

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 08-12229 (MFW)

Adv. Case No. 10-50731 (MFW)

Adv. Case No. 10-50788 (MFW)

- - - - -x

In the Matter of:

WASHINGTON MUTUAL, INC., et al.,

Debtors.

- - - - -x

OFFICIAL COMMITTEE OF

EQUITY SECURITY HOLDERS,

Plaintiff,

-against-

WASHINGTON MUTUAL, INC.,

Defendant.

- - - - -x

UNION BANK, N.A.,

Plaintiff,

-against-

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,

et al.,

Defendants.

- - - - -x

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

U.S. Bankruptcy Court
824 North Market Street
Wilmington, Delaware

April 21, 2010
11:31 AM

B E F O R E:
HON. MARY F. WALRATH
U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HEARING re Motion of Debtors Pursuant to Section 105(a) of the
Bankruptcy Code and Bankruptcy Rule 9019(a) for Approval of
Settlements with Old Republic Insurance Company, Zurich
American Insurance Company and JPMorgan Chase Bank, N.A.
[Docket No. 2082; filed 1/4/2010]

STATUS CONFERENCE re Debtors' Twentieth Omnibus (Substantive)
Objection to Claims [Docket No. 2205; filed 1/22/2010]

HEARING re Complaint by Official Committee of Equity Security
Holders against Washington Mutual, Inc., et al. [Adversary
Proceeding Case No. 10-50731; Docket No. 1; filed 3/3/2010]

PRETRIAL CONFERENCE re Complaint for Declaratory Judgment
[Adversary Proceeding Case No. 10-50788; Docket No. 1; filed
3/11/2010]

HEARING re Fee Applications

Transcribed By: Clara Rubin

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S:

WEIL, GOTSHAL & MANGES LLP

Attorneys for the Debtors

767 Fifth Avenue

New York, NY 10153

BY: BRIAN S. ROSEN, ESQ.

WEIL, GOTSHAL & MANGES LLP

Attorneys for the Debtors

100 Federal Street

Floor 34

Boston, MA 02110

BY: THOMAS C. FRONGILLO, ESQ.

RICHARDS, LAYTON & FINGER, P.A.

Attorneys for the Debtors

One Rodney Square

920 North King Street

Wilmington, DE 19801

BY: CHUN I. JANG, ESQ.

MARK D. COLLINS, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUINN EMANUEL URQUHART & SULLIVAN LLP
Attorneys for the Debtors
51 Madison Avenue, 22nd Floor
New York, NY 10010

BY: BENJAMIN I. FINESTONE, ESQ. (TELEPHONICALLY)
DAVID L. ELSBERG, ESQ. (TELEPHONICALLY)

ELLIOTT GREENLEAF
Special Counsel to the Debtors
1105 Market Street
Suite 1700
Wilmington, DE 19801

BY: SHELLEY A. KINSELLA, ESQ.

JOHN W. WOLFE, P.A.
Special Counsel to the Debtors

BY: JOHN W. WOLFE, ESQ. (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AKIN GUMP STRAUSS HAUER & FELD LLP
Attorneys for the Official Committee of Unsecured
Creditors
One Bryant Park
New York, NY 10036

BY: ROBERT A. JOHNSON, ESQ.
FRED S. HODARA, ESQ. (TELEPHONICALLY)
ROBERT J. BOLLER, ESQ. (TELEPHONICALLY)

AKIN GUMP STRAUSS HAUER & FELD LLP
Attorneys for the Official Committee of Unsecured
Creditors
2029 Century Park East
Suite 2400
Los Angeles, CA 90067

BY: PETER J. GURFEIN, ESQ.
BRIAN M. ROTHSCHILD, ESQ. (TELEPHONICALLY)
DAVID P. SIMONDS, ESQ. (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AKIN GUMP STRAUSS HAUER & FELD LLP

Attorneys for the Official Committee of Unsecured
Creditors

Robert S. Strauss Building
1333 New Hampshire Avenue, N.W.
Washington, DC 20036-1564

BY: SCOTT L. ALBERINO, ESQ. (TELEPHONICALLY)

ASHBY & GEDDES, P.A.

Attorneys for the Equity Committee
500 Delaware Avenue
Wilmington, DE 19899

BY: GREGORY ALAN TAYLOR, ESQ.

BIFFERATO LLC

Attorneys for the Ad Hoc Group of Trust Preferred Holders
800 N. King Street
Wilmington, DE 19899

BY: KEVIN G. COLLINS, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BROWN RUDNICK LLP
Attorneys for the Ad Hoc Group of Trust Preferred Holders
Seven Times Square
New York, NY 10036

BY: SIGMUND S. WISSNER-GROSS, ESQ.

BROWN RUDNICK LLP
Attorneys for the Ad Hoc Group of Trust Preferred Holders
One Financial Center
Boston, MA 02111

BY: JEREMY B. COFFEY, ESQ.

DLA PIPER
Attorneys for FDIC, Receiver
1251 Avenue of the Americas
New York, NY 10020

BY: JOHN J. CLARKE, JR., ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HALPERIN BATTAGLIA RAICHT, LLP

Attorneys for Hoffman, Bannister, Endsley, Morris
555 Madison Avenue
9th Floor
New York, NY 10022

BY: ALAN D. HALPERIN, ESQ.

K&L GATES LLP

Attorneys for Union Bank, N.A., as Trustee
599 Lexington Avenue
New York, NY, 10022

BY: JEFFREY N. RICH, ESQ.

LANDIS RATH & COBB LLP

Attorneys for JPMorgan Chase
919 Market Street, Suite 1800
Wilmington, DE 19899

BY: ADAM LANDIS, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MORRIS JAMES LLP

Attorneys for Zurich/Old Republic Insurance

500 Delaware Avenue

Suite 1500

Wilmington, DE 19801

BY: ERIC J. MONZO, ESQ.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

Attorneys for Union Bank, N.A., as Trustee

1201 North Market Street

Wilmington, DE 19899

BY: GREGORY W. WERKHEISER, ESQ.

PEPPER HAMILTON LLP

Attorneys for the Official Committee of Unsecured

Creditors

Hercules Plaza

1313 Market Street

Suite 5100

Wilmington, DE 19899

BY: DAVID B. STRATTON, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

POTTER ANDERSON & CORROON LLP

Attorneys for the Group of Bondholders of WMB

Hercules Plaza

1313 N. Market Street, 6th Floor

Wilmington, DE 19899

BY: ETTA R. WOLFE, ESQ.

SULLIVAN & CROMWELL LLP

Attorneys for JPMorgan Chase

125 Broad Street

New York, NY 10004

BY: BRIAN D. GLUECKSTEIN, ESQ.

STACEY R. FRIEDMAN, ESQ. (TELEPHONICALLY)

JOSHUA J. FRITSCH, ESQ. (TELEPHONICALLY)

SUSMAN GODFREY LLP

Attorneys for the Equity Committee

1000 Louisiana

Suite 5100

Houston, TX 77002

BY: STEPHEN D. SUSMAN, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUSMAN GODFREY LLP

Attorneys for the Equity Committee

654 Madison Avenue

5th Floor

New York, NY 10065

BY: SETH ARD, ESQ.

VENABLE LLP

Attorneys for the Equityholders

750 E. Pratt Street

Suite 900

Baltimore, MD 21202

BY: GREGORY A. CROSS, ESQ.

VENABLE LLP

Attorneys for the Equityholders

Rockefeller Center

1270 Avenue of the Americas

Twenty-Fifth Floor

New York, NY 10020

BY: JORIAN L. ROSE, ESQ. (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WILMER CUTLER PICKERING HALE & DORR

Attorneys for the Bank Bondholders

399 Park Avenue

New York, NY 10022

BY: PHILIP D. ANKER, ESQ.

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

Attorneys for Hoffman, Bannister, Endsley, Morris

222 Delaware Avenue

Wilmington, DE 19801

BY: ERICKA F. JOHNSON, ESQ.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Attorneys for FDIC, Receiver

The Brandywine Building

1000 West Street, 17th Floor

Wilmington, DE 19801

BY: M. BLAKE CLEARY, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

U.S. DEPARTMENT OF JUSTICE
Office of the United States Trustee
844 King Street
Suite 2207
Wilmington, DE 19801

BY: JOSEPH MCMAHON, ESQ.

ARENT FOX LLP
Attorneys for Creditor, Wilmington Trust
1050 Connecticut Avenue, NW
Washington, DC 20036

BY: JEFFREY N. ROTHLEDER, ESQ. (TELEPHONICALLY)

BINGHAM MCCUTCHEN LLP
Attorneys for McKee Nelson
2020 K Street NW
Washington, DC 20006

BY: KEVIN OTERO, ESQ. (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BRACEWELL & GIULIANI LLP

Attorneys for the WMB Noteholder Group

225 Asylum Street

Suite 2600

Hartford, CT 06103

BY: EVAN D. FLASCHEN, ESQ. (TELEPHONICALLY)

KATHERINE L. LINDSAY, ESQ. (TELEPHONICALLY)

DAVIS WRIGHT TREMAINE LLP

Interested Party

1201 Third Avenue

Suite 2200

Seattle, WA 98101

BY: STEVEN CAPLOW, ESQ. (TELEPHONICALLY)

FOX, HEFTER, SWIBEL, LEVIN & CARROLL, LLP

Attorneys for Creditor, Old Republic/Zurich

200 West Madison Street

Suite 3000

Chicago, IL 60606

BY: MARGARET M. ANDERSON, ESQ. (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

GIBSON DUNN & CRUTCHER

Interested Party

3161 Michelson Drive

Irvine, CA 92612

BY: KENNETH A. GLOWACKI JR., ESQ. (TELEPHONICALLY)

LOEB & LOEB LLP

Attorneys for Creditor, Wells Fargo, N.A.

345 Park Avenue

New York, NY 10154

BY: WALTER H. CURCHACK, ESQ. (TELEPHONICALLY)

VADIM J. RUBENSTEIN, ESQ. (TELEPHONICALLY)

LOWENSTEIN SANDLER PC

Attorneys for Plaintiff, Ontario Teachers' Pension Plan

65 Livingston Avenue

Roseland, NJ 07068

BY: IRA M. LEVEE, ESQ. (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MILLER & CHEVALIER

Attorneys for Shearman & Sterling

655 Fifteenth Street, NW

Suite 900

Washington, DC 20005

BY: STEVEN R. DIXON, ESQ. (TELEPHONICALLY)

MUNGER, TOLLES & OLSON LLP

Interested Party

355 South Grand Avenue

35th Floor

Los Angeles CA 90071

BY: THOMAS B. WALPER, ESQ. (TELEPHONICALLY)

PATTERSON BELKNAP WEBB & TYLER LLP

Attorneys for Creditor, Law Debenture Trust Company of

New York

1133 Avenue of the Americas

New York, NY 10036

BY: BRIAN P. GUINEY, ESQ. (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PERKINS COIE LLP

Interested Party

1201 Third Avenue

Suite 4800

Seattle, WA 98101

BY: BRUCE G. MACINTYRE, ESQ. (TELEPHONICALLY)

PILLSBURY WINTHROP SHAW PITTMAN LLP

Attorneys for Creditor, Bank of New York Mellon

1540 Broadway

New York, NY 10036

BY: LEO T. CROWLEY, ESQ. (TELEPHONICALLY)

MARGOT P. ERLICH, ESQ. (TELEPHONICALLY)

SHEARMAN & STERLING LLP

801 Pennsylvania Avenue, NW

Suite 900

Washington, DC 20004

BY: ELIZABETH PIKE, ESQ. (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SIMPSON THACHER & BARTLETT LLP

Interested Party

425 Lexington Avenue

New York, NY 10017

BY: MEGHAN E. CANNELLA, ESQ. (TELEPHONICALLY)

STUTMAN TREISTER & GLATT

Attorneys for Elliott Management

1901 Avenue of the Stars, 12th Floor

Los Angeles, CA 90067

BY: K. JOHN SHAFFER, ESQ. (TELEPHONICALLY)

WILLIAM L. HOLT, ESQ. (TELEPHONICALLY)

SULLIVAN & CROMWELL LLP

Attorneys for JPMorgan Chase

1888 Century Park East

Los Angeles, CA 90067

BY: ROBERT A. SACKS, ESQ. (TELEPHONICALLY)

HYDEE R. FELDSTEIN, ESQ. (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WHITE & CASE LLP

Attorneys for the Committee of Bondholders

1155 Avenue of the Americas

New York, NY 10036

BY: GREGORY M. STARNER, ESQ. (TELEPHONICALLY)

WILMER CUTLER PICKERING HALE & DORR

Attorneys for the Bank Bondholders

1875 Pennsylvania Avenue, NW

Washington, DC 20006

BY: LISA E. EWART, ESQ. (TELEPHONICALLY)

NANCY MANZER, ESQ. (TELEPHONICALLY)

ALVAREZ & MARSAL

Interested Party

BY: MICHAEL ARKO (TELEPHONICALLY)

CHRIS WELLS (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AURELIUS CAPITAL MANAGEMENT

Interested Party

BY: ELEANOR CHAN (TELEPHONICALLY)

BANK OF AMERICA SECURITIES

Creditor

BY: ALEXANDER KLIPPER (TELEPHONICALLY)

BARCLAYS CAPITAL, INC.

Interested Party

BY: JAMES RUSSO (TELEPHONICALLY)

CENTERBRIDGE PARTNERS

Creditor

BY: STANISLAV FEDORENKO (TELEPHONICALLY)

CHAPDELAINE CREDIT PARTNERS

Interested Party

BY: GREN DAY (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CP ENERGY GROUP

Interested Party

BY: MARTIN PASQUALINI (TELEPHONICALLY)

CREDIT SUISSE FIRST BOSTON

Interested Party

BY: ANDREW REBAK (TELEPHONICALLY)

CRT CAPITAL GROUP, LLC

Creditor

BY: KEVIN STARKE (TELEPHONICALLY)

DAVIDSON KEMPNER CAPITAL

Creditor

BY: EPHRAIM DIAMOND (TELEPHONICALLY)

ELLIOTT MANAGEMENT

Creditor

BY: JOHN PIKE (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ESOPUS CREEK ADVISORS LLC

Member of the Official Committee of Equityholders

BY: LAUREN KRUEGER (TELEPHONICALLY)

ANDREW SOLE (TELEPHONICALLY)

FTI CONSULTING, INC.

Creditor

BY: STEVEN SIMMS (TELEPHONICALLY)

GRANT THORNTON LLP

Interested Party

BY: DON CORBETT (TELEPHONICALLY)

OCH-ZIFF CAPITAL MANAGEMENT GROUP

Creditor

BY: NOAH CHARNEY (TELEPHONICALLY)

ONE EAST PARTNERS

Interested Party

BY: MICHAEL D. ADAMSKI (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PRICEWATERHOUSECOOPERS

Interested Party

BY: DAVID MARSTON (TELEPHONICALLY)

SILVER POINT CAPITAL

Creditor

BY: MATTHEW EHMER (TELEPHONICALLY)

TALAMOD ASSET MANAGEMENT, LLC

Creditor

BY: JAY STEEN (TELEPHONICALLY)

THE SEAPORT GROUP

Interested Party

BY: GEORGE BRICKFIELD (TELEPHONICALLY)

UBS SECURITIES LLC

Interested Party

BY: ARIN J. WOLFSON (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WASHINGTON MUTUAL, INC.

Debtor

BY: DOREEN LOGAN (TELEPHONICALLY)

MICHAEL BLOMQUIST (TELEPHONICALLY)

In Propria Persona

DAN BULLOCK (TELEPHONICALLY)

In Propria Persona

ANNA KALENCHITS (TELEPHONICALLY)

Interested Party

1 P R O C E E D I N G S

2 THE CLERK: All rise. Please be seated.

3 THE COURT: Good morning.

4 MR. ROSEN: Good morning, Your Honor. Brian Rosen,
5 Weil Gotshal & Manges, along with Mark Collins and Chun Jang
6 from Richards Layton & Finger on behalf of Washington Mutual
7 Inc.

8 Your Honor, we have five items on today's agenda that
9 we're going forward. The first item, Your Honor, is item
10 number 18 --

11 THE COURT: Yes.

12 MR. ROSEN: -- which is the motion of the debtors
13 pursuant to Section 105 of the Code and 9019 for approval of
14 settlements with Old Republic Insurance Company, Zurich
15 Insurance Company and JPMorgan Chase.

16 Your Honor, if you will recall, we actually filed this
17 motion on January 4th, 2010 and we had a hearing on February
18 5th to consider the motions. We actually then adjourned that
19 because there was some nonmaterial revisions that were going to
20 be made to the agreement and we wanted to afford everybody to
21 see those as well as any changes that would necessarily have to
22 be done to the orders. And, Your Honor, if I could, I'd like
23 to just approach the bench. I have a blackline. If I may
24 approach, Your Honor?

25 THE COURT: You may.

1 MR. ROSEN: Your Honor, the agreements essentially
2 were amended to do the following, to provide at the request of
3 J.P. Morgan that the proofs of claim that it filed related to
4 the insurance agreements would be deemed to be amended so that
5 JPM would not be required to amend or withdraw the existing
6 claims. And we also made this change for the benefit of the
7 insurers.

8 Also to clarify, at the request of J.P. Morgan that no
9 additional documentation would be required for the debtors to
10 assign their interest in the return premiums, although none was
11 originally contemplated; additionally, to revise the agreements
12 so that the waivers and the releases match exactly for all
13 parties because, originally, there was some different language
14 in the two, Your Honor; lastly, to synchronize all actions
15 contemplated by the agreement so that they occur more or less
16 at the same time and on the consummation date.

17 Your Honor, just again, for history sake, Old Republic
18 provided workmen's comp and employers liability, commercial
19 general liability and business automotive liability insurance
20 to the debtors and their affiliates, including WMB, pursuant to
21 various policies and insurance for the periods of March 1, '06
22 to March 1, '07, March 1, '07 to March 1, '08 and March 1, '08
23 to March 1, '09.

24 Zurich provided workmen's comp and employers
25 liability, commercial general liability and business automotive

1 liability insurance to the debtors and their affiliates,
2 including WMB, through various policies for the periods of I
3 would say the corresponding four years immediately prior to the
4 Old Republic ones.

5 Pursuant to this arrangement, Your Honor, JPM will
6 assume the liability for approximately 46,000 in unpaid
7 premiums owed to Old Republic and will assume the debtors'
8 rights, title and interest and approximately 183,000 in return
9 premiums which were paid by WMB. JPM will also assume the
10 liability for approximately 138,000 in unpaid premiums owed to
11 Zurich.

12 Your Honor, we have no objections to this as reflected
13 in the agenda. It was an uncontested matter going forward. We
14 would ask the Court at this time to approve the motion based
15 upon the amendments that are set forth in the blackline that we
16 have. I also have an original back here, Your Honor.

17 THE COURT: All right. Does anybody wish to be heard
18 on that motion?

19 (No response)

20 THE COURT: All right. I will approve it.

21 MR. ROSEN: May I approach?

22 THE COURT: Yes.

23 MR. ROSEN: Your Honor, the next item on the agenda is
24 a status conference with respect to the debtors' twentieth
25 omnibus objection otherwise known as the bank bondholders'

1 objection or our objection to the bank bondholder claims.

2 As you recall, Your Honor, we were here a short while
3 ago and the parties have been discussing these matters. I
4 would like to hand the podium over to my partner, Mr. Thomas
5 Frongillo, and I assume Mr. Anker as well.

6 MR. FRONGILLO: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. FRONGILLO: This week we had a telephone
9 conference to try to at least take the first steps towards
10 working out a scheduling order -- proposed order for the Court
11 for the bondholder claims. And the focus of the discussion was
12 primarily on a proposal by Mr. Anker that we take a look at the
13 scheduling order that was issued in the United States District
14 Court in the Western District of Washington regarding the
15 securities and ERISA litigation in that case. And Mr. Anker
16 was kind enough to disseminate the order for us to take a look
17 at. And I can just tell you briefly what it proposes.

18 It proposes a completion of document production just
19 after Labor Day, the first week of September, with depositions
20 to fall out beginning in the fall, October. It has a trial
21 date of July 2012. The close of expert discovery in this case
22 is November of 2011. So without getting into all the details,
23 that gives you a rough idea of the parameters of what the Court
24 is doing up in Washington.

25 The other issue, of course, that we discussed was an

1 effort by the parties to see if we could come to an agreement
2 that depositions would not be duplicative, that many of the
3 people that would be deposed in this case are likely to be
4 deposed in the federal case pending in Washington. And there
5 are some limitations, I believe, time limitations pursuant to
6 the Federal Rules of Civil Procedure. And the idea would be is
7 that these witnesses, many of them whom, obviously, are
8 individuals, should not be subjected to multiple depositions on
9 some issues which are somewhat related.

10 So that was a suggestion made by Mr. Anker and posed
11 to us. We would like to continue having a discussion about the
12 schedule. There is obviously an issue on document production
13 which is important to us because to be able to comply with the
14 requests which have already been submitted is a prodigious
15 undertaking. With Your Honor's ruling a couple weeks ago, I'll
16 just note that veil-piercing alter ego type claims really open
17 the gamut, if you will, in terms of the type of discovery and
18 determining what would be responsive to the requests by the
19 bondholders. The nature of their proof of claim is obviously
20 such that the two entities were acting as one. There was
21 confused intermingling. One exercised domination or control
22 over the other. Some creditors didn't know who they were
23 dealing with. So aside from the standard type of discovery
24 that you would have in connection with the issuance of the
25 bonds, what representations were made, which ones were relied

1 upon, this really opens the door to many avenues and factual
2 issues that are far broader than that as does the substantive
3 consolidation claim.

4 So I think that what we need to do, we've taken a step
5 forward. We've got an active discussion right now. I hope I
6 fairly characterized it and Mr. Anker can let you know that as
7 well. But I think we do need to have some additional
8 discussion but we're taking steps, I think, in a -- the right
9 direction to coming up with something that makes sense to the
10 Court.

11 THE COURT: Okay.

12 MR. ANKER: Good morning, Judge Walrath. Philip
13 Anker, Wilmer Cutler Pickering Hale & Dorr. I think Mr.
14 Frongillo's recounting of the discussion on Monday is
15 substantially accurate. It was, in my view, a productive
16 discussion. I do think this is a more complicated case than
17 most that come up with a scheduling order not so much but as of
18 the breadth of the issues but because of the overlapper in a
19 relationship with other litigation. And the only thing I would
20 add is there is potential overlap, at least in some of the
21 factual issues, with the two adversary proceedings that are
22 pending before Your Honor, one in which I think the plaintiff,
23 the initial plaintiff, is WUMI, one in which the initial
24 plaintiff, I think, is JPMorgan Chase. And, again, I think the
25 parties are committed, to the extent possible, to try to

1 coordinate so we do this in the least painful for everyone's
2 basis. That takes a little bit of time and it was a fruitful
3 discussion and we agreed to sit down and continue to have a
4 discussion to try to come up with an appropriate schedule.
5 Thank you, Your Honor.

6 THE COURT: All right. Thank you.

7 MR. ROSEN: Your Honor, the next item that we can
8 expeditiously deal with on the docket is item number 29 which
9 is the complaint for declaratory judgment by Union Bank in
10 connection with the rabbi trust. And I believe that counsel is
11 here in the courtroom. You can address the Court.

12 MR. RICH: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. RICH: Jeffrey Rich of K&L Gates. I believe I've
15 been pro hac'd into this particular matter by our local
16 counsel. So thank you for letting me address the Court.

17 Let me just take a few minutes, if I may, to tell you
18 what this is about and where it stands. Union Bank, N.A., is
19 the trustee under certain rabbi trusts which are commonly
20 referred to as the Omitson (ph.) trusts and the Dime trust.
21 There was a dispute, I guess, between the parties, the debtor
22 and J.P. Morgan as successor to the bank's assets as to where
23 the assets of these two trusts, or a number of trusts, would
24 go. Apparently, that's been settled. And that would, in
25 effect, probably make moot certain of the causes of action in

1 the adversary proceeding should the plan be confirmed.

2 There are, however, certain other issues that the
3 complaint raises. In connection with the Dime trusts, there
4 are, in one particular trust called the Dime Executive Trust, a
5 number of split dollar policies. And under those split dollar
6 policies, the beneficiaries of those policies may have
7 interests which therefore would result in certain of the
8 proceeds of the policies being paid to individuals as opposed
9 to J.P. Morgan. That is the principal issue that is really now
10 present in the adversary proceeding.

11 There were some pressing issues, namely, two people
12 had died who would have been entitled, but for any issues
13 involving the bankruptcy, to certain of the proceeds of these
14 policies. And the insurance carriers will not pay over any
15 monies to these individuals without instructions from Union
16 Bank. Union Bank was concerned about whether it was authorized
17 to give such instructions because it may be possible for J.P.
18 Morgan or it could have been possible for the debtor if it was
19 not giving up its rights ultimately in these particular trusts
20 who claim perhaps those monies should be paid to it because two
21 people had died. And they were pressing for the proceeds of
22 the policies one of which apparently is sorely needed by the
23 family. We reached out to the J.P. Morgan and the debtor and
24 we have an agreement in principle whereby these parties will
25 consent to the payment of these monies to the beneficiary. And

1 that stipulation is in process of being prepared and hopefully
2 will be done in the next couple of days.

3 One other issue that was raised was the cash surrender
4 value of a whole life policy which was not going to be
5 sufficient to maintain the policy after July. That stipulation
6 also provides that the monies in the Dime Executive Trust can
7 be utilized to pay the premium on that particular policy to
8 keep it in effect. And all of that will be in that stipulation
9 which we would hope would be signed and we would submit to the
10 Court in the next few days under a COC, if the Court is
11 acceptable to that.

12 THE COURT: That's fine.

13 MR. RICH: The issues involved in the case hopefully
14 will result in a settlement with J.P. Morgan and we will
15 discuss that with J.P. Morgan in the next few weeks and
16 hopefully that will move out most, if not all, of the issues in
17 the adversary proceeding.

18 We have extended time of various individuals and
19 others to answer the complaint. And we don't think there's any
20 discovery necessary at this point or a necessity for a
21 discovery order. We would submit and suggest to the Court that
22 the matter be carried -- I understand there's a hearing on May
23 19th. I may have the date wrong since I'm not a principal
24 player in this drama. But if that date works then hopefully
25 all the answers will be done by then. Maybe we will have an

1 overall settlement and won't have to take up the Court's time.
2 So my request to the Court would be that we carry this to that
3 date, that we not be concerned at this point about discover and
4 then we will submit this, hopefully, stipulation that's agreed
5 by the parties within the next few days and moot out the most
6 pressing issues in the adversary.

7 THE COURT: All right. Well, I have no objection to
8 continuing it since the answers are not filed. So we can
9 continue the pretrial unless anybody else has an issue.

10 MR. LANDIS: Thank you, Your Honor. For the record,
11 Adam Landis from Landis Rath & Cobb on behalf of JPMorgan
12 Chase. We certainly don't have an issue with continuing the
13 pretrial conference to the 19th and in the interim not need to
14 answer, move or engage in any discovery.

15 With respect to the settlement agreement, Mr. Rich
16 accurately described what's going on. We need to confirm some
17 facts that need to go into the settlement agreement. We need
18 to work on some language, provide appropriate releases on
19 behalf of JPM and the debtors. And we hope to have that done
20 very shortly. Document's in process and we would like nothing
21 better than to submit it under a certification of counsel and
22 not have to appear again on this matter. So --

23 THE COURT: That would be fine.

24 MR. LANDIS: Thank you, Your Honor.

25 MR. ROSEN: Your Honor, from the debtors' perspective,

1 we likewise were given an opportunity or the extension of time
2 to answer. We have no problem carrying this to the May 19th
3 date and we look forward to trying to resolve it.

4 THE COURT: All right. Thank you.

5 MR. WERKHEISER: Your Honor, for the record, Gregory
6 Werkheiser, Morris, Nichols, Arsht & Tunnell LLP, also
7 appearing on behalf of Union Bank as trustee. Your Honor, we
8 were contacted by the Court prior to this hearing in regard to
9 a motion to seal certain certificates of service that the bank
10 had filed. And we were instructed that Your Honor did want to
11 hear proceedings concerning that motion today.

12 In substance, what we have sought to do was seal
13 certificates of service that contain the address information of
14 the individual defendants who are clients in the bank. This is
15 consistent with bank policy under which, as a general matter,
16 they try to maintain client confidentiality and keep personal
17 information of their clients out of the public record. And
18 because we couldn't verify to an absolute certainty that
19 whether there are privacy laws in various jurisdictions that
20 might in any way be impacted by putting that material in the
21 public record.

22 So that's the motion that we filed. And we did serve
23 it on all the counterparties to the adversary and received no
24 responses from those parties or from anybody else. And we're
25 here today to address that if Your Honor has any questions or

1 concerns about that request.

2 THE COURT: I've never heard of redacting addresses of
3 parties served with a motion.

4 MR. WERKHEISER: It was something we did out of an
5 abundance of caution.

6 THE COURT: Were these defendants that you've named
7 because they have an interest?

8 MR. WERKHEISER: These are defendants that we named
9 because they may have an interest in the funds or may claim an
10 interest in the funds. They were -- the names of the
11 individual defendants themselves are listed on the publicly
12 filed original certificates of service, simply the addresses
13 that we've kept out of the public record and asked to be sealed
14 on those.

15 THE COURT: What's confidential about that?

16 MR. WERKHEISER: Your Honor, from the bank's
17 perspective, I don't know that anything is. However, we were
18 not in a position to say with certainty what the bank's clients
19 would view as confidential or not and whether they would have a
20 problem with that information being in the public record.

21 So I think where we stand, unless Mr. Rich rises and
22 has a different view, is that we'd abide by whatever
23 instruction the Court has and how to proceed here, but we felt
24 it important to seek the relief in the first instance.

25 THE COURT: Well, I'm not inclined to seal it. I

1 don't see any necessity for it. So I'll deny the motion.

2 MR. WERKHEISER: Okay. Thank you, Your Honor. We
3 understand.

4 THE COURT: Okay.

5 MR. WERKHEISER: Your Honor, with the Court's leave,
6 may we be excused for the balance of the hearing?

7 THE COURT: Yes.

8 MR. WERKHEISER: Thank you.

9 MR. ROSEN: Your Honor, now going back to what I
10 believe is going to be a lengthier matter will be item number
11 28 on the agenda which started with the complaint filed by the
12 official committee of equity security holders against the
13 debtors with respect to seeking to force the holding of a
14 shareholders meeting. There was also motions for summary
15 judgment, responses filed by the debtors and a reply filed by
16 the equity committee the other day. We have been told by the
17 Court that the matter that will be on for today is not the
18 matter of the summary judgment itself but rather just the
19 aspect of it relating to the automatic stay.

20 THE COURT: Yes.

21 MR. ROSEN: With that, I would turn the podium over to
22 the equity committee.

23 MR. TAYLOR: Good morning, Your Honor. Greg Taylor
24 from Ashby & Geddes on behalf of the equity committee. I'd
25 like to make a couple of introductions to Your Honor if I may.

1 Steve Susman and Seth Ard from the Susman Godfrey who have
2 recently been retained by the equity committee, are here in
3 attendance. Mr. Susman will be handling the argument on behalf
4 of the equity committee. Both Mr. Susman and Mr. Ard are
5 members in good standing of the bars of the state of New York
6 and I would move their admission for hac vice and we'll follow
7 up with the papers, Your Honor.

8 THE COURT: All right. They'll be heard.

9 MR. TAYLOR: In addition, Your Honor, in attendance
10 today, we have several members of the equity committee. We
11 have Mike Willingham who is the chair of the committee. We
12 have Joe Criscione and Dorothea Barr, all in attendance today
13 for Your Honor.

14 THE COURT: All right.

15 MR. TAYLOR: And with that, Your Honor, I'll turn the
16 podium over.

17 THE COURT: All right.

18 MR. ROSEN: Your Honor, just one comment before we get
19 going. As the Court may be aware, the equity committee was
20 originally represented by Venable. They were subsequently
21 substituted out and Munger Tolles was attempted to be brought
22 in. I'm sorry. There was in the middle -- Dewey LeBoeuf was
23 brought in. They were found to have a conflict. And then
24 Munger Tolles was brought in and they had a conflict as well.
25 With the Susman Godfrey firm, I would like to let the Court

1 know that the debtors are looking into an issue. Susman
2 Godfrey was brought in, interviewed by the debtors and provided
3 with significant information. We're trying to ascertain the
4 level of that information to see if a conflict exists there.
5 And, if so, we just wanted to let the Court know of it and
6 reserve our rights to object to the retention if necessary.

7 THE COURT: All right.

8 MR. SUSMAN: Good morning, Your Honor, Steve Susman.
9 Your Honor, the only issue before the Court today is whether it
10 will allow the shareholders to seek the assistance of a state
11 court in Washington to compel WMI to convene an annual
12 shareholders meeting, something which is required by both
13 Washington law and WMI's bylaws.

14 As an initial matter, I trust the Court understands
15 why the WMI shareholders, the equity committee, if they believe
16 the automatic stay provision didn't apply, nevertheless asked
17 your permission before they filed in state court. Given the
18 lengths to which the debtors have gone to deny the equity
19 holders even a chance to put their chosen representatives on
20 the board and at the negotiating table, there's little chance
21 that they would not have been defending a contempt motion here
22 had they filed first and asked later.

23 As to why the shareholders have sought alternative
24 relief from this Court, that too is easily explained. If they
25 are to have any chance to see a board with an opportunity to

1 make relevant decisions time is of the essence. That's why
2 they elected to proceed today with their argument on their
3 alternative request regarding the stay when they realized that
4 their summary judgment motion would take longer to resolve.
5 They are hopeful that a Washington state court can resolve the
6 issue of corporate governance before this Court has to hear and
7 decide their summary judgment motion.

8 The debtors' suggestion, Your Honor, that the distinct
9 issue of the scope of the stay is not ripe is belied by two
10 facts. First, the equity committee is determined to have a
11 shareholders meeting, so much so that it has alternatively
12 sought to have this Court summarily order one. Second, the
13 debtors have filed a counterclaim asking this Court to enjoin
14 the equity committee from taking any action in state court to
15 demand one. If this is not a ripe controversy I don't know
16 what would be.

17 The debtors' suggestion that the equity committee's
18 desire to call a shareholders meeting is motivated by some
19 intent to torpedo the settlement or the plan is belied by the
20 chronology of events in this case. Members of the equity
21 committee who are here today -- and I'm going to call Mr.
22 Michael Willingham, the chairman, to the stand for a few
23 minutes -- are prepared to testify that by late February they
24 had consulted with Washington state counsel about filing a
25 proceeding to require an annual meeting. By March they had

1 formally retained and paid a retainer to Washington state
2 counsel to initiate such a proceeding. They instead, out of an
3 abundance of caution, chose to file their complaint here on
4 March 3rd because they did not want to take any chance that
5 they would be violating the automatic stay.

6 And as the Court knows, the equity committee filed its
7 motion for summary judgment, and in the alternative, the relief
8 from the stay, on March 11th. The simple point is that if you
9 just consider these dates, Your Honor, the equity committee
10 could not have intended to upset the settlement or the plan by
11 doing these things because the settlement wasn't announced till
12 March 12th and the plan wasn't even filed till March 26th.
13 What they did and what they are doing has nothing to do with a
14 desire to torpedo any plan or settlement or anything else.
15 They simply want to exercise their corporate governance rights.

16 We begin with a proposition, Your Honor, that the
17 automatic stay provision doesn't apply to a shareholder action
18 solely in his capacity as a shareholder to require a debtor in
19 reorganization to hold an annual meeting. There's only one
20 case that squarely dealt with this issue, and that's Marvel
21 Entertainment Group decided by the District of Delaware in
22 1997.

23 The Court there squarely held, and I quote, "The
24 automatic stay provisions of the Bankruptcy Code are not
25 implicated by the exercise of shareholders' corporate

1 governance rights." The debtors, in their brief, relegate
2 discussion of the Marvel case to footnote 24 and proclaim that
3 it is not binding authority on this case. That may technically
4 be true, but the Third Circuit requires that it be given great
5 deference. Instead of giving it great deference, the debtors
6 argue in a footnote simply that the Court in Marvel got it
7 wrong by concluding that the "exercise control" phrase added by
8 Congress in 1984 to 362 did not intend a "marked departure from
9 the well-established law for more than fifty years, to the
10 effect that the automatic stay provision does not prevent
11 shareholders from electing a new board."

12 And refusing to give deference to Marvel, debtors do
13 not bother to point out to the Court that at least four other
14 decisions have approved and followed Marvel. They are cited on
15 page 16 of our brief. No Court -- I repeat, no Court has ever
16 rejected the reasoning of Marvel.

17 I guess the corollary of rejecting a decision of this
18 district is to rely, as the debtors do on page 26 of their
19 brief, on two cases that the Marvel court distinguished as
20 involving creditors who acquired shares when they weren't paid
21 debts and sought to use the shares to cause the repayment of
22 their debts.

23 Our second point, Your Honor, is even if the automatic
24 stay provision applies, the equity committee has established
25 good cause for lifting it. There is no dispute that the

1 failure to have conducted an annual shareholders meeting since
2 19 -- since 2008 violates both Washington law and WMI's bylaws.
3 There is no indication whatsoever that wanting the chance to
4 elect new directors who would not be biased as a result of
5 their involvement in pre-petition events constitutes clear
6 abuse. There's no reason to suspect that the committee is
7 acting in bad faith or has some secret desire to destroy all
8 prospects for reorganization or to torpedo the reorganization
9 process. Those are the words that courts have used to describe
10 what constitutes clear abuse.

11 Within less than two months of being established, over
12 the debtors' objections, the committee sought the relief
13 requested today, and it did so without knowing there was a
14 settlement or even a plan in the offering. Unlike the
15 shareholders who testified as to their true motives, at a trial
16 on the merits held upon remand in the Johns-Mansville case, the
17 members of this equity committee have neither done anything nor
18 said anything, either before or after they filed their request
19 for relief to suggest that they would either oppose the
20 settlement or the plan, only that they wanted and want
21 independent and new directors to evaluate it and other possible
22 sources of recovery.

23 As this Court has previously noted, it is an open
24 question of whether WMI is insolvent. But even assuming it
25 were not an open question and that WMI were insolvent, no court

1 has ever held that insolvency in and of itself deprives
2 shareholders of the right to elect directors. To the contrary,
3 the Delaware Supreme Court in the Saxon Industries case held
4 that, quote, "Absent other compelling legal or equitable
5 factors, insolvency alone, irrespective of degree, does not
6 divest shareholders of their right to exercise the powers of
7 corporate democracy."

8 And I don't mean to suggest, Your Honor, that the
9 proposed settlement, which certainly isn't an executed
10 agreement yet, isn't of serious concern to the equity
11 committee. It is. And that underscores the reasons why the
12 equity committee believes it is imperative to have an
13 opportunity for new corporate governance for the debtors. The
14 legal claims of the debtors that would be released through
15 settlement are among the debtors' most valuable assets.

16 This is not time to shoo away the owners of this
17 company. It is exactly the time when they should have an
18 opportunity to be heard through an annual meeting. Of course
19 this motion does not require the Court to make any conclusions
20 or decisions about the competency or adequacy of the current
21 boards and management of the debtors or about the adequacy of
22 the settlement or the proposed plan. And no such conclusions
23 or findings would be implied by a decision that permits these
24 shareholders to seek relief from the state court in Washington.

25 I do want to advise the Court that the equity

1 committee will be filing a motion for appointment of an
2 examiner under Section 1104(c), and we will be doing that by
3 early next week if not sooner. I mention that because I don't
4 want that to be misconstrued as a substitute for the relief we
5 are seeking today. We intend to do that whether the relief we
6 are seeking today is granted or denied.

7 And now, Your Honor, I'd like to call Mr. Willingham
8 to the stand for a few short questions.

9 Mr. Willingham?

10 THE COURT: All right. You may take the stand.
11 Please remain standing there so that you can be sworn.

12 (Witness duly sworn)

13 THE CLERK: Please state your full name and spell your
14 last name for the record.

15 THE WITNESS: Michael Lance Willingham.

16 THE COURT: All right, you may be seated.

17 DIRECT EXAMINATION

18 BY MR. SUSMAN:

19 Q. Mr. Willingham, are you a member of the equity committee
20 of WMI?

21 A. I am.

22 Q. Are you the chairman of that committee?

23 A. I am.

24 Q. Would you tell the Court when you as a -- do you own
25 common shares and stock?

1 A. I do.

2 Q. Do you own any preferred stock?

3 A. I do not.

4 Q. Could you tell the Court when you and some of your
5 colleagues first approached a lawyer in Washington, the state
6 of Washington, about filing an action to force WMI to have an
7 annual shareholders meeting?

8 A. It was sometime at the end of February -- sometime at the
9 end of February.

10 Q. Do you recall when you first formally retained -- I mean
11 executed a retainer agreement with a lawyer for that purpose?

12 A. I believe it was March 1st.

13 Q. At the time you filed this adversary proceeding, the
14 committee did, on March 3rd, did you have any idea, top, side,
15 or bottom, that a settlement was about to be announced?

16 A. No.

17 Q. At the time you filed the motion that brings us here today
18 on March -- I think it was March 11th, the motion for summary
19 judgment, and in the alternative to lift the stay and allow you
20 to proceed in spite of the stay, at that time did you have any
21 idea that the next day a settlement was going to be announced
22 or that a settlement had been reached?

23 A. No.

24 Q. Or what its terms were?

25 A. No.

1 Q. Does your seeking the relief you are seeking today before
2 the Court indicate you have made some pre-judgment about
3 whether the settlement is good or bad?

4 A. No. We filed this motion prior to the settlement, so
5 while I -- I don't like the settlement the way it looks now, it
6 didn't have anything to do with our filing.

7 Q. Okay. And I should have asked you the same question
8 regarding the plan. The plan was announced, I think, on -- or
9 filed on March 27th. Did you know anything about the terms of
10 the plan before it was --

11 A. I did not.

12 Q. -- announced or filed?

13 A. I did not.

14 MR. SUSMAN: Pass the witness, Your Honor.

15 MR. ROSEN: Just a few questions, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. ROSEN:

18 Q. Mr. Willingham, how many shares of common stock do you
19 own?

20 A. I believe I own over a million.

21 Q. When did you buy them?

22 A. I'm not sure.

23 Q. What price did you pay?

24 A. I don't recall the specific price but it was somewhere in
25 the twenties -- twenty cent range --

1 Q. Twenty --

2 A. -- maybe a little bit more.

3 Q. And you have no idea when you bought the stock?

4 A. I know it was some time last year. I filed a paper with
5 the U.S. Trustee that has that information on it.

6 Q. We haven't been provided with that so -- you're saying
7 within the last year, so you bought it after the bank seizure,
8 is that right?

9 A. Yes, that's correct.

10 Q. Okay. You say that you're the chairman of the equity
11 committee, is that correct?

12 A. That's correct.

13 Q. And were you responsible for contacting lawyers out in
14 Seattle, Washington or who did that on behalf?

15 A. Yes, yes.

16 Q. You personally went and contacted people?

17 A. That's correct.

18 Q. Who did you contact?

19 A. I contacted Jeff Bird at Schwabe, Williamson & Wyatt.

20 Q. Anyone else?

21 A. No.

22 Q. You answered that you formally retained them on or about
23 March 1st, is that correct?

24 A. That's correct.

25 Q. And did the equity committee file an application with the

1 bankruptcy court seeking authorization to retain the firm?

2 A. No.

3 Q. So is the equity committee -- and is it your understanding
4 that the equity committee's authorized to retain them without
5 that autho -- that court order?

6 A. Well, the equity committee actually didn't retain them.

7 Q. Oh. Who did?

8 A. Myself and another member of the committee personally --

9 Q. Oh.

10 A. -- as shareholders of the company.

11 Q. So Jeff Bird is not representing the equity committee
12 here?

13 A. That's correct.

14 Q. Oh, he's only representing you and some other people?

15 A. That's correct.

16 Q. Okay. And is it your intention that the equity committee
17 would retain this person or it would be just you?

18 A. Just the shareholders, not the equity committee.

19 Q. Just the shareholders, okay. Isn't it true that the
20 equity committee has issued a press release about the terms of
21 the settlement?

22 A. Yes, that's correct.

23 Q. And what was the equity committee's position with respect
24 to that?

25 A. I don't recall the wording of the press release, but --

1 Q. Generally, what was your position?

2 A. I think our position --

3 Q. You're 100 percent in favor of it?

4 A. No, I think it would be a safe characterization to say
5 that we were not 100 percent in favor of the settlement or the
6 plan.

7 Q. That was another press release?

8 A. No, it wasn't a press release but I think I can speak for
9 the committee that we disagree with both of those items.

10 Q. Have you been one of the many people who filed a form
11 letter with the Court expressing your views about the
12 settlement?

13 A. No, I have not.

14 Q. Have other members of the equity committee done so?

15 A. I don't believe so, but shareholders -- I don't know what
16 they would do. I know we haven't discussed it in the
17 committee.

18 Q. Okay. Do you think that your law firm provides adequate
19 representation to the equity committee?

20 A. To the equity committee, yes, absolutely.

21 Q. Do you think they're competent to come to court and take a
22 position with respect to the plan and the settlement?

23 A. I believe so. They are aware of how the equity committee
24 views the settlement and the plan and they understand the
25 aspects of the plan.

1 Q. Do you think that they're competent to take discovery with
2 respect to all aspects of the settlement and the plan and to
3 represent you competently in a hearing before this Court?

4 A. I absolutely 100 percent am certain that they are
5 competent counsel to do anything that we need to be done --
6 that needs to be done for the equity committee.

7 Q. So that they would adequately represent the interests of
8 the equity committee and its constituents before this Court?

9 A. Absolutely.

10 Q. Okay.

11 MR. ROSEN: No further questions, Your Honor.

12 MR. SUSMAN: Let me -- just one follow-up question.

13 REDIRECT EXAMINATION

14 BY MR. SUSMAN:

15 Q. Why, Mr. Willingham, do you think that the equity
16 committee's ability to come into this court and object to the
17 plan, either through me or someone else, is a substitute for
18 your ability to try to elect new directors of WMI?

19 A. No.

20 MR. SUSMAN: No further questions.

21 MR. JOHNSON: Your Honor, Robert Johnson from Akin
22 Gump on behalf of the official committee of unsecured
23 creditors. Just a couple of short questions.

24 CROSS-EXAMINATION

25 BY MR. JOHNSON:

1 Q. Mr. Willingham, do you recall the motion to disband the
2 equity committee that we heard in this court in January?

3 A. Yes, I do.

4 Q. Were you here for that?

5 A. I was not present in court. I know -- actually, what
6 happened was the committee was appointed and that same day the
7 debtor filed the motion to disband.

8 Q. Now, isn't it correct that at that -- at the time of that
9 motion to disband that the debtors and the official committee
10 of unsecured creditors let it be known to you and the other
11 members of the equity committee that we believed that the
12 equity was out of the money?

13 A. It was certainly clear to me the day that we were
14 appointed as an official equity committee by the U.S. Trustee
15 that Mr. Rosen spoke in front of the shareholders that were
16 present and said you will receive no recovery, so it was very
17 clear to us from day one that not only the debtor but
18 subsequently the creditors as well viewed it the same way.

19 Q. So wasn't it clear to you at the time that you contacted
20 your counsel in Seattle regarding a shareholders meeting that
21 it was the belief of the debtors that the equity was out of the
22 money?

23 A. It was certainly clear to us that's what the debtor
24 believed. The board of directors acting through its counsel
25 had certainly stated that to us.

1 Q. And that was clear to you in January?

2 A. It was clear to us the day we were formed.

3 Q. Thank you.

4 MR. JOHNSON: No further questions.

5 THE COURT: Anything further?

6 MR. SUSMAN: No. May he be excused, Your Honor?

7 THE COURT: Yes, Mr. Willingham, you may step down.

8 Anything further as far as testimony?

9 MR. SUSMAN: I'm sorry, Your Honor, that concludes my
10 presentation. Thank you very much.

11 THE COURT: All right. Anybody else have any
12 testimony or should we just go to argument? All right.

13 MR. ROSEN: We have no witnesses, Your Honor.

14 THE COURT: All right. Well, I've heard argument from
15 the movant. Does the debtor wish to reply?

16 MR. ROSEN: I would, Your Honor. Thank you. Your
17 Honor, as I said at the outset, we're here to discuss the sole
18 issue of the automatic stay, whether it's applicable and if so
19 whether it should be lifted to permit the equity committee to
20 proceed in Washington state court to attempt to cause an annual
21 shareholders meeting to be held. That's it. There's nothing
22 more, nothing more to discuss about the summary judgment.

23 In looking at the matter, Your Honor, we need to
24 really look at the history of these Chapter 11 cases, the fact
25 that they have been going on for almost nineteen months. We

1 need to consider that this court is effectively handling two
2 major pieces of litigation, the JPMC adversary proceeding and
3 the turnover litigation. Likewise, the third litigation, the
4 one pending in the District of Columbia, has been stayed
5 pending this Court's decision.

6 These litigations have engulfed these Chapter 11 cases
7 and the parties. The turnover action has been briefed, argued,
8 and we have been informed by the Court, Your Honor, that a
9 decision on summary judgment is ready for distribution.
10 Indeed, but for the announcement of the settlement on March
11 12th of this year, we were informed that such a decision would
12 be rendered. And on a parallel track and as part of the
13 summary judgment turnover action but for the settlement the
14 FDIC was before the Court to argue its Section 9.5 rights with
15 respect to those deposits.

16 But now where are we, Your Honor? We have a plan that
17 has been filed with the Court, we have a corresponding
18 disclosure statement that has been filed with the Court and a
19 hearing to approve the adequacy of the information contained in
20 that disclosure statement is scheduled for May 19th. The
21 foundation of the plan is the proposed settlement between the
22 debtors, the FDIC, JPMorgan Chase, and several significant
23 creditor constituencies.

24 Such settlement provides for a complete resolution of
25 the underlying litigations, permits significant recoveries for

1 the debtors' estates, for the turnover of the debtors'
2 deposits, the release of the FDIC's competing claims for such
3 monies, the allocation of tax refunds, the assumption of
4 certain liabilities by JPMorgan, among other things.

5 A draft of the settlement agreement, Your Honor, was
6 attached to the plan and included in the disclosure statement.
7 And while certain modifications need to be made prior to
8 execution, despite statements made by certain parties,
9 including the equity committee in its papers, as evidenced by
10 Mr. Clark's statements two weeks ago with respect to the bank
11 bondholder objection that we were here on, the FDIC endorses
12 the settlement and hopes to reach closure on the documentation
13 in the very near future.

14 So then why are we really here? Because the equity
15 committee, being fully briefed on the process prior the
16 commencement of this action, being educated by the debtors'
17 professionals as to claims and causes of actions, feared the
18 worst. They feared the settlement. The equity committee fears
19 that the results of the settlement will yield no recovery for
20 equity interest holders. It fears that despite its claims to
21 the contrary it will end up out of the money.

22 From the debtors' perspective, Your Honor, we would
23 like nothing better than for that not to be the case. We would
24 like for equity interest holders to share in the recoveries.
25 Unfortunately the results of the settlement, the amount of

1 allowed claims and disputed claims, do not forecast that that
2 is possible.

3 But the debtors have held out hope and even the plan
4 provides that if there is a trickle down effect and claims are
5 effectively reduced so that allowed claims are paid in full,
6 then there will be a recovery and a distribution made to
7 holders of over seven billion dollars of preferred stock.
8 Unfortunately, we don't even forecast, though, that it can
9 reach beyond that seven billion dollars to go to common
10 shareholders like Mr. Willingham who bought after the seizure.

11 Again, why are we here, Your Honor? The equity
12 committee does not want the debtors to proceed with the
13 proposed settlement. They are not shy in admitting it. They
14 stated it in a pres release. Their constituency, through the
15 hundreds of form letters sent to the Court, says it every day.
16 The equity committee believes that there is more money to be
17 milked from JPMorgan Chase than what is agreed to pursuant to
18 the settlement. In fact, Mr. Susman said that very well today.
19 In other words, the equity committee believes that the
20 settlement is not fair, that it is unreasonable.

21 When we were here before the Court on January 28th,
22 Your Honor, with respect to the debtors' motion to disband the
23 equity committee, the debtors put on the only evidence that
24 day, and the evidence showed how liabilities, allowed and
25 asserted but not yet allowed in some aspects, far exceed the

1 assets projected by the debtors and included on the debtors'
2 monthly operating reports.

3 At that time the Court acknowledged the debtors'
4 views. Nevertheless the Court indicated, and I quote, "With
5 respect to whether there's adequate protection of the interests
6 of the equity committee -- excuse me, the equity holders, which
7 is the other prong of a determination of whether or not the
8 decision was inappropriate, I think that certainly falls in
9 favor of the equity. While the debtor is clearly representing
10 all constituencies in this case and fulfilling its fiduciary
11 duty, I think the fact is that we have Section 1102 of the Code
12 that makes it clear that there are instances where other
13 parties have a place at the table. And the U.S. Trustee has
14 made a determination that the equity should be present and I
15 don't think they're wrong."

16 Unfortunately, Your Honor, a seat at the table, an
17 opportunity to participate as a group, to have their fees and
18 expenses covered by the debtors is not what is sought. The
19 equity committee does not want to review the merits of the
20 settlement and the corresponding plan. It and its constituents
21 want to abuse the process and start all over.

22 That was the very thought process going on in Manville
23 II, which is a case that is cited by all the parties. The
24 equity committee cites Marvel as the case that must be
25 followed, and I suggest that that is distinguishable. First

1 off, Your Honor, that controversy emanated out of Ron
2 Perelman's decision at the outset of a Chapter 11 case to walk
3 away, to yank an offer in excess of 150 million dollars to fund
4 the debtors. It frustrated creditors one month into the case
5 that they sought to gain more control than through the right to
6 foreclose on stock. Judge McKelvie held that the automatic
7 stay did not extend to prohibit the voting of stock. In doing
8 so, he clearly noted that the rulings of Manville II and the
9 abusive process, though, that must be stopped.

10 That is all that we are requesting, Your Honor. As
11 evidenced by our answer, our counterclaims, and the response,
12 the debtors submit that the equity committee's actions are
13 clearly abusive. They require that this Court address this
14 issue through and full and complete evidentiary hearing with a
15 record made. Accordingly, whether or not the Court addresses
16 this matter today, which technically is not before the Court,
17 or subsequently following discovery of each of the committee
18 members and its financial advisor, it will need to be
19 addressed. Whether by a hearing on the merits of the pending
20 motion for summary judgment and corresponding complaint or
21 through a motion for a temporary restraining and preliminary
22 injunction filed by the debtors, the clear abuse standard set
23 forth in Manville II and followed by Marvel must be addressed.

24 I say this in all due respect that it's clear that the
25 equity committee has its own scuttling agenda. They are not

1 satisfied with their discovery rights and litigation
2 alternatives through the plan process. They want to dismantle
3 the nineteen months of work that have been undertaken by all of
4 the parties in this case, including the Court, and to rebuild
5 the wheel.

6 Mr. Susman talks about cause and harm and there is
7 none, Your Honor. As we've mentioned, there is a process.
8 There is a process that is being undertaken by this Court
9 through the disclosure statement and the plan confirmation
10 process. There is no tipping at all of harm in either
11 direction. Everyone has their opportunity to come before the
12 Court. Everyone has their opportunity to be prepared in order
13 to do so. Everyone is equal: the creditors, the debtors,
14 management, and even the equity committee holders and its
15 constituency.

16 My suggestion, Your Honor, is that we defer discussion
17 and decision on this any further, allow the parties to conduct
18 expedited discovery as appropriate on the issue of clear abuse,
19 even insolvency, fold in the questions of insolvency as the
20 courts have found that that is to be a central theme, including
21 Judge McKelvie in his last comments in Marvel.

22 So Your Honor, my thought is let's have a single trial
23 on this because if we decide to move forward today we'll only
24 be back here within a very short time before any action is
25 taken elsewhere. There will be a request to move forward on

1 the counterclaim by way of a motion for a temporary restraining
2 order or a preliminary injunction. And judicial efficiency
3 waves an order to do this now, Your Honor, pursuant to one
4 proceeding rather than multiple actions. Thank you.

5 MR. JOHNSON: Your Honor, Robert Johnson again from
6 Akin Gump on behalf of the official committee of unsecured
7 creditors. We rise in support of the debtors' position here
8 and we strenuously object to the equity committee's motion to
9 lift the stay.

10 What the equity committee is seeking here is authority
11 to spend the creditors' recovery; to upset the fragile
12 settlement, in principle, that has been described; to derail
13 the plan; and to prevent confirmation. It's abundantly clear
14 here that the common shares are out of the money. And as has
15 been shown and was said by the courts with respect to clear
16 abuse, clear abuse requires a showing that the shareholders'
17 actions seeking to elect a new board of directors demonstrates
18 a willingness to risk rehabilitation altogether in order to win
19 a larger share for equity. That's what the Second Circuit said
20 in Johns-Manville I, that's what Judge Lifland said on remand
21 in Manville II and what the Delaware bankruptcy court said in
22 the Marvel case. And that's exactly what the equity committee
23 is seeking to do here, to risk rehabilitation altogether.

24 We support the debtors' position that if the Court
25 were considering lifting the stay here, that what we need to do

1 is have expedited discovery regarding the intentions of the
2 equity committee in order to explore the clear abuse issue.
3 And so we oppose lifting the stay. Thank you.

4 MR. SUSMAN: Let me begin, Your Honor, by first
5 responding that I think my brethren at Weil, Gotshal have done
6 a marvelous job and they're to be praised for everything
7 they've done. But they aren't the board of WMI. They are not
8 the decision makers on the board. And shareholders have a
9 corporate governance right to elect, under the law, people who
10 will represent them to the board. And I mean, the clients may
11 call the shots and the shareholders have a right under the law
12 to decide who those decision makers are.

13 Everything that Mr. Rosen said, I mean, about the bad
14 motives of my client, first, they're not true. You saw the
15 man. I mean, he testified, he wants his representatives. The
16 cases make it absolutely clear that wanting a place at the
17 table, wanting to exercise leverage, wanting a better deal than
18 the deals on the table is not clear abuse. It's got to be much
19 worse than that. It's got to be something like "I don't want
20 this company to be reorganized at all." There's nothing that
21 approaches that. They want people to evaluate -- people who
22 were not there at the time this happened to evaluate what kind
23 of claims does the debtor have that could be pursued, what is
24 being given up, all fair questions for shareholders to ask. So
25 clear abuse certainly constitutes something more than simply

1 wanting to milk more money out of a settlement. The courts
2 have clearly held that wanting that is permissible.

3 The Manville II case, which Mr. Rosen talks about, is
4 a case that was tried on the merits. And the court in the
5 opinion quotes the trial testimony of the members of the equity
6 committee and the shareholders. It tot -- they don't have
7 anything that resembles that here. There's no suggestion that
8 there's anything that resembles that here where the sole desire
9 was to prevent reorganization at all, where they explicitly
10 testified to that.

11 Mr. Rosen says that Marvel is distinguishable, but I
12 listened to see how he was going to distinguish it and never
13 heard that. I suggest that Marvel -- the Court in Marvel is
14 owed great deference by this Court and it cannot be
15 distinguished. They may not like it, but it is the law of this
16 district. Thank you, Your Honor.

17 THE COURT: Anything further?

18 MR. ROSEN: Your Honor, I would only point out
19 something Mr. Johnson said, and like it or not, as Mr. Susman
20 says, it is the fact. And any actions being undertaken to
21 disrupt or jeopardize the recoveries to creditors, actually the
22 courts have determined to be the most important thing. And
23 what we know now is that based upon the view of the equity
24 committee, Mr. Willingham, and the hundreds of people who filed
25 letters as his constituents, they don't like the settlement.

1 And unfortunately, in doing so they are potentially disrupting
2 or jeopardizing the recovery to creditors.

3 Mr. Susman also made a point about Marvel II (sic) and
4 being a trial on the merits. That's exactly what we suggest.
5 I thought he was making my pitch for me there, Your Honor. We
6 believe that there has to be that discovery. We believe there
7 has to be that hearing. We believe that we need to have the
8 members of the equity come in. We believe we need to know
9 whether or not they believe that they are being appropriately
10 or could be appropriately represented in the plan process. I
11 think he said yes, and I think that's the most important thing
12 for the Court. Marvel, when you look at what Judge McKelvie
13 said, he focused on those things that I pointed out in the end:
14 insolvency, clear abuse. He did talk about other things, I
15 grant you that, but he said that these issues were
16 countervailing factors that had to be considered. All we're
17 asking for, Your Honor, is the opportunity for this Court to be
18 able to consider those very important issues. Thank you.

19 (Pause)

20 THE COURT: Well, let me say this. I think that it is
21 clear, not only under Marvel but under Johns-Manville itself,
22 that the automatic stay does not bar shareholders from
23 exercising their corporate governance rights. It just is not
24 at all encompassed by 362. It's well settled law that the
25 rights of shareholders to compel a shareholders meeting for

1 purposes of electing a new board continues, notwithstanding
2 bankruptcy. And that's a quote from Johns-Manville.

3 In order to enjoin shareholders from doing that the
4 courts look to whether there's clear abuse. There is none
5 shown on the record before me. There's not even a motion to
6 enjoin the shareholders. Before the debtor files any motion to
7 enjoin and makes me have a hearing, I think it's clear from the
8 case law that you need more than just the fact that the
9 shareholders disagree with what the debtor may have done.

10 I note that in the Johns-Manville case the Court
11 allowed the shareholders meeting even though it was requested
12 after the debtor had reached a settlement with the asbestos
13 claimant. In this case the evidence is that the desire for a
14 shareholders meeting was not a result of any settlement by the
15 debtors since the shareholders were not aware of it at the time
16 they made that initial inquiry of counsel to get a shareholders
17 meeting.

18 The courts have also said the mere desire to get more
19 bargaining power in the bankruptcy reorganization is not a
20 clear abuse. Not enough that they want to elect board members
21 who have a different opinion as to how the bankruptcy case
22 should proceed. I just don't see any basis to find clear abuse
23 here or any basis to stop the shareholders from exercising
24 their state law rights. So I guess that's a ruling.

25 MR. SUSMAN: Thank you.

1 THE COURT: I'll look for a form of order from counsel
2 for that.

3 MR. ROSEN: Your Honor, we will be going forward,
4 though, with our expedited discovery then to seek to have the
5 complaint heard on the merits, including our counterclaim.

6 THE COURT: All right.

7 MR. SUSMAN: Thank you.

8 MR. ROSEN: Your Honor, there is one more item on the
9 agenda which are the respective fee applications that have been
10 filed in the case.

11 THE COURT: All right.

12 MR. ROSEN: I don't know if the Court has had an
13 opportunity -- I know the Court's been busy with many matters,
14 I don't know if the Court has had an opportunity to look at
15 each of those applications.

16 THE COURT: Is the Venable fee application on, to
17 which there is one objection?

18 MR. ROSEN: Yes, Your Honor.

19 THE COURT: Do you want to proceed with that? That's
20 the only one to which there's an objection.

21 MR. CROSS: Good afternoon, Your Honor, Greg Cross of
22 Venable. There's only one objection to Venable's fee
23 application. That objection was submitted by the debtor.
24 There's no objection to the particularized time entries. There
25 is a generalized objection that the work Venable performed did

1 not benefit the estate. I would submit that the objection is
2 largely a continuation of the motion to disband and the
3 arguments that we just heard.

4 The question in front of the Court is the
5 reasonableness of the time entries of the time that was
6 incurred. And all of the actions were largely routine, and to
7 the extent that they were out of the ordinary they were driven
8 by the debtor. Venable spent significant amount of time
9 responding to the motion to disband which was resolved
10 favorably in favor of the equity committee, spent time on
11 regular committee and administrative functions.

12 There was some specific reference to Venable's time
13 incurred on its fee application. I did a rough calculation. I
14 think that totals 15,000 dollars, 133 of the total time
15 requested.

16 Venable spent time interviewing and retaining the
17 financial advisor for the equity committee that has been
18 approved. Venable spent time analyzing and fully briefing the
19 arguments that Your Honor just affirmed in favor of the equity
20 committee's motion for relief from stay. And Venable spent the
21 ramp-up time that was necessary to investigate the legal claims
22 that are pending as well as both the documents supporting those
23 claims and the legal analysis that the debtor and the committee
24 were employing as well as the defenses in those claims. That
25 information has been passed off to the financial advisors of

1 the equity committee and will be briefed with counsel who is
2 now representing the equity committee.

3 There's no particularized objection, as I said at the
4 beginning. I think it's worth noting that, by way of
5 comparison, during the similar ramp-up stage, the debtor
6 incurred more than four times the fees that the equity
7 committee counsel incurred. The same is true for the counsel
8 for the unsecured creditors' committee. Virtually all of the
9 tasks that Venable was asked to perform it has completed, and I
10 believe all of them were completed successfully. I think that
11 the case law is pretty clear in the Third Circuit and in this
12 court that committee counsel is entitled to compensation for
13 reasonable expenses that were necessary for representation of
14 the committee and that the fact that substitute counsel has
15 entered its appearance is really not of any consideration,
16 particularly where the matters in this instance are largely
17 resolved.

18 MR. ROSEN: Your Honor, when the debtors initially
19 received the monthly applications of Venable for payment in
20 accordance with the Court's interim compensation order, we were
21 troubled by the amount of fees and expenses that were
22 associated with the retention of Venable, the clearing of
23 conflicts and things of that like. We then -- unfortunately
24 for Venable, Venable was removed and the debtors were more
25 concerned because they thought of the time and expense that

1 they were looking to be -- were asking to be paying for
2 Venable's involvement in the case was going to be wasted time.
3 So we filed the objection, not just a mere reservation of
4 rights, to make sure that the debtors were not going to be
5 forced to make duplicate payments to Venable and anybody else
6 who would subsequently come on, whether it was Dewey & LeBoeuf,
7 whether it was Munger, Tolles, or whether it's now Susman
8 Godfrey or whoever may succeed them if necessary.

9 So Your Honor, that was the basis for the objection.
10 We were looking to avoid duplication of payment.

11 MR. TAYLOR: Your Honor, if we may be heard briefly,
12 Greg Taylor on behalf of the equity committee. I just wanted
13 to go on record here as well. While the equity committee has
14 decided to retain new counsel, we do thank the Venable firm for
15 its services and believe that the firm should be compensated as
16 requested in the application. We do believe that the Venable
17 firm added value to these cases, specifically on behalf of the
18 equity committee, as Mr. Cross discussed in his presentation,
19 and we would ask that the application be approved. Thank you.

20 THE COURT: Well, the one concern I had also was the
21 issue about duplication of services resulting from the
22 replacement of counsel. I won't know that until I get new
23 counsel's fee application. I will approve the fees on an
24 interim basis, subject to revisiting them at the time that I
25 get the first interim fee application by replacement counsel

1 because I agree the desire to replace counsel should not -- the
2 effects of that should not be borne by the estate.

3 MR. ROSEN: Your Honor, may I approach? I have an
4 order.

5 THE COURT: You may. Okay.

6 (Pause)

7 THE COURT: All right. With respect to the others, I
8 will approve them on an interim basis, again subject to my
9 review of them at the final. Okay.

10 MR. ROSEN: Thank you, Your Honor. That will conclude
11 today's agenda.

12 THE COURT: All right, thank you.

13 (Proceedings concluded at 12:37 PM)

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

T E S T I M O N Y

WITNESS	EXAM BY	PAGE	LINE
Michael Willingham	Mr. Susman	46	19
Michael Willingham	Mr. Rosen	48	18
Michael Willingham	Mr. Susman	52	14
Michael Willingham	Mr. Johnson	53	1

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' motion pursuant to Section 105 of the Bankruptcy Code and Rule 9019 for approval of settlements with Old Republic Insurance Company, Zurich Insurance Company and JPMorgan Chase, granted	28	20
Union Bank's motion to seal certain certificates of service, denied	38	1
Permission granted to equity committee to proceed in state court in an attempt to cause an annual shareholders meeting	65	22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

R U L I N G S (cont'd.)

DESCRIPTION	PAGE	LINE
Venable LLP's fee application approved on an interim basis, subject to the Court's review of them after future fee application filings	69	23
All other fee applications approved on an interim basis, subject to the Court's review of them after future fee application filings	70	8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.

Clara Rubin

AAERT Certified Electronic Transcriber (CET**D-491)

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: April 22, 2010