

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

Lead Case No. 08-12229 (MFW)

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In the Matter of:

WASHINGTON MUTUAL, INC., et al.,

Debtors.

- - - - -x

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

May 19, 2010

11:30 a.m.

B E F O R E:

HON. MARY F. WALRATH

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY

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DEBTORS' Fifth Omnibus Objection to Claims

PLAINTIFFS' Buus et al. Motion for Relief From the Automatic Stay

MOTION of Debtors Pursuant to Sections 105 and 363 of the Bankruptcy Code for Order Approving Procedures for the Sale of Certain intellectual Property

DEBTORS' Objection to Proof of Claim Filed By Egencia LLC

DEBTORS' Twenty-First Omnibus (Substantive) Objection to Claims

DEBTORS' Twenty-Third Omnibus (Substantive) Objection to Claims

DEBTORS' Twenty-Eighth Omnibus (Substantive) Objection to Claims Filed by Claimants Gregory Bushansky, Dana Marra, Marina Ware, Ontario Teachers' Pension Plan Board and Brockton Contributory Retirement System (Claim Nos. 999, 1001, 1002, 1003, 2759, 2761 and 2763) Pursuant to Section 510(b) of the Bankruptcy Code

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DEBTORS' Twenty-Ninth (Substantive) Objection to Claims Filed
by Morgan Stanley & Co., Inc., Goldman Sachs & Co., and Credit
Suisse Securities (USA) LLC (Claim Nos. 2584, 2909 and 3794)
Pursuant to Section 510(b) of the Bankruptcy Code

DEBTORS' Objection to Proof of Claim Filed by the Oregon
Department of Revenue

Complaint by Broadbill Investment Corp. Against Washington
Mutual, Inc.

DEBTORS' Thirtieth Omnibus (Substantive) Objection to Claims
Filed by Claimants Walden Management Co. Pension Plan, Metzler
Investment, and South Ferry LP #2 (Claim Nos. 2808, 2809, 3087
and 3448) Pursuant to Section 510(b) of the Bankruptcy Code

APPLICATION for an Order Pursuant to 11 U.S.C. Sections 328,
330 and 1103 and Fed. R. Bankr. P. 2014 Authorizing the
Retention and Employment of Susman Godfrey LLP as Counsel to
the Official Committee of Equity Security Holders of Washington
Mutual, Inc., et al. Nunc Pro Tunc to April 16, 2010

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NOTICE of (A) Required Compliance with Provisions of the
Bankruptcy Rule 2019(a) and (B) Hearing to Show Cause Why
Sanctions or Limitations Pursuant to Bankruptcy Rule 2019(b) or
Otherwise Should Not be Imposed

MOTION of Debtors for an Order, Pursuant to Sections 105, 502,
1125, 1126 and 1128 of the Bankruptcy Code and Bankruptcy Rules
2002, 3003, 3017, 3018 and 3020, (I) Approving the Proposed
Disclosure Statement and the Form and Manner of the Notice of
the Disclosure Statement Hearing, (II) Establishing
Solicitation and Voting Procedures, (III) Scheduling a
Confirmation Hearing, and (IV) Establishing Notice and
Objection Procedures for Confirmation of the Debtors' Joint
Plan

DEBTORS' Motion for an Order Confirming Classification of
Certain Claims for Voting Purposes Only

MOTION of the Consortium of Trust Preferred Security Holders to
Compel Debtors to Produce Documents

Transcribed by: Esther Accardi

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A P P E A R A N C E S: (continued)

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A P P E A R A N C E S: (continued)

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A P P E A R A N C E S: (continued)

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A P P E A R A N C E S: (continued)

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A P P E A R A N C E S: (continued)

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A P P E A R A N C E S: (continued)

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P R O C E E D I N G S

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THE CLERK: All rise.

THE COURT: You may be seated. Good morning.

MR. ROSEN: Good morning, Your Honor. Brian Rosen,
Weil Gotshal & Manges on behalf of Washington Mutual Inc.

Your Honor, we have several items on this morning's agenda. One item, however, that appears to be carried from the prior omnibus that was not reflected on the agenda was the continued pretrial conference with respect to the complaint filed by Union Bank on the Rabbi Trust. And counsel for Union Bank is here. But I think the announcement is merely going to be to continue that pretrial conference again.

THE COURT: Okay.

MR. ROSEN: But I just wanted to let them have the opportunity to address the Court.

MR. WERKHEISER: Thank you, Your Honor. For the record, Gregory Werkheiser, Morris Nichols Arsht & Tunnel LLP, Delaware co-counsel to Union Bank.

Your Honor, that's correct. With the Court's leave we would like to continue the pretrial again. As we reported when we were last before Your Honor, and Mr. Rich is on the telephone. The parties have engaged in some very meaningful discussions to resolve a number of the counts in the complaint. And I think have agreement on a number of points, and they're really at the stage of trying to document that understanding.

1 It's taken a little bit longer than I think we predicted when
2 we were last here, two hearings ago, and I think there's a
3 little more work to be done on it. But that is still moving
4 forward, and obviously parties have been up to bigger and
5 better things and have had a few other things to put their
6 attention to in this case.

7 So if it's acceptable to the Court perhaps we could
8 roll it over again to the June omnibus date. And then we
9 expect and hope to have that stipulation done before then,
10 which would resolve -- certainly narrow the issues in the
11 complaint.

12 THE COURT: All right. Any objections by any of the
13 parties?

14 MR. ROSEN: Your Honor, no. The only suggestion I
15 would make is we have two omnibus hearing schedule in June. I
16 would suggest we go to the second one, which is June 17th,
17 rather than June 3rd to give the parties time to try and
18 resolve this.

19 THE COURT: All right.

20 MR. LANDIS: Your Honor, Adam Landis, for the record,
21 from Landis Rath & Cobb on behalf of JPMorgan Chase. We don't
22 have any objection to rolling this to June 17th.

23 MR. WERKHEISER: I believe that's acceptable to us,
24 Your Honor, as well.

25 THE COURT: All right. June 17th it is.

1 MR. ROSEN: And we'll make sure, Your Honor, that it's
2 reflected on that agenda.

3 THE COURT: Okay.

4 MR. WERKHEISER: Thank you, Your Honor.

5 MR. LANDIS: Thanks.

6 MR. ROSEN: Your Honor, the next item on the agenda is
7 item number 11 on page 7. And that is -- we have already
8 submitted a certification of counsel. It's still reflected on
9 the calendar however, Your Honor, in case the Court had any
10 questions with respect to this.

11 THE COURT: I entered that order this morning, as well
12 as the order on item 7.

13 MR. ROSEN: Okay.

14 THE COURT: Based on the certificates of counsel
15 filed.

16 MR. ROSEN: Thank you very much, Your Honor.

17 The next item, Your Honor, is item number 12, which is
18 the equity committee's motion for the retention of Susman
19 Godfrey LLP. Mr. Susman is here for that. That was put on
20 this morning's calendar on the Court's order shortening time.

21 For the record, Your Honor, the debtors have not
22 interposed an objection to that retention. We reserve our
23 rights as we did before previously with Venable, Your Honor, as
24 to fees and expenses.

25 THE COURT: All right. Any other objection filed?

1 All right. I'll enter the order then. Is there one
2 with a motion or --

3 MR. SUSMAN: Do you need a copy of the order, Your
4 Honor?

5 THE COURT: You may hand it up. Thank you. All
6 right.

7 MR. ROSEN: Thank you, Your Honor. Your Honor, item
8 number 13 is the matter that the Court asked us to calendar
9 with respect to the 2019 statements. And we did that based
10 upon the Court's directive. And we have, Your Honor, a number
11 of 2019 statements that have been filed with the Court. I do
12 not know how the Court would like to address that, so I will
13 leave it to the Court and the respective filing parties.

14 THE COURT: Well, let's push that off and go to the
15 disclosure statement. I understand the debtor wants to
16 continue that.

17 MR. ROSEN: Your Honor, if I could ask for the Court's
18 indulgence for one or five minutes on that. Because there were
19 some train issues this morning getting into New York and,
20 therefore, making the Penn Station connection. Counsel for the
21 FDIC is on the 10 o'clock train rather than the 9 o'clock, and
22 he shall be here in five minutes.

23 THE COURT: All right.

24 MR. ROSEN: And I'd thought it would be helpful if we
25 had him.

1 THE COURT: All right.

2 MR. ROSEN: Your Honor, you wanted to go back to the
3 2019 that would be fine. Otherwise, Your Honor, the next item
4 on the agenda is with respect to -- I just want to make sure I
5 have it here.

6 THE COURT: The classification issue?

7 MR. ROSEN: The classification motion. And Ms.
8 DiBlasi is here to address that.

9 THE COURT: Okay.

10 MS. DIBLASI: Good morning, Your Honor. Kelly
11 DiBlasi, Weil Gotshal & Manges on behalf of the debtors.

12 The debtors filed this motion seeking to provide
13 notice to claimants of the proposed classification of their
14 claims for voting purposes only, with respect to certain
15 classes that are getting paid in full under the plan, where
16 these claimants will be deemed to accept.

17 Subsequently we filed an amendment with respect to
18 certain claims that needed to be classified in what we refer to
19 as the WMI Medical Plan Class 4. This didn't really have a
20 substantive effect because these claimants still are not
21 voting, except with respect to two of them where a portion of
22 their claim is being classified as a general unsecured claim
23 for voting purposes. And with respect to that portion of their
24 claims they will be entitled to vote.

25 We received two responses; one formal that was filed

1 on the docket, one informal. We spoke to each of those
2 claimants and were able to resolve their concerns. We made
3 some minor edits to the exhibit listing the claims in order to
4 resolve one of the claimants concerns.

5 And unless Your Honor has any questions I have a
6 proposed order with the revised exhibit attached.

7 THE COURT: You may hand it up. All right, does
8 anybody else wish to be heard on the debtors' classification
9 motion? All right, there being no objection I will enter the
10 order then, as revised.

11 MR. ROSEN: Your Honor, the next item on the calendar
12 is item number 16, which is the motion of a consortium of trust
13 preferred security holders to compel the debtors to produce
14 certain documents. Mr. Coffey is here on behalf of the movant.

15 We have been in discussions with them trying to
16 resolve any issues associated with their motion, including
17 issues associated with the confidentiality agreement. And I
18 think that we have reached closure with respect to that. There
19 may be an issue outstanding with respect to filing under seal,
20 we're trying to reach closure on that. And with respect to the
21 actual timing of production. But let Mr. Coffey speak.

22 MR. COFFEY: Thank you, Your Honor. Jeremy Coffey
23 with Brown Rudnick on behalf of a group of investors who have
24 been classified under Class 19 of the amended plan, known as
25 the REIT Series of the Trust Preferred Securities, depending on

1 your point of view. We did file a motion to compel and we
2 appreciate Your Honor setting it for today.

3 We have been in discussions, I think we're almost
4 there. So I'm wondering if there are other things on the
5 docket, if we might have a few minutes to continue the
6 discussion and kind of come to a finale on this. And hopefully
7 announce at least a partial resolution by the end of the
8 hearing.

9 THE COURT: All right. We'll go back to the --

10 MR. ROSEN: Well, I --

11 THE COURT: Is the FDIC here?

12 MR. ROSEN: Yes.

13 THE COURT: Let's talk about the disclosure statement
14 scheduling then.

15 MR. ROSEN: Your Honor, Mr. Califano is here. Your
16 Honor, since we filed the amended plan disclosure statement and
17 modified settlement agreement on Sunday, we have been engaged
18 in some additional dialogue with the FDIC, JPMorgan Chase and
19 certain creditor groups. And we have a little bit more
20 tinkering that needs to be finished. But that is solely to
21 make it consistent with the agreement that has been reached
22 among the parties.

23 And so we anticipate finalizing those documents,
24 hopefully the settlement agreement, as early as this afternoon,
25 when we leave here, Your Honor, but certainly no later than

1 Friday. And filing those with the Court on Friday.

2 As a result, Your Honor, we'd like to continue the
3 disclosure statement hearing to as early as possible next week,
4 so that we can gain approval of that and commence the
5 solicitation process.

6 Mr. Califano is here and he can certainly address this
7 from the FDIC's perspective.

8 MR. CALIFANO: Good morning, Your Honor. I'm sorry
9 I'm late -- I was late.

10 THE COURT: That's okay.

11 MR. CALIFANO: Your Honor, we've been working with all
12 the parties to achieve a settlement of the issues in this case.
13 The basic provisions of the settlement agreement and disclosure
14 statement positively addressed the issues of the FDIC receiver.
15 And the FDIC expects that drafting on the remaining issues, and
16 obtaining all the necessary internal approvals wouldn't be
17 completed by the end of this week.

18 THE COURT: Okay. Let me hear from anybody else who
19 wishes to be heard on the timing of the disclosure statement
20 hearing.

21 MR. POTTER: Your Honor, if I may?

22 THE COURT: You are?

23 MR. POTTER: James Potter with the State of
24 California -- Deputy Attorney General with the State of
25 California, representing the California Department of Toxic

1 Substances Control.

2 We obtained one of the payments. We were among the
3 parties who filed an objection to the disclosure statement, in
4 part because of substantial ambiguities in the disclosure
5 statement that preclude our client and other clients -- other
6 claimants with interest in the BKK landfill from determining
7 the impact of the plan on our claim. And that, of course, is a
8 key principle of the disclosure statement.

9 The amended -- in many respects, the amended
10 disclosure statement does not resolve the ambiguities, but
11 further the amended disclosure statement introduces substantial
12 new information and in some cases substantial new ambiguities.
13 Therefore, we would ask that twenty-eight be given for us and
14 related parties to review the amended disclosure statement and
15 submit supplemental objections, if appropriate.

16 THE COURT: All right. Let me hear from anybody else.

17 MR. BILSON: Good morning, Your Honor. My name is
18 David Bilson with Phillips Goldman & Spence. With me today is
19 Melissa Murray with Bingham McCutchen, we represent BKK Defense
20 Group. Ms. Murray who has an application pro hac vice, is
21 pending, would like to address the scheduling issue, if it
22 please the Court.

23 THE COURT: All right, she will be heard.

24 MS. MURRAY: Good morning, Your Honor. Melissa Murray
25 of Bingham McCutchen. I represent the BKK joint defense group,

1 also claimants like the State of California relating to the
2 debtors' liability for contamination at a site in West Covina,
3 California.

4 We would echo the response of the state and ask that
5 there be at least a twenty-eight-day period as required by Rule
6 3017, both to -- for a hearing on the amended disclosure
7 statement. And if the Court's inclined to set an additional
8 objection deadline that it not be before June 14th, which I
9 believe is the twenty-eighth day from the filing date of the
10 amended disclosure statement.

11 THE COURT: Assuming it's filed Friday?

12 MS. MURRAY: I thought it was filed on the 17th.

13 THE COURT: Oh, well, they're going to amend it again,
14 I understand.

15 MS. MURRAY: Right. This is based on the one that was
16 already filed. I understand now there may be a new one. But,
17 again, because of the complexity of the issues and certainly
18 those that surround the treatment of the claims of the BKK
19 joint defense group, and the State of California, we would
20 request our full twenty-eight days notice, both for objections
21 and for the hearing.

22 THE COURT: Thank you.

23 MS. MURRAY: Thank you, Your Honor.

24 MR. ANKER: Good morning, Your Honor. Philip Anker,
25 Wilmer Cutler Pickering Hale & Dorr for various bank

1 bondholders.

2 We have been in various discussions. I want to advise
3 the Court, we are not -- I guess I don't know whether we are
4 supportive or not supportive because I don't really know what
5 settlement is being discussed in Court here today, since it
6 appears to be a fluid moving target.

7 I will say this, I recognize the disclosure statement
8 hearing whenever it is scheduled is not the date for
9 substantive objections to confirmation, that will be down the
10 road. But it is the time for objections with respect to the
11 adequacy of disclosure. And if there is a new settlement with
12 a new plan even if it's simply tinkers at the edges, and one
13 can say that now, today, but without seeing it one doesn't
14 know.

15 The current plan was filed -- today is Wednesday, if
16 memory serves me right, it was filed Monday, it may have been
17 filed Friday. And if so, I apologize to the Court. You need
18 to give some reasonable time to allow people to look at it. We
19 thought there were significant disclosure in addition to a
20 substantive issues with the prior plan, and giving a few days
21 through next week is hardly adequate time.

22 I also think, frankly, it's counterproductive in
23 trying to get to a truly global resolution. So whether the
24 Court wants to have a full twenty-eight days from the date of
25 filing, or a shorter period than that, but some reasonable

1 period to allow for meaningful objections to be filed, review
2 to occur, and if there is a view of inadequate disclosure
3 objections to be filed, I would urge the Court to do that.
4 Thank you.

5 THE COURT: Thank you.

6 MR. SUSMAN: Your Honor, on behalf of the equity
7 committee, Steve Susman.

8 To the extent that they need additional time to get
9 the settlement in place and reflected in this disclosure
10 statement we don't have any objection to that. But we have now
11 filed objections twice to the original disclosure statement and
12 to amended one. I don't think they should use the -- be
13 allowed to use the extra time to change other things in the
14 disclosure statement. It's one thing to make disclosure
15 statement comply with the settlement, and it reflected fully.
16 But for them to go back now in this huge document, that's 160
17 some odd pages long, and constantly make different changes that
18 have nothing to do with the settlement, and requires us to make
19 again our second amended objections to all these things in a
20 short period of time, I don't think is fair. Thank you, Your
21 Honor.

22 THE COURT: Well, do you want them to make the changes
23 responsive to your objection?

24 MR. SUSMAN: Yeah. Well, of course. That would be
25 good. But we should give a little more time.

1 THE COURT: I see.

2 MR. SUSMAN: Is what I'm saying.

3 THE COURT: All right, thank you.

4 MR. STEINBERG: Your Honor, this is Arthur Steinberg
5 from King & Spalding on behalf of Nantahala Capital Partners
6 and Blackwell Partners Limited, who are in the category of the
7 dime warrants under the plan.

8 I would echo the sentiment that some greater period of
9 time be given from the time period that documents are filed,
10 and there's an actual hearing on the disclosure statement so
11 that we can review what is a very lengthy document, which has
12 had substantial changes from the first disclosure statement
13 that was filed to the amended disclosure statement that was
14 filed sometime on Sunday.

15 But in order to try to achieve the efficiency that Mr.
16 Susman talked about, whenever the debtor decides it's going to
17 file the disclosure statement that's it's going to ask the
18 Court to approve, we would like that to be filed with a signed
19 agreement of the settlement agreement, so there's nothing
20 further that is going to be tinkered with that. So we know
21 that's the basis from the baseline upon which the disclosure
22 should be measured.

23 And if there are any documents that presently say
24 we'll disclose this prior to the hearing on the disclosure
25 statement, since we're pushing off the disclosure statement

1 those documents and all exhibits to the settlement agreement,
2 disclosure statement plan, everything that they say is going to
3 be attached, that should be attached at one time, and then
4 everybody should get a reasonable period of time to review what
5 is a lengthy document. Whether it's twenty-eight days, or some
6 shorter period of time.

7 But we would like to have everything done once and
8 then have a reasonable time to review, and if necessary,
9 further amplify, supplement our pending objection.

10 THE COURT: Thank you.

11 MR. JOHNSON: Your Honor, Robert Johnson from Akin
12 Gump on behalf of the official committee of unsecured
13 creditors.

14 We join the debtors in asking for a hearing as soon as
15 possible next week. We think the parties have been given
16 enough time. And strictly speaking with respect to the timing
17 issues, we're confident that the changes that will be coming
18 with the latest version in the next couple of days, will be
19 minor in nature and they will be addressing the objections that
20 are being made by various parties. And so we think that it's
21 important to go forward with the disclosure statement as soon
22 as possible next week. Thank you.

23 THE COURT: Thank you.

24 MR. ROSEN: Your Honor, I understand why some of these
25 people have stood up and asked for a lot of time. The reason

1 for that is -- take Mr. Steinberg for instance, his clients
2 aren't getting anything under the plan. Same for Mr. Susman.
3 And Mr. Anker's they're not getting what he wants, or he thinks
4 his clients are entitled to get. So they think that the delay
5 in time would put more pressure upon the debtor and cause them
6 to probably to come and change of heart and provide them with
7 something.

8 The fact of the matter is, Your Honor, that the
9 modifications to the disclosure statement that were filed on
10 Sunday were only in relation to some of the nuances associated
11 with the settlement agreement, itself. The other changes that
12 were made were done to change -- to address some of the
13 objections to the extent that we felt that they were disclosure
14 statement objections and not confirmation hearing objections.
15 But there were not significant changes to the disclosure
16 statement. So for people to come up and say that they need
17 twenty-eight days to review something, not only is it
18 inconsistent with the practice before this Court of filing
19 those and letting them be seen by the Court, and by the
20 parties, and addressing those at a disclosure statement
21 hearing, but it's just not accurate.

22 We are trying to get this case out of Chapter 11 as
23 quickly as possible, Your Honor. The ongoing accrual of
24 interest --

25 THE COURT: But why?

1 MR. ROSEN: I'm about to say, Your Honor. The ongoing
2 accrual of interest associated with some of these pieces of
3 debt continues to eat significantly into the recovery of
4 creditors. The sooner we reach an effective date, the sooner
5 we reach an effective date of the settlement and the funds are
6 provided by JPMorgan, the deposits come over. The sooner we
7 can make distributions to creditors and we can toll the running
8 of that accrual of interest that eats away at the lower
9 classes. And by the way, Your Honor, the more it eats away the
10 more Mr. Susman's clients get deeper and deeper in the hole.
11 The more Mr. Steinberg's clients get deeper and deeper into the
12 hole. We're trying to do this quickly, Your Honor. We're
13 trying to stave off any erosion to the creditor body here.

14 The equity body, Your Honor, as we have told the Court
15 several times before, we don't see a distribution. If there is
16 to be one, Your Honor, it will be insignificant and be at the
17 preferred stock level. Certainly nothing to ever trickle
18 beyond seven and a half billion dollars of preferred stock.

19 But the ongoing accrual of interest, Your Honor, would
20 be significant and would wipe out whatever would even go to the
21 preferred stockholders, Your Honor. We're doing our best, but
22 to delay this process for someone to take twenty-eight days, or
23 even five days, or even less for a meaningless review of
24 something that was totally insignificant is not appropriate,
25 Your Honor.

1 We know that the Court's calendar does not permit
2 something early next week, and that something that could be
3 done at the soonest next Wednesday in the afternoon, or perhaps
4 Thursday. Your Honor, we would like to do that. Any further
5 modifications to the disclosure statement, again, will be minor
6 and they will be around the edges to the extent necessary to
7 incorporate any changes associated with the settlement
8 agreement.

9 I take Mr. Steinberg's comment to heart. And that is
10 what we are committed to do. We want an executed settlement
11 agreement to attach to the document, and we will do that, Your
12 Honor. But that will not be significantly changed from what
13 has already been filed with the Court in draft form.

14 So we will not be back before the Court without the
15 executed agreement. We, more than anyone, Your Honor, demand
16 that that document be executed by the parties. We anticipated
17 that it will be and we will anticipate filing it with the
18 Court.

19 THE COURT: Thank you.

20 MR. STEINBERG: Your Honor, this is Arthur Steinberg
21 again.

22 First, with regard to what Mr. Rosen said, we didn't
23 ask for twenty-eight days, I echoed Mr. Anker's sentiment that
24 we have a reasonable time period, which Your Honor would set.

25 Second, I'm not here to argue today that we believe

1 that we are not equity, and that we do have a claim in the
2 case, and that we've been miscategorized. But I didn't want
3 Mr. Rosen to be able to say that without having a refutation in
4 response.

5 And, third, as far as whether he thinks that what he
6 filed on Monday was a minor change, I won't try to debate what
7 Mr. Rosen believes is minor. But he did file a blackline, and
8 it did add new classes, it did talk about elections for each of
9 the classes, it did say -- it did add a bunch of information
10 that was without regard to I think the global settlement, it
11 did put a burden on people to review 168 pages, try to figure
12 out whether they needed to have a response, all to do it within
13 what was a day and a half to two days before this thing was
14 adjourned. I think people are asking for a reasonable time
15 period to review whatever it is that they're going to do. I
16 mean, they added forecasts, they did a bunch of things beyond
17 just amplifying the global settlement.

18 And we have no clue as to what it is that they're
19 going to be doing in the future. It's easy for the creditors'
20 committee counsel to say we think it's all going to be minor,
21 because apparently they're at the table and they're making the
22 changes and is subject to their approval. So they're further
23 review is going to be minor.

24 But for those who aren't at the table, who aren't
25 being consulted, who have no clue as to what is being done from

1 this point going forward, a reasonable time period for us to
2 review the document, for whatever Your Honor believes is the
3 reasonable time period under the circumstances of this
4 liquidating Chapter 11, should be given to us.

5 THE COURT: Thank you.

6 MR. ANKER: Your Honor, I'll try to be brief.

7 I obviously echo Mr. Steinberg's endorsing of my prior
8 comments. But let me try to be a little less glib than that.

9 It is accurate -- I accept Mr. Rosen's representation,
10 I have no reason to assume he's not being forthright in saying
11 that whatever changes are made from this point forward will be
12 modest and "around the edges." But even if that is right, what
13 he's talking about is modest and around the edges to a document
14 that was filed on the ECF Sunday night. I won't represent what
15 time, but I certainly didn't see it before I went to bed
16 Sunday night, maybe I'm an early to bed person and don't stay
17 up until all hours. And I will represent to this Court that I,
18 like I suspect other counsel and other principals in this room,
19 have other matters. I did get a chance to literally glance at
20 the latest plan and disclosure statement. And as Mr. Steinberg
21 says there are -- simply, if you look at the blackline and just
22 look at the number of underlinings and cross-outs, material
23 changes. I will say I still don't understand what the
24 treatment is but this is substance, we'll get to it on a
25 disclosure statement hearing, of the treatment of my clients'

1 claims, if those claims are to be allowed pursuant to the
2 discovery schedule that we're going to have to work out.

3 So there are disclosure issues here and we need a
4 reasonable period of time. One way to approach this is to say
5 let's accept that representation and count the period that you
6 think is reasonable from this Monday, two days ago, and say
7 yes, Mr. Anker I understand you have other cases, but you've
8 got a big law firm, you can have spent the last two days
9 reading this thing.

10 But it is right what Mr. Steinberg says about
11 something else. The -- I believe the WMI senior noteholders'
12 committee, Your Honor, but I may have the party wrong, filed a
13 reservation of rights, in which they said we've only gotten to
14 see drafts that have been circulating to some people of the
15 latest changes two days ago, that's inadequate for us to be
16 able to assess the adequacy of disclosure. Well, it has one
17 advantage over us, we didn't to see any drafts of any kind.
18 I've not seen anything other than what is on the ECF.

19 I accept that interest is accruing, but this is a case
20 that has gone on for eighteen months in a liquidating setting
21 with some eighty million dollars in professional fees. And
22 allowing another reasonable period, whether that is an
23 additional two weeks or whatever period the Court deems
24 appropriate, to allow the parties some time to actually read
25 the thing. And if they think the disclosures are inadequate

1 put in new disclosure statement objections, seems to me
2 consistent, frankly, with due process. And that's all we ask.
3 Thank you, Your Honor.

4 MR. ROSEN: Your Honor, I rise only not to address Mr.
5 Anker's ongoing request for delay, but rather to just point out
6 that the statement made by Mr. Steinberg, there is a
7 reorganization being done pursuant to this plan, Your Honor.
8 One of the things that's being done is the funding of
9 operations going forward, the elections that were referred was
10 for people to take stock, or reorganized stock going forward.
11 So this is not a liquidating plan, Your Honor, there is a
12 reorganization associated with it. And it's important that we
13 get that reorganization underway as quickly as possible.

14 THE COURT: Well, let me say this. I agree with the
15 parties that given the breadth of the changes and the length of
16 the disclosure statement, some additional time is necessary to
17 allow the parties to review the changes made by the debtor, and
18 to be made by the debtor on Friday.

19 So I'm going to suggest we continue this to the June
20 3rd hearing. I'll direct the debtor to file any additional
21 revisions by Friday, May 21st. And any further objections
22 should be filed by May 28th. I would like the debtor to
23 provide the Court before the June 3rd hearing a chart as is
24 customary in this district, regarding how you've dealt with
25 each of the objections to the disclosure statement.

1 MR. ROSEN: Your Honor --

2 THE COURT: I know you haven't started.

3 MR. ROSEN: No, we were actually ready for today's.
4 But, Your Honor, we will then file that between 5/28 and 6/3,
5 Your Honor. And to the extent that it's necessary to make
6 further modifications we'll then file that as well, so you can
7 see it.

8 THE COURT: Okay.

9 MR. STEINBERG: Thank you, Your Honor.

10 THE COURT: And just for the record, let's say the
11 June 3rd hearing is at 10:30.

12 MR. ROSEN: Yes, Your Honor.

13 MR. STEINBERG: Your Honor, if there's going to be a
14 further revision to -- this is Arthur Steinberg, I apologize.

15 If there's going to be a further revision to the May 21
16 document before the June 3 hearing, is there a deadline when
17 that will be filed so we will have an opportunity to review it.

18 THE COURT: Yeah.

19 MR. STEINBERG: Or is the last opportunity for the
20 debtor to revise something going to be May 21st?

21 THE COURT: No. If they make any revisions based on
22 the May 28th, they should file a June 1st.

23 MR. STEINBERG: Thank you, Your Honor.

24 MR. ROSEN: Your Honor, if I could -- I know I'm sort
25 of going to the well here, and I don't want to -- could I ask

1 only for the 2nd by noon, only because, Your Honor, you're
2 giving people the opportunity to serve objections on Friday,
3 Memorial Day Weekend.

4 THE COURT: I'm ruining your Memorial Day Weekend
5 anyway.

6 MR. ROSEN: Well, not necessarily mine -- yes, yes,
7 mine. Of course, it's mine, but others as well. And I'm only
8 thinking of them.

9 THE COURT: Of course.

10 MR. ROSEN: So if we could just ask for the second by
11 noon, Your Honor.

12 THE COURT: Well, make sure you deliver it to chambers
13 by noon, or I won't consider it on the 3rd.

14 MR. ROSEN: We'll do. Thank you, Your Honor.

15 Your Honor, if we could go back then to the TPS
16 consortium matter, which was the motion to compel the
17 discovery.

18 THE COURT: Number 16.

19 MR. ROSEN: Yes.

20 THE COURT: Yes.

21 MR. COFFEY: Thank you, Your Honor. Again, Jeremy
22 Coffey with Brown Rudnick on behalf of the TPS consortium.

23 I'm happy to announce we've achieved a partial
24 resolution of our motion to compel and this is what we would
25 propose to do, if it meets with Your Honor's agreement.

1 The debtors have offered by tomorrow to get to us
2 documents responsive to request number 2 of our document
3 request, which is Exhibit A to our motion to compel.

4 Also, beginning tomorrow, the debtors will use best
5 efforts to start delivering documents responsive to the rest of
6 our request on a rolling basis.

7 One of the request that we've lodged is for documents
8 the debtors received in connection with the 2004 examination of
9 claims potentially against JPMorgan. I understand that the
10 debtors have their own confidentiality restrictions on how that
11 can be delivered to us, and we're going to work on that as
12 well, but that may be an issue on which we need Your Honor's
13 assistance going forward. So what we propose to do is carry
14 this motion; our motion to compel, either to the next omnibus
15 hearing or the hearing on the disclosure statement which I
16 understand may be confirmed on June 3rd.

17 MR. ROSEN: It's one and the same.

18 MR. COFFEY: One and the same.

19 THE COURT: Okay. June 3rd. All right, that's fine.

20 MR. COFFEY: Thank you, Your Honor.

21 THE COURT: Thank you. So we're back to the 2019
22 motion.

23 MR. ROSEN: Yes, Your Honor. Item 13.

24 THE COURT: The only matter left.

25 Well, I've reviewed the statements filed up to and

1 including I guess yesterday.

2 MR. FLASCHEN: Your Honor, if we may have permission
3 to be heard on this?

4 THE COURT: Anything to add other than what you've
5 filed?

6 MR. FLASCHEN: Briefly.

7 THE COURT: All right.

8 MR. FLASCHEN: Your Honor, Evan Flaschen of Bracewell
9 & Giuliani for the WMI noteholder group.

10 Two items and I will try to be brief. The second item
11 is why 2019 doesn't apply to us, and I will not repeat what we
12 said in the motion in our statement.

13 The first is ultimately a more fundamental point.

14 THE COURT: Yes.

15 MR. FLASCHEN: In context Chapter 11 is generally
16 viewed as a pro-debtor statute. Nothing wrong with that, that's
17 what Congress intended, it favors reorganization, it gives the
18 debtor many rights, it gives them substantial leverage; such as
19 exclusivity and other matters. When the debtor speaks they
20 have added weight to what they say.

21 Second, this Court so often does not know what happens
22 outside the Court. A good example is a discovery dispute.
23 Until it was resolved today you had two affidavits that said
24 opposite things. People swearing yes, we complied, no we
25 didn't, whatever it is. You do your best.

1 This is different. We have what you said, we have
2 what they said. I am before you today literally to ask you not
3 to impose sanctions against our group or against my law firm
4 for failing to comply with an order you have not yet entered.

5 Their notice is clear. If we did not file 2019
6 statement two days ago we risked sanctions today. You did not
7 enter an order to show cause, you've seen the words since
8 you've read my objection, I will not repeat them, you simply
9 said I had an order that applied to the WMI noteholders. I
10 kind of think it should apply to everyone, you certainly said
11 that. If you don't agree show up on April 21st, by the way,
12 they put it off. It was your motion, but they put it off. And
13 here we are today. We took a chance, everyone else complied.

14 I realize that by doing this I'm putting a target on
15 our law firm's back, on my back, not just in this case but in
16 cases for years to come, because we're calling out debtors'
17 counsel for this outrageous conduct. But sometimes people have
18 to stand up and say what is wrong, and this was wrong. It
19 caused us to prepare for the first hearing, it caused us to
20 prepare for this hearing, it caused us to come down here. And
21 the context of a case where eighty million has been spent on
22 professional fees, the fifty thousand dollars it cost my
23 clients is not a hill of beans, but it matters to them. It's
24 1,500 dollars to fly down here from beautiful Hartford,
25 Connecticut. It doesn't matter, you can't do things like that.

1 They are officers of this Court.

2 Main point, I will not repeat what is in the pleading.
3 Rule 2019 is being interpreted by different courts as to what
4 its terms literally mean. They're not the best words in the
5 world. This Court has stated clearly what it believes the
6 words mean, I am not going to dispute that. But I will focus
7 on the words.

8 The very first sentence of Rule 2019 says it applies
9 to "and the entity representing or any group of creditors or
10 interest holders." We are not creditors. Our group is two
11 different subgroups. One group is pursuing what are called the
12 direct claims. I, WMI bank bondholder were directly injured by
13 WMI, give me recoveries. That group is represented by Grant &
14 Eisenhofer, they have filed a 2019 statement.

15 Our group -- I'm going to be careful with the words I
16 use, is seeking recoveries solely on behalf of the receivership
17 estate. We are not saying pay me, we are not saying I'm owed
18 100 dollars versus 100 million dollars, pay that, we're saying
19 pay the estate.

20 If 2019 applies at all it applies to the creditor
21 which is the FDIC. It is the receivership estate. We have
22 disclosed all of that in our pleading. We've said how much
23 they think they owe, when they acquired their claim, all those
24 different things. How much we are owed by a bank that is not a
25 debtor in this Court is not relevant. It is not relevant as a

1 matter of information. It's not relevant as a matter of
2 statute. We're not creditors, there's only one claim.

3 Why this matter. Our guys don't care what they
4 disclose, that's not what this is about. It's about setting
5 principles and towing the line when people have gone too far,
6 and this goes too far.

7 If Your Honor nevertheless concludes that Rule 2019
8 does apply to us, and if you order -- the Court enters an order
9 today to that effect, since you have not yet entered one to
10 that effect, we would request that the Court exercise its
11 discretion as to sanctions, and I will be quite specific that
12 this Court should order that our group cannot participate in
13 the WMI case in any capacity other in defense of the proofs of
14 claim we filed. If we ever want to -- if we want to object to
15 the disclosure statement, if we want to object to the plan, if
16 we want to object to an uncontested settlement, we do that at
17 our peril if we haven't filed a 2019.

18 So in sum, this is wrong. The rule doesn't apply to
19 us anyway. And if it does you have the authority to craft the
20 sanctions as are appropriate under the circumstances. Thank
21 you, Your Honor.

22 THE COURT: Well, let me address two of those points
23 because it does go to at least one of the issues I was going to
24 raise.

25 With respect to whether I'm prepared to sanction

1 anybody, I'm not prepared to sanction anybody. I full intended
2 today's hearing to be a rule to show cause; to hear arguments
3 by any party as to whether or not they felt 2019 did not apply
4 to them. Recognizing that my ruling with respect to the
5 noteholders that really were their position and other parties
6 may have other arguments as to why 2019 does not apply to them.

7 In reading the statements that were filed in response
8 to the debtors' notice, it became clear to me that many of the
9 parties who filed them in my opinion did not need to file such
10 statements. Leaving aside, whether or not, I think any of the
11 statements other than those filed by Drinker Biddle and Grant
12 Eisenhofer, comply with 2019, but it did not need to file
13 statements. And I'll refer to them generically.

14 Counsel who represents individual clients, once
15 counsel may represent more than one client in a bankruptcy case
16 without being required to file a 2019(b) statement. Mainly if
17 the counsel will file statements make it clear that the clients
18 they represent are not related. They represent a pension fund
19 and AT&T, they are not related, they are not purporting to
20 represent a group of creditors with similar claims asking this
21 Court to treat them as a ad hoc committee. Other examples are
22 representing more than one employee in the Rabbi Trust
23 litigation. I think 2019 does not apply to such situations.
24 Representing defendants in adversaries brought by the debtor,
25 two different adversaries, I don't think 2019 was meant to

1 apply to those circumstances.

2 As counsel just noted, simply prosecuting a proof of
3 claim in a bankruptcy case on behalf of more than one creditor
4 does not require a 2019(b) statement. It is only those in a
5 situation where they are representing similar creditors as an
6 ad hoc committee or group asking this Court to consider their
7 position based on the total amount of all of the claims
8 represented by that group of creditors where I think 2019(b) --
9 2019 applies.

10 And I think with respect to some of the statements
11 that were filed, specifically by Pachulski and by Kasowitz
12 Benson, I think the concerns that I had expressed and that were
13 expressed by the committee dealing with the amendment to Rule
14 2019 becomes clear because in those statements it's clear that
15 some, if not all of the members of the group hold two different
16 positions in this case. And I think that certainly the
17 amendments to 2019 are going to require that parties disclose
18 if they have more than one economic interest in a case.

19 But I think with respect to those who do represent ad
20 hoc committees, I think the disclosures -- the initial
21 disclosures were names and addresses only. I don't think that
22 complies with 2019. As I noted Drinker and Grant Eisenhofer
23 disclosed the identities, the prices paid, and the dates paid.
24 Others submitted statements which gave a range of dates and a
25 range of prices. I do not think that complies with 2019. But

1 for the purposes of this case I am going to allow that to
2 stand, because of the fact that after seeing all these verified
3 statements it's clear that, at least to me, that there's not
4 one counsel representing any sufficiently large group of
5 creditors in any one class that I'm going to be convinced to
6 buy that counsel's argument alone, as to how that class should
7 be treated.

8 So based on my review I'm not going to sanction
9 anybody. And I hope my comments clarify it for this case. I
10 don't know if anybody didn't file a statement, but anybody
11 thinks should have filed a statement. But if they haven't and
12 it's determined they should, I will allow them to file a
13 statement identifying whom they represent and giving a range of
14 dates and prices paid for those claims.

15 But, clearly, any member of that group must identify
16 that they have more than one economic interest in this case.
17 Because I think that's critical.

18 MR. FLASCHEN: Your Honor, if I can --

19 THE COURT: Yes.

20 MR. FLASCHEN: If I can briefly clarify. Evan
21 Flaschen of Bracewell & Giuliani again.

22 We stated multiple reasons why we thought 2019 did not
23 apply. As I understand, without commenting on the other
24 reasons, you're saying so long as we have only filed a proof of
25 claim and are defending it on that basis, we do not need to

1 comply?

2 THE COURT: Yes.

3 MR. FLASCHEN: Okay. We would ask that the Court, if
4 nothing else, guide us with observations about this notice,
5 because it really did ask us to show up today, and hope we did
6 not get sanctioned. We would not have been here in person
7 today but for that notice, we would have done this on the
8 phone. Thank you, Your Honor.

9 THE COURT: All right. I don't know, who's going to
10 take a shot at doing the form of order?

11 MR. ROSEN: Your Honor, we will put it together and we
12 will make sure that Mr. Flaschen has an opportunity to see it.

13 THE COURT: Okay. Anything else?

14 MR. ROSEN: I think that concludes --

15 MR. STEINBERG: Your Honor, this is Arthur Steinberg
16 again.

17 With regard to your ruling on the disclosure
18 statement, there were two things I wanted to just make sure
19 that was clarified in light of some of the comments made by the
20 people.

21 The May 21st deadline where you're asking the debtor
22 to file whatever the amendments to the disclosure statement is,
23 if debtor is not filing the document by that day do I take it
24 that the June 3rd hearing will automatically be adjourned,
25 because of the other dates have changed? And let me just get

1 through all my questions, Your Honor, if I may.

2 The second is when the debtors filed the documents, if
3 they do file on May 21st, must it include the actual signed
4 global settlement agreement so that we know we're actually
5 dealing with something that will be going forward? And will
6 the debtor also be including on that May 21st document all of
7 the other disclosures that it needs to make as exhibits to its
8 documents? And where in the disclosure statement, like on page
9 15, it says they're going to disclose something prior to the
10 disclosure hearing with regard to the rights offering, and with
11 regard to the number of shares of common stock, whether all of
12 that information now will be included in the May 21st document,
13 so we're dealing with a closed book assignment.

14 And the second -- the final questions I had is since
15 we really have now a very tight timetable between the debtors'
16 further amendments on June 2 and the hearing on June 3 to make
17 sure that the debtor, whatever it files, files as it did this
18 time a redline and the chart by that time as well, too, so that
19 we have what is less than twenty-four hours to prepare for that
20 hearing.

21 THE COURT: Well, they are going to file the chart,
22 and they are going to file the redline, and they are going to
23 file everything else they said they are required to attach,
24 they intend to attach.

25 MR. ROSEN: Yes, Your Honor. That's correct, Your

1 Honor.

2 THE COURT: Okay.

3 MR. STEINBERG: Thank you.

4 THE COURT: All right.

5 MR. ROSEN: Thank you for your time, Your Honor.

6 THE COURT: All right, we'll stand adjourned.

7 (Proceedings concluded at 12:20 p.m.)

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I N D E X

R U L I N G S

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

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

**Esther
Accardi**

Digitally signed by Esther Accardi
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AAERT Certified Electronic Transcriber

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Mineola, New York 11501

Date: May 20, 2010

UNITED STATES BANKRUPTCY COURT
District of Delaware

In Re:

Washington Mutual, Inc.
1301 Second Avenue
Seattle, WA 98101
EIN: 91-1653725

Chapter: 11

Case No.: 08-12229-MFW

NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION

A transcript of the proceeding held on 5/19/2010 was filed on 5/21/2010 . The following deadlines apply:

The parties have 7 days to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is 6/11/2010 .

If a request for redaction is filed, the redacted transcript is due 6/21/2010 .

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 8/19/2010 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber (see docket for Transcriber's information) or you may view the document at the clerk's office public terminal.



Clerk of Court

Date: 5/21/10

(ntc)

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