UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 08-12229(MFW)

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In the Matter of:

WASHINGTON MUTUAL, INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

October 18, 2010

10:01 AM

B E F O R E:

HON. MARY F. WALRATH

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: NICKITA BARKSDALE

HEARING re 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 Debtors' Joint Plan

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE CLERK: All rise. You may be seated.

THE COURT: Good morning.

MR. ROSEN: Good morning, Your Honor. Brian Rosen, Weil Gotshal & Manges, on behalf of the debtors. With me today are several associates, Ms. DiBlasi, Ms. Coleman and Mr. Sharma, who have helped us on this matter, as well as Mr. Collins and Mr. Jang from Richards Layton & Finger.

THE COURT: Okay.

MR. ROSEN: Your Honor, we're here today for the disclosure statement hearing with respect to the sixth amended disclosure statement. As we set forth in our second supplemental response that we filed with the Court, Your Honor, this process has been going on since we initially filed the plan in March and we've had several fits and starts as we've allowed for modifications to the plan, the execution of what's referred to as the global settlement agreement and then, ultimately, Your Honor, with respect to the appointment of the examiner and the investigation that the examiner is doing with respect to the global settlement agreement, the claims and causes of action being compromised and the assets being transferred there, as well as with respect to the retained assets that are otherwise being distributed pursuant to the plan.

Additionally, Your Honor, we had adjourned one

additional time so that we could allow for the negotiations that we were having with the bank bondholders. And by that, specifically, Your Honor, the WMB senior noteholders that were formally represented by Mr. Anker and are now represented by Mr. Jeremy Richards and Mr. Dean Ziehl from the Pachulski Stang law firm.

And as a result of those negotiations, Your Honor, we filed the sixth amended plan and the sixth amended disclosure statement on October 6th. And we -- in accordance with a notice, Your Honor, we had asked for objections to that disclosure statement to be received by Wednesday, October 13th. We did receive a few additional objections, Your Honor, and we, of course, did receive some as late as Friday night. But we have included our responses to each of those objections, including those that were filed Friday evening, in the supplemental response that we provided to the Court.

Your Honor, I'd like to tackle head on the issue which, I think, is probably foremost in the minds of some of the people in the room and perhaps the Court as well, which is the timing. Should we go forward with the disclosure statement today or should we await the approval -- or, excuse me, the release of the examiner's report on November 1st. And we addressed this, Your Honor, on page 7 of the second supplemental response. Specifically, Your Honor, as we have indicated throughout this process, there was an approximate

thirty million dollar per month drain on these debtors' estates. And that's a combination of post-petition interest with respect to the senior debt as well as fees and expenses that are incurred. And at the time that we decided and that was consensual for the appointment of the examiner, it was talked about and agreed upon that we would move forward on a dual track. Specifically, the examiner would do whatever the examiner was doing and we would continue in the plan confirmation process. And as far as we are concerned, that includes, Your Honor, moving forward today with respect to seeking approval of the disclosure statement. We don't think that process should be pushed aside. We should continue on that dual track approach. And as we say in the second supplemental response, Your Honor, there are two reasons for that: (1)the thirty million dollars versus the 1.2 million dollars. And in our second supplemental response, we gross that up, Your Honor, to two million dollars just for the sake of additional cost that may exist. And Exhibit A to the second supplemental response details, Your Honor, the costs and expenses that have been projected by KCC, the court-appointed claims and noticing agent, with respect to solicitation of the plan and publication of notices. And, Your Honor, we have a blowup over there for you as well which is the same as what's contained in Exhibit A.

So, Your Honor, we juxtapose 1.2 million dollars of

costs versus thirty million dollars of additional loss to the debtors' estates and a further, if you will, sinking of value for the lowest rung on the ladder of creditors that are funded indebtedness which are the PIERS, Your Honor, before you even get to the people who are beneath that which, as we refer to in the plan are the 510 subordinated claims, the preferred stock and then the common stock.

So, Your Honor, we'd say should one pay 1.2 million dollars. Should that group of creditors be willing to give that up? And, Your Honor, we can represent to the Court that that group of creditors consents to paying the 1.2 million dollars because it directly comes out of a distribution that they otherwise would receive.

Secondly, Your Honor, we point out in the response that we have a suggested gap period. And by that I mean, Your Honor, we are suggesting pursuant to the procedures that the voting deadline for solicitation of acceptances and rejections to the plan be November 15th, two weeks subsequent of the issuance of the examiner's report. As we have always maintained, Your Honor, we are going to provide the examiner's report online for all parties to review.

Your Honor, as you know, the examiner has suggested a bifurcated approach with respect to the distribution of that, a first one with respect to confidential information and then hopefully, subsequently, a totally unredacted version by

November 1st. We would suggest, Your Honor, that whatever form the Court allows for distribution that that would be posted online. Every person who receives the solicitation materials, Your Honor, will have an opportunity to review that report. As we say in our second supplemental response, Your Honor, parties then have a choice. To the extent that they have already voted and they read the report and they decide to change their ballot, they certainly can submit a revised ballot. And as the Court is well aware and the voting procedures provide, the second ballot is the ballot that counts. To the extent that people want to wait and read the report in the first instance, they certainly won't be harmed because there's two weeks to read the report and submit a ballot subsequent to that. So, Your Honor, we believe that there is no prejudice to the parties to have the opportunity to read it and the parties who will incur associated with the solicitation and the publication are consenting to it. And the estate will be saved, Your Honor, approximately 28.8 million dollars.

So, Your Honor, we think that there is no reason not to move forward today with the disclosure statement hearing. We think everything points in favor of doing so.

Your Honor --

THE COURT: Will I hear from others on that point?

MR. ROSEN: Sure, Your Honor.

MR. HODARA: Good morning, Your Honor. Fred Hodara of

Akin Gump Strauss Hauer & Feld for the official committee of unsecured creditors. Your Honor, it's very important in the view of the creditors' committee in a dynamic situation like the Washington Mutual bankruptcy case to strike while the iron is hot. And we believe that now is that time. The global settlement agreement has finally been expanded to include the Washington Mutual Bank bondholders. And so we believe that when you have a dynamic situation like this, it's important to move forward.

We think that there are two reasons why it's critical to move forward at this time. One is economic and objective. The other has to do with the dynamic itself. The economic issue has been identified in Exhibit A to the supplemental response which is the statement from KCC that makes clear that we are seeing a cost of twenty-three million dollars a month. This is what's stated in the response itself -- to the PIERS holders plus the cost of the case itself to all creditors versus a cost of 1.2 million to do the solicitation and balloting. So a clear juxtaposition of expense to specific creditors and then to the entire estate versus a very identifiable and albeit significant amount, 1.2 million dollars, but insignificant compared to the monthly hit to those creditor parties. So we think that reason, in and of itself, is a sound basis to move forward at this time.

The second reason pertaining to the dynamic is that

we've seen so many times in cases like this, and we've seen it in this case itself, that when you allow time to slip, things can change. And when things change, that delicate balance that we have that has resulted in a global settlement agreement involving so many of the significant parties in this case and all of the senior parties in this case can change. And those changes can come from any number of sources whether they be regulatory, congressional, specific to the parties themselves. And so we think that that dynamic combined with the identifiable economic benefit of moving forward at this time relative to the theoretical potential that the solicitation and balloting itself may have to be modified or even changed weighs so heavily in favor of moving forward with approval of this disclosure statement at this time that that is exactly what the Court should do for the benefit of this estate.

THE COURT: All right. Thank you.

MR. HODARA: Thank you, Your Honor.

MR. NELSON: Good morning, Your Honor.

THE COURT: Good morning.

MR. NELSON: May it please the Court, Justin Nelson on behalf of the equity committee. We are opposed to the disclosure statement going forward today due primarily to the fact that the examiner's report is coming out literally in a week, at least in the confidential version. The public version will be coming out on November 1st. Part of Mr. Rosen's most

recent objection was presumably on behalf of at least part of our constituency who are the preferred shareholders saying that this potentially might impact them. Well, on behalf of that class, specifically, we believe that it is more than prudent to wait until the actual examiner's report comes out so that can be incorporated. There is no doubt that the disclosure state -- under Mr. Rosen's plan, that the disclosure statement will come out before the examiner's report and that the disclosure statement will not include the examiner's report's findings. It is not sufficient just to put it online. We feel that there is a significant likelihood that the disclosure statement will have to be amended to reflect what's in the examiner's report and we should wait to hear what the examiner has to say.

One other point on the timing issue is that Mr. Hodara just mentioned the regulatory and congressional findings that might come out. There is a report of the Financial Crisis Inquiry Commission that is due to the American public on December 15th, 2010. And that very well could add other facts that are important to confirmation. So to try to rush the disclosure statement, to try to beat the Financial Crisis Inquiry Commission's report seems shortsighted. Thank you, Your Honor.

THE COURT: Thank you.

MR. SILVERSTEIN: Good morning, Your Honor. Paul Silverstein, Andrews & Kurth, for Broadbill Investments on

behalf of the Dime warrant holders. We filed last week a supplemental objection to the debtors' proposed disclosure statement at docket number 5600. But with respect to timing, we believe -- well, first, the objection dealt with a few substantive matters as to the content with the disclosure statement which I assume we'll get to later in this hearing if we go forward. But we believe that the disclosure statement hearing should await the filing of the examiner's report which is due in ten days. The debtors' focus that the examiner's report won't affect voting is really irrelevant. Whether it will or will not doesn't matter. It's the integrity of these cases that should mandate that we wait the ten days to see what the examiner says because it has an effect on the case. And it seems to us that nothing has changed since Your Honor appointed the examiner and since the disclosure statement has basically been taken off track while we wait for the examiner's findings. And it is totally illogical to us that we would proceed before we wait ten days for the examiner's report to be disseminated and reviewed by the parties. I understand why the debtor and the other parties who support the plan want to go forward because the natural thing to do is to continue to keep the train going. There's no surprise about that. But to suggest that we do not wait ten days to see the examiner's report, to us, is really an absurd approach. Thank you.

MS. LEAMY: Good morning, Your Honor. Jane Leamy for

the United States trustee. The United States trustee is also opposed to the disclosure statement going out before the examiner's report is filed. Your Honor, the case has been pending for two years. The disclosure statement is one of the most important things in the case and certainly should wait two weeks so the examiner's report can be filed, parties have an opportunity to review it before they get their ballots and, really, so they have everything and can make an informed decision before voting on the plan. And that's our position on the disclosure statement today. Thank you, Your Honor.

MR. POTTER (TELEPHONICALLY): Good morning, Your Honor. If I may, this is Jim Potter with the California Department of Justice on behalf of the California Department of Toxic Substances Control. We also have recommended that the hearing on the disclosure statement be delayed -- the ruling on the disclosure statement be delayed until after the examiner report comes out. And I'd like to respond very quickly to the two points debtors and the creditors' committee made today.

First, the comment about the cost savings look to only to the cost of the estate. Obviously, an important concern, but all the creditors who have to respond if the plan approval process goes forward and then get stopped and redone, that will lead to tremendous cost on all the creditors and all the other people and that gets left out of the comparison of thirty million dollars a month against allegedly just two million

dollars to run the voting.

Secondly, having the disclosure statement approval go forward and the plan confirmation process go forward while waiting for the examiner's report inevitably creates a presumption against revising the plan and/or the disclosure statement. And I think that that presumption is not really appropriate when the Court has made the choice to have the examiner come in. And I would say the presumption goes to all parties concerned. And one would want to hear from the debtors that if the examiner's report articulates issues that the debtors had not really focused on or point of view that the debtors had not focused on then the debtors will be willing to revisit any affected provisions of the plan or the disclosure statement.

But it's against human nature with things -- as Mr. Hodara said, with things rolling down the road. You want to keep them going. And our concern is that whatever the examiner comes out and says, if the plan confirmation process is going forward, it'll be very hard for the debtors and their representatives to make the changes that they might otherwise agree are necessary. Thank you.

MR. CURCHACK: Good morning, Your Honor. Walter Curchack of Loeb & Loeb on behalf of Wells Fargo Banks, the indenture trustee for the PIERS. You've heard Mr. Nelson and Mr. Silverstein speak this morning on behalf of creditor

constituencies below ours in this case and be very willing to spend our money to continue this case for yet another ten days, two weeks, a month, who knows how long. I rise simply to say that we believe the case should proceed on the dual track as Your Honor had originally planned it. There's no reason to delay it at this point. If the examiner's report yields something that causes people to change their votes then perhaps the plan will be voted down if the examiner's report reveals something that requires a change then resolicitation may be necessary. We've already heard that the cost of that resolicitation wouldn't exceed the cost of the initial solicitation so we're balancing a possible million two against a sure many times that in terms of the lost interest and the additional expenses

We've also heard that the Financial Crisis Inquiry report is coming out on December 15th. Your Honor, if you take that logic, there's going to be a new Congress in January. You know, they could change the law. I mean, at some point, you've got a deal. You got to proceed with it. And we think that moment is now. Thank you.

THE COURT: Thank you.

MR. CALIFANO: Good morning, Your Honor. Tom Califano, DLA Piper, on behalf of the Federal Deposit Insurance Corp. Your Honor, I think we're losing sight of how much work has gone into this settlement. This is months and months of

work. And it is a somewhat fragile coalition. And the settlement agreement in its latest permutation just received approval from the FDIC's board of governors and has -- there are no more conditions to our agreement. But I've been involved in this process since the spring and what the Court doesn't see is that many issues arise which threaten this agreement and which threaten the only hope we've had at a resolution in this case for over two years. No one who's objected to the dual track has said in any way that what the examiner is about to report on would impact their vote. That's the only question in connection with the disclosure statement. If there's some fact out there that might bear on confirmation but wouldn't bear on the vote, that's not really relevant, Your Honor. We're here to make sure the creditors have the information they need to vote on this plan. Waiting for the examiner's report or some other governmental report or something that might come out a month from now doesn't bear on the voting. And I think there is no reason to delay this process further. We'll go down on the dual track. I think the debtor has a very reasonable proposal to make the report public and allow people to vote. But I think we can't lose sight of the fact that after two plus years of fighting in this case there was a prospect of a resolution. And it's a prospect which I think is in danger the longer the case is prolonged. Thank you.

MS. NAGLE: Good morning, Your Honor. Shannon Lowry Nagle from Fried Frank on behalf of the settlement noteholders. Mr. Rosen referred to our clients as the lowest strung in the food chain basically. And we are them. We own approximately seventy percent of the PIERS. The delays that everyone has discussed and is aware of in this case directly affect our clients. The costs of the consent -- or the solicitation for the plan comes out of our clients' recoveries. The sixty million dollars that we offered to settle with the bank bondholders came out of our clients' recoveries. The delays, the costs, it's all coming out of the PIERS, the lowest rung. And we, on behalf of the settlement noteholders, do support going forward, continuing the dual track that everyone envisioned when the examiner was appointed. I believe everyone knows that the report is coming. They know what date it's coming. They've known about the dual track. These are sophisticated parties. There are lawyers in the room that represent these parties and everyone knows the report is coming and can react to the content in the required time to decide whether to vote, to decided whether an amendment is necessary, to ask questions. I believe that debtors' counsel has been extremely open and responsive throughout this case to people with questions. And as Mr. Hodara alluded to and Mr. Califano on behalf of the FDIC, the balance that is the settlement agreement, the foundation of the plan, is at risk the longer we

delay. And on behalf of the people that represent a significant portion of the creditor recoveries in this case, we cannot express or request that this case move forward enough. And I feel like I hammer people on a daily basis in this case, we've got to move forward, there can be no delays. I'm sure people on both sides of the table are mad at me and hate my phone calls but we've got to move forward. Our creditors are losing money with every day and every hearing. And enough is enough. Thank you.

MR. LAURIA: Good morning, Your Honor. Tom Lauria with White & Case. We represent the senior notes. Your Honor, I think we're at a point in this case where Chapter 11 cases generally start to pull out of the station. As I understand it, every major voting constituency that is or is reasonably likely to be in the money now supports the plan. The lone objector at this point who can vote or who represents a group that can vote is the equity committee who, not coincidentally, still harbors hopes of dealing with this process by changing the board of directors and derailing the settlements that have come together that form this plan of reorganization. Going forward does not interfere with the examiner's work at this point which is, we assume, largely complete. It's a totally separate exercise that will preserve -- and I'm going to use a word here that people have coined but I guess really isn't a word yet -- optionality for the Court and the parties. The

debtors' proposed timeline works in that regard. Approval today permits the review of the examiner's report. It permits changing course as that info comes in and is digested if necessary. And it preserved the ability to make a decision later at very low cost to the estate.

On the other hand, denial of the approval of the disclosure statement today is a decision that eliminates the possibility of proceeding immediately on the shortest path possible to confirmation of a plan that all of the voting constituencies that are in the money support.

There's another point that I wanted to raise for the Court's consideration. I'm sure that the Court is familiar with the events that have unfolded in the Tribune case. And it could be argued that this is the same situation. To steal a phrase, Your Honor, I know Tribune and this is not Tribune. In the Tribune case, the plan that was on the table at the time reflected a deal between a few of the constituencies in the case. But most of the voting parties had expressed opposition to the plan when the examiner's report was being prepared. That report, it was hoped, would either bring the parties together around a plan or split them apart and sound the death bell of the plan. The report was extensive and written away that I guess people have characterized it as a Rorschach inkblot test where everybody who looked at it could see what they were looking for in the report. And so, as a consequence,

the report had the ultimate effect of calcifying opposition and support as it then existed for the plan rather than bringing the parties together. Here, everyone has already decided. The report is not going to change how equity votes. The report is not going to change how any of the other classes of creditors vote. You know how the opposition and support winds up. And that is not going to be changed by the examiner's report. Unlike Tribune, which was assessing avoidance litigation, here, the examiner is looking at claims that would have to produce a material affirmative recovery to the estate. I submit, Your Honor, that it will be very difficult to conclude that the prospects of success in that litigation are sufficient to blow up the mosaic of settlements that comprise this plan. In that regard, unlike Tribune, the examiner's report here is only a data point for the Court to consider at the end of the day. It's not going to change anyone's mind and it's not the answer. The answer ultimately can only be provided by this Court on the basis of a record. And it's time to put everybody to their proof and let's get to the record and see if we have a confirmable plan. So we would ask that the process move forward as swiftly as possible. Thank you, Your Honor.

MR. ROSEN: Your Honor, I think that -- actually, as Mr. Lauria has laid it out, you see the two sides of the coin or both sides of the table at this point. You have the people with an economic interest in this case and the people who are

outside that economic sphere. And those who are going to be receiving recoveries who have the opportunity to receive recoveries are looking forward to moving as quickly as possible.

As we indicated in our supplemental response, the parties who are not are the ones who are seeking to delay for the purpose of trying to get some value thrown their way from the other parties. And as Ms. Nagle has already indicated, her group, the lowest rung on the food chain, they have already given. She indicated they've given sixty million dollars to help facilitate the bank bondholder settlement that is now incorporated in the plan and they are funding the solicitation and publication as well as bearing the risk for ongoing delay.

Your Honor, we think that based upon everything that you've heard today, there is no reason not to move forward with approval of the disclosure statement. We ask that the Court allow us to continue with this hearing and deal with whatever might be the remaining objections. Thank you.

THE COURT: One more party?

MS. MURRAY: Sorry, Your Honor. I thought that the previous statements were going to be limited to the issue of the examiner report. BKK Group, that's a creditor in this -- an environmental creditor in this case, has other objections to the disclosure statement. I can --

THE COURT: Well, we're not -- we're only deciding

MS. MURRAY: Okay.

THE COURT: -- whether or not I go ahead today. You have a position on whether I go ahead or postpone?

MS. MURRAY: Oh, definitely do because we have objections to the disclosure statement still that relate to ambiguities in the disclosure statement that directly affect how the BKK Group votes.

THE COURT: Do you want me to hear them today or --

MS. MURRAY: Yes --

THE COURT: -- postpone.

MS. MURRAY: Yes, I do, Your Honor.

THE COURT: Okay. Well, but we're not getting into that. I'm first deciding whether I'm going ahead today at all.

MS. MURRAY: Thank you, Your Honor.

THE COURT: All right. Well, let me issue my ruling. I have to say that initially my inclination would be to wait and see what the examiner says. But given the timing that the debtor is suggesting, I think that proceeding now does permit all parties to review the examiner's report before voting. And I will say this, however, that I would not be inclined to allow any party to "respond" to the examiner's report as part of the solicitation process. If the debtor wants to go ahead now, it's going ahead with this disclosure statement and that's all that's going to go out to voters.

MR. ROSEN: Your Honor, that's absolutely fine with

the debtors.

THE COURT: Okay, with the suggestion that the debtor has that all parties will be informed that the examiner report is available on the debtors' website for review as a "supplement" to the disclosure statement, if you will -- or disclosure if it is being given to them.

MR. ROSEN: Absolutely, Your Honor. I think, as Mr. Lauria just indicated, it is merely a data point and it's a point that people will take into account when we come forward to the confirmation hearing and deal with the issues as part of the compromise in settlement.

THE COURT: Obviously, I'm not making any judgment as to what happens at the confirmation hearing and whether or not the issues of the examiner's report changes my mind as to timing of proceeding. But from the perspective of disclosure, I think given the timing and the fact that the examiner's report will be out shortly, if I go ahead with the disclosure statement today, I see that it will be much less time spent on this case than if I postponed it and had parties revising the disclosure statement or insisting on additional disclosure based on the examiner's report. Let's just get the examiner's report, have it stand as written by the examiner and allow all parties to make their decision on the plan based on that.

So I will proceed with the disclosure statement today.

MR. ROSEN: Thank you, Your Honor.

(Pause)

MR. ROSEN: Your Honor, as you're well aware, we have filed that second supplemental response. And Exhibit B to that response is a chart, quite a voluminous chart, because what we've tried to do, Your Honor, is to keep track of what the ongoing objections have been because to the extent that an objecting party did not state or reiterate what they were saying, we wanted it there for the Court's benefit.

Your Honor, but if you were to look at the table of contents attached as that, you'll see the objections related to the senior notes. And that is, I believe, Mr. Lauria's group -- well, excuse me, the indenture trustee's among others. And those -- Your Honor, those issues have been resolved in their entirety based upon prior responses to the disclosure statement and modifications to the plan.

Page 10, Your Honor, we get to what I'll refer to as the senior subordinated notes trustee reservation of rights. And that was merely just that, and it is not really an objection.

Page 11 was the PIERS trustee objection, Your Honor, and that has been resolved as well.

Page 13, Your Honor, the CCB guaranty trustee objection -- it is the debtors' view and I believe -- I don't know if anyone is in the courtroom today but that objection has been resolved as well and there are no more with respect to

that.

Page 15, Your Honor, the bank bondholder objections, and this is bifurcated into two. Specifically, you have the objections that were interposed initially by the WMB senior noteholders, as I said, Your Honor, then represented by Mr. Anker and Wilmer Hale and now represented by Mr. Ziehl and Mr. Richards. And those objections have been resolved, Your Honor. And, of course, by their execution of the plan support agreement, they are endorsing approval of the disclosure statement and confirmation of the plan. And as we'll get to in a moment, Your Honor, hopefully at the end, the bank -- the senior bank bondholders have provided us with a letter for distribution to parties evidencing that support and encouraging them to vote in favor of the plan.

The second batch within that bank bondholder tranche are those objections that were interposed by the WMB subordinated noteholders which are represented by Mr. Flaschen and Bracewell Giuliani. And I believe Ms. Silverstein might be here in the courtroom today. She has indicated an ongoing view with respect to the disclosure statement.

Your Honor, we believe that the disclosure statement more than fully describes what their objections are and the resolution of those. And I think there might have been also a misunderstanding on their part as to what the plan currently provides. Specifically, Your Honor, based upon the agreement

that we have now reached with the senior noteholders or the bank bondholders, there's a bifurcation of Class 17 into a 17A and 17B, 17A being the senior, 17B being the subordinated; and 17A being those that are going to vote on the plan and receive their pro rata share of 335 million dollars. And that would also be made available not just to those who filed proofs of claim but all those WMB senior noteholders whether or not they've filed a proof of claim if they decide to opt in to that treatment.

The subordinated debt is in 17B, Your Honor. There is no recovery for those pursuant to the plan. To the extent that anyone within that group also has a misrepresentation claim that has been asserted previously, Your Honor, that balance of the claim remains and that is in the five-tenths subordinated class. They will not be -- they are voting on the plan but we, of course, expect them to reject it.

So we do believe, Your Honor, that there is more than adequate description in the disclosure statement with respect to that. To the extent that they have any ongoing issues with respect to releases, Your Honor, we submit that those are not issues that are before the Court today. And we will address those issues to the extent that they remain at the confirmation hearing.

The next group, Your Honor, are what we refer to as the litigation plaintiff objections. And those are the ANICO

(ph.) plaintiffs, if you recall the Texas litigation, Your Honor. And those objections, we believe that we've dealt with although we do know and recognize that they will have their ongoing views with respect to their litigation against JPMorgan in a different tribunal, Your Honor. Of course, I will note, and I think the Court is aware, that that litigation has been dismissed although it is -- their efforts to renew that litigation are currently on appeal.

The next group, Your Honor, are various lead plaintiffs that Mr. Etkin represents in connection with some class action litigation pending in Seattle. Again, Your Honor, we believe that these claims -- excuse me -- the descriptions have been taken care of, although I do note that Mr. Etkin has expressed some ongoing objections with respect to the releases pursuant to the plan. And I think he may have some concerns with respect to voting procedures as well that he would like to talk to the Court about.

And that would encompass, Your Honor, then the Metzler, the -- what we refer to as the Police Annuity, which is the MARTA, the Ontario Teachers' objections that have been interposed.

The next group in the chart, Your Honor, starting on page 42, are the BKK-related ones. To me, these are the interesting ones because, not that they have much merit, Your Honor, but because I think they misunderstand the plan and thus

their comments about the disclosure statement are a bit off base.

We have two groups, Your Honor: Ms. Murray, who just stood up to talk and Mr. Potter on the phone representing both the BKK group as well as the California Department of Toxic Substances Control. I say I think that they're off base, Your Honor, because I think they're misreading the global settlement agreement, what it means and what's being done. As far as the debtors are concerned, Your Honor, they have or -- have no claim against the estate. It's as simple as that. The fact that the global settlement agreement is going to provide that JPMorgan is going to foot some of our bill pursuant to that claim is a good thing for the estate. It does nothing, however, to impact their claims against the estate. They are what they are. And it really is as simple as that.

Both, however, have tried to turn this into something else. The California people think that there's more to discuss about the WMB receivership and what JPMorgan assumed in that context. Your Honor, this is not the receivership. This is not that context. All we know is that they assert a claim against the estate. And that's as simple as it is. They say that they're confused about the assumption of what JPM is assuming. Again, Your Honor, JPM is paying the fees -- excuse me -- the claim to the extent it's allowed and to the extent that it fits within a little, little box. To the extent that

it's outside that box, they will have their remaining claim paid by the estate. There's nothing more to disclose. But Mr. Potter and Ms. Murray, I assume, will still want to address the Court. To the extent that they want something more, Your Honor, that fits within that description, we're happy to include it. But we don't see it, Your Honor. We don't think that there's anything more to incorporate.

Your Honor, we have -- the equity committee has filed its objections. We believer that we have more than adequately responded to each of those points. And I don't think that there's anything to say beyond that.

The trust preferred security holders represented by Mr. Coffey and the Brown Rudnick firm, previously they had represented that they had no further objections to the disclosure statement. Mr. Coffey informed me today that he wanted to modify his letter that we had agreed that we would send along with the disclosure statement, Your Honor. As we indicated when the first time we suggested letters being sent out by constituents, if he wants to modify his letter, that is fine with the debtors. We're happy that anything he wants to say go out to his people so that they can decide whether or not they want to vote in favor or to reject the plan. He also had a concern expressed to me earlier today about the letter being in a hard copy going along with the ballot, and the answer is it will, Your Honor. It will not be as part of the CD rom

which will include the plan and the disclosure statement.

Next, Your Honor, we have the Dime warrant holders. And Mr. Silverstein is here representing, I believe, the Broadbill and the Nantahala Groups. Your Honor, again, we believe that this is something that has been very, very adequately completely disclosed. There was a question that Mr. Silverstein's clients had raised in their latest response about the reserve that we had included in the disclosure statement in the event that they would be determined not to be equity interest but instead be general unsecured creditors. And initially, Your Honor, we had included in there -- in the disclosure statement a 194 million dollar amount. Your Honor, we have been able to further refine that amount. And as we reflect in the chart that was filed last night, the amount would be now 183.9 million. And we include in the disclosure statement, Your Honor, the calculation as to how that was achieved. And we continue, Your Honor, to receive input from the parties who were involved in connection with the Dime warrants in the Anchor litigation. And as they provide us with more data, Your Honor, it blends into that calculation. Specifically, Your Honor, and I don't want to overwhelm the Court with all of those details, but the value that ultimately could be received out of a judgment on the Anchor litigation gets reduced by multiples of things. Specifically, Your Honor, any of the fees and expenses incurred in connection with the

issuance, the creation, of the Dime warrants themselves, any SEC filings, things like that. Also, any cost incurred in connection with the Anchor litigation which, as we found out last evening at 7 p.m. or thereabouts, we now know that one law firm has incurred, without expert fees, in excess of twenty million dollars. You then take from that, Your Honor, all the taxes associated with the issuance of the warrants. And then once you hit that bottom line, Your Honor, you take eighty-five percent of that number.

So, Your Honor, we get to a number currently of approximately 183.9 million dollars. We've included that calculus within the disclosure statement. And we believe that we've also been able to address the other issues that are associated with the Dime warrants. And as the Court will recall, the Dime warrants are the subject of a litigation. And it is one that is moving, I think -- I don't know how many more tracks we have, Your Honor, but it is moving in parallel with the confirmation process, the TPS litigation and now the Broadbill or Dime warrant litigation. And just for the Court's benefit, because I know we haven't had an update on that, there has been the amended complaint filed in a class action format. The debtors have responded, discovery is ongoing and the debtors are preparing and are prepared to file very shortly a dispositive motion with respect to that litigation.

So, Your Honor, I believe that addresses the Dime

warrant objections. And those are contained, Your Honor, on pages 78 on through 84 of the chart.

There were additional objections that were interposed, Your Honor. There were the United States trustee has its issue with respect to the releases pursuant to the plan. And we realize that that's going to be something to deal with subsequently at the confirmation hearing and putting all of the parties to the proof that's required.

There was an informal response by the creditors' committee and, obviously, as by Mr. Hodara's point of view expressed earlier today, he's in support of moving forward. Likewise, the FDIC's position and the reservation of rights that it also filed.

There have been, Your Honor, 600 or so letters that have been filed with the Court. And we chart those. And I believe that's actually listed on Exhibit C to the omnibus response. And earlier on in the chart, Your Honor, we go through the responses for each of those. And we believe, Your Honor, that with respect to each of those three forms that have been filed with the Court, we have addressed those.

Lastly, Your Honor, there was a recent filing by Mr. Geoff Olsen. The Court may remember Mr. Olsen. He was involved, way back when, Your Honor, with the deferred compensation trial that we had with HFA 104823. And we believe that we have been able to address the first two of his points.

And those are set forth on pages 89 and the top of 90, Your Honor. The last point that Mr. Olsen refers to, it really doesn't have anything to do with him because he is not a party to the other deferred compensation plans. But he's looking for certain information associated with the -- some of the boley-coley (ph.) and deferred compensation plans, Your Honor. And that has been the subject of certain confidential information that has been provided to the examiner. And, Your Honor, we ask that the Court allow the examiner to release the report and then Mr. Olsen will be able to get the information that he is concerned about. I would point out that I don't think that Mr. Olsen is going to vote with respect to this plan, or if he does, he's certainly going to vote in favor because he's going to get up to a hundred cents on the dollar plus interest. But we believe that last point about the value of those plans and the liabilities that JPMorgan is assuming are the subject of that report, Your Honor, and we would ask that the report be published so that Mr. Olsen could see it.

Your Honor, that, I believe, are the outstanding issues. And, of course, what I'd like to do, Your Honor, to the extent that the parties have anything to say about those few outstanding points that they be permitted to come and address the Court and then we'd be able to respond.

THE COURT: All right. Does anybody wish to be heard on their objection?

(Pause)

MR. COFFEY: Good morning, Your Honor. Jeremy Coffey with Brown Rudnick on behalf of the TPS Consortium. Just stand to correct the record or supplement the record with respect to what Mr. Rosen recited to the Court. Your Honor, again, my clients hold approximately 1.2 billion dollars worth of trust preferred securities out of a total issuance of about four billion. And my clients have commenced litigation before Your Honor in a separate adversary proceeding seeking relief including a declaration that a purported conditional exchange of their trust preferred securities interest two hours before the bankruptcy was never consummated such that they actually -- they still hold the trust preferred securities as opposed to WMI preferred stock as being treated under Class 19 of the plan.

And, Your Honor, for purposes of today, we understand we're at the disclosure statement hearing stage and that what we're talking about here is whether or not the solicitation materials will provide enough and accurate information to stakeholders to vote up or down in the plan. So I just stand to make two points because the agenda does reflect we have an objection outstanding. I just want to supplement what Mr. Rosen had said.

First, we had raised a couple of what I'll call dead-on-arrival arguments in our disclosure statement objection that

the plan -- the releases provided in the plan, the compelled release of third party claims against other third parties, we think is plainly violative of Your Honor's decisions in Coram and in Zenith. So that's an issue that we're going to have to address at confirmation. It's not a today issue.

The second issue, Your Honor, and this is really the thrust of our litigation, which Your Honor has said will commence on December 1st as the first thing -- our trial will be the first thing out of the gate for the confirmation hearing -- is that to the extent the plan is dependent or contingent on the debtors transferring assets to which they don't hold title, the trust preferred securities, we think the plan is, as a practical matter, dead-on-arrival as well. But again, we'll get to that issue on December 1st when we have our trial. But I just want to make very clear that by saying today that we don't have a further problem with the disclosure statement, we're not conceding any of those or any other confirmation objections.

THE COURT: All right.

MR. COFFEY: So that's clarification number one, Your Honor. The second is that, as Mr. Rosen recited, we've agreed to stand down our disclosure statement objection if we can send out a letter to Class 19 expressing what our views are in the plan. And I think the letter was first submitted to the Court, Your Honor, at docket number 4923. I have a copy of that if

Your Honor would like to look at it.

THE COURT: I don't think it's necessary, is it?

MR. COFFEY: Probably not but I just want to make sure I made the offer.

THE COURT: Okay.

MR. COFFEY: In the three months since that letter was first drafted there have been some changes. First of all, we have a trial date for our adversary proceeding which is December 1st. We'd like to put that in our letter. We think it's important to the extent we reference the trial that we let people know it's going to happen.

The second issue, Your Honor, is that the latest version of the plan and disclosure statement -- and this is primarily why we felt we had to stand today -- include or changes in the mechanism whereby they would force these third party releases onto members of Class 19. If Your Honor will recall, the first time around, they had an opt-out provision where you could check the box saying I don't want to give the release. I don't consent to JPMorgan taking the trust preferred securities. And they also had language saying no matter how you opt out, we're still going to try to bind you. The latest iteration of the plan provides that in addition to the opt-out, which is still there, to the extent the class votes in favor of the plan, they're going to try to use that class vote to bind nonconsenting holders. Both, Your Honor, we

think are plainly violative of Coram and of Zenith. So we want to put that in our letter that we think that what the debtors are trying to do in its revised plan cannot be done and that people voting in favor of the plan or against the plan should bear that in mind in how they cast their vote.

So, with that, Your Honor, I think we're largely settled for today. And we'll submit a revised letter to Mr. Rosen.

THE COURT: Okay.

MR. ROSEN: Your Honor, as I indicated, with respect to the letter, we are perfectly happy to let Mr. Coffey include whatever he wants in the letter.

Just one point of clarification, I think he said the exchange took place two hours before the petition was filed. The exchange took place, Your Honor, the day before on the announcement of an exchange event by BOTS on the 25th not the 26th. That'll be one of the points we address at the trial, Your Honor.

THE COURT: All right. Thank you.

MR. JARVIS: Good morning, Your Honor. My name is Geoff Jarvis. I'm with the firm of Grant & Eisenhofer. I represent the misrepresentation claim, bank bondholders. As you will recall, we were back before Your Honor in April. We extensively argued at that point in time whether there are the claims that could go forward, Your Honor; in her order of April

the 6th, argued that they could. We are here to bring claims that ostensibly would go to the plan. But because we believe that the plan, as written, at least as to our clients, is unconfirmable -- there's a whole line of cases suggesting it. In fact, those sorts of claims should be brought at the disclosure hearing because there's no sense in going forward with the disclosure statement that sets forth a particular category as claims -- as to a treatment that is simply unconfirmable under this prevailing law. And the objection to our filed -- the response to our filed objection was that they're plan claims and that we should wait for the next hearing. I would like to present them today because I believe they do go, in fact, to the confirmability that suggest that the plan is per se unconfirmable as to at least my claims. Obviously, Your Honor can deal with that at the front end. But that's --

THE COURT: I prefer to hear it at the confirmation hearing.

MR. JARVIS: That's what Your Honor's choice is and that's -- I do have, however, one other point -- and that's my main claim, was the unconfirmable. But as to one group of my clients, I've read the plan, I looked it over. And I can't quite figure out where my clients fall. I think they may have been inadvertently excluded because Mr. Rosen doesn't necessarily know that they exactly exist in their current form.

Let me just clarify. There are some of my senior noteholder clients who brought misrepresentation claims and have now subsequently sold, since the POC was filed back a couple years ago, their notes. So theoretically, they have claims related to the senior notes and thus fall in 17A. But because they will not hold bonds as of the time of the voting of the plan which is sort of a date that we count how much they can then file a senior noteholder claim for, they fall within 17A but are not entitled to apparently, it would seem, any recovery under 17A. But then might nonetheless release their misrep claims anyway. And as to that -- and it's probably a few hundred million dollars in bonds. It's not like -- I'm not talking about ten million dollars or I think there's been some substantial sales by some of my clients. All of them bought at par and have dumped them at considerably less than par over the course of the last eighteen to twenty months. And that is something I would like to see if Mr. Rosen -- we put in our objection -- we didn't seem to get a response. That's the one we have left -- that might well be perceived as a plan as opposed -- or a disclosure as opposed to a plan objection 'cause it just doesn't say where we go.

THE COURT: Yeah. Which class are they in?

MR. ROSEN: Your Honor, it's the people who hold the claims as of October 18th today that get to vote. So to the extent that they don't hold the claim, they don't vote. If it

is a misrepresentation claim itself, Your Honor, they fall within the subordinated class. Only the people who have claims are in 17A.

MR. JARVIS: Well, the language you use in your definitions says "claims related to the senior bonds". My claims are clearly related to the senior bonds. I mean, I could pull it out. And that's just -- I want to --

MR. ROSEN: Your Honor, Ms. DiBlasi is here. I'll allow her to try to --

MS. DIBLASI: Your Honor, the record date for voting purposes for the claims in Class 17A is the bar date. So the ballots will be sent to the people who filed those claims as of the bar date. However, the debtors have agreed that they will vote in the amount of the WMB senior notes that they hold as of October 18th. So if they didn't hold anything and they've subsequently sold then they would have nothing to vote.

MR. JARVIS: Then I would suggest as a -- then the language of "related to", I suspect, is somewhat inaccurate 'cause it puts them into 17A but -- 'cause of "related to" but then they're not in 17A 'cause they don't hold. I mean, if they want to clarify that --

THE COURT: She's suggesting there --

MR. JARVIS: That's a disclosure objection, obviously.

THE COURT: Well, she's saying you're in 17B --

MR. JARVIS: I'm not 'cause those are subordinated.

THE COURT: -- for the misrep claim?

MS. DIBLASI: No. To the extent that they're WMB senior notes, they're in 17A. 17B is only for the WMB subordinated notes meaning those people who are contractually subordinated.

THE COURT: And where are the misrep claims of those in --

MS. DIBLASI: They're in Class 18 and they're defined in the plan as the Section 510(b) subordinated WMB note claims.

MR. JARVIS: But they're only in 18 if, in fact, they end up being subordinated. And we don't necessarily know whether you're going to move to subordinate, 'cause, of course, if you don't move to subordinate my claims under the plan as written, they go away. So there's no incentive for them to move to subordinate. I might have to move to subordinate my own claims. So it gets a little tricky. That's why -- I mean --

(Pause)

MR. ROSEN: Your Honor, I think we just cleared it up. We'll be filing today the complaint to subordinate the balance of the WMB senior notes. It's just awaiting completion today. So I think that will clear up Mr. Jarvis' issues.

MR. JARVIS: Which I do not know. Thank you.

THE COURT: All right.

MS. SILVERSTEIN: Your Honor, Laurie Silverstein here

on behalf of the WMB noteholder group. And actually, this last colloquy just illustrates why there are still issues with respect to disclosure statement that need to be clarified.

We've been here before on our previous objections to the disclosure statement as it relates solely to the provisions addressing the treatment of the group's proof of claim. And in particular, we are talking about Class 17, which has now, as indicated, been bifurcated into Class 17A and Class 17B, and Class 18.

And, Your Honor, you haven't seen me before here. I'm a new face. I'm subbing in for Ms. Brown-Edward. So if you put that in context, you know where we're coming from.

THE COURT: Okay.

MS. SILVERSTEIN: To also clear up, Your Honor, our group's claims relate to both the WMB senior notes and the WMB subordinated notes. Both. Not as Mr. Rosen indicated just subordinated. Our group has claims in both. But we are not a settlement WMB noteholder. That is, we did not enter into the plan support agreement. And that is notwithstanding that our group constitutes 1.9 billion on Exhibit B -- listed on Exhibit B of the global settlement agreement. And we are the largest proof of claim filing group. Indeed, we were not a party to any negotiations. We were not consulted with respect to it or the purported settlement. And we're not included in the group of attorneys slotted to receive ten million dollars in cash on

account of attorneys' fees.

Your Honor, we're not here to comment on the merits of the purported settlement. But we do have issues with the disclosure statement. We filed a supplemental objection. Your Honor, we need some plain English. We need some plain language in the disclosure statement with respect to Class 17 and what its treatment is. It's a little unusual, Your Honor, because it talks about voting rights, it talks about distribution rights. And it bifurcates, as we just heard, between whether you're going to be subordinated or not. And what, again, this colloquy just exemplified that in the sense that Mr. Rosen was incorrect in his first statement about voting rights, not surprisingly because it's unusual.

Your Honor, here's what I understand to be the case. And if I'm correct, it should be set out this plainly. And if I'm not corrected, I should be corrected and then it should be set out this plainly. But here's what I understand with respect to senior note claims, Class 17A. If you filed a proof of claim before the bar date, you get to vote. Your claim is temporarily allowed for voting purposes at the face amount plus interest accrued as of 9/26/08 of the notes you hold as of October 18, 2010.

To receive a distribution, a claimant who filed a proof of claim must still hold notes as of October 18, 2010. Now if you did not file a proof of claim, you're a nonfiling

WMB senior noteholder. You do not get to vote. But you can get a distribution if you hold notes as of October 18th, 2010 and you checked the box granting releases.

I think I have it right but I have to admit, and I'm new to the case, but I have to admit that it took me a long time to get there. And I had to go through not only the disclosure statement, but the disclosure statement order and the voting -- the ballots and the election form and talk to some people about it what it was supposed to mean before you can get there. And, Your Honor, I think there's nothing more important that people understand what their rights are. And here, where the treatment is so different -- it's so unusual from what you normally see. You can't turn to Class 17 and figure it out just by reading Class 17. And once you get through the myriad of defined terms, you're still lucky if you get there.

So what I suggest is that there be something as simple as what I just went through with bullet points some place in the disclosure statement that is logical that tells people in Class 17 when they get to vote, when they get a distribution, when they don't get to vote, when they have to hold the claims as of, and how that is determined. And that, Your Honor, would go to solve several of our objections to the disclosure statement.

We also have some more specific objections to some of

the language. For example, Your Honor, we have indicated that there are what appear to us to be overlapping definitions of pro rata that are confusing. And they're used in various ways. Pro rata is used in Section -- in the definition, it talks about what pro rata is with respect to your distribution that you're going to get of your interests, of your BB Liquidating Trust interests. Yet, in the class treatment on Section 17, it talks about pro rata for purposes of voting and pro rata for calculating your pro rata share. Well, why is there a pro rata for calculating your pro rata share of distributions of BB Liquidating Trust is pro rata already tells you how to do that? We don't understand that and, again, it's a matter of clarity.

Our concern about voting record date has been cleared up now that the proposed disclosure statement order has been filed. The plan refers you to the disclosure statement order which now has a definition of voting record date. I'm not sure that's the best for a plan, that it refers you to the disclosure statement order to find out what the voting record date and why it's not put in the plan. But that seems to be cleared up now.

And then finally, Your Honor, we have an objection -- or I shouldn't say finally -- the last technical objection before we get to the Class 17, Class 18, what class are we in objection is the provisos in Section 21(a) of the plan. Your Honor, the proviso deals with -- let me find it here. The

proviso deals with the concept that the receiver, the FDIC receiver, acknowledges that amounts distributed to the holders of the WM senior notes claims under the plan are not credited and do not reduce their claims against the receivership. And that's fine. And that's consistent between Class 17A and Class 17B. But then there's a proviso. And 17A says, "Provided further, that no holder of a WMB senior note claim shall be entitled to receive more from the receivership than the amount owed under such WMB senior note claim." In Class 17B, again a proviso -- I'm sorry. I'm wrong. That's in little paragraph (a) for proof of claim holders. For nonfiling proof of claim holders, it has the same concept in that it says, "Provided further that no excepting nonfiler WMB senior noteholder shall be entitled to receive more from the receivership than the amount owed to such holder with respect to its WMB senior noteholder claims." So one says you're not allowed to receive more than the amount owed under such WMB senior note claim. And the other says you're not allowed to receive more with respect to. I don't know if there's supposed to be a difference, there is a difference. They're different words. I don't know what that meaning is. But there's an inconsistency and we want it cleared up.

Your Honor, besides the broad concept there on plain language and then some technical language changes which we brought to the attention of the debtors but need clarification,

we have the same concern that was just expressed by the other noteholder group. It's a lingering issue that the debtors really have yet to clarify. We believe that our group needs to understand whether in fact the debtors are going to seek to subordinate any of their claims prior to voting. Now I may get the same answer that Mr. Rosen gave to the other group. But we think it's important that our group know the debtors' present intention as to whether they will seek to subordinate the noteholder claims.

So those are our objections, Your Honor. We think they are all disclosure statement objections. We will deal with plan objections at confirmation. But given the complicated nature of Class 17, we think plain language needs to prevail here.

THE COURT: All right. Let me hear --

MS. SILVERSTEIN: Thank you.

THE COURT: -- from the debtor then.

MR. ROSEN: Yes, Your Honor. I'll take the last one first 'cause that one is the easiest. Your Honor, previously, Ms. Silverstein's clients were included in the twentieth omnibus objection that had been filed. And that included Mr. Anker's clients as well and that was the subject of the hearing that was referred to in April. Your Honor, because we have resolved the issues with respect to the senior note people, we thought it best to try and split up that omnibus objection.

Still keep it outstanding for the seniors at this point until the plan is confirmed and we know where we're going, but with respect to the Bracewell Giuliani clients, what we did yesterday, Your Honor, was we filed the notice of withdrawal of the objection to them. And we filed a second omnibus objection -- or a fifty-fifth omnibus objection, Your Honor. And as part of that, Ms. Silverstein would be happy to know, that her clients are in it. And it also includes all of the other parties, the miscellaneous people, moms and pops even, or institutional investors who filed a proof of claim and representing the holdings of a WMB subordinated note claim. We include in that omnibus objection, Your Honor, both an objection to the direct claim as well as a -- and which Mr. Flaschen has stood up several times in front of this Court to say I don't even have a direct claim, I'm just derivative of the FDIC. And we, of course, point that out for them. But also, we deal with the misrepresentation claims. And we have, in that omnibus objection, Your Honor, sought to subordinate the misrep claim to the extent it exists. So both claims, the 17B an the 18 are covered as part this omnibus objection filed last evening.

THE COURT: Okay.

MR. ROSEN: With respect to the plain language, we -- Ms. Silverstein's recitation of what it's intended to say is correct. And we actually believe that it is. But we're happy

to sit with Ms. Silverstein and get her point by point and incorporate it into the disclosure statement to make sure that there's no misunderstanding to the extent that her clients have a 17A issue. Now, I know Mr. Richards has just stood up and he represents a lot of the people in 17A as well. I'm sure he may want to say something about that.

With respect to the pro rata comment that Ms. Silverstein, I'm not sure that we understand the difficulty that she is having and we're happy to walk her through that instead of taking the time of the Court, Your Honor. We believe it is clear but I'm happy to go through it with her. And to the extent that she has additional language she would like us to put in, that's fine. Yes.

And lastly, her comment about "under" versus with "respect to" --

THE COURT: Right.

MR. ROSEN: -- we took care of that last night. We have some changed pages that the people in the gallery have already had, Your Honor. We made the two consistent. They say "with respect to".

MR. RICHARDS: Your Honor, Jeremy Richards of Pachulski Stang Ziehl & Jones appearing on behalf of the ad hoc committee of certain WMB senior noteholders. Your Honor, Ms. Silverstein is absolutely correct in her recitation of how Class 17A works. It is unfortunately a complicated provision

because our client, among other things, has elected that the 335 million dollar recovery should be shared with WMB senior noteholders who did not file proofs of claim. And that's what gives rise to a somewhat unusual structure in 17A and the complexities that come with that. I echo Mr. Rosen's comment to the extent that we can bring more clarity, we're happy to do that. The one thing I would add for the record, Your Honor, is what we have tried to in a separate solicitation letter that is about a page and a half is to condense the relevant provisions of the plan and to try to make clear -- as clear as possible the structure under the plan and to advise WMB senior noteholders exactly where they stand under the plan, whether they get to vote, whether they can elect to deliver releases and what their recovery will be.

So hopefully, within a page and a half, we've managed to boil down some of the complexities. But, frankly, it is a complicated structure and some of the definitions unavoidably are fairly complex.

THE COURT: All right.

MR. RICHARDS: Frankly, it's not something I've done before so it was a challenging piece of drafting.

THE COURT: Well, then you will work with Ms. Silverstein to clarify either in the disclosure statement or in the letter an English version of how they're treated.

MR. RICHARDS: Yes, Your Honor, although I cannot

promise it will be plain English, unfortunately. Thank you.

MR. ROSEN: But, Ms. Silverstein, we're happy to sit with you and put your bullet points in there.

MS. SILVERSTEIN: Thank you, Your Honor.

THE COURT: All right.

MR. SILVERSTEIN: Thank you, Your Honor. Paul Silverstein, Andrews Kurth, for Broadbill Investments on behalf of the Dime warrants. Your Honor, Broadbill and the Dime warrant holders have filed several objections to the disclosure statement, objected to, among other things, the lack of clarity with respect to the Anchor litigation and the global settlement agreement.

The disclosure statement and the proposed plan are the moving documents for the approval of the global settlement agreement and there's some information that's just not there. For example, what provision -- and, Your Honor, 5600 -- you may want to just follow along. It's pretty short -- docket number 5600, if you want.

THE COURT: I have it. 5600? I have it.

MR. ROSEN: When -- you're referring to your objection?

MR. SILVERSTEIN: I'm referring to my objection, yes.

THE COURT: I've reviewed it. Go ahead.

MR. SILVERSTEIN: "What provision of section 363...allows the Debtors to sell their interest in the Anchor

Litigation free and clear of claims?" Is the contemplated Section 363 -- "In the contemplated...'free and clear' sale, will the claims of [the] LTW holders attach to the proceeds...? How did it come about that the Debtors own the Anchor Litigation and can sell this asset to [JPMorgan]?" As to that, the debtor says, well we're only transferring what we have so we don't have to address that.

"Why did the Debtors determine to retain the Goodwill Litigation relating to the American Savings Bank [matter] and decide to transfer the Anchor litigation...? Why must the transfer of the Anchor Litigation be backdated to September 2008? Why does the Proposed Disclosure Statement [say] that [JPM] is assuming the Debtors' liabilities relating to assets [it's] buying, yet [with respect to the] Anchor Litigation [there appears to be no assumption]?"

The debtors basically say that, as to those matters, this could jeopardize future settlement negotiations if the global settlement is not approved. We think the disclosure statement should address the issue and address those unanswered questions. I don't think that's too difficult if the debtors are not prepared to give the substance of the answers. I leave that to Your Honor.

Second, the debtors, we believe, intend to reject their executory obligations under the Warren agreement, dated March 11, 2003. We think the debtors should do so now, as

opposed to doing it in a plan supplement. It's been six months since the debtors filed their first version of the disclosure statement. It's not clear why they need to piecemeal the disclosure with respect to the rejection of that contract. The debtors basically say, in response, that they're not required to choose to reject yet. I don't think that's an acceptable answer, Your Honor.

Next, Your Honor, Mr. Rosen talked about how this 194 million dollar reserve that the debtor believed was necessary has been reduced to 183. We've asked the debtors how they arrived at the 194 and we got no response. They're now at 183, we still want to know how they got to 194, 183 or whatever.

THE COURT: You don't think their calculation is in there?

MR. SILVERSTEIN: No, it's not in there, Your Honor. We haven't seen it. And frankly, the end of paragraph 5 of our objection, we provided some very simple language that would now need to be modified to say -- the last sentence would now read, "The debtors believe that such amount as 183.9, the Warren holders don't but the Court will set a reserve." I mean, it's not complex. I don't understand why there's controversy on that. But we haven't seen any calculations. We've asked for them so I don't get that.

Finally, the debtors have agreed that the litigation by Broadbill will be a class action. We've been, sort of,

dickering around, so to speak, with a stipulation in respect of that class action which who knows if it ever gets done. But one issue is that the debtor filed some claims objections which asserted 510(b) and asserted non-filed or late claims. We believe that in connection with the stipulation and wrapping everything into the litigation, that that issue was withdrawn because, first, 510(b) they've asserted as a counterclaim in their answer to the litigation and secondly, as far as the timely or non-filed proofs of claim, notice was never given to the LTW Holders, rather it was given to the Warren agent who specifically has no responsibility to communicate with the holders and specifically said that it wouldn't communicate with the holders. We believe that the disclosure statement should be revised to reflect that the omnibus objections are withdrawn.

So we have several objection points that do not appear, at all, to be monumental in resolving. The debtors pushing back, I think it's somewhat consistent with being in a litigation posture with the dime warrants. I'm not going to comment on the state of the litigation, we can do that if we need to outside of this hearing in a separate conference.

THE COURT: Okay.

MR. SILVERSTEIN: Those are our objections. At this point I don't understand why the debtor will not rectify them, I think they should. Thank you, Your Honor.

THE COURT: Thank you.

MR. ROSEN: Thank you, Your Honor. First, Your Honor the Dime warrants are equity pursuant to the plan. They are set forth in Class XXI of the plan and Class XXI is deemed to reject the plan. So we know where they are, we know what they're voting, we deem it to be a rejection already.

With respect to information and the disparity, if you will, between the American Savings litigation and the Anchor litigation there are reasons for that and we have actually told Mr. Silverstein and Mr. Steinberg those reasons during our meet and confer sessions. However, Your Honor, those reasons are the subject of litigation right now with JPMorgan, as to why we treat them differently pursuant to the global settlement agreement.

The examiner has been fully briefed on these points. The examiner will include, in his report, why things are a certain way. But we don't think it is in the best interest of the estates to set forth, in the disclosure statement, the respective views.

With respect to the calculations, Your Honor, page 57 of the disclosure statement, footnote number 17 goes through the calculations. We, of course, have sat with them before and said we'd be happy to go through, point by point, what they are but we have not had that meeting at this point in time.

We have had discussions with Mr. Steinberg but we have

not delved into this particular nuance as to the calculations. But it is in footnote 17, page 57 of the disclosure statement. And it is even updated, Your Honor, through last evening with the twenty million dollar number that I referenced, we heard last night at 7 p.m. That footnote carries over onto page 58 as well. So we think that it is very, very comprehensive.

As to the 363 comment, Your Honor, we are conveying whatever interest we have and if our interest is none then we're not selling any interest and we made that clear in the disclosure statement. We are merely conveying the interest that the estate may have. JPMorgan obviously takes the position that the Anchor litigation is something that is owned by WMB or was owned by WMB and therefore it was transferred to JPMorgan as part of the purchase and assumption agreement on September 25th, 2008. And if in fact that is correct, Your Honor, we have no interest in that litigation to convey.

With respect to the issue about the amended and restated warrant agreement, Your Honor, the debtors are doing everything we can to look through all of the executory contracts and unexpired leases that we have and we are putting together a list. I believe, and I will be corrected, but I believe our deadline to file that list is October 29th. So Your Honor, that is eleven days from now and certainly Mr. Silverstein will know, at that point in time, what our position is with respect to the amended and restated warrant agreement.

So Your Honor, the few items that Mr. Silverstein is looking for, I would suggest, are either already in the disclosure statement or will certainly be posted on October 29th in the plan supplement or will be in the examiner's report two days later.

THE COURT: Yes.

MR. SILVERSTEIN: Thank you, Your Honor. For the record, Paul Silverstein for Broadbill. Your Honor, I disagree with Mr. Rosen's comments because, well number one, as to footnote 17, which we've never seen yet, it may have come out late last night, I've just not seen it. Because the debtor says that's the number doesn't mean it's the number and that's why we provided language, very simple language, that -- essentially took the debtors' language and said, and I'll read it --

THE COURT: But --

MR. SILVERSTEIN: I'm sorry?

THE COURT: -- you're a rejecting class.

MR. SILVERSTEIN: Yeah.

THE COURT: Does it really matter what's in the disclosure statement as to that number? This is the number the debtor thinks it is.

MR. SILVERSTEIN: The debtors should say this is the number the debtor think it is, not this is the number. And does it matter that I'm a rejecting class as to whether the

information is correct, as to my vote no because I'm not voting.

THE COURT: All right.

MR. SILVERSTEIN: But it matters because the disclosure statement should be accurate and should contain facts that are true. So it's not a big deal or a big undertaking for the debtor to insert our language.

THE COURT: Show him the language.

MR. SILVERSTEIN: He has the language; it's in our objection.

THE COURT: Debtors' counsel's going to show you the language.

MR. ROSEN: Your Honor, it says that this is the amount or such lesser amount. We'll change the word "lesser" to "other" as determined by the bankruptcy court.

THE COURT: Okay.

MR. SILVERSTEIN: Right. That's very simple. I don't think we need to be fighting about that.

THE COURT: That's fine.

MR. SILVERSTEIN: But it ought to take the position that Broadbill and the plaintiffs in the class action believe that the number is higher. Again, not complex. It's about a sentence and I don't think that the debtor should --

MR. ROSEN: We will add a sentence following that saying that the plaintiffs believe it is higher.

MR. SILVERSTEIN: And this Court's going to determine what it is.

THE COURT: Okay.

MR. SILVERSTEIN: With respect to the Anchor litigation and who owns it and the free and clear sale under 363 and so forth, we think that although the debtors have expressed their sensitivity as to jeopardizing future settlements or future litigation with JPM, the debtors should put in the disclosure statement, for accuracy, the questions that we've raised.

Again, typically when there's a dispute on a disclosure statement the debtor typically would just add the language that says so and so believes and so and so questions, that's all we've asked for and I don't know what's unreasonable about that and I don't know why the debtors' being so, for lack of better words, pig-headed about that and not doing that.

THE COURT: I'm going to overrule that objection for two reasons. Number one, you're a rejecting class.

MR. SILVERSTEIN: Yes.

THE COURT: The information will not affect how you vote.

MR. SILVERSTEIN: Correct.

THE COURT: And number two, you're in litigation and these issues are being dealt with in the litigation and in connection with confirmation.

MR. SILVERSTEIN: They're not really being dealt -- those issues are not really being dealt with in the litigation. Where they're being dealt with is in the global settlement agreement.

THE COURT: And you've objected -- you're, presumably, going to object to confirmation on that basis.

MR. SILVERSTEIN: I think that's right but there's a distinction between our argument that we're debt and not equity and the issues of the mechanics of what's going on in terms of the debtor selling under Section 363 something that to us is not clear that the debtors have the right to sell.

THE COURT: I understand but presumably you will be raising that in an objection to confirmation.

MR. SILVERSTEIN: Okay.

THE COURT: That's a confirmation issue.

MR. SILVERSTEIN: That's fine, Your Honor. And as far as the -- Mr. Rosen's point about how the debtors will be moving to reject or assume executory contracts within ten days or so, if I recall the dates. I mean, why can't they do it now or give an indication in the disclosure statement as to whether they will be assuming or rejecting the warrant agreement with respect to the Dime warrants, I don't get that. Are they suggesting they don't know today?

THE COURT: Well, does it matter? Does it really matter to your client? No.

MR. SILVERSTEIN: Nothing really matters, okay, because we're not voting.

THE COURT: You can put a lot of things in the disclosure statement but you don't have to put into a disclosure statement every single fact in a case if it's not relevant to parties voting.

MR. SILVERSTEIN: That's right. But that's why our objection was three pages and we didn't have every single thing.

THE COURT: I don't think this is relevant to creditors voting.

MR. SILVERSTEIN: Thank you, Your Honor, and I think that's it.

THE COURT: Okay.

MR. SILVERSTEIN: Thank you.

MS. MURRAY: My name is Milissa Murray. I'm at Bingham McCutchen. I represent the BKK joint defense group. I know this is not an environmental bankruptcy case of the Chemtura or Tronox variety; nevertheless, Washington Mutual Bank and Washington Mutual Inc. are parties to a consent order to clean up a site in California that California estimates is going to cost 710 million dollars to clean up.

Washington Mutual Bank signed onto an agreement with my clients, who are members of the joint defense group, to clean up that site in accordance with the consent decree.

Nobody's objected to my client's proof of claim and nobody's objected to the state's proof of claim. Yet the plan deals dramatically with both the debtors' liability and nondebtors' liability at that site.

Washington Mutual Bank is a nondebtor, one of the debtors' subsidiaries, WMI Rainier is also a nondebtor and those two nondebtors, in the view of the group and the state, are significantly liable parties at the site. So the extent to which the plan releases those nondebtors is a huge issue in terms of whether we elect to opt out in hoping to preserve our claims against the nondebtors, or to accept and buy in because the releases of the nondebtors are worth it in terms of what JPMorgan is assuming.

So the ambiguities involved in the release are significant to us in terms of how we vote. It's not just a confirmation issue. And the ambiguities in the release is this: the debtor says in its most recent response, in its attempt to clarify who's getting released and who isn't, that Washington Mutual Bank, and FDIC is another potentially liable party because they assumed Washington Mutual Bank's obligations at some point, but it says all claims held by entities against Washington Mutual Bank, FDIC and/or FDIC receiver in the receivership are not being released, that's what the plan says.

Well, first of all it doesn't say anything about the potential liability of JPMorgan and second of all it limits

that statement to the receivership.

In addition it says, "Furthermore, the sixth amended plan's definition of released claims is not intended to include the State of California's direct claims against JPMorgan or WMI Rainier." Well, it doesn't say anything about the BKK Groups' claims and it doesn't say what direct means. If JPMorgan is liable, it's through Washington Mutual Bank. That's not a direct -- arguably not a direct claim.

The fix would be very easy. In the disclosure statement the SEC asked for a carve out in the release provision that they got and we would like the same carve out because it seems to be consistent with what the debtor is now saying in its response. "Provided further that nothing contained in the plan or the confirmation order shall release or is intended to release any nondebtor, including any nondebtor entity that may be a released party or a released person in connection with any legal action or claims brought by the SEC."

There's no reason why, if the plan is not intended to release, JPMorgan, the FDIC and WMI Rainier and Washington Mutual Bank, all nondebtors, then the disclosure statement ought to say that and the plan should say that.

THE COURT: All right. I understand your position. Does the debtor want to respond?

MR. POTTER (TELEPHONICALLY): Your Honor, this is Jim

Potter from the California Department of Toxic Substance Controls. I can go now or wait until after the debtor responds, whichever is the Court's preference.

THE COURT: Well, do you have anything different from what the BKK --

MR. POTTER: I do, Your Honor.

THE COURT: You do? Go ahead.

MR. POTTER: Should I go ahead?

THE COURT: Yes.

MR. POTTER: Okay. Thank you. First, just for clarity, I mean, debtor -- Washington Mutual Bank's predecessor, Home Savings, unusually for the bank, was, itself, in the business of running a hazardous waste landfill and that's why we're here.

I want to be clear that this isn't sort of an incidental liability but Home Savings created the landfill, envisioned the landfill and owned and, we would argue, operated the landfill for about fifteen million -- fifteen years, rather. It's about 150 acres. There's about three to five million tons of hazardous waste disposed into thirty million tons of garbage and there are houses very close.

I'll sum up by saying this is a very real and active public health threat. And as Ms. Murray indicated we estimate it'll be in excess of 600 million dollars to, over the indefinite future, to prevent it from getting to be a much

worse public health threat.

Washington Mutual Inc.'s predecessor, HF Ahmanson, caused the landfill to be moved from Washington Mutual Bank to another subsidiary and then caused those subsidiaries to be moved around. And so we believe that Washington Mutual Inc., as well as Washington Mutual Bank and as well as WMI Rainier, are all jointly liable for those costs.

Earlier today Mr. Rosen said that he believed, if I understood him, he believed that WMI, Washington Mutual Inc. has the liability, the debtors have no liability. JPMorgan is assuming only a very small portion of whatever liability WMI Inc. may have, again if I understood him correctly. And that DTSC and the PRP Group, Ms. Murray's clients, should just go ahead and assert their claims against the estate and not really worry about what JPMorgan is or is not assuming. And that's all duly noted and will proceed accordingly.

Now here is the disclosure statement issue that I want to focus on and why the disclosure statement does not provide adequate information. In addition to what Ms. Murray had said, for DTSC to vote on the plan. The debtors -- under the plan debtors are stripping assets from WMI Rainier and we're not arguing that debtors don't have the right to do that. WMI Rainier is a wholly owned subsidiary of WMI Inc -- Washington Mutual Inc. And if the parent company wants to strip its subsidiaries assets, then I suppose it has the right to do

that.

I don't want to waive, now, any arguments that creates for confirmation or about alter ego claims, but just saying for the moment we're assuming that WM -- debtor -- Washington Mutual Inc. has the right to strip WMI Rainier's assets.

So according to Mr. Rosen, WMI, debtor Washington Mutual Inc., is claiming it has no liability and it is stripping assets from or it has the right to take assets from its subsidiary WMI Rainier. Well, whether DTSC votes for or against the plan will depend -- may well depend on just the value of those assets being taken from WMI Rainier. And in the second supplemental response debtors are very clear that they have no intention of providing the information about the value of assets being taken from WMI Rainier. They say that the only issue is whether or not they have a legal right to.

We don't want to raise the question -- we're not intending to raise the question right now of whether debtor has the legal right to take those assets, but the value of those assets does go to whether or not DTSC would or would not vote for the plan. And so we would ask that debtors estimate the value of what they are taking from WMI Rainier. Thank you, Your Honor.

THE COURT: Thank you. Does the debtor want to respond?

MR. ROSEN: Sure, Your Honor.

MS. MURRAY: I do have a couple more objections, Your Honor, that I'd like to --

MR. ROSEN: Your Honor. I apologize for the confusion that Mr. Potter and Ms. Murray have and if it was -- if we created it then we certainly will rectify it.

With respect to what JPMorgan is assuming or not assuming, Your Honor, I don't know what JPMorgan assumed by way of the receivership. All I know is I have a purchase and assumption agreement that says that they picked up whatever they picked up and they have read that as well as we have and perhaps everyone else in the courtroom. But I can't opine as to what JPMorgan's obligations are pursuant to that. All I can say, Your Honor, is that the debtors have no intention of delving into what that relationship is on the BKK or California versus WMB side. We don't know what it is.

And I can equally say, Your Honor, that to the extent that we led people to believe that there would be a release for JPMorgan for its WMB obligations, that was our fault and we'll correct that, Your Honor. We have no intention of making JPMorgan a recipient of a release for whatever it assumed on the WMB side.

All we are saying, Your Honor, pursuant to the plan, is that JPMorgan has picked up certain of the liabilities that we have pursuant to this consent agreement or whatever else may exist out there.

With respect to WMI Rainier, Your Honor, I'll equally take the blame. I don't think it says that we're going to give them a release but we'll make sure, Your Honor, that WMI Rainier is not being released.

The assets that are there, Your Honor, are de minimis and if Mr. Potter and his clients would like to go after WMI Rainier, feel free to do so. It's probably not worth the filing fee associated with a complaint but we'll make sure that both of those are cleared up, Your Honor.

THE COURT: What assets of Rainier are being transferred to the debtor?

MR. ROSEN: None.

MS. MURRAY: I beg to differ, Your Honor. One of the exhibits to the plan shows that a cash deposit was in Washington Mutual Bank at the time of the take over in excess of, I think, two million dollars by ADI, Rainier's predecessor, and that that amount is going now, under the plan, to WMI.

MR. POTTER: This is Jim Potter again from California. If I may, additionally the plan assigns insurance rights in the name of WMI Rainier actually to JPMorgan. That's another asset that is transferring from WMI Rainier to another party.

A third issue that may require discovery is whether or not WMI Rainier has any entitlement to the tax refunds that are being given to WMI, the debtors. So those are three assets, the 1.6 million dollars in the account, the insurance and

possibly any entitlement to the tax liability that, as we read it, are being transferred.

One other point quickly. There's an odd thing, until 2008, the successor in question was Ahmanson Development, Inc. And then in December of 2008, after the petition had been filed, that Ahmanson Development, Inc. was merged into WMI Rainier and we've not seen any explanation of the basis for that or what impact that might have had on other assets. Mr. Rosen just indicated that WMI Rainier is pretty much broke. We don't know if that's because previous liabilities that WMI Rainier had absorbed whatever assets Ahmanson Development, Inc. had and again, that's a merger that happened after the case went into bankruptcy. Thank you.

THE COURT: You had other issues?

MS. MURRAY: Yes, Your Honor. The plan provides -- incorporates the global settlement agreement in 2.2(1) which talks about the treatment of BKK liabilities and finally in the response that was filed yesterday it became clear to me that 2.2(1)(a) and 2.2(1)(b) appear to be mutually exclusive. So that in (a) JPMorgan assumes certain carved out liabilities and in (b) it will indemnify the debtor with respect to the proofs of claim to the extent they're not assumed.

So we would ask that the "in addition" language that's now in the response be incorporated into the plan and disclosure statement to clarify what we thought was an

ambiguity until yesterday.

In addition, Your Honor, because the debtor argues that WMI Rainier is not a debtor and they don't have to disclose the assets and liabilities as Mr. Potter suggested. And it also says that the issue of whether or not JPMorgan has assumed any BKK liabilities from Washington Mutual Bank is solely an issue between JPMorgan and FDIC.

The plan calls for all of the debtors' insurance, actually not just the debtors' insurance, all the insurance that would go to the debtor, Rainier, Washington Mutual Bank gets assigned to JPMorgan under the global settlement agreement. So it's not really non-related because the extent to which that insurance go into JPMorgan, it's not coming to us or being used to satisfy the obligations at the site.

Secondly, under the plan JPMorgan assumes only what "insurance" doesn't cover. There's nothing in the disclosure statement about who's going to prosecute the insurance claims. I mean, JPMorgan's getting an assignment of all the insurance. There's no obligation for JPMorgan to prosecute the insurance claims. And there's no --

THE COURT: Is this a confirmation issue?

MS. MURRAY: Well it is again, Your Honor. We need to decide on the ballot whether we're going to walk away from this plan and pursue our nondebtor claims. I mean, we can't --

THE COURT: Yeah. But whether or not JPM agrees to be

obligated to pursue the insurance claims is a confirmation issue that bears on it, not a disclosure issue.

MS. MURRAY: Well, if JPMorgan has no obligation to pursue the insurance, then it's not assuming anything. And if it's not assuming anything then we should know that so we know to vote in the plan to reject the releases.

THE COURT: All right. Does JPM want to answer the question?

MS. MURRAY: Thank you, Your Honor.

MR. SACKS: Very quickly, Your Honor. Robert Sacks from Sullivan & Cromwell on behalf of JPM. This is a very straightforward provision. We are agreeing to assume liability. We'd be overjoyed to strip this entire provision out of the agreement and not have it. We are giving the debtors significant value. We are assuming the debtors' liabilities as defined in excess of available and applicable insurance.

It is our incentive to pursue every conceivable insurance coverage that may exist because that will reduce the amount that we have to pay out of pocket for these liabilities. So, yes. The deal was that we get a first call on the insurance policies and we will pay, to the extent the liabilities exceed that amount. That is correct. That was the deal that we struck. We are potentially assuming hundreds of millions of dollars in liabilities based upon what they have

claimed to be a 700 million dollar liability in that case.

It's a straightforward provision. It does not touch, in any way, shape or form, the issue of whether we, JPMorgan Chase, assumed any liability in connection with our purchase from the receiver of WMB's assets. If we assume those, we still have them. If we didn't assume them, maybe the FDIC is liable for them. But this plan doesn't release them, it doesn't touch them, it is as straightforward as can be. And these issues that are being raised don't have anything to do with it.

So, yes. We do get first call on WMI's insurance policies. We have every incentive in the world to pursue coverage as aggressively as possible because it will help us to pay less out of our own pocket. I don't understand what the lack of disclosure is in this particular case. It is fairly straightforward.

The one thing I would say on the last point, the next to the last point that was made, about we did not agree to indemnify them for unassumed liabilities -- so I'm not sure what that point was but we've agreed to indemnify -- there's a lot of belt and suspenders in here that the debtors insisted upon depending upon where these claims get litigated. So we have to pay them, we have to indemnify them for them, we have to reimburse them for them, depending on where they get paid out, but it's only for what we are assuming, which is certain

defined liabilities in excess of insurance, not unassumed liabilities, which is what I believe was said a few moments ago. That shouldn't be clarified -- if there's any ambiguity it should be clarified to make clear that we are not, in any circumstances, paying for unassumed liabilities. But I think it's perfectly clear. I don't think there's any ambiguity in this document on these points.

THE COURT: The debtor want to address the other points?

MR. ROSEN: Your Honor, I actually think Mr. Sacks has done a pretty good job doing that. I would just point out about the liability issue. As I indicated, we have these proofs of claim filed against the estate in unliquidated amounts and that's all we know about them, although Ms. Murray says that she believes it's around 700 million but it is unliquidated at this time and there's been no effort to seek the estimation of them at this time.

Your Honor, as I indicated at the outset of this hearing and when we got up with respect to this particular objection, JPM picking up whatever liability is a good thing for the estate. To the extent that there is the balance of any liability against the estate, meaning those beyond what JPMorgan is expressly agreeing to pay and that's set forth in 2.21(a), those will be claims against the estate. I don't know how much clearer it can be. It will be general unsecured

claims against the estate and we have to do our best to estimate what that would be and to come up with an appropriate reserve, if any. We obviously would object to those claims at a certain point in time so that we can move forward with the claims reconciliation process.

I don't see the ambiguity that Mr. Potter and Ms. Murray do but, Your Honor, I think the disclosure statement is very clear.

THE COURT: And Rainier is not getting any release so whatever claims they have against Rainier are being preserved?

MR. ROSEN: Absolutely correct, Your Honor. Just like it'll be claims against anybody else on the street, they can pursue Rainier. They can pursue whatever else they want to do.

To the extent that there was a nondebtor merger of entities, Your Honor, that happens in very Chapter 11 case. You try and clean up what your corporate structure is. So I'm not sure where the focus is but, Your Honor, they can pursue Rainier however they want to pursue Rainier.

MR. POTTER: Jim Potter from California again. My remaining concern -- and this has been very helpful. I appreciate both debtors and Mr. Sacks on behalf of JPMorgan going forward. And we do believe that both entities are acting in good faith to, kind of, streamline this. But my one ongoing concern with the disclosure statement issue is the value of assets being taken, WMI Rainier. And that -- it seems to me to

be at least 1.6 million plus the insurance and possibly plus any tax. Thank you.

THE COURT: Well, is there any part of the tax refund that is allocable to Rainier?

MR. ROSEN: Your Honor, if you could just give me one second.

(Pause)

MR. POTTER: If I may say, Your Honor, in the interim, we believe that WMI is jointly liable for Rainier's liability but there's obviously the possibility we may ultimately not prevail on that. And we believe that under -- the sum of that liability would be assumed by JPMorgan under the language of the agreement. But obviously, again, we might not prevail on that. So we're just trying to protect ourselves in case.

THE COURT: I understand. I understand.

MR. ROSEN: Your Honor, with respect to the tax refund issue, we don't believe that they were a filer, a joint filer if you will, or on a consolidated basis but we'll have to check that. And even if they were I don't know, under the tax sharing agreement, how much, if any, amount is allocable to WMI Rainier. But we can find out that information, Your Honor, and I'm happy to tell Mr. Potter that offline, because I don't think it has any basis in the disclosure statement.

THE COURT: All right. Thank you.

MS. MURRAY: Just in closing, Your Honor, the group

would be satisfied, in addition to the WMI Rainier asset issue, to have the carve-out that we've identified put into the plan that carves out the release of any nondebtor liability, including JPMorgan and also to put the clarification that the debtors now may, with respect to 2.2(1), actually in the disclosure statement in the plan. Thank you.

THE COURT: Any objection to either of those?

MR. ROSEN: Well Your Honor, I think the clarification is inaccurate. But with respect to the nondebtor releases, we're happy to be clear about that.

MR. SACKS: I'm not sure exactly what she's asking for, Your Honor, to be put in at this point because I think we've clarified that we are not assuming unassumed liabilities.

THE COURT: She wants in there that Rainier is not being released.

MR. SACKS: Oh, just Rainier, okay. Then I have no issue.

MR. ROSEN: Absolutely.

MR. SACKS: I have no issue about that.

THE COURT: And she wants put in the clarification that it was in the debtors' statement in response that was filed -- was it Friday?

MS. MURRAY: On page 43 of the response, at the top of the page, it says in addition to the assumption that's in 2.21(a), "In addition, JPMorgan must reimburse the debtors for

any distribution the debtors become obligated to make on account of remediation or cleanup cost and expenses contained in the BKK proofs of claim." The "in addition" was not in the plan or the disclosure statement. So if the words "in addition" are put in the plan and disclosure statement that connect A and B, we're happy.

THE COURT: Okay. You'll add that?

MR. POTTER: While they're conferring I'll thank the Court for your attention to this matter. It's obviously not in the mainstream -- although it's very significant it's obviously not in the mainstream of the bankruptcy and I appreciate your taking the time.

THE COURT: All right. Thank you.

MR. ROSEN: Your Honor, we will clarify that.

THE COURT: Okay. Anybody else?

MR. ETKIN: Still good morning, Your Honor. Michael Etkin, Lowenstein Sandler, on behalf of the lead plaintiffs in three separate, pending class actions, Your Honor. One involves the consolidated securities litigation out in Washington. One involves the securities litigation relating to the mortgage backed securities. And the other is separate securities litigation dating back several years which has been pending for several years.

As we speak, Your Honor, all three of those cases have survived motions to dismiss in the various courts. The debtor

has updated the disclosures in the disclosure statement relating to the status of each of those cases. The securities litigation just -- there was a recent decision regarding class certification that the debtor put in. So those issues have been resolved in terms of disclosure as to status.

Several other issues that we raised in the various objections and supplemental objections that we filed, just to make sure that we discuss the status of the playing field here, Your Honor, as it relates to subordination issues and classification and discrimination issues, we're content leaving those issues for confirmation.

Also, with respect to insurance issues and injunction issues as well as issues that we raised concerning document preservation, hopefully we'll be able to deal with those between now and confirmation and if not we'll raise those at the confirmation hearing as well, along with whatever other confirmation objections we believe are appropriate.

And I do understand, Your Honor, the conventional wisdom that release issues are confirmation issues and I don't intend to go into any discussion as to the propriety or the legality of the releases under the plan today. That is a confirmation issue.

But the problem that we have, Your Honor, is that these releases are really all over the map. They are confusing, at best, and in some cases bordering on

incomprehensible. You have to navigate between plan language, then go back to plan definitions, then go back to separate releases that are set forth in the global settlement agreement and the debtor has included the rather bald statement in the disclosure statement that all of these releases are fundamental and necessary for purposes of getting the consideration that the debtor claims it's getting under the global settlement agreement.

But if you really try to parse through them and maybe hours and hours and a half a bottle of Advil, I've managed to parse through these release provisions. The releases in the global settlement agreement focus on the parties to the global settlement agreement.

There is language in the global settlement agreement which says that to the extent permitted by law, the debtor is going to attempt to obtain border releases in the context of the plan and that the debtor will attempt, regardless of the opt out provision in the ballots, to enforce these releases in any event, and I don't want to step on the U.S. trustee's thunder but they raised that issue as did we, and I'll get to that in a moment with respect to the voting procedures.

But just in terms of disclosure and explanation as to what these releases do and don't cover. It's really hard to ascertain, Your Honor, what the releases are that are fundamental to confirmation of the plan as the debtors

indicate, those releases being the releases set forth as between the parties to the global settlement agreement. But the debtors go so much father in the plan and it's really hard to distinguish between the two, where one ends and one begins. Let me give you the grossest example of that, Your Honor, which I --

THE COURT: Is this confirmation objection?

MR. ETKIN: It is not, Your Honor, in my view. It's not because it's just hard to decipher who is and who is not getting released. And it's hard to decipher, based upon the statement that the debtors make in both the plan and the disclosure statement as to the necessity of those releases, whether that statement is really accurate as it relates to those global settlement agreements.

THE COURT: As to whether it's accurate, that's a confirmation issue. Do you need these releases, that's a confirmation issue, isn't it?

MR. ETKIN: I don't think so, Your Honor. If the global settlement agreement says that these releases, as they relate to the parties to the global settlement agreement, there will be an attempt to obtain releases from all parties under the plan, to the extent permitted by law. But if the law doesn't permit, if the law in this circuit doesn't permit those releases, ultimately, then how can you make a statement in the disclosure statement that those releases are -- if the Court

rules that those releases are not legal and not in conformity with Third Circuit law --

THE COURT: Then they don't get them.

MR. ETKIN: But the settlement doesn't blow up and that's what --

THE COURT: That's a confirmation argument. I'll hear that at confirmation.

MR. ETKIN: Your Honor, if that's the Court's position then I'll move on from there. Let me focus, Your Honor, on the voting procedures issue as it relates to the releases because I think that that remains a significant issue here.

Your Honor, there appears to be an attempt, through the voting procedures, to obtain what the debtors may argue, somewhere down the road, are consensual third party releases. The disclosure statement -- the ballots indicate, again, that one needs to opt out of those releases as opposed to opt in and I think that issue becomes even more relevant when you look at what the Washington Mutual Bank noteholders are required to do. They are required to affirmatively opt into the releases as opposed to everyone else where you have to check the box to opt out or else you're stuck, according to the debtor. I don't believe that that's appropriate in the first instance.

Secondly, Your Honor, the idea that these releases are consensual where the debtor makes clear that it intends to cram down these broad third party releases on all parties,

regardless of whether they opt in or opt out, it's a fiction. And I'm concerned, somewhere down the road, that the debtor will rely on some theory of consent when if the debtor believes that these releases are appropriate they should be put to their proof, as Mr. Rosen indicated earlier, make the arguments at confirmation and those releases will either stand or they won't.

But the fiction of consent through a box where people have to affirmatively opt out is totally inappropriate. Combining that with a gun to a creditor's head that if they do opt out and check the box then they don't get a distribution under the plan. If Your Honor wants to deal with that at confirmation, I'm happy to do that as well but that's going to influence people's vote. It's going to influence who checks the box and who doesn't and I think that entire fiction should be stripped from the ballot. And if the debtor wants these releases, wants to take a position with respect to these releases at confirmation, they should do so and they should make their case at confirmation.

THE COURT: Okay.

MR. ETKIN: This hybrid just doesn't make any sense.

THE COURT: I understand.

MR. ETKIN: Then Your Honor, you have an additional problem. What happens with respect to those creditors or interest holders that don't vote? What happens to those

creditors or interest holders who have multiple claims and file a ballot with respect to, let's say, senior notes that they currently hold but have a securities claim as well by virtue of the fact that they purchased during the class period and they don't fill out a ballot with respect to the so-called subordinated claim that they might have.

THE COURT: Okay.

MR. ETKIN: That's an issue. I don't see any answers to those questions in the disclosure statement and I think it should be clear that if someone --

THE COURT: I understand. All right. Anything else?

MR. ETKIN: Yes, Your Honor. Just give me a moment.

(Pause)

MR. ETKIN: Your Honor, a couple of things that I picked up in the supplemental -- the second supplemental response that I just want to put on the record for clarity's sake, at the very least.

In their response regarding the issue of the extent of subordination or classification, the debtors indicate that by virtue of the order that was entered, that it was stipulated by two of the three lead plaintiff groups that I represent, and I'm quoting, "that their claims are subordinated claims as defined in section 1.188 of the sixth amended plan". That's not what the stipulation says. As a matter of fact we have an outstanding issue as to the extent to which some of these

claims should be subordinated. So that's an open item and I just wanted to make sure that I corrected the record because that statement in the response is simply untrue.

In addition, there's a statement as it relates to the mortgage backed securities claims which are the subject of an outstanding claim objection, which we're trying to resolve. There's a statement that upon information and belief those lead plaintiffs will withdraw its claim against the debtors with prejudice. I don't think that's what we've been discussing, certainly that's not what I've been discussing with Mr. Rosen so I just wanted to make sure that the record was clarified with respect to that.

Finally, Your Honor, there are just a couple of other issues relating to the disclosure statement that I wanted to bring to the Court's attention.

Your Honor, at page 18 of the blackline there's an indication, and this goes back to the order that the Court entered, maybe within the last thirty days, regarding the approval of the confidentiality agreement between the debtor and the committee. The disclosure statement states that the parties to the global settlement agreement will determine who is entitled to discovery in connection with confirmation. I think the order that Your Honor entered indicated that either the parties or the Court will make that determination, that it's not a determination that will solely be made by the

parties to the GSA. So I wanted to make sure that that was pointed out as well.

And the statement that the debtors included in the disclosure statement, at page 138, regarding the releases and regarding the parties' objections to those releases that have been interposed through today, the debtors indicate that the position of myself and others is that they may not be in accordance with applicable law, I think it's fairly clear that our position is that they are not in accordance with applicable law. And I think that that inclusion in the disclosure statement should also follow what's in the ballot so that parties, when they review their ballot, understand that that is a contested issue with respect to this plan.

THE COURT: I understand. Okay. Well, do you want to hear the U.S. trustee's position on those points?

MR. ROSEN: Sure.

MS. LEAMY: Jane Leamy for the United States trustee. The United States trustee objection concerns section 43.6 of the plan, which is a third party release provision. And our issue there is that the debtors are trying to do two mutually exclusive things: return and solicit a consensual release as discussed by the prior counsel, which is not really consensual as I'll show in a second; and they're also indicating their intent to prosecute a nonconsensual third party release at confirmation.

The language in that section, you know, says that each entity -- in the proviso, "Each entity that has submitted a ballot may elect by checking the appropriate box not to grant the release. In which case" -- after a few lines -- "In which case each entity that elects not to grant the release will not receive a distribution hereunder. Provided further that because the plan and global settlement agreement and the financial contributions contained therein are conditioned upon the aforementioned releases and are essential for the successful reorganization" -- and this is the important language -- "those entities that opt out of the releases provided hereunder shall be bound and shall receive the distributions they would otherwise be entitled to receive."

So they're trying to do two separate things here. The opt-out that they're going to put on the ballot, it's not really consensual that parties are being given the opportunity to opt out because they're not going to get a distribution. So I don't know why anyone would really make that choice to opt out. And the position of the United States trustee is that the debtors should not be permitted to solicit releases from creditors based on the premise that they actually have a choice when the debtors are going to go to confirmation and try to impose that release on everyone. Thank you, Your Honor.

MR. ETKIN: Your Honor, I apologize. One more point on that issue that bears mentioning. The opt-out, as I

understand it, deals with an opt-out with respect to granting releases to the other parties to the global settlement agreement. You cannot opt out of a third party release under this plan, even in its current form, as it relates to claims against the debtors' former and current officers and directors, that you're giving regardless. You can't opt out with respect to a claim against the former accountants, former investment bankers, essentially most of the parties to the securities litigation, you're stuck there. There's no ability to opt out as it relates to those releases which are the related persons as defined under the plan, as they are relevant to the debtors.

(Pause)

MR. ROSEN: Your Honor, if I could take a matter that we just concluded and hopefully not bring about more comment but it's in answer to the tax refund question.

THE COURT: Okay.

MR. ROSEN: Your Honor, it's my understanding that WMI Rainier itself would not qualify for any portion of the refunds coming the debtors' way. However, with respect to the merger that Mr. Potter referred to with respect to ADI, which was Ahmanson Development, Inc., there may be an entitlement to a certain amount of the refund, but it would be in the mere thousands of dollars and nothing significant, Your Honor, and certainly not in the millions of dollars. But as I get more clarity, I'm happy to let Mr. Potter know that.

THE COURT: All right.

MR. POTTER: Thank you.

THE COURT: Thank you.

MR. ROSEN: Your Honor, with respect to the easiest of what Mr. Etkin said, there was a misstatement in the disclosure statement. The negotiation that we're having with respect to certain claims that have been filed in the MARTA action, they are to be withdrawn without prejudice to refiling. The reason is, they would be refiled if in fact there is going to be a distribution that'll drip down to the subordinated claim level, at which point they would be refiled and then we could litigate as to whether or not there would be any liability on the part of the estate.

But in the avoidance of fees and expenses, we all decided let's not waste our time litigating those claims at this time. And we are in the process -- that is a pending claim objection, Your Honor, we're in the process of working on a stipulation for that removal.

With respect to the release issue, Your Honor's correct that many of these issues are confirmation issue and Mr. Etkin is correct when he says that Mr. Rosen said he was going to come to the confirmation hearing and he's going to put on testimony, because I know, Your Honor, that it's an important part of the confirmation hearing to show the consideration that is being given with respect to those

releases and the entitlement to them.

Your Honor is correct that it says to the extent permitted by law. And if the Court determines that there is nothing that is permitted to be give, then the parties to the agreements have issues that they're going to have to take up at the confirmation hearing, Your Honor. But everybody knows that going in and we know that -- the effort is, Your Honor, to try and get a release either by checking the box or establishing for the Court that there is an entitlement to a third party release, and then have that third party release binding upon the other parties. But if in fact the Court determines --

THE COURT: Does the opt-out apply to all of the third party releases?

MR. ROSEN: That -- his last clarification, Your Honor, with respect to Ds and Os and former Ds and Os?

THE COURT: Yeah.

MR. ROSEN: It does not, Your Honor.

THE COURT: The release does not apply to the Ds and Os?

MR. ROSEN: It does not permit the opt-out for that piece, as Mr. Etkin recited it. He is correct.

THE COURT: And does your ballot say that?

MR. ROSEN: I believe it does.

THE COURT: Let me see the ballot.

(Pause)

MR. ROSEN: Your Honor -- I'm sorry. Your Honor, two things. It's in the plan itself in paragraph 43.6. It's bolded as required and it says that you cannot -- I just want to make sure I read it correctly: "Each entity that has submitted a ballot may elect, by checking the appropriate box on its ballot, not to grant the releases set forth in 43.6 of the plan with respect to those release parties other than" and the "other than" would encompass the relates parties which are including the Ds and Os, Your Honor.

THE COURT: What does it say on the ballot?

MR. ROSEN: I'm looking at the subordinated -- the 510 subordinated ballot because that's the one that -- since there is no ballot going down to equity, Your Honor. Your Honor, it has the same exact language carried over from 43.6 of the plan.

THE COURT: Which is "other than" --

MR. ROSEN: That you cannot opt out with respect to those people. We took, Your Honor, in toto, the entire section so it was clear for anyone reviewing it to the extent it can be.

MR. ETKIN: That's why I like Mr. Rosen. He's candid Your Honor. The problem is that you have no idea, really, the scope of who you're releasing because you have to go back to the definitional sections of the plan as it relates to related persons. So to navigate through all of that mess is a relative impossibility, Your Honor. Coupling that with the objection

that the U.S. trustee and I just articulated, as well as the fact that these people who are voting and who fill out a ballot, they're not consciously making a decision as to whether they're going to give a release or not. Number one, they're being forced to opt out of it. It's backwards as opposed to what the WMB bondholders need to do which is to affirmatively opt into it. A release, a waiver of rights has to be an affirmative act, Your Honor.

THE COURT: That's a confirmation issue.

MR. ETKIN: But these ballots are going out and I -- my concern is that there's going to be some reliance on these ballots or the failure to check the box or the fact that you never submitted a ballot in the first place or the other laundry list of things that could happen that's going to influence that decision, if somebody is really focusing on making that decision.

THE COURT: I understand.

MR. ETKIN: And once they see that if I check this that means I'm not going to get a distribution under the plan, do you mean if I have this other claim --

MR. ROSEN: Hold on a sec. Your Honor, we'll make it easy and stop this one. We'll make it an opt-in so it's a lot cleaner.

THE COURT: Does the ballot say that you're nonetheless going to seek these releases independently?

MR. ROSEN: Yes. Yes it does, Your Honor.

THE COURT: Okay.

MR. ETKIN: And that, I believe Your Honor, remains an issue because you have to -- the debtor really needs to choose, fish or fowl, whether they're going to attempt to stuff these down creditors' throats by virtue of argument at confirmation, or that they're going to stuff them down creditors' throats by virtue of not giving them a distribution if they now opt in to the release. Those, at least to me, Your Honor, are not confirmation; they're issues to be raised now. However, to the extent that the Court believes that they are confirmation issues, I don't want to waive the ability to come into Your Honor at the confirmation hearing and argue that these really were not -- these releases really were not consensual at all.

THE COURT: You're reserving that argument. I'm going to allow it. I think that this is a confirmation issue. I don't know that the debtor's going to argue to say that somebody who opts out of a release is otherwise bound by the release.

MR. ROSEN: We understand, Your Honor.

THE COURT: I'll let you make the argument.

MR. ROSEN: We understand, Your Honor. Mr. Coffey asked me a question about would we make that same opt-in for all classes and the answer is we'll make them the same.

THE COURT: Good.

(Pause)

MR. NELSON: Now, good afternoon. Justin Nelson, Sussman Godfrey, for the equity committee. Just to be clear, Your Honor, there are two constituencies as part of the equity committee. One is the commons, which are deemed to have rejected the plan. The preferreds can vote on the plan and are, I think, Class XX of the plan.

And we have one issue that I think has not been addressed, either by this morning, the ruling on waiting or not waiting for the examiner and some of the other filings that the debtor has made and that's specifically with respect to the reorganized company that's going to emerge WMRIC (ph.). They have attached Exhibit D that states that the value will be between 120 and 160 million dollars, I think. It doesn't talk, at all, about what the NOL is and there' reason to believe that it's in the billions of dollars for what the NOL is. And it's potentially a huge, undisclosed gift to the owners, the hedge funds who own the PIERS claims.

And so we would like there to be some disclosure with respect to just a few points. First, the lines of businesses that would be allowed under the tax code to have income shielded by the NOL; second, to disclose the use of the proceeds on the proposed rights offering. Right now they say that it's going to be a hundred million dollar rights offering and the value will be, to give back, will be about 100 million

dollars; third, to disclose any revenue, rulings, requests to the IRS; and fourth, and fundamentally, the potential size of the NOL that will emerge from the reorganized company. Thank you, Your Honor, unless there are any questions.

THE COURT: No.

(Pause)

MR. ROSEN: Your Honor, I think several of these are already encompassed in there but to the extent that they are not, I don't think we have a problem with the disclosure of these and I'm happy to work with Mr. Nelson to put that language in the disclosure statement.

THE COURT: Okay.

MR. NELSON: May I just get a clarification, Your Honor? There is -- attached as Exhibit D is a summary of what they call the Blackstone report but my understanding is that still has not been shared and that might help, as well, in terms of disclosure as well, if we could actually see the underlying Blackstone report.

MR. ROSEN: Your Honor, I think the Blackstone report is near completion and it is an expert report that would certainly be made available to the equity committee as part of the confirmation process as well as whatever they would want as a result of it being an expert report and I think it will be posted to the depository so you'll be able to read it.

MR. NELSON: The problem is that Exhibit D relies on

the Blackstone already, right now, in the disclosure statement. But I take that we're going to work to try to work out all the issues that we listed, to try to put them in the disclosure.

MR. ROSEN: Yes.

MR. NELSON: All right Thank you, Your Honor.

THE COURT: Because I didn't rule on the security plaintiffs' two issues regarding, one, that the debtors say that -- other parties say the releases may not be in accord with applicable law, I think that's right.

MR. ROSEN: We'll put -- yeah, they want to or not, that's fine.

THE COURT: And with respect to who gets discovery, you'll modify that?

MR. ROSEN: Yes. That, I think, Your Honor, honestly, that was a situation of the disclosure statement not catching up to an order.

THE COURT: Exactly.

MR. ETKIN: Just one last thing. And I'll ask this to the Court and to Mr. Rosen, that statement in the disclosure statement, will that also be transported to the ballot regarding the issues relating to the releases?

MR. ROSEN: I'm sorry. I couldn't hear you.

MR. ETKIN: The statement that parties have objected to and believe that the releases are not in it, will that be transported to the ballot as well?

MR. ROSEN: I don't think it's a ballot issue; it's a disclosure statement issue.

THE COURT: I think it's already in the -- I think that provision is in the disclosure statement, is what you've copied into the ballot.

MR. ROSEN: No. This is sort of the editorial with respect to it. He wants that into a ballot itself.

MR. ETKIN: The language in the plan is in there but not an indication to people who are voting that there's an issue regarding the leases.

THE COURT: Yeah, I think that should be on the ballot or let him file a letter with the --

MR. ROSEN: I think that's fine. If Mr. Etkin wants to give us a letter, we'll send that out with everything as well, Your Honor.

Your Honor, I made a comment very quickly before and I'm not sure it's accurate. Mr. Coffey had asked me about the opt-in versus opt-out and I don't think it can actually work that way because of the consideration that's being given to all of these people pursuant to the different classes. I think with respect to one class it may work that way, which is the bottommost tier, but I don't think it can work with respect to the higher up tiers, where people are actually getting direct distributions by way of the settlement agreement. So I think we were going to look to keep those opt-outs but for that

subordinated group that he's referring to.

MR. ETKIN: That blends into the problem that I mentioned a little earlier, Your Honor, and that is, you know, what happens to a creditor who has multiple claims in the case? What happens to a creditor who has a general unsecured claim but who also may be a class member with respect to securities litigation?

THE COURT: Well, each class -- he can opt one way or the other.

MR. ETKIN: As to that claim.

MR. ROSEN: Right.

THE COURT: As to the claim in that specific class.

MR. ETKIN: Just want that to be clear. I don't want somebody who's giving a release as to their general unsecured claim to be deemed to give a release across the board.

THE COURT: I think that's understood. All right. Have we resolved all objections, then? All right. When will the debtor have a clean copy done?

MR. ROSEN: Your Honor, I think the changes that we need to make today will not take too long and we could have it for the Court tomorrow.

THE COURT: Okay. File it under certification and circulate it to all the parties who have objected.

MR. ROSEN: Your Honor, if I could just go through dates that we've been contemplating, and it goes to what I

started with, I think, as part of the overall timing. Your Honor, based upon the communications that we've had with KCC, we anticipate being able to commence the solicitation this Friday. That's how long it will take them to get everything together and ready to roll.

Your Honor, there are certain people who will probably want to file a motion for temporary allowance for voting purposes and we would ask, and we would include in the proposed order, that that date be a week from today. We would then, Your Honor, turn to responding to those by November 4th. There is an omnibus hearing, Your Honor, on November 9th and to the extent that there are any, we would hope to try and take care of those to the extent that we cannot resolve them consensually at that hearing on the 9th.

We propose the voting deadline, as I indicated earlier Your Honor, of November 15th with objections to confirmation due on November 19th, this would be the weekend -- the Friday before Thanksgiving.

We would then, on the 22nd, which is a one week after the voting deadline, file with the Court, Your Honor, a stock election notice because there is an opportunity under the plan to elect stock or other distributions. And that dovetails then, Your Honor, into the subscription notice that we would want to file with the Court, excuse me the subscription deadline which we would want to set as November 29th. So it

would give people, to the extent that they want to elect the subscription rights, one week to make that determination after they see who may have elected other stock pursuant to the plan.

And lastly, Your Honor, so as we don't burden ourselves over the Thanksgiving weekend, we would want to file all of our responses to those confirmation objections and file all affidavits for direct testimony the day before Thanksgiving, so that it would be a week before the scheduled confirmation hearing on December 1st.

It was those dates, Your Honor, that we would include in the proposed disclosure statement order.

MR. ETKIN: Just one question, Your Honor, as to those dates. I thought I read something that the debtor had up until, I don't know whether it was the voting deadline or the record date to file objections to claims, that would obviously be -- take it beyond October 25th, which is the deadline to file 3018 motions. Now somebody who hasn't had a claim objected to would have no reason to file a 3018 motion if their claim's going to be allowed for voting purposes. But if there's an objection, I was just curious as to how that would work.

MR. ROSEN: To the extent that there is a liquidated claim out there, we will have filed all of our objections today. There are unliquidated claims and pursuant to the voting procedures, they are to be voted in the amount of one

dollar. So to the extent that they want to vote in a different amount, they would have to file the 3018 motion.

MR. NELSON: Justin Nelson for the equity committee, Your Honor. I rise specifically with respect to the December 1st date. We would ask that we not set a date for confirmation at least until we see the examiner's report. We are concerned that once we get the examiner's report that we either will or will not have to do further discovery. To think that that can happen within a short window, especially given some of the discovery issues that we've previously had with the debtors and to follow up on any issues, potentially, with the examiners, not even talking about, of course, the shareholders' meeting which is on the agenda for November 9th. We think that it would be more prudent to set something in mid to late January, even now tentatively, so that there could be time to conduct discovery and the follow up that can be done from the examiner's report. Thank you.

THE COURT: Well, I'm going to suggest that we set the date. If there's a reason to extend it, I'll hear that once I get the examiner's report.

MR. NELSON: And just for --

THE COURT: And we have the November 9th hearing date at any rate.

MR. ROSEN: We do, Your Honor.

MR. NELSON: And just for clarification, Your Honor,

if at that point we do need more discovery that we're not going to be able to get within the time remaining, would that be a sufficient reason to --

THE COURT: Well, I'm going to rule --

MR. NELSON: All right. Fair enough. Thank you, Your Honor.

THE COURT: -- today on such --

MR. HODARA: Your Honor, Fed Hodara for the committee. Very briefly, we had a support letter that was dated July 7. I just wanted to advise the Court that we will be conforming that letter to the current date and to reference the sixth amended plan, rather than the fifth, and the current settlement agreement.

THE COURT: Okay.

MR. HODARA: Thank you.

MR. ROSEN: Your Honor, if I could, we will get Mr. Etkin's letter and we will provide that to the Court with the certification of counsel that you referred to earlier, so the Court has all of the updated letters.

THE COURT: Well, let me ask you a question. Why are we having a different voting deadline from the objection deadline? I think you said voting would be November 15th and objections November 19th.

MR. ROSEN: Correct, Your Honor. Your Honor, we wanted to get the voting -- I'm happy to move the objection

deadline forward, to the 15th, that is fine, Your Honor. We were trying to give people help.

THE COURT: I think the other way.

MR. ROSEN: The reason for the other way, Your Honor, is because we need to compile the stock election notice so that we can have -- people have that -- there's going to take time between taking the vote, looking at each ballot to see who elected what and then putting it in the stock election notice that we're going to file with the Court and so that everybody can see it. That's why we looked at the week, two week separations Your Honor. And we didn't want to jam anybody on objecting earlier, but I'll gladly accept that, Your Honor.

THE COURT: I'll accept your dates then.

MR. ROSEN: Thank you, Your Honor. I think that concludes this morning's calendar.

THE COURT: All right. I'll look for the certification of counsel with a form of order and the revised disclosure statement.

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

THE COURT: All right. We'll stand adjourned.

(Whereupon these proceedings were concluded at 12:36 p.m.)

I N D E X

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

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib
Digitally signed by Lisa Bar-Leib
DN: cn=Lisa Bar-Leib, c=US
Reason: I am the author of this document
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LISA BAR-LEIB (CET**D-486)

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Date: October 19, 2010