

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF DELAWARE

3 - - - - -x

4 In the Matter of:

5 WASHINGTON MUTUAL, INC., ET AL., Case No.

6 Debtors. 08-12229 (MFW)

7 - - - - -x

8 BLACKHORSE CAPITAL LP, ET AL., Plaintiffs, ADV. Proceeding

9 - against - No. 10-51387 (MFW)

10 JPMORGAN CHASE BANK, N.A., ET AL., Defendants.

11 - - - - -x

12 MICHAEL WILLINGHAM and ESOPUS CREEK

13 VALUE, LP, Plaintiffs, ADV. Proceeding

14 - against - No. 10-51297 (MFW)

15 WASHINGTON MUTUAL, INC., Defendant.

16 - - - - -x

17 United States Bankruptcy Court

18 824 North Market Street

19 Wilmington, Delaware

20 November 29, 2010

21 9:01 AM

22 B E F O R E:

23 HON. MARY F. WALRATH

24 U.S. BANKRUPTCY JUDGE

25 ECR OPERATOR: BRANDON MCCARTHY

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Telephonic Hearing: Teleconference

Transcribed by: Karen Schiffmiller

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

THE COURT: Good morning. Are the parties on the line? Good morning?

THE OPERATOR: They are, Your Honor.

THE COURT: All right. I've taken a look at the motions for summary judgment, and here's how I'd like the week to go. On Wednesday, I'd like to hear oral argument on the TPS summary judgment motions, starting at 1. I'll give each side an hour for their main argument, and a half an hour for rebuttal. I'd like also to have oral argument on the Dime warrants issue. I'll give each side a half an hour for their main argument, and fifteen minutes for rebuttal.

And hopefully, then, we'll finish the summary judgment arguments on Wednesday. On Thursday, we start at 9:30, and I suggest that the debtor put on its confirmation case. I will either have made a decision at the conclusion of oral argument, or more likely will render my decision on the summary judgment in connection the confirmation ruling. Okay? Any questions?

UNIDENTIFIED SPEAKER: No, Your Honor, thank you.

MR. TAYLOR: Your Honor? Your Honor, this is Greg Taylor, on behalf of the equity committee, just one brief question. At the beginning of the confirmation hearing, would you like the parties to provide opening statements?

THE COURT: Well, I suspect the debtor will be, so, I will allow those objectors to give opening statements. But I'd

1 like them to be limited. My preference is to hear the  
2 testimony before --

3 MR. ROSEN: Your Honor, this is Brian Rosen. We  
4 actually were planning to dispense with opening statements, and  
5 just let you know which objections had been resolved, leaving  
6 for the end, which objections might remain.

7 THE COURT: Well, I --

8 MR. ROSEN: We'd rather just get to the material.

9 THE COURT: Will I be getting a chart, Mr. Rosen?

10 MR. ROSEN: We filed an omnibus response, which was a  
11 chart, but we will update that to the extent that objections  
12 have been resolved.

13 MR. JANG: Your Honor, this is Chun Jang of Richards  
14 Layton. So, the chart will be included in the hearing binders  
15 that go over today.

16 THE COURT: Okay.

17 MR. STEINBERG: Your Honor, this is Arthur Steinberg.  
18 I did have a question that - with regards to the confirmation  
19 hearing, there were obviously a number of objections filed to  
20 confirmation. And, will Your Honor be hearing oral argument on  
21 the objections before the presentation on Thursday of the  
22 debtors' case for confirmation, or will those objections be  
23 argued after the debtor has put in his case-in-chief?

24 THE COURT: Well, that's what we're discussing now. I  
25 do want, Mr. Steinberg, the confirmation objections to be

1 argued in connection with the confirmation. How long, Mr.  
2 Rosen, will your case be, as far as presenting testimony, live  
3 or through declarations?

4 MR. ROSEN: Well, Your Honor, obviously, we have  
5 submitted those declarations last Wednesday. We think that we  
6 might be supplementing those in a very, very limited respect,  
7 and it really is dependent upon cross-examination. There were  
8 a few of the people, who we submitted declarations for, that  
9 had been deposed. There were others where no depositions were  
10 requested. So, I would assume that there would be no cross-  
11 examination with respect to those, or at least, I would hope  
12 that there wouldn't be. But, Your Honor, as far as our case-  
13 in-chief, with the declarations being submitted, and without  
14 calculating cross-examination, it could be in a morning.

15 THE COURT: Well, are you - I guess my question is,  
16 you're not intending to present any live testimony other than  
17 the declarations?

18 MR. ROSEN: Your Honor, we have given some thought to  
19 this. So, what some people have suggested to us, we may be  
20 supplementing one of those declarants, but again, Your Honor,  
21 that live testimony would probably be limited to an hour or so.

22 THE COURT: Okay. Well, in light of that, then I  
23 think I will allow brief opening statements by the remaining  
24 objectors, before cross-examination of the declarants. But I'd  
25 like to limit that to maybe fifteen minutes per party?

1 MR. TAYLOR: Thank you, Your Honor. Your Honor --

2 MR. ROSEN: Your Honor, I apologize; this is Brian  
3 Rosen, again. Just to keep in mind what you just suggested,  
4 there were approximately fifty-five objections at fifteen  
5 minutes each. That might take some time.

6 THE COURT: You haven't resolved all this, Mr. Rosen?

7 MR. ROSEN: I'm doing my best, Your Honor, but not  
8 yet. And we think that the modifications to the plan, that we  
9 filed last week, did get rid of many of them, but there are  
10 still some remaining.

11 THE COURT: Well, that is going to be cumbersome,  
12 then. I know many are the same objections as others.

13 MR. ROSEN: You're right, Your Honor. And, many of  
14 them go to the releases, and hopefully, we'll have the  
15 opportunity between now and Wednesday at 1, to walk through  
16 with the people who did file objections, exactly how they were  
17 revised and perhaps, convince them that there no longer is an  
18 objection. But, Your Honor, if I could, maybe, if we reduce  
19 that fifteen minute window that you suggested, to five minutes  
20 each for those that remain, it might be a little bit easier to  
21 handle.

22 THE COURT: Well, I haven't looked at the chart, Mr.  
23 Rosen. You have them organized by issue raised, or are they  
24 listed as chronologically, as the objections came in?

25 MR. ROSEN: Your Honor, we did them by party, but we

1 can do the cross reference for you, and do it by issue, and get  
2 that over to you. And you'll see, the majority of them, Your  
3 Honor, go to release issue.

4 THE COURT: Well, I don't know if the objecting  
5 parties want to designate, you know, a lead attorney to argue.  
6 I don't know if that is possible on specific issues.

7 MR. STEINBERG: Your Honor, while - this is Arthur  
8 Steinberg, again. While there are fifty-five people who may  
9 have filed objections, many of them, I think, are pro se  
10 parties, that may or may not actually show up at the  
11 confirmation hearing. And then, I think, when the release  
12 issue is winnowed down, you won't have that many people  
13 speaking on behalf of their objection. Meaning, that there'll  
14 be people speaking, but it won't be fifty-five. It won't be  
15 half of that.

16 THE COURT: No. Or even half of that --

17 MR. STEINBERG: I was being conservative, Your Honor.  
18 I doubt there'd be ten.

19 MR. ROSEN: Your Honor, I just come back to -- I think  
20 it better if we allow everybody to put - if we allow us to put  
21 on our testimony, allow for the cross-examination, and then  
22 deal with whatever objections remain. Let people argue those  
23 points at closing. We might be able to get rid of many of them  
24 during the course of the confirmation hearing, either through  
25 discussion or presentation.

1 MR. STEINBERG: I would say the opposite, Your Honor.  
2 I think that if there was a colloquy on some of these  
3 objections, you may be able to have them resolved, and a lot of  
4 people's participation at the confirmation hearing may be  
5 reduced.

6 THE COURT: Well, I don't know. Is it because you  
7 think I might make a ruling before hearing the testimony, or do  
8 you think that Mr. Rosen might see the light and resolve your  
9 objection if you give an argument?

10 MR. STEINBERG: Well, Your Honor, I think at least  
11 half the objections are directed to the release.

12 THE COURT: I understand.

13 MR. STEINBERG: So, that if Your Honor didn't like the  
14 way that the release ultimately happened, and decided that  
15 which is being presented does not meet confirmation standards,  
16 there would be a resolution of that issue before the  
17 presentation. And a good portion of the people would -- and  
18 I'm not saying my client -- but a good portion of the people  
19 would then go away. That's what I was referring to.

20 THE COURT: Well, Mr. Rosen is there any testimony or  
21 cross that would be relevant to that issue, really?

22 MR. ROSEN: Actually, I think there's a limited  
23 amount, Your Honor. We have carved back these releases through  
24 discussions with all parties, and I think that they are  
25 compliant with the law as we see it, Your Honor. But there is

1 some testimony that would be helpful to bear upon that, and to  
2 be consistent with what the Third Circuit in Delaware specific  
3 law is. So, I think it's important, at least, to allow that to  
4 get into the record before the Court can make a determination  
5 on that.

6 THE COURT: Well, I tend to agree. I think I'm going  
7 to go back on my original suggestion, and suggest that we get  
8 the testimony in on Thursday, if we can get it all in. And  
9 then save argument for the conclusion. All right?

10 MR. STARK: Your Honor, it's Robert Stark. I don't  
11 want to jump in with a new topic, if we're not complete on that  
12 one.

13 THE COURT: Go ahead with --

14 MR. STARK: Is that Your Honor's rule?

15 THE COURT: I think we're done with that.

16 MR. STARK: Okay, my apologies. Your Honor, I'm just  
17 a little bit unclear about procedure on my adversary  
18 proceeding. We have two counts in seven that -- excuse me,  
19 six, we're withdrawn count three -- that are subject to summary  
20 judgment. There are remaining counts that the defendants have  
21 moved for summary judgment on a variety of legal theories, and  
22 we argue in our papers that summary judgment is not  
23 appropriate, that we're prepared to present our trial on those  
24 issues.

25 We have experts coming from Harvard Law School, from

1 Georgia, as well as, fact witnesses and a fair amount of work  
2 and trial preparations. Your Honor's conclusion that we would  
3 have one hour of argument with half an hour each of rebuttal,  
4 and then Mr. Rosen should move the next day into confirmation,  
5 meaning, that Your Honor is not prepared to entertain a trial  
6 on those other issues?

7 THE COURT: I think that's correct. I think I'll hear  
8 argument on the summary judgment. I think testimony is not  
9 going to be helpful to me.

10 MR. STARK: Okay. And beyond - besides the testimony,  
11 no other form of evidence, where the case is going to be won  
12 and lost in the papers and the argument, in other words.

13 THE COURT: Yes, I think so.

14 MR. STARK: Understood.

15 THE COURT: Any other questions? All right, I'll hear  
16 the parties then on Wednesday at 1 o'clock.

17 MR. ROSEN: Thank you, Your Honor.

18 IN UNISON: Thanks, Your Honor. Bye, bye.

19 (Whereupon these proceedings were concluded at 9:14 AM)  
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C E R T I F I C A T I O N

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

**Karen  
Schiffmiller**

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**UNITED STATES BANKRUPTCY COURT**  
**District of Delaware**

**In Re:**

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

**Chapter: 11**

*Case No.:* 08-12229-MFW

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


A transcript of the proceeding held on 11/29/2010 was filed on 12/2/2010 . The following deadlines apply:

The parties have 7 days to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is 12/23/2010 .

If a request for redaction is filed, the redacted transcript is due 1/3/2011 .

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 3/2/2011 unless extended by court order.

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



Clerk of Court

Date: 12/2/10

(ntc)

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Case: 08-12229-MFW

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