

Second Washington Mutual Plan Confirmation Denial May Have Significant Impact on Claims Trading and Plan Negotiation

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On September 13, 2011, Judge Mary Walrath of the United States Bankruptcy Court for the District of Delaware surprised many parties in interest and observers of the case by issuing an opinion denying confirmation of the modified proposed plan of reorganization of Washington Mutual, Inc. (“WMI”) and its affiliated debtors. The modified plan incorporated certain changes Judge Walrath had indicated were necessary in a January 2011 opinion denying confirmation of a prior version of the plan, and many expected that these changes would be sufficient to ensure confirmation of the modified plan. Although the decision turned primarily on the rate of post-petition interest awarded to certain creditors of WMI, the Court’s extensive discussion of allegations of “insider trading” raised against certain claims purchasers is likely to attract the most attention. Judge Walrath’s findings on these allegations may have a significant impact on claims trading and negotiation dynamics in complex chapter 11 cases going forward.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Donald S. Bernstein

+1 212 450 4092
donald.bernstein@davispolk.com

Timothy Graulich

+1 212 450 4639
timothy.graulich@davispolk.com

Marshall S. Huebner

+1 212 450 4099
marshall.huebner@davispolk.com

Ben Kaminetzky

+1 212 450 4259
ben.kaminetzky@davispolk.com

Elliot Moskowitz

+1 212 450 4241
elliot.moskowitz@davispolk.com

Brian M. Resnick

+1 212 450 4213
brian.resnick@davispolk.com

Damian S. Schaible

+1 212 450 4580
damian.schaible@davispolk.com

Eli J. Vonnegut

+1 212 450 4331
eli.vonnegut@davispolk.com

Karen E. Wagner

+1 212 450 4404
karen.wagner@davispolk.com

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