Donald E. West
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The Honorable Judge Mary F. Walrath
United States Bankruptcy Court, District of Delaware
824 North Market Street
5th Floor
Wilmington, DE 19801

Dear Judge Walrath,

I am writing you in regards to case number 08-12229, the bankruptcy proceedings for Washington Mutual, Inc. (WaMu). Although I have much to say and very strong feelings regarding this case, I will endeavor to keep this letter as brief as possible.

I respectfully request that you take any available steps to seriously look into the actions of the FDIC, and to a lesser degree that of JP Morgan/Chase, as they relate to the seizure of WaMu last month. Although I believe there may be room for plenty of blame to be placed upon WaMu management, I feel that there have been too many inconsistencies and questionable practices by the FDIC to go uninvestigated.

In the days leading up to the seizure of WaMu, there was at least one leak to the media regarding the FDIC's behind-the-scenes closed-door negotiations with at least 6 private firms, including JP Morgan/Chase. According to Ms. Bair's own public disclosure, the FDIC's seizure action was prompted and precipitated by this leak and media spotlight. Certainly a media leak had a huge role in the crisis of confidence that caused a run on WaMu's deposits. When the FDIC's own actions contribute to the "failure" of a bank, I believe they own some liability for the result. According to the FDIC's public releases, WaMu's liquidity squeeze was not pre-existing, but rather very targeted. This liquidity issue and run occurred from 9/15 to 9/24. This falls right in place with the media leak's timeline of back-room negotiations out of the public eye.

The bank run on WaMu deposits was largely focused on accounts far above the $100,000 FDIC insurance limit. Deposits of $100,000 and less were mostly intact. The law cited by the OTS and FDIC in their justification of seizure states that the FDIC has the authority to take the action that will cost the least to solve a bank run problem such as this. During a crisis of confidence (partly due to the FDIC's own actions), seizing a 119 year-old institution and rendering shareholder's positions worthless in the middle of a Thursday night was absolutely not the least costly alternative. Certainly not in the midst of a nationwide debate over a financial bailout package, to boot. Many alternatives were available. Temporarily raising deposit insurance to $250,000 would have instilled consumer confidence, rather than shattering it. As this alternative would have resulted in the bank not failing, it would effectively have cost the FDIC and the American taxpayer and consumer absolutely nothing.

FDIC also allowed JP Morgan/Chase to devalue WaMu's mortgage assets by more than $10B (from a $19B loss to a $30B loss on paper). This virtually set WaMu's intangible asset value to zero. This, along with other actions by the FDIC (negotiations behind the back of WaMu), robbed WaMu of the most basic right of American commerce, the right to sell a product (in this case their own bank) at a fair market price. If the FDIC had not bent or changed the rules for the JP Morgan/Chase firesale purchase, WaMu could have potentially garnered a purchase price $15B-20B higher for their banking division on the open market. This number is very similar to that of the Wachovia debacle from the past weeks. Without restating too much of the obvious from the Wachovia situation, suffice it to say that a similar result could very well have resulted with WaMu had the FDIC not acted so abruptly and prematurely. A free-market buyout of WaMu (which management was actively pursuing over the past months) would have resulted in a reasonable purchase price. Shareholders in WaMu would not have been left with nothing. The American public would not have taken such a hit to their confidence in the free market. Please also refer to the case of First City Bancorp v. FDIC in 1993. This is another case settled in favor of a private bank over the FDIC. There is legal precedent behind my request for investigation of the FDIC. In the text of the very law Ms. Bair cites for her authority to seize WaMu, it states that the FDIC is liable as a corporation and not immune from investigation or prosecution in the event of a mishandled bank take-over.

Lastly, I would request a look into the actual situation of WaMu's liquidity and capitalization at the time of seizure. Although FDIC's own regulations state that a 2% or lower level of liquidity gives them the authority to seize a bank, I have seen no proof or justification on this relating to WaMu. By my own calculations using the most recent public data, the worst-case scenario of WaMu's liquidity would have been 12.7%. Obviously this would be far above the rate at which the bank could legally have been seized.
Again, I respectfully request your attention to these matters in the course of investigation, for the good of the WaMu shareholders, and for the greater good of the economy and consumer confidence in general. During these trying times in our economy, the work you are doing in this historic bankruptcy case will set modern precedence and go far to set the expectations of American investors and consumers. I am confident that you will be fair and just in the administration of the law, and I will patiently await your decisions.

Sincerely,

Donald E. West