

FILED

2009 JUL 16 AM 11:00

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

CLERK OF COURT
DEPT. OF COURTS
100 N. MARKET STREET
WILMINGTON, DE 19801

<hr/>		x
<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., et al.,	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	<i>Hearing Date: July 27, 2009</i>
	:	<i>Objection Deadline: July 16, 2009</i>
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RESPONSE TO DEBTORS' SIXTH OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS

To: Clerk of the Court for the United States Bankruptcy Court for the District of Delaware
824 North Market Street, 3rd Floor
Wilmington, DE 19801

Cc: Weil, Gotshal & Manges LLP	Richards, Layton, & Finger, PA
Attn: Marcia L. Goldstein	Attn: Mark D Collins
Attn: Brian S. Rosen	Attn: Chun I Jang
767 Fifth Avenue	920 North King Street
New York, NY 10153	Wilmington, DE 19801

To whom it may concern: I hereby oppose the disallowance and expungement of my claim, with the details listed below:

Court: United States Bankruptcy Court for the District of Delaware

Debtors: Washington Mutual, Inc. et al.

Case No.: 08-12229 (MFW)

Objection Title: Debtors' Sixth Omnibus (Substantive) Objection to Claims

Claimant: Stephen E. Whittaker

Claim No.: 3458

Basis for the Claim: Special Bonus Opportunity/Retention Bonus Agreement("Agreement")



081222909071600000000006

Factual Basis and Legal Argument: The Debtors' objection to this claim relies on their one-sentence assertion that the Agreement was between the Claimant and Washington Mutual Bank. However, nowhere within the Agreement is there even any mention of "Washington Mutual Bank." For the reasons discussed below, Debtors clearly have not met any evidentiary burden of proof that this Agreement was solely entered into by Washington Mutual Bank.

In contrast to the Debtors' naked assertion, the Agreement only refers to "Washington Mutual," which it defines as the "Company" or "WaMu". Washington Mutual, Inc. is a "company." Washington Mutual Bank, on the other hand, is a "bank" and was commonly referred to and defined as the "Bank" in company documents and agreements.

Further supporting the argument of Claimant, the Agreement was signed by Anthony Vuoto, who was an Officer (Executive Vice President) of Washington Mutual, Inc. and member of the Executive Committee of Washington Mutual, Inc. Upon receiving this Agreement, Claimant was aware of this fact and relied on it in determining that Mr. Vuoto had the authority to bind Washington Mutual, Inc.

Further, this Agreement supersedes a previous agreement between the Claimant and Providian Financial Corporation (the "Providian Change in Control") whose successor to the obligations under the Providian Change of Control is Washington Mutual, Inc., as expressly evidenced on the attached amendment to the Providian Change of Control (see Exhibit A).

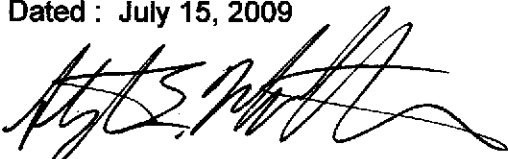
Finally, the Claimant was an in-house counsel for Washington Mutual, Inc. – the holding company. Washington Mutual, Inc. had a strong motive and interest in retaining Claimant to continue to represent the holding company (as well as its subsidiaries). It was Claimant's understanding and belief that Washington Mutual, Inc. was the entity that offered him this retention agreement. Claimant accepted this offer with the same understanding.

In conclusion, the "Washington Mutual" referenced in the Agreement refers to Washington Mutual, Inc. – not Washington Mutual Bank. At the least, Debtors have not met any burden they have to prove otherwise.

Supporting Documentation: Previously supplied Proof of Claim and Attachments and Exhibit A

Contact: Stephen E. Whittaker
115 Crane Ter.
Orinda, CA 94563
Home: (925) 254-5511
Fax: (650) 554-3975
Email: swhittak@visa.com

Dated : July 15, 2009



Stephen E. Whittaker


Exhibit A

AMENDMENT TO CHANGE OF CONTROL EMPLOYMENT AGREEMENT

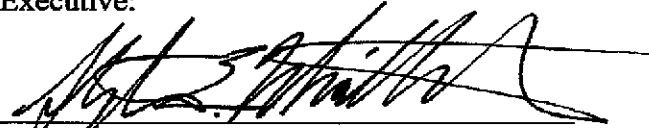
The Change of Control Employment Agreement by and between Stephen Whittaker and Providian Financial Corporation ("Providian"), dated January 27, 2004 is hereby amended by adding the following new sections 9(g) and 12(i):

- 9(g) Notwithstanding any other provision of this Section 9 to the contrary, any Cross-Up Payment shall be paid by the Corporation at the time specified in this Section 9, and all events no later than the end of the calendar year next following the calendar year in which the related taxes are remitted to the applicable taxing authority.
- 12(i) Notwithstanding any provision of this Agreement to the contrary, if, at the time of Executive's termination of employment with Washington Mutual, Inc. or any of its affiliates or subsidiaries, as successors to Providian ("Washington Mutual") he or she is a "specified employee" as defined in Section 409A of the Code, and one or more of the payments or benefits received or to be received by Executive pursuant to this Agreement would constitute deferred compensation subject to Section 409A, no such payment or benefit will be provided under this Agreement until the earlier of (a) the date that is six (6) months following Executive's termination of employment with Washington Mutual, or (b) the Executive's death. The provisions of this Section 12(i) shall only apply to the extent required to avoid Executive's incurrence of any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated thereunder. In addition, if any provision of this Agreement would cause Executive to incur any penalty tax thereunder, Washington Mutual may reform such provision to maintain to the maximum extent practicable the original intent of the applicable provision without violating the provisions of Section 409A of the Code.

Washington Mutual, Inc., Successor to
Providian

By: 
Daryl D. David
Executive Vice President
Chief Human Resources Officer

September 12, 2007
Date

Executive:

Stephen Whittaker

9/25/07
Date