

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re : Chapter 11
WASHINGTON MUTUAL, INC., *et al.*,¹ :
Debtors. : Case No. 08-12229 (MFW)
(Jointly Administered)

Hearing Date: January 28, 2010 at 4:00 P.M.

**OBJECTION OF THE ACTING UNITED STATES TRUSTEE TO BLACK HORSE
CAPITAL MANAGEMENT LLC’S REQUEST FOR ALTERNATIVE RELIEF
CONSISTING OF A RECONSTITUTED COMMITTEE OF
CERTAIN PREFERRED EQUITY HOLDERS
(DOCKET ENTRY # 2186)**

In support of her objection to Black Horse Capital Management LLC’s (“Black Horse”) request for alternative relief consisting of a reconstituted committee of certain preferred equity holders (the “Request”), Roberta A. DeAngelis, Acting United States Trustee for Region 3 (“U.S. Trustee”), by and through her counsel, avers:

INTRODUCTION

1. This Court has jurisdiction to hear and determine the Request.
2. Under 11 U.S.C. § 1102(a)(1), with the exception of “small business” cases, the U.S. Trustee is obligated to appoint an official committee of unsecured creditors in a chapter 11 case and has the discretion to appoint additional committees of creditors or of equity security holders “as the [U.S. Trustee] deems appropriate.”
3. Under 11 U.S.C. § 307, the U.S. Trustee has standing to be heard on the issues raised by the Request.

¹
The Debtors in these cases, and the last four digits of each Debtor’s federal tax identification numbers, are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



GROUND/BASIS FOR RELIEF

4. In its response to the Debtors' motion to disband the Official Committee of Equity Security Holders (the "Equity Committee") and its Request, Black Horse is not entirely clear about what relief is being requested. However, after discussions with Black Horse's counsel, the office of the U.S. Trustee understands that Black Horse requests that this Court issue an order directing the U.S. Trustee to "reconstitute the membership of the official committee of equity holders so that it consists of the Preferred Holders in these cases." Response/Request ¶ 17.

5. In its response to the Debtors' motion, Black Horse incorrectly cites 11 U.S.C. § 1102(a)(2) in support of its request for relief. The U.S. Trustee appointed the Equity Committee pursuant to 11 U.S.C. § 1102(a)(1) – *not* 11 U.S.C. § 1102(a)(2). Accordingly, any order entered by this Court pursuant to 11 U.S.C. § 1102(a)(2) would be redundant. Further, to the extent that Black Horse suggests that this Court has the ability to review the U.S. Trustee's decision on a *de novo* basis, this Court should reject that suggestion.

6. Black Horse's request to reconstitute the Equity Committee is properly considered pursuant to 11 U.S.C. § 1102(a)(4), which permits this Court to, "[o]n request of a party in interest and after notice and a hearing, [] [to] order the United States trustee to change the membership of a committee appointed under [Code section 1102(a)], if the court determines that the change is necessary to ensure adequate representation of [] equity security holders." Given that a majority of the Equity Committee's representatives hold preferred shares, it is unclear why Black Horse believes that the Equity Committee does not adequately represent the interests of preferred holders. Furthermore, the Request is procedurally deficient, as it is a motion (or a cross-motion) that was not properly noticed in accordance with Code section 1102(a)(4) and this Court's Local Rules. *See*

CONCLUSION

WHEREFORE the U.S. Trustee requests that this Court enter an order denying the Request.

Respectfully submitted,

**ROBERTA A. DeANGELIS
ACTING UNITED STATES TRUSTEE**

BY: /s/ Joseph J. McMahon, Jr.
Joseph J. McMahon, Jr., Esquire (# 4819)
Trial Attorney
United States Department of Justice
Office of the United States Trustee
J. Caleb Boggs Federal Building
844 King Street, Room 2207, Lockbox 35
Wilmington, DE 19801
(302) 573-6491
(302) 573-6497 (Fax)

Date: January 26, 2010