IN THE UNITIED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:
WASHINGTON MUTUAL, INC., et al.,
Debtors

Chapter 11
Case No. 08-12229 (MFW)
(Jointly Administered)

The Honorable Mary F. Walrath

Pro Se
Jeffrey S. Schultz, CFA
Trust Investment Officer
American National Bank, As Agent
Claim #2494 and #3015
Statement of Opposition to Debtors' Proposed Amended Joint Plan of Reorganization

We currently have an investment in litigation tracking warrants (LTWs) that were issued many years ago by Anchor Savings Bank FSB and subsequently overseen by Washington Mutual, Inc. We filed with this Court in March 2009 proofs of claim asserting our rights in the current bankruptcy of Washington Mutual, Inc. We oppose the Debtors' Sixth Amended Joint Plan of Reorganization because it does not recognize the rights or the value of the underlying contingent asset attached to the LTWs.

We would suggest that the Court could equitably enhance the economic value to the debtors, protect the LTW holders and potentially reduce the number of lawyers in your Court by allowing third parties to bid for control of the underlying contingent asset attached to the LTWs with the stipulation that the restated and amended warrant agreement dated March 11, 2003 be honored.

As you are well aware there is currently ongoing litigation, *Anchor Savings Bank FSB v. United States No.95-39,* that had a favorable decision by the Honorable Judge Lawrence J. Block of the Federal Claims Court on March 14, 2008, prior to Washington Mutual. Inc. filing for bankruptcy. On July 17, 2008, an amended judgment for $356,454,911 was entered for the plaintiff. The United States appealed the decision to the United States Court of Appeals for the Federal Circuit on September 9, 2008. On

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March 10, 2010, the United States Court of Appeals for the Federal Circuit affirmed the ruling but remanded the case to the Federal Claims Court to determine if the damage award should be increased by an additional $63,000,000 due to an error in the calculation of the damage award. Also remanded was the issue of a tax gross-up intended to make the plaintiff whole after payment of any tax liability. At this moment no final judgment has been made but the Court has affirmed a minimum judgment of $356,454,911.

As background, in December 2000 LTWs were issued by Dime Bancorp to specifically track this litigation and any resulting judgment. In 2002 Washington Mutual acquired Dime Bancorp and executed a new warrant agreement. The warrant agreement basically stated that any favorable judgment after expenses would be split 15% and 85% between the controlling entity and the LTW holders respectively.

The litigation against the United States government dates back to 1982 and involves the failed actions of the FSLIC and the congressional response through the passage of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) during the last financial crisis. Anchor Savings was acquired by Dime Bancorp in 1995. In December 2000 Dime Bancorp, Inc. issued Litigation Tracking Warrants (LTWs) that would allow the holders to participate in the recovery of damages from the government from the litigation. Any benefit to the warrant holders would be 85% of the amount recovered less litigation expenses, warrant expenses and taxes. Dime Savings and Dime Bancorp merged into Washington Mutual Bank and Washington Mutual Inc. (WM) in January 2002. As a result of the merger WM assumed the rights under the litigation against the government, and the LTWs were exercisable for shares of their common stock or other consideration (cash or stock). The amended and restated warrant agreement dated March 11, 2003 between Washington Mutual, Inc. and Mellon Investor Services was included as an exhibit to Form 8-k filed March 12, 2003. We control a number of the LTWs.

The amended and restated warrant agreement dated March 11, 2003 confers with it an obligation to distribute the value of any recovery, net of expenses and litigation management fee, to the LTW holders.

In September of 2008 JPMorgan Chase (JPM) acquired certain assets and liabilities of Washington Mutual. At the time of the takeover I personally contacted Washington Mutual, the FDIC and JPM's investor relations department to determine who would control the litigation of *Anchor Savings Bank vs. US, U.S. Court of Appeals for the Federal Circuit, Docket 2008-5175*. At that time none of the parties, outside of WM, were aware of the litigation and the potential windfall if there was a favorable appeal.

We have not seen in the documents where this contingent asset was sold to JPM. In the US Court of Appeals for the Federal Circuit, *Anchor Savings Bank, FSB v. United Sates No. 95-39*, Edwin Fountain filed a certificate of interest naming Washington Mutual Inc. as the real party of interest on September 22, 2008, and then filed again on March 25, 2009, for JPMorgan Chase Bank, N.A. In the Purchase and Assumption Agreement the FDIC as receiver of Washington Mutual Bank sold to JP Morgan Chase Bank, N.A. This litigation, contingent asset or action was not scheduled. This was litigation controlled by the holding company and not the bank. Bottom line the litigation was not identified or scheduled as part of the purchase and assumption agreement between the FDIC and JPM.

As long as the warrant agreement is honored, the LTW holders should be indifferent about who controls the Anchor Savings litigation and as such who receives the 15% litigation net management fee due them under the amended and restated warrant agreement. We believe that the LTW's are a separate obligation, distinct from the claims of other creditors and certainly not within the rights of the FDIC and/or JPM to seize without consideration.

There are multiple legal arguments supporting the claims of the LTW holders (e.g. fraudulent conveyance, contract obligations of the security, proof of the intent as evidenced by the SEC's analysis of the original transaction, press releases originally made by Dime Bancorporation that the LTWs transferred effective economic value to the holders therein, written assignment acknowledgement by WM of the LTWs) and they are not mutually exclusive. However, they each provide different pathways to reach the same conclusion that the LTW holders are entitled to 85% of the net amount of the Anchor Savings litigation related recovery.

At this juncture it is not apparent that anyone is looking out for the interests of the LTWs and as such we strenuously object to any settlement that tries to exclude the LTWs from their unique and undeniable rights which set them apart from the other claimants. We believe that all parties are intentionally ignoring the warrant agreement filed with the SEC. The LTWs are protected by a legitimate agreement and we and other investors relied upon the warrant agreement as a basis for investment. We have filed a claim with the Court in order to protect our rights and substantiate our claim.

As a current warrant holder we are disappointed that the debtor has minimized the value of this contingent asset. We are confused why the debtor or the FDIC have not tried to maximize the value of controlling the litigation since the current party of interest in the U.S. Court of Appeals is entitled to 15% after legal expenses of any award as documented in the warrant agreement that has been in place for a number of years.

In fact, the Disclosure Statement is misleading, at best, in the amount that is reserved for the LTW's potential liability. In the calculation $180,594,042 is reserved for estimated taxes. As previously noted the United States Court of Appeals for the Federal Circuit remanded the case back to the Federal Claims Court to determine the issue of a tax gross-up intended to make the plaintiff whole after payment of any tax liability. At a minimum the correct calculation for determining the amount that should be reserved for the LTW Claimants should be $337,729,638 calculated as follows:

Prospective Recovery from Anchor Litigation	$419,000,000
Less Estimated Litigation Expense:	20,331,614
Less Estimated LTW Trading Expenses:	1,758,401
Less Estimated Taxes (None due to tax gross-up):	0
Net Minimum Award before Tax Gross-Up	$397,328,985
Adjusted Litigation Recovery to LTWs @ 85%	$337,729,638
Adjusted Amount to Controlling Entity @ 15%	$59,599,347

We believe it is a fraud to include estimated taxes when it is known full well that the Court of Appeals has approved the tax gross up. It is deceptive to tell the Court that someone will have to pay taxes on the award and therefore the amount necessary to reserve for taxes on the LTW exposure is unreliable. This is not simple oversight. It is either intentional or pure idiocy.

We believe the litigation has monetary value and would propose that the debtor request JPM to submit a bid to maintain control of the litigation, with the stipulation the restated and amended warrant agreement dated March 11, 2003 be honored. An even better solution would be to allow third parties to bid for the litigation with the same stipulation, that they honor the amended and restated warrant agreement.

A bidding process would allow the debtors to maximize the value of this contingent asset and avoid the backdated *sham* Section 363 sale that is currently contemplated. At the very least we would request that if the litigation is transferred to JPM that they be required to enter into and embrace the amended and restated warrant agreement dated March 11, 2003, as required by that document. If no bidders show an interest than we would agree that the LTWs are indeed a worthless security and should not have a voice in the Plan of Reorganization.

I respectfully ask that the long term investors in the LTWs be protected. The outcome of the litigation is owned by the LTWs by a valid agreement. The LTWs have over $356 million at stake in the current litigation based on the latest judgment (No.95-39C). I am confident the Court will work to protect the fair and equitable interests of the LTW holders.

Please feel free to contact me if you have questions regarding this issue or need additional supporting documents.

Sincerely,

Jeffrey S. Schultz, CFA
Vice President/Trust Investment Officer
American National Bank
2732 Midwestern Parkway
Wichita Falls, TX 76308

Attachments

SEC Regulations Committee Highlights, Joint Meeting with AICPA and SEC, March 12, 1998 (relevant pages)

Dime Announces Distribution of Litigation Track Warrants, Press Release, December 18, 2000

Certificate of Interest, United States Court of Appeals for the Federal Circuit, September 22, 2008

Certificate of Interest, United States Court of Appeals for the Federal Circuit, March 25, 2009

To: Chambers of the Honorable Mary F. Walrath
Bankruptcy Court
824 Market St.
3rd Floor
Wilmington, DE 19801

cc: Washington Mutual, Inc.
Attn: Charles Edward Smith, Esq.
925 Forth Ave.
Seattle, WA 98104

cc: Weil, Gotshal & Manges, LLP
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cc: Richards, Layton & Finger, P.A.
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cc: Quinn, Emanual, Urquhart & Sullivan, LLP
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cc: Akin, Gump, Strauss, Hauer & Feld, LLP
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cc: Landis, Rath & Cobb, LLP
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919 Market St., Suite 1800
Wilmington, DE 19899

cc: Office of the United States Trustee
844 King St., Room 2207, Lockbox 35
Wilmington, DE 19899-0035
Attn: Jane Leamy, Esq.

cc: Andrews Kurth LLP
Attn: Paul N. Silverstein, Esq.
450 Lexington Ave.
New York, NY 10017

cc: King & Spalding LLP
Attn: Arthur J Steinberg, Esq.
1185 Avenue of the Americas
New York, NY 10036-4003

ATTACHMENTS

SEC Regulations Committee Highlights

Joint Meeting with SEC Staff - March 12, 1998

Location: SEC Headquarters – Washington, D.C.

NOTICE: The AICPA SEC Regulations Committee meets periodically with the staff of the SEC to discuss emerging technical accounting and reporting issues relating to SEC rules and regulations. The purpose of the following highlights is to summarize the issues discussed at the meetings. These highlights have not been considered and acted on by senior technical committees of the AICPA, or by the Financial Accounting Standards Board, and do not represent an official position of either organization.

In addition, these highlights are not authoritative positions or interpretations issued by the SEC or its staff. The highlights were not transcribed by the SEC and have not been considered or acted upon by the SEC or its staff. Accordingly, these highlights do not constitute an official statement of the views of the Commission or of the staff of the Commission.

I. **ATTENDANCE**

A. **SEC Regulations Committee**

Robert H. Herz, Chairman
Val Bitton
Mark Bagaason
Ernie Baugh
Ed Coulson
David Einhorn
Jay Hartig
Terri Iannaconi
Rodney Liddle
Eric Press
Tony Ressino
Amy Ripepi
Stewart Sandman
Bill Travis
Bill Yeates

B. **Securities and Exchange Commission**

Office of the Chief Accountant

Jane Adams, Deputy Chief Accountant
Scott Bayless, Assistant Chief Accountant
Donna Coallier, Professional Accounting Fellow
Jeffrey Jones, Professional Accounting Fellow
Mike Kigin, Associate Chief Accountant
Leslie Overton, Assistant Chief Accountant
Armando Pimentel, Professional Accounting Fellow
Cody Smith, Professional Accounting Fellow
Walter Teets, Academic Accounting Fellow
Bob Uhl, Professional Accounting Fellow

Division of Corporation Finance

Robert Bayless, Chief Accountant
Craig Olinger, Deputy Chief Accountant

Division of Market Regulation

Matt Hughey

C. **AICPA**

Annette Schumacher Barr, Technical Manager
Brad Davidson, Technical Manager

D. **Guests**

Kenny Chatelain, Coopers & Lybrand
Debra Mac Laughlin, BDO Seidman

II. ORGANIZATIONAL/STAFF CHANGES

Robert Bayless reported that the Division of Corporation Finance will be expanding the number of offices in operations from 9 to 12. A list of the new offices is included as Attachment A to these highlights.

Jane Adams announced that the Office of the Chief Accountant is seeking an additional professional accounting fellow with a background in financial instruments and financial services. Applications for this position will be accepted until April 10th, 1998.

III. STATUS OF COMPANY REGISTRATION

Craig Olinger reported that press reports regarding SEC proposal of "company registration" rules in the summer of 1998 are not entirely accurate. Proposed rules refining the registration process are expected by the end of 1998. The staff does not consider the proposal to be "company registration." Instead, it will be a comprehensive look at the entire registration process. Issues to be addressed may include:

- The communications outside the prospectus at or near the time of an offering
- Prospectus delivery requirements
- Private versus public offerings-distinctions and integration
- Improvements in the quality of disclosures
- The staff's administrative process regarding registrations.

IV. OBSERVATIONS ON SAB 98

Cody Smith made the following staff observations relating to Staff Accounting Bulletin (SAB) No. 98:

On February 3, 1998, the Commission issued SAB 98. SAB 98 makes technical revisions to various existing SABs to be consistent with the requirements of FASB Statement No. 128, Earnings Per Share. The SAB is effective immediately.

registrant may be unable to present a pro forma income statement depicting the joint venture formation because financial statements of the business contributed by the other party are not available. Those financial statements and related pro forma financial statements need not be filed until 75 days after the transaction is consummated. Pro forma financial statements depicting a significant disposition are required to be filed within 15 business days of the disposition. In these circumstances, the initial Form 8-K reporting the transaction should include a narrative description of the effects of the disposition, quantified to the extent practicable, with complete pro forma information depicting the effects of the exchange of interests furnished at the time that the audited financial statements of the acquired business are filed.

XVII. PRORATA CONSOLIDATION

Bob Herz noted that Robert Bayless has asked for the Committee's views about when prorata consolidation is considered appropriate. Bob stated that although no formal research was done, the Committee discussed the issue and agreed that prorata consolidation (other than in foreign issuer filings) is generally considered appropriate only for undivided interests. While this is most prevalent in some industries such as in oil and gas and construction projects, it may be appropriate in other circumstances provided there are undivided interests. However, "synthetic" undivided interests (such as might be created with corporate structures) should not qualify for such treatment. A Committee member noted that prorata statements could also be shown on a supplemental basis.

XVIII. PRO FORMA FINANCIAL STATEMENTS THAT INCLUDE COST-SAVING ADJUSTMENTS

Robert Bayless agreed to share ideas with the Filing Issues Task Force related to reporting expected cost savings and similar matters in pro forma financial statements. The emphasis of this effort will be to help issuers present information that is meaningful to investors while clearly distinguishing pro forma financial information in accordance with regulation S-X from other forward-looking information.

XIX. POOLING OF INTEREST CRITERIA

. Tainted Treasury Shares and the Acquisition of Preferred Shares

Jeff Jones discussed a pooling issue in which the company wanted to acquire the minority interest of a subsidiary in a target company. The registrant proposed to issue tainted treasury shares to acquire the outstanding minority interest and thereby cure the taint for the instant pooling transaction. The staff concluded that issuing tainted treasury shares for this purpose would not cure the taint for the instant pooling transaction. The staff would reach a similar conclusion if an issuer proposed to use tainted treasury shares to acquire other securities of the target company.

A. Litigation Tracking Warrants

Donna Coallier discussed a pooling issue in which a registrant had a contingent asset that could be realized upon favorable settlement of certain

litigation. The registrant did not believe that the trading value of its shares in the market properly included the value of the contingent asset. As a result, the registrant proposed to issue a warrant that they believed would capture and isolate the value of the contingent asset. The registrant planned to issue one warrant to each shareholder for each share outstanding as of a date shortly following a business combination. At issue was whether such an issuance would preclude pooling of interest accounting for the business combination that preceded the issuance.

The planned warrants were to be detachable and freely tradable separately from the common stock of the company. The warrants would be issued equally to issuer and combining company shareholders alike. The warrant would give the holder the right to obtain a variable amount stock for nominal consideration. The number of shares the holder available at exercise would vary based upon the amount of settlement received from the litigation. As a result, common stockholders that do not or cannot exercise warrants upon settlement of the litigation will be diluted to the extent of exercise by warrant holders that do exercise.

The staff concluded that if the company issued these warrants subsequent to consummation of a business combination, pooling of interest accounting would not be appropriate for the business combination. The staff believed that the instrument effectively separated the combined entity into two components: the contingent asset and the remainder of the company. Upon issuance of the warrant, the shareholders would be able to trade the value of the contingent asset separately from the rest of the company's value. The staff believed that such an ability was inconsistent with the introduction to paragraph 48 which requires that there be no planned transactions that are inconsistent with the combining of the entire existing common stock interests of the combining companies. In addition, the staff believed that the warrant issuance has the same economic effect as a spin-off of the contingent asset, which would be precluded by paragraph 48c.

B. **Systematic Patterns**

Donna Coallier discussed a pooling issue related to systematic patterns. She referred to a registrant that had submitted a formulaic systematic pattern based on the company's projections of annual treasury stock needs. The company projected its treasury stock needs based on the degree to which vested options were in or out of the money and historical exercise experience that had been compiled by its human resources department. The systematic pattern provided that the annual estimate of share needs would be repurchased ratably each day, after giving effect to legal black out periods. The staff concurred that the repurchase program described by the registrant qualified as a systematic pattern since it had explicit criteria that specified the amount and timing of shares to be repurchased.

However, in the first quarter in 1997, a decision was made to purchase additional shares beyond the number specified by systematic pattern. Specifically, due to sharp increases in the company's stock price, the company believed that a larger number of shares would be purchased in the first quarter, and adjusted repurchases accordingly. The systematic pattern

Business Services Industry

Dime Announces Distribution of Litigation Tracking Warrants

Business Wire, Dec 18, 2000

Business Editors

NEW YORK--(BUSINESS WIRE)--Dec. 18, 2000

Dime Bancorp, Inc. (NYSE: DME) today announced that its Board of Directors has declared a distribution to common stockholders of a substantial portion of Dime's economic interest in its pending "goodwill" lawsuit against the United States government through the issuance of Litigation Tracking Warrants(TM) (LTW(TM)s).

Dime has set the close of business on December 22, 2000 as the record date for the determination of those stockholders eligible to receive LTWs. Each eligible stockholder will receive one LTW for each share of Dime's common stock held on the record date. Dime will distribute the LTWs to eligible stockholders beginning on December 29, 2000. The LTWs will be listed on the Nasdaq National Market under the trading symbol DIMEZ (CUSIP number 25429Q 11 0) and will begin trading following the record date. Dime understands that its common stock will continue to trade on the New York Stock Exchange with "due bills" (reflecting a seller's obligations to deliver LTWs when received) from December 20, 2000 until the "ex-distribution date," which will be January 2, 2001 - the first business day after the December 29th distribution date.

At September 30, 2000, Dime had assets of $25.2 billion and deposits of $13.9 billion. Its principal subsidiary, The Dime Savings Bank of New York, FSB (www.dime.com), is a regional bank serving consumers and businesses through 127 branches located throughout the greater New York City metropolitan area. Directly and through its mortgage banking subsidiary, North American Mortgage Company (www.namc.com), Dime also provides consumer loans, insurance products and mortgage banking services throughout the United States.

Certain statements in this press release may be forward-looking. A variety of factors could cause Dime's actual results and experience to differ materially from the anticipated results or other expectations expressed in such forward-looking statements. The risks and uncertainties that may affect such forward-looking statements include the vagaries of litigation, the timing and occurrence (or non-occurrence) of events that may be subject to circumstances beyond Dime's control, market fluctuations, and changes in applicable laws and regulations or interpretations thereof.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Anchor Savings Bank, FSB v. United States

No. 2008-5175

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party) Appellee/Cross-Appellant certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

Anchor Savings Bank, FSB

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

Washington Mutual, Inc.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Jones Day, by: George T. Manning, Donald B. Ayer, Peter F. Garvin, Michael A. Carvin, Adrian Wager-Zito, Edwin L. Fountain, Geoffrey S. Irwin, Michael S. Fried, Debra S. Clayman

22 SEPT 08
Date

Edwin L. Fountain
Signature of counsel

EDWIN L. FOUNTAIN
Printed name of counsel

Please Note: All questions must be answered

cc: John J. Todor, Esq., U.S. Department of Justice

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

SEP 22 2008

JAN HORBALY
CLERK

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Anchor Savings Bank, FSB v. United States

No. 2008-5175, -5182

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party) Plaintiff-Cross Appellant certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

Anchor Savings Bank, FSB

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

JPMorgan Chase Bank, N.A.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

JPMorgan Chase & Co.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Jones Day: George T. Manning, Donald B. Ayer, Peter F. Garvin, Michael A. Carvin, Adrian Wager-Zito, Edwin L. Fountain, Gregory A. Castanias, Michael S. Fried, Geoffrey S. Irwin, Debra Satinoff Clayman, Erin M. Fishman, and Hashim M. Mooppan. No longer with Jones Day: Stefanie F. Roemer, Thaddeus J. Burns, and C. Thomas Long.

25 MAR 2009
Date

Edwin L. Fountain
Signature of counsel

Edwin L. Fountain
Printed name of counsel

Please Note: All questions must be answered

cc: Jeanne E. Davidson, Esq., U.S. Department of Justice

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U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

MAR 25 2009

JAN HORBALY
CLERK

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