**UNITED STATES BANKRUPTCY COURT**
**DISTRICT OF DELAWARE**

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| *In re* | : | Chapter 11 |
| WASHINGTON MUTUAL, INC., *et al.*, | : | Case No. 08-12229 (MFW) |
| Debtors. | : | (Jointly Administered) |
| BROADBILL INVESTMENT CORP., | : | Adversary Proceeding Case No. 10-50911 (MFW) |
| Plaintiff, | : | |
| v. | : | |
| WASHINGTON MUTUAL, INC., | : | |
| Defendant. | : | |
| NANTAHALA CAPITAL PARTNERS, LP, and BLACKWELL CAPITAL PARTNERS, LLC, | : | |
| Intervenor-Plaintiffs, | : | |
| v. | : | |
| WASHINGTON MUTUAL, INC., | : | |
| Defendant-in-Intervention. | : | |

**DECLARATION OF CHARLOTTE CHAMBERLAIN, Ph.D**
**IN SUPPORT OF ENTRY OF AN ORDER CONFIRMING**
**THE SIXTH AMENDED JOINT PLAN OF AFFILIATED DEBTORS**
**PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

I, Charlotte Chamberlain, Ph.D., hereby declare that the following is true to the best of my knowledge, information, and belief:

## I. BACKGROUND

### A. Professional Expertise

1. I am an independent consultant doing business as Chamberlain Associates, an economics and finance research firm. I specialize in the fields of banking, economics and

finance. Employees of Analysis Group, Inc., an economics research and consulting firm, assisted me in the preparation of the expert report (the "Report") annexed as Exhibit A to this Declaration.[1]

2. I hold an M.A. and a Ph.D. in economics from Cornell University. I have been a member of the Board of Trustees of the Los Angeles Chartered Financial Analyst ("CFA") Society and the National Association of Business Economists. I am currently a member of both organizations. My expertise includes economics, equity analysis and analysis of market-making and trading in equity securities.

3. From February 1997 until October 2005, I was a managing director and equity analyst at Jefferies & Company Inc. ("Jefferies"), a broker-dealer and investment banking firm. At Jefferies, I conducted equity research focusing on the financial services sector, including banks, thrifts and market makers and traders. While at Jefferies, I was designated by *The Wall Street Journal*, *Forbes* and Zacks Investment Research as one of the best sell-side equity research analysts in those sectors of the financial service industry. At the time, I held National Association of Securities Dealers ("NASD") Series 7, 63, 86 and 87 licenses (now lapsed).

4. As a senior analyst at Jefferies, starting in May 1998, I initiated equity analysis and published research reports on litigation participation securities and litigation tracking warrants, specifically the California Federal Bank Contingent Litigation Recovery Participation Interests (CALGZ), California Federal Bank Secondary Contingent Litigation Recovery Participation Interests (CALGL), Coast Federal Litigation Contingent Payments Rights Trust (CCPRZ), Bank United Litigation Contingent Payment Rights (BNKUZ) and Golden State

[1] This Declaration and the annexed Report are being offered in the event that Washington Mutual, Inc.'s motion for summary judgment in the adversary proceeding captioned *Broadbill Investment Corp. v. Washington Mutual, Inc.*, Adv. Pro. No. 10-50911 (MFW), is not granted.

Bancorp Litigation Tracking Warrants (GSBNZ). To the best of my knowledge, I was the only equity analyst who covered litigation participation securities.

5. In addition, I discussed the litigation tracking warrants and litigation participation securities regularly and extensively with equity investors, Jefferies salespeople and market makers. Jefferies also sponsored a seminar on litigation tracking warrants and litigation participation securities for institutional investors in New York in December 1998, which I moderated and in which I participated as a speaker.

6. Both the litigation tracking warrants and litigation participation securities identified in paragraph 4 above were listed on NASDAQ, and Jefferies was an equity market maker in all five securities, as disclosed at the end of my research reports.

7. Prior to joining Jefferies, I was a Vice President at Wedbush Morgan, conducting equity research covering West Coast banks, thrifts and insurance companies.

8. I previously served as vice chair of NewAmerica Savings and before that I was executive vice president and director of strategic planning at Golden State Bancorp ("GSB"), the holding company for Glendale Federal Bank ("Glendale"). During my tenure, Glendale acquired Broward Savings, the merger that ultimately resulted in Golden State Bancorp distributing the GSBNZ equity securities to its shareholders in 1998.

9. While at Glendale, I was appointed to the Thrift Institutions Advisory Council of the Federal Reserve Board of Governors and the Real Estate Advisory Board for the University of California at Berkeley. Prior to joining Glendale, I was Chief Economist and Director of Policy and Economic Research at the Federal Home Loan Bank Board during the time supervisory goodwill was first used to encourage healthy thrifts to acquire failing institutions.

10. I submit this Declaration and the annexed Report in support of confirmation of the Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated October 6, 2010 (as has and may be further modified, the "Plan"), by providing my expert opinion and analysis concerning the litigation tracking warrants at issue in the adversary proceeding captioned *Broadbill Investment Corp. v. Washington Mutual, Inc.*, Adv. Pro. No. 10-50911 (MFW) (the "Broadbill Adversary Proceeding").[2] In my opinion, these warrants constitute equity interests in WMI and should be treated as such pursuant to the terms of the Plan. I am familiar with the terms and provisions of the Plan and the related Disclosure Statement (the "Disclosure Statement") as they relate to the litigation tracking warrants at issue in this case.

**B. Summary of Assignment**

11. I have been engaged by counsel for Washington Mutual, Inc. ("WMI") to provide expert testimony in this chapter 11 case and the related Broadbill Adversary Proceeding pending in this Court. Specifically, I have been asked to provide an overview of the historical events and financial conditions that led to the issuance of the litigation tracking warrants at issue, to provide an overview of the features and benefits of these instruments, to discuss how these instruments have been viewed by market participants, and to opine on whether or not the litigation tracking warrants issued by Dime Bancorp, Inc. ("Dime"), as subsequently assumed by WMI, constitute equity securities (the "Dime LTWs"). I have also been asked to provide preliminary observations on certain topics discussed in Plaintiffs' Memorandum of Law in Opposition to

[2] My curriculum vitae, a copy of which is attached to the Report as Appendix A, provides further details on my professional background and specifies the testimony that I have given in the past four years as an expert witness. As stated in the Report, I am being compensated at a rate of $600 per hour for my work on this case, including any testimony. My compensation is not contingent upon my findings or the outcome of this matter.

Defendant's Motion for Summary Judgment, filed in the Broadbill Adversary Proceeding on November 17, 2010.

12. I have reviewed documents and other materials provided through discovery in the Broadbill Adversary Proceeding and obtained from public sources. These materials include, among others: the Amended Complaint, dated September 3, 2010; the Memorandum of Law in Support of the Motion of Defendant Washington Mutual, Inc. for Summary Judgment and the declaration and exhibits submitted in support thereof, dated October 29, 2010; Plaintiffs' Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment and the declaration and exhibits submitted in support thereof, dated November 17, 2010; Defendant Washington Mutual, Inc.'s Reply Memorandum of Law in Further Support of Its Motion for Summary Judgment, dated November 22, 2010; and the relevant registration statement and certain agreements governing or related to litigation participation certificates ("LPCs") and litigation tracking warrants, including the Dime LTWs, as well as various textbooks and academic research related to the issues in this case.[3]

## II. SUMMARY OF CONCLUSIONS IN THE REPORT

13. Based on my analysis of the relevant documents, including the warrant agreements, and my education and experience as a federal thrift regulator, savings institution executive, and equity analyst covering thrift holding companies, LPCs and litigation tracking warrants, I have the following opinions:

- The method and form of payouts on LPCs and litigation tracking warrants, including the Dime LTWs, varied by issuer, as detailed in their respective offering prospectuses. However, the two main differentiating factors were

[3] The documents, materials, and other information I have relied upon in forming my opinions are listed in the annexed Report or in Appendix B thereto.

whether the holder was entitled to payment in (1) cash (LPCs) or (2) equity shares of the issuer (litigation tracking warrants, including the Dime LTWs).

- Because the Dime LTWs were exercisable in equity shares of the issuer, they were viewed by equity market participants as functionally and financially equivalent to a rights offering[4] or secondary stock offering.[5] Investors expected that any net litigation recovery would be accounted for on the holding company's balance sheet as an increase in net worth and additional equity shares would be distributed to the holders of the litigation tracking warrants.

- The relevant warrant agreements, which define the Dime LTWs as conditional interests in Dime common stock, support my conclusion that the Dime LTWs were functionally and financially equivalent to a shareholder rights offering.

- Although Dime's distribution of the Dime LTWs to its common shareholders allowed equity market participants to value the potential recovery from Anchor Savings Bank's pending goodwill litigation separately from the value of Dime itself (and subsequently WMI), in fact the two shared common equity risks. The shared equity risk became apparent when WMI's stock price declined dramatically (from $9.24 to

[4] *See* Report n.1.

[5] *See* Report n.2.

$2.26 between March 17, 2008, and September 24, 2008), as the mortgage market crisis and the subsequent run on its deposits eviscerated its business. Despite continuing good news regarding Anchor Saving Bank's pending litigation recovery during the same period, the price of the Dime LTWs declined dramatically as well (from $0.355 to $0.13 between March 17, 2008, and September 24, 2008).

- From my experience interacting with Jefferies' clients, equity investors understood the shared equity risk between litigation tracking warrants and the issuing thrift holding company's common stock.

## III. RESEARCH AND ANALYSIS CONTAINED IN THE REPORT

### A. <u>The Origins of Litigation Participation Securities</u>

14. As stated in the Report, the history of the savings and loan industry is well covered in the pleadings filed in the Broadbill Adversary Proceeding. The purpose of my Report is not to repeat the entire history, but to emphasize certain aspects that I find relevant to the question of whether litigation tracking warrants should be considered equity securities – namely, the regulatory and competitive forces that have contributed to successive periods of rapid consolidation in the industry. In such an environment, firms' equity valuations take on added importance.

#### *1. Regulatory context*

15. "Supervisory goodwill" lawsuits resulted from regulatory changes that significantly affected the entire thrift industry.[6] These regulatory changes began with the

[6] *See* Report n.3.

deregulation of thrift deposit interest rates by the Depository Institutions Deregulation and Monetary Control Act of 1980,[7] continued with the relaxation of capital requirements and expansion of thrifts' risk and leverage capabilities by the Garn-St. Germain Act in 1982,[8] and culminated in the re-regulation of the industry's capital requirements and abolishment of supervisory goodwill by the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA") in 1989.[9]

16. Throughout this period of regulation and deregulation, savings and loans ("S&Ls") experienced widespread losses and insolvencies,[10] largely attributable to the timing of the regulatory changes in conjunction with the rise and fall of interest rates. When interest rate competition between thrifts and commercial banks prompted Congress to expand Regulation Q policy to limit the deposit interest charged by thrifts in 1966,[11] for example, subsequent increases in interest rates in the late 1970s and early 1980s wreaked havoc on thrifts' profitability.[12] Higher interest rates caused widespread disintermediation (net depository outflows) as depositors pursued alternative investments.[13] The resulting competition severely harmed the profitability of thrifts, and sparked the S&L insolvencies that continued over the next decade.[14]

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[7] *See* Report n.4.

[8] *See* Report n.5.

[9] *See* Report n.6.

[10] *See* Report n.7.

[11] *See* Report n.8.

[12] *See* Report n.9.

[13] *See* Report n.10.

[14] *See* Report n.11.

17. The Monetary Control Act of 1980 and the Depository Institutions Deregulation Committee ("DIDC") attempted to combat the disintermediation by undoing the regulation of interest rate ceilings under Regulation Q.[15] This led to the introduction by thrifts of new investment products designed to compete with money market mutual funds.[16] Not only did these alternative investments fail to compete with money market funds, and, therefore, fail to bring in the desired deposits and associated revenues, but higher interest rates also destroyed the historical spread that thrifts had enjoyed between the low interest paid out on their short-term deposits and higher interest received on their long-term mortgage loans.[17] Additionally, the growing market in mortgage-backed securities and recession-induced increases in default rates further destroyed the profitability of S&Ls and led to continued insolvencies.[18]

18. The Garn-St Germain Act of 1982 directed the DIDC to authorize new products that could compete with money market funds, to eliminate the remaining ceilings on interest rates, and to provide thrifts with the ability to take on riskier investments at higher leverage ratios.[19] Garn-St Germain also lifted restrictions on the corporate structure of S&Ls, encouraging failing thrifts to raise private capital through conversion from mutual ownership to stock ownership.[20] Because the high number of insolvencies persisted, however, the Federal Savings and Loan Insurance Corporation ("FSLIC") remained in jeopardy.[21] As a result, the

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[15] *See* Report n.12.

[16] *See* Report n.13.

[17] *See* Report n.14.

[18] *See* Report n.15.

[19] *See* Report n.16.

[20] *See* Report n.17.

[21] *See* Report n.18.

Federal Home Loan Bank Board encouraged the acquisition of insolvent thrifts by healthy thrifts by creating an accounting asset called supervisory goodwill, which could be included toward thrifts' capital requirements.[22] Despite the increase in real private capital from initial public offerings and regulatory capital from supervisory goodwill, the FSLIC was insolvent by the end of 1986.[23] Thrifts with billions in losses and hundreds of billions in assets failed in increasing numbers, due to risky lending and insufficient capital to cover credit defaults.[24]

19. In response to the failures, on August 9, 1989, Congress enacted FIRREA, which increased capital requirements for thrifts and commercial banks.[25] Subsequently, the Office of Thrift Supervision ("OTS") issued regulations that began the elimination of supervisory goodwill in regulatory capital calculations.[26] As a result, hundreds of thrifts became insolvent.[27]

*2. Initiation of the supervisory goodwill lawsuits*

20. In the early 1990s, thrift firms filed more than 100 breach of contract lawsuits against the federal government. In early July 1996, the U.S. Supreme Court held that the government was liable for breach of contract to the plaintiffs in the consolidated cases *Winstar, Statesman and Glendale v. U.S.* Glendale Federal sought roughly $1.9 billion in damages while California Federal sought roughly $1.6 billion. Glendale Federal's trial to determine the amount of damages commenced on February 24, 1997 in the U.S. Court of Federal Claims, while California Federal's damages trial started in late 1998.

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[22] *See* Report n.19.

[23] *See* Report n.20.

[24] *See* Report n.21.

[25] *See* Report n.22.

[26] *See* Report n.23.

[27] *See* Report n.24.

21. On April 12, 1999, the trial court denied lost profit damages but awarded $909 million in restitution and reliance damages to Glendale Federal.[28] On February 16, 2001, the U.S. Court of Appeals vacated the trial court's judgment.[29] In 2002, the U. S. Court of Federal Claims awarded Glendale Federal $381 million in reliance damages, but denied any restitution damages.[30] This decision was affirmed in the U.S. Court of Appeals on August 9, 2004.[31] In 2002, the Federal Circuit Court denied California Federal's lost profit damages, reliance damages and restitution damages, but awarded $23 million in compensation for the cost of replacing regulatory capital due to FIRREA.[32] On January 19, 2005, the U.S. Court of Appeals upheld this decision.[33]

*3. Anchor Savings Bank*

22. On January 13, 1995, Anchor Savings Bank ("Anchor") filed suit against the U.S. government in the Court of Federal Claims, alleging that, through FIRREA, the government breached its obligations under the supervisory merger contracts related to supervisory goodwill resulting from Anchor's acquisition of several failing thrifts between 1982 and 1985.[34] Dime then acquired Anchor and assumed Anchor's rights under the litigation. On December 22, 2000, Dime distributed a litigation tracking warrant for each share of its common stock outstanding as

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[28] *See* Report n.25.

[29] *See* Report n.26.

[30] *See* Report n.27.

[31] *See* Report n.28.

[32] *See* Report n.29.

[33] *See* Report n.30.

[34] *See* Report n.31.

of that date subject to the value of any recovery in the Anchor litigation. On January 4, 2002, Dime merged into WMI.[35]

23. In multiple rulings in 2002, the U.S. Court of Federal Claims found that the government had breached its supervisory goodwill contracts with Anchor through the implementation of FIRREA. On March 14, 2008, the U.S. Court of Federal Claims awarded Anchor $382 million in recoverable damages, plus an undetermined amount for a gross-up of tax liabilities.[36] On July 16, 2008, the court reduced the judgment to approximately $356 million. On March 10, 2010, the Federal Circuit Court of Appeals affirmed the decision and remanded the case to the Court of Federal Claims to determine whether that court had made a calculation error and should increase the damage award by as much as an additional $63 million.[37]

**B. <u>Purpose, Benefits, and Features of Litigation Participation Securities</u>**

24. With such large damage awards being sought, the boards of directors of the thrift holding company litigants wanted to split ownership of the potential litigation recoveries from ownership of the thrift franchises.[38] Although the directors expected shareholders to benefit from pending awards in due time, uncertainty about both the timing of final decisions and the magnitude of the potential awards complicated valuations of holding companies. Consequently, the directors were frustrated in their efforts to explore merger opportunities.[39]

25. For example, the maximum potential litigation recovery for Golden State Bancorp was $1.9 billion, more than 80 percent of the holding company's $2.3 billion market

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[35] *See* Report n.32.

[36] *See* Report n.33.

[37] *See* Report n.34.

[38] *See* Report n.35.

[39] *See* Report n.36.

capitalization at the end of April 1998.[40] Thus, even small changes in market expectations as to the timing and/or amount of potential litigation recoveries could cause material fluctuations in the company's share price.

26. The thrifts therefore issued securities representing interests in the prospective damage awards. As discussed further below and in the Report, these securities took two basic forms: those that gave holders the right to receive a defined portion of the proceeds in cash (i.e., LPCs); and those that gave holders the right to receive common stock of the issuing thrift equivalent in value to a defined portion of the litigation proceeds (i.e., litigation tracking warrants, including the Dime LTWs).

*1. The Precedent Litigation Participation Securities — CALGZ, CALGL and CCPRZ*

27. CalFed, Inc. ("CalFed," the holding company of California Federal Savings) and Coast Savings Financial, Inc. ("Coast," the holding company of Coast Federal Savings) issued the first litigation participation securities, both of which provided holders the right to receive a portion of the proceeds from any damages award in cash.

28. CalFed issued two classes of securities to its shareholders: the California Federal Bank Contingent Litigation Recovery Participation Interests (NASDAQ: CALGZ) in 1995 and, in connection with its acquisition by First Nationwide, the California Federal Bank Secondary Contingent Litigation Recovery Participation Interests (NASDAQ: CALGL) in 1996. The structure of the securities provided that CalFed (or its successor) would retain the majority of any damages award. Holders of the primary securities (CALGZ) would receive, in aggregate, roughly 25 percent of the damages award net of taxes and expenses, while holders of the secondary securities (CALGL) would receive, in aggregate, 60 percent of the remainder (that is,

[40] *See* Report n.37.

the damages award less taxes, expenses, and the share paid to CALGZ holders), less a payment of $125 million to CalFed or its successor.[41]

29. The Coast Federal Litigation Contingent Payment Rights Trust was created in February 1998 in connection with the acquisition of Coast Federal Savings by H.F. Ahmanson & Co. The Trust issued LPCs to Coast shareholders representing undivided interests in the cash assets of the Trust (NASDAQ: CCPRZ). Holders of these certificates could expect to receive, in aggregate, one hundred percent of the after-tax proceeds of any recovery in cash, net of expenses.[42]

30. For all three of these securities – CALGZ, CALGL, and CCPRZ – the formula for determining payouts, as defined in each respective prospectus, dictated that the economic value of the securities was determined by a single variable: the cash value of any recovery in litigation. Factors affecting the economic or financial condition of the issuer or its successor would have no bearing on trading prices for these securities.

31. The CalFed and Coast securities also shared two important drawbacks. First, from the perspective of the issuers, cash distributions to the holders of the securities would reduce capital on the balance sheet of the firm, thereby limiting future earnings capacity. Second, cash recoveries were taxable events both for the thrift recipient and for the holders of the securities.

*2. GSBNZ and DIMEZ*

32. To enhance their capital positions and to minimize tax consequences, certain thrift holding companies looked into alternative structures for litigation participation securities. Those

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[41] *See* Report n.38.

[42] *See* Report n.39.

efforts led to the creation of litigation tracking warrants, which entitled holders to shares of stock rather than payments in cash. Two firms issued securities of this type, Golden State Bancorp ("GSB") and Dime.

33. GSB distributed litigation tracking warrants to holders of its common stock in May 1998, in part to facilitate its merger with CENFED Financial.[43] Those securities were issued on a one-for-one basis to common shareholders.

34. Unlike the CalFed and Coast securities, holders of the GSB warrants (NASDAQ: GSBNZ) could expect to receive common stock in GSB or its successor in the event of recovery from Glendale Federal's lawsuit in the U.S. Court of Federal Claims.[44] Further, because the distribution was in equity shares, GSBNZ holders could expect that the distribution would be treated as a tax-free dividend.

35. Specifically, the GSBNZs entitled holders to shares of GSB stock equal in value to 85 percent (in aggregate) of the proceeds from any litigation recovery net of taxes and expenses. The number of shares issued would be determined by the average closing price of GSB stock over the 30 days prior to the receipt of a final judgment in the lawsuit.[45]

36. Because the GSBNZs were exercisable in shares of common stock rather than in cash, market participants viewed the GSBNZs as the functional equivalent of a rights offering. In a rights offering, existing shareholders are entitled to subscribe to new shares from the issuer at a specified price within a specified timeframe.[46] The GSBNZs were structured in precisely the

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[43] *See* Report n.40.

[44] *See* Report n.41.

[45] *See* Report n.42.

[46] *See* Report n.1.

same way. Like rights offerings, the GSBNZs were distributed to common shareholders, not to the general public (as would be the case in an initial or secondary public offering); the exercise price was clearly defined; and the warrants were exercisable within a specified timeframe as defined in the offering circular.

37. Like GSB, Dime distributed litigation tracking warrants on a one-for-one basis to the holders of Dime common stock.[47] The Dime LTWs traded on NASDAQ under the ticker symbol DIMEZ.

38. Holders of the Dime LTWs could expect to receive common shares of the issuer in an amount equivalent to 85 percent of any recovery Dime received as part of the Anchor litigation, net of taxes and expenses.[48] As with the GSBNZs, market participants viewed the Dime LTWs as the functional equivalent of a shareholder rights offering, for all of the same reasons discussed above and in the Report.

39. For both the GSBNZs and the DIMEZs, and in direct contrast to the three cash-based securities discussed above (CALGZ, CALGL, and CCPRZ), two variables affected the value of the securities, not just one: (1) the proceeds from any litigation recovery; and (2) the parent company's own share price. That is, the economic and financial factors that affected the economic or financial condition of Dime or GSB also affected the share price of that company's litigation tracking warrants.

40. Although the litigation tracking warrants, including the Dime LTWs, allowed equity market participants to value the potential litigation recoveries separately from the value of the issuing firm, the two, in fact, shared common equity risks. Think of a three-legged race:

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[47] *See* Report n.44.

[48] *See* Report n.45.

although two individuals comprise each team, impediments to one typically impede the other. If one trips and falls, the partner will likely be dragged down, too.

41. The shared equity risk became particularly apparent in early 2008 when WMI "tripped over" the subprime mortgage crisis and later "crashed" due to massive deposit outflows in late summer 2008.[49] Despite continuing *good news* regarding Anchor's pending litigation recovery, the Dime LTWs took a hard fall as well. On March 17, 2008, immediately following the announcement of the Anchor litigation award, DIMEZ traded at $0.355 per share; but by September 24, 2008, the day prior to WMI's seizure by the FDIC, DIMEZ had fallen to just $0.13 per share.[50]

### C. Market View of Litigation Participation Securities

42. I initiated coverage and began publishing research reports on litigation participation securities while at Jefferies in May 1998. In total, I covered four LPCs (CALGZ, CALGL, CCPRZ, BNKUZ) and one litigation tracking warrant (GSBNZ). My regulatory and thrift experience gave me a unique perspective on the valuation of litigation participation securities, and my employer anticipated that my research reports would attract additional NASDAQ trading revenues to the firm.

43. In the normal course of business, I spoke frequently to many of Jefferies' clients about the analysis I conducted and research reports I authored regarding litigation participation securities.

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[49] *See* Report n.46.

[50] *See* Report n.47.

44. The clients with whom I spoke were equity investors who used quantitative and qualitative analyses to forecast both (1) the net earnings of the thrift holding companies and (2) the timing and size of the expected litigation recoveries.

45. Based on those discussions and my own analysis, it was clear that litigation participation securities that were payable in holding company stock rather than cash, including the Dime LTWs, were viewed by market participants as rights offerings of the issuers – in other words, as equity securities. As investors saw it, any adjusted litigation recovery would be accounted for on the holding company's balance sheet as an increase in net worth and additional equity shares would be distributed accordingly. Most importantly, they understood that the litigation tracking warrants (GSBNZ and DIMEZ) shared equity risks of the common stock of the issuing thrifts, as discussed above and in the Report.

46. Although litigation tracking warrants were distributed initially to holders of common stock, many equity investors bought the warrants on the secondary market for reasons other than ownership of the thrift franchises. Based on my interactions with those investors, they too viewed litigation tracking warrants payable in common stock of the issuer as equity securities, and they made their investments in those securities on that basis.

### D. The Terms of the Agreements Support My Opinion That The Dime LTWs Are Conditional Interests in Common Stock

48. I have reviewed Amendment 1 to the Registration Statement of Dime Bancorp, Inc., filed December 15, 2000 (the "Registration Statement"); the Warrant Agreement, dated December 21, 2000 (the "Warrant Agreement"); the Agreement and Plan of Merger, dated June 25, 2001 (the "Merger Agreement"); and the 2003 Amended and Restated Warrant Agreement, dated March 11, 2003 (the "Amended Warrant Agreement"). I find that the agreements support

my view that the Dime LTWs were payable in equity shares and functioned as secondary capital offerings of the issuer, and thus constitute equity securities.

49. All of the above documents define the Dime LTWs as conditional interests in the common shares of Dime or WMI as its successor.

50. The Registration Statement defines the terms under which Dime issued the Dime LTWs.[51] The document defines the Dime LTWs as a conditional interest in Dime common stock, and describes Dime's expectation that the warrants would be treated as a tax-free stock dividend for tax purposes.[52]

51. The Warrant Agreement likewise indicates that the Dime LTWs represent "the right to purchase shares or a portion of a share of Common Stock."[53] It defines the method by which the number of shares of common stock would be determined as well as the value of each share and sets an exercise price of $0.01.

52. On January 4, 2002, Dime merged with WMI. Section 2.10 of the Merger Agreement defines the manner in which the Dime LTWs would be converted into WMI stock if and when the necessary trigger events occurred.[54]

53. In March 2003, WMI issued the Amended Warrant Agreement. My understanding of the Amended Warrant Agreement is that it is essentially identical to the original Warrant Agreement with respect to the treatment of the Dime LTWs. It also indicates that

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[51] *See* Report n.48.

[52] *See* Report n.49.

[53] *See* Report n.50.

[54] *See* Report n.51.

warrant holders will be entitled to purchase shares of WMI common stock with their defined share of the Anchor litigation recovery, if any.[55]

### E. Partial and Preliminary Observations Concerning Plaintiffs' Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment

54. I have been asked by counsel to review and respond to certain assertions made by Plaintiffs in their Memorandum of Law in Response to Defendant's Motion for Summary Judgment, dated November 17, 2010 ("Plaintiffs' Response").

#### *1. Equity warrants can be structured in many different ways*

55. Citing a court decision, Plaintiffs argue that warrants must embody three specific characteristics: a predetermined price, a specified number of shares and a set term.[56]

56. In fact, warrants are not defined so rigidly, and can be structured in many different ways by the issuer. In my experience, the only characteristic common to all warrants is that they represent conditional claims on the issuing firm's equity. Specifically, warrants permit the holder to buy the underlying stock of the issuing company at a fixed exercise price until the expiration date. Typically, they are traded separately from the underlying stock of the issuing company or trust.[57]

57. In contrast to Plaintiffs' narrow definition, various types of warrants exist, including, for example, warrants with perpetual terms:

> A warrant is a stock option that entitles the holder to buy some number of shares of the associated common stock at some specified terms *such* as the exercise price and the effective exercisable time. The exercise price of a warrant indicates the amount which must be paid on conversion for each share of the

[55] *See* Report n.52.

[56] *See* Plaintiffs' Response, pp. 21-22.

[57] *See* Report n.54.

> given common stock.[[58]] The exercise price is *usually* above the market price of the common stock at the time of issue, and it *usually* changes at stated times during the life of a warrant. A European warrant can be exercised only on its expiration date, while an American warrant can be exercised at any time during the length of its life. . . . For *most* of the warrants, the lengths of their lives are specified in the published terms of the warrants. However, there are some warrants, such as Alleghany Corporation, Atlas Corporation, and Tn-Continental Corporation warrants, which have indefinite length of life and are known as perpetual warrants.[59]

58. In any case, even if one were to conclude that the Dime LTWs are not typical of the most common forms of stock warrants, their terms nonetheless represent interests in the issuing firm's equity, and therefore qualify as warrants.

*2. Warrants are not liabilities and do not share the key characteristics of debt securities*

59. Curiously, Plaintiffs compare the Dime LTWs to a spin-off.[60] That comparison is apt, and, in fact, supports the conclusion that the Dime LTWs represent equity interests. In a typical spin-off, a firm separates the value of a subsidiary or division from the remainder of the company by distributing equity interests among shareholders on a pro rata basis.[61] As stated above and in the Report, a principal aim of the firms' issuance of litigation tracking warrants was to divide ownership interests relating to the pending litigation proceeds from ownership interests in the thrift franchise.

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[58] *See* Report n.55.

[59] Andrew H.Y. Chen, "A Model of Warrant Pricing in a Dynamic Market," *The Journal of Finance* 25 (December 1970):1041–1059 (emphasis added).

[60] *See* Report n.57.

[61] *See* Report n.58.

60. Furthermore, if the Dime LTWs are not considered equity interests and instead represent claims against the company's assets, as Plaintiffs suggest, then, by definition, Plaintiffs are arguing that the Dime LTWs should be considered liabilities. Liabilities, however, by most standard definitions, represent claims on the assets of a firm, not on the firm's equity.[62] Even if the necessary "triggers" had already occurred -- which they have not – the warrants require only the issuance of stock, not payment in cash or other transfer of assets. Thus the Dime LTWs do not meet standard definitions of liabilities.

61. The Dime LTWs also do not share the characteristics of debt securities. Debt securities, like equity securities, come in many forms, but all debt securities represent "money borrowed" by the issuing firm "that must be repaid."[63] Nothing in the documents I have reviewed and nothing in my experience with these securities suggests that any holder of litigation participation securities has provided a "loan" to the issuing firm that the issuer is then obligated to repay. Rather, the terms of the Warrant Agreement state that the issuer's obligation was to keep reserved and available a sufficient number of *common shares* to provide for the exercise in full of all the Dime LTWs outstanding.[64]

*3. Equity interests can take many forms, each with distinct characteristics, features and risks*

62. Plaintiffs argue that, because litigation tracking warrants involve different risks and considerations from common stock, they cannot be considered stock warrants, equity securities or equity interests.[65] Plaintiffs provide no direct support for this conclusion.

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[62] *See* Report n.59.

[63] *See* Report n.60.

[64] *See* Warrant Agreement, §3.7(a).

[65] *See* Plaintiffs' Response, pp. 5-6.

63. In fact, "equity" simply represents the net assets of a firm (i.e., assets minus liabilities). Equity may be divided into numerous classes or series of stock, including preferred stock, each of which typically bears different rights and each of which therefore involves different risks and considerations.[66] Holders of preferred stock, for example, may have different voting rights, may receive fixed payments (not unlike payments on debt), and may be entitled to separately defined dividends.[67]

64. These distinctions clearly create "different risks" and "different considerations" but do not change the fundamental conclusion that company stock and warrants both represent equity interests in the firm. Thus, Plaintiffs' unsupported assertion that the warrants entail "different risks and considerations from . . . common stock" does not alter my conclusion that the Dime LTWs represent equity interests. Further, as discussed above, the Dime LTWs clearly shared equity risks with WMI common stock.

## IV. CONCLUSION

In light of the foregoing, as set forth herein and in the Report, I believe that the Dime LTWs constitute equity interests in, not claims against, WMI.

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[66] *See* Report n.63.

[67] *See* Report n.64.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of
November, 2010.

By:

_____
Charlotte Chamberlain, Ph.D.

# EXHIBIT A

**UNITED STATES BANKRUPTCY COURT**
**DISTRICT OF DELAWARE**

| | |
|---|---|
| *In re*<br><br>WASHINGTON MUTUAL, INC., *et al.*,<br><br>Debtors. | Chapter 11<br><br>Case No. 08-12229 (MFW)<br><br>(Jointly Administered)<br><br>Adversary Proceeding<br>Case No. 10-50911 (MFW) |
| BROADBILL INVESTMENT CORP.,<br>Plaintiff,<br>v.<br>WASHINGTON MUTUAL, INC.,<br>Defendant. | |
| NANTAHALA CAPITAL PARTNERS, LP And BLACKWELL CAPITAL PARTNERS, LLC,<br>Intervenor-Plaintiff,<br>v.<br>WASHINGTON MUTUAL, INC.,<br>Defendant-in-Intervention. | **EXPERT REPORT OF CHARLOTTE CHAMBERLAIN, PH.D.** |

**November 29, 2010**

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# EXPERT REPORT OF CHARLOTTE CHAMBERLAIN, PH.D.

## I. QUALIFICATIONS

1. My name is Charlotte Chamberlain, Ph.D. I am an independent consultant doing business as Chamberlain Associates, an economics and finance research firm. I specialize in the fields of banking, economics and finance. Employees of Analysis Group, Inc., an economics research and consulting firm, have assisted me in this assignment, working under my direction and supervision.

2. I hold an M.A. and a Ph.D. in economics from Cornell University. I have been a member of the Board of Trustees of the Los Angeles Chartered Financial Analyst ("CFA") Society and the National Association of Business Economists. I am currently a member of both organizations. My expertise includes economics, equity analysis and analysis of market-making and trading in equity securities.

3. From February 1997 until October 2005, I was a managing director and equity analyst at Jefferies & Company Inc. ("Jefferies"), a broker-dealer and investment banking firm. At Jefferies, I conducted equity research focusing on the financial services sector, including banks, thrifts and market makers and traders. While at Jefferies, I was designated by *The Wall Street Journal*, *Forbes* and Zacks Investment Research as one of the best sell-side equity research analysts in those sectors of the financial service industry. At the time, I held National Association of Securities Dealers ("NASD") Series 7, 63, 86 and 87 licenses (now lapsed).

4. As a senior analyst at Jefferies, starting in May 1998, I initiated equity analysis and published research reports on litigation participation securities and litigation tracking warrants, specifically the California Federal Bank Contingent Litigation

Recovery Participation Interests (CALGZ), California Federal Bank Secondary Contingent Litigation Recovery Participation Interests (CALGL), Coast Federal Litigation Contingent Payments Rights Trust (CCPRZ), Bank United Litigation Contingent Payment Rights (BNKUZ) and Golden State Bancorp Litigation Tracking Warrants (GSBNZ). To the best of my knowledge, I was the only equity analyst who covered litigation participation securities.

5. In addition, I discussed the litigation tracking warrants and litigation participation securities regularly and extensively with equity investors, Jefferies salespeople and market makers. Jefferies also sponsored a seminar on litigation tracking warrants and litigation participation securities for institutional investors in New York in December 1998, which I moderated and in which I participated as a speaker.

6. Both the litigation tracking warrants and litigation participation securities identified above in paragraph 4 were listed on NASDAQ, and Jefferies was an equity market maker in all five securities, as disclosed at the end of my research reports.

7. Prior to joining Jefferies, I was a Vice President at Wedbush Morgan, conducting equity research covering West Coast banks, thrifts and insurance companies.

8. I previously served as vice chair of NewAmerica Savings and before that I was executive vice president and director of strategic planning at Golden State Bancorp ("GSB"), the holding company for Glendale Federal Bank ("Glendale"). During my tenure, Glendale acquired Broward Savings, the merger that ultimately resulted in Golden State Bancorp distributing the GSBNZ equity securities to its shareholders in 1998.

9. While at Glendale, I was appointed to the Thrift Institutions Advisory Council of the Federal Reserve Board of Governors and the Real Estate Advisory Board

for the University of California at Berkeley. Prior to joining Glendale, I was Chief Economist and Director of Policy and Economic Research at the Federal Home Loan Bank Board during the time supervisory goodwill was first used to encourage healthy thrifts to acquire failing institutions.

10. My curriculum vitae, a copy of which is attached as Appendix A, provides further details on my professional background and specifies the testimony that I have given in the past four years as an expert witness.

## II. ASSIGNMENT

### A. Summary of Assignment

11. I have been engaged by counsel for Washington Mutual, Inc. ("WMI") to provide expert testimony in the matter of *In re Washington Mutual, Inc., et al.*, Case No. 08-12229 (MFW), and the related adversary proceeding captioned *Broadbill Investment Corp., et al. v. Washington Mutual, Inc.*, Adv. Pro. No. 10-50911 (MFW) (the "Broadbill Adversary Proceeding"), pending in the United States Bankruptcy Court for the District of Delaware. Specifically, I have been asked to provide an overview of the historical events and financial conditions that led to the issuance of the litigation tracking warrants at issue in this litigation, to provide an overview of the features and benefits of these instruments, to discuss how these instruments have been viewed by market participants, and to opine on whether or not the litigation tracking warrants issued by Dime Bancorp, Inc. ("Dime"), as subsequently assumed by WMI, constitute equity securities (the "Dime LTWs"). I have also been asked to provide preliminary observations on certain topics discussed in Plaintiffs' Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment, dated November 17, 2010, in the Broadbill Adversary Proceeding.

12. I am being compensated at a rate of $600 per hour for my work on this case, including any testimony. My compensation is not contingent upon my findings or the outcome of this matter.

### B. Documents Relied Upon

13. I have reviewed documents and other materials provided through discovery and obtained from public sources. These materials include, among others: the Amended Complaint; the Memorandum of Law in Support of the Motion of Defendant Washington Mutual, Inc. for Summary Judgment and the declaration and exhibits submitted in support thereof; Plaintiffs' Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment and the declaration and exhibits submitted in support thereof; Defendant Washington Mutual, Inc.'s Reply Memorandum of Law in Further Support of its Motion for Summary Judgment; and the registration statement and certain agreements governing or related to litigation participation certificates ("LPCs") and litigation tracking warrants, including the Dime LTWs, as well as various textbooks and academic research related to the issues in this case. The documents, materials, and other information I have relied upon in forming my opinions are listed in this report or in Appendix B.

## III. SUMMARY OF CONCLUSIONS

14. Based on my analysis of the case documents, including the relevant warrant agreements, and my education and experience as a federal thrift regulator, savings institution executive, and equity analyst covering thrift holding companies, LPCs and litigation tracking warrants, I have the following opinions:

- The method and form of payouts on LPCs and litigation tracking warrants, including the Dime LTWs, varied by issuer, as detailed

in their respective offering prospectuses. However, the two main differentiating factors were whether the holder was entitled to payment in (1) cash (LPCs) or (2) equity shares of the issuer (litigation tracking warrants, including the Dime LTWs).

- Because the Dime LTWs were exercisable in equity shares of the issuer, they were viewed by equity market participants as functionally and financially equivalent to a rights offering[1] or secondary stock offering.[2] Investors expected that any net litigation recovery would be accounted for on the holding company's balance sheet as an increase in net worth and additional equity shares would be distributed to the holders of the litigation tracking warrants.

- The relevant warrant agreements, which define the Dime LTWs as conditional interests in Dime common stock, support my conclusion that the Dime LTWs were functionally and financially equivalent to a shareholder rights offering.

- Although Dime's distribution of the Dime LTWs to its common shareholders allowed equity market participants to value the

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1 A subscription right, better known as a right, is a privilege granted to existing shareholders of a corporation to subscribe to new issues of common stock before it is offered to the public. John Downes and Jordan Elliot Goodman, *Barron's Dictionary of Finance and Investment Terms* (Hauppauge, NY: Barron's Educational Series, 2010), 718.

2 A secondary stock offering, sometimes referred to as a *seasoned new issue*, refers to stock issued to the general public by companies that already have stock on the market (that is, any stock issued after the firm's initial public offering). *See,. e.g.*, Zvi Bodie, Alex Kane & Alan J. Marcus, *Investments*, 6th ed. (New York: McGraw-Hill), p. 1057.

potential recovery from Anchor Savings Bank's pending goodwill litigation separately from the value of Dime itself (and subsequently WMI), in fact the two shared common equity risks. The shared equity risk became apparent when WMI's stock price declined dramatically (from $9.24 to $2.26 between March 17, 2008, and September 24, 2008) as the mortgage market crisis and the subsequent run on its deposits eviscerated its business. Despite continuing good news regarding Anchor Saving Bank's pending litigation recovery during the same period, the price of the Dime LTWs declined dramatically as well (from $0.355 to $0.13 between March 17, 2008, and September 24, 2008).

- From my experience interacting with Jefferies' clients, equity investors understood the shared equity risk between litigation tracking warrants and the issuing thrift holding company's common stock.

15. My work in this matter is ongoing, and I reserve the right to amend my report and may modify, refine, or revise my opinions if new information comes to light or in light of other discovery or expert testimony.

## IV. BACKGROUND AND ANALYSIS

### A. The Origins of Litigation Participation Securities

16. The history of the savings and loan industry is well covered in the pleadings filed in this case. My purpose is not to repeat the entire history, but to emphasize certain aspects that I find relevant to the question of whether litigation

tracking warrants should be considered equity securities — namely, the regulatory and competitive forces that have contributed to successive periods of rapid consolidation in the industry. In such an environment, firms' equity valuations take on added importance.

*1. Regulatory context*

17. "Supervisory goodwill" lawsuits resulted from regulatory changes that significantly affected the entire thrift industry.[3] These regulatory changes began with the deregulation of thrift deposit interest rates by the Depository Institutions Deregulation and Monetary Control Act of 1980,[4] continued with the relaxation of capital requirements and expansion of thrifts' risk and leverage capabilities by the Garn-St. Germain Act in 1982,[5] and culminated in the re-regulation of the industry's capital requirements and abolishment of supervisory goodwill by the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA") in 1989.[6]

18. Throughout this period of regulation and deregulation, savings and loans ("S&Ls") experienced widespread losses and insolvencies,[7] largely attributable to the timing of the regulatory changes in conjunction with the rise and fall of interest rates.

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[3] Timothy Curry and Lynn Shibut, "The Cost of the Savings and Loan Crisis: Truth and Consequences," FDIC Banking Review (2000), 26–35 at 34. Thrifts comprise both savings banks and savings and loan institutions. Prior to the passage of FIRREA in 1989, savings banks were insured and regulated by the FDIC while savings and loans were insured by the FSLIC and regulated by the Federal Home Loan Bank Board.

[4] R. Alton Gilbert, "Requiem for Regulation Q: What It Did and Why It Passed Away," Federal Reserve Bank of St. Louis (February 1986), 30–33; R. Glenn Hubbard, Money, the Financial System, and the Economy, 4th ed. (Boston, MA: Pearson Education, 2002), 389–391.

[5] Gilbert at 33; Hubbard at 389–390; Randall S. Kroszner and Philip E. Strahan, "Regulatory Incentives and the Thrift Crisis: Dividends, Mutual-To-Stock Conversions, and Financial Distress," *The Journal of Finance* 51 (Sep. 1996), 1285–1319 at 1288; Lawrence R. Cordell, Gregor D. MacDonald, and Mark E. Wohar, "Corporate Ownership and the Thrift Crisis," *Journal of Law and Economics* 36 (Oct. 1993), 719–756 at 723–726.

[6] Sangkyun Park, "Put Option Values of Thrifts in the 1980s: Evidence from Thrift Stock Reactions to the FIRREA," *The Journal of Financial and Quantitative Analysis* 37 (Mar. 2002), 157–176 at 157–160; Curry and Shibut at 34; Hubbard at 394.

[7] Curry and Shibut at 27, 33; Hubbard at 394.

When interest rate competition between thrifts and commercial banks prompted Congress to expand Regulation Q policy to limit the deposit interest charged by thrifts in 1966,[8] for example, subsequent increases in interest rates in the late 1970s and early 1980s wreaked havoc on thrifts' profitability.[9] Higher interest rates caused widespread disintermediation (net depository outflows) as depositors' pursued alternative investments.[10] The resulting competition severely harmed the profitability of thrifts, and sparked the S&L insolvencies that continued over the next decade.[11]

19. The Monetary Control Act of 1980 and the Depository Institutions Deregulation Committee ("DIDC") attempted to combat the disintermediation by undoing the regulation of interest rate ceilings under Regulation Q.[12] This led to the introduction by thrifts of new investment products designed to compete with money market mutual funds.[13] Not only did these alternative investments fail to compete with money market funds, and, therefore, fail to bring in the desired deposits and associated revenues, but higher interest rates also destroyed the historical spread that thrifts had enjoyed between the low interest paid out on their short-term deposits and higher interest received on their long-term mortgage loans.[14] Additionally, the growing market in

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8 Gilbert at 23, 26, 28.

9 Gilbert at 30; Cordell, *et al.*, at 724; Kroszner and Strahan at 1285; Curry and Shibut at 27.

10 Gilbert at 28–31; Hubbard at 386.

11 Lawrence J. White, "A Cautionary Tale of Deregulation Gone Awry: The S&L Debacle," *Southern Economic Journal* 59 (January 1993), 503; Kroszner and Strahan at 1285.

12 Gilbert at 30–33; Heather A. Haveman, "Organizational Size and Change: Diversification in the Savings and Loan Industry after Deregulation," *Administrative Science Quarterly* 38 (Mar. 1993), 20–50 at 28; Hubbard at 389–391.

13 Gilbert at 30–31.

14 Hubbard at 389; White at 501–503.

mortgage-backed securities and recession-induced increases in default rates further destroyed the profitability of S&Ls and led to continued insolvencies.[15]

20. The Garn-St Germain Act of 1982 directed the DIDC to authorize new products that could compete with money market funds, to eliminate the remaining ceilings on interest rates, and to provide thrifts with the ability to take on riskier investments at higher leverage ratios.[16] Garn-St Germain also lifted restrictions on the corporate structure of S&Ls, encouraging failing thrifts to raise private capital through conversion from mutual ownership to stock ownership.[17] Because the high number of insolvencies persisted, however, the Federal Savings and Loan Insurance Corporation ("FSLIC") remained in jeopardy.[18] As a result, the Federal Home Loan Bank Board encouraged the acquisition of insolvent thrifts by healthy thrifts by creating an accounting asset called supervisory goodwill, which could be included toward thrifts' capital requirements.[19] Despite the increase in real private capital from initial public offerings and regulatory capital from supervisory goodwill, the FSLIC was insolvent by the end of 1986.[20] Thrifts with billions in losses and hundreds of billions in assets failed in

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[15] Cordell, *et al.*, at 727; Hubbard at 391.

[16] Hubbard at 389–390; Gilbert at 33; Cordell, *et al.*, at 723–726, 751.

[17] Kroszner and Strahan at 1288; Cordell, *et al.*, at 723–725.

[18] *See Ariadne Financial Services Pty. Ltd. v. United States*, 133 F.3d 874 (Fed. Cir.), *cert. denied*, 119 S. Ct. 67 (1998).

[19] *Id. See also* Cordell, *et al.*, at 725; Park at 159. The Federal Home Loan Bank Board ("FHLBB") was the federal agency responsible for oversight of federally chartered thrifts. I was the Director of Policy and Economic Research at the time the FHLBB initiated the use of supervisory goodwill to facilitate the acquisition of failing thrifts by stronger institutions. I also participated in FHLBB board meetings that approved several such acquisitions.

[20] Curry and Shibut at 27; Hubbard at 393.

increasing numbers, due to risky lending and insufficient capital to cover credit defaults.[21]

21. In response to the failures, on August 9, 1989, Congress enacted FIRREA, which increased capital requirements for thrifts and commercial banks.[22] Subsequently, the Office of Thrift Supervision ("OTS") issued regulations that began the elimination of supervisory goodwill in regulatory capital calculations.[23] As a result, hundreds of thrifts became insolvent.[24]

*2. Initiation of the supervisory goodwill lawsuits*

22. In the early 1990s, thrift firms filed more than 100 breach of contract lawsuits against the federal government. In early July 1996, the U.S. Supreme Court held that the government was liable for breach of contract to the plaintiffs in the consolidated cases *Winstar, Statesman and Glendale v. U.S.* Glendale Federal sought roughly $1.9 billion in damages while California Federal sought roughly $1.6 billion. Glendale Federal's trial to determine the amount of damages commenced on February 24, 1997 in the U.S. Court of Federal Claims, while California Federal's damages trial started in late 1998.

23. On April 12, 1999, the trial court denied lost profit damages but awarded $909 million in restitution and reliance damages to Glendale Federal.[25] On February 16, 2001, the U.S. Court of Appeals vacated the trial court's judgment.[26] In 2002, the U. S.

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[21] Curry and Shibut at 27, 33.

[22] Curry and Shibut at 28; Hubbard at 394–395.

[23] Curry and Shibut at 34; Park at 157.

[24] Curry and Shibut at 34.

[25] *Glendale Fed. Bank, FSB, v. United States,* 239 F.3d 1374 (2001).

[26] *Id.*

Court of Federal Claims awarded Glendale Federal $381 million in reliance damages, but denied any restitution damages.[27] This decision was affirmed in the U.S. Court of Appeals on August 9, 2004.[28] In 2002, the Federal Circuit Court denied California Federal's lost profit damages, reliance damages and restitution damages, but awarded $23 million in compensation for the cost of replacing regulatory capital due to FIRREA.[29] On January 19, 2005, the U.S. Court of Appeals upheld this decision.[30]

*3. Anchor Savings Bank*

24. On January 13, 1995, Anchor Savings Bank ("Anchor") filed suit against the U.S. government in the Court of Federal Claims, alleging that, through FIRREA, the government breached its obligations under the supervisory merger contracts related to supervisory goodwill resulting from Anchor's acquisition of several failing thrifts between 1982 and 1985.[31] Dime then acquired Anchor and assumed Anchor's rights under the litigation. On December 22, 2000, Dime distributed a litigation tracking warrant for each share of its common stock outstanding as of that date subject to the value of any recovery in the Anchor litigation. On January 4, 2002, Dime merged into WMI.[32]

25. In multiple rulings in 2002, the U.S. Court of Federal Claims found that the government had breached its supervisory goodwill contracts with Anchor through the implementation of FIRREA. On March 14, 2008, the U.S. Court of Federal Claims

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27 *Glendale Fed. Bank, FSB, v. United States*, 378 F.3d 1308 (2004).

28 *Id.*

29 *Cal. Fed. Bank v. United States*, 395 F.3d 1263 (2005).

30 *Id.*

31 *Anchor Sav. Bank, FSB v. United States,* 597 F.3d 1356 (2010).

32 Merger Agreement, § 2.4; Amended Warrant Agreement, Recitals, § C.

awarded Anchor $382 million in recoverable damages, plus an undetermined amount for a gross-up of tax liabilities.[33] On July 16, 2008, the court reduced the judgment to approximately $356 million. On March 10, 2010, the Federal Circuit Court of Appeals affirmed the decision and remanded the case to the Court of Federal Claims to determine whether that court had made a calculation error and should increase the damage award by as much as an additional $63 million.[34]

### B. Purpose, Benefits, and Features of Litigation Participation Securities

26. With such large damage awards being sought, the boards of directors of the thrift holding company litigants wanted to split ownership of potential litigation recoveries from ownership of the thrift franchises.[35] Although the directors expected shareholders to benefit from pending awards in due time, uncertainty about both the timing of final decisions and the magnitude of the potential awards complicated valuations of holding companies. Consequently, the directors were frustrated in their efforts to explore merger opportunities.[36]

27. For example, the maximum potential litigation recovery for Golden State Bancorp was $1.9 billion, more than 80 percent of the holding company's $2.3 billion

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[33] Washington Mutual, Inc., Form 8-K, dated March 21, 2008.

[34] Disclosure Statement for the Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated October 6, 2010 (the "Disclosure Statement"), pp. 55–56.

[35] "Golden State Bancorp Announces Plans to Distribute Goodwill Litigation Tracking Warrants," PR Newswire, October 28, 1997 ("GSB Announcement"), quoting Stephen J. Trafton, chairman and chief executive officer of Golden State: "The distribution of the LTW(TM)s will provide a mechanism to allow the market to track the value of our pending goodwill lawsuit separately from the franchise value of the bank. The separation of the value of the underlying franchise from that of the goodwill lawsuit should allow both assets to be more accurately valued in the marketplace. In contrast with other previously announced or issued goodwill certificates, this structure would allow the LTW(TM)s to be the first goodwill lawsuit security to be distributed on a tax-free basis for both security holders and the distributing institution."

[36] *Id.* For example, at the time GlenFed announced its intention to issue LTWs in the fall of 1997, the board of directors was in merger negotiations with CENFED Financial Corporation, the holding company for CenFed Bank, FSB.

market capitalization at the end of April 1998.[37] Thus, even small changes in market expectations as to the timing and/or amount of potential litigation recoveries could cause material fluctuations in the company's share price.

28. The thrifts therefore issued securities representing interests in the prospective damage awards. As discussed further below, these securities took two basic forms: those that gave holders the right to receive a defined portion of the proceeds in cash (i.e., LPCs); and those that gave holders the right to receive common stock of the issuing thrift equivalent in value to a defined portion of the litigation proceeds (i.e., litigation tracking warrants, including the Dime LTWs).

*1. The Precedent Litigation Participation Securities — CALGZ, CALGL and CCPRZ*

29. CalFed, Inc. ("CalFed," the holding company of California Federal Savings) and Coast Savings Financial, Inc. ("Coast," the holding company of Coast Federal Savings) issued the first litigation participation securities, both of which provided holders the right to receive a portion of the proceeds from any damages award in cash.

30. CalFed issued two classes of securities to its shareholders: the California Federal Bank Contingent Litigation Recovery Participation Interests (NASDAQ: CALGZ) in 1995 and, in connection with its acquisition by First Nationwide, the California Federal Bank Secondary Contingent Litigation Recovery Participation Interests (NASDAQ: CALGL) in 1996. The structure of the securities provided that CalFed (or its successor) would retain the majority of any damages award. Holders of the primary securities (CALGZ) would receive, in aggregate, roughly 25 percent of the damages award net of taxes and expenses, while holders of the secondary securities

[37] Bloomberg Financial Markets.

(CALGL) would receive, in aggregate, 60 percent of the remainder (that is, the damages award less taxes, expenses, and the share paid to CALGZ holders), less a payment of $125 million to CalFed or its successor.[38]

31. The Coast Federal Litigation Contingent Payment Rights Trust was created in February 1998 in connection with the acquisition of Coast Federal Savings by H.F. Ahmanson & Co. The Trust issued LPCs to Coast shareholders representing undivided interests in the cash assets of the Trust (NASDAQ: CCPRZ). Holders of these certificates could expect to receive, in aggregate, 100 percent of the after-tax proceeds of any recovery in cash, net of expenses.[39]

32. For all three of these securities — CALGZ, CALGL, and CCPRZ — the formula for determining payouts, as defined in each respective prospectus, dictated that the economic value of the securities was determined by a single variable: the cash value of any recovery in litigation. Factors affecting the economic or financial condition of the issuer or its successor would have no bearing on trading prices for these securities.

33. The CalFed and Coast securities also shared two important drawbacks. First, from the perspective of the issuers, cash distributions to the holders of the securities would reduce capital on the balance sheet of the firm, thereby limiting future earnings capacity. Second, cash recoveries were taxable events both for the thrift recipient and for the holders of the securities.

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[38] Agreement and Plan of Merger, dated July 27, 1996, by and among First Nationwide Holdings Inc., Cal Fed Bancorp, Inc., and California Federal Bank, F.S.B. (Exhibit L to the Shiffman Declaration), annex 4.21 (a) and annex 4.21 (b).

[39] Coast Federal Litigation Contingent Payment Rights Trust Registration Statement, dated January 13, 1998 (Exhibit M to the Shiffman Declaration); Coast Federal Litigation Contingent Payment Rights Trust Form 10-Q, May 10, 2001.

### 2. *GSBNZ and DIMEZ*

34. To enhance their capital positions and to minimize tax consequences, certain thrift holding companies looked into alternative structures for litigation participation securities. Those efforts led to the creation of *litigation tracking warrants*, which entitled holders to shares of stock rather than payments in cash. Two firms issued securities of this type, Golden State Bancorp ("GSB") and Dime.

35. GSB distributed litigation tracking warrants to holders of its common stock in May 1998, in part to facilitate its merger with CENFED Financial.[40] Those securities were issued on a one-for-one basis to common shareholders.

36. Unlike the CalFed and Coast securities, holders of the GSB warrants (NASDAQ: GSBNZ) could expect to receive *common stock* in GSB or its successor in the event of recovery from Glendale Federal's lawsuit in the U.S. Court of Federal Claims.[41] Further, because the distribution was in equity shares, GSBNZ holders could expect that the distribution would be treated as a tax-free dividend.

37. Specifically, the GSBNZs entitled holders to shares of GSB stock equal in value to 85 percent (in aggregate) of the proceeds from any litigation recovery net of taxes and expenses. The number of shares issued would be determined by the average closing price of GSB stock over the 30 days prior to the receipt of a final judgment in the lawsuit.[42]

38. Because the GSBNZs were exercisable in shares of common stock rather than in cash, market participants viewed the GSBNZs as the functional equivalent of a

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[40] GSB Announcement.

[41] Golden State Bancorp (NYSE: GSB) was the holding company of Glendale Federal Bank, FSB.

[42] GSB Announcement.

rights offering. In a rights offering, existing shareholders are entitled to subscribe to new shares from the issuer at a specified price within a specified timeframe.[43] The GSBNZs were structured in precisely the same way. Like rights offerings, the GSBNZs were distributed to common shareholders, not to the general public (as would be the case in an initial or secondary public offering); the exercise price was clearly defined; and the warrants were exercisable within a specified timeframe as defined in the offering circular.

39. Like GSB, Dime distributed litigation tracking warrants on a one-for-one basis to the holders of Dime common stock.[44] The Dime LTWs traded on NASDAQ under the ticker symbol DIMEZ.

40. Holders of the Dime LTWs could expect to receive common shares of the issuer in an amount equivalent to 85 percent of any recovery Dime received as part of the Anchor litigation, net of taxes and expenses.[45] As with the GSBNZs, market participants viewed the Dime LTWs as the functional equivalent of a shareholder rights offering, for all of the same reasons detailed in paragraph 38, above.

41. For both the GSBNZs and the DIMEZs, and in direct contrast to the three cash-based securities discussed above (CALGZ, CALGL, and CCPRZ), two variables affected the value of the securities, not just one: (1) the proceeds from any litigation recovery, and (2) the parent company's own share price. That is, the economic and financial factors that affected the economic or financial condition of Dime or GSB also affected the share price of that company's litigation tracking warrants.

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[43] *See supra*, n. 1.

[44] The securities at issue in this case were created as a result of Anchor's supervisory goodwill lawsuit, which was initiated in 1995. The bank's claims stemmed from the acquisition of eight failing savings institutions in the early 1980s. *See supra*, n. 31.

[45] Warrant Agreement (*infra*, ¶ 50), § 1.1.

42. Although the litigation tracking warrants, including the Dime LTWs, allowed equity market participants to value the potential litigation recoveries separately from the value of the issuing firm, the two, in fact, shared common equity risks. Think of a three-legged race: although two individuals comprise each team, impediments to one typically impede the other. If one trips and falls, the partner will likely be dragged down too.

43. The shared equity risk became particularly apparent in early 2008 when WMI "tripped over" the subprime mortgage crisis and later "crashed" due to massive deposit outflows in late summer 2008.[46] Despite continuing good news regarding Anchor's pending litigation recovery, the Dime LTWs took a hard fall as well. On March 17, 2008, immediately following the announcement of the Anchor litigation award, DIMEZ traded at $0.355 per share, but by September 24, 2008, the day prior to WMI's seizure by the FDIC, DIMEZ had fallen to just $0.13 per share.[47]

### C. Market View of Litigation Participation Securities

44. I initiated coverage and began publishing research reports on litigation participation securities while at Jefferies in May 1998. In total, I covered four LPCs (CALGZ, CALGL, CCPRZ, BNKUZ) and one litigation tracking warrant (GSBNZ). My regulatory and thrift experience gave me a unique perspective on the valuation of litigation participation securities, and my employer anticipated that my research reports would attract additional NASDAQ trading revenues to the firm.

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[46] WMI assumed the Dime LTWs when it acquired Dime. *See* Merger Agreement, Amended Warrant Agreement, discussed *infra* ¶ 50.

[47] Bloomberg Financial Markets. WMI stock fell from $9.24 per share to $2.26 per share over the same period.

45. In the normal course of business, I spoke frequently to many of Jefferies' clients about the analysis I conducted and research reports I authored regarding litigation participation securities.

46. The clients with whom I spoke were equity investors who used quantitative and qualitative analyses to forecast both (1) the net earnings of the thrift holding companies and (2) the timing and size of the expected litigation recoveries.

47. Based on those discussions and my own analysis, it was clear that litigation participation securities that were payable in holding company stock rather than cash, including the Dime LTWs, were viewed by market participants as rights offerings of the issuers — in other words, as equity securities. As investors saw it, any adjusted litigation recovery would be accounted for on the holding company's balance sheet as an increase in net worth and additional equity shares would be distributed accordingly.

48. Most importantly, they understood that the litigation tracking warrants (GSBNZ and DIMEZ) shared equity risks of the common stock of the issuing thrifts, as discussed above at paragraph 43.

49. Although litigation tracking warrants were distributed initially to holders of common stock, many equity investors bought the warrants on the secondary market for reasons other than ownership of the thrift franchises. Based on my interactions with those investors, they too viewed litigation tracking warrants payable in common stock of the issuer as equity securities, and they made their investments in those securities on that basis.

### D. The Terms of the Agreements Support My Opinion that the Dime LTWs Are Conditional Interests in Common Stock

50. I have reviewed Amendment 1 to the Registration Statement of Dime Bancorp, Inc., filed December 15, 2000 (the "Registration Statement"); the Warrant Agreement, dated December 21, 2000 (the "Warrant Agreement"); the Agreement and Plan of Merger, dated June 25, 2001 (the "Merger Agreement"); and the 2003 Amended and Restated Warrant Agreement, dated March 11, 2003 (the "Amended Warrant Agreement"). I find that the agreements support my view that the Dime LTWs were payable in equity shares and functioned as secondary capital offerings of the issuer, and thus constitute equity securities.

51. All of the above documents define the Dime LTWs as conditional interests in the common shares of Dime or WMI as its successor.

52. The Registration Statement defines the terms under which Dime issued the Dime LTWs.[48] The document defines the Dime LTWs as a conditional interest in Dime common stock, and describes Dime's expectation that the warrants would be treated as a tax-free stock dividend for tax purposes.[49]

53. The Warrant Agreement likewise indicates that the Dime LTWs represent "the right to purchase shares or a portion of a share of Common Stock."[50] It defines the method by which the number of shares of common stock would be determined as well as the value of each share and sets an exercise price of $0.01.

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[48] I have also reviewed the original registration statement, dated October 20, 2000, and it is not materially different than the Amended Registration Statement.

[49] Registration Statement, pp. 1–2.

[50] Warrant Agreement, Recitals, ¶ A.

54. On January 4, 2002, Dime merged with WMI. Section 2.10 of the Merger Agreement defines the manner in which the Dime LTWs would be converted into WMI stock if and when the necessary trigger events occurred.[51]

55. In March 2003, WMI issued the Amended Warrant Agreement. My understanding of the Amended Warrant Agreement is that it is essentially identical to the original Warrant Agreement with respect to the treatment of the Dime LTWs. It also indicates that warrant holders will be entitled to purchase shares of WMI common stock with their defined share of the Anchor litigation recovery, if any.[52]

### E. Partial and Preliminary Observations Concerning Plaintiffs' Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment

56. I have been asked by counsel to review and respond to certain assertions made by Plaintiffs in their Memorandum of Law in Response to Defendant's Motion for Summary Judgment, dated November 17, 2010 ("Plaintiffs' Response").

#### *1. Equity warrants can be structured in many different ways*

57. Citing a court decision, Plaintiffs argue that warrants must embody three specific characteristics: a predetermined price, a specified number of shares and a set term.[53]

58. In fact, warrants are not defined so rigidly, and can be structured in many different ways by the issuer. In my experience, the only characteristic common to all warrants is that they represent conditional claims on the issuing firm's equity. Specifically, warrants permit the holder to buy the underlying stock of the issuing

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[51] Merger Agreement, § 2.10.

[52] Amended Warrant Agreement, Recitals, ¶ C.

[53] Plaintiffs' Response, pp. 21–22.

company at a fixed exercise price until the expiration date. Typically, they are traded separately from the underlying stock of the issuing company or trust.[54]

59. In contrast to Plaintiffs' narrow definition, various types of warrants exist, including, for example, warrants with perpetual terms:

> A warrant is a stock option that entitles the holder to buy some number of shares of the associated common stock at some specified terms *such as* the exercise price and the effective exercisable time. The exercise price of a warrant indicates the amount which must be paid on conversion for each share of the given common stock.[[55]] The exercise price is *usually* above the market price of the common stock at the time of issue, and it *usually* changes at stated times during the life of a warrant. A European warrant can be exercised only on its expiration date, while an American warrant can be exercised at any time during the length of its life. . . . For *most* of the warrants, the lengths of their lives are specified in the published terms of the warrants. However, there are some warrants, such as Alleghany Corporation, Atlas Corporation, and Tn-Continental Corporation warrants, which have indefinite length of life and are known as perpetual warrants."[56]

60. In any case, even if one were to conclude that the Dime LTWs are not typical of the most common forms of stock warrants, their terms nonetheless represent interests in the issuing firm's equity and therefore qualify as warrants.

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[54] *See, e.g.*, Bodie, Kane & Marcus, p. 725: "Like convertible debt, warrant terms may be tailored to meet the needs of the firm."

[55] Note that the exercise price of the Dime LTWs is fixed under the terms of the Warrant Agreement ($0.01) and Amended Warrant Agreement ($0.00). *See* Warrant Agreement, art. III, § 1; Amended Warrant Agreement, art. III, § 1.

[56] Andrew H. Y. Chen, "A Model of Warrant Pricing in a Dynamic Market," *The Journal of Finance* 25 (December 1970):1041–1059 (emphasis added), at 1041.

### 2. *Warrants are not liabilities and do not share the key characteristics of debt securities*

61. Curiously, Plaintiffs compare the Dime LTWs to a spin-off.[57] That comparison is apt, and, in fact, supports the conclusion that the Dime LTWs represent equity interests. In a typical spin-off, a firm separates the value of a subsidiary or division from the remainder of the company by distributing *equity* interests among shareholders on a pro rata basis.[58] As stated above, a principal aim of the firms issuing litigation tracking warrants was to divide ownership interests relating to the pending litigation proceeds from ownership interests in the thrift franchise.

62. Furthermore, if the Dime LTWs are not considered equity interests and instead represent claims against the company's assets, as Plaintiffs suggest, then by definition Plaintiffs are arguing that the Dime LTWs should be considered liabilities. Liabilities, however, by most standard definitions, represent claims on the assets of a firm, not on the firm's equity.[59] Even if the necessary "triggers" had already occurred — which they have not — the warrants require only the issuance of stock, not payment in

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57 "The members of the Joint Committee believed that 'litigation tracking warrants,' once issued, effectively separated the contingent asset from the remainder of the company - - an issuance of 'litigation tracking warrants' had the same economic effect of a 'spin-off' of the contingent asset." Plaintiffs' Response, p. 5 (citing Exhibit M to the Silverstein Declaration).

58 James A. Miles & James D. Rosenfeld, "The Effect of Voluntary Spin-off Announcements on Shareholder Wealth" *The Journal of Finance* 38 (1983):1597–1606, at 1597: "A spin-off occurs when a company distributes all of the common shares it owns in a controlled subsidiary to its existing shareholders, thereby creating a separate public company." *See also* Downes & Goodman, 687: "In a traditional spin-off, shares of the new entity are distributed to the parent company's shareholders of record on a pro rata basis."

59 See, e.g., Downes & Goodman, 400: "[A liability is a] claim on the assets of a company or individual — excluding ownership equity." *See also* Statement of Financial Accounting Concepts No. 06, Financial Accounting Standards Board (2008), ¶ 36: "A liability has three essential characteristics: (a) it embodies a present duty or responsibility to one or more entities *that entails settlement by probable future transfer or use of assets at a specified or determinable date*, on occurrence of a specified event, or on demand, (b) the duty or responsibility obligates a particular entity, leaving it little or no discretion to avoid future sacrifice, and (c) the transaction or other event obligating the entity has already happened" (emphasis added).

cash or other transfer of assets. Thus the Dime LTWs do not meet standard definitions of liabilities.

63. The Dime LTWs also do not share the characteristics of debt securities. Debt securities, like equity securities, come in many forms, but all debt securities represent "money borrowed" by the issuing firm "that must be repaid."[60] Nothing in the documents I have reviewed and nothing in my experience with these securities suggests that any holder of litigation participation securities has provided a "loan" to the issuing firm that the issuer is then obligated to repay. Rather, the terms of the Warrant Agreement state that the issuer's obligation was to keep reserved and available a sufficient number of common shares to provide for the exercise in full of all the Dime LTWs outstanding.[61]

*3. Equity interests can take many forms, each with distinct characteristics, features and risks.*

64. Plaintiffs argue that because litigation tracking warrants involve different risks and considerations from common stock, they cannot be considered stock warrants, equity securities or equity interests.[62] Plaintiffs provide no direct support for this conclusion.

65. In fact, "equity" simply represents the net assets of a firm (i.e., assets minus liabilities). Equity may be divided into numerous classes or series of stock, including preferred stock, each of which typically bears different rights and each of

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60 Downes & Goodman, 170: "[A debt security is a] "security representing money borrowed that must be repaid and having a fixed amount, a specific maturity or maturities, and usually a specific rate of interest or an original purchase discount."

61 Warrant Agreement, § 3.7(a).

62 "The Registration Statement also is clear that the LTWs are not stock warrants, equity securities, or equity interests. 'An investment in the LTWs involves different risks and considerations from an investment in the common stock of a savings and loan holding company such as Dime Bancorp.'" Plaintiffs' Response, pp. 5–6 (*citing* Exhibit P to the Silverstein Declaration).

which therefore involves different risks and considerations.[63] Holders of preferred stock, for example, may have different voting rights, may receive fixed payments (not unlike payments on debt), and may be entitled to separately defined dividends.[64]

66. These distinctions clearly create "different risks" and "different considerations" but do not change the fundamental conclusion that company stock and warrants both represent equity interests in the firm. Thus, Plaintiffs' unsupported assertion that the warrants entail "different risks and considerations from . . . common stock" does not alter my conclusion that the Dime LTWs represent equity interests. Further, as discussed above, the Dime LTWs clearly shared equity risks with WMI common stock.

Respectfully submitted,

Charlotte Chamberlain, Ph.D.
November 29, 2010

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63 Richard A Brealey and Stewart C. Myers, *Principles of Corporate Finance*, 7th ed. (New York, NY: Irwin McGraw-Hill 2003), p. 389: "Usually when investors talk about equity or stock, they are referring to common stock. [But companies also issue] preferred stock, and this too is part of the company's equity. . . ."

64 *Id.* "Like debt, preferred stock offers a series of fixed payments to the investor. The company can choose not to pay a preferred dividend, but in that case it may not pay a dividend to its common shareholders."

## Appendix A

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# CHARLOTTE CHAMBERLAIN, PH.D.

Summary of experience

Dr. Chamberlain specializes in analysis of complex litigation issues involving securities, banks, and thrifts. Until October 2005, Dr. Chamberlain was a managing director in equity research at Jefferies & Company, Inc. covering financial services—primarily banks, thrifts, market makers, and traders. Prior to joining Jefferies, she was a vice president at Wedbush Morgan, a Los Angeles-based securities firm specializing in West Coast companies. Dr. Chamberlain previously served as vice chair of NewAmerica Savings, where she directed all financial, operations, and regulatory aspects of the bank. Prior to her board participation at NewAmerica, she was executive vice president and director of strategic planning at Glendale Federal Bank, now part of Citigroup. There she chaired the Asset/Liability Committee and was a member of the Operating and Investment Committees. While at Glendale, Dr. Chamberlain was appointed to the Thrift Institutions Advisory Council of the Federal Reserve Board of Governors and the Real Estate Advisory Board for the University of California at Berkeley.

Before joining Glendale, Dr. Chamberlain was Chief Economist and Director of Policy and Economic Research at the Federal Home Loan Bank Board. That office was responsible for providing financial analysis to the Board on fixed income and mortgage markets and the thrift industry, as well as forecasts of the costs of thrift failures to the Federal Savings and Loan Insurance Corporation. While at the Bank Board, Dr. Chamberlain authored *Agenda for Reform*, which examined the changes needed in the nation's deposit insurance and regulatory systems to guarantee their viability in a deregulated and highly competitive world. In addition, she has authored numerous articles on mortgage finance, housing, and measuring the equity value of thrifts.

**Education**

**Cornell University**
Ph.D. economics
M.A. economics

**University of Connecticut**
BA economics

**Professional Experience**

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|---|---|
| | **Analysis Group, Economic, Financial and Strategy Consultants** |
| 2007-present | External Expert |
| | **NERA Economic Consulting** |
| 2006-present | Special Consultant |
| | **Jefferies & Company, Inc.** |
| 1997-2005 | Managing Director |
| | **Wedbush Morgan Securities** |
| 1992-1997 | Vice President |
| | **NERA Economic Consulting** |
| 1989-1992 | Vice President |
| | **NewAmerica Savings Bank, Camarillo, CA** |
| 1989-1991 | Vice President |
| | **Glendale Federal Savings Bank** |
| 1985-1989 | Executive Vice President |
| 1983-1985 | Senior Vice President, Asset/Liability Management |
| 1979-1981 | Senior Vice President, Asset/Liability Management |
| | **The Federal Home Loan Bank Board** |
| 1981-1983 | Chief Economist and Director of Policy and Economic Research |
| | **U.S. Department of Transportation** |
| 1973-1979 | Branch Chief, Forecasting and Modeling |
| | **Northeastern University** |
| 1971-1973 | Assistant Professor of Economics |

**Professional Activities Experience**

Thrift Industry Advisory Council to the Federal Reserve Board of Governors

Advisory Board to the University of California at Berkeley Real Estate Center

Board of Directors, Los Angeles Financial Analysts Society

Economic Advisory Council to the Board of Directors of the Los Angeles Area Chamber of Commerce

Lambda Alpha International Honorary Society of Land Economics

**Testimony, Expert Consulting, and Reports**

Trial Testimony: In the Ontario, Canada Securities Commission, Biovail Corporation, Eugene N. Melnyk, et al, April 15, 2009.

Expert Report: In The Matter Of The Securities Act, R.S.O. 1990, C. S. 5, As Amended, and In The Matter Of Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk And Kenneth G. Howling , January 16, 2009.

Deposition Testimony (October 14, 2008) In the Circuit Court Of Jefferson County, Alabama Healthsouth Corporation 2002, Wade Tucker, derivatively, for the benefit of and on behalf of the nominal defendant Healthsouth Corporation, Plaintiff, Richard M. Scrushy, et al.,defendants

Deposition Testimony (October 8, 2008) and Work Product: In the Superior Court Of The State Of California, County of Orange, Downey Savings And Loan Association, F.A., a federal association, Plaintiff, v. Chevy Chase Bank, F.S.B., a federal savings bank regarding damages in connection with option ARM mortgages.

Expert consulting: In The Court Of Chancery Of The State Of Delaware, Countrywide Corporation; Shareholders Litigation, re Countrywide Financial Corp.'s use of the "Deep Recession" scenario in forecasting 2008-2012 US home prices for its Bank of America Corp. merger analysis.

Tracking the Subprime Mortgage Market Meltdown; January 2008, Focus Report, Analysis Group

Expert Report: EMC Mortgage Corporation Plaintiff, v. Ameriquest Mortgage Company, October 15, 2007, re the sudden and steep decline in nonprime lending and securitization starting in early 2007.

Deposition testimony and rebuttal expert report, In the United States District court Middle District of Florida, Orlando, *Waste Services Inc. v. Waste Management Inc.*, on September 4, 2006 covering industry standards in commercial lending, options valuations, and damages.

Expert consulting, In the United States District Court, District of Connecticut, Grand Jury N-04-3, in *USA v. Chance M. Bought and John M. Lucarelli*, on July 10, 2006 covering industry and regulatory practices for initial public offerings for banks and thrifts.

Event Study, in *Arata v. UBS,* on NASD Arbitration, 2006 covering research protocols for developing price targets and equity valuations.

Testimony before U.S. House of Representatives on Modernizing the Federal Home Loan Bank System, 1991.

**Chamberlain Associates**

**Equity Research Reports**

Archipelago Exchange (NYSE)

The Chicago Mercantile Exchange

Countrywide Financial Corp (Bank of America)

E*TRADE Financial

eSpeed Inc.

FirstFed Financial (OneWest Bank)

Golden West Financial (Wachovia/ Wells Fargo)

GFIG Group

Greater Bay Bancorp

Investment Technology Group

ICAP plc

IndyMac Bancorp (OneWest Bank)

Knight Capital Group

LaBranche & Co.

The Nasdaq Stock Market Inc. Group

Safety Insurance Group, Inc.

SVB Financial Group

Trade Station Group Inc.

Van der Moolen Holding NV.

Washington Mutual Inc.(JPMorgan Chase)

**Journal Articles**

"Computer-Assisted Real Estate Appraisal; A California Savings and Loan Case Study," *The Appraisal Journal (*August 1993, January 1994).

August 26, 2010

## Appendix B

## Documents Relied Upon

*Case Documents*

Agreement and Plan of Merger, dated July 27, 1996, by and among First Nationwide Holdings Inc., Cal Fed Bancorp, Inc., and California Federal Bank, F.S.B.

Agreement and Plan of Merger, June 25, 2001.

Amended and Restated Warrant Agreement, March 11, 2003.

Amended Registration Statement of Dime Bancorp, Inc., filed December 15, 2000.

Coast Federal Litigation Contingent Payment Rights Trust Registration Statement, dated January 13, 1998.

Complaint for Declaratory Relief, April 12, 2010.

Declaration of Jonathan A. Shiffman and Exhibits, October 29, 2010.

Declaration of Paul N. Silverstein and Exhibits, November 17, 2010.

Defendant's Reply Memorandum of Law in Further Support of its Motion for Summary Judgement, November 22, 2010.

Disclosure Statement for the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of The United States Bankruptcy Code (*In re Washington Mutual, Inc.*), March 26, 2010.

Memorandum of Law in Support of the Motion of Defendant Washington Mutual, Inc. for Summary Judgment, October 29, 2010.

Plaintiffs' Amended Class Complaint for Declaratory Relief, September 3, 2010.

Plaintiffs' Memorandum of Law in Response to Defendant's Motion for Summary Judgment, November 17, 2010.

Registration Statement of Dime Bancorp, Inc., filed October 20, 2000.

Warrant Agreement, December 21, 2000.

*Cases*

*Anchor Sav. Bank, FSB v. United States,* 597 F.3d 1356 (2010).

*Ariadne Financial Services Pty. Ltd. v. United States,* 133 F.3d 874 (Fed Cir.), cert. denied, 119 S. Ct. 67 (1998).

*Cal. Fed. Bank v. United States,* 395 F.3d 1263 (2005).

*Glendale Fed. Bank, FSB, v. United States,* 239 F.3d 1374 (2001).

*Glendale Fed. Bank, FSB, v. United States,* 378 F.3d 1308 (2004).

*Textbooks and Articles*

Andrew H. Y. Chen, "A Model of Warrant Pricing in a Dynamic Market," *The Journal of Finance* 25 (December 1970).

Heather A. Haveman, "Organizational Size and Change: Diversification in the Savings and Loan Industry after Deregulation," *Administrative Science Quarterly* 38 (1993).

James A. Miles and James D. Rosenfeld, "The Effect of Voluntary Spin-off Announcements on Shareholder Wealth," *The Journal of Finance* 38 (1983).

John Downes and Jordan Elliot Goodman, *Barron's Dictionary of Finance and Investment Terms* (Hauppauge, NY: Barron's Educational Series, 2010).

Lawrence J. White, "A Cautionary Tale of Deregulation Gone Awry: The S&L Debacle," *Southern Economic Journal* 59 (January 1993).

Lawrence R. Cordell, Gregor D. MacDonald, and Mark E. Wohar, "Corporate Ownership and the Thrift Crisis," *Journal of Law and Economics* 36 (October 1993).

R. Alton Gilbert, "Requiem for Regulation Q: What It Did and Why It Passed Away," *Federal Reserve Bank of St. Louis* (February 1986).

R. Glenn Hubbard, *Money, the Financial System, and the Economy,* 4th ed. (Boston, MA: Pearson Education, 2002).

Randall S. Kroszner and Philip E. Strahan, "Regulatory Incentives and the Thrift Crisis: Dividends, Mutual-To-Stock Conversions, and Financial Distress," *The Journal of Finance* 51 (September 1996).

Richard A Brealey and Stewart C. Myers, *Principles of Corporate Finance,* 7th ed. (New York, NY: Irwin McGraw-Hill, 2003).

Sangkyun Park, "Put Option Values of Thrifts in the 1980s: Evidence from Thrift Stock Reactions to the FIRREA," *The Journal of Financial and Quantitative Analysis* 37 (March 2002).

Timothy Curry and Lynn Shibut, "The Cost of the Savings and Loan Crisis: Truth and Consequences," *FDIC Banking Review* (2000).

Zvi Bodie, Alex Kane, and Alan J. Marcus, *Investments,* 6th ed. (New York: McGraw-Hill).

*Other*

"Golden State Bancorp Announces Plans to Distribute Goodwill Litigation Tracking Warrants," PR Newswire, October 28, 1997.

Statement of Financial Accounting Concepts No. 06, Financial Accounting Standards Board (2008).

Washington Mutual, Inc., Form 8-K, filed March 14, 2008.

Bloomberg Financial Markets.

Coast Federal Litigation Contingent Payment Rights Trust Form, 10-Q, May 10, 2001.