

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re
WASHINGTON MUTUAL, INC., *et al.*,

Debtors.

Chapter 11

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

Hearing Date: July 13, 2011, at 9:30 a.m. (requested)
Objections Due: July 11, 2011, at 4:00 p.m. (requested)

**MOTION OF CERTAIN DIME LTW HOLDERS,
PURSUANT TO BANKRUPTCY CODE § 1102, FOR AN ORDER APPOINTING AN
OFFICIAL COMMITTEE OF DIME LTW HOLDERS**

Jim Alderson, Brad Christensen, Austin Hopper, Rodney McFadden, Edward Mintz, Richard Squires and Chuck Warltier (collectively, the “Moving Dime LTW Holders”), each an LTW holder and party in interest in the above-captioned cases, hereby file their Motion for an Order Appointing an Official Committee of Dime LTW Holders (the “Motion”) and respectfully represent as follows:

JURISDICTION AND VENUE

- 1) This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
- 2) On September 26, 2008 (the “Petition Date”), the above-captioned debtors, Washington Mutual, Inc. and WMI Investment Corp. (the “Debtors”), filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.
- 3) The Debtors are authorized to continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.



4) On October 15, 2008, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Creditors’ Committee”).

5) On January 11, 2010, the U.S. Trustee appointed an official committee of equity security holders in these cases (the “Equity Committee”).

PRELIMINARY STATEMENTS

6) Recently, numerous LTW holders, including most of the Moving LTW Holders, petitioned the Office of the U.S. Trustee for the appointment of an Official LTW Committee. By letter dated June 22, 2011 and offering no explanation or illumination on the issue, the Office of the U.S. Trustee denied those petitions¹. Additionally, requests were made not only to ascertain the reason(s) for the denial but were also made so that the petitioners might have an opportunity to respond to any objections. Those additional requests were also denied. These denials necessitate that the instant Motion be brought before this Court. For all of the reasons contained within this Motion, the Moving LTW Holders respectfully disagree with the U.S. Trustee’s decision to deny the appointment of an Official LTW Committee and are now appearing before this Court seeking equitable remedy.

7) The U.S. Trustee has appointed two official committees in these cases; an Unsecured Creditors Committee and an Equity Committee. Each of these statutory committees represents its constituency or “class” and has retained counsel and various other professionals whose toll charge is borne by the Debtors’ Estates. Similarly, this Court suggested and informally allowed the LTW holders to be treated as a “class” that would be represented by certain members within the class as Class Plaintiffs (originally Broadbill Investment Corp. “Broadbill” and later Nantahala Capital Partners, LP “Nantahala” and Blackwell Capital

¹ See Exhibit A for an example of one denial letter received from the Office of the U.S. Trustee.

Partners, LLC). While this arrangement is similar in structure to the way a statutorily appointed committee might represent a particular class or constituency, it differs in that the legal and professional fees incurred by the LTW holders, as a class, have been borne by a few individual LTW holders. That the LTW Holders are an “in the money constituency” with a disputed claims reserve of \$337 million set aside that redounds to their benefit and yet are forced to pay their own toll charge in this bankruptcy proceeding results in an inequitable situation that should no longer be countenanced by this Court.

RELIEF REQUESTED

8) By this Motion, the Moving LTW Holders seek an Order directing the United States Trustee to appoint an Official Committee of LTW Holders, pursuant to Bankruptcy Code Section 1102. The Moving LTW Holders seek appointment of an Official Dime LTW Committee to represent the interests of all LTW holders in the above referenced Chapter 11 cases. Additionally, each of the Moving LTW Holders stands ready, if called upon, to enter into a fiduciary relationship as a member of the LTW Committee, if appointed, to faithfully and vigorously represent the interests of fellow LTW holders.²

BASIS FOR RELIEF REQUESTED

9) As will be shown more fully below, the criteria for appointing an Official Committee of LTW holders are satisfied here. Section 1102(a)(2) of the Bankruptcy Code provides that,

² For the avoidance of doubt, if an LTW Committee is appointed and in an effort to promote continuity, the Moving LTW Holders suggest that some of the named Plaintiffs in the LTW Adversary Proceeding receive a seat on the LTW Committee with the appointment of additional members from within the LTW constituency to form a committee of 7 members in total. In addition and most importantly, the Moving LTW Holders would prefer that current counsel to the Plaintiffs in the LTW Adversary Proceeding, Arthur Steinberg, would become lead counsel to the LTW Committee. The Moving LTW Holders are sanguine towards that end.

“On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee.” 11 U.S.C. § 1102(a)(2).

10) Based on this Congressional intent, courts have appointed additional committees in many recent Chapter 11 cases filed within the Third Circuit and elsewhere. See, e.g., *In re General Growth Properties, Inc.*, Case No. 09-11977 (ALG) (Bankr. S.D.N.Y.); *In re Tronox, Inc.*, Case No. 09-10156 (ALG) (Bankr. S.D.N.Y.); *In re Chemtura Corp.*, Case No. 09-11233 (REG) (Bankr. S.D.N.Y.); *In re Solutia Inc.*, Case No. 03-17949 (PCB) (Bankr. S.D.N.Y.); *In re Pilgrim's Pride Corp.*, 407 B.R. 211 (Bankr. N.D. Tex. 2009); *In re W.R. Grace & Co.*, Case No. 01- 01139 (JKF) (Bankr. D. Del.); *In re Point Blank Solutions, Inc.*, Case No. 10-11255 (PJW) (Bankr. D. Del.); *In re Washington Mutual Inc.*, Case No. 08-12229 (MFW) (Bankr. D. Del.); and *In re MiddleBrook Pharmaceuticals, Inc.*, Case No. 10-11485 (MFW) (Bankr. D. Del).

11) In providing interested parties and stakeholders with the right to seek the appointment of an official committee, Congress recognized the vulnerability of and potential prejudice to certain claims and interest holders from the Chapter 11 process. The legislative history to this section notes that an official committee (or LTW Committee in this case) could “counteract the natural tendency of a debtor in distress to pacify large creditors, with whom the debtor would expect to do business, at the expense of small and scattered investors.” S. Rep. No. 898, 95th Cong., 2nd Sess., at 10 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5796.³

³ In enacting the Bankruptcy Code of 1978, Congress viewed reorganization proceedings as “literally the last clear chance to conserve for [LTW Holders] values that corporate financial stress or insolvency have placed in jeopardy.” S. Rep. No. 95-989, at 10 (1978), as reprinted in 1978 U.S.C.C.A.N. 5787, 5796.

12) Determinations about whether additional committees should be appointed are made on a case-by-case basis. Nonetheless, several factors are traditionally considered in determining whether additional committees should be appointed, including: (i) whether the debtor appears to be hopelessly insolvent, (ii) whether the debtor's chapter 11 cases are large and complex, (iii) whether the LTWs are widely held, (iv) whether LTW holders will be adequately represented absent the appointment of an Official Committee, (v) the timing of the request for an Official Committee of LTW holders, and (vi) whether the cost of an Official Committee of LTW holders outweighs the need for LTW holder representation. See *Albero v. Johns-Manville Corp.* (In re Johns-Manville Corp.), 68 B.R. 155, 159-160 (S.D.N.Y. 1986) appeal dismissed 824 F.2d 176 (2d Cir. 1987); *Exide Tech. v. Wisc. Inv. Bd.*, 2002 WL 32332000 (D. Del. Dec. 23, 2002).

13) The Moving LTW Holders submit that the application of the foregoing factors to the facts and circumstances of these Chapter 11 Cases leads to a single and inescapable conclusion: the appointment of an Official Committee of LTW holders is not only appropriate but also necessary to assure that all LTW holders will be adequately represented in the Chapter 11 Cases. In this regard, and as described more fully below:

- i) the Debtors do not appear to be hopelessly insolvent and, to the contrary, all available information (including the Debtors' sworn public filings, Reorganization Plan and Disclosure Statement and the Disputed Claims Reserve established for LTW holders in the amount of \$337 million) indicates that there is significant value in the Estate such that the LTW holders have real and significant economic interests in these Chapter 11 Cases;
- ii) the Chapter 11 Cases are, by all accounts, large and complex;
- iii) the LTWs are publicly traded and logically are also widely held;

iv) the interests of the LTW holders, which at the present time diverge significantly from those of both the Unsecured Creditors Committee and Equity Committee, are most assuredly not being represented by the Debtors or either of the appointed statutory committees and in fact are being vigorously opposed by both the Debtors and the Unsecured Creditors Committee;

v) the timing of this request will allow an Official Committee of LTW holders to play a meaningful role in these Chapter 11 Cases and will allow the LTW holders to have official representation beyond confirmation and heading into the related adversary proceeding that is scheduled to commence on September 12, 2011; and

vi) the cost of an Official Committee of LTW holders does not outweigh the need for an Official Committee to represent the interests of all LTW holders.

The Debtors do not Appear to be Hopelessly Insolvent

14) The appointment of an Official Committee of LTW holders in these Chapter 11 Cases is justified because all available information indicates that there is significant value for LTW holders without regard for whether the Debtors are or are not hopelessly insolvent. Nonetheless, in assessing insolvency for purposes of appointing an Official Committee of LTW holders, the focus is on whether the debtor appears to be hopelessly insolvent based upon the available data and not on a full-fledged valuation analysis (which is premature prior to a confirmation hearing). If the debtor appears to be hopelessly insolvent, then this factor weighs against having an Official Committee of LTW holders. If it appears, however, that the debtor is solvent, then creditors, LTW holders and shareholders have a meaningful economic interest to protect, and the presumption should be in favor of appointing an Official Committee of LTW holders, especially given that the LTW holders hold claims that are senior to those of

shareholders and at worst, *pari passu* with General Unsecured Creditors if not altogether senior on account of our secured interest and contractual right to 85% of the underlying Anchor Litigation. See Collier on Bankruptcy, § 1102.03[2][a] (N.Resnick & Henry 1. Sommer eds., 15th ed. rev.).

15) Here, the available data belies any notion that the Debtors are hopelessly insolvent and, instead, strongly suggests that there is significant creditor and perhaps even some residual equity value in the Debtors on account of the Debtors' Net Operating Losses. First, the Debtors' sworn public filings have consistently shown significant value available to satisfy unsecured creditors of Class 12 and to also pay pendency interest of over 5%. The very notion of paying pendency interest to unsecured creditors implies that the Debtors are solvent. Under the current plan construct, if the LTW holders prevail in the adversary proceeding (originally captioned as Broadbill Investment Corp. et al v. Washington Mutual Inc., et al, Case No. 10-50911), the LTW holders will be placed in Class 12 as unsecured creditors of the Estate. This fact has been stipulated by the Debtors in their Disclosure Statement and Plan of Reorganization. Further to the point, the Debtors have established a Disputed Claims Reserve for LTW holders and have escrowed funds in an amount of \$337 million, as this Court is well aware. As such, there is no disputing the Debtor's ability to satisfy the claims of the LTW holders.

16) In addition, the trading prices of the LTWs (trading on the Pink Sheets as DIMEQ) reflect the market's perception that a significant recovery is in the offing. Notably, the LTWs currently trade in the open market at \$0.63 per LTW which reflects a market capitalization of approximately \$71 million⁴. The current trading price is significantly below where the LTWs traded before Broadbill decided to withdraw as a named Plaintiff in the LTW

⁴ 113 million LTWs x \$0.63 is approximately \$71 million.

adversary proceeding on May 16, 2011⁵. In the three to four months leading up to their withdrawal, the LTWs traded in a range between \$0.80 and \$0.98. Thus, on the high end, the market had valued the security at approximately \$110 million which is approximately 33% of the amount escrowed in the Disputed Claims Reserve set aside for LTW holders. Given the uncertainty of the bankruptcy process in general, and the uncertainty regarding the ultimate timing of the receipt of any recovery due to LTW holders, a market capitalization of 1/3rd of the Disputed Claims Reserve amount speaks volumes about the market's views of strength of the case for LTW holders. These trading prices undoubtedly reflect the market's perception that there is significant value available for LTW holders and undercut any notion that the LTWs are without need for official representation.

The Chapter 11 Cases are Large and Complex

17) Further supporting the appointment of an Official Committee of LTW holders is the fact that these Chapter 11 Cases are undeniably large and complex. The Chapter 11 Cases have been highly contentious and have been litigated and administered for nearly 3 years. They also involve the claims and interests of thousands of parties, nearly 8,000 docket entries in the main docket alone and hundreds more in the 37 adversary proceedings that have been filed.

18) As a constituency whose interests will be significantly impacted absent any official representation, the LTW holders should be represented by an Official Committee comprised of vigorous and indefatigable fiduciaries as the adversary proceeding transpires so that their significant economic interests and rights are appropriately protected, going forward.

⁵ Further exacerbating the issue, in the 6th Amended Plan, the Debtors created an undue amount of confusion regarding several issues relating to the LTWs including whether certain LTW holders would be in Class 12 versus Class 12a, even if the LTW holders are successful in the LTW Adversary Proceeding. For a more complete discussion of this and other ambiguities that are of concern to LTW holders, see Docket # 7912 entitled, OBJECTION TO CONFIRMATION OF THE MODIFIED SIXTH AMENDED PLAN OF AFFILIATED DEBTORS BY CLASS REPRESENTATIVES OF DIME LITIGATION TRACKING WARRANTS.

The appointment of an Official Committee of LTW holders is therefore justified as a means to assure that LTW holders will continue to be represented on a pre and post-confirmation basis to assure that representation and funding are in place to see the adversary proceeding through until a settlement or a non-appealable final order has been entered. There is no doubt that this process could last for more than a year beyond confirmation and will continue to be costly to litigate.

The LTWs are Widely Held and Publicly Traded

19) While the total number of outstanding LTW holders is unknown, the appointment of an Official Committee of LTW holders is certainly supported by the fact that the LTWs are publicly traded on the Over the Counter Bulletin Board exchange under the symbol (DIMEQ). Absent any information from the Depository Trust & Clearing Corporation (DTCC) it is difficult to determine the exact number of holders. However, with approximately 113 million LTWs outstanding, it is reasonable to assume that they are widely held and undisputed that they are publicly traded.

The LTW holders may not be Adequately Represented Without an Official Committee of LTW holders

20) The appointment of an Official Committee of LTW holders is also justified because the LTW holders may not be adequately represented without the appointment of such a committee. It is undisputed that there is no indentured trustee to protect LTW holder rights like certain other creditors. The appointed Warrant Agent works for the Debtors and has done absolutely nothing for LTW Holders during the pendency of these Chapter 11 cases which span nearly 3 years now. For the last year, the LTWs have been represented solely by a few LTW holders; first by Broadbill who initiated the LTW adversary proceeding against the Debtors (which now properly includes the Board of Directors as named defendants) and later by Nantahala who subsequently intervened and also became a named Plaintiff. These LTW Holders

took it upon themselves to reach into their own pockets to represent the entire LTW constituency and until recently, had borne all of the legal costs in representing the interests of all LTW holders. By all accounts, they have done a remarkable job of representing LTW holders throughout the adversary proceeding thus far. However, on May 16, 2011, for reasons unknown to the Moving LTW Holders, Broadbill withdrew as a named Plaintiff which left Nantahala to shoulder the balance of the legal burden, going forward. Within the last few weeks, it was announced that four additional LTW holders (Axicon Partners LLC, Brennus Fund Limited, Costa Brava Partnership III, LP, and Sonterra Capital Master Fund, Ltd.) have been added as named plaintiffs in the LTW adversary proceeding and are now funding the related legal costs. Despite the emergence of these LTW holders, other LTW holder concerns over the continued funding of the LTW Adversary proceeding, going forward, are quite palpable as evidenced by the aforementioned selloff in the market.

21) While the recent emergence of these (4) LTW holders and the steadfast presence of Nantahala to bear the legal costs is certainly a positive sign and welcome development, it is an inescapable reality that these LTW holders are not fiduciaries of the estate and ostensibly would owe no continuing fiduciary duty to any other LTW holders if they withdrew as Plaintiffs. For the avoidance of doubt, the Moving LTW holders do not wish to impugn anyone, but the departure of Broadbill at such a critical juncture in the LTW Adversary Proceeding underscores the precarious position that LTW holders would find themselves in if the current group of Plaintiffs were to decide, at some future date, that they also would withdraw as named Plaintiffs. To be clear, the Moving LTW holders submit that the Plaintiffs (chiefly Nantahala and their outstanding counsel, Arthur Steinberg, Esq.) have done a remarkable job of representing the

interests of LTW holders thus far and the appointment of an Official LTW Committee would serve to provide some continuity and some assurance that funding will be in place going forward.

22) The outstanding achievements, heretofore, by the LTW Plaintiffs include (but are not limited to):

i. Defeating the Summary Judgment motion by the Debtors which would have dismissed the LTW Adversary Proceeding;

ii. Successfully arguing for the establishment of a \$337 million disputed claims reserve to satisfy the claims of LTW holders;

iii. Lodging numerous objections (which had not been addressed by the Debtors or raised by any of the official committees) to the January 2011 confirmation which found merit in the eyes of this Court as evidenced in the Confirmation Opinion which highlighted various points related to the preservation of LTW holders rights;

iv. The LTW Plaintiffs' Confirmation objection was upheld with respect to the members of the Board of Directors of the Debtors which prevented exculpation of the Board on account of potential LTW holder claims;

v. Along a similar vein, the LTW Plaintiffs defeated the Debtor's motion to dismiss the Amended Complaint which resulted in the addition of the Board members as named defendants in the LTW Adversary Proceeding; and

vi. Most recently, the LTW Plaintiffs have filed confirmation objections to the 6th amended plan that highlight additional issues that are of concern to LTW holders which have not been addressed by the Debtors and were not raised by any of the other official committees.

23) These achievements notwithstanding, it cannot be stated by anyone with any degree of certainty that the interests of LTW holders will continue to be adequately represented by anyone or more LTW holders, including LTW holders who may have significant holdings, throughout the remainder of the trial and appeals process. Moreover, no reasonable argument can be proffered that would suggest any individual or collective group of LTW holders has the duty or obligation to reach into their own pockets to provide funding to represent other LTW holders; indeed, that duty and financial obligation rests with the Debtors' Estates. The Moving LTW Holders want to be clear that the assurance of continued representation and continued and uninterrupted funding of the litigation expense is the issue that is of paramount concern. The reality is that the current group of named Plaintiffs could decide, as would be their right, to simply withdraw as Plaintiffs and "take their ball and go home" as Broadbill recently did which would leave the LTW class without any representation or funding to continue the LTW Adversary Proceeding.

24) The contention that some members of the class may have resources sufficient to protect all LTW holders' interests is of little significance where, as here, the security is widely held and where a continuing fiduciary duty does not otherwise exist. Accordingly, and based upon the foregoing, absent the appointment of an Official Committee of LTW holders with a true fiduciary capacity and relationship, there is a real risk and there can be no assurance that the interests of LTW holders will continue to be adequately represented and funded in the Chapter 11 Cases and beyond until a non-appealable final order has been entered in the LTW adversary proceeding. This fact underscores the need for official committee representation of all LTW holders. With \$337 million hanging in the balance, other LTW holders simply cannot afford to take this risk.

25) Additionally, the interests of LTW holders are not currently represented at all by the Unsecured Creditors Committee and furthermore, by the very nature of the LTW Adversary Proceeding, will not and cannot be adequately represented by either the Unsecured Creditors or Equity Committees that have been appointed in these Chapter 11 Cases. It is sometimes argued that all stakeholders may be adequately represented by a creditors committee because there may be a unity of interest among creditors and other stakeholders to maximize value. However, the Creditors Committee has no duty or incentive to maximize value or to represent the interests of LTW holders, and in fact the Creditors Committee has repeatedly and continually pursued actions that conflict with the interests of LTW holders by intervening in the adversary proceeding to oppose the interests of LTW holders.

26) Finally, the fact that an Equity Committee has been appointed coupled by the fact that neither the Equity Committee nor the Unsecured Creditors Committee represent LTW holders results in an inequitable situation for LTW holders. It is a hard pill to swallow that if the LTW holders are afforded their proper treatment as Secured Creditors or, at worst, Class 12 general unsecured creditors, they will only have achieved that end by reaching into their own pockets to fund their legal costs. LTW holders have a disputed claims reserve of \$337 million, as was ordered by this Court. The LTW claimants rank senior to equity security holders and are at worst *pari passu* with the General Unsecured Claims yet the committees representing those claims and interest holders are able to fund their legal costs from the Estate without any risk of loss or interruption in the funding source. This puts the LTW holders at a distinct disadvantage when they must engage in legal battles against parties who have billions of dollars at their disposal.

27) The Debtors as Defendants and Unsecured Creditors Committee as Interveners have spent a considerable amount of time and Estate resources defending the LTW Adversary Proceeding. As an example, Akin Gump, co-counsel to the Unsecured Creditors Committee, billed the Estate in excess of \$50,000 for over 70 hours of work related to the Dime LTWs in the Month of May 2011 alone⁶. Additionally, Akin Gump has even spent time attending the underlying Anchor Savings case hearings on October 23, 2009⁷. The notion that the time and estate resources spent by the Debtors and Unsecured Creditors are not somehow duplicative, quite simply, strains credulity. If the Debtors, its official committees and other interveners are allowed to spend Estate resources to oppose the LTW Holders then LTW Holders should also be allowed access to Estate resources through the mechanism of an official committee.

28) The Debtors, Unsecured Creditors Committee and other interveners in the LTW adversary proceeding are currently waging a war of attrition with the LTW holders as is evidenced by Aurelius' thinly veiled attempt to get a "second bite" at the LTW Summary Judgment apple in an effort to zero out the late filed claims, which would ostensibly and incorrectly include certain LTW holders who were: (1) never provided notification that a claim needed to be filed; (2) relying (to their detriment) upon the Board of Directors to make the necessary adjustments as was the Board's contractual and fiduciary duty under the Warrant Agreement and (3) not otherwise required to file a proof of claim because the LTWs are securities registered with the SEC.

29) Appointing an LTW Committee will level the playing field heading into the September 12, 2011 trial. Additionally, the appointment of an LTW Committee could promote and facilitate a settlement and stop this wasteful war of attrition which has trampled the rights of

⁶ Docket # 8017 pp.46-50, filed 06/28/2011

⁷ Anchor Savings Bank, FSB v. United States; United States Court of Appeals for the Federal Circuit, #2008-5175, - 5182

LTW holders for far too long. Once the legal costs of the LTW holders are rightfully funded out of the Debtors' Estates (the same pocket that the Debtors, Unsecured Creditors and Equity Committee reach into), the Debtors will have to negotiate in good faith with the LTW Committee and cease the pernicious financial attenuation of disadvantaged individual LTW holders. This is an inequitable situation which can find equitable remedy in this Court if the Court would only approve the instant Motion.

The Timing of the Request for an Official Committee of LTW holders is Appropriate

30) The timing of this request further supports the appointment of an Official Committee of LTW holders. Given the stage of these Chapter 11 Cases, an Official Committee of LTW holders can and should play a meaningful role in representing LTW holder interests. No plan of reorganization has been confirmed and in fact the first confirmation hearing yielded hundreds of objections and was derailed for many months and the original Plan has been amended no less than 6 times.

31) Objectors may posit that it is too late in the case to appoint additional committees but that assertion misses the mark. The timing of this request should not be viewed in light of how close we are to confirmation but rather should be viewed in light of how long the LTW Adversary Proceeding is expected to continue until a non-appealable final order is entered. While the Confirmation hearing is less than a month away, the LTW Adversary Proceeding is not scheduled to come to trial until September 12, 2011. Regardless of the outcome of the September trial, and barring a settlement in the interim, it is reasonable to expect that, given the rancor and acrimony that has surrounded the LTW Adversary Proceeding, the non-prevailing party would appeal the decision. If an appeal ensues or if multiple appeals ensue, the LTW Adversary Proceeding could drag on for years beyond this request.

32) Undoubtedly, the legal costs of representing the interests of LTW holders will be significant and absent the Court approving the instant Motion, the funding of these legal costs will have to be borne by the LTW holders themselves for potentially years beyond the date of this Motion. Whether the current group of named Plaintiffs in the LTW Adversary Proceeding will continue to fund the legal cost of representing the interests of all LTW holders until a final non-appealable order has been entered is altogether unknowable. Given the uncertain nature of the funding status, it is imperative that LTW holders are afforded representation by an Official Committee that is funded by the Debtor's Estate so that the LTW interests are adequately represented at all stages of the adversary proceeding. As such, objections based on the timing of this Motion must fail.

The Cost of an Official Committee of LTW holders does not Outweigh the Need for an Official Committee of LTW holders

33) In these Chapter 11 Cases, where the need for adequate LTW holder representation is clear for the reasons noted above, it cannot seriously be contended that the cost of an Official Committee of LTW holders is an appropriate justification for not having such a committee. Courts have recognized the impropriety of using cost as a reason to deny official committee status when there is otherwise a basis for having a committee. See *Ad Hoc Bondholders Group v. Interco Inc. (In re Interco Inc.)*, 141 B.R. 422, 424 (Bankr. E.D. Mo. 1992) (noting that "potential added cost is not sufficient in itself to deprive the creditors of the formation of an additional committee if one is otherwise appropriate") (citation omitted). Furthermore, given the size and complexity of these Chapter 11 Cases, as well as the numerous professionals that have already been retained by the Debtors, the Creditors Committee and the Equity Committee, the incremental cost of an Official Committee of LTW holders would not place an undue burden on the Debtors' estates. Moreover, the incremental costs would pale in

comparison to the purported monthly toll charge of \$30 to \$40 million in legal costs and accrued interest that the Estate has borne for almost 3 years. When, as is the case for the LTW holders, a class of claimants have a disputed claims reserve of \$337 million established because the Debtors and their Board failed to fulfill their fiduciary duty to protect their interests, it should be the Estate and not the LTW holders that bears the cost of the related legal representation.

34) Once the need for an official committee is established, the burden shifts to those who might oppose this Motion “to show that the cost of the additional committee sought significantly outweighs the concern for adequate representation and cannot be alleviated in other ways.” See *In re Becker Indus. Corp.*, 55 B.R. 945, 949 (Bankr. S.D.N.Y. 1985). Given the need for an Official LTW Committee as established herein, there is no basis for denying appointment based on the additional incremental cost of doing so.

35) For these reasons, it is apparent that the mere cost of an Official Committee of LTW holders does not outweigh the need for adequate LTW holder representation and, thus, the appointment of an Official Committee of LTW holders is appropriate, justified and necessary.

36) By enacting the Bankruptcy Code, Congress, has conferred great equitable powers upon Bankruptcy Courts and indeed Bankruptcy Courts are considered to be courts of equity. The Moving LTW Holders’ prayer for relief is that this Court will exercise those powers and direct the Office of the U.S. Trustee to appoint an Official Committee of Dime LTW Holders.

37) While the Court will consider each of the foregoing factors in determining whether to appoint an additional committee, it is not necessary to satisfy each and every one of these factors and no single factor is dispositive. The relative weight afforded to any single factor depends on the circumstances of the case. Nevertheless, for all of the foregoing reasons, the Moving LTW Holders strongly believe that each and every one of these factors are both satisfied

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

WASHINGTON MUTUAL, INC., *et al.*,

Debtors.

Chapter 11

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

Hearing Date: July 13, 2011, at 9:30 a.m. (requested)
Objections Due: July 11, 2011, at 4:00 p.m. (requested)

NOTICE OF MOTION

PLEASE TAKE NOTICE that on July 1, 2011, the undersigned filed the Motion Of Certain Dime LTW Holders, Pursuant To Bankruptcy Code § 1102, For An Order Appointing An Official Committee Of Dime LTW Holders (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that the Movant contemporaneously with the Motion, filed a Motion To Shorten Notice With Respect To The Motion Of Certain Dime LTW Holders, Pursuant To Bankruptcy Code § 1102, For An Order Appointing An Official Committee Of Dime LTW Holders (the “Motion to Shorten”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be made in writing, filed with the Bankruptcy Court, 824 Market Street, 5th Floor, Wilmington, DE 19801 and served upon, so as to actually be received by the undersigned counsel, on or before the **requested** date of July 11, 2011, at 4:00 p.m.

PLEASE TAKE FURTHER NOTICE that if an objection is properly filed in accordance with the above procedure, a hearing on the Motion will be held before the Honorable Mary F. Walrath on the **requested** date of July 13, 2011, at 9:30 a.m. Only those objections made in response to the Motion will be heard.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT
MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER
NOTICE OR HEARING.

Dated: July 1, 2011
Wilmington, Delaware

PINCKNEY, HARRIS & WEIDINGER, LLC

/s/ Donna L. Harris

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Counsel to the Dime LTW Holders

EXHIBIT A



U.S. Department of Justice

Office of the United States Trustee

District of Delaware

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(302) 573-6491
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June 22, 2011

Via E-Mail

Mr. Rodney McFadden
rdmcfadden@gmail.com

**RE: Washington Mutual Inc., et al.
(the "Debtors"), Case No. 08-12229 (MFW)**

Dear Mr. McFadden:

I am responding to your letter of June 7, 2011 whereby you requested that our office appoint an official committee of Dime Litigation Tracking Warrant holders in the above-referenced cases (the "LTW Committee Request").

We have carefully reviewed your request and considered same in light of the facts and circumstances of the case and the positions of the various parties in interest. Based upon our review, Roberta A. DeAngelis, the United States Trustee for Region 3 has determined to decline the LTW Request and to not appoint an official committee of Litigation Tracking Warrant holders at this time. Of course, we reserve the right to reconsider this decision in the future.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

/s/ Jane M. Leamy

Jane M. Leamy
Trial Attorney

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

WASHINGTON MUTUAL, INC., *et al.*,

Debtors.

Chapter 11

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

Re: Docket No. ____

ORDER APPOINTING A OFFICAL COMMITTEE OF DIME LTW HOLDERS

Upon the Motion Of Certain Dime LTW Holders, Pursuant To Bankruptcy Code § 1102, For An Order Appointing An Official Committee Of Dime LTW Holders (the “Motion”); and it appearing that the Court has jurisdiction of the Motion pursuant to 28 U.S.C. § 157(b)(2); and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and upon the record herein; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED as follows:

1. The Motion is GRANTED.
2. The Office of the United States Trustee shall appoint an Official Committee of Dime LTW Holders forthwith.
3. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: July _____, 2011
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE