

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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: **Chapter 11**
: **Case No. 08-12229 (MFW)**
: **(Jointly Administered)**
: **Re: D.I. 8066**
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In re
WASHINGTON MUTUAL, INC., et al.,¹
Debtors.

**DEBTORS' OBJECTION TO
MOTION TO SHORTEN NOTICE WITH RESPECT TO
THE MOTION OF CERTAIN DIME LTW HOLDERS FOR AN ORDER
APPOINTING AN OFFICIAL COMMITTEE OF DIME LTW HOLDERS**

Washington Mutual, Inc. ("WMI") and WMI Investment Corp., as debtors and debtors in possession (collectively, the "Debtors"), file this objection to that certain motion to shorten notice, dated July 1, 2011 [D.I. 8066] (the "Motion to Shorten"), filed by certain purported holders (the "Movants") of Litigation Tracking Warrants™ that are convertible into shares of common equity interests in WMI (the "LTWs"), with respect to that certain Motion of Certain Dime LTW Holders, Pursuant to Bankruptcy Code § 1102, for an Order Appointing an Official Committee of Dime LTW Holders, dated July 1, 2011 [D.I. 8065] (the "LTW Committee Motion"), and respectfully represent as follows:

1. *Thirty-three months* into these chapter 11 cases, *15 months* since the Debtors first proposed plan treatment for the LTWs, *13 months* since certain LTW holders commenced litigation against the Debtors, *seven months* since the Court denied the Debtors' motion for summary judgment with respect to that litigation, *seven months*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Suite 2500, Seattle, Washington 98104.



since a full reserve was established to protect the interest of LTW holders, *four months* since the Court entered a scheduling order in the LTW litigation setting a September 12, 2011 trial date, and *six weeks* since original plaintiff Broadbill Investment Corporation (“Broadbill”) withdrew from participation in the litigation as a representative plaintiff and was replaced by several other holders, Movants seek appointment of an official committee for the sole purpose of shifting the plaintiffs’ litigation costs to the bankruptcy estate. Movants have acted with no diligence whatsoever in seeking appointment of an official committee and in filing the LTW Committee Motion, yet now seek to shorten notice on the ground that such motion “must be heard prior to confirmation of the Proposed Plan.” Motion to Shorten at ¶ 2.

2. There is no conceivable reason why the LTW Committee Motion must be heard before the confirmation hearing. The LTW Committee Motion makes clear that its purpose is to ensure “continued funding of the LTW Adversary proceeding,” a matter that will go to trial *after* the Debtors’ proposed plan of reorganization becomes effective (if the Court confirms the plan). LTW Committee Motion at ¶ 20. To the extent the ostensible purpose of the LTW Committee Motion is to ensure that LTW holders are represented at the confirmation hearing, it is groundless. Indeed, on the very day that the LTW Committee Motion was filed, counsel for the plaintiffs in the LTW litigation (and in a manner afoul of the Local Rules of Bankruptcy Procedure) filed a reply to an objection to confirmation – further illustrating their resiliency and the fact that they will carp to the end. If Movants are concerned that the current plaintiffs in the adversary proceeding, who have already objected to confirmation, will “take their ball and go home,” then Movants’ current counsel – who filed an 18-page motion for appointment of

a committee and obviously is familiar with the issues in the underlying LTW disputes – is more than capable of appearing on their behalf at confirmation.

3. The LTW Committee Motion is a distraction from the key issues before the Court and all parties in interest – consideration of the Debtors’ plan. The Debtors already have an abbreviated time in which to respond to substantive objections. The Movants should not be permitted to distract the Court or the Debtors from that task by shortening notice on their belated and unwarranted motion.

4. Further, the Debtors may wish to investigate some of the assertions in the LTW Committee Motion regarding the trading price of the LTWs, and it will be difficult or impossible to do so on an expedited schedule concurrent with a full schedule of confirmation-related discovery. Movants assert recent trading prices of the LTWs as evidence that “a significant recovery is in the offing[,]” thus justifying appointment of a committee. LTW Committee Motion at ¶ 16. The Court will recall that the Debtors sought discovery regarding trading prices from the LTW plaintiffs in the adversary proceeding, but the plaintiffs refused to produce it and the Court denied a motion to compel, requiring that plaintiffs provide only an affidavit attesting to the number of LTWs held. If the trading price is to be asserted as an indicator of the likelihood of plaintiffs’ success in the adversary proceeding, then the Debtors should be entitled to probe the factors driving the trading price, and that could include discovery of trading data from the Movants as well as the plaintiffs in the adversary proceeding.

5. Movants allege – again, as a fact that warrants appointment of a committee – a decline in the price of the LTWs after plaintiff Broadbill withdrew from participation in the LTW litigation. They attribute this asserted decline as “palpable”

evidence that LTW holders at large have “concerns over the continued funding of the LTW Adversary proceeding.” LTW Committee Motion at ¶ 20. The Debtors question this logic; markets move on trading activity, not abstract “concerns” in the marketplace, so it seems equally plausible that prices fell due to the decision of a holder or holders to sell or reduce their position around the time that Broadbill withdrew. Whether it was Broadbill that sold, some other holder or holders such as the current LTW plaintiffs, or the Movants themselves seeking to take profits after a substantial run-up in the value of the LTWs, the Debtors need time to explore these issues if recent movements in the trading price are to be asserted as a basis for shifting to the estate the cost of plaintiffs’ representation in the LTW litigation.

6. Moreover, Movants filed the LTW Committee Motion after the addition of *four* newly-named plaintiffs – apparently, hedge funds – who collectively own over 17 million LTWs. The addition of these newly-named plaintiffs completely addressed any concerns that the LTW holders may have had over the continued funding of the LTW litigation.

7. Based on the foregoing, the Court should *deny* the Motion to Shorten and set the LTW Committee Motion for the next omnibus hearing date – July 28, 2011 – at the earliest.

Dated: Wilmington, Delaware
July 5, 2011

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