

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re : Chapter 11
: :
WASHINGTON MUTUAL, INC., *et al.*,¹ : Case No. 08-12229 (MFW)
: :
Debtors. : Jointly Administered
: :
: **Related Docket No. 8065**
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**OPPOSITION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF WASHINGTON MUTUAL, INC. , *ET AL.*, TO THE
MOTION OF CERTAIN LTW HOLDERS FOR AN ORDER APPOINTING
AN OFFICIAL COMMITTEE OF LTW HOLDERS**

The Official Committee of Unsecured Creditors (the “Creditors’ Committee”) of Washington Mutual, Inc. (“WMI”) and WMI Investment Corp. (collectively with WMI, the “Debtors”), by and through its undersigned co-counsel, submits this Opposition (the “Opposition”) to the Motion of Jim Alderson, Brad Christensen, Austin Hopper, Rodney McFadden, Edward Mintz, Richard Squires and Chuck Warltier (collectively, the “Moving LTW Holders”) for an Order Appointing an Official Committee of LTW Holders (the “Motion”) (D.I. # 8065).

PRELIMINARY STATEMENT

1. On June 22, 2011, the Office of the United States Trustee (the “U.S. Trustee”) denied the requests of several sophisticated investors that collectively hold more than 1.3 million Litigation Tracking Warrants (“LTWs”) for appointment of an official committee of LTW holders. *See* Boller Aff., Ex. A.

¹ The Debtors in these chapter 11 cases (the "Chapter 11 Cases") and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395).



2. Now, those same investors ask the Court to overrule the U.S. Trustee and to appoint an official LTW committee anyway. This request is an improper attempt by sophisticated investors to have the Debtors' estates fund their adversary proceeding against those estates. The Motion should be denied. The facts of this case do not satisfy the criteria for appointment of an additional committee under 11 U.S.C. § 1102(a).

RELEVANT BACKGROUND

3. On September 26, 2008, the Debtors filed for chapter 11 bankruptcy protection.

4. On October 15, 2008, the U.S. Trustee appointed the Creditors' Committee as the statutory fiduciary representative of all of the Debtors' unsecured creditors.

5. On January 10, 2010, the U.S. Trustee appointed the Official Committee of Equity Security Holders (the "Equity Committee") to fulfill a similar role for holders of equity interests.

6. On April 12, 2010, Broadbill Investment Corp. ("Broadbill") filed an adversary proceeding against WMI (the "LTW Adversary Proceeding"), seeking (among other things) a declaration that the LTWs represent general unsecured claims against WMI's estate.² Shortly afterward, Nantahala Capital Partners, LP ("Nantahala") and Blackwell Capital Partners, LLC ("Blackwell") intervened in the adversary proceeding as plaintiffs and sought to proceed as a class action on behalf of all LTW holders. The Creditors' Committee also intervened, but as defendants. Debtors counterclaimed, seeking a declaration that the LTWs represent equity interests (not claims) or, if they represent claims, that those claims are subordinated to the level of common equity pursuant to 11 U.S.C. § 510(b). Last month, Broadbill filed a notice officially withdrawing as a lead plaintiff. Shortly thereafter, four additional investment funds sought to

² In the Motion, the Moving LTW Holders state that LTWs represent *secured* claims against the Debtors' estates, and that LTW holders are *secured* creditors. Motion, ¶¶14, 26. This unsubstantiated allegation is without merit, is unsupported by any of the operative documents and was never asserted by the class plaintiffs in any of the four complaints filed by the class plaintiffs.

become co-lead plaintiffs: Axicon Partners LLC, Brennus Fund Limited, Costa Brava Partnership III LP, and Sonterra Capital Master Fund, Ltd. (collectively, with Nantahala and Blackwell, the “LTW Class Plaintiffs”).³

7. On January 7, 2011, the Court issued an order denying the Debtors’ motion for summary judgment in the LTW Adversary Proceeding. (Adv. Proc. No. 10-50911 (MFW), D.I. # 146).

8. On February 8, 2011, the Court entered a Revised Order Estimating the Maximum Amount of LTW Claims for Purposes of Claims Reserve, establishing a claims reserve of \$337 million for the LTW holders in the event it is determined that their securities represent claims and not equity interests. (D.I. # 6701).

9. Also on February 8, 2011, the Debtors filed their Modified Sixth Amended Plan of Reorganization (the “Modified Sixth Amended Plan”). (D.I. # 6696). Under the terms of the Modified Sixth Amended Plan, if the LTW Adversary Proceeding results in a determination that LTWs represent claims against the Debtors’ estates, then LTW holders will be placed into Class 12 and treated as General Unsecured Creditors. Modified Sixth Amended Plan, ¶ 25.1. Conversely, if the Court determines that LTWs represent common equity interests, or are subordinated to the level of common equity pursuant to § 510(b) of the Bankruptcy Code, then LTW holders will be treated *pari passu* with common equity holders and will receive no distribution. *Id.*

10. On June 16, 2011, the LTW Class Plaintiffs filed an objection to confirmation of the Modified Sixth Amended Plan. (D.I. # 7912).

11. On June 7, 2011, more than two and a half years after these chapter 11 cases were

³ By entry of a Scheduling Order on June 8, 2011, these additional parties became named plaintiffs.

commenced, Rodney McFadden sent a letter to the U.S. Trustee on behalf of Lennox Capital Partners, L.P. (“Lennox”), and himself, collectively holders of 967,227 LTWs, seeking appointment of an official LTW Committee. *See* Boller Aff., Ex. B (the “Lennox Letter”), 1.

12. On June 8, 2011, Ralph Saye III sent a letter to the U.S. Trustee on behalf of AWH Opportunity Fund I L.P. (“AWH”), a holder of 375,000 LTWs, seeking appointment of an official LTW Committee. *See id.*, Ex. C, 1.

13. In the Motion, the Moving LTW Holders disclosed that most members of their group submitted similar requests to the U.S. Trustee. Motion, ¶ 6.

14. On June 22, 2011, the U.S. Trustee denied the requests for formation of a LTW committee. Boller Aff., Ex. A.

15. On July 1, 2011, the Moving LTW Holders submitted the Motion, which consists of an almost verbatim recitation of the unsuccessful arguments in support of appointment of a LTW committee that were previously laid out in the Lennox and AWH letters.

16. From July 13, 2011 through July 21, 2011, the Court conducted a seven-day hearing on confirmation of the Modified Sixth Amended Plan.

17. Discovery in the LTW Adversary Proceeding is almost complete, and a trial has been scheduled for September 2011.

THE MOVING LTW HOLDERS

18. Because the Moving LTW Holders did not file a Rule 2019 statement, it is impossible to determine how many LTWs the group collectively owns. However, several of the Moving LTW Holders appear to be affiliated with sophisticated financial institutions.

- As explained above (¶ 11 *supra*), Rodney McFadden is affiliated with Lennox. McFadden and Lennox together own almost 1 million LTWs.

- Richard Squires is also affiliated with Lennox. *See* Lennox Ltr., 7.
- Austin W. Hopper is the principal of AWH, which owns 375,000 LTWs.

See Boller Aff., Ex. D.

- An individual named Chuck Warltier is a partner in Hoak & Co., a hedge fund manager. *See* Boller Aff., Ex. E.

ARGUMENT

19. The Motion should be denied. First, LTW holders are already adequately represented—not just by the three separate law firms currently serving as class counsel to all LTW holders, but also by the Debtors, the Creditors’ Committee and the Equity Committee, all of whom have fiduciary duties to maximize the value of the estate (despite the Moving LTW Holders’ statement to the contrary, Motion, ¶ 25). Second, even if LTW holders were not being adequately represented, the factors relevant to appointment of an additional committee counsel militate against the creation of a LTW Committee: (a) the Motion is extremely late, as (i) these chapter 11 cases are almost three years old and the hearing on confirmation of the Modified Sixth Amended Plan of Reorganization has already taken place, and (ii) the LTW Adversary Proceeding was commenced more than fifteen months ago, and trial is set to begin in a matter of weeks; (b) appointment of a LTW Committee now would add significant cost and delay to an already expensive case and increase the complexity of the reorganization process; and (c) LTW holders still will be able to participate in these cases without an official committee, and if they or LTW class counsel make a substantial contribution to these cases, they may apply to the Court for reimbursement of fees and expenses under 11 U.S.C. § 503(b). All of these discretionary factors weigh against the creation of an official special-interest LTW Committee.

I. APPLICABLE STANDARD

20. As the parties seeking appointment of an additional committee, the Moving LTW Holders bear the burden of demonstrating that LTW holders are not being adequately represented. *In re Garden Ridge Corp.*, No. 04-10324 (DDS), 2005 WL 523129 *3 (Bankr. D. Del. March 2, 2005) (citing *In re Enron Corp.*, 279 B.R. 671, 685 (Bankr. S.D.N.Y. 2002)); *In re Dana Corp.*, 344 B.R. 35, 38 (Bankr. S.D.N.Y. 2006) (same). When determining whether or not to appoint an additional official committee, courts in the Third Circuit will look to a variety of factors. Those factors include (1) whether holders of the securities in question are adequately represented absent the appointment of an additional official committee representing solely their interests, (2) the timing of the request for formation of an additional official committee, and (3) whether the cost of an additional official committee outweighs the need for such a committee. *Garden Ridge*, 2005 WL 523129 at *2; *Exide Techs. v. Wisconsin Inv. Bd., et al.*, No. 02-1572-SLR, 2003 WL 32332000 *1-2 (D. Del. Dec. 23, 2002). None of these factors supports the formation of a LTW Committee, and the Motion should therefore be denied.

II. THE LTW HOLDERS ARE ALREADY BEING ADEQUATELY REPRESENTED

21. First, there is no question that LTW holders' interests already are adequately represented. The LTW class is currently very well represented by three separate law firms: King & Spalding; Schindler Cohen & Hochman, LLP; and the Rosner Law Group LLC. Indeed, the LTW holders' lead counsel, Mr. Arthur Steinberg of King & Spalding, is well-known in these cases, having participated extensively throughout the December 2010 and July 2011 confirmation hearings, having cross-examined witnesses, and having appeared and argued at numerous omnibus hearings and status conferences. Those firms are being paid by the putative class representatives, six well-funded and sophisticated hedge funds that together hold almost 20 million LTWs combined. *See* Memorandum Of Law By Nantahala Capital Partners, LP, and

Blackwell Capital Partners, LLC, In Support Of Motion To Amend The Second Amended Complaint Solely To Add Additional Class Plaintiffs And Delete Broadbill Investment Corp. As A Named Class Plaintiff, at 1-2, *Nantahala Capital Partners, L.P. , et al. v. Washington Mutual, Inc., et al.*, Adv. Proc. No. 10-50911 (Bankr. D. Del. May 25, 2011). These putative class representatives owe a duty to adequately protect the interests of all the members of their class, including the Moving LTW Holders. *See* Fed. R. Civ. P. 23(a)(4).

22. Additionally, if the Moving LTW Holders—also a sophisticated and well-funded group, holding more than 1.3 million LTWs—were dissatisfied with the representation they have received as members of the LTW class, they are clearly capable of hiring counsel to represent their individual pecuniary interests, having retained the firm of Pinckney, Harris & Weidinger, LLC to represent them in this proceeding.

23. However, the Moving LTW Holders are not dissatisfied with their current representation. To the contrary, they acknowledge that lead plaintiffs and their “outstanding” counsel have done a “remarkable job”, stating “[t]o 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” Motion, ¶ 21. The Motion includes a litany of the “outstanding achievements” of the LTW representatives to date, including defeating a motion to dismiss and a motion for summary judgment in the LTW Adversary Proceeding, successfully arguing in favor of a \$337 million disputed claims reserve to benefit LTW holders, and filing multiple objections to confirmation. *Id.* at ¶ 22.

24. Rather than argue that their current representation is inadequate, the Moving LTW Holders argue that LTW holders need their own official committee because their representation *may* become inadequate *at some point in the future*. That is not the applicable standard. The

fear that representation may become inadequate in the future does not justify the creation of an additional committee in the present. *See Mirant Americas Energy Marketing LP v. Official Comm. of Unsecured Creditors of Enron Corp.*, 2003 WL 22327118, at *4 (S.D.N.Y. 2003) (affirming *Enron*, 279 B.R. 671) (“Appellant’s argument concerning potential future conflicts was also presented to the Bankruptcy Court. The Court properly dismissed the argument as speculative.”); *Dana*, 344 B.R. at 39 (rejecting as speculative the argument of an ad hoc committee of asbestos claimants that they were entitled to appointment of a separate official committee because the interests of asbestos claimants might diverge from those of other Creditors’ Committee members at some point in the future); *In the Matter of Baldwin-United Corp.*, 45 B.R. 375 (Bankr. S.D. Ohio 1983) (“[M]ovants have established only a potential conflict. The Court should refrain from *a priori* judgment concerning potential conflicts”).⁴ Because speculation about potential inadequate representation is not enough to warrant appointment of an additional committee, the Motion should be denied.

III. THE TIMING OF THE REQUEST COUNSELS AGAINST CREATION OF AN OFFICIAL LTW COMMITTEE

25. The timing of the requests also counsels heavily against appointment of a new committee. These chapter 11 cases are almost three years old. Creditors voted overwhelmingly in favor of approval of the Modified Sixth Amended Plan, and a confirmation hearing took place over seven days between July 13 and July 21, 2011. One of the primary functions of official committees is to negotiate the plan of reorganization, and there is no value to be added by appointing an official LTW committee now, after the confirmation hearing has already taken place. *See Albero v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 68 B.R. 155, 163

⁴ Additionally, the argument that a recent decrease in the trading price of LTWs reflects a market concern over the funding of the litigation is rank speculation at best; it is just as likely that any decline in the trading price is due to a perception in the market that the original named plaintiffs—who were intimately familiar with the case, including the results of discovery to date—no longer see much value in the litigation.

(S.D.N.Y. 1986) (“[R]eorganization is in its final stages, and approaching confirmation. Much of an official committee’s potential role in the reorganization has been completed. It is too late for a committee to exercise its most important function – negotiating a reorganization plan – as a reorganization plan has already been submitted to the bankruptcy court”); *In re Sharon Steel Corp.*, 100 B.R. 767, 779 (Bankr. W.D.Pa. 1989) (“The appointment of an additional committee at this point in the reorganization would not vindicate a prime function of a committee, to wit, assistance in the formulation of a plan of reorganization”); *In re Kalvar Microfilm, Inc.*, 195 B.R. 599, 601 (Bankr. D. Del. 1996) (“The late timing of the motion ties in to the only remaining purpose of an equity committee in this case, which would be to object to confirmation, and litigate the valuation issue”); *see also In re Orfa Corp. of Philadelphia*, 121 B.R. 294, 298-99 (Bankr. E.D. Pa. 1990) (quoting *Johns-Manville*). Moreover, the determination of the LTW holders’ issues is necessarily a function of the pending adversary proceeding, not a function of further plan negotiation.

26. At this stage in the chapter 11 cases, the only meaningful role that an official LTW committee could possibly play would be to represent LTW holders in their adversary proceeding against the estate. It is clear from the timing and content of the Motion that the Moving LTW Holders are not requesting a stronger voice in the reorganization process; the Plan has already been negotiated, confirmation issues have been tried and the Plan includes a \$337 million reserve for LTW holders. What the Moving LTW Holders really seek is to have the litigation costs of their lawsuit against WMI paid for by WMI itself. The Moving LTW Holders repeatedly admit as much:

- “[T]he 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.” Motion, ¶ 18.

- “The appointment of an Official Committee of LTW holders is therefore justified as a means to assure... that adequate representation and funding are in place *to see the adversary proceeding through until a non-appealable decision has been entered.*” *Id.*

- “[T]hat duty and financial obligation [to fund the LTW holders’ lawsuit against the estates] 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.*” *Id.*, ¶ 23.

- [A]bsent the appointment of an Official Committee of LTW holders... 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.*” *Id.*, ¶ 24.

- “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 it draws to a non-appealable final order has been entered.” *Id.*, ¶ 31.

This is not a proper justification for appointment of an additional committee.⁵ See *Sharon Steel*, 100 B.R. at 780 (refusing to appoint an additional committee representing specific creditors, because “[t]he Debenture Group’s motion boils down to an appeal to this court to give this one group separate legal representation and the opportunity to request the court to retain its own professionals at the expense of Sharon’s estate”); see also *Enron*, 279 B.R. at 692 (“The Court does not believe the estate should fund a distinct group of creditors to litigate an issue that would appear to be in their interest alone and provide no benefit to the estate.”). Moreover, the LTW Adversary Proceeding itself is more than fifteen months old, discovery is almost finished and trial is scheduled to begin in just over six weeks. Even if appointing an official LTW committee to represent LTW holders in the Adversary Proceeding were a proper use of estate resources—and it is not—to do so now and authorize the retention of additional professionals as the cases near completion would be doubly wasteful.

IV. THE COST OF AN OFFICIAL LTW COMMITTEE OUTWEIGHS ANY CONCEIVABLE BENEFIT OF ONE

⁵ The Moving LTW Holders provide no support whatsoever for the dubious proposition that the duty to provide uninterrupted funding for their litigation against the Debtors’ estates rests with the Debtors themselves.

27. The appointment of an official LTW committee would present significant costs to the Debtors' estates, in terms of both time and resources, that far outweigh any conceivable value to the estate or the need for such a committee. At a minimum, a new LTW committee would retain counsel and may seek to retain a financial advisor. If new counsel is retained, that counsel would need to spend time getting up to speed on a case that is nearly three years old.

28. Moreover, as explained above, since the Plan already has been submitted and confirmation issues tried, the only reason to appoint an official LTW committee would be to have the estates pay the committee's legal fees in prosecuting the LTW Adversary Proceeding against the estates. The Moving LTW Holders' indicated preference for having LTW class counsel represent the proposed LTW committee is a tacit admission that the Moving LTW Holders are seeking merely to continue with the status quo, but have the Debtors' estates foot the bill. This would result in a cost to the estates to benefit a very discrete group of stakeholders, and is not an appropriate use of the estates' assets. *See Enron*, 279 B.R. at 692 ("The Court does not believe the estate should fund a distinct group of creditors to litigate an issue that would appear to be in their interest alone and provide no benefit to the estate.").

29. The process of getting new professionals up to speed in this case also would take time. If a LTW committee is appointed on the eve of the LTW Adversary Proceeding trial, it is likely that the new committee would request an adjournment to allow the committee to get organized. This would only further delay what has been an extremely long process, and extend the pendency of the \$337 million claims reserve, and counsels against appointing a committee at this point. *See Sharon Steel*, 100 B.R. 779 (rejecting request for additional committee because "[c]reation of an additional committee and its professionals as an additional party to all negotiations . . . would delay, rather than accelerate, a successful plan of reorganization").

V. LTW HOLDERS CAN PARTICIPATE IN THESE CASES WITHOUT AN OFFICIAL COMMITTEE

30. Finally, there are other avenues for LTW holders to participate in these chapter 11 cases. As the court noted in *Dana*, “Even without the appointment of an Official Committee, the [Movants] may continue to monitor and participate in these cases. . . [T]he Movants and the parties joining in their requests are represented by sophisticated, competent counsel with a wealth of experience Their voices have been and likely will continue to be heard in this case.” *Dana*, 344 B.R. at 39-40. The Delaware Bankruptcy Court reached the same conclusion in *In re Kalvar Microfilm*. 195 B.R. at 601 (“[Movant] thus has a substantial stake and can continue to represent its own interest in future matters in this case.”).

31. Such is the case here. The LTW holders are organized and well-represented by competent class counsel who have participated actively in the case for over a year. Their voice has been heard and will continue to be heard throughout this bankruptcy. Additionally, the Moving LTW Holders are represented by competent counsel. And finally, the Moving LTW Holders, and/or the LTW Class Plaintiffs, are entitled to apply for reimbursement under section 503(b) if they have provided a substantial contribution to the estates. But they are not entitled to have the Debtors’ estates pay their costs to litigate against the Debtors simply because they do not want to bear those fees themselves.

CONCLUSION

32. In conclusion, because the LTW holders are already adequately represented, and because the LTW holders are already protected by a \$337 million reserve determined by the Court to be sufficient to protect their interests, and due to the factors discussed at length above, the Court should deny the Motion For An Order Appointing An Official Committee of LTW Holders.

WHEREFORE, for the reasons set forth above, the Committee respectfully requests that this Court (a) deny the Motion; and (b) grant the Committee such other relief as is fair, just, and proper.

Dated: July 28, 2011
Wilmington, DE

PEPPER HAMILTON LLP

/s/ John H. Schanne, II

David B. Stratton (No. 960)
David M. Fournier (No. 2812)
James C. Carignan (No. 4230)
John H. Schanne, II (No. 5260)
Hercules Plaza, Suite 5100
1313 N. Market Street
P.O. Box 1709
Wilmington, DE 19899-1709
(302) 777-6500

- and -

Fred S. Hodara, Esq.
Robert A. Johnson, Esq.
AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, NY 10036
(212) 872-1000

*Co-counsel to the Official Committee of
Unsecured Creditors*

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

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<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <i>et al.</i> , ¹	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	Jointly Administered
	:	
	:	
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**AFFIRMATION OF ROBERT J. BOLLER IN SUPPORT OF THE OPPOSITION OF
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF WASHINGTON
MUTUAL, INC., ET AL., TO THE MOTION OF CERTAIN LTW HOLDERS FOR AN
ORDER APPOINTING AN OFFICIAL COMMITTEE OF LTW HOLDERS**

ROBERT J. BOLLER, an attorney admitted to practice before the Courts of the State of New York and admitted pro hac vice in this Court to represent the Official Committee of Unsecured Creditors of Washington Mutual, Inc., *et al.*, (the "Creditors' Committee") in the above-captioned cases, affirms under penalty of perjury as follows:

1. I respectfully submit this affirmation in support of the Creditors' Committee's opposition to the motion of certain LTW holders for an order appointing an official committee of LTW Holders.

2. I am an attorney with the law firm of Akin Gump Strauss Hauer & Feld LLP. The matters set forth herein are based on my own personal knowledge. I am over the age of majority and competent in all respects to provide the testimony set forth herein.

¹ The Debtors in these chapter 11 cases (the "Chapter 11 Cases") and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395).

3. We represent the Creditors' Committee in the above titled action, and I am familiar with all the facts and circumstances herein.

4. Annexed hereto as Exhibit A is a true and correct copy of a letter from Jane Leamy, on behalf of the Office of the United States Trustee, to Rodney McFadden, dated June 22, 2011.

5. Annexed hereto as Exhibit B is a true and correct copy of a letter from Rodney McFadden, on behalf of Lennox Capital Partners, L.P. and himself, to the U.S. Trustee, dated June 7, 2011.

6. Annexed hereto as Exhibit C is a true and correct copy of a letter from Ralph Saye III, on behalf of AWH Opportunity Fund I L.P., to the U.S. Trustee, dated June 8, 2011.

7. Annexed hereto as Exhibit D is a true and correct copy of a screenshot of the AWH Capital, L.P. website as of July 28, 2011. The AWH Capital, L.P. website is located at <http://awhcapital.com/>.

8. Annexed hereto as Exhibit E is a true and correct copy of a page from an electronic version of the 2010 ROTH Hawaii Conference book, available on the ROTH Capital Partners, LLC website as of July 28, 2011. The electronic version of the 2010 ROTH Hawaii Conference book was located at the following web address:

http://roth.com/files/marketing/2010_roth_hawaii_conference/2010%20roth%20hawaii%20conference%20book_electronic.pdf. Exhibit E includes a biographical description for an individual named Chuck Wartier who is affiliated with Hoak & Company.

Dated: July 28, 2011
New York, New York



Robert J. Boller, Esq.

Exhibit A

EXHIBIT - A



U.S. Department of Justice

Office of the United States Trustee

District of Delaware

844 King Street, Suite 2207
Lockbox 35
Wilmington, Delaware 19081

(302) 573-6491
fax (302) 573-6497

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

Exhibit B

BY FAX AND ELECTRONIC MAIL
Jane M. Leamy, Esq.
Office of the United States Trustee
J. Caleb Boggs Federal Building
844 King Street, Suite 2207, Lockbox 35
Wilmington, DE 19801
Tel: (302) 573-6491
Fax: (302) 573-6497
Email: Jane.M.Leamy@usdoj.gov

June 7, 2011

RE: In re Washington Mutual, Inc.
Jointly Administered Case No. 08-12229 (MFW)

Dear Ms. Leamy,

I am a holder of 67,227 Dime Litigation Tracking Warrants (LTWs). In addition, in my capacity as a consultant, I represent the interests of Lennox Capital Partners, L.P. who are holders of 900,000 LTWs. Collectively we hold 967,227 LTWs. The principals of Lennox Capital Partners, L.P. have been copied on this communication and their contact information is included below.

I am writing to respectfully request the formation of an Official Committee to represent the LTW holders in the above referenced Chapter 11 cases. Additionally, I stand ready to enter into a fiduciary relationship to faithfully and vigorously represent the interests of fellow LTW holders.

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,

"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).

Determinations about whether an Official Committee of LTW holders should be appointed are made on a case-by-case basis. Nonetheless, several factors are traditionally considered in determining whether an Official Committee of LTW holders 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 debtor's 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).

I 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 the 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 an amount in excess of \$330 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 and may soon face opposition from the Equity Committee now that equity will be receiving a recovery in the form of Newco Stock in the reorganized company commonly known as WMMRC;

(v) the timing of this request will allow an Official Committee of LTW holders to play a meaningful role in the 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

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 pari passu with other General Unsecured Creditors. See 7 Collier on Bankruptcy, § 1102.03[2][a] (N.Resnick & Henry 1. Sommer eds., 15th ed. rev.).

Here, the available data belies any notion that the Debtors are hopelessly insolvent and, instead, strongly suggests that there is significant creditor and even equity value in the Debtors. 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%. If logic reason and fairness prevail and the adversary proceeding (Originally captioned as Broadbill Investment Corp. et al v. Washington Mutual Inc. et al. Case No. 10-50911) is successful for LTW holders, 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 in excess of \$330 million. As such, there is no disputing the Debtor's ability to satisfy the claims of the LTW holders.

In addition, the trading prices of the LTWs (trading on the Pinksheets 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 \$0.60 per LTW which yields a market capitalization of approximately \$68 million¹. The current trading price is significantly below where the LTWs traded before Broadbill decided to withdraw as a named Plaintiff in the LTW adversary proceeding on May 16, 2011. In the 3-4 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 priced in a recovery of 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

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 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.

As a constituency whose interests will be significantly impacted absent any 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. The

¹ 113 million LTWs x \$0.60 is approximately \$68 million.

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 so that they will have a voice in negotiating a plan of reorganization and also to assure that representation and funding are in place to see the adversary proceeding through until a non-appealable decision has been rendered. There is no doubt that this process could last for more than a year beyond confirmation.

The LTWs are Widely Held and Publicly Traded

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 as a Pinksheet security on the Over the Counter Bulletin Board exchange under the symbol (DIMEQ). Absent any information from the DTC it is difficult to determine the exact number of holders and given the nature of the LTWs no entities are required to file SEC 13d or 13f-hr filings related to their individual holdings. With approximately 113 million LTWs in existence it is reasonable to assume that they are widely held.

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

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. For the last year, the LTWs have been represented by fellow LTW holders; first by Broadbill who initiated the LTW adversary proceeding against the Debtors (which later included their Board of Directors) and later by Nantahala who subsequently intervened and also became a named Plaintiff. These funds took it upon themselves to represent the entire LTW constituency and have borne all of the legal costs of protecting the interests of all LTW holders. By all accounts, they have done a fantastic job of representing LTW holders throughout the adversary proceeding thus far. However, on May 16, 2011, for reasons known only to them, Broadbill withdrew as a named Plaintiff which left Nantahala to shoulder the balance of the legal burden, going forward. Last week it was announced that (4) additional LTW holders have emerged to replace Broadbill in the adversary proceeding and in funding the related legal costs. Despite the emergence of these LTW holders, other LTW holder concerns over the funding, going forward are quite palpable as evidenced by the recent selloff in the market from \$0.90 to \$0.60 per LTW.

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, it is an inescapable reality that these LTW holders are not fiduciaries of the estate and ostensibly would owe no fiduciary duty to any other LTW holders. Without assigning any blame or casting any dispersion, the departure of Broadbill at such a critical juncture in the 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. I want to be clear that there is no doubt that the Plaintiffs (Chiefly Nantahala and their outstanding counsel, Arthur Steinberg) have adequately represented the interests of LTW holders thus far. The main issue I have in this regard is that the assurance of continued representation is of paramount concern.

It cannot be stated by any person or persons 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. The current group of named Plaintiffs does not owe fiduciary duties to any other LTW holders and may decide to simply withdraw as Plaintiff and “take their ball and go home” as Broadbill recently did. The contention that some members of the class may have resources sufficient to protect all LTW holders’ interests is of little significance, in my judgment, at least where, as here, the security is widely held and where a fiduciary duty does not otherwise exist. Accordingly, and based upon the foregoing, absent 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 in the Chapter 11 Cases and beyond until a non-appealable decision has been rendered in the LTW adversary proceeding. This fact underscores the need for official committee representation of all LTW holders. **With over \$330 million hanging in the balance, other LTW holders cannot afford to take this risk.**

Additionally, the interests of LTW holders are not currently represented at all by the Unsecured Creditors Committee and furthermore will not be adequately represented by either the Unsecured Creditors Committee or the Equity Committee that have been appointed in these Chapter 11 Cases. It is sometimes argued that the interests of shareholders (or LTW holders) may be represented by a creditors committee because there may be a unity of interest among creditors and shareholders 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 pursued actions that conflict with the interests of LTW holders by intervening in the adversary proceeding to oppose the interests of LTW holders.

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 Class 12 general unsecured claimants they will only have achieved that status by reaching into their own pockets to fund their legal costs. LTW holders have a disputed claims reserve in excess of \$330 million which are senior to the interests of equity security holders and *pari passu* with the interests of General Unsecured Claims yet those who are *pari passu* and subordinate to the LTW 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.

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

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. There is currently no reason to assume that this trend will be broken anytime soon. Normally one would not approach the Office of the U.S. Trustee for an Official Committee when the Confirmation hearing is less than a month away but the recent withdrawal of Broadbill, the original Plaintiff in the LTW adversary proceeding and the LTW holder for whom the adversary was named and is still commonly called, necessitates the instant request.

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 it draws to a non-appealable conclusion. While Confirmation is potentially less than a month away, the adversary proceeding in question 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 expected that whichever party is on the short end of the Judge Walrath's ruling will certainly appeal the decision. If an appeal ensues or if multiple appeals ensue, this adversary proceeding could drag on for a year or more beyond this request.

Undoubtedly, the legal costs of representing the interests of LTW holders will be significant and the funding of these legal costs will have to be borne by the LTW holders themselves for a year or more beyond this request. Whether the current group of named Plaintiffs in the adversary proceeding will continue to fund the legal cost of representing the interests of all LTW holders until a non-appealable decision is rendered 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.

The Cost of an Official Committee of LTW holders does not Outweigh the Need for an Official Committee of LTW holders to Represent the Interests of all LTW Holders

In these Chapter 11 Cases, where the need for adequate LTW holder representation is clear for the reasons noted above, it cannot seriously be argued 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 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 set aside for them in excess of \$330 million because the Debtors and their Board failed to fulfill their fiduciary duty to protect their interests, it should be the Estate and not the individual LTW holders that bears the cost of the related legal representation. 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.

While the Trustee will consider each of the foregoing factors in determining whether to appoint an additional committee, it is not typically necessary to satisfy each and every one of these litmus tests. Nevertheless, I strongly believe that each and every one of these tests are satisfied for all of the foregoing reasons. Accordingly, I submit that the appointment of an Official Committee of LTW holders is both appropriate and necessary to assure that the LTW holders are adequately represented throughout the pendency of these Chapter 11 cases and beyond until the LTW adversary proceeding is reduced to a non-appealable decision. I thank you for your time and consideration of this request. I would welcome the opportunity to discuss these matters with you further and am available to speak at your convenience.

Respectfully submitted,

Dated: Woodway, TX
June 7, 2011

Rodney D. McFadden



7833 Fairway Rd.
Woodway, TX 76712
Telephone: (979) 324-4363
Email: rdmcfadden@gmail.com

and

Rodney D. McFadden
As Consultant for:
Lennox Capital Partners, L.P.
Richard Squires
Brian Ladin
2101 Cedar Springs Rd # 1230, Dallas, TX
(469) 364-7610
Email: rsquires@spiholdings.com
Email: brian@delosshipping.com

Exhibit C

AWH CAPITAL

BY USPS AND ELECTRONIC MAIL

Jane M. Leamy, Esq.
Office of the United States Trustee
J. Caleb Boggs Federal Building
844 King Street, Suite 2207, Lockbox 35
Wilmington, DE 19801
Tel: (302) 573-6491
Fax: (302) 573-6497
Email: Jane.M.Leamy@usdoj.gov

June 8, 2011

RE: In re Washington Mutual, Inc.
Jointly Administered Case No. 08-12229 (MFW)

Dear Ms. Leamy,

AWH Opportunity Fund I L.P., as managed by AWH Capital, L.P., is the holder of 375,000 Dime Litigation Tracking Warrants (LTWs). I am writing to respectfully request the formation of an Official Committee to represent the LTW holders in the above referenced Chapter 11 cases. Additionally, my colleague Austin Hopper stands ready to serve on such a committee.

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,

"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).

Determinations about whether an Official Committee of LTW holders should be appointed are made on a case-by-case basis. Nonetheless, several factors are traditionally considered in determining whether an Official Committee of LTW holders 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 debtor's 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. Wis. Inv. Bd.*, 2002 WL 32332000 (D. Del. Dec. 23, 2002).

I 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 the 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 an amount in excess of \$330 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 and may soon face opposition from the Equity Committee now that equity will be receiving a recovery in the form of Newco Stock in the reorganized company commonly known as WMMRC;

(v) the timing of this request will allow an Official Committee of LTW holders to play a meaningful role in the 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

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 pari passu with other General Unsecured Creditors. See 7 Collier on Bankruptcy, § 1102.03[2][a] (N.Resnick & Henry I. Sommer eds., 15th ed. rev.).

Here, the available data belies any notion that the Debtors are hopelessly insolvent and, instead, strongly suggests that there is significant creditor and even equity value in the Debtors. 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%. If logic reason and fairness prevail and the adversary proceeding (Originally captioned as *Broadbill Investment Corp. et al v. Washington Mutual Inc. et al, Case No. 10-50911*) is successful for LTW holders, 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 in excess of \$330 million. As such, there is no disputing the Debtor's ability to satisfy the claims of the LTW holders.

In addition, the trading prices of the LTWs (trading on the Pinksheets 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 \$0.60 per LTW which yields a market capitalization of approximately \$68 million¹. The current trading price is significantly below where the LTWs traded before Broadbill decided to withdraw as a named Plaintiff in the LTW adversary proceeding on May 16, 2011. In the 3-4 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 priced in a recovery of 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

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 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.

As a constituency whose interests will be significantly impacted absent any 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. 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 so that they will have a voice in negotiating a plan of reorganization and also to assure that representation and funding are in place to see the adversary proceeding through until a non-

¹ 113 million LTWs x \$0.60 is approximately \$68 million.

appealable decision has been rendered. There is no doubt that this process could last for more than a year beyond confirmation.

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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 as a Pinksheet security on the Over the Counter Bulletin Board exchange under the symbol (DIMEQ). Absent any information from the DTC it is difficult to determine the exact number of holders and given the nature of the LTWs no entities are required to file SEC 13d or 13f-hr filings related to their individual holdings. With approximately 113 million LTWs in existence it is reasonable to assume that they are widely held.

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

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. For the last year, the LTWs have been represented by fellow LTW holders; first by Broadbill who initiated the LTW adversary proceeding against the Debtors (which later included their Board of Directors) and later by Nantahala who subsequently intervened and also became a named Plaintiff. These funds took it upon themselves to represent the entire LTW constituency and have borne all of the legal costs of protecting the interests of all LTW holders. By all accounts, they have done a fantastic job of representing LTW holders throughout the adversary proceeding thus far. However, on May 16, 2011, for reasons known only to them, Broadbill withdrew as a named Plaintiff which left Nantahala to shoulder the balance of the legal burden, going forward. Last week it was announced that (4) additional LTW holders have emerged to replace Broadbill in the adversary proceeding and in funding the related legal costs. Despite the emergence of these LTW holders, other LTW holder concerns over the funding, going forward are quite palpable as evidenced by the recent selloff in the market from \$0.90 to \$0.60 per LTW.

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, it is an inescapable reality that these LTW holders are not fiduciaries of the estate and ostensibly would owe no fiduciary duty to any other LTW holders. Without assigning any blame or casting any dispersion, the departure of Broadbill at such a critical juncture in the 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. I want to be clear that there is no doubt that the Plaintiffs (Chiefly Nantahala and their outstanding counsel, Arthur Steinberg) have adequately represented the interests of LTW holders thus far. The main issue I have in this regard is that the assurance of continued representation is of paramount concern.

It cannot be stated by any person or persons 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. The current group of named Plaintiffs does not owe fiduciary duties to any other LTW holders and may decide to simply withdraw as Plaintiff and "take their ball and go home" as Broadbill recently did. The contention that some members of the class may have resources sufficient to protect all LTW holders' interests is of little significance, in my judgment, at least where, as here, the security is widely held and where a fiduciary duty does not otherwise exist. Accordingly, and based upon the foregoing, absent 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 in the Chapter 11 Cases and beyond until a non-appealable decision has been rendered in the LTW adversary proceeding. This fact underscores the need for official committee representation of all LTW holders. **With over \$330 million hanging in the balance, other LTW holders cannot afford to take this risk.**

Additionally, the interests of LTW holders are not currently represented at all by the Unsecured Creditors Committee and furthermore will not be adequately represented by either the Unsecured Creditors Committee or the Equity Committee that have been appointed in these Chapter 11 Cases. It is sometimes argued that the interests of shareholders (or LTW holders) may be represented by a creditors committee because there may be a unity of interest among creditors and shareholders 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 pursued actions that conflict with the interests of LTW holders by intervening in the adversary proceeding to oppose the interests of LTW holders.

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 Class 12 general unsecured claimants they will only have achieved that status by reaching into their own pockets to fund their legal costs. LTW holders have a disputed claims reserve in excess of \$330 million which are senior to the interests of equity security holders and *pari passu* with the interests of General Unsecured Claims yet those who are *pari passu* and subordinate to the LTW 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.

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

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. There is currently no reason to assume that this trend will be broken anytime soon. Normally one would not approach the Office of the U.S. Trustee for an Official Committee when the Confirmation hearing is less than a month away but the recent withdrawal of Broadbill, the

original Plaintiff in the LTW adversary proceeding and the LTW holder for whom the adversary was named and is still commonly called, necessitates the instant request.

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 it draws to a non-appealable conclusion. While Confirmation is potentially less than a month away, the adversary proceeding in question 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 expected that whichever party is on the short end of the Judge Walrath's ruling will certainly appeal the decision. If an appeal ensues or if multiple appeals ensue, this adversary proceeding could drag on for a year or more beyond this request.

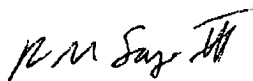
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The Cost of an Official Committee of LTW holders does not Outweigh the Need for an Official Committee of LTW holders to Represent the Interests of all LTW Holders

In these Chapter 11 Cases, where the need for adequate LTW holder representation is clear for the reasons noted above, it cannot seriously be argued 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 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 set aside for them in excess of \$330 million because the Debtors and their Board failed to fulfill their fiduciary duty to protect their interests, it should be the Estate and not the individual LTW holders that bears the cost of the related legal representation. 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.

While the Trustee will consider each of the foregoing factors in determining whether to appoint an additional committee, it is not typically necessary to satisfy each and every one of these litmus tests. Nevertheless, I strongly believe that each and every one of these tests are satisfied for all of the foregoing reasons. Accordingly, I submit that the appointment of an Official Committee of LTW holders is both appropriate and necessary to assure that the LTW holders are adequately represented throughout the pendency of these Chapter 11 cases and beyond until the LTW adversary proceeding is reduced to a non-appealable decision. I thank you for your time and consideration of this request. I would welcome the opportunity to discuss these matters with you further and am available to speak at your convenience. I can be reached at (214) 462-9102 and via email at csaye@awhcapital.com.

Sincerely,



Ralph M. Saye, III
Director of Research
AWH Capital, L.P.

Exhibit D

AWH Capital, L.P.

Austin W. Hopper **R. M. "Chip" Saye, CFA**
Principal **Director of Research**

3949 Maple Avenue, Suite 450
Dallas, Texas 75219
Phone 214.462.9100 - Fax 214.462.9105

Exhibit E

Chuck Wartier, Hoak & Company

500 Crescent Ct, #220
Dallas, TX, 75201
United States

Phone: +1 214-855-2290

Fax: +1 972-960-4899

Institution Type:

Hedge Fund Manager

Market Cap:

Micro-Cap, Small-Cap, Mid-Cap, Large-Cap

Styles:

Value

Overview and Supplemental Information

Hoak & Co. manages internal assets through the Hoak Public Equities, L.P. hedge fund. The firm invests in stocks with a market capitalization below \$100 million. Hoak also invests in private equity and distressed debt. The firm was founded in 2004. The firm prefers to initiate outside contact.

Source: BigDough

CERTIFICATE OF SERVICE

I, John H. Schanne, II, hereby certify that on the 28 day of July, 2011, I did serve the foregoing by causing a copy of the **OPPOSITION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF WASHINGTON MUTUAL, INC. , ET AL., TO THE MOTION OF CERTAIN LTW HOLDERS FOR AN ORDER APPOINTING AN OFFICIAL COMMITTEE OF LTW HOLDERS** to be served via United States mail, first class, postage pre-paid, upon those parties listed on the attached service list.

/s/ John H. Schanne, II

John H. Schanne, II (DE No. 5260)

Counsel for the Debtors

Brian S. Rosen, Esq.
Marica L. Goldstein, Esq.
Michael F. Welch, Esq.
Weil Gotshal & Manges LLP
767 Fifth Ave
New York, NY 10153

Co-Counsel for the Debtors

Mark D. Collins, Esq.
Chun I. Jang, Esq.
Richards Layton & Finger PA
One Rodney Square
920 N King St
Wilmington, DE 19899

Co-Counsel to the Official Committee of Equity Security Holders

Stephen D. Susman, Esq.
Susman Godfrey LLP
654 Madison Avenue
5th Floor
New York, NY 10065

Delaware Counsel to the Official Committee of Equity Security Holders

William P Bowden, Esq.
Ashby & Geddes PA
500 Delaware Ave 8th Fl
PO Box 1150
Wilmington, DE 19899

Co-Counsel to to JP Morgan Chase

Adam G. Landis, Esq.
Matthew B. McGuire, Esq.
Landis Rath & Cobb LLP
919 Market St Ste 1800
Wilmington, DE 19801-3033

Counsel to Movants

Donna L. Harris, Esq.
Pinckney Harris Weidinger LLC
1220 N Market St Ste 950
Wilmington, DE 19801

Counsel to to JP Morgan Chase

Stacey Friedman, Esq.

Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004

Special Counsel to the Debtors

Peter Calamari, Esq.
Quinn, Emanuel, Urquhart & Sullivan LLP
55 Madison Avenue, 22nd Floor
New York, NY 10010

Jane M. Leamy, Esq.
Office of the United States Trustee
844 King Street, Room 2207
Lockbox #35
Wilmington, DE 19899-0035