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CLERK
US BANKRUPTCY COURT
DISTRICT OF DELAWARE

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VIA FED-EX TRACKING #________________

Nov. 18, 2011

The Honorable Judge Mary Walrath
Bankruptcy Judge
U.S. Bankruptcy Court
District of Delaware
824 Market St.
3rd Floor
Wilmington, DE 19801

Re: In re Washington Mutual, Inc., Case no. 08-12229 (MFW)

Dear Judge Walrath:

My name is Frank Cawood. I am the 68-year-old owner of a book and newspaper publishing company. I own over 10% of the outstanding Litigation Tracking Warrants (LTWs) being considered in this case, directly or through affiliates, such as our family's charitable non-profit private foundation.

I believe that great injustice would be done if the LTWs were deemed to be "equity" and not "debt", and I appreciate your taking the time to consider my concerns. The Defendants have made a silly argument that because some owners of the LTWs are hedge fund operators, this fact has bearing on your duty to decide whether the LTWs are equity or debt. As an LTW owner, and by no means a hedge fund, I find this argument to be impertinent and irrelevant.

My understanding of our legal system is that a claimant has the right to sell his or her claim to another party who may have more staying power. This right is paramount in a case such as this, which has toiled 18 years on a long, convoluted road seeking justice. I now stand in the

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shoes of some of the original holders of the LTWs. It does not seem appropriate for counsel for the defense to even discuss the status of the present LTW holders. However, since they have done so, may I respond that I am acquainted with three of the original owners whom, I believe, still own LTWs in our class.

At the time the LTWs were issued, there was no way to calculate or estimate a value for them. It was impossible to use the Black Scholes model that generally is used to value equity warrants because a key element was absent: the number of shares of DIME or Washington Mutual that an LTW owner would receive – a number that might be anything, even zero.

Therefore, any supposed income from the distribution of the LTWs to the shareholders of DIME would be imaginary – phantom income. The Defendants' witnesses said there was no clear tax advantage in the manner the LTWs were structured. In truth, there was no tax advantage whatsoever because there was no way to calculate that LTW holders would receive any income at all from the spin-off of what was a very uncertain contingent claim.

Under the Internal Revenue Code, there is no income and no income tax due if there is no way to value the so-called phantom income. The Defendants admit at page 23 of their recent Brief that one of the reasons DIME intended to spin off its "litigation business" was because "bankers and investors did not always understand it or know how to value it." Defendants' claims that the LTWs were structured as equity to avoid phantom tax on phantom income are, according to their own words, not credible. Once the litigation proceeds were actually triggered, the LTWs would then have the right to receive actual, not phantom, consideration. They would also be in a position to pay any taxes due from the value received, no matter in what currency.

The outcome of this case depends on what the intent of DIME, the Warrant Agent and the holders of the original LTWs was at the time of the original issuance of the LTWs and whether that intent changed at any point up to the point of the filing of WMI's bankruptcy. Other than the false tax argument discussed above, there was no other valid economic reason to structure the LTWs as equity rather than debt. Had the bankers and lawyers who drafted the documentation done their jobs correctly, they would have made it clear that the LTWs would be treated as debt

and not equity in the event of the bankruptcy of the issuer. That they did not, suggests that the very real prospect of bankruptcy in an unstable industry was not on their radar as they evidently viewed the LTWs as a contingent claim, just as they stated.

It is worth remembering that DIME had a near-death experience with insolvency, which was the genesis of the claim that gave birth to the LTWs. If the LTWs had been viewed as equity by their creators, the risk that their value could be destroyed by bankruptcy should have been staring them in the face.

That experienced lawyers failed to do what every author of a legal contract is obligated to do – contemplate the bankruptcy of the contracting parties, is shocking. On page 10 of the Defendants' recent Brief, they state that Sarkozy, the developer of the LTWs, "left the drafting and review of the operative documents to the lawyers."

Ambiguity in the documentation at issue is evidence of failure of the Boards of DIME and Washington Mutual to draft documents in a way that anticipated bankruptcy. Mistakes were made by the very persons responsible for protecting the interests of the LTW holders and their assignees and successors in interest, including the current LTW holders. As a private citizen, I believe that, above all, this Court must do justice and find that the intent was for the LTWs to be treated as debt and not equity in the event of bankruptcy in order to prevent punishing the Plaintiffs for the sins of omission of their fiduciaries.

At page 74, Defendants disagreed with Plaintiffs' assertion that WMI Directors had a fiduciary duty to protect the LTW holders by saying that a corporation has a fiduciary duty only to shareholders, not holders of warrants. Defendants are wrong in asserting that there was no fiduciary duty owed to the original LTW holders because in order to become an LTW holder in the first place, a person had to be a DIME shareholder. As a shareholder, that person would be owed the duty of a fiduciary from the DIME Board along with the requisite standard of care from the attorneys representing the Board and the warrant agent representing the shareholders who were to receive the LTWs.

The Defendants try to degrade the legal rights of the current holders of the LTWs by saying that we are not entitled to the protection of the contra proferentum doctrine of contract construction because the doctrine is "intended to protect unsophisticated parties and does not apply here because Plaintiffs are sophisticated business entities" - hedge funds. This assertion flies in the face of this Court's granting class action status to all holders of LTWs, including ordinary, individual holders, such as myself.

In fact, the original LTW holders themselves were the ultimate unsophisticates. They were not even at the bargaining table when it came to the drafting of the original Warrant Agreement. That is why the DIME Board, the successor Washington Mutual Board, the Warrant Agent and their attorneys had the highest legal obligation to draft the documents with a simple provision to ensure that the LTW holders would be treated in the most advantageous way possible in the event of DIME's bankruptcy – as debt holders, as there was no tax advantage to being treated otherwise. The fiduciaries' failure to add such a simple provision does not change the fact that the original intent of the parties was that the LTWs were debt and not equity.

Defendants at page 5 of their Brief state that there is no "substitute for independent analysis of the true economic substance of the instrument based on the totality of the circumstances." Also, at page 25 of the Defendants' Brief it is stated that "the Court must consider the totality of the circumstances to determine if the obligation is, in fact, debt or equity" citing eToys, 381 B.R. at 358. I agree with this proposition, and that is why I disagree with the Defendants' consistent insistence in focusing on a single, incidental element of the LTWs – the right of the LTW holders, in certain cases, to get shares of the issuer – in trying to prove that this was the overriding intent of the parties. It simply was not. The debt intent would be manifested by the fact that the natural, first, spontaneous reaction of a DIME shareholder receiving the news that she would get LTWs, would be to immediately proclaim, " If the Anchor claim against the U.S. government wins, I'm going to get some value out of it."

Defendants' attempt to provide a second reason why there may have been a reason to structure the LTWs as equity rather than debt. At page 9 of their Brief they state, "removing the equity value of the goodwill litigation from the thrifts' balance sheets was like curing a headache

by decapitation" because DIME would have to dip into their reserves in order to pay out the Anchor proceeds. That is not true, as this Court noted when correcting the Defendants' counsel in oral argument this past Wednesday, November 23.

Looking at the totality of the circumstances in the words of the Defendants, it seems obvious that the essence of the LTWs was to entitle a holder to receive her *pro rata* share of the 85% of the Anchor litigation proceeds. That was the predominant factor in the intent; the form of the payout was secondary.

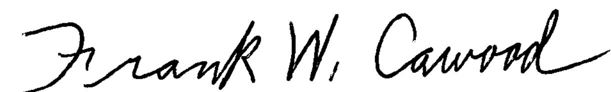
Judge Walrath, I am not a lawyer, and I submit this to you on the understanding that it in no way is intended to affect my standing as a member of the class of LTW holders. I do it entirely independently and without the knowledge or consent of any lawyer of record in this case or any other party to this case. If possible I would like this letter to be treated as part of the record as you have done with other letters you have received from claimants.

We LTW holders have been pushed aside by WMI and the WMI Board of Directors who abrogated their fiduciary responsibility to us. Their Board of Directors wrongly transferred the right to the proceeds of the Anchor litigation to JP Morgan without requiring that JP Morgan pay 85% of the proceeds to the LTW holders, who were the rightful owners of that claim.

This Court now has the opportunity to right the wrong, to do justice and to decide that the LTW holders are entitled to the value of our claim, and that our rightful claim is "debt," not "equity."

Thank you for your consideration.

Yours truly,



Frank W. Cawood