

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
WASHINGTON MUTUAL, INC. <i>et al.</i> ,	)	Case No. 08-12229 (MFW)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Hearing Date: January 11, 2012 at 2:00 p.m. (ET)
	)	Related Docket Nos.: 9178, 9179, 9180, 9181
	)	

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**WHITEBOX'S SUPPLEMENTAL OBJECTION TO THE ADEQUACY OF THE  
DISCLOSURE STATEMENT FOR THE SEVENTH AMENDED JOINT PLAN OF  
AFFILIATED DEBTORS PURSUANT TO CHAPTER 11 OF  
THE UNITED STATES BANKRUPTCY CODE**

Whitebox Asymmetric Partners, LP, Whitebox Multi Strategy Partners, L.P., Whitebox Concentrated Convertible Arbitrage Partners, L.P., Whitebox Credit Arbitrage Partners, L.P., IAM Mini-Fund 14 Limited, Pandora Select Partners, L.P. and Whitebox Special Opportunities Fund LP, Series B (collectively, "Whitebox")—each of whom hold Approved PIERS Claims—by and through their undersigned attorneys, hereby submit this Supplemental Objection to the adequacy of the Disclosure Statement, and respectfully states as follows:

1. As confirmed by the Debtors' omnibus response to objections to the Disclosure Statement, based on the updated Liquidation Analysis, holders of PIERS Claims would forfeit over \$726 million of their potential \$820 million recovery to other creditors if the Plan is confirmed. To learn this, however, PIERS holders would have to review the last sentence of footnote 56 – which starts on page 106 of the Disclosure Statement and runs onto page 107 – and then cross reference it against the Liquidation Analysis. Such disclosure is effectively no disclosure in this case and would certainly be drowned out by the chorus of support letters drafted by the Debtors and both committees to be included in the solicitation package.



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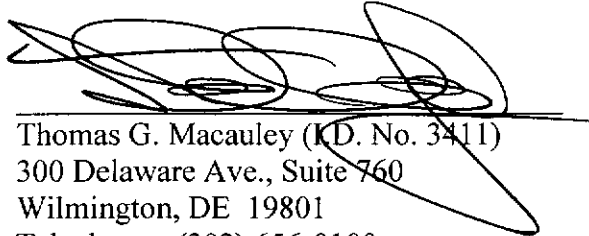
2. Before voting on the Plan, holders of PIERS Claims have a right to know the burdensome effect that the Plan – and specifically its subordination model – will have on the potential recovery on their Claims. It would not be readily apparent to most readers that the subordination provisions would require PIERS holders to disgorge the vast majority of their anticipated recovery, notwithstanding that the recipients would have already received full payment on their claims plus post-petition interest at the highest rate that this Court will allow.

3. As a remedy, Whitebox proposes that the solicitation package to Class 16 holders of PIERS Claims include a copy of the letter annexed as Exhibit A hereto. Inclusion of Whitebox’s proposed letter in the solicitation package will resolve Whitebox’s objection to the Disclosure Statement. Whitebox reserves its right to object to confirmation of the Plan.

**WHEREFORE**, Whitebox respectfully requests that the Court direct the Debtors to include Whitebox’s letter in the solicitation package to Class 16 holders of PIERS Claims.

Dated: January 11, 2012

**MACAULEY LLC**



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**ATTORNEYS FOR WHITEBOX**

EXHIBIT A

## **Communication to Members of Class 16 (Holders of PIERS Claims)**

To the Members of Class 16:

This is a communication from investors owned or controlled by Whitebox Advisors, LLC (collectively “Whitebox”). Whitebox holds Preferred Income Equity Redeemable Securities (“PIERS”) issued by the Washington Mutual Capital Trust 2001. If you hold PIERS, then Washington Mutual, Inc. and its affiliates (the “Debtors”) are seeking your approval of the chapter 11 plan (the “Plan”) enclosed in the materials you have received with this letter. For the reasons we discuss below, **WHITEBOX BELIEVES PIERS HOLDERS SHOULD VOTE AGAINST THE PLAN.**

### **The Plan Requires the PIERS Holders to Pay \$726 Million in Interest to the Senior Noteholders**

The Plan contemplates that out of what would otherwise be an \$820 million recovery to PIERS holders, \$726 million must be paid to Senior Noteholders, leaving PIERS holders with a recovery of \$94 million, or 11% of their claim amount (rather than 97%).<sup>1</sup> The \$726 million is for post-petition interest: specifically, the difference between the federal judgment rate of 1.95% and the higher rate under the applicable Senior Note indenture (the “contract rate”). This feature of the Plan implements two rulings of the Bankruptcy Court in connection with the Plan’s prior version: first, that post-petition interest should be paid at the federal judgment rate rather than the contract rate; second, that under contractual subordination provisions, the PIERS holders are required to make up the difference between the two rates.

Appeals of the subordination ruling are pending. In addition, Whitebox intends to object to Plan confirmation on the ground that subordination does not require the PIERS to pay to Senior Noteholders the difference between the federal and contract rates, and if there is an adverse ruling, Whitebox intends to appeal. There is a significant risk, however, that once the Plan is substantially consummated, an appellate court will consider the issue moot and decline to address it. In that event, PIERS holders will lose 86% of their recovery without the opportunity to pursue what Whitebox believes would be a meritorious appeal on this critical issue.

If the Plan had a provision for a reserve to cover the interest rate differential, the rights of the PIERS holders would be protected, as the funds would be held in escrow until the appeals were decided. The Plan, however, does not provide for such a reserve.

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<sup>1</sup> See Exhibit C to the Disclosure Statement (Updated Liquidation Analysis).

PIERS holders thus should vote against the Plan because it requires them to increase the recovery to the Senior Noteholders beyond what the Court ruled they could obtain from the Debtors, at a cost to the PIERS holders of the substantial bulk of their recovery, without protecting the right of the PIERS holders to effectively appeal this substantial and significant issue.

**The Plan Provides a Recovery for Equity Holders Even Though PIERS Holders Receive Only 11%**

The Plan provides for a recovery for equity holders even though the substantial majority of the PIERS claims, after the subordination described above, will not be paid. Whitebox believes this is unfair to the PIERS holders, who stand ahead of equity in the capital structure and should be fully paid before equity receives a recovery. PIERS holders should vote against the Plan because it does not recognize this priority.

\* \* \*

In summary, the Plan short-changes PIERS holders on both ends: it provides creditors senior to the PIERS holders with an enhanced recovery in the amount of \$726 million at the PIERS' expense, and it provides a recovery to constituents junior to the PIERS, also at the PIERS' expense. The PIERS holders therefore should not approve the Plan.

**Note: if you vote against the Plan, this will not prevent you from receiving a distribution if the Plan is confirmed anyway.**

If you or your counsel wish to discuss the foregoing prior to casting your ballot, please feel free to call our counsel John Orenstein (612.436.9802) or Kelly Pierce (612.436.9803) of Ross & Orenstein LLC.

Very truly yours,

WHITEBOX ADVISORS, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of January 2012, 2011, a copy of the foregoing was served in the manner indicated on:

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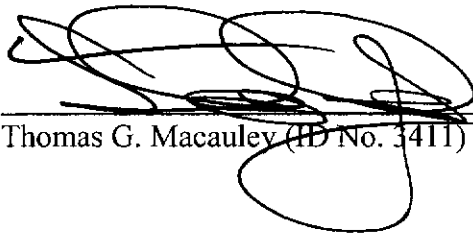
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