

August 10, 2011

Honorable Mary F. Walrath, U.S.B.J.
United States Bankruptcy Court
824 Market Street, 5th Floor
Wilmington, DE 19801

Re: **Washington Mutual, Inc., et al.**
Case No. 08-12229 (MFW)
Securities Plaintiffs' Post-Hearing Submission

Dear Judge Walrath:

Lead Plaintiffs, Policemen's Annuity and Benefit Fund of the City of Chicago and Doral Bank Puerto Rico (the "Lead Plaintiffs"), in the consolidated securities class action entitled *Boilermakers National Annuity Trust Fund, on Behalf of Itself and All Others Similarly Situated v. WAMU Mortgage Pass Through Certificates, Series ARI, et al.*, Case No. C09-0037 (MJP) (W.D. Wash) (the "Securities Litigation"), respectfully request the Court accept this letter submission in furtherance of Lead Plaintiffs' previously filed Objection¹ [Doc. No. 7478] to confirmation of the Debtors' Modified Sixth Amended Joint Plan [Doc. No. 6696] (the "Plan"). The Objection, which is incorporated herein by reference, discussed three areas of concern that should, in the wake of the evidence adduced at the confirmation hearing, result in at least a modification of the Plan.

First, the Plan must preserve Lead Plaintiffs' rights to pursue their Claims against the Debtors post-confirmation to the extent of available D&O insurance. Because the Plan is essentially a liquidating plan (at least as to WMI and despite Debtors' arguments to the contrary), the Debtors should not be entitled to a discharge so as to preclude Lead Plaintiffs from pursuing their Claims to the extent of available insurance.

Second, notwithstanding Debtors' attempt to protect the Liquidating Trustee and "prevent parties from seeking to assert claims and causes of action against the Liquidating Trust," *see* Debtors' Response to Objections to Confirmation of the Modified Sixth Amended Plan [Doc. No. 8122], Debtors provide no substantive basis to extend the stays and injunctions, extant on the Confirmation Date, beyond the Plan Effective Date. As a result of the proposed extension of stays and injunctions to an unspecified date, the Liquidating Trust and Trustee are provided an unfair advantage over Lead Plaintiffs to the extent the Trust and/or Trustee pursue the estate's claims and causes of action against Non-Debtor Defendants. Indeed, special

¹ Capitalized terms shall have the meanings ascribed to them in the Objection, unless otherwise defined herein.

counsel has now been retained by the Debtors for that purpose. The use of the automatic stay as sword rather than a shield is prejudicial to Lead Plaintiffs and should not be permitted.

Third, in the event the Court determines that holders of General Unsecured Claims are entitled to receive post-petition interest on their Claims, the appropriate rate of interest is the federal judgment rate, not the individual contract rate. During the trial, evidence was elicited by the Equity Committee and others supporting the factual and legal bases for utilizing the federal judgment rate of interest, if any. Lead Plaintiffs join in the factual and legal arguments raised and to be raised in support of computing interest at the federal judgment rate. Lead Plaintiffs also support the argument raised by several objectors, together with the factual evidence in support thereof, that 11 U.S.C. 726(a) requires that all general unsecured claims, including those subordinated claims in Class 18 under the Plan, be paid before interest is paid to any other class of creditors.

Based upon the foregoing, and for the reasons set forth in the Objection previously filed by Lead Plaintiffs, Lead Plaintiffs respectfully request that an Order be entered denying confirmation of the Plan and granting such other and further relief as the Court deems just and proper unless the infirmities referenced above are resolved through appropriate Plan modifications.

Respectfully,


Michael S. Etkin

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cc: Attached Service List