UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,	:	**Case No. 08-12229 (MFW)** **(Jointly Administered)**
Debtors.	:	**Hearing Date: January 28, 2010 at 4:00 p.m.**
	:	**Re: Docket No. 2132**

OPPOSITION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS TO DEBTORS' MOTION FOR AN ORDER (A) DISBANDING SUCH COMMITTEE OR (B) LIMITING THE FEES AND EXPENSES WHICH MAY BE INCURRED BY SUCH COMMITTEE

The Official Committee of Equity Security Holders (the "Equity Committee") of Washington Mutual, Inc. ("WMI" and, together with its chapter 11 debtor-affiliate, WMI Investment Corp., the "Debtors"), by and through undersigned counsel, respectfully submits this Opposition to the Motion of the Debtors for an Order (A) Disbanding the Official Committee of Equity Holders Appointed by the United States Trustee or (B) Limiting the Fees and Expenses which may be Incurred by such Committee (the "Motion"). In support of this Opposition, the Equity Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. Five months after WMI rejected as insufficient an offer by JP Morgan Chase ("JPM") that would have provided WMI's shareholders $8 per share, the FDIC seized Washington Mutual Bank ("WMB") and sold it to JPM at a fire-sale price. These events led not only to the largest banking failure in U.S. history, but to a terrible "state of limbo" for thousands of WMI shareholders who were instantly and inexplicably stripped of many billions of dollars of shareholder equity value without apparent recourse.

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2. For over a year, WMI shareholders petitioned Roberta A. Deangelis, the Acting United States Trustee for Region 3 (the "U.S. Trustee"), to exercise her authority under Section 1102(a)(1) of Title 11 of the United States Code (the "Bankruptcy Code") to appoint an equity committee to represent their interests in these chapter 11 cases. These repeated requests were initially declined by the U.S. Trustee. However, after litigation seeking in excess of $20 billion was filed (collectively, the "Pending Litigation")[1] and after 3,500 shareholders wrote letters in support of such a committee, the U.S. Trustee determined that equity holders had a sufficient economic stake and need for representation to warrant appointment of the Equity Committee.

3. Before the ink was dry on the U.S. Trustee's notice appointing the Equity Committee, the Debtors filed their Motion to "disband" the Equity Committee. After wading through the Debtors' circular and inconsistent arguments, the basis for their Motion devolves to this: if the Equity Committee is allowed to learn enough to effectively participate in the formulation of a plan and the negotiation of the Pending Litigation, it will confirm that value exists for equity holders and will then insist that equity holders receive value, making it more difficult for the Debtors to wrap up the estate with recoveries for creditors alone.

4. Consequently, the Debtors seek to deny equity holders a place at the table, or in the alternative, fund them in such a negligible way that they are unable to sufficiently participate in effectively asserting their rights.

5. The thousands of shareholders who clamored for the appointment of a committee share the Debtors' view that fundamental misconduct caused the seizure and fire-sale of WMB. They will not, and should not, be satisfied by platitudes mouthed by the Debtors that

[1] The Pending Litigation includes, but is not limited to, what the Debtors' refer to in their Motion as "The D.C. Action," "The Adversary Proceedings" and "The American National Action."

the Debtors and their creditors are looking out for the equity holders' interests, and not just their own interests. The Debtors are asserting both liquidated and unliquidated claims seeking billions of dollars and have numerous subsidiaries to sell that have not been valued. Yet, recovery of only the liquidated amounts sought by the Debtors in the Pending Litigation will result in a recovery for the equity holders. The cost to fund the Equity Committee will be shouldered by the Debtors, but that cost will also be controlled by the Debtors -- the more information and analysis the Debtors share, the less costly it will be for the Equity Committee to become more familiar with these chapter 11 cases.

6. Finally, the notion that the Equity Committee will sabotage delicate negotiations is the reddest of herrings. If it turns out that the value of the Pending Litigation is less than the Debtors have asserted, and the Debtors make their information and analysis available to the Equity Committee, there is no reason why the Equity Committee would, and no available vehicle for the Equity Committee to, prevent the negotiation of a reasonable plan and settlements, even if the result included no recovery for equity holders. On the other hand, if, as the Pending Litigation and the market suggest, value for equity holders exists, why should the equity holders be forced to hold their breath and hope that someone else -- with no incentive to do so -- will try to recover that value for them?

7. The Debtors now seek to overturn the exercise of the U.S. Trustee's Section 1102(a)(1) appointment authority and assert in their Motion that the Equity Committee should be (a) "disbanded" or, in the alternative, (b) so constrained by an oppressive cap on fees and expenses that its existence is a practical nullity. There is no basis for such extraordinary relief and the Debtors' Motion should be denied in all respects.

8. In their Motion, the Debtors cite numerous authorities opining on the power of a bankruptcy court to direct the appointment of an equity committee under Section ***1102(a)(2)*** of the Bankruptcy Code—that is, under circumstances where a United States trustee has not exercised his or her appointment authority under Section ***1102(a)(1)***. Those authorities are inapplicable when, as here, debtors seek to have a bankruptcy court overturn an exercise of a United States trustee's statutory authority to "appoint additional committees … of equity security holders ***as the United States trustee deems appropriate***." 11 U.S.C. § 1102(a)(1) (emphasis added).

FACTUAL BACKGROUND

9. WMI has over 1.7 billion common shares and over 20 million preferred shares outstanding. With these massive numbers come thousands of individual and institutional shareholders that range significantly in levels of sophistication and amounts invested. For this reason alone, this case is particularly well suited to have an equity committee to speak for its holders.

10. For well over one year prior to formation of the Equity Committee, an *ad hoc* group of non-institutional equity holders requested that the U.S. Trustee form an equity committee. For much of that time, the facts with respect to these cases had not been developed. During that period, this *ad hoc* equity group spent considerable time reviewing what was publicly available, but struggled without adequate resources or access to information to properly represent equity holders. Finally, after gathering enough information and ***3,500+ equity holders'*** letters in support, the Equity Committee was formed and its members appointed by the U.S. Trustee. Those 3,500 letters of support came from holders of many classes of equity including:

- Holders of 572,000+ WMI Preferred Class R Shares (approximately nineteen percent of such shares outstanding);

- Holders of 900,000+ WMI Preferred Class K Shares (approximately five percent of such shares outstanding); and
- Holders of 100+ million WMI common shares (approximately six percent of such shares outstanding).

11. WMI's equity holders have a significant economic stake and need the Equity Committee to adequately represent their interests to preserve that stake. Indeed, they stand to recover billions of dollars if even a portion of the Debtors' Pending Litigation is successfully prosecuted. This likelihood of recovery is reflected in the current market prices of the Debtors' stock, which the Debtors point to as "the best indicator of a debtor's perceived solvency." Debtors' Motion ¶ 29. In this instance, the first tier of preferred shares is trading at between $72 and $93 a share.

12. In total, the current market value of the Debtors' equity exceeds $500 million, broken down as follows[2]:

Equity Class	**January Closing Price Range**	**Aggregate Value Range**
Class R Preferred Stock (WAMPQ)	$72.50-$93.01	$217,500,000-$279,030,000 (3 million shares outstanding)
Class K Preferred Stock (WAMKQ)	$2.04-$2.80	$40,800,000-$56,000,000 (20 million shares outstanding)
Common Stock (WAMUQ)	$0.15-$0.19	$255,000,000-$323,000,000 (1.7 billion shares outstanding)

13. As of December 31, 2009, the Debtors and Official Committee of Unsecured Creditors (the "Creditors' Committee") had incurred over $65 million in professional fees in these chapter 11 cases, in large measure to investigate, bring and defend claims in the Pending Litigation. The claims brought by the Debtors are huge and in most instances

[2] See Exhibits 1-3. Additionally, these values reflect significant trading activity in WMI's equity in January: WAMPQ approximate daily volume ranged from 6,000 to 62,000 shares; WAMKQ approximate daily volume ranged from 50,000 to 887,000 shares; and WAMUQ approximate daily volume ranged from 7 to 41 million shares.

liquidated. Unless there is some reason to question whether those claims were not commenced in good faith, there will be recovery for the equity holders. Comparing just the $20.5 billion in liquidated claims to the Debtors' approximately $8 billion in scheduled debt[3] evidences the strong likelihood of a substantial distribution to WMI's equity holders. Adding the Debtors' unliquidated claims to that balance merely buttresses the U.S. Trustee's conclusion to appoint the Equity Committee.

LEGAL ARGUMENT

I. The Equity Committee Was Properly Appointed

14. Congress recognized the vulnerability of public investors in chapter 11 cases when it conferred on the United States trustee the authority to appoint additional committees under Section 1102(a)(1) of the Bankruptcy Code. The legislative history of Section 1102 recognizes the importance Congress placed on equity committees to serve "to counteract the natural tendency of a debtor . . . to pacify large creditors . . . at the expense of small and scattered public investors." S. Rep. No. 95-989, at 10 (1978).

15. Section 1102(a)(1) of the Bankruptcy Code vests the power to appoint an equity committee in the United States trustee. The Debtors' Motion simply assumes that a bankruptcy court exercises a power to "disband" a properly constituted equity committee and posits that the Court is to review *de novo* the U.S. Trustee's appointment decision. In In re New Life Fellowship, Inc., 202 B.R. 994 (Bankr. W.D. Okla. 1996), however, the court concluded that "both the specific language and the legislative history of section 1102(a)(1) compel the conclusion that the court . . . is without power to abolish" an equity committee appointed by the United States trustee under the "exclusive authority to appoint committees" afforded by that

[3] On page 13 of the Motion, the Debtors make a vague reference to contingent liabilities in addition to those scheduled. At this stage, without appropriate review, it is impossible for the Equity Committee (or the Court) to determine the nature, priority and amount of such contingent liabilities.

section of the Bankruptcy Code. Id. at 996; accord id. at 997 ("section 1102(a)(1) . . . is absolute in its language and deprives the court of any discretion concerning appointment or abolition of committees . . . ."). Other courts have likewise concluded that they lack the power to review actions taken by the United States trustee pursuant to the express authority conveyed under Section 1102. See, e.g., In re Wheeler Technology, Inc., 139 B.R. 235, 239 (9th Cir. B.A.P. 1992) (stating that "[t]he power to appoint and delete members of the Creditors' Committee now resides exclusively with the U.S. Trustee"); In re Dow Corning Corp., 212 B.R. 258, 264 (E.D. Mich. 1997) (finding that § 1102 "does not empower the bankruptcy court to appoint or remove the members of the committee"); In re Drexel Burnham Lambert Group, Inc., 118 B.R. 209, 210 (Bankr. S.D.N.Y. 1990) (highlighting "the absence of any indication in the statute that the court may add to or delete an unsecured creditor from a committee").[4] In fact, the Debtors ***fail to cite any authority for the proposition that an appointed equity committee may be "disbanded" after appointment,*** let alone authority that any such committee has been "disbanded."

16. Among those courts that have concluded that review of the United States trustee's committee decisions is proper, there is hardly unanimity in the level of deference to be afforded the trustee in the course of such a review. Rather than the *de novo* review urged by the Debtors, this Court has reviewed a United States trustee's refusal to appoint a particular creditor to serve on a committee under an abuse of discretion standard. See In re Columbia Gas System, Inc., 133 B.R. 174, 176 (Bankr. D. Del. 1991). Numerous other courts have likewise concluded that a United States trustee's decision regarding the composition of a particular committee can be overturned only in the event such decision was arbitrary and capricious or otherwise comprised

[4] Although Congress crafted Section 1102(a)(4) in 2005 to expressly empower a court to change the membership of committees, it left untouched the singular power of the United States trustee to form committees found in 1102(a)(1) and through the adoption of 1102(a)(4) implicitly acknowledged that the court lacks authority to overturn an 1102(a)(1) committee formation decision.

an abuse of the United States trustee's discretion. See, e.g., In re America West Airlines, 142 B.R. 901, 902 (Bankr. D. Ariz. 1992) (stating that United States trustee's decision to remove a committee member will be overturned only if the trustee acted arbitrarily and capriciously).

17. Even courts undertaking a *de novo* review – an approach that finds no support in the prior decisions of this Court – appreciate that the United States trustee's committee decisions should be afforded due consideration. See, e.g., In re Oneida Ltd., 2006 WL 1288576, at *1 (Bankr. S.D.N.Y. 2006).

18. Accordingly, should this Court hold that it may review the U.S. Trustee's appointment of the Equity Committee, any such review should interfere with the U.S. Trustee's exercise of discretion only if that discretion was abused, and in any event, should not simply ignore the U.S. Trustee's decision as if it was never made or implemented.

19. United States trustees have exercised their unquestioned power to appoint official committees of equity holders in many recent large and complex chapter 11 cases. See, e.g., In re General Growth Properties, Inc., et al., Case No. 09-11977 (Bankr. S.D.N.Y.); In re Hancock Fabrics, Inc., Case No. 07-10353 (Bankr. D. Del.); In re Calpine Corporation, et al., Case No. 05-60200 (Bankr. S.D.N.Y.); In re Delphi Corporation, et al., Case No. 05-44481 (Bankr. S.D.N.Y); In re Loral Space & Commc'ns Ltd., Case No. 03-41710 (Bankr. S.D.N.Y.); In re Cone Mills Corp., Case No. 03-12944 (Bankr. D. Del.); In re Seitel, Inc., et al., Case No. 03-12227 (Bankr. D. Del.); In re Peregrine Systems, Inc., et al., 02-12740 (Bankr. D. Del.); In re Coram Healthcare Corp., Case No. 00-3299 (Bankr. D. Del.).

20. In instances when the United States trustee has not appointed an equity committee and the bankruptcy court is called upon to decide a motion for appointment of an

equity committee under Section 1102(a)(2), courts have generally held that an equity committee is appropriate if some or all of the following criteria are met:

a. The debtors are not "hopelessly insolvent";

b. The interests of shareholders are otherwise not adequately represented;

c. The costs of adequate representation of shareholders will not significantly outweigh the benefits;

d. The case is large and complex; and

e. The debtors' shares are widely held and publicly traded.

See, e.g., In re Exide Technologies, 2002 U.S. Dist. LEXIS 27210 (D. Del. 2002); In re Williams Commc'ns Group, Inc., 281 B.R. 216 (Bankr. S.D.N.Y. 2002); In re Kalvar Microfilm, Inc., 195 B.R. 599 (Bankr. D. Del. 1996). These factors are considered as a group and no one factor is determinative. In re National R.V. Holdings, Inc., 390 B.R. 690, 696 (Bankr. C.D. Cal. 2008); In re Dana Corp., 344 B.R. 35, 38 (Bankr. S.D.N.Y. 2006); Kalvar Microfilm, 195 B.R at 600-601. Here, assuming *de novo* review is the applicable standard, each of the factors substantiate the U.S. Trustee's decision in these cases.

A. WMI Is Not Hopelessly Insolvent.

21. The Debtors incorrectly assert that the Equity Committee has a burden of showing that there is a substantial likelihood of recovery in these cases. Neither the U.S. Trustee nor the Equity Committee must make a showing of a substantial likelihood of recovery. See Motion ¶ 23. It is the Debtors, who move the Court and seek to overturn the U.S. Trustee's decision, that bear the burden of showing they are "hopelessly insolvent." In re Spansion, Inc., 2009 Bankr. LEXIS 3958, at *16 (Bankr. D. Del. 2009) (the party moving under Section 1102(a)(2) has the burden of persuasion on the insolvency issue); In re Ampex Corp., 2008

Bankr. LEXIS 1536, at *4 (Bankr. S.D.N.Y. 2008) ("The burden of proving the Debtors' solvency for purposes of the [Section 1102(a)(2)] Motion is on [the moving party]").

22. Courts look to the value of all the debtor's assets in determining solvency. See In re Wang Labs., Inc., 149 B.R. 1, 3 (Bankr. D. Mass. 1992) (appointing an equity committee though the debtors appeared insolvent).[5] Even when applying the more lenient Section 1102(a)(2) standard of review, courts that have relied on this prong have denied requests to appoint an equity committee only when there was no hope of recovery. See In re Leap Wireless Intern., Inc., 295 B.R. 135, 138-139 (Bankr. C.D. Cal. 2003) (even if the debtor was to recover on its claims, ***there would be no distribution*** to equity holders); Williams Commc'ns, 281 B.R. at 220 (concluding under ***no circumstances*** would the equity holders receive a distribution).

23. The Debtors assert that "equity security holders" are unlikely to receive a meaningful distribution because WMI must first address the $3.4 billion in preferred stock outstanding. The Debtors conclude that common stock would not recover unless the $3.4 billion in preferred shareholder recoveries is paid. The Debtors ignore that ***the Equity Committee was formed to adequately represent the rights of all holders of equity, both preferred and common.*** (See Notice of Appointment, [Docket No. 2130].) Indeed, members of the Equity Committee hold WMI preferred stock, as well as common stock.

24. Thus, the Debtors' Motion, in several respects, implicitly concedes that there may be value for preferred shareholders. The marketplace confirms the Debtors' concession. WMI Preferred R shares and Preferred K shares are trading at $72.50 to $93.01 per share and $2.04 to $2.80 per share, respectively. See Exhibits 1-3. It is not surprising that

[5] Furthermore, "the solvency of the debtor should not be the only factor, or even the principal factor, in deciding whether to appoint a committee of equity security holders." 7 Collier on Bankruptcy ¶ 1102.03[2][a] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev.).

holders of 19% of the WMI Preferred R shares wrote letters to the U.S. Trustee requesting that an equity committee be formed. In total, the indicative market capitalization of WMI shares exceeds $500 million.

25. In the Pending Litigation, the Debtors have asserted claims that are enormous by any measure, yet their Motion is silent about the value of those claims. The successful determination of the Pending Litigation would yield billions of dollars in liquidated damages and an unknown and likely staggering amount of unliquidated damages. Just the liquidated portion of these claims has significant value, the most substantial of which are:

BASIS OF CLAIM	**AMOUNT OF CLAIM**
Debt under four promissory notes	*$0.177 billion*
Intercompany receivables owed by WMB	*$0.022 billion*
Claims under a tax sharing agreement	*$5.700 billion*
Fraudulent transfer claim related to capital contributions made to WMB	*$6.500 billion*
Avoidance actions and other claims related to trust preferred securities	*$4.000 billion*
Voidable insider preference claim	*$0.151 billion*
Deposit claim	*$4.000 billion*
TOTAL	**$20.55 billion**

26. The Debtors' own pleadings give every indication that WMI's equity holders have a significant likelihood of a meaningful recovery. If prosecuted successfully, the Pending Litigation will yield billions of dollars in distributions for WMI's equity holders as well

as its creditors. Indeed, even a partially successful recovery on the liquidated portion of the claims would net a substantial recovery to equity holders.

27. Curiously, the Debtors' Motion highlights and quantifies specific values only when arguing that their balance sheet reflects a shareholders' equity deficiency of $1.4 billion. Among the claims mentioned in the Motion, the Debtors' balance sheet seems to only account for the $4 billion deposit claim and certain intercompany claims and fails to account for billions of dollars in other Pending Litigation claims. Given the breadth of Pending Litigation, the Debtors' balance sheet is not indicative of WMI's insolvency or of a failure of WMI's equity holders to recover.

28. None of the cases cited by the Debtors involve litigation rights as the mainstay of recoveries. Each of the cases relied on by the Debtors involves an operating company in which the bankruptcy court found ***there was no hope of a recovery for equity***. See In re Smurfit-Stone Container Corp., Case No. 09-10235 (BLS) (Bankr. D. Del. Dec. 10, 2009); Leap Wireless, 295 B.R. 135; Williams Commc'ns, 281 B.R. 216; In re Edison Bros. Stores, Inc., 1996 U.S. Dist. LEXIS 13768 (D. Del. 1996); In re Sharon Steel Corp., 100 B.R. 767 (Bankr. W.D. Pa. 1989). Recovery for equity holders in this case hangs on successful prosecution of litigation claims that assert damages far in excess of the amount necessary for a recovery for equity, not "EBITDA" or real estate valuations as in the cases upon which Debtors' exclusively rely. In each of the cases cited by the Debtors, proving valuation was the burden of the party moving under Section 1102(a)(2), not so here. The cases cited by the Debtors are simply inapplicable to this case.

29. In sum, there is no basis upon which to conclude that the Debtors are hopelessly insolvent. On the contrary, a substantial distribution is likely for WMI's equity holders.

B. WMI's Shareholders Require Adequate Representation of Their Interests.

30. The Debtors' argument that the Creditors' Committee adequately represents WMI's equity holders is logically and legally defective. The Creditors' Committee has a fiduciary duty only to unsecured creditors. See In re Smart World Technologies, LLC, 423 F.3d 166, 175 (2d Cir. 2005) ("creditors' committee owes a fiduciary duty to the class it represents, but not to the debtor, other classes of creditors, or the estates"); In re TSIC, Inc., 393 B.R. 71, 78 (Bankr. D. Del. 2008). Because the principal remaining assets are litigation claims, unsecured creditors are motivated to prosecute these claims only to the extent that their own constituency benefits. Only the Equity Committee would have undivided loyalty and owe fiduciary duties solely to WMI's shareholders.

31. Shareholders are not represented by an official creditors' committee. Unsecured creditors and equity holders possess discordant priorities and interests, In re Saxon Indus., Inc., 29 B.R. 320, 321 (Bankr. S.D.N.Y. 1983) and the interests of creditors and shareholders frequently conflict during the course of a chapter 11 proceeding. In re Evans Prods. Co., 58 B.R. 572, 575 (Bankr. S.D. Fla. 1985). Creditors' committees are charged only with dutifully and zealously pursuing recovery for their constituents, unsecured creditors. In this case, creditors will be satisfied by receiving just a fraction of the more than $20 billion asserted in the Pending Litigation. In contrast, the Equity Committee is charged with maximizing the estate's recovery as a whole. In order to resolve the Pending Litigation, without a representative for equity holders, WMI's management and its board of directors will be under enormous pressure to

ignore the interest of equity. See S. Rep. No. 95-989, at 10 (1978) (discussing "the natural tendency of a debtor . . . to pacify large creditors . . . at the expense of small and scattered public investors").

32. The Debtors also assert that certain holders of WMI preferred stock have been actively involved in these chapter 11 cases and plan negotiation and that those holders are adequately representing the interests of equity holders at large. While this contradicts the Debtors' argument that WMI's equity holders are out-of-the-money, the Debtors do not demonstrate how, or even why, these certain holders of preferred stock are looking out for the interests of common stockholders or whether they are also WMI creditors.

33. The Debtors assert that they have been "engaged in extensive negotiations with the FDIC and JPMorgan in an attempt to reach a global resolution of the many disputed issues between the parties that would ***facilitate a timely distribution to creditors***." Debtors' Motion, ¶ 8 (emphasis added). By itself, this proves nothing, although the failure to reference equity holders does cause concern about the Debtors' goals. It is clear that without the Equity Committee, the interests of equity holders has not and will not be represented in those discussions. The Equity Committee is the only entity adequately charged with ensuring that such a potential global resolution considers the interests of equity holders, and the Equity Committee is the only entity whose existence will satisfy the widespread equity holders' concern that the ultimate disposition of potential recovery for them will be fair.

34. The Debtors' argument that the Equity Committee will disrupt the negotiating process only serves to increase the Equity Committee's concern for whether equity holders' interests are being duly represented. If there is value for the equity holders, the Equity

Committee should attempt to obtain it, even if such efforts are demeaned as "disruptive." If there is no value, how can the Equity Committee insist on it and thereby be "disruptive"?

35. If the Equity Committee were to be "disbanded," despite the likely existence of substantial equity value, WMI's shareholders would find themselves without a voice in these chapter 11 cases. Given the posture of these cases, where the principal assets remaining in the Debtors' estates are litigation claims, the amount of any judgment or potential settlement on such claims will directly and irrevocably determine the amount of distribution to WMI's stakeholders. Unless equity holders are properly represented in any prosecution or potential settlement of such claims, their interests will likely be eviscerated.

C. The Critical Need for the Equity Committee Outweighs the Potential Costs.

36. The Equity Committee is mindful of concerns regarding the additional expense in these cases. Nevertheless, "[c]ost alone cannot, and should not, deprive… security holders of representation." In re McLean Indus., Inc., 70 B.R. 852, 860 (Bankr. S.D.N.Y. 1987); see also In re Enron Corp., 279 B.R. 671, 694 (Bankr. S.D.N.Y. 2002) (added cost alone does not justify the denial of appointment of an additional committee where it is warranted). Additional cost must be weighed against the need for adequate representation of public shareholders. See Wang Labs., 149 B.R. at 3; In re Beker Industries Corp., 55 B.R. 945, 949-51 (Bankr. S.D.N.Y. 1985). "Essentially, the courts employ a balancing test to weigh the cost of an equity committee versus the 'concern for adequate representation.'" Williams Commc'ns, 281 B.R. at 220.

37. Where, as here, the need for adequate representation is established, the burden shifts to the opponent of the additional committee to show that the cost "significantly outweighs the concern for adequate representation and cannot be alleviated in other ways." Beker Industries, 55 B.R. at 949. Given the potential benefit to equity holders and the likelihood

that they will receive nothing if the Equity Committee is "disbanded," the cost is *de minimis* in relation to the potential benefits that may be provided. The Debtors make no argument to the contrary.

38. In this case, net recovery to equity could be in the billions of dollars. The current market capitalization of WMI is $500 million. Given the astronomical amounts involved in these cases, the relative costs of adding an additional set of lawyers and professionals is *de minimis*, and can be controlled here by the Debtors through the simple expedient of sharing existing information and analyses. Many of the costs that the Debtors are concerned with incurring can be avoided as there is no reason the Equity Committee should not benefit from the more than $65 million incurred by the Debtors and Creditors' Committee on lawyers and professionals. In fact, it can be argued that the formation of the Equity Committee is perfectly timed. Millions of dollars have already been invested in analyses that can and should be shared with the Equity Committee.

D. The Debtors' Cases are Large and Complex.

39. By any measure, these chapter 11 cases are large and complex. These cases and the related Pending Litigation are intimately intertwined with the failure of WMB, the largest bank failure in U.S. history. WMI's capital structure has multiple classes with many competing interests. There are competing claims and third party claims that aggregate many billions of dollars. Such size and complexity further highlights the appropriateness and necessity of the Equity Committee in ensuring that shareholders are adequately represented in the admittedly complex negotiations apparently underway.

E. The Debtors' Shares Are Widely-Held and Publicly Traded.

40. WMI shares were (and remain) actively traded and continue to be widely held. More than 1.7 billion shares of outstanding common stock are held by tens of thousands of equity holders. Such a diverse and unique class cannot be adequately represented by the Debtors and Creditors Committee alone; nor can they be adequately represented by an isolated shareholder. It is imperative that the WMI shareholders be given a formal and singular voice in the pending proceedings and that the Equity Committee be allowed to convene, act and negotiate to ensure their interests are protected by a group with a fiduciary duty to such holders.

41. Given the ongoing development of the Debtors' plan of reorganization and the progression of the Pending Litigation, it is critical that shareholders be allowed to provide input in these cases immediately and that the Equity Committee be allowed to participate therein instead of wasting resources defending its formation and existence. The Debtors argue that the U.S. Trustee's action is not timely. The opposite is true. If the Equity Committee were "disbanded" now, there would be little hope for adequate recoveries for such holders.

II. The Debtors' Request to Limit Fees and Expenses is Completely Unwarranted.

42. In a transparent attempt to prevent the Equity Committee from serving its constituency, the Debtors suggest capping the Equity Committee's fees at $250,000 for the duration of the cases. Based on the facts of these cases and the many complex matters at issue, this suggestion is absurd. Curiously, the Debtors state that to "fulfill their statutory obligations, the Equity Committee, along with their retained professionals, will need to spend considerable time and effort familiarizing themselves with the complex issues involved in these cases."

Debtors' Motion at ¶ 35. Yet, they propose to prevent the fulfillment of those obligations by an inadequate budget of just $250,000.

43. When viewed alongside the fees and expenses already spent by the Debtors administering these chapter 11 cases and investigating and bringing the Pending litigation, the suggested cap on Equity Committee fees and expenses is patently absurd. Through December 31, 2009, the Debtors have spent over $52,000,000 in professional fees or approximately $3,600,000 per month. The Creditors' Committee has expended over $13,000,000 in professional fees or approximately $850,000 per month. In comparison, the Debtors suggest that the Equity Committee's total expenditures be capped at just four tenths of one percent (0.4%) of the funds the Debtors claim to have been necessary for them and the Creditors Committees to evaluate these cases. The Debtors' suggestion is preposterous and unsupportable. The Equity Committee understands the importance of, and is committed to, efficiency and effectiveness, but simply cannot do its job on the proposed budget, considering the size and complexity of the matters at hand.

44. Moreover, as discussed briefly above, both the Debtors and Creditors Committee have within their power the ability to minimize many of the costs that the Equity Committee must incur by freely sharing whatever information the more than $65 million spent on investigation, analysis and review has yielded to date. This ability to voluntarily mitigate the Equity Committee's costs coupled with the Bankruptcy Code's fee review and approval process alleviates any need for the arbitrary fee cap requested.

CONCLUSION

44. These cases concern thousands of disparate shareholders, claims of fraud and malfeasance against the Federal Government and one of the largest financial institutions in

the United States, and the loss of billions of dollars in equity value. This is precisely the type of case where Congress contemplated equity having a seat at the table and a representative voice in the outcome. After months of consideration and a careful review, the U.S. Trustee has formed the Equity Committee. The Debtors' precipitous efforts to stifle that newly formed Equity Committee's voice and overturn the U.S. Trustee's decision should be rejected.

WHEREFORE, for the reasons stated herein, the Equity Committee respectfully requests that the Court: (i) deny the Debtors' Motion in its entirety; and (ii) grant such other and further relief as is just and proper.

Dated January 21, 2010

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Proposed Counsel to the Official Committee of Equity Security Holders

EXHIBIT 1

WAMUQ Trading History Jan. 1, 2010- Jan. 21, 2010

Washington Mutual, Inc. (Public, OTC:WAMUQ) Watch this stock

Find more results for **WAMUQ**

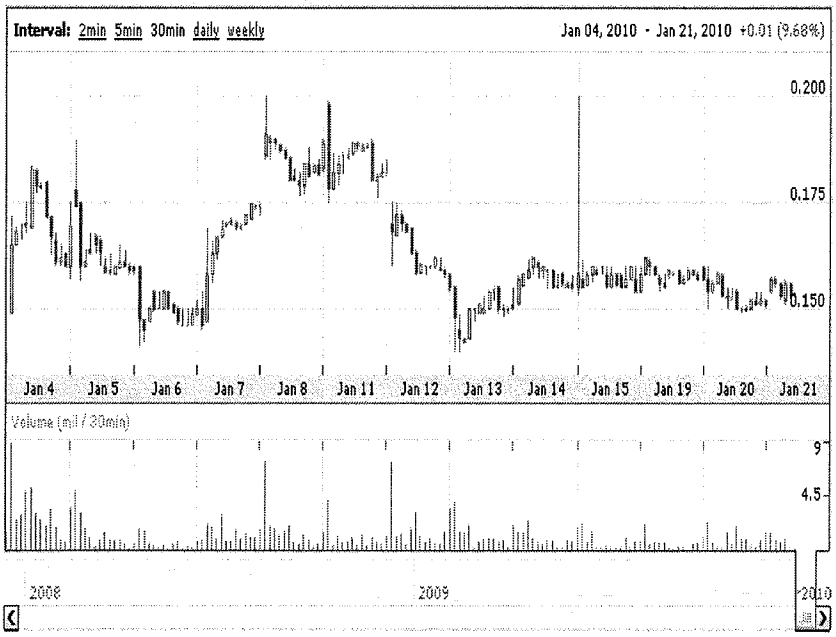
WAMUQ 0.155 2.65%

0.155 +0.004 (2.65%)
Delayed: 12:28PM EST
OTC data delayed by 15 mins - Disclaimer

Range	0.15 - 0.16	Mkt c	
52 week	0.01 - 0.44	P/E	
Open	0.15	Div/yi	
Vol / Avg.	4.96M/17.55M	EPS	

Compare: Enter ticker here Add more »

PBCT FBTXQ
BRKL ONFC
UCFC HLFN
FNFG CZYB
CASH



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Key stats and ratios

	Q2 (Jun '08)	2007
Net profit margin	-116.49%	-0.47%
Operating margin	-193.70%	2.17%

Washington Mutual, Inc. historical prices Watch this stock

Show: **Daily** | Weekly Jan 1, 2010 - Jan 21, 2010 Update

Date	Open	High	Low	Close	Volume
Jan 20, 2010	0.16	0.16	0.15	0.15	13,556,984
Jan 19, 2010	0.16	0.16	0.15	0.16	7,631,473
Jan 18, 2010	0.16	0.16	0.16	0.16	0
Jan 15, 2010	0.16	0.16	0.15	0.16	8,868,964
Jan 14, 2010	0.15	0.20	0.15	0.16	13,250,915
Jan 13, 2010	0.16	0.16	0.14	0.15	16,368,068
Jan 12, 2010	0.17	0.18	0.15	0.16	23,860,669
Jan 11, 2010	0.20	0.20	0.18	0.18	12,857,690
Jan 8, 2010	0.19	0.20	0.18	0.19	21,066,831
Jan 7, 2010	0.15	0.18	0.14	0.17	17,530,555
Jan 6, 2010	0.16	0.16	0.14	0.15	7,538,433
Jan 5, 2010	0.18	0.19	0.16	0.16	16,701,644
Jan 4, 2010	0.15	0.18	0.15	0.17	41,588,548
Jan 1, 2010	0.14	0.14	0.14	0.14	0

Show rows: 30 1 - 14 of 14 rows

Historical chart

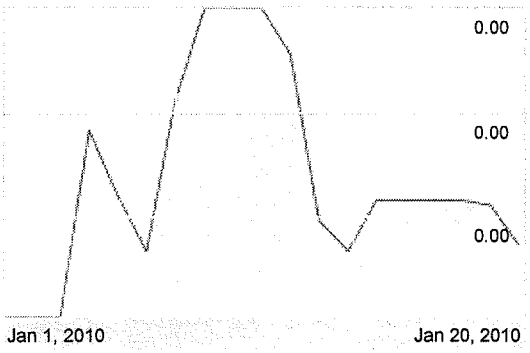

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EXHIBIT 2

WAMKQ Trading History Jan. 1, 2010- Jan. 21, 2010

WASHINGTON MUTUAL DE (Public, PINK:WAMKQ) Watch this stock

WAMKQ	2.39	-0.83%

2.39 -0.02 (-0.83%)
Delayed: 12:17PM EST
PINK data delayed by 15 mins - Disclaimer

Range	2.35 - 2.43	Mkt	
52 week	0.09 - 3.85	P/E	
Open	2.43	Div.	
Vol / Avg.	32,440.00/217,000.00	EPS	

Compare: Enter ticker here Add

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WASHINGTON MUTUAL DE discussions View all discussions »

WASHINGTON MUTUAL DE historical prices Watch this stock

Show: **Daily** | Weekly Jan 1, 2010 - Jan 21, 2010 Update

Date	Open	High	Low	Close	Volume
Jan 20, 2010	2.38	2.50	2.35	2.41	107,516
Jan 19, 2010	2.40	2.40	2.30	2.39	114,536
Jan 18, 2010	2.35	2.35	2.35	2.35	0
Jan 15, 2010	2.34	2.35	2.30	2.35	65,076
Jan 14, 2010	2.35	2.35	2.25	2.33	50,740
Jan 13, 2010	2.35	2.35	2.20	2.26	132,702
Jan 12, 2010	2.40	2.50	2.15	2.35	294,256
Jan 11, 2010	2.19	2.44	2.19	2.38	224,812
Jan 8, 2010	2.20	2.40	2.01	2.19	342,733
Jan 7, 2010	2.10	2.25	2.00	2.09	305,814
Jan 6, 2010	2.30	2.30	1.84	2.04	511,946
Jan 5, 2010	2.95	3.11	2.10	2.30	437,067
Jan 4, 2010	1.70	3.85	1.69	2.80	887,763
Jan 1, 2010	1.60	1.60	1.60	1.60	0

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Historical chart

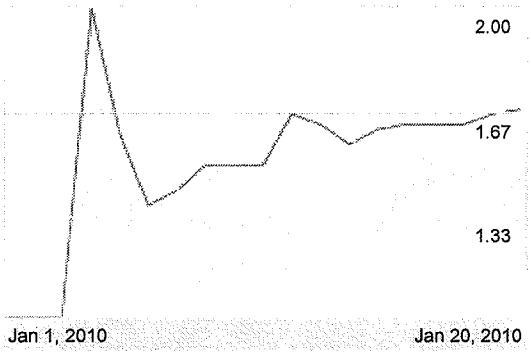

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EXHIBIT 3

WAMPQ Trading History Jan. 1, 2010- Jan. 21, 2010

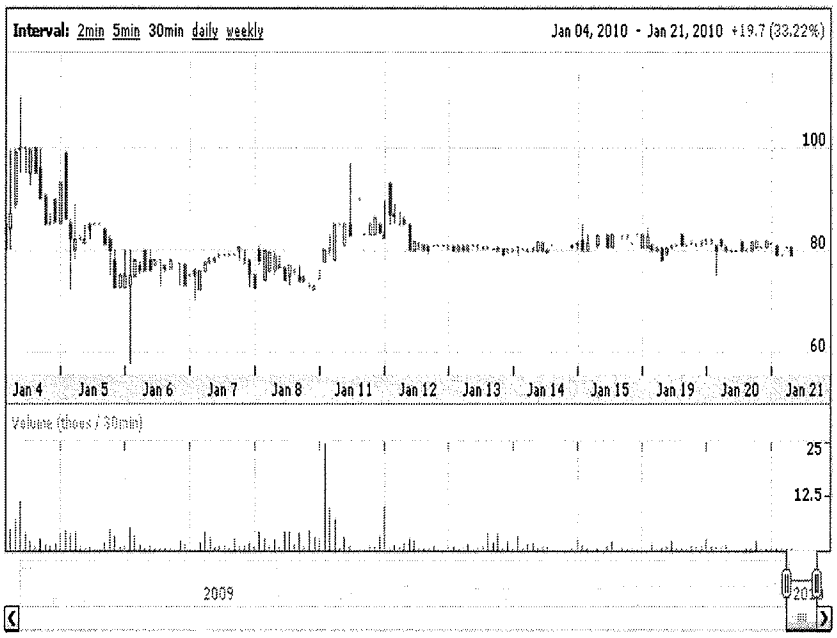
WASHINGTON MUTUAL PF (Public, PINK:WAMPQ) Watch this stock Find more results for **WAMPQ**

WAMPQ	80.50	-0.92%

80.50 -0.75 (-0.92%)

Delayed: 12:31PM EST
PINK data delayed by 15 mins - Disclaimer

Range	79.00 - 81.25	Mkt	
52 week	3.05 - 110.00	P/E	
Open	81.00	Div/	
Vol / Avg.	461.00/21,000.00	EPS	



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WASHINGTON MUTUAL PF discussions View all discussions »

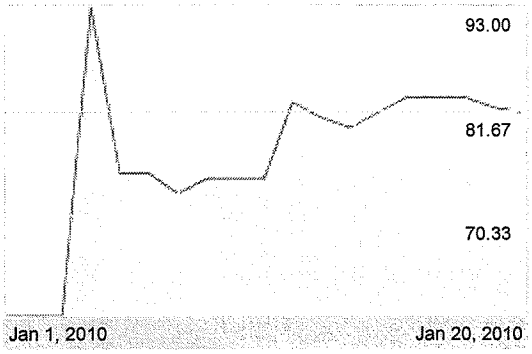
WASHINGTON MUTUAL PF historical prices Watch this stock

Show: **Daily** | Weekly Jan 1, 2010 - Jan 21, 2010 Update

Date	Open	High	Low	Close	Volume
Jan 20, 2010	82.00	82.00	75.00	81.25	8,118
Jan 19, 2010	80.53	84.00	78.02	82.00	11,153
Jan 18, 2010	82.90	82.90	82.90	82.90	0
Jan 15, 2010	82.00	85.00	80.00	82.90	6,122
Jan 14, 2010	80.50	81.49	79.25	81.39	10,676
Jan 13, 2010	80.75	81.00	79.10	80.01	16,735
Jan 12, 2010	93.00	93.00	79.11	80.75	12,588
Jan 11, 2010	77.74	93.98	77.74	82.35	62,399
Jan 8, 2010	80.00	81.00	72.00	74.44	35,691
Jan 7, 2010	76.00	80.50	70.00	72.50	21,319
Jan 6, 2010	73.00	80.00	57.50	74.99	15,602
Jan 5, 2010	98.99	98.99	72.00	75.00	27,720
Jan 4, 2010	69.50	110.00	60.00	93.01	48,812
Jan 1, 2010	59.30	59.30	59.30	59.30	0

Show rows: 30 1 - 14 of 14 rows

Historical chart



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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

CERTIFICATE OF SERVICE

I, Bradford J. Sandler, Esquire, hereby certify that on January 21, 2010, a true and correct copy of the foregoing document was served on all parties registered to receive service on the electronic notification list as maintained by the Court, and via hand delivery or regular mail upon the following parties:

Mark D. Collins, Esquire Chun I. Jang, Esquire Lee E. Kaufman, Esquire Andrew C. Irgens, Esquire RICHARDS LAYTON & FINGER, P.A. One Rodney Square 920 North King Street Wilmington, DE 19801	Marcia L. Goldstein, Esquire Brian S. Rosen, Esquire Michael F. Walsh, Esquire WEIL, GOTSHAL & MANGES LLP 767 Fifth Avenue New York, NY 10153

Dated: January 21, 2010

BENESCH, FRIEDLANDER, COPLAN
& ARONOFF LLP

By: */s/ Bradford J. Sandler*
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Proposed Counsel to the Official Committee of Equity Security Holders

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.