

1 JUDGE HERB ROSS (Recalled)

2 UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA  
3 605 West 4th Avenue, Room 138, Anchorage, AK 99501-2253 — (Website: www.akb.uscourts.gov)  
4 Clerk's Office: 907-271-2655 (1-800-859-8059 In-State) — Judge's Fax: 907-271-2692  
5  
6

7 In re

8 LYNN H. LYTHGOE, JR.,

9 Debtor(s)

Case No. A07-00658-HAR

In Chapter 11

[Lead Case - Jointly Administered]

10 In re

11 LYTHGOE PROPERTIES, LLC,

12 Debtor(s)

Case No. A09-00966-HAR

In Chapter 11

13 **MEMORANDUM: (1) DENYING MOTION**  
14 **TO AMEND PLAN AS IT RELATES TO**  
15 **CLASS S-5 [Docket No. 898] and (2)**  
16 **SETTING STATUS CONFERENCE ON**  
17 **OBJECTION TO PROOF OF CLAIM NO. 58**  
18 **FILED BY ONEWEST BANK [Docket No.**  
19 **821] [in the Lynn H. Lythgoe, Jr. case]**

16 Debtor Lynn Lythgoe filed a motion to amend the confirmed plan.<sup>1</sup> It seeks to amend the  
17 treatment "Class S-5: IndyMac Bank" of the confirmed plan.<sup>2</sup> The court will deny the motion and  
18 instead set a status conference on debtor's objection to Proof of Claim No. 58.

19 1. **MOTION TO AMEND CONFIRMED PLAN SHOULD BE DENIED**- The motion to  
20 amend the confirmed plan to alter the treatment of Class S-5 will be denied without prejudice for  
21 a number of reasons, a few of which the court will reiterate briefly by the following bullet-points:  
22  
23

24 \_\_\_\_\_  
25 <sup>1</sup> The motion to amend is at Docket No. 898, entered on 08/28/12; the amended confirmation order is  
26 at Docket No. 786, entered on 12/17/10; the *Debtors' Second Amended Joint Plan of Reorganization [September*  
27 *30, 2010] [Corrected October 6, 2010]* is at Docket No. 734, entered on 10/06/10.

28 <sup>2</sup> Docket No. 734, at page 7-8.

- 1 ● The notice<sup>3</sup> is deficient. It does not identify OneWest or IndyMac by name, but  
2 only refers to “Class S-5.”
- 3 ● The motion was not served on OneWest or Richard Ullstrom, its attorney.<sup>4</sup> Only a  
4 copy of the inadequate notice (see, previous bullet) was mailed to Mr. Ullstrom,<sup>5</sup>  
5 but it is likely, given his previous objections to OneWest taking a haircut, that he  
6 did not relate it to the OneWest note obligation.
- 7 ● The triplex is only partly owned by the estate, along with Marcia Lythgoe.<sup>6</sup> The  
8 amendment to the interest rate surely will not be able to enhance her interest.  
9 There is no discussion of the effect of Marcia’s interest.
- 10 ● Approval of the amendment might entail a cram-down hearing, the expense of  
11 which will far outweigh any financial benefit to either side. There is a sharp  
12 dispute amongst bankruptcy courts, unresolved in the Alaska bankruptcy court or  
13 the Ninth Circuit, as to whether the absolute priority rule applies to an individual  
14 chapter 11 case.<sup>7</sup>

15 As an aside, this motion is presented with indifference to the court and other readers. The  
16 docket now has over 900 entries. The motion does not deign to cite to docket numbers or set out  
17 key wording verbatim. It left it to the court to laboriously dig through the record to analyze the  
18 situation, instead of being pointed to the key documents.

19 This matter is better addressed by resolving the objection to Proof of Claim No. 58.

---

21 <sup>3</sup> Docket No. 899, filed 08/28/12.

22 <sup>4</sup> See, certificate of service at page 6 of the motion, Docket No 898, filed 08/28/12.

23 <sup>5</sup> Docket No. 901, filed 09/20/12.

24 <sup>6</sup> *Supplemental Consent to Sale of Property and Disclosure of Co-Obligations [Marcia Lythgoe]*, Docket  
25 No. 784, filed 12/16/10.

26 <sup>7</sup> The cases are collected in *In re Arnold*, 471 B.R. 578, 587-88 (Bankr. C.D. Cal 2012).

27 MEMORANDUM: (1) DENYING MOTION TO AMEND PLAN  
28 AS IT RELATES TO CLASS S-5 [Docket No. 898] and  
(2) SETTING STATUS CONFERENCE ON OBJECTION  
TO PROOF OF CLAIM NO. 58 FILED BY ONEWEST BANK  
[Docket No. 821] [in the Lynn H. Lythgoe, Jr. case]

