

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11
 :
 : Case No. 08-12229 (MFW)
 : Jointly Administered
 WASHINGTON MUTUAL, INC., *et al.*,¹ :
 : *CE 2448, 2486*
 :
 Debtors. :
 :
 -----X

**ORDER AUTHORIZING RETENTION OF PETER J. SOLOMON COMPANY
AS FINANCIAL ADVISOR AND CONSULTING EXPERT FOR
THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS**

Upon the application ("Application")² of the Official Committee of Equity Security Holders (the "Committee") of Washington Mutual, Inc., *et al.* (the "Debtors") for an Order pursuant to section 1103 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), authorizing the Committee to retain Peter J. Solomon Company ("PJSC") as financial advisor and consulting expert pursuant to the terms and conditions of that certain agreement between PJSC and the Committee (the "Engagement Agreement"), substantially in the form attached hereto as Exhibit "A," and subject to final approval by the Committee; and upon the Affidavit of Anders J. Maxwell (the "Maxwell Affidavit") in support of the Application; and due and adequate notice of the Application having been given; and it appearing that no other notice need be given;

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 925 Fourth Avenue, Suite 2500, Seattle, Washington 98101.

² Capitalized terms not defined herein have the meaning given to them in the Application.



and it appearing that PJSC is not representing any adverse interest in connection with these cases; and it appearing that the relief requested in the Application is in the best interest of the Committee; after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Application be, and it hereby is, granted as provided herein; and it is further.

ORDERED that in accordance with section 1103 of the Bankruptcy Code, the Committee is authorized to employ and retain PJSC as of February 12, 2010 as their financial advisor and consulting expert on the terms set forth in the Application; and it is further

ORDERED that notwithstanding any provision to the contrary in the Application or Engagement Letter, PJSC shall be compensated in accordance with sections 330 and 331 of the Bankruptcy Code and such Bankruptcy Rules as may then be applicable, from time to time, and such procedures as may be fixed by order of this Court; and PJSC shall file and serve together with any application and request for compensation or quarterly or final fee application a statement of services performed and time spent on such services that complies with Del. Bankr. L.R. 2016, except that PSJC may record its time in .5 increments; and it is further

ORDERED that notwithstanding any provision to the contrary in the Application, the Engagement Letter, or this Order, the Monthly Fee or any other compensation or expense reimbursement payable to PJSC may not be increased except, upon notice and hearing, such increased fees and expenses are approved by order of the Bankruptcy Court prior to performing the services to which any such additional

compensation would relate; and it is further

ORDERED that notwithstanding any provision to the contrary in the Engagement Letter, the proviso in the fourth paragraph of Exhibit A to the Engagement Letter limiting PJSC's contribution obligation to fees paid to PJSC is hereby stricken; and it is further

ORDERED that PJSC will not seek or be entitled to reimbursement for its attorney's fees and expenses, except in connection with Exhibit A to the Engagement Letter (as modified hereby); and it is further

ORDERED that PJSC is retained solely by the Committee notwithstanding that counsel to Committee executed the Engagement Letter, but nothing herein shall be deemed to waive any claim of privilege or protection that may be afforded to PJSC work product or communications, nor shall anything herein be construed as a ruling that any privilege or protection applies; and it is further

ORDERED that, notwithstanding the Application or the Engagement Letter, the indemnification provisions shall be modified as follows:

- (a) PJSC (defined for purposes of these subparagraphs (a – c) as having the same meaning as the term “Indemnified Parties” in Exhibit A to the Engagement Letter) shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Letter for services other than those described in the Engagement Letter, unless such services and indemnification therefor are approved by the Court;
- (b) The Debtors shall have no obligation to indemnify PJSC, or provide contribution or reimbursement to PJSC, for any claim or expense that is either; (i) judicially determined (the determination having become final) to have arisen from PJSC’s gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors and/or

Committee allege the breach of PJSC's contractual obligations unless the Court determines that indemnification, contribution or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by the Court, after notice and a hearing to be a claim or expense for which PJSC should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter as modified by this Order; and

- (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these chapter 11 cases, PJSC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Letter (as modified by this Order), including without limitation the advancement of defense costs, PJSC must file an application therefore in this Court, and the Debtors may not pay any such amounts to PJSC before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by PJSC for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify PJSC. All parties in interest shall retain the right to object to any demand by PJSC for indemnification, contribution or reimbursement.

ORDERED that this court shall retain jurisdiction with respect to all matters arising or related to the implementation of this order.

Dated: April 6, 2010

BY THE COURT:



HONORABLE MARY F. WALRATH,
United States Bankruptcy Judge

EXHIBIT A



520 Madison Avenue
New York, New York 10022

TEL: 212.508.1600
FAX: 212.508.1633
info@pjsolomon.com

February 12, 2010

The Official Committee of Equity
Security Holders of Washington Mutual Inc.
c/o Venable LLP
750 E. Pratt Street
Suite 900
Baltimore, MD 21202
Attn: Michael Willingham, Chairman

Dear Mr. Willingham:

The purpose of this letter is to confirm the understanding and agreement (the "Agreement") between Venable LLP ("Venable") on behalf of The Official Committee of Equity Security Holders (the "Committee") of Washington Mutual Inc. or its successors (the "Company"), and Peter J. Solomon Company, L.P. and/or its affiliate Peter J. Solomon Securities Company, LLC (collectively, "PJSC") as the Committee's financial advisor and consulting expert in connection with the Company's Chapter 11 proceedings and reorganization before the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), Case No. 08-12229 (the "Case"). It is understood that the retention of PJSC, effectiveness of this Agreement and payment of any fees, expenses, indemnity, reimbursement, contribution or other amounts is subject to the approval of the Bankruptcy Court.

Subject to the approval of the Bankruptcy Court, the Company will compensate and reimburse PJSC and undertake the indemnification and other obligations pursuant to the terms of this Agreement. Notwithstanding such arrangement, PJSC's duties hereunder run solely to, and for the benefit of, the Committee and Venable and PJSC is not authorized to be, and will not purport to be, a representative or agent of the Company for any purpose. All communication and correspondence by and among PJSC, Venable and the Committee and all work product and analyses prepared by PJSC for the Committee and Venable shall not constitute a waiver of the attorney-client and work product privileges, among others.

Section 1. Services to be Rendered. PJSC will perform such of the financial advisory and consulting expert services that the Committee and Venable may reasonably request:

(a) PJSC will advise and assist the Committee in assessing the operating and financial performance of, and strategies for, the Company as of or about the date of the bankruptcy filing in the Case (the "Filing Date"), including reviewing and analyzing the business plans and financial projections prepared by the Company as of the Filing Date and testing assumptions and comparing those assumptions to historical Company and industry trends;

(b) PJSC will advise and assist the Committee in evaluating the Company and its assets and liabilities as of the Filing Date, including valuations proposed by any interested party;

(c) PJSC will advise and assist the Committee in evaluating the claims made in the Case, as well as evaluating tax assets and subsidiary or affiliate values;

(d) PJSC will advise and assist the Committee in developing a solvency analysis of the Company as of the Filing Date;

(e) PJSC will advise and assist the Committee in analyzing the Company's claims regarding seizure of the Company's banking affiliates;

(f) PJSC will advise and assist the Committee and Venable in the course of any negotiations with the Company and its creditors and constituencies, including participation in meetings and telephone or video conferences;

(g) If requested, appropriate PJSC personnel will provide testimony with respect to the financial advisory and consulting expert services referenced hereunder, specifically including testimony with respect to valuation issues or in connection with the Committee's prosecution of any of the foregoing claims; and

(h) PJSC will render such other financial advisory and consulting expert services as may be agreed upon by PJSC and the Committee and Venable in connection with the foregoing.

Section 2. Term. The term of this Agreement shall extend from date hereof for one month and shall continue thereafter on a month-to-month basis; provided, however, that after one month, either the Committee or PJSC may terminate this Agreement at any time by delivery of 30 days' written notice to the other parties. Notwithstanding any termination, (i) PJSC shall be entitled to any fees which are due and owing to PJSC upon the effective date of termination; (ii) PJSC will be entitled to reimbursement for the out-of-pocket expenses incurred prior to termination to the extent described in Section 4; and (iii) the Company's continuing obligations under Section 7 and Exhibit A hereof shall not be affected or impaired.

Section 3. Fees. In consideration of the services described in Section 1 above, PJSC shall be paid in cash (via wire transfer) by the Company an advisory fee of \$175,000 per month (the "Monthly Fee"), payable in accordance with the procedures approved by the Bankruptcy Court.

While not contemplated at this time, the Committee and PJSC agree that, during the course of this Case, there may be months in which the level of services provided by PJSC is materially diminished or is in excess of the level contemplated currently by the parties. Taking into consideration the status and requirements of the Case during such months, as appropriate, the Monthly Fee for such months may be adjusted downward in good faith by a mutually agreed upon amount or the Committee may recommend to the Bankruptcy Court the payment by the Company of an additional fee to PJSC. Any such adjustment will be reviewed by the Committee and PJSC subsequently each month.

Section 4. Expenses. Without in any way reducing or affecting the provisions of Exhibit A hereof, the Company shall reimburse PJSC for its reasonable out-of-pocket expenses incurred in connection with the provision of services hereunder and the execution and delivery of this Agreement, including without limitation the fees, disbursements and other charges of PJSC's counsel. Out-of-pocket expenses also shall include, but not be limited to, travel and lodging, data processing and communication charges, research and courier services. The Company shall promptly reimburse PJSC upon presentation of an invoice or other similar documentation in accordance with the procedures approved by the Bankruptcy Court.

Section 5. Indemnity and Other Rights; No Liability. (a) The parties agree to the provisions of Exhibit A hereto, which is an integral part of this Agreement and the terms of which are incorporated by reference herein. Such Exhibit A shall survive any termination, expiration or completion of PJSC's engagement hereunder. Notwithstanding anything to the contrary in this Agreement (including Exhibit A), the Company shall have no obligation to indemnify PJSC or provide contribution or reimbursement to PJSC (i) for any claim or expense that is judicially determined (the determination having become final) to have arisen from PJSC's bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct, (ii) for a contractual dispute in which the Company alleges the breach of PJSC's contractual obligations unless the Bankruptcy Court determines that indemnification, contribution or reimbursement would be permissible pursuant to In re United Artists Theatre Company, et al., 315 F.3d 217 (3d Cir. 2003), or (iii) for any claim or expense that is settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by the Bankruptcy Court, after notice and a hearing, to be a claim or expense for which PJSC should not receive indemnity, contribution or reimbursement under the terms of this Agreement (including Exhibit A).

(b) PJSC acknowledges that neither Venable nor any member of the Committee shall have any liability hereunder for fees, expenses or other amounts payable to PJSC by the Company.

Section 6. Information. The Committee recognizes and confirms that PJSC will use and rely upon the information provided by or on behalf of the Committee and the Company, and their respective advisors and agents, and on publicly available information in performing the services contemplated hereby. It is understood that in performing under this engagement, PJSC may assume and rely upon the accuracy and completeness of, and is not assuming any responsibility for independent investigation or verification of, such publicly available information and the information so furnished. PJSC acknowledges that many of the services set forth in Section 1 above involve the critical analysis of information received.

Section 7. Miscellaneous.

(a) The Committee shall, after the execution of this Agreement by all parties hereto, seek an order from the Bankruptcy Court authorizing the retention of PJSC pursuant to the terms

of this Agreement, as professional persons pursuant to, and subject to the standard of review of, Sections 328(a), 330 and 1103 of the United States Bankruptcy Code (the "Bankruptcy Code") and rules and applicable local rules and orders of the Bankruptcy Court. The retention application and proposed order shall be provided to PJSC sufficiently in advance of their filing so as to provide PJSC and counsel an opportunity to review and comment thereon and must be acceptable to PJSC in its sole discretion. The Committee will use its reasonable efforts to obtain Bankruptcy Court approval of the Company's payment of PJSC's fees and expenses *nunc pro nunc* to the date of this Agreement. If the order authorizing the retention of PJSC is obtained, the Company shall pay all fees and expenses as promptly as possible in accordance with the Bankruptcy Code and rules and applicable local rules and orders of the Bankruptcy Court.

(b) In connection with allowances of compensation and reimbursement of expenses, PJSC shall file appropriate applications for allowance of interim and final compensation and reimbursement of expenses in accordance with Sections 330 and 331 of the Bankruptcy Code and applicable rules at such times as directed by the Bankruptcy Court or established by administrative order entered in the bankruptcy cases. The fees detailed in Section 3 above have been agreed upon with the express expectation that they are subject to review by the Bankruptcy Court only as provided by Section 328 of the Bankruptcy Code. Furthermore, the hours worked, the results achieved in the reorganization or the ultimate benefit to the estate of the work performed may be variable and the parties have taken this into account in setting the fees detailed in Section 3 above. In accordance with the guidelines of the Bankruptcy Court, PJSC shall maintain detailed records of time spent working on this assignment, which records shall be available for submission to the Bankruptcy Court subject to appropriate redactions to preserve confidential or sensitive information. Although PJSC is providing such records, it, as an investment bank, does not have hourly rates for its professionals. PJSC will make every effort to coordinate with the other professionals retained by the Company in this bankruptcy in order to eliminate unnecessary duplication or overlap of work.

(c) If applicable, PJSC's compensation set forth herein and payments made pursuant to reimbursement provisions of this Agreement shall be entitled to priority as expenses of administration under Sections 503(b)(1)(A) and 507(a)(1) of the Bankruptcy Code and shall be entitled to the benefits of any "carve-outs" for professional fees and expenses in effect in the Case pursuant to one or more financing orders now or hereafter in effect.

(d) Sections 2 through 7 shall survive termination or expiration of this Agreement.

(e) The advice (oral or written) rendered by PJSC pursuant to this Agreement is intended solely for the benefit and use of the Committee and its professionals in considering the matters to which this Agreement relates, and the parties agree that such advice is not intended to be relied upon by any other person, or used for any other purpose.

(f) The parties agree that PJSC shall have the right after completion of its engagement to place advertisements in financial and other newspapers and journals at its own expense describing its services hereunder.

(g) This Agreement may not be amended or modified except by a writing executed by each of the parties. The provisions of this Agreement, including, without limitation, the obligation to make the payments set forth in Sections 3, 4 and 5 (including Exhibit A), shall be binding on the Company and its successors and assigns.

(h) This Agreement, including all controversies arising from or relating to performance under this Agreement, shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed entirely within the State of New York, without regard to the conflict of law provisions thereof that would result in the application of the laws of any other jurisdiction. The parties hereby irrevocably and unconditionally consent to submit to the Bankruptcy Court for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby, or if the Bankruptcy Court does not have jurisdiction, the courts of the State of New York and of the United States of America located in the City of New York within the State of New York (and the parties hereto agree not to commence any action, suit or proceeding relating thereto except in such courts).

(i) To the extent permitted by applicable law, each of the parties hereby waives trial by jury in any lawsuit with respect to, in connection with or arising out of this Agreement, or any other claim or dispute relating to the engagement of PJSC arising among the parties hereto. Each of the parties hereby confirms that the foregoing waiver is informed and freely made.

(j) The relationship of PJSC to Venable and the Committee hereunder shall be that of an independent contractor and PJSC shall have no authority to bind Venable or the Committee.

(k) This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument. Delivery of an executed counterpart signature page to this Agreement by telecopier or e-mail shall be as effective as delivery of a manually executed counterpart signature page of this Agreement. This Agreement shall be effective as of the date hereof upon delivery by all parties hereto of executed counterpart signature pages to this Agreement.

* * *

If the foregoing correctly sets forth the understanding and agreement among PJSC, Venable and the Committee, please so indicate by signing the enclosed copy of this letter, whereupon it shall become a binding agreement among the parties hereto as of the date first above written.

Very truly yours,

PETER J. SOLOMON COMPANY, L.P.

By: Peter J. Solomon Company Limited
General Partner


By: 
Anders J. Maxwell
Managing Director

PETER J. SOLOMON SECURITIES
COMPANY, LLC

By: 
Anders J. Maxwell
Managing Director

Accepted and Agreed to as of
the day first written above:

VENABLE LLP

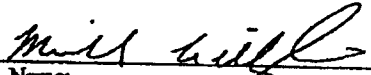
By: 
Name: Jordan Rose
Title:

THE OFFICIAL COMMITTEE OF EQUITY
SECURITY HOLDERS OF WASHINGTON MUTUAL INC.

By: Its Chairman

[]

By:



Name: MICHAEL W. DELLENHAM
Title: CHAIRMAN

Exhibit A

The Company shall indemnify and hold harmless PJSC and its affiliates, counsel and other professional advisors, and the respective directors, officers, members, partners, controlling persons, agents and employees of each of the foregoing (PJSC and all of such other persons collectively, the "Indemnified Parties"), from and against any losses, claims or proceedings including stockholder actions, damages, judgments, assessments, investigation costs, settlement costs, fines, penalties, arbitration awards, other liabilities, costs, fees and expenses (collectively, "Losses") (i) related to or arising out of (A) oral or written information provided by the Company, the Company's employees or other agents, which either the Company or PJSC provides to any persons, or (B) other action or failure to act by the Company, the Company's employees or other agents or PJSC at the Company's request or with the Company's consent, or (ii) otherwise related to or arising out of the engagement of PJSC under this Agreement or any transaction or conduct in connection therewith, provided that this clause (ii) shall not apply if it is finally judicially determined by a court of competent jurisdiction that such Losses arose primarily out of the gross negligence or bad faith of such Indemnified Party.

The Company shall further reimburse any Indemnified Party promptly for, or at the Indemnified Party's option advance amounts sufficient to cover, any legal or other fees or expenses as they are incurred (i) in investigating, preparing or pursuing any action or other proceeding (whether formal or informal) or threat thereof, whether or not in connection with pending or threatened litigation or arbitration and whether or not any Indemnified Party is a party (an "Action") and (ii) in connection with enforcing such Indemnified Party's rights under this Agreement (including, without limitation, its rights under this Exhibit A); provided, however, that in the event it is finally judicially determined by a court of competent jurisdiction that the Losses of such Indemnified Party arose primarily out of the gross negligence or bad faith of such Indemnified Party, all such reimbursement and/or advancement obligations shall immediately cease and such Indemnified Party will promptly remit to the Company any amounts reimbursed or advanced under this paragraph.

The Company shall, if requested by PJSC, assume the defense of any such Action including the employment of counsel reasonably satisfactory to PJSC and will not settle, compromise, consent or otherwise resolve or seek to terminate any pending or threatened Action (whether or not any Indemnified Party is a party thereto) unless it obtains the prior written consent of PJSC or an express, unconditional release of such Indemnified Party from all liability relating to such Action and the engagement of PJSC under this Agreement. Any Indemnified Party shall be entitled to retain separate counsel of its choice and participate in the defense of any Action in connection with any of the matters to which this Exhibit A relates, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless: (i) the Company has failed promptly to assume the defense and employ counsel or (ii) the named parties to any such Action (including any impleaded parties) include such Indemnified Party and the Company, and such Indemnified Party shall have been advised by counsel that there may be one or more legal defenses available to it which are different from or in addition to those available to the Company; provided that the Company shall not in such event be responsible under this Exhibit A for the fees and expenses of more than one firm of separate counsel (in addition to local counsel) in connection with any such Action in the same jurisdiction.

The Company agrees that if any right of any Indemnified Party set forth in the preceding paragraphs is finally judicially determined to be unavailable (except by reason of the gross negligence or bad faith of such Indemnified Party), or is insufficient to hold such Indemnified Party harmless against such Losses as contemplated herein, then the Company shall contribute to such Losses (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and its stockholders, on the one hand, and such Indemnified Party, on the other hand, in connection with the transactions contemplated hereby, and (ii) if (and only if) the allocation provided in clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Company and such Indemnified Party, provided, however, that in no event shall the amount, if any, to be contributed by all Indemnified Parties exceed the amount of the fees actually received by PJSC hereunder. Benefits received (or anticipated to be received) by the Company and its stockholders shall be deemed to be equal to the aggregate cash consideration and value of securities or any other property payable, exchangeable or transferable in any proposed or potential transactions within the scope of this Agreement, and benefits received by PJSC shall be deemed to be equal to the compensation payable by the Company to PJSC in connection with this Agreement. Relative fault shall be determined by reference to, among other things, whether any alleged untrue statement or omission or any other alleged conduct relates to information provided by the Company or other conduct by the Company (or the Company's employees or other agents) on the one hand or by PJSC on the other hand. The parties hereto agree that it would not be just and equitable if contribution were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to above.

The rights of the Indemnified Parties hereunder shall be in addition to any other rights that any Indemnified Party may have at common law, by statute or otherwise. Except as otherwise expressly provided for in this Exhibit A, if any term, provision, covenant or restriction contained in this Exhibit A is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement all remain in full force and effect and shall in no way be affected, impaired or invalidated. The reimbursement, indemnity and contribution obligations of the Company set forth herein shall apply to any modification of this Agreement and shall remain in full force and effect regardless of any termination of, or the completion of any Indemnified Party's services under or in connection with, this Agreement.