

the above-captioned chapter 11 cases (the “Committee”); (iii) the *Joinder of the Washington Mutual, Inc. Noteholders Group to Debtors’ Objection to Motion of the United States for an Order Lifting the Automatic Stay to Allow the United States to Assert Its Setoff Rights* [Docket No. 588], filed on January 22, 2009 by the Washington Mutual, Inc. Noteholders Group (the “Noteholders”); and (iv) the *Joinder of Certain Creditors to the Debtors’ Objection to Motion of the United States for an Order Lifting the Automatic Stay to Allow the United States to Assert Its Setoff Rights* [Docket No. 589], filed on January 22, 2009 by Apaloosa Management L.P. (“Apaloosa”) and Centerbridge Partners, L.P. (“Centerbridge”).

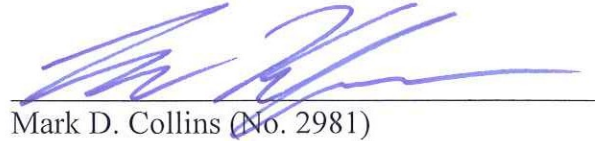
3. On January 29, 2009 at 10:30 a.m. (EST), the Court held a hearing (the “January 29 Hearing”) to consider, among other things, the Motion and the Objections. At the January 29 Hearing, the Court heard the statements and arguments of counsel with respect to the relief requested in the Motion as well as the Objections, and at the conclusion of the January 29 Hearing the Court asked that the Debtors submit a proposed form of order denying the Motion under certification of counsel based on the record at the January 29 Hearing.

4. In compliance with the Court’s request, based on the record from the January 29 Hearing, the Debtors have prepared a form of order with respect to the Motion (the “Proposed Order”) consistent with the record of the January 29 Hearing. A copy of the Proposed Order is attached hereto as Exhibit A. The Proposed Order has been circulated to, and approved by, (i) counsel to the Government; (ii) counsel to the Committee; (iii) counsel to the Noteholders; (iv) counsel to Apaloosa; and (v) counsel to Centerbridge.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as Exhibit A, at its earliest convenience.

Dated: February 9, 2009
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.



Mark D. Collins (No. 2981)
Chun I. Jang (No. 4790)
Lee E. Kaufman (No. 4877)
One Rodney Square
920 North King Street
Wilmington, DE 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

– and –

WEIL, GOTSHAL & MANGES LLP

Marcia L. Goldstein, Esq.
Brian S. Rosen, Esq.
Michael F. Walsh, Esq.
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

*Attorneys to the Debtors
and Debtors in Possession*

EXHIBIT A

the United States Court of Federal Claims (the “Claims Court”), including, without limitation, payment of the sum of \$55,028,000.00 (the “Partial Final Judgment”) to WMI; and based upon the Motion, the Objection, the Joinders and the record of the Hearing; and, upon due consideration, and good and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion be denied without prejudice; and it is further

ORDERED that the United States is directed to deposit the amount of the Partial Final Judgment (collectively, the “Funds”) into the registry of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”); and it is further

ORDERED that the Clerk of the Bankruptcy Court is directed to invest the Funds in a money market account or such other investment as may be directed or permitted by further order of the Bankruptcy Court; and its further

ORDERED that, notwithstanding the payment and deposit of the Funds by the United States pursuant to the terms of this Order, nothing contained herein shall prejudice or otherwise limit the rights of the Debtors to pursue other recoveries in connection with the Litigation or the motion for contempt against the United States in connection with the Partial Final Judgment currently pending in the Claims Court; and it is further

ORDERED that, notwithstanding the payment and deposit of the Funds into the registry of the Bankruptcy Court (a) the setoff rights of the United States, if any, under either 31 U.S.C. §3728 or under common law with respect to the Partial Final Judgment shall be preserved, and (b) nothing contained herein shall prejudice the rights of the Debtors or any other party in interest to contest the assertion of any such rights; provided, however, that the debt owed by the United States by virtue of the Partial Final Judgment is not extinguished for purposes of setoff as a result of the United States’ deposit of the Funds into the Court’s registry; and it is further

ORDERED that the Funds shall be held in the registry of the Bankruptcy Court until the earlier to occur of (a) entry of an order of the Bankruptcy Court with respect to the Debtors' objection to the proofs of claim filed by the Internal Revenue Service in the Debtors' chapter 11 cases, as such objection may be amended, and (b) entry of such other order of the Bankruptcy Court with respect to the Funds; and it is further

ORDERED that any party, other than the Debtors, asserting an ownership interest in the Funds must bring its claim before the Bankruptcy Court through the commencement of an adversary proceeding in accordance with Rule 7001 of the Federal Rules of Bankruptcy Procedure; provided, however, that any such claim shall be subject to the rights and defenses of the Debtors with respect thereto, including res judicata of any prior determination thereof by the Claims Court; and it is further

ORDERED that the Bankruptcy Court shall have exclusive jurisdiction, subject to all otherwise applicable provisions of the Bankruptcy Code and applicable law, with respect to the Funds; and it is further

ORDERED that the Clerk of the Bankruptcy Court shall distribute the copies of this Order to all counsel of record.

Dated: February ____, 2009
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE