

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re : Chapter 11
WASHINGTON MUTUAL, INC., et al.,¹ : Case No. 08-12229 (MFW)
 : (Jointly Administered)
Debtors. : Re: Docket Nos. 542, 585, 587, 588 & 589
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**ORDER (A) DENYING UNITED STATES MOTION TO LIFT
AUTOMATIC STAY AND (B) DIRECTING PAYMENT OF PARTIAL
FINAL JUDGMENT INTO REGISTRY OF THE BANKRUPTCY COURT**

Upon the motion, dated January 6, 2009 (the "Motion"), of the United States for an order lifting the automatic stay to allow the United States to assert certain setoff rights; and an objection (the "Objection") to the Motion and the relief requested therein having been interposed by Washington Mutual, Inc. ("WMI") and WMI Investment Corp. (collectively with WMI, the "Debtors"); and joinders to the Objection having been filed by (1) the Official Committee of Unsecured Creditors appointed in the Debtors' chapter 11 cases, (2) the Washington Mutual, Inc. Noteholders Group and (3) Appaloosa Management L.P. and Centerbridge Partners, L.P., in their respective capacities as investment advisors to certain funds (collectively, the "Joinders"); and a hearing to consider the Motion, the Objection and the Joinders having been held on January 29, 2009 (the "Hearing"); and, at the Hearing, the United States having limited its request for relief to seeking a freeze on its obligations in connection with that certain litigation styled American Savings Bank, F.A., et al. v. United States, No. 98-872 C (the "Litigation"), currently pending in

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.



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 16, 2009
Wilmington, Delaware



THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE