

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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: **Chapter 11**
: **Case No. 08-12229 (MFW)**
: **(Jointly Administered)**
: **Hearing Date: 6/24/09 at 10:30 a.m. (EDT)**
: **Objection Deadline: 6/2/09 at 4:00 p.m. (EDT)**
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**MOTION OF DEBTORS FOR AN ORDER
PURSUANT TO SECTIONS 105(a) AND 363 OF THE BANKRUPTCY CODE
AUTHORIZING BUT NOT DIRECTING (I) WASHINGTON MUTUAL, INC. TO
EXERCISE ITS OWNERSHIP RIGHTS OVER CERTAIN TRUST ASSETS, (II)
DISTRIBUTION OF TRUST ASSETS, AND (III) TERMINATION OF THE TRUSTS**

Washington Mutual, Inc. (“WMI”) and WMI Investment Corp., as debtors and debtors in possession (collectively, the “Debtors”), respectfully represent:

Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On September 26, 2008 (the “Commencement Date”), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and

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.



1108 of the Bankruptcy Code. On October 3, 2008, the Court entered an order, pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the joint administration of the Debtors’ chapter 11 cases.

WMI’s Business

3. WMI is a holding company incorporated in the State of Washington and headquartered at 1301 Second Avenue, Seattle, Washington 98101. WMI is the direct parent of WMI Investment, which serves as an investment vehicle for WMI and holds a variety of securities. WMI Investment is incorporated in the State of Delaware.

4. Prior to the Commencement Date, WMI was a savings and loan holding company that owned Washington Mutual Bank (“WMB”) and such bank’s subsidiaries, including Washington Mutual Bank fsb (“WMBfsb”). WMI also has certain non-banking, non-debtor subsidiaries (the “Non-debtor Subsidiaries”). Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the “OTS”). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI’s banking and nonbanking subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation (“FDIC”).

5. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB and advised that the receiver was immediately taking possession of WMB (the “Receivership”). Immediately after its appointment as receiver, the FDIC sold substantially all the assets of WMB, including the stock of WMBfsb, to JPMorgan Chase Bank, National Association (“JPMorgan Chase”) pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008 (the “Purchase Agreement”) (publicly available at <http://www.fdic.gov/about/freedom/popular.html>).

6. WMI's assets include its common stock interest in WMB, its interest in its non-banking subsidiaries, and more than \$4 billion of cash that WMI and its non-banking subsidiaries (including WMI Investment) had on deposit at WMB and WMBfsb immediately prior to the time the FDIC was appointed as receiver. WMI is in the process of evaluating these and other assets for purposes of ultimate distribution to its creditors.

The Trusts

7. In 1998, WMI purchased H.F. Ahmanson & Company ("HFA") and obtained the assets maintained in the following nine trusts (collectively, the "Trusts") previously established by HFA in connection with, among other things, HFA's deferred compensation and retirement plans (collectively, the "Plans"):

- H.F. Ahmanson & Company 1989 Contingent Deferred Compensation Plan Trust, which was established on November 28, 1989 by Ahmanson (as grantor) and Union Bank (as trustee) to implement the 1989 Contingent Deferred Compensation Plan (014901-00-57).
- H.F. Ahmanson & Company and Affiliated Companies Supplemental Executive Retirement Plan Trust, which was established on November 28, 1989 by Ahmanson (as grantor) and Union Bank (as trustee) to implement the Supplemental Executive Retirement Plan (014902-00-56).
- H.F. Ahmanson & Company Elective Deferred Compensation Plan Trust, which was established on November 28, 1989 by Ahmanson (as grantor) and Union Bank (as trustee) to implement the Elective Deferred Compensation Plan (014903-00-57).
- H.F. Ahmanson & Company Outside Director Retirement Plan Trust, which was established on November 28, 1989 by Ahmanson (as grantor) and Union Bank (as trustee) to implement the Outside Director Retirement Plan (014904-00-56).
- H.F. Ahmanson & Company Outside Directors' Elective Deferred Compensation Plan Trust, which was established on November 28, 1989 by Ahmanson (as grantor) and Union Bank (as trustee) to implement the Outside Directors' Elective Deferred Compensation Plan (014905-00-57).

- H.F. Ahmanson & Company Loan Agents' Elective Deferred Compensation Plan, which was established on January 1, 1991 by Ahmanson (as grantor) and Union Bank (as trustee) to implement the Loan Agents' Elective Deferred Compensation Plan (500000002-00).
- Trust Under H.F. Ahmanson & Company Outside Directors' Capital Accumulation Plan, which was established on September 30, 1998 by Ahmanson (as grantor) and Union Bank of California, N.A. (as trustee) to implement the Outside Directors' Capital Accumulation Plan (510001209-00).
- Trust Under H.F. Ahmanson & Company Loan Consultants' Capital Accumulation Plan, which was established on September 30, 1998 by Ahmanson (as grantor) and Union Bank of California, N.A. (as trustee) to implement the Loan Consultants' Capital Accumulation Plan (510001207-00).
- Trust Under H.F. Ahmanson & Company Capital Accumulation Plan, which was established on September 30, 1998 by Ahmanson (as grantor) and Union Bank of California, N.A. (as trustee) to implement the Capital Accumulation Plan (510001208-00).

The terms and conditions of each of the foregoing Trusts are memorialized in separate trust agreements (collectively, the "Trust Agreements") entered into by and between HFA and Union Bank of California, N.A. (under each of the Trust Agreements, the "Trustee").² WMI is successor-in-interest to HFA with respect to each of the Trusts.

8. The Trusts currently contain, among other assets, corporate securities, government securities, cash and cash equivalents. These assets plus all proceeds or income – less any distributions – constitute the Trust estates (the "Trust Estates"). A schedule reflecting the categories of assets held in these Trusts is annexed hereto as Exhibit "A."

9. Pursuant to the Trust Agreements, the agreement of WMI to make payments pursuant to the provisions of any Plan associated with the Trusts is an unsecured

² Due to the voluminous nature of the Trust Agreements, the Debtors are not attaching the Trust Agreements as exhibits to this Motion and will make copies of the Trust Agreements available upon request.

promise to pay. The participants in the Plans, therefore, have the status of unsecured creditors and have no security interest in the Trust Estates.

10. In accordance with the Trust Agreements, the Trusts shall terminate when no participant is entitled to any benefits under the Plans and, upon such a termination, any assets remaining in the Trusts shall be returned to WMI. Pursuant to the Trust Agreements, beneficiaries are no longer entitled to benefits under the Plans when the settlor of the Trusts is “Insolvent,” *i.e.*, becomes subject to a pending proceeding as a debtor under the Bankruptcy Code, and the Trusts’ assets become subject to the claims of the settlor’s general creditors. WMI is “Insolvent” for purposes of the Trust Agreements by virtue of the commencement of its chapter 11 case. Therefore, the participants are no longer entitled to benefits under the Plans, and the assets of the Trusts should be returned to WMI and made subject to the claims of WMI’s general creditors.

11. Upon information and belief, as of February 28, 2009, the aggregate asset value in the Trusts is approximately \$68 million. The Trust Estates are solely assets of WMI and constitute property of WMI’s estate.³

Relief Requested

12. By this motion (the “Motion”), WMI requests, pursuant to sections 105(a) and 363 of the Bankruptcy Code, entry of an order substantially in the form attached hereto as Exhibit “B” (the “Proposed Order”) authorizing (i) WMI to exercise its ownership rights over the Trust Estates, (ii) the Trustee to return the assets, income, and proceeds held therein to WMI

³ In an adversary proceeding filed by JPMorgan Chase against the Debtors alleging several causes of action related to disputed assets, JPMorgan Chase acknowledges that it “does not assert an ownership interest in the Rabbi Trusts previously sponsored by H.F. Ahmanson and Co.” See Adversary Proceeding No. 09-50551, Complaint of JP Morgan Chase Bank, National Association v. Washington Mutual, Inc. and WMI Investment Corp., and Federal Deposit Insurance Corporation, Pg. 38, n. 2.

(less any reasonable fees and expenses incurred in connection with the administration of the Trusts), and (iii) the termination of the Trusts. The Trustee has indicated that it will acknowledge WMI's rights with respect to the assets in the Trusts. The Trustee, however, has requested that the Court approve any exercise of such rights, provide advance approval of any and all applicable distributions of assets, and authorize the termination of the Trust.

**The Relief Requested is Appropriate Under
Sections 105(a) and 363 of the Bankruptcy Code**

13. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1); In determining whether to authorize the use of property outside the ordinary course of business, courts require a debtor to show that a sound business purpose justifies such actions. See, e.g., In re Martin (Myers v. Martin), 91 F.3d 389, 395 (3d Cir. 1996) (citing In re Schipper (Fulton State Bank v. Schipper), 933 F.2d 513, 515 (7th Cir. 1991)); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Abbotts Dairies of Penn., Inc., 788 F.2d 143 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of Lionel Corp. and requiring good faith); In re Delaware and Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991) (concluding that the Third Circuit adopted the “sound business judgment” test in the Abbotts Dairies decision); In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999) (same); In re Del. & Hudson Ry. Co., 124 B.R. 169, 178 (D. Del. 1991) (affirming decision permitting debtor to sell assets where sound business reasons supported the sale). Section 105(a) of the Bankruptcy Code, in turn, authorizes this Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

14. WMI's decision to exercise its ownership rights over the assets in the Trusts at this time is an exercise of sound business judgment, is undertaken in good faith, and is in the best interests of WMI's estate and creditors. Termination of the Trusts and a transfer of the assets held therein will afford WMI the opportunity to liquidate such assets (and save WMI any fees and expenses attributable to the administration of the Trusts), which is estimated to lead to a cash benefit of approximately \$68 million into WMI's estate. Taking action to secure its ownership rights over the assets in the Trusts falls squarely within WMI's rights under the Trusts. By pursuing these rights, WMI is not affecting the interests of any other party. Indeed, the Trust Estates are solely assets of WMI for the benefit of WMI's general creditors.

15. In sum, the relief requested could lead to the monetization of approximately \$68 million worth of assets, and ensure that these valuable assets are available for distribution to WMI's creditors. The relief requested does not affect the rights of any other parties. Accordingly, the relief requested is in the best interests of WMI, its estate, and all parties in interest, and the Court should approve the Motion.

Notice

16. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion has been provided to: (i) the U.S. Trustee; (ii) counsel for the Creditors' Committee; (iii) counsel to JPMorgan Chase; (iv) the Trustee; (v) the participants of the Plans; and (vi) those parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, WMI submits that no other or further notice need be provided.

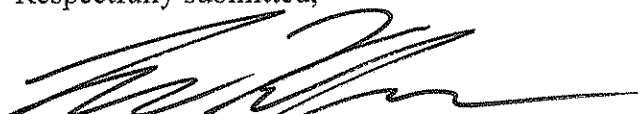
No Previous Request

17. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: May 15, 2009
Wilmington, Delaware

Respectfully submitted,



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Chun I. Jang (No. 4790)
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ATTORNEYS TO THE DEBTORS
AND DEBTORS IN POSSESSION

**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. :
: **Hearing Date: 6/24/09 at 10:30 a.m. (EDT)**
: **Objection Deadline: 6/2/09 at 4:00 p.m. (EDT)**
-----X

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that, on May 15, 2009, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Motion of Debtors for an Order Pursuant to Sections 105(a) and 363 of the Bankruptcy Code Authorizing But Not Directing (I) Washington Mutual, Inc. to Exercise Its Ownership Rights Over Certain Trust Assets, (II) Distribution of Trust Assets, and (III) Termination of the Trusts* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be filed in writing with the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned counsel for the Debtors on or before **June 2, 2009 at 4:00 p.m. (Eastern Daylight Time)**.


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.

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received and such objection is not otherwise timely resolved, a hearing to consider such objection and the Motion will be held before The Honorable Mary F. Walrath at the Bankruptcy Court, 824 Market Street, 5th Floor, Courtroom 4, Wilmington, Delaware 19801 on **June 24, 2009 at 10:30 a.m. (Eastern Daylight Time)**.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: May 15, 2009
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.



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Attorneys to the Debtors and Debtors in Possession

Exhibit A
The Schedule of Assets

FEBRUARY 2009 ACCOUNT ACTIVITY PER BANK STATEMENTS

	Account Number	Ending 2/28/2009
MM	14901-00-57	394,328.49
US Govt Corp	14901-00-57	6,753,005.45
Other	14901-00-57	2,659,551.10
	14901-00-57	517,338.20
MM	14902-00-56	710,214.81
US Govt Corp	14902-00-56	10,497,276.40
Other	14902-00-56	4,526,797.46
	14902-00-56	1,049,802.25
MM	14903-00-57	438,949.04
US Govt Corp	14903-00-57	7,394,225.06
Other	14903-00-57	2,663,340.05
	14903-00-57	614,795.50
MM	14904-00-56	96,229.77
US Govt Corp	14904-00-56	1,803,543.57
Other	14904-00-56	397,535.36
	14904-00-56	133,546.45
MM	14905-00-57	87,968.10
US Govt Corp	14905-00-57	1,557,846.43
Other	14905-00-57	501,002.09
	14905-00-57	107,501.20
MM	500000002-00	149,486.04
US Govt Corp	500000002-00	2,681,087.71
Other	500000002-00	1,196,224.69
	500000002-00	302,335.80
MM	510001206-00	36,615.96
Mutual F	510001206-00	462,335.09
MM	510001207-00	11.01
US Govt Corp	510001207-00	-
Other	510001207-00	-
	510001207-00	-
MM	510001208	604,405.44
US Govt Corp	510001208	13,485,010.89
Other	510001208	5,105,104.23
	510001208	1,081,724.95
Total	Security Bal	65,660,823.95
	Cash	2,518,206.58

Exhibit B
The Proposed Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

-----X
: **Chapter 11**
: **Case No. 08-12229 (MFW)**
: **(Jointly Administered)**
: **Re: Docket No. _____**
-----X

In re :
WASHINGTON MUTUAL, INC., et al.,¹ :
Debtors. :

**ORDER PURSUANT TO SECTIONS 105(a) AND 363 OF THE
BANKRUPTCY CODE AUTHORIZING BUT NOT DIRECTING (I) WASHINGTON
MUTUAL, INC. TO EXERCISE ITS OWNERSHIP
RIGHTS OVER CERTAIN TRUST ASSETS, (II) DISTRIBUTION
OF TRUST ASSETS, AND (III) TERMINATION OF THE TRUSTS**

Upon the motion, dated May 14, 2009 (the "Motion"), of Washington Mutual, Inc. ("WMI") and WMI Investment Corp. (collectively, the "Debtors"), as debtors and debtors in possession, for entry of an order, pursuant to sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code"),² authorizing, subject to WMI's sole discretion, (i) WMI to exercise its ownership rights over those certain assets held in nine legacy trusts reflected on Exhibit "1" attached hereto (the "Trusts"), (ii) the distribution of the Trusts' assets, and income and proceeds therefrom, as directed by the Debtors, and (iii) the termination of the Trusts, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b);

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.

² Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of WMI, its creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted as set forth herein; and it is further

ORDERED that WMI is authorized but not directed to exercise any and all of their ownership rights over the assets in the Trusts; and it is further

ORDERED that, upon its election to exercise any ownership rights over the assets in the Trusts, WMI shall submit a written direction to the Trustee acknowledging such election; and it is further

ORDERED that the Trusts shall be terminated in accordance with the Trust Agreements and the assets, including income and proceeds therefrom, remaining in the Trusts shall be returned to WMI as soon as reasonably practicable, subject to payment to the Trustee of reasonable fees and expenses in connection with the administration of the Trusts; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: June _____, 2009
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1
Schedule of Assets

FEBRUARY 2009 ACCOUNT ACTIVITY PER BANK STATEMENTS

	Account Number	Ending 2/28/2009
MM	14901-00-57	394,328.49
US Govt Corp	14901-00-57	6,753,005.45
Other	14901-00-57	2,659,591.10
MM	14901-00-57	517,338.20
MM	14902-00-56	710,214.81
US Govt Corp	14902-00-56	10,497,276.40
Other	14902-00-56	4,526,737.46
MM	14902-00-56	1,049,802.25
MM	14903-00-57	438,949.04
US Govt Corp	14903-00-57	7,394,225.06
Other	14903-00-57	2,663,340.05
MM	14903-00-57	614,755.50
MM	14904-00-56	96,229.77
US Govt Corp	14904-00-56	1,803,543.57
Other	14904-00-56	897,835.38
MM	14904-00-56	133,546.45
MM	14905-00-57	87,988.10
US Govt Corp	14905-00-57	1,557,846.43
Other	14905-00-57	501,002.09
MM	14905-00-57	107,501.20
MM	500000002-00	149,486.04
US Govt Corp	500000002-00	2,681,087.71
Other	500000002-00	1,196,224.69
MM	500000002-00	302,335.80
MM	510001206-00	36,615.98
Mutual F	510001206-00	462,335.09
MM	510001207-00	11.01
US Govt Corp	510001207-00	-
Other	510001207-00	-
MM	510001208	604,405.44
US Govt Corp	510001208	13,485,010.89
Other	510001208	5,105,104.23
Total	510001208	1,081,724.95
	Security Bal	65,660,829.95
	Cash	2,518,208.68