

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In re : **Chapter 11**
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WASHINGTON MUTUAL, INC., et al.,¹ : **Case No. 08-12229 (MFW)**
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Debtors. : **(Jointly Administered)**
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DEBTORS' FOURTH MOTION FOR ORDER PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY CODE EXTENDING EXCLUSIVE PERIODS FOR THE FILING OF A CHAPTER 11 PLAN AND SOLICITATION OF ACCEPTANCES THERETO

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

Preliminary Statement

1. The Debtors, with the consent and support of the Official Committee of Unsecured Creditors (the "Committee"), seek to extend their exclusive periods in which to file a chapter 11 plan and solicit acceptances thereto by approximately ninety days, through and including January 19, 2010 and March 22, 2010, respectively, without prejudice to their right to seek further extensions, as may be appropriate under the circumstances.

2. As described in the Debtors' prior motions to extend their exclusive periods and herein, the Debtors' chapter 11 cases are large and complex and fraught with "unresolved contingencies" relating to the ownership of certain of the Debtors' significant assets. In this regard,

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.



as this Court is well-aware, the Debtors remain in the midst of complex litigation with the Federal Deposit Insurance Corporation (“FDIC”) and JPMorgan Chase Bank, National Association (“JPMorgan”).

3. Notwithstanding the distraction and uncertainty of this litigation, the Debtors’ have, to the extent possible, made significant progress in administering their chapter 11 cases and are taking steps needed for the confirmation of a plan, including, *inter alia*, objecting to claims and liquidating the estates’ assets. Despite the significant progress made to date, however, the complexities at issue in the Debtors’ chapter 11 cases, which largely result from the seizure and sale of Washington Mutual Bank (“WMB”), the “unresolved contingencies” relating to the ownership of certain significant assets, and the challenges arising from the reconciliation of claims, warrant an extension of the Debtors’ Exclusive Periods for another ninety days.

Background

4. 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”). As of the date hereof, the Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On October 3, 2008, this 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.

6. On October 15, 2008, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the Committee. No trustee or examiner has been appointed in these cases.

7. On December 19, 2008, the Debtors filed with the Court their schedules of assets and liabilities. On January 27, 2009, and February 24, 2009, WMI filed with the Court its first and second, respectively, amended schedule of assets and liabilities.

8. By order, dated January 30, 2009, the Court established March 31, 2009 as the deadline for filing proofs of claim against the Debtors. Over 3,700 proofs of claim have been filed in these chapter 11 cases.

WMI's Business

9. 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.

10. Prior to the Commencement Date, WMI was a savings and loan holding company that owned WMB and such bank's subsidiaries, including Washington Mutual Bank fsb ("WMBfsb"). WMI also has certain non-banking, non-debtor subsidiaries.

11. Prior to the Commencement Date, WMI, like all savings and loan holding companies, was subject to regulation by the Office of Thrift Supervision (the "OTS"). WMB and WMBfsb, like all depository institutions with federal thrift charters, were also subject to regulation and examination by the OTS. In addition, WMI's banking and non-banking subsidiaries were overseen by various federal and state authorities, including the FDIC. 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. Immediately after its appointment as receiver, the FDIC sold substantially all the assets of WMB, including the stock of

WMBfsb, to JPMorgan pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008.

12. WMI's assets include its common stock interest in WMB, its interests in its non-banking subsidiaries, and in excess of \$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 (the "Deposit Funds"). WMI is in the process of evaluating these and other assets for purposes of ultimate distribution to its creditors.

Overview of Litigation With the FDIC and JPMorgan

13. As this Court is aware, WMI, the FDIC and JPMorgan are in the midst of complex litigation regarding, among other issues, each party's claims with respect to the ownership of various assets, including the Deposit Funds. The following is a summary of the pending litigation:

The D.C. Action

14. On December 30, 2008, the Debtors filed a proof of claim against the FDIC, as receiver of WMB, pursuant to the receivership procedures set forth in section 11 of the Federal Deposit Insurance Act (12 U.S.C. § 1821). The Debtors' proof of claim requested, among other things, compensation for the Debtors' assets (or the return of such assets as a preference or fraudulent transfer), which were wrongfully transferred or claimed by the FDIC and/or JPMorgan, and for other money owed by WMB. By letter, dated January 23, 2009, the FDIC notified the Debtors that the FDIC had disallowed the Debtors' proof of claim in its entirety. The FDIC's letter also notified the Debtors of their right to challenge the disallowance of their claim by commencing a lawsuit within sixty (60) days of the notice of disallowance.

15. Consistent therewith, on March 20, 2009, the Debtors filed a complaint against the FDIC (both in its capacity as WMB's receiver and in its corporate capacity) in the United States District Court for the District of Columbia (the "D.C. Court"), Case No. 09-cv-00533 (RMC), seeking to recover the value of each of the claims set forth in the Debtors' proof of claim, including, inter alia, claims for the value of approximately \$6.5 billion in capital contributions, \$4 billion in preferred securities, and \$3 billion in tax refunds (the "D.C. Action"). The Debtors also asserted a protective claim with respect to the Deposit Funds.

16. By motions, dated June 11, 2009 and June 15, 2009, the FDIC, in its capacity as receiver and in its corporate capacity, respectively, filed motions to dismiss the D.C. Action, which motions were opposed by the Debtors. Contemporaneously with their motions to dismiss, the FDIC filed an answer to the Debtors' complaint, as amended, and counterclaims against the Debtors. Thereafter, by motion dated July 27, 2009, the Debtors moved to dismiss the amended counterclaims asserted by the FDIC and to stay the remainder of the D.C. Action, in its entirety, in favor of the pending proceedings in this Court (the "Debtors' Motion to Dismiss"). The FDIC and JPMorgan have both opposed the Debtors' Motion to Dismiss. JPMorgan and certain holders of senior notes issued by WMB (the "Bank Bondholders") have been permitted to intervene in the D.C. Action. The Bank Bondholders have until October 28, 2009 to file a brief in support of or opposition to the motions to dismiss pending before the D.C. Court. By motion, dated October 16, 2009, the Committee moved to intervene as a plaintiff in the D.C. Action.

The Adversary Proceedings

17. On March 24, 2009, notwithstanding pending negotiations between the Debtors and JPMorgan to resolve outstanding issues, JPMorgan commenced an adversary proceeding against the Debtors and the FDIC (Adv. Proc. No. 09-50551 (MFW)) in this Court

seeking a declaratory judgment with respect to the ownership of disputed assets (the “JPMorgan Adversary”). On May 29, 2009, the Debtors filed an answer to JPMorgan’s complaint and asserted various counterclaims against JPMorgan.

18. On April 27, 2009, the Debtors commenced an adversary proceeding (Adv. Proc. No. 09-50934 (MFW)) in the Bankruptcy Court (the “Turnover Action”) demanding that JPMorgan turn over the Deposit Funds. JPMorgan filed a motion to dismiss the Turnover Action, or, in the alternative to consolidate the Turnover Action with the JPMorgan Adversary, which motion was opposed by the Debtors. JPMorgan also filed a motion to stay the Turnover Action and the JPMorgan Adversary to allow JPMorgan, the FDIC, and the Debtors to resolve their claims in the D.C. Action. At a hearing held before this Court on June 24, 2009, both of JPMorgan’s motions were denied. Likewise, this Court denied a motion made by the FDIC to stay the Turnover Action and the JPMorgan Adversary while the D.C. Action is prosecuted.

19. In addition to the foregoing, the litigation between the Debtors, JPMorgan and the FDIC has included the following:

- On June 23, 2009, JPMorgan filed a motion to withdraw the reference of the JPMorgan Adversary and the Turnover Action pursuant to 28 U.S.C. § 157(d), which motion has been opposed by the Debtors.
- Both the FDIC and JPMorgan have sought to appeal this Court’s orders denying their motions to dismiss or stay the adversary proceedings and filed motions with this Court for leave to appeal, which motions were opposed by the Debtors. Further, JPMorgan and the FDIC have sought certification by the District Court for direct appeal to the Third Circuit. The Debtors have opposed this request.
- The parties have completed briefing on the Debtors’ motion for summary judgment in the Turnover Action, which motion and the oppositions thereto – filed by the FDIC, as Receiver, JPMorgan, and the Bank Bondholders – will be considered at a hearing before this Court on October 22, 2009.
- In the JPMorgan Adversary, JPMorgan moved to dismiss the counterclaims asserted by the Debtors against JPMorgan, which motion was opposed by the Debtors, and denied by this Court by order, dated September 14, 2009. JPMorgan has sought leave to appeal the Court’s order. The Debtors oppose JPMorgan’s latest gambit.

- By order, dated August 28, 2009, this Court granted the Bank Bondholders' motion to intervene in the adversary proceedings.

The 2004 Examination Request

20. On May 1, 2009, the Debtors filed a motion (the "2004 Motion") [Dkt. No. 974], pursuant to Bankruptcy Rule 2004, seeking entry of an order directing the examination of JPMorgan in order to investigate potential claims against JPMorgan based on alleged misconduct, some of which may be the subject of a lawsuit filed in Texas federal court captioned, American Nat'l Ins. Co., et al. v. JPMorgan Chase & Co., et al., 3:09-cv-00044 (S.D. Tex. Feb. 16, 2009). Notwithstanding JPMorgan's opposition to the 2004 Motion, by Opinion and Order, dated June 24, 2009, this Court granted the 2004 Motion [Dkt. Nos. 1219, 1220]. JPMorgan then filed a motion for reconsideration of this Court's Opinion and Order, which motion was opposed by the Debtors and denied by this Court. Thereafter, JPMorgan has begun producing documents to the Debtors for their review.

Jurisdiction

21. 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.

Relief Requested

22. Section 1121(b) of the Bankruptcy Code provides for an initial period of 120 days after commencement of a chapter 11 case during which a debtor has the exclusive right to propose and file a chapter 11 plan (the "Plan Period"). See 11 U.S.C. § 1121(b). Section 1121(c)(3) provides that, if a debtor files a plan within the 120-day Plan Period, it has a period of 180 days after the commencement of the case to obtain acceptances of such plan, during which time competing plans may not be filed (the "Solicitation Period" and, together with the Plan Period, the

“Exclusive Periods”). 11 U.S.C. § 1121(c)(3). Pursuant to section 1121(d), the Court may extend a debtor’s Exclusive Periods for cause shown. 11 U.S.C. § 1121(d).²

23. The Debtors’ Plan Period and Solicitation Period initially were set to expire on January 24, 2009 and March 25, 2009, respectively. On January 20, 2009, the Debtors filed a motion to extend the Exclusive Periods [Dkt. No. 569] and, by order, dated February 16, 2009, pursuant to section 1121(d) of the Bankruptcy Code, this Court granted the Debtors an extension of their Exclusive Periods through and including April 24, 2009 and June 23, 2009, respectively [Dkt. No. 692]. On April 22, 2009, the Debtors filed a second motion to extend the Exclusive Periods [Dkt. No. 937] and, by order, dated May 19, 2009, this Court granted the Debtors a further extension of their Exclusive Periods through and including July 23, 2009 and September 21, 2009, respectively [Dkt. No. 1044]. On July 22, 2009, the Debtors filed a third motion to extend the Exclusive Periods [Dkt. No. 1370] and, by order, dated August 21, 2009, this Court granted the Debtors an extension of their Exclusive Periods through and including October 21, 2009 and December 21, 2009, respectively [Dkt. No. 1532].

24. By this motion (the “Motion”), the Debtors request, with the Committee’s consent and support, pursuant to section 1121(d) of the Bankruptcy Code, entry of the proposed order substantially in the form attached hereto as Exhibit “A,” extending the Plan Period and Solicitation Period by approximately ninety days, through and including January 19, 2010 and

² Pursuant to section 1121(d)(1) of the Bankruptcy Code (as amended by the Bankruptcy Abuse Protection and Consumer Protection Act of 2005), the Plan Period may not be extended beyond a date that is 18 months after the commencement of a chapter 11 case. 11 U.S.C. § 1121(d)(1). Pursuant to section 1121(d)(2), the Solicitation Period may not be extended beyond a date that is 20 months after the commencement of a chapter 11 case. 11 U.S.C. § 1121(d)(2).

March 22, 2010, respectively.³ Notwithstanding this request, in light of the pending litigation with JPMorgan and the FDIC described herein and the corresponding disputes regarding the ownership of the Debtors' principal assets, the Debtors reserve their right to seek further extensions of the Exclusive Periods as may be necessary and appropriate.

Legal Standard for Extending the Exclusive Periods

25. One of the primary objectives of a chapter 11 case is the formulation, confirmation, and consummation of a consensual plan that facilitates distributions to the debtor's economic stakeholders. A debtor's Exclusive Periods are designed to accomplish this objective, and are intended to afford a debtor a full and fair opportunity to propose a consensual plan and solicit acceptances of such plan without the disruption to the administration of a debtor's estate that may result from the filing of competing plans by non-debtor parties.

26. Where the default 120- and 180-day Exclusive Periods prove to be an unworkable time frame in any particular case, section 1121(d) of the Bankruptcy Code allows the Court to extend a debtor's Exclusive Periods for cause. Although the Bankruptcy Code does not define the term "cause," the legislative history indicates it is intended to be a flexible standard to balance the competing interests of a debtor and its creditors. See H.R. Rep. No. 95-595, at 231-32 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 6191 (noting that Congress intended to give bankruptcy courts flexibility to protect a debtor's interests by allowing unimpeded opportunity to negotiate settlement of debts without interference from other parties in interest).

27. Congress built flexibility into section 1121 of the Bankruptcy Code to give the debtor an adequate opportunity to stabilize its business operations at the outset of its chapter 11

³ An extension of the Debtors' Solicitation Period for ninety days would fall on March 21, 2009, which is a Sunday. Therefore, the Debtors seek a ninety one-day extension of their Solicitation Period, until March 22, 2009.

case and to negotiate an effective plan with its creditors. In re Newark Airport/Hotel Ltd. P'ship., 156 B.R. 444, 451 (Bankr. D.N.J.), aff'd, 155 B.R. 93 (D.N.J. 1993) (noting that Congress designed chapter 11 provisions to enable a debtor to remain in control for some period of time, thereby making reorganization an attractive alternative to financially troubled companies); Gaines v. Perkins (In re Perkins), 71 B.R. 294, 297-98 (W.D. Tenn. 1987) (Congress designed section 1121 to give the debtor time to reach an agreement with its creditors regarding a plan of reorganization).

28. In determining whether cause exists to extend the Exclusive Periods, a court may consider, “in addition to the need of the creditors committee to negotiate with the debtor and the ability to prepare adequate information,” a variety of factors, including:

- a. the size and complexity of the debtor’s case;
- b. the existence of good-faith progress towards reorganization;
- c. a finding that the debtor is not seeking to extend exclusivity to pressure creditors “to accede to [the debtors’] reorganization demands”;
- d. the existence of an unresolved contingency; and
- e. the fact that the debtor is paying its bills as they come due.

In re McLean Indus., Inc., 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987) (citations omitted). Accord In re Express One Int’l, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (identifying four of the five above-quoted factors, among others, as relevant in determining whether “cause” exists to extend exclusivity); In re United Press Int’l, Inc., 60 B.R. 265, 269 (Bankr. D.D.C. 1986) (holding that the debtor showed “cause” to extend its exclusivity period based upon certain of above-quoted factors).

29. Moreover, the fact that a debtor may propose a liquidating, as opposed to a reorganizing, plan should not negatively impact its ability to retain the exclusive right to file a plan. Courts in this District have, on numerous occasions, granted extensions of the Exclusive Periods in liquidating chapter 11 cases. See, e.g., In re Sharper Image Corp., Ch. 11 Case No. 08-10322 (KG)

(Bankr. D. Del. July 17, 2008); In re SN Liquidation, Inc., et al., Ch. 11 Case No. 07-11666 (KG) (Bankr. D. Del. Mar. 28, 2008); In re American Home Mortgage Holdings, Inc., et al., Ch. 11 Case No. 07-11047 (CSS) (Bankr. D. Del. Dec. 19, 2007); In re Tweeter Home Entm't Group, Inc., et al., Ch. 11 Case No. 07-10787 (PJW) (Bankr. D. Del. Oct. 9, 2007); In re Tiro Acquisition, LLC, Ch. 11 Case No. 04-12938 (PJW) (Bankr. D. Del. Aug. 1, 2005); In re SFMB Acquisition Corp., Ch. 11 Case No. 03-11524 (JW) (Bankr. D. Del. Aug. 25, 2004); In re SHC, Inc., Ch. 11 Case No. 03-12002 (CJW) (Bankr. D. Del. Apr. 2, 2004); In re Cone Mills Corp., et al., Ch. 11 Case No. 03-12944 (CJW) (Bankr. D. Del. Mar. 8, 2004); In re Orion Refining Corp., Ch. 11 Case No. 03-11483 (MFW) (Bankr. D. Del. Sept. 23, 2003); In re Golf America Stores, Inc., Ch. 11 Case No. 02-12313 (JW) (Bankr. D. Del. Apr. 11, 2003).

30. As illustrated by the facts set forth herein, an application of the aforementioned standards to the facts of this case demonstrates sufficient “cause” to grant the Debtors’ requested extension of the Exclusive Periods so that they may have a full and fair opportunity to propose a consensual plan and solicit acceptances thereon.

Cause Exists to Extend the Debtors’ Exclusive Periods

31. As described in the Debtors’ prior motions to extend the Exclusive Periods, the Debtors’ cases are both large and complex. The complexity of these cases is due, in large part, to the placement of WMB into receivership and the subsequent sale of substantially all of WMB’s assets to JPMorgan.

32. Since commencing their cases, the Debtors’ have made significant progress in administering their chapter 11 cases and have taken steps necessary, to the extent possible, for confirmation of a plan, including:

- a. hiring several former WMB employees;
- b. gaining access to important business records;

- c. filing required schedules and monthly financial reports;
- d. entering into an agreement with JPMorgan concerning the payment of certain vendors;
- e. transferring WMI's 401(k) plan to JPMorgan;
- f. reviewing and rejecting unnecessary and burdensome contracts and leases;
- g. reconciling claims and the filing of thirteen omnibus claims objections;
- h. facilitating the sale of certain of the Debtors' investments;
- i. liquidating the estates' assets, including those held in certain rabbi trusts;
- j. securing assets that rightfully belong to the Debtors, including the proceeds of the American Savings Bank litigation; and
- k. undertaking a complex tax analysis, filing tax returns and reconciling related claims.

33. Notwithstanding these accomplishments, there is still substantial uncertainty regarding the ownership of the Debtors' most significant assets, as demonstrated by the Debtors' pending litigation with JPMorgan and the FDIC. The complexities at issue in the Debtors' chapter 11 cases, the "unresolved contingencies," relating to the ownership of assets, and the unique challenges arising from the reconciliation of claims, warrant an extension of the Debtors' Exclusive Periods.

34. As this Court is aware, JPMorgan claims that it has legal title to and beneficial interests in a variety of assets claimed by the Debtors, including, without limitation, the Deposit Funds, trust securities, tax refunds, goodwill judgments, trust assets, stocks, intellectual property, contractual rights, and the pension plan.⁴ Resolution of at least certain of the legal and economic issues that are the subject of the litigation with JPMorgan is essential for the formulation

⁴ See Complaint, JPMorgan Chase Bank, N.A. v. Washington Mutual, Inc., et al., No. 08-12229 (Bankr. D. Del. Mar. 24, 2009) [Dkt. No. 807]; see also JPMorgan Chase Bank, N.A.'s Motion to Intervene as Defendant, Washington Mutual, Inc., et al. v. FDIC, No. 09-00533 (D.D.C. Mar. 30, 2009) [Dkt. No. 4].

of a chapter 11 plan. It is extremely difficult, if not impossible, for the Debtors to propose a feasible plan unless they know the amount of assets available for distribution to creditors as well as the magnitude of claims against the chapter 11 estates. This is particularly true with respect to the Deposit Funds – in excess of \$4 billion – which are the foundation of any plan to be proposed by the Debtors.

35. Contrary to the historical understanding and treatment of the Deposit Funds, JPMorgan seeks to recharacterize the Deposit Funds as capital contributions, rather than deposit liabilities. In the event the Deposit Funds are determined to be deposit liabilities (which the Debtors believe is the correct outcome), JPMorgan alternatively asserts setoff rights and other claims against such funds. Until this Court determines the true nature of the Deposit Funds, and whether JPMorgan possesses any right of setoff or other rights with respect thereto, the Debtors cannot proceed with plan preparations.

36. In light of the complexity of the pending litigation, the interplay between the adversary proceedings pending in this Court and the D.C. Action, and JPMorgan's pending motion for withdrawal of the reference of the adversary proceedings, it is uncertain, at this time, when a decision will be made regarding the assets available for distribution to the Debtors' creditors. Therefore, a further extension of the Exclusive Periods is needed.

37. It should also be noted that the litigation with the FDIC and JPMorgan has proven to be a hurdle, and even a distraction, from plan formulation. The Debtors have had to devote a significant portion of their time and energy to addressing the pending litigation, in addition to working on various day-to-day tasks and issues attendant to these chapter 11 cases. The Debtors' management has spent a significant amount of time working with the Debtors' counsel to prepare for and respond to the FDIC and JPMorgan proceedings, including, among other things, formulating

strategies, collecting factual information, preparing legal documents, and engaging in discussions with the Committee and various creditor constituencies. Although the Debtors continue to work in good faith towards the filing of a chapter 11 plan, the diversion created by the litigation has prevented the Debtors from being fully focused on the task.

38. In addition, this case presents unique claims issues that must be resolved prior to formulating a chapter 11 plan. Over 3,700 proofs of claim have been filed by parties asserting claims against the Debtors and the Debtors must determine the validity of these many claims. JPMorgan alone has filed approximately 45 proofs of claim against the Debtors, certain of which would likely need to be resolved before a plan could be formulated. Moreover, there are certain significant claims filed against the Debtors, including, but not limited to, the proof of claim filed by the Internal Revenue Service, in the approximate amount of \$10 billion, and the claims filed by Bank Bondholders, which would need to be resolved, estimated, or at least capped in order for the Debtors to propose a plan, and for which more time is needed.

39. Assessing the validity of the claims against the Debtors' is essential to ensuring that only true creditors are entitled to vote on a chapter 11 plan and receive distributions from the Debtors' estates. The Debtors believe that many claimants, intending to assert claims against WMB, erroneously filed claims against the Debtors. Accordingly, the Debtors are examining the proofs of claim to determine whether the claims asserted against the Debtors, are in fact claims solely against WMB. In addition, the Debtors are analyzing the proofs of claim to determine whether any claims may be expunged on other bases, e.g., as duplicative, or unsupported by the Debtors' books and records. Reconciling the claims filed against the Debtors in this complex case is essential to determining the size of the claims pool and crafting a chapter 11 plan.

40. Therefore, in light of the size and complexity of the Debtors' chapter 11 cases, the unresolved contingencies at issue, and the need to reconcile the numerous claims filed in these cases, the Debtors seek an extension of the Exclusive Periods in order to continue making progress on their efforts to formulate a chapter 11 plan. The Committee has agreed to and supports the Debtors' request for a 90-day extension of the Exclusive Periods. Under these circumstances, "cause" exists for granting the requested extensions.⁵

Notice

41. 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 Committee; and (iii) parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, as modified by the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware. In light of the nature of the relief requested, the Debtors submit that no other or further notice need be provided.

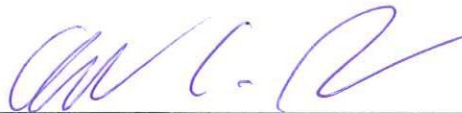
⁵ The other "common" factors a court may consider in determining whether cause exists to extend the Exclusive Periods are not significant factors in these cases. For instance, the Debtors are not seeking to extend their Exclusive Periods in order to pressure creditors "to accede to [the debtors'] reorganization demands." To the contrary, the Debtors are working cooperatively with their creditor constituencies to resolve the legal status of certain assets of the estates. In addition, the Debtors are paying their bills as they come due.

No Previous Request

42. Except as disclosed above, 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 enter an order, substantially in the form attached hereto as Exhibit "A", granting the relief requested herein and such other and further relief as it deems just and proper.

Dated: October 19, 2009
Wilmington, Delaware



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**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: November 24, 2009 at 2:00 p.m. ET**
 : **Objection Deadline: November 6, 2009 at 4:00 p.m. ET**
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NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that, on October 19, 2009, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the **Debtors’ Fourth Motion for Order Pursuant to Section 1121(d) of the Bankruptcy Code Extending Exclusive Periods for the Filing of a Chapter 11 Plan and Solicitation of Acceptances Thereto** (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 **November 6, 2009 at 4:00 p.m. (prevailing Eastern Time)**.

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

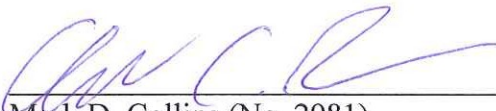
¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

Court, 824 Market Street, 5th Floor, Courtroom 4, Wilmington, Delaware 19801 on **November 24, 2009 at 2:00 p.m. (prevailing Eastern 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: October 19, 2009
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.



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Attorneys to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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

**FOURTH ORDER PURSUANT TO SECTION 1121(d)
OF THE BANKRUPTCY CODE EXTENDING
EXCLUSIVE PERIODS FOR THE FILING OF A CHAPTER 11
PLAN AND SOLICITATION OF ACCEPTANCES THERETO**

Upon the motion, dated October 19, 2009 (the "Motion"), of Washington Mutual, Inc. and WMI Investment Corp., as debtors and debtors in possession (the "Debtors") in the above referenced chapter 11 cases, for entry of an order pursuant to section 1121(d) of title 11 of the United States Code (the "Bankruptcy Code") extending the period during which each of the Debtors has the exclusive right to file a chapter 11 plan to January 19, 2010 (the "Plan Period") and extending the period during which each of the Debtors may solicit acceptances thereof to March 22, 2010 (the "Solicitation Period" and together with the Plan Period, the "Exclusive Periods"), 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); 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,

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.

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 the Debtors, their 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; and it is further

ORDERED that, pursuant to section 1121(d) of the Bankruptcy Code, the Plan Period for each Debtor is extended through and including January 19, 2010; and it is further

ORDERED that, pursuant to section 1121(d) of the Bankruptcy Code, the Solicitation Period for each Debtor is extended through and including March 22, 2010; and it is further

ORDERED that the extension of the Exclusive Periods granted herein is without prejudice to such further requests by the Debtors that may be made pursuant to section 1121(d) of the Bankruptcy Code.

Dated: Wilmington, Delaware
_____, 2009

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE