

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| ----- | X | |
| <i>In re</i> | : | |
| | : | Chapter 11 |
| WASHINGTON MUTUAL, INC., <i>et al.</i> , ¹ | : | |
| | : | Case No. 08-12229 (MFW) |
| Debtors. | : | |
| | : | Jointly Administered |
| | : | |
| | : | Hearing Date: 2/5/2010 @ 10:30 a.m. |
| | : | Objection Deadline: 1/29/2010 @ 4:00 p.m. |
| | : | Re: Docket Nos. 888, 1043 |
| ----- | X | |

**DEBTORS' MOTION PURSUANT TO SECTIONS 327(e) AND 328(a)
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 2014 TO AMEND THE
RETENTION OF QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP, AS
SPECIAL LITIGATION AND CONFLICTS COUNSEL TO THE DEBTORS**

Washington Mutual, Inc. and WMI Investment Corp., as debtors and debtors in possession (together, the "Debtors") hereby file this motion (the "Motion") pursuant to sections 327(e) and 328(a) of title 11 of the United States Code (the "Bankruptcy Code") to amend the scope of the retention of Quinn Emanuel Urquhart Oliver & Hedges, LLP ("Quinn Emanuel") as initially approved by the Court on May 19, 2009 to include certain further matters of representation, and respectfully represent:

General Background

1. 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 are authorized to

¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors continue to share their principal offices with the employees of JPMC located at 1301 Second Avenue, Seattle, Washington 98101.



continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On October 15, 2008, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the Official Committee of Unsecured Creditors (the "Creditors' Committee").

3. On November 7, 2008, this Court issued an order, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, authorizing the Debtors to employ and retain Weil, Gotshal & Manges LLP ("Weil Gotshal") as attorneys for the Debtors in connection with these chapter 11 cases, *nunc pro tunc* to the Commencement Date.

4. On April 8, 2009, the Debtors filed their Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014 for Authorization to Employ and Retain Quinn Emanuel Urquhart Oliver & Hedges, LLP, as Special Litigation and Conflicts Counsel to the Debtors, *Nunc Pro Tunc* to April 3, 2009 (the "Application") (Docket No. 888). The Court entered an order approving of the Application on May 19, 2009 (the "Retention Order") (Docket No. 1043).

5. Pursuant to the Retention Order, Quinn Emanuel has been representing the Debtors in: (i) litigation adverse to JPMorgan Chase Bank, National Association ("JPMC") in two adversary proceedings before this Court: *JPMC Bank, N.A. v. Washington Mutual, Inc.*, Adv. Proc. No. 09-50551 (MFW) (Bankr. D. Del); and *Washington Mutual, Inc. v. JPMC Bank, N.A.*, Adv. Proc. No. 09-50934 (MFW) (Bankr. D. Del) (together, the "Adversary Proceedings"); (ii) in coordination with Weil Gotshal, in litigation adverse to the Federal Deposit Insurance Corp. (the "FDIC") in which JPMC has sought to intervene and in which the FDIC has named JPMC as a cross-claim defendant (the "DC Action"); and (iii) pursuant to Bankruptcy Rule 2004,

investigating the prepetition activities of JPMC in order to assess certain potential estate causes of action related to the destruction of the Debtors' businesses (the "Business Tort Investigation," and, collectively, with the Adversary Proceedings and the DC Action, the "Initial Retention Issues").

Jurisdiction

6. 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

7. By this Motion, the Debtors request, pursuant to sections 327(e) and 328(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), entry of the proposed order, substantially in the form attached hereto as Exhibit "B," amending the retention and employment of Quinn Emanuel, as special litigation and conflicts counsel for the Debtors to include representing the Debtors in connection with the following (collectively, the "Further Issues"): (i) in coordination with Weil Gotshal, objecting to the claims asserted against the Debtors' estates by certain *ad hoc* groups of holders of notes issued by the Debtors' primary operating subsidiary, Washington Mutual Bank, Henderson, Nevada (the "Bank Bondholders"); (ii) the Seattle U.S. Attorney's investigation into certain Debtor attorney-client privilege issues ("White Collar Matters"); and (iii) other matters which, due to the nature of the work completed by Quinn Emanuel to date on the Initial Retention Issues or due to other conflicts possessed by Weil Gotshal, it would be most efficient for Quinn Emanuel to be engaged in connection therewith.

8. In support of the Motion, the Debtors rely on the Declaration of Susheel Kirpalani, Esq. (the "Kirpalani Declaration"), a partner of Quinn Emanuel, a copy of which is annexed hereto as Exhibit "A."

Expansion of Retention Of Quinn Emanuel

9. Section 327(e) of the Bankruptcy Code provides:

The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtors or to the estate with respect to the matter on which such attorneys are to be employed.

11 U.S.C. § 327(e).

10. The Debtors believe that amending Quinn Emanuel's retention is reasonable and necessary in order for the Debtors to most efficiently administer their estates and to discharge their responsibilities to their creditors. To date, in connection with Quinn Emanuel's representation of the Debtors on the Initial Retention Issues, Quinn Emanuel has developed a significant working knowledge base on various issues that are relevant to the Further Issues. Given the completion of this work by Quinn Emanuel, the Debtors have determined that it is in their estates' best interests for certain issues to be handled by Quinn Emanuel.

11. For example, many of the claims asserted by the Bank Bondholders against the Debtors concern underlying facts and issues that overlap with claims asserted by the FDIC or JPMC in connection with Initial Retention Issues. In certain instances, the Debtors assert that the claims themselves are completely duplicative of claims asserted by the FDIC or JPMC. Claims asserted by the Bank Bondholders that do not relate to the Initial Retention Issues will be handled and objected to by Weil Gotshal. Similarly, many of the intelligence gained in

the pending Business Tort Investigation may be related to and potentially overlap with representing the Debtors in connection with the White Collar Matters.

12. As set forth in the Application (which is incorporated by reference herein), Quinn Emanuel possesses extensive knowledge, expertise, and experience in matters concerning complex bankruptcy and commercial litigation including aiding and abetting actions, avoidance actions, cash collateral and DIP financing disputes, contested confirmations, fraud claims, intercompany disputes, fiduciary and lender liability claims, auditor accountability actions, defending class action suits, white-collar defense matters, and many other areas of law. This extensive experience in handling complex litigation makes Quinn Emanuel particularly well-suited to deal effectively with the myriad of legal issues that may arise in these bankruptcy cases related in some fashion to the Initial Retention Issues or otherwise.

13. To date, Quinn Emanuel has been careful not to duplicate the work of Weil Gotshal or any of the other Debtor-professionals. These efforts will continue. Furthermore, the Debtors will continue to implement efforts to coordinate Quinn Emanuel's services with those of its other professionals to avoid unnecessary duplication of services. In fact, the driving force behind this Motion is to ensure that the needs of the Debtors' estates are handled in the manner that best addresses the interests of economy and efficiency.

Quinn Emanuel Holds No Interest Adverse To The Debtors Or Their Estates

14. To the best of the Debtors' knowledge, information, and belief, and except as otherwise set forth in the prior Kirpalani Declarations filed in connection with the Application and on April 30, 2009, June 30, 2009, and August 20, 2009, Quinn Emanuel does not represent or hold any interest adverse to the Debtors or their estates with respect to the matters as to which Quinn Emanuel is to be employed. Quinn Emanuel conducts an ongoing review of its files to ensure that no disqualifying circumstances arise and, if any new relevant facts or relationships

are discovered, Quinn Emanuel will supplement its disclosure to the Court. To this end, Quinn Emanuel has conducted a search with respect to the individual members comprising the Bank Bondholders and has uncovered no conflicts.

15. Based on the foregoing and the disclosures set forth in the Kirpalani Declaration, Quinn Emanuel does not hold or represent any interest adverse to the Debtors' estates that would impair Quinn Emanuel's ability to perform professional services for the Debtors, objectively and in accordance with section 327(e) of the Bankruptcy Code, regarding the matters on which Quinn Emanuel is proposed to be engaged.

16. To the best of the Debtors' knowledge, and upon information and belief, Quinn Emanuel is not a creditor, equity security holder, or an insider of the Debtors.

Compensation

17. Compensation for Further Issues will be handled in the manner approved by the Court under the Retention Order.

Notice

18. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Application has been provided to: (i) the U.S. Trustee; (ii) counsel for the Creditors' Committee; (iii) and parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. The Debtors submit that no other or further notice need be provided.

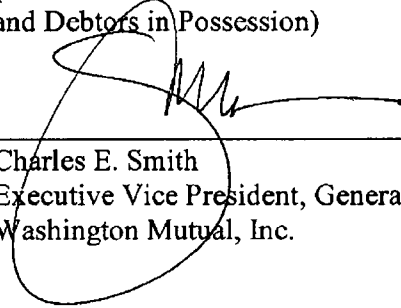
No Previous Request

19. 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: January 12, 2010
Wilmington, Delaware

WASHINGTON MUTUAL, INC.
(for itself and on behalf of its affiliated debtors as Debtors
and Debtors in Possession)

A handwritten signature in black ink, appearing to be "CS", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

Charles E. Smith
Executive Vice President, General Counsel & Secretary
Washington Mutual, Inc.

Exhibit A

Kirpalani Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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

**DECLARATION OF SUSHEEL KIRPALANI IN
CONNECTION WITH MOTION TO AMEND THE RETENTION
OF QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP,
AS SPECIAL LITIGATION AND CONFLICTS COUNSEL TO THE DEBTORS**

Susheel Kirpalani, hereby declares, under penalty of perjury:

1. I am a member of the firm of Quinn Emanuel Urquhart Oliver & Hedges, LLP ("Quinn Emanuel" or the "Firm"), a law firm with offices at 51 Madison Avenue, New York, New York 10010, Los Angeles, San Francisco, and Silicon Valley, California, Chicago, Illinois, as well as London, England, and Tokyo, Japan.

2. I submit this declaration in connection with Quinn Emanuel's representation of Washington Mutual Inc. and WMI Investment Corp. as debtors and debtors in possession (collectively, "WMI" or the "Debtors"), and Debtor' motion (the "Motion") pursuant to sections 327(e) and 328(a) of title 11 of the United States Code (the "Bankruptcy Code") to amend the scope of the retention of Quinn Emanuel as initially approved by the Court on May 19, 2009 to include certain further matters of representation. Quinn Emanuel was retained upon application, dated April 8, 2009 (the "Application"), by the Debtors pursuant to sections 327(e)

¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395).

and 328(a) of title 11 of the Bankruptcy Code and Bankruptcy Rule 2014. Unless otherwise stated in this declaration, I have personal knowledge of the facts set forth herein. I will supplement the disclosures made in this declaration as I have done so with respect to the declaration filed in support of the Application (the "Previous Declarations") if additional relevant information becomes available during the pendency of the Debtors' chapter 11 cases (the "Chapter 11 Cases").

3. In support of the Motion, I hereby disclose all known connections with the Bank Bondholders (as defined in the Motion). I have used the Quinn Emanuel Disclosure Procedures (as defined in the Motion) to identify any such connections. Except as disclosed herein and in Previous Declarations, Quinn Emanuel has not, does not, and will not represent any entities, or any respective affiliates or subsidiaries thereof, in matters directly related to the Debtors or the Chapter 11 Cases or in other matters directly adverse to the Debtors during the pendency of the Chapter 11 Cases. Quinn Emanuel may in the future represent entities that are claimants of, or interest holders in, the Debtors in matters unrelated to the Debtors.

4. Quinn Emanuel currently represents the following Bank Bondholders in matters unrelated to the Chapter 11 Cases:

- ◆ QVT Fund, L.P.
- ◆ Bank of Ireland
- ◆ Aegon Asset Management
- ◆ Halcyon Master Fund
- ◆ Ramius Capital Group
- ◆ VR Global Partners, L.P.

Quinn Emanuel will not represent the individual Bank Bondholders in connection with the Debtors' chapter 11 cases.

I certify that the foregoing statements are true and correct to the best of my knowledge information and belief.

New York, New York
January 15, 2010



Susheel Kirpalani

Exhibit B

Proposed Order

**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)
 Debtors. :
 : Jointly Administered
 : Re: Docket No. _____
 :
----- X

**ORDER PURSUANT TO SECTIONS 327(e) AND 328(a) OF THE BANKRUPTCY CODE
AND BANKRUPTCY RULE 2014 AMENDING THE RETENTION OF QUINN
EMANUEL URQUHART OLIVER & HEDGES, LLP AS SPECIAL LITIGATION AND
CONFLICTS COUNSEL TO THE DEBTORS *NUNC PRO TUNC* TO APRIL 3, 2009**

Upon the Motion, dated January 15, 2010 (the "Motion"), of Washington Mutual, Inc. and WMI Investment Corp., as debtors and debtors in possession (together, the "Debtors"), for entry of an order pursuant to sections 327(e) and 328(a) of title 11 of the United States Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure, amending the scope of the Debtors' retention of Quinn Emanuel Urquhart Oliver & Hedges, LLP ("Quinn Emanuel"), as special litigation and conflicts counsel to the Debtors² and upon the Declaration of Susheel Kirpalani, Esq. (the "Kirpalani Declaration"), a partner at Quinn Emanuel, which is annexed to the Motion as Exhibit "A;" it is

ORDERED that the Motion is granted; and it is further

ORDERED that the scope of amended to include the Further Issues;

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

ORDERED that Quinn Emanuel shall continue to be compensated pursuant to the Retention Order in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, this order, that certain Amended Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals dated November 14, 2008, and any other applicable orders of this Court; and it is further

ORDERED that, during the pendency of any of the Debtors' chapter 11 cases, this Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation or enforcement of this Order.

Dated: Wilmington, Delaware
_____, 2010

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

—

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

----- X
In re : Chapter 11
: :
WASHINGTON MUTUAL, INC., *et al.*,¹ : Case No. 08-12229 (MFW)
: :
Debtors. : Jointly Administered
: :
: **Hearing Date: February 5, 2010 at 10:30 am**
: **Obj. Deadline: January 29, 2010 at 4:00 pm**
----- X

**NOTICE OF DEBTORS' MOTION PURSUANT TO SECTIONS 327(e) AND 328(a)
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 2014 TO AMEND THE
RETENTION OF QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP, AS
SPECIAL LITIGATION AND CONFLICTS COUNSEL TO THE DEBTORS**

TO: (I) counsel to the Debtors; (II) the Office of the United States Trustee for the District of Delaware; (III) counsel for the Official Committee of Unsecured Creditors; and (IV) all parties required to receive service under Rule 2002-1(b) of the Local Rules.

PLEASE TAKE NOTICE that Washington Mutual, Inc. and WMI Investment Corp. have filed this Motion Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014 to Amend the Retention of Quinn Emanuel Urquhart Oliver & Hedges, LLP, as Special Litigation and Conflicts Counsel to the Debtors (the "Motion").

PLEASE TAKE FURTHER NOTICE that any responses or objections to the relief requested in the Motion must be filed on or before **January 29, 2010 at 4:00 p.m. (prevailing Eastern Time)** with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), 824 Market Street, Wilmington, Delaware 19801. At the same time, you must also serve a copy of any responses or objection upon the undersigned attorneys.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion, if necessary, shall be held before the Honorable Mary F. Walrath on **February 5, 2010 at 10:30 a.m. (prevailing Eastern Time)** at the Bankruptcy Court, 824 Market Street, 5th Floor, Courtroom 4, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE THAT IF NO RESPONSES OR OBJECTIONS ARE TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THE ABOVE

¹ The Debtors in these chapter 11 cases (the "Chapter 11 Cases") and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395).

PROCEDURES, AN ORDER MAY BE ENTERED GRANTING THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.

Dated: January 15, 2010
Wilmington, Delaware

ELLIOTT GREENLEAF

/s/ Neil R. Lapinski

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Special Litigation and Conflicts Co-Counsel to Washington Mutual, Inc. and WMI Investment Corp.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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

**CERTIFICATE OF SERVICE REGARDING
DEBTORS' MOTION PURSUANT TO SECTIONS 327(e) AND 328(a)
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 2014 TO AMEND
THE RETENTION OF QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP,
AS SPECIAL LITIGATION AND CONFLICTS COUNSEL TO THE DEBTORS**

I, Neil R. Lapinski, Delaware counsel to Washington Mutual, Inc. and WMI Investment Corp., hereby certify that I caused copies of the *Motion Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014 to Amend the Retention of Quinn Emanuel Urquhart Oliver & Hedges, LLP, as Special Litigation and Conflicts Counsel to the Debtors* to be served on January 15, 2010 via hand delivery on all local parties; and via U.S. First Class Mail and Foreign First Class Mail upon the remaining parties.

Dated: January 15, 2010
Wilmington, Delaware

ELLIOTT GREENLEAF

/s/ Neil R. Lapinski
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*Special Litigation and Conflicts Counsel to Washington
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¹ The Debtors in these chapter 11 cases (the "Chapter 11 Cases") and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395).

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