

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

	X	
	:	
<i>In re</i>	:	<b>Chapter 11</b>
	:	
<b>WASHINGTON MUTUAL, INC., <u>et al.</u>,<sup>1</sup></b>	:	<b>Case No. 08-12229 (MFW)</b>
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
	:	<b>Hearing Date: June 3, 2010 at 10:30 a.m. (EDT)</b>
	:	<b>Obj. Deadline: May 27, 2010 at 4:00 p.m. (EDT)</b>
	X	

**MOTION OF DEBTORS PURSUANT TO SECTION 105(a)  
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019(a)  
FOR APPROVAL OF SETTLEMENT WITH LUMBERMENS MUTUAL  
CASUALTY COMPANY, AMERICAN MOTORISTS INSURANCE COMPANY,  
AMERICAN MANUFACTURING MUTUAL INSURANCE COMPANY, AMERICAN  
PROTECTION INSURANCE COMPANY AND JPMORGAN CHASE BANK, N.A.**

Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment"), as debtors and debtors in possession (collectively, the "Debtors"), hereby file this motion (the "Motion") for approval of a settlement among the Debtors, Lumbermens Mutual Casualty Company, American Motorists Insurance Company, American Manufacturing Mutual Insurance Company and American Protection Insurance Company (collectively, "Lumbermens") and JPMorgan Chase Bank, N.A. ("JPMC") pursuant to which, among other things, JPMC shall assume all liabilities and obligations of the Debtors and their non-debtor affiliates to Lumbermens under the Insurance Agreements (defined below), as set forth in that certain Settlement Agreement, dated April 20, 2010, a copy of which is annexed hereto as Exhibit "A" (the "Settlement Agreement"), and respectfully represent:

<sup>1</sup> 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 925 Fourth Avenue, Seattle, Washington 98104.



### **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"). 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.

3. 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.

### **The Settlement Agreement**

4. Lumbermens provided workers' compensation and employers' liability, commercial general liability and business automobile liability insurance to WMI and its affiliates, including WMB, through various policies of insurance for the period between May 12, 1986 and June 10, 2003 (collectively, the "Policies"). Lumbermens issued these policies pursuant to various annual program agreements (the "Program Agreements" and, together with the Policies, the "Insurance Agreements").

5. The vast majority of the employees covered by the Insurance Agreements were employees of WMB and its subsidiaries, substantially all of whom transferred employment to JPMC on September 25, 2008. In view of this transition of employment, the Debtors, on

behalf of themselves and their affiliates, have entered into the Settlement Agreement, pursuant to which JPMC has agreed to assume all of the liabilities and obligations of WMI and its affiliates to Lumbermens under the Insurance Agreements, including those not directly related to WMB, in exchange for the Debtors' agreement to assign and transfer all of their rights, title and interest in any return premium or dividends now owing or which may become due to them with respect to the Policies to JPMC. As of the date hereof, no amounts are outstanding.

6. In addition, pursuant to the Settlement Agreement, the parties have agreed that—

- On the later to occur of (i) the date this Court has entered an order approving this Agreement (the "Effective Date") and (ii) JPMC's execution of the Policy Assumption Agreement<sup>2</sup> (the "Consummation Date"), WMI, on behalf of itself and its non-debtor direct and indirect subsidiaries (the "Non-Debtor Affiliates"), and WMI Investment shall be deemed to have assigned to JPMC all of their rights, title and interest in the Return Premium, the Escrow, the Subrogation Recoveries and the Policy Rights.
- JPMC shall (i) within five (5) days after the Effective Date, enter into a Policy Assumption Agreement with Lumbermens in the form attached to the Settlement Agreement; (ii) as of the Consummation Date, be deemed to have amended the Proof of Claim it filed in the Bankruptcy Case, Claim No. 2343, to withdraw, with prejudice, its claims related to the Insurance Agreements, the Escrow and the existing letter(s) of credit ("Existing Letters of Credit") issued on behalf of JPMC to Lumbermens in connection with the Insurance Agreements; and (iii) as of the Consummation Date, be deemed to have released and forever discharged the Debtors, the Debtors' Estates and the Non-Debtor Affiliates and all of their affiliates, subsidiaries, officers, directors, partners, employees, agents, attorneys, shareholders, successors, assigns, and other representatives from any liability for any and all claims, controversies, actions, causes of action, demands, debts,

---

<sup>2</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement.

damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, in contract, in tort or otherwise that they have, whether or not now or heretofore known, suspected, or claimed against them relating to the Insurance Agreements, the Existing Letters of Credit, the Return Premium, the Escrow, the Subrogation Recoveries or the Policy Rights. Except for the claims released and discharged in Section 4(c) of the Settlement Agreement, notwithstanding anything contained in Section 4(c) of the Settlement Agreement or elsewhere in the Settlement Agreement to the contrary, nothing in the Settlement Agreement shall release or discharge, or have the effect of releasing or discharging, any of the claims and causes of action asserted in JPMorgan Chase Bank, N.A. v. Washington Mutual, Inc., et al., Adv. Proc. No. 09-50551 (MFW) (Bankr. D. Del.); Washington Mutual, Inc., et al. v. JPMorgan Chase Bank, N.A., et al., Adv. Proc. No. 09-50934 (MFW) (Bankr. D. Del.); or Washington Mutual, Inc., et al. v. Federal Deposit Insurance Corporation, et al., Case No. 09-cv-00533 (RMC) (D.D.C.).

- As of the Consummation Date, the Debtors, the Debtors' Estates and the Non-Debtor Affiliates shall be deemed to have released and forever discharged JPMC and all of their affiliates, subsidiaries, officers, directors, partners, employees, agents, attorneys, shareholders, successors, assigns, and other representatives from any liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, in contract, in tort or otherwise that they have, whether or not now or heretofore known, suspected, or claimed against them relating to the Insurance Agreements, the Existing Letters of Credit, the Return Premium, the Escrow, the Subrogation Recoveries or the Policy Rights. Except for the claims released and discharged in Section 5 of the Settlement Agreement, notwithstanding anything contained in Section 5 of the Settlement Agreement or elsewhere in the Settlement Agreement to the contrary, nothing in the Settlement Agreement shall release or discharge, or have the effect of releasing or discharging, any of the claims and causes of action asserted in JPMorgan Chase Bank, N.A. v. Washington Mutual, Inc., et al., Adv. Proc. No. 09-50551 (MFW) (Bankr. D. Del.); Washington Mutual, Inc., et al. v. JPMorgan Chase

Bank, N.A., et al., Adv. Proc. No. 09-50934 (MFW) (Bankr. D. Del.); or Washington Mutual, Inc., et al. v. Federal Deposit Insurance Corporation, et al., Case No. 09-cv-00533 (RMC) (D.D.C.).

- Except as provided for in the Settlement Agreement, as of the Consummation Date, the Debtors and the Non-Debtor Affiliates shall be deemed to have released and forever discharged Lumbermens and all its affiliates, subsidiaries, officers, directors, partners, employees, agents, attorneys, shareholders, successors, assigns, and other representatives from any liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, in contract, in tort or otherwise that they have, whether or not now or heretofore known, suspected, or claimed against them relating to the Insurance Agreements, the Existing Letters of Credit, the Return Premium, the Escrow, the Subrogation Recoveries or the Policy Rights; provided, however, Lumbermens will continue to defend and pay all claims insured under the Policies in accordance with the terms of the Policies and the applicable law.
- Except as provided for in the Settlement Agreement, as of the Consummation Date, Lumbermens shall be deemed to have released and forever discharged the Debtors, the Debtors' estates and each of the Non-Debtor Affiliates and each of their officers, directors, employees, agents, attorneys, successors, assigns, and other representatives from liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, whether or not now or heretofore known, suspected, or claimed against them relating to the Insurance Agreements, the Existing Letters of Credit, the Return Premium, the Escrow, the Subrogation Recoveries or the Policy Rights.
- To the extent required under the Insurance Agreements, JPMC, the Debtors and the Non-Debtor Affiliates will continue to cooperate with Lumbermens and provide Lumbermens with the necessary information required under the Insurance Agreements, including, but not limited to, providing claims information and documentation. JPMC, the Debtors and the Non-Debtor Affiliates will promptly upon written request from

Lumbermens provide Lumbermens with the information it needs to conduct premium audits for the Policies.

**Relief Requested**

7. By this Motion, the Debtors seek entry of an order, substantially in the form annexed hereto as Exhibit “B” (the “Proposed Order”), pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a), approving the Settlement Agreement.

**Approval of the Settlement Agreement is Appropriate and Warranted Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019**

8. The Debtors submit that the Court should approve the Settlement Agreement pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a). Bankruptcy Code section 105(a) provides that, “[t]he court may 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). Bankruptcy Rule 9019(a) governs the approval of compromises and settlements, and provides:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a). A starting point in analyzing any proposed settlement agreement is the general policy of encouraging settlements and favoring compromises. See Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996). The standard by which courts evaluate a proposed compromise and settlement is well established. The United States District Court for the District of Delaware “has described the ultimate inquiry to be whether ‘the compromise is fair, reasonable, and in the interest of the estate.’” In re Marvel Entm’t Group, Inc., 222 B.R. 243, 249 (D. Del. 1998) (quoting In re Louise’s, Inc., 211 B.R. 798, 801 (D. Del. 1997)).

9. The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. In re World Health Alternatives, Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006). In determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983) (quoting Newman v. Stein, 464 F.2d 689, 693 (2d Cir. 1972)); see also World Health Alternatives, 344 B.R. at 296; In re Key3Media Group, Inc., 336 B.R. 87, 92-93 (Bankr. D. Del. 2005).

10. When considering whether a proposed settlement is fair, reasonable, and in the best interests of a debtor’s estate and within the “range of reasonableness,” a court should consider four principal factors: (1) the probability of success in litigation, (2) the likely difficulties in collection, (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it, and (4) the paramount interest of the creditors. Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968); In re RFE Industries, Inc., 283 F.3d 159, 165 (3d Cir. 2002); Martin, 91 F.3d at 393; World Health Alternatives, 344 B.R. at 296. These factors continue to be applied by courts in this Circuit. See, e.g., Will v. Northwestern Univ. (In re Nutraquest, Inc.), 434 F.3d 639, 644 (3d Cir. 2006); In re RNI Wind Down Corp., No. 06-10110, 2007 WL 949647 at \*4 (Bankr. D. Del. March 29, 2007). These factors seek to balance the probable benefit and potential cost of pursuing a claim or defense against the costs of the proposed settlement.

11. The Debtors submit that, in light of the above-referenced factors, the Settlement Agreement is fair, reasonable, and in the best interests of the Debtors’ estates and

creditors. Approval of the Settlement Agreement will extinguish the obligations and liabilities of the Debtors and their non-debtor affiliates to Lumbermens. Without approval of the Settlement Agreement, the Debtors will remain jointly and severally liable for all amounts due pursuant to the Insurance Agreements, including losses, premiums and indemnification expenses. Absent the Settlement Agreement, the Debtors and their non-debtor affiliates could continue to be liable for these amounts, even though WMB historically paid all premiums due under the Insurance Agreements and the vast majority of the employees covered by the Policies have transferred their employment to JPMC.

12. Accordingly, the Settlement Agreement will reduce the Debtors' outstanding obligations and liabilities and protect the estates' assets. In addition, JPMC has agreed to amend, with prejudice, the proof of claim it filed against the Debtors in these chapter 11 cases to withdraw its claims relating to the Insurance Agreements, the Escrow and the Existing Letters of Credit, as well as waive and release the Debtors from all liability or claims relating to the Insurance Agreements. The withdrawal of these claims and the waivers and releases inure to the benefit of the Debtors' estates and creditors. For all of these reasons, the Debtors submit that entry into the Settlement Agreement is in the best interests of the Debtors' estates and creditors.

#### **Notice**

13. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion and the Motion have been provided to: (i) the U.S. Trustee; (ii) counsel to the Statutory Committee of Unsecured Creditors appointed in these chapter 11 cases; (iii) counsel to the Statutory Committee of Equity Security Holders appointed in these chapter 11 cases; (iv) counsel to Lumbermens; (v) counsel to JPMC; and (vi) 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**

14. 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 7, 2010  
Wilmington, Delaware



---

Mark D. Collins (No. 2981)  
Chun I. Jang (No. 4790)  
Julie A. Finocchiaro (No. 5303)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701  
– and –

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

*Attorneys for the Debtors and Debtors in Possession*

**Exhibit A**  
**Settlement Agreement**

## SETTLEMENT AND RELEASE AGREEMENT

This **Settlement and Release Agreement** (the "Agreement") is entered into as of April 20, 2010, by and among Lumbermens Mutual Casualty Company, American Motorists Insurance Company, American Manufacturing Mutual Insurance Company and American Protection Insurance Company (collectively, with their insurance company affiliates, "Lumbermens"), Washington Mutual, Inc., ("WMI") and WMI Investment Corp ("Investment" and collectively with WMI, the "Debtors"), and JPMorgan Chase Bank, National Association ("JPMC") (Lumbermens, Debtors and JPMC each a "Party" and together the "Parties"), who hereby covenant and agree as follows:

### **RECITALS**

**WHEREAS**, on September 26, 2008, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), case number 08-12229, et al. (the "Bankruptcy Case");

**WHEREAS**, on or about September 25, 2008, the Federal Deposit Insurance Corporation closed Washington Mutual Bank (the "Bank") and was appointed Receiver thereof;

**WHEREAS**, on or about September 25, 2008, JPMC entered into a certain Purchase and Assumption Agreement with the Federal Deposit Insurance Corporation to purchase certain assets and to assume certain liabilities of the Bank;

**WHEREAS**, the Bank was a wholly-owned subsidiary of WMI;

**WHEREAS**, Lumbermens provided workers' compensation and employers' liability, commercial general liability, business automobile liability and property insurance to WMI and its affiliates, including Investment and the Bank, through various policies of insurance for policy periods from May 12, 1986 and June 10, 2003 (collectively, the "Policies");

**WHEREAS**, in connection with the Policies, Lumbermens and WMI entered into various annual Program Agreements (the “Program Agreements”, and, together with the Policies, the “Insurance Agreements”);

**WHEREAS**, JPMC has agreed to assume all liabilities and obligations of the Debtors and the Non-Debtor Affiliates (as hereinafter defined) to Lumbermens under the Insurance Agreements, including those not directly related to the Bank, in exchange for the Debtors and the Non-Debtors Affiliates assigning to JPMC all of their rights, title and interest in any return premium or dividends or claims or policy settlements now owing or which may become due to any insureds with respect to the Policies (the “Return Premium”), any funds held in escrow by any third party administrator supporting the obligations under the Policies (the “Escrow”), all recoveries related to claims asserted under the Policies (the “Subrogation Recoveries”) and all rights to enter into any additional agreements related to the Policies, including but not limited to claims settlements, policy assignments or novation agreements (the “Policy Rights”); and

**WHEREAS**, Lumbermens, the Debtors and JPMC wish to settle any disputes among them relating to the Insurance Agreements, pursuant to the terms of this Settlement Agreement;

**WHEREAS**, counsel for the Debtors will file a motion with the Bankruptcy Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure seeking an order approving this Settlement Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The foregoing recitals are incorporated herein as if fully set forth in the text of the Agreement.

2. To the extent provided under applicable law, this Agreement shall become binding upon the Parties upon its execution by all of the Parties; provided, however, that this Agreement shall not be enforceable against the Debtors or their estates or against JPMC until the Bankruptcy Court has entered an Order approving this Agreement, which Order has become a final order no longer subject to appeal (the “Effective Date”).

3. On the later to occur of (i) the Effective Date and (ii) JPMC’s execution of the Policy Assumption Agreement (as hereinafter defined) (the “Consummation Date”), WMI, on behalf of itself and its non-debtor direct and indirect subsidiaries (the “Non-Debtor Affiliates”), and Investment shall be deemed to have assigned to JPMC all of their rights, title and interest in the Return Premium, the Escrow , the Subrogation Recoveries and the Policy Rights.

4. JPMC shall:

(a) within five business days after the Effective Date, enter into a Policy Assumption Agreement with Lumbersmens in form attached hereto as Exhibit A, which Policy Assumption Agreement is incorporated herein;

(b) as of the Consummation Date, be deemed to have amended the Proof of Claim it filed in the Bankruptcy Case, No. 2343 to withdraw with prejudice its claims related to the Insurance Agreements, the Escrow and the existing letter(s) of credit (“Existing Letters of Credit”) issued on behalf of JPMC to Lumbersmens in connection with the Insurance Agreements; and

(c) as of the Consummation Date, be deemed to have released and forever discharged the Debtors, the Debtors’ Estates and the Non-Debtor Affiliates and all of their affiliates, subsidiaries, officers, directors, partners, employees, agents, attorneys, shareholders, successors, assigns, and other representatives from any liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys’ fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, in contract, in tort or otherwise that they have, whether or not now or heretofore known, suspected, or claimed against them relating to the Insurance Agreements, the Existing Letters of Credit, the Return Premium, the Escrow, the Subrogation Recoveries or the Policy Rights. Except for the claims released and discharged in this Section 4(c), notwithstanding anything contained in this Section 4(c) or elsewhere in this Agreement to the contrary, nothing in this Agreement shall release or discharge, or have the effect of releasing or discharging, any of the claims and causes of action asserted in JPMorgan Chase

Bank, N.A. v. Washington Mutual, Inc., et al., Adv. Proc. No. 09-50551 (MFW) (Bankr. D. Del.); Washington Mutual, Inc., et al. v. JPMorgan Chase Bank, N.A., et al., Adv. Proc. No. 09-50934 (MFW) (Bankr. D. Del.); or Washington Mutual, Inc., et al. v. Federal Deposit Insurance Corporation, et al., Case No. 09-cv-00533 (RMC) (D.D.C.).

5. As of the Consummation Date, the Debtors, the Debtors' Estates and the Non-Debtor Affiliates shall be deemed to have released and forever discharged JPMC and all of their affiliates, subsidiaries, officers, directors, partners, employees, agents, attorneys, shareholders, successors, assigns, and other representatives from any liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, in contract, in tort or otherwise that they have, whether or not now or heretofore known, suspected, or claimed against them relating to the Insurance Agreements, the Existing Letters of Credit, the Return Premium, the Escrow, the Subrogation Recoveries or the Policy Rights. Except for the claims released and discharged in this Section 5, notwithstanding anything contained in this Section 5 or elsewhere in this Agreement to the contrary, nothing in this Agreement shall release or discharge, or have the effect of releasing or discharging, any of the claims and causes of action asserted in JPMorgan Chase Bank, N.A. v. Washington Mutual, Inc., et al., Adv. Proc. No. 09-50551 (MFW) (Bankr. D. Del.); Washington Mutual, Inc., et al. v. JPMorgan Chase Bank, N.A., et al., Adv. Proc. No. 09-50934 (MFW) (Bankr. D. Del.); or Washington Mutual, Inc., et al. v. Federal Deposit Insurance Corporation, et al., Case No. 09-cv-00533 (RMC) (D.D.C.).

6. Except as provided for herein, as of the Consummation Date, the Debtors and the Non-Debtor Affiliates shall be deemed to have released and forever discharged Lumbermens and all its affiliates, subsidiaries, officers, directors, partners, employees, agents, attorneys, shareholders, successors, assigns, and other representatives from any liability for any and all

claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, in contract, in tort or otherwise that they have, whether or not now or heretofore known, suspected, or claimed against them relating to the Insurance Agreements, the Existing Letters of Credit, the Return Premium, the Escrow, the Subrogation Recoveries or the Policy Rights; provided, however, Lumbermens will continue to defend and pay all claims insured under the Policies in accordance with the terms of the Policies and the applicable law.

7. Except as provided for herein, as of the Consummation Date, Lumbermens shall be deemed to have released and forever discharged the Debtors, the Debtors' estates and each of the Non-Debtor Affiliates and each of their officers, directors, employees, agents, attorneys, successors, assigns, and other representatives from liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, whether or not now or heretofore known, suspected, or claimed against them relating to the Insurance Agreements, the Existing Letters of Credit, the Return Premium, the Escrow, the Subrogation Recoveries or the Policy Rights.

8. To the extent required under the Insurance Agreements, JPMC, the Debtors and the Non-Debtor Affiliates will continue to cooperate with Lumbermens and provide Lumbermens with the necessary information required under the Insurance Agreements, including, but not limited to, providing claims information and documentation. JPMC, the Debtors and the Non-Debtor Affiliates will promptly upon written request from Lumbermens provide Lumbermens with the information it needs to conduct premium audits for the Policies.

9. This Agreement shall be interpreted and governed by the laws of the State of Illinois without regard to principles of conflicts of law. In the event that this paragraph is deemed unenforceable in any judicial, arbitration or governmental proceeding, the remaining provisions of this Agreement shall remain in full force and effect.

10. Each Party hereto shall have the right at any time to enforce the provisions of this Agreement in strict accordance with the terms hereof, notwithstanding any conduct or custom on the part of such Party in refraining from so doing at any time or times. The failure of any Party at any time or times to enforce its rights under such provisions shall not be construed as having created a custom in any way or manner contrary to specific provisions of this Agreement or as having in any way or manner modified or waived the same.

11. Any notices or consents required or permitted by this Agreement shall be in writing and shall be deemed delivered if delivered in person or if sent by fax or certified mail, postage prepaid, return receipt requested, as follows, unless such address is changed by written notice hereunder:

If to Lumbermens

Gerald C. Pluard, Jr.  
Associate General Counsel  
Kemper Insurance Companies  
One Kemper Drive  
Long Grove, IL 60049  
Phone: 847-320-4088  
Fax: (847) 320-4202  
[jpluard@kemperinsurance.com](mailto:jpluard@kemperinsurance.com)

If to the Debtors and  
the Non-Debtor Affiliates:

Chad Smith  
Washington Mutual, Inc.  
1301 Second Avenue, WMC 3601  
Seattle, WA 98101  
Phone: 206.432.8731  
Fax: 206.432.8879  
[chad.smith@wamuinc.net](mailto:chad.smith@wamuinc.net)



With a copy to:

David R. Berz  
Weil, Gotshal & Manges LLP  
1300 I Street, N.W., Suite 900  
Washington, D.C. 20005  
Phone: 202.682.7190  
Fax: 202.857.0940  
[david.berz@weil.com](mailto:david.berz@weil.com)

If to JPMC:

Roberta Martoza  
JPMorgan Chase Bank, N.A.  
Corporate Insurance Services  
4 New York Plaza (12<sup>th</sup> Floor)  
New York, NY 10004-2413  
Phone: 212.623.3268  
Fax: 212.623.3289  
[roberta.l.martoza@chase.com](mailto:roberta.l.martoza@chase.com)

With a copy to:

Berrie Martinis  
Assistant General Counsel  
JPMorgan Chase & Co.  
1301 Second Avenue, 13<sup>th</sup> Floor  
Mailstop, WA1-3449  
Seattle, WA 98101  
Phone: 206-500-4427  
Fax: 206.377.0078  
[berrie.martinis@chase.com](mailto:berrie.martinis@chase.com)

12. JPMC warrants that:

(a) It has been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) It is duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) It has voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

13. The Debtors and the Non-Debtor Affiliates warrant that:

(a) They have been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) Upon entry of the Approval Order, they will be duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) They have voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

14. Lumbermens represents and warrants that:

(a) It has been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) It is duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) It has voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

15. This Agreement contains the entire Agreement between the Parties as respects its subject matter. All discussions and Agreements previously entertained between the Parties concerning the subject matter of the Agreement are merged into this Agreement. This Agreement may not be modified or amended, nor any of its provisions waived, except by an instrument in writing, signed by all Parties hereunder.

16. This Agreement and any amendment hereto may be executed in several counterparts and by each Party on separate counterpart, each of which, when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the Party against whom enforcement is sought. A facsimile signature shall be treated as an original signature.

17. This Agreement was negotiated and drafted with full participation of the Parties and their respective counsel. In the event that it is determined that any ambiguity exists in this

Agreement, any such ambiguity shall not be resolved or otherwise construed against any particular Party, but rather shall be resolved by a fair reading of the intent of the Parties as established herein.

18. If any provision of this Agreement is found to be contrary to law or void, the remainder of the Agreement shall be considered valid and enforceable and shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

19. This Agreement shall be binding upon all successors and assigns of each of the Parties to the Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and date first written above.

~~LUMBERMENS~~ MUTUAL CASUALTY WASHINGTON MUTUAL, INC.  
COMPANY

By: 

Name: Gerald C PIVARD JR

Its: Associate General Counsel

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

JPMORGAN CHASE BANK, N.A.

WMI INVESTMENT CORP.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and date first written above.

**LUMBERMENS MUTUAL CASUALTY WASHINGTON MUTUAL, INC. COMPANY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**JPMORGAN CHASE BANK, N.A.**

**WMI INVESTMENT CORP.**

By: Roberta Martoza

By: \_\_\_\_\_

Name: Roberta Martoza

Name: \_\_\_\_\_

Its: Senior Vice President  
Corporate Insurance  
Services

Its: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and date first written above.

**LUMBERMENS MUTUAL CASUALTY COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**JPMORGAN CHASE BANK, N.A.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

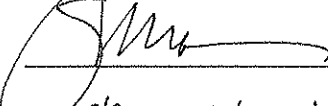
**WASHINGTON MUTUAL, INC.**

By:  \_\_\_\_\_

Name: Charles Edward Smith

Its: Executive Vice President

**WMI INVESTMENT CORP.**

By:  \_\_\_\_\_

Name: Charles Edward Smith

Its: Senior Vice President

**Exhibit B**

**Proposed Order**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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

**ORDER APPROVING SETTLEMENT WITH  
LUMBERMENS MUTUAL CASUALTY COMPANY,  
AMERICAN MOTORISTS INSURANCE COMPANY, AMERICAN  
MANUFACTURING MUTUAL INSURANCE COMPANY, AMERICAN  
PROTECTION INSURANCE COMPANY AND JPMORGAN CHASE BANK, N.A.**

Upon the motion, dated May 7, 2010 (the “Motion”),<sup>2</sup> of Washington Mutual, Inc. (“WMI”) and WMI Investment Corp., as debtors and debtors in possession (together, the “Debtors”), for entry of an order, pursuant to section 105(a) of title 11 of the United States Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for approval of the settlement agreement among the Debtors, Lumbermens Mutual Casualty Company, American Motorists Insurance Company, American Manufacturing Mutual Insurance Company and American Protection Insurance Company (collectively, “Lumbermens”) and JPMorgan Chase Bank, N.A. (“JPMC”), as set forth in that certain Settlement Agreement, dated April 20, 2010 (the “Settlement Agreement”), a copy of which is attached hereto as Exhibit “A,” all as more fully set forth in the Motion; and the Court

<sup>1</sup> 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.

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



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, 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 therefore, it is

ORDERED that the Motion is granted; and it is further

ORDERED that, pursuant to Bankruptcy Rule 9019, the terms and conditions of the Settlement Agreements are approved and the Debtors are authorized to consummate the compromise and settlement embodied in the Settlement Agreement; 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 the Settlement Agreement and this Order.

Dated: \_\_\_\_\_, 2010  
Wilmington, Delaware

---

THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

Exhibit A  
**Settlement Agreement**

## SETTLEMENT AND RELEASE AGREEMENT

This **Settlement and Release Agreement** (the "Agreement") is entered into as of April 20, 2010, by and among Lumbermens Mutual Casualty Company, American Motorists Insurance Company, American Manufacturing Mutual Insurance Company and American Protection Insurance Company (collectively, with their insurance company affiliates, "Lumbermens"), Washington Mutual, Inc., ("WMI") and WMI Investment Corp ("Investment" and collectively with WMI, the "Debtors"), and JPMorgan Chase Bank, National Association ("JPMC") (Lumbermens, Debtors and JPMC each a "Party" and together the "Parties"), who hereby covenant and agree as follows:

### **RECITALS**

**WHEREAS**, on September 26, 2008, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), case number 08-12229, et al. (the "Bankruptcy Case");

**WHEREAS**, on or about September 25, 2008, the Federal Deposit Insurance Corporation closed Washington Mutual Bank (the "Bank") and was appointed Receiver thereof;

**WHEREAS**, on or about September 25, 2008, JPMC entered into a certain Purchase and Assumption Agreement with the Federal Deposit Insurance Corporation to purchase certain assets and to assume certain liabilities of the Bank;

**WHEREAS**, the Bank was a wholly-owned subsidiary of WMI;

**WHEREAS**, Lumbermens provided workers' compensation and employers' liability, commercial general liability, business automobile liability and property insurance to WMI and its affiliates, including Investment and the Bank, through various policies of insurance for policy periods from May 12, 1986 and June 10, 2003 (collectively, the "Policies");

**WHEREAS**, in connection with the Policies, Lumbermens and WMI entered into various annual Program Agreements (the “Program Agreements”, and, together with the Policies, the “Insurance Agreements”);

**WHEREAS**, JPMC has agreed to assume all liabilities and obligations of the Debtors and the Non-Debtor Affiliates (as hereinafter defined) to Lumbermens under the Insurance Agreements, including those not directly related to the Bank, in exchange for the Debtors and the Non-Debtors Affiliates assigning to JPMC all of their rights, title and interest in any return premium or dividends or claims or policy settlements now owing or which may become due to any insureds with respect to the Policies (the “Return Premium”), any funds held in escrow by any third party administrator supporting the obligations under the Policies (the “Escrow”), all recoveries related to claims asserted under the Policies (the “Subrogation Recoveries”) and all rights to enter into any additional agreements related to the Policies, including but not limited to claims settlements, policy assignments or novation agreements (the “Policy Rights”); and

**WHEREAS**, Lumbermens, the Debtors and JPMC wish to settle any disputes among them relating to the Insurance Agreements, pursuant to the terms of this Settlement Agreement;

**WHEREAS**, counsel for the Debtors will file a motion with the Bankruptcy Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure seeking an order approving this Settlement Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The foregoing recitals are incorporated herein as if fully set forth in the text of the Agreement.

2. To the extent provided under applicable law, this Agreement shall become binding upon the Parties upon its execution by all of the Parties; provided, however, that this Agreement shall not be enforceable against the Debtors or their estates or against JPMC until the Bankruptcy Court has entered an Order approving this Agreement, which Order has become a final order no longer subject to appeal (the "Effective Date").

3. On the later to occur of (i) the Effective Date and (ii) JPMC's execution of the Policy Assumption Agreement (as hereinafter defined) (the "Consummation Date"), WMI, on behalf of itself and its non-debtor direct and indirect subsidiaries (the "Non-Debtor Affiliates"), and Investment shall be deemed to have assigned to JPMC all of their rights, title and interest in the Return Premium, the Escrow, the Subrogation Recoveries and the Policy Rights.

4. JPMC shall:

(a) within five business days after the Effective Date, enter into a Policy Assumption Agreement with Lumbermens in form attached hereto as Exhibit A, which Policy Assumption Agreement is incorporated herein;

(b) as of the Consummation Date, be deemed to have amended the Proof of Claim it filed in the Bankruptcy Case, No. 2343 to withdraw with prejudice its claims related to the Insurance Agreements, the Escrow and the existing letter(s) of credit ("Existing Letters of Credit") issued on behalf of JPMC to Lumbermens in connection with the Insurance Agreements; and

(c) as of the Consummation Date, be deemed to have released and forever discharged the Debtors, the Debtors' Estates and the Non-Debtor Affiliates and all of their affiliates, subsidiaries, officers, directors, partners, employees, agents, attorneys, shareholders, successors, assigns, and other representatives from any liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, in contract, in tort or otherwise that they have, whether or not now or heretofore known, suspected, or claimed against them relating to the Insurance Agreements, the Existing Letters of Credit, the Return Premium, the Escrow, the Subrogation Recoveries or the Policy Rights. Except for the claims released and discharged in this Section 4(c), notwithstanding anything contained in this Section 4(c) or elsewhere in this Agreement to the contrary, nothing in this Agreement shall release or discharge, or have the effect of releasing or discharging, any of the claims and causes of action asserted in JPMorgan Chase

Bank, N.A. v. Washington Mutual, Inc., et al., Adv. Proc. No. 09-50551 (MFW) (Bankr. D. Del.); Washington Mutual, Inc., et al. v. JPMorgan Chase Bank, N.A., et al., Adv. Proc. No. 09-50934 (MFW) (Bankr. D. Del.); or Washington Mutual, Inc., et al. v. Federal Deposit Insurance Corporation, et al., Case No. 09-cv-00533 (RMC) (D.D.C.).

5. As of the Consummation Date, the Debtors, the Debtors' Estates and the Non-Debtor Affiliates shall be deemed to have released and forever discharged JPMC and all of their affiliates, subsidiaries, officers, directors, partners, employees, agents, attorneys, shareholders, successors, assigns, and other representatives from any liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, in contract, in tort or otherwise that they have, whether or not now or heretofore known, suspected, or claimed against them relating to the Insurance Agreements, the Existing Letters of Credit, the Return Premium, the Escrow, the Subrogation Recoveries or the Policy Rights. Except for the claims released and discharged in this Section 5, notwithstanding anything contained in this Section 5 or elsewhere in this Agreement to the contrary, nothing in this Agreement shall release or discharge, or have the effect of releasing or discharging, any of the claims and causes of action asserted in JPMorgan Chase Bank, N.A. v. Washington Mutual, Inc., et al., Adv. Proc. No. 09-50551 (MFW) (Bankr. D. Del.); Washington Mutual, Inc., et al. v. JPMorgan Chase Bank, N.A., et al., Adv. Proc. No. 09-50934 (MFW) (Bankr. D. Del.); or Washington Mutual, Inc., et al. v. Federal Deposit Insurance Corporation, et al., Case No. 09-cv-00533 (RMC) (D.D.C.).

6. Except as provided for herein, as of the Consummation Date, the Debtors and the Non-Debtor Affiliates shall be deemed to have released and forever discharged Lumbermens and all its affiliates, subsidiaries, officers, directors, partners, employees, agents, attorneys, shareholders, successors, assigns, and other representatives from any liability for any and all

claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, in contract, in tort or otherwise that they have, whether or not now or heretofore known, suspected, or claimed against them relating to the Insurance Agreements, the Existing Letters of Credit, the Return Premium, the Escrow, the Subrogation Recoveries or the Policy Rights; provided, however, Lumbermens will continue to defend and pay all claims insured under the Policies in accordance with the terms of the Policies and the applicable law.

7. Except as provided for herein, as of the Consummation Date, Lumbermens shall be deemed to have released and forever discharged the Debtors, the Debtors' estates and each of the Non-Debtor Affiliates and each of their officers, directors, employees, agents, attorneys, successors, assigns, and other representatives from liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, whether or not now or heretofore known, suspected, or claimed against them relating to the Insurance Agreements, the Existing Letters of Credit, the Return Premium, the Escrow, the Subrogation Recoveries or the Policy Rights.

8. To the extent required under the Insurance Agreements, JPMC, the Debtors and the Non-Debtor Affiliates will continue to cooperate with Lumbermens and provide Lumbermens with the necessary information required under the Insurance Agreements, including, but not limited to, providing claims information and documentation. JPMC, the Debtors and the Non-Debtor Affiliates will promptly upon written request from Lumbermens provide Lumbermens with the information it needs to conduct premium audits for the Policies.

9. This Agreement shall be interpreted and governed by the laws of the State of Illinois without regard to principles of conflicts of law. In the event that this paragraph is deemed unenforceable in any judicial, arbitration or governmental proceeding, the remaining provisions of this Agreement shall remain in full force and effect.

10. Each Party hereto shall have the right at any time to enforce the provisions of this Agreement in strict accordance with the terms hereof, notwithstanding any conduct or custom on the part of such Party in refraining from so doing at any time or times. The failure of any Party at any time or times to enforce its rights under such provisions shall not be construed as having created a custom in any way or manner contrary to specific provisions of this Agreement or as having in any way or manner modified or waived the same.

11. Any notices or consents required or permitted by this Agreement shall be in writing and shall be deemed delivered if delivered in person or if sent by fax or certified mail, postage prepaid, return receipt requested, as follows, unless such address is changed by written notice hereunder:

If to Lumbermens

Gerald C. Pluard, Jr.  
Associate General Counsel  
Kemper Insurance Companies  
One Kemper Drive  
Long Grove, IL 60049  
Phone: 847-320-4088  
Fax: (847) 320-4202  
[jpluard@kemperinsurance.com](mailto:jpluard@kemperinsurance.com)

If to the Debtors and  
the Non-Debtor Affiliates:

Chad Smith  
Washington Mutual, Inc.  
1301 Second Avenue, WMC 3601  
Seattle, WA 98101  
Phone: 206.432.8731  
Fax: 206.432.8879  
[chad.smith@wamuinc.net](mailto:chad.smith@wamuinc.net)



With a copy to:

David R. Berz  
Weil, Gotshal & Manges LLP  
1300 I Street, N.W., Suite 900  
Washington, D.C. 20005  
Phone: 202.682.7190  
Fax: 202.857.0940  
[david.berz@weil.com](mailto:david.berz@weil.com)

If to JPMC:

Roberta Martoza  
JPMorgan Chase Bank, N.A.  
Corporate Insurance Services  
4 New York Plaza (12<sup>th</sup> Floor)  
New York, NY 10004-2413  
Phone: 212.623.3268  
Fax: 212.623.3289  
[roberta.l.martoza@chase.com](mailto:roberta.l.martoza@chase.com)

With a copy to:

Berrie Martinis  
Assistant General Counsel  
JPMorgan Chase & Co.  
1301 Second Avenue, 13<sup>th</sup> Floor  
Mailstop, WA1-3449  
Seattle, WA 98101  
Phone: 206-500-4427  
Fax: 206.377.0078  
[berrie.martinis@chase.com](mailto:berrie.martinis@chase.com)

12. JPMC warrants that:

(a) It has been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) It is duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) It has voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

13. The Debtors and the Non-Debtor Affiliates warrant that:

(a) They have been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) Upon entry of the Approval Order, they will be duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) They have voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

14. Lumbermens represents and warrants that:

(a) It has been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) It is duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) It has voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

15. This Agreement contains the entire Agreement between the Parties as respects its subject matter. All discussions and Agreements previously entertained between the Parties concerning the subject matter of the Agreement are merged into this Agreement. This Agreement may not be modified or amended, nor any of its provisions waived, except by an instrument in writing, signed by all Parties hereunder.

16. This Agreement and any amendment hereto may be executed in several counterparts and by each Party on separate counterpart, each of which, when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the Party against whom enforcement is sought. A facsimile signature shall be treated as an original signature.

17. This Agreement was negotiated and drafted with full participation of the Parties and their respective counsel. In the event that it is determined that any ambiguity exists in this

Agreement, any such ambiguity shall not be resolved or otherwise construed against any particular Party, but rather shall be resolved by a fair reading of the intent of the Parties as established herein.

18. If any provision of this Agreement is found to be contrary to law or void, the remainder of the Agreement shall be considered valid and enforceable and shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

19. This Agreement shall be binding upon all successors and assigns of each of the Parties to the Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and date first written above.

**LUMBERMENS MUTUAL CASUALTY WASHINGTON MUTUAL, INC.  
COMPANY**

By: 

Name: Gerald E PWARD JR

Its: Associate General Counsel

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**JPMORGAN CHASE BANK, N.A.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**WMI INVESTMENT CORP.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and date first written above.

**LUMBERMENS MUTUAL CASUALTY WASHINGTON MUTUAL, INC. COMPANY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**JPMORGAN CHASE BANK, N.A.**

**WMI INVESTMENT CORP.**

By: Roberta Martozer

By: \_\_\_\_\_

Name: Roberta Martozer

Name: \_\_\_\_\_

Its: Senior Vice President  
Corporate Insurance  
Services

Its: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and date first written above.

**LUMBERMENS MUTUAL CASUALTY COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

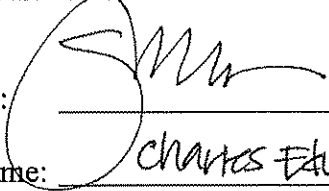
**JPMORGAN CHASE BANK, N.A.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

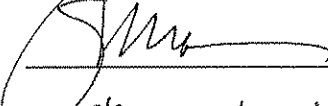
**WASHINGTON MUTUAL, INC.**

By:  \_\_\_\_\_

Name: Charles Edward Smith

Its: Executive Vice President

**WMI INVESTMENT CORP.**

By:  \_\_\_\_\_

Name: Charles Edward Smith

Its: Senior Vice President

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	X	
<i>In re</i>	:	Chapter 11
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	:	Case No. 08-12229 (MFW)
Debtors.	:	(Jointly Administered)
	:	Hearing Date: June 3, 2010 at 10:30 a.m. (ET)
	:	Objection Deadline: May 27, 2010 at 4:00 p.m. (ET)

**NOTICE OF MOTION OF DEBTORS PURSUANT TO SECTION 105(a)  
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019(a)  
FOR APPROVAL OF SETTLEMENT WITH LUMBERMENS MUTUAL  
CASUALTY COMPANY, AMERICAN MOTORISTS INSURANCE COMPANY,  
AMERICAN MANUFACTURING MUTUAL INSURANCE COMPANY, AMERICAN  
PROTECTION INSURANCE COMPANY AND JPMORGAN CHASE BANK, N.A.**

PLEASE TAKE NOTICE that, on May 7, 2010, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the **Motion of Debtors Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a) for Approval of Settlement with Lumbermens Mutual Casualty Company, American Motorists Insurance Company, American Manufacturing Mutual Insurance Company, American Protection Insurance Company and JPMorgan Chase Bank, N.A.** (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3<sup>rd</sup> 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, 3<sup>rd</sup> Floor,

---

<sup>1</sup> 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 925 Fourth Avenue, Seattle, Washington 98104.

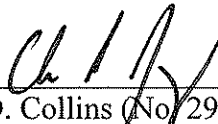
Wilmington, Delaware 19801, and served upon and received by the undersigned counsel for the Debtors on or before **May 27, 2010 at 4:00 p.m. (Eastern Daylight Time)**.

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 Court, 824 Market Street, 5th Floor, Courtroom 4, Wilmington, Delaware 19801 on **June 3, 2010 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 7, 2010  
Wilmington, Delaware

**RICHARDS, LAYTON & FINGER, P.A.**



---

Mark D. Collins (No. 2981)  
Chun I. Jang (No. 4790)  
Drew G. Sloan (No. 5069)  
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*



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

In re:

WASHINGTON MUTUAL, INC.  
*et al.*,

Debtors.

Chapter 11

Case No. 08-12229 (MFW)

(Jointly Administered)

**Re: Docket No. 3447**

**AMENDED VERIFIED STATEMENT OF LOWENSTEIN  
SANDLER PC PURSUANT TO FED.R.BANKR.P. 2019(a)**

In compliance with Fed.R.Bankr.P. 2019(a), Lowenstein Sandler PC (“Lowenstein”), as attorneys for the parties listed in paragraph 1, *infra*, makes the following disclosures:<sup>1</sup>

1. Lowenstein has been retained by each of the following creditors in connection with this matter:

A. Ontario Teachers Pension Plan Board, individually (“Ontario”) and as lead plaintiff in the consolidated putative securities class action entitled *In re Washington Mutual Securities Litigation*, Case No. C08-387 (MJP)(W.D. Wash.) (the “Ontario Securities Litigation”), on behalf of a putative securities class of persons who purchased or otherwise acquired securities issued by Washington Mutual, Inc. (“WMI”) and its subsidiaries between October 19, 2005 and July 23, 2008 (the “Ontario Class”).

B. Brockton Contributory Retirement System (“Brockton”).

C. Metzler Investment GmbH (“Metzler”) and Walden Management Co. Pension Plan (“Walden”) each individually and as lead plaintiffs in the consolidated putative securities class action entitled *South Ferry LP #2, Individually and on Behalf of All Others Similarly Situated v. Killinger*, Case No. C04-1599 (W.D. Wash.) (the “Metzler Securities

---

<sup>1</sup> Lowenstein Sandler PC previously filed a Verified Statement pursuant to Fed.R.Bankr.P. 2019(a) (Docket No. 543) and Supplement to Verified Statement pursuant to Fed.R.Bankr.P. 2019(a) (Docket No. 1857), both of which are incorporated herein.

Litigation”) on behalf of a putative securities class of all persons who purchased the common stock of WMI between April 15, 2003 and June 28, 2004, inclusive (the “Metzler Class”).

D. South Ferry LP #2 (“South Ferry”).<sup>2</sup>

E. Policemen’s Annuity and Benefit Fund of the City of Chicago, (“Chicago PABF”) and Doral Bank Puerto Rico (“Doral”), each individually and as lead plaintiffs in the consolidated securities class action entitled *Boilermakers National Annuity Trust Fund, on Behalf of Itself and All Others Similarly Situated v. WAMU Mortgage Pass-Through Certificates, Series AR1, et al.*, Case No. C09-0037 (MJP) (W.D. Wash.) (the “Boilermakers Securities Litigation”), on behalf of a putative class of all persons (the “Boilermakers Class”) who purchased or otherwise acquired interests in specific Washington Mutual Pass-Through Trusts pursuant to two (2) Registration Statements and accompanying Original Basic Prospectuses filed with SEC by Washington Mutual Asset Acceptance Corporation on December 30, 2005, as amended, and pursuant to which \$47.25 billion of Wa-Mu Mortgage Pass-Through Certificates were issued in a series of 36 public offerings between January 26, 2006 and June 26, 2007, and were sold to members of the Boilermakers Class.

2. The allegations of the complaints filed in the Ontario Securities Litigation, the Metzler Securities Litigation and the Boilermakers Securities Litigation form the basis of the respective class and individual securities claims. The grounds of such claims are for violations of certain federal securities laws, including §§10(b) and 20(a) of the Securities Exchange act of 1934, and Rule 10b-5 promulgated thereunder, and/or §§11, 12(a)(2) and 15 of the Securities Act of 1933, and/or certain Washington State statutes, all as more specifically described in the respective complaints.

3. Ontario, individually and as lead plaintiff in the Ontario Securities Litigation, and Brockton, individually, and Metzler and Walden, individually and as lead plaintiffs in the Metzler Securities Litigation, and South Ferry, individually, and Chicago PABF and Doral,

---

<sup>2</sup> South Ferry was initially appointed one of the Lead Plaintiffs in the Metzler Securities Litigation, but on March 15, 2010, South Ferry withdrew as a Lead Plaintiff.

individually and as lead plaintiffs in the Boilermakers Securities Litigation, and the Ontario Class, the Metzler Class and the Boilermakers Class are creditors, equity holders and parties in interest by virtue of the fact that they lost millions of dollars as a result of the purchases or acquisitions of WMI securities as described in the respective Securities Litigations.

4. The lead plaintiffs in each of the respective class actions were appointed by orders of the United States District Court for the Western District of Washington (the “Washington District Court”). As such, the lead plaintiffs filed proofs of claim on behalf of the respective class and, along with non-lead plaintiffs, filed individual claims, as follows:

<u>Creditor</u>	<u>Claim No.</u>	<u>Amount</u>
Ontario Class	2759	Not yet determined
Ontario	2761	Not yet determined
Brockton	2763	Not yet determined
Metzler Class	3448	Not yet determined <sup>3</sup>
Metzler	2809	Not yet determined
Walden	2808	Not yet determined
South Ferry	3087	Not yet determined
Boilermakers Class	3812	\$39,837,106,891.00 <sup>4</sup>

5. The Washington District Court approved the retention of the following firms as lead counsel (“Lead Counsel”) in the respective actions: (i) Bernstein Litowitz Berger & Grossmann LLP, with offices at 1285 Avenue of the Americas, New York, NY 10019, in the Ontario Securities Litigation; (ii) Milberg LLP, with offices at One Pennsylvania Plaza, New York, NY 10119, in the Metzler Securities Litigation; and (iii) Scott+Scott LLP, with offices at 29 West 57th Street, New York, NY 10110, and Cohen Milstein Sellers & Toll PLLC, with offices at 150 East 52nd Street, New York, NY 10022, in the Boilermakers Securities Litigation.

<sup>3</sup> Metzler and Walden reserve the right to amend Claim No. 3448 to reflect that South Ferry is no longer a lead plaintiff in the Metzler Securities Litigation.

<sup>4</sup> With the recent appointment of Doral as co-lead plaintiff with Chicago PABF, the parties reserve the right to amend this proof of claim to reflect the claims of all of the members of the amended Boilermakers Class.

Bull & Lifshitz LLP, with offices at 18 East 41<sup>st</sup> Street, New York, NY 10017, is counsel to South Ferry.

6. Lowenstein, with offices at 65 Livingston Avenue, Roseland, NJ 07068, was retained by each of the Lead Counsel as bankruptcy counsel, and Cross & Simon LLC, with offices at 913 N. Market Street, Wilmington, DE 19801, was retained as local bankruptcy counsel, to represent the Lead Plaintiffs, the individuals and the respective putative Classes in these bankruptcy proceedings.

7. Lowenstein has also been retained by AT&T Corp. ("AT&T") and SBC Global Services, Inc., d/b/a AT&T Global Services ("SBC") in these matters.

8. AT&T and SBC, having offices at One AT&T Way, Room 3A218, Bedminster, NJ 07921, are pre-petition creditors herein and have filed the following claims against the Debtors for telecommunications services provided to the Debtors:

<u>Creditor</u>	<u>Claim No.</u>	<u>Amount</u>
AT&T	3725	\$8,961,792.58
AT&T	3759	125,428.31
SBC	123	1,066,589.72
SBC	3789	341.64
SBC	3790	1,645.12

Dated: May 7, 2010  
Wilmington, Delaware

CROSS & SIMON LLC

By: /s/ Christopher P. Simon  
Christopher P. Simon (No. 3697)  
P.O. Box 1380  
913 North Market Street, 11<sup>th</sup> Floor  
Wilmington, Delaware 19899-1380  
302.777.4200 (Telephone)  
302.777.4224 (Facsimile)  
[csimon@crosslaw.com](mailto:csimon@crosslaw.com)

*Counsel to Ontario, Brockton, Metzler, Walden, South Ferry, Chicago PABF and Doral, individually and as lead plaintiff, as the case may be, and the respective putative Classes*

and

Michael S. Etkin, Esq. (ME 0570)  
Ira M. Levee, Esq. (IL 9958)  
LOWENSTEIN SANDLER PC  
65 Livingston Avenue  
Roseland, New Jersey 07068  
973.597.2500 (Telephone)  
973.597.2400 (Facsimile)

*Counsel to Ontario, Brockton, Metzler, Walden, South Ferry, Chicago PABF and Doral, individually and as lead plaintiff, as the case may be, and the respective putative Classes and AT&T and SBC*

I verify under penalty of perjury that the facts set forth in this Amended Verified Statement are true and correct.

/s/ Ira M. Levee

Ira M. Levee

**CERTIFICATE OF SERVICE**

I, Christopher P. Simon, hereby certify that on this 7th day of May, 2010, I caused copies of the *Amended Verified Statement of Lowenstein Sandler PC Pursuant to Fed.R.Bankr.P. 2019(a)* to be served on the following individuals by first class mail.

Marcia L. Goldstein, Esq.  
Brian S. Rosen, Esq.  
Michael F. Walsh, Esq.  
Weil Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153

David B. Stratton, Esq.  
Evelyn J. Meltzer, Esq.  
Pepper Hamilton LLP  
Hercules Plaza Ste 5100  
1313 N Market St  
Wilmington, DE 19801

Chun I Jang, Esq.  
Mark D. Collins, Esq.  
Richards, Layton & Finger, P.A.  
920 North King Street  
Wilmington, DE 19801

William P Bowden, Esq.  
Ashby & Geddes, P.A.  
500 Delaware Avenue, 8th Floor  
PO Box 1150  
Wilmington, DE 19899

Fred S. Hodara, Esq.  
Akin Gump Stauss Hauer & Feld LLP  
One Bryant Park  
New York, NY 10036

Stephen D Susman, Esq.  
Seth D Ard, Esq.  
Susman Godfrey LLP  
654 Madison Ave 5th Fl  
New York, NY 10065

/s/ Christopher P. Simon  
Christopher P. Simon (No. 3697)