

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

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

**MOTION OF THE CONSORTIUM OF TRUST PREFERRED
SECURITY HOLDERS TO COMPEL DEBTORS TO PRODUCE DOCUMENTS**

The consortium of holders of interests subject to treatment under Class 19 of the Debtors’ recently-filed Amended Plan (the “TPS Consortium”¹), by and through its undersigned counsel, hereby files this motion to compel Debtors to produce documents responsive to the First Request for Production of Documents of the Trust Preferred Security Holders to Debtors (attached hereto as Exhibit A), and to produce such documents in an expedited manner. In support of this Motion, the TPS Consortium respectfully represents as follows:

PRELIMINARY STATEMENT

1. Since the announcement of the purported “Global Settlement” that forms the basis of the Plan, the Debtors have indicated to the Court and parties in interest that they seek a quick and fair resolution to these Cases. But, their actions outside the presence of the Court belie such sentiments. More specifically, the Debtors have chosen to engage in delay tactics aimed at furthering their efforts to achieve confirmation of the Plan (and Global Settlement) so as to deliver significant benefits and/or valuable releases to JPMC, insiders and other select parties.

¹ The TPS Consortium is made up of holders of interests (as set forth more fully in the group’s Rule 2019 statement [Docket No. 3546], as such may be amended) proposed by



The latest manifestation of these tactics is the Debtors' discovery "gamesmanship" designed to deprive the TPS Consortium of documents critical to a fair assessment and analysis of the Disclosure Statement and Plan.

2. More specifically, in response to requests by counsel for the TPS Consortium, the Debtors initially agreed, in late April, to provide certain documents without the need to engage in formal discovery. And, the Debtors indicated that they were gathering the requested documentation and would be prepared to produce those documents early in the week of May 10, 2010. But, rather than produce such documents as agreed, the Debtors engaged in one stall tactic after another, ranging from suddenly demanding acceptance of non-standard confidentiality restrictions to waiting days to respond to inquiries. The Debtors also rebuffed efforts by the TPS Consortium to reach an agreement regarding document production, including the TPS Consortium's suggestion that the production be made subject to the stipulated Protective Order entered by this Court on February 18, 2010 [Adv. Proc. No. 09-50551, Docket No. 179], as well as the TPS Consortium's requests to meet and confer to discuss other options.

3. In the end, the Debtors' promises to produce documents in response to informal requests proved empty and the TPS Consortium was forced to serve a formal document discovery request in connection with its objection to the pending Disclosure Statement. In response, the Debtors again waited until the last minute to inform the TPS Consortium that the Debtors would not even respond substantively to the TPS Consortium's discovery requests until at least June 10 – well after the currently-scheduled May 19 hearing to consider the Disclosure Statement and approximately two weeks in advance of the proposed deadline to object to confirmation of the Plan.

the Debtors to be treated under Class 19 of the Amended Plan (described in the Amended

4. Now, with the hearing to consider the Disclosure Statement only days away (assuming the Debtors intend to proceed with that hearing on May 19), the TPS Consortium is left with no recourse other than to seek the Court's assistance in obtaining documents critical to its preparation for the Disclosure Statement hearing – substantially all of which documents were represented by the Debtors to have already been gathered and/or otherwise are capable of production without little or no additional efforts by the Debtors.

BACKGROUND

5. The TPS Consortium, through counsel, initially sought the cooperation of the Debtors to obtain certain documents without the need for engaging in formal discovery. On April 26, 2010, lead counsel for the TPS Consortium spoke with Brian Rosen, Esq., counsel for Debtors, regarding such informal discovery. During that telephone conversation, Mr. Rosen agreed to produce documents concerning the Trust Preferred Securities and related topics. Later that same day, counsel for the TPS Consortium emailed a list of documents the TPS Consortium sought to review. See Email and List of Documents attached as Exhibit B.

6. In particular, the TPS Consortium is seeking further information regarding the current status of the Trust Preferred Securities, the circumstances of the purported transfers of those securities to and from the Debtors (including the implications for the Amended Disclosure Statement and Amended Plan, inter alia, if the so-called “conditional exchange” did not occur or should be deemed not to have occurred, and such Trust Preferred Securities are not part of the Debtors' estates), and other factors relevant to an informed assessment of the Plan and Global Settlement pursuant to which the Trust Preferred Securities would be delivered to JPMC (along with other problematic aspects of the Plan). The TPS Consortium also seeks to review

Plan and Amended Disclosure Statement as the “REIT Series”).

documents previously produced in Rule 2004 discovery, which documents the Debtors purportedly considered before deciding to enter into the purported Global Settlement and to provide substantial additional value and/or releases to JPMC, insiders and others. All of the requested documents are directly related and relevant to the issues raised in the TPS Consortium's subsequently-filed Objection to the Disclosure Statement. [Docket No. 3694].

7. On April 29, Debtors' counsel informed counsel for the TPS Consortium that the Debtors were gathering information and documents responsive to the informal request and that such documents would be made available by way of an Intralinks website. The Debtors did not claim that gathering such documents would be difficult, nor did the Debtors indicate any burden to the estates to do so. Later that day, despite the existence of a previously stipulated and endorsed Protective Order governing the production of documents, Debtors' counsel transmitted to counsel for the TPS Consortium a proposed non-disclosure agreement ("NDA") that contained a number of onerous terms. See Exhibit C.

8. The proposed NDA sought to impose numerous burdensome conditions on the TPS Consortium and their counsel, conditions that are not typical to discovery agreements between debtors-in-possession and parties-in-interest or protective orders. In particular, the proposed NDA: (a) would not allow the TPS Consortium or their counsel to challenge any confidentiality designations; and (b) would require the TPS Consortium to seek prior permission from the Debtors and/or this Court before offering any documents into evidence or utilizing them in any way with respect to these Cases (rather than the more standard requirement to seek to file or use such materials under seal, which, ultimately, still leaves the Court as the final arbiter of whether the confidentiality designations are appropriate and/or should be given effect).

9. Counsel for the TPS Consortium nonetheless provided responsive comments to the proposed NDA the next day, April 30. See Exhibit D. Counsel for the Debtors did not respond until May 3, at which time it was indicated that counsel was too busy to respond substantively to the TPS Consortium's comments. See Exhibit E.

10. On May 4, Debtors' counsel finally responded, rejecting substantially all of the substantive changes proposed by the TPS Consortium. See Exhibit F. By voicemail the next day, May 5, Counsel for the Debtors stated that the Debtors were not willing to negotiate on the terms of the proposed NDA. In response, the TPS Consortium requested a "meet and confer" call to attempt to resolve the open issues and also offered to treat all documents in accordance with the existing Protective Order that had been agreed to by all parties and endorsed by this Court on February 18, 2010. See Exhibit G. The TPS Consortium's request for a meet and confer and suggestion regarding use of the Protective Order were both ignored.

11. At the omnibus hearing on May 5, counsel for the Debtors repeatedly referenced a finite set of documents (approximately 70,000 pages) that had been produced to and reviewed by the Debtors and other parties in interest in connection with Rule 2004 discovery of JPMC. Also at the May 5, 2010 hearing, the Court cautioned the Debtors, "I don't want to hear about obstacles being placed in their path to getting full and open access to that information, whether it's documentary or interviews..." *May 5, 2010 Hearing Transcript* p. 99. The Court also stated, "I'm strongly urging the committee and the debtor to provide all the information to the equity committee without testing the Court's patience with discovery motions." Id. at 100. The TPS Consortium is not aware of how the Debtors are dealing with requests from the Equity Committee, but the TPS Consortium was deliberately led to believe that Debtors would be cooperative, only to be stonewalled.

12. On May 6, 2010, Debtors' Counsel stated that the TPS Consortium's requests were still under consideration and that Mr. Rosen could not be reached to discuss the issue further. Shortly after the close of business on Friday, May 7, Debtors provided via email a further marked-up version of the proposed NDA. That version still contained unreasonable and non-standard provisions relating to the TPS Consortium's ability to make use of the documents to be produced by the Debtors. See Exhibit H. The email further stated that documents were being gathered and would be available for production early in the week of May 10. However, the requests to meet and confer and the offer to operate under the Court's Protective Order were again ignored.

13. After two weeks worth of delay, the TPS Consortium had no choice but to proceed with formal discovery. On May 11, having served its objection to the Disclosure Statement, the TPS Consortium served the Requests attached as Exhibit A. Because Debtors had represented documents were to have been available for production earlier in the week of May 10 and other documents (e.g., those related to prior Rule 2004 discovery) were already segregated and had already been shared with other parties in interest, the TPS Consortium requested that documents be produced by 9:00 a.m. on May 14, in order to have access to such documents in advance of the May 19 disclosure statement hearing.

14. Continuing the pattern of delay, rather than turn over the documents the Debtors had agreed to produce informally earlier in the week and without reaching out to the TPS Consortium to attempt to resolve the issue, at exactly 9:00 a.m. on May 14, Debtors served a three-paragraph Response and Objection to the TPS Consortium's Document Requests. In that Response and Objection, Debtors stated they would not provide any substantive response or documents until June 10, 2010 -- three weeks after the hearing on the Disclosure Statement and

just two weeks before the currently-contemplated plan objection deadline. Debtors' Response and Objection is attached as Exhibit I. In neither the Response and Objection nor any prior communications have the Debtors challenged the relevance of the information requested by the TPS Consortium or raised any other substantive objections.

15. On May 14, counsel for the TPS Consortium again sought to confer with Debtors' counsel via telephone to resolve the current dispute, but received no return telephone call. Having received no response by the close of business on Friday, May 14, the TPS Consortium's counsel sent the letter attached as Exhibit J. Debtors' counsel still has provided no response, and continues to refuse to produce any responsive documents, including those documents that were represented to be ready for production at the beginning of last week. Debtors further refuse to produce any documents produced or received in connection with Rule 2004 discovery, which presumably would require mere duplication of the disks on which those documents were already produced.

16. The requested documents go to the heart of the TPS Consortium's concerns regarding the information to be provided to stakeholders in the Disclosure Statement. As such, the Debtors' stonewalling and refusal to produce such documents prejudices the TPS Consortium's ability to present argument and evidence in connection with the Court's consideration of the adequacy of the Disclosure Statement. Ultimately, if the Court allows solicitation of the Plan, the requested documents will also likely be critical to the TPS Consortium's ability to challenge confirmation of the Plan, and the TPS Consortium should be provided immediate access to such documents. Other than the Debtors' apparent tactical decision to try to block review of such documents, or improperly restrict their use, or simply to sandbag the TPS Consortium, there is no logic to the Debtors' positions or actions.

ARGUMENT

17. The rights of the members of the TPS Consortium have been threatened by the proposed Plan, which is predicated upon the Court's approval of the purported Global Settlement. Among many problematic features, the purported Global Settlement attempts to: (a) deliver ownership of the Trust Preferred Securities to JPMC, notwithstanding numerous questions as to the true current ownership of those assets and whether they are or should be even considered part of the Debtors' estates; (b) provide broad releases to JPMC, insiders and others, despite the Debtors' prior representations as to the validity and vitality of claims against certain of such parties; and (c) forcibly release potentially valuable claims of stakeholders, including claims held by members of the TPS Consortium, who have not participated in any discussions related to the Global Settlement and have not consented to such releases. As set forth in the TPS Consortium's objection to the Disclosure Statement, the Debtors' sudden acquiescence to the demands of JPMC and others raises significant questions as to what the Debtors reviewed and/or considered before surrendering (after nearly sixteen months of purported fighting on behalf of stakeholders) and how estate fiduciaries cured numerous conflicts of interest before agreeing to seek non-consensual releases in favor of JPMC and other third parties.² Such issues are directly relevant to stakeholders' consideration of the proposed Plan, and therefore, must be addressed in connection with the Disclosure Statement.

² A more detailed discussion of the TPS Consortium's interests and objections is set forth in the *Objection of the TPS Consortium to Debtors' Motion for Approval of Disclosure Statement* [Docket No. 3694]. The Debtors, late last night, filed an amended Disclosure Statement and Plan. While the TPS Consortium's review of those documents is ongoing, it would appear that substantially all of the concerns raised in its original objection remain extant.

18. As a party-in-interest to these Cases, the TPS Consortium is entitled to obtain discovery under Federal Rules of Civil Procedure 26 and 34, made applicable pursuant to Rules 9014, 7026 and 7034 of the Federal Rule of Bankruptcy Procedure.

19. In light of the above-described dilatory actions by the Debtors, the TPS Consortium respectfully requests that this Court order Debtors to produce immediately: (a) all documents that were previously produced to the Debtors in connection with Rule 2004 discovery (which documents have apparently already been shared with other parties in interest); and (b) all other documents previously requested by the TPS Consortium, which documents the Debtors represented were ready to be produced by the beginning of the week of May 10. The TPS Consortium agrees to treat such documents in accordance with the protective orders in place in these proceedings. Such documents are critical to an informed assessment of the Plan and Global Settlement in connection with the Disclosure Statement, which is currently set for Court consideration on May 19.

20. Ordering an expedited response is well within the discretion of the Court. See Stich v. United States, 730 F.2d 115, 117-18 (3d Cir. 1984) (noting that the conduct of discovery is left to the sound discretion of trial courts); Integra Bank N.A. v. Pearlman, 2007 U.S. Dist. LEXIS 7781, 4-8 (M.D. Fla. Feb. 2, 2007) (noting that Federal Rules 26(d) and 34(b) expressly provide courts with the ability to shorten the time for a party to respond to discovery and ruling that the plaintiff demonstrated the need for a shortened period because documents may be destroyed absent such an order); Semitool, Inc. v. Tokyo Electron Am., 208 F.R.D. 273, 276 (N.D. Cal. 2002) (“Good cause may be found where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.”); Arista Records, L.L.C. v. Does, 2008 U.S. Dist. LEXIS 66377, *3 (E.D. Mo. Aug. 29, 2008)

“Courts will ... allow expedited discovery where the party establishes good cause, i.e. the need for expedited discovery, in consideration of administration of justice, outweighs prejudice to responding party.”); Monsanto Co. v. Woods, 250 F.R.D. 411, 413 (E.D. Mo. 2008) (discussing two standards for determining whether to expedite discovery, and holding that the “good cause” standard is appropriate to apply, rather than a modified injunction standard, because plaintiffs made reasonable attempt to gather relevant evidence with defendant’s cooperation and information subject to discovery could be subject to being lost or destroyed with time). Good cause exists for requiring an expedited response because the TPS Consortium would be prejudiced by not receiving responses until after the Disclosure Statement hearing and very shortly before the deadline for filing Plan objections. Further, because the requested documents have purportedly been gathered already by the Debtors or, in the case of Rule 2004 discovery previously received and shared by the Debtors with other case parties, are readily identifiable, such an Order would not present any burden to the Debtors.

RESERVATION OF RIGHTS

21. The TPS Consortium expressly reserves all of its rights to request further relief after receiving the Debtors’ response to the TPS Consortium’s Request for Production.

CONCLUSION

22. The Debtors should not, through engaging in dilatory discovery tactics, be allowed to prevent the TPS Consortium from demonstrating to the Court significant deficiencies in the Disclosure Statement, Plan and Global Settlement. Rather, Debtors should be required to produce the documents that they claimed to have already prepared for production and documents that merely require simple copying of disks.

WHEREFORE, the TPS Consortium respectfully requests that the Court: (a) compel the Debtors to: (1) immediately produce documents previously produced and/or received in connection with Rule 2004 Discovery; and (2) immediately produce documents already prepared for production as represented by Debtors' counsel; and (b) grant such other and further relief as is warranted.

Dated: Wilmington, Delaware
May 17, 2010

Respectfully submitted,

CAMPBELL & LEVINE LLC

/s/ Marla Rosoff Eskin

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Counsel for the TPS Consortium

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

	)	Chapter 11
In re:)	
	)	Case No. 08-12229 (MFW)
WASHINGTON MUTUAL, INC., <i>et al.</i> ,)	
	)	Jointly Administered
Debtors)	
	)	Objection Deadline: May 18, 2010 @ 4:00 p.m.
	)	Hearing Date: May 19, 2010 @ 11:30 a.m.
)	

**NOTICE OF MOTION OF THE CONSORTIUM OF TRUST PREFERRED SECURITY
HOLDERS TO COMPEL DEBTORS TO PRODUCE DOCUMENTS**

TO: All Parties on the Attached List

PLEASE TAKE NOTICE, that on May 17, 2010, the Consortium of Trust Preferred Security Holders filed and served the attached **Motion To Compel Debtors to Produce Documents** (the “Motion”), with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that any responses to the Motion must be in writing and filed with the Bankruptcy Court on or before **May 18, 2010 at 4:00 p.m.**

PLEASE TAKE FURTHER NOTICE that at the same time, you must also serve a copy of the response upon the undersigned counsel, so that it is received on or before **May 18, 2010 at 4:00 p.m.**

IN THE EVENT THAT ANY OBJECTION OR RESPONSE IS FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, A HEARING ON THE MOTION WILL BE HELD ON MAY 19, 2010 AT 11:30 A.M. BEFORE THE HONORABLE MARY F. WALRATH AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6th FLOOR, WILMINGTON, DELAWARE 19801.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT
MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER
NOTICE OR HEARING.

Dated: Wilmington, Delaware
May 17, 2010

Respectfully submitted,

CAMPBELL & LEVINE LLC

/s/ Marla Rosoff Eskin

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Counsel for the TPS Consortium

EXHIBIT A

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

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

**FIRST REQUEST OF THE CONSORTIUM OF
TRUST PREFERRED SECURITY HOLDERS TO
THE DEBTORS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, made applicable to these proceedings by Rules 9014, 7026 and 7034 of the Federal Rules of Bankruptcy Procedure, and pursuant to the Local Bankruptcy Rules for the District of Delaware, the Consortium of Trust Preferred Security Holders (the "TPS Consortium"), by and through its undersigned counsel, hereby requests that Washington Mutual Inc. and WMI Investment Corp (together, the "Debtors") in the above-captioned jointly administered chapter 11 cases (the "Chapter 11 Cases"), produce and permit the TPS Consortium to inspect and copy the documents requested herein.

The TPS Consortium requests that the Debtors' response, together with the documents herein requested, be produced at the offices of **Brown Rudnick LLP, One Financial Center, Boston, MA 02111, Attn: Daniel J. Brown, no later than May 14, 2010 at 9:00 a.m.**

DEFINITIONS

The following terms have the meanings indicated below:

1. As used herein, the term “Bankruptcy Code” means title 11 of the United States Code, as amended, 11 U.S.C. §§ 101 *et seq.*

2. As used herein, the term “communication” means any oral or written utterance, notation, or statement of any nature whatsoever between or among two or more persons, by or to whomsoever made, and including, without limitation, correspondence, documents (as defined below), conversations, dialogues, discussions, e-mails, interviews, consultations, agreements, and other understandings.

3. As used herein, the terms “concerning,” “relating to,” “referring to,” or “pertaining to” mean and include all documents that in any manner or form are relevant in any way to or bear upon the subject matter in question, including, without limitation, all documents that contain, record, reflect, evidence, summarize, evaluate, comment upon, transmit, refer to, or discuss that subject matter, or that in any manner state the background of, or were the basis or bases for, or that record, evaluate, comment upon, or were referred to, relied upon, utilized, generated, transmitted, or received in arriving at any conclusion, opinion, estimate, calculation, position, decision, belief, assertion or allegation, or undermine, contradict, or conflict with any conclusion, opinion, calculation, estimate, position, belief, assertion, or allegation, concerning the subject matter in question.

4. As used herein, the term “Disclosure Statement” shall mean the Disclosure Statement for the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, filed on or about March 26, 2010 in the Debtors’ Chapter 11 cases.

5. As used herein, the term “document” means any printed, written, typed, recorded, transcribed, taped, photographic, or graphic matter, however produced or reproduced, including but not limited to: any letter, correspondence, or communication of any sort; film, print or negative of photograph; sound recording, video recording; note, notebook, diary, calendar, minutes, memorandum, contract, agreement, or any amendment thereto; telex, telegram, cable; summary, report or record of telephone conversation, voice mail or voice mail back-up, personal conversation, discussion, interview, meeting, conference, investigation, negotiation, act or activity; projection, work paper, or draft; computer or computer network output or input, hard or floppy disc, electronic mail, magnetic and/or optical medias, archived or back up data on any of these medias, and documents that have been deleted but are recoverable from any of these media; opinion or report of consultant; request, order, invoice or bill of lading; analysis, diagram, map, index, sketch, drawing, plan, chart, manual, brochure, pamphlet, advertisement, circular, newspaper or magazine clipping, press release; receipt, journal, ledger, schedule, bill, or voucher; financial statement, statement of account, bank statement, checkbook, stubs, or register, canceled check, deposit slip, charge slip, tax return (income or other), requisition; file, study, graph, tabulation, and any and all other

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writings and recordings of whatever nature, whether signed or unsigned or transcribed, and any other data compilation from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form. The term “document” also means (a) the original and/or any non-identical original or copy including those with any marginal note or comment, or showing additions, deletions, or substitutions; (b) drafts; (c) attachments to or enclosures with any document; and (d) every document referred to in any other documents.

6. As used herein, the term “Person” means any natural person or any business, legal, or governmental entity or association.

7. As used herein, the term “Plan” means the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, filed on or about March 26, 2010 in the Debtors’ Chapter 11 cases.

8. As used herein, the term “Rule 2004” shall mean Federal Rule of Bankruptcy Procedure 2004.

9. As used herein, the terms “You, ”“Your” or “Debtors” mean and refer to the Debtors and any current or former affiliates or subsidiaries, or any of their members, officers, directors, representatives, employees, agents, consultants, accountants, attorneys, financial advisors, predecessors, successors, assigns and any other person currently or formerly acting or purporting to act on the Debtors’ behalf for any purpose whatsoever.

10. Unless otherwise defined herein, capitalized terms shall bear the meanings ascribed thereto in the Disclosure Statement and/or Plan, as applicable.

INSTRUCTIONS

1. Documents produced in response to the requests contained herein shall be produced in full and unexpurgated form without abbreviation or redaction.

2. The words “and” and “or” are to be construed both conjunctively and disjunctively. The singular form of a noun or pronoun includes the plural form and vice versa. The word “all” shall also include “each of,” and vice versa.

3. For the purposes of the requests, the singular shall be construed to include the plural, and the plural shall be construed to include the singular.

4. You are requested to produce all responsive documents in your possession, custody or control, wherever located, including, without limitation, those in the custody of your representatives, agents, professionals, and affiliates.

5. If any part of the following requests cannot be responded to in full, please respond to the extent possible, specifying the reason(s) for your inability to respond to the remainder and stating whatever information or knowledge you have concerning the portion to which you do not respond.

6. If there are no documents responsive to any particular request, please state so in writing.

7. Where any copy of any document is sought herein, whether a draft or final version, is not identical to any copy thereof by reason of alterations, notes, comments,

initials, underscoring, indication of routing, or other material contained thereon or attached thereto, all such non-identical copies are to be produced separately.

8. Hard copies of all documents should be produced; in addition, copies of all documents available electronically should be delivered on a disk or CD-ROM.

9. A request for any document shall be deemed to include a request for any and all transmittal sheets, cover letters, exhibits, enclosures, or attachments to such document, in addition to the document in its full and unexpurgated form.

10. Documents should be segregated according to the number of the request to which you are responding or produced in the manner they are kept in the ordinary course of business. Documents attached to each other should not be separated.

11. Each request for documents herein includes a request for exact copies of all disks, CDs, DVDs and other removable media containing any information responsive to such request. Electronic records and computerized information should be produced in an intelligible format or together with a sufficient description of the system or program from which each was derived to permit rendering the material legible.

12. If any requested Documents are maintained in digital, electronic, and/or imaged form, production of a copy of the electronically stored information (“ESI”) in digital, electronic, and/or imaged form is hereby requested, along with any information needed to access, search or sort electronic data or Documents.

13. ESI and e-mails (and attachments to emails) produced pursuant to this requests shall be produced in a searchable format with an accompanying index that states the following metadata:

- a. Date created/sent;
- b. Author;
- c. Recipients;
- d. cc – copies; and
- e. bcc – blind copies.

14. If You claim any form of privilege or immunity, whether based on statute or otherwise, as a ground for not responding to a request contained in this Schedule A:

- a. State the nature of the privilege or immunity claimed (i.e., attorney/client, work product, etc.);
- b. State the basis for claiming the privilege or immunity as to the specific information or documents; and
- c. State the date of such document; identify the type of document (i.e., letter, memo, etc.); set forth the subject matter thereof, identify each person who prepared it and each person (if any) who signed it; identify each person to whom it was directed, circulated or shown; and identify each person now in possession of the document.

15. In the event that any document requested herein was formerly in Your possession, custody or control, and has been lost, destroyed or otherwise disposed of, You are requested to furnish a list identifying each such document and stating the following information with respect to each such document:

- a. The document's title, if any, and the nature and subject matter of its contents;

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- b. The identity of the person(s) who prepared or authored the document, and, if applicable, the persons to whom the document was sent or was intended to be sent;
- c. The date on which the document was prepared or transmitted; and
- d. The date on which the document was lost, destroyed or otherwise disposed of, the manner and conditions of and reasons for such destruction or other disposition and the persons requesting and performing the destruction or other disposition.

16. The following requests are to be deemed continuing in nature. In the event You become aware of or acquire additional information relating or referring to any of the following Requests, such additional information is to be promptly produced.

15. Pursuant to Federal Rules 26(b)(1) and 34(b)(2) of the Federal Rules of Civil Procedure, any and all Documents must be produced in the form or forms in which they were originally created, edited, and stored.

DOCUMENTS TO BE PRODUCED

- 1. Copies of each prospectus or other offering materials used to market or solicit interest in the Trust Preferred Securities.
- 2. Any and all documents relating to the Trust Preferred Securities, including, without limitation, the following types of documents referenced in the various prospectuses for the Trust Preferred Securities:
 - a. Limited liability company agreement(s) for WMPF;
 - b. Bylaws and organizational documents for WMPF;

- c. Deposit agreements pertaining to any of WMI, Mellon Investor Services (or any other depository), and Wilmington Trust (Cayman), Ltd. (or any other registrar);
- d. Purchase agreements pertaining to Washington Mutual Preferred Funding (Cayman) I (“WaMu Cayman”), Washington Mutual Preferred Funding Trust I, (together with Washington Mutual Preferred Funding Trust II, Washington Mutual Preferred Funding Trust III, Washington Mutual Preferred Funding Trust IV, “WaMu Delaware”), WMI, Washington Mutual Preferred Funding, and the “Initial Purchasers” set forth in the various prospectuses;
- e. Administration agreements pertaining to WaMu Cayman, WaMu Delaware, Maples Finance Ltd. or any other party set forth in any of the prospectuses;
- f. Custody agreements pertaining to any asset trust related to the Trust Preferred Securities;
- g. Pooling and servicing agreements;
- h. Administrative services agreement pertaining to WMPF, WMB or any other party set forth in the prospectuses;
- i. Trust agreement pertaining to Washington Mutual Home Equity Trust I (a Delaware statutory trust) and any other trust agreements related to the Trust Preferred Securities;
- j. Expense agreements pertaining to WaMu Delaware, WaMu Cayman or WMB;
- k. Exchange agreements pertaining to WaMu Delaware, WaMu Cayman, WMI, and/or Mellon Investor Services, LLC; and/or
- l. Replacement capital covenants.

3. Any and all documents governing or defining the rights of holders of the Trust Preferred Securities, including but not limited to the Wamu Cayman Articles of Association, the WaMu Delaware Articles of Incorporation, each declaration of trust, unit agreement and form of warrant.

4. Any and all documents relating to the current ownership of the Trust Preferred Securities.

5. Any and all documents evidencing collateral, funds or other source against which the Trust Preferred Securities hold or held a liquidation preference.

6. Any and all documents relating to any purported exchange, transfer or other disposition of the Trust Preferred Securities, including any applicable trust register.

7. Any and all documents relating to the Series I, J, L, M and N preferred shares in WMI.

8. Any and all documents relating to the current ownership, control and/or status of WMPF, WaMu Cayman, WaMu Delaware or Washington Mutual Home Equity Trust I.

9. Any and all documents relating to the Downstream Undertaking, including without limitation: (a) all communications between the Debtors, WMB, or any of their respective affiliates, officers, employees or agents, on the one hand, and the OTS, the FDIC or any other regulatory body, on the other hand; and (b) any and all documents related to the transaction by which the Trust Preferred Securities were purportedly assigned from WMI to WMB.

10. Any and all documents produced by or to the Debtors in connection with Rule 2004 discovery conducted in the Chapter 11 cases, including any documents relating to the Trust Preferred Securities, the occurrence of an Exchange Event, the Downstream Undertaking or the Assignment Agreement.

11. Any and all documents relating to the Liquidation Analysis referenced in the Disclosure Statement.

{D0175710.1}

12. Any and all documents relating to “the terms governing the Trust Preferred Securities” as that phrase is used in Section I.B.2.b of the Disclosure Statement (page 5).

13. Any and all documents relating to the negotiation of the Proposed Global Settlement Agreement.

14. Any and all documents relating to the “careful analysis” referenced in Section I.C. of the Disclosure Statement (page 7).

15. Any and all documents relating to the Debtors’ conclusions as to the “substantial expense of litigating the issues” as that phrase is used in Section I.C. of the Disclosure Statement (page 7).

16. Any and all documents relating to the Debtors’ conclusions as to the “length of time necessary to resolve each of the issues presented in the pending litigation” as that phrase is used in Section I.C. of the Disclosure Statement (page 7).

17. Any and all documents relating to the Debtors’ conclusions as to the “complexity and uncertainty involved” as that phrase is used in Section I.C. of the Disclosure Statement (page 7).

18. Any and all documents relating to the Debtors’ conclusions as to “the existence of potential additional claims and causes of action of the Debtors and the Debtors’ chapter 11 estates against JPMC” as that phrase is used in Section I.C. of the Disclosure Statement (page 8).

19. Any and all documents relating to the Tax Refunds.

20. Any and all documents relating to the allocation of the Tax Refunds under the Proposed Global Settlement Agreement.

21. Any and all documents relating to claims to the Tax Refunds asserted by parties other than the Debtors or their estates.

22. Any and all documents relating to the ownership or valuation of the Class B shares of Visa, Inc. referenced in Section I.C.3.a. of the Disclosure Statement (page 10).

23. Any and all documents relating to estimated value to the Debtors' estates of the undertakings discussed in Section I.C.3.b. of the Disclosure Statement (page 10).

24. Any and all documents relating to the "Settlement with the REIT Series Holders" referenced in Section I.C.8. of the Disclosure Statement, including any and all documents and communications relating to the negotiation of that "settlement."

25. Any and all documents relating to the Debtors' understanding or knowledge of "claims against the Debtors and JPMC arising out of, related to, or resulting from, among other things, the issuance or assignment of the Trust Preferred Securities or any commitment, disclosure or non-disclosure with respect thereto, the declaration of any Exchange Event, the assignment of the Trust Preferred Securities subsequent thereto, and any and all claims in any way related to the Trust Preferred Securities or the REIT Series . . ." as that phrase is used in Section I.C.8. of the Disclosure Statement (page 12).

26. Any and all documents relating to the releases proposed to be granted pursuant to the Plan and/or Proposed Global Settlement, including any evaluation of the value of the claims, rights or causes of action to be released.

27. Any and all documents relating to the Debtors' analysis of potential estate claims or causes of action against JPMC, the FDIC, OTS or any other third party.

28. Any and all documents related to conflicts of interest of professionals for the Debtors and/or the Creditors Committee in connection with negotiation of the Plan and/or Global Settlement.

29. Any and all documents related to the proposed treatment of Class 18 under the Plan, including the proposed payment from JPMC to members of Class 18.

Dated: Wilmington, Delaware
May 11, 2010

CAMPBELL & LEVINE LLC

/s/ Kathleen Campbell Davis
Marla Rosoff Eskin, Esq. (DE 2989)
Bernard G. Conaway, Esq. (DE 2856)
Kathleen Campbell Davis, Esq. (DE 4229)
800 North King Street, Suite 300
Wilmington, DE 19809
(302) 426-1900
(302) 426-9947 (fax)

– and –

BROWN RUDNICK LLP

Robert J. Stark, Esq.
Sigmund Wissner-Gross, Esq.
Seven Times Square
New York, NY 10036
(212) 209-4800
(212) 209-4801 (fax)

– and –

Jeremy B. Coffey, Esq.
Daniel J. Brown, Esq.
One Financial Center
Boston, MA 02111
(617) 856-8200
(617) 856-8201 (fax)

Counsel for the TPS Consortium

{D0175710.1 }

EXHIBIT B

Brown, Daniel J.

From: Coffey, Jeremy B.
Sent: Friday, May 14, 2010 10:13 AM
To: Brown, Daniel J.
Subject: FW: WMI
Attachments: DOCS_NY-#8251950-v5-WaMu__Informal_Document_Request.pdf

From: Wissner-Gross, Sigmund S.
Sent: Monday, April 26, 2010 7:24 PM
To: 'brian.rosen@weil.com'
Cc: Coffey, Jeremy B.
Subject: WMI


Brian: Please find attached an informal document request per our discussion earlier today. We would like to start getting documents asap. After you have reviewed, please give Jeremy or me a call to discuss if you have any questions. Thanks.


Sig

BROWNRUDNICK

Sigmund S. Wissner-Gross

Brown Rudnick LLP
Seven Times Square
New York, NY 10036

 Tel 212-209-4930

 Fax 212-938-2804

 Email swissnergross@brownrudnick.com

 Website www.brownrudnick.com

5/17/2010

Washington Mutual, Inc.

Informal Request of the Debtors for Documents

1. Any and all documents relating to the Trust Preferred Securities,¹ including, without limitation, the following types of documents referenced in the various prospectuses for the Trust Preferred Securities:

- a. Limited liability company agreement(s) for WMPF;
- b. Bylaws and organizational documents for WMPF;
- c. Deposit agreements pertaining to any of WMI, Mellon Investor Services (or any other depository), and Wilmington Trust (Cayman), Ltd. (or any other registrar);
- d. Purchase agreements pertaining to Washington Mutual Preferred Funding (Cayman) I ("WaMu Cayman"), Washington Mutual Preferred Funding Trust I, (together with Washington Mutual Preferred Funding Trust II, Washington Mutual Preferred Funding Trust III, Washington Mutual Preferred Funding Trust IV, "WaMu Delaware"), WMI, WMPF, and the "Initial Purchasers" set forth in the various prospectuses;
- e. Administration agreements pertaining to WaMu Cayman, WaMu Delaware, Maples Finance Ltd. or any other party set forth in any of the prospectuses;
- f. Custody agreements pertaining to any asset trust related to the Trust Preferred Securities;
- g. Pooling and servicing agreements;
- h. Administrative services agreement pertaining to WMPF, WMB or any other party set forth in the prospectuses;
- i. Trust agreement pertaining to Washington Mutual Home Equity Trust I (a Delaware statutory trust) and any other trust agreements related to the Trust Preferred Securities;
- j. Expense agreements pertaining to WaMu Delaware, WaMu Cayman or WMB;
- k. Exchange agreements pertaining to WaMu Delaware, WaMu Cayman, WMI, and/or Mellon Investor Services, LLC; and/or
- l. Replacement capital covenants.

¹ Unless otherwise defined herein, capitalized terms shall bear the meanings ascribed thereto in the Disclosure Statement and/or Plan, as applicable.

2. Any and all documents governing or defining the rights of holders of the Trust Preferred Securities, including but not limited to the Wamu Cayman Articles of Association, the WaMu Delaware Articles of Incorporation, each declaration of trust, unit agreement and form of warrant.

3. Any and all document relating to the current ownership of the Trust Preferred Securities.

4. Any and all documents evidencing collateral, funds or other source against which the Trust Preferred Securities hold or held a liquidation preference.

5. Copies of each prospectus or other offering materials used to market or solicit interest in the Trust Preferred Securities.

6. Any and all documents relating to any purported exchange, transfer or other disposition of the Trust Preferred Securities, including any applicable trust register.

7. Any and all documents relating to the Series I, J, L, M and N preferred shares in WMI.

8. Any and all documents relating to the current ownership, control and/or status of WMPF, WaMu Cayman, WaMu Delaware or Washington Mutual Home Equity Trust I.

9. Any and all documents relating to the Downstream Undertaking, including without limitation: (a) all communications between the Debtors, WMB, or any of their respective affiliates, officers, employees or agents, on the one hand, and the OTS, the FDIC or any other regulatory body, on the other hand; and (b) any and all documents related to the transaction by which the Trust Preferred Securities were purportedly assigned from WMI to WMB.

10. Any and all documents produced by or to the Debtors in connection with Rule 2004 discovery conducted in the Chapter 11 cases relating to the Trust Preferred Securities, the occurrence of an Exchange Event, the Downstream Undertaking or the Assignment Agreement.

11. Any and all documents relating to “the terms governing the Trust Preferred Securities” as that phrase is used in Section I.B.2.b of the Disclosure Statement (page 5).

12. Any and all documents relating to the proposed “Settlement with the REIT Series Holders” referenced in Section I.C.8. of the Disclosure Statement, including any and all documents relating to the negotiation of such proposed “settlement.”

13. Any and all documents relating to the correspondence between WMI and the OTS concerning the “Downstream Undertaking” and to the “OTS Reservation of Rights” referenced in paragraphs 35 – 36 of the Debtors’ September 11, 2009 Answer and Amended Counterclaims filed in the JPMC Adversary.

EXHIBIT C

Brown, Daniel J.

From: Petherbridge, Vaughan [vaughan.petherbridge@weil.com]
Sent: Thursday, April 29, 2010 5:21 PM
To: Coffey, Jeremy B.
Cc: Sapeika, Tal; Coleman, Erica; Gold, Simeon; Chad Smith; jgoulding@alvarezandmarsal.com; jmaciel@alvarezandmarsal.com; Rosen, Brian; Wissner-Gross, Sigmund S.
Subject: RE: WMI
Attachments: US_ACTIVE_Brown Rudnick NDA_43381214_2.DOC

Dear Jeremy,

The form of confidentiality agreement is attached. Subject to any comments you may have, I will send you an execution version of WGM letterhead.

Regards,

Vaughan Petherbridge
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY, 10153
Phone: 212-310-8941
Facsimile: 212-310-8007
Email: vaughan.petherbridge@weil.com

From: Coffey, Jeremy B. [mailto:JCoffey@brownrudnick.com]
Sent: Thursday, April 29, 2010 2:29 PM
To: Rosen, Brian; Wissner-Gross, Sigmund S.
Cc: Petherbridge, Vaughan; Sapeika, Tal; Coleman, Erica; Gold, Simeon; Chad Smith; jgoulding@alvarezandmarsal.com; jmaciel@alvarezandmarsal.com
Subject: RE: WMI

Vaughan,

Please forward the proposed confi at your earliest convenience.

Thanks,

Jeremy B. Coffey
Brown Rudnick LLP
One Financial Center
Boston, MA 02111
Telephone (617) 856-8595
Facsimile (617) 856-8201

- and -

Seven Times Square
New York, NY 10036
Telephone (212) 209-4800

* Admitted in Texas and Massachusetts

5/17/2010

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April __, 2010

VIA E-MAIL

To Brown Rudnick LLP

**Re: Confidentiality Agreement with
Brown Rudnick LLP**

Washington Mutual, Inc. and WMI Investment Corp (collectively, the “Debtors”) are debtors and debtors in possession in the jointly administered chapter 11 cases pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 08-12229 (MFW) (collectively, the “Cases”). Brown Rudnick LLP (“Brown Rudnick”) represents certain holders of interests in the securities described by the Debtors as constituting the “REIT Series” in the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code that was filed with the Bankruptcy Court on March 26, 2010 (each a “Holder” and, collectively, the “Holders”). The Debtors are prepared to provide now and during the administration of the Cases to Brown Rudnick certain information relating to the Debtors and other matters relevant to the Cases. The Debtors are entering into this agreement (the “Agreement”) with Brown Rudnick to govern the exchange and preservation of that information. The term “Representative” as used in this Agreement shall include directors, executives, officers, employees, agents, partners, experts, consultants, legal counsel, financial and other advisors.

As used herein, the term “Confidential Information” shall mean any information (whether written or oral) concerning the Debtors (whether prepared by the Debtors, their Representatives, or otherwise and irrespective of the form of communication) that is confidential, non-public or proprietary in nature and which is furnished during the pendency of the Cases (whether before or after the date hereof) to Brown Rudnick by, or on behalf of, the Debtors or their Representatives. “Confidential Information” shall also include all notes, analyses, compilations, studies or other documents, whether prepared by Brown Rudnick or others, which contain or are based upon Confidential Information furnished to Brown Rudnick concerning the Debtors. The

term “Confidential Information” shall not include information that (i) was in Brown Rudnick’s or a Holder’s possession as of the commencement of the Cases so long as such information did not come from a source that is not reasonably known by Brown Rudnick to be bound by a confidentiality agreement with, or other legal, contractual, or fiduciary obligation of confidentiality owed to, the Debtors, (ii) is or becomes publicly available other than as a result of a disclosure by Brown Rudnick in violation of the terms hereof, (iii) is or becomes available to Brown Rudnick on a non-confidential basis from a source other than the Debtors or any of their Representatives so long as such source is not reasonably known by Brown Rudnick to be bound by a confidentiality agreement with, or legal, contractual or fiduciary obligation of confidentiality to, the Debtors, or (iv) is independently developed by Brown Rudnick or any of its clients not in violation of this Agreement.

In consideration of such Confidential Information being furnished by the Debtors to Brown Rudnick, Brown Rudnick agrees to the following:

1. Brown Rudnick hereby agrees that all Confidential Information and the existence thereof will be held and treated in confidence, will not be disclosed in any manner whatsoever, in whole or in part, to any party, including the Holders or any of their respective Representatives, except as provided herein. Brown Rudnick agrees to use Confidential Information only for the purpose of participating in the Cases on behalf of the Holders and further agrees not to use Confidential Information in any manner inconsistent with this Agreement.

Brown Rudnick may share Confidential Information with: (a) its partners, employees or agents who require such information in order to discharge Brown Rudnick’s job responsibilities and who agree to keep such Confidential Information in accordance with the terms of this Agreement, and (b) with other parties (including, without limitation, the Holders) that execute a confidentiality agreement in form and substance reasonably acceptable to counsel for the Debtors. Brown Rudnick will be responsible for any breach of this Agreement by it or its Representatives.

2. In the event that Brown Rudnick receives a request to disclose any Confidential Information, under any applicable law or regulation or legal, regulatory, or judicial process or the rules of any applicable stock exchange, Brown Rudnick agrees (i) to promptly notify the Debtors in writing thereof in order to enable the Debtors to seek an appropriate protective order or other remedy or to waive compliance, in whole or in part, with the terms of this Agreement, (ii) to consult with the Debtors on the advisability of taking steps to resist or narrow such request, and (iii) if disclosure is legally required, to use its reasonable best efforts to cooperate with the Debtors in any attempt they may make to obtain a protective order or other appropriate remedy and/or waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Debtors waive compliance with the provisions hereof, Brown Rudnick shall be permitted to furnish that portion of the Confidential Information as is legally required. Brown Rudnick shall not oppose the

Debtors' efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information.

3. Brown Rudnick understands and acknowledges that the Debtors make no representation or warranty as to the accuracy or completeness of the Confidential Information, and Brown Rudnick agrees that neither the Debtors nor any of their Representatives will have any liability to Brown Rudnick or its Representatives relating to or resulting from the use of the Confidential Information.

4. If Brown Rudnick resigns as adviser to the Holders, Brown Rudnick will promptly notify in writing the Debtors' counsel, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attention: Brian S. Rosen. In such an event, Brown Rudnick shall promptly, upon the Debtors' request and at the option of Brown Rudnick, return to the Debtors or destroy, if so requested by the Debtors, all Confidential Information in its possession and will not retain any copies, extracts or other reproductions in whole or in part of such written material. Upon the Debtors' request, any such destruction shall be certified in writing by an authorized representative of Brown Rudnick supervising such destruction. Upon termination of this Agreement, Confidential Information shall be held by Brown Rudnick in accordance with its retention policies subject to the terms of this Agreement (and notwithstanding the termination hereof) unless otherwise (i) agreed by the parties hereto, (ii) ordered by the Bankruptcy Court, (iii) required by law, or (iv) requested to be destroyed by the Debtors. Unless otherwise directed by the Debtors, Brown Rudnick may retain one copy of any Confidential Information it receives for its office records subject to the confidentiality of such copy as provided under the terms of this Agreement; provided, however, that if Brown Rudnick determines that compliance with the Debtors' request under clause (iv) would be inconsistent with its professional obligations, Brown Rudnick shall not be obligated to comply with any such request; and provided, further, that, in the event Brown Rudnick makes such determination, it shall inform the Debtors, in writing, and state the reasons therefore.

5. The Debtors are entitled to all remedies that may be available to any of them at law or in equity for any breach or violation of this Agreement by Brown Rudnick, including specific performance and injunctive relief and, in the event the Debtors seek such relief, Brown Rudnick shall not assert that specific performance or injunctive relief is not available. Brown Rudnick further agrees to waive, and to use its reasonable best efforts to cause its officers, employees, and agents to waive, any requirement for the securing or posting of any bond in connection with such remedy.

Brown Rudnick shall be liable for any breach of this Agreement as may be determined by a final order of a court of competent jurisdiction. Nothing in this section 5 shall prevent Brown Rudnick from contesting that any such breach has occurred or from contesting any litigation in any appropriate fashion.

6. It is understood and agreed that no failure or delay by a party hereto in exercising any right, power or privilege hereunder shall operate as a waiver

thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

7. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

8. This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, arrangements and understandings relating to the matter provided for herein. No alteration, waiver, amendment, change or supplement hereto shall be binding or effective unless the same is set forth in a writing signed by each party hereto. No party hereunder may assign its rights or obligations under this Agreement without the prior written consent of the Debtors.

9. Nothing in this Agreement is intended to grant Brown Rudnick any rights under any patent, copyright, trade secret or other intellectual property right, nor shall this Agreement grant to Brown Rudnick any rights in or to the Confidential Information, except the limited right to review the Confidential Information solely for the purpose and in the manner set forth in this Agreement.

10. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Bankruptcy Court for any actions, suits or proceedings arising out of or relating to this Agreement (and the parties agree not to commence any action, suit or proceeding relating thereto except in such court), and further agrees that service of any process, summons, notice or document by U.S. registered mail to the respective addresses of and to the attention of the (i) Debtors' counsel and (ii) Brown Rudnick shall be effective service of process for any action, suit or proceeding brought against the parties in any such court. Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this agreement in the Bankruptcy Court, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

11. In the event that Brown Rudnick intends to offer into evidence or otherwise use Confidential Information in the Cases, then Brown Rudnick shall (i) obtain the prior written consent of the Debtors (through the Debtors' counsel) to such offer or use; or (ii) obtain an order of the Bankruptcy Court to use such Confidential Information pursuant to the Federal Rules of Bankruptcy Procedure, including by seeking authorization to file the papers seeking such order under seal. Any such request for relief from the Bankruptcy Court may be heard on expedited notice, subject to the Bankruptcy Court's calendar.

12. Other than any provision hereof that by its terms survives termination, this Agreement shall remain in full force and effect until the earlier to occur of (i) six months following the effective date of a chapter 11 plan in respect of the Cases, and (ii) the termination of this Agreement by agreement of the parties hereto.

13. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

If the foregoing reflects our agreement, please execute below and return to my attention.

Very truly yours,

Brian S. Rosen

AGREED TO AND ACCEPTED BY:

BROWN RUDNICK LLP

Signature:

Name/Title:

EXHIBIT D

Brown, Daniel J.

From: Coffey, Jeremy B.
Sent: Monday, May 17, 2010 12:08 PM
To: Brown, Daniel J.
Subject: FW: WaMu
Attachments: DOCS_NY-8252386.DOC

From: Coffey, Jeremy B.
Sent: Friday, April 30, 2010 7:43 PM
To: 'Petherbridge, Vaughan'
Cc: Wissner-Gross, Sigmund S.
Subject: WaMu

Vaughan,

Apologies for delay. Our comments to the NDA are marked on the attached. Please let me know if you have any questions (and, if so, when we can speak to discuss).

Regards,

Jeremy B. Coffey
Brown Rudnick LLP
One Financial Center
Boston, MA 02111
Telephone (617) 856-8595
Facsimile (617) 856-8201

- and -

Seven Times Square
New York, NY 10036
Telephone (212) 209-4800

* Admitted in Texas and Massachusetts

5/17/2010

Style Definition: Document
Number: Font: Arial, 7 pt, Space
Before: 18 pt

Formatted: Document Number, Left

April __, 2010

VIA E-MAIL

To Brown Rudnick LLP

**Re: Confidentiality Agreement with
Brown Rudnick LLP**

Washington Mutual, Inc. and WMI Investment Corp (collectively, the “Debtors”) are debtors and debtors in possession in the jointly administered chapter 11 cases pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 08-12229 (MFW) (collectively, the “Cases”). Brown Rudnick LLP (“Brown Rudnick”) represents certain holders of interests in the securities described by the Debtors as constituting the “REIT Series” in the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code that was filed with the Bankruptcy Court on March 26, 2010 (each a “Holder” and, collectively, the “Holders”). The Debtors are prepared to provide now and during the administration of the Cases to Brown Rudnick certain information relating to the Debtors and other matters relevant to the Cases. The Debtors are entering into this agreement (the “Agreement”) with Brown Rudnick to govern the exchange and preservation of that information. The term “Representative” as used in this Agreement shall include directors, executives, officers, employees, agents, partners, experts, consultants, legal counsel, financial and other advisors.

As used herein, the term “Confidential Information” shall mean any information (whether written or oral) concerning the Debtors (whether prepared by the Debtors, their Representatives, or otherwise and irrespective of the form of communication) that is confidential, non-public or proprietary in nature and which is furnished during the pendency of the Cases (whether before or after the date hereof) to Brown Rudnick by, or on behalf of, the Debtors or their Representatives. “Confidential Information” shall also include all notes, analyses, compilations, studies or other

documents, whether prepared by Brown Rudnick or others, which contain or are based upon Confidential Information furnished to Brown Rudnick concerning the Debtors. The term “Confidential Information” shall not include information that (i) was in Brown Rudnick’s or a Holder’s possession prior to the parties’ entry into this Agreement so long as such information did not come from a source that is reasonably known by Brown Rudnick to be bound by a confidentiality agreement with, or other legal, contractual, or fiduciary obligation of confidentiality owed to, the Debtors, (ii) is or becomes publicly available other than as a result of a disclosure by Brown Rudnick in violation of the terms hereof, (iii) is or becomes available to Brown Rudnick on a non-confidential basis from a source other than the Debtors or any of their Representatives so long as such source is not reasonably known by Brown Rudnick to be bound by a confidentiality agreement with, or legal, contractual or fiduciary obligation of confidentiality to, the Debtors, or (iv) is independently developed by Brown Rudnick or any of its clients not in violation of this Agreement.

Deleted: as of the commencement of the Cases

Deleted: not

In consideration of such Confidential Information being furnished by the Debtors to Brown Rudnick, Brown Rudnick agrees to the following:

1. Brown Rudnick hereby agrees that all Confidential Information and the existence thereof will be held and treated in confidence, will not be disclosed in any manner whatsoever, in whole or in part, to any party, including the Holders or any of their respective Representatives, except as provided herein. Brown Rudnick agrees to use Confidential Information only for the purpose of participating in the Cases on behalf of the Holders and further agrees not to use Confidential Information in any manner inconsistent with this Agreement.

Brown Rudnick may share Confidential Information with: (a) its partners, employees or agents who require such information in order to discharge Brown Rudnick’s job responsibilities and who agree to keep such Confidential Information in accordance with the terms of this Agreement, and (b) with other parties (including, without limitation, the Holders) that execute a confidentiality agreement in form and substance reasonably acceptable to counsel for the Debtors. Brown Rudnick will be responsible for any breach of this Agreement by it or its Representatives.

2. In the event that Brown Rudnick receives a request to disclose any Confidential Information, under any applicable law or regulation or legal, regulatory, or judicial process or the rules of any applicable stock exchange, Brown Rudnick agrees, to the extent reasonably possible under the circumstances (i) to promptly notify the Debtors in writing thereof in order to enable the Debtors to seek an appropriate protective order or other remedy or to waive compliance, in whole or in part, with the terms of this Agreement, (ii) to consult with the Debtors on the advisability of taking steps to resist or narrow such request, and (iii) if disclosure is legally required, to use its reasonable best efforts to cooperate with the Debtors in any attempt they may make to obtain a protective order or other appropriate remedy and/or waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Debtors waive compliance with the provisions hereof, Brown

Rudnick shall be permitted to furnish that portion of the Confidential Information as is legally required. Brown Rudnick shall not oppose the Debtors' efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information.

3. Brown Rudnick understands and acknowledges that the Debtors make no representation or warranty as to the accuracy or completeness of the Confidential Information, and Brown Rudnick agrees that neither the Debtors nor any of their Representatives will have any liability to Brown Rudnick or its Representatives relating to or resulting from the use of the Confidential Information; provided however that Brown Rudnick shall not have waived any claims arising from the gross negligence or willful misconduct of the Debtors or their representatives.

4. If Brown Rudnick resigns as adviser to the Holders, Brown Rudnick will promptly notify in writing the Debtors' counsel, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attention: Brian S. Rosen. In such an event, Brown Rudnick shall promptly, upon the Debtors' request and at the option of Brown Rudnick, return to the Debtors or destroy, if so requested by the Debtors, all Confidential Information in its possession and will not retain any copies, extracts or other reproductions in whole or in part of such written material. Upon the Debtors' request, any such destruction shall be certified in writing by an authorized representative of Brown Rudnick supervising such destruction. Upon termination of this Agreement, Confidential Information shall be held by Brown Rudnick in accordance with its retention policies subject to the terms of this Agreement (and notwithstanding the termination hereof) unless otherwise (i) agreed by the parties hereto, (ii) ordered by the Bankruptcy Court, (iii) required by law, or (iv) requested to be destroyed by the Debtors. Unless otherwise directed by the Debtors, Brown Rudnick may retain one copy of any Confidential Information it receives for its office records subject to the confidentiality of such copy as provided under the terms of this Agreement; provided, however, that if Brown Rudnick determines that compliance with the Debtors' request under clause (iv) would be inconsistent with its professional obligations, Brown Rudnick shall not be obligated to comply with any such request; and provided, further, that, in the event Brown Rudnick makes such determination, it shall inform the Debtors, in writing, and state the reasons therefore. It is understood and agreed, moreover, that Brown Rudnick shall not be required to erase electronically stored information that has been saved to a back-up file in accordance with ordinary document retention policies or applicable law, and shall not be required to destroy or return any information required to be retained pursuant to applicable law or regulation.

5. The Debtors are entitled to all remedies that may be available to any of them at law or in equity for any breach or violation of this Agreement by Brown Rudnick, including specific performance and injunctive relief and, in the event the Debtors seek such relief, Brown Rudnick shall not assert that specific performance or injunctive relief is not available. Brown Rudnick further agrees to waive, and to use its reasonable best efforts to cause its officers, employees, and agents to waive, any requirement for the securing or posting of any bond in connection with such remedy.

Brown Rudnick shall be liable for any breach of this Agreement as may be determined by a final order of a court of competent jurisdiction. Nothing in this section 5 shall prevent Brown Rudnick from contesting that any such breach has occurred or from contesting any litigation in any appropriate fashion.

6. It is understood and agreed that no failure or delay by a party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

7. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

8. This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, arrangements and understandings relating to the matter provided for herein. No alteration, waiver, amendment, change or supplement hereto shall be binding or effective unless the same is set forth in a writing signed by each party hereto. No party hereunder may assign its rights or obligations under this Agreement without the prior written consent of the Debtors.

9. Nothing in this Agreement is intended to grant Brown Rudnick any rights under any patent, copyright, trade secret or other intellectual property right, nor shall this Agreement grant to Brown Rudnick any rights in or to the Confidential Information, except the limited right to review the Confidential Information solely for the purpose and in the manner set forth in this Agreement.

10. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Bankruptcy Court for any actions, suits or proceedings arising out of or relating to this Agreement (and the parties agree not to commence any action, suit or proceeding relating thereto except in such court), and further agrees that service of any process, summons, notice or document by U.S. registered mail to the respective addresses of and to the attention of the (i) Debtors' counsel and (ii) Brown Rudnick shall be effective service of process for any action, suit or proceeding brought against the parties in any such court. Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this agreement in the Bankruptcy Court, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

11. In the event that Brown Rudnick intends to offer into evidence or otherwise use Confidential Information in the Cases, then Brown Rudnick shall (i) obtain the prior written consent of the Debtors (through the Debtors' counsel) to such offer or

use; or (ii) use its best efforts to obtain authority to file such information under seal. Any such request for relief from the Bankruptcy Court may be heard on expedited notice, subject to the Bankruptcy Court's calendar.

Deleted: obtain an order of the Bankruptcy Court to use such Confidential Information pursuant to the Federal Rules of Bankruptcy Procedure, including by seeking authorization to file the papers seeking such order under seal.

12. Notwithstanding the foregoing, Brown Rudnick shall retain the right to challenge any designation by Debtors or their Representatives of "Confidentiality" and to seek the Bankruptcy Court's determination that such documents or information are not "Confidential." Moreover, if Brown Rudnick files under seal papers with the Bankruptcy Court containing any information designated as "Confidential," Brown Rudnick's filing of such information under seal shall be without prejudice to Brown Rudnick's right to seek to unseal such documents. Pending the Court's determination on such application, Brown Rudnick shall continue to treat such documents or information as "Confidential."

12. Other than any provision hereof that by its terms survives termination, this Agreement shall remain in full force and effect until the earlier to occur of (i) six months following the effective date of a chapter 11 plan in respect of the Cases, and (ii) the termination of this Agreement by agreement of the parties hereto.

13. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

If the foregoing reflects our agreement, please execute below and return to my attention.

Very truly yours,

Brian S. Rosen

AGREED TO AND ACCEPTED BY:

BROWN RUDNICK LLP

Signature:

Name/Title:

EXHIBIT E

Brown, Daniel J.

From: Petherbridge, Vaughan [vaughan.petherbridge@weil.com]
Sent: Monday, May 03, 2010 9:52 AM
To: Coffey, Jeremy B.
Cc: Wissner-Gross, Sigmund S.
Subject: RE: WaMu

I will come back to you as soon as I can, most likely later today - I am tied up on an exchange offer that is launching today, so am snowed under at the moment.

Vaughan Petherbridge
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY, 10153
Phone: 212-310-8941
Facsimile: 212-310-8007
Email: vaughan.petherbridge@weil.com

From: Coffey, Jeremy B. [mailto:JCoffey@brownrudnick.com]
Sent: Friday, April 30, 2010 7:43 PM
To: Petherbridge, Vaughan
Cc: Wissner-Gross, Sigmund S.
Subject: WaMu

Vaughan,

Apologies for delay. Our comments to the NDA are marked on the attached. Please let me know if you have any questions (and, if so, when we can speak to discuss).

Regards,

Jeremy B. Coffey
Brown Rudnick LLP
One Financial Center
Boston, MA 02111
Telephone (617) 856-8595
Facsimile (617) 856-8201

- and -

Seven Times Square
New York, NY 10036
Telephone (212) 209-4800

* Admitted in Texas and Massachusetts

IRS Circular 230 Disclosure: To ensure compliance with U.S. Treasury Regulations governing tax practice, we inform you that:

Any U.S. tax advice contained in this communication (including attachments) was not written to be used for and cannot be used for (i) purposes of avoiding any tax related penalties that may be imposed under Federal tax laws, or (ii) the promotion, marketing or recommending to another party of any transaction or matter addressed herein.

5/17/2010

The information contained in this electronic message may be legally privileged and confidential under applicable law, and is intended only for the use of the individual or entity named above. If the recipient of this message is not the above-named intended recipient, you are hereby notified that any dissemination, copy or disclosure of this communication is strictly prohibited. If you have received this communication in error, please notify Brown Rudnick LLP, (617) 856-8200 (if dialing from outside the US, 001-(617)-856-8200) and purge the communication immediately without making any copy or distribution.

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email (postmaster@weil.com), and destroy the original message. Thank you.

EXHIBIT F

Brown, Daniel J.

From: Petherbridge, Vaughan [vaughan.petherbridge@weil.com]
Sent: Tuesday, May 04, 2010 11:35 AM
To: Coffey, Jeremy B.
Cc: Wissner-Gross, Sigmund S.; Sapeika, Tal
Subject: RE: WaMu
Attachments: US_ACTIVE_Brown Rudnick NDA - 5.4.10_43385014_2.DOC;
US_ACTIVE_WS_BinaryComparison_#43385014v1_US_ACTIVE_ - Brown Rudnick NDA - 5.4.10-
#43385014v2_US_ACTIVE_ - Brown Rudnick NDA - 5.4.10_43385030_1.DOC

Dear Jeremy,

A revised draft of the NDA is attached, clean and blackline against your draft.

With regards to the information that would be provided, please reach out to my colleague, Tal Sapeika, who is copied on this email. I believe Tal is not in the office today but should be able to respond to any questions you may have tomorrow.

Regards,

Vaughan Petherbridge
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY, 10153
Phone: 212-310-8941
Facsimile: 212-310-8007
Email: vaughan.petherbridge@weil.com

From: Coffey, Jeremy B. [mailto:JCoffey@brownrudnick.com]
Sent: Friday, April 30, 2010 7:43 PM
To: Petherbridge, Vaughan
Cc: Wissner-Gross, Sigmund S.
Subject: WaMu

Vaughan,

Apologies for delay. Our comments to the NDA are marked on the attached. Please let me know if you have any questions (and, if so, when we can speak to discuss).

Regards,

Jeremy B. Coffey
Brown Rudnick LLP
One Financial Center
Boston, MA 02111
Telephone (617) 856-8595
Facsimile (617) 856-8201

- and -

Seven Times Square
New York, NY 10036
Telephone (212) 209-4800

5/17/2010

* Admitted in Texas and Massachusetts

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The information contained in this electronic message may be legally privileged and confidential under applicable law, and is intended only for the use of the individual or entity named above. If the recipient of this message is not the above-named intended recipient, you are hereby notified that any dissemination, copy or disclosure of this communication is strictly prohibited. If you have received this communication in error, please notify Brown Rudnick LLP, (617) 856-8200 (if dialing from outside the US, 001-(617)-856-8200) and purge the communication immediately without making any copy or distribution.

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May ____, 2010

VIA E-MAIL

To Brown Rudnick LLP

**Re: Confidentiality Agreement with
Brown Rudnick LLP**

Washington Mutual, Inc. and WMI Investment Corp (collectively, the “Debtors”) are debtors and debtors in possession in the jointly administered chapter 11 cases pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 08-12229 (MFW) (collectively, the “Cases”). Brown Rudnick LLP (“Brown Rudnick”) represents certain holders of interests in the securities described by the Debtors as constituting the “REIT Series” in the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code that was filed with the Bankruptcy Court on March 26, 2010 (each a “Holder” and, collectively, the “Holders”). The Debtors are prepared to provide now and during the administration of the Cases to Brown Rudnick certain information relating to the Debtors and other matters relevant to the Cases. The Debtors are entering into this agreement (the “Agreement”) with Brown Rudnick to govern the exchange and preservation of that information. The term “Representative” as used in this Agreement shall include directors, executives, officers, employees, agents, partners, experts, consultants, legal counsel, financial and other advisors.

As used herein, the term “Confidential Information” shall mean any information (whether written or oral) concerning the Debtors (whether prepared by the Debtors, their Representatives, or otherwise and irrespective of the form of communication) that is confidential, non-public or proprietary in nature and which is furnished during the pendency of the Cases (whether before or after the date hereof) to Brown Rudnick by, or on behalf of, the Debtors or their Representatives. “Confidential Information” shall also include all notes, analyses, compilations, studies or other

documents, whether prepared by Brown Rudnick or others, which contain or are based upon Confidential Information furnished to Brown Rudnick concerning the Debtors. The term “Confidential Information” shall not include information that (i) was in Brown Rudnick’s or a Holder’s possession prior to the parties’ entry into this Agreement so long as such information did not come from a source that is reasonably known by Brown Rudnick to be bound by a confidentiality agreement with, or other legal, contractual, or fiduciary obligation of confidentiality owed to, the Debtors, (ii) is or becomes publicly available other than as a result of a disclosure by Brown Rudnick in violation of the terms hereof, (iii) is or becomes available to Brown Rudnick on a non-confidential basis from a source other than the Debtors or any of their Representatives so long as such source is not reasonably known by Brown Rudnick to be bound by a confidentiality agreement with, or legal, contractual or fiduciary obligation of confidentiality to, the Debtors, or (iv) is independently developed by Brown Rudnick or any of its clients not in violation of this Agreement.

In consideration of such Confidential Information being furnished by the Debtors to Brown Rudnick, Brown Rudnick agrees to the following:

1. Brown Rudnick hereby agrees that all Confidential Information and the existence thereof will be held and treated in confidence, will not be disclosed in any manner whatsoever, in whole or in part, to any party, including the Holders or any of their respective Representatives, except as provided herein. Brown Rudnick agrees to use Confidential Information only for the purpose of participating in the Cases on behalf of the Holders and further agrees not to use Confidential Information in any manner inconsistent with this Agreement.

Brown Rudnick may share Confidential Information with: (a) its partners, employees or agents who require such information in order to discharge Brown Rudnick’s job responsibilities and who agree to keep such Confidential Information in accordance with the terms of this Agreement, and (b) with other parties (including, without limitation, the Holders) that execute a confidentiality agreement in form and substance reasonably acceptable to counsel for the Debtors. Brown Rudnick will be responsible for any breach of this Agreement by it or its Representatives.

2. In the event that Brown Rudnick receives a request to disclose any Confidential Information, under any applicable law or regulation or legal, regulatory, or judicial process or the rules of any applicable stock exchange, Brown Rudnick agrees, to the extent possible under the circumstances, (i) to promptly notify the Debtors in writing thereof in order to enable the Debtors to seek an appropriate protective order or other remedy or to waive compliance, in whole or in part, with the terms of this Agreement, (ii) to consult with the Debtors on the advisability of taking steps to resist or narrow such request, and (iii) if disclosure is legally required, to use its reasonable best efforts to cooperate with the Debtors in any attempt they may make to obtain a protective order or other appropriate remedy and/or waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Debtors waive compliance with the provisions hereof, Brown Rudnick shall be

permitted to furnish that portion of the Confidential Information as is legally required. Brown Rudnick shall not oppose the Debtors' efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information.

3. Brown Rudnick understands and acknowledges that the Debtors make no representation or warranty as to the accuracy or completeness of the Confidential Information, and Brown Rudnick agrees that neither the Debtors nor any of their Representatives will have any liability to Brown Rudnick or its Representatives relating to or resulting from the use of the Confidential Information.

4. If Brown Rudnick resigns as adviser to the Holders, Brown Rudnick will promptly notify in writing the Debtors' counsel, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attention: Brian S. Rosen. In such an event, Brown Rudnick shall promptly, upon the Debtors' request and at the option of Brown Rudnick, return to the Debtors or destroy, if so requested by the Debtors, all Confidential Information in its possession and will not retain any copies, extracts or other reproductions in whole or in part of such written material. Upon the Debtors' request, any such destruction shall be certified in writing by an authorized representative of Brown Rudnick supervising such destruction. Upon termination of this Agreement, Confidential Information shall be held by Brown Rudnick in accordance with its retention policies subject to the terms of this Agreement (and notwithstanding the termination hereof) unless otherwise (i) agreed by the parties hereto, (ii) ordered by the Bankruptcy Court, (iii) required by law, or (iv) requested to be destroyed by the Debtors. Unless otherwise directed by the Debtors, Brown Rudnick may retain one copy of any Confidential Information it receives for its office records subject to the confidentiality of such copy as provided under the terms of this Agreement; provided, however, that if Brown Rudnick determines that compliance with the Debtors' request under clause (iv) would be inconsistent with its professional obligations, Brown Rudnick shall not be obligated to comply with any such request; and provided, further, that, in the event Brown Rudnick makes such determination, it shall inform the Debtors, in writing, and state the reasons therefore. It is understood and agreed, moreover, that Brown Rudnick shall not be required to erase electronically stored information that has been saved to a back-up file in accordance with ordinary document retention policies or applicable law, and shall not be required to destroy or return any information required to be retained pursuant to applicable law or regulation provided such information is kept confidential in accordance with the terms of this Agreement.

5. The Debtors are entitled to all remedies that may be available to any of them at law or in equity for any breach or violation of this Agreement by Brown Rudnick, including specific performance and injunctive relief and, in the event the Debtors seek such relief, Brown Rudnick shall not assert that specific performance or injunctive relief is not available. Brown Rudnick further agrees to waive, and to use its reasonable best efforts to cause its officers, employees, and agents to waive, any requirement for the securing or posting of any bond in connection with such remedy.

Brown Rudnick shall be liable for any breach of this Agreement as may be determined by a final order of a court of competent jurisdiction. Nothing in this section 5 shall prevent Brown Rudnick from contesting that any such breach has occurred or from contesting any litigation in any appropriate fashion.

6. It is understood and agreed that no failure or delay by a party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

7. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

8. This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, arrangements and understandings relating to the matter provided for herein. No alteration, waiver, amendment, change or supplement hereto shall be binding or effective unless the same is set forth in a writing signed by each party hereto. No party hereunder may assign its rights or obligations under this Agreement without the prior written consent of the Debtors.

9. Nothing in this Agreement is intended to grant Brown Rudnick any rights under any patent, copyright, trade secret or other intellectual property right, nor shall this Agreement grant to Brown Rudnick any rights in or to the Confidential Information, except the limited right to review the Confidential Information solely for the purpose and in the manner set forth in this Agreement.

10. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Bankruptcy Court for any actions, suits or proceedings arising out of or relating to this Agreement (and the parties agree not to commence any action, suit or proceeding relating thereto except in such court), and further agrees that service of any process, summons, notice or document by U.S. registered mail to the respective addresses of and to the attention of the (i) Debtors' counsel and (ii) Brown Rudnick shall be effective service of process for any action, suit or proceeding brought against the parties in any such court. Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this agreement in the Bankruptcy Court, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

11. In the event that Brown Rudnick intends to offer into evidence or otherwise use Confidential Information in the Cases, then Brown Rudnick shall (i) obtain the prior written consent of the Debtors (through the Debtors' counsel) to such offer or

use; or (ii) obtain an order of the Bankruptcy Court to use such Confidential Information pursuant to the Federal Rules of Bankruptcy Procedure, including by seeking authorization to file the papers seeking such order under seal. Any such request for relief from the Bankruptcy Court may be heard on expedited notice, subject to the Bankruptcy Court's calendar.

12. Other than any provision hereof that by its terms survives termination, this Agreement shall remain in full force and effect until the earlier to occur of (i) six months following the effective date of a chapter 11 plan in respect of the Cases, and (ii) the termination of this Agreement by agreement of the parties hereto.

13. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

If the foregoing reflects our agreement, please execute below and return to my attention.

Very truly yours,

Brian S. Rosen

AGREED TO AND ACCEPTED BY:

BROWN RUDNICK LLP

Signature:

Name/Title:

~~April~~ May ____, 2010

VIA E-MAIL

To Brown Rudnick LLP

**Re: Confidentiality Agreement with
Brown Rudnick LLP**

Washington Mutual, Inc. and WMI Investment Corp (collectively, the “Debtors”) are debtors and debtors in possession in the jointly administered chapter 11 cases pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 08-12229 (MFW) (collectively, the “Cases”). Brown Rudnick LLP (“Brown Rudnick”) represents certain holders of interests in the securities described by the Debtors as constituting the “REIT Series” in the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code that was filed with the Bankruptcy Court on March 26, 2010 (each a “Holder” and, collectively, the “Holders”). The Debtors are prepared to provide now and during the administration of the Cases to Brown Rudnick certain information relating to the Debtors and other matters relevant to the Cases. The Debtors are entering into this agreement (the “Agreement”) with Brown Rudnick to govern the exchange and preservation of that information. The term “Representative” as used in this Agreement shall include directors, executives, officers, employees, agents, partners, experts, consultants, legal counsel, financial and other advisors.

As used herein, the term “Confidential Information” shall mean any information (whether written or oral) concerning the Debtors (whether prepared by the Debtors, their Representatives, or otherwise and irrespective of the form of communication) that is confidential, non-public or proprietary in nature and which is furnished during the pendency of the Cases (whether before or after the date hereof) to Brown Rudnick by, or on behalf of, the Debtors or their Representatives. “Confidential Information” shall also include all notes, analyses, compilations, studies or other

documents, whether prepared by Brown Rudnick or others, which contain or are based upon Confidential Information furnished to Brown Rudnick concerning the Debtors. The term “Confidential Information” shall not include information that (i) was in Brown Rudnick’s or a Holder’s possession prior to the parties’ entry into this Agreement so long as such information did not come from a source that is reasonably known by Brown Rudnick to be bound by a confidentiality agreement with, or other legal, contractual, or fiduciary obligation of confidentiality owed to, the Debtors, (ii) is or becomes publicly available other than as a result of a disclosure by Brown Rudnick in violation of the terms hereof, (iii) is or becomes available to Brown Rudnick on a non-confidential basis from a source other than the Debtors or any of their Representatives so long as such source is not reasonably known by Brown Rudnick to be bound by a confidentiality agreement with, or legal, contractual or fiduciary obligation of confidentiality to, the Debtors, or (iv) is independently developed by Brown Rudnick or any of its clients not in violation of this Agreement.

In consideration of such Confidential Information being furnished by the Debtors to Brown Rudnick, Brown Rudnick agrees to the following:

1. Brown Rudnick hereby agrees that all Confidential Information and the existence thereof will be held and treated in confidence, will not be disclosed in any manner whatsoever, in whole or in part, to any party, including the Holders or any of their respective Representatives, except as provided herein. Brown Rudnick agrees to use Confidential Information only for the purpose of participating in the Cases on behalf of the Holders and further agrees not to use Confidential Information in any manner inconsistent with this Agreement.

Brown Rudnick may share Confidential Information with: (a) its partners, employees or agents who require such information in order to discharge Brown Rudnick’s job responsibilities and who agree to keep such Confidential Information in accordance with the terms of this Agreement, and (b) with other parties (including, without limitation, the Holders) that execute a confidentiality agreement in form and substance reasonably acceptable to counsel for the Debtors. Brown Rudnick will be responsible for any breach of this Agreement by it or its Representatives.

2. In the event that Brown Rudnick receives a request to disclose any Confidential Information, under any applicable law or regulation or legal, regulatory, or judicial process or the rules of any applicable stock exchange, Brown Rudnick agrees, to the extent ~~reasonably~~ possible under the circumstances, (i) to promptly notify the Debtors in writing thereof in order to enable the Debtors to seek an appropriate protective order or other remedy or to waive compliance, in whole or in part, with the terms of this Agreement, (ii) to consult with the Debtors on the advisability of taking steps to resist or narrow such request, and (iii) if disclosure is legally required, to use its reasonable best efforts to cooperate with the Debtors in any attempt they may make to obtain a protective order or other appropriate remedy and/or waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Debtors waive compliance with the provisions hereof, Brown

Rudnick shall be permitted to furnish that portion of the Confidential Information as is legally required. Brown Rudnick shall not oppose the Debtors' efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information.

3. Brown Rudnick understands and acknowledges that the Debtors make no representation or warranty as to the accuracy or completeness of the Confidential Information, and Brown Rudnick agrees that neither the Debtors nor any of their Representatives will have any liability to Brown Rudnick or its Representatives relating to or resulting from the use of the Confidential Information; ~~provided however that Brown Rudnick shall not have waived any claims arising from the gross negligence or willful misconduct of the Debtors or their representatives.~~

4. If Brown Rudnick resigns as adviser to the Holders, Brown Rudnick will promptly notify in writing the Debtors' counsel, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attention: Brian S. Rosen. In such an event, Brown Rudnick shall promptly, upon the Debtors' request and at the option of Brown Rudnick, return to the Debtors or destroy, if so requested by the Debtors, all Confidential Information in its possession and will not retain any copies, extracts or other reproductions in whole or in part of such written material. Upon the Debtors' request, any such destruction shall be certified in writing by an authorized representative of Brown Rudnick supervising such destruction. Upon termination of this Agreement, Confidential Information shall be held by Brown Rudnick in accordance with its retention policies subject to the terms of this Agreement (and notwithstanding the termination hereof) unless otherwise (i) agreed by the parties hereto, (ii) ordered by the Bankruptcy Court, (iii) required by law, or (iv) requested to be destroyed by the Debtors. Unless otherwise directed by the Debtors, Brown Rudnick may retain one copy of any Confidential Information it receives for its office records subject to the confidentiality of such copy as provided under the terms of this Agreement; provided, however, that if Brown Rudnick determines that compliance with the Debtors' request under clause (iv) would be inconsistent with its professional obligations, Brown Rudnick shall not be obligated to comply with any such request; and provided, further, that, in the event Brown Rudnick makes such determination, it shall inform the Debtors, in writing, and state the reasons therefore. It is understood and agreed, moreover, that Brown Rudnick shall not be required to erase electronically stored information that has been saved to a back-up file in accordance with ordinary document retention policies or applicable law, and shall not be required to destroy or return any information required to be retained pursuant to applicable law or regulation provided such information is kept confidential in accordance with the terms of this Agreement.

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requirement for the securing or posting of any bond in connection with such remedy.

Brown Rudnick shall be liable for any breach of this Agreement as may be determined by a final order of a court of competent jurisdiction. Nothing in this section 5 shall prevent Brown Rudnick from contesting that any such breach has occurred or from contesting any litigation in any appropriate fashion.

6. It is understood and agreed that no failure or delay by a party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

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10. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Bankruptcy Court for any actions, suits or proceedings arising out of or relating to this Agreement (and the parties agree not to commence any action, suit or proceeding relating thereto except in such court), and further agrees that service of any process, summons, notice or document by U.S. registered mail to the respective addresses of and to the attention of the (i) Debtors' counsel and (ii) Brown Rudnick shall be effective service of process for any action, suit or proceeding brought against the parties in any such court. Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this agreement in the Bankruptcy Court, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

11. In the event that Brown Rudnick intends to offer into evidence or otherwise use Confidential Information in the Cases, then Brown Rudnick shall (i) obtain the prior written consent of the Debtors (through the Debtors' counsel) to such offer or use; or (ii) ~~use its best efforts to obtain authority to file such information~~obtain an order of the Bankruptcy Court to use such Confidential Information pursuant to the Federal Rules of Bankruptcy Procedure, including by seeking authorization to file the papers seeking such order under seal. Any such request for relief from the Bankruptcy Court may be heard on expedited notice, subject to the Bankruptcy Court's calendar.

~~12. Notwithstanding the foregoing, Brown Rudnick shall retain the right to challenge any designation by Debtors or their Representatives of "Confidentiality" and to seek the Bankruptcy Court's determination that such documents or information are not "Confidential." Moreover, if Brown Rudnick files under seal papers with the Bankruptcy Court containing any information designated as "Confidential," Brown Rudnick's filing of such information under seal shall be without prejudice to Brown Rudnick's right to seek to unseal such documents. Pending the Court's determination on such application, Brown Rudnick shall continue to treat such documents or information as "Confidential."~~

12. Other than any provision hereof that by its terms survives termination, this Agreement shall remain in full force and effect until the earlier to occur of (i) six months following the effective date of a chapter 11 plan in respect of the Cases, and (ii) the termination of this Agreement by agreement of the parties hereto.

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If the foregoing reflects our agreement, please execute below and return to my attention.

Very truly yours,

Brian S. Rosen

AGREED TO AND ACCEPTED BY:






BROWN RUDNICK LLP

Signature:

Name/Title:

Document comparison by Workshare Professional on Tuesday, May 04, 2010
11:31:10 AM

Document 1	
Document 1 ID	interwovenSite://USDMS/US_ACTIVE/43385014/1
Description	#43385014v1<US_ACTIVE> - Brown Rudnick NDA - 5.4.10
Document 2	
Document 2 ID	interwovenSite://USDMS/US_ACTIVE/43385014/2
Description	#43385014v2<US_ACTIVE> - Brown Rudnick NDA - 5.4.10
Rendering set	standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	4
Deletions	5
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	9

EXHIBIT G

Brown, Daniel J.

From: Coffey, Jeremy B.
Sent: Wednesday, May 05, 2010 6:30 PM
To: 'Petherbridge, Vaughan'
Cc: Wissner-Gross, Sigmund S.; 'Sapeika, Tal'; 'brian.rosen@weil.com'; Brown, Daniel J.
Subject: RE: WaMu
Attachments: Adversary Actions - Confidentiality Stipulation.pdf

Further to the below, I see that the parties had previously conducted document production under the attached protective order. So as to avoid further delay and dispute about the terms of a non-disclosure agreement, we would be willing to sign the acknowledgement and consent, and have the requested production be subject to the terms of the existing protective order.

Please let us know by tomorrow morning if this approach is acceptable to the Debtors. Otherwise, please provide us a time tomorrow afternoon when you and Brian Rosen would be available for a meet and confer with Sig Wissner-Gross and me.

Thanks,

Jeremy B. Coffey
Brown Rudnick LLP
One Financial Center
Boston, MA 02111
Telephone (617) 856-8595
Facsimile (617) 856-8201

- and -

Seven Times Square
New York, NY 10036
Telephone (212) 209-4800

* Admitted in Texas and Massachusetts

From: Coffey, Jeremy B.
Sent: Wednesday, May 05, 2010 5:01 PM
To: 'Petherbridge, Vaughan'
Cc: Wissner-Gross, Sigmund S.; Sapeika, Tal; 'brian.rosen@weil.com'
Subject: FW: WaMu

Vaughan,

I'm sorry we have not been able to connect (I just left another voicemail for you). Since this is dragging on, perhaps email communication will be quicker. In hopes that we can come to some agreement regarding the Debtors' provision of documents responsive to the informal request we transmitted to Brian Rosen on April 26 (attached for your reference), I would ask that you reconsider your position on the NDA changes we have requested (in particular, paragraphs 11 and 12 of the attached). We believe the requested changes are reflective of the current best practices for chapter 11 debtors sharing information with case parties and are reasonable under the circumstances of these cases. But, from your last voicemail, I understand your position to be that the indicated terms of the NDA are non-negotiable and that the Debtors are not otherwise willing to provide the requested documents. We believe that position is inconsistent with the spirit of our prior conversation with Brian and the comments (by the parties and the Court) at today's hearing regarding the provision of information in the Debtors' hands.

Again, our hope was to work cooperatively with the Debtors to obtain copies of certain base documents related to the trust preferred and/or REIT securities. If we are unable to do so, we are left with no choice other than to commence formal discovery.

I look forward to your prompt response.

Regards,

5/17/2010

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Seven Times Square
New York, NY 10036
Telephone (212) 209-4800

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From: Petherbridge, Vaughan [mailto:vaughan.petherbridge@weil.com]
Sent: Tuesday, May 04, 2010 11:35 AM
To: Coffey, Jeremy B.
Cc: Wissner-Gross, Sigmund S.; Sapeika, Tal
Subject: RE: WaMu

Dear Jeremy,

A revised draft of the NDA is attached, clean and blackline against your draft.

With regards to the information that would be provided, please reach out to my colleague, Tal Sapeika, who is copied on this email. I believe Tal is not in the office today but should be able to respond to any questions you may have tomorrow.

Regards,

Vaughan Petherbridge
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY, 10153
Phone: 212-310-8941
Facsimile: 212-310-8007
Email: vaughan.petherbridge@weil.com

From: Coffey, Jeremy B. [mailto:JCoffey@brownrudnick.com]
Sent: Friday, April 30, 2010 7:43 PM
To: Petherbridge, Vaughan
Cc: Wissner-Gross, Sigmund S.
Subject: WaMu

Vaughan,

Apologies for delay. Our comments to the NDA are marked on the attached. Please let me know if you have any questions (and, if so, when we can speak to discuss).

Regards,

Jeremy B. Coffey
Brown Rudnick LLP
One Financial Center
Boston, MA 02111

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EXHIBIT H

Brown, Daniel J.

From: Petherbridge, Vaughan [vaughan.petherbridge@weil.com]
Sent: Friday, May 07, 2010 5:02 PM
To: Coffey, Jeremy B.
Subject: RE: WaMu
Attachments: US_ACTIVE_Brown Rudnick NDA - 5.4.10_43385014_3.DOC;
US_ACTIVE_WS_BinaryComparison_#43385014v1_US_ACTIVE_ - Brown Rudnick NDA - 5.4.10-
#43385014v3_US_ACTIVE_ - Brown Rudnick NDA - 5.4.10_43390022_1.DOC

Apologies for the delay. Attached is a further revised draft of the NDA, clean and cumulative blackline against your mark-up, in which we have accepted some but not all of your proposed revisions. Please let me know if you have any additional comments.

Re. the types of documents that would be provided, I believe WMI's general counsel is currently pulling together the applicable documents and that they will be ready early next week. I understand that they will include the closing transcripts for the WMPF transactions, but Tal is waiting to obtain further details from WMI and we will let you know.

Regards,

Vaughan Petherbridge
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY, 10153
Phone: 212-310-8941
Facsimile: 212-310-8007
Email: vaughan.petherbridge@weil.com

From: Coffey, Jeremy B. [mailto:JCoffey@brownrudnick.com]
Sent: Thursday, May 06, 2010 4:15 PM
To: Petherbridge, Vaughan
Subject: RE: WaMu

As I'm sure you can imagine (since we're coming up on two weeks since Brian Rosen indicated the Debtors would provide documents consensually), we need to bring this to a conclusion by tomorrow at the latest. If the conclusion is that the Debtors are not willing to provide documents other than through litigation, that's fine and we will have to act accordingly.

But, in the meantime, I would ask that you or Tal at least tell us what types of documents the Debtors would intend to deliver assuming we can work out the terms.

Many thanks,

Jeremy B. Coffey
Brown Rudnick LLP
One Financial Center
Boston, MA 02111
Telephone (617) 856-8595
Facsimile (617) 856-8201

- and -

Seven Times Square
New York, NY 10036
Telephone (212) 209-4800

5/17/2010

* Admitted in Texas and Massachusetts

From: Petherbridge, Vaughan [mailto:vaughan.petherbridge@weil.com]
Sent: Thursday, May 06, 2010 3:38 PM
To: Coffey, Jeremy B.
Subject: RE: WaMu

Apologies for the delay - I have discussed with Tal but we also need to discuss with Brian, who is out of the office today. We have tried calling him on his cell and are waiting for him to respond. I will let you know as soon as I have further instructions.

Regards,

Vaughan Petherbridge
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY, 10153
Phone: 212-310-8941
Facsimile: 212-310-8007
Email: vaughan.petherbridge@weil.com

From: Coffey, Jeremy B. [mailto:JCoffey@brownrudnick.com]
Sent: Thursday, May 06, 2010 11:52 AM
To: Petherbridge, Vaughan
Subject: RE: WaMu

Thanks, Vaughan. I'll look forward to hearing from you.

From: Petherbridge, Vaughan [mailto:vaughan.petherbridge@weil.com]
Sent: Wednesday, May 05, 2010 6:52 PM
To: Coffey, Jeremy B.
Cc: Wissner-Gross, Sigmund S.; Sapeika, Tal; Rosen, Brian; Brown, Daniel J.
Subject: RE: WaMu

I will confer with Brian and Tal and come back to you.

Regards,

Vaughan Petherbridge
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY, 10153
Phone: 212-310-8941
Facsimile: 212-310-8007
Email: vaughan.petherbridge@weil.com

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Subject: RE: WaMu

5/17/2010

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May ____, 2010

VIA E-MAIL

To Brown Rudnick LLP

**Re: Confidentiality Agreement with
Brown Rudnick LLP**

Washington Mutual, Inc. and WMI Investment Corp (collectively, the “Debtors”) are debtors and debtors in possession in the jointly administered chapter 11 cases pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 08-12229 (MFW) (collectively, the “Cases”). Brown Rudnick LLP (“Brown Rudnick”) represents certain holders of interests in the securities described by the Debtors as constituting the “REIT Series” in the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code that was filed with the Bankruptcy Court on March 26, 2010 (each a “Holder” and, collectively, the “Holders”). The Debtors are prepared to provide now and during the administration of the Cases to Brown Rudnick certain information relating to the Debtors and other matters relevant to the Cases. The Debtors are entering into this agreement (the “Agreement”) with Brown Rudnick to govern the exchange and preservation of that information. The term “Representative” as used in this Agreement shall include directors, executives, officers, employees, agents, partners, experts, consultants, legal counsel, financial and other advisors.

As used herein, the term “Confidential Information” shall mean any information (whether written or oral) concerning the Debtors (whether prepared by the Debtors, their Representatives, or otherwise and irrespective of the form of communication) that is confidential, non-public or proprietary in nature and which is furnished during the pendency of the Cases (whether before or after the date hereof) to Brown Rudnick by, or on behalf of, the Debtors or their Representatives. “Confidential Information” shall also include all notes, analyses, compilations, studies or other

documents, whether prepared by Brown Rudnick or others, which contain or are based upon Confidential Information furnished to Brown Rudnick concerning the Debtors. The term “Confidential Information” shall not include information that (i) was in Brown Rudnick’s or a Holder’s possession prior to the parties’ entry into this Agreement so long as such information did not come from a source that is reasonably known by Brown Rudnick to be bound by a confidentiality agreement with, or other legal, contractual, or fiduciary obligation of confidentiality owed to, the Debtors, (ii) is or becomes publicly available other than as a result of a disclosure by Brown Rudnick in violation of the terms hereof, (iii) is or becomes available to Brown Rudnick on a non-confidential basis from a source other than the Debtors or any of their Representatives so long as such source is not reasonably known by Brown Rudnick to be bound by a confidentiality agreement with, or legal, contractual or fiduciary obligation of confidentiality to, the Debtors, or (iv) is independently developed by Brown Rudnick or any of its clients not in violation of this Agreement.

In consideration of such Confidential Information being furnished by the Debtors to Brown Rudnick, Brown Rudnick agrees to the following:

1. Brown Rudnick hereby agrees that all Confidential Information and the existence thereof will be held and treated in confidence, will not be disclosed in any manner whatsoever, in whole or in part, to any party, including the Holders or any of their respective Representatives, except as provided herein. Brown Rudnick agrees to use Confidential Information only for the purpose of participating in the Cases on behalf of the Holders and further agrees not to use Confidential Information in any manner inconsistent with this Agreement.

Brown Rudnick may share Confidential Information with: (a) its partners, employees or agents who require such information in order to discharge Brown Rudnick’s job responsibilities and who agree to keep such Confidential Information in accordance with the terms of this Agreement, and (b) with other parties (including, without limitation, the Holders) that execute a confidentiality agreement in form and substance reasonably acceptable to counsel for the Debtors. Brown Rudnick will be responsible for any breach of this Agreement by it or its Representatives.

2. In the event that Brown Rudnick receives a request to disclose any Confidential Information, under any applicable law or regulation or legal, regulatory, or judicial process or the rules of any applicable stock exchange, Brown Rudnick agrees, to the extent possible under the circumstances, (i) to promptly notify the Debtors in writing thereof in order to enable the Debtors to seek an appropriate protective order or other remedy or to waive compliance, in whole or in part, with the terms of this Agreement, (ii) to consult with the Debtors on the advisability of taking steps to resist or narrow such request, and (iii) if disclosure is legally required, to use its reasonable best efforts to cooperate with the Debtors in any attempt they may make to obtain a protective order or other appropriate remedy and/or waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Debtors waive compliance with the provisions hereof, Brown Rudnick shall be

permitted to furnish that portion of the Confidential Information as is legally required. Brown Rudnick shall not oppose the Debtors' efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information.

3. Brown Rudnick understands and acknowledges that the Debtors make no representation or warranty as to the accuracy or completeness of the Confidential Information, and Brown Rudnick agrees that neither the Debtors nor any of their Representatives will have any liability to Brown Rudnick or its Representatives relating to or resulting from the use of the Confidential Information.

4. If Brown Rudnick resigns as adviser to the Holders, Brown Rudnick will promptly notify in writing the Debtors' counsel, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attention: Brian S. Rosen. In such an event, Brown Rudnick shall promptly, upon the Debtors' request and at the option of Brown Rudnick, return to the Debtors or destroy, if so requested by the Debtors, all Confidential Information in its possession and will not retain any copies, extracts or other reproductions in whole or in part of such written material. Upon the Debtors' request, any such destruction shall be certified in writing by an authorized representative of Brown Rudnick supervising such destruction. Upon termination of this Agreement, Confidential Information shall be held by Brown Rudnick in accordance with its retention policies subject to the terms of this Agreement (and notwithstanding the termination hereof) unless otherwise (i) agreed by the parties hereto, (ii) ordered by the Bankruptcy Court, (iii) required by law, or (iv) requested to be destroyed by the Debtors. Unless otherwise directed by the Debtors, Brown Rudnick may retain one copy of any Confidential Information it receives for its office records subject to the confidentiality of such copy as provided under the terms of this Agreement; provided, however, that if Brown Rudnick determines that compliance with the Debtors' request under clause (iv) would be inconsistent with its professional obligations, Brown Rudnick shall not be obligated to comply with any such request; and provided, further, that, in the event Brown Rudnick makes such determination, it shall inform the Debtors, in writing, and state the reasons therefore. It is understood and agreed, moreover, that Brown Rudnick shall not be required to erase electronically stored information that has been saved to a back-up file in accordance with ordinary document retention policies or applicable law, and shall not be required to destroy or return any information required to be retained pursuant to applicable law or regulation provided such information is kept confidential in accordance with the terms of this Agreement.

5. The Debtors are entitled to all remedies that may be available to any of them at law or in equity for any breach or violation of this Agreement by Brown Rudnick, including specific performance and injunctive relief and, in the event the Debtors seek such relief, Brown Rudnick shall not assert that specific performance or injunctive relief is not available. Brown Rudnick further agrees to waive, and to use its reasonable best efforts to cause its officers, employees, and agents to waive, any requirement for the securing or posting of any bond in connection with such remedy.

Brown Rudnick shall be liable for any breach of this Agreement as may be determined by a final order of a court of competent jurisdiction. Nothing in this section 5 shall prevent Brown Rudnick from contesting that any such breach has occurred or from contesting any litigation in any appropriate fashion.

6. It is understood and agreed that no failure or delay by a party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

7. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

8. This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, arrangements and understandings relating to the matter provided for herein. No alteration, waiver, amendment, change or supplement hereto shall be binding or effective unless the same is set forth in a writing signed by each party hereto. No party hereunder may assign its rights or obligations under this Agreement without the prior written consent of the Debtors.

9. Nothing in this Agreement is intended to grant Brown Rudnick any rights under any patent, copyright, trade secret or other intellectual property right, nor shall this Agreement grant to Brown Rudnick any rights in or to the Confidential Information, except the limited right to review the Confidential Information solely for the purpose and in the manner set forth in this Agreement.

10. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Bankruptcy Court for any actions, suits or proceedings arising out of or relating to this Agreement (and the parties agree not to commence any action, suit or proceeding relating thereto except in such court), and further agrees that service of any process, summons, notice or document by U.S. registered mail to the respective addresses of and to the attention of the (i) Debtors' counsel and (ii) Brown Rudnick shall be effective service of process for any action, suit or proceeding brought against the parties in any such court. Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this agreement in the Bankruptcy Court, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

11. In the event that Brown Rudnick intends to offer into evidence or otherwise use Confidential Information in the Cases, then Brown Rudnick shall (i) obtain the prior written consent of the Debtors (through the Debtors' counsel) to such offer or

use; or (ii) obtain an order of the Bankruptcy Court to use such Confidential Information pursuant to the Federal Rules of Bankruptcy Procedure, including by seeking authorization to file the papers seeking such order under seal. Any such request for relief from the Bankruptcy Court may be heard on expedited notice, subject to the Bankruptcy Court's calendar.

12. Notwithstanding the foregoing, Brown Rudnick shall retain the right to challenge any designation by the Debtors or their Representatives of "Confidentiality" and to seek the Bankruptcy Court's determination that such documents or information are not "Confidential." Moreover, upon receipt of appropriate Bankruptcy Court authorization to file papers under seal with the Bankruptcy Court, which contain any information designated as "Confidential," the filing of such information under seal shall be without prejudice to either Brown Rudnick's or the Debtors' rights with respect thereto. Pending the Court's determination on such application, Brown Rudnick shall continue to treat such documents or information as "Confidential."

13. Other than any provision hereof that by its terms survives termination, this Agreement shall remain in full force and effect until the earlier to occur of (i) six months following the effective date of a chapter 11 plan in respect of the Cases, and (ii) the termination of this Agreement by agreement of the parties hereto.

14. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

If the foregoing reflects our agreement, please execute below and return to my attention.

Very truly yours,

Brian S. Rosen

AGREED TO AND ACCEPTED BY:

BROWN RUDNICK LLP

Signature:

Name/Title:

~~April~~ May ____, 2010

VIA E-MAIL

To Brown Rudnick LLP

**Re: Confidentiality Agreement with
Brown Rudnick LLP**

Washington Mutual, Inc. and WMI Investment Corp (collectively, the "Debtors") are debtors and debtors in possession in the jointly administered chapter 11 cases pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), Case No. 08-12229 (MFW) (collectively, the "Cases"). Brown Rudnick LLP ("Brown Rudnick") represents certain holders of interests in the securities described by the Debtors as constituting the "REIT Series" in the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code that was filed with the Bankruptcy Court on March 26, 2010 (each a "Holder" and, collectively, the "Holders"). The Debtors are prepared to provide now and during the administration of the Cases to Brown Rudnick certain information relating to the Debtors and other matters relevant to the Cases. The Debtors are entering into this agreement (the "Agreement") with Brown Rudnick to govern the exchange and preservation of that information. The term "Representative" as used in this Agreement shall include directors, executives, officers, employees, agents, partners, experts, consultants, legal counsel, financial and other advisors.

As used herein, the term "Confidential Information" shall mean any information (whether written or oral) concerning the Debtors (whether prepared by the Debtors, their Representatives, or otherwise and irrespective of the form of communication) that is confidential, non-public or proprietary in nature and which is furnished during the pendency of the Cases (whether before or after the date hereof) to Brown Rudnick by, or on behalf of, the Debtors or their Representatives. "Confidential Information" shall also include all notes, analyses, compilations, studies or other

documents, whether prepared by Brown Rudnick or others, which contain or are based upon Confidential Information furnished to Brown Rudnick concerning the Debtors. The term “Confidential Information” shall not include information that (i) was in Brown Rudnick’s or a Holder’s possession prior to the parties’ entry into this Agreement so long as such information did not come from a source that is reasonably known by Brown Rudnick to be bound by a confidentiality agreement with, or other legal, contractual, or fiduciary obligation of confidentiality owed to, the Debtors, (ii) is or becomes publicly available other than as a result of a disclosure by Brown Rudnick in violation of the terms hereof, (iii) is or becomes available to Brown Rudnick on a non-confidential basis from a source other than the Debtors or any of their Representatives so long as such source is not reasonably known by Brown Rudnick to be bound by a confidentiality agreement with, or legal, contractual or fiduciary obligation of confidentiality to, the Debtors, or (iv) is independently developed by Brown Rudnick or any of its clients not in violation of this Agreement.

In consideration of such Confidential Information being furnished by the Debtors to Brown Rudnick, Brown Rudnick agrees to the following:

1. Brown Rudnick hereby agrees that all Confidential Information and the existence thereof will be held and treated in confidence, will not be disclosed in any manner whatsoever, in whole or in part, to any party, including the Holders or any of their respective Representatives, except as provided herein. Brown Rudnick agrees to use Confidential Information only for the purpose of participating in the Cases on behalf of the Holders and further agrees not to use Confidential Information in any manner inconsistent with this Agreement.

Brown Rudnick may share Confidential Information with: (a) its partners, employees or agents who require such information in order to discharge Brown Rudnick’s job responsibilities and who agree to keep such Confidential Information in accordance with the terms of this Agreement, and (b) with other parties (including, without limitation, the Holders) that execute a confidentiality agreement in form and substance reasonably acceptable to counsel for the Debtors. Brown Rudnick will be responsible for any breach of this Agreement by it or its Representatives.

2. In the event that Brown Rudnick receives a request to disclose any Confidential Information, under any applicable law or regulation or legal, regulatory, or judicial process or the rules of any applicable stock exchange, Brown Rudnick agrees, to the extent ~~reasonably~~ possible under the circumstances, (i) to promptly notify the Debtors in writing thereof in order to enable the Debtors to seek an appropriate protective order or other remedy or to waive compliance, in whole or in part, with the terms of this Agreement, (ii) to consult with the Debtors on the advisability of taking steps to resist or narrow such request, and (iii) if disclosure is legally required, to use its reasonable best efforts to cooperate with the Debtors in any attempt they may make to obtain a protective order or other appropriate remedy and/or waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Debtors waive compliance with the provisions hereof, Brown

Rudnick shall be permitted to furnish that portion of the Confidential Information as is legally required. Brown Rudnick shall not oppose the Debtors' efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information.

3. Brown Rudnick understands and acknowledges that the Debtors make no representation or warranty as to the accuracy or completeness of the Confidential Information, and Brown Rudnick agrees that neither the Debtors nor any of their Representatives will have any liability to Brown Rudnick or its Representatives relating to or resulting from the use of the Confidential Information; ~~provided however that Brown Rudnick shall not have waived any claims arising from the gross negligence or willful misconduct of the Debtors or their representatives.~~

4. If Brown Rudnick resigns as adviser to the Holders, Brown Rudnick will promptly notify in writing the Debtors' counsel, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attention: Brian S. Rosen. In such an event, Brown Rudnick shall promptly, upon the Debtors' request and at the option of Brown Rudnick, return to the Debtors or destroy, if so requested by the Debtors, all Confidential Information in its possession and will not retain any copies, extracts or other reproductions in whole or in part of such written material. Upon the Debtors' request, any such destruction shall be certified in writing by an authorized representative of Brown Rudnick supervising such destruction. Upon termination of this Agreement, Confidential Information shall be held by Brown Rudnick in accordance with its retention policies subject to the terms of this Agreement (and notwithstanding the termination hereof) unless otherwise (i) agreed by the parties hereto, (ii) ordered by the Bankruptcy Court, (iii) required by law, or (iv) requested to be destroyed by the Debtors. Unless otherwise directed by the Debtors, Brown Rudnick may retain one copy of any Confidential Information it receives for its office records subject to the confidentiality of such copy as provided under the terms of this Agreement; provided, however, that if Brown Rudnick determines that compliance with the Debtors' request under clause (iv) would be inconsistent with its professional obligations, Brown Rudnick shall not be obligated to comply with any such request; and provided, further, that, in the event Brown Rudnick makes such determination, it shall inform the Debtors, in writing, and state the reasons therefore. It is understood and agreed, moreover, that Brown Rudnick shall not be required to erase electronically stored information that has been saved to a back-up file in accordance with ordinary document retention policies or applicable law, and shall not be required to destroy or return any information required to be retained pursuant to applicable law or regulation provided such information is kept confidential in accordance with the terms of this Agreement.

5. The Debtors are entitled to all remedies that may be available to any of them at law or in equity for any breach or violation of this Agreement by Brown Rudnick, including specific performance and injunctive relief and, in the event the Debtors seek such relief, Brown Rudnick shall not assert that specific performance or injunctive relief is not available. Brown Rudnick further agrees to waive, and to use its reasonable best efforts to cause its officers, employees, and agents to waive, any

requirement for the securing or posting of any bond in connection with such remedy.

Brown Rudnick shall be liable for any breach of this Agreement as may be determined by a final order of a court of competent jurisdiction. Nothing in this section 5 shall prevent Brown Rudnick from contesting that any such breach has occurred or from contesting any litigation in any appropriate fashion.

6. It is understood and agreed that no failure or delay by a party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

7. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

8. This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, arrangements and understandings relating to the matter provided for herein. No alteration, waiver, amendment, change or supplement hereto shall be binding or effective unless the same is set forth in a writing signed by each party hereto. No party hereunder may assign its rights or obligations under this Agreement without the prior written consent of the Debtors.

9. Nothing in this Agreement is intended to grant Brown Rudnick any rights under any patent, copyright, trade secret or other intellectual property right, nor shall this Agreement grant to Brown Rudnick any rights in or to the Confidential Information, except the limited right to review the Confidential Information solely for the purpose and in the manner set forth in this Agreement.

10. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Bankruptcy Court for any actions, suits or proceedings arising out of or relating to this Agreement (and the parties agree not to commence any action, suit or proceeding relating thereto except in such court), and further agrees that service of any process, summons, notice or document by U.S. registered mail to the respective addresses of and to the attention of the (i) Debtors' counsel and (ii) Brown Rudnick shall be effective service of process for any action, suit or proceeding brought against the parties in any such court. Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this agreement in the Bankruptcy Court, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

11. In the event that Brown Rudnick intends to offer into evidence or otherwise use Confidential Information in the Cases, then Brown Rudnick shall (i) obtain the prior written consent of the Debtors (through the Debtors' counsel) to such offer or use; or (ii) ~~use its best efforts to obtain authority to file such information~~obtain an order of the Bankruptcy Court to use such Confidential Information pursuant to the Federal Rules of Bankruptcy Procedure, including by seeking authorization to file the papers seeking such order under seal. Any such request for relief from the Bankruptcy Court may be heard on expedited notice, subject to the Bankruptcy Court's calendar.

12. Notwithstanding the foregoing, Brown Rudnick shall retain the right to challenge any designation by the Debtors or their Representatives of "Confidentiality" and to seek the Bankruptcy Court's determination that such documents or information are not "Confidential." Moreover, ~~if Brown Rudnick files upon receipt of appropriate Bankruptcy Court authorization to file papers~~under seal papers with the Bankruptcy Court containing, which contain any information designated as "Confidential," ~~Brown Rudnick's~~the filing of such information under seal shall be without prejudice to either Brown Rudnick's right to seek to unseal such documents or the Debtors' rights with respect thereto. Pending the Court's determination on such application, Brown Rudnick shall continue to treat such documents or information as "Confidential."

~~12.13.~~ Other than any provision hereof that by its terms survives termination, this Agreement shall remain in full force and effect until the earlier to occur of (i) six months following the effective date of a chapter 11 plan in respect of the Cases, and (ii) the termination of this Agreement by agreement of the parties hereto.

~~13.14.~~ This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

If the foregoing reflects our agreement, please execute below and return to my attention.

Very truly yours,

Brian S. Rosen

AGREED TO AND ACCEPTED BY:

BROWN RUDNICK LLP

Signature:

Name/Title:

Document comparison by Workshare Professional on Friday, May 07, 2010
4:57:06 PM

<div style="background-color: black; color: white; padding: 2px;"> Document Comparison </div>	
Document 1 ID	interwovenSite://USDMS/US_ACTIVE/43385014/1
Description	#43385014v1<US_ACTIVE> - Brown Rudnick NDA - 5.4.10
Document 2 ID	interwovenSite://USDMS/US_ACTIVE/43385014/3
Description	#43385014v3<US_ACTIVE> - Brown Rudnick NDA - 5.4.10
Rendering set	standard

<div style="background-color: black; color: white; padding: 2px;"> Summary </div>	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<div style="background-color: black; color: white; padding: 2px;"> Statistics </div>	
	Count
Insertions	13
Deletions	12
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	25

EXHIBIT I

Brown, Daniel J.

From: Jang, Chun I. [Jang@RLF.com]
Sent: Friday, May 14, 2010 8:44 AM
To: meskin@camlev.com; kdavis@camlev.com; bconaway@camlev.com; Stark, Robert J.; Wissner-Gross, Sigmund S.; Coffey, Jeremy B.; Brown, Daniel J.
Cc: brian.rosen@weil.com; Sharma, Rahul; McMahon, Joseph (USTP); Adam Landis; Hodara, Fred; Peter Calamari; David Stratton; Bill Bowden; friedmans@sullcrom.com; ssusman@susmangodfrey.com; sard@susmangodfrey.com; pfolse@susmangodfrey.com; esargent@susmangodfrey.com; jnelson@susmangodfrey.com
Subject: WaMu: Response and Objection to Request for Production of Documents
Attachments: Response and Objection to Doc Requests.pdf

Please find attached the Response and Objection of Washington Mutual, Inc. and WMU Investment Corp. to First Request for Production of Documents by Consortium of Trust Preferred Security.

Chun I. Jang
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
Direct Dial: 302-651-7514
Direct Fax: 302-498-7514

Richards, Layton and Finger, P.A. is not providing any advice with respect to any federal tax issue in connection with this matter.

The information contained in this e-mail message is intended only for the use of the individual or entity named above and may be privileged and/or confidential. If the reader of this message is not the intended recipient, you are hereby notified that any unauthorized dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please immediately notify us by return e-mail or telephone (302-651-7700) and destroy the original message. Thank you.

5/17/2010

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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

**RESPONSE AND OBJECTION OF
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.
TO FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
BY CONSORTIUM OF TRUST PREFERRED SECURITY HOLDERS**

Pursuant to Federal Rules of Civil Procedure 26 and 34, applicable herein pursuant to Rules 7026 and 7034 of the Federal Rules of Bankruptcy Procedure, Washington Mutual, Inc. and WMI Investment Corp., as debtors in possession (collectively, the “Debtors”), by their undersigned counsel, submit the following response and objection to the First Request for Production of Documents (the “Request”) of a purported “Consortium of Trust Preferred Security Holders” (the “TPS Consortium”).

General Objection

1. Federal Rule of Civil Procedure 34(b)(1) provides in pertinent part that a request must specify a reasonable time, place, and manner for the inspection and for the performing of the related acts. In that regard, Rule 34(b)(2)(A) provides as follows:

The party to whom the request is directed must respond in writing within 30 days after being served. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

FRCP 34(b)(2)(A).

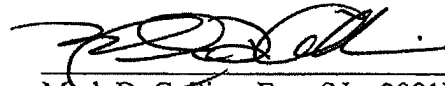
¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors’ principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.

2. As (a) the Debtors have not been asked to nor agreed to expedited discovery and (b) the Court has not entered an order requiring expedited discovery, the Debtors would be required to respond to the Request on June 10, 2010. Accordingly, the TPS Consortium's demand to have the Request satisfied by May 14, 2010 at 9:00 a.m. is of no force or effect. The aforementioned demand is even more absurd in light of the TPS Consortium's participation in the Debtors' chapter 11 cases, their retention of counsel and their ability to have proceeded in a more timely manner.

RESERVATION OF RIGHTS

3. In the event that the Court determines to permit expedited discovery, the Debtors reserve all rights to object or otherwise respond to the scope and nature of such Requests.

Dated: Wilmington, Delaware
May 13, 2010



Mark D. Collins, Esq. (No. 2981)
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.
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 J

Brown, Daniel J.

From: Brown, Daniel J.
Sent: Friday, May 14, 2010 5:44 PM
To: 'brian.rosen@weil.com'; 'vaughan.petherbridge@weil.com'
Cc: Stark, Robert J.; Wissner-Gross, Sigmund S.; Coffey, Jeremy B.; Brown, Daniel J.; 'Marla R. Eskin'; 'Kathleen Campbell Davis'; 'Bernard G. Conaway'
Subject: Washington Mutual
Attachments: DOCS_NY-#8253683-v1-5_14_10_ltr_to_Weil_Gotshal.PDF

Counsel,


Please see attached letter.



Daniel J. Brown

Counselor at Law

Brown Rudnick LLP
One Financial Center
Boston, MA 02111
T: 617.856.8287
F: 617.289.0577
dbrown@brownrudnick.com
www.brownrudnick.com

 please consider the environment before printing this e-mail



SIGMUND WISSNER-GROSS
direct dial: 212 209-4930
swissnergross@brownrudnick.com

Seven
Times
Square
New York
New York
10036
tel 212.209.4800
fax 212.209.4801

May 14, 2010

VIA EMAIL AND FIRST CLASS MAIL

Brian Rosen, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153-0119

**Re: In re: Washington Mutual, Inc., Case No. 08-12229 (MFW)
United States Bankruptcy Court for the District of Delaware**

Dear Brian:

I write in connection with the *Response and Objection of Debtors to First Request for Production of Documents by Consortium of Trust Preferred Security Holders* (the "Response"), which I received this morning at 9:00 a.m. As you are aware, for weeks we have been trying to obtain from the Debtors basic documents concerning the Trust Preferred Securities. Yet, we have been presented with nothing but delay tactics and empty promises from your firm.

In this regard, I feel it necessary and appropriate to recount accurately the history of our efforts. You and I spoke by telephone on April 26, 2010, at which time you agreed to produce documents concerning the Trust Preferred Securities. Later that same day, I forwarded to you by email a list of documents we were interested in reviewing. On April 29, you responded, indicating that the Debtors were gathering information and documents responsive to my request, that such documents would be made available via an Intralinks website and, for the first time, you introduced the concept of a non-disclosure agreement. Still later that day, we received from Vaughan Petherbridge of your office a draft non-disclosure agreement. As that proposed agreement would have imposed numerous limitations and conditions not typical to agreements between debtors-in-possession and parties in interest, we provided comments to Mr. Petherbridge the following day (April 30). Mr. Petherbridge did not respond until May 3, at which time he indicated he was too busy at that time to respond to our comments to the proposed non-disclosure agreement. Finally, on May 4, Mr. Petherbridge responded to our comments, rejecting substantially all substantive

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changes. By voicemail on the next day (May 5), Mr. Petherbridge indicated that the Debtors were not willing to negotiate on the terms of the non-disclosure agreement. In response, we requested that the Debtors reconsider that position or, in the alternative, offered to allow the production to be subject to the existing protective order negotiated and approved by the Court in these cases. When we followed up with Mr. Petherbridge regarding these alternatives on May 6, we were told that they remained under consideration but that you could not be reached to discuss. Finally, late in the day on Friday, May 7, we received a revised mark-up of the non-disclosure agreement from Mr. Petherbridge, which again contained non-standard terms and conditions regarding use of information produced thereunder. Mr. Petherbridge did, however, indicate that the documents were being gathered, and would be available for production early during the week of May 10. But, our offer to operate under the Court-approved protective Order was ignored. At that point, we were left with no choice but to proceed with formal discovery, which we served in connection with our objection to the disclosure statement on May 11.

Notwithstanding representations by you and Mr. Petherbridge that responsive documents have already been gathered, the Response served this morning indicates that Debtors refuse to provide any substantive response or documents until June 10, 2010, just two weeks before the current plan objection deadline. Such a position is entirely unacceptable and in light of prior representations and actions by the Debtors. We have again attempted to resolve this issue amicably today, but have not heard back.

As such, I am demanding that Debtors produce responsive documents immediately, otherwise, we will be forced to raise the issue with Judge Walrath. I am confident, given the history recounted above and the Court's warnings to you at the May 5 hearing regarding unnecessary discovery disputes, Judge Walrath will not view your delay tactics and posturing as being consistent with the Debtors' fiduciary duties or your duties as an officer of the Court.

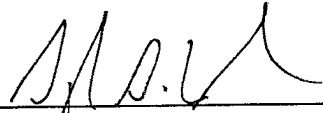
With respect to logistics, we have no objection to the immediate production of documents at the New York office of Brown Rudnick, 7 Times Square, New York, NY 10036 or at the Delaware office of Campbell & Levine LLC, 800 North King Street, Suite 300, Wilmington, DE 19809, whichever is more convenient for you. Again, we will agree to treat any documents designated as confidential in accordance with the February 18, 2010 Amended Confidentiality Stipulation and Protective Order Governing the Production of Documents.

I look forward to your anticipated cooperation. Please feel free to contact me if you have any questions.



Very truly yours,

BROWN RUDNICK LLP

By: 

Sigmund Wissner-Gross

cc: Robert Stark, Esq.
Jeremy Coffey, Esq.
Daniel Brown, Esq.
Marla Rosoff Eskin, Esq.
Bernard G. Conaway, Esq.
Kathleen Campbell Davis, Esq.
Vaughan Petherbridge, Esq.

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

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

**CERTIFICATION OF COUNSEL
IN SUPPORT OF THE MOTION OF
THE CONSORTIUM OF TRUST PREFERRED SECURITY HOLDERS
TO COMPEL DEBTORS TO PRODUCE DOCUMENTS**

I, Daniel J. Brown, counsel for the Trust Preferred Holders hereby certify that, in addition to the efforts to engage in informal discovery between April 26 and May 7, which are outlined in detail in the Motion to Compel, the following efforts were made to resolve the matters which are the subject of the Motion to Compel:

1. On May 14, 2010 counsel for the TPS Consortium attempted to contact counsel for the Debtors via telephone and email to schedule a telephone conference to discuss the issues raised in the Motion to Compel.

2. After not receiving no substantive response to the request for a teleconference, the TPS Consortium's lead counsel sent the letter to Debtors' lead counsel, which letter is attached to the Motion to Compel as Exhibit D. Debtors' counsel has not responded to the letter, nor has counsel agreed to a teleconference.

Dated: May 17, 2010

/s/ Daniel J. Brown
Daniel J. Brown
Brown Rudnick LLP
One Financial Center
Boston, MA 02111
(617) 856-8200
(617) 856-8201 (fax)

Counsel to Trust Preferred Holders

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

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

**ORDER APPROVING MOTION OF THE CONSORTIUM OF TRUST PREFERRED
SECURITY HOLDERS TO COMPEL DEBTORS TO PRODUCE DOCUMENTS**

Upon consideration of the Motion of the Consortium of Trust Preferred Security Holders (the "TPS Consortium") to Compel Debtors to Produce Documents (the "Motion") and any objections thereto; it is HEREBY

ORDERED that the Motion is approved and Debtors are compelled to produce immediately: (a) all documents that were previously produced to the Debtors in connection with Rule 2004 discovery; and (b) all other documents previously requested by the TPS Consortium including all documents that the Debtors represented were ready to be produced by the beginning of the week of May 10.

Dated: May ____, 2010

Wilmington, Delaware

The Honorable Mary F. Walrath
UNITED STATES BANKRUPTCY JUDGE

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

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

CERTIFICATE OF SERVICE

I, Marla Rosoff Eskin, of Campbell & Levine, LLC, hereby certify that on May 17, 2010, I caused a copy of the foregoing *Motion of the Consortium of Trust Preferred Security Holders to Compel Debtors to Produce Documents* to be served upon the individuals listed below via First Class Mail.

Washington Mutual, Inc.
c/o Charles E. Smith, Esq.
925 Fourth Avenue
Seattle, Washington 98104

Brian S. Rosen, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153

Mark D. Collins, Esq.
Richards Layton & Finger, PA
One Rodney Square
920 North King Street
Wilmington, DE 19899

Peter Calamari, Esquire
Quinn Emanuel Urquhart &
Sullivan LLP
55 Madison Avenue, 22nd
Floor
New York, NY 10010

Joseph McMahon, Esq.
Office of the United States
Trustee
844 King Street, Suite 2207
Lockbox 35
Wilmington, DE 19899-0035

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

David B. Stratton, Esq.
Pepper Hamilton LLP
Hercules Plaza, Suite 5100
1313 N. Market Street
Wilmington, DE 19801

William P. Bowden, Esq.
Ashby & Geddes, P.A.
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8th Floor
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Wilmington, DE 19899

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Sullivan & Cromwell LLP
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New York, NY 10004

Adam G. Landis, Esq.
Landis Rath & Cobb LLP
919 Market Street
Suite 1800
P.O. Box 2087
Wilmington, DE 19899

Stephen D. Susman, Esq.
Seth Ard, Esq.
Susman Godfrey LLP
654 Madison Avenue, 5th Fl
New York, NY 10065-8404

Parker C. Folse, III, Esq.
Edgar G. Sargent, Esq.
Justin A. Nelson, Esq.
1201 Third Avenue
Suite 3800
Seattle, Washington 98101-
3000

Dated: May 17, 2010

/s/ Marla Rosoff Eskin

Marla Rosoff Eskin (No. 2989)