

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

-----X	:	
In re	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	Jointly Administered
	:	
-----X		Related D.I. 3663, 3924, 3929

**CERTIFICATION OF COUNSEL REGARDING  
CERTIFICATION OF DIRECT APPEAL TO THE  
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

Gregory A. Taylor, a partner of Ashby & Geddes, P.A., co-counsel to the Official Committee of Equity Security Holders (the “Equity Committee”), hereby certifies as follows:

1. On May 19, 2010 the Equity Committee filed its timely notice of appeal [Docket No. 3924] (the “Notice of Appeal”) with respect to the *Order Denying Motion and Supporting Memorandum of the Official Committee of Equity Security Holders for the Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy Code*, entered on May 5, 2010 [D.I. 3663] (the “Final Order”).

2. On May 19, 2010, the Equity Committee also filed the *Official Committee of Equity Security Holders’ Petition, Pursuant to 11 U.S.C. § 105(a), 28 U.S.C. § 158(d)(2), and Fed. R. Bankr. P. 8001(f), for Certification for Direct Appeal to the Court of Appeals for the Third Circuit of Appeal from Order Denying Appointment of an Examiner* [Docket No. 3929] (the “Certification Motion”).

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s 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, Suite 2500, Seattle, Washington 98104.



3. On June 3, 2010, the Court held a hearing to consider the Certification Motion. Following oral argument, the Court granted the relief sought in the Certification Motion. The Court further directed Equity Committee to submit a revised proposed order under certification of counsel.

4. The Equity Committee has conferred with counsel to the Debtors and counsel to the Official Committee of Unsecured Creditors on a form of revised proposed order. The Equity Committee and the Debtors were unable to reach an agreement on the revised proposed order.

5. The Equity Committee has prepared a revised proposed form of order it believes is consistent with the Court's ruling rendered at the June 3<sup>rd</sup> hearing, a copy of which is attached hereto as Exhibit A (the "Revised Proposed Order"). A blackline of the Revised Proposed Order, as against the original form of order submitted with the Certification Motion is attached hereto as Exhibit B. This language mirrors exactly clause (ii) of the statute, which is what this Court specifically found.

6. The Debtors have requested, that the words "from courts outside the Third Circuit" be inserted at the end of next to the last sentence of the next to the last paragraph of the Revised Proposed Order. A copy of the revised proposed order reflecting the Debtors' proposed insertion is attached hereto as Exhibit C (the "Debtors' Revised Proposed Order"). A blackline of the Debtors' Revised Proposed Order, as against the original form of order submitted with the Certification Motion is attached hereto as Exhibit D. The Equity Committee does not believe that the language requested by the Debtors is consistent with the Court's ruling and submits that it should not be included in the Order. The Debtors' insertion is trying to add language to clause (ii). The other parts of the Proposed Order mirror the statutory language, and the language on clause (ii) should do the same.

7. The Equity Committee therefore respectfully requests that the Court enter the Revised Proposed Order, attached hereto as Exhibit A, at its earliest convenience.

Dated: June 4, 2010

**ASHBY & GEDDES, P.A.**



William P. Bowden (DE Bar No. 2553)  
Gregory A. Taylor (DE Bar No. 4008)  
Amanda M. Winfree (DE Bar No. 4615)  
Stacy L. Newman (DE Bar No. 5044)  
500 Delaware Avenue, 8<sup>th</sup> Floor  
P.O. Box 1150  
Wilmington, DE 19899  
Telephone: (302) 654-1888  
Facsimile : (302) 654-2067  
E-mail: [wbowden@ashby-geddes.com](mailto:wbowden@ashby-geddes.com)  
[gtaylor@ashby-geddes.com](mailto:gtaylor@ashby-geddes.com)  
[snewman@ashby-geddes.com](mailto:snewman@ashby-geddes.com)

*Co-Counsel to the Official Committee of Equity  
Security Holders of Washington Mutual, Inc., et al.*

-and-

**SUSMAN GODFREY, L.L.P.**

Stephen D. Susman (NY Bar No. 3041712)  
Seth D. Ard (NY Bar No. 4773982)  
654 Madison Avenue, 5th Floor  
New York, NY 10065  
E-mail: [ssusman@susmangodfrey.com](mailto:ssusman@susmangodfrey.com)  
[sard@susmangodfrey.com](mailto:sard@susmangodfrey.com)

Parker C. Folsie, III (WA Bar No. 24895)  
Edgar Sargent (WA Bar No. 28283)  
Justin A. Nelson (WA Bar No. 31864)  
1201 Third Ave., Suite 3800  
Seattle, WA 98101  
Telephone: (206) 516-3880  
Facsimile: (206) 516-3883  
E-mail: [pfolsie@susmangodfrey.com](mailto:pfolsie@susmangodfrey.com)  
[esargent@susmangodfrey.com](mailto:esargent@susmangodfrey.com)  
[jnelson@susmangodfrey.com](mailto:jnelson@susmangodfrey.com)

*Co-Counsel for the Official Committee of Equity  
Security Holders of Washington Mutual, Inc., et al.*

**EXHIBIT A**

**[Revised Proposed Order]**

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

-----X		
In re	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	Jointly Administered
	:	
-----X		<b>Related D.I. 3663, 3924, 3929</b>

**CERTIFICATION OF DIRECT APPEAL TO THE  
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT  
OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS'  
APPEAL FROM THE ORDER DENYING APPOINTMENT OF AN EXAMINER**

A notice of appeal having been timely filed in the above-captioned Chapter 11 cases on May 19, 2010 by the Official Committee of Equity Security Holders (the "Equity Committee") appealing the *Order Denying Motion and Supporting Memorandum of the Official Committee of Equity Security Holders for the Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy Code*, entered on May 5, 2010 [D.I. 3663] (the "Final Order"), a copy of which is attached hereto as Exhibit 1; and for the reasons set forth in the *Official Committee of Equity Security Holders' Petition, Pursuant to 11 U.S.C. § 105(a), 28 U.S.C. § 158(d)(2), and Fed. R. Bankr. P. 8001(f), for Certification for Direct Appeal to the Court of Appeals for the Third Circuit of Appeal from Order Denying Appointment of an Examiner* (the "Certification Motion") and the underlying *Motion and Supporting Memorandum of the Official Committee of Equity Security Holders for the Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy Code* [D.I. 3579] (the "Motion"); the Court hereby finds that this certification arises

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's 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, Suite 2500, Seattle, Washington 98104.

from a timely appeal from a final judgment, order, or decree of the United States Bankruptcy Court for the District of Delaware; this Court hereby further finds that the Final Order involves a question of law as to which there is no controlling decision of the United States Court of Appeals for the Third Circuit (the "Third Circuit") or of the Supreme Court of the United States; this Court hereby further finds that the Final Order involves a matter of public importance; and this Court hereby further finds that the Final Order involves a question of law requiring resolution of conflicting decisions; and thus it is hereby

ORDERED that, pursuant to 28 U.S.C. § 158(d)(2) and Bankruptcy Rule 8001(f), the Equity Committee's appeal of the Final Order is hereby CERTIFIED for direct appeal to the Third Circuit.

Dated: \_\_\_\_\_, 2010

\_\_\_\_\_  
The Honorable Mary F. Walrath  
United States Bankruptcy Judge

**EXHIBIT B**

**[Blackline - Revised Proposed Order]**

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

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

Related D.I. 3663, 3924, 3929

Deleted:

**CERTIFICATION OF DIRECT APPEAL TO THE  
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT  
OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS'  
APPEAL FROM THE ORDER DENYING APPOINTMENT OF AN EXAMINER**

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from a timely appeal from a final judgment, order, or decree of the United States Bankruptcy Court for the District of Delaware; this Court hereby further finds that the Final Order involves a question of law as to which there is no controlling decision of the United States Court of Appeals for the Third Circuit (the "Third Circuit") or of the Supreme Court of the United States; this Court hereby further finds that the Final Order involves a matter of public importance; ~~and this Court hereby further finds that the Final Order involves a question of law requiring resolution of conflicting decisions;~~ and thus it is hereby

**Deleted:** and this Court hereby further finds that an immediate appeal from the Final Order to the Third Circuit will materially advance the progress of the above-captioned Chapter 11 cases

ORDERED that, pursuant to 28 U.S.C. § 158(d)(2) and Bankruptcy Rule 8001(f), the Equity Committee's appeal of the Final Order is hereby CERTIFIED for direct appeal to the Third Circuit.

Dated: \_\_\_\_\_, 2010

\_\_\_\_\_  
The Honorable Mary F. Walrath  
United States Bankruptcy Judge

**EXHIBIT C**

**[Debtors' Revised Proposed Order]**

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

-----X	:	
In re	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	Jointly Administered
	:	
-----X		Related D.I. 3663, 3924, 3929

**CERTIFICATION OF DIRECT APPEAL TO THE  
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT  
OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS'  
APPEAL FROM THE ORDER DENYING APPOINTMENT OF AN EXAMINER**

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from a timely appeal from a final judgment, order, or decree of the United States Bankruptcy Court for the District of Delaware; this Court hereby further finds that the Final Order involves a question of law as to which there is no controlling decision of the United States Court of Appeals for the Third Circuit (the "Third Circuit") or of the Supreme Court of the United States; this Court hereby further finds that the Final Order involves a matter of public importance; and this Court hereby further finds that the Final Order involves a question of law requiring resolution of conflicting decisions from courts outside the Third Circuit; and thus it is hereby

ORDERED that, pursuant to 28 U.S.C. § 158(d)(2) and Bankruptcy Rule 8001(f), the Equity Committee's appeal of the Final Order is hereby CERTIFIED for direct appeal to the Third Circuit.

Dated: \_\_\_\_\_, 2010

\_\_\_\_\_  
The Honorable Mary F. Walrath  
United States Bankruptcy Judge

**EXHIBIT D**

**[Blackline - Debtors' Revised Proposed Order]**

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

-----X	:	
In re	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	Jointly Administered
	:	
-----X	:	
	:	Related D.I. <u>3663, 3924, 3929</u>

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**CERTIFICATION OF DIRECT APPEAL TO THE  
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT  
OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS'  
APPEAL FROM THE ORDER DENYING APPOINTMENT OF AN EXAMINER**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's 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, Suite 2500, Seattle, Washington 98104.

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**Deleted:** and this Court hereby further finds that an immediate appeal from the Final Order to the Third Circuit will materially advance the progress of the above-captioned Chapter 11 cases

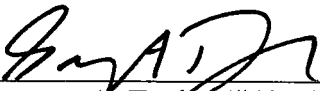
ORDERED that, pursuant to 28 U.S.C. § 158(d)(2) and Bankruptcy Rule 8001(f), the Equity Committee's appeal of the Final Order is hereby CERTIFIED for direct appeal to the Third Circuit.

Dated: \_\_\_\_\_, 2010

\_\_\_\_\_  
The Honorable Mary F. Walrath  
United States Bankruptcy Judge

**CERTIFICATE OF SERVICE**

I, Gregory A. Taylor, hereby certify that on June 4, 2010, I caused one copy of the foregoing document to be served upon the parties on the attached service list by first class U.S. Mail, postage prepaid, unless otherwise indicated.

  
\_\_\_\_\_  
Gregory A. Taylor (#4008)



**HAND DELIVERY**

Mark D. Collins  
Chun I. Jang  
Lee E. Kaufman  
RICHARDS LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801

**HAND DELIVERY**

David B. Stratton  
Evelyn J. Meltzer  
John H. Schanne, II  
PEPPER HAMILTON LLP  
Hercules Plaza, Suite 5100  
1313 Market Street  
Wilmington, DE 19801

**U.S. MAIL**

Fred S. Hodara  
Robert A. Johnson  
AKIN GUMP STRAUSS HAUER & FELD LLP  
One Bryant Park  
New York, NY 10036

**HAND DELIVERY**

Joseph J. McMahon, Jr.  
OFFICE OF THE UNITED STATES TRUSTEE  
J. Caleb Boggs Federal Building  
844 King Street, Suite 2207, Lockbox #35  
Wilmington, DE 19801

**U.S. MAIL**

Marcia L. Goldstein  
Brian S. Rosen  
WEIL GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153