

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

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

**CERTIFICATION OF COUNSEL SEEKING ENTRY OF  
INTERIM ORDER PURSUANT TO FEDERAL RULE OF EVIDENCE 502(d)**

I, Neil R. Lapinski, Delaware special litigation and conflict counsel to Washington Mutual, Inc. and WMI Investment Corp. (collectively, the “Debtors”), hereby certify the following:

1. Whereas the Debtors have determined to produce certain additional materials and information (the “Confidential Production”) to the Official Committee of Equity Security Holders (the “Equity Committee”), provided that the Debtors require certain protections to the extent that disclosures made or documents produced to the Equity Committee contain materials subject to any applicable privilege, including any attorney-client privilege and/or any attorney work-product; and

2. Whereas the Debtors and the Equity Committee acknowledge that the Court likely deems it desirable to expedite the provision of the Confidential Production to the Equity Committee without the Court, at this time, undertaking a document-by-document review as to whether individual items in the Confidential Production contain attorney-client privileged and/or attorney work product material; an

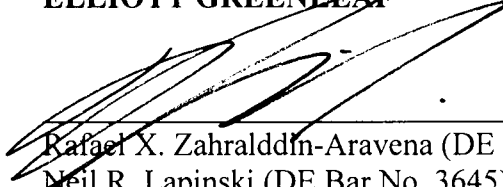
<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corporation (5395). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



3. Pursuant to this Certification of Counsel, the Debtors and Equity Committee request that the Court enter the proposed Order, attached hereto as Exhibit A, approving the Interim Order Pursuant to Federal Rule of Evidence 502(d). Counsel is available at the request of the Court.

Dated: June 15, 2010  
Wilmington, Delaware

**ELLIOTT GREENLEAF**



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

# **Exhibit A**

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

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

**INTERIM ORDER PURSUANT TO FEDERAL RULE OF EVIDENCE 502(d)**

**WHEREAS** following the Court’s bench rulings at the omnibus hearing held June 3, 2010 in these cases, Washington Mutual, Inc. and WMI Investment Corp. (collectively, the “Debtors”) have determined to produce additional materials and information (the “Confidential Production”) to the Official Committee of Equity Security Holders (the “Equity Committee”), provided that the Debtors require certain protections to the extent that disclosures made or documents produced to the Equity Committee contain materials subject to any applicable privilege, including any attorney-client privilege and/or any attorney work-product; and

**WHEREAS** the Court believes it is desirable to expedite the provision of the Confidential Production to the Equity Committee without the Court, at this time, undertaking a document-by-document review as to whether individual items in the Confidential Production contain attorney-client privileged and/or attorney work product material; and

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

**WHEREAS** the Court anticipates addressing further issues regarding the scope and logistics of document production at the next Omnibus hearing in these cases, presently scheduled for June 17, 2010, and at future hearings; it is hereby

1. **ORDERED** that individual items in the Confidential Production shall be presumed, without prejudice, to contain material that is subject to applicable privileges, including attorney-client privileged and/or attorney work product protection if labeled “Privileged,” “Confidential,” “Attorney Work Product,” “Common Interest Material” or words of similar effect; and it is further

2. **ORDERED** that pursuant to Federal Rule of Evidence 502(d), the provision of the Confidential Production to the Equity Committee and to counsel and the retained financial advisors to the Equity Committee (the “Equity Committee Advisors”), in connection with the litigation and other matters pending before this Court does not constitute, and shall not be deemed to constitute, a waiver by the Debtors of any applicable privilege, including any attorney-client privilege or any work product protection, in this Court or in any other Federal or State proceeding (including any governmental investigation) as to any party, including the Equity Committee, with respect to either the Confidential Production or any other materials and information; and it is further

3. **ORDERED** that the Confidential Production, subject to the terms and provisions herein, shall be treated by the Equity Committee and the Equity Committee Advisors as confidential under the terms of the non-disclosure agreements they have previously signed; and it is further

4. **ORDERED** that pending further order of this Court, the Equity Committee and the Equity Committee Advisors shall keep confidential the Confidential Production and shall not disclose any portion of the Confidential Production to any person or entity; and it is further

5. **ORDERED** that the provision of the Confidential Production to the Equity Committee and the Equity Committee Advisors shall not confer on any person or entity, other than the Equity Committee and the Equity Committee Advisors, the right to obtain such materials; and it is further

6. **ORDERED** that the Equity Committee and/or the Equity Committee Advisors will not assert in any proceeding that the provision of the Confidential Production pursuant to this Order constitutes a waiver of any applicable privilege, including any attorney-client privilege or any work product protection and that the provision of the Confidential Production to the Equity Committee and the Equity Committee Advisors shall not be used as a basis to argue subject matter waiver or waiver based on “selective disclosure” or similar doctrines; provided, that this Order is without prejudice to the right of the Equity Committee and the Equity Committee Advisors to argue, on any other ground and based on any other acts or occurrences (including but not limited to any waiver that may have occurred before this production), that privileges asserted by the Debtors are invalid, have been waived, or should be disregarded; and it is further

7. **ORDERED** that the Debtors’ provision of the Confidential Production pursuant to this Order is without prejudice to the right of the Equity Committee and the Equity Committee Advisors to argue that the Confidential Information is inadequate or insufficient and to insist upon the need for further investigation by the Equity Committee or by a bankruptcy examiner and without prejudice to the Debtors’ right to oppose any such request on any grounds; and it is further

8. **ORDERED** that the submission of any portion of the Confidential Production to this Court shall be done only pursuant to sealing or similar procedures as agreed upon by counsel to the Debtors and the Equity Committee, which agreement shall not be unreasonably withheld; and it is further

9. **ORDERED** that no copies of any portion of the Confidential Production submitted to this Court pursuant to Paragraph 8 of this Order shall be provided to any other person or entity, other than the Debtors; and it is further

10. **ORDERED** that this Court shall retain exclusive jurisdiction to resolve any dispute arising from or related to this Order; and it is further

11. **ORDERED** that, notwithstanding the possible application of any Federal Rule of Bankruptcy Procedure, this Order shall become effective immediately upon its entry.

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

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The Honorable Mary F. Walrath  
United States Bankruptcy Judge

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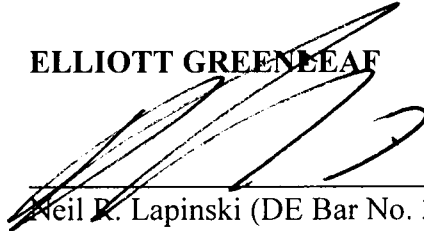
**CERTIFICATE OF SERVICE REGARDING  
CERTIFICATION OF COUNSEL SEEKING ENTRY OF  
INTERIM ORDER PURSUANT TO FEDERAL RULE OF EVIDENCE 502(d)**

I, Neil R. Lapinski, Delaware special litigation and conflict counsel to Washington Mutual, Inc. and WMI Investment Corp., hereby certify that I caused copies of the *Certification of Counsel Seeking Entry of Interim Pursuant to Federal Rule of Evidence 502(d)* to be served on June 15, 2010 via hand delivery on the following:

William P. Bowden  
Gregory A. Taylor  
Ashby & Geddes  
500 Delaware Avenue, 8<sup>th</sup> Floor  
Wilmington, DE 19801

Dated: June 15, 2010  
Wilmington, Delaware

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

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