

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

In re

WASHINGTON MUTUAL, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 08-12229 (MFW)

Jointly Administered

OFFICIAL COMMITTEE OF EQUITY SECURITY
HOLDERS,

Plaintiff,

v.

WASHINGTON MUTUAL, INC.,

Defendant.

Adv. Pro. No. 10-50731 (MFW)

**Related Docket Nos. 1, 3, 4, 7- 9, 11,
14, 15, 19, 20, and 26 - 29**

**NOTICE OF ENTRY OF ORDER BY UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON TRANSFERRING
SHAREHOLDER ACTION TO UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF DELAWARE AND REQUEST FOR HEARING**

Plaintiff the Official Committee of Equity Security Holders (the "Equity Committee"), by and through their respective attorneys, respectfully submits a true and correct copy of the Order dated June 21, 2010 (the "Transfer Order") entered by the United States Bankruptcy Court for the Western District of Washington transferring the Shareholder Action (as defined below) to this Court. The Equity Committee further respectfully states as follow:

1. On March 3, 2010, the Equity Committee filed its *Complaint* against debtor Washington Mutual Inc. ("WMI") commencing Adv. Pro. No. 10-50731 (MFW) in which the

¹ Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors are located at 925 Fourth Avenue, Suite 2500, Seattle, Washington 98104.



Equity Committee seeks an order from this Court compelling WMI to hold a long overdue annual shareholders meeting (Adv. Dkt. No. 1). On March 11, 2010, the Equity Committee filed its *Motion for Summary Judgment* (Adv. Dkt. No. 3).

2. On April 21, 2010, the Court granted the alternative relief sought in the Equity Committee's Motion for Summary Judgment concluding that the automatic stay does not preclude the filing or prosecution of an action by shareholders of WMI in Washington state court to compel WMI to convene an annual shareholders meeting.² The Court entered an Order on April 26, 2010 (Adv. Dkt. No. 20) memorializing the Court's April 21st ruling.

3. On April 26, 2010, two WMI shareholders ("Plaintiffs") filed a *Complaint to Compel Shareholders' Meeting* (the "Shareholders' Complaint") in the Superior Court for the State of Washington for the County of Thurston commencing Case No. 10-2-00854-1 (the "Shareholder Action"). On May 5, 2010, Plaintiffs filed a *Motion to Compel Shareholders' Meeting* that was scheduled to be considered by the Washington state court on June 11, 2010.

4. On May 13, 2010, WMI filed a *Notice of Removal of the Shareholder Action* ("Notice of Removal") to the United States District Court for the Western District of Washington, and by reference and applicable local rules, to the United States Bankruptcy Court for the Western District of Washington.

5. On May 14, 2010, WMI filed in the Washington Bankruptcy Court, to which it had removed the Shareholder Action, its *Motion to Transfer, Stay, or Dismiss the Instant Action* (the "Motion to Transfer"). (See Adv. Dkt. No. 27, Exhibit C). In the Motion to Transfer, WMI argues that the Shareholder Action "should be transferred, stayed, or dismissed, so that Plaintiff's claim can be litigated in the context of the Adversary Proceeding in the Delaware Bankruptcy

² Transcript of Hearing, Apr. 21, 2010 (Dkt. No. 3593), at 64-65.

Court." (Motion to Transfer 1) In order to expedite a decision on the merits of the Shareholder Action, Plaintiffs advised WMI that they would consent to the immediate transfer of the Shareholder Action to this Court, which was one of the alternative forms of relief that WMI requested in its Motion to Transfer. WMI, however, *refused to consent to entry of an order granting the relief it requested*. On May 21, 2010, Plaintiffs filed in the Washington Bankruptcy Court a *Motion to Remand or, in the Alternative, Transfer for Hearing on Remand* (the "Motion to Remand")

6. On May 20, 2010, the Equity Committee filed its *Application for Oral Argument* (Adv. Dkt. No. 27) and *Notice of Completion of Briefing* (Adv. Dkt. No. 28) regarding the Motion for Summary Judgment.

7. On June 4, 2010, the Debtors filed a *Response* (Adv. Dkt. No. 29) to the Equity Committee application for argument in which the Debtors argued "in the interest of judicial efficiency, this Court should defer considering the Motion for Summary Judgment until the Washington Bankruptcy Court has ruled on the Motions to Transfer and Remand...." (Response, ¶8)

8. On June 11, 2010, the Washington Bankruptcy Court convened a hearing to consider the Motions to Transfer and Remand. On June 17, 2010, the Washington Bankruptcy Court convened a further hearing to render its decision whereby the Court: 1) granted the Motion to Transfer sending the Shareholder Action to this Court, and 2) preserved and transferred the Motion to Remand to this Court for determination. (See Transfer Order (attached hereto)) On June 21, 2010, the Washington Bankruptcy Court entered the Transfer Order memorializing its June 17th decision.

9. The Debtors now have what they want – the Shareholder Action has been transferred to this Court. The Equity Committee is informed that the Plaintiffs in the Shareholder Action intend to withdraw the Motion to Remand as soon as practical following the docketing of the Shareholder Action in this Court, leaving for determination by this Court the sole substantive issue (common to both the Shareholder Action and the Motion for Summary Judgment) of whether WMI should be compelled to convene its long overdue annual shareholders meeting. Thus, the complex procedural posture about which the Debtors complained so much no longer exists and the matter is ripe for determination.

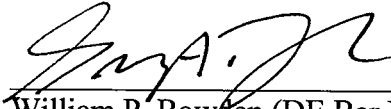
10. In an apparent attempt to focus this Court's attention away from the Debtors' violation of the spirit, if not express terms, of this Court's April 26th Order (Adv. Dkt. No. 20) by their filing of the Motion to Transfer, the Debtors complain in their Response that the Equity Committee's application for argument and notice of completion of briefing were untimely filed. (Response at fn.1) This is just another example of the Debtors running roughshod over this Court's views and rulings while attempting to hold others to a higher standard. As this Court is well aware, the Local Rules permit modification "by the Court in the interest of justice." Del. Bankr. L.R. 1001-1(c). To the extent the Court entertains the Debtors' claim that the request for argument is untimely, the Equity Committee submits that in light of the Debtors' improper tactics to delay an annual shareholders meeting, the interests of justice certainly warrant the exercise of discretion by the Court as permitted under the Local Rules to extend the deadlines imposed by LR 7007-3 and LR 7007-4.

11. It cannot be overstated – time is of the essence if a shareholder meeting is to have any real meaning for WMI's owners. The Motion for Summary Judgment is fully briefed and the Equity Committee respectfully requests the scheduling of argument as soon as the Court's

calendar permits so that a decision on the merits of the claims asserted therein may be obtained without any further undue delay.

Dated: June 24, 2010

ASHBY & GEDDES, P.A.



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

-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
sard@susmangodfrey.com

Parker C. Folse, 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:
pfolse@susmangodfrey.com
esargent@susmangodfrey.com
jnelson@susmangodfrey.com

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

EXHIBIT A

FILED
LODGED
RECEIVED

JUN 21 2010

MARK L. MACHES
CLERK U.S. BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DEPUTY

Judge: Paul B. Snyder

Chapter 11

Hearing Date: Friday, June 11, 2010

Hearing Time: 10:30 A.M.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA

In Re

WASHINGTON MUTUAL, INC.,

Debtor.

MICHAEL WILLINGHAM and ESOPUS
CREEK VALUE LP,

Plaintiffs,

vs.

WASHINGTON MUTUAL, INC., a
Washington corporation,

Defendant.

Case No. 08-12229-MFW

District of Delaware

Chapter 11

Adversary No. 10-04136

**ORDER ON DEFENDANT'S MOTION
TO TRANSFER, STAY, OR DISMISS
THE INSTANT ACTION AND ON
PLAINTIFFS' MOTION TO REMAND,
OR IN THE ALTERNATIVE
TRANSFER FOR HEARING ON
REMAND**

This matter came before the Court for hearing on June 11, 2010, on Defendant's Motion to Transfer, Stay, or Dismiss the Instant Action, and Plaintiffs' Motion to Remand, or in the Alternative Transfer for Hearing on Remand. The Court has considered the pleadings and documents in this case, including the following moving and response papers:

1. Defendant's Motion to Transfer, Stay, or Dismiss the Instant Action;
2. Declaration of Charles Edward Smith, with attached exhibits;
3. Declaration of William C. Rava, with attached exhibits;
4. Defendant's Proposed Order;
5. Plaintiffs' Memorandum Opposing Defendant's Motion to Transfer,

ORDER ON DEFENDANT'S MOTION TO TRANSFER, STAY, OR
DISMISS AND ON PLAINTIFFS' MOTION TO REMAND, OR
TRANSFER FOR HEARING ON REMAND - 1

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SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
US Bank Centre
1420 5th Ave., Suite 3400
Seattle, WA 98101-4010
Telephone 206.622.1711

- 1 Stay, or Dismiss the Instant Action;
- 2 6. Declaration of Colin Folawn in Support of Motion to Remand or in the
- 3 Alternative Transfer for Hearing on Remand, with attached exhibits;
- 4 7. Plaintiffs' [Proposed] Order Denying Defendant's Motion to Transfer,
- 5 Stay, or Dismiss the Instant Action;
- 6 8. Reply in Support of Washington Mutual, Inc.'s Motion to Transfer,
- 7 Stay, or Dismiss the Instant Action;
- 8 9. Brian Rosen Declaration re: Reply in Support of Washington Mutual,
- 9 Inc.'s Motion to Transfer, Stay, or Dismiss the Instant Action;
- 10 10. Plaintiffs' Motion to Remand, or in the Alternative Transfer for Hearing
- 11 on Remand;
- 12 11. [Proposed] Order Granting Plaintiffs' Motion to Remand;
- 13 12. Washington Mutual, Inc.'s Opposition to Plaintiffs' Motion to Remand
- 14 or, in the Alternative, Transfer for Hearing on Remand;
- 15 13. Declaration of William C. Rava in Support of Washington Mutual,
- 16 Inc.'s Opposition to Plaintiffs' Motion to Remand or, in the Alternative,
- 17 Transfer for Hearing on Remand;
- 18 14. Reply Memorandum in Support of Plaintiffs' Motion to Remand, or in
- 19 the Alternative, Transfer for Hearing on Remand; and
- 20 15. Supplemental Declaration of Colin Folawn in Support of Motion to
- 21 Remand, or in the Alternative, Transfer for Hearing on Remand;

22 Based on the submissions of the parties, the court records on file, and the argument of

23 counsel, the Court hereby ORDERS as follows:

24 Pursuant to Bankruptcy Rule 7052, the Court incorporates by reference its oral ruling

25 that issued on June 17, 2010. This Court orders that adversary proceeding 10-04136 is

26 transferred to United States Bankruptcy Court for the District of Delaware and orders that the

ORDER ON DEFENDANT'S MOTION TO TRANSFER, STAY, OR
DISMISS AND ON PLAINTIFFS' MOTION TO REMAND, OR
TRANSFER FOR HEARING ON REMAND - 2

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SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
US Bank Centre
1420 5th Ave., Suite 3400
Seattle, WA 98101-4010
Telephone 206.622.1711

1 issue of whether to remand is preserved for Judge Walrath's determination. The Clerk of this
2 Court is ordered to transmit to the Clerk of the United States Bankruptcy Court for the
3 District of Delaware a certified copy of this order and all of the pleadings and papers on file
4 in the Clerk's office relating to this proceeding.

5 Dated this 21st day of June, 2010.

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8 The Honorable Paul B. Snyder
9 United States Bankruptcy Court Judge
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ORDER ON DEFENDANT'S MOTION TO TRANSFER, STAY, OR
DISMISS AND ON PLAINTIFFS' MOTION TO REMAND, OR
TRANSFER FOR HEARING ON REMAND - 3
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SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
US Bank Centre
1420 5th Ave., Suite 3400
Seattle, WA 98101-4010
Telephone 206.622.1711

1 *Presented by:*

2 SCHWABE, WILLIAMSON & WYATT, P.C.

3
4 By:  34211

5 Bert W. Markovich, WSBA #13580

6 bmarkovich@schwabe.com

7 Colin Folawn, WSBA #34211

8 cfolawn@schwabe.com

9 1420 Fifth Avenue, Suite 3400

10 Seattle, WA 98101

11 Telephone: 206-622-1711

12 Facsimile: 206-292-0460

13 *Attorneys for Plaintiffs Michael Willingham and*

14 *Esopus Creek Value LP*

15 *Also presented by:*

16 PERKINS COIE LLP

17 By: /s/ William C. Rava

18 John S. Kaplan, WSBA #23788

19 jkaplan@perkinscoie.com

20 William C. Rava, WSBA #29948

21 wrava@perkinscoie.com

22 1201 Third Avenue, Suite 4800

23 Seattle, WA 98101-3099

24 Telephone: 206-359-8000

25 Facsimile: 206-359-9000

26 *Attorneys for Defendant Washington Mutual, Inc.*

ORDER ON DEFENDANT'S MOTION TO TRANSFER, STAY, OR
DISMISS AND ON PLAINTIFFS' MOTION TO REMAND, OR
TRANSFER FOR HEARING ON REMAND - 4

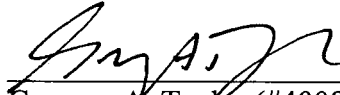
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SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
US Bank Centre
1420 5th Ave., Suite 3400
Seattle, WA 98101-4010
Telephone 206.622.1711

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CERTIFICATE OF SERVICE

I, Gregory A. Taylor, hereby certify that on June 24, 2010, I caused one copy of the foregoing document to be served upon the parties on the attached service list in the manner 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