

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

_____	X	
	:	Chapter 11
In re	:	
	:	Case No. 08-12229 (MFW)
WASHINGTON MUTUAL, INC., et al.,	:	
	:	
Debtors	:	Jointly Administered
_____	X	
	:	
Black Horse Capital LP, et al.	:	
	:	
Plaintiffs	:	
v.	:	
	:	Adversary Proceeding
JPMorgan Chase Bank, N.A., et al.	:	No. 10-51387 (MFW)
	:	
Defendants.	:	
_____	X	

**JOINT ANSWER OF PLAINTIFFS TO COUNTERCLAIM OF
WASHINGTON MUTUAL, INC.**

Plaintiffs and Defendants-in-Counterclaim (collectively, "Plaintiffs") hereby submit the following Joint Answer to the Counterclaim filed by Washington Mutual, Inc.

1. This Court has jurisdiction over this Counterclaim pursuant to 28 U.S.C. §§ 157 and 1334. This Counterclaim is a core proceeding.

Answer—This paragraph contains conclusions of law to which no response is required.

2. Venue is proper in this Court under 28 U.S.C. § 1409.

Answer—This paragraph contains conclusions of law to which no response is required.

3. Plaintiffs allegedly hold securities of WMI or of an affiliate of WMI.



Answer—Plaintiffs deny the allegations contained in this Paragraph for the reasons stated in their Complaint, which is incorporated by reference as if fully set forth herein, but admit that they are beneficial holders of Trust Preferred Securities.

4. Counts I-VI of the Complaint seek declaratory and equitable relief to the effect that Plaintiffs retain “all right, title and interest” in some or all of the Trust Preferred Securities.

Answer—Plaintiffs admit only that Counts I-VI of their Complaint seek declaratory relief related to the “right, title and interest” in some or all of the Trust Preferred Securities, but deny all other allegations contained in this Paragraph. Further responding, Plaintiffs explicitly deny any implicit attempt to broaden or limit the scope of the Plaintiffs’ Complaint.

5. By their Complaint, Plaintiffs seek payment on account of their alleged ownership of the Trust Preferred Securities.

Answer—Plaintiffs deny the allegations contained in this Paragraph.

6. Section 101(5) of the Bankruptcy Code provides that a “claim” is a “right to an equitable remedy for breach of performance, if such breach gives rise to a right to payment. . .”

Answer—Plaintiffs admit that Defendant WMI has partially recited the language of 11 U.S.C. § 101(5), but otherwise deny the allegations in this Paragraph.

7. Plaintiffs assert “claims” against WMI in Counts I-VI of the Complaint.

Answer—This paragraph contains conclusions of law to which no response is required. To the extent a response is required, Plaintiffs deny the allegations contained in this Paragraph.

8. Plaintiffs' claims seek to rescind the automatic conversion of the securities they owned into preferred interests in WMI.

Answer—This paragraph contains conclusions of law to which no response is required. To the extent a response is required, Plaintiffs deny the allegations contained in this Paragraph.

9. Plaintiffs in Counts I-VI of the Complaint assert claims arising from rescission of a purchase or sale of a security of WMI or of an affiliate of WMI, or for damages arising from the purchase or sale of such a security.

Answer—This paragraph contains conclusions of law to which no response is required. To the extent a response is required, Plaintiffs deny the allegations contained in this Paragraph.

10. WMI denies any and all liability on Counts I-VI of the Complaint, but should the Court find that Plaintiffs are entitled to any relief, Plaintiffs' claims are subject to mandatory subordination to all claims or interests that are senior to or equal preferred equity interests in accordance with section 510(b) of the Bankruptcy Code.

Answer—This paragraph contains conclusions of law to which no response is required. To the extent a response is required, Plaintiffs deny the allegations contained in this Paragraph.

AFFIRMATIVE DEFENSES

1. Washington Mutual, Inc. fails to state a claim upon which relief can be granted.

RELIEF REQUESTED

WHEREFORE, for the reasons set forth in the Plaintiffs' Complaint, the allegations of which are incorporated by reference as if fully set forth herein, Plaintiffs respectfully request that this Court deny the relief requested by Washington Mutual, Inc. and:

- A. Enter judgment in favor of Plaintiffs under Count I of their Complaint, and further enter a declaration that:

- i. Holders of certificates representing the Trust Preferred Securities never delivered such certificates to WMI;
- ii. The applicable trustees have not recorded WMI as the holder of the Trust Preferred Securities in any of the associated Trust Registers;
- iii. The WMI preferred equity to be exchanged for the Trust Preferred Securities was never issued to holders of the Trust Preferred Securities;
- iv. The required notice of the purported Conditional Exchange was never issued to holders of the Trust Preferred Securities;
- v. The purported Conditional Exchange is null, void and of no effect;
- vi. WMI never obtained an interest in the Trust Preferred Securities, and, as such, WMI never had any rights to the Trust Preferred Securities to transfer to WMB and/or JPMC; and
- vii. All right, title and interest in the Trust Preferred Securities remains with investors who held such securities immediately prior to 8:00 a.m. (Eastern) on September 26, 2008, or to any party to whom such parties subsequently transferred such Trust Preferred Securities, other than in connection with the purported Conditional Exchange.

B. Enter judgment in favor of Plaintiffs under Count II of their Complaint, and further enter a declaration that:

- i. WMI never acquired possession of the applicable security certificates for the Trust Preferred Securities;
- ii. No other person in possession of the applicable security certificates for the Trust Preferred Securities has taken possession of the security certificates for the Trust Preferred Securities on behalf of WMI, or has acknowledged WMI as the transferee of the Trust Preferred Securities or that it holds such security certificates on behalf of WMI;
- iii. The purported Conditional Exchange is null, void and of no effect;
- iv. WMI never obtained an interest in the Trust Preferred Securities, and, as such, WMI never had any rights to the Trust Preferred Securities to transfer to WMB and/or JPMC; and
- v. All right, title and interest in the Trust Preferred Securities remains with investors who held such securities immediately prior to 8:00 a.m. (Eastern) on September 26, 2008, or to any party to whom such parties subsequently transferred such Trust Preferred Securities, other than in connection with the purported Conditional Exchange.

- C. Enter judgment in favor of Plaintiffs under Count III of their Complaint, and further enter a declaration that:
- i. The Trust Preferred Securities and applicable governing documents impose restrictions on transfer of the Trust Preferred Securities, including by establishing requirements for an eligible assignee or transferee;
 - ii. WMI is not, and has not been since at least September 25, 2008, an eligible assignee or transferee of the Trust Preferred Securities;
 - iii. The purported Conditional Exchange was void ab initio, without force or effect, and did not transfer any right in or to the Trust Preferred Securities to WMI;
 - iv. The purported Conditional Exchange remains null, void and of no effect; and
 - v. All right, title and interest in the Trust Preferred Securities remains with investors who held such securities immediately prior to 8:00 a.m. (Eastern) on September 26, 2008, or to any party to whom such parties subsequently transferred such Trust Preferred Securities, other than in connection with the purported Conditional Exchange.
- D. In the alternative, enter Judgment in favor of Plaintiffs under Count IV of their Complaint, and further enter a declaration that:
- i. Through its participation in the issuance of the Trust Preferred Securities and its agreements, as set forth in the undisclosed Side Letter agreements with WMI regarding contribution of the Trust Preferred Securities to WMB following a purported Conditional Exchange, the OTS acted in excess of its authority and its actions related to the Conditional Exchange otherwise should be held to be without force or effect and a nullity;
 - ii. The OTS's actions aided and abetted a fraud by WMI and WMPF against holders of the Trust Preferred Securities, and therefore exceeded the OTS's authority;
 - iii. The purported Conditional Exchange was dependent and contingent on actions of the OTS that exceeded the OTS's authority;
 - iv. Any directive by the OTS to execute a purported Conditional Exchange and/or transfer of the Trust Preferred Securities to any other party was, is, and will be, null, void, and without effect; and
 - v. All right, title and interest in the Trust Preferred Securities remains with investors who held such securities immediately prior to 8:00 a.m. (Eastern) on September 26, 2008, or to any party to whom such parties

subsequently transferred such Trust Preferred Securities, other than in connection with the purported Conditional Exchange.

- E. In the alternative, enter judgment in favor of Plaintiffs under Count V of their Complaint, and further enter a declaration that:
- i. WMI participated in a fraud against investors in the Trust Preferred Securities;
 - ii. WMI has acted inequitably with respect to the Trust Preferred Securities;
 - iii. WMI has unclean hands with respect to the Trust Preferred Securities; and
 - iv. WMI is ineligible for equitable relief necessary to consummate the purported Conditional Exchange or any other transfer of the Trust Preferred Securities.
 - v. All right, title and interest in the Trust Preferred Securities remains with investors who held such securities immediately prior to 8:00 a.m. (Eastern) on September 26, 2008, or to any party to whom such parties subsequently transferred such Trust Preferred Securities, other than in connection with the purported Conditional Exchange.
- F. In the alternative, enter Judgment in favor of Plaintiffs under Count VI of their Complaint, and further enter a declaration that:
- i. JPMC had knowledge of the non-disclosure of the Side Letters and the misrepresentations regarding the safety and soundness of WMB prior to its purchase of the assets of WMB.
 - ii. JPMC cannot be a bona fide purchaser of the Trust Preferred Securities.
 - iii. JPMC's claim to the Trust Preferred Securities, if any, is subject to the fraud claims of investors in the Trust Preferred Securities.
- G. Enter any further relief the Court deems equitable and just.

Dated: Wilmington, Delaware
October 5, 2010

Respectfully submitted,

CAMPBELL & LEVINE LLC

/s/ Kathleen Campbell Davis

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

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

	X	
	:	
Black Horse Capital LP, Black Horse Capital Master	:	
Fund Ltd., Black Horse Capital (QP) LP, Greywolf	:	
Capital Partners II, Greywolf Overseas Fund,	:	
Guggenheim Portfolio Company VII, LLC, HFR RVA	:	
Combined Master Trust, IAM Mini-Fund 14 Limited,	:	Adversary Proceeding
LMA SPC for and on behalf of the MAP 89 Segregated	:	No. 10-51387 (MFW)
Portfolio, Lonestar Partners LP, Mariner LDC, Nisswa	:	
Convertibles Master Fund Ltd., Nisswa Fixed Income	:	
Master Fund Ltd., Nisswa Master Fund Ltd., Paige	:	
Opportunity Partners LP, Paige Opportunity Partners	:	
Master Fund, Pandora Select Partners, LP, Pines Edge	:	
Value Investors Ltd, Riva Ridge Capital Management	:	
LP, Riva Ridge Master Fund, Ltd., Scoggin Capital	:	
Management II LLC, Scoggin International Fund Ltd.,	:	
Scoggin Worldwide Fund Ltd., Visium Global Fund,	:	
Ltd., VR Global Partners, L.P. Whitebox Asymmetric	:	
Partners LP, Whitebox Combined Partners, LP,	:	
Whitebox Convertible Arbitrage Partners, LP, Whitebox	:	
Hedged High Yield Partners, LP and Whitebox Special	:	
Opportunities LP, Series B,	:	

Plaintiffs

v.

	:	
JPMorgan Chase Bank, N.A., JPMorgan Chase & Co.,	:	
Washington Mutual, Inc., Washington Mutual Preferred	:	
Funding, LLC, Washington Mutual Preferred Funding	:	
(Cayman) I Ltd., Washington Mutual Preferred Funding	:	
Trust I, Washington Mutual Preferred Funding Trust II,	:	
Washington Mutual Preferred Funding Trust III,	:	
Washington Mutual Preferred Funding Trust IV	:	

Defendants.

CERTIFICATE OF SERVICE

I, Kathleen Campbell Davis, of Campbell & Levine, LLC, hereby certify that on October 5, 2010, I caused a copy of the *Joint Answer of Plaintiffs to Counterclaim of Washington Mutual, Inc.* to be served upon the individual listed below via First Class Mail:

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Date: October 1, 2010

/s/Kathleen Campbell Davis
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