

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

	X	
In re:	:	Chapter 11
WASHINGTON MUTUAL, INC., <u>et al.</u> ,	:	Case No. 08-12229 (MFW)
Debtors.	:	Jointly Administered
	:	
	:	
WILLINGHAM <u>et al.</u> ,	:	Adv. Proc. No. 10-51297 (MFW)
Plaintiff,	:	
v.	:	
WASHINGTON MUTUAL, INC. <u>et al.</u> ,	:	
Defendant.	:	
	X	

**MOTION OF THE WASHINGTON MUTUAL, INC. NOTEHOLDERS
GROUP TO (I) SHORTEN THE NOTICE PERIOD FOR THE
HEARING ON THE MOTION FOR ORDER GRANTING INTERVENTION
AND (II) SET THE INTERVENTION MOTION OBJECTION DEADLINE**

The Washington Mutual, Inc. Noteholders Group (the “WMI Noteholders”) seeks entry of an order, substantially in the form annexed hereto as Exhibit A, (i) shortening the notice period for the hearing on the Motion of the WMI Noteholders Group for an Order Granting Intervention (the “Intervention Motion”) in the adversary proceeding captioned Willingham et. al. v. Washington Mutual et. al., Adv. Proc. No. 10-51297 (the “Adversary Proceeding”) and (ii) setting the deadline for filing objections to the Intervention Motion as October 20, 2010 at 12:00 p.m. In support of this motion (the “Motion”), the WMI Noteholders respectfully state as follows:



JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).

2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are Rule 9006(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9006-1(e) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, as effective February 1, 2010 (the “Local Rules”).

BACKGROUND

4. The WMI Noteholders represent various entities that hold, or advise funds that hold, debt of Washington Mutual, Inc. (“WMI”). The WMI Noteholders hold in the aggregate approximately \$2.3 billion of WMI’s outstanding debt securities.

5. On March 3, 2010 the Equity Committee instituted an adversary proceeding against WMI to compel a shareholders’ meeting. See Complaint by Official Committee of Equity Security Holders Against Washington Mutual, Inc., et al., Adv. Proc. No. 50731 (MFW) [Docket No. 1]. Eight days later, the Equity Committee filed a motion for summary judgment, or in the alternative, for relief from the automatic stay (the “Motion for Summary Judgment”). See Adv. Proc. No. 50731 (MFW) [Docket No. 3].

6. On April 26, 2010, plaintiffs Michael Willingham and Esopus

Creek Value LP (“Plaintiffs”) filed an action in the Superior Court of the State of Washington for the County of Thurston, in a case captioned Michael Willingham and Esopus Creek Value LP v. Washington Mutual Inc., Case No. 10-2-00854-1 (the “State Court Action”), seeking the same relief as that sought in the adversary proceeding previously commenced by the Equity Committee (Adv. Proc. No. 50731 (MFW)). On May 5, 2010, Plaintiffs in the State Court Action filed a motion for an order to compel a shareholders’ meeting (the “Motion to Compel”). The State Court Action was removed to the United States Bankruptcy Court for the Western District of Washington at Tacoma on May 13, 2010 initiating an adversary proceeding captioned Esopus Creek Value LP and Michael Willingham v. Washington Mutual, Inc., Adv. Proc. No. 10-04136 (PBS) (the “Washington Adversary Proceeding”). The Washington Adversary Proceeding was subsequently transferred to this Court by Order dated June 21, 2010. See 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 by Michael Willingham and Esopus Creek Value LP Against Washington Mutual, Inc., Adv. Proc. No. 10-51297 (MFW) [Docket No. 1].

7. On August 3, 2010 the Equity Committee filed the Motion of the Official Committee of Equity Holders for an Order (i) Granting Intervention, and (ii) Consolidating the Adversary Proceedings (“Equity Committee Motion to Intervene”) in Willingham et. al. v. Washington Mutual, Inc., et al., Adv. Proc. No. 10-51297 (MFW) [Docket No. 10]. On August 23, 2010, this Court granted that motion and consolidated the adversary proceedings. See Order Granting the Motion of the Official Committee of Equity Security Holders for Order (i) Granting Intervention, and (ii) Consolidating

Adversary Proceedings into Adv. Proc. No. 10-51297 (MFW) [Docket No. 13].

8. The Court has scheduled a hearing on the Motion for Summary Judgment and the Motion to Compel for November 9, 2010 (the “November 9th Hearing”).

9. On May 4, 2010 the WMI Noteholders filed a motion to convert the Debtors’ chapter 11 cases to chapter 7 or, in the alternative, to appoint a trustee to administer the Debtors’ estates (the “Motion to Convert”), Case No. 08-12229 (MFW) [Docket No. 3651].

10. The Motion to Convert is currently scheduled to be heard at the omnibus hearing before this Court on October 22, 2010 at 10:30 a.m.

11. The WMI Noteholders, as parties in interest under 11 U.S.C. § 1109, now seek to intervene in the Adversary Proceeding to preserve the WMI Noteholders’ right to be heard in connection with the Adversary Proceeding and with respect to the Equity Committee’s attempt to compel WMI to hold a shareholders’ meeting.

RELIEF REQUESTED

12. By this Motion, the WMI Noteholders respectfully request that the Court (i) shorten the period of time in which the WMI Noteholders must serve notice of hearing on the Intervention Motion from 14 days to 8 days and (ii) set the deadline for filing objections to the Intervention Motion as October 20, 2010 at 12:00 p.m.

BASIS FOR RELIEF

13. Local Rule 9006-1(c) provides, in relevant part:

Service of Motion Papers. Unless the Fed. R. Bankr. P. or these Local Rules state otherwise, all motion papers shall be filed and served in

accordance with Local Rule 2002-1(b) at least fourteen (14) days (and an additional three (3) days if service is by mail) prior to the hearing date.

Objection Deadlines. Where a motion is filed and served in accordance with Local Rule 9006-1(c)(i), the deadline for objection(s) shall be no later than seven (7) days before the hearing date[.]

14. Bankruptcy Rule 9006(c) provides:

(1) Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

(2) The court may not reduce the time for taking action under Rules 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 4008(a), 8002, and 9033(b). In addition, the court may not reduce the time under Rule 1007(c) to file the statement required by Rule 1007(b)(7).

15. Similarly, Local Rule 9006-1(e) provides:

Shortened Notice. No motion will be scheduled on less notice than required by these Local Rules or the Fed. R. Bankr. P. except by order of the Court, on written motion (served on all interested parties) specifying the exigencies justifying shortened notice. The Court will rule on such motions promptly without need for a hearing.

16. Thus, although Local Rule 9006-1(c) generally provides for motions to be filed and served at least 14 days before the hearing date on such motions, Bankruptcy Rule 9006(c) and Local Rule 9006-1(e) expressly provide that the Court, for cause shown, may in its discretion reduce the notice period.

17. The WMI Noteholders respectfully submit that shortening notice is justified and appropriate here. As set forth in the Intervention Motion, the relief sought by the Equity Committee in the Adversary Proceeding significantly implicates the WMI Noteholders' interests, and as parties in interest the WMI Noteholders are entitled to be heard with respect to the Adversary Proceeding and the relief requested therein. Out of

an abundance of caution, the WMI Noteholders seek a minimally-shortened notice period so that the Intervention Motion may be heard at the next omnibus hearing scheduled for October 22, 2010. The WMI Noteholders seek to schedule the Intervention Motion for hearing on October 22, 2010 in order to preserve their right to be heard in connection with the Motion for Summary Judgment and the Motion to Compel, which are currently scheduled to be heard at the November 9th Hearing. The opportunity to participate at the November 9th Hearing is of particular significance to the WMI Noteholders to the extent that, if the relief requested by the Equity Committee in the Complaint is ultimately granted, the WMI Noteholders believe that applicable law in and outside of the Third Circuit would require the conversion of the chapter 11 cases to chapter 7 or the appointment of a trustee to administer the estates.

18. No party in interest—including the Debtors and the Equity Committee—is unduly prejudiced by the relief requested herein. In conjunction with the request to shorten the time for giving notice of hearing on the Intervention Motion by 6 days, from 14 days to 8 days, the WMI Noteholders have also requested that the Court alter the deadline for filing objections to the Intervention Motion. No potential objector will be worse off than if the relief had not been granted because the requested objection deadline of October 20, 2010 will afford such parties the same amount of time in which to oppose the Intervention Motion as Local Rule 9006-1(c) makes available (7 days).

NOTICE

19. Notice of this Motion has been provided to (i) the United States Trustee; (ii) counsel to the Debtors; (iii) counsel to the Official Committee of Equity Security Holders; (iv) counsel to the Official Committee of Unsecured Creditors; and (v)

all parties that have entered an appearance in the Adversary Proceeding. In light of the nature of the relief requested herein, the WMI Noteholders submit that no other or further notice need be provided.

NO PRIOR REQUEST


20. No prior request for the relief requested herein has been made to this or any other court.

CONCLUSION

21. WHEREFORE, the WMI Noteholders respectfully request that the Court enter an order, in the form attached hereto as Exhibit A, (i) shortening the notice period for the hearing on the WMI Noteholders' Intervention Motion and (ii) setting the deadline for filing objections to the Intervention Motion as October 20, 2010 at 12:00 p.m.

Dated: October 12, 2010
Wilmington, Delaware

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Attorneys for the Washington Mutual, Inc.
Noteholders Group

Exhibit A

Proposed Order

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

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

WILLINGHAM <u>et al.</u> ,	:	Adv. Proc. No. 10-51297 (MFW)
	:	
Plaintiff,	:	
	:	
v.	:	
	:	Re: Docket No.: ____
WASHINGTON MUTUAL, INC. <u>et al.</u> ,	:	
	:	
Defendant.	:	
-----	x	

**ORDER GRANTING THE MOTION OF THE WASHINGTON MUTUAL, INC.
NOTEHOLDERS GROUP TO (I) SHORTEN THE NOTICE PERIOD FOR THE
HEARING ON THE MOTION FOR ORDER GRANTING INTERVENTION
AND (II) SET THE INTERVENTION MOTION OBJECTION DEADLINE**

Upon the motion (the “Motion”) of the Washington Mutual, Inc. Noteholders Group seeking entry of an order, substantially in the form annexed hereto as Exhibit A, (i) shortening the notice period for the hearing on the WMI Noteholders Group’s Motion for Order Granting Intervention (the “Intervention Motion”) and (ii) setting the deadline for filing objections to the Intervention Motion as October 20, 2010 at 12:00 p.m.; and it appearing that the relief requested therein is a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. §§ 157(b); venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and

sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is granted in its entirety.
2. The Intervention Motion will be heard on October 22, 2010 at 10:00 a.m.
3. The Intervention Motion objection deadline is set for October 20, 2010 at 12:00 p.m.
4. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: October __, 2010
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I, John H. Strock, hereby certify that on the 12th day of October, 2010, I caused a copy of the **Motion of the Washington Mutual, Inc. Noteholders Group to (I) Shorten the Notice Period for the Hearing on the Motion for Order Granting Intervention and (II) Set the Intervention Motion Objection Deadline** to be served upon the parties listed below *via* the manner indicated.

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