

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

IN RE:	§	
	§	CASE NO. 08-12229 (MFW)
WASHINGTON MUTUAL, INC., <i>et al.</i> ,	§	
	§	CHAPTER 11
DEBTORS.	§	(Jointly Administered)
	§	

**TEXAS GROUP’S MOTION TO ENFORCE ORDER  
REGARDING PRODUCTION OF DOCUMENTS**

American National Insurance Company, American National Property and Casualty Company, Farm Family Life Insurance Company, Farm Family Casualty Insurance Company, and National Western Life Insurance Company (collectively, the “Texas Group”) seek enforcement of the Court’s Order Regarding the Texas Group’s Motion to Compel Production of Documents from Debtors and to Exercise its Right to Participate in General Discovery Available to all Parties (D.I. 5544), and respectfully submits the following:

**BASIS FOR RELIEF**

In short and as explained below, the Texas Group is compelled to file this motion to enforce the Court’s Order for the following three reasons:

1. The Debtors failed to produce documents as mandated by the Order (defined at ¶7) and are attempting to limit the scope of their production in defiance of the Order;
2. The Debtors are attempting to impermissibly interpose objections to discovery production that were previously rejected by this Court; and
3. The Debtors claim certain privileges, but fail to identify documents to which such privileges may apply and fail to provide identifiers in their privilege log to support application of any such privilege.



## **PROCEDURAL BACKGROUND**

1. On July 2, 2010, the Texas Group filed its Motion to Compel Production of Documents from Debtors and to Exercise Its Right to Participate in General Discovery Available to all Parties (D.I. 4869) (the “Motion”).

2. The Debtors objected to the Motion on September 17, 2010 (D.I. 5441).

3. The Texas Group replied to the Debtors’ objection on September 21, 2010 (D.I. 5447).

4. The Court held a hearing on the Motion on September 24, 2010 (the “September 24 hearing”) during which the Court heard argument relating to the Motion, the Debtors’ objection, and the Texas Group’s reply.

5. After hearing argument from the parties, the Court granted the Texas Group’s Motion and orally ruled that the Texas Group members were parties in interest and were entitled to discovery.

6. Subsequently, on October 4, 2010, the Debtors submitted a proposed order under certificate of counsel effecting the Court’s bench order (D.I. 5543).

7. On October 5, 2010, the Court entered the Order submitted by the Debtors memorializing and effecting the Court’s bench ruling at the September Hearing (D.I. 5544) (the “Order”).

8. The Order provided in relevant part:

Within *14 days* of entry of this Order, the Debtors shall respond to requests 2, 3, 9, 34, 36 and 37 of the Texas Group’s First Requests for Production of Documents, as supplemented by paragraph 7 of the Reply. (emphasis added)

and

Nothing in the Order requires the Debtors to produce any documents subject to the attorney-client privilege, the work product doctrine, or any other applicable privilege.

Order, D.I. 5544.

9. The Order required the Debtors to produce all responsive documents by October 19, 2010.

10. On October 19, 2010, counsel for the Texas Group sent an email to Debtors' counsel asking about the Debtors' production. In their answer to this email, the Debtors replied that they would be providing a response later but would not be producing any documents now. Specifically, Debtors' counsel's stated:

You will be getting our response to the discovery requests today. It will identify places in the dataroom containing the documents you requested and indicate what additional document *we will be searching for and producing*. *The additional documents will follow as soon as they can be collected and processed.*

See Exhibit A. (emphasis added)

11. The Debtors, during the evening of October 19, 2010, served *Washington Mutual Inc.'s Objections and Responses to American National Insurance Company, Et Al.'s First Request for Production of Documents*. See Exhibit B (the "Objections").

12. The Debtors failed to produce any documents.

13. The Debtors response failed to comply with the letter or spirit of the Court's Order, as detailed below. Because of the compressed discovery time table imposed by the Debtors and the fast-approaching December 1 confirmation hearing, the Debtors' refusal to produce discoverable, court-ordered documents to the Texas Group is prejudicial to the Texas Group's efforts to show, for purposes of its to-be-filed objection to confirmation of the current Plan, that the Texas Group's litigation against JPMorgan Chase & Co., *et al.*, is not property of

the estate, and that the purported releases of the Texas Group's litigation contained in the Debtors' plan of reorganization (the "Plan") are impermissible.

### **ARGUMENT**

#### **A. THE DEBTORS HAVE FAILED TO EVEN BEGIN A SEARCH FOR RESPONSIVE DOCUMENTS AND HAVE REFUSED TO COMPLY WITH THE COURT'S ORDER**

14. Debtors' counsel admitted in his October 19, 2010 email that the Debtors "will be searching for and producing" documents responsive to the Texas Groups' requests, and "[t]he additional documents will follow as soon as they can be collected and processed." It is plain that the Debtors have not yet begun to search for documents responsive to the Texas Group's requests, despite that the requests were issued in June 2010.

15. In their Objections, the Debtors admit that they failed to comply with the Court's Order. *See* Exhibit A.

16. In addition, the Debtors' responses show that they seek to improperly limit the scope of their responses. Thus, although the Texas Group sought all documents concerning the Texas Litigation related to certain subjects, the Debtors impermissibly sought to limit their responses to a few specific events.

17. For example, in the Texas Group's Request For Production of Documents No. 2 ("Request No. 2"), the Texas Group sought production of:

All documents reflecting or concerning communications between and among the Debtors and any party, including JPMC and the FDIC, concerning (1) the Texas Litigation, (2) the factual basis of any allegation contained in the Texas Litigation (3) the settlement of the Texas Litigation, and (4) any request for information or documents from a third party or governmental agency concerning the Texas Litigation or the factual basis or any allegation contained in the Texas Litigation.

18. However, the Debtors responded to Request No. 2 by referring the Texas Group to certain folders in the online repository, and stating that:

WMI also agrees to supplement its production with any responsive, non-privileged documents identified after searching for documents that may exist relating to (1) telephone conferences concerning the Texas Litigation which occurred on or around February 10, 11, 12, and 19, 2010; (2) a stipulation submitted to WMI by JPMC on or around February 22, 2010 as it relates to the Texas Litigation; and (3) the Debtors' litigation assessment conference occurring on or around March 10, 2010 as it relates to the Texas Litigation.

19. In addition, the Texas Group, in Request For Production of Documents No. 34 ("Request No. 34"), sought production of:

All documents concerning negotiation of a settlement, release or dismissal of the Texas Litigation.

20. The Debtors responded to Request No. 34 by referring the Texas Group to certain folders in the online repository, and stating that:

WMI also agrees to supplement its production with any responsive, non-privileged documents identified after searching for documents that may exist relating to (1) telephone conferences concerning the Texas Litigation which occurred on or around February 10, 11, 12, and 19, 2010; (2) a stipulation submitted to WMI by JPMC on or around February 22, 2010 as it relates to the Texas Litigation; and (3) the Debtors' litigation assessment conference occurring on or around March 10, 2010 as it relates to the Texas Litigation.

21. These responses by the Debtors are inadequate in that (a) no discovery production has been made by the Debtors, and (b) this is an attempt by the Debtors to unduly limit the scope of production to documents that WMI "agrees" to produce, rather than those that it was ordered to produce (*i.e.*, "All documents reflecting or concerning communications between and among the Debtors and any party, including JPMC and the FDIC, concerning . . . the Texas Litigation . . ." and "All documents concerning negotiation of a settlement, release or dismissal of the Texas Litigation"). For example, in already-produced discovery the Texas Group has seen references to correspondence between and among WMI, JPMC and the FDIC in the Spring of 2009

regarding the Texas Litigation. Under the Debtors' "agreed" response, the Debtors would refuse to produce any such correspondence, even if it explicitly related to settlement negotiations.

22. Contrary to the Debtors' contention, the Debtors must produce discoverable documents that came into existence as early as February 2009, when the Texas Litigation began.

23. The Debtors' cavalier approach to production is inexcusable and highly prejudicial to the Texas Group especially given the expedited discovery timetable relating to the Plan, proposed deadlines to object to the Plan, and the December 1 hearing scheduled for this Court to consider confirmation of the Plan.

**B. THE DEBTORS HAVE ASSERTED NUMEROUS IMPERMISSIBLE OBJECTIONS**

24. The Debtors, in their reply and in argument at the September 24 Hearing, argued that the Texas Group was not a party in interest with standing to participate in discovery. The Court rejected the Debtors' argument and ordered the Debtors to respond to the discovery propounded by the Texas Group. The Court allowed that the Debtors did not have to produce documents that were attorney-client privileged. The Debtors failed to raise any other basis to oppose the Texas Group's discovery requests.

25. Now, after having been ordered to produce documents in response to requests for production propounded by the Texas Group, the Debtors seek to withhold documents on the basis of objections not previously raised by the Debtors at the September 24 Hearing or otherwise, and which were not included in the Court's Order.

26. Specifically, in the Objections, the Debtors seek to assert the following impermissible objections:

- a) Objections Paragraph 1: “WMI objects to the definitions of “Washington Mutual,” “WMB,” “WMB fsb,” “WMI,” and You” in Paragraphs 36, 38, 39, and 40 of the Definitions to the Requests . . .”
- b) Objections Paragraph 2: “WMI objects to these Requests to the extent they seek to require WMI to produce documents that are not in its possession, custody, or control, or that are in the Texas Group’s or a third party’s possession.”
- c) Objections Paragraph 3: “WMI objects to these Requests to the extent they seek information that is not relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.”
- d) Objections Paragraph 5: “WMI objects to these Requests as overly broad and unduly burdensome to the extent they are not properly limited in time or scope.”
- e) Objections Paragraph 6: “WMI objects to these Requests to the extent that they are unreasonably cumulative and/or duplicative and therefore vague, ambiguous, overly broad, unduly burdensome, harassing, and/or oppressive in violation of Rule 26(b) of the Federal Rules of Civil Procedure.”

27. The Order precludes the Debtors from asserting any of these objections. The only objection permitted by the Order is that of privilege. Any other objection was waived by the Debtors’ failure to raise it at or prior to the September 24 Hearing or was rejected by the Court. The Court particularly stated that it was not concerned with the breadth of any of the Texas Group’s discovery requests.

28. The Debtors must withdraw these objections and provide full and complete responses.

**C. THE DEBTORS MUST FULLY EXPLAIN THEIR ASSERTIONS OF PRIVILEGE**

29. In the Objections at Paragraph 4, and in their responses to Request Nos. 2, 3, 9, 34, 36, and 37, the Debtors assert the following objection:

WMI objects to these Requests to the extent they seek confidential information that is protected from disclosure by . . . the common interest privilege, or any other applicable common law or statutory privilege, doctrine, or immunity from discovery.

30. In addition to the Objections, the Debtors also provided privilege logs in which they listed documents that Debtors' counsel previously provided to the Equity Committee. However, the Debtors fail to explain the pertinence of these privilege logs to the instant request for production.

31. Furthermore, the Debtors explicitly state in their privilege logs that the only privileges claimed are attorney-client and work product privileges.<sup>1</sup> Indeed, the Texas Group does not seek material that is protected by the attorney-client or work product privileges.

32. To the extent that a common interest privilege, or any other applicable common law or statutory privilege has been asserted, the Debtors fail to describe any document to which such privilege may apply, and they fail to explain the application of such privilege to any such documents.

33. Although the Debtors, in the Objections, very loosely suggest that a "common interest privilege, or any other applicable common law or statutory privilege" could apply, there is no assertion of any of these privileges in any privilege log, and they do not appear to relate to

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<sup>1</sup> The Debtors attempt by way of language in a footnote in their privilege logs to reserve an opportunity to assert additional bases for privilege. This, however, is impermissible under prevailing caselaw. *See, e.g., See International Paper v. Fibreboard Corp.*, 63 F.R.D. 88 (D. Del. 1974) (stating that "an improperly asserted claim of privilege is no claim of privilege at all.")



any document. Accordingly, the Debtors' citation to these privileges is spurious and the Debtors should not be permitted to delay production of documents to the Texas Group on this basis.

34. More to the point and consistent with the law of this District, any documents not referenced in the privilege logs submitted to the Texas Group by the Debtors should be declared not privileged, or alternatively, that the Debtors have waived any applicable privilege. *See International Paper v. Fibreboard Corp.*, 63 F.R.D. 88 (D. Del. 1974) (stating that "an improperly asserted claim of privilege is no claim of privilege at all.").

**WHEREFORE**, the Texas Group respectfully requests that the Court order the following:

- a) That the Debtors immediately search all electronic databases, email repositories, physical files and other document storage facilities in their possession, custody or control, and produce all documents responsive to the Texas Group's requests numbers: 2, 3, 9, 34, 36, and 37 by Monday, October 25 at 4:00 p.m. ET;
- b) That any document not referenced in privilege logs submitted to the Texas Group by the Debtors on October 19, 2010 are declared not privileged and that the Debtors have waived any applicable privilege as to any such document;
- c) That immediately upon completion of the search and production required in subsection a), above, that the Debtors certify to the Court and the Texas Group that the Debtors have met the requirements of this Order;
- d) That, if the Debtors fail to complete the search and production requirements required by subsection a) above, the Debtors schedule a status conference with the Court where the Debtors shall show cause why the plan confirmation hearing,

presently scheduled for December 1, 2010, should not be rescheduled to a date in 2011;

- e) That the Debtors pay reasonable attorney's fees incurred by the Texas Group for having to file the instant Motion;
- f) For such other relief that the Court deems appropriate.

Dated: October 20, 2010

Respectfully Submitted,  
SMITH, KATZENSTEIN & FURLOW LLP

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Counsel to American National Insurance Company,  
American National Property and Casualty  
Company, Farm Family Life Insurance Company,  
Farm Family Casualty Insurance Company, and  
National Western Life Insurance Company

# **EXHIBIT A**

**Victoria Miller**

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**From:** Stochak, Adam [adam.stochak@weil.com]  
**Sent:** Tuesday, October 19, 2010 6:07 PM  
**To:** James M. Roquemoire  
**Cc:** Michael P. Migliore; Thompson, Sunny  
**Subject:** RE: WMI - ANICO discovery

You will be getting our response to the discovery requests today. It will identify places in the dataroom containing the documents you requested and indicate what additional documents we will be searching for and producing. The additional documents will follow as soon as they can be collected and processed.

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**From:** James M. Roquemoire [mailto:jroquemoire@greerherz.com]  
**Sent:** Tuesday, October 19, 2010 5:47 PM  
**To:** Stochak, Adam  
**Cc:** Michael P. Migliore  
**Subject:** WMI - ANICO discovery

Adam,

The deadline for the Debtors to produce documents pursuant to the Court's order is today. I was checking on when and in what form the Debtors will be making their production.

James M. Roquemoire  
Greer, Herz & Adams, L.L.P.  
One Moody Plaza, 18th floor  
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10/20/2010

## **EXHIBIT B**

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

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

**WASHINGTON MUTUAL INC.'S OBJECTIONS  
AND RESPONSES TO AMERICAN NATIONAL INSURANCE  
COMPANY, ET AL.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Washington Mutual, Inc. (“WMI”), Debtor and Debtor in Possession in these jointly administered chapter 11 cases, hereby submits, by and through its counsel, its Objections and Responses to American National Insurance Company, American National Property and Casualty Company, Farm Family Life Insurance Company, Farm Family Casualty Insurance Company, and National Western Life Insurance Company’s (collectively, the “Texas Group”) First Request for Production of Documents (the “Requests”), as modified by the Court’s October 5, 2010 Order Regarding the Texas Group’s Motion to Compel Production of Documents From Debtors and to Exercise Its Right to Participate in General Discovery Available to All Parties.

**GENERAL OBJECTIONS TO THE REQUESTS**

1. WMI objects to the definitions of “Washington Mutual,” “WMB,” “WMB fsb,” “WMI,” and “You” in Paragraphs 36, 38, 39, and 40 of the Definitions to the Requests to the extent they include “any and all of their current and former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting or purporting to act on their behalf[.]” The inclusion of such terms renders the defined terms vague, ambiguous, cumulative, duplicative, and overbroad. WMI also objects to these definitions to the extent they include “attorneys” on the ground that they call for information

outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege, doctrine, or immunity from discovery.

2. WMI objects to these Requests to the extent they seek to require WMI to produce documents that are not in its possession, custody, or control, or that are in the Texas Group's or a third party's possession.

3. WMI objects to these Requests to the extent they seek information that is not relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

4. WMI objects to these Requests to the extent they seek confidential information that is protected from disclosure by attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege, doctrine, or immunity from discovery. WMI asserts these privileges and protections with respect to all information to which they apply, and any disclosure of such information shall not be construed as a waiver of any privilege or protection.

5. WMI objects to these Requests as overly broad and unduly burdensome to the extent they are not properly limited in time or scope.

6. WMI objects to these Requests to the extent that they are unreasonably cumulative and/or duplicative and therefore vague, ambiguous, overly broad, unduly burdensome, harassing, and/or oppressive in violation of Rule 26(b) of the Federal Rules of Civil Procedure.

## SPECIFIC OBJECTIONS AND RESPONSES TO THE REQUESTS

**REQUEST No. 2:** All documents reflecting or concerning communications between and among the Debtors and any party, including JPMC and the FDIC, concerning (1) the Texas Litigation, (2) the factual basis of any allegation contained in the Texas Litigation, (3) the settlement of the Texas Litigation, and (4) any request for information or documents from a third party or governmental agency concerning the Texas Litigation or the factual basis of any allegation contained in the Texas Litigation.

**RESPONSE:**

WMI objects to Request No. 2 to the extent it seeks confidential information that is protected from disclosure by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege, doctrine, or immunity from discovery. WMI asserts these privileges and protections with respect to all information to which they apply, and any disclosure of such information shall not be construed as a waiver of any privilege or protection.

Subject to the above general and specific objections to Request No. 2, WMI refers the Texas Group in the following folders in the data room:

- 4 Settlement Matters/ 4.2 Lawsuits and Claims/ 4.2.1 Global Settlement Agreement
- 4 Settlement Matters/ 4.3 Settlement Communications / 4.3.1 Weil Settlement Negotiations
- 4 Settlement Matters/ 4.3 Settlement Communications / 4.3.2 A&M Settlement Negotiations
- 4 Settlement Matters/ 4.3 Settlement Communications / 4.3.3 Committee Settlement Negotiations
- 6 JPMC Data/ 6.3 JPMC and S&C Settlement Negotiations

To the extent there are any documents in the above-referenced folders reflecting communications among counsel to the Debtors, Sullivan & Cromwell LLC, and DLA Piper, counsel to the Federal Deposit Insurance Corporation (the “FDIC”), they may include communications



concerning the Debtors', JPMorgan Chase Bank, National Association's ("JPMC"), and the FDIC's approach to defending against the Texas Group's claims in the Texas Litigation.<sup>1</sup> Moreover, the folders containing documents reflecting general settlement discussions may also contain incidental discussions of the Texas Litigation.

WMI also agrees to supplement its production with any responsive, non-privileged documents identified after searching for documents that may exist relating to (1) telephone conferences concerning the Texas Litigation which occurred on or around February 10, 11, 12, and 19, 2010; (2) a stipulation submitted to WMI by JPMC on or around February 22, 2010 as it relates to the Texas Litigation; and (3) the Debtors' litigation assessment conference occurring on or around March 10, 2010 as it relates to the Texas Litigation.

**REQUEST No. 3.** All internal communications of the Debtors concerning (1) the Texas Litigation, (2) the factual basis of any allegation contained in the Texas Litigation, (3) the settlement of the Texas Litigation, and (4) any request for information or documents from a third party or governmental agency concerning the Texas Litigation or the factual basis of any allegation contained in the Texas Litigation.

**RESPONSE:**

WMI objects to Request No. 3 because it seeks "[a]ll internal communications of the Debtors concerning" a variety of litigation matters, and any responsive documents would contain confidential information that is protected from disclosure by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege, doctrine, or immunity from discovery. WMI asserts these privileges and protections with respect to all information to which they apply, and any disclosure of such information shall not be construed as a waiver of any privilege or protection.

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<sup>1</sup> All capitalized terms not defined herein shall have the meaning given them in the Requests.

**REQUEST No. 9.** All documents concerning the Debtors' analysis of potential claims or causes of action against JPMC, the FDIC, OTS, Sullivan & Cromwell, LLP, and any other third party.

**RESPONSE:**

WMI objects to Request No. 9 because it seeks “[a]ll documents concerning the Debtors’ analysis of potential claims and causes of actions against” various third parties, and any responsive documents would contain confidential information that is protected from disclosure by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege, doctrine, or immunity from discovery. WMI asserts these privileges and protections with respect to all information to which they apply, and any disclosure of such information shall not be construed as a waiver of any privilege or protection.

WMI will provide the Texas Group with privilege logs of the work product provided to the Official Committee of Equity Holders (“Equity Committee”) by Weil, Gotshal & Manges LLP and Quinn Emanuel Urquhart & Sullivan LLP.

**REQUEST No. 34.** All documents concerning negotiation of a settlement, release or dismissal of the Texas Litigation.

**RESPONSE:**

WMI objects to Request No. 34 to the extent it seeks confidential information that is protected from disclosure by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege, doctrine, or immunity from discovery. WMI asserts these privileges and protections with respect to all information to which they apply, and any disclosure of such information shall not be construed as a waiver of any privilege or protection.

Subject to the above general and specific objections to Request No. 34, WMI refers the Texas Group to the following folders in the data room containing documents reflecting general settlement discussions which may also contain incidental discussions of the Texas Litigation:

- 4 Settlement Matters/ 4.2 Lawsuits and Claims/ 4.2.1 Global Settlement Agreement
- 4 Settlement Matters/ 4.3 Settlement Communications / 4.3.1 Weil Settlement Negotiations
- 4 Settlement Matters/ 4.3 Settlement Communications / 4.3.2 A&M Settlement Negotiations
- 4 Settlement Matters/ 4.3 Settlement Communications / 4.3.3 Committee Settlement Negotiations
- 6 JPMC Data/ 6.3 JPMC and S&C Settlement Negotiations

WMI also agrees to supplement its production with any responsive, non-privileged documents identified after searching for documents that may exist relating to (1) telephone conferences concerning the Texas Litigation which occurred on or around February 10, 11, 12, and 19, 2010; (2) a stipulation submitted to WMI by JPMC on or around February 22, 2010 as it relates to the Texas Litigation; and (3) the Debtors' litigation assessment conference occurring on or around March 10, 2010 as it relates to the Texas Litigation.

**REQUEST No. 36.** All documents provided to WMI's Board of Directors with respect to the Global Settlement Agreement.

**RESPONSE:**

WMI objects to Request No. 36 to the extent it seeks confidential information that is protected from disclosure by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege, doctrine, or immunity from discovery. WMI asserts these privileges and protections with respect to all information to which they apply, and any disclosure of such information shall not be construed

as a waiver of any privilege or protection. WMI further objects to this Request to the extent that it seeks information that is not relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to the above general and specific objections to Request No. 36, WMI refers the Texas Group in the following folder in the data room containing Board Minutes from meetings of WMI's Board of Directors:

- 3 Post-Petition General/ 3.3 Board Minutes

WMI also agrees to supplement its production with any responsive, non-privileged documents that were provided to WMI's Board of Directors with respect to the Global Settlement Agreement. Additionally, WMI will provide the Texas Group with privilege logs of the work product provided to the Equity Committee by Weil, Gotshal & Manges LLP and Quinn Emanuel Urquhart & Sullivan LLP.

**REQUEST No. 37.** All documents relating to the release of the claims made in the Texas Litigation pursuant to the Plan and Global Settlement Agreement, including any evaluation of the value of the claims.

**RESPONSE:**

WMI objects to Request No. 37 to the extent it seeks confidential information that is protected from disclosure by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege, doctrine, or immunity from discovery. WMI asserts these privileges and protections with respect to all information to which they apply, and any disclosure of such information shall not be construed as a waiver of any privilege or protection.

Subject to the above general and specific objections to Request No. 37, WMI refers the Texas Group in the following folders in the data room containing documents reflecting general settlement discussions which may also contain incidental discussions of the Texas Litigation, including any related releases:

- 4 Settlement Matters/ 4.2 Lawsuits and Claims/ 4.2.1 Global Settlement Agreement
- 4 Settlement Matters/ 4.3 Settlement Communications / 4.3.1 Weil Settlement Negotiations
- 4 Settlement Matters/ 4.3 Settlement Communications / 4.3.2 A&M Settlement Negotiations
- 4 Settlement Matters/ 4.3 Settlement Communications / 4.3.3 Committee Settlement Negotiations
- 6 JPMC Data/ 6.3 JPMC and S&C Settlement Negotiations

Additionally, WMI will provide the Texas Group with privilege logs of the work product provided to the Equity Committee by Weil, Gotshal & Manges LLP and Quinn Emanuel Urquhart & Sullivan LLP.

Dated: October 19, 2010  
Wilmington, Delaware

Respectfully Submitted,



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ATTORNEYS TO THE DEBTORS  
AND DEBTORS IN POSSESSION

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

IN RE: §  
§ CASE NO. 08-12229 (MFW)  
WASHINGTON MUTUAL, INC., *et al.*, §  
§ CHAPTER 11  
Debtors. § (Jointly Administered)

**ORDER**

Upon consideration of the *Texas Group's Motion To Enforce Order Regarding Production Of Documents* (the "Motion") and having heard responses or objections thereto, if any, due and sufficient notice having been given thereof, and finding good cause for the relief requested therein, it is hereby,

**ORDERED, ADJUDGED and DECREED** that:

1. The Motion is **GRANTED**.
2. The Debtors shall immediately search all electronic databases, email repositories, physical files and other document storage facilities in their possession, custody or control, and produce all documents responsive to the Texas Group's requests numbers 2, 3, 9, 34, 36, and 37 by Monday, October 25 at 4:00 p.m. ET;
3. Any document not referenced in privilege logs submitted to the Texas Group by the Debtors on October 19, 2010 are declared not privileged and the Debtors have waived any applicable privilege as to any such document;
4. Immediately upon completion of the search and production required in paragraph 2. above, that the Debtors shall certify to the Court and the Texas Group that the Debtors have met the requirements of this Order;

5. If the Debtors fail to complete the search and production requirements required by paragraph 2. above, the Court shall schedule a status conference in which the Debtors shall show cause why the plan confirmation hearing, presently scheduled for December 1, 2010, should not be rescheduled to a date in 2011;

6. The Debtors shall pay reasonable attorney's fees incurred by the Texas Group for having to file the contemporaneously-filed Motion;

7. This Court shall retain jurisdiction to interpret and enforce the provisions of this Order.

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

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The Honorable Mary F. Walrath  
United States Bankruptcy Judge



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

IN RE:	§	
	§	CASE NO. 08-12229 (MFW)
WASHINGTON MUTUAL, INC., <i>et al.</i> ,	§	
	§	CHAPTER 11
Debtors.	§	(Jointly Administered)
	§	

**CERTIFICATE OF SERVICE**

I, Michael P. Migliore, hereby certify that, on this 2nd day of July, 2010, I caused a true and correct copy of: Texas Group's Motion to Enforce Order Regarding Production of Documents to be served on the parties listed below as indicated.

/s/ Michael P. Migliore  
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