

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	)	Chapter 11
In re:	)	
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 08-12229 (MFW)
Debtors.	)	(Jointly Administered)
	)	<i>Requested Hearing Date: 12/2/10 @ 9:30 a.m.</i>
	)	<i>Requested Objection Deadline: At the hearing</i>
	)	Related Dkt. No. 6141

**REPLY IN SUPPORT OF MOTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS FOR ENTRY OF AN ORDER GRANTING RELIEF FROM THE CONFIDENTIALITY AGREEMENT GOVERNING CONFIRMATION DISCOVERY TO PERMIT REFERENCE TO DEBTORS' WORK PRODUCT UPON CLOSING OF THE COURTROOM**

The Official Committee of Equity Security Holders (the "Equity Committee"), by and through its undersigned counsel, hereby submits this reply ("Reply") in further support of its *Motion for Entry of an Order Granting Relief from the Confidentiality Agreement Governing Confirmation Discovery to Permit Reference to Debtors' Work Product upon Closing of the Courtroom* [Dkt. No. 6141] (the "Motion"). In support thereof, the Equity Committee respectfully represents as follows:

1. Debtors appear to agree that the Equity Committee may use this material as part of confirmation, as they must. The Rule 502(d) Order in this case says as much. The Equity Committee is at the pleasure of the Court about how to conduct this part of the Examination and whether to close the courtroom. The Equity Committee takes no position on whether these documents have been properly labeled work product or highly confidential, and has no objection

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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 Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



to this portion of the hearing occurring in public if the Court so desires. Rather, the Equity Committee wants to facilitate the process for the use of these documents before the confirmation hearing begins.

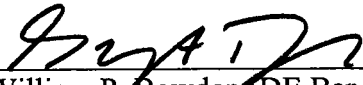
2. The Equity Committee also has no objection to showing these documents to the Court for *in camera* review beforehand or to Debtors immediately before the documents are introduced. It does not believe, however, that Debtors should be entitled to see the documents on which the Equity Committee intends to cross-examine the Debtors' witnesses until the point that the document is about to be introduced or the witness is on the stand.

3. The Equity Committee strongly disagrees with the Debtors' suggestion that these documents should be submitted only on the papers, and that the Debtors' witnesses should not be subject to cross-examination on these documents. Such a suggestion -- if implemented -- would severely and negatively impact the Equity Committee's ability to object to plan confirmation, and indeed raises substantial due process and evidentiary concerns should the Debtors be able to submit a declaration but be exempt from cross-examination on certain highly relevant points.

WHEREFORE, the Equity Committee respectfully requests that the Court enter an order granting the relief requested in the Motion and awarding such other and further relief that the Court deems just and proper.

Dated: December 1, 2010  
Wilmington, Delaware

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