

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In re : Chapter 11

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WASHINGTON MUTUAL, INC., et al.,¹ : Case No. 08-12229 (MFW)

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Debtors. : (Jointly Administered)

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Objection Deadline: TBD
Hearing Date: TBD

**MOTION OF DEBTORS FOR AN ORDER AUTHORIZING THE
RETURN OF PAYMENTS MADE PURSUANT TO THE RIGHTS OFFERING**

Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI
Investment"), as debtors and debtors in possession (together, the "Debtors"), as and for their motion (the "Motion"), pursuant to section 105(a) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), for an order authorizing the return of payments made pursuant to the Rights Offering (as defined herein),² respectfully represent as follows:

JURISDICTION

1. The Bankruptcy Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in either the Sixth Amended Plan, the Modified Plan, or the Disclosure Statement Order (each as defined herein).



BACKGROUND

2. On September 26, 2008 (the “Commencement Date”), each of the Debtors commenced with the Bankruptcy Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code. As of the date hereof, the Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On October 3, 2008, the Bankruptcy Court entered an order pursuant to Bankruptcy Rule 1015(b) authorizing the joint administration of the Debtors’ chapter 11 cases.

4. On October 15, 2008, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Creditors’ Committee”). On January 11, 2010, the U.S. Trustee appointed an official committee of equity security holders (the “Equity Committee”).

The Sixth Amended Plan

5. On October 6, 2010, the Debtors filed the *Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code*, dated October 6, 2010 (as modified, the “Sixth Amended Plan”) and a corresponding disclosure statement (as amended, the “Prior Disclosure Statement”). Among other things, the Sixth Amended Plan provided each holder of an Allowed PIERS Claim that relates to PIERS Preferred Securities with Subscription Rights entitling such holder to purchase Additional Common Stock provided that such holder held a certain principal amount of PIERS Preferred Securities (the “Rights Offering”). By no means, however, was consummation of the Rights Offering a certainty. Indeed, the Sixth Amended Plan provided for the possibility that the Rights Offering might be cancelled. Specifically, Section 34.10 of the Sixth Amended Plan stated: “**if the Rights Offering is**

cancelled ... the Debtors or the Reorganized Debtors, as the case may be, will return any payments made pursuant to the Rights Offering to the Voting Nominees on behalf of each applicable holder of Subscription Rights **within ten (10) Business Days thereafter**” (emphasis added). Similarly, the Subscription Forms and Master Subscription Forms sent to beneficial holders of Allowed PIERS Claims and Voting Nominees of such beneficial holders, respectively, noted that consummation of the Rights Offering was not a certainty and that there was a possibility it would be cancelled.

6. By order, dated October 21, 2010 [Docket No. 5659] (the “Disclosure Statement Order”), the Bankruptcy Court approved the Prior Disclosure Statement and the Debtors’ proposed procedures for soliciting votes and elections with respect to the Sixth Amended Plan, including elections with respect to the Rights Offering and the corresponding Subscription Forms and Master Subscription Forms.

7. In accordance with the Disclosure Statement Order, the Debtors distributed the Prior Disclosure Statement to the respective holders of Claims and Equity Interests. Pursuant to the Disclosure Statement Order, holders of PIERS Claims interested in participating in the Rights Offering were required to submit their elections with respect to the Rights Offering and payment related thereto to their Voting Nominees such that the Debtors’ Rights Offering Agent, Kurtzman Carson Consultants LLC, received such elections from the Voting Nominees on or before November 29, 2010 and payment related thereto from the Voting Nominees on or before November 30, 2010. In connection therewith, and as set forth in the *Declaration of David M. Sharp with Respect to the Tabulation of Rights Offering Elections Pursuant to the Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code*, dated November 30, 2010 [Docket No. 6156], eligible holders

of PIERS Claims elected to exercise 31,614,004 Subscription Rights and submitted \$31,614,004.00 to the Rights Offering Agent. Such funds are on deposit in the Rights Offering Trust Account, a segregated account established by the Rights Offering Agent at Bank of America exclusively for the purpose of administering the Rights Offering and maintained by the Rights Offering Agent as agent for the Debtors. As of February 1, 2011, including interest accrued thereon, such funds total \$31,618,545.89.

8. On January 7, 2011, the Bankruptcy Court entered an opinion [Docket No. 6528] (the “Opinion”)³ and a corresponding order [Docket No. 6529] determining that the compromise and settlement embodied in the Global Settlement Agreement, upon which the Sixth Amended Plan and the Modified Plan are premised, and the transactions contemplated therein, are fair, reasonable, and in the best interests of the Debtors, the Debtors’ creditors, and the Debtors’ chapter 11 estates, but identifying certain modifications to the Sixth Amended Plan that would be required before the Bankruptcy Court would confirm the Sixth Amended Plan – including that the Sixth Amended Plan should be modified to allow *all* holders of PIERS Claims (regardless of the size of their Claims) the opportunity to participate in the Rights Offering.

The Modified Plan and the Supplemental Disclosure Statement

9. As set forth in more detail in the proposed Supplemental Disclosure Statement⁴ and the Modified Plan,⁵ on February 8, 2011 the Debtors modified the Sixth

³ A full and complete copy of the Opinion is available at www.kccllc.net/wamu or the Bankruptcy Court’s website, www.deb.uscourts.gov, and also is available for inspection during regular business hours in the office of the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801.

⁴ *Supplemental Disclosure Statement for the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code*, dated February 7, 2011 [Docket No. 6697] (the “Supplemental Disclosure Statement”).

⁵ *Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code*, dated February 7, 2011 [Docket No. 6696] (as it has been and may be further modified, the “Modified Plan”).

Amended Plan consistent with the Opinion and with the Bankruptcy Court's statements on the record at a status conference held on January 20, 2011, and determined to cancel the Rights Offering due to potential federal securities laws issues associated with a broader solicitation and acceptance of the Rights Offering.

RELIEF REQUESTED

10. By this Motion, and pursuant to section 105(a) of the Bankruptcy Code, the Debtors seek entry of the proposed order attached hereto as **Exhibit A** (the "Proposed Order"), authorizing the return of funds previously submitted in connection with the Rights Offering.

11. For the reasons described below, the Debtors arguably must return the funds previously submitted in connection with the Rights Offering by February 23, 2011. Therefore, the relief requested pursuant to this Motion must be granted in advance of such date. Accordingly, contemporaneously herewith, the Debtors have filed a motion seeking to shorten notice with respect to the Motion and to schedule a hearing on the Motion on or before February 22, 2011.

BASIS FOR RELIEF

12. Effective as of February 8, 2011, by filing the Modified Plan with the removal of the Rights Offering concept, the Debtors cancelled the Rights Offering. Pursuant to Section 34.10 of the Sixth Amended Plan, which itself was not approved, the Debtors arguably must return any payments made pursuant to the Rights Offering within ten (10) Business Days thereafter – February 23, 2011. Accordingly, the Debtors hereby request authority to return all payments made pursuant to the Rights Offering, plus any interest earned thereon (collectively, the "Rights Offering Obligations") to the Voting Nominees. The Debtors will need one (1)

Business Day to effectuate the return of such payments, and so the relief requested pursuant to this Motion would need to be granted by February 22, 2011.

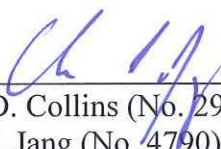
13. The Debtors also respectfully request that the Court order that, with the exception of payment of the Rights Offering Obligations, the Debtors shall have no further liability to any party in connection with the Rights Offering or the cancellation thereof.

NOTICE

14. The Debtors shall serve notice of this Motion on (i) the U.S. Trustee, (ii) counsel for the Creditors' Committee, (iii) counsel for the Equity Committee, and (iv) all parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002.

WHEREFORE the Debtors respectfully request that the Bankruptcy Court enter an order granting the relief requested herein and such other and further relief as is just and proper.

Dated: February 9, 2011
Wilmington, Delaware



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Attorneys for Debtors
and Debtors in Possession

Exhibit A
(Proposed Order)

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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| Debtors. | : | (Jointly Administered) |
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| -----X | | |
| | | Re: Docket No. ____ |

**ORDER AUTHORIZING THE RETURN
OF PAYMENTS MADE PURSUANT TO THE RIGHTS OFFERING**

Upon the motion, dated February 9, 2011 (the "Motion"),² of Washington Mutual, Inc. ("WMI") and WMI Investment Corp. (collectively, the "Debtors"), as debtors and debtors in possession, for entry of an order, pursuant to section 105(a) of the Bankruptcy Code, authorizing the return of payments made pursuant to the Rights Offering; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Debtors having cancelled the Rights Offering effective as of February 8, 2011, the date the Debtors filed the Modified Plan; and due and proper notice of the Motion having been provided to those parties identified therein, and no other or further notice being required; and the Court having determined that the relief sought in the Motion is in the best interest of the Debtors, their creditors, and all parties in interest; and the Court having determined that the legal and

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them to the Motion.

factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore, it is

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Debtors are authorized to return payments made pursuant to the Rights Offering, plus any interest earned thereon (collectively, the “Rights Offering Obligations”) to the Voting Nominees; and it is further

ORDERED that, with the exception of payment of the Rights Offering Obligations, the Debtors shall have no further liability to any party in connection with the Rights Offering or the cancellation thereof; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: February __, 2011
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE