

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

<p>In re</p> <p>WASHINGTON MUTUAL, INC., <i>et al.</i>,<sup>1</sup></p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 08-12229 (MFW)</p> <p>Jointly Administered</p> <p><b>Related Dkt. Nos. 6567, 6645, 6652, 6655, 6657, 6660</b></p>
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**CERTIFICATION OF COUNSEL**

I, Gregory A. Taylor, a member of the law firm of Ashby & Geddes, P.A., Delaware counsel to the Official Committee of Equity Security Holders (the "Equity Committee") of Washington Mutual, Inc. ("WMI" and, together with its chapter 11 debtor-affiliate, WMI Investment Corp., the "Debtors"), hereby certify the following:

1. On January 15, 2011, the Equity Committee filed the *Motion Of The Official Committee Of Equity Security Holders For An Order Pursuant To Bankruptcy Rule 2004 And Local Bankruptcy Rule 2004-1 Directing The Examination Of The Washington Mutual, Inc. Settlement Note Holders Group* [Dkt No. 6567] (the "Motion").

2. Objections to the Motion were filed by Appaloosa Management L.P. ("Appaloosa") [Dkt No. 6645], Owl Creek Asset Management, L.P. ("Owl Creek") [Dkt No. 6660], Centerbridge Partners, L.P. ("Centerbridge") [Dkt No. 6655], Aurelius Capital Management, LP ("Aurelius") [Dkt No. 6652] (Appaloosa, Owl Creek, Centerbridge and Aurelius, together, the "Settlement Note Holders"), and the WMI Noteholders Group [Dkt No. 6657] (collectively, the "Objectors").

<sup>1</sup> Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors are located at 925 Fourth Avenue, Suite 2500, Seattle, Washington 98104.



3. On February 3, 2011, the Equity Committee filed the *Omnibus Reply in Support of Motion Of The Official Committee Of Equity Security Holders For An Order Pursuant To Bankruptcy Rule 2004 And Local Bankruptcy Rule 2004-1 Directing The Examination Of The Washington Mutual, Inc. Settlement Note Holders Group* [Dkt. 6683].

4. On February 8, 2011, the Court convened a hearing (the "Hearing"), to consider the relief requested in the Motion. At the Hearing, the Court received argument both in favor of, and in opposition to, approval of the Motion. At the conclusion of argument, the Court rendered its decision granting the Motion, in part, and directed the Equity Committee and Objectors (the "Parties") to confer and submit under certification of counsel a form of proposed Order reflecting the Court's ruling. A copy of the portion of the transcript of the Hearing reflecting the Court's decision on the Motion is attached hereto as Exhibit A.

5. At approximately noon (Eastern) on February 9, 2011, counsel for the Equity Committee circulated via e-mail to counsel for each of the Objectors, the Debtors and the Official Committee of Unsecured Creditors (the "Creditors Committee") a revised proposed form of order and requested any comments to the proposed order by noon (Eastern) on February 10, 2011. Counsel for the Settlement Note Holders (Fried, Frank, Harris, Shriver & Jacobson LLP) has provided certain limited comments to the proposed form of order all of which have been incorporated into the revised proposed form of order (the "Proposed Order") attached hereto as Exhibit B. The Equity Committee has not received any additional comments to the Proposed Order as of the time of this filing.

6. The undersigned counsel for the Equity Committee respectfully submits that the Proposed Order attached hereto as Exhibit B, accurately reflects the Court's ruling rendered at the Hearing.

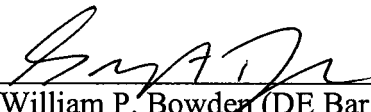
7. For the convenience of the Court and the other parties in interest, attached hereto as Exhibit C, is a blackline copy of the Proposed Order that reflects the revisions made to the original form of proposed order filed along with the Motion.

8. Accordingly, the Equity Committee respectfully requests that the Court enter the Proposed Order, attached hereto as Exhibit B at the Court's first convenience.

9. The Equity Committee remains at the Court's convenience should the Court have any questions or concerns.

Dated: February 10, 2011

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Washington Mutual, Inc., et al., as to Aurelius  
Capital Management, L.P.*

**EXHIBIT A**

**EXCERPT FROM FEBRUARY 8, 2011  
HEARING TRANSCRIPT REFLECTING  
COURT'S RULING**

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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In the Matters of: \*

WASHINGTON MUTUAL, INC., et al., \* Case No. 08-12229 (MFW)

Debtors. \*

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BROADBILL INVESTMENT CORP., \*

Plaintiff, \*

v. \* Adv. Pro. No. 10-50911 (MFW)

WASHINGTON MUTUAL, INC., \*

Defendant. \*

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MICHAEL WILLINGHAM and ESOPUS \*

CREEK VALUE LP, \*

Plaintiffs, \*

v. \* Adv. Pro. No. 10-51297 (MFW)

WASHINGTON MUTUAL, INC., \*

Defendant. \*

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WASHINGTON MUTUAL, INC. and \*

WMI INVESTMENT CORP. \*

Plaintiffs, \*

v. \* Adv. Pro. No. 10-53420 (MFW)

PETER J. AND CANDANCE R. ZAK \*

LIVING TRUST OF 2001 U/D/O \*

AUGUST 31, 2001, et al., \*

Defendants. \*

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United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

February 8, 2011

10:31 AM

B E F O R E:

HON. MARY F. WALRATH

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY

1 that threshold created these securities issues, the debtors  
2 would abandon the rights offering. And so, Your Honor, in the  
3 plan that was filed today, the rights offering is not included.  
4 So it is not because that there were, in our mind, Your Honor,  
5 we were trying to focus or generate interest in the rights  
6 offering to a certain level of PIERS holdings. Rather, it was  
7 compliance with securities laws that we did it. And as a  
8 result of that, Your Honor, we have now, in the modified plan,  
9 taken that out.

10 Your Honor, whatever way you go today, Your Honor, we  
11 only ask that we stick to May 2nd. Thank you.

12 THE COURT: Well, I am going to rule now. I am going  
13 to grant the motion in a limited fashion. I do think the  
14 requests are overly broad but I think that there's no basis not  
15 to grant discovery from the -- and I'll use the term  
16 generically -- the settlement noteholders. I think it is  
17 relevant to the confirmation hearing that I will be holding.  
18 It relates to both the interest issue and the valuation issue.

19 On the timing, I will require that the documents and  
20 information -- or discovery be responded to within two weeks.  
21 That was the basis on which I agreed to have the hearing today  
22 and the parties have been aware that if I granted it, it would  
23 be on that time frame.

24 I will limit the discovery, though, to what I think is  
25 relevant. I think what is relevant is any post-bankruptcy



1 trading by these parties. Rule 2019 would require it anyway.  
2 And I think that it is relevant to the issues raised and  
3 identified by the Court as of concern in my opinion denying  
4 confirmation.

5 I will require the production of any information  
6 received by these parties, the settlement noteholders, during  
7 settlement negotiations. That limits it temporally as well. I  
8 will require the production of any information with respect to  
9 their valuation of the reorganized debtor. It may not be a  
10 value the debtor -- the Court agrees is the value of the  
11 reorganized debtor but I think it is relevant to that issue. I  
12 will not limit it to specific trades identified by Mr. Thoma or  
13 anybody else. I think all trades post-petition should be  
14 produced. But I will not allow the broad ranging inquiries  
15 into what the settlement noteholders' plans are as to the --  
16 for the reorganized debtor. I don't think that's relevant to  
17 any confirmation issue.

18 Do I have to go through each interrogatory and -- I  
19 think on one issue with respect to admissions, they can submit  
20 whatever admissions they want. That's appropriate. You can  
21 respond to them if you agree or don't agree. But again, they  
22 should be limited to the areas that I have identified.

23 MR. HARRIS: Your Honor?

24 THE COURT: Yes.

25 MR. HARRIS: If I may, by way of clarification? When

1 Your Honor said that we'd limit it to information received by  
2 the parties during settlement negotiations and that would be a  
3 temporal limitation, is that a temporal limitation with respect  
4 to your statement regarding post-bankruptcy trades so that the  
5 temporal limitation would be any trading from and after the  
6 point you first received material nonpublic information? Or is  
7 it --

8 THE COURT: No.

9 MR. HARRIS: I didn't understand the comment regarding  
10 to the temporal limitation and how it related to the comment  
11 about all post-bankruptcy trading.

12 THE COURT: Post-bankruptcy trading should be  
13 produced. Information regarding settlement negotiations is,  
14 obviously, only since you got involved in settlement  
15 negotiations.

16 MR. HARRIS: And, Your Honor, would you like us to  
17 produce the details of the actual settlement negotiations or  
18 the information we received from the company during the  
19 settlement negotiations?

20 THE COURT: Only the information received during the  
21 settlement negotiations. The settlement negotiations  
22 themselves I don't think are relevant.

23 MR. HARRIS: Okay. Thank you for that clarification.

24 THE COURT: Yes. Thank you for asking.

25 MR. MAYER: Your Honor, I appreciate your limiting the

1 scope of discovery. I suspect there will be some further  
2 negotiations on meet and confer. And we'll do what we can.  
3 But if we determine that we simply can't do it then I'll have  
4 to come back either to you or seek relief elsewhere. Two weeks  
5 is a commitment that was not made by my client. And there may  
6 be a lot of documents to review. And if it can't be done then  
7 we'll come back and tell you or, if necessary, we'll have to  
8 tell some other judge that it can't be done because if it can't  
9 be done, it can't be done.

10 THE COURT: All right. I'll be available for a  
11 teleconference if the parties wish.

12 MR. ARD: One other point of clarification, Your  
13 Honor. I didn't hear you say anything about the ethical  
14 trading wall.

15 THE COURT: Oh, I'm sorry.

16 MR. ARD: Yeah.

17 THE COURT: Thank you. Yes. I will require  
18 information regarding what process was put in place by these  
19 parties if any regarding the post-bankruptcy trading.

20 MR. ARD: I'm sorry, Your Honor. One more point. You  
21 said that you may go to the interrogatories but you don't need  
22 to. But they're to respond to the interrogatories as well  
23 insofar as they pertain to the questions that you --

24 THE COURT: To those topics, yes.

25 MR. ARD: To the issues. Thank you, Your Honor.

1 THE COURT: All right. I'll look for a form of order  
2 from the equity committee.

3 MR. ROSEN: Your Honor, that takes us to agenda item  
4 number 33 which is also a motion by the equity committee.

5 MR. SARGENT: Good morning, Your Honor. Thank you.  
6 Edgar Sargent, Susman Godfrey, also on behalf of the equity  
7 committee. We have moved, under Section 158(d)(2)(A) for this  
8 Court to certify a review by the Third Circuit the order  
9 finding that the GSA is fair and reasonable under Rule 9019.

10 Your Honor, this motion is likely to determine whether  
11 or not there will ever be appellate review of the seven billion  
12 dollar settlement that is at the heart of this bankruptcy.  
13 Postponing appeal until after a plan has been confirmed and all  
14 related issues have been resolved risks foreclosing appeal  
15 altogether. At that point, the issue may well be found to be  
16 equitably moot. But appeal now of the discreet legal issue  
17 presented in our moving papers can continue on a parallel track  
18 with the plan proponents' efforts to present a plan that meets  
19 the requirements of the Court's January 7th order.

20 The plan proponents are well aware of this dynamic.  
21 They understand what's at stake in this motion. They want to  
22 take advantage of the situation and try to squeeze the life out  
23 of any possibility of an appeal of this order which explains  
24 some of the contorted positions that the plan proponents have  
25 taken. On the one hand, they insist that the order approving

**EXHIBIT B**

**PROPOSED ORDER**

**IN 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> , <sup>1</sup>	)	Case No. 08-12229 (MFW)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Related Docket No. 6567, 6645, 6652, 6655, 6657, 6660, 6683

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**ORDER GRANTING, IN PART, MOTION OF THE OFFICIAL COMMITTEE OF  
EQUITY SECURITY HOLDERS FOR AN ORDER PURSUANT TO BANKRUPTCY  
RULE 2004 AND LOCAL BANKRUPTCY RULE 2004-1 DIRECTING THE  
EXAMINATION OF THE WASHINGTON MUTUAL, INC. SETTLEMENT NOTE  
HOLDERS GROUP**

Upon the motion (the “Motion”) of the Official Committee of Equity Security Holders, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure and Local Rule 2004-1 of the United States Bankruptcy Court for the District of Delaware, for the entry of an order directing discovery from and the examination of the Settlement Note Holders Group<sup>2</sup>; and upon the objections to the Motion submitted by each of Appaloosa Management, L.P. (Dkt. No. 6645), Centerbridge Partners L.P. (Dkt. No. 6655), Owl Creek Asset Management, L.P. (Dkt. No. 6660), Aurelius Capital Management, LP (Dkt. No. 6652) and the WMI Noteholders Group (Dkt. No. 6657); and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B); and the Court having held a hearing on the Motion on February 8, 2011 at 10:30 a.m. (the “Hearing”) at which the Court received argument both in favor of, and in opposition to, approval of the Motion; and upon consideration of the Motion; and due and proper notice of the Motion having been given, and for the reasons stated on the record at the Hearing and as limited by the

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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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Motion.

Court at the Hearing, it is hereby

ORDERED that the Motion is granted on a limited basis and only to the extent provided herein; and it is

ORDERED that, solely with respect to those topics identified by the Court as part of its ruling on the Motion as issued at the Hearing, and as limited by the Court at the Hearing, each of the Settlement Note Holders shall respond to the Equity Committee's written discovery requests, and produce all responsive documents, on or before February 22, 2011, or such other date as the Equity Committee and each of the Settlement Note Holders may agree, at the offices of Susman Godfrey LLP, 560 Lexington Ave., 15<sup>th</sup> Floor, New York, NY 10022; and it is

ORDERED that the Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order and any further proceedings with respect to the Motion.

DATED: Wilmington, Delaware  
February \_\_\_\_\_, 2011

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Honorable Mary F. Walrath  
United States Bankruptcy Judge

**EXHIBIT C**

**BLACKLINE PROPOSED ORDER**





Court at the Hearing, it is hereby

ORDERED that the Motion is granted on a limited basis and only to the extent provided herein; and it is

ORDERED that, solely with respect to those topics identified by the Court as part of its ruling on the Motion as issued at the Hearing; and as limited by the Court at the Hearing, each of the Settlement Note Holders shall respond to ~~all~~the Equity Committee's written discovery requests, and produce all responsive documents, on or before ~~the~~February 22, 2011, or such other date that is fifteen (15) days after entry of this Order as the Equity Committee and each of the Settlement Note Holders may agree, at the offices of Susman Godfrey LLP, 560 Lexington Ave., 15<sup>th</sup> Floor, New York, NY 10022; and it is

~~ORDERED that the Equity Committee is authorized to obtain deposition testimony from the Settlement Note Holders with respect to the subject matter described in Exhibit D to the Motion; and it is~~

ORDERED that the Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order and any further proceedings with respect to the Motion.

DATED: Wilmington, Delaware  
January \_\_\_\_\_ February \_\_\_\_\_, 2011

\_\_\_\_\_  
Honorable Mary F. Walrath  
United States Bankruptcy Judge

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Motion.