IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
WASHINGTON MUTUAL, INC., et al.,[1]	)	Case No. 08-12229 (MFW)
Debtors.	)	(Jointly Administered)
	)	**Hearing Date: March 21, 2011 at 10:30 a.m.** **Objection Deadline: March 9, 2011 at 4:00 p.m.** **Related Docket Nos. 6697 and 6711**

OBJECTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS TO MOTION OF DEBTORS FOR AN ORDER (I) APPROVING THE PROPOSED SUPPLEMENTAL DISCLOSURE STATEMENT AND THE FORM AND MANNER OF THE NOTICE OF THE PROPOSED SUPPLEMENTAL DISCLOSURE STATEMENT HEARING, (II) ESTABLISHING SOLICITATION AND VOTING PROCEDURES, (II) SCHEDULING A CONFIRMATION HEARING, AND (IV) ESTABLISHING NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF THE DEBTORS' MODIFIED PLAN

The Official Committee of Equity Security Holders (the "Equity Committee")[2] of Washington Mutual, Inc. ("WMI" and, together with its chapter 11 debtor-affiliate, WMI Investment Corp., the "Debtors"), by and through its undersigned counsel, submits this objection (the "Objection") to the *Motion of Debtors for an Order, Pursuant to Sections 105, 502, 1125, 1126, and 1128 of the Bankruptcy Code and Bankruptcy Rules 2002, 3003, 3017, 3018 and 3020, (I) Approving the Proposed Supplemental Disclosure Statement and the Form and Manner of the Notice of the Proposed Supplemental Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling A Confirmation Hearing, and (IV)*

[1] 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.

[2] All capitalized terms not otherwise defined herein shall have the meaning given to them in the Modified Plan.

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Establishing Notice and Objection Procedures for Confirmation of the Debtors' Modified Plan [Docket No. 6711] (the "Motion"). In support of this Objection, the Equity Committee respectfully states as follows:

PRELIMINARY STATEMENT

Although the Debtors have attempted to revise the Sixth Amended Plan to address certain of the deficiencies identified in the Court's January 7, 2010 Opinion (as defined below) denying confirmation of the Sixth Amended Plan, they have largely ignored the most glaring deficiencies and issues identified by the Court. For example, in its Opinion, the Court rejected the Debtors' $157.5 million valuation of Reorganized WMI (the "Prior Blackstone Valuation") because it: (i) was based solely on cash flows expected to be generated by the runoff insurance business of WMMRC and did not consider the potential for any new business, (ii) did not take into account the incremental value that will accrue if Reorganized WMI becomes a public company, and (iii) did not account for the availability of the approximately $5.5 billion in additional value attributable to their NOLs as a result of a delayed emergence from chapter 11. (Op. at 98-100). Remarkably, the Debtors' valuation (the "Updated Blackstone Valuation") offered in connection with the Modified Plan (as defined below) is largely unchanged. Blackstone now values Reorganized WMI at $160 million (midpoint) – a token increase of just $2.5 million from the prior valuation that was soundly rejected by this Court. (Modified Plan, Exhibit E). Moreover, the Updated Blackstone Valuation continues to: (i) be based on a discounted cash flow analysis that does not account for the possibility of Reorganized WMI raising new capital or obtaining new business (even though the Debtors' concede that the proceeds of a post Effective Date rights offering "could be used to effectuate an expanded business model")[3], (ii) rely upon the Debtors'

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[3] (See Supplemental Disclosure Statement at 16.)

NOL analysis (which asserts that the portion of the $5.5 billion of NOLs not subject to the Section 382 limitation is $3.5 billion – a loss of $2 billion on account of the Debtors' delay in confirmation)[4] without any independent factual verification or analysis, and (iii) ignore whether Reorganized WMI will be a public company. (Id.)

Moreover, the Debtors appear to have manipulated certain numbers in order to justify their low-ball valuation of WMMRC. Under the Prior Blackstone Valuation, where only $105 million of the $5.5 billion of NOLs was not subject to the Section 382 limitation (the "Unrestricted NOLs"), Blackstone valued that the NOLs between $20 and $35 million. (Decl. of S. Zelin [Docket No. 6087], Exhibit A at 29-30). Now, under the Updated Blackstone Valuation, the amount of Unrestricted NOLs has increased to $3.5 billion (an increase of nearly $3.4 billion from the amount used for the Prior Blackstone Valuation), yet Blackstone has actually reduced its valuation of the NOLs to $10 to $25 million.

As discussed below, the Debtors' Modified Plan ignores many of the concerns identified by the Court or falls far short of addressing them. The Equity Committee submits that additional revisions to the Modified Plan are necessary, and additional disclosure is required, before the Debtors should be authorized to solicit votes on the Modified Plan.

BACKGROUND

1. On September 26, 2008, Washington Mutual, Inc. ("WMI") and its affiliate, WMI Investment Corp. (collectively, the "Debtors"), filed voluntary petitions for relief in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") under chapter 11 of the Bankruptcy Code.

[4] (See Supplemental Disclosure Statement at 22).

2. On October 6, 2010, the Debtors filed their Sixth Amended Joint Plan of Reorganization (the "Sixth Amended Plan") [Docket Nos. 5548, 5714, 6081], the foundation of which is a global settlement agreement (the "Global Settlement") between the Debtors, JPMC, the FDIC, and the Official Committee of Unsecured Creditors.[5] The result of the Global Settlement is that the billions of dollars in value of the Debtors' estates is compromised in a way that ensures a full or substantial recovery for all parties in interest other than the Equity Committee's constituency – holders of WMI's preferred equity securities may receive, at most, a one-percent recovery and holders of WMI's common equity securities will receive absolutely nothing.

3. Following a four-day confirmation hearing, the Bankruptcy Court issued its Opinion [Docket No. 6529] and Order [Docket No. 6528] (together, the "Opinion") in which the Bankruptcy Court found the Global Settlement to be fair and reasonable under the standard articulated by the Third Circuit. (Op at 2). The Bankruptcy Court, however, denied confirmation of the Sixth Amended Plan. Among other material deficiencies and violations of applicable law, the Court:

- rejected the bulk of the expansive proposed Plan releases (Op. at 74-85);
- declined to decide what is the appropriate rate of post-petition interest to be applied in this case citing a lack of evidence regarding equitable considerations that should be weighed (Op. at 90-94);

[5] Prior to the denial of confirmation of the Sixth Amended Plan, Appaloosa Management, L.P, Centerbridge Partners, L.P., Owl Creek Asset Management, L.P. and Aurelius Capital Management, L.P. (collectively, the "Settlement Note Holders") were also party to the Global Settlement. The Debtors explain that the Settlement Note Holders did not agree to a further extension of the Global Settlement because "among other things, the passage of time." (Supplemental Disclosure Statement at 3).

- declined to decide whether the holders of PIERS securities (Class 16) should be treated as holders of debt or equity securities (Op. at 100);
- rejected the valuation of Reorganized WMI offer by the Debtors citing numerous deficiencies (Op. at 98-100); and
- rejected the Debtors' proposal to pay the fees and expenses of professionals retained by the Settlement Note Holders without judicial review and approval (Op. at 108).

4. On January 19, 2011, the Equity Committee filed its Notice of Appeal [Docket No. 6573] with respect to the Court's approval of the Global Settlement (the "Global Settlement Appeal"). On February 8, 2011, the Court entered an Order [Docket No. 6703] denying the Equity Committee's Petition for Certification of Direct Appeal to the Third Circuit [Docket No. 6575]. On February 22, 2011, the District Court for the District of Delaware docketed the Global Settlement Appeal under C.A. No. 11-00158 (GMS), which was immediately referred to mandatory mediation pursuant to the District Court's Standing Order, dated July 23, 2004 (the "Standing Order"). On February 25, 2011, the Equity Committee filed a motion seeking relief from the Standing Order to bypass mediation and to promptly establish a briefing schedule and argument on the merits of the appeal [D. Del. Docket No. 8] (the "Motion to Expedite"). The Debtors have filed an opposition [D. Del. Docket No. 9], in which the Creditors Committee has joined [D. Del. Docket No. 10], to the Motion to Expedite. Also on February 25, 2011, the Equity Committee filed a motion seeking leave to appeal [D. Del. Docket No. 7] (the "Motion for Leave"). No opposition to the Motion for Leave has yet been filed, however in their

opposition to the Motion to Expedite, the Debtors advised that they intend to move to dismiss the Global Settlement Appeal on jurisdictional grounds.[6]

The Equity Committee's Discovery of the Settlement Note Holders

5. In its Opinion denying confirmation of the Sixth Amended Plan, the Court paid particular attention to allegations regarding the possible misuse of confidential information by the Settlement Note Holders. Accordingly, on January 18, 2011, the Equity Committee filed its motion [Docket No. 6567] seeking discovery from the Settlement Note Holders concerning those allegations (the "Discovery Motion"). On February 11, 2011, the Court entered an Order [Docket No. 6725] granting the Discovery Motion, in part, and in accordance with the Court's rulings issued during the hearing held on February 8, 2011. The Equity Committee's discovery efforts on these issues are ongoing.[7]

The Trust Preferred Securities Action (Adv. Pro. No. 10-51387 (MFW))

6. Also on January 7, 2011, the Court issued its Opinion and entered its Order (together, the "Summary Judgment Opinion") granting summary judgment in favor of the Debtors and JPMC finding that the "Conditional Exchange" occurred on September 26, 2008 and, as a result, "the certificates held by the TPS holder are no longer TPS but are deemed to be Depositary Shares tied to WMI Preferred Shares." (Op. at 13). The import of the Summary Judgment Opinion is that the claimants in Class 19 have been judicially determined to hold WMI preferred equities that are on par with the WMI preferred equity holders comprising Class 20.

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[6] The discussion of the GSA Appeal in the Supplemental Disclosure Statement should be updated to be current as of the mailing of solicitation packages to parties in interest.

[7] On March 8, 2011, the Equity Committee was served with document requests and interrogatories by Appaloosa Management, L.P.

Plaintiffs have appealed the Summary Judgment Order to the District Court for the District of Delaware which remains pending under C.A. No. 11-0124 (GMS).[8]

The Modified Sixth Amended Plan and Supplemental Disclosure Statement

7. The Debtors filed their Modified Sixth Amended Plan (the "Modified Plan") and related Supplemental Disclosure Statement (the "Supplemental Disclosure Statement") on February 8, 2011 [Docket Nos. 6696, 6697]. The Modified Plan is based upon the very same Global Settlement approval of which the Equity Committee has appealed. The Bankruptcy Court is scheduled to consider the adequacy of the Disclosure Statement on March 21, 2011 [Docket No. 6700], and has scheduled a hearing on May 2, 2011 to consider confirmation of the Modified Plan. It appears that the Debtors have attempted to revise the Sixth Amended Plan consistent with the Court's Opinion, however, those revisions are insufficient in a number of respects and also give rise to additional objections.

OBJECTIONS[9]

I. THE MODIFIED PLAN SHOULD BE REVISED PRIOR TO SOLICITATION.

8. As a result of the Debtors having proposed and prosecuted the Sixth Amended Plan, which the Court ruled did not satisfy applicable law in a number of respects, these cases are now suffering the added delay and expense of solicitation of yet another flawed plan. In the Modified Plan, the Debtors have superficially revised the third party releases contained in Section 43.6 but in a manner that clearly violates the "best interest test" of section 1129(a)(7) of the Bankruptcy Code. Moreover, the Modified Plan lacks any mechanism to accommodate a

[8] The discussion of the status of the TPS Appeal contained in the Supplemental Disclosure Statement should be updated to be current as of the mailing of solicitation packages to parties in interest.

[9] The fact that the Equity Committee herein raises certain objections regarding the Modified Plan should not be interpreted or construed as a waiver of any additional objections the Equity Committee may have in connection with the Modified Plan. The Equity Committee hereby expressly reserves the right to raise any additional objections with respect to the Modified Plan at any appropriate time.

determination by the Court that the PIERS should be treated as equity, or that post-petition interest should be calculated at the federal judgment rate. There exists no reasonable justification for the Debtors to solicit another unconfirmable plan. In order to avoid any additional waste of estate value, the following additional modifications to the Modified Plan should be made prior to solicitation.

A. The Modified Plan Violates the Best Interest Test of 11 U.S.C. § 1129(a)(7).

9. Where, as here, plan proponents seek to require parties to grant releases in order to receive a distribution under a chapter 11 plan, the "best interest of creditors test" under section 1129(a)(7) of the Bankruptcy Code limits the extent to which the rights of non-releasing creditors or interest holders may be diminished. Section 1129 requires, in relevant part:

> With respect to each impaired class of claims or interests –
>
> (A) each holder of a claim or interest of such class —
>
> (i) has accepted the plan; or
>
> (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date;

11 U.S.C. §1129(a)(7)(A).[10] In In re Conseco, Inc., the debtors proposed that creditors be required to grant a release of non-debtors in order to receive a distribution under a chapter 11 plan. 301 B.R. 525, 528 (Bankr. N.D. Ill. 2003). The court rejected the release provision to the extent it would violate the "best interest of creditors" test stating:

> [u]nder §1129 (a)(7)(ii), a plan cannot be confirmed unless each non-accepting creditor gets at least as much as it would get in a

[10] The WMI preferred equity holders (Class 20) voted overwhelmingly to reject the Sixth Amended Plan. (See Sharp Decl. [Docket No. 6089] at 11). The Modified Plan provides the very same treatment for Class 20 as did the Sixth Amended Plan. Thus, there is no reason to believe that Class 20 will vote to accept the Modified Plan.

> Chapter 7 liquidation. Under previous plan provisions, creditors who did not vote to accept the plan but were clearly entitled to a distribution in a Chapter 7 liquidation had to release non-debtors to receive a distribution. These provisions violated the best interests of creditors test because they forced creditors to accept the release or give up the distribution to which they were entitled under §1129 (a)(7)(ii).

Id. In Conseco, the Court found third-party release provisions acceptable only after the debtors revised the plan to add an opt-out provision that did not result in a forfeiture of plan distributions. Id. Similarly, in In re Adelphia Communications Corp., the court overruled an objection to a plan, which provided a monetary inducement to vote in favor of a plan to equity holders that would otherwise not receive a distribution. In doing so, the court noted:

> This "carrot and stick" provision, by which a creditor is offered an inducement to vote on plan of reorganization, is not inconsistent with any provision of the Code – though I'd prefer to qualify that general statement to make it applicable *if (but only if) the inducement is to give a stakeholder more than it would be entitled to, rather than to threaten to take an existing right away.*

368 B.R. 140, 275-76 (Bankr. S.D.N.Y. 2007) (emphasis added); see also In re Monroe Well Serv., Inc., 80 B.R. 324 (E.D. Pa. 1987) (non-debtor third party release permissible where creditors were permitted to render individual decisions whether to provide a release to non-debtors in return for additional distribution provided by non-debtor plan funders); In re AOV Indus., Inc., 792 F.2d 1140, 1150 (DC Cir. 1986) (third party releases proper where creditors granting release would receive estimated distribution of 13% whereas creditors rejecting the third party release would receive estimated distribution of 4%).

10. In its Opinion, the Court gutted the Debtors' proposed third party releases set out in Section 43.6 of the Sixth Amended Plan. (Op. at 74-85). The Modified Plan fares no better. The Debtors go well beyond what is necessary to address the Court's rulings and have revised Section 43.6 in the Modified Plan to provide:

> each Entity that has elected not to grant the releases set forth in this Section 43.6, including, without limitation, any Entity that fails to execute and deliver a release following notice in accordance with the provisions of Section 32.6 hereof, shall not be entitled to, and shall not receive, any payment, distribution or other satisfaction of its claims pursuant to the Plan.

(Modified Plan § 43.6) (the "Third Party Release"). Thus, unless a Claim or Interest Holder agrees to grant the Third Party Release, it will not receive the distribution from the estate to which it is otherwise entitled under the Bankruptcy Code by virtue of its allowed claims and interests. The coercive aspect of this provision is apparent. Not only is Section 43.6 unduly coercive and improper, the Modified Plan cannot satisfy section 1129(a)(7) of the Bankruptcy Code with respect to WMI preferred equity holders who vote to reject the Modified Plan.

11. As if putting Claim and Interest Holders to a Hobson's choice were not enough, the Debtors also seek to discharge the Claims and Interest of Holders who opt out of the Third Party Release! Section 43.2 of the Plan provides for discharge and release of claims and termination of equity interests "regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims ... or other Equity Interests." Section 43.2 further provides that the discharge will be effective "whether or not ... (b) a Claim based upon such debt is allowed under section 502 of the Bankruptcy Code (or is otherwise resolved)." Based on the foregoing provisions, it appears that Claim or Interest Holders that decline to grant the Third Party Release will not receive any distribution under the Plan, yet their claims and interests will still be discharged. (Modified Plan §§ 43.2, 43.6).

12. According to the Debtors' Liquidation Analysis, if these cases were converted to Chapter 7, preferred equity holders would likely not receive any distribution. (Modified Plan, Exhibit D). However, in chapter 7 preferred equity holders will retain any claims they may have against the non-debtor Released Parties. Unless WMI preferred equity holders who vote to reject

the Modified Plan will receive some additional consideration in exchange for granting the Third Party Release, the Modified Plan violates Section 1129(a)(7). Votes on the Modified Plan should not be solicited unless Sections43.2 and 43.6 are revised.

B. The Modified Plan Should be Revised to Address the Possibility the Court will Decide to Award Post Petition Interest Calculated at the Federal Judgment Rate.

13. Although in its Opinion the Court left open the issue of the applicable rate of post petition interest to be awarded (Op. at 94), the Debtors make no mention of this issue in the Supplemental Disclosure Statement, which is roughly a $700 million swing in recoveries. Nor do they attempt to point to any facts that would support application of the contract rate of interest. The Debtors omission of any discussion of this dispute in the Supplemental Disclosure Statement is glaring. A $700 million issue is certainly material and should be afforded proper attention and disclosure by the Debtors. The Debtors should be required to include in the Supplemental Disclosure Statement a calculation of the differential in value that would be distributed to creditors in the event the Court were to award post-petition interest calculated at the federal judgment rate and how that additional value will affect the Recovery Analysis. In addition, at this point in these cases, the Debtors should be able to clearly articulate those facts, if any, they believe exist (above and beyond any applicable presumption in favor of application of the contract rate) justifying application of the contract rate of interest.

C. The Modified Plan Should be Revised to Account for the Likelihood that the Court will Determine the PIERS are Equity Securities.

14. In its Opinion, the Court was unable to conclude whether the PIERS were appropriately treated in the Plan as debt rather than equity. (Op. at 101). In the Supplemental Disclosure Statement, the Debtors address only one of several issues that bear directly on whether PIERS are appropriately classified as debt in the Modified Plan. (Supplemental

Disclosure Statement at 10-11 (rejecting the suggestion that WMCT 2001 had been merged into WMI)).[11] In addition, the discussion of the PIERS in the Supplemental Disclosure Statement should include a discussion of whether the PIERS were historically treated as debt or equity both in terms of WMI's reporting to its regulators as well as for accounting purposes. Information currently available suggests that the PIERS were intended to be treated as Tier I capital. (PIERS June 21, 2007 Prospectus at 5: "Upon the occurrence of certain tax events, or if there is a substantial risk that the Trust will be considered an investment company and certain requirements are satisfied, or if the preferred securities no longer qualify as Tier 1 capital, we may, at our option, elect to cause the remarketing of the preferred securities at a price no less than 100% of their accreted value, and to redeem the warrants at their warrant value.") (emphasis added).[12] The possible treatment of the PIERS as Tier 1 capital and the effect of such treatment on recoveries are material facts that should be disclosed prior to solicitation of the Modified Plan that continues to treat PIERS as debt. In addition, if any value is being distributed to PIERS holders on account of the warrant component of the PIERS preferred securities, the Debtors should disclose the amount of that value and any justification for that distribution.

15. Currently, the Modified Plan does not incorporate a mechanism to adjust distributions in the event that the PIERS are determined to be equity. Now is the time (before solicitation of the Modified Plan) to consider incorporating revisions to the Modified Plan that would accommodate a determination by the Court that the PIERS should be treated as equity.

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[11] The Equity Committee is currently engaged in discovery on this issue and will present any appropriate arguments in connection with confirmation of the Modified Plan.

[12] Due to the voluminous nature of the Prospectus, it has not been attached hereto as an exhibit but is available upon request to counsel to the Equity Committee.

D. The Modified Plan Contains Various Conflicting Provisions Concerning the Equity Committee that Must be Revised.

16. The Modified Plan now allows for the continued existence of the Equity Committee following confirmation of a plan for purposes of any appeal by the Equity Committee of confirmation of the plan. (Plan § 35.2). That notion, however, was not carried through in Section 43.17 of the Modified Plan, which provides: "On the Effective Date, the Equity Committee Adversary Proceeding and the Equity Committee Action to Compel, and any other proceeding or action instituted by the Equity Committee (including any appeal), shall be deemed withdrawn, with prejudice, without any further action." (Plan § 43.17) Section 43.17 of the Modified Plan needs to be revised consistent with the revisions of Section 35.2 of the Modified Plan.

17. In addition, Section 35.2 of the Modified Plan could be read to provide for the Equity Committee's continued existence only to the extent that any appeal filed by the Equity Committee is filed prior to the Effective Date. Whether the Modified Plan has become effective prior to commencement of an appeal is not necessarily fatal to any appeal of confirmation of the Plan the Equity Committee may commence. Accordingly, Section 35.2 should be revised to reflect that the Equity Committee shall not be dissolved in the event that the Equity Committee commences a timely appeal regardless of the Effective Date.

18. Finally, Section 35.2 of the Modified Plan should be revised to make express that in the event the Equity Committee commences a timely appeal of confirmation of the Modified Plan, the Equity Committee's members shall continue to be entitled to reimbursement of their reasonable and necessary expenses, and that the Equity Committee's professionals are entitled to be compensated by the estate for their reasonable fees and costs.

II. ADDITIONAL OBJECTIONS TO THE SUPPLEMENTAL DISCLOSURE STATEMENT AND PROPOSED SOLICITATION PROCEDURES.

19. In addition to the issues identified above with respect to the Modified Plan, the Supplemental Disclosure Statement and the proposed solicitation procedures must be revised.

A. The Modified Plan Negatively Affects Class 19, and Therefore, Class 19 Must be Resolicited.

20. In connection with the Modified Plan, the Debtors' propose to resolicit votes and plan release elections from all classes of claimants and interest holders that are impaired and are entitled to vote other than Classes 17A and 19 (Supplemental Disclosure Statement at 12). With respect to Class 19, the Debtors state that they "will not resolicit votes from holders of the REIT Series in Class 19, nor will JPMC extend the period in which such holders may elect to receive a supplemental distribution from JPMC." (Supplemental Disclosure Statement at 12). The Debtors explain that they "believe that resolicitation of votes from Class 19 on the Modified Plan is not required by Bankruptcy Rule 3019 because Class 19 voted to reject the Sixth Amended Plan." (Supplemental Disclosure Statement at 12). So the Debtors propose to deem Class 19's vote on the Sixth Amended Plan as applicable to the Modified Plan. While the Debtors' (and JPMC's) proposed treatment of Class 19 under the Modified Plan may appear convenient at first glance, a closer look reveals the plan proponents' design is contrary to the Court's directives in the Opinion and would unfairly prejudice Class 19 claimants.

21. Under the Sixth Amended Plan, in addition to any distribution from the Debtors' estate, Class 19 claimants also stood to receive from JPMC cash in an amount equal to $1,250.00 times the number of shares of REIT Series (or an amount of JPMC stock of equal value) (in either case, the "JPMC Supplemental Consideration") held by such claimants in exchange for granting a release of JPMC. (Sixth Amended Plan, p.50). Section 1.161 of the version of the

Sixth Amended Plan sent out for solicitation [Docket No. 5659] further provided that if Class 19 voted to accept the Sixth Amended Plan, each member of Class 19 (regardless of its actual vote) would be "deemed" to have granted the release of JPMC and would receive its allocable share of the JPMC Supplemental Consideration. Further, Section 43.6 of the version of the Sixth Amended Plan sent out for solicitation contained a similar provision, regarding releases generally, that stated that entities opting out of the demanded releases would nonetheless be bound and forced to accept the distribution they would otherwise be entitled to receive pursuant to the Plan. Subsequently, after the voting deadline, the Debtors modified the Section 43.6 of Sixth Amended Plan to provide that elections to opt out of the third party releases would be honored and entities so electing would lose the right to a distribution. (See Op. at 83). In addressing this late change to the Sixth Amended Plan, the Court stated in the Opinion that:

> The Court agrees with the UST that the Plan provision with respect to third party releases has changed materially. This is equally applicable to those who originally opted out of the releases (feeling that even though the Court might find the opt out invalid, they would still get a distribution) as those who did not bother checking the box to opt out (feeling that the Court would simply enforce the releases anyway).

(Id.). Section 1.161, providing for the compelled release of claims and acceptance of plan consideration if Class 19 voted to accept the Plan, was not modified. Further, as was made clear through the Debtors' witnesses at the confirmation hearing, the Sixth Amended Plan was rife with provisions that could have required releases of claims regardless of an entity's vote or election.

22. Class 19 voted to reject the Sixth Amended Plan (Sharp Decl. [Docket No. 6089] at 11), and only approximately 25% of holders elected to grant the release of JPMC (*id.* at Ex. C,

p.13-14).[13] Now, in connection with the Modified Plan, JPMC has refused to extend the period in which Class 19 claimants can elect to receive a share of the JPMC Supplemental Consideration. (Supplemental Disclosure Statement at 12).

23. The Debtors have made it clear that they intend to hold Class 19 to their votes and release elections (submitted with respect to the Sixth Amended Plan) in connection with confirmation of the Modified Plan. The Modified Plan also provides that any claimant who elects to not grant the Third Party Release will not receive any distribution under the Modified Plan. (Supplemental Disclosure Statement at 9: "Pursuant to the Modified Plan, **any holder of a Claim or Equity Interest that elects to opt out of the Non-Debtor Release Provision will not receive a distribution**.") (emphasis in original)). Thus, not only will Class 19 claimants who did not elect to grant the releases not receive any portion of the JPMC Supplemental Consideration, they also will not receive the distributions they are otherwise entitled to under the Modified Plan. <u>Class 19 is the ONLY class that is treated in this fashion under the Modified Plan</u>. This calculated inequity cannot be justified and should not be permitted to stand. Consistent with the Court's criticism of the post-solicitation changes to Section 43.6 of the Sixth Amended Plan, the Debtors should resolicit votes and release elections from Class 19 under the Modified Plan and all members of Class 19 should be entitled to receive the same treatment.

B. The Debtors Should Address in the Supplemental Disclosure Statement the Recent Allegations of Unauthorized Sales of WMI Investment Securities.

24. Recently, certain questions have been raised concerning the alleged unauthorized post-petition sale of securities held by WMI Investment Corp. (<u>See</u> <u>e.g.</u>, Docket Nos. 6813-6822). These allegations as yet remain unproven. In response to the Equity Committee's

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[13] Of the $4 billion issued REIT Series securities, $1,036,978,000 elected to grant the third party releases. (Sharp Decl. [Docket No. 6089] at 11).

inquiries on this topic, however, the Debtors have not yet offered a reasonable explanation. Thus, in order to address these questions and quell such allegations, the Equity Committee requests that the Debtors revise the Supplemental Disclosure Statement to include a summary of the securities formerly held by WMI Investment Corp., the dates (or range of dates) such securities were sold, identification of the purchasers of such securities (if possible) and the reason(s) such securities were sold.

C. Additional Disclosure Regarding the Liquidation Analysis is Warranted.

25. The Debtors appear to be intentionally understating the value of the estate in chapter 7. Like the Debtors' Prior Liquidation Analysis, the Debtors Updated Liquidation Analysis assumes the Debtors would be forced to sell WMMRC in a "fire-sale" transaction that would garner only $50 million. (Supplemental Disclosure Statement at 21). The Supplemental Disclosure Statement fails to disclose any basis supporting the Debtors' supposed need to quickly dump WMMRC upon conversion to chapter 7, nor does it provide any justification for estimated fire-sale value of $50 million. Conversion of these cases to chapter 7 would not change the fact that WMMRC is a captive reinsurance business in run-off status. So then why is the value of WMMRC less under chapter 7 when the Debtors' valuation expert has valued WMMRC at $160 million? Additionally, the Debtors' estimated fire-sale value of $50 million appears grossly understated in light of multiple post petition expressions of interest to purchase WMMRC (copies of which the Equity Committee recently received in discovery). The Debtors should disclose the basis for their assumed fire-sale value of WMMRC, whether they have received post petition offers to purchase WMMRC, from whom such offers were received as well as any basis they believe exists to discount the value of such purchase offers.

26. The Debtors also appear to be overstating the amount of operating expenses under chapter 7. The Debtors' Updated Liquidation Analysis assumes operating expenses in chapter 11 of $50 million over 4 months ($12.5 million/month) whereas if the case is converted to chapter 7, the Debtors' anticipate expenses of $85 million over 5 months ($17million/month). (Supplemental Disclosure Statement at 21). The Debtors, however, fail to explain what accounts for the additional $4.5 million of expense associated in the initial months following conversion to Chapter 7. Additionally, under the Prior Liquidation Analysis, the Debtors estimated the cost differential at $4 million. (Sixth Amended Plan, Exhibit C at 4). What accounts for the additional $500,000 of estimated chapter 7 expenses as compared to the Prior Liquidation Analysis? The Supplemental Disclosure Statement should be revised to provide the additional disclosure requested herein.[14]

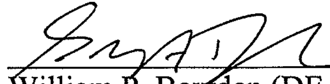
CONCLUSION

WHEREFORE, based on the foregoing, the Equity Committee respectfully requests that, unless the Modified Plan and Supplemental Disclosure Statement are revised consistent with this Objection, an order be entered (i) denying approval of the Supplemental Disclosure Statement and (ii) granting such other and further relief as the Court deems just and proper.

[14] The Equity Committee reserves the right to raise any additional issues that require additional disclosure.

Dated: March 9, 2011

ASHBY & GEDDES, P.A.



William P. Bowden (DE Bar No. 2553)
Gregory A. Taylor (DE Bar No. 4008)
Stacy L. Newman (DE Bar No. 5044)
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899
Telephone: (302) 654-1888
Facsimile : (302) 654-2067
E-mail: wbowden@ashby-geddes.com
gtaylor@ashby-geddes.com
snewman@ashby-geddes.com

Delaware Counsel to the Official Committee of Equity Security Holders of Washington Mutual, Inc., et al.

-and-

SUSMAN GODFREY, L.L.P.

Stephen D. Susman (NY Bar No. 3041712)
Seth D. Ard (NY Bar No. 4773982)
654 Madison Avenue, 5th Floor
New York, NY 10065
E-mail:
ssusman@susmangodfrey.com
sard@susmangodfrey.com

Parker C. Folse, III (WA Bar No. 24895)
Edgar Sargent (WA Bar No. 28283)
Justin A. Nelson (WA Bar No. 31864)
1201 Third Ave., Suite 3800
Seattle, WA 98101
Telephone: (206) 516-3880
Facsimile: (206) 516-3883
E-mail:
pfolse@susmangodfrey.com
esargent@susmangodfrey.com
jnelson@susmangodfrey.com

Co-Counsel for the Official Committee of Equity Security Holders of Washington Mutual, Inc., et al.