

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

|   |   |                         |
|---|---|-------------------------|
|   | X |                         |
| <i>In re</i>  | : | Chapter 11              |
| WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup> | : | Case No. 08-12229 (MFW) |
| Debtors.  | : | (Jointly Administered)  |
|   | X |                         |

**DEBTORS' FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS DIRECTED TO COLLEEN M. MARTIN**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (the "Federal Rules"), which are applicable hereto pursuant to Rules 7026 and 7034 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 7026 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, and in connection with that certain Motion of Colleen M. Martin for Allowance and Payment of Administrative Expense Claim Under 11 U.S.C. § 503(b)(1)(A)(i) and Allowance of an Allowed General Unsecured Claim, dated May 17, 2001 [D.I. 7763] (the "Motion"), Washington Mutual, Inc. and WMI Investment Corp. (the "Debtors") hereby request that Colleen M. Martin produce, on or before **4:00 p.m. (ET) on Wednesday, July 6, 2011**, the documents designated below at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attention: Brian S. Rosen.

<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: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Suite 2500, Seattle, Washington 98104.



## DEFINITIONS

1. The term “WMI” means Washington Mutual, Inc.
2. The term “Martin” means Colleen M. Martin.
3. The terms “you” or “your” mean Martin, her agents or anyone else acting for or on her behalf.
4. The term “A&M” means Alvarez & Marsal North America, LLC.
5. The term “Court” means the United States Bankruptcy Court for the District of Delaware.
6. The term “Commencement Date” means September 26, 2008.
7. The term “JPMC” means JPMorgan Chase Bank, N.A.
8. The term “Modified Plan” means the *Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code*, dated February 7, 2011, as has and may be further amended, modified, or supplemented.
9. The term “Operations Committee” means the Operations Committee of WMI’s Board of Directors.
10. The term “Operations Committee Consent” means that certain *Written Consent to Action of the Operations Committee of the Board of Directors of Washington Mutual, Inc. in Lieu of a Special Meeting*, dated April 29, 2011, pursuant to which the Operations Committee adopted resolutions that, among other things, (i) ratified, confirmed, and approved all actions taken by the PAC (defined below) on and after September 25, 2008 with respect to employee benefit plans, including, without limitation, the ceasing of benefit accruals under the SERP and SERAP (each defined below); and (ii) ratified, confirmed, and approved termination of the Severance Plan (defined below) as of September 25, 2008.

11. The term “PAC” means the Plan Administration Committee (appointed by the Human Resources Committee of WMI’s Board of Directors).

12. The term “Plan Amendment PAC Consent” means the Unanimous Written Consent in Lieu of Special Meeting of the Washington Mutual, Inc. Plan Administration Committee, dated December 31, 2008, pursuant to which, among other things, the PAC amended the SERAP and the SERP.

13. The terms “person” or “persons” mean natural persons, proprietorships, corporations, partnerships, trusts, joint ventures, groups, associations, organizations, and all other types of entities.

14. The term “SERP” means the Washington Mutual, Inc. Supplemental Employees’ Retirement Plan (Amended and Restated Effective July 20, 2004), as further amended effective December 31, 2008.

15. The term “SERAP” means the Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (Amended and Restated Effective January 1, 2004), as further amended effective December 31, 2008.

16. The term “Severance Plan” means the WaMu Severance Plan (Amended and Restated Effective January 1, 2008), as terminated effective September 25, 2008.

17. The term “Severance Plan PAC Consent” means the Unanimous Written Consent in Lieu of Special Meeting of the Washington Mutual, Inc. Plan Administration Committee, dated April 19, 2011, pursuant to which, among other things, the PAC ratified and confirmed the termination of the Severance Plan as of September 25, 2008.

18. The term “WMB” means, collectively, (i) Washington Mutual Bank, a Washington State chartered stock savings bank (which later converted into a federal savings

association, and subsequently merged with and into Washington Mutual Bank, FA (“WMBFA”)), and (ii) WMBFA (which, following the aforementioned merger, is now known as “Washington Mutual Bank”).

19. The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) by any means, including but not limited to any meeting, conversation, discussion, conference, correspondence, message, or other written or oral transmission, exchange, or transfer of information in any form between two or more persons, including, without limitation, in person or by telephone, facsimile, telegraph, telex, electronically transmitted messages from any and all business and personal email accounts (e.g., Hotmail, Yahoo! Mail, etc.) (“e-mail”), or other medium.

20. The term “document” shall have the broadest meaning permitted by Bankruptcy Rule 7034(a) and Federal Rule 34(a) and includes, without limitation, all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise), and drafts of the following items, whether printed, recorded (through a sound, video, or other electronic, magnetic, or digital recording system), or reproduced by hand: letters, correspondence, legal notices, checks or copies of checks, receipts, handwritten notes, telegrams, telexes, memoranda, records, summaries of conversations or interviews, minutes, records, or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” notes, stenographic notes, notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars,

appointment books, maps, charts, graphs, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, “flash” drives, data tapes or readable computer-produced interpretations or transcriptions thereof, e-mail, voicemail messages, text messages, interoffice communications, advertising, packaging and promotional materials and any other writings, papers, and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, server, mainframe, or other storage device (including (i) information on or in computer memory, (ii) information on or in computer or network backup files, and (iii) information which has been “deleted” or “erased” but is recoverable), whether located on-site or at an off-site facility, within your possession, custody, or control.

### **INSTRUCTIONS**

1. You are to produce all documents in your possession, custody or control which are requested herein. The term “possession, custody, or control” includes actual possession by you, actual possession by you with another, or constructive possession by you – in that you are legally entitled or able to obtain actual possession from another person (including counsel and former counsel). If any of the requested documents were, but no longer are, in your possession or subject to your control, state whether such information or document: (a) is missing or lost; (b) has been destroyed; (c) has been transferred voluntarily or involuntarily to any other person or entity; or (d) has been otherwise disposed of, and, in each instance, explain the circumstances surrounding the disposition thereof and provide a description of the nature, content, date, author(s), and recipient(s) of the information or document.

2. A request for a document shall be deemed to include a request for any and all transmittal sheets, cover letters, exhibits, enclosures, or attachments to the document, in

addition to the document itself. Each and every document shall be produced in its entirety notwithstanding the fact that portions thereof may contain information not requested. All interim as well as final versions of any document shall be produced, and all versions or copies that are not identical to the original or other produced copy of the document, whether due to handwritten notations, modifications, changes, amendments, revisions, or otherwise shall be produced.

3. The use of the singular shall be deemed to include the plural, and the use of masculine, feminine or neutral gender shall include each gender, as appropriate in context.

4. The terms “and” and “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of any request all information that might otherwise be construed to be outside of its scope.

5. If you object to any request, or if you otherwise do not respond to any request in full, state the specific grounds for the objection or other reason for not responding. If you object to any request, you should clearly indicate to which part or portion of the request the objection is directed and provide all documents that are responsive to that part or portion of the request to which no objection is made as if such part or portion were propounded as a separate request. If there is no document responsive to any particular request, please state so in writing.

6. If any document requested herein is withheld under claim of privilege, the response or objection to the specific request shall (a) describe in detail the nature of the privilege (including work product) which is being claimed and the applicable rule or law governing such claim and sufficient information to set forth the basis for asserting the privilege and (b) identify each document by date and subject matter, without disclosing its contents, in a manner sufficient to allow it to be described to the Court for ruling on the privilege or other reason asserted. You shall provide each requested document that is not subject to a claim of privilege by excising or

otherwise protecting the portions for which a privilege is asserted, if such a technique does not result in disclosing the contents of the portions for which privilege is asserted.

7. Each request is deemed to be continuing in nature. Any additional document that is obtained, discovered, or brought to your attention between the time of responding to these requests and the final disposition of the matters asserted in [the Motion/Objection], must be produced as required by Federal Rule 26(e).

8. Each request, including, without limitation, each request relating to benefits allegedly due, is deemed to refer to the periods both before and after the Commencement Date.

9. If any document requested herein is maintained in computer files, you are requested to produce each such document in paper form as well as provide a copy of each document on computer disk or CD-ROM.

#### **REQUEST FOR PRODUCTION OF DOCUMENTS**

1. All documents and communications relating to the terms of your employment with WMB, including, but not limited to, all benefits offered or provided to you by WMB in connection with such employment.

2. All documents and communications relating to the terms of your employment with JPMC, including, but not limited to, all benefits offered or provided to you by JPMC in connection with such employment.

3. All documents and communications relating to the terms of your employment with WMI, including, but not limited to, (i) all benefits offered or provided to you by WMI in connection with such employment, and (ii) the scope and nature of your employment with WMI.

4. All documents and communications relied upon in support of your claims against WMI for (i) your pro-rated bonus, (ii) severance payments allegedly due pursuant to the Severance Plan, (iii) benefits allegedly due under the SERAP, (iv) benefits allegedly due under the SERP, (v) double damages allegedly due based upon a purported willful withholding of wages, and/or (vi) costs and attorneys' fees, including, but not limited to:

- (a) documents regarding the terms of and Martin's entitlement to receive a bonus;
- (b) communications with WMI and/or A&M regarding the terms of and Martin's entitlement to receive a bonus;
- (c) documents related to the SERP, SERAP, and/or Severance Plan including, without limitation, the drafting, execution, implementation, amendment, or termination thereof;
- (d) communications with WMI, A&M, and/or JPMC, and any of their respective employees or agents, regarding the SERP, SERAP, and/or Severance Plan including, without limitation, the drafting, execution, implementation, amendment, or termination thereof;
- (e) documents related to the Severance Plan PAC Consent, the Plan Amendment PAC Consent, and/or the Operations Committee Consent;
- (f) communications with WMI, A&M, or any other person regarding the Severance Plan PAC Consent, the Plan Amendment PAC Consent, and/or the Operations Committee Consent;
- (g) documents related to any severance payment(s) you received from JPMC, and/or the releases you granted JPMC in exchange for such payments; and
- (h) communications with JPMC related to any severance payment(s) you received from JPMC, and/or the releases you granted JPMC in exchange for such payments.

5. All communications with current and/or former employees of WMI, WMB, JPMC, or any other persons related to any of the claims asserted in the Motion.

6. All documents and communications including, without limitation, journals, diaries, notes, and calendars, related to any meeting with, or attended by, William C.



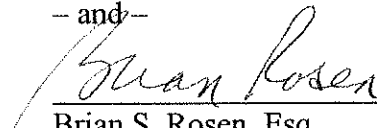
Kosturos (Chief Restructuring Officer of WMI), Robert J. Williams, Jr. (President of WMI), and/or any member of the board of directors of WMI.

7. Any and all additional documents and communications relied upon in support of the allegations asserted in the Motion.

Dated: June 3, 2011  
New York, New York

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