UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Re: Docket No. 7763**

DEBTORS' EMERGENCY MOTION REQUESTING ADJOURNMENT OF THE HEARING TO CONSIDER THE 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

Washington Mutual, Inc. ("WMI") and WMI Investment Corp., as debtors and debtors in possession (collectively, the "Debtors"), hereby request an adjournment of the hearing to consider the motion, dated May 17, 2011, of Colleen M. Martin, for allowance and payment of an administrative expense claim and allowance of a general unsecured claim in connection with certain alleged employee benefits [D.I. 7763] (the "Motion"), and respectfully represent as follows:

BACKGROUND

1. On May 17, 2011, Ms. Martin filed the Motion and provided notice to the Debtors that the Motion would be heard at the omnibus hearing scheduled for June 8, 2011, and that their deadline to object to the Motion was June 1, 2011. Shortly

[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, Suite 2500, Seattle, Washington 98104.

thereafter, on May 20, 2011, Debtors' counsel delivered a letter to Ms. Martin (the "May 20 Letter")[2] advising Ms. Martin that the Debtors intended to interpose an objection to the Motion, thereby creating a contested matter in accordance with Rule 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and that the Debtors further intended to serve Ms. Martin with discovery requests pursuant to Bankruptcy Rules 7030 and 7034. The Debtors advised Ms. Martin that, pursuant to the Bankruptcy Rules, unless otherwise ordered by the Court, she would have thirty (30) days to respond to the Debtors' document request and that her deposition would be taken thereafter. (May 20 Letter at 1.) Accordingly, the Debtors advised Ms. Martin that, in order for the discovery requests to be satisfied, it would be necessary to reschedule the proposed hearing on the Motion. (Id.) The Debtors further advised Ms. Martin that the Debtors had been informed that the Court has limited time available to consider matters scheduled for the June 8, 2011 omnibus hearing. (Id.)

2. On May 23, 2011, Debtors' counsel sent Ms. Martin a follow-up letter reminding her that the proposed June 8 hearing date for the Motion does not provide sufficient time to conduct discovery in accordance with the Bankruptcy Rules, reminding her that a hearing on the Motion would require more time than allotted to the Debtors by the Court for the June 8 hearing, proposing a possible date for adjournment of

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[2] A copy of the May 20 Letter is attached as Exhibit 1 to the Supplemental Declaration of Colleen M. Martin in Support of Reply of Colleen M. Martin to Debtors' Objection to 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, which Ms. Martin served on the Debtors on June 3, 2011 (a copy of which is attached hereto as Exhibit A, the "Supplemental Martin Declaration").

such hearing and, in the alternative, suggesting that Ms. Martin either participate with the Debtors in a scheduling conference with the Court at the omnibus hearing scheduled for May 24, 2011 or place a joint call with Debtors' counsel to the Court's chambers to discuss scheduling this matter.[3] In response, that same day, Ms. Martin delivered to Debtors' counsel a letter advising that Ms. Martin would need to see the Debtors' objection to the Motion before considering an adjournment of the hearing and refusing to participate in any scheduling conference with the Court (the "May 23 Martin Letter").[4] Notwithstanding the fact that she had filed her Motion *pro se*, Ms. Martin also advised the Debtors that they should continue to copy her counsel, Mr. Hall and Mr. Wilson, on all communications to her. (May 23 Martin Letter at 1.)

3. On June 1, 2011, the Debtors timely filed an objection to the Motion [D.I. 7834] (the "Objection") and, on June 3, 2011, filed and served Ms. Martin with a notice of deposition [D.I. 7849] (the "Deposition Notice") and a set of requests for production of documents [D.I. 7850] (the "Document Requests"), in accordance with the Bankruptcy Rules. Pursuant to these requests, and in accordance with Bankruptcy Rule 7034, Ms. Martin is required to produce documents in response to the Document Requests by July 6, 2011 and her deposition is scheduled for August 1, 2011. In the cover letter attached to these discovery requests, the Debtors requested that Ms. Martin agree to reschedule the hearing to consider her Motion to August 12, 2011 or such later date as is mutually acceptable. In response, Ms. Martin delivered a letter to Debtors'

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[3] A copy of this letter is attached to the Supplemental Martin Declaration as Exhibit 2.

[4] A copy of the May 23 Martin Letter is attached to the Supplemental Martin Declaration as Exhibit 3.

counsel that same day, advising that she "decline[s] to reschedule the hearing on the Motion" and "oppose[s] any request for continuance of the hearing," without any explanation as to why or any suggestion as to whether, how, or when she would respond to the Debtors' discovery requests prior to the hearing.[5] Ms. Martin has yet to produce any document or information whatsoever in response to the Document Requests.

4. Therefore, faced with no alternative, on June 3, 2011, Debtors' counsel sent Ms. Martin a letter advising her that Debtors' counsel intended to contact chambers to inform the Court that, despite the Debtors' numerous requests, Ms. Martin refused to consensually reschedule the hearing on the Motion to allow discovery to proceed, and to request that the Court conduct an emergency telephonic scheduling conference to resolve this issue.[6] Notwithstanding her receipt of this correspondence on the afternoon of Friday, June 3, 2011, Ms. Martin waited until after 12:00 a.m. (Eastern Time) this morning to advise Debtors' counsel that she does not believe the Debtors are entitled to convene an emergency telephonic scheduling conference but, that, in any event, because she will be traveling to New York and Delaware on Monday and Tuesday, her only available time for a call with the Court will be between 10:00 and 11:00 a.m. (Eastern Time) on Tuesday, June 7, 2011.[7]

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[5] A copy of this letter is attached hereto as Exhibit B.

[6] A copy of this letter is attached hereto as Exhibit C.

[7] A copy of this letter is attached hereto as Exhibit D.

5. Based upon Ms. Martin's responses and her unwillingness to resolve this scheduling matter consensually, the Debtors were forced to file this Emergency Motion.

ARGUMENT

6. As noted in counsel's letters to Ms. Martin, upon the filing of the Objection, the Motion became a "contested matter" and, pursuant to Bankruptcy Rule 9014, the Federal Rules of Civil Procedure apply, entitling the Debtors, as a matter of right, to seek discovery of Ms. Martin. While it is the Debtors' position that the plain language of the controlling documents at issue in the Motion are dispositive and fatal to most, if not all, of Ms. Martin's claims (and the Debtors' reserve their rights in this regard), Ms. Martin's motion raises many factual assertions that the Debtors are entitled to test, including, among others, allegations she has raised regarding the context in which her employment agreement was entered into, WMI's alleged course of conduct regarding payment of bonuses, WMI's alleged course of conduct regarding payment of severance benefits, whether Ms. Martin acted as an "insider" of WMI in performing services as Deputy General Counsel of WMI, and whether and when Ms. Martin became aware of the Debtors' termination and amendment of the employee benefit plans at issue in the Motion. Unsurprisingly, documents would be particularly pertinent to many of these issues. Therefore, the Debtors must have an opportunity to review whatever documents Ms. Martin produces before taking her deposition.

7. Accordingly, on June 3, 2011, the Debtors served Ms. Martin with the Deposition Notice and Document Requests. Pursuant to Bankruptcy Rule 7034, unless the Court orders otherwise, Ms. Martin has thirty (30) days to respond to the

Document Requests, and the Debtors intend to depose Ms. Martin after having an opportunity to review whatever documents she produces in response. Ms. Martin has yet to produce any document or information whatsoever in response to the Document Requests. Accordingly, more time is needed to complete discovery, and the hearing cannot go forward on June 8, 2011.

8. The Debtors are merely exercising their right to conduct discovery in support of their opposition to the Motion. The Debtors put Ms. Martin on notice weeks ago that the Debtors' intended to serve Ms. Martin with discovery in connection with this matter, and the Debtors attempted, on numerous prior occasions, to obtain Ms. Martin's agreement to reschedule the hearing on the Motion. Ms. Martin has repeatedly refused to consider any such adjournment, without explanation, nor has she suggested how, whether, or when she will respond to the Debtors' discovery requests. In addition, Ms. Martin has repeatedly made herself unavailable for a conference with this Court to resolve this dispute, including her latest claim of being almost completely unavailable today and tomorrow. Assuming this is true, it is unclear why her counsel, Mr. Wilson and/or Mr. Hall, cannot participate on her behalf.

9. There is no urgency to the relief sought in the Motion (which seeks only monetary relief and not any preliminary or injunctive or expedited relief), so there is no harm to Ms. Martin in delaying the hearing until the parties have had a full opportunity to conduct discovery. By contrast, the Debtors would plainly be prejudiced if the hearing were to go forward without having had a fair opportunity to conduct discovery. In addition, the Debtors are aware that the Court has limited time scheduled for the omnibus hearing on June 8, 2011.

CONCLUSION

10. Based upon the foregoing, the Debtors request that the Court adjourn the hearing to consider the Motion to August 12, 2011 or such other date as is convenient for the Court. The Debtors are available at the Court's convenience should the Court require a telephonic scheduling conference.

NOTICE

11. Notice of this Motion has been provided via email to Ms. Martin and her counsel. The Debtors submit that no other or further notice is necessary under the circumstances.

Dated: Wilmington, Delaware
June 6, 2011

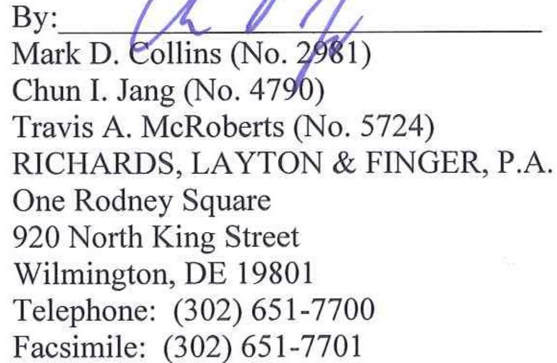

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Exhibit A

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: June 8, 2011 at 9:30 a.m. (EDT)**

REPLY OF COLLEEN M. MARTIN TO DEBTORS' OBJECTION TO 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

Colleen M. Martin ("Claimant") respectfully renews her request for (i) payment of an administrative expense in the amount of $510,486 pursuant to 11 U.S.C. § 503(b)(1)(A)(i), plus reasonable attorney's fees and costs and (ii) allowance and approval for distribution of a general unsecured claim in the amount of $475,678. In support of this request, Claimant respectfully states as follows:

JURISDICTION

1. This 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 this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is 11 U.S.C. §§ 503(b)(1), 507(a)(2) and 507(a)(4).

[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 1301 Second Avenue, Seattle, Washington 98101.

BACKGROUND

2. Claimant filed her *Motion 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* ("Motion") with this Court on May 18, 2011, and it was assigned Docket Number 7763. Attached to the Motion was the *Declaration of Colleen M. Martin in Support of 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* (the "Martin Declaration"). The Debtors filed the *Debtors' Objection to Motion 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* ("Objection") to Claimant's Motion on June 1, 2011, and it was assigned Docket Number 7834. The main factual background for Claimant's claims is set forth in paragraphs 3 through 20 of the Motion.

3. On May 21, 2011, Claimant received a letter dated May 20, 2011, from Brian S. Rosen, counsel to WMI ("Rosen Letter of May 20"), a copy of which is attached as Exhibit 1 to the attached Supplemental Declaration of Colleen M. Martin In Support of 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 ("Martin Supplemental Declaration"). In the Rosen Letter of May 20, WMI sought, even prior to formally objecting to Claimant's Motion, to delay the hearing on Claimant's Motion to July 13, 2011. Mr. Rosen demanded to know by noon on Monday, May 23, 2011 (i.e., at 9:00 a.m. on Monday morning Claimant's time following a Saturday delivery of the Rosen Letter of May 20), whether Claimant would agree to this adjournment. "If not, we will ask the Bankruptcy Court to conduct

a status conference during the Omnibus Hearing to be held the following day." Exhibit 1 to Martin Supplemental Declaration, at page 2.

4. On May 23, 2011, Claimant received a letter dated May 23, 2011, from Chun I. Jang, local counsel to WMI ("Jang Letter of May 23"), a copy of which is attached as Exhibit 2 to the Martin Supplemental Declaration. In the Jang Letter of May 23 WMI clarified that even the proposed delay of hearing Claimant's motion to July 13 could not be guaranteed. And then, "[i]f we do not hear from you by 5:00 p.m. (Eastern) on Tuesday, we will contact the Court and ask for it to unilaterally reschedule the hearing on your Motion to the July 13 omnibus hearing or another date acceptable to the Court." Id. at page 1.

5. Claimant responded to the Letters of May 20 and May 23 in a letter of May 23, 2011 ("Claimant's Letter of May 23"), a copy of which is attached as Exhibit 3 to the Martin Supplemental Declaration. Claimant conveyed to WMI that Claimant could not consider WMI's proposals for delay because Claimant had not yet even received WMI's objection. Claimant further clarified to WMI that it was not authorized to speak to the Court on her behalf. Id.

6. On May 27, 2011, Claimant received a letter dated May 27, 2011 from Charles Edward Smith, WMI's general counsel ("WMI General Counsel"), in his capacity as a member of the Plan Administration Committee ("PAC Letter of May 27") for the WMI Supplemental Employees' Retirement Plan ("SERP"), Supplemental Executive Retirement Accumulation Plan ("SERAP") and WaMu Severance Plan (collectively, with the SERP and SERAP, the "Plans"). A copy of the PAC Letter of May 27 is attached as Exhibit 4 to the Martin Supplemental Declaration. The Plans and their amendments, supplied to Claimant by the WMI General Counsel on or about April 14, 2011 (see Martin Declaration ¶ 21), were previously attached as Exhibits 1 (SERP), 2 (SERAP), 3 (WaMu Severance Plan), 4 (SERP Amendment), 5 (SERAP

Amendment) and 14 (PAC Resolution Authorizing Amendments) to the Martin Declaration. In the PAC Letter of May 27 WMI developed yet another scheme to delay the hearing on Claimant's Motion, asserting that Claimant has failed to exhaust an appeals procedure under the Plans. Exhibit 4 to Martin Supplemental Declaration. The PAC Letter of May 27 does not expressly acknowledge that the Plans are in full force or effect or that Claimant is covered by the Plans; rather it refers only to "the governing documents of the Plans" and "[u]nder the terms of the Plans" in setting up its scheme for delay.

7. On April 5, 2011, Claimant supplied the WMI General Counsel with a flash drive containing a confidential settlement communication protected under Federal Rule of Evidence ("FRE") 408. Martin Supplemental Declaration at ¶ 7. This communication was supplied in response to the WMI General Counsel's previous invitation for Claimant to supply comments on the Termination Notice, see Exhibit 12 to Martin Declaration, she received on February 3, 2011. Motion at ¶ 23; Martin Declaration at ¶ 20. FRE 408 precludes introducing any "[e]vidence of conduct or statements made in compromise negotiations", but it "does not require exclusion when the evidence is offered for another purpose". Suffice it to say, by April 25, 2011, when Claimant felt obliged to deliver a Demand Letter, see Exhibit 15 to Martin Declaration, to WMI, the parties had made clear to each other their positions in respect of the Plans. As stated in the Motion, "[o]n April 29, 2011, WMI paid Claimant only the salary due since the last regular pay period, net of taxes." Motion at ¶ 20; Martin Declaration at ¶ 23.

8. Upon Claimant's knowledge and belief, Janie Palsha, one of the six WMI employees given notice of termination on February 3, 2011 (see Martin Declaration ¶ 20), has had her employment extended by WMI. Martin Supplemental Declaration at ¶ 8. Neither WMI

nor the Plan Administration Committee has contacted any of the other four employees terminated on February 3, 2011, regarding their potential benefit claims under the Plans. Id.

LEGAL ARGUMENT

9. Claimant's claim is composed six separate elements: (I) pro-rated bonus in the amount of $51,500, which is entitled to priority distribution under Section 507(a)(2) of the Bankruptcy Code; (II) claim under the WaMu Severance Plan in the amount of $392,172, of which $154,333 is entitled to priority distribution under Sections 507(a)(2) and 507(a)(4) of the Bankruptcy Code and the remainder of which should be classified as an Allowed General Unsecured Claim (as such term is defined in the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated as of February 7, 2011 (as it may be further amended, the "Modified Plan")); (III) claim for post-petition amounts due under the SERAP in the amount of $35,217 which is entitled to priority distribution under Section 507(a)(2) of the Bankruptcy Code; (IV) claim for post-petition amounts due under the SERP in the amount of $14,193 which is entitled to priority distribution under Section 507(a)(2) of the Bankruptcy Code; (V) claim for double damages based upon the willful withholding of wages due under RCW 49.52.070 of $493,082, of which $255,243 is entitled to priority distribution under Section 507(a)(2) of the Bankruptcy Code and the remainder of which should be classified as an Allowed General Unsecured Claim (as such term is defined in the Modified Plan); (VI) claim for costs and reasonable attorney's fees under RCW 49.48.030 and RCW 49.52.070, in an amount to be proved at a subsequent hearing.

10. Claimant has organized her Legal Argument as follows:

- Claim I – Bonus;
- Claims II, III and IV – Issues Common to the Plans; and

- Claim II – Issues Unique to the WaMu Severance Plan.

Claimant will address any double damages and attorney fee arguments at the June 8 hearing.

11. Pursuant to 11 U.S.C. § 503(b)(1)(A)(i), after notice and hearing, there shall be allowed administrative expenses for wages, salaries and commissions for services rendered after the commencement date. Pursuant to 11 U.S.C. § 507(a)(2), post-petition wage claims are entitled to a second priority to the extent they are administrative expense claims. Pursuant to 11 U.S.C. § 507(a)(4), allowed unsecured claims for wages, salaries or commissions including vacation, severance and sick leave pay, earned within 180 days before filing of the petition are entitled to a fourth priority, but such priority is limited to $11,725.

CLAIM I – BONUS

12. In its Objection, WMI claims to understand the context rule, but then fails to grasp the central point: by its course of dealing WMI effectively read the term "discretionary" out of its employment agreements, and then attempted to reassert its centrality for an improper retaliatory purpose. In any rational world, a bonus relates to employment performance, and in this case WMI expressed satisfaction with Claimant's performance and indicated it intended to pay her bonus. See Exhibit 12 to Martin Declaration. The Bonus paragraph in Claimant's Employment Letter does not state that a bonus is contingent on satisfactory employment performance *and* executing a release. Exhibit 10 to Martin Declaration at page 2. In fact, the Employment Letter states that "[t]ermination of your employment for Cause shall operate to discharge any obligation to make any bonus payment for the year of termination". Id. It is clear that Claimant was not terminated for Cause, see Exhibit 12 to Martin Declaration, and only when Claimant demanded all compensation she is due did WMI use the bonus as an improper retaliatory blow.

13. The improper use of the bonus presented in paragraph 12, above, is ironic, given that WMI had available the precise tool it claims the bonus was for. The WaMu Severance Plan explicitly makes the bargain of severance for a release; provided that the release "will not cover any claims or appeal processes set forth in any ERISA plans sponsored by the Company." Exhibit 3 to Martin Declaration at § 8.1. Claimant would easily have executed such a release, and pursued her plan-based claims. Instead, the release in the Termination Notice expressly covered "any rights or claims you may have under . . . the Employee Retirement Income Security Act of 1974", Exhibit 12 to Martin Declaration at page 2, in addition to seeking the release of "claims of fraud or negligent misrepresentation", and capping it all off with:

> By signing this agreement, you acknowledge that you are releasing potentially unknown claims, and that you may have limited knowledge with respect to some of the claims being released. You acknowledge that there is a risk that, after signing this agreement, you may learn information that might have affected your decision to enter this agreement. You assume this risk and all other risks of any mistake in entering into this agreement.

Id. Because we tell you we might lie to you, it's OK if we do. Well, potentially forgoing $51,500 didn't buy Claimant's acquiescence in such a reprehensible scheme. And WMI now notes with glee, and apparent satisfaction of a job well done:

> The other employees terminated during 2011 all signed releases giving up their claims pursuant to, among other things, the Severance Plan. Thus, the average severance payment made to non-management employees during 2011 is $0 and, therefore, WMI is precluded from making any post-petition severance payment to Ms. Martin.

Objection, at ¶ 50. These strands of the same overall scheme demonstrate the overall willfulness of WMI's conduct, and the arrogance with which it was perpetrated. Claimant respectfully

requests that this Court hold WMI to account and approve the relief requested by Claimant in paragraphs 25 and 26 of her Motion.

CLAIMS II, III AND IV – ISSUES COMMON TO THE PLANS

14. Claimant has organized this section of her Legal Argument as follows:

- WMI Must Admit in Open Court That the Plans are in Full Force and Effect and That Claimant is a Covered Participant;
- Because Claimant's Claims Include a Pre-Petition Component, Claimant Must Pursue Her Claims Before this Court to Avoid Violating the Automatic Stay; and
- WMI Cannot Hide Behind a Procedural Contrivance to Delay Resolution of Claimant's Claims by Asserting She Must Perform a Futile Act.

WMI Must Admit in Open Court That the Plans are in Full Force and Effect and That Claimant is a Covered Participant

15. WMI seeks to delay resolution of Claimant's claims by asserting that she must pursue exhaustion of remedies under the Plans. Yet WMI has not expressly stated that the Plans are in full force and effect and that Claimant is covered by the Plans. For the avoidance of doubt, whether Claimant is simply covered by the Plans is a question separate and apart from whether Claimant is eligible for benefits under the Plans, and Claimant does not maintain WMI must go that far in open court.

16. WMI seeks to rely on extensive delay-inducing procedures under the Plans. Accordingly, WMI must admit that the Plans are in full force and effect and that Claimant is a covered participant, else it seeks the bizarre result that Claimant is bound by the provisions of a Plan that does not exist or by which she is not covered. In either instance, it makes no sense that

she should have to abide by delay-inducing procedures that do not apply to her. If WMI cannot make these two limited admissions, then the claims raised by Claimant are ripe for consideration by this Court, and Claimant respectfully requests that the Court resolve the claims set forth herein and in Claimant's Motion and issue an order in the form of the Order attached to Claimant's Motion.

Because Claimant's Claims Include a Pre-Petition Component, Claimant Must Pursue Her Claims Before this Court to Avoid Violating the Automatic Stay

17. The automatic stay prohibits claimants from pursuing claims against the estate while the debtor is reorganizing its affairs. 11 U.S.C. § 362. Claimant's claim is a mixed claim of pre-petition components and administrative expenses. As a result, to properly pursue her claims, Claimant must seek the leave of this Court regarding the pre-petition components of her claim, which are inextricably bound up with the post-petition administrative components of her claim. See Motion, at ¶¶ 27-41. Where a bankruptcy court has jurisdiction to resolve one part of a claim, it should exercise its jurisdiction to resolve all of the claims placed before it. See Allegheny Univ. of the Health Sciences v. Nat'l Union of Hospital and Health Care Employees, AFSCME, AFL-CIO, District 1199C (In re Allegheny Health, Education and Research Foundation), 383 F.3d 169, 175-76 (3d Cir. 2004). Accordingly, the claims raised by Claimant are ripe for consideration by this Court, and Claimant respectfully requests that the Court resolve the claims set forth herein and in Claimant's Motion and issue an order in the form of the Order attached to Claimant's Motion.

WMI Cannot Hide Behind a Procedural Contrivance to Delay Resolution of Claimant's Claims by Asserting She Must Perform a Futile Act

18. In general, federal courts require beneficiaries under ERISA plans to exhaust remedies under the plan. See Harrow v. Prudential Ins. Co., 279 F.3d 244, 249 (3d Cir. 2002).

> Whether to excuse exhaustion on futility grounds rests upon weighing several factors, including: (1) whether plaintiff diligently pursued administrative relief; (2) whether plaintiff acted reasonably in seeking immediate judicial review under the circumstances; (3) existence of a fixed policy denying benefits; (4) failure of the insurance company to comply with its own internal administrative procedures; and (5) testimony of plan administrators that any administrative appeal was futile. Of course, all factors may not weigh equally.

Id. at 250. The Harrow court did not excuse exhaustion, holding that the district court did not abuse its discretion because the Harrows made only one phone call to Prudential before instituting suit for a Viagra claim and Prudential did not issue a blanket statement rejecting Viagra coverage until after the Harrows filed suit. Id. at 251-52 (although noting the case as "difficult" because of the Prudential blanket statement). In an earlier case, however, the Third Circuit approved the district court's application of the futility exception:

> Although the three employees failed to make written requests for benefits, this does not excuse Edgewater's failure to comply with the Plan's administrative procedures. It is clear that Berger, Dallas and Wagner made their desire for 70/80 retirement plain to the responsible officials. In addition, it is clear that the company had adopted a policy of denying all applications for 70/80 retirement. [citation omitted] We agree with the

district court that Edgewater's blanket denial of 70/80 retirement under § 2.6(e)'s mutual interest provision and Edgewater's failure to comply with the Plan's administrative procedures weigh in favor of applying the futility exception to Dallas, Wagner and Berger. Given these circumstances, any resort by these employees to the administrative process would have been futile. Thus, the district court was correct in excepting these three employees from the exhaustion requirement.

Berger v. Edgewater Steel Co., 911 F.2d 911, 917 (3d Cir. 1990) (but also noting that "because Kier did not request 70/80 retirement he is precluded from seeking judicial relief on his claims seeking to enforce the terms of the Plan").

19. Contrary to the impression the WMI General Counsel sought to give in his letter of April 25, 2011 ("recently-asserted claims", see Exhibit 23 to Martin Declaration), and the PAC Letter of May 27 ("claims are deemed made as of April 25, 2011", see Exhibit 4 to Martin Supplemental Declaration), Claimant diligently pursued the administrative remedy offered by the WMI General Counsel (i.e., inviting her to supply comments on the Termination Notice, see Motion at ¶ 23; Martin Declaration at ¶ 20) when she delivered a confidential communication protected by FRE 408 on April 5, 2011. Martin Supplemental Declaration at ¶ 7; see FRE 408 (permitting proffer of evidence when "negating a contention of undue delay"). She later felt the necessity to deliver an unprotected communication in writing on April 25, 2011. See Exhibit 15 to Martin Declaration. WMI completely disregarded Claimant's claims under the Plans when, on April 29, 2011, it paid Claimant only the salary due since the last regular pay period, net of taxes. Motion at ¶ 20; Martin Declaration at ¶ 23. Claimant then commenced preparation and filing of the Motion in order to preserve her claims and to address the bifurcated nature of her claim, as discussed above in paragraph 19. Based on the unique scenario provided by the

bankruptcy context, and based on Claimant following the route of negotiation offered by the WMI General Counsel ("suggest a continued dialogue with respect to certain of your recently asserted claims", see Exhibit 23 to Martin Declaration), Claimant believes she diligently pursued administrative relief and acted reasonably in applying to this Court for relief under the circumstances. Harrow, 279 F.3d at 250.

20. WMI's position on the availability of benefits to Claimant under the Plans could not be more clear. See Objection (asserting, *inter alia*, that the WaMu Severance Plan magically terminated on September 25, 2008, and that Claimant is entitled to nothing under any of the Plans). Accordingly, WMI has indicated that there is a fixed policy to deny Claimant's benefits. Harrow, 279 F.3d at 250.

21. Given WMI's position that the Plans do not exist, see paragraph 20, above, it is easy to see why it did not comply with the administrative procedures set out in them. The WaMu Severance Plan explicitly makes the bargain of severance for a release; provided that the release "will not cover any claims or appeal processes set forth in any ERISA plans sponsored by the Company." Exhibit 3 to Martin Declaration at § 8.1. At no point in time was Claimant supplied with a Severance Agreement that conformed to the requirements of the WaMu Severance Plan. In fact the Termination Notice contained provisions directly contradictory to the terms of the WaMu Severance Plan. Exhibit 12 to Martin Declaration at page 2 (release in the Termination Notice expressly covered "any rights or claims you may have under . . . the Employee Retirement Income Security Act of 1974"). By failing to comply with a central feature of its claims and appeal process, WMI cannot now seek to impose that process on Claimant. Harrow, 279 F.3d at 250.

22. Although there is no direct testimony that any administrative appeal under the plan will be futile, Claimant submits that it is easy to read between the lines of the Objection. The members of the Plan Administration Committee are also the controlling executives at WMI. They were aware of Claimant's demand, they affirmatively decided not to pay her, and they obviously mean it, based on the size of the expenditure that must have gone into the Objection. Any appeal under the administrative provisions of the Plans would clearly meet with the same response as found in the Objection. While this is not direct testimony, Claimant submits that the Objection and the resources expended upon it speak volumes about the intent of the plan administrators to simply deny Claimant's claims under the Plans.

23. WMI's purpose in seeking to impose administrative process on Claimant is clearly a procedural contrivance to delay her claim. The preposterousness of the time frames needed for considering one claim is laughable. See, e.g., Exhibit 3 to Martin Declaration, at §§ 7.2, 7.2 [sic] (initial 60-day delay after receiving claim, with up to a 60-day extension, then, after a 90-day period for the Claimant, another 60-day delay for an appeal, with up to a 60-day extension). Those time frames exist for a vigorous corporate giant, not a 16-person outfit reducing its size to 11 employees. Tellingly, the PAC Letter of May 27, see Exhibit 4 to Martin Supplemental Declaration, advising Claimant of her supposed obligation to exhaust remedies, was delivered only after Claimant declined to agree to an adjournment of the June 8 hearing, prior to even seeing WMI's Objection. See paragraphs 3-5, above, and Exhibits 1, 2, and 3 to Martin Supplemental Declaration. The delay-inducing purpose of WMI's desire to hide behind imposing an administrative appeal process on Claimant could not be more clear.

24. Fortunately, the law allows the Court to exercise its discretion to avoid the farce of exhaustion of administrative appeal under the Plans. Harrow, 279 F.3d at 248. In particular,

paragraph 19, above, addresses (1) that Claimant diligently pursued administrative relief; and (2) that Claimant acted reasonably in seeking immediate judicial review under the circumstances; paragraph 20, above, addresses (3) the existence of a fixed WMI policy to deny benefits under the Plans; paragraph 21, above, addresses (4) WMI's failure to comply with its own internal administrative procedures; and paragraph 22, above (5) speaks to the futility of any appeal to plan administrators who have so volubly demonstrated their objection to Claimant's claim. Harrow, 279 F.3d at 250; see also Berger, 911 F.2d at 917 (focusing particularly on a blanket denial of coverage (as in WMI's Objection) and failure to comply with the plan's own administrative procedures). Accordingly, the claims raised by Claimant are ripe for consideration by this Court, and Claimant respectfully requests that the Court resolve the claims set forth herein and in Claimant's Motion and issue an order in the form of the Order attached to Claimant's Motion.

CLAIM II – ISSUES UNIQUE TO THE WAMU SEVERANCE PLAN

25. Claimant has organized this section of her Legal Argument as follows:

- Claimant is Not an Insider Because Her Actual Duties and Responsibilities Rebut the Presumption that She is an Officer Due to her Title;
- Claimant Suffered a Job Elimination on September 25, 2008, and Again on February 3, 2011;
- Claimant is Eligible for and Entitled to Receive Severance Benefits at Both September 25, 2008, and February 3, 2011, and a Post-Termination Notice Attempt to Deny Benefits is Ineffective with Respect to Claimant; and

- The Severance Payment Claimant Received from JPMorgan Chase Bank, National Association ("Chase") Was for a Release of Claims Against Chase, not Severance Claims Against WMI.

Claimant is Not an Insider Because Her Actual Duties and Responsibilities Rebut the Presumption that She is an Officer Due to her Title

26. A severance payment to an insider of the debtor is prohibited under 11 U.S.C. § 503(c)(2), unless the payment is part of a program that is generally applicable to all full-time employees and the amount of the payment is not greater than 10 times the amount of the mean severance pay given to nonmanagement employees during the calendar year in which the payment is made. An insider is broadly defined to include officers of the debtor. 11 U.S.C. § 101(31)(B). In In re Foothills Texas, Inc., 408 Bankr. Rptr. 573 (Bankr. D. Del. 2009), the Court held that a person holding an officer's title is presumptively an officer and, thus, an insider. In ¶¶ 28-29 of the Motion, Claimant successfully rebuts that presumption. In the Objection, WMI assert that Claimant was insider because she took the lead role in negotiating the terms of WMI's settlement with Chase regarding the transfer of intellectual property to Chase. This assertion is false. See Martin Supplemental Declaration at ¶ 16. The negotiation of the terms for transfer of the intellectual property was handled by Jon Goulding WMI's Treasurer and an employee of Alvarez & Marsal. Id. On March 19, 2010, the WMI General Counsel sent an email to Stacey Friedman of Sullivan & Cromwell (Chase's outside counsel) acknowledging that Ms. Friedman had had discussions with Mr. Goulding about the Intellectual Property and asking her to include Claimant in discussions going forward so that Claimant could react to any legal positions. Id. The negotiation of the transfer of intellectual property was handled by Mr. Kosturos, WMI's

Chief Restructuring Officer and employee of Alvarez & Marsal, and Mr. Goulding. Id. Claimant acted as a mere scrivener in reviewing the pertinent sections of the Settlement Agreement pertaining to the transfer of the Intellectual Property. Id.

27. Debtors assert that Claimant was given wide latitude and discretion to make decisions on vendor claims and intellectual property matters, but such was not the case. Claimant was not permitted to speak to the counsel for the Creditors' Committee without the presence of an attorney from Weil, Gotshal & Manges. Id. at ¶ 17. Claimant was not permitted to speak to the financial advisors to the Creditors' Committee without the presence of a representative from Alvarez & Marsal. Id. In many instances, Claimant was not permitted to speak to Vendor's counsel without the presence of an attorney from Weil, Gotshal & Manges and in several instances Claimant was excluded from such calls. Id.

Claimant Suffered a Job Elimination on September 25, 2008, and Again on February 3, 2011

28. WMI asserts that a "Job Elimination" did not occur on the September 25, 2008 seizure of Washington Mutual Bank ("WMB") by the FDIC. Objection ¶ 54. WMI reaches this conclusion by asserting that Chase purchased "assets of the Company" and that "the PAC has 'absolute discretion' to make all determinations about eligibility for benefits thereunder, and such determinations are final binding and conclusive." Id. (citing Severance Plan §§ 5.1, 5.2). So the PAC is empowered to say black is white? WMI appears to argue that plan documents really aren't necessary, because plan administrators are always empowered to snatch away benefits at their whim. Are our laws intended to protect employee benefits truly so deficient? The WaMu Severance Plan answers this question itself, in a clause conveniently overlooked by

WMI (even though it's right in one of the sections WMI cites): "All exercises of power by the Committee hereunder shall be final, conclusive and binding on all interested parties, unless found by a court of competent jurisdiction, in a final judgment that is no longer subject to review or appeal, to be arbitrary and capricious." Exhibit 3 to Martin Declaration at § 5.2 (*final sentence*; i.e., the last word is not with the PAC).

29. So how exactly does the PAC's (not yet articulated, but presumably soon to follow) exercise of discretion fit with the reality of the real world? It was widely known that WMI leadership was shopping the company prior to the seizure. Had Chase purchased WMI or the assets of WMB in a deal with WMI, then Chase would have purchased "some or all of the assets of the Company". Exhibit 3 to Martin Declaration at § 8.2. But Chase declined to do that. And there were huge ramifications to Chase deciding to purchase assets seized by the FDIC, owned by the FDIC, even though for a transitory instant, and decoupled from the liabilities of WMB, which stayed with the FDIC. The FDIC—not WMI, WMB or any of their subsidiaries or affiliates—passed title to Chase. This Court is probably all too familiar with the very intricate negotiations between WMI and Chase over who actually owned what and what title the FDIC was actually capable of passing. For executives who have been intimately involved in those negotiations to cause the PAC to assert that Chase bought "Company assets" strains credulity, and is clearly an arbitrary and capricious interpretation of the meaning of the WaMu Severance Plan.

30. As a result, on September 25, 2008, Claimant's job was eliminated due to the seizure of WMB by the FDIC, which (a) materially altered the corporate structure of Company (as defined under the WaMu Severance Plan), (b) materially reduced the size of the operating business of Company, and (c) materially reduced the size of the workforce of Company. Martin

Declaration at ¶ 11. And even Chase recognized, in the release of successor liability claims it obtained from Claimant in a Release Agreement ("Release Agreement") between Claimant and Chase, see Exhibit F to Objection, that Claimant had been the subject of a "termination of employment with Washington Mutual, Inc. or its subsidiaries or affiliates". Id. § 8. As a result, Claimant experienced a "Job Elimination". See Exhibit 3 to Martin Declaration at §§ 2.1(a), 2.3. As explained more fully in the Motion, Claimant also experienced a Job Elimination on February 3, 2011. Motion at ¶ 33.

Claimant is Eligible for and Entitled to Receive Severance Benefits at Both September 25, 2008, and February 3, 2011, and a Post-Termination Notice Attempt to Deny Benefits is Ineffective with Respect to Claimant

31. In the Objection, WMI argues that Claimant is not eligible to receive any benefits pursuant to the WaMu Severance Plan as of her April 30, 2011 end date. First, WMI states that WMI considered the WaMu Severance Plan terminated as of September 25, 2008—the date of the seizure and sale of WMB's assets and transfer of employees to JPMC. However, WMI does not cite any legal authority which would support the automatic termination of the WaMu Severance Plan as a result of the seizure and sale of WMB's assets. In addition, WMI does not maintain that any corporate action was taken by the Plan Administration Committee or the Board of Directors of WMI on or before September 25, 2008 to terminate or amend the WaMu Severance Plan. WMI seems to rely on the assertion that WMI's management periodically reminded employees that severance and retention payments would not be paid to employees. However, in Rodman v. Rinier (In re W.T. Grant Co.), 620 F.2d 319, 321 (2d Cir. 1980), the Second Circuit held that posting of notices stating that the debtor would not honor the severance

plan did not suffice to terminate a severance obligation. Instead, the Second Circuit held that the debtor must formally reject the severance plan under the Bankruptcy Act. Id.

32. WMI then argues that even if the Severance Plan termination was not effective as of September 25, 2008, such termination was ratified on April 19, 2011. As discussed below the ratification of such termination by the PAC on April 19, 2011 and subsequent ratification by the Operations Committee of the Board of Directors of WMI on April 29, 2011 was not effective to terminate the WaMu Severance Plan because the WaMu Severance Plan was an executory contract which required formal rejection with the Bankruptcy Court to be effective. WMI argues that it is Claimant's termination date (i.e. April 30, 2011), not the date of WMI's notice of termination (i.e. February 4, 2011) that is relevant to determine whether Claimant was eligible to receive benefits under the WaMu Severance Plan. Claimant strongly disagrees with this analysis. Section 7.1 of Severance Plan states that "[n]o such termination or amendment shall affect the rights of any individual who is then entitled to receive Severance Pay at the time of such amendment or termination." WMI asserts that the Claimant was merely eligible for Severance Pay, but was not entitled to Severance Pay until she signed and returned the Severance Agreement after the last active date of employment. However, WMI never presented the Claimant with a Severance Agreement. Claimant asserts that the requirement for the return of a signed Severance Agreement is at best a condition subsequent to her entitlement to Severance Pay. Claimant's position is supported by the language of Section 4.2 (Extension and Acceleration) of the WaMu Severance Plan. Section 4.2 of the WaMu Severance Plan provides that the Company (i.e. WMI and its affiliates) may extend, cancel or accelerate a Participant's end date under certain circumstances. See Exhibit 3 to Martin Declaration, at § 4.2. Section 4.2(b) states that if the Company notifies a participant of its intent to extend or cancel the job end

date within fourteen days of the original job end date, the participant may reject such extension or cancellation, voluntarily terminate on the original job end date, and "receive full Severance Pay under this Plan." See Id. at § 4.2(b). Clearly, the language of the WaMu Severance Plan anticipates that the entitlement to Severance Pay vests upon receipt of the Notice and can only be lost under very narrow circumstances (i.e. failure to return the signed Severance Agreement).

33. WMI argues that whether the WaMu Severance Plan constitutes an executory contract under the Bankruptcy Code should be determined solely with respect to obligations owed to or from the Claimant. This view ignores the continuing obligations that WMI had not only with respect to the Claimant, but with respect to all other employees of WMI and its affiliates. At an absolute minimum WMI should have promptly informed all Participants who suffered a Job Elimination on September 25, 2008 of their potential claims, which of course would be stayed until confirmation of the bankruptcy plan of reorganization. Instead WMI maintained silence to avoid sending notices to 40,000-plus terminated Participants and inserted in the Modified Plan a clause designed to quietly allow for the post-confirmation termination of benefit plans without notice to Participants. See Section 36.7 of the Modified Plan. Docket Number 6528. Even under WMI's formulation, the WaMu Severance Plan constituted an executory contract.

The Severance Payment Claimant Received from JPMorgan Chase Bank, National Association ("Chase") Was for a Release of Claims Against Chase, not Severance Claims Against WMI

34. WMI seeks to somehow take credit for the fact that Chase made a severance payment to Claimant. The definition of "Firm", the parties being released, is found in § 1 of the

Release Agreement. Exhibit F to Objection § 1. In no way could any reasonable person construe the term "Firm" to include WMI. WMI is not a party to the Release Agreement. Id. at Preamble. The operative language concerning the severance payment made to Claimant refers only to the Firm and Chase's severance plan. Id. § 3. In contrast to Claimant's prepetition SERP claim against WMI, for which Chase took an assignment, id. § 5, Chase sought no assignment of any severance claim against WMI, id. § 3, apparently wanting nothing to do with it. Chase knew that Claimant was going to work for WMI, yet it did not allege that Claimant's subsequent employment mitigated her right to severance. Cf. id. § 3 ("Employee agrees to repay a prorated portion of the severance payment as provided in the Plan if Employee is rehired by the Firm within the number of weeks covered by his or her severance pay."). WMI's arguments that it should benefit from Chase's severance payment—or that such severance payment, made without mention of releasing WMI or reference to the WaMu Severance Plan, should somehow impose equitable penalties on Claimant—are utter fantasy.

35. WMI makes much of how Claimant will be unjustly enriched if it is forced to honor its legitimate obligations to her. Implicit in these arguments is the fundamentally flawed argument that Chase paid severance to Claimant on behalf of WMI. For the avoidance of doubt, Chase paid severance to Claimant for a release of claims against Chase (via the defined term the "Firm", and a host of affiliates and agents, none of which apply to WMI). Id. § 8. It is true that the release provision contains references to WMI, but only to the extent that Claimant releases the Firm et. al. for any successor liability it may have to Claimant. Id. In no way does the language operate to release WMI. If WMI wanted releases for severance paid by Chase, it could have coordinated action with Chase to accomplish that objective. It did not. Chase did not want assignments of severance claims against WMI, but it did want assignment of SERP claims. Id.

§ 5. Chase knew how to obtain an assignment of Claimant's severance claim against WMI if it wanted to (as it did with the SERP), but it chose not to. Claimant's severance claim against WMI is her property. Period.

36. Given the focus WMI places on Chase's severance payment to Claimant, however, it is worth a quick detour to discuss the proper method for conducting a termination accompanied by a severance payment and release. WMI should acquaint itself with the section on "Exceptions", id. § 9, a relative of which WMI's own severance plan calls for, but which WMI failed to include in its Termination Notice.

37. Finally, as to the timeliness of Claimant's prepetition severance claim, there are two important facts. First, because Claimant was either continuously employed by Company, or terminated and rehired, the claim did not mature until Claimant received Notice of Termination on February 3, 2011. WMI controlled the circumstances that led to the obligation arising, so it should not blame the timing on Claimant. Second, Claimant did not "lie-in-wait" for the opportunity to pounce on a severance claim. She did notify the WMI General Counsel in September 2010 of her concerns that the SERAP might not be terminated (after filing a claim for SERAP). Martin Supplemental Declaration at ¶ 10. Claimant did not think deeply about her rights under benefit plans (it was not her job) until she received the Termination Notice, which contained the extreme release language discussed in paragraph 13, above. Id. at ¶¶ 12-13. Only when pushed to consider why WMI sought such an extreme release, including warnings with red-blinking lights, did she finally piece together what WMI's scheme was. Id. Accordingly, Claimant respectfully requests this Court to disregard all of the so-called "equitable theories" advanced by WMI as an attempt to detract attention from the main focus: Claimant's legitimate claims against WMI.

CONCLUSION

For the reasons described above and in her Motion, Claimant respectfully requests this Court to enter an Order (i) granting Claimant an administrative priority claim under Section 503(b)(1) of the Bankruptcy Code, which is entitled to priority distribution under Sections 507(a)(2) and 507(a)(4) of the Bankruptcy Code, in the following amounts:

For Claim I, $51,500;

For Claim II, $154,333;

For Claim III, $35,217;

For Claim IV, $14,193;

For Claim V, $255,243; and

For Claim VI, costs of suit and a reasonable sum for attorney's fees (under either RCW 49.48.030 or RCW 49.52.070, to the greatest extent allowed), in an amount to be proved at a subsequent hearing;

with all of such amounts subject to adjustment as the Court may see fit; and (ii) granting such other and further relief as the Court deems just and proper under the circumstances.

Further, Claimant respectfully requests this Court to enter an Order allowing and approving for distribution the following amounts to be classified as Allowed General Unsecured Claims (as such term is defined in the Modified Plan):

For Claim II, $237,839; and

For Claim V, $237,839;

with both of such amounts subject to adjustment as the Court may see fit; and (ii) granting such other and further relief as the Court deems just and proper under the circumstances.

Dated: June 2, 2011

Respectfully submitted,

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**

SUPPLEMENTAL DECLARATION OF COLLEEN M. MARTIN IN SUPPORT OF REPLY OF COLLEEN M. MARTIN TO DEBTORS' OBJECTION TO 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

I, Colleen M. Martin, pursuant to 28 U.S.C. § 1746, hereby declare, under penalty of perjury, that the following is true and correct to the best of my knowledge, information and belief:

1. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein and, if called to testify, could competently swear to such facts.

2. On May 18, 2011, I filed with this Court *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*, which was assigned Docket Number 7763 (the "Motion"). Attached to the Motion was the *Declaration of Colleen M. Martin in Support of 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* (the "Martin Declaration"). On June 1, 2011, I received the *Objection of Washington Mutual, Inc. to*

[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.

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 (the "Objection"). I submit this Declaration in support of my *Reply to Objection of Washington Mutual, Inc. to 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* (the "Reply").

3. On May 21, 2011, I received a letter dated May 20, 2011, from Brian S. Rosen, counsel to the Debtors ("Rosen Letter of May 20"), a copy of which is attached as hereto as Exhibit 1. In the Rosen Letter of May 20, WMI sought, even prior to formally objecting to my Motion, to delay the hearing on my Motion to July 13, 2011. Mr. Rosen demanded to know by noon on Monday, May 23, 2011 (i.e., at 9:00 a.m. on Monday morning Seattle time (where I reside) following a Saturday delivery of the Rosen Letter of May 20), whether I would agree to this adjournment. "If not, we will ask the Bankruptcy Court to conduct a status conference during the Omnibus Hearing to be held the following day." Exhibit 1, at page 2.

4. On May 23, 2011, I received a letter dated May 23, 2011, from Chun I. Jang, local counsel to WMI ("Jang Letter of May 23"), a copy of which is attached hereto as Exhibit 2. In the Jang Letter of May 23 WMI clarified that even the proposed delay of hearing my motion to July 13 could not be guaranteed. And then, "[i]f we do not hear from you by 5:00 p.m. (Eastern) on Tuesday, we will contact the Court and ask for it to unilaterally reschedule the hearing on your Motion to the July 13 omnibus hearing or another date acceptable to the Court." Exhibit 2, at page 1.

5. I responded to the Letters of May 20 and May 23 in a letter of May 23, 2011 ("Claimant's Letter of May 23"), a copy of which is attached hereto as Exhibit 3. I

conveyed to WMI that I could not consider WMI's proposals for delay because I had not yet even received WMI's objection. I further clarified to WMI that it was not authorized to speak to the Court on my behalf.

6. On May 27, 2011, I received a letter dated May 27, 2011 from Charles Edward Smith, WMI's general counsel ("WMI General Counsel"), in his capacity as a member of the Plan Administration Committee ("PAC Letter of May 27") for the WMI Supplemental Employees' Retirement Plan ("SERP"), Supplemental Executive Retirement Accumulation Plan ("SERAP") and WaMu Severance Plan (collectively, with the SERP and SERAP, the "Plans"). A copy of the PAC Letter of May 27 is attached hereto as Exhibit 4. The Plans and their amendments, supplied to me by the WMI General Counsel on or about April 14, 2011 (see Martin Declaration ¶ 21), were previously attached as Exhibits 1 (SERP), 2 (SERAP), 3 (WaMu Severance Plan), 4 (SERP Amendment), 5 (SERAP Amendment) and 14 (PAC Resolution Authorizing Amendments) to the Martin Declaration. In the PAC Letter of May 27 WMI asserted that I had failed to exhaust an appeals procedure under the Plans. The PAC Letter of May 27 does not expressly acknowledge that the Plans are in full force or effect or that I am covered by the Plans; rather it refers only to "the governing documents of the Plans" and "[u]nder the terms of the Plans" in setting up its scheme for delay. See Exhibit 4, at page 1.

7. On April 5, 2011, Claimant supplied the WMI General Counsel with a flash drive containing a confidential settlement communication protected under Federal Rule of Evidence ("FRE") 408.

8. Upon information and belief, Janie Palsha, one of the six WMI employees given notice of termination on February 3, 2011 (see Martin Declaration ¶ 20), has had her employment extended by WMI. Upon information and belief, neither WMI nor the Plan

Administration Committee has contacted any of the other four employees terminated on February 3, 2011, regarding their potential benefit claims under the Plans.

9. On August 30, 2010, Mr. Mark Spittell of Alvarez & Marsal requested that I meet with him and Mr. Doug Friesen of Alvarez & Marsal on August 31, 2010 to discuss my proof of claim for pre-petition amounts due under the SERAP which I filed on or about March 30, 2009 with this Court, which claim was assigned claim number 2522 (a copy of the proof of claim is attached as Exhibit 9 to the Martin Declaration) (the "SERAP POC"). Mr. Spittell and Mr. Friesen were primarily tasked with reviewing and evaluating employee claims filed with this Court. Mr. Spittell and Mr. Friesen wanted to know my justification for filing a claim for an unvested portion of SERAP. Mr. Spittell and Mr. Friesen requested that I withdraw the SERAP POC. I did not have a copy of the SERAP and requested a complete copy from Mr. Spittell. Shortly thereafter, Mr. Spittell gave me a copy of the Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (Amended and Restated) effective as of January 1, 2004 (the "2004 SERAP Document"). Mr. Spittell did not provide a copy of the 2008 Amendment to the Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (Amended and Restated Effective January 1, 2004)(409A Amendment), a copy of which is attached to the Martin Declaration as Exhibit 5 (the "2008 SERAP Amendment"). I was not aware of the existence of the 2008 SERAP Amendment until it was delivered to me by the WMI General Counsel on or about April 14, 2011.

10. I promptly reviewed the 2004 SERAP Document. On or about September 2, 2010, I met with Mr. Spittell to discuss the SERAP POC. At that time I asked if there had been any amendments to the 2004 SERAP Document or whether the 2004 SERAP Document had been terminated. Mr. Spittell stated that he had given me complete plan

documents. I told Mr. Spittell at that time that in the absence of any amendments or termination of the 2004 SERAP Document, the plan was in force and I should be entitled to additional vesting and additional benefit accruals. Mr. Spittell said that he would follow-up on the matter, but he never reported back to me. Shortly thereafter, I raised this matter with the WMI General Counsel. I said that I believed the SERAP was still in existence and I thought that other plans including the SERP and the Washington Mutual, Inc. Executive Target Retirement Income Plan might also be in existence. The WMI General Counsel told me that he would handle this matter going forward.

11. I did not hear back from the WMI General Counsel until February 3, 2011 when I received notice that my employment would be terminated and my position eliminated on April 30, 2011. A copy of the notice provided to me is attached to the Martin Declaration as Exhibit 12 (the "Termination Notice"). At that time, the WMI General Counsel said that he had almost convinced Mr. John Maciel, WMI's Chief Financial Officer and an employee of Alvarez & Marsal that the Debtors should not object to my SERAP POC. The WMI General Counsel stated that I should calculate how much I thought I was entitled to under the SERAP.

12. I began to review the Termination Notice but not in depth because the WMI General Counsel had left for two weeks of vacation. However, I was immediately troubled by the overly broad language of the release contained in the Termination Notice. The release included,

> "without limitation, claims of wrongful termination or constructive discharge, claims arising out of agreements, representations or policies related to your employment, claims arising under federal, state or local laws or ordinances prohibiting discrimination or harassment or requiring accommodation on the basis

of age, race, color, national origin, religion, sex, disability, marital status, sexual orientation or any other status, claims of failure to accommodate a disability or religious practice, claims for violation of public policy, claims of retaliation, claims for wages or compensation of any kind (including overtime claims), claims of tortious interference with contract or expectancy, claims of fraud or negligent misrepresentation, claims of breach of privacy, defamation claims, claims of intentional or negligent infliction of emotional distress, claims of unfair labor practices, claims for attorneys' fees or costs, and any other claims that are based on any legal obligations that arise out of or are related to your employment relationship with us."

See Exhibit 12 to Martin Declaration at page 2. I thought it was against public policy to release fraud. The Termination Notice further provided an acknowledgement that I was "releasing potentially unknown claims, and that [I] may have limited knowledge with respect to some of the claims being released." See Id., at page 2. The Termination Notice provided that I would assume "all other risks of any mistake in entering into" the Termination Notice. See Id. The Termination Notice warned that I should consult with an attorney before signing the agreement and that by signing the agreement I would acknowledge that I had an adequate opportunity to do so. See Id.

13. In light of the WMI General Counsel's statement about the SERAP, I began to contemplate what other claims I might have against WMI because of the overreaching nature of the release language and the warning to consult an attorney. It was at that time that I began on my week-ends to research the possibility of a claim under the SERP and the WaMu Severance Plan. I concluded based upon my research that I had valid claims against WMI under

the WaMu Severance Plan, the SERP and the SERAP. On or about April 5, I informed the WMI General Counsel of my belief that I was entitled to payment under the WaMu Severance Plan, the SERP and the SERAP.

14. It is true that I did not file a proof of claim against the estate before the Bar Date for the pre-petition amount of SERP. On January 31, 2009, I assigned my pre-petition SERP claim to JPMorgan Chase Bank, N.A. ("Chase") pursuant to Assignment Agreement by and between Colleen Martin and JPMorgan Chase Bank, N.A. See ¶ 15 of the Martin Declaration, Exhibit 7 to Martin Declaration. I only assigned my pre-petition claim for SERP to Chase and not any post-petition claim for SERP that arose from my employment by WMI after the petition date.

15. It is true that I did not file a proof of claim against the estate before the Bar Date for severance under the WaMu Severance Plan. However, the WaMu Severance Plan was not distributed to employees of WMI and its affiliates before the petition date. Instead, I believe it was available on WMI's internal website, www.wamu.net. I do not remember searching wamu.net after the petition date for the WaMu Severance Plan and it is quite possible that Chase removed the WaMu Severance Plan from www.wamu.net after the seizure. It is also true that I never received notice from WMI that I was a participant under the WaMu Severance Plan and may therefore have a claim against the estate pursuant to such plan. In contrast, by letter dated March 11, 2009 (a copy of which is attached to the Martin Declaration as Exhibit 8) (the "SERP Notice"), WMI notified me that I was a participant in the Washington Mutual, Inc. Supplemental Employees' Retirement Plan. The SERP Notice states that if I were a participant in another nonqualified plan sponsored by WMI, I would receive information regarding that plan under separate cover. See Exhibit 8 to Martin Declaration, at page 1. If I had received such a

notice with respect to the WaMu Severance Plan, I believe that I certainly would have filed a proof of claim for such amounts.

16. In the Objection, WMI asserts that I was an insider because I took the lead role in negotiating the terms of WMI's settlement with Chase regarding the transfer of intellectual property to Chase. This assertion is false. The negotiation of the terms for transfer of the intellectual property were handled by Jon Goulding WMI's Treasurer and an employee of Alvarez & Marsal. On March 19, 2010, the WMI General Counsel sent an email to Stacey Friedman of Sullivan & Cromwell (Chase's outside counsel) acknowledging that Ms. Friedman had had discussions with Mr. Goulding about the Intellectual Property and asking her to include me in discussions going forward so that I could react to any legal positions. The negotiation of the transfer of intellectual property was handled by Mr. Kosturos, WMI's Chief Restructuring Officer and employee of Alvarez & Marsal, and Mr. Goulding. I acted as a mere scrivener in reviewing and suggesting edits to the pertinent sections of the Settlement Agreement pertaining to the transfer of the Intellectual Property.

17. In the Objection, WMI asserts that I was given wide latitude and discretion to make decisions on vendor claims and intellectual property matters, but such was not the case. I was not permitted to speak to the counsel for the Creditors' Committee without the presence of an attorney from Weil, Gotshal & Manges. I was not permitted to speak to the financial advisors to the Creditors' Committee without the presence of a representative from Alvarez & Marsal. In many instances, I was not permitted to speak to Vendor's counsel without the presence of an attorney from Weil, Gotshal & Manges and in several instances I was excluded from such calls.

18. In several places in the Objection, WMI asserts that I was the WMI employee responsible for dealing with employee claims. This assertion is false. In early 2010, I was involved with identifying and interviewing potential witnesses for WMI with respect to Change in Control Agreements and Retention Arrangements. Although I think it was the WMI General Counsel's intention that I be responsible for dealing with employee claim, such intention was never fulfilled. On several occasions, I told the WMI General Counsel that I was repeatedly excluded from meetings and emails pertaining to employee claims. This pattern and practice was particularly evident after Alvarez & Marsal and Weil, Gotshal & Manges decided in July 2010 that the Employee Adversarial Hearing be held after Plan Confirmation.

19. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 2, 2011

Colleen M. Martin

EXHIBITS

Exhibit 1: Rosen Letter of May 20

767 Fifth Avenue
New York, NY 10153-0119
+1 212 310 8000 tel
+1 212 310 8007 fax

Weil, Gotshal & Manges LLP

Brian S. Rosen, Esq.
+1 212 310 8602
brian.rosen@weil.com

May 20, 2011

Colleen M. Martin, Esq.
3257 N.W. 60th Street
Seattle, WA 98107

Re: Washington Mutual, Inc. ("WMI")

Dear Ms. Martin:

Reference is hereby made to your motion, dated May 17, 2011 (the "Motion"), for allowance and payment of an administrative expense claim and a notice of motion (the "Notice") filed in connection therewith. This letter is being sent directly to you as no retained counsel is reflected on either the Motion or the Notice. However, a copy of this letter is being provided to counsel previously mentioned as representing you in this matter. If they are no longer providing services to you, please let us know and we will refrain from copying them on future correspondence or the service of pleadings.

Pursuant to the Notice, you indicate that a hearing to consider the relief requested in the Motion will be held on June 8, 2011, at 9:30 a.m. and that responses/objections to such relief must be filed by June 1, 2011 at 4:00 p.m. Although this letter addresses the timing set forth in the Notice, WMI reserves its rights to assert that you have failed to exhaust available remedies and that any and all matters associated with the relief requested in the Motion must be addressed in an alternative forum in accordance with the terms and provisions of the plans governing the claims being asserted.

Please be advised that it is WMI's intention to interpose an objection to the relief requested, thereby creating a contested matter in accordance with Rule 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). Additionally, it is WMI's intention to serve discovery requests, at a minimum, in accordance with Bankruptcy Rules 7030 and 7034. Unless otherwise ordered by the Court or agreed to by the parties, the date for you to respond to such document request shall be thirty (30) days from the service of such request, with the deposition to be taken thereafter. Accordingly, in order for such discovery requests to be satisfied, it will be necessary for the proposed hearing to be rescheduled.

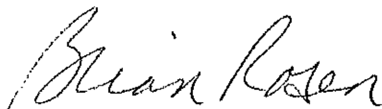
Additionally, we have been informed that the Bankruptcy Court has limited time available to consider the matters scheduled for the June 8, 2011 Omnibus Hearing and, according to our local counsel, the Court has already adjourned certain WMI matters to a later date.

Based upon the foregoing, WMI suggests that the parties agree to adjourn the hearing to consider the Motion to July 13, 2011 at 10:30 a.m. In doing so, however, WMI does not propose to adjourn its response date from that set forth in the Notice.

Please advise me by no later than 12:00 p.m. on May 23, 2011 whether the foregoing is acceptable. If not, we will ask the Bankruptcy Court to conduct a status conference during the Omnibus Hearing to be held the following day.

I look forward to hearing from you.

Very truly yours,



Brian S. Rosen

cc: Charles E. Smith, Esq.
Nancy Williams, Esq.
Kurt Linsenmayer, Esq.
Kevin Hamilton, Esq.
Shea Wilson, Esq.
Spencer Hall, Esq.

Exhibit 2: Jang Letter of May 23

PRF 40272-1

RICHARDS LAYTON & FINGER

Chun I. Jang, Esq.
302-651-7514
jang@rlf.com

May 23, 2011

VIA OVERNIGHT COURIER AND E-MAIL TO PREVIOUSLY RETAINED COUNSEL

Colleen M. Martin, Esq.
3257 N.W. 60th Street
Seattle, WA 98107

Re: Washington Mutual, Inc. ("WMI")

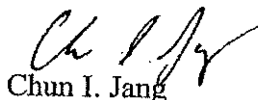
Dear Ms. Martin:

This letter is a follow-up Brian Rosen's letter sent to you on May 20, 2011 via email and first class mail. As indicated in Mr. Rosen's letter, the proposed hearing date for your motion, dated May 17, 2011 (the "Motion") does not provide sufficient time to conduct discovery in accordance with the Federal Rules of Bankruptcy Procedure. In addition, a hearing on the Motion will require more time than allotted to WMI by the Court for the omnibus hearing on June 8, 2011 at 9:30 a.m. Thus, it is necessary that we adjourn the hearing on your motion to a later date.

We propose adjourning the hearing on the Motion to the omnibus hearing on July 13, 2011 at 10:30 a.m., or to another mutually agreeable date. Of course, any date (including July 13th) would be subject to the Court's availability. Hopefully, in response to Mr. Rosen's letter, you arranged to participate in tomorrow's omnibus hearing calendar. If so, we will raise this with the Court at time. If not, we propose that we place a joint call to the Court's chambers tomorrow afternoon regarding scheduling. If you are not available tomorrow, please contact me regarding a time that would work for a call on Wednesday, May 25, 2011. If we do not hear from you by 5:00 p.m. (Eastern) on Tuesday, we will contact the Court and ask for it to unilaterally reschedule the hearing on your Motion to the July 13th omnibus hearing or another date acceptable to the Court.

I look forward to hearing from you.

Sincerely,



Chun I. Jang

cc: Brian S. Rosen, Esq., Charles E. Smith, Esq., Nancy Williams, Esq.,
Kurt Linsenmayer, Esq. Kevin Hamilton, Esq., Shea Wilson, Esq., Spenser Hall, Esq.

Exhibit 3: Claimant's Letter of May 23

Colleen M. Martin
3257 NW 60th Street
Seattle, Washington 98107

VIA E-MAIL PDF ATTACHMENT

May 23, 2011

Mr. Brian S. Rosen
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153-0119

Re: Washington Mutual, Inc. ("WMI"); Your Letter of May 20, 2011 ("May 20 Letter") and Chun I. Jang Letter of May 23, 2011 ("May 23 Letter")

Dear Mr. Rosen:

Thank you for your May 20 Letter. Please also convey thanks to Mr. Jang for his May 23 Letter.

As we have not received WMI's objection, I find it difficult to agree to any of the items proposed in your May 20 Letter or Mr. Jang's May 23 Letter. Accordingly, we will await WMI's objection before considering any of the matters discussed in the Letters. For the avoidance of doubt, neither you, Mr. Jang, nor any of your partners, associates, colleagues or confederates are authorized in any way to speak on my behalf to the Court at tomorrow's Omnibus Hearing or any informal status conference you may seek to arrange. We would appreciate proper notice of any future hearing or conference, as we believe we accorded WMI with my motion.

Please continue to copy Mr. Hall and Mr. Wilson on any communications.

If you would be so kind as to provide a list of persons who should receive copies of future correspondence and their contact information, we would appreciate it.

Very truly yours,

Colleen M. Martin

cc: Spencer Hall
Kevin Hamilton
Chun Jang
Kurt Linsenmayer
Charles Smith
Nancy Williams
Shea Wilson

Exhibit 4: PAC Letter of May 27

Washington Mutual, Inc.

925 Fourth Avenue, Suite 2500
Seattle, WA 98104

May 27, 2011

Via Electronic Mail (PDF) & Certified U.S. Postal Service

Ms. Colleen M. Martin
3257 N.W. 60th Street
Seattle, Washington 98107

Re: Claim for Benefits under Washington Mutual, Inc. Benefit Plans

Dear Ms. Martin:

This letter is sent on behalf of the Washington Mutual, Inc. Plan Administration Committee (the "Committee"). We are in receipt of your letter, dated April 25, 2011, and the 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, 2011 (the "Motion"), in which you assert a claim for benefits under the following employee benefit plans of Washington Mutual, Inc. ("WMI"): (1) Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (Amended and Restated) Effective January 1, 2004 (as further amended effective December 31, 2008, the "SERAP"), (2) Washington Mutual, Inc. Supplemental Employees' Retirement Plan, Amended and Restated Effective July 20, 2004 (as further amended effective December 31, 2008, the "SERP") and (3) WaMu Severance Plan, Amended and Restated Effective January 1, 2008 (as further amended effective September 25, 2008, the "Severance Plan", and collectively with the SERAP and SERP, the "Plans").

In accordance with the governing documents of the Plans, your letter and the Motion are considered claims for benefits under the Plans and applicable law, and such claims are deemed made as of April 25, 2011. Under the terms of the Plans, you will be provided with a written notice as to the status or determination on each such claim within sixty (60) days of April 25, 2011. That notice will include further information about your rights, including to the extent provided in the Plans' claims procedures.

If you have questions in the meantime, you may contact me at my office address on this letter.

Sincerely,

Washington Mutual, Inc.
Solely in its capacity as sponsor of the
Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan
Washington Mutual, Inc. Supplemental Employees' Retirement Plan
WaMu Severance Plan

By:

Charles Edward Smith
Member, Plan Administration Committee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of *Reply of Colleen M. Martin to Debtors' Objection to Motion 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* (the "Reply") was served upon the individuals set forth below via overnight courier for delivery on June 3, 2011:

Debtors
Washington Mutual, Inc.
925 Fourth Avenue, Suite 2500
Seattle, Washington 98104
Attn: Charles Edward Smith, Esq.

Counsel to the Debtors
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attn: Brian S. Rosen, Esq.

Co-Counsel to the Debtors
Richards Layton & Finger P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19899
Attn: Mark D. Collins, Esq.

The undersigned hereby certifies that a copy of the Reply was served via United States mail, first class, postage pre-paid (placed in the mail on June 2, 2011) upon the individuals set forth below:

Special Litigation and Conflicts Counsel to the Debtors
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
Attn: Peter Calamari, Esq.

Office of the U.S. Trustee
Office of the U.S. Trustee for the D. Del.
844 King Street, Suite 2207, Lockbox 35
Wilmington, Delaware 19899-0035
Attn: Joseph McMahon, Esq.

Counsel to the Equity Committee
Susman Godfrey LLP
1201 Third Avenue, Suite 3800
Seattle, Washington 98101
Attn: Justin A. Nelson, Esq.

Co-Counsel to the Equity Committee
Ashby & Geddes, P.A.
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, Delaware 19899
Attn: William P. Bowden, Esq.

Counsel to the Creditors' Committee
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park,
New York, New York 10036
Attn: Fred S. Hodara, Esq.

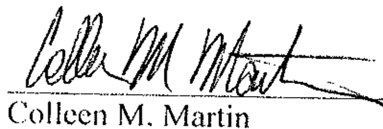
Co-Counsel to the Creditors' Committee
Pepper Hamilton LLP
Hercules Plaza, Suite 5100
1313 N. Market Street
Wilmington, Delaware 19801
Attn: David B. Stratton, Esq.

Counsel to JPMorgan Chase
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attn: Stacey R. Friedman, Esq.

Co-Counsel to JPMorgan Chase
Landis Rath & Cobb LLP
919 Market Street, Suite 1800
P.O. Box 2087
Wilmington, DE 19899
Attn: Adam G. Landis, Esq.

Counsel to FDIC
DLA Piper LLP (US)
1251 Avenue of the Americas
New York, New York 10020
Attn: Thomas R. Califano, Esq.

Co-Counsel to FDIC
Young Conaway Stargatt & Taylor, LLP
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19801
Attn: M. Blake Cleary, Esq.



Colleen M. Martin

Exhibit B

Colleen M. Martin
3257 NW 60th Street
Seattle, Washington 98107

VIA E-MAIL PDF ATTACHMENT

June 3, 2011

Mr. Brian S. Rosen
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153-0119

Re: Washington Mutual, Inc. ("WMI"): *Motion of Colleen M. Martin for Allowance and Payment of Administrative Expense Claim Under U.S.C. § 503(b)(1) and Allowance of an Allowed General Unsecured Claim*, dated May 17, 2011(the "Motion")

Dear Mr. Rosen:

Thank you for your letter dated June 3, 2011.

The Motion is scheduled to be heard at the June 8, 2011 Omnibus Hearing. I decline to reschedule the hearing of the Motion. I also oppose any request for continuance of the hearing of the Motion.

Very truly yours,

Colleen M. Martin

cc: Spencer Hall
Kevin Hamilton
Chun Jang
Kurt Linsenmayer
Charles Smith
Nancy Williams
Shea Wilson

Exhibit C

RICHARDS LAYTON & FINGER

Chun I. Jang, Esq.
302-651-7514
jang@rlf.com

June 3, 2011

VIA E-MAIL

Colleen M. Martin, Esq.
3257 N.W. 60th Street
Seattle, WA 98107

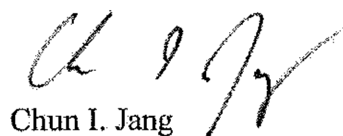
Re: Washington Mutual, Inc. ("WMI")

Dear Ms. Martin:

I write in response to your June 3rd letter to Brian Rosen whereby you refused to reschedule the hearing on your motion, dated May 17, 2011 (the "Motion"), despite the fact that WMI has objected to your Motion and has served you with discovery requests and a notice of deposition in accordance with the Federal Rules of Bankruptcy Procedure.

Please be advised that I will be contacting chambers to inform the Court that, despite our numerous requests, you have refused to consensually reschedule the hearing to allow discovery to proceed. As such, I will be asking the Court to conduct an emergency telephonic scheduling conference to set an appropriate schedule with respect to your Motion. I will inform you of the timing of such conference when I hear from the Court.

Sincerely,



Chun I. Jang

cc: Brian S. Rosen, Esq., Charles E. Smith, Esq., Nancy Williams, Esq., Kurt Linsenmayer, Esq. Kevin Hamilton, Esq., Shea Wilson, Esq., Spenser Hall, Esq.

Exhibit D

Colleen M. Martin
3257 NW 60th Street
Seattle, Washington 98107

<u>VIA E-MAIL PDF ATTACHMENT</u>

June 5, 2011

Mr. Chun I. Jang
Richards Layton & Finger P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19899

Re: Washington Mutual, Inc. ("WMI"); *Motion of Colleen M. Martin for Allowance and Payment of Administrative Expense Claim Under U.S.C. § 503(b)(1) and Allowance of an Allowed General Unsecured Claim*, dated May 17, 2011

Dear Mr. Jang:

Thank you for your letter dated June 3, 2011.

Please be advised that I will be travelling to New York tomorrow and I will be travelling to Wilmington on Tuesday afternoon. Although I do not think you are entitled to convene an emergency telephonic scheduling conference, my only available time will be between 10:00 and 11:00 a.m. EDT on Tuesday. Please be advised that I do not have a cell phone or other wireless device and I will have limited access to email.

Very truly yours,

Colleen M. Martin

cc: Spencer Hall
Kevin Hamilton
Chun Jang
Kurt Linsenmayer
Charles Smith
Nancy Williams
Shea Wilson