

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

WASHINGTON MUTUAL, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 08-12229 (MFW)
Jointly Administered

Re: D.I. _____

**MOTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS FOR
AUTHORIZATION TO SEAL ITS MOTION FOR AN ORDER COMPELLING
AURELIUS CAPITAL MANAGEMENT L.P. TO PRODUCE DOCUMENTS**

The Official Committee of Equity Security Holders (“Equity Committee”) of Washington Mutual Inc. (“WMI” and, together with its chapter 11 debtor-affiliate, WMI Investment Corp., the “Debtors”), respectfully submits this motion (the “Motion to Seal”), pursuant to section 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), seeking entry of an Order authorizing it to file under seal its *Motion for an Order Compelling Aurelius Capital Management L.P. to Produce Documents*, (the “Motion to Compel”), a copy of which is attached hereto as Exhibit A [*Under Seal*]. In support of the Motion to Seal, the Equity Committee respectfully represents as follows:

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



JURISDICTION

1. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core bankruptcy proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code section 107(b), Bankruptcy Rule 9018, and Local Rule 9018-1(b).

RELIEF REQUESTED

3. The Motion to Compel includes numerous references to documents, deposition testimony, and pleadings and attaches four exhibits which have been designated as confidential by the parties in this case, the use of which is governed by a confidentiality agreement.

4. Accordingly, the Equity Committee files this Motion to Seal requesting that the Court grant it permission to file the Motion to Compel under seal.

BASIS FOR RELIEF REQUESTED

5. Section 107(b) of the Bankruptcy Code provides this Court with the authority to issue orders that will protect entities from potential harm that may result from the disclosure of certain information. The section provides, in relevant part:

- (b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may –
 - (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information....

11 U.S.C. § 107(b). Rule 9018 of the Bankruptcy Rules sets forth the procedures by which a party may move for relief under section 107(b), providing that “[o]n motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to

protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information....” Fed. R. Bankr. P. 9018. Local Rule 9018-1(b) additionally provides, in relevant part, that “[a]ny party who seeks to file documents under seal must file a motion to that effect.” Del. Bankr. L.R. 9018-1(b).

6. On September 26, 2008, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

7. In connection with the litigation of contested matters in this case, including plan confirmation issues, the Equity Committee has participated in and received discovery from other constituencies in these cases. This includes the discovery authorized under the Court’s *Order Granting in Part the Equity Committee’s Motion for Rule 2004 Examination of the Washington Mutual, Inc. Settlement Note Holders Group* (the “Rule 2004 Order”) (D.I. 6725).

8. Following the entry of the Rule 2004 Order on February 11, 2011, the Settlement Note Holder Parties, the Equity Committee, the Official Committee of Unsecured Creditors (the “Creditors’ Committee”), and the Debtors entered into a confidentiality agreement (the “Confidentiality Agreement”) governing the production, exchange, and use of all Discovery Materials (as defined therein) produced in connection with that order. Paragraph 2(c) of the Confidentiality Agreement obligates any party filing a pleading that includes information designated as confidential under the Confidentiality Agreement to file that pleading under seal. Aurelius is a party to the Confidentiality Agreement and has required that all of the exhibits attached to the Motion to Compel (and the excerpts of the exhibits contained in the Motion) be

maintained as confidential. Accordingly, the Equity Committee is obligated by the terms of the Confidentiality Agreement to file the Motion to Compel under seal.

9. As set forth above, the Motion to Compel includes excerpts and exhibits designated as confidential by the parties to this case. Accordingly, the Equity Committee respectfully requests the entry of an order permitting it to file the Motion to Compel under seal. Notwithstanding the filing of this motion, the Equity Committee reserves its right to challenge the designation of any material as confidential pursuant to the provisions of the Confidentiality Agreement.

NOTICE

10. Notice of this Motion to Seal will be served on all counsel entitled to notice in the above-referenced cases. In light of the nature of the relief requested, the Equity Committee submits that no further or other notice is required.

NO PRIOR REQUEST

11. No prior motion for relief requested herein has been made to this or any other Court.

CONCLUSION

WHEREFORE, the Equity Committee respectfully requests the Court enter an Order substantially in the form attached hereto as “Exhibit B” granting the Equity Committee authority to file its Motion to Compel under seal, and granting such other and further relief as the Court may deem just and proper.

Date: June 15, 2011
Wilmington, Delaware

SULLIVAN • HAZELTINE • ALLINSON LLC

/s/ William D. Sullivan

William D. Sullivan (Del. Bar No. 2820)
Elihu E. Allinson, III (Del. Bar No. 3476)
901 N. Market St., Suite 1300

Wilmington, DE 19801
Telephone: (302) 428-8191
Facsimile: (302) 428-4195
Email: bsullivan@sha-llc.com
Email: zallinson@sha-llc.com

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

-and-

SUSMAN GODFREY, L.L.P.

Stephen D. Susman (NY Bar No. 3041712)

Seth D. Ard (NY Bar No. 4773982)

654 Madison Avenue, 5th Floor

New York, NY 10065

E-mail:

ssusman@susmangodfrey.com

sard@susmangodfrey.com

Parker C. Folse, III (WA Bar No. 24895)

Edgar Sargent (WA Bar No. 28283)

Justin A. Nelson (WA Bar No. 31864)

1201 Third Ave., Suite 3800

Seattle, WA 98101

Telephone: (206) 516-3880

Facsimile: (206) 516-3883

E-mail:

pfolse@susmangodfrey.com

esargent@susmangodfrey.com

jnelson@susmangodfrey.com

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

Exhibit A

Motion to Compel

[Filed under Seal]

EXHIBIT B

[Proposed Order Granting Motion to Seal]

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

WASHINGTON MUTUAL, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 08-12229 (MFW)
Jointly Administered

Re: D.I. _____

**[PROPOSED] ORDER APPROVING MOTION OF THE OFFICIAL COMMITTEE OF
EQUITY SECURITY HOLDERS FOR AUTHORIZATION TO SEAL MOTION FOR AN
ORDER COMPELLING AURELIUS CAPITAL MANAGEMENT L.P. TO PRODUCE
DOCUMENTS**

Upon consideration of the *Motion of the Official Committee of Equity Security Holders for Authorization to Seal Motion for an Order Compelling Aurelius Capital Management L.P. to Produce Documents* (the “Motion to Seal”); and the Court having reviewed all pleadings related thereto; and the Court having determined that there exists just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion to Seal is GRANTED; and
2. The Equity Committee is hereby granted permission to file under seal its *Motion for an Order Compelling Aurelius Capital Management L.P. to Produce Documents*, pursuant to Bankruptcy Code section 107(b), Federal Rule 9018, and Local Rule 9018-1(b).

Dated: June _____, 2011

The Honorable Mary F. Walrath
United States Bankruptcy Judge

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