IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: WASHINGTON MUTUAL, INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 08-12229 (MFW) Jointly Administered **Re: Dkt. Nos. 7906, 7911**

AURELIUS CAPITAL MANAGEMENT, LP'S OBJECTION TO MOTION TO SHORTEN NOTICE AND SCHEDULE HEARING ON MOTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS FOR AN ORDER COMPELLING AURELIUS CAPITAL MANAGEMENT, LP TO PRODUCE DOCUMENTS

Aurelius Capital Management, LP ("Aurelius"), on behalf of certain of its respective managed entities that are creditors of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), by and through its undersigned counsel, hereby submits this objection to the motion (the "Motion to Shorten") of the Official Committee of Equity Security Holders (the "Equity Committee"), filed on June 16, 2011, for an order shortening notice of, and scheduling an emergency hearing on, the Motion of the Official Committee of Equity Securities Holders for an Order Compelling Aurelius Capital Management L.P. to Produce Documents (the "Motion to Compel"), and in support thereof respectfully states as follows:

PRELIMINARY STATEMENT

1. This Court's confirmation ruling last January briefly mentioned one investor's baseless and unsubstantiated allegations regarding the "Settlement Noteholders"[2] – allegations for which not a shred of evidence was admitted in the confirmation hearing. In

[1] The Debtors are (i) Washington Mutual, Inc. and (ii) Washington Mutual Investment Corp.

[2] The Settlement Noteholders consisted of Aurelius, Appaloosa Management, L.P. ("Appaloosa"), Centerbridge Partners, L.P. ("Centerbridge") and Owl Creek Asset Management, L.P. ("Owl Creek").

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response, the Equity Committee – which had theretofore shown no interest in those allegations – has embarked on what is, plain and simple, a shakedown operation. Aurelius prizes its integrity and reputation. It will not allow its reputation to be so sullied, it will never settle to appease such abhorrent tactics, and it has never supported the settlement with the Equity Committee recently under discussion.

2. By May 4, Aurelius provided the Equity Committee all discovery ordered by this Court, including (among other things) its trading records pertaining to the Debtors' securities, thousands of pages of documents, and a full day deposition. On May 24, the Debtors' counsel announced in open court that "as far as we know and based upon everything that we have seen so far and set forth in the term sheet, it is our understanding, the debtors, that the equity committee's investigation has not established any activity that Appaloosa, Aurelius, Centerbridge or Owl Creek traded in the securities of the debtors while in possession of non-public information, or otherwise engaged in improper conduct, or in any way delayed these proceedings."[3] Both of the Equity Committee's counsel appeared and were heard at that hearing, and neither of them expressed any disagreement with this statement.

3. Nonetheless, six weeks after Aurelius fulfilled its discovery obligations, the Equity Committee has filed a Motion to Compel seeking from Aurelius a vast new round of discovery in this malicious witch hunt. To add insult to injury, the Equity Committee seeks to afford Aurelius an inadequate and unnecessarily compressed period within which to respond to the Motion to Compel. Before yet more unintended consequences befall these cases and beget shakedown attempts in others, Aurelius respectfully urges this Court to afford Aurelius until July 1 to respond to the Motion to Compel, in order to afford it a fair opportunity to address the

[3] *See* May 24, 2011 Hearing Transcript at 42-43 (the relevant portion of which is attached hereto as Exhibit A).

baseless allegations and insinuations contained in the Motion to Compel and to explain to the Court why no further discovery should be permitted.

FACTUAL BACKGROUND

4. In compliance with this Court's order and at huge cost, Aurelius produced thousands of pages of documents in February and March 2011 and later completed its document production in April, including, *inter alia*, records of its trades in the Debtors' securities and all information required to be produced by the Court. The Equity Committee did not then question or object to the scope of Aurelius's document production, or take issue with Aurelius's assertions of privilege or document redactions.

5. Weeks later, after completing a day-long deposition of Aurelius Managing Director Dan Gropper, the Equity Committee demanded extensive new discovery – broader even than the discovery requests originally presented to, and narrowed by, this Court. When counsel for the Equity Committee first surfaced this demand in early May, Aurelius responded that it viewed the new requests – and the allegations in the draft motion to compel – as unjustified and interposed in bad faith. Contrary to the Equity Committee's false statement that its original motion to compel was "not pursued . . . by agreement of the parties" (Motion to Shorten ¶ 8), Aurelius was a party to no agreement. Instead, the Equity Committee unilaterally chose not to file its motion because it was negotiating with certain *other* parties, and indeed pointedly *excluded* Aurelius from those negotiations. When the Equity Committee recently stated on the record that it intended to seek expedited discovery if settlement discussions failed, Aurelius informed counsel that it reserved the right to object to the expanded discovery on any and all grounds, including improper burden and the impossibility of complying with the new demands on the current confirmation schedule.

6. The Motion to Compel finally filed on June 16 is an expanded version of the draft shared with Aurelius in May and articulates, for the first time in this litigation, the Equity Committee's theory as to the particular information on which Aurelius supposedly traded improperly – a theory that relies on a gross distortion of both Mr. Gropper's testimony and Aurelius's legal obligations. Grasping for support for its baseless smears, the Equity Committee now seeks the potential production of tens of thousands of additional documents – essentially every communication concerning the Debtors' cases in Aurelius's files, plus, remarkably, thousands of documents received only by Aurelius's counsel and never transmitted to Aurelius. The Motion to Compel would multiply the millions of dollars in unfair expense and burden already placed upon Aurelius to date by this groundless shakedown operation and is calculated only to create an excuse to delay confirmation proceedings indefinitely until a ransom is extorted. The Court should not countenance such inappropriate conduct by a bankruptcy fiduciary.

ARGUMENT

7. The Motion to Compel ultimately should be denied on multiple grounds:

- It is little more than a *sub rosa* attempt to re-argue this Court's earlier decision limiting the scope of discovery on the trading issues;

- It raises issues (including the scope of Aurelius's production and privilege assertions) that the Equity Committee could and should have asserted promptly upon receiving Aurelius's production months ago, long before the recent settlement discussions were even entertained; and

- Finally, as Aurelius will explain more fully in its response, the Motion to Compel is based on the utterly false allegation that the investigation to date has uncovered

wrongdoing. Not only is this assertion belied by the Equity Committee's own willingness in May to certify to the contrary, but the documents produced and Mr. Gropper's deposition indeed confirm that Aurelius fully and meticulously complied with the law and did nothing wrong.

8. The Equity Committee's assertions of wrongdoing are completely baseless – but they are nevertheless serious allegations to level against a highly regarded investment fund manager that values its reputation for scrupulous legal and ethical conduct. Aurelius requires, and deserves, a fair opportunity for due process and the ability to explain to the Court why the Equity Committee has demonstrated no wrongdoing and has no reasonable, good faith need for further discovery.

9. Moreover, the Equity Committee is proceeding on June 23 and 24 with depositions of the other Settlement Noteholders and the Debtors, which it will no doubt follow up with similarly harassing document demands aimed at those parties. The Equity Committee's actions seem calculated to stretch out its "investigation" indefinitely, not just imposing massive unnecessary costs, but pressuring the Settlement Noteholders to pay an inappropriate settlement to avoid the harm of further sheer delay – a shakedown that should not be tolerated. Rather than dealing with these issues piecemeal, the Court should require the Equity Committee to complete its depositions and then come before the Court to address, comprehensively, its purported justification for any further discovery. The schedule recommended by Aurelius permits precisely such a result.

10. In any event, permitting Aurelius a fair opportunity to respond to the Motion to Compel will not itself delay these proceedings. The Equity Committee's suggestion (Motion to Shorten ¶ 9) that the vastly burdensome new discovery it seeks could be completed in one week is wholly unrealistic. Not only would this exercise create months of further delay, but

it would no doubt be followed by a demand for a renewed deposition – frivolous though that request would be. If anything resembling the current confirmation schedule is to be maintained, the Equity Committee's sideshow should be closed down. Aurelius requires a fair opportunity to explain why that is the appropriate result.

11. Aurelius understands that the confirmation hearing has now been adjourned to begin on July 13. If Aurelius's position is correct that no additional discovery is warranted, the Equity Committee will have an opportunity based on the significant discovery previously ordered by the Court to raise its objections to confirmation of the Sixth Amended Plan at that hearing and have those objections fairly considered.

CONCLUSION

For the reasons stated above, Aurelius respectfully requests that the Motion to Shorten be denied or, in the alternative, that Aurelius's time to answer the Motion to Compel be set no earlier than July 1, 2011, with a hearing the week of July 4.

Dated: Wilmington, Delaware
June 17, 2011

BLANK ROME LLP

/s/ Victoria Guilfoyle

Michael D. DeBaecke (No. 3186)
Victoria Guilfoyle (No. 5183)
1201 Market Street, Suite 800
Wilmington, Delaware 19801
Telephone: (302) 425-6400
Facsimile: (302) 425-6464
E-mail: Debaeke@BlankRome.com
Guilfoyle@BlankRome.com

-and-

Kenneth H. Eckstein (*pro hac vice* pending)
Thomas Moers Mayer
Jeffrey S. Trachtman
KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 Avenue of Americas
New York, New York 10036
Telephone: (212) 715-9100
Facsimile: (212) 715-8000
E-mail: keckstein@kramerlevin.com
tmayer@kramerlevin.com
jtrachtman@kramerlevin.com

Attorneys for Aurelius Capital Management, LP

EXHIBIT A

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Lead Case No. 08-12229(MFW);

Adv. Proc. Nos. 10-50911(MFW); 10-51297(MFW); 10-53420(MFW)

- -x

In the Matters of:

WASHINGTON MUTUAL, INC. et al.

debtors.

- -x

BROADBILL INVESTMENT CORP.

Plaintiff,

v.

WASHINGTON MUTUAL, INC.

Defendant.

- -x

MICHAEL WILLINGHAM and ESOPUS CREEK VALUE LP,

Plaintiffs,

v.

WASHINGTON MUTUAL, INC.

Defendant.

- -x

WASHINGTON MUTUAL, INC. and WMI INVESTMENT CORP.

Plaintiff,

v.

PETER J. and CANDANCE R. ZAK LIVING TRUST OF 2001 U/D/O AUGUST 31, 2001, et al.

Defendant.

- -x

United States Bankruptcy Court
824 North Market Street
Wilmington, Delaware

May 24, 2011
11:30 AM

B E F O R E:
HON. MARY F. WALRATH
U.S. BANKRUPTCY COURT, CHIEF JUDGE

ECR OPERATOR: BRANDON MCCARTHY

this deals falls apart, the equity committee reserves its right to continue to press its existing objections to the current plan. Hopefully, we won't get to that point, but obviously we need to reserve the right to do so. Your Honor, I'm happy to answer any questions about this that Your Honor might have. I know this has been a very high level description of the proposal to Your Honor.

THE COURT: No, I'll wait and see the amendments -- or seventh modified plan if that's what we think we're going to go to.

MR. BOWDEN: Okay. Mr. Ard, do you have anything to add to what I've --

MR. ARD: No, thank you.

THE COURT: All right.

MR. BOWDEN: Thank you, Your Honor.

THE COURT: Thank you.

MR. ROSEN: Your Honor, Brian Rosen. I just want to clarify one thing, Your Honor. Your Honor, I did talk very briefly about this: the documentation or the investigation that was being done by the equity committee among others, and the documentation that they have received. And Your Honor, as far as we know and based upon everything that we have seen so far and set forth in the term sheet, it is our understanding, the debtors, that the equity committee's investigation has not established any activity that Appaloosa, Aurelius Centerbridge,

or Owl Creek traded in the securities of the debtors while in possession of non-public information, or otherwise engaged in improper conduct, or in any way delayed these proceedings. Obviously, this is something that is going to be the subject of the further documentation among the parties, and will be included in the -- what we file with the Court in 7 to 10 days.

THE COURT: Okay.

MR. CURCHACK: Good afternoon, Your Honor, Walter Curchak of Loeb & Loeb on behalf of Wells Fargo Bank, the indentured Trustee for the peers. Your Honor, first I largely rise to endorse Mr. Hodara's comments. The indenture Trustee certainly believes a consensual resolution is always the preferable result of a contested matter like this, but I must advise the Court of two considerations which are weighing heavily on the peers' Trustee. First is that the recovery that rightfully would have belonged to the peers creditors is not being lost, and in that connection we intend to study the proposed settlement carefully to ensure that that issue has been addressed. It is our belief that that has been the intention of the parties to the settlement. The second issue, though, Your Honor is really more directly addressed to yourself, and that is the concern that the peers do not suffer depreciation of their claims by the further delay in these proceedings, and as to that Your Honor we would simply urge you to assist with the parties to the extent possible and

CERTIFICATE OF SERVICE

I, Victoria Guilfoyle, hereby certify that on June 17, 2011, I caused a copy of the following document to be served upon the parties listed on the attached service list in the manner indicated.

AURELIUS CAPITAL MANAGEMENT, LP'S OBJECTION TO MOTION TO SHORTEN NOTICE AND SCHEDULE HEARING ON MOTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS FOR AN ORDER COMPELLING AURELIUS CAPITAL MANAGEMENT, LP TO PRODUCE DOCUMENTS

Dated: June 17, 2011

/s/ Victoria Guilfoyle
Victoria Guilfoyle (DE No. 5183)

Service List

Via Electronic Mail, Hand Delivery (local) and First Class Mail (non-local)

William P. Bowden, Esquire
Gregory A. Taylor, Esquire
Ashby & Geddes, P. A.
500 Delaware Ave., 8th Floor
P.O. Box 1150
Wilmington, DE 19899
wbowden@ashby-geddes.com
gtaylor@ashby-geddes.com

Mark D. Collins, Esquire
Chun I. Jang, Esquire
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
collins@rlf.com
jang@rlf.com

Stephen D. Susman, Esquire
Seth D. Ard, Esquire
Susman Godfrey, L.L.P.
654 Madison Avenue, 5th Floor
New York, NY 10065
ssusman@susmangodfrey.com
sard@susmangodfrey.com

David B. Stratton, Esquire
Pepper Hamilton LLP
Hercules Plaza Ste. 5100
1313 N. Market Street
Wilmington, DE 19801
strattond@pepperlaw.com

William D. Sullivan, Esquire
Elihu E. Allinson, III, Esquire
Sullivan Hazeltine Allinson LLC
901 North Market Street, Suite 1300
Wilmington, DE 19801
bsullivan@sha-llc.com
zallinson@sha-llc.com

Parker C. Folse, III, Esquire
Edgar Sargent, Esquire
Justin A. Nelson, Esquire
Susman Godfrey, L.L.P.
1201 Third Ave., Suite 3800
Seattle, WA 98101
pfolse@susmangodfrey.com
esargent@susmangodfrey.com
jnelson@susmangodfrey.com

Brian S. Rosen, Esquire
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
brian.rosen@weil.com

Robert A. Johnson, Esquire
Fred S. Hodara, Esquire
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
fhodara@akingump.com
rajohnson@akingump.com