

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC, <u>et al.</u> , <sup>1</sup>	:	Case No. 08-12229 (MFW)
	:	Jointly Administered
Debtors.	:	
	:	<b>Requested Hearing Date: TBD</b>
	:	<b>Requested Obj. Deadline: TBD</b>
	:	<b>Related Docket No. 6020, 6567, 6725, 7480, 7482</b>

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**MOTION TO COMPEL OWL CREEK ASSET MANAGEMENT, L.P.,  
APPALOOSA MANAGEMENT, L.P., CENTERBRIDGE PARTNERS, LP,  
AND AURELIUS CAPITAL MANAGEMENT LP TO PRODUCE DOCUMENTS**

Whitebox Advisors, Scoggin Capital Management, VR Global Partners, L.P., The Visium Funds, Black Horse Capital, Paige Capital Management LLC, Lonestar Capital Management, LLC, Greywolf Capital Management LP, and 683 Capital Management, LLC (collectively, “the Trust Preferred Holders”), by and through their undersigned counsel, hereby move, (i) pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Bankruptcy Rule 2004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), or, alternatively, Rules 26 and 34 of the Federal Rules of Civil Procedure and Rules 7026 and 7034 of the Bankruptcy Rules, for an order compelling Owl Creek Asset Management, L.P. (“Owl Creek”), Appaloosa Management, L.P. (“Appaloosa”), Centerbridge Partners, LP (“Centerbridge”), and Aurelius Capital Management LP (“Aurelius” and, together with Owl Creek, Appaloosa and Centerbridge, the “Settlement Noteholders”) to produce discovery (the “Motion to Compel”). In support thereof, the Trust Preferred Holders respectfully represent as follows:

<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



## **JURISDICTION AND VENUE**

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

## **BACKGROUND**

2. On October 6, 2010, Debtors WMI and WMI Investment Corp. filed their Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code, and thereafter filed modifications to the Plan on October 29 and November 24, 2010 (the “Plan”). The Court held a four-day hearing to consider the confirmation of the Plan in December 2010.

3. During the hearing, one objector, Mr. Nate Thoma, alleged that the Settlement Noteholders traded the Debtors’ securities while in possession of material non-public information they obtained while participating in the negotiation of a settlement agreement between the Debtors, the Settlement Noteholders and certain other parties (the “Global Settlement Agreement”). The Global Settlement Agreement was announced in Court on March 12, 2010.

4. On January 7, 2011, the Court issued an Opinion and Order denying confirmation of the Plan (Docket # 6528 and 6529) (hereinafter, the “Order”). Among other things, the Court held that the provision in the Plan and Global Settlement Agreement releasing the Settlement Noteholders from any and all claims was “not reasonable.” Order at 67. In connection with this ruling, the Court relied, in part, on Mr. Thoma’s allegations:

Further, one of the individual creditors who objected to the Plan, Mr. Thoma, sought to introduce evidence that the Settlement Noteholders used their position in the negotiations to gain non-public information about the Debtors which permitted them to trade in the Debtors’ debt. While the evidence was not admitted because it was hearsay, the Court is reluctant to approve any releases of the Settlement Noteholders in light of those allegations.

Order at 69.

5. The Court further held that Mr. Thoma's allegations with respect to the Settlement Noteholders were relevant to determine the appropriate rate of post-petition interest. Order at 94. While the Court held that it did "not have enough evidence to conclude that there were conflicts of interest that tainted the reorganization process or other equitable reasons warranting payment at the federal judgment rate rather than the contract rate," it suggested that "there are allegations that the Settlement Noteholders . . . used information obtained in the negotiations to trade in claims." *Id.* Ultimately, the Court did not decide what post-petition judgment rate was appropriate "[b]ecause the Plan as written cannot be confirmed." *Id.*<sup>2</sup>

6. In the wake of the Order denying confirmation of the Plan, the Official Committee of Equity Security Holders ("Equity Committee") sought discovery from the Settlement Noteholders with respect to Mr. Thoma's allegations. Notwithstanding the Court's ruling, the Settlement Noteholders opposed such discovery. On January 18, 2011, the Equity Committee moved for an order, pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1, to compel discovery from the Settlement Noteholders.

7. On February 8, 2011, the Court heard argument on the Equity Committee's motion. During the course of the hearing, the Court expressed "concern" regarding the issues Mr. Thoma raised with respect to the Settlement Noteholders' actions, and stated its desire to explore those issues before confirming the Plan: "He raised an issue that the Court has a concern about. And I think it should be explored. I don't think, on the basis of some of the facts, I should be asked to make a decision on that." February 8 Transcript at 45:10-13.

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<sup>2</sup> To the extent that post-petition interest is payable on allowed unsecured claims, the Trust Preferred Holders respectfully submit that the appropriate rate of post-petition interest rate is the federal judgment rate. *See Supplemental Objection of the Consortium of Trust Preferred Security Holders to Confirmation of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, Filed on February 7, 2011* (Docket # 7480), at 9-24.

8. At the conclusion of the parties' presentations, the Court stated that it would grant, in part, the Equity Committee's motion on the grounds that the authorized discovery (which included, among other topics, discovery of the Settlement Noteholders' post-petition trading activity and the information the Settlement Noteholders received during settlement negotiations) is "relevant to the confirmation hearing that I will be holding. It relates both to the interest issue and the valuation issue." *Id.* at 81:12-18. The Court issued a conforming order on February 11, 2011 ("February 11 Order").

9. The Settlement Noteholders have produced certain documents to the Equity Committee, and on May 4, 2011, the Equity Committee conducted a Rule 30(b)(6) deposition of Dan Gropper, the corporate representative of Aurelius. The Equity Committee noticed similar depositions of corporate representatives of Owl Creek, Appaloosa and Centerbridge, but those depositions were adjourned while the Settlement Noteholders and the Equity Committee explored a potential settlement. Settlement discussions between the Settlement Noteholders and the Equity Committee apparently ended unsuccessfully on or about June 14, 2011.

10. On June 15, 2011, the Equity Committee re-noticed Rule 30(b)(6) depositions of Owl Creek, Appaloosa and Centerbridge for June 23 and 24, 2011.

11. The Trust Preferred Holders have retained Arkin Kaplan Rice LLP ("AKR") to investigate these serious allegations of inappropriate trading activities and to take whatever actions necessary (together with the Equity Committee, if appropriate) to protect the Trust Preferred Holders' interests. The Trust Preferred Holders believe that having their own securities counsel separately review this matter and participate in discovery will facilitate and streamline any ultimate presentations to the Court.

12. On Wednesday, June 15, 2011, counsel for the Trust Preferred Holders contacted counsel for Owl Creek, Appaloosa and Centerbridge to request the production of all materials

these parties have produced pursuant to the February 11 Order, including documents, discovery responses and deposition testimony. Counsel for the Trust Preferred Holders offered to sign the confidentiality agreement negotiated with the Equity Committee before receiving the materials. In light of the impending deposition dates, counsel for the Trust Preferred Holders requested that counsel for Owl Creek, Appaloosa and Centerbridge indicate their acceptance or rejection of the Trust Preferred Holders' request by no later than 12 p.m. the following day.

13. By 12 p.m. on June 16, counsel for Owl Creek, Appaloosa and Centerbridge had neither accepted nor rejected the Trust Preferred Holders' request. Consequently, later that day, the Trust Preferred Holders served a First Request for Production of Documents to the Settlement Noteholders, which is attached hereto as Exhibit A. This request seeks the documents that the Court specifically ruled must be produced. In connection with those requests, counsel for the Trust Preferred Holders asked all parties to produce, by 11 a.m. on Friday, June 17, 2011, all materials the Settlement Noteholders already had collected and produced to the Equity Committee.

14. At 11:31 a.m. on June 17, counsel for Owl Creek informed counsel for the Trust Preferred Holders via email that Owl Creek, Appaloosa and Centerbridge were in the process of considering the Trust Preferred Holders' request. Counsel for Aurelius did not respond at this time.

15. At 2:55 p.m. on Friday, June 17, counsel for Centerbridge informed counsel for the Trust Preferred Holders via email that Centerbridge, Appaloosa and Owl Creek would not agree to the Trust Preferred Holders' request. In an effort to reach an amicable resolution of the issues, counsel for the Trust Preferred Holders contacted counsel for these three parties by phone later in the afternoon on June 17. These conversations were not fruitful; counsel for Owl Creek, Appaloosa and Centerbridge still refused to comply with the Trust Preferred Holders' expedited

discovery request. Indeed, counsel continued to argue, contrary to the Court's rulings, that their respective clients were not required to produce the requested documents, expressed disbelief that the Trust Preferred Holders would request such information, and threatened to retaliate by raising various issues with the Court concerning the Trust Preferred Holders, including their failure to provide any discovery concerning their own trading activities (even though none of the Trust Preferred Holders were parties to the Global Settlement and no allegations of trading improprieties have been made against any of them).

16. Counsel for the Trust Preferred Holders also attempted to contact counsel for Aurelius by phone, but was unable to do so. At approximately 5:45 p.m. on June 17, counsel for Aurelius informed counsel for the Trust Preferred Holders via email that Aurelius would not produce any discovery requested by the Trust Preferred Holders.

#### **RELIEF REQUESTED**

17. Pursuant to Bankruptcy Rule 2004(a), “[o]n motion of any party in interest, the court may order the examination of any entity.” As this Court has observed, “[t]he scope of a Rule 2004 examination is ‘unfettered and broad.’” *In re Washington Mutual, Inc.*, 408 B.R. 45, 49 (Bankr. D. Del. 2009) (citation omitted). The purpose of a Rule 2004 examination “is to enable the trustee to discover the nature and extent of the bankruptcy estate.” *Id.* at 50 (citing *In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702, 708 (Bankr. S.D.N.Y. 1991). Rule 2004 examinations are “legitimate[ly]” used in “determining whether wrongdoing has occurred,” *id.* (citing *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002), and uncovering fraudulent conduct, *In re Symington*, 209 B.R. 678, 684 (Bankr. D. Md. 1997).

18. The expedited discovery sought by the Trust Preferred Holders fits well within the scope of Rule 2004 and Local Rule 2004-1. Indeed, this Court already has compelled the Settlement Noteholders to produce the very discovery that the Trust Preferred Holders now seek

on an expedited basis. As the Court observed, this discovery “is relevant to the confirmation hearing that I will be holding. It relates both to the interest issue and the valuation issue.”

February 8 Transcript at 81:12-18; *see also* Order at 69, 94. *A fortiori*, the scope of the Trust Preferred Holders expedited discovery request is proper under Rule 2004 and Local Rule 2004-1.<sup>3</sup>

### **CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 2004-1**

19. Counsel for the Trust Preferred Holders have provided counsel for the Settlement Noteholders with a copy of Exhibit A hereto, requested expedited production of discovery previously produced in response to the Court’s February 11 Order, and described the substance of the relief requested by this motion. Counsel for the Settlement Noteholders have refused to comply with the Trust Preferred Holders’ request. The Trust Preferred Holders accordingly hereby seek expedited production of all discovery materials, including documents, discovery responses and deposition transcripts, produced by the Settlement Noteholders pursuant to the February 11 Order.

### **NO PRIOR REQUEST**

20. No prior request for the relief requested herein has been made to this or any other court.

### **CONCLUSION**

**WHEREFORE**, the Trust Preferred Holders respectfully request entry of an Order substantially in the form attached hereto as Exhibit B, (i) granting the Motion to Compel; and (ii) granting such other and further relief as the Court deems appropriate.

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<sup>3</sup> The same result would obtain under Rules 26 and 34 of the Federal Rules of Civil Procedure and Rules 7026 and 7034 of the Bankruptcy Rules. *See, e.g., Pacitti v. Macy’s*, 193 F.3d 766, 777-78 (3d Cir. 1999) (“[A]ll relevant material is discoverable unless an applicable evidentiary privilege is asserted.”); *In re ML-Lee Acquisition Fund II, L.P.*, 151 F.R.D. 37, 39 (D. Del. 1993) (“[D]iscovery should ordinarily be allowed under the concept of relevancy unless it is clear that the information sought can have no possible bearing upon the subject matter of the action.”) (internal quotation omitted).

Dated: Wilmington, Delaware  
June 20, 2011

Respectfully submitted,

CAMPBELL & LEVINE LLC

*/s/ Kathleen Campbell Davis*

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# EXHIBIT A

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**ARKIN KAPLAN RICE LLP**

ATTORNEYS AT LAW

June 16, 2011

**By Electronic Mail & Hand Delivery**

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Re: *In re Washington Mutual, Inc., et al.*, No. 08-12229 (MFW)

Counsel:

As you know, this firm represents Whitebox Advisors, Scoggin Capital Management, VR Global Partners, L.P., The Visium Funds, Black Horse Capital, Paige Capital Management LLC, Lonestar Capital Management, LLC, Greywolf Capital Management LP, and 683 Capital Management, LLC (collectively, "the Trust Preferred Holders") in the above-captioned matter.

Enclosed please find the Trust Preferred Holders Consortium's First Request for Production of Documents to the Settlement Noteholders. Notwithstanding the response date noted in these requests, we hereby call for you produce to us, by tomorrow, June 17, 2011, at 11 a.m. EST, all documents and materials you previously produced pursuant to the court's February 11 order granting, in part, the Official Committee of Equity Security Holders' motion for an order compelling discovery pursuant to Bankruptcy Rule 2004. As these materials already have been collected and produced once, this request should not be burdensome. As a condition of receiving these materials, Arkin Kaplan Rice LLP is prepared to be bound by the terms of the confidentiality agreement previously entered into between the Settlement Noteholders and others.

**ARKIN KAPLAN RICE LLP**

June 16, 2011

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We are aware that Rule 30(b)(6) depositions of Owl Creek Asset Management, L.P., Appaloosa Management, L.P. and Centerbridge Partners, L.P. are scheduled to proceed next week. On behalf of the Trust Preferred Holders, we intend to participate in those depositions. Given that we have yet to receive any documents from these entities, however, we cannot be assured that we will have sufficient time to prepare, and therefore may need additional deposition dates.

Please inform us today as to whether you will agree to the above requests. If you are not willing to agree, then we intend to raise these issues with the court tomorrow.

Regards,

A handwritten signature in black ink that reads "Howard J. Kaplan" followed by a stylized monogram "JKM".

Howard J. Kaplan

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

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

**TRUST PREFERRED HOLDERS CONSORTIUM'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS TO THE SETTLEMENT NOTEHOLDERS**

Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 2004-1, or, alternatively, Rules 26 and 34 of the Federal Rules of Civil Procedure and Rules 7026 and 7034 of the Federal Rules of Bankruptcy Procedure, Whitebox Advisors, Scoggin Capital Management, VR Global Partners, L.P., The Visium Funds, Black Horse Capital, Paige Capital Management LLC, Lonestar Capital Management, LLC, Greywolf Capital Management LP, and 683 Capital Management, LLC (“the Trust Preferred Holders”), by and through their undersigned counsel, hereby request that the Settlement Noteholders (as defined below), produce, for inspection and copying, the documents and things requested below, by no later than June 30, 2011, at 4:00 p.m. EST, at the offices of Arkin Kaplan Rice LLP, 590 Madison Avenue, 35th Floor, New York, New York 10022, or at such other time and place as the parties shall agree.

**DEFINITIONS**

The following terms (whether singular or plural, capitalized or uncapitalized) shall have the meanings set forth below:

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<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

1. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

2. “Bankruptcy Code” means or refers to the Bankruptcy Reform Act of 1978, as amended, to the extent codified in Title 11, United States Code, as applicable to the Chapter 11 Cases.

3. “Chapter 11 Cases” means the jointly administered cases commenced by the Debtors styled as *In re Washington Mutual, Inc., et al.* and being jointly administered in the United States Bankruptcy Court for the District of Delaware, Case No. 08-12229 (MFW), under Chapter 11 of the Bankruptcy Code.

4. “Communication” means any oral, written or electronic transmission of information, including without limitation any letter, correspondence, memorandum, electronic-mail message, text message, note or meeting log, conversation, meeting, discussion, telephone call, facsimile, telegram, telex, conference or message.

5. “Concerning” means comprising, consisting of, referring to, reflecting, regarding, supporting, evidencing, or relating to, the matter or Document described, referred to or discussed.

6. The term “Document” or “Documents” is used in the broadest sense permitted by the Federal Rules of Civil Procedure and means the original (or any copy when originals are not available) and any drafts or non-identical copies thereof, whether different from the original because of interlineations, receipt stamp, notation of copy sent or received or otherwise, of any email, instant message, voicemail, book, pamphlet, periodical, letter, report, note, memorandum, record, minutes, calendar or diary entry, transcript, study compilation, analysis, tabulation, map,

diagram, drawing, plan, picture, summary, working paper, chart, paper, graph index, data sheet, data processing card, computer printout, summary of a computer printout, tape, contract, agreement, lease, ledger, journal, balance sheet, account, invoice, purchase order, receipt, billing record, financial data, financial statement, file, diary, film, trip tickets, telex, teletype or other messages, telegram, expense vouchers, instructions, bulletins or any other writing or recording of information, as well as all tape recordings, computer tapes, disc and other electronic or mechanical recordings, however produced, maintained or reproduced, including information stored in or generated by a computer whether or not ever printout out or displayed, within the possession, custody or control of plaintiff or any of its officers, directors, employees, attorneys, or other agents and/or representatives.

7. “FDIC” shall mean the Federal Deposit Insurance Corporation and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

8. “Global Settlement Agreement” means or refers to that proposed agreement contained as exhibit H of the March 16, 2010 Plan, as such proposed agreement was amended or modified, and/or the settlement agreement by and among, *inter alia*, the Debtors, JPMC and the Federal Deposit Insurance Corp. announced to the Court on or about March 12, 2010.

9. “JPMorgan” shall mean JPMorgan Chase Bank, N.A. and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on its behalf, any of its

parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

10. "Order" shall mean the Order Granting, In Part, Motion of the Official Committee of Equity Security Holders for an Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1 Directing the Examination of the Washington Mutual, Inc. Settlement Note Holders Group, issued by The Honorable Mary F. Walrath, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, on February 11, 2011.

11. "Plan" means or refers to the "Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code" dated March 26, 2010 [Docket No. 2622], as such document was amended or modified.

12. "Reorganized Debtor" means or refers to WMMRC, as that term is used in Judge Walrath's January 7, 2011 Order Denying Confirmation, and/or the Debtor from and after the effective date of any proposed Plan of Reorganization.

13. "Settlement Noteholders" means and refers to the Settlement Noteholders referenced in footnote 2 to Judge Walrath's January 7, 2011 Order Denying Confirmation, and their counsel.

14. "Valuation" means or refers to the actual, perceived, estimate or appraised worth of any entity, asset or party whatsoever, and includes without limitation, enterprise value, going concern value, equity value, actual cash value, book value, intrinsic value, liquidation value, and market value.

15. "Washington Mutual" means or refers to WMI and WMB, and any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on their behalf, any of

their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

16. “WMB” means or refers to the Washington Mutual Bank, Henderson, Nevada, and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

17. “WMI” means or refers to the Washington Mutual, Inc. and WMI Investment Corp. (collectively, the “Debtors”) and any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

18. “You or “Your” refers to each and every member of the Settlement Noteholders, including Owl Creek Asset Management, L.P., Appaloosa Management, L.P., Centerbridge Partners, LP, and Aurelius Capital Management LP, any current or former parent, affiliates or subsidiaries, or any of their members, officers, directors, representatives, employees, agents, consultants, accountants, attorneys, financial advisors, predecessors, successors, assigns and any other person currently or formerly acting or purporting to act on any Settlement Noteholder’s behalf, or on behalf of several Settlement Noteholders, for any purpose whatsoever, from September 25, 2008 to the present.

### **INSTRUCTIONS**

Each response must be made in accordance with the following instructions:



1. The responsive Documents should be produced in the manner prescribed by the Federal Rules of Civil Procedure, as made applicable herein by the Federal Rules of Bankruptcy Procedure, including producing the requested Documents as they are kept in the usual course of business or organized and labeled to correspond with the categories in the requests, and identifying the name of the person from whose files the Documents were produced.

2. You are to produce the original and all non-identical copies, including all drafts, of each request. If you are not able to produce the original of any document, please produce the best available copy and all non-identical copies, including drafts.

3. Each request herein extends to all Documents and Communications in your possession, custody or control. A Document is deemed to be in your possession, custody, or control if it is in your physical custody, or if it is in the physical custody of any other person, including, without limitation, your attorneys, and you: (1) own such Document in whole or in part; (2) have a right, by contract, statute or otherwise, to use, inspect, examine or copy such Document in any terms; (3) have an understanding, express or implied, that you may use, inspect, examine or copy such Document on any terms; or (4) as a practical matter, have been able to use inspect, examine, or copy such Document when you sought to do so. If any requested Documents were, but no longer are, in your control, state the disposition of each such Document.

4. Any reference in these requests to an individual or person include any and all agents, advisors, employees, representative, attorneys, and successors-in-interest.

5. If any Document is withheld under any claim of privilege, including without limitation, attorney-client privilege and attorney work product, you should provide the following information with respect to such Document:

- (1) The date of the Document;

- (2) The title of the Document;
- (3) The name of its author(s) or preparer(s) and an identification by employment and title of each such person;
- (4) The name of each person who was sent or furnished with, received, viewed or has custody of the Document or a copy thereof together with an identification by employment and title of each such person;
- (5) The request to which the Document relates;
- (6) The title and description of the Document sufficient to identify it without revealing the information for which privilege is claimed;
- (7) The claim of privilege under which it is withheld; and
- (8) A description of the subject matter of the Document in sufficient detail to support your contention that the Document is privileged;

6. If, after exercising due diligence to secure them, you cannot provide some or any of the requested Documents, so state and provide all Documents to the extent possible, specifying the reason for your inability to produce the remainder of the Documents.

7. If any requested Document or other Document potentially relevant to this action is subject to destruction under any Document retention or destruction program, the document(s) should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this action or unless otherwise permitted by the Court.

8. If any Document response to these requests is known to have existed and cannot now be located, or has been destroyed or discarded, set forth a complete statement of the circumstances surrounding such loss or destruction.

9. If an objection is made to any request, state your objection and the ground or grounds with particularity in your written response. If an objection is made only to part of the request, identify that part in your written response and state your objection and the ground(s) therefor.

10. This request is a continuing one. If, after producing the requested Documents, you obtain or become aware of any further Documents responsive to this request, you are required to produce such additional Documents promptly.

11. Any ambiguity in a discovery request shall be construed to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.

12. Unless otherwise specified, the time period covered by these requests is from September 25, 2008 to the present.

## REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All discovery responses and Documents You produced to the Official Committee of Equity Security Holders pursuant to the Order, including, without limitation, (i) all Documents You produced in response to the Official Committee of Equity Security Holders First Request for Production of Documents; (ii) Your responses to the Official Committee of Equity Security Holders First Set of Interrogatories to the Washington Mutual, Inc. Settlement Noteholders; (iii) Your responses to the Official Committee of Equity Security Holders First Request for Admissions to the Washington Mutual, Inc. Settlement Noteholders; (iv) transcripts of any deposition testimony given by You in connection with the discovery authorized by the Court in the Order, including all exhibits introduced during any such deposition; and (v) any privilege logs You have produced.

2. All Documents Concerning any trading by You of any debt or equity of WMI, WMB and/or the Debtors on or after September 25, 2008.

3. All Documents Concerning any information You received in connection with any negotiations or Communications Concerning the actual or potential settlement of Your claims against the Debtors, the Global Settlement Agreement and/or the negotiations of the Global Settlement Agreement, including, without limitation, information received from WMI, WMB and/or the Debtors, JPMorgan, the FDIC, any other Settlement Noteholders.

4. All Documents Concerning any non-public information You received Concerning WMI, WMB and/or the Debtors on or after September 25, 2008.

5. All confidentiality or non-disclosure agreements You signed in connection with the Chapter 11 Cases.

6. All Documents Concerning Your assessment or opinion of the value of the Reorganized Debtor.

7. All Documents Concerning any analysis performed with respect to the price or value of the debt or equity securities of WMI, WMB and/or the Debtors on or after September 25, 2008.

8. All Documents Concerning any policies and procedures You instituted or employed, attempted to institute or employ, or contemplated instituting or employing to govern Your decisions to trade (or to refrain from trading) in any debt or equity security of WMI, WMB and/or the Debtors on or after September 25, 2008, including, without limitation, all Documents Concerning any such policies or procedures designed or intended to ensure that Your trading decisions with respect to WMI, WMB and/or the Debtors debt or equity securities were (or are) not informed or affected by any confidential or non-public information in Your possession.

9. To the extent that You claim that counsel conducted negotiations of the Global Settlement Agreement without Your knowledge, all Communications between You and Your counsel Concerning the actual or potential settlement of Your claims against the Debtors, the Global Settlement Agreement and/or the negotiations of the Global Settlement Agreement.

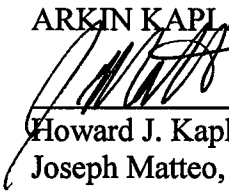
10. All Documents Concerning any agreement between or among any of the Settlement Noteholders with respect to (i) the debt or equity securities of WMI, WMB and/or the Debtors or (ii) the existence or assertion of any joint defense, common interest other joint interest privilege.

Dated: New York, New York  
June 16, 2011

CAMPBELL & LEVINE LLC  
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## **EXHIBIT B**

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

-----X  
: :  
In re : Chapter 11  
: :  
WASHINGTON MUTUAL, INC, et al.,<sup>1</sup> : Case No. 08-12229 (MFW)  
: Jointly Administered  
: :  
Debtors. : :  
: :  
: :  
: **Related Docket No. 6020, 6567, 6725,**  
: **7480, 7482,**  
-----X

**ORDER GRANTING MOTION TO COMPEL OWL CREEK ASSET MANAGEMENT,  
L.P., APPALOOSA MANAGEMENT, L.P., CENTERBRIDGE PARTNERS, LP, AND  
AURELIUS CAPITAL MANAGEMENT LP TO PRODUCE DOCUMENTS**

Upon consideration of the Motion, dated June 20, 2011, filed by Trust Preferred Security Holders (the “Trust Preferred Holders”), to compel Owl Creek Asset Management, L.P. (“Owl Creek”), Appaloosa Management, L.P. (“Appaloosa”), Centerbridge Partners, LP (“Centerbridge”), and Aurelius Capital Management LP (“Aurelius” and, together with Owl Creek, Appaloosa and Centerbridge, the “Settlement Noteholders”) to produce discovery; and it appearing that the Court has jurisdiction to consider and determine the Motion; and it appearing that due and proper notice of the Motion has been given; and it appearing that the relief requested in the Motion is appropriate; and after due deliberation and sufficient cause appearing therefore; it is hereby:

ORDERED that the Motion to compel is granted; and it is further

ORDERED that the Settlement Noteholders shall produce to the Trust Preferred Holders all documents and materials produced pursuant to the Court’s February 11, 2011 Order granting, in part, the Official Committee of Equity Security Holders’ motion for an order compelling

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<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



discovery pursuant to Bankruptcy Rule 2004, on or before \_\_\_\_\_, 2011, at the offices of Arkin Kaplan Rice LLP, 590 Madison Avenue, 35<sup>th</sup> Floor, New York, New York 10022; and it is further

ORDERED that this Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this order and any further proceedings with respect to the Motion.

Dated: \_\_\_\_\_, 2011  
Wilmington, Delaware

---

THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

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

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

**CERTIFICATE OF SERVICE**

I, Kathleen Campbell Davis, of Campbell & Levine, LLC, hereby certify that on June 20, 2011, I caused a copy of the *Motion to Compel Owl Creek Asset Management, L.P., Appaloosa Management, L.P., Centerbridge Partners, L.P. and Aurelius Capital Management LP To Produce Documents* to be served upon the attached service list via First Class Mail.

Dated: June 20, 2011

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