

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)	Chapter 11
In re:)	
)	Case No. 08-12229 (MFW)
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹)	
)	(Jointly Administered)
Debtors.)	
)	Requested Hearing Date: At the Court's convenience
)	Requested Obj. Deadline: To be established by the Court

**MOTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS
OF WASHINGTON MUTUAL, INC., ET AL. FOR EXTENSION OF TIME
TO OBJECT TO THE MODIFIED SIXTH AMENDED PLAN**

The Official Committee of Equity Security Holders (the "Equity Committee") of the above-captioned debtors and debtors in possession (the "Debtors"), hereby files this motion (the "Motion") seeking entry of an order in the form attached hereto as Exhibit A extending the deadline for the Equity Committee to file its objection to the Modified Sixth Amended Plan (as defined herein). In support of the Motion, the Equity Committee respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these cases is proper in this district in accordance with 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are section 105(a) of the Bankruptcy Code and Rule 9006 of the Federal Rules of Bankruptcy Procedure ("the "Bankruptcy Rules").

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax



RELEVANT BACKGROUND

3. On February 8, 2011, the Debtors filed their Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (as modified, the “Modified Sixth Amended Plan”) and related Supplemental Disclosure Statement [Docket Nos. 6696, 6697, 6964, 6966, 7038, 7040].

4. Pursuant to the Order approving the Supplemental Disclosure Statement, the hearing on confirmation of the Modified Sixth Amended Plan was scheduled for June 6, 2011 (as postponed, the “Confirmation Hearing”), and the deadline to object to the Modified Sixth Amended Plan was set as May 13, 2011 (as extended, the “Objection Deadline”) [Docket No. 7081].

5. On May 19, 2011, the Debtors filed a notice adjourning the commencement of the Confirmation Hearing to June 29, 2011 and extending the Objection Deadline for the Equity Committee until June 10, 2011 in light of the ongoing discussions with respect to the Modified Sixth Amended Plan [Docket No. 7748]. The quid pro quo was the Equity Committee’s agreement to adjourn the depositions scheduled by the Equity Committee and otherwise hold in abeyance fact and expert discovery while the parties explored the possibility of settlement.

6. Since that time, the Equity Committee has been engaged in settlement discussions with the Debtors and other parties in interest regarding a proposed Seventh Plan and related deal documents. In light thereof, the parties agreed to further extend the abeyance of formal discovery, and the Debtors agreed to further extend the Equity Committee’s Objection Deadline to June 17, 2011, and then again to June 22, 2011. The establishment of June 22 as the Equity Committee’s most recent Objection Deadline was agreed to by the parties at a time when the

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.

Confirmation Hearing was scheduled for July 5, 2011.

7. Unfortunately, the parties could not reach an agreement regarding the proposed Seventh Plan and related settlement. As of last week, the parties have ceased settlement negotiations, and the Debtors are moving forward with confirmation of the Modified Sixth Amended Plan.

8. Likewise, the Equity Committee is moving forward with its discovery and objection in opposition to the Modified Sixth Amended Plan. After the settlement fell through, the Equity Committee re-noticed the depositions of the Debtors and the Settlement Note Holders, which were previously postponed due to the settlement negotiations [Docket Nos. 7895, 7896, 7897, 7915]. The depositions of fact witnesses for the Debtors and the Settlement Noteholders are scheduled to take place on June 23 and 24, 2011 – two on each day. Depositions of the parties' expert witnesses are anticipated to take place the following week.

9. Without any prior consultation with the Equity Committee, on June 17, 2011, the Debtors filed a notice [Docket No. 7921] informing all parties in interest that the Confirmation Hearing will be held on July 13, 2011, rather than July 5, 2011 as had been established by the Court at the June 8, 2011 omnibus hearing.

10. That same day, after receiving the notice, counsel for the Equity Committee emailed counsel for the Debtors requesting an additional extension of the Objection Deadline to permit the Equity Committee to complete its discovery before having to submit its objection. Counsel for the Debtors refused to grant the requested extension, simply stating that the deadline had previously been established as June 22, 2011 and, therefore, the Equity Committee should be prepared to comply with that deadline. In response, Equity Committee counsel reminded Debtors' counsel that the scheduling of the Confirmation Hearing for July 5 and the availability

of the parties' witnesses left the Equity Committee with no choice but to agree to the June 22 Objection Deadline; however, now that the Confirmation Hearing has been rescheduled to July 13, there was sufficient time to complete discovery prior to the Equity Committee's submission of its objection while still affording the Debtors one week to file a reply.

11. After notifying Debtors' counsel that the Equity Committee intended to file a motion seeking an extension of the June 22, 2011 Objection Deadline, Debtors' counsel agreed to extend the deadline until June 27, 2011. However, this proposed deadline is earlier than necessary for the Debtors to prepare a reply and would precede three of the depositions, likely necessitating supplementation of the objection. As of the filing of this Motion, the Debtors have not agreed to extend the Equity Committee's Objection Deadline beyond June 27, 2011.

RELIEF REQUESTED

12. For the reasons set forth herein, the Equity Committee requests additional time to file an objection to the Modified Sixth Amended Plan. Thus, the Equity Committee respectfully requests that the Objection Deadline be extended until July 1, 2011.

13. Bankruptcy Rule 9006(b) provides, in pertinent part,

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request thereof is made before the expiration of the period originally prescribed or as extended by a previous order.

Fed. R. Bankr. P. 9006(b).

14. The time to object to the Modified Sixth Amended Plan has not yet expired, and the Equity Committee respectfully submits that cause exists to extend the Objection Deadline.

15. Over the past few weeks, a significant amount of the time and effort of the Equity Committee and its professionals have been spent attempting to negotiate a settlement with

certain parties in interest in an effort to reach a consensual resolution to these cases. During this time, the Equity Committee agreed to postpone discovery related to the Modified Sixth Amended Plan in order to facilitate a settlement. Indeed, such discovery would have been wasted in the event the parties reached a consensus on the proposed Seventh Plan.

16. Recently, negotiations on the proposed Seventh Plan reached an impasse. Thus, the Debtors have scheduled a Confirmation Hearing on the Modified Sixth Amended Plan, which is opposed by the Equity Committee. The Equity Committee has double-booked the depositions of two of the Settlement Note Holders on June 23, and scheduled the third for June 24. The parties are attempting to schedule the Equity Committee's deposition of the Debtors and several expert depositions during the week of June 27. The Equity Committee expects to obtain evidence from these depositions that it will use to oppose the current plan. As such, it would be best for the Objection Deadline to be extended so that the evidence obtained at these depositions can be incorporated into the Equity Committee's written objection. Filing one, comprehensive written objection that sets forth the Equity Committee's basis for opposing the current plan would be most efficient. Indeed, the alternative – filing an initial (and incomplete) objection followed by supplemental submissions incorporating evidence from the depositions – would be confusing and wasteful.

17. The Equity Committee submits that an extension of the Objection Deadline will not prejudice the Debtors or any other party in interest. The Debtors previously agreed to the July 22 deadline when the Confirmation Hearing was scheduled for July 5 – a deadline thirteen days before the hearing date. There is no reason why a twelve day window between the requested deadline of July 1 and the new July 13 hearing date will prejudice any party in interest. Most importantly, the Debtors will still have one week to file a reply, which is the same amount

of time they had under the prior schedule with which they previously agreed.

NOTICE

18. Notice of this Motion has been provided to (i) the United State Trustee; (ii) counsel to the Debtors; and (iii) those parties who have requested service pursuant to Bankruptcy Rule 2002, in accordance with Local Rule 2002-1(b). In light of the nature of the relief requested herein, the Equity Committee submits that no other or further notice need be provided.

WHEREFORE, the Equity Committee respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A (i) extending the deadline by which the Equity Committee may object to the Modified Sixth Amended Plan through and including July 1, 2011 and granting such other and further relief as the Court deems just and appropriate.

Dated: June 22, 2011
Wilmington, Delaware

ASHBY & GEDDES, P.A.



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Exhibit A

[Proposed Order]

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

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

**ORDER GRANTING MOTION OF THE OFFICIAL COMMITTEE OF EQUITY
SECURITY HOLDERS OF WASHINGTON MUTUAL, INC., ET AL. FOR EXTENSION
OF TIME TO OBJECT TO THE MODIFIED SIXTH AMENDED PLAN**

Upon consideration of the *Motion of the Official Committee of Equity Security Holders of Washington Mutual, Inc., et al. for Extension of Time to Object to the Modified Sixth Amended Plan* (the "Motion"), pursuant to section 105 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the "Bankruptcy Code") and Rule 9006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for the entry of an order extending the time within which the Equity Committee may respond to the Modified Sixth Amended Plan²; and the Court finding that it has jurisdiction over 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 in this district pursuant to 28 U.S.C. §§ 1408 and 1409; the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; proper and adequate notice has been given and no other or further notice is necessary; after due deliberation and sufficient cause appearing therefore, it is hereby:

¹ 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.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED.
2. The Equity Committee has until July 1, 2011 to file and serve an objection to the Modified Sixth Amended Plan.
3. This Court shall retain jurisdiction over any and all issues arising from or related to the implementation of this Order.

Dated: Wilmington, Delaware
June _____, 2011

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY COURT