

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) EXTENDING THE  
DEADLINE TO FILE AN OMNIBUS REPLY TO OBJECTIONS TO  
CONFIRMATION OF THE MODIFIED SIXTH AMENDED PLAN; AND (II)  
AUTHORIZING THE DEBTORS TO FILE ALL DOCUMENTS IN SUPPORT OF  
CONFIRMATION CONTEMPORANEOUSLY THEREWITH**

Washington Mutual Inc. and WMI Investment Corp., as debtors and debtors in possession (collectively, the “Debtors”), hereby submit this motion (the “Motion”) for entry of an order (i) extending the deadline by which the Debtors may file an omnibus reply to objections to confirmation of the *Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* (as has been and may be further amended, the “Modified Sixth Amended Plan”) to 12:00 p.m. (noon) (Eastern Daylight Time) on July 12, 2011; and (ii) authorizing the Debtors to file all documentation in support of confirmation including, without limitation, any affidavits, briefs, memoranda and a proposed form of confirmation order (collectively, the “Confirmation Submissions”) contemporaneously therewith, and respectfully represent as follows:

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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: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors’ principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.



## PRELIMINARY STATEMENT

1. On March 30, 2011, this Court entered an order approving the supplemental disclosure statement for the Modified Sixth Amended Plan [D.I. 7081] (the “Supplemental Disclosure Statement Order”) and established that (a) objections to the Modified Sixth Amended Plan were due on May 13, 2011 (the “Objection Deadline”); (b) the omnibus reply to all objections is due three (3) business days prior to the Confirmation Hearing (as defined below); and (c) the hearing to consider confirmation of the Modified Sixth Amended Plan would commence on June 6, 2011 (as has been rescheduled from time to time, the “Confirmation Hearing”).

2. On June 23, 2011, this Court entered its *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* [D.I. 7976] (the “Extension Order”), extending the Official Committee of Equity Security Holders’ (the “Equity Committee”) deadline to object to the Modified Sixth Amended Plan to July 1, 2011. In addition, in light of the adjournments outlined below, the Debtors have granted numerous extensions of the Objection Deadline to various parties in interest, including granting the Ontario Teachers’ Pension Plan Board, as lead plaintiff in certain multi-district securities litigation (the “Lead Plaintiff”), an extension of the Objection Deadline to July 1, 2011.

3. The practical effect of these extensions (including the Equity Committee’s extension as ordered by this Court) is that the Debtors are left with just seven (7) days -- only four (4) of which are business days due to the intervening July 4th holiday -- to formulate an omnibus reply to what will sure to be lengthy objections that will raise (or already have raised) numerous and complicated legal issues. These extensions, taken with the hundreds of other

objections filed to date, many of which were filed weeks after the Objection Deadline, will substantially impair the Debtors' ability to prepare a fulsome and comprehensive omnibus reply that adequately responds to arguments raised by the Equity Committee, the Lead Plaintiff and all other objectors.

4. Accordingly, in the interest of fairness and to avoid undue prejudice to the Debtors, the Debtors request that the deadline to file an omnibus reply to confirmation objections be extended to 12:00 p.m. (noon) (Eastern Daylight Time) on July 12, 2011. In addition, due to the inextricably intertwined nature of the omnibus reply to the Debtors' other confirmation submissions, the Debtors further request that they be authorized to file the Confirmation Submissions at the same time on July 12, 2011.

#### **JURISDICTION AND VENUE**

5. 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.

#### **BACKGROUND**

6. On September 26, 2008 (the "Commencement Date"), the Debtors each commenced with this Court a voluntary case (together, the "Chapter 11 Cases") pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On October 3, 2008, the Court entered an order, pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the joint administration of the Chapter 11 Cases.

7. On October 15, 2008, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an Official Committee of Unsecured Creditors (the “Creditors’ Committee”). On January 11, 2010, the U.S. Trustee appointed the Equity Committee. By agreed order, dated July 22, 2010, the Court directed the U.S. Trustee to appoint an examiner to investigate certain matters. On July 26, 2010, the U.S. Trustee appointed Joshua R. Hochberg of McKenna Long & Aldridge LLP as examiner.

8. On October 6, 2010, the Debtors filed the *Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code*, dated October 6, 2010 (as modified and amended, the “Sixth Amended Plan”). A hearing to consider confirmation of the Sixth Amended Plan commenced on December 2, 2010 and concluded on December 7, 2010 (the “Prior Confirmation Hearing”).

9. On January 7, 2011, this Court entered an opinion [D.I. 6528] (the “Opinion”) and a corresponding order [D.I. 6529] determining that the Global Settlement Agreement, upon which the Sixth Amended Plan and the Modified Sixth Amended Plan are premised, and the compromise and settlement embodied therein, are fair and reasonable, and in the best interests of the Debtors and their estates, but identifying certain modifications to the Sixth Amended Plan that would be required before the Court would confirm the Sixth Amended Plan.

10. In accordance with the Opinion, as well as statements made by this Court at the status conference held on January 20, 2011, on February 8, 2011, the Debtors filed the Modified Sixth Amended Plan and a related supplemental disclosure statement. On March 30, 2011, the Bankruptcy Court entered the Supplemental Disclosure Statement Order and established that (a) objections to the Modified Sixth Amended Plan were due on May 13, 2011;

(b) the omnibus reply to all objections is due three (3) business days prior to the Confirmation Hearing; and (c) the Confirmation Hearing would commence on June 6, 2011 (as has been rescheduled from time to time, the “Confirmation Hearing”).

11. However, the Confirmation Hearing was subsequently adjourned twice, to June 29, 2011 and July 5, 2011, in order to facilitate discussions among the Debtors, the Creditors’ Committee, the Equity Committee and certain creditors – Appaloosa Management L.P., Centerbridge Partners, L.P., and Owl Creek Asset Management, L.P. – aimed at diffusing additional objections and negotiating the terms of a consensual chapter 11 plan. While such negotiations culminated in a tentative understanding (including the economic terms) being announced to the Court on May 24, 2011, after weeks of intensive good faith negotiations and the preparation of implementing documentation, the Debtors, the Creditors’ Committee, the Equity Committee, and other parties were unable to reach a global settlement regarding the nuances of such understanding and, during the week of June 13, 2011, the Equity Committee terminated discussions. Accordingly, on June 17, 2011, the Debtors filed a notice with the Court [D.I. 7921] disclosing their intent to proceed with the Confirmation Hearing on the Modified Sixth Amended Plan on July 13, 2011.

12. Thereafter, on June 22, 2011, the Equity Committee filed 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* [D.I. 7952] (the “Extension Motion”). The Debtors objected to the Extension Motion [D.I. 7968]; however, on June 23, 2011, the Court entered the Extension Order. The Extension Order extended the Equity Committee’s objection deadline by nine (9) days --- including seven (7) business days --- from

June 22, 2011<sup>2</sup> to July 1, 2011. Following entry of the Extension Order, the Lead Plaintiff requested, and was granted, an extension of the Objection Deadline to July 1, 2011.<sup>3</sup>

### **RELIEF REQUESTED**

13. By this Motion, the Debtors respectfully request entry of an order (i) extending the deadline by which the Debtors may file an omnibus reply to objections to confirmation of the Modified Sixth Amended Plan to 12:00 p.m. (noon) (Eastern Daylight Time) on July 12, 2011; and (ii) authorizing the Debtors to file the Confirmation Submissions contemporaneously therewith.

### **BASIS FOR RELIEF**

14. The Supplemental Disclosure Statement Order requires the Debtors to file and serve all reply papers, including an omnibus reply, to objections to confirmation of the Modified Sixth Amended Plan “no later than **three (3) business days** prior to the Confirmation Hearing.” Supplemental Disclosure Statement Order, ¶ 51 (emphasis in original). Given that the Confirmation Hearing is scheduled to commence on July 13, 2011, the Debtors’ current deadline to file all reply papers is Friday, July 8, 2011. The Debtors respectfully submit that the requested extension of the deadline to reply to any confirmation objection filed by any party to 12:00 p.m. (noon) (Eastern Daylight Time) on July 12, 2011 is reasonable and appropriate under the circumstances. Significantly, the Debtors have conferred with counsel to the Equity Committee

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<sup>2</sup> Although the objection deadline with respect to the Modified Sixth Amended Plan was fixed as May 13, 2011 pursuant to the terms of the Supplemental Disclosure Statement Order, with the consent of the Debtors, the objection deadline with respect to the Equity Committee was extended to June 22, 2011 to facilitate potential settlement discussions as between the parties.

<sup>3</sup> The Debtors also granted numerous extensions of the Objection Deadline to various parties in interest, including Wells Fargo Bank, N.A., in its capacity as indenture trustee under the indenture dated April 30, 2001, the Washington Mutual, Inc. Noteholders Group, the Creditors’ Committee and the class representative of the Dime Litigation Tracking Warrants.

and are advised that the Equity Committee has no objection to the relief requested in this Motion as it relates to the extension of the Debtors' deadline to file a reply to confirmation objections.

15. The failure of parties to abide by the Objection Deadline, as well as other parties being granted extensions, placed the Debtors in the difficult situation of having just seven (7) days to consider those objections to confirmation, which are sure to be voluminous and raise numerous complex issues, and incorporate and integrate a reply to such objections into their omnibus reply to the remaining extant confirmation objections and to make corresponding changes to the Confirmation Submissions. Notably, only four (4) of these seven (7) days are business days due to the intervening July 4th holiday. The Debtors believe that a mere four (4) business days to finalize their omnibus reply and other Confirmation Submissions would unduly prejudice their interests and substantially impair their ability to draft a comprehensive reply.

16. Moreover, while true that the Equity Committee and Lead Plaintiff may raise a number of the same issues already voiced by other objectors, the Debtors are concerned that their objections could put an entirely different spin on certain objections and force the Debtors to rework their response to many of the hundreds of other objections already received. Given the short period between the expiration of the Equity Committee's and Lead Plaintiff's Objection Deadlines and the deadline to file a reply, this would place an enormous burden on the Debtors and their estates and distinctly limit their ability to fully sustain their case in support of confirmation; the Debtors respectfully submit that their estates should not be so prejudiced, in particular in light of the Equity Committee's consent to the relief requested herein in so far as it relates to extending the Debtors' deadline to file a reply to its confirmation objection.

Conversely, the Debtors believe that extending their deadline to reply to any confirmation objections will assist in streamlining the Confirmation Hearing and will enable the Court to be

fully informed of the complex issues presented in the outstanding confirmation objections in advance of the Confirmation Hearing and ruling on confirmation of the Modified Sixth Amended Plan.

17. The Debtors further submit that allowing the Confirmation Submissions to be filed contemporaneously with any omnibus reply is reasonable under the circumstances. By filing the Confirmation Submissions at the same time as the omnibus reply, the Debtors will be able to ensure that all relevant information is included and likely eliminate the need for corrective or supplemental submissions.

18. Accordingly, the Debtors request that the deadline to file an omnibus reply be extended from July 8, 2011 to 12:00 p.m. (noon) (Eastern Daylight Time) on July 12, 2011 and that they be authorized to file the Confirmation Submissions substantially contemporaneously therewith.

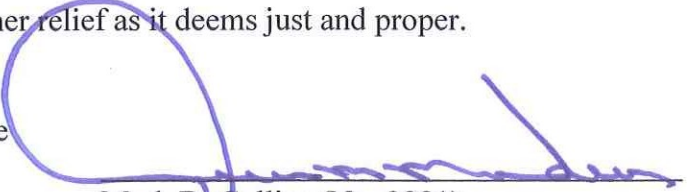
#### **NOTICE**

19. No trustee has been appointed in these chapter 11 cases. Notice of this Motion shall be provided via overnight (Saturday) delivery on the date hereof to: (i) the U.S. Trustee; (ii) counsel for the Creditors' Committee; (iii) counsel for the Equity Committee; and (iv) parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice need be provided.



WHEREFORE the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested in the Motion and grant such other and further relief as it deems just and proper.

Dated: June 24, 2011  
Wilmington, Delaware



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– and –

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ATTORNEYS TO THE DEBTORS  
AND DEBTORS IN POSSESSION

**EXHIBIT A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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

**ORDER (I) EXTENDING THE DEADLINE TO FILE AN OMNIBUS REPLY TO  
OBJECTIONS TO CONFIRMATION OF THE MODIFIED SIXTH AMENDED PLAN;  
AND (II) AUTHORIZING THE DEBTORS TO FILE ALL DOCUMENTS IN SUPPORT  
OF CONFIRMATION CONTEMPORANEOUSLY THEREWITH**

Upon the motion (the "Motion"), dated June 24, 2011, of Washington Mutual Inc. and WMI Investment Corp., as debtors and debtors in possession (collectively, the "Debtors"), for entry of an order (i) extending the deadline by which the Debtors may file an omnibus reply to objections to confirmation of the *Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* (as has been and may be further amended, the "Modified Sixth Amended Plan") to 12:00 p.m. (noon) (Eastern Daylight Time) on July 12, 2011; and (ii) authorizing the Debtors to file all documents in support of confirmation contemporaneously therewith; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and after due deliberation, it is

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Debtors are authorized to file an omnibus reply to any objection to confirmation of the Modified Sixth Amended Plan at or before 12:00 p.m. (noon) (Eastern Daylight Time) on July 12, 2011; and it is further

ORDERED that the Debtors are authorized to file the Confirmation Submissions (as such term is defined in the Motion) at or before 12:00 p.m. (noon) (Eastern Daylight Time) on July 12, 2011; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

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

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

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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: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.