

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

U.S. BANKRUPTCY COURT
DISTRICT OF DELAWARE
AUG 28 11 10:55

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<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:	Case No. 08-12229 (MFW)
	:	(Jointly Administered)
	:	
Debtors.	:	
	:	
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**COLLEEN M. MARTIN'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO WASHINGTON MUTUAL, INC.**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (the "Federal Rules"), which are applicable hereto pursuant to Rules 7026, 7034, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 7026 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, and in connection with that certain *Motion of Colleen M. Martin for Allowance and Payment of Administrative Expense Claim Under 11 U.S.C. § 503(b)(1)(A)(i) and Allowance of an Allowed General Unsecured Claim*, dated May 17, 2011 [D.I. 7763] (the "Motion"), Colleen M. Martin hereby requests that Washington Mutual, Inc. ("WMI") produce, on or before **4:00 p.m. (EDT) on Monday, August 29, 2011**, the documents designated below at 3257 N.W. 60th Street, Seattle, Washington 98107, Attention: Colleen M. Martin.

¹ 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 1301 Second Avenue, Seattle, Washington 98101.



DEFINITIONS

As used herein the following terms will have the stated meanings:

1. The term “WMI” means Washington Mutual, Inc.
2. The term “Martin” means Colleen M. Martin
3. The term “you” and “your” means WMI, its officers, directors, employees, agents, advisors, including without limitation, A&M and its employees and agents, and anyone else acting for or its behalf.
4. The term “A&M” means Alvarez & Marsal North America, LLC.
5. The term “Court” means the United States Bankruptcy Court for the District of Delaware.
6. The term “Commencement Date” means September 26, 2008.
7. The term “JPMC” means JPMorgan Chase Bank, N.A.
8. The term “minutes” means any written summary of a meeting of a corporate governance body adopted by such body as the official minutes of its meeting, as well as any preliminary drafts of such minutes circulated prior to such approval, and also includes any actions of a corporate governance body taken by written consent without a meeting, as well as any preliminary drafts of such written consent, and in all cases including any attachments, exhibits or other documents referenced in such minutes or written consents.
9. The term “Objection” means the *Debtors’ Objection to Motion of Colleen M. Martin for Allowance and Payment of Administrative Expense Claim Under 11 U.S.C. § 503(b)(1)(a)(i) and Allowance of an Allowed General Unsecured Claim* filed with the Court and assigned Docket Number 7834.
10. The term “Operations Committee” means the Operations Committee of WMI’s Board of Directors.
11. The term “Operations Committee Consent” means that certain *Written Consent to Action of the Operations Committee of the Board of Directors of Washington Mutual, Inc. in Lieu of a Special Meeting*, dated April 29, 2011.
12. The term “PAC” means the Plan Administration Committee (appointed by the Human Resources Committee of WMI’s Board of Directors).

13. The term "Plan Amendment PAC Consent" means the Unanimous Written Consent in Lieu of Special Meeting of the Washington Mutual, Inc. Plan Administration Committee, dated December 31, 2008.

14. The terms "person" or "persons" means natural persons, proprietorships, corporations, partnerships, trusts, joint ventures, groups, associations, organizations, and all other types of entities.

15. The term "Reply" means the *Reply of Colleen M. Martin to Debtors' Objection to Motion of Colleen M. Martin for Allowance and Payment of Administrative Expense Claim Under 11 U.S.C. § 503(b)(1)(a)(i) and Allowance of an Allowed General Unsecured Claim* filed with the Court and assigned Docket Number 7860.

16. The term "SERP" means the Washington Mutual, Inc. Supplemental Executive Retirement Plan (Amended and Restated effective July 20, 2004), as further amended effective December 31, 2008.

17. The term "SERAP" means the Washington Mutual, Inc. Supplemental Executive Retirement Plan (Amended and Restated Effective January 1, 2004), as further amended effective December 31, 2008.

18. The term "Severance Plan" means the WaMu Severance Plan (Amended and Restated Effective January 1, 2008).

19. The term "Severance Plan PAC Consent" means the Unanimous Written Consent in Lieu of Special Meeting of the Washington Mutual, Inc. Plan Administration Committee, dated April 19, 2011.

20. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) by any means, including but not limited to any meeting, conversations, discussion, conference, correspondence, message, or other written or oral transmission, exchange, or transfer of information in any form between two or more persons, including, without limitation, in person or by telephone, facsimile, telegraph, telex, electronically transmitted message from any and all business and personal email accounts (e.g. Hotmail, Yahoo! Mail, etc.) ("e-mail"), or other medium.

21. The term "document" shall have the broadest meaning permitted by Bankruptcy Rule 7034(a) and Federal Rule 34(a) and includes, without limitation, all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise), and drafts of the following items, whether printed, recorded (through a sound, video, or other electronic, magnetic, or digital recording system), or reproduced by hand: letters, correspondence, legal notices, checks or copies of checks, receipts, handwritten notes, telegrams, telexes, memoranda, records, summaries of conversations or interview, minutes, records, or notes of meetings or conferences, note pads, notebooks, postcards, "Post-It" notes, stenographic

notes, notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, photos, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plan, tape recordings, videotapes, disks, diskettes, "flash" drives, data tapes or readable computer-produced interpretations or transcription thereof, e-mail, voicemail messages, text messages, interoffice communications, advertising, packaging and promotional materials and any other writings, papers, and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, server, mainframe, or other storage device (including (i) information on or in computer memory, (ii) information on or in computer network backup files, and (iii) information which has been "deleted" or "erased" but is recoverable) whether located on-site or at an off-site facility, within your possession, custody, or control.

INSTRUCTIONS

1. You are to produce all documents in your possession, custody or control which are requested herein. The term "possession, custody, or control" includes actual possession by you, actual possession by you with another, or constructive possession by you - in that you are legally entitled or able to obtain actual possession from another person (including counsel and former counsel). If any of the requested documents were, but no longer are, in your possession or subject to your control, state whether such information or document: (a) is missing or lost; (b) has been destroyed; (c) has been transferred voluntarily or involuntarily to any other person or entity; or (d) has been otherwise disposed of, and, in each instance, explain the circumstances surrounding the disposition thereof and provide a description of the nature, content, date, author(s), and recipient(s) of the information or document.
2. A request for a document shall be deemed to include a request for any and all transmittal sheets, cover letters, exhibits, enclosures, or attachments to the document, in addition to the document itself. Each and every document shall be produced in its entirety notwithstanding the fact that portions thereof may contain information not requested. All interim as well as final versions of any document shall be produced, and all versions or copies that are not identical to the original or other produced copy of the document, whether due to handwritten notations, modifications, changes, amendments, revisions, or otherwise shall be produced.
3. The use of the singular shall be deemed to include the plural, and the use of masculine, feminine or neutral gender shall include each gender, as appropriate in context.
4. The terms "and" and "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of the request all information that might otherwise be construed to be outside its scope.
5. If you object to any request, or if you otherwise do not respond to any request in full, state the specific grounds for the objection or other reason for not responding. If

you object to any request, you should clearly indicate to which part or portion of the request the objection is directed and provide all documents that are responsive to that part or portion of the request to which no objection is made as if such part or portion were propounded as a separate request. If there is no document responsive to any particular request, please state so in writing.

6. If any document requested herein is withheld under claim of privilege, the response or objection to the specific request shall (a) describe in detail the nature of the privilege (including work product) which is being claimed and the applicable rule or law governing such claim and sufficient information to set forth the basis for asserting the privilege and (b) identify each document by date and subject matter, without disclosing its contents, in a manner sufficient to allow it to be described to the Court for ruling on the privilege or other reason asserted. You shall provide each requested document that is not subject to a claim of privilege by excising or otherwise protecting the portions for which a privilege is asserted, if such a technique does not result in disclosing the contents of the portions for which privilege is asserted.

7. Each request is deemed to be continuing in nature. Any additional document that is obtained, discovered, or brought to your attention between the time of responding to these requests and the final disposition of the matters asserted in the Motion, Objection and Reply, must be produced as required by Federal Rule 26(e).

8. Each request, including, without limitation, each request relating to benefits due, is deemed to refer to the periods both before and after the Commencement Date.

9. Except for the Request set forth in Item 9, below, if any document requested herein is maintained in computer files, you are requested to produce each such document in paper form as well as provide a copy of each document on computer disk or CD-ROM.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents and communications relied upon in support of your Objection including, but not limited to:

- (a) communication with A&M regarding the terms of and Martin's entitlement to receive a bonus;
- (b) documents related to the SERP, SERAP, and/or Severance Plan including without limitation, the drafting, execution, implementation, amendment, or termination thereof;
- (c) communications with A&M and/or JPMC, and any of their respective employees or agents, regarding the SERP, SERAP, and/or Severance Plan including, without limitation, the drafting, execution, implementation, amendment, or termination thereof;

- (d) documents related to the Severance Plan PAC Consent, the Plan Amendment PAC Consent, and/or the Operations Committee Consent; and
 - (e) communications with A&M, JPMC, or any other person regarding the Severance Plan PAC Consent, the Plan Amendment PAC Consent, and/or the Operations Committee Consent.
2. All minutes of the Board of Directors of WMI, and its Committees, from and after September 1, 2008.
 3. All documents pertaining to or describing the powers of the PAC, including without limitation the PAC Charter.
 4. All minutes of the PAC from and after September 1, 2008.
 5. With respect to each employee of WMI (whether or not still currently employed by WMI) hired on or after September 25, 2008:
 - a. Any written employment agreements entered into, or if there is no such written agreement, a written summary of the terms of the oral employment agreement with the employee;
 - b. Any release of WMI executed by such employee after September 25, 2008;
 - c. Any notice of termination (or other communication indicating that such employee's employment by WMI would cease) provided to such employee after September 25, 2008;
 - d. All documents pertaining to such employee's target or potential bonus for any specified period of time, to the extent not contained in the response to item 5.a., above;
 - e. All documents pertaining to the calculation of such employee's bonuses paid after September 25, 2008;
 - f. A statement indicating such employee's base salary, and bonus for each calendar tax year (either full or partial), cross-referenced to the appropriate documents responsive to items 5.a., 5.d. and 5.e., above;
 - g. Forms W-2 for such employee for each calendar tax year (beginning with calendar tax year 2008) during which such employee was employed by WMI, and for employees employed by WMI during 2011, such employee's final paystub (if terminated during 2011) or

June 30, 2011 paystub (if still employed as of June 30 2011), all of such forms W-2 and paystubs either agreed to the appropriate line-item of information in the statement prepared for item 5.f., above, or reconciled to such line-item; and

h. All performance reviews for such employee.

For the avoidance of doubt, each of items 5.a. through 5.h., above, should be organized into a set of documents for each employee, and "employee" includes Stewart Landefeld, Robert Williams, Jan Schrag, Charles Edward Smith, Linda O'Brien, Amy Shilling Rose, Kraig Klinkhammer, Deborah Johnson, Curt Brouwer, Nicholas Nguyen, Helen Grayson, Vicky Wu, Peter Struck, Thomas Cronk, Janie Palsha, Yana Hirata, Doreen Logan, Dennis Suzuki, and Jennifer Rundorff as well as any other person to whom WMI issued a Form W-2 for any of the calendar tax years 2009 or 2010, irrespective of how much or little of such calendar tax years such employee worked for WMI.

6. All documents pertaining to the calculation of the 2009 benefit credits under the Washington Mutual, Inc. Cash Balance Pension Plan.


7. All documents pertaining to continuation coverage under the group medical plan for terminated employees or soon to be terminated employees.

8. All communications with A&M, Gallagher Benefit Services, Inc. or any other person pertaining to continuation coverage under the group medical plan for terminated employees or soon to be terminated employees.

9. A hard disk drive containing a download of all of the documents, including without limitation all .pst files, Outlook calendar and Outlook contacts, contained on Martin's laptop and on Martin's restricted file on the G: drive.

10. Any and all additional documents and communications relied upon in support of the allegations asserted in the Objection.

Dated: June 24, 2011
Seattle, Washington


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of *Colleen M. Martin's First Request for Production of Documents Directed to Washington Mutual, Inc.* was served upon the individuals set forth below via United States first class mail, postage pre-paid (placed in the mail on June 24, 2011):

Counsel to the Debtors
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attn: Brian S. Rosen, Esq.

FILED
JUN 28 PM 10:55
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK


Colleen M. Martin