

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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*In re* : Chapter 11
  
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WASHINGTON MUTUAL, INC., et al.,<sup>1</sup> : Case No. 08-12229 (MFW)
  
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Debtors. : (Jointly Administered)
  
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**MOTION FOR AN ORDER SHORTENING THE NOTICE AND  
OBJECTION PERIODS WITH RESPECT TO “DEBTORS’ MOTION IN  
LIMINE TO EXCLUDE PORTIONS OF THE EXPERT REPORTS AND  
THE TESTIMONY OF THE EQUITY COMMITTEE’S EXPERT  
WITNESSES ANDERS J. MAXWELL AND KEVIN D. ANDERSON ”**

Washington Mutual, Inc. (“WMI”) and WMI Investment Corp. (“WMI Investment,” and together with WMI, the “Debtors”), as debtors and debtors in possession, hereby submit this motion (the “Motion to Shorten”) for an order, pursuant to section 105 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002 and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9006-1(e) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”): (i) shortening the notice and objection periods for a hearing on the *Debtors’ Motion in Limine to Exclude Portions of the Expert Reports and the Testimony of the Equity Committee’s Expert Witnesses Anders J. Maxwell and Kevin D. Anderson* (the “Motion to

<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.



Exclude”);<sup>2</sup> (ii) allowing the Motion to Exclude to be heard at the hearing scheduled for July 13, 2011 at 9:30 a.m. (EDT) (the “Confirmation Hearing”); (iii) permitting parties to submit objections, if any, to the Motion to Exclude up to and including at the Confirmation Hearing; and (iv) granting such other and further relief as the Court deems just and proper. In support of the Motion to Shorten, the Debtors respectfully state as follows:

### **JURISDICTION**

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

### **BACKGROUND**

2. On September 26, 2008 (the “Commencement Date”), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their businesses 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 Bankruptcy Rule 1015(b), authorizing the joint administration of the Debtors’ chapter 11 cases.

3. 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 an official

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<sup>2</sup> Contemporaneously with the Motion to Exclude, the Debtors also filed, (i) the *Debtors’ Memorandum of Law in Support of Their Motion in Limine to Exclude Portions of the Expert Reports and the Testimony of the Equity Committee’s Expert Witnesses Anders J. Maxwell and Kevin D. Anderson* and (ii) the *Declaration of John P. Mastando III, Esq. in Support of Debtors’ Motion in Limine to Exclude Portions of the Expert Reports and the Testimony of the Equity Committee’s Expert Witnesses Anders J. Maxwell and Kevin D. Anderson*.

committee of equity security holders (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.

4. 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.

5. On January 7, 2011, the Bankruptcy Court entered an opinion [D.I. 6528] (the “Opinion”) and a corresponding order [D.I. 6529] determining that the Global Settlement Agreement, 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.

6. In accordance with the Opinion, as well as statements made by the Bankruptcy Court at the status conference held on January 20, 2011, on February 8, 2011, the Debtors filed 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”) and a related supplemental disclosure statement. On March 30, 2011, the Bankruptcy Court entered an order approving the supplemental disclosure statement for the Modified Sixth Amended Plan [D.I. 7081] and established that (a) objections to the Modified Sixth Amended Plan were due on May 13, 2011 and (b) the Confirmation Hearing

would commence on June 6, 2011. The Confirmation Hearing has since been adjourned to July 13, 2011 at 9:30 a.m. (EDT).

7. The Equity Committee retained Peter J. Solomon Company, L.P. ("Peter J. Solomon") as financial advisor and requested that Peter J. Solomon critique the valuation performed by Steven Zelin, the Debtors' valuation expert. Anders J. Maxwell ("Maxwell") prepared a Residual Washington Mutual, Inc. Valuation Critique, dated April 29, 2011 (the "Maxwell Report"). The Maxwell Report opines on the valuation of the reinsurance run-off business of Reorganized WMI and speculates on "scenarios" in which Reorganized WMI raises debt and equity capital to generate taxable income and utilize net operating losses ("NOLs"). Maxwell was deposed on June 30, 2011.

8. The Equity Committee retained Anderson to opine on the Debtors' ability to use its NOLs and other federal tax attributes in post-emergence periods, pursuant to relevant portions of the Internal Revenue Code. On May 2, 2011, the Equity Committee filed the expert report of Kevin D. Anderson ("Anderson"). The Equity Committee filed a supplemental report prepared by Anderson on June 23, 2011. The Equity filed a second supplemental report prepared by Anderson on June 30, 2011. Anderson was deposed on July 1, 2011.

#### **RELIEF REQUESTED**

9. By this Motion to Shorten, the Debtors seek entry of an order, pursuant to section 105 of the Bankruptcy Code, Bankruptcy Rules 2002 and 9006, and Local Rule 9006-1 (i) shortening the notice and objection periods for a hearing on the Motion to Exclude; (ii) allowing the Motion to Exclude to be heard at the Confirmation Hearing; (iii) permitting parties to submit objections, if any, to the Motion to Exclude up to and including at the Confirmation Hearing; and (iv) granting such other and further relief as the Court deems just and proper.

### **BASIS FOR RELIEF REQUESTED**

10. Local Rule 9006-1(c) requires that all motion papers be filed and served at least fourteen (14) days prior to the hearing date scheduled for such motion, and seventeen (17) days if notice is given by first class mail, unless the Bankruptcy Rules state otherwise. See Del. Bankr. L.R. 9006-1(c). Local Rule 9006-1(c) further requires that the objection deadline set for a motion be no later than seven (7) days before the scheduled hearing date. See Id. Accordingly, absent the relief requested herein, the Debtors would be unable to have the Motion to Exclude heard at the Confirmation Hearing under the Local Rules.

11. The Debtors respectfully submit, however, that the relief requested herein is necessary and appropriate under the circumstances. The Debtors believe that consideration of the Motion to Exclude at the Confirmation Hearing is necessary because the expert testimony and reports that the Debtors' are seeking to exclude are inextricably bound up with the entire confirmation process. Specifically, the testimony and reports that the Debtors are seeking to exclude are a significant piece of the Equity Committee's objection to confirmation of the Modified Sixth Amended Plan. If the Court declines to hear the Motion to Exclude at the Confirmation Hearing, the Debtors would be irreparably prejudiced and their ability to move forward with a meaningful Confirmation Hearing would be jeopardized. Moreover, given the underlying purpose of the Motion to Exclude, the Debtors believe that hearing the underlying testimony without first considering the Motion to Exclude could result in valuable time and estate resources being expended on evidence and testimony that may ultimately not be considered in connection with the Court's ruling on confirmation.

12. Additionally, the Debtors request that the Court permit parties in interest to raise objections to the Motion to Exclude up to and including at the Confirmation Hearing to

offset any potential prejudice that parties in interest may incur by the Motion to Exclude being heard on shortened notice.

13. Based on the foregoing, the Debtors believe that cause exists for the Motion to Exclude to be heard on an expedited basis at the Confirmation Hearing, with objections being allowed up to and including the Confirmation Hearing.

**NOTICE**

14. Notice of this Motion to Shorten shall be provided 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 herein and allowing the Motion to Exclude to be heard on an expedited basis at the Confirmation Hearing, permitting parties in interest to object or otherwise respond to the relief requested in the Motion to Exclude up to and including at the Confirmation Hearing, and granting such other and further relief as is just and proper.

Dated: July 11, 2011  
Wilmington, Delaware



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ATTORNEYS TO THE DEBTORS  
AND DEBTORS IN POSSESSION

# **EXHIBIT A**



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

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

**ORDER SHORTENING THE NOTICE AND  
OBJECTION PERIODS WITH RESPECT TO “DEBTORS’ MOTION IN  
LIMINE TO EXCLUDE PORTIONS OF THE EXPERT REPORTS AND  
THE TESTIMONY OF THE EQUITY COMMITTEE’S EXPERT  
WITNESSES ANDERS J. MAXWELL AND KEVIN D. ANDERSON ”**

Upon consideration of the Motion, dated July 11, 2011 (the “Motion to Shorten”), of Washington Mutual, Inc. (“WMI”) and WMI Investment Corp. (“WMI Investment,” and together with WMI, the “Debtors”) for an order pursuant to section 105 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002 and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9006-1(e) of the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) (i) shortening the notice and objection periods for a hearing on the Motion to Exclude;<sup>2</sup> (ii) allowing the Motion to Exclude to be heard to be heard at the Confirmation Hearing; (iii) permitting parties in interest to submit objections, if any, to the Motion to Exclude

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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.

<sup>2</sup> Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Rights Offering Motion.

up to and including the Confirmation Hearing; and (iv) granting such other and further relief as the Court deems just and proper; and upon the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and (c) notice of the Motion to Shorten was due and proper under the circumstances; and it appearing that the relief requested in the Motion to Shorten is in the best interests of the Debtors' estates, their creditors and other parties-in-interest; and after due deliberation, and good and sufficient cause appearing therefore, it is hereby

ORDERED, DECREED AND ADJUDGED that:

1. The Motion to Shorten is hereby granted.
2. The Motion to Exclude shall be considered at the Confirmation Hearing.
3. Parties may submit objections, or otherwise respond to the relief requested in the Motion to Exclude up to and including at the Confirmation Hearing.
4. 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: July \_\_, 2011  
Wilmington, Delaware

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE