IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
WASHINGTON MUTUAL, INC., *et al.*,[1]	Case No. 08-12229 (MFW)
	(Jointly Administered)
Debtors.	Hearing Date: July 13, 2011 at 9:30 a.m.
	Re: Dkt. No. 8073

OWL CREEK ASSET MANAGEMENT, L.P.'S RESPONSE TO THE OBJECTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS TO CONFIRMATION OF THE MODIFIED SIXTH AMENDED PLAN OF REORGANIZATION

Owl Creek Asset Management, L.P., on behalf of the funds it manages or advises (collectively, "Owl Creek"), by and through its undersigned counsel, respectfully submits this response (the "Response") to the Objection of the Official Committee of Equity Security Holders (the "EC") to Confirmation of the Modified Sixth Amended Plan of Reorganization (the "EC Objection") [D.I. 8073]. In support of its Response, Owl Creek respectfully states as follows:

INTRODUCTION

1. For more than six months, the EC has been conducting an investigation into the general allegations, first raised by Mr. Nate Thoma in his objection to confirmation of the Debtors' Sixth Amended Plan, that the Settlement Note Holders ("SNH") had traded in the securities of WMI while in the possession of material non-public information. As part of this investigation, the SNH provided to the EC tens of thousands of pages of documents (including detailed trading records) in response to discovery requests and made witnesses from each of the

[1] The Debtors are: (i) Washington Mutual, Inc. ("WMI") and (ii) Washington Mutual Investment Corp.

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SNH available for deposition. The Debtors also made Mr. William Kosturos, the Debtors' chief restructuring officer, available for a full day deposition.

2. The results of the EC's investigation are clear—*no claim is made in the EC Objection that Owl Creek traded in any securities of WMI while in the possession of material non-public information*. That should end the inquiry as to Owl Creek, as well as any attempt by the EC to reduce, disallow or otherwise adversely impact Owl Creek's recovery in these cases. Unfortunately, having found no evidence to support a claim that Owl Creek engaged in any improper trading activity, the EC attempts to construct from whole cloth arguments that the Debtors abdicated all fiduciary and other responsibilities for the negotiations with the various constituencies in these cases, simply adopting whatever the SNH proposed, and that the SNH "hijacked" the settlement and reorganization processes. Nothing could be further from the truth.

3. Given the number of organized and well-represented parties in interest in these cases (including the Debtors, the Creditors' Committee, JP Morgan Chase Bank, N.A. ("JPMC"), the FDIC, the WMI Noteholders (a group of creditors that in turn consists of different subgroups), the WMB Bondholders, the Trust Preferred Securities Group (the "TPS Group"), the Litigation Tracking Warrants holders (the "LTW Group"), the EC and others), as well as the fact that (a) any settlement ultimately negotiated with JPMC and the FDIC would be subject to approval by this Court, after notice and a hearing, in accordance with Rule 9019, and (b) any plan negotiated would be subject to a vote of all impaired creditors and equity security holders, and compliance with the standards for confirmation under the Bankruptcy Code, the notion that any group of creditors could "hijack" the settlement negotiations or the reorganization process solely for its own benefit is absurd. In fact, the hearings that were conducted by this Court with respect to the Amended and Restated Settlement Agreement (the "Global Settlement") and

confirmation of the Sixth Amended Plan in December 2010—after more than six months of discovery by numerous parties in interest (including the Equity Committee)—are clear and convincing evidence that no party "hijacked" (or could hijack) the process.

4. To be sure, Owl Creek is, and has always been, a strong advocate of positions in these cases that would maximize the recoveries on the debt obligations they hold. But as a party in interest, Owl Creek is entitled to so act, either individually or in conjunction with others whose interests may be aligned. Neither Owl Creek nor any of the other SNH was responsible for representing the interests of other creditors or equity holders. They did not agree to act as such, never held themselves out as doing such, and no such "obligation" should be imposed upon them as a matter of law—particularly not after the fact. The interests of all of these other parties are, and at all times have been, adequately represented in these cases either by the Debtors (through the exercise of their fiduciary duties), through their own counsel (individually or in ad hoc groups), or by statutory committees appointed to act on their behalf. The active participation and zealous advocacy by each of these parties throughout the cases on behalf of their respective constituents has been witnessed by the Court, and undermines any argument that these parties somehow expected Owl Creek or any other SNH to look out for their interests.

5. The real issue here is obvious. The Plan provides no recovery to the EC's constituents and they do not like that result. In an effort to change that outcome, in addition to the baseless allegations made against Owl Creek and the other SNH, the EC has accused the Debtors of failing to exercise their fiduciary duties to equityholders, and the Creditors' Committee of allowing itself to be co-opted by the SNH in violation of its fiduciary duties. However, there is not a shred of evidence to support any of these allegations. The treatment of old equity under the Sixth Amended Plan is driven purely by the impact of the "absolute priority

rule" and the value available for distribution (which is in turn dictated, in large part, by the economics embodied in the Global Settlement that the Court already found was reasonable). Neither Owl Creek nor the other SNH should bear responsibility for that.

STATEMENT OF FACTS[2]

Background

6. Founded in February 2002, Owl Creek is an investment firm that utilizes an event-driven strategy. Krueger Dep. 9:25-11:9, 14:20-15:6, 16:7-10. Owl Creek identifies and evaluates investment opportunities by analyzing publicly-available information and financial news about issuers. *Id.* at 32:14-33:10, 33:20-34:3, 35:13-36:7, 110:9-20, 120:24-121:2, 141:23-142:19, 143:3-13.

7. Owl Creek takes its obligations with respect to insider trading laws very seriously. It maintains rigorous policies and procedures designed to prevent, detect and correct any violations of the prohibition on insider trading.[3] Those policies and procedures prohibit Owl Creek employees from: (1) trading, personally or on behalf of others (including on behalf of any funds managed by Owl Creek), while in possession of material, nonpublic information; and (2) communicating material, nonpublic information to others in violation of the law. Glickman Decl. Ex. B at OWL_0010801. The Written Procedures require employees who believe they might have access to material, nonpublic information immediately to bring the issue to the

[2] This discussion is limited to facts specific to Owl Creek. Facts relevant to the SNH more generally are set forth in the joint response of Owl Creek, Centerbridge and Appaloosa prepared by Fried Frank and filed contemporaneously herewith (the "AOC Joint Response"). Citations to "Krueger Dep." herein refer to the transcript of the June 24, 2011 deposition of Owl Creek Managing Director Daniel Krueger. Relevant pages of the transcript are attached as Exhibit A to the Declaration of Alan R. Glickman submitted herewith ("Glickman Decl.").

[3] Owl Creek's policies and procedures are reflected in the "Procedures to Prevent and Detect Misuse of Material Nonpublic Information" (the "Written Procedures") that are part of Owl Creek's Compliance Manual. Glickman Decl. Ex. B at OWL_0010801-0010803; Krueger Dep. 54:6-55:20. Substantially similar policies and procedures have been in effect since prior to Owl Creek's first investment in WMI securities in late September 2008. Glickman Decl. Ex. C at OWL_0010746-0010748, OWL_0010772-0010774; Krueger Dep. 63:5-8.

attention of Owl Creek's Chief Operating Officer and General Counsel, who determine what further action should be taken. Glickman Decl. Ex. B at OWL_0010802. In conjunction with its internal analysis of potentially non-public insider information, Owl Creek also consults with outside counsel as part of its standard practice. Krueger Dep. 58:5-15, 58:24-59:20, 79:5-16.

8. Owl Creek also maintains a "restricted list" of companies (the "Restricted List"), to which it adds whenever Owl Creek enters into a confidentiality agreement with a company, agrees to review drafts of certain documents, or otherwise determines that it would be prudent to restrict trading activity. Glickman Decl. Ex. B at OWL_0010803; Krueger Dep. 67:20-68:25, 69:9-70:18, 72:5-10, 74:20-75:24, 80:2-22, 100:6-23. A decision to remove a company from the Restricted List involves "a very careful and thorough analysis [by Owl Creek] of the situation at that time" (Krueger Dep. 83:25-84:3) and consultation with one or more of the outside law firms that Owl Creek retains. *Id*. at 69:12-70:2, 81:15-25, 82:2-12, 82:24-83:10. Every Owl Creek employee receives both an electronic and hard copy of the Restricted List whenever it is updated. *Id*. at 100:24-101:18.

9. As Owl Creek Managing Director Daniel Krueger testified, "[Owl Creek is] extremely conservative about these sorts of issues. So it is very important to us that we not ever get anywhere close to that line." *Id*. at 74:8-19; *see also id*. at 58:9-15, 79:9-16, 81:15-82:6. And in fact, no claim is made in the EC Objection that Owl Creek engaged in insider trading, nor could any such claim be made.

Owl Creek's Investment In WMI

10. Owl Creek began investing in WMI in late September 2008, and is currently one of the Debtors' large creditors. Krueger Dep. 13:8-14:11, 78:11-20. In the wake of the seizure of WMI's subsidiary, Washington Mutual Bank ("WMB"), the FDIC receivership, the sale of

WMB's assets to JPMC, and the Chapter 11 cases that were filed thereafter, numerous disputes arose among the Debtors, JPMC and the FDIC, relating to matters including the ownership of more than $5 billion of anticipated tax refunds (the "Tax Refunds"), $4 billion of deposits held at WMB in WMI's name (the "Deposit Accounts"), certain trust preferred securities with a liquidation preference of approximately $4 billion (the "TPS"), employee benefit plans and trusts created to fund employee-related obligations, intellectual property and contractual rights, shares in Visa Inc., and the proceeds of litigation and insurance policies. Disclosure Statement for the Sixth Amended Plan [D.I. 5549] at 1, 2, 5.

(a) The March 2009 Confidentiality Agreement

11. Soon after the Petition Date, Owl Creek joined an unofficial group of investors comprised primarily of senior bondholders (the "W&C Group") and represented by White & Case LLP ("W&C").[4] Krueger Dep. 123:14-124:10; Kosturos Dep. 115:9-16.[5] In March 2009, the Debtors invited the W&C Group and other noteholders to a meeting on March 10 (the "March 10 Meeting") to discuss a possible settlement offer to the FDIC and JPMC. Krueger Dep. 180:4-181:16, 199:9-14, 200:6-16.

12. As a condition of attending the March 10 Meeting, on March 10, 2009, Owl Creek and the Debtors entered into the "Confidentiality Agreement (Limited) with Owl Creek Asset Management, L.P." (the "March Confidentiality Agreement"), by which Owl Creek agreed to hold any confidential information that was provided to it in confidence, and to use it "only for the purpose of participating in the [Chapter 11] Cases." Glickman Decl. Ex. E ¶ 1; Krueger Dep. 82:18-23, 188:2-8. The other SNH signed substantially identical agreements. By their terms, the

[4] Verified Statement of White & Case LLP, [D.I. 102] (Oct. 20, 2008). Owl Creek was never a member of the Official Committee of Unsecured Creditors (the "Creditors' Committee"). EC Objection ¶ 14.

[5] Citations to "Kosturos Dep." refer to the transcript of the June 30, 2011 deposition of the Debtors' Rule 30(b)(6) witness, William C. Kosturos, relevant pages of which are attached as Exhibit D to the Glickman Declaration.

agreements expired on May 8, 2009. Glickman Decl. Ex. E ¶ 13. Importantly, the agreement included a safe harbor procedure which required that, upon termination, the Debtors publicly disclose any material non-public information provided to the SNH.[6] Upon signing the agreement, Owl Creek ceased trading in the Debtors' securities, and did not trade again until after the agreement—and Owl Creek's obligations under it—expired. Krueger Dep. 74:20-75:5, 82:18-85:10, 188:2-16.

13. Owl Creek's involvement in the ensuing settlement discussions was hardly extensive. It attended the March 10 Meeting and received the Debtors' terms sheets dated March 5 and March 11, 2009 and JPMC's March 18 response. Krueger Dep. 178:24-179:8, Glickman Decl. Exs. F, G. On March 24, JPMC filed an adversary proceeding against the Debtors seeking declaratory judgment that it owned the disputed assets. Disclosure Statement for the Sixth Amended Plan [D.I. 5549] at 4; Kosturos Dep. 90:9-91:3.

14. On May 8, 2009, the March Confidentiality Agreement expired by its terms. Glickman Decl. Ex. E ¶ 13. Before Owl Creek removed the Debtors from its Restricted List, in an abundance of caution, it took several steps to ensure that trading in WMI securities would not violate the securities laws. First, Owl Creek obtained an email from Brian Rosen, the Debtors' lead counsel, representing that the Debtors had made all required disclosures of material nonpublic information, as required under the March Confidentiality Agreement. Glickman Decl. Ex. H; Krueger Dep. 82:24-83:10, 189:11-190:16, 192:5-16, 217:8-24, 218:8-15. In addition, Owl Creek consulted with securities counsel from two outside law firms, W&C and Schulte Roth & Zabel LLP, regarding the decision to become unrestricted. *Id*. at 82:24-83:10, 84:12-85:2,

[6] Glickman Decl. Ex. E ¶ 13 ("Upon the termination of this Agreement pursuant hereto, the Debtors shall make public disclosure (within the meaning of Rule 101 of Regulation FD) of a fair summary, as reasonably determined by the Debtors, of any Confidential Information that constitutes material non-public information under U.S. federal securities laws.")

192:5-16. Finally, Owl Creek itself "considered all the facts that existed at that point in time and came to a decision." *Id*. at 192:12-16; *see also id.* at 83:16-84:8.

(b) The November Confidentiality Agreement

15. Thereafter, Owl Creek left the W&C Group to join another unofficial investor group (the "FF Group"), represented by Fried, Frank, Harris, Shriver & Jacobson LLP ("Fried Frank"). Krueger Dep. 38:18-39:10. Other members of the FF Group included Appaloosa Management L.P. ("Appaloosa") and Centerbridge Partners, L.P. ("Centerbridge"), both of whom—like Owl Creek—had large holdings of junior subordinated debentures known as "PIERS," and thus shared Owl Creek's interests.[7] At certain times, the FF Group also included Aurelius Capital Management, LP ("Aurelius"). By contrast, the W&C Group consisted of senior bondholders. Kosturos Dep. 115:9-16.

16. On November 16, 2009, Owl Creek entered into a second agreement with the Debtors, entitled the "Confidential Agreement (Limited) with Owl Creek Asset Management L.P., on behalf of certain funds for which it acts as investment adviser" (the "November Confidentiality Agreement"). Glickman Decl. Ex. I. The other SNH entered into substantially identical agreements. The agreements included the same confidentiality and use restrictions as the March Confidentiality Agreement, and provided that they would expire by their terms no later than December 31, 2009. *Id.* ¶¶ 1, 13. The November Confidentiality Agreement also included an explicit safe harbor provision that required the Debtors to "immediately make public disclosure . . . of any Confidential Information that constitutes material non-public information under U.S. federal securities laws" upon termination of the Agreement. *Id.* Upon signing the November Confidentiality Agreement, Owl Creek put the Debtors on the Restricted List and

[7] Kosturos Dep. 115:17-19; First Supplemental Verified Statement of Fried, Frank, Harris, Shriver & Jacobson LLP pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure [D.I. 3761] (May 17, 2010); *see also* Disclosure Statement for the Sixth Amended Plan [D.I. 5549] at 41..

suspended all trading in the Debtors' securities until December 30, 2009, when the November Confidentiality Agreement was terminated by agreement of the parties. Krueger Dep. 74:20-75:5; 85:11-86:22.

17. During the two weeks after Owl Creek signed the November Confidentiality Agreement, the Debtors disclosed to the SNH that they anticipated receiving approximately $2.5 billion of additional tax refunds (the "Second Tax Refund") as the result of passage of the Worker, Homeownership, and Business Assistance Act of 2009 ("WHBA"). Owl Creek also received a November 23, 2009 term sheet that Debtors sent to JPMC, as well as JPMC's one-page response to that term sheet, dated November 30, 2009. Krueger Dep. 222:25-223:11; 226:11-13; 231:20-23; Glickman Decl. Ex. J. The term sheets that were exchanged by the Debtors and JPMC reflected numerous differences in their respective positions, including with respect to the allocation of the Tax Refunds (as well as the Second Tax Refund), and did not even mention any allocation to the other parties (such as the FDIC and WMB Bondholders) that ultimately shared in the Tax Refunds in the Global Settlement.[8] Not surprisingly, the negotiations during that period did not result in an agreement.

18. On December 30, 2009, before Owl Creek removed the Debtors from its Restricted List, the Debtors filed the November 2009 Monthly Operating Report, disclosing the Second Tax Refund (Kosturos Dep. 268:9-269:8), and Debtors' counsel sent FF an email assuring it that once the November 2009 Monthly Operating Report was filed, "WMI [would] consider all necessary disclosure obligations to have been satisfied and the Confidentiality Agreement . . . terminated." Glickman Decl. Ex. L.[9] Owl Creek also again consulted with

[8] Glickman Decl. Exs. J, K; Sixth Amended Plan [D.I. 5548], Exhibit H (Oct. 6, 2010).

[9]Owl Creek believes that the Debtors complied with its disclosure obligations under the March and November Confidentiality Agreements. However, to the extent this Court determines otherwise, the SNH would have administrative expenses claims against the Debtors' estates for breach of an ordinary course agreement entered into

outside counsel regarding whether it would be permissible to trade in the Debtors' securities upon termination of the agreement. Krueger Dep. 85:25-86:16.

ARGUMENT

I. The SNH's Role In The Chapter 11 Cases Was Entirely Appropriate.

19. In its Objection, the EC asserts that the SNH usurped the role of Debtor and Creditors' Committee and used that power to "hijack" negotiations of the Global Settlement with JPMC and the FDIC, and to dictate the terms of the Debtors' Sixth Amended Plan. As reflected above and further discussed in the AOC Joint Response, there is no basis whatsoever for these claims.

II. Owl Creek Did Not Misuse Confidential Information Obtained in Bankruptcy.

20. The EC cannot and does not allege that Owl Creek engaged in insider trading. Indeed, the EC tacitly acknowledges that Owl Creek did *not* do so by limiting its insider trading claims to Aurelius and Centerbridge. EC Objection at 20, heading A, ¶¶ 38, 42-44, 46-47, 60-62. Owl Creek vigorously disagrees with the EC's claim that Aurelius and Centerbridge engaged in improper trading, and respectfully refers the Court to their responses to the EC Objection. In Owl Creek's case, however, no insider trading claim is even made.

21. Despite limiting its insider trading allegations to Aurelius and Centerbridge, the EC conclusorily asserts that "the Settlement Noteholders' claims" should be disallowed and that "the Settlement Noteholders traded in violation of a number of fiduciary duties." *Id.* ¶¶ 38-47. Inasmuch as the EC alleges no facts whatsoever as to *any* trading by Owl Creek, much less improper trading, the EC's claims that the SNH traded in violation of fiduciary duties are

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post-petition (the "SNH Admin. Claims"). In such an event, in order for the Sixth Amended Plan to comply with section 1129(a) of the Bankruptcy Code, sections 43.2, 43.6 and 43.7 and 43.8 of the Sixth Amended Plan would have to be modified to allow the SNH to assert the SNH Admin. Claims and the Debtors would have to reserve amounts sufficient to satisfy those claims.

irrelevant in Owl Creek's case.[10] Nonetheless, we respond below to EC's meritless assertions that the SNH are fiduciaries and/or non-statutory insiders.

A. The SNH Are Not Fiduciaries To The Creditors, Estate or Equity.

22. After six months of discovery and four days of hearings to consider approval of the Global Settlement and confirmation of the Sixth Amended Plan in December 2010, this Court concluded that "[t]he Settlement Noteholders [including Owl Creek] *were not acting in this case in any fiduciary capacity*; their actions were taken solely on their own behalf, not others." *In re Wash. Mut., Inc.*, 442 B.R. 314, 349 (Bankr. D. Del. 2011) (emphasis added). Under the law of the case doctrine, there is no justification for revisiting that decision now. *See, e.g., Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816-17 (1988); *Scheafnocker v. Comm'r*, __F.3d__, 2011 WL 1467198, at *3 (3d Cir. Apr. 19, 2011). As described below, there is no basis for the EC's fiduciary duty claims in any event.

(1) The SNH Were Not Temporary Insiders Under *Dirks*.

23. Relying on *Dirks v. SEC*, 463 U.S. 646 (1983), the EC argues that the SNH became "temporary insiders" as a result of their involvement in these Chapter 11 cases. In *Dirks*, the Supreme Court noted that when a corporate outsider has "entered into a special confidential relationship in the conduct of the business of the enterprise and [is] given access to information solely for corporate purposes," the outsider may be deemed to be a fiduciary to the corporation's

[10] Because the EC Objection contains no allegations about trading by Owl Creek, the EC's unsupported additional claim that no duty is required in order for trading to be deemed improper is also irrelevant to Owl Creek. So too is any suggestion by the EC that the SNH were in possession of material non-public information. In any event, there is no basis for suggesting that the proposals reflected in term sheets exchanged by the Debtors and JPMC in settlement discussions were material. *See Basic Inc. v. Levinson*, 485 U.S. 224, 238 (1988) (materiality of contingent events "will depend at any given time upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity." (internal quotation marks omitted)); *see also Gay v. Axline*, No. 93-1491, 1994 U.S. App. LEXIS 8989, at *15-25 (1st Cir. Apr. 28, 1994) (unpublished opinion) (discussions regarding contract for significant product sale were immaterial due to the contract's uncertain and contingent status). For a more detailed discussion of the insider trading issue, we respectfully refer to the submissions of Aurelius and Centerbridge.

shareholders. *Id.* at 655 n. 14. The SNH had no such relationship with the Debtors here. Under *Dirks*, temporary insider status is created when an outsider is engaged by the corporation to advance a corporate interest, not when the corporation and the outsider are working together toward a goal in which they each have distinct interests.[11]

24. Here, neither the Debtors nor the SNH ever intended, or even considered, the SNH to be acting on behalf of the Debtors, whether as consultants or advisors or in any other capacity. It was always clear that Owl Creek and the other SNH became involved in settlement discussions, and entered into the March and November Confidentiality Agreements, to further their own economic self-interest in the adequacy of any settlement from their point of view, and the Debtors were fully aware of the divergence between their respective interests. *See, e.g.* Kosturos Dep. 185:5-14 ("Ultimately I'm the debtor… The debtor needs to make its own decisions that not necessarily are always going to be agreed upon by creditors…."); 202:10-13 (the SNH "wanted to get the most they could and that's what they're in business for.").[12]

25. Even if the Debtors gave the SNH access to confidential information in part to further the Debtors' interest in furthering settlement negotiations and facilitate progress of the

[11] As *Dirks* explained, the temporary insider rule would apply in circumstances "such as where corporate information is revealed legitimately to an underwriter, accountant, lawyer, or consultant working for the corporation…." *Id.* That is also reflected in the cases *Dirks* cited. *See In re Investors Mgmt. Co.*, 44 S.E.C. 633 (1971) (confidential information disclosed to prospective underwriter retained by corporation for securities offering); *In re Van Alstyne, Noel & Co.*, 43 S.E.C. 1080 (1969) (same); *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 43 S.E.C. 933 (1968) (same). Courts continue to limit temporary insider status to those who act as either formal or informal consultants. *See Sawant v. Ramsey*, 742 F. Supp. 2d 219, 238 (D. Conn. 2010) (defendant shareholder who played no consulting or advisory role for the corporation not a temporary insider).

[12] To support its temporary insider claim, the EC relies on a law review article. EC Objection ¶ 50 (quoting Mark J. Krudys, *Insider Trading by Members of Creditors' Committees—Actionable!*, 44 DePaul L. Rev. 99, 142 (1994)). That reliance is misplaced. First, contrary to the suggestion in the article, the test is whether information is shared "solely" for a corporate purpose, and it is not sufficient that this has been the "primary reason." Second, in this case the SNH's goal was to achieve an adequate recovery on their bonds, not to serve the Debtors. The EC also references an article that observes that "members of a creditors committee overseeing a reorganization of the issuer would be treated as insiders." Donald C. Langevoort, 18 Insider Trading Regulation, Enforcement and Prevention § 3:8 (Database updated April 2011). However, Owl Creek is not, nor ever was, a member of the Creditors' Committee in these Chapter 11 cases.

cases, the temporary insider theory would not apply. Under *Dirks*, an outsider acquires temporary insider status only when he is given access to confidential information "s*olely* for corporate purposes." *Dirks*, 463 U.S. at 655 n.14 (emphasis added). That was clearly not the case here, as the EC itself recognizes. EC Objection ¶ 12 ("The Settlement Note Holders goal in these negotiations was always to achieve certain levels of recovery on their bonds.").[13]

26. Further, should the Court find that Owl Creek and/or the other SNH became temporary insiders of the Debtors as a result of entering into the Confidentiality Agreements, the concomitant duty to refrain from trading was coextensive with the terms of those agreements, not perpetual. *See Spa Time, Inc. v. Bally Total Fitness Corp.*, 28 Fed. App'x 131 (3d Cir. 2002) (unpublished opinion) (parties' awareness of limited nature of the parties' relationship belied any intention that agreement would be perpetual). Accordingly, when the Confidentiality Agreements terminated, so did Owl Creek's obligations thereunder.

(2) The SNH Owed No Duty To Other Noteholders Not to Trade.

27. The EC argues that "by acquiring blocking positions in all the subordinated classes, and negotiating and acting collectively, the [SNH] took on obligations to other members of those classes." EC Objection ¶ 52. There is no basis for the EC's novel theory.

28. As a threshold matter, and as discussed above, this Court already has concluded that the SNH were *not* fiduciaries. To attempt to evade the law of the case doctrine, the EC invokes a passage from the Court's prior ruling on the applicability of Bankruptcy Rule 2019, in which the Court noted that "[t]he case law . . . *suggests* that members of a class of creditors *may*, in fact, owe fiduciary duties to other members of the class." *In re Wash. Mut., Inc.*, 419 B.R. 271, 278 (Bankr. D. Del. 2009) (emphasis added) (the "Rule 2019 Decision"). However, that

[13] Nor is there any basis for the EC's suggestion that if the information was not provided solely for a corporate purpose, then it must have been provided for an improper one, such as to permit trading on material nonpublic information. EC Objection p. 26 n.8. That is simply a *non sequitur*.

portion of the Court's decision is clearly *dicta* and, as such, it is not law of the case.[14] That is particularly so inasmuch as the Court's conclusion earlier this year that the SNH were not fiduciaries was subsequent to the Rule 2019 Decision and—unlike that decision—was based on a lengthy hearing and fully developed factual record.

29. Moreover, given the factual record, neither of the cases referenced in the 2019 Decision would support a finding that the SNH owed fiduciary duties to other holders. In *Young v. Higbee Co.*, 324 U.S. 204 (1945), the Supreme Court held that two preferred shareholders who appealed a plan's confirmation breached their fiduciary duties to other preferred shareholders when they "sold their stock and their appeal" to the insiders of the reorganized debtor for a premium, thereby depriving other preferred stockholders of a ratable distribution of the bankrupt estate. 324 U.S. at 206-07. The Supreme Court found that the preferred shareholders who appealed owed the class of stockholders affected by the appeal an obligation to act in good faith, particularly since they filed their appeal under a "statute passed to protect the interests of all [shareholders]." *Id.* at 210, 212. Here, the SNH will not receive a disproportionate benefit under the Sixth Amended Plan vis-à-vis other class members, and did not owe any statutory duties to other noteholders or control either their rights or the rights of anyone else.[15]

30. The court's decision in *Official Committee of Equity Security Holders of Mirant Corp. v. Wilson Law Firm, P.C. (In re Mirant Corp.)*, 334 B.R. 787 (Bankr. N.D. Tex. 2005), is also inapposite. There, the court found that a shareholder, who claimed to be counsel to a non-existent ad hoc shareholders committee by portraying himself to the "public . . . as a fiduciary"

[14] *See Council Tree Commc'ns, Inc. v. FCC*, 503 F.3d 284, 292 n.5 (3d Cir. 2007); *718 Arch St. Assocs., Ltd. v. Blatstein (In re Blatstein)*, 260 B.R. 698, 715-16 (E.D. Pa. 2001).

[15] Any interested parties in these cases always had the independent right to be heard under Section 1109(b) of the Bankruptcy Code, to meet with the Debtors and their advisors, to vote to accept or reject the plan and to enforce the panoply of other rights afforded to individual creditors under the Bankruptcy Code and Rules.

and broadcasting that he represented "current shareholders" of the company, assumed a fiduciary role as to the class. 334 B.R. at 791, 793 & n.9. Here, the SNH never participated in the Chapter 11 cases as representatives of anyone other than themselves, and never sought or obtained representative status. They simply acted to advance their common objective to maximize their recoveries.

31. Even if the SNH *did* owe similarly situated creditors a duty, that duty would inure solely to those creditors. The EC acts on behalf of equity security holders, and therefore would lack standing to enforce any such duty. *See N. Am. Catholic Educ. Programming Found., Inc. v. Gheewalla*, 930 A.2d 92, 101-03 (Del. 2007) (holding that creditors have no direct cause of action against directors because directors' duties are owed to the corporation).[16]

(3) The SNH Did Not Take on the Obligations of a Creditors' Committee.

32. The EC also argues that the SNH took on the role and duties of the Creditors' Committee, including fiduciary duties, and thus should be held to the same standards as Creditors' Committee members with respect to restrictions on trading. The EC cites no case nor any other authority in support of this extraordinary suggestion, but rather references only the "unique facts of this case." However, the facts of these cases are anything but unique.

33. As this Court has no doubt seen time and again, creditors with substantial interests in a debtor's debt and/or equity securities—sometimes alone and sometimes with others holding aligned interests—engage with the debtor and other parties in interest in settlement discussions designed to facilitate a consensual plan of reorganization. In fact, debtors often reach out to

[16] Even assuming that a duty existed or could be enforced by the EC, there could be no breach of any such duty in these cases. The SNH negotiated for a plan that maximized the distribution for the SNH, and all creditors in the same classes as the SNH with an allowed claim will receive the identical treatment. Not surprisingly, none of these alleged beneficiaries has raised any allegations of breach by the SNH. Nor can the EC claim that any insider trading by Owl Creek breached such a duty. As noted earlier, no allegations of insider trading are asserted against Owl Creek.

holders of substantial claims and/or interests because they know that the support of such creditors will be important to the debtor's ability to confirm a plan of reorganization. This is particularly the case where settlement discussions are ongoing with parties who are in litigation with a debtor, and where the settlement will be subject to approval under the standards of Bankruptcy Rule 9019. The debtor will want comfort that the settlement will be supported by (or at least not opposed by) the holders of substantial claims, and the litigating parties likely will not want to be subject to additional demands by creditors not "in the room" after reaching an agreement with the debtor. Participation by holders of substantial claims in litigation-related settlement discussions is the rule, not the exception.

34. Accordingly, there are no "unique facts" that warrant imposing fiduciary duties on Owl Creek or the other SNH. While Owl Creek and the other SNH were actively involved in the settlement discussions, so were the Debtors, the Creditors' Committee, the different constituencies of WMI Noteholders (which did not always agree among themselves, or with the Debtors or Creditors' Committee) and other parties in interest—all of whom were represented by highly competent counsel and, in some instances, financial advisors. And despite the EC's assertion that "the Settlement Note Holders held great power over the Creditors' Committee itself, through their influence over two of the indenture trustees who sit on the Creditors' Committee," there is no evidence to support that assertion. As this Court has observed, the Creditors' Committee has been an active participant in all aspects of these cases zealously representing the interests of its constituents consistent with its fiduciary duties.[17]

[17] While Owl Creek and the other SNH may hold a majority in principal amount of some notes for which the indenture trustees serve on the Creditors' Committee, the EC offers no basis to conclude that Owl Creek or the other SNH have ever given any direction to the indenture trustees in these cases, or otherwise interfered with the exercise of their duties.

35. The EC also argues that because Owl Creek and the other SNH owned substantial amounts of the subordinated debt, they "held more sway in negotiations than any constituency" since "no deal could pass without their votes." However, the existence of parties holding substantial amounts of debt also is by no means "unique" in the bankruptcy context. It is not a basis for treating them as members of the Creditors' Committee.

B. The SNH Were Not Non-Statutory Insiders.

36. The EC also seeks to thrust additional burdens on the SNH by claiming that they were non-statutory insiders. For the SNH to qualify as non-statutory insiders, this Court must find that the transactions between the SNH and the Debtors "were not conducted at arm's length." *See Schubert v. Lucent Techs, Inc. (In re Winstar Commc'ns, Inc.)*, 554 F.3d 382, 396-97 (3d Cir. 2009). There is no basis for so concluding here.

37. The cases invoked by the EC are entirely inapposite. In *Winstar*, the court found Lucent Technologies to be a non-statutory insider when it used its dual role—as Winstar Communication's pre-bankruptcy trade vendor and as lender—to transform Winstar into a "'mere instrumentality to inflate Lucent's own revenues . . . [W]hat began as a strategic partnership to benefit both parties quickly degenerated into a relationship in which the much larger company [Lucent] bullied and threatened the smaller [Winstar] into taking actions that were designed to benefit the larger at the expense of the smaller.'" *Id.* at 392-93 (quoting *Shubert v. Lucent Techs., Inc. (In re Winstar Commc'ns, Inc.)*, 348 B.R. 234, 284, 251 (Bankr. D. Del. 2005)). This case bears no resemblance to *Winstar*.

38. The court's decision in *In re Krehl*, 86 F.3d 737 (7th Cir. 1996), is also not on point. In that case, the Seventh Circuit found that Krehl was an insider because he "was for all intents and purposes the corporate entity itself. He was [the corporation]'s president, the owner

of all of its stock, and a director on its board. Krehl also managed [its] day-to-day operations and established its corporate policies. He knew everything about the corporation that there possibly was to know." *Id*. at 742. No remotely similar claim can be made as to the SNH.

39. The other cases cited by the EC are equally inapplicable. *See Luedke v. Delta Air Lines, Inc.*, 159 B.R. 385 (S.D.N.Y. 1993) (claims were against creditors' committee based on its being a joint sponsor and proponent of a plan, and had nothing to do with the non-statutory insider doctrine); *Official Unsecured Creditors' Comm. of Broadstripe, LLC v. Highland Capital Mgmt., LP (In re Broadstripe, LLC)*, 444 B.R. 51, 81 (Bankr. D. Del. 2010) (summary judgment denied where creditor, among other things, "directed management hiring and firing," was "directly involved" in CEO's selection, and required debtor to hire creditor's affiliate as consultant); *In re Allegheny Int'l, Inc.*, 118 B.R. 282, 298-99 (Bankr. W.D. Pa. 1990) (creditor "exploited" access by, among other things, seeking information from employees in violation of court orders). There is no basis whatsoever to conclude that the SNH are non-statutory insiders, and the EC's attempt to impose that status on them should be squarely rejected.

III. Owl Creek Is Entitled To Post-Petition Interest At The Contract Rate.

40. As set forth in the AOC Joint Response, there is no basis for depriving the SNH of the contract rate of interest on their WMI notes. Nor is there any basis for the EC's allegation that the "egregious facts" present here justify application of the federal judgment rate (EC Objection ¶¶ 70-71). As discussed herein and in the AOC Joint Response, Owl Creek has done nothing wrong. Owl Creek has not—and is not alleged by the EC to have—engaged in insider trading with respect to securities issued by WMI. From the outset of these chapter 11 cases, Owl Creek has advanced its own interests as a significant creditor, which helped to push these cases to a consensual resolution that maximizes the value of the Debtors' estates and avoids years of

complex and expensive litigation between the large number of constituencies active in these cases. As such, Owl Creek engaged in no inequitable conduct, had no conflict that tainted the reorganization and caused no harm to the estate, and neither did the other SNH.[18]

CONCLUSION

For all of the foregoing reasons, Owl Creek respectfully requests entry of an order (i) overruling the EC Objection, (ii) confirming the Sixth Amended Plan, and (iii) granting Owl Creek such other and further relief as the Court may deem just and appropriate.

Wilmington, Delaware
Dated: July 11, 2011

BLANK ROME LLP

/s/ Victoria Guilfoyle .

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[18]To the extent this Court believes that the conduct of any of the SNH warrants imposition of the federal judgment rate rather than the contract rate, the decreased interest rate should only apply to that specific SNH. Unlike the situation in the *Coram* case, if there was misconduct by a SNH, it only benefited the individual creditor and not the class as a whole. *See In re Coram Healthcare Corp.*, 315 B.R. 321 (Bankr. D. Del. 2004) (finding that the misconduct of one creditor benefited the entire class of creditors such that it would be inequitable to also award default interest to that class).

In response to the EC's other challenges to the Plan, Owl Creek respectfully refers to the Debtors' submissions.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
WASHINGTON MUTUAL, INC., *et al.*,[1]	)	Case No. 08-12229 (MFW)
Debtors.	)	(Jointly Administered)

DECLARATION OF ALAN R. GLICKMAN

Alan R. Glickman declares as follows under penalty of perjury:

1. I am a member of Schulte Roth & Zabel LLP, attorneys for Owl Creek Asset Management, L.P. ("Owl Creek"), in these chapter 11 proceedings.

2. I submit this Declaration in support of Owl Creek's Response to the Objection of the Official Committee of Equity Security Holders to Confirmation of the Modified Sixth Amended Plan of Reorganization.

3. Attached hereto as Exhibit A is a true and correct copy of excerpts from the transcript of the deposition of Daniel Krueger, taken on June 24, 2011, in this case.

4. Attached hereto as Exhibit B is a true and correct copy of an excerpt from Owl Creek's current Compliance Manual, dated January 2011.

5. Attached hereto as Exhibit C are true and correct copies of excerpts from Owl Creek's Compliance Manuals, dated April 2008 and September 2009.

6. Attached hereto as Exhibit D is a true and correct copy of excerpts from the transcript of the deposition of William C. Kosturos, taken June 30, 2011, in this case.

[1] The Debtors are: (i) Washington Mutual, Inc. and (ii) Washington Mutual Investment Corp.

7. Attached hereto as Exhibit E is a true and correct copy of the Confidentiality Agreement (Limited) with Owl Creek Asset Management, L.P., dated March 9, 2009.

8. Attached hereto as Exhibit F is a true and correct copy of an email dated March 13, 2009 from Philip Nichols of White & Case LLP to Daniel Krueger and others, forwarding an email and attaching a "WMI Term Sheet," marked "WGM Draft - 3/11/09."

9. Attached hereto as Exhibit G is a true and correct copy of an email dated March 19, 2009 from Philip Nichols of White & Case LLP to Daniel Krueger and others, forwarding an email and attaching a "WMI/JPMC Settlement Term Sheet," marked "S&C Draft 3/18/09."

10. Attached hereto as Exhibit H is a true and correct copy of an email dated May 8, 2009 from Gerard Uzzi of White & Case LLP to Daniel Krueger, forwarding a May 7, 2009 email from Brian Rosen Weil, Gotshal & Manges LLP.

11. Attached hereto as Exhibit I is a true and correct copy of the Confidentiality Agreement (Limited) with Owl Creek Asset Management, L.P., on behalf of certain funds for which it acts as investment advisor, dated November 16, 2009.

12. Attached hereto as Exhibit J is a true and correct copy of an email from Jim Bolin, dated November 30, 2009, to Daniel Krueger and others, forwarding an email chain that includes a "Confidential Settlement Discussion Document" from JPMorgan Chase Bank, N.A.

13. Attached hereto as Exhibit K is a true and correct copy of an email chain, dated November 23, 2009, attaching a "Confidential Settlement Discussion Document" from the Debtors.

14. Attached hereto as Exhibit L is a true and correct copy of an email dated December 28, 2009 from Matthew Roose of Fried, Frank, Harris, Shriver & Jacobson LLP, forwarding an email from Brian Rosen of Weil, Gotshal & Manges LLP.

Dated: New York, New York
July 11, 2011

By: 
Alan R. Glickman

SCHULTE ROTH & ZABEL LLP
919 Third Avenue
New York, New York 10022
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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----------X

In Re

WASHINGTON MUTUAL, INC., et al.,

Debtors.

----------X

Black Horse Capital LP, et al.,

Plaintiffs,

-v-

JPMorgan Chase Bank, N.A., et al.,

Defendants.

----------X

DATE: June 24, 2011

TIME: 10:09 a.m.

*** HIGHLY CONFIDENTIAL ***

30(b)(6) deposition of OWL CREEK, by a witness, DAN KRUEGER, taken by the respective parties, pursuant to a Subpoena, held at the offices of SUSMAN GODFREY, 560 Lexington Avenue, New York, New York, before a Notary Public of the State of New York.

REPORTED BY: Rebecca Schaumloffel, RPR

JOB #: 39783

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BY: JON HOLLIS, ESQ.

ALSO PRESENT:

Michael Pineiro, videographer

HIGHLY CONFIDENTIAL - D. KRUEGER

THE VIDEOGRAPHER: This is the start of the tape labeled number one of the videotape deposition of Dan Krueger in the matter of In Re Washington Mutual.

Today is June 24, 2011. The time is approximately 10:11 a.m. Appearances have already been noted by the court reporter.

Will the court reporter please swear in the witness.

D A N I E L K R U E G E R, called as a witness, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. SARGENT:

Q. Good morning. Could you please state your name and spell your last name for the record?

A. Sure. Daniel Krueger, K-R-U-E-G-E-R.

Q. Where do you work, Mr. Krueger?

A. I work at Owl Creek Asset

Aurelius.

Q. Good morning, Mr. Krueger. So the entity you work for is Owl Creek Asset Management; is that correct?

A. That's mostly correct.

Q. What did I miss? Correct me. Let's get it all the way correct.

A. If you are asking me whose name is on the checks that I get, I don't know. But when I think about where I work, I think about Owl Creek Asset Management, which is a management company that manages separate legal funds.

Q. Owl Creek Asset Management is a limited partnership; is that right?

A. Owl Creek Asset Management, I am not sure.

Q. I think as we have it on some of the legal documents in the bankruptcy, it is LP, which I assume means limited partnership. If I just refer to that entity as Owl Creek, you will understand what I mean today?

A. Yes.

Q. And you said Owl Creek manages

HIGHLY CONFIDENTIAL - D. KRUEGER

several funds?

A. Owl Creek is an advisor to different funds, yes.

Q. How many funds?

A. Well, there is a hedge fund family known as Owl Creek Flagship Funds, which includes -- you know, this isn't my expertise, so I will do the best I can. But there is probably Owl Creek I, Owl Creek II, Owl Creek III, Owl Creek V, and there is a separate hedge fund family known as Owl Creek Asia, which includes, I believe, three funds in that family as well.

Q. So you think, and I am not going to hold you to this, but it is approximately seven funds, different funds that are advised by Owl Creek Asset Management?

A. That's -- that sounds right, yes.

Q. When you say Owl Creek provides -- advises these funds, what does "advises" mean?

A. Well, we are an investment manager, so we manage money for institutions and individuals. The money that we manage

goes into separate legal entities, which are the funds, and as I understand the actual mechanics, which again is not my expertise, but my understanding is that the entity, the advisory or management entity provides services to those funds and allocates the assets in different types of investments, and receives a fee for that.

Q. And is that -- that's the -- are they allocating all of the assets in the fund, or do these funds receive advice and management services from any other entity?

A. No, they do not.

Q. So it is all from Owl Creek?

A. Correct.

Q. Do the Owl Creek Asia funds invest exclusively in Asian securities for Asian companies?

A. No, they don't.

Q. Were any of those funds invested in Washington Mutual?

A. Yes.

Q. So how many of the total number of funds under Owl Creek's management were

investments outside of the region of Asia, when the opportunity set seems like a very attractive one.

Q. And Washington Mutual was one of those opportunities?

A. Yes, it was.

Q. Do you know when the three Asia funds first invested in Washington Mutual securities?

A. Sitting here today, I don't recall exactly when that was, no.

Q. Do you know if it was before the bankruptcy petition was filed or after?

A. To the best of my knowledge, I don't think -- I don't think any of the funds were invested in Washington Mutual before the time around the bankruptcy, in September of '08.

Q. Okay. So some of them might have invested within a month, say, prior to the bankruptcy, but not any further back than that? Is that -- do I understand your testimony correctly?

A. Yes. As best I can recall.

HIGHLY CONFIDENTIAL - D. KRUEGER

Well, certainly our trading records, I believe, have been, you know, turned over as part of this discovery process. So the exact answer to these questions can be known.

But sitting here today, if you are asking me from memory when the first trade in Washington Mutual occurred, I believe it was either the day before or the day -- the day of or the day after the actual bankruptcy.

Q. Okay. That is -- I mean, our request for trading records, just so the record is clear, started on the 25th of September, the day the petition was filed. So if you had invested earlier, they wouldn't necessarily show up on the records produced. That's why I was asking you if you had any pre-petition investments.

Does Owl Creek specialize in distressed debt?

A. Our stated mandate to our investors is to be value investors who invest in event-driven situations. We largely bucket things into two large buckets,

equities and debt. To say -- you know, if you are asking what do we specialize in, we specialize in distressed debt as well as value equities. Not one or the other but both.

Q. Do any of the individual funds specialize in equity versus debt or all invest in both?

A. They all invest in both.

Q. Is there any difference in emphasis on different types of investments between or among any of the funds? Is my question clear?

A. No, it is not.

Q. Does Owl Creek I have a different investment focus from Owl Creek II, III or V?

A. No. For the most part, the funds are invested pari passu, so from a very top level, you can generalize that all of the Flagship Funds invest one way and have one portfolio, and all of the Asian funds invest another way and have their own portfolio.

That doesn't hold true to the exact penny for each individual security, but

it is a good rule of thumb.

Q. Who are the investors in the Owl Creek funds? Is it primarily institutions or individuals?

A. It is a mix of both.

Q. When was the -- when was Owl Creek founded?

A. We started investing in February of 2002.

Q. And does Owl Creek Flagship Fund I go back that far?

A. Yes, it does.

Q. How many employees does Owl Creek have?

A. My best guess is that we have around 55 or 60 employees.

Q. Where are your offices?

A. Our primary office is here in New York City. We also have an office in Hong Kong, and we have an office in London.

Q. How would you divide up the 60 -- you said 60 to 65 employees?

A. 55 to 60.

Q. How would you divide them up,

A. And just so you know, those would have occurred sometime around the first day of the month.

Q. Okay.

A. If that's helpful.

Q. Were you involved personally in the decision to make the initial investment in Washington Mutual?

A. Was I involved personally?

Q. Yes.

A. I was involved in that decision, yes.

Q. Can you explain how that came about?

A. Well, as I said before, I believe our first investment in Washington Mutual was either the day of -- my recollection is that the company filed for bankruptcy on a Friday night. So I think we were -- we made our first investment that Friday morning, because I believe there was a headline the night before that the bank had been seized, which was the catalyst for bond prices to drop.

You know, we are financial

analysts who -- you asked me what we do. Part of what we do is distressed investing, so we felt like this was something that we should analyze, and we did. And given the price at which the securities were trading the following morning, after that news event, we thought that they were trading at a very attractive price and there was a very good chance we can make money on them.

Q. Who is the "we"? Who is involved in that analysis?

A. In addition to me, it would have been Jeff Altman. Mark Kronfeld was one of the analysts at Owl Creek, and at the time -- then the other analyst's name, but -- is Vik Ghei.

Q. That's G-H-E-I?

A. Um-hum.

Q. Was it any one particular person at Owl Creek's idea to first start investigating Washington Mutual when the news of the receivership came across?

A. Was it any one person's idea?

Q. Yes.

HIGHLY CONFIDENTIAL - D. KRUEGER

A. I don't recall if it was. I mean, this was a very large news item.

Q. Sure. I remember it well.

How did you end up as the portfolio manager, sort of running this account, rather than one of the other two?

A. It would have naturally gone to me because I handle most of the credit investments.

Q. Okay. The other two specialize in equities?

A. Correct.

Q. Okay. Got it.

What do you remember about -- why did you think that the bond investments at Washington Mutual looked attractive at that point?

MR. GLICKMAN: I think that's been asked and answered, but go ahead.

MR. SARGENT: If it is my hearing, I apologize, but I guess I didn't hear the details of that.

A. Can you repeat the question, please.

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(Whereupon, the aforementioned question was read back by the Court Reporter.)

A. You know, I guess it is hard for me to understand how much detail you want me to go into. But --

Q. Did you do an examination of what you thought were the holding company's assets that they would be able to use to make good on the bonds?

A. Yes, we did.

Q. What about that analysis led you to believe that the bonds were a good investment?

A. In analyzing the situation at that point in time, we came to believe that there was a very high likelihood that the holding company had a multibillion dollar deposit that it held at its own bank. This was something that by piecing together different balance sheets from different financial statements, Qs, bank regulatory filings, et cetera, we came to have the view of, and in our legal analysis of the

situation, we thought that that asset was a true and good asset of the holding company, and with the high likelihood, we thought, that we would ultimately prevail in any sort of litigation if it came down to it, that we got to keep that cash.

With the bonds trading in the teens, and the magnitude of that asset incline a par recovery, we thought it was a very good investment.

Q. Do you know -- do you remember when you first learned about this deposit?

A. My recollection was that we learned about it sometime around the bankruptcy.

Q. Within a couple of days of the bankruptcy?

A. Well, no. I mean, I specifically recall we had analyzed that question before the bankruptcy.

Q. Okay. So were you monitoring Washington Mutual as a potential investment knowing it was a distressed bank before you made the investment, before it filed for

HIGHLY CONFIDENTIAL - D. KRUEGER

Q. Let's confine that to the analysis you just described prepetition.

A. I don't recall using outside counsel to analyze that prepetition.

Q. Okay. Did Owl Creek ultimately hire outside counsel to represent it or advise it in conjunction with its investments in Washington Mutual?

A. Yes. We have been advised by at least a couple of different law firms since the petition date.

Q. And who are they, which firms?

A. White & Case, Fried Frank. I recall we received some advice from Kirkland & Ellis.

Q. That's a firm. Okay.

Again, if your memory is off on that, I am not going to -- and are you represented today by White & Case and Fried Frank; Owl Creek?

A. My recollection is that we ceased being represented by White & Case at some point in 2009.

Q. Okay. And then you switched to

Fried Frank, or were you represented by both firms for a period?

A. No, we weren't.

Q. So it was a switch from White & Case to Fried Frank?

A. Yes.

Q. And that was sometime in 2009, as far as you remember?

A. Yes.

Q. How many analysts are there at Owl Creek?

A. There are probably around 15 or 16.

Q. And how many are -- are they assigned to a particular entity?

A. Well, different analysts work on certain investments. I don't know what you mean, assigned to a particular entity.

Q. So you have a Washington Mutual investment?

A. Yes.

Q. Is there a particular analyst or group of analysts who are assigned to that for the life of the investment?

HIGHLY CONFIDENTIAL - D. KRUEGER

start of tape labeled number two. The time is 11:25. We are back on the record.

BY MR. SARGENT:

Q. Mr. Krueger, does Owl Creek have a policy for management of confidential information?

A. Yes, we do.

Q. Does that include inside information potentially material to securities transactions?

A. Yes, it does.

MR. SARGENT: I will ask the court reporter to mark this document next in sequence and hand it to the witness.

(Whereupon, the Compliance Manual Bates stamped OWL 10759 through '786 was marked as Exhibit 129 for identification as of this date by the Reporter.)

Q. This is a document that was produced to us by Owl Creek. Can you tell us what this is?

HIGHLY CONFIDENTIAL - D. KRUEGER

A. Yes. It is the Owl Creek Compliance Manual dated September of 2009.

Q. And this is a redacted or excerpted copy of that manual; is that correct?

A. Yes.

Q. And the sections that are in here are the ones that deal with management of confidential information?

A. I haven't looked through the entire document.

Q. Did you review this in preparation for your deposition today?

A. Yes, I did.

Q. Was it your understanding that these are the sections of the manual dealing with at least, what we would call inside information?

A. Yes.

Q. When I say "inside information," I mean confidential, potentially material information relevant to securities transactions. Is that fair? If I use "inside information" that way, will you

HIGHLY CONFIDENTIAL - D. KRUEGER

uses the term on Bates number page 10762 in the first paragraph. It is in quotes.

A. Um-hum.

Q. There is a definition of "material information" a little later, but I don't believe I saw an "inside information" definition. And I could have missed it.

A. Okay. I mean, to be clear, this is a document; you asked me what it is and I told you. But when -- in practice, when we are dealing with buying and selling securities, we consult with lawyers. That's our mechanic for dealing with these sorts of very important issues.

So I only say that because I don't want to get caught up in what the first sentence of this paragraph says as though that is the hard and fast rule that we would ever apply in understanding the issues surrounding the insider trading, material non-public information, breach of duty, those sorts of things.

Q. I guess I am trying to understand your testimony. Are you saying that in any

situation where it appears to you to be a potentially close call or there might be inside information involved, you would consult with counsel rather than make the decision yourself?

MR. GLICKMAN: Objection to the form of the question.

MR. SARGENT: I am just asking if that's what he meant.

MR. GLICKMAN: I believe he said it was an either/or. That's the way your question phrased it.

MR. SARGENT: Okay.

Q. Go ahead.

A. What I am saying is that when we analyze the issue of potentially non-public inside information, as it pertains to securities laws, our standard practice is to speak to counsel.

Q. Okay. Did you consider the risk that you might obtain inside information as part of your work on the Washington Mutual case at any point in time?

A. Did we consider the risk of it?

like that, and I don't know exactly what other changes, if any, there were from time to time in the manual.

Q. Do you remember any significant changes in procedure for handling inside information situations?

A. No.

Q. And would you have reviewed this in 2009 as part of your employment with Owl Creek?

A. Yes.

Q. And do you believe you followed the procedures in this manual with regard to the Washington Mutual investments?

A. I believe that I did, yes.

Q. Could you turn in the document to page 10772. Actually, sorry, go back to where you were, '762, and turn the page to '763. Just one page further.

You see in the very first paragraph on the page that spills over to the following page, the first sentence reads, "In addition, at or about the time of the firm's annual compliance meeting." Does the firm

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because there is so many redactions.
Actually, let me strike that last question.
Can you turn to 10766?
A. Yes.
Q. That appears to be another cover page?
A. Um-hum.
Q. Can you explain to me the relationship between this document, if it is a separate document, and the one that is on the first page of Exhibit 129, Bates 10759?
A. Yes. I believe 10766 is Appendix A to this document, which is a Compliance Manual, and also on the -- on 10761, it lists the appendices, and it appears that Appendix A is the Employee Handbook.
Q. Okay. So go forward to 10770.
A. Okay.
Q. This is the section of the Employee Handbook on inside information. Do you see that?
A. Yes.
Q. Look at the second paragraph under "inside information," and I will read

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that into the record. "Any company personnel who have any question about whether the company or such person is in possession of material non-public information should immediately ask the general counsel and the CFO."

Do you recall any time when you did that?

A. With regard to Washington Mutual?

Q. Ever.

A. Ever?

Q. Ever.

A. Yes, there have been times that I do that.

Q. Do you recall any time when you did it with regard to Washington Mutual?

A. Well, there were a number of times that the general counsel and CFO were told that we might sign or will sign a Confidentiality Agreement, which is standard practice because we maintain a restricted list of securities. So that certainly happened multiple times with the situation of Washington Mutual.

The tenor of this paragraph is more along the lines of, if you're not sure about something, you know, you want to walk into their office. If that is your question, I don't recall whether those specific circumstances occurred with regard to Washington Mutual.

Q. I guess that wasn't my question. Maybe I will try to put it a little bit more pointedly.

So do you recall any situation in Washington Mutual, related to the Washington Mutual investments, where you were not certain whether or not what you had obtained was inside information and you consulted with either the CFO or the general counsel on that question?

A. The consultation that I recall, as I recall it, was on the back end of a restricted period. It is part of our practice to speak to our advisors, like White & Case or Fried Frank, as well as Schulte Roth, to ascertain whether we are, you know, able to take something off the

restricted list. My recollection of things going onto the restricted list was that there wasn't as much -- that there wasn't consultation that I recall.

Q. Okay.

A. In other words, if I signed a Confidentiality Agreement, that would, to me, and to this document, be something where the security would go on the restricted list. So there was no need to bounce the idea around.

Q. So something goes on the restricted list when you have inside information. Am I making that correct connection there?

A. No, not at all. There are a lot of securities on our restricted list where we don't have material non-public information.

Q. I am trying to follow your answer. I thought I asked you a question about consulting with the CFO or general counsel about whether or not you had inside information. And your answer had to do with the restricted list. What's the relationship between those two things?

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A. Maybe you should just ask the question again so I answer it.

Q. The first question was, do you remember a situation involving the Washington Mutual investments where you thought you might have inside information and you consulted with either the CFO or the general counsel on that question?

A. Well, I think the confusion between your question and my answer is that you keep using the word "consulted" as though we get into a room and debate the issue.

Q. Um-hum.

A. There were a number of times that we put Washington Mutual on our restricted list. But as to whether there was a lengthy conversation about the merits of it going on or staying off, I don't remember any of those conversations.

Q. Did you put it on the restricted list because you had inside information?

A. As I think about the times that it went onto the restricted list, in some cases, no. In some cases, it was when we

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had, you know, signed a Confidentiality Agreement, which by itself doesn't mean you have inside information, obviously, so --

Q. It means you might be getting inside information. That's why you put it on the restricted list. Is that fair?

A. Certainly to sign a confi, you know, there is obviously a chance that you might get non-public information.

Q. Okay. As I read this manual, this paragraph that we have been discussing addresses the situation in which an employee isn't certain whether or not information that that employee has might constitute inside information. Is that how you understand this paragraph?

A. Yes.

Q. And my question, I am still asking it, is whether you remember a situation in Washington Mutual where you personally were in that position, you weren't certain if information that you had was inside information or not, and so you consulted with general counsel or the CFO on

that issue.

A. I don't remember any circumstances like that.

Q. Do you remember any circumstance like that where you consulted with outside counsel on that question?

A. No.

Q. So do you remember any circumstances where Washington Mutual was placed on a restricted list because you did determine that you had inside information?

A. Because -- are you asking if we put it on the restricted list because we were at that moment in time, that exact moment in time, in possession?

Q. Yes.

A. No, I don't remember any period of time where we were in possession of any sort of non-public information that Washington Mutual wasn't on our restricted list already.

Q. And that's because the situations where you did place Washington Mutual on the restricted list, you did it as the result of

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a confi agreement or some other request from another party, not because you determined that information you had was, at that point in time, was inside information?

MR. GLICKMAN: Objection to the form of the question.

A. Yes, our -- this document and our policy regarding our restricted list is a mechanic -- you know, we are extremely conservative about these sorts of issues. So it is very important to us that we not ever get anywhere even close to that line.

So I am not sure exactly the way you phrased it in your question, but we would put things on our restricted list, we do put things on our restricted list, even though we are not in possession of material non-public information.

Q. What are the reasons that you can remember from the Washington Mutual case, what are the reasons why you put the securities on the restricted list?

A. I remember two reasons. One reason was because we signed a confi with the

Debtor.

Q. That happened twice; is that right?

A. I remember that happening twice.

Q. Okay.

A. There were other -- I said there were two reasons.

Q. Yes.

A. That's the first reason. The second reason was I had put it on our restricted list ahead of getting a draft of a document, like the plan or something like that.

Q. And those situations happened after the settlement was announced in March of 2010, the situations where you put it on the restricted list ahead of getting a document; is that right?

A. Well, as I sit here today, I think that is probably correct, because I don't think any documents would have been getting drafted before that time, although I can't be 100% sure.

Q. There were settlement term sheets

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receive inside information at various times?

A. I am sorry, am I aware of --

Q. You were aware, during your work on the Washington Mutual case, let's say in 2009, that there was a possibility that you, Owl Creek, might receive inside information at various times?

A. Generally speaking, I was aware that that event might happen, yes.

Q. Is that something you are aware of generally when you work on investments involving bankruptcy estates? Is that a consideration that arises in that situation as a regular matter for you?

A. Generally speaking, there are times in bankruptcy case situations where as part of the process, large creditors, like Owl Creek was in this case, need to get non-public information.

Q. Yes.

The third paragraph under Section A, "Introduction," the first sentence says, "The laws that address insider trading are not always clear and are continuously

developing."

Do you agree with that?

A. I am not a lawyer.

Q. Let me ask you about the first part. Do you think it is true that the laws that address insider trading are not always clear, to you?

A. To me, as a non-lawyer, you know, the laws that address insider trading, I, Dan Krueger, believe can be complicated to understand, and, you know, it is for that very reason that we consider it a very important practice to consult with outside counsel to help us address these laws and these issues.

Q. Okay. But you don't remember a time when you consulted with outside counsel, or inside counsel for that matter, in trying to decide whether or not you needed to place Washington Mutual on the restricted list, correct?

A. Not the way you are asking the question, in some sort of consultation environment.

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Q. It was never unclear to you whether or not Washington Mutual should go on the restricted list because you weren't certain if what you had was inside information or not?

A. Well, I can be specific. I am not trying to give you non-answers to your question. If we are about to sign a confi with the Debtor, it is unambiguous to us.

I am not a securities lawyer, but our practice is to put it on the restricted list. So that's not something that requires 20 phone calls to lawyers to do.

Similarly, if somebody from a law firm says we need settlement note holders to look at a draft of a document, you know, to us, that would be, as a matter of practice -- you know, again, I am not a securities lawyer, but that is something where typically, out of an abundance of caution, we would put the company on the restricted list.

So I don't recall conversations around whether or not it should go on. Does that answer your question?

Q. It does.

What I am trying to get at, were there times, other than the involving the confi agreements or about to get a document times, when you had to make a decision about whether or not information you already had was insider and therefore you needed to become restricted.

A. I don't remember any of those.

Q. And it sounds like there were no such situations.

A. No, I don't. I don't remember any of those sorts of conversations.

Q. You said, I think, that there was a time when you recall consulting with outside counsel about the decision to become unrestricted.

A. Yes.

Q. And what was that situation?

A. Well, that wasn't just one situation. That's something that we do as a practice, not just for Washington Mutual, but for every security that's on our restricted list.

As you can imagine, you know, inside information is a very serious thing, and it is much easier to put a security onto a list that binds you not to trade than to take it off.

Q. Okay.

A. So the act of removing a security from the restricted list, to us, is something that we would, as practice, want to consult with White & Case on, Fried Frank on, Schulte Roth on.

Q. Okay. Is that something you recall doing at least once in the Washington Mutual case?

A. Definitely. Many more times than once.

Q. One Confidentiality Agreement that Owl Creek entered into that caused it to be restricted ran from mid March to mid May 2009, roughly. Is that consistent with your recollection?

A. Yes.

Q. Do you recall if you consulted with outside counsel about the decision to

become unrestricted at the termination of that agreement?

A. Yes, we definitely did.

Q. Which firm did you consult with?

A. Fried Frank. I'm sorry. White & Case, Schulte Roth. I recall getting an E-mail from Brian Rosen forwarded to me as part of our process to remove it from the restricted list.

Q. Okay. You considered that -- and Brian Rosen wasn't your lawyer, was he?

A. That's correct.

Q. But he is an attorney, I think.

A. True.

Q. He calls himself one anyway.

And you considered that a legal opinion that you could in some measure rely upon on whether or not you could become unrestricted? Am I understanding your testimony correctly?

A. No. You correctly point out Brian Rosen was not advising Owl Creek at that moment in time. But for us to remove a security from the restricted list involves a

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very careful and thorough analysis of the situation at that time, and certainly, among a lot of other facts, to have an E-mail from the lead attorney at the Debtor's counsel saying there is no material non-public information that exists that hasn't been pre-released is one important factor.

Q. Sure.

A. Which is why I mentioned it to you.

Q. Do you recall when you became unrestricted at the end of that -- after the termination of that Confidentiality Agreement, was it literally the next day, or was there some period in which you had to make the decision so that it took a while to get off the list?

A. I don't recall exactly the date that Washington Mutual came off of the restricted list.

Q. Do you remember a period of consultation under which -- during which you were making that decision?

A. Well, as I mentioned, we spoke to

lawyers about it.

Q. And did that occur -- I guess my question is, do you remember if that was -- if those conversations occurred after the agreement ended, or did they occur before the termination of the agreement so that you could become unrestricted immediately after it terminated?

A. I don't recall the exact timing.

Q. Okay. A second Confidentiality Agreement that you entered into with the debtors ran from mid November to the end of December '09; is that right?

A. Yes.

Q. Did you consult with counsel about becoming unrestricted at the end of that agreement?

A. I don't recall the exact conversation, but, you know, as I said before, there were numerous conversations like this that we had specifically about Washington Mutual throughout the course of the past two and a half years.

Q. But I am asking you specifically

about whether or not you consulted with outside counsel concerning whether it was permissible to trade in securities at the termination of the November/December Confidentiality Agreement. Did you have such a consultation with outside counsel?

A. I have a recollection that we did. Because the end of that confi period was the one that was marked by either a monthly operating report or an 8-K or something that talked about the tax refund, and I have a recollection of, you know, dotting the I's and crossing the T's with regards to being unrestricted. But I don't recall the specifics of it.

Q. Okay. So you don't have a specific recollection of it, but it is your general practice and you assume it happened; is that a fair summary of what you are saying?

A. Yes, that is fair.

Q. Towards the bottom of the page, there is a paragraph numbered number one, "What is Material Information?" Do you see

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we can trade but for whatever other technical reason, it is on the list. Like, for example, there might be a certain threshold above which we can't buy too much.

Q. I should be clear. When I say can't trade, I don't mean can't trade because of the securities laws. I mean can't trade for whatever reasons.

I mean, the purpose of this list internally at Owl Creek is to identify securities that the company is not going to trade in?

A. Correct.

Q. One of the reasons that a security might go on a list is because the company possesses inside information; is that correct?

A. Yes.

Q. Another reason is that you might have entered into a Confidentiality Agreement that requires you to restrict your trading?

A. That's another example, yes.

Q. And who has -- did you have access to the restricted list?

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A. Yes.

Q. Or only certain items on the restricted list?

A. No. The restricted list is, as a matter of practice, sent around to every employee of the firm, both electronically as an initial matter and then shortly thereafter with the hard copy dropped on everyone's desk, with every security.

Q. How often is it updated?

A. It is updated at least as often as it is modified.

Q. Okay.

A. And sometimes even when it hasn't been modified, just as, you know, a reminder that it is there and makes it easy for people to grab.

Q. Okay. And it is -- okay, gotcha. I don't think I have any more questions about that.

MR. SARGENT: Would you mark this as the next in sequence and hand it to the witness.

(Whereupon, the document Bates

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November and a couple in December in 2008; is that right? Everything on this page?

A. Yes.

Q. So assuming this is sorted by security, I don't see any PIERS acquisitions prior to November; is that right?

A. That's correct.

Q. Do you remember making a decision at some point in time in the fall of 2008 to acquire PIERS?

A. I -- I mean, I don't remember a specific event, but I remember generally in that period of time, the fall of 2008, as you know, we continued to do our research and, as I recall, there were hearings going on where, you know, facts were coming out of the hearings, and it caused us to increase our conviction that there might be value for the junior parts of the capital structure.

Q. When you say "hearings," you mean in bankruptcy court?

A. Yes, um-hum.

Q. Not U.S. Senate hearings?

A. No.

we would win on that issue.

So there are a lot of assumptions that go into the model, obviously.

Q. One of the assets you mentioned was tax refunds; is that right?

A. Um-hum.

Q. What did you know about the tax refunds in the fall of 2008?

A. Well, anybody who had done good work on Washington Mutual would have seen that they had been a large taxpayer in years leading up to the bankruptcy. You know, Washington Mutual, along with some other financial institutions, was uniquely positioned to have made a lot of money during the boom years of the housing bubble, and then lost a lot very dramatically in 2008, as we all know.

Q. Yes.

A. So we had tried to analyze how much money the holding company might get from the IRS.

Q. And what did you look at when you were making that determination?

A. 10-Ks.

Q. Was there anything filed by the debtor in the bankruptcy that identified the amount or range of amounts for the tax refund, in the fall of 2008?

A. In the fall of 2008, I don't -- I don't remember.

Q. Did you have any communications with the Debtor or Debtors' counsel in the fall of 2008?

A. I don't remember that we ever did. If we did, it would have been through counsel. But I don't -- I don't even really remember that.

Q. Through counsel being White & Case?

A. Correct.

Q. And you would have had them contact counsel for the Debtors?

A. Well, I am fairly certain White & Case was in communication with Weil in the fall of 2008. I don't recall that I was ever in communication with Weil or the Debtor specifically in --

White & Case that White & Case learned from the Debtor in the fall of 2008?

A. No.

Q. But your assumption is that White & Case did have contact with the Debtor in that period; is that right? On your behalf?

A. Sitting here today, that's my assumption, yes.

Q. That's on Owl Creek's behalf?

A. Owl Creek along with a lot of other note holders, yes.

Q. White & Case was retained by a number of investors in Washington Mutual; isn't that right?

A. Yes.

Q. How did that come about?

A. My recollection is that one note holder had spoken to White & Case and somehow we became aware of that. I don't remember if I got a call from that note holder or from a trader at an investment bank or what. But somehow we got put in contact with the people at White & Case.

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Q. You don't remember when that was?

A. Yes. It was very early on in the process. You know, I don't remember if it was within a week or a few weeks, but it was certainly -- you know, it wasn't months. It was days or weeks.

Q. Okay. Probably no later than the end of October?

A. That's a good guess, yes.

MR. SARGENT: Would you mark this and hand it to the witness.

(Whereupon, the document Bates stamped OWL '001 through '031 was marked as Exhibit 131 for identification as of this date by the Reporter.)

Q. Do you recognize this document?

A. Yes, I do.

Q. What is it?

A. This document shows the trading records of the Owl Creek funds as they pertain to Washington Mutual, Inc. I believe they are organized by fund and by date.

Q. Okay. Is this a format of a

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Q. Then going back to this item I called your attention to, the $3 billion tax refund.

A. Um-hum.

Q. Is it consistent with your recollection, is there any surprise in here to you to see that Owl Creek was aware that there were -- the tax refund was in the approximate amount of $3 billion in November of '08?

A. Can you repeat your question.

Q. Does it surprise you to see on here that Owl Creek was aware that the tax refund was an approximate amount of $3 billion and that Owl Creek was aware of that as of November '08?

A. No.

Q. That's consistent with your recollection of what you knew at the time when you were analyzing this investment?

A. Yes.

Q. How did you learn that that was the size of the tax refund? Is it what you just testified to, before having studied the

GAAP financial statements and how much taxes had been paid in the past?

A. Yes. I mean, we didn't know anything. Tax analysis quite frankly is very difficult to do. But we were able to look at public statements, and I guess, according to this, and I don't recall any differently, Washington Mutual paid 3 billion of cash taxes to the IRS over the two prior fiscal years.

Q. Did you obtain that $3 billion figure from the Debtor?

A. No.

Q. Was that inside information at this point, or was that publicly available information, in your view?

A. That was in 10-Ks. It was available in a tax footnote in the 10-K.

Q. Would you agree that this is a material item for the bankruptcy estate?

A. The size of the refund?

Q. Um-hum.

A. Well, it is a very large number. I don't know if you are asking me -- you are

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asking me a technical legal question.

Q. I am asking your view as an investor. Is it something that you would consider of importance in making investment decisions, that the estate has a tax refund of that amount?

A. Yes. The fact that we had the view at that time from doing the work that we had done, as I mentioned before, looking at the 10-Ks and looking at cash taxes paid, I think that was an important part of our investment thesis.

Q. Okay. That's all the questions I have on that one, I think. Let's go to this.

MR. SARGENT: Please mark that.

(Whereupon, the document Bates stamped OWL 10826 through '827 was marked as Exhibit 135 for identification as of this date by the Reporter.)

Q. Actually, I think I will give you two at once, because they are very similar, and I am kind of curious about the differences.

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MR. SARGENT: Mark this, please.

(Whereupon, the document Bates stamped OWL 10831 through '835 was marked as Exhibit 139 for identification as of this date by the Reporter.)

Q. Do you recognize this document?

A. Well, on the first blush it looks similar to the earlier document.

Q. 137?

A. Yeah.

Q. There is one difference. There is a caption here, "NPV of deploying 5 billion into buying a business and using the tax carryforward before selling it."

You see where I am reading?

A. Yes.

Q. So this is a different, appears to be a different version of essentially the same calculation. Is that fair? Or same analysis is probably better.

A. Yeah. It looks like -- from looking at the grid on the bottom, it looks like the answers are all identical. But the

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formatting is changed a little bit to make it easier to read.

Q. So someone did yet another version of an analysis with the assumption of a $5 billion investment and what that would do to the net present value of the NOL; is that right?

MR. GLICKMAN: Objection to form.

Q. Is that right?

A. Well, like I said, this is -- I haven't studied every line item. But it looks like the exact same analysis formatted differently.

Q. Okay.

MR. SARGENT: Would you mark that and hand it to the witness.

(Whereupon, the document Bates stamped OWL 10951 through '971 was marked as Exhibit 140 for identification as of this date by the Reporter.)

Q. Do you recognize Exhibit 140?

A. Yes. It appears to be something

that was handed out at a meeting I attended in March of '09.

Q. And this is a copy that was produced from Owl Creek's files, so do you believe this is a copy of the document you received at the meeting?

A. Yes.

Q. I believe this is dated before the Confidentiality Agreement that you entered into in March; is that right?

A. That's correct.

Q. So you had this meeting before you went restricted?

A. No. My recollection is that the meeting where this was handed out was a date later than the one on the top here.

Q. Okay. What does this document represent?

A. Well, it is a term sheet prepared by the Debtor or the Debtor's counsel.

Q. Term sheet for settlement with JPMC and FDIC?

A. Yes.

Q. Whose handwriting is it on the

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second page?

A. Mine.

Q. And you said a meeting. Was this meeting -- it involved counsel for the Debtor, you, anybody else?

A. Yeah.

Q. Who?

A. My recollection, in March of '09, was that all of the note holders were invited, both the White & Case group and the Fried Frank group, which, you know, might have been ten or more different bondholders.

Q. Okay.

A. Their counsel, obviously, the Debtor, the Debtor's counsel. I never met with, but my recollection is that also, at that, you know, summit, let's say, was JP Morgan and the FDIC.

Q. Was that a meeting at Sullivan & Cromwell?

A. Could have been.

Q. Okay.

A. It was Midtown.

Q. So I was trying to -- this was a

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meeting that did involve the other parties, it wasn't just a meeting of the creditors and the Debtor to prepare for a future presentation of a term sheet; this was a mediation session that involved both sides?

MR. GLICKMAN: Objection to form.

A. Yes. My recollection is that it was intended there be this, you know, kind of all hands on gathering. I remember that all the bondholders ever did was just meet with each other. But my recollection of that summit was in other rooms, there was the FDIC and JP Morgan, and, you know, the Debtor was --

Q. Well, you also met the Debtor, it wasn't just the bond --

MR. GLICKMAN: Let him finish his answer, please.

Q. I'm sorry, I can't hear. I really apologize for interrupting you. Were you finished? Was there more?

A. Go ahead and ask your question.

Q. You said just the bondholders.

But the bondholders and the Debtor met together, correct? When you say just the bondholders, you mean you didn't meet with JPMC and the FDIC?

A. That's correct.

Q. But you met with the Debtor. And that was Weil?

A. Yes.

Q. Was Quinn Emanuel there?

A. In March of '09, I don't believe that they were.

Q. Was it your understanding that this term sheet was provided to JPMC and the FDIC, this written term sheet, at that meeting or prior to that meeting?

A. I don't -- I don't believe that it was.

Q. But were its terms presented orally?

A. Well, this -- this term sheet that I have in front of me isn't really a term sheet, because it has blanks around a very important item, which is the tax issues. So I -- I don't know what was conveyed at

that meeting.

But it certainly -- this, you know, by itself is not a term sheet that is useful to anybody, because there are blanks in it.

Q. Fair enough.

So were those blanks -- is it your recollection those blanks were filled in at that meeting?

A. My recollection is that at some point after this meeting, you know, the blanks were, quote/unquote, filled in and proposed to -- my understanding is they were proposed to JP Morgan and maybe the FDIC. I wasn't specifically involved in that. But that's my recollection of how events were occurring.

Q. So the Debtors and the bondholder group were involved in and came to agreement on what those percentages should be, and then the Debtor ultimately conveyed those to the other parties?

A. I believe that's what happened.

Q. And there is some numbers on

Q. And was this a Confidentiality Agreement that Owl Creek entered into at least in part to participate in the meeting that -- at which the term sheet Exhibit 140 was presented to you?

A. Yes, I think we signed this as part of attending that meeting.

Q. And did -- did signing this cause you to put the Washington Mutual securities on the restricted list?

A. I believe it did.

Q. So you didn't trade in Washington Mutual securities during the pendency of this agreement?

A. That's my understanding.

Q. And this agreement had a term of 60 days; is that right? If you don't remember, I think it is paragraph 13 on page 10936 or page five of the document itself.

A. Yes, I see that, 60 days.

Q. Is it consistent with your recollection that that's how long this agreement remained in force?

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A. Well, there definitely was no disclosure statement filed. I don't recall if 60 days passed or if the parties agreed to terminate prior to the 60 days.

Q. Sometime after this terminated, Owl Creek determined it was no longer restricted in trading Washington Mutual securities; isn't that right?

A. That's correct.

Q. And do you know how long -- when that was, when you determined that you could take Washington Mutual off the restricted list?

MR. GLICKMAN: I think that's been asked and answered.

But you can go ahead.

MR. SARGENT: I thought in this context, I thought it might refresh his recollection.

MR. GLICKMAN: I have no objection to you asking. Just reserving for the record.

A. I don't recall which exact date Owl Creek removed Washington Mutual from the

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restricted list. I do recall a lot of, you know, events that occurred leading up to that, like we talked about before.

Q. Which events? You mean consultations with counsel or --

A. Yes. Speaking to counsel, having an E-mail forwarded from Brian Rosen saying that there was no, you know, non-public information that existed. You know, there were other things, like there was this -- I recall that in the middle of this confi period, there was a very large lawsuit that was filed by JP Morgan against the Debtor. But I don't remember exact dates of those things.

Q. The same paragraph that we just looked at for the termination date includes a clause requiring the Debtor to make certain disclosures. Do you remember that clause?

A. I'm sorry, on paragraph 13?

Q. Yes. "Upon the termination of this agreement, the Debtors shall make public disclosure."

A. Yes.

HIGHLY CONFIDENTIAL - D. KRUEGER

Q. And it goes on. Do you remember that clause?

A. I do.

Q. What was your understanding of how that operated?

A. Well, I am not a lawyer, so I am not the expert in these sorts of documents. But my layperson's understanding is that by signing this, the Debtor agreed that at the termination or -- you know, upon termination of this agreement or somewhere around that time period, that the Debtor would disclose any information that might have been conveyed to me in the case of this document publicly.

Q. Was that --

A. If it hadn't already been.

Q. Was that public disclosure, was the intent of that to allow Owl Creek and the other parties to this agreement to be able to trade once that disclosure had been made?

A. That -- from a layperson's perspective, I think that's the understanding, yes.

Q. In your opinion, did the Debtor

HIGHLY CONFIDENTIAL - D. KRUEGER

fulfill its obligations under this paragraph when this agreement expired?

A. Yes.

Q. And did Owl Creek rely entirely on the Debtor's representation that it had fulfilled this obligation, or did Owl Creek make its own determination about whether or not it should stay restricted?

MR. GLICKMAN: Objection. Asked and answered.

A. No. We consulted at least two sets of lawyers. We got the E-mail. We considered all the facts that existed at that point in time and came to a decision that way.

Q. And do you personally believe that when you removed Washington Mutual from the restricted list after the expiration of this agreement, do you believe that you were in possession of inside information?

A. Absolutely not.

Q. And when you give that testimony, do you rely -- are you relying on the advice your counsel gave you?

HIGHLY CONFIDENTIAL - D. KRUEGER

Q. And that led to a final term sheet; you filled in those blanks, correct?

A. The Debtor did, yes.

Q. And is 143 the filled-in final copy based on the meeting at which Number 140 was discussed?

A. Number 143 is a version of that same term sheet with the blanks filled in.

Q. And is it the version that was finalized as a result of the meeting? That's what the E-mail seems to say.

MR. STRATTON: Lack of foundation.

A. Well, I guess the trouble I am having is that I don't recall that me or any other bondholder, you know, definitively said what needs to go in this document. So if you are asking me if we had agreed to this term sheet, I just don't recall.

Q. Okay.

A. And I know, because it says at the top, that this term sheet was prepared by Weil. So I just can't comment on whether it was a direct result of the meeting, the

earlier meeting.

Q. Is it your understanding that these terms were communicated to JPMC at the meeting on Tuesday?

A. I wasn't in any meetings with JP Morgan, so I don't know what was communicated to them. I can read on this E-mail that it says, "draft term sheet that sets out the points we discussed with you and JPM on Tuesday."

Q. This is going to take forever if we go this way.

So you are at a meeting with the Debtor, other bondholders, JPMC and the FDIC all in one law office, correct?

A. Um-hum.

Q. And you discussed potential settlement terms with the Debtor and the other bondholders at that meeting, correct?

A. Yes.

Q. It was your understanding that those settlement terms that you discussed were communicated by the Debtor to JPMC and the FDIC, correct?

HIGHLY CONFIDENTIAL - D. KRUEGER

A. I am just telling you I don't know what was communicated to JP Morgan.

Q. Did you have an understanding at the time?

A. I don't recall. I wasn't in those meetings. I have no way of knowing what was said in those -- in those rooms.

Q. I am having a hard time understanding -- what did you understand to be the point of your discussions with the Debtor, if not to reach terms that could then be communicated to JPMC? What was the point of it?

MR. STRATTON: I think you have the wrong witness.

MR. SARGENT: I'm sorry?

MR. STRATTON: I think you need to talk to somebody at Weil about what they transmitted. That's why I said lack of foundation.

MR. SARGENT: I think that you should stop instructing the witness. If you have an objection to form, you can make it. Otherwise, be quiet.

HIGHLY CONFIDENTIAL - D. KRUEGER

Thank you. It is not your deposition.

I will be talking to the Debtor next week.

Q. Go ahead and answer the question.

A. The purpose of that big hands-on meeting was, as I recall, to try and start the process for a global settlement. As I said before, I recall sitting in a room with other bondholders and with the Debtor and talking about terms, but I did not go into any rooms with JP Morgan or the FDIC, and I just don't have any way of knowing what was communicated by the Debtor or Weil to JP Morgan or FDIC in those rooms. I just don't.

Q. Did Weil tell you they were going to communicate something to JPMC?

A. My understanding was that they would, yes.

Q. Your understanding was that they were going to communicate the terms that were being discussed -- that were decided upon with the other bondholders and the Debtor; they were going to communicate those to JPMC.

HIGHLY CONFIDENTIAL - D. KRUEGER

All I want you to do is really kind of confirm what you have already said and tell me if you remember receiving this.

A. I haven't read every word on this, but I do remember receiving this E-mail.

Q. And this is an E-mail in which Mr. Rosen confirms that the Debtor believes that the necessary disclosures required by the Confidentiality Agreement, the one we discussed a few moments ago, have been made?

A. That's Exhibit 141?

Q. Yes. That's probably right.

A. Yes. That seems to be what it is referring to.

Q. And when you -- you said you remember getting this E-mail?

A. Yes.

Q. And when you got this E-mail, this is one of the factors that you used in determining that you could take WMI off your restricted list?

A. Yes. I mean, as I said before, I am not a lawyer, so I am not the expert on

confi's. But, you know, paragraph 13, it says that, as we talked about earlier, "upon termination of this agreement, the Debtors shall make public disclosure of a fair summary of any confidential information that constitutes material non-public information."

So I think, you know, as I said before, we considered it an important practice to make sure that we are way within the bounds when we take something off of the restricted list. So to ask Brian Rosen to confirm that all of those required disclosures had been made would be, you know, something that we would do.

Q. Do you recall being aware of a settlement proposal to JPMC that was made by two of the settling note holder hedge funds in the summer of 2009?

A. Your question is do I -- repeat that.

Q. Do you recall that happening in the summer of 2009? Did you know that happened?

A. No.

HIGHLY CONFIDENTIAL - D. KRUEGER

MR. SARGENT: Why don't you mark that.

(Whereupon, the document Bates stamped OWL 10942 through '950 was marked as Exhibit 148 for identification as of this date by the Reporter.)

Q. Do you recognize this document, Mr. Krueger?

A. Yes, I do.

Q. What is it?

A. It's a Confidentiality Agreement that was signed in November of 2009.

Q. By?

A. By Owl Creek and the Debtor.

Q. And this is similar to the agreement that was signed in early March that we looked at an hour or so ago?

A. It seems similar.

Q. Was your understanding at the time that it was similar?

A. I don't recall what my belief was at the time.

Q. Why did Owl Creek enter into this

agreement?

A. Well, my recollection of the timeframe, around November, December of 2009, that was just after the law for going back five years to recoup a refund from the IRS had been passed. And I -- my recollection is that the Debtor thought it would be a good idea for purposes of, you know, getting to finality in the case, to disclose that number to us.

Q. Okay. Was there also a possibility of being involved in further negotiations with JPMC, was part of the motivation for this?

A. I don't recall that being a reason.

Q. Do you recall if Owl Creek was substantively involved in preparing terms for settlement proposals to JPMC during the pendency of this agreement?

A. I don't -- sitting here today, I don't recall a specific term sheet that we prepared to send to JP Morgan.

Q. Who is "we"?

HIGHLY CONFIDENTIAL - D. KRUEGER

A. We, the note holders.

Q. Okay. Let's do two.

MR. SARGENT: Mark that.

(Whereupon, the document Bates stamped WMI-TPS-S0110488 through '491 was marked as Exhibit 149 for identification as of this date by the Reporter.)

MR. SARGENT: Please mark this as well.

(Whereupon, the document Bates stamped OWL 10974 through '976 was marked as Exhibit 150 for identification as of this date by the Reporter.)

Q. Having these documents in front of you -- first of all, do you recognize Exhibit 150, which is a document that was produced from your files?

A. Well, I immediately recognize the handwriting on it is mine.

Do you know the date of these documents?

Q. Well, there is a date on

HIGHLY CONFIDENTIAL - D. KRUEGER

Number 149. It is an E-mail dated 11/23/09, and the draft term sheet is dated the same.

The document from your files, which is similar, does not have a date, and I do not believe I know a date. It is not included in your counsel's Privilege Log because it is not redacted; I don't believe. But I will confirm that.

A. I don't -- well, to answer your question, I don't remember -- I am not sure what your specific question was, but I don't remember these term sheets, if that was your question.

Q. I was asking, in particular, if you remember seeing the Document '974 or Exhibit 150. My follow-up --

A. No.

Q. I'm sorry.

A. I don't.

Q. And my follow-up would be, does seeing these two things together refresh your recollection about Owl Creek's involvement in preparing a settlement proposal to JPMC during the pendency of the Confidentiality

Agreement we just looked at, Number 148?

A. It doesn't.

Q. Would you agree with me that it appears, based on Number 150, that you had a draft of that term sheet and that you were making notes on it and working on it at least at some point in time?

A. Yes. That's my handwriting on Exhibit 150.

Q. Do you have any reason to believe you were not involved in the preparation of the term sheet in Number 149?

A. No.

Q. On Exhibit 150, do you have an understanding of what it means, GUC at the top of the page, 200 to 2 -- 200 plus 275?

A. Well, GUC to me refers to general unsecured claims.

Q. Um-hum.

A. But I don't know what those -- I don't know why I wrote those numbers.

Q. I was going to ask you, are those estimates of the amounts?

A. I don't know. I don't remember.

HIGHLY CONFIDENTIAL - D. KRUEGER

There is handwriting at the very end there, "Subs 1.7. Banks .35." Do you know what that refers to?

A. No.

Q. And down below, a little bit of arithmetic, 2.75 minus 1.70.

A. The math isn't correct.

Q. Well, it is close; must be rounded.

A. I don't know what that is.

Q. You don't know what that is either, okay.

So going through that in a little more detail, that doesn't refresh your recollection about being involved in any proposal to JPMC in November?

A. In November of 2009, I don't remember that process.

Q. Do you remember getting a response from JPMC in late November, early December, to any kind of settlement offer?

A. No.

MR. SARGENT: Let's mark this next in sequence and give it to the

EXHIBIT B

FILED UNDER SEAL

(PER DKT. NO.: 6831)

EXHIBIT C

FILED UNDER SEAL

(PER DKT. NO.: 6831)

EXHIBIT D

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: Chapter 11

WASHINGTON MUTUAL, INC., et al., Case No. 081229

Debtors.

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* H I G H L Y C O N F I D E N T I A L *

RULE 30(b)(6)
VIDEOTAPED DEPOSITION
OF
WILLIAM C. KOSTUROS
New York, New York
Thursday, June 30, 2011

Reported by:
ANNETTE ARLEQUIN, CCR, RPR
JOB NO. 39987

June 30, 2011

10:12 a.m.

RULE 30(b)(6) videotaped deposition of WASHINGTON MUTUAL, INC. and WMI INVESTMENT CORP., through its representative WILLIAM C. KOSTUROS, held at the offices of WEIL, GOTSHAL & MANGES LLP, 767 Fifth Avenue, New York, New York, before Annette Arlequin, a Certified and Registered Professional Reporter and a Notary Public of the State of New York.

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A P P E A R A N C E S (Cont'd.)

ALSO PRESENT:

MATTHEW SMITH, Legal Video Specialist

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

THE VIDEOGRAPHER: This begins tape labeled No. 1 of the videotaped deposition of Bill Kosturos in the matter of In Re Washington Mutual Incorporated, et al. in the United States Bankruptcy Court for the District of Delaware, Case No. 081229.

This deposition is being held at 767 Fifth Avenue, in New York, New York on June 30th, 2011 at approximately 10:12 a.m.

My name is Matthew Smith for TSG Reporting Incorporated and I am the legal video specialist.

The court reporter is Annette Arlequin in association with TSG Reporting.

All appearances have been recorded.

Will the court reporter please swear in the witness.

* * *

W I L L I A M C. K O S T U R O S, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. SARGENT:

Q. Could you spell your last name so it's clear for the record, please?

A. K-o-s-t-u-r-o-s.

Q. And good morning, Mr. Kosturos.

You're employed by Alvarez & Marsal; is that correct?

A. Yes.

Q. How would you describe the job that Alvarez & Marsal does? What's its line of business?

A. Alvarez & Marsal has several lines of businesses.

I'm in the group called the North American Commercial Restructuring Group. That group specializes in working for financially distressed companies. We provide either interim management services or financial advisory work.

Q. How often is that for a company -- you say financially distressed.

How often are those companies in bankruptcy?

A. Probably 60 percent of our work is in companies in bankruptcy.

I would say 40 percent of it is

ways could we resolve our disputes.

Q. And did the Finality Committee actually conduct meetings and do investigations intending to resolve that issue?

A. I don't remember how many meetings Finality took -- how many meetings were within this group.

Q. The structure as a whole, how long did it stay in place, were these committees active?

A. The day that JPMorgan filed their lawsuit against us, which I believe was, I think it was March 23rd, something like that.

Q. And why did they stop functioning at that point?

A. Because they sued us.

Q. Why did that cause this process to stop?

A. Well, I think it pretty much caused irreparable harm as it related to this effort.

Q. I mean you can -- the fact that a suit had been filed made it harder to reach a negotiated solution somehow?

A. No. I'm just saying that this effort

with all these working groups ended the day the lawsuit was filed.

Q. Was it the debtor's understanding that this effort was going to take the place of a lawsuit and when the lawsuit was filed, that understanding went away?

A. We had hoped that we could resolve our differences perhaps outside of litigation. You always obviously want to start at that, but ultimately that was not going to be the case here so we were under timelines of our claims with the FDIC.

There was a natural expiration of or a natural deadline of our responding to their rejection of our claims of which we responded. I believe that that caused JPMorgan to then counter, to sue us in Bankruptcy Court somewhere in March of 2009.

So a lot of these efforts formally ended, but we still needed to gather information from JPMorgan because they were the custodians of our books and records, so more due diligence, if you will, fact finding, forensic accounting, whatever you want to call it, would continue

A. At the time of this email, Fried Frank represents Appaloosa and Centerbridge.

Q. Okay.

A. And I believe that they had debt throughout the capital structure, seniors, subs, junior notes. Maybe not junior notes, but certainly up and down the capital structure.

Q. So when you wrote, "It's about time that the seniors figure this out," do you know who you were referring to who were the seniors?

A. The seniors would be the White & Case group primarily.

Q. Because they held primarily senior bonds?

A. Senior bonds.

Q. And the Fried Frank group was more distributed throughout the capital structure?

A. That's my understanding, yes.

Q. Okay. And so what did you mean when said, "It's about time the seniors figure this out"?

A. Well, if you go back through this document, you under -- I understand that a bigger deal, quote, is this idea of JPM taking

debtor, but you weren't trying to cut them out, right?

A. You asked a lot of questions there.

Q. Sorry. You weren't trying to cut them out, right?

A. Cut them out?

Q. Yeah, of the negotiation process.

A. Ultimately I'm the debtor. We are the debtor. The debtor needs to make its own decisions that not necessarily are always going to be agreed upon by creditors, so we're trying to create a consensual process, but that doesn't require me to involve them in all negotiations.

Q. And you just don't remember one way or the other whether they were involved in the preparation of this proposal?

MR. ROSEN: I'm sorry, counsel, you said "this proposal."

Which proposal are you referring to?

MR. SARGENT: WMI Proposal, 4/16/09, Exhibit 11.

MR. ROSEN: I'm sorry?

MR. SARGENT: It's on Exhibit 11.

MR. ROSEN: Exhibit 11 is Sullivan &

strong-willed group and generally let you know what their point of view is on many different things.

Q. Right.

A. So we listened.

Q. But you're not telling me what you thought of it.

I mean did you agree with them?

A. What are you going to do? I mean you're in the middle of a negotiation. They wanted to get the most that they could and that's what they're in business for.

Q. Did he ask that you not make further substantive settlement offers without first confirming them with the White & Case group?

A. I cannot -- I don't remember specifically that he asked us to do that.

Q. Did you make --

A. At that meeting.

Q. Did you make such an assurance?

A. No.

Q. Did you make it at any other meeting?

A. No.

Q. You never offered such an assurance

A. I just don't recall.

Q. Did the debtor go through a process similar to the process that it went through in April to determine what information needed to be disclosed to the public as a result of the expiration of that agreement?

A. Yes.

Q. And what did you determine needed to be disclosed?

A. We determined that we needed to disclose the size of the potential second NOL due to the five-year NOL carryback.

Q. Anything else?

A. No.

Q. Did you consider disclosing any of the settlement proposals that had been made either by the debtor or by JPMC or any other party during the period of the Confidentiality Agreement?

A. Well we discussed the -- during the process we involved our lawyers from Weil Gotshal and the WMI management team and together we, on the advice of counsel, agreed that the disclosure in the November MOR that was filed

December 30th was appropriate.

Q. Did you explicitly consider whether or not to disclose the settlement proposals though?

A. Yes.

Q. And you determined not to.

A. We determined not to.

Q. What was the basis of that determination?

A. Those discussions are really subject to attorney product privilege discussions.

Q. It was all advice of counsel?

Do you have any reasons for deciding not to disclose that that are not coming from your lawyers?

A. No.

Q. Did you understand that the settlement noteholders were free to trade or analyze their trading decisions based on the information in those settlement proposals after the expiration of the Confidentiality Agreement?

A. That was my understanding.

MR. SARGENT: I don't have any more questions.

EXHIBIT E

March 9, 2009

VIA E-MAIL

To Owl Creek Asset Management, L.P.
410 Park Avenue, 20th Floor
New York, NY 10019

Re: **Confidentiality Agreement (Limited)**
with Owl Creek Asset Management, L.P

Washington Mutual, Inc. and WMI Investment Corp (collectively, the "Debtors") are debtors and debtors in possession in the jointly administered chapter 11 cases pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), Case No. 08-12229 (MFW) (collectively, the "Cases"). The Debtors are prepared to provide now and during the administration of the Cases to Owl Creek Asset Management, L.P. ("Participant") certain information relating to the Debtors and other matters relevant to the Cases. The Debtors are entering into this agreement (the "Agreement") with Participant to govern the exchange and preservation of that information. The term "Representative" as used in this Agreement shall include directors, executives, officers, employees, members, managers, agents, partners, experts, consultants, legal counsel, affiliates and financial and other advisors.

As used herein, the term "Confidential Information" shall mean any information (i) whether written or oral and whether prepared by the Debtors, their Representatives, or otherwise and irrespective of the form of communication, (ii) concerning the Debtors and reasonably related to and necessary for the limited purpose of Participant's participation in negotiations among the Debtors, the Federal Deposit Insurance Corporation (in its individual capacity and in its capacity as receiver of Washington Mutual Bank) JPMorgan Chase & Co. (and/or its affiliates and subsidiaries) concerning the terms of a plan (as that term is used in subchapter II of chapter 11 of title 11, United States Code), (iii) that is furnished during the pendency of the Cases (whether

on or after the date hereof) to Participant by, or on behalf of, the Debtors or their Representatives, and (iv) that is confidential, non-public or proprietary in nature. "Confidential Information" shall also include all notes, analyses, compilations, studies or other documents, whether prepared by Participant or others, which contain or are based upon Confidential Information furnished to Participant concerning the Debtors. The term "Confidential Information" shall not include information that (i) was in Participant's or its Representatives' possession prior to receiving such information from the Debtors so long as such information did not come from a source that is not reasonably known by the Participant or its Representatives to be bound by a confidentiality agreement with, or other legal, contractual, or fiduciary obligation of confidentiality owed to, the Debtors, (ii) is publicly available, or becomes publicly available other than as a result of a disclosure by Participant in violation of the terms hereof, (iii) is or becomes available to Participant on a non-confidential basis from a source other than the Debtors or any of their Representatives, so long as such source is not known by Participant to be bound by a confidentiality agreement with, or legal, contractual or fiduciary obligation of confidentiality to, the Debtors and in breach of such obligation, or (iv) is independently acquired or developed by Participant not in violation of this Agreement.

In consideration of such Confidential Information being furnished by the Debtors to Participant, Participant agrees to the following:

1. Participant hereby agrees that all Confidential Information and the existence thereof will be held and treated in confidence, and will not be disclosed in any manner whatsoever, in whole or in part, to any party, except as provided herein; provided, however, that information concerning the existence of Confidential Information shall be subject to the exception to non-disclosure set forth above under sub-paragraph (ii) as if it were Confidential Information for the purposes hereof. Participant agrees to use Confidential Information only for the purpose of participating in the Cases and further agrees not to use Confidential Information in any manner inconsistent with this Agreement. Nothing in this Agreement shall prejudice Participant's ability to obtain Confidential Information by way of discovery or other legal manner.

Participant may share Confidential Information: (a) with its directors, executives, officers and employees who require such information and who agree to keep such Confidential Information in accordance with the terms of this Agreement, (b) with its other Representatives, and (c) with any other party that has executed a confidentiality agreement with Debtors in form and substance that is no less favorable to such party than the terms of this Agreement. Participant will be responsible for any breach of the non-disclosure provisions of this Agreement by it or its Representatives.

2. The Debtors acknowledge and are aware that Participant may maintain or establish an information blocking device or "Ethical Wall" between its employees who receive the Confidential Information and its other employees. The Debtors acknowledge and are aware and Participant agrees that in the event it maintains or establishes such an information blocking device or Ethical Wall, only those employees

who receive Confidential Information or otherwise participate in discussions with the Debtors or their Representatives with respect to the transaction contemplated hereunder (such designated employees, the "Designated Representatives") shall be bound by the restrictions contained herein. In order to preserve such Ethical Wall, if established (and without limiting the generality of the other provisions of this Agreement), the Debtors and Participant each agree that the Designated Representatives each shall not disclose Confidential Information, or otherwise discuss the Cases in a manner that may intentionally or inadvertently divulge Confidential Information, to any employee, officer, or director of Participant or Participant's affiliates who is not a Designated Representative. Attached hereto as Exhibit A is a description of procedures and mechanisms that Participant shall establish or maintain and enforce to create and preserve an effective Ethical Wall. Notwithstanding anything in this Agreement to the contrary, (a) only those individuals employed by Participant who are working on the proposed transaction contemplated hereunder and, after the date hereof, have gained knowledge of the substantive Confidential Information provided under this Agreement shall be bound by the restrictions contained herein, (b) and for the avoidance of doubt, neither Participant nor its affiliates shall be restricted from acting with respect to or pursuing any transaction regarding the Debtors and/or their respective securities, bank debt or other instruments.

3. In the event that Participant receives a request or requirement to disclose any Confidential Information, in any such case under any applicable law or regulation, subpoena, court order, or legal, regulatory, or judicial process or the rules of any applicable regulatory agency or stock exchange (collectively, "Legal Process"), Participant agrees, if legally permitted, (i) to promptly notify the Debtors in writing thereof in order to enable the Debtors, at the Debtors' sole cost and expense, to seek an appropriate protective order or other remedy or to waive compliance, in whole or in part, with the terms of this Agreement, and (ii) if disclosure is legally required or requested, the Participant shall use its reasonable efforts, at the Debtors' sole cost and expense, to cooperate with the Debtors, at the Debtors' expense, in any attempt they may make to obtain a protective order or other appropriate remedy and/or waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Debtors waive compliance with the provisions hereof, Participant shall be permitted to furnish that portion of the Confidential Information as they are advised by counsel is legally required pursuant to such Legal Process. Participant shall not oppose the Debtors' efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information.

4. Participant understands and acknowledges that the Debtors make no representation or warranty as to the accuracy or completeness of the Confidential Information, and Participant agrees that neither the Debtors nor any of their Representatives will have any liability to Participant or its Representatives relating to or resulting from the use of the Confidential Information.

5. Participant shall promptly, upon the Debtors' written request and at the option of Participant, return to the Debtors or destroy, if so requested by the Debtors in writing, all Confidential Information in its possession and will not retain any copies, extracts or other reproductions in whole or in part of such written material (i) unless Participant is prohibited from doing so by any applicable law, rule, regulation code of ethics or by a competent judicial, governmental supervisory or regulatory body, or (ii) except such Confidential Information as may be stored on magnetic backup discs as part of Participant's standard archiving process. In the event Participant withdraws from further participation in the Cases prior to termination of this Agreement, Confidential Information shall be held by Participant subject to the terms of the Agreement (and notwithstanding Participant's withdrawal) unless otherwise (i) agreed by the parties hereto, (ii) ordered by the Bankruptcy Court, (iii) required by law, or (iv) requested to be destroyed by the Debtors. Unless otherwise directed by the Debtors, Participant may retain one copy of any Confidential Information it receives for its office records subject to the confidentiality of such copy as provided under the terms of this Agreement.

6. The Debtors are entitled to seek all remedies that may be available to any of them at law or in equity for any breach or violation of this Agreement by Participant, including specific performance and injunctive relief and, in the event the Debtors seek such relief, Participant shall not oppose same on the grounds that the Debtors are not entitled to seek such relief. Participant further agrees to waive, and to use its reasonable best efforts to cause its officers, employees, and agents to waive, any requirement for the securing or posting of any bond in connection with such remedy.

Participant shall be liable for any breach of this Agreement as may be determined by a final non-appealable order of a court of competent jurisdiction. Nothing in this section 6 shall prevent Participant from contesting that any such breach has occurred or from contesting any litigation in any appropriate fashion.

7. It is understood and agreed that no failure or delay by a party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

8. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

9. This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, arrangements and understandings relating to the matter provided for herein. No alteration, waiver, amendment, change or supplement hereto shall be binding or effective unless the same is set forth in a writing signed by each party hereto. No party hereunder may assign its rights or obligations under this Agreement without the prior written consent of the other party

10. Nothing in this Agreement is intended to grant Participant any rights under any patent, copyright, trade secret or other intellectual property right, nor shall this Agreement grant to Participant any rights in or to the Confidential Information, except the limited right to review the Confidential Information solely for the purpose and in the manner set forth in this Agreement.

11. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflict of laws principles. Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Bankruptcy Court for any actions, suits or proceedings arising out of or relating to this Agreement (and the parties agree not to commence any action, suit or proceeding relating thereto except in such court), and further agrees that service of any process, summons, notice or document by U.S. registered mail to the respective addresses of and to the attention of the (i) Debtors' counsel and (ii) Participant's General Counsel shall be effective service of process for any action, suit or proceeding brought against the parties in any such court. Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this agreement in the Bankruptcy Court, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12. In the event that Participant intends to offer into evidence or otherwise use Confidential Information in the Cases, then Participant shall (i) obtain the prior written consent of the Debtors (through the Debtors' counsel) to such offer or use; or (ii) obtain an order of the Bankruptcy Court to use such Confidential Information pursuant to the Federal Rules of Bankruptcy Procedure, including by seeking authorization to file the papers seeking such order under seal. Any such request for relief from the Bankruptcy Court may be heard on expedited notice, subject to the Bankruptcy Court's calendar.

13. Other than any provision hereof that by its terms survives termination, this Agreement shall remain in full force and effect until the earlier to occur of (i) the filing by the Debtors of a disclosure statement pursuant to section 1125(b) of title 11, United States Code, (ii) sixty days following the date of execution of this Agreement, and (iii) the termination of this Agreement by agreement of the parties hereto. Upon the termination of this Agreement pursuant hereto, the Debtors shall make public disclosure (within the meaning of Rule 101 of Regulation FD) of a fair summary, as reasonably determined by the Debtors, of any Confidential Information that constitutes material non-public information under U.S. federal securities laws. Such disclosure shall be made in the Debtor's next regularly scheduled monthly operating report immediately following such termination unless timing constraints make it impracticable, in which case the Debtors shall make such disclosure as soon as is reasonably practicable, but in no event later than 10 days following termination of this Agreement.

14. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

If the foregoing reflects our agreement, please execute below and return to my attention.

Very truly yours,

Washington Mutual, Inc.

Signature:

_____

Name/Title:

_____

WMI Investment Corp

Signature:

_____

Name/Title:

_____

AGREED TO AND ACCEPTED BY:

OWL CREEK ASSET MANAGEMENT, L.P

Signature:

_____

Name/Title:

_____

Exhibit A – Ethical Wall Procedures

In conjunction with Participant's[1] existing information blocking procedures and the Agreement, Participant has established and will maintain the following Ethical Wall Procedures:

(1) Participant's Designated Persons shall execute a letter (a "Confidentiality Letter") acknowledging that they may receive Confidential Information and that they are aware of the Ethical Wall Procedures that are in effect with respect to the Debtors Securities[2] and will follow these procedures and will immediately inform White & Case LLP ("White & Case"), counsel to the Washington Mutual, Inc. Noteholders Group (the "WMI Noteholders Group"), in writing if such procedures are breached;

(2) Subject to the following paragraph, Participant's Designated Persons will not directly or indirectly share any Confidential Information with any other director, executive, officer or employee who is not a Designated Person, including Participant's investment advisory personnel, and Participant's Designated Persons shall not share any Confidential Information with any employee of Participant known to be engaged in trading activities with respect to the Debtors' Securities on behalf of Participant and/or the Screened Funds, except that a good faith communication of publicly available information shall not be presumed to be a breach of the obligations of Participant or Participant's Designated Persons hereunder;

(3) Participant's Designated Persons will maintain all files containing Confidential Information in secured cabinets inaccessible to other employees of Participant;

(4) Participant's Designated Persons will not receive any information concerning Participant's trades in the Debtors' Securities in advance of the execution of such trades, except that Participant's Designated Persons may receive reports showing Participant's purchases and sales and ownership of the Debtors' Securities but no more frequently than weekly (provided that Participant's Designated Persons may receive usual and customary internal reports showing Participant's purchases and sales on behalf of Participant and/or the Screened Funds and the amount and class of claims, interests or

---

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in that certain Confidentiality Agreement by and between Washington Mutual, Inc., WMI Investment Corp. and Owl Creek Asset Management, L.P., dated as of March 6, 2009 (the "Agreement").

[2] The term "Securities" is used as described in section 2(a)(1) of the Securities Act of 1933, including the following but only to the extent they constitute securities thereunder: stocks, notes, bonds, debentures, participations in or derivates based upon or relating to, any of the Debtors' debt obligations or equity interests.

securities owned by Participant and/or the Screened Funds to the extent that such Designated Persons would receive otherwise receive such reports in the ordinary course of business and such reports are not specifically prepared with respect to the Debtors);

(5) Participant's compliance personnel shall review Participant's trades of the Debtors' Securities to determine if there is any reason to believe that such trades were not made in compliance with these Ethical Wall Procedures and shall keep records of such review;

(6) Participant's compliance personnel shall monitor periodically the exchange of Confidential Information through electronic means among Participant's Designated Persons to ensure that such exchanges are performed in a manner consistent with these Ethical Procedures; and

(7) So long as Participant is a member of the WMI Noteholders Group, it shall disclose every three (3) months to White & Case a declaration verifying continued compliance with these Ethical Wall Procedures.

If the foregoing reflects our agreement, please execute below and return to my attention.

Very truly yours,

Washington Mutual, Inc.

Signature:

_____

Name/Title:

_____

WMI Investment Corp

Signature:

_____

Name/Title:

_____

AGREED TO AND ACCEPTED BY:

OWL CREEK ASSET MANAGEMENT, L.P

Signature: 

Name/Title: Daniel E. Krueger
Managing Director

EXHIBIT F

From: Nichols, Philip [pnichols@ny.whitecase.com]
Sent: Friday, March 13, 2009 8:57 AM
To: Chaim Fortgang; Rich Parisi; jPike@elliottmgmt.com; Dan Gropper; maschwartz@taconiccap.com; AMoolji@taconiccap.com; Dan Krueger; Mark Kronfeld; Vik Ghei
Cc: Uzzi, Gerard
Subject: FW: WMI - draft term sheet
Attachments: WMI Term Sheet 090311.pdf

REDACTED

From: Walsh, Michael [mailto:michael.walsh@weil.com]
Sent: Thursday, March 12, 2009 3:36 PM
To: feldsteinh@sullcrom.com; friedmans@sullcrom.com; sacksr@sullcrom.com
Cc: Hodara, Fred; Simonds, David; 'pgurfein@akingump.com'; steven.simms@FTIConsulting.com; andrew.scruton@FTIConsulting.com; Lauria, Thomas E.; Uzzi, Gerard; lpotash@zolfocooper.com; Pfeiffer, Brian; bscheler@friedfrank.com; rjwilliamsjr@yahoo.com; bkosturos@alvarezandmarsal.com; 'jgoulding@alvarezandmarsal.com'; Rosen, Brian; Goldring, Stuart; rcotton@zolfocooper.com
Subject: WMI - draft term sheet

Hydee,

I am attaching a draft term sheet that sets out the points we discussed with you and JPMorgan on tuesday. Although there are still some brackets for information that needs to be provided and some of the schedules still need to be completed, the attached covers all the material business terms of the proposal we discussed.

I am simultaneously distributing the attached to representatives of the creditors who attended the meetings on tuesday.

Please call me if you have any questions about the attached and to discuss next steps.

Regards.

m

9:30am - 5:30pm (EST). Any other time please call (212) 819-7664. Please then delete the e-mail and any copies of it. Thank you.
==========

WMI Term Sheet

The appointment of the Federal Deposit Insurance Corporation ("FDIC") as receiver for Washington Mutual Bank ("WMB"), the FDIC's sale of substantially all of WMB's assets to JPMorgan Chase Bank, N.A. ("JPMC"), and the commencement of chapter 11 cases by Washington Mutual Inc. and WMI Investment Corp. have resulted in significant issues among these parties concerning the ownership of assets and the resolution of certain claims. The purpose of this term sheet is to outline the principal terms of a global settlement of all issues and disputes among the parties. This term sheet is for settlement purposes only and is protected by Rule 408 of the Federal Rules of Evidence. A settlement based on this term sheet is subject to, among other things, (a) the execution and delivery of definitive documentation, satisfactory in form and substance to the parties hereto, (b) the approval by the WMI Board of Directors, and (c) the entry of an order approving the settlement and the other transactions described below by the United States Bankruptcy Court for the District of Delaware having jurisdiction of the chapter 11 cases of Washington Mutual Inc. and WMI Investment Corp. (the "Bankruptcy Court").

Agreement in Principle

Defined Terms — Capitalized terms are defined in the preamble, above, and in the section on Defined Terms, below.

Settlement Structure — The proposed settlement among the parties (i) will be a fundamental part of WMI's chapter 11 plan of reorganization, (ii) will be subject to Bankruptcy Court approval under Bankruptcy Rule 9019, and (iii) will include, among other things,

- a sale of certain assets to JPMC free and clear of all interests pursuant to section 363(f) of the Bankruptcy Code
- a sharing of the Tax Refunds
- mutual releases among the parties
- third party releases and
- other customary chapter 11 provisions

Effectiveness — Unless otherwise specified herein, all transactions described herein will take place on the Effective Date.

363 Sale

In consideration of the purchase price described below, JPMC shall purchase all WMI's right, title, and interest in and to:

- the Trust Preferred Securities (inclusive of any dividends accrued prior to the Effective Date)
- the Visa Shares (exclusive of any dividends received prior to the Effective Date)
- the WMI Intellectual Property

As a purchase price, JPMC shall pay or transfer to WMI all of JPMC's right, title, and interest in and to:

- the funds in the Deposit Accounts
- the Goodwill Litigation, including the Goodwill Litigation Proceeds

The FDIC shall consent to the 363 sale.

Tax Issues

WMI, JPMC, and the FDIC (on behalf of WMB) shall jointly direct all federal and state taxing authorities to pay Tax Refunds to WMI.

WMI shall be entitled to retain (and JPMC, the FDIC, and WMB shall waive any claim to) any Tax Refunds received by WMI on or before the date hereof. WMI and JPMC shall share the additional Tax Refunds as specified below and WMI shall distribute JPMC's share as soon as practical after receipt:

First $500 million received after date hereof to WMI
Remainder (other than due to 2008 extended 5-year carryback):
- 60% to WMI
- 40% to JPMC

Any additional amount due to 2008 extended 5-year carryback:
- 80% to WMI
- 20% to JPMC

Any group tax liabilities for 2008 and prior years and related expense shall be borne by JPMC and WMI in a manner so as to result in the "net" Tax refunds being distributed as reflected above, but only to the extent of additional tax refunds received and allocated between JPMC and WMI. In the unlikely event there is an excess tax liability, WMB shall bear such excess.

WMI, JPMC, and the FDIC (on behalf of WMB) shall cooperate with each other to maximize the amount of the Tax Refunds, minimize the amount of any deficiencies, and obtain payment of the Tax Refunds as quickly as possible. In the event that JPMC or the FDIC receives any Tax Refund, it shall promptly transfer such refund to WMI. WMI shall

account for all Tax Refunds received.

WMI shall control (and the FDIC and WMB shall cooperate with WMI with respect to) all group tax matters in respect of tax years 2009 and after, including any carrybacks relating thereto.

Intercompany Issues

JPMC shall repay the Intercompany Notes, together with any interest accrued through the Effective Date. JPMC also shall transfer all its right title, and interest in and to the stock of HS Loan Corporation (approximately 1.5%) to WMI.

JPMC shall continue to service the loans identified on Schedule 9 and shall transfer to WMI all checks and/or payments received in connection with those loans in its possession.

All other Intercompany Claims shall be mutually released, as described below.

Party Releases

WMI shall release JPMC from any and all claims, including, without limitation, the Intercompany Claims. WMI shall also release WMB and the FDIC from any and all claims, including, without limitation, the claims asserted in the Receivership Proof of Claim.

JPMC shall (i) release WMI from any and all claims, including, without limitation, the Intercompany Claims, any intercompany claims on the books of WMB related to the Pension Plan, and claims related in any way to the Trust Preferred Securities, and (ii) waive any rights of setoff, recoupment, banker's liens, or similar rights it may have against funds in the Deposit Accounts, including, without limitation, any rights it may have under section 553 of the Bankruptcy Code. JPM also shall release any security interest in or lien on Account No. xxxxxx1206.

The FDIC shall release WMI from any and all claims and agree that it shall not assert any jurisdiction over any of WMI's assets or any assets to be received by WMI as described herein. The FDIC also shall agree not to exercise its rights pursuant to Section 9.5 of the Purchase and Assumption Agreement with respect to any funds that WMI had on deposit with WMB or its former banking subsidiary, Washington Mutual Bank, fsb. The FDIC shall release JPMC from any and all claims related to WMI, including with respect to the Deposit Accounts.

Benefit Plans

Pension and 401(k) Plans. WMI shall transfer sponsorship (and all assets) of the Pension Plan, the Lakeview Pension Plan, and the 401(k) Plan to JPMC. JPMC shall assume all liabilities in connection with those

plans, including, without limitation, the Pension Plan Litigation and any audit requests or remediation requirements issued by the IRS or the Pension Benefit Guaranty Corporation with respect to the Pension Plan or the Lakeview Pension Plan. JPMC shall indemnify WMI and its current and former officers, directors, and employees, including members of the plan committees for the foregoing pension plans, with respect to all such matters.

Other Benefit Plans. With respect to the benefit plans listed on Schedule 3, JPMC shall (i) assume any and all obligations of the beneficiaries of such plans, (ii) indemnify WMI against any claims asserted by such beneficiaries, and (iii) waive any claims it may have against WMI in connection with such benefit plans or such obligations, including by way of assignment or subrogation.

Medical Plan. WMI shall transfer sponsorship of the Medical Plan to JPMC. WMI also shall transfer all its right, title, and interest in and to any outstanding checks made out to WMI, including pharmacy rebates in connection with contracts associated with the Medical Plan. JPMC shall assume sponsorship and all duties and obligations under the Medical Plan and shall indemnify WMI for such obligations or any claims arising thereunder.

Separation of Certain Benefits-Related Property

WMI shall acknowledge that it has no right, title, or interest in or to the Rabbi Trusts set forth on Schedule 1, the BOLI/COLI policies set forth on Schedule 2 or any proceeds therefrom, and the CCBI split dollar policies set forth on Schedule 6. WMI shall acknowledge that JPMC has no liability with respect to change of control agreements for current or former employees of WMI (other than for individuals currently employed by JPMC).

JPMC shall acknowledge that it has no right, title, or interest in or to the Rabbi Trusts set forth on Schedule 4 and the BOLI/COLI policies set forth on Schedule 5 or any proceeds therefrom. JPMC shall acknowledge that WMI has no liability with respect to change of control agreements for current or former employees of WMB or the WMB Subsidiaries.

Vendor Issues

JPMC shall waive any and all claims it has against WMI in connection with its payment of the prepetition claims of vendors against WMI, WMB, or the WMB Subsidiaries (or its purchase of such claims), whether by subrogation, assignment, or otherwise. In addition, JPMC shall indemnify WMI against any claims asserted against WMI by vendors with respect to services provided to WMB or the WMB Subsidiaries (whether arising before or after JPMC's acquisition of the assets of WMB).

Tower Insurance Policy	WMI and its current and former officers, directors, and employees shall be entitled to a priority recovery against the Tower Insurance Policy. Any payments received under that policy by JPMC or the FDIC shall be held in trust until a determination of all claims covered by that policy.
Interest On Deposit Accounts	From and after the date hereof, interest shall accrue on the funds in the Deposit Accounts at the greater of twenty-five (25) basis points and such other amount as may be (a) quoted by JPMC as applicable to one, three and six month rates and (b) selected by WMI.
Further Assurances	WMI shall acknowledge that it has no right, title, or interest in or to the Trust Preferred Securities and will perform such ministerial acts requested by JPMC that are necessary to confirm JPMC as the legal and beneficial owner of the Trust Preferred Securities. JPMC shall file with the Bankruptcy Court such notice as may be reasonably requested by WMI evidencing JPMC's waiver and release of its rights to the Goodwill Litigation Proceeds that have been deposited in the registry of the Bankruptcy Court. The FDIC shall not make a substantial distribution to creditors in the receivership of WMB or close or wind up such receivership before the Effective Date. The parties shall provide further assurances to each other in connection with the matters covered herein.
Third Party Releases	WMI's chapter 11 plan shall provide, to the fullest extent legally permissible, that any party receiving a distribution shall release JPMC from any and all claims arising from the claims or interests for which such party is receiving such distribution.

Defined Terms

Bankruptcy Code	Title 11 of the United States Code.
Bankruptcy Rules	The Federal Rules of Bankruptcy Procedure.
Deposit Accounts	The accounts at JPMC or its affiliates identified on Schedule 7.
Effective Date	The effective date of WMI's chapter 11 plan of reorganization.
Goodwill Litigation	*American Savings Bank, F.A. v. United States,* No. 92-872C, currently pending in the United States Court of Federal Claims and *Anchor Savings Bank, FSB v. United States,* 2008-5175-5182, currently pending

	in the United States Court of Appeals for the Federal Circuit.
Goodwill Litigation Proceeds	All proceeds of any judgment against the United States payable to WMI, WMB, the WMB Subsidiaries, or JPMC with respect to the Goodwill Litigation, including, without limitation, any rights and claims to (i) any funds deposited into the registry of the Bankruptcy Court and (ii) any funds held in escrow pursuant to that Escrow Agreement, dated December 20, 1996, by and among WMI, Keystone Holdings Partners, L.P., Escrow Partners, L.P. and The Bank of New York, as amended.
Intercompany Claims	All claims of (i) WMI against WMB or the WMB Subsidiaries and (ii) WMB or the WMB Subsidiaries against WMI, as reflected on the books and records of WMI, other than the Intercompany Notes.
Intercompany Notes	All obligations of WMB, the WMB Subsidiaries, or JPMC under the Revolving Notes identified on Schedule 8.
Lakeview Pension Plan	The tax-qualified retirement income plan for salaried employees of Lakeview Savings Bank sponsored by Washington Mutual, Inc.
Medical Plan	The omnibus group welfare plan providing health, dental, vision, life insurance, long term disability, and death benefits (including retiree benefits) sponsored by Washington Mutual, Inc.
Pension Plan	The tax-qualified defined benefit cash balance pension plan sponsored by Washington Mutual, Inc.
Pension Plan Litigation	*Buus v. Washington Mutual Pension Plan* [case number], *In re Washington Mutual ERISA Litigation* [case number], each pending in the United States District Court for the Western District of Washington, and [the "stock-drop" ERISA litigation].
Purchase and Assumption Agreement	Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008, between the FDIC and JPMC
Receivership Proof of Claim	The Proof of Claim, dated December 30, 2008, filed by WMI against WMB in WMB's receivership.
Tax Refunds	All federal, state, and local group tax refunds due to WMI or WMB or their respective affiliates for all tax years through and including 2008 (net of expenses and excluding any tax refunds due to post-2008 carrybacks).
Tower Insurance Policy	The blended insurance program, dated July 18, 2007, for the policy year from May 1, 2007, to May 1, 2008 and July 16, 2008, for the policy year from May 1, 2008, to May 1, 2009, providing D&O, Bankers

	Professional Liability, Financial Institution Bond, Fiduciary Liability, and EPL coverage to WMI and its affiliates.
Trust Preferred Securities	(i) Washington Mutual Preferred (Cayman) I Ltd. 7.25% Perpetual Non-cumulative Preferred Securities, Series A-1; (ii) Washington Mutual Preferred (Cayman) I Ltd. 7.25% Perpetual Non-cumulative Preferred Securities, Series A-2; (iii) Washington Mutual Preferred Funding Trust I Fixed-to-Floating Rate Perpetual Non-cumulative Trust Securities; (iv) Washington Mutual Preferred Funding Trust II Fixed-to-Floating Rate Perpetual Non-cumulative Trust Securities; (v) Washington Mutual Preferred Funding Trust III Fixed-to-Floating Rate Perpetual Non-cumulative Trust Securities; and (vi) Washington Mutual Preferred Funding Trust IV Fixed-to-Floating Rate Perpetual Non-cumulative Trust Securities.
Visa Shares	[5.4 million Class B common shares of Visa, Inc. owned by WMI.]
WMB Subsidiaries	The direct or indirect subsidiaries of WMB that were transferred to JPMC pursuant to the Purchase and Assumption Agreement.
WMI	Washington Mutual, Inc., and its direct and indirect subsidiaries, other than WMB and the WMB Subsidiaries.
WMI Intellectual Property	All WMI's right, title, and interest in and to the intellectual property listed on Schedule 10.

Dated: March ___, 2009

WASHINGTON MUTUAL, INC.
as Debtor in Possession

By: _____
Title:

WASHINGTON MUTUAL BANK

By: _____
Title:

JPMORGAN CHASE BANK, N.A.

By: _____
Title:

FEDERAL DEPOSIT INSURANCE CORPORATION

By: _____
Title:

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF WASHINGTON MUTUAL, INC., ET AL

By: _____
Title:

SCHEDULE 1

WMB/JPMC RABBI TRUSTS

Rabbi Trust	Trustee Bank
Pacific First Bank	Wells Fargo
Great Western*	Wells Fargo
American Savings Bank	BNYM
DIME*	Union Bank
Providian*	B of A
Coast Federal	Northern Trust

*Rabbi Trusts contain the following BOLI/COLI Policies:

Carrier	Policy List Bills/# of Policies
Pacific First Bank	7490A, 7386A, 7570A, z04001-04601, 7810A
Met Life (DIME)	1 Policy
AIG (DIME)	5 Policies
Mass Mutual (DIME)	125 Policies
Principal Mutual (DIME)	1 Policy
Prudential (DIME)	48 Policies

SCHEDULE 2

WMB/JPMC BOLI/COLI Assets

Carrier	
Kemper Investors Life	K19036-S01W, K19035-SO1W
Met Life	191511-G, 191514-G
Hartford	VG153
Sun Life	G171, G172, G180, G187, G188
Minnesota Life	55010
Pacific Life	Z04701, 7776 1A22E76B, 7777
ING Security Life (ELIP)	E208090000, E208090001

Schedule 3

Deferred Compensation, Other Non-Qualified Plans, and Split Dollar Liabilities

Plan Name (Abbreviated)	Description
American Savings Bank - DCP	American Savings Bank, F.A. Executive Compensation Program's Deferred Compensation Plan
American Savings Bank - SERP	American Savings Bank, F.A. - Executive Compensation Program's - Supplemental Executive Retirement Plan 1 - Executive Vice Presidents and Above
Bowery Savings - DCP	Bowery Savings - Deferred Compensation Plan
CCBI - Individual Contracts	CCBI - Individual Contracts
Coast Federal Bank - Directors	Directors' Benefit and Retirement Plan of Coast Federal Savings Bank
Coast Federal Bank - Officers	Coast Federal Bank - Officers
Coast Federal Bank - SERP	Supplemental Executive Retirement Plan of Coast Federal Bank
Dime - Benefit Restoration Plan	Benefit Restoration Plan of The Dime Savings Bank of New York, FSB
Dime - Dir. Ret. Cont.	Retainer Continuation Plan for Independent Directors of The Dime Savings Bank of New York, FSB
Dime - EVP SERP	Dime Bancorp, Inc. - Supplemental Executive Retirement Plan
Dime - Individual Contracts	Dime - Individual Contracts
Dime - NAMCO SERP	North American Mortgage Company - Supplemental Executive Retirement Plan
Dime - Vol. DCP DC	Dime Bancorp, Inc. - Voluntary Deferred Compensation Plan
Dime - Vol. DCP Dir BTA	Dime - Vol. DCP Dir BTA
Dime - Vol. DCP Directors	Dime Bancorp, Inc. - Voluntary Deferred Compensation Plan for Directors
Great Western - DC Make-up	Great Western - DC Make-up
Great Western - DCP Roll-in	Great Western Financial Corporation - Deferred Compensation Plan
Great Western - DCP-MLC	Great Western Financial Corporation - Deferred Compensation Plan
Great Western - DCP-S&C	Great Western Financial Corporation - Deferred Compensation Plan
Great Western - DCP-SO	Great Western Financial Corporation - Senior Officers' Deferred Compensation Plan
Great Western - Dir DCP	Great Western Financial Corporation - Directors' Deferred Compensation Plan
Great Western - Dir. Retirement	Great Western Financial Corporation Retirement Plan for Directors
Great Western - ESIP	Great Western Supplemental Incentive Plan
Great Western - GMS	Great Western - GMS
Great Western - Gratuitous	Great Western - Gratuitous
Great Western - Restoration	Great Western - Retirement Restoration Plan
Great Western - SERP	Great Western - Supplemental Executive Retirement Plan
Miscellaneous - Individual Contracts (15)	Miscellaneous - Individual Contracts (15)
Pacific First Bank - SERP	Pacific First Federal Savings Bank - Supplemental Executive Retirement Plan
Providian - DCP	Providian Financial Corporation Deferred Compensation Plan
Providian - Individual Contract	Separation and Consulting Agreement - Julie Montanari
WAMU - DCP	WAMU - Deferred Compensation Plan (incl Directors)
WAMU - SERP	WAMU - Supplemental Executive Retirement Plan
WAMU - SERAP	WAMU - Supplemental Executive Retirement Accumulation Plan
WAMU - ETRIP	WAMU - Executive Target Retirement Income Plan
CCBI	CCBI Split Dollar Liabilities

Dime KELP	Dime Key Employee Life Insurance (Split Dollar Liabilities)
ASB ELIP	American Savings Bank Employee Life Insurance Policies (Split Dollar Liabilities)

SCHEDULE 4

WMI RABBI TRUST

Rabbi Trust	Trustee Bank
HF Ahmanson	Union Bank

SCHEDULE 5

WMI BOLI/COLI Assets

Carrier/Policies	Policy Owner	Trustee
Pacific Life	WMI Revocable Trust	BNYM
8168A		
8176A		
8171A		
7856A		
8177B		
8167A		
7361A		
7729A		
7362A		
7364A		
7660A		
8184A		
7659A		
7658A		
7675A		
Pacific Life (SELIPs – Collateral Assignment)		
7363A		
7860A		
7892A		
7664A		
Prudential (SELIP – Collateral Assignment)		
R722722		
CIGNA (ELIP)		
ENZ522		

SCHEDULE 6

CCBI SPLIT DOLLAR Policies

Carrier	Issue Date	Policy #
Beneficial Life	8/1/05	BL2048828
Beneficial Life	8/1/05	BL2161150
Beneficial Life	8/1/05	BL2161151
Beneficial Life	8/1/05	BL2161152
Beneficial Life	8/1/05	BL2161153
Beneficial Life	8/1/05	BL2161154
Beneficial Life	8/1/05	BL2161155
Beneficial Life	8/1/05	BL2161156
Beneficial Life	8/1/05	BL2161157
Beneficial Life	8/1/05	BL2161159
Beneficial Life	8/1/05	BL2161160
Beneficial Life	8/1/05	BL2161161
Beneficial Life	8/1/05	BL2161162
Beneficial Life	8/1/05	BL2161163
Beneficial Life	8/1/05	BL2161165
Beneficial Life	8/1/05	BL2161166
Beneficial Life	8/1/05	BL2161167
Beneficial Life	8/1/05	BL2161168
Beneficial Life	8/1/05	BL2161169
Beneficial Life	8/1/05	BL2161170
Beneficial Life	8/1/05	BL2161171
Beneficial Life	8/1/05	BL2161172
Beneficial Life	8/1/05	BL2161173
Beneficial Life	8/1/05	BL2161174
Beneficial Life	8/1/05	BL2161175
Beneficial Life	8/1/05	BL2161176
Beneficial Life	8/1/05	BL2161178
Beneficial Life	8/1/05	BL2161179
Beneficial Life	8/1/05	BL2161180
Beneficial Life	8/1/05	BL2161181
Beneficial Life	8/1/05	BL2161182
Beneficial Life	8/1/05	BL2161183
Beneficial Life	8/1/05	BL2161185
Beneficial Life	8/1/05	BL2161186
Beneficial Life	8/1/05	BL2161187
Beneficial Life	8/1/05	BL2161189
Beneficial Life	8/1/05	BL2161190
Beneficial Life	8/1/05	BL2161191
Beneficial Life	8/1/05	BL2161194
Beneficial Life	8/1/05	BL2161195
Beneficial Life	8/1/05	BL2161198
Beneficial Life	8/1/05	BL2161199
Beneficial Life	8/1/05	BL2161200
Beneficial Life	8/1/05	BL2161201
Beneficial Life	8/1/05	BL2161202
Beneficial Life	8/1/05	BL2161203
Beneficial Life	8/1/05	BL2161204
Beneficial Life	8/1/05	BL2161205
Beneficial Life	8/1/05	BL2161206
Beneficial Life	8/1/05	BL2161207
Beneficial Life	8/1/05	BL2161208
Beneficial Life	8/1/05	BL2161209
Beneficial Life	8/1/05	BL2161210
Beneficial Life	8/1/05	BL2161211
Beneficial Life	8/1/05	BL2161212
Beneficial Life	8/1/05	BL2161213
Beneficial Life	8/1/05	BL2161214
Beneficial Life	8/1/05	BL2161215
Beneficial Life	8/1/05	BL2161216
Beneficial Life	8/1/05	BL2161217
Beneficial Life	8/1/05	BL2161218
Beneficial Life	8/1/05	BL2161219
Beneficial Life	8/1/05	BL2161220
Beneficial Life	8/1/05	BL2161221
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Beneficial Life	8/1/05	BL2161223
Beneficial Life	8/1/05	BL2161224
Beneficial Life	8/1/05	BL2161225
Beneficial Life	8/1/05	BL2161226
Beneficial Life	8/1/05	BL2161227

Carrier	Issue Date	Policy #
Midland	3/1/02	650704
Midland	3/1/02	650756
Midland	3/1/02	650758
Midland	3/1/02	650762
Midland	3/1/02	650763
Midland	3/1/02	650765
Midland	3/1/02	650767
Midland	3/1/02	650836
Midland	3/1/02	650838
Midland	3/1/02	650840
Midland	3/1/02	650841
Midland	3/1/02	650842
Midland	3/1/02	650843
Midland	3/1/02	650844
Midland	3/1/02	650845
Midland	3/1/02	680750
Midland	10/28/02	666591
Midland	10/28/02	666593
Midland	10/28/02	666594
Midland	10/28/02	666596
Midland	10/28/02	666597
Midland	6/4/03	680739
Midland	6/4/03	680740
Midland	6/4/03	680742
Midland	6/4/03	680743
Midland	6/4/03	680744
Midland	6/4/03	680745
Midland	6/4/03	680746
Midland	6/4/03	680747
Midland	6/4/03	680748
Midland	6/4/03	680749
Midland	6/4/03	680751
Midland	6/4/03	680752
Midland	5/28/04	687686
New York Life	3/1/02	56601745
New York Life	3/1/02	56601746
New York Life	3/1/02	56601747
New York Life	3/1/02	56601748
New York Life	3/1/02	56601749
New York Life	3/1/02	56601750
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New York Life	3/1/02	56601752
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New York Life	3/1/02	56602721
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New York Life	6/4/03	56606182
New York Life	6/4/03	56606183
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New York Life	6/4/03	56606188
New York Life	6/4/03	56606189
New York Life	6/4/03	56606190
New York Life	6/4/03	56606191
New York Life	6/4/03	56606192
New York Life	6/4/03	56606193
New York Life	6/4/03	56606194
New York Life	6/4/03	56606195
New York Life	6/4/03	56606196

Beneficial Life	8/1/05	BL2161228
Beneficial Life	8/1/05	BL2161229
Beneficial Life	8/1/05	BL2161230
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Beneficial Life	8/1/05	BL2161914
Beneficial Life	8/1/05	BL2161915
Beneficial Life	8/1/05	BL2161916
Beneficial Life	8/1/05	BL2161917
Beneficial Life	8/1/05	BL2161918
Beneficial Life	8/1/05	BL2161919
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Beneficial Life	8/1/05	BL2162077
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Beneficial Life	10/5/05	BL2163990
Beneficial Life	10/5/05	BL2163991
Beneficial Life	10/5/05	BL2163992
Beneficial Life	10/5/05	BL2163993
Beneficial Life	10/5/05	BL2163994
Beneficial Life	10/5/05	BL2163995
Beneficial Life	10/5/05	BL2163996
Beneficial Life	10/5/05	BL2163997
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Beneficial Life	10/5/05	BL2163999
Beneficial Life	10/5/05	BL2164000
Beneficial Life	10/5/05	BL2164001
Beneficial Life	10/5/05	BL2164002
Beneficial Life	10/5/05	BL2164003
Beneficial Life	10/5/05	BL2164004
Beneficial Life	10/5/05	BL2164005
Beneficial Life	10/5/05	BL2164006
Beneficial Life	10/5/05	BL2164007
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Beneficial Life	10/5/05	BL2164475
Beneficial Life	10/5/05	BL2164476
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New York Life	6/4/03	56606204
New York Life	6/4/03	56606205
New York Life	5/28/04	56608347
New York Life	8/1/05	56611467
New York Life	8/1/05	56611468
New York Life	8/1/05	56611469
New York Life	8/1/05	56611470
New York Life	8/1/05	56611471
New York Life	8/1/05	56611472
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New York Life	10/5/05	56611668
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New York Life	10/5/05	56611670
New York Life	10/5/05	56611671

Beneficial Life	10/5/05	BL2164477
Beneficial Life	10/5/05	BL2164478
Beneficial Life	10/5/05	BL2164479
Beneficial Life	10/5/05	BL2164480
Beneficial Life	10/5/05	BL2164481
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Beneficial Life	10/5/05	BL2164501
Beneficial Life	10/5/05	BL2164502
Beneficial Life	3/30/06	BL2050021
Beneficial Life	3/30/06	BL2050058
Jefferson Pilot	3/1/02	JP5242202
Jefferson Pilot	3/1/02	JP5242203
Jefferson Pilot	3/1/02	JP5242204
Jefferson Pilot	3/1/02	JP5242205
Jefferson Pilot	3/1/02	JP5242206
Jefferson Pilot	3/1/02	JP5242207
Jefferson Pilot	3/1/02	JP5242208
Jefferson Pilot	3/1/02	JP5242209
Jefferson Pilot	3/1/02	JP5242210
Jefferson Pilot	3/1/02	JP5242211
Jefferson Pilot	3/1/02	JP5242212
Jefferson Pilot	3/1/02	JP5242213
Jefferson Pilot	3/1/02	JP5242214
Jefferson Pilot	3/1/02	JP5242215
Jefferson Pilot	3/1/02	JP5242216
Jefferson Pilot	10/28/02	JP5262455
Jefferson Pilot	10/28/02	JP5262456
Jefferson Pilot	10/28/02	JP5262457
Jefferson Pilot	10/28/02	JP5262458
Jefferson Pilot	10/28/02	JP5262459
Jefferson Pilot	6/4/03	JP5299304
Jefferson Pilot	6/4/03	JP5299305
Jefferson Pilot	6/4/03	JP5299306
Jefferson Pilot	6/4/03	JP5299307
Jefferson Pilot	6/4/03	JP5299308
Jefferson Pilot	6/4/03	JP5299309
Jefferson Pilot	6/4/03	JP5299310
Jefferson Pilot	6/4/03	JP5299311
Jefferson Pilot	6/4/03	JP5299316
Jefferson Pilot	6/4/03	JP5299317
Jefferson Pilot	6/4/03	JP5299318
Jefferson Pilot	6/4/03	JP5299319
Jefferson Pilot	6/4/03	JP5401632
Jefferson Pilot	5/28/04	JP5446156
John Hancock	3/1/02	SB59258001
John Hancock	3/1/02	SB59258002
John Hancock	3/1/02	SB59258003
John Hancock	3/1/02	SB59258004
John Hancock	3/1/02	SB59258005
John Hancock	3/1/02	SB59258006
John Hancock	3/1/02	SB59258007
John Hancock	3/1/02	SB59258008
John Hancock	3/1/02	SB59258009
John Hancock	3/1/02	SB59258010
John Hancock	3/1/02	SB59258011
John Hancock	3/1/02	SB59258012
John Hancock	3/1/02	SB59258013
John Hancock	3/1/02	SB59258014
John Hancock	3/1/02	SB59258015
John Hancock	10/31/02	SB59528002
New York Life	10/5/05	56611672
New York Life	10/5/05	56611673
New York Life	10/5/05	56611674
New York Life	10/5/05	56611675
New York Life	10/5/05	56611676
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New York Life	10/5/05	56611680
New York Life	10/5/05	56611681
New York Life	10/5/05	56611682
New York Life	10/5/05	56611683
New York Life	10/5/05	56611684
New York Life	3/28/06	56612329
New York Life	3/28/06	56612330
Northwestern Mutual	3/31/03	16457269
Northwestern Mutual	3/31/03	16457404
Northwestern Mutual	3/31/03	16457424
Northwestern Mutual	3/31/03	16457472
Northwestern Mutual	3/31/03	16457490
Northwestern Mutual	3/31/03	16457506
Northwestern Mutual	3/31/03	16457511
Northwestern Mutual	3/31/03	16457514
Northwestern Mutual	3/31/03	16457530
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Northwestern Mutual	3/31/03	16457710
Northwestern Mutual	3/31/03	16457725
Northwestern Mutual	3/31/03	16457729
Northwestern Mutual	3/31/03	16457731
Northwestern Mutual	3/31/03	16457739
Northwestern Mutual	3/31/03	16457747
Northwestern Mutual	3/31/03	16457755
Northwestern Mutual	3/31/03	16457767
Northwestern Mutual	3/31/03	16457778
Northwestern Mutual	3/31/03	16457786
Northwestern Mutual	3/31/03	16457790
Northwestern Mutual	3/31/03	16457796
Northwestern Mutual	3/31/03	16457809
Northwestern Mutual	3/31/03	16457820
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Northwestern Mutual	3/31/03	16457946
Northwestern Mutual	3/31/03	16457952
Northwestern Mutual	3/31/03	16457956
Northwestern Mutual	3/31/03	16457958
Northwestern Mutual	3/31/03	16457961
Northwestern Mutual	3/31/03	16457965
Northwestern Mutual	3/31/03	16457968
Northwestern Mutual	3/31/03	16457971
Northwestern Mutual	3/31/03	16457976
Northwestern Mutual	3/31/03	16457977
Northwestern Mutual	3/31/03	16457979
Northwestern Mutual	3/31/03	16457983
Northwestern Mutual	3/31/03	16457985
Northwestern Mutual	3/31/03	16457990
Northwestern Mutual	3/31/03	16457994
Northwestern Mutual	3/31/03	16458002

John Hancock	10/31/02	SB59528003
John Hancock	10/31/02	SB59528004
John Hancock	10/31/02	SB59528005
John Hancock	10/31/02	SB59528006
John Hancock	3/31/03	SB59955001
John Hancock	3/31/03	SB59955002
John Hancock	3/31/03	SB59955003
John Hancock	3/31/03	SB59955004
John Hancock	3/31/03	SB59955005
John Hancock	3/31/03	SB59955006
John Hancock	3/31/03	SB59955007
John Hancock	3/31/03	SB59955008
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John Hancock	3/31/03	SB59955010
John Hancock	3/31/03	SB59955011
John Hancock	3/31/03	SB59955012
John Hancock	3/31/03	SB59955013
John Hancock	3/31/03	SB59955014
John Hancock	3/31/03	SB59955015
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John Hancock	3/31/03	SB59955017
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John Hancock	3/31/03	SB59955019
John Hancock	3/31/03	SB59955020
John Hancock	3/31/03	SB59955021
John Hancock	3/31/03	SB59955022
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John Hancock	3/31/03	SB59955024
John Hancock	3/31/03	SB59955025
John Hancock	3/31/03	SB59955026
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John Hancock	3/31/03	SB59955028
John Hancock	3/31/03	SB59955029
John Hancock	3/31/03	SB59955030
John Hancock	3/31/03	SB59955031
John Hancock	3/31/03	SB59955032
John Hancock	3/31/03	SB59955033
John Hancock	3/31/03	SB59955034
John Hancock	3/31/03	SB59955035
John Hancock	3/31/03	SB59955036
John Hancock	3/31/03	SB59955037
John Hancock	3/31/03	SB59955038
John Hancock	3/31/03	SB59955039
John Hancock	3/31/03	SB59955040
John Hancock	3/31/03	SB59955041
John Hancock	3/31/03	SB59955042
John Hancock	3/31/03	SB59955043
John Hancock	3/31/03	SB59955044
John Hancock	3/31/03	SB59955045
John Hancock	3/31/03	SB59955046
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John Hancock	3/31/03	SB59955066
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John Hancock	3/31/03	SB59955069
John Hancock	3/31/03	SB59955070
John Hancock	3/31/03	SB59955072
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John Hancock	3/31/03	SB59955074
John Hancock	3/31/03	SB59955075
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Northwestern Mutual	3/31/03	16458046
Northwestern Mutual	3/31/03	16458047
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John Hancock	6/4/03	SB59981002
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John Hancock	6/4/03	SB59981013
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West Coat Life	3/1/02	ZUA388896

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Mass Mutual	8/2/05	0068536
Mass Mutual	8/2/05	0068537
Mass Mutual	8/2/05	0068538
Mass Mutual	8/2/05	0068539
Mass Mutual	8/2/05	0068540
Mass Mutual	3/28/06	0070249
Mass Mutual	3/28/06	0070250

Schedule 7

Deposit Accounts

[list to be supplied]

Schedule 8 – Intercompany Notes

a. $82,048,081 under that certain Revolving Master Note, dated as of December 22, 2005, by and between WMB, as borrower, and H.S. Loan Corporation, as lender. H.S. Loan Corporation is a subsidiary of WMI, in which WMB owns 1.5748%.

b. $73,670,153 under that certain Revolving Master Note, dated as of December 22, 2005, by and between WMB, as borrower, and H.S. Loan Partners, as lender. H.S. Loan Partners is an indirect, wholly-owned subsidiary of WMI.

c. $7,781,240 under that certain Revolving Master Note, dated as of February 11, 2005, by and between WMB, as borrower, and WMHFA Delaware Holdings LLC, as lender. WMHFA Delaware Holdings LLC is an indirect, wholly-owned subsidiary of WMI.

d. $13,576,245 under that certain Registered Security, Note A, dated as of December 17, 2004, by and between University Street, Inc., as payor and predecessor in interest to WMB, and WMRP Delaware Holdings LLC, as payee, and predecessor in interest to PCA Asset Holdings LLC. This Promissory Note is recorded on WMI's books and records as an obligation owed to PCA Asset Holdings LLC, an indirect subsidiary of WMI, by WMB.

Schedule 9

Loans Serviced by JPMorgan

[list to be supplied]

Schedule 10

Intellectual Property

[list of all licenses, marks, and other intellectual property belonging to WMI – some licenses or marks may need to be retained by WMI on a non-exclusive basis]

EXHIBIT G

From: Nichols, Philip [pnichols@ny.whitecase.com]
Sent: Thursday, March 19, 2009 2:24 PM
To: jPike@elliottmgmt.com; Dan Gropper; Dan Krueger; Mark Kronfeld; Vik Ghei; maschwartz@taconiccap.com; Rich Parisi; Chaim Fortgang; AMoolji@taconiccap.com
Cc: Uzzi, Gerard; Lauria, Thomas E.
Subject: REDACTED

Attachments: LA_LAN01-#225120-v1-JPMorgan_Wamu_Proposal.DOC

REDACTED

----- Forwarded by Brian Rosen/NY/WGM/US on 03/18/2009 07:44 PM -----

"Feldstein, Hydee R." <feldsteinh@sullcrom.com>

03/18/2009 05:16 PM

To "Walsh, Michael" <michael.walsh@weil.com>, <brian.rosen@weil.com>, "Hodara, Fred" <fhodara@AkinGump.com>

cc "Califano, Thomas R." <Thomas.Califano@dlapiper.com>, "Clarke, John J., Jr." <John.Clarke@dlapiper.com>, <epes_travis@jpmorgan.com>, "Cooney, Daniel P." <dan.cooney@chase.com>, "Eitel, Mitchell" <Eitelm@sullcrom.com>, "Friedman, Stacey" <FriedmanS@sullcrom.com>, "Lindauer, Erik" <Lindauere@sullcrom.com>, "Sacks, Robert" <SACKSR@sullcrom.com>

Subject JPMC Response to Draft Proposal

Dear Michael, Brian and Fred:

Thank you for sharing with us the term sheet that you prepared last week. Given the differences in our respective modes of analysis, we thought it more productive to send you the attached summary rather than attempting to mark up your more detailed term sheet. This way we hope to focus on the core issues that need resolution before we get into the mechanics of the settlement.

Please understand that we are approaching the analysis from the perspective of what we think are our clients' respective rights and what we believe you and we are legitimately entitled to claim and likely to prevail upon at the end of the day. We believe it is important to work from this baseline rather than going top-down to achieve certain pre-determined recovery levels for particular constituencies if we are to resolve this in a reasonable timeframe. Given our different perspectives on how to reach the goal line, we think it would be most

productive to meet again, preferably in a smaller group but that is
really up to your side, to try to understand the disparity in our views.
We stand ready to do this at
your convenience.

I have copied counsel for the FDIC but would ask that you please
distribute this further as among creditor constituencies who may need to
receive it limiting the distribution as appropriate in light of the
confidentiality agreements those constituencies have executed.

Please let me know whether and when another meeting might be productive.
Thanks again for your efforts to date and I hope we can move forward
quickly to try to develop common ground for a consensual resolution.

Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East, 21st Floor
Los Angeles, CA 90067
Direct: 310-712-6690
Main: 310-712-6600
Fax: 310-712-8800
Email: feldsteinh@sullcrom.com

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WMI/JPMC SETTLEMENT TERM SHEET

PROTECTED BY FEDERAL RULE OF EVIDENCE 408

This term sheet is intended to outline the basic division of assets and certain liabilities between JPMorgan Chase Bank N.A. ("JPMC") and Washington Mutual Inc. ("WMI") that would be embodied in a settlement of all disputes among the various parties arising out of the receivership of Washington Mutual Bank and the filing of Chapter 11 cases by WMI and WMI Investment Corp. An actual resolution of the issues will be embodied in a plan of reorganization (the "Plan") and will be a fundamental part thereof, will be approved under Bankruptcy Rule 9019, will include a sale of all right, title or interest of the Debtors in or to the assets below to JPMC free and clear of all claims and interests under Bankruptcy Code § 363(f) and will provide for both party and third party releases covering all matters in dispute or claims that may arise out of or relate to the receivership or the Chapter 11 cases or the assets described herein. The resolution is subject to internal approvals of the Debtors and JPMC, to the approval of the FDIC, and to the entry of an order confirming the Plan in form and substance satisfactory to the Debtors and JPMC.

In summary form, the assets in dispute will be divided among the parties as follows, free and clear, with good title and all claims released pursuant to agreed mechanics to be embodied in the Plan:

Issue	WMI Proposal 3/12/09	JPMC Proposal 3/18/09
• Balances in "Deposit Accounts"	• JPMC to (a) pay over $4.08 billion, including post-petition tax refunds received; plus (b) interest accrued through date of payment at the greater of 25 basis points or amount set forth in the agreement; plus (c) release claims to the $292 million released in December, 2008	• Agreed except payment is of $4.08 billion less the amount of approximately $250 million in tax refunds received on 9/30/08 and interest accrual is on balance due at agreed upon rates

• Trust Securities ($4B face amount)	• WMI to take all steps necessary or appropriate to provide record title and ownership to JPMC free and clear of all claims and interests in connection therewith	• Agreed
• Tax	• WMI takes $250 million already received in deposit account • WMI takes first $500 million coming from tax authorities • Parties split remainder 60/40 in favor of WMI increasing to 80/20 in favor of WMI in the event 5-year carryback legislation revives and is passed	• JPMC takes all tax refunds • JPMC retains the $250 million in Deposit Account attributable to refunds already received • WMI receives amounts, if any, which are determined owing for taxes already paid by WMI on behalf of WMB, less any amounts owed to WMB for prior years' unsettled taxes
• Goodwill Litigation	• JPMC transfers all of its interest in the goodwill litigation to WMI	• JPMC retains all goodwill litigation proceeds allocable to WMB which JPMC believes is all other than the portion allocable to WMI which JPMC estimates to be about $15 million
• Rabbi Trusts	• JPMC transfers Ahmanson Rabbi Trust assets with associated liabilities • WMI transfers all other Rabbi Trust assets to JPMC with associated liabilities	• Agreed
• Split Dollar Policies	• WMI transfers all split dollar policies and associated liabilities to JPMC	• Agreed
• Agreed Boli/Coli Policies	• Agreed Boli policies and associated liabilities to JPMC • Agreed Coli policies and associated liabilities to WMI	• Agreed - schedule provided by WMI is subject to JPMC review and confirmation
• Two disputed Pac Life Policies	• JPMC transfers to WMI with associated	• Agreed

	liabilities	
• Visa B Shares	• WMI transfers to JPMC with associated liabilities	• Agreed
• Pension/401(k) Plans	• WMI transfers sponsorship of tax qualified defined benefit cash balance pension plan ("WaMu Pension Plan"), 401(k) plan and Lakeview plan and transfers plan sponsor rights and liabilities under plans to JPMC • JPMC assumes liability for medical plan • JPMC assumes liability for two pension related litigations previously discussed • JPMC assumes liability for third litigation matter – apparently a securities 10b-5 case	• JPMC will accept sponsorship and assets and liabilities of WaMu Pension Plan and 401(k) plan • JPMC will accept the assets and liabilities under the medical plan • JPMC will accept liability over and above available insurance coverage for the two pension related litigation matters but will not indemnify any other defendants • WMI to retain the Lakeview plan for salaried employees of WMI and the third litigation matter (apparently 10b-5)
• Contracts and Licenses	• WMI to transfer all contracts and licenses with reference to a schedule to be agreed • JPMC to pay cure costs and provide assurance of future performance	• Agreed subject to agreement re: schedule
• Claims for Pre-Petition Payments	• JPMC to waive	• Agreed on amounts already paid
• Tower Insurance	• WMI takes priority claim status on Tower Insurance D&O-type policies	• JPMC to retain rights of coverage to settle pension plan litigation matters assumed but will agree to allow WMI priority claim status on excess
• Intercompany Notes	• JPMC pays four intercompany notes totaling $178mm and transfers to WMI its 1.5% equity interest in HS Loan Corporation (a WMI subsidiary) • JPMC forgives $275 million	• JPMC will pay amounts due and owing under three intercompany notes; fourth note, Registered Security Note A dated as of 12/17/2004, and transfer equity interest to WMI need to be discussed further

	intercompany receivable due to WMB	• JPMC will forgive the approximately $275 million intercompany receivable due from WMI
• Third Party Loans	• WMI receives payment from JPMC of $24 million in aggregate representing principal & interest on certain third-party loans held by WMI which are serviced by WMB/JPMC	• JPMC will pay unpaid amount owing for principal and interest under third-party loans held by WMI and serviced by WMB/JPMC. Amount being verified but believed to be substantially less than claimed
• Cash payment		• JPMC to pay $50 million to WMI

The parties would agree to work in good faith to embody the settlement terms in appropriate definitive documents so that they could be executed and approved by the required parties, submitted to the Bankruptcy Court and confirmed as promptly as practicable.

EXHIBIT H

From: Uzzi, Gerard [guzzi@ny.whitecase.com]
Sent: Friday, May 08, 2009 4:44 PM
To: Dan Krueger
Subject: FW: Wamu

REDACTED

Gerard H. Uzzi
Partner
Financial Restructuring and Insolvency Practice
White & Case LLP
1155 Avenue of the Americas
New York, NY 10036-2787
Telephone: + 212-819-8479
Fax: + 212-354-8113
guzzi@whitecase.com

From: brian.rosen@weil.com [mailto:brian.rosen@weil.com]
Sent: Thursday, May 07, 2009 3:00 PM
To: Uzzi, Gerard
Subject: Re: Wamu

No problem. The Debtors believe that all required disclosure has been made.

Also, thanks for yesterday and the tone of the meeting.

Brian

"Uzzi, Gerard" <guzzi@ny.whitecase.com>

05/07/2009 02:55 PM

To brian.rosen@weil.com
cc
Subject Wamu

Brian,

Thanks for yesterday's meeting. I think it will help us advance the case constructively. I wanted to follow up on one point relating to the expiration of the confidentiality agreement so that there is no confusion. I would like to confirm that, pursuant to the confidentiality agreements, the debtors believe that no further disclosure is required. You confirmation of this point is greatly appreciated. As you can appreciate it, this is an important point to the note holders.

Jerry

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EXHIBIT I

November 16, 2009

VIA E-MAIL

To Owl Creek Asset Management, L.P., on behalf of certain funds for which it acts as investment adviser

Re: Confidentiality Agreement (Limited) with Owl Creek Asset Management, L.P., on behalf of certain funds for which it acts as investment adviser

Washington Mutual, Inc. and WMI Investment Corp. (collectively, the "Debtors") are debtors and debtors in possession in the jointly administered chapter 11 cases pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), Case No. 08-12229 (MFW) (collectively, the "Cases"). The Debtors are prepared to provide now and during the administration of the Cases to Owl Creek Asset Management, L.P., on behalf of certain funds for which it acts as investment adviser ("Participant") certain information relating to the Debtors and other matters relevant to the Cases. The Debtors are entering into this agreement (the "Agreement") with Participant to govern the exchange and preservation of that information. The term "Representative" as used in this Agreement shall include directors, executives, officers, employees, members, managers, agents, partners, experts, consultants, legal counsel, affiliates and financial and other advisors.

As used herein, the term "Confidential Information" shall mean any information (i) whether written or oral and whether prepared by the Debtors, their Representatives, or otherwise and irrespective of the form of communication, (ii) concerning the Debtors and reasonably related to and necessary for the limited purpose of Participant's participation in negotiations among the Debtors, the Federal Deposit Insurance Corporation (in its individual corporate capacity and in its capacity as receiver of Washington Mutual Bank) (the "FDIC") and JPMorgan Chase & Co. (and/or its affiliates and subsidiaries, including JPMorgan Chase Bank, N.A.) (collectively, "JPM"), concerning the terms of a plan (as

that term is used in subchapter II of chapter 11 of title 11, United States Code) and global settlement discussions regarding the resolution of pending litigation and claims between, among other parties, the Debtors, the FDIC and JPM, including, without limitation, the following *JPMorgan Chase Bank, National Association, et al. v. Washington Mutual, Inc., et al., Case No. 09-50551 (MFW), Washington Mutual, Inc., et al. v. JPMorgan Chase Bank, N.A., et al., Case No. 09-50934 (MFW)*, and *Washington Mutual, Inc., et al. v. Federal Deposit Insurance Corporation, Case No. 1:09-cv-0533 (RMC)*, (iii) that is furnished during the pendency of the Cases (whether on or after the date hereof) to Participant by, or on behalf of, the Debtors or their Representatives, and (iv) that is confidential, non-public or proprietary in nature. "Confidential Information" shall also include all notes, analyses, compilations, studies or other documents and materials, whether prepared by Participant or others, which contain or are based upon Confidential Information furnished to Participant concerning the Debtors. The term "Confidential Information" shall not include information that (i) was in Participant's or its Representatives' possession prior to receiving such information from the Debtors so long as such information did not come from a source that is not reasonably known by the Participant or its Representatives to be bound by a confidentiality agreement with, or other legal, contractual, or fiduciary obligation of confidentiality owed to, the Debtors, (ii) is publicly available, or becomes publicly available other than as a result of a disclosure by Participant in violation of the terms hereof, (iii) is or becomes available to Participant on a non-confidential basis from a source other than the Debtors or any of their Representatives, so long as such source is not known by Participant to be bound by a confidentiality agreement with, or a legal, contractual or fiduciary obligation of confidentiality to, the Debtors and in breach of such obligation, or (iv) is independently acquired or developed by Participant not in violation of this Agreement.

In consideration of such Confidential Information being furnished by the Debtors to Participant, Participant agrees to the following:

1. Participant hereby agrees that all Confidential Information and the existence thereof will be held and treated in confidence, and will not be disclosed in any manner whatsoever, in whole or in part, to any party, except as provided herein; provided, however, that information concerning the existence of Confidential Information shall be subject to the exception to non-disclosure set forth above under sub-paragraph (ii) as if it were Confidential Information for the purposes hereof. Participant agrees to use Confidential Information only for the purpose of participating in the Cases and further agrees not to use Confidential Information in any manner inconsistent with this Agreement. Nothing in this Agreement shall prejudice Participant's ability to obtain Confidential Information by way of discovery or other legal manner.

Participant may share Confidential Information: (a) with its directors, executives, officers and employees who require such information and who agree to keep such Confidential Information in accordance with the terms of this Agreement, (b) with its other Representatives, and (c) with any other party that has executed a confidentiality agreement with Debtors in form and substance that is no less favorable to such party than

the terms of this Agreement. Participant will be responsible for any breach of the non-disclosure provisions of this Agreement by it or its Representatives.

2. The Debtors acknowledge and are aware that Participant may maintain or establish an information blocking device or "Ethical Wall" between its employees who receive the Confidential Information and its other employees. The Debtors acknowledge and are aware and Participant agrees that in the event it maintains or establishes such an information blocking device or Ethical Wall, only those employees who receive Confidential Information or otherwise participate in discussions with the Debtors or their Representatives with respect to the transaction contemplated hereunder (such designated employees, the "Designated Representatives") shall be bound by the restrictions contained herein. In order to preserve such Ethical Wall, if established (and without limiting the generality of the other provisions of this Agreement), the Debtors and Participant each agree that the Designated Representatives each shall not disclose Confidential Information, or otherwise discuss the Cases in a manner that may intentionally or inadvertently divulge Confidential Information, to any employee, officer, or director of Participant or Participant's affiliates who is not a Designated Representative. Attached hereto as Exhibit A is a description of procedures and mechanisms that Participant shall establish or maintain and enforce to create and preserve an effective Ethical Wall. Notwithstanding anything in this Agreement to the contrary, (a) only those individuals employed by Participant who are working on the proposed transaction contemplated hereunder and, after the date hereof, have gained knowledge of the substantive Confidential Information provided under this Agreement shall be bound by the restrictions contained herein, (b) and for the avoidance of doubt, neither Participant nor its affiliates shall be restricted from acting with respect to or pursuing any transaction regarding the Debtors and/or their respective securities, bank debt or other instruments.

3. In the event that Participant receives a request or requirement to disclose any Confidential Information, in any such case under any applicable law or regulation, subpoena, court order, or legal, regulatory, or judicial process or the rules of any applicable regulatory agency or stock exchange (collectively, "Legal Process"), Participant agrees, if legally permitted, (i) to promptly notify the Debtors in writing thereof in order to enable the Debtors, at the Debtors' sole cost and expense, to seek an appropriate protective order or other remedy or to waive compliance, in whole or in part, with the terms of this Agreement, and (ii) if disclosure is legally required or requested, the Participant shall use its reasonable efforts, at the Debtors' sole cost and expense, to cooperate with the Debtors, at the Debtors' expense, in any attempt they may make to obtain a protective order or other appropriate remedy and/or waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Debtors waive compliance with the provisions hereof, Participant shall be permitted to furnish that portion of the Confidential Information as they are advised by counsel is legally required pursuant to such Legal Process. Participant shall not oppose the Debtors' efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information.

4. Participant understands and acknowledges that the Debtors make no representation or warranty as to the accuracy or completeness of the Confidential Information, and Participant agrees that neither the Debtors nor any of their Representatives will have any liability to Participant or its Representatives relating to or resulting from the use of the Confidential Information.

5. Participant shall promptly, upon the Debtors' written request and at the option of Participant, return to the Debtors or destroy, if so requested by the Debtors in writing, all Confidential Information in its possession and will not retain any copies, extracts or other reproductions in whole or in part of such written material (i) unless Participant is prohibited from doing so by any applicable law, rule, regulation code of ethics or by a competent judicial, governmental supervisory or regulatory body, or (ii) except such Confidential Information as may be stored on magnetic backup discs as part of Participant's standard archiving process. In the event Participant withdraws from further participation in the Cases prior to termination of this Agreement, Confidential Information shall be held by Participant subject to the terms of the Agreement (and notwithstanding Participant's withdrawal) unless otherwise (i) agreed by the parties hereto, (ii) ordered by the Bankruptcy Court, (iii) required by law, or (iv) requested to be destroyed by the Debtors. Unless otherwise directed by the Debtors, Participant may retain one copy of any Confidential Information it receives for its office records subject to the confidentiality of such copy as provided under the terms of this Agreement.

6. The Debtors are entitled to seek all remedies that may be available to any of them at law or in equity for any breach or violation of this Agreement by Participant, including specific performance and injunctive relief and, in the event the Debtors seek such relief, Participant shall not oppose same on the grounds that the Debtors are not entitled to seek such relief. Participant further agrees to waive, and to use its reasonable best efforts to cause its officers, employees, and agents to waive, any requirement for the securing or posting of any bond in connection with such remedy.

Participant shall be liable for any breach of this Agreement as may be determined by a final non-appealable order of a court of competent jurisdiction. Nothing in this section 6 shall prevent Participant from contesting that any such breach has occurred or from contesting any litigation in any appropriate fashion.

7. It is understood and agreed that no failure or delay by a party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

8. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

9. This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, arrangements and understandings relating to the matter provided for herein. No alteration, waiver, amendment, change or supplement hereto shall be binding or effective unless the same is set forth in a writing signed by each party hereto. No party hereunder may assign its rights or obligations under this Agreement without the prior written consent of the other party.

10. Nothing in this Agreement is intended to grant Participant any rights under any patent, copyright, trade secret or other intellectual property right, nor shall this Agreement grant to Participant any rights in or to the Confidential Information, except the limited right to review the Confidential Information solely for the purpose and in the manner set forth in this Agreement.

11. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflict of laws principles. Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Bankruptcy Court for any actions, suits or proceedings arising out of or relating to this Agreement (and the parties agree not to commence any action, suit or proceeding relating thereto except in such court), and further agrees that service of any process, summons, notice or document by U.S. registered mail to the respective addresses of and to the attention of the (i) Debtors' counsel and (ii) Participant's General Counsel shall be effective service of process for any action, suit or proceeding brought against the parties in any such court. Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this agreement in the Bankruptcy Court, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12. In the event that Participant intends to offer into evidence or otherwise use Confidential Information in the Cases, then Participant shall (i) obtain the prior written consent of the Debtors (through the Debtors' counsel) to such offer or use; or (ii) obtain an order of the Bankruptcy Court to use such Confidential Information pursuant to the Federal Rules of Bankruptcy Procedure, including by seeking authorization to file the papers seeking such order under seal. Any such request for relief from the Bankruptcy Court may be heard on expedited notice, subject to the Bankruptcy Court's calendar.

13. Other than any provision hereof that by its terms survives termination, this Agreement shall remain in full force and effect until the earlier to occur of (i) the filing by the Debtors of a disclosure statement pursuant to section 1125(b) of title 11, United States Code, (ii) December 31, 2009, and (iii) the termination of this Agreement by agreement of the parties hereto. Upon the termination of this Agreement pursuant hereto, the Debtors shall immediately make public disclosure (within the meaning of Rule 101 of Regulation FD) of a fair summary, as reasonably determined by

the Debtors, of any Confidential Information that constitutes material non-public information under U.S. federal securities laws. In addition, if the Debtors, the FDIC and JPM enter into a final agreement that involves a global settlement of pending litigation and claims between, among other parties, the Debtors, the FDIC and JPM, including, without limitation, the following *JPMorgan Chase Bank, National Association, et al. v. Washington Mutual, Inc., et al., Case No. 09-50551 (MFW), Washington Mutual, Inc., et al. v. JPMorgan Chase Bank, N.A., et al., Case No. 09-50934 (MFW)*, and *Washington Mutual, Inc., et al. v. Federal Deposit Insurance Corporation, Case No. 1:09-cv-0533 (RMC)*, the Debtors shall, within four (4) business days, make public disclosure (within the meaning of Rule 101 of Regulation FD) of a fair summary, as reasonably determined by the Debtors, of any Confidential Information that constitutes material non-public information under U.S. federal securities laws.

14. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

If the foregoing reflects our agreement, please execute below and return to my attention.

Very truly yours,

Washington Mutual, Inc.

Signature: _____

Name/Title: Charles Edward Smith / EVP

WMI Investment Corp.

Signature: _____

Name/Title: Charles Edward Smith / SVP

AGREED TO AND ACCEPTED BY:

Owl Creek (Asset Management, L.P., on behalf of certain funds for which it acts as investment adviser

Signature: _____

Name/Title: Managing Director

Exhibit A – Ethical Wall Procedures

In conjunction with Participant's[1] existing information blocking procedures and the Agreement, Participant has established and will maintain the following Ethical Wall Procedures:

(1) Participant's Designated Persons shall execute a letter (a "Confidentiality Letter") acknowledging that they may receive Confidential Information and that they are aware of the Ethical Wall Procedures that are in effect with respect to the Debtors' Securities[2] and will follow these procedures and will immediately inform the Participant's counsel in writing if such procedures are breached;

(2) Subject to the following paragraph, Participant's Designated Persons will not directly or indirectly share any Confidential Information with any other director, executive, officer or employee who is not a Designated Person, including Participant's investment advisory personnel, and Participant's Designated Persons shall not share any Confidential Information with any employee of Participant known to be engaged in trading activities with respect to the Debtors' Securities on behalf of Participant and/or the Screened Funds, except that a good faith communication of publicly available information shall not be presumed to be a breach of the obligations of Participant or Participant's Designated Persons hereunder;

(3) Participant's Designated Persons will maintain all files containing Confidential Information in secured cabinets inaccessible to other employees of Participant;

(4) Participant's Designated Persons will not receive any information concerning Participant's trades in the Debtors' Securities in advance of the execution of such trades, except that Participant's Designated Persons may receive reports showing Participant's purchases and sales and ownership of the Debtors' Securities but no more frequently than weekly (provided that Participant's Designated Persons may receive usual and customary internal reports showing Participant's purchases and sales on behalf of Participant and/or the Screened Funds and the amount and class of claims, interests or securities owned by Participant and/or the Screened Funds to the extent that such Designated Persons would receive otherwise receive such reports in the ordinary course of business and such reports are not specifically prepared with respect to the Debtors);

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[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in that certain Confidentiality Agreement by and between Washington Mutual, Inc., WMI Investment Corp. and Owl Asset Creek Management, L.P., on behalf of certain funds for which it acts as investment adviser, dated as of November 16, 2009 (the "Agreement").

[2] The term "Securities" is used as described in section 2(a)(1) of the Securities Act of 1933, including the following but only to the extent they constitute securities thereunder: stocks, notes, bonds, debentures, participations in or derivates based upon or relating to, any of the Debtors' debt obligations or equity interests.

(5) Participant's compliance personnel shall review Participant's trades of the Debtors' Securities to determine if there is any reason to believe that such trades were not made in compliance with these Ethical Wall Procedures and shall keep records of such review;

(6) Participant's compliance personnel shall monitor periodically the exchange of Confidential Information through electronic means among Participant's Designated Persons to ensure that such exchanges are performed in a manner consistent with these Ethical Procedures; and

(7) Every three (3) months the Participant shall submit to its counsel a declaration verifying continued compliance with these Ethical Wall Procedures.

EXHIBIT J

Dan Gropper

From: Jim Bolin
Sent: Mon 11/30/2009 6:35 PM (GMT 0)
To: DanK@owlcreeklp.com; Dan Gropper
Cc: matthew.roose@friedfrank.com
Bcc:
Subject: FW:

REDACTED

From: Kosturos, Bill [mailto:BKosturos@alvarezandmarsal.com]
Sent: Monday, November 30, 2009 1:20 PM
To: Jim Bolin; Melwani, Vivek
Cc: Rosen, Brian
Subject: FW:

See JPM's proposal. They are resetting the bookends. I land in NY around 4pm.

From: Donald McCree [mailto:Donald.McCree@jpmorgan.com]
Sent: Monday, November 30, 2009 9:35 AM
To: Kosturos, Bill
Subject:

CONFIDENTIAL SETTLEMENT DISCUSSION DOCUMENT

SUBJECT TO FRE 408 AND ALL APPLICABLE PROTECTIONS

SUBJECT TO FINAL AGREEMENT AND DOCUMENTATION

Dear Bill,

Thank you for your note from last week with settlement proposal attached. We have reviewed that proposal with senior management and conclude that we remain fairly far apart in our views. However, we would be interested in discussing with you a new idea along the following lines:

1. JPMC receives 100% of the tax refunds already received and future refunds, except for the ""additional NOLs"" created by the new legislation.

2. WMI receives 100% of the ""additional NOLs"" created by the new legislation.

3. Remaining assets to be divided as previously discussed, except:

    a. VISA shares to be released to JPMC

    b. American Savings goodwill litigation proceeds to be released to JPMC

    c. All intercompany debt (including $177mm intercompany notes) are cancelled

    d. Tower insurance priority claim for any JPMC liability under pension plan

    e. Cost of releases from third parties to be established and then paid by WMI (not to exceed $500mm)

We believe this proposal delivers greater overall value to the estate than the proposal we were discussing last week.

If you think the parties are interested in further discussing this concept, we would be available to discuss in person later this week.

Don

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EXHIBIT K

From: Kosturos, Bill <BKosturos@alvarezandmarsal.com>
Sent: Monday, November 23, 2009 3:03 PM
To: 'j.bolin@amlp.com'; 'vmelwani@centerbridge.com'
Subject: Fw: Revised Term Sheet
Attach: WMI Proposed Term Sheet 11.23.09v2.DOC

Any comments before i send to Don Mccree?

From: Goulding, Jon
To: Kosturos, Bill
Sent: Mon Nov 23 15:01:03 2009
Subject: Revised Term Sheet

Bill,

Please find attached a revised term sheet based on your most recent comment on sharing. Let me know if you need anything else. Thanks.

JON GOULDING
Treasurer - Washington Mutual, Inc.
Senior Director - Alvarez & Marsal
SF Office: (415) 490 - 2257
Mobile: (415) 260 - 6061

CONFIDENTIAL SETTLEMENT DISCUSSION DOCUMENT
SUBJECT TO FRE 408 AND ALL APPLICABLE PROTECTIONS
SUBJECT TO FINAL AGREEMENT AND DOCUMENTATION

Issue	Proposal	JPMC Response
Deposit Accounts and Interest	• JPMC to pay over balances in disputed accounts, less JPMC share of tax refund amounts received (61% of approximately $249mm)	
Trust Preferred Securities	• JPMC to receive trust securities free and clear • JPMC to negotiate a settlement with REIT Trust Preferred Holders directly	
Taxes	• Tax amounts already received and future refunds, except for additional NOL carryback to be split: • 39% WMI • 61% JPMC • Additional NOL carryback to be split: • 50% WMI • 50% JPMC • Settlement with WMB Bondholders to be split by WMI and JPM pro-rata, based on the overall tax refund split, out of additional NOL carryback refund • Parties to enter into cooperation agreement	

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Medical Plan	• JPMC assumes all liabilities associated with the medical plan, including all OPEB liabilities • WMI will sign over all rebate checks associated with the post-9/25 period	
Rabbi Trusts	• Split as previously discussed	
BOLI/COLI Policies and Deferred Comp Liabilities	• Split as previously discussed	
Pension Plan	• WMI to transfer plan to JPMC	
Tower Insurance Policy	• WMI to receive priority recovery	
HS Loan Corp.	• JPMC to transfer its ownership percentage to WMI	
Goodwill Litigation	• WMI to take 100% of American Savings goodwill litigation/release of funds held in registry • JPMC to take 100% of Anchor Savings goodwill litigation	
Vendor Claims	• JPMC waives any claims against WMI for payments of pre-petition vendor payables • JPMC to pay remaining pre-petition vendor payables (not to exceed $50mm)	
VISA Shares	• WMI to retain VISA shares	
Intercompany Issues	• JPMC to repay the four intercompany loans to WMI subsidiaries including interest (approximately $179mm)	

	• All other intercompany claims are forgiven	
Intellectual Property	• WMI to transfer all intellectual property to JPMC, excluding domain names associated with Timcor or 1031 Exchange	
Loan Servicing	• JPMC to continue to service loans for WMI	
Releases	• WMI, FDIC (individually and in its capacity as receiver for WMB and in its corporate capacity) and JPMC shall exchange mutual releases • Litigations to be dismissed and proofs of claim to be withdrawn with prejudice • Texas litigation to be asserted to be derivative claims and dismissed with prejudice • WMI and JPMC to share pro-rata (from the tax refunds attributable to the "Additional NOL Carryback") in order to acquire certain additional releases beneficial to WMI and JPMC.	

EXHIBIT L

From: Roose, Matthew
Sent: Mon 12/28/2009 9:19 PM (GMT 0)
To: WaMu – Aurelius
Cc: de Leeuw, Michael; Groskaufmanis, Karl A.
Bcc:
Subject: FW: WMI - MOR

REDACTED

From: Rosen, Brian [mailto:brian.rosen@weil.com]
Sent: Monday, December 28, 2009 4:06 PM
To: Roose, Matthew
Cc: 'bkosturos@alvarezandmarsal.com'; Chad Smith; 'Jon Goulding'; 'jmaciel@alvarezandmarsal.com'; Sapeika, Tal; Rodden, Kelly; Curro, Matthew; Scheler, Brad Eric
Subject: RE: WMI - MOR

Matt,

I have spoken to folks at WMI/A&&M. We will be filing the MOR on Wednesday at some point. At that time, WMI will consider all necessary disclosure obligations to have been satisfied and the Confidentiality Agreement may be deemed terminated. Inasmuch as we will not be seeking comments and suggestions to the MOR, WMI believes it would be inappropriate for an advanced review of the MOR by your clients.

Brian

Brian S. Rosen

Weil, Gotshal && Manges LLP

767 Fifth Avenue

New York, NY 10153

Phone: (212) 310-8602

Fax: (212) 310-8353

Email: brian.rosen@weil.com