

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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: **Chapter 11**
: **Case No. 08-12229 (MFW)**
: **(Jointly Administered)**
: **Hearing Date: September 6, 2011 at 2:00 p.m. (ET)**
: **Objection Deadline: August 19, 2011 at 4:00 p.m. (ET)**
-----X

In re

WASHINGTON MUTUAL, INC., et al.,¹

Debtors.

MOTION OF DEBTORS FOR AN ORDER, PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, (I) APPROVING SETTLEMENT AGREEMENT IN FLAHERTY ACTION, AND (II) MODIFYING AUTOMATIC STAY UNDER SECTION 362 OF THE BANKRUPTCY CODE TO ALLOW PAYMENT OF SETTLEMENT AMOUNT UNDER DIRECTORS AND OFFICERS INSURANCE POLICIES

Washington Mutual, Inc. ("WMI") and WMI Investment Corp., as debtors and debtors in possession (collectively, the "Debtors"), as and for their motion (the "Motion") for an order, pursuant to section 105(a) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) authorizing and approving that certain Settlement Agreement and Mutual Release (the "Settlement Agreement"), dated July 11, 2011, with respect to the litigation captioned *Flaherty & Crumrine Preferred Income Fund Incorporated, et al. v. Killinger, et al.*, No. C09-1756 MJP (the "Flaherty Action") in the United States District Court for the Western District of Washington, and (ii) modifying the automatic stay provided for in section 362(a) of the Bankruptcy Code, to the extent it applies, to allow payment of the settlement amount in connection with the Settlement Agreement, respectfully represent as follows:

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) Washington Mutual, Inc. Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Suite 2500, Seattle, Washington 98104.



Jurisdiction

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B) and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

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

3. On October 15, 2008, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Creditors’ Committee”). On January 11, 2010, the U.S. Trustee appointed an official committee of equity security holders (the “Equity Committee”).

4. By order, dated January 30, 2009, the Bankruptcy Court established March 31, 2009 at 5:00 p.m. (Eastern Time) (the “Bar Date”) as the deadline for filing proofs of claim against the Debtors and their chapter 11 estates. Plaintiffs did not file any proofs of claim in the Chapter 11 Cases prior to or after the Bar Date.

5. On February 8, 2011, the Debtors filed their *Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* [D.I.

6696] (as has and may be further amended, the “Modified Plan”)² and related supplemental disclosure statement [D.I. 6697].

6. A hearing to consider confirmation of the Modified Plan was held on July 13 through 15 and July 18 through 21, 2011. The matter is *sub judice*.

WMI’s Business

7. Prior to the Commencement Date, WMI was a savings and loan holding company that owned Washington Mutual Bank (“WMB”) and such bank’s subsidiaries, including Washington Mutual Bank fsb (“WMBfsb”). WMI also has certain non-banking, non-debtor subsidiaries. Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the “OTS”). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI’s banking and nonbanking subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation (“FDIC”).

8. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC Receiver as receiver for WMB and advised that the FDIC Receiver was immediately taking possession of WMB. Immediately after its appointment as receiver, the FDIC Receiver sold substantially all the assets of WMB, including the stock of WMBfsb, to JPMorgan Chase Bank, N.A. (“JPMC”) pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008.

The Flaherty Action

9. On or about October 16, 2009, Flaherty & Crumrine Preferred Income Fund Incorporated, Flaherty & Crumrine Preferred Income Opportunity Fund Incorporated,

² The Debtors filed a composite version of the Modified Plan on March 16, 2011 [D.I. 6965].

Flaherty & Crumrine/Claymore Preferred Securities Income Fund Incorporated, Flaherty & Crumrine/Claymore Total Return Fund Incorporated and Flaherty & Crumrine Investment Grade Fixed Income Fund (collectively, the “Plaintiffs”) commenced an action, captioned *Flaherty & Crumrine Preferred Income Fund Inc. et al. v. Killinger et al.*, Case No. BC424066, in the Superior Court of California, Los Angeles County (the “State Court Action”), against several former WMI directors and officers as individual defendants³ and certain other defendants. Plaintiffs are a series of funds who allegedly purchased unregistered Washington Mutual Preferred Funding Trust securities, issued on or about March 7, 2006 and October 25, 2007 (the “2006 and 2007 Preferred Trust Securities”), which are automatically exchangeable in specified circumstances into depositary shares representing preferred stock of WMI.⁴ Plaintiffs allege that the Individual Defendants, as former WMI directors and officers, made misleading statements in connection with the offerings of the 2006 and 2007 Preferred Trust Securities (collectively, the “Offerings”).

10. On November 2, 2009, pursuant to 28 U.S.C. §§ 1334(b), 1367, 1441, 1446 and 1452, Individual Defendants Casey, Cathcart, Rotella and Schneider, with the consent of all other defendants, removed the State Court Action to the United States District Court for the Central District of California. *See Flaherty & Crumrine Preferred Income Fund Incorporated, et al. v. Killinger, et al.*, Case No. 09-7992 (DSF) (C.D. Cal.) (the “Removed Action”).

³ Specifically, these individual director and officer defendants include Kerry Killinger, Thomas Casey, Stephen Rotella, Ronald Cathcart, David Schneider, Anne Farrell, Stephen Frank, Thomas Leppert, Charles Lillis, Phillip Matthews, Regina Montoya, Michael Murphy, Margaret Osmer McQuade, Mary Pugh, William Reed, Jr., Orin Smith, James Stever, and Willis Wood, Jr. (collectively, the “Individual Defendants”).

⁴ The exchange event has occurred and, consistent with the Court’s opinion and order, each dated January 7, 2011, in the adversary proceeding styled *Black Horse Capital Master Fund Ltd et al. v. JPMorgan Chase Bank, N.A. et al.*, Case No. 10-51387 (MFW) (Bankr. D. Del.), the 2006 and 2007 Preferred Trust Securities were exchanged into WMI preferred shares. *See Adv. No. 10-51387, D.I. 179 at 12-13* (holding that “the certificates held by the TPS holders are no longer TPS but are deemed to be Depositary Shares tied to WMI Preferred Shares”).

11. By order, effective December 10, 2009, the United States Judicial Panel on Multidistrict Litigation issued a conditional transfer order directing the transfer of the Removed Action to the United States District Court for the Western District of Washington (the “District Court”) and created the Flaherty Action. *See* Conditional Transfer Order [D.I. 40, Flaherty Action].

12. On March 24, 2010, the Flaherty Action was consolidated, for purposes of discovery, with and into the multidistrict litigation proceeding against WMI in the District Court, styled *In re Washington Mutual, Inc., Securities, Derivative & ERISA Litigation*, 08-md-1919 (MJP).

13. On July 23, 2010, Plaintiffs filed a second amended complaint (the “Complaint”) [D.I. 102, Flaherty Action], asserting both fraud and negligence under California common and statutory law and federal law arising out of the Individual Defendants’ alleged materially false and misleading statements made in connection with the Offerings of the 2006 and 2007 Preferred Trust Securities. The Complaint further alleges, *inter alia*, that Plaintiffs purchased the 2006 and 2007 Preferred Trust Securities in reliance upon purported false and misleading statements contained in the offering documents.⁵

14. Individual Defendants and certain other defendants filed motions to dismiss the Flaherty Action on August 20, 2010 [D.I. 104, 107, 108, Flaherty Action]. By order, dated November 3, 2010, the District Court granted in part and denied in part the motions to dismiss. *See* Order [D.I. 122, Flaherty Action]. On December 9, 2010, the Individual

⁵ The Complaint also asserted negligence-based claims against Goldman Sachs & Co, Credit Suisse Securities (USA) LLC, and Morgan Stanley & Co. Incorporated based on their status as initial purchasers of the Offerings and the entities who solicited and sold the 2006 and 2007 Preferred Trust Securities to Plaintiffs.

Defendants and other defendants filed answers to the Complaint [D.I. 135, 136, 137, Flaherty Action].

15. Plaintiffs and the Individual Defendants, through their respective counsel, engaged in extensive arm's-length negotiations that included mediation sessions on February 18, 2011 and April 28, 2011, with former United States District Judge Layn R. Phillips. As a result of the negotiations and mediation, the parties reached an agreement-in-principle to settle the Flaherty Action.

16. On May 11, 2011, the District Court entered an order dismissing all claims asserted in the Flaherty Action, with prejudice, pending final settlement of the Flaherty Action, but allowing the parties to reopen the case in the event the settlement is not perfected. *See* Order of Dismissal [D.I. 163, Flaherty Action].

The Settlement Agreement

17. Subject to this Court's approval, Plaintiffs, the Individual Defendants, and WMI (together, the "Parties"), through arm's-length negotiations, have agreed to resolve and settle all claims relating to, concerning or arising out of the facts and circumstances alleged in the Flaherty Action that were or could have been asserted in the Flaherty Action or the Chapter 11 Cases, to avoid potential or further protracted litigation. Notwithstanding the foregoing, each of the Individual Defendants expressly denies any wrongdoing and expressly denies that they have committed any act or omission giving rise to any liability to Plaintiffs whatsoever.

18. In furtherance thereof, the Parties executed the Settlement Agreement, a copy of which is annexed hereto as Exhibit "A". The salient terms of the Settlement Agreement are as follows⁶:

⁶ The following is a summary of the Settlement Agreement. The Settlement Agreement is incorporated by reference as if fully set forth herein. In the event of any inconsistency between this summary and the Settlement Agreement,

Express Conditions

- The Settlement Agreement is expressly conditioned on entry of a final order by this Court (the “Approval Order”) (i) authorizing the D&O Carriers (as defined below) to pay Four Million Two Hundred Eighteen Thousand Seven Hundred Fifty Dollars (\$4,218,750.00) from the D&O Polices (as defined below); and (ii) containing provisions substantially in the form as those contained in the proposed order annexed hereto as Exhibit “B.”

Payment of Settlement Amount and Release of Claims

- Payment of Settlement Amount. Upon the later of (i) the tenth (10th) business day after this Court enters the Approval Order; (ii) receipt by the D&O Carriers of an executed Form W-9; and (iii) execution of a mutually agreeable escrow agreement with Gilardi & Co. (the “Escrow Agent”), and in full and complete settlement of the Plaintiff Released Claims and Released Claims (as defined below), the D&O Carriers (which, as represented by the Individual Defendants, have consented to payment pursuant to the terms of the Settlement Agreement), shall pay into an interest bearing escrow account, established by the Escrow Agent, by check or wire transfer the total sum of Four Million Two Hundred Eighteen Thousand Seven Hundred Fifty Dollars (\$4,218,750.00) (the “Settlement Amount”).
- Release and Waiver of Defendant Released Claims. Upon Plaintiffs’ receipt of the entire Settlement Amount: (1) Plaintiffs shall absolutely and unconditionally waive any and all rights to file any proofs of claim in the Chapter 11 Cases, provided, however, that, except to the extent released in the Settlement Agreement as a Released Claim, nothing in the Settlement Agreement shall release, impair or otherwise impact Plaintiffs’ rights to receive any distributions in the Chapter 11 Cases to which Plaintiffs are entitled on account of their ownership of debt or equity securities of WMI and to continue to retain such securities and receive such distributions as provided in any confirmed chapter 11 plan or otherwise; (2) without any further action by anyone, Plaintiffs, on behalf of themselves, their affiliates, predecessors, successors, assigns, agents, officials, employees and all other persons or entities controlled by, or under common control with Plaintiffs, including, but not limited to, Flaherty & Crumrine Incorporated, shall be deemed to have, and by operation of law shall have, fully, finally and forever released, relinquished, settled and discharged the Individual Defendants, WMI, WMB, any and all of their respective predecessors, successors, parents, affiliates, and their respective divisions, shareholders, employees, agents, servants, marital communities, heirs, consultants, advisors, insurers, reinsurers, attorneys, accountants, underwriters and representatives, and their successors and assigns from any and all claims, rights, demands, liabilities, defenses or causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorneys’

the Settlement Agreement controls. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement.

fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), including any and all actions, causes of action, proceedings, and suits whether based on federal, state, local, statutory or common law or any other law, rule or regulation, that relate in any way to the prosecution, defense or settlement of the Flaherty Action, whether in law or in equity, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, whether brought directly or derivatively, existing now or to be created in the future, that (i) (a) have been asserted in the Flaherty Action or the Chapter 11 Cases, or (b) could have been asserted in the Flaherty Action or the Chapter 11 Cases, or in any other forum, that are based on, relate to or arise out of the allegations, transactions, facts, matters, events, disclosures, statements, occurrences, representations, acts or omissions or failures to act that have been or could have been asserted or alleged in the Flaherty Action; or (ii) relate to Plaintiffs' purchase, holding or acquisition of WMI debt or equity securities, that would be barred by the principles of *res judicata* had the claims that have been or could have been asserted in the Flaherty Action or the Chapter 11 Cases been fully litigated and resulted in a final judgment or order (the "Released Claims").

- Release and Waiver of Plaintiff Released Claims. Upon Plaintiffs' receipt of the entire Settlement Amount, and without any further action by anyone, Individual Defendants, on behalf of themselves, their affiliates, predecessors, successors, assigns, agents, partners, employees and all other persons or entities controlled by, or under common control with Individual Defendants, shall be deemed to have, and by operation of law shall have, fully, finally and forever released, relinquished, settled and discharged Plaintiffs, any or all of their predecessors, successors, parents, affiliates, and their respective divisions, officials, employees, agents, servants, consultants, advisors, insurers, reinsurers, attorneys, accountants, underwriters and representatives, and their successors and assigns, from any and all claims that relate in any way to the prosecution, defense or settlement of the Flaherty Action, including any and all actions, causes of action, proceedings, and suits, whether in law or in equity, whether based on any federal law, state law, common law, or foreign law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, existing now or to be created in the future, that relate to the same transactions and occurrences that give rise to the claims alleged in the Flaherty Action (the "Plaintiff Released Claims").

Effective Date

- The Effective Date of the Settlement Agreement shall be the third (3rd) business day following the latest of: (i) the expiration of the time for appeal or appellate review of the Approval Order, with no appeal having been taken; (ii) if there has been an appeal from the Approval Order, and the appeal has been decided without causing a material change in the Approval Order, the expiration of the time for petitioning for rehearing and/or certiorari; or (iii) if rehearing or certiorari is granted, the date that the appeal has been decided without causing a material change in entry of the Approval Order.

Termination

- In the event that this Court enters the Approval Order and an appeal is taken therefrom, the Parties shall use their reasonable best efforts to obtain final approval of the Approval Order. However, if this Court denies entry of the Approval Order and (i) no appeal is taken, or (ii) appeal is taken and final approval of the Approval Order is denied, the Settlement Agreement shall be deemed null and void and the Parties shall revert to their positions as of May 8, 2011, except that any amounts paid by or on behalf of the Individual Defendants pursuant to the Settlement Agreement plus any interest earned thereon shall be refunded by the Escrow Agent to the D&O Carriers within two (2) business days of the receipt of written instructions from Individual Defendants' counsel.

The D&O Insurance Policies

19. Prior to the Commencement Date, WMI purchased directors and officers liability insurance policies for the period from May 1, 2007 to May 1, 2008 (the "D&O Policies") from certain third party carriers (the "D&O Carriers"), in connection with its indemnification obligations to the officers and directors of WMI and its subsidiaries, including for the Individual Defendants in connection with their role as defendants in the Flaherty Action.

20. The D&O Policies include that certain Executive and Organization Liability Insurance Policy No. 741-98-06, which WMI purchased from National Union Fire Insurance Co. of Pittsburgh, Pa. (the "2007/2008 Primary D&O Policy"). The 2007/2008 Primary D&O Policy is the primary policy in a layered group (referred to as a "tower") of D&O Policies. The D&O Policies provide Two Hundred Fifty Million Dollars (\$250,000,000.00) of insurance coverage subject to the terms and conditions thereof, inclusive of Side-A coverage. Exhibit "C" hereto lists each of the D&O Policies comprising the 2007/2008 tower.

21. The 2007/2008 Primary D&O Policy, subject to its terms, conditions and exclusions, provides insurance coverage for, among other things, settlements, judgments, defense costs, fees and associated expenses incurred in defending "Claims" (as defined in the 2007/2008 Primary D&O Policy). This coverage is provided to "Insured Persons," which term includes the

Debtors' present and former officers and directors, if a "Loss" is not reimbursed by WMI through indemnification payments. *See* 2007/2008 Primary D&O Policy, Insuring Agreements, Coverage (A). The 2007/2008 Primary D&O Policy also provides coverage to WMI for certain claims asserted against WMI and for certain indemnification obligations to "Insured Persons." *See* 2007/2008 Primary D&O Policy, Insuring Agreements, Coverage (B).

22. Further, pursuant to the Order of Payments Endorsement to the 2007/2008 Primary D&O Policy, Endorsement No. 18, the interest of WMI, if any, in the proceeds of the 2007/2008 Primary D&O Policy is secondary to the interests of the Individual Defendants in those proceeds. *See* 2007/2008 Primary D&O Policy, Endorsement No. 18. The 2007/2008 Primary D&O Policy also provides that it is "further understood and agreed that the coverage provided under [the 2007/2008 Primary D&O Policy] is intended to protect and benefit the Insured Persons" and that WMI and the insurer agree not to oppose a motion for relief from stay in the event of a bankruptcy filing by WMI. *See* 2007/2008 Primary D&O Policy, Endorsement No. 17.

23. On May 3, 2010, this Court entered an Order Modifying Automatic Stay to Allow Advancement Under Insurance Policies [D.I. 3634] that, among other things, authorized the applicable D&O Carriers to advance the Individual Defendants' defense fees and costs incurred in the Flaherty Action under the applicable D&O Policies.

Relief Requested

24. By this Motion, the Debtors seek entry of an order, pursuant to section 105(a) of the Bankruptcy Code and Rule 9019 of the Bankruptcy Rules, (i) approving the Settlement Agreement as fair and reasonable, (ii) discharging the D&O Carriers from any liability to any Insureds (as defined by the D&O Policies) or other claimants for having paid the

Settlement Amount, (iii) barring Plaintiffs, upon their receipt of the entire Settlement Amount, from asserting any rights to or filing any and all claims in the Chapter 11 Cases, and (iv) modifying the automatic stay provided for in section 362(a) of the Bankruptcy Code, to the extent applicable, to allow the D&O Carriers to pay the Settlement Amount from the D&O Policies in connection with the Settlement Agreement.

25. Subject to the preceding paragraph and the discharge of liability for the D&O Carriers sought therein, the Debtors, the Individual Defendants and the D&O Carriers reserve their respective rights under the D&O Policies or any other insurance policy. In addition, the Debtors are not seeking a determination of any insurer's obligation to pay any settlement costs on behalf of the Individual Defendants. Rather, with respect to the relief requested herein pursuant to section 362 of the Bankruptcy Code, the Debtors seek only the entry of an order clarifying that the automatic stay does not prevent, or alternatively, modifying the automatic stay, to the extent applicable, to allow the D&O Carriers to make payment of the Settlement Amount on behalf of the Individual Defendants under the terms of the D&O Policies.

Basis For Relief

A. The Settlement Agreement is Fair and Reasonable and Should be Approved

26. Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Bankruptcy Rule 9019, which governs the approval of compromises and settlements, provides that “[o]n motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). The decision to approve a particular settlement lies “within the sound discretion of the

bankruptcy court.” *In re Key3Media Group, Inc.*, 336 B.R. 87, 92 (Bankr. D. Del. 2005); *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006).

27. A starting point in analyzing any proposed settlement agreement is the general policy of encouraging settlements and favoring compromises. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996). To approve a settlement, a bankruptcy court must determine that such settlement is in the best interest of a debtor’s estate. *Law Debenture Trust Co. of New York v. Kaiser Aluminum Corp. (In re Kaiser Aluminum Corp.)*, 339 B.R. 91, 95-96 (D. Del. 2006). In addition, a court must

“assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal” in light of four factors: (1) the probability of success in the litigation, (2) the likely difficulties in collection, (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it, and (4) the paramount interests of the creditors.

Id. at 96 (quoting *Martin*, 91 F.3d at 393). The United States District Court for the District of Delaware has explained that a court’s ultimate inquiry is whether a settlement is fair, reasonable, and in the best interest of a debtor’s estate. *In re Marvel Entm’t Group, Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (quoting *In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997)).

28. A court need not decide the numerous issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’ ” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)); *see also In re World Health Alternatives, Inc.*, 344 B.R. at 296; *In re Key3Media Group, Inc.*, 336 B.R. at 92-93.

29. Applying these factors, the Settlement Agreement satisfies the standard for approval. The Settlement Agreement is fair, reasonable, and in the best interests of the Debtors’

estates, and allowing the insurers to pay the Settlement Amount on behalf of the Individual Defendants will benefit the Debtors' estates. Although neither of the Debtors is a party to the Flaherty Action, the Settlement Agreement allows WMI, WMB, and any and all of their respective predecessors, successors, parents, affiliates, and their respective divisions, among others, to obtain the benefit of a release of all Released Claims. Further, the Settlement Agreement expressly preserves, among other things, all claims belonging to WMI, its affiliates or successors in interest against the Individual Defendants. Therefore, to the extent that WMI, its affiliates or successors in interest have meritorious claims against the Individual Defendants pertaining to the Flaherty Action or otherwise, the creditors will retain the benefit of any such claims. In addition, if the Flaherty Action is not settled, it is foreseeable that a potential finding of wrongdoing or liability against the Individual Defendants may be used, or attempted to be used, to judicially prejudice or prosecute claims against the Debtors. The Settlement Agreement, therefore, avoids the costs and uncertainties of litigation without the additional expense of attorneys' fees and related costs.

30. Moreover, neither WMI nor its estate will incur any expense if the Settlement Agreement is consummated. Rather, the D&O Carriers will fund the entire payment of the Settlement Amount. As a result thereof, and pursuant to the terms of the Settlement Agreement, the Individual Defendants will not have claims for indemnification in the Chapter 11 Cases relating to payments made to defend or settle the Flaherty Action. In addition, to the extent that any of the D&O Carriers assert a right of subrogation to whatever indemnification claims may be held by the Individual Defendants on account of the Flaherty Action, the Debtors believe that such claims are subordinated pursuant to section 510(b) of the Bankruptcy Code, and any distributions to be made on account of such allowed claims would be part of Class 18

(Subordinated Claims) or Class 22 (Common Equity Interests) under the Modified Plan. If the claims asserted in the Flaherty Action were to be asserted against the estate directly, the Debtors believe that such claims would be subordinated pursuant to section 510(b) of the Bankruptcy Code. Courts have held that the subordination provisions of section 510(b) include indemnification claims of officers, directors and underwriters for “both liability and expenses incurred in connection with the pursuit of claims for rescission or damages by purchasers or sellers of the debtor’s securities.” *See Mid-Am. Waste, Sys., Inc.*, 228 B.R. 816, 824 (Bankr. D. Del. 1999).

31. Based on the foregoing, the Debtors submit that ample cause exists to approve the Settlement Agreement pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

B. Cause Exists to Modify the Automatic Stay, to the Extent that it Applies, to Allow Payment of the Settlement Amount

32. Pursuant to section 362(d) of the Bankruptcy Code, “[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . such as by terminating, annulling, modifying, or conditioning such stay – for cause” 11 U.S.C. § 362(d)(1). Here, “cause” exists to modify the automatic stay, to the extent applicable, to allow the D&O Carriers to pay the Settlement Amount pursuant to the D&O Policies. If the D&O Carriers are barred from paying the Settlement Amount due to the enforcement of the automatic stay, the Individual Defendants may seek to assert indemnification claims against the Debtors for such amounts. Consequently, payment of the Settlement Amount under the D&O Policies will reduce or eliminate the claims that the Individual Defendants could assert against the Debtors’ estates.

33. Moreover, modifying the automatic stay will not harm the Debtors' estates. The applicable insurance policies provide that the Debtors have a right to the insurance proceeds only after the insured individuals are fully reimbursed for any "Loss," including defense costs and settlement payments. In addition, pursuant to Endorsement 17 of the 2007/2008 Primary D&O Policy, the Debtors contractually agreed, on a prepetition basis, not to oppose a motion for relief from the stay in the event that the Debtors filed for Chapter 11 relief. See 2007/2008 Primary D&O Policy, Endorsement No. 17. By modifying the automatic stay and allowing the D&O Carriers to pay the Settlement Amount, the Debtors will obtain, without having to make any payment from their estates, the benefit of a release of any and all claims that (i) have been or could have been asserted in the Flaherty Action, the Chapter 11 Cases or in any other forum, that are based on, relate to or arise out of the allegations, transactions, facts, matters, events, disclosures, statements, occurrences, representations, acts or omissions or failures to act that have been or could have been asserted or alleged in the Flaherty Action, or (ii) relate to Plaintiffs' purchase, holding or acquisition of WMI debt or equity securities, that would be barred by the principles of *res judicata* had the claims that have been or could have been asserted in the Flaherty Action or the Chapter 11 Cases been fully litigated and resulted in a final judgment. Furthermore, because all such claims will be released pursuant to the Settlement Agreement, if the Settlement Agreement were implemented, the Debtors will not need coverage with respect to the Flaherty Action. "It is not uncommon for courts to grant stay relief to allow payment of . . . settlement costs to directors and officers, especially when there is no evidence that direct coverage of the debtor will be necessary." *In re Allied Digital Techs., Corp.*, 306 B.R. 505, 513 (Bankr. D. Del. 2004). As such, granting the relief requested by the Motion is unlikely to have any adverse effect on the Debtors' estates and creditors.

Notice


34. No trustee has been appointed in these Chapter 11 Cases. Notice of this Motion has been provided to: (i) the U.S. Trustee; (ii) counsel to the Creditors' Committee; (iii) counsel to the Equity Committee; (iv) counsel to Plaintiffs; (v) counsel to Individual Defendants; (vi) the Insureds (as defined by the D&O Policies) set forth on Exhibit "D" hereto; (vii) the D&O Carriers; (viii) JPMC; (ix) the FDIC; and (x) parties entitled to receive notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice need be provided.

No Previous Request

35. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit "B", approving the Settlement Agreement in its entirety, modifying the automatic stay, to the extent applicable, to allow the D&O Carriers to pay the Settlement Amount, and granting such other and further relief as is just.

Dated: August 2, 2011
Wilmington, Delaware


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ATTORNEYS TO THE DEBTORS
AND DEBTORS IN POSSESSION

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

-----X	:	
<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	Hearing Date: 9/6/11 at 2:00 p.m. (EDT)
-----X	:	Objection Deadline: 8/19/11 at 4:00 p.m. (EDT)

NOTICE OF MOTION OF DEBTORS FOR AN ORDER, PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, (I) APPROVING SETTLEMENT AGREEMENT IN FLAHERTY ACTION, AND (II) MODIFYING AUTOMATIC STAY UNDER SECTION 362 OF THE BANKRUPTCY CODE TO ALLOW PAYMENT OF SETTLEMENT AMOUNT UNDER DIRECTORS AND OFFICERS INSURANCE POLICIES

PLEASE TAKE NOTICE that, on August 2, 2011, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the **Motion of Debtors for an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure, (I) Approving Settlement Agreement in Flaherty Action, and (II) Modifying Automatic Stay Under Section 362 of the Bankruptcy Code to Allow Payment of Settlement Amount Under Directors and Officers Insurance Policies** (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be filed in writing with the Bankruptcy Court, 824 Market Street, 3rd Floor,

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors’ principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.

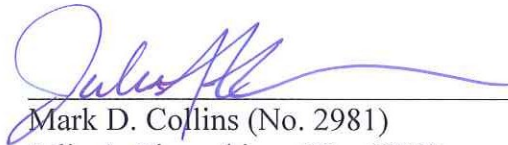
Wilmington, Delaware 19801, and served upon and received by the undersigned counsel for the Debtors on or before **August 19, 2011 at 4:00 p.m. (Eastern Daylight Time)**.

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Motion will be held before The Honorable Mary F. Walrath at the Bankruptcy Court, 824 Market Street, 5th Floor, Courtroom 4, Wilmington, Delaware 19801 on **September 6, 2011 at 2:00 p.m. (Eastern Daylight Time)**.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: August 2, 2011
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.



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– and –

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Attorneys to the Debtors and Debtors in Possession

Exhibit A

Settlement Agreement

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement"), dated as of July 11, 2011, by and among (i) Flaherty & Crumrine Preferred Income Fund Incorporated, Flaherty & Crumrine Preferred Income Opportunity Fund Incorporated, Flaherty & Crumrine/Claymore Preferred Securities Income Fund Incorporated, Flaherty & Crumrine/Claymore Total Return Fund Incorporated and Flaherty & Crumrine Investment Grade Fixed Income Fund (collectively, "Plaintiffs"), and (ii) Kerry Killinger, Thomas Casey, Stephen Rotella, Ronald Cathcart, David Schneider, Anne Farrell, Stephen Frank, Thomas Leppert, Charles Lillis, Phillip Matthews, Regina Montoya, Michael Murphy, Margaret Osmer McQuade, Mary Pugh, William Reed, Jr., Orin Smith, James Stever, and Willis Wood, Jr. (collectively, "Individual Defendants"), and (iii) Washington Mutual, Inc. ("WMI"). Plaintiffs, Individual Defendants and WMI are collectively referred to herein as the "Parties."

WHEREAS, Plaintiffs filed an action in the Superior Court of California, which action was thereafter removed to the United States District Court for the Central District of California and transferred to the United States District Court for the Western District of Washington (the "Court") and styled *Flaherty & Crumrine Preferred Income Fund Incorporated, et al. v. Killinger, et al.*, No. C09-1756 MJP (the "Action"), asserting claims against Individual Defendants arising from their roles as officers and/or directors of WMI and/or Washington Mutual Bank ("WMB");

WHEREAS, Individual Defendants asserted defenses in the Action;

WHEREAS, on September 25, 2008, the Office of Thrift Supervision, by order number 2008-36, closed WMB, appointed the FDIC Receiver as receiver for WMB and advised that the FDIC Receiver was immediately taking possession of WMB's assets. Upon its appointment as receiver, the FDIC Receiver sold substantially all the assets of WMB to JPMorgan Chase Bank, National Association, pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008;

WHEREAS, on September 26, 2008, WMI and WMI Investment Corp. (together, the "Debtors") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), as jointly administered, *In re Washington Mutual, Inc.*, Case No. 08-12229 (MFW) (the "Bankruptcy Cases");

WHEREAS, by order, dated January 30, 2009, the Bankruptcy Court established March 31, 2009 at 5:00 p.m. (Eastern Time) (the "Bar Date") as the deadline for filing proofs of claim against the Debtors and their chapter 11 estates;

WHEREAS, Plaintiffs did not file any proofs of claim in the Bankruptcy Cases prior to or after the Bar Date;

WHEREAS, on May 3, 2010, the Bankruptcy Court entered an Order Modifying Automatic Stay to Allow Advancement Under Insurance Policies that, among other things, authorized the applicable insurance carriers (the "D&O Policy Carriers") to advance the Individual Defendants' defense fees and

costs incurred in the Action under the applicable directors' and officers' liability insurance policies ("D&O Policies");

WHEREAS, each of the Individual Defendants expressly denies any wrongdoing and expressly denies that he or she has committed any act or omission giving rise to any liability to Plaintiffs whatsoever, and states that this Agreement shall in no event be construed or deemed to be evidence of, or an admission or concession on the part of any Individual Defendants with respect to, any claim or for any fault, liability, wrongdoing or damage whatsoever, or any infirmity in the defenses that the Individual Defendants have asserted or could have asserted in the Action, and states that the Individual Defendants are entering into this Agreement solely to eliminate the uncertainties, burden, expense, costs and distraction of potential or further protracted litigation; and

WHEREAS, the Parties desire to finally resolve and settle all claims relating to, concerning or arising out of the facts and circumstances alleged in the Action that were or could have been asserted against Individual Defendants in the Action or WMI in the Bankruptcy Cases to avoid potential or further protracted litigation, as provided herein;

NOW THEREFORE, in consideration of the covenants and agreements contained in this Agreement, and in full, complete and final release and discharge and settlement of all claims relating in any way to the Action, including, but not limited to, the prosecution, defense or settlement of the Action except as expressly provided otherwise herein, and any claims by Plaintiffs in the Bankruptcy Cases, the Parties agree as follows:

1. Upon the later of (1) the tenth business day after the Bankruptcy Court enters the Approval Order, as defined below; (2) receipt by the D&O Policy Carriers of an executed Form W-9; and (3) execution of a mutually agreeable escrow agreement with Gilardi & Co. ("Escrow Agent") and in full and complete settlement of the Plaintiff Released Claims and Released Claims, each as defined below, the D&O Policy Carriers (which, as represented by the Individual Defendants, have consented to payment pursuant to the terms of the Agreement) shall pay the total sum of Four Million Two Hundred Eighteen Thousand Seven Hundred Fifty Dollars (\$4,218,750.00) (the "Settlement Amount") into an interest bearing escrow account ("Escrow Account") established by the Escrow Agent by check or wire transfer pursuant to the following wire transfer instructions:

Bank:	Bank of the West Business Services 2527 Camino Ramon San Ramon, CA 94583
Routing #:	121100782
Account Name:	Killinger et al., Settlement Fund
Account #:	024-975359

Taxpayer ID #: 45-2654267

The settlement funds shall remain in the Escrow Account, and shall be used for no other purposes, until the Effective Date, as defined below. Neither WMI, the D&O Policy Carriers or the Individual Defendants shall have any responsibility or liability for the settlement funds while they are held in the Escrow Account. If the Effective Date does not occur, the Agreement shall be rendered null and void, as provided by paragraph 7 herein except that within two (2) business days of the receipt of written instructions from Individual Defendants' counsel, the Escrow Agent shall refund the settlement funds, plus any interest earned thereon, to the D&O Policy Carriers in accordance with the written instructions.

2. Upon Plaintiffs' receipt of the entire Settlement Amount, Plaintiffs shall absolutely and unconditionally waive any and all rights to file any proofs of claim in the Bankruptcy Cases; provided, however, that, except to the extent released herein as a Released Claim, nothing in this Agreement shall release, impair or otherwise impact Plaintiffs' rights to receive any distributions in the Bankruptcy Cases to which Plaintiffs are entitled on account of their ownership of debt or equity securities of WMI and to continue to retain such securities and receive such distributions as provided in any confirmed chapter 11 plan or otherwise.

3. Neither WMI, the D&O Policy Carriers or the Individual Defendants shall have any responsibility or liability for the allocation or distribution of the Settlement Amount among the Plaintiffs upon the Effective Date. In all other respects, each of the Parties shall be responsible for their own fees and costs incurred in the Action.

4. This Agreement is expressly conditioned on entry of a final order by the Bankruptcy Court in the Bankruptcy Cases (the "Approval Order") authorizing the D&O Policy Carriers to pay Four Million Two Hundred Eighteen Thousand Seven Hundred Fifty Dollars (\$4,218,750.00), on behalf of the Individual Defendants from the D&O Policies, and containing provisions substantially the same as those set forth in paragraph 5 below.

5. As soon as possible after the Parties execute this agreement, WMI, Plaintiffs and the Individual Defendants shall use their reasonable best efforts to seek entry of the Approval Order, with a hearing before the Bankruptcy Court to be set on the first available date thereafter. Plaintiffs and the Individual Defendants shall cooperate with the Debtors in drafting a proposed Approval Order, which shall contain, in substantially the following form, the following provisions, in addition to any other usual and customary terms:

ORDERED that the Settlement Agreement and Mutual Release is fair and reasonable; and it is further

ORDERED that the automatic stay, extant pursuant to section 362 of the Bankruptcy Code, is hereby modified so as to permit, and the D&O Policy Carriers are hereby authorized, to the extent necessary, to pay Four Million Two Hundred Eighteen Thousand Seven Hundred Fifty

Dollars (\$4,218,750.00) on behalf of the Individual Defendants from the D&O Policies; and it is further

ORDERED that, on and effective as of the Effective Date of the Settlement Agreement and Mutual Release, consistent with this Order and the Settlement Agreement and Mutual Release, the D&O Policy Carriers who contribute to payment of the Settlement Amount will be deemed discharged from any liability to any Insureds (as defined by the D&O Policies) or other claimants for having paid the Settlement Amount; and it is further

ORDERED that, upon Plaintiffs' receipt of the entire Settlement Amount, Plaintiffs shall absolutely and unconditionally waive any rights with respect to, and release any and all claims in, the Bankruptcy Cases; provided, however, that, except to the extent released in the Settlement Agreement and Mutual Release as a Released Claim, Plaintiffs shall retain their rights to receive any distributions in the Bankruptcy Cases to which Plaintiffs are entitled on account of their ownership of debt or equity securities of WMI.

6. The "Effective Date" of this Agreement shall be the third (3) business day following the latest of: (i) the expiration of the time for appeal or appellate review of the Approval Order, with no appeal having been taken; (ii) if there has been an appeal from the Approval Order, and the appeal has been decided without causing a material change in the Approval Order, the expiration of the time for petitioning for rehearing and/or certiorari; or (iii) if rehearing or certiorari is granted, the date that the appeal has been decided without causing a material change in entry of the Approval Order.

7. In the event that the Bankruptcy Court enters the Approval Order and an appeal is taken therefrom, the Parties shall use their reasonable best efforts to obtain final approval of the Approval Order. However, if the Bankruptcy Court denies entry of the Approval Order and (a) no appeal is taken, or (b) appeal is taken and final approval of the Approval Order is denied, then this Agreement shall be deemed null and void and the Parties shall revert to their positions as of May 8, 2011 except that any amounts paid by or on behalf of the Individual Defendants pursuant to this Agreement shall be returned to the D&O Policy Carriers in accordance with paragraph 1 herein.

8. The Parties recognize that, on May 11, 2011, the Court dismissed the Action and all claims with prejudice and without costs to any party. Upon the Effective Date, no party to the Action shall take any steps to vacate, appeal or otherwise challenge that dismissal order.

9. Upon Plaintiffs' receipt of the entire Settlement Amount, and without any further action by anyone, Plaintiffs, on behalf of themselves, their affiliates, predecessors, successors, assigns, agents, officials, employees and all other persons or entities controlled by, or under common control with Plaintiffs, including, but not limited to, Flaherty & Crumrine Incorporated, shall be deemed to have, and by operation of law shall have, fully, finally and forever released, relinquished, settled and discharged Individual Defendants, WMI, WMB, any and all of their respective predecessors, successors, parents, affiliates, and their respective divisions, shareholders, employees, agents, servants, marital communities, heirs, consultants, advisors, insurers, reinsurers, attorneys, accountants, underwriters and

representatives, and their successors and assigns, from any and all claims, rights, demands, liabilities, defenses or causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorney's fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, that relate in any way to the prosecution, defense or settlement of the Action, including any and all actions, causes of action, proceedings, and suits, whether in law or in equity, whether based on any federal law, state law, common law, or foreign law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, whether brought directly or derivatively, existing now or to be created in the future, that (i) (a) have been asserted in the Action or the Bankruptcy Cases; or (b) could have been asserted in the Action or the Bankruptcy Cases, or in any other forum, that are based on, relate to or arise out of the allegations, transactions, facts, matters, events, disclosures, statements, occurrences, representations, acts or omissions or failures to act that have been or could have been asserted or alleged in the Action, or (ii) relate to Plaintiffs' purchase, holding or acquisition of WMI debt or equity securities, that would be barred by the principles of *res judicata* had the claims that have been or could have been asserted in the Action or the Bankruptcy Cases been fully litigated and resulted in a final judgment or order (the "Released Claims").

10. Upon Plaintiffs' receipt of the entire Settlement Amount, and without any further action by anyone, Individual Defendants, on behalf of themselves, their affiliates, predecessors, successors, assigns, agents, partners, employees and all other persons or entities controlled by, or under common control with Individual Defendants, shall be deemed to have, and by operation of law shall have, fully, finally and forever released, relinquished, settled and discharged Plaintiffs, any or all of their predecessors, successors, parents, affiliates, and their respective divisions, officials, employees, agents, servants, consultants, advisors, insurers, reinsurers, attorneys, accountants, underwriters and representatives, and their successors and assigns, from any and all claims that relate in any way to the prosecution, defense or settlement of the Action, including any and all actions, causes of action, proceedings, and suits, whether in law or in equity, whether based on any federal law, state law, common law, or foreign law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, existing now or to be created in the future, that relate to the same transactions and occurrences that give rise to the claims alleged in the Action (the "Plaintiff Released Claims").

11. The Released Claims and Plaintiff Released Claims include, without limitation, any claims that any of the Parties does not know or suspect to exist in its favor at the time of the release of such claims, which if known by it might have affected its decision(s) with respect to the Agreement. The Parties shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each of the Parties waives and relinquishes any right or benefit which it has or may have under California Civil Code Section 1542, or any similar provision of the statutory or non-statutory law of any other jurisdiction, to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter hereof. The Parties acknowledge and agree that this waiver is an essential and material term of this Agreement and, without such waiver, the Agreement would not have been made. Notwithstanding the releases set forth in this Agreement, each Party specifically retains the right to enforce the terms of this Agreement.

12. For the avoidance of doubt, (a) nothing herein shall be deemed to release, bar, waive, impair or otherwise impact any claims belonging to WMI, its affiliates or successors in interest against any Individual Defendants; nor shall anything herein be deemed to release, bar, waive, impair or otherwise impact the defenses of any Individual Defendants to any such claims belonging to WMI or its affiliates and asserted against such persons or entities by WMI or its successors in interest; and (b) to the extent that any of the Individual Defendants have claims against WMI in the Chapter 11 Cases, other than claims for indemnification with respect to payments made to defend or settle the Action, nothing herein shall be deemed to release, bar, waive, impair or otherwise impact any such claims, or any defenses of WMI with respect thereto; except that to the extent that any insurers who issued any of the Directors' and Officers' Liability Insurance Policies claim subrogation rights against WMI on the basis of the Individual Defendants' indemnification claims, all such claims are preserved, as are WMI's defenses thereto.

13. This Agreement and the terms of the settlement and releases embodied in this Agreement represent a compromise of disputed claims, and the negotiations, discussions and communications in connection with or leading up to and including the settlement are not and shall not be construed as admissions or concessions by the Parties, or any of them, either as to any liability or wrongdoing or as to the merits of any claim or defense. Neither the existence of this Agreement nor any of its provisions shall be admissible in any proceeding for any purpose whatsoever, except that this Agreement shall only be admissible for all purposes solely in proceedings brought by WMI, Plaintiffs or Individual Defendants to enforce the terms of this Agreement.

14. The Parties agree that the amount paid and the other terms of the settlement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel. The Parties further agree that the settlement set forth in this Agreement constitutes a fair, reasonable and adequate resolution of the claims asserted or which could have asserted in this Action or the Bankruptcy Cases. The Parties agree not to assert any claim that the Action or any defense or counterclaim was prosecuted by Plaintiffs or Individual Defendants in bad faith under Federal Rule of Civil Procedure 11.

15. The Amended Stipulated Protective Order in the Action, dated December 9, 2010, shall survive this Agreement to the extent permitted by law and by its terms.

16. This Agreement and the escrow agreement referenced in paragraph 1 of this Agreement constitute the entire and complete agreement between the Parties, the terms and conditions herein are contractual and not a mere recital, and such terms and conditions shall not be amended, supplemented or abrogated other than by a written instrument signed by each affected Party hereto or by the authorized representative of each Party.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to choice of law principles. The Bankruptcy Court shall have exclusive jurisdiction over any action involving or pertaining to WMI and relating to this Agreement or the enforcement of any of its terms.

18. Each Party represents and warrants that it is authorized to enter into this Agreement and all the releases, representations and warranties contained in this Agreement. The signatories to this Agreement represent and warrant that they have the authority to enter into this Agreement and all the releases, representations and warranties contained in this Agreement. This Agreement and each and all of the representations, warranties and covenants of the Parties made herein are binding upon the Parties and each and all of their respective successors, assigns, heirs and representatives.

19. With the exception of the representations and warranties made in this Agreement, in entering into this Agreement and the settlement contemplated herein, the Parties assume the risk of any misrepresentation, concealment or mistake. If any Party to this Agreement subsequently discovers that any fact that he, she or it relied upon in entering into this Agreement was untrue, or that any fact was concealed from him, her or it, or that his, her or its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including, without limitation, any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be and is final and binding between and among the Parties hereto, regardless of any claims of misrepresentation, promises made, lack of intention to perform, concealment of facts, mistakes of fact or law, or of any other circumstances whatsoever.

20. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21. This Agreement was prepared jointly by the Parties and their counsel, and shall be construed as if the Parties jointly prepared this Agreement, and any uncertainty or ambiguity shall not on that ground be interpreted against any one Party.

22. Notices required by this Agreement shall be submitted by any form of overnight mail, facsimile or in person to:

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Dietrich Siben Thorpe LLP
2173 Salk Avenue, Suite 250
Carlsbad, CA 92008
Telephone: (760) 579-7368
Facsimile: (760) 579-7369

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Counsel for Washington Mutual, Inc.

AGREED TO BY:

Counsel for Plaintiffs Flaherty & Crumrine Preferred Income Fund Incorporated, Flaherty & Crumrine Preferred Income Opportunity Fund Incorporated, Flaherty & Crumrine/Claymore Preferred Securities Income Fund Incorporated, Flaherty & Crumrine/Claymore Total Return Fund Incorporated and Flaherty & Crumrine Investment Grade Fixed Income Fund

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By: David G. Thorpe
David Thorpe

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Date: 7/11/11

Counsel for Defendant Kerry K. Killinger

WILSON SONSINI GOODRICH & ROSATI

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Jerome F. Birn, Jr.

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Date:

Counsel for Defendants Thomas Casey, Stephen Rotella, Ronald Cathcart, and David Schneider

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and

Deborah L. Stein
1999 Avenue of the Stars, 29th Floor

-9-

AGREED TO BY:

**Counsel for Plaintiffs Flaherty & Crumrine Preferred
Income Fund Incorporated, Flaherty & Crumrine
Preferred Income Opportunity Fund Incorporated,
Flaherty & Crumrine/Claymore Preferred Securities
Income Fund Incorporated, Flaherty &
Crumrine/Claymore Total Return Fund Incorporated
and Flaherty & Crumrine Investment Grade Fixed
Income Fund**

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Telephone: (760) 579-7368
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Date:

Counsel for Defendant Kerry K. Killinger

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Date:

**Counsel for Defendants Thomas Casey, Stephen
Rotella, Ronald Cathcart, and David Schneider**

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and

Deborah L. Stein
1999 Avenue of the Stars, 29th Floor

-9-

AGREED TO BY:

**Counsel for Plaintiffs Flaherty & Crumrine Preferred
Income Fund Incorporated, Flaherty & Crumrine
Preferred Income Opportunity Fund Incorporated,
Flaherty & Crumrine/Claymore Preferred Securities
Income Fund Incorporated, Flaherty &
Crumrine/Claymore Total Return Fund Incorporated
and Flaherty & Crumrine Investment Grade Fixed
Income Fund**

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Date:

Counsel for Defendant Kerry K. Killinger

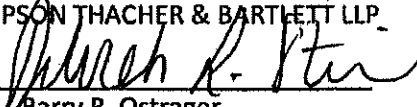
WILSON SONSINI GOODRICH & ROSATI

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Date:

**Counsel for Defendants Thomas Casey, Stephen
Rotella, Ronald Cathcart, and David Schneider**

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and

Deborah L. Stein
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Los Angeles, California 90067
Telephone: (310) 407-7525
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Date:

**Counsel for Defendants Anne Farrell, Stephen Frank,
Thomas Leppert, Charles Lillis, Phillip Matthews,
Regina Montoya, Michael Murphy, Margaret Osmer
McQuade, Mary Pugh, William Reed, Jr., Orin Smith,
James Stever, and Willis Wood, Jr.**

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By: 

Ronald L. Berenstain

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Date: *July 11, 2011*

Counsel for Washington Mutual, Inc.

WEIL, GOTSHAL & MANGES LLP

By: _____

Brian S. Rosen

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Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Date:

Los Angeles, California 90067
Telephone: (310) 407-7525
Facsimile: (310) 407-7502

Date:

**Counsel for Defendants Anne Farrell, Stephen Frank,
Thomas Leppert, Charles Lillis, Phillip Matthews,
Regina Montoya, Michael Murphy, Margaret Osmer
McQuade, Mary Pugh, William Reed, Jr., Orin Smith,
James Stever, and Willis Wood, Jr.**

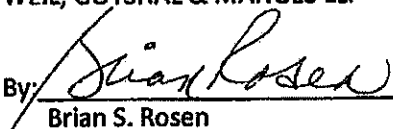
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Facsimile: (206) 359-9477

Date:

Counsel for Washington Mutual, Inc.

WEIL, GOTSHAL & MANGES LLP

By:  _____
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767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Date:

Exhibit B
Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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

**ORDER (I) APPROVING SETTLEMENT AGREEMENT IN FLAHERTY
ACTION PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND
RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, AND (II)
MODIFYING AUTOMATIC STAY PURSUANT TO SECTION 362 OF THE
BANKRUPTCY CODE TO ALLOW PAYMENT OF SETTLEMENT
AMOUNT UNDER DIRECTORS AND OFFICERS INSURANCE POLICIES**

Upon the motion, dated August 2, 2011 (the "Motion"),² of Washington Mutual, Inc. ("WMI") and WMI Investment Corp., as debtors and debtors in possession (collectively, the "Debtors"), for entry of an order pursuant to section 105(a) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure, (i) authorizing and approving that certain Settlement Agreement and Mutual Release (the "Settlement Agreement"), dated July 11, 2011, in the litigation captioned *Flaherty & Crumrine Preferred Income Fund Incorporated, et al. v. Killinger, et al.*, No. C09-1756 MJP (the "Flaherty Action") in the United States District Court for the Western District of Washington, and (ii) modifying the automatic stay provided for in section 362(a) of the Bankruptcy Code, to the extent applicable, to allow payment of the Settlement Amount in

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.

² Capitalized terms used but not otherwise defined herein will have the meanings ascribed to them in the Motion.

connection with the Settlement Agreement, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to those parties identified therein, including, without limitation, notice to the Insureds listed on Exhibit D to the Motion being sufficient to satisfy Local Rule 2002-1(b) under the circumstances; and no other or further notice being required; and the Court having determined that the relief sought in the Motion is in the best interest of the Debtors, their creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Settlement Agreement, a copy of which is attached hereto as Exhibit 1, is approved in all respects as fair and reasonable; and it is further

ORDERED that the automatic stay, extant pursuant to section 362 of the Bankruptcy Code, is hereby modified so as to permit, and the D&O Carriers are hereby authorized, to the extent necessary, to pay Four Million Two Hundred Eighteen Thousand Seven Hundred Fifty Dollars (\$4,218,750.00) on behalf of the Individual Defendants from the D&O Policies; and it is further

ORDERED that, on and effective as of the Effective Date of the Settlement Agreement, consistent with this Order and the Settlement Agreement, the D&O Carriers who contribute to payment of the Settlement Amount will be deemed discharged from any liability to

any Insureds (as defined by the D&O Policies) or other claimants for having paid the Settlement Amount on behalf of the Individual Defendants; and it is further

ORDERED that, upon Plaintiffs' receipt of the entire Settlement Amount, Plaintiffs shall absolutely and unconditionally waive any rights with respect to and release any and all claims in the Chapter 11 Cases; provided, however, that, except to the extent released in the Settlement Agreement as a Released Claim, Plaintiffs shall retain their rights to receive any distributions in the Chapter 11 Cases to which Plaintiffs are entitled on account of their ownership of debt or equity securities of WMI; and it is further

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

Dated: September __, 2011
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATE BANKRUPTCY JUDGE

Exhibit 1

Settlement Agreement

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement"), dated as of July 11, 2011, by and among (i) Flaherty & Crumrine Preferred Income Fund Incorporated, Flaherty & Crumrine Preferred Income Opportunity Fund Incorporated, Flaherty & Crumrine/Claymore Preferred Securities Income Fund Incorporated, Flaherty & Crumrine/Claymore Total Return Fund Incorporated and Flaherty & Crumrine Investment Grade Fixed Income Fund (collectively, "Plaintiffs"), and (ii) Kerry Killinger, Thomas Casey, Stephen Rotella, Ronald Cathcart, David Schneider, Anne Farrell, Stephen Frank, Thomas Leppert, Charles Lillis, Phillip Matthews, Regina Montoya, Michael Murphy, Margaret Osmer McQuade, Mary Pugh, William Reed, Jr., Orin Smith, James Stever, and Willis Wood, Jr. (collectively, "Individual Defendants"), and (iii) Washington Mutual, Inc. ("WMI"). Plaintiffs, Individual Defendants and WMI are collectively referred to herein as the "Parties."

WHEREAS, Plaintiffs filed an action in the Superior Court of California, which action was thereafter removed to the United States District Court for the Central District of California and transferred to the United States District Court for the Western District of Washington (the "Court") and styled *Flaherty & Crumrine Preferred Income Fund Incorporated, et al. v. Killinger, et al.*, No. C09-1756 MJP (the "Action"), asserting claims against Individual Defendants arising from their roles as officers and/or directors of WMI and/or Washington Mutual Bank ("WMB");

WHEREAS, Individual Defendants asserted defenses in the Action;

WHEREAS, on September 25, 2008, the Office of Thrift Supervision, by order number 2008-36, closed WMB, appointed the FDIC Receiver as receiver for WMB and advised that the FDIC Receiver was immediately taking possession of WMB's assets. Upon its appointment as receiver, the FDIC Receiver sold substantially all the assets of WMB to JPMorgan Chase Bank, National Association, pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008;

WHEREAS, on September 26, 2008, WMI and WMI Investment Corp. (together, the "Debtors") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), as jointly administered, *In re Washington Mutual, Inc.*, Case No. 08-12229 (MFW) (the "Bankruptcy Cases");

WHEREAS, by order, dated January 30, 2009, the Bankruptcy Court established March 31, 2009 at 5:00 p.m. (Eastern Time) (the "Bar Date") as the deadline for filing proofs of claim against the Debtors and their chapter 11 estates;

WHEREAS, Plaintiffs did not file any proofs of claim in the Bankruptcy Cases prior to or after the Bar Date;

WHEREAS, on May 3, 2010, the Bankruptcy Court entered an Order Modifying Automatic Stay to Allow Advancement Under Insurance Policies that, among other things, authorized the applicable insurance carriers (the "D&O Policy Carriers") to advance the Individual Defendants' defense fees and

costs incurred in the Action under the applicable directors' and officers' liability insurance policies ("D&O Policies");

WHEREAS, each of the Individual Defendants expressly denies any wrongdoing and expressly denies that he or she has committed any act or omission giving rise to any liability to Plaintiffs whatsoever, and states that this Agreement shall in no event be construed or deemed to be evidence of, or an admission or concession on the part of any Individual Defendants with respect to, any claim or for any fault, liability, wrongdoing or damage whatsoever, or any infirmity in the defenses that the Individual Defendants have asserted or could have asserted in the Action, and states that the Individual Defendants are entering into this Agreement solely to eliminate the uncertainties, burden, expense, costs and distraction of potential or further protracted litigation; and

WHEREAS, the Parties desire to finally resolve and settle all claims relating to, concerning or arising out of the facts and circumstances alleged in the Action that were or could have been asserted against Individual Defendants in the Action or WMI in the Bankruptcy Cases to avoid potential or further protracted litigation, as provided herein;

NOW THEREFORE, in consideration of the covenants and agreements contained in this Agreement, and in full, complete and final release and discharge and settlement of all claims relating in any way to the Action, including, but not limited to, the prosecution, defense or settlement of the Action except as expressly provided otherwise herein, and any claims by Plaintiffs in the Bankruptcy Cases, the Parties agree as follows:

1. Upon the later of (1) the tenth business day after the Bankruptcy Court enters the Approval Order, as defined below; (2) receipt by the D&O Policy Carriers of an executed Form W-9; and (3) execution of a mutually agreeable escrow agreement with Gilardi & Co. ("Escrow Agent") and in full and complete settlement of the Plaintiff Released Claims and Released Claims, each as defined below, the D&O Policy Carriers (which, as represented by the Individual Defendants, have consented to payment pursuant to the terms of the Agreement) shall pay the total sum of Four Million Two Hundred Eighteen Thousand Seven Hundred Fifty Dollars (\$4,218,750.00) (the "Settlement Amount") into an interest bearing escrow account ("Escrow Account") established by the Escrow Agent by check or wire transfer pursuant to the following wire transfer instructions:

Bank:	Bank of the West Business Services 2527 Camino Ramon San Ramon, CA 94583
Routing #:	121100782
Account Name:	Killinger et al., Settlement Fund
Account #:	024-975359

Taxpayer ID #: 45-2654267

The settlement funds shall remain in the Escrow Account, and shall be used for no other purposes, until the Effective Date, as defined below. Neither WMI, the D&O Policy Carriers or the Individual Defendants shall have any responsibility or liability for the settlement funds while they are held in the Escrow Account. If the Effective Date does not occur, the Agreement shall be rendered null and void, as provided by paragraph 7 herein except that within two (2) business days of the receipt of written instructions from Individual Defendants' counsel, the Escrow Agent shall refund the settlement funds, plus any interest earned thereon, to the D&O Policy Carriers in accordance with the written instructions.

2. Upon Plaintiffs' receipt of the entire Settlement Amount, Plaintiffs shall absolutely and unconditionally waive any and all rights to file any proofs of claim in the Bankruptcy Cases; provided, however, that, except to the extent released herein as a Released Claim, nothing in this Agreement shall release, impair or otherwise impact Plaintiffs' rights to receive any distributions in the Bankruptcy Cases to which Plaintiffs are entitled on account of their ownership of debt or equity securities of WMI and to continue to retain such securities and receive such distributions as provided in any confirmed chapter 11 plan or otherwise.

3. Neither WMI, the D&O Policy Carriers or the Individual Defendants shall have any responsibility or liability for the allocation or distribution of the Settlement Amount among the Plaintiffs upon the Effective Date. In all other respects, each of the Parties shall be responsible for their own fees and costs incurred in the Action.

4. This Agreement is expressly conditioned on entry of a final order by the Bankruptcy Court in the Bankruptcy Cases (the "Approval Order") authorizing the D&O Policy Carriers to pay Four Million Two Hundred Eighteen Thousand Seven Hundred Fifty Dollars (\$4,218,750.00), on behalf of the Individual Defendants from the D&O Policies, and containing provisions substantially the same as those set forth in paragraph 5 below.

5. As soon as possible after the Parties execute this agreement, WMI, Plaintiffs and the Individual Defendants shall use their reasonable best efforts to seek entry of the Approval Order, with a hearing before the Bankruptcy Court to be set on the first available date thereafter. Plaintiffs and the Individual Defendants shall cooperate with the Debtors in drafting a proposed Approval Order, which shall contain, in substantially the following form, the following provisions, in addition to any other usual and customary terms:

ORDERED that the Settlement Agreement and Mutual Release is fair and reasonable; and it is further

ORDERED that the automatic stay, extant pursuant to section 362 of the Bankruptcy Code, is hereby modified so as to permit, and the D&O Policy Carriers are hereby authorized, to the extent necessary, to pay Four Million Two Hundred Eighteen Thousand Seven Hundred Fifty

Dollars (\$4,218,750.00) on behalf of the Individual Defendants from the D&O Policies; and it is further

ORDERED that, on and effective as of the Effective Date of the Settlement Agreement and Mutual Release, consistent with this Order and the Settlement Agreement and Mutual Release, the D&O Policy Carriers who contribute to payment of the Settlement Amount will be deemed discharged from any liability to any Insureds (as defined by the D&O Policies) or other claimants for having paid the Settlement Amount; and it is further

ORDERED that, upon Plaintiffs' receipt of the entire Settlement Amount, Plaintiffs shall absolutely and unconditionally waive any rights with respect to, and release any and all claims in, the Bankruptcy Cases; provided, however, that, except to the extent released in the Settlement Agreement and Mutual Release as a Released Claim, Plaintiffs shall retain their rights to receive any distributions in the Bankruptcy Cases to which Plaintiffs are entitled on account of their ownership of debt or equity securities of WMI.

6. The "Effective Date" of this Agreement shall be the third (3) business day following the latest of: (i) the expiration of the time for appeal or appellate review of the Approval Order, with no appeal having been taken; (ii) if there has been an appeal from the Approval Order, and the appeal has been decided without causing a material change in the Approval Order, the expiration of the time for petitioning for rehearing and/or certiorari; or (iii) if rehearing or certiorari is granted, the date that the appeal has been decided without causing a material change in entry of the Approval Order.

7. In the event that the Bankruptcy Court enters the Approval Order and an appeal is taken therefrom, the Parties shall use their reasonable best efforts to obtain final approval of the Approval Order. However, if the Bankruptcy Court denies entry of the Approval Order and (a) no appeal is taken, or (b) appeal is taken and final approval of the Approval Order is denied, then this Agreement shall be deemed null and void and the Parties shall revert to their positions as of May 8, 2011 except that any amounts paid by or on behalf of the Individual Defendants pursuant to this Agreement shall be returned to the D&O Policy Carriers in accordance with paragraph 1 herein.

8. The Parties recognize that, on May 11, 2011, the Court dismissed the Action and all claims with prejudice and without costs to any party. Upon the Effective Date, no party to the Action shall take any steps to vacate, appeal or otherwise challenge that dismissal order.

9. Upon Plaintiffs' receipt of the entire Settlement Amount, and without any further action by anyone, Plaintiffs, on behalf of themselves, their affiliates, predecessors, successors, assigns, agents, officials, employees and all other persons or entities controlled by, or under common control with Plaintiffs, including, but not limited to, Flaherty & Crumrine Incorporated, shall be deemed to have, and by operation of law shall have, fully, finally and forever released, relinquished, settled and discharged Individual Defendants, WMI, WMB, any and all of their respective predecessors, successors, parents, affiliates, and their respective divisions, shareholders, employees, agents, servants, marital communities, heirs, consultants, advisors, insurers, reinsurers, attorneys, accountants, underwriters and

representatives, and their successors and assigns, from any and all claims, rights, demands, liabilities, defenses or causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorney's fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, that relate in any way to the prosecution, defense or settlement of the Action, including any and all actions, causes of action, proceedings, and suits, whether in law or in equity, whether based on any federal law, state law, common law, or foreign law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, whether brought directly or derivatively, existing now or to be created in the future, that (i) (a) have been asserted in the Action or the Bankruptcy Cases; or (b) could have been asserted in the Action or the Bankruptcy Cases, or in any other forum, that are based on, relate to or arise out of the allegations, transactions, facts, matters, events, disclosures, statements, occurrences, representations, acts or omissions or failures to act that have been or could have been asserted or alleged in the Action, or (ii) relate to Plaintiffs' purchase, holding or acquisition of WMI debt or equity securities, that would be barred by the principles of *res judicata* had the claims that have been or could have been asserted in the Action or the Bankruptcy Cases been fully litigated and resulted in a final judgment or order (the "Released Claims").

10. Upon Plaintiffs' receipt of the entire Settlement Amount, and without any further action by anyone, Individual Defendants, on behalf of themselves, their affiliates, predecessors, successors, assigns, agents, partners, employees and all other persons or entities controlled by, or under common control with Individual Defendants, shall be deemed to have, and by operation of law shall have, fully, finally and forever released, relinquished, settled and discharged Plaintiffs, any or all of their predecessors, successors, parents, affiliates, and their respective divisions, officials, employees, agents, servants, consultants, advisors, insurers, reinsurers, attorneys, accountants, underwriters and representatives, and their successors and assigns, from any and all claims that relate in any way to the prosecution, defense or settlement of the Action, including any and all actions, causes of action, proceedings, and suits, whether in law or in equity, whether based on any federal law, state law, common law, or foreign law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, existing now or to be created in the future, that relate to the same transactions and occurrences that give rise to the claims alleged in the Action (the "Plaintiff Released Claims").

11. The Released Claims and Plaintiff Released Claims include, without limitation, any claims that any of the Parties does not know or suspect to exist in its favor at the time of the release of such claims, which if known by it might have affected its decision(s) with respect to the Agreement. The Parties shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each of the Parties waives and relinquishes any right or benefit which it has or may have under California Civil Code Section 1542, or any similar provision of the statutory or non-statutory law of any other jurisdiction, to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter hereof. The Parties acknowledge and agree that this waiver is an essential and material term of this Agreement and, without such waiver, the Agreement would not have been made. Notwithstanding the releases set forth in this Agreement, each Party specifically retains the right to enforce the terms of this Agreement.

12. For the avoidance of doubt, (a) nothing herein shall be deemed to release, bar, waive, impair or otherwise impact any claims belonging to WMI, its affiliates or successors in interest against any Individual Defendants; nor shall anything herein be deemed to release, bar, waive, impair or otherwise impact the defenses of any Individual Defendants to any such claims belonging to WMI or its affiliates and asserted against such persons or entities by WMI or its successors in interest; and (b) to the extent that any of the Individual Defendants have claims against WMI in the Chapter 11 Cases, other than claims for indemnification with respect to payments made to defend or settle the Action, nothing herein shall be deemed to release, bar, waive, impair or otherwise impact any such claims, or any defenses of WMI with respect thereto; except that to the extent that any insurers who issued any of the Directors' and Officers' Liability Insurance Policies claim subrogation rights against WMI on the basis of the Individual Defendants' indemnification claims, all such claims are preserved, as are WMI's defenses thereto.

13. This Agreement and the terms of the settlement and releases embodied in this Agreement represent a compromise of disputed claims, and the negotiations, discussions and communications in connection with or leading up to and including the settlement are not and shall not be construed as admissions or concessions by the Parties, or any of them, either as to any liability or wrongdoing or as to the merits of any claim or defense. Neither the existence of this Agreement nor any of its provisions shall be admissible in any proceeding for any purpose whatsoever, except that this Agreement shall only be admissible for all purposes solely in proceedings brought by WMI, Plaintiffs or Individual Defendants to enforce the terms of this Agreement.

14. The Parties agree that the amount paid and the other terms of the settlement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel. The Parties further agree that the settlement set forth in this Agreement constitutes a fair, reasonable and adequate resolution of the claims asserted or which could have asserted in this Action or the Bankruptcy Cases. The Parties agree not to assert any claim that the Action or any defense or counterclaim was prosecuted by Plaintiffs or Individual Defendants in bad faith under Federal Rule of Civil Procedure 11.

15. The Amended Stipulated Protective Order in the Action, dated December 9, 2010, shall survive this Agreement to the extent permitted by law and by its terms.

16. This Agreement and the escrow agreement referenced in paragraph 1 of this Agreement constitute the entire and complete agreement between the Parties, the terms and conditions herein are contractual and not a mere recital, and such terms and conditions shall not be amended, supplemented or abrogated other than by a written instrument signed by each affected Party hereto or by the authorized representative of each Party.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to choice of law principles. The Bankruptcy Court shall have exclusive jurisdiction over any action involving or pertaining to WMI and relating to this Agreement or the enforcement of any of its terms.

18. Each Party represents and warrants that it is authorized to enter into this Agreement and all the releases, representations and warranties contained in this Agreement. The signatories to this Agreement represent and warrant that they have the authority to enter into this Agreement and all the releases, representations and warranties contained in this Agreement. This Agreement and each and all of the representations, warranties and covenants of the Parties made herein are binding upon the Parties and each and all of their respective successors, assigns, heirs and representatives.

19. With the exception of the representations and warranties made in this Agreement, in entering into this Agreement and the settlement contemplated herein, the Parties assume the risk of any misrepresentation, concealment or mistake. If any Party to this Agreement subsequently discovers that any fact that he, she or it relied upon in entering into this Agreement was untrue, or that any fact was concealed from him, her or it, or that his, her or its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including, without limitation, any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be and is final and binding between and among the Parties hereto, regardless of any claims of misrepresentation, promises made, lack of intention to perform, concealment of facts, mistakes of fact or law, or of any other circumstances whatsoever.

20. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21. This Agreement was prepared jointly by the Parties and their counsel, and shall be construed as if the Parties jointly prepared this Agreement, and any uncertainty or ambiguity shall not on that ground be interpreted against any one Party.

22. Notices required by this Agreement shall be submitted by any form of overnight mail, facsimile or in person to:

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Preferred Income Opportunity Fund Incorporated,
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Income Fund Incorporated, Flaherty &
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Date: *July 11, 2011*

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Date:

Exhibit C

The D&O Policies

2007/2008 D&O Policies

Type	Policy Term	Expiration	Policy Number	Line of Coverage	Carrier
ABC D&O	5/01/07 – 05/01/08		741-98-06	Primary	Chartis
ABC D&O	5/01/07 – 05/01/08		ELU097687-07	1st Excess	XL Specialty Insurance Co.
ABC D&O	5/01/07 – 05/01/08		00 DA 1497374-07	2nd Excess	Twin City Fire Insurance Co.
ABC D&O	5/01/07 – 05/01/08		DOX G21669994 004	3rd Excess	ACE American Insurance Co.
ABC D&O	5/01/07 – 05/01/08		DOX0006090-02	4th Excess	Arch Insurance Group
ABC D&O	5/01/07 – 05/01/08		8208-3395	5th Excess	Federal Insurance Co.
ABC D&O	5/01/07 – 05/01/08		287127607	5th Excess	Continental Casualty Co.
ABC D&O	5/01/07 – 05/01/08		590CM2684	6th Excess	St. Paul Travelers Inc.
ABC D&O	5/01/07 – 05/01/08		G238226001	7th Excess	Ace Westchester
ABC D&O	5/01/07 – 05/01/08		HS625033	7th Excess	RSUI Group, Inc.
ABC D&O	5/01/07 – 05/01/08		347-2092	8th Excess	National Union Fire Insurance Co.
Side A	5/01/07 – 05/01/08		ELU097685-07	Primary Side A	XL Specialty Insurance Co.
Side A	5/01/07 – 05/01/08		6802-6117	Side A 1st Excess	Federal Insurance Co.
Side A	5/01/07 – 05/01/08		00DA021819707	Side A 2nd Excess	Twin City Fire Insurance Co.
Side A	5/01/07 – 05/01/08		287127641	Side A 3rd Excess	CNA Global Specialty Lines
Side A	5/01/07 – 05/01/08		RNN713043/01/2007	Side A 3rd Excess	Axis Financial Insurance
Side A	5/01/07 – 05/01/08		QA015507	Side A 4th Excess	Lloyds of London

Exhibit D

Insureds Notice List

Service on Counsel on Behalf of Insureds

Counsel	Name of Insured
<p>Bingham McCutchen LLP Three Embarcadero Center, 28th Floor San Francisco, CA 94111-4067 Attn: John D. Pernick, David M. Balabanian, and Frank Busch</p> <p>Bingham McCutchen LLP 355 South Grand Ave, Ste 4400 Los Angeles, CA 90071-3106 Attn: Susan L. Hoffman</p> <p>Hillis Clark Martin & Peterson 1221 Second Ave, Suite 500 Seattle, WA 98101-2925 Attn: Brian C. Free and Louis D. Peterson</p>	<p>Beck, David Careaga, Richard Fortunato, Stephen Jurgens, Rolland Lehmann, Thomas Novak, Diane Wilhelm, Donald</p>
<p>Bingham McCutchen LLP Three Embarcadero Center, 28th Floor San Francisco, CA 94111-4067 Attn: John D. Pernick</p> <p>Covington & Burling LLC 1201 Pennsylvania Avenue, NW Washington, DC 20004-2401 Attn: William P. Skinner</p>	<p>Washington Mutual Asset Acceptance Corporation Washington Mutual Capital Corporation</p>
<p>Connolly Bove Lodge & Hutz LLP 1007 North Orange Street P.O. Box 2207 Wilmington, DE 19899 Attn: Jeffrey C. Wisler</p>	<p>Rotella, Stephen J.</p>
<p>Corr Cronin Michelson 1001 4th Avenue 3900 Seattle, WA 99205 Attn: Steven Fog</p>	<p>Feltgen, Cheryl</p>
<p>Kaufman Kaufman & Miller LLP 16633 Ventura Blvd Ste 500 Encino, CA 91436 Attn: Mitchell F. Kaufman</p>	<p>Minkow, Brian</p>
<p>Hollingsworth LLP 1350 I Street, NW Washington, DC 20005 Attn: Rosemary Stewart</p>	<p>Hattemer, Frank</p>

<p>Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, P.C. 565 5th Avenue New York, NY 10019 Attn: Judith Mogul</p> <p>Charlene D. Davis, Esq. 222 Delaware Avenue, Suite 900 Wilmington, DE 19899</p>	<p>Oppenheimer, Deanna</p>
<p>Orrick Herrington & Sutcliffe LLP 701 5th Ave, Ste. 5600 Seattle, WA 98104-7097 Attn: George E. Greer</p>	<p>Ballenger, Melissa J.</p>
<p>Perkins Coie LLP 1201 Third Ave., Suite 4800 Seattle, WA 98101-3099 Attn: Ronald L. Berenstain and William C. Rava</p>	<p>Chazen, Stephen I. Farrell, Anne Frank, Stephen E. Leppert, Thomas Lillis, Charles M. Matthews, Phillip D. McQuade, Margaret Osmer Murphy, Michael Montoya, Regina Pugh, Mary Reed, William G., Jr. Smith, Orin Stever, James H. Woods, Willis B. Jr.</p>
<p>Phillips, Goldman & Spence P.A. 1200 N. Broom Street Wilmington, DE 19806 Attn: Stephen W. Spence</p>	<p>Brooks, Albert Horvath, Debora D. McMurray, John P.</p>
<p>Savitt Bruce & Willey LLP Joshua Green Building 1425 Fourth Avenue, Suite 800 Seattle, WA 98101 2272 Attn: Duncan E. Manville</p>	<p>Sherrington, Gregg R.</p>
<p>Savitt Bruce & Willey LLP Joshua Green Building 1425 Fourth Avenue, Suite 800 Seattle, WA 98101-2272 Attn: James P. Savitt</p>	<p>Melby, Randy</p>

<p>Simpson Thacher & Bartlett LLP 1999 Ave. of the Stars, 29th Floor Los Angeles, CA 90067 Attn: Deborah L. Stein</p> <p>Davis Wright Tremaine LLP 1201 Third Ave., Suite 2200 Seattle, WA 98101-3045 Attn: Stephen M. Rummage and Steven P. Caplow</p>	<p>Casey, Thomas Cathcart, Ronald Rotella, Stephen J. Schneider, David C. Woods, John F.</p>
<p>Simpson Thacher & Bartlett LLP 1999 Ave. of the Stars, 29th Floor Los Angeles, CA 90067 Attn: Deborah L. Stein</p>	<p>Baker, Todd Bedwell, Deborah Berens, John David, Daryl D. Grau Iverson, Michele Jorgenson, Pia Krahling, Suzanne Longbrake, William McCarthy, Michelle Meola, Tony Williams, Robert J.</p>
<p>Smyth & Mason, PLLC 7100 Columbia Center 701 Fifth Ave. Seattle WA 98104 Attn: Jeff Smyth and Christopher C. Mason</p>	<p>Amato, Mike</p>
<p>Wilson Sonsini Goodrich Rosati PC 701 Fifth Ave., Suite 5100 Seattle, WA 98104-7036 Attn: Barry M. Kaplan, Douglas C. Greene and Jerome F. Birn, Jr.</p> <p>Williams & Connolly LLP 725 Twelfth Street, N.W. Washington, D.C. 20005 Attn: Brendan V. Sullivan, Jr. and Beth A. Stewart</p>	<p>Killinger, Kerry K.</p>

Direct Service Insureds

Aguilar, Tracey
Anderson, Judy L.
Baker, Todd
Bedwell, Deborah
Berens, John
Bonderman, David
Boyle, Hugh
Brouwer, Curt
Chapman, Fay L.
Chea, Linda S.
Chen, Chaomei
Cleary, Tim
Corcoran, James B.
David, Daryl D.
Fishman, Alan
Fournier, Patricia A.
Freilinger, Peter
Graham, Diana
Grau, Iverson, Michele
Hattermer, Frank
Hillis, Mark
Holman, Minh
Jaeger, Jessica
Jorgensen, Pia
Kellner, Larry
Kido, Kenneth E.
Koch, Barry
Krahling, Suzanne
Lam, Quyen X.
Lay, Binh
Logan, Doreen
Longbrake, Bill
Ly, Linda
Martinez, Jesus, Jr.
McCarthy, James
McCarthy, Jim
McCarthy, Michelle
Meola, Tony
Navarro, Everardo
Noblezada, Yolanda
O'Brien, Chris
Ochoa, Adrian
Ostgarden, Eric Lim
Padilla, Alice
Quach, Tyler

Radosevich, Andrea
Read, C. Jack
Rios, Edgar
Rodriguez, Rosio
Rubin, Joey
Saenz, Humberto
Saunders, Joseph
Schulte, Patricia
Smith, Charles Edward
Snyer, Michele
Solender, Michael S.
Stephen, Paul S.
Stephenson, Richard G.
Stevenson, Richard L.
Taylor, Susan R.
Tetteh, Enock
Thomas, Armen
Tran, Veda
Valeron, Nancy
Vella, Frank
Vinson, Judy L.
Vuoto, Anthony
Weiss, Jerome
White, Donald
William, Robert J.
Winder, Brandon J.
Wu, Weijia ("Vicky")
Zarro, Michael