

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----X		Re: Docket No. 8861

**WASHINGTON MUTUAL, INC., AND
WMI INVESTMENT CORP.'S COUNTER-STATEMENT
OF ISSUE AND COUNTER-DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, appellees Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment," and, together with WMI, the "Debtors"), hereby submit the following counter-statement of issue and counter-designation of additional items to be included in the record for the appeal filed by Wells Fargo Bank, National Association, from the order [D.I. 8613] (the "Order") and the related opinion [D.I. 8612] (the "Opinion"), entered by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on September 13, 2011.²

Counter-Statement of Issue on Appeal

1. Whether the Bankruptcy Court correctly determined that that certain First Supplemental Indenture, dated April 30, 2001, by and between WMI and The Bank of New York, as Trustee, requires subordinated creditors to pay senior creditors post-petition interest at

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 The Debtors submit this counter-statement of issue and counter-designation of record on appeal without prejudice to their position that the Order, as it relates to the appeal filed by Wells Fargo Bank, National Association, is not a final order subject to a right of appeal.



the contract rate, regardless of the rate allowed by the Bankruptcy Court as to claims for post-petition interest paid to creditors by the Debtors?

Counter-Designation of the Record on Appeal

In addition to the items designated by the Appellants to be included in the record on appeal, the Debtors hereby designate the following items:

Tab Number	Exhibit No.³	Document	Document Date
1	CONF DX-425	Debtors' Omnibus Response to Objections to Confirmation of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (Unredacted Copy) [Dkt. No. 8186]	7/12/2011

Tab Number	Docket No.	Document	Document Date
2	2017	Order Approving Stipulation and Agreement Between Washington Mutual, Inc. and Law Debenture Trust Company of New York, as Indenture Trustee	12/17/2009
3	6082	Debtors' Omnibus Response to Objections to Confirmation of the Debtors' Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code	11/24/2010
4	8097	Consolidated Response of The Bank of New York Mellon Trust Company, N.A. To Certain Objections To Confirmation Of The Modified Sixth Amended Joint Plan Of Affiliated Debtors	7/7/2011
5	8101	Statement of Law Debenture Trust Company of New York in Support of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code and in Response to Certain Objections	7/8/2011
6	8410	Post-Confirmation Hearing Submission of the Washington Mutual Inc. Noteholders Group In Support of Confirmation of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code	8/10/2011

³ Documents with a CONF DX pre-fix were admitted into evidence in the course of the confirmation hearings, which occurred from December 2-3, 2010, December 6-7, 2010, July 13-15, 2011, and July 18-21, 2011.

7	8412	Post-Confirmation Hearing Written Submission of Law Debenture Trust Company of New York in Support of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code	8/10/2011
8	8439	Post-Hearing Brief in Further Support of Confirmation of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code	8/10/2011
9	8861	Wells Fargo Bank, National Association's Statement of Issues and Designation of Record on Appeal	10/24/2001

Dated: November 7, 2011
Wilmington, Delaware

Mark D. Collins (No. 2981)
Marcos A. Ramos (No. 4450)
Travis A. McRoberts (No. 5724)
Amanda R. Steele (No. 5530)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

– and –

Brian S. Rosen, Esq.
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

*Attorneys for Debtors
and Debtors in Possession*