

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	)	Chapter 11
In re:	)	
	)	Case No. 08-12229 (MFW)
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	)	
	)	(Jointly Administered)
Debtors.	)	
	)	<b>Related Docket Nos. 8788</b>

**APPELLEE THE OFFICIAL COMMITTEE OF EQUITY SECURITY  
HOLDERS' COUNTER-DESIGNATION OF THE RECORD  
AND ADDITIONAL STATEMENT OF ISSUES ON APPEAL<sup>2</sup>**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, appellee the Official Committee of Equity Security Holders (the "Equity Committee"), by and through its undersigned counsel, hereby submits the following additional statement of issues and counter-designation of additional items to be included in the record of appeal filed by Aurelius Capital Management, LP [Docket No. 8788] from the Opinion (the "Opinion") [Docket No. 8612] and accompanying Order (the "Order") [Docket No. 8613] entered by the Honorable Mary F. Walrath, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, on September 13, 2011.<sup>3</sup>

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

<sup>2</sup> The Equity Committee reserves the right to amend and/or supplement this counter-designation of record and additional statement of issues on appeal.

<sup>3</sup> The Equity Committee submits this counter-designation of record and additional statement of issues on appeal without prejudice to its position, as set forth fully in its Opposition to the Motions for Leave to Appeal Filed by Aurelius Capital Management, K.P., the Official Committee of Unsecured Creditors, Appaloosa Management L.P., Centerbridge Partners, L.P. and Owl Creek Asset Management, L.P. and the Joinder Filed by the Debtors [Docket No. 8811] and Motion for Leave to Cross-Appeal [Docket No. 8791], that the Opinion and Order are not final orders appealable as of right.



**I. Counter-Designation of Record on Appeal**<sup>4</sup>

The Equity Committee counter-designates the following record items from the above-captioned cases:

<b>Tab</b>	<b>Date</b>	<b>Docket No.<sup>5</sup></b>	<b>Record Items</b>
1.	02/01/10	2277	Transcript regarding Hearing Held 01/28/10
2.	02/09/11	6711	Motion of Debtors for an Order, Pursuant to Sections 105, 502, 1125, 1126, and 1128 of the Bankruptcy Code and Bankruptcy Rules 2002, 3003, 3017, 3018 and 3020, (I) Approving the Proposed Supplemental Disclosure Statement and the Form and Manner of the Notice of the Proposed Supplemental Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling a Confirmation Hearing, and (IV) Establishing Notice and Objection Procedures for Confirmation of the Debtors' Modified Plan
3.	02/24/11	6789	Debtor-in-Possession Monthly Operating Report for Filing Period 01/01/11 to 01/31/11
4.	05/07/11	7430	Notice of Filing of Updated Liquidation Analyses
5.	07/08/11	8106	Declaration of Robert Q. Klamser with Respect to the Tabulation of Votes on and Elections Pursuant to the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code
6.	07/08/11	8111	Application to Employ/Retain Klee, Tuchin, Bogdanoff & Stern LLP as Special Litigation Counsel to Washington Mutual, Inc.
7.	07/12/11	8178	Declaration of Anders J. Maxwell in Support of Objection of the Official Committee of Equity Security Holders to Confirmation of the Modified Sixth Amended Plan of Reorganization
8.	08/15/11	8493	Notice of Errata Regarding [Revised] Post-Hearing Brief of the Official Committee of Equity Security Holders in Opposition to Confirmation of the Debtors' Modified Sixth Amended Plan of Reorganization
9.	10/10/11	8771	Wells Fargo Bank, National Association's Notice of Appeal
10.	10/11/11	8781	Joinder of Debtors to the Motion of the Official Committee of Unsecured Creditors for Leave to Appeal from the Portion of the September 13, 2011 Opinion and Order of the Bankruptcy Court Granting Standing to the Equity Committee to Prosecute Claims for Equitable Disallowance

<sup>4</sup> The Equity Committee does not repeat the items designated by Aurelius, but rather incorporates herein by reference Aurelius' appellate designations.

<sup>5</sup> The designation of a docket item is intended to include all exhibits and/or attachments thereto.

<b>Tab</b>	<b>Date</b>	<b>Docket No.<sup>5</sup></b>	<b>Record Items</b>
11.	10/11/11	8783	Debtors' Limited Opposition to Motion of Aurelius Capital Management, LP for Leave to Appeal Under U.S.C. § 158(a) with Respect to Determination of Appropriate Rate of Postpetition Interest
12.	10/11/11	8784	Appellant Appaloosa Management, L.P., Centerbridge Partners, L.P. and Owl Creek Asset Management LP's Designation of Items for Inclusion in Record on Appeal
13.	10/11/11	8785	Debtors' Notice of Appeal
14.	10/11/11	8788	Appellant Aurelius Capital Management, LP's Designation of Items for Inclusion in Record on Appeal
15.	10/11/11	8790	Official Committee of Equity Security Holders' Notice of Cross-Appeal
16.	10/11/11	8791	Official Committee of Equity Security Holders' Motion for Leave to Cross-Appeal
17.	10/14/11	8811	The Official Committee of Equity Security Holders' Opposition to the Motions for Leave to Appeal Filed by Aurelius Capital Management, L.P., the Official Committee of Unsecured Creditors, Appaloosa Management, L.P., Centerbridge Partners, L.P. and Owl Creek Asset Management, L.P. and Joinder Filed by the Debtors
18.	10/18/11	8830	Appellant Official Committee of Unsecured Creditors' Designation of Items for Inclusion in Record on Appeal and Statement of Issues
19.	10/24/11	8861	Appellant Wells Fargo Bank, N.A.'s Designation of Items for Inclusion in Record on Appeal
20.	10/24/11	8863	Appellant Wells Fargo Bank, N.A.'s Designation of Items for Inclusion in Record on Appeal (Additional Items)
21.	10/24/11	8865	Appellee Law Debenture Trust Company of New York Designation of Additional Items for Inclusion in Record of Appeal
22.	10/24/11	8866	Reply of the Official Committee of Unsecured Creditors in Response to the Official Committee of Equity Security Holders' Opposition to the Motions for Leave to Appeal
23.	10/25/11	8878	Debtors' Partial Opposition to the Official Committee of equity Security Holders' Conditional Motion for Leave to Cross-Appeal Portions of the Bankruptcy Court's September 13, 2011 Order and Opinion
24.	10/25/11	8883	Appellee Debtors' Additional Statement of Issue and Counter-Designation with Respect to Appeal Filed by Appaloosa, Centerbridge and Owl Creek
25.	10/25/11	8884	Appellee Debtors' Counter-Designation with Respect to Appeal Filed by Aurelius Capital Management, LP
26.	10/25/11	8885	Appellant Debtors' Designation of Items for Inclusion in Record on Appeal and Statement of Issues

<b>Tab</b>	<b>Date</b>	<b>Docket No.<sup>5</sup></b>	<b>Record Items</b>
27.	10/25/11	8887	Official Committee of Unsecured Creditors' Objection to Official Committee of Equity Security Holders' Motion for Leave to Cross-Appeal
28.	11/01/11	8933	Appellee Debtors' Additional Statement of Issues and Counter-Designation of Record on Appeal
29.	11/07/11	8957	Designation of Law Debenture Trust Company of New York, Appellee, of Additional Items to be Included in the Record on Appeal
30.	11/07/11	8958	Counter-Designation of the Appellee Bank of New York Mellon Trust Company, N.A. of Additional Items to be Included in the Record on Appeal in Connection with the Appeal of Wells Fargo Bank, National Association
31.	11/07/11	8960	Appellee Debtors' Counter-Statement of Issues and Counter-Designation of Record on Appeal
32.		AU 9	Aurelius Compliance Documents [WaMu_Aurelius_12351-12373]
33.	05/16/01	DX 299	Amendment No. 1 to the Guarantee Agreement [WMI-MOD0000749-750]
34.	03/09/09	EC 2	Confidentiality Agreement between Washington Mutual Inc. and WMI Investment Corp. and Aurelius Capital Management [WaMu_Aurelius_12343-Wamu_Aurelius_12350]
35.	03/09/09	EC 3	Aurelius Capital Management Information Barrier Policies and Procedures re Washington Mutual Inc. and WMI Investment Corp. [WaMu_Aurelius_00007-Wamu_Aurelius_00012]
36. E	04/27/09	EC 10	Email from B. Rosen to B. Pfeiffer re term sheet response proposal [WGM_00000322-WGM_00000324]
37.	04/29/09	EC 12	Email from D. Gropper to B. Kosturos re Wamu plan confirmation [WMI-TPS 500110825.00001]
38.	11/30/09	EC 16	Email from J. Bolin to D. Gropper re JPM proposal [WaMu_Aurelius_12330-Wamu_Aurelius_12332]
39.	01/11/10	EC 124	Email from M. Toose to B. Rosen, K. Rodden, T. Sapeika re NDA call [WGM-TPS 00000937-39, WEIL 00000025-27]
40.	01/01/09	EC 131	Owl Creek Trade chart 1/1/2009 to 9/1/2010 [OWL 0000001-OWL 0000031]
41.	02/18/10	EC 274	Email from B. Rosen to B. Kosturos re WMI meeting [WGM 000208259-WGM 000208260]
42.	05/14/10	EC 284	Email from B. Scheler to J. Bloin re JPM deal [AML0000009]
43.	01/10/10	EC 296	Email from C. Smith to B. Kosturos enclosing draft Settlement Agreement [WMI-TPS 500110988.00001-WMI-TPS 500110989.00001-00106]

Tab	Date	Docket No. <sup>5</sup>	Record Items
44.	03/10/10	EC 299	Disclosure Statement for the Joint Plan of Affiliated Debtors pursuant to Chapter 11 of The United States Bankruptcy Code
45.	05/16/10	EC 300	Disclosure Statement for the First Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code

## II. Additional Statement of Issues on Appeal

1. Whether the petition date is the proper date on which the federal judgment rate is determined for purposes of awarding interest under Section 726(a)(5) of the Bankruptcy Code.
2. Whether the Bankruptcy Court erred in holding that the Modified Plan was proposed in good faith.
3. Whether the Bankruptcy Court abused its discretion in approving the \$335 million settlement with the WMB Bondholders.

Dated: November 14, 2011  
Wilmington, Delaware

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*Delaware Counsel to the Official Committee of Equity Security Holders of Washington Mutual, Inc., et al., and with respect to the Settlement Note Holders, only as to Centerbridge Partners, L.P., Appaloosa Management L.P., and Owl Creek Asset Management, L.P.*

-and-

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