

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

In re:)	Chapter 11
)	
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹)	Case No. 08-12229 (MFW)
)	
Debtors.)	(Jointly Administered)
)	Related Docket Nos. 8784

**APPELLEE THE OFFICIAL COMMITTEE OF EQUITY SECURITY
HOLDERS' COUNTER-DESIGNATION OF THE RECORD
AND ADDITIONAL STATEMENT OF ISSUES ON APPEAL²**

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 on appeal filed by Appaloosa Management, L.P., Centerbridge Partners, L.P. and Owl Creek Asset Management, L.P. (collectively, "AOC") [Docket No. 8784] 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, 2011.³

¹ 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.

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

³ 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 Appeal⁴

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

Tab	Date	Docket No.⁵	Record Items
1.	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
2.	02/24/11	6789	Debtor-in-Possession Monthly Operating Report for Filing Period 01/01/11 to 01/31/11
3.	03/16/11	6963	Debtors' Omnibus Response to Objections to 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
4.	03/16/11	6965	Notice of Filing of Revised Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code
5.	05/07/11	7430	Notice of Filing of Updated Liquidation Analyses
6.	07/01/11	8073	Objection of the Official Committee of Equity Security Holders to Confirmation of the Modified Sixth Amended Plan of Reorganization (Filed under seal)
7.	07/07/11	8100	Second Supplemental Objection of the Consortium of Trust Preferred Security Holders to Confirmation of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code

⁴ The Equity Committee does not repeat the items designated by AOC, but rather incorporates herein by reference AOC's appellate designations.

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

Tab	Date	Docket No.⁵	Record Items
8.	07/08/11	8105	Declaration of Jonathan Goulding in Support of Entry of an Order Confirming the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code
9.	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
10.	07/08/11	8108	Declaration of David M. Sharp 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 with Respect to Securities Voting Classes
11.	07/08/11	8109	Notice of Filing Confirmation Hearing Exhibits of the Official Committee of Equity Security Holders
12.	07/08/11	8111	Application to Employ/Retain Klee, Tuchin, Bogdanoff & Stern LLP as Special Litigation Counsel to Washington Mutual, Inc.
13.	07/08/11	8113	Corrected 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
14.	07/08/11	8114	Notice of Designation of Debtors' Witness List in Support of Confirmation
15.	07/08/11	8115	Debtors' Pre-Hearing Submissions in Connection with Confirmation
16.	07/08/11	8120	Notice of Filing Documents Related to Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code
17.	07/11/11	8140	Memorandum of Law of the Official Committee of Unsecured Creditors of Washington Mutual, Inc., et al., in Response to Certain Objections to Confirmation of the Debtors' Modified Sixth Amended Plan of Reorganization
18.	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
19.	07/12/11	8180	Equity Committee's Objections to Pre-Hearing Submissions and Updated Exhibit List in Connection with Confirmation
20.	07/12/11	8186	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)
21.	07/12/11	8188	Debtors' Supplemental Response to the Objection of the Official Committee of Equity Security Holders to Confirmation of the Modified Sixth Amended Plan of Reorganization (Unredacted)

Tab	Date	Docket No.⁵	Record Items
22.	07/13/11	8202	Notice of Filing Second Updated Confirmation Hearing Exhibit List of the Official Committee of Equity Security Holders
23.	07/13/11	8203	Notice of Filing of Debtors' Confirmation Exhibit List
24.	07/14/11	8222	Notice of Filing Third Updated Confirmation Hearing Exhibit List of the Official Committee of Equity Security Holders
25.	07/19/11	8269	Notice of Filing Fourth Updated Confirmation Hearing Exhibit List of the Official Committee of Equity Security Holders
26.	07/25/11	8304	Notice of Filing Final Confirmation Hearing Exhibit List of the Official Committee of Equity Security Holders
27.	08/10/11	8439	Debtors' 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
28.	08/15/11	8492	[Blackline] [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
29.	10/10/11	8771	Wells Fargo Bank, National Association's Notice of Appeal
30.	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
31.	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
32.	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
33.	10/11/11	8785	Debtors' Notice of Appeal
34.	10/11/11	8788	Appellant Aurelius Capital Management, LP's Designation of Items for Inclusion in Record on Appeal
35.	10/11/11	8790	Official Committee of Equity Security Holders' Notice of Cross-Appeal
36.	10/11/11	8791	Official Committee of Equity Security Holders' Motion for Leave to Cross-Appeal
37.	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
38.	10/18/11	8830	Appellant Official Committee of Unsecured Creditors' Designation of Items for Inclusion in Record on Appeal and Statement of Issues

Tab	Date	Docket No.⁵	Record Items
39.	10/24/11	8861	Appellant Wells Fargo Bank, N.A.'s Designation of Items for Inclusion in Record on Appeal
40.	10/24/11	8863	Appellant Wells Fargo Bank, N.A.'s Designation of Items for Inclusion in Record on Appeal (Additional Items)
41.	10/24/11	8865	Appellee Law Debenture Trust Company of New York Designation of Additional Items for Inclusion in Record of Appeal
42.	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
43.	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
44.	10/25/11	8883	Appellee Debtors' Additional Statement of Issue and Counter-Designation with Respect to Appeal Filed by Appaloosa, Centerbridge and Owl Creek
45.	10/25/11	8884	Appellee Debtors' Counter-Designation with Respect to Appeal Filed by Aurelius Capital Management, LP
46.	10/25/11	8885	Appellant Debtors' Designation of Items for Inclusion in Record on Appeal and Statement of Issues
47.	10/25/11	8887	Official Committee of Unsecured Creditors' Objection to Official Committee of Equity Security Holders' Motion for Leave to Cross-Appeal
48.	11/01/11	8933	Appellee Debtors' Additional Statement of Issues and Counter-Designation of Record on Appeal
49.	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
50.	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
51.	11/07/11	8960	Appellee Debtors' Counter-Statement of Issues and Counter-Designation of Record on Appeal
52.		AU 9	Aurelius Compliance Documents [WaMu_Aurelius_12351-12373]
53.	05/16/01	DX 299	Amendment No. 1 to the Guarantee Agreement [WMI-MOD0000749-750]
54.	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]

Tab	Date	Docket No.⁵	Record Items
55.	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]
56. E	04/27/09	EC 10	Email from B. Rosen to B. Pfeiffer re term sheet response proposal [WGM 00000322-WGM 00000324]
57.	04/29/09	EC 12	Email from D. Gropper to B. Kosturos re Wamu plan confirmation [WMI-TPS 500110825.00001]
58.	11/30/09	EC 16	Email from J. Bolin to D. Gropper re JPM proposal [WaMu Aurelius 12330-WaMu Aurelius 12332]
59.	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]
60.	01/01/09	EC 131	Owl Creek Trade chart 1/1/2009 to 9/1/2010 [OWL 0000001-OWL 0000031]
61.	02/18/10	EC 274	Email from B. Rosen to B. Kosturos re WMI meeting [WGM 000208259-WGM 000208260]
62.	05/14/10	EC 284	Email from B. Scheler to J. Bloin re JPM deal [AML0000009]
63.	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]
64.	03/10/10	EC 299	Disclosure Statement for the Joint Plan of Affiliated Debtors pursuant to Chapter 11 of The United States Bankruptcy Code
65.	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
66.	09/26/08	EC 301	List of nominal weekly average 1-year constant maturity yield – the Federal Judgment Rate 9/26/2008 – 6/16/2011

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

ASHBY & GEDDES, P.A.

/s/ Gregory A. Taylor

William P. Bowden (DE Bar No. 2553)
Gregory A. Taylor (DE Bar No. 4008)
Stacy L. Newman (DE Bar No. 5044)
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899
Telephone: (302) 654-1888
Facsimile : (302) 654-2067

*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-

SUSMAN GODFREY, L.L.P.

Stephen D. Susman (NY Bar No. 3041712)
Seth D. Ard (NY Bar No. 4773982)
654 Madison Avenue, 5th Floor
New York, NY 10065

Parker C. Folse, III (WA Bar No. 24895)
Edgar Sargent (WA Bar No. 28283)
Justin A. Nelson (WA Bar No. 31864)
1201 Third Ave., Suite 3800
Seattle, WA 98101
Telephone: (206) 516-3880
Facsimile: (206) 516-3883

*Co-Counsel to the Official Committee of Equity
Security Holders of Washington Mutual, Inc. et al.*

-and-

SULLIVAN HAZELTINE ALLINSON LLC

William D. Sullivan (DE Bar No. 2820)
901 N. Market Street, Suite 1300

Wilmington, DE 19801
Telephone: (302) 428-8191
Facsimile: (302) 428-8195

*Conflicts Co-Counsel for the Official Committee of
Equity Security Holders of Washington Mutual,
Inc., et al., as to Aurelius Capital Management,
L.P.*