

**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. 8885

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

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 Washington Mutual, Inc. and WMI Investment Corp. (collectively, the “Debtors”) [Docket No. 8885] 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.	01/11/10	2132	Debtors' Motion for an Order (I) Disbanding the Official Committee of Equity Holders Appointed by the United States Trustee or (B) Limiting the Fees and Expenses Which May be Incurred by Such Committee
2.	01/25/10	2223	Debtors' Reply in Further Support of Motion for an Order (I) Disbanding the Official Committee of Equity Holders Appointed by the United States Trustee or (B) Limiting the Fees and Expenses Which May be Incurred by Such Committee
3.	02/01/10	2277	Transcript regarding Hearing Held 01/28/10
4.	02/08/11	6696	Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code
5.	02/08/11	6697	Supplemental Disclosure Statement for the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code
6.	02/08/11	6705	Corrected Exhibit A to Supplemental Disclosure Statement for the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code
7.	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
8.	02/24/11	6789	Debtor-in-Possession Monthly Operating Report for Filing Period 01/01/11 to 01/31/11

⁴ The Equity Committee does not repeat the items designated by the Debtors, but rather incorporates herein by reference the Debtors' 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
9.	03/09/11	6902	Objection of the Official Committee of Equity Security Holders to Motion of Debtors for an Order (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
10.	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
11.	03/16/11	6964	Modification of Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code
12.	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
13.	03/16/11	6966	Revised Supplemental Disclosure Statement for the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code
14.	03/23/11	7017	Transcript regarding Hearing Held 03/21/11
15.	03/25/11	7038	Second Modification of Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code
16.	03/26/11	7040	Second Modification of Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code [Executed Version]
17.	03/30/11	7081	Order (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
18.	04/28/11	7217	Plan Supplement in Support of Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code
19.	05/04/11	7281	Transcript regarding Hearing Held 05/02/11

Tab	Date	Docket No.⁵	Record Items
20.	05/07/11	7430	Notice of Filing of Updated Liquidation Analyses
21.	05/26/11	7815	Transcript regarding Hearing Held 05/24/11
22.	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)
23.	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
24.	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
25.	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
26.	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
27.	07/08/11	8109	Notice of Filing Confirmation Hearing Exhibits of the Official Committee of Equity Security Holders
28.	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
29.	07/08/11	8114	Notice of Designation of Debtors' Witness List in Support of Confirmation
30.	07/08/11	8115	Debtors' Pre-Hearing Submissions in Connection with Confirmation
31.	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
32.	07/08/11	8121	Debtors' Memorandum of Law in Support of Confirmation of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code
33.	07/08/11	8122	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
34.	07/11/11	8131	Debtors' Supplemental Response to the Objection of the Official Committee of Equity Security Holders to Confirmation of the Modified Sixth Amended Plan of Reorganization (Filed under seal)

Tab	Date	Docket No.⁵	Record Items
35.	07/11/11	8134	Omnibus Response of Aurelius Capital Management, LP to Certain Objections to Confirmation of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code
36.	07/11/11	8155	Official Committee of Equity Security Holders' Joinder to 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
37.	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
38.	07/12/11	8180	Equity Committee's Objections to Pre-Hearing Submissions and Updated Exhibit List in Connection with Confirmation
39.	07/12/11	8185	Debtors' Memorandum of Law in Support of Confirmation of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (Unredacted)
40.	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)
41.	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)
42.	07/12/11	8192	Objection of the Official Committee of Equity Security Holders to Confirmation of the Modified Sixth Amended Plan of Reorganization
43.	07/12/11	8200	Notice of Filing Additional Plan Supplement Documents
44.	07/13/11	8202	Notice of Filing Second Updated Confirmation Hearing Exhibit List of the Official Committee of Equity Security Holders
45.	07/13/11	8203	Notice of Filing of Debtors' Confirmation Exhibit List
46.	07/14/11	8222	Notice of Filing Third Updated Confirmation Hearing Exhibit List of the Official Committee of Equity Security Holders
47.	07/19/11	8269	Notice of Filing Fourth Updated Confirmation Hearing Exhibit List of the Official Committee of Equity Security Holders
48.	07/25/11	8304	Notice of Filing Final Confirmation Hearing Exhibit List of the Official Committee of Equity Security Holders
49.	08/01/11	8359	Joint Submission of the Official Committee of Equity Security Holders and JPMorgan Chase Bank, N.A. Concerning the Equity Committee's Oral Motion to Admit Designations from the Deposition of Travis Epes

Tab	Date	Docket No.⁵	Record Items
50.	08/05/11	8389	Joinder of Appaloosa Management, L.P., Centerbridge Partners, L.P. and Owl Creek Asset Management, L.P. to the Objection by JPMorgan Chase Bank, N.A. to the Equity Committee's Oral Motion for the Admission of Designated Portions of the Travis Epes Deposition
51.	08/08/11	8401	Reply of the Official Committee of Equity Security Holders in Support of its Motion to Admit Designations from the Deposition of Travis Epes
52.	08/10/11	8440	Post-Hearing Brief of the Official Committee of Equity Holders in Opposition to Confirmation of the Debtors Modified Sixth Amended Plan of Reorganization (Filed under seal)
53.	08/15/11	8491	[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
54.	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
55.	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
56.	10/10/11	8771	Wells Fargo Bank, National Association's Notice of Appeal
57.	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
58.	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
59.	10/11/11	8788	Appellant Aurelius Capital Management, LP's Designation of Items for Inclusion in Record on Appeal
60.	10/11/11	8790	Official Committee of Equity Security Holders' Notice of Cross-Appeal
61.	10/11/11	8791	Official Committee of Equity Security Holders' Motion for Leave to Cross-Appeal
62.	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
63.	10/18/11	8830	Appellant Official Committee of Unsecured Creditors' Designation of Items for Inclusion in Record on Appeal and Statement of Issues
64.	10/24/11	8861	Appellant Wells Fargo Bank, N.A.'s Designation of Items for Inclusion in Record on Appeal

Tab	Date	Docket No.⁵	Record Items
65.	10/24/11	8863	Appellant Wells Fargo Bank, N.A.'s Designation of Items for Inclusion in Record on Appeal (Additional Items)
66.	10/24/11	8865	Appellee Law Debenture Trust Company of New York Designation of Additional Items for Inclusion in Record of Appeal
67.	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
68.	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
69.	10/25/11	8883	Appellee Debtors' Additional Statement of Issue and Counter-Designation with Respect to Appeal Filed by Appaloosa, Centerbridge and Owl Creek
70.	10/25/11	8884	Appellee Debtors' Counter-Designation with Respect to Appeal Filed by Aurelius Capital Management, LP
71.	10/25/11	8885	Appellant Debtors' Designation of Items for Inclusion in Record on Appeal and Statement of Issues
72.	10/25/11	8887	Official Committee of Unsecured Creditors' Objection to Official Committee of Equity Security Holders' Motion for Leave to Cross-Appeal
73.	11/01/11	8933	Appellee Debtors' Additional Statement of Issues and Counter-Designation of Record on Appeal
74.	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
75.	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
76.	11/07/11	8960	Appellee Debtors' Counter-Statement of Issues and Counter-Designation of Record on Appeal
77.		AU 9	Aurelius Compliance Documents [WaMu Aurelius 12351-12373]
78.	05/16/01	DX 299	Amendment No. 1 to the Guarantee Agreement [WMI-MOD0000749-750]
79.	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
80.	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]
81.	01/29/09	EC 7	Email from G. Balasingam to B. Rosen re term sheet sent to Appaloosa/Centerbridge [WGM 00000001-WGM 00000010]
82.	03/19/09	EC 8	Email from B. Rosen to B. Pfeiffer re JPMC response to draft proposal [WGM 00033669-WGM 00033670]
83.	03/18/09	EC 9	WMI/JPMC Settlement Term Sheet draft [WGM 00033671-WGM 000336574]
84. E	04/27/09	EC 10	Email from B. Rosen to B. Pfeiffer re term sheet response proposal [WGM 00000322-WGM 00000324]
85.	04/29/09	EC 12	Email from D. Gropper to B. Kosturos re Wamu plan confirmation [WMI-TPS 500110825.00001]
86.	08/17/09	EC 14	JPMC Response to Settlement Proposal draft [AMLP 0006395-AMLP 0006937]
87.	11/30/09	EC 16	Email from J. Bolin to D. Gropper re JPM proposal [WaMu Aurelius 12330-WaMu Aurelius 12332]
88.		EC 19	Appaloosa Inside Trading Policies [AMLP 0014984-AMPL 0014987]
89.	03/09/09	EC 26	Email from B. Pfeiffer to Appaloosa re WMI Term sheet [AMPL 0000410]
90.	03/09/09	EC 26A	WMI Term Sheet attached to email from B. Pfeiffer to Appaloosa re WMI Term Sheet [AMPL 0000411-AMLP 0000431]
91.	03/11/09	EC 28	WMI Termsheet SGM draft [AMPL 0014021-AMPL 0014045]
92.	03/19/09	EC 29	Email from B. Pfeiffer to Appaloosa, Centerbridge re JPMC Response to draft proposal [AMPL 0000404-AMPL 0000405]
93.	02/09/10	EC 41	Email from J. Buono to B. Rosen, B. Kosturos re WMI term sheet [WMI-TPS 500110994.00001-10]
94.	03/23/10	EC 42	Email from B. Scheler to Fried Frank re Waterfall comparison [AMLP 0005101-AMLP 0005102]
95.	06/30/10	EC 43	Chart re High Level Recovery – Proposed Waterfall Distribution [AMLP 0005103-AMLP 0005104]
96.	12/01/07	EC 103	Centerbridge Compliance Manual Relating to its Investment Activities effective as of December 1, 2007 [LW_WAMU_019000-LW_WAMU_019046]

Tab	Date	Docket No.⁵	Record Items
97.	01/22/09	EC 107	Email from B. Pfeiffer to V. Melwani re WMI plan term sheet [LW_WAMU 018890-LW_WAMU 018900]
98.	08/18/09	EC 115	Email from D. McCree to J. Aron re JPMC response to settlement proposal [LW_WAMU 001372-LW_WAMU 001375]
99.	12/17/09	EC 122	Email from J. Hart to S. Fedorenko, V. Melwani, B. Bolin re call [WMI-TPS 500103533.0001]
100.	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]
101.	01/01/09	EC 131	Owl Creek Trade chart 1/1/2009 to 9/1/2010 [OWL 0000001-OWL 0000031]
102.	03/19/09	EC 144	Email from H. Feldstein to M. Walsh re JPMC response to draft proposal [OWL 0011004-OWL 0011005]
103.	04/07/09	EC 216	Email from B. Pfeiffer to B. Rosen, B. Kosturos re final holdings of Centerbridge and Appaloosa [WMI-TPS 0110652.0001-WMI-TPS 0110653.0002]
104.	02/18/10	EC 274	Email from B. Rosen to B. Kosturos re WMI meeting [WGM 000208259-WGM 000208260]
105.	02/28/10	EC 277	Email from B. Scheler to B. Rosen, M. Roose, B. Kosturos re WMI FDIC [WMI-TPS500100548.00001-.00003]
106.	03/01/10	EC 279	Email from J. Bolin to B. Kosturos re meeting at JPMC [WGM-TPS 500103176.00001]
107.	03/02/10	EC 280	Email from B. Rosen to B. Scheler re JPM and FDIC [WGM_00001547-WGM_00001549]
108.	03/02/10	EC 281	Email from B. Scheler to B. Rosen re JPM and FDIC [WGM_00023285-WGM_00023287]
109.	05/14/10	EC 284	Email from B. Scheler to J. Bloin re JPM deal [AMLPO0000009]
110.	05/07/10	EC 289	Email from B. Scheler to B. Rosen, M. Roose re meeting [WMI-TPS 500100510.00001-00002]
111.	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]
112.	02/28/10	EC 297	Email from B. Rosen to C. Smith enclosing draft Settlement Agreement [WMI-TPS 500110939.00001-WMI-TPS 50011940.00001-00133]
113.	03/10/10	EC 299	Disclosure Statement for the Joint Plan of Affiliated Debtors pursuant to Chapter 11 of The United States Bankruptcy Code

Tab	Date	Docket No.⁵	Record Items
114.	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
115.	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
116.	01/12/10	EC 304	Email from B. Rosen to C. Smith re settlement communication
117.	12/11/09	EC 306	Email from B. Kosturos to D. McCree [JPMCD 000000210.00001]
118.	05/16/10	EC 308	Email from B. Scheler to B. Kostrosus [WGM 00025202-25205]
119.	05/14/10	EC 309	Email from B. Rosen to S. Nagle [WGM 00000708-709]

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.

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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
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-and-

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L.P.*