

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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 :  
*In re* : Chapter 11  
 :  
 WASHINGTON MUTUAL, INC., et al.,<sup>1</sup> : Case No. 08-12229 (MFW)  
 :  
 Debtors. : (Jointly Administered)  
 :  
 : Re: Docket No. 8780  
 :  
 -----X

**CERTIFICATION OF COUNSEL REGARDING  
SUBMISSION OF ORDER AMENDING ORDER APPOINTING MEDIATOR**

The undersigned hereby certifies as follows:

1. On October 11, 2011, the Court entered the *Order Appointing Mediator*, dated October 11, 2011 (the "Mediation Order")<sup>2</sup> [D.I. 8780]. Thereafter, the Mediator conducted in-person and telephonic sessions among the Debtors, the Creditors' Committee, the Equity Committee, Aurelius Capital Management, LP, Appaloosa Management L.P., Centerbridge Partners, L.P., Owl Creek Asset Management, L.P. and other Mediation Parties, which sessions culminated in the filing of the *Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code*, dated December 12, 2011 [D.I. 9178] (the "Seventh Amended Plan").

2. The Debtors and the Class Representatives of Dime Litigation Tracking Warrant Holders have agreed that it would be in the best interests of such parties to obtain the assistance of the Mediator to conduct non-binding mediation with respect to the resolution of the

<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: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.

<sup>2</sup> Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in Mediation Order.



causes of action asserted in the litigation styled, *Nantahala Capital Partners, LP, et al. v. Washington Mutual Inc., et al.*, Adv. Proc. No. 10-50911, currently pending before this Court, and alleged impediments to confirmation of the Seventh Amended Plan.

3. The Mediator has agreed to mediate this dispute under the terms of the Mediation Order.

4. The Debtors and the Class Representatives of Dime Litigation Tracking Warrant Holders have agreed to the language in the order attached hereto as Exhibit A amending the Mediation Order to enlarge the scope of the Mediation and include the Class Representatives of Dime Litigation Tracking Warrant Holders as one of the Mediation Parties.

WHEREFORE the Debtors respectfully request that the Court enter the proposed order annexed hereto as Exhibit A.

Dated: December 15, 2011  
Wilmington, Delaware



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and Debtors in Possession*

## Exhibit A

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

-----X  
: **Chapter 11**  
: **Case No. 08-12229 (MFW)**  
: **(Jointly Administered)**  
: **Re: Docket Nos. 8780 & \_\_\_\_\_**  
-----X

*In re*  
**WASHINGTON MUTUAL, INC., et al.,<sup>1</sup>**  
**Debtors.**

**ORDER AMENDING ORDER APPOINTING MEDIATOR**

The Court having entered the *Order Appointing Mediator*, dated October 11, 2011 (the "Mediation Order")<sup>2</sup> [D.I. 8780]; and the Court now having found that amending the Mediation Order to allow the participation of the Class Representatives of Dime Litigation Tracking Warrant Holders<sup>3</sup> in the Mediation is in the best interests of the Debtors, their estates, creditors, and stakeholders; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED as follows:

1. Effective upon entry of this Order, (i) the Mediation Parties shall be enlarged to include the Class Representatives of Dime Litigation Tracking Warrant Holders, and (ii) the scope of the Mediation shall include the resolution of the causes of action asserted in the

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<sup>2</sup> Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in Mediation Order.

<sup>3</sup> "Class Representatives of Dime Litigation Tracking Warrant Holders" includes Nantahala Capital Partners, LP, Blackwell Capital Partners, LLC, Axicon Partners LLC, Brennus Fund Limited, Costa Brava Partnership III, LP, and Sonterra Capital Master Fund, Ltd. for themselves and as class representatives of the Dime Litigation Tracking Warrants.

litigation styled, *Nantahala Capital Partners, LP, et al. v. Washington Mutual Inc., et al.*, Adv. Proc. No. 10-50911, currently pending before this Court.

2. All other provisions of the Mediation Order shall remain in full force and effect and the Class Representatives of Dime Litigation Tracking Warrant Holders shall be subject to such provisions, including, without limitation, the confidentiality provisions set forth therein and the required attendance of principals.

3. Notwithstanding Local Bankruptcy Rule 9019-5, no later than 5:00 p.m. on December 19, 2011, WMI and the Class Representatives of Dime Litigation Tracking Warrant Holders shall submit to the Mediator a Mediation Statement no more than five (5) pages in length, setting forth the issues that such Mediation Parties believe must be addressed by the Mediator, including, without limitation, all issues which such Mediating Parties believe are an impediment to confirmation of a chapter 11 plan; provided, however, that the foregoing shall not in any way limit the Mediator from requesting such additional statements, memoranda, or documents, including, without limitation, any pleadings which have been filed with the Court and are part of the record in these chapter 11 cases, as would assist the Mediator in connection with the Mediation.

4. 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: December \_\_, 2011  
Wilmington, Delaware

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE