



the Settlement Noteholders will make a settlement payment. No portion of the Settlement Noteholders' claims will be disallowed. None of the Settlement Noteholders will reimburse the Debtors' estates for the significant costs incurred as a result of the substantial delay occasioned by the Settlement Noteholders' actions. Instead, the Settlement Noteholders actually stand to profit further through the Seventh Amended Plan, which provides that they will make available to the Reorganized Debtor a \$125 million credit facility at a 7 percent interest rate. And even then, the Reorganized Debtor may only access the credit facility, which is fully secured, subject to a number of conditions.

3. This deal, the Debtors maintain, is in "in the best interests of all parties in interest." (Disclosure Statement at 10.) But merely because the Debtors and other Plan proponents may think that the settlement embodied in the Seventh Amended Plan is fair does not make it so. To the contrary, it is well settled that this Court has the obligation to independently determine whether the Plan and its terms have been offered in good faith, are fair to other stakeholders, and are not the product of fraud or collusion.

4. The TPS Group has propounded discovery requests to each of the Respondents on these very issues. Nevertheless, the Respondents (with the partial exception of the Debtors and Weil Gotshal, who have indicated that they may agree to produce documents but only to the extent those documents already have been produced to other parties) have refused to produce even a single document in response to the TPS Group's requests. As set forth in greater detail below, Respondents' objections should be overruled, and the Court should compel each of them to produce the documents called for in the TPS Group's requests. In the alternative, the TPS Group respectfully submits that the Court should preclude the Respondents from offering evidence at the anticipated third confirmation on the topics as to which they refuse to produce discovery.

## BACKGROUND

### **A. The Court Denies Confirmation of the Sixth Amended Plan and Orders Discovery Regarding the Settlement Noteholders' Trading in the Debtors' Securities**

5. On January 7, 2011, the Court denied confirmation of the Sixth Amended Plan due to certain deficiencies. *See In re Wash. Mut., Inc.*, 442 B.R. 314, 344-45, 365 (Bankr. D. Del. 2011). Among other things, the Court noted that

[O]ne of the individual creditors who objected to the Plan, Mr. Thoma, sought to introduce evidence that the Settlement Noteholders used their position in the negotiations to gain non-public information about the Debtors which permitted them to trade in the Debtors' debt. While the evidence was not admitted because it was hearsay, the Court is reluctant to approve any releases of the Settlement Noteholders in light of those allegations.

*Id.* at 349.

6. In the wake of the Order denying confirmation of the Sixth Amended Plan, the Official Committee of Equity Security Holders ("Equity Committee") sought discovery from the Settlement Noteholders with respect to Mr. Thoma's allegations. Notwithstanding the Court's ruling, the Settlement Noteholders opposed the Equity Committee's discovery requests. On January 18, 2011, the Equity Committee therefore moved for an order, pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1, to compel discovery from the Settlement Noteholders.

7. On February 8, 2011, the Court heard argument on the Equity Committee's motion. During the course of the hearing, the Court expressed "concern" regarding the issues Mr. Thoma raised with respect to the Settlement Noteholders' actions, and stated its desire to explore those issues before confirming the Plan: "He raised an issue that the Court has a concern about. And I think it should be explored. I don't think, on the basis of some of the facts, I should be asked to make a decision on that." (Equity Committee Motion to Compel Hr'g Tr.,

45:10-13, Feb. 8, 2011.) The Court stated that it would grant, in part, the Equity Committee's motion on the grounds that the authorized discovery (which itself was extremely limited, and excluded communications and documents concerning the Settlement Noteholders' trading decisions) is "relevant to the confirmation hearing that I will be holding. It relates both to the interest issue and the valuation issue." *Id.* at 81:12-18. The Court issued a conforming order on February 11, 2011.

8. The Settlement Noteholders subsequently produced documents to the Equity Committee, and the Equity Committee deposed representatives of each of the Settlement Noteholders between May 4 and June 24, 2011. On June 15, 2011, the TPS Group requested that the Settlement Noteholders produce all documents they had previously produced to the Equity Committee. The Settlement Noteholders refused. As a result, the TPS Group was forced to move to compel the production of these documents on June 20, 2011. [Docket No. 7930.] On June 29, 2011—after the depositions of each of the Settlement Noteholders had already taken place—the Court granted the TPS Group's motion. One day later, the Equity Committee deposed a representative of the Debtors. The TPS Group did not receive the Settlement Noteholders' document productions until the first week of July.

9. The Equity Committee and TPS Group each subsequently moved to compel the production of additional documents from the Settlement Noteholders, including communications between the Settlement Noteholders and their attorneys. The Court denied both motions to the extent the Equity Committee and TPS Group respectively sought communications by which the Settlement Noteholders' attorneys forwarded information provided by the Debtors. The Court did so based on the Settlement Noteholders' representations that all such communications already had been produced. (Confirmation Hr'g Tr., 49:14-18, July 13, 2011.) The Court reserved judgment, however, on the question of whether the Settlement Noteholders had put the



advice of their counsel at issue, stating that it wanted first to hear the testimony of the Settlement Noteholders' representatives. (*Id.* at 49:12-14.)

**B. The Court Denies Confirmation of the Modified Sixth Amended Plan, and Finds Colorable Claims Against the Settlement Noteholders Based on a Limited Evidentiary Record**

10. On July 13-15 and 18-21, 2011, this Court held a hearing to consider confirmation of the Sixth Amended Joint Plan of Affiliated Debtors (the "Modified Sixth Amended Plan"). Nearly four days of those hearings were devoted to the allegations of inequitable conduct against the Settlement Noteholders in connection with their trading in the Debtors' securities, and the Equity Committee's related motion for standing to prosecute claims against the Settlement Noteholders on the Debtors' behalf (the "Standing Motion").

11. As became apparent at the hearing, however, the Court did not have the benefit of a full evidentiary record, particularly with respect to the Settlement Noteholders' trading decisions. The Settlement Noteholders did not produce, for example, any documents reflecting internal communications regarding their respective trading decisions. Nor did they produce any documents reflecting internal communications regarding the settlement negotiations leading to the Global Settlement Agreement. And while the Settlement Noteholders did produce some investment models—models they later admitted reflected information regarding settlement negotiations<sup>3</sup>—these documents were redacted so heavily as to be useless.

12. Nevertheless, after arguing to this Court that discovery regarding their trading decisions was not necessary, a number of the Settlement Noteholders' representatives attempted to testify at the hearing concerning the reasons for their trades. The Court did not permit that testimony given that the Settlement Noteholders had not produced documents concerning these

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<sup>3</sup> (*See* Confirmation Hr'g Tr., 94:16-97:10, July 19, 2011 (Gropper); Confirmation Hr'g Tr., 34:10-19, July 21, 2011 (Melwani).)

decisions. (*See, e.g.*, Confirmation Hr’g Tr., 86:9-91:12, July 18, 2011; *id.* at 94:11-96:10; Confirmation Hr’g Tr., 224:21-226:16, July 20, 2011.)

13. On September 13, 2011, the Court issued an opinion denying confirmation of the Modified Sixth Amended Plan. [Docket No. 8612 (the “September 13 Opinion”)]. The Court spent more than 30 pages of its opinion analyzing, in meticulous detail, the law governing insider trading and the evidence adduced against the Settlement Noteholders, and concluded that “the Equity Committee and TPS Group have stated a colorable claim that the Settlement Noteholders engaged in insider trading.” (September 13 Opinion at 137.) In several instances, the Court noted further discovery would shed light on specific open factual issues, including whether the Settlement Noteholders’ counsel provided them with material information regarding settlement negotiations, and “how the Settlement Noteholders internally treated the settlement discussions and if they considered them material to their trading decisions.” (*Id.* at 128, 137.) In several instances, the Court found that the Settlement Noteholders’ assertions were implausible, and called for additional discovery. For example, the Court observed that it had “substantial doubts” regarding the Settlement Noteholders’ assertion that their attorneys did not provide them with material information regarding settlement negotiations after December 2009. (September 13 Opinion at 137.) The Court noted that “[f]urther discovery on this issue,” was necessary. (*Id.*)

### **C. The Court Orders the Parties to Mediate**

14. While the Court held that colorable claims against the Settlement Noteholders existed, it directed “that the parties go to mediation on this issue, as well as the issues that remain an impediment to confirmation of any plan or reorganization in this case.” (*Id.* at 138-39.) On October 10, 2011, the Court appointed the Honorable Raymond Lyons as the mediator and ordered various parties, including the TPS Group, to participate in the mediation. [Docket No. 8780 (“Order Appointing Mediator”).] The mediation commenced on October 19, 2011.

[Docket No. 9179 (the “Disclosure Statement”) at 5.] Despite this Court’s order, the TPS Group was excluded from any substantive discussions during the mediation. According to the Debtors, the Plan is the “culmination” of that mediation. (*Id.* at 6.)

15. On December 12, 2011, the Debtors filed a proposed Disclosure Statement. The Debtors also requested that this Court enter an order scheduling the anticipated confirmation to commence during the week of February 13, 2012. [Docket No. 9181 at 7.<sup>4</sup>]

**D. The Respondents First Ignore the TPS Group’s Requests for Discovery, and Then Refuse to Produce Documents Relevant to Confirmation of the Seventh Amended Plan**

16. On December 22, 2011, counsel for the TPS Group informed this Court that the TPS Group would be propounding discovery requests to, among others, the Settlement Noteholders, in connection with the anticipated hearing to consider confirmation of the Seventh Amended Plan. Counsel to the TPS Group noted that it might require the assistance of the Court in this process if the Settlement Noteholders, among others, resisted discovery as they had before. Unfortunately, counsel’s warning has proven prophetic.

17. On December 23, 2011, the TPS Group served document discovery requests on each of the Settlement Noteholders. The TPS Group’s requests to the Settlement Noteholders, together with the Settlement Noteholders objections, are attached hereto as Exhibit A. The requests to each of the Settlement Noteholders provided for a 30-day time to respond, as required under Rule 34 of the Federal Rules of Civil Procedure, made applicable to these proceedings by Bankruptcy Rule 7034. Due to the Debtors’ request that the confirmation hearing commence during the week of February 13, 2012, however, the TPS Group asked each of the Settlement Noteholders to meet and confer to discuss an expedited production schedule. (*See* Exhibit B.) None responded.

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<sup>4</sup> On January 10, 2012, the Debtors filed a modified disclosure statement and Seventh Amended Plan. [Docket Nos. 9178 & 9179.]

18. On December 27, 2011, the TPS Group propounded discovery requests on the Debtors. A copy of these requests, together with the Debtors' objections, are attached hereto as Exhibit C. That same day, the TPS Group emailed representatives of Weil Gotshal and Fried Frank, respectively, to ask if each would accept service of non-party subpoenas duces tecum via email. (*See* Exhibits D and E.) Neither responded. On December 28, the TPS Group accordingly caused the subpoenas to be served by hand on Weil Gotshal and Fried Frank. Copies of the TPS Group's documents requests, together with Fried Frank's and Weil Gotshal's objections, are attached hereto as Exhibits F and G. The TPS Group also asked the Debtors, Weil Gotshal, and Fried Frank to meet and confer to discuss expedited discovery. (Exhibits D, E and H.) As with the Settlement Noteholders, none responded.

19. On January 5, 2012, the TPS Group sent letters to each of the Respondents asking them to produce documents by no later than January 13, 2012, in view of the Debtors' request for an expedited confirmation hearing to commence on February 13, 2012. (*See* Exhibit I.) The Settlement Noteholders thereafter served responses and objections to the TPS Group's discovery requests on January 6, 2012. (*See* Exhibit A.) The Settlement Noteholders refused to produce a single document, brazenly stating that they "did not agree to the filing of the Seventh Amended Plan must so they could be the subject of a second round of discovery and essentially a second trial in Bankruptcy Court." (*Id.* at 2 (Gen'l Obj. No. 5).)

20. On January 9, 2012, counsel for the TPS Group and counsel for the Settlement Noteholders met and conferred concerning the Settlement Noteholders' objections. The Settlement Noteholders still refused to produce a single document in response to the TPS Group's requests.

21. Weil Gotshal (on behalf of itself and the Debtors) and Fried Frank did not respond to the TPS Group's objections until January 9, 2012. When they did respond, each asserted

blanket objections and refused to produce any documents. (*See* Exhibits C, F and G.) During a meet and confer on January 10, 2012, counsel for the Debtors and Weil Gotshal indicated that, subject to the approval of the Debtors, they would agree to produce certain documents the Debtors had previously produced to other parties, but refused to produce any additional documents. Counsel for the TPS Group also met and conferred with counsel for Fried Frank on January 10, 2012. Fried Frank took the position that the documents responsive to the TPS Group's requests were protected by the attorney-client privilege, which belonged to its clients, the Settlement Noteholders, and thus Fried Frank would defer to the objections of the Settlement Noteholders.

## **ARGUMENT**

### **I. The Federal Rules of Civil Procedure Permit Broad and Liberal Discovery**

22. The TPS Group is entitled to discovery “regarding any nonprivileged matter that is relevant to any party’s claim or defense . . . .” Fed. R. Civ. P. 26(b)(1). “It is well recognized that the federal rules allow broad and liberal discovery.” *Pacitti v. Macy’s*, 193 F.3d 766, 777-78 (3d Cir. 1999); *accord Pearson v. Miller*, 211 F.3d 57, 65 (3d Cir. 2000) (“[A]ll relevant material is discoverable unless an applicable evidentiary privilege is asserted.”); *In re ML-Lee Acquisition Fund II, L.P.*, 151 F.R.D. 37, 39 (D. Del. 1993) (“[D]iscovery should ordinarily be allowed under the concept of relevancy unless it is clear that the information sought can have no possible bearing upon the subject matter of the action.”) (internal quotation omitted). As set forth below, the TPS Group’s document requests fit well within the permissible scope of discovery.

**II. The TPS Group Seeks Information That Is Relevant and Necessary For the Court To Fairly Evaluate the Seventh Amended Plan**

**A. The Basis for the Settlement Noteholders' Trading Decisions, Their Knowledge of Settlement Negotiations Leading to the Global Settlement Agreement, and the Profits They Made in Connection With Those Trades, Are Highly Relevant to Plan Confirmation**

23. The TPS Group has propounded a number of requests for production to the Settlement Noteholders concerning their trading decisions with respect to the Debtors' securities; knowledge of the negotiations leading to the Global Settlement Agreement; and monthly profits as a result of trading in the Debtors' securities, as well as other information about their positions in the Debtors' securities. (*See* Exhibit A (Request Nos. 1-29).) The TPS Group also has propounded requests to the Settlement Noteholders' counsel, Fried Frank, on these issues. (*See* Exhibit F (Request Nos. 1-21, 24).) The Settlement Noteholders have refused to produce a single document responsive to any of these requests, and has instructed Fried Frank not to do so either. The Court should compel the Settlement Noteholders and Fried Frank to produce these documents, as they are directly relevant to this Court's assessment of the settlement and release of claims against the Settlement Noteholders that is contemplated in the Seventh Amended Plan.

24. Pursuant to Bankruptcy Code section 1129(a)(3), a plan cannot be confirmed unless it has been proposed "in good faith and not by any means prohibited by law." 11 U.S.C. § 1129(a)(3); *see In re PWS Holdings Corp.*, 228 F.3d 224, 242 (3d Cir. 2000). To determine if a plan meets this standard, the court must review the totality of the circumstances surrounding the plan and the process by which the plan was negotiated. *See, e.g., In re Coram Healthcare Corp.*, 271 B.R. 228, 234 (Bankr. D. Del. 2001) (Walrath, B.J.); *In re ACandS, Inc.*, 311 B.R. 36, 42-43 (D. Del. 2004) (denying confirmation). Where, as here, the proposed plan or reorganization includes a settlement of claims, a bankruptcy court must independently evaluate that settlement by examining (i) the probable success of the underlying suit on its merits, (ii) the complexity of

the case, (iii) any difficulties with collection, and (iv) the paramount interests of the creditors. *See In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996); *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 832 (Bankr. D. Del. 2008). In addition to these four factors, the court must also consider “all other factors relevant to a full and fair assessment of the wisdom of the proposed comprise.” *In re Nutritional Sourcing Corp.*, 398 B.R. at 833 (citation omitted).

25. The documents the Settlement Noteholders are attempting to withhold from production are critical to these inquiries. The Debtors and other proponents of the Seventh Amended Plan propose to settle all claims against the Settlement Noteholders pertaining to their trading in the Debtors’ securities—claims that this Court already has deemed “colorable”—for no consideration. (Disclosure Statement at 188-90; Seventh Amended Plan at 98-99 §§ 41.5 & 41.6.) The Court cannot assess the probability of success of these claims without evidence of the Settlement Noteholders’ internal trading decisions, including their investment models and internal communications. Indeed, this conclusion is compelled by the Court’s September 13 Opinion, where it stated that it was “unable to reach any conclusion” as to the basis for the Settlement Noteholders’ trades “because full discovery on the Settlement Noteholders’ internal trading decisions has not been permitted to date.” (September 13 Opinion at 127-28.)

26. Nor can the Court consider whether this settlement is in the best interests of other creditors—especially those, like the TPS Group, that were denied a place at the bargaining table—without information as to the merits, and potential value, of the claims to be released. *See In re Nutritional Sourcing Corp.*, 398 B.R. at 835-36 (denying settlement and plan where settlement adversely impacted creditors excluded from negotiations); *In re Fort Wayne Telstat, Inc.*, 2011 U.S. App. LEXIS 23371, at \*7 (7th Cir. 2011) (“Determining the reasonableness of a settlement requires comparing the amount of the settlement to the net expected gain of seeking a litigated judgment.”) Evidence of the Settlement Noteholders’ trading profits, current holdings

in the Debtors' securities and projected recoveries, among other things, are therefore highly relevant here. Yet the Settlement Noteholders refuse to produce them. (*See* Exhibit A (Obj. to Request. No. 17.)) It remains to be seen how the Court can be expected to conduct a “full and fair assessment of the wisdom of the proposed compromise,” contemplated in the Seventh Amended Plan without this information. *Id.* at 833 (citation omitted).<sup>5</sup>

27. The Settlement Noteholders do not—and cannot—seriously contend that the discovery the TPS Group seeks would not be relevant to plan confirmation. Rather, they object to the TPS Group's requests on the grounds that no further discovery is needed on these issues. (Exhibit A at 2 (Gen'l Obj. No. 4).) As noted above, however, this Court's September 13 Opinion demonstrates otherwise. In finding that that Equity Committee and TPS Group had stated “colorable claims” against the Settlement Noteholders, the Court specifically noted that it was “unable to reach any conclusion” as to the basis for the Settlement Noteholders' trades “because full discovery on the Settlement Noteholders' internal trading decisions has not been permitted to date.” (September 13 Opinion at 127-28.) The Court also found that “it appears that the [settlement] negotiations may have shifted towards the material end of the spectrum and that the Settlement Noteholders traded on that information which was not known to the public,” and stated that “[f]urther discovery would help shed light on how the Settlement Noteholders

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<sup>5</sup> Discovery regarding the Settlement Noteholders' trading decisions potentially is necessary for yet another reason. The Seventh Amended Plan requires, as a condition of confirmation, that this Court vacate the portions of its September 13 Opinion relating to the Court's findings that there exist “colorable” claims of inequitable conduct against the Settlement Noteholders. This “extraordinary remedy” is available only in “exceptional circumstances,” which do not include “the mere fact that the settlement agreement provides for vacatur.” *U.S. Bancorp Mortgage Co. v. Bonner Mall P'ship*, 513 U.S. 18, 29 (1994); *see also Sentinel Trust Co. v. Universal Bonding Ins. Co., Polymasc Pharms.*, 316 F.3d 213, 220 (3d Cir. 2003); *PLC v. Alza Corp.*, No. Civ.A. 01-228-JJF, 2004 WL 633256, at \*1 (D. Del. Mar. 26, 2004). To the contrary, “[j]udicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants and should stand unless a court concludes the public interest would be served by a vacatur.” *Id.* at 26 (quotation marks and citation omitted). The Debtors have not provided any conceivable basis to warrant vacatur of any part of the September 13 Opinion, and the TPS Group contends that no such basis exists. But if the Debtors and other Plan proponents intend to argue that vacatur is appropriate because the Court's conclusions have no basis in fact, then the TPS Group is entitled to discovery regarding the Settlement Noteholders' trading decisions in order to test the veracity of these claims.



internally treated the settlement discussions and if they considered them material in their trading decisions.” (*Id.* at 128.) If the Court could not discern the basis of the Settlement Noteholders’ trading decisions from the evidence available at the second confirmation hearing, then, *a fortiori*, further discovery is needed before this Court can determine the probability of success of the claims that were based on those trades, let alone the wisdom of releasing those claims for no consideration. Indeed, further discovery regarding the claims against the Settlement Noteholders is even more critical now, when the Court must assess the probability of success of those claims on their merits, than it was in connection with the second confirmation, when the Court needed to determine only whether such claims were colorable.

28. The Settlement Noteholders also contend that additional discovery would “be fundamentally at odds with the premise of the settlement – namely, to bring a hard-fought litigation to a close.” (Exhibit A at 3 (Gen’l Obj. No. 5).) In other words, according to the Settlement Noteholders, discovery is never appropriate in connection with assessing a settlement. Such a proposition finds no support in either law or logic. As the Supreme Court has stated, a court must “apprise [itself] of all facts necessary for an intelligent and objective opinion of the probabilities of the ultimate success should the claim be litigated.” *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968); *see also In re Nutraquest, Inc.*, 434 F.3d 639, 643 (3d Cir. 2006) (“the unique nature of the bankruptcy process means that judges must carefully examine settlements before approving them”). Thus, courts routinely grant discovery in advance of considering settlements, even when the parties have previously taken discovery on the same issues. *See, e.g., In re Exide Techs.*, 303 B.R. 48, 69 (Bankr. D. Del. 2003) (rejecting settlement proposed as part of plan of reorganization and noting that the court had “approved a separate discovery schedule in connection with the Confirmation

Hearing” to consider the settlement). The discovery that the TPS Group seeks is therefore not “at odds” with the settlement embodied in the Seventh Amended Plan.

29. Nor are the requests to the Settlement Noteholders unduly burdensome, as the Settlement Noteholders contend. (Exhibit A at 3 (Gen'l Obj. No. 9).) To the contrary, the requests are limited both by date and subject matter. Indeed, many of the requests seek documents regarding issues specifically raised by the Settlement Noteholders at the last confirmation hearing. For example, Aurelius's Dan Gropper attempted to explain his firm's trading in the Debtors' securities by reference to certain documents concerning investor redemptions at Aurelius, none of which had been produced. (Confirmation Hr'g Tr., 18:23-19:4, July 19, 2011.) The TPS Group has called for the production of those documents here, but Aurelius refuses to produce them due to, among other things, the purported burden it would impose on Aurelius to “create[] a compilation” of these documents. (Exhibit A at 14 (Obj. to Request No. 20).) Taking Mr. Gropper's testimony at face value, this objection makes no sense insofar as Mr. Gropper already has gathered and reviewed these documents. Aurelius thus should be able to produce them with minimal effort. This is but one example. In reality, the Settlement Noteholders should be able to collect and produce the documents called for by the TPS Group's requests with minimal effort. Indeed, they likely gathered and reviewed these documents long ago.

30. The Settlement Noteholders' expectations in agreeing to the Seventh Amended Plan should play no role in the Court's determination. The Settlement Noteholders state that they “did not agree to the filing of the Seventh Amended Plan just so that they could be the subject of a second round of discovery and effectively a second trial in the Bankruptcy Court.” (*Id.* at 3 (Gen'l Obj. No. 5).) Respectfully, while the Settlement Noteholders exercised a great deal of control over the negotiations leading to the Global Settlement Agreement, it is not for

them to dictate to this Court the proper scope of discovery. Indeed, this conclusion is particularly true here, where the Seventh Amended Plan contemplates a full release of claims against the Settlement Noteholders relating to their trading in the Debtors' securities for no consideration whatsoever.

31. Finally, the Court should ignore the Settlement Noteholders' *ad hominem* attacks on the TPS Group. The Settlement Noteholders state that the only "goal" of the TPS Group's discovery requests was to delay the confirmation proceedings." (*Id.* at 3 (Gen'l Obj. No. 6).) Such rank speculation is irresponsible and unconstructive; it is also demonstrably false. The TPS Group has made every effort to expedite discovery in an attempt to fit within the Debtors' proposed timeline for the confirmation hearing, including by serving its discovery requests even before a disclosure statement has been approved and votes on the Seventh Amended Plan have been solicited. Yet the Settlement Noteholders incredibly object to these efforts as well, arguing that the TPS's Group's discovery requests are premature because there is not yet a contested proceeding. (*Id.* at 1 n.4.) Apparently, the Settlement Noteholders would object to the timing of the TPS Group's discovery requests no matter when they were served.

32. If discovery causes delay of the confirmation hearing on the Seventh Amended Plan, then it will be solely at the hands of the Settlement Noteholders (and other Respondents) who first ignored, and then refused to produce a single document in response to any of the TPS Group's requests, thus requiring this Motion to Compel. The Settlement Noteholders actions here are consistent with parties that are simply trying to "run out the clock," and then argue to the Court that there is insufficient time in which to conduct additional discovery. The Court should not countenance any such argument, especially from the beneficiaries of the settlement this Court is being asked to approve.

**B. Documents Concerning Settlement Negotiations, Including Information the Settlement Noteholders Received From, and Communications the Settlement Noteholders Had With, Their Counsel Regarding Those Negotiations Are Highly Relevant to Plan Confirmation**

33. The Settlement Noteholders and Fried Frank have refused to produce any communications between them concerning the actual, proposed, or potential settlement of any claim or issue in the Chapter 11 Cases. (Exhibit A (Obj. to Request Nos. 11 & 12); Exhibit F (Obj. to Request Nos. 2, 9).) Each also has refused to produce phone records reflecting their telephone communications from April 1, 2009, through September 30, 2009, and December 1, 2009, through March 12, 2010. (Exhibit A (Obj. to Request No. 16); Exhibit F (Obj. to Request No. 11.) These communications and records will be essential to evaluating the settlement embodied in the Seventh Amended Plan, and should be produced. Indeed, this Court already has held that additional discovery regarding the Settlement Noteholders' communications with their counsel at Fried Frank is both relevant and necessary. As the Court will recall, during the second confirmation hearing, the Settlement Noteholders maintained that their attorneys did not provide them with material information regarding settlement negotiations after December 2009. (September 13 Opinion at 137.) The Court expressed "substantial doubts about these assertions," and noted that "[f]urther discovery on this issue would clarify this point." (*Id.*) The TPS Group respectfully submits that the time for that further discovery is now, while the Court is being asked to approve a settlement releasing the Settlement Noteholders from all trading-related claims.

34. The Settlement Noteholders object to any discovery concerning its communications with Fried Frank on the grounds that those communications are protected by the attorney-client privilege.<sup>6</sup> As a threshold matter, the attorney-client privilege would not apply to

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<sup>6</sup> As noted above, Fried Frank has refused to produce these communications per its clients' instructions.

communications merely forwarding information from third parties. Nor would it shield from production the parties' phone records, which reflect only the fact, but not the contents, of communications. *See, e.g., Global HTM Promotional Group, Inc. v. Angel Music Group LLC*, No. 06-20441, 2007 WL 221423, at \*2 (S.D. Fla. Jan. 26, 2007). The Settlement Noteholders and Fried Frank cannot withhold these documents from production on the basis of privilege.

35. But even assuming that any privilege ever did apply to any of the materials sought by the TPS Group's requests, the Settlement Noteholders have now waived it. It is well settled that a party cannot use the attorney-client privilege as both a sword and a shield. Thus, where a party discloses a privileged communication "to present a one-sided story to the court, the privilege will be waived as to all communications on the same subject." *Westinghouse Elec. Corp. v. Republic of Philippines*, 951 F.2d 1414, 1426 n.12 (3d Cir. 1991).

36. This is precisely what the Settlement Noteholders have done here. Each of the Settlement Noteholders has argued to the Court that it informed its counsel not to share with it non-public information regarding the negotiations, or testified as to communications from their counsel on this subject:

- Aurelius: "Fried Frank was under 'strict instructions' not to convey any material nonpublic information to Aurelius during this time, as had been the practice throughout the cases when Aurelius was not restricted." [Docket No. 8433 at 42.]
- Owl Creek: "Owl Creek . . . made requests to its own counsel and Debtors' counsel to exclude material nonpublic information from any discussions at times when it was trading." [Docket No. 8429 at 3; *see also id.* at 47 ("Owl Creek's instructions to its counsel were that Owl Creek must consent in advance prior to receiving anything that might be considered material nonpublic information.")]
- Appaloosa: "Additionally, Appaloosa used its external counsel as a screen to ensure that it did not inadvertently receive information it was not intended to have." [Docket No. 8428 at 7.]
- Centerbridge: "Q. And under what circumstances did you obtain material nonpublic information from the debtors? A. There were two specific periods

where we signed confidentiality agreement with the debtors. Outside of those confidentiality agreements, the debtors talked to Fried Frank, who was our counsel. Fried Frank wouldn't provide that information to us unless the debtors said it was okay. *And they advised us in advance that the information they would provide us could be restrictive, and we accepted.*" (Confirmation Hr'g Tr., 228:13-21, July 20, 2011 (emphasis added); *see also id.* at 228:24-229:1 ("Q. Were there times when information was offered that you did not agree to take it? A. Yes.").)

37. The Settlement Noteholders' reliance on those communications, which were privileged until disclosed,<sup>7</sup> allowed the Settlement Noteholders to tell the Court a one-sided story, *i.e.*, that their attorneys never shared with them any confidential, non-public information outside of the two periods during which the Settlement Noteholders themselves were bound by confidentiality agreements with the Debtors. As the Settlement Noteholders have made this argument, they cannot now shield it from scrutiny by continuing to assert the attorney-client privilege as to their communications with counsel. Accordingly, all communications between Fried Frank and the Settlement Noteholders between March 1, 2009, and March 31, 2010, relating to settlement negotiations leading to the Global Settlement Agreement must be produced, as they will demonstrate what information Fried Frank provided to the Settlement Noteholders during the course of those negotiations, and whether Fried Frank did, in fact, refrain from sharing confidential information with its clients.

38. At a minimum, the Settlement Noteholders' and Fried Frank's blanket assertions of privilege are improper. As set forth in Fed. R. Civ. P. 26(b)(5), made applicable to these proceedings by Bankruptcy Rule 7026, a party that seeks to withhold information based on a privilege must "describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself

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<sup>7</sup> The attorney-client privilege applies equally to communications by the client to its attorney or vice versa. *See, e.g., Hurt v. Phila. Housing Auth.*, 1994 U.S. Dist. LEXIS 7844, at \*7 (E.D. Pa. 1994) (attorney-client privilege applies to communications from client to attorney).

privileged or protected, will enable other parties to assess the claim.” Fed. R. Civ. P. 26(b)(5).

To the extent that the Settlement Noteholders or Fried Frank assert a privilege or protection that they contend entitles them to withhold documents from production, they cannot merely rely on this assertion; they must produce a privilege log. *See, e.g., Wachtel v. Health Net, Inc.*, 239 F.R.D. 81, 106-07 (D.N.J.2006).

**C. Discovery From the Debtors and Their Counsel at Weil Gotshal Are Highly Relevant to Plan Confirmation**

39. The Debtors and Weil Gotshal have refused to produce documents concerning the disclosures the Debtors made pursuant to their confidentiality agreements with the Settlement Noteholders, including deliberations as to the Debtors’ disclosure obligations thereunder, and whether the Debtors’ disclosures complied with Regulation FD. (See Exhibit C (Obj. to Request Nos. 7, 8, 10 & 11); Exhibit G (Obj. to Request Nos. 7, 8, 10 & 11)).<sup>8</sup> The Debtors and Weil Gotshal refuse to produce these documents on the grounds that they are protected by the attorney-client privilege. The Debtors’ and Weil Gotshal’s positions are without merit.

40. It is well settled that a party waives the attorney-client privilege by asserting reliance on counsel as a defense. *See, e.g., In re ML-Lee Acquisition Fund II, L.P.*, 859 F. Supp. 765, 768 (D. Del. 1994) (holding that defendants waived the attorney-client privilege by raising reliance on the advice of counsel as a defense to plaintiffs’ allegations and that fairness requires

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<sup>8</sup> The TPS Group also has propounded requests to the Debtors for production of the following categories of documents: (1) documents concerning the Debtors’ communications with the Settlement Noteholders concerning any actual, potential or proposed settlement (Exhibit C (Request Nos. 1, 2, 4-6 & 12)) and (2) documents concerning the Debtors’ communications with the Settlement Noteholders’ actual or potential trading in the Debtors’ securities or the early termination of any confidentiality agreement (*id.* (Request Nos. 3, 9)). In addition, the Debtors have made requests to Weil Gotshal for the same categories of documents. (Exhibit G.) During a meet and confer on January 10, 2012, counsel for the Debtors and Weil Gotshal has represented that all documents called for by the above requests are included in the Debtors’ document depository or in prior productions by Debtors to the TPS Consortium and the Equity Committee, subject to the Debtors’ privilege objections and the caveat that the Debtors used agreed-upon search terms to gather documents. The Debtors have agreed to make those documents available to the TPS Group. Based on that agreement, and the Debtors’ representations regarding the contents of the productions, the TPS Group does not seek to compel the production of documents responsive to the above-referenced requests at this time, but reserves the right to do so at a later date should the need arise.

defendants to produce those communications upon which it has relied to assert its good faith based on the advice of counsel); *RCA Corp. v. Data General Corp.*, 1986 WL 15683, at \* 1 (D. Del. July 2, 1986) (ordering defendant to produce all documents which directly or indirectly relate to opinions of counsel because defendant waived the privilege “by asserting reliance upon advice of counsel as an essential element of his defense”); *see also Glenmede Trust Co., v. B. Ray Thompson, Jr.*, 56 F.3d 476, 486 (3d Cir. 1995) (stating that “[t]he attorney-client privilege may be waived by a client who asserts reliance on the advice of counsel as an affirmative defense” because “the party opposing the defense of reliance on advice of counsel must be able to test what information had been conveyed by the client to counsel and vice-versa regarding that advice”).

41. Here, the Debtors repeatedly claim to have relied on outside counsel to determine what information should be disclosed at the conclusion of their confidentiality agreements with the Settlement Noteholders. Indeed, the Debtors’ post-hearing brief and closing argument alone are replete with invocations of advice of counsel on this topic, often with citation to the testimony Mr. Kosturos offered during his direct examination:

- “The determination by the Debtors as to what information needed to be disclosed was made carefully. The Debtors consulted counsel. *See Hr’g Tr. 7/21/2011 at 115:18-20 (Kosturos Direct)* (“The debtor and its advisors and attorneys determined that there was no additional material non-public information that needed to be disclosed”). After consultation with counsel, the Debtors concluded that the terms of the various term sheets did not need to be disclosed.” [Docket No. 8439 at 54-55.]
- “As with the earlier March Confidentiality Period, the Debtors acted carefully in deciding what information needed to be disclosed in the November MOR. The Debtors consulted counsel. *See id.* at 128:15-24 (Kosturos Direct) (“The debtor, in connection with its advisors and lawyers, determined that there was not any [additional] material non-public information that needed to be disclosed” at that time). Once again, after consultation with counsel, the Debtors concluded that the terms of the various term sheets between JPMC and the Debtors did not need to be disclosed. *Id.*” [Docket No. 8439 at 64-65.]



- “Under these circumstances, the Debtors (after consultation with their counsel) and each of the Settlement Note Holders independently made a good-faith determination that the term sheets were not material. Accordingly, there is no basis for a finding of inequitable conduct.” [Docket No. 8439 at 125.]
- “After careful consideration, including consultation with experienced securities counsel, the Debtors concluded that there “was no additional material non-public information that needed to be disclosed,” Hr’g Tr. 7/21/2011 at 115:18-20 (Kosturos Direct), including the terms of the offers that had been exchanged with JPMC.” [Docket No. 8439 at 131.]
- “After careful consideration, including consultation with experienced securities counsel, the Debtors concluded that the information disclosed in the November MOR was the only material non-public information that they shared with the Settlement Note Holders during this period.” Hr’g Tr. 7/21/2011 at 128:15- 24 (Kosturos Direct).” [Docket No. 8439 at 134.]
- “As we cite Mr. Kosturos' testimony, the debtor and its advisors and attorneys determined that there was no additional material, nonpublic info that needed to be disclosed. (Closing Arg. Hr’g Tr., 52:19-21, August 24, 2011.)

42. These repeated invocations of reliance on the advice of counsel clearly put the Debtors’ communications with counsel regarding their disclosure obligations “at issue” in this case. *See LML Patent Corp. v. Telecheck Servs., Inc. Elec. Clearing House, Inc.*, 2006 U.S. Dist. LEXIS 13498, at \* 2 (D. Del. March 28, 2006) (“Once a party has relied on the opinion of counsel, that party waives the privilege as to all documents in its possession, custody or control that have some relevance to the subject matter of the opinion.”); *RCA Corp.*, 1986 WL 15683, at \* 1 (requiring defendant to produce “all documents which directly or indirectly relate to opinions of counsel” on the contested issue). The Debtors have therefore waived their privilege, and they, together with Weil Gotshal, should be ordered to produce these communications. Indeed, these documents are particularly important here, because each of the Settlement Noteholders argues that they relied on the Debtors’ counsel to determine that they were free to trade in the Debtors’ securities after the close of the two confidentiality periods. In light of the Settlement Noteholders’ arguments, the TPS Group should be permitted examine what that advice actually was.

**D. The Basis of the Settlement With the Settlement Noteholders for No Consideration, Including the Negotiations That Led to the Seventh Amended Plan, Are Highly Relevant to Plan Confirmation**

43. None of the Respondents have agreed to produce documents concerning the basis of the proposed settlement by which the Settlement Noteholders will be released from all claims relating to their trading in the Debtors' securities. (Exhibit A (Obj. to Request No. 31); Exhibit F (Obj. to Request No. 23); Exhibit C (Obj. to Request No. 14); Exhibit G (Obj. to Request No. 14).) In addition to the factors set out in *Martin, supra* Section II.A, the Debtors and other Plan proponents bear the burden of demonstrating that the settlement with the Settlement Noteholders is "truly the product of 'arms-length' bargaining, and not of fraud or collusion." *In re Exide Techs.*, 303 B.R. 48, 67-68, 71 (Bankr. D. Del. 2003); *accord In re Adelpia Commc'ns*, 327 BR. 143, 165 (S.D.N.Y. 2005). They also must show that the settlement is "fair and equitable." *In re Nutritional Sourcing Corp.*, 398 B.R. at 832 (quoting *In re Exide Techs.*, 303 B.R. at 67.) To do so, they presumably will offer evidence concerning the basis for the settlement, including what steps the Debtors took to investigate the claims against the Settlement Noteholders (if any). And even if the Debtors choose not to offer such evidence, the basis for the settlement will be a central issue in this Court's assessment of whether the settlement is fair and equitable and the product of arms-length negotiations. As such, documents relating to these topics are relevant to plan confirmation, and should be produced.

44. The Respondents argue that documents concerning the basis for the settlement are protected by the Court's Order Appointing Mediator, by Federal Rule of Evidence 408, and by Rule 9019-5 of the local rules of the United States Bankruptcy Court for the District of Delaware. As a threshold matter, this objection would not prevent the production of documents prepared (or communications made) outside the context of the mediation, even if shared during the mediation. These documents should be produced, because no privilege, order or rule could

possibly apply to them. *See, e.g., Chester County Hosp. v. Independence Blue Cross*, 2003 U.S. Dist. LEXIS 25214, at \*23-24 (E.D. Pa. Nov. 7, 2003) (“To the extent . . . that the mediation submissions include documents that were prepared outside the scope of the mediation and were merely submitted as support for [the party’s] mediation position, we decline to find them privileged.”); Local Rule 9019-5(d)(i) (“Information otherwise discoverable or admissible in evidence does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in the mediation.”). It is clear that documents fitting this description exist here. Indeed, as the Debtors have conceded, the Seventh Amended Plan includes “modifications . . . made after the Mediation.” (Disclosure Statement at 6.) Those documents should be produced. *See Folb v. Motion Picture Indus. Pension & Health Plans*, 16 F. Supp. 2d 1164, 1180 (C.D. Cal. 1998) (“Subsequent negotiations between the parties . . . are not protected even if they include information initially disclosed in the mediation.”).<sup>9</sup>

45. In all events, however, the Respondents’ objections are beside the point. If the Debtors or other Respondents attempt to demonstrate, based on the mediation, that the settlement was fair and equitable and the Seventh Amended Plan has been offered in good faith, they will have waived any privilege or protection that may have attached to mediation discussions, and those documents must be produced. *See Westinghouse*, 951 F.2d at 1426 n.12.<sup>10</sup> The terms of the Order Appointing Mediator would not change this conclusion. Indeed, to the extent the Debtors or other Respondents attempt to introduce evidence regarding the mediation, they would

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<sup>9</sup> For the reasons stated *supra*, even if the Court does not order the Respondents to produce these documents in the first instance, the TPS Group respectfully submits that the Respondents must produce a privilege log of all document withheld so that the TPS Group, and the Court, can evaluate the veracity of the Respondents’ assertions.

<sup>10</sup> The fact that the settlement embodied in the Seventh Amended Plan was the result of a mediation does not satisfy Section 1129. In *Kakani v. Oracle Corp.*, 2007 WL 1793774 (N.D. Cal. 2007), for example, the court rejected a class action settlement reached through mediation. *Id.* at \*11. As the court observed, “a mediator is paid to help the immediate parties reach a deal. Mediators do not adjudicate the merits. They are masters in the art of what is negotiable. It matters little to the mediator whether the deal is collusive so long as a deal is reached. Such a mediator has no fiduciary duty to anyone, must less those not at the table.” *Id.*

have violated the Order Appointing Mediator (as they interpret its terms) themselves. Under such circumstances, they could hardly continue to rely on that order to shield themselves from discovery.<sup>11</sup>

46. Likewise, the Respondents refuse to produce any documents concerning information any of them sent or received during the mediation. (Exhibit A (Obj. to Request No. 30); Exhibit F (Obj. to Request No. 22); Exhibit C (Obj. to Request No. 13); Exhibit G (Obj. to Request No. 13).) In the interests of compromise, the TPS Group has proposed to limit this request to all documents concerning information exchanged relating to the mediation with the exception of (i) communications between any party to the mediation and Judge Lyons; (ii) communications concerning the mediation, which were made between or among the mediation parties at a mediation session convened by Judge Lyons; and (iii) communications documenting any offers or counter-offers exchanged or agreements reached during a mediation session convened by Judge Lyons. These are the same exceptions ordered by the court in *In re Tribune Co.*, No. 08-13141 (KJC), 2011 WL 386827, at \*8, 10 (Bankr. D. Del. Feb. 3, 2011).<sup>12</sup> Indeed, this precedent should be well known to the Respondents, particularly Aurelius, which filed the motion that gave rise to the *Tribune* court's decision, and argued that *more* expansive discovery regarding the mediation was required. *See id.* at 1 & n.3. Nevertheless, none of the Respondents

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<sup>11</sup> Nor would Federal Rule of Evidence 408 bar production of these documents, because that rule governs the admissibility of evidence, not the discoverability of documents. *See, e.g., In re Initial Public Offering Secs. Litig.*, No. 21 MC 92(SAS), 2004 WL 60290, at \*4-5 (S.D.N.Y. Jan. 12, 2004). Local Rule 9019-5(d)(iv) is also unavailing. Pursuant to Local Rule 1001-1(c), the application of any rule “may be modified by the Court in the interests of justice.” This exception certainly would apply if the Debtors or other proponents of the Seventh Amended Plan were to rely on the mediation itself to demonstrate the reasonableness of the settlement with the Settlement Noteholders. *See, e.g., In re Tribune Co.*, No. 08-13141 (KJC), 2011 WL 386827, at \*8, 10 (Bankr. D. Del. Feb. 3, 2011) (ordering plan proponents to produce discovery beyond which they already had agreed to produce, and noting that the “protections afforded by the Mediation Order, Fed.R.Evid. 408, and Local Rule 9019-5 will otherwise remain.”)

<sup>12</sup> The Respondents likely will argue that scope of disclosure in *Tribune* was the result of a consensual agreement among the parties. This would be an overstatement. While the plan proponents in *Tribune* did offer to produce certain mediation-related discovery, the court broadened the scope of permissible discovery beyond what the plan proponents agreed to produce notwithstanding the mediation order in that case. *See In re Tribune Co.*, 2011 WL 386827, at \*8.

agreed to this compromise, which the TPS Group believes is fair and reasonable, and consistent with the approach taken in *Tribune*. See also *Hays v. Equitex, Inc. (In re RDM Sports Group, Inc.)*, 277 B.R. 415, 431 (Bankr. N.D. Ga. 2002) (“The mediation privilege should operate to protect only those communications made to the mediator, between the parties during the mediation, or in preparation for the mediation.”).

47. The TPS Group therefore respectfully submits that the Court order all Respondents to produce (i) all documents concerning the basis for the settlement embodied in the Seventh Amended by which the Settlement Noteholders receive a full release of claims relating to their trading in the Debtors’ securities; and (ii) all documents concerning information exchanged during the mediation with the exception of (a) communications between any party to the mediation and Judge Lyons, (b) communications concerning the mediation, which were made between or among the mediation parties at a mediation session convened by Judge Lyons, and (c) communications documenting any offers or counter-offers exchanged or agreements reached during a mediation session convened by Judge Lyons.

**III. The Respondents Should Be Precluded From Presenting Evidence At the Anticipated Confirmation Hearing Concerning the Subject Matter of the TPS Group’s Discovery Requests**

48. The Court should preclude the Respondents from offering any evidence at trial concerning the topics of discovery as to which the Respondents have not agreed, or are not compelled, to respond. It would be patently unfair, and prejudicial, to prevent the TPS Group from obtaining discovery on certain topics while also permitting the Respondents to offer evidence on those same topics at the confirmation hearing. Indeed, the Court has already been down this road once before. As the Court will recall, the Settlement Noteholders successfully opposed discovery by the TPS Group and the Equity Committee with respect to, *inter alia*, the Settlement Noteholders’ trading decisions concerning the Debtors’ securities on the grounds that

such discovery was irrelevant. Nevertheless, the Settlement Noteholders attempted to introduce evidence concerning this very topic at the confirmation hearing. The Court correctly precluded the Settlement Noteholders from offering this evidence. As the Court observed, it would be unfair to permit the Settlement Noteholders to testify as to the reasons they bought and sold the Debtors' securities when the TPS Group and the Equity Committee had been denied discovery to test the veracity of these contentions. (*See, e.g.*, Confirmation Hr'g Tr., 86:9-91:12, July 18, 2011; *id.* at 94:11-96:10; Confirmation Hr'g Tr., 224:21-226:16, July 20, 2011.) The same logic applies here in spades.

#### **NO PRIOR REQUEST**

49. No prior request for the relief requested herein has been made to this or any other court.

#### **CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7026-1**

50. Counsel for the TPS Group has made a reasonable effort to reach agreement with Respondents on the matters set forth in the motion by meeting and conferring with each of the Respondents. The parties have been unable to resolve their disputes.

#### **CONCLUSION**

**WHEREFORE**, the TPS Group respectfully requests entry of an Order substantially in the form attached hereto as Exhibit J, (i) granting the Motion to Compel; and (ii) granting such other and further relief as the Court deems appropriate.

Dated: Wilmington, Delaware  
January 11, 2012

Respectfully submitted,

**CAMPBELL & LEVINE LLC**

/s/ Mark T. Hurford

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*Counsel for the TPS Group*

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

	)	Chapter 11
In re:	)	
	)	Case No. 08-12229 (MFW)
WASHINGTON MUTUAL, INC., <i>et al.</i> ,	)	Jointly Administered
	)	
Debtors.	)	<b>Objection Deadline: January 18, 2012 @ 4:00 p.m.</b>
	)	<b>Hearing Date: January 19, 2012 @ 10:30 a.m.</b>

**NOTICE OF MOTION OF THE TPS GROUP'S MOTION TO COMPEL DISCOVERY  
OR, IN THE ALTERNATIVE, FOR AN ORDER OF PRECLUSION**

TO: All Parties on the Attached List

PLEASE TAKE NOTICE, that on January 10, 2012, the TPS Group<sup>1</sup> filed and served the attached **TPS Group's Motion to Compel Discovery, or in the Alternative, for an Order of Preclusion** (the "Motion"), with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that any responses to the Motion must be in writing and filed with the Bankruptcy Court on or before **January 18, 2012 @ 4:00 p.m.**

PLEASE TAKE FURTHER NOTICE that at the same time, you must also serve a copy of the response upon the undersigned counsel, so that it is received on or before **January 18, 2012 @ 4:00 p.m.**

IN THE EVENT THAT ANY OBJECTION OR RESPONSE IS FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, A HEARING ON THE MOTION WILL BE HELD ON **JANUARY 19, 2012 @ 10:30 A.M.** BEFORE THE HONORABLE MARY F. WALRATH AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE,

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<sup>1</sup> The TPS Group consists of VR Global Partners, L.P., The Visium Funds, Black Horse Capital, Greywolf Capital Management LP, and Pine River Capital L.P.



824 MARKET STREET, 5<sup>th</sup> FLOOR, COURTROOM #4, WILMINGTON, DELAWARE  
19801.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT  
MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER  
NOTICE OR HEARING.

Dated: Wilmington, Delaware  
January 11, 2012

Respectfully submitted,  
CAMPBELL & LEVINE LLC

*/s/ Mark T. Hurford*

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*Counsel for the TPS Group*

# **EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re

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

Debtors.

)  
) Chapter 11

)  
) Case No. 08-12229 (MFW)  
) (Jointly Administered)

**AAOC'S OBJECTIONS AND RESPONSES TO THE  
TRUST PREFERRED SUB-GROUP'S REQUEST FOR PRODUCTION OF  
DOCUMENTS TO THE SETTLEMENT NOTEHOLDERS**

AAOC<sup>2</sup> hereby answers, objects, and otherwise responds to the Trust Preferred Sub-Group's<sup>3</sup> Request for Production of Documents to the Settlement Noteholders, dated December 23, 2011 (the "Discovery Requests" or "Requests").

**AAOC'S GENERAL OBJECTIONS TO THE TRUST PREFERRED SUB-GROUP'S  
REQUEST FOR PRODUCTION OF DOCUMENTS**

1. These Discovery Requests are procedurally and substantively improper.<sup>4</sup> The Requests constitute a plainly inappropriate attempt to conduct discovery on the same issues

<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification numbers, are: (a) Washington Mutual, Inc. (3725); and (b) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

<sup>2</sup> "AAOC" refers to each of (a) Appaloosa Management L.P., Appaloosa Investment L.P. I, Palomino Fund Ltd., Thoroughbred Fund, L.P., and Thoroughbred Master Ltd., (b) Aurelius Capital Management, LP, Aurelius Capital Partners, LP, Aurelius Convergence Master, Ltd., ACP Master, Ltd., Aurelius Capital Master, Ltd. and Aurelius Investment, LLC, (c) Owl Creek Asset Management, L.P., Owl Creek I, L.P., Owl Creek II, L.P., Owl Creek Overseas Fund, Ltd., Owl Creek Socially Responsible Investment Fund, Ltd., Owl Creek Asia I, L.P., Owl Creek Asia II, L.P., and Owl Creek Asia Master Fund, Ltd. and (d) Centerbridge Partners, L.P., Centerbridge Special Credit Partners, L.P., Centerbridge Credit Partners, L.P., and Centerbridge Credit Partners Master, L.P. and any other Affiliates of the funds listed in (a) through (d) above which own or, during the Chapter 11 Cases, owned securities issued by and/or have direct or indirect Claims against WMI.

<sup>3</sup> The "Trust Preferred Sub-Group" is a sub-group of the Trust Preferred Consortium and consists of the following five individual equity holders: VR Global Partners, L.P., The Visium Funds, Black Horse Capital, Greywolf Capital Management LP, and Pine River Capital L.P.

<sup>4</sup> Procedurally, there is no basis to serve these Requests under either Bankruptcy Rule 7026 or 7034 as there is no adversary proceeding or contested matter that could form the basis for such discovery, and the Trust Preferred Sub-Group has neither sought nor received authorization to pursue a second investigation with respect to AAOC under Bankruptcy Rule 2004, nor would it be entitled to such authorization.

already conducted by the Trust Preferred Sub-Group and its own fiduciaries, the Official Committee of Equity Security Holders (the "Equity Committee"). Such additional discovery is not needed to address the fairness of the settlement now before the Court and indeed would undermine and defeat the goals of the mediation and the settlement.

2. Pursuant to the Court's February 8, 2011 Order, AAOC has already produced over 57,000 pages of documents,<sup>5</sup> and testified in four depositions. The Trust Preferred Sub-Group received all of these previously produced materials in July 2011 in accordance with the Court's June 29, 2011 Order, attended each of the four depositions, and received a copy of the deposition transcripts as well as any associated exhibits.

3. There also was a two-week evidentiary hearing in July 2011, dedicated in substantial part to issues relating to AAOC. The Trust Preferred Sub-Group participated at this hotly contested confirmation hearing, had the opportunity to cross-examine all of the witnesses who testified, and did in fact cross-examine AAOC witnesses.

4. As a result of the extensive discovery and evidentiary hearing that has already occurred, there is no need for additional discovery of AAOC. The Court already has an ample record from which it can assess the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (the "Seventh Amended Plan") and the reasonableness of the multi-party settlement contained therein. Consideration of a settlement does not now require or justify a mini-trial on the merits. The Court already has before it a great deal more information about the merits of the settled claims than is customarily available to a court in evaluating a settlement.

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<sup>5</sup> Appaloosa produced 15,034 pages of documents, Aurelius produced 12,373 pages of documents, Centerbridge produced 19,046 pages of documents, and Owl Creek produced 11,009 pages of documents.

5. Any further discovery into the alleged merits of claims against AAOC would defeat the purpose of the Court-ordered mediation, which was to prevent the case from “devolv[ing] into a litigation morass.” It would also be fundamentally at odds with the premise of the settlement – namely, to bring a hard-fought litigation to a close. The AAOC parties did not agree to the filing of the Seventh Amended Plan just so that they could be the subject of a second round of discovery and effectively a second trial in the Bankruptcy Court.

6. The Trust Preferred Sub-Group has no interest in this or any other reasonable settlement of the claims against AAOC. Its goal is only to derail or delay the confirmation proceedings in the hope that its ill-founded appeal from the Court’s denial of their REIT-preferred securities claims will be decided in its favor. It is precisely for that reason that the Trust Preferred Sub-Group has also filed a motion for a stay of the confirmation proceedings pending the adjudication of that appeal. Such tactical considerations cannot justify further discovery against AAOC in these circumstances.

7. Finally, the Discovery Requests also inappropriately seek documents regarding the Court-ordered mediation. Any such documents clearly are protected by, among other things, the Court’s Order Appointing Mediator.

8. Accordingly, AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Document Request contained therein in their entirety, as further described herein.

9. AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Discovery Request contained therein, on the grounds and to the extent that they (a) are cumulative, duplicative, overbroad, unduly burdensome or oppressive; (b) are vague and ambiguous; and/or (c) are not reasonably calculated to lead to the discovery of relevant evidence.

10. AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Discovery Request contained therein, to the extent that they purport to call for the production of documents not in AAOC's possession, custody, or control, or that cannot be ascertained by means of a reasonable, diligent, good faith review of documents having an identifiable relationship to, and inquiry of personnel likely to have knowledge concerning, the subject matter of the Request.

11. AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Document Request contained therein, insofar as they purport to require AAOC to create or generate documents that do not currently exist.

12. AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Discovery Request contained therein, to the extent they seek information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

13. AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Discovery Request contained therein, to the extent they seek information protected from disclosure pursuant to the Mediation Order [D.I. 8780], Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

14. AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Discovery Request contained therein, to the extent they seek (a) information, the disclosure of which would constitute an unwarranted invasion of AAOC's rights of privacy and/or confidentiality; and/or (b) private, privileged, and confidential commercial, financial, and/or proprietary business information.

15. AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Discovery Request contained therein, to the extent they seek publicly filed documents and/or documents or information already in the possession, custody, and control of, or otherwise available to, the Trust Preferred Sub-Group.

16. Finally, AAOC objects to the service of any similar discovery requests or subpoenas on its agents, attorneys (including, without limitation, Fried, Frank, Harris, Shriver & Jacobson LLP, which has acted as counsel for AAOC at various times during these chapter 11 cases) or any of the other persons or entities described in the Discovery Requests' definition of "Settlement Noteholders," on the same grounds indicated above with respect to the Discovery Requests.

All General Objections are incorporated by reference into each Request as though set forth in full therein.

**AAOC'S RESPONSE TO THE TRUST PREFERRED SUB-GROUP'S  
DISCOVERY REQUESTS**

**DOCUMENT REQUEST 1:**

All documents concerning the market for and/or the market price of the Securities.

**OBJECTION AND RESPONSE TO DOCUMENT REQUEST 1:**

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 2:

All documents concerning your purchases or sales of Securities, including without limitation all documents concerning (i) your decisions to trade (or to refrain from trading) such Securities; and (ii) the reasons or bases for such decisions.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 2:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 3:

All documents concerning any actual, proposed or potential settlement of any claim or issue in the Chapter 11 Cases, including without limitation (i) all term sheets, settlement proposals, settlement agreements or plans, including any drafts thereof; (ii) your assessment of any actual, proposed or potential settlement; and (iii) any analyses, evaluations or determinations in connection with any of the foregoing.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 3:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.



DOCUMENT REQUEST 4:

All documents concerning your knowledge of any negotiations or communications concerning any actual, proposed or potential settlement of any claim or issue in these Chapter 11 Cases.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 4:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 5:

All documents concerning any models that include as an input any aspect of any term of an actual, proposed or potential settlement of any claim or issue in the Chapter 11 Cases. These documents should be produced in unredacted, digital form.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 5:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this request on the grounds that seeks confidential, proprietary, or trade secret information.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 6:

All documents concerning your use of any information you obtained relating to any actual, proposed or potential settlement of any claim or issue in the Chapter 11 Cases, including without limitation information you received, either directly or indirectly, from the Debtors.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 6:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 7:

All documents concerning any communications with JPMorgan concerning the Chapter 11 Cases.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 7:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 8:

All documents reflecting any communications with the Debtors (including without limitation Weil Gotshal) concerning trading in the Securities.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 8:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 9:

All documents concerning the Debtors' disclosures at the end of the Confidentiality Periods, including but not limited to communications concerning the Debtors' compliance (or failure to comply) with Securities and Exchange Commission Regulation FD.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 9:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 10:

All Confidentiality Agreements and drafts thereof, and all communications concerning the Confidentiality Agreements, including without limitation the Debtors' disclosure obligations thereunder.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 10:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 11:

All documents concerning any information you received from Fried Frank concerning (i) settlement negotiations, (ii) term sheets, (iii) potential settlement terms, (iv) potential

recoveries and/or (v) the actual, proposed or potential settlement of any claim or issue in the Chapter 11 Cases.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 11:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 12:

All documents concerning the term sheets exchanged by the Debtors and JPMorgan in April 2009, including without limitation communications with Fried Frank concerning (i) those term sheets; (ii) any term in such term sheets; and any summary of those term sheets.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 12:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 13:

All documents concerning the meeting on or about May 6, 2009 among some or all of the Settlement Noteholders, the Debtors and the Debtors' counsel at Quinn Emanuel Urquhart & Sullivan LLP.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 13:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 14:

All documents concerning the negotiations among Centerbridge, Appaloosa and JPMorgan from June 1, 2009 through and including September 30, 2009, concerning the Chapter 11 Cases.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 14:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. Aurelius and Owl Creek further objects to this request to the extent it calls for the production of documents not in their possession, custody, or control.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 15:

All documents concerning the meeting held on or about September 2, 2009, among Centerbridge, Appaloosa, and JPMorgan.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 15:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this request to the extent it calls for the production of documents not in their possession, custody, or control.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 16:

All phone records reflecting any telephone calls between or among you and Fried Frank from April 1, 2009 through September 30, 2009, inclusive, and from December 1, 2009 through March 12, 2010, inclusive.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 16:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request as unduly burdensome and to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest, and/or any other applicable privilege or immunity.

DOCUMENT REQUEST 17:

With respect to your investment in the debt or equity securities of WMI, WMB and/or the Debtors, documents reflecting (i) your realized and unrealized trading profits by month, (ii) your current positions; and (iii) your projected recovery should the Court approve the Seventh Amended Plan.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 17:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request on the grounds that it seeks information that is not relevant to any fact at issue and on the grounds that it

seeks confidential, proprietary and or trade secret information. AAOC further objects to this Request to the extent that it would necessitate the creation of a compilation, abstract, audit or summary of documents.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 18:

All documents concerning Centerbridge's and Aurelius' reallocation of the Securities between or among their respective affiliated funds.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 18:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request on the grounds that it seeks confidential, proprietary and or trade secret information. AAOC further objects to this Request on the grounds that it is vague and ambiguous. AAOC further objects to this Request to the extent that it would necessitate the creation of a compilation, abstract, audit or summary of documents. AAOC further object to this Request to the extent it seeks documents not in their possession, custody or control.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 19:

All documents reflecting Centerbridge's and Aurelius' investment capital inflows and outflows by month.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 19:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request on the grounds that it seeks confidential, proprietary and or trade secret information. AAOC further objects to this Request to the extent that it would necessitate the creation of a compilation, abstract, audit or summary of documents. AAOC further object to this request to the extent it seeks documents not in their possession, custody or control.

DOCUMENT REQUEST 20:

All documents concerning investor redemptions (or the lack thereof) at Aurelius in or around June 2009, including without limitation all documents referenced by Mr. Daniel Gropper at page 18, line 23 to page 19, line 4 of the July 19, 2011 transcript of his testimony during the second confirmation hearing.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 20:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request on the grounds that it seeks confidential, proprietary and or trade secret information. AAOC further objects to this Request to the extent that it would necessitate the creation of a compilation, abstract, audit or summary of documents. Appaloosa, Centerbridge and Owl Creek further object to this request to the extent it seeks documents not in their possession, custody or control.

DOCUMENT REQUEST 21:

All documents concerning the acquisition by the Settlement Noteholders of a blocking position in any class of Securities.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 21:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.



Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 22:

All documents concerning whether any settlement negotiation or discussion in connection with these Chapter 11 cases constitutes material non-public information.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 22:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 23:

All documents concerning the applicability of your internal insider trading policies to any trades or transactions involving Securities.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 23:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 24:

All documents concerning Owl Creek's and Aurelius' departure from the White & Case Noteholders Group and their subsequent engagement of Fried Frank, including without limitation all communications (with Fried Frank, the Settlement Noteholders, or others), concerning past or future settlement discussions or positions, or past or future strategy.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 24:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 25:

All documents concerning the status of settlement negotiations concerning the Chapter 11 Cases, including without limitation documents concerning any alleged belief that such settlement negotiations were "dead".

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 25:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable

privilege or immunity. AAOC further objects to this Request to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 26:

All documents concerning whether to abstain from trading or place restrictions on trading of Securities, including without limitation whether to create an ethical wall.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 26:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 27:

All documents concerning any trading restrictions or limitations you actually implemented (or contemplated implementing) with respect to the Securities, including without limitation Centerbridge's alleged restrictions on trading at the end of August and early September 2009.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 27:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 28:

All documents concerning whether to disclose publicly any settlement discussions or negotiations concerning the Chapter 11 Cases, including without limitation any term sheet, draft plan, or proposed form of any settlement.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 28:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 29:

All documents concerning the "Plan Term Sheet" Mr. Brad Eric Scheler emailed to Mr. Brian Rosen on February 9, 2010.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 29:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 30:

All documents concerning any information you received from or provided to any third party concerning the Chapter 11 Cases during the Mediation.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 30:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request as vague and ambiguous. AAOC further objects to this Request to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

DOCUMENT REQUEST 31:

All documents concerning the basis for the release of claims against the Settlement Noteholders, as contemplated by the Seventh Amended Plan, including without limitation the negotiations relating thereto.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 31:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, the Mediation Order, Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408, and/or any other applicable privilege or immunity. AAOC further objects to this Request to the extent it seeks publicly filed documents and/or documents or information already in the possession, custody, and control of, or otherwise available to, the Trust Preferred Sub-Group.

DOCUMENT REQUEST 32:

All discovery responses and documents you produced to the Official Committee of Equity Security Holders pursuant to the Order, but did not produce to the Trust Preferred Holders, including, without limitation, (i) all documents you produced in response to the Official Committee of Equity Security Holders' First Request for Production of Documents; (ii) your responses to the Official Committee of Equity Security Holders' First Set of Interrogatories to the Washington Mutual, Inc. Settlement Noteholders; (iii) your responses to the Official Committee of Equity Security Holders' First Request for Admissions to the Washington Mutual, Inc. Settlement Noteholders; and (iv) any privilege logs you have produced.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 32:

AAOC incorporates its General Objections by reference. For the reasons set forth in the Preliminary Statement and General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced all documents responsive to this Request required by the Court's June 29, 2011 Order.

DOCUMENT REQUEST 33:

All documents upon which you intend to rely at the hearing to consider confirmation of the Seventh Amended Plan.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 33:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

Dated: Wilmington, Delaware  
January 6, 2012

By: /s/ Barry G. Sher  
Barry G. Sher, Esq.  
Maria E. Douvas, Esq.

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*Attorneys for Appaloosa Management L.P.*

-and-

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Jeffrey S. Trachtman  
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*Attorneys for Aurelius Capital Management, LP*

-and-

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*Attorneys for Owl Creek Asset Management, L.P.*

-and-

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-and-

Richard G. Mason, Esq.

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*Attorneys for Centerbridge Partners, L.P.*



# **EXHIBIT B**

590 Madison Avenue  
New York, New York 10022  
Tel: (212) 333-0200  
Fax: (212) 333-2350

9536 Wilshire Boulevard  
Suite 500  
Beverly Hills, California 90212  
(310) 273-3777

***ARKIN KAPLAN RICE LLP***

ATTORNEYS AT LAW

December 23, 2011

Via Email and Federal Express

Richard D. Owens, Esq.  
Latham & Watkins LLP  
885 Third Avenue  
New York, New York 10022

Dear Mr. Owens:

I enclose the Trust Preferred Group's Request for Production of Documents to the Settlement Noteholders in connection with the anticipated hearing to consider confirmation of the Seventh Amended Plan in *In re Washington Mutual, Inc., et al.* We have provided for the standard 30-day time to respond as provided by Rule 34 of the Federal Rules of Civil Procedure. Given the expedited schedule the Debtors appear to contemplate, however, we would like to discuss with you an abbreviated production deadline. We also would like to discuss with you certain privilege issues that we are considering bringing to the Court for resolution.

I look forward to speaking with you.

Very truly yours,



Joseph A. Matteo

Enclosure

590 Madison Avenue  
New York, New York 10022  
Tel: (212) 333-0200  
Fax: (212) 333-2350

9536 Wilshire Boulevard  
Suite 500  
Beverly Hills, California 90212  
(310) 273-3777

***ARKIN KAPLAN RICE LLP***

ATTORNEYS AT LAW

December 23, 2011

Via Email and Federal Express

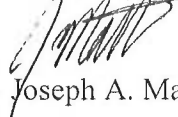
Kenneth Eckstein, Esq.  
Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, New York 10036

Dear Mr. Eckstein:

I enclose the Trust Preferred Group's Request for Production of Documents to the Settlement Noteholders in connection with the anticipated hearing to consider confirmation of the Seventh Amended Plan in *In re Washington Mutual, Inc., et al.* We have provided for the standard 30-day time to respond as provided by Rule 34 of the Federal Rules of Civil Procedure. Given the expedited schedule the Debtors appear to contemplate, however, we would like to discuss with you an abbreviated production deadline. We also would like to discuss with you certain privilege issues that we are considering bringing to the Court for resolution.

I look forward to speaking with you.

Very truly yours,



Joseph A. Matteo

Enclosure

590 Madison Avenue  
New York, New York 10022  
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Fax: (212) 333-2350

9536 Wilshire Boulevard  
Suite 500  
Beverly Hills, California 90212  
(310) 273-3777

***ARKIN KAPLAN RICE LLP***

ATTORNEYS AT LAW

December 23, 2011

Via Email and Federal Express

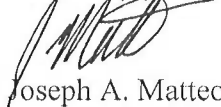
Alan Glickman  
Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022

Dear Mr. Glickman:

I enclose the Trust Preferred Group's Request for Production of Documents to the Settlement Noteholders in connection with the anticipated hearing to consider confirmation of the Seventh Amended Plan in *In re Washington Mutual, Inc., et al.* We have provided for the standard 30-day time to respond as provided by Rule 34 of the Federal Rules of Civil Procedure. Given the expedited schedule the Debtors appear to contemplate, however, we would like to discuss with you an abbreviated production deadline. We also would like to discuss with you certain privilege issues that we are considering bringing to the Court for resolution.

I look forward to speaking with you.

Very truly yours,



Joseph A. Matteo

Enclosure

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***ARKIN KAPLAN RICE LLP***

ATTORNEYS AT LAW

December 23, 2011

Via Email and Federal Express

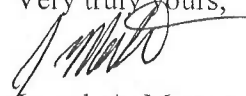
Barry Sher, Esq.  
Paul, Hastings, Janofsky & Walker LLP  
75 East 55th Street  
New York, New York 10022

Dear Mr. Sher:

I enclose the Trust Preferred Group's Request for Production of Documents to the Settlement Noteholders in connection with the anticipated hearing to consider confirmation of the Seventh Amended Plan in *In re Washington Mutual, Inc., et al.* We have provided for the standard 30-day time to respond as provided by Rule 34 of the Federal Rules of Civil Procedure. Given the expedited schedule the Debtors appear to contemplate, however, we would like to discuss with you an abbreviated production deadline. We also would like to discuss with you certain privilege issues that we are considering bringing to the Court for resolution.

I look forward to speaking with you.

Very truly yours,



Joseph A. Matteo

Enclosure

# EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

**DEBTORS' OBJECTIONS AND RESPONSES TO THE TRUST PREFERRED  
GROUP'S REQUEST TO THE DEBTORS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (the "Rules"), made applicable to these proceedings by Rules 9014, 7026, and 7034 of the Federal Rules of Bankruptcy Procedure, and pursuant to the Local Bankruptcy Rules for the District of Delaware, Weil Gotshal & Manges LLP ("Weil"), attorneys for Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMIIC"), as debtors and debtors in possession (together, the "Debtors"), hereby submits the following objections to the Trust Preferred Security Holders' ("TPS Holders") Request to the Debtors for Production of Documents, dated December 27, 2011 (the "Request").

<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, Suite 2500, Seattle, Washington 98104.

## GENERAL OBJECTIONS

The Debtors make the following General Objections to the Request, which apply to and are incorporated into each specific objection below as if they were fully repeated therein, and will not be specifically repeated or referenced in each specific objection.<sup>2</sup>

1. Inconsistency with Applicable Rules. The Debtors object generally to the Request, including the definitions and instructions contained therein, to the extent it seeks to impose requirements that are in addition to, different from, or broader than those set forth in, required or permitted by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, the local rules of the United States Bankruptcy Court for the District of Delaware, and/or any rules, statutes, applicable case law, or court orders governing the proper scope, timing, and extent of all discovery in these chapter 11 cases.

2. Definition of "Debtors." The Debtors object to the definition of "Debtors" to the extent it includes "any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest." The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. The Debtors also object to this definition to the extent it includes "attorneys" on the ground that it calls for information outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine. The Debtors will interpret the term "Debtors" to mean Washington Mutual, Inc. and WMI Investment Corp., collectively.

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<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed in the Request.



3. Definition of "Document or documents." The Debtors object to the definition of "Document" on the grounds that it is overly broad, vague, and ambiguous. The Debtors further object to the definition of the term "Document" to the extent it calls for documents and/or information that may be outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine. The Debtors will interpret the term "Document" in accordance with the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, and relevant case law.

4. Definition of "Entity." The Debtors object to the definition of "Entity" to the extent it includes "a person, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, governmental unit or any subdivision thereof, including, without limitation, the office of the United States Trustee, or any other entity." The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad.

5. Definition of "FDIC." The Debtors object to the definition of "FDIC" to the extent it includes "any parent, subsidiaries, divisions, affiliates, and any other entities related thereto, and their past and present employees, consultants, representatives, attorneys, partners, successors, assigns, and any person or entity that, at any time, acted on their behalf or for their benefit." The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. The Debtors will interpret the term "FDIC" to mean the Federal Deposit Insurance Corporation.

6. Definition of "Fried Frank." The Debtors object to the definition of "Fried Frank" to the extent it includes "any parent, subsidiaries, divisions, affiliates, and any other entities

related thereto, and their past and present employees, consultants, representatives, attorneys, partners, successors, assigns, and any person or entity that, at any time, acted on their behalf or for their benefit.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. The Debtors will interpret the term “Fried Frank” to mean the law firm of Fried, Frank, Harris, Shriver & Jacobson LLP.

7. Definition of “JPMorgan.” The Debtors object to the definition of “JPMorgan” to the extent it includes “any parent, subsidiaries, divisions, affiliates, holding companies, predecessors and/or successors-in-interest and any other entity relating thereto, and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, representatives, and other persons acting on its behalf.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. The Debtors will interpret the term “JPMorgan” to mean JPMorgan Chase Bank, N.A.

8. Definition of “Securities.” The Debtors object to the definition of “Securities” to the extent it includes the “debt or equity securities of WMI, WMB and/or the Debtors.” The inclusion of such terms renders the defined term vague, ambiguous, unduly burdensome, and overbroad. The Debtors further object to the definition of “Securities” to the extent it includes the debt and equity of WMB on the grounds that the inclusion of the debt and equity of WMB renders the term overbroad and further calls for information outside the Debtors’ possession, custody and/or control.

9. Definition of “Settlement Noteholders.” The Debtors object to the definition of “Settlement Noteholders” to the extent it includes “their respective current or former parents, subsidiaries, divisions, affiliates, management companies, funds, holding companies and any other entities related thereto, and their respective past and present employees, consultants,

accountants, agents, financial advisors, representatives, attorneys, successors, assigns, and any person or entity that, at any time, acted on their behalf or for their benefit.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. The Debtors will interpret the term “Settlement Noteholders” to mean Owl Creek Asset Management, L.P., Appaloosa Management, L.P., Centerbridge Partners, L.P. and Aurelius Capital Management L.P.

10. Definition of “Valuation.” The Debtors object to the definition of “Valuation” on the grounds that it is overly broad, vague, and ambiguous, and to the extent it includes “actual, perceived, estimated or appraised worth” and “enterprise value, going concern value, equity value, actual cash value, book value, intrinsic value, liquidation value, and market value.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad.

11. Definition of “Washington Mutual.” The Debtors object to the definition of “Washington Mutual” to the extent it includes “WMI and WMB, and any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside accountants, outside consultants, representatives and other persons acting on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in interest.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. The Debtors also object to this definition to the extent it includes “attorneys” on the ground that it calls for information outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine. The Debtors further object to the definition of “Washington Mutual” to the extent it includes WMB on the

grounds that the inclusion of WMB renders the term overbroad and further calls for information outside the Debtors' possession, custody and/or control.

12. Definition of "Weil Gotshal." The Debtors object to the definition of "Weil Gotshal" to the extent it includes "any parent, subsidiaries, divisions, affiliates, and any other entities related thereto, and their past and present employees, consultants, representatives, attorneys, successors, assigns, and any person or entity that, at any time, acted on their behalf or for their benefit." The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. The Debtors also object to this definition generally, and to the extent it includes the term "attorneys," as it purports to call for information outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine. The Debtors will interpret the term "Weil Gotshal" to mean the law firm of Weil, Gotshal & Manges LLP.

13. Definition of "White & Case." The Debtors object to the definition of "White and Case" to the extent it includes "any parent, subsidiaries, divisions, affiliates, and any other entities related thereto, and their past and present employees, consultants, representatives, attorneys, successors, assigns, and any person or entity that, at any time, acted on their behalf or for their benefit." The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. The Debtors will interpret the term "White & Case" to mean the law firm of White & Case LLP.

14. Definition of "White & Case Noteholders Group." The Debtors object to the definition of "White & Case Noteholders Group" as vague, ambiguous, overbroad and unduly burdensome, and to the extent it incorporates the objectionable definitions of "Securities" and

“White & Case.” The Debtors incorporate by reference the objections asserted above with respect to the definitions of “Securities” and “White & Case.”

15. Definition of “WMB.” The Debtors object to the definition of “WMB” to the extent it includes “any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. The Debtors object to this definition to the extent it includes “attorneys” on the ground that it calls for information outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine. The Debtors will interpret the term “WMB” to mean Washington Mutual Bank, Henderson, Nevada.

16. Definition of “WMI.” The Debtors object to the definition of “WMI” to the extent it includes “any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside accountants, outside consultants, representatives and other persons acting on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. The Debtors also object to this definition to the extent the inclusion of the term “attorneys” purports to call for information outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or

statutory privilege or doctrine. The Debtors will interpret the term "WMI" to mean Washington Mutual, Inc.

17. Definition of "You or Your." The Debtors object to the definitions of "You or Your" to the extent they call for information outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine. The Debtors incorporate by reference their objections to the definition of "Debtors" as set forth above.

18. Requirements of Instruction No. 1. The Debtors object to the requirements of Instruction No. 1 to the extent the Instruction renders the Requests duplicative of previous discovery served in these chapter 11 cases, and is not reasonably calculated to lead to the discovery of admissible evidence or testimony, unduly burdensome and/or harassing.

19. Requirements of Instruction No. 3. The Debtors object to the requirements of Instruction No. 3 on the grounds that the Instruction is vague and ambiguous and seeks to impose requirements that are in addition to, different from, or broader than those set forth in or required by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, the local rules of the United States Bankruptcy Court for the District of Delaware, and/or any rules, statutes, applicable case law, or court orders governing the proper scope, timing, and extent of all discovery in these chapter 11 cases.

20. Requirements of Instruction No. 4. The Debtors object to the requirements of Instruction No. 4 to the extent the Instruction calls for drafts protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, any other applicable common law or statutory privilege or doctrine or any court orders.

21. Requirements of Instruction No. 6. The Debtors object to the requirements of Instruction No. 6 on the grounds that the Instruction is vague and ambiguous.

22. Requirements of Instruction No. 7. The Debtors object to the requirements of Instruction No. 7 to the extent the Instruction includes the terms “agents, advisors, employees, representative, attorneys, and successors-in-interest.” The inclusion of such terms renders the Instruction vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. The Debtors also object to this Instruction to the extent it includes the term “attorneys,” as it purports to call for information outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, any other applicable common law or statutory privilege or doctrine or any court orders.

23. Requirements of Instruction No. 8. The Debtors object to the requirements of Instruction No. 8 on the grounds that the Instruction is overly broad and unduly burdensome.

24. Requirements of Instruction No. 9. The Debtors object to the requirements of Instruction No. 9 on the grounds that the Instruction is overly broad, unduly burdensome, and seeks to impose requirements that are in addition to, different from, or broader than those set forth in or required by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, the local rules of the United States Bankruptcy Court for the District of Delaware, and/or any rules, statutes, applicable case law, or court orders governing the proper scope, timing, and extent of all discovery in these chapter 11 cases.

25. Requirements of Instruction No. 10. The Debtors object to the requirements of Instruction No. 10 on the grounds that the Instruction is overly broad and unduly burdensome.

26. Privilege. The Debtors object to the Request to the extent it seeks information that falls outside the scope of permissible discovery and/or is protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, any other

applicable common law or statutory privilege or doctrine or any court orders. The Debtors further object to the Request to the extent it seeks information protected by the Order Appointing Mediator, dated October 10, 2011 [D.I. 8768] and Rule 9019-5(d)(iv) of the local rules of the United States Bankruptcy Court for the District of Delaware.

27. Confidential, Commercially, and/or Competitively Sensitive Information and Trade Secrets. The Debtors object to the Request to the extent it seeks information that contains and/or constitutes private, business confidential, proprietary, trade secret, information made confidential by law or agreement, or other information of Weil, the Debtors or third parties protected from disclosure. The Debtors' prior production of non-privileged documents responsive to the Request is governed by the terms of the Order Governing the Production and Use of Discovery Materials In Connection with Plan Confirmation [Docket No. 5407] entered by the Court on September 9, 2010.

28. Confidentiality of Mediation. The Debtors object to the Request to the extent it seeks information deemed "strictly confidential" and/or "not admissible for any purpose in any judicial or administrative proceeding" pursuant to paragraph 6 of the Order Appointing Mediator, dated October 10, 2011 [D.I. 8768]. The Debtors further object to the Request on the grounds that the TPS Holders have recognized the confidentiality restrictions imposed by the Order Appointing Mediator and has pledged to respect the confidentiality of the Mediation. (See Motion of the Consortium of Trust Preferred Security Holders to Determine Propriety of Proposed Classification of Interests Subject to Treatment Under Class 19 of the Seventh Amended Plan of Liquidation [D.I. 9257] ("The latest version of the Plan follows on the heels of a mediation process initiated by this Court's October 10, 2011 Order Appointing Mediator [Docket No. 8780]. The TPS Consortium will obviously respect the confidentiality restrictions imposed by that Order.")). The Debtors further object to the Request to the extent it purports to



seek information that falls outside the scope of permissible discovery and/or is protected from discovery by Federal Rule of Civil Procedure 408, Rule 9019-5(d) of the local rules of the United States Bankruptcy Court for the District of Delaware, and/or any other rules, statutes, applicable case law, or court orders.

29. Vague and Ambiguous. The Debtors generally object to the Request to the extent that it is vague, ambiguous and/or calls for the disclosure of information and/or the identification of materials not reasonably calculated to lead to the discovery of admissible evidence.

30. Relevancy. The Debtors generally object to the Request to the extent it seeks the disclosure of information neither relevant to the issues to be addressed at the hearing on confirmation of the Seventh Amended Plan nor reasonably calculated to lead to the discovery of admissible evidence or testimony.

31. Possession, Custody, and/or Control. The Debtors object to the Request to the extent it seeks information not within the Debtors' possession, custody and/or control, and/or information that can or should be sought from other parties.

32. Duplicative Requests. The Debtors object to each Request to the extent it is duplicative of other Requests and/or of other discovery previously propounded in connection with these chapter 11 cases, including but not limited to i) the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; ii) the Equity Committee's First Request for Production of Documents, dated June 6, 2010; iii) the November 16, 2010 deposition of William Kosturos; iv) the November 17, 2010 deposition of Jonathan Goulding; v) the November 22, 2010 deposition of Charles Smith; and vi) the June 30, 2011 deposition of William Kosturos. The Debtors object to each Request to the extent non-privileged documents responsive to such Requests have already been made available either (i) in the Debtors' document depository (the "Depository"), which contains, *inter alia*, non-

privileged settlement communications, prior to the confirmation hearing which commenced on December 2, 2010 (“Initial Confirmation Hearing”); (ii) along with the Debtors’ September 1, 2010 production to the TPS Holders in connection with the TPS adversary proceeding containing TIFF (image) files and metadata for WMI documents previously provided in the Depository (“September 1, 2010 production”); (iii) in the November 5, 2010 supplemental production to the TPS Holders, containing non-privileged settlement communications bearing the bates pre-fix WGM-TPS (“November 5, 2010 production”); (iv) in the February 24, 2011 supplemental production to the Official Committee of Equity Holders (“Equity Committee”), containing non-privileged settlement communications bearing the bates pre-fix WEIL (“February 24, 2011 production”); and vi) on the hard drive containing all non-privileged documents from the depository with metadata produced to the Equity Committee on February 7, 2011. The Debtors further object to each Request to the extent they are duplicative of requests previously propounded by the Equity Committee, as the Equity Committee is the fiduciary for the TPS Holders and a representative of their interests. The Debtors also object to each Request to the extent non-privileged documents responsive to such Requests have already been offered into evidence at the Initial Confirmation Hearing and/or the second confirmation hearing which commenced on July 13, 2011 (“Second Confirmation Hearing”) and to the extent responsive testimony has been given at the Initial and Second Confirmation Hearings.

33. Issues Related to the Global Settlement Agreement. The Debtors object to each Request to the extent they purport to seek information regarding, or to place at issue, the reasonableness of the Global Settlement Agreement (“GSA”), including the negotiation and terms of the GSA. In the January 7, 2011 Opinion, the Court found that the GSA is fair and reasonable (See January 7 Op. at 2.) and reiterated that holding in its September 13, 2011 opinion. (See September 13 Op. at 26-32.) Further, pursuant to the Court’s January 20, 2011

ruling, “any items that [the Court] did decide [are] not going to be relitigated [. . .] . It’s the law of the case.” (See January 20, 2011 Tr. at 51:2-52:2; See also September 13 Op. at 27 (“[the Court’s ruling on the reasonableness of the GSA rendered as part of the January 7 Opinion is law of the case . . .”).) Extensive discovery, including, but not limited to the November 16, 2010 deposition of William Kosturos, the November 17, 2010 deposition of Jonathan Goulding, and the November 22, 2010 deposition of Charles Smith regarding the GSA, among other issues, was provided prior to both the Initial Confirmation Hearing and the Second Confirmation Hearing. To the extent the Request seeks information regarding, or to place at issue, the reasonableness or negotiation of the GSA, the Request improperly seeks to relitigate issues adjudicated by the Court, contravenes prior Court orders and is overbroad, unduly burdensome and/or harassing, and not reasonably calculated to lead to the discovery of admissible evidence.

34. Issues Related to Insider Trading Allegations. The Debtors object to each Request to the extent they purport to seek information regarding issues related to insider trading allegations, which were litigated during the Second Confirmation Hearing. The Debtors object to each Request on the grounds that non-privileged Weil and Debtor settlement communications responsive to such Requests have already been made available pursuant to i) the July 2010 upload of such documents to the Depository; ii) the September 1, 2010 production; iii) the November 5, 2010 production; iv) the June 30, 2011 30(b)(6) deposition of William Kosturos attended by the TPS Holders; v) the February 24, 2011 supplemental production to the Equity Committee; and vi) the hard drive containing all non-privileged documents from the depository with metadata produced to the Equity Committee on February 7, 2011. The Debtors further object to each Request to the extent non-privileged documents responsive to such Requests have already been offered into evidence at the Second Confirmation Hearing. The Debtors also object to any further discovery regarding issues related to the insider trading allegations because such

discovery would defeat the purpose of the Court-ordered mediation, which was to prevent the case from devolving into a litigation morass. Any further discovery related to such issues would also be fundamentally at odds with the premise of the settlement – namely, to bring a hard-fought litigation to a close. To the extent the Request seeks information related to insider trading allegations, it improperly seeks to relitigate issues considered by the Court, contravenes prior Court orders and is overbroad, unduly burdensome and/or harassing, and not reasonably calculated to lead to the discovery of admissible evidence or testimony.

35. Advice of Counsel. The Debtors object to each Request to the extent they purport to seek information regarding, or to place at issue, the advice of counsel. Per the Court's September 7, 2010 ruling denying the TPS Consortium Motion To Deem All Requests Admitted, or in the Alternative, to Compel Debtors to Adequately Respond to the Consortium of Trust Preferred Security Holders First Set of Requests for Admissions Directed to the Debtors [D.I. 5368], and the January 7, 2011 Opinion, the advice of counsel has not been placed at issue by the Debtors in connection with these chapter 11 cases. (See January 7, 2011 Op. at 21-23; September 7, 2010 Tr. at 83:17-21.)

36. Overly Broad, Unduly Burdensome, and/or Harassing. The Debtors object to the Request to the extent it is overly broad, unduly burdensome, and/or harassing.

37. Right to Supplement or Revise. The objections and responses herein are based on The Debtors' present knowledge, and the Debtors expressly reserve the right to supplement, clarify, revise, or correct any of the responses or objections hereto.

### SPECIFIC OBJECTIONS TO THE REQUESTS

#### DOCUMENT REQUEST NO. 1:

All documents concerning any communications with the Settlement Noteholders, the Official Committee of Unsecured Creditors, and/or JPMorgan (or their respective representatives

or counsel) concerning any actual, proposed or potential settlement of any claim or issue in the Chapter 11 Cases, including without limitation (i) all term sheets, settlement proposals, agreements or plans, whether in draft or final form; and (ii) any discussion, deliberation, analysis, assessment, evaluation or determination in connection with any of the foregoing.

**RESPONSE TO DOCUMENT REQUEST NO. 1:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, the Debtors object to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors object to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. The Debtors also object to this Request on the grounds that it is duplicative of *inter alia*, i) Topic No. 1 of the Consortium of Trust Preferred Securities Holders' Notice of 30(b)(6) Deposition, dated June 28, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; ii) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; iii) document request Nos. 27 and 28 of the Equity Committee's First Request for Production of Documents, dated June 6, 2010; iv) Topic No. 19 of the TPS Holders' Notice of 30(b)(6) Deposition Directed to WMI, dated October 12, 2010, in response to which William Kosturos was produced to testify on November 16, 2010; v) the November 17, 2010 deposition of Jonathan Goulding; and vi) testimony provided at the Initial and Second Confirmation Hearings. Further, the Debtors object to this Request on the grounds that non-privileged documents responsive to this Request have already been made available in the

Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010, November 5, 2010 and February 24, 2011 productions.

**DOCUMENT REQUEST NO. 2:**

All documents concerning any information provided to the Settlement Noteholders, or their respective representatives or counsel, concerning (i) settlement negotiations, (ii) term sheets, (iii) potential settlement terms, (iv) potential recoveries and/or (v) the actual, proposed or potential settlement of the Chapter 11 Cases.

**RESPONSE TO DOCUMENT REQUEST NO. 2:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, the Debtors object to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors object to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. The Debtors further object to this Request on the grounds that it is duplicative of *inter alia*, i) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; ii) document request Nos. 27 and 28 of the Equity Committee's First Request for Production of Documents, dated June 6, 2010; iii) Topic Nos. 2 and 4 of the Equity Committee's Amended Notice of 30(b)(6) Deposition, dated June 22, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; iv) the November 16, 2010 deposition of William Kosturos; v) the November 17, 2010 deposition of Jonathan Goulding; and vi) testimony provided at the Initial and Second Confirmation Hearings. The Debtors further object on the basis that this Request is duplicative of Request No. 1 and incorporate each of the specific objections to that Request by reference as if fully set forth herein. Further, The Debtors object to this Request on the grounds that non-privileged documents responsive to this Request have

already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010, November 5, 2010 and February 24, 2011 productions.

**DOCUMENT REQUEST NO. 3:**

All documents concerning any communications with the Settlement Noteholders (or their counsel) concerning the Settlement Noteholders' actual or potential trading in the Securities.

**RESPONSE TO DOCUMENT REQUEST NO. 3:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, the Debtors object to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors object to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. The Debtors further object to this Request on the grounds that it is duplicative of inter alia, i) Topic No. 1 of the Consortium of Trust Preferred Securities Holders' Notice of 30(b)(6) Deposition, dated June 28, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; ii) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; and iii) testimony provided at the Initial and Second Confirmation Hearings. Further, the Debtors object to this Request on the grounds that non-privileged documents responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 4:**

All documents concerning the meeting you attended on or about March 10, 2009 with some or all of the Settlement Noteholders, JPMorgan, and the FDIC, among others, at Sullivan & Cromwell's New York offices.

**RESPONSE TO DOCUMENT REQUEST NO. 4:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, the Debtors object to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors object to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. The Debtors further object to this Request on the grounds that it is duplicative of *inter alia*, i) Topic No. 1 of the Consortium of Trust Preferred Securities Holders' Notice of 30(b)(6) Deposition, dated June 28, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; ii) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; iii) document request Nos. 27 and 28 of the Equity Committee's First Request for Production of Documents, dated June 6, 2010; iv) the November 16, 2010 deposition of William Kosturos; and v) testimony provided at the Initial and Second Confirmation Hearings. The Debtors further object on the basis that this Request is duplicative of Request No. 1 and incorporate each of the specific objections to that Request by reference as if fully set forth herein. Further, the Debtors object to this Request on the grounds that non-privileged documents responsive to this Request have already been made available in the



Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 5:**

All documents concerning the term sheets you exchanged with JPMorgan in April 2009, including without limitation all communications with Fried Frank concerning those term sheets.

**RESPONSE TO DOCUMENT REQUEST NO. 5:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, the Debtors object to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors object to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. The Debtors also object to this Request to the extent it calls for the production of documents that are not within the Debtors' possession, custody and/or control. The Debtors further object to this Request on the grounds that it is duplicative of i) Topic No. 1 of the Consortium of Trust Preferred Securities Holders' Notice of 30(b)(6) Deposition, dated June 28, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; ii) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; iii) document request Nos. 27 and 28 of the Equity Committee's First Request for Production of Documents, dated June 6, 2010; iv) the November 16, 2010 deposition of William Kosturos; v) the November 17, 2010 deposition of Jonathan Goulding; and vi) testimony provided at the Initial and Second Confirmation Hearings. Further, the Debtors object to this Request on the grounds that non-privileged documents responsive to this Request have already been made available in the

Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 6:**

All documents concerning the meeting you attended on or about May 6, 2009 with some or all of the Settlement Noteholders, among others, at Quinn Emanuel Urquhart & Sullivan LLP.

**RESPONSE TO DOCUMENT REQUEST NO. 6:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, the Debtors object to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors object to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. The Debtors further object to this Request on the grounds that it is duplicative of inter alia, i) Topic No. 1 of the Consortium of Trust Preferred Securities Holders' Notice of 30(b)(6) Deposition, dated June 28, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; ii) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; iii) document request Nos. 27 and 28 of the Equity Committee's First Request for Production of Documents, dated June 6, 2010; iv) the November 16, 2010 deposition of William Kosturos; v) the November 17, 2010 deposition of Jonathan Goulding; and vi) testimony provided at the Initial and Second Confirmation Hearings. The Debtors further object on the basis that this Request is duplicative of Request No. 1 and incorporate each of the specific objections to that Request by reference as if fully set forth herein. Further, the Debtors object to this Request on the grounds that non-privileged documents

responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 7:**

All Confidentiality Agreements and drafts thereof, and all communications concerning the Confidentiality Agreements, including without limitation all documents concerning your disclosure obligations thereunder.

**RESPONSE TO DOCUMENT REQUEST NO. 7:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, the Debtors object to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors object to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. The Debtors further object to this Request on the grounds that it is duplicative of inter alia, i) Topic No.1 of the Equity Committee's Amended Notice of 30(b)(6) Deposition, dated June 22, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; ii) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; and iii) testimony provided at the Initial and Second Confirmation Hearings. Further, the Debtors object to this Request to the extent that that non-privileged documents responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 8:**

All documents concerning your disclosures at the end of the Confidentiality Periods, including but not limited to communications concerning the your [sic] compliance (or failure to comply) with Securities and Exchange Commission Regulation FD.

**RESPONSE TO DOCUMENT REQUEST NO. 8:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, the Debtors object to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors object to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. The Debtors further object to this Request on the grounds that it is duplicative of *inter alia*, i) the June 30, 2011 deposition of William Kosturos; and ii) testimony provided at the Second Confirmation Hearing. The Debtors also object to this request on the basis that it is duplicative of Request No. 7 and incorporate each of the specific objections to that Request by reference as if fully set forth herein. Further, the Debtors object to this Request to the extent that non-privileged documents responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 9:**

All documents concerning any request by the Settlement Noteholders to terminate a Confidentiality Period early.

**RESPONSE TO DOCUMENT REQUEST NO. 9:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, the Debtors object to this Request on the grounds that it is vague,

ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors also object to this Request to the extent it seeks information that can or should be sought from other parties. The Debtors object to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. The Debtors further object to this Request on the grounds that it is duplicative of inter alia, i) the June 30, 2011 deposition of William Kosturos; and ii) testimony provided at the Second Confirmation Hearing. The Debtors further object to this request on the basis that it is duplicative of Request No. 7 and incorporate each of the specific objections to that Request by reference as if fully set forth herein. Further, the Debtors object to this Request to the extent that non-privileged documents responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 10:**

All documents concerning any discussion, deliberation, analysis, assessment, evaluation or determination as to whether any settlement negotiation or discussion in connection with the Chapter 11 Cases constituted material non-public information.

**RESPONSE TO DOCUMENT REQUEST NO. 10:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, the Debtors object to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors object to this Request to the

extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. The Debtors further object to this Request on the grounds that it is duplicative of inter alia, i) the June 30, 2011 deposition of William Kosturos; and ii) testimony provided at the Second Confirmation Hearing. The Debtors also object to this request on the basis that it is duplicative of Request Nos. 7 and 8 and incorporate each of the specific objections those Requests by reference as if fully set forth herein. Further, the Debtors object to this Request to the extent that non-privileged documents responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 11:**

All documents concerning any discussion, deliberation, analysis, assessment, evaluation or determination concerning whether to publicly disclose the existence or substance of any settlement discussions, settlement negotiations, term sheet, draft plan, or proposed form of any settlement concerning the Chapter 11 Cases.

**RESPONSE TO DOCUMENT REQUEST NO. 11:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, the Debtors object to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors object to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. The Debtors further object to this Request on the grounds that it is duplicative of inter alia, i) Topic No. 5 of the Equity Committee's Amended Notice of 30(b)(6) Deposition, dated June 22, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; and ii) testimony provided at the Second Confirmation Hearing. The Debtors also object to this request

on the basis that it is duplicative of Request Nos. 7, 8 and 10 and incorporate each of the specific objections to those Requests by reference as if fully set forth herein. Further, the Debtors object to this Request to the extent that non-privileged documents responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 12:**

All documents concerning the "Plan Term Sheet" Mr. Brad Eric Scheler emailed to Mr. Brian Rosen on February 9, 2010.

**RESPONSE TO DOCUMENT REQUEST NO. 12:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, the Debtors object to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors also object to this Request to the extent it seeks information that can or should be sought from other parties. The Debtors object to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. The Debtors further object to this Request on the grounds that it is duplicative of inter alia, i) Topic No.1 of the Consortium of Trust Preferred Securities Holders' Notice of 30(b)(6) Deposition, dated June 28, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; ii) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; iii) the November 16, 2010 deposition of William Kosturos; iv) the November 17, 2010 deposition of Jonathan Goulding; and v) testimony provided at the Initial and Second Confirmation Hearings. Further, the Debtors object to this Request on the grounds

that non-privileged documents responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 13:**

All documents concerning any information you received from or provided to any third party concerning the Chapter 11 Cases during the Mediation.

**RESPONSE TO DOCUMENT REQUEST NO. 13:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, the Debtors object to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors also object to this Request to the extent it seeks information that can or should be sought from other parties. The Debtors further object to this Request on the grounds that it seeks information deemed "strictly confidential" and "not admissible for any purpose in any judicial or administrative proceeding" pursuant to paragraph 6 of the Order Appointing Mediator, dated October 10, 2011 [D.I. 8768]. The Debtors further object on the grounds that the term "third party" is vague, ambiguous, overly broad and unduly burdensome.

**DOCUMENT REQUEST NO. 14:**

All documents concerning the basis for the release of claims against the Settlement Noteholders, as contemplated by the Seventh Amended Plan, including without limitation the negotiations relating thereto and any documents concerning the consideration to be provided by the Settlement Noteholders in connection with any such release.

**RESPONSE TO DOCUMENT REQUEST NO. 14:**



In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, the Debtors object to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors further object to this request on the grounds that it seeks information deemed “strictly confidential” and “not admissible for any purpose in any judicial or administrative proceeding” pursuant to paragraph 6 of the Order Appointing Mediator, dated October 10, 2011 [D.I. 8768]. The Debtors refer the TPS Holders to the Disclosure Statement for the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated December 12, 2011 [D.I. 9179].

**DOCUMENT REQUEST NO. 15:**

All documents concerning the settlement with the Settlement Noteholders, including any agreement relating thereto and any documents concerning the consideration to be provided by the Settlement Noteholders in connection with the settlement.

**RESPONSE TO DOCUMENT REQUEST NO. 15:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, the Debtors object to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors further object to this request on the grounds that it seeks information deemed “strictly confidential” and “not admissible for any purpose in any judicial or administrative proceeding” pursuant to paragraph 6 of the Order Appointing Mediator, dated October 10, 2011 [D.I. 8768]. The Debtors refer the TPS Holders to

the Disclosure Statement for the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated December 12, 2011 [D.I. 9179].

Dated: New York, New York  
January 9, 2012

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Mark D. Collins (No. 2981)  
Michael J. Merchant (No. 3854)  
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-- and --

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Facsimile: (212) 310-8007

Attorneys for Debtors and Debtors in Possession

# EXHIBIT D

**From:** Joseph Matteo  
**Sent:** Tuesday, December 27, 2011 5:16 PM  
**To:** 'brian.rosen@weil.com'  
**Cc:** Howard J. Kaplan  
**Subject:** In re Washington Mutual, Inc., et al. - Subpoena to Weil Gotshal

Brian,

Attached is a subpoena duces tecum to Weil Gotshal & Manges LLP. Will you accept service of the subpoena via this email?

Separately, the subpoena calls for the production of documents by January 26, 2012. Given the expedited schedule the Debtors appear to contemplate for a confirmation hearing on the Seventh Amended Plan, however, we would like to discuss with you an abbreviated production deadline. We also realize that these requests raise certain privilege issues. We would like to discuss those issues with you in advance.

I look forward to hearing from you.

Joe

Joseph A. Matteo | Arkin Kaplan Rice LLP | 590 Madison Avenue, New York, NY 10022 | direct: 212 333 0271 | main: 212 333 0200 | fax: 212 333 0250 | [JMatteo@arkin-law.com](mailto:JMatteo@arkin-law.com) | <http://www.arkin-law.com>

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# EXHIBIT E

**From:** Joseph Matteo  
**Sent:** Tuesday, December 27, 2011 5:15 PM  
**To:** 'brad.scheler@friedfrank.com'  
**Cc:** Howard J. Kaplan  
**Subject:** In re Washington Mutual, Inc., et al. - Subpoena Duces Tecum

Mr. Scheler,

Attached is a subpoena duces tecum to Fried, Frank, Harris, Shriver & Jacobson LLP. Will you accept service of the subpoena via this email?

Separately, the subpoena calls for the production of documents by January 26, 2012. Given the expedited schedule the Debtors appear to contemplate for a confirmation hearing on the Seventh Amended Plan, however, we would like to discuss with you an abbreviated production deadline. We also realize that these requests raise certain privilege issues. We would like to discuss those issues with you in advance.

I look forward to hearing from you.

Joseph A. Matteo | Arkin Kaplan Rice LLP | 590 Madison Avenue, New York, NY 10022 | direct: 212 333 0271 | main: 212 333 0200 | fax: 212 333 0250 | [JMatteo@arkin-law.com](mailto:JMatteo@arkin-law.com) | <http://www.arkin-law.com>

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# **EXHIBIT F**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

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

Debtors.

Chapter 11

District of Delaware Bankruptcy  
Court No. 08-12229 (MFW)  
(Jointly Administered)

**NON-PARTY FRIED, FRANK,  
HARRIS, SHRIVER &  
JACOBSON LLP'S  
OBJECTIONS AND  
RESPONSES TO THE TRUST  
PREFERRED GROUP'S  
SUBPOENA**

Non-party Fried, Frank, Harris, Shriver & Jacobson LLP ("Fried Frank") hereby objects and otherwise responds to the TPS Group's<sup>2</sup> subpoena that was served on Fried Frank on December 28, 2011 (the "Subpoena"), which included twenty-four separate document requests (the "Document Requests").

**FRIED FRANK'S GENERAL OBJECTIONS TO THE TPS GROUP'S SUBPOENA**

1. Fried Frank incorporates by reference the General Objections in AAOC's Objections and Responses to the Trust Preferred Sub-Group's Request for Production of Documents to the Settlement Noteholders (the "AAOC Objections and Responses"), attached hereto as Exhibit A, served in response to the Trust Preferred Sub-Group's Request for Production of Documents to the Settlement Noteholders (the "AAOC Requests").

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<sup>1</sup> The Debtors in the Washington Mutual chapter 11 cases, along with the last four digits of each Debtor's federal tax identification numbers, are: (a) Washington Mutual, Inc. (3725); and (b) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

<sup>2</sup> The "TPS Group" consists of five individual equity holders: VR Global Partners, L.P., The Visium Funds, Black Horse Capital, Greywolf Capital Management LP, and Pine River Capital L.P.



2. Fried Frank objects to the Subpoena as a whole, and to each Definition, Instruction, and Document Request contained therein as procedurally improper because there is no adversary proceeding, contested matter or other “action” (as defined in Bankruptcy Rule 9002) pending that would allow the TPS Group to serve the subpoena under Federal Rule of Civil Procedure 45, as made applicable in cases under the Bankruptcy Code through Rule 9016<sup>3</sup> of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and the TPS Group has neither sought nor received authorization to pursue a duplicative, second investigation with respect to AAOC<sup>4</sup> under Bankruptcy Rule 2004, nor would it be entitled to such authorization.

3. Fried Frank further objects to the Subpoena as a whole, and to each Definition, Instruction, and Document Request contained therein under Federal Rule of Civil Procedure 45 (c)(1) on the grounds that the Subpoena seeks (i) documents that overwhelmingly are subject to the protections of the attorney-client privilege and the work product doctrine—privileges that are held and asserted by AAOC; (ii) documents that have already been produced in the Washington Mutual chapter 11 cases, and (iii) documents that are protected by, among other things, the mediation order entered by the Bankruptcy Court in the Washington Mutual chapter 11 cases (the “Mediation Order”). The expense of conducting a review of the scope demanded in the Subpoena would be enormous.

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<sup>3</sup> In bankruptcy cases, unless the court orders an examination under Bankruptcy Rule 2004, discovery is permitted only in adversary proceedings, contested matters, proceedings contesting an involuntary bankruptcy petition, proceedings for recognition under chapter 15, and proceedings to vacate an order for relief. *See* Bankruptcy Rules 1018, 2004, 7026-7037, and 9014(c).

<sup>4</sup> “AAOC” refers to each of (a) Appaloosa Management L.P., Appaloosa Investment L.P. I, Palomino Fund Ltd., Thoroughbred Fund, L.P., and Thoroughbred Master Ltd., (b) Aurelius Capital Management, LP, Aurelius Capital Partners, LP, Aurelius Convergence Master, Ltd., ACP Master, Ltd., Aurelius Capital Master, Ltd. and Aurelius Investment, LLC, (c) Owl Creek Asset Management, L.P., Owl Creek I, L.P., Owl Creek II, L.P., Owl Creek Overseas Fund, Ltd., Owl Creek Socially Responsible Investment Fund, Ltd., Owl Creek Asia I, L.P., Owl Creek Asia II, L.P., and Owl Creek Asia Master Fund, Ltd. and (d) Centerbridge Partners, L.P., Centerbridge Special Credit Partners, L.P., Centerbridge Credit Partners, L.P., and Centerbridge Credit Partners Master, L.P. and any other Affiliates of the funds listed in (a) through (d) above which own or, during the Chapter 11 Cases, owned securities issued by and/or have direct or indirect Claims against WMI.

4. Fried Frank objects to the Subpoena as a whole, and to each Definition, Instruction, and Document Request contained therein, on the grounds and to the extent that they (a) are cumulative, duplicative, overbroad, unduly burdensome or oppressive; (b) are vague and ambiguous; and/or (c) are not reasonably calculated to lead to the discovery of relevant evidence.

5. Fried Frank objects to the Subpoena as a whole, and to each Definition, Instruction, and Document Request contained therein, to the extent they violate Local Rule of Bankruptcy Procedure 7026-1, and Rule 26.3 of the Local Civil Rules of the Southern and Eastern Districts of New York.

6. Fried Frank objects to the Subpoena as a whole, and to each Definition, Instruction, and Document Request contained therein, to the extent that they purport to call for the production of documents not in Fried Frank's possession, custody, or control, or that cannot be ascertained by means of a reasonable, diligent, good faith review of documents having an identifiable relationship to, and inquiry of personnel likely to have knowledge concerning, the subject matter of the Subpoena.

7. Fried Frank objects to the Subpoena as a whole, and to each Definition, Instruction, and Document Request contained therein, insofar as they purport to require Fried Frank to create or generate documents that do not currently exist.

8. Fried Frank objects to the Subpoena as a whole, and to each Definition, Instruction, and Document Request contained therein, to the extent they seek information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

9. Fried Frank objects to the Subpoena as a whole, and to each Definition, Instruction, and Document Request contained therein, to the extent they seek information

protected from disclosure pursuant to the Mediation Order, Delaware Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

10. Fried Frank objects to the Subpoena as a whole, and to each Definition, Instruction, and Document Request contained therein, to the extent they seek (a) information, the disclosure of which would constitute an unwarranted invasion of AAOC's rights of privacy and/or confidentiality; and/or (b) private, privileged, and confidential commercial, financial, and/or proprietary business information.

11. Fried Frank objects to the Subpoena as a whole, and to each Definition, Instruction, and Document Request contained therein, to the extent they seek publicly filed documents and/or documents or information already in the possession, custody, and control of, or otherwise available to, the TPS Group.

12. Fried Frank objects to the Subpoena as a whole, and to each Definition, Instruction, and Document Request contained therein, to the extent they seek documents that have already been produced in the Washington Mutual chapter 11 cases.

13. Fried Frank objects to the Subpoena as a whole, and to each Definition, Instruction, and Document Request contained therein, to the extent that they seek to impose obligations that exceed or differ from those imposed by the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure and the Local Rules of this Court or the Delaware Bankruptcy Court.

14. Fried Frank objects to the Subpoena as a whole, and to each Definition, Instruction, and Document Request contained therein, to the extent that it calls for production of electronically stored information from sources that are not reasonably accessible and where

retrieval of such materials is unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence, including but not limited to the production of electronically stored information from legacy systems, from sources that are maintained for disaster recovery purposes, or from sources that are not reasonably believed to contain unique, non-duplicative information. Absent a showing of special need and prima facie showing of relevance and materiality, Fried Frank further objects to the definition of “Document” to the extent that it would require the identification, location, and production of electronically stored information that has been deleted, fragmented or exists only in residual form.

All General Objections are incorporated by reference into each Request as though set forth in full therein.

## **FRIED FRANK’S OBJECTIONS TO THE TPS GROUP’S DOCUMENT REQUESTS**

### DOCUMENT REQUEST 1

All documents concerning any actual, proposed or potential settlement of any claim or issue in the Chapter 11 Cases.

### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 1

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 1 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine; to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases; and to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Delaware Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting

information disclosed at mediation or during settlement discussions.

#### DOCUMENT REQUEST 2

All documents concerning any information you provided to the Settlement Noteholders concerning (i) settlement negotiations, (ii) term sheets, (iii) potential settlement terms, (iv) potential recoveries and/or (v) the actual, proposed or potential settlement of the Chapter 11 Cases.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 2

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 2 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine; to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases; and to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Delaware Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

#### DOCUMENT REQUEST 3

All documents concerning the Settlement Noteholders' use of any information they obtained relating to the actual, proposed or potential settlement of any claim or issue in the Chapter 11 Cases, including without limitation information the Settlement Noteholders received, either directly or indirectly, from the Debtors.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 3

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 3 to the extent that it seeks

documents protected by the attorney-client privilege and/or the work product doctrine; to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases; and to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Delaware Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

#### DOCUMENT REQUEST 4

All documents concerning the Settlement Noteholders' purchases or sales of Securities, including with limitation all documents concerning (i) the Settlement Noteholders' decisions to trade (or to refrain from trading) such Securities; and (ii) the reasons or bases for such decisions.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 4

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 4 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine and to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases.

#### DOCUMENT REQUEST 5

All documents concerning any communications between you and/or the Settlement Noteholders on the one hand, and JPMorgan on the other hand, concerning the Chapter 11 Cases.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 5

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these

Requests. Fried Frank further specifically objects to Request 5 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine; to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases; and to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Delaware Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

#### DOCUMENT REQUEST 6

All documents concerning any communications with the Debtors (including without limitation Weil Gotshal) concerning the Settlement Noteholders' actual or potential trading in the Securities.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 6

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 6 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine and to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases.

#### DOCUMENT REQUEST 7

All documents concerning the meeting on or about May 6, 2009, among some or all of the Settlement Noteholders, the Debtors and the Debtors' counsel at Quinn Emanuel Urquhart & Sullivan LLP.

7

Fried Frank incorporates by reference its General Objections as well as the

General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 7 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine and to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases.

#### DOCUMENT REQUEST 8

All documents concerning the negotiations among Centerbridge, Appaloosa, and JPMorgan from June 1, 2009, through and including September 30, 2009, concerning the Chapter 11 Cases.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 8

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 8 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine and to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases.

#### DOCUMENT REQUEST 9

All documents concerning communications with the Settlement Noteholders regarding the term sheets exchanged by the Debtors and JPMorgan in April 2009.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 9

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 9 to the extent that it seeks



documents protected by the attorney-client privilege and/or the work product doctrine and to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases.

DOCUMENT REQUEST 10

All documents concerning the meeting held on or about September 2, 2009, among Centerbridge, Appaloosa, and JPMorgan.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 10

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 10 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine and to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases.

DOCUMENT REQUEST 11

All phone records reflecting any telephone calls between or among you and the Settlement Noteholders from April 1, 2009, through September 30, 2009, inclusive, and from December 1, 2009, through March 12, 2010, inclusive.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 11

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 11 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine.

DOCUMENT REQUEST 12

All documents concerning Owl Creek's and Aurelius' departure from the White

& Case Notcholders Group and their subsequent engagement of you, including without limitation all communications with Owl Creek or Aurelius concerning past or future settlement discussions or positions, or past or future strategy.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 12

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 12 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine and to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases.

#### DOCUMENT REQUEST 13

All Confidentiality Agreements and drafts thereof, and all communications concerning the Confidentiality Agreements, including without limitation the Debtors' disclosure obligations thereunder.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 13

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 13 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine and to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases.

#### DOCUMENT REQUEST 14

All documents concerning the Debtors' disclosures at the end of the Confidentiality Periods, including but not limited to communications concerning the Debtors' compliance (or failure to comply) with Securities and Exchange Commission Regulation FD.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 14

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 14 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine and to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases.

#### DOCUMENT REQUEST 15

All documents concerning any request by the Settlement Noteholders to terminate a Confidentiality Period early.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 15

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 15 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine and to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases.

#### DOCUMENT REQUEST 16

All documents concerning any discussion, deliberation, analysis, assessment, evaluation or determination as to whether any settlement negotiation or discussion in connection with the Chapter 11 Cases constituted material non-public information.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 16

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent

that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 16 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine and to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases.

#### DOCUMENT REQUEST 17

All documents concerning the status of settlement negotiations concerning the Chapter 11 Cases, including without limitation documents concerning any alleged belief on the part of the Settlement Noteholders that such settlement negotiations were "dead".

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 17

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 17 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine; to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases; and to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Delaware Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

#### DOCUMENT REQUEST 18

All documents concerning whether the Settlement Noteholders should or should not abstain from trading or place restrictions on trading of Securities, including without limitation whether to create an ethical wall.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 18

Fried Frank incorporates by reference its General Objections as well as the

General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 18 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine and to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases.

#### DOCUMENT REQUEST 19

All documents concerning any trading restrictions or limitations the Settlement Noteholders actually implemented (or contemplated implementing) with respect to the Securities, including without limitation Centerbridge's alleged restrictions on trading at the end of August and early September 2009.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 19

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 19 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine and to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases.

#### DOCUMENT REQUEST 20

All documents concerning any discussion, deliberation, analysis, assessment, evaluation or determination concerning whether to publicly disclose the existence or substance of any settlement discussions, settlement negotiations, term sheet, draft plan, or proposed form of any settlement concerning the Chapter 11 Cases.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 20

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent

that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 20 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine; to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases; and to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Delaware Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

#### DOCUMENT REQUEST 21

All documents concerning the "Plan Term Sheet" Mr. Brad Eric Scheler emailed to Mr. Brian Rosen on February 9, 2010.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 21

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 21 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine and to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases.

#### DOCUMENT REQUEST 22

All documents concerning any information you received from or provided to any third party concerning the Chapter 11 Cases during the Mediation.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 22

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent

that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 22 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine; to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases; and to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Delaware Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

#### DOCUMENT REQUEST 23

All documents concerning the basis for the release of claims against the Settlement Noteholders, as contemplated by the Seventh Amended Plan, including without limitation the negotiations relating thereto and any documents concerning the consideration to be provided by the Settlement Noteholders in connection with any such release.

#### OBJECTION AND RESPONSE TO DOCUMENT REQUEST 23

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 23 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine; to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases; and to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Delaware Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

DOCUMENT REQUEST 24

To the extent that you provided legal advice to the Settlement Noteholders with respect to the subject matter of any of the above requests, all documents concerning any such advice.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 24

Fried Frank incorporates by reference its General Objections as well as the General Objections interposed by AAOC in the AAOC Objections and Responses to the extent that the documents sought in the AAOC Requests are the same or similar to those sought in these Requests. Fried Frank further specifically objects to Request 24 to the extent that it seeks documents protected by the attorney-client privilege and/or the work product doctrine; to the extent that it seeks documents that have already been produced by AAOC, the Debtors or any other party in the Washington Mutual chapter 11 cases; and to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Delaware Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.



Dated: January 9, 2012  
New York, New York

FRIED, FRANK, HARRIS, SHRIVER  
& JACOBSON LLP

/s William G. McGuinness  
William G. McGuinness  
Michael B. de Leeuw

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New York, New York 10004-1980  
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Non-Party Pro Se

# EXHIBIT A

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re	)	Chapter 11
WASHINGTON MUTUAL, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 08-12229 (MFW)
Debtors.	)	(Jointly Administered)
	)	
	)	
	)	

**AAOC'S OBJECTIONS AND RESPONSES TO THE TRUST PREFERRED SUB-GROUP'S REQUEST FOR PRODUCTION OF DOCUMENTS TO THE SETTLEMENT NOTEHOLDERS**

AAOC<sup>2</sup> hereby answers, objects, and otherwise responds to the Trust Preferred Sub-Group's<sup>3</sup> Request for Production of Documents to the Settlement Noteholders, dated December 23, 2011 (the "Discovery Requests" or "Requests").

**AAOC'S GENERAL OBJECTIONS TO THE TRUST PREFERRED SUB-GROUP'S REQUEST FOR PRODUCTION OF DOCUMENTS**

1. These Discovery Requests are procedurally and substantively improper.<sup>4</sup> The Requests constitute a plainly inappropriate attempt to conduct discovery on the same issues

<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification numbers, are: (a) Washington Mutual, Inc. (3725); and (b) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

<sup>2</sup> "AAOC" refers to each of (a) Appaloosa Management L.P., Appaloosa Investment L.P. I, Palomino Fund Ltd., Thoroughbred Fund, L.P., and Thoroughbred Master Ltd., (b) Aurelius Capital Management, LP, Aurelius Capital Partners, LP, Aurelius Convergence Master, Ltd., ACP Master, Ltd., Aurelius Capital Master, Ltd. and Aurelius Investment, LLC, (c) Owl Creek Asset Management, L.P., Owl Creek I, L.P., Owl Creek II, L.P., Owl Creek Overseas Fund, Ltd., Owl Creek Socially Responsible Investment Fund, Ltd., Owl Creek Asia I, L.P., Owl Creek Asia II, L.P., and Owl Creek Asia Master Fund, Ltd. and (d) Centerbridge Partners, L.P., Centerbridge Special Credit Partners, L.P., Centerbridge Credit Partners, L.P., and Centerbridge Credit Partners Master, L.P. and any other Affiliates of the funds listed in (a) through (d) above which own or, during the Chapter 11 Cases, owned securities issued by and/or have direct or indirect Claims against WMI.

<sup>3</sup> The "Trust Preferred Sub-Group" is a sub-group of the Trust Preferred Consortium and consists of the following five individual equity holders: VR Global Partners, L.P., The Visium Funds, Black Horse Capital, Greywolf Capital Management LP, and Pine River Capital L.P.

<sup>4</sup> Procedurally, there is no basis to serve these Requests under either Bankruptcy Rule 7026 or 7034 as there is no adversary proceeding or contested matter that could form the basis for such discovery, and the Trust Preferred Sub-Group has neither sought nor received authorization to pursue a second investigation with respect to AAOC under Bankruptcy Rule 2004, nor would it be entitled to such authorization.

already conducted by the Trust Preferred Sub-Group and its own fiduciaries, the Official Committee of Equity Security Holders (the “Equity Committee”). Such additional discovery is not needed to address the fairness of the settlement now before the Court and indeed would undermine and defeat the goals of the mediation and the settlement.

2. Pursuant to the Court’s February 8, 2011 Order, AAOC has already produced over 57,000 pages of documents,<sup>5</sup> and testified in four depositions. The Trust Preferred Sub-Group received all of these previously produced materials in July 2011 in accordance with the Court’s June 29, 2011 Order, attended each of the four depositions, and received a copy of the deposition transcripts as well as any associated exhibits.

3. There also was a two-week evidentiary hearing in July 2011, dedicated in substantial part to issues relating to AAOC. The Trust Preferred Sub-Group participated at this hotly contested confirmation hearing, had the opportunity to cross-examine all of the witnesses who testified, and did in fact cross-examine AAOC witnesses.

4. As a result of the extensive discovery and evidentiary hearing that has already occurred, there is no need for additional discovery of AAOC. The Court already has an ample record from which it can assess the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (the “Seventh Amended Plan”) and the reasonableness of the multi-party settlement contained therein. Consideration of a settlement does not now require or justify a mini-trial on the merits. The Court already has before it a great deal more information about the merits of the settled claims than is customarily available to a court in evaluating a settlement.

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<sup>5</sup> Appaloosa produced 15,034 pages of documents, Aurelius produced 12,373 pages of documents, Centerbridge produced 19,046 pages of documents, and Owl Creek produced 11,009 pages of documents.

5. Any further discovery into the alleged merits of claims against AAOC would defeat the purpose of the Court-ordered mediation, which was to prevent the case from “devolv[ing] into a litigation morass.” It would also be fundamentally at odds with the premise of the settlement – namely, to bring a hard-fought litigation to a close. The AAOC parties did not agree to the filing of the Seventh Amended Plan just so that they could be the subject of a second round of discovery and effectively a second trial in the Bankruptcy Court.

6. The Trust Preferred Sub-Group has no interest in this or any other reasonable settlement of the claims against AAOC. Its goal is only to derail or delay the confirmation proceedings in the hope that its ill-founded appeal from the Court’s denial of their REIT-preferred securities claims will be decided in its favor. It is precisely for that reason that the Trust Preferred Sub-Group has also filed a motion for a stay of the confirmation proceedings pending the adjudication of that appeal. Such tactical considerations cannot justify further discovery against AAOC in these circumstances.

7. Finally, the Discovery Requests also inappropriately seek documents regarding the Court-ordered mediation. Any such documents clearly are protected by, among other things, the Court’s Order Appointing Mediator.

8. Accordingly, AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Document Request contained therein in their entirety, as further described herein.

9. AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Discovery Request contained therein, on the grounds and to the extent that they (a) are cumulative, duplicative, overbroad, unduly burdensome or oppressive; (b) are vague and ambiguous; and/or (c) are not reasonably calculated to lead to the discovery of relevant evidence.

10. AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Discovery Request contained therein, to the extent that they purport to call for the production of documents not in AAOC's possession, custody, or control, or that cannot be ascertained by means of a reasonable, diligent, good faith review of documents having an identifiable relationship to, and inquiry of personnel likely to have knowledge concerning, the subject matter of the Request.

11. AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Document Request contained therein, insofar as they purport to require AAOC to create or generate documents that do not currently exist.

12. AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Discovery Request contained therein, to the extent they seek information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

13. AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Discovery Request contained therein, to the extent they seek information protected from disclosure pursuant to the Mediation Order [D.I. 8780], Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

14. AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Discovery Request contained therein, to the extent they seek (a) information, the disclosure of which would constitute an unwarranted invasion of AAOC's rights of privacy and/or confidentiality; and/or (b) private, privileged, and confidential commercial, financial, and/or proprietary business information.

15. AAOC objects to the Discovery Requests as a whole, and to each Definition, Instruction, and Discovery Request contained therein, to the extent they seek publicly filed documents and/or documents or information already in the possession, custody, and control of, or otherwise available to, the Trust Preferred Sub-Group.

16. Finally, AAOC objects to the service of any similar discovery requests or subpoenas on its agents, attorneys (including, without limitation, Fried, Frank, Harris, Shriver & Jacobson LLP, which has acted as counsel for AAOC at various times during these chapter 11 cases) or any of the other persons or entities described in the Discovery Requests' definition of "Settlement Noteholders," on the same grounds indicated above with respect to the Discovery Requests.

All General Objections are incorporated by reference into each Request as though set forth in full therein.

**AAOC'S RESPONSE TO THE TRUST PREFERRED SUB-GROUP'S  
DISCOVERY REQUESTS**

**DOCUMENT REQUEST 1:**

All documents concerning the market for and/or the market price of the Securities.

**OBJECTION AND RESPONSE TO DOCUMENT REQUEST 1:**

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 2:

All documents concerning your purchases or sales of Securities, including without limitation all documents concerning (i) your decisions to trade (or to refrain from trading) such Securities; and (ii) the reasons or bases for such decisions.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 2:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 3:

All documents concerning any actual, proposed or potential settlement of any claim or issue in the Chapter 11 Cases, including without limitation (i) all term sheets, settlement proposals, settlement agreements or plans, including any drafts thereof; (ii) your assessment of any actual, proposed or potential settlement; and (iii) any analyses, evaluations or determinations in connection with any of the foregoing.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 3:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.



DOCUMENT REQUEST 4:

All documents concerning your knowledge of any negotiations or communications concerning any actual, proposed or potential settlement of any claim or issue in these Chapter 11 Cases.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 4:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 5:

All documents concerning any models that include as an input any aspect of any term of an actual, proposed or potential settlement of any claim or issue in the Chapter 11 Cases. These documents should be produced in unredacted, digital form.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 5:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this request on the grounds that seeks confidential, proprietary, or trade secret information.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 6:

All documents concerning your use of any information you obtained relating to any actual, proposed or potential settlement of any claim or issue in the Chapter 11 Cases, including without limitation information you received, either directly or indirectly, from the Debtors.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 6:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 7:

All documents concerning any communications with JPMorgan concerning the Chapter 11 Cases.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 7:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 8:

All documents reflecting any communications with the Debtors (including without limitation Weil Gotshal) concerning trading in the Securities.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 8:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 9:

All documents concerning the Debtors' disclosures at the end of the Confidentiality Periods, including but not limited to communications concerning the Debtors' compliance (or failure to comply) with Securities and Exchange Commission Regulation FD.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 9:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 10:

All Confidentiality Agreements and drafts thereof, and all communications concerning the Confidentiality Agreements, including without limitation the Debtors' disclosure obligations thereunder.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 10:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 11:

All documents concerning any information you received from Fried Frank concerning (i) settlement negotiations, (ii) term sheets, (iii) potential settlement terms, (iv) potential

recoveries and/or (v) the actual, proposed or potential settlement of any claim or issue in the Chapter 11 Cases.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 11:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 12:

All documents concerning the term sheets exchanged by the Debtors and JPMorgan in April 2009, including without limitation communications with Fried Frank concerning (i) those term sheets; (ii) any term in such term sheets; and any summary of those term sheets.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 12:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 13:

All documents concerning the meeting on or about May 6, 2009 among some or all of the Settlement Noteholders, the Debtors and the Debtors' counsel at Quinn Emanuel Urquhart & Sullivan LLP.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 13:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 14:

All documents concerning the negotiations among Centerbridge, Appaloosa and JPMorgan from June 1, 2009 through and including September 30, 2009, concerning the Chapter 11 Cases.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 14:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. Aurelius and Owl Creek further objects to this request to the extent it calls for the production of documents not in their possession, custody, or control.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 15:

All documents concerning the meeting held on or about September 2, 2009, among Centerbridge, Appaloosa, and JPMorgan.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 15:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this request to the extent it calls for the production of documents not in their possession, custody, or control.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 16:

All phone records reflecting any telephone calls between or among you and Fried Frank from April 1, 2009 through September 30, 2009, inclusive, and from December 1, 2009 through March 12, 2010, inclusive.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 16:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request as unduly burdensome and to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest, and/or any other applicable privilege or immunity.

DOCUMENT REQUEST 17:

With respect to your investment in the debt or equity securities of WMI, WMB and/or the Debtors, documents reflecting (i) your realized and unrealized trading profits by month, (ii) your current positions; and (iii) your projected recovery should the Court approve the Seventh Amended Plan.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 17:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request on the grounds that it seeks information that is not relevant to any fact at issue and on the grounds that it

seeks confidential, proprietary and or trade secret information. AAOC further objects to this Request to the extent that it would necessitate the creation of a compilation, abstract, audit or summary of documents.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 18:

All documents concerning Centerbridge's and Aurelius' reallocation of the Securities between or among their respective affiliated funds.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 18:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request on the grounds that it seeks confidential, proprietary and or trade secret information. AAOC further objects to this Request on the grounds that it is vague and ambiguous. AAOC further objects to this Request to the extent that it would necessitate the creation of a compilation, abstract, audit or summary of documents. AAOC further object to this Request to the extent it seeks documents not in their possession, custody or control.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 19:

All documents reflecting Centerbridge's and Aurelius' investment capital inflows and outflows by month.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 19:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request on the grounds that it seeks confidential, proprietary and or trade secret information. AAOC further objects to this Request to the extent that it would necessitate the creation of a compilation, abstract, audit or summary of documents. AAOC further object to this request to the extent it seeks documents not in their possession, custody or control.

DOCUMENT REQUEST 20:

All documents concerning investor redemptions (or the lack thereof) at Aurelius in or around June 2009, including without limitation all documents referenced by Mr. Daniel Gropper at page 18, line 23 to page 19, line 4 of the July 19, 2011 transcript of his testimony during the second confirmation hearing.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 20:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request on the grounds that it seeks confidential, proprietary and or trade secret information. AAOC further objects to this Request to the extent that it would necessitate the creation of a compilation, abstract, audit or summary of documents. Appaloosa, Centerbridge and Owl Creek further object to this request to the extent it seeks documents not in their possession, custody or control.

DOCUMENT REQUEST 21:

All documents concerning the acquisition by the Settlement Noteholders of a blocking position in any class of Securities.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 21:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.



Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 22:

All documents concerning whether any settlement negotiation or discussion in connection with these Chapter 11 cases constitutes material non-public information.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 22:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 23:

All documents concerning the applicability of your internal insider trading policies to any trades or transactions involving Securities.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 23:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 24:

All documents concerning Owl Creek's and Aurelius' departure from the White & Case Noteholders Group and their subsequent engagement of Fried Frank, including without limitation all communications (with Fried Frank, the Settlement Noteholders, or others), concerning past or future settlement discussions or positions, or past or future strategy.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 24:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 25:

All documents concerning the status of settlement negotiations concerning the Chapter 11 Cases, including without limitation documents concerning any alleged belief that such settlement negotiations were "dead".

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 25:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable

privilege or immunity. AAOC further objects to this Request to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 26:

All documents concerning whether to abstain from trading or place restrictions on trading of Securities, including without limitation whether to create an ethical wall.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 26:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 27:

All documents concerning any trading restrictions or limitations you actually implemented (or contemplated implementing) with respect to the Securities, including without limitation Centerbridge's alleged restrictions on trading at the end of August and early September 2009.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 27:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 28:

All documents concerning whether to disclose publicly any settlement discussions or negotiations concerning the Chapter 11 Cases, including without limitation any term sheet, draft plan, or proposed form of any settlement.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 28:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 29:

All documents concerning the "Plan Term Sheet" Mr. Brad Eric Scheler emailed to Mr. Brian Rosen on February 9, 2010.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 29:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC objects to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, and/or any other applicable privilege or immunity.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

DOCUMENT REQUEST 30:

All documents concerning any information you received from or provided to any third party concerning the Chapter 11 Cases during the Mediation.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 30:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this Request as vague and ambiguous. AAOC further objects to this Request to the extent it seeks information protected from disclosure pursuant to the Mediation Order, Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408 and/or any other applicable law or rule protecting information disclosed at mediation or during settlement discussions.

DOCUMENT REQUEST 31:

All documents concerning the basis for the release of claims against the Settlement Noteholders, as contemplated by the Seventh Amended Plan, including without limitation the negotiations relating thereto.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 31:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request. AAOC further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, a common interest privilege, the Mediation Order, Local Bankruptcy Rule 9019-5(d), Federal Rule of Evidence 408, and/or any other applicable privilege or immunity. AAOC further objects to this Request to the extent it seeks publicly filed documents and/or documents or information already in the possession, custody, and control of, or otherwise available to, the Trust Preferred Sub-Group.

DOCUMENT REQUEST 32:

All discovery responses and documents you produced to the Official Committee of Equity Security Holders pursuant to the Order, but did not produce to the Trust Preferred Holders, including, without limitation, (i) all documents you produced in response to the Official Committee of Equity Security Holders' First Request for Production of Documents; (ii) your responses to the Official Committee of Equity Security Holders' First Set of Interrogatories to the Washington Mutual, Inc. Settlement Noteholders; (iii) your responses to the Official Committee of Equity Security Holders' First Request for Admissions to the Washington Mutual, Inc. Settlement Noteholders; and (iv) any privilege logs you have produced.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 32:

AAOC incorporates its General Objections by reference. For the reasons set forth in the Preliminary Statement and General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced all documents responsive to this Request required by the Court's June 29, 2011 Order.

DOCUMENT REQUEST 33:

All documents upon which you intend to rely at the hearing to consider confirmation of the Seventh Amended Plan.

OBJECTION AND RESPONSE TO DOCUMENT REQUEST 33:

AAOC incorporates its General Objections by reference. For the reasons set forth in the General Objections, AAOC objects to this Request.

Subject to and without in any way waiving the above objections, AAOC already produced documents responsive to this Request, if any, to the extent required by the Court's February 11, 2011 and June 29, 2011 Orders.

Dated: Wilmington, Delaware  
January 6, 2012

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# EXHIBIT G

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

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

**WEIL GOTSHAL & MANGES, LLP’S OBJECTIONS AND RESPONSES TO THE  
TRUST PREFERRED SECURITY HOLDERS’ SUBPOENA TO  
WEIL GOTSHAL & MANGES LLP**

Pursuant to Rules 26 and 45 of the Federal Rules of Civil Procedure (the “Rules”), made applicable to these proceedings by Rules 9016, 9014 and 7026 of the Federal Rules of Bankruptcy Procedure, and pursuant to the Local Bankruptcy Rules for the District of Delaware, Weil Gotshal & Manges LLP (“Weil”), attorneys for Washington Mutual, Inc. (“WMI”) and WMI Investment Corp. (“WMIIC”), as debtors and debtors in possession (together, the “Debtors”), hereby submits the following objections to the Trust Preferred Security Holders’ (“TPS Holders”) Subpoena to Weil, dated December 27, 2011 (the “Subpoena”).

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<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, Suite 2500, Seattle, Washington 98104.

## GENERAL OBJECTIONS

Weil makes the following General Objections to the requests (“Requests”) set forth in the Subpoena, which apply to and are incorporated into each specific objection below as if they were fully repeated therein, and will not be specifically repeated or referenced in each specific objection.<sup>2</sup>

1. Inconsistency with Applicable Rules. Weil objects generally to the Subpoena, including the definitions and instructions contained therein, to the extent it seeks to impose requirements that are in addition to, different from, or broader than those set forth in, required or permitted by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, the local rules of the United States Bankruptcy Court for the District of Delaware, and/or any rules, statutes, applicable case law, or court orders governing the proper scope, timing, and extent of all discovery in these chapter 11 cases.

2. Definition of “Debtors.” Weil objects to the definition of “Debtors” to the extent it includes “any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. Weil also objects to this definition to the extent it includes “attorneys” on the ground that it calls for information outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine. Weil will

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<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed in the Subpoena.

interpret the term “Debtors” to mean Washington Mutual, Inc. and WMI Investment Corp., collectively.

3. Definition of “Document or “documents.” Weil objects to the definition of “Document” on the grounds that it is overly broad, vague, and ambiguous. Weil further objects to the definition of the term “Document” to the extent it calls for documents and/or information that may be outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine. Weil will interpret the term “Document” in accordance with the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, and relevant case law.

4. Definition of “Entity.” Weil objects to the definition of “Entity” to the extent it includes “a person, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, governmental unit or any subdivision thereof, including, without limitation, the office of the United States Trustee, or any other entity.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad.

5. Definition of “FDIC.” Weil objects to the definition of “FDIC” to the extent it includes “any parent, subsidiaries, divisions, affiliates, and any other entities related thereto, and their past and present employees, consultants, representatives, attorneys, partners, successors, assigns, and any person or entity that, at any time, acted on their behalf or for their benefit.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. Weil will interpret the term “FDIC” to mean the Federal Deposit Insurance Corporation.

6. Definition of “Fried Frank.” Weil objects to the definition of “Fried Frank” to the extent it includes “any parent, subsidiaries, divisions, affiliates, and any other entities related thereto, and their past and present employees, consultants, representatives, attorneys, partners, successors, assigns, and any person or entity that, at any time, acted on their behalf or for their benefit.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. Weil will interpret the term “Fried Frank” to mean the law firm of Fried, Frank, Harris, Shriver & Jacobson LLP.

7. Definition of “JPMorgan.” Weil objects to the definition of “JPMorgan” to the extent it includes “any parent, subsidiaries, divisions, affiliates, holding companies, predecessors and/or successors-in-interest and any other entity relating thereto, and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, representatives, and other persons acting on its behalf.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. Weil will interpret the term “JPMorgan” to mean JPMorgan Chase Bank, N.A.

8. Definition of “Securities.” Weil objects to the definition of “Securities” to the extent it includes the “debt or equity securities of WMI, WMB and/or the Debtors.” The inclusion of such terms renders the defined term vague, ambiguous, unduly burdensome, and overbroad. Weil further objects to the definition of “Securities” to the extent it includes the debt and equity of WMB on the grounds that the inclusion of the debt and equity of WMB renders the term overbroad and further calls for information outside Weil and the Debtors’ possession, custody and/or control.

9. Definition of “Settlement Noteholders.” Weil objects to the definition of “Settlement Noteholders” to the extent it includes “their respective current or former parents, subsidiaries, divisions, affiliates, management companies, funds, holding companies and any

other entities related thereto, and their respective past and present employees, consultants, accountants, agents, financial advisors, representatives, attorneys, successors, assigns, and any person or entity that, at any time, acted on their behalf or for their benefit.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. Weil will interpret the term “Settlement Noteholders” to mean Owl Creek Asset Management, L.P., Appaloosa Management, L.P., Centerbridge Partners, L.P., and Aurelius Capital Management L.P.

10. Definition of “Valuation.” Weil objects to the definition of “Valuation” on the grounds that it is overly broad, vague, and ambiguous, and to the extent it includes “actual, perceived, estimated or appraised worth” and “enterprise value, going concern value, equity value, actual cash value, book value, intrinsic value, liquidation value, and market value.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad.

11. Definition of “Washington Mutual.” Weil objects to the definition of “Washington Mutual” to the extent it includes “WMI and WMB, and any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside accountants, outside consultants, representatives and other persons acting on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in interest.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. Weil also objects to this definition to the extent it includes “attorneys” on the ground that it calls for information outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine. Weil further objects to the

definition of “Washington Mutual” to the extent it includes WMB on the grounds that the inclusion of WMB renders the term overbroad and further calls for information outside Weil and the Debtors’ possession, custody and/or control.

12. Definition of “Weil Gotshal.” Weil objects to the definition of “Weil Gotshal” to the extent it includes “any parent, subsidiaries, divisions, affiliates, and any other entities related thereto, and their past and present employees, consultants, representatives, attorneys, successors, assigns, and any person or entity that, at any time, acted on their behalf or for their benefit.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. Weil also objects to this definition generally, and to the extent it includes the term “attorneys,” as it purports to call for information outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine. Weil will interpret the term “Weil Gotshal” to mean the law firm of Weil, Gotshal & Manges LLP.

13. Definition of “White & Case.” Weil objects to the definition of “White and Case” to the extent it includes “any parent, subsidiaries, divisions, affiliates, and any other entities related thereto, and their past and present employees, consultants, representatives, attorneys, successors, assigns, and any person or entity that, at any time, acted on their behalf or for their benefit.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. Weil will interpret the term “White & Case” to mean the law firm of White & Case LLP.

14. Definition of “White & Case Noteholders Group.” Weil objects to the definition of “White & Case Noteholders Group” as vague, ambiguous, overbroad and unduly burdensome, and to the extent it incorporates the objectionable definitions of “Securities” and “White &

Case.” Weil incorporates by reference the objections asserted above with respect to the definitions of “Securities” and “White & Case.”

15. Definition of “WMB.” Weil objects to the definition of “WMB” to the extent it includes “any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. Weil also objects to this definition to the extent it includes “attorneys” on the ground that it calls for information outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine. Weil will interpret the term “WMB” to mean Washington Mutual Bank, Henderson, Nevada.

16. Definition of “WMI.” Weil objects to the definition of “WMI” to the extent it includes “any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside accountants, outside consultants, representatives and other persons acting on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in interest.” The inclusion of such terms renders the defined term vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. Weil also objects to this definition to the extent the inclusion of the term “attorneys” purports to call for information outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine. Weil will interpret the term “WMI” to mean Washington Mutual, Inc.



17. Definition of “You or Your.” Weil objects to the definitions of “You or Your” to the extent they call for information outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine. Weil incorporates by reference its objections to the definition of “Weil Gotshal” as set forth above.

18. Requirements of Instruction No. 1. Weil objects to the requirements of Instruction No. 1 to the extent the Instruction renders the Requests duplicative of previous discovery served in these chapter 11 cases, and is not reasonably calculated to lead to the discovery of admissible evidence or testimony, unduly burdensome and/or harassing.

19. Requirements of Instruction No. 3. Weil objects to the requirements of Instruction No. 3 on the grounds that the Instruction is vague and ambiguous and seeks to impose requirements that are in addition to, different from, or broader than those set forth in or required by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, the local rules of the United States Bankruptcy Court for the District of Delaware, and/or any rules, statutes, applicable case law, or court orders governing the proper scope, timing, and extent of all discovery in these chapter 11 cases.

20. Requirements of Instruction No. 4. Weil objects to the requirements of Instruction No. 4 to the extent the Instruction calls for drafts protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, any other applicable common law or statutory privilege or doctrine or any court orders.

21. Requirements of Instruction No. 6. Weil objects to the requirements of Instruction No. 6 on the grounds that the Instruction is vague and ambiguous.

22. Requirements of Instruction No. 7. Weil objects to the requirements of Instruction No. 7 to the extent the Instruction includes the terms “agents, advisors, employees,

representative, attorneys, and successors-in-interest.” The inclusion of such terms renders the Instruction vague, ambiguous, cumulative, duplicative, unduly burdensome, and overbroad. Weil also objects to this Instruction to the extent it includes the term “attorneys,” as it purports to call for information outside the scope of permissible discovery and/or protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, any other applicable common law or statutory privilege or doctrine or any court orders.

23. Requirements of Instruction No. 8. Weil objects to the requirements of Instruction No. 8 on the grounds that the Instruction is overly broad and unduly burdensome.

24. Requirements of Instruction No. 9. Weil objects to the requirements of Instruction No. 9 on the grounds that the Instruction is overly broad, unduly burdensome, and seeks to impose requirements that are in addition to, different from, or broader than those set forth in or required by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, the local rules of the United States Bankruptcy Court for the District of Delaware, and/or any rules, statutes, applicable case law, or court orders governing the proper scope, timing, and extent of all discovery in these chapter 11 cases.

25. Requirements of Instruction No. 10. Weil objects to the requirements of Instruction No. 10 on the grounds that the Instruction is overly broad and unduly burdensome.

26. Privilege. Weil objects to the Subpoena to the extent it seeks information that falls outside the scope of permissible discovery and/or is protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, any other applicable common law or statutory privilege or doctrine or any court orders. The Debtors further object to the Request to the extent it seeks information protected by the Order Appointing Mediator, dated October 10, 2011 [D.I. 8768] and Rule 9019-5(d)(iv) of the local rules of the United States Bankruptcy Court for the District of Delaware.

27. Confidential, Commercially, and/or Competitively Sensitive Information and Trade Secrets. Weil objects to the Subpoena to the extent it seeks information that contains and/or constitutes private, business confidential, proprietary, trade secret, information made confidential by law or agreement, or other information of Weil, the Debtors or third parties protected from disclosure. Weil and the Debtors' prior productions of non-privileged documents responsive to the Subpoena are governed by the terms of the Order Governing the Production and Use of Discovery Materials In Connection with Plan Confirmation [Docket No. 5407] entered by the Court on September 9, 2010.

28. Confidentiality of Mediation. Weil objects to the Subpoena to the extent it seeks information deemed "strictly confidential" and/or "not admissible for any purpose in any judicial or administrative proceeding" pursuant to paragraph 6 of the Order Appointing Mediator, dated October 10, 2011 [D.I. 8768]. Weil further objects to the Subpoena on the grounds that the TPS Holders have recognized the confidentiality restrictions imposed by the Order Appointing Mediator and has pledged to respect the confidentiality of the Mediation. (See Motion of the Consortium of Trust Preferred Security Holders to Determine Propriety of Proposed Classification of Interests Subject to Treatment Under Class 19 of the Seventh Amended Plan of Liquidation [D.I. 9257] ("The latest version of the Plan follows on the heels of a mediation process initiated by this Court's October 10, 2011 Order Appointing Mediator [Docket No. 8780]. The TPS Consortium will obviously respect the confidentiality restrictions imposed by that Order.")). Weil further objects to the Subpoena to the extent it purports to seek information that falls outside the scope of permissible discovery and/or is protected from discovery by Federal Rule of Civil Procedure 408, Rule 9019-5(d) of the local rules of the United States Bankruptcy Court for the District of Delaware, and/or any other rules, statutes, applicable case law, or court orders.

29. Vague and Ambiguous. Weil generally objects to the Subpoena to the extent that it is vague, ambiguous and/or calls for the disclosure of information and/or the identification of materials not reasonably calculated to lead to the discovery of admissible evidence.

30. Relevancy. Weil generally objects to the Subpoena to the extent it seeks the disclosure of information neither relevant to the issues to be addressed at the hearing on confirmation of the Seventh Amended Plan nor reasonably calculated to lead to the discovery of admissible evidence or testimony.

31. Possession, Custody, and/or Control. Weil objects to the Subpoena to the extent it seeks information not within Weil or the Debtors' possession, custody and/or control, and/or information that can or should be sought from other parties.

32. Duplicative Requests. Weil objects to each Request to the extent it is duplicative of other Requests in the Subpoena and/or of other discovery previously propounded in connection with these chapter 11 cases, including but not limited to i) the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; ii) the Equity Committee's First Request for Production of Documents, dated June 6, 2010; iii) the November 16, 2010 deposition of William Kosturos; iv) the November 17, 2010 deposition of Jonathan Goulding; v) the November 22, 2010 deposition of Charles Smith; and vi) the June 30, 2011 deposition of William Kosturos. Weil objects to each Request to the extent non-privileged documents responsive to such Requests have already been made available either (i) in the Debtors' document depository (the "Depository"), which contains, inter alia, non-privileged Weil settlement communications totaling 37,804 pages, prior to the confirmation hearing which commenced on December 2, 2010 ("Initial Confirmation Hearing"); (ii) along with the Debtors' September 1, 2010 production to the TPS Holders in connection with the TPS adversary proceeding containing TIFF (image) files and metadata for WMI documents

previously provided in the Depository ("September 1, 2010 production"); (iii) in the November 5, 2010 supplemental production to the TPS Holders, containing non-privileged Weil settlement communications bearing the bates pre-fix WGM-TPS, totaling 17,574 pages ("November 5, 2010 production"); (iv) in the February 24, 2011 supplemental production to the Official Committee of Equity Holders ("Equity Committee"), containing non-privileged Weil settlement communications bearing the bates pre-fix WEIL, totaling 5,562 pages ("February 24, 2011 production"); and vi) on the hard drive containing all non-privileged documents from the depository with metadata produced to the Equity Committee on February 7, 2011. Thus, over 60,000 pages of non-privileged settlement communications have been produced from Weil's files throughout the course of these chapter 11 cases. Weil further objects to each Request to the extent they are duplicative of requests previously propounded by the Equity Committee, as the Equity Committee is the fiduciary for the TPS Holders and a representative of their interests. Weil also objects to each Request to the extent non-privileged documents responsive to such Requests have already been offered into evidence at the Initial Confirmation Hearing and/or the second confirmation hearing which commenced on July 13, 2011 ("Second Confirmation Hearing") and to the extent responsive testimony has been given at the Initial and Second Confirmation Hearings.

33. Issues Related to the Global Settlement Agreement. Weil objects to each Request to the extent they purport to seek information regarding, or to place at issue, the reasonableness of the Global Settlement Agreement ("GSA"), including the negotiation and terms of the GSA. In the January 7, 2011 Opinion, the Court found that the GSA is fair and reasonable (See January 7 Op. at 2.) and reiterated that holding in its September 13, 2011 opinion. (See September 13 Op. at 26-32.) Further, pursuant to the Court's January 20, 2011 ruling, "any items that [the Court] did decide [are] not going to be relitigated [. . .]. It's the law of the case." (See January

20, 2011 Tr. at 51:2-52:2; See also September 13 Op. at 27 (“[the Court’s ruling on the reasonableness of the GSA rendered as part of the January 7 Opinion is law of the case . . .].”) Extensive discovery, including, but not limited to the November 16, 2010 deposition of William Kosturos, the November 17, 2010 deposition of Jonathan Goulding, and the November 22, 2010 deposition of Charles Smith regarding the GSA, among other issues, was provided prior to both the Initial Confirmation Hearing and the Second Confirmation Hearing. To the extent the Subpoena seeks information regarding, or to place at issue, the reasonableness or negotiation of the GSA, the Subpoena improperly seeks to relitigate issues adjudicated by the Court, contravenes prior Court orders and is overbroad, unduly burdensome and/or harassing, and not reasonably calculated to lead to the discovery of admissible evidence.

34. Issues Related to Insider Trading Allegations. Weil objects to each Request to the extent they purport to seek information regarding issues related to insider trading allegations, which were litigated during the Second Confirmation Hearing. Weil objects to each Request on the grounds that non-privileged Weil and Debtor settlement communications responsive to such Requests have already been made available pursuant to i) the July 2010 upload of such documents to the Depository; ii) the September 1, 2010 production; iii) the November 5, 2010 production; iv) the June 30, 2011 30(b)(6) deposition of William Kosturos attended by the TPS Holders; v) the February 24, 2011 supplemental production to the Equity Committee; and vi) the hard drive containing all non-privileged documents from the depository with metadata produced to the Equity Committee on February 7, 2011. Weil further objects to each Request to the extent non-privileged documents responsive to such Requests have already been offered into evidence at the Second Confirmation Hearing. Weil also objects to any further discovery regarding issues related to the insider trading allegations because such discovery would defeat the purpose of the Court-ordered mediation, which was to prevent the case from devolving into a litigation morass.

Any further discovery related to such issues would also be fundamentally at odds with the premise of the settlement – namely, to bring a hard-fought litigation to a close. To the extent the Subpoena seeks information related to insider trading allegations, it improperly seeks to relitigate issues already considered by the Court, contravenes prior Court orders and is overbroad, unduly burdensome and/or harassing, and not reasonably calculated to lead to the discovery of admissible evidence or testimony.

35. Advice of Counsel. Weil objects to each Request to the extent they purport to seek information regarding, or to place at issue, the advice of counsel. Per the Court's September 7, 2010 ruling denying the TPS Consortium Motion To Deem All Requests Admitted, or in the Alternative, to Compel Debtors to Adequately Respond to the Consortium of Trust Preferred Security Holders First Set of Requests for Admissions Directed to the Debtors [D.I. 5368], and the January 7, 2011 Opinion, the advice of counsel has not been placed at issue by the Debtors in connection with these chapter 11 cases. (See January 7, 2011 Op. at 21-23; September 7, 2010 Tr. at 83:17-21.)

36. Overly Broad, Unduly Burdensome, and/or Harassing. Weil objects to the Subpoena to the extent it is overly broad, unduly burdensome, and/or harassing.

37. Right to Supplement or Revise. The objections and responses herein are based on Weil's present knowledge, and Weil expressly reserves the right to supplement, clarify, revise, or correct any of the responses or objections hereto.

### **SPECIFIC OBJECTIONS TO THE REQUESTS**

#### **DOCUMENT REQUEST NO. 1:**

All documents concerning any communications with the Settlement Noteholders, the Official Committee of Unsecured Creditors, and/or JPMorgan (or their respective representatives or counsel) concerning any actual, proposed or potential settlement of any claim or issue in the Chapter 11 Cases, including without limitation (i) all term sheets, settlement proposals,

agreements or plans, whether in draft or final form; and (ii) any discussion, deliberation, analysis, assessment, evaluation or determination in connection with any of the foregoing.

**RESPONSE TO DOCUMENT REQUEST NO. 1:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine or any court orders. Weil objects to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. Weil also objects to this Request on the grounds that it is duplicative of *inter alia*, i) Topic No. 1 of the Consortium of Trust Preferred Securities Holders' Notice of 30(b)(6) Deposition, dated June 28, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; ii) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; iii) document request Nos. 27 and 28 of the Equity Committee's First Request for Production of Documents, dated June 6, 2010; iv) Topic No. 19 of the TPS Holders' Notice of 30(b)(6) Deposition Directed to WMI, dated October 12, 2010, in response to which William Kosturos was produced to testify on November 16, 2010; v) the November 17, 2010 deposition of Jonathan Goulding; and vi) testimony provided at the Initial and Second Confirmation Hearings. Further, Weil objects to this Request on the grounds that non-privileged documents responsive to this Request have already been made available in the Depository prior



to the Initial Confirmation Hearing, and in the September 1, 2010, November 5, 2010 and February 24, 2011 productions.

**DOCUMENT REQUEST NO. 2:**

All documents concerning any information provided to the Settlement Noteholders, or their respective representatives or counsel, concerning (i) settlement negotiations, (ii) term sheets, (iii) potential settlement terms, (iv) potential recoveries and/or (v) the actual, proposed or potential settlement of the Chapter 11 Cases.

**RESPONSE TO DOCUMENT REQUEST NO. 2:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. Weil objects to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. Weil further objects to this Request on the grounds that it is duplicative of inter alia, i) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; ii) document request Nos. 27 and 28 of the Equity Committee's First Request for Production of Documents, dated June 6, 2010; iii) Topic Nos. 2 and 4 of the Equity Committee's Amended Notice of 30(b)(6) Deposition, dated June 22, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; iv) the November 16, 2010 deposition of William Kosturos; v) the November 17, 2010 deposition of Jonathan Goulding; and vi) testimony provided at the Initial and Second Confirmation Hearings. Weil further objects on the basis that this request is duplicative of Request No. 1 and incorporates each of the specific objections to that Request by reference as if fully set forth herein. Further, Weil objects to this Request on the grounds that non-privileged documents responsive to this Request have already been made available in the Depository prior

to the Initial Confirmation Hearing, and in the September 1, 2010, November 5, 2010 and February 24, 2011 productions.

**DOCUMENT REQUEST NO. 3:**

All documents concerning any communications with the Settlement Noteholders (or their counsel) concerning the Settlement Noteholders' actual or potential trading in the Securities.

**RESPONSE TO DOCUMENT REQUEST NO. 3:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. Weil objects to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. Weil further objects to this Request on the grounds that it is duplicative of *inter alia*, i) Topic No. 1 of the Consortium of Trust Preferred Securities Holders' Notice of 30(b)(6) Deposition, dated June 28, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; ii) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; and iii) testimony provided at the Initial and Second Confirmation Hearings. Further, Weil objects to this Request on the grounds that non-privileged documents responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 4:**

All documents concerning the meeting you attended on or about March 10, 2009 with some or all of the Settlement Noteholders, the Debtors, JPMorgan, and the FDIC, among others, at Sullivan & Cromwell's New York offices.

**RESPONSE TO DOCUMENT REQUEST NO. 4:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine or any court orders. Weil objects to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. Weil further objects to this Request on the grounds that it is duplicative of inter alia, i) Topic No. 1 of the Consortium of Trust Preferred Securities Holders' Notice of 30(b)(6) Deposition, dated June 28, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; ii) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; iii) document request Nos. 27 and 28 of the Equity Committee's First Request for Production of Documents, dated June 6, 2010; iv) the November 16, 2010 deposition of William Kosturos; and v) testimony provided at the Initial and Second Confirmation Hearings. Weil further objects on the basis that this request is duplicative of Request No. 1 and incorporates each of the specific objections to that Request by reference as if fully set forth herein. Further, Weil objects to this Request on the grounds that non-privileged documents responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 5:**

All documents concerning the term sheets exchanged by the Debtors and JPMorgan in April 2009, including without limitation all communications with Fried Frank concerning those term sheets.

**RESPONSE TO DOCUMENT REQUEST NO. 5:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. Weil objects to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. Weil also objects to this Request to the extent it calls for the production of documents that are not within Weil or the Debtors' possession, custody and/or control. Weil further objects to this Request on the grounds that it is duplicative of i) Topic No. 1 of the Consortium of Trust Preferred Securities Holders' Notice of 30(b)(6) Deposition, dated June 28, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; ii) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; iii) document request Nos. 27 and 28 of the Equity Committee's First Request for Production of Documents, dated June 6, 2010; iv) the November 16, 2010 deposition of William Kosturos; v) the November 17, 2010 deposition of Jonathan Goulding; and vi) testimony provided at the Initial and Second Confirmation Hearings. Further, Weil objects to this Request on the grounds that non-privileged documents responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 6:**

All documents concerning the meeting you attended on or about May 6, 2009, with some or all of the Settlement Noteholders and the Debtors at Quinn Emanuel Urquhart & Sullivan LLP.

**RESPONSE TO DOCUMENT REQUEST NO. 6:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably to calculated to lead to the discovery of admissible evidence or testimony and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable common law or statutory privilege or doctrine or any court orders. Weil objects to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. Weil further objects to this Request on the grounds that it is duplicative of inter alia, i) Topic No. 1 of the Consortium of Trust Preferred Securities Holders' Notice of 30(b)(6) Deposition, dated June 28, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; ii) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; iii) document request Nos. 27 and 28 of the Equity Committee's First Request for Production of Documents, dated June 6, 2010; iv) the November 16, 2010 deposition of William Kosturos; v) the November 17, 2010 deposition of Jonathan Goulding; and vi) testimony provided at the Initial and Second Confirmation Hearings. Weil further objects on the basis that this Request is duplicative of Request No. 1 and incorporates each of the specific objections to that Request by reference as if fully set forth herein. Further, Weil objects to this Request on the grounds that non-privileged documents responsive to this Request have already

been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 7:**

All Confidentiality Agreements and drafts thereof, and all communications concerning the Confidentiality Agreements, including without limitation all documents concerning the Debtors' disclosure obligations thereunder.

**RESPONSE TO DOCUMENT REQUEST NO. 7:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. Weil objects to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. Weil further objects to this Request on the grounds that it is duplicative of *inter alia*, i) Topic No.1 of the Equity Committee's Amended Notice of 30(b)(6) Deposition, dated June 22, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; ii) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; and iii) testimony provided at the Initial and Second Confirmation Hearings. Further, Weil objects to this Request to the extent that that non-privileged documents responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 8:**

All documents concerning the Debtors' disclosures at the end of the Confidentiality Periods, including but not limited to communications concerning the Debtors' compliance (or failure to comply) with Securities and Exchange Commission Regulation FD.

**RESPONSE TO DOCUMENT REQUEST NO. 8:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. Weil objects to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. Weil further objects to this Request on the grounds that it is duplicative of *inter alia*, i) the June 30, 2011 deposition of William Kosturos; and ii) testimony provided at the Second Confirmation Hearing. Weil also objects to this request on the basis that it is duplicative of Request No. 7 and incorporates each of the specific objections to that Request by reference as if fully set forth herein. Further, Weil objects to this Request to the extent that non-privileged documents responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 9:**

All documents concerning any request by the Settlement Noteholders to terminate a Confidentiality Period early.

**RESPONSE TO DOCUMENT REQUEST NO. 9:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the

attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. Weil also objects to this Request to the extent it seeks information that can or should be sought from other parties. Weil objects to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. Weil further objects to this Request on the grounds that it is duplicative of inter alia, i) the June 30, 2011 deposition of William Kosturos; and ii) testimony provided at the Second Confirmation Hearing. Weil further objects to this request on the basis that it is duplicative of Request No. 7 and incorporates each of the specific objections to that Request by reference as if fully set forth herein. Further, Weil objects to this Request to the extent that non-privileged documents responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 10:**

All documents concerning any discussion, deliberation, analysis, assessment, evaluation or determination as to whether any settlement negotiation or discussion in connection with the Chapter 11 Cases constituted material non-public information.

**RESPONSE TO DOCUMENT REQUEST NO. 10:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. Weil objects to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. Weil further objects to this Request on the grounds that it is duplicative of inter alia, i) the June



30, 2011 deposition of William Kosturos; and ii) testimony provided at the Second Confirmation Hearing. Weil also objects to this request on the basis that it is duplicative of Request Nos. 7 and 8 and incorporates each of the specific objections to those Requests by reference as if fully set forth herein. Further, Weil objects to this Request to the extent that non-privileged documents responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 11:**

All documents concerning any discussion, deliberation, analysis, assessment, evaluation or determination concerning whether to publicly disclose the existence or substance of any settlement discussions, settlement negotiations, term sheet, draft plan, or proposed form of any settlement concerning the Chapter 11 Cases.

**RESPONSE TO DOCUMENT REQUEST NO. 11:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. Weil objects to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. Weil further objects to this Request on the grounds that it is duplicative of inter alia, i) Topic No. 5 of the Equity Committee's Amended Notice of 30(b)(6) Deposition, dated June 22, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; and ii) testimony provided at the Second Confirmation Hearing. Weil also objects to this request on the basis that it is duplicative of Request Nos. 7, 8 and 10 and incorporates each of the specific objections to those Requests by reference as if fully set forth herein. Further, Weil objects to this Request to the extent that non-privileged documents responsive to this Request have already been made

available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 12:**

All documents concerning the “Plan Term Sheet” Mr. Brad Eric Scheler emailed to Mr. Brian Rosen on February 9, 2010.

**RESPONSE TO DOCUMENT REQUEST NO. 12:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. Weil also objects to this Request to the extent it seeks information that can or should be sought from other parties. Weil objects to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. Weil further objects to this Request on the grounds that it is duplicative of inter alia, i) Topic No.1 of the Consortium of Trust Preferred Securities Holders’ Notice of 30(b)(6) Deposition, dated June 28, 2011, in response to which William Kosturos was produced to testify on June 30, 2011; ii) document request No. 18 of the Second Request of the Consortium of Trust Preferred Security Holders to the Debtors for Production of Documents, dated June 8, 2010; iii) the November 16, 2010 deposition of William Kosturos; iv) the November 17, 2010 deposition of Jonathan Goulding; and v) testimony provided at the Initial and Second Confirmation Hearings. Further, Weil objects to this Request on the grounds that non-privileged documents responsive to this Request have already been made available in the Depository prior to the Initial Confirmation Hearing, and in the September 1, 2010 and November 5, 2010 productions.

**DOCUMENT REQUEST NO. 13:**

All documents concerning any information you received from or provided to any third party concerning the Chapter 11 Cases during the Mediation.

**RESPONSE TO DOCUMENT REQUEST NO. 13:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. Weil also objects to this Request to the extent it seeks information that can or should be sought from other parties. Weil further objects to this Request on the grounds that it seeks information deemed “strictly confidential” and “not admissible for any purpose in any judicial or administrative proceeding” pursuant to paragraph 6 of the Order Appointing Mediator, dated October 10, 2011 [D.I. 8768]. Weil further objects on the grounds that the term “third party” is vague, ambiguous, overly broad and unduly burdensome.

**DOCUMENT REQUEST NO. 14:**

All documents concerning the basis for the release of claims against the Settlement Noteholders, as contemplated by the Seventh Amended Plan, including without limitation the negotiations relating thereto and any documents concerning the consideration to be provided by the Settlement Noteholders in connection with any such release.

**RESPONSE TO DOCUMENT REQUEST NO. 14:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or

statutory privilege or doctrine or any court orders. Weil further objects to this request on the grounds that it seeks information deemed “strictly confidential” and “not admissible for any purpose in any judicial or administrative proceeding” pursuant to paragraph 6 of the Order Appointing Mediator, dated October 10, 2011 [D.I. 8768]. Weil refers the TPS Holders to the Disclosure Statement for the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated December 12, 2011 [D.I. 9179].

**DOCUMENT REQUEST NO. 15:**

All documents concerning the settlement with the Settlement Noteholders, including any agreement relating thereto and any documents concerning the consideration to be provided by the Settlement Noteholders in connection with the settlement.

**RESPONSE TO DOCUMENT REQUEST NO. 15:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony, and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. Weil further objects to this request on the grounds that it seeks information deemed “strictly confidential” and “not admissible for any purpose in any judicial or administrative proceeding” pursuant to paragraph 6 of the Order Appointing Mediator, dated October 10, 2011 [D.I. 8768]. Weil refers the TPS Holders to the Disclosure Statement for the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated December 12, 2011 [D.I. 9179].

**DOCUMENT REQUEST NO. 16:**

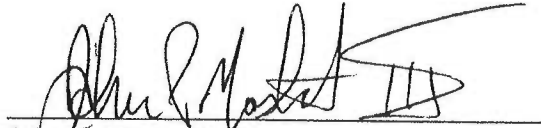
To the extent that you provided legal advice to the Debtors with respect to the subject matter of any of the above requests, all documents concerning any such advice.

**RESPONSE TO DOCUMENT REQUEST NO. 16:**

In addition to the General Objections, each of which is incorporated by reference as if fully set forth herein, Weil objects to this Request on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or testimony and seeks information that is protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable common law or statutory privilege or doctrine or any court orders. Weil objects to this Request to the extent it impermissibly seeks to relitigate issues related to the GSA and/or insider trading allegations. Weil further objects to this Request to the extent it seeks information deemed “strictly confidential” and “not admissible for any purpose in any judicial or administrative proceeding” pursuant to paragraph 6 of the Order Appointing Mediator, dated October 10, 2011 [D.I. 8768]. Further, Weil objects to this Request on the grounds that it purports to seek information regarding, or to place at issue, the advice of counsel. Per the Court’s September 7, 2010 ruling denying the TPS Consortium Motion To Deem All Requests Admitted, or in the Alternative, to Compel Debtors to Adequately Respond to the Consortium of Trust Preferred Security Holders First Set of Requests for Admissions Directed to the Debtors [D.I. 5368], and the January 7, 2011 Opinion, the advice of counsel has not been placed at issue by the Debtors in connection

with these chapter 11 cases. (See January 7, 2011 Op. at 21-23; September 7, 2010 Tr. at 83:17-21.)

Dated: New York, New York  
January 9, 2012

A handwritten signature in black ink, appearing to read "John P. Mastando III", is written over a horizontal line.

John P. Mastando III  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

*Attorneys for Weil Gotshal & Manges, LLP*

# EXHIBIT H

590 Madison Avenue  
New York, New York 10022  
Tel: (212) 333-0200  
Fax: (212) 333-2350

9536 Wilshire Boulevard  
Suite 500  
Beverly Hills, California 90212  
(310) 273-3777

***ARKIN KAPLAN RICE LLP***

ATTORNEYS AT LAW

December 27, 2011

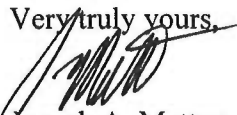
Via Email and Hand Delivery

Brian S. Rosen, Esq.  
Weil Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153

Dear Brian:

I enclose the Trust Preferred Group's Request for Production of Documents to the Debtors in connection with the anticipated hearing to consider confirmation of the Seventh Amended Plan in *In re Washington Mutual, Inc., et al.* We have provided for the standard 30-day time to respond as provided by Rule 34 of the Federal Rules of Civil Procedure. Given the expedited schedule the Debtors appear to contemplate, however, we would like to discuss with you an abbreviated production deadline. We also would like to discuss with you certain privilege issues that we are considering bringing to the Court for resolution.

I look forward to speaking with you.

Very truly yours,  
  
Joseph A. Matteo

Enclosure



# EXHIBIT I

590 Madison Avenue  
New York, New York 10022  
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Fax: (212) 333-2350

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Suite 500  
Beverly Hills, California 90212  
(310) 273-3777

**ARKIN KAPLAN RICE LLP**

ATTORNEYS AT LAW

January 5, 2012

By Email

Barry Sher, Esq.  
Paul, Hastings, Janofsky & Walker LLP  
75 East 55<sup>th</sup> Street  
New York, New York 10022

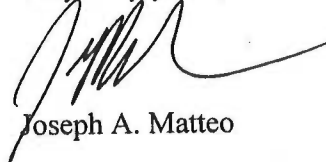
Re: *In re Washington Mutual, Inc., et al.*, No. 08-12229 (MFW)

Dear Mr. Sher:

On December 23, 2011, this Firm served Appaloosa Management L.P. ("Appaloosa") with the Trust Preferred Group's Request for Production of Documents (the "Requests") in connection with the anticipated hearing to consider confirmation of the Seventh Amended Plan. In an accompanying letter, we explained that we had provided for the standard 30-day time to respond to the Requests, as required by Rule 34 of the Federal Rules of Civil Procedure, but asked you to contact us to discuss an expedited production schedule given the Debtors' request that the confirmation hearing commence during the week of February 13, 2012. We also asked you to contact us to discuss various privilege issues that may be implicated by the Requests. By inviting you to discuss these issues, we had hoped to streamline the discovery process and avoid any unnecessary conflict and delay.

Unfortunately, we have yet to receive any response to our request to discuss these issues. We therefore request the production of all documents responsive to the Requests by no later than Friday, January 13, 2012, at 4 p.m. Please confirm that Appaloosa will agree to produce all responsive documents by this date and time. If we have not received your answer by tomorrow, January 6, 2012, at 12 noon, we will have no choice but to seek the Court's assistance in expediting discovery in this matter.

Very truly yours,



Joseph A. Matteo

590 Madison Avenue  
New York, New York 10022  
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Fax: (212) 333-2350

9536 Wilshire Boulevard  
Suite 500  
Beverly Hills, California 90212  
(310) 273-3777

**ARKIN KAPLAN RICE LLP**

ATTORNEYS AT LAW

January 5, 2012

Via Email

Kenneth Eckstein, Esq.  
Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, New York 10036

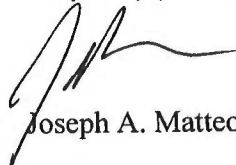
Re: *In re Washington Mutual, Inc., et al.*, No. 08-12229 (MFW)

Dear Mr. Eckstein:

On December 23, 2011, this Firm served Aurelius Capital Management LP (“Aurelius”) with the Trust Preferred Group’s Request for Production of Documents (the “Requests”) in connection with the anticipated hearing to consider confirmation of the Seventh Amended Plan. In an accompanying letter, we explained that we had provided for the standard 30-day time to respond to the Requests, as required by Rule 34 of the Federal Rules of Civil Procedure, but asked you to contact us to discuss an expedited production schedule given the Debtors’ request that the confirmation hearing commence during the week of February 13, 2012. We also asked you to contact us to discuss various privilege issues that may be implicated by the Requests. By inviting you to discuss these issues, we had hoped to streamline the discovery process and avoid any unnecessary conflict and delay.

Unfortunately, we have yet to receive any response to our request to discuss these issues. We therefore request the production of all documents responsive to the Requests by no later than Friday, January 13, 2012, at 4 p.m. Please confirm that Aurelius will agree to produce all responsive documents by this date and time. If we have not received your answer by tomorrow, January 6, 2012, at 12 noon, we will have no choice but to seek the Court’s assistance in expediting discovery in this matter.

Very truly yours,



Joseph A. Matteo

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Fax: (212) 333-2350

9536 Wilshire Boulevard  
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Beverly Hills, California 90212  
(310) 273-3777

**ARKIN KAPLAN RICE LLP**

ATTORNEYS AT LAW

January 5, 2012

By Email

Richard D. Owens, Esq.  
Latham & Watkins LLP  
885 Third Avenue  
New York, New York 10022

Re: *In re Washington Mutual, Inc., et al.*, No. 08-12229 (MFW)

Dear Mr. Owens:

On December 23, 2011, this Firm served Centerbridge Partners, L.P. ("Centerbridge") with the Trust Preferred Group's Request for Production of Documents (the "Requests") in connection with the anticipated hearing to consider confirmation of the Seventh Amended Plan. In an accompanying letter, we explained that we had provided for the standard 30-day time to respond to the Requests, as required by Rule 34 of the Federal Rules of Civil Procedure, but asked you to contact us to discuss an expedited production schedule given the Debtors' request that the confirmation hearing commence during the week of February 13, 2012. We also asked you to contact us to discuss various privilege issues that may be implicated by the Requests. By inviting you to discuss these issues, we had hoped to streamline the discovery process and avoid any unnecessary conflict and delay.

Unfortunately, we have yet to receive any response to our request to discuss these issues. We therefore request the production of all documents responsive to the Requests by no later than Friday, January 13, 2012, at 4 p.m. Please confirm that Centerbridge will agree to produce all responsive documents by this date and time. If we have not received your answer by tomorrow, January 6, 2012, at 12 noon, we will have no choice but to seek the Court's assistance in expediting discovery in this matter.

Very truly yours,



Joseph A. Matteo

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Fax: (212) 333-2350

9536 Wilshire Boulevard  
Suite 500  
Beverly Hills, California 90212  
(310) 273-3777

**ARKIN KAPLAN RICE LLP**

ATTORNEYS AT LAW

January 5, 2012

Via Email

Brian S. Rosen, Esq.  
Weil Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153

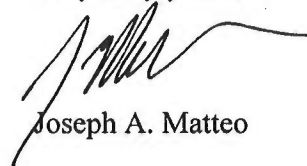
Re: *In re Washington Mutual, Inc., et al.*, No. 08-12229 (MFW)

Dear Brian:

On December 27, 2011, this Firm served the Debtors with the Trust Preferred Group's Request for Production of Documents (the "Requests") in connection with the anticipated hearing to consider confirmation of the Seventh Amended Plan. In an accompanying letter, we explained that we had provided for the standard 30-day time to respond to the Requests, as required by Rule 34 of the Federal Rules of Civil Procedure, but asked you to contact us to discuss an expedited production schedule given the Debtors' request that the confirmation hearing commence during the week of February 13, 2012. We also asked you to contact us to discuss various privilege issues that may be implicated by the Requests. By inviting you to discuss these issues, we had hoped to streamline the discovery process and avoid any unnecessary conflict and delay.

Unfortunately, we have yet to receive any response to our request to discuss these issues. We therefore request the production of all documents responsive to the Requests by no later than Friday, January 13, 2012, at 4 p.m. Please confirm that the Debtors will agree to produce all responsive documents by this date and time. If we have not received your answer by tomorrow, January 6, 2012, at 12 noon, we will have no choice but to seek the Court's assistance in expediting discovery in this matter.

Very truly yours,



Joseph A. Matteo

590 Madison Avenue  
New York, New York 10022  
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9536 Wilshire Boulevard  
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Beverly Hills, California 90212  
(310) 273-3777

**ARKIN KAPLAN RICE LLP**

ATTORNEYS AT LAW

January 5, 2012

By Email

Alan Glickman, Esq.  
Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022


Re: *In re Washington Mutual, Inc., et al.*, No. 08-12229 (MFW)

Dear Mr. Glickman:

On December 23, 2011, this Firm served Owl Creek Asset Management, L.P. ("Owl Creek") with the Trust Preferred Group's Request for Production of Documents (the "Requests") in connection with the anticipated hearing to consider confirmation of the Seventh Amended Plan. In an accompanying letter, we explained that we had provided for the standard 30-day time to respond to the Requests, as required by Rule 34 of the Federal Rules of Civil Procedure, but asked you to contact us to discuss an expedited production schedule given the Debtors' request that the confirmation hearing commence during the week of February 13, 2012. We also asked you to contact us to discuss various privilege issues that may be implicated by the Requests. By inviting you to discuss these issues, we had hoped to streamline the discovery process and avoid any unnecessary conflict and delay.

Unfortunately, we have yet to receive any response to our request to discuss these issues. We therefore request the production of all documents responsive to the Requests by no later than Friday, January 13, 2012, at 4 p.m. Please confirm that Owl Creek will agree to produce all responsive documents by this date and time. If we have not received your answer by tomorrow, January 6, 2012, at 12 noon, we will have no choice but to seek the Court's assistance in expediting discovery in this matter.

Very truly yours,



Joseph A. Matteo

590 Madison Avenue  
New York, New York 10022  
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Fax: (212) 333-2350

9536 Wilshire Boulevard  
Suite 500  
Beverly Hills, California 90212  
(310) 273-3777

**ARKIN KAPLAN RICE LLP**

ATTORNEYS AT LAW

January 5, 2012

Via Email

Brad Scheler, Esq.  
Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, NY 10004


Re: *In re Washington Mutual, Inc., et al.*, No. 08-12229 (MFW)

Dear Mr. Scheler:

On December 28, 2011, this Firm caused a subpoena duces tecum (the "Subpoena") to be served on Fried, Frank, Harris, Shriver & Jacobson LLP ("Fried Frank") in connection with the above-referenced matter. By email to you dated December 27, 2011, we explained that we had provided in the Subpoena for a January 26, 2012, production date, but asked you to contact us to discuss an expedited production schedule given the Debtors' request that the confirmation hearing commence during the week of February 13, 2012. We also asked you to contact us to discuss various privilege issues that may be implicated by the Subpoena. By inviting you to discuss these issues, we had hoped to streamline the discovery process and avoid any unnecessary conflict and delay.

Unfortunately, we have yet to receive any response to our request to discuss these issues. We therefore request the production of all documents responsive to the Subpoena by no later than Friday, January 13, 2012, at 4 p.m. Please confirm that Fried Frank will agree to produce all responsive documents by this date and time. If we have not received your answer by tomorrow, January 6, 2012, at 12 noon, we will have no choice but to seek the Court's assistance in expediting discovery in this matter.

Very truly yours,



Joseph A. Matteo

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New York, New York 10022  
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Fax: (212) 333-2350

9536 Wilshire Boulevard  
Suite 500  
Beverly Hills, California 90212  
(310) 273-3777

**ARKIN KAPLAN RICE LLP**

ATTORNEYS AT LAW

January 5, 2012

Via Email

Brian S. Rosen, Esq.  
Weil Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153

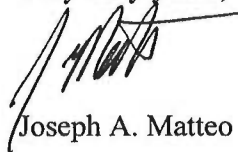
Re: *In re Washington Mutual, Inc., et al.*, No. 08-12229 (MFW)

Dear Brian:

On December 28, 2011, this Firm caused a subpoena duces tecum (the "Subpoena") to be served on Weil Gotshal & Manges LLP ("Weil Gotshal") in connection with the above-referenced matter. By email to you dated December 27, 2011, we explained that we had provided in the Subpoena for a January 26, 2012, production date, but asked you to contact us to discuss an expedited production schedule given the Debtors' request that the confirmation hearing commence during the week of February 13, 2012. We also asked you to contact us to discuss various privilege issues that may be implicated by the Subpoena. By inviting you to discuss these issues, we had hoped to streamline the discovery process and avoid any unnecessary conflict and delay.

Unfortunately, we have yet to receive any response to our request to discuss these issues. We therefore request the production of all documents responsive to the Subpoena by no later than Friday, January 13, 2012, at 4 p.m. Please confirm that Weil Gotshal will agree to produce all responsive documents by this date and time. If we have not received your answer by tomorrow, January 6, 2012, at 12 noon, we will have no choice but to seek the Court's assistance in expediting discovery in this matter.

Very truly yours,



Joseph A. Matteo



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

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

**ORDER GRANTING THE MOTION OF THE TPS GROUP TO COMPEL  
DISCOVERY OR, IN THE ALTERNATIVE, FOR AN ORDER OF PRECLUSION**

Upon consideration of the Motion, dated January 11, 2012, filed by the TPS Group<sup>1</sup>, for the entry of an order to compel discovery or, in the alternative, for an order of preclusion (the "Motion"); and it appearing that the Court has jurisdiction to consider and determine the Motion; and it appearing that due and proper notice of the Motion has been given; and it appearing that the relief requested in the Motion is appropriate; and after due deliberation and sufficient cause appearing therefore; it is hereby:

ORDERED that the Motion is GRANTED; and it is further

ORDERED that Aurelius Capital Management LP, Centerbridge Partners, LP, Appaloosa Management, L.P., Owl Creek Asset Management, L.P., and each of their respective affiliates (collectively, the "Settlement Noteholders"), shall produce all documents responsive to the TPS Group's Request to the Debtors for Production of Documents to the Settlement Noteholders; and it is further

ORDERED that Washington Mutual, Inc. and WMI Investment Corp. (the "Debtors") shall produce all documents responsive to Request Nos. 7, 8, 10 & 11 of the TPS Group's Request for Production of Documents to the Debtors; and it is further

---

<sup>1</sup> The TPS Group consists of VR Global Partners, L.P., The Visium Funds, Black Horse Capital, Greywolf Capital Management LP, and Pine River Capital L.P.

ORDERED that Weil, Gotshal & Manges LLP (“Weil Gotshal”) shall produce all documents responsive to Request Nos. 7, 8, 10 & 11 of Attachment A to the TPS Group’s subpoena duces tecum to Weil Gotshal; and it is further

ORDERED that Fried, Frank, Harris, Shriver & Jacobson LLP (“Fried Frank”) shall produce all documents responsive to the requests set forth in Attachment A to the TPS Group’s subpoena duces tecum to Fried Frank; and it is further

ORDERED that, in the alternative, to the extent any of the Settlement Noteholders, the Debtors, Weil Gotshal or Fried Frank are not compelled, and do not agree, to produce documents called for by the TPS Group’s discovery requests to that party, then such parties are precluded from introducing evidence on the subject matter of such requests the anticipated hearing to consider confirmation of the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code; and it is further

ORDERED that this Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this order and any further proceedings with respect to the Motion.

Dated: January \_\_, 2012  
Wilmington, Delaware

---

THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

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

In re:	)	
	)	Chapter 11
WASHINGTON MUTUAL, INC., et al.,	)	
	)	Case No. 08-12229 (MFW)
Debtors	)	Jointly Administered
	)	
	)	

**CERTIFICATE OF SERVICE**

I, Mark T. Hurford, of Campbell & Levine, LLC, hereby certify that on January 11, 2012, I caused a copy of the foregoing to be served upon the attached service list via First Class U.S. Mail.

Dated: January 11, 2012

*/s/ Mark T. Hurford*  
Mark. T. Hurford (DE 3299)

**Acxiom Corporation**  
CB Blackard III  
301 E Dave Ward Dr  
PO Box 2000  
Conway, AR 72033-2000

**Akin Gump Strauss Hauer & Feld LLP**  
David P Simonds  
2029 Century Park E Ste 2400  
Los Angeles, CA 90067-3012

**Akin Gump Strauss Hauer & Feld LLP**  
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New York, NY 10036

**Akin Gump Strauss Hauer & Feld LLP**  
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Los Angeles, CA 90067-3012

**Akin Gump Strauss Hauer & Feld LLP**  
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Washington, DC 20036

**Andrews Kurth LLP**  
Attn Paul Silverstein  
450 Lexington Ave 15th Fl  
New York, NY 10017

**Angelo Gordon & Co**  
Edward W Kressler  
245 Park Ave 26th Fl  
New York, NY 10167

**Archer & Greiner PC**  
Attn Charles J Brown III  
300 Delaware Ave Ste 1370  
Wilmington, DE 19801

**Archer & Greiner PC**  
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300 Delaware Ave Ste 1370  
Wilmington, DE 19801

**Arent Fox LLP**  
Andrew Silfen  
1675 Broadway  
New York, NY 10019

**Arent Fox LLP**  
Jeffrey N Rothleder  
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Washington, DC 20036

**Arkin Kaplan Rice LLP**  
Deana Davidian  
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**Arkin Kaplan Rice LLP**  
Howard J Kaplan  
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**Arkin Kaplan Rice LLP**  
Joseph A Matteo  
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**Arnall Golden Gregory LLP**  
Darryl S Laddin  
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**Attorney Generals Office**  
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**Baker & McKenzie LLP**  
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**Baker & McKenzie LLP**  
David F Heroy  
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**Bank of New York Mellon**  
Attn Gary S Bush  
Global Corporate Trust  
101 Barclay St  
New York, NY 10286

**Bartlett Hackett Feinberg PC**  
Frank F McGinn  
155 Federal St 9th Fl  
Boston, MA 02110

**Bernstein Litowitz Berger &  
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Chad Johnson  
1285 Avenue of the Americas 38th Fl  
New York, NY 10019

**Blank Rome LLP**

Michael DeBaecke  
1201 Market St Ste 800  
Wilmington, DE 19801

**Bouchard Margules & Friedlander PA**

Andre G Bouchard  
222 Delaware Ave Ste 1400  
Wilmington, DE 19801

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**Buchalter Nemer PC**

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**City of Fort Worth**

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**Bouchard Margules & Friedlander PA**

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**Cairncross & Hempelmann PS**

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**Carlo & Robert Rankel**

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**Cohen Milstein Seller & Toll PLLC**

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**Cox Smith Matthew Inc**

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**Bernstein Litowitz Berger &  
Grossmann LLP**

Jerald Bien Willner  
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New York, NY 10019

**Board of Governors of the Federal  
Reserve System**

Stephen H Meyer  
Assistant General Counsel  
20th & C Sts NW  
Washington, DE 20551

**Bronwen Price**

Gail B Price  
2600 Mission St Ste 206  
San Marion, CA 91108

**Brown Rudnick LLP**

Sigmund S Wissner Gross  
Seven Times Sq  
New York, NY 10036

**Campbell & Levine LLC**

Bernard G Conaway  
800 N King St Ste 300  
Wilmington, DE 19809

**Centerbridge Capital Partners LP**

Vivek Melwani  
375 Park Ave 12th Fl  
New York, NY 10152-0002

**Cohen Milstein Seller & Toll PLLC**

Kenneth Rehns  
150 E 52nd St  
New York, NY 10022

**Connolly Bove Lodge & Hutz LLP**

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Wilmington, DE 19899

**Cross & Simon LLC**

Christopher P Simon  
913 N Market St 11th Fl  
Wilmington, DE 19801

**Curtis Mallet Prevost Colt & Mosle**

**LLP**

Steven J Reisman  
101 Park Ave  
New York, NY 10178-0061

**David D Lennon**

Asst Attorney General  
Revenue Section  
PO Box 629  
Raleigh, NC 27602-0629

**Dechert LLP**

Attn Michael J Sage  
1095 Avenue of the Americas  
New York, NY 10036-6797

**Delaware Dept of Justice**

Attn Bankruptcy Dept  
820 N French St 6th Fl  
Wilmington, DE 19801

**Delaware Secretary of the State**

Division of Corporations  
PO Box 898  
Franchise Tax Division  
Dover, DE 19903

**Delaware Secretary of the Treasury**

PO Box 7040  
Dover, DE 19903

**Department of Labor**

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