

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

	X	:	
	:	:	
<i>In re</i>	:	:	Chapter 11
	:	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:	:	Case No. 08-12229 (MFW)
	:	:	
Debtors.	:	:	(Jointly Administered)
	:	:	
	:	:	Hearing Date: TBD
	:	:	Re: Docket Nos. 10192, 10193, 10194
	:	:	
	X		

**OBJECTION OF THE WMI LIQUIDATING TRUST
TO THE MBS PLAINTIFFS' MOTION TO SHORTEN NOTICE
FOR EMERGENCY MOTION FOR STAY PENDING APPEAL**

WMI Liquidating Trust ("WMILT"), as successor in interest to Washington Mutual, Inc. ("WMI") and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the "Debtors") in the above-referenced chapter 11 cases, hereby submits, by and through its counsel, its objection to the *Motion to Shorten Notice for the Emergency Motion of the MBS Plaintiffs² for Stay Pending Appeal* (the "Motion to Shorten"), dated May 21, 2012 [D.I. 10194] relating to the *Emergency Motion of MBS Plaintiffs Pursuant to Bankruptcy Rule 8005 for Stay Pending Appeal of Order Denying MBS Plaintiffs' Motion to Certify Asserted Class Claim as a Class 12 Claim, Finding Proofs of Claim Nos. 4064 and 4069 Prematurely Filed by the MBS Plaintiffs, And Granting WMI Liquidating Trust Authority to Release the Reserve in*

¹ 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 principal offices of WMILT, as defined herein, are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

² The MBS Plaintiffs are the Policeman's Annuity and Benefit Fund of the City of Chicago, Boilermakers National Annuity Trust and Doral Bank Puerto Rico.



Connection Therewith, dated May 21, 2012 [D.I. 10193] (the “Stay Motion”),³ and respectfully states as follows:

ARGUMENT

1. The Motion to Shorten should be denied outright. In addition, before any hearing, WMILT intends to file a more detailed objection to the Stay Motion because it believes that motion should also be denied. The Court already considered the MBS Plaintiffs’ contentions and concluded that it would be inappropriate and unfair to holders of allowed claims to require WMILT to continue to maintain a large reserve for the MBS Plaintiffs’ asserted \$435 million claim (the “Reserve”) in circumstances where the MBS Plaintiffs had no right to assert the claim in the first place. See Order at 3-4. By requesting a stay of the Order and an expedited hearing on the Stay Motion, the MBS Plaintiffs essentially seek reconsideration of the Court’s ruling, without establishing any basis for revisiting the decision.

2. The Motion to Shorten rests on the same flawed premise that also dooms the MBS Plaintiffs’ request for a stay, contending that they will be irreparably harmed if the release of the Reserve moots their appeal of the Court’s ruling. See Motion to Shorten at 2-3; Stay Motion at 9. As this Court has observed, however, it is well-established that equitable mootness alone does not constitute irreparable harm for purposes of obtaining a stay. See In re Wash. Mutual, Inc., Case No. 08-12229 (MFW), Jan. 11, 2012 Hr’g Tr. at 72:8-9 [D.I. 9413] (“[T]he courts clearly say that equitable mootness alone is not irreparable harm.”); see also, e.g., In re Calpine Corp., No. 05–60200 (BRL), 2008 WL 207841, at *4 (Bankr. S.D.N.Y. Jan. 24,

³ In the Stay Motion, the MBS Plaintiffs seek a stay of the *Order Denying MBS Plaintiffs’ Motion To Certify Asserted Class Claim As A Class 12 Claim, Finding Proofs of Claim Nos. 4064 and 4069 Prematurely Filed By The MBS Plaintiffs, And Granting WMI Liquidating Trust Authority To Release The Reserve In Connection Therewith*, which was entered on May 16, 2012 [D.I. 10182] (the “Order”).

2008) (explaining that equitable mootness is “a risk that is present in any post-confirmation appeal of a chapter 11 plan,” and so “is not sufficient to demonstrate irreparable harm”).⁴

3. Moreover, “[a] stay is not a matter of right, even if irreparable injury might otherwise result.” Ind. State Police Pension Trust v. Chrysler LLC, 556 U.S. 960, 961 (2009) (quoting Nken v. Holder, 566 U.S. 418, 433 (2009)). The MBS Plaintiffs do not come close to making the showing necessary on the other factors required for the extraordinary remedy of a stay pending appeal. See Fed. R. Bankr. P. 8005 (requiring: (i) a strong showing of likelihood of success on the merits of their appeal; (ii) irreparable injury if the stay is not granted; (iii) lack of substantial harm to other parties in these proceedings; and (iv) demonstration that a stay is in the public interest); see also Republic of the Philippines v. Westinghouse Elec. Corp., 949 F.2d 653, 658 (3d Cir. 1991); VFB LLC v. Money’s Trust (In re VF Brands, Inc.), 282 B.R. 134, 137 (Bankr. D. Del 2002). Nor have the MBS Plaintiffs even proposed to bond the appeal to protect against the demonstrable harm to holders of allowed claims—particularly holders of PIERS—that would flow from indefinite retention of a reserve for a \$435 million proof of claim.

4. There is ample basis to deny the Stay Motion outright without further briefing or argument. If the Court does not outright deny the Stay, there is an omnibus hearing scheduled for May 30, 2012, and the Stay Motion can be heard at that time because WMILT will not make further distributions before then. Prior to that hearing, WMILT will file a detailed and

⁴ Regal Ware, Inc. v. Global Home Prods., LLC (In re Global Home Prods., LLC), Nos. 06-10340-KG, Civ. A. 06-508-UNA, 2006 WL 2381918, at *1 (D. Del. Aug. 17, 2006) (“[T]he fact that [the movant’s] appeal could be rendered moot . . . does not in and of itself constitute irreparable harm”); Official Comm. of Unsecured Creditors of Motor Coach Indus. Int’l, Inc. v. Motor Coach Indus. Int’l, Inc. (In re Motor Coach Indus. Int’l, Inc.), Nos. 08-12136-BLS, 09-078-SLR, 2009 WL 330993, at *1 (D. Del. Feb. 10, 2009) (same); Bepco, L.P. v. 15375 Mem’l Corp. (In re 15375 Mem’l Corp.), Nos. 08-313-SLR, 08-314, 08-319, 08-321, 08-322, 08-325, 08-326, 2009 WL 393948, at *1 (D. Del. Feb. 18, 2009) (same); In re Trans World Airlines, Inc., No. 01-0056(PJW), 2001 WL 1820325, at *10 (Bankr. D. Del. Mar. 27, 2001) (same).

substantive objection to the Stay Motion. If the Court sets the Stay Motion for hearing on May 30, WMILT requests that the objection deadline be set for May 29 at 12:00 noon.

Dated: May 22, 2012
Wilmington, Delaware

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