

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

In re:

WASHINGTON MUTUAL, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 08-12229 (MFW)

Jointly Administered

Objection Deadline: 12/20/2012 @ 4:00 p.m. (ET)

Hearing Date: 12/27/2012 @ 2:00 p.m. (ET)

**MOTION OF THE WMI LIQUIDATING TRUST FOR AN ORDER, PURSUANT
TO SECTION 107(b) OF THE BANKRUPTCY CODE, BANKRUPTCY
RULE 9018, AND LOCAL RULE 9018-1(b), GRANTING AUTHORIZATION
TO FILE UNDER SEAL EXHIBIT 1 TO THE MOTION BY WMI LIQUIDATING
TRUST FOR AN ORDER AUTHORIZING AN EXAMINATION OF
GOLDMAN SACHS PURSUANT TO BANKRUPTCY RULE 2004**

WMI Liquidating Trust (“**WMILT**”) as successor in interest to Washington Mutual, Inc. (“**WMI**”) and WMI Investment Corp. (“**WMI Investment**”), formerly debtors and debtors in possession (collectively the “**Debtors**”), by and through its undersigned counsel, submits this motion (the “**Motion to Seal**”) for an order granting authorization to file under seal Exhibit 1 to the Motion by WMI Liquidating Trust for an Order Authorizing an Examination of Goldman Sachs Pursuant to Bankruptcy Rule 2004 (the “**2004 Motion**”) and granting related relief. In support of this Motion to Seal, WMILT respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction to consider this Motion to Seal pursuant to 28 U.S.C. §§ 1334 and 157. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ Debtors in these Chapter 11 cases and the last four digits of each Debtor’s federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors are located at 925 Fourth Avenue, Suite 2500, Seattle, Washington 98104.



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2. The statutory predicates for the relief requested in this Motion to Seal are sections 105(a) and 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

BACKGROUND

3. On September 26, 2008, WMI filed a petition for relief under Chapter 11. The bankruptcy case was jointly administered with the case of WMI’s affiliate WMI Investments, which filed on the same day. WMI and WMI Investments served as debtors in possession throughout the pendency of the bankruptcy.

4. On February 23, 2012, this Court approved the Seventh Amended Joint Plan of Reorganization (the “**Plan**”). The Plan was the product of an extensive negotiation between various stakeholders, including the Debtors, the Committee of Unsecured Creditors, and the Committee of Equity Holders. The Plan received overwhelming support from WMI’s stakeholders, including its equity investors who received majority ownership in the reorganized debtor and an interest in any post-confirmation litigation. The Plan became effective on March 19, 2012.

5. Pursuant to the Plan, WMILT was formed, among other reasons, to manage the resolution of all remaining claims, both those against the Debtors and those that might be brought on behalf of the Debtors or other stakeholders. Also pursuant to the negotiated terms of the Plan, a subcommittee of WMILT was formed for the purpose of investigating any affirmative claims that WMILT might bring against third parties (the “**Litigation Subcommittee**”). Under

the Plan, certain funds were allocated from the estate to the Litigation Subcommittee to be used in the investigation and prosecution of any potential claims.

6. Goldman, Sachs & Co. and its affiliates including Goldman Sachs Execution & Clearing LP (collectively “**Goldman Sachs**” or “**Goldman**”) was WMI’s investment bank for years prior to WMI’s bankruptcy. Goldman underwrote several of WMI’s securities and WMI looked to Goldman for assistance in raising capital and seeking investment partners. This work on behalf of WMI became increasingly important as the financial crisis worsened and turbulence in the mortgage markets threatened WMI’s subsidiary Washington Mutual Bank (“**WMB**”). Believing that the bank’s asset base and capital position were adequate to weather the storm if it could find a reliable source of liquidity, WMI was counting on Goldman Sachs’ reputation to bolster market confidence and help prevent a collapse. WMI hired Goldman Sachs, and paid it millions in fees, to seek out investors who could provide liquidity and to explain to these potential investors why WMI was sound.

7. As set forth more fully in the 2004 Motion, WMILT seeks authorization to conduct discovery into potential claims against Goldman Sachs for breach of contract and related causes of action. Evidence recently developed by WMILT’s Litigation Subcommittee suggests that these claims could be a source of substantial value to WMILT’s remaining creditors and WMI’s former equity holders.

8. A more detailed description of the background of these Chapter 11 Cases and the circumstances relating to the 2004 Motion are set forth in the 2004 Motion filed contemporaneously herewith and incorporated herein by reference. WMILT proposes to attach as Exhibit 1 to the 2004 Motion the September 24, 2008 Letter Agreement between Goldman Sachs and WMI (the “**Letter Agreement**”). The Letter Agreement is prominently marked

“Confidential” and “Personal and Confidential” and, accordingly, WMILT files this Motion to Seal out of an abundance of caution.

RELIEF REQUESTED

9. By this Motion to Seal, WMILT requests the entry of an order authorizing WMILT: (i) to file the Letter Agreement attached as Exhibit 1 to the 2004 Motion under seal, and (ii) to the extent necessary, authorizing WMILT and responding parties to file future pleadings in connection to the 2004 Motion redacted and under seal, to the extent they contain confidential information, and directing that they remain confidential, redacted, protected under seal, and not made available to any person or entity other than the Court, counsel for the Debtors, WMILT and its counsel, Goldman Sachs and their counsel, and the United States Trustee, unless otherwise ordered by the Court.

BASIS FOR RELIEF REQUESTED

10. A bankruptcy court may grant the relief requested herein pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b). Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from potential harm. Section 107(b), in relevant part, provides:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may –

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information

11. Bankruptcy Rule 9018 defines the procedure by which a party may move for relief under section 107(b) of the Bankruptcy Code:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation.

12. Unlike Federal Rule of Civil Procedure 26(c), section 107(b) of the Bankruptcy Code does not require a demonstration of “good cause.” Rather, if material sought to be protected falls within one of the enumerated categories, “the court is required to protect a requesting interested party and has no discretion to deny the application.” *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994). As set forth above, WMILT files this Motion to Seal out of an abundance of caution to protect parties’ rights with respect to the Letter Agreement, which is marked prominently both “CONFIDENTIAL” and “PERSONAL AND CONFIDENTIAL.” The relief requested in this Motion to Seal is therefore appropriate and necessary to protect confidential, sensitive and non-public information contained in the Letter Agreement and to protect WMILT from any potential claims by Goldman Sachs for violation of any confidentiality agreement.

13. Section 105(a) of the Bankruptcy Code grants the Court broad equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” Section 105(a) thus provides ample, independent authority for the Court to grant the Motion to Seal in these circumstances.

14. Accordingly, for the reasons set forth herein, WMILT respectfully submits that the relief requested is appropriate and necessary under the circumstances.

NOTICE

15. No trustee has been appointed in these chapter 11 cases. Notice of this Motion to Seal has been provided to: (i) the Office of the United States Trustee for the District of Delaware, (ii) Goldman Sachs, (iii) counsel for Goldman Sachs, and (iv) those parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 200. In light of the nature of the relief requested, WMILT submits that no other or further notice need be provided.

NO PRIOR REQUEST

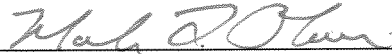
16. No previous request for the relief sought herein has been made to this or any other Court.

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WHEREFORE, WMILT respectfully requests that the Court: (a) grant the relief requested by this Motion to Seal; and (b) grant such further relief as is just and proper.

Dated: November 30, 2012
Wilmington, Delaware

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

In re:
WASHINGTON MUTUAL, INC., et al.,¹

Debtors.

Chapter 11

Case No. 08-12229 (MFW)

(Jointly Administered)

Ref. No. ____

**ORDER GRANTING MOTION OF THE WMI LIQUIDATING TRUST FOR AN
ORDER, PURSUANT TO SECTION 107(b) OF THE BANKRUPTCY CODE,
BANKRUPTCY RULE 9018, AND LOCAL RULE 9018-1(b), GRANTING
AUTHORIZATION TO FILE UNDER SEAL EXHIBIT 1 TO THE MOTION BY WMI
LIQUIDATING TRUST FOR AN ORDER AUTHORIZING AN EXAMINATION OF
GOLDMAN SACHS PURSUANT TO BANKRUPTCY RULE 2004**

Upon consideration of the Motion (the “**Motion**”)² of WMI Liquidating Trust (“**WMILT**”) as successor in interest to Washington Mutual, Inc. (“**WMI**”) and WMI Investment Corp. (“**WMI Investment**”), formerly debtors and debtors in possession (collectively the “**Debtors**”) for an Order, Pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b), Granting Authorization to File Under Seal Exhibit 1 to the Motion by WMI Liquidating Trust for an Order Authorizing an Examination of Goldman Sachs Pursuant to Bankruptcy Rule 2004 (the “**2004 Motion**”); and the Court having jurisdiction to hear the Motion to Seal; and it appearing that sufficient notice of the Motion to Seal has been given; and it appearing that the relief requested by the Motion to Seal is in the best interests of WMILT and other parties-in-interest; and good cause having been shown, it is hereby

ORDERED that the Motion to Seal is GRANTED; and it is further

¹ Debtors in these Chapter 11 cases and the last four digits of each Debtor’s federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors are located at 925 Fourth Avenue, Suite 2500, Seattle, Washington 98104.

² Capitalized terms used by not otherwise defined in this Order shall have the meaning ascribed to them in the Motion to Seal.

ORDERED that WMILT is authorized to file the Letter Agreement attached as Exhibit 1 to the 2004 Motion under seal; and it is further

ORDERED that to the extent necessary, WMILT and responding parties are authorized to file future pleadings in connection with the 2004 Motion redacted and under seal, to the extent they contain confidential information, and directing that they remain confidential, redacted, protected under seal, and not made available to any person or entity other than the Court, counsel for the Debtors, WMILT and its counsel, Goldman Sachs and their counsel, and the United States Trustee, unless otherwise ordered by the Court; and it is further

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: December ____, 2012
Wilmington, Delaware

Honorable Mary F. Walrath
United States Bankruptcy Court Judge

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

In re:

WASHINGTON MUTUAL, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 08-12229 (MFW)

Jointly Administered

Objection Deadline: 12/20/2012 @ 4:00 p.m. (ET)

Hearing Date: 12/27/2012 @ 2:00 p.m. (ET)

NOTICE OF MOTION AND HEARING

TO: Debtors; counsel for the Debtors; the Office of the United States Trustee for the District of Delaware; Goldman Sachs; counsel for Goldman Sachs; and any party requesting notice pursuant to Bankruptcy Rule 2002.

On November 30, 2012, the WMI Liquidating Trust filed the **Motion of the WMI Liquidating Trust for an Order, Pursuant to Section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b), Granting Authorization to File Under Seal Exhibit 1 to the Motion by WMI Liquidating Trust for an Order Authorizing an Examination of Goldman Sachs Pursuant to Bankruptcy Rule 2004** (the "Motion"), a copy of which is attached hereto.

Objections, if any, to the relief requested in the Motion must be filed with the United States Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **December 20, 2012 at 4:00 p.m. (ET)**.

At the same time, you must also serve a copy of the objection upon the undersigned counsel so as to be **received no later than 4:00 p.m. (ET) on December 20, 2012**.

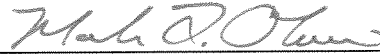
A HEARING ON THE MOTION WILL BE HELD ON **DECEMBER 27, 2012 AT 2:00 P.M. (ET)** BEFORE THE HONORABLE MARY F. WALRATH, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5th FLOOR, COURTROOM 4, WILMINGTON, DELAWARE 19801.

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

Dated: November 30, 2012
Wilmington, Delaware

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