

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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: **Chapter 11**
: **Case No. 08-12229 (MFW)**
: **(Jointly Administered)**
: **Re: D.I. Nos. 1234 & 10800**
-----X

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

**CERTIFICATION OF COUNSEL REGARDING ORDER APPROVING
STIPULATION AND AGREEMENT BETWEEN WMI LIQUIDATING TRUST AND
GENEVIEVE SMITH, PARTIALLY REINSTATING PROOF OF CLAIM NOS. 2264 AND 2265
AND SUBJECTING SUCH CLAIMS TO THE SIXTH OMNIBUS OBJECTION TO CLAIMS**

The undersigned hereby certifies as follows:

1. On October 29, 2012, Genevieve Smith ("Smith") filed the *Motion to Partially Vacate Order Expunging Claims and to Reinstate Proofs of Claim 2264 and 2265* [D.I. 10800] (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court").

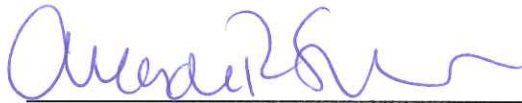
2. WMI Liquidating Trust ("WMILT"), as successor in interest to Washington Mutual, Inc. ("WMI") and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the "Debtors"), and Smith, after good-faith arms' length negotiations, have agreed to resolve the Motion in accordance with the terms of the *Stipulation and Agreement Between WMI Liquidating Trust and Genevieve Smith, Partially Reinstitating Proof of Claim Nos. 2264 and 2265 and Subjecting Such Claims to the Sixth Omnibus Objection to Claims* (the "Stipulation"), a copy of which is attached as Exhibit 1 to the proposed form of order (the "Proposed Order") attached hereto.

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



WHEREFORE WMILT respectfully requests that the Court enter the Proposed Order at its earliest convenience.

Dated: January 11, 2013
Wilmington, Delaware



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Attorneys to the WMI Liquidating Trust

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

Exhibit A
(Proposed Order)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

-----X
: **Chapter 11**
: **Case No. 08-12229 (MFW)**
: **(Jointly Administered)**
: **Re: D.I Nos. 1234 & 10800**
-----X

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

ORDER APPROVING STIPULATION AND AGREEMENT BETWEEN WMI LIQUIDATING TRUST AND GENEVIEVE SMITH, PARTIALLY REINSTATING PROOF OF CLAIM NOS. 2264 AND 2265 AND SUBJECTING SUCH CLAIMS TO THE SIXTH OMNIBUS OBJECTION TO CLAIMS

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”), and Genevieve Smith (“Claimant”), having entered into that certain *Stipulation and Agreement Between WMI Liquidating Trust and Genevieve Smith, Partially Reinstating Proof of Claim Nos. 2264 and 2265 and Subjecting Such Claims to the Sixth Omnibus Objection to Claims* (the “Stipulation”); and the Court having reviewed the Stipulation; and the Court having determined that good cause has been demonstrated for approving the Stipulation; it is hereby

ORDERED that the Stipulation attached hereto as Exhibit 1 is approved; and it is further

ORDERED that the Parties are hereby authorized to take any and all actions reasonably necessary to effectuate the terms of the Stipulation; and it is further

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.

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

Dated: _____, 2013
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

(Stipulation)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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

STIPULATION AND AGREEMENT BETWEEN
WMI LIQUIDATING TRUST AND GENEVIEVE SMITH,
PARTIALLY REINSTATING PROOF OF CLAIM NOS. 2264 AND 2265 AND
SUBJECTING SUCH CLAIMS TO THE SIXTH OMNIBUS OBJECTION TO CLAIMS

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"), and Genevieve Smith ("Claimant" and, together with WMILT, the "Parties"), by and through their undersigned counsel, hereby enter into this stipulation (the "Stipulation"), and agree as follows:

RECITALS

A. On September 26, 2008 (the "Commencement Date"), each of the Debtors commenced a case (collectively, the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court").

B. By order, dated January 30, 2009, the Court established March 31, 2009 as the deadline for filing proofs of claim against the Debtors in these Chapter 11 Cases.

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

C. On March 26, 2009, Claimant filed two proofs of claim against WMI's chapter 11 estate, which claims were assigned claim numbers 2264 ("Claim 2264") and 2265 ("Claim 2265" and, together with Claim 2264, the "Claims"). Claim 2264 was filed in the amount of \$1,212,750. Claim 2265 was filed in the amount of \$120,000.

D. On December 12, 2011, the Debtors filed their *Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* [D.I. 9178] (as modified, the "Plan").² By order [D.I. 9759] (the "Confirmation Order"), dated February 23, 2012, the Court confirmed the Plan and, upon satisfaction or waiver of the conditions described in the Plan, the transactions contemplated by the Plan were substantially consummated on March 19, 2012.

E. On June 26, 2009, the Debtors filed the *Debtors' Sixth Omnibus Objection (Substantive) to Claims* [D.I.1234] (the "Objection"), pursuant to which the Debtors objected to, among other claims, the Claims, seeking to disallow Claim 2264 and Claim 2265 in their entirety.

F. In accordance with the respective notices sent with the Objection, responses to the Objection and the relief requested therein, if any, were required to be filed with the Court and the Debtors on or prior to July 6, 2009. As of such date, the Claimant did not interpose a response to the Objection. On May 16, 2012, the Court entered the *Fourth Order Granting Debtors' Sixth Omnibus Objection to Claim* [D.I. 10181] (the "Fourth Order"), disallowing all of the claims of non-responding claimants, including Claim 2264 and Claim 2265.

G. On October 4, 2012, shortly after Claimant learned, after a conversation with

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

² Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

another former employee Carey Brennan, that she was no longer part of the continued hearings for the Sixth Omnibus Objection, Claimant sent a letter to the Court requesting her claims be reinstated [D.I. 10726].

H. On October 29, 2012, Claimant filed her *Motion to Partially Vacate Order Expunging Claims and to Reinstate Proofs of Claim 2264 and 2265* [D.I. 10800] (the "Motion"), to reinstate Claim 2264 and 2265 on the basis of "excusable neglect" pursuant to section 502(j) of the Bankruptcy Code and Rule 3008 of the Federal Rules of Bankruptcy Procedure, asserting that Claimant failed to timely respond to the Objection because Claimant's husband had been diagnosed with colon cancer and began to undergo chemotherapy treatment, including hospitalization, and Claimant was his sole caretaker. During this time, and over the two plus years that the Sixth Omnibus Objection was pending, Claimant's husband's cancer metastasized to his brain, and he passed away on February 5, 2011. Following his death, Claimant's 22 year old daughter suffered a severe mental breakdown and had to be treated on four separate occasions over the next eighteen months for suicidal ideations.

I. WMILT and the Claimant, after good faith arms' length negotiations, have determined that the Claims 2264 and 2265, previously disallowed by order of the Court, should be reinstated in full as Disputed Claims against the Debtors' chapter 11 estates and subject to the Objection, currently scheduled to be heard in accordance with that certain *Agreed Order Establishing Procedures and Deadlines Concerning Hearing on Employee Claims and Discovery in Connection Therewith*, dated October 15, 2012 [D.I. 10777] (as amended, the "Scheduling Order"), entered by the Court in connection with the Objection, among other objections to certain employee claims.

NOW, THEREFORE, without any admission or concession of any liability whatsoever

on the part of WMILT with respect to the Reinstated Claims (as defined below), it is hereby STIPULATED AND AGREED by and among the Parties as follows:

AGREEMENT

1. The recitals in paragraphs A through I above are incorporated by reference herein.
2. On the date the Court enters an order approving this Stipulation (the "Effective Date"), (i) the Motion shall be deemed withdrawn, (ii) Claims 2264 and 2265 will be reinstated in the amounts of \$1,212,750 and \$120,000, respectively (the "Reinstated Claims"), and (iii) Kurtzman Carson Consultants, LLC, the Court-appointed claims agent, shall place the Reinstated Claims on the claims register of the Debtors' chapter 11 cases.
3. On or before the tenth (10th) business day following the Effective Date, Claimant shall file a response to the Objection with respect to the Reinstated Claims.
4. Upon the Effective Date, the Reinstated Claims shall be made subject to the Objection, and shall otherwise be governed by the terms and provisions of the Scheduling Order, including, without limitation, the discovery provisions and deadlines set forth therein; provided, however, that the Parties agree that the December 10, 2012 deadline in the Scheduling Order, for any requests for Permitted Written Discovery (as defined in the Scheduling Order) to be served, shall be adjourned for both Parties to ten business days following the Effective Date.
5. This Stipulation contains the entire agreement between the Parties as to the subject matter hereof and supersedes all prior agreements and undertakings between the Parties relating thereto. This Stipulation is subject to approval of the Court and shall be of no force and effect unless and until it is approved.

6. Each person who executes this Stipulation represents that he or she is duly authorized to execute this Stipulation on behalf of the respective Parties hereto and that each such Party has full knowledge and has consented to this Stipulation.

7. The Stipulation may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of the Stipulation to present any copy, copies, electronic copies, or facsimile signed by the Parties hereto to be charged.

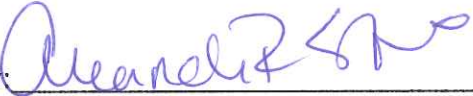
8. This Stipulation may not be modified, altered, amended or vacated other than by a signed writing executed by the Parties hereto or by further order of the Court.

9. The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

10. The Court shall have sole and exclusive jurisdiction to hear disputes arising out of or related to this Stipulation.


Dated: January 11, 2013
Wilmington, Delaware

WMI LIQUIDATING TRUST

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