Docket #11015 Date Filed: 2/1/2013

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: WASHINGTON MUTUAL, INC., *et al.*[2],	)	Chapter 11
	)	Case No. 08-12229 (MFW)
	)	Jointly Administered
Debtors.	)	
	)	**Hearing Date: 02/21/13 @ 11:30 a.m. (EST)**
	)	**Response Date: 02/14/2013**

MOTION OF ANN TIERNEY FOR AN ORDER GRANTING AMENDMENT TO PROOF OF CLAIM NO. 3862 OR, IN THE ALTERNATIVE, ALLOWING TIERNEY TO ASSERT ALTERNATE ARGUMENT REGARDING CLAIM BASED ON THE WAMU SEVERANCE PLAN

Claimant Ann Tierney ("Claimant"), by and through her undersigned counsel, submits this "Motion For An Order Granting Amendment To Proof Of Claim Or, In The Alternative, Allowing Claimant To Assert Alternate Argument Regarding Claim Based On WaMu Severance Plan" (the "Motion"). In support of this Motion, Claimant represents as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 1334 and 157. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

RELIEF REQUESTED

2. This Motion is brought to ensure that Claimant is not barred from arguing all of Claimant's legal theories with respect to her timely filed First Amended Proof of Claim, Claim Number 3862, in the amount of $842,685.33 filed on June 11, 2010 ("First Amended Claim").

[2] The Debtors in these cases are: (i) Washington Mutual, Inc. and WMI Investment Corp.

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3. By this Motion, Claimant requests the entry of an order authorizing Claimant to amend her Proof of Claim or, in the alternative, allowing Claimant to assert an alternative theory of recovery based on the WaMu Severance Plan. Claimant's proposed amended proof of claim includes an alternate claim under the WaMu Severance Plan, which is sponsored by Washington Mutual, Inc. ("WMI"). Claimant's proposed amendment will not alter the claim amount in any way. Claimant seeks solely to add language in her explanation attached to the Claim stating the following: "To the extent that it is determined that a change in control did not occur or WMI is found not to be responsible for obligations under the WaMu Change in Control Agreement, then Claimant is entitled to severance pay pursuant to the WaMu Severance Plan." A of the form of proposed amended claim is attached hereto as Exhibit "A" and incorporated herein by this reference ("Amended Claim").[3]

4. In the alternative, should the Court not allow the proposed amendment, the Claimant seeks the right to assert an alternate recovery theory based on the WaMu Severance Plan at the hearing on WMILT's objection to Claimant's Claim.

5. As counsel for WMILT has been unwilling to concede that the claims of similar claimants include the alternate theory of recovery, Claimant seeks an order from this Court authorizing him to file the Amended Claim or allowing Claimant to argue this alternate theory of recovery at any hearing on his Claim.

SUMMARY OF RELEVANT FACTS

6. On September 26, 2008, WMI filed a petition for relief under Chapter 11 of the Bankruptcy Code. The bankruptcy case was jointly administered with the case of WMI's affiliate Washington Mutual Investments, which was filed on the same day.

7. On or about January 30, 2009, the Court entered its Order setting March 31, 2009 as the deadline for filing proofs of claim against WMI.

[3] The Amended Claim is attached hereto without exhibits and does not yet list the calculations of the amount due to Claimant under the WaMu Severance Plan; both will be attached to the Amended Claim when filed.

8. On or about June 11, 2009, Claimant filed her First Amended Proof of Claim, No. 1153, the Claim in the amount of $842,685 for unpaid amounts due to her as a result of her employment. Claimant was not assisted by counsel in the preparation and filing of her original claim or the First Amended Claim. Attached hereto as Exhibit "B" and incorporated herein by this reference is a copy of the First Amended Claim without exhibits.

9. Claimant's breakdown of the amount of the Claim is attached to the Claim and states that Claimant is owed $701,036.66 as a result of her Change in Control Agreement. Id.

10. On February 23, 2012, this Court entered its order approving the Seventh Amended Joint Plan of Reorganization (the "Confirmation Order"). The Confirmation Order provides that "[a]s of the commencement of the Confirmation Hearing, a Proof of Claim may not be filed or amended without the authority of the Court." See Confirmation Order ¶ 45, [Docket No. 9759]. The Confirmation Order further provides that, "[n]otwithstanding that the Court may permit the filing or amendment of such a proof of Claim, the Debtors are not required to reserve Liquidating Trust Assets to pay or otherwise satisfy any such Claims." Id.

11. On or about August 15, 2012, WMILT filed the "WMI Liquidating Trust Eighty-Second Omnibus (Substantive) Objection to Change in Control Claims" [Docket No. 10507] ("Objection"). By and through the Objection, WMILT among other things objected to Claimant's Claim on, *inter alia*, the following grounds: (a) WMILT is not responsible for those claims arising from either the WaMu CIC Agreement or WaMu Retention Agreement because WMI allegedly was not a party such agreements – WMILT's Wrong Party Argument; (b) WMILT is not responsible for those claims arising under the WaMu CIC Agreement or the WaMu Retention Agreement because a change in control did not occur – WMILT's No CIC Argument; (c) the allowed Claim must be reduced pursuant to the cap set forth in 11 U.S.C. §502(b)(7) –WMILT's 502(b)(7) Cap Argument; and, (d) WMILT is entitled to a credit for any severance payments or other relevant benefits actually received by Claimant from JP Morgan Chase – WMILT's Setoff Argument.

12. On or about September 4, 2012, Claimant filed the "Response of Ann Tierney to WMI Liquidating Trust's Eighty-Second Omnibus (Substantive) Objection to Claims" [Docket No. 10574] ("Opposition") which addressed WMILT's No CIC Argument and WMILT's Wrong Party Argument, WMILT's Setoff Argument, WMILT's 502(b)(7) Cap Argument and WMILT's Wrong Party Argument.

13. This alternate claim amount will be significantly less than the amount of the Claim. Thus, WMILT does not need to adjust the Liquidating Trust Assets to pay or otherwise satisfy the proposed Second Amended Claim.

14. The WaMu Severance Plan Amended and Restated Effective January 1, 2008 preamble reads:

> Washington Mutual, Inc. has established the WaMu Severance Plan (the "Plan") with the intention of providing benefits to Eligible Employees of Washington Mutual, Inc. and its Affiliates (the "Company"), in the event of job elimination. This document sets forth the basic terms that are applicable to all eligible participants. Provisions that apply exclusively to eligible employees of acquired employees are set forth in appendixes to this document. The Plan is intended to be a welfare plan governed by ERISA and intended to constitute a single plan.
>
> See WaMu Severance Plan attached hereto as Exhibit "C."

15. If a WaMu employee is a party to a Change in Control Agreement and receives payment under such Change in Control Agreement, such employee is not entitled to severance under the WaMu Severance Plan. Specifically, the WaMu Severance Plan provides that:

> 2.2 Exceptions. An Eligible Employee is not eligible to receive benefits under this Plan if he is eligible to receive benefits or payments from any other severance plan arrangement agreement or program or if he has received such payment within the last two years from the Company or any Acquired Companies.

THE RELIEF REQUESTED IS APPROPRIATE UNDER THE FEDERAL RULES OF CIVIL PROCEDURE AND FIRMLY ESTABLISHED CASE LAW

A. Amendments to Proofs of Claims Are Liberally Permitted

16. The general rule regarding amendment of a proof of claim is as follows:

> It is well established that amendments to proofs of claim are liberally allowed [citations omitted]. **Generally, amendments are allowed when the original claim provides notice of the existence, nature, and amount of the claim.** Amendments are generally used to cure obvious defects, describe the claim with greater specificity or **plead a new theory of recovery on facts of the original proof of claim.** Post-bar date amendment should be scrutinized to ensure that the amendment is not a new claim. While courts allow post-bar date amendment to claim amounts, courts do not allow post-bar amendment to change status of the claim.

In re Orion Ref Corp., 317 B.R. 660, 664 (Bankr. D. Del. 2004) (emphasis added).

17. As the Federal Rules of Bankruptcy Procedure do not directly address amendment of a proof of claim, most Courts look to Federal Rule of Civil Procedure 15 and apply the test set forth therein to determine whether to allow an amendment to a proof of claim. In re Channokhon, 465 B.R. 132 (Bankr. S.D. Ohio 2012); In re Xechem Int'l, Inc., 424 B.R. 836, 841 (Bankr. N.D. Ill. 2010); Midland Cogeneration Venture Ltd. P'ship v. Enron Corp., 419 F.3d 115, 133 (2d Cir. 2005); In re Enron Corp. ("Enron"), 298 B.R. 513, 521 (Bankr.S.D.N.Y. 2003); Gens v. Resolution Trust Corp., 112 F.3d 569, 575 (1st Cir. 1997); In re Stavriotis, 977 F.2d 1202, 1204 (7th Cir. 1992); Robert Farms, 980 F.2d 1248, 1251 (9th Cir. 1992); In re Spurling, 391 B.R. 783, 786 (Bankr. E.D. Tenn. 2008); In re J.S. II, L.L.C., 389 B.R. 563, 567 (Bankr. N.D. Ill. 2008); In re MK Lonbard Grp. I, Ltd., 301 B.R. 812, 816 (Bankr. E.D. Pa. 2003); Little v. Drexel Burnham Labert Grp., Inc., 159 B.R. 420, 425 (S.D.N.Y. 1993).

18. Rule 15 provides that "[t]he court should freely give leave when justice so requires." Courts have a long established liberal policy that permits amendments to a proof of claim. *See* Bankr.R. 7015; Fed. R. Civ. P. 15; In re Franciscan Vineyards, Inc., 597 F.2d 181, 182 (9th Cir., 1979), cert. denied, 445 U.S. 915 (1980). The crucial inquiry is whether the

opposing party would be unduly prejudiced by the amendment. In re Wilson, 96 B.R. 257, 263 (9th Cir. 1988); United States v. Hougham, 364 U.S. 310, 316, 81 S.Ct. 13, 18 (1960). Furthermore, an amendment to a proof of claim will relate back to the timely filed proof of claim if the claims in the amendment arise from the same conduct, transaction or occurrence as required by Rule 15. See generally In re Xechem Intern., Inc., 424 B.R. 836 (Bankr. N.D. Ill. 2010).

B. The Amended Proof of Claim Satisfies the Requirements of Rule 15

19. The United States Supreme Court in Foman v. Davis, 371 U.S. 178 (1962), referred to several factors courts should use when confronted with the issue to justify leave to amend, stating:

> In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the appealing party by virtue of allowance of the amendment, futility of amendment, etc. – the sought relief should, as the rules require, be "freely given."

Foman, 371 U.S. at 182.

20. The Third Circuit has employed the "Foman Factors" in determining whether a trial court properly granted or denied leave to amend pleading. In re Burlington Coat Factory Securities Litigation, 114 F.3d, 1410, 1434 (3rd Cir. 1997) (listing five factors taken into account to assess the propriety of a motion for leave to amend: (1) undue delay, (2) bad faith, (3) dilatory motive, (4) prejudice, and (5) futility of amendment); Riley v. Taylor, 62 F.3d 86, 90 (3rd Cir. 1995) (adopting and applying the Forman factors; Grayson v. Mayview State Hospital, 293 F.3d 103, 108 (3rd Cir. 2002) (holding that a under FRCP 15(a), leave to amend "must be granted in the absence of undue delay, bad faith, dilatory motive, unfair prejudice, or futility of amendment."); see also Shane v. Fauver, 213 F.3d 113, 115 (3rd Cir. 2000).

21. The following analysis of the "Foman Factors" as used by the Third Circuit shows that leave to amend the Claim should be granted in this case:

Bad Faith.

22. There are no indicia of bad faith. The Claim contemplated reimbursement for employee benefits. See Exhibit "B." Additionally, the Objection filed by WMILT raised an objection to the claim with respect to the component of the Claim based upon the WaMu Severance Plan. The Supreme Court in Foman stated that "[i]f the underlying facts or circumstances relied upon by plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test her claim on the merits." Foman at 182. The proposed Second Amended Claim is based on the same underlying facts and circumstances relied upon by Claimant in her First Amended Claim. Claimant should be allowed an opportunity to test her Claim on the merits and should not be barred from raising an additional legal theory for recovery.

Undue Delay.

23. There will be no undue delay occasioned by the filing of the Second Amended Claim or reservation of Claimant's right to argue an additional theory of recovery based upon the original Claim. Discovery regarding the Employee Wage Claims is ongoing and the Written Requests propounded by WMILT inquire regarding the Claim and all legal theories and facts supporting the Claim. Claimant's responses to the Written Discovery are not due until March 11, 2013. Thus, the Second Amended Claim will not require additional discovery or an extension of currently scheduled dates.

Prejudice to Opposing Party.

24. The Second Amended Claim will not prejudice WMILT at all. As mentioned above, the underlying facts relied on in the Second Amended Claim are substantially the same as in the original Claim. WMILT will in no way be prejudiced by the Second Amended Claim because the amendment does not does not require further discovery or a continuation of the currently scheduled dates. Furthermore, the Second Amended Claim does not increase the face amount of the Claim. As such, the only party that will be prejudiced is Claimant if the Court

fails to allow Claimant to file the Second Amended Claim or to argue its alternate under the WaMu Severance Plan.

The Additional Claims For Relief Are Not Futile.

25. The alternate argument for recovery with respect to the Claim is not futile. As set forth in the Opposition to Claim, Claimant was a party to the WaMu Severance Plan and the WaMu Severance Plan specifically provides for a payment to Claimant upon termination from Washington Mutual as long as Claimant is not entitled to a payment under Claimant's WaMu CIC Agreement.

Dilatory Tactics by Claimant.

26. Claimant has exercised no dilatory tactics. Claimant submits that the Claim includes the alternate recovery theory as it specifically states that the basis for the claim is "compensation." Furthermore, Claimant has become aware that others have brought to the attention of WMILT and apprised WMILT that they intended to pursue this alternate argument and requested that WMILT allow for this amendment to their claims. Counsel for WMILT refused to stipulate to amending of their claims for the sole purpose of clarifying that other claimants may argue the alternative theory of recovery under the WaMu Severance Plan. WMILT's rejection of other such requests has made any further request by Claimant futile and has necessitated this Motion. As the alternate legal theories have already been presented to the Court and WMILT at the earliest possible time after retaining the counsel, Claimant was not dilatory.

C. Claimant's Proposed Amendment Does Not Prejudice WMILT as It Merely Adds an Alternative Theory of Recovery Arising from the Identical Facts

27. The Claim provided notice that Claimant was pursuing claims arising out of her employment relationship with WMI. The amended proof of claim seeks the identical claim arising from the very same employment, employment agreements and benefits. The sole

change in the Amended Proof of Claim is to include an alternate theory of recovery under the WaMu Severance Plan. See Second Amended Claim.

28. A similar set of facts was decided by the Bankruptcy Court in Illinois in In re Xechem International, Inc., 424 B.R. 836 (Bankr. N.D. Ill. 2010). In that case, a former employee of the debtor filed a timely claim for unpaid compensation. After the bar date, the former employee sought to amend her claim to include additional claims for severance compensation, indemnification, repayment of a loan to the company and interest on the loan. The amended proof of claim reasserted the original claims, although in different amounts. In fact, the amended proof of claim claimed an additional $247,094.00 to the original amount of $1,699,000. Id. at 842. The court found that those claims clearly involved the same core disputes as those in the original proof of claim, and thus related back. Id. at 845. As for the severance and indemnification claims, the court found that those claims arose from the parties' employment agreements and the debtor's bylaws and therefore arose from the same ongoing conduct, transaction, or occurrence as those in the original proof of claim. Id. The employee was permitted to file the amended proof of claim on all new theories, except for the loss of personal property. Id.

29. As the claim under the WaMu Severance Plan relate to the employment relationship and compensation owed to Claimant, it clearly relates to the original Claim. As such, Claimant's proposed amendment relates back to the Claim and should be granted. In the alternative, should the Court not allow the proposed amendment, the Claimant seeks the right to assert alternative recovery based on the WaMu Severance Plan, if necessary.

CONCLUSION

30. Based on the foregoing, Claimant requests that this Court allow her to file the Second Amended Claim and have it relate back to her timely filed Claim. In the alternative, the Claimant seeks a ruling from this Court that the Claimant has properly presented and preserved her alternate recovery theory in the Claim and Opposition and Claimant, therefore, may assert a

claim for recovery under the WaMu Severance Plan, if it is determined that no change in control occurred and/or that WMI is not responsible for satisfaction of employee claims under the WaMu CIC Agreement.

Dated: February 1, 2013

PHILLIPS, GOLDMAN & SPENCE, P.A.

/s/ Stephen W. Spence

Stephen W. Spence, Esquire (#2033)
1200 North Broom Street
Wilmington, DE 19806
Telephone: (302) 655-4200
Facsimile: (302) 655-4210
Attorneys for Ann Tierney

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
WASHINGTON MUTUAL, INC., *et al.*[1],	)	
	)	Case No. 08-12229 (MFW)
	)	
	)	Jointly Administered
Debtors.	)	
	)	
	)	**Objection Deadline: 2/14/1013**
	)	**Hearing Date: 2/21/13 @ 11:30 a.m. (EST)**
	)	

NOTICE OF MOTION AND HEARING

TO: WMILT; Counsel for WMILT; the Office of the United States Trustee for the District of Delaware; and any party requesting notice pursuant to Bankruptcy Rule 2002 through the CM/ECF system and all those appearing on the attached list.

On February 1, 2013, Claimant Ann Tierney filed the **Motion of Ann Tierney for Order Granting Amendment to Proof of Claim No. 3862 or, in the Alternative, Allowing Tierney to Assert Alternate Argument Regarding Claim Based on WaMu Severance Plan** (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 19807, on or before **February 14, 2013 at 4:00 p.m. (EST)**.

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. (EST) on February 14, 2013**.

A HEARING ON THE MOTION WILL BE HELD **ON FEBRUARY 21, 2013 AT 11:30 A.M. (EST)** 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.

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.

[1] The Debtors in these cases are: (i) Washington Mutual, Inc. and WMI Investment Corp.

Dated: February 1, 2013

PHILLIPS, GOLDMAN & SPENCE, P.A.

/s/ Stephen W. Spence

Stephen W. Spence, Esquire (#2033)
1200 North Broom Street
Wilmington, DE 19806
Telephone: (302) 655-4200
Facsimile: (302) 655-4210
Counsel to Ann Tierney

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: WASHINGTON MUTUAL, INC., *et al.*[2],	)	Chapter 11
	)	Case No. 08-12229 (MFW)
	)	Jointly Administered
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	)	**Response Date: 02/14/2013**

MOTION OF ANN TIERNEY FOR AN ORDER GRANTING AMENDMENT TO PROOF OF CLAIM NO. 3862 OR, IN THE ALTERNATIVE, ALLOWING TIERNEY TO ASSERT ALTERNATE ARGUMENT REGARDING CLAIM BASED ON THE WAMU SEVERANCE PLAN

Claimant Ann Tierney ("Claimant"), by and through her undersigned counsel, submits this "Motion For An Order Granting Amendment To Proof Of Claim Or, In The Alternative, Allowing Claimant To Assert Alternate Argument Regarding Claim Based On WaMu Severance Plan" (the "Motion"). In support of this Motion, Claimant represents as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 1334 and 157. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

RELIEF REQUESTED

2. This Motion is brought to ensure that Claimant is not barred from arguing all of Claimant's legal theories with respect to her timely filed First Amended Proof of Claim, Claim Number 3862, in the amount of $842,685.33 filed on June 11, 2010 ("First Amended Claim").

[2] The Debtors in these cases are: (i) Washington Mutual, Inc. and WMI Investment Corp.

3. By this Motion, Claimant requests the entry of an order authorizing Claimant to amend her Proof of Claim or, in the alternative, allowing Claimant to assert an alternative theory of recovery based on the WaMu Severance Plan. Claimant's proposed amended proof of claim includes an alternate claim under the WaMu Severance Plan, which is sponsored by Washington Mutual, Inc. ("WMI"). Claimant's proposed amendment will not alter the claim amount in any way. Claimant seeks solely to add language in her explanation attached to the Claim stating the following: "To the extent that it is determined that a change in control did not occur or WMI is found not to be responsible for obligations under the WaMu Change in Control Agreement, then Claimant is entitled to severance pay pursuant to the WaMu Severance Plan." A of the form of proposed amended claim is attached hereto as Exhibit "A" and incorporated herein by this reference ("Amended Claim").[3]

4. In the alternative, should the Court not allow the proposed amendment, the Claimant seeks the right to assert an alternate recovery theory based on the WaMu Severance Plan at the hearing on WMILT's objection to Claimant's Claim.

5. As counsel for WMILT has been unwilling to concede that the claims of similar claimants include the alternate theory of recovery, Claimant seeks an order from this Court authorizing him to file the Amended Claim or allowing Claimant to argue this alternate theory of recovery at any hearing on his Claim.

SUMMARY OF RELEVANT FACTS

6. On September 26, 2008, WMI filed a petition for relief under Chapter 11 of the Bankruptcy Code. The bankruptcy case was jointly administered with the case of WMI's affiliate Washington Mutual Investments, which was filed on the same day.

7. On or about January 30, 2009, the Court entered its Order setting March 31, 2009 as the deadline for filing proofs of claim against WMI.

[3] The Amended Claim is attached hereto without exhibits and does not yet list the calculations of the amount due to Claimant under the WaMu Severance Plan; both will be attached to the Amended Claim when filed.

Exhibit "A"

B10 (Official Form 10)(12/11)

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE		PROOF OF CLAIM
Name of Debtor: Washington Mutual, Inc.	Case Number: 08-12229	
NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.*		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Ann Tierney		**COURT USE ONLY**
Name and address where notices should be sent: Ann C. Tierney 1824 27TH Avenue W. Seattle, WA 98199 Telephone number: email:		❒ Check this box if this claim amends a previously filed claim. **Court Claim Number:** 3862 (*If known*) Filed on: 6/11/2010
Name and address where payment should be sent (if different from above): Telephone number: email:		❒ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

1. Amount of Claim as of Date Case Filed: $842,685.33
If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

❒Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. Basis for Claim: Compensation
(See instruction #2) Amounts due under change in control agreement/Severance Plan as an employee of Washington Mutual

3. Last four digits of any number by which creditor identifies debtor:	**3a. Debtor may have scheduled account as:**	**3b. Uniform Claim Identifier (optional):**
4910 or 1012	(See instruction #3a)	(See instruction #3b)

4. Secured Claim (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ❒Real Estate ❒Motor Vehicle ❒Other
Describe:

Value of Property: $_____

Annual Interest Rate_____**%** ❒Fixed or ❒Variable
(when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:

$_____

Basis for perfection: _____

Amount of Secured Claim: $_____

Amount Unsecured: $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

❒ Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).

❒ Wages, salaries, or commissions (up to $ 11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).

❒ Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).

Amount entitled to priority:

❒ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).

❒ Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).

❒ Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(__). **$**_____

**Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

B10 (Official Form 10)(12/11)

7. Documents: Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. *(See instruction #7, and the definition of "**redacted**".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)
Check the appropriate box.

☐ I am the creditor. ☒ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Stephen W. Spence, Esquire

Title: Counsel to Ann C. Tierney

Company: Phillips, Goldman & Spence, P.A.
Address and telephone number (if different from notice address above):
1200 North Broom Street
Wilmington, DE 19806
302-655-4200 sws@pgslaw.com
Telephone number: email:

(Signature) (Date)

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

B10 (Official Form 10)(12/11)

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

Claim
A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. § 506 (a)
A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507 (a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

MAIL TO:

UNITED STATES BANKRUPTCY COURT

ATTN: CLAIMS

824 NORTH MARKET STREET, 3RD FLOOR

WILMINGTON, DE 19801

Attachment to Amended Claim of Ann Tierney

This claim seeks initially, payment of the following amounts:

Compensation **$491,865.23**

In the alternative, to the extent that it is determined that a change in control did not occur or WMI is found not to be responsible for obligations under the WaMu Change in Control Agreement, then Claimant is entitled to severance pay in the amount of $_____*, pursuant to the WaMu Severance Plan. Claimant seeks payment for the following amounts:

Severance Payment ..... $_____*
Total ..... **$_____***

*Amounts and exhibits are to be provided in the amended claim.

Exhibit "B"

— AMENDED —

United States Bankruptcy Court District of Delaware

PROOF OF CLAIM

Name of Debtor *(check only one)*:

☑ Washington Mutual, Inc. 08-12229 (MFW)

☐ WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor): Name ID: 5430842 Pack No. 19669

ANN TIERNEY
1814 27th Ave W.
SEATTLE, WA 98199

Telephone number: 206-619-8110 Email Address: anntierney@mac.com

Name and address where payment should be sent (if different from above):

Telephone number: Email Address:

☑ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: 08-12229 (MFW) *(If known)*

Filed on: 09/26/2008

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

Your Claim Is Scheduled as Follows:

The Debtor has listed your claim as Contingent Unliquidated, and Disputed on Schedule F as General Unsecured claim.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. **Type of Claim:**

☑ Claim existing as of the date case was filed. Amount of Claim as of Date Case Filed: $ 842,685.33

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete item 5.

☐ Check this box if claim is filed by a governmental unit.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. **Basis for Claim:** Compensation
(See instruction #2 on reverse side.)

3. **Last four digits of any number by which creditor identifies debtor:** 1017

3a. **Debtor may have scheduled account as:** uid 164190
(See instruction #3a on reverse side.)

4. **Secured Claim** (See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other

Describe:

Value of Property: $ Annual Interest Rate: %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

$ Basis for perfection:

Amount of Secured Claim: $ Amount Unsecured: $ 842,685.33

5. **Amount of Claim Entitled to Priority under 11 U.S.C. §507(a).** If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries or commissions (up to $10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

☑ Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

☐ Up to $2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

☐ Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. § 507(a)(____).

Amount entitled to priority:

$ 842,685.33

6. **Credits:** The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. **Documents:** Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. *(See definition of "redacted" on reverse side.)* **DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.**

If the documents are not available, please explain:

FOR COURT USE ONLY

Date: 6/5/2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

 Claim Filed: 1809-14-10 -0000-3547-1455

June 7, 2010

c/o Kurtzman Carson Consultants, Inc
Washington Mutual Claims Processing
2335 Alaska Ave.
El Segundo, CA 90245

Re: Ann Tierney, WaMu Employee ID u164190
Amended Proof of Claim – Washington Mutual Inc, Bankruptcy, 08-1229 (MFW)

To Whom It May Concern:

Please find attached an amended Proof of Claim. In a recent review of the original claim calculation of compensation due, it was apparent that the total claim amount that I prepared did not include all amounts due under the Change In Control Agreement, resulting in a significant understatement.

At the time that I originally prepared the claim, I was under significant stress due to a serious personal health matter, which contributed to the oversight. So it is with all due respect, that I request that the attached amended Proof of Claim and calculation of compensation due be accepted and entered as an amendment to my initial Proof of Claim.

Sincerely,

Ann Tierney
1814 27th Ave. W.
Seattle, WA 98199

Attachments:

- Attachment 1. Amended Proof of Claim
- Attachment 2. Summary of Original & Amended Claim Amounts
- Attachment 3. Detailed Calculation of Amended Claim Amount
- Appendix 1. Change in Control Agreement
- Appendix 2: 2008 Rewards Summary
- Appendix 3: 3/15/2007 Pay Advice
- Appendix 4: 2007 Leadership Scorecard
- Appendix 5: 12/31/2008 Pay Advice
- Appendix 6: WaMu Pension Plan Summary
- Appendix 7: WaMu Savings Plan Summary
- Appendix 8: Cash Long Term Incentive Award
- Appendix 9: 2007 WaMu Supplemental Retirement Benefits Statement
- Appendix 10: 2/13/2009 Pay Advice
- Appendix 11: 3/13/2009 Pay Advice

EXHIBIT "C"

WaMu Severance Plan

Amended and Restated
Effective January 1, 2008

PREAMBLE

Washington Mutual, Inc. has established the WaMu Severance Plan (the "Plan") with the intention of providing benefits to Eligible Employees of Washington Mutual, Inc. and its Affiliates (the "Company"), in the event of a job elimination. This document sets forth the basic terms that are applicable to all eligible participants. Provisions that apply exclusively to eligible employees of acquired companies are set forth in appendixes to this document. The Plan is intended to be a welfare benefit plan governed by ERISA and is intended to constitute a single plan.

SECTION 1. DEFINITIONS

For the purpose of this Plan, the following definitions shall apply unless the context requires otherwise. Words used in the masculine gender shall apply to the feminine, where applicable, and wherever the context of the Plan dictates, the plural shall be read as the singular and the singular as the plural. The words "Section" or "Section" in this Plan shall refer to an Section or Section of this Plan unless specifically stated otherwise. Compounds of the word "here" such as "herein" and "hereof" shall be construed to refer to another provision of this Plan, unless otherwise specified or required by the context. It is the intention of the Company that the Plan be governed the provisions of the Code and ERISA and that all its provisions shall be construed to that result.

In determining the time within which an event or action is to take place for purposes of the Plan, no fraction of a day shall be considered, and any act, the performance of which would fall on a Saturday, Sunday, holiday or other non-business day, may be performed on the next following business day.

1.1 Acquired Company. Any company or part of a company acquired by the Company either through an asset purchase or stock purchase.

1.2 Base Pay. Base Pay includes salary, but does not include bonus, commissions, incentives (except as noted in this Section 1.2) or any other compensation. For salaried employees, weekly Base Pay means annual salary divided by Fifty Two (52). For hourly employees, weekly Base Pay means base hourly rate times Forty (40). Base Pay includes incentives and commissions, but only if they are guaranteed or are not dependent upon achievement of certain goals or objectives.

1.3 Basic Program. The portion of the Severance Plan set forth in this document, not including the appendixes.

1.4 Cause. Any of the following shall constitute cause:

(a) Participant violates the Company's policies regarding drug or alcohol use on a recurring basis,

(b) Participant is convicted of any felony or of a misdemeanor involving moral turpitude (including forgery, fraud, theft or embezzlement) or enters into a pretrial diversion or similar program in connection with the prosecution for an offense involving dishonesty, breach of trust or money laundering; or

(c) Participant has engaged in: (a) dishonesty or fraud, (b) destruction or theft of property of the Company or a Subsidiary, (c) physical attack on another employee, (d) willful malfeasance or gross negligence in the performance of Participant's duties, or (e) misconduct materially injurious to the Company.

1.5 Change in Control. Any of the following shall constitute a Change in Control:

(a) The acquisition of ownership, directly or indirectly, beneficially or of record, by any Person (as defined below) or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as amended from time to time), other than Washington Mutual, Inc., a Subsidiary or any employee benefit plan of the Company, of shares representing more than 25% of (i) the common stock of Washington Mutual, Inc., (ii) the aggregate voting power of Washington Mutual, Inc.'s voting securities or (iii) the total market value of Washington Mutual, Inc.'s voting securities;

(b) During any period of 25 consecutive calendar months, a majority of the board of directors of Washington Mutual, Inc. (the "Board") ceasing to be composed of individuals (i) who were members of the Board on the first day of such period, (ii) whose election or nomination to the Board was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of the Board or (iii) whose election or nomination to the Board was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of the Board; provided that, any director appointed or elected to the Board to avoid or settle a threatened or actual proxy contest shall in no event be deemed to be an individual referred to in clauses (i), (ii) or (iii) above;

(c) The good-faith determination by the Board that any Person or group (other than a Subsidiary or any employee benefit plan of the Company) has acquired direct or indirect possession of the power to direct or cause to direct the management or policies of Washington Mutual, Inc., whether through the ability to exercise voting power, by contract or otherwise;

(d) The merger, consolidation, share exchange or similar transaction between Washington Mutual, Inc. and another Person (other than a Subsidiary) other than a merger in which the stockholders of Washington Mutual, Inc. immediately before such merger, consolidation or transaction own, directly or indirectly, immediately following such merger, consolidation or transaction, at least seventy-five percent (75%) of the combined voting power of the surviving entity in such

merger, consolidation or transaction in substantially the same proportion as their ownership immediately before such merger, consolidation or transaction; or

(e) The sale or transfer (in one transaction or a series of related transactions) of all or substantially all of Washington Mutual, Inc.'s assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary of involuntary.

(f) The following definitions shall apply for purposes of Section 1.5:

1. "Person" shall mean any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

2. "Subsidiary" shall mean a corporation that is wholly owned by the Company, either directly or through on or more corporations that are wholly owned by the Company.

1.6 Code. The Internal Revenue Code of 1986, as amended.

1.7 Company. Washington Mutual, Inc. and its subsidiaries and affiliates.

1.8 Eligible Employee. Any "regular" employee of the Company who is scheduled to work at least 20 hours per week. The following are not considered Eligible Employees:

(a) workers hired through a contract with any other unrelated entity, including but not limited to contingent staffing companies, professional employer organizations, temporary agencies or other similar entities;

(b) employees hired for a fixed or limited term;

(c) employees who are classified in the Company's Human Resources Information System as "fully commissioned" are not eligible to participate in the Plan even if they receive a minimum incentive, guaranteed incentive or other similar payments; and

(d) an individual who is classified as an independent contractor or another non-employee position by the Company even if such individual is subsequently reclassified by a court of law or a regulatory body as a common law employee of the Company.

1.9 ERISA. The Employee Retirement Income Security Act of 1974, as amended.

1.10 Job End Date. The date a Participant's job is to be eliminated. Job End Date will be set forth in the notice issued pursuant to Section 4 and is subject to change in accordance with

that Section. "Original Job End Date" refers to the date set forth in the first notice without regard to any acceleration or extension of that date.

1.11 Job Elimination. Has the meaning set forth in Section 2.3.

1.12 Notification. Has the meaning set forth in Section 4.

1.13 Participant. An Eligible Employee who becomes eligible for benefits under this Plan by satisfying the requirements of Section 2.

1.14 Plan. The Severance Plan, as amended from time to time. The Plan is comprised of this document (the "Basic Program") and any appendixes attached hereto (the "Acquisition Programs").

1.15 Severance Agreement. A written agreement provided by the Company by which a Participant releases any claims he might have against the Company in exchange for the benefits set forth in Section 3 which the Company is not otherwise obligated to provide.

1.16 Termination Date. The last active day of employment. For these purposes, an employee will be deemed to have terminated on the last day of employment at 5:00 p.m. in the Participant's time zone.

1.17 Service. A "Year of Service" means a full year of continuous employment with Company measured on each anniversary date from the Participant's date of hire. Partial years will be ignored. Years of service will be calculated by using Participant's hire date and Termination Date. For purposes of this calculation, hire date will be the Participant's latest hire date. Prior service with the Company or Acquired Companies shall not be counted toward Years of Service unless otherwise specified in an appendix to the Plan. In the case of an acquisition, Years of Service will be determined based on the records provided by the Acquired Company, which shall be conclusive; no adjustment will be made for any reason.

SECTION 2. ELIGIBILITY

2.1 Requirements. An Eligible Employee will be eligible for benefits under Section 3 only if he:

(a) experiences a Job Elimination; and

(b) signs and returns a Severance Agreement within 21 business days or within such other period or by such other date specified in the "Notification."

2.2 Exceptions. An Eligible Employee is not eligible to receive benefits under this Plan if he is eligible to receive benefits or payments from any other severance plan, arrangement, agreement, or program or if he has received such payment within the last two years from the Company or any Acquired Companies.

2.3 Job Elimination. The Eligible Employee's position is eliminated because of corporate restructuring, downsizing, or a reduction in force and, as a result, his employment with the Company terminates. Job elimination does not include termination by the Company for any other reason or voluntary termination. Whether or not a position is being eliminated due to corporate restructuring, downsizing, or a reduction in force is conclusively determined by the responsible manager. If an Eligible Employee's position is eliminated but he accepts another position with the Company, he will not become a Participant and will not be eligible for Benefits hereunder. For purposes of this section a Participant who is designated as a Level 6 employee will also be deemed to have experienced a job elimination if his employment is terminated for any reason other than for Cause within 18 months after a Change in Control.

2.4 Loss of Eligibility. An Eligible Employee who would otherwise be eligible under this Section 2, will not be eligible for benefits under the Plan if he rejects an offer of another position within the Company provided that the new position:

(a) has Base Pay that is at least eighty percent (80%) of the Base Pay for the position that is being eliminated; and

(b) does not increase Eligible Employee's one-way commute from his primary residence to his place of work by 25 miles or more.

2.5 Repayment Upon Rehire. If a Participant has received Severance Pay and subsequently becomes employed by the Company, Participant will be required to repay a pro-rata portion of the Severance Pay. The pro-rata portion to be repaid will be equal to:

$$\left(\frac{\text{Number of weeks Severance Pay}}{\text{Number of weeks between Termination Date and rehire date}}\right) \times \text{Severance Pay}$$

Number of weeks of Severance Pay

Reemployment also includes employment by an unrelated entity that provides services to the Company through a contract with the Company.

2.6 Leave of Absence. If an employee's job is eliminated while he is on unpaid leave of absence that is not protected by federal or state law, including but not limited to the Family Medical Leave Act, he will not be eligible for benefits under this Plan. For purposes of this Section 2.6, an employee's job is considered eliminated effective on the Job End Date.

SECTION 3. BENEFITS

3.1 In General. If a Participant meets the eligibility requirements he will be eligible for Severance Pay based on the appropriate schedule set forth in Section 3.2.

3.2 Severance Pay. Except as noted in Section 3.2(d) below, Severance Pay is equal to Base Pay for the number of weeks indicated in the table in subsection (a), and the number of weeks indicated in subsection (b), if any.

(a) The number of weeks of basic Severance Pay are calculated as follows:

Senior Leader	Levels 6-8		Levels 9-13	
4 weeks per year Min: 16 weeks Max: 52 weeks	Years of Service	Total Weeks	Years of Service	Total Weeks
	< 6 mos	4.0	< 6 mos	3.0
	6-23 mos	8.0	6-23 mos	6.0
	2 yrs	10.0	2 yrs	7.5
	3	12.0	3	9.0
	4	14.0	4	10.5
	5	16.0	5	12.0
	6	18.0	6	13.5
	7	20.0	7	15.0
	8	22.0	8	16.5
	9	24.0	9	18.0
	10	26.0	10	19.5
	11	28.0	11	21.0
	12	30.0	12	22.5
	13	32.0	13	24.0
	14	34.0	14	25.5
	15	36.0	15	27.0
	16	38.0	16	28.5
	17	40.0	17	30.0
	18	42.0	18	31.5
	19	44.0	19	33.0
	20	46.0	20	34.5
	21	48.0	21 or more	36.0
	22	50.0		
	23 or more	52.0		

(b) Any Participant who is required to repay a portion of Severance Pay pursuant to Section 2.5 will be entitled to additional weeks of Base Pay equal to the number of weeks of Severance Pay he was required to repay upon rehire.

(c) Severance Pay will be reduced dollar for dollar by the amount of any pay received during a period when the Participant is on Nonworking Notice, provided that Severance Pay will not be reduced to less than one week of Severance Pay.

(d) Notwithstanding the foregoing, a Participant who is designated as a Level 6 employee at the time of the Change in Control will be entitled to Severance Pay equal to one and a half times his annual compensation, reduced by any other payments due under this Section 3.2 if his employment is terminated for any reason other than for Cause within 18 months after the Change in Control. For purposes of this Section 3.2(d), annual compensation will include base pay at the time of the Change in Control, plus the greater of: (i) the target bonus or incentive pay for the current year; or (ii) the actual bonus or incentive pay for the preceding year.

3.3 Payment Method. Severance Pay will be paid to Participant in a lump sum payment unless the Plan Administrator determines, in its sole discretion, that periodic payments or other forms of payment may be made in lieu of the lump sum payment. State and federal taxes will be withheld from the payment as required by law.

3.4 Loss of Some or All Benefits. If a Participant has received Severance Pay and subsequently becomes employed by the Company, Participant will be required to repay a pro-rata portion of the Severance Pay pursuant to Section 2.5.

3.5 Limitation on Payments. In the event that Participant would, except for this Section 3.6, be subject to a tax pursuant to Section 4999 of the Code, or any successor provision that may be in effect, as a result of "parachute payments" (as that term is defined in Sections 280G(b)(2)(A) and 280G(d)(3)) made pursuant to the Plan, or a deduction would not be allowed to the Company for all or any part of such payments, by reason of Section 280G(a), or any successor provision that may be in effect, such payments shall be reduced, eliminated, or postponed in such amounts as are required to reduce the aggregate "present value" (as that term is defined in Section 280G(d)(4)) of such payments to one dollar less than an amount equal to three times Participant's "base amount," (as that term is defined in Sections 280G(b)(3)(A) and 280G(d)(1) and (2)) to the end that Participant is not subject to tax pursuant to such Section 4999 and no deduction is disallowed by reason of such Section 280G(a).

3.6 Death of Participant. If a Participant dies before his Job End Date, no benefits will be paid under the Plan. If a Participant dies after his Job End Date but before he has

received Severance Pay under the Plan, payment will be made to his beneficiaries or to his estate provided that his personal representative signs and returns the Severance Agreement.

SECTION 4. NOTIFICATION

4.1 General. When Participant's position is to be eliminated, Participant will be notified in writing ("Notice"). Only a notice issued by the Transition Services Group (or its successor) constitutes notice under this Plan. The notice will indicate Participant's Job End Date.

4.2 Extension and Acceleration. The Company reserves the right to extend, cancel or accelerate Participant's Job End Date in accordance with the following rules:

(a) A Participant's Job End Date may be accelerated at any time by the Company. If the Job End Date is accelerated at any time within fourteen (14) days of a Participant's Original Job End Date, the Company will pay Participant his regular salary through the Original Job End Date in addition to any Severance Pay.

(b) A Participant's Job End Date may be extended or canceled by the Company at any time, however, if the Company notifies a Participant of its intent to extend or cancel the Job End Date within fourteen (14) days of the Original Job End Date, the Participant may reject such extension or cancellation, voluntarily terminate on the Original Job End Date, and receive full Severance Pay under this Plan.

4.3 Plan Document Controls. Notices may indicate eligibility for specific benefits under this Plan, including benefits set forth in an Appendix, and an estimate of actual benefits. However, this information is provided merely as a courtesy and does not convey any right upon the Participant to receive a particular benefit nor does it mean that Participant is eligible for a particular program. The amount of any benefit and eligibility for a particular benefit are governed by this Plan document, including any appendixes thereto.

SECTION 5. ADMINISTRATION COMMITTEE

5.1 Plan Administrator. The Plan Administrator shall be the Plan Administration Committee (the "Committee"). The Administrator may delegate any of its duties, responsibilities, or authority to one or more person (by name or by title), committee, or unrelated service provider. The Plan Administrator has absolute discretion to make all decisions under this Plan, including making determinations about eligibility for and the amounts of benefits payable under this Plan and interpreting all provisions of this plan. All decisions of the Plan Administrator are final, binding and conclusive.

5.2 Powers of the Administration Committee. The Committee shall have the following powers and duties:

(a) To direct the administration of the Plan in accordance with the provisions herein set forth;

(b) To adopt rules of procedure (including distribution procedures) necessary for the administration of the Plan provided the rules are not inconsistent with the terms of the Plan;

(c) To interpret the provisions of the Plan and determine all questions with respect to rights of Participants under the Plan, including but not limited to rights of eligibility of a Participant to participate in the Plan, and the value of a Participant's benefit.

(d) To interpret and enforce the terms of the Plan and the rules it adopts;

(e) To review and render decisions with respect to a claim for, (or denial of a claim for) a benefit under the Plan;

(f) To furnish the Company with information which the Company may require for tax or other purposes;

(g) To engage the service of counsel (who may, if appropriate, be counsel for the Company) and agents whom it may deem advisable to assist it with the performance of its duties;

(h) To receive from the Company and from Participants such information as shall be necessary for the proper administration of the Plan; and

(i) To interpret and construe the terms of the Plan in its discretion.

The Committee shall have no power to add to, subtract from, or modify any of the terms of the Plan, or to change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for a benefit under the Plan provided that the Committee may amend the Plan to comply with changes in relevant laws, to provide for more efficient administration or other changes it deems appropriate as long as the changes do not materially increase the obligation or liabilities of the Company. Nonetheless, the Committee shall have absolute discretion in the exercise of its powers in this Plan. All exercises of power by the Committee hereunder shall be final, conclusive and binding on all interested parties, unless found by a court of competent jurisdiction, in a final judgment that is no longer subject to review or appeal, to be arbitrary and capricious.

SECTION 6. ACQUISITION PROGRAMS

6.1 In General. Special provisions that apply only to certain classes of former employees of Acquired Companies shall be set forth in the appendixes to this document (the "Acquisition Programs"). The terms set forth in the appendixes shall control to the extent they

are inconsistent with the terms set forth in this Basic Program document. All other terms in this Basic Program document shall apply to the Acquisition Programs.

6.2 Expiration. Acquisition Programs are intended to provide benefits to Participants of certain Acquired Companies should their positions be eliminated within a certain time after the acquisition. Every Acquisition Program will expire on the expiration date set forth in the appendix that corresponds to such program, provided that if a Participant in an Acquisition Program is notified before the expiration date that his position is being eliminated within six (6) months of the expiration date, the acquired Participant will continue to be eligible for the Acquisition Program benefits provided that he is actually terminated within six (6) months of the expiration date.

6.3 Authority to Adopt. The Company may add Appendixes at any time by amending the Plan. In addition, Appendixes may be added by adopting and approving a binding agreement to acquire the stock or some or all of the assets of an unrelated entity. If the Company adopts and approves such an agreement, and under the terms of that agreement, the Company is obligated to provide severance benefits to employees of the acquired company under terms that are different from the terms of the Basic Program, the terms will be included in an Appendix. The Company's most senior Human Resources executive shall have the authority to prepare and execute the Appendix on behalf of the Company.

6.4 Reliance on Records. In administering the Acquisition Programs, the Plan Administrator will conclusively rely on records provided by the Acquired Company for purposes of determining eligibility and benefits.

SECTION 7. COMPANY ADMINISTRATIVE PROVISIONS

7.1 Amendment to Termination. The Plan may be amended or terminated by the Company or the Plan Administration Committee (for certain enumerated reasons) at any time when, in its judgment, such amendment or termination is necessary or desirable. No such termination or amendment shall affect the rights of any individual who is then entitled to receive Severance Pay at the time of such amendment or termination.

Severance Pay is not intended to be a vested right. The Committee reserves the right to interpret the Plan, prescribe, amend and rescind rules relating to it, determine the terms and provisions of the Severance Payments and make all other determinations it deems necessary or advisable for the administration of the Plan. The determination of the Committee on all matters regarding the Plan shall be conclusive.

Notwithstanding the foregoing, upon a Change in Control, and for a period of two years thereafter, the Company or its successor shall have no authority to amend the Plan to the extent that the amendment would interfere with change or reduce benefits that would otherwise be payable under Section 3.2 (d).

7.2 Claim Procedure.

(a) In General. If a Participant's claim for benefits is denied, the Plan Administrator will furnish written notice of denial to the Participant making the claim (the "Claimant") within sixty (60) days of the date the claim is received, unless special circumstances require an extension of time for processing the claim. This extension will not exceed sixty (60) days, and the Claimant must receive written notice stating the grounds for the extension and the length of the extension within the initial sixty (60) day review period. If the Plan Administrator does not provide written notice, the Claimant may deem the claim denied and seek review according to the appeals procedures set forth below.

(b) Denial Notice. The notice of denial to the Claimant shall state:

(i). the specific reasons for the denial;

(ii). specific references to pertinent provisions of the Plan upon which the denial was based;

(iii). a description of any additional material or information needed for the Claimant to perfect his or her claim and an explanation of why the material or information is needed; and

(iv). a statement that the Claimant may request a review upon written application to the Plan Administrator, review pertinent Plan documents, and submit issues and comments in writing, and that any appeal that the Claimant wishes to make of the adverse determination must be in writing to the Plan Administrator within ninety (90) days after the Claimant receives notice of denial of benefits.

The notice of denial of benefits shall identify the name and address of the Administrator to which the Claimant may forward an appeal. The notice may state that failure to appeal the action to the Plan Administrator in writing within the ninety (90) day period will render the determination final, binding and conclusive.

7.2 Appeal Procedure. If the Claimant appeals to the Administrator, the Claimant or his or her authorized representative may submit in writing whatever issues and comments he or she believes to be pertinent to the appeal. The Administrator shall reexamine all facts related to the appeal and make a final determination about whether the denial of benefits is justified under the circumstances. The Administrator shall advise the Claimant in writing of:

(a) its decision on appeal;

(b) The specific reasons for the decision; and

(c) The specific provisions of the Plan upon which the decision is based.

Notice of the Administrator's decision shall be given within sixty (60) days of the Claimant's written request for review, unless additional time is required due to special circumstances. In no event shall the Administrator render a decision on an appeal later than one hundred twenty (120) days after receiving a request for a review.

SECTION 8. MISCELLANEOUS PROVISIONS

8.1 Severance Agreement. Participants will receive the Severance Agreement after they receive Notification of Job Elimination. The Severance Agreement will not be valid unless it is signed and returned after the Termination Date but within 21 business days or other time period prescribed by the Administrator. The Severance Agreement will be generally effective for any claims against the Company through the Termination Date, but will not cover any claims or appeal processes set forth in any ERISA plans sponsored by the Company. Failure to sign and return the Severance Agreement within twenty one (21) business days will result in Participant being ineligible for Severance Pay under the Plan.

8.2 Divestiture. If a Participant is offered a position with another company that has purchased some or all of the assets of the Company or has purchased the stock of the Company or one of its affiliates or subsidiaries, the Participant will not be entitled to severance benefits under the Plan, provided that the job offered meets the requirements of Section 2.4(a) and 2.4(b).

8.3 Outsourcing. If a Participant is offered a position with an entity unrelated to the Company in connection with a decision to outsource particular services, Participant will not be eligible for severance under this Plan.

8.4 Governing Law. To the extent not preempted by ERISA, the terms of the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington, including all matters of construction, validity and performance.

8.5 Miscellaneous Provisions.

(a) Anti-Alienation. Severance Pay and benefits under the Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge prior to actual receipt thereof by an Participant; and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge prior to such receipt shall be void; and the Company shall not be liable in any manner for, or subject to, the debts, contacts, liabilities, engagements or torts of any person entitled to any Severance Pay or benefits under the Plan.

(b) Employment at Will. Nothing contained herein shall confer upon any Participant the right to be retained in the service of the Company or an affiliate nor limit the right of the Company or an affiliate to discharge or otherwise deal with any Participant with regard to the existence of the Plan.

(c) Unfunded. The Plan shall at all times be entirely unfunded and no provision shall at any time be made with respect to segregating assets of the Company or

an affiliate for payment of any Severance Pay or Severance Benefits hereunder. No Participant or any other person shall have any interest in any particular assets of the Company or an affiliate by reason of the right to receive Severance Pay or Severance Benefits under the Plan and any such Participant or any other person shall have only the rights of a general unsecured creditor of the Company or an affiliate with respect to any rights under the Plan.

(d) Notwithstanding any provision of this Plan to the contrary, if, at the time of Participant's termination of employment with Washington Mutual, he or she is a "specified employee" as defined in Section 409A of the Code, and one or more of the payments or benefits received or to be received by Participant pursuant to this Plan would constitute deferred compensation subject to Section 409A, no such payment or benefit will be provided under this Plan until the earlier of (a) the date that is six (6) months following Participant's termination of employment with Washington Mutual, or (b) the Participant's death. The provisions of this Section 8.5(d) shall only apply to the extent required to avoid Participant's incurrents of any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated thereunder. In addition, if any provision of this Plan would cause Participant to incur any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated thereunder, Washington Mutual may reform such provision to maintain to the maximum extent practicable the original intent of the applicable provision without violating the provisions of Section 409A of the Code.

Pursuant to the authority delegated to me by the Plan Administration Committee, this Plan is hereby adopted effective as of the date specified above:

Daryl D. David
Executive Vice President
Human Resources
Washington Mutual, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	Case No. 08-12229 (MFW)
Washington Mutual, Inc., *et al.*,[1]	)	(Jointly Administered)
	)	
Debtors.	)	Ref. Docket No. _____
	)	

ORDER

On this _____ day of _____, 2013, having considered *Motion of Ann Tierney for Order Granting Amendment to Proof of Claim No. 3862 or, in the Alternative, Allowing Tierney to Assert Alternate Argument Regarding Claim Based on WaMu Severance Plan* (the "**Motion**"), and any responses thereto;

IT IS HEREBY ORDERED that, for the reasons stated on the record, the Motion is GRANTED; and

IT IS FURTHER ORDERED that the amended proof of claim may be filed within fifteen (15) days of the date of this Order; and

IT IS FURTHER ORDERED the Court retains jurisdiction with respect to all matters arising from or related to the implementation this Order.

Wilmington, Delaware

_____
THE HONRABLE MARY F. WALRATH
U.S. Bankruptcy Court Judge

[1] The Debtors in these cases are: Washington Mutual, Inc. and WMI Investment Corp.

CERTIFICATE OF SERVICE

I, Celeste A. Hartman, Senior Paralegal, do hereby certify that I am over the age of 18 and that on February 1, 2013, I caused a copy of *Motion of Ann Tierney for Order Granting Amendment to Proof of Claim No. 3862 or, in the Alternative, Allowing Tierney to Assert Alternate Argument Regarding Claim Based on WaMu Severance Plan* to be served upon all persons receiving notice through the Court's cm/ecf system with a courtesy copy on the following via email:

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Under penalty of perjury, I certify the foregoing to be true and correct.

/s/ Celeste A. Hartman
CELESTE A. HARTMAN