

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

In re:	)	Chapter 11
WASHINGTON MUTUAL, INC., <i>et al.</i> <sup>2</sup> ,	)	
	)	Case No. 08-12229 (MFW)
	)	
	)	Jointly Administered
Debtors.	)	
	)	
	)	<b>Objection Deadline: 2/14/13</b>
	)	
	)	<b>Hearing Date: 2/21/13 @</b>
	)	<b>11:30 a.m. (EST)</b>
	)	

---

**MOTION OF JOHN MCMURRAY, ALFRED BROOKS, TODD BAKER, THOMAS CASEY, DEBORA HORVATH, AND DAVID SCHNEIDER FOR AN ORDER GRANTING AMENDMENT TO CERTAIN PROOFS OF CLAIM REGARDING AN ADDITIONAL THEORY OF RECOVERY BASED UPON THE WAMU EXECUTIVE OFFICER SEVERANCE PLAN, OR, IN THE ALTERNATIVE, FINDING THAT EXCUSABLE NEGLIGENCE PERMITS THE ASSERTION OF CLAIMS BASED UPON THE WAMU EXECUTIVE OFFICER SEVERANCE PLAN**

Claimants John McMurray, Alfred Brooks, Todd Baker, Thomas Casey, Debora Horvath, and David Schneider (collectively, the “**Claimants**”), by and through their undersigned attorneys, hereby file this *Motion for an Order Granting Amendment to Certain Proofs of Claim Regarding an Additional Theory of Recovery Based Upon the WaMu Executive Officer Severance Plan, or, in the Alternative, Finding that Excusable Neglect Permits the Assertion of Claims Based Upon the WaMu Executive Officer Severance Plan* (the “**Motion**”), and, in support thereof, state the following:

**PRELIMINARY STATEMENT**

1. The Claimants seek to amend their timely filed proofs of claim to add an additional theory of recovery. All of the Claimants asserted as a basis for recovery, *inter alia*,

---

<sup>2</sup> The Debtors in these cases are: (i) Washington Mutual, Inc. and WMI Investment Corp.



Change in Control Agreements (“**CIC Agreements**”) with Washington Mutual, Inc., which provided the Claimants with compensation should a change in control occur followed by a loss of employment. At the time the Claimants’ proofs of claim were filed, it seemed objectively undisputable that a change in control as defined in the CIC Agreements had in fact occurred in late September 2008 when the bank was seized by the government and sold to JPMorgan Chase. Indeed, some of the Claimants were present at the board meeting where a change in control was declared to have occurred. Thus, the Claimants, at the time the proofs of claim were filed, believed that it was unnecessary to include as a basis for recovery an alternative claim under the Executive Officer Severance Plan (“**EOSP**”) in which they participated because the terms of the EOSP state that it does not provide benefits if payments are made under the CIC Agreements.

2. Only until the bankruptcy had progressed well past the bar date, however, did WMILT reveal that it was contesting whether a change in control had occurred, as most clearly exemplified in its Eighty-Fifth Omnibus Objection, filed on September 17, 2012.

3. Accordingly, the Claimants move this Court to enter an order granting an amendment to their claims to assert the applicability of the EOSP as an alternative theory of recovery. Such amendment is proper because: the new theory arises from the same conduct, transaction, or occurrence – the termination of the Claimants’ employment with Washington Mutual, Inc.; WMILT is not prejudiced because the amounts that would be due under the EOSP are substantially less than the amounts reserved for the CIC Agreements and the Claimants are only entitled to benefits under the CIC or the EOSP, but not both; the amendment would not materially affect the ongoing proceedings because discovery, to the extent it is necessary, is still open; and the Claimants have not acted in bad faith, with undue delay, or with dilatory motive.

Alternatively, in the event the Court denies the Claimants' motion to amend, the Court should find that excusable neglect permits the assertion of claims based upon the EOSP.

### **JURISDICTION AND VENUE**

4. 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).

### **BACKGROUND**

#### **I. Relevant Procedural History**

5. Washington Mutual, Inc. ("WMI"), a bank holding company, and related entity, WMI Investment Corp. (collectively with WMI, the "Debtors") each filed voluntary petitions under Chapter 11 of Title 28, United States Code (the "Bankruptcy Code") and commenced the above-captioned cases on September 26, 2008.

6. At all relevant times prior to September 25, 2008, WMI owned Washington Mutual Bank ("WMB") and through its ownership of WMB, indirectly owned WMB's subsidiaries including Washington Mutual Bank fsb ("WMB fsb").

7. On September 25, 2008, the director of the Office of Thrift Supervision directed the FDIC to take immediate possession of the assets of WMB as receiver. The FDIC in its role as receiver then sold substantially all of the assets of WMB to JPMorgan Chase Bank, National Association. The assets of WMB constituted, indirectly, substantially all of the operating banking assets of WMI.

8. On or about January 30, 2009, the Court entered an order setting March 31, 2009 as the deadline for filing proofs of claim against WMI [D.I. 632].

9. 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 (the "Plan"). By order dated February 23, 2012 (the "Confirmation Order"), this Court confirmed the Plan [D.I. 9759]. Upon information and belief the effective date of the Plan was March 19, 2012. On the effective date certain of the Debtors' assets were transferred to WMILT for administration under the Plan. The Plan requires reservation of the full face value of asserted liquidated claims until those claims were either allowed or disallowed.

10. The Confirmation Order further 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. It further states 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 September 17, 2012, WMILT filed *WMI Liquidating Trust’s Eighty-Fifth Omnibus (Substantive) Objection to Claims* [D.I. 10678] (the “**Eighty-Fifth Objection**”) objecting to Claimants’ Original Claims by arguing, *inter alia*, that a change in control, as defined in the CIC Agreements, had not occurred.

12. On or about October 8, 2012, the Claimants filed their *Combined Response of John McMurray, Alfred Brooks, Todd Baker, Thomas Casey, Debora Horvath, and David Schneider to WMI Liquidating Trust’s Eighty-fifth Omnibus (Substantive) Objection to, Among Others, Change in Control Claims* [D.I. 10735] (the “**Combined Response**”), responding to the Eighty-Fifth Objection. It is important to note that the Claimants discussed the EOSP in the Combined Response and attached a copy of the EOSP. Id. at ¶¶ 22-24; Id., Ex. B.

13. Litigation over claims from former WMI and WMB employees began in earnest in the last quarter of 2012. To this end, WMILT grouped the Claimants’ claims into a category

of claims defined as “**Employee Claims**,” as described in the *Agreed Order Establishing Procedures and Deadlines Concerning Hearing on Employee Claims and Discovery in Connection Therewith*, dated October 15, 2012 [D.I. 10777] (the “**Original Scheduling Order**”). The Original Scheduling Order sets forth a schedule for discovery, briefing, and a hearing on a large number of claims and WMILT’s objections. Notably, the Original Scheduling Order demonstrates that WMILT is aware of the EOSP and its relevance to the “Employee Claims.” Id., Ex. A (Glossary) at ¶ E.

14. The Original Scheduling Order was amended pursuant to the *Agreed Order Amending Scheduling Orders with Respect to Employee Claims Hearing and Adversary Proceedings*, dated January 7, 2013 [D.I. 10975] (the “**Amended Scheduling Order**”). The Amended Scheduling Order extended certain deadlines, including: responses to written discovery is not due until March 11, 2013; depositions can be taken up to April 29, 2013; briefing is not due until May 8, 2013; and the Hearing is not until June 3 and 4. Id.

## **II. Facts Relevant to this Motion.**

### **A. The Claimants and Their Proofs of Claim.**

15. The Claimants are described individually below. Their proofs of claims and accompanying one-page charts are attached to this Motion as Exhibit A; however, the documents included with each claim have not been included with this Motion (hereinafter, “**Original Claims**”). Each proof of claim in its entirety is available from the Claims Agent.

16. McMurray was employed as an Executive Vice-President and Chief Enterprise Risk Officer. In that position, he was WAMU’s most senior risk officer. On or about September 26, 2008, McMurray’s employment relationship with WMI was terminated. On March 26, 2009,

McMurray filed a proof of claim seeking amounts due to him from various agreements and employee benefit programs which stemmed from his employment with WMI. (Claim No. 2543)

17. Brooks was employed by WMI as President of the Commercial Group. In that position, Brooks was primarily responsible for, among other things, was to lead all of the commercial loan activities for WMB which included multi-family lending, commercial mortgage lending, real estate banking and mortgage banking lending. On or about September 26, 2008, Brooks' employment relationship with WMI was terminated. On March 27, 2009, Brooks filed a proof of claim seeking amounts due to him from various agreements and employee benefit programs which stemmed from his employment with WMI. (Claim No. 2159)

18. Baker was employed by WMI as an Executive Vice-President of Corporate Strategy and Development. In that position, Baker was primarily responsible for, among other things, managing corporate strategic planning, and mergers and acquisitions on behalf of the company. On or about September 26, 2008, Baker's employment relationship with WMI was terminated. On March 26, 2009, Baker filed a proof of claim seeking amounts due to him from various agreements and employee benefit programs which stemmed from his employment with WMI. (Claim No. 2274)

19. Casey was employed by WMI as an Executive Vice-President and Chief Financial Officer. In that position, Casey was primarily responsible for, among other things, WMI's consolidated financial reporting and disclosures. Casey reported to the Board of Directors and the company CEO. On September 26, 2008, Casey's employment relationship with WMI was terminated. On March 26, 2009, Casey filed a proof of claim seeking amounts due to him from various agreements and employee benefit programs which stemmed from his employment with WMI. (Claim No. 2687)

20. Horvath was employed by WMI as an Executive Vice-President and Chief Information Officer. In that position, Horvath was primarily responsible for, among other things, overseeing all of the information technology systems for the entire group of companies, as well as having oversight for the Enterprise Project office. On or about September 26, 2008, Horvath's employment relationship with WMI was terminated. On March 26, 2009, Horvath filed a proof of claim seeking amounts due to her from various agreements and employee benefit programs which stemmed from her employment with WMI. (Claim No. 2683)

21. Schneider was employed by WMI as President of Home Loans and Executive Vice President of WMI. In that position, Schneider was primarily responsible for, among other things, the overall management of the home loans business. On or about September 26, 2008, Schneider's employment relationship with WMI was terminated. On March 26, 2009, Schneider filed a proof of claim seeking amounts due to him from various agreements and employee benefit programs which stemmed from his employment with WMI. (Claim No. 2681).

**B. The CIC Agreements.**

22. Each of the Claimants entered into a CIC Agreement with WMI which provided the Claimants with compensation should a change in control occur followed by a loss of employment. A copy of a CIC Agreement is attached as Exhibit B. The relevant paragraph of the CIC Agreements, ¶ 6(c)(1), states:

If (i) Employee's employment is terminated by the Company without "cause" (as defined below) upon or within three years after a Change in Control or (ii) Employee resigns for "good reason" (as defined below) upon or within three years after a Change in Control and no reason for Washington Mutual to terminate for "cause" exists, then:

1. Employee shall be entitled to receive, within five business days after the effective date of such termination or resignation, from the Company, a lump sum equal to three times Employee's annual compensation (as defined in Section 6(d)). Notwithstanding the preceding, the amount paid to employee under this Section 6(c) shall be offset by any payment received by

Employee from the Company or any acquired company pursuant to: (i) a severance or change in control agreement, arrangement or plan, with the exception of any such payment received more than two years before either clause (i) or clause (ii) of this Section 6(c) was satisfied, or (ii) The Worker Adjustment and Retraining Notification Act (WARN Act) or any similar state or local law.

23. The CIC Agreement, ¶ 11(e), defines a Change in Control, among other things, as “[t]he sale or transfer (in one transaction or a series of related transactions) of all or substantially all of [WMI’s] assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary.” Person is defined in ¶ 11(f) as “any individual, corporation or company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or government (or agency, instrumentality or political subdivision thereof).”

24. The Combined Response, at ¶¶ 25-39, explains why the Claimants are entitled to benefits under the CIC Agreements, and includes a detailed factual and legal analysis about what a “change in control” means under those agreements and why the Court must find that a change in control occurred. Furthermore, whether a change in control occurred, as defined under the CIC Agreements, impacts whether the Claimants are entitled to benefits under other agreements described in their Original Claims, as discussed in the Combined Response at ¶¶ 17-21.

**C. Executive Officer Severance Plan.**

25. In the alternative, and should the Court determine that a change in control did not occur, each of the Claimants are entitled to benefits under the EOSP. A copy of the EOSP is attached as Exhibit C. The EOSP provides severance benefits to Eligible Executives who were terminated without cause and do not otherwise “satisf[y] the requirements to receive severance benefits under (a) an individual change in control agreement with [WMI] or (b) and employment agreement that provides separation payments or severance benefits following a change in



control.” EOSP, at § 2. Benefits under the EOSP are cash severance benefits equal to 150% of each Claimant’s base pay and unadjusted target bonus. EOSP, at § 3.1.

26. Eligible Executives are each “employee of [WMI] who is (i) classified as either a Level 2 or Level 3 executive, and (ii) not a party to an individual employment agreement with [WMI] that provides for any form of separation payment or severance benefit upon a termination unrelated to a change of control.” EOSP, at §1.5.

27. In short, the Claimants, as Level 2 or Level 3 executives with WMI whose CIC Agreements only provide benefits upon a change in control, are entitled to payments under the EOSP should the Court determine that a change in control did not occur.

28. The benefit each Claimant is entitled to under the EOSP is substantially lower than the amount the same Claimant would be due under his or her CIC Agreement. Accordingly, the reserves set aside for claims pursuant to the CIC Agreements are more than sufficient to cover any payment obligation under the EOSP; especially considering the Claimants would only receive payment under one or the other and not both.

**D. Claimants’ Reasons for Not Including the EOSP in their Original Claims.**

29. As exemplified in the attached Declaration of the Claimant John McMurray,<sup>3</sup> the Claimants, at the time their claims were filed, believed that it was unnecessary to include the EOSP as a basis for recovery because the terms of the EOSP state that it does not provide benefits if payments are received under the CIC Agreements. To this end, it seemed objectively

---

<sup>3</sup> The full title of McMurray’s declaration: *Declaration of John McMurray in Support of the Motion for an Order Granting Amendment to Certain Proofs of Claim Regarding an Additional Theory of Recovery Based Upon the WaMu Executive Officer Severance Plan, or, in the Alternative, Finding that Excusable Neglect Permits the Assertion of Claims Based Upon the WaMu Executive Officer Severance Plan.*

undisputable that a change in control had in fact occurred on September 25, 2008, when the bank was seized by the government and sold to JPMorgan Chase.

30. Indeed, one of the Claimants, McMurray, was present at the board meeting where a change in control was declared to have occurred. On Thursday, September 25, 2008, the bank was seized by the government and sold to JPMorgan Chase. The following day, Friday, September 26, 2008, a meeting of the full Board of Directors of WMI was held. At that meeting, one of the subjects discussed was whether a change in control under the CIC Agreements and related agreements had occurred. The full Board, after consulting with counsel on this issue, unanimously determined that a change in control had occurred. The Board then instructed the head of human resources, Daryl David, to process the information described under the CIC Agreements and related agreements to make the necessary calculations. All of the Claimants quickly became aware that the Board had made this change in control determination. That knowledge informed them in the drafting and filing of their claims. In particular, the Claimants believed it was unnecessary to include the EOSP in their claims because the Claimants are not entitled to benefits under the EOSP if they receive benefits under the CIC Agreements and they believed it was undisputable that a change in control had occurred.

31. Claimants only became aware that WMILT was contesting whether a change in control had occurred well after the bar date had passed. They were formally made aware that this argument related to their claims by the Eighty-Fifth Objection, filed more than three years after the bar date in September 2012.

**E. The Amended Proofs of Claim.**

32. Each Claimant's amended proofs of claim will reflect one simple change to the chart attached to the official form – the addition of a row stating “WaMu Executive Officer

Severance Plan” accompanied by the applicable amount due; and a copy of the EOSP will also be attached (hereinafter “**Amended Claims**”).

### **RELIEF REQUESTED**

33. The Claimants seek the entry of an order granting an amendment to their claims to assert the EOSP as an additional theory of recovery. Alternatively, in the event the Court denies the Claimants’ motion to amend, the Court should find that excusable neglect permits the assertion of claims based upon the EOSP.

### **BASIS FOR RELIEF**

#### **I. THE COURT SHOULD PERMIT THE AMENDMENT OF CLAIMANTS’ ORIGINAL CLAIMS TO INCLUDE THE EOSP AS AN ADDITIONAL THEORY OF RECOVERY.**

##### **A. Amendments to Proofs of Claim are Liberally Permitted.**

34. The general rule regarding amending 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).

35. As the Federal Rules of Bankruptcy Procedure do not directly address amendment of a proof of claim, the courts consistently 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. Midland Cogeneration Venture Ltd. P’ship v. Enron Corp., 419 F.3d 115, 133 (2d Cir. 2005); Gens v. Resolution Trust Corp., 112 F.3d 569, 575 (1st Cir. 1997); In re Stavriotis, 977 F.2d 1202, 1204 (7th Cir. 1992); In re Robert Farms, 980 F.2d 1248, 1251 (9th Cir. 1992); 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); 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 Enron Corp., 298 B.R. 513, 521 (Bankr. S.D.N.Y. 2003); 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).

36. 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. BAP 1988); U.S. v. Hougham, 364 U.S. 310, 316 (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 In re Xechem Intern., Inc.*, 424 B.R. 836, 841 (Bankr. N.D. Ill. 2010).

**B. The Amended Claims Satisfy the Requirements of Rule 15.**

37. The threshold inquiry is whether the proposed amended proof of claim is truly an amendment or impermissibly asserts a new claim. In re Orion Ref Corp., 317 B.R. at 664. “In determining whether the amendment asserts a new claim, a court may compare the amendment to the original proof of claim.” In re Edison Bros. Stores, 2002 Bankr. LEXIS 1228, at \*12 (Bankr. D. Del. 2002). “In comparing the proof of claim and the amendment, if the initial proof did not give fair notice of the conduct, transaction or occurrence that forms the basis of the claim asserted in the amendment then the amendment asserts new claims and will not be allowed.” *Id.* (quotations omitted). A common example of a new claim is where the moving party seeks to

change the nature and status of a claim or reclassify it to a higher priority level. In re Orion Ref. Corp., 317 B.R. at 664-665; In re Metro Trans. Co., 117 B.R. 143, 144 (Bankr. E.D. Pa. 1990). By contrast, proper amendments are those “that merely cure defects in the previously-filed claim, describe the claim in more detail, plead new theories of recovery on the same facts presented in the initial claim, or increase damages[.]” In re Bruno, 2008 Bankr. LEXIS 910, at \*10 (Bankr. D.N.J. 2008); see In re FLYi, Inc., 2008 Bankr. LEXIS 4867, at \*6 (Bankr. D. Del. 2008) (“The assertion of a different legal theory for the same claim is not a new claim.”). At bottom, “amendment is freely permitted so long as the initial claim provides adequate notice of the existence and nature of the claim, as well as the creditor's intent to hold the estate liable.” In re Oscar, 2005 Bankr. LEXIS 3345, at \*15 (Bankr. E.D. Pa. 2005) (citation omitted); see In re Enron Corp., 298 B.R. 513, 520 (Bankr. S.D.N.Y. 2003) (“A court must first look to whether there was timely assertion of a similar claim or demand evidencing an intention to hold the estate liable.”) (quotations omitted).

38. Here, the Claimants’ proposed amendments are proper and are not a new claims. The Claimants’ Original Claims gave notice of the basis for their claims in substantially the same language: “This claim stems from the employment of [Claimant] by Washington Mutual, Inc.” See Exhibit A. Stated differently, the Claimants’ claims arise from the termination of their employment with WMI upon the seizure and sale of the bank. The additional theory of recovery based upon the EOSP arises from the same set of circumstances. Thus, the Claimants’ amendments are proper because their Original Claims gave “fair notice of the conduct, transaction or occurrence that forms the basis of the claim asserted in the amendment”; In re Edison Bros. Stores, 2002 Bankr. LEXIS 1228, at \*12; and the Claimants only seek to add a new theory of recovery based upon the same set of facts; In re Bruno, 2008 Bankr. LEXIS 910, at

\*10; In re FLYi, Inc., 2008 Bankr. LEXIS 4867, at \*6. Likewise, the Claimants' Amended Claims do not present a new claim, because the amendments do not change the nature and status of the claim or reclassify it to a higher priority level. In re Orion Ref. Corp., 317 B.R. at 664-665. In sum, the Claimants' Original Claims provided sufficient notice of the existence and nature of their claims, as well as their intent to hold the estate liable. In re Oscar, 2005 Bankr. LEXIS 3345, at \*15.

39. Once the moving party demonstrates that its amendment is proper, the Court must grant the amendment unless the opposing party can demonstrate that such relief would be inequitable. Dole v. Arco Chemical Co., 921 F.2d 484, 488 (3d Cir. 1990); see Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002); In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997). The United States Supreme Court enumerated five factors the opposing party may rely upon to justify denying leave to amend: (1) undue delay, (2) bad faith, (3) dilatory motive, (4) unfair prejudice, and (5) futility of amendment. Foman v. Davis, 371 U.S. 178, 182 (1962); In re Burlington Coat., 114 F.3d at 1434. "Only when these factors suggest that amendment would be 'unjust' should the court deny leave." Arthur v. Maersk, Inc., 434 F.3d 196, 203 (3d Cir. 2006); Grayson, 293 F.3d at 108 ("[S]uch leave must be granted in the absence of undue delay, bad faith, dilatory motive, unfair prejudice, or futility of amendment."); see In re Cudeyro, 213 B.R. 910, 918 (Bankr. E.D. Pa. 1997).

40. As demonstrated below, none of those factors weigh against granting the Claimants' motion for leave to amend their claims.

**(1) No Undue Delay.**

41. There will be no undue delay occasioned by the filing of the Amended Claims. Discovery regarding these claims is ongoing and the discovery requests propounded by WMILT

inquire regarding these and all legal theories and facts supporting the Claim. Claimant's responses to that discovery are not due until March 11, 2013, so responses regarding the EOSP can be included. Moreover, no depositions of the Claimants have been taken, much less scheduled. Thus, the Amended Claims will not require additional discovery or an extension of currently scheduled dates.

42. To the extent this factor relates to the moving parties' delay in bringing the motion to amend, any delay here cannot be characterized as "undue." The Claimants, at the time the Original Claims were filed, believed that it was unnecessary to include the EOSP as a basis for recovery because the terms of the EOSP state that it does not provide benefits if payments are received under the CIC Agreements. The need to assert the EOSP as an additional theory of recovery only became apparent when WMILT, in its Eighty-Fifth Objection filed on September 17, 2012 (over three years after the bar date passed), contested whether a change in control had occurred. Consequently, only four-plus months have passed since the Eighty-Fifth Objection, and in the interim other significant and time-consuming matters had to be dealt with in this case. Thus, the Claimants' have not committed undue delay. Howze v. Jones & Laughlin Steel Corp., 750 F.2d 1208, 1212 (3d Cir. 1984) ("Delay alone, is an insufficient ground upon which to deny a motion to amend. . . . Rather the touchstone is whether the non-moving party will be prejudiced if the amendment is allowed."); Hatzel & Buehler, Inc. v. Station Plaza Assoc., L.P., 150 B.R. 560, 562 (Bankr. D. Del. 1993) ("The passage of time, without more, does not require that a motion to amend a [claim] be denied. [citation] Rather, according to the Adams Court, the delay must be motivated by bad faith or result in prejudice to the opposing party.") (quoting Adams v. Gould, Inc., 739 F.2d 858, 864 (3d Cir. 1984)).

43. Indeed, the Debtors and WMILT caused most of the delay. The blame for the length of time that has passed from the bar date until now rests squarely on the Debtors and WMILT. It was the four years it took to get a plan confirmed that accounts for the vast majority of time between the bar date and now.

**(2) No Bad Faith.**

44. The Claimants' Motion is filed in good faith to add an additional theory of recovery based on the EOSP arising from the same underlying facts and circumstances relied upon by the Claimants' Original Claims. Moreover, the Claimants' Original Claims were timely filed. On the other hand, there are no indicia of bad faith. The Claimants' Motion is not being used to pressure WMILT into settling, to materially complicate the proceedings at the last minute, or as a delay tactic to prolong the litigation. See In re Burlington Coat., 114 F.3d at 1435; Hatzel & Buehler, Inc., 150 B.R. at 562.

**(3) No Dilatory Motive.**

45. The Claimants have no dilatory motive. All the Claimants timely filed their Original Claims before the bar date. Moreover, all of the Claimants Original Claims gave sufficient notice of the basis for their claims in substantially the same language: "This claim stems from the employment of [Claimant] by Washington Mutual, Inc." *See* Exhibit A. As described above, the Claimants only became aware of their need to assert the EOSP as an additional theory of recovery arising from the termination of their employment with WMI when WMILT, in its Eighty-Fifth Objection filed on September 17, 2012 (over three years after the bar date passed), contested whether a change in control had occurred. The Claimants then raised the EOSP as a theory of recovery in their Combined Response filed on October 4, 2012. Combined Response, at ¶¶ 22-24. Now, only four-plus months after the filing of the Eighty-Fifth



Objection, the Claimants are formally seeking to amend their claims to add the EOSP as an additional theory of recovery. This course of events does not show dilatory motive.

**(4) No Unfair Prejudice.**

46. The Amended Claims will not cause WMILT to suffer unfair prejudice. As mentioned above, the underlying facts relied upon in the Amended Claims are substantially the same as in the Original Claims, with just an additional theory of recovery being advanced. Furthermore, WMILT was made aware by the Combined Response that the Claimants intend to pursue the alternative argument that they are entitled to benefits under the EOSP if it is determined that a change of control did not occur under the CIC Agreements. Combined Response, at ¶¶ 22-24. Additionally, the amendments do not require further discovery or a continuation of the currently scheduled dates. Importantly, the Amended Claims do not increase the face amount of the claim or require a change to the reserves set aside for these claims, because any payment under the EOSP is smaller than, and mutually exclusive of, any obligation to pay under the CIC Agreements. WMILT must show more than just the loss of an advantageous position to demonstrate prejudice. In re O'Brien, 188 F.3d 116, 127 (3d Cir. 1999) (“[P]rejudice is not merely the loss of an advantageous position, but must be something more closely tied to the merits of the issue.”). As such, the only parties that will be prejudiced are the Claimants if the Court fails to allow the Claimants to file the Amended Claims to assert an additional theory of recovery under the EOSP.

47. WMILT certainly cannot claim surprise or unawareness of the EOSP and its relevance to the Employee Claims and this litigation. While the Claimants did not include the EOSP in their Originals Claim, numerous other claimants did include the EOSP in their proofs of claim. This is most clearly exemplified in *WMI Liquidating Trust's Eighty-Fourth Omnibus*

(*Substantive*) *Objection to Claims* [D.I. 10677] (the “**Eighty-Fourth Objection**”), where WMILT objected to claims made under the EOSP. *Id.* at ¶¶ 25-28. And WMILT was made fully aware by numerous claimants of the arguments against its objection to EOSP. See D.I. 10730; 10734; 10736; 10739 (various responses to the Eighty-Fourth Objection). Thus, WMILT is aware of the EOSP, its relevance to the Employee Claims, and the arguments supporting the Claimants’ entitlement to benefits under the EOSP. Accordingly, WMILT would not suffer any prejudice if the Court permits the filing of the Amended Claims. In re O’Brien, 188 F.3d at 128 (stating that lack of surprise weighs in favor of finding no prejudice).

**(5) The Additional Theory of Recovery Is Viable.**

48. This additional theory of recovery with respect to the EOSP is not futile. As set forth in the Combined Response, the Claimants were parties to the EOSP, and the EOSP specifically provides for a payment to the Claimants upon their termination from WMI as long as the Claimants are not entitled to payments under the CIC Agreements. Moreover, this theory of recovery is viable, as explained in the numerous responses to the Eighty-Fourth Objection. See D.I. 10730; 10734; 10736; 10739 (various responses to the Eighty-Fourth Objection).

49. Finally, a recent opinion from the Bankruptcy Court for the Northern District of Illinois, captioned In re Xechem Intn’l., Inc., 424 B.R. 836 (Bankr. N.D. Ill. 2010), is particularly instructive. 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 his 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.

50. Based on the foregoing, the Court should finding that Claimants' amendment is proper and that WMILT cannot demonstrate that such relief would be inequitable and grant the Claimants leave to amend their Original Claims to add an additional theory of recovery based upon the EOSP.

**II. IN THE ALTERNATIVE, IF THE COURT DENIES CLAIMANTS' MOTION TO AMEND, THE COURT SHOULD FIND THAT EXCUSABLE NEGLIGENCE PERMITS THE ASSERTION OF A NEW CLAIM BASED UPON THE EOSP.**

51. If the Court denies the Claimants' motion to amend, the Court should find that excusable neglect permits the assertion of claims based upon the ESOP.

52. Under Fed. R. Bankr. P. 9006(b)(1), the Bankruptcy Court may accept a late claim if the delay resulted from excusable neglect. In re Am. Classic Voyages Co., 405 F.3d 127, 133 (3d Cir. 2005). "The determination whether a party's neglect of a bar date is 'excusable' is essentially an equitable one, in which courts are to take into account all relevant circumstances surrounding a party's failure to file." Chemetron Corp. v. Jones, 72 F.3d 341, 349 (3d Cir. 1995). The preeminent case on excusable neglect, Fed. R. Bankr. P. 9006(b)(1), and proofs of claim is Pioneer Invest. Servs. Co. v. Brunswick Assoc. Ltd. Pship., 507 U.S. 380 (1993). In Pioneer, the Supreme Court instructed that excusable neglect be applied broadly, holding that courts are "permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control." Id. at 395.

With that in mind, the determination is made by considering four factors: “the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.” Pioneer, at 395. The burden of proof is on the movant to demonstrate excusable neglect by a preponderance of the evidence. Jones v. Chemetron Corp., 212 F.3d 199, 205 (3d Cir. 2000).

53. As demonstrated below, the factors weigh in favor of finding excusable neglect and permitting the filing of the Amended Claims which assert the EOSP as a basis for recovery. Similar arguments are made earlier in the Motion, so to the extent they apply, those arguments are stated here in a more concise manner.

**(1) There is No Danger of Unfair Prejudice.**

54. Claimants’ assertion of claims based upon the EOSP will not cause WMILT to suffer unfair prejudice. The underlying facts relied on substantially the same as in the Original Claims, with just an additional basis for recovery being advanced. Furthermore, WMILT was made aware by the Combined Response that the Claimants intend to pursue the alternative argument that they are entitled to benefits under the EOSP. Combined Response, at ¶¶ 22-24. Additionally, the amendments do not require further discovery or a continuation of the currently scheduled dates. Importantly, the Amended Claims do not increase the face amount of the claim or require a change to the reserves set aside for these claims, because any payment under the EOSP is smaller than, and mutually exclusive of, any payment obligations under the CIC Agreements.

55. WMILT certainly cannot claim surprise or unawareness of the EOSP and its relevance to the Employee Claims and this litigation. While the Claimants did not include the

EOSP in their Originals Claim, numerous other claimants did include the EOSP in their proofs of claim. This is most clearly exemplified in *WMI Liquidating Trust's Eighty-Fourth Omnibus (Substantive) Objection to Claims* [D.I. 10677] (the “**Eighty-Fourth Objection**”), where WMILT objected to claims made under the EOSP. *Id.* at ¶¶ 25-28. And WMILT was made fully aware by numerous claimants of the arguments against its objection to EOSP. *See* D.I. 10730; 10734; 10736; 10739 (various responses to the Eighty-Fourth Objection). Thus, WMILT is aware of the EOSP, its relevance to the Employee Claims, and the arguments supporting the Claimants’ entitlement to benefits under the EOSP. Accordingly, WMILT would not suffer any prejudice if the Court permits the filing of the Amended Claims. *In re O'Brien*, 188 F.3d at 128 (stating that lack of surprise weighs in favor of finding no prejudice).

56. The Third Circuit in *In re O'Brien* enumerated several factors to consider in the Pioneer prejudice analysis. Those factors include: (1) the size of the claim compared to universe of claims; (2) whether allowing the late claim would adversely impact the judicial administration of the case; (3) whether the plan was filed or confirmed with knowledge of the existence of the claim; whether late filing would disrupt the plan; and (4) whether allowing the claim would open the floodgates to other similar claims. *In re O'Brien*, at 126 (citing *In re Keene Corp.*, 188 B.R. 903). Applying those factors to this case *seriatim*: (1) the Claimants’ EOSP claims are smaller than their current claims and very small compared to the universe of claims in this case; (2) the Claimants’ EOSP claims will not require additional discovery or an extension of currently scheduled dates; (3) the plan was structured and confirmed accounting for similar EOSP claims; (3) to the best of the Claimants’ knowledge, the EOSP applies to a limited number of people, and they are the only eligible persons who did not include the EOSP in their claims.

57. Two other points are worth noting. First, the loss of an advantageous position does not equate to prejudice. In re O'Brien, 188 F.3d at 127. And, second, courts have found that late claims are less likely to result in prejudice to debtors in liquidation cases as opposed to reorganization cases. In re Sacred Heart Hosp., 186 B.R. 891, 896-897 (Bankr. E.D. Pa. 1995).

**(2) The Length of the Delay is Minor, and the Assertion of a Claim Based Upon the EOSP Will Have Little Impact on Judicial Proceedings.**

58. The length of the delay in seeking relief to assert claims based upon the EOSP is only four-plus months from the filing of the Eighty-Fifth Objection. Even if the Court calculates the delay as beginning on the bar date, a long period of time does not foreclose finding excusable neglect. Chemetron, 72 F.3d at 350. Rather, the focus is on when the litigation became active. In re FLYi, Inc., 2008 Bankr. LEXIS 4867, at \*11. Here, the litigation has only recently become active and it is still in the discovery phase. As such, the delay will have little impact on the judicial proceedings because the Claimants' EOSP will not require additional discovery or an extension of currently scheduled dates.

**(3) The Delay, While Caused in Part By Claimants, Was Also Caused by Debtors and WMILT.**

59. The delay in asserting the EOSP claims was caused in part by the Claimants and their counsel. As described above, the Claimants were apparently naïve to believe that the seemingly obvious fact that a change in control had occurred would later be challenged. It would have perhaps been wise to proceed more cautiously and include all possible bases for recovery in their Original Claims even if it was believed that some of those bases were inapplicable. In this regard, Claimants and their counsel could be considered to have acted negligently.

60. The Debtors and WMILT, however, caused most of the delay. As noted, the need to assert the EOSP as an additional theory of recovery only became apparent when WMILT, in

its Eighty-Fifth Objection filed on September 17, 2012 (over three years after the bar date passed), contested whether a change in control had occurred. More importantly, the blame for the length of time that has passed from the bar date until now rests squarely on the Debtors and WMILT. It was the four years it took to get a plan confirmed that accounts for the vast majority of time between the bar date and now.

**(4) Claimants Acted in Good Faith.**

61. The Claimants' Motion is filed in good faith to add an additional theory of recovery based on the EOSP arising from the same underlying facts and circumstances relied upon by the Claimants' Original Claims. Moreover, the Claimants' Original Claims were timely filed. On the other hand, there are no indicia of bad faith. The Claimants' Motion is not being filed to pressure WMILT into settling, to materially complicate the proceedings at the last minute, or as a delay tactic to prolong the litigation. See In re Burlington Coat., 114 F.3d at 1435; Hatzel & Buehler, Inc., 150 B.R. at 562.

62. As a final note, the Claimants urge this Court to follow its decision in In re FLYi, Inc., 2008 Bankr. LEXIS 4867. In that case, this Court was faced with similar circumstances. A creditor had timely filed a proof of claim for lease rejection damages, stating that its theory of relief was under property law. The creditor later sought to amend its proof of claim to assert that it was entitled to damages for the lease rejection under contract law as an alternative to property law. The liquidating trust opposed that relief. This Court allowed the creditor to present his lease rejection claim under contract law. In so allowing, this Court found that the creditor was asserting a different legal theory for the same claim based upon the same set of circumstances (the rejection of the lease). Id. at \*6-9. As an alternative basis, this Court also found that the

delay in asserting the claim under contract law was excusable neglect and that the Pioneer factors weighed in favor of granting relief. Id. at \*9-13.

**CONCLUSION**

63. For the foregoing reasons, the Claimants' Motion should be granted.

WHEREFORE, Claimants respectfully request that this Court allow Claimants to file their Amended Claims and have them relate back to their timely filed Original Claims. Alternatively, if the Court denies the Claimants' motion to amend, the Court should find that excusable neglect permits the assertion of claims based upon the EOSP.

PHILLIPS, GOLDMAN & SPENCE, P.A.

/s/ Stephen W. Spence

Stephen W. Spence, Esquire (#2033)

1200 North Broom Street

Wilmington, DE 19806

(302) 655-4200

(302) 655-4210

*Counsel to Todd H. Baker, Alfred Brooks, Thomas Casey, Debora Horvath, John McMurray and David Schneider*

Dated: February 4, 2013



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

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

---

**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, Claimants John McMurray, Alfred Brooks, Todd Baker, Thomas Casey, Debora Horvath, and David Schneider filed the **Motion for an Order Granting Amendment to Certain Proofs of Claim Regarding an Additional Theory of Recovery Based Upon the WaMu Executive Officer Severance Plan, or, in the Alternative, Finding that Excusable Neglect Permits the Assertion of Claims Based Upon the WaMu Executive Officer 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 counsels 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.**

---

<sup>1</sup> The Debtors in these cases are: (i) Washington Mutual, Inc. and WMI Investment Corp.

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.

PHILLIPS, GOLDMAN & SPENCE, P.A.

*/s/ Stephen W. Spence*

\_\_\_\_\_  
Stephen W. Spence, Esquire (#2033)

1200 North Broom Street

Wilmington, DE 19806

(302) 655-4200

(302) 655-4210

*Counsel to Todd H. Baker, Alfred Brooks, Thomas Casey, Debora Horvath, John McMurray and David Schneider*

Dated: February 4, 2013

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

In re:	)	Chapter 11
WASHINGTON MUTUAL, INC., <i>et al.</i> <sup>2</sup> ,	)	
	)	Case No. 08-12229 (MFW)
	)	
Debtors.	)	Jointly Administered
	)	
	)	<b>Objection Deadline: 2/14/13</b>
	)	
	)	<b>Hearing Date: 2/21/13 @</b>
	)	<b>11:30 a.m. (EST)</b>
	)	

---

**MOTION OF JOHN MCMURRAY, ALFRED BROOKS, TODD BAKER, THOMAS CASEY, DEBORA HORVATH, AND DAVID SCHNEIDER FOR AN ORDER GRANTING AMENDMENT TO CERTAIN PROOFS OF CLAIM REGARDING AN ADDITIONAL THEORY OF RECOVERY BASED UPON THE WAMU EXECUTIVE OFFICER SEVERANCE PLAN, OR, IN THE ALTERNATIVE, FINDING THAT EXCUSABLE NEGLIGENCE PERMITS THE ASSERTION OF CLAIMS BASED UPON THE WAMU EXECUTIVE OFFICER SEVERANCE PLAN**

Claimants John McMurray, Alfred Brooks, Todd Baker, Thomas Casey, Debora Horvath, and David Schneider (collectively, the “**Claimants**”), by and through their undersigned attorneys, hereby file this *Motion for an Order Granting Amendment to Certain Proofs of Claim Regarding an Additional Theory of Recovery Based Upon the WaMu Executive Officer Severance Plan, or, in the Alternative, Finding that Excusable Neglect Permits the Assertion of Claims Based Upon the WaMu Executive Officer Severance Plan* (the “**Motion**”), and, in support thereof, state the following:

**PRELIMINARY STATEMENT**

1. The Claimants seek to amend their timely filed proofs of claim to add an additional theory of recovery. All of the Claimants asserted as a basis for recovery, *inter alia*,

---

<sup>2</sup> The Debtors in these cases are: (i) Washington Mutual, Inc. and WMI Investment Corp.

Change in Control Agreements (“**CIC Agreements**”) with Washington Mutual, Inc., which provided the Claimants with compensation should a change in control occur followed by a loss of employment. At the time the Claimants’ proofs of claim were filed, it seemed objectively undisputable that a change in control as defined in the CIC Agreements had in fact occurred in late September 2008 when the bank was seized by the government and sold to JPMorgan Chase. Indeed, some of the Claimants were present at the board meeting where a change in control was declared to have occurred. Thus, the Claimants, at the time the proofs of claim were filed, believed that it was unnecessary to include as a basis for recovery an alternative claim under the Executive Officer Severance Plan (“**EOSP**”) in which they participated because the terms of the EOSP state that it does not provide benefits if payments are made under the CIC Agreements.

2. Only until the bankruptcy had progressed well past the bar date, however, did WMILT reveal that it was contesting whether a change in control had occurred, as most clearly exemplified in its Eighty-Fifth Omnibus Objection, filed on September 17, 2012.

3. Accordingly, the Claimants move this Court to enter an order granting an amendment to their claims to assert the applicability of the EOSP as an alternative theory of recovery. Such amendment is proper because: the new theory arises from the same conduct, transaction, or occurrence – the termination of the Claimants’ employment with Washington Mutual, Inc.; WMILT is not prejudiced because the amounts that would be due under the EOSP are substantially less than the amounts reserved for the CIC Agreements and the Claimants are only entitled to benefits under the CIC or the EOSP, but not both; the amendment would not materially affect the ongoing proceedings because discovery, to the extent it is necessary, is still open; and the Claimants have not acted in bad faith, with undue delay, or with dilatory motive.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

---

**DECLARATION OF STEPHEN W. SPENCE, ESQUIRE IN SUPPORT OF THE MOTION OF JOHN MCMURRAY, ALFRED BROOKS, TODD BAKER, THOMAS CASEY, DEBORA HORVATH, AND DAVID SCHNEIDER FOR AN ORDER GRANTING AMENDMENT TO CERTAIN PROOFS OF CLAIM REGARDING AN ADDITIONAL THEORY OF RECOVERY BASED UPON THE WAMU EXECUTIVE OFFICER SEVERANCE PLAN, OR, IN THE ALTERNATIVE, FINDING THAT EXCUSABLE NEGLIGENCE PERMITS THE ASSERTION OF CLAIMS BASED UPON THE WAMU EXECUTIVE OFFICER SEVERANCE PLAN**

I, Stephen W. Spence, hereby declare and state the following:

1. I am a Shareholder of the law firm of Phillips, Goldman & Spence, P.A., which represents John McMurray, Alfred Brooks, Todd Baker, Thomas Casey, Debora Horvath, and David Schneider (the “**Claimants**”), creditors in the above-captioned chapter 11 cases. I am an attorney admitted to practice before the Courts of the State of Delaware.

2. I submit this declaration on behalf of the Claimants’ *Motion for an Order Granting Amendment to Certain Proofs of Claim Regarding an Additional Theory of Recovery Based Upon the WaMu Executive Officer Severance Plan, or, in the Alternative, Finding that Excusable Neglect Permits the Assertion of Claims Based Upon the WaMu Executive Officer Severance Plan* (the “**Motion**”) I have personal knowledge of the matters contained in this Declaration.

---

<sup>1</sup> The Debtors in these cases are: (i) Washington Mutual, Inc. and WMI Investment Corp.


3. Attached to the Motion as Exhibit A are true and correct copies of Claimants' proofs of claims and accompanying one-page charts; however, the documents included with each claim have not been included. Each proof of claim in its entirety is available from the claims register.

4. Attached to the Motion as Exhibit B is a true and correct copy of a Change in Control Agreement.

5. Attached to the Motion as Exhibit C is a true and correct copy of the WaMu Executive Officer Severance Plan.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 1st day of February, 2013, in Rehoboth Beach, Delaware.

  
\_\_\_\_\_  
Stephen W. Spence, Esquire (#2033)

Dated: February 1, 2013

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	Case No. 08-12229 (MFW)
Washington Mutual, Inc., <i>et al.</i> , <sup>1</sup>	)	(Jointly Administered)
	)	
Debtors.	)	Ref. Docket No. _____
	)	

**ORDER**

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, having considered the *Motion for an Order Granting Amendment to Certain Proofs of Claim Regarding an Additional Theory of Recovery Based Upon the WaMu Executive Officer Severance Plan, or, in the Alternative, Finding that Excusable Neglect Permits the Assertion of Claims Based Upon the WaMu Executive Officer 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 proofs 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

<sup>1</sup> The Debtors in these cases are: Washington Mutual, Inc. and WMI Investment Corp.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

---

**DECLARATION OF JOHN MCMURRAY IN SUPPORT OF THE MOTION OF JOHN MCMURRAY, ALFRED BROOKS, TODD BAKER, THOMAS CASEY, DEBORA HORVATH, AND DAVID SCHNEIDER FOR AN ORDER GRANTING AMENDMENT TO CERTAIN PROOFS OF CLAIM REGARDING AN ADDITIONAL THEORY OF RECOVERY BASED UPON THE WAMU EXECUTIVE OFFICER SEVERANCE PLAN, OR, IN THE ALTERNATIVE, FINDING THAT EXCUSABLE NEGLIGENCE PERMITS THE ASSERTION OF CLAIMS BASED UPON THE WAMU EXECUTIVE OFFICER SEVERANCE PLAN**

I, John McMurray, hereby declare and state the following:

1. I submit this declaration on behalf of the Claimants' *Motion for an Order Granting Amendment to Certain Proofs of Claim Regarding an Additional Theory of Recovery Based Upon the WaMu Executive Officer Severance Plan, or, in the Alternative, Finding that Excusable Neglect Permits the Assertion of Claims Based Upon the WaMu Executive Officer Severance Plan*. I have personal knowledge of the matters contained in this Declaration.

2. I was employed as an Executive Vice-President and Chief Enterprise Risk Officer at Washington Mutual, Inc ("WMI").

3. In that position, I was WMI's most senior risk officer.

4. On or about September 26, 2008, my employment relationship with WMI was terminated.

---

<sup>1</sup> The Debtors in these cases are: (i) Washington Mutual, Inc. and WMI Investment Corp.



5. On March 26, 2009, I filed a proof of claim seeking amounts due to me from various agreements and employee benefit programs which stemmed from my employment with WMI. (Claim No. 2543)

6. Generally speaking, on Thursday, September 25, 2008, the bank was seized by the government and sold to JPMorgan Chase.

7. The following day, Friday, September 26, 2008, a meeting of the full Board of Directors of WMI was held.

8. At that meeting, one of the subjects discussed was whether a change in control under the CIC Agreements and related agreements had occurred.

9. The full Board, after consulting with counsel on this issue, unanimously determined that a change in control had occurred.

10. The Board then instructed the head of human resources, Daryl David, to process the information described under the Change in Control Agreements ("**CIC Agreements**") and related agreements to make the necessary calculations.

11. All of WMI's higher-level executives, including the Claimants quickly became aware that the Board had made this change in control determination.

12. That knowledge informed me and the other Claimants when our claims were drafted and filed.


13. In particular, I and the other Claimants believed it was unnecessary to include the WaMu Executive Officer Severance Plane (the "**EOSP**") in our claims because we are not entitled to benefits under the EOSP if we receive benefits under the CIC Agreements and we believed it was undisputable that a change in control had occurred.

14. I and the other Claimants only became aware that WMILT was contesting whether a change in control had occurred well after the bar date had passed.

15. We were formally made aware that this argument related to our claims by the *WMI Liquidating Trust's Eighty-Fifth Omnibus (Substantive) Objection to Claims* [D.I. 10678], filed more than three years after the bar date in September 2012.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 1st day of February, 2013, in Seattle, WA.

  
\_\_\_\_\_  
John McMurray

**EXHIBIT A**  
*Claimants' Proofs of Claim*

**COPIES**  
**FACT**

B10 (Official Form 10)(12/08)

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE PROOF OF CLAIM

Name of Debtor: **Washington Mutual, Inc.** Case Number: **08-12229 (MFW)**

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. §503.

Name of Creditor (the Person or other entity to whom the debtor owes money or property):  
**John P. McMurray**

Name and address where notices should be sent:  
**John P. McMurray  
P.O. Box 682  
Mercer Island, WA 98040-0682**

Telephone number: \_\_\_\_\_

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

Court Claim Number: \_\_\_\_\_

Filed on: \_\_\_\_\_

COPY

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

Telephone number: \_\_\_\_\_

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.

1. Amount of Claim as of Date Case Filed: **\$5,006,450 + unliquidated amount for indemnification claim**

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, complete item 5.

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

2. Basis for Claim: \_\_\_\_\_  
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: \_\_\_\_\_

3a. Debtor may have scheduled account as: \_\_\_\_\_  
(See instruction #3 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: \$ \_\_\_\_\_

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 - 11 U.S.C. §507 (a)(4).

Contributions to an employee benefit plan - 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 - 11 U.S.C. §507 (a)(7).

6. Credits: The amount of all payments on which 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.

Amount entitled to priority:  
**\$10,950**

\* Amounts are subject to adjustment on 4/1/10 and every three years thereafter with respect to cases commenced on or after the date of adjustment.

Date: **3/26/09**

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.

*Stephen W. Spence*  
STEPHEN W. SPENCE, Counsel for John P. McMurray

**RECEIVED**  
FOR COURT USE ONLY  
**MAR 27 2009**

**ATTACHMENT TO PROOF OF CLAIM OF  
JOHN P. McMURRAY**

This claim stems from the employment of Mr. McMurray by Washington Mutual, Inc. ("WAMU"). The back up documentation for the numbers submitted is available upon request. The total due is \$5,006,450, which is broken down in the chart below:

<b>Benefit</b>	<b>Amount</b>	<b>Source</b>
ETRIIP	\$676,450	See ETRIIP Plan
Retention & Long Term Award Bonus	\$1,000,000 <sup>1</sup>	See attached correspondence
Change in Control Payments:	\$3,330,000	See 12/07 Change in Control Agreement
Indemnification claims arising from employment as an officer of Washington Mutual, Inc.	unliquidated	
<b>Total</b>	<b>\$5,006,450</b>	

<sup>1</sup> Earned and unpaid as of the Petition Date.

APR 03 2009  
**COPY**

B10 (Official Form 10)(12/08)

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: <b>Washington Mutual, Inc.</b>		Case Number: <b>08-12229 (MFW)</b>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. §503.		
Name of Creditor (the Person or other entity to whom the debtor owes money or property): <b>Al Brooks</b>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim
Name and address where notices should be sent: <b>Al Brooks 6509 Park Royal Circle Huntington Beach, CA 92648-6638</b>		Court Claim Number: _____
Telephone number: <b>(714) 369-2381</b>		Filed on: _____
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> 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.
Telephone number:		<input type="checkbox"/> Check this box if you are the Debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: <b>\$3,759,741 + unliquidated amount for indemnification claim</b>		
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, complete item 5.  <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		
2. Basis for Claim: _____ (See instruction #2 on reverse side.)		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.
Last four digits of any number by which creditor identifies debtor: _____		Specify the priority of the claim.
3a. Debtor may have scheduled account as: _____ (See instruction #3 on reverse side.)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or right of setoff and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> 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: \$ _____		<input checked="" type="checkbox"/> 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 - 11 U.S.C. §507 (a)(4).
6. Credits: The amount of all payments on which claim has been credited for the purpose of making this proof of claim.		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).
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.)		<input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7).
DO NOT SEND ORIGINAL DOCUMENTS, ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain.		<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).
		<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(____).
		<b>Amount entitled to priority:</b> <u><b>\$10,950</b></u>
		* Amounts are subject to adjustment on 4/1/10 and every three years thereafter with respect to cases commenced on or after the date of adjustment.

COPY

**RECEIVED**

**FOR VALUE USE ONLY**  
**MAR 30 2009**

Date: **3/27/09**  
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.  
**STEPHEN W. SPENCE, Counsel for Al Brooks**

**ATTACHMENT TO PROOF OF CLAIM OF  
AL BROOKS**

This claim stems from the employment of Mr. Brooks with Washington Mutual, Inc. ("WAMU"). The back up documentation for the numbers submitted is available upon request. The total due is \$3,759,741, which is broken down in the chart below:

<b>Benefit</b>	<b>Amount</b>	<b>Source</b>
SERAP	\$82,000 <sup>1</sup>	
ETRIP	\$447,089	N/A
Change in Control Payments:	\$ 3,230,652	12/07 Change in Control Agreement 9/25/08 Change in Control Analysis
Indemnification claims arising from employment as an officer of Washington Mutual, Inc.	unliquidated	
<b>Total</b>	<b>\$3,759,741</b>	

<sup>1</sup> Earned and unpaid as of the Petition Date.

B10 (Official Form 10)(12/08)

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE PROOF OF CLAIM

Name of Debtor: **Washington Mutual, Inc.** Case Number: **08-12229 (MFW)**

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. §503.

Name of Creditor (the Person or other entity to whom the debtor owes money or property):  
**Todd H. Baker**  Check this box to indicate that this claim amends a previously filed claim

Name and address where notices should be sent:  
**Todd H. Baker**  
**2141 Broadmoor Drive East**  
**Seattle, WA 98112** COPY

Telephone number: **206-328-5420** Court Claim Number: \_\_\_\_\_

Filed on: \_\_\_\_\_

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

Telephone number: \_\_\_\_\_  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.

**1. Amount of Claim as of Date Case Filed: \$3,109,450.51+unliquidated amount for indemnification claim**

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, complete item 5.

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

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

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

**3a. Debtor may have scheduled account as:** \_\_\_\_\_  
(See instruction #3 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 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: \$ \_\_\_\_\_

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 - 11 U.S.C. §507 (a)(4).  
 Contributions to an employee benefit plan - 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 - 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)(\_\_\_\_).

**6. Credits:** The amount of all payments on which 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.

Specify the priority of the claim.  
**Amount entitled to priority:**  
\$10,950

\* Amounts are subject to adjustment on 4/1/10 and every three years thereafter with respect to cases commenced on or after the date of adjustment.

Date: **3/26/09** **RECEIVED FOR COURT USE ONLY MAR 27 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.

*Stephen W. Spence*  
**STEPHEN W. SPENCE, Counsel for Todd H. Baker** 151 BAK 2086



**ATTACHMENT TO PROOF OF CLAIM OF  
TODD H. BAKER**

This claim stems from the employment of Mr. Baker by Washington Mutual, Inc. (“WAMU”). The total due is \$3,109,450.51, which is broken down in the chart below:

<b>Benefit</b>	<b>Amount</b>	<b>Source</b>
SERAP	\$184,295.51 <sup>1</sup>	See Washington Mutual Letter
Long Term Incentive Bonus	\$350,000 <sup>1</sup>	See 7/22/2008 letter from Tom Casey
Change in Control Payments Due	\$2,575,155	See 12/07 Change in Control Agreement and 1/26/09 BJC CIC Analysis
Indemnification claims arising from employment as an officer of Washington Mutual, Inc.	unliquidated	
<b>Total</b>	<b>\$3,109,450.51</b>	

<sup>1</sup> Earned and unpaid as of the Petition Date.

WRITING DRAFT  
**COPY** FACT

B10 (Official Form 10)(12/08)

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE PROOF OF CLAIM

Name of Debtor: **Washington Mutual, Inc.** Case Number: **08-12229 (MFW)**

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S. C. §503.

Name of Creditor (the Person or other entity to whom the debtor owes money or property):  
**Thomas W. Casey**

Name and address where notices should be sent:  
**Thomas W. Casey**  
**2331 94<sup>th</sup> Avenue NE**  
**Clyde Hill, WA 98040-2518**

Telephone number: \_\_\_\_\_

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

Court Claim Number: \_\_\_\_\_

Filed on: \_\_\_\_\_

**COPY**

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

Telephone number: \_\_\_\_\_

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.

1. Amount of Claim as of Date Case Filed: **\$8,836,782 + unliquidated amount**  
**for indemnification claim**

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, complete item 5.

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

2. Basis for Claim: \_\_\_\_\_  
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: \_\_\_\_\_

3a. Debtor may have scheduled account as: \_\_\_\_\_  
(See instruction #3 on reverse side.)

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.

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: \$ \_\_\_\_\_

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 - 11 U.S.C. §507 (a)(4).

Contributions to an employee benefit plan - 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 - 11 U.S.C. §507 (a)(7).

6. Credits: The amount of all payments on which 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.

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)(\_\_\_\_).

Amount entitled to priority:  
**\$10,950**

\* Amounts are subject to adjustment on 4/1/10 and every three years thereafter with respect to cases commenced on or after the date of adjustment.

Date: **3/26/09**

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.

**STEPHEN W. SPENCE, Counsel for Thomas W. Casey**

**RECEIVED FOR COURT USE ONLY MAR 27 2009**

**KURTZMAN CADSON CONSULTANTS**

**ATTACHMENT TO PROOF OF CLAIM OF  
THOMAS W. CASEY**

This claim stems from the employment of Mr. Casey by Washington Mutual, Inc. ("WAMU"). The total due is \$8,836,782, which is broken down in the chart below:

<b>Benefit</b>	<b>Amount</b>	<b>Source</b>
ET RIP	\$2,989,998	
Change in Control Payments:	\$5,846,784	12/07 Change in Control Agreement 9/25/08 CIC Analysis
Indemnification claims arising from employment as an officer of Washington Mutual, Inc.	unliquidated	
<b>Total</b>	<b>\$8,836,782</b>	

COPY

B10 (Official Form 10)(12/08)

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE

PROOF OF CLAIM

Name of Debtor: Washington Mutual, Inc.

Case Number: 08-12229 (MFW)

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S. C. §503.

Name of Creditor (the Person or other entity to whom the debtor owes money or property): Debora D. Horvath

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

Name and address where notices should be sent: Debora D. Horvath, 18302 Ridgefield Rd. NW, Shoreline, WA 98177-3244

COPY

Court Claim Number: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Filed on: \_\_\_\_\_

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

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.

Telephone number: \_\_\_\_\_

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

1. Amount of Claim as of Date Case Filed: \$6,208,184 +unliquidated amount for indemnification claim

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, complete item 5.

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

2. Basis for Claim: \_\_\_\_\_ (See instruction #2 on reverse side.)

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.

3. Last four digits of any number by which creditor identifies debtor: \_\_\_\_\_

3a. Debtor may have scheduled account as: \_\_\_\_\_ (See instruction #3 on reverse side.)

Specify the priority of the claim.

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

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: \$ \_\_\_\_\_

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 - 11 U.S.C. §507 (a)(4).

Contributions to an employee benefit plan - 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 - 11 U.S.C. §507 (a)(7).

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

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

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.)

Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(\_\_\_\_\_).

Amount entitled to priority:

\$10,950

DO NOT SEND ORIGINAL DOCUMENTS, ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain.

\* Amounts are subject to adjustment on 4/1/10 and every three years thereafter with respect to cases commenced on or after the date of adjustment.

Date: 3/26/09

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.

STEPHEN W. SPENCE, Counsel for Debora Horvath

RECEIVED FOR COURT USE ONLY MAR 27 2009

KURTZMAN CARSON CONSULTANTS

**ATTACHMENT TO PROOF OF CLAIM OF  
DEBORA D. HORVATH**

This claim stems from the employment of Ms. Horvath with Washington Mutual, Inc. ("WAMU"). The back up documentation for the numbers submitted is available upon request. The total due is \$6,208,184, which is broken down in the chart below:

<b>Benefit</b>	<b>Amount</b>	<b>Source</b>
ETRIP	\$1,758,860 <sup>1</sup>	N/A
Special Incentive Bonus	\$600,000 <sup>1</sup>	7/22/2008 Letter from Steve Rotella
Change in Control Payment Due	\$3,849,324	12/07 Change in Control Agreement January 15, 2008 Memo from Steve Rotella
Indemnification claims arising from employment as an officer of Washington Mutual, Inc.	unliquidated	
<b>Total</b>	<b>\$6,208,184</b>	

<sup>1</sup> Earned and unpaid as of the Petition Date.

B10 (Official Form 10)(12/08)

**COPY**

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE PROOF OF CLAIM

Name of Debtor: **Washington Mutual, Inc.** Case Number: **08-12229 (MFW)**

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S. C. §503.

Name of Creditor (the Person or other entity to whom the debtor owes money or property):  
**David Schneider**  Check this box to indicate that this claim amends a previously filed claim

Name and address where notices should be sent:  
**David Schneider**  
**3 The Highlands**  
**Seattle, WA 98177** Court Claim Number: \_\_\_\_\_

Telephone number: \_\_\_\_\_ Filed on: \_\_\_\_\_

**COPY**

Name and address where payment should be sent (if different from above):  
\_\_\_\_\_  
Telephone number: \_\_\_\_\_  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.

1. Amount of Claim as of Date Case Filed: **\$7,741,711 + unliquidated amount for indemnification claim**

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, complete item 5.

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

2. Basis for Claim: \_\_\_\_\_  
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: \_\_\_\_\_

3a. Debtor may have scheduled account as: \_\_\_\_\_  
(See instruction #3 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 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: \$ \_\_\_\_\_

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 - 11 U.S.C. §507 (a)(4).

Contributions to an employee benefit plan - 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 - 11 U.S.C. §507 (a)(7).

6. Credits: The amount of all payments on which 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.)

Amount entitled to priority: **\$10,950**

DO NOT SEND ORIGINAL DOCUMENTS, ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain.

\* Amounts are subject to adjustment on 4/1/10 and every three years thereafter with respect to cases commenced on or after the date of adjustment.

Date: **3/26/09** 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.

**STEPHEN W. SPENCE, Counsel for David Schneider**

**RECEIVED FOR COURT USE ONLY MAR 27 2009**

**ATTACHMENT TO PROOF OF CLAIM OF  
DAVID SCHNEIDER**

This claim stems from the employment of Mr. Schneider with Washington Mutual, Inc. ("WAMU"). The total due is \$7,741,711, which is broken down in the chart below:

<b>Benefit</b>	<b>Amount</b>	<b>Source</b>
ETRIP	\$1,947,023	N/A
Long Term Incentive Bonus	\$900,000 <sup>1</sup>	See 7/22/2008 Letter from Steve Rotella
Change in Control Payments:	\$4,894,688	See 12/07 Change in Control Agreement and 9/25/08 Change in Control Analysis
Indemnification claims arising from employment as an officer of Washington Mutual, Inc.	unliquidated	
<b>Total</b>	<b>\$7,741,711</b>	

<sup>1</sup> Earned and unpaid as of the Petition Date.

**EXHIBIT B**  
*Change in Control Agreement*



McMurray, John

## CHANGE IN CONTROL AGREEMENT

This Change in Control Agreement (the "Agreement") is between Washington Mutual, Inc., a Washington corporation ("Washington Mutual") and the undersigned employee of Washington Mutual ("Employee"). The term "Company" shall mean Washington Mutual and any successor after a Change in Control (as defined below).

It is the desire of Washington Mutual and Employee to set forth certain terms and conditions relating to Employee's employment as an inducement for Employee continuing his or her employment for so long as Washington Mutual desires to employ Employee.

Therefore, the parties agree as follows:

1. Employment. Washington Mutual agrees to, and does hereby, employ Employee, and Employee agrees to, and does hereby, accept such employment, on the terms in this Agreement.
2. Duties. Employee shall perform such duties as the Chairman, the President or the Board of Directors of Washington Mutual (the "Board") may from time to time direct. (As used herein "Board" shall include the board of directors or other successor body performing its function in the event of a Change in Control.) Employee's title may be changed from time to time as the Chairman, the President or the Board may determine.
3. Compensation. During Employee's employment under this Agreement, Employee shall receive base salary compensation in the amount determined by the Board's Human Resources Committee (the "Human Resources Committee"), payable semi-monthly or in such manner as is consistent with Washington Mutual's policy relating to exempt employees. In addition, Employee is entitled to participate in Washington Mutual's bonus plan for executives as adopted by the Human Resources Committee, under which Employee may receive, subject to the terms of the plan, a bonus based on Washington Mutual's achievement of specified financial goals. Employee may also be awarded stock options, restricted stock and/or other forms of equity compensation, as determined by the Human Resources Committee. Employee's compensation shall be reviewed by the Human Resources Committee annually and, in the sole discretion of the Human Resources Committee, such compensation may be adjusted either upward or downward.
4. Other Benefits. Subject to the respective eligibility requirements and other terms and provisions of the applicable benefit or insurance plans (including relevant waiting periods), Employee shall be enrolled as a participant in all employee benefit plans (including retirement and insurance plans) available to other officers of Washington Mutual, as the same may from time to time be adopted or amended. Employee shall also be entitled to receive such other perquisites as the Chairman, the President or the Board may from time to time deem appropriate.
5. Performance of Duties. Employee agrees that during his or her employment with Washington Mutual: (a) Employee will faithfully perform the duties of such office or offices as

McMurray, John :

he or she may occupy, which duties shall be such as may be assigned to him or her by the Chairman, the President or the Board; (b) Employee will devote to the performance of his or her duties all such time and attention as the Chairman, the President or the Board shall reasonably require, taking, however, from time to time, such reasonable vacations as are consistent with his or her duties and Washington Mutual policy; and (c) Employee will not, without the express consent of the Chairman, the President or the Board, become actively associated with or engaged in any business or activity during the term of this Agreement other than that of Washington Mutual (excepting family and personal activities which may include management of personal investments, but only to the extent such activities, do not entail active involvement in a business enterprise and do not interfere or conflict with the performance of Employee's duties) and Employee will do nothing inconsistent with his or her duties to Washington Mutual.

6. Termination.

(a) Either Washington Mutual or Employee may terminate Employee's employment at any time in its sole discretion, with or without advance notice. Except as expressly provided in this Agreement or under any employee benefit plan maintained by Washington Mutual, upon termination of employment, Washington Mutual shall have no liability to pay any further compensation or any other benefit or sum whatsoever to Employee. Notwithstanding any other provision under this Agreement, no further amounts or benefits shall be payable hereunder if, at least 120 days prior to a Change in Control (as defined below), Employee transfers to another Washington Mutual position and, under Washington Mutual's policies then in effect, Washington Mutual does not enter into agreements comparable to this Agreement with persons occupying that position or a comparable position.

(b) Upon termination of employment, Employee's rights under all employee pension plans, employee welfare benefit plans, bonus plans and stock option and restricted stock plans shall be determined under the terms of the plans and grants themselves except as otherwise specifically provided in this Agreement.

(c) If (i) Employee's employment is terminated by the Company without "cause" (as defined below) upon or within three years after a Change in Control or (ii) Employee resigns for "good reason" (as defined below) upon or within three years after a Change in Control and no reason for Washington Mutual to terminate for "cause" exists, then

1. Employee shall be entitled to receive, within five business days after the effective date of such termination or resignation, from the Company, a lump sum equal to three times Employee's annual compensation (as defined in Section 6(d)). Notwithstanding the preceding, the amount paid to employee under this Section 6(c) shall be offset by any payment received by Employee from the Company or any acquired company pursuant to: (i) a severance or change in control agreement, arrangement or plan, with the exception of any such payment received more than two years before either clause (i) or clause (ii) of this Section 6(c) was satisfied, or (ii) The Worker Adjustment and Retraining Notification Act (WARN Act) or any similar state or local law.

McMurray, John

2. Upon a Change in Control, the lapse of the restrictions on Employee's restricted stock, restricted stock units, stock options and other equity awards shall automatically be accelerated (and, to the extent applicable, the option or other award shall be fully exercisable) unless the applicable award agreement provides otherwise.

(d) For purposes of Section 6(c), Employee's "annual compensation" shall equal the sum of (i) the highest of the Employee's annual base salary for the calendar year in which termination or resignation occurs, the prior calendar year, or the calendar year immediately preceding the year in which the Change in Control occurred, (ii) the highest of (A) the Employee's unadjusted target bonus for the calendar year in which the termination or resignation occurs, (B) the Employee's actual bonus (including, for the avoidance of doubt, any portion of the actual bonus that was deferred or exchanged at the Employee's election for equity awards) for the prior calendar year (annualized if Employee was not employed by the Company for the entire previous calendar year), or (C) the Employee's actual bonus (including, for the avoidance of doubt, any portion of the actual bonus that was deferred or exchanged at the Employee's election for equity awards) for the calendar year immediately preceding the year in which the Change in Control occurred (annualized if Employee was not employed by Washington Mutual for the entire such calendar year), and (iii) the amount of the contributions or accruals made or anticipated to have been made on Employee's behalf to the Company's benefit plans for the calendar year in which the termination or resignation occurs, including without limitation contributions to and accruals under qualified and nonqualified defined contribution and defined benefit pension plans and plans qualified under Section 125 of the Internal Revenue Code of 1986, as amended (the "Code"). For purposes of this Section 6(d), bonus refers to monthly, quarterly, annual and other periodic performance-based bonuses based on individual and/or company results, and excludes non-periodic lump sum bonuses (such as sign-on and retention bonuses (even if such bonuses are also performance-based bonuses) and cash and non-cash prizes and awards, including awards from sales contests) and the value of equity awards except as otherwise specifically provided herein. For purposes of this paragraph, any increase in the value of benefits to be provided under the Executive Target Replacement Income Plan shall not be counted as a contribution or accrual under Section 6(d)(iii).

(e) If Employee becomes entitled to the payments and lapse of restrictions on equity awards described in Sections 6(c) and 6(d) and such payments and the value of any lapse of restrictions, together with any other payments or transfers of property (collectively the "Severance Payments"), constitute "parachute payments" under Section 280G of the Code or any successor statute then in effect, then Washington Mutual shall pay an additional amount (the "Gross-Up Payment") to employee at the time specified in the following paragraph. The Gross-Up Payment shall be equal to the amount necessary so that the net amount retained by Employee, after subtracting the parachute excise tax imposed by Section 4999 of the Code, as amended, or any successor statute then in effect (the "Excise Tax"), and after also subtracting all federal, state or local income tax, FICA tax and Excise Tax on the Gross-Up Payment, equals the net amount Employee would have retained if no Excise Tax had been imposed and no Gross-Up Payment had been paid. The amount of the Gross-Up Payment shall be determined in good faith by nationally recognized registered public accountants or tax counsel selected by the Company, who shall apply the following assumptions: (i) Employee shall be treated as paying federal income

McMurray, John

taxes at the highest marginal rate in the calendar year in which the Gross-Up Payment is made, and (ii) Employee shall be treated as paying state and local income taxes at the highest marginal rate(s) in the calendar year in which the Gross-Up Payment is made in the locality of Employee's residence as of the effective date of Employee's termination or resignation, net of the maximum reduction in federal income taxes that could be obtained from deducting those state and local taxes.

(f) The Gross-Up Payment shall be made within five business days after the effective date of Employee's termination or resignation, provided that, if the Gross-Up Payment cannot be determined within that time, the Company shall pay Employee within that time an estimate, determined in good faith by the Company, of the minimum amount of the Gross-Up Payment and shall pay the remainder (plus interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount can be determined but in no event later than the 30<sup>th</sup> day after the effective date of Employee's termination or resignation. If the estimated payment is more than the amount later determined to have been due, the excess (plus interest at the rate provided in Section 1274(b)(2)(B) of the Code) shall be repaid by Employee within five business days after written demand. In all events, any Gross-Up Payment made pursuant to this Section 6(f) shall be paid to Employee no later than the end of the calendar year following the year in which the related taxes are remitted to the applicable taxing authority.

(g) If the actual Excise Tax imposed is less than the amount that was taken into account in determining the amount of the Gross-Up Payment, Employee shall repay at the time that the amount of the reduced Excise Tax is finally determined the portion of the Gross-Up Payment attributable to that reduction (plus the portion of the Gross-Up Payment attributable to the Excise Tax, FICA tax and federal, state and local income tax imposed on the portion of the Gross-Up Payment being repaid by Employee, to the extent the repayment results in a reduction in or refund of Excise Tax, FICA tax or federal, state or local income tax), plus interest on the amount of the repayment at the rate provided in Section 1274(b)(2)(B) of the Code. If the actual Excise Tax imposed is more than the amount that was taken into account in determining the amount of the Gross-Up Payment, Washington Mutual shall make an additional Gross-Up Payment in respect of such excess (plus interest at the rate provided in Section 1274(b)(2)(B) of the Code) at the time that the amount of the excess is finally determined.

7. Continuation of Medical Coverage. If Employee's employment by the Company terminates for any reason (including early retirement) other than gross misconduct, Employee shall be entitled to continue to participate in the Company's self-funded group medical coverage, at Employee's expense, to the extent provided in the plan and under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

8. Death or Disability. If Employee should die or become disabled at any time during his or her employment hereunder, neither Employee nor anyone claiming by, through or under him or her shall be entitled to any further compensation or other sum under this Agreement (but shall be entitled to payments made by insurers under policies of life and disability insurance and any sums which may become available under any employee benefit plan).

McMurray, John

9. Confidentiality. Employee agrees that information not generally known to the public to which Employee has been or will be exposed as a result of Employee's employment by the Company is confidential information that belongs to the Company or its Subsidiaries. This includes information developed by Employee, alone or with others, or entrusted to the Company or its Subsidiaries by its customers or others. The Company's or its Subsidiaries' confidential information includes, without limitation, information relating to the Company's or any of its Subsidiaries' trade secrets, know-how, procedures, purchasing, accounting, marketing, sales, customers, clients, employees, business strategies and acquisition strategies. Employee will hold the Company's and its Subsidiaries' confidential information in strict confidence and will not disclose or use it except as authorized by the Company and for the Company's benefit.

10. Possession of Materials. Employee agrees that upon conclusion of employment or request by the Company, Employee shall turn over to the Company all documents, files, office supplies and any other material or work product in Employee's possession or control that were created pursuant to or derived from Employee's services for the Company.

11. Change in Control. For purposes of this Agreement, "Change in Control" shall mean:

(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 in effect on the date of this Agreement), other than Washington Mutual, a Subsidiary or any employee benefit plan of Washington Mutual or its Subsidiaries, of shares representing more than 25% of (i) the common stock of Washington Mutual, (ii) the aggregate voting power of Washington Mutual's voting securities or (iii) the total market value of Washington Mutual's voting securities;

(b) During any period of 25 consecutive calendar months, a majority of 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 Washington Mutual or a Subsidiary) has acquired direct or indirect possession of the power to direct or cause to direct the management or policies of Washington Mutual, whether through the ability to exercise voting power, by contract or otherwise;

(d) The merger, consolidation, share exchange or similar transaction between Washington Mutual and another Person (other than a Subsidiary), other than a merger in which

McMurray, John

the stockholders of Washington Mutual 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's assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary.

(f) "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); and

(g) "Subsidiary" or "Subsidiaries" shall mean a corporation or corporations that are wholly owned by the Company, either directly or through one or more corporations that are wholly owned by the Company.

(h) For purposes of this Agreement, "good reason" for Employee to resign shall mean:

1. The assignment of duties to Employee which (a) are materially different from Employee's duties immediately prior to the Change in Control, or (b) result in Employee having significantly less authority and/or responsibility than Employee had prior to the Change in Control.

2. A reduction of Employee's total pay opportunity from that in effect on the date of the Change in Control. Changes in the allocation of Employee's compensation between salary and incentive compensation, and changes to the criteria or method for determining incentive compensation amounts actually earned, shall not constitute "good reason" for Employee to resign. "Total pay opportunity" means base salary plus target incentive compensation, provided that in the case of incentive compensation for which a "target" is not defined (such as some sales commissions), the incentive component of the pay opportunity shall be the average incentive compensation of Employee during the 24 months preceding the Change in Control.

3. A relocation by more than 50 miles of Employee's principal place of employment as in effect on the date of the Change in Control, if the relocation increases the distance between Employee's principal residence and principal place of employment by more than 25 miles. Distances shall be measured by surface miles, using surface transportation over public streets, roads, highways and waterways, by the shortest route.

For purposes of this Agreement, Employee shall be considered to have resigned for "good reason" only if Washington Mutual fails to cure within 15 days after receiving a written demand to cure that specifies the circumstances constituting "good reason." Also, Employee shall be

McMurray, John

considered to have resigned for "good reason" only if the effective date of Employee's resignation is within 60 days after the effective date of the occurrence that constitutes "good reason."

(i) For purposes of this Agreement, the Company shall have "cause" to terminate Employee's employment if:

1. Employee violates the Company's policies regarding drug or alcohol use on a recurring basis;

2. Employee 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 fraud, dishonesty, breach of trust or money laundering; or

3. Employee 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 Employee's duties, or (e) misconduct materially injurious to the Company or a Subsidiary.

12. Title. Although it is the intention of the parties that during the term of this Agreement, Employee shall be an executive employee of Washington Mutual with the title and duties described in Section 2 above, it is specifically understood that, subject to the provisions of Section 6(c), the employment and the nature and situs of services to be rendered shall be subject to the authority of the Chairman, the President or the Board to change the same from time to time and at any time and to provide for the operation of Washington Mutual as specified by applicable banking laws and regulations.

13. Resolution of Disputes. Any dispute arising out of or relating to this Agreement or Employee's employment (or termination of employment) shall be submitted to and resolved by final and binding arbitration as provided in the Binding Arbitration Agreement attached as Exhibit A, whether the claimant is Employee or Washington Mutual. In any dispute in arbitration or court arising out of or relating to this Agreement, the losing party shall pay the prevailing party's reasonable attorneys' fees, costs and expenses.

14. Agreement Not To Solicit Personnel. In consideration for mutual covenants in this Agreement and Employee's access as an employee of the Company or a Subsidiary to employees, contractors and consultants of the Company and Subsidiaries, Employee agrees that, during Employee's employment with the Company or a Subsidiary, and for a period of one year following termination of employment, Employee will not in any manner, directly or indirectly, solicit, encourage, induce, or recruit any person who is then an employee, contractor, or consultant of the Company or a Subsidiary, and whom Employee worked with, supervised, or had access to confidential information about while employed by the Company or a Subsidiary, to seek or accept employment or a contractual or consulting engagement with any business that competes with or provides services comparable to those provided by the Company or a

McMurray, John

Subsidiary. Should Employee breach the agreements set forth in this Section 14 or in Section 15, in addition to any other remedy available to the Company, (a) the Employee shall immediately pay to the Company any payment made pursuant to Section 6(c); (b) pursuant to the relevant award agreements, any option that vested upon a Change in Control ("Option"), or portion of such Option, that remains unexercised shall terminate and cease to be exercisable; (c) pursuant to the relevant award agreements, for any Option, or portion of such Option, already exercised, Employee shall immediately pay to the Company any difference between the fair market value of the Option shares on the date of exercise and the exercise price of such Option shares; and (d) pursuant to the relevant award agreements, Employee will immediately pay to the Company the fair market value as of the Change in Control of any shares of restricted stock that vested upon a Change in Control. The parties agree that, to the extent the restrictions set forth in this Section 14 are found to be unenforceable in any respect, this section shall be construed to be enforceable to the maximum extent permitted by law.

15. Intellectual Property Ownership. In addition, in consideration for mutual covenants in this Agreement, the Company will own all rights to the results of Employee's work, including inventions and other intellectual property developed using equipment, supplies, facilities or trade secret information of the Company or a Subsidiary. It will also own all rights to the results of any other effort of Employee (outside of Employee's performance of Company work) that relate directly to Employee's work or to the Company's or Subsidiaries' business or actual or demonstrably anticipated research or development. Washington Mutual's rights extend to anything that is authored, conceived, invented, written, reduced to practice, improved or made by Employee, alone or jointly with others, during the period of Employee's employment by the Company. To the extent that the results of Employee's work or other effort constitute a "work made for hire" as defined under U.S. copyright law, the copyright shall belong solely to the Company. Otherwise, to the extent that such results are legally protectable, then Employee hereby irrevocably assigns all copyrights, patent rights, and other proprietary rights therein to the Company, and no further action by Employee is required to grant ownership to the Company. Employee will assist in preparing and executing documents, and will take any other steps requested by the Company, to vest, confirm or demonstrate its ownership rights, and Employee will not at any time contest the validity of such rights. Employee understands that the termination of Employee's employment will not terminate or invalidate any of Employee's obligations, or the Company's rights, as described above.

Employee understands that the above commitments are in furtherance of the WaMu Intellectual Property Policy (a copy of which Employee has had an opportunity to review and is also found on wamu.net), which is incorporated herein but not set forth in full due to space limitations. If Employee lives or works in Washington, California, Illinois, or in any other state mentioned in the Invention Notice section of the policy, then the above assignment does not apply to inventions described in the Invention Notice for Employee's state.

16. Miscellaneous.

(a) This Agreement is the entire agreement between the parties and may not be modified or abrogated orally or by course of dealing, but only by another instrument in writing



McMurray, John

duly executed by the parties. This Agreement replaces and supersedes all prior agreements on these subjects that Employee may have with the Company or any Subsidiary, provided that this Agreement shall supplement and shall not supersede any other agreement that Employee has signed in favor of Washington Mutual or any Subsidiary protecting the confidentiality of its confidential information or its interest in intellectual property. All such agreements remain in full force and effect. Employee acknowledges that Employee shall be entitled to change in control benefits, severance benefits or other employment separation benefits only as specifically provided in this Agreement (or, to the extent applicable according to its terms, as provided in the Washington Mutual Severance Plan as in effect from time to time), notwithstanding the terms of any other representation, policy, severance plan, benefit plan or agreement.

(b) Notwithstanding any provision of this Agreement to the contrary, if, at the time of Employee's termination of employment with the Company, 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 Employee pursuant to this Agreement would constitute deferred compensation subject to Section 409A, no such payment or benefit will be provided under this Agreement until the earlier of (a) the date that is six (6) months following Employee's termination of employment with Washington Mutual, or (b) the Employee's death. The provisions of this Section 16(b) shall only apply to the extent required to avoid Employee's incurrence 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 Agreement would cause Employee 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.

(c) This Agreement has been drafted in contemplation of and shall be construed in accordance with and governed by the law of the state of Employee's principal place of employment with the Company.

(d) Employee acknowledges that this Agreement has been drafted by counsel for Washington Mutual, and that Employee has not relied upon such counsel with respect to this Agreement.

(e) If a court or arbitrator of competent jurisdiction or governmental authority declares any term or provision hereof invalid, unenforceable or unacceptable, the remaining terms and provisions hereof shall be unimpaired and the invalid, unenforceable or unacceptable term or provision shall be replaced by a term or provision that is valid, enforceable and acceptable and that comes closest to expressing the intention of the invalid, unenforceable or unacceptable term or provision.

(f) Employee may not assign Employee's rights or delegate Employee's duties under this Agreement.

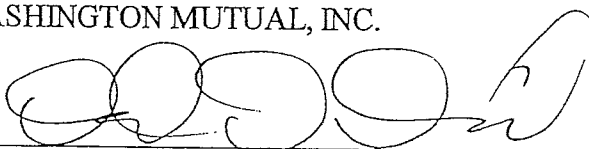
McMurray, John

(g) The Company may assign its rights and delegate its duties under this Agreement to any Subsidiary or to any purchaser of all or substantially all of Washington Mutual's assets. The transfer of Employee's employment from the Company to any Subsidiary or to the purchaser of all or substantially all of the assets of Washington Mutual shall not be considered a termination of employment, but this Agreement shall run to the benefit of, and be binding upon, the new employer. In the event of a Change in Control, this Agreement shall bind, and run to the benefit of, the successor to Washington Mutual resulting from the Change in Control.

DATED effective as of the 1<sup>st</sup> day of May, 2008.

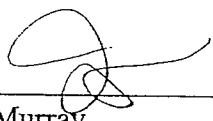
WASHINGTON MUTUAL:

WASHINGTON MUTUAL, INC.

By 

Daryl D. David  
Executive Vice President  
Chief Human Resources Officer

EMPLOYEE:

  
\_\_\_\_\_  
John McMurray

6-30-08

\_\_\_\_\_  
DATE

McMurray, John

EXHIBIT A  
BINDING ARBITRATION AGREEMENT

This Binding Arbitration Agreement is a part of, and incorporated into, that certain Change in Control Agreement between the parties dated effective as of the 1<sup>st</sup> of May, 2008. I, the employee who is a party to the Change in Control Agreement to which this Exhibit is attached, as well as Washington Mutual, agree as follows:

1. Any and all disputes that involve or relate in any way to my employment (or termination of employment) with Washington Mutual shall be submitted to and resolved by final and binding arbitration.

2. Washington Mutual and I understand that, by entering into this Binding Arbitration Agreement, we are each waiving any right we may have to file a lawsuit or other civil action or proceeding relating to my employment with Washington Mutual, and are waiving any right we may have to resolve employment disputes through trial by jury. We agree that arbitration shall be in lieu of any and all lawsuits or other civil legal proceedings relating to my employment.

3. This Binding Arbitration Agreement is intended to cover all civil claims that involve or relate in any way to my employment (or termination of employment) with Washington Mutual, including, but not limited to, claims of employment discrimination or harassment on the basis of race, sex, age, religion, color, national origin, sexual orientation, disability and veteran status (including claims under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act ("ERISA"), the Fair Labor Standards Act, the Immigration Reform and Control Act and any other local, state or federal law concerning employment or employment discrimination), claims based on violation of public policy or statute, and claims against individuals or entities employed by, acting on behalf of, or affiliated with Washington Mutual. However, ERISA plan benefit issues and claims for workers compensation or for unemployment compensation benefits are not covered by this Binding Arbitration Agreement. The statutes of limitations otherwise applicable under law shall apply to all claims made in the arbitration.

4. I understand and agree that, despite anything in this Binding Arbitration Agreement to the contrary, I am not waiving the right to file or institute a complaint or charge with any government agency authorized to investigate or resolve employment-related matters, including but not limited to the United States Equal Employment Opportunity Commission, the Department of Labor, the Occupational Safety and Health Administration, the National Labor Relations Board, the Office of Special Counsel for Unfair Immigration-Related Employment Practices or other appropriate immigration authorities, and any other comparable local, state or federal agency. I also understand and agree that, despite anything in this Binding Arbitration Agreement to the contrary, either party may request a court to issue such temporary or interim relief (including temporary restraining orders and preliminary injunctions) as may be appropriate, either before or after arbitration is commenced. The temporary or interim relief may remain in

McMurray, John

effect pending the outcome of arbitration. No such request shall be a waiver of the right to submit any dispute to arbitration.

5. This Binding Arbitration Agreement does not constitute an employment contract, require discharge only for cause, or require any particular corrective action or discharge procedures.

6. Arbitration under this Binding Arbitration Agreement shall be conducted before a single arbitrator and shall take place within the state where I am currently employed by Washington Mutual, or where I was so employed at the time of termination.

7. In order to initiate arbitration, Washington Mutual or I must notify the other party in writing of its decision to initiate arbitration, either by personal delivery or certified mail. The notification should include the following information about the employee: name, home address, work address, work and home phone number, and the following information about the occurrence: date, location, nature of the claims or dispute, facts upon which the claims are made, and remedy requested. Any notice of arbitration initiated by Washington Mutual shall be sent to my last known residence address as reflected in my personnel file at Washington Mutual. Notice of arbitration initiated by me shall be sent to Washington Mutual's Chief Legal Officer. The Chief Legal Officer's address is currently Washington Mutual, 1301 Second Avenue, WMC 3501, Seattle, Washington 98101.

8. Within thirty (30) days after receipt of notice of arbitration, Washington Mutual and I will attempt to agree upon a mutually acceptable arbitrator. If Washington Mutual and I are unable to agree upon an arbitrator, we will submit the dispute to the American Arbitration Association ("AAA"). If AAA is, for some reason, unable or unwilling to accept the matter, we will submit the matter to a comparable arbitration service. The arbitration shall be conducted in accordance with the laws of the state in which the arbitration is conducted and the rules and requirements of the arbitration service being utilized, to the extent that such rules and requirements do not conflict with the terms of this Binding Arbitration Agreement.

9. At the request of either Washington Mutual or myself, the arbitrator will schedule a pre-hearing conference to, among other things, agree on procedural matters, obtain stipulations, and attempt to narrow the issues.

10. During the arbitration process, Washington Mutual and I may each make a written demand on the other for a list of witnesses, including experts, to be called and/or copies of documents to be introduced at the hearing. The demand must be served at least thirty (30) days prior to the hearing. The list and copies of documents must be delivered within twenty-five (25) days of service of the demand.

11. Each party shall be entitled to conduct a limited amount of discovery prior to the arbitration hearing. Each party may take a maximum of two (2) depositions. Each party may apply to the arbitrator for further discovery. Such further discovery may, in the discretion of the arbitrator, be awarded upon a showing of sufficient cause. If any documents to be produced or

McMurray, John

requested for production contain or refer to matters that are private, proprietary and/or confidential, the arbitrator shall make an appropriate protective order prohibiting or limiting use and disclosure of such documents and providing for return of documents produced after the arbitration is concluded.

12. Each party may file a brief with the arbitrator. Each brief must be served on the arbitrator and the other party at least five (5) working days prior to the hearing and, if not timely served, must be disregarded by the arbitrator. The brief shall specify the facts the party intends to prove, analyze the applicable law or policy, and specify the remedy sought. At the close of the hearing, each party shall be given leave to file a post-hearing brief. The time for filing the post-hearing brief shall be set by the arbitrator.

13. I understand that, at my expense, I have the right to hire an attorney to represent me in the arbitration, and Washington Mutual has that same right. I also understand that all parties shall have the right to present evidence at the arbitration, through testimony and documents, and to cross-examine witnesses called by another party. Each party agrees to pay the fees of any witnesses testifying at that party's request. Each party also agrees to pay the cost of any stenographic record of the arbitration hearing should that party request any such record. The requesting party must notify the other of such arrangements at least two (2) working days in advance of the hearing.

14. Any postponement or cancellation fee imposed by the arbitration service will be paid by the party requesting the postponement or cancellation. During the time the arbitration proceedings are ongoing, Washington Mutual will advance any required administrative or arbitrator's fees. Each party will pay its own witness fees.

15. At the conclusion of the arbitration, each party agrees to promptly pay any arbitration award against it.

16. We agree that the decision of the arbitrator shall be final and binding on all parties and shall be the exclusive remedy of the parties. The arbitrator shall issue a written and signed statement of the basis of his or her decision, including findings of fact and conclusions of law. In making the decision and award, if any, the arbitrator shall apply applicable substantive law. The arbitrator may only award a remedy that would have been available in court. The decision and award, if any, shall be consistent with the terms of this Binding Arbitration Agreement and shall include an allocation of the costs of the arbitration proceeding between the parties.

17. This Binding Arbitration Agreement may be enforced by a court of competent jurisdiction through the filing of a petition to compel arbitration, or otherwise. The decision and award of the arbitrator may also be judicially enforced pursuant to applicable law.

18. Because of the interstate nature of Washington Mutual's business, this Binding Arbitration Agreement is governed by the Federal Arbitration Act, 9 U.S.C. §1 et seq. (the "FAA"). The provisions of the FAA (and to the extent not preempted by the FAA, the provisions of the laws of the state of my principal place of employment with Washington Mutual that

generally apply to commercial arbitration agreements, such as provisions granting stays of court actions pending arbitration) are incorporated into this Binding Arbitration Agreement to the extent not inconsistent with the other terms of this Binding Arbitration Agreement.

19. We agree that, if any provision of this Binding Arbitration Agreement is found to be unenforceable to any extent or in violation of any statute, rule, regulation or common law, it will not affect the enforceability of the remaining provisions and the court shall enforce the affected provision and all remaining provisions to the fullest extent permitted by law.

20. This Binding Arbitration Agreement shall remain in full force and effect at all times during and subsequent to my employment with Washington Mutual, or any successor in interest to Washington Mutual.

**EXHIBIT C**

*WaMu Executive Officer Severance Plan*

**WAMU EXECUTIVE OFFICER SEVERANCE PLAN**  
**Effective as of April 1, 2008**

**PREAMBLE**

Washington Mutual, Inc. has established the WaMu Executive Officer Severance Plan (the "Plan") with the intention of providing benefits to Eligible Executives (as defined herein) of the Company (as defined herein) in the event of termination of their employment by the Company without "Cause." This document sets forth the basic terms that are applicable to all eligible participants. The Plan covers a select group of management or highly compensated employees and is intended to be a top-hat welfare benefit plan governed by ERISA.

**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 "Sections" in this Plan shall refer to a Section or Sections of this Plan (i.e., and not to a statutory provision) 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 Base Pay. Base Pay means the Eligible Employee's annual base salary in the year in which termination occurs.

1.2 Cause. Cause means the termination of the Eligible Executive's employment by the Company in connection with any of the following events: (i) the Eligible Executive violates the Company's policies on drug or alcohol abuse on a recurring basis, (ii) the Eligible Executive has been convicted of any felony or of a misdemeanor involving moral turpitude (including forgery, fraud, theft or embezzlement), or the Eligible Executive is convicted or enters into a pretrial diversion or similar program in connection with the prosecution for an offense involving fraud, dishonesty, breach of trust or money laundering, or (iii) the Eligible Executive has engaged in dishonesty, fraud, destruction or theft of property of the Company, physical attack on another employee, willful malfeasance or gross negligence in the performance of his or her duties, or misconduct materially injurious to the Company.

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



1.4 Company. Washington Mutual, Inc. and its majority-owned subsidiaries and affiliates.

1.5 Eligible Executive. Each employee of the Company who is (i) classified as either a Level 2 or Level 3 executive, and (ii) not a party to an individual employment agreement with the Company that provides for any form of separation payment or severance benefit upon a termination unrelated to a change of control.

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

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

1.8 Plan. This WaMu Executive Officer Severance Plan, as amended from time to time.

1.9 Severance Agreement. A written agreement provided by the Company by which a Participant releases any claims he or she might have against the Company in exchange for the benefits set forth in Section 3.1.

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

## SECTION 2. ELIGIBILITY

An Eligible Executive will be eligible for benefits under Section 3 only if his or her employment is terminated by the Company without Cause. Benefits shall not be payable under this Plan in connection with the Eligible Executive's termination of employment from the Company for any other reason (including, without limitation, due to the Eligible Executive's death, disability or resignation). In addition, notwithstanding any other provision of the Plan to the contrary, an Eligible Executive shall not be entitled to benefits under this Plan if he or she satisfies the requirements to receive severance benefits under (a) an individual change in control agreement with the Company or (b) an employment agreement that provides separation payments or severance benefits following a change in control.

## SECTION 3. BENEFITS

3.1 In General. If an Eligible Executive is eligible for severance benefits under this Plan pursuant to Section 2, he or she shall be paid a cash severance benefit equal to one and one-half (1-1/2) multiplied by the sum of (a) the Eligible Executive's Base Pay, and (b) the higher of the Eligible Executive's unadjusted target bonus for the year in which the termination of employment occurs or the Eligible Executive's actual annual bonus for the immediately-preceding year (the "Severance Payment"). The Severance Payment shall be paid in a lump sum

upon the effectiveness of the Severance Agreement. State and federal taxes will be withheld from the payment as required by law.

3.2 Offset. The Severance Payment shall be offset dollar-for-dollar by any severance payment payable to the Eligible Executive under any other plan, program or arrangement of the Company.

3.3 Severance Agreement. The Severance Payment shall in all events be subject to the Eligible Executive entering into and not revoking a Severance Agreement.

#### **SECTION 4. ADMINISTRATION COMMITTEE**

4.1 Plan Administrator. The Plan Administrator shall be the Human Resources 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.

---

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

- (a) 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;
- (b) To direct the administration of the Plan in accordance with the provisions herein set forth;
- (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 5. COMPANY ADMINISTRATIVE PROVISIONS

5.1 Amendment or Termination. The Plan may be amended or terminated by the Company or the Human Resources 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 a Severance Payment at the time of such amendment or termination.

Severance Payments are 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.

5.2 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.

---

5.3 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 6. MISCELLANEOUS PROVISIONS

6.1 Severance Agreement. The Severance Agreement will not be valid unless it is signed and returned after the date of the Eligible Executive's termination of employment without Cause and 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 Payments under the Plan.

6.2 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.

6.3 Miscellaneous Provisions.

(a) Anti-Alienation. Severance Payments 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, contracts, liabilities, engagements or torts of any person entitled to any Severance Payments 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 Payment 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 Payments 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) Section 409A. Notwithstanding any provision of this Plan to the contrary, if, at the time of Participant's termination of employment with the Company, 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 a 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 the Company, or (b) the Participant's death. The provisions of this Section 6.3(d) shall only apply to the extent required to avoid Participant's incurring 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, the Company 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 Human Resources Committee, this Plan is hereby adopted effective as of the date specified above:

---

Daryl D. David  
Executive Vice President  
Chief Human Resources Officer  
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., <i>et al.</i> , <sup>1</sup>	)	(Jointly Administered)
	)	
Debtors.	)	Ref. Docket No. _____, _____ & _____
	)	

**ORDER**

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, having considered [*MOTION TITLE*]  
(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.

Dated: \_\_\_\_\_, 2013  
Wilmington, Delaware

\_\_\_\_\_  
THE HONRABLE MARY F. WALRATH  
U.S. Bankruptcy Court Judge

<sup>1</sup> 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 4, 2013, I caused a copy of *Motion for an Order Granting Amendment to Certain Proofs of Claim Regarding an Additional Theory of Recovery Based Upon the WaMu Executive Officer Severance Plan, or, in the Alternative, Finding that Excusable Neglect Permits the Assertion of Claims Based Upon the WaMu Executive Officer 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:

Julio C. Gurdian, Esquire  
Weil, Gotshal & Manges LLP  
1395 Brickell Avenue, Suite 1200  
Miami, FL 33131-2861  
[julio.gurdian@weil.com](mailto:julio.gurdian@weil.com)

Lawrence J. Baer, Esquire  
Brian Rosen, Esquire  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
[lawrence.baer@weil.com](mailto:lawrence.baer@weil.com)  
[brian.rosen@weil.com](mailto:brian.rosen@weil.com)

Mark D. Collins, Esquire  
Paul N. Heath, Esquire  
Richards, Layton & Finger, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801  
[collins@rlf.com](mailto:collins@rlf.com)  
[heath@rlf.com](mailto:heath@rlf.com)

[brucewbivert@aol.com](mailto:brucewbivert@aol.com)  
[casey3205@yahoo.com](mailto:casey3205@yahoo.com)  
[cboyd@akingump.com](mailto:cboyd@akingump.com)  
[pmott@akingump.com](mailto:pmott@akingump.com)  
[jmaciel@alvarezandmarsal.com](mailto:jmaciel@alvarezandmarsal.com)  
[cbrouwer55@gmail.com](mailto:cbrouwer55@gmail.com)  
[freilinger42@me.com](mailto:freilinger42@me.com)  
[fstein@fstein.com](mailto:fstein@fstein.com)  
[gdoll@dollamir.com](mailto:gdoll@dollamir.com)  
[Greg.camás@gmail.com](mailto:Greg.camás@gmail.com)  
[henrygid@yahoo.com](mailto:henrygid@yahoo.com)  
[Jake.Domér@ExpressPros.com](mailto:Jake.Domér@ExpressPros.com)  
[Jan.schrag@gmail.com](mailto:Jan.schrag@gmail.com)



[Jfww1111@yahoo.com](mailto:Jfww1111@yahoo.com)  
[jjoneswamu@comcast.net](mailto:jjoneswamu@comcast.net)  
[jnimeroff@bsnlawyers.com](mailto:jnimeroff@bsnlawyers.com)  
[joemelo@sbcglobal.net](mailto:joemelo@sbcglobal.net)  
[chad.smith@wamuinc.net](mailto:chad.smith@wamuinc.net)  
[curt.brouwer@wamuinc.net](mailto:curt.brouwer@wamuinc.net)  
[kaaron@weirpartners.com](mailto:kaaron@weirpartners.com)  
[Pinneyt@whiteandwilliams.com](mailto:Pinneyt@whiteandwilliams.com)  
[Kenkido1@gmail.com](mailto:Kenkido1@gmail.com)  
[loizides@loizides.com](mailto:loizides@loizides.com)  
[mbusenkell@gsbblaw.com](mailto:mbusenkell@gsbblaw.com)  
[bbjorklund@hotmail.com](mailto:bbjorklund@hotmail.com)  
[Mel.bartels@yahoo.com](mailto:Mel.bartels@yahoo.com)  
[mitch.stevens@gmail.com](mailto:mitch.stevens@gmail.com)  
[mjoyce@crosslaw.com](mailto:mjoyce@crosslaw.com)  
[msscottgaspard@gmail.com](mailto:msscottgaspard@gmail.com)  
[poulsbo5@gmail.com](mailto:poulsbo5@gmail.com)  
[Rachellemmieur@gmail.com](mailto:Rachellemmieur@gmail.com)  
[ronlowery@me.com](mailto:ronlowery@me.com)  
[rsokol@ebg-law.com](mailto:rsokol@ebg-law.com)  
[rstmarie@Dollamir.com](mailto:rstmarie@Dollamir.com)  
[slehrberge@aol.com](mailto:slehrberge@aol.com)  
[steve.fortunato@gmail.com](mailto:steve.fortunato@gmail.com)  
[susanonbainbridge@hotmail.com](mailto:susanonbainbridge@hotmail.com)  
[Tamra.treosti@bankofamerica.com](mailto:Tamra.treosti@bankofamerica.com)  
[tdriscoll@bifferato.com](mailto:tdriscoll@bifferato.com)  
[Trina10@cox.net](mailto:Trina10@cox.net)  
[twangyjane@hotmail.com](mailto:twangyjane@hotmail.com)  
[gary.brady@jpmchase.com](mailto:gary.brady@jpmchase.com)  
[skyle@kylelawcorp.com](mailto:skyle@kylelawcorp.com)  
[mbennett@lhlawfirm.com](mailto:mbennett@lhlawfirm.com)  
[Vickywu.wmi@gmail.com](mailto:Vickywu.wmi@gmail.com)  
[wfinzer@msn.com](mailto:wfinzer@msn.com)  
[kcapuzzi@phw-law.com](mailto:kcapuzzi@phw-law.com)  
[WMILT.Employee.Claims@weil.com](mailto:WMILT.Employee.Claims@weil.com)  
[abbe.miller@weirpartners.com](mailto:abbe.miller@weirpartners.com)  
[Jane.M.Leamy@usdoj.gov](mailto:Jane.M.Leamy@usdoj.gov)

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

/s/ Celeste A. Hartman  
CELESTE A. HARTMAN