Docket #11032 Date Filed: 2/19/2013

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Hearing Date: 3/25/13 at 10:30 a.m. (EDT)**
	:	**Obj. Deadline: 3/18/13 at 4:00 p.m. (EDT)**

WMI LIQUIDATING TRUST'S MOTION FOR LEAVE TO AMEND THE FIFTH, SIXTH, SEVENTY-NINTH, EIGHTIETH, EIGHTY-FIRST, EIGHTY-SECOND, EIGHTY-FOURTH, EIGHTY-FIFTH, AND EIGHTY-EIGHTH OMNIBUS OBJECTIONS TO CLAIMS

WMI Liquidating Trust ("WMILT" or the "Trust"), as successor in interest to Washington Mutual, Inc. ("WMI") and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the "Debtors"), hereby files this motion (the "Motion") for leave to amend the various omnibus objections discussed herein, substantially in the forms attached hereto as Exhibits "A-I" (the "Amended Objections"). In support of this Motion, WMILT respectfully represents as follows:

BACKGROUND

The Chapter 11 Cases and the Chapter 11 Plan

1. On September 26, 2008 (the "Commencement Date"), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code.

[1] The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMILT, as defined herein, are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

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

WMI's Business and JPMC

3. Prior to the Commencement Date, WMI operated as a savings and loan holding company that owned Washington Mutual Bank ("WMB") and, indirectly, such bank's subsidiaries, including Washington Mutual Bank fsb ("WMBfsb"). Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the "OTS"). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI's banking and nonbanking subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation ("FDIC").

4. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB and advised that the receiver was immediately taking possession of WMB (the "Bank Seizure"). Immediately after its appointment as receiver, the FDIC purportedly sold substantially all the assets of WMB, including the stock of WMBfsb (the "JPMC Transaction"), to JPMorgan Chase Bank, National Association ("JPMC") pursuant to that certain *Purchase and Assumption Agreement, Whole Bank*, dated as of September 25, 2008 (the "Purchase Agreement").

The Bar Date

5. By order, dated January 30, 2009 (the "Bar Date Order"), the Court established March 31, 2009 (the "Bar Date") as the deadline for filing proofs of claim against the Debtors in these chapter 11 cases. Pursuant to the Bar Date Order, each creditor, subject to certain limited exceptions, was required to file a proof of claim on or before the Bar Date.

6. In accordance with the Bar Date Order, Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' court-appointed claims and noticing agent, mailed notices of the Bar Date and proof of claim forms to, among others, all of the Debtors' creditors and other known holders of claims as of the Commencement Date. Notice of the Bar Date also was published once in *The New York Times (National Edition)*, *The Wall Street Journal*, *The Seattle Times*, and *The Seattle Post-Intelligencer*.

The Objections

7. On June 26, 2009, the Debtors filed the *Debtors' Fifth Omnibus (Substantive) Objection to Claims* [D.I. 1233] (the "Fifth Omnibus Objection") and the *Debtors' Sixth Omnibus (Substantive) Objection to Claims* [D.I. 1234] (the "Sixth Omnibus Objection"), objecting to, among others, certain employee claims. Subsequent thereto, several claimants whose claims were the subject of such objections filed responses. After an initial hearing, consideration of such objections was adjourned from time to time.

8. On August 15, 2012, WMILT, as successor in interest to the Debtors, filed the following objections to employee-related claims: (a) *WMI Liquidating Trust's Seventy-Ninth Omnibus (Substantive) Objection to Claims* [D.I. 10504] (the "Seventy-Ninth Omnibus Objection"), (b) *WMI Liquidating Trust's Eightieth Omnibus (Substantive) Objection to Claims* [D.I. 10505] (the "Eightieth Omnibus Objection"), (c) *WMI Liquidating Trust's Eighty-First Omnibus (Substantive) Objection to Claims* [D.I. 10506] (the "Eighty-First Omnibus

Objection"), and (d) *WMI Liquidating Trust's Eighty-Second Omnibus (Substantive) Objection to Claims* [D.I. 10507] (the "Eighty-Second Omnibus Objection").

9. On September 17, 2012, WMILT filed: (a) *WMI Liquidating Trust's Eighty-Fourth Omnibus (Substantive) Objection to Change in Control Claims* [D.I. 10677] (the "Eighty-Fourth Omnibus Objection"), (b) *WMI Liquidating Trust's Eighty-Fifth Omnibus (Substantive) Objection to Change in Control Claims* [D.I. 10678] (the "Eighty-Fifth Omnibus Objection"), and (c) *WMI Liquidating Trust's Eighty-Eighth Omnibus (Substantive) Objection to Disputed Equity Interests* [D.I. 10681] (the "Eighty-Eighth Omnibus Objection" and, together with the Fifth Omnibus Objection, Sixth Omnibus Objection, Seventy-Ninth Omnibus Objection, Eightieth Omnibus Objection, Eighty-First Omnibus Objection, Eighty-Second Omnibus Objection, Eighty-Fourth Omnibus Objection, and Eighty-Fifth Omnibus Objection, the "Omnibus Objections").

10. Following the filing of the Seventy-Ninth Omnibus Objection, Eightieth Omnibus Objection, Eighty-First Omnibus Objection, Eighty-Second Omnibus Objection, Eighty-Fourth Omnibus Objection, Eighty-Fifth Omnibus Objection, and Eighty-Eight Omnibus Objection, certain claimants filed responses to such objections (together with the claimants that filed responses to the Fifth Omnibus Objection and the Sixth Omnibus Objection, the "Responding Claimants").

11. On May 16, 2012, the Court entered orders granting the Fifth Omnibus Objection and the Sixth Omnibus Objection with respect to the non-responding employee claimants. *See* D.I. 10179 (as corrected by D.I. 10225), D.I. 10181 (as corrected by D.I. 10226). On September 19, 2012, the Court entered orders granting the Seventy-Ninth, Eightieth, Eighty-First and

Eighty-Second Omnibus Objections with respect to the non-responding employee claimants. *See* D.I. 10689, 10690, 10691 and 10692.

12. On September 10, 2012, the Court held a status conference (the "September 10 Teleconference") with respect to the Omnibus Objections and, at such time, requested that WMILT and the Responding Claimants confer regarding discovery and other procedures with respect to a hearing or series of hearings to consider the relief requested in the Omnibus Objections (the "Hearing"). As a result of such conferences and the Court's input with respect to remaining issues, on October 15, 2012, the Court entered the *Agreed Order Establishing Procedures and Deadlines Concerning Hearing on Employee Claims and Discovery in Connection Therewith* which provided for, among other things, the consolidation of the litigation with respect to the Fifth Omnibus Objection, the Sixth Omnibus Objection and the remainder of the Omnibus Objections, a schedule of deadlines related to these litigation and discovery protocols to be followed by the parties (the "Employee Claims Scheduling Order").

13. Thereafter, WMILT and certain of the Responding Claimants began the discovery process and quickly realized that, based upon the discovery propounded, additional time would be required to complete such process and prepare for the Hearing. Consequently, and as a result of such mutual understanding, on January 7, 2013, the Court entered the *Agreed Order Amending Scheduling Orders With Respect to Employee Claims Hearing and Adversary Proceedings* (the "Amended Scheduling Order") which, among other things, amended the deadlines set forth in the Employee Claims Scheduling Order and established June 3, 2013 as the hearing date to consider the change of control issues raised by the Omnibus Objections.

14. On February 1, 2013, the following motions were filed with the Court by certain Responding Claimants, each seeking leave to amend their original or previously amended proofs of claims (collectively, the "February 1st Motions to Amend"):

(a) *Motion of Michael Reynoldson for Order Granting Leave to File Amendment to Proof of Claim No. 752 or, in the Alternative, Allowing Reynoldson to Assert Alternate Argument Regarding Claim Based on WaMu Severance Plan* [D.I. 11009];

(b) *Motion of Kimberly Cannon for Order Granting Leave to File Amendment to Proof of Claim No. 1248 or, in the Alternative, Allowing Kimberly Cannon to Assert Alternative Argument Regarding Claim Based on WaMu Severance Plan* [D.I. 11010];

(c) *Motion of Chandan Sharma for Order Granting Leave to File Amendment to Proof of Claim No. 2539 or, in the Alternative, Allowing Chandan Sharma to Assert Alternate Argument Regarding Claim Based on WaMu Severance Plan* [D.I. 11011];

(d) *Motion of Anthony Bozzuti for Order Granting Amendment to Proof of Claim No. 3907 or, in the Alternative, Allowing Bozzuti to Assert Alternative Argument Regarding Claim Based on WaMu Severance Plan* [D.I. 11012];

(e) *Motion of Marc Malone for Order Granting Amendment to Proof of Claim No. 466 or, in the Alternative, Allowing Malone to Assert Alternate Argument Regarding Claim Based on WaMu Severance Plan* [D.I. 11013];

(f) *Motion of Genevieve Smith for Order Granting Amendment to Proof of Claim No. 2264 or, in the Alternative, Allowing Smith to Assert Alternate Argument Regarding Claim Based on WaMu Severance Plan* [D.I. 11014];

(g) *Motion of Ann Tierney for an Order Granting Amendment to Proof of Claim No. 3862 or, in the Alternative, Allowing Tierney to Assert Alternate Argument Regarding Claim Based on the WaMu Severance Plan* [D.I. 11015];

(h) *Motion of Sean Becketti for an Order Granting Amendment to Proof of Claim No. 1714 or, in the Alternative, Allowing Becketti to Assert Alternative Argument Regarding Claim Based on the WaMu Severance Plan* [D.I. 11016];

(i) *Motion of Thomas E. Morgan for an Order Granting Amendment to Proof of Claim No. 2612 or, in the Alternative, Allowing Morgan to Assert Alternate Argument Regarding Claim Based on the WaMu Severance Plan* [D.I. 11017];

(j) *Motion of Radha R. Thompson for an Order Granting Amendment to Proof of Claim No. 1153 or, in the Alternative, Allowing Thompson to Assert Alternate Argument Regarding Claim Based on the WaMu Severance Plan* [D.I. 11018], and

(k) *Motion of Rajiv Kapoor for an Order Granting Amendment to Proof of Claim No. 1069 or, in the Alternative, Allowing Kapoor to Assert Alternative Argument Regarding Claim Based on the WaMu Severance Plan* [D.I. 11019].

15. On February 4, 2013, additional Responding Claimants filed the following motion, again seeking to amend the applicable proofs of claims (the "February 4th Motion to Amend"): *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 Neglect Permits the Assertion of Claims Based upon the WaMu Executive Officer Severance Plan*, dated February 4, 2013 [D.I. 11020].

16. On February 8, 2013, claimant John H. Murphy filed the *Motion of John H. Murphy for Leave to Amend His Proof of Claim to Assert an Alternate Theory of Recovery*, dated February 8, 2013 [D.I. 11026] (together with the February 1st Motions to Amend and the February 4th Motion to Amend, the "Motions to Amend").

JURISDICTION AND VENUE

17. This Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and the Plan.

18. This action is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).

19. Venue of this action is proper in this District pursuant to 28 U.S.C. §1409(a).

20. The statutory basis for the relief requested in this Motion is Rule 3007-1(f)(iv) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), making Bankruptcy Rule 7015 applicable to the proceedings related to the Omnibus Objections.

RELIEF REQUESTED

21. WMILT seeks (a) leave to amend the Omnibus Objections to include, as additional grounds for the denial of claims of the Responding Claimants, the specific language set forth below by adding such language at the end of the substantive objection descriptions in each such Omnibus Objection (the "Additional Defenses")[2] and (b) to have such amendments relate back to the filing of the Omnibus Objections.[3]

Disallowance by Operation of Applicable Nonbankruptcy Law

> Many of the claims asserted by the claimants are also subject to disallowance as a result of the operation of 12 C.F.R. § 163.39 and/or 12 C.F.R. § 359, as applicable. *See* 12 U.S.C. § 1828(k); 12 C.F.R. § 163.39, *et seq.* (formerly 12 C.F.R. § 563.39, *et seq.*); 12 C.F.R. § 359, *et seq*. Section 359.2 provides that "[n]o insured depository institution or depository institution holding company shall make or agree to make any golden parachute payment . . . ." Section 359.1(f), subject to certain exceptions, generally defines a golden parachute payment as "any payment . . . in the nature of compensation" by an insured depository institution or an affiliated holding company for the benefit of an employee that is contingent or is payable upon termination and is made in contemplation of, among other things, the insolvency of the insured depository institution or the appointment of a receiver.
>
> Further, 12 C.F.R. § 163.39(b) provides that an employment contract shall terminate upon the default of a savings association. *See Williams v. Federal Deposit Insurance Corporation*, No. 11-35812, 2012 WL 3939964 (9th Cir. Sept. 11, 2012).
>
> These regulations were specifically designed to, among other things, prevent employees of a failed or failing financial institution and its parent holding company from collecting golden parachute payments while creditors and depositors were at risk of losing their claims and deposits from such institutions. Thus, each of the claims should be disallowed in part or in whole based on the application of such regulations.

[2] The amended language will appear following paragraphs 17, 17, 21, 23, 25, 41, 37, 29, and 24 of the Fifth, Sixth, Seventy-Ninth, Eightieth, Eighty-First, Eighty-Second, Eighty-Fourth, Eighty-Fifth, and Eighty-Eighth Omnibus Objections, respectively.

[3] WMILT reserves its rights to further amend the Omnibus Objections to the extent the Responding Claimants amend their claims in these cases.

ARGUMENT

I. Leave to Amend

22. The Court should permit the filing of the Additional Defenses in the Amended Objections because such defenses provide for an absolute statutory bar to the collection of certain claims against the Debtors. The regulations set forth in the Additional Defenses were specifically designed to, among other things, prevent employees of a failed or failing financial institution and its parent holding company from collecting golden parachute payments while creditors and depositors were at risk of losing their claims and deposits from such institutions. As such, the Additional Defenses should be analyzed by the Court, even absent amendment of the Omnibus Objections.

23. Rule 15 of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable to this proceeding by Local Rule 3007-1(f)(iv) and Bankruptcy Rule 7015, provides that a party may amend its pleading by motion or with the consent of the opposing party. *See* Fed. R. Civ. Proc. 15(a)(2). The "court should freely give leave when justice so requires." *Id.* Moreover, leave to amend generally should be granted absent bad faith or prejudice to the opposing party. *See, e.g., Ad Hoc Committee of Equity Holders of Tectonic Network, Inc. v. Wolford,* 554 F.Supp.2d 538, 550 (D. Del. 2008) (leave to amend should be granted unless there is evidence of bad faith or prejudice to the opposing party); *Alvin v. Suzuki*, 227 F.3d 107, 121 (3d Cir. 2000) (Without a clear reason such as delay, bad faith or prejudice, it is an abuse of discretion for a district court to deny leave to amend.); *Boileau v. Bethlehem Steel Corp.*, 730 F.2d 929, 938 (3d Cir. 1984), *cert. denied*, 469 U.S. 871 (1984) (noting a "general presumption in favor of allowing a party to amend pleadings."); *Agere Sys. Guardian Corp. v. Proxim, Inc.*, 190 F. Supp. 2d 726, 732 (D. Del. 2002) ("[A]bsent any apparent or declared reason--such as

undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.--the leave [to amend one's pleadings] should, as rules require, be freely given.") (*citing Foman v. Davis*, 371 U.S. 178, 182 (1962)); *In re Am. Remanufacturers, Inc.*, Case No. 05-20022, 2007 WL 2376723, *5 (Bankr. D. Del. Aug. 16, 2007) ("The court has discretion to deny leave to amend when there exists undue delay, bad faith, dilatory motive or undue prejudice to the opposing party, or when the amendment would be futile."); *see Hechinger Inv. Co. of Del. v. Raytheon Co. (In re Hechinger Investment Company of Delaware, Inc.)*, 286 B.R. 591, 593 (Bankr. D. Del. 2002) (explaining that, although the Court has discretion in deciding whether to grant leave to amend a filing, "the . . . outright refusal to grant the leave without any justifying reason appearing from the denial is not an exercise of that discretion; it is merely an abuse of that discretion and inconsistent with the spirit of the Federal Rules.") (*citing Foman*, 371 U.S. at 178). The crucial factor to consider when granting leave to amend is not length of delay, but prejudice. *Adams v. Gould, Inc.*, 739 F.2d 858, 868 (3d Cir. 1984) ("The passage of time, without more, does not require that a motion to amend a complaint be denied.").

24. As the various Responding Claimants that filed the Motions to Amend readily admit, courts have a long established policy of liberally permitting amendments. *See, e.g.*, *Motion of Michael Reynoldson for Order Granting Leave to File Amendment to Proof of Claim No. 752 or, in the Alternative, Allowing Reynoldson to Assert Alternate Argument Regarding Claim Based on WaMu Severance Plan* [D.I. 11009], at ¶ 22. In accordance with such policy, WMILT should be granted leave to file the Amended Objections to include the Additional Defenses that have recently become known to WMILT since filing the Omnibus Objections.

The Additional Defenses are based on certain federal regulations that prohibit the enforcement of the employee contracts and/or benefit plans that are the subject of the claims and Omnibus Objections. As such, those claims would be disallowed pursuant to section 502(b)(1) of the Bankruptcy Code. *See* 11 U.S.C. § 502(b)(1).

25. The Amended Objections are not the result of undue delay, bad faith or dilatory motive. WMILT believes that the Additional Defenses appropriately deal with the claims, and the Court should be allowed to hear such defenses in order to fairly decide the issues related to the Amended Objections. The Additional Defenses are not being added to multiply litigation or to harass the Responding Claimants, but are legitimate defenses to the claims. In fact, as was recently discovered by WMILT through the review of relevant documents, several of the Responding Claimants were keenly aware of, and concerned about, the application of the Additional Defenses even before they filed their proofs of claim.

26. In addition, there is no dilatory motive on the part of WMILT. WMILT would like to have these matters heard in an expeditious matter so that it may distribute funds from the trust and reduce the amount of outstanding claims against the Debtors' estates. As such, there is no reason why WMILT would want to delay the litigation on the Amended Objections beyond what is absolutely necessary to resolve them. In fact, given that the Additional Defenses largely raise legal bars to the claims, they may assist in resolving these matters more quickly. [4]

27. Moreover, there is no prejudice to the claimants here. Discovery in these matters is ongoing and the Additional Defenses do not add to the discovery burden of the Responding Claimants. Rather, the Additional Defenses merely apply prevailing law to facts that are well

[4] Given the spate of Motions to Amend that have been filed, and are likely to be filed, with the Court, the Court will likely have to craft a process to allow responses to such amendments and, thus, the Amended Objections will not unduly delay these proceedings.

established. Furthermore, based upon the ongoing review of correspondence between employees, WMILT believes that many of the Responding Claimants were already aware of the Additional Defenses well before the Commencement Date. The Amended Objections should, therefore, not come as a surprise to such claimants. The defenses to be included in the Amended Objections raise largely legal issues, which do not require the Court to consider much factual evidence. Given that the change in control issue will not be heard until June and the pre-hearing briefing is scheduled for May, no prejudice will result from the Amended Objections. As a result, WMILT should be allowed to amend the Omnibus Objections.

II. Relation Back

28. The Additional Defenses should also relate back to the Omnibus Objections. Federal Rule 15(c) provides in pertinent part:

> An amendment to a pleading relates back to the date of the original pleading when . . . (B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out - or attempted to be set out - in the original pleading . . . .

Fed. R. Civ. P. 15(c).

29. Relation back is generally appropriate when an amended pleading deals with the same conduct, transaction, or occurrence as the original pleading. *Berkshire Fashions, Inc. v. M.V. Hakusan II*, 954 F.2d 874, 887 (3d Cir. 1992) (finding that relation back is appropriate when the defense asserted arose out of the conduct, transaction or occurrence set forth in the initial pleading).

30. The Additional Defenses satisfy Rule 15(c) because they arise out of the same facts that give rise to the claims and the Omnibus Objections, mainly, the various employment agreements and benefits plans which are the subject of these litigations. Each of those

agreements and benefit plans provide the bases for the Additional Defenses. Therefore, the Additional Defenses as set forth in the Amended Objections should be allowed to relate back to the Omnibus Objections, and WMILT should be allowed to pursue its objection to the claims in this Court.

Notice

31. Notice of this Motion shall be provided to (i) the United States Trustee for the District of Delaware, (ii) each of the Responding Claimants and (iii) all other persons entitled to receive notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, WMILT submits that no other or further notice need be provided.

CONCLUSION

WHEREFORE WMILT respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit "J", granting WMILT leave to amend the Omnibus Objections, granting relation back of the Amended Objections, and granting WMILT such other and further relief as the Court deems just and equitable.

Dated: February 19, 2013
Wilmington, Delaware

/s/ Amanda R. Steele

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Paul N. Heath (No. 3704)
Amanda R. Steele (No. 5530)
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Hearing Date: 3/25/13 at 10:30 a.m. (EDT)**
	:	**Objection Deadline: 3/18/13 at 4:00 p.m. (EDT)**

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that on February 19, 2013, WMI Liquidating Trust, as successor in interest to Washington Mutual, Inc. and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the "Debtors"), filed **WMI Liquidating Trust's Motion for Leave to Amend the Fifth, Sixth, Seventy-Ninth, Eightieth, Eighty-First, Eighty-Second, Eighty-Fourth, Eighty-Fifth, and Eighty-Eighth Omnibus Objections to Claims** (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that any objections or responses to the Motion must be filed in writing with the Clerk of the Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned counsel for the Debtors on or before **March 18, 2013 at 4:00 p.m. (EDT)**.

PLEASE TAKE FURTHER NOTICE that, in the event that one or more objections or responses to the Motion are timely filed and not otherwise resolved, the Motion will be considered at a hearing before The Honorable Mary F. Walrath at the Bankruptcy Court,

[1] The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMI Liquidating Trust are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

824 North Market Street, 5th Floor, Courtroom 4, Wilmington, Delaware 19801, on **March 25, 2013 at 10:30 a.m. (EDT)**.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS OR RESPONSES TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: February 19, 2013
Wilmington, Delaware

/s/ Amanda R. Steele
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Attorneys for WMI Liquidating Trust

EXHIBIT A

Amended Fifth Omnibus Objection

PLEASE CAREFULLY REVIEW THIS OBJECTION AND THE ATTACHMENTS HERETO TO DETERMINE WHETHER THIS OBJECTION AFFECTS YOUR CLAIMS

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Hearing Date:**
	:	**Objection Deadline:**

DEBTORS' AMENDED FIFTH OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS

Washington Mutual, Inc. ("WMI") and WMI Investment Corp., as debtors and debtors in possession (collectively, the "Debtors"), file this amended fifth substantive omnibus objection (this "Fifth Omnibus Objection") to those claims listed on Exhibit A hereto. This Fifth Omnibus Objection is filed pursuant to section 502 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3007-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"). The Debtors' proposed order is attached hereto as Exhibit C. In support of the Fifth Omnibus Objection, the Debtors respectfully represent as follows:

[1] The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

Jurisdiction

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

Background

2. On September 26, 2008 (the "Commencement Date"), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On October 3, 2008, the Court entered an order, pursuant to Bankruptcy Rule 1015(b), authorizing the joint administration of the Debtors' chapter 11 cases.

WMI's Business

3. WMI is a holding company incorporated in the State of Washington and headquartered at 1301 Second Avenue, Seattle, Washington 98101. WMI is the direct parent of WMI Investment, which serves as an investment vehicle for WMI and holds a variety of securities. WMI Investment is incorporated in the State of Delaware.

4. Prior to the Commencement Date, WMI was a savings and loan holding company that owned Washington Mutual Bank ("WMB") and such bank's subsidiaries, including Washington Mutual Bank fsb ("WMBfsb"). WMI also has certain non-banking, non-debtor subsidiaries (the "Non-debtor Subsidiaries"). Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the "OTS"). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI's banking and nonbanking

subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation ("FDIC").

5. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB and advised that the receiver was immediately taking possession of WMB (the "Receivership"). Immediately after its appointment as receiver, the FDIC sold substantially all the assets of WMB, including the stock of WMBfsb, to JPMorgan Chase Bank, National Association ("JPMorgan Chase") pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008 (the "Purchase Agreement").

6. WMI's assets include its common stock interest in WMB, its interest in its non-banking subsidiaries, and more than $4 billion of cash that WMI and its non-banking subsidiaries (including WMI Investment) had on deposit at WMB and WMBfsb immediately prior to the time the FDIC was appointed as receiver. WMI is in the process of evaluating these and other assets for purposes of ultimate distribution to its creditors.

The Bar Date and Schedules

7. On December 19, 2008, the Debtors filed with the Court their schedules of assets and liabilities. On January 27, 2009, and February 24, 2009, WMI filed with the Court its first and second, respectively, amended schedule of assets and liabilities (collectively, the "Schedules").

8. By order, dated January 30, 2009 (the "Bar Date Order"), the Court established March 31, 2009 (the "Bar Date") as the deadline for filing proofs of claim against the Debtors in these chapter 11 cases. Pursuant to the Bar Date Order, each creditor, subject to

certain limited exceptions, was required to file a proof of claim on or before the Bar Date or be forever barred.

9. In accordance with the Bar Date Order, Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' court-appointed claims and noticing agent, mailed notices of the Bar Date and proof of claim forms to, among others, all of the Debtors' creditors and other known holders of claims as of the Commencement Date. Notice of the Bar Date also was published once in *The New York Times (National Edition), The Wall Street Journal* and *The Seattle Times*.

Proofs of Claim

10. Over 3,600 proofs of claim have been filed in these chapter 11 cases. The Debtors have begun the process of reviewing and reconciling the filed proofs of claim. As part of their ongoing review, the Debtors have reviewed each of the proofs of claim listed on Exhibit A hereto and have concluded that each such claim should be disallowed and expunged in its entirety.

Objection to Claims

11. Local Rule 3007-1 allows a debtor to file an omnibus objection to proofs of claim on substantive grounds. Omnibus substantive objections must include sufficient detail as to why each claim should be disallowed and must be limited to no more than 150 claims. *See* Local Rule 3007-1(J). The following omnibus objection complies with Local Rule 3007-1(J) as well as the other requirements of Local Rule 3007.

12. The claims listed on Exhibit A have been asserted by parties to which the Debtors have no legal obligation. Such claims generally fall into three general categories.

Category 1: Litigation Claims

13. First, certain of the claims objected to herein assert liability on account of litigation to which neither Debtor is a counterparty or named defendant (the "Litigation Claims"). For certain of the Litigation Claims, WMI was initially named as a defendant in the underlying litigation, but has since been dismissed from such litigation. In both such circumstances, neither Debtor will incur any liability with respect to the underlying litigation. Accordingly, the Litigation Claims should be disallowed and expunged in their entirety.

Category 2: Pension Claims

14. Second, certain of the claims objected to herein seek a recovery on account of asserted pension plan benefits and/or distributions pursuant to the WaMu Pension Plan (the "Plan"). Pursuant to the Plan, all Plan assets are held in a separate, segregated trust (the "Plan Trust"), which is administered by the WaMu Pension Plan Administration Committee. Because, pursuant to the terms of the Plan, all benefits are paid from the Plan Trust, the claims filed against the Debtors on account of alleged Plan benefits (the "Pension Claims") are improper. All beneficiaries of the Plan must look only to the Plan Trust and the assets therein for satisfaction of their benefits claims, as no claims arise on account of pension claims against the general assets of WMI.

15. In addition, even in the event the Plan is ultimately under-funded and terminated by WMI, the Plan sponsor, all Plan beneficiaries would nonetheless be limited in their recovery on account their benefits claims to the assets of the Plan Trust. The Pension Benefit Guaranty Corporation ("PBGC"), as insurer of the Plan, would thereafter be responsible for any deficiency between the benefits accrued and the assets in the Plan Trust. However, in that situation, while the PBGC might have a claim against the Debtors for the under-funding, the Plan

beneficiaries themselves would still only have a claim against the Plan or the Plan Trust, and *not* WMI.

16. Accordingly, because the Pension Claims do not assert a valid liability of the Debtors, such claims should be disallowed and expunged in their entirety.

Category 3: Employee Claims

17. Third, certain of the claims objected to herein assert liability pursuant to retention bonus agreements or Change in Control agreements (together, the "Employee Agreements") between the claimant and WMB, *not* WMI (the "Employee Claims"). Because neither Debtor is a party to the respective Employee Agreement, the Debtors have no liability with respect thereto. Accordingly, the Employee Claims should be disallowed and expunged in their entirety.[2]

18. Many of the Employee Claims asserted by the claimants are also subject to disallowance as a result of the operation of 12 C.F.R. § 163.39 and/or 12 C.F.R. § 359, as applicable. *See* 12 U.S.C. § 1828(k); 12 C.F.R. § 163.39, *et seq.* (formerly 12 C.F.R. § 563.39, *et seq.*); 12 C.F.R. § 359, *et seq*. Section 359.2 provides that "[n]o insured depository institution or depository institution holding company shall make or agree to make any golden parachute payment . . . ." Section 359.1(f), subject to certain exceptions, generally defines a golden parachute payment as "any payment . . . in the nature of compensation" by an insured depository institution or an affiliated holding company for the benefit of an employee that is contingent or is

[2] Out of an abundance of caution, the Debtors also assert that, with respect to the Employee Agreements, to the extent a "change in control" is defined thereunder as a sale of all or substantially all of WMI's assets, no such "change in control" occurred. Therefore, even if this Court were to find that the Employee Claim claimants can seek a recovery from WMI, such recovery should nonetheless be barred because, among other things, the contractual predicates to payment in the respective agreements have not been met. The Debtors expressly reserve their rights to fully brief this issue should such briefing be required.

payable upon termination and is made in contemplation of, among other things, the insolvency of the insured depository institution or the appointment of a receiver.

19. Further, 12 C.F.R. § 163.39(b) provides that an employment contract shall terminate upon the default of a savings association. *See Williams v. Federal Deposit Insurance Corporation*, No. 11-35812, 2012 WL 3939964 (9th Cir. Sept. 11, 2012).

20. These regulations were specifically designed to, among other things, prevent employees of a failed or failing financial institution and its parent holding company from collecting golden parachute payments while creditors and depositors were at risk of losing their claims and deposits from such institutions. Thus, each of the Employee Claims should be disallowed in part or in whole based on the application of such regulations.

Category 4: Miscellaneous Claims

21. Fourth, the remaining claims objected to herein are miscellaneous claims that improperly seek a recovery against the Debtors rather than the party responsible therefor (the "Miscellaneous Claims," and together with the Litigation claims, the Employee Claims, and the Pension Claims, the "Fifth Omnibus Objection Claims"). Because the Debtors are not the proper entity against which the Miscellaneous Claims should be asserted, the Debtors object to their allowance and respectfully request that the Miscellaneous Claims be disallowed and expunged in their entirety.

22. In support of the foregoing, the Debtors rely on the Declaration of John Maciel Pursuant to Local Rule 3007-1 in Support of the Fifth Omnibus Objection, dated as of the date hereof, and herewith at Exhibit B.

Reservation of Rights

23. Pursuant to Local Rule 3007-1(f)(iii), "[a]n objection based on substantive grounds shall include all substantive objections to such claim." *See* Local Rule 3007-1(f)(iii). The Debtors, after reviewing the Fifth Omnibus Objection Claims, have determined that, on the face of the Fifth Omnibus Claims, the Debtors have no liability on account thereof. To conserve property of these estates, the Debtors have not made specific inquiry into the amounts asserted in the Fifth Omnibus Objection Claims, or vetted any other defenses thereto. Accordingly, the Debtors request that, to the extent this Court finds that the Debtors may, in fact, be liable on account of the Fifth Omnibus Objection Claims, they be granted limited relief from Local Rule 3007-1(f)(iii) to further object to the Fifth Omnibus Objection Claims. The Debtors also request that, to the extent they are liable, they be allowed to seek to impose on the Fifth Omnibus Objection Claims any applicable claim amount cap prescribed by the Bankruptcy Code.

Notice

24. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Fifth Omnibus Objection has been provided to: (i) the United States Trustee for the District of Delaware, (ii) counsel for the Creditors' Committee, (iii) those parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002 and (iv) each holder of a claim objected to herein. In light of the nature of the relief requested, WMI submits that no other or further notice need be provided.

25. Pursuant to Bankruptcy Rule 3007, the Debtors have provided all claimants affected by the Fifth Omnibus Objection with at least thirty (30) days' notice of the hearing to consider the Fifth Omnibus Objection.

Statement of Compliance with Local Rule 3007-1

26. The undersigned representative of Richards, Layton & Finger, P.A. certifies that he has reviewed the requirements of Local Rule 3007-1 and that the Fifth Omnibus Objection substantially complies with that Local Rule. To the extent that the Fifth Omnibus Objection does not comply in all respects with the requirements of Local Rule 3007-1, Richards, Layton & Finger, P.A. believes such deviations are not material and respectfully requests that any such requirement be waived.

No Previous Request

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

WHEREFORE the Debtors respectfully request that the Court enter an order (i) disallowing and expunging in their entirety each claim identified on Exhibit A hereto and (ii) granting the Debtors such other and further relief as is just.

Dated: March __, 2013
Wilmington, Delaware

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ATTORNEYS TO THE DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT B

Amended Sixth Omnibus Objection

PLEASE CAREFULLY REVIEW THIS OBJECTION AND THE ATTACHMENTS HERETO TO DETERMINE WHETHER THIS OBJECTION AFFECTS YOUR CLAIMS

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Hearing Date:**
	:	**Objection Deadline:**

DEBTORS' AMENDED SIXTH OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS

Washington Mutual, Inc. ("WMI") and WMI Investment Corp., as debtors and debtors in possession (collectively, the "Debtors"), file this amended sixth substantive omnibus objection (this "Sixth Omnibus Objection") to those claims listed on Exhibit A hereto. This Sixth Omnibus Objection is filed pursuant to section 502 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3007-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"). The Debtors' proposed order is attached hereto as Exhibit C. In support of the Sixth Omnibus Objection, the Debtors respectfully represent as follows:

[1] The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

Jurisdiction

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

Background

2. On September 26, 2008 (the "Commencement Date"), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On October 3, 2008, the Court entered an order, pursuant to Bankruptcy Rule 1015(b), authorizing the joint administration of the Debtors' chapter 11 cases.

WMI's Business

3. WMI is a holding company incorporated in the State of Washington and headquartered at 1301 Second Avenue, Seattle, Washington 98101. WMI is the direct parent of WMI Investment, which serves as an investment vehicle for WMI and holds a variety of securities. WMI Investment is incorporated in the State of Delaware.

4. Prior to the Commencement Date, WMI was a savings and loan holding company that owned Washington Mutual Bank ("WMB") and such bank's subsidiaries, including Washington Mutual Bank fsb ("WMBfsb"). WMI also has certain non-banking, non-debtor subsidiaries (the "Non-debtor Subsidiaries"). Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the "OTS"). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI's banking and nonbanking

subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation ("FDIC").

5. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB and advised that the receiver was immediately taking possession of WMB (the "Receivership"). Immediately after its appointment as receiver, the FDIC sold substantially all the assets of WMB, including the stock of WMBfsb, to JPMorgan Chase Bank, National Association ("JPMorgan Chase") pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008 (the "Purchase Agreement").

6. WMI's assets include its common stock interest in WMB, its interest in its non-banking subsidiaries, and more than $4 billion of cash that WMI and its non-banking subsidiaries (including WMI Investment) had on deposit at WMB and WMBfsb immediately prior to the time the FDIC was appointed as receiver. WMI is in the process of evaluating these and other assets for purposes of ultimate distribution to its creditors.

The Bar Date and Schedules

7. On December 19, 2008, the Debtors filed with the Court their schedules of assets and liabilities. On January 27, 2009, and February 24, 2009, WMI filed with the Court its first and second, respectively, amended schedule of assets and liabilities (collectively, the "Schedules").

8. By order, dated January 30, 2009 (the "Bar Date Order"), the Court established March 31, 2009 (the "Bar Date") as the deadline for filing proofs of claim against the Debtors in these chapter 11 cases. Pursuant to the Bar Date Order, each creditor, subject to certain limited exceptions, was required to file a proof of claim on or before the Bar Date.

9. In accordance with the Bar Date Order, Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' court-appointed claims and noticing agent, mailed notices of the Bar Date and proof of claim forms to, among others, all of the Debtors' creditors and other known holders of claims as of the Commencement Date. Notice of the Bar Date also was published once in the of *The New York Times (National Edition), The Wall Street Journal* and *The Seattle Times*.

Proofs of Claim

10. Over 3,600 proofs of claim have been filed in these chapter 11 cases. The Debtors have begun the process of reviewing and reconciling the filed proofs of claim. As part of their ongoing review, the Debtors have reviewed each of the proofs of claim listed on Exhibit A hereto and have concluded that each such claim should be disallowed and expunged in its entirety.

Objection to Claims

11. Local Rule 3007-1 allows a debtor to file an omnibus objection to proofs of claim on substantive grounds. Omnibus substantive objections must include sufficient detail as to why each claim should be disallowed and must be limited to no more than 150 claims. *See* Local Rule 3007-1(J). The following omnibus objection complies with Local Rule 3007-1(J) as well as the other requirements of Local Rule 3007.

12. The claims listed on Exhibit A have been asserted by parties to which the Debtors have no legal obligation. Such claims generally fall into three general categories.

Category 1: Litigation Claims

13. First, certain of the claims objected to herein assert liability on account of litigation to which neither Debtor is a counterparty or named defendant (the "Litigation

Claims"). For certain of the Litigation Claims, WMI was initially named as a defendant in the underlying litigation, but has since been dismissed from such litigation. In both such circumstances, neither Debtor will incur any liability with respect to the underlying litigation. Accordingly, the Litigation Claims should be disallowed and expunged in their entirety.

Category 2: Pension Claims

14. Second, certain of the claims objected to herein seek a recovery on account of asserted pension plan benefits and/or distributions pursuant to the WaMu Pension Plan (the "Plan"). Pursuant to the Plan, all Plan assets are held in a separate, segregated trust (the "Plan Trust"), which is administered by the WaMu Pension Plan Administration Committee. Because, pursuant to the terms of the Plan, all benefits are paid from the Plan Trust, the claims filed against the Debtors on account of alleged Plan benefits (the "Pension Claims") are improper. All beneficiaries of the Plan must look only to the Plan Trust and the assets therein for satisfaction of their benefits claims, as no claims arise on account of pension claims against the general assets of WMI.

15. In addition, even in the event the Plan is ultimately under-funded and terminated by WMI, the Plan sponsor, all Plan beneficiaries would nonetheless be limited in their recovery on account their benefits claims to the assets of the Plan Trust. The Pension Benefit Guaranty Corporation ("PBGC"), as insurer of the Plan, would thereafter be responsible for any deficiency between the benefits accrued and the assets in the Plan Trust. However, in that situation, while the PBGC might have a claim against the Debtors for the under-funding, the Plan beneficiaries themselves would still only have a claim against the Plan or the Plan Trust, and *not* WMI.

16. Accordingly, because the Pension Claims do not assert a valid liability of the Debtors, such claims should be disallowed and expunged in their entirety.

Category 3: Employee Claims

17. Third, certain of the claims objected to herein assert liability pursuant to retention bonus agreements or Change in Control agreements (together, "Employee Agreements") between the claimant and WMB, *not* WMI (the "Employee Claims"). Because neither Debtor is a party to the respective Employee Agreement, the Debtors have no liability with respect thereto. Accordingly, the Employee Claims should be disallowed and expunged in their entirety.[2]

18. Many of the Employee Claims asserted by the claimants are also subject to disallowance as a result of the operation of 12 C.F.R. § 163.39 and/or 12 C.F.R. § 359, as applicable. *See* 12 U.S.C. § 1828(k); 12 C.F.R. § 163.39, *et seq.* (formerly 12 C.F.R. § 563.39, *et seq.*); 12 C.F.R. § 359, *et seq*. Section 359.2 provides that "[n]o insured depository institution or depository institution holding company shall make or agree to make any golden parachute payment . . . ." Section 359.1(f), subject to certain exceptions, generally defines a golden parachute payment as "any payment . . . in the nature of compensation" by an insured depository institution or an affiliated holding company for the benefit of an employee that is contingent or is payable upon termination and is made in contemplation of, among other things, the insolvency of the insured depository institution or the appointment of a receiver.

[2] Out of an abundance of caution, the Debtors also assert that, with respect to the Change in Control Agreements, to the extent a "change in control" is defined as a sale of all or substantially all of WMI's assets, no such "change in control" occurred. Therefore, even if this Court were to find that the Employee Claim claimants can seek a recovery from WMI, such recovery should nonetheless be barred because, among other things, the contractual predicates to payment in the respective agreements have not been met. The Debtors expressly reserve their rights to fully brief this issue should such briefing be required.

19. Further, 12 C.F.R. § 163.39(b) provides that an employment contract shall terminate upon the default of a savings association. *See Williams v. Federal Deposit Insurance Corporation*, No. 11-35812, 2012 WL 3939964 (9th Cir. Sept. 11, 2012).

20. These regulations were specifically designed to, among other things, prevent employees of a failed or failing financial institution and its parent holding company from collecting golden parachute payments while creditors and depositors were at risk of losing their claims and deposits from such institutions. Thus, each of the Employee Claims should be disallowed in part or in whole based on the application of such regulations.

Category 4: Miscellaneous Claims

21. Fourth, the remaining claims objected to herein are miscellaneous claims that improperly seek a recovery against the Debtors rather than the party responsible therefor (the "Miscellaneous Claims," and together with the Litigation claims, the Employee Claims, and the Pension Claims, the "Sixth Omnibus Objection Claims"). Because the Debtors are not the proper entity against which the Miscellaneous Claims should be asserted, the Debtors object to their allowance and respectfully request that the Miscellaneous Claims be disallowed and expunged in their entirety.

22. In support of the foregoing, the Debtors rely on the Declaration of John Maciel Pursuant to Local Rule 3007-1 in Support of the Sixth Omnibus Objection, dated as of the date hereof, and herewith at Exhibit B.

Reservation of Rights

23. Pursuant to Local Rule 3007-1(f)(iii), "[a]n objection based on substantive grounds shall include all substantive objections to such claim." *See* Local Rule 3007-1(f)(iii). The Debtors, after reviewing the Sixth Omnibus Objection Claims, have determined that, on the

face of the Sixth Omnibus Claims, the Debtors have no liability on account thereof. To conserve property of these estates, the Debtors have not made specific inquiry into the amounts asserted in the Sixth Omnibus Objection Claims, or vetted any other defenses thereto. Accordingly, the Debtors request that, to the extent this Court finds that the Debtors may, in fact, be liable on account of the Sixth Omnibus Objection Claims, they be granted limited relief from Local Rule 3007-1(f)(iii) to further object to the Sixth Omnibus Objection Claims. The Debtors also request that, to the extent they are liable, they be allowed to seek to impose on the Sixth Omnibus Objection Claims any applicable claim amount cap prescribed by the Bankruptcy Code.

Notice

24. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Sixth Omnibus Objection has been provided to: (i) the United States Trustee for the District of Delaware, (ii) counsel for the Creditors' Committee, (iii) those parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002 and (iv) each holder of a claim objected to herein. In light of the nature of the relief requested, WMI submits that no other or further notice need be provided.

25. Pursuant to Bankruptcy Rule 3007, the Debtors have provided all claimants affected by the Sixth Omnibus Objection with at least thirty (30) days' notice of the hearing to consider the Sixth Omnibus Objection.

Statement of Compliance with Local Rule 3007-1

26. The undersigned representative of Richards, Layton & Finger, P.A. certifies that he has reviewed the requirements of Local Rule 3007-1 and that the Sixth Omnibus Objection substantially complies with that Local Rule. To the extent that the Sixth Omnibus Objection does not comply in all respects with the requirements of Local Rule 3007-1, Richards, Layton & Finger, P.A. believes such deviations are not material and respectfully requests that any such requirement be waived.

No Previous Request

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

WHEREFORE the Debtors respectfully request that the Court enter an order (i) disallowing and expunging in their entirety each claim identified on Exhibit A hereto and (ii) granting the Debtors such other and further relief as is just.

Dated: March __, 2013
Wilmington, Delaware

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ATTORNEYS TO THE DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT C

Amended Seventy-Ninth Omnibus Objection

PLEASE CAREFULLY REVIEW THIS OBJECTION AND THE ATTACHMENTS HERETO TO DETERMINE WHETHER THIS OBJECTION AFFECTS YOUR CLAIMS

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Hearing Date:**
	:	**Response Deadline:**

WMI LIQUIDATING TRUST'S AMENDED SEVENTY-NINTH OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS

WMI Liquidating Trust ("WMILT"), as successor in interest to Washington Mutual, Inc. ("WMI") and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the "Debtors"), pursuant to section 502 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), files this amended seventy-ninth omnibus substantive objection (the "Seventy-Ninth Omnibus Objection") to those claims listed on Exhibits A, B, and C hereto, and in support of the Seventy-Ninth Omnibus Objection, respectfully represents as follows:

[1] The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMILT, as defined herein, are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

Jurisdiction

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

Background

2. On September 26, 2008 (the "Commencement Date"), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code.

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

WMI's Business and JPMC

4. Prior to the Commencement Date, WMI operated as a savings and loan holding company that owned Washington Mutual Bank ("WMB") and, indirectly, such bank's subsidiaries, including Washington Mutual Bank fsb ("WMBfsb"). Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the "OTS"). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI's banking and nonbanking subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation ("FDIC").

5. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB (the "Bank Seizure") and advised that the receiver was immediately taking possession of WMB (the "Receivership"). Immediately after its

appointment as receiver, the FDIC purportedly sold substantially all the assets of WMB, including the stock of WMBfsb (the "JPMC Transaction"), to JPMorgan Chase Bank, National Association ("JPMC") pursuant to that certain *Purchase and Assumption Agreement, Whole Bank*, dated as of September 25, 2008 (the "Purchase Agreement").

The Bar Date and Schedules

6. On December 19, 2008, the Debtors filed with the Court their schedules of assets and liabilities and their statements of financial affairs. On January 27, 2009, and February 24, 2009, WMI filed with the Court its first and second, respectively, amended schedule of assets and liabilities and its first and second, respectively, amended statements of financial affairs. On January 14, 2010, WMI filed a further amendment to its statement of financial affairs (collectively, the "Schedules").

7. By order, dated January 30, 2009 (the "Bar Date Order"), the Court established March 31, 2009 (the "Bar Date") as the deadline for filing proofs of claim against the Debtors in these chapter 11 cases. Pursuant to the Bar Date Order, each creditor, subject to certain limited exceptions, was required to file a proof of claim on or before the Bar Date.

8. In accordance with the Bar Date Order, Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' court-appointed claims and noticing agent, mailed notices of the Bar Date and proof of claim forms to, among others, all of the Debtors' creditors and other known holders of claims as of the Commencement Date. Notice of the Bar Date also was published once in *The New York Times (National Edition), The Wall Street Journal, The Seattle Times*, and *The Seattle Post-Intelligencer*.

Proofs of Claim

9. Over 4,000 proofs of claim have been filed in these chapter 11 cases. WMILT is in the process of reviewing and reconciling the filed proofs of claim. To date, approximately 3,100 claims have been disallowed or withdrawn.

10. As part of their ongoing review, WMILT has reviewed each of the proofs of claim listed on Exhibits A, B, and C hereto and has concluded that each such claim is appropriately objected to on the basis set forth below.

Objection to Wrong Party Claims

11. Local Rule 3007-1 allows a debtor to file an omnibus objection to proofs of claim on substantive grounds. Omnibus substantive objections must include sufficient detail as to why each claim should be disallowed and must be limited to no more than 150 claims. *See* Local Rule 3007-1(f)(i). The following omnibus objection complies with Local Rule 3007-1(f)(i) as well as the other requirements of Local Rule 3007.

12. The majority of the claims objected to herein consist of multiple components. Subject to certain limited exceptions, WMILT requests the Court to disallow each of the claim components in their entirety, such that the majority of the claims objected to herein are disallowed in their entirety. To the extent WMILT does not object to certain components, leaving an allowed amount of a particular claim, WMILT requests that the Court reduce and allow such claims as set forth herein.

I. Exhibit A (Wrong Party Claims)

13. Each claim on Exhibit A arises, in most cases, from either a WMB retention bonus agreement (the "WMB Retention Bonus Agreements") or a WMB Change in Control agreement (the "WMB CIC Agreements"), or both, or, in two cases, from miscellaneous employment or bonus agreements, all entered into between the claimant and WMB, not WMI. Because neither of the Debtors was a party to such agreements, WMILT requests that such claims be disallowed in their entirety. Objections to similar claims were asserted, and granted by this Court, in the Debtors' *Fifth* and *Sixth Omnibus Claims Objections.*

14. Should the Court find that WMILT were liable with respect to the WMB Retention Bonus Agreements and WMB CIC Agreements notwithstanding that neither Debtor is

a party to the applicable agreements, WMILT asserts that it is not liable for any "change in control" payments or other benefits pursuant to the WMB Retention Bonus Agreements or WMB CIC Agreements.[2] First, with respect to payments triggered or accelerated upon a "change of control," WMILT asserts that no "change in control," as defined in the respective agreements, occurred. For example, neither the Bank Seizure nor the JPMC Transaction constituted a "Change in Control" within the definition of "Change in Control" in the WMB Retention Bonus Agreements and the WMB CIC Agreements, which is a sale of all or substantially all of WMI's assets.[3] Indeed, none of WMI's assets, which, in September 2008, included, among other things, its equity interest in WMB, were transferred or sold to the FDIC or to JPMC, as the case may be, pursuant to the Bank Seizure or JPMC Transaction. Thus, no "Change in Control" occurred pursuant to the terms of the WMB Retention Bonus Agreements or the WMB CIC Agreements and, accordingly, WMILT's liability for "change in control" payments, or other benefits, pursuant to such agreements has not been triggered *See Williams v. McGreevey* (*In re Touch Am. Holdings, Inc.)*, 401 B.R. 107, 126 (Bankr. D. Del. 2009) ("It is well recognized that 'a corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary.'") (quoting *Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003))). Moreover, even if WMB's assets could fall within the plain meaning of "Washington Mutual Inc.'s assets" pursuant to the WMB Retention Bonus Agreements or the WMB CIC Agreements, the assets of WMB did not constitute "all or substantially all" of WMI's assets. Second, the claimants are not entitled to other payments or benefits pursuant to the WMB Retention Bonus Agreements because the claimants otherwise failed to satisfy the eligibility

[2] WMILT expressly reserves its right to fully brief these issues should such briefing be required.

[3] *See* WMB CIC Agreement, at § 5(g)(5) ("For purposes of this Agreement, "Change in Control" shall mean: . . . The sale or transfer (in one transaction or a series of related transactions) of all or substantially all of . . .[Washington Mutual, Inc.'s] assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary."); WMB Retention Bonus Agreement (cross-referencing the definition of "change in control" found in the recipient's WMB CIC Agreement).

requirements pursuant to the respective documents.[4] Accordingly, even if this Court were to find that such claimants can seek a recovery from WMILT, such recovery should nonetheless be barred because, among other things, the contractual predicates to payment in the respective agreements have not been met.

15. Additionally, even if the Court were to determine that (a) WMILT were liable for and on behalf of WMB **and** (b) a "Change in Control" has occurred pursuant to the terms of the WMB CIC Agreements, the allowed amounts of such claims are subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because the Wrong Party Components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7). Section 502(b)(7) of the Bankruptcy Code addresses the maximum allowable claim of an employee under a terminated employment contract and provides that the court shall disallow:

> [a] claim of an employee for damages resulting from the termination of an employment contract, [to the extent] such claim exceeds (A) the compensation provided by such contract, without acceleration, for one year following the earlier of – the date of the filing of the petition; or (ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus (B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates.

11 U.S.C. § 502(b)(7). This Court and others have found that claims for severance payments, including "change in control" payments, are subject to the limitation in section 502(b)(7). *See, e.g., In re VeraSun Energy Corp.*, 467 B.R. 757 (Bankr. D. Del. 2012); *Protarga Inc. v. Webb (In re Protarga Inc.)*, 329 B.R. 451, 465-66 (Bankr D. Del. 2005); *In re Dornier Aviation (N. Am.), Inc.*, 305 B.R. 650, 653-56 (E.D. Va. 2004); *see also Bitters v. Networks Elecs. Corp. (In re*

[4] For example, certain WMB Retention Bonus Agreements state that the "employment requirement" is waived to the extent the claimant experienced a job elimination pursuant to the WaMu Severance Plan. WMILT submits that the applicable claimants are ineligible for benefits pursuant to the WMB Retention Bonus Agreements because they did not experience a "job elimination" pursuant to the WaMu Severance Plan by virtue of a "change in control" or otherwise.

Networks Elecs. Corp.), 195 B.R. 92, 100 (B.A.P. 9th Cir. 1996) ("The purpose of § 502(b)(7) is to protect the employer/debtor from valid employee claims which would unreasonably compromise the debtor's fresh start, and work to the detriment of other creditors."). Additionally, WMILT is entitled to a credit for any severance payments or other relevant benefits actually received by the claimant from JPMC on account of such claimants' employment with WMB. *See Skidmore, Owings*, 1997 WL 563159, at *6; *Barney*, 869 P.2d at 1094; *see also* WMB CIC Agreement § 5(c); *see generally id.* As such, any liability pursuant to the WMB Retention Bonus Agreements or the WMB CIC Agreements, and WMILT submits that there is none, should be significantly reduced.

16. In the Debtors' *Fifth* and *Sixth Omnibus Claims Objections* [D.I. 1233 & 1234], the Debtors objected to similar claims arising from WMB Retention Bonus Agreements and/or WMB CIC Agreements, on the ground that neither of the Debtors was a party to such agreements, and therefore could not be liable thereto, while reserving all rights to fully brief the argument that no "change in control," as defined in the respective agreements, occurred, should such briefing be required. The Court recently entered orders disallowing claims for which no response had been filed [D.I. 10225 & 10226], and scheduled a hearing on the *Fifth* and *Sixth Omnibus Claims Objections* with respect to the claims of responding claimants. For purposes of the *Fifth* and *Sixth Omnibus Claims Objections*, with respect to each of the claims listed on Exhibit A-1 hereto, WMILT incorporates by reference the arguments contained herein in paragraphs 14 and 15, and applies such arguments to the balance of such responding claimants as though set forth in full in the *Fifth* and *Sixth Omnibus Claims Objections*.

II. Exhibit B (Wrong Party Claims / Assigned Claims / Common Equity Interests)

17. The claims in Exhibit B hereto consist of multiple components: (1) a component arising from the WMB Retention Bonus Agreement or the WMB CIC Agreement, or both (the "Wrong Party Component"); (2) a component arising from the Washington Mutual Inc.

Deferred Compensation Plan (the "DCP"), the Washington Mutual Inc. Supplemental Executive Retirement Plan, amended and restated effective as of July 20, 2004 (the "SERP"), or both (the "Assigned Claim Component"); and (3) in one case, a component arising from the holding of common equity of WMI (the "Equity Component"). With respect to the Wrong Party Component of each such claim, WMILT requests that such components should be disallowed, for the reasons set forth above.

18. With respect to the Assigned Claim Component of each such claim, pursuant to assignment agreements, the claimants received payments on account of the DCP and/or SERP liabilities from JPMC and, in exchange therefor, each claimant assigned all of their claims related to their participation in the DCP and/or SERP, including any proof of claim, together with the assignment of any voting and other rights and benefits which existed at the time of such agreement or in the future come into existence or are paid or issued by the Debtor or any other party, directly or indirectly, in connection or satisfaction of the claim, to JPMC. And, pursuant to that certain *Second Amended and Restated Settlement Agreement*, dated as of February 7, 2011 (as amended, the "Amended Settlement Agreement"), which agreement became effective on March 19, 2012, upon the consummation of the transactions contemplated by the Plan, and a copy of which is annexed to the Plan as Exhibit H, each of the Assigned Claims were waived by JPMC. Therefore, with respect to the Assigned Claim Component of each such claim, WMILT requests that such components should be disallowed. Objections to similar claims arising from the WMI SERP were asserted, and granted by the court, pursuant to the *Thirty-Sixth* and *Fifty-Third Omnibus Claims Objections*.

19. With respect to the Equity Component of each such claim, the Bankruptcy Code defines an "equity security" as:

> (A) share in a corporation, whether or not transferable or denominated "stock", or similar security;

> (B) interest of a limited partner in a limited partnership; or
>
> (C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph.

11 U.S.C. § 101(16). Holders of equity securities, such as shares of stock, do not have "claims" under section 101(5) of the Bankruptcy Code, but rather equity interests. See In re Insilco Techs., Inc., 480 F.3d 212, 218 (3rd Cir. 2007) ("[an equity] interest is not a claim at all"); In re Hedged-Invs. Assocs., 84 F.3d 1267, 1272 (10th Cir. 1996) ("Simply put, an equity interest is not a claim against the debtor."). Because equity interests are not claims against the Debtors' estates, WMILT requests that the Court disallow the Equity Components of such claims as well, such that all claims listed on Exhibit B are disallowed in their entirety.[5]

III. Exhibit C (Wrong Party Claims / Assigned Claims / SERAP Claims)

20. The claims in Exhibit C hereto also consist of multiple components: (1) a Wrong Party Component; (2) in some cases, an Assigned Claim Component; and (3) a component (the "SERAP Component") arising from the WMI Supplemental Executive Retirement Accumulation Plan (the "SERAP"). With respect to the Wrong Party Component and Assigned Claim Component of each such claim, WMILT requests that such components should be disallowed, for the reasons set forth above.

21. For each such claim, with respect to the SERAP Component, WMILT's books and records indicate a corresponding obligation owed to such claimants with respect to the SERAP, and WMILT seeks to allow these portions of the claims as general unsecured claims in the amounts reflected in WMILT's books and records, as set forth in Exhibit C.

[5] It should be noted that one claimant asserts that his unvested restricted stock units vested because of a change in control, as defined in his WMB CIC Agreement. As noted above, first, neither of the Debtors was a party to such agreement, and so WMILT cannot be held liable for such agreement, and, second, in any case, WMILT submits that no such change in control has occurred. Thus, with respect to this claimant, the "Equity Component" of his claim does not even exist. Nevertheless, in an abundance of caution, if the Court were to find that such component does exist, then WMILT also objects to such component on the grounds that it would consist entirely of equity interests in the Debtors and not a claim against the Debtors' estates.

IV. Disallowance by Operation of Applicable Nonbankruptcy Law

22. Many of the claims asserted by the claimants are also subject to disallowance as a result of the operation of 12 C.F.R. § 163.39 and/or 12 C.F.R. § 359, as applicable. *See* 12 U.S.C. § 1828(k); 12 C.F.R. § 163.39, *et seq.* (formerly 12 C.F.R. § 563.39, *et seq.*); 12 C.F.R. § 359, *et seq*. Section 359.2 provides that "[n]o insured depository institution or depository institution holding company shall make or agree to make any golden parachute payment . . . ." Section 359.1(f), subject to certain exceptions, generally defines a golden parachute payment as "any payment . . . in the nature of compensation" by an insured depository institution or an affiliated holding company for the benefit of an employee that is contingent or is payable upon termination and is made in contemplation of, among other things, the insolvency of the insured depository institution or the appointment of a receiver.

23. Further, 12 C.F.R. § 163.39(b) provides that an employment contract shall terminate upon the default of a savings association. *See Williams v. Federal Deposit Insurance Corporation*, No. 11-35812, 2012 WL 3939964 (9th Cir. Sept. 11, 2012).

24. These regulations were specifically designed to, among other things, prevent employees of a failed or failing financial institution and its parent holding company from collecting golden parachute payments while creditors and depositors were at risk of losing their claims and deposits from such institutions. Thus, each of the claims should be disallowed in part or in whole based on the application of such regulations.

25. In support of the foregoing, WMILT relies on the *Declaration of John Maciel Pursuant to Local Rule 3007-1 in Support of the WMI Liquidating Trust's Seventy-Ninth Omnibus (Substantive) Objection to Claims*, dated as of August 15, 2012, attached hereto as Exhibit D.

26. Nothing contained in this Seventy-Ninth Omnibus Objection shall be, or shall be deemed to be, a determination that JPMC or any of its affiliates or subsidiaries, WMB or any of WMB's subsidiaries, or any person other than the Debtors is or is not liable or responsible in any way for any of the claims that are subject to this Seventy-Ninth Omnibus Objection.

Notice

27. Notice of this Seventy-Ninth Omnibus Objection has been provided to: (i) the U.S. Trustee, (ii) those parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, and (iii) each holder of a claim objected to herein. In light of the nature of the relief requested, WMILT submits that no other or further notice need be provided.

28. Pursuant to Bankruptcy Rule 3007, WMILT has provided all claimants affected by the Seventy-Ninth Omnibus Objection with at least thirty (30) days' notice of the hearing to consider the Seventy-Ninth Omnibus Objection.

Statement of Compliance with Local Rule 3007-1

29. The undersigned representative of Richards, Layton & Finger, P.A. ("RLF") certifies that he has reviewed the requirements of Local Rule 3007-1 and that the Seventy-Ninth Omnibus Objection substantially complies with that Local Rule. To the extent that the Seventy-Ninth Omnibus Objection does not comply in all respects with the requirements of Local Rule 3007-1, RLF believes such deviations are not material and respectfully requests that any such requirement be waived.

WHEREFORE WMILT respectfully requests that the Court enter an order granting (i) the relief requested herein and (ii) such other and further relief as is just.

Dated: March __, 2013
Wilmington, Delaware

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Attorneys to the WMI Liquidating Trust

EXHIBIT D

Amended Eightieth Omnibus Objection

PLEASE CAREFULLY REVIEW THIS OBJECTION AND THE ATTACHMENTS HERETO TO DETERMINE WHETHER THIS OBJECTION AFFECTS YOUR CLAIMS

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Hearing Date:**
	:	**Response Deadline:**

WMI LIQUIDATING TRUST'S AMENDED EIGHTIETH OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS

WMI Liquidating Trust ("WMILT"), as successor in interest to Washington Mutual, Inc. ("WMI") and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the "Debtors"), pursuant to section 502 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), files this amended eightieth omnibus substantive objection (the "Eightieth Omnibus Objection") to those claims listed on Exhibits A, B, C, and D hereto, and in support of the Eightieth Omnibus Objection, respectfully represents as follows:

[1] The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMILT, as defined herein, are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

Jurisdiction

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

Background

2. On September 26, 2008 (the "Commencement Date"), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code.

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

WMI's Business and JPMC

4. Prior to the Commencement Date, WMI operated as a savings and loan holding company that owned Washington Mutual Bank ("WMB") and, indirectly, such bank's subsidiaries, including Washington Mutual Bank fsb ("WMBfsb"). Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the "OTS"). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI's banking and nonbanking subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation ("FDIC").

5. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB (the "Bank Seizure") and advised that the receiver was immediately taking possession of WMB (the "Receivership"). Immediately after its

appointment as receiver, the FDIC purportedly sold substantially all the assets of WMB, including the stock of WMBfsb (the "JPMC Transaction"), to JPMorgan Chase Bank, National Association ("JPMC") pursuant to that certain *Purchase and Assumption Agreement, Whole Bank*, dated as of September 25, 2008 (the "Purchase Agreement").

The Bar Date and Schedules

6. On December 19, 2008, the Debtors filed with the Court their schedules of assets and liabilities and their statements of financial affairs. On January 27, 2009, and February 24, 2009, WMI filed with the Court its first and second, respectively, amended schedule of assets and liabilities and its first and second, respectively, amended statements of financial affairs. On January 14, 2010, WMI filed a further amendment to its statement of financial affairs (collectively, the "Schedules").

7. By order, dated January 30, 2009 (the "Bar Date Order"), the Court established March 31, 2009 (the "Bar Date") as the deadline for filing proofs of claim against the Debtors in these chapter 11 cases. Pursuant to the Bar Date Order, each creditor, subject to certain limited exceptions, was required to file a proof of claim on or before the Bar Date.

8. In accordance with the Bar Date Order, Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' court-appointed claims and noticing agent, mailed notices of the Bar Date and proof of claim forms to, among others, all of the Debtors' creditors and other known holders of claims as of the Commencement Date. Notice of the Bar Date also was published once in *The New York Times (National Edition), The Wall Street Journal, The Seattle Times*, and *The Seattle Post-Intelligencer*.

Proofs of Claim

9. Over 4,000 proofs of claim have been filed in these chapter 11 cases. WMILT is in the process of reviewing and reconciling the filed proofs of claim. To date, approximately 3,100 claims have been disallowed or withdrawn.

10. As part of their ongoing review, WMILT has reviewed each of the proofs of claim listed on Exhibits A, B, C, and D hereto and has concluded that each such claim is appropriately objected to on the basis set forth below.

Objection to Wrong Party Claims

11. Local Rule 3007-1 allows a debtor to file an omnibus objection to proofs of claim on substantive grounds. Omnibus substantive objections must include sufficient detail as to why each claim should be disallowed and must be limited to no more than 150 claims. *See* Local Rule 3007-1(f)(i). The following omnibus objection complies with Local Rule 3007-1(f)(i) as well as the other requirements of Local Rule 3007.

12. The majority of the claims objected to herein consist of multiple components. Subject to certain limited exceptions, WMILT requests the Court to disallow each of the claim components in their entirety, such that the majority of the claims objected to herein are disallowed in their entirety. To the extent WMILT does not object to certain components, leaving an allowed amount of a particular claim, WMILT requests that the Court reduce and allow such claims as set forth herein.

I. Exhibit A (Medical Reimbursement Claims)

13. Each claim on Exhibit A arises from a contractual provision in (a) a Change of Control Employment Agreement entered into between the claimant and Providian Financial Corporation ("PFC"), which provision provides for PFC to provide for medical benefits programs for a period of time following the claimant's termination by PFC, or (b) an Employment Agreement entered into between the claimant and Commercial Capital Bank, FSB and/or Commercial Capital Bancorp ("CCB"), which provision provides for CCB to provide for medical benefits programs for a period of time following the claimant's termination by CCB. Both PFC and CCB were acquired and eventually merged into WMB prior to the Commencement Date, with the liabilities asserted in the claims on Exhibit A eventually accruing

to WMB and **not** WMI.[2] Because neither of the Debtors is liable for such claims (the "Medical Reimbursement Claims"), WMILT requests that such claims be disallowed in their entirety.

II. Exhibit B (Providian Claims)

14. Each claim on Exhibit B arises from a Change of Control Employment Agreement (the "Providian Agreements") entered into between the claimant and PFC. Such claimants have asserted claims for, in certain cases, a Providian 2008 Leadership Bonus, and, in other cases, alleged miscalculations relating to payments made to the claimants in 2005 pursuant to the Providian Agreements. As noted above, after PFC was acquired, PFC was eventually merged into WMB, with the liabilities asserted in the claims on Exhibit B eventually accruing to WMB and **not** WMI. Because neither of the Debtors is liable for such claims (the "Providian Claims"), WMILT requests that such claims be disallowed in their entirety.

15. Additionally, should the Court find that WMILT were liable with respect to the Providian Claims notwithstanding that neither Debtor is a party to the applicable agreements, WMILT denies the alleged miscalculations from which these claims arise and expressly reserves its right to fully brief these issues should such briefing be required.

III. Exhibit C (Wrong Party Claims / Providian Claims)

16. The claims in Exhibit C hereto consist of multiple components: (1) a component arising from either a WMB retention bonus agreement (the "WMB Retention Bonus Agreements") or a WMB Change in Control agreement (the "WMB CIC Agreements"), or both (the "Wrong Party Component") and (2) a component (the "Providian Component") arising from a Providian Agreement.

[2] It should be noted that objections to similar claims – claims arising from actions of or agreements with other entities that were acquired by WMB and eventually merged into WMB prior to the Commencement Date, including American Savings Bank, Long Beach Mortgage Company, Dime Savings Bank, and Great Western Bank, such that the claims accrued to WMB and not WMI – were asserted, and granted by this Court, in the Debtors' *Nineteenth Omnibus Claims Objection*.

17. With respect to the Wrong Party Components, because neither of the Debtors was a party to such agreements, WMILT requests that such claims be disallowed in their entirety. Objections to similar claims were asserted, and granted by this Court, in the Debtors' *Fifth* and *Sixth Omnibus Claims Objections*.

18. Should the Court find that WMILT were liable with respect to the WMB Retention Bonus Agreements and WMB CIC Agreements notwithstanding that neither Debtor is a party to the applicable agreements, WMILT asserts that it is not liable for any "change in control" payments or other benefits pursuant to the WMB Retention Bonus Agreements or WMB CIC Agreements.[3] First, with respect to payments triggered or accelerated upon a "change of control," WMILT asserts that no "change in control," as defined in the respective agreements, occurred. For example, neither the Bank Seizure nor the JPMC Transaction constituted a "Change in Control" within the definition of "Change in Control" in the WMB Retention Bonus Agreements and the WMB CIC Agreements, which is a sale of all or substantially all of WMI's assets.[4] Indeed, none of WMI's assets, which, in September 2008, included, among other things, its equity interest in WMB, were transferred or sold to the FDIC or to JPMC, as the case may be, pursuant to the Bank Seizure or JPMC Transaction. Thus, no "Change in Control" occurred pursuant to the terms of the WMB Retention Bonus Agreements or the WMB CIC Agreements and, accordingly, WMILT's liability for "change in control" payments, or other benefits, pursuant to such agreements has not been triggered *See Williams v. McGreevey* (*In re Touch Am. Holdings, Inc.)*, 401 B.R. 107, 126 (Bankr. D. Del. 2009) ("It is well recognized that 'a corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or

[3] WMILT expressly reserves its right to fully brief these issues should such briefing be required.

[4] *See* WMB CIC Agreement, at § 5(g)(5) ("For purposes of this Agreement, "Change in Control" shall mean: . . . The sale or transfer (in one transaction or a series of related transactions) of all or substantially all of . . .[Washington Mutual, Inc.'s] assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary."); WMB Retention Bonus Agreement (cross-referencing the definition of "change in control" found in the recipient's WMB CIC Agreement).

have legal title to the assets of the subsidiary.'") (quoting *Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003))). Moreover, even if WMB's assets could fall within the plain meaning of "Washington Mutual Inc.'s assets" pursuant to the WMB Retention Bonus Agreements or the WMB CIC Agreements, the assets of WMB did not constitute "all or substantially all" of WMI's assets. Second, the claimants are not entitled to other payments or benefits pursuant to the WMB Retention Bonus Agreements because the claimants otherwise failed to satisfy the eligibility requirements pursuant to the respective documents.[5] Accordingly, even if this Court were to find that such claimants can seek a recovery from WMILT, such recovery should nonetheless be barred because, among other things, the contractual predicates to payment in the respective agreements have not been met.

19. Additionally, even if the Court were to determine that (a) WMILT were liable for and on behalf of WMB **and** (b) a "Change in Control" has occurred pursuant to the terms of the WMB CIC Agreements, the allowed amounts of such claims are subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because the Wrong Party Components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7). Section 502(b)(7) of the Bankruptcy Code addresses the maximum allowable claim of an employee under a terminated employment contract and provides that the court shall disallow:

> [a] claim of an employee for damages resulting from the termination of an employment contract, [to the extent] such claim exceeds (A) the compensation provided by such contract, without acceleration, for one year following the earlier of – the date of the filing of the petition; or (ii) the date on which the employer directed the employee to terminate, or such employee terminated,

[5] For example, certain WMB Retention Bonus Agreements state that the "employment requirement" is waived to the extent the claimant experienced a job elimination pursuant to the WaMu Severance Plan. WMILT submits that the applicable claimants are ineligible for benefits pursuant to the WMB Retention Bonus Agreements because they did not experience a "job elimination" pursuant to the WaMu Severance Plan by virtue of a "change in control" or otherwise.

> performance under such contract; plus (B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates.

11 U.S.C. § 502(b)(7). This Court and others have found that claims for severance payments, including "change in control" payments, are subject to the limitation in section 502(b)(7). *See, e.g., In re VeraSun Energy Corp.*, 467 B.R. 757 (Bankr. D. Del. 2012); *Protarga Inc. v. Webb (In re Protarga Inc.)*, 329 B.R. 451, 465-66 (Bankr D. Del. 2005); *In re Dornier Aviation (N. Am.), Inc.*, 305 B.R. 650, 653-56 (E.D. Va. 2004); *see also Bitters v. Networks Elecs. Corp. (In re Networks Elecs. Corp.)*, 195 B.R. 92, 100 (B.A.P. 9th Cir. 1996) ("The purpose of § 502(b)(7) is to protect the employer/debtor from valid employee claims which would unreasonably compromise the debtor's fresh start, and work to the detriment of other creditors."). Additionally, WMILT is entitled to a credit for any severance payments or other relevant benefits actually received by the claimant from JPMC on account of such claimants' employment with WMB. *See Skidmore, Owings*, 1997 WL 563159, at *6; *Barney*, 869 P.2d at 1094; *see also* WMB CIC Agreement § 5(c); *see generally id.* As such, any liability pursuant to the WMB Retention Bonus Agreements or the WMB CIC Agreements, and WMILT submits that there is none, should be significantly reduced.

20. With respect to the Providian Components, WMILT requests that such components be disallowed for the reasons set forth above, such that the claims listed on Exhibit C are disallowed in their entirety.

IV. Exhibit D (Wrong Party Claims / Providian Claims / SERAP Claims)

21. The claims in Exhibit D hereto consist of multiple components: (1) a Wrong Party Component; (2) a Providian Component; (3) in one case, a component arising from a "change in control" provision in an individual cash long-term incentive award agreement (the "Cash LTI Agreement") entered into between the claimant and WMI; and (4) a component (the "SERAP Component") arising from the WMI Supplemental Executive Retirement Accumulation

Plan (the "SERAP"). With respect to the Wrong Party Component and Providian Component of each such claim, for the reasons set forth above, WMILT requests that such components should be disallowed.

22. With respect to the component arising from the Cash LTI Agreement, because this component asserts liability pursuant to a "change in control" provision in the Cash LTI Agreement, WMILT objects on the ground that no "Change in Control," as such term is defined in the Cash LTI Agreement, has occurred. Pursuant to the Cash LTI Agreement, "Change in Control" has the meaning ascribed to such term in the "Form Change in Control Agreement for Senior Leaders." Although the term "Senior Leaders" is not defined in the Cash LTI Agreements, the quoted language refers to a form agreement entered into between WMB and WMB employees classified in Level 4 or Level 5 pursuant to WMB's employment scheme. As noted above, under the express definition of "Change in Control" in the WMB CIC Agreements, no "change of control" has occurred. Accordingly, WMILT is not liable for "change in control" payments pursuant to the terms of the Cash LTI Agreement, because no "Change in Control" occurred pursuant to the terms of the Cash LTI Agreement, and this portion of the claim should be disallowed.[6]

23. For each such claim, with respect to the SERAP Component, WMILT's books and records indicate a corresponding obligation owed to such claimants with respect to the SERAP, and WMILT seeks to allow these portions of the claims as general unsecured claims in the amounts reflected in WMILT's books and records, as set forth in Exhibit D.

[6] Moreover, even if the Court were to find that WMILT is liable for payments pursuant to the terms of the Cash LTI Agreement, the allowed amount of this component is subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because this component asserts claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7).

V. Disallowance by Operation of Applicable Nonbankruptcy Law

24. Many of the claims asserted by the claimants are also subject to disallowance as a result of the operation of 12 C.F.R. § 163.39 and/or 12 C.F.R. § 359, as applicable. *See* 12 U.S.C. § 1828(k); 12 C.F.R. § 163.39, *et seq.* (formerly 12 C.F.R. § 563.39, *et seq.*); 12 C.F.R. § 359, *et seq*. Section 359.2 provides that "[n]o insured depository institution or depository institution holding company shall make or agree to make any golden parachute payment . . . ." Section 359.1(f), subject to certain exceptions, generally defines a golden parachute payment as "any payment . . . in the nature of compensation" by an insured depository institution or an affiliated holding company for the benefit of an employee that is contingent or is payable upon termination and is made in contemplation of, among other things, the insolvency of the insured depository institution or the appointment of a receiver.

25. Further, 12 C.F.R. § 163.39(b) provides that an employment contract shall terminate upon the default of a savings association. *See Williams v. Federal Deposit Insurance Corporation*, No. 11-35812, 2012 WL 3939964 (9th Cir. Sept. 11, 2012).

26. These regulations were specifically designed to, among other things, prevent employees of a failed or failing financial institution and its parent holding company from collecting golden parachute payments while creditors and depositors were at risk of losing their claims and deposits from such institutions. Thus, each of the claims should be disallowed in part or in whole based on the application of such regulations.

27. In support of the foregoing, WMILT relies on the *Declaration of John Maciel Pursuant to Local Rule 3007-1 in Support of the WMI Liquidating Trust's Eightieth Omnibus (Substantive) Objection to Claims*, dated as of August 15, 2012, attached hereto as Exhibit E.

28. Nothing contained in this Eightieth Omnibus Objection shall be, or shall be deemed to be, a determination that JPMC or any of its affiliates or subsidiaries, WMB or any

of WMB's subsidiaries, or any person other than the Debtors is or is not liable or responsible in any way for any of the claims that are subject to this Eightieth Omnibus Objection.

Notice

29. Notice of this Eightieth Omnibus Objection has been provided to: (i) the U.S. Trustee, (ii) those parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, and (iii) each holder of a claim objected to herein. In light of the nature of the relief requested, WMILT submits that no other or further notice need be provided.

30. Pursuant to Bankruptcy Rule 3007, WMILT has provided all claimants affected by the Eightieth Omnibus Objection with at least thirty (30) days' notice of the hearing to consider the Eightieth Omnibus Objection.

Statement of Compliance with Local Rule 3007-1

31. The undersigned representative of Richards, Layton & Finger, P.A. ("RLF") certifies that he has reviewed the requirements of Local Rule 3007-1 and that the Eightieth Omnibus Objection substantially complies with that Local Rule. To the extent that the Eightieth Omnibus Objection does not comply in all respects with the requirements of Local Rule 3007-1, RLF believes such deviations are not material and respectfully requests that any such requirement be waived.

WHEREFORE WMILT respectfully requests that the Court enter an order granting (i) the relief requested herein and (ii) such other and further relief as is just.

Dated: March ___, 2013
Wilmington, Delaware

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EXHIBIT E

Amended Eighty-First Omnibus Objection

PLEASE CAREFULLY REVIEW THIS OBJECTION AND THE ATTACHMENTS HERETO TO DETERMINE WHETHER THIS OBJECTION AFFECTS YOUR CLAIMS

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Hearing Date:**
	:	**Response Deadline:**

WMI LIQUIDATING TRUST'S AMENDED EIGHTY-FIRST OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS

WMI Liquidating Trust ("WMILT"), as successor in interest to Washington Mutual, Inc. ("WMI") and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the "Debtors"), pursuant to section 502 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), files this amended eighty-first omnibus substantive objection (the "Eighty-First Omnibus Objection") to those claims listed on Exhibits A, B, and C hereto, and in support of the Eighty-First Omnibus Objection, respectfully represents as follows:

[1] The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMILT, as defined herein, are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

Jurisdiction

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

Background

2. On September 26, 2008 (the "Commencement Date"), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code.

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

WMI's Business and JPMC

4. Prior to the Commencement Date, WMI operated as a savings and loan holding company that owned Washington Mutual Bank ("WMB") and, indirectly, such bank's subsidiaries, including Washington Mutual Bank fsb ("WMBfsb"). Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the "OTS"). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI's banking and nonbanking subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation ("FDIC").

5. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB (the "Bank Seizure") and advised that the receiver

was immediately taking possession of WMB (the "Receivership"). Immediately after its appointment as receiver, the FDIC purportedly sold substantially all the assets of WMB, including the stock of WMBfsb (the "JPMC Transaction"), to JPMorgan Chase Bank, National Association ("JPMC") pursuant to that certain *Purchase and Assumption Agreement, Whole Bank*, dated as of September 25, 2008 (the "Purchase Agreement").

The Bar Date and Schedules

6. On December 19, 2008, the Debtors filed with the Court their schedules of assets and liabilities and their statements of financial affairs. On January 27, 2009, and February 24, 2009, WMI filed with the Court its first and second, respectively, amended schedule of assets and liabilities and its first and second, respectively, amended statements of financial affairs. On January 14, 2010, WMI filed a further amendment to its statement of financial affairs (collectively, the "Schedules").

7. By order, dated January 30, 2009 (the "Bar Date Order"), the Court established March 31, 2009 (the "Bar Date") as the deadline for filing proofs of claim against the Debtors in these chapter 11 cases. Pursuant to the Bar Date Order, each creditor, subject to certain limited exceptions, was required to file a proof of claim on or before the Bar Date.

8. In accordance with the Bar Date Order, Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' court-appointed claims and noticing agent, mailed notices of the Bar Date and proof of claim forms to, among others, all of the Debtors' creditors and other known holders of claims as of the Commencement Date. Notice of the Bar Date also was published once in *The New York Times (National Edition), The Wall Street Journal, The Seattle Times*, and *The Seattle Post-Intelligencer*.

Proofs of Claim

9. Over 4,000 proofs of claim have been filed in these chapter 11 cases. WMILT is in the process of reviewing and reconciling the filed proofs of claim. To date, approximately 3,100 claims have been disallowed or withdrawn.

10. As part of their ongoing review, WMILT has reviewed each of the proofs of claim listed on Exhibits A, B, and C hereto and has concluded that each such claim is appropriately objected to on the basis set forth below.

Objection to Wrong Party Claims

11. Local Rule 3007-1 allows a debtor to file an omnibus objection to proofs of claim on substantive grounds. Omnibus substantive objections must include sufficient detail as to why each claim should be disallowed and must be limited to no more than 150 claims. *See* Local Rule 3007-1(f)(i). The following omnibus objection complies with Local Rule 3007-1(f)(i) as well as the other requirements of Local Rule 3007.

12. The majority of the claims objected to herein consist of multiple components. Subject to certain limited exceptions, WMILT requests the Court to disallow each of the claim components in their entirety, such that the majority of the claims objected to herein are disallowed in their entirety. To the extent WMILT does not object to certain components, leaving an allowed amount of a particular claim, WMILT requests that the Court reduce and allow such claims as set forth herein.

I. Exhibit A (JPMC Settlement Claims / Other Components)

13. The Debtors and JPMC, among others, are parties to that certain *Second Amended and Restated Settlement Agreement,* dated as of February 7, 2011 (as amended, the

"Amended Settlement Agreement"),[2] which became effective on March 19, 2012, upon the consummation of the transactions contemplated by the Plan. Claims that arise from (a) the WMI Medical Plan, (b) JPMC Rabbi Trusts, (c) Benefit Plans listed on Exhibit P to the Amended Settlement Agreement, or (d) Qualified Plans (collectively, the "JPMC Settlement Claims"), for all of which WMI has assigned its rights and obligations to JPMC pursuant to the Amended Settlement Agreement, are claims to which the Debtors have no legal obligation and for which the Debtors' books and records do not indicate a corresponding obligation owed to such claimant.

14. Specifically, pursuant to section 2.8 of the Amended Settlement Agreement, JPMC has reviewed its duties, responsibilities, liabilities and obligations associated with sponsorship responsibilities and liabilities of the WMI Medical Plan and the employee welfare plan and arrangement obligations as set forth on Exhibit L to the Amended Settlement Agreement (the "WMI Medical Plan Claims"), and the WMI Medical Plan Claims have been satisfied pursuant to and consistent with the terms of the Amended Settlement Agreement and Plan to the extent that they are valid obligations under the WMI Medical Plan. Additionally, pursuant to section 2.9(a) of the Amended Settlement Agreement, with respect to the Claims listed on Schedules 2.9(a) and 2.9(c) to the Amended Settlement Agreement (the "JPMC Rabbi Trust / Benefit Plan Claims"), JPMC has reviewed its obligations to pay or provide any and all benefits with respect to the arrangements that are identified on Exhibit P to the Amended Settlement Agreement, and the JPMC Rabbi Trust / Benefit Plan Claims have been satisfied pursuant to and consistent with the terms of the Amended Settlement Agreement and Plan to the extent that they are valid obligations relating to the JPMC Rabbi Trusts or the Benefit Plans

[2] Capitalized terms used, but not defined, herein shall have the meaning ascribed to them in the Plan, or if not defined therein, the Amended Settlement Agreement.

listed on Exhibit P to the Amended Settlement Agreement. Finally, pursuant to section 2.10 of the Amended Settlement Agreement, with respect to the Claims listed on Schedule 2.10 to the Amended Settlement Agreement (the "Qualified Plan Claims"), JPMC has reviewed its duties, responsibilities, liabilities and obligations associated with sponsorship responsibilities and liabilities of the Qualified Plans, and the Qualified Claims have been satisfied pursuant to and consistent with the Amended Settlement Agreement and Plan to the extent that they are valid obligations under the Qualified Plan. For these reasons, WMILT requests that all JPMC Settlement Claims be disallowed. Objections to similar claims were asserted, and granted by this Court, in the Debtors' *Seventy-Fifth*, *Seventy-Sixth*, and *Seventy-Seventh Omnibus Claims Objections*.

15. Each of the claims in Exhibit H hereto consists of multiple components: (1) a component arising from (a) the WMI Medical Plan, (b) JPMC Rabbi Trusts, (c) Benefit Plans listed on Exhibit P to the Amended Settlement Agreement, or (d) Qualified Plans (collectively, the "JPMC Settlement Components"); (2) in some cases, a component (the "Wrong Party Component") arising from retention bonus agreements or Change in Control Agreements (together, the "WMB Employee Agreements") between the claimant and WMB, *not* WMI; (3) in some cases, a component arising from the Washington Mutual Inc. Deferred Compensation Plan (the "DCP"), the Washington Mutual Inc. Supplemental Executive Retirement Plan, amended and restated effective as of July 20, 2004 (the "SERP"), or both (the "Assigned Claim Component"); (4) in one case, a component arising from an Employment Agreement entered into between the claimant and Commercial Capital Bank, FSB and/or Commercial Capital Bancorp ("CCB"), which provision provides for CCB to provide for medical benefits programs for a period of time following the claimant's termination by CCB (the "Medical Reimbursement

Component"); (5) in one case, a component (the "Providian Component") arising from a Change of Control Employment Agreement entered into between the claimant and Providian Financial Corporation ("PFC"); and (6) in two cases, a component (the "Unvested SERAP Component") relating to unvested account balances in the WMI Supplemental Executive Retirement Accumulation Plan (the "SERAP").

16. With respect to the JPMC Settlement Component, WMILT requests that such components should be disallowed, for the reasons set forth above.

17. With respect to the Wrong Party Components, because neither of the Debtors was a party to such agreements, WMILT requests that such claims be disallowed in their entirety. Objections to similar claims were asserted, and granted by this Court, in the Debtors' *Fifth* and *Sixth Omnibus Claims Objections*.

18. Should the Court find that WMILT were liable with respect to the WMB Retention Bonus Agreements and WMB CIC Agreements notwithstanding that neither Debtor is a party to the applicable agreements, WMILT asserts that it is not liable for any "change in control" payments or other benefits pursuant to the WMB Retention Bonus Agreements or WMB CIC Agreements.[3] First, with respect to payments triggered or accelerated upon a "change of control," WMILT asserts that no "change in control," as defined in the respective agreements, occurred. For example, neither the Bank Seizure nor the JPMC Transaction constituted a "Change in Control" within the definition of "Change in Control" in the WMB Retention Bonus Agreements and the WMB CIC Agreements, which is a sale of all or substantially all of WMI's assets.[4] Indeed, none of WMI's assets, which, in September 2008, included, among other things,

[3] WMILT expressly reserves its right to fully brief these issues should such briefing be required.

[4] *See* WMB CIC Agreement, at § 5(g)(5) ("For purposes of this Agreement, "Change in Control" shall mean: . . . The sale or transfer (in one transaction or a series of related transactions) of all or substantially all of . .

its equity interest in WMB, were transferred or sold to the FDIC or to JPMC, as the case may be, pursuant to the Bank Seizure or JPMC Transaction. Thus, no "Change in Control" occurred pursuant to the terms of the WMB Retention Bonus Agreements or the WMB CIC Agreements and, accordingly, WMILT's liability for "change in control" payments, or other benefits, pursuant to such agreements has not been triggered *See Williams v. McGreevey (In re Touch Am. Holdings, Inc.)*, 401 B.R. 107, 126 (Bankr. D. Del. 2009) ("It is well recognized that 'a corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary.'") (quoting *Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003))). Moreover, even if WMB's assets could fall within the plain meaning of "Washington Mutual Inc.'s assets" pursuant to the WMB Retention Bonus Agreements or the WMB CIC Agreements, the assets of WMB did not constitute "all or substantially all" of WMI's assets. Second, the claimants are not entitled to other payments or benefits pursuant to the WMB Retention Bonus Agreements because the claimants otherwise failed to satisfy the eligibility requirements pursuant to the respective documents.[5] Accordingly, even if this Court were to find that such claimants can seek a recovery from WMILT, such recovery should nonetheless be barred because, among other things, the contractual predicates to payment in the respective agreements have not been met

19. Additionally, even if the Court were to determine that (a) WMILT were liable for and on behalf of WMB **and** (b) a "Change in Control" has occurred pursuant to the

.[Washington Mutual, Inc.'s] assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary."); WMB Retention Bonus Agreement (cross-referencing the definition of "change in control" found in the recipient's WMB CIC Agreement).

[5] For example, certain WMB Retention Bonus Agreements state that the "employment requirement" is waived to the extent the claimant experienced a job elimination pursuant to the WaMu Severance Plan. WMILT submits that the applicable claimants are ineligible for benefits pursuant to the WMB Retention Bonus Agreements because they did not experience a "job elimination" pursuant to the WaMu Severance Plan by virtue of a "change in control" or otherwise.

terms of the WMB CIC Agreements, the allowed amounts of such claims are subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because the Wrong Party Components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7). Section 502(b)(7) of the Bankruptcy Code addresses the maximum allowable claim of an employee under a terminated employment contract and provides that the court shall disallow:

> [a] claim of an employee for damages resulting from the termination of an employment contract, [to the extent] such claim exceeds (A) the compensation provided by such contract, without acceleration, for one year following the earlier of – the date of the filing of the petition; or (ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus (B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates.

11 U.S.C. § 502(b)(7). This Court and others have found that claims for severance payments, including "change in control" payments, are subject to the limitation in section 502(b)(7). *See, e.g., In re VeraSun Energy Corp.*, 467 B.R. 757 (Bankr. D. Del. 2012); *Protarga Inc. v. Webb (In re Protarga Inc.)*, 329 B.R. 451, 465-66 (Bankr D. Del. 2005); *In re Dornier Aviation (N. Am.), Inc.*, 305 B.R. 650, 653-56 (E.D. Va. 2004); *see also Bitters v. Networks Elecs. Corp. (In re Networks Elecs. Corp.)*, 195 B.R. 92, 100 (B.A.P. 9th Cir. 1996) ("The purpose of § 502(b)(7) is to protect the employer/debtor from valid employee claims which would unreasonably compromise the debtor's fresh start, and work to the detriment of other creditors."). Additionally, WMILT is entitled to a credit for any severance payments or other relevant benefits actually received by the claimant from JPMC on account of such claimants' employment with WMB. *See Skidmore, Owings*, 1997 WL 563159, at *6; *Barney*, 869 P.2d at 1094; *see also* WMB CIC Agreement § 5(c); *see generally id.* As such, any liability pursuant to

the WMB Retention Bonus Agreements or the WMB CIC Agreements, and WMILT submits that there is none, should be significantly reduced.

20. With respect to the Assigned Claim Component of each such claim, pursuant to assignment agreements, the claimants received payments on account of the DCP and/or SERP liabilities from JPMC and, in exchange therefor, each claimant assigned all of their claims related to their participation in the DCP and/or SERP, including any proof of claim, together with the assignment of any voting and other rights and benefits which existed at the time of such agreement or in the future come into existence or are paid or issued by the Debtor or any other party, directly or indirectly, in connection or satisfaction of the claim, to JPMC. And, pursuant to the Amended Settlement Agreement, which agreement became effective on March 19, 2012, upon the consummation of the transactions contemplated by the Plan, and a copy of which is annexed to the Plan as Exhibit H, each of the Assigned Claims were waived by JPMC. Therefore, with respect to the Assigned Claim Component of each such claim, WMILT requests that such components should be disallowed. Objections to similar claims arising from the WMI SERP were asserted, and granted by the court, pursuant to the *Thirty-Sixth* and *Fifty-Third Omnibus Claims Objections*.

21. With respect to the Medical Reimbursement Component and Providian Component of each claim, both PFC and CCB were acquired and eventually merged into WMB, with the liabilities asserted in the claims on Exhibit A eventually accruing to WMB and not WMI. Thus, WMILT requests that such components be disallowed in their entirety.

22. With respect to the Unvested SERAP Component of each such claim, such components are based upon account balances in the SERAP, but WMILT's books and records show that no amount in the claimants' SERAP account had vested as of the Commencement

Date. Benefits under the SERAP were made according to a set schedule that correlates years of executive service with benefits. These accounts vested 25% once 2 years of executive service had been completed and increased by 25% for each additional year of executive service up to 100%. Objections to similar claims arising from unvested SERAP account balances were asserted, and granted by the court, pursuant to the *Fifty-Third Omnibus Claims Objections*.[6] Accordingly, WMILT requests that the Court disallow the Unvested SERAP Components of such claims as well, such that all claims listed on Exhibit A are disallowed in their entirety.

II. Exhibit B (JPMC Settlement Claims / Other Components / SERAP Claims)

23. The claims in Exhibit B hereto consist of multiple components: (1) a JPMC Settlement Component; (2) a Wrong Party Component; and (3) a SERAP Component. With respect to the JPMC Settlement Component and Wrong Party Component of each such claim, WMILT requests that such components should be disallowed, for the reasons set forth above.

24. For each such claim, with respect to the SERAP Component, WMILT's books and records indicate a corresponding obligation owed to such claimants with respect to the SERAP, and WMILT seeks to allow these portions of the claims as general unsecured claims in the amounts reflected in WMILT's books and records, as set forth in Exhibit B.

III. Exhibit C (Miscellaneous WMB Employee Claims)

25. The claims in Exhibit C hereto are miscellaneous claims to which the Debtors have no legal obligation and for which WMILT's books and records do not indicate a corresponding obligation owed to such claimant, for the reasons set forth in Exhibit C. For most

[6] It should also be noted that one claimant asserts that her unvested SERAP balance vested because of a change in control. None of the operating documents for the SERAP provide for any such immediate vesting of any unvested balances should a change in control have occurred. Additionally, as noted above, WMILT submits that no such change in control has occurred.

of the claims on Exhibit C, WMILT's records show that such claims have been filed by former WMB employees. Additionally, as set forth in Exhibit C, many of the claimants have provided no supporting detail to substantiate, or otherwise establish the prima facie validity of, the these claims, and the Debtors' efforts to obtain any supporting detail from such claimants have been unsuccessful. As such, WMILT requests that the Court disallow the claims listed in Exhibit C hereto in their entirety.

VI. Disallowance by Operation of Applicable Nonbankruptcy Law

26. Many of the claims asserted by the claimants are also subject to disallowance as a result of the operation of 12 C.F.R. § 163.39 and/or 12 C.F.R. § 359, as applicable. *See* 12 U.S.C. § 1828(k); 12 C.F.R. § 163.39, *et seq.* (formerly 12 C.F.R. § 563.39, *et seq.*); 12 C.F.R. § 359, *et seq*. Section 359.2 provides that "[n]o insured depository institution or depository institution holding company shall make or agree to make any golden parachute payment . . . ." Section 359.1(f), subject to certain exceptions, generally defines a golden parachute payment as "any payment . . . in the nature of compensation" by an insured depository institution or an affiliated holding company for the benefit of an employee that is contingent or is payable upon termination and is made in contemplation of, among other things, the insolvency of the insured depository institution or the appointment of a receiver.

27. Further, 12 C.F.R. § 163.39(b) provides that an employment contract shall terminate upon the default of a savings association. *See Williams v. Federal Deposit Insurance Corporation*, No. 11-35812, 2012 WL 3939964 (9th Cir. Sept. 11, 2012).

28. These regulations were specifically designed to, among other things, prevent employees of a failed or failing financial institution and its parent holding company from collecting golden parachute payments while creditors and depositors were at risk of losing their

claims and deposits from such institutions. Thus, each of the claims should be disallowed in part or in whole based on the application of such regulations.

29. In support of the foregoing, WMILT relies on the *Declaration of John Maciel Pursuant to Local Rule 3007-1 in Support of the WMI Liquidating Trust's Eighty-First Omnibus (Substantive) Objection to Claims*, dated as of August 15, 2012, attached hereto as Exhibit D.

30. Nothing contained in this Eighty-First Omnibus Objection shall be, or shall be deemed to be, a determination that JPMC or any of its affiliates or subsidiaries, WMB or any of WMB's subsidiaries, or any person other than the Debtors is or is not liable or responsible in any way for any of the claims that are subject to this Eighty-First Omnibus Objection.

Notice

31. Notice of this Eighty-First Omnibus Objection has been provided to: (i) the U.S. Trustee, (ii) those parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, and (iii) each holder of a claim objected to herein. In light of the nature of the relief requested, WMILT submits that no other or further notice need be provided.

32. Pursuant to Bankruptcy Rule 3007, WMILT has provided all claimants affected by the Eighty-First Omnibus Objection with at least thirty (30) days' notice of the hearing to consider the Eighty-First Omnibus Objection.

Statement of Compliance with Local Rule 3007-1

33. The undersigned representative of Richards, Layton & Finger, P.A. ("RLF") certifies that he has reviewed the requirements of Local Rule 3007-1 and that the Eighty-First Omnibus Objection substantially complies with that Local Rule. To the extent that the Eighty-First Omnibus Objection does not comply in all respects with the requirements of

Local Rule 3007-1, RLF believes such deviations are not material and respectfully requests that any such requirement be waived.

WHEREFORE WMILT respectfully requests that the Court enter an order granting (i) the relief requested herein and (ii) such other and further relief as is just.

Dated: March __, 2013
Wilmington, Delaware

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EXHIBIT F

Amended Eighty-Second Omnibus Objection

PLEASE CAREFULLY REVIEW THIS OBJECTION AND THE ATTACHMENTS HERETO TO DETERMINE WHETHER THIS OBJECTION AFFECTS YOUR CLAIMS

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Hearing Date:**
	:	**Response Deadline:**

WMI LIQUIDATING TRUST'S AMENDED EIGHTY-SECOND OMNIBUS (SUBSTANTIVE) OBJECTION TO CHANGE IN CONTROL CLAIMS

WMI Liquidating Trust ("WMILT"), as successor in interest to Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment"), formerly debtors and debtors in possession (collectively, the "Debtors"), pursuant to section 502 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), files this amended eighty-second omnibus substantive objection (the "Eighty-Second Omnibus Objection") to those Claims[2] listed on Exhibits A (Disallowed Claims) and B (Reduce and Allowed Claims) hereto, and in support of the Eighty-Second Omnibus Objection, respectfully represents as follows:

[1] The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMILT, as defined herein, are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Plan (as defined herein).

Jurisdiction

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

Background

2. On September 26, 2008 (the "Commencement Date"), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code.

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

WMI's Business and JPMC

4. Prior to the Commencement Date, WMI operated as a savings and loan holding company that owned Washington Mutual Bank ("WMB") and, indirectly, such bank's subsidiaries, including Washington Mutual Bank fsb ("WMBfsb"). Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the "OTS"). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI's banking and nonbanking subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation ("FDIC").

5. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB and advised that the receiver was immediately taking possession of WMB (the "Bank Seizure"). Immediately after its appointment as receiver,

the FDIC purportedly sold substantially all the assets of WMB, including the stock of WMBfsb (the "JPMC Transaction"), to JPMorgan Chase Bank, National Association ("JPMC") pursuant to that certain *Purchase and Assumption Agreement, Whole Bank*, dated as of September 25, 2008 (the "Purchase Agreement").

The Bar Date and Schedules

6. On December 19, 2008, the Debtors filed with the Court their schedules of assets and liabilities and their statements of financial affairs. On January 27, 2009, and February 24, 2009, WMI filed with the Court its first and second, respectively, amended schedule of assets and liabilities and its first and second, respectively, amended statements of financial affairs. On January 14, 2010, WMI filed a further amendment to its statement of financial affairs (collectively, the "Schedules").

7. By order, dated January 30, 2009 (the "Bar Date Order"), the Court established March 31, 2009 (the "Bar Date") as the deadline for filing proofs of claim against the Debtors in these chapter 11 cases. Pursuant to the Bar Date Order, each creditor, subject to certain limited exceptions, was required to file a proof of claim on or before the Bar Date.

8. In accordance with the Bar Date Order, Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' court-appointed claims and noticing agent, mailed notices of the Bar Date and proof of claim forms to, among others, all of the Debtors' creditors and other known holders of claims as of the Commencement Date. Notice of the Bar Date also was published once in *The New York Times (National Edition), The Wall Street Journal, The Seattle Times*, and *The Seattle Post-Intelligencer*.

Proofs of Claim

9. Over 4,000 proofs of claim have been filed in these chapter 11 cases. WMILT is in the process of reviewing and reconciling the filed proofs of claim. To date, approximately 3,100 claims have been disallowed or withdrawn.

10. As part of their ongoing review, WMILT has reviewed each of the proofs of claim listed on Exhibits A and B hereto and has concluded that each such claim is appropriately objected to on the bases set forth below.

Objection to Change in Control Claims

11. Local Rule 3007-1 allows a debtor to file an omnibus objection to proofs of claim on substantive grounds. Omnibus substantive objections must include sufficient detail as to why each claim should be disallowed and must be limited to no more than 150 claims. *See* Local Rule 3007-1(f)(i). The following omnibus objection complies with Local Rule 3007-1(f)(i) as well as the other requirements of Local Rule 3007.

12. The majority of the "change in control" claims objected to herein (the "CIC Claims") consist of multiple components. Subject to certain limited exceptions, WMILT requests the Court disallow each of the claim components in their entirety, such that the majority of the claims objected to herein are disallowed in their entirety. To the extent WMILT does not object to certain components, leaving an allowed amount of a particular CIC Claim, WMILT requests that the Court reduce and allow such CIC Claims as set forth herein.

I. Change in Control Components

13. Each of the CIC Claims asserts a claim pursuant to the "change in control" provisions in one or more employment or employee benefits-related document naming WMI as the contract counterparty or, where applicable, the plan sponsor (collectively, the "WMI CIC Documents"). The WMI CIC Documents include: (i) certain individual "change in control" agreements or other employment agreements entered into between WMI and the respective claimant in connection with such claimant's former employment with WMI (collectively, the "Individual WMI Agreements"); (ii) the Washington Mutual, Inc. Executive Target Retirement Income Plan (the "ETRIP"), an unfunded plan designed primarily to provide deferred compensation benefits to a select group of management and highly compensated employees;

(iii) the WaMu Severance Plan, effective January 1, 2008,[3] established by WMI to provide benefits to eligible employees of WMI and its subsidiaries and affiliates in the event of a job elimination pursuant to the terms and conditions contained therein; (iv) certain individual cash long-term incentive award agreements (the "Cash LTI Agreements") entered into between the claimant and WMI; and (v) certain individual retention bonus agreements (the "WMI Retention Bonus Agreements") entered into between the claimant and WMI.

14. To the extent a CIC Claim asserts liability pursuant to the respective "change in control" provisions of the WMI CIC Documents (collectively, the "Change in Control Components"), WMILT objects to the CIC Claims on the ground that no "Change in Control," as such term is defined in the respective WMI CIC Documents, has occurred. Accordingly, WMILT is not liable for "change in control" payments or other benefits that are triggered or accelerated by a "change in control" pursuant to the terms of any of the WMI CIC Documents. Specific objections with respect to each of the WMI CIC Documents are set forth below.

Individual WMI Agreement Component

15. WMILT objects to the Change in Control Components arising from the terms of the Individual WMI Agreements (the "Individual WMI Agreement Component"). In particular, various CIC Claims allege that the Bank Seizure and the JPMC Transaction constituted a "Change in Control" pursuant to the terms of the Individual WMI Agreements. The Individual WMI Agreements define "Change in Control" as, among other things, "[t]he sale or

[3] In accordance with Section 7.1of the WaMu Severance Plan, which authorized WMI or the Plan Administrative Committee (appointed by the Human Resources Committee of WMI's Board of Directors, the "PAC") to amend or terminate the WaMu Severance Plan "at any time when, it its judgment, such amendment or termination is necessary or desirable" (provided that such amendment or termination did not affect the rights of any individual then entitled to receive severance pay), the PAC adopted a resolution ratifying, confirming and approving the termination of the WaMu Severance Plan, effective as of September 25, 2008, pursuant to that certain Unanimous Written Consent in Lieu of Special Meeting of the Washington Mutual, Inc. Plan Administration Committee, dated April 19, 2011 (the "Severance Plan PAC Consent"). Thereafter, pursuant to that certain Written Consent to Action of the Operations Committee of the Board of Directors of Washington Mutual, Inc. in Lieu of a Special Meeting, dated April 29, 2011, the operations committee of WMI's Board of Directors adopted resolutions that, among other things, ratified, confirmed, and approved termination of the Severance Plan as of September 25, 2008.

transfer (in one transaction or a series of related transactions) of all or substantially all of Washington Mutual's assets to another Person[4] (other than a Subsidiary[5]) whether assisted or unassisted, voluntary or involuntary." Sample Individual WMI Agreement § 11(e), attached hereto as Exhibit C. The term "Washington Mutual," as used in the Individual WMI Agreements, is defined as "Washington Mutual, Inc., a Washington corporation." Exhibit C, Sample Individual WMI Agreement. Neither the Bank Seizure nor the JPMC Transaction constituted a "Change of Control" within the meaning of Section 11(e) of the Individual WMI Agreements, or any other provision of the Individual WMI Agreements.[6] Indeed, none of WMI's assets, which, in September 2008, included, among other things, its equity interest in WMB, were transferred or sold to the FDIC or to JPMC pursuant to the Bank Seizure or JPMC Transaction. *See In re Touch Am. Holdings, Inc.*, 401 B.R. 107, 126 (Bankr. D. Del. 2009) ("It is well recognized that 'a corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary.'") (citing *Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003))). Moreover, even if WMB's assets could fall within the plain meaning of "Washington Mutual's assets," as such phrase is used in the Individual WMI Agreements, the assets of WMB did not constitute "all or substantially all" of WMI's assets. Thus, no "Change in Control" occurred pursuant to the terms of the Individual WMI Agreements and, accordingly, WMILT's liability for "change in control" payments pursuant to the Individual

[4] Pursuant to Section 11(f) of the Individual WMI Agreements, "'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)." Sample Individual WMI Agreement § 11(f).

[5] Pursuant to Section 11(g) of the Individual WMI Agreements, "'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." Sample Individual WMI Agreement § 11(g).

[6] For example, WMILT submits that WMI's Board of Directors never made a "good faith determination that any Person or group . . . 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" as required by the definition of "Change in Control" in Section 11(c) of the Individual WMI Agreement. *See* Sample Individual WMI Agreement § 11(c).

WMI Agreements has not been triggered. *See* Exhibit C, Sample Individual WMI Agreement § 6(c) (requiring termination of employment or resignation for "good cause" *upon or within three years after a "Change in Control"* to trigger WMI's liability pursuant to the terms of the agreement). Based on the foregoing, WMILT requests that the Court disallow the Individual WMI Agreement Component of the claims set forth on Exhibits A and B hereto.

16. Even if the Court were to determine that a "Change in Control" has occurred pursuant to the terms of the Individual WMI Agreements, the allowed amounts of the Individual WMI Agreement Components are subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because the Individual WMI Agreement Components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7). Section 502(b)(7) of the Bankruptcy Code addresses the maximum allowable claim of an employee under a terminated employment contract and provides that the court shall disallow a:

> claim of an employee for damages resulting from the termination of an employment contract, [to the extent] such claim exceeds (A) the compensation provided by such contract, without acceleration, for one year following the earlier of – the date of the filing of the petition; or (ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus (B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates.

11 U.S.C. § 502(b)(7). This Court and others have found that claims for severance payments, including "change in control" payments, are subject to the limitation in section 502(b)(7). *See, e.g.*, *In re VeraSun Energy Corp.*, 467 B.R. 757 (Bankr. D. Del. 2012); *Protarga Inc. v. Webb (In re Protarga Inc.)*, 329 B.R. 451, 465 (Bankr D. Del. 2005); *In re Dornier Aviation (N. Am.), Inc.*, 305 B.R. 650, 653-64 (E.D. Va. 2004); *see also In re Networks Elecs. Corp.*, 195 B.R. 92, 100 (B.A.P. 9th Cir. 1996) ("The purpose of § 502(b)(7) is to protect the employer/debtor from valid employee claims which would unreasonably compromise the debtor's fresh start, and work to the

detriment of other creditors."). As such, any liability pursuant to the Individual WMI Agreements—and WMILT submits that there is none—should be significantly reduced.

17. Furthermore, upon information and belief, certain of the claimants with Individual WMI Agreement Components received severance payments from JPMC and, accordingly, pursuant to Section 6(c) of the Individual WMI Agreements, their claims should be reduced by the amount of such severance benefits received. *See* Exhibit C, Sample Individual WMI Agreement § 6(c)(1) ("[T]he amount paid to employee under this Section 6(c) shall be offset by any payment received by Employee from the Company[7] or any acquired company pursuant to: (i) a severance or change in control agreement, arrangement or plan . . . .").[8] And, even if WMILT were not entitled to a contractual offset for payments received by the claimants from JPMC, WMILT is otherwise entitled to a credit against its liability on the Individual WMI Agreement Components for severance payments or other benefits received by the claimants from JPMC. *See Skidmore, Owings & Merrill v. Intrawest I L.P.*, 1997 WL 563159, at *6 (Wash. App. Div. 1997) ("Washington law [holds] that a party who breaches a contract is not liable for damages that are mitigated or recovered from other sources."); *Barney v. Safeco Ins. Co. of Am.*, 869 P.2d 1093, 1094 (Wash. App. Div. 2 1994), *overruled on other grounds, Price v. Farmers Ins. Co. of Wash.*, 946 P.2d 388 (Wash. 1997) (explaining that there is a general public policy against "double recovery" of damages in lawsuits).

ETRIP Components

18. Certain of the CIC Claims assert liability pursuant to the "change in control" provisions of the ETRIP (the "ETRIP CIC Component"), and allege that the Bank

[7] Pursuant to the Individual WMI Agreements, "[t]he term 'Company' shall mean Washington Mutual and any successor after a Change in Control . . . ." Sample Individual WMI Agreement.

[8] Pursuant to Section 6(c) of the Individual WMI Agreements, WMILT is also entitled to an offset for any payments received by an employee pursuant to the Worker Adjustment and Retraining Notification Act (WARN Act) or any similar state or local law. Sample Individual WMI Agreement § 6(c)(1).

Seizure and JPMC Transaction constituted a "Change in Control" under the ETRIP.[9] *See* ETRIP, attached hereto as Exhibit D, at § 3.5 (providing that, upon a "Change in Control," a participant will be credited with certain additional deferred compensation benefits). The ETRIP's definition of "Change in Control" cross-references the definition of "Change in Control" found in the individual participant's "Employment Agreement," though the term "Employment Agreement" is not defined in the ETRIP. *See* ETRIP § 2.4. Upon information and belief, prior to 2005, WMI issued form documents entitled "Employment Agreement" to its employees, but ceased using such forms in 2005 and instead issued form documents entitled "Change in Control Agreement," although the terms of the "Change in Control Agreement" are substantially similar to the form entitled "Employment Agreement." All of the claimants with ETRIP CIC Components are parties to Individual WMI Agreements entitled "Change in Control Agreement." Thus, assuming the definition of "Change in Control" contained in the Individual WMI Agreements controls the meaning of such term in the ETRIP, WMILT submits that it is not liable for the ETRIP CIC Components for the reasons set forth above, and requests that the Court disallow such components as set forth on Exhibit B hereto.

19. Each of the claimants who have asserted ETRIP CIC Components in their respective proofs of claim, in addition to certain other claimants, also allege that he or she is entitled to payments pursuant to the ETRIP unrelated to the "change of control" provisions of the ETRIP (the "ETRIP Base Component"). WMILT does not object to the ETRIP Base Component of the CIC Claims and requests that such components be allowed in the amount reflected in WMILT's books and records, as set forth on Exhibit B.

[9] The ETRIP vests the plan administration committee with "absolute discretion in the exercise of its powers" under the ETRIP and gives such committee broad authority to interpret the provisions of the ETRIP, among other things. *See, e.g.*, ETRIP, Article 5.

WaMu Severance Plan Component

20. WMILT objects to the Change in Control Components arising from the WaMu Severance Plan (the "WaMu Severance Plan Components") on the ground that no "Change in Control," as such term is defined in the WaMu Severance Plan, occurred. The definition of "Change in Control" contained in the WaMu Severance Plan is substantially similar as the definition contained in the Individual WMI Agreements.[10] *See* WaMu Severance Plan § 1.5, attached hereto as Exhibit E. Accordingly, for the reasons set forth above, no "Change in Control" occurred pursuant to the terms of the WaMu Severance Plan.[11]

21. As a result, WMILT requests that the WaMu Severance Plan Components be disallowed in their entirety as set forth on Exhibit A. Claimants with WaMu Severance Plan Components are ineligible to receive "change in control" benefits under the WaMu Severance Plan because they did not experience a "Job Elimination" by virtue of a "Change in Control" pursuant to the terms of the WaMu Severance Plan. *See* WaMu Severance Plan § 2.1 (providing that an employee will be eligible for benefits "only if he: (a) experiences a Job Elimination; and (b) signs and returns a Severance Agreement"); *id.* at § 2.3 (defining "Job Elimination" and providing that "[f]or purposes of this section a Participant who is designated as a Level 6 employee will also be deemed to have experienced a job elimination if his employment is terminated for any reason other than for Cause within 18 months after a Change in Control").

22. In the alternative, WMILT objects that it is not liable for any payments pursuant to the WaMu Severance Plan because the claimants with WaMu Severance Plan

[10] The definition of "Change in Control" in the WaMu Severance Plan refers directly to Washington Mutual, Inc., *see* WaMu Severance Plan § 1.5, whereas the definition in the Individual WMI Agreements refers to "Washington Mutual" throughout and defines "Washington Mutual" as Washington Mutual, Inc., *see* Sample Individual WMI Agreement § 11.

[11] Pursuant to the WaMu Severance Plan, "[t]he Plan Administrator shall be the Plan Administration Committee" and such committee has broad and absolute discretion to interpret the plan and make decisions regarding eligibility, among other things. *See, e.g.*, WaMu Severance Plan § 5, 7.

Components are otherwise ineligible to receive payments pursuant to the terms and conditions of such plan. In particular, Section 8.2 of the WaMu Severance Plan provides that: "[i]f a Participant is offered a position with another company that has purchased some or all of the assets of the Company or has purchased the stock of the Company or one of its affiliates or subsidiaries, the Participant will not be entitled to severance benefits under the Plan" provided that the job offered meets certain conditions contained in Sections 2.4(a) and 2.4(b) of the WaMu Severance Plan. WaMu Severance Plan §§ 8.2, 2.4. "Company," as defined in the WaMu Severance Plan, means "Washington Mutual, Inc. and its subsidiaries and affiliates." WaMu Severance Plan § 1.7. Upon information and belief, all of the CIC Claimants with WaMu Severance Plan Components were offered a position with JPMC, which purchased some of the assets of WMB, and the job offered satisfied the requirements of Sections 2.4(a) and 2.4(b) of the WaMu Severance Plan. Accordingly, such claimants are not eligible to receive severance payments pursuant to the WaMu Severance Plan.[12] *See id.* at § 8.2. Indeed, "[c]ircuit courts have held, *even in the absence of explicit terms in an employer's severance policy*, that employees re-hired by the purchasing firm did not qualify for severance benefits because they were not laid-off or terminated." *Kosswig v. Timken Co.*, No. 06 Viv. 499, 2007 WL 2320537, at *7 (D. Conn. Aug.10, 2007) (emphasis added) (collecting cases).

23. Moreover, WMILT is not liable on the WaMu Severance Plan Components to the extent any of the claimants failed to execute a "Severance Agreement," as required by Section 2.1 of the WaMu Severance Plan. *See* WaMu Severance Plan § 2.1 ("An Eligible Employee will be eligible for benefits under Section 3 only if he: (a) experiences a Job

[12] Furthermore, Section 2.2 of the WaMu Severance Plan provides that: "[a]n Eligible Employee is not eligible to receive benefits under this Plan if he is eligible to receive benefits or payments from any other severance plan, arrangement, agreement or program or if he has received such payment within the last two years from the Company or any Acquired Companies." WaMu Severance Plan § 2.2. Upon information and belief, each of the claimants with WaMu Severance Plan Components became eligible to receive severance benefits and, in fact, received certain severance benefits, pursuant to JPMC's severance plan (the "JPMC Severance Plan").

Elimination; and (b) signs and returns a Severance Agreement within 21 business days or within such other period or by such other date specified in the 'Notification.'"); *id.* at § 1.15 (defining "Severance Agreement" as "[a] written agreement provided by the Company by which a Participant releases any claims he might have against the Company in exchange for the benefits set forth in Section 3 which the Company is not otherwise obligated to provide.").

24. To the extent the Court determines that WMILT is liable to the claimants for "change in control" or other payments pursuant to the WaMu Severance Plan: (i) the allowed amounts of the WaMu Severance Plan Components are subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because the WaMu Severance Plan Components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7); and (ii) WMILT is entitled to a credit for any severance payments actually received by the claimant from JPMC. *See Skidmore, Owings*, 1997 WL 563159, at *6; *Barney*, 869 P.2d at 1094; *Harms v. Cavenham Forest Industries, Inc.*, 984 F.2d 686, 693 (5th Cir. 1993) (finding that beneficiaries were not entitled to certain severance benefits because it would result in a "double-recovery windfall—a result abhorred by ERISA").

Cash LTI Component

25. WMILT objects to the Change in Control Components arising from the Cash LTI Agreements (the "Cash LTI Components") on the ground that no "Change in Control," as such term is defined in the respective Cash LTI Agreements, occurred. As a result, the claimants fail to satisfy the eligibility requirements for payment pursuant to the Cash LTI Agreements. *See* Sample Cash LTI Agreement attached hereto as Exhibit F ("To earn the Cash LTI Award and receive a payment, you must remain continuously employed by the Company through each applicable anniversary date. . . . You must be employed on each anniversary date in order to receive each portion of the award. Vesting and payment of the Award will accelerate upon a 'Change in Control.'").

26. Pursuant to the individual Cash LTI Agreements, "Change in Control" has the meaning ascribed to such term in the "Form Change in Control Agreement for Senior Leaders." Sample Cash LTI Agreement.[13] Although the term "Senior Leaders" is not defined in the Cash LTI Agreements, upon information and belief, the quoted language refers to a form agreement entered into between WMB and WMB employees classified in Level 4 or Level 5 pursuant to WMB's employment scheme. As reflected in certain of the claimants' proofs of claim, the "change in control" agreements between WMB and its "Senior Leaders" contain substantially the same definition of "Change in Control" as the Individual WMI Agreements. Accordingly, for the reasons set forth above, no "Change in Control" occurred pursuant to the terms of the Cash LTI Agreements.

27. Based on the foregoing, and as reflected on Exhibits A and B, WMILT is not liable for the Cash LTI Components of the CIC Claims. In the absence of a "Change in Control," the vesting of the respective claimants' cash awards was not accelerated, and the claimants otherwise failed to satisfy the continuous employment eligibility requirement. *See* Sample Cash LTI Agreement ("Nothing in this letter is intended to suggest any guaranteed period of continued employment or any guarantee that you will be paid the Cash LTI Award. This letter merely sets forth the terms of the Cash LTI Award that may be paid to you for achievement of the stated criteria.").

28. Moreover, even if the Court were to find that WMILT is liable for payments pursuant to the terms of the Cash LTI Agreements, (i) the allowed amounts of the Cash LTI Components are subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because the Cash LTI Components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7); and (ii) certain of the claimants

[13] The Cash LTI Agreements provide the "Committee" with broad discretion to interpret the Cash LTI Agreements and to determine controversies arising thereunder. *See* Sample Cash LTI Agreement.

with Cash LTI Components received partial payment of their Cash LTI award from JPMC and, accordingly, their claims should be reduced by the amount of such partial payment to the extent their proofs of claim did not already deduct the amounts received from JPMC. *See Skidmore, Owings*, 1997 WL 563159, at *6; *Barney*, 869 P.2d at 1094.

WMI Retention Bonus Agreement Components

29. WMILT objects to the Change in Control Components arising from the WMI Retention Bonus Agreements (the "WMI Retention Bonus CIC Components"). In order to receive the bonus payments described in the WMI Retention Bonus Agreements, either the respective employee must satisfy the employment requirement set forth in the agreement by remaining an employee of WMI through a date certain, or such employment requirement may be deemed satisfied as a result of the occurrence of a "Change in Control." *See* Sample WMI Retention Bonus Agreement ("To receive the full amount of the bonus, you must remain an employee of the Company and continue to perform your job duties through . . . [a date certain]. The requirement that you remain an employee of the Company through [a date certain] is referred to as the 'Employment Requirement.' . . . You will be treated as having fulfilled the Employment Requirement if, within three years after a change in control, . . . your employment is terminated by the Company or a successor for any reason other than for cause . . . ."). WMILT asserts that no "Change in Control," as such term is defined in the respective WMI Retention Bonus Agreements, occurred. Because the claimants failed to otherwise satisfy the employment criteria set forth in their respective WMI Retention Bonus Agreements, the claimants are ineligible to receive the bonus payments described in such agreements. *See* Sample WMI Retention Bonus Agreement ("Nothing in this letter is intended to suggest any guaranteed period of continued employment or any guarantee that you will be paid the special bonus. This letter merely sets forth the terms of a special bonus that may be paid to you for achievement of the stated criteria.").

30. The individual WMI Retention Bonus Agreements define a "change in control" with a cross reference to "Section 5(g) of [the employee's] Change in Control ("CIC") Agreement." However, with respect to each of the two claimants with WMI Retention Bonus CIC Components, their Individual WMI Agreements contain "change in control" provisions in Sections 6 and 11, rather than Section 5(g). Nevertheless, should the definition of "Change in Control" found in the respective claimant's Individual WMI Agreement control the meaning of such term in the WMI Retention Bonus Agreements, for the reasons stated above, WMILT objects that no "change in control" occurred.

31. Accordingly, the WMI Retention Bonus CIC Components should be disallowed to the extent set forth on Exhibit B. In the absence of a "Change in Control" pursuant to the WMI Retention Bonus Agreements, the applicable claimants failed to satisfy the requisite "employment requirement" pursuant to the WMI Retention Bonus Agreements and are ineligible to receive the bonuses described therein.

32. Moreover, WMILT objects to Claim No. 985, listed on Exhibit A hereto, asserting liability arising from Anthony Vuoto's WMI Retention Bonus Agreement, which agreement does not contain any "change in control" provision (the "Other WMI Retention Bonus Component"). WMILT objects that Mr. Vuoto is not entitled to payment pursuant to his WMI Retention Bonus Agreement because Mr. Vuoto did not satisfy the requirement that he remain an employee of WMI through February 28, 2010. The letter agreement specifically states that "[y]our employment will continue to be terminable by you or the company at will, without cause or advance notice. Nothing in this letter is intended to suggest any guaranteed period of continued employment or any guarantee that you will be paid the special bonus. This letter merely sets forth the terms of a special bonus that may be paid to you for achievement of the stated criteria." WMILT is not liable for the Other WMI Retention Bonus Component because

Mr. Vuoto has failed to achieve the stated employment criteria and, therefore, is ineligible to receive his retention bonus.

II. Wrong Party Components

33. Certain of the CIC Claims objected to herein assert liability for "change in control" or other benefits pursuant to certain retention bonus agreements (the "WMB Retention Bonus Agreements"),[14] "change in control" agreements (the "WMB CIC Agreements"),[15] or signing bonus agreements between the respective claimant and WMB, *not* WMI (collectively, the "Wrong Party Components"). Because neither Debtor is a party to the respective agreements that form the basis of the Wrong Party Components, WMILT has no liability with respect thereto. Accordingly, the Wrong Party Components of the CIC claims, as set forth on Exhibits A and B, should be disallowed and expunged in their entirety.

34. Should the Court find that WMILT is liable with respect to the Wrong Party Components notwithstanding that neither Debtor is a party to the applicable agreements, WMILT asserts that it is not liable for any "change in control" payments or other benefits pursuant to the WMB Retention Bonus Agreements or WMB CIC Agreements.[16] First, with respect to payments triggered or accelerated upon a "change of control," WMILT asserts that no "change in control," as defined in the respective agreements, occurred. The "change in control" provisions in the WMB Retention Bonus Agreements and the WMB CIC Agreements are substantially similar to the "change in control" provisions found in the WMI CIC Documents.[17]

[14] A sample WMB Retention Bonus Agreement containing "change in control" provisions, with personal information redacted, is attached hereto as Exhibit G.

[15] A sample WMB CIC Agreement, with personal information redacted, is attached hereto as Exhibit H.

[16] WMILT expressly reserves its right to fully brief these issues should such briefing be required.

[17] *See* Sample WMB CIC Agreement, at § 5(g)(5) ("For purposes of this Agreement, "Change in Control" shall mean: . . . The sale or transfer (in one transaction or a series of related transactions) of all or substantially all of . . .[Washington Mutual, Inc.'s] assets to another Person (other than a Subsidiary) whether assisted or unassisted,

Thus, for the reasons set forth above, no "Change in Control" occurred pursuant to the terms of the WMB Retention Bonus Agreements and WMB CIC Agreements and, as a result, the claimants are ineligible for payments triggered or accelerated by a "change in control." Second, the claimants are not entitled to other payments or benefits pursuant to the WMB Retention Bonus Agreements because the claimants otherwise failed to satisfy the eligibility requirements pursuant to the respective documents.[18]

35. Moreover, to the extent the Court determines that WMILT is liable to the claimants for "change in control" or other payments pursuant to the WMB Retention Bonus Agreements, WMB CIC Agreements or other "wrong party" signing bonus or employment agreements: (i) the allowed amounts of such Wrong Party Components are subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because such components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7); and (ii) WMILT is entitled to a credit for any severance payments actually received by the claimant from JPMC. *See Skidmore, Owings*, 1997 WL 563159, at *6; *Barney*, 869 P.2d at 1094; *see also* Sample WMB CIC Agreement § 5(c); *see generally id.*

III. Other Components

WaMu Executive Officer Severance Plan Component

36. Certain claimants have asserted alternate claims pursuant to that certain WaMu Executive Officer Severance Plan, effective as of April 1, 2008 (the "WaMu Executive Officer Severance Plan"), a plan that "covers a select group of management of highly

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voluntary or involuntary."); Sample WMB Retention Bonus Agreement (cross-referencing the definition of "change in control" found in the recipient's WMB CIC Agreement).

[18] For example, certain WMB Retention Bonus Agreements state that the "employment requirement" is waived to the extent the claimant experienced a job elimination pursuant to the WaMu Severance Plan. WMILT submits that the applicable claimants are ineligible for benefits pursuant to the WMB Retention Bonus Agreements because they did not experience a "job elimination" pursuant to the WaMu Severance Plan by virtue of a "change in control" or otherwise.

compensated employees." Preamble, WaMu Executive Officer Severance Plan, attached hereto as Exhibit J. Specifically, such claimants allege that, in the event they are not entitled to "change in control" payments pursuant to the terms of their Individual WMI Agreements, they are entitled to severance benefits pursuant to the WaMu Executive Officer Severance Plan (the "WaMu Executive Officer Severance Plan Component").[19]

37. WMILT asserts that the claimants with WaMu Executive Officer Severance Plan Components are ineligible for benefits pursuant to the terms of the WaMu Executive Officer Severance Plan to the extent each failed to execute a "Severance Agreement" with WMI as required by Section 3.3 of the WaMu Executive Officer Severance Plan.[20] *See* WaMu Executive Officer Severance Plan § 3.3 ("The Severance Payment shall in all events be subject to the Eligible Executive entering into and not revoking a Severance Agreement."); *id.* at § 1.9 (defining "Severance Agreement" as "[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."); *see also id.* at § 3.1 ("The Severance Payment shall be paid in a lump sum upon the effectiveness of the Severance Agreement.").

38. Accordingly, WMILT requests that the WaMu Executive Officer Severance Plan Component of the claims set forth on Exhibit B be disallowed. To the extent WMILT is liable for payments pursuant to the WaMu Executive Officer Severance Plan, WMILT asserts that (i) any allowed amounts of the WaMu Executive Officer Severance Plan Components are subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because

[19] Pursuant to Section 2 of the WaMu Executive Officer Severance Plan "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."

[20] Pursuant to the WaMu Executive Officer Severance Plan, the "Human Resources Committee," as plan administrator, has broad and absolute discretion to make decisions under the plan, including to, among other things, interpret the plan provisions and determine eligibility. *See, e.g.*, WaMu Executive Officer Severance Plan § 4.

the WaMu Executive Officer Severance Plan Components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7); and (ii) WMILT is entitled to a credit for any severance payments actually received by the claimant from JPMC. *See Skidmore, Owings*, 1997 WL 563159, at *6; *Barney*, 869 P.2d at 1094; *Harms*, 984 F.2d at 693; *see also* WaMu Executive Officer Severance Plan § 3.2 ("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.").

WMI SERP Component

39. WMILT objects to the CIC Claims to the extent they assert liability (the "WMI SERP Component") pursuant to the Washington Mutual, Inc. Supplemental Executive Retirement Plan (the "WMI SERP"). Pursuant to assignment agreements executed by the claimants, such claimants received payment on account of the WMI SERP Components from JPMC and, in exchange therefor, the claimants assigned all of their claims related to their participation in the WMI SERP, including any related proofs of claim, together with the assignment of any voting and other rights and benefits which existed at the time of such agreement or in the future come into existence or are paid or issued by the Debtors or any other party, directly or indirectly, in connection or satisfaction of the claim, to JPMC. And, pursuant to that certain *Second Amended and Restated Settlement Agreement*, dated as of February 7, 2011 (as amended, the "Amended Settlement Agreement"), a copy of which is annexed to the Plan as Exhibit H, which agreement became effective on March 19, 2012, upon the consummation of the transactions contemplated by the Plan, each of the assigned claims were waived by JPMC. Objections to similar claims arising from the WMI SERP were asserted, and granted by the Court, pursuant to the *Debtors' Thirty-Sixth* and *Fifty-Third Omnibus Claims Objections*. WMILT, therefore, requests that the Court disallow the WMI SERP Component of the CIC Claims set forth on Exhibit B.

WMI Deferred Compensation Component

40. WMILT objects to the Claims to the extent they assert liability (the "WMI DCP Component") pursuant to the Washington Mutual, Inc. Deferred Compensation Plan (the "WMI DCP"). Pursuant to assignment agreements executed by the claimants, the claimants received payment on account of the WMI DCP Component from JPMC and, in exchange, the claimants assigned all of their claims related to their participation in the WMI DCP, including any related proofs of claim, together with the assignment of any voting and other rights and benefits which existed at the time of such agreement or in the future come into existence or are paid or issued by the Debtors or any other party, directly or indirectly, in connection or satisfaction of the claim, to JPMC. And, pursuant to the Amended Settlement Agreement, upon the consummation of the transactions contemplated by the Plan, each of the assigned claims were waived by JPMC. Objections to similar claims arising from the WMI DCP were asserted, and granted by the Court, pursuant to the *Debtors' Thirty-Sixth* and *Fifty-Third Omnibus Claims Objections*. WMILT, therefore, requests that the Court disallow the WMI DCP Component of the CIC Claims set forth on Exhibit B.

WMI SERAP Component

41. Certain of the CIC Claims contain a component (the "WMI SERAP Component") arising from the WMI Supplemental Executive Retirement Accumulation Plan (the "WMI SERAP"). WMILT's books and records indicate a corresponding obligation owed to such claimants with respect to the WMI SERAP Component and, as set forth on Exhibit B, WMILT seeks to allow these portions of the CIC Claims in the amounts reflected in WMILT's books and records.

IV. Disallowance by Operation of Applicable Nonbankruptcy Law

42. Many of the claims asserted by the claimants are also subject to disallowance as a result of the operation of 12 C.F.R. § 163.39 and/or 12 C.F.R. § 359, as applicable. *See* 12 U.S.C. § 1828(k); 12 C.F.R. § 163.39, *et seq.* (formerly 12 C.F.R. § 563.39, *et seq.*); 12 C.F.R. § 359, *et seq*. Section 359.2 provides that "[n]o insured depository institution or depository institution holding company shall make or agree to make any golden parachute payment . . . ." Section 359.1(f), subject to certain exceptions, generally defines a golden parachute payment as "any payment . . . in the nature of compensation" by an insured depository institution or an affiliated holding company for the benefit of an employee that is contingent or is payable upon termination and is made in contemplation of, among other things, the insolvency of the insured depository institution or the appointment of a receiver.

43. Further, 12 C.F.R. § 163.39(b) provides that an employment contract shall terminate upon the default of a savings association. *See Williams v. Federal Deposit Insurance Corporation*, No. 11-35812, 2012 WL 3939964 (9th Cir. Sept. 11, 2012).

44. These regulations were specifically designed to, among other things, prevent employees of a failed or failing financial institution and its parent holding company from collecting golden parachute payments while creditors and depositors were at risk of losing their claims and deposits from such institutions. Thus, each of the claims should be disallowed in part or in whole based on the application of such regulations.

Reservation of Rights

45. Pursuant to Local Rule 3007-1(f)(iii), "[a]n objection based on substantive grounds shall include all substantive objections to such claim." To conserve its resources, WMILT requests that, to the extent the Court finds that WMILT may, in fact, be liable on account of the CIC Claims, it be granted limited relief from Local Rule 3007-1(f)(iii) to further object to the CIC Claims. WMILT also requests that, to the extent it is found liable, it be

allowed to seek to impose on the CIC Claims any applicable cap on the amount of such claims as prescribed by the Bankruptcy Code.

46. To the extent the Court allows any of the CIC Claims objected to herein, or any of the various components thereof, WMILT reserves its right, consist with Section 31.10 of the Plan, section 553 of the Bankruptcy Code and the common law right of recoupment or setoff, to withhold distributions from any claimants who are subject to (i) that certain letter, dated October 13, 2011, asserting a claim on behalf of the Debtors' estates against and demand upon certain of the Debtors' former directors and officers for losses suffered by WMI as a result of such persons' actions and failure to act in their roles as directors and officers of WMI, and/or (ii) other claims that have or may be asserted by the Litigation Subcommittee on behalf of WMILT.

47. Nothing contained in this Eighty-Second Omnibus Objection shall be, or shall be deemed to be, a determination that JPMC or any of its affiliates or subsidiaries, WMB or any of WMB's subsidiaries, or any person other than the Debtors and WMILT is or is not liable or responsible in any way for any of the claims that are subject to this Eighty-Second Omnibus Objection.

Notice

48. Notice of this Eighty-Second Omnibus Objection has been provided to: (i) the U.S. Trustee, (ii) those parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, and (iii) each holder of a claim objected to herein. In light of the nature of the relief requested, WMILT submits that no other or further notice need be provided.

49. Pursuant to Bankruptcy Rule 3007, WMILT has provided all claimants affected by the Eighty-Second Omnibus Objection with at least thirty (30) days' notice of the hearing to consider the Eighty-Second Omnibus Objection.

Statement of Compliance with Local Rule 3007-1

50. The undersigned representative of Richards, Layton & Finger, P.A. ("RLF") certifies that he has reviewed the requirements of Local Rule 3007-1 and that the Eighty-Second Omnibus Objection substantially complies with that Local Rule. To the extent that the Eighty-Second Omnibus Objection does not comply in all respects with the requirements of Local Rule 3007-1, RLF believes such deviations are not material and respectfully requests that any such requirement be waived.

WHEREFORE WMILT respectfully requests that the Court enter an order granting (i) the relief requested herein and (ii) such other and further relief as is just.

Dated: March ___, 2013
Wilmington, Delaware

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EXHIBIT G

Amended Eighty-Fourth Omnibus Objection

PLEASE CAREFULLY REVIEW THIS OBJECTION AND THE ATTACHMENTS HERETO TO DETERMINE WHETHER THIS OBJECTION AFFECTS YOUR CLAIMS

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Hearing Date:**
	:	**Response Deadline:**

WMI LIQUIDATING TRUST'S AMENDED EIGHTY-FOURTH OMNIBUS (SUBSTANTIVE) OBJECTION TO, AMONG OTHERS, CHANGE IN CONTROL CLAIMS

WMI Liquidating Trust ("WMILT"), as successor in interest to Washington Mutual, Inc. ("WMI") and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the "Debtors"), pursuant to section 502 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), files this amended eighty-fourth omnibus substantive objection (the "Eighty-Fourth Omnibus Objection") to those Claims[2] listed on Exhibit A (Disallowed Claims) and Exhibit B (Reduced and Allowed Claims) hereto, and in support of the Eighty-Fourth Omnibus Objection, respectfully represents as follows:

[1] The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMILT, as defined herein, are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

[2] Capitalized terms used, but not defined, herein shall have the meaning ascribed to them in the Plan (as defined herein).

Preliminary Statement

1. The claimants whose claims are objected to herein were some of WMI's most senior executives. Some were members of the Executive Committee. All were involved, at a senior level, at the point in time when WMI and its subsidiaries were failing. Amazingly, such individuals are now seeking to recover millions of dollars each at the expense of other creditors and interest holders as a result of an alleged "change in control." Though the parties may dispute the meaning of the "change in control" provisions in WMI's employment documents, it is repugnant that such individuals be rewarded for the results of their actions or inaction, as the case may be.

Jurisdiction

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

Background

3. On September 26, 2008 (the "Commencement Date"), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code.

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

WMI's Business and JPMC

5. Prior to the Commencement Date, WMI operated as a savings and loan holding company that owned Washington Mutual Bank ("WMB") and, indirectly, such bank's

subsidiaries, including Washington Mutual Bank fsb ("WMBfsb"). Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the "OTS"). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI's banking and nonbanking subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation ("FDIC").

6. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB and advised that the receiver was immediately taking possession of WMB (the "Bank Seizure"). Immediately after its appointment as receiver, the FDIC purportedly sold substantially all the assets of WMB, including the stock of WMBfsb (the "JPMC Transaction"), to JPMorgan Chase Bank, National Association ("JPMC") pursuant to that certain *Purchase and Assumption Agreement, Whole Bank,* dated as of September 25, 2008 (the "Purchase Agreement").

The Bar Date and Schedules

7. On December 19, 2008, the Debtors filed with the Court their schedules of assets and liabilities and their statements of financial affairs. On January 27, 2009, and February 24, 2009, WMI filed with the Court its first and second, respectively, amended schedule of assets and liabilities and its first and second, respectively, amended statements of financial affairs. On January 14, 2010, WMI filed a further amendment to its statement of financial affairs (collectively, the "Schedules").

8. By order, dated January 30, 2009 (the "Bar Date Order"), the Court established March 31, 2009 (the "Bar Date") as the deadline for filing proofs of claim against the Debtors in these chapter 11 cases. Pursuant to the Bar Date Order, each creditor, subject to certain limited exceptions, was required to file a proof of claim on or before the Bar Date.

9. In accordance with the Bar Date Order, Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' court-appointed claims and noticing agent, mailed notices of the Bar Date and proof of claim forms to, among others, all of the Debtors' creditors and other known holders of claims as of the Commencement Date. Notice of the Bar Date also was published once in *The New York Times (National Edition), The Wall Street Journal*, *The Seattle Times*, and *The Seattle Post-Intelligencer*.

Proofs of Claim

10. Over 4,000 proofs of claim have been filed in these chapter 11 cases. WMILT is in the process of reviewing and reconciling the filed proofs of claim. To date, approximately 3,100 claims have been disallowed or withdrawn.

11. As part of their ongoing review, WMILT has reviewed each of the proofs of claim listed on Exhibits A and B hereto and has concluded that each such claim is appropriately objected to on the bases set forth below.

Objection to Change in Control Claims

12. Local Rule 3007-1 allows a debtor to file an omnibus objection to proofs of claim on substantive grounds. Omnibus substantive objections must include sufficient detail as to why each claim should be disallowed and must be limited to no more than 150 claims. *See* Local Rule 3007-1(f)(i). The following omnibus objection complies with Local Rule 3007-1(f)(i) as well as the other requirements of Local Rule 3007.

13. Each of the claims objected to herein (the "CIC Claims") consists of multiple components. WMILT requests that the Court disallow each of the CIC Claims set forth on Exhibit A hereto in their entirety. In certain instances, as reflected on Exhibit B hereto, WMILT requests that the Court reduce and allow certain of the CIC Claims.

I. Change in Control Components

14. Each of the CIC Claims asserts a claim (the "Change in Control Component") pursuant to the "change in control" provisions in one or more employment or employee benefits-related document naming WMI as the contract counterparty or, where applicable, the plan sponsor (collectively, the "WMI CIC Documents"). The WMI CIC Documents include: (i) certain individual "change in control" agreements or other employment agreements entered into between WMI and the respective claimant in connection with such claimant's former employment with WMI (collectively, the "Individual WMI Agreements"); (ii) the Washington Mutual, Inc. Executive Target Retirement Income Plan (the "ETRIP"), an unfunded plan designed primarily to provide deferred compensation benefits to a select group of management and highly compensated employees; and (iii) certain individual retention bonus agreements (the "WMI Retention Bonus Agreements") entered into between the claimant and WMI.

15. WMILT objects to the Change in Control Components on the ground that no "Change in Control," as such term is defined in the respective WMI CIC Documents, has occurred. Accordingly, WMILT is not liable for "change in control" payments or other benefits that are triggered or accelerated by a "change in control" pursuant to the terms of the WMI CIC Documents. Specific objections with respect to each of the respective WMI CIC Documents are set forth below.

Individual WMI Agreement Component

16. WMILT objects to the Change in Control Components arising from the Individual WMI Agreements (the "Individual WMI Agreement Component"). In particular, certain CIC Claims allege that the Bank Seizure and/or the JPMC Transaction constituted a "Change in Control" pursuant to the terms of the Individual WMI Agreements. The Individual WMI Agreements define "Change in Control" as, among other things, "[t]he 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[3] (other than a Subsidiary[4]) whether assisted or unassisted, voluntary or involuntary." Sample Individual WMI Agreement § 11(e), attached hereto as Exhibit C. The term "Washington Mutual," as used in the Individual WMI Agreements, is defined as "Washington Mutual, Inc., a Washington corporation."

17. WMILT submits that no "Change in Control" occurred pursuant to the terms of the Individual WMI Agreements. For example, neither the Bank Seizure nor the JPMC Transaction constituted a "Change of Control" within the meaning of Section 11(e) of the Individual WMI Agreements, or any other provision of the Individual WMI Agreements. Indeed, none of WMI's assets, which, in September 2008, included, among other things, its equity interest in WMB, were transferred or sold to the FDIC or to JPMC, as the case may be, pursuant to the Bank Seizure or JPMC Transaction. *See Williams v. McGreevey (In re Touch Am. Holdings, Inc.)*, 401 B.R. 107, 126 (Bankr. D. Del. 2009) ("It is well recognized that 'a corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary.'" (quoting *Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003))). Moreover, even if WMB's assets could fall within the plain meaning of "Washington Mutual's assets," as such phrase is used in the Individual WMI Agreements, the assets of WMB did not constitute "all or substantially all" of WMI's assets. Thus, no "Change in Control" occurred pursuant to the terms of the Individual WMI Agreements and, accordingly, WMILT's liability for "change in control" payments pursuant to the Individual WMI

[3] Pursuant to Section 11(f) of the Individual WMI Agreements, "'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)." Sample Individual WMI Agreement § 11(f).

[4] Pursuant to Section 11(g) of the Individual WMI Agreements, "'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." Sample Individual WMI Agreement § 11(g).

Agreements has not been triggered. *See* Sample Individual WMI Agreement § 6(c) (requiring termination of employment without "cause" or resignation for "good reason" upon or within three years after a "Change in Control" to trigger WMI's liability pursuant to the terms of the agreement). For the reasons set forth above, WMILT requests that the Court disallow the Individual WMI Agreement Components in their entirety. Claims with Individual WMI Agreement Components are included on Exhibits A and B hereto.

18. Furthermore, even if the Court were to determine that a "Change in Control" occurred pursuant to the terms of the Individual WMI Agreements, the allowed amounts of the Individual WMI Agreement Components are subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because the Individual WMI Agreement Components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7). Section 502(b)(7) of the Bankruptcy Code addresses the maximum allowable claim of an employee under a terminated employment contract and provides that the court shall disallow:

> [a] claim of an employee for damages resulting from the termination of an employment contract, [to the extent] such claim exceeds (A) the compensation provided by such contract, without acceleration, for one year following the earlier of – the date of the filing of the petition; or (ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus (B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates.

11 U.S.C. § 502(b)(7). This Court and others have found that claims for severance payments, including "change in control" payments, are subject to the limitation in section 502(b)(7). *See, e.g.*, *In re VeraSun Energy Corp.*, 467 B.R. 757, 765 (Bankr. D. Del. 2012); *Protarga Inc. v. Webb (In re Protarga Inc.)*, 329 B.R. 451, 465-66 (Bankr D. Del. 2005); *In re Dornier Aviation (N. Am.), Inc.*, 305 B.R. 650, 653-56 (E.D. Va. 2004); *see also Bitters v. Networks Elecs. (In re Networks Elecs. Corp.)*, 195 B.R. 92, 100 (B.A.P. 9th Cir. 1996) ("The purpose of § 502(b)(7) is

to protect the employer/debtor from valid employee claims which would unreasonably compromise the debtor's fresh start, and work to the detriment of other creditors."). As such, any liability pursuant to the Individual WMI Agreements—and WMILT submits that there is none—should be significantly reduced.

19. Additionally, upon information and belief, certain of the claimants with Individual WMI Agreement Components received severance payments from JPMC and, accordingly, pursuant to Section 6(c) of the Individual WMI Agreements, their claims should be reduced by the amount of such severance benefits received. *See* Sample Individual WMI Agreement § 6(c)(1) ("[T]he amount paid to employee under this Section 6(c) shall be offset by any payment received by Employee from the Company[5] or any acquired company pursuant to: (i) a severance or change in control agreement, arrangement or plan . . . .").[6] Moreover, even if a contractual offset were not available, should WMILT be found liable on the Individual WMI Agreement Components, WMILT is otherwise entitled to a credit for severance payments or other benefits actually received by the claimants from JPMC on account of such claimants' former employment with WMI. *See Skidmore, Owings & Merrill v. Intrawest I L.P.*, No. 35196-8-I, 1997 WL 563159, at *6 (Wash. Ct. App. Sept. 8, 1997) ("Washington law [holds] that a party who breaches a contract is not liable for damages that are mitigated or recovered from other sources."); *Barney v. Safeco Ins. Co. of Am.*, 869 P.2d 1093, 1094 (Wash. Ct. App. 1994), *overruled on other grounds*, *Price v. Farmers Ins. Co. of Wash.*, 946 P.2d 388 (Wash. 1997) (explaining that there is a general public policy against "double recovery" of damages in lawsuits); *see also Tavaglione v. Billings*, 847 P.2d 574, 580 (Cal. 1993) ("Double or duplicative

[5] Pursuant to the Individual WMI Agreements, "[t]he term 'Company' shall mean Washington Mutual and any successor after a Change in Control . . . ." Sample Individual WMI Agreement.

[6] Pursuant to Section 6(c) of the Individual WMI Agreements, WMILT is also entitled to an offset for any payments received by an employee pursuant to the Worker Adjustment and Retraining Notification Act (WARN Act) or any similar state or local law. Sample Individual WMI Agreement § 6(c)(1).

recovery for the same items of damage amounts to overcompensation and is therefore prohibited.")

ETRIP Components

20. Certain of the CIC Claims assert liability pursuant to the "change in control" provisions of the ETRIP (the "ETRIP CIC Component"), and claim that the Bank Seizure and JPMC Transaction constituted a "Change in Control" under the ETRIP.[7] In particular, Section 3.5 of the ETRIP provides that, "[u]pon a Change in Control a Participant will be credited with additional years of Executive Service" towards the calculation of their deferred compensation benefits. ETRIP, attached hereto as Exhibit D, at § 3.5. The ETRIP's definition of "Change in Control" cross-references the definition of "Change in Control" found in the individual participant's "Employment Agreement," though the term "Employment Agreement" is not defined in the ETRIP. *See* ETRIP § 2.4. Except for Stephen Rotella ("Mr. Rotella"), whose Individual WMI Agreement is entitled "Employment Agreement," all of the claimants with ETRIP CIC Components are parties to Individual WMI Agreements entitled "Change in Control Agreement." Upon information and belief, during 2004, WMI issued form documents entitled "Employment Agreement" to its employees, but ceased using such forms in 2005 and instead issued form documents entitled "Change in Control Agreement" in place of the "Employment Agreements," although the definition of "Change in Control" in both form documents is substantially similar.[8] Thus, assuming the definition of "Change in Control" contained in the Individual WMI Agreements controls the meaning of such term in the ETRIP, WMILT submits that it is not liable for the ETRIP CIC Components of the CIC Claims for the

[7] The ETRIP vests the plan administration committee with "absolute discretion in the exercise of its powers" under the ETRIP and gives such committee broad authority to interpret the provisions of the ETRIP, among other things. *See, e.g.*, ETRIP, Article 5.

[8] The definition of "Change in Control" in Mr. Rotella's "Employment Agreement" is substantially the same as that contained in the Individual WMI Agreements entitled "Change in Control Agreement."

reasons set forth above, and requests that the Court disallow all such components. The CIC Claims that include such components are included on Exhibit B hereto.

21. Moreover, if the Court were to determine that WMILT is liable for the ETRIP CIC Components, WMILT further objects that such components should be allowed in accordance with the books and records amount of such components, rather than the filed amount, to the extent such amounts differ.

WMI Retention Bonus Agreement Components

22. WMILT objects to the Change in Control Components arising from the "change in control" provisions of certain WMI Retention Bonus Agreements (the "WMI Retention Bonus CIC Components") on the ground that no "Change in Control," as such term is defined in the respective WMI Retention Bonus Agreements, occurred. The individual WMI Retention Bonus Agreements define a "change in control" with a cross reference to "Section 5(g) of [the employee's] Change in Control ("CIC") Agreement." However, with respect to the two claimants who have asserted WMI Retention Bonus CIC Components—Daryl David and Robert Williams—their Individual WMI Agreements do not contain a definition of "change in control" in Section 5(g). Rather, the Individual WMI Agreements of the claimants with WMI Retention Bonus Components contain "change in control" provisions in Sections 6 and 11. Should the reference to "Section 5(g)" nevertheless be interpreted to relate to Section 11 of the respective claimant's Individual WMI Agreement, WMILT objects that no "change in control" occurred for the reasons stated above. In the absence of a "change in control," the claimants otherwise failed to satisfy the eligibility requirements pursuant to their respective agreements.[9] Accordingly, the WMI Retention Bonus CIC Components should be disallowed in their entirety.

[9] For example, Robert Williams' WMI Retention Bonus Agreement states that the "employment requirement" is waived to the extent the claimant experienced a job elimination pursuant to the WaMu Severance Plan. WMILT submits that Mr. Williams is ineligible for benefits pursuant to his agreement because he did not experience a "job elimination" pursuant to the WaMu Severance Plan, by virtue of a "change in control" or otherwise.

23. Moreover, WMILT objects to Claim No. 985, listed on Exhibit A hereto, which asserts liability arising from Anthony Vuoto's WMI Retention Bonus Agreement, which agreement does not contain any "change in control" provision (the "Other WMI Retention Bonus Component"). WMILT objects that Mr. Vuoto is not entitled to payment pursuant to his WMI Retention Bonus Agreement because Mr. Vuoto did not satisfy the requirement that he remain an employee of WMI through February 28, 2010. The letter agreement specifically states that "[y]our employment will continue to be terminable by you or the company at will, without cause or advance notice. Nothing in this letter is intended to suggest any guaranteed period of continued employment or any guarantee that you will be paid the special bonus. This letter merely sets forth the terms of a special bonus that may be paid to you for achievement of the stated criteria." WMILT is not liable for the Other WMI Retention Bonus Component because Mr. Vuoto has failed to achieve the stated employment criteria and is therefore ineligible to receive his retention bonus.

24. To the extent WMILT is liable for the WMI Retention Bonus CIC Components or Other WMI Retention Bonus Component, WMILT asserts that any allowed amounts of such components are subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because such components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7). Moreover, to the extent any of the claimants received partial payment of their retention bonuses from JPMC and did not deduct such amounts from the filed amount of their claims, WMILT is entitled to a credit for any payments received by the claimants from JPMC on account their retention bonus agreements. *See Skidmore, Owings*, 1997 WL 563159, at *6; *Barney*, 869 P.2d at 1094.

II. Other Components

Executive Severance Plan Component

25. Certain claimants have asserted alternate claims pursuant to that certain WaMu Executive Officer Severance Plan, effective as of April 1, 2008 (the "Executive Severance Plan"), a plan that "covers a select group of management of highly compensated employees." Preamble, Executive Severance Plan, attached hereto as Exhibit E. Specifically, such claimants allege that, in the event they are not entitled to "change in control" payments pursuant to the terms of their Individual WMI Agreements, they are entitled to severance benefits pursuant to the Executive Severance Plan (the "Executive Severance Plan Component").[10]

26. WMILT objects that the claimants with Executive Severance Plan Components are ineligible for benefits pursuant to the terms of the Executive Severance Plan[11] and, accordingly, WMILT has no liability to such claimants pursuant to such plan. In particular, none of claimants with Executive Severance Plan Components have entered into a "Severance Agreement" with WMI, as required by Section 3.3 of the Executive Severance Plan in order to receive benefits pursuant to such plan. *See* Executive Severance Plan § 3.3 ("The Severance Payment shall in all events be subject to the Eligible Executive entering into and not revoking a Severance Agreement."); *id.* at § 1.9 (defining "Severance Agreement" as "[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."); *see*

[10] Pursuant to Section 2 of the Executive Severance Plan "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."

[11] Pursuant to the Executive Severance Plan, the "Human Resources Committee," as plan administrator, has broad and absolute discretion to make decisions under the plan, including to, among other things, interpret the plan provisions and determine eligibility. *See*, *e.g.*, Executive Severance Plan § 4.

also id. at § 3.1 ("The Severance Payment shall be paid in a lump sum upon the effectiveness of the Severance Agreement.").

27. In addition, one claimant with an Executive Severance Plan Component—Mr. Rotella—is not an "Eligible Executive," as defined in Section 1.5 of the Executive Severance Plan. Section 1.5 of the Executive Severance Plan provides, in relevant part, that an "Eligible Executive" is one who is "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." Executive Severance Plan § 1.5. As set forth below, Mr. Rotella's employment agreement with WMI provides for severance benefits unrelated to whether a "change in control" has occurred. Accordingly, Mr. Rotella is ineligible to receive benefits pursuant to the Executive Severance Plan. *See generally* Executive Severance Plan (defining rights of "Eligible Executives" pursuant to the plan). For the foregoing reasons, WMILT requests that the Executive Severance Plan Components be disallowed in their entirety.

28. To the extent WMILT is liable for payments pursuant to the Executive Severance Plan, WMILT asserts that (i) any allowed amounts of the Executive Severance Plan Components are subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because the Executive Severance Plan Components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7); and (ii) WMILT is entitled to a credit for any severance payments actually received by the claimant from JPMC on account of such claimants' former employment with WMI. *See Skidmore, Owings*, 1997 WL 563159, at *6; *Barney*, 869 P.2d at 1094; *see also* Executive Severance Plan § 3.2.

Other Individual WMI Agreement Component

29. WMILT objects to Claim No. 2249, filed by Mr. Rotella and listed on Exhibit A hereto, which asserts an alternate claim for damages pursuant to the additional (*i.e.*, non-"change in control") terms of Mr. Rotella's Individual WMI Agreement in the event that the Court determines that Mr. Rotella is not entitled to "change in control" payments pursuant to such agreement.

30. WMILT objects to Mr. Rotella's alternate claim for payment pursuant to the non-"change in control" provisions of his employment agreement (the "Other Individual WMI Agreement Component") on the ground that Mr. Rotella failed to execute a "Separation Agreement" with WMI, as required by Section 6(h) of his Individual WMI Agreement.

31. Furthermore, even if the Court were to find WMILT liable for Mr. Rotella's Other Individual WMI Agreement Component, such component asserts a claim for damages resulting from the termination of an employment contract and, accordingly, is subject to the statutory cap in section 502(b)(7) of the Bankruptcy Code.

SERP Component

32. WMILT objects to the CIC Claims to the extent they assert liability (the "SERP Component") pursuant to the Washington Mutual, Inc. Supplemental Executive Retirement Plan (the "SERP"). Pursuant to assignment agreements executed by the claimants, such claimants received payment on account of the SERP Components from JPMC and, in exchange, the claimants assigned all of their claims related to their participation in the SERP, including any related proofs of claim, together with the assignment of any voting and other rights and benefits which existed at the time of such agreement or in the future come into existence or are paid or issued by the Debtors or any other party, directly or indirectly, in connection or satisfaction of the claim, to JPMC. Objections to similar claims arising from the SERP were asserted, and granted by the Court, pursuant to the *Debtors' Thirty-Sixth* and *Fifty-Third*

Omnibus Claims Objections. WMILT, therefore, requests that the Court disallow the SERP Component of the CIC Claims set forth on Exhibit B.

DCP Component

33. WMILT objects to the CIC Claims to the extent they assert liability (the "DCP Component") pursuant to the Washington Mutual, Inc. Deferred Compensation Plan (the "DCP"). Pursuant to assignment agreements executed by the claimants, the claimants received payment on account of the DCP Component from JPMC and, in exchange, the claimants assigned all of their claims related to their participation in the DCP, including any related proofs of claim, together with the assignment of any voting and other rights and benefits which existed at the time of such agreement or in the future come into existence or are paid or issued by the Debtors or any other party, directly or indirectly, in connection or satisfaction of the claim, to JPMC. Objections to similar claims arising from the DCP were asserted, and granted by the Court, pursuant to the *Debtors' Thirty-Sixth* and *Fifty-Third Omnibus Claims Objections*. WMILT, therefore, requests that the Court disallow the DCP Component of the CIC Claims set forth on Exhibit B.

ETRIP Base Component

34. Two claimants, Daryl David and Craig Tall, also allege that they are entitled to payments pursuant to the ETRIP unrelated to the "change of control" provisions of the ETRIP (the "ETRIP Base Component"). WMILT requests that such components be allowed in the amounts set forth in WMILT's books and records. The CIC Claims with ETRIP Base Components, and the amounts set forth in WMILT's books and records for such components, are reflected on Exhibit B hereto.

SERAP Component

35. Certain of the CIC Claims contain a component (the "SERAP Component") arising from the WMI Supplemental Executive Retirement Accumulation Plan (the

"SERAP"). WMILT's books and records indicate a corresponding obligation owed to such claimants with respect to the SERAP Component and, as set forth on Exhibit B, WMILT seeks to allow these portions of the CIC Claims in the amounts reflected in WMILT's books and records.

III. Breach of Contract

36. WMI and Mr. Rotella are parties to that certain Employment Agreement, dated as of January 10, 2005, as amended, from which arise (a) Claim No. 2249 in its entirety and (b) the ETRIP CIC Component of Claim No. 2107. Upon information and belief, Mr. Rotella breached such Employment Agreement which required him to "faithfully perform the duties of such office or offices as he may occupy, which duties shall be such as may be assigned to him...". Indeed, the FDIC commenced litigation against, among others, Mr. Rotella and, over a course of 63 pages, articulated many examples and reasons how Mr. Rotella breached his responsibilities pursuant to the Employment Agreement, asserting negligence, gross negligence, and breach of fiduciary duty. *See The Federal Deposit Insurance Corporation, et al. v. Killinger et al.*, Case 11-00459 (MJP) (W. D. Wash. March 16, 2011).

37. Accordingly, in addition to the reasons set forth above, because Mr. Rotella has breached such Employment Agreement, WMILT requests that the Court disallow the portions of his claims that arise from such Employment Agreement, as set forth in Exhibits A and B.

IV. Disallowance by Operation of Applicable Nonbankruptcy Law

38. Many of the claims asserted by the claimants are also subject to disallowance as a result of the operation of 12 C.F.R. § 163.39 and/or 12 C.F.R. § 359, as applicable. *See* 12 U.S.C. § 1828(k); 12 C.F.R. § 163.39, *et seq.* (formerly 12 C.F.R. § 563.39, *et seq.*); 12 C.F.R. § 359, *et seq*. Section 359.2 provides that "[n]o insured depository institution or depository institution holding company shall make or agree to make any golden parachute payment . . . ." Section 359.1(f), subject to certain exceptions, generally defines a golden

parachute payment as "any payment . . . in the nature of compensation" by an insured depository institution or an affiliated holding company for the benefit of an employee that is contingent or is payable upon termination and is made in contemplation of, among other things, the insolvency of the insured depository institution or the appointment of a receiver.

39. Further, 12 C.F.R. § 163.39(b) provides that an employment contract shall terminate upon the default of a savings association. *See Williams v. Federal Deposit Insurance Corporation*, No. 11-35812, 2012 WL 3939964 (9th Cir. Sept. 11, 2012).

40. These regulations were specifically designed to, among other things, prevent employees of a failed or failing financial institution and its parent holding company from collecting golden parachute payments while creditors and depositors were at risk of losing their claims and deposits from such institutions. Thus, each of the claims should be disallowed in part or in whole based on the application of such regulations.

Reservation of Rights

41. Pursuant to Local Rule 3007-1(f)(iii), "[a]n objection based on substantive grounds . . . shall include all substantive objections to such claim." To conserve its resources, WMILT requests that, to the extent the Court finds that WMILT may, in fact, be liable on account of the CIC Claims, it be granted limited relief from Local Rule 3007-1(f)(iii) to further object to the CIC Claims. WMILT also requests that, to the extent it is found liable, it be allowed to seek to impose on the CIC Claims any applicable cap on the amount of such claims as prescribed by the Bankruptcy Code.

42. In support of the foregoing, WMILT relies on the *Declaration of John Maciel Pursuant to Local Rule 3007-1 in Support of WMI Liquidating Trust's Eighty-Fourth Omnibus (Substantive) Objection to Change in Control Claims*, dated of as September 17, 2012, attached hereto as Exhibit F.

43. To the extent the Court allows any of the CIC Claims objected to herein, or any of the various components thereof, WMILT reserves its right, consistent with Section 31.10 of the Plan, section 553 of the Bankruptcy Code and the common law right of recoupment or setoff, to withhold distributions from any claimants who are subject to (i) that certain letter, dated October 13, 2011, asserting a claim on behalf of the Debtors' estates against and demand upon certain of the Debtors' former directors and officers for losses suffered by WMI as a result of such persons' actions and failure to act in their roles as directors and officers of WMI, and/or (ii) other claims that have or may be asserted by the Litigation Subcommittee on behalf of WMILT.

44. Nothing contained in this Eighty-Fourth Omnibus Objection shall be, or shall be deemed to be, a determination that JPMC or any of its affiliates or subsidiaries, WMB or any of WMB's subsidiaries, or any person other than the Debtors and WMILT is or is not liable or responsible in any way for any of the claims that are subject to this Eighty-Fourth Omnibus Objection.

Notice

45. Notice of this Eighty-Fourth Omnibus Objection has been provided to: (i) the U.S. Trustee, (ii) those parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, and (iii) each holder of a claim objected to herein. In light of the nature of the relief requested, WMILT submits that no other or further notice need be provided.

46. Pursuant to Bankruptcy Rule 3007, WMILT has provided all claimants affected by the Eighty-Fourth Omnibus Objection with at least thirty (30) days' notice of the hearing to consider the Eighty-Fourth Omnibus Objection.

Statement of Compliance with Local Rule 3007-1

47. The undersigned representative of Richards, Layton & Finger, P.A. ("RLF") certifies that he has reviewed the requirements of Local Rule 3007-1 and that the

Eighty-Fourth Omnibus Objection substantially complies with that Local Rule. To the extent that the Eighty-Fourth Omnibus Objection does not comply in all respects with the requirements of Local Rule 3007-1, RLF believes such deviations are not material and respectfully requests that any such requirement be waived.

WHEREFORE WMILT respectfully requests that the Court enter the proposed order, attached hereto as Exhibit G, granting WMILT (i) the relief requested herein and (ii) such other and further relief as is just.

Dated: March ___, 2013
Wilmington, Delaware

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EXHIBIT H

Amended Eighty-Fifth Omnibus Objection

PLEASE CAREFULLY REVIEW THIS OBJECTION AND THE ATTACHMENTS HERETO TO DETERMINE WHETHER THIS OBJECTION AFFECTS YOUR CLAIMS

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Hearing Date:**
	:	**Response Deadline:**

WMI LIQUIDATING TRUST'S AMENDED EIGHTY-FIFTH OMNIBUS (SUBSTANTIVE) OBJECTION TO CHANGE IN CONTROL CLAIMS

WMI Liquidating Trust ("WMILT"), as successor in interest to Washington Mutual, Inc. ("WMI") and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the "Debtors"), pursuant to section 502 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), files this amended eighty-fifth omnibus substantive objection (the "Eighty-Fifth Omnibus Objection") to those Claims[2] listed on Exhibit A (Disallowed Claims) and Exhibit B (Reduced and Allowed Claims) hereto, and in support of the Eighty-Fifth Omnibus Objection, respectfully represents as follows:

[1] The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMILT, as defined herein, are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

[2] Capitalized terms used, but not defined, herein shall have the meaning ascribed to them in the Plan (as defined herein).

Preliminary Statement

1. The claimants whose claims are objected to herein were some of WMI's most senior executives. Some were members of the Executive Committee. All were involved, at a senior level, at the point in time when WMI and its subsidiaries were failing. Amazingly, such individuals are now seeking to recover millions of dollars each at the expense of other creditors and interest holders as a result of an alleged "change in control." Though the parties may dispute the meaning of the "change in control" provisions in WMI's employment documents, it is repugnant that such individuals be rewarded for the results of their actions or inaction, as the case may be.

Jurisdiction

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

Background

3. On September 26, 2008 (the "Commencement Date"), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code.

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

WMI's Business and JPMC

5. Prior to the Commencement Date, WMI operated as a savings and loan holding company that owned Washington Mutual Bank ("WMB") and, indirectly, such bank's

subsidiaries, including Washington Mutual Bank fsb ("WMBfsb"). Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the "OTS"). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI's banking and nonbanking subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation ("FDIC").

6. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB and advised that the receiver was immediately taking possession of WMB (the "Bank Seizure"). Immediately after its appointment as receiver, the FDIC purportedly sold substantially all the assets of WMB, including the stock of WMBfsb (the "JPMC Transaction"), to JPMorgan Chase Bank, National Association ("JPMC") pursuant to that certain *Purchase and Assumption Agreement, Whole Bank,* dated as of September 25, 2008 (the "Purchase Agreement").

The Bar Date and Schedules

7. On December 19, 2008, the Debtors filed with the Court their schedules of assets and liabilities and their statements of financial affairs. On January 27, 2009, and February 24, 2009, WMI filed with the Court its first and second, respectively, amended schedule of assets and liabilities and its first and second, respectively, amended statements of financial affairs. On January 14, 2010, WMI filed a further amendment to its statement of financial affairs (collectively, the "Schedules").

8. By order, dated January 30, 2009 (the "Bar Date Order"), the Court established March 31, 2009 (the "Bar Date") as the deadline for filing proofs of claim against the Debtors in these chapter 11 cases. Pursuant to the Bar Date Order, each creditor, subject to certain limited exceptions, was required to file a proof of claim on or before the Bar Date.

9. In accordance with the Bar Date Order, Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' court-appointed claims and noticing agent, mailed notices of the Bar Date and proof of claim forms to, among others, all of the Debtors' creditors and other known holders of claims as of the Commencement Date. Notice of the Bar Date also was published once in *The New York Times (National Edition), The Wall Street Journal*, *The Seattle Times*, and *The Seattle Post-Intelligencer*.

Proofs of Claim

10. Over 4,000 proofs of claim have been filed in these chapter 11 cases. WMILT is in the process of reviewing and reconciling the filed proofs of claim. To date, approximately 3,100 claims have been disallowed or withdrawn.

11. As part of their ongoing review, WMILT has reviewed each of the proofs of claim listed on Exhibits A and B hereto and has concluded that each such claim is appropriately objected to on the bases set forth below.

Objection

12. Local Rule 3007-1 allows a debtor to file an omnibus objection to proofs of claim on substantive grounds. Omnibus substantive objections must include sufficient detail as to why each claim should be disallowed and must be limited to no more than 150 claims. *See* Local Rule 3007-1(f)(i). The following omnibus objection complies with Local Rule 3007-1(f)(i) as well as the other requirements of Local Rule 3007.

13. Each of the claims objected to herein (the "CIC Claims") consists of multiple components. To the extent that certain components of the CIC Claims are not objected to in this Eighty-Fifth Omnibus Objection, WMILT's reserves its right to further object to such additional components of the CIC Claims at such later time as has been agreed to by the respective claimants and WMILT pursuant to (i) that certain *Stipulation Resolving, Among Other Things, Estimation Motion With Respect to Certain Disputed Director and Officer Non-*

Subordinated Indemnification Claims, dated September 14, 2012, and (ii) that certain *Stipulation to Suspend Local Rule 3007-1(f)(iii) With Respect to Certain D&O Claims*, dated September 14, 2012.

I. Change in Control Components

14. Each of the CIC Claims asserts a claim (the "Change in Control Component") pursuant to the "change in control" provisions in one or more employment or employee benefits-related document naming WMI as the contract counterparty or, where applicable, the plan sponsor (collectively, the "WMI CIC Documents"). The WMI CIC Documents include: (i) certain individual "change in control" agreements or other employment agreements entered into between WMI and the respective claimant in connection with such claimant's former employment with WMI (collectively, the "Individual WMI Agreements"); (ii) the Washington Mutual, Inc. Executive Target Retirement Income Plan (the "ETRIP"), an unfunded plan designed primarily to provide deferred compensation benefits to a select group of management and highly compensated employees; and (iii) certain individual Cash Long-Term Incentive Agreements (the "Cash LTI Agreements").

15. WMILT objects to the Change in Control Components on the ground that no "Change in Control," as such term is defined in the respective WMI CIC Documents, has occurred. Accordingly, WMILT is not liable for "change in control" payments or other benefits that are triggered or accelerated by a "change in control" pursuant to the terms of the WMI CIC Documents. Specific objections with respect to each of the respective WMI CIC Documents are set forth below.

Individual WMI Agreement Component

16. WMILT objects to the Change in Control Components arising from the Individual WMI Agreements (the "Individual WMI Agreement Component"). The Individual WMI Agreements define "Change in Control" as, among other things, "[t]he 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[3] (other than a Subsidiary[4]) whether assisted or unassisted, voluntary or involuntary." Sample Individual WMI Agreement § 11(e), attached hereto as Exhibit C. The term "Washington Mutual," as used in the Individual WMI Agreements, is defined as "Washington Mutual, Inc., a Washington corporation."

17. WMILT submits that no "Change in Control" occurred pursuant to the terms of the Individual WMI Agreements. For example, neither the Bank Seizure nor the JPMC Transaction constituted a "Change of Control" within the meaning of Section 11(e) of the Individual WMI Agreements, or any other provision of the Individual WMI Agreements. Indeed, none of WMI's assets, which, in September 2008, included, among other things, its equity interest in WMB, were transferred or sold to the FDIC or to JPMC, as the case may be, pursuant to the Bank Seizure or JPMC Transaction. *See Williams v. McGreevey (In re Touch Am. Holdings, Inc.)*, 401 B.R. 107, 126 (Bankr. D. Del. 2009) ("It is well recognized that 'a corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary.'" (quoting *Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003))). Moreover, even if WMB's assets could fall within the plain meaning of "Washington Mutual's assets," as such phrase is used in the Individual WMI Agreements, the assets of WMB did not constitute "all or substantially all" of WMI's assets. Thus, no "Change in Control" occurred pursuant to the terms of the Individual WMI Agreements and, accordingly, WMILT's liability for "change in control" payments pursuant to the Individual WMI

[3] Pursuant to Section 11(f) of the Individual WMI Agreements, "'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)." Sample Individual WMI Agreement § 11(f).

[4] Pursuant to Section 11(g) of the Individual WMI Agreements, "'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." Sample Individual WMI Agreement § 11(g).

Agreements has not been triggered. *See* Sample Individual WMI Agreement § 6(c) (requiring termination of employment without "cause" or resignation for "good reason" upon or within three years after a "Change in Control" to trigger WMI's liability pursuant to the terms of the agreement). For the foregoing reasons, WMILT requests that the Court disallow the Individual WMI Agreement Components in their entirety. Claims with Individual WMI Agreement Components are included on Exhibits A and B hereto.

18. Furthermore, even if the Court were to determine that a "Change in Control" occurred pursuant to the terms of the Individual WMI Agreements, the allowed amounts of the Individual WMI Agreement Components are subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because the Individual WMI Agreement Components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7). Section 502(b)(7) of the Bankruptcy Code addresses the maximum allowable claim of an employee under a terminated employment contract and provides that the court shall disallow:

> [a] claim of an employee for damages resulting from the termination of an employment contract, [to the extent] such claim exceeds (A) the compensation provided by such contract, without acceleration, for one year following the earlier of – the date of the filing of the petition; or (ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus (B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates.

11 U.S.C. § 502(b)(7). This Court and others have found that claims for severance payments, including "change in control" payments, are subject to the limitation in section 502(b)(7). *See, e.g.*, *In re VeraSun Energy Corp.*, 467 B.R. 757, 765 (Bankr. D. Del. 2012); *Protarga Inc. v. Webb (In re Protarga Inc.)*, 329 B.R. 451, 465-66 (Bankr D. Del. 2005); *In re Dornier Aviation (N. Am.), Inc.*, 305 B.R. 650, 653-56 (E.D. Va. 2004); *see also Bitters v. Networks Elecs. (In re Networks Elecs. Corp.)*, 195 B.R. 92, 100 (B.A.P. 9th Cir. 1996) ("The purpose of § 502(b)(7) is

to protect the employer/debtor from valid employee claims which would unreasonably compromise the debtor's fresh start, and work to the detriment of other creditors."). As such, any liability pursuant to the Individual WMI Agreements—and WMILT submits that there is none—should be significantly reduced.

19. Additionally, upon information and belief, certain of the claimants with Individual WMI Agreement Components received severance payments from JPMC and, accordingly, pursuant to Section 6(c) of the Individual WMI Agreements, their claims should be reduced by the amount of such severance benefits received. *See* Sample Individual WMI Agreement § 6(c)(1) ("[T]he amount paid to employee under this Section 6(c) shall be offset by any payment received by Employee from the Company[5] or any acquired company pursuant to: (i) a severance or change in control agreement, arrangement or plan . . . .").[6] Moreover, even if a contractual offset were not available, should WMILT be found liable on the Individual WMI Agreement Components, WMILT is otherwise entitled to a credit for severance payments or other benefits actually received by the claimants from JPMC on account of such claimants' former employment with WMI. *See Skidmore, Owings & Merrill v. Intrawest I L.P.*, No. 35196-8-I, 1997 WL 563159, at *6 (Wash. Ct. App. Sept. 8, 1997) ("Washington law [holds] that a party who breaches a contract is not liable for damages that are mitigated or recovered from other sources."); *Barney v. Safeco Ins. Co. of Am.*, 869 P.2d 1093, 1094 (Wash. Ct. App. 1994), *overruled on other grounds*, *Price v. Farmers Ins. Co. of Wash.*, 946 P.2d 388 (Wash. 1997) (explaining that there is a general public policy against "double recovery" of damages in lawsuits).

[5] Pursuant to the Individual WMI Agreements, "[t]he term 'Company' shall mean Washington Mutual and any successor after a Change in Control . . . ." Sample Individual WMI Agreement.

[6] Pursuant to Section 6(c) of the Individual WMI Agreements, WMILT is also entitled to an offset for any payments received by an employee pursuant to the Worker Adjustment and Retraining Notification Act (WARN Act) or any similar state or local law. Sample Individual WMI Agreement § 6(c)(1).

ETRIP CIC Components

20. Certain of the CIC Claims assert liability pursuant to the "change in control" provisions of the ETRIP (the "ETRIP CIC Component").[7] In particular, Section 3.5 of the ETRIP provides that "[u]pon a Change in Control a Participant will be credited with additional years of Executive Service" towards the calculation of their deferred compensation benefits. ETRIP, attached hereto as Exhibit D, at § 3.5. The ETRIP's definition of "Change in Control" cross-references the definition of "Change in Control" found in the individual participant's "Employment Agreement," though the term "Employment Agreement" is not defined in the ETRIP. *See* ETRIP § 2.4. All of the claimants with ETRIP CIC Components are parties to Individual WMI Agreements entitled "Change in Control Agreement." Upon information and belief, during 2004, WMI issued form documents entitled "Employment Agreement" to its employees, but ceased using such forms in 2005 and instead issued form documents entitled "Change in Control Agreement" in place of the "Employment Agreements," although the definition of "Change in Control" in both form documents is substantially similar. Thus, assuming the definition of "Change in Control" contained in the Individual WMI Agreements controls the meaning of such term in the ETRIP, WMILT submits that it is not liable for the ETRIP CIC Components of the CIC Claims for the reasons set forth above, and requests that the Court disallow such components in their entirety. CIC Claims with ETRIP CIC Components are included on Exhibits A and B hereto.

21. Moreover, if the Court were to determine that WMILT is liable for the ETRIP CIC Components, WMILT further objects that such components should be allowed in

[7] The ETRIP vests the plan administration committee with "absolute discretion in the exercise of its powers" under the ETRIP and gives such committee broad authority to interpret the provisions of the ETRIP, among other things. *See, e.g.*, ETRIP, Article 5.

accordance with the books and records amount of such components, rather than the filed amount, to the extent such amounts are different.

Cash LTI Component

22. WMILT objects to the Change in Control Component arising from John McMurray's Cash LTI Agreement (the "Cash LTI Component") on the ground that no "Change in Control," as such term is defined in the Cash LTI Agreement, occurred. As a result, the claimant failed to satisfy the eligibility requirements for payment pursuant to the Cash LTI Agreement.

23. Pursuant to the Cash LTI Agreement, "Change in Control" has the meaning ascribed to such term in the "Change in Control Agreement for Senior Leaders."[8] Although the term "Senior Leaders" is not defined in the Cash LTI Agreement, upon information and belief, the quoted language refers to a form agreement distributed to employees classified in Level 4 or Level 5 pursuant to WMB's employment scheme.[9] Upon information and belief, the form "change in control" agreements for "Senior Leaders" contain substantially the same definition of "Change in Control" as the Individual WMI Agreements.[10] Accordingly, for the reasons set forth above, no "Change in Control" occurred pursuant to the terms of the Cash LTI Agreement.

24. Based on the foregoing, and as reflected on Exhibit A, WMILT is not liable for the Cash LTI Component of Mr. McMurray's claim. In the absence of a "Change in

[8] The Cash LTI Agreements provide the "Committee" with broad discretion to interpret the Cash LTI Agreements and to determine controversies arising thereunder. *See* Sample Cash LTI Agreement.

[9] Upon information and belief, John McMurray was formerly employed by WMB as Level 4 employee, but, as of May 1, 2008, he was promoted to Level 3 and became an employee of WMI.

[10] Specifically, the form "change in control" agreement for Senior Leaders defines "change in control" as, among other things: "The sale or transfer (in one transaction or series of related transactions) of all or substantially all of the Company's assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary." The term "Company" in such agreements is defined as "Washington Mutual, Inc."

Control," the vesting of Mr. McMurray's cash award was not accelerated, and the claimant otherwise failed to satisfy the eligibility requirements set forth in the agreement, which required, among other things, that the claimant remain an employee of WMI through each award anniversary date set forth in the agreement.

25. Moreover, even if the Court were to find that WMILT were liable for payments pursuant to the terms of the Cash LTI Agreement, (i) the allowed amount of the Cash LTI Component is subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because the Cash LTI Component asserts a claim for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7); and (ii) in the event that Mr. McMurray received partial payment of his Cash LTI award from JPMC, his claim should be reduced by the amount of such partial payment to the extent he did not already deduct the amounts received from JPMC in his proof of claim. *See Skidmore, Owings*, 1997 WL 563159, at *6; *Barney*, 869 P.2d at 1094.

II. Other Benefits Components

WMI Retention Bonus Components

26. WMILT objects to the CIC Claims to the extent they assert liability arising from certain individual retention bonus agreements (the "WMI Retention Bonus Agreements") between the claimant and WMI (the "WMI Retention Bonus Component"). WMILT submits that the applicable claimants are not entitled to payment pursuant to their WMI Retention Bonus Agreements because, upon information and belief, each did not satisfy the requirement that he or she remain an employee of WMI through the date certain specified in the respective agreements. The letter agreements specifically state that "[y]our employment will continue to be terminable by you or the company at will, without cause or advance notice. Nothing in this letter is intended to suggest any guaranteed period of continued employment or any guarantee that you will be paid the special bonus. This letter merely sets forth the terms of a special bonus

that may be paid to you for achievement of the stated criteria." Accordingly, WMILT is not liable for the WMI Retention Bonus Components because the applicable claimants have failed to achieve the stated employment criteria and are therefore ineligible to receive their retention bonuses.

27. Moreover, even if the Court were to find that WMILT were liable for payments pursuant to the terms of the WMI Retention Bonus Agreements, (i) the allowed amounts of the WMI Retention Bonus Components are subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because such components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7); and (ii) to the extent any claimant received partial payment of his or her WMI Retention Bonus Component from JPMC, such claims should be reduced by the amount of such partial payment to the extent the claimant did not already deduct such amounts received from JPMC. *See Skidmore, Owings*, 1997 WL 563159, at *6; *Barney*, 869 P.2d at 1094.

ETRIP Base Components

28. Certain of the CIC Claims seek payments pursuant to the ETRIP unrelated to the "change of control" provisions of the ETRIP (the "ETRIP Base Component"). WMILT requests that such components be allowed in the amounts set forth in WMILT's books and records. The CIC Claims with ETRIP Base Components, and the amounts set forth in WMILT's books and records for such components, are reflected on Exhibit B hereto. WMILT's books and records reflect an account balance for Mr. McMurray of $0.00.

SERAP Component

29. Certain of the CIC Claims contain a component (the "SERAP Component") arising from the WMI Supplemental Executive Retirement Accumulation Plan (the "SERAP"). WMILT's books and records indicate a corresponding obligation owed to such

claimants with respect to the SERAP Component and, as set forth on Exhibit B, WMILT seeks to allow these portions of the CIC Claims in the amounts reflected in WMILT's books and records.

III. Disallowance by Operation of Applicable Nonbankruptcy Law

30. Many of the claims asserted by the claimants are also subject to disallowance as a result of the operation of 12 C.F.R. § 163.39 and/or 12 C.F.R. § 359, as applicable. *See* 12 U.S.C. § 1828(k); 12 C.F.R. § 163.39, *et seq.* (formerly 12 C.F.R. § 563.39, *et seq.*); 12 C.F.R. § 359, *et seq*. Section 359.2 provides that "[n]o insured depository institution or depository institution holding company shall make or agree to make any golden parachute payment . . . ." Section 359.1(f), subject to certain exceptions, generally defines a golden parachute payment as "any payment . . . in the nature of compensation" by an insured depository institution or an affiliated holding company for the benefit of an employee that is contingent or is payable upon termination and is made in contemplation of, among other things, the insolvency of the insured depository institution or the appointment of a receiver.

31. Further, 12 C.F.R. § 163.39(b) provides that an employment contract shall terminate upon the default of a savings association. *See Williams v. Federal Deposit Insurance Corporation*, No. 11-35812, 2012 WL 3939964 (9th Cir. Sept. 11, 2012).

32. These regulations were specifically designed to, among other things, prevent employees of a failed or failing financial institution and its parent holding company from collecting golden parachute payments while creditors and depositors were at risk of losing their claims and deposits from such institutions. Thus, each of the claims should be disallowed in part or in whole based on the application of such regulations.

Reservation of Rights

33. Pursuant to Local Rule 3007-1(f)(iii), "[a]n objection based on substantive grounds shall . . . include all substantive objections to such claim." To conserve its resources, WMILT requests that, to the extent the Court finds that WMILT may, in fact, be liable on

account of the CIC Claims, it be granted limited relief from Local Rule 3007-1(f)(iii) to further object to the CIC Claims. WMILT also requests that, to the extent it is found liable, it be allowed to seek to impose on the CIC Claims any applicable cap on the amount of such claims as prescribed by the Bankruptcy Code.

34. In support of the foregoing, WMILT relies on the *Declaration of John Maciel Pursuant to Local Rule 3007-1 in Support of WMI Liquidating Trust's Eighty-Fifth Omnibus (Substantive) Objection to Change in Control Claims*, dated of as September 17, 2012, attached hereto as Exhibit F.

35. To the extent the Court allows any of the CIC Claims objected to herein, or any of the various components thereof, WMILT reserves its right, consistent with Section 31.10 of the Plan, section 553 of the Bankruptcy Code and the common law right of recoupment or setoff, to withhold distributions from any claimants who are subject to (i) that certain letter, dated October 13, 2011, asserting a claim on behalf of the Debtors' estates against and demand upon certain of the Debtors' former directors and officers for losses suffered by WMI as a result of such persons' actions and failure to act in their roles as directors and officers of WMI, and/or (ii) other claims that have or may be asserted by the Litigation Subcommittee on behalf of WMILT.

36. Nothing contained in this Eighty-Fifth Omnibus Objection shall be, or shall be deemed to be, a determination that JPMC or any of its affiliates or subsidiaries, WMB or any of WMB's subsidiaries, or any person other than the Debtors and WMILT is or is not liable or responsible in any way for any of the claims that are subject to this Eighty-Fifth Omnibus Objection.

Notice

37. Notice of this Eighty-Fifth Omnibus Objection has been provided to: (i) the U.S. Trustee, (ii) those parties entitled to receive notice in these chapter 11 cases pursuant

to Bankruptcy Rule 2002, and (iii) each holder of a claim objected to herein. In light of the nature of the relief requested, WMILT submits that no other or further notice need be provided.

38. Pursuant to Bankruptcy Rule 3007, WMILT has provided all claimants affected by the Eighty-Fifth Omnibus Objection with at least thirty (30) days' notice of the hearing to consider the Eighty-Fifth Omnibus Objection.

Statement of Compliance with Local Rule 3007-1

39. The undersigned representative of Richards, Layton & Finger, P.A. ("RLF") certifies that he has reviewed the requirements of Local Rule 3007-1 and that the Eighty-Fifth Omnibus Objection substantially complies with that Local Rule. To the extent that the Eighty-Fifth Omnibus Objection does not comply in all respects with the requirements of Local Rule 3007-1, RLF believes such deviations are not material and respectfully requests that any such requirement be waived.

WHEREFORE WMILT respectfully requests that the Court enter the proposed order, attached hereto as Exhibit G, granting WMILT (i) the relief requested herein and (ii) such other and further relief as is just.

Dated: March __, 2013
Wilmington, Delaware

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EXHIBIT I

Amended Eighty-Eighth Omnibus Objection

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Hearing Date:**
	:	**Objection Deadline:**

WMI LIQUIDATING TRUST'S AMENDED EIGHTY-EIGHTH OMNIBUS (SUBSTANTIVE) OBJECTION TO DISPUTED EQUITY INTERESTS

WMI Liquidating Trust ("WMILT"), as successor in interest to Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment"), formerly debtors and debtors in possession (collectively, the "Debtors"), pursuant to section 502 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), files this amended eighty-eighth omnibus substantive objection (the "Eighty-Eighth Omnibus Objection") to those Disputed Equity Interests[2] arising from the EIP (as defined herein) and listed on Exhibit A hereto, and in support of the Eighty-Eighth Omnibus Objection, respectfully represents as follows:

[1] The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMILT, as defined herein, are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Plan (as defined herein).

Jurisdiction

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

Background

2. On September 26, 2008 (the "Commencement Date"), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code.

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

WMI's Business and JPMC

4. Prior to the Commencement Date, WMI operated as a savings and loan holding company that owned Washington Mutual Bank ("WMB") and, indirectly, such bank's subsidiaries, including Washington Mutual Bank fsb ("WMBfsb"). Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the "OTS"). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI's banking and nonbanking subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation ("FDIC").

5. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB (the "Bank Seizure") and advised that the receiver

was immediately taking possession of WMB (the "Receivership"). Immediately after its appointment as receiver, the FDIC purportedly sold substantially all the assets of WMB, including the stock of WMBfsb (the "JPMC Transaction"), to JPMorgan Chase Bank, National Association ("JPMC") pursuant to that certain *Purchase and Assumption Agreement, Whole Bank*, dated as of September 25, 2008 (the "Purchase Agreement").

The Bar Date and Schedules

6. On December 19, 2008, the Debtors filed with the Court their schedules of assets and liabilities and their statements of financial affairs. On January 27, 2009, and February 24, 2009, WMI filed with the Court its first and second, respectively, amended schedule of assets and liabilities and its first and second, respectively, amended statements of financial affairs. On January 14, 2010, WMI filed a further amendment to its statement of financial affairs (collectively, the "Schedules").

7. By order, dated January 30, 2009 (the "Bar Date Order"), the Court established March 31, 2009 (the "Bar Date") as the deadline for filing proofs of claim against the Debtors in these chapter 11 cases. Pursuant to the Bar Date Order, each creditor, subject to certain limited exceptions, was required to file a proof of claim on or before the Bar Date.

8. In accordance with the Bar Date Order, Kurtzman Carson Consultants, LLC ("KCC"), the Debtors' court-appointed claims and noticing agent, mailed notices of the Bar Date and proof of claim forms to, among others, all of the Debtors' creditors and other known holders of claims as of the Commencement Date. Notice of the Bar Date also was published once in *The New York Times (National Edition), The Wall Street Journal, The Seattle Times*, and *The Seattle Post-Intelligencer*.

Proofs of Claim

9. Over 4,000 proofs of claim have been filed in these chapter 11 cases. WMILT is in the process of reviewing and reconciling the filed proofs of claim. To date, approximately 3,100 claims have been disallowed or withdrawn.

Objection to Disputed Equity Interests

10. By this Eighty-Eighth Omnibus Objection, WMILT is seeking an order from the Court determining that, with respect to that certain Washington Mutual, Inc. Amended and Restated 2003 Equity Incentive Plan (the "EIP"), a "change in control" has not occurred. Pursuant to the EIP, restricted stock awards (each, an "RSA") or restricted stock units (each, an "RSU") granted to employees (the "EIP Participants") would vest upon the occurrence of a "change in control." To the extent the EIP Participants' RSAs and RSUs vest pursuant to the terms of the EIP, EIP Participants would be entitled to receive common stock in WMI.

11. Because equity holders were not required to file proofs of claim or proofs of equity interests in these chapter 11 cases, most such employees did not file any such proof related to the EIP.[3] However, pursuant to the Plan, holders of equity interests are entitled to receive a distribution, and if the Court finds that a "change in control" occurred pursuant to the terms of the EIP, WMILT would be required to distribute 553,644 shares of Reorganized Common Stock to 5,107 RSA holders and 38,452 shares of Reorganized Common Stock to 847 RSU holders. Thus, WMILT has reserved 592,096 shares of Reorganized Common Stock in the Disputed Equity Escrow on behalf of the EIP Participants' interests. Pursuant to the Plan, such

[3] Out of nearly 6,000 EIP Participants, only three (3) employees filed claims for the loss of value of their restricted stock, and WMILT has already objected to such claims in the *Eighty-First Omnibus Objection* [D.I. 10506]..

interests are referred to as Disputed Equity Interests. Each of these EIP Participants is listed on Exhibit A hereto.[4]

12. Though almost none of the nearly 6,000 EIP Participants have filed any proofs of claim or proofs of equity interests, because (a) such holders do in fact hold Disputed Equity Interests and (b) the deadline to object to Disputed Equity Interests is September 17, 2012, out of an abundance of caution, WMILT files this Eighty-Eighth Omnibus Objection seeking an order determining that, with respect to the EIP, a "change in control" has not occurred. Consequently, WMILT requests that the Court allow it to release the 592,096 shares of Reorganized Common Stock that it is holding in the Disputed Equity Escrow on account of the EIP Participants' interests, for re-distribution to other holders of preferred and common equity interests entitled to receive such distribution.

I. The EIP

13. On or about February 18, 2003, WMI's board of directors (the "Board") adopted the EIP, pursuant to which certain employees received, among other things, awards of common stock subject to various restrictions or conditions (the "Restricted Stock"). Section 1 of the EIP states that its purposes are "(a) to promote the long-term interests of WMI and its shareholders by strengthening the Company's ability to attract, motivate and retain employees, officers, directors, consultants, agents, advisors and independent contractors and (b) to provide additional incentive for those persons through stock ownership and other incentives to improve

[4] Contemporaneously with the filing of the Eighty-Eighth Omnibus Objection, out of an abundance of caution, WMILT has filed the *Motion of WMILT for an Order Granting Relief from Local Rule 3007-1(f)(i)*. While it is not clear if such rule applies to the Eighty-Eighth Omnibus Objection, because this objection does not relate to proofs of claim or proofs of equity interests, WMILT notes that there are almost 6,000 EIP Participants, and to list only 150 per objection would require 40 identical objections to be filed. WMILT will serve individualized notices to each EIP Participant with respect to the Eighty-Eighth Omnibus Objection.

operations, increase profits and strengthen the mutuality of interest between those persons and the Company's shareholders."

14. The EIP was administered by the Human Resources Committee of the Board (the "HRC"), which committee had the authority to prescribe the various terms, conditions or restrictions associated with a grant of Restricted Stock. Because such terms were determined at the time of issuance, once issued, RSAs and RSUs were usually accompanied by forms of notices and agreements which provided the additional terms and conditions pursuant to which the Restricted Stock was awarded. Furthermore, the EIP contains an automatic vesting provision which provides that, upon the occurrence of a "Company Transaction" (defined below), certain stock benefits would automatically vest in their holder. *See* EIP §§ 15.3.1, 15.3.2.

II. Change in Control Provisions of the EIP

15. Section 2 of the EIP provides that "'Company Transaction,' unless otherwise defined in the instrument evidencing the Award or in a written employment, services or other agreement between the Participant and the Company or a Related Company, means consummation of either (a) a merger or consolidation of the Company with or into any other company or other entity or (b) a sale, lease, exchange or other transfer in one transaction or a series of related transactions undertaken with a common purpose of all or substantially all of the Company's then outstanding securities or all or substantially all of the Company's assets; provided, however, that a Company Transaction shall not include a Related Party Transaction." "Company" as used in the EIP is defined as WMI.

16. Pursuant to Sections 15.3.1 and 15.3.2 of the EIP, stock options, stock appreciation rights, and Restricted Stock granted pursuant to the EIP automatically vest upon the

occurrence of a Company Transaction. Section 15.3.1 further provides that the HRC, *in its sole discretion*, may, as an alternative to the accelerated vesting upon the occurrence of a Company Transaction, provide that a plan participant's outstanding options and/or Restricted Stock shall terminate upon the occurrence of a Company Transaction and that each such participant shall receive, in exchange therefor, a cash payment pursuant to a specified formula.

III. Change in Control Provisions of Other Employment Agreements

17. WMI granted RSAs and RSUs to its employees pursuant to the EIP along with forms of notices and agreements, including a document entitled "Washington Mutual, Inc. Restricted Stock Award Agreement (3-Year Vesting)" (the "Sample Restricted Stock Agreement"). Section 5.2 of the Sample Restricted Stock Agreement states that "the Vesting and Forfeiture of Shares under this Award shall be subject to any other written agreement between the Participant and the Company or a Related Company and, to the extent not otherwise addressed in any such written agreement, shall be treated as expressly provided under the [EIP] (for example, in connection with a Company Transaction under Section 15.3 of the Plan)." Other form agreements granting RSUs and performance shares to employees contain similar language. For example, a document entitled "Washington Mutual, Inc. Performance Share Program Award Terms and Conditions (2006-2008 Performance Period) (the "Sample Performance Share Agreement"), provides that, "upon the occurrence of a 'change in control,' a Participant will receive a pro-rated payment for the Award as soon as reasonably possible following the date of the change in control . . . . For this purpose, the term 'change in control' shall have the meaning set forth in any individual agreement between the Participant and the Company addressing Awards, if applicable, or in the absence thereof, shall mean a Company Transaction, as defined in the [EIP]."

18. Accordingly, the terms of these form agreements, which are incorporated by reference into the definition of "Company Transaction" in the EIP, suggest that, if an EIP Participant has a separate employment agreement with WMI or WMB in which "Change in Control" is defined (in the case of a small number of EIP Participants), then the definition of "Change in Control" found in such separate employment agreement governs the vesting and acceleration of Restricted Stock in the EIP. If an EIP Participant, however, does not have a separate employment agreement with WMI or WMB in which "Change in Control" is defined (as is the case for the vast majority of EIP Participants), then the definition of "Change in Control" found in the EIP governs the vesting and acceleration of Restricted Stock in the EIP. Under either definition, WMILT does not believe that a "Change in Control" has occurred.

IV. There Has Been No Change in Control

EIP

19. To the extent the definition of "Company Transaction" in the EIP controls, the Bank Seizure and JPMC Transaction did not constitute "Company Transactions" because the Bank Seizure and JPMC Transaction were involuntary, and involuntary sales and transfers are not expressly contemplated in the definition of "Company Transaction." Courts have denied "change in control" claims arising from a bank seizure where the applicable "change in control" provisions did not expressly contemplate involuntary or assisted transfers or sales. *See Hibyan v. FDIC*, 812 F. Supp. 271 (D. Me. 1993); *McCarron v. FDIC*, 111 F.3d 1089 (3d Cir. 1997).

20. To the extent the Court finds that, for the small number of EIP Participants that have a separate employment agreement with WMI or WMB, the vesting of the Restricted Stock in the EIP is governed by the definition of "Change in Control" found in such separate employment agreements, there has still been no "Change in Control." Employment agreements

with WMI or WMB that contain a definition of "Change in Control" come in two varieties: (i) certain "change in control" agreements entered into between WMI and employees in connection with such employees' former employment with WMI (collectively, the "WMI CIC Agreements") and (ii) "change in control" agreements entered into between WMB and employees in connection with such employees' former employment with WMB (the "WMB CIC Agreements"). Under the definition of "Change in Control" in either type of agreement, there has been no "Change in Control." Accordingly, the Restricted Stock in the EIP has not vested, and WMILT should be allowed to release the 592,096 shares of Reorganized Common Stock that it is holding in the Disputed Equity Escrow on account of the EIP Participants' interests, for re-distribution to other holders of preferred and common equity interests entitled to receive such distribution

WMI CIC Agreements

21. The WMI CIC Agreements define "Change in Control" as, among other things, "[t]he 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[5] (other than a Subsidiary[6]) whether assisted or unassisted, voluntary or involuntary." WMI CIC Agreement § 11(e). The term "Washington Mutual," as used in the WMI CIC Agreements, is defined as "Washington Mutual, Inc., a Washington corporation." Neither the Bank Seizure nor the JPMC Transaction constituted a "Change of Control" within the meaning of Section 11(e) of the WMI CIC

[5] Pursuant to Section 11(f) of the WMI CIC Agreements, "'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)."

[6] Pursuant to Section 11(g) of the WMI CIC Agreements, "'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."

Agreements, or any other provision of the WMI CIC Agreements.[7] Indeed, none of WMI's assets, which, in September 2008, included, among other things, its equity interest in WMB, were transferred or sold to the FDIC or to JPMC pursuant to the Bank Seizure or JPMC Transaction. *See In re Touch Am. Holdings, Inc.*, 401 B.R. 107, 126 (Bankr. D. Del. 2009) ("It is well recognized that 'a corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary.'") (citing *Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003))). Moreover, even if WMB's assets could fall within the plain meaning of "Washington Mutual's assets," as such phrase is used in the WMI CIC Agreements, the assets of WMB did not constitute "all or substantially all" of WMI's assets. Thus, no "Change in Control" occurred pursuant to the terms of the WMI CIC Agreements and, accordingly, WMILT's liability for "change in control" payments pursuant to the WMI CIC Agreements has not been triggered. *See* WMI CIC Agreement § 6(c) (requiring termination of employment or resignation for "good cause" *upon or within three years after a "Change in Control"* to trigger WMI's liability pursuant to the terms of the agreement).

WMB CIC Agreements

22. Additionally, WMILT asserts that no "change in control," as defined in the WMB CIC Agreements, occurred. The "change in control" provisions in the WMB CIC Agreements are substantially similar to the "change in control" provisions found in the WMI CIC Agreements.[8] Thus, for the reasons set forth above, no "Change in Control" occurred pursuant to the terms of the WMB CIC Agreements.

[7] For example, WMILT submits that WMI's Board of Directors never made a "good faith determination that any Person or group . . . 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" as required by the definition of "Change in Control" in Section 11(c) of the WMI CIC Agreement.

[8] *See* WMB CIC Agreement, at § 5(g)(5) ("For purposes of this Agreement, "Change in Control" shall mean: . . . The sale or transfer (in one transaction or a series of related transactions) of all or substantially all of . .

23. For all of the reasons set forth above, WMILT requests that the Court enter an order determining that, with respect to the EIP, a "change in control" has not occurred and, so, WMILT may release the 592,096 shares of Reorganized Common Stock that it is holding in the Disputed Equity Escrow on account of the EIP Participants' interests, for re-distribution to other holders of preferred and common equity interests entitled to receive such distribution.

24. If the Court rules that a "change of control" has occurred with respect to the EIP, shares in the Disputed Equity Escrow would be distributed to the EIP Participants. In accordance with applicable law, such distributions would be subject to certain tax withholding obligations (including employment taxes), and unless an EIP Participant forwards to the Liquidating Trustee cash payment sufficient to cover the tax obligations owed by such individual on such distribution, the Liquidating Trustee, as escrow agent, will sell a portion of the shares otherwise distributable to an EIP Participant sufficient to generate net proceeds equal to such taxes of the EIP Participant, and any such sales would be effected in accordance with applicable securities laws. Additionally, to the extent that the Disputed Equity Escrow is also liable for taxes with respect to such distribution, and if cash in the Disputed Equity Escrow is insufficient to pay such taxes, then, in accordance with Section 26.3(f)(2) of the Plan and with applicable securities laws, the Liquidating Trustee may liquidate shares of Reorganized Common Stock held in the Disputed Equity Escrow, in order to pay such taxes.

V. Disallowance by Operation of Applicable Nonbankruptcy Law

25. Many of the claims asserted by the claimants are also subject to disallowance as a result of the operation of 12 C.F.R. § 163.39 and/or 12 C.F.R. § 359, as

.[Washington Mutual, Inc.'s] assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary.").

applicable. *See* 12 U.S.C. § 1828(k); 12 C.F.R. § 163.39, *et seq.* (formerly 12 C.F.R. § 563.39, *et seq.*); 12 C.F.R. § 359, *et seq*. Section 359.2 provides that "[n]o insured depository institution or depository institution holding company shall make or agree to make any golden parachute payment . . . ." Section 359.1(f), subject to certain exceptions, generally defines a golden parachute payment as "any payment . . . in the nature of compensation" by an insured depository institution or an affiliated holding company for the benefit of an employee that is contingent or is payable upon termination and is made in contemplation of, among other things, the insolvency of the insured depository institution or the appointment of a receiver.

26. Further, 12 C.F.R. § 163.39(b) provides that an employment contract shall terminate upon the default of a savings association. *See Williams v. Federal Deposit Insurance Corporation*, No. 11-35812, 2012 WL 3939964 (9th Cir. Sept. 11, 2012).

27. These regulations were specifically designed to, among other things, prevent employees of a failed or failing financial institution and its parent holding company from collecting golden parachute payments while creditors and depositors were at risk of losing their claims and deposits from such institutions. Thus, each of the claims should be disallowed in part or in whole based on the application of such regulations.

28. In support of the foregoing, WMILT relies on the *Declaration of John Maciel Pursuant to Local Rule 3007-1 in Support of the Eighty-Eighth Omnibus Objection*, dated as of the date hereof, attached hereto as Exhibit B.

Notice

29. Notice of this Eighty-Eighth Omnibus Objection has been provided to: (i) the U.S. Trustee, (ii) those parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, and (iii) each holder of an equity interest objected to herein. In light

of the nature of the relief requested, WMILT submits that no other or further notice need be provided.

30. Pursuant to Bankruptcy Rule 3007, WMILT has provided all equity interest holders affected by the Eighty-Eighth Omnibus Objection with at least thirty (30) days' notice of the hearing to consider the Eighty-Eighth Omnibus Objection. Due to the large number of EIP Participants, EIP Participants need not respond to the Eighty-Eighth Omnibus Objection but, rather, they will be deemed to oppose the Eighty-Eighth Omnibus Objection. However, the Court will be hearing argument on similar issues simultaneously, with respect to WMILT's *Fifth*, *Sixth*, *Seventy-Ninth*, *Eightieth*, *Eighty-First*, *Eighty-Second*, *Eighty-Fourth*, and *Eighty-Fifth Omnibus Objections*, and if an EIP Participant would like to participate in such hearing, such individual must notify WMILT's counsel in writing on or before October 8, 2012 at: Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Rahul Sharma, Esq.

Statement of Compliance with Local Rule 3007-1

31. The undersigned representative of Richards, Layton & Finger, P.A. ("RLF") certifies that he has reviewed the requirements of Local Rule 3007-1 and that, other than with respect to Local Rule 3007-1(f)(i), the Eighty-Eighth Omnibus Objection substantially complies with that Local Rule. Contemporaneously with the filing of the Eighty-Eighth Omnibus Objection, out of an abundance of caution, WMILT has filed the *Motion of WMILT for an Order Granting Relief from Local Rule 3007-1(f)(i)*. Other than with respect to Local Rule 3007-1(f)(i), to the extent that the Eighty-Eighth Omnibus Objection does not comply in all other respects with the requirements of Local Rule 3007-1, RLF believes such deviations are not material and respectfully requests that any such requirement be waived.

WHEREFORE WMILT respectfully requests that the Court enter an order granting (i) the relief requested herein and (ii) such other and further relief as is just.

Dated: March __, 2013
Wilmington, Delaware

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Attorneys to the WMI Liquidating Trust

EXHIBIT J

Proposed Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Re: Docket No. _____**

ORDER GRANTING
WMI LIQUIDATING TRUST'S MOTION FOR AN ORDER GRANTING LEAVE TO AMEND THE FIFTH, SIXTH, SEVENTY-NINTH, EIGHTIETH, EIGHTY-FIRST, EIGHTY-SECOND, EIGHTY-FOURTH, EIGHTY-FIFTH, AND EIGHTY-EIGHTH OMNIBUS OBJECTIONS TO CLAIMS

Upon the motion, dated February __, 2013 (the "Motion")[2], of WMI Liquidating Trust ("WMILT" or the "Trust"), as successor in interest to Washington Mutual, Inc. ("WMI") and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the "Debtors"), for entry of an order authorizing WMILT to amend the Omnibus Objections, all as more fully set forth in the Motion, pursuant to Bankruptcy Rule 7015; the Court finding that it has jurisdiction over this matter and the relief requested herein pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that due and proper notice of the Motion and the relief requested therein having been given, and no other or further notice need be given, and all parties in interest having been heard or having been afforded an opportunity to be heard; and the relief requested in the Motion

[1] The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMILT, as defined herein, are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

[2] All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

being in the best interests of WMILT and its beneficiaries; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that good and just cause appears in favor of granting the Motion;

IT IS HEREBY ORDERED THAT:

1. The Motion is Granted.

2. WMILT is hereby granted leave to file the Amended Objections.

3. The Amended Objections will relate back to the Omnibus Objections.

4. This Order is without prejudice to the rights of any party to seek additional relief from this Court.

5. This Court shall retain jurisdiction with respect to any matters related to or arising from the implementation of this Order.

Dated: March ____, 2013
Wilmington, Delaware

_____
THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE