

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

| | | |
|---|---|--------------------------------|
| In re: |) | Chapter 11 |
| |) | |
| Washington Mutual, Inc., et al.,¹ |) | Case No. 08-12229 (MFW) |
| |) | (Jointly Administered) |
| Debtors. |) | |
| |) | |

**RESPONSE OF
EDWARD F. BACH TO WMI LIQUIDATING TRUST'S
FIFTH OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS AND
SEVENTY-NINTH OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS**

Edward F. Bach (“Mr. Bach”), by and through his undersigned counsel, hereby responds and objects to the Fifth Omnibus (Substantive) Objection to Claims (the “5th Objection”) and the Seventy-Ninth Omnibus (Substantive) Objection to Claims (the “79th Objection,” and together with the 5th Objection, the “Objections”) filed by the Debtor and WMI Liquidating Trust (“WMILT”), respectively, and in support thereof avers as follows:²

BACKGROUND RELATING TO MR. BACH’S CLAIM

1. On or about March 19, 2009, Mr. Bach filed a proof of claim (#2955) in the amount of \$577,000.00 (the “Bach Claim”). A true and correct copy of the Bach Claim is attached hereto as Exhibit “A”.³

2. The bases for the Bach Claim are monies owed to Mr. Bach from a retention bonus agreement (the “Retention Bonus Agreement”) and two special bonus opportunity

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

² On September 24, 2010, the Official Committee of Unsecured Creditors filed a complaint against Mr. Bach initiating adversary proceeding no. 10-53132 (MFW) (the “Bach Adversary Proceeding”) relating to the Bach Claim (as defined herein) and the employment agreement between Mr. Bach and WMB (as defined herein), under which the Bach Claim arose. This Response to WMILT’s Objections in no way impacts or compromises Mr. Bach’s defenses in the Bach Adversary Proceeding.

³ It is Mr. Bach’s intention to file a motion with this Court for leave to file an amendment to the Bach Claim.



agreements (the “SBOs,” and, together with the Retention Bonus Agreement, the “Bach Agreements”), offered to and accepted by Mr. Bach, which were never paid to Mr. Bach.

3. In both Objections, WMILT objects to the allowance of the Bach Claim. The SBOs provide, in relevant part, that Mr. Bach would earn a “special bonus” provided that he:

remain an employee of the Company, have a current overall performance rating of Solid Contributor or better, and continue to perform your job duties as required in accordance with Company policies and procedures through April 1, 2009 (the “Bonus Period”). The requirement that you remain an employee of the Company through the Bonus Period is referred to as the “Employment Requirement” . . . If you full these requirements and also meet the other conditions of this letter, you will be entitled to the bonus . . . The bonus will be paid in a lump sum.

There are two situations in which the Employment Requirement is waived for purposes of this retention bonus. First, if your job is eliminated (as defined in the WaMu Severance Plan) you will be treated as having fulfilled the Employment Requirement as long as you remain employed through your Job End Date (as defined in the WaMu Severance Plan). Second, you will be treated as having fulfilled the Employment Requirement if, within two years after a change in control (as defined in Section 5(f) of your Change in Control (“CIC”) Agreement), your employment is terminated by the Company or a successor for any reason other than for cause (as defined in Section 5(h) of your CIC Agreement) or you resign for any reason other than for cause (as defined in Section 5(i) of your CIC Agreement) and no reason exists for the Company or a successor to terminate you for cause (as defined in Section 5(h) [sic] your CIC Agreement).

See April 23, 2008 Letter from David Schneider, President Home Loans to Mr. Bach re “Special Bonus Opportunity,” (the “April SBO”), a true and correct copy of which is attached hereto as Exhibit “B”.

4. On July 1, 2008, WaMu send Mr. Bach a second Special Bonus Opportunity Letter (the “July SBO”) offering him an additional \$250,000 “special bonus,” “as a reward for your continued service to Washington Mutual (the “Company” or “WaMu”) on similar terms to those set out in the April 2008 SBO. A true and correct copy of the July SBO is attached hereto as Exhibit “C”. Under the July SBO, to earn the \$250,000 “reward,” Mr. Bach was required to

remain an employee of the “Company” through July 1, 2010, subject to certain terms and conditions, unless the “Employment Requirement” was “waived for the purpose of this retention bonus” by one of two ways:

First, if your job is eliminated (as defined in the WaMu Severance Plan) you will be treated as having fulfilled the Employment Requirement as long as you remain employed through your Job End Date (as defined in the WaMu Severance Plan). Second, you will be treated as having fulfilled the Employment Requirement if, within two years after a change in control (as defined in Section 5 of your Change in Control (“CIC”) Agreement), your employment is terminated by the Company or a successor for any reason other than for cause (as defined in Section 5 of your CIC Agreement) or you resign for good reason (as defined in Section 5 of your CIC Agreement) and no reason exists for the Company or a successor to terminate you for cause (as defined in Section 5 of your CIC Agreement).

See July SBO.

5. Mr. Bach fulfilled the requirements set out in the Retention Bonus Agreement and the SBOs.

**WMILT’S OBJECTIONS TO THE
BACH CLAIM SHOULD BE OVERRULED**

6. This Honorable Court should overrule WMILT’s Objections to the Bach Claim for the following reasons:

a. contrary to WMILT’s assertion that that Washington Mutual Bank (“WMB”), not Washington Mutual, Inc. (“WMI”), is the party to the Retention Bonus Agreement and the SBOs and WMILT’s misleading characterization (in the 79th Objection) of the SBOs as a “**WMB** Special Bonus Agreement,” WMB is not a party to either of the SBOs. The words “Washington Mutual Bank” do not appear anywhere in the SBOs. Rather, the SBOs are letters from David Schneider, President Home Loans, to Mr. Bach on “WaMu” letterhead. Every reference in each of the SBOs is to “WaMu.” There are no references to WMB or WMI;

b. Under Washington law, WMI is the party responsible for the payments under the Bach Agreements;

c. the contractual requirements set forth in the Bach Agreements were fulfilled upon the occurrence of the seizure of WMB by the FDIC on September 25, 2008; and

d. the allowed amount of the Bach Claim is not subject to the cap under §502(b)(7) of the Bankruptcy Code because the Bach Claim is for compensation earned prior to the Debtors' Commencement Date⁴; thus, the Bach Claim is not a claim for damages resulting from the post-petition termination of the SBOs.⁵

7. In banking circles and among WMI's employees, it was well known in the Fall of 2007 and Spring of 2008 that WMB was experiencing serious deterioration in asset quality and financial performance and that WMI was serving as a source of financial strength to WMB. These facts are documented by WMI's own pleadings in this bankruptcy case.⁶

8. Given its announced lay off of thousands of its employees and billions of dollars of financial losses, WMI was concerned about its ability to retain key employees. In early 2008, WMI adopted strategies to address its concerns. In publicly disclosed comments concerning long-term equity incentive awards made to its named executive officers in 2008, WMI stated: "Due to the current unprecedented challenges in the mortgage and credit markets, retaining executives, officers and key employees, including the named executives, also was a primary

⁴ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Objections.

⁵ As discussed more fully below, alternatively, if the Bach Claim is subject to a cap, the cap should be increased by the amount of the Bach Claim.

⁶ E.g., in its answer filed in Adversary Proceeding No. 09-50551, WMI asserted: "Since at least December 2007 until it was ultimately seized and placed into receivership by the FDIC, WMB was under liquidity pressure. During this time WMI down-streamed billions of dollars without recompense and made significant preferential transfers to WMB on account of antecedent debts". Debtors' Answer and Counterclaims in Response to Complaint of JPMorgan Chase Bank, N.A. at ¶2. WMI also stated: "On December 10, 2007, WMI announced a loss for the fourth quarter because of a \$1.6 billion charge to write down the value of its home-loan business, and its plans to lay off approximately 3,150 employees." *Id.* at ¶16.

compensation objective for the awards.” See WMI’s Proxy Statement for its 2008 Annual Meeting of Shareholders dated March 14, 2008 (Schedule 14A) filed with the Securities & Exchange Commission (“SEC”) at p. 32.

9. WMI also made long term cash incentive awards beginning in early 2008 pursuant to a standard form agreement (the “WMI Cash LTI Award Agreement”), a copy of which WMI filed with the SEC.⁷ This standard form agreement bore the “W Logo,” the “WaMu” mark and the date “February 1, 2008” on the first page, and bore the signature block “Washington Mutual, Inc.” on the last page. The first sentence of the agreement explained the reason for the award, stating: “We are pleased to inform you that on January 22, 2008 you were awarded a Cash Long-Term Incentive Award (“Cash LTI Award”) in the amount of \$XX.XX as a reward for your continued service to Washington Mutual (the “Company” or “WaMu”).

10. During this period of time, members of WMI’s executive committee (WMI’s most senior executive officers) began offering special retention bonuses to a limited number of key employees in their respective divisions and operations. WMI used a standard form agreement referencing a “Special Bonus” that had, upon information and belief, been prepared by WMI’s human resources department, which was to be signed by the applicable executive committee member⁸ and counter-signed by the key employee to whom the special bonus opportunity was made. Similar to the WMI Cash Long Term Incentive Award Agreement, this standard form bonus opportunity agreement also bore the “W logo” and the “WaMu” mark on the first page and the first sentence used the same words to explain the reason for the bonus offer: “I’m pleased to offer you this opportunity to earn a special bonus of \$50,000 as a **reward**

⁷ See Exhibit 10.3 to WMI’s 2007 Annual Report on Form 10-K, filed with the SEC on February 29, 2008.

⁸ The following individuals were the members of WMI’s executive committee during this period of time: Kerry K. Killinger, Todd H. Baker, Melissa J. Ballanger, Alfred R. Brooks, Thomas W. Casey, Ronald J. Cathcart, James B. Corcoran, Daryl D. David, Debora D. Horvath, Stewart M. Landefeld, Stephen J. Rotella, **David C. Schneider**, and Anthony F. Vuoto. See WMI’s 2007 Annual Report on Form 10-K, filed with the SEC on February 29, 2008, at p. 7.

for your continued service to Washington Mutual (the “Company” or “WaMu”).” *See* April SBO (emphasis added).

11. In order for Mr. Bach to earn retention bonus under the Retention Bonus Agreement and his special bonuses under the SBOs, the Bach Agreements required that Mr. Bach satisfy certain conditions, all of which were, in fact, satisfied by Mr. Bach.

12. The standard form special bonus opportunity agreement required that the employee “remain an employee of the Company through the Bonus Period” to be entitled to receive the special bonus. This requirement was referred to in the agreement as the “Employment Requirement” and the SBO Agreement provided that the Employment Requirement would be waived in two situations, as follows:

First, if your job is eliminated (as defined in the WaMu Severance Plan) you will be treated as having fulfilled the Employment Requirement as long as you remain employed through your Job End Date (as defined in the WaMu Severance Plan). Second, you will be treated as having fulfilled the Employment Requirement if, within two years after a change in control (as defined in Section 5(g) of your Change in Control (“CIC”) Agreement), your employment is terminated by the Company or a successor for any reason other than for cause (as defined in Section 5(i) of your CIC Agreement) or you resign for good reason (as defined in Section 5(j) of your CIC Agreement) and no reason exists for the Company or a successor to terminate you for cause (as defined in Section 5(i) [sic] your CIC Agreement).

13. Mr. David Schneider, a member of WMI’s executive committee, signed the April SBO. Mr. Henry John Berens, the Division Executive for Loan Servicing, signed the July SBO. Mr. Bach counter-signed and accepted the SBOs. Mr. Bach remained an employee of Washington Mutual through the occurrence of the bank seizure by the FDIC. Having done so,

Mr. Bach earned the sums due to him under the Retention Bonus Agreement and the SBOs, in the total amount set out in the Bach Claim, prior to the Commencement Date.

LEGAL ARGUMENTS

The Retention Bonus Agreement and the SBOs

14. WMILT asserts that all retention Bonus and special bonus agreements were entered into between the respective claimants and WMB, not WMI. *See* 79th Objection at I. This is simply not true. WMB is not a party to either the Mr. Bach's Retention Bonus Agreement or SBOs. The words "Washington Mutual Bank" do not appear anywhere in the Bach Agreements. In fact, nothing about any of the Bach Agreements indicates that WMB is a party to those agreements.

15. Such is not the case with respect to WMI. As previously described, the retention bonus agreements and special bonus agreements were standard form agreements that bore the "W logo" and "WaMu" mark, both of which are trademarks that WMI has asserted were owned by WMI. The first sentence of the SBOs states that the special bonus was offered "as a reward for your continued service to Washington Mutual (the 'Company' or 'WaMu')," the same rationale WMI used for making the long term cash incentive awards pursuant to the standard form WMI Cash LTI Award Agreement. The Special Bonus Opportunity agreements were drafted by WMI, were disseminated and signed by members of WMI's Executive Committee, and were implemented to address WMI's publicly-stated concern regarding the retention of key employees. The continuous service of key employees receiving SBO agreements provided a benefit to both WMI and WMB during a period of time in which WMB was in severe financial distress.

16. For these reasons, Mr. Bach, along with the other employees who were offered similar types of retention and special bonus opportunity agreements, reasonably concluded that **WMI** was the making the special bonus offer and entering into the Retention Bonus Agreement and the SBOs with him.

17. Under Washington law, any ambiguity regarding WMI's liability under the Bach Agreements is to be resolved against WMI and in favor of Mr. Bach. *See Felt v. McCarthy*, 130 Wn.2d 203, 922 F.2d 90, 93 (1996)(“In choosing among reasonable meanings of a[n] . . . agreement . . . , that meaning is generally preferred which operates against the party who supplies the words” (quoting *Restatement (Second) of Contracts* §206 (1979))).

18. WMILT asserts that Mr. Bach is not entitled to payments or benefits under the Bach Agreements because he failed to satisfy the eligibility requirements and because the contractual predicates to payment have not been met. WMILT seeks to buttress this assertion through convoluted arguments that no “change in control” or “job elimination,” as defined in the Bach Agreements, occurred. WMILT's assertions and arguments are mistaken and misguided.

19. The Bach Agreements were offered to Mr. Bach as a key employee for the express purpose and with the clear intent of inducing him to remain an employee of Washington Mutual through a stated “Bonus Period.” The SBOs refer to this as the “Employment Requirement.” Mr. Bach could fulfill the Employment Requirement through either of two different means: (1) a job elimination; or (2) termination of employment for any reason other than cause after a “change in control.” Job elimination was defined by reference to the WaMu Severance Plan and the words “cause” and “change in control” were defined by reference to the employee's change in control (“CIC”) agreement.

20. As more fully discussed below, a “change in control” within the meaning of the SBOs and the CIC agreement **did** occur and, thus, Mr. Bach is entitled to the payments set out in the Bach Agreements.

21. A fundamental principle of contract interpretation is that the objective intent of the parties controls.⁹ Given the circumstances surrounding the special bonus opportunities and the change in control agreement offers to certain employees, it was clearly the intent of the parties that Mr. Bach, having been induced to remain an employee of Washington Mutual, would be entitled to receive the special bonus and the payment due under the CIC Agreement in connection with a job loss upon the demise of WMB. The Bach Agreements were all standard form agreements drafted by WMI and provided to the Washington Mutual employees to be accepted on a “take or leave it” basis. These were not negotiated agreements. As such, this Court should resolve each ambiguity in these agreements against WMI.¹⁰

22. Despite WMILT’s assertion in the Objections to the contrary, the seizure of WMB by the FDIC constituted the “sale or transfer (in one transaction or a series of 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.” Therefore, a “change in control” under section 5(g)5 of the CIC Agreements **did** occur. WMILT would have the Court conclude

⁹ See *Berg v. Hudesman*, 115 Wn. 2d 657, 663, 510 P.2d 222 (1990) (“it is deceptively simple to state the purpose of a court in interpreting a contract. ‘The cardinal rule with which all interpretation begins is that its purpose is to ascertain the intention of the parties’”) (quoting Corbin, *The Interpretation of Words and the Parol Evidence Rule*, 50 Cornell L. Quar. 161, 162 (1965) and citing 4 S. Williston, *Contract* §601 at 306 (3d ed. 1961)). See also *Restatement (Second) of Contract* §202(1) (1981).

¹⁰ See *Felt v. McCarthy*. See also *Berg v. Hudesman*, 115 Wn. 2d at 667 (“We determine the parties intent ‘by viewing the contract as a whole, the subject and objective of the contract, all the circumstances surrounding the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties.’”) (quoting *Stender v. Twin City Foods, Inc.*, 82 Wn.2d 250, 254, 810 P.2d 221 (1973)). See also *Restatement (Second) of Contracts* §211 (1981) (“Such a writing [referring to a standardized agreement] is interpreted wherever reasonable as treating alike all those similarly situated, without regard to their knowledge or understanding of the standard terms of the writing.”).

otherwise, asserting that the term “Company’s assets” means only the assets directly owned by WMI, without including the assets of WMB (i.e., the unconsolidated assets of WMI).¹¹

23. WMILT further asserts that, even if WMB’s assets fall within the plain meaning of the term, which Claimant argues is the case, WMB’s assets did not constitute “all or substantially all” of the consolidated assets of WMI. WMILT is wrong on both counts. In construing this provision of the CIC Agreement, the Court should take notice of the fact that WMI maintained its financial statements and publicly reported its assets on a consolidated basis, inclusive of WMB’s assets. Additionally, the words “assisted or unassisted, voluntary or involuntary” are commonly used to describe asset transfers made by the FDIC as receiver in connection with failed bank purchase and assumption transactions. Giving a commonly understood meaning to these terms creates a strong and reasonable inference that the term “Company’s assets” was intended to include WMB’s assets.

24. Moreover, the FDIC, as receiver for WMB, succeeded by operation of law all rights, titles, powers, and privileges of WMB, including the power to take over its assets.¹² Additionally, the seizure of WMB by the FDIC operated as a matter of law to divest WMI of all its rights, titles, powers and privileges as the stockholder of WMB.¹³ The FDIC’s succession by

¹¹ In support of its position, WMILT cites *Williams v. McGreevey (In re Touch Am. Holdings, Inc.)*, 401 B.R. 107, 126 (Bankr. D. Del. 2009), quoting *Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003). These cases are easily distinguished. In *Williams v. McGreevey* the Court was faced with the argument that a subsidiary’s right to pursue derivative claims against corporate insiders was a property right of its parent company, an argument it rejected. The issue before the U.S. Supreme Court in *Dole Food Co. v. Patrickson* was whether a corporate subsidiary can claim instrumentality status under the Foreign Sovereign Immunities Act, when the foreign state does not own a majority of its shares but does own a majority of the shares of a corporate parent. In opposing the instant Objections, Mr. Bach is not asking this Court to declare that the assets of WMB were the legal property of WMI, only to construe the words “Company’s assets” (in the context of the other words used in the applicable provision of the CIC Agreement) as meaning the **consolidated assets of WMI**.

¹² See Federal Deposit Insurance Act (“FDI Act”) § 1 I (d)(2)(A)(i) (“The Corporation shall, as conservator or receiver, and by operation of law, succeed to (i) all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, accountholder, depositor, officer or director of such institution with respect to the institution and the assets of the institution.” 12 USC § 1821(d)(2)(A)(i). See also FDI Act §11 (d)(2)(B)(i), 12 USC §1821(d)(2)(B)(i).

¹³ *Id.*

operation of law to WMB's assets constituted an involuntary transfer of substantially all of WMI's **consolidated** assets. WMI's loss of powers as the stockholder of WMB by operation of law constituted an involuntary transfer of substantially all of WMI's unconsolidated assets.

25. Accordingly, whichever interpretation of WMI's assets is applied -- consolidated or unconsolidated -- the seizure of WMB by the FDIC constituted a "change in control" under section 5(g)5 of the CIC Agreements.¹⁴

26. WMB's assets, control of which passed by operation of law to the FDIC as receiver upon the Bank Seizure, unquestionably constituted "all or substantially all" of WMI's **consolidated** assets.¹⁵ WMI's stock ownership interest in WMB was divested by operation of law upon the seizure, unquestionably constituted "all or substantially" all of WMI's **unconsolidated** assets. WMILT's assertion to the contrary is simply wrong and applicable law. *See Philadelphia National Bank v. B.S.F. Co.*, 41 Del. Ch. 509, 516, 199 A.2d 557, 561 (Ch. 1964), *rev'd on other grounds*, 42 Del. Ch. 106, 204 A.2d 746 (Supr. Ct. 1964).¹⁶

27. The extraordinary nature and substantial impact on WMI of the Bank Seizure are beyond debate. WMI filed its chapter 1 I petition the following day, publicly stating that the

¹⁴ The seizure also serves as the factual predicate for the good-faith determination by WMI's board of directors that a "change in control" within the meaning of section 5(g)3 of the CIC Agreement (namely, the acquisition by any Person of the power to direct the management and policies of the Company) had occurred. Upon information and belief, WMI's board of directors made this good-faith determination at a meeting held on or about September 26, 2008.

¹⁵ According to the FDIC's press release announcing the Bank Seizure and the JPMC Transaction, the combined assets of WMB and its subsidiary, Washington Mutual FSB, were \$307 billion, which represented 99% of the \$309.7 billion of consolidated assets reported by WMI in its unaudited Consolidated Statements of Financial Condition for the calendar quarter ended June 30, 2008, included with its Quarterly Report on Form 10-Q, filed with the SEC on August 11, 2008.

¹⁶ In *Philadelphia National Bank v. B.S.F. Co.*, the issue before the Court was the interpretation of language in a trust indenture to "sell all or substantially all" of the corporation's properties. The Court analyzed the indenture language in the light of the corporate law regarding the sale of corporate assets, including similar language in corporate statutes involving shareholder approval of sales of corporate assets. The Court said: "[T]he critical factor in determining the character of a sale of assets is generally considered not the amount of the property sold but whether the sale is in fact an unusual transaction or one made in the regular course of business of the seller." *Philadelphia National Bank v. B.S.F. Co.*, 41 Del. Ch. at 515, 199 A.2d at 561. See also *Gimbel v. Signal Companies, Inc.*, 316 A.2d 599 (Del. Ch. 1974), *aff'd*, 316 A.2d 619 (Del. 1974).

filing was the “result” of the appointment of the FDIC as receiver of WMB on September 25, 2008, also disclosing that, on September 29, 2008, NYSE Regulation, Inc. had notified the Company that it had suspended the New York Stock Exchange listings of the Company’s common stock because of “the substantial reduction in the scope of the Company’s operations as a result of the [JPMC Transaction] and the ‘abnormally low’ trading price of the Company’s common stock.”¹⁷ Clearly, the seizure of WMB substantially and detrimentally affected the very existence and purpose of WMI.

28. WMILT asserts that “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.” On September 25, 2008, at the very moment when the FDIC seizure of WMB occurred, WMB ceased operating, a “Change in Control” under the CIC Agreements occurred, and the jobs of every WMB employee were eliminated and their employment with Washington Mutual terminated without cause. As a result, the employment requirement was fulfilled pursuant to the terms of SBOs and the CIC Agreement.

29. Importantly, WMILT does not argue that a claimant, and particularly Mr. Bach, failed to satisfy his obligations under his SBOs or under the CIC Agreement.

Rebuttal to WMILT’s Arguments under Section 502(b)(7) of the Bankruptcy Code

30. In paragraph 15 of the 79th Objection, WMILT argues that the allowed amounts of claims pursuant to the retention bonus agreement, “special bonus opportunity” agreements, and “change in control” agreements are subject to the cap in section 502(b)(7) of the Bankruptcy

¹⁷ See WMI’s Current Report on Form 8-K dated September 30, 2008, filed with the SEC on September 29, 2008.

Code, suggesting that the Bach Claim is a claim for severance payments or “change in control” payments.

31. To the contrary. The Bach Claim, under the Agreements, constitutes earned compensation for services performed before the Commencement Date. The cap in §502(b)(7) does not apply to Mr. Bach’s Claim.¹⁸

32. As discussed above, the retention bonus agreements, the special bonus agreements, and the CIC agreements were offered to induce employees to remain employees of Washington Mutual through the specified bonus periods. This Court has described severance payments, including “change in control” payments, as “prospective compensation” paid on termination in lieu of compensation for periods subsequent to termination and not compensation for services already rendered. *See In re VeraSun Energy Corp.*, 467 B.R. 757 (Bankr. D. Del. 2012). Unlike a severance payment, in this instance, each key employee was to receive the special bonus under a special bonus opportunity agreement even if the employee remained an employee of Washington Mutual after the end of the bonus period. These were special bonuses, not severance payments. Termination of employment was not a condition precedent to receiving the bonus. The fact that the bonus period was cut short and the employees lost their jobs as a result of the FDIC’s seizure of WMB should be of no consequence with respect to the interpretation of Mr. Bach’s Claim under the Bach Agreements and the CIC Agreement. The FDIC seizure does not alter the character of his compensation. Mr. Bach’s employment requirement was fulfilled pursuant to the terms of the Retention Bonus Agreement and the SBOs. His retention bonuses, special bonuses and CIC payments were earned for services rendered during the bonus period, regardless of the duration of the bonus period.

¹⁸ Alternatively, if this Court rules that cap under §502(b)(7) does apply to the Bach Claim, the amount of the cap should be increased by the special bonus as “unpaid compensation due under such contract” as of the Commencement Date. *See* §502(b)(7)(B).

WHEREFORE, for the reasons set forth herein, Edward F. Bach, by his undersigned counsel, respectfully requests that this Court (i) disallow WMILT's 5th and 79th Objections with respect to his Proof of Claim, Claim No. 2855; (ii) allow Proof of Claim No. 2855 in full as a post-petition administrative claim; and (iii) grants such other and further relief as is just.

Dated: March 19, 2013
Wilmington, DE

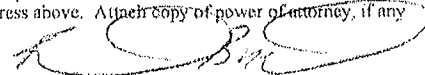
Respectfully submitted,

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EXHIBIT “A”

B 10 (Official Form 10) (12/08)

| | | |
|---|---|---|
| UNITED STATES BANKRUPTCY COURT | | PROOF OF CLAIM |
| Name of Debtor: <u>Washington Mutual Bank</u> | | Case Number: <u>08-12228</u> |
| <small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small> | | |
| Name of Creditor (the person or other entity to whom the debtor owes money or property): <u>Edward F. Bach</u> | | <input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____ |
| Name and address where notices should be sent: <u>Edward Bach</u> <u>1140 W. Kasby Ln.</u> <u>JA-DeSotoville FL 32259</u> Telephone number: <u>904-287-6340</u> | | |
| Name and address where payment should be sent (if different from above): | | <input checked="" type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case. |
| Telephone number: | | |
| 1. Amount of Claim as of Date Case Filed: <u>\$ 577,000.00</u> | | 5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8) <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(____). Amount entitled to priority: \$ _____ <small>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small> |
| If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges. | | |
| 2. Basis for Claim: <u>Retention bonuses not paid under change of control act PAID</u> <small>(See instruction #2 on reverse side.)</small> | | |
| 3. Last four digits of any number by which creditor identifies debtor: _____ | | |
| 3a. Debtor may have scheduled account as: _____ <small>(See instruction #3a on reverse side.)</small> | | |
| 4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate: % _____ Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____ | | |
| 6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. | | |
| 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. <small>(See instruction 7 and definition of "redacted" on reverse side.)</small> DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: | | |
| Date: <u>3/19/09</u> | Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  <u>Edward Bach</u> | |
| | | FOR COURT USE ONLY |

B 10 (Official Form 10) (12/08) -- Cont.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

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

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address:

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

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4. Secured Claim:

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

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

7. Documents:

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

INFORMATION

Debtor

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

Creditor

A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101 (10)

Claim

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

Proof of Claim

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

Secured Claim Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

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

Claim Entitled to Priority Under 11 U.S.C. §507(a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection

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

Acknowledgment of Filing of Claim

To receive acknowledgment of your filing, please enclose a stamped self-addressed envelope and a copy of this proof of claim. You may view a list of filed claims in this case by visiting the Claims and Noticing Agent's website at <http://www.kecllc.net>

Offers to Purchase a Claim

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

Federal Deposit Insurance Corporation as Receiver for:
10015 - Washington Mutual Bank Henderson, NV
(Name of Bank/Financial Institution and Location)

PROOF OF CLAIM

SSN/Tax ID # (1) 365-94-7034

The undersigned, (2) Edward F. Bach
(Name of person making the claim)

says that the Washington Mutual Bank now in liquidation is
(Name of Bank/Financial Institution)

justly indebted to (3) Edward F. Bach in the sum of
(Individual/Joint/Corporation/Partnership/Firm/Agency)

(4) five hundred seventy-seven thousand and 100 Dollars upon the following Claim:

| | Description of (Invoice) claim: | Liability Number | Amount of Claim |
|--------|---|--------------------|-----------------|
| CLAIMS | (5) Retention Bonus - 4/23/08 | FDIC will complete | \$50,000.00 |
| | Retention Bonus - 7/1/08 | | \$250,000.00 |
| | Change of Control agreement - 1 and 1/2 times | | \$277,000.00 |
| | Total Compensation | Total Claim: (6) | \$577,000.00 |

The undersigned further states that he/she makes this claim on behalf of

(7) Edward F. Bach

that no part of said debt has been paid, that

(8) Edward F. Bach
(Individual/Joint/Corporation/Partnership/Firm/Agency)

has given no endorsement or assignment of the same or any part thereof, and that there is no set-off or counterclaim, or other legal or equitable defense to said claim or any part thereof.

NAME (9) [Signature] _____
(Signature of Person making the Claim) (Title)

FIRM _____
(If applicable)

ADDRESS (10) 1140 W. Kostog Ln.

CITY/STATE/ZIP Jacksonville, FL 32259

TELEPHONE NUMBER 904-287-6340

The penalty for knowingly making or inviting reliance of any false, forged, or counterfeit statement, document, or thing for the purpose of influencing in any way the action of the Federal Deposit Insurance Corporation is a fine of not more than \$1,000,000 or imprisonment for not more than thirty years, or both (18 U.S.C. Section 1007).

GENERAL INFORMATION AND INSTRUCTIONS FOR COMPLETING A PROOF OF CLAIM FORM

This form is being sent to you in the event you believe the failed institution owes you funds for services rendered or goods purchased prior to the date of closing. If the institution does not currently owe you any money, it is not necessary for you to complete this form.

The following blanks must be completed in order for your Proof of Claim to be considered: (The numbers correspond with those located on the proof of claim form.)

- 1) A company's tax identification number or an individual's social security number.
- 2) Name of the person making the claim.
- 3) Review this name. Make corrections as needed. Fill in name if blank.
- 4) Written dollar amount of the claim (ex. One hundred and no/100.)
- 5) Detailed description of what is being claimed (i.e., the invoice number, type of service being claimed, account number, etc.).
- 6) Total amount of claim. Total should NOT include interest or late fees accrued since institution closing.
- 7) Review this name. Make corrections as needed. Fill in name if blank.
- 8) Review this name. Make corrections as needed. Fill in name if blank.
- 9) Signature of the person making claim and the title of that person if they are representing a company making a claim.
- 10) The address and telephone number of the individual or company making the claim.

Should the above information be missing, your information will be entered into our tracking system, but your Proof of Claim form will be returned to you for completion.

REQUIRED DOCUMENTATION

- 1) Claims for Goods Purchased by the Former Institution: You must forward a copy of the Purchase order or other correspondence from the institution requesting the goods, a copy of your invoice and a receipt signed by the institution indicating that the goods were received.
- 2) Claims for Services Rendered: You must forward a copy of the correspondence or signed initial contract sent by the Institution to request your services and an invoice. In the case of legal fees, an itemized invoice must be sent indicating your prorated charges. For appraisal services, submit proof the appraisal was completed.

EXHIBIT “B”



WaMu®

April 23, 2008

Edward Bach
U225826

Dear Edward,

Re: Special Bonus Opportunity

I'm pleased to offer you this opportunity to earn a special bonus of \$50,000 as a reward for your continued service to Washington Mutual (the "Company" or "WaMu").

Terms of Offer

To receive the bonus, you must remain an employee of the Company, have a current overall performance rating of Solid Contributor or better, and continue to perform your job duties as required and in accordance with Company policies and procedures through April 1, 2009 (the "Bonus Period"). The requirement that you remain an employee of the Company through the Bonus Period is referred to as the "Employment Requirement." Additionally, as noted below, a condition to your entitlement to the special bonus is your compliance with your obligations under this agreement.

If you fulfill these requirements and also meet the other conditions in this letter, you will be entitled to the bonus of \$50,000. The bonus will be paid in a lump sum, less taxes and withholding, in the pay cycle following the Bonus Period. This payment will be in addition to any other bonus for which you may normally be eligible.

You will continue to be subject to all Company policies and management directives. Your 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.

There are two situations in which the Employment Requirement is waived for purposes of this retention bonus. First, if your job is eliminated (as defined in the WaMu Severance Plan) you will be treated as having fulfilled the Employment Requirement as long as you remain employed through your Job End Date (as defined in the WaMu Severance Plan). Second, you will be treated as having fulfilled the Employment Requirement if, within two years after a change in control (as defined in Section 5(f) of your Change in Control ("CIC") Agreement), your employment is terminated by the Company or a successor for any reason other than for cause (as defined in Section 5(h) of your CIC Agreement) or you resign for good reason (as defined in Section 5(i) of your CIC Agreement) and no reason exists for the Company or a successor to terminate you for cause (as defined in Section 5(h) your CIC Agreement).



WaMu

Edward Bach
April 23, 2008
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Agreement Not to Solicit Personnel

As a condition of this offer, you agree that you will not solicit Washington Mutual personnel for a period of one year after your employment here ends. This means that, regardless of the reason for termination of your employment, you will not directly or indirectly solicit, encourage, induce, or enter into any arrangement with any person who is then a WaMu employee or a contractor or consultant whom you have worked with, supervised, or been exposed to confidential information about while associated with the Company to terminate or diminish his or her relationship with the company, or to seek or accept employment or a similar relationship with any other business or entity including, but not limited to, one that competes with or provides services comparable to those provided by WaMu. If you violate this obligation, you agree to return the bonus promptly, and agree that the Company shall also be entitled to pursue whatever other remedies are available to it.

Other Terms

Not all of your coworkers are being made such an offer. We expect that you will respect their feelings and keep the fact and terms of this bonus offer confidential.

This letter sets forth all of the terms and conditions upon which the special bonus may be paid to you, and it supersedes any other representations about this bonus opportunity. No one at the Company has the authority to make any promises to you that are different from those set forth in this letter on the subject of this special bonus except for personnel from Corporate Rewards who refer to this letter.

We are confident in your ability to make valuable contributions to the Company. On behalf of Washington Mutual, I would like to thank you not only for the service you have already rendered but also, in advance, for the important role that I trust you will continue to play. If you have any questions, please direct them to Peggy Ohlhaber, Home Loans Rewards. In order to be eligible to receive this special bonus opportunity, you must sign this letter in the designated place below and return it to Beth Wright, Corporate Rewards & Benefits (Mailstop WMC0705) by May 5, 2008.

Sincerely,
David Schneider
President, Home Loans

Acknowledgement: I understand and agree to all of the terms set forth in this agreement.

Signature: _____ Date: _____
Edward Bach U225826

EXHIBIT “C”



July 1, 2008

Ed Bach
U225826

Dear Ed,

Re: Special Bonus Opportunity

I'm pleased to offer you this opportunity to earn a special bonus of \$250,000 as a reward for your continued service to Washington Mutual (the "Company" or "WaMu").

Terms of Offer

To receive the bonus, you must remain an employee of the Company, have a current overall performance rating of Solid Contributor or better, and continue to perform your job duties as required and in accordance with Company policies and procedures through July 1, 2010 (the "Bonus Period"). The requirement that you remain an employee of the Company through the Bonus Period is referred to as the "Employment Requirement." You must also meet the following goals along the way in order to receive your special bonus:

- Maintain capacity and productivity at acceptable levels based on volume
- Achieve a 5% year-over-year improvement in Promises Kept per Hour.

Your bonus will be paid based on your performance relative to milestones achieved per the following schedule:

| Percent of Defined KPIs Achieved | 100% | 90% | 80% | 75% | Less than 75% |
|---|-----------|-----------|-----------|-----------|---------------|
| Bonus Payment | \$250,000 | \$200,000 | \$150,000 | \$100,000 | \$0 |

If you fulfill these requirements and also meet the other conditions in this letter, you will be entitled to:

- 50% of the bonus payment for performance through July 1, 2009
- 50% of the bonus payment for performance through July 1, 2010.

The bonus payments will be paid in a lump sum, less taxes and withholding, in the pay cycle following the dates indicated above. These payments will be in addition to any other bonus for which you may normally be eligible.

You will continue to be subject to all Company policies and management directives. Your employment will continue to be terminable by you or the company at will, without cause or



Ed Bach
July 1, 2008
Page 2

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.

There are two situations in which the Employment Requirement is waived for purposes of this retention bonus. First, if your job is eliminated (as defined in the WaMu Severance Plan) you will be treated as having fulfilled the Employment Requirement as long as you remain employed through your Job End Date (as defined in the WaMu Severance Plan). Second, you will be treated as having fulfilled the Employment Requirement if, within two years after a change in control (as defined in Section 5 of your Change in Control ("CIC") Agreement), your employment is terminated by the Company or a successor for any reason other than for cause (as defined in Section 5 of your CIC Agreement) or you resign for good reason (as defined in Section 5 of your CIC Agreement) and no reason exists for the Company or a successor to terminate you for cause (as defined in Section 5 your CIC Agreement).

Agreement Not to Solicit Personnel

As a condition of this offer, you agree that you will not solicit Washington Mutual personnel for a period of one year after your employment here ends. This means that, regardless of the reason for termination of your employment, you will not directly or indirectly solicit, encourage, induce, or enter into any arrangement with any person who is then a WaMu employee or a contractor or consultant whom you have worked with, supervised, or been exposed to confidential information about while associated with the Company to terminate or diminish his or her relationship with the company, or to seek or accept employment or a similar relationship with any other business or entity including, but not limited to, one that competes with or provides services comparable to those provided by WaMu. If you violate this obligation, you agree to return the bonus promptly, and agree that the Company shall also be entitled to pursue whatever other remedies are available to it.

Other Terms

Not all of your coworkers are being made such an offer. We expect that you will respect their feelings and keep the fact and terms of this bonus offer confidential.

This letter sets forth all of the terms and conditions upon which the special bonus may be paid to you, and it supersedes any other representations about this bonus opportunity. No one at the Company has the authority to make any promises to you that are different from those set forth in this letter on the subject of this special bonus except for personnel from Corporate Rewards who refer to this letter.



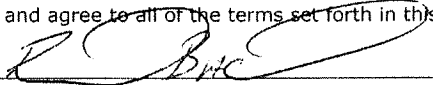
Ed Bach
July 1, 2008
Page 3

We are confident in your ability to make valuable contributions to the Company. On behalf of Washington Mutual, I would like to thank you not only for the service you have already rendered but also, in advance, for the important role that I trust you will continue to play. If you have any questions, please direct them to your HR Business Partner. In order to be eligible to receive this special bonus opportunity, you must sign this letter in the designated place below and return it to Beth Wright, Corporate Rewards & Benefits (Mailstop: WMC0705).

Sincerely,
John Berens
Division Executive, Loan Servicing

Acknowledgement:

I understand and agree to all of the terms set forth in this agreement.

Signature:  Date: 7/15/08
Ed Bach U225826

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

CERTIFICATE OF SERVICE

I, Kenneth E. Aaron, Esquire, hereby certify that on this date I caused to be served true and correct copies of the **Response of Edward F. Bach to WMI Liquidating Trust’s Fifth Omnibus (Substantive) Objection to Claims and Seventy-Ninth Omnibus (Substantive) Objection to Claims** via ECF notification and First Class postage prepaid, upon the following:

United States Trustee
844 King Street, Room 2207
Lockbox #35
Wilmington, DE 19889-0035

Amanda R. Steele, Esquire
Paul Noble Heath, Esquire
Richard Layton and Finger
920 N. King Street
Wilmington, DE 19801

Brian S. Rosen, Esquire
Lawrence J. Baer, Esquire
Weil Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Akin Gump Strauss Hauer & Feld LLP

Patrick M. Mott, Esquire
One Bryant Park
New York, NY 10036

Evelyn J. Meltzer, Esquire
Pepper Hamilton LLP
Hercules Plaza
1313 N. Market Street, Suite 5100
Wilmington, DE 19899

Scott Cousins, Esquire
Cousins Chipman & Brown, LLP
1007 North Orange Street
Suite 1110
Wilmington, DE 19801

Dated: March 19, 2013

/s/ Kenneth E. Aaron
Kenneth E. Aaron, Esquire