

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	:	Case No. 08-12229 (MFW)
	:	(Jointly Administered)
	:	
Debtors.	:	
	:	
-----X	:	
-----X	:	
WMI LIQUIDATING TRUST	:	
	:	
Plaintiff,	:	
	:	
v.	:	
-----X	:	
ANTHONY BOZZUTI,	:	Adversary Proc. No. 10-53131 (MFW)
-----X	:	
CHANDAN SHARMA,	:	Adversary Proc. No. 10-53147 (MFW)
-----X	:	
EDWARD F. BACH,	:	Adversary Proc. No. 10-53132 (MFW)
-----X	:	
HENRY J. BERENS,	:	Adversary Proc. No. 10-53134 (MFW)
-----X	:	
JOHN M. BROWNING,	:	Adversary Proc. No. 10-53156 (MFW)
-----X	:	
KEITH O. FUKUI,	:	Adversary Proc. No. 10-53139 (MFW)
-----X	:	
MARC MALONE,	:	Adversary Proc. No. 10-53152 (MFW)
-----X	:	
MICHAEL R. ZARRO,	:	Adversary Proc. No. 10-53143 (MFW)
-----X	:	
RACHEL M. MILEUR a/k/a	:	Adversary Proc. No. 10-53133 (MFW)
RACHELLE M. MILEUR,	:	
-----X	:	
ROBERT C. HILL,	:	Adversary Proc. No. 10-53153 (MFW)
-----X	:	
STEPHEN E. WHITTAKER,	:	Adversary Proc. No. 10-53150 (MFW)
-----X	:	
THOMAS E. MORGAN,	:	Adversary Proc. No. 10-53154 (MFW)
-----X	:	
ANN TIERNEY	:	Adversary Proc. No. 11-53299 (MFW)
-----X	:	

<sup>1</sup> 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.



<b>TODD H. BAKER</b>	:	<b>Adversary Proc. No. 11-54031 (MFW)</b>
-----x		
<b>RICHARD STRAUCH</b>	:	<b>Adversary Proc. No. 12-50848 (MFW)</b>
-----x		
<b>GENNADIY DARAKHOVSKIY</b>	:	<b>Adversary Proc. No. 12-50902 (MFW)</b>
-----x		
<b>ROBERT BJORKLUND, DARYL DAVID,</b>	:	<b>Adversary Proc. No. 12-50965 (MFW)</b>
<b>MARY BETH DAVIS,</b>	:	
<b>MICHELE GRAU-IVERSEN,</b>	:	
<b>DEBORA HORVATH, JEFFREY JONES,</b>	:	
<b>JOHN MCMURRAY, CASEY NAULT,</b>	:	
<b>MICHAEL REYNOLDSON,</b>	:	
<b>DAVID SCHNEIDER, DAVID TOMLINSON,</b>	:	
<b>BRUCE ALAN WEBER, AND</b>	:	
<b>JEFFREY WEINSTEIN,</b>	:	
<b>Defendants.</b>	:	
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**CERTIFICATION OF COUNSEL REGARDING ORDER  
ADJOURNING HEARING ON WMI LIQUIDATING TRUST’S MOTION TO  
AMEND OMNIBUS OBJECTIONS AND SUSPENDING AMENDED SCHEDULING  
ORDER WITH RESPECT TO DISCOVERY AND  
EMPLOYEE CLAIMS HEARING AND ADVERSARY PROCEEDINGS**

I, Kenneth E. Aaron, Esquire, counsel for Claimants, Michael A. Zarro (“Zarro”), Henry J. Berens (“Berens”), and Edward Bach (“Bach,” and together with Zarro and Berens, “Claimants”), in the above captioned matter, hereby states as follows:

1. On March 29, 2013 at 4:10 p.m. (EDT), counsel for WMI Liquidating Trust (“WMILT”) filed with this Court its Certification of Counsel Regarding Order Adjourning Hearing on WMI Liquidating Trust’s Motion to Amend Omnibus Objections and Suspending Amended Scheduling Order with Respect to Employee Claims Hearing and Adversary Proceedings [D.I. 11184] (“WMILT’s COC”). Attached to WMILT’s COC as Exhibit “A” is the proposed form of order WMILT is requesting that this Court enter.

2. On March 28, 2013, WMILT circulated to interested counsel a prior draft of the order attached to WMILT’s COC. The prior draft had been circulated as an “agreed” order.

However, as described more fully below, after counsel for many of the employee claimants and adversary proceeding defendants would not agree with WMILT's proposed language and WMILT refused to accept comments and suggested changes from such counsel, WMILT filed the COC and the proposed order, which was no longer an "agreed" order.<sup>2</sup>

3. For the reasons set out in this Certification of Counsel, Counsel for Claimants respectfully requests that this Court **not** enter the proposed order submitted by WMILT. Rather, Counsel for Claimants respectfully requests that this Court enter an order in the form attached hereto, staying discovery with respect to the WMILT's omnibus objections to employee claims and the Adversary Proceedings **only** April 18, 2013, the date of the hearing on the Motion of WMI Liquidating Trust for an Order Appointing a Mediator with Respect to Employee Claims and Pending Omnibus Objections [D.I. 11185] (the "Mediation Motion").

#### **BACKGROUND**

4. On October 15, 2012, the Court entered the Agreed Order Establishing Procedures and Deadlines Concerning Hearing on Employee Claims and Discovery in Connection Therewith [D.I. 10777] (the "First Scheduling Order").

5. On November 13, 2012, the Court entered the Scheduling Order with respect to the above-captioned adversary proceedings (the "Adversary Proceedings Scheduling Order").

6. On January 8, 2013, the Court entered the Agreed Order Amending Scheduling Orders With Respect to Employee Claims Hearing and Adversary Proceedings [D.I. 10975] (the "Second Scheduling Order," and together with the First Scheduling Order and the Adversary Proceedings Scheduling Order, the "Scheduling Orders").

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<sup>2</sup> In its COC, WMILT advised that Court that, in WMILT's opinion: "WMILT circulated a prior version of the Proposed Order to counsel for Claimants in attendance at the Omnibus Hearing and the Proposed Order contains suggested revisions to matters raised at the Omnibus Hearing. Other suggested revisions which relate to matters which were not raised at the Omnibus Hearing or went well beyond the agreement stated on the record of the Omnibus Hearing have not been incorporated into the Proposed Order. *See* WMILT's COC at ¶8.

7. Since October, 2012, WMILT, the claimants subject to the First Scheduling Order and the Second Scheduling Order (the “Employee Claimants”)<sup>3</sup>, and the above-captioned defendants (the “Defendants” and, together with the Employee Claimants and WMILT, the “Parties”) have been engaging in discovery as contemplated by the Scheduling Orders.

8. In early February, 2013, various Claimants filed motions to amend their proofs of claim. [*See, e.g.*, D.I. 11009, 11010, 11011, 11012, 11013, 11014, 11015, 11016, 11017, 11018, 11019, 11020, and 11026].

9. On February 19, 2013, WMILT filed the 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 [D.I. 11032] (the “Motion to Amend”).

10. Numerous objections and responses were filed to the Motion to Amend, including, among others, Bach’s Joinder [D.I. 11146] to Joint Objection John McMurray, Alfred Brooks, Todd Baker, Thomas Casey, Deborah Horvath, David Schneider, Stephen Rotella, Sean Beckett, David Beck, Anthony Bozzuit, Rajiv Kapoor, Marc Malone, Thomas E. Morgan, Genevieve Smith, Radha Thompson, Ann Tierney, Daryl David, Kimberly Cannon, Michael Reynoldson, Chandan Sharma and Robert Bjorklund to 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 “Joint Objection”) [D.I. 11141], Berens’ Joinder to the Joint Objection [D.I. 11147], and Zarro’s Joinder to the Joint Objection [D.I. 11148].

11. On March 25, 2013, this Court held an omnibus hearing (the “March 25<sup>th</sup> Hearing”) in the bankruptcy case. Among the motions considered by the Court was WMILT’s

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<sup>3</sup> Zarro, Berens and Bach are Employee Claimants and Defendants in pending adversary proceedings.

Motion to Amend. Counsel to the Claimants and counsel to other parties in interest who objected or otherwise responded in opposition to the relief sought by WMILT in the Motion to Amend agreed with WMILT that the hearing on the Motion to Amend could be continued to the June 3, 2013 Omnibus Hearing.

12. Also discussed at the March 25<sup>th</sup> Hearing was the status of discovery with respect to WMILT's objections to the employee Claims and the adversary proceedings. There was general discussion about whether the Parties could agree, under the proper circumstances and guidelines, to mediate the objections to employee claims and the adversary proceedings.

13. This Court instructed counsel present at the March 25<sup>th</sup> Hearing to submit an **agreed** order that would set out the terms by which the parties would agree to mediation, how a mediator would be chosen, where the mediations would take place, and who would bear the cost of the mediation.

14. It was clear at the March 25<sup>th</sup> Hearing that WMILT was overwhelmed by the voluminous and extensive discovery necessary for it to prosecute its pending omnibus objections to claims and the adversary proceedings. Apparently, between the time that WMILT decided to file and prosecute the omnibus objections to employee claims and the adversary proceedings and the March 23<sup>rd</sup> Hearing, WMILT had not devised a strategy by which to effectively respond to the written and other discovery propounded by Employee Claimants and Defendants.<sup>4</sup>

15. Prior to the March 25<sup>th</sup> Hearing, Counsel for Claimants had **not** been made aware by counsel for WMILT that there was a proposal pending to delay the discovery deadlines or that counsel for WMILT intended to present such a proposal at the March 25<sup>th</sup> Hearing. In fact, at

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<sup>4</sup> Since WMILT (and prior to WMILT, the Debtors) filed **88 omnibus** objections to claims (including hundreds of objections to the Debtors' former employees' claims), it is baffling the Claimants are baffled as to why WMILT had not given serious thought and consideration to how discovery with respect to all of its objections would play out. It should not have come as a "surprise" to counsel for WMILT that the discovery was complex and voluminous.

the March 25<sup>th</sup> Hearing, there was no pending Motion or other request before the Court relating to the discovery deadlines and the hearing date set out in the Scheduling Orders.

16. At the March 25<sup>th</sup> Hearing, there was also discussion regarding WMILT's proposal that the discovery deadlines set out in the Scheduling Orders be suspended pending settlement discussions with the Employee Claimants.

17. Surprisingly to Claimants' counsel, at the March 25<sup>th</sup> Hearing, Claimants' counsel was informed for the first time by counsel for WMILT that WMILT had been engaged in settlement negotiations with **certain other** of the Employee Claimants and Defendants. However, prior to the March 25<sup>th</sup> Hearing, WMILT had not even reached out to counsel for the Claimants regarding a potential settlement of their claims.

18. At the March 25<sup>th</sup> Hearing, the Court instructed all counsel to submit an **agreed** Order setting out the terms of a mediation process to with respect to all of the pending employee claims' objections and the adversary proceedings.

19. Instead, and contrary to this Court's instructions, late in the day on March 28, 2013, counsel for WMILT for the first time circulated a proposed form of Order that did not address the mediation process at all. Rather, the proposed form of Order circulated would merely suspend the discovery process until June, 2013. Attached hereto as Exhibit "A" is the cover email from Amy Price, Esquire counsel to WMILT, **sent at 2:41 p.m.** EDT on March 28, 2013. In that email, Ms. Price instructed counsel for certain of the Employee Claimants to review WMILT's draft certification of counsel and proposed order and to "provide any comments or questions **by the end of the day today** [March 28<sup>th</sup>]" because WMILT "intend[s] to file this [proposed "agreed" order] with the Court tomorrow morning."

20. Clearly, there was not sufficient time between 2:41 p.m. EDT and 5:00 p.m. EDT (the end of the business day) for a consent order to be negotiated between counsel for WMILT and counsel for the Employee Claimants.

21. Multiple comments and a revised proposed Order were emailed by numerous Employee Claimants and Defendants to Mr. Rosen late Thursday afternoon and evening and Friday morning.

22. However, rather than accept the Employee Claimants' comments, or even negotiate in good faith with the Employee Claimants regarding an order to which all parties could agree, at 11:00 a.m. on March 29, 2013, Mr. Rosen chose to respond to the Employee Claimants' counsel as follows:

Thank you for your comments. We have reviewed them and will incorporate what is appropriate. We will NOT include references to additional pleadings. Likewise, we will not waive available privileges, will not expand the opportunity to serve additional discovery requests, will not waive the applicability of Local Rules and will not reschedule the hearing that the Court established . . . We will send you a blacklined copy as it submitted to the Court.

*See* Email from Brian Rosen, Esquire to numerous counsel for Employee Claimants, dated March 29, 2013 at 11:00 a.m. (EDT), a true and correct copy of which is attached hereto as Exhibit "B".

23. Even later on March 29, 2013, WMILT filed its Motion of WMI Liquidating Trust for an Order Appointing a Mediator With Respect to Employee Claims and Pending Omnibus Objections [D.I. 11185] (the "Mediation Motion"). Claimants intend to timely object to the Mediation Motion, not because they oppose the concept of mediation, but because the terms proposed by WMILT are patently unfair and it is clear that WMILT has no true interest in mediating its objections to claims.

24. Based on the forgoing, including (a) this Court's instructions at the March 25<sup>th</sup> Hearing regarding the submission of an agreed order with respect to **mediation** of the employee claims objections and adversary proceedings; (b) WMILT's circulating a proposed form of "agreed" order mid-afternoon on March 28<sup>th</sup> and demanding comments by the end of **that** business day; (c) WMILT's counsel's response to the Employee Claimants' comments and changes to the draft order that he was unwilling to take such comments and changes into account **and** he was unwilling to circulate another draft of the proposed order; and (d) WMILT's filing of the Mediation Motion, it is Claimants' belief that WMILT has no true interest in agreeing to consensual terms of mediation.

25. Rather, WMILT seems to have engineered this entire exercise in order to delay discovery on the objections to employee claims that it chose to prosecute. Moreover, WMILT is intentionally attempting to steer this Court into entering a new scheduling Order without the consent of the Claimants and other Employee Claimants. In fact, it seems to counsel for Claimants that WMILT has managed to the shift the focus from consensual mediation to delaying the burdensome discovery process.

26. Moreover, Claimants do not believe that WMILT has any real interest in achieving fair settlements with them. There have not been any negotiations with Claimants regarding a potential settlement of their claims.<sup>5</sup> It was not until the morning of March 29, 2013 that WMILT made settlement offers to the Claimants. Those settlement offers came via email just minutes prior to WMILT's self-imposed deadline of delivering offers to all claimants by

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<sup>5</sup> In addition, on March 29, 2013, Berens filed a Motion for Order Granting Leave to File Amendment to Proof of Claim 2129, or, In the Alternative, Allowing Claimant to Assert Alternative Argument Regarding Claim Based on WaMu Severance Plan [D.I. 11182] (the "Berens Motion for Leave to Amend"). Also on March 29, 2013, Zarro filed his Motion for Order Granting Leave to File Amendment to Proof of Claim 1743, or, In the Alternative, Allowing Claimant to Assert Alternative Argument Regarding Claim Based on WaMu Severance Plan [D.I. 11183] (the "Zarro Motion for Leave to Amend"). The Berens Motion for Leave to Amend and the Zarro Motion for Leave to Amend



noon on March 29<sup>th</sup>. Without disclosing the amount of WMILT's initial offer to Claimants, it is Claimants' belief that the settlement proposals were not made in good faith.

**REQUEST FOR ENTRY OF ORDER REGARDING SUSPENSION OF DISCOVERY DEADLINES**

27. Based on the foregoing, Claimants respectfully request that this Court enter an Order solely with respect to a limited suspension of the discovery deadlines, until the April 18, 2013 hearing scheduled on the Mediation Motion. A copy of the proposed form of Order reflecting the above is attached hereto as Exhibit "C".

28. The undersigned respectfully requests that this Honorable Court enter the proposed form of Order attached as Exhibit "C".

29. The undersigned is available to answer any inquires the Court may have regarding this Certification.

**WEIR & PARTNERS LLP**

BY: /s/ Kenneth E. Aaron  
Kenneth E. Aaron, Esquire (# 4043)  
824 Market Street Mall, Suite 800  
Wilmington, Delaware 19801  
Telephone: (302) 652-8181  
Facsimile: (302) 652-8909  
[kaaron@weirpartners.com](mailto:kaaron@weirpartners.com)

Abbe A. Miller, Esquire (admitted *pro hac vice*)  
WEIR & PARTNERS LLP  
The Widener Building  
1339 Chestnut Street  
Suite 500  
Philadelphia, Pennsylvania 19107  
Telephone: (215) 665-8181  
Facsimile: (215) 665-8464  
[abbe.miller@weirpartners.com](mailto:abbe.miller@weirpartners.com)  
*Attorneys for Michael A. Zarro*

Wilmington, DE  
April 1, 2013

# EXHIBIT “A”

**From:** Price, Amy [<mailto:Amy.Price@weil.com>]

**Sent:** Thursday, March 28, 2013 2:41 PM

**To:** [SWS@pgslaw.com](mailto:SWS@pgslaw.com); Robyn B. Sokol; Aaron, Ken ([kaaron@weirpartners.com](mailto:kaaron@weirpartners.com)); [kcapuzzi@phw-law.com](mailto:kcapuzzi@phw-law.com); Jami Nimeroff; [mjoyce@crosslaw.com](mailto:mjoyce@crosslaw.com); [skyle@kylelawcorp.com](mailto:skyle@kylelawcorp.com); [mbusenkell@gsbblaw.com](mailto:mbusenkell@gsbblaw.com)

**Cc:** Rosen, Brian; Mastando III, John; [rajohnson@akingump.com](mailto:rajohnson@akingump.com); Gurdian, Julio; [cboyd@akingump.com](mailto:cboyd@akingump.com)

**Subject:** WMILT: Draft Certification of Counsel and Order

Counsel:

Consistent with the March 25, 2013 omnibus hearing, attached please find for your review a draft certification of counsel and order adjourning WMILT's motion to amend its omnibus objections and suspending the amended scheduling order with respect to the employee claims hearing and adversary proceedings.

Due to tomorrow's half-day holiday schedule, we intend to file this with the Court tomorrow morning. Accordingly, please provide any comments or questions by the end of the day today.

Thank you in advance,

Amy



Amy Price  
Associate

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
[amy.price@weil.com](mailto:amy.price@weil.com)  
+1 212 310 8617 Direct  
+1 212 310 8007 Fax

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# EXHIBIT “B”

**From:** Rosen, Brian [<mailto:brian.rosen@weil.com>]  
**Sent:** Friday, March 29, 2013 11:00 AM  
**To:** Stephan E. Kyle; Miller, Abbe A.; Price, Amy; 'rajohnson@akingump.com'; Gurdian, Julio; 'cboyd@akingump.com'; Mastando III, John  
**Cc:** 'SWS@pgslaw.com'; 'rsokol@ebg-law.com'; Aaron, Ken; 'kcapuzzi@phw-law.com'; 'jnimeroff@bsnlawyers.com'; 'mjoyce@crosslaw.com'; 'mbusenkell@gsbblaw.com'  
**Subject:** RE: WMILT: Draft Certification of Counsel and Order

Thank you for your comments. We have reviewed them and will incorporate what is appropriate. We will NOT include reference to additional pleadings. Likewise, we will not waive available privileges, will not expand the opportunity to serve additional discovery requests, will not waive the applicability of Local Rules and will not reschedule the hearing that the Court established. Lastly, despite Ms. Miller's view, all settlement offers have been, or, in the next hour, will have been, delivered.

We will send you a blacklined copy as it submitted to the Court.

Thank you for your assistance.

Brian Rosen



Brian S. Rosen  
Partner

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
[brian.rosen@weil.com](mailto:brian.rosen@weil.com)  
+1 212 310 8602 Direct  
+1 914 393 3040 Mobile  
+1 212 310 8007 Fax

**From:** Stephan E. Kyle [<mailto:skyle@kylelawcorp.com>]  
**Sent:** Friday, March 29, 2013 10:55 AM  
**To:** 'abbe.miller@weirpartners.com'; Rosen, Brian; Price, Amy; 'rajohnson@akingump.com'; Gurdian, Julio; 'cboyd@akingump.com'; Mastando III, John  
**Cc:** 'SWS@pgslaw.com'; 'rsokol@ebg-law.com'; 'kaaron@weirpartners.com'; 'kcapuzzi@phw-law.com'; 'jnimeroff@bsnlawyers.com'; 'mjoyce@crosslaw.com'; 'mbusenkell@gsbblaw.com'  
**Subject:** Re: WMILT: Draft Certification of Counsel and Order

Counsel.

If we are adding the language about certain claimants bringing motions to plead alternate/additional theories, several of my clients will need to be added. Weil is already aware of who these claimants as we have discussed this.

We too are finalizing the motions for leave to amend.

Thank you.

Stephan

Stephan E. Kyle, Esq.  
KYLE LAW CORPORATION  
255 California Street  
Suite 1300  
San Francisco, CA 94111  
t: 415-839-8100  
f: 415-839-8189  
e: [skyle@kylelawcorp.com](mailto:skyle@kylelawcorp.com)

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**From:** Miller, Abbe A. <[abbe.miller@weirpartners.com](mailto:abbe.miller@weirpartners.com)>  
**To:** Rosen, Brian <[brian.rosen@weil.com](mailto:brian.rosen@weil.com)>; Amy.Price@weil.com <[Amy.Price@weil.com](mailto:Amy.Price@weil.com)>;  
[rajohnson@akingump.com](mailto:rajohnson@akingump.com) <[rajohnson@akingump.com](mailto:rajohnson@akingump.com)>; [julio.gurdian@weil.com](mailto:julio.gurdian@weil.com)  
<[julio.gurdian@weil.com](mailto:julio.gurdian@weil.com)>; [cboyd@akingump.com](mailto:cboyd@akingump.com) <[cboyd@akingump.com](mailto:cboyd@akingump.com)>; [john.mastando@weil.com](mailto:john.mastando@weil.com)  
<[john.mastando@weil.com](mailto:john.mastando@weil.com)>  
**Cc:** Stephan E. Kyle; [SWS@pgslaw.com](mailto:SWS@pgslaw.com) <[SWS@pgslaw.com](mailto:SWS@pgslaw.com)>; Robyn B. Sokol <[rsokol@ebg-law.com](mailto:rsokol@ebg-law.com)>;  
Aaron, Ken <[kaaron@weirpartners.com](mailto:kaaron@weirpartners.com)>; [kcapuzzi@phw-law.com](mailto:kcapuzzi@phw-law.com) <[kcapuzzi@phw-law.com](mailto:kcapuzzi@phw-law.com)>;  
[jnimeroff@bsnlawyers.com](mailto:jnimeroff@bsnlawyers.com) <[jnimeroff@bsnlawyers.com](mailto:jnimeroff@bsnlawyers.com)>; [mjoyce@crosslaw.com](mailto:mjoyce@crosslaw.com)  
<[mjoyce@crosslaw.com](mailto:mjoyce@crosslaw.com)>; [mbusenkell@gsbblaw.com](mailto:mbusenkell@gsbblaw.com) <[mbusenkell@gsbblaw.com](mailto:mbusenkell@gsbblaw.com)>  
**Sent:** Fri Mar 29 07:48:08 2013  
**Subject:** FW: WMILT: Draft Certification of Counsel and Order

Counsel:

We have the following additional comments/changes:

1. Obtaining written settlement offers from WMILT by the COB today is unrealistic. We suggest that date is changed to April 3, 2013.
2. Also, please add the following footnote that applies to two of our clients' claims on page 9 after the words "various Claimants having filed motions to amend their respective proofs of claim":

**Claimants Zarro and Berens have advised counsel for WMILT that, in the very near future, they will be filing Motions with the Court for leave to amend their proofs of claim to add claims owed to each of them under their "change in control" agreements with the Debtors and also to add an alternative argument that, to the extent that the Court does not find that there was a "change in control" or that Claimants Zarro and Berens do have allowable claims under their CIC agreements, Claimants Zarro and Bach assert claims under the WaMu severance plan. To the extent that the Court grants Claimants Zarro and Berens' Motions, the provisions of this Order shall apply to Claimants Zarro and Berens' Amended Proofs of Claim.**

Thank you.

**ABBE A. MILLER, Esquire | WEIR & PARTNERS LLP**

Fifth Floor | The Widener Building | 1339 Chestnut Street | Philadelphia, PA 19107-3519  
Phone: 215-241-7723 | Fax: 215-665-8464 | Email: [abbe.miller@weirpartners.com](mailto:abbe.miller@weirpartners.com)

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**From:** Stephan E. Kyle [<mailto:skyle@kylelawcorp.com>]  
**Sent:** Friday, March 29, 2013 12:51 AM  
**To:** Price, Amy; [SWS@pgslaw.com](mailto:SWS@pgslaw.com); Robyn B. Sokol; Aaron, Ken; [kcapuzzi@phw-law.com](mailto:kcapuzzi@phw-law.com); [jnimeroff@bsnlawyers.com](mailto:jnimeroff@bsnlawyers.com); [mjoyce@crosslaw.com](mailto:mjoyce@crosslaw.com); [mbusenkell@gsbblaw.com](mailto:mbusenkell@gsbblaw.com); Miller, Abbe A.  
**Cc:** Rosen, Brian; Mastando III, John; [rajohnson@akingump.com](mailto:rajohnson@akingump.com); Gurdian, Julio; [cboyd@akingump.com](mailto:cboyd@akingump.com)  
**Subject:** RE: WMILT: Draft Certification of Counsel and Order

Counsel.

We are attaching a clean revised version of the proposed order to be submitted under certification of counsel. Also attached is .pdf comparison document reflecting the requested changes.

This is NOT a version agreed upon by all claimants or claimant's counsel. We have attempted to incorporate comments from Ken Aaron/Abbe Miller and Jami Nimeroff and Robyn Sokol, but they and others will likely have comments or wording suggestions as well.

Thank you.

Stephan Kyle

**Stephan Kyle, Esq.**  
KYLE LAW CORPORATION  
255 California Street  
Suite 1300  
San Francisco, CA 94111  
Direct 415-839-8110  
Main 415-839-8100  
Fax 415-839-8189  
e. [skyle@kylelawcorp.com](mailto:skyle@kylelawcorp.com)  
w. [www.kylelawcorp.com](http://www.kylelawcorp.com)

**From:** Price, Amy [<mailto:Amy.Price@weil.com>]  
**Sent:** Thursday, March 28, 2013 11:41 AM  
**To:** [SWS@pgslaw.com](mailto:SWS@pgslaw.com); Robyn B. Sokol; Aaron, Ken ([kaaron@weirpartners.com](mailto:kaaron@weirpartners.com)); [kcapuzzi@phw-law.com](mailto:kcapuzzi@phw-law.com); [jnimeroff@bsnlawyers.com](mailto:jnimeroff@bsnlawyers.com); [mjoyce@crosslaw.com](mailto:mjoyce@crosslaw.com); Stephan E. Kyle; [mbusenkell@gsbblaw.com](mailto:mbusenkell@gsbblaw.com)

**Cc:** Rosen, Brian; Mastando III, John; [rajohnson@akingump.com](mailto:rajohnson@akingump.com); Gurdian, Julio; [cboyd@akingump.com](mailto:cboyd@akingump.com)  
**Subject:** WMILT: Draft Certification of Counsel and Order

Counsel:

Consistent with the March 25, 2013 omnibus hearing, attached please find for your review a draft certification of counsel and order adjourning WMILT's motion to amend its omnibus objections and suspending the amended scheduling order with respect to the employee claims hearing and adversary proceedings.

Due to tomorrow's half-day holiday schedule, we intend to file this with the Court tomorrow morning. Accordingly, please provide any comments or questions by the end of the day today.

Thank you in advance,

Amy



Amy Price  
Associate

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
[amy.price@weil.com](mailto:amy.price@weil.com)  
+1 212 310 8617 Direct  
+1 212 310 8007 Fax

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# EXHIBIT “C”

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

-----X	:	
	:	
<i>In re</i>	:	<b>Chapter 11</b>
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	:	<b>Case No. 08-12229 (MFW)</b>
	:	<b>(Jointly Administered)</b>
	:	
Debtors.	:	
	:	
-----X	:	
	:	
WMI LIQUIDATING TRUST	:	
	:	
Plaintiff,	:	
	:	
v.	:	
-----X	:	
ANTHONY BOZZUTI,	:	<b>Adversary Proc. No. 10-53131 (MFW)</b>
-----X	:	
CHANDAN SHARMA,	:	<b>Adversary Proc. No. 10-53147 (MFW)</b>
-----X	:	
EDWARD F. BACH,	:	<b>Adversary Proc. No. 10-53132 (MFW)</b>
-----X	:	
HENRY J. BERENS,	:	<b>Adversary Proc. No. 10-53134 (MFW)</b>
-----X	:	
JOHN M. BROWNING,	:	<b>Adversary Proc. No. 10-53156 (MFW)</b>
-----X	:	
KEITH O. FUKUI,	:	<b>Adversary Proc. No. 10-53139 (MFW)</b>
-----X	:	
MARC MALONE,	:	<b>Adversary Proc. No. 10-53152 (MFW)</b>
-----X	:	
MICHAEL R. ZARRO,	:	<b>Adversary Proc. No. 10-53143 (MFW)</b>
-----X	:	
RACHEL M. MILEUR a/k/a	:	<b>Adversary Proc. No. 10-53133 (MFW)</b>
RACHELLE M. MILEUR,	:	
-----X	:	
ROBERT C. HILL,	:	<b>Adversary Proc. No. 10-53153 (MFW)</b>
-----X	:	

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<sup>1</sup> 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.

STEPHEN E. WHITTAKER,	:	Adversary Proc. No. 10-53150 (MFW)
-----X		
THOMAS E. MORGAN,	:	Adversary Proc. No. 10-53154 (MFW)
-----X		
ANN TIERNEY	:	Adversary Proc. No. 11-53299 (MFW)
-----X		
TODD H. BAKER	:	Adversary Proc. No. 11-54031 (MFW)
-----X		
RICHARD STRAUCH	:	Adversary Proc. No. 12-50848 (MFW)
-----X		
GENNADIY DARAKHOVSKIY	:	Adversary Proc. No. 12-50902 (MFW)
-----X		
ROBERT BJORKLUND, DARYL DAVID,	:	Adversary Proc. No. 12-50965 (MFW)
MARY BETH DAVIS,	:	
MICHELE GRAU-IVERSEN,	:	
DEBORA HORVATH, JEFFREY JONES,	:	
JOHN MCMURRAY, CASEY NAULT,	:	
MICHAEL REYNOLDSON,	:	
DAVID SCHNEIDER, DAVID TOMLINSON,	:	
BRUCE ALAN WEBER, AND	:	
JEFFREY WEINSTEIN,	:	
	:	
Defendants.	:	
-----X		

**AGREED ORDER ADJOURNING HEARING ON  
WMI LIQUIDATING TRUST’S MOTION TO  
AMEND OMNIBUS OBJECTIONS AND SUSPENDING  
AMENDED SCHEDULING ORDER WITH RESPECT TO  
EMPLOYEE CLAIMS HEARING AND ADVERSARY PROCEEDINGS**

Upon the *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* [D.I. 11032] (the “Motion to Amend”); and objections to the Motion to Amend and joinders to such objections having been filed by numerous Claimants (as defined below); and the Court having entered the *Agreed Order Establishing Procedures and Deadlines Concerning Hearing on Employee Claims and Discovery in Connection Therewith*, dated October 15, 2012 [D.I. 10777] (the “First Scheduling Order”), with respect to, among other things, the conduct of discovery in connection with the hearing to consider the claims of the

claimants (the “Claimants”) and the objections subject to the First Scheduling Order; and the Court having entered that certain scheduling order with respect to the above-captioned adversary proceedings (the “Adversary Proceeding Scheduling Order”); and the Court having entered the Agreed Order Amending Scheduling Orders With Respect to Employee Claims Hearing and Adversary Proceedings dated January 8, 2013 [D.I. 10975] (the “Second Scheduling Order,” and together with the First Scheduling Order and the Adversary Proceedings Scheduling Order, the “Scheduling Orders”); and various Claimants having filed motions to amend their respective proofs of claim [*see, e.g.*, D.I. 11009, 11010, 11011, 11012, 11013, 11014, 11015, 11016, 11017, 11018, 11019, 11020, and 11026]; and the Court having entered the Order Granting the Motion of Chandan Sharma for Entry of an Order Authorizing Claimant To Amend his Respective Claim as More Fully Set Forth in the Motion, dated March 7, 2013 [D.I. 11063], the Order Granting the Motions of John McMurray, Alfred Brooks, et al., for Entry of an Order Authorizing Claimants To Amend Their Respective Claims as More Fully Set Forth in the Motions, dated March 7, 2013 [D.I. 11062], the Order Granting Motions of Sean Beckett, Anthony Bozzuti, et al., dated March 7, 2013 [D.I. 11061], and the Order Granting of John Murphy for Entry of an Order Authorizing Murphy To Amend his Proof of Claim as More Fully Set Forth in the Motion, dated March 15, 2013 [D.I. 11136] (collectively, the “Orders Granting Claimants Leave to Amend Proofs of Claim”); and on March 29, 2013, Claimant Henry J. Berens having filed his Motion for Order Granting Leave to File Amendment to Proof of Claim 2129 or, In the Alternative, Allowing Claimant to Assert Alternative Argument Regarding Claim Based on WaMu Severance Plan [D.I. 11182] (the “Berens Motion to Amend POC”); and on March 29, 2013, Claimant Michael R. Zarro having filed his Motion for Order Granting Leave to File Amendment to Proof of Claim 1743 or, In the Alternative, Allowing Claimant to Assert Alternative Argument Regarding Claim

Based on WaMu Severance Plan [D.I. 11183] (the “Zarro Motion to Amend POC”); and the hearings on the Berens Motion to Amend POC and the Zarro Motion to Amend POC are presently scheduled to be heard before this Court on April 23, 2012 at 2:00 p.m. (EDT); and on March 29, 2013, WMI Liquidating Trust (“WMILT”) having filed its Motion of WMI Liquidating Trust for an Order Appointing a Mediator With Respect to Employee Claims and Pending Omnibus Objections [D.I. 11185] (the “WMILT Motion for a Mediator”); and a hearing on the WMILT Motion for a Mediator presently scheduled to be heard before this Court on April 18, 2013 at 2:00 p.m. (EDT); and WMILT and certain of the Claimants and the above-captioned adversary proceeding defendants (the “Defendants” and, together with the Claimants and WMILT, the “Parties”) having mutually agreed to continue WMILT’s Motion to Amend until a hearing before this Court on June 3, 2013, it is hereby

ORDERED that WMILT’s Motion to Amend shall be adjourned until June 3, 2013, without prejudice to the relief WMILT seeks in the Motion to Amend, it is further

ORDERED that all actions, obligations, deadlines and dates set by the Scheduling Orders that have not passed as of March 25, 2013 shall be suspended, without prejudice, until April 18, 2013, pending further order of the Court, and the deadlines and dates with respect thereto shall be re-established pursuant to the terms of a further amended scheduling order including, without limitation, the Parties’ obligations with respect to the production of documents and the noticing of witnesses for depositions; provided, however, that notwithstanding the foregoing (a) WMILT shall promptly post un-redacted minutes from board meetings relating to the period from January 1, 2008 up to and including September 26, 2008 to the document Depository (as defined in the Scheduling Orders), (b) Claimants’ and Defendants’ obligation to provide any outstanding proposed witness lists and written responses to WMILT’s First Set of Requests for Production of

Documents From, and Interrogatories and Requests for Admission Directed to, Claimants and Adversary Proceeding Defendants [D.I. 10893], which lists and responses were due prior to March 25, 2013, shall not be suspended and shall be provided no later than April 5, 2013; and (c) nothing herein is intended to suspend or otherwise affect the obligation of JPMorgan Chase Bank, N.A. or any other third party to these proceedings to respond to the Parties' discovery requests; and it is further

ORDERED that all deadlines and tolling provisions included in the Orders Granting Claimants Leave to Amend Proofs of Claim that have not expired as of March 25, 2013 shall be extended such that (a) WMILT may file objections to the amended proofs of claim<sup>2</sup> and/or file additional adversary proceedings within thirty (30) days (or to the next business day if such extended deadline falls on a Saturday, Sunday or "Legal Holiday" as defined in Rule 6(a)(6) of the Federal Rules of Civil Procedure) following April 18, 2013, and (b) Claimants shall file responses, if any, to such objections within sixty (60) days (or to the next business day if such extended deadline falls on a Saturday, Sunday or "Legal Holiday" as defined in Rule 6(a)(6) of the Federal Rules of Civil Procedure) following April 18, 2013, unless ordered by the Court; and it is further

ORDERED that WMILT shall immediately engage in meaningful settlement discussions with each of the employee claimants by (1) providing each such claimant with a good faith, written settlement proposal not later than April 5, 2013 at 4:00 p.m. (EDT); and (2) by timely responding to counter-proposals from each such claimant; and it is further

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<sup>2</sup> In the event that the Berens' Motion to Amend POC and/or the Zarro's Motion to Amend POC are granted, the deadlines set out in this paragraph for WMILT to file objections to Claimants' amended proofs of claim shall expressly apply an amended proof of claim filed by Claimant Henry J. Berens and an amended proof of claim filed by Claimant Michael R. Zarro.

ORDERED that the Court shall hold a hearing on April 18, 2013 at 2:00 p.m., or as soon thereafter as counsel may be heard, and WMILT and the Claimants shall report as to the status of settlement discussions and the resolution of Claimants' claims, if any; and it is further

ORDERED that in the event that prior to the hearing on April 18, 2013, WMILT has not reach agreements on settlement terms with all of the claimants, at the hearing on April 18, 2013 this Court shall set down the specific terms pursuant to which mediations shall be held with respect to the settlement of the then-pending objections to claims and adversary proceedings, including, without limitation, the appointment of a mediator, the time frame for such mediations to be held and concluded, and which party/parties shall bear the costs of such mediations and how such costs shall be allocated; and it is further

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

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

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**THE HONORABLE MARY F. WALRATH**  
**UNITED STATES BANKRUPTCY JUDGE**