

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

-----X	:	
<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:	Case No. 08-12229 (MFW)
	:	(Jointly Administered)
	:	
Debtors.	:	Hearing Date: April 18, 2013 at 2:00 p.m. (ET)
	:	Re: Docket No. 11185
-----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	:	

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



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		

**NOTICE OF FILING OF PROPOSED ORDER APPOINTING A MEDIATOR WITH
RESPECT TO EMPLOYEE CLAIMS AND PENDING OMNIBUS OBJECTIONS**

PLEASE TAKE NOTICE that, March 29, 2013, WMI Liquidating Trust (“WMILT” or the “Trust”), as successor in interest to Washington Mutual, Inc. (“WMI”) and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the “Debtors”), filed the **Motion of WMI Liquidating Trust for an Order Appointing a Mediator with Respect to Employee Claims and Pending Omnibus Objections** [Docket No. 11185] (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that WMILT has today filed a proposed form of **Order Appointing a Mediator with Respect to Employee Claims and Pending**

Omnibus Objections (the “Proposed Order”) in connection with the relief requested in the Motion. A copy of the Proposed Order is attached hereto as **Exhibit 1**.

PLEASE TAKE FURTHER NOTICE that WMILT intends to present the Proposed Order to the Bankruptcy Court at the hearing on the Motion scheduled for **April 18, 2013 at 2:00 p.m. (ET)** before The Honorable Mary F. Walrath at the Bankruptcy Court, 824 North Market Street, 5th Floor, Courtroom 4, Wilmington, Delaware 19801.

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Dated: April 9, 2013
Wilmington, Delaware

/s/ Amanda R. Steele

Mark D. Collins (No. 2981)
Paul N. Heath (No. 3704)
Tyler D. Semmelman (No. 5386)
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-and-

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– and –

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Attorneys for WMI Liquidating Trust

EXHIBIT 1

Proposed Order

-----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		
TODD H. BAKER	:	Adversary Proc. No. 11-54031 (MFW)
-----X		
RICHARD STRAUCH	:	Adversary Proc. No. 12-50848 (MFW)
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GENNADIY DARAKHOVSKIY	:	Adversary Proc. No. 12-50902 (MFW)
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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		
		Re: Docket No. _____

**ORDER APPOINTING MEDIATOR WITH RESPECT TO
EMPLOYEE CLAIMS AND PENDING OMNIBUS OBJECTIONS**

Upon the motion of WMI Liquidating Trust (the “Motion”), dated March 29, 2013, and as stated on the record of the hearings held on March 25, 2013 and April 18, 2013, the Court having determined that the appointment of a mediator (the “Mediator”)² to assist the parties in resolving disputes in connection with (a) the *Debtors’ Fifth Omnibus (Substantive) Objection to Claims* [D.I. 1233], dated June 26, 2009, (b) the *Debtors’ Sixth Omnibus (Substantive) Objection to Claims* [D.I. 1234], dated June 26, 2009, (c) *WMI Liquidating Trust’s*

² Capitalized terms used herein, but not otherwise defined, shall have the meaning ascribed to such terms in the Motion.

Seventy-Ninth Omnibus (Substantive) Objection to Claims [D.I. 10504], dated August 15, 2012, (d) *WMI Liquidating Trust's Eightieth Omnibus (Substantive) Objection to Claims* [D.I. 10505], dated August 15, 2012, (e) *WMI Liquidating Trust's Eighty-First Omnibus (Substantive) Objection to Claims* [D.I. 10506], dated August 15, 2012, (f) *WMI Liquidating Trust's Eighty-Second Omnibus (Substantive) Objection to Claims* [D.I. 10507], dated August 15, 2012 (g) *WMI Liquidating Trust's Eighty-Fourth Omnibus (Substantive) Objection to Change in Control Claims* [D.I. 10677], dated September 17, 2012, (h) *WMI Liquidating Trust's Eighty-Fifth Omnibus (Substantive) Objection to Change in Control Claims* [D.I. 10678], dated September 17, 2012, (i) the *Objection of WMI Liquidating Trust to Proof of Claim Filed by Claimant Medina & Thompson (Claim No. 1218)* [D.I. 10676], dated September 17, 2012, (j) *WMI Liquidating Trust's Eighty-Eighth Omnibus (Substantive) Objection to Disputed Equity Interests* [D.I. 10681], dated September 17, 2012 (collectively with the other omnibus objections, the "Objections"), and (k) the Adversary Proceedings is in the best interests of the WMI Liquidating Trust ("WMILT"), as successor to Washington Mutual, Inc. ("WMI") and WMI Investment Corp. (collectively, the "Debtors"), the Debtors' estates, creditors and stakeholders; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED as follows:

1. Effective upon entry of this Order, _____ is hereby appointed as Mediator in these cases for the limited purpose of conducting one or more mediations (the "Mediation") concerning the resolution of the Objections and Adversary Proceedings, and any responses thereto.

2. Unless otherwise ordered by the Court, the parties to the Mediation (collectively, the "Mediation Parties") are (a) WMILT and (b) each of the Non-Settling Responding Claimants set forth on Exhibit "A" hereto.

3. The fees and expenses associated with the Mediation, including, without limitation, the fees and expenses of the Mediator and any professionals retained by the Mediator shall be allocated to the mediation of each individual Disputed Claim and be borne by the Mediation Parties as follows: (a) fifty percent (50%) to WMILT and (b) fifty percent (50%) to the respective Non-Settling Responding Claimant; provided, however, that, to the extent the Mediator incurs fees and expenses in connection with the review of general background information or travel to a place of mediation where the mediation of more than one Disputed Claim shall occur, the fees and expenses associated therewith shall be allocated to and borne by the Mediation Parties as follows: (y) fifty percent (50%) to WMILT and (z) fifty percent (50%) to the Non-Settling Responding Claimants, with such fifty percent (50%) allocation to be further allocated on a pro rata basis on account of such claimant's asserted amount as set forth on Exhibit "A" hereto.

4. As soon as practicable after entry of this Order, WMILT shall provide to the Mediator copies of (a) a chart providing for each of the Non-Settling Responding Claimant's name, proof(s) of claim number(s), and which Objection such Non-Settling Responding Claimant's proof of claim appears, (b) each of the Objections, (c) WMILT'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"), dated February 19, 2013, (d) each Non-Settling Responding Claimant's proof of claim that are the subject of the Objections, (e) each of the Non-Settling Responding Claimant's response to the Objections, as applicable, and the Motion to Amend, if any, (f) the *Reply of WMI Liquidating Trust in Further Support of Motion For Leave to Amend the Fifth, Sixth, Seventy-Ninth, Eightieth, Eighty-First, Eighty-Second, Eighty-Fourth, Eighty-Fifth, and Eighty-Eight*

Omnibus Objections to Claims, dated March 20, 2013, (g) each Adversary Proceeding Complaint and Answer, and (h) each of the agreements, instruments, plans, etc. giving rise to the claims asserted by the Non-Settling Responding Claimants, to the extent such documents are not incorporated in any of (b) through (g) above.

5. No later than five (5) days from the date hereof, each Mediation Party shall separately or in combination with any other Mediation Party submit directly to the Mediator, with a copy thereof contemporaneously provided to each of the other Mediation Parties, a statement (the “Mediation Statement”), which statement shall be no more than five (5) pages in length, setting forth the issues that each Mediation Party believes must be addressed by the Mediator; provided, however, that the foregoing shall not in any way limit the Mediator from requesting such additional statements, memoranda, or documents, including, without limitation, any pleadings which have been filed with the Court and are part of the record in these chapter 11 cases, as would assist the Mediator in connection with the Mediation.

6. The Mediation conferences shall occur (a) at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153 and in a city in the West Coast to be selected by the Mediator and (b) on a date and at a time selected by the Mediator. Unless otherwise directed by the Mediator, each Non-Settling Responding Claimant, or at least one (1) representative of each separately-represented Non-Settling Responding Claimant, with authority to make a decision binding upon such Non-Settling Responding Claimant, **shall be present at each session of the Mediation.**

7. The Mediator may conduct the Mediation as the Mediator deems appropriate, establish rules of the Mediation, and consider and take appropriate action with

respect to any matters the Mediator deems appropriate in order to conduct the Mediation, subject to the terms of this Order.

8. Without limiting the applicability of Local Bankruptcy Rule 9019-5, all (a) discussions among any of the Mediation Parties relating to the Mediation, including discussions with or in the presence of the Mediator, (b) Mediation Statements and any other documents or information provided to the Mediator or the Mediation Parties in the course of the Mediation, other than documents allegedly giving rise to the claims asserted or as defense thereto, and (c) correspondence, draft resolutions, offers and counteroffers produced for or as a result of the Mediation shall be strictly confidential and shall not be admissible for any purpose in any judicial or administrative proceeding, and no person or party participating in the Mediation, whether a direct participant or member of a committee or group, including counsel for any Mediation Party or any other party, shall in any way disclose to any non-party or to any court, including, without limitation, in any pleading or other submission to any court, any such discussion, Mediation Statement, other document or information, correspondence, resolution, offer or counteroffer which may be made or provided in connection with the Mediation.

9. To the extent that any Mediation Party is in possession of privileged or confidential information provided to such Mediation Party pursuant to the terms and conditions of a confidentiality agreement executed or an order of the Court entered in connection with these chapter 11 cases, such information may be disclosed to the Mediator, but shall otherwise remain privileged and confidential and not be disclosed to any other Mediation Party.

10. Except as may be permitted by Local Bankruptcy Rule 9019-5 and decretal paragraph 11 herein, the Mediator and any personnel who assists the Mediator, and all the Mediation Parties, shall not have any communications with the Court regarding or otherwise

disclose any aspect of the Mediation other than to report whether a settlement has been reached between any of the Mediation Parties (and the terms of any such settlement); provided, however, that, in the event that there is an impasse, the Mediator shall report that there is a lack of agreement, with no further comment or recommendation.

11. On or prior to 4:00 p.m. (prevailing Eastern time) on May 31, 2013, the Mediator shall file with the Court a status report (the “Status Report”) expressing an opinion as to whether (a) a resolution of issues subject to the Mediation has been reached, (b) a resolution of issues subject to the Mediation cannot be reached, or (c) the Mediator believes the Mediation should continue in order to reach a resolution of the issues subject to the Mediation. The Court will hold a status conference on June 3, 2013, at 9:30 a.m., to consider what actions, if any, should be taken based upon the Status Report, including, without limitation, such other or further relief as will aid the Mediator in the performance of the Mediator’s duties.

12. To the extent any part of this Order shall conflict with Local Bankruptcy Rule 9019-5, the terms and provisions of this Order shall govern.

13. This 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

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Non-Settling Responding Claimants