

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----X	
<i>In re</i>	:
	:
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:
	:
Debtors.	:
-----X	
-----X	
WMI LIQUIDATING TRUST	:
	:
Plaintiff,	:
	:
v.	:
-----X	
ANTHONY BOZZUTI,	:
-----X	
CHANDAN SHARMA,	:
-----X	
EDWARD F. BACH,	:
-----X	
HENRY J. BERENS,	:
-----X	
JOHN M. BROWNING,	:
-----X	
KEITH O. FUKUI,	:
-----X	
MARC MALONE,	:
-----X	
MICHAEL R. ZARRO,	:
-----X	
RACHEL M. MILEUR a/k/a	:
RACHELLE M. MILEUR,	:
-----X	
ROBERT C. HILL,	:
-----X	
STEPHEN E. WHITTAKER,	:

Chapter 11

Case No. 08-12229 (MFW)
(Jointly Administered)

Related: 11185

Hearing Date: April 18, 2013 at
2:00 p.m.

Adversary Proc. No. 10-53131 (MFW)

Adversary Proc. No. 10-53147 (MFW)

Adversary Proc. No. 10-53132 (MFW)

Adversary Proc. No. 10-53134 (MFW)

Adversary Proc. No. 10-53156 (MFW)

Adversary Proc. No. 10-53139 (MFW)

Adversary Proc. No. 10-53152 (MFW)

Adversary Proc. No. 10-53143 (MFW)

Adversary Proc. No. 10-53133 (MFW)

Adversary Proc. No. 10-53153 (MFW)

Adversary Proc. No. 10-53150 (MFW)

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.



-----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		

**OBJECTION OF CLAIMANTS, EDWARD F. BACH,
HENRY J. BERENS, AND MICHAEL R. ZARRO,
TO MOTION OF WMI LIQUIDATING TRUST FOR AN
ORDER APPOINTING A MEDIATOR WITH RESPECT TO
EMPLOYEE CLAIMS AND PENDING OMNIBUS OBJECTIONS**

Claimants Edward F. Bach (“Bach”), Henry J. Berens (“Berens”), and Michael R. Zarro (“Zarro,” and together with Bach and Berens, “Claimants”), by and through their undersigned counsel, hereby object to 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 “Motion for Mediation”) as follows.

BACKGROUND

1. On March 31, 2009, Bach filed proof of claim 2855 in the amount of \$577,000.00

(the “Bach Claim”). By Order dated May 16, 2012, the Bach Claim was disallowed. (D.I. 10181). On February 26, 2013, this Court entered an Order reinstating the Bach Claim (D.I. 11041).

2. On March 24, 2009 Berens filed proof of claim 2129 in the amount of \$337,776.37 (the “Berens Claim”).

3. On March 29, 2013, Berens filed his Motion for Order Granting Leave to File Amendment to Proof of Claim No. 2129, or In The Alternative, Allowing Claimant to Assert Alternate Argument Regarding Claim Based on WaMu Severance Plan (D.I. 11182) (the “Berens Motion to Amend POC”). The Berens Motion to Amend POC is scheduled to be heard before this Court on April 23, 2013. If the Berens Motion to Amend POC is granted, Berens will file an amended claim, in the form attached to the Berens Motion to Amend POC, in the amount of \$1,829,488.37.

4. On March 17, 2009, Zarro filed proof of claim 1743 in the amount of \$224,000.00 (the “Zarro Claim”). By Order dated May 16, 2012, the Zarro Claim was disallowed. (D.I. 10179). On February 26, 2013, this Court entered an Order reinstating the Zarro Claim (D.I. 11042).

5. On March 29, 2013, Zarro filed his Motion for Order Granting Leave to File Amendment to Proof of Claim No. 1743, or In The Alternative, Allowing Claimant to Assert Alternate Argument Regarding Claim Based on WaMu Severance Plan (D.I. 11183) (the “Zarro Motion to Amend POC”). The Zarro Motion to Amend POC is scheduled to be heard before this Court on April 23, 2013. If the Zarro Motion to Amend POC is granted, Zarro will file an amended claim, in the form attached to the Zarro Motion to Amend POC, in the amount of \$1,044,000.00.

OBJECTION TO TERMS OF MEDIATION PROPOSED BY WMI LIQUIDATING TRUST

6. In concept, Claimants are not opposed to meditation. However, the terms of the mediation proposed by WMI Liquidating Trust (“WMILT”) in the Motion for Mediation are so onerous that Claimants cannot agree to such terms.

7. WMILT filed a total of 88 omnibus objections to claims in this case, many of which were targeted at expunging the proofs of claim filed by former employees of the Debtors and their subsidiaries. Additionally, the Official Committee of Unsecured Creditors and WMILT filed numerous adversary proceedings against certain former employees, including the Claimants, on virtually identical grounds as those raised on the omnibus objections to claims.

8. As acknowledged by WMILT and those claimants present at the hearing before this Court on October 10, 2012, in order to rule on the omnibus objections to claims and the adversary proceedings, there are many legal and factual issues that need to be tried before this Court. Also, as the documents are voluminous and there are many potential witnesses, a discovery schedule needed to be set.

9. In its Order dated October 15, 2012, this Court ruled that it would try the legal issues one at a time and that the first legal issue to be considered by the Court would be the “change in control” issue. *See* Agreed Order Establishing Procedures and Deadlines Concerning Hearing on Employee Claims and Discovery in Connection Therewith dated October 15, 2012 (D.I. 10777) (the “Scheduling Order”). A trial on the change in control issue only was initially scheduled for early April, 2013. All discovery with respect to WMILT’s objections to claims and the adversary proceedings was to be completed prior to the trial date.

10. Just days before the January omnibus hearing, WMILT decided that it needed additional time for discovery, and it circulated a proposed amended scheduling order, the Agreed

Order Amending Scheduling Orders with Respect to Employee Claims Hearing and Adversary Proceedings (D.I. 10975), entered by the Court on January 8, 2013 (the “Amended Scheduling Order”). The Amended Order set out new deadlines to complete discovery and a new date for the trial on the “change in control” issue – June 3 and 4, 2013.

11. It was not until February or March of this year that WMILT actually realized (a) the enormity of the task of prosecution of its objections to claims and its claims in the adversary proceedings, and (b) that it could not conclude discovery in sufficient time to meet the deadlines set out in the Amended Scheduling Order.

12. 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-Four, Eighty-Fifth, and Eighty-Eighty Omnibus Objections to Claims (the “WMILT Motion to Amend”) (D.I. 11032). In the WMILT Motion to Amend, WMILT asserted that it was necessary to amend certain omnibus objection to add a **new but crucial defense** under which it was allegedly not liable to pay the former employees’ claims.

13. Claimants oppose the relief sought in WMILT’s Motion to Amend and each filed a Joinder (D.I. 11146, 11147 and 11148) to the Joint Objection of 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 (D.I. 11141) (the “Joint Objection”).²

14. WMILT has agreed to adjourn the hearing on its Motion to Amend to June 3, 2013.

The Terms of Mediation Proposed by WMILT Are Onerous and Contrary to This Court’s General Order Regarding Adversary Proceedings

15. In the present Motion for Mediation, WMILT seeks an order of this Court requiring that those employee claimants who have not yet settled with WMILT to mediate their claims. The terms by which WMILT proposes that the mediation will be conducted are onerous and overly burdensome on the claimants.

The East Coast Mediations Should Take Place in Wilmington

16. Despite that these bankruptcy cases were filed and are pending in Delaware, WMILT suggests that the mediations be held at its counsel’s office in New York and at an undetermined location on the West Coast. In WMILT’s proposed Order Appointing Mediator with Respect to Employee Claims and Pending Omnibus Objections (D.I. 11196), filed with the Court on April 9, 2013, WMILT includes proposed language that the mediation sessions be held at Weil Gotshal’s New York office and a “city in the West Coast to be selected by the Mediator.” The proposed New York location, Weil Gotshal’s own office, will result in increased costs to Claimants, whose counsel will need to go to New York, rather than Delaware.

17. Any mediator chosen by this Court should be chosen solely from the Register of Mediator and Arbitrators pursuant to Local Rule 9019-4 for the United States Bankruptcy Court of the District of Delaware. *See* General Order 3(a).

² As stated in the Joint Objection: “It is noteworthy that nowhere in the Motion does WMILT explain why, despite being represented by no less than two reputable law firms that handle numerous sizeable complex bankruptcy cases, it failed to include the Additional Defenses during the applicable time period.” Joint Objection at 8.

The Entire Cost of the Mediation Should be Borne by WMILT

18. WMILT proposes that the non-settling employee claimants should pay 50% of the mediator's costs. In the Motion to for Mediation, WMILT asserts that this Court's local rules require sharing of the costs. (*See* Motion for Mediation at ¶24.) However, there is absolutely no such local rule.

19. In the Motion for Mediation, WMILT incorrectly asserts that the Local Bankruptcy Rules require that the cost of mediation be shared. In fact, WMILT states: "WMILT **understands** the applicability of the Local Rules and the **allocation of mediation costs in connection therewith**. To address this WMILT proposes that the cost of the mediator be split between WMILT and the Non-Settling Claimants so that WMILT pays fifty percent (50%) of the mediator's costs (**more than its required share under the Local Rules** and the Non-Settling Responding Claimants pay fifty percent (50%) of the mediator's costs, but allocated pro rata based on such claimant's ultimately allowed claim amount." Motion for Mediation at ¶24 (emphasis added).

20. This Court's own General Order re: Procedures in Adversary Proceedings (the "General Order") is directly to the contrary. **The bankruptcy estate is to pay all of the mediator's fees and expenses**. The General Order states:

Mediation.

(b) **The bankruptcy estate . . . shall pay the fees and costs of the mediator.**

See General Order ¶ 3(b) dated April 7, 2004.

21. Mediation is not binding. *See* Local Bankruptcy Rule 9019-5. If the Claimants are required to share in the costs of the mediation WMILT could easily refuse to accept a mediator's determination, forcing Claimants to bear the cost of both mediation **and** litigation.

The Mediation Proposed by WMILT Seems Merely a Tactic to Force Claimants to Settle

22. As set out more fully in Claimants' 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 and Adversary Proceeding (D.I. 11186) ("Claimants' March 29, 2013 COC"), a true and correct copy of which is attached hereto as Exhibit "A," the settlement offers made by WMILT to Claimants were not made in good faith. Other than WMILT's presumptuous assumption that it will prevail on all of its theories under which it objects to the Claimants' Claims, including the "new" theory (which is not this Court has not yet permitted WMILT to add as a defense), there is simply no rational basis for WMILT to have made an offer to two of the three claimants **that is one less than one percent**³ of the amount of the filed Claims.

23. Evidence of WMILT's disingenuousness as to a fair settlement process abounds. On April 5, 2013, Amy Price, Esquire, counsel for WMILT, sent a letter to claimants' counsel and a similar letter to other claimants, *inter alia, pro se* claimants, advising them that this Court **had already ordered mandatory mediation** of the claims: "Furthermore, if we reach an impasse as of April 18, 2013 in negotiations (either because you have not responded [to WMILT's settlement offer] or we are just unable to reach an accord), **the matters will be referred to mandatory mediation**, the details of which will be addressed by the Court at the hearing on April 18, 2013." Letter dated April 5, 2013 from Amy B. Price, Esquire to Kenneth E. Aaron, Esquire, a true and correct copy of which is attached hereto as Exhibit "B"(emphasis added).⁴

³ The settlement offers appear not to have taken into account Berens and Zarro's pending Motions to Amend their proofs of claim. Berens is seeking to amend his proof of claim to \$1,829,488.37. Zarro is seeking to amend his proof of claim to \$1,044,000.00.

⁴ Because the April 5th Letter is marked "FED.R.EVID. 408 PROTECTED – FOR SETTLEMENT PURPOSES

24. WMILT can well afford the costs of mediation and, in all likelihood, mediation will cost significantly less than the attorneys' fees that WMILT is incurring to litigate with Claimants.

25. As this Court is well aware, the Plan confirmed by the Court is a 100% plan. In making such insulting and low settlement offers to Claimants,⁵ it appears that WMILT, as successor to the Debtors, has forgotten that it has a fiduciary duty to all creditors, including Claimants and other former employee claimants. It appears that the only fiduciary duty that WMILT now recognizes is to the new equity holders of the Debtors.

26. Mediation is not binding. *See* Local Bankruptcy Rule 9019-5. Thus, should the mediator award Claimants an amount that WMILT is unwilling to pay, WMILT will be in the position that it can then prosecute the objections to claims and adversary proceedings. In such case, the costs of the defense will also be borne by the Claimants. Should this Court rule that Claimants must share the costs of a mediator (despite the fact that the Liquidating Trust is extremely well-funded), it is foreseeable that in the Claimants may end up paying twice – once for a mediator and then again to defend the objects to claims and the adversary proceedings. Such a result would be patently unfair to Claimants, former employees of WaMu who lost their jobs, were forced to find new jobs (resulting in the need to re-locate their families), and who are owed between \$500,000 and \$1.8 million under “special bonus opportunity” agreements, “change in control” agreements and other employment agreements with the Debtors.

27. WMILT is dismissive of the fact that Claimants are real people who lost their jobs and honestly believe are owed real money. Witness that WMILT referred to Claimants as

ONLY,” Claimants have not attached the “confidential” attachments to that letter that set out the specific terms a copy of it to this Objection.

⁵ Claimants are former executive employees of WaMu. As such, they are similarly situated to the vast majority of employee claimants whose claims were objected to by WMILT.

holding “**nuisance value claims.**” See WMILT’s Supplemental 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 at ¶ 8 (D.I. 11188). This Court can be assured that Msrs. Bach, Berens and Zarro do not believe that the amounts that they were not paid by the Debtors and reflected on their proofs of claim are of “nuisance” value.

WHEREFORE, Claimants object to the Motion of WMI Liquidating Trust for an Order Appointing a Mediator With Respect to Employee Claims and Pending Omnibus Objections and propose that, if this Court orders mediation of non-settling claimants’ claims, that (1) the mediations be held in Wilmington for Claimants who are or whose litigation counsel are near to Wilmington and, for all other claimants, at locations not more than 100 miles from their current residences; (2) WMILT be responsible for all of the costs and fees of the mediator; (3) the mediator be chosen from the Register of Mediator and Arbitrators to mediate before this Court or a member of this Honorable Court; and (4) mediation be voluntary, rather than mandatory.

Date: April 11, 2013

Respectfully submitted,
WEIR & PARTNERS LLP

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*Attorneys for Movant, Edward F. Bach, Henry J.
Berens and Michael R. Zarro*

EXHIBIT “A”

UNITED STATES BANKRUPTCY COURT
 FOR THE 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.	:	
	:	
-----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	:	

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.

TODD H. BAKER	:	Adversary Proc. No. 11-54031 (MFW)
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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		

**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.²

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").

² 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”)³, 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 25th Hearing”) in the bankruptcy case. Among the motions considered by the Court was WMILT’s

³ 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 25th 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 25th 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 25th 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 23rd Hearing, WMILT had not devised a strategy by which to effectively respond to the written and other discovery propounded by Employee Claimants and Defendants.⁴

15. Prior to the March 25th 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 25th Hearing. In fact, at

⁴ 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 25th 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 25th 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 25th 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 25th Hearing, WMILT had not even reached out to counsel for the Claimants regarding a potential settlement of their claims.

18. At the March 25th 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 28th]" 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 25th 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 28th 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.⁵ 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

⁵ 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 29th. 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
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Attorneys for Michael A. Zarro

Wilmington, DE
April 1, 2013

EXHIBIT “B”

Weil, Gotshal & Manges LLP

CONFIDENTIAL
BY E-MAIL

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Amy B. Price
+1 (212) 310-8617
amy.price@weil.com

April 5, 2013

Kenneth E. Aaron, Esq.
Weir & Partners LLP
824 Market Street Suite 800
Wilmington, DE 19801

Abbe A. Miller, Esq.
The Widener Building Suite 500
Philadelphia, PA 19701

Re: In re Washington Mutual, Inc. (08-12229) (Bankr. D. Del.)

FED. R. EVID. 408 PROTECTED – FOR SETTLEMENT PURPOSES ONLY

Dear Mr. Aaron and Ms. Miller:

I am writing to follow up on my emails, dated March 29, 2013, which included correspondence from Brian Rosen on behalf of WMI Liquidating Trust (the "Trust"). A copy of Mr. Rosen's letters are attached hereto as **Exhibit A** for your convenience.

We have not heard back from you regarding the Trust's settlement proposals. Please be advised that the Trust is willing to extend the April 5, 2013 deadline to participate in the next scheduled distribution (currently scheduled to take place on or about May 1, 2013), until this Monday, April 8, 2013, at 6:00 p.m. (ET). To the extent we can resolve your clients' claims prior to Monday at 6:00 p.m., your clients will be entitled to receive a prompt payment on or about May 1, 2013.

Furthermore, if we reach an impasse as of April 18, 2013 in negotiations (either because you have not responded or we are just unable to reach an accord), the matters will be referred to

Weil, Gotshal & Manges LLP

April 5, 2013
Page 2

mandatory mediation, the details of which will be addressed by the Court at the hearing on April 18, 2013.

We look forward to hearing from you.

Very truly yours,



Amy B. Price

cc: Brian S. Rosen, Esq.
Charles E. Smith, Esq.
John Maciel

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----X
:
In re : Chapter 11
:
WASHINGTON MUTUAL, INC., et al.,¹ : Case No. 08-12229 (MFW)
:
Debtors. : (Jointly Administered)
:
Related: 11185
:
-----X
-----X
WMI LIQUIDATING TRUST : Hearing Date: April 18, 2013 at
:
Plaintiff, : 2:00 p.m.
:
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)
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JOHN M. BROWNING, : Adversary Proc. No. 10-53156 (MFW)
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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)

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.

-----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)
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RICHARD STRAUCH	:	Adversary Proc. No. 12-50848 (MFW)
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GENNADIY DARAKHOVSKIY	:	Adversary Proc. No. 12-50902 (MFW)
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ROBERT BJORKLUND, DARYL DAVID,	:	Adversary Proc. No. 12-50965 (MFW)
MARY BETH DAVIS,	:	
MICHELE GRAU-IVERSEN,	:	
DEBORA HORVATH, JEFFREY JONES,	:	
JOHN MCMURRAY, CASEY NAULT,	:	RE: DOCKET NO. _____
MICHAEL REYNOLDSON,	:	
DAVID SCHNEIDER, DAVID TOMLINSON,	:	
BRUCE ALAN WEBER, AND	:	
JEFFREY WEINSTEIN,	:	
	:	
Defendants.	:	
-----X		

**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 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.

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

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 100% borne by WMILT.

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 seven (7) business days from the notice of the entry of this Order, 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 or five (5) pages per Mediation Party (i.e., a twenty page Mediation Statement may be filed if it is for four (4) Mediation Parties), 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. Nothing herein shall prevent a Mediation Party from submitting a separate, additional confidential Mediation Statement to the Mediator.

6. For Non-Settling Responding Claimants who are or whose litigation counsel are near to Wilmington, Delaware, the mediations shall be held in Wilmington. For all other Non-Settling Responding Claimants, the mediations shall be held at locations not more than 100 miles from such claimants' current residences or their counsel's office, after consultation with such claimants and/or their counsel. The mediations shall occur on a date and 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**, during which such Non-Settling Responding Claimant's claims are actually being presented to or considered by the Mediator.

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. 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.

9. 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.

10. 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.

11. 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

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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:
In re : Chapter 11
:
WASHINGTON MUTUAL, INC., et al.,¹ : Case No. 08-12229 (MFW)
:
Debtors. : (Jointly Administered)
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Related: 11185
:
-----X
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WMI LIQUIDATING TRUST : Hearing Date: April 18, 2013 at
:
Plaintiff, : 2:00 p.m.
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v. :
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ANTHONY BOZZUTI, : Adversary Proc. No. 10-53131 (MFW)
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CHANDAN SHARMA, : Adversary Proc. No. 10-53147 (MFW)
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RACHELLE M. MILEUR, :
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ROBERT C. HILL, : Adversary Proc. No. 10-53153 (MFW)
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STEPHEN E. WHITTAKER, : Adversary Proc. No. 10-53150 (MFW)

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

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GENNADIY DARAKHOVSKIY	:	Adversary Proc. No. 12-50902 (MFW)
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ROBERT BJORKLUND, DARYL DAVID,	:	Adversary Proc. No. 12-50965 (MFW)
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JOHN MCMURRAY, CASEY NAULT,	:	
MICHAEL REYNOLDSON,	:	
DAVID SCHNEIDER, DAVID TOMLINSON,	:	
BRUCE ALAN WEBER, AND	:	
JEFFREY WEINSTEIN,	:	
	:	
Defendants.	:	
-----X		

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 **Objection of Claimants. Edward F. Bach, Henry J. Berens and Michael R. Zarro to Motion of WMI Liquidating Trust for an Order Appointing a Mediator with Respect to Employee Claims and Pending Omnibus Objections** via ECF notification and First Class postage prepaid, upon the following:

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Lockbox #35
Wilmington, DE 19889-0035

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Paul Noble Heath, Esquire
Richard Layton and Finger
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Scott Cousins, Esquire
Cousins Chipman & Brown, LLP
1007 North Orange Street
Suite 1110
Wilmington, DE 19801

Dated: April 11, 2013

/s/ Kenneth E. Aaron
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