IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
WASHINGTON MUTUAL, INC., *et al.*,[1]	)	Case No.: 08-12229 (MFW)
	)	(Jointly Administered)
	)	
Debtors.	)	**Re: D.I. Nos. 11185 & 11196**
	)	
	)	

LIMITED OPPOSITION TO WMI LIQUIDATING TRUST'S MOTION FOR AN ORDER APPOINTING A MEDIATOR WITH RESPECT TO EMPLOYEE CLAIMS AND PENDING OMNIBUS OBJECTIONS

Claimants Jose' Tagunicar, Daniel Shanks, John Webber, Robert Merritt, Robert Boxberger, Laura Rodrigues, Richard Strauch, Luis Rodriguez, Kathy Yeu, Michele Grau-Iversen, Robert Hill, Michael Rapaport, David Tomlinson, Mary Beth Davis, Stephen Whittaker, John Murphy and Anthony Vuoto (each a "Claimant" and collectively "Claimants"), by and through their undersigned counsel, hereby submit the following Limited Opposition To WMI Liquidating Trust's Motion For an Order Appointing a Mediator With Respect To Employee Claims and Pending Omnibus Objections (the "Motion")[D.I. No. 11185]. In support of this Limited Opposition, the Claimants respectfully represent the following:

Jurisdiction and Venue

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

[1] The Debtors in this Chapter 11 case, along with the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98191.

LIMITED OPPOSITION TO
MOTION TO APPOINT MEDIATOR

2. The Claimants are generally not opposed to the appointment of a mediator to assist with the potential resolution of the issues presented by the remaining employee claims and Omnibus Objections to those claims. The Claimants do, however, oppose certain specific mechanics of the mediation process as requested by WMILT in its Proposed Order. [Docket No. 11196]. Counsel for the Claimants has provided WMILT with requested revisions to the Proposed Order, which are summarized as follows:

a. ***Paragraph 1*** - To the extent the Court seeks the input of the parties with respect to potential mediators who could serve as Mediator in these claims proceedings, Claimants would request to be included in the selection process;

b. ***Paragraph 3*** - WMILT should bear the cost of the Mediation. WMILT is the party who proposed mandatory mediation of the non-settling claims, and should therefore bear the expense. Further, the cost of the mediation could be prohibitive for certain claimants, thereby depriving them of an even playing surface upon which to engage in settlement negotiations.[2] This Court has previously recognized this potential inequity in mediation proceedings in its General Order Re: Procedures in Adversary Proceedings[3] and Local Bankruptcy Rule 9019-5(j)(ix). The limited settlement discussions over the past two weeks with counsel for the Claimants have not resulted in sufficient progress as to the Claimant's claims to believe that mediation will actually yield positive results. Additionally, the proposed allocation of the fees and expenses associated with the Mediation is not fair to the claimant group on its face. Claimants with larger claims will bear a larger percentage of the mediation cost than other claimants,

[2] It appeared to Claimants' counsel that the attorneys for WMILT were using the threat of the cost and time of mediation as a "sword" in settlement negotiations. Stephan Kyle, counsel to the Claimants, was told by attorney Brian Rosen on a telephone call within a matter of days of receiving the very first settlement offer from WMILT on behalf of his clients that "if a settlement is not reached now," that "it looked like the Claimants will be the only ones left at Mediation" and that "they will bear 50% of the cost of the mediation" which is "likely to go on for 30 days."
[3] http://www.deb.uscourts.gov/sites/default/files/general-ordes/mfw040704_orderadversary.pdf

regardless of the ultimate settlement amount of the claim;

c. If, however, the Court determines that the Claimants should bear some percentage of the cost associated with the Mediation, such percentage should be limited to the portion of the Mediation sessions during which that claimant's claims are being presented to or considered by the Mediator, and further limited by allocating such costs on a pro rata basis on the settlement amount, if any, of the claimant's claim;

d. ***Paragraph 6*** – If personal attendance is required at the Mediation by a claimant or by the representative of a claimant, such attendance should be limited to only those sessions of the Mediation at which such claimant's claims are actually being considered by the Mediator. With respect to the location of the East Coast mediations, undersigned counsel believes Wilmington, Delaware is a less expensive, more convenient location than the offices of WMILT's counsel in New York.

e. ***Paragraph 8*** - The strict confidentiality provisions contained in this paragraph of the Proposed Order are overly-restrictive and not necessary in light of the governing "prohibited use" provisions regarding compromise offers and negotiations as set forth in Rule 408 of the Federal Rules of Evidence and Local Rule 9019-5(d)(1). Indeed, the language proposed by WMILT contradicts the express language of Rule 408 which provides that "[t]he court may admit this evidence for another purpose, such as proving witness bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution."

f. ***Paragraph 10*** - Similarly, Paragraph 10 of Proposed Order unnecessarily limits the mediator from sharing potentially helpful information to the Court regarding the status of any settlement discussions.

3. A redline version of the Proposed Order is attached hereto as Exhibit "A".

WHEREFORE, for all of the above reasons, the Claimants request that the Court enter the Proposed Order Appointing Mediator, as revised to incorporate the requested items set forth above.

Dated: April 11, 2013
Wilmington, Delaware

CROSS & SIMON, LLC

By: _____

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Exhibit A

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

ROBERT C. HILL,	:	Adversary Proc. No. 10-53153 (MFW)
STEPHEN E. WHITTAKER,	:	Adversary Proc. No. 10-53150 (MFW)
THOMAS E. MORGAN,	:	Adversary Proc. No. 10-53154 (MFW)
ANN TIERNEY	:	Adversary Proc. No. 11-53299 (MFW)
TODD H. BAKER	:	Adversary Proc. No. 11-54031 (MFW)
RICHARD STRAUCH	:	Adversary Proc. No. 12-50848 (MFW)
GENNADIY DARAKHOVSKIY	:	Adversary Proc. No. 12-50902 (MFW)
ROBERT BJORKLUND, DARYL DAVID, 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,	:	Adversary Proc. No. 12-50965 (MFW)
Defendants.	:	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 borne by WMILT. ~~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 Notice of entry of this Order, ~~the date hereof,~~ seven (7) business 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) 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). 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~~. Nothing herein shall prevent a Mediation Party from submitting a separate confidential Mediation Statement to the Mediator.

6. The Mediation conferences shall occur (a) ~~at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153~~ in Wilmington, Delaware at a time and location selected by the Mediator, and in a city in the West Coast to be selected by the Mediator, after consultation with the West Coast claimants and/or their counsel 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** 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. 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

CERTIFICATE OF SERVICE

I, Michael J. Joyce, hereby certify that on this 11th day of April, 2013, I caused copies of the foregoing *Limited Opposition to WMI Liquidating Trust's Motion for an Order Appointing a Mediator with Respect to Employee Claims and Pending Omnibus Objections* to be served on the parties listed below via CM/ECF and/or as otherwise indicated:

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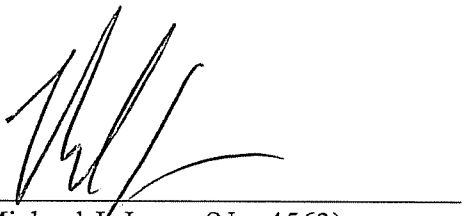

Michael J. Joyce (No. 4563)