

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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<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,	:

Chapter 11
Case No. 08-12229 (MFW)
(Jointly Administered)

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)

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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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)
-----X		
GENNADIY DARAKHOVSKIY	:	Adversary Proc. No. 12-50902 (MFW)
-----X		
ROBERT BJORKKLUND, 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,	:	Re: Docket No. 11185, 11199, 11200, 11201,
	:	11202, 11203, 11204, & 11208,
Defendants.	:	
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**REPLY OF WMI LIQUIDATING TRUST IN FURTHER SUPPORT OF
MOTION FOR AN ORDER APPOINTING MEDIATOR WITH RESPECT TO
EMPLOYEE CLAIMS AND PENDING OMNIBUS OBJECTIONS**

WMI Liquidating Trust (“WMILT” or “Trust”), as successor in interest to Washington Mutual, Inc. (“WMI”) and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the “Debtors”), hereby files this reply in further support of its motion, dated March 29, 2013 (the “Motion”)², for an order appointing a mediator in the employee claim matters, and respectfully represents as follows:

² Capitalized terms used herein shall have the meanings ascribed to them in the Motion.

Preliminary Statement

1. Since the filing of the Motion, WMILT has successfully negotiated a compromise and settlement of 49 of the 90 Disputed Claims held by Non-Settling Responding Claimants, relating to approximately \$84.5 million of \$123 million of Disputed Claims. All that remain are several *pro se* claimants and certain claimants congregated around several counsel. A listing of such Non-Settling Responding Claimants, the amount of their Disputed Claims and, if represented, the name of their counsel is set forth on Exhibit "A" hereto.

2. While several responses and one objection to the relief requested in the Motion have been interposed, no respondent is opposed to the concept of mediation. Rather, but for one rhetoric-filled response, all of the responses nip at the edges of the relief requested, seeking to trim the Non-Settling Responding Claimant's active involvement or the cost associated therewith. Similarly, several responses failed to realize that, after discussion with counsel for certain Claimants, under Certification of Counsel, the Trust filed a proposed order which addressed many of the concerns voiced in their responses. Additionally, one or more of the responses suggests that confidentiality of the mediation process should not be observed. As discussed briefly below, such approach is not conducive to an open dialogue, will create an atmosphere where parties will not speak freely and will not lead to a successful mediation.

3. For the reasons set forth below, the Trust submits that the relief requested in the Motion should be granted and the Court should enter the proposed order annexed hereto as Exhibit "B" (the "Proposed Order")³.

³ A blacklined copy of the proposed order, reflecting changes from the order submitted under Certification of Counsel is annexed hereto as Exhibit "C".

Participation and Location

4. Several of the responding Claimants have suggested that the mediation not be mandatory. Rather, such Claimants assert that the mediation should be on a voluntary basis and, if circumstances dictate, participants should be able to participate telephonically. The Trust certainly understands the costs associated with this litigation and, on a more limited basis, the mediation. For months, the Trust has been the sole party responding to multitudes of discovery requests and incurring significant costs and expenses. Conversely, but for a few Claimants, others have sat back and been non-responsive to the Trust's requests and have failed to produce documents or otherwise object.

5. However, the Trust's goal for this process is to seek resolution of the Disputed Claims and, as indicated in the Motion, on whatever basis the mediator determines appropriate. Thus, while the Trust still believes that the mediation should be mandatory and "in person", if the mediator determines that telephonic participation is sufficient for the Claimants, the Trust does not object.

6. Likewise, in the Motion, the Trust proposed that the mediation sessions be conducted in New York (due to the availability of facilities) and at a West Coast location selected by the mediator. Several Claimants have suggested a Wilmington, Delaware location instead of New York. The Trust has no objection to such locale and will coordinate with its counsel to ensure the maximum availability.

7. With respect to a West Coast location, the Trust maintains no preference. However, the Trust notes that Mr. Kyle represents sixteen (16) of the forty one (41) remaining Claimants, holding over fifty-six percent (56%) of the remaining Disputed Claims, and his offices are located in San Francisco, California. The Trust further notes that several other

remaining Claimants are within driving distance of such offices. The Trust has no objection to San Francisco being selected as a West Coast location or, for that matter, any other West Coast location.

Costs of Mediation

8. As the Court will readily note, the lion's share of the remaining Disputed Claims are represented by the Kyle Law Corporation (Stephan Kyle, Esq.), Ezra Brutzkus Gubner LLP (Robyn B. Sokol, Esq.) and Phillips, Goldman & Spence, P.A. (Stephen W. Spence, Esq.). Interestingly, these are the three counsel which have repeatedly requested that the Trust participate in mediation, two of whom requested an adjournment of the Motion to Amend so as to permit settlement dialogue, and one of whom expressly requested that the Trust file the Motion to further memorialize the "agreement" to participate in mediation. It is ironic that they now state that the concept of mediation was solely the idea of the Trust and thrust upon them.

9. Furthermore, these are not small sums being demanded by the remaining Claimants, and, despite their repeated statements, the remaining Claimants are extremely well-to-do, historically having been very well compensated by Washington Mutual Bank. There is no basis that WMI should shoulder the entire costs of mediation, thereby decreasing recoveries to creditors holding valid claims. Indeed, despite the claims of certain Claimants, the Trust is not acting on behalf of its "new equity holder". Pursuant to the confirmed Seventh Amended Plan, distributions still need to be made to creditors and, based upon prior projections, it is doubtful that cash distributions will be made to the Debtors' preferred and common equity interest holders.

10. The form of order submitted at the Court's request upon Certification of Counsel included a proposed allocation of costs that had been agreed upon by counsel to

substantially all of the remaining Claimants. The Trust submits that such understanding should be maintained. Specifically, for general background development by the mediator, such costs shall be shared fifty percent (50%) by WMILT and fifty percent (50%) by the remaining claimants, which such Claimants sharing responsibility based upon their pro rata share of remaining Disputed Claims. For the Court's benefit, such allocation is set forth on Exhibit "A" hereto. With respect to mediator services specifically dedicated to a Claimant, such costs would be shared equally by WMILT and such Claimant.

Mediation Statements

11. Several Claimants have commented that they would like to submit a joint mediation statement and not be constrained by the five page limit. Rather, such limit would be multiplied by the number of joined parties. The Trust does not object to such formulation and shall do the same to the extent that the Trust discusses multiple Claimants.

Confidentiality

12. Lastly, several Claimants seek to permit the unbridled dissemination of information and, presumably, to share offers submitted by the Trust in the mediation. As the Court is well aware from prior mediation orders entered in these cases, such is not the norm. Rather, to achieve the best results, confidentiality must be observed. The parties' views with respect to the merits of their positions are not to be shared, disseminated or otherwise leaked. Otherwise, all will be guarded in their views and offers and the process and the mediator's efforts will be for naught.

WHEREFORE WMILT respectfully requests that the Court (a) grant the relief requested in the Motion and enter the Proposed Order and (b) grant WMILT such other and further relief as is just.

Dated: April 16, 2013
Wilmington, Delaware



Mark D. Collins (No. 2981)
Paul N. Heath (No. 3704)
L. Katherine Good (No. 5101)
Amanda R. Steele (No. 5530)
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– and –

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Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for WMI Liquidating Trust

EXHIBIT A

List of Remaining
Non-Settling Responding Claimants

Counsel	Claimant Name	Claim Number(s)	Total Disputed Claim Amount	% of Remaining
Cross & Simon, LLC (Michael J. Joyce)	Murphy, John H.	2033, 2031	\$776,630	2.00%
		Total:	\$776,630.00	
Ezra Brutzkus Gubner LLP ¹ (Robyn B. Sokol)	Bjorklund, Robert C.	2880	\$405,000	1.04%
	Cannon, Kimberly A.	1248	\$1,085,369	2.80%
	Reynoldson, Michael	752	\$1,193,806	3.08%
	Sharma, Chandan	2539	\$577,812	1.49%
		Total:	\$3,261,987.00	
Gellert Scali Busenkell & Brown, LLC (Michael Busenkell)	Batt, Robert	2499	\$736,639	1.90%
	Jones, Jeffrey R.	2106	\$860,331	2.22%
	McCarthy, Michelle	2497	\$1,672,645	4.31%
	Melby, Randy	2364	\$1,022,714	2.64%
	Schulte, Patricia	1092	\$801,782	2.07%
	Shaw, Scott	3975	\$342,069	0.88%
	Stearns, Steven Kenneth	340	\$365,925	0.94%
	Weinstein, Jeffrey P.	996, 986	\$1,288,720	3.32%
		Total:	\$7,090,825.00	

¹ For each claimant represented by Ezra Brutzkus Gubner, LLP, Phillips, Goldman & Spence, P.A. serves as local counsel.

Kyle Law Corporation ² (Stephan Kyle)	Boxberger, Robert C.	2363	\$1,093,616	2.82%
	Davis, Mary Beth	844	\$885,255	2.28%
	Grau Iversen, Michelle	610,613,617	\$1,807,352	4.66%
	Hill, Robert C.	636	\$1,103,250	2.84%
	Merritt, Robert G.	2351	\$319,049	0.82%
	Rapaport, Michael	629	\$283,594	0.73%
	Rodrigues, Laura C. Rogers	2673	\$1,174,151	3.03%
	Rodriguez, Luis P.	2149	\$1,105,131	2.85%
	Shanks, Daniel	2360	\$222,735	0.57%
	Strauch, Richard	2420	\$2,662,682	6.86%
	Tagunicar, Jose O. N.	2367	\$343,546	0.89%
	Tomlinson, David A.	1390	\$1,803,628	4.65%
	Vuoto, Anthony F.	985; 997	\$4,188,629	10.79%
	Webber, John	2348	\$885,142	2.28%
	Whittaker, Stephen E.	2832, 3458, 3459	\$2,574,177	6.63%
	Yeu, Kathy H.	2354	\$1,311,167	3.38%
	Total:		\$21,763,104.00	

² For each claimant represented by Kyle Law Corporation, Cross & Simon LLC serves as local counsel.

Lichtsinn & Haensel S.C. ³ (Michael J. Bennett)	Eschenbach, Andrew	557	\$390,000	1.00%
		Total:	\$390,000.00	
Weir & Partners LLP (Abbe A. Miller)	Bach, Edward F.	2855	\$577,000	1.49%
	Berens, Henry J.	2129	\$290,000 ⁴	0.75%
	Zarro, Michael R.	1743	\$224,000 ⁵	0.58%
		Total:	\$1,091,000.00	
Pro se	Allison, Susan	3222	\$575,168	1.48%
Pro se	Camas, Gregory	4079	\$1,020,032	2.63%
Pro se	Darakhovskiy, Gennadiy	2571	\$1,193,477	3.08%
Pro se	Ferguson, Jacqueline	3829	\$100,202	0.26%
Pro se	Fortunato, Stephen	991	\$993,396	2.56%
Pro se	Lehrberger, Suzanne R.	3763	\$295,787	0.76%
Pro se	Melo, Joe Anthony	3165	\$29,698	0.08%
Pro se	Woods, John F.	3039	\$230,000	0.59%
		Total:	\$4,437,760.00	
		Total:	\$38,811,306.00	100.00%

Claimants Solely on the 88th Omnibus Objection

³ Loizides, P.A serves as local counsel for Andrew Eschenbach.

⁴ Mr. Berens has filed a motion to amend his claim in the amount of \$1,829,488.37, which motion remains pending.

⁵ Mr. Zarro has filed a motion to amend his claim in the amount of \$1,044,000.00, which motion remains pending.

Counsel	Claimant Name	Claim Number(s)	Number of Disputed Equity Interests
Pro se	Harrington, Tammy	n/a	180
Pro se	Rust, Kathleen	n/a	2,719
Pro se	Said, Foad	n/a	270
Pro se	Turk, Benjamin	n/a	3,962

EXHIBIT B

Form of Proposed Order

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)
: (Jointly Administered)
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Debtors. : :
: :
-----X

-----X
WMI LIQUIDATING TRUST :
: :
Plaintiff, :
: :
v. :
-----X
ANTHONY BOZZUTI, : Adversary Proc. No. 10-53131 (MFW)
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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

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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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 responses and an objection to the relief requested in the Motion having been interposed (collectively, the "Responses"); and WMILT having submitted a reply in further support of the Motion and in responses to the Responses; 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 seven (7) business days from the date hereof, each Mediation Party shall separately or in combination with any other Mediation Party submit directly to the Mediator, a statement (the "Mediation Statement"), which statement shall be no more than five (5) pages in length or (a) five (5) pages per Mediation Party (i.e., a twenty (20) page Mediation Statement may be filed if on behalf of four (4) Mediation Parties and (b) if by WMILT a multiple of such five (5) pages times the number of Mediation Parties discussed thereunder, 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 Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, DE 19801 and in a city on the West Coast to be selected by the Mediator and (b) on a date and at a time selected 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; provided, however, that, if directed by the Mediator, a Non-Settling Responding Claimant may participate telephonically.

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. (the "Hearing"), 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. All actions, obligations, deadlines and dates set by the Scheduling Orders, as defined in this Court's order, dated April ___, 2013, that have not passed as of March 25, 2013, including, without limitation, the Parties' obligations with respect to the production of documents, shall be suspended and deadlines and dates with respect thereto shall be re-

established pursuant to the terms of a further amended Scheduling Order which shall be negotiated by the Parties and presented to the Court at the Hearing.

13. 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 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 June 3, 2013, and (b) Claimants shall file responses, if any, to such objections within forty-five (45) 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 June 3, 2013, unless otherwise agreed to by the applicable Parties or ordered by the Court.

14. 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.

15. 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

Counsel	Claimant Name	Claim Number(s)	Total Disputed Claim Amount	% of Remaining
Cross & Simon, LLC (Michael J. Joyce)	Murphy, John H.	2033, 2031	\$776,630	2.00%
		Total:	\$776,630.00	
Ezra Brutzkus Gubner LLP ¹ (Robyn B. Sokol)	Bjorklund, Robert C.	2880	\$405,000	1.04%
	Cannon, Kimberly A.	1248	\$1,085,369	2.80%
	Reynoldson, Michael	752	\$1,193,806	3.08%
	Sharma, Chandan	2539	\$577,812	1.49%
		Total:	\$3,261,987.00	
Gellert Scali Busenkell & Brown, LLC (Michael Busenkell)	Batt, Robert	2499	\$736,639	1.90%
	Jones, Jeffrey R.	2106	\$860,331	2.22%
	McCarthy, Michelle	2497	\$1,672,645	4.31%
	Melby, Randy	2364	\$1,022,714	2.64%
	Schulte, Patricia	1092	\$801,782	2.07%
	Shaw, Scott	3975	\$342,069	0.88%
	Stearns, Steven Kenneth	340	\$365,925	0.94%
	Weinstein, Jeffrey P.	996, 986	\$1,288,720	3.32%
		Total:	\$7,090,825.00	

¹ For each claimant represented by Ezra Brutzkus Gubner, LLP, Phillips, Goldman & Spence, P.A. serves as local counsel.

Kyle Law Corporation ² (Stephan Kyle)	Boxberger, Robert C.	2363	\$1,093,616	2.82%
	Davis, Mary Beth	844	\$885,255	2.28%
	Grau Iversen, Michelle	610,613,617	\$1,807,352	4.66%
	Hill, Robert C.	636	\$1,103,250	2.84%
	Merritt, Robert G.	2351	\$319,049	0.82%
	Rapaport, Michael	629	\$283,594	0.73%
	Rodrigues, Laura C. Rogers	2673	\$1,174,151	3.03%
	Rodriguez, Luis P.	2149	\$1,105,131	2.85%
	Shanks, Daniel	2360	\$222,735	0.57%
	Strauch, Richard	2420	\$2,662,682	6.86%
	Tagunicar, Jose O. N.	2367	\$343,546	0.89%
	Tomlinson, David A.	1390	\$1,803,628	4.65%
	Vuoto, Anthony F.	985; 997	\$4,188,629	10.79%
	Webber, John	2348	\$885,142	2.28%
	Whittaker, Stephen E.	2832, 3458, 3459	\$2,574,177	6.63%
	Yeu, Kathy H.	2354	\$1,311,167	3.38%
	Total:	\$21,763,104.00		

² For each claimant represented by Kyle Law Corporation, Cross & Simon LLC serves as local counsel.

Lichtsinn & Haensel S.C. ³ (Michael J. Bennett)	Eschenbach, Andrew	557	\$390,000	1.00%
		Total:	\$390,000.00	
Weir & Partners LLP (Abbe A. Miller)	Bach, Edward F.	2855	\$577,000	1.49%
	Berens, Henry J.	2129	\$290,000 ⁴	0.75%
	Zarro, Michael R.	1743	\$224,000 ⁵	0.58%
		Total:	\$1,091,000.00	
Pro se	Allison, Susan	3222	\$575,168	1.48%
Pro se	Camas, Gregory	4079	\$1,020,032	2.63%
Pro se	Darakhovskiy, Gennadiy	2571	\$1,193,477	3.08%
Pro se	Ferguson, Jacqueline	3829	\$100,202	0.26%
Pro se	Fortunato, Stephen	991	\$993,396	2.56%
Pro se	Lehrberger, Suzanne R.	3763	\$295,787	0.76%
Pro se	Melo, Joe Anthony	3165	\$29,698	0.08%
Pro se	Woods, John F.	3059	\$230,000	0.59%
		Total:	\$4,437,760.00	
		Total:	\$38,811,306.00	100.00%

Claimants Solely on the 88th Omnibus Objection

³ Loizides, P.A serves as local counsel for Andrew Eschenbach.

⁴ Mr. Berens has filed a motion to amend his claim in the amount of \$1,829,488.37, which motion remains pending.

⁵ Mr. Zarro has filed a motion to amend his claim in the amount of \$1,044,000.00, which motion remains pending.

Counsel	Claimant Name	Claim Number(s)	Number of Disputed Equity Interests
Pro se	Harrington, Tammy	n/a	180
Pro se	Rust, Kathleen	n/a	2,719
Pro se	Said, Foad	n/a	270
Pro se	Turk, Benjamin	n/a	3,962

EXHIBIT C

Blackline of Proposed Order

**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	:	
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,	:	

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 WMLT, as defined herein, are located at 1201 Third Avenue, Suite 3000 Seattle, Washington 98101.

-----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)
-----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	:	

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)*

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

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. 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 responses and an objection to the relief requested in the Motion having been interposed (collectively, the "Responses"); and WMILT having submitted a reply in further support of the Motion and in responses to the Responses; 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~~seven (§7) business 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 or (a) five (5) pages per Mediation Party (i.e., a twenty (20) page Mediation Statement may be filed if on behalf of four (4) Mediation Parties and (b) if by WMILT a multiple of such five (5) pages times the number of Mediation Parties discussed thereunder, 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 Richards, Gotshal Layton & Manges LLP~~Finger, 767 Fifth Avenue P.A., New York~~Rodney Square, 920 NY, King Street, Wilmington, DE 1980153~~ and in a city ~~in~~on 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, e~~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; provided, however, that, if directed by the Mediator, a Non-Settling Responding Claimant may participate telephonically.

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. (the "Hearing"), 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. All actions, obligations, deadlines and dates set by the Scheduling Orders, as defined in this Court's order, dated April , 2013, that have not passed as of March 25, 2013, including, without limitation, the Parties' obligations with respect to the production of documents, shall be suspended and deadlines and dates with respect thereto shall be re-established pursuant to the terms of a further amended Scheduling Order which shall be negotiated by the Parties and presented to the Court at the Hearing.

13. 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 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 June 3, 2013, and (b) Claimants shall file responses, if any, to such objections within forty-five (45) 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 June 3, 2013, unless otherwise agreed to by the applicable Parties or ordered by the Court.

14. ~~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.

15. ~~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

Summary Report:	
Litéra® Change-Pro TDC 7.0.0.390 Document Comparison done on 4/16/2013 2:56:28 PM	
Style Name: Default Style	
Original DMS: iw://USDMS/US Active/44227886/2	
Modified DMS: iw://USDMS/US Active/44227886/3	
Changes:	
Add	30
Delete	22
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	0
Total Changes:	52