

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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| In re: |) | Chapter 11 |
| |) | |
| WASHINGTON MUTUAL, INC., <i>et al.</i> , ¹ |) | Case No.: 08-12229 (MFW) |
| |) | (Jointly Administered) |
| |) | |
| Debtors. |) | Hearing Date: May 23, 2013 at 10:30 a.m. |
| |) | Objection Deadline: May 6, 2013 at 4:00 p.m. |
| |) | |

MOTION OF CERTAIN PROVIDIAN EMPLOYEE CLAIMANTS FOR LEAVE TO AMEND CLAIMS TO INCLUDE ADDITIONAL VESTED SERAP BENEFITS AND TO PLEAD ADDITIONAL THEORIES OF RECOVERY IN LIGHT OF WMI LIQUIDATING TRUST’S FIFTH, SIXTH, SEVENTY-NINTH AND EIGHTIETH OMNIBUS (SUBSTANTIVE) OBJECTIONS TO CLAIMS

Claimants Michele Grau-Iversen, Robert Hill, Michael Rapaport, David Tomlinson, Mary Beth Davis and Stephen Whittaker (each a “Claimant” and collectively “Claimants”), hereby file the following motion (the “Motion”) for entry of an order granting leave to amend their existing proofs of claim (the “Original Claims”) to the extent necessary (1) in light of the arguments advanced in the Fifth, Sixth, Seventy-Ninth and Eightieth Omnibus (Substantive) Objections to Claims (the “Objections,” Docket Nos. 1233, 1234, 10504 and 10505) filed by the WMI Liquidating Trust (“WMILT”), as successor in interest to Washington Mutual, Inc. and WMI Investment Corp., formerly debtors and debtors in possession (the “Debtors”), (2) to seek additional monies owed to them under the WMI Supplemental Executive Retirement Accumulation Plan (“SERAP”), and (3) to correct calculation errors and benefit omissions made in the Original Claims. In support of this Motion and in support of their request to amend their claims, the Claimants respectfully represent the following:

Jurisdiction and Venue

¹The Debtors in this Chapter 11 case are Washington Mutual, Inc. and WMI Investment Corp.



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).

Relief Requested

2. This Motion is brought to ensure that the Claimants are not barred from arguing all of Claimants' theories of recovery and seeking recovery of all monies owed to Claimants with respect to their timely filed Original Claims, as detailed below. Each Claimant prepared and filed his/her own proof of claim without the assistance of retained counsel and inadvertently failed to include certain components and alternate recovery theories in his/her claim, including: (a) vested balances under the SERAP; (b) compensation arising from his/her Providian Change in Control Employment Agreement (the "Providian Agreement") if it is determined that the Special Bonus Opportunity is not an obligation of WMI; and (c) severance pay due certain Claimants under the WaMu Severance Plan if it is determined that Washington Mutual, Inc. is not responsible for compensating Claimants or that no change in control occurred under the WaMu Change in Control Agreement (the "WaMu CIC Agreement"). The proposed amended proofs of claim (the "Amended Claims") seek only to include monies that the Claimants are entitled to receive based on their employment with Washington Mutual.

3. By this Motion, Claimants request the entry of an order authorizing Claimants to amend the Original Claims or, in the alternative, allowing Claimants to assert alternative theories of recovery based on the Providian Agreement and WaMu Severance Plan and to seek additional monies owed to Claimants under their WaMu CIC Agreements, the Providian Agreement and the SERAP which were not known to the Claimants at the time of filing the Original Claims.

4. None of the Claimants were represented by counsel at the time of filing their Original Claims, and as a result, certain benefits arising under the agreements at issue in the Original Claims were not properly calculated or were not included in those Original Claims.

A. Amended Claims of Ms. Grau-Iversen, Mr. Hill, Mr. Tomlinson, Ms. Davis and Mr. Whittaker

5. The Amended Claims for Ms. Grau-Iversen, Mr. Hill, Mr. Tomlinson, Ms. Davis and Mr. Whittaker would include two alternate claims: (1) an alternate claim for compensation under the Providian Agreement if the Court determines that the Special Bonus Opportunity is not an obligation of WMI, as WMILT has asserted in the Objections, and (2) an alternate claim under the WaMu Severance Plan, which is sponsored by Washington Mutual, Inc. (“WMI”) if it is determined that their WaMu CIC Agreement is not an obligation of WMI or if it is determined that a change in control did not occur. These Claimants seek to add language in their explanation attached to the Claim stating the following: “To the extent that it is determined that WMI is found not to be the party responsible for the obligations under the Special Bonus Opportunity, then Claimants are entitled to compensation in an amount according to proof pursuant to the Providian Agreement. Further, to the extent that it is determined that a change in control did not occur or WMI is found not to be responsible for obligations under the WaMu CIC Agreement, then Claimants are entitled to severance pay in the amount of \$ _____² pursuant to the WaMu Severance Plan.”

6. In addition, the Amended Claims would correct the amount of their respective claims under the WaMu CIC Agreement to the extent certain components of compensation were inadvertently omitted or improperly calculated in the Original Claims filed by these Claimants.

² The individual amounts for each Claimant will be inserted on their respective Amended Claim.

7. Finally, the Amended Claims for these Claimants would also include the additional amounts that each of them was entitled to receive under the SERAP as a result of additional service credit that WMI failed to include, pursuant to the Amendment No. 1 to the SERAP dated September 30, 2005,³ when calculating each of these Claimants' vested SERAP benefits.⁴

B. Amended Claim of Michael Rapaport

8. The Amended Claim for Mr. Rapaport would simply restate his existing claim for unpaid compensation under the Providian Agreement to include additional monies, including additional vested SERAP benefits, owed to him under the Providian Agreement that he unknowingly failed to include in his calculations when he filed his Original Claim.

C. Form of The Amended Proofs of Claim

9. Claimants' Amended Claims will simply amend the attachments to the official Claim form to reflect the inclusion of the additional and alternate claims on that attachment, accompanied by the applicable amounts, as follows:

- a. In the case of Ms. Grau-Iversen, Mr. Hill, Mr. Tomlinson, Ms. Davis and Mr. Whittaker – alternate claims (1) for compensation under the Providian Agreement and (2) for severance benefits under the WaMu Severance Plan;
- b. In the case of each of the Claimants, a restatement of the calculation of their benefits and compensation owed to them under their existing claims; and

³ See Exhibit "7."

⁴ Mr. Hill failed to include his SERAP claim in his Original Claim. Therefore, his Amended Claim would seek the entirety of his SERAP vested balances. The other Claimants received a partial payment of their SERAP balance, as improperly calculated, by way of a partial distribution earlier in these proceedings. Those Claimants would seek only the remaining SERAP balances.

c. Inclusion of the value of full Vested Balances owed to each of the Claimants under the SERAP.

10. Should the Court not allow the proposed amendments, the Claimants seek the right to assert these theories of recovery at the hearing on WMILT's objection to Claimants' Claims. These recovery theories have been disclosed to WMILT.

11. Counsel for WMILT has been requested to stipulate to allow the filing of the Amended Claims but has stated that they are unwilling to do so. As such, Claimants seek an order from this Court authorizing them to file the Amended Claims or in the alternative allowing Claimants to argue their alternate theories of recovery and to seek the additional monies owed to them under their employment agreements at the hearing on their Claims.

Summary Of Relevant Facts

12. On September 26, 2008, WMI filed a petition for relief under chapter 11 of the Bankruptcy Code. The bankruptcy case was jointly administered with the case of WMI's affiliate Washington Mutual Investments, which was filed on the same day.

13. On or about January 30, 2009, the Court entered its order setting March 31, 2009 as the deadline for filing proofs of claim against WMI.

14. Prior to the Bar Date, Ms. Grau-Iversen filed four proofs of claim against Debtor WMI: (1) Claim no. 613 for payment owed pursuant to the WaMu CIC Agreement (the "WaMu CIC Claim") in the amount of \$1,486,352; (2) Claim no. 610 for payment owed pursuant to the Special Bonus Opportunity (the "Special Bonus Opportunity Claim") in the amount of \$221,000; (3) Claim no. 617 for bonus payment owed pursuant to the Providian Agreement (the "Providian Agreement Claim") in the amount of \$100,000; and Claim no. 117 for payment owed pursuant to the SERAP (the "SERAP Claim") in the amount of \$9,651.66.

15. Prior to the Bar Date, Mr. Hill filed his Proof of Claim no. 636 in the amount of \$1,103,250 for (1) payment owed pursuant to his WaMu CIC Claim, (2) for payment owed pursuant to his Special Bonus Opportunity Claim, and (3) for bonus payment owed pursuant to his Providian Agreement Claim.

16. Prior to the Bar Date, Mr. Tomlinson filed his Proof of Claim no. 1390 in the amount of \$1,815,402.65 for (1) payment owed pursuant to his WaMu CIC Claim, (2) for payment owed pursuant to his Special Bonus Opportunity Claim that was related to the Providian Agreement and (3) for payment owed pursuant to his SERAP Claim.

17. Prior to the Bar Date, Ms. Davis filed her Proof of Claim no. 844 in the amount of \$915,958.00 for (1) payment owed pursuant to her WaMu CIC Claim, (2) for payment owed pursuant to her Special Bonus Opportunity Claim, (3) for bonus payment owed pursuant to her Providian Agreement Claim, and (4) for payment owed pursuant to her SERAP Claim.

18. Prior to the Bar Date, Ms. Whittaker filed four proofs of claim against Debtor WMI: (1) Claim no. 2832 in the amount of \$1,185,852 for payment owed pursuant to his WaMu CIC Claim; (2) Claim no. 3458 in the amount of \$1,233,000 for payment owed pursuant to his Special Bonus Opportunity Claim; (3) Claim no. 3459 in the amount of \$155,325 for bonus payment owed pursuant to his Providian Agreement Claim; and Claim no. 3457 in the amount of \$8,122.72 for payment owed pursuant to his SERAP Claim.

19. Prior to the Bar Date, Mr. Rapaport filed his Proof of Claim no. 629 in the amount of \$292,742.00 for unpaid compensation owed pursuant to the Providian Agreement.

20. On February 23, 2012, this Court entered its order approving the Seventh Amended Joint Plan of Reorganization (the "Confirmation Order"). The Confirmation Order provides that "[a]s of the commencement of the Confirmation Hearing, a Proof of Claim may not

be filed or amended without the authority of the Court.” See Confirmation Order ¶ 45, [Docket No. 9759]. The Confirmation Order further provides that, “[n]otwithstanding that the Court may permit the filing or amendment of such a proof of Claim, the Debtors are not required to reserve Liquidating Trust Assets to pay or otherwise satisfy any such Claims.” Id.

21. On or about June 26, 2009, WMI, as debtor in possession, filed Debtors’ Fifth and Sixth Omnibus (Substantive) Objections to Claims [Docket Nos. 1233 and 1234]. On August 15, 2012, WMILT filed the WMI Liquidating Trust Seventy-Ninth Omnibus (Substantive) Objection to Claims [Docket No. 10504] and the Eightieth Omnibus (Substantive) Objection to Claims [Docket No. 10505] (collectively the “Objections”). By and through the Objections, WMILT among other things objected to Claimants’ Claims on, inter alia, the following grounds: (a) WMILT is not responsible for those claims arising from either the WaMu CIC Agreement, the Special Bonus Opportunity Agreement or the Providian Agreement because WMI allegedly was not a party such agreements – WMILT’s Wrong Party Argument; and (b) WMILT is not responsible for those claims arising under the WaMu CIC Agreement, or the Special Bonus Opportunity Agreement because a change in control did not occur – WMILT’s No CIC Argument. See, the Objections.

22. With the Confirmation Order in mind, on or about December 3, 2012, Stephan Kyle, counsel for the Claimants, sent Mr. Brian S. Rosen and Mr. Lawrence Baer of Weil Gotshal & Manges LLP (“Weil”) a letter (the “December 3 Letter”) requesting that WMILT stipulate that the Claimants be permitted to amend their Claims to add alternate and/or additional theories of recovery arising out of the agreements at issue in their Original Claims as follows:

- i. Claims for additional vesting of benefits under the SERAP
- ii. Alternate Claims for unpaid benefits pursuant to the Providian Agreement;

- iii. Alternate Claims for change in control/severance benefits pursuant to the WMI Severance Plan.

23. The December 3 Letter provided a detailed description of the proposed amendment.⁵ The requested stipulation was refused in a December 7, 2012 email from Julio Gurdian of Weil stating that they “would not accept further amendments to the proofs of claims.”

24. Written discovery proceeded during the months of January and February 2013. Through the written discovery process, additional documents and information became available in order to support the Claimants’ requests to file amended proofs of claim.

25. On or about March 8, 2013, the day after the Court ruled that other employee Claimants would be permitted leave to file amended proofs of claim in connection with their employment relationship with Washington Mutual, Mr. Kyle sent a further and even more detailed letter to Mr. Rosen and Mr. Baer (the “March 8 letter”) re-asserting his request that WMILT stipulate to allow the Claimants leave to amend to file their amended claims to plead these alternate and additional theories of recovery in connection with their employment agreements and benefit plans.⁶

26. On Friday, March 15, 2013, Mr. Kyle received a telephone call from Mr. Gurdian who stated that WMILT refused to enter into the proposed stipulation and would require that the Claimants file a contested motion with the Court to seek leave to amend. As such, Claimants have filed this Motion.

Support for the Requested Amendments

I. Alternate Claim for Recovery Under the Providian Agreement

⁵ The December 3 Letter is attached hereto as Exhibit “1.”

⁶ The March 8 Letter is attached hereto as Exhibit “2.”

27. Prior to 2005, the Claimants were each employed by Providian Financial Corporation (PFC) in San Francisco pursuant to a Change in Control Employment Agreement with PFC (the “Providian Agreement”). A copy of the Providian Agreement of Ms. Grau-Iversen is attached hereto as Exhibit “3.”⁷

28. On October 1, 2005, Providian merged into Washington Mutual. As a result of the merger, the Providian Agreement became an employment agreement with a 3-year term with Washington Mutual. (Providian Agreement at ¶3).

29. WMI acknowledged itself as the successor to PFC for purposes of the Providian Agreement in an executed Amendment to the Providian Agreement, signed by WMI Officer Daryl David in his capacity of Chief Human Resources Officer of “*Washington Mutual, Inc., Successor to Providian*” on September 12, 2007.⁸ As the successor, WMI is bound by the terms of the Providian Agreement.

30. Pursuant to the Providian Agreement, each Claimant was entitled to receive, among other things, a lump-sum termination payment from WMI if Claimants’ employment was terminated other than for “Cause” or “Disability.” (Providian Agreement at ¶6(a)(i))

31. Each Claimant was also entitled to receive a guaranteed Annual Bonus payment in cash, as set forth in the Providian Agreement. (Providian Agreement at ¶4(b)(2)).

32. The 3-year employment term under the Providian Agreement was scheduled to expire on October 1, 2008. In order to avoid the loss of a large number of former Providian employees who were eligible to trigger their termination benefits under the Providian Agreement before October 1, 2008, many of these employees, including the Claimants, were each offered a

⁷ Ms. Grau-Iversen’s agreement is illustrative. The Providian Agreements were nearly identical in their terms for all of the Claimants.

⁸ See, again by of illustration, the Amendment to Change in Control Employment Agreement of Ms. Grau-Iversen attached hereto as Exhibit “4”.

Special Bonus Opportunity designed to serve as a retention tool to avoid losing these valuable employees.

33. In February and August 2008, Ms. Grau-Iversen, Mr. Hill, Mr. Tomlinson, Ms. Davis and Mr. Whittaker were provided with Special Bonus Opportunity retention agreements which were designed to retain the employment of each of these Claimants beyond the 3-year employment term under the Providian Agreement. The August 2008 Special Bonus Opportunity Agreement specifically stated it was intended to *supersede* the Providian Agreement.⁹ Without this additional incentive to remain employed, each of the Claimants would have been eligible to exercise their rights under the Providian Agreement and trigger substantial termination severance benefits at any time before October 1, 2008 (the end of the 3-year employment term). In other words, the Special Bonus Opportunity was designed to provide those claimants with an incentive to stay with the Company and to forego their contractual rights under the Providian Agreement.

34. As stated above, WMI has asserted in the Objections that it was not a contracting party to the Special Bonus Opportunity agreements. If WMI's assertion is determined to be correct, then the Providian Agreement (which is an obligation of WMI as successor to Providian) could not have been "superseded" by the Special Bonus Opportunity, since it would have lacked the necessary contractual privity to relieve WMI of its obligations under the Providian Agreement. Stated differently, if the Special Bonus Opportunity *is* an obligation of WMI (which the Claimants believed was the case) the Providian Agreement for these Claimants who received the Special Bonus Opportunity would be superseded. But if WMI is deemed not to be a contracting party to the Special Bonus Opportunity, the rights and benefits under the Providian Agreement would remain intact, since WMI is the stated successor to the Providian Agreement.

⁹ See, the August 7, 2008 Special Bonus Opportunity agreement attached hereto as Exhibit "5."

35. WMI cannot have it both ways. Claimants request, by way of this Motion, that if WMI is deemed not to be a contracting party to the Special Bonus Opportunity, then the Claimants should be permitted to pursue this alternate theory of recovery under the Providian Agreement, as will be more fully set forth in the Amended Claims.

36. With respect to Mr. Rapaport, his claim as originally filed is solely related to compensation and benefits under the Providian Agreement, since he was terminated several months prior to the Petition Date. Mr. Rapaport merely seeks to amend his Original Claim under the Providian Agreement to include additional monies, including the expanded vested SERAP benefit and other sums owed to him under the Providian Agreement, that he did not properly include at the time he filed his original proof of claim.

II. Alternate Claim for Recovery Under the WaMu Severance Plan

37. The WaMu Severance Plan, effective August 1, 2004 provides as follows: Washington Mutual, Inc., has established the Washington Mutual Special Severance Plan (the "Plan") to provide benefits to eligible employees of Washington Mutual, Inc., and its designated subsidiaries and affiliates (collectively, "Washington Mutual") whose jobs are eliminated due to a restructure or downturn in business. The Plan is intended to be a welfare plan governed by the Employee Retirement Income Security act of 1974 ("ERISA").

38. The WaMu Severance Plan Amended and Restate Effective January 1, 2008 preamble reads:

Washington Mutual, Inc. has established the WaMu Severance Plan (the "Plan") with the intention of providing benefits to Eligible Employees of Washington Mutual, Inc. and its Affiliates (the "Company"), in the event of job elimination. This document sets forth the basic terms that are applicable to all eligible participants. Provisions that apply exclusively to eligible employees of acquired employees are set forth in appendixes to this document. The Plan is intended to be a welfare plan governed by ERISA and intended to constitute a single plan.

39. If a WaMu employee is a party to a Change in Control Agreement and receives payment under such Change in Control Agreement, such employee is not entitled to severance under the WaMu Severance Plan. Specifically, the WaMu Severance Plan provides that:

2.2 Exceptions. An Eligible Employee is not eligible to receive benefits under this Plan if he is eligible to receive benefits or payments from any other severance plan arrangement agreement or program or if he has received such payment within the last two years from the Company or any Acquired Companies.

40. The WaMu Severance Plan provides an alternate theory of recovery against WMILT in the event it is determined that WMI is not obligated to perform under the terms of the WaMu CIC Agreement. The WaMu Severance Plan is intended to cover The Claimants and provide for severance benefits in the event of job loss following a change in control, unless Claimants are eligible to receive severance benefits under his/her WaMu CIC Agreement. Since WMILT has objected to Claimants' claims for benefits under the WaMu CIC as not being an obligation of WMI, Claimants seek to amend their proofs of claim to plead this alternate theory of recovery of severance benefits against WMI.

III. Additional Service Credit and Vesting Under the SERAP

41. The SERAP provides retirement benefits to certain executive employees that supplement benefits accrued under other retirement plans of the Company.¹⁰ An eligible executive was allocated benefit accruals based on a percentage of their compensation. The percentage increased as their years of "Executive Service" to the Company increased. See Exhibit "6", SERAP, at § 3.2.

42. These executives became increasingly "vested" in the benefit credit accruals as their years of Executive Service increased. Executives with less than 2 years of Executive

¹⁰ A copy of the SERAP is attached hereto as Exhibit "6."

Service were 0% vested, those with more than 2 years of Executive Service were 25% vested, and vesting continued at 25% per year until an executive became 100% vested after 5 years of Executive Service. SERAP, at § 4.3.

43. Upon the merger of Providian into Washington Mutual, the SERAP was amended by the Amendment No. 1 adopted September 30, 2005 (the "Amendment No. 1") to provide for plan entry dates and prior service credits. A copy of the Amendment No. 1 is attached hereto as Exhibit 7. Pursuant to Amendment No. 1, the definition of "Executive Service" was amended by adding the following language to the end of Section 2.20:

Employees who on September 30, 2005 were employed by Providian Financial Corporation, Providian National Bank or any affiliate or subsidiary thereof and who on October 1, 2005 became employed by the Employer shall, after April 1, 2006, be credited with Service for service with Providian Financial Corporation, Providian National Bank or their affiliates or subsidiaries, but only to the extent that such service occurred after December 31, 2003.

44. Pursuant to Amendment No. 1, Claimants were each entitled to up to two (2) additional years of service (for their service with Providian) dating back to Jan. 1, 2004. Yet, the calculations made by WMI, as represented to Claimants in the Notice on March 11, 2009 signed by Robert Williams on behalf of WMI (the "Notice") as being reflected on the books and records of the Debtor, failed to take into account these additional years of Executive Service for the Claimants. A copy of the Notice sent to Ms. Grau-Iversen, by way of illustration and a Fidelity statement showing her full SERAP balance is attached hereto as Exhibit "8". All of the Claimants vested balances were similarly miscalculated by WMI.

45. If the Amendment No. 1 had been properly applied, the Vested Percentage would have increased to 75% for the Claimants (4 full years of Executive Service from January 1, 2004 through September 26, 2008), instead of the 25% WMI calculated as vested. In addition, the

Benefit Credit increases to 4% (Percentage of Compensation) as a result of the application of the additional years of service credit.

46. The Claimants would also seek to include any additional amounts that would be owed each of them under the SERAP in connection with acceleration of any remaining vesting as a result of termination of employment or change of control.

LEGAL ANALYSIS

THE RELIEF REQUESTED IS APPROPRIATE UNDER THE FEDERAL RULES OF CIVIL PROCEDURE AND FIRMLY ESTABLISHED CASE LAW

A. AMENDMENTS TO PROOFS OF CLAIMS ARE LIBERALLY PERMITTED

47. The general rule regarding amendment of a proof of claim is as follows:

It is well established that amendments to proofs of claim are liberally allowed [citations omitted]. Generally, amendments are allowed when the original claim provides notice of the existence, nature, and amount of the claim. Amendments are generally used to cure obvious defects, describe the claim with greater specificity or plead a new theory of recovery on facts of the original proof of claim. Post-bar date amendment should be scrutinized to ensure that the amendment is not a new claim. While courts allow post-bar date amendment to claim amounts, courts do not allow post-bar amendment to change status of the claim.

In re Orion Ref Corp., 317 B.R. 660, 664 (Bankr. D. Del. 2004) (emphasis added).

48. As the Federal Rules of Bankruptcy Procedure do not directly address amendment of a proof of claim, most Courts look to Federal Rule of Civil Procedure 15 (“Rule 15”) and apply the test set forth therein to determine whether to allow an amendment to a proof of claim.

In re Channokhon, 465 B.R. 132 (Bankr. S.D. Ohio 2012); In re Xechem Int’l, Inc., 424 B.R. 836, 841 (Bankr. N.D. Ill. 2010); Midland Cogeneration Venture Ltd. P’ship v. Enron Corp., 419 F.3d 115, 133 (2d Cir. 2005); In re Enron Corp. (“Enron”), 298 B.R. 513, 521 (Bankr.S.D.N.Y. 2003); Gens v. Resolution Trust Corp., 112 F.3d 569, 575 (1st Cir. 1997); In re Stavriotis, 977

F.2d 1202, 1204 (7th Cir. 1992); Robert Farms, 980 F.2d 1248, 1251 (9th Cir. 1992); In re Spurling, 391 B.R. 783, 786 (Bankr. E.D. Tenn. 2008); In re J.S. II, L.L.C., 389 B.R. 563, 567 (Bankr. N.D. Ill. 2008); In re MK Lombard Grp. I, Ltd., 301 B.R. 812, 816 (Bankr. E.D. Pa. 2003); Little v. Drexel Burnham Lambert Grp., Inc., 159 B.R. 420, 425 (S.D.N.Y. 1993).

49. Rule 15 provides that “[t]he court should freely give leave when justice so requires.” Courts have a long established liberal policy that permits amendments to a proof of claim. See Bankr.R. 7015; Fed.R.Civ.P. 15; In re Franciscan Vineyards, Inc., 597 F.2d 181, 182 (9th Cir., 1979), cert. denied, 445 U.S. 915, 100 S.Ct. 1274, 63 L.Ed.2d 598 (1980). The crucial inquiry is whether the opposing party would be unduly prejudiced by the amendment. In re Wilson, 96 B.R. 257, 263 (9th Cir.BAP1988); United States v. Hougham, 364 U.S. 310, 316, 81 S.Ct. 13, 18, 5 L.Ed.2d 8 (1960). Furthermore, an amendment to a proof of claim will relate back to the timely filed proof of claim if the claims in the amendment arise from the same conduct, transaction or occurrence as required by Rule 15. See generally, In re Xechem Intern., Inc., 424 B.R. 836 (Bankr. N.D. Ill. 2010).

B. THE AMENDED PROOFS OF CLAIM SATISFY THE REQUIREMENTS OF RULE 15

50. The United States Supreme Court in Foman v. Davis, 371 U.S. 178, 83 S. Ct. 227, 9 L.Ed. 2d 222 (1962), referred to several factors courts should analyze when confronted with a request for leave to amend, stating:

In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the appealing party by virtue of allowance of the amendment, futility of amendment, etc. – the sought relief should, as the rules require, be “freely given.”

Foman, 371 U.S. at 182.

51. The Third Circuit has employed the “Foman Factors” in determining whether a trial court properly granted or denied leave to amend a pleading. In *re Burlington Coat Factory Securities Litigation*, 114 F.3d, 1410, 1434 (3rd Cir. 1997) (listing five factors taken into account to assess the propriety of a motion for leave to amend: (1) undue delay, (2) bad faith, (3) dilatory motive, (4) prejudice, and (5) futility of amendment); *Riley v. Taylor*, 62 F.3d 86, 90 (3rd Cir. 1995) (adopting and applying the Forman factors; *Grayson v. Mayview State Hospital*, 293 F.3d 103, 108 (3rd Cir. 2002) (holding that a under FRCP 15(a), leave to amend “must be granted in the absence of undue delay, bad faith, dilatory motive, unfair prejudice, or futility of amendment.”); see also *Shane v. Fauver*, 213 F.3d 113, 115 (3rd Cir. 2000).

52. The following analysis of the “Foman Factors” as used by the 3rd Circuit shows that leave to amend the Claims should be granted in this case:

(a) No Bad Faith.

53. There are no indicia of bad faith. Each of the Original Claims contemplated reimbursement for severance, wage compensation and/or employee benefits. The Supreme Court in *Foman* stated that “[i]f the underlying facts or circumstances relied upon by plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.” *Foman* at 182. The proposed Amended Claims are based on the same underlying facts and circumstances relied upon by Claimants in their Original Claims, namely their employment with Washington Mutual. The Claimants should be allowed an opportunity to present their full Claims on the merits and should not be barred from raising additional legal theories for recovery.

(b) No Undue Delay.

54. There will be no undue delay occasioned by the filing of the Amended Claims or reservation of Claimants' right to argue additional theories of recovery based upon the Original Claims. Discovery regarding the Employee Claims is ongoing and the Written Requests propounded by WMILT already encompassed all legal theories and facts supporting the additional theories to be included in the Amended Claims. No depositions of the Claimants or other relevant witnesses have yet been taken, or scheduled. Thus, the Amended Claims will not require additional discovery or an extension of currently scheduled dates.

(c) No Prejudice to Opposing Party.

55. The Amended Claims will not prejudice WMILT at all. As mentioned above, the underlying facts relied on in the Amended Claims are the same as in the Original Claims. Furthermore, WMILT and its counsel were apprised that Claimants intend to pursue the additional and alternative theories if it is determined that a change of control has not occurred and/or that WMILT is not obligated to satisfy Claimants' claims arising under the Special Bonus Opportunity or the WaMu CIC Agreement. See Exhibit "1" and Exhibit "2."

56. WMILT will in no way be prejudiced by the Amended Claims because the amendments do not require further discovery or a continuation of the currently scheduled dates. While Claimants are seeking to increase the Original Claim amounts to include additional sums due them under the SERAP and their WaMu CIC Agreement or Providian Agreement (as the case may be), they are not requesting that WMILT reserve additional funds to satisfy these additional amounts. As such, the only parties that will be prejudiced are the Claimants if the Court does not allow Claimants to file the Amended Claims or argue their alternate recovery theories.

(d) The Amended Claims Are Not Futile.

57. The Amended Claims are not futile. Claimants were each a party to the WaMu Severance Plan and the WaMu Severance Plan specifically provides for a payment to each Claimant upon termination from Washington Mutual if Claimants are not entitled to a payment under Claimants' WaMu CIC Agreements. Additionally, Claimants are a party to the Providian Agreement and to the extent it is determined that WMI is responsible for claims/payments arising under the Providian Agreement, Claimants are entitled to claim benefits. Further, Claimants were all participants in the SERAP Plan. At a minimum, Claimants should not be prevented from arguing the merits of their claims and raising all legal issues at this stage of claim litigation.

(e) No Previous Amendments.

58. There have been no previous amendments to the Claims.

(f) No Dilatory Tactics by Claimants.

59. Claimants have exercised no dilatory tactics. Claimants submit that the Original Claims already encompass the alternate and additional recovery theories as they clearly provide that the basis for each claim is Claimant's employment with Washington Mutual. Moreover, these alternate and additional theories of recovery were raised to WMILT's counsel as soon as Claimants realized that they had not been included in their Original Claims. Claimants by and through their counsel specifically brought this issue to the attention of WMILT and apprised WMILT that they intended to pursue these alternate and additional theories and seek recovery of the full amounts they are due. Counsel for WMILT refused to stipulate to the amending of the Original Claims. Rather, WMILT informed Claimants' counsel that a motion needed to be brought seeking an order from this Court authorizing the amendment. Thus, the Claimants were not dilatory.

C. CLAIMANTS' PROPOSED AMENDMENT DOES NOT PREJUDICE WMILT

60. The Original Claims provided notice that each Claimant was pursuing claims arising out of their employment relationship with WMI. The Amended Claims would likewise seek compensation, severance and benefits arising from the Claimant's employment, employment agreements, severance and benefits. The Amended Claims seek compensation for the very same types of claims arising from Claimants' employment with WMI.

61. A similar set of facts was decided by the Bankruptcy Court in Illinois in *In re Xechem International, Inc.*, 424 B.R. 836 (Bankr. N.D. Ill. 2010). In that case, a former employee of the debtor filed a timely claim for unpaid compensation. After the bar date, the former employee sought to amend his claim to include additional claims for severance compensation, indemnification, repayment of a loan to the company and interest on the loan. The amended proof of claim reasserted the original claims, although in different amounts. In fact, the amended proof of claim claimed an additional \$247,094.00 to the original amount of \$1,699,000. *Id.* at 842. The court found that those claims clearly involved the same core disputes as those in the original proof of claim, and thus related back. *Id.* at 845. As for the severance and indemnification claims, the court found that those claims arose from the parties' employment agreements and the debtor's bylaws and therefore arose from the same ongoing conduct, transaction, or occurrence as those in the original proof of claim. *Id.* The employee was permitted to file the amended proof of claim on all new theories, except for the loss of personal property. *Id.*

62. As the Amended Claims here relate to the employment relationship and compensation owed to Claimants, they clearly relate to the Original Claims. As such, Claimants' proposed amendments relate back to the Original Claims and leave to file the Amended Claims

should be granted. In the alternative, should the Court not allow the proposed amendments, the Claimants seek the right to assert alternative recovery based on the Providian Agreement and the WaMu Severance Plan, if necessary, and argue that they are also entitled to additional compensation under the SERAP and their agreements at issue in the Original Claims.

CONCLUSION

63. Based on the foregoing, Claimants request that this Court allow them to file the Amended Claims and have them relate back to the timely filed Claims.

64. In the alternative, the Claimants seeks an order from this Court that; (a) the Claimants may assert alternate claims (i) for recovery under the Providian Agreement and the WaMu Severance Plan, if it is determined that no change of control occurred and/or that WMI is not responsible for satisfaction of employee claims under the Special Bonus Opportunity or the WaMu CIC Agreement, respectively, and (b) the Claimants may argue at the Hearing that their compensation and therefore, their Original Claims include the additional monies owed to them under their WaMu CIC Agreements, the Providian Agreement (Mr. Rapaport) and the SERAP.

Respectfully Submitted,

Dated: April 17, 2013
Wilmington, Delaware

CROSS & SIMON, LLC

By: 

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David G. Holmes (No. 4718)
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-and-

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*Counsel to Michele Grau-Iversen, Robert Hill,
David Tomlinson, Mary Beth Davis, Stephen
Whittaker and Michael Rapaport*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|---|---|--|
| In re: |) | Chapter 11 |
| |) | |
| WASHINGTON MUTUAL, INC., <i>et al.</i> , ¹ |) | Case No.: 08-12229 (MFW) |
| |) | (Jointly Administered) |
| |) | |
| Debtors. |) | Hearing Date: May 23, 2013 at 10:30 a.m. |
| |) | Objection Deadline: May 6, 2013 at 4:00 p.m. |
| |) | |

NOTICE OF MOTION

PLEASE TAKE NOTICE, that Claimants Michele Grau-Iversen, Robert Hill, Michael Rapaport, David Tomlinson, Mary Beth Davis and Stephen Whittaker (each a “Claimant” and collectively “Claimants”), filed their *Motion of Certain Providian Employee Claimants for Leave to Amend Claims to Include Additional Vested SERAP Benefits and to Plead Additional Theories of Recovery in Light of WMI Liquidating Trust’s Fifth, Sixth, Seventy-Ninth and Eightieth Omnibus (Substantive) Objections to Claims* (the “Motion”), with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

Objections to the Motion, if any, must be filed on or before **May 6, 2013 at 4:00 p.m.** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801.

At the same time, you must also serve a copy of the objection upon the undersigned counsel to the Claimants so that the response is received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that if an objection is properly filed in accordance with the above procedure, a hearing on the Motion will be held before the Honorable Mary F. Walrath on **May 23, 2013 at 10:30 a.m.** Only those objections made in response to the Motion will be heard.

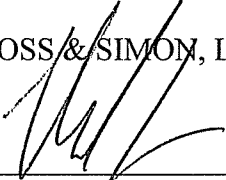
¹The Debtors in this Chapter 11 case are Washington Mutual, Inc. and WMI Investment Corp.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: April 17, 2013
Wilmington, Delaware

CROSS & SIMON, LLC

By: _____


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and Michael Rapaport*

Exhibit 1

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December 3, 2012

VIA EMAIL & U.S. PRIORITY MAIL

Counsel for WMILT

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Re: AMENDMENT OF PROOFS OF CLAIM – PROVIDIAN
EMPLOYEES
In re Washington Mutual, Inc., Case No. 08-12229 (MFW)
United States Bankruptcy Court, District of Delaware

Dear Counsel:

As you know, we are the attorneys for the group of former Providian employee claimants in the above-referenced bankruptcy matter.

We are writing to you in an effort to obtain a stipulation to allow certain of our clients the opportunity to formally amend their proofs of claim to plead new theories of recovery on the same facts upon which their original proofs of claim were based. Specifically, our clients would be seeking additional theories of recovery against WMILT (as successor to WMI) related to their employment as follows:

- i. Claim for additional benefits under the SERAP/ETRIP
- ii. Claim for unpaid wages prior to the Petition Date pursuant to the Providian Agreement;

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- iii. Claim for termination payment that vested on September 25, 2008 – prior to the Petition Date – pursuant to the Providian Agreement;
- iv. Alternate Claim for change in control/severance benefits pursuant to the WMI Severance Plan/Executive Officer Severance Plan; and
- v. Claim for compensation under Anthony Vuoto’s WMI Employment Agreement

The basis for each of these claim theories is set forth below.

1. Amendment of Claim Is Proper Where It Arises Out of Same Conduct, Transaction, or Occurrence as the Originally Filed Proof of Claim

We believe that the Court would grant a motion for leave to amend the proofs of claim for each of our clients, as set forth below. The general rule with regard to amendment of proofs of claim is as follows:

Generally, amendments are allowed when the original claim provides notice of the existence, nature, and amount of the claim. Amendments are generally used to cure obvious defects, describe the claim with greater specificity or plead a new theory of recovery on facts of the original proof of claim. Post-bar date amendment should be scrutinized to ensure that the amendment is not a new claim. While courts allow post-bar date amendment to claim amounts, courts do not allow post-bar amendment to change status of the claim.

In re Orion Ref. Corp., 317 B.R. 660, 664 (Bankr. D. Del. 2004).

Here, each of the claimant’s original claims provided notice that they were pursuing claims arising out of their employment relationship with WMI. The request to amend their proof(s) of claim is intended to plead new theories of recovery based on facts of the original proof(s) of claim. Specifically, the new theories of recovery are directly related to their rights to compensation and benefits that were not known to them at the time of filing their original proofs of claim. In addition, amendment would not change the status of these claims. Each of the claims would remain categorized as a Class 12 General Unsecured Creditor claim.

A similar set of facts was decided by the Bankruptcy Court in Illinois in *In re Xechem International, Inc.*, 424 B.R. 836 (Bankr. N.D. Ill 2010). In that case, a former employee of the debtor filed a timely claim for unpaid compensation. After the Bar Date, the former employee sought to amend his claim to include additional claims for severance compensation,

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indemnification, repayment of a loan to the company and interest on the loan. The original proof of claim included claims totaling \$1,669,000, and the proposed amended proof of claim included claims totaling \$2,916,094. Each of the claims, with the exception of a new claim for loss of personal property valued at \$1,000,000, arose from agreements between the former employee and the debtor concerning his employment and from the Debtor's bylaws. The Amended Proof of Claim reasserted the original claims, although in different amounts. The Court found that those claims clearly involved the same core disputes as those in the Original Proof of Claim, and thus related back. As for the severance and indemnification claims, the Court found that those claims arose from the parties' employment agreements and the Debtor's bylaws and therefore arose from the same ongoing conduct, transaction, or occurrence as those in the Original Proof of Claim. The employee was permitted to file the Amended Proof of Claim on all new theories, except for the loss of personal property.

2. Claims for additional benefits under the SERAP/ETRIIP

This issue has been well described to you in our October 24, 2012 letter. It has been more than five (5) weeks since we requested that you confirm the Liquidating Trustee's intent with respect to the clearly documented mis-calculation of vested benefits under the SERAP and the ETRIIP for a number of our clients. Despite numerous follow-up emails, we still have not received any type of response from you on this matter. We are therefore notifying you of our intent to file a motion to amend the proofs of claim to include:

- (i) The amount of vested benefit that is owed to **Michael Rapaport, Mary Beth Davis, David Tomlinson, Robert Hill, Michele Grau-Iversen, Richard Strauch, Stephen Whittaker, Kathy Yeu and Robert Boxberger** by virtue of proper application of Amendment No. 1 to the SERAP, increasing the Benefit Credit to 4% (Percentage of Compensation) and the Vested Percentage to 75%;
- (ii) The amount of vested benefit that is owed to **Anthony Vuoto** by virtue of proper application of Amendment No. 1 to the SERAP, increasing the Benefit Credit to 3% (Percentage of Compensation) and the Vested Percentage to 75%;
- (iii) The amounts owed to **Anthony Vuoto** under the ETRIIP Plan documents giving him credit for his accrued 19 months of Executive Service thereby entitling him to 20% Vested Percentage; and
- (iv) Any amounts that would be owed each of these claimants under the SERAP or ETRIIP in connection with acceleration of their vesting as a result of termination of employment or change of control.

Items (i) through (iii) above should be acknowledged and conceded at this time and should not need to be included in the motion to amend the proofs of claim since they are clear

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liabilities of the debtors that are not contingent on a finding of “change in control.” We hereby reiterate our request that the Liquidating Trustee acknowledge these liabilities on the books and records at this time.

As for item (iv), we understand that WMILT will contest whether a “change in control” occurred, but these claimants should be permitted to pursue the sums that would vest if a change in control is found to have occurred. We would, of course, stipulate that WMILT’s Objection to claims would include an objection to the claim for these additional sums.

3. Claim for Unpaid Bonus Wages and Termination Payment Prior to the Petition Date pursuant to the Providian Agreement

As you know, the Providian employee claimants are unique in that they were employed by Washington Mutual pursuant to their respective Providian Change in Control Employment Agreements. Several of the Providian claimants did not properly calculate the amounts owed to them under their Providian Agreements when filing their original proofs of claim. These claimants include:

Michele Grau-Iversen
Robert Hill
David Tomlinson
Mary Beth Davis
Michael Rapaport
Stephen Whittaker

The additional amounts owed to these claimants under the Providian Agreement relate to unpaid bonus wages owed by Washington Mutual prior to the Petition Date, as well as termination payments owed to them as a result of the termination of their employment when WMB was seized by the OTS.

Each of these claimants made the Providian Agreement known to the debtor at the time their original claims were filed. The Providian Agreements were also brought to WMILT’s attention at the time each of these claimants filed responses to the 79th and 80th Omnibus Objections. Since the claims under the Providian Agreements relate to the employment relationship and compensation owed to each claimant, they clearly relate to the original claims for unpaid compensation made by each of them. As such, we believe the court will grant our motion for leave to file an amended proof of claim on behalf of these individuals to include these additional theories of recovery.

4. Alternate Claim for Change in Control Severance Benefits Pursuant to the WMI Severance Plan/Executive Officer Severance Plan

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We have recently been provided copies of the WaMu Severance Plan and the WaMu Executive Officer Severance Plan and have now completed our review of the plan documents. Our review of these documents revealed alternate theories of recovery of compensation and benefits for the following employee claimants under the WaMu Severance Plan or the Executive Officer Severance Plan:

Michele Grau-Iversen (WaMu Severance Plan)
Robert Hill (WaMu Severance Plan)
Stephen Whittaker (WaMu Severance Plan)
David Tomlinson (WaMu Severance Plan)
Mary Beth Davis (WaMu Severance Plan)
Richard Strauch (WaMu Severance Plan)
Laura Rodrigues (WaMu Severance Plan)
Luis Rodriguez (WaMu Severance Plan)
Anthony Vuoto (Executive Officer Severance Plan)

Based on our review of the WaMu Severance Plan, which was sponsored by WMI, it is apparent that the Plan would become applicable to each of these claimants in the event it is determined that WMI is not obligated to perform under the terms of the WaMu CIC Agreement that was offered to each of them. Specifically, the WaMu Severance Plan is intended to cover each of these employee claimants and provide for severance benefits in the event of job loss following a change in control, ***unless the claimant is eligible to receive severance benefits under his/her WaMu CIC.*** Since WMILT has objected to each claimant's claim for benefits under their WaMu CIC (as not being an obligation of WMI), these claimants will each seek to amend his/her proof(s) of claim to plead this alternate theory of recovery of severance benefits against WMI.

Similarly, the Executive Officer Severance Plan, which was sponsored by WMI, provides for a cash severance benefit equal to one and one-half (1½) times Mr. Vuoto's compensation if his employment is terminated other than for cause. This payment obligation is not tied to a finding of "change in control." However, if the court agrees with our position that a change in control did occur, the payments received by Mr. Vuoto under his WMI change in control agreement would offset, per the terms of the Plan, any payment owed to him under the Executive Officer Severance Plan. Since WMILT has objected to Mr. Vuoto's claim for benefits under his WMI CIC (on the basis that a change in control did not occur), he will seek to amend his proof(s) of claim to plead this alternate theory of recovery of severance benefits against WMI.

The rights conferred to each of these claimants under the WaMu Severance Plan and the Executive Officer Severance Plan was not known to them at the time of filing their original claim and became known only after we received and reviewed a copy of the Plans. Regardless, the claims under these Plans relate to the employment relationship and compensation owed to each claimant, and therefore clearly relate to the original claims for unpaid compensation made by

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Brian Rosen, Esq.
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each of them. As outlined above, a motion to amend to plead these additional theories of recovery should be viewed favorably by the Court.

5. Claim for Benefits Under Mr. Vuoto's WMI Employment Agreement

Mr. Vuoto is not in possession of his employment agreement with WMI that superseded his Providian Agreement at the time of filing his original proofs of claim. We have requested a copy of this Agreement as part of his personnel file in our recent request for production of documents. It is believed that such agreement may provide for an alternate theory or basis of recovery of compensation or severance benefits for Mr. Vuoto. An amendment to his proof(s) of claim to include these additional theories should be permitted.

Since the claims under the SERAP, ETRIP, Providian Agreements, WaMu Severance Plan, WaMu Executive Officer Severance Plan and Mr. Vuoto's WMI employment agreement relate to the employment relationship and compensation owed to each claimant, they clearly relate to the original claims for unpaid compensation made by each of them. We believe that the Court will look favorably upon a motion to amend the proof(s) of claims to advance these additional/alternate theories of recovery. With this in mind, we believe it prudent to come to agreement on a stipulation of the parties regarding such amendment of the proof(s) of claim, prior to bringing the motion, so as to minimize the Court's involvement in the matter. As stated above, our clients would stipulate that the Objections filed to their existing proofs of claim would be deemed to include objections to any new theories of recovery in the amended proofs of claim.

Since time is of the essence, please contact us at your earliest opportunity, but not later than **Friday, December 7, 2012**, to discuss whether, and on what terms, WMILT would stipulate to allow the additional theories to be included by way of an amended proof(s) of claim.

Thank you for your attention to this matter. We look forward to hearing from you shortly.

Very truly yours,



STEPHAN E. KYLE

SEK/of
cc: Clients

Exhibit 2

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March 8, 2013

VIA EMAIL & U.S. PRIORITY MAIL

Counsel for WMILT

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Re: AMENDMENT OF PROOFS OF CLAIM – PROVIDIAN
EMPLOYEES
In re Washington Mutual, Inc., Case No. 08-12229 (MFW)
United States Bankruptcy Court, District of Delaware

Dear Counsel:

As you know, we are the attorneys for the group of former Providian employee claimants in the above-referenced bankruptcy matter.

We are writing to you to renew our request that WMILT stipulate to allow certain of our clients the opportunity to formally amend their proofs of claim to plead new theories of recovery on the same facts upon which their original proofs of claim were based. This renewed request follows the Court's recent orders granting a number of claimants, including Chandan Sharma, leave to file amended proofs of claim to plead alternate theories of recovery, in addition to new claims for recovery, based on contracts and benefit plans that were in effect during those claimants' employment.

Specifically, our clients would be seeking additional theories of recovery against WMILT (as successor to WMI) related to their employment as follows:

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Page 2

- i. New Claim for additional benefits under the SERAP;
- ii. Alternate Claim for unpaid wages prior to the Petition Date pursuant to the Providian Agreement;
- iii. Alternate Claim for termination payment that vested on September 25, 2008 – prior to the Petition Date – pursuant to the Providian Agreement;
- iv. Alternate Claim for change in control/severance benefits pursuant to the WMI Severance Plan/Executive Officer Severance Plan;
- v. Alternate Claim for compensation under Anthony Vuoto’s WMI Employment Agreement, effective October 1, 2005; and
- vi. Restored and additional benefits under the SERAP and the ETRIP for Anthony Vuoto – We would request that WMILT stipulate to vacate the order disallowing claim no. 159 of Anthony Vuoto and to allow leave to file an amended claim for SERAP and ETRIP benefits.

The basis for each of these claim theories is set forth below.

1. Amendment of Claim Is Proper Where It Arises Out of Same Conduct, Transaction, or Occurrence as the Originally Filed Proof of Claim

We believe that the Court would grant our motion for leave to amend the proofs of claim for each of our clients, as set forth below. The general rule with regard to amendment of proofs of claim is as follows:

Generally, amendments are allowed when the original claim provides notice of the existence, nature, and amount of the claim. Amendments are generally used to cure obvious defects, describe the claim with greater specificity or plead a new theory of recovery on facts of the original proof of claim. Post-bar date amendment should be scrutinized to ensure that the amendment is not a new claim. While courts allow post-bar date amendment to claim amounts, courts do not allow post-bar amendment to change status of the claim.

In re Orion Ref. Corp., 317 B.R. 660, 664 (Bankr. D. Del. 2004).

Here, each of the claimant’s original claims provided notice that they were pursuing claims arising out of their employment relationship with WMI. The request to amend their

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Brian Rosen, Esq.
Lawrence Baer, Esq.
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Page 3

proof(s) of claim is intended to plead new theories of recovery based on facts of the original proof(s) of claim. Specifically, the new theories of recovery are directly related to their rights to compensation and benefits that were not known to them, or were presumed inapplicable, at the time of filing their original proofs of claim. In addition, amendment would not change the status of these claims. Each of the claims would remain categorized as a Class 12 General Unsecured Creditor claim.

A similar set of facts was decided by the Bankruptcy Court in Illinois in In re Xechem International, Inc., 424 B.R. 836 (Bankr. N.D. Ill 2010). In that case, a former employee of the debtor filed a timely claim for unpaid compensation. After the Bar Date, the former employee sought to amend his claim to include additional claims for severance compensation, indemnification, repayment of a loan to the company and interest on the loan. The original proof of claim included claims totaling \$1,669,000, while the proposed amended proof of claim included claims totaling \$2,916,094. Each of the claims, with the exception of a new claim for loss of personal property valued at \$1,000,000, arose from agreements between the former employee and the debtor concerning his employment and from the Debtor's bylaws. The Amended Proof of Claim reasserted the original claims, although in different amounts. The Court found that those claims clearly involved the same core disputes as those in the Original Proof of Claim, and thus related back. As for the severance and indemnification claims, the Court found that those claims arose from the parties' employment agreements and the Debtor's bylaws and therefore arose from the same ongoing conduct, transaction, or occurrence as those in the Original Proof of Claim. The employee was permitted to file the Amended Proof of Claim on all new theories, except for the loss of personal property.

Judge Walrath adopted this reasoning and has now expressly recognized the rights of other employee claimants in this action to amend their claims on the same or similar grounds as our clients seek to amend.

2. Claims for additional benefits under the SERAP/ETRIIP

This issue is not new to you. We first raised it in our letter of October 24, 2012, and again in our December 3, 2012 letter. We have identified the clear mis-calculation of vested benefits under the SERAP and the ETRIP for a number of our clients. Despite numerous attempts to secure WMILT's stipulation to permit amendment with respect to the SERAP and ETRIP, our requests have been uniformly rejected. We are hopeful that, in light of Judge Walrath's rulings yesterday, WMILT will reconsider its position. To reiterate, the basis for these amendments are as follows:

- (i) The amount of vested benefit that is owed to **Michael Rapaport, Mary Beth Davis, David Tomlinson, Robert Hill (new claim), Michele Grau-Iversen, Richard Strauch, Stephen Whittaker, Kathy Yeu (new claim) and Robert Boxberger (new claim)** by virtue of proper application of Amendment No. 1 to

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Page 4

- the SERAP, increasing the Benefit Credit to 4% (Percentage of Compensation) and the Vested Percentage to 75%;
- (ii) The amount of vested benefit that is owed to **Anthony Vuoto** by virtue of proper application of Amendment No. 1 to the SERAP, increasing the Benefit Credit to 3% (Percentage of Compensation) and the Vested Percentage to 75%;
 - (iii) The amounts owed to **Anthony Vuoto** under the ETRIP Plan documents giving him credit for his accrued 19 months of Executive Service thereby entitling him to 20% Vested Percentage; and
 - (iv) We would also seek amendment to include any additional amounts that would be owed each of these claimants under the SERAP or ETRIP in connection with acceleration of their vesting as a result of termination of employment or change of control.

Items (i) through (iii) above should have been previously acknowledged and conceded at the time of the SERAP distributions last month. These benefits stem from monies owed to these participants, but for the clear failure of WMI to apply the Amendment no. 1 to the SERAP plan properly. These are clear liabilities of the debtors that are not contingent on a finding of “change in control.” We hereby reiterate our request that the Liquidating Trustee acknowledge these liabilities on the books and records at this time. Alternatively, leave to amend should be stipulated to by WMILT to allow those claimants to pursue these additional sums through the Contested Matter proceedings.

As for item (iv), we understand that WMILT will contest whether a “change in control” occurred, but these claimants likewise should be permitted to pursue the sums that would vest under the SERAP/ETRIIP if a change in control is found to have occurred.

3. Claim for Unpaid Bonus Wages and Termination Payment Prior to the Petition Date pursuant to the Providian Agreement

As you know, the Providian employee claimants are unique in that they were employed by Washington Mutual pursuant to their respective Providian Change in Control Employment Agreements. Because WMILT has taken the position that the Retention Bonuses were not obligations of WMI, the following individuals should be entitled to plead an alternate theory of recovery under their Providian Agreements. The reasoning is simple. The evidence will show that the Retention Bonuses for certain former Providian employees were intended to supersede the benefits these individuals would have received under their Providian Agreements, as a means of keeping these folks from terminating their employment in order to exercise their Providian Agreements which were approaching the end of their 3-year term. Since the Providian Agreement was an obligation of WMI (as Successor to Providian), it was assumed that the

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Retention Bonuses were likewise obligations of WMI. Since WMILT has taken the position that the Retention Bonuses were not WMI obligations, then these Providian claimants should be entitled to pursue an alternate theory of recovery under their Providian Agreements which, if WMILT's position proves successful, were not then superseded by the Retention Bonuses and therefore remain obligations of WMI. These claimants include:

Michele Grau-Iversen
Robert Hill
David Tomlinson
Mary Beth Davis
Stephen Whittaker

The additional amounts owed to these claimants under the Providian Agreement relate to unpaid bonus wages owed by Washington Mutual prior to the Petition Date, as well as termination payments owed to them as a result of the termination of their employment when WMB was seized by the OTS.

Each of these claimants made the Providian Agreement known to the debtor at the time their original claims were filed. The Providian Agreements were also brought to WMILT's attention at the time each of these claimants filed responses to the 79th and 80th Omnibus Objections. Since the claims under the Providian Agreements relate to the employment relationship and compensation owed to each claimant, they clearly relate to the original claims for unpaid compensation made by each of them. As such, we believe the court will grant our motion for leave to file an amended proof of claim on behalf of these individuals to include these alternate theories of recovery.

4. Michael Rapaport Claim for Unpaid Bonus Wages and Termination Payment Prior to the Petition Date pursuant to the Providian Agreement

Michael Rapaport is in a different position. He was terminated several months prior to the filing of the bankruptcy. He simply did not properly calculate the amounts owed to him under his Providian Agreement resulting from his termination when he filed his original proofs of claim. As with the other Providian claimants, the additional amounts owed to Mr. Rapaport under the Providian Agreement relate to unpaid bonus wages owed by Washington Mutual prior to the Petition Date, as well as underpaid termination payments owed to him as a result of his termination of employment in June 2008.

Mr. Rapaport made the Providian Agreement known to the debtor at the time his original claim was filed. He also highlighted the monies still owed to him at the time he filed his response to the 80th Omnibus Objection. He should likewise be permitted to pursue these additional monies owed to him in connection with the termination of his employment.

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5. Alternate Claim for Change in Control Severance Benefits Pursuant to the WMI Severance Plan/Executive Officer Severance Plan

Those of our clients who were employed by Washington Mutual at the time of the OTS seizure are also entitled to pursue alternate theories of recovery of compensation and benefits under the WaMu Severance Plan or the Executive Officer Severance Plan. These claimants include:

Michele Grau-Iversen (WaMu Severance Plan)
Robert Hill (WaMu Severance Plan)
Stephen Whittaker (WaMu Severance Plan)
David Tomlinson (WaMu Severance Plan)
Mary Beth Davis (WaMu Severance Plan)
Richard Strauch (WaMu Severance Plan)
Laura Rodrigues (WaMu Severance Plan)
Luis Rodriguez (WaMu Severance Plan)
Anthony Vuoto (Executive Officer Severance Plan)

Based on our review of the WaMu Severance Plan, which was sponsored by WMI, it is apparent that the Plan would become applicable to each of these claimants in the event it is determined that WMI is not obligated to perform under the terms of the WaMu CIC Agreement that was offered to each of them. Specifically, the WaMu Severance Plan is intended to cover each of these employee claimants and provide for severance benefits in the event of job loss following a change in control, ***unless the claimant is eligible to receive severance benefits under his/her WaMu CIC.*** Since WMILT has objected to each claimant's claim for benefits under their WaMu CIC (as not being an obligation of WMI), these claimants will each seek to amend his/her proof(s) of claim to plead this alternate theory of recovery of severance benefits against WMI.

Similarly, the Executive Officer Severance Plan, which was sponsored by WMI, provides for a cash severance benefit equal to one and one-half (1½) times Mr. Vuoto's compensation if his employment is terminated other than for cause. This payment obligation is not tied to a finding of "change in control." However, if the court agrees with our position that a change in control did occur, the payments received by Mr. Vuoto under his WMI change in control agreement would offset, per the terms of the Plan, any payment owed to him under the Executive Officer Severance Plan. Since WMILT has objected to Mr. Vuoto's claim for benefits under his WMI CIC (on the basis that a change in control did not occur), he will seek to amend his proof(s) of claim to plead this alternate theory of recovery of severance benefits against WMI.

The rights conferred to each of these claimants under the WaMu Severance Plan and the Executive Officer Severance Plan was not known to them at the time of filing their original claim

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and became known only after we received and reviewed a copy of the Plans. Regardless, the claims under these Plans relate to the employment relationship and compensation owed to each claimant, and therefore clearly relate to the original claims for unpaid compensation made by each of them. As outlined above, a motion to amend to plead these additional theories of recovery would be granted by the Court.

6. Claim for Benefits Under Mr. Vuoto's WMI Employment Agreement

Mr. Vuoto was a party to a 3-year employment agreement with WMI that became effective upon the merger of Providian into Washington Mutual. This employment agreement superseded his Providian Agreement. Mr. Vuoto was not in possession of his WMI employment agreement at the time of filing his original proofs of claim. We have requested a copy of this Agreement as part of his personnel file in our request for production of documents, but it has not yet been provided. This agreement provides for an alternate theory or basis of recovery of compensation or severance benefits for Mr. Vuoto. An amendment to his proof(s) of claim to include these additional theories should be permitted.

Since the claims under the SERAP, ETRIP, Providian Agreements, WaMu Severance Plan, WaMu Executive Officer Severance Plan and Mr. Vuoto's WMI employment agreement relate to the employment relationship and compensation owed to each claimant, they clearly relate to the original claims for unpaid compensation made by each of them. We believe that the Court would grant a motion to amend the proof(s) of claims to advance these additional/alternate theories of recovery, just as she did in her rulings yesterday for other employee claimants. With this in mind, we believe it prudent to come to agreement on a stipulation of the parties regarding such amendment of the proof(s) of claim, prior to bringing the motion, so as to minimize the Court's involvement in the matter.

7. Claimants Would Stipulate to Allow WMILT to File Objections to The New Components of the Amended Proofs of Claim

Per the Court's rulings yesterday, we would, in turn, stipulate to allow WMILT to file an objection to the amended proofs of claim solely with respect to the new components raised in the claim amendments and would permit WMILT to take additional discovery, if necessary, with respect to these components.


We trust that the recent rulings of Judge Walrath with respect to employee claims amendment will serve as a basis for WMILT to stipulate as outlined above, so as to eliminate the need for our clients to file formal motions for leave to amend at this time. We are available to discuss and we request that you please contact us at your earliest opportunity, but not later than **Friday, March 15, 2013**, so that we might reach agreement on the items outlined above.

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Thank you for your attention to this matter. We look forward to hearing from you shortly.

Very truly yours,


STEPHAN E. KYLE

SEK/of

cc: Julio Gurdian, Esq. (by email)
Christopher Boyd, Esq. (by email)

Exhibit 3

CHANGE OF CONTROL EMPLOYMENT AGREEMENT

AGREEMENT by and between Providian Financial Corporation (the "Corporation"), a Delaware corporation, and Michele Iversen (the "Executive"), dated as of the 27th day of January, 2004.

The Board of Directors of the Corporation (the "Board") has determined that it is in the best interests of the Corporation and its shareholders to assure that the Corporation, will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change in Control (as defined below) of the Corporation. The Board believes it is imperative to diminish the inevitable distraction of the Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change in Control and to encourage the Executive's full attention and dedication to the Corporation currently and in the event of any threatened or pending Change in Control, and to provide the Executive with compensation and benefits arrangements upon a Change in Control which ensure that the compensation and benefits expectations of the Executive will be satisfied and which are competitive with those of other corporations. Therefore, in order to accomplish these objectives, the Board has authorized the Corporation to enter into, and to cause the Corporation to enter into, this Agreement.

IT IS, THEREFORE, AGREED:

1. Certain Definitions. (a) The "Effective Date" shall be the first date during the "Change in Control Period" (as defined in Section 1(b)) on which a Change in Control (as defined in Section 2) occurs. Anything in this Agreement to the contrary notwithstanding, if a Change in Control occurs and if the Executive's employment with the Corporation and the affiliated companies is terminated or the Executive ceases to be an officer of the Corporation and the affiliated companies prior to the date on which a Change in Control occurs, and if it is reasonably demonstrated by the Executive that such termination of employment or cessation of status as an officer (i) was at the request of a third party who has taken steps reasonably calculated to effect the Change in Control or (ii) otherwise arose in connection with the Change in Control, then for all purposes of this Agreement the "Effective Date" shall mean the date immediately prior to the date of such termination of employment or cessation of status as an officer. As used in this Agreement, the

term "affiliated companies" includes any company controlling, controlled by or under common control with the Corporation.

(b) The "Change in Control Period" shall mean the period commencing on the date hereof and ending on the second anniversary of such date; provided, however, that commencing on the date one year after the date hereof, and on each annual anniversary of such date (the date one year after the date hereof and each annual anniversary of such date, is hereinafter referred to as the "Renewal Date"), the Change in Control Period shall be automatically extended so as to terminate two years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Corporation shall give notice to the Executive that the Change in Control Period shall not be so extended.

2. Change in Control. For the purpose of this Agreement, a "Change in Control" shall mean:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (i) the then outstanding shares of common stock of the Corporation (the "Outstanding Company Common Stock") or (ii) the combined voting power of the then outstanding voting securities of the Corporation entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that for purposes of this subsection (a), the following acquisitions shall not constitute a Change in Control: (i) any acquisition directly from the Corporation, (ii) any acquisition by the Corporation, (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Corporation or any corporation controlled by the Corporation or (iv) any acquisition by any corporation pursuant to a transaction which complies with clauses (i), (ii) and (iii) of subsection (c) of this Section 2; or

(b) Individuals who, as of the date hereof, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that

any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Corporation's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(c) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Corporation or the acquisition of assets of another corporation (a "Business Combination"), in each case, unless, following such Business Combination, (i) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 60% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Corporation or all or substantially all of the Corporation's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (ii) no Person (excluding any employee benefit plan (or related trust) of the Corporation or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Business

Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(d) Approval by the shareholders of the Corporation of a complete liquidation or dissolution of the Corporation.

3. Employment Period. The Corporation hereby agrees to continue the Executive in its employ for the period commencing on the Effective Date and ending on the earlier to occur of (i) the third anniversary of such date or (ii) unless the Executive elects to continue employment beyond the Executive's Normal Retirement Age (as defined in the Corporation's 401 (k) Plan, as amended from time to time), the first day of the month coinciding with or next following the Executive's Normal Retirement Age (the "Employment Period").

4. Terms of Employment. (a) Position of Duties. (i) During the Employment Period, (A) the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all material respects with the most significant of those held, exercised and assigned at any time during the 90-day period immediately preceding the Effective Date and (B) unless Executive otherwise agrees, the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or at any office or location less than forty-five (45) miles from such location.

(ii) During the Employment Period, and excluding periods of paid time off (as defined in the Corporation's benefit plans) to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Corporation and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use reasonable efforts to perform faithfully and efficiently such responsibilities. The Executive may (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with

the performance of the Executive's responsibilities. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the Effective Date, such prior conduct of activities, and any subsequent conduct of activities similar in nature and scope shall not thereafter be deemed to interfere with the performance of the Executive's responsibilities to the Corporation.

(b) Compensation. (i) Base Salary. During the Employment Period, the Executive shall receive an annual base salary ("Annual Base Salary") at an annual rate at least equal to 12 times the highest monthly base salary paid or payable to the Executive, including any base salary that has been earned but deferred, by the Corporation, together with any of its affiliated companies, during the twelve-month period immediately preceding the month in which the Effective Date occurs. The Annual Base Salary shall be paid at such intervals as the Corporation generally pays executive salaries. During the Employment Period, the Annual Base Salary shall be reviewed at least annually and shall be increased at any time and from time to time as shall be substantially consistent with increases in base salary awarded in the ordinary course of business to other peer executives of the Corporation and its affiliates. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased.

(ii) Annual Bonus. In addition to Annual Base Salary, the Executive shall be awarded, for each fiscal year during the Employment Period, an annual bonus under the Corporation Management Incentive Plan (or any successor thereto) in cash at least equal to the highest bonus paid or payable, including by reason of any deferral, to the Executive by the Corporation and its affiliated companies (whether in cash, stock or other property, whether such stock or property is granted under the Corporation Management Incentive Plan (or any successor thereto) or another plan including the Corporation Stock Incentive Plan (or any successor thereto)) in respect of the three fiscal years during which the Executive has been employed by the Corporation or its affiliated companies immediately preceding the fiscal year in which the Effective Date occurs or such lesser

number of years that the Executive has been employed by the Corporation and its affiliated companies (it being understood that such annual bonus shall not include any one-time stock or cash bonuses granted outside the annual bonus program) (the "Annual Bonus"); provided, that for any fiscal year during such three-year or shorter period immediately preceding the fiscal year in which the Effective Date occurs consisting of less than 12 full months or with respect to which the Executive has been employed by the Corporation or its affiliated companies for less than 12 full months and for which the Executive shall have been eligible to receive an annual bonus, the annual bonus for such year for purposes of determining the Executive's Annual Bonus shall be the greater of (i) the Executive's target annual bonus for such year or (ii) the actual annual bonus paid or payable, including by reason of any deferral, to the Executive by the Corporation and its affiliated companies (whether in cash, stock or other property, whether such stock or property is granted under the Corporation Management Incentive Plan (or any successor thereto) or another plan including the Corporation Stock Incentive Plan (or any successor thereto)) in respect of such fiscal year, provided, further, that if the Executive has not been eligible to earn such a bonus for any period prior to the Effective Date, the "Annual Bonus" shall mean the Executive's target annual bonus for the year in which the Effective Date occurs. Each such Annual Bonus shall be paid no later than 90 days following the fiscal year for which the Annual Bonus is awarded, unless the Executive shall otherwise elect to defer the receipt of such Annual Bonus.

(iii) Incentive, Savings and Retirement Plans. During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and programs applicable generally to other peer executives of the Corporation and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, to the extent, if any, that such distinction is applicable), savings opportunities and retirement benefit opportunities, in each case, less favorable, in the aggregate, than the most favorable of those provided by the Corporation and its affiliated companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 90-day period

immediately preceding the Effective Date or if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Corporation and its affiliated companies. Without limiting the foregoing, the annual retirement contribution payable on behalf of the Executive during the Employment Period, as a percentage of the Executive's total compensation, shall not in any event be less than the average annual retirement contribution, as a percentage of total compensation, paid on behalf of the Executive by the Corporation and its affiliated companies during the three years immediately preceding the Effective Date.

(iv) Welfare Benefit Plans. During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Corporation and its affiliated companies (including, without limitation, medical, prescription, dental, vision, disability, employee life, dependent life, and accidental death) to the extent applicable generally to other peer executives of the Corporation and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with benefits which are less favorable, in the aggregate, than the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Corporation and its affiliated companies.

(v) Expenses. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in accordance with the policies and procedures of the Corporation and its affiliated companies in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect at any time thereafter with respect to other peer executives of the Corporation and its affiliated companies.

(vi) Fringe Benefits. During the Employment Period, the Executive shall be entitled to fringe benefits in accordance with the most favorable plans, practices, programs and

policies of the Corporation and its affiliated companies in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect at any time thereafter with respect to other peer executives of the Corporation and its affiliated companies.

(vii) Office and Support Staff. During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to administrative and other assistance, at least equal to the most favorable of the foregoing provided to the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect at any time thereafter with respect to other peer executives of the Corporation and its affiliated companies.

(viii) Paid Time Off. During the Employment Period, the Executive shall be entitled to paid time off in accordance with the most favorable plans, policies, programs and practices of the Corporation and its affiliated companies as in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Corporation and its affiliated companies.

5. Termination. (a) Death or Disability. This Agreement shall terminate automatically upon the Executive's death. If the Corporation determines in good faith that the Disability of the Executive has occurred during the Employment Period (pursuant to the definition of "Disability" set forth below), it may give the Executive written notice in accordance with Section 12(b) of this Agreement of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Corporation and its affiliated companies shall terminate effective on the 30th day after receipt of such notice (the "Disability Effective Date"), provided that, within 30 days after such receipt, the Executive shall fail to return to full-time performance of the Executive's duties. For purposes of this Agreement, "Disability" means the absence of the Executive from the Executive's duties within the Corporation and its affiliated companies for 180

consecutive business days as a result of the incapacity due to physical or mental illness which, after the expiration of such 180 business days, is determined to be total and permanent by a physician selected by the Corporation or its insurers and acceptable to the Executive or the Executive's legal representative (such agreement to acceptability not to be withheld unreasonably).

(b) Cause. The Corporation may terminate the Executive's employment for "Cause." For purposes of this Agreement, "Cause" means (i) a willful and continuing failure to perform substantially the Executive's obligations under Section 4(a) of this Agreement (other than as a result of the Executive's death or Disability); or (ii) conduct undertaken by the Executive which is demonstrably willful and deliberate on the Executive's part and which is intended to result in (x) substantial personal enrichment of the Executive at the expense of the Corporation or its affiliated companies and (y) substantial injury to the Corporation or its affiliated companies; or (iii) commission by the Executive of a felony involving the Corporation or its affiliated companies.

A termination for Cause within the meaning of clause (i) or (ii) shall not take effect unless:

A. the Board shall have delivered a written notice to the Executive within 30 days of its having knowledge of one of the circumstances constituting cause within the meaning of clause (i) or (ii), stating which one of those circumstances has occurred;

B. within 30 days of such notice, the Executive is permitted to respond and defend himself (along with counsel) before the Board;

C. within 15 days of the date on which the Executive is given the opportunity to respond and defend himself before the Board, the Executive has not remedied such circumstance; and

D. if the Executive has not remedied such circumstance as provided in subclause (C) above, the Board notifies the Executive in writing that it is terminating his employment for Cause.

(c) Good Reason. The Executive's employment may be terminated during the Employment Period by the Executive for Good Reason. For purposes of this Agreement, "Good Reason" means:

(i) (A) the assignment to the Executive of any duties inconsistent in any respect with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 4(a) of this Agreement or (B) any other action by the Corporation or its affiliated companies which results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not occurring in bad faith which is remedied by the Corporation or its affiliated companies promptly after receipt of notice thereof given by the Executive;

(ii) any failure by the Corporation to comply with any of the provisions of Section 4(b) of this Agreement, excluding for this purpose an isolated, insubstantial and inadvertent failure not occurring in bad faith which is remedied by the Corporation promptly after receipt of notice thereof given by the Executive;

(iii) unless the Executive otherwise agrees, the Corporation's requiring the Executive to be based at any office or location other than that at which the Executive is based at the Effective Date or within forty-five (45) miles of such location, except for travel reasonably required in the performance of the Executive's responsibilities;

(iv) any purported termination by the Corporation of the Executive's employment otherwise than as permitted by this Agreement;

(v) any failure by the Corporation to comply with and satisfy Section 11(c) of this Agreement provided that such successor has received at least ten days prior written notice from the Corporation or the Executive of the requirements of Section 11(c) of this Agreement.

For purposes of this Section 5(c), any good faith determination of "Good Reason" made by the Executive shall be conclusive.

(d) Notice of Termination. Any termination by the Corporation for Cause or by the Executive for Good Reason shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 12(b) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date shall be not more than 15 days after the giving of such notice). The failure by the Executive or the Corporation to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Corporation hereunder or preclude the Executive or the Corporation from asserting such fact or circumstance in enforcing the Executive's or the Corporation's rights hereunder.

(e) Date of Termination. "Date of Termination" means (i) if the Executive's employment is terminated by the Corporation for Cause, or by the Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified therein, as the case may be, (ii) if the Executive's employment is terminated by the Corporation other than for Cause or Disability, the Date of Termination shall be the date on which the Corporation notifies the Executive of such termination and (iii) if the Executive's employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Executive or the Disability Effective Date, as the case may be.

6. Obligations of the Corporation upon Termination. (a) Good Reason; Other Than for Cause, Death or Disability. If, during the Employment Period, the Corporation and the

affiliated companies shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate employment for Good Reason:

(i) the Corporation shall pay to the Executive in a lump sum in cash within 30 days after the Date of Termination the aggregate of the following amounts:

A. the sum of (1) the Executive's Annual Base Salary through the Date of Termination, (2) the product of (x) the Annual Bonus and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365, and (3) any compensation previously deferred by the Executive under non-qualified plans (together with any accrued interest or earnings thereon) and the value of any unused paid time off, in each case to the extent not theretofore paid (the sum of the amounts described in clauses (1), (2) and (3) shall be hereinafter referred to as the "Accrued Obligations"); and

B. the amount equal to the product of (1) one and (2) the sum of (x) the Executive's Annual Base Salary, and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage. For purposes of this Section 6(a)(i)(B), "Bonus Percentage" shall mean the highest percentage obtained by dividing (1) the annual bonus paid or payable, including by reason of any deferral, whether or not payable under the Corporation Management Incentive Plan (or any successor thereto) to the Executive by the Corporation and its affiliated companies (whether in cash, stock or other property, whether such stock or property is granted under the Corporation Management Incentive Plan (or any successor thereto) or another plan including the Corporation Stock Incentive Plan (or any successor thereto)) in respect of each of the three fiscal years during which the Executive has been employed by the Corporation or its affiliated companies immediately preceding the fiscal year in which the Effective Date occurs or such lesser number of years that the Executive has been employed by the Corporation and its affiliated companies (it being understood that such annual bonus shall not include any one-time stock or cash bonuses granted outside the annual bonus program); provided, that for any fiscal year during such three-year or shorter period immediately preceding the fiscal year in which the Effective Date occurs consisting of less than 12

full months or with respect to which the Executive has been employed by the Corporation or its affiliated companies for less than 12 full months and for which the Executive shall have been eligible to receive an annual bonus, the annual bonus for such year shall be the greater of (A) the Executive's target annual bonus for such year or (B) the actual annual bonus paid or payable, including by reason of any deferral, to the Executive by the Corporation and its affiliated companies (whether in cash, stock or other property, whether such stock or property is granted under the Corporation Management Incentive Plan (or any successor thereto) or another plan including the Corporation Stock Incentive Plan (or any successor thereto)) in respect of such fiscal year, provided, further, that if the Executive has not been eligible to earn such a bonus for any period prior to the Effective Date, the annual bonus for purposes of this clause (1) shall mean the Executive's target annual bonus for the year in which the Effective Date occurs, by (2) the base salary paid or payable to the Executive by the Corporation and its affiliated companies for each such year, annualized for any fiscal year consisting of less than twelve full months or with respect to which the Executive has been employed by the Corporation or its affiliated companies for less than twelve full months. The amount described in the first sentence of this clause B shall be paid in lieu of, and the Executive hereby waives the right to receive, any other amount of severance relating to salary or bonus continuation to be received by the Executive upon termination of employment of the Executive under any severance plan, policy or arrangement of the Corporation or its affiliated companies (it being understood that this payment shall not be in lieu of, and the Executive shall not hereby waive, any stay or retention awards or bonuses to which the Executive may be entitled pursuant to the terms of such stay or retention awards or bonuses); and

C. a separate lump-sum payment equal to the product of (1) one and (2) the sum of (x) the Executive's Annual Base Salary and (y) the Executive's Annual Base Salary multiplied by the Bonus Percentage and (3) the Retirement Contribution Percentage (which, for purposes of this Section 6(a)(i)(C) shall equal the highest percentage of retirement contributions as a percentage of total compensation for all eligible employees of the Corporation and its affiliated companies for any year beginning with the third full year prior to the Effective Date); and

D. to the extent not already paid under section 6(a)(i)A above, an amount equal to the unvested portion of the qualified and non-qualified retirement contribution account in addition to any vested amounts due under the retirement plans of the Corporation and its affiliated companies; and

(ii) for one year after the Date of Termination, or such longer period as any plan, program, practice or policy may provide, the Corporation shall continue benefits to the Executive and/or the Executive's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in Section 4(b)(iv) of this Agreement if the Executive's employment had not been terminated in accordance with the most favorable plans, practices, programs or policies of the Corporation and its affiliated companies applicable generally to other peer executives and their families during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Corporation and its affiliated companies and their families, provided, however, that if the Executive becomes re-employed with another employer and is eligible to receive medical or other welfare benefits under another employer provided plan, the medical and other welfare benefits described herein shall be secondary to those provided under such other plan during such applicable period of eligibility; and

(iii) to the extent not theretofore paid or provided, the Corporation shall timely pay or provide to the Executive any other amounts or benefits required to be paid or provided or which the Executive is eligible to receive pursuant to this Agreement under any plan, program, policy or practice or contract or agreement of the Corporation and its affiliated companies (such other amounts and benefits shall be hereinafter referred to as the "Other Benefits"), but excluding solely purposes of this Section 6(a)(iii) amounts waived by the Executive pursuant to the provisions of Section 6(a)(i)(B).

(b) Death. If the Executive's employment is terminated by reason of the Executive's death, this Agreement shall terminate without further obligations to the Executive's legal

representatives under this Agreement other than for payment of the Accrued Obligations and the timely payment or provision of Other Benefits. All Accrued Obligations shall be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination. Anything in this Agreement to the contrary notwithstanding, the Executive's family shall be entitled to receive benefits at least equal to the most favorable benefits provided by the Corporation and any of its affiliated companies to surviving families of peer executives of the Corporation and such affiliated companies under such plans, programs, practices and policies relating to family death benefits, if any, as in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive and/or the Executive's family, as in effect at any time on the date of Executive's death with respect to other peer executives of the Corporation and its affiliated companies and their families.

(c) Disability. If the Executive's employment is terminated by reason of the Executive's Disability during the Employment Period, this Agreement shall terminate without further obligations to the Executive, other than for payment of Accrued Obligations and the timely payment or provision of Other Benefits. All Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of Other Benefits, the term Other Benefits as utilized in this Section 6(c) shall include, and the Executive shall be entitled after the Disability Effective Date to receive, disability and other benefits at least equal to the most favorable of those generally provided by the Corporation and its affiliated companies to disabled executives and/or their families in accordance with such plans, programs, practices and policies relating to disability, if any, as in effect generally with respect to other peer executives and their families at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive and/or the Executive's family, as in effect at any time thereafter generally with respect to other peer executives of the Corporation and its affiliated companies and their families.

(d) Cause; Other than for Good Reason. If the Executive's employment shall be terminated for Cause during the Employment Period, this Agreement shall terminate without further

obligations other than the obligation to pay to the Executive Annual Base Salary through the Date of Termination plus the amount of any compensation previously deferred by the Executive, in each case to the extent theretofore not paid. If the Executive terminates employment during the Employment Period, excluding a termination for Good Reason, this Agreement shall terminate without further obligations to the Executive, other than for Accrued Obligations and the timely payment or provision of Other Benefits. In such case, all Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination.

7. Non-exclusivity of Rights. Except as otherwise provided in Sections 6(a)(i)(B), 6(a)(ii) and 6(a)(iii) of this Agreement, nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any benefit, bonus, incentive or other plan or program provided by the Corporation or any of its affiliated companies and for which the Executive may qualify, nor shall anything herein limit or otherwise affect such rights as the Executive may have under any stock option or other agreements with the Corporation or any of its affiliated companies. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan or program of the Corporation or any of its affiliated companies at or subsequent to the Date of Termination shall be payable in accordance with such plan or program.

8. Full Settlement. The Corporation's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any circumstances, including, without limitation, any set-off, counterclaim, recoupment, defense or other right which the Corporation may have against the Executive or others. In no event shall the Executive be obligated to seek other employment by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement, and, except as provided in Section 6(a)(ii) of this Agreement, such amounts shall not be reduced whether or not the Executive obtains other employment. The Corporation agrees to pay, to the full extent permitted by law, all legal fees and expenses which the Executive may reasonably incur in good faith as a result of any contest (regardless of the outcome thereof) by the Corporation, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of

performance thereof (including as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement), plus in each case interest, on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended (the "Code").

9. Certain Additional Payments by the Corporation.

(a) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any Payment would be subject to the Excise Tax, then the Executive shall be entitled to receive an additional payment (the "Gross-Up Payment") in an amount such that, after payment by the Executive of all taxes (and any interest or penalties imposed with respect to such taxes), including, without limitation, any income taxes (and any interest and penalties imposed with respect thereto) and Excise Tax imposed upon the Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments. The Corporation's obligation to make Gross-Up Payments under this Section 9 shall not be conditioned upon the Executive's termination of employment.

(b) Subject to the provisions of Section 9(c), all determinations required to be made under this Section 9, including whether and when a Gross-Up Payment is required, the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by a nationally recognized certified public accounting firm (the "Accounting Firm"). The Accounting Firm shall provide detailed supporting calculations both to the Corporation and the Executive within 15 business days of the receipt of notice from the Executive that there has been a Payment or such earlier time as is requested by the Corporation. In no event shall the Accounting Firm be an accounting firm serving as accountant or auditor for the individual, entity or group effecting the Change of Control. All fees and expenses of the Accounting Firm shall be borne solely by the Corporation. Any Gross-Up Payment, as determined pursuant to this Section 9, shall be paid by the Corporation to the Executive within 5 days of the receipt of the Accounting Firm's determination. Any determination by the Accounting Firm shall be binding upon the Corporation

and the Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments that will not have been made by the Corporation should have been made (the "Underpayment"), consistent with the calculations required to be made hereunder. In the event the Corporation exhausts its remedies pursuant to Section 9(c) and the Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Corporation to or for the benefit of the Executive.

(c) The Executive shall notify the Corporation in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Corporation of the Gross-Up Payment. Such notification shall be given as soon as practicable, but no later than 10 business days after the Executive is informed in writing of such claim. The Executive shall apprise the Corporation of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which the Executive gives such notice to the Corporation (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Corporation notifies the Executive in writing prior to the expiration of such period that the Corporation desires to contest such claim, the Executive shall:

- A. give the Corporation any information reasonably requested by the Corporation relating to such claim,
- B. take such action in connection with contesting such claim as the Corporation shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Corporation,
- C. cooperate with the Corporation in good faith in order effectively to contest such claim, and

D. permit the Corporation to participate in any proceedings relating to such claim;

provided, however, that the Corporation shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest, and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 9(c), the Corporation shall control all proceedings taken in connection with such contest, and, at its sole discretion, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the applicable taxing authority in respect of such claim and may, at its sole discretion, either pay the tax claimed to the appropriate taxing authority on behalf of the Executive and direct the Executive to sue for a refund or contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Corporation shall determine; *provided, however*, that, if the Corporation pays such claim and directs the Executive to sue for a refund, the Corporation shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties) imposed with respect to such payment or with respect to any imputed income in connection with such payment; and *provided, further*, that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Corporation's control of the contest shall be limited to issues with respect to which the Gross-Up Payment would be payable hereunder, and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by the Executive of a Gross-Up Payment or payment by the Corporation of an amount on the Executive's behalf pursuant to Section 9(c), the Executive becomes entitled to receive any refund with respect to the Excise Tax to which such Gross-Up

Payment relates or with respect to such claim, the Executive shall (subject to the Corporation's complying with the requirements of Section 9(c), if applicable) promptly pay to the Corporation the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after payment by the Corporation of an amount on the Executive's behalf pursuant to Section 9(c), a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Corporation does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then the amount of such payment shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

(e) Notwithstanding any other provision of this Section 9, the Corporation may, in its sole discretion, withhold and pay over to the Internal Revenue Service or any other applicable taxing authority, for the benefit of the Executive, all or any portion of any Gross-Up Payment, and the Executive hereby consents to such withholding.

(f) Definitions. The following terms shall have the following meanings for purposes of this Section 9.

A. "Excise Tax" shall mean the excise tax imposed by Section 4999 of the Code, together with any interest or penalties imposed with respect to such excise tax.

B. A "Payment" shall mean any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to or for the benefit of the Executive, whether paid or payable pursuant to this Agreement or otherwise.

10. Confidential Information. (a) The Executive shall not, without the prior written consent of the Corporation, divulge, disclose or make accessible to any other person, firm, partnership or corporation or other entity any Confidential Information (as defined in Section 10(b) below) pertaining to the business of the Corporation or its affiliated companies except (i) while employed by the Corporation or its affiliated companies in the business of and for the benefit of the

Corporation or its affiliated companies or (ii) when required to do so by a court of competent jurisdiction, by any governmental agency having supervisory authority over the business of the Corporation or its affiliated companies, or by any administrative body or legislative body (including a committee thereof) with purported or apparent jurisdiction to order the Executive to divulge, disclose or make accessible such information.

(b) For the purposes of this Agreement, Confidential Information shall mean all nonpublic information concerning the business of the Corporation and its affiliated companies, including products, customer lists, financial information and marketing plans and strategies. Confidential Information does not include the information that is, or becomes, available to the public, unless such availability occurs through a breach by the Executive of the provisions of this Section.

(c) In no event shall an asserted violation of the provisions of this Section 10 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

11. Successors. (a) This Agreement is personal to the Executive and without the prior written consent of the Corporation shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Corporation and its successors.

(c) Any parent company or successor to all or substantially all of the business and/or assets of the Corporation (whether direct or indirect, by purchase, merger, consolidation or otherwise) shall, by an agreement in form and substance satisfactory to the Executive, guarantee and agree to cause the performance of this Agreement, in each case, in the same manner and to the same extent as the Corporation would be required to perform if no such succession had taken place. "Corporation" means the Corporation as hereinbefore defined and any successor to its business

and/or assets as aforesaid that assumes and agrees to perform this Agreement by operation of law or otherwise.

12. Miscellaneous. (a) This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

Michele Iversen
Providian Financial Corporation
201 Mission Street
San Francisco, California 94105

If to the Corporation:

Providian Financial Corporation
201 Mission Street
San Francisco, California 94105
Attention: Vice Chairman, Human Resources

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Corporation may withhold from any amounts payable under this Agreement such Federal, state or local taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right that the Executive may have hereunder, including without limitation, the right of the Executive to terminate employment for Good Reason pursuant to Sections 5(c)(i) through 5(c)(v), shall not be deemed to be a waiver of such provision or any other provisions hereof.

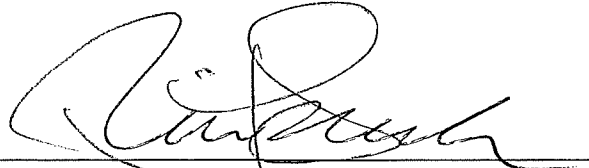
(f) All references to sections of the Code shall be deemed to refer to corresponding sections of any successor federal income tax statute.

(g) This Agreement contains the entire understanding of the Corporation and the Executive and supersedes any prior agreements between the Executive and the Corporation with respect to the subject matter hereof, including without limitation any Change of Control Employment Agreements previously entered into by the Executive, the Corporation, and any affiliated entities of the Corporation.

(h) The Executive and the Corporation acknowledge that the employment of the Executive by the Corporation and its affiliated companies is "at will", and, prior to the Effective Date, may be terminated by either the Executive or the Corporation or such affiliated companies at any time, with or without cause, in which case the Executive shall have no further rights under this Agreement. From and after the Effective Date, except as specifically provided herein, this Agreement shall supersede any other agreement between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Executive has hereunto set his hand and, pursuant to the authorization from its Board of Directors, the Corporation has caused these presents to be executed in its name on its behalf, all as of the date and year first above written.

PROVIDIAN FINANCIAL CORPORATION



Name: Richard A. Leweke

Title: Vice Chairman and Chief Human Resources Officer

EXECUTIVE



Name: Michele Iversen

Exhibit 4

COPY

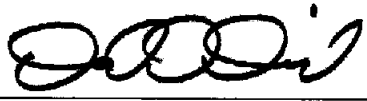
AMENDMENT TO CHANGE OF CONTROL EMPLOYMENT AGREEMENT

The Change of Control Employment Agreement by and between Michele S. Grau-Iversen and Providian Financial Corporation ("Providian"), dated January 27, 2004 is hereby amended by adding the following new sections 9(g) and 12(i):

- 9(g) Notwithstanding any other provision of this Section 9 to the contrary, any Gross-Up Payment shall be paid by the Corporation at the time specified in this Section 9, and all events no later than the end of the calendar year next following the calendar year in which the related taxes are remitted to the applicable taxing authority.

- 12(i) Notwithstanding any provision of this Agreement to the contrary, if, at the time of Executive's termination of employment with Washington Mutual, Inc. or any of its affiliates or subsidiaries, as successors to Providian ("Washington Mutual") he or she is a "specified employee" as defined in Section 409A of the Code, and one or more of the payments or benefits received or to be received by Executive pursuant to this Agreement would constitute deferred compensation subject to Section 409A, no such payment or benefit will be provided under this Agreement until the earlier of (a) the date that is six (6) months following Executive's termination of employment with Washington Mutual, or (b) the Executive's death. The provisions of this Section 12(i) shall only apply to the extent required to avoid Executive's incurrence of any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated thereunder. In addition, if any provision of this Agreement would cause Executive to incur any penalty tax thereunder, Washington Mutual may reform such provision to maintain to the maximum extent practicable the original intent of the applicable provision without violating the provisions of Section 409A of the Code.

Washington Mutual, Inc., Successor to Providian

By: 

 Daryl D. David
 Executive Vice President
 Chief Human Resources Officer

September 12, 2007

 Date

Executive:



 Michele S. Grau-Iversen

09-19-07

 Date

Exhibit 5



WaMu

Exhibit Special
Bonus Opportunity

August 7, 2008

Michele Grau-Iversen
U623660

Dear Michele,

Re: Special Bonus Opportunity

I'm pleased to offer you this opportunity to earn a special bonus composed of two payments in the total amount of \$847,000 as a reward for your continued service to Washington Mutual (the "Company" or "WaMu"). This special bonus opportunity supersedes the bonus described in the agreement dated February 13, 2008 ("Prior Bonus Agreement") as well as the Providian Change of Control Agreement that you signed ("Providian Agreement").

Terms of Offer

To receive each payment of the bonus, you must remain an employee of the Company (the "Employment Requirement"), have a current overall performance rating of Solid Contributor or better, and continue to perform your job duties as required and in accordance with Company policies and procedures through the target date for that payment. Additionally, as noted below, a condition to your entitlement to any payment of the special bonus is your compliance with your obligations under this agreement through the applicable date.

There are two situations in which the Employment Requirement is waived for purposes of this retention bonus. First, if the Company or its successor terminates your employment for any reason prior to a target date for reasons that do not constitute "cause" as defined in Section 5 of your WaMu Change in Control Agreement ("CIC"), we will consider the Employment Requirement to have been fulfilled. Second, you will be treated as having fulfilled the Employment Requirement under this offer if, within two years after a change in control (as defined in Section 5 of your WaMu Change in Control ("CIC") Agreement), (i) your employment is terminated by the Company or a successor for any reason other than for cause (as defined in Section 5 of your CIC Agreement) or (ii) you resign for good reason (as defined in Section 5 of your CIC Agreement) and no reason exists for the Company or a successor to terminate you for cause (as defined in Section 5 your CIC Agreement).

If you fulfill these requirements and also meet the other conditions in this letter, you will be entitled to:

\$626,000 for service through the target date of September 1, 2008; and
\$221,000 for service through the target date of July 1, 2009.



WaMu

Michele Grau-Iversen
August 7, 2008
Page 2

Each of the individual payments will be provided to you less taxes and withholding, in the pay cycle following the dates indicated above. If, however, the Company terminates your employment and you are still eligible for the payments in accordance with the terms of this letter, including the exceptions described above, the payments will be made within two pay cycles after the date of your termination. These payments will be in addition to any other bonus for which you may normally be eligible.

You will continue to be subject to all Company policies and management directives. Your employment will continue to be terminable by you or the company at will, without cause or advance notice. Nothing in this letter is intended to suggest any guaranteed period of continued employment or any guarantee that you will be paid the special bonus. This letter merely sets forth the terms of a special bonus that will be paid to you if you satisfy the requirements set forth in this letter.

Agreement Not to Solicit Personnel

As a condition of this offer, you agree that you will not solicit Washington Mutual personnel for a period of one year after your employment here ends. This means that, regardless of the reason for termination of your employment, you will not directly or indirectly solicit, encourage, induce, or enter into any arrangement with any person who is then a WaMu employee or a contractor or consultant whom you have worked with, supervised, or been exposed to confidential information about while associated with the Company to terminate or diminish his or her relationship with the company, or to seek or accept employment or a similar relationship with any other business or entity including, but not limited to, one that competes with or provides services comparable to those provided by WaMu. If you violate this obligation, you agree to return the bonus promptly, and agree that the Company shall also be entitled to pursue whatever other remedies are available to it.

Other Terms

Not all of your coworkers are being made such an offer. We expect that you will respect their feelings and keep the fact and terms of this bonus offer confidential.

This letter sets forth all of the terms and conditions upon which the special bonus may be paid to you, and it supersedes any other representations about this bonus opportunity. No one at the Company has the authority to make any promises to you that are different from those set forth in this letter on the subject of this special bonus except for personnel from Corporate Rewards who refer to this letter.



Michele Grau-Iversen
August 7, 2008
Page 3

We are confident in your ability to make valuable contributions to the Company. On behalf of Washington Mutual, I would like to thank you not only for the service you have already rendered but also, in advance, for the important role that I trust you will continue to play. If you have any questions, please direct them to me or your Sr. HR Manager. In order to be eligible to receive this special bonus opportunity, you must sign this letter in the designated place below and return it to Beth Wright, Corporate Rewards & Benefits (Mailstop: WMC0705) by August 31, 2008.

Sincerely,
Tony Vuoto
President – Washington Mutual Card Services

Acknowledgement:

I understand and agree to all of the terms set forth in this agreement. I understand that by signing this agreement, I agree that both the Prior Bonus Agreement and the Providian Agreement are void and of no further effect and that I am owed no amounts under either of those agreements.

Signature: Michele J. Iversen Date: 08/15/08
Michele Grau-Iversen U623660

Exhibit 6

WASHINGTON MUTUAL, INC.
SUPPLEMENTAL EXECUTIVE RETIREMENT ACCUMULATION PLAN
(Amended and Restated)

Effective January 1, 2004

WASHINGTON MUTUAL, INC.

SUPPLEMENTAL EXECUTIVE RETIREMENT ACCUMULATION PLAN

Effective January 1, 2004

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**WASHINGTON MUTUAL, INC.
SUPPLEMENTAL EXECUTIVE RETIREMENT ACCUMULATION PLAN**

Effective January 1, 2004

PREAMBLE

The Supplemental Executive Retirement Accumulation Plan ("SERAP") was established effective January 1, 1996 by the Compensation and Stock Option Committee of the Board of Directors of Washington Mutual, Inc. The purpose of the SERAP was to provide certain executives with retirement income to supplement the retirement income provided by the Company's qualified retirement plans and the nonqualified plans for executives.

On October 19, 2004, the Human Resources Committee approved a new executive retirement plan (the "Executive Target Replacement Income Plan" or the "ETRIP") for executives at levels 1, 2 and 3. As a result, effective January 1, 2004, executives at levels 1, 2, and 3 are no longer eligible to receive benefit credits under Section 3.2 of this Plan, but will be eligible for interest credits under Section 3.3 of the Plan on accrued balances in their Accounts.

The Human Resources Committee also approved changes to the formula used to determine benefit credits under Section 3.2 for level 4 and 5 employees who remain eligible for this Plan. The new formula will take into account executive service with the Company without regard to the Participant's age.

**ARTICLE I
NATURE OF PLAN**

1.1 Purpose. The purpose of this Plan is to provide retirement benefits to certain executive employees of the Company and its affiliates that supplement the benefits accrued under the Retirement Plans.

1.2 Top Hat Plan. The Plan is an unfunded plan maintained primarily to provide deferred compensation benefits for a select group of management or highly compensated employees (within the meaning of sections 201(2), 301(a)(3), and 401(a)(1) of ERISA), and is intended to be exempt from Parts 2, 3, and 4 of ERISA.

1.3 Unfunded Plan. This Plan is established as an unfunded plan of deferred compensation. The compensation that is payable hereunder and interest that accrues thereon are represented solely by bookkeeping entries on accounts maintained by the Plan Administration Committee. No funds are held in trust or otherwise segregated for the sole purpose of paying Plan benefits. All Plan benefits are payable solely from the general assets of the Company. Participants and Beneficiaries shall have no legal or equitable rights, interest or claims in any specific collateral, property or assets of the Company, but shall be general unsecured creditors of the Company until benefits are paid hereunder. The Company may from time to time reserve assets in a general account or grantor trust owned by the Company for the purpose paying liabilities that are accrued under this Plan.

End of Article I

ARTICLE II DEFINITIONS AND CONSTRUCTION

For the purpose of this Plan, the following definitions shall apply unless the context requires otherwise. Words used in the masculine gender shall apply to the feminine, where applicable, and wherever the context of the Plan dictates, the plural shall be read as the singular and the singular as the plural. The words "Article" or "Section" in this Plan shall refer to an Article or Section of this Plan unless specifically stated otherwise. Compounds of the word "here," such as "herein" and "hereof" shall be construed to refer to another provision of this Plan, unless otherwise specified or required by the context.

In determining the time within which an event or action is to take place for purposes of the Plan, no fraction of a day shall be considered, and any act, the performance of which would fall on a Saturday, Sunday, holiday observed by the Company, or other non-business day, may be performed on the next following business day.

2.1 Accounts. The separate bookkeeping records that are established and maintained by the Plan Administration Committee to record any amounts credited on behalf of each Participant under the terms of the Plan. A Participant's Account shall only include the amounts actually credited thereto by the Committee.

2.2 Annual Leadership Bonus. The bonus paid under the Annual Leadership Bonus Plan. For purposes of this Plan, Annual Leadership Bonus shall also include annual bonuses paid by Washington Mutual Advisors, Inc. and any other annual bonuses that are approved for inclusion by the committee, in its discretion.

2.3 Beneficiary. Any person or fiduciary designated by a Participant who is or may become entitled to a benefit under the Plan following the death of the Participant; provided, that, in the case of a married Participant, the Participant's Beneficiary shall be the Participant's surviving spouse unless the Participant's spouse (i) consents in writing to the designation of another party as Beneficiary of all or a part of the benefit to which the Participant may become entitled under the Plan, (ii) such election designates a Beneficiary which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the Participant without any requirement of further spousal consent), (iii) the spouse's consent acknowledges the effect of such election, and (iv) such consent is witnessed by a notary public or a member of the Plan Administration Committee. Such spousal consent shall not be required if it is established to the satisfaction of the Plan Administration Committee that such consent cannot be obtained because the spouse cannot be located (and any other circumstances the Secretary of the Treasury may prescribe by regulations). Any consent by a spouse hereunder shall be effective only with respect to that spouse.

2.4 Code. The Internal Revenue Code of 1986, as amended.

2.5 Company. Washington Mutual, Inc. or any successor thereto.

2.6 Compensation. A Participant's compensation, determined according to the definition of "compensation" under the Pension Plan for the Plan Year, without regard to the limitations of section 401(a)(17) of the Code contained in the Pension Plan, that is actually paid or made available to the Participant during such year, less the maximum amount of compensation that can be considered under section 401(a)(17)(A) of the Code, as adjusted by section 401(a)(17)(B) of the Code.

2.7 Committee. The Plan Administration Committee, as it is appointed from time to time by the Human Resources Committee pursuant to Article V.

2.8 Disabled or Disability. A Participant is Disabled when he is determined to be disabled under the terms of the WaMu Pension Plan.

2.9 Eligible Employee. Effective January 1, 2004, an Employee who is classified as a level 4 or level 5 employee. An Employee's status as an Eligible Employee shall be determined separately for each Plan Year as of the end of the Plan Year. All other Employees are ineligible, provided that the Human Resources Committee, may, in its discretion, designate any other Employee as eligible and may designate any Employee who would otherwise be eligible as ineligible in any Plan Year.

2.10 Employee. Any employee of an Employer; specifically excluding, however, a person who is a nonresident alien who receives no earned income that constitutes income from sources within the United States.

2.11 Employer. The Company and any Related Employer designated by the Human Resources Committee from time to time whether explicit or implicit.

2.12 ERISA. The Employee Retirement Income Security Act of 1974, as amended.

2.13 Former Employee Participant. Any individual who is a Participant, but who has terminated employment, and who has not yet received the entire benefit to which he or she is entitled under the Plan, and any individual who was previously an Eligible Employee and who has become ineligible for any reason.

2.14 Human Resources Committee. The Human Resources Committee of the Board of Directors of the Company.

2.15 Participant. An individual who is or has been an Eligible Employee.

2.16 Pension Plan. The WaMu Pension Plan.

2.17 Plan. The Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan as embodied herein and as amended from time to time.

2.18 Plan Year. The fiscal year of the Plan, which is the period from January 1 through December 31 of each year.

2.19 Related Employer. Any business entity that is, along with an Employer, (i) a member of a controlled group of corporations (as defined by section 414(b) of the Code), (ii) a member of a group of trades or businesses (whether or not incorporated) that are under common control (as defined by section 414(c) of the Code), (iii) a member of an affiliated service group (as defined by section 414(m) of the Code), or (iv) any other entity described by Treasury Regulations promulgated pursuant to section 414(o) of the Code.

2.20 Year of Executive Service. Effective January 1, 2004, Eligible Employees will be credited with a year of service for each Plan Year in which they are an Eligible Employee on December 31st of that Plan Year.

End of Article II

**ARTICLE III
BENEFITS**

3.1 Participant's Accounts. The Committee shall establish for each Participant one or more Accounts, as appropriate, to which shall be allocated the proper benefit accruals hereunder, together with interest credited thereto and less the distributions therefrom. For each Eligible Employee who was a Participant on January 1, 2004, his Accounts shall include with the balance in his Accounts as of December 31, 2003.

3.2 Benefits Credited to Accounts. For Plan Years beginning on or after January 1, 2004, unless the Committee determines otherwise, credits shall be made in accordance with the following schedule:

| Years of Executive Service: | Benefit Credit (Percentage of Compensation): |
|------------------------------------|---|
| Less than 3 | 3% |
| 3 | 3% |
| 4 | 4% |
| 5 | 5% |
| 6 | 6% |
| 7 | 7% |
| 8 | 8% |
| 9 | 9% |
| 10 | 10% |
| 11 | 11% |
| 12 | 12% |
| More than 12 | 12% |

Notwithstanding the preceding, any Participant who was a Participant prior to January 1, 2004, and who's Benefit Credit Percentage for the Plan Year per the above schedule is less than the Benefit Credit rate for the 2003 Plan Year ("2003 Rate"), shall receive a Benefit Credit based on the 2003 Rate for that Plan Year.

3.3 Interest Credited to Accounts. Each Participant's Account and each Former Employee Participant's Accounts shall be credited with interest on the balance in his or her Account.

(1) **Interest Rate.** The rate of interest shall be equal to the rate that would have been paid by the Company at the beginning of the Plan Year had it issued unsecured junior debt with a maturity date of ten years. If the Company did not make such a debt offering at or near the beginning of the Plan Year for which the interest rate is being determined, the Plan Administration Committee shall, in its discretion, determine this rate by reference to the following: (i) the rates paid on similar debt offerings of comparably rated financial institutions, and (ii) an estimate of the probable interest rate on such a debt offering from at least one nationally-recognized

investment banking firm. The Committee may, in its discretion, determine the rate for the following Plan Year at any time during the Plan Year. The interest rate so determined will be set forth in writing and kept with the Plan records. The Human Resources Committee may, in its discretion, determine that interest credits shall cease with respect to any Participant's Accounts.

(2) **Timing.** Interest will be credited on a regular basis (at least annually) and prior to the crediting of benefits described in Section 3.2 to the Accounts of all Participants.

End of Article III

**ARTICLE IV
PAYMENT OF BENEFITS**

4.1. Payment Commencement Date. A Participant shall receive payment of the nonforfeitable balance of his Accounts commencing as soon as administratively possible after termination of employment with the Company and all Related Employers. Notwithstanding the preceding, if the Participant is a Key Employee as set forth in Section 409A of the Code, payments shall commence no earlier than 6 months after termination of employment.

4.2. Payment Options. In general, a Participant shall receive payment of the nonforfeitable balance in his Accounts in the form of a single lump sum payment as soon as administratively feasible after the Payment Commencement Date. However, if the Participant meets the requirements set forth in subparagraph (a) below, he may elect another form of payment pursuant to subparagraph (b) below. In the absence of any election, payment will be made in the form of a lump sum.

(a) To be eligible to make an election to receive payment in a form set forth in 4.2(b), a Participant must meet each of the following requirements:

(i) The balance in his account on the Payment Commencement Date must exceed \$100,000; and

(ii) The election must be made at least twelve (12) months prior to the Payment Commencement Date.

(b) A Participant who meets the requirements of Section 4.2(a) may elect to receive payment of his nonforfeitable balance in a series of installments over a period of up to ten (10) years. If a Participant makes an election pursuant to Section 4.2, such elections shall be null and void if the balance of his Accounts does not exceed \$100,000 at the time of termination.

4.3. Determination of Nonforfeitable Benefits. The nonforfeitable benefit for any Participant shall be determined as follows:

(a) If the Participant terminates employment as a result of death or Disability, his Accounts shall be fully nonforfeitable;

(b) If the Participant engages in dishonesty, his Account shall be fully forfeited, regardless of his Years of Executive Service. For this purpose, dishonesty means that the Participant has engaged in an act of fraud, embezzlement, theft or any other crime of moral turpitude or has otherwise been dishonest in his relationship with the Employer (without necessity of formal criminal proceedings being initiated) and the Participant's employment terminated by either discharge or resignation, all as determined by the Committee.

(c) The following vesting schedule shall apply if a Participant has not engaged in an act of dishonesty, as described in paragraph (b):

| <u>Years of Executive Service</u> | <u>Percent Vested</u> |
|---------------------------------------|---------------------------|
| Fewer than 2 | 0% |
| 2 | 25% |
| 3 | 50% |
| 4 | 75% |
| 5 or more | 100% |

(d) Notwithstanding the preceding, any Participant whose nonforfeitable percentage under this section is less than his nonforfeitable percentage under the terms of the Plan for the 2003 Plan Year, shall have his nonforfeitable benefit determined at the higher of the two percentages.

4.4. Upon Death of Participant. Upon the death of a Participant, his entire balance will be paid to his Beneficiary, as determined under Section 6, in a lump sum as soon as administratively feasible, provided that the balance in his Accounts immediately after his death is less than \$100,000. If his balance immediately after his death is \$100,000 or more, the balance will be paid in three annual installments.

4.5. Payment in the Event of Legal Disability. Payments to any Participant, Former Employee Participant, or Beneficiary shall be made to the recipient entitled in form satisfactory to the Plan Administration Committee, except when the recipient entitled thereto shall be under a legal disability, or, in the judgment of the Committee, shall otherwise be unable to apply such payment in furtherance of such recipient's own interest and advantage. The Committee may, in such event, direct all or any portion of such payments to be made in any one or more of the following ways:

- (a) to such person directly;
- (b) to the guardian or estate of such person;
- (c) to a relative or friend of such person, to be expended for such person's benefit; or
- (d) to a custodian for such person under any Uniform Gifts to Minors Act.

4.6. Accounts Charged. The Committee shall charge all distributions made to a Participant or to such Participant's Beneficiary from and against the Accounts of the Participant when made.

4.7. **Unclaimed Accounts.** Neither the Employer nor the Committee shall be obliged to search for or ascertain the whereabouts of any Participant or Beneficiary. The Committee, by certified or registered mail addressed to his last known address of record with the Committee or Employer, shall notify any Participant or Beneficiary that he is entitled to a distribution under this Plan, and the notice shall state the provisions of this Section. If Payment Commencement Date has arrived, and the Participant or the Beneficiary fails to claim his benefits or make his whereabouts known in writing to the Committee by the date that is immediately prior to three years (adjusted according to the abandonment period of the escheat laws of the applicable state) after the date of notification, the Participant's Accounts shall be forfeited.

End of Article IV

ARTICLE V
PLAN ADMINISTRATION COMMITTEE

5.1. Appointment. The Plan Administration Committee has been appointed by the Company to administer the Plan and serves in such capacity at the pleasure of the board of directors of the Company. The board of directors of the Company may remove the Plan Administration Committee or appoint a successor committee at any time. If the Plan Administration Committee ceases to exist or is removed without the appointment of a replacement committee, the Company shall function as the Plan Administration Committee.

5.2. Term. Each member of the Committee shall serve until his or her successor is appointed and assumes membership. Any member of the Committee may be removed, with or without cause, and the board of directors of the Company shall have the power to fill any vacancy that may occur. A member may resign upon written notice to the board of directors of the Company or the Plan Administration Committee.

5.3. Compensation. The members of the Committee shall serve without compensation for services as such, but the Company shall pay all expenses of the members of the Committee.

5.4. Powers of Plan Administration Committee. The Committee shall have full and absolute discretion in the exercise of its powers hereunder. All exercises of power by the Committee hereunder shall be final, conclusive and binding on all interested parties, unless found by a court of competent jurisdiction, in a final judgment that is no longer subject to review or appeal, to be arbitrary and capricious. In addition to the power otherwise enumerated herein, the Committee shall have the following specific authority:

- (a) to direct the administration of the Plan in accordance with the provisions herein set forth;
- (b) to adopt rules of procedure and regulations necessary for the administration of the Plan that are not inconsistent with the terms of the Plan;
- (c) to interpret and construe the provisions of the Plan and determine all questions with respect to rights of Employees, Participants, and Beneficiaries under the Plan, including but not limited to rights of eligibility of an Employee to participate in the Plan, the value of a Participant's Accounts, and the nonforfeitable percentage of each Participant's Accounts;
- (d) to interpret and enforce the terms of the Plan and the rules and regulations it adopts;
- (e) to review and render decisions with respect to a claim for, (or denial of a claim for) a benefit under the Plan;

- (f) to furnish the Employer with information that the Employer may require for tax or other purposes;
- (g) to engage the service of counsel (who may, if appropriate, be counsel for the Employer) and agents whom the Committee may deem advisable to assist it with the performance of its duties;
- (h) to receive from the Employer and from employees such information as shall be necessary for the proper administration of the Plan;
- (i) to maintain, or cause to be maintained, separate Accounts in the name of each Participant; and
- (j) to select a secretary, who need not be a member of the Committee.

5.5. Adjustments. Any misstatement or other mistake of fact may be corrected by the Committee when it becomes known, in the manner the Committee deems equitable and practicable.

5.6. Manner of Action. The decision of a majority of the members of the Plan Administration Committee shall control. In case of a vacancy on the Committee, the remaining members may exercise any and all of the powers, authorities, duties, and discretion conferred upon the Committee. The Committee may, but need not, call or hold formal meetings. Any decision may be made or action may be taken by the Committee pursuant to written approval of a majority of the then members. The Committee shall maintain adequate records of its decisions.

5.7. Authorized Representative. The Committee may authorize any one of its members, or its secretary, to sign on its behalf any notices, directions, applications, certificates, consents, approvals, waivers, letters, or other documents requested pursuant hereto or necessary or desirable for the Committee to administer the Plan as provided herein, or to do any act necessary to carry out the Committee's duties and obligations set forth herein.

5.8. Interested Member. No member of the Committee may decide or determine any matter concerning the distribution, nature, or method of settlement of his or her own benefits under the Plan unless there is only one person acting alone as the Committee.

5.9. Indemnity. The Company shall indemnify and save harmless the Committee, and its members, and each of them, from and against any and all loss, damage, action, fee, cost, claim, liability, proceeding, or expense (including reasonable attorneys fees) to which the Committee, or its members, may be subjected arising out of, resulting in whole or in part from, or otherwise related to any act, conduct, or inaction (except willful or reckless misconduct), in their official capacities in the administration of the Plan.

End of Article V

**ARTICLE VI
PARTICIPANT ADMINISTRATIVE PROVISIONS**

6.1 Beneficiary Designation. Each Participant may from time to time designate a Beneficiary to whom his Accounts shall be paid in the event of his death. The Committee shall prescribe the form for the designation of Beneficiary and, upon the Participant's filing the form with the Committee, it shall revoke all designations filed prior to that date by the same Participant. A Participant may designate multiple and/or contingent Beneficiaries. If a Participant fails to name a Beneficiary, or if the Beneficiary named by a Participant predeceases him or is otherwise ineligible to be a Beneficiary, the Committee may direct that payment of a Participant's Accounts be made to the person or persons in the following priority: (i) the Participant's spouse at the time of death; (ii) if no surviving spouse, then to the Participant's surviving children (including adopted children) in equal shares; (iii) if the Participant has no surviving children, then to the Participant's surviving parents in equal shares; (iv) if the Participant has no surviving parents then to the Participant's estate or such other individual or entity designated by the Committee, in its sole discretion, if no estate exists or it is otherwise impractical to make payment to the estate.

The Committee, in its sole discretion, shall determine to whom the payment shall be made under this Section.

6.2 Personal Data to Plan Administration Committee. Each Participant and Beneficiary must furnish to the Committee such evidence, data, or information as the Committee considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent that each Participant will promptly furnish full, true, and complete evidence, data, and information when requested by the Committee.

6.3 Address for Notification. Each Participant and each Beneficiary of a deceased Participant shall file with the Committee, in writing, such person's mailing address, and each subsequent change of such mailing address. Any payment or distribution hereunder, and any communication addressed to a Participant or his Beneficiary, at the last address filed with the Committee, or if no address have been filed, then the last address indicated on the records of the Employer shall be deemed to have been delivered to the Participant or his Beneficiary on the date that such distribution or communication is deposited in the United States Mail, postage prepaid.

6.4 Place of Payment and Proof of Continued Eligibility. Any payment or distribution hereunder, and any communication addressed to a Participant or Beneficiary, at the last address filed with the Plan Administration Committee, or if no address has been filed, then the last address indicated on the records of the Employer shall be deemed to have been delivered to the Participant or Beneficiary on the date that such distribution or communication is deposited in the United States Mail, postage prepaid. If the Committee, for any reason, is in doubt as to whether benefit payments are being received by the person entitled thereto, it shall, by registered mail addressed to the person concerned, at the last

address of record, notify such person that all unmailed and future retirement income payments shall be henceforth withheld until such person provides the Committee with evidence of continued life and the proper mailing address for future payments.

6.5 Assignment or Alienation. Except as may be specified under a “qualified domestic relations order,” as defined in section 514(b)(7) of ERISA, no benefit payable under the Plan shall be subject in any manner to alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary prior to actually being received by the person entitled to the benefit under the terms of the Plan. The Company shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any person entitled to benefits hereunder.

6.6 Information Available. Any Participant or Beneficiary may examine copies of this Plan or any other instrument under which the Plan was established or is operated. The Plan Administration committee will maintain such documents in its office, or in such other place or places as the Committee may designate from time to time for examination during reasonable business hours. Upon the written request of a Participant or Beneficiary, the Plan Administration Committee shall furnish him or her with a copy of such documents. The Plan Administration Committee may make a reasonable charge to the requesting person for the copy so furnished.

6.7 Beneficiary’s Right to Information. A beneficiary’s right to (and the Committees’ duty to provide to the Beneficiary) information or data concerning the Plan shall not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

6.8 Claims Procedure. Prior to or upon becoming entitled to receive a benefit hereunder, a Participant or Beneficiary shall file a claim for such benefit with the Committee at the time and in the manner prescribed thereby. However, the Committee may direct payment of a Participant’s or Beneficiary’s benefits hereunder without requiring the filing of a claim therefore, if the Committee has knowledge of such Participant’s or Beneficiary’s whereabouts.

6.9 Appeal Procedure for Denial of Benefits. The Committee shall provide adequate notice in writing as prescribed pursuant to paragraph (b) below to any Participant or to any Beneficiary (“Claimant”) whose claim for benefits under the Plan has been denied.

(a) Such notice must be sent within 90 days of the date the claim is received by the Committee unless special circumstances require an extension of time for processing the claim. Such extension shall not exceed 90 days and no extension shall be allowed unless, within the initial 90 day period, the claimant is sent an extension notice indicating the special circumstances requiring the extension and specifying a date by which the Committee expects to render its decision.

(b) The Committee’s notice of denial to the Claimant shall set forth the following:

- (1) the specific reason or reasons for the denial;
- (2) specific references to pertinent Plan provisions on which the Committee based its denial;
- (3) a description of any additional material and information needed for the Claimant to perfect his or her claim and an explanation of why the material or information is needed;
- (4) a statement that the Claimant may request a review upon written application to the Committee, review pertinent Plan documents, and submit issues and comments in writing;
- (5) a statement that any appeal of the Committee's adverse determination must be made in writing to the Committee within 60 days after receipt of the Committee's notice of denial of benefits, and that failure to appeal the action to the Committee in writing within the 60-day period will render the Committee's determination final, binding, and conclusive; and
- (6) the address of the Plan Administration Committee to which the Claimant may forward his or her appeal.

(c) If the Claimant should appeal to the Committee, the Claimant or a duly authorized representative, may submit, in writing, whatever issues and comments the Claimant deems pertinent. The Committee shall re-examine all facts related to the appeal and make a final determination as to whether the denial of benefits is justified under the circumstances. The Committee shall advise the Claimant in writing of its decision on the appeal, the specific reasons for the decision, and the specific Plan provisions on which the decision is based. The notice of the decision shall be given within 60 days of the Claimant's written request for review, unless special circumstances (such as a hearing) would make the rendering of a decision within the 60 day period infeasible, but in no event shall the Committee render a decision regarding the denial of a claim for benefits later than 120 days after its receipt of a request for review. If an extension of time for review is required because of special circumstances, written notice of the extension shall be furnished to the claimant prior to the date the extension period commences.

6.10 No Rights Implied. Nothing contained in this Plan, or in any modification or amendment to the Plan, shall give any Employee, Participant, or any Beneficiary any right to continue employment, or any other legal or equitable right against an Employer, or Employee of the Employer, or against their agents, except as expressly provided by the Plan.

6.11 Right To Offset For Taxes, Other Obligations. Any payment or other distribution of benefits under the Plan may be reduced by any amount required to be withheld

by the Company under any applicable law, rule, regulation, order or other requirement, now or hereafter in effect, of any governmental authority. In addition, if a Participant becomes entitled to a distribution under the Plan, and if at such time such Participant has outstanding any debt, obligation or other liability representing an amount owing to the Company, then the Company may offset such amount owing it against the amount of benefits otherwise distributable to the extent permitted by applicable law.

End of Article VI

**ARTICLE VII
AMENDMENT AND TERMINATION**

7.1 **Amendment.** The Company shall have the right at any time, without prior notice and without cause, to amend or terminate the Plan by action of its board of directors or by action of the Committee. All amendments shall be in writing. Each amendment shall state the date to which it is either retroactively or prospectively effective.

7.2 **Termination.** Upon termination of the Plan, the Company shall pay all benefits credited to Participants pursuant to Article IV.

End of Article VII

**ARTICLE VIII
MISCELLANEOUS**

8.1 Execution of Receipts and Releases. Any payment to any Participant, or to such Participant's legal representative or beneficiary, in accordance with the provisions of the Plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the Plan. The Plan Administration Committee may require such Participant, legal representative, or Beneficiary, as a condition precedent to such payment, to execute a receipt and release therefore in the form determined by the Committee. Any payment made pursuant to the power herein conferred upon the Plan Administration Committee shall operate as a complete discharge of all obligations of the Employer, the Plan Administration Committee and the Committee, to the extent of the distributions so made. Neither the Employer, nor the Committee, is obliged to ensure the proper application or expenditure of any payment so made.

8.2 Employer Records. Each Employer shall, upon request or as may be specifically required hereunder, furnish or cause to be furnished, all of the information or documentation which is necessary or required by the Plan Administration Committee to perform its duties and functions under the Plan. Records of an Employer as to an Employee's or Participant's period of employment, termination of employment and the reason therefore, leaves of absent, reemployment, and Compensation will be conclusive on all persons, unless determined by the Plan Administration Committee to be incorrect.

8.3 Evidence. Evidence required of anyone under the Plan may be by certificate, affidavit, document, or other information which the person acting on it considers pertinent and reliable, and signed, made or presented by the proper party or parties. Any action required of an Employer may be by resolution of its board of directors or by any person authorized to act on behalf of the Employer.

8.4 Severability. In the event any provision of the Plan shall be held to be illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining provisions of the Plan, but shall be fully severable and the Plan shall be construed and enforced as if the illegal or invalid provision had never been included herein.

8.5 Notice. Any notice required to be given herein by an Employer or the Plan Administration Committee, shall be deemed delivered, when (a) personally delivered, or (b) placed in the United States mails, in an envelope addressed to the last address of record the person to whom the notice is given.

8.6 Waiver of Notice. Any person entitled to notice under the Plan may waive the notice.

8.7 Successors. The Plan shall be binding upon all persons entitled to benefits under the Plan, their respective heirs and legal representatives, upon each Employer, its successors and assigns, and upon the Plan Administration Committee, and its successors.

8.8 Headings. The titles and headings of Articles and Sections are included for convenience of reference only and are not to be considered in construction of the provisions hereof.

8.9 Governing Law. All questions arising with respect to the provisions of this Agreement shall be determined by application of the internal laws of the State of Washington except to the extent Washington law is preempted by federal law.

End of Article VII

IN WITNESS WHEREOF, the undersigned officer of Washington Mutual, Inc. has executed this instrument as of May 6, 2005.

WASHINGTON MUTUAL, INC.

By: 
Its: Executive Vice President – Human Resources

**THE HUMAN RESOURCES COMMITTEE OF
THE BOARD OF DIRECTORS OF
WASHINGTON MUTUAL, INC.
CERTIFICATE OF SECRETARY**

I, Craig A. Day, Secretary of the Human Resources Committee (the "Committee") of the Board of Directors of Washington Mutual, Inc. (the "Company"), a corporation duly organized and existing under the laws of Washington, hereby certify that, at a meeting duly called and held on October 17, 2006, the Committee approved the attached resolution. The resolution authorized the Company's Executive Vice President – Human Resources to make revisions to Attachment A as he deemed necessary. A copy of the revised Attachment A is attached to this certification.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 28th day of December, 2006.



Craig A. Day
Secretary of the Human Resources Committee

WASHINGTON MUTUAL, INC.

**RESOLUTION OF THE HUMAN RESOURCES COMMITTEE
REGARDING WM ADVISORS, INC. AND THE DEFERRED COMPENSATION PLAN,
THE SUPPLEMENTAL EMPLOYEES' RETIREMENT PLAN AND THE
SUPPLEMENTAL EXECUTIVE RETIREMENT ACCUMULATION PLAN**

WHEREAS, Washington Mutual, Inc. (the "Company") sponsors the Washington Mutual, Inc. Deferred Compensation Plan, the Supplemental Executive Retirement Accumulation Plan ("SERAP"), and the Supplemental Employees' Retirement Plan ("SERP", and collectively, the "Plans") to provide retirement benefits to certain executives, senior officers and highly compensated employees;

WHEREAS, the Company has entered into an agreement whereby the Principal Life Insurance Company ("Principal") will acquire all of the shares of WM Advisors, Inc. ("WMAI"), a subsidiary of Washington Mutual (the "Sale") and will merge WMAI into Principal;

WHEREAS, certain current employees of WMAI are participants in one or more of the Plans (the "Participants");

WHEREAS, effective immediately before the Sale, the Company desires to spin off all of the liabilities associated with the Participants in the Plans to new plans to be sponsored by WMAI (the "WM Advisors Plans"), which such WM Advisors Plans shall be identical to the Plans except that (i) references to the Company shall instead refer to WMAI where appropriate, and (ii) all benefit accruals under the WM Advisors Plans (including, for the avoidance of doubt, pay credits and interest credits where applicable) shall be frozen as of the date of the Sale, and Participants' accrued benefits shall not increase thereafter

WHEREAS, because the liabilities under the Plans with respect to the Participants are being spun off to WMAI and the Participants are expected to continue employment with WMAI, no Participant will experience a "separation from service" (within the meaning of Section 409A of the Internal Revenue Code) solely as a result of the Sale; and

WHEREAS, because the definition of "Compensation" in the SERP and SERAP refer to the definition of compensation in the WaMu Pension Plan, and due to changes in the WaMu Pension Plan, the definition in the SERP and SERAP must be amended to avoid a reduction in benefits;

WHEREAS, the Human Resources Committee has the authority to amend the Plans;

NOW, THEREFORE, IT IS HEREBY RESOLVED that the liabilities and accruals associated with the Participants in the Plans are hereby spun off to the corresponding WM Advisors Plans, which such WM Advisors Plans shall be identical to the Plans except that (i) references to the Company shall instead refer to WMAI where appropriate, and (ii) all benefit

accruals under the WM Advisors Plans (including, for the avoidance of doubt, pay credits and interest credits where applicable) shall be frozen as of the date of the Sale, and Participants' accrued benefits under the WM Advisors Plans shall not increase thereafter; and

FURTHER RESOLVED that, effective immediately before the Sale, the Participants shall accrue no additional benefits under the Plans and shall have no further rights under the Plans (including, without limitation, the right to any payment under the Plans);

FURTHER RESOLVED that, subject to its consent, WMAI shall be the sponsor of the WM Advisors Plans;

FURTHER RESOLVED, that the amendments substantially as set forth in Attachment A are hereby adopted with respect to the WM Advisor Plans, and where indicated in Attachment A, to the Plans.

FURTHER RESOLVED that the Company's Executive Vice President - Human Resources is further authorized and directed to take any actions he deems necessary to carry out the intent of this resolution, including but not limited to making any changes he deems necessary to Attachment A, directing the Company's third party administrator to prepare any necessary documents and records, to notify the Participants, and to collaborate with employees and outside counsel of Principal.

ATTACHMENT A

AMENDMENT TO THE DEFERRED COMPENSATION PLAN

1. ***Benefit Credits Frozen.*** Effective as of the date of the closing of the sale of WM Advisors, Inc. to Principal (the "Closing"), there shall be no further credits under Section 4 of the Plan with respect to any participants who are currently employees of WM Advisors, Inc. or Washington Mutual, Inc. and any of its subsidiaries and who also become employees of the Principal pursuant to an agreement between Washington Mutual, Inc. and the Principal (the "Specified Participants"). Any elections previously filed by Specified Participants to defer compensation under this section shall be null and void as of the Closing.
2. ***Interest Credits Frozen.*** Effective as of the Closing, there shall be no further interest credits under Section 4, 3 to the accounts of any of the Specified Participants.
3. ***WM Advisors, Inc. is Successor Sponsor.*** Effective immediately, WM Advisors, Inc. shall become the successor sponsor of the plan that covers the Specified Participants, and Section 1.5 is hereby replaced in its entirety by the following:

"Company" means WM Advisors, Inc.

In addition, the preamble is hereby amended by replacing the last sentence of the preamble with the following:

The "Deferred Compensation Plan" was amended and restated effective July 20, 2004 as set forth herein. The Plan was also amended effective October 17, 2006 to spin off the portion of the Plan that applies to employees of WM Advisors, Inc. ("WMAI") in anticipation of the closing of the sale of WMAI to Principal Life Insurance Company. To that end, benefit credits and other credits were frozen on the date of the closing.

AMENDMENT TO THE SUPPLEMENTAL EXECUTIVE RETIREMENT ACCUMULATION PLAN

1. ***Benefit Credits Frozen.*** Effective as of the date of the closing of the sale of WM Advisors, Inc. to Principal (the "Closing"), there shall be no further credits under Section 3.2 of the Plan with respect to any participants who are currently employees of WM Advisors, Inc. or Washington Mutual, Inc. and any of its subsidiaries and who also become employees of Principal pursuant to an agreement between Washington Mutual, Inc. and Principal (the "Specified Participants"). Any elections previously filed by Specified Participants to defer compensation under this section shall be null and void as of the Closing.

2. ***Interest Credits Frozen.*** Effective as of the Closing, there shall be no further interest credits pursuant to Section 3.3 to the accounts of any of the Specified Participants.

4. ***WM Advisors, Inc. is Successor Sponsor.*** Effective immediately, WM Advisors, Inc. shall become the successor sponsor of the plan that covers the Specified Participants, and Section 1.5 is hereby replaced in its entirety by the following:

“Company” means WM Advisors, Inc.

In addition, the preamble is hereby amended by replacing the last sentence of the preamble with the following:

The “Deferred Compensation Plan” was amended and restated effective July 20, 2004 as set forth herein. The Plan was also amended effective October 17, 2006 to spin off the portion of the Plan that applies to employees of WM Advisors, Inc. (“WMAI”) in anticipation of the closing of the sale of WMAI to Principal Life Insurance Company. To that end, benefit credits and other credits were frozen on the date of the closing.

3. ***Definition of Compensation.*** The following amendment applies to both the SERAP that was spun off and to the SERAP that continues to be sponsored by Washington Mutual, Inc. Section 2.6 is replaced in its entirety by the following:

Compensation. A Participant’s compensation, determined according to the definition of “compensation” under the Pension Plan for the Plan Year plus any amounts deferred under Section 3.1(a) of the Deferred Compensation Plan, without regard to the limitations of section 401(a)(17) of the Code contained in the Pension Plan, that is actually paid or made available to the Participant during such year, less the maximum amount of compensation that can be considered under section 401(a)(17)(A) of the Code, as adjusted by section 401(a)(17)(B) of the Code.

AMENDMENT TO THE SUPPLEMENTAL EMPLOYEES’ RETIREMENT PLAN

1. ***Benefit Credits Frozen.*** Effective as of the date of the closing of the sale of WM Advisors, Inc. to Principal (the “Closing”), there shall be no further credits under Section 3.2 of the Plan with respect to any participants who are currently employees of WM Advisors, Inc. or Washington Mutual, Inc. and any of its subsidiaries and who also become employees of Principal pursuant to an agreement between Washington Mutual, Inc. and Principal (the “Specified Participants”). Any elections previously filed by Specified Participants to defer compensation under this section shall be null and void as of the Closing.

2. ***Interest Credits Frozen.*** Effective as of the Closing, there shall be no further interest credits pursuant to Section 3.3 to the accounts of any of the Specified Participants.
5. ***WM Advisors, Inc. is Successor Sponsor.*** Effective immediately, WM Advisors, Inc. shall become the successor sponsor of the plan that covers the Specified Participants, and Section 1.5 is hereby replaced in its entirety by the following:

“Company” means WM Advisors, Inc.

In addition, the preamble is hereby amended by replacing the last sentence of the preamble with the following:

The “Deferred Compensation Plan” was amended and restated effective July 20, 2004 as set forth herein. The Plan was also amended effective October 17, 2006 to spin off the portion of the Plan that applies to employees of WM Advisors, Inc. (“WMAI”) in anticipation of the closing of the sale of WMAI to Principal Life Insurance Company. To that end, benefit credits and other credits were frozen on the date of the closing.

3. ***Definition of Compensation.*** The following amendment applies to both the SERP that was spun off and to the SERAP that continues to be sponsored by Washington Mutual, Inc. Section 2.6 is replaced in its entirety by the following:

Compensation. A Participant’s compensation, determined according to the definition of “compensation” under the Pension Plan for the Plan Year plus any amounts deferred under Section 3.1(a) of the Deferred Compensation Plan, without regard to the limitations of section 401(a)(17) of the Code contained in the Pension Plan, that is actually paid or made available to the Participant during such year, less the maximum amount of compensation that can be considered under section 401(a)(17)(A) of the Code, as adjusted by section 401(a)(17)(B) of the Code.

**RESOLUTION OF THE WASHINGTON MUTUAL, INC.
PLAN ADMINISTRATION COMMITTEE**

**AMENDMENT OF VARIOUS WASHINGTON MUTUAL, INC. PLANS
RELATED TO PROVIDIAN MERGER**

WHEREAS, the Company maintains the Deferred Compensation Plan, WaMu Savings, WaMu Pension, the Flexible Benefits Plan, the Supplemental Employees' Retirement Plan, the Supplemental Executive Retirement Accumulation Plan (the "Plans") for the benefit of its eligible employees; and

WHEREAS, effective October 1, 2005, Providian Financial Corporation ("Providian") will merge with and into the Company, and Providian National Bank ("PNB") will merge with and into Washington Mutual Bank, FA ("WMB"); and

WHEREAS, employees of Providian who become employees of the Company and employees of PNB who become employees of WMB on October 1, 2005 as a result of the company mergers will not be moved to the Company payroll system until April 1, 2006; and

WHEREAS until April 1, 2006, the former Providian and PNB employees will continue to participate in the plans that were sponsored by Providian and PNB prior to the company mergers; and

WHEREAS the Company would like to amend the Plans to delay the Plans entry dates for the former employees of Providian and PNB to April 1, 2006, and to provide prior service credit for certain purposes.

NOW, THEREFORE, effective September 30, 2005, the Plans are hereby amended substantially in the form attached; and

FURTHER RESOLVED, that the Company's Executive Vice President – Human Resources is hereby authorized to take any and all actions necessary to carry out the intent of this resolution, including but not limited to making changes to the attached documents and executing those documents.

WASHINGTON MUTUAL, INC.
Supplemental Executive Retirement Accumulation Plan

Amendment No. 1

THIS AMENDMENT to the Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan ("Plan") is made by Washington Mutual, Inc. ("Company").

WHEREAS, the Company maintains the Plan for the benefit of its eligible employees; and

WHEREAS, effective October 1, 2005, Providian Financial Corporation ("Providian") will merge with and into the Company, and Providian National Bank ("PNB") will merge with and into Washington Mutual Bank, FA ("WMB"); and

WHEREAS, employees of Providian who become employees of the Company and employees of PNB who become employees of WMB on October 1, 2005 as a result of the company mergers will not be moved to the Company payroll system until April 1, 2006; and

WHEREAS, until April 1, 2006, the former Providian and PNB employees will continue to participate in any supplemental nonqualified retirement plans that were sponsored by Providian and PNB prior to the company mergers; and

WHEREAS, the Company would like to amend the Plan to delay the Plan entry date for the former employees of Providian and PNB to April 1, 2006, and to provide prior service credit for purposes of determining benefit credits under the Plan.

NOW, THEREFORE, effective September 30, 2005, the Plan is hereby amended as follows:

1. Section 2.9 of the Plan, Eligible Employees, is amended by adding the following sentence to the end of that section:

Notwithstanding the foregoing, Eligible Employees who on September 30, 2005 were employed by Providian Financial Corporation, Providian National Bank or any affiliates or subsidiaries thereof and who on October 1, 2005 became employed by the Employer may first enter the Plan on April 1, 2006.

2. Section 2.20 of the Plan, Year of Executive Service, is amended by adding the following sentence to the end of the section:

(31) Employees who on September 30, 2005 were employed by Providian Financial Corporation, Providian National Bank or any affiliate or subsidiary thereof and

who on October 1, 2005 became employed by the Employer shall, after April 1, 2006, be credited with Service for service with Providian Financial Corporation, Providian Nation Bank or their affiliates or subsidiaries, but only to the extent that such service occurred after December 31, 2003.

This amendment is adopted and executed this 30th day of September, 2005.

WASHINGTON MUTUAL, INC.

By: 

Daryl D. David
Executive V.P. – Human Resources

Exhibit 7

WASHINGTON MUTUAL, INC.
Supplemental Executive Retirement Accumulation Plan

Amendment No. 1

THIS AMENDMENT to the Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan ("Plan") is made by Washington Mutual, Inc. ("Company").

WHEREAS, the Company maintains the Plan for the benefit of its eligible employees; and

WHEREAS, effective October 1, 2005, Providian Financial Corporation ("Providian") will merge with and into the Company, and Providian National Bank ("PNB") will merge with and into Washington Mutual Bank, FA ("WMB"); and

WHEREAS, employees of Providian who become employees of the Company and employees of PNB who become employees of WMB on October 1, 2005 as a result of the company mergers will not be moved to the Company payroll system until April 1, 2006; and

WHEREAS, until April 1, 2006, the former Providian and PNB employees will continue to participate in any supplemental nonqualified retirement plans that were sponsored by Providian and PNB prior to the company mergers; and

WHEREAS, the Company would like to amend the Plan to delay the Plan entry date for the former employees of Providian and PNB to April 1, 2006, and to provide prior service credit for purposes of determining benefit credits under the Plan.

NOW, THEREFORE, effective September 30, 2005, the Plan is hereby amended as follows:

1. Section 2.9 of the Plan, Eligible Employees, is amended by adding the following sentence to the end of that section:

Notwithstanding the foregoing, Eligible Employees who on September 30, 2005 were employed by Providian Financial Corporation, Providian National Bank or any affiliates or subsidiaries thereof and who on October 1, 2005 became employed by the Employer may first enter the Plan on April 1, 2006.

2. Section 2.20 of the Plan, Year of Executive Service, is amended by adding the following sentence to the end of the section:

(31) Employees who on September 30, 2005 were employed by Providian Financial Corporation, Providian National Bank or any affiliate or subsidiary thereof and

who on October 1, 2005 became employed by the Employer shall, after April 1, 2006, be credited with Service for service with Providian Financial Corporation, Providian Nation Bank or their affiliates or subsidiaries, but only to the extent that such service occurred after December 31, 2003.

This amendment is adopted and executed this 30th day of September, 2005.

WASHINGTON MUTUAL, INC.

By: 

Daryl D. David

Executive V.P. – Human Resources

Exhibit 8

Washington Mutual, Inc.

March 11, 2009

Michele Grau-Iversen
P.O. Box 190883
San Francisco, CA 94119

RE: Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (the "Plan")

Dear Michele:

According to our records, you are a participant in the above referenced Plan. As you know, Washington Mutual, Inc. ("WMI") filed a voluntary petition with the bankruptcy court on September 26, 2008, the day after its banking subsidiary, Washington Mutual Bank, was placed in receivership by federal regulators.

The information below is being provided for your reference and reflects the value of your account as of September 26, 2008 as computed by Fidelity.

| | |
|----------------------------|--|
| Plan Name: | Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan |
| Participant Name: | Michele Grau-Iversen |
| Employee ID number: | u623660 |
| 09/26/2008 Balance: | \$9,648.32 |

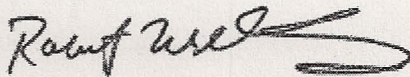
Please note that if you were a participant in another nonqualified plan sponsored by WMI, you will receive information regarding that plan under separate cover.

The above information is provided to you for informational purpose only.

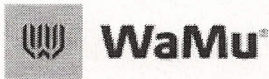
WMI has not independently verified the accuracy of the amount of your account balance referenced above as computed by Fidelity and WMI reserves the right to correct or otherwise change the amounts provided herein in accordance with the terms of the Plan.

The information hereby provided to you does not constitute a promise to pay or confer any additional rights to the amount of your account balance referenced above in accordance with the terms of the Plan.

Sincerely,



Robert Williams
Washington Mutual, Inc.



WaMu Supplemental Retirement Plans

MICHELE S S GRAU-IVERSEN
 P. O. BOX 190883
 SAN FRANCISCO, CA 94119-0883

Retirement Savings Statement

Customer Service: (800) 860-2363
 Fidelity Investments Institutional Operations
 Company, Inc.
 82 Devonshire Street
 Boston, MA 02109

Your Account Summary

Statement Period: 10/01/2008 to 10/31/2008

| | |
|-----------------------------------|------------------------|
| Beginning Balance | \$71,002.36 |
| Change in Account Value | \$340.17 |
| Ending Balance | \$71,342.53 |
| Additional Information | |
| Vested Balance | \$42,225.45 |
| Interest | \$340.17 |

This plan represents a non-qualified plan that is "unfunded" for tax purposes. Any account and/or balances represented here are bookkeeping entries that measure the plan sponsor's obligation to you. Neither you nor the plan hold actual balances in the funds listed in this plan.

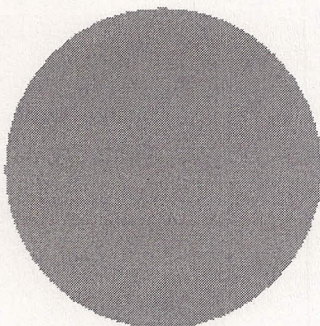
Your Personal Rate of Return

This Period **0.5%**

Your Personal Rate of Return is calculated with a time-weighted formula, widely used by financial analysts to calculate investment earnings. It reflects the results of your investment selections as well as any activity in the plan account(s) shown. There are other Personal Rate of Return formulas used that may yield different results. Remember that past performance is no guarantee of future results.

Your Asset Allocation

Statement Period: 10/01/2008 to 10/31/2008



■ 100.00% Bond Investments: \$71,342.53

Your account is allocated among the asset classes specified above as of 10/31/2008. Percentages and totals may not be exact due to rounding.

Market Value of Your Account

Statement Period: 10/01/2008 to 10/31/2008

This section displays the value of your account for the period, in both shares and dollars.

| <i>Investment</i> | Shares as of 09/30/2008 | Shares as of 10/31/2008 | Price as of 09/30/2008 | Price as of 10/31/2008 | Market Value as of 09/30/2008 | Market Value as of 10/31/2008 |
|-------------------------|-------------------------------|-------------------------------|------------------------------|------------------------------|-------------------------------------|-------------------------------------|
| Bond Investments | | | | | \$71,002.36 | \$71,342.53 |
| Serap | 38,606.630 | 38,822.770 | \$1.00 | \$1.00 | \$38,606.63 | \$38,822.77 |
| Serp | 32,395.730 | 32,519.760 | \$1.00 | \$1.00 | \$32,395.73 | \$32,519.76 |
| Account Totals | | | | | \$71,002.36 | \$71,342.53 |

Market Value By Deferral

Statement Period: 10/01/2008 to 10/31/2008

This section displays the current Market Value of your account by year of distribution.

| Deferral Year | Contribution Source: | Distribution Year: | Distribution Type: | Market Value On: 10/31/2008 | Effective Date: |
|-----------------------------|-------------------------|-----------------------|-----------------------|--------------------------------|--------------------|
| Other Contributions | Serap | Separation | Lump Sum | | Current |
| Other Contributions Serap | | | | \$38,822.77 | |
| Other Contributions | Serp | Election Unknown | | | Unknown |
| Other Contributions Serp | | | | \$32,519.76 | |
| Other Contributions Total | | | | \$71,342.53 | |
| Total Mrkt Value On: | | | | \$71,342.53 | |

Your Contribution Summary

Statement Period: 10/01/2008 to 10/31/2008

| Contributions | Serp | Serap |
|-----------------------|-------------|--------------|
| Period to date | \$0.00 | \$0.00 |
| Inception to Date | \$30,074.75 | \$35,906.06 |
| Vested Percent | 100% | 25% |
| Total Account Balance | \$32,519.76 | \$38,822.77 |
| Total Vested Balance | \$32,519.76 | \$9,705.69 |

Your Account Activity by Source

Statement Period: 10/01/2008 to 10/31/2008

Your Account Activity - reflects the summary of transactions by source during the statement period

| Activity | Serp | Serap | Total |
|-----------------|-------------|--------------|--------------|
|-----------------|-------------|--------------|--------------|

| | | | |
|--------------------------|--------------------|--------------------|--------------------|
| Beginning Balance | \$32,395.73 | \$38,606.63 | \$71,002.36 |
| Change in Account Value | \$124.03 | \$216.14 | \$340.17 |
| Vested Percentage | 100% | 25% | |
| Vested Balance | \$32,519.76 | \$9,705.69 | \$42,225.45 |
| Ending Balance | \$32,519.76 | \$38,822.77 | \$71,342.53 |
| Interest | \$124.03 | \$216.14 | \$340.17 |

Questions? Call (800) 860-2363.

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Your Security
IA=1 SZ=3

SERAP INTEREST**Snapshot****Quick Stats**

| | |
|----------------------------------|---------------|
| YTD Return (09/30/2008) | 3.23% |
| NAV (10/30/2008) | \$1.00 |
| 52 Week Low-High (10/30/2008) | \$1.00-\$1.00 |

Average Annual Total Returns¹ (%)

as of 09/30/2008

| | |
|---------|------|
| 1 Year | 6.42 |
| 3 Year | 5.88 |
| 5 Year | 5.71 |
| 10 Year | 6.26 |
| Life | 6.37 |

Life is as of inception date 01/01/1996.

See [additional performance information](#).

The performance data featured represents past performance, which is no guarantee of future results. Investment return and principal value of an investment will fluctuate; therefore, you may have a gain or loss when you sell your shares. Current performance may be higher or lower than the performance data quoted.

[Top](#)**Overview****What it is**

SERAP interest is calculated daily and credited monthly to your account balance. The annual percentage rate for 2008 is 6.61%.

Goal

Seeks to preserve the principal amount of your account balance while earning interest income.

What it invests in

The SERAP is a general obligation of Washington Mutual, Inc., and does not represent a mutual fund, stock or diversified investment option.

This is neither a mutual fund nor a diversified or managed investment option. The description and information about this earnings accrual method was provided by Washington Mutual, Inc.

[Top](#)**Performance****Cumulative Total Returns¹ (%)**

as of 09/30/2008

| | |
|---------|------|
| YTD | 3.23 |
| 1 Month | 0.53 |
| 3 Month | 1.62 |
| 6 Month | 3.25 |

Average Annual Total Returns¹ (%)

as of 09/30/2008

| | |
|---------|------|
| 1 Year | 6.42 |
| 3 Year | 5.88 |
| 5 Year | 5.71 |
| 10 Year | 6.26 |
| Life | 6.37 |

Life is as of inception date 01/01/1996.

Quarter-End Average Annual Total Returns¹ (%)

as of 09/30/2008

| | |
|---------|------|
| 1 Year | 6.42 |
| 3 Year | 5.88 |
| 5 Year | 5.71 |
| 10 Year | 6.26 |
| Life | 6.37 |

Life is as of inception date 01/01/1996.

Quarter-End returns include all applicable recurring and non-recurring fees (including short-term trading or redemption fees) and changes, if any.

The performance data featured represents past performance, which is no guarantee of future results. Investment return and principal value of an investment will fluctuate; therefore, you may have a gain or loss when you sell your shares. Current performance may be higher or lower than the performance data quoted.

[Top](#)**Fund Facts****Fund Facts**

Fund Inception 01/01/1996

[Top](#)**Prices & Distributions****Price History** as of 09/30/2008

| | |
|------------------|-----------------|
| 52 Week Low-High | \$1.00 - \$1.00 |
| On 09/30/2008 | \$1.00 |

[Top](#)

- 1 Average annual total returns include changes in share price and reinvestment of dividends and capital gains. Quarter-end returns include the effect of any applicable recurring and non-recurring fees (including short-term trading fees or redemption fees).

Important Legal Information

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For more information, click Help at the top of the page or get [further assistance](#).

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

| | | |
|--|---|--------------------------|
| In re: |) | Chapter 11 |
| |) | |
| WASHINGTON MUTUAL, INC., <i>et al.</i> , |) | Case No.: 08-12229 (MFW) |
| |) | (Jointly Administered) |
| |) | |
| Debtors. |) | |
| |) | |
| |) | Re: Docket No. _____ |

ORDER

Upon the motion, dated April 17, 2013 (the "Motion"), of Claimants Michele Grau-Iversen, Robert Hill, Michael Rapaport, David Tomlinson, Mary Beth Davis and Stephen Whittaker (each a "Claimant" and collectively "Claimants") for entry of an order granting leave to amend their existing proofs of claim (the "Original Claims") to the extent necessary (1) in light of the arguments advanced in the Fifth, Sixth, Seventy-Ninth and Eightieth Omnibus (Substantive) Objections to Claims (the "Objections," Docket Nos. 1233, 1234, 10504 and 10505) filed by the WMI Liquidating Trust ("WMILT"), as successor in interest to Washington Mutual, Inc. and WMI Investment Corp., formerly debtors and debtors in possession (the "Debtors"), (2) to seek additional monies owed to them under the WMI Supplemental Executive Retirement Accumulation Plan ("SERAP"), and (3) to correct calculation errors and benefit omissions made in the Original Claims, as more fully set forth in the Motion, pursuant to Bankruptcy Rule 7015; the Court finding that it has jurisdiction over this matter and the relief requested herein pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that due and proper notice of the Motion and the relief requested therein having been given, and no other or further notice need be given, and all parties in interest having been heard or having been afforded an opportunity to be heard; and the Court having determined that the legal and factual bases set

forth in the Motion establishes just cause for the relief granted herein; and the Court having determined that good and just cause appears in favor of granting the Motion;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein;
2. Claimants Michele Grau-Iversen, Robert Hill, David Tomlinson, Mary Beth Davis and Stephen Whittaker are hereby granted leave to file amended proofs of claim (1) to include an alternate claim for compensation under each Claimant's Providian Agreement, (2) to include an alternate claim under the WaMu Severance Plan, (3) to correct the amount of their respective WaMu CIC Claims to the extent certain components of compensation were inadvertently omitted or improperly calculated in their Original Claims, and (4) to include the full benefits that each Claimant was entitled to receive under the SERAP, all as set forth in the Motion, within 15 days of the entry of this Order;
3. Claimant Michael Rapaport is hereby granted leave to file an amended proof of claim (1) to restate his existing claim under his Providian Agreement to include the full amount of unpaid compensation owed to him under that agreement that was not included in the calculations in his Original Claim, and (2) to include the full benefits that he was entitled to receive under the SERAP, both as set forth in the Motion, within 15 days of the entry of this Order
4. Claimants' amended proofs of claim will relate back to the bar date established in these cases, March 31, 2009;
5. WMI Liquidating Trust may file objection (the "Objection") to the amended proofs of claim solely with respect to (1) any alternate claims for compensation under the Providian Agreement, (2) any alternate claims for severance benefits under the WaMu Severance Plan, (3) any restatement of the calculation of their benefits and compensation owed to them under the

Agreements and Plans governing their employment, or (4) any claims for unpaid SERAP benefits, unless otherwise agreed to by the parties or ordered by the Court, within 30 days of the entry of this Order;

6. Claimants shall file a response, if any, to any Objection within 45 days of the entry of this Order;

7. WMI Liquidating Trust is granted leave to bring additional adversary proceedings related solely to the WaMu Severance Plan claims within 30 days of the entry of this Order;

8. Claimants hereby waive the invocation of any defense based on the running of any statute of limitation, statute of repose, period of prescription, contractual period of limitation, laches, and any other rule or doctrine, at law or in equity, relating to the timeliness of any claims that could have been timely asserted by WMI Liquidating Trust solely with respect to adversary proceedings related to the WaMu Severance Plan claims.

9. This Order is without prejudice to the rights of any party to seek additional relief from this Court; and,

10. This Court shall retain jurisdiction with respect to any matters related to or arising from the implementation of this Order.

Dated: _____, 2013
Wilmington, Delaware

The Honorable Mary F. Walrath
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Michael J. Joyce, hereby certify that on this 17th day of April, 2013, I caused copies of the foregoing *Motion of Certain Providian Employee Claimants for Leave to Amend Claims to Include Additional Vested SERAP Benefits and to Plead Additional Theories of Recovery in Light of WMI Liquidating Trust's Fifth, Sixth, Seventy-Ninth and Eightieth Omnibus (Substantive) Objections to Claims* to be served on the parties listed below via CM/ECF and/or as otherwise indicated:

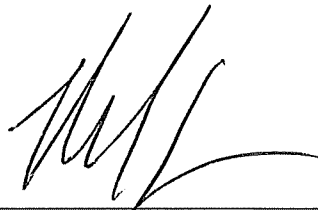
Amanda R. Steele, Esquire
Richards, Layton and Finger
920 N. King Street
Wilmington, DE 19801

VIA FIRST CLASS MAIL

Brian S. Rosen, Esquire
Lawrence J. Baer, Esquire
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153

Christopher L. Boyd, Esquire
Patrick M. Mott, Esquire
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036

Julio C. Gurdian, Esquire
Weil, Gotshal & Manges LLP
1395 Brickell Avenue
Suite 1200
Miami, Florida 33131



Michael J. Joyce (No. 4563)