

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 7, 2013 at 4:00 p.m. |
| |) | |

MOTION OF ANTHONY VUOTO FOR AN ORDER (1) GRANTING AMENDMENT TO PROOFS OF CLAIM REGARDING ADDITIONAL THEORIES OF RECOVERY BASED UPON THE WAMU EXECUTIVE OFFICER SEVERANCE PLAN AND THE WMI EXECUTIVE TARGET RETIREMENT INCOME PLAN, AND (2) REINSTATING CLAIM NO. 159 AND VACATING ORDER DISALLOWING CLAIM

Claimant Anthony Vuoto ("Claimant"), hereby files the following motion (the "Motion") for entry of an order (1) granting leave to amend his claim no. 997 to the extent necessary in light of the arguments advanced in the Eighty-fourth Omnibus (Substantive) Objection to Claims (the "Eighty-Fourth Objection") [Docket No. 10677] 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") to seek an additional theory of recovery under the Executive Officer Severance Plan (the "EOSP"), to include a claim under the WMI Executive Target Retirement Income Plan (the "ETRIP"), and to restate his claim for contractual benefits under his WMI Change in Control Agreement (the "CIC Agreement") and (2) reinstating his claim no. 159 with respect to benefits under the WMI Supplemental Executive Retirement Accumulation Plan (the "SERAP"), and vacating the Court's prior order disallowing the claim [Docket No. 5818] (the "Prior Order"). In support of this Motion, Mr. Vuoto respectfully represents the following:

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



SUMMARY OF MOTION

1. Claimant seeks to amend his timely filed proof of claim no. 997 to add an additional theory of recovery. Claimant asserted as a basis for recovery, *inter alia*, his CIC Agreement with Washington Mutual, Inc., which provided Claimant with compensation should a change in control occur followed by a loss of employment. At the time Claimant filed his proofs of claim were filed, it seemed objectively undisputable that a change in control as defined in the CIC Agreements had in fact occurred in late September 2008 when the bank was seized by the government and sold to JPMorgan Chase. Indeed, some of the Executive Committee claimants that made similar claims in these cases were present at the board meeting where a change in control was declared to have occurred. Thus, Claimant, at the time the proofs of claim were filed, believed that it was unnecessary to include as a basis for recovery of an alternative claim under the EOSP in which he participated because the terms of the EOSP state that it does not provide benefits if payments are made under the CIC Agreements.

2. Only until the bankruptcy had progressed well past the bar date, however, did WMILT reveal that it was contesting whether a change in control had occurred, as most clearly exemplified in its Eighty-Fourth Objection, filed on September 17, 2012.

3. The Court has granted such relief on these grounds to similarly situated claimants John McMurray, Alfred Brooks, Todd Baker, Thomas Casey, Debora Horvath, and David Schneider on March 7, 2013 [Docket No. 11062]. Accordingly, Claimant moves this Court to enter an order granting leave to file an amendment to his claim no. 997 to assert the applicability of the EOSP as an alternative theory of recovery. Further Claimant seeks to amend this claim to restate the contractual benefits owed to him under his CIC Agreement, by minimally increasing his calculation of “annual compensation” to include the value of employer-contributions made or

to be made on his behalf to qualified and non-qualified plans of the Company, and to make clear that the he seeks recovery of his attorney fees and expenses under the CIC Agreement, both of which were not included Claimant's original proofs of claim. Finally, Claimant also seeks to amend this claim to include benefits owed to him under the ETRIP.

4. In addition, Claimant seeks reinstatement of his claim no 159 for benefits under the SERAP and to vacate the Prior Order. Claimant filed his claim no 159 for SERAP benefits on December 11, 2008. Several months later, on March 11, 2009, WMI sent Mr. Vuoto a notice (the "Notice") stating his vested balances in the WMI ETRIP and SERAP. The notice was signed by Robert Williams on behalf of WMI. A true and correct copy of this notice is attached hereto as Exhibit "1". The Notice indicated that Mr. Vuoto had a \$0 vested balance in both the SERAP and the ETRIP. Although unknown to Mr. Vuoto at the time, the books and records of WMI – as represented to him in the Notice - were inaccurate as follows.

a. Pursuant to Amendment No. 1 to the SERAP dated September 30, 2005 (the "SERAP Amendment No. 1"), each of the Providian employees who became eligible to participate in the SERAP were entitled to up to two (2) additional years of service credit (for their service with Providian) dating back to Jan. 1, 2004. A true and correct copy of the SERAP Amendment No. 1 is attached hereto as Exhibit "2".) Mr. Vuoto is one of the former Providian employees who were eligible for the full two (2) years of service credit under the SERAP upon the merger with Washington Mutual. The calculations made by WMI, as represented to Mr. Vuoto in the Notice, failed to take into account these additional years of Executive Service. When the service credit is properly applied (under SERAP Amendment No. 1) the Vested Percentage increases from 0% to 75% for Mr. Vuoto.

b. A similar calculation error was made with respect to the ETRIP. Mr. Vuoto became a participant in the ETRIP on March 1, 2007 (his "Entry Date" under the Plan) and had accrued 19 months of Executive Service, which is more than 1 full year of Executive Service at the time of filing of the bankruptcy petition. This entitled him to 20% Vested Percentage, as of September 26, 2008 under Section 3.4 of the Plan not 0% as was represented to him by WMI.

5. Mr. Vuoto did not retain counsel in this matter until September 2012. These errors were not known to Mr. Vuoto until after his counsel had obtained and reviewed copies of the SERAP and ETRIP Plans. These calculation errors were certainly not known to him at the time the Debtors filed their 52nd Omnibus Objection [Docket No. 5578] to his SERAP claim on November 9, 2010. Indeed, upon examination of the 52nd Omnibus Objection, the copy of the SERAP attached to the Objection **failed to include the SERAP Amendment No. 1**, even though the 2008 Amendment was included in the copy submitted to the Court. By failing to include this material amendment in the 52nd Omnibus Objection, the debtors failed to provide any notice that the Providian employees were actually entitled to additional vesting credit. This was a material omission that severely prejudiced Mr. Vuoto, who had absolutely no notice or reason to know that the basis for the Objection made by the debtors was, in fact, false.

6. For these reasons, Counsel for WMILT has been requested to stipulate to allow the filing of the amended claims, and to stipulate to reinstate the SERAP claim, but have stated that they are unwilling to do so.

JURISDICTION AND VENUE

7. 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).

BACKGROUND

I. Relevant Procedural History

8. Washington Mutual, Inc. ("WMI"), a former bank holding company, and related entity, WMI Investment Corp. (collectively with WMI, the "Debtors") each filed voluntary petitions under Chapter 11 of Title 28, United States Code (the "Bankruptcy Code") and commenced the above-captioned cases on September 26, 2008.

9. At all relevant times prior to September 25, 2008, WMI owned Washington Mutual Bank ("WMB") and through its ownership of WMB, indirectly owned WMB's subsidiaries including Washington Mutual Bank fsb ("WMB fsb").

10. On September 25, 2008, the director of the Office of Thrift Supervision directed the FDIC to take immediate possession of the assets of WMB as receiver. The FDIC in its role as receiver then sold substantially all of the assets of WMB to JPMorgan Chase Bank, National Association. The assets of WMB constituted, indirectly, substantially all of the operating banking assets of WMI.

11. On or about January 30, 2009, the Court entered an order setting March 31, 2009 as the deadline for filing proofs of claim against WMI [Docket No. 632].

12. On December 12, 2011, the Debtors filed their Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (the "Plan"). By order dated February 23, 2012 (the "Confirmation Order"), this Court confirmed the Plan [Docket No. 9759]. Upon information and belief the effective date of the Plan was March 19,

2012. On the effective date certain of the Debtors' assets were transferred to WMILT for administration under the Plan. The Plan requires reservation of the full face value of asserted liquidated claims until those claims were either allowed or disallowed.

13. The Confirmation Order further 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. It further states 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.*

14. On or about September 17, 2012, WMILT filed the Eighty-Fourth Objection objecting to Claimant’s Original Claims by arguing, *inter alia*, that a change in control, as defined in the CIC Agreement, had not occurred.

15. On or about October 8, 2012, Claimant filed *Response and Opposition of Anthony Vuoto to WMI Liquidating Trust’s Eighty-fourth Omnibus (Substantive) Objection to, Claims* [Docket No. 10736] (the “Response”), responding to the Eighty-Fourth Objection. It is important to note that Claimant discussed the EOSP in the Response and attached a copy of the EOSP. *Id.* at ¶¶ 31-36; *Id.*, Ex. C. In the response, Claimant specifically reserved his right to amend his proof of claim to the extent necessary to plead an alternate basis of recovery pursuant to the EOSP, since his termination was without Cause. *Id.* at ¶¶ 37-38.

16. Litigation over claims from former WMI and WMB employees began in earnest in the last quarter of 2012. To this end, WMILT grouped the Claimant’s claims into a category of claims defined as “Employee Claims,” as described in the *Agreed Order Establishing Procedures and Deadlines Concerning Hearing on Employee Claims and Discovery in Connection Therewith*, dated October 15, 2012 [Docket No. 10777] (the “First Scheduling

Order”). The First Scheduling Order set forth a schedule for discovery, briefing, and a hearing on a large number of claims and WMILT’s objections. Notably, the First Scheduling Order demonstrates that WMILT is aware of the EOSP and its relevance to the “Employee Claims.”*Id.*, Ex. A (Glossary) at ¶ E.

17. The First Scheduling Order was amended pursuant to the *Agreed Order Amending Scheduling Orders with Respect to Employee Claims Hearing and Adversary Proceedings*, dated January 7, 2013 [Docket No. 10975] (the “Second Scheduling Order”). The Second Scheduling Order extended certain deadlines, including responses to written discovery, depositions, briefing, and the Hearing. *Id.*

18. On April 3, 2013, the Court ordered, pursuant to the *Agreed Order Adjourning Hearing on WMI Liquidating Trust’s Motion to Amend Omnibus Objections and Suspending Amended Scheduling Order With Respect to Employee Claims Hearing and Adversary Proceedings* [Docket No. 11191] that all actions, obligations, deadlines and dates set by the Scheduling Orders that have not passed as of March 25, 2013 be suspended and re-established pursuant to a further amended scheduling order.

II. Facts Relevant to this Motion.

A. Claimant and His Proofs of Claim.

19. Mr. Vuoto was employed by WMI as President of Card Services and Executive Vice President of WMI. In that position, Claimant was primarily responsible for, among other things, the overall management of the card services business. On or about September 25, 2008, Claimant’s employment relationship with WMI was terminated.

20. On December 11, 2008, Claimant filed a proof of claim seeking amounts he assumed were due to him under the SERAP. (Claim no. 159). On February 26, 2009, he filed

proofs of claim nos. 985 and 997 seeking amounts owed to him under the WMI CIC (Claim no. 997) and the Special Bonus Opportunity (Claim no. 985).² (Claim nos. 159, 985 and 997 hereafter collectively "Original Claims"). Each proof of claim in its entirety is available from the Claims Agent.

B. The CIC Agreement.

21. Claimant entered into a CIC Agreement with WMI which provided Claimant with compensation should a change in control occur followed by a loss of employment. A copy of a CIC Agreement is attached as Exhibit "3". The relevant paragraph of the CIC Agreements, ¶ 6(c)(1), states:

If (i) Employee's employment is terminated by the Company without "cause" (as defined below) upon or within three years after a Change in Control or (ii) Employee resigns for "good reason" (as defined below) upon or within three years after a Change in Control and no reason for Washington Mutual to terminate for "cause" exists, then:

1. Employee shall be entitled to receive, within five business days after the effective date of such termination or resignation, from the Company, a lump sum equal to three times Employee's annual compensation (as defined in Section 6(d)). Notwithstanding the preceding, the amount paid to employee under this Section 6(c) shall be offset by any payment received by Employee from the Company or any acquired company pursuant to: (i) a severance or change in control agreement, arrangement or plan, with the exception of any such payment received more than two years before either clause (i) or clause (ii) of this Section 6(c) was satisfied, or (iii) The Worker Adjustment and Retraining Notification Act (WARN Act) or any similar state or local law.

22. The CIC Agreement, ¶ 11(e), defines a Change in Control, among other things, as "[t]he sale or transfer (in one transaction or a series of related transactions) of all or substantially all of [WMI's] assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary." Person is defined in ¶ 11(f) as "any individual,

² Claimant brought identical claims on January 15, 2009 (Claim no. 484) and February 2, 2009 (Claim no. 729), which were expunged as duplicative.

corporation or company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or government (or agency, instrumentality or political subdivision thereof).”

23. The Response, at ¶¶ 17-21, sets forth the basis upon which Claimant is entitled to benefits under the CIC Agreement, and includes a factual and legal analysis about what a “change in control” means under those agreements and why the Court must find that a change in control occurred.

C. Executive Officer Severance Plan.

24. In the alternative, and should the Court determine that a change in control did not occur, the Claimant is entitled to benefits under the EOSP. A copy of the EOSP is attached as Exhibit “4”. The EOSP provides severance benefits to Eligible Executives who were terminated without cause and do not otherwise “satisf[y] the requirements to receive severance benefits under (a) an individual change in control agreement with [WMI] or (b) an employment agreement that provides separation payments or severance benefits following a change in control.” EOSP, at § 2. Benefits under the EOSP are cash severance benefits equal to 150% of each Claimant’s base pay and unadjusted target bonus. EOSP, at § 3.1.

25. Eligible Executives are each “employee of [WMI] who is (i) classified as either a Level 2 or Level 3 executive, and (ii) not a party to an individual employment agreement with [WMI] that provides for any form of separation payment or severance benefit upon a termination unrelated to a change of control.” EOSP, at §1.5.

26. In short, Claimant, as Level 2 or Level 3 executives with WMI whose CIC Agreements only provide benefits upon a change in control, are entitled to payments under the EOSP should the Court determine that a change in control did not occur.

27. The benefit each Claimant is entitled to under the EOSP is substantially lower than the amount the same Claimant would be due under his or her CIC Agreement. Accordingly, the reserves set aside for claims pursuant to the CIC Agreements are more than sufficient to cover any payment obligation under the EOSP; especially considering that Claimant would receive payment under only one or the other and not both.

D. The SERAP

28. Claimant requests that his claim no. 159 for SERAP benefits be reinstated and that the Order disallowing this claim be vacated. A copy of the SERAP is attached as Exhibit “5”.

29. The SERAP provides retirement benefits to certain executive employees that supplement benefits accrued under other retirement plans of the Company. 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. SERAP, at § 3.2.

30. 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 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.

31. Upon the merger of Providian into Washington Mutual, the SERAP was amended by the SERAP Amendment No. 1 adopted September 30, 2005 to provide for plan entry dates and prior service credits. See, Exhibit 2. Pursuant to SERAP 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.

32. Further, SERAP Amendment No. 1 entitled Claimant to up to two (2) additional years of service (for his service with Providian) dating back to Jan. 1, 2004. Yet, the calculations made by WMI, as represented to Claimant in the Notice on March 11, 2009 as being reflected on the books and records of the Debtor, failed to take into account these additional years of Executive Service for Mr. Vuoto.

33. If the SERAP Amendment No. 1 had been properly applied, the Vested Percentage would have increased to 75% for Mr. Vuoto (4 full years of Executive Service from January 1, 2004 through September 26, 2008).

E. The ETRIP

34. The ETRIP is a separate retirement benefit plan that was exclusive to level 1 through 3 executives and is designed to provide deferred compensation benefits to those executives. Once an executive becomes eligible to participate in the ETRIP, they no longer receive further benefit accruals under the SERAP, but any benefits paid under the ETRIP are offset by the executive's balances under other retirement plans including the SERAP. A true and correct copy of the ETRIP is attached hereto as Exhibit 6.

35. The ETRIP differs from the SERAP in the way service credits are calculated. An employee's years of service are calculated in terms of "months" and "full years" rather than Plan Years. ETRIP, at § 2.15. Claimant became a participant in the ETRIP on March 1, 2007 (his "Entry Date" under the Plan) and had accrued 19 months of Executive Service, which is more

than 1 full year of Executive Service at the time of filing of the bankruptcy petition. This entitled him to 20% Vested Percentage as of September 26, 2008 under Section 3.4 of the Plan.

36. In addition, the ETRIP provides for additional years of vesting, equal to the multiplier in the employee's WMI Change in Control Agreement, in the event of a change in control event. ETRIP, at § 3.5. Claimant's multiplier under his CIC Agreement was three (3). See, Exhibit 3 at ¶ 6(c)(1). As such he would be entitled to three (3) additional years of service credit for vesting purposes under the ETRIP. Should the Court find, as Claimant contends, that a change in control did occur, Claimant's Vested Percentage would increase from 20% to 80% under the ETRIP.

F. Claimant's Reasons Supporting Reinstatement and Amendment

37. Claimant, at the time his claims were filed, believed that it was unnecessary to include the EOSP as a basis for recovery because the terms of the EOSP state that it does not provide benefits if payments are received under the CIC Agreement. To this end, it seemed objectively clear that he would receive benefits under the CIC Agreement in connection with WMB's seizure by the government and sale to JP Morgan Chase.

38. Claimant only became aware that WMILT was contesting whether a change in control had occurred well after the bar date had passed. He was formally made aware that this argument related to his claims by the Eighty-Fourth Objection, filed more than three years after the bar date, in September 2012.

39. With respect to the SERAP, Claimant did not oppose the 52nd Objection based on WMI's mis-representation to him in the Notice of March 11, 2009 that Claimant had a \$0 vested balance in the SERAP. Further, since the Debtors failed to include a copy of the SERAP

Amendment No. 1 in the 52nd Objection, Claimant had no basis upon which to know that WMI's calculation of his vesting percentage was in error.

40. Similarly, by way of the March 11, 2009 Notice WMI also mis-represented that Claimant had a \$0 vested balance in the ETRIP. It was only after Claimant retained counsel, years after the Original Claims were filed, that a copy of the ETRIP was obtained and it was discovered that Claimant was, in fact, entitled to vested benefits under the ETRIP.

41. Finally, Claimant prepared his own proofs of claim and was not represented by counsel. As such, he did not include all of the compensation components in his claim that are contractually owed to him under the CIC Agreement. Also, when the Debtors filed the Eighty-Fourth Objection, Claimant was required to retain counsel and will now seek to recover attorney fees and costs as prevailing party under the CIC Agreement.

G. The Amended Proof of Claim

42. Claimant's amended proof of claim will amend the attachment to the official form amending Claim no. 997 to reflect only the addition of rows on that attachment, accompanied by the applicable amounts, as follows:

- a. Restatement of contractual benefits under the CIC Agreement, by minimally increasing the claim to include the value of employer-contributions and to include additional contractual rights to attorney fees and expenses;
- b. Alternate severance benefit under the EOSP; and
- c. Value of vested balance under the ETRIP, and inclusion of additional rights available to Claimant under the ETRIP.

43. The amended claim would also include copies of the EOSP and the ETRIP.

RELIEF REQUESTED

44. Claimant seeks the entry of an order granting an amendment to his existing claims to assert the EOSP and the ETRIP as alternate and additional theories of recovery, respectively. In addition, Claimant seeks to include the value of employer-sponsored benefits in his calculation of “annual compensation” under the CIC Agreement, and to include other contractual rights arising from the CIC Agreement, the EOSP and the ETRIP. Alternatively, in the event the Court denies Claimant’s motion to amend, the Court should find that excusable neglect permits the assertion these claims at the time of the Hearing on Claimant’s claims in this matter.

45. Pursuant to 11 U.S.C. § 502(j) and Bankruptcy Rule 3008, Claimant also seeks reconsideration of the November 9, 2010 Order so that the Order is vacated to reinstate Claimant’s Claim No. 159 for SERAP benefits. As set forth herein, Claimant was made to believe that he had a \$0 vested benefit in the SERAP according to WMI’s March 11, 2009 Notice. Further, the debtors failed to include a copy of the SERAP Amendment No. 1 (which set forth the basis for additional vesting) when filing the 52nd Objection. As such, Claimant had no actual or constructive knowledge of the additional vesting provisions that benefitted him at the time the Court granted the 52nd Objection. Thus, Claimant asserts that cause exists to reconsider the Order, and that his Claim no. 159 should be reinstated in full.

BASIS FOR RELIEF

I. THE COURT SHOULD PERMIT THE AMENDMENT OF CLAIMANT’S ORIGINAL CLAIMS TO INCLUDE THE EOSP AND THE ETRIP AS ADDITIONAL THEORIES OF RECOVERY.

A. Amendments to Proofs of Claim are Liberally Permitted.

46. The general rule regarding amending 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 postbar amendment to change status of the claim.

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

47. As the Federal Rules of Bankruptcy Procedure do not directly address amendment of a proof of claim, the courts consistently look to Federal Rule of Civil Procedure 15 and apply the test set forth therein to determine whether to allow an amendment to a proof of claim.

Midland Cogeneration Venture Ltd. P'ship v. Enron Corp., 419 F.3d 115, 133 (2d Cir. 2005); Gens v. Resolution Trust Corp., 112 F.3d 569, 575 (1st Cir. 1997); In re Stavriotis, 977 F.2d 1202, 1204 (7th Cir. 1992); In re Robert Farms, 980 F.2d 1248, 1251 (9th Cir. 1992); 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); 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 Enron Corp., 298 B.R. 513, 521 (Bankr. S.D.N.Y. 2003); 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).

48. 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 (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. BAP 1988); U.S. v. Hougham, 364 U.S. 310, 316 (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 *In re Xechem Intern., Inc.*, 424 B.R. 836, 841 (Bankr. N.D. Ill. 2010).

B. The Amended Claims Satisfy the Requirements of Rule 15.

49. The threshold inquiry is whether the proposed amended proof of claim is truly an amendment or impermissibly asserts a new claim. In *re Orion Ref Corp.*, 317 B.R. at 664. “Indetermining whether the amendment asserts a new claim, a court may compare the amendment to the original proof of claim.” In *re Edison Bros. Stores*, 2002 Bankr. LEXIS 1228, at *12 (Bankr. D. Del. 2002). “In comparing the proof of claim and the amendment, if the initial proof did not give fair notice of the conduct, transaction or occurrence that forms the basis of the claim asserted in the amendment then the amendment asserts new claims and will not be allowed.” *Id.* (quotations omitted). A common example of a new claim is where the moving party seeks to change the nature and status of a claim or reclassify it to a higher priority level. In *re Orion Ref. Corp.*, 317 B.R. at 664-665; In *re Metro Trans. Co.*, 117 B.R. 143, 144 (Bankr. E.D. Pa. 1990). By contrast, proper amendments are those “that merely cure defects in the previously-filed claim, describe the claim in more detail, plead new theories of recovery on the same facts presented in the initial claim, or increase damages[.]” In *re Bruno*, 2008 Bankr. LEXIS 910, at *10 (Bankr. D.N.J. 2008); see *In re FLYi, Inc.*, 2008 Bankr. LEXIS 4867, at *6 (Bankr. D. Del. 2008) (“The assertion of a different legal theory for the same claim is not a new claim.”). At bottom, “amendment is freely permitted so long as the initial claim provides adequate notice of the existence and nature of the claim, as well as the creditor’s intent to hold the estate liable.” In *re Oscar*, 2005 Bankr. LEXIS 3345, at *15 (Bankr. E.D. Pa. 2005) (citation omitted); see *In re Enron Corp.*, 298 B.R. 513, 520 (Bankr. S.D.N.Y. 2003) (“A court must first look to whether

there was timely assertion of a similar claim or demand evidencing an intention to hold the estate liable.”) (quotations omitted).

50. Here, Claimant’s proposed amendments are proper and are not a new claims. Claimant’s Original Claims gave notice of the basis for his claims, namely that Claimant’s claims arise from the termination of his employment with WMI upon the seizure and sale of the bank. The additional theories of recovery based upon the EOSP and the ETRIP arise from the same set of circumstances. Thus, the Claimant’s amendments are proper because his Original Claims gave “fair notice of the conduct, transaction or occurrence that forms the basis of the claim asserted in the amendment”; *In re Edison Bros. Stores*, 2002 Bankr. LEXIS 1228, at *12; and Claimant only seek to add a new theory of recovery based upon the same set of facts; *In re Bruno*, 2008 Bankr. LEXIS 910, at*10; *In re FLYi, Inc.*, 2008 Bankr. LEXIS 4867, at *6. Likewise, the Claimant’s Amended Claim does not present a new claim, because the amendments do not change the nature and status of the claim or reclassify it to a higher priority level. *In re Orion Ref. Corp.*, 317 B.R. at 664-665. In sum, the Claimant’s Original Claims provided sufficient notice of the existence and nature of his claims, as well as his intent to hold the estate liable. *In re Oscar*, 2005 Bankr. LEXIS3345, at *15.

51. Once the moving party demonstrates that its amendment is proper, the Court must grant the amendment unless the opposing party can demonstrate that such relief would be inequitable. *Dole v. Arco Chemical Co.*, 921 F.2d 484, 488 (3d Cir. 1990); see *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002); *In re Burlington Coat Factory Sec.Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997). The United States Supreme Court enumerated five factors the opposing party may rely upon to justify denying leave to amend: (1) undue delay, (2) bad faith, (3) dilatory motive, (4) unfair prejudice, and (5) futility of amendment. *Foman v.*

Davis, 371 U.S. 178, 182 (1962); In re Burlington Coat., 114 F.3d at 1434. "Only when these factors suggest that amendment would be 'unjust' should the court deny leave." Arthur v. Maersk, Inc., 434 F.3d 196, 203 (3d Cir. 2006); Grayson, 293 F.3d at 108 ("[S]uch leave must be granted in the absence of undue delay, bad faith, dilatory motive, unfair prejudice, or futility of amendment."); see In re Cudeyro, 213 B.R. 910, 918 (Bankr. E.D. Pa. 1997).

52. As demonstrated below, none of those factors weigh against granting the Claimant's motion for leave to amend his claims.

(1) No Undue Delay.

53. There will be no undue delay occasioned by the filing of the Amended Claims. Discovery regarding these claims is ongoing and the discovery requests propounded by WMILT inquired regarding these and all legal theories and facts supporting the Claim. No depositions of Claimant or other relevant witnesses have been taken, much less scheduled. Thus, the Amended Claim will not require additional discovery or an extension of currently scheduled dates.

54. To the extent this factor relates to the moving party's delay in bringing the motion to amend, any delay here cannot be characterized as "undue." Claimant, at the time the Original Claims were filed, believed that it was unnecessary to include the EOSP as a basis for recovery because the terms of the EOSP state that it does not provide benefits if payments are received under the CIC Agreements. The need to assert the EOSP as an additional theory of recovery only became apparent when WMILT, in its Eighty-Fourth Objection filed on September 17, 2012 (over three years after the bar date passed), contested whether a change in control had occurred. Consequently, only four-plus months have passed since the Eighty-Fourth Objection, and in the interim other significant and time-consuming matters had to be dealt with in this case. Thus, the Claimant has not committed undue delay. *Howze v. Jones & Laughlin Steel Corp.*, 750 F.2d

1208, 1212 (3d Cir. 1984) (“Delay alone, is an insufficient ground upon which to deny a motion to amend. . . . Rather the touchstone is whether the non-moving party will be prejudiced if the amendment is allowed”); *Hatzel & Buehler, Inc. v. Station Plaza Assoc., L.P.*, 150 B.R.560, 562 (Bankr. D. Del. 1993) (“The passage of time, without more, does not require that a motion to amend a [claim] be denied. [citation] Rather, according to the Adams Court, the delay must be motivated by bad faith or result in prejudice to the opposing party.”) (quoting *Adams v. Gould, Inc.*, 739 F.2d 858, 864 (3d Cir. 1984)).

55. Indeed, the Debtors and WMILT caused most of the delay. The blame for the length of time that has passed from the bar date until now rests squarely on the Debtors and WMILT. It was the four years it took to get a plan confirmed that accounts for the vast majority of time between the bar date and now.

(2) No Bad Faith.

56. The Claimant’s Motion is filed in good faith to add an additional theory of recovery based on the EOSP, the ETRIP and to restate his benefits under the CIC Agreement, all arising from the same underlying facts and circumstances relied upon by the Claimant’s Original Claims. Moreover, the Claimant’s Original Claims were timely filed. On the other hand, there are no indicia of bad faith. The Claimant’s Motion is not being used to pressure WMILT into settling, to materially complicate the proceedings at the last minute, or as a delay tactic to prolong the litigation. See *In re Burlington Coat.*, 114 F.3d at 1435; *Hatzel & Buehler, Inc.*, 150 B.R. at 562.

(3) No Dilatory Motive.

57. Claimant has no dilatory motive. Claimant timely filed his Original Claims before the bar date. Moreover, Claimant’s Original Claims gave sufficient notice of the basis for

his claims in substantially the same language: "Calculation of Compensation due under Change in Control (CIC) Agreement." See Proof of Claim 997. As described above, Claimant only became aware of his need to assert the EOSP as an additional theory of recovery arising from the termination of their employment with WMI when WMILT, in its Eighty-Fourth Objection filed on September 17, 2012 (over three years after the bar date passed), contested whether a change in control had occurred. Claimant then raised the EOSP as a theory of recovery in his Response filed on October 8, 2012. Response, at ¶¶ 31-38. Now, only seven months after the filing of the Eighty-Fourth Objection, Claimant is formally seeking to amend his claim to add the EOSP as an additional theory of recovery. The ETRIP calculation error was discovered at this same time, when Claimant retained counsel. This course of events does not show dilatory motive.

(4) No Unfair Prejudice.

58. The Amended Claim will not cause WMILT to suffer unfair prejudice. As mentioned above, the underlying facts relied upon in the Amended Claim are substantially the same as in the Original Claims, with just additional theories of recovery being advanced and a restatement of contractual benefits owed under the same contract (the CIC Agreement). Furthermore, WMILT was made aware by the Response that Claimant intended to pursue the alternative argument that he is entitled to benefits under the EOSP if it is determined that a change of control did not occur under the CIC Agreement. Response, at ¶¶ 31-38. Additionally, the amendments do not require further discovery or a continuation of the currently scheduled dates. Importantly, the Amended Claim will increase the face amount of the claim only to include the value of the employer-contributions and other contractual rights under the CIC Agreement, and to include the ETRIP benefits owed to Claimant. WMILT must show more than just the loss of an advantageous position to demonstrate prejudice. In re O'Brien, 188 F.3d 116,

127 (3d Cir. 1999) (“[P]rejudice is not merely the loss of an advantageous position, but must be something more closely tied to the merits of the issue.”). As such, the only party that will be prejudiced is Claimant if the Court does not allow Claimant to file the Amended Claim to assert the additional theories of recovery under the EOSP and the ETRIP and to restate his claim under the CIC Agreement.

59. WMILT certainly cannot claim surprise or unawareness of the EOSP or the ETRIP and its relevance to the Employee Claims and this litigation. While Claimant did not include the EOSP or the ETRIP in his Originals Claim, numerous other claimants did include the EOSP and the ETRIP in their proofs of claim. This is most clearly exemplified in the Eighty-Fourth Objection, where WMILT objected to claims made under the EOSP and the ETRIP. *Id.* at ¶¶ 25-28 and 34. And WMILT was made fully aware by numerous claimants of the arguments against its objection to EOSP and the ETRIP. See D.I. 10730; 10734; 10736; 10739 (various responses to the Eighty-Fourth Objection). Thus, WMILT is aware of the EOSP and the ETRIP, its relevance to the Employee Claims, and the arguments supporting the Claimant’s entitlement to benefits under the EOSP and the ETRIP. Accordingly, WMILT would not suffer any prejudice if the Court permits the filing of the Amended Claim. *In re O'Brien*, 188 F.3d at 128 (stating that lack of surprise weighs in favor of finding no prejudice).

(5) The Additional Theories of Recovery Are Viable.

60. These additional theories of recovery with respect to the EOSP and the ETRIP, and the restatement of his claim under the CIC Agreement are not futile. As set forth in the Response, Claimant was a party to the EOSP, and the EOSP specifically provides for a payment to Claimant upon their termination from WMI as long as Claimant is not entitled to payments under the CIC Agreement. Likewise, Claimant was a party to the ETRIP and is entitled to

benefits thereunder. Moreover, these theories of recovery are viable, as explained in the numerous responses to the Eighty-Fourth Objection. See D.I. 10730; 10734; 10736; 10739 (various responses to the Eighty-Fourth Objection).

61. Finally, a recent opinion from the Bankruptcy Court for the Northern District of Illinois, captioned *In re Xechem Intn'l., Inc.*, 424 B.R. 836 (Bankr. N.D. Ill. 2010), is particularly instructive. 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. Based on the foregoing, the Court should find that Claimant's amendment is proper and that WMILT cannot demonstrate that such relief would be inequitable and grant Claimant leave to amend their Original Claims to add additional theories of recovery based upon the EOSP and the ETRIP and to restate his claim for contractual benefits under the CIC Agreement.

II. THE COURT SHOULD PERMIT THE REINSTATEMENT OF CLAIMANT'S CLAIM NO. 159 FOR SERAP BENEFITS UNDER 11 U.S.C. 502(j).

63. Rule 3008 of the Bankruptcy Rules allows any party in interest to seek reconsideration of an Order allowing or disallowing a claim against the estate.

64. Under Bankruptcy Rule 3008, the Bankruptcy Court may enter an "appropriate Order" reinstating a claim after notice and hearing.

65. 11 U.S.C. § 502(j) provides that a claim that has been disallowed may be reconsidered for cause based on the equities of the case. Even absent § 502(j), the bankruptcy court has an "ancient and elementary power" to reconsider any of its orders, including an order allowing or disallowing a claim. *Brielle Assocs. v. Graziano* (3rd Cir. 1982) 685 F2d 109, 111–112.)

66. Here, Claimant was misled by the debtors into believing that he had a \$0 vested balance in the SERAP. See Exhibit 1. Further, the debtors failed to include the SERAP Amendment No. 1 (providing the basis for Claimant's vesting) along with the copy of the SERAP submitted to the Court with the 52nd Objection.

67. It was not until Claimant retained counsel, nearly 2 years after the November 10, 2010 Order was entered, that Claimant discovered that the debtors failed to apply the additional service credit conferred upon the Providian employees upon the merger with Washington Mutual, as set forth in the Amendment No. 1. As such, Claimant has established that cause exists to vacate the November 9, 2010 Order and to reinstate Claimant's Claim no. 159 for SERAP benefits.

CONCLUSION

68. For the foregoing reasons, the Claimant's Motion should be granted.

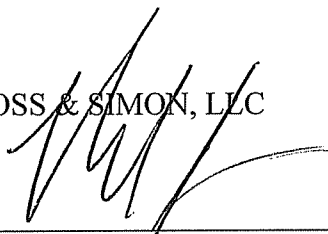
69. WHEREFORE, Claimant respectfully requests that this Court allow Claimant to file his Amended Claim and have them relate back to his timely filed Original Claims. Alternatively, if the Court denies the Claimant's motion to amend, the Court should find that excusable neglect permits the assertion of claims based upon the EOSP and the ETRIP and the restatement of his claim for contractual benefits under his CIC Agreement.

70. In addition, Claimant respectfully requests that the Court vacate its November 9, 2010 Order on the 52nd Objection as to Claimant and reinstate his Claim no. 159 for SERAP benefits.

Dated: April 18, 2013
Wilmington, Delaware

CROSS & SIMON, LLC

By: _____


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David G. Holmes (No. 4718)
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Counsel to Anthony Vuoto

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 7, 2013 at 4:00 p.m. |
| _____ |) | |

NOTICE OF MOTION

PLEASE TAKE NOTICE, that Claimant Anthony Vuoto (“Claimant”), filed his *Motion of Anthony Vuoto for an Order (1) Granting Amendment to Proofs of Claim Regarding Additional Theories of Recovery Based Upon the WAMU Executive Officer Severance Plan and the WMI Executive Target Retirement Income Plan, and (2) Reinstating Claim No. 159 and Vacating Order Disallowing Claim* (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 7, 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 Claimant 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.

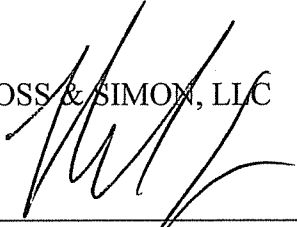
¹The Debtors in this Chapter 11 case are Washington Mutual, Inc. and WMI Investment Corp.

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 18, 2013
Wilmington, Delaware

CROSS & SIMON, LLC

By: _____


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Counsel to Anthony Vuoto

Exhibit 1

Washington Mutual, Inc.

March 11, 2009

Anthony Vuoto
1597 Via Di Salerno
Pleasanton, CA 94566-2222

RE: Washington Mutual, Inc. Executive Target Retirement Income Plan (the "Plan")

Dear Anthony:

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. Executive Target Retirement Income Plan |
| Participant Name: | Anthony Vuoto |
| Employee ID number: | u623349 |
| 09/26/2008 Balance: | \$0.00 |

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®

**Executive Target Retirement Income Plan (ETRIP)
Statement as of September 26, 2008**

| 2008 ETRIP Benefit for Anthony Vuoto | | |
|--|-------|----------------|
| 1. Average Compensation (see box below) | | \$710,600.00 |
| 2. Target Benefit (Line 1 x 6.5) | | \$4,618,900.00 |
| 3. Executive Service (see box below) | | |
| a) Months of Executive Service (25 year/300 month maximum) | 19 | |
| b) Executive Service Pro-ration Factor (Line 3a ÷ 300) | 6.33% | |
| 4. Prorated Target Benefit (Line 2 x Line 3b) | | \$292,530.33 |
| 5. Vested Balances in Other Retirement Plans (see box below) | | \$125,333.32 |
| 6. Net ETRIP Benefit at December 31, 2007 (Line 4 - Line 5) | | \$167,197.01 |
| 7. Vesting Percentage | | 0% |
| Vested Net ETRIP Benefit (Line 6 x Line 7) | | \$0.00 |

| Executive Service | Average Compensation | |
|--|---|---------------------|
| Executive Service includes full and partial months as a Level 1 - 3 (or equivalent). | Average Compensation is the average of employee base pay and actual annual leadership bonus (including any portion allocated through the ITRO program) over the past 5 plan years, if eligible. | |
| Executive Service Effective Date: | 2003 | n/a |
| March 1, 2007 | 2004 | n/a |
| Months of Executive Service: | 2005 | n/a |
| 19 Months | 2006 | n/a |
| | 2007 | \$710,600.00 |
| | Overall Average: | \$710,600.00 |

| Vested Balances in Other Retirement Plans | |
|---|---------------------|
| WaMu Savings (Profit Sharing & Match) | \$17,751.05 |
| WaMu Pension | \$29,018.24 |
| Supplemental Employees' Retirement Plan (SERP) | \$78,564.03 |
| Supplemental Executive Retirement Accumulation Plan (SERAP) | \$0.00 |
| Total in Other Retirement Plans as of 08/31/2008: | \$125,333.32 |

Every effort has been made to ensure the accuracy of this statement. If there is any discrepancy between this calculation and the plan document, the plan document will prevail.

Exhibit 2

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 3

CHANGE IN CONTROL AGREEMENT

This Change in Control Agreement (the "Agreement") is between Washington Mutual, Inc., a Washington corporation ("Washington Mutual") and the undersigned employee of Washington Mutual ("Employee"). The term "Company" shall mean Washington Mutual and any successor after a Change in Control (as defined below).

It is the desire of Washington Mutual and Employee to set forth certain terms and conditions relating to Employee's employment as an inducement for Employee continuing his or her employment for so long as Washington Mutual desires to employ Employee.

Therefore, the parties agree as follows:

1. Employment. Washington Mutual agrees to, and does hereby, employ Employee, and Employee agrees to, and does hereby, accept such employment, on the terms in this Agreement.

2. Duties. Employee shall perform such duties as the Chairman, the President or the Board of Directors of Washington Mutual (the "Board") may from time to time direct. (As used herein "Board" shall include the board of directors or other successor body performing its function in the event of a Change in Control.) Employee's title may be changed from time to time as the Chairman, the President or the Board may determine.

3. Compensation. During Employee's employment under this Agreement, Employee shall receive base salary compensation in the amount determined by the Board's Human Resources Committee (the "Human Resources Committee"), payable semi-monthly or in such manner as is consistent with Washington Mutual's policy relating to exempt employees. In addition, Employee is entitled to participate in Washington Mutual's bonus plan for executives as adopted by the Human Resources Committee, under which Employee may receive, subject to the terms of the plan, a bonus based on Washington Mutual's achievement of specified financial goals. Employee may also be awarded stock options, restricted stock and/or other forms of equity compensation, as determined by the Human Resources Committee. Employee's compensation shall be reviewed by the Human Resources Committee annually and, in the sole discretion of the Human Resources Committee, such compensation may be adjusted either upward or downward.

4. Other Benefits. Subject to the respective eligibility requirements and other terms and provisions of the applicable benefit or insurance plans (including relevant waiting periods), Employee shall be enrolled as a participant in all employee benefit plans (including retirement and insurance plans) available to other officers of Washington Mutual, as the same may from time to time be adopted or amended. Employee shall also be entitled to receive such other perquisites as the Chairman, the President or the Board may from time to time deem appropriate.

5. Performance of Duties. Employee agrees that during his or her employment with Washington Mutual: (a) Employee will faithfully perform the duties of such office or offices as

he or she may occupy, which duties shall be such as may be assigned to him or her by the Chairman, the President or the Board; (b) Employee will devote to the performance of his or her duties all such time and attention as the Chairman, the President or the Board shall reasonably require, taking, however, from time to time, such reasonable vacations as are consistent with his or her duties and Washington Mutual policy; and (c) Employee will not, without the express consent of the Chairman, the President or the Board, become actively associated with or engaged in any business or activity during the term of this Agreement other than that of Washington Mutual (excepting family and personal activities which may include management of personal investments, but only to the extent such activities, do not entail active involvement in a business enterprise and do not interfere or conflict with the performance of Employee's duties) and Employee will do nothing inconsistent with his or her duties to Washington Mutual.

6. Termination.

(a) Either Washington Mutual or Employee may terminate Employee's employment at any time in its sole discretion, with or without advance notice. Except as expressly provided in this Agreement or under any employee benefit plan maintained by Washington Mutual, upon termination of employment, Washington Mutual shall have no liability to pay any further compensation or any other benefit or sum whatsoever to Employee. Notwithstanding any other provision under this Agreement, no further amounts or benefits shall be payable hereunder if, at least 120 days prior to a Change in Control (as defined below), Employee transfers to another Washington Mutual position and, under Washington Mutual's policies then in effect, Washington Mutual does not enter into agreements comparable to this Agreement with persons occupying that position or a comparable position.

(b) Upon termination of employment, Employee's rights under all employee pension plans, employee welfare benefit plans, bonus plans and stock option and restricted stock plans shall be determined under the terms of the plans and grants themselves except as otherwise specifically provided in this Agreement.

(c) If (i) Employee's employment is terminated by the Company without "cause" (as defined below) upon or within three years after a Change in Control or (ii) Employee resigns for "good reason" (as defined below) upon or within three years after a Change in Control and no reason for Washington Mutual to terminate for "cause" exists, then

1. Employee shall be entitled to receive, within five business days after the effective date of such termination or resignation, from the Company, a lump sum equal to three times Employee's annual compensation (as defined in Section 6(d)). Notwithstanding the preceding, the amount paid to employee under this Section 6(c) shall be offset by any payment received by Employee from the Company or any acquired company pursuant to: (i) a severance or change in control agreement, arrangement or plan, with the exception of any such payment received more than two years before either clause (i) or clause (ii) of this Section 6(c) was satisfied, or (ii) The Worker Adjustment and Retraining Notification Act (WARN Act) or any similar state or local law.

2. Upon a Change in Control, the lapse of the restrictions on Employee's restricted stock, restricted stock units, stock options and other equity awards shall automatically be accelerated (and, to the extent applicable, the option or other award shall be fully exercisable) unless the applicable award agreement provides otherwise.

(d) For purposes of Section 6(c), Employee's "annual compensation" shall equal the sum of (i) the highest of the Employee's annual base salary for the calendar year in which termination or resignation occurs, the prior calendar year, or the calendar year immediately preceding the year in which the Change in Control occurred, (ii) the highest of (A) the Employee's unadjusted target bonus for the calendar year in which the termination or resignation occurs, (B) the Employee's actual bonus (including, for the avoidance of doubt, any portion of the actual bonus that was deferred or exchanged at the Employee's election for equity awards) for the prior calendar year (annualized if Employee was not employed by the Company for the entire previous calendar year), or (C) the Employee's actual bonus (including, for the avoidance of doubt, any portion of the actual bonus that was deferred or exchanged at the Employee's election for equity awards) for the calendar year immediately preceding the year in which the Change in Control occurred (annualized if Employee was not employed by Washington Mutual for the entire such calendar year), and (iii) the amount of the contributions or accruals made or anticipated to have been made on Employee's behalf to the Company's benefit plans for the calendar year in which the termination or resignation occurs, including without limitation contributions to and accruals under qualified and nonqualified defined contribution and defined benefit pension plans and plans qualified under Section 125 of the Internal Revenue Code of 1986, as amended (the "Code"). For purposes of this Section 6(d), bonus refers to monthly, quarterly, annual and other periodic performance-based bonuses based on individual and/or company results, and excludes non-periodic lump sum bonuses (such as sign-on and retention bonuses (even if such bonuses are also performance-based bonuses) and cash and non-cash prizes and awards, including awards from sales contests) and the value of equity awards except as otherwise specifically provided herein. For purposes of this paragraph, any increase in the value of benefits to be provided under the Executive Target Replacement Income Plan shall not be counted as a contribution or accrual under Section 6(d)(iii).

(e) If Employee becomes entitled to the payments and lapse of restrictions on equity awards described in Sections 6(c) and 6(d) and such payments and the value of any lapse of restrictions, together with any other payments or transfers of property (collectively the "Severance Payments"), constitute "parachute payments" under Section 280G of the Code or any successor statute then in effect, then Washington Mutual shall pay an additional amount (the "Gross-Up Payment") to employee at the time specified in the following paragraph. The Gross-Up Payment shall be equal to the amount necessary so that the net amount retained by Employee, after subtracting the parachute excise tax imposed by Section 4999 of the Code, as amended, or any successor statute then in effect (the "Excise Tax"), and after also subtracting all federal, state or local income tax, FICA tax and Excise Tax on the Gross-Up Payment, equals the net amount Employee would have retained if no Excise Tax had been imposed and no Gross-Up Payment had been paid. The amount of the Gross-Up Payment shall be determined in good faith by nationally recognized registered public accountants or tax counsel selected by the Company, who shall apply the following assumptions: (i) Employee shall be treated as paying federal income

taxes at the highest marginal rate in the calendar year in which the Gross-Up Payment is made, and (ii) Employee shall be treated as paying state and local income taxes at the highest marginal rate(s) in the calendar year in which the Gross-Up Payment is made in the locality of Employee's residence as of the effective date of Employee's termination or resignation, net of the maximum reduction in federal income taxes that could be obtained from deducting those state and local taxes.

(f) The Gross-Up Payment shall be made within five business days after the effective date of Employee's termination or resignation, provided that, if the Gross-Up Payment cannot be determined within that time, the Company shall pay Employee within that time an estimate, determined in good faith by the Company, of the minimum amount of the Gross-Up Payment and shall pay the remainder (plus interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount can be determined but in no event later than the 30th day after the effective date of Employee's termination or resignation. If the estimated payment is more than the amount later determined to have been due, the excess (plus interest at the rate provided in Section 1274(b)(2)(B) of the Code) shall be repaid by Employee within five business days after written demand. In all events, any Gross-Up Payment made pursuant to this Section 6(f) shall be paid to Employee no later than the end of the calendar year following the year in which the related taxes are remitted to the applicable taxing authority.

(g) If the actual Excise Tax imposed is less than the amount that was taken into account in determining the amount of the Gross-Up Payment, Employee shall repay at the time that the amount of the reduced Excise Tax is finally determined the portion of the Gross-Up Payment attributable to that reduction (plus the portion of the Gross-Up Payment attributable to the Excise Tax, FICA tax and federal, state and local income tax imposed on the portion of the Gross-Up Payment being repaid by Employee, to the extent the repayment results in a reduction in or refund of Excise Tax, FICA tax or federal, state or local income tax), plus interest on the amount of the repayment at the rate provided in Section 1274(b)(2)(B) of the Code. If the actual Excise Tax imposed is more than the amount that was taken into account in determining the amount of the Gross-Up Payment, Washington Mutual shall make an additional Gross-Up Payment in respect of such excess (plus interest at the rate provided in Section 1274(b)(2)(B) of the Code) at the time that the amount of the excess is finally determined.

7. Continuation of Medical Coverage. If Employee's employment by the Company terminates for any reason (including early retirement) other than gross misconduct, Employee shall be entitled to continue to participate in the Company's self-funded group medical coverage, at Employee's expense, to the extent provided in the plan and under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

8. Death or Disability. If Employee should die or become disabled at any time during his or her employment hereunder, neither Employee nor anyone claiming by, through or under him or her shall be entitled to any further compensation or other sum under this Agreement (but shall be entitled to payments made by insurers under policies of life and disability insurance and any sums which may become available under any employee benefit plan).

Vuoto, Anthony [Redacted]

9. Confidentiality. Employee agrees that information not generally known to the public to which Employee has been or will be exposed as a result of Employee's employment by the Company is confidential information that belongs to the Company or its Subsidiaries. This includes information developed by Employee, alone or with others, or entrusted to the Company or its Subsidiaries by its customers or others. The Company's or its Subsidiaries' confidential information includes, without limitation, information relating to the Company's or any of its Subsidiaries' trade secrets, know-how, procedures, purchasing, accounting, marketing, sales, customers, clients, employees, business strategies and acquisition strategies. Employee will hold the Company's and its Subsidiaries' confidential information in strict confidence and will not disclose or use it except as authorized by the Company and for the Company's benefit.

10. Possession of Materials. Employee agrees that upon conclusion of employment or request by the Company, Employee shall turn over to the Company all documents, files; office supplies and any other material or work product in Employee's possession or control that were created pursuant to or derived from Employee's services for the Company.

11. Change in Control. For purposes of this Agreement, "Change in Control" shall mean:

(a) The acquisition of ownership, directly or indirectly, beneficially or of record, by any Person (as defined below) or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date of this Agreement), other than Washington Mutual, a Subsidiary or any employee benefit plan of Washington Mutual or its Subsidiaries, of shares representing more than 25% of (i) the common stock of Washington Mutual, (ii) the aggregate voting power of Washington Mutual's voting securities or (iii) the total market value of Washington Mutual's voting securities;

(b) During any period of 25 consecutive calendar months, a majority of the Board ceasing to be composed of individuals (i) who were members of the Board on the first day of such period, (ii) whose election or nomination to the Board was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of the Board or (iii) whose election or nomination to the Board was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of the Board; provided that, any director appointed or elected to the Board to avoid or settle a threatened or actual proxy contest shall in no event be deemed to be an individual referred to in clauses (i), (ii) or (iii) above;

(c) The good-faith determination by the Board that any Person or group (other than a Subsidiary or any employee benefit plan of Washington Mutual or a Subsidiary) has acquired direct or indirect possession of the power to direct or cause to direct the management or policies of Washington Mutual, whether through the ability to exercise voting power, by contract or otherwise;

(d) The merger, consolidation, share exchange or similar transaction between Washington Mutual and another Person (other than a Subsidiary), other than a merger in which

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the stockholders of Washington Mutual immediately before such merger, consolidation or transaction own, directly or indirectly, immediately following such merger, consolidation or transaction, at least seventy-five percent (75%) of the combined voting power of the surviving entity in such merger, consolidation or transaction in substantially the same proportion as their ownership immediately before such merger, consolidation or transaction; or

(e) The sale or transfer (in one transaction or a series of related transactions) of all or substantially all of Washington Mutual's assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary.

(f) "Person" shall mean any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof); and

(g) "Subsidiary" or "Subsidiaries" shall mean a corporation or corporations that are wholly owned by the Company, either directly or through one or more corporations that are wholly owned by the Company.

(h) For purposes of this Agreement, "good reason" for Employee to resign shall mean:

1. The assignment of duties to Employee which (a) are materially different from Employee's duties immediately prior to the Change in Control, or (b) result in Employee having significantly less authority and/or responsibility than Employee had prior to the Change in Control.

2. A reduction of Employee's total pay opportunity from that in effect on the date of the Change in Control. Changes in the allocation of Employee's compensation between salary and incentive compensation, and changes to the criteria or method for determining incentive compensation amounts actually earned, shall not constitute "good reason" for Employee to resign. "Total pay opportunity" means base salary plus target incentive compensation, provided that in the case of incentive compensation for which a "target" is not defined (such as some sales commissions), the incentive component of the pay opportunity shall be the average incentive compensation of Employee during the 24 months preceding the Change in Control.

3. A relocation by more than 50 miles of Employee's principal place of employment as in effect on the date of the Change in Control, if the relocation increases the distance between Employee's principal residence and principal place of employment by more than 25 miles. Distances shall be measured by surface miles, using surface transportation over public streets, roads, highways and waterways, by the shortest route.

For purposes of this Agreement, Employee shall be considered to have resigned for "good reason" only if Washington Mutual fails to cure within 15 days after receiving a written demand to cure that specifies the circumstances constituting "good reason." Also, Employee shall be

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considered to have resigned for "good reason" only if the effective date of Employee's resignation is within 60 days after the effective date of the occurrence that constitutes "good reason."

(i) For purposes of this Agreement, the Company shall have "cause" to terminate Employee's employment if:

1. Employee violates the Company's policies regarding drug or alcohol use on a recurring basis;

2. Employee is convicted of any felony or of a misdemeanor involving moral turpitude (including forgery, fraud, theft or embezzlement), or enters into a pretrial diversion or similar program in connection with the prosecution for an offense involving fraud, dishonesty, breach of trust or money laundering; or

3. Employee has engaged in: (a) dishonesty or fraud, (b) destruction or theft of property of the Company or a Subsidiary, (c) physical attack on another employee, (d) willful malfeasance or gross negligence in the performance of Employee's duties, or (e) misconduct materially injurious to the Company or a Subsidiary.

12. Title. Although it is the intention of the parties that during the term of this Agreement, Employee shall be an executive employee of Washington Mutual with the title and duties described in Section 2 above, it is specifically understood that, subject to the provisions of Section 6(c), the employment and the nature and situs of services to be rendered shall be subject to the authority of the Chairman, the President or the Board to change the same from time to time and at any time and to provide for the operation of Washington Mutual as specified by applicable banking laws and regulations.

13. Resolution of Disputes. Any dispute arising out of or relating to this Agreement or Employee's employment (or termination of employment) shall be submitted to and resolved by final and binding arbitration as provided in the Binding Arbitration Agreement attached as Exhibit A, whether the claimant is Employee or Washington Mutual. In any dispute in arbitration or court arising out of or relating to this Agreement, the losing party shall pay the prevailing party's reasonable attorneys' fees, costs and expenses.

14. Agreement Not To Solicit Personnel. In consideration for mutual covenants in this Agreement and Employee's access as an employee of the Company or a Subsidiary to employees, contractors and consultants of the Company and Subsidiaries, Employee agrees that, during Employee's employment with the Company or a Subsidiary, and for a period of one year following termination of employment, Employee will not in any manner, directly or indirectly, solicit, encourage, induce, or recruit any person who is then an employee, contractor, or consultant of the Company or a Subsidiary, and whom Employee worked with, supervised, or had access to confidential information about while employed by the Company or a Subsidiary, to seek or accept employment or a contractual or consulting engagement with any business that competes with or provides services comparable to those provided by the Company or a

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Subsidiary. Should Employee breach the agreements set forth in this Section 14 or in Section 15, in addition to any other remedy available to the Company, (a) the Employee shall immediately pay to the Company any payment made pursuant to Section 6(c); (b) pursuant to the relevant award agreements, any option that vested upon a Change in Control ("Option"), or portion of such Option, that remains unexercised shall terminate and cease to be exercisable; (c) pursuant to the relevant award agreements, for any Option, or portion of such Option, already exercised, Employee shall immediately pay to the Company any difference between the fair market value of the Option shares on the date of exercise and the exercise price of such Option shares; and (d) pursuant to the relevant award agreements, Employee will immediately pay to the Company the fair market value as of the Change in Control of any shares of restricted stock that vested upon a Change in Control. The parties agree that, to the extent the restrictions set forth in this Section 14 are found to be unenforceable in any respect, this section shall be construed to be enforceable to the maximum extent permitted by law.

15. Intellectual Property Ownership. In addition, in consideration for mutual covenants in this Agreement, the Company will own all rights to the results of Employee's work, including inventions and other intellectual property developed using equipment, supplies, facilities or trade secret information of the Company or a Subsidiary. It will also own all rights to the results of any other effort of Employee (outside of Employee's performance of Company work) that relate directly to Employee's work or to the Company's or Subsidiaries' business or actual or demonstrably anticipated research or development. Washington Mutual's rights extend to anything that is authored, conceived, invented, written, reduced to practice, improved or made by Employee, alone or jointly with others, during the period of Employee's employment by the Company. To the extent that the results of Employee's work or other effort constitute a "work made for hire" as defined under U.S. copyright law, the copyright shall belong solely to the Company. Otherwise, to the extent that such results are legally protectable, then Employee hereby irrevocably assigns all copyrights, patent rights, and other proprietary rights therein to the Company, and no further action by Employee is required to grant ownership to the Company. Employee will assist in preparing and executing documents, and will take any other steps requested by the Company, to vest, confirm or demonstrate its ownership rights, and Employee will not at any time contest the validity of such rights. Employee understands that the termination of Employee's employment will not terminate or invalidate any of Employee's obligations, or the Company's rights, as described above.

Employee understands that the above commitments are in furtherance of the WaMu Intellectual Property Policy (a copy of which Employee has had an opportunity to review and is also found on wamu.net), which is incorporated herein but not set forth in full due to space limitations. If Employee lives or works in Washington, California, Illinois, or in any other state mentioned in the Invention Notice section of the policy, then the above assignment does not apply to inventions described in the Invention Notice for Employee's state.

16. Miscellaneous.

(a) This Agreement is the entire agreement between the parties and may not be modified or abrogated orally or by course of dealing, but only by another instrument in writing

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duly executed by the parties. This Agreement replaces and supersedes all prior agreements on these subjects that Employee may have with the Company or any Subsidiary, provided that this Agreement shall supplement and shall not supersede any other agreement that Employee has signed in favor of Washington Mutual or any Subsidiary protecting the confidentiality of its confidential information or its interest in intellectual property. All such agreements remain in full force and effect. Employee acknowledges that Employee shall be entitled to change in control benefits, severance benefits or other employment separation benefits only as specifically provided in this Agreement (or, to the extent applicable according to its terms, as provided in the Washington Mutual Severance Plan as in effect from time to time), notwithstanding the terms of any other representation, policy, severance plan, benefit plan or agreement.

(b) Notwithstanding any provision of this Agreement to the contrary, if, at the time of Employee's termination of employment with the Company, 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 Employee 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 Employee's termination of employment with Washington Mutual, or (b) the Employee's death. The provisions of this Section 16(b) shall only apply to the extent required to avoid Employee'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 Employee to incur any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated 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.

(c) This Agreement has been drafted in contemplation of and shall be construed in accordance with and governed by the law of the state of Employee's principal place of employment with the Company.

(d) Employee acknowledges that this Agreement has been drafted by counsel for Washington Mutual, and that Employee has not relied upon such counsel with respect to this Agreement.

(e) If a court or arbitrator of competent jurisdiction or governmental authority declares any term or provision hereof invalid, unenforceable or unacceptable, the remaining terms and provisions hereof shall be unimpaired and the invalid, unenforceable or unacceptable term or provision shall be replaced by a term or provision that is valid, enforceable and acceptable and that comes closest to expressing the intention of the invalid, unenforceable or unacceptable term or provision.

(f) Employee may not assign Employee's rights or delegate Employee's duties under this Agreement.


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(g) The Company may assign its rights and delegate its duties under this Agreement to any Subsidiary or to any purchaser of all or substantially all of Washington Mutual's assets. The transfer of Employee's employment from the Company to any Subsidiary or to the purchaser of all or substantially all of the assets of Washington Mutual shall not be considered a termination of employment, but this Agreement shall run to the benefit of, and be binding upon, the new employer. In the event of a Change in Control, this Agreement shall bind, and run to the benefit of, the successor to Washington Mutual resulting from the Change in Control.

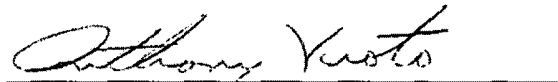
DATED effective as of the 20 day of DECEMBER, 2007.

WASHINGTON MUTUAL:

WASHINGTON MUTUAL, INC.

By 
Daryl D. David
Executive Vice President
Chief Human Resources Officer

EMPLOYEE:


Anthony Vuoto

12/20/07
DATE

EXHIBIT A
BINDING ARBITRATION AGREEMENT

This Binding Arbitration Agreement is a part of, and incorporated into, that certain Change in Control Agreement between the parties dated effective as of the 17th of December, 2007. I, the employee who is a party to the Change in Control Agreement to which this Exhibit is attached, as well as Washington Mutual, agree as follows:

1. Any and all disputes that involve or relate in any way to my employment (or termination of employment) with Washington Mutual shall be submitted to and resolved by final and binding arbitration.

2. Washington Mutual and I understand that, by entering into this Binding Arbitration Agreement, we are each waiving any right we may have to file a lawsuit or other civil action or proceeding relating to my employment with Washington Mutual, and are waiving any right we may have to resolve employment disputes through trial by jury. We agree that arbitration shall be in lieu of any and all lawsuits or other civil legal proceedings relating to my employment.

3. This Binding Arbitration Agreement is intended to cover all civil claims that involve or relate in any way to my employment (or termination of employment) with Washington Mutual, including, but not limited to, claims of employment discrimination or harassment on the basis of race, sex, age, religion, color, national origin, sexual orientation, disability and veteran status (including claims under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act ("ERISA"), the Fair Labor Standards Act, the Immigration Reform and Control Act and any other local, state or federal law concerning employment or employment discrimination), claims based on violation of public policy or statute, and claims against individuals or entities employed by, acting on behalf of, or affiliated with Washington Mutual. However, ERISA plan benefit issues and claims for workers compensation or for unemployment compensation benefits are not covered by this Binding Arbitration Agreement. The statutes of limitations otherwise applicable under law shall apply to all claims made in the arbitration.

4. I understand and agree that, despite anything in this Binding Arbitration Agreement to the contrary, I am not waiving the right to file or institute a complaint or charge with any government agency authorized to investigate or resolve employment-related matters, including but not limited to the United States Equal Employment Opportunity Commission, the Department of Labor, the Occupational Safety and Health Administration, the National Labor Relations Board, the Office of Special Counsel for Unfair Immigration-Related Employment Practices or other appropriate immigration authorities, and any other comparable local, state or federal agency. I also understand and agree that, despite anything in this Binding Arbitration Agreement to the contrary, either party may request a court to issue such temporary or interim relief (including temporary restraining orders and preliminary injunctions) as may be appropriate, either before or after arbitration is commenced. The temporary or interim relief may remain in

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effect pending the outcome of arbitration. No such request shall be a waiver of the right to submit any dispute to arbitration.

5. This Binding Arbitration Agreement does not constitute an employment contract, require discharge only for cause, or require any particular corrective action or discharge procedures.

6. Arbitration under this Binding Arbitration Agreement shall be conducted before a single arbitrator and shall take place within the state where I am currently employed by Washington Mutual, or where I was so employed at the time of termination.

7. In order to initiate arbitration, Washington Mutual or I must notify the other party in writing of its decision to initiate arbitration, either by personal delivery or certified mail. The notification should include the following information about the employee: name, home address, work address, work and home phone number, and the following information about the occurrence: date, location, nature of the claims or dispute, facts upon which the claims are made, and remedy requested. Any notice of arbitration initiated by Washington Mutual shall be sent to my last known residence address as reflected in my personnel file at Washington Mutual. Notice of arbitration initiated by me shall be sent to Washington Mutual's Chief Legal Officer. The Chief Legal Officer's address is currently Washington Mutual, 1301 Second Avenue, WMC 3501, Seattle, Washington 98101.

8. Within thirty (30) days after receipt of notice of arbitration, Washington Mutual and I will attempt to agree upon a mutually acceptable arbitrator. If Washington Mutual and I are unable to agree upon an arbitrator, we will submit the dispute to the American Arbitration Association ("AAA"). If AAA is, for some reason, unable or unwilling to accept the matter, we will submit the matter to a comparable arbitration service. The arbitration shall be conducted in accordance with the laws of the state in which the arbitration is conducted and the rules and requirements of the arbitration service being utilized, to the extent that such rules and requirements do not conflict with the terms of this Binding Arbitration Agreement.

9. At the request of either Washington Mutual or myself, the arbitrator will schedule a pre-hearing conference to, among other things, agree on procedural matters, obtain stipulations, and attempt to narrow the issues.

10. During the arbitration process, Washington Mutual and I may each make a written demand on the other for a list of witnesses, including experts, to be called and/or copies of documents to be introduced at the hearing. The demand must be served at least thirty (30) days prior to the hearing. The list and copies of documents must be delivered within twenty-five (25) days of service of the demand.

11. Each party shall be entitled to conduct a limited amount of discovery prior to the arbitration hearing. Each party may take a maximum of two (2) depositions. Each party may apply to the arbitrator for further discovery. Such further discovery may, in the discretion of the arbitrator, be awarded upon a showing of sufficient cause. If any documents to be produced or

requested for production contain or refer to matters that are private, proprietary and/or confidential, the arbitrator shall make an appropriate protective order prohibiting or limiting use and disclosure of such documents and providing for return of documents produced after the arbitration is concluded.

12. Each party may file a brief with the arbitrator. Each brief must be served on the arbitrator and the other party at least five (5) working days prior to the hearing and, if not timely served, must be disregarded by the arbitrator. The brief shall specify the facts the party intends to prove, analyze the applicable law or policy, and specify the remedy sought. At the close of the hearing, each party shall be given leave to file a post-hearing brief. The time for filing the post-hearing brief shall be set by the arbitrator.

13. I understand that, at my expense, I have the right to hire an attorney to represent me in the arbitration, and Washington Mutual has that same right. I also understand that all parties shall have the right to present evidence at the arbitration, through testimony and documents, and to cross-examine witnesses called by another party. Each party agrees to pay the fees of any witnesses testifying at that party's request. Each party also agrees to pay the cost of any stenographic record of the arbitration hearing should that party request any such record. The requesting party must notify the other of such arrangements at least two (2) working days in advance of the hearing.

14. Any postponement or cancellation fee imposed by the arbitration service will be paid by the party requesting the postponement or cancellation. During the time the arbitration proceedings are ongoing, Washington Mutual will advance any required administrative or arbitrator's fees. Each party will pay its own witness fees.

15. At the conclusion of the arbitration, each party agrees to promptly pay any arbitration award against it.

16. We agree that the decision of the arbitrator shall be final and binding on all parties and shall be the exclusive remedy of the parties. The arbitrator shall issue a written and signed statement of the basis of his or her decision, including findings of fact and conclusions of law. In making the decision and award, if any, the arbitrator shall apply applicable substantive law. The arbitrator may only award a remedy that would have been available in court. The decision and award, if any, shall be consistent with the terms of this Binding Arbitration Agreement and shall include an allocation of the costs of the arbitration proceeding between the parties.

17. This Binding Arbitration Agreement may be enforced by a court of competent jurisdiction through the filing of a petition to compel arbitration, or otherwise. The decision and award of the arbitrator may also be judicially enforced pursuant to applicable law.

18. Because of the interstate nature of Washington Mutual's business, this Binding Arbitration Agreement is governed by the Federal Arbitration Act, 9 U.S.C. §1 et seq. (the "FAA"). The provisions of the FAA (and to the extent not preempted by the FAA, the provisions of the laws of the state of my principal place of employment with Washington Mutual that

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generally apply to commercial arbitration agreements, such as provisions granting stays of court actions pending arbitration) are incorporated into this Binding Arbitration Agreement to the extent not inconsistent with the other terms of this Binding Arbitration Agreement.

19. We agree that, if any provision of this Binding Arbitration Agreement is found to be unenforceable to any extent or in violation of any statute, rule, regulation or common law, it will not affect the enforceability of the remaining provisions and the court shall enforce the affected provision and all remaining provisions to the fullest extent permitted by law.

20. This Binding Arbitration Agreement shall remain in full force and effect at all times during and subsequent to my employment with Washington Mutual, or any successor in interest to Washington Mutual.

RECEIVED
JAN 22 2008

Exhibit 4

WAMU EXECUTIVE OFFICER SEVERANCE PLAN
Effective as of April 1, 2008

PREAMBLE

Washington Mutual, Inc. has established the WaMu Executive Officer Severance Plan (the "Plan") with the intention of providing benefits to Eligible Executives (as defined herein) of the Company (as defined herein) in the event of termination of their employment by the Company without "Cause." This document sets forth the basic terms that are applicable to all eligible participants. The Plan covers a select group of management or highly compensated employees and is intended to be a top-hat welfare benefit plan governed by ERISA.

SECTION 1. DEFINITIONS

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 "Section" or "Sections" in this Plan shall refer to a Section or Sections of this Plan (i.e., and not to a statutory provision) 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. It is the intention of the Company that the Plan be governed the provisions of the Code and ERISA and that all its provisions shall be construed to that result.

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 or other non-business day, may be performed on the next following business day.

1.1 Base Pay. Base Pay means the Eligible Employee's annual base salary in the year in which termination occurs.

1.2 Cause. Cause means the termination of the Eligible Executive's employment by the Company in connection with any of the following events: (i) the Eligible Executive violates the Company's policies on drug or alcohol abuse on a recurring basis, (ii) the Eligible Executive has been convicted of any felony or of a misdemeanor involving moral turpitude (including forgery, fraud, theft or embezzlement), or the Eligible Executive is convicted or enters into a pretrial diversion or similar program in connection with the prosecution for an offense involving fraud, dishonesty, breach of trust or money laundering, or (iii) the Eligible Executive has engaged in dishonesty, fraud, destruction or theft of property of the Company, physical attack on another employee, willful malfeasance or gross negligence in the performance of his or her duties, or misconduct materially injurious to the Company.

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

1.4 Company. Washington Mutual, Inc. and its majority-owned subsidiaries and affiliates.

1.5 Eligible Executive. Each employee of the Company who is (i) classified as either a Level 2 or Level 3 executive, and (ii) not a party to an individual employment agreement with the Company that provides for any form of separation payment or severance benefit upon a termination unrelated to a change of control.

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

1.7 Participant. An Eligible Executive who becomes eligible for benefits under this Plan by satisfying the requirements of Section 2.

1.8 Plan. This WaMu Executive Officer Severance Plan, as amended from time to time.

1.9 Severance Agreement. A written agreement provided by the Company by which a Participant releases any claims he or she might have against the Company in exchange for the benefits set forth in Section 3.1.

1.10 Termination Date. The last active day of employment. For these purposes, a Participant will be deemed to have terminated on the last day of employment at 5:00 p.m. in the Participant's time zone.

SECTION 2. ELIGIBILITY

An Eligible Executive will be eligible for benefits under Section 3 only if his or her employment is terminated by the Company without Cause. Benefits shall not be payable under this Plan in connection with the Eligible Executive's termination of employment from the Company for any other reason (including, without limitation, due to the Eligible Executive's death, disability or resignation). In addition, notwithstanding any other provision of the Plan to the contrary, an Eligible Executive shall not be entitled to benefits under this Plan if he or she satisfies the requirements to receive severance benefits under (a) an individual change in control agreement with the Company or (b) an employment agreement that provides separation payments or severance benefits following a change in control.

SECTION 3. BENEFITS

3.1 In General. If an Eligible Executive is eligible for severance benefits under this Plan pursuant to Section 2, he or she shall be paid a cash severance benefit equal to one and one-half (1-1/2) multiplied by the sum of (a) the Eligible Executive's Base Pay, and (b) the higher of the Eligible Executive's unadjusted target bonus for the year in which the termination of employment occurs or the Eligible Executive's actual annual bonus for the immediately-preceding year (the "Severance Payment"). The Severance Payment shall be paid in a lump sum

upon the effectiveness of the Severance Agreement. State and federal taxes will be withheld from the payment as required by law.

3.2 Offset. The Severance Payment shall be offset dollar-for-dollar by any severance payment payable to the Eligible Executive under any other plan, program or arrangement of the Company.

3.3 Severance Agreement. The Severance Payment shall in all events be subject to the Eligible Executive entering into and not revoking a Severance Agreement.

SECTION 4. ADMINISTRATION COMMITTEE

4.1 Plan Administrator. The Plan Administrator shall be the Human Resources Committee (the "Committee"). The Administrator may delegate any of its duties, responsibilities, or authority to one or more person (by name or by title), committee, or unrelated service provider. The Plan Administrator has absolute discretion to make all decisions under this Plan, including making determinations about eligibility for and the amounts of benefits payable under this Plan and interpreting all provisions of this plan. All decisions of the Plan Administrator are final, binding and conclusive.

4.2 Powers of the Administration Committee. The Committee shall have the following powers and duties:

(a) To adopt rules of procedure (including distribution procedures) necessary for the administration of the Plan provided the rules are not inconsistent with the terms of the Plan;

(b) To direct the administration of the Plan in accordance with the provisions herein set forth;

(c) To interpret the provisions of the Plan and determine all questions with respect to rights of Participants under the Plan, including but not limited to rights of eligibility of a Participant to participate in the Plan, and the value of a Participant's benefit.

(d) To interpret and enforce the terms of the Plan and the rules 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 Company with information which the Company may require for tax or other purposes;

(g) To engage the service of counsel (who may, if appropriate, be counsel for the Company) and agents whom it may deem advisable to assist it with the performance of its duties;

(h) To receive from the Company and from Participants such information as shall be necessary for the proper administration of the Plan; and

(i) To interpret and construe the terms of the Plan in its discretion.

The Committee shall have no power to add to, subtract from, or modify any of the terms of the Plan, or to change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for a benefit under the Plan provided that the Committee may amend the Plan to comply with changes in relevant laws, to provide for more efficient administration or other changes it deems appropriate as long as the changes do not materially increase the obligation or liabilities of the Company. Nonetheless, the Committee shall have absolute discretion in the exercise of its powers in this Plan. 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.

SECTION 5. COMPANY ADMINISTRATIVE PROVISIONS

5.1 Amendment or Termination. The Plan may be amended or terminated by the Company or the Human Resources Committee (for certain enumerated reasons) at any time when, in its judgment, such amendment or termination is necessary or desirable. No such termination or amendment shall affect the rights of any individual who is then entitled to receive a Severance Payment at the time of such amendment or termination.

Severance Payments are not intended to be a vested right. The Committee reserves the right to interpret the Plan, prescribe, amend and rescind rules relating to it, determine the terms and provisions of the Severance Payments and make all other determinations it deems necessary or advisable for the administration of the Plan. The determination of the Committee on all matters regarding the Plan shall be conclusive.

5.2 Claim Procedure.

(a) In General. If a Participant's claim for benefits is denied, the Plan Administrator will furnish written notice of denial to the Participant making the claim (the "Claimant") within sixty (60) days of the date the claim is received, unless special circumstances require an extension of time for processing the claim. This extension will not exceed sixty (60) days, and the Claimant must receive written notice stating the grounds for the extension and the length of the extension within the initial sixty (60) day review period. If the Plan Administrator does not provide written notice, the Claimant may deem the claim denied and seek review according to the appeals procedures set forth below.

(b) Denial Notice. The notice of denial to the Claimant shall state:

(i) the specific reasons for the denial;

(ii). specific references to pertinent provisions of the Plan upon which the denial was based;

(iii). a description of any additional material or information needed for the Claimant to perfect his or her claim and an explanation of why the material or information is needed; and

(iv). a statement that the Claimant may request a review upon written application to the Plan Administrator, review pertinent Plan documents, and submit issues and comments in writing, and that any appeal that the Claimant wishes to make of the adverse determination must be in writing to the Plan Administrator within ninety (90) days after the Claimant receives notice of denial of benefits.

The notice of denial of benefits shall identify the name and address of the Administrator to which the Claimant may forward an appeal. The notice may state that failure to appeal the action to the Plan Administrator in writing within the ninety (90) day period will render the determination final, binding and conclusive.

5.3 Appeal Procedure. If the Claimant appeals to the Administrator, the Claimant or his or her authorized representative may submit in writing whatever issues and comments he or she believes to be pertinent to the appeal. The Administrator shall reexamine all facts related to the appeal and make a final determination about whether the denial of benefits is justified under the circumstances. The Administrator shall advise the Claimant in writing of:

- (a) its decision on appeal;
- (b) The specific reasons for the decision; and
- (c) The specific provisions of the Plan upon which the decision is based.

Notice of the Administrator's decision shall be given within sixty (60) days of the Claimant's written request for review, unless additional time is required due to special circumstances. In no event shall the Administrator render a decision on an appeal later than one hundred twenty (120) days after receiving a request for a review.

SECTION 6. MISCELLANEOUS PROVISIONS

6.1 Severance Agreement. The Severance Agreement will not be valid unless it is signed and returned after the date of the Eligible Executive's termination of employment without Cause and within 21 business days or other time period prescribed by the Administrator. The Severance Agreement will be generally effective for any claims against the Company through the Termination Date, but will not cover any claims or appeal processes set forth in any ERISA plans sponsored by the Company. Failure to sign and return the Severance Agreement within

twenty one (21) business days will result in Participant being ineligible for Severance Payments under the Plan.

6.2 Governing Law. To the extent not preempted by ERISA, the terms of the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington, including all matters of construction, validity and performance.

6.3 Miscellaneous Provisions.

(a) Anti-Alienation. Severance Payments and benefits under the Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge prior to actual receipt thereof by an Participant; and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge prior to such receipt shall be void; and the Company shall not be liable in any manner for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any Severance Payments under the Plan.

(b) Employment at Will. Nothing contained herein shall confer upon any Participant the right to be retained in the service of the Company or an affiliate nor limit the right of the Company or an affiliate to discharge or otherwise deal with any Participant with regard to the existence of the Plan.

(c) Unfunded. The Plan shall at all times be entirely unfunded and no provision shall at any time be made with respect to segregating assets of the Company or an affiliate for payment of any Severance Payment hereunder. No Participant or any other person shall have any interest in any particular assets of the Company or an affiliate by reason of the right to receive Severance Payments under the Plan and any such Participant or any other person shall have only the rights of a general unsecured creditor of the Company or an affiliate with respect to any rights under the Plan.

(d) Section 409A. Notwithstanding any provision of this Plan to the contrary, if, at the time of Participant's termination of employment with the Company, 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 a Participant pursuant to this Plan would constitute deferred compensation subject to Section 409A, no such payment or benefit will be provided under this Plan until the earlier of (a) the date that is six (6) months following Participant's termination of employment with the Company, or (b) the Participant's death. The provisions of this Section 6.3(d) shall only apply to the extent required to avoid Participant's incurring 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 Plan would cause Participant to incur any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated thereunder, the Company 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.

Pursuant to the authority delegated to me by the Human Resources Committee, this Plan is hereby adopted effective as of the date specified above:

Daryl D. David
Executive Vice President
Chief Human Resources Officer
Washington Mutual, Inc.

Exhibit 5

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 6

WASHINGTON MUTUAL, INC.
EXECUTIVE TARGET RETIREMENT INCOME PLAN

Effective January 1, 2004

WASHINGTON MUTUAL, INC.

EXECUTIVE TARGET RETIREMENT INCOME PLAN

Effective January 1, 2004

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**WASHINGTON MUTUAL, INC.
EXECUTIVE TARGET RETIREMENT INCOME PLAN**

Effective January 1, 2004

PREAMBLE

The Executive Target Retirement Income Plan (the "Plan") was adopted by the Human Resources Committee in order to attract and retain top executive talent. The Plan covers level 1 through 3 executives and is designed to provide retirement income of approximately 55% of final average pay for an executive with twenty-five years of service. The Plan uses a formula that provides 6.5 times the average final five years salary and bonus, adjusted to the extent executive service is less than 25 years, and offset by balances under other retirement plans. The balances vest over a five year period based on executive service beginning on or after January 1, 2004.

Effective January 1, 2004, participants in this Plan are not eligible for benefit accruals under the Supplemental Executive Retirement Accumulation Plan (the "SERAP").

**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 Nature of 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 upon termination 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 actual bonus paid under the Leadership Bonus Plan during the Plan Year. 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 Human Resources 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 Change in Control. For purposes of this Plan, Change in Control shall have the same meaning ascribed to that term in the Participant's Employment Agreement.

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

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

2.7 Committee. The Plan Administration Committee, as it is appointed from time to time by the Human Resources Committee of the Board of Directors.

2.8 Compensation. An eligible Employee's base pay and actual Annual Leadership Bonus for the Plan Year. Compensation shall also include the portion of a Participant's Annual Leadership Bonus, if any, that has been exchanged for stock options under the Incentive Target Replacement Option Plan. For purposes of this section, an Eligible Employee's base pay will be the base pay established for the Plan Year by the Company's Human Resources Committee. For Employees who first become eligible during a Plan Year, base pay shall be the base pay set forth in the Eligible Employee's offer letter.

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

2.10 Eligible Employee. Any active Employee in level 1, 2 or 3. An Employee is considered active only if he is on the company payroll and is either working or on paid leave or vacation. Notwithstanding the preceding the Committee may, in its discretion, designate any Employee as eligible or ineligible.

2.11 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.

2.12 Employer. Washington Mutual, Inc., and any Related Employer from time to time designated by the Committee as an Employer, whether such designation is express or implied.

2.13 Entry Dates. Eligible Employees will enter the plan on the later of: (1) January 1, 2004; (2) date of hire; or (3) date they became a level 1, 2 or 3 employee.

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

2.15 Executive Service. All service provided while the Employee was an Employee in level 1, 2 or 3, served on the Company's Executive Committee, or had a title of Executive Vice President of Washington Mutual, Inc. For purposes of Section 3.1, Executive Service shall be credited in terms of months, and any Participant who provides services for one day in any month shall receive credit for a full month of service in that month. For purposes of Section 3.4, Executive Service shall be credited in terms of full years, and only full years of Executive Service after December 31, 2003 shall be counted.

2.16 Final Average Pay. For purposes of determining benefits under Article 3, Final Average Pay will be calculated by dividing the Participant's Compensation for the last five Plan Years by five. For purposes of this calculation, Plan Years in which a Participant was no longer an Eligible Employee as of the end of the Plan Year ("Partial Years") shall not be counted. If a Participant has less than five Plan Years which are not Partial Years ("Full Years") then Final Average Pay shall be calculated by dividing Compensation for all Full Years by the number of such Full Years.

2.17 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.

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

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

2.20 Pension Plan. The WaMu Pension Plan.

2.21 Plan. The Washington Mutual, Inc. Executive Target Retirement Income Plan as embodied herein and as amended from time to time.

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

2.23 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.

2.24 Retirement Plans. The sources of retirement income provided by or contributed to on behalf of Participants by the Company or a Related Employer, including but not limited to the WaMu Pension Plan, the WaMu Savings Plan, the Washington Mutual, Inc. Supplemental Employees' Retirement Plan, and the Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan.

2.25 Vested Percentage. The percentage determined under Section 3.4.

End of Article II

**ARTICLE III
BENEFITS**

3.1 Amount of Benefit. Upon termination of employment, a Participants benefit will be calculated as follows:

$$\left(\left(6.5 \times \frac{\text{Final Average Pay}}{\text{Executive Service}} \times \frac{\text{Executive Service}}{25} \right) - \text{Offset Balances} \right) \times \text{Vested Percentage}$$

3.2 Participant's Accounts. Upon termination of employment the Committee shall establish for each Participant one or more Accounts, as appropriate, to which shall be allocated the proper benefit and interest accruals hereunder, less the distributions therefrom. Upon termination, the Committee shall initially credit to each Participant's Account, the benefit set forth in Section 3.1.

3.3 Offset Balances. A Participant's benefit under this Plan shall be reduced by the vested balances in the following accounts and plans:

| Plan | Account |
|---|---|
| WaMu Savings | Employer Matching Contribution Profit Sharing Contribution |
| WaMu Pension | Hypothetical Cash Balance |
| Supplemental Employees' Retirement Plan | All |
| Supplemental Executive Retirement Accumulation Plan | All |

Balances will be established as of the most recently completed month before termination of employment.

3.4 Vested Percentage. A Participants vested Percentage shall be determined using the following table, considering only full years of Executive Service:

| Full Years of Executive Service | Vested Percentage |
|---------------------------------|-------------------|
| Fewer than 1 | 0% |
| 1 | 20% |
| 2 | 40% |
| 3 | 60% |
| 4 | 80% |
| 5 or more | 100% |

3.5 Upon Change in Control. Upon a Change in Control a Participant will be credited with additional years of Executive Service (either 2 or 3) equal to the multiplier used to calculate the payment amount upon termination after a Change in Control as set forth in the Participant's Employment Agreement.

3.6 Interest Credited to Accounts. Upon termination of employment, Participants who elect to receive payment in any form other than a lump sum shall be credited with interest on the balance in their account. 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 debt offering from at least one rationally 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.

End of Article III

**ARTICLE IV
PAYMENT OF BENEFITS**

4.1. Payment Commencement and Automatic Form of Payment. In the absence of any election set forth in Section 4.2, a Participant shall receive payment of the nonforfeitable balance of his Accounts as a lump sum, commencing as soon as administratively possible after termination of employment with the Company. However, a Participant may instead elect for payments to be made pursuant to Section 4.2, provided that the balance of his Accounts exceeds \$500,000 at the time of termination. 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. Elective Form of Payment. Notwithstanding the provisions of Section 4.1, a Participant may, make an irrevocable election for payments to be made in substantially equal installments paid over a period of up to 20 years, each such payment to be recalculated for interest that is credited on the unpaid Account balance, provided that the Participant makes such an election at least 12 months prior to the payment commencement date. The Participant's election under this Section must be made prior to the time that payments would otherwise commence and at least 12 months prior to termination of employment with the Company and all Related Employers.

4.3. Dishonesty. Notwithstanding any provisions to the contrary, the Account of a Participant who has engaged in dishonesty shall be completely forfeited. For this purpose, dishonesty means that the Participant has engaged in acts of fraud, embezzlement, theft or any other crime of moral turpitude or has otherwise been dishonest in his or her 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.

4.4. Upon Death of Participant. Upon the death of a Participant, his vested Account 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 \$500,000. If his balance immediately after his death is \$500,000 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 Participant, or Beneficiary shall be made to the recipient entitled thereto in person or upon such recipient's personal receipt, 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 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 Committee or appoint a successor committee at any time. If the Committee ceases to exist or is removed without the appointment of a Retirement committee, the Company shall function as the 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. The Committee may, in its discretion, adopt such policies and rules as it deems appropriate with respect to qualified domestic relations orders, but in no case shall such an order provide for payment to a Participant’s spouse if the Participant is not entitled to a distribution under the terms of this Plan.

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 Human Resources Committee, provided that no such amendment may reduce the Participant's Benefit under Section 3.1 as of the effective date of the amendment. All amendments shall be in writing and shall state the effective date. Notwithstanding the foregoing, upon a Change in Control, no amendment of this Plan by the Company or its successor shall have the effect of reducing a Participant's Benefit hereunder, except that the Plan may be amended to add to the list of plans that are part of the offset under Section 3.3 any plans that Participants become eligible for on or after the date of the Change in Control.

7.2 Termination. Upon termination of the Plan, the Company shall pay all benefits credited to Participants pursuant to Section 4.1.

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 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 Committee shall operate as a complete discharge of all obligations of the Employer, the Committee and the Human Resources 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 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 absence, reemployment, and Compensation will be conclusive on all persons, unless determined by the 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 mail, 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 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 __, 2005.

WASHINGTON MUTUAL, INC.

By: _____
Its: Executive Vice President – Human Resources

**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 18, 2013 (the "Motion"), of Claimant Anthony Vuoto ("Claimant") for entry of an order (1) granting leave to amend his claim no. 997 to the extent necessary in light of the arguments advanced in the Eighty-Fourth Omnibus (Substantive) Objection to Claims (the "Eighty-Fourth Objection") [Docket No. 10677] 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") to seek an additional theory of recovery under the Executive Officer Severance Plan (the "EOSP"), to include a claim under the WMI Executive Target Retirement Income Plan (the "ETRIP"), and to restate his claim for contractual benefits under his WMI Change in Control Agreement (the "CIC Agreement") and (2) reinstating his claim no. 159 with respect to benefits under the WMI Supplemental Executive Retirement Accumulation Plan (the "SERAP"), and vacating the Court's prior order disallowing the claim [Docket No. 5818] (the "Prior Order"), 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. Claimant Anthony Vuoto is hereby granted leave to file an amended proof of claim (1) to include an alternate claim for compensation under the EOSP, (2) to add a claim for benefits arising under the ETRIP, and (3) to restate the amount of his claim under the CIC Agreement to include certain components of compensation that were inadvertently omitted or improperly calculated in his Original Claim and to include other contractual benefits under the CIC Agreement, all as set forth in the Motion, within 15 days of the entry of this Order;
3. Proof of Claim No. 159 is hereby reinstated;
4. The portion of the Court's Prior Order of November 9, 2010 [Docket No. 5818] disallowing Proof of Claim No. 159 is hereby vacated;
5. Claimant's amended proof of claim will relate back to the bar date established in these cases, March 31, 2009;
6. WMI Liquidating Trust may file an objection (the "Objection") to the amended proof of claim solely with respect to (1) any alternate claims for severance benefits under the EOSP, (2) any restatement of the calculation of the benefits owed to him under the CIC Agreement, or (3) any claims for unpaid SERAP or ETRIP benefits, unless otherwise agreed to by the parties or ordered by the Court, within 30 days of the entry of this Order;

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

8. WMI Liquidating Trust is granted leave to bring additional adversary proceedings related solely to the EOSP claim within 30 days of the entry of this Order;

9. Claimant hereby waives 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 EOSP claim.

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

11. 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 18th day of April, 2013, I caused copies of the foregoing *Motion of Anthony Vuoto for an Order (1) Granting Amendment to Proofs of Claim Regarding Additional Theories of Recovery Based Upon the WAMU Executive Officer Severance Plan and the WMI Executive Target Retirement Income Plan, and (2) Reinstating Claim No. 159 and Vacating Order Disallowing Claim* to be served on the parties listed below via CM/ECF and/or as otherwise indicated:

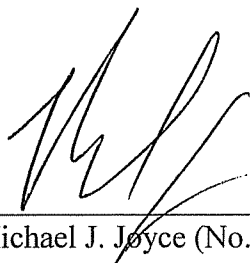
Amanda R. Steele, Esquire
Richards, Layton and Finger
920 N. King Street
Wilmington, DE 19801

VIA FIRST CLASS MAIL

Brian S. Rosen, Esquire
Lawrence J. Baer, Esquire
Weil, Gotshal & Manges LLP
767 Fifth Avenue
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Christopher L. Boyd, Esquire
Patrick M. Mott, Esquire
Akin Gump Strauss Hauer & Feld LLP
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Julio C. Gurdian, Esquire
Weil, Gotshal & Manges LLP
1395 Brickell Avenue
Suite 1200
Miami, Florida 33131



Michael J. Joyce (No. 4563)