

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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 :
In re: : **Chapter 11**
 :
WASHINGTON MUTUAL, INC., et al.,¹ : **Case No. 08-12229 (MFW)**
 :
Debtors. : **(Jointly Administered)**
 :
 -----X **Re: Docket Nos. 11194 &**

ORDER APPROVING STIPULATION AND AGREEMENT BETWEEN WMI LIQUIDATING TRUST AND PATRICIA ROBERTS, PARTIALLY REINSTATING PROOF OF CLAIM NO. 566 AND SUBJECTING SUCH CLAIM TO THE SEVENTY-NINTH OMNIBUS OBJECTION TO CLAIMS

WMI Liquidating Trust (“WMILT”), as successor in interest to Washington Mutual, Inc. (“WMI”) and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the “Debtors”), and the Patricia Roberts (together with WMILT, the “Parties”), having entered into that certain *Stipulation and Agreement Between WMI Liquidating Trust and Patricia Roberts, Partially Reinstating Proof of Claim No. 566 and Subjecting Such Claim to the Seventy-Ninth Omnibus Objection to Claims* (the “Stipulation”), a copy of which is attached hereto as Exhibit 1; and the Court having reviewed the Stipulation; and the Court having determined that good cause has been demonstrated for approving the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Stipulation is APPROVED.
2. The Parties are hereby authorized to take any and all actions reasonably necessary to effectuate the terms of the Stipulation.

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



3. The Court shall retain jurisdiction over the implementation and enforcement of the Stipulation and this Order.

Dated: May 13, 2013
Wilmington, Delaware



THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1
(Stipulation)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In re : Chapter 11
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 WASHINGTON MUTUAL, INC., et al.,¹ : Case No. 08-12229 (MFW)
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 Debtors. : (Jointly Administered)
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**STIPULATION AND AGREEMENT BETWEEN
WMI LIQUIDATING TRUST AND PATRICIA ROBERTS,
PARTIALLY REINSTATING PROOF OF CLAIM NO. 566 AND SUBJECTING
SUCH CLAIM TO THE SEVENTY-NINTH OMNIBUS OBJECTION TO CLAIMS**

WMI Liquidating Trust ("WMILT"), as successor in interest to Washington Mutual, Inc. ("WMI") and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the "Debtors"), and Patricia Roberts ("Claimant" and, together with WMILT, the "Parties") hereby enter into this stipulation (the "Stipulation"), and agree as follows:

RECITALS

A. On September 26, 2008 (the "Commencement Date"), each of the Debtors commenced a case (collectively, the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court").

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

B. Prior to the Commencement Date, WMI was a savings and loan holding company that owned, among other assets, Washington Mutual Bank ("WMB") and such bank's subsidiaries.

C. On September 25, 2008, the Director of the Office of Thrift Supervision, by order number 2008-36, appointed the Federal Deposit Insurance Corporation as receiver for WMB (the "FDIC") and advised that the receiver was immediately taking possession of WMB. Immediately after its appointment as receiver, the FDIC sold substantially all of the assets of WMB to JPMorgan Chase Bank, N.A., pursuant to that certain *Purchase and Assumption Agreement (Whole Bank)*, dated as of September 25, 2008.

D. By order, dated January 30, 2009, the Court established March 31, 2009 as the deadline for filing proofs of claim against the Debtors in these Chapter 11 Cases.

E. On December 30, 2008, Claimant filed a proof of claim against WMI's chapter 11 estate, which claim was assigned claim number 566 ("Claim 566"), seeking (i) \$135,000.00 in "change in control" payments allegedly owed pursuant to a retention bonus agreement (the "Retention Bonus Component"), and (ii) \$49,306.62 in payments pursuant to that certain Washington Mutual, Inc. Supplemental Executive Retirement Accumulation Plan (the "SERAP Component").

F. On March 20, 2009, Claimant filed another proof of claim against WMI's chapter 11 estate, which claim was assigned claim number 2295 ("Claim 2295") and, together with Claim 566, the "Claims"), seeking \$644,836.00 in "change in control" payments allegedly owed pursuant to an employment agreement entered into between Claimant and WMB.

G. 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* [D.I. 9178] (as

modified, the "Plan").² By order, dated February 23, 2012, (the "Confirmation Order") [D.I. 9759], the Court confirmed the Plan and, upon satisfaction or waiver of the conditions described in the Plan, the transactions contemplated by the Plan were substantially consummated on March 19, 2012.

H. On June 26, 2009, the Debtors filed the *Debtors' Sixth Omnibus Objection (Substantive) to Claims* [D.I.1234] (the "Sixth Omnibus Objection"), pursuant to which the Debtors objected to, among other claims, Claim 2295, seeking to disallow such claim in its entirety.

I. In accordance with the notice sent with the Sixth Omnibus Objection, responses to the Sixth Omnibus Objection and the relief requested therein, if any, were required to be filed with the Court and served upon the Debtors on or prior to July 6, 2009. As of such date, the Claimant did not interpose a response to the Sixth Omnibus Objection.

J. Following confirmation and consummation of the Plan, on May 11, 2012, WMILT filed a certification of counsel seeking, among other things, the entry of an order disallowing the claims of those claimants who failed to file a response to the Sixth Omnibus Objection as of such date, including Claim 2295. *See* D.I. 10163. On May 16, 2012, the Court entered the *Fourth Order Granting Debtors' Sixth Omnibus Objection to Claim* [D.I. 10181, as corrected by D.I. 10226] (the "May Order"), disallowing all of the claims of non-responding claimants on the Sixth Omnibus Objection, including Claim 2295.

K. On August 15, 2012, WMILT, as successor to the Debtors, filed the *WMI Liquidating Trust's Seventy-Ninth Omnibus (Substantive) Objection to Claims* (the "Seventy-

² Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Ninth Omnibus Objection") [D.I. 10504], pursuant to which WMILT objected to, among other claims, Claim 566, seeking to disallow the Retention Bonus Component of Claim 566 in full and to reduce and allow Claim 566 in the amount of \$48,751.12, representing the amount of the SERAP Component as set forth in the Debtors' books and records (the "Allowed SERAP Component").

L. In accordance with the notice filed with the Seventy-Ninth Omnibus Objection, responses to the Seventy-Ninth Omnibus Objection and the relief requested therein, if any, were required to be filed with the Court and served upon the Debtors on or prior to September 4, 2012. As of such date, the Claimant did not interpose a response to the Seventy-Ninth Omnibus Objection.

M. On September 14, 2012, WMILT filed a certification of counsel seeking, among other things, the entry of an order disallowing or reducing and allowing the claims of those claimants who failed to file a response to the Seventy-Ninth Omnibus Objection as of such date, including Claim 566.

N. On September 19, 2012, the Court entered the *First Order Granting WMI Liquidating Trust's Seventy-Ninth Omnibus (Substantive) Objection to Claims* [D.I. 10692] (the "September Order"), reducing and allowing Claim 566 in the amount of \$48,751.12, representing the amount of the Allowed SERAP Component.

O. By letter, dated September 27, 2012, and filed with the Court on October 2, 2012, Claimant filed a late response to the Seventy-Ninth Omnibus Objection (the "Response") [D.I. 10723], which response requested that the Court (i) overrule the Seventy-Ninth Omnibus Objection for the reasons cited in the response of Carey Brennan to WMILT's Seventy-Ninth Omnibus Objection [D.I. 10553], and (ii) reinstate both of the Claims on the basis that Claimant

failed to receive timely notice of the Seventy-Ninth Omnibus Objection.

P. On or around November 1, 2012, Claimant received payment in full on account of her prepetition Allowed SERAP Component, as reduced and allowed by the September Order, in addition to a partial payment on account of accrued postpetition interest.

Q. On October 15, 2012, the Court entered the *Agreed Order Establishing Procedures and Deadlines Concerning Hearing on Employee Claims and Discovery In Connection Therewith*, dated October 15, 2012 [D.I. 10777], as amended by that certain *Agreed Order Amending Scheduling Orders with Respect to Employee Claims Hearing and Adversary Proceedings*, dated January 8, 2013 [D.I. 10975], as further modified by that certain *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*, dated April 3, 2013 [D.I. 11191] (collectively, the "Scheduling Order"), which Scheduling Order set forth certain deadlines and procedures with respect to a hearing on the remaining employee claims in connection with the Seventy-Ninth Omnibus Objection, among other objections to employee claims. Because the Claims had previously been disallowed or reduced and allowed, the Claimant was not included on the Scheduling Order.

R. On or around December 10, 2012, notwithstanding that Claimant was not included on the Scheduling Order, Claimant served WMILT with Permitted Written Discovery (as defined in the Scheduling Order). See D.I. 10937 (the "Claimant's Discovery Request").

S. On April 4, 2013, the Claimant filed her *Motion to Reinstate Claim No. 566 and Vacate the Order Disallowing Such Claim* [D.I. 11194] (the "Motion"), seeking the reinstatement of Claim 566 on the basis of "excusable neglect," and asserting that the Claimant failed to timely respond to the Seventy-Ninth Omnibus Objection because her husband's naval

orders required Claimant and her husband to report to Fort Sam Houston, Texas during the relevant time periods, while all mail to them was still being sent to Norfolk, Virginia.

T. WMILT and the Claimant, after good faith arms' length negotiations, have determined that: (i) Claim 2295, previously disallowed by order of the Court, shall remain disallowed, and (ii) Claim 566, previously disallowed by order of the Court, shall be reinstated as a Disputed Claim against the Debtors' chapter 11 estates and subject to the Seventy-Ninth Omnibus Objection, which objection is currently scheduled to be heard in accordance with the Scheduling Order.

NOW, THEREFORE, without any admission or concession of any liability whatsoever on the part of WMILT with respect to the Remaining Claim (as defined below), it is hereby STIPULATED AND AGREED by and among the Parties as follows:

AGREEMENT

1. The recitals in paragraphs A through T above are incorporated by reference herein.
2. Upon entry of an order by the Court approving this Stipulation (the "Effective Date"): (i) the Motion shall be deemed withdrawn, (ii) the Retention Bonus Component of Claim 566 shall be reinstated as a Disputed Claim against WMI's chapter 11 estate in the amount of \$135,000.00 (the "Remaining Claim"), (iii) Claimant shall be deemed to fully, finally and forever waive any and all rights to seek payment from WMILT with respect to Claim 2295, (iv) Claimant's Response shall be deemed a timely response to the Seventy-Ninth Omnibus Objection, and (v) Kurtzman Carson Consultants, LLC, the Court-appointed claims agent, shall place the Remaining Claim on the claims register of the Debtors' chapter 11 cases.
3. Upon the Effective Date, the Remaining Claim shall be made subject to the

Seventy-Ninth Omnibus Objection, as it has or may be amended, and shall be governed by the terms and provisions of the Scheduling Order, as it may be further amended, including, without limitation, the discovery provisions and deadlines set forth therein; provided, however, that (i) WMILT shall serve Claimant with Permitted Written Discovery (as defined in the Scheduling Order) on or before five (5) business days from the Effective Date; (ii) Claimant's Discovery Request shall be deemed timely Permitted Written Discovery pursuant to the Scheduling Order and Claimant shall not be permitted to serve additional Permitted Written Discovery; (iii) each Party shall respond to the Permitted Written Discovery served by the other Party on or before fifteen (15) business days following the Effective Date, and (iv) Claimant shall serve WMILT with its witness list, in accordance with the Scheduling Order, on or before twenty-five business (25) days from the Effective Date.

4. This Stipulation contains the entire agreement between the Parties as to the subject matter hereof and supersedes all prior agreements and undertakings between the Parties relating thereto. This Stipulation is subject to approval of the Court and shall be of no force and effect unless and until it is approved.

5. Each person who executes this Stipulation represents that he or she is duly authorized to execute this Stipulation on behalf of the respective Parties hereto and that each such Party has full knowledge and has consented to this Stipulation.

6. The Stipulation may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of the Stipulation to present any copy, copies, electronic copies, or facsimile signed by the Parties hereto to be charged.

7. This Stipulation may not be modified, altered, amended or vacated other than by a

signed writing executed by the Parties hereto or by further order of the Court.

8. The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

9. The Court shall have sole and exclusive jurisdiction to hear disputes arising out of or related to this Stipulation.

may 6, 2013
Dated: ~~April~~ *2013* *AE*
Wilmington, Delaware

WMI LIQUIDATING TRUST

PATRICIA ROBERTS

By: _____
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Paul N. Heath (No. 3704)
Amanda R. Steele (No. 5530)
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By: *Patricia Roberts*
Patricia Roberts

Claimant

-and-

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Counsel for WMI Liquidating Trust

signed writing executed by the Parties hereto or by further order of the Court.

8. The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

9. The Court shall have sole and exclusive jurisdiction to hear disputes arising out of or related to this Stipulation.

Dated: May 10, 2013
Wilmington, Delaware

WMI LIQUIDATING TRUST

PATRICIA ROBERTS

By: 

By: _____
Patricia Roberts

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Paul N. Heath (No. 3704)
Amanda R. Steele (No. 5530)
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