

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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<i>In re</i>	:	Chapter 11
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:	Case No. 08-12229 (MFW)
Debtors.	:	(Jointly Administered)
-----X	:	Re: Docket No. 12499 & 12512
WMI LIQUIDATING TRUST	:	
Plaintiff,	:	
v.	:	
-----X	:	
ANTHONY BOZZUTI,	:	Adversary Proc. No. 10-53131 (MFW)
-----X	:	
CHANDAN SHARMA,	:	Adversary Proc. No. 10-53147 (MFW)
-----X	:	
EDWARD F. BACH,	:	Adversary Proc. No. 10-53132 (MFW)
-----X	:	
HENRY J. BERENS,	:	Adversary Proc. No. 10-53134 (MFW)
-----X	:	
KEITH O. FUKUI,	:	Adversary Proc. No. 10-53139 (MFW)
-----X	:	
MARC MALONE,	:	Adversary Proc. No. 10-53152 (MFW)
-----X	:	
MICHAEL R. ZARRO,	:	Adversary Proc. No. 10-53143 (MFW)
-----X	:	
RACHEL M. MILEUR a/k/a	:	Adversary Proc. No. 10-53133 (MFW)
RACHELLE M. MILEUR,	:	
-----X	:	
THOMAS E. MORGAN,	:	Adversary Proc. No. 10-53154 (MFW)
-----X	:	
ANN TIERNEY,	:	Adversary Proc. No. 11-53299 (MFW)
-----X	:	
TODD H. BAKER,	:	Adversary Proc. No. 11-54031 (MFW)
-----X	:	

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 800 Fifth Avenue, Suite 4100, Seattle, Washington 98104. In accordance with terms and provisions of the Confirmation Order, WMI Investment Corp. has been dissolved.



GENNADIY DARAKHOVSKIY	:	Adversary Proc. No. 12-50902 (MFW)
-----X		
ROBERT BJORKLUND, DARYL DAVID,	:	Adversary Proc. No. 12-50965 (MFW)
DEBORA HORVATH, JEFFREY JONES,	:	
JOHN MCMURRAY,	:	
MICHAEL REYNOLDSON,	:	
DAVID SCHNEIDER,	:	
BRUCE ALAN WEBER,	:	
AND JEFFREY WEINSTEIN	:	
	:	
Defendants.	:	
-----X		

CERTIFICATION OF COUNSEL REGARDING *CONTESTED ORDER (A) (I) DEEMING CERTAIN CLAIMANTS’ CLAIMS DISALLOWED, (II) AUTHORIZING THE DISTRIBUTION OF CERTAIN FUNDS IN THE DISPUTED CLAIMS RESERVE, AND (III) DISMISSING CERTAIN OF THE WMI LIQUIDATING TRUST’S ADVERSARY PROCEEDINGS AND (B) DENYING MOTION OF CERTAIN EMPLOYEE CLAIMANTS FOR ORDER DETERMINING APPLICABLE LAW NECESSARY TO IMPLEMENT DEBTORS’ CHAPTER 11 PLAN*

The undersigned hereby certifies as follows:

1. On August 30, 2018, WMI Liquidating Trust (“WMILT”), as successor in interest to Washington Mutual, Inc. and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the “Debtors”), filed the *Motion of WMI Liquidating Trust for an Order (I) Granting WMI Liquidating Trust’s Omnibus Objections, (II) Deeming the Claimants’ Claims Disallowed, (III) Authorizing the Distribution of Funds in Disputed Claims Reserve and (IV) Dismissing WMI Liquidating Trust’s Adversary Proceedings* [D.I. 12499] (“WMILT Motion”).²

2. On September 18, 2018, certain Claimants filed the *Motion of Melba Ann Bartels, Todd H. Baker, Sean Beckett, Anthony J. Bozzuti, Alfred Brooks, Thomas W. Casey, Gregory C. Camas, Deborah D. Horvath, Rajiv Kapoor, Kenneth E. Kido, Marc Malone, John P. McMurray, John Murphy, Thomas E. Morgan, Stephen J. Rotella, David Schneider, Genevieve Smith, Steven F. Stein, Mitchell Stevens, Craig E. Tall, Radha Thompson, Ann Tierney, Anthony*

² Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Motions (as defined below).

Vuoto, and Robert J. Williams, Jr. for Order Determining Applicable Law Necessary to Implement Debtors' Chapter 11 Plan [D.I. 12512] (the "Claimants' Motion", collectively with the WMILT Motion, the "Motions").

3. On October 16, 2018, the Court held a hearing (the "October 16 Hearing") with respect to the Motions, and the objections filed to the relief requested in the Motions. For the reasons set forth on the record at the October 16 Hearing, the Court granted the relief requested in the WMILT Motion and denied the relief requested in the Claimants' Motion. In addition, the Court requested that counsel submit a form of order reflecting the Court's ruling under certification of counsel.

4. On October 22, 2018, WMILT filed a proposed form of order (the "WMILT's Proposed Order") under certification of counsel reflecting the Court's ruling at the October 16 Hearing and counsel for certain of the Claimants filed a competing form of proposed order (the "Claimants' Proposed Order") under certification of counsel carving out certain claims (the "Surviving Claims") from the relief requested in WMILT's Proposed Order.

5. On November 1, 2018, the Court held a hearing (the "November 1 Hearing") regarding the competing forms of order submitted by WMILT and counsel for certain Claimants. At the November 1 Hearing, the Court ordered certain additional briefing with respect to the Surviving Claims. Additionally, at such time, it was discussed that entry of an order with respect to the undisputed items would be deferred. However, as discussed below, due to the undisputed nature of such items, as well as the desire to provide distributions with respect thereto to holders of allowed claims, WMILT is hopeful that the Court would reconsider its prior position. This is especially so, as the Claimants have expressed an intention to appeal from any order and it would be in the creditors' interest to commence that process.

6. Based on the foregoing, following the November 1 Hearing, counsel to WMILT prepared a modified form of the Claimants' Proposed Order that (i) carves out the Surviving Claims from the relief granted at the October 16 Hearing and (ii) sets forth the schedule for the additional briefing with respect to the Surviving Claims requested by the Court at the November 1 Hearing (the "Revised Proposed Order"). On November 13, 2018, counsel for WMILT provided a draft of the Revised Proposed Order to counsel for certain Claimants for their review and comment. On November 14, 2018, counsel for certain Claimants informed counsel for WMILT that they do not consent to entry of the Revised Proposed Order until after the submission of the additional briefing.

7. WMILT believes that the Revised Proposed Order is consistent with (i) the ruling on the record at the October 16 Hearing, (ii) the relief requested in the Claimants' Proposed Order, and (iii) the Court's ruling on the record at the November 1 Hearing. In fact, the Revised Proposed Order is based on the Claimants' Proposed Order and only adds additional paragraphs to account for the additional briefing requested by the Court with respect to the Surviving Claims. WMILT understands counsel for certain of the Claimant's concerns. However, WMILT believes that entry of the Revised Proposed Order is necessary to ensure that there is not a further deterioration to recoveries for other creditors due to not making distributions to holders of allowed claims and thus permitting additional interest to accrue on their claims and diminishing or eliminating the recoveries which may be made to creditors lower in the waterfall.

WHEREFORE, WMILT respectfully requests that the Court enter the Revised Proposed Order at its earliest convenience.

Dated: November 19, 2018
Wilmington, Delaware

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Attorneys to WMI Liquidating Trust

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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RACHELLE M. MILEUR,	:	
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THOMAS E. MORGAN,	:	Adversary Proc. No. 10-53154 (MFW)
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DAVID SCHNEIDER,	:	
BRUCE ALAN WEBER,	:	
AND JEFFREY WEINSTEIN	:	
	:	
Defendants.	:	
-----X		

ORDER (A) (I) DEEMING CERTAIN CLAIMANTS’ CLAIMS DISALLOWED, (II) AUTHORIZING THE DISTRIBUTION OF CERTAIN FUNDS IN THE DISPUTED CLAIMS RESERVE, AND (III) DISMISSING CERTAIN OF THE WMI LIQUIDATING TRUST’S ADVERSARY PROCEEDINGS AND (B) DENYING MOTION OF CERTAIN EMPLOYEE CLAIMANTS FOR ORDER DETERMINING APPLICABLE LAW NECESSARY TO IMPLEMENT DEBTORS’ CHAPTER 11 PLAN

Upon (a) the motion, dated August 30, 2018 (“WMILT Motion”), of WMI Liquidating Trust (“WMILT” or the “Trust”), as successor in interest to Washington Mutual, Inc. and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the “Debtors”), for the entry of an order (i) granting WMILT’s Omnibus Objections, (ii) deeming the Claims disallowed, (iii) authorizing WMILT’s distribution of cash and Liquidating Trust Interests in the Disputed Claims Reserve on behalf of the Claims, and (iv) dismissing the WMILT’s Adversary Proceedings against the Claimants and (b) the motion, dated September 18, 2018 (the “Claimants’ Motion” and, together with the WMILT Motion, the “Motions”),² of certain Claimants, for entry of an order determining applicable law necessary to implement Debtors’ chapter 11 plan; and due and proper notice of the Motions having been provided to those parties identified therein, and no other or further notice being required; and the Court having held a hearing to consider the Motions and the relief requested therein on October 16, 2018 (the “Hearing”) and, at the Hearing, the Court (a) determined that the relief sought in the WMILT

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motions.

Motion is in the best interests of WMILT, the Debtors' creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the WMILT Motion establish just cause for the relief granted herein, (b) determined that it lacks jurisdiction to grant the relief requested in the Claimants' Motion, and (c) found and determined that WMILT is barred from making any payments to the Claimants that were subject to the order, dated April 15, 2016, entered by the United States District Court for the District of Columbia [Second APA D.I. 25]; and, in accordance with the Court's directive at the Hearing, WMILT circulated a form of proposed order (the "Proposed Order") consistent with the Court's ruling at the Hearing and filed such order with the Court upon certification of counsel (the "Certification"); and upon filing of the Certification, certain Claimants asserted that certain claims were not subject to the WMILT Motion and should not be included in the Proposed Order; and the Court having held a hearing on November 1, 2018 to consider the Proposed Order and the objections thereto (the "Order Hearing"); and, after due deliberation and sufficient cause appearing therefor, and for the reasons stated on the record of the Hearing and the Order Hearing, IT IS HEREBY ORDERED that:

1. The WMILT Motion is GRANTED to the extent provided herein.
2. The Claimants' Motion is DENIED.
3. Except for the Surviving Claims identified in Paragraph 4 below, each of the Claims³ is hereby deemed disallowed in its entirety.
4. In light of the remaining questions of fact and/or law that were discussed on the record at the Order Hearing, the following components of Claims shall not be deemed disallowed at this time (the "Surviving Claims");

³ For the avoidance of doubt, "Claims" refers to all Employee Claims except the claims of Gennadiy Darakhovskiy (Claim No. 2571) and Jacqueline Ferguson (Claim No. 3829), which were not submitted by WMILT to the FDIC in connection with the First Payment Application or the Second Payment Application.

- i. Anthony Vuoto – Claim No. 997: the ETRIP Base Component Claim in the amount of \$72,049.06, and Attorneys’ Fees Claim related to the payment of the ETRIP Base Component Claim.
- ii. Attorneys’ Fees Claims related to recovery of allowed ETRIP Base Component Claims or Base SERAP Component Claims for the following Claimants:
 - a. Todd H. Baker – Allowed Base SERAP Component Claim
 - b. Melba Ann Bartels – Allowed Base SERAP Component Claim
 - c. Sean Beckett – Allowed Base SERAP Component Claim
 - d. Anthony J. Bozzuti – Allowed Base SERAP Component Claim
 - e. Alfred Brooks – Allowed Base SERAP Component Claim
 - f. Kimberly A. Cannon – Allowed Base SERAP Component Claim
 - g. Thomas W. Casey – Allowed ETRIP Base Component Claim
 - h. Daryl D. David – Allowed ETRIP Base Component Claim
 - i. Debora D. Horvath – Allowed ETRIP Base Component Claim
 - j. Kenneth E. Kido – Allowed Base SERAP Component Claim
 - k. Marc Malone – Allowed Base SERAP Component Claim
 - l. Thomas E. Morgan – Allowed Base SERAP Component Claim
 - m. Michael Reynoldson – Allowed Base SERAP Component Claim
 - n. Stephen J. Rotella – Allowed ETRIP Base Component Claim
 - o. David Schneider – Allowed ETRIP Base Component Claim
 - p. Chandan Sharma – Allowed Base SERAP Component Claim
 - q. Genevieve Smith – Allowed Base SERAP Component Claim

- r. Steven F. Stein – Allowed Base SERAP Component Claim
 - s. Mitchell Stevens – Allowed Base SERAP Component Claim
 - t. Craig E. Tall – Allowed ETRIP Base Component Claim
 - u. Ann Tierney – Allowed Base SERAP Component Claim
 - v. Robert J. Williams, Jr. – Allowed Base SERAP Component Claim
- iii. Steven F. Stein – Claim No. 2601: The asserted claim for vested guaranteed salary and bonus under the terms of his April 11, 2008 agreement with WaMu (the “April 11, 2008 Agreement”), and Attorneys’ Fees Claim related to the payment of salary and bonus under the April 11, 2008 Agreement.
- iv. Any Claims of the Claimants as holders of vested equity interests which, pursuant to the Plan, are entitled to receive a distribution.

5. Kurtzman Carson Consultants, LLC, WMILT’s court-appointed claims and noticing agent, is authorized and directed to delete the Claims, except for the portions of the Claims constituting Surviving Claims, from the official claims register in the Debtors’ chapter 11 cases and take any other actions necessary to implement the relief granted herein.

6. Except with respect to the Surviving Claims, WMILT is authorized to release and distribute such Cash and Liquidating Trust Interests held in the Disputed Claims Reserve on behalf of the Claims in accordance with the provisions of the Plan.

7. Upon this Order becoming final and non-appealable and the release of Cash and Liquidating Trust Interests as provided in decretal paragraph 6 hereof, from the Disputed Claims Reserve the following Adversary Proceedings are dismissed with prejudice:

- i. *WMI Liquidating Trust v. Bach*, Adversary Proc. No. 10-53132 (MFW);
- ii. *WMI Liquidating Trust v. Berens*, Adversary Proc. No. 10-53134 (MFW);

- iii. *WMI Liquidating Trust v. Fukui*, Adversary Proc. No. 10-53139 (MFW);
- iv. *WMI Liquidating Trust v. Zarro*, Adversary Proc. No. 10-53143 (MFW); and
- v. *WMI Liquidating Trust v. Mileur*, Adversary Proc. No. 10-53133 (MFW).

8. With respect to the Surviving Claims, WMILT shall be permitted to adjust the disputed claim holdback, pursuant to Section 26.3(a) of the Plan, such that the holdback for each of the Claimants holding any of the Surviving Claims shall be equal to the Section 502(b)(7) cap previously imposed by the Court for such Claimant.

9. On or before December 5, 2018, (i) Claimants holding Surviving Claims shall submit supplemental briefing and evidence in support of the allowance of the Surviving Claims, and (ii) WMILT and Claimants holding Surviving Claims shall submit briefing and any evidence supporting their respective requests for attorneys' fees.

10. On or before December 17, 2018, (i) WMILT shall submit its response to Claimants' December 5th supplemental briefing, inclusive of any evidence regarding the allowance or disallowance of the Surviving Claims, and (ii) WMILT and Claimants holding Surviving Claims shall submit their respective response in opposition to any request for attorneys' fees, inclusive of any evidence in support of their opposition.

11. Upon review of the parties' submissions, the Court will direct the parties regarding next steps, including with respect to the scheduling of a hearing on the parties' submissions and the allowance or disallowance of the Surviving Claims.

12. The effectiveness of this Order is stayed for twenty-one (21) days pending the Claimant's appeal to the United States District Court for the District of Delaware.

13. WMILT is authorized to take any actions necessary to implement the relief granted herein.

14. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.