

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

-----X
In re: : **Chapter 11**
: :
WASHINGTON MUTUAL, INC., et al.,¹ : **Case No. 08-12229 (MFW)**
: :
Debtors. : **(Jointly Administered)**
: :
-----X **Re: Docket Nos. 5970, 5971 & 9834**

**ORDER APPROVING STIPULATION
REGARDING PLAN RESERVE FOR CERTAIN DISPUTED
DIRECTOR AND OFFICER SUBORDINATED INDEMNIFICATION
CLAIMS SUBJECT TO ASSERTED RIGHTS OF SUBROGATION**

Washington Mutual, Inc. and WMI Investment Corp., as debtors and debtors in possession (collectively, the “Debtors”), and the D&O Claimants² (together with the Debtors, the “Parties”), having entered into that certain *Stipulation Regarding Plan Reserve for Certain Disputed Director and Officer Subordinated Indemnification Claims Subject to Asserted Rights of Subrogation* (the “Stipulation”); 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, a copy of which is attached hereto as Exhibit 1, is

APPROVED.

2. The Parties are hereby authorized to take any and all actions reasonably

necessary to effectuate the terms of the Stipulation.

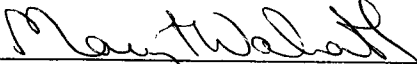
¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors’ principal offices are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed in the Stipulation.



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

Dated: March 8, 2012
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
WASHINGTON MUTUAL, INC., et al.,¹ : Case No. 08-12229 (MFW)
Debtors. : (Jointly Administered)
: :
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**STIPULATION REGARDING PLAN RESERVE FOR CERTAIN DISPUTED
DIRECTOR AND OFFICER SUBORDINATED INDEMNIFICATION
CLAIMS SUBJECT TO ASSERTED RIGHTS OF SUBROGATION**

Washington Mutual, Inc. (“WMI”) and WMI Investment Corp., as debtors and debtors in possession (collectively, the “Debtors”), and certain directors and officers holding asserted indemnification claims against the Debtors (collectively, the “D&O Claimants,” and collectively with the Debtors, the “Parties”),² by and through their respective counsel, hereby stipulate as follows:

RECITALS

A. On September 26, 2008 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief 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 “Bankruptcy 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 Debtors’ principal offices are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

² The D&O Claimants include Stephen J. Rotella; Anne V. Farrell; Phillip D. Matthews; Willis B. Wood, Jr.; Orin C. Smith; Michael K. Murphy; Charles M. Lillis; Margaret Osmer McQuade; William G. Reed, Jr.; Stephen I. Chazen; James H. Stever; Regina T. Montoya; Stephen E. Frank; Mary E. Pugh; Thomas C. Leppert; Deanna Oppenheimer; Thomas W. Casey; David Schneider; Debora D. Horvath; Al Brooks; Todd H. Baker; John P. McMurray; and Kerry K. Killinger.

B. On or before March 31, 2009, the date established by the Bankruptcy Court as the last date to file proofs of claim against the Debtors and their chapter 11 estates, each of the D&O Claimants filed a proof of claim asserting, among other claims, unliquidated claims for indemnification and advancement of defense and other litigation costs and damages, with respect to investigations, litigation commenced, threatened to be commenced or which may be commenced, under WMI's articles of incorporation, by-laws and other corporate documents and applicable law, and indemnification agreements (the "D&O Claims"). A list of the D&O Claims is attached hereto as Exhibit "A".³

C. WMI holds various director and officer liability insurance policies (the "D&O Policies") acquired in connection with WMI's indemnification obligations to its officers and directors and to officers and directors of WMI's subsidiaries, including certain of the D&O Claimants. By orders, entered December 16, 2008, May 4, 2010 and September 23, 2010, the Bankruptcy Court granted relief from the automatic stay to allow certain of the insurance carriers (the "D&O Carriers") to advance and/or pay defense costs pursuant to the D&O Policies that are, or will become, owing to certain of the D&O Claimants who were named as defendants in certain then pending litigation and investigations.

D. Prior to the Petition Date, WMI also procured a blended insurance program providing bankers professional liability, employment practices liability, fiduciary liability and financial institution bond insurance coverage to WMI and its affiliates, which, like the D&O Policies, is structured as a tower of related insurance (collectively, the "Blended

³ Four of the D&O Claims (Claim Nos. 3194, 3196, 3197, and 3198) have been resolved pursuant to the *Order Approving Stipulation Resolving Debtors' Motion to Estimate the Maximum Amount of Certain Claims for Purposes of Establishing Reserve Under the Debtors' Confirmed Chapter 11 Plan with Respect to Certain Director and Officer Indemnification Claims with Respect to Claim Nos. 3194, 3196, 3197 and 3198* [Docket No. 9298] and are not subject to this Stipulation.

Policies” and, together with the D&O Policies, the “Tower Insurance Programs”). The Blended Policies provide insurance to WMI, its subsidiaries, its employee benefit plans, and their past, present and future directors, officers, trustees, or employees for certain claims. By orders, dated April 13, 2009 and April 1, 2010, the Bankruptcy Court granted relief from the automatic stay to allow certain of WMI’s third party insurance carriers (the “Blended Policy Carriers,” and together with the D&O Carriers, the “Carriers”) to advance and/or pay defense costs pursuant to the Blended Policies that are, or will become, owing in connection with certain litigation, including ERISA litigation against certain of the D&O Claimants.

E. Certain of the Carriers have distributed, or are obligated to distribute, insurance proceeds for defense and advancement obligations under the Tower Insurance Programs for the benefit of certain of the D&O Claimants.

F. On November 17, 2010, the Debtors filed that certain *Motion to Estimate the Maximum Amount of Certain Claims for Purposes of Establishing Reserve Under the Debtors’ Confirmed Chapter 11 Plan* [Docket No. 5971] (the “Estimation Motion”), seeking to estimate the maximum amount of certain claims, including, without limitation, the D&O Claims.

G. On November 17, 2010, the Debtors filed the *Sixtieth Omnibus (Substantive) Objections to Claims (Claims Nos. 2108, 2240, 2241, 2246, 2247, 2248, 2604, 2606, 2631, 2633, 2634, 2635, 2636, 2637, and 3242)* [Docket No. 5970] (the “Sixtieth Omnibus”) seeking to disallow claims filed by certain of the D&O Claimants as set forth on Exhibit “A” to the Sixtieth Omnibus.

H. The D&O Claimants filed objections to the Estimation Motion⁴ and responses to the Sixtieth Omnibus.⁵ On December 14, 2010, the Debtors filed omnibus

⁴ See Docket Nos. 6242 (filed by Killinger); 6256 (filed by Rotella); 6252 and 6254 (filed by Chazen, Farrell, Frank, Leppert, Lillis, Matthews, Montoya, Murphy, Osmer McQuade, Pugh, Reed, Smith, Stever and

responses to the objections to the Estimation Motion [Docket No. 6336] and the responses to the Sixtieth Omnibus [Docket No. 6334].

I. 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* [Docket No. 9178] (as it has and may be amended, modified or supplemented, the “Seventh Amended Plan”)⁶ and a related disclosure statement [Docket No. 9179] (as amended, the “Disclosure Statement”). By order, dated January 13, 2012 [Docket No. 9414], the Bankruptcy Court approved the Disclosure Statement and authorized the Debtors to solicit votes with respect to the Seventh Amended Plan. A hearing to consider confirmation of the Seventh Amended Plan was held on February 16 and 17, 2012. On February 17, 2012, the Bankruptcy Court determined, among other things, that the Seventh Amended Plan satisfied the requirements of section 1129 of the Bankruptcy Code and, by order, dated February 23, 2012 [Docket No. 9759], the Bankruptcy Court confirmed the Seventh Amended Plan.

J. Pursuant to Section 26.3 of the Seventh Amended Plan, from and after the Effective Date, as defined therein, the Liquidating Trustee shall maintain a Disputed Claims Holdback and a Disputed Equity Escrow for holders of Disputed Claims and Disputed Equity Interests, in “an amount equal to the Pro Rata Share of distributions that would have been made to the holder of the Dispute Claim if it were an Allowed Claim” or the “Disputed Equity Interest if it were an Allowed Equity Interest.” *See* Seventh Amended Plan, §§ 26.3(a) and (d).

Wood); 6306 (filed by Oppenheimer); 6246 (filed by Albert Brooks, Todd H. Baker, Thomas Casey, Deborah Horvath, John McMurray, David Schneider); 8380 (filed by Schneider) and 9272 (filed by Casey).

⁵ See Docket Nos. 6252 (filed by Chazen, Farrell, Frank, Leppert, Lillis, Matthews, Montoya, Murphy, Osmer McQuade, Pugh, Reed, Smith, Stever and Wood); 6256 (filed by Rotella), and 6306 (filed by Oppenheimer).

⁶ Capitalized terms used but not defined herein shall have the meanings contained in the Seventh Amended Plan.

K. On February 2, 2012, the Parties entered into that certain *Stipulation Regarding Proposed Briefing Schedule with Respect to Estimation Motion and Sixtieth Omnibus Objection to Claims in Connection with Director and Officer Indemnification Claims* (the “Supplemental Briefing Stipulation”). By order, dated February 8, 2012 [Docket No. 9611], the Court approved the Supplemental Briefing Stipulation. By order, dated February 15, 2012 [Docket No. 9682], the Court approved a revised supplemental briefing schedule pursuant to which (a) the Debtors filed their supplemental briefing in support of the Estimation Motion (as it relates to the D&O Claims) on February 15, 2012; and (b) the D&O Claimants filed their supplemental briefing in response to the Debtors’ supplemental brief with respect to the issues related to the Estimation Motion (as it relates to the D&O Claims) on February 22, 2012.

L. On February 22, 2012, the Parties entered into that certain *Stipulation Regarding Hearing on Estimation Motion and Sixtieth Omnibus Objection to Claims in Connection with Director and Officer Indemnification Claims* [Docket No. 9726] (the “Non-Subordinated Stipulation”), pursuant to which the Debtors agreed to establish a contingent plan reserve for certain Disputed Non-Subordinated D&O Claims in Class 12 of the Seventh Amended Plan. By order, dated March 1, 2012 [Docket No. 9797], the Bankruptcy Court approved the Non-Subordinated Stipulation.

M. The hearing to consider the Estimation Motion (as it relates to the indemnification claims of the D&O Claimants) and the Sixtieth Omnibus has currently been adjourned to a date to be determined.

N. The Parties have agreed to establish a reserve under Section 26.3 of the Seventh Amended Plan to provide for distributions on account (i) any D&O Claims that may be allowed relating to any litigation, investigation, or demand, which has been or may be asserted

against the D&O Claimants and subordinated to Class 18 of the Seventh Amended Plan under section 510(b) of the Bankruptcy Code (collectively, the “Subordinated D&O Claims”) or (ii) any D&O Claims that may be allowed relating to any litigation, investigation, or demand, which has been or may be asserted against the D&O Claimants and subordinated to Class 19 and/or 22 of the Seventh Amended Plan under section 510(b) of the Bankruptcy Code (collectively, the “Subordinated D&O Interests”).

NOW, THEREFORE, IT IS HEREBY AGREED BY AND AMONG THE PARTIES, BY AND THROUGH THEIR RESPECTIVE COUNSEL, AS FOLLOWS:

1. Until further order of the Court, in accordance with Section 26.3 of the Seventh Amended Plan, the Debtors shall establish a contingent reserve (the “Subordinated Plan Reserve”) as follows:

(a) Liquidating Trust Interests, to the extent distributed pursuant to Section 22.1 of the Seventh Amended Plan, equal to the Pro Rata Share of distributions that would be made to the D&O Claimants if the Subordinated D&O Claims were Allowed Claims in Class 18 of the Seventh Amended Plan in the aggregate amount of Four Million Two Hundred Thousand Dollars (\$4,200,000.00); and

(b) Liquidating Trust Interests, to the extent distributed pursuant to Section 23.1 of the Seventh Amended Plan, and Reorganized Common Stock, and in accordance with the provisions of the Confirmation Order, equal to the Pro Rata Share of distributions (calculated with respect to the applicable Preferred Equity Interests by using the liquidation preference thereof) that would be made to the D&O Claimants if the Subordinated D&O Interests were Allowed Equity Interests in Class 19 of the Seventh Amended Plan in the aggregate amount of Thirty Four Million Four Hundred Thousand Dollars (\$34,400,000.00); and

(c) Liquidating Trust Interests, to the extent distributed pursuant to Section 24.1 of the Seventh Amended Plan, and Reorganized Common Stock, and in accordance with the provisions of the Confirmation Order, equal to the Pro Rata Share of distributions that would be made to the D&O Claimants if the Subordinated D&O Interests were Allowed Equity Interests in Class 22 of the Seventh Amended Plan in the aggregate amount of

Seventy-Nine Million Five Hundred Thousand Dollars
(\$79,500,000.00).

2. The Subordinated Plan Reserve represents the maximum amount available for distributions on account of Subordinated D&O Claims that may become Allowed Claims or Subordinated D&O Interests that may become Allowed Equity Interests; provided, however, that, from and after the date hereof, the Debtors may seek entry of one or more orders, upon notice and a hearing, reducing the number of Liquidating Trust Interests and shares of Reorganized Common Stock in the Subordinated Plan Reserve. The Subordinated D&O Claims shall be treated as Disputed Claims subject to allowance as Class 18 Claims and the Subordinated D&O Interests shall be treated as Disputed Equity Interests subject to allowance as Class 19 or Class 22 Equity Interests, each pursuant to the Seventh Amended Plan. If all or any portion of a Subordinated D&O Claim becomes an Allowed Claim, in order to receive a distribution on account thereof, a D&O Claimant entitled to receive such distribution shall execute and deliver to the Liquidating Trustee, as defined in the Seventh Amended Plan, within thirty (30) days of allowance thereof, the release required pursuant to Section 41.6 of the Seventh Amended Plan.

3. Nothing herein is intended or shall be construed to waive any defenses, setoffs, objections or counterclaims, including, without limitation, with respect to the validity and amounts asserted therein, that the Debtors or the D&O Claimants may have with respect to the D&O Claims (unless contrary to the terms of this Stipulation), and the rights of Debtors or the D&O Claimants and their respective successors in interest to object to, and defend against, the D&O Claims are preserved and this Stipulation is without prejudice to the Debtors' or the D&O Claimants' ability to seek relief from the Bankruptcy Court to disallow any D&O Claim or to fix the allowed amount of any D&O Claim; provided, however, that the foregoing is not

intended to inhibit the right of the Parties to respond thereto; and, provided, further, that, under no circumstances, shall the Subordinated D&O Claims or the Subordinated D&O Interests ever be considered other than a Claim or Equity Interest in Class 18, Class 19 or Class 22 of the Seventh Amended Plan, each as the case may be.

4. Notwithstanding any other provision herein, this Stipulation does not concern or affect any proofs of claim, or portions of proofs of claim, submitted by any D&O Claimant, other than the D&O Claims for indemnity as a director or officer of WMI.

5. The D&O Claims are “Disputed Claims” or “Disputed Equity Interests” under the Seventh Amended Plan and shall remain so unless and until they are disallowed or become “Allowed Claims” or “Allowed Equity Interests” under the Seventh Amended Plan pursuant to a final order of the Bankruptcy Court.

6. On or prior to 5:00 p.m. (EDT) on April 4, 2012, the Debtors and the D&O Claimants shall exchange expert reports (the “Expert Reports”) with respect to that portion of the reserve, Fifty-Five Million Dollars (\$55,000,000.00), established pursuant to the Non-Subordinated Stipulation relating to fees and expenses estimated by the D&O Claimants to be incurred on account of the claims and causes of action asserted in the Demand Letter, as defined therein, or on account of claims which have not been asserted, but which certain D&O Claimants allege may be asserted in the future (the “Fee Reserve”).

7. On or prior to 5:00 p.m. (EDT) on April 18, 2012, the Debtors and the D&O Claimants shall exchange reports, if any, to rebut the conclusions set forth in the Expert Reports, including, without limitation, any rebuttal report prepared by a witness on behalf of a D&O Claimant testifying pursuant to Rule 701 of the Federal Rules of Evidence (the “Rebuttal Reports”).

8. Depositions of all persons issuing an Expert Report or a Rebuttal Report shall take place during the period from April 23, 2012 up to and including May 18, 2012 (the "Deposition Period").

9. A hearing to consider the Fee Reserve established pursuant to the Non-Subordinated Stipulation shall be held as soon as the Bankruptcy Court's calendar permits following the closure of the Deposition Period, but in no event later than June 15, 2012.

10. This Stipulation shall be binding upon the Parties and effective as of the date of execution.

11. For purposes of interpretation of this Stipulation, the Parties shall be deemed to have jointly drafted this Stipulation and this Stipulation shall not be interpreted in favor or against any of the Parties because such Party or its counsel drafted this Stipulation or any provision of this Stipulation.

12. This Stipulation may be executed in counterparts and each such executed counterpart shall constitute an original Stipulation and all such executed counterparts shall constitute an integrated Stipulation.

13. Counsel to the Parties are authorized to execute this Stipulation on behalf of their respective Parties.

14. This Stipulation constitutes the entire agreement between the Parties and may not be amended or modified in any manner except by a writing signed by each of the Parties or their counsel and approved by the Bankruptcy Court.

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

Dated: March 8, 2012

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Exhibit A

List of D&O Claims

EXHIBIT A

The D&O Claimants

Claim Number	Claimant
2108	Stephen J. Rotella
2240	Anne V. Farrell
2241	Phillip D. Matthews
2246	Willis B. Wood Jr.
2247	Orin C. Smith
2248	Michael K. Murphy
2604	Charles M. Lillis
2606	Margaret Osmer Mcquade
2629	William G. Reed Jr.
2631	Stephen I. Chazen
2633	James H. Stever
2634	Regina T. Montoya
2635	Stephen E. Frank
2636	Mary E. Pugh
2637	Thomas C. Leppert
3242	Deanna Oppenheimer
2687	Thomas W. Casey
2681	David Schneider
2683	Debora D. Horvath
2159	Al Brooks
2274	Todd H. Baker
2543	John P. McMurray
3266	Kerry K. Killinger