

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

-----X
: **Chapter 11**
: **Case No. 08-12229 (MFW)**
: **(Jointly Administered)**
: **Hearing Date: 6/24/09 at 10:30 a.m. (EDT)**
: **Objection Deadline: 6/2/09 at 4:00 p.m. (EDT)**
-----X

**MOTION OF DEBTORS FOR AN ORDER
PURSUANT TO SECTIONS 105(a) AND 363 OF THE BANKRUPTCY CODE
AUTHORIZING BUT NOT DIRECTING (I) WASHINGTON MUTUAL, INC. TO
EXERCISE ITS OWNERSHIP RIGHTS OVER CERTAIN TRUST ASSETS, (II)
DISTRIBUTION OF TRUST ASSETS, AND (III) TERMINATION OF THE TRUSTS**

Washington Mutual, Inc. (“WMI”) and WMI Investment Corp., as debtors and debtors in possession (collectively, the “Debtors”), respectfully represent:

Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On September 26, 2008 (the “Commencement Date”), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and

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 1301 Second Avenue, Seattle, Washington 98101.

1108 of the Bankruptcy Code. On October 3, 2008, the Court entered an order, pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the joint administration of the Debtors’ chapter 11 cases.

WMI’s Business

3. WMI is a holding company incorporated in the State of Washington and headquartered at 1301 Second Avenue, Seattle, Washington 98101. WMI is the direct parent of WMI Investment, which serves as an investment vehicle for WMI and holds a variety of securities. WMI Investment is incorporated in the State of Delaware.

4. Prior to the Commencement Date, WMI was a savings and loan holding company that owned Washington Mutual Bank (“WMB”) and such bank’s subsidiaries, including Washington Mutual Bank fsb (“WMBfsb”). WMI also has certain non-banking, non-debtor subsidiaries (the “Non-debtor Subsidiaries”). Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the “OTS”). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI’s banking and nonbanking subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation (“FDIC”).

5. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB and advised that the receiver was immediately taking possession of WMB (the “Receivership”). Immediately after its appointment as receiver, the FDIC sold substantially all the assets of WMB, including the stock of WMBfsb, to JPMorgan Chase Bank, National Association (“JPMorgan Chase”) pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008 (the “Purchase Agreement”) (publicly available at <http://www.fdic.gov/about/freedom/popular.html>).

6. WMI's assets include its common stock interest in WMB, its interest in its non-banking subsidiaries, and more than \$4 billion of cash that WMI and its non-banking subsidiaries (including WMI Investment) had on deposit at WMB and WMBfsb immediately prior to the time the FDIC was appointed as receiver. WMI is in the process of evaluating these and other assets for purposes of ultimate distribution to its creditors.

The Trusts

7. In 1998, WMI purchased H.F. Ahmanson & Company ("HFA") and obtained the assets maintained in the following nine trusts (collectively, the "Trusts") previously established by HFA in connection with, among other things, HFA's deferred compensation and retirement plans (collectively, the "Plans"):

- H.F. Ahmanson & Company 1989 Contingent Deferred Compensation Plan Trust, which was established on November 28, 1989 by Ahmanson (as grantor) and Union Bank (as trustee) to implement the 1989 Contingent Deferred Compensation Plan (014901-00-57).
- H.F. Ahmanson & Company and Affiliated Companies Supplemental Executive Retirement Plan Trust, which was established on November 28, 1989 by Ahmanson (as grantor) and Union Bank (as trustee) to implement the Supplemental Executive Retirement Plan (014902-00-56).
- H.F. Ahmanson & Company Elective Deferred Compensation Plan Trust, which was established on November 28, 1989 by Ahmanson (as grantor) and Union Bank (as trustee) to implement the Elective Deferred Compensation Plan (014903-00-57).
- H.F. Ahmanson & Company Outside Director Retirement Plan Trust, which was established on November 28, 1989 by Ahmanson (as grantor) and Union Bank (as trustee) to implement the Outside Director Retirement Plan (014904-00-56).
- H.F. Ahmanson & Company Outside Directors' Elective Deferred Compensation Plan Trust, which was established on November 28, 1989 by Ahmanson (as grantor) and Union Bank (as trustee) to implement the Outside Directors' Elective Deferred Compensation Plan (014905-00-57).

- H.F. Ahmanson & Company Loan Agents' Elective Deferred Compensation Plan, which was established on January 1, 1991 by Ahmanson (as grantor) and Union Bank (as trustee) to implement the Loan Agents' Elective Deferred Compensation Plan (500000002-00).
- Trust Under H.F. Ahmanson & Company Outside Directors' Capital Accumulation Plan, which was established on September 30, 1998 by Ahmanson (as grantor) and Union Bank of California, N.A. (as trustee) to implement the Outside Directors' Capital Accumulation Plan (510001209-00).
- Trust Under H.F. Ahmanson & Company Loan Consultants' Capital Accumulation Plan, which was established on September 30, 1998 by Ahmanson (as grantor) and Union Bank of California, N.A. (as trustee) to implement the Loan Consultants' Capital Accumulation Plan (510001207-00).
- Trust Under H.F. Ahmanson & Company Capital Accumulation Plan, which was established on September 30, 1998 by Ahmanson (as grantor) and Union Bank of California, N.A. (as trustee) to implement the Capital Accumulation Plan (510001208-00).

The terms and conditions of each of the foregoing Trusts are memorialized in separate trust agreements (collectively, the "Trust Agreements") entered into by and between HFA and Union Bank of California, N.A. (under each of the Trust Agreements, the "Trustee").² WMI is successor-in-interest to HFA with respect to each of the Trusts.

8. The Trusts currently contain, among other assets, corporate securities, government securities, cash and cash equivalents. These assets plus all proceeds or income – less any distributions – constitute the Trust estates (the "Trust Estates"). A schedule reflecting the categories of assets held in these Trusts is annexed hereto as Exhibit "A."

9. Pursuant to the Trust Agreements, the agreement of WMI to make payments pursuant to the provisions of any Plan associated with the Trusts is an unsecured

² Due to the voluminous nature of the Trust Agreements, the Debtors are not attaching the Trust Agreements as exhibits to this Motion and will make copies of the Trust Agreements available upon request.

promise to pay. The participants in the Plans, therefore, have the status of unsecured creditors and have no security interest in the Trust Estates.

10. In accordance with the Trust Agreements, the Trusts shall terminate when no participant is entitled to any benefits under the Plans and, upon such a termination, any assets remaining in the Trusts shall be returned to WMI. Pursuant to the Trust Agreements, beneficiaries are no longer entitled to benefits under the Plans when the settlor of the Trusts is “Insolvent,” *i.e.*, becomes subject to a pending proceeding as a debtor under the Bankruptcy Code, and the Trusts’ assets become subject to the claims of the settlor’s general creditors. WMI is “Insolvent” for purposes of the Trust Agreements by virtue of the commencement of its chapter 11 case. Therefore, the participants are no longer entitled to benefits under the Plans, and the assets of the Trusts should be returned to WMI and made subject to the claims of WMI’s general creditors.

11. Upon information and belief, as of February 28, 2009, the aggregate asset value in the Trusts is approximately \$68 million. The Trust Estates are solely assets of WMI and constitute property of WMI’s estate.³

Relief Requested

12. By this motion (the “Motion”), WMI requests, pursuant to sections 105(a) and 363 of the Bankruptcy Code, entry of an order substantially in the form attached hereto as Exhibit “B” (the “Proposed Order”) authorizing (i) WMI to exercise its ownership rights over the Trust Estates, (ii) the Trustee to return the assets, income, and proceeds held therein to WMI

³ In an adversary proceeding filed by JPMorgan Chase against the Debtors alleging several causes of action related to disputed assets, JPMorgan Chase acknowledges that it “does not assert an ownership interest in the Rabbi Trusts previously sponsored by H.F. Ahmanson and Co.” See Adversary Proceeding No. 09-50551, Complaint of JP Morgan Chase Bank, National Association v. Washington Mutual, Inc. and WMI Investment Corp., and Federal Deposit Insurance Corporation, Pg. 38, n. 2.

(less any reasonable fees and expenses incurred in connection with the administration of the Trusts), and (iii) the termination of the Trusts. The Trustee has indicated that it will acknowledge WMI's rights with respect to the assets in the Trusts. The Trustee, however, has requested that the Court approve any exercise of such rights, provide advance approval of any and all applicable distributions of assets, and authorize the termination of the Trust.

**The Relief Requested is Appropriate Under
Sections 105(a) and 363 of the Bankruptcy Code**

13. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1); In determining whether to authorize the use of property outside the ordinary course of business, courts require a debtor to show that a sound business purpose justifies such actions. See, e.g., In re Martin (Myers v. Martin), 91 F.3d 389, 395 (3d Cir. 1996) (citing In re Schipper (Fulton State Bank v. Schipper), 933 F.2d 513, 515 (7th Cir. 1991)); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Abbotts Dairies of Penn., Inc., 788 F.2d 143 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of Lionel Corp. and requiring good faith); In re Delaware and Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991) (concluding that the Third Circuit adopted the “sound business judgment” test in the Abbotts Dairies decision); In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999) (same); In re Del. & Hudson Ry. Co., 124 B.R. 169, 178 (D. Del. 1991) (affirming decision permitting debtor to sell assets where sound business reasons supported the sale). Section 105(a) of the Bankruptcy Code, in turn, authorizes this Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

14. WMI's decision to exercise its ownership rights over the assets in the Trusts at this time is an exercise of sound business judgment, is undertaken in good faith, and is in the best interests of WMI's estate and creditors. Termination of the Trusts and a transfer of the assets held therein will afford WMI the opportunity to liquidate such assets (and save WMI any fees and expenses attributable to the administration of the Trusts), which is estimated to lead to a cash benefit of approximately \$68 million into WMI's estate. Taking action to secure its ownership rights over the assets in the Trusts falls squarely within WMI's rights under the Trusts. By pursuing these rights, WMI is not affecting the interests of any other party. Indeed, the Trust Estates are solely assets of WMI for the benefit of WMI's general creditors.

15. In sum, the relief requested could lead to the monetization of approximately \$68 million worth of assets, and ensure that these valuable assets are available for distribution to WMI's creditors. The relief requested does not affect the rights of any other parties. Accordingly, the relief requested is in the best interests of WMI, its estate, and all parties in interest, and the Court should approve the Motion.

Notice

16. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion has been provided to: (i) the U.S. Trustee; (ii) counsel for the Creditors' Committee; (iii) counsel to JPMorgan Chase; (iv) the Trustee; (v) the participants of the Plans; and (vi) those parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, WMI submits that no other or further notice need be provided.

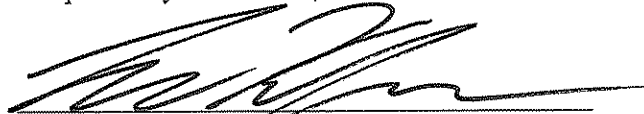
No Previous Request

17. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: May 15, 2009
Wilmington, Delaware

Respectfully submitted,



Mark D. Collins (No. 2981)
Chun I. Jang (No. 4790)
Lee E. Kaufman (No. 4877)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

– and –

Marcia L. Goldstein, Esq.
Brian S. Rosen, Esq.
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

ATTORNEYS TO THE DEBTORS
AND DEBTORS IN POSSESSION