

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

	X	
	:	
<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. 9023

**WASHINGTON MUTUAL, INC., AND
WMI INVESTMENT CORP.'S COUNTER-STATEMENT
OF ISSUES AND COUNTER-DESIGNATION OF RECORD REGARDING
THE EQUITY COMMITTEE'S CONDITIONAL CROSS-APPEAL**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, Appellants/Cross-Appellees Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment," and, together with WMI, the "Debtors"), hereby submit the following counter-statement of issues and counter-designation of additional items to be included in the record for the conditional cross-appeal filed by the Official Committee of Equity Security Holders (the "Equity Committee"), from the order [D.I. 8613] (the "Order") and the related opinion [D.I. 8612] (the "Opinion"), entered by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on September 13, 2011.²

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 925 Fourth Avenue, Seattle, Washington 98104.

² The Debtors submit this counter-statement of issues and counter-designation of record on appeal without prejudice to their position that no jurisdiction exists over the conditional cross-appeal filed by the Equity Committee.

Counter-Statement of Issues on Conditional Cross-Appeal

1. Whether the Bankruptcy Court correctly determined that the petition date is the proper date to use when calculating post-petition interest based on the federal judgment rate pursuant to section 726(a)(5) of the Bankruptcy Code?

2. Whether the Bankruptcy Court correctly found that the Modified Plan was proposed in good faith?

3. Whether the Bankruptcy Court correctly found that the Debtors' settlement with the WMB Senior Noteholders is reasonable?

Counter-Designation of the Record on Conditional Cross-Appeal

In addition to the items designated by the Equity Committee, as conditional cross-appellants, to be included in the record on appeal, the Debtors hereby designate the following exhibits and docket entries:

Tab Number	Exhibit No.³	Document	Document Date
1	CONF DX-1	Sixth Amended and Restated Global Settlement Agreement	10/06/2010
2	CONF DX-32	<i>WMI and WMI Investment v. FDIC</i> , No. 09-00533 (D.D.C.) (" <i>DC Action</i> "), Complaint [Dkt No. 1]	3/20/2009
3	CONF DX-33	<i>DC Action</i> , Motion of FDIC to Dismiss the Complaint in Part [Dkt. No. 24]	6/11/2009
4	CONF DX-34	<i>DC Action</i> , FDIC's Memorandum of Law in Support of Partial Motion to Dismiss [Dkt. No. 25]	6/11/2009
5	CONF DX-35	<i>DC Action</i> , Answer and Counterclaims of Defendant FDIC, as Receiver for Washington Mutual Bank [Dkt. No. 26]	6/11/2009
6	CONF DX-36	<i>DC Action</i> , First Amended Answer and Counterclaims of FDIC [Dkt. No. 34]	7/13/2009
7	CONF DX-37	<i>DC Action</i> , Plaintiffs' Consolidated Response	7/16/2009

³ Documents with a CONF DX, EC, AOC, AU, CB, CC, or WMI-NG pre-fix were admitted into evidence in the course of the confirmation hearings, which occurred from December 2-3, 2010, December 6-7, 2010, July 13-15, 2011, and July 18-21, 2011.

Tab Number	Exhibit No. ³	Document	Document Date
		to FDIC's Motion to Dismiss Counterclaims [Dkt. No. 42]	
8	CONF DX-38	<i>DC Action</i> , Plaintiff's Motion to Dismiss the Amended Counterclaims of Defendant and Counterclaim Plaintiff FDIC [Dkt No. 45]	7/27/2009
9	CONF DX-39	<i>DC Action</i> , Answer, Crossclaims, and Counterclaims of JPMC [Dkt. No. 60]	9/04/2009
10	CONF DX-40	<i>DC Action</i> , Court Order Granting Motion to Stay/Dismiss in Part [Dkt. No. 97]	1/7/2010
11	CONF DX-41	<i>JPMC. v. Washington Mutual, Inc., et al.</i> , Adv. Pro. No. 09-50551 (MFW) (" <i>JPMC Adversary</i> "), Complaint [Dkt. No. 1]	3/24/2009
12	CONF DX-42	<i>JPMC Adversary</i> , Debtors' Answer & Counterclaims [Dkt. No. 23]	5/29/2009
13	CONF DX-44	<i>JPMC Adversary</i> , Debtors' Answer and Amended Counterclaims in Response to the Complaint of JPMC [Dkt. No. 139]	9/11/2009
14	CONF DX-46	<i>JPMC Adversary</i> , JPMC Notice of Appeal of Order Denying Motion to Dismiss Debtors' Counterclaims [Dkt. No. 143]	9/18/2009
15	CONF DX-47	<i>JPMC Adversary</i> , JPMC Answer to Defendants' Amended Counterclaims [Dkt. No. 148]	9/21/2009
16	CONF DX-48	<i>Washington Mutual, Inc., et al., v. JPMC Adv</i> Pro. No. 09-50934 (MFW) (" <i>Turnover Action</i> "), Complaint for Turnover of Estate Property [Dkt. No. 1]	4/27/2009
17	CONF DX-49	<i>Turnover Action</i> , Motion of Defendant JPMC to Dismiss Adversary Proceeding [Dkt. No. 8]	5/13/2009
18	CONF DX-50	<i>Turnover Action</i> , Plaintiffs' Brief in Support of Motion for Summary Judgment [Dkt. No. 14]	5/19/2009
19	CONF DX-51	<i>Turnover Action</i> , Affidavit of Doreen Logan [Dkt. No. 15].	5/19/2009
20	CONF DX-52	<i>Turnover Action</i> , Order Denying (A) Motion of Defendant JPMorgan Chase Bank, N.A. to Stay and (B) Motion of FDIC as Receiver to Stay or Dismiss Adversary Proceeding [Dkt. No. 62]	7/6/2009
21	CONF DX-53	<i>Turnover Action</i> , Answer and Counterclaims/ Crossclaim of JPMC [Dkt. No. 66]	7/6/2009
22	CONF DX-54	<i>Turnover Action</i> , Memorandum of Law of Cross-Claim Defendant FDIC in Opposition to Plaintiffs' Motion for Summary Judgment [Dkt. No. 97]	7/24/2009
23	CONF DX-55	<i>Turnover Action</i> , Opposition of JPMC to	7/24/2009

Tab Number	Exhibit No. ³	Document	Document Date
		Plaintiffs' Motion for Summary Judgment [Dkt. No. 102]	
24	CONF DX-56	<i>Turnover Action</i> , Answer of FDIC as Receiver to Counterclaims/Cross-claims [Dkt. No. 109]	7/27/2009
25	CONF DX-57	<i>Turnover Action</i> , Answer and Amended Counterclaims/Cross-Claim of JPMC [Dkt. No. 121]	8/10/2009
26	CONF DX-58	<i>Turnover Action</i> , FDIC's Answer to Amended Counterclaims/Cross-claims [Dkt. No. 136]	8/20/2009
27	CONF DX-59	Motion of FDIC for an Order Modifying the Automatic Stay [Dkt. No. 1834]	11/4/2009
28	CONF DX-60	Debtors' Objection to the Motion of the FDIC for an Order Modifying the Automatic Stay [Dkt. No. 1872]	11/11/2009
29	CONF DX-68	Debtors' Motion for an Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1 Directing the Examination of JPMC [Dkt. No. 0974]	5/1/2009
30	CONF DX-69	Order Granting Debtors' Motion for an Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1 Directing the Examination of JPMC [Dkt. No. 1220]	6/24/2009
31	CONF DX-70	Debtors' Motion for an Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1 Directing the Examination of Witnesses and Production of Documents from Knowledgeable Parties [Dkt. No. 1997]	12/14/2009
32	CONF DX-71	Order Denying Debtors' Motion for an Order Directing the Examination of Witnesses and Production of Documents from Knowledgeable Parties [Dkt. No. 2366]	2/16/2010
33	CONF DX-72	Purchase and Assumption Agreement, Whole Bank	9/25/2008
34	CONF DX-253	Revised Supplemental Disclosure Statement for the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the U.S. Bankruptcy Code (Solicitation Version) ("Revised Supplemental Disclosure Statement")	3/25/2011
35	CONF DX-253A	Exhibit "A" – Prior Disclosure Statement	
36	CONF DX-253B	Exhibit "B" – Modified Sixth Amended Plan	

Tab Number	Exhibit No. ³	Document	Document Date
37	CONF DX-253C	Exhibit "C" – Chart of Modifications to Modified Sixth Amended Plan	
38	CONF DX-253D	Exhibit "D" – Updated Liquidation Analyses	
39	CONF DX-253E	Exhibit "E" – Valuation Analysis	
40	CONF DX-260	Transcript of Proceedings (Confirmation Hearing)	12/01/2010
41	CONF DX-261	Transcript of Proceedings (Confirmation Hearing)	12/02/2010
42	CONF DX-262	Transcript of Proceedings (Confirmation Hearing)	12/03/2010
43	CONF DX-263	Transcript of Proceedings (Confirmation Hearing)	12/06/2010
44	CONF DX-264	Transcript of Proceedings (Confirmation Hearing)	12/07/2010
45	CONF DX-265	Opinion Denying Confirmation of Debtors' Sixth Amended Joint Plan [Dkt. No. 6528]	1/07/2011
46	CONF DX-266	Order Denying Confirmation of Debtors' Sixth Amended Joint Plan [Dkt. No. 6529]	1/07/2011
47	CONF DX-267	Opinion Granting Defendants' Motions for Summary Judgment [Adv. Proc. 10-51387 (" <i>TPS Adversary</i> "), Dkt. No. 179]	1/07/2011
48	CONF DX-268	Opinion Denying Defendant's Motion for Summary Judgment [Adv. Proc. 10-50911 (" <i>LTW Adversary</i> "), Dkt. No. 145]	1/07/2011
49	CONF DX-270	Transcript of Proceedings	1/20/2011
50	CONF DX-375	July 6, 2011 Updated Liquidation Analyses	7/06/2011
51	CONF DX-408	Confidentiality Agreement with Fried, Frank, Harris Shriver & Jacobson LLP	11/11/2008
52	CONF DX-421	Debtors' Response to the First and Second Supplemental Objections of the Consortium of	7/12/2011

Tab Number	Exhibit No. ³	Document	Document Date
		Trust Preferred Security Holders to Confirmation of the Modified Sixth Amended Plan of Reorganization [Dkt. No. 8176]	
53	CONF DX-427	WMI Form 8-K	4/30/2009
54	CONF DX-428	WMI Form 8-K	12/30/2009
55	EC 25	March 2009 Monthly Operating Report of Washington Mutual, Inc. [Dkt. No. 970]	3/2009
56	EC 31	Washington Mutual, Inc. Litigation update prepared by Quinn Emanuel (public info. version)	9/14/2009
57	EC 33	Meeting w/ the Official Committee of Creditors Washington Mutual	10/18/2009
58	EC 39	Monthly Operating Report of WMI for 11/1/2009 – 11/30/2009 [Dkt. No. 2077]	11/2009
59	EC 125	Email from J. Buono to B. Rosen, B. Kosturos re WMI plan term sheet	2/09/2010
60	EC 146	Email from G. Uzzi to D. Krueger (redacted)	5/08/2009
61	EC 221	Email from B. Pfeiffer to WaMu-Centerbridge cc: M. Roose re WMI Term Sheet	3/13/09
62	AOC 14	Owl Creek Compliance Manual, dated January 2011	1/2011
63	AOC 18	Owl Creek Trading Records	
64	AOC 19	Owl Creek Trading Records	
65	AOC 57	In re Washington Mutual March 4, 2010 Hearing Transcript	3/04/2010
66	AOC 60	Underlying TRACE report data	
67	AOC 69	Motion of Debtors Pursuant to Sections 105(a), 361, 362 and 542(b) of the Bankruptcy Code Seeking Approval of a Stipulation and Agreement Concerning Deposit Accounts at JPMorgan Chase Bank, National Association	10/14/2008

Tab Number	Exhibit No. ³	Document	Document Date
		[Dkt. No. 0074]	
68	AU 12	WCI Communities Confidentiality Agreement	6/30/2008
69	AU 17	Aurelius Ethical Wall Policy	3/09/2009
70	AU22	Dan Gropper Email to Bill Kosturos	4/29/2009
71	AU26	General Motors Confidentiality Agreement	5/28/2009
72	AU31	Email from B. Rosen to M. Roose, forwarded to Aurelius	12/28/2009
73	AU38	Lehman Brothers Confidentiality Agreement	6/14/2011
74	AU39	Capmark Financial Group Confidentiality Agreement	10/12/2009
75	WMI-NG 1	First Supplemental Indenture (BONY)	8/01/2002
76	WMI-NG 2	Standard Multiple-Series Indenture Provisions	4/2002
77	WMI-NG 3	CCB Capital Trust IV Guarantee	11/01/2007
78	WMI-NG 4	CCB Capital Trust Floating Rate Junior Subordinated Debt Securities	9/25/2003
79	WMI-NG 5	CCB Capital Trust VI Guarantee	11/01/2007
80	WMI-NG 6	CCB Capital Trust Junior Subordinated Indenture	3/31/2004
81	WMI-NG 7	First Supplemental Indenture	4/30/2001

Tab Number	Docket No.	Document	Document Date
82	5141	Notice of Appointment of Examiner	7/26/2010
83	5735	Final Report of the Examiner	11/1/2010
84	6085	Memorandum of Law in Support of Confirmation of the Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code	11/24/2010
85	8101	Statement of Law Debenture Trust Company of New York in Support of the Modified Sixth Amended Joint Plan of Affiliated Debtors	7/8/2011

Tab Number	Docket No.	Document	Document Date
		Pursuant to Chapter 11 of the Bankruptcy Code and in Response to Certain Objections	
86	8107	Statement of the Washington Mutual Inc. Noteholders Group in Support of Confirmation of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code and Response to the Limited Objection of Normandy Hill Capital L.P. and the Statement of Wells Fargo Bank, N.A.	7/8/2011
87	8112	Submission of JPMorgan Chase bank, N.A. in Support of Confirmation of the Debtors' Modified Sixth Amended Joint Plan	7/8/2011
88	8184	Reply of the Official Committee of Unsecured Creditors to Insider Trading and Equitable Conduct Arguments Set Forth in Objection of the Official Committee of Equity Security Holders to Confirmation of the Modified Sixth Amended Plan of Reorganization	7/12/2011
89	8190	Response of Appaloosa Management L.P. to the Objection of the Official Committee of the Equity Security Holders to Confirmation of the Modified Sixth Amended Plan of Reorganization	7/12/2011
90	8194	Owl Creek Asset Management, L.P.'s Response to the Objection of the Official Committee of Equity Security Holders to Confirmation of the Modified Sixth Amended Plan of Reorganization	7/12/2011
91	8270	Notice of Filing of Transcript and of Deadlines Related to Restriction and Redaction for Hearing Held on July 14, 2011	7/19/2011
92	8410	Post-Confirmation Hearing Submission of the Washington Mutual Inc. Noteholders Group in Support of Confirmation of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code	8/10/2011
93	8415	Post-Confirmation Hearing Brief of the Official Committee of Unsecured Creditors in Support of Confirmation (Issues Other Than Alleged Insider Trading)	8/10/2011
94	8419	Post-Confirmation Hearing Brief of the Official Committee of Unsecured Creditors in Support of	8/10/2011

Tab Number	Docket No.	Document	Document Date
		Confirmation of the Modified Sixth Amended Plan of Reorganization [Docket No. 8073] With Respect to Insider Trading and Equitable Conduct Issues	
95	8420	Objection of the Official Committee of Unsecured Creditors to Motion for an Order Authorizing the Official Committee of Equity Security Holders to Commence and Prosecute Certain Claims of Debtors' Estates	8/10/2011
96	8422	Post-Hearing Submission of JPMorgan Chase Bank, N.A. in Support of Confirmation of the Debtors' Modified Sixth Amended Joint Plan	8/10/2011
97	8424	Debtors' Objection to Motion for an Order Authorizing the Official Committee of Equity Security Holders to Commence and Prosecute Certain Claims of Debtors' Estates	8/10/2011
98	8476	Post-Confirmation Hearing Brief of the Official Committee of Unsecured Creditors in Support of Confirmation of the Modified Sixth Amended Plan of Reorganization [Docket No. 8073] with Respect to Insider Trading and Equitable Conduct Issues	8/15/2011
99	8482	Joint Post Trial Brief of Appaloosa Management L.P., Centerbridge Partners, L.P. and Owl Creek Asset Management, L.P. in Connection with Confirmation of the Modified Sixth Amended Plan	8/15/2011
100	8483	Appaloosa Management L.P.'s Post-Hearing Brief in Connection with Confirmation of the Modified Sixth Amended Joint Plan of Reorganization	8/15/2011
101	8484	Owl Creek Asset Management, L.P.'s Post-Confirmation Hearing Memorandum Supporting Confirmation of the Modified Sixth Amended Plan of Reorganization	8/15/2011
102	8485	Post-Confirmation Hearing Brief of Centerbridge Partners, L.P. in Support of the Modified Sixth Amended Plan of Reorganization	8/15/2011
103	8487	Post-Hearing Memorandum of Aurelius Capital Management, LP	8/15/2011
104	8489	Objection of Certain Funds Managed by Centerbridge Partners, L.P. to the Motion for an Order Authorizing the Official Committee of	8/15/2011

Tab Number	Docket No.	Document	Document Date
		Equity Security Holders to Commence and Prosecute Certain Claims of Debtors' Estates	
105	8490	Objection of Aurelius Capital Management, LP to Motion for an Order Authorizing the Official Committee of Equity Security Holders to Commence and Prosecute Certain Claims of Debtors' Estates	8/15/2011
106	8520	Notice Regarding Arguments with Respect to (I) Confirmation of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, and (II) Motion of Equity Committee to Commence and Prosecute Certain Claims of Debtors' Estates	8/19/2011

Dated: November 28, 2011
Wilmington, Delaware



Mark D. Collins (No. 2981)
Marcos A. Ramos (No. 4450)
Travis A. McRoberts (No. 5724)
Amanda R. Steele (No. 5530)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

– and –

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 for Debtors
and Debtors in Possession*