

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE WASHINGTON MUTUAL, INC.
SECURITIES LITIGATION,

No. 2:08-md-1919 MJP
Lead Case No. C08-387 MJP

This Document Relates to: ALL ACTIONS

**STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR DEFENDANTS
AND WITH WASHINGTON MUTUAL, INC.**

This Stipulation and Agreement of Settlement (the “Stipulation”) is entered into by and among: (i) Ontario Teachers’ Pension Plan Board (“Ontario Teachers”), Lead Plaintiff in the consolidated class action styled *In re Washington Mutual, Inc. Securities Litigation*, No. 2:08-md-1919 MJP (W.D. Wash.), Lead Case No. C08-387 MJP (the “Action”¹), one of the actions that comprises the Multidistrict Litigation captioned *In re Washington Mutual, Inc. Securities, Derivative & ERISA Litigation*, Case No. 2:08-md-1919 MJP (W.D. Wash), on behalf of itself and the Class;² (ii) Defendants Kerry K. Killinger, Thomas W. Casey, Stephen J. Rotella, Ronald J. Cathcart, David C. Schneider, John F. Woods, Melissa J. Ballenger (collectively, the “Officer Defendants”), Anne V.

¹ The term “Action” expressly excludes *Flaherty & Crumrine Preferred Income Fund Inc. v. Killinger et al.*, 09-1756 (W.D. Wash.) and *In re Washington Mutual, Inc. California Securities Litigation*, 09-664 (W.D. Wash.).

² All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in ¶ 1 herein, unless a contrary indication appears.

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP

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Farrell, Stephen E. Frank, Thomas C. Leppert, Charles M. Lillis, Phillip D. Matthews, Regina Montoya, Michael K. Murphy, Margaret Osmer McQuade, Mary E. Pugh, William G. Reed, Jr., Orin C. Smith, James H. Stever and Willis B. Wood, Jr. (collectively, the "Outside Director Defendants") and, together with the Officer Defendants, the "Individual Defendants"; and (iii) Defendant Washington Mutual, Inc. ("WMI" or the "Company" and, together with the Individual Defendants the "Settling Defendants") by and through their respective counsel, is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure, and is subject to (a) the approval of the United States District Court for the Western District of Washington (the "District Court"), and (b) entry of the Bankruptcy Court Approval Order by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). Subject to the terms expressly provided herein, this Settlement is intended to settle and release all Settled Claims, including without limitation, the Bankruptcy Claims.

WHEREAS:

A. Beginning in November 2007, three securities class actions, *Koesterer v. Washington Mutual, Inc., et al.*, No. C08-0387 MJP; *Abrams and Roffe v. Washington Mutual, Inc., et al.*, No. C-08-388 MJP; and *Garber v. Washington Mutual, Inc., et al.*, No. C08-465 MJP were commenced in the United States District Court for the Southern District of New York (the "Southern District of New York") against WMI and certain of its officers and directors who are also named as Individual Defendants (collectively, the "Securities Actions"). The Securities Actions alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), and Rule 10b-5 promulgated thereunder, with respect to public disclosures concerning the lending practices

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 and financial condition of WMI. A fourth putative securities class action, *Nelson v. Woods, et al.*,
 2 No. C 07-1809 MJP, was commenced in the District Court and was voluntarily dismissed, without
 3 prejudice, on March 3, 2008.

4 B. On February 21, 2008 and March 17, 2008, the United States Judicial Panel on
 5 Multidistrict Litigation ordered that the Securities Actions, together with a number of related
 6 derivative and ERISA actions, be centralized for coordinated pretrial proceedings in the District
 7 Court and that the Securities Actions pending in the Southern District of New York be transferred to
 8 the District Court.

9 C. On May 7, 2008, the District Court entered an Order consolidating the Securities
 10 Actions and any related pending or subsequently filed actions into the Action; appointing Ontario
 11 Teachers as Lead Plaintiff, Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel and
 12 Byrnes Keller Cromwell LLP as Liaison Counsel in the Action; and ordering Lead Plaintiff to file an
 13 amended complaint.

14 D. On May 13, 2008, Brockton Contributory Retirement System ("Brockton") filed a
 15 class action complaint, *Brockton Contributory Retirement System v. Washington Mutual, Inc., et al.*,
 16 No. C08-751 MJP, alleging claims under Sections 11, 12(a)(2) and 15 of the Securities Act of 1933
 17 (the "Securities Act") against certain of the Underwriter Defendants, certain of the Officer
 18 Defendants and Outside Director Defendants and Deloitte & Touche LLP ("Deloitte") in connection
 19 with (i) the August 2006 offering (the "August 2006 Offering") of \$500 million of floating rate notes
 20 due August 24, 2009 (the "Floating Rate Notes") and \$400 million of 5.50% notes due August 24,
 21 2011 (the "5.50% Notes"); (ii) the September 2006 offering (the "September 2006 Offering") of

22
 STIPULATION AND AGREEMENT OF SETTLEMENT
 WITH INDIVIDUAL OFFICER AND DIRECTOR
 DEFENDANTS AND WITH WASHINGTON MUTUAL,
 INC.

Master No: 2:08-md-1919 MJP



1 \$500 million in Series K perpetual non-cumulative floating rate preferred stock ("Series K Stock");
2 and (iii) the October 2007 offering (the "October 2007 Offering") of \$500 million of 7.250%
3 subordinated notes due November 1, 2017 (the "7.250% Notes"). Such action was subsequently
4 consolidated into the Action.

5 E. On August 5, 2008, Lead Plaintiff filed the Consolidated Class Action Complaint
6 (the "Consolidated Complaint"), which included Brockton as an additional named plaintiff. The
7 Consolidated Complaint asserted claims against WMI, Killinger, Casey, Cathcart, Rotella, and
8 Schneider under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder; and
9 against Killinger, Casey, Cathcart, Rotella, Schneider, Woods, Ballenger, and certain of the Outside
10 Director Defendants under Section 20(a) of the Exchange Act. The Consolidated Complaint alleged
11 that the named defendants in the Exchange Act claims made, or controlled others who made,
12 materially false and misleading statements about the effectiveness of WMI's risk management
13 procedures, the fairness and reliability of the appraisals received in connection with WMI's loans,
14 the quality of WMI's mortgage underwriting practices and WMI's financial results, including the
15 appropriate allowances for its loan losses, and that these false and misleading statements caused the
16 prices of WMI's securities to be artificially inflated during the Class Period. The Consolidated
17 Complaint also asserted claims against WMI, Killinger, Casey, Woods, the Outside Director
18 Defendants, Deloitte, the Underwriter Defendants, Lehman Brothers Inc. ("Lehman") and Banc of
19 America Securities LLC ("BOA") under Section 11 of the Securities Act; against WMI, the
20 Underwriter Defendants, Lehman and BOA under Section 12(a)(2) of the Securities Act; and against
21 Killinger, Casey, Woods, Ballenger, and the Outside Director Defendants under Section 15 of the
22

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



Securities Act. The Consolidated Complaint alleged that the named defendants in the Securities Act claims were statutorily liable for materially untrue statements and misleading omissions in the registration statement and offering documents for four public offerings WMI conducted during the Class Period, including the August 2006 Offering, the September 2006 Offering, the October 2007 Offering and WMI's December 2007 offering (the "December 2007 Offering") of \$3 billion in 7.75% Series R Non-Cumulative Perpetual Convertible Preferred Stock (the "Series R Stock").

F. On September 25, 2008, the Office of Thrift Supervision (the "OTS"), by order number 2008-36, closed Washington Mutual Bank ("WMB"), appointed the FDIC Receiver as receiver for WMB and advised that the FDIC Receiver was immediately taking possession of WMB's assets. Upon its appointment as receiver, the FDIC Receiver sold substantially all the assets of WMB to JPMorgan Chase Bank, National Association, pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008.

G. On September 26, 2008, WMI and WMI Investment Corp. (together, the "Debtors") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the Bankruptcy Court, as jointly administered, *In re Washington Mutual, Inc.*, Case No. 08-12229 (MFW) (the "Chapter 11 Cases"). As a result, all claims against WMI in the Action were stayed pursuant to 11 U.S.C. § 362(a).³

H. On December 16, 2008, the Bankruptcy Court entered an Order Modifying Automatic

³ On September 19, 2008, the Southern District of New York entered an order commencing a proceeding under the Securities Investor Protection Act of 1970 (SIPA) with respect to Lehman and staying certain proceedings, including the Action, against Lehman pursuant to 11 U.S.C. § 362(a). *SIPC v. Lehman Bros. Inc.*, 08 cv 8119 (S.D.N.Y. Sept. 19, 2008 [Dkt. No. 1]).

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP

Stay to Allow Advancement Under Insurance Policies that, among other things, authorized the Contributing Insurers to advance defense fees and costs incurred by the Officer Defendants and the Outside Director Defendants in the Action.

I. The Bankruptcy Court established March 31, 2009 at 5:00 p.m. (Eastern Time) (the “Bankruptcy Bar Date”) as the deadline for filing proofs of claim against the Debtors and their chapter 11 estates.

J. Prior to the Bankruptcy Bar Date, Plaintiffs filed the following proofs of claim in the Chapter 11 Cases on their own behalf against WMI with respect to the claims asserted in the Action (the “Individual Claims”):

<u>Claim No.</u>	<u>Claimant</u>	<u>Debtor</u>	<u>Amount</u>
2761	Ontario Teachers’ Pension Board	WMI	Unliquidated
2763	Brockton Contributory Retirement System	WMI	Unliquidated

K. Prior to the Bankruptcy Bar Date, Lead Plaintiff also filed the following proof of claim in the Chapter 11 Cases on behalf of the Class with respect to the claims asserted in the Action (the “Class Claim” and, together with the Individual Claims, the “Bankruptcy Claims”):

<u>Claim No.</u>	<u>Claimant</u>	<u>Debtor</u>	<u>Amount</u>
2759	Lead Plaintiff on behalf of the Class in In re Washington Mutual Securities Litigation	WMI	Unliquidated

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP

1 L. On March 18, 2010, the Debtors filed the Debtors' Twenty-Eighth Omnibus
2 (Substantive) Objection to Claims (the "Twenty-Eighth Omnibus Objection") and asserted that (i)
3 the Class Claim should be disallowed because the Lead Plaintiff failed to seek certification on behalf
4 of the putative class pursuant to Rule 9014 of the Federal Rules of Bankruptcy Procedure (the
5 "Bankruptcy Rules"), and (ii) any recovery on account of the Bankruptcy Claims should be
6 subordinated pursuant to section 510(b) of the Bankruptcy Code. By stipulation, dated May 17,
7 2010 (the "Claim Stipulation"), the Lead Plaintiff, on its own behalf and on behalf of the Class, as
8 well as Brockton on its own behalf, and the Debtors, agreed (i) to a consensual resolution of the
9 Twenty-Eighth Omnibus Objection whereby the Lead Plaintiff and Brockton would stipulate to the
10 subordination of the Bankruptcy Claims consistent with section 510(b) of the Bankruptcy Code, and
11 (ii) to the withdrawal, without prejudice, of the Twenty-Eighth Omnibus Objection pursuant to the
12 terms of the Claim Stipulation. By order, dated May 19, 2010, the Bankruptcy Court approved the
13 Claim Stipulation and granted the Twenty-Eighth Omnibus Objection, as modified, thereby
14 subordinating the Bankruptcy Claims, to the extent allowed, consistent with section 510(b) of the
15 Bankruptcy Code.

16 M. On December 8, 2008, all of the Defendants, other than WMI and Lehman, filed
17 motions to dismiss the Consolidated Complaint, which were fully briefed and argued to the District
18 Court. On May 15, 2009, the District Court entered an order granting in part and denying in part the
19 motions to dismiss. The District Court denied Defendants' motions to dismiss the claims under the
20 Securities Act concerning the October 2007 Offering, but granted Defendants' motions to dismiss
21 the Securities Act claims concerning the August 2006 Offering, the September 2006 Offering and
22

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 the December 2007 Offering. Additionally, the District Court ordered that the Exchange Act claims
2 be re-pled.

3 N. On June 15, 2009, Lead Plaintiff filed the Amended Consolidated Class Action
4 Complaint (the "Amended Complaint"). In addition to Lead Plaintiff Ontario Teachers and named
5 plaintiff Brockton, the Amended Complaint included Pompano Beach Police and Firefighters'
6 Retirement System ("Pompano Beach"), Harlan Seymour ("Seymour"), and Police and Fire
7 Retirement System of the City of Detroit ("Detroit P&F") as named plaintiffs. Like the
8 Consolidated Complaint, the Amended Complaint asserted claims under Sections 10(b) and 20(a) of
9 the Exchange Act and Rule 10b-5 promulgated thereunder; and under Sections 11, 12(a)(2) and 15
10 of the Securities Act. The Amended Complaint alleged claims substantially similar to those in the
11 Consolidated Complaint.

12 O. On July 17, 2009, all Defendants (except WMI and Lehman, against which the Action
13 had been stayed) filed motions to dismiss the Amended Complaint. The motions were fully briefed
14 and argued to the District Court. On October 27, 2009, the District Court sustained the Exchange
15 Act claims against all the Defendants against whom they were asserted and dismissed the Section 11
16 claims relating to the August 2006 offering of 5.50% Notes and the Section 12(a)(2) claims relating
17 to the 5.50% Notes, the Floating Rate Notes, and the Series K Stock, but sustained all other
18 Securities Act claims asserted.

19 P. On January 15, 2010, all Defendants, other than WMI and Lehman, filed answers to
20 the Amended Complaint.

21 Q. On April 30, 2010, Lead Plaintiff filed a motion for class certification which was
22

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 fully briefed and argued to the District Court.

2 R. On October 12, 2010, the District Court entered an Order (the "October 12, 2010
3 Order") granting Lead Plaintiff's motion for class certification except with respect to named plaintiff
4 Seymour and the Series K Stock. The District Court certified Lead Plaintiff and additional named
5 plaintiffs Pompano Beach, Brockton and Detroit P&F (collectively, the "Additional Named
6 Plaintiffs") as class representatives and appointed Lead Counsel as Class Counsel. The District
7 Court excluded named plaintiff Seymour and the Series K Stock from the certified class.⁴

8 S. On December 1, 2010, the Underwriter Defendants moved for judgment on the
9 pleadings, a motion in which all Defendants (other than WMI and Lehman) joined, contending that
10 the remaining Securities Act claims relating to the August 2006 Offering and the December 2007
11 Offering were barred by the statute of limitations. The District Court heard oral argument on the
12 motion on January 27, 2011 and denied the motion on January 28, 2011.

13 T. Pursuant to the District Court's Order, dated November 25, 2009, the parties were
14 directed to engage in mediation to determine whether a consensual resolution of the Action could be
15 achieved. Lead Plaintiff and the Individual Defendants, through their respective counsel, engaged in
16 extensive arm's-length negotiations that included mediation sessions on February 18, 2011 and
17 March 22 and 23, 2011, with an experienced mediator, former United States District Judge Layn R.
18 Phillips and extensive additional settlement discussions and negotiations during February and March
19

20 ⁴ BOA, which was an underwriter for the Series K Stock, was dismissed from the Action pursuant to
21 the District Court's October 12, 2010 Order.

22
STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



2011, including the submission of detailed mediation briefs to Judge Phillips. With Judge Phillips' assistance, on March 23, 2011, Lead Plaintiff reached an agreement-in-principle to settle with the Individual Defendants, on terms that include the use of the Directors' and Officers' Liability Insurance Policies to fund the payment of One Hundred Five Million Dollars (\$105,000,000.00), in cash, to be paid by the Contributing Insurers for the benefit of the Class.

U. Lead Counsel has conducted an investigation and pursued discovery relating to the claims and the underlying events and transactions alleged in the Amended Complaint. Lead Counsel has analyzed the evidence adduced during its investigation and through discovery, which included almost 500 witness interviews, review of over 23 million pages of documents produced by Defendants and others, and dozens of depositions; has consulted with numerous experts, including experts in accounting and auditing, risk management, loss reserve modeling, statistical analysis and damages; and has researched the applicable law with respect to the claims of Lead Plaintiff and the Class against the Settling Defendants and the potential defenses thereto.

V. Based upon its investigation and what it has learned through its prosecution of the Action, Lead Counsel has concluded that the terms and conditions of the Settlement are fair, reasonable and adequate to Lead Plaintiff and the other members of the Class, and in their best interests. Based on Lead Plaintiff's direct oversight of the prosecution of the Action, along with the input of Lead Counsel, Lead Plaintiff has agreed to settle the Action against the Settling Defendants and to withdraw, with prejudice, the Bankruptcy Claims in the Chapter 11 Cases, pursuant to the terms and provisions of this Stipulation, after considering (i) the substantial benefits that Lead Plaintiff and the other members of the Class will receive from the resolution of the Action against

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 the Settling Defendants and the withdrawal, with prejudice, of the Bankruptcy Claims in the Chapter
2 11 Cases, pursuant to the terms and provisions of this Stipulation; (ii) the attendant risks of
3 litigation; and (iii) the desirability of permitting the Settlement to be consummated as provided by
4 the terms of this Stipulation.

5 W. Each of the Settling Defendants denies any wrongdoing, and this Stipulation shall in
6 no event be construed or deemed to be evidence of or an admission or concession on the part of any
7 of the Settling Defendants with respect to any claim or of any fault or liability or wrongdoing or
8 damage whatsoever, or any infirmity in the defenses that the Settling Defendants have asserted, or
9 could have asserted, in the Action or in the Chapter 11 Cases with respect to the Bankruptcy Claims
10 or otherwise. The Settling Parties recognize, however, that the Action and the Bankruptcy Claims
11 have been filed and prosecuted by Lead Plaintiff and defended by the Settling Defendants in good
12 faith under Rule 11 of the Federal Rules of Civil Procedure, and, where applicable, Rule 9011 of the
13 Bankruptcy Rules, and that the Action is being voluntarily settled and the Bankruptcy Claims
14 withdrawn, with prejudice, with the advice of counsel. The Settling Parties recognize that the terms
15 of the Settlement are fair, adequate and reasonable. The Settling Defendants are entering into this
16 Settlement solely to avoid the cost and distraction of further litigation.

17 NOW THEREFORE, without any admission or concession on the part of Lead Plaintiff of
18 any lack of merit of the Action or the Bankruptcy Claims whatsoever, and without any admission or
19 concession of any liability or wrongdoing or lack of merit in their defenses whatsoever by any of the
20 Settling Defendants, it is hereby STIPULATED AND AGREED, by and among the parties to this
21 Stipulation, through their respective attorneys, subject to entry of (a) the Bankruptcy Court Approval
22

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



Order by the Bankruptcy Court, and (b) the Judgment, by the District Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Settling Parties from the Settlement, that all Settled Claims against the Released Defendant Parties and all Released Claims by Defendants as to Plaintiffs shall be unconditionally, fully, finally and forever compromised, settled, released and dismissed, with prejudice, and the Bankruptcy Claims shall be withdrawn, with prejudice, in their entirety, upon and subject to the following terms and conditions:

DEFINITIONS

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) “Alternative Judgment” means a form of final judgment that may be entered by the District Court but in a form other than the form of Judgment provided for in this Stipulation.

(b) “Authorized Claimant” means a Class Member who submits a timely and valid Proof of Claim Form to the Claims Administrator, in accordance with the requirements established by the District Court, that is approved for payment from the Net Settlement Fund.

(c) “Bankruptcy Court Approval Order” means the order of the Bankruptcy Court authorizing WMI to consummate the Settlement contemplated herein, and authorizing, to the extent necessary, the use of the proceeds of the Directors’ and Officers’ Liability Insurance Policies for the payment and funding of the Settlement Amount.

(d) “Claim” means a completed and signed Proof of Claim Form submitted to the Claims Administrator in accordance with the instructions on the Proof of Claim Form.

(e) “Claim Form” or “Proof of Claim Form” means the form, substantially in the form attached hereto as Exhibit “2” to Exhibit “A”, that a Claimant or Class Member must complete

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP

1 in order that the Claimant or Class Member may be eligible to share in a distribution of the Net
2 Settlement Fund.

3 (f) “Claimant” means a person or entity that submits a Claim Form to the Claims
4 Administrator seeking to share in the proceeds of the Net Settlement Fund.

5 (g) “Claims Administrator” means the firm retained by Lead Plaintiff and Lead
6 Counsel, subject to approval of the District Court, to provide all notices approved by the District
7 Court to potential Class Members and to administer the Settlement.

8 (h) “Class” means the class defined in paragraph 870 of the Amended Complaint
9 and modified by Orders of the District Court dated, May 15, 2009, October 27, 2009, and October
10 12, 2010. Specifically, the Class includes all persons and/or entities who purchased or otherwise
11 acquired the WMI Class Securities during the Class Period and were damaged thereby. Excluded
12 from the Class are (i) Defendants; (ii) members of the Immediate Family of each Individual
13 Defendant; (iii) any other person who was an officer or director of WMI, Deloitte, any of the
14 Underwriter Defendants, Lehman, or BOA during the Class Period; (iv) any firm, trust, corporation,
15 or other entity in which any Defendant has or had a controlling interest; (v) any person who
16 participated in the wrongdoing alleged in the Action; (vi) TPG Capital and other purchasers of equity
17 securities issued by WMI in connection with the \$7 billion capital issuance pursuant to the
18 agreements entered into by and among TPG Capital and WMI and other investors, announced by the
19 Company on April 8, 2008 (the “TPG Deal”), to the extent that such purchasers exercised distinct
20 rights and diligence opportunities afforded them in connection with the TPG Deal; and (vii) the legal
21 representatives, agents, affiliates, heirs, beneficiaries, successors-in-interest, or assigns of any such
22

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 excluded party, provided that any Investment Vehicle shall not be deemed an excluded person or
2 entity by definition. Also excluded from the Class are any persons or entities who exclude
3 themselves by filing a request for exclusion in accordance with the requirements set forth in the
4 Notice.

5 (i) "Class Distribution Order" means an order entered by the District Court
6 authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to
7 Authorized Claimants.

8 (j) "Class Member" means a person or entity that is a member of the Class,
9 including, without limitation, Lead Plaintiff and the Additional Named Plaintiffs, and does not
10 exclude himself, herself or itself by filing a request for exclusion in accordance with the
11 requirements set forth in the Notice.

12 (k) "Class Period" means the period from October 19, 2005 to July 23, 2008.

13 (l) "Contributing Insurers" means those insurers issuing the Directors' and
14 Officers' Liability Insurance Policies, as defined below, and (1) who contribute to the Settlement
15 Amount, and/or (2) whose applicable Directors' and Officers' Liability Insurance Policy proceeds
16 have been exhausted as of the date the Settlement Amount is fully funded, by (a) payment of defense
17 fees and costs or (b) payment of settlements of matters other than the Action on behalf of any
18 insureds under the Directors' and Officers Liability Insurance Policies.

19 (m) "Defendants" means the Settling Defendants and all other persons or entities
20 that were named as defendants in the Consolidated Complaint or the Amended Complaint.

21 (n) "Directors' and Officers' Liability Insurance Policies" means the following
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STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP

1 policies with a policy period of May 1, 2007 to May 1, 2008: (i) National Union (AIG) Policy
 2 Number 741-98-06 ("National Union Policy") with an aggregate limit of \$25,000,000; (ii) XL
 3 Specialty Policy Number ELU097687-07 ("XL Specialty Policy") with an aggregate limit of
 4 \$15,000,000 excess of the National Union Policy; (iii) Twin City Fire (Hartford) Policy Number
 5 DA1497374 ("Twin City Fire Policy") with an aggregate limit of \$15,000,000 excess of the National
 6 Union Policy and the XL Specialty Policy; (iv) ACE American Policy Number DOXG21669994 004
 7 ("ACE American Policy") with an aggregate limit of \$15,000,000 excess of the National Union
 8 Policy, the XL Specialty Policy and Twin City Fire Policy; (v) Arch Insurance Policy Number
 9 DOX0006090-02 ("Arch Insurance Policy") with an aggregate limit of \$15,000,000 excess of the
 10 National Union Policy, the XL Specialty Policy, the Twin City Fire Policy and the ACE American
 11 Policy; (vi) Continental Casualty Company (Continental) Policy Number 287127607 ("Continental
 12 Policy") with an aggregate limit of \$5,000,000 excess of the National Union Policy, the XL
 13 Specialty Policy, the Twin City Fire Policy, the ACE American Policy and the Arch Insurance
 14 Policy; (vii) Federal Insurance Company Policy Number 8208-3395 ("Federal Policy") with an
 15 aggregate limit of \$5,000,000 excess of the National Union Policy, the XL Specialty Policy, the
 16 Twin City Fire Policy, the ACE American Policy and the Arch Insurance Policy; (viii) St. Paul
 17 Mercury Policy Number 590CM2684 ("St. Paul Policy") with an aggregate limit of \$15,000,000
 18 excess of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE
 19 American Policy, the Arch Insurance Policy, the Continental Policy and the Federal Policy; (ix)
 20 RSUI Policy Number N-HS625033 ("RSUI Policy") with an aggregate limit of \$10,000,000 excess
 21 of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE
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STIPULATION AND AGREEMENT OF SETTLEMENT
 WITH INDIVIDUAL OFFICER AND DIRECTOR
 DEFENDANTS AND WITH WASHINGTON MUTUAL,
 INC.

Master No: 2:08-md-1919 MJP



American Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy and the St. Paul Policy; (x) ACE Westchester Policy Number G23822660-001 ("ACE Westchester Policy") with an aggregate limit of \$10,000,000 excess of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE American Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy and the St. Paul Policy; (xi) AIG Casualty (Starr Excess) Policy Number 347-2092 ("AIG Casualty Policy") with an aggregate limit of \$20,000,000 excess of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE American Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy, the St. Paul Policy, the RSUI Policy and the ACE Westchester Policy; (xii) XL Specialty Side A Policy Number ELU097685-07 ("XL Specialty Side A Policy") with an aggregate limit of \$25,000,000 excess of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE American Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy, the St. Paul Policy, the RSUI Policy, the ACE Westchester Policy, and the AIG Casualty Policy; (xiii) Federal Insurance Side A Policy Number 6802-6117 ("Federal Insurance Side A Policy") with an aggregate limit of \$25,000,000 in excess of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE American Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy, the St. Paul Policy, the RSUI Policy, the ACE Westchester Policy, the AIG Casualty Policy and the XL Specialty Side A Policy; (xiv) Twin City Fire (Hartford) Side A Policy Number DA0218197 ("Twin City Fire Side A Policy") with an aggregate limit of \$10,000,000 in excess of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE American Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy, the St. Paul Policy, the

STIPULATION AND AGREEMENT OF SETTLEMENT
 WITH INDIVIDUAL OFFICER AND DIRECTOR
 DEFENDANTS AND WITH WASHINGTON MUTUAL,
 INC.

Master No: 2:08-md-1919 MJP



1 RSUI Policy, the ACE Westchester Policy, the AIG Casualty Policy, the XL Specialty Side A Policy
 2 and the Federal Insurance Side A Policy; (xv) Continental Casualty Company (Continental) Side A
 3 Policy Number 287127641-2 ("Continental Side A Policy") with an aggregate limit of \$5,000,000 in
 4 excess of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE
 5 American Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy, the St. Paul
 6 Policy, the RSUI Policy, the ACE Westchester Policy, the AIG Casualty Policy, the XL Specialty
 7 Side A Policy, the Federal Insurance Side A Policy and the Twin City Fire Side A Policy; (xvi) Axis
 8 Reins Co. Side A Policy Number RNN 713043/01/2007 ("Axis Reins Co. Side A Policy") with an
 9 aggregate limit of \$10,000,000 in excess of the National Union Policy, the XL Specialty Policy, the
 10 Twin City Fire Policy, the ACE American Policy, the Arch Insurance Policy, the Continental Policy,
 11 the Federal Policy, the St. Paul Policy, the RSUI Policy, the ACE Westchester Policy, the AIG
 12 Casualty Policy, the XL Specialty Side A Policy, the Federal Insurance Side A Policy and the Twin
 13 City Fire Side A Policy; and (xvii) those certain Lloyd's Underwriters and Companies severally
 14 subscribing to Side A Policy Number 509QA015507 ("Lloyd's Side A Policy") with an aggregate
 15 limit of \$25,000,000 in excess of the National Union Policy, the XL Specialty Policy, the Twin City
 16 Fire Policy, the ACE American Policy, the Arch Insurance Policy, the Continental Policy, the
 17 Federal Policy, the St. Paul Policy, the RSUI Policy, the ACE Westchester Policy, the AIG Casualty
 18 Policy, the XL Specialty Side A Policy, the Federal Insurance Side A Policy, the Twin City Fire Side
 19 A Policy, the Continental Side A Policy and the Axis Reins Co. Side A Policy.

20 (o) "Effective Date" means the first business day on which, unless otherwise
 21 waived by the Settling Parties, all of the events and conditions specified in ¶ 32 of this Stipulation
 22

STIPULATION AND AGREEMENT OF SETTLEMENT
 WITH INDIVIDUAL OFFICER AND DIRECTOR
 DEFENDANTS AND WITH WASHINGTON MUTUAL,
 INC.

Master No: 2:08-md-1919 MJP



have been met and have occurred.

(p) “Escrow Account” means the account maintained at Valley National Bank to hold the Settlement Fund, which account, subject to the District Court’s supervisory authority, shall be under the control of Lead Counsel.

(q) “Escrow Agent” means Valley National Bank.

(r) “Escrow Agreement” means the agreement between Lead Counsel and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.

(s) “Final” means, with respect to any order or judgment, including, without limitation, the Bankruptcy Court Approval Order and the Judgment or, if applicable, the Alternative Judgment: (i) if no appeal is filed, the expiration date of the time provided for filing or noticing of any appeal under the Federal Rules of Civil Procedure, i.e., thirty (30) days after entry of the order or judgment; or (ii) if there is an appeal from the order or judgment, the date of (a) final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise to review the order or judgment, or (b) the date the order or judgment is finally affirmed on appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance of the order or judgment following review pursuant to that grant; provided, however, that any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to (i) attorneys’ fees, costs or expenses, or (ii) the Plan of Allocation (or such other plan of allocation as the court may approve), shall not in any way delay or preclude the

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP

Judgment or Alternative Judgment from becoming Final.

(t) “Immediate Family” means an individual’s spouse, parents, siblings, children, grandparents, grandchildren; the spouses of his or her parents, siblings and children; and the parents and siblings of his or her spouse, and includes step and adoptive relationships. In this paragraph, “spouse” shall mean a husband, a wife, or a partner in a state-recognized domestic partnership or civil union.

(u) “Investment Vehicle” means any investment company or pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds, fund of funds and hedge funds, in which any Underwriter Defendant, BOA or Lehman has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor but in which the Underwriter Defendant, BOA or Lehman or any of the their respective affiliates is not a majority owner or does not hold a majority beneficial interest. This definition does not bring into the Class any of the Underwriter Defendants, BOA or Lehman.

(v) “Judgment” means the judgment, substantially in the form attached hereto as Exhibit “B,” approving the Settlement, to be entered by the District Court pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

(w) “Lead Counsel” means the law firm of Bernstein Litowitz Berger & Grossmann LLP.

(x) “Lead Plaintiff” means Ontario Teachers.

(y) “Liaison Counsel” means the law firm of Byrnes Keller Cromwell LLP.

(z) “Litigation Expenses” means costs and expenses incurred in connection with

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP

commencing and prosecuting the Action (which may include the costs and expenses of Plaintiffs directly related to their representation of the Class), for which Lead Counsel intends to apply to the District Court for reimbursement from the Settlement Fund.

(aa) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the District Court; and (iv) any attorneys’ fees awarded by the District Court.

(bb) “Notice” means the Notice of (I) Pendency of Class Action and Proposed Settlements, (II) Settlement Fairness Hearing, and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, which is to be sent to members of the Class, substantially in the form attached hereto as Exhibit “1” to Exhibit “A”.

(cc) “Notice and Administration Costs” means the costs, fees and expenses that are incurred by the Claims Administrator and/or Lead Counsel in connection with (i) providing notice to the Class; (ii) administering the Claims process; and (iii) the Escrow Account.

(dd) “Other Defendants” means, for purposes of this Settlement, the Underwriter Defendants, Lehman and Deloitte.

(ee) “Plaintiffs” means, collectively, Lead Plaintiff and the Additional Named Plaintiffs.

(ff) “Plaintiffs’ Counsel” means, collectively, Lead Counsel, Liaison Counsel and all other legal counsel who, at the direction and under the supervision of Lead Counsel, performed services on behalf of the Class.

(gg) “Plan of Allocation” means the proposed plan of allocation of the Net

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP

1 Settlement Fund set forth in the Notice.

2 (hh) "Preliminary Approval Order" means the order, substantially in the form
3 attached hereto as Exhibit "A", to be entered by the District Court preliminarily approving the
4 Settlement and directing notice be provided to the Class.

5 (ii) "Related Parties" means, (i) with respect to each Individual Defendant, his or
6 her assigns, attorneys, advisors (other than the Underwriter Defendants), representatives, members of
7 his or her Immediate Family, heirs, executors, estates, administrators, insurers, including, without
8 limitation the Contributing Insurers and reinsurers, (ii) with respect to WMI, its predecessors,
9 successors, past, present or future parents, subsidiaries, affiliates, and each of their respective past or
10 present officers, directors, agents, partners, principals, members, employees, attorneys, advisors
11 (other than the Underwriter Defendants), auditors and accountants (other than Deloitte), insurers,
12 including, without limitation, the Contributing Insurers, and reinsurers; (iii) with respect to all
13 Settling Defendants, any firm, trust, corporation, or other entity in which any of the Settling
14 Defendants has or had a controlling interest; provided, however, that Related Parties do not include
15 any of the Other Defendants (as defined herein) or any of the Other Defendants' Related Parties as
16 defined in the Stipulation and Agreement of Settlement in the Action between Lead Plaintiff and the
17 Underwriter Defendants and in the Stipulation and Agreement of Settlement in the Action between
18 Lead Plaintiff and Deloitte.

19 (jj) "Released Defendant Parties" means any and all of the Settling Defendants
20 and each of their respective Related Parties, including, without limitation, the Contributing Insurers.

21 (kk) "Released Claims by Defendants as to Plaintiffs" means any and all claims,
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STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



rights, demands, liabilities or causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorney's fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether known claims or Unknown Claims, that have been or could have been asserted in the Action or in this or any other forum, including, without limitation, in the Chapter 11 Cases, by or on behalf of the Released Defendant Parties or any of them, or the successors and assigns of any of them against Lead Plaintiff, Plaintiffs' Counsel, any other Class Member or any of their respective attorneys, which arise out of or relate in any way to the filing, prosecution, or settlement of the Action (except for claims to enforce the Settlement).

(II) "Settled Claims" means any and all claims, rights, demands, liabilities, or causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorney's fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), to the fullest extent that the law permits their release in this Action or in the Chapter 11 Cases, by or on behalf of Lead Plaintiff or any other Class Members against any of the Released Defendant Parties that have been alleged or could have been alleged in the Action or in the Chapter 11 Cases, including without limitation, the Bankruptcy Claims, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether known claims or Unknown Claims, whether class or individual in nature, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, whether at law or in equity, matured or unmatured, that (i) are based on, relate to or arise out of the allegations, transactions, facts, matters, events, disclosures, statements, occurrences, representations, acts or omissions or failures to act that have been or could

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 have been alleged in the Action or in the Chapter 11 Cases with respect to the Bankruptcy Claims or
 2 otherwise, and/or (ii) relate to or arise out of Lead Plaintiff's or any other Class Member's purchase,
 3 acquisition or holding of WMI Released Securities during the Class Period insofar as it relates in any
 4 way to any other matter covered in this definition of Settled Claims. Settled Claims do not include,
 5 release, bar, waive, impair or otherwise impact (i) any claims to enforce the Settlement; (ii) any
 6 claims of the Class or any Class Member against any of the Other Defendants; (iii) the rights of any
 7 Class Members to recover moneys from the settlement of the action styled *In re Washington Mutual*
 8 *Inc. ERISA Litig.*, Lead Case No. 07-cv-1874; (iv) any claims asserted in the actions styled: *In re*
 9 *Washington Mutual, Inc. California Securities Litigation*, No. 09-664 (W.D. Wash.), *Flaherty &*
 10 *Crumrine Preferred Income Fund Incorporated, et al. v. Killinger, et al.*, No. C09-1756 MJP (W.D.
 11 Wash.), *Boilermakers National Annuity Trust Fund v. WaMu Mortgage Pass-Through Certificates et*
 12 *al.*, 09-37 (W.D. Wash.), and *Allstate Bank, et al. v. JPMorgan Chase Bank, NA, et al.*, Index No.
 13 650398/2011 (N.Y. Supreme); (v) any claim or right to recovery of any Class Member individually
 14 in the Chapter 11 Cases based solely upon his, her or its status as a holder or beneficial owner of a
 15 WMI debt or equity security with respect to their rights to participate in the distribution of funds in
 16 the Chapter 11 Cases upon confirmation of a plan of reorganization or otherwise solely to the extent
 17 that such distribution is being made on account of such debt or equity security; or (vi) Lead
 18 Plaintiff's and each other Class Member's right to participate in the distribution of any funds
 19 recovered from any of the Defendants by any governmental or regulatory agency.

20 (mm) "Settlement" means the compromise and settlement among the Settling Parties
 21 contemplated by this Stipulation.

22
 STIPULATION AND AGREEMENT OF SETTLEMENT
 WITH INDIVIDUAL OFFICER AND DIRECTOR
 DEFENDANTS AND WITH WASHINGTON MUTUAL,
 INC.

Master No: 2:08-md-1919 MJP



(nn) "Settlement Amount" means One Hundred Five Million Dollars (\$105,000,000.00), in cash.

(oo) "Settlement Fund" means the Settlement Amount plus any and all interest earned thereon from the date the Settlement Amount is deposited into the Escrow Account.

(pp) "Settlement Hearing" means the hearing set by the District Court under Rule 23(e)(1)(c) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

(qq) "Settling Defendants' Counsel" means as to (i) Defendant Killinger, the law firm of Wilson Sonsini Goodrich & Rosati; (ii) Defendants Casey, Rotella, Cathcart, Schneider, and Woods, the law firms of Simpson Thacher & Bartlett LLP and Davis Wright Tremaine LLP; (iii) Defendant Ballenger, the law firm of Orrick Herrington & Sutcliffe LLP; (iv) Defendants Farrell, Frank, Leppert, Lillis, Matthews, Montoya, Murphy, Osmer McQuade, Pugh, Reed, Smith, Stever, and Wood, the law firm of Perkins Coie LLP; and (v) Defendant WMI, the law firm of Weil, Gotshal & Manges LLP.

(rr) "Settling Parties" means the Settling Defendants and Lead Plaintiff, on behalf of itself and the other Class Members, including, without limitation, the Additional Named Plaintiffs.

(ss) "Summary Notice" means the Summary Notice of (I) Pendency of Class Action and Proposed Settlements, (II) Settlement Fairness Hearing, and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit "3" to Exhibit "A", to be published as set forth in the Preliminary Approval Order.

(tt) "Taxes" means: (i) all federal, state and/or local taxes of any kind on any

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP

1 income earned by the Settlement Fund after it is deposited into the Escrow Account; and (ii) the
 2 expenses and costs incurred by Lead Counsel in connection with determining the amount of, and
 3 paying, any federal, state and/or local taxes of any kind owed by the Settlement Fund (including,
 4 without limitation, expenses of tax attorneys and accountants).

5 (uu) “Underwriter Defendants” means Goldman, Sachs & Co., Morgan Stanley &
 6 Co., Incorporated (now known as Morgan Stanley & Co. LLC), Credit Suisse Securities (USA)
 7 LLC, Deutsche Bank Securities Inc., UBS Securities LLC, J.P. Morgan Securities Inc., Barclays
 8 Capital Inc., Keefe, Bruyette & Woods, Inc., Cabrera Capital Markets, LLC, the Williams Capital
 9 Group, L.P., Citigroup Global Markets, Inc., Greenwich Capital Markets, Inc.(now known as RBS
 10 Securities Inc.), BNY Mellon Capital Markets LLC (successor to BNY Capital Markets, Inc.), and
 11 Samuel A. Ramirez & Company, Inc.

12 (vv) “Unknown Claims” means any Settled Claims which Lead Plaintiff or other
 13 Class Members do not know or suspect to exist in his, her or its favor at the time of the release of the
 14 Released Defendant Parties, and any Released Claims by Defendants as to Plaintiffs which any
 15 Released Defendant Party does not know or suspect to exist in his, her, or its favor at the time of the
 16 release of Lead Plaintiff, Plaintiffs’ Counsel, the other Class Members and their respective attorneys,
 17 which, if known by him, her or it, might have affected his, her or its decision(s) with respect to this
 18 Settlement. With respect to any and all Settled Claims and Released Claims by Defendants as to
 19 Plaintiffs, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff and
 20 each of the Settling Defendants shall expressly waive, and each of the other Class Members and each
 21 of the other Released Defendant Parties shall be deemed to have waived, and by operation of the
 22

STIPULATION AND AGREEMENT OF SETTLEMENT
 WITH INDIVIDUAL OFFICER AND DIRECTOR
 DEFENDANTS AND WITH WASHINGTON MUTUAL,
 INC.

Master No: 2:08-md-1919 MJP



Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiff and each of the Settling Defendants acknowledge, and each of the other Class Members and each of the other Released Defendant Parties shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for as a key element of the Settlement.

(ww) “WMI Class Securities” means WMI common stock; the Floating Rate Notes (CUSIP 939322AW3); the 7.250% Notes (CUSIP 939322AY9); the 7.75% Series R Stock (CUSIP 939322814); and Washington Mutual Capital Trust 2001’s 5.375% Trust Preferred Income Equity Redeemable Securities (PIERS) Units, maturing 7/1/2041 (“Capital Trust Unit Preferred”) (CUSIP 939322848).

(xx) “WMI Released Securities” means, collectively, the WMI Class Securities, the 5.50% Notes (CUSIP 939322AX1) and the Series K Stock (CUSIP 939322830).

RELEASE OF CLAIMS

2. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action against the Settling Defendants and the Bankruptcy Claims against WMI, and shall fully and finally release any and all Settled Claims against all Released Defendant Parties

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP

1 and shall also fully and finally release any and all Released Claims by Defendants as to Plaintiffs
2 against Lead Plaintiff, Plaintiffs' Counsel, each of the other Class Members and each of their
3 respective attorneys.

4 3. Upon the Effective Date: (i) Lead Plaintiff and all of the other Class Members, on
5 behalf of themselves, their respective heirs, executors, administrators, predecessors, successors,
6 assigns and agents, shall be deemed by operation of law to have irrevocably, absolutely and
7 unconditionally, fully, finally and forever released, waived, discharged and dismissed, with
8 prejudice, each and every Settled Claim against every Released Defendant Party, including, without
9 limitation, the Bankruptcy Claims against WMI, and shall forever be enjoined from prosecuting
10 any or all Settled Claims against any Released Defendant Party, including, without limitation, the
11 Bankruptcy Claims against WMI; and (ii) the Bankruptcy Claims shall be withdrawn, with
12 prejudice, in their entirety.

13 4. Upon the Effective Date, each of the Settling Defendants, and each of the other
14 Released Defendant Parties, on behalf of themselves, their respective heirs, executors,
15 administrators, predecessors, successors, assigns and agents, shall be deemed by operation of law to
16 have irrevocably, absolutely and unconditionally, fully, finally, and forever released, waived,
17 discharged and dismissed, with prejudice, each and every of the Released Claims by Defendants as
18 to Plaintiffs against Lead Plaintiff, Plaintiffs' Counsel and the other Class Members and their
19 respective attorneys, and shall forever be enjoined from prosecuting any or all of the Released
20 Claims by Defendants as to Plaintiffs against Lead Plaintiff, each Plaintiffs' Counsel, each of the
21 other Class Members and each of their respective attorneys.

22
STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



THE SETTLEMENT CONSIDERATION

5. In consideration of the Settlement of the Settled Claims, including without limitation claims asserted in the Action under the Securities Act and under the Exchange Act, the Contributing Insurers (which, as represented by the Individual Defendants, have consented to payment of the Settlement Amount pursuant to the terms of the Stipulation) shall pay, in full satisfaction of the monetary obligations under the terms of the Settlement, One Hundred Five Million Dollars (\$105,000,000.00), in cash, such amount to be deposited into the Escrow Account within thirty (30) calendar days after the latest of: (a) the Preliminary Approval Order being entered by the District Court, (b) the Bankruptcy Court Approval Order being entered by the Bankruptcy Court provided however, that until the Bankruptcy Court Order becomes Final, no funds may be withdrawn from the Escrow Account other than to pay Taxes and until the Bankruptcy Court Order becomes Final, any instructions to the Escrow Agent shall require the signature of Perkins Coie in addition to Lead Counsel; and (c) receipt by Individual Defendants' Counsel from Lead Counsel of full and complete wiring or other instructions necessary for such payment, an executed W-9 for the Settlement Fund, and payee name and address for delivery of payment by check.

USE OF SETTLEMENT FUND

6. The Settlement Fund shall be used to pay: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the District Court; and (iv) any attorneys' fees awarded by the District Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 16-25 below.

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 7. Except as expressly provided herein or pursuant to an Order of the District Court, the
2 Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held
3 by the Escrow Agent shall be deemed to be in the custody of the District Court and shall remain
4 subject to the jurisdiction of the District Court until such time as the Settlement Fund shall be
5 distributed or returned pursuant to the terms of this Stipulation and/or further Order of the District
6 Court. The Escrow Agent shall invest the Settlement Fund in United States Treasury Bills (or a
7 mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued
8 thereon, except that any residual cash balance in the Escrow Account of less than Two Hundred Fifty
9 Thousand Dollars (\$250,000.00) may be invested in money market mutual funds comprised
10 exclusively of investments secured by the full faith and credit of the United States. In the event that
11 the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or
12 any portion of the Settlement Fund held by the Escrow Agent may be deposited in a non-interest
13 bearing account that is fully insured by the FDIC.

14 8. The Settling Parties agree that the Settlement Fund is intended to be a Qualified
15 Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as
16 administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3),
17 shall be solely responsible for filing or causing to be filed all informational and other tax returns as
18 may be necessary or appropriate (including, without limitation, the returns described in Treasury
19 Regulation § 1.468B-2(k)) for the Settlement Fund. Such returns shall be consistent with this
20 paragraph and, in all events, shall reflect that all taxes on the income earned on the Settlement Fund
21 shall be paid out of the Settlement Fund as provided below. Lead Counsel shall also be responsible
22

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the
 2 Settlement Fund. Upon written request, the Individual Defendants will provide to Lead Counsel the
 3 statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrator of the
 4 Settlement Fund within the meaning of Treasury Regulation §1.468B-2(k)(3), shall timely make
 5 such elections as are necessary or advisable to carry out this paragraph, including, as necessary,
 6 making a "relation back election," as described in Treasury Regulation § 1.468B-1(j), to cause the
 7 Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or
 8 cause to be taken all actions as may be necessary or appropriate in connection therewith.

9 9. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the
 10 Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement,
 11 and without prior Order of the District Court. Any tax returns prepared for the Settlement Fund (as
 12 well as the election set forth therein) shall be consistent with the previous paragraph and in all events
 13 shall reflect that all Taxes (including any interest or penalties) on the income earned by the
 14 Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Settlement Fund
 15 shall indemnify and hold harmless the Released Defendant Parties for federal, state and/or local
 16 taxes incurred in connection with the taxation of the Settlement Fund (including, without limitation,
 17 taxes paid by reason of any such indemnification).

18 10. This is not a claims-made settlement. Upon the occurrence of the Effective Date,
 19 none of the Contributing Insurers or any other person or entity who or which paid any portion of the
 20 Settlement Amount, shall have any right to the return of the Settlement Fund or any portion thereof
 21 irrespective of the number of Claims filed, the collective amount of losses of Authorized Claimants,
 22

STIPULATION AND AGREEMENT OF SETTLEMENT
 WITH INDIVIDUAL OFFICER AND DIRECTOR
 DEFENDANTS AND WITH WASHINGTON MUTUAL,
 INC.

Master No: 2:08-md-1919 MJP



1 the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net
2 Settlement Fund.

3 11. The Claims Administrator shall discharge its duties under Lead Counsel's supervision
4 and subject to the jurisdiction of the District Court. Regardless of whether the Effective Date occurs,
5 the Released Defendant Parties shall have no responsibility whatsoever for the administration of the
6 Settlement, and shall have no liability whatsoever to any person or entity, including, but not limited
7 to, Plaintiffs, Plaintiffs' Counsel or any other Class Members or their respective attorneys, in
8 connection with any such administration; provided, however, that the Settling Defendants and their
9 respective counsel shall use their reasonable best efforts to assist Lead Counsel in obtaining the
10 Company's transfer records, consisting of the Class Period WMI Class Securities holders' names
11 and addresses in electronic form (at no cost to the Settlement Fund, Lead Counsel or the Claims
12 Administrator), in order to identify and provide notice to the Class. Lead Counsel shall cause the
13 Claims Administrator to mail the Notice and Proof of Claim to those members of the Class at the
14 address of each such person as set forth in the records of WMI or its transfer agent (to the extent that
15 it is able to obtain such records) or who otherwise may be identified through further reasonable
16 effort. Lead Counsel also shall cause the Summary Notice to be published pursuant to the terms of
17 the Preliminary Approval Order or whatever other form or manner might be ordered by the District
18 Court.

19 12. Lead Counsel may pay from the Settlement Fund, without further approval from
20 Settling Defendants or further Order of the District Court, all reasonable Notice and Administration
21 Costs actually incurred. Such costs and expenses shall include, without limitation, the actual costs of
22

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 publication, printing and mailing the Notice, reimbursements to nominee owners for forwarding the
 2 Notice to their beneficial owners, the administrative expenses incurred and fees charged by the
 3 Claims Administrator in connection with providing Notice and processing the submitted claims, and
 4 the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the
 5 terms of this Stipulation, all Notice and Administration Costs paid or incurred, including any related
 6 fees, shall not be returned or repaid to the Contributing Insurers, or to any other person or entity who
 7 or which paid any portion of the Settlement Amount and the Settling Defendants agree that it shall
 8 be deemed to constitute Loss, as that term is defined in the Directors' and Officers' Liability
 9 Insurance Policies, which reduces the limits of liability.

10 **ATTORNEYS' FEES AND LITIGATION EXPENSES**

11 13. Lead Counsel will apply to the District Court for an award of attorneys' fees to
 12 Plaintiffs' Counsel, which shall be a percentage of the Settlement Fund to be approved by Lead
 13 Plaintiff. Lead Counsel also will apply to the District Court for reimbursement of Litigation
 14 Expenses to be paid from the Settlement Fund. No Settling Defendant, Contributing Insurer nor any
 15 other Released Defendant Party, shall take any position with respect to Lead Counsel's application
 16 for an award of such attorneys' fees and/or Litigation Expenses. Such matters are not the subject of
 17 any agreement between Settling Defendants and Lead Plaintiff other than what is set forth in this
 18 Stipulation, and this Stipulation shall otherwise be enforceable according to its terms without regard
 19 to any modification, denial, appeal or other adverse ruling with respect to Lead Counsel's
 20 application for an award of attorneys' fees, costs or Litigation Expenses.

21 14. Any attorneys' fees and Litigation Expenses that are awarded by the District Court

22 STIPULATION AND AGREEMENT OF SETTLEMENT
 WITH INDIVIDUAL OFFICER AND DIRECTOR
 DEFENDANTS AND WITH WASHINGTON MUTUAL,
 INC.

Master No: 2:08-md-1919 MJP



1 shall be paid to Lead Counsel from the Settlement Fund immediately upon award, notwithstanding
2 the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral
3 attack on the Settlement or any part thereof, subject to Lead Counsel's obligation to make
4 appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate
5 as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this
6 Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral
7 attack, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed. Lead Counsel
8 shall make the appropriate refund or repayment in full no later than thirty (30) days after receiving
9 from the Individual Defendants' Counsel or from a court of appropriate jurisdiction notice of the
10 termination of the Settlement or notice of any reduction of the award of attorneys' fees and/or
11 Litigation Expenses. An award of attorneys' fees and/or Litigation Expenses is not a necessary term
12 of this Stipulation or this Settlement and is not a condition of this Stipulation or this Settlement.
13 Lead Plaintiff and Lead Counsel may not cancel or terminate the Stipulation or the Settlement based
14 on the District Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation
15 Expenses. Apart from the Individual Defendants' obligation to cause the Contributing Insurers to
16 pay the Settlement Amount to the Escrow Account as set forth in ¶ 5 above, the Released Defendant
17 Parties shall have no liability or obligation whatsoever to any person or entity, including, but not
18 limited to, Lead Plaintiff, Plaintiffs' Counsel, or any other Class Members or their respective
19 counsel, with respect to any attorneys' fees, costs or expenses, or Litigation Expenses, regardless of
20 the amount of any attorneys' fees, costs or expenses or Litigation Expenses approved by the District
21 Court, and regardless of any termination of this Stipulation or the Settlement contained herein.

22
STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 15. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel
2 in a manner which it, in good faith, believes reflects the contributions of such counsel to the
3 prosecution and settlement of the Action.

4 CLAIMS ADMINISTRATION

5 16. The Claims Administrator shall administer the process of receiving, reviewing and
6 approving or denying Claims under Lead Counsel's supervision and subject to the jurisdiction of the
7 District Court. Other than the Settling Defendants' and their respective counsel's obligation to use
8 their reasonable best efforts to assist Lead Counsel in obtaining the Company's transfer records, as
9 provided in ¶ 11 herein, neither the Settling Defendants, their respective counsel nor the Released
10 Defendant Parties shall have any responsibility whatsoever for the administration of the Settlement
11 or the claims process and shall have no liability whatsoever to any person, including, but not limited
12 to, Lead Plaintiff, Plaintiffs' Counsel, or any other Class Members or their respective attorneys in
13 connection with such administration. The Settling Defendants' Counsel shall cooperate in the
14 administration of the Settlement to the extent reasonably necessary to effectuate its terms.

15 17. The Claims Administrator shall receive Claims and determine first, whether the
16 Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's *pro rata* share of
17 the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim compared to
18 the total Recognized Claims (as defined in the Plan of Allocation set forth in the Notice, or in such
19 other plan of allocation as the District Court approves) of all Authorized Claimants.

20 18. The Plan of Allocation proposed in the Notice is not a necessary term of this
21 Stipulation and it is not a condition of this Stipulation that any particular plan of allocation be
22

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 approved by the District Court. Lead Plaintiff and Lead Counsel may not cancel or terminate the
2 Stipulation or the Settlement based on the District Court's or any appellate court's ruling with
3 respect to the Plan of Allocation, any modification made to the Plan of Allocation, or any other plan
4 of allocation as may be ordered by the District Court in this Action. No Settling Defendant, nor any
5 other Released Defendant Party, shall have any involvement in or responsibility or liability
6 whatsoever for the Plan of Allocation or the allocation of the Net Settlement Fund.

7 19. Any Class Member who does not submit a valid Claim Form will not be entitled to
8 receive any distribution from the Net Settlement Fund but will otherwise be bound by all of the
9 terms of this Stipulation and the Settlement, including, without limitation, the terms of the Judgment
10 and the releases provided for therein or herein, and will be permanently barred and enjoined from
11 bringing any action, claim, or other proceeding of any kind, including, without limitation, in the
12 Chapter 11 Cases, against any Released Defendant Party concerning any Settled Claims.

13 20. Lead Counsel shall be responsible for supervising the administration of the Settlement
14 and disbursement of the Net Settlement Fund. No Settling Defendant, nor any other Released
15 Defendant Party, shall have any liability, obligation or responsibility whatsoever for the
16 administration of the Settlement or disbursement of the Net Settlement Fund. No Settling
17 Defendant, nor any other Released Defendant Party, shall be permitted to review, contest or object to
18 any Claim Form or any decision of the Claims Administrator or Lead Counsel with respect to
19 accepting or rejecting any Claim Form or Claim for payment by a Class Member. Lead Counsel
20 shall have the right, but not the obligation, to waive what it deems to be formal or technical defects
21 in any Claim Forms submitted in the interests of achieving substantial justice.
22

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



21. For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

a. Each Class Member shall be required to submit a Claim Form, supported by such documents as are designated therein, including proof of the Claimant's loss, or such other documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable;

b. All Claim Forms must be submitted by the date set by the District Court in the Preliminary Approval Order and specified in the Notice, unless such deadline is extended by Order of the District Court. Any Class Member who fails to submit a Claim Form by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless, by Order of the District Court, late-filed Claim Forms are accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including, without limitation, the terms of the Judgment and the releases provided for therein and herein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind, including, without limitation, in the Chapter 11 Cases, against any Released Defendant Party concerning the Settled Claims. Provided that it is received before the motion for the Class Distribution Order is filed, a Claim Form shall be deemed to be submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator;

c. Each Claim Form shall be submitted to and reviewed by the Claims Administrator, under the supervision of Lead Counsel, who shall determine in accordance with this

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP

1 Stipulation the extent, if any, to which each Claim shall be allowed, subject to review by the District
2 Court pursuant to subparagraph (e) below;

3 d. Claims that do not meet the submission requirements may be rejected. Prior to
4 rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the Claimant
5 in writing, to give the Claimant the chance to remedy any curable deficiencies in the Claim Form
6 submitted. The Claims Administrator, under supervision of Lead Counsel, shall notify, in a timely
7 fashion and in writing, all Claimants whose Claim the Claims Administrator proposes to reject in
8 whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant
9 whose Claim is to be rejected has the right to a review by the District Court if the Claimant so
10 desires and complies with the requirements of subparagraph (e) below;

11 e. If any Claimant whose Claim has been rejected in whole or in part desires to
12 contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the
13 notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and
14 statement of reasons indicating the Claimant's grounds for contesting the rejection along with any
15 supporting documentation, and requesting a review thereof by the District Court. If a dispute
16 concerning a Claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request
17 for review to the District Court; and

18 f. The administrative determinations of the Claims Administrator accepting and
19 rejecting Claims shall be presented to the District Court, on notice to Settling Defendants' Counsel,
20 for approval by the District Court in the Class Distribution Order.

21 22. Each Claimant shall be deemed to have submitted to the jurisdiction of the District
22

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP

1 Court with respect to the Claimant's Claim, and the Claim will be subject to investigation and
2 discovery under the Federal Rules of Civil Procedure; provided, however, that such investigation
3 and discovery shall be limited to that Claimant's status as a Class Member and the validity and
4 amount of the Claimant's Claim. No discovery shall be allowed on the merits of the Action or this
5 Settlement in connection with the processing of Claim Forms.

6 23. Lead Counsel will apply to the District Court, on notice to Settling Defendants, for a
7 Class Distribution Order: (i) approving the Claims Administrator's administrative determinations
8 concerning the acceptance and rejection of the Claims submitted; (ii) approving payment of any
9 administration fees and expenses associated with the administration of the Settlement from the
10 Settlement Fund, and (iii) if the Effective Date has occurred, directing payment of the Net Settlement
11 Fund to Authorized Claimants from the Escrow Account.

12 24. Payment pursuant to the Class Distribution Order shall be final and conclusive
13 against all Class Members. All Class Members whose Claims are not approved by the District Court
14 shall be barred from participating in distributions from the Net Settlement Fund. Whether or not a
15 Class Member submits a Claim, or any Claim is not allowed either in whole or in part, all Class
16 Members shall be bound by all of the terms of this Stipulation and the Settlement, including, without
17 limitation, the terms of the Judgment and the releases provided for therein and herein, and will be
18 permanently barred and enjoined from bringing any action, claim or other proceeding, including,
19 without limitation, in the Chapter 11 Cases, against any and all Released Defendant Parties
20 concerning any Settled Claims.

21 25. All proceedings with respect to the administration, processing and determination of
22

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 Claims and the determination of all controversies relating thereto, including disputed questions of
2 law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the District
3 Court.

4 **PRELIMINARY APPROVAL OF THE SETTLEMENT**

5 26. As soon as practical after execution of this Stipulation, the Lead Plaintiff and Lead
6 Counsel shall apply to the District Court for entry of the Preliminary Approval Order.

7 **BANKRUPTCY COURT APPROVAL**

8 27. Within ten (10) business days of entry of the Preliminary Approval Order, WMI shall
9 file a motion with the Bankruptcy Court in the Chapter 11 Cases seeking entry of the Bankruptcy
10 Court Approval Order, which shall contain, in substantially the following form, the following
11 provisions:

12 ORDERED that the Stipulation and Settlement are fair and reasonable as to WMI
13 and the Debtors are authorized to take all steps necessary to consummate the
Settlement;

14 ORDERED that the automatic stay, extant pursuant to section 362 of the Bankruptcy
15 Code, to the extent applicable, is hereby modified so as to permit, and the
Contributing Insurers are hereby authorized, to the extent necessary, to pay the
16 Settlement Amount from the Directors' & Officers' Liability Policies;

17 ORDERED that, on and effective as of the date of the payment by the Contributing
18 Insurers of the Settlement Amount into the Escrow Account, consistent with this
Order, and the Settlement and Stipulation, the Contributing Insurers will be deemed
19 discharged from any liability to any Insureds (as defined by the Directors' &
Officers' Liability Insurance Policies) or other claimants for having paid the
Settlement Amount; it is further

20 ORDERED that, upon the Effective Date, as defined in the Stipulation and
21 Settlement, the Bankruptcy Claims shall be deemed withdrawn, with prejudice, in
their entirety.

22 STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP

1 28. The order to be proposed to the Bankruptcy Court shall contain the following
2 language: "ORDERED that nothing in this Order shall constitute a determination as to whether the
3 proceeds of the insurance policies used in connection with the Settlement are or are not the property
4 of WMI's estate." Such language shall also be proposed in the Judgment and any Alternative
5 Judgment.

6 **TERMS OF THE JUDGMENT**

7 29. If the Settlement contemplated by this Stipulation is approved by the District Court
8 and the Bankruptcy Court Approval Order is entered by the Bankruptcy Court and becomes Final,
9 Lead Counsel and Settling Defendants' Counsel shall request that the District Court enter the
10 Judgment, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

11 30. The Judgment shall contain a provision, substantially in the form set forth in Exhibit
12 "B" hereto (the "Bar Order"), barring claims for contribution by or against the Settling Defendants,
13 to the fullest extent permitted by 15 U.S.C. §78u-4(f)(7) and any other applicable law or regulation.
14 Nothing herein is intended to broaden the language of the Private Securities Litigation Reform Act
15 of 1995.

16 31. The Judgment shall also contain a provision, substantially in the form set forth in
17 Exhibit "B" hereto, requiring that any final verdict or judgment that may be obtained by or on behalf
18 of the Class or a Class Member against any person or entity subject to the Bar Order as defined
19 herein be reduced by the greater of: (i) an amount that corresponds to the percentage of
20 responsibility of the Settling Defendants for common damages; or (ii) the amount paid pursuant to
21 this Settlement to the Class or Class Member for common damages.

22
STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



CONDITIONS OF SETTLEMENT AND EFFECT OF TERMINATION

32. The Effective Date of this Stipulation shall be conditioned on the occurrence or waiver of all of the following events:

- (a) the District Court has entered the Preliminary Approval Order;
- (b) the Bankruptcy Court has entered the Bankruptcy Court Approval Order and that Order has become Final;
- (c) the Individual Defendants have caused the Contributing Insurers to deposit the Settlement Amount in the Escrow Account in accordance with the provisions of ¶ 5 hereof;
- (d) the Individual Defendants have not exercised their option to terminate the Settlement pursuant to ¶¶ 33 or 34 hereof;
- (e) the District Court has entered the Judgment and the Judgment has become Final, or the District Court has entered an Alternative Judgment, the Individual Defendants have not elected to terminate the Settlement and the Alternative Judgment has become Final.

33. The Individual Defendants (provided they collectively agree) and Lead Plaintiff shall both have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (the "Termination Notice") to the other parties to this Stipulation within thirty (30) days of: (a) the District Court's declining to enter the Preliminary Approval Order in any material respect; (b) the Bankruptcy Court's declining to enter the Bankruptcy Court Approval Order in any material respect; (c) the District Court's refusal to approve this Stipulation and Settlement or any material part of it; (d) the District Court's declining to enter the Judgment, or any Alternative Judgment to which the Individual Defendants have consented, in any material respect; (e) the date

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 upon which the Judgment is modified or reversed in any material respect by the Court of Appeals or
 2 the Supreme Court; or (f) the date upon which an Alternative Judgment is modified or reversed in
 3 any material respect by the Court of Appeals or the Supreme Court. However, any decision with
 4 respect to an application for attorneys' fees or Litigation Expenses, or with respect to any plan of
 5 allocation, shall not be considered material to the Settlement, shall not affect the finality of the
 6 Judgment, or an Alternative Judgment, and shall not be grounds for termination by any of the
 7 Individual Defendants or Lead Plaintiff.

8 34. In addition to the grounds set forth in ¶ 33, the Individual Defendants (provided they
 9 collectively agree) shall have the right to terminate the Settlement and this Stipulation in the event
 10 that Class Members requesting exclusion from the Class meet the conditions set forth in a
 11 confidential supplemental agreement with Lead Plaintiff that is being executed concurrently with
 12 this Stipulation (the "Supplemental Agreement"). The Supplemental Agreement shall not be filed
 13 with the District Court and its terms shall not be disclosed in any other manner (other than the
 14 statements herein and in the Notice) unless and until the District Court requires the Settling Parties to
 15 file the Supplemental Agreement or disclose its terms or a dispute arises between Lead Plaintiff and
 16 the Individual Defendants concerning its interpretation or application. If submission of the
 17 Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the
 18 District Court, Lead Plaintiff and the Individual Defendants will undertake to have the Supplemental
 19 Agreement submitted to the District Court *in camera*.

20 35. Except as otherwise provided herein, in the event that the Settlement is terminated or
 21 the Effective Date otherwise fails to occur: (a) the Settlement and this Stipulation, other than ¶¶ 14,
 22

STIPULATION AND AGREEMENT OF SETTLEMENT
 WITH INDIVIDUAL OFFICER AND DIRECTOR
 DEFENDANTS AND WITH WASHINGTON MUTUAL,
 INC.

Master No: 2:08-md-1919 MJP



35 and 37, shall be null and void, and without prejudice; (b) none of the terms of the Settlement or this Stipulation, including, without limitation, the releases granted herein, shall be effective or enforceable; and (c) the facts of the Settlement shall not be admissible in any trial of the Action or in the Chapter 11 Cases with respect to the Bankruptcy Claims or otherwise; (d) the Settling Defendants and Lead Plaintiff shall be deemed to have reverted to their respective status in the Action and the Chapter 11 Cases immediately prior to March 23, 2011 and, except as otherwise expressly provided herein, the Settling Defendants and Lead Plaintiff shall proceed in all respects as if this Stipulation and any related orders had not been entered; and (e) any portion of the Settlement Amount previously paid by the Contributing Insurers, together with any interest earned thereon, less any Taxes paid or due with respect to such income, and less Notice and Administration Costs actually incurred and paid or payable, shall be returned to the Contributing Insurers within fourteen (14) business days after joint written notification of such event by the Individual Defendants' Counsel and Lead Counsel to the Escrow Agent pursuant to the terms of the Escrow Agreement. In the event that the Settlement is terminated or the Effective Date otherwise fails to occur at any time after the Contributing Insurers have fully funded the Settlement Amount, the Settlement Amount shall be refunded and distributed in accordance with written instructions to be provided by the Individual Defendants' Counsel to Lead Counsel, which written instructions shall provide, among other things, that any shortfall between the Settlement Amount funded by the Contributing Insurers and the amount actually refunded to the Contributing Insurers is deemed to constitute Loss as that term is defined in the Directors' and Officers' Liability Insurance Policies and which reduces the limits of liability. The content of the written refund instructions provided by the Individual

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



Defendants' Counsel to Lead Counsel and such instructions' compliance with the terms of this provision shall be the sole obligation and responsibility of the Individual Defendants' Counsel. Lead Counsel's sole responsibility shall be compliance with the written instructions provided by the Individual Defendants' Counsel and Lead Counsel shall have no other responsibility, obligation or liability with respect to the content of said instructions, including but not limited to, any errors made in connection therewith.

PRESERVATION OF CLAIMS IN CHAPTER 11 CASES

36. For the avoidance of doubt:

a. individual Class Members (including Lead Plaintiff and the Additional Named Plaintiffs) have, or may have, claims in the Chapter 11 Cases based solely upon their status as holders of various debt or equity securities of WMI. This Stipulation and Settlement shall not in any way release, impair or otherwise impact any claim or right to recovery of any Class Member individually in the Chapter 11 Cases based solely upon his, her or its status as a holder or beneficial owner of a WMI debt or equity security with respect to the rights to participate in the distribution of funds in the Chapter 11 Cases upon confirmation of a plan of reorganization or otherwise solely to the extent that such distribution is being made on account of such debt or equity security, in addition to any recovery that he, she or it may be entitled to receive pursuant to this Settlement;

b. except to the extent released pursuant to ¶ 4 hereof, nothing herein shall be deemed to release, bar, waive, impair or otherwise impact any claims belonging to WMI, its affiliates or successors in interest against any Class Members (including Lead Plaintiff and the Additional Named Plaintiffs) or any Individual Defendants; nor shall anything herein be deemed to

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 release, bar, waive, impair or otherwise impact the defenses of any Class Members (including Lead
2 Plaintiff and the Additional Named Plaintiffs) or any Individual Defendants to any such claims
3 belonging to WMI or its affiliates and asserted against such persons or entities by WMI or its
4 successors in interest; and

5 c. to the extent that any of the Individual Defendants have claims against WMI
6 in the Chapter 11 Cases, other than claims for indemnification with respect to payments made to
7 defend or settle the Action, nothing herein shall be deemed to release, bar, waive, impair or
8 otherwise impact any such claims, or any defenses of WMI with respect thereto; except that to the
9 extent that any insurers who issued any of the Directors' and Officers' Liability Insurance Policies
10 claim subrogation rights against WMI on the basis of the Individual Defendants' indemnification
11 claims, all such claims are preserved, as are WMI's defenses thereto.

12 **NO ADMISSION OF WRONGDOING**

13 37. This Stipulation and Settlement, whether or not consummated, and any actions taken
14 pursuant to it:

15 a. shall not be offered or received against any of the Released Defendant Parties
16 as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or
17 admission by any of the Released Defendant Parties with respect to the truth of any fact alleged by
18 Plaintiffs or the validity of any claim that was or could have been asserted against any of the
19 Released Defendant Parties in the Action, any other litigation, or in the Chapter 11 Cases with
20 respect to the Bankruptcy Claims or otherwise, or the deficiency of any defense that has been or
21 could have been asserted in the Action, any other litigation, or in the Chapter 11 Cases with respect
22

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP

1 to the Bankruptcy Claims or otherwise, or of any liability, negligence, fault, or other wrongdoing of
2 any kind of any of the Released Defendant Parties;

3 b. shall not be offered or received against any of the Released Defendant Parties
4 as evidence of a presumption, concession or admission of any fault, misrepresentation or omission
5 with respect to any statement or written document approved or made by any of the Released
6 Defendant Parties;

7 c. shall not be offered or received against the Lead Plaintiff or any other Class
8 Members as evidence of any infirmity in the claims of Lead Plaintiff or the other Class Members;

9 d. shall not be offered or received against any of the Released Defendant Parties,
10 the Lead Plaintiff or any other Class Members, as evidence of a presumption, concession or
11 admission with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way
12 referred to for any other reason as against any of the Released Defendant Parties, the Lead Plaintiff
13 or any other Class Members, in any other civil, criminal or administrative action or proceeding, other
14 than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided,
15 however, that, if this Stipulation is approved by the District Court in the Judgment or Alternative
16 Judgment, the Settling Defendants, any other Released Defendant Party, Lead Plaintiff and the other
17 Class Members may refer to it to effectuate the protections from liability granted hereunder or
18 otherwise to enforce the terms of the Settlement;

19 e. shall not be construed against any of the Released Defendant Parties, Lead
20 Plaintiff or any other Class Members as an admission, concession, or presumption that the
21 consideration to be given hereunder represents the amount which could be or would have been
22

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 recovered after trial; and

2 f. shall not be construed against Lead Plaintiff or any other Class Members as an
3 admission, concession, or presumption that any of their claims are without merit or that damages
4 recoverable under the Amended Complaint would not have exceeded the Settlement Amount.

5 MISCELLANEOUS PROVISIONS

6 38. All of the exhibits attached hereto are hereby incorporated by reference as though
7 fully set forth herein.

8 39. Each of the Individual Defendants warrants that, as to the payments made on behalf
9 of him or her, at the time of entering into this Stipulation and at the time of such payment that he or
10 she caused or will cause to be made pursuant to the terms above, he or she was not insolvent, nor
11 will the payment required to be made by or on behalf of him or her render him or her insolvent,
12 within the meaning of and/or for the purposes of the Bankruptcy Code, including but not limited to
13 §§ 101 and 547 thereof. This representation is made by each of the Individual Defendants and not
14 by his or her counsel.

15 40. If a case is commenced in respect of any of the Individual Defendants, any
16 Contributing Insurer, or any other person or entity contributing funds to the Settlement Fund under
17 the Bankruptcy Code, or a trustee, receiver, conservator, or other fiduciary is appointed under any
18 similar law, and in the event of the entry of a final order of a court of competent jurisdiction
19 determining the transfer of money to the Settlement Fund or any portion thereof paid for the benefit
20 of the Class to be a preference, voidable transfer, fraudulent transfer or similar transaction and any
21 portion thereof is required to be returned, and such amount is not promptly deposited to the
22

STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 Settlement Fund by others, then, at the election of Lead Plaintiff, the Settling Parties shall jointly
2 move the District Court to vacate and set aside the releases given and the Judgment or Alternative
3 Judgment, if applicable, entered in favor of the Settling Defendants and the other Released
4 Defendant Parties pursuant to this Stipulation, which releases and Judgment, or Alternative
5 Judgment, shall be null and void as to the Settling Defendants and the other Released Defendant
6 Parties, and the Settling Defendants and Lead Plaintiff shall be restored to their respective positions
7 in the Action and in the Chapter 11 Cases as provided in ¶ 35 (including, without limitation, the
8 reinstatement of the Bankruptcy Claims) and any cash amounts in the Settlement Fund shall be
9 returned as provided in the same paragraph.

10 41. Lead Plaintiff and the Settling Defendants intend this Settlement to be a final and
11 complete resolution of all Settled Claims, including, without limitation, the Bankruptcy Claims.
12 Accordingly, Lead Plaintiff and each of the Settling Defendants agree not to assert that the Action or
13 the Bankruptcy Claims were brought by Plaintiffs or defended by Settling Defendants in bad faith or
14 without a reasonable basis. Neither Lead Plaintiff nor any Settling Defendant shall assert any claims
15 of any violation of Rule 11 of the Federal Rules of Civil Procedure or, where applicable, Rule 9011
16 of the Bankruptcy Rules, relating to the prosecution, defense, or settlement of the Action or the
17 Bankruptcy Claims. Lead Plaintiff and the Settling Defendants agree that the amount paid and the
18 other terms of the Settlement were negotiated at arm's-length in good faith by the parties, including
19 at a mediation conducted by a former United States District Judge, and reflect a Settlement that was
20 reached voluntarily after consultation with experienced legal counsel.

21 42. This Stipulation may not be modified or amended, nor may any of its provisions be
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STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 waived, except by a writing signed by counsel for Lead Plaintiff and the Settling Defendants or their
2 successors-in-interest.

3 43. The headings herein are used for the purpose of convenience only and are not meant
4 to have legal effect.

5 44. The administration and consummation of this Settlement as embodied in this
6 Stipulation shall be under the authority of the District Court (except that the Bankruptcy Court shall
7 retain jurisdiction over the interpretation and enforcement of the Bankruptcy Court Approval Order),
8 and the District Court shall retain jurisdiction for the purpose of entering orders providing for awards
9 of attorneys' fees and Litigation Expenses to Lead Counsel and enforcing the terms of this
10 Stipulation.

11 45. The waiver by one party of any breach of this Stipulation by any other party shall not
12 be deemed a waiver by any party of any other prior or subsequent breach of this Stipulation.

13 46. This Stipulation, its exhibits and the Supplemental Agreement constitute the entire
14 agreement among Lead Plaintiff and the Settling Defendants concerning the Settlement, and no
15 representations, warranties, or inducements have been made by Lead Plaintiff or any Settling
16 Defendant concerning this Stipulation and its exhibits other than those contained and memorialized
17 in such documents or in the Supplemental Agreement.

18 47. This Stipulation may be executed in one or more original and/or faxed counterparts.
19 All executed counterparts and each of them shall be deemed to be one and the same instrument.

20 48. This Stipulation shall be binding upon, and inure to the benefit of, the successors and
21 assigns of Lead Plaintiff and the Settling Defendants.

22
STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



1 49. The construction, interpretation, operation, effect and validity of this Stipulation, and
2 all documents necessary to effectuate it, shall be governed by the internal laws of the State of
3 Washington without regard to conflicts of laws, except to the extent that federal law requires that
4 federal law govern.

5 50. This Stipulation shall not be construed more strictly against one party than another
6 merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of
7 the parties, it being recognized that it is the result of arm's-length negotiations among the parties
8 and all parties have contributed substantially and materially to the preparation of this Stipulation.

9 51. All counsel and any other person executing this Stipulation and any of the exhibits
10 hereto, or the Supplemental Agreement, warrant and represent that they have the full authority to do
11 so and that they have the authority to take appropriate action required or permitted to be taken
12 pursuant to the Stipulation to effectuate its terms.

13 52. Lead Counsel and Settling Defendants' Counsel agree to cooperate fully with one
14 another in seeking entry of: (i) the Preliminary Approval Order by the District Court, (ii) the
15 Bankruptcy Court Approval Order by the Bankruptcy Court, and (iii) the Judgment by the District
16 Court, and to use best efforts to promptly agree upon and execute all such other documentation as
17 may be reasonably required to obtain such approvals.

18 53. If any party is required to give notice to another party under this Stipulation, such
19 notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery
20 or facsimile transmission with confirmation of receipt. Notice shall be provided as follows:
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STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
DEFENDANTS AND WITH WASHINGTON MUTUAL,
INC.

Master No: 2:08-md-1919 MJP



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STIPULATION AND AGREEMENT OF SETTLEMENT
WITH INDIVIDUAL OFFICER AND DIRECTOR
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STIPULATION AND AGREEMENT OF SETTLEMENT
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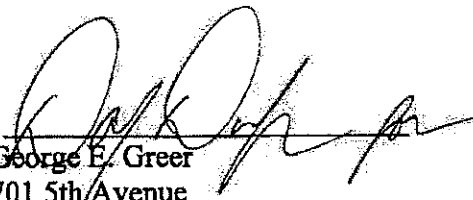
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Exhibit C

The Directors' and Officers' Liability Insurance Policies



2007/2008 Directors' and Officers' Liability Insurance Policies

Type	Policy Term	Expiration	Policy Number	Line of Coverage	Carrier
ABC D&O	5/01/07 – 05/01/08		741-98-06	Primary	Chartis
ABC D&O	5/01/07 – 05/01/08		ELU097687-07	1st Excess	XL Specialty Insurance Co.
ABC D&O	5/01/07 – 05/01/08		00 DA 1497374-07	2nd Excess	Twin City Fire Insurance Co.
ABC D&O	5/01/07 – 05/01/08		DOX G21669994 004	3rd Excess	ACE American Insurance Co.
ABC D&O	5/01/07 – 05/01/08		DOX0006090-02	4th Excess	Arch Insurance Group
ABC D&O	5/01/07 – 05/01/08		8208-3395	5th Excess	Federal Insurance Co.
ABC D&O	5/01/07 – 05/01/08		287127607	5th Excess	Continental Casualty Co.
ABC D&O	5/01/07 – 05/01/08		590CM2684	6th Excess	St. Paul Travelers Inc.
ABC D&O	5/01/07 – 05/01/08		G238226001	7th Excess	Ace Westchester
ABC D&O	5/01/07 – 05/01/08		HS625033	7th Excess	RSUI Group, Inc.
ABC D&O	5/01/07 – 05/01/08		347-2092	8th Excess	National Union Fire Insurance Co.
Side A	5/01/07 – 05/01/08		ELU097685-07	Primary Side A	XL Specialty Insurance Co.
Side A	5/01/07 – 05/01/08		6802-6117	Side A 1st Excess	Federal Insurance Co.
Side A	5/01/07 – 05/01/08		00DA021819707	Side A 2nd Excess	Twin City Fire Insurance Co.
Side A	5/01/07 – 05/01/08		287127641	Side A 3rd Excess	CNA Global Specialty Lines
Side A	5/01/07 – 05/01/08		RNN713043/01/2007	Side A 3rd Excess	Axis Financial Insurance
Side A	5/01/07 – 05/01/08		QA015507	Side A 4th Excess	Lloyds of London