

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

*In re*

WASHINGTON MUTUAL, INC., et al.,<sup>1</sup>

**Debtors.**

**Chapter 11**

**Case No. 08- 12229 (MFW)**

**(Jointly Administered)**

**Re: Docket No. 173**

**ORDER PURSUANT TO SECTIONS 105(a), 327, 328, AND 330 OF THE  
BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO EMPLOY  
PROFESSIONALS USED IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion, dated October 28, 2008 (the "Motion"), of Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment"), as debtors and debtors in possession (collectively, the "Debtors"), for entry of an order, pursuant to sections 105(a), 327, 328, and 330 of title 11 of the United States Code (the "Bankruptcy Code"), authorizing the Debtors to employ and compensate professionals used in the ordinary course of business ("Ordinary Course Professionals"), all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest; and the Court having determined that the legal

<sup>1</sup> The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted, as modified herein; and it is further

ORDERED that pursuant to sections 105(a), 327, 328, and 330 of the Bankruptcy Code, to the extent deemed necessary or appropriate by the Debtors, the Debtors are authorized, to employ ordinary course professionals, including, but not limited to, those professionals listed on Exhibit "A" annexed hereto (collectively, the "Ordinary Course Professionals" and each an "Ordinary Course Professional") in the ordinary course of their business, effective as of the Commencement Date;<sup>2</sup> and it is further

ORDERED that within thirty (30) days of the later of (i) the date of entry of this Order and (ii) the date on which an Ordinary Course Professional commences services for the Debtors, each Ordinary Course Professional shall provide to the Debtors' attorneys the following: (a) an affidavit, substantially in the form annexed hereto as Exhibit "B," certifying that such professional does not represent or hold any interest adverse to the Debtors or their estates for the matter on which the professional is to be employed (the "Ordinary Course Professional Affidavit") and (b) a completed retention questionnaire, substantially in the form annexed hereto as Exhibit "C" (the "Retention Questionnaire"). The Debtors' attorneys shall promptly file the Ordinary Course Professional Affidavit and the Retention Questionnaire with the Court and serve it by first-class U.S. mail, postage prepaid, upon (i) the United States Trustee for the District of Delaware (the "U.S. Trustee") and (ii) proposed counsel to the official committee of unsecured creditors (the "Creditors' Committee") (together, the "Reviewing

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<sup>2</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Parties”). The Reviewing Parties shall have 15 days following the date of service to notify the Debtors’ counsel, in writing, of any objection to the retention based on the contents of the Ordinary Course Professional Affidavit and the Retention Questionnaire (“Retention Objection Deadline”) and file any such objection with the Court, with service of any objection to be made upon Mark D. Collins, Esq. at Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 and Brian S. Rosen, Esq. at Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, New York 10153, so that any such objection is actually received by the Retention Objection Deadline; and it is further

ORDERED that if, after the Retention Objection Deadline, no objection is filed, the retention, employment, and compensation of such Ordinary Course Professional shall be deemed approved by the Court pursuant to sections 327 and 328 of the Bankruptcy Code, without further order from the Court, and, except as expressly provided herein, the Debtors may pay the Ordinary Course Professional one hundred percent (100%) of fees and one hundred percent (100%) of expenses sought by each Ordinary Course Professional retained pursuant to this Order, without application to the Court, upon the submission to, and approval by, the Debtors of reasonably detailed invoices indicating the nature of the services rendered and disbursements actually incurred, provided that payments, in the aggregate, do not exceed \$35,000 per month per Ordinary Course Professional on a “rolling basis” (the “Fee Limit”); and it is further

ORDERED that paying fees on a “rolling basis” shall mean that an Ordinary Course Professional whose fees and disbursements are less than \$35,000 in any month will be eligible to apply the difference between \$35,000 and the amount billed in such month to any subsequent month in which fees and disbursements exceed \$35,000; provided, however, that the

payment to any Ordinary Course Professional in any such subsequent month shall not exceed \$50,000; and it is further

ORDERED that each Ordinary Course Professional shall be subject to an aggregate Fee Limit of \$500,000 in these chapter 11 cases (the "Aggregate Fee Limit") and that in order for an Ordinary Course Professional to receive compensation in excess of the Aggregate Fee Limit during the pendency of the chapter 11 cases, such Ordinary Course Professional shall request compensation for the full amount of their fees and disbursements, in excess of the Aggregate Fee Limit, in accordance with sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), orders of the Court, and Fee Guidelines promulgated by the U.S. Trustee (the "Fee Guidelines"); and it is further

ORDERED that the Creditors' Committee reserves the right to request that that the Debtors file an application, pursuant to sections 327 and 328 of the Bankruptcy Code, to retain any Ordinary Course Professional whose fees exceed the Aggregate Fee Limit in these chapter 11 cases; and it is further

ORDERED that if a timely objection is filed to the proposed retention of an Ordinary Course Professional hereunder, and any such objection cannot be resolved within fifteen (15) days, the matter shall be set for a hearing before the Court; and it is further

ORDERED that the Debtors shall not pay an Ordinary Course Professional any amounts for invoiced fees and expense reimbursement until its Ordinary Course Professional Affidavit and Retention Questionnaire have been filed with the Court and the Retention

Objection Deadline has passed and, if an objection is filed within the Retention Objection Deadline, after the Court signs an order overruling such objection; and it is further

ORDERED that, in the event that an Ordinary Course Professional seeks an amount in excess of the Fee Limit, such Ordinary Course Professional, together with the Debtors, shall submit a statement for the additional compensation sought (a "Fee Statement") to the Reviewing Parties that shall include all of the fees for the Ordinary Course Professional for the relevant period, and the Reviewing Parties shall have twenty (20) days following the date of the Fee Statement to notify the Debtors' counsel, in writing, of any objection to payment to the Ordinary Course Professional (the "Fee Statement Objection Deadline"), with service of any such objection to be made upon (i) Mark D. Collins, Esq. at Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801; (ii) Brian S. Rosen, Esq. at Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, New York 10153; and (iii) the Ordinary Course Professional, so that any such objection is actually received by the Fee Statement Objection Deadline; and it is further

ORDERED that, if no objection is received, the Debtors are authorized to pay those amounts set forth in the Fee Statement; provided, however, that if a timely objection is received, such Ordinary Course Professional will be required to file a fee application for the full amount of its fees and disbursements for such month in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, orders of the Court, and the Fee Guidelines; and it is further

ORDERED that the Debtors are authorized to supplement the list of Ordinary Course Professionals from time to time during these chapter 11 cases, as the need arises, and file such supplemental lists, along with the Ordinary Course Affidavit and Retention Questionnaire,

with the Court and serve such list, Ordinary Course Affidavit and Retention Questionnaire on the Reviewing Parties by first class mail, postage-prepaid; and it is further

ORDERED that, if no objection to any such supplemental list, Ordinary Course Affidavit and Retention Questionnaire are served and filed within fifteen (15) days after the service thereof, the retention of such Ordinary Course Professionals shall be deemed approved by the Court pursuant to sections 327 and 328 of the Bankruptcy Code without the need for a hearing; provided, however, that, if an objection is served and filed, and any such objection cannot be resolved within fifteen (15) days, the matter shall be set for a hearing before the Court; and it is further

ORDERED that approximately every ninety (90) days (commencing ninety (90) days from the date of entry of the annexed proposed order), the Debtors will file a statement with the Court, and serve the same on the Reviewing Parties, certifying the Debtors' compliance with the terms of the relief requested herein, which statement shall include the following information: (i) for each Ordinary Course Professional, (a) the name of such Ordinary Course Professional and (b) for each month, the aggregate amounts paid as compensation for services rendered and as reimbursement of expenses incurred by such Ordinary Course Professional during the first sixty (60) days of each ninety (90) day period and the last thirty (30) days of the immediately prior ninety (90) day period, if applicable, and (ii) a list of any additional Ordinary Course Professionals that are retained or utilized after the Commencement Date and that are not listed on Exhibit "A" hereto; and it is further

ORDERED that the Debtors' right to dispute any invoices shall not be affected or prejudiced in any manner by the relief granted in this Order; and it is further

ORDERED that this Order shall not apply to any professional retained by the Debtors pursuant to a separate order of the Court; and it is further

ORDERED that, notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

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

Dated: December 2, 2008  
Wilmington, Delaware

  
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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE