

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON  
3 AT SEATTLE

4 IN RE WASHINGTON MUTUAL, INC.  
5 SECURITIES LITIGATION,

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

6 This Document Relates to: ALL ACTIONS

7  
8 **STIPULATION AND AGREEMENT OF SETTLEMENT**  
9 **WITH INDIVIDUAL OFFICER AND DIRECTOR DEFENDANTS**  
10 **AND WITH WASHINGTON MUTUAL, INC.**

11 This Stipulation and Agreement of Settlement (the “Stipulation”) is entered into by and  
12 among: (i) Ontario Teachers’ Pension Plan Board (“Ontario Teachers”), Lead Plaintiff in the  
13 consolidated class action styled *In re Washington Mutual, Inc. Securities Litigation*, No. 2:08-md-  
14 1919 MJP (W.D. Wash.), Lead Case No. C08-387 MJP (the “Action”<sup>1</sup>), one of the actions that  
15 comprises the Multidistrict Litigation captioned *In re Washington Mutual, Inc. Securities, Derivative*  
16 *& ERISA Litigation*, Case No. 2:08-md-1919 MJP (W.D. Wash), on behalf of itself and the Class;<sup>2</sup>  
17 (ii) Defendants Kerry K. Killinger, Thomas W. Casey, Stephen J. Rotella, Ronald J. Cathcart, David  
18 C. Schneider, John F. Woods, Melissa J. Ballenger (collectively, the “Officer Defendants”), Anne V.

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

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

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

13 WHEREAS:

14 A. Beginning in November 2007, three securities class actions, *Koesterer v. Washington*  
15 *Mutual, Inc., et al.*, No. C08-0387 MJP; *Abrams and Roffe v. Washington Mutual, Inc., et al.*, No. C-  
16 08-388 MJP; and *Garber v. Washington Mutual, Inc., et al.*, No. C08-465 MJP were commenced in  
17 the United States District Court for the Southern District of New York (the “Southern District of  
18 New York”) against WMI and certain of its officers and directors who are also named as Individual  
19 Defendants (collectively, the “Securities Actions”). The Securities Actions alleged violations of  
20 Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule  
21 10b-5 promulgated thereunder, with respect to public disclosures concerning the lending practices  
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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  
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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  
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1 Securities Act. The Consolidated Complaint alleged that the named defendants in the Securities Act  
2 claims were statutorily liable for materially untrue statements and misleading omissions in the  
3 registration statement and offering documents for four public offerings WMI conducted during the  
4 Class Period, including the August 2006 Offering, the September 2006 Offering, the October 2007  
5 Offering and WMI's December 2007 offering (the "December 2007 Offering") of \$3 billion in  
6 7.75% Series R Non-Cumulative Perpetual Convertible Preferred Stock (the "Series R Stock").

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

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

18 H. On December 16, 2008, the Bankruptcy Court entered an Order Modifying Automatic  
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20 <sup>3</sup> On September 19, 2008, the Southern District of New York entered an order commencing a  
21 proceeding under the Securities Investor Protection Act of 1970 (SIPA) with respect to Lehman and  
22 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]).

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

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

7 J. Prior to the Bankruptcy Bar Date, Plaintiffs filed the following proofs of claim in the  
8 Chapter 11 Cases on their own behalf against WMI with respect to the claims asserted in the Action  
9 (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

14 K. Prior to the Bankruptcy Bar Date, Lead Plaintiff also filed the following proof of  
15 claim in the Chapter 11 Cases on behalf of the Class with respect to the claims asserted in the Action  
16 (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

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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  
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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  
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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.<sup>4</sup>

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  
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20 <sup>4</sup> 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.  
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1 2011, including the submission of detailed mediation briefs to Judge Phillips. With Judge Phillips'  
2 assistance, on March 23, 2011, Lead Plaintiff reached an agreement-in-principle to settle with the  
3 Individual Defendants, on terms that include the use of the Directors' and Officers' Liability  
4 Insurance Policies to fund the payment of One Hundred Five Million Dollars (\$105,000,000.00), in  
5 cash, to be paid by the Contributing Insurers for the benefit of the Class.

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

14 V. Based upon its investigation and what it has learned through its prosecution of the  
15 Action, Lead Counsel has concluded that the terms and conditions of the Settlement are fair,  
16 reasonable and adequate to Lead Plaintiff and the other members of the Class, and in their best  
17 interests. Based on Lead Plaintiff's direct oversight of the prosecution of the Action, along with the  
18 input of Lead Counsel, Lead Plaintiff has agreed to settle the Action against the Settling Defendants  
19 and to withdraw, with prejudice, the Bankruptcy Claims in the Chapter 11 Cases, pursuant to the  
20 terms and provisions of this Stipulation, after considering (i) the substantial benefits that Lead  
21 Plaintiff and the other members of the Class will receive from the resolution of the Action against  
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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  
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1 Order by the Bankruptcy Court, and (b) the Judgment, by the District Court, pursuant to Rule 23(e)  
2 of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Settling  
3 Parties from the Settlement, that all Settled Claims against the Released Defendant Parties and all  
4 Released Claims by Defendants as to Plaintiffs shall be unconditionally, fully, finally and forever  
5 compromised, settled, released and dismissed, with prejudice, and the Bankruptcy Claims shall be  
6 withdrawn, with prejudice, in their entirety, upon and subject to the following terms and conditions:

7 **DEFINITIONS**

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

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

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

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

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

20 (e) “Claim Form” or “Proof of Claim Form” means the form, substantially in the  
21 form attached hereto as Exhibit “2” to Exhibit “A”, that a Claimant or Class Member must complete  
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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  
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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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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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1 American Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy and the St.  
2 Paul Policy; (x) ACE Westchester Policy Number G23822660-001 (“ACE Westchester Policy”)  
3 with an aggregate limit of \$10,000,000 excess of the National Union Policy, the XL Specialty  
4 Policy, the Twin City Fire Policy, the ACE American Policy, the Arch Insurance Policy, the  
5 Continental Policy, the Federal Policy and the St. Paul Policy; (xi) AIG Casualty (Starr Excess)  
6 Policy Number 347-2092 (“AIG Casualty Policy”) with an aggregate limit of \$20,000,000 excess of  
7 the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE American  
8 Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy, the St. Paul Policy, the  
9 RSUI Policy and the ACE Westchester Policy; (xii) XL Specialty Side A Policy Number  
10 ELU097685-07 (“XL Specialty Side A Policy”) with an aggregate limit of \$25,000,000 excess of the  
11 National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE American  
12 Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy, the St. Paul Policy, the  
13 RSUI Policy, the ACE Westchester Policy, and the AIG Casualty Policy; (xiii) Federal Insurance  
14 Side A Policy Number 6802-6117 (“Federal Insurance Side A Policy”) with an aggregate limit of  
15 \$25,000,000 in excess of the National Union Policy, the XL Specialty Policy, the Twin City Fire  
16 Policy, the ACE American Policy, the Arch Insurance Policy, the Continental Policy, the Federal  
17 Policy, the St. Paul Policy, the RSUI Policy, the ACE Westchester Policy, the AIG Casualty Policy  
18 and the XL Specialty Side A Policy; (xiv) Twin City Fire (Hartford) Side A Policy Number  
19 DA0218197 (“Twin City Fire Side A Policy”) with an aggregate limit of \$10,000,000 in excess of  
20 the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE American  
21 Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy, the St. Paul Policy, the  
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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

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1 have been met and have occurred.

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

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

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

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

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

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

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

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

19 (x) “Lead Plaintiff” means Ontario Teachers.

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

21 (z) “Litigation Expenses” means costs and expenses incurred in connection with  
22

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

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

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

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

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

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

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

21 (gg) “Plan of Allocation” means the proposed plan of allocation of the Net  
22

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

10 (II) “Settled Claims” means any and all claims, rights, demands, liabilities, or  
11 causes of action of every nature and description whatsoever (including, but not limited to, any claims  
12 for damages, interest, attorney’s fees, expert or consulting fees, and any other costs, expenses or  
13 liabilities whatsoever), to the fullest extent that the law permits their release in this Action or in the  
14 Chapter 11 Cases, by or on behalf of Lead Plaintiff or any other Class Members against any of the  
15 Released Defendant Parties that have been alleged or could have been alleged in the Action or in the  
16 Chapter 11 Cases, including without limitation, the Bankruptcy Claims, whether based on federal,  
17 state, local, statutory or common law or any other law, rule or regulation, whether known claims or  
18 Unknown Claims, whether class or individual in nature, whether fixed or contingent, accrued or un-  
19 accrued, liquidated or unliquidated, whether at law or in equity, matured or unmatured, that (i) are  
20 based on, relate to or arise out of the allegations, transactions, facts, matters, events, disclosures,  
21 statements, occurrences, representations, acts or omissions or failures to act that have been or could  
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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.  
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1 (nn) “Settlement Amount” means One Hundred Five Million Dollars  
2 (\$105,000,000.00), in cash.

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

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

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

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

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

21 (tt) “Taxes” means: (i) all federal, state and/or local taxes of any kind on any  
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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  
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1 Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any  
2 law of any state or territory of the United States, or principle of common law or foreign law, which is  
3 similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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

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

12 (ww) “WMI Class Securities” means WMI common stock; the Floating Rate Notes  
13 (CUSIP 939322AW3); the 7.250% Notes (CUSIP 939322AY9); the 7.75% Series R Stock (CUSIP  
14 939322814); and Washington Mutual Capital Trust 2001’s 5.375% Trust Preferred Income Equity  
15 Redeemable Securities (PIERS) Units, maturing 7/1/2041 (“Capital Trust Unit Preferred”) (CUSIP  
16 939322848).

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

### 19 **RELEASE OF CLAIMS**

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

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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.

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1 **THE SETTLEMENT CONSIDERATION**

2 5. In consideration of the Settlement of the Settled Claims, including without limitation  
3 claims asserted in the Action under the Securities Act and under the Exchange Act, the Contributing  
4 Insurers (which, as represented by the Individual Defendants, have consented to payment of the  
5 Settlement Amount pursuant to the terms of the Stipulation) shall pay, in full satisfaction of the  
6 monetary obligations under the terms of the Settlement, One Hundred Five Million Dollars  
7 (\$105,000,000.00), in cash, such amount to be deposited into the Escrow Account within thirty (30)  
8 calendar days after the latest of: (a) the Preliminary Approval Order being entered by the District  
9 Court, (b) the Bankruptcy Court Approval Order being entered by the Bankruptcy Court provided  
10 however, that until the Bankruptcy Court Order becomes Final, no funds may be withdrawn from the  
11 Escrow Account other than to pay Taxes and until the Bankruptcy Court Order becomes Final, any  
12 instructions to the Escrow Agent shall require the signature of Perkins Coie in addition to Lead  
13 Counsel; and (c) receipt by Individual Defendants’ Counsel from Lead Counsel of full and complete  
14 wiring or other instructions necessary for such payment, an executed W-9 for the Settlement Fund,  
15 and payee name and address for delivery of payment by check.

16 **USE OF SETTLEMENT FUND**

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

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

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

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

20           c. Each Claim Form shall be submitted to and reviewed by the Claims  
21 Administrator, under the supervision of Lead Counsel, who shall determine in accordance with this  
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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  
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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  
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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  
16 Contributing Insurers are hereby authorized, to the extent necessary, to pay the  
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  
19 Order, and the Settlement and Stipulation, the Contributing Insurers will be deemed  
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.

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

**TERMS OF THE JUDGMENT**

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

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

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

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1                                    **CONDITIONS OF SETTLEMENT AND EFFECT OF TERMINATION**

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

4                    (a)     the District Court has entered the Preliminary Approval Order;

5                    (b)     the Bankruptcy Court has entered the Bankruptcy Court Approval Order and  
6 that Order has become Final;

7                    (c)     the Individual Defendants have caused the Contributing Insurers to deposit the  
8 Settlement Amount in the Escrow Account in accordance with the provisions of ¶ 5 hereof;

9                    (d)     the Individual Defendants have not exercised their option to terminate the  
10 Settlement pursuant to ¶¶ 33 or 34 hereof;

11                    (e)     the District Court has entered the Judgment and the Judgment has become  
12 Final, or the District Court has entered an Alternative Judgment, the Individual Defendants have not  
13 elected to terminate the Settlement and the Alternative Judgment has become Final.

14                    33.     The Individual Defendants (provided they collectively agree) and Lead Plaintiff shall  
15 both have the right to terminate the Settlement and this Stipulation by providing written notice of  
16 their election to do so (the “Termination Notice”) to the other parties to this Stipulation within thirty  
17 (30) days of: (a) the District Court’s declining to enter the Preliminary Approval Order in any  
18 material respect; (b) the Bankruptcy Court’s declining to enter the Bankruptcy Court Approval Order  
19 in any material respect; (c) the District Court’s refusal to approve this Stipulation and Settlement or  
20 any material part of it; (d) the District Court’s declining to enter the Judgment, or any Alternative  
21 Judgment to which the Individual Defendants have consented, in any material respect; (e) the date  
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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,  
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1 35 and 37, shall be null and void, and without prejudice; (b) none of the terms of the Settlement or  
2 this Stipulation, including, without limitation, the releases granted herein, shall be effective or  
3 enforceable; and (c) the facts of the Settlement shall not be admissible in any trial of the Action or in  
4 the Chapter 11 Cases with respect to the Bankruptcy Claims or otherwise; (d) the Settling  
5 Defendants and Lead Plaintiff shall be deemed to have reverted to their respective status in the  
6 Action and the Chapter 11 Cases immediately prior to March 23, 2011 and, except as otherwise  
7 expressly provided herein, the Settling Defendants and Lead Plaintiff shall proceed in all respects as  
8 if this Stipulation and any related orders had not been entered; and (e) any portion of the Settlement  
9 Amount previously paid by the Contributing Insurers, together with any interest earned thereon, less  
10 any Taxes paid or due with respect to such income, and less Notice and Administration Costs  
11 actually incurred and paid or payable, shall be returned to the Contributing Insurers within fourteen  
12 (14) business days after joint written notification of such event by the Individual Defendants'  
13 Counsel and Lead Counsel to the Escrow Agent pursuant to the terms of the Escrow Agreement. In  
14 the event that the Settlement is terminated or the Effective Date otherwise fails to occur at any time  
15 after the Contributing Insurers have fully funded the Settlement Amount, the Settlement Amount  
16 shall be refunded and distributed in accordance with written instructions to be provided by the  
17 Individual Defendants' Counsel to Lead Counsel, which written instructions shall provide, among  
18 other things, that any shortfall between the Settlement Amount funded by the Contributing Insurers  
19 and the amount actually refunded to the Contributing Insurers is deemed to constitute Loss as that  
20 term is defined in the Directors' and Officers' Liability Insurance Policies and which reduces the  
21 limits of liability. The content of the written refund instructions provided by the Individual  
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1 Defendants' Counsel to Lead Counsel and such instructions' compliance with the terms of this  
2 provision shall be the sole obligation and responsibility of the Individual Defendants' Counsel. Lead  
3 Counsel's sole responsibility shall be compliance with the written instructions provided by the  
4 Individual Defendants' Counsel and Lead Counsel shall have no other responsibility, obligation or  
5 liability with respect to the content of said instructions, including but not limited to, any errors made  
6 in connection therewith.

7 **PRESERVATION OF CLAIMS IN CHAPTER 11 CASES**

8 36. For the avoidance of doubt:

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

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



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.

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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:  
21  
22

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6 Telephone: (650) 493-9300  
Facsimile: (650) 493-6811  
7 Attn: Jerome F. Birn, Jr., Esq.

8 If to the Outside Director Perkins Coie LLP  
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9 Suite 4800  
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10 Telephone: (206) 359-8477  
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11 Attn: Ronald L. Berenstain, Esq.

12 If to Defendant Ballenger: Orrick Herrington & Sutcliffe LLP  
13 701 5th Avenue  
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14 Seattle, Washington 98104-7097  
Telephone: (206) 839-4403  
15 Facsimile: (206) 839-4301  
Attn: George E. Greer, Esq.

16 If to Defendants Rotella, Simpson Thacher & Bartlett LLP  
Casey, Schneider, 425 Lexington Avenue  
17 Cathcart and Woods: New York, New York 10017-3954  
Telephone: (212) 455-3093  
18 Facsimile: (212) 455-2502  
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20  
21  
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DATED: June 30, 2011

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STIPULATION AND AGREEMENT OF SETTLEMENT  
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Master No: 2:08-md-1919 MJP

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22  
STIPULATION AND AGREEMENT OF SETTLEMENT  
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