

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 **STIPULATION AND AGREEMENT OF SETTLEMENT**
8 **WITH THE UNDERWRITER DEFENDANTS**

9 This Stipulation and Agreement of Settlement (the “Stipulation”) is entered into by and
10 between: (i) Ontario Teachers’ Pension Plan Board (“Ontario Teachers”), Lead Plaintiff in the
11 consolidated class action *In re Washington Mutual, Inc. Securities Litigation*, No. 2:08-md-1919
12 MJP, Lead Case No. C08-387 MJP (the “Action”), on behalf of itself and the Class as defined
13 herein;¹ and (ii) Defendants Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated (now
14 known as Morgan Stanley & Co. LLC), Credit Suisse Securities (USA) LLC, Deutsche Bank
15 Securities Inc., UBS Securities LLC, J.P. Morgan Securities Inc., Barclays Capital Inc., Keefe,
16 Bruyette & Woods, Inc., Cabrera Capital Markets, LLC, The Williams Capital Group, L.P.,
17 Citigroup Global Markets, Inc., Greenwich Capital Markets, Inc. (now known as RBS Securities
18 Inc.), BNY Mellon Capital Markets LLC (successor to BNY Capital Markets, Inc.), and Samuel
19 A. Ramirez & Company, Inc. (the “Underwriter Defendants” and collectively with Lead
20 Plaintiff, the “Settling Parties”) by and through their respective counsel, is submitted pursuant to
21 Rule 23 of the Federal Rules of Civil Procedure, and is subject to the approval of the United
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23 _____
24 ¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in paragraph 1 herein.

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1 States District Court for the Western District of Washington (the “District Court”). Subject to
2 certain limitations expressly provided herein, the Settlement is intended to settle and release all
3 Settled Claims as defined in ¶ 1(rr) below.

4 WHEREAS:

5 A. Beginning in November 2007, three securities class actions, *Koesterer v.*
6 *Washington Mutual, Inc., et al.*, No. C08-0387 MJP; *Abrams and Roffe v. Washington Mutual,*
7 *Inc., et al.*, No. C-08-388 MJP; and *Garber v. Washington Mutual, Inc., et al.*, No. C08-465 MJP
8 (collectively the “Securities Actions”) were commenced in the United States District Court for
9 the Southern District of New York against Washington Mutual, Inc. (“WMI” or the “Company”) and
10 certain of its officers and directors who are also named as defendants in the Action. The
11 Securities Actions complaints alleged violations of Sections 10(b) and 20(a) of the Securities
12 Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder with respect to
13 public disclosures concerning the lending practices and financial condition of WMI. A fourth
14 putative securities class action, *Nelson v. Woods, et al.*, No. C 07-1809 MJP, was commenced in
15 the District Court and was voluntarily dismissed without prejudice on March 3, 2008.

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

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

4 D. On May 13, 2008, Brockton Contributory Retirement System (“Brockton”)
5 commenced an action, *Brockton Contributory Retirement System v. Washington Mutual, Inc., et*
6 *al.*, No. C08-751 MJP, alleging claims under Sections 11, 12(a)(2) and/or 15 of the Securities
7 Act of 1933 (the “Securities Act”) against WMI, certain of the Underwriter Defendants, Deloitte
8 & Touche LLP (“Deloitte”), certain of the Officer Defendants² and the Outside Director
9 Defendants³ in connection with the (i) the August 2006 Offering of \$500 million of floating rate
10 notes due August 24, 2009 (“Floating Rate Notes”) and \$400 million of 5.50% notes due August
11 24, 2011 (“5.50% Notes”); (ii) the September 2006 Offering of \$500 million in Series K
12 perpetual non-cumulative floating rate preferred stock (“Series K Stock”); and (iii) the October
13 2007 Offering of \$500 million of 7.250% subordinated notes due November 1, 2017 (“7.250%
14 Notes”). The Brockton action later was consolidated into the Action, and Brockton became an
15 additional named plaintiff in this Action.
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17 E. On August 5, 2008, Lead Plaintiff filed the Consolidated Class Action Complaint
18 (the “Consolidated Complaint”), which included Brockton as an additional named plaintiff. The
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21 ² The Officer Defendants are Kerry K. Killinger, Thomas W. Casey, Stephen J. Rotella, Ronald
J. Cathcart, David C. Schneider, John F. Woods, and Melissa J. Ballenger.

22 ³ The Outside Director Defendants are Anne V. Farrell, Stephen E. Frank, Thomas C. Leppert,
23 Charles M. Lillis, Phillip D. Matthews, Regina Montoya, Michael K. Murphy, Margaret Osmer
24 McQuade, Mary E. Pugh, William G. Reed, Jr., Orin C. Smith, James H. Stever and Willis B.
Wood, Jr.

1 Consolidated Complaint asserted claims against WMI, Killinger, Casey, Cathcart, Rotella, and
2 Schneider under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder; and
3 against Killinger, Casey, Cathcart, Rotella, Schneider, Woods, Ballenger, and certain of the
4 Outside Director Defendants under Section 20(a) of the Exchange Act. The Consolidated
5 Complaint alleged that the defendants named in the Exchange Act claims made, or controlled
6 others who made, materially false and misleading statements about, among other things, the
7 effectiveness of WMI's risk management procedures, the fairness and reliability of the appraisals
8 received in connection with WMI's loans, the quality of WMI's mortgage underwriting practices
9 and WMI's financial results, including the appropriate allowances for its loan losses, and that
10 these false and misleading statements caused the prices of WMI's securities to be artificially
11 inflated during the Class Period. The Consolidated Complaint also asserted claims against WMI,
12 Killinger, Casey, Woods, the Outside Director Defendants, Deloitte, the Underwriter Defendants,
13 Lehman Brothers Inc. ("Lehman") and Banc of America Securities LLC ("BOA") under Section
14 11 of the Securities Act; against WMI, the Underwriter Defendants, Lehman and BOA under
15 Section 12(a)(2) of the Securities Act; and against Killinger, Casey, Woods, Ballenger, and the
16 Outside Director Defendants under Section 15 of the Securities Act. The Consolidated
17 Complaint alleged that the defendants named in the Securities Act claims were statutorily liable
18 for materially untrue statements and misleading omissions in the registration statement and
19 offering documents for four public offerings WMI conducted during the Class Period, including
20 the three offerings included in the Brockton action and WMI's December 2007 Offering of \$3
21 billion in 7.75% Series R Non-Cumulative Perpetual Convertible Preferred Stock ("Series R
22 Stock").
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1 F. On September 26, 2008, WMI and WMI Investment Corp. each filed a voluntary
2 petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”)
3 with the Bankruptcy Court, as jointly administered, *In re Washington Mutual, Inc.*, Case No. 08-
4 12229 (MFW) (the “Chapter 11 Cases”). As a result, all claims against WMI in the Action were
5 stayed pursuant to 11 U.S.C. § 362(a).⁴

6 G. On December 8, 2008, all of the Defendants other than WMI and Lehman filed
7 motions to dismiss the Consolidated Complaint, which were fully briefed and argued to the
8 District Court. On May 15, 2009, the District Court entered an order granting in part and
9 denying in part the motions to dismiss. The District Court denied Defendants’ motions to
10 dismiss the claims under the Securities Act concerning WMI’s October 2007 securities offering,
11 but granted Defendants’ motions to dismiss the Securities Act claims concerning WMI’s August
12 2006, September 2006, and December 2007 securities offerings. Additionally, the District Court
13 ordered that the Exchange Act claims be re-pled.
14

15 H. On June 15, 2009, Lead Plaintiff filed the Amended Consolidated Class Action
16 Complaint (the “Amended Complaint”). In addition to Lead Plaintiff Ontario Teachers and
17 named plaintiff Brockton, the Amended Complaint included Pompano Beach Police and
18 Firefighters’ Retirement System (“Pompano Beach”), Harlan Seymour (“Seymour”), and Police
19 and Fire Retirement System of the City of Detroit (“Detroit P&F”) as named plaintiffs. Like the
20 Consolidated Complaint, the Amended Complaint asserted claims under Sections 10(b) and
21

22 ⁴ On September 15, 2008, Lehman Brothers Holdings, Inc. filed for bankruptcy protection and,
23 on September 19, 2008, the United States District Court for the Southern District of New York
24 entered an Order staying certain proceedings, including this Action, against Lehman pursuant to
11 U.S.C. § 362(a).

1 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder; and under Sections 11,
2 12(a)(2) and 15 of the Securities Act. The Amended Complaint alleged claims substantially
3 similar to those in the Consolidated Complaint.

4 I. On July 17, 2009, all Defendants (except WMI and Lehman, as against which the
5 Action had been stayed) filed motions to dismiss the Amended Complaint. The motions were
6 fully briefed and argued to the District Court. On October 27, 2009, the District Court entered an
7 Order granting in part and denying in part the motion to dismiss the Amended Complaint. The
8 District Court sustained the Exchange Act claims against all the Defendants against whom they
9 were asserted. The District Court dismissed the Section 11 claims relating to the August 2006
10 offering of 5.50% Notes and the Section 12(a)(2) claims relating to the 5.50% Notes, the
11 Floating Rate Notes, and the Series K Stock, but sustained all other Securities Act claims
12 asserted.
13

14 J. On January 15, 2010, all Defendants other than WMI and Lehman filed answers
15 to the Amended Complaint.

16 K. On April 30, 2010, Lead Plaintiff filed a motion for class certification which was
17 fully briefed and argued to the District Court.

18 L. On October 12, 2010, the District Court entered an Order granting Lead Plaintiff's
19 motion for class certification except with respect to named plaintiff Seymour and the Series K
20 Stock. The District Court certified Lead Plaintiff and additional named plaintiffs Pompano
21 Beach, Brockton and Detroit P&F as class representatives and appointed Lead Counsel as Class
22 Counsel. The District Court excluded named plaintiff Seymour and the Series K Stock from the
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1 certified class.⁵

2 M. On December 1, 2010, the Underwriter Defendants moved for judgment on the
3 pleadings, a motion in which all other Defendants (except for WMI and Lehman) joined,
4 contending that the remaining Securities Act claims relating to the August 2006 and the
5 December 2007 offerings were barred by the statute of limitations. The District Court heard oral
6 argument on the motion on January 27, 2011 and denied the motion on January 28, 2011.

7 N. Pursuant to the District Court's Order dated November 25, 2009, the parties were
8 directed to engage in mediation to determine whether a consensual resolution of the Action could
9 be achieved. The Settling Parties, through their respective counsel, engaged in extensive arm's-
10 length negotiations that included mediation sessions on February 18 and 23, 2011 and March 24,
11 2011, with an experienced mediator, former United States District Judge Layn R. Phillips and in
12 additional extensive settlement discussions and negotiations during the time period of February
13 and March 2011, including the submission of detailed mediation briefs to Judge Phillips. With
14 Judge Phillips' assistance, on March 30, 2011, Lead Plaintiff reached an agreement-in-principle
15 to settle with the Underwriter Defendants on terms that include the payment of a total of
16 \$85,000,000 in cash for the benefit of the Class, in accordance with such allocation as the
17 Underwriter Defendants determine.

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19 O. Lead Counsel has conducted an investigation and pursued discovery relating to
20 the claims and the underlying events and transactions alleged in the Amended Complaint. Lead
21 Counsel has analyzed the evidence adduced during its investigation and through discovery,
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24 ⁵ Defendant BOA, which underwrote only the Series K Stock offering, was dismissed from the
Action as a result of the District Court's October 12, 2010 Order.

1 which included almost 500 witness interviews, review of over 23 million pages of documents
2 produced by Defendants and others, and dozens of depositions; has consulted with numerous
3 experts, including experts in accounting and auditing, risk management, loss reserve modeling,
4 statistical analysis and damages; and has researched the applicable law with respect to the claims
5 of Lead Plaintiff and the Class against the Settling Defendants and the potential defenses thereto.

6 P. Based upon its investigation and what it has learned through its prosecution of the
7 Action, Lead Counsel has concluded that the terms and conditions of this Settlement are fair,
8 reasonable and adequate to Lead Plaintiff and the other members of the Class, and in their best
9 interests. Based on Lead Plaintiff's direct oversight of the prosecution of the Action, along with
10 the input of Lead Counsel, Lead Plaintiff has agreed to settle the sustained claims in the Action
11 against the Settling Defendants, pursuant to the terms and provisions of this Stipulation, after
12 considering (i) the substantial benefits that Lead Plaintiff and the other members of the Class will
13 receive from the resolution of the Action as against the Settling Defendants, (ii) the attendant
14 risks of litigation, and (iii) the desirability of permitting the Settlement to be consummated as
15 provided by the terms of this Stipulation.
16

17 Q. Each of the Settling Defendants and BOA deny any wrongdoing, and this
18 Stipulation shall in no event be construed or deemed to be evidence of or an admission or
19 concession on the part of any of the Settling Defendants or BOA with respect to any claim or of
20 any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that
21 the Settling Defendants or BOA have asserted, or could have asserted in the Action. The
22 Settling Defendants are entering into this Settlement solely to avoid the cost and distraction of
23 further litigation.
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1 NOW THEREFORE, without any admission or concession on the part of Lead Plaintiff
2 of any lack of merit of the Action whatsoever, and without any admission or concession of any
3 liability or wrongdoing or lack of merit in their defenses whatsoever by any of the Settling
4 Defendants, it is hereby STIPULATED AND AGREED, by and among the parties to this
5 Stipulation, through their respective attorneys, subject to entry of the Judgment of the District
6 Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the
7 benefits flowing to the Settling Parties from the Settlement, that all Settled Claims as against the
8 Released Defendant Parties and all Released Defendant Parties' Claims shall be compromised,
9 settled, released and dismissed, with prejudice, upon and subject to the following terms and
10 conditions:

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12 **DEFINITIONS**

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

15 (a) "Action" means the consolidated class action as described herein, one of
16 the actions that comprises the Multidistrict Litigation under the caption *In re Washington*
17 *Mutual, Inc. Securities Litigation*, No. 2:08-md-1919 MJP, including each of the Securities
18 Actions as defined above, but expressly excluding *Flaherty & Crumrine Preferred Income Fund*
19 *Inc. v. Killinger et al.*, No. 09-1756 (W.D. Wash.) and *In re Washington Mutual, Inc. California*
20 *Securities Litigation*, No. 09-664 (W.D. Wash.).

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22 (b) "Additional Named Plaintiffs" means Pompano Beach Police and
23 Firefighters' Retirement System, Brockton Contributory Retirement System, and Police and Fire
24 Retirement System of the City of Detroit.

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

4 (d) “Amended Complaint” means the Amended Consolidated Class Action
5 Complaint filed in the Action by Lead Plaintiff on or about June 15, 2009.

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

9 (f) “Bankruptcy Court” means the United States Bankruptcy Court for the
10 District of Delaware.

11 (g) “Chapter 11 Cases” means the proceedings before the Bankruptcy Court
12 styled *In re Washington Mutual, Inc. et al.*, Chapter 11, Case No 08-12229 (MFW).
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14 (h) “Claim” means a completed and signed Proof of Claim Form submitted to
15 the Claims Administrator in accordance with the instructions on the Proof of Claim Form.

16 (i) “Claim Form” or “Proof of Claim Form” means the form, substantially in
17 the form attached hereto as Exhibit 2 to Exhibit A, that a Claimant or Class Member must
18 complete in order for that Claimant or Class Member to be eligible to share in a distribution of
19 the Net Settlement Fund.

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

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

2 (l) "Class" means the Class defined in paragraph 870 of the Amended
3 Complaint and modified by Orders of the District Court dated May 15, 2009, October 27, 2009,
4 and October 12, 2010. Specifically, the Class includes all persons and/or entities who purchased
5 or otherwise acquired the following securities issued by WMI and its subsidiaries: WMI
6 common stock; Floating Rate Notes offered in WMI's August 2006 Offering (CUSIP
7 939322AW3); the 7.250% Notes offered in WMI's October 2007 Offering (CUSIP
8 939322AY9); the 7.75% Series R Non-Cumulative Perpetual Convertible Preferred Stock
9 offered in WMI's December 2007 Offering (CUSIP 939322814); and Washington Mutual
10 Capital Trust 2001's 5.375% Trust Preferred Income Equity Redeemable Securities (PIERS)
11 Units, maturing 7/1/2041 ("Capital Trust Unit Preferred") (CUSIP 939322848) (collectively, the
12 "WMI Class Securities") during the period from October 19, 2005 to July 23, 2008 (the "Class
13 Period"), and were damaged thereby. Excluded from the Class are (i) Defendants; (ii) members
14 of the Immediate Family of each Individual Defendant; (iii) any other person who was an officer
15 or director of WMI, Deloitte, any of the Underwriter Defendants, Lehman, or BOA during the
16 Class Period; (iv) any firm, trust, corporation, officer, or other entity in which any Defendant has
17 or had a controlling interest; (v) any person who participated in the wrongdoing alleged in the
18 Action; (vi) TPG Capital and other purchasers of equity securities issued by WMI in connection
19 with the \$7 billion capital issuance pursuant to the agreements entered into by and among TPG
20 Capital and WMI and other investors, announced by the Company on April 8, 2008 (the "TPG
21 Deal"), to the extent that such purchasers exercised distinct rights and diligence opportunities
22 afforded them in connection with the TPG Deal; and (vii) the legal representatives, agents,
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1 affiliates, heirs, beneficiaries, successors-in-interest, or assigns of any such excluded party,
2 provided that any Investment Vehicle (as defined herein) shall not be deemed an excluded person
3 or entity by definition. Also excluded from the Class are any persons or entities who exclude
4 themselves by filing a request for exclusion in accordance with the requirements set forth in the
5 Notice.

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

9 (n) “Class Member” means a person or entity that is a member of the Class
10 and does not exclude himself, herself or itself by filing a request for exclusion in accordance
11 with the requirements set forth in the Notice.

12 (o) “Class Period” means the period from October 19, 2005 to July 23, 2008.

13 (p) “Defendants” means all persons and entities that were named as
14 defendants in the Consolidated Complaint or the Amended Complaint.

15 (q) “Deloitte” means Defendant Deloitte & Touche LLP.

16 (r) “District Court” means the United States District Court for the Western
17 District of Washington at Seattle.

18 (s) “Effective Date” means the first business day on which, unless otherwise
19 waived by the Settling Parties, all of the events and conditions specified in ¶ 30 of this
20 Stipulation have been met and have occurred.

21 (t) “Escrow Account” means the account maintained at Valley National
22 Bank to hold the Settlement Fund, which account, subject to the District Court’s supervisory
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1 authority, shall be under the control of Lead Counsel.

2 (u) “Escrow Agent” means Valley National Bank.

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

6 (w) “Final,” with respect to any order or judgment, including the Judgment or,
7 if applicable, the Alternative Judgment, means: (i) if no appeal is filed, the expiration date of the
8 time provided for filing or noticing of any appeal under the Federal Rules of Civil Procedure,
9 i.e., thirty (30) days after entry of the order or judgment; or (ii) if there is an appeal from the
10 order or judgment, the date of (a) final dismissal of all such appeals, or the final dismissal of any
11 proceeding on certiorari or otherwise to review the order or judgment, or (b) the date the order or
12 judgment is finally affirmed on appeal, the expiration of the time to file a petition for a writ of
13 certiorari or other form of review, or the denial of a writ of certiorari or other form of review,
14 and, if certiorari or other form of review is granted, the date of final affirmance of the order or
15 judgment following review pursuant to that grant; provided, however, that any appeal or
16 proceeding seeking subsequent judicial review pertaining solely to an order issued with respect
17 to (i) attorneys’ fees, costs or expenses, or (ii) the plan of allocation, shall not in any way delay
18 or preclude the Judgment or Alternative Judgment from becoming Final.

19 (x) “Immediate Family” means an individual’s spouse, parents, siblings,
20 children, grandparents, grandchildren; the spouses of his or her parents, siblings and children;
21 and the parents and siblings of his or her spouse, and includes step and adoptive relationships. In
22 this paragraph, “spouse” shall mean a husband, a wife, or a partner in a state-recognized
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1 domestic partnership or civil union.

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

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

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

14 (bb) “Lead Plaintiff” means Ontario Teachers’ Pension Plan Board.

15 (cc) “Liaison Counsel for Defendants” means the law firm of Davis Wright
16 Tremaine LLP.

17 (dd) “Liaison Counsel for Plaintiffs” means the law firm of Byrnes Keller
18 Cromwell LLP.

19 (ee) “Litigation Expenses” means costs and expenses incurred in connection
20 with commencing and prosecuting the Action (which may include the costs and expenses of
21 Plaintiffs directly related to their representation of the Class), for which Lead Counsel intends to
22 apply to the District Court for reimbursement from the Settlement Fund.
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1 (ff) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes;
2 (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the District
3 Court; and (iv) any attorneys’ fees awarded by the District Court.

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

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

12 (ii) “Officer and Director Defendants” or “Individual Defendant(s)” means
13 Defendants Kerry K. Killinger, Thomas W. Casey, Stephen J. Rotella, Ronald J. Cathcart, David
14 C. Schneider, John F. Woods, Melissa J. Ballenger, Anne V. Farrell, Stephen E. Frank, Thomas
15 C. Leppert, Charles M. Lillis, Phillip D. Matthews, Regina Montoya, Michael K. Murphy,
16 Margaret Osmer McQuade, Mary E. Pugh, William G. Reed, Jr., Orin C. Smith, James H. Stever
17 and Willis B. Wood, Jr.

18 (jj) “Other Defendants” means, for purposes of this Settlement, WMI,
19 Lehman, Deloitte and the Officer and Director Defendants, as defined herein.⁶
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21 (kk) “Plaintiffs” means Lead Plaintiff and the Additional Named Plaintiffs.
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24 ⁶ Defendant BOA was dismissed from the Action as a result of the District Court’s October 12,
2010 Order and is not an Other Defendant.

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

4 (mm) “Plan of Allocation” means the proposed plan of allocation of the Net
5 Settlement Fund set forth in the Notice.

6 (nn) “Preliminary Approval Order” means the order, substantially in the form
7 attached hereto as Exhibit A, to be entered by the District Court preliminarily approving the
8 Settlement and directing notice be provided to the Class.

9 (oo) “Related Parties” means with respect to each Underwriter Defendant and
10 BOA, its predecessors, successors, past, present or future parents, subsidiaries, affiliates, and
11 each of their respective past or present officers, directors, shareholders, agents, partners,
12 principals, members, employees, attorneys, advisors, auditors and accountants (other than
13 Deloitte), insurers and reinsurers, and any firm, trust, corporation, or other entity in which any of
14 the Underwriter Defendants or BOA has or had a controlling interest. Notwithstanding the
15 foregoing, Related Parties do not include any Other Defendant or any of the Other Defendants’
16 Related Parties as defined in the Stipulation and Agreement of Settlement in this Action between
17 Lead Plaintiff and Deloitte & Touche LLP and in the Stipulation and Agreement of Settlement in
18 this Action between Lead Plaintiff and the Officer and Director Defendants and WMI.

19 (pp) “Released Defendant Parties” means any and all of the Settling
20 Defendants, BOA and each of their respective Related Parties.

21 (qq) “Released Defendant Parties’ Claims” means any and all claims, rights,
22 demands, liabilities or causes of action of every nature and description whatsoever (including,
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1 but not limited to, any claims for damages, interest, attorney’s fees, expert or consulting fees, and
2 any other costs, expenses or liabilities whatsoever), whether based on federal, state, local,
3 statutory or common law or any other law, rule or regulation, including both known claims and
4 Unknown Claims, that have been or could have been asserted in the Action or in this or any other
5 forum, by or on behalf of the Released Defendant Parties or any of them, or the successors and
6 assigns of any of them against Lead Plaintiff, Lead Counsel, Liaison Counsel for Plaintiffs, any
7 other Class Member or any of their respective attorneys, which arise out of or relate in any way
8 to the institution, prosecution, or settlement of the Action (except for claims to enforce the
9 Settlement).

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11 (rr) “Settled Claims” means any and all claims, rights, demands, liabilities, or
12 causes of action of every nature and description whatsoever (including, but not limited to, any
13 claims for damages, interest, attorney’s fees, expert or consulting fees, and any other costs,
14 expenses or liabilities whatsoever), to the fullest extent that the law permits their release in this
15 Action, by or on behalf of Lead Plaintiff or any other Class Members against any of the Released
16 Defendant Parties that have been alleged or could have been alleged in the Action, whether based
17 on federal, state, local, statutory or common law or any other law, rule or regulation, whether
18 known claims or Unknown Claims, whether class or individual in nature, whether fixed or
19 contingent, accrued or un-accrued, liquidated or unliquidated, whether at law or in equity,
20 matured or unmatured, that (i) are based on, relate to or arise out of the allegations, transactions,
21 facts, matters, events, disclosures, statements, occurrences, representations, acts or omissions or
22 failures to act that have been or could have been alleged in the Action, and/or (ii) relate to or
23 arise out of Lead Plaintiff’s or any other Class Member’s purchase, acquisition or holding of
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1 WMI Released Securities during the Class Period insofar as it relates in any way to any other
2 matter covered in this definition of Settled Claims. Settled Claims do not include, release, bar,
3 waive, impair or otherwise impact (i) any claims to enforce the Settlement; (ii) any claims of the
4 Class or any Class Member against any of the Other Defendants; (iii) the rights of any Class
5 Members to recover moneys from the settlement of the action styled: *In re Washington Mutual*
6 *Inc. ERISA Litig.*, Lead Case No. 07-cv-1874; (iv) any claims asserted in the actions styled: *In re*
7 *Washington Mutual, Inc. California Securities Litigation*, No. 09-664 (W.D. Wash.), *Flaherty &*
8 *Crumrine Preferred Income Fund Incorporated, et al. v. Killinger, et al.*, No. C09-1756 MJP
9 (W.D. Wash.), *Boilermakers National Annuity Trust Fund v. WaMu Mortgage Pass-Through*
10 *Certificates et al.*, No. 09-37 (W.D. Wash.), and *Allstate Bank, et al. v. JPMorgan Chase Bank,*
11 *NA, et al.*, Index No. 650398/2011 (N.Y. Supreme); (v) any claim or right to recovery of the
12 Class or any Class Member individually in the Chapter 11 Cases and their rights to participate in
13 the distribution of funds in the Chapter 11 Cases upon confirmation of a plan of reorganization or
14 otherwise; or (vi) Lead Plaintiff's and each other Class Member's right to participate in the
15 distribution of any funds recovered by any governmental or regulatory agency from any of the
16 Defendants.

17
18 (ss) "Settlement" means the compromise and settlement between the Settling
19 Parties contemplated by this Stipulation.

20 (tt) "Settlement Amount" means Eighty Five Million Dollars (\$85,000,000),
21 in cash.

22 (uu) "Settlement Fund" means the Settlement Amount plus any and all interest
23 earned thereon.
24

STIPULATION AND AGREEMENT OF SETTLEMENT
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1 (vv) “Settlement Hearing” means the hearing set by the District Court under
2 Rule 23(e)(1)(c) of the Federal Rules of Civil Procedure to consider final approval of the
3 Settlement.

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

11 (xx) “Settling Defendants’ Counsel” means the law firms of Gibson, Dunn &
12 Crutcher LLP and K&L Gates LLP.

13 (yy) “Settling Parties” means the Settling Defendants and Lead Plaintiff, on
14 behalf of itself and the other Class Members, including the Additional Named Plaintiffs.

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

21 (aaa) “Taxes” means: (i) all federal, state and/or local taxes of any kind on any
22

23 ⁷ Due to the bankruptcy filing and SIPIC liquidation, the Action has been stayed against
24 Lehman pursuant to § 362(a) of the Bankruptcy Code. BOA, which was the underwriter for the
Series K Stock, was dismissed pursuant to the Court’s October 12, 2010 Order.

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 (bbb) “Unknown Claims” means any Settled Claims which Lead Plaintiff or any
6 other Class Member does not know or suspect to exist in his, her or its favor at the time of the
7 release of the Released Defendant Parties, and any Released Defendant Parties’ Claims which
8 any Released Defendant Party does not know or suspect to exist in his, her, or its favor at the
9 time of the release of Lead Plaintiff, Lead Counsel, Liaison Counsel for Plaintiffs, the other
10 Class Members and their respective attorneys, which, if known by him, her or it, might have
11 affected his, her or its decision(s) with respect to this Settlement. With respect to any and all
12 Settled Claims and Released Defendant Parties’ Claims, the Settling Parties stipulate and agree
13 that, upon the Effective Date, Lead Plaintiff and each of the Settling Defendants shall expressly
14 waive, and each of the other Class Members and each of the other Released Defendant Parties
15 shall be deemed to have waived, and by operation of the Judgment shall have expressly waived,
16 any and all provisions, rights, and benefits conferred by any law of any state or territory of the
17 United States, or principle of common law or foreign law, which is similar, comparable, or
18 equivalent to California Civil Code §1542, which provides:
19

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

23 Lead Plaintiff and each of the Settling Defendants acknowledge, and each of the other Class
24 Members and each of the other Released Defendant Parties shall be deemed by operation of law

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1 to have acknowledged, that the foregoing waiver was separately bargained for and a key element
2 of the Settlement.

3 (ccc) “WMI” means Washington Mutual, Inc.

4 (ddd) “WMI Class Securities” means WMI common stock; Floating Rate Notes
5 offered in WMI’s August 2006 Offering (CUSIP 939322AW3); the 7.250% Notes offered in
6 WMI’s October 2007 Offering (CUSIP 939322AY9); the 7.75% Series R Non-Cumulative
7 Perpetual Convertible Preferred Stock offered in WMI’s December 2007 Offering (CUSIP
8 939322814); and Washington Mutual Capital Trust 2001’s 5.375% Trust Preferred Income
9 Equity Redeemable Securities (PIERS) Units, maturing 7/1/2041 (“Capital Trust Unit
10 Preferred”) (CUSIP 939322848).

11 (eee) “WMI Released Securities” means WMI common stock; Floating Rate
12 Notes offered in WMI’s August 2006 Offering (CUSIP 939322AW3); 5.50% Notes offered in
13 WMI’s August 2006 Offering (CUSIP 939322AX1); the Series K Stock offered in WMI’s
14 September 2006 Offering (CUSIP 939322830); the 7.250% Notes offered in WMI’s October
15 2007 Offering (CUSIP 939322AY9); the 7.75% Series R Non-Cumulative Perpetual Convertible
16 Preferred Stock offered in WMI’s December 2007 Offering (CUSIP 939322814); and
17 Washington Mutual Capital Trust 2001’s 5.375% Trust Preferred Income Equity Redeemable
18 Securities (PIERS) Units, maturing 7/1/2041 (“Capital Trust Unit Preferred”) (CUSIP
19 939322848).

20
21 **RELEASE OF CLAIMS**

22 2. The obligations incurred pursuant to this Stipulation shall be in full and final
23 disposition of the Action as against the Settling Defendants only, and shall fully and finally
24

1 release any and all Settled Claims as against all Released Defendant Parties and shall also release
2 Lead Plaintiff, Lead Counsel, Liaison Counsel for Plaintiffs, each of the other Class Members
3 and each of their respective attorneys from any and all Released Defendant Parties' Claims.

4 3. Upon the Effective Date, Lead Plaintiff and each of the other members of the
5 Class on behalf of themselves, their respective heirs, executors, administrators, predecessors,
6 successors and assigns, shall be deemed by operation of law to have released, waived, discharged
7 and dismissed each and every Settled Claim as against every Released Defendant Party covered
8 by the Judgment, and shall forever be enjoined from prosecuting any or all Settled Claims
9 against any such Released Defendant Party.

10 4. Upon the Effective Date, each of the Settling Defendants and each of the other
11 Released Defendant Parties covered by the Judgment, on behalf of themselves, their respective
12 heirs, executors, administrators, predecessors, successors and assigns, shall be deemed by
13 operation of law to have released, waived, discharged and dismissed each and every of the
14 Released Defendant Parties' Claims as against Lead Plaintiff, Lead Counsel, Liaison Counsel for
15 Plaintiffs, every other Class Member and each of their respective attorneys and shall forever be
16 enjoined from prosecuting any or all of the Released Defendant Parties' Claims against Lead
17 Plaintiff, Lead Counsel, Liaison Counsel for Plaintiffs, every other Class Member and each of
18 their respective attorneys.

19
20 **THE SETTLEMENT CONSIDERATION**

21 5. In consideration of the Settlement of the Settled Claims against the Settling
22 Defendants and the other Released Defendant Parties, in full satisfaction of the Settling
23 Defendants' monetary obligations under the terms of the Settlement, the Underwriter Defendants
24

STIPULATION AND AGREEMENT OF SETTLEMENT
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1 shall pay, in accordance with such allocation as they determine, Eighty Five Million Dollars
2 (\$85,000,000) in cash, such amount to be deposited into the Escrow Account within thirty (30)
3 calendar days after the latter of: (a) the District Court entering an order preliminarily approving
4 this Stipulation and the Settlement; and (b) receipt by Settling Defendants' Counsel from Lead
5 Counsel of full and complete wiring or other instructions necessary for such payment, an
6 executed W-9 for the Settlement Fund, and payee name and address for delivery of payment by
7 check.

8 **USE OF SETTLEMENT FUND**

9
10 6. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and
11 Administration Costs; (c) any Litigation Expenses awarded by the District Court; and (d) any
12 attorneys' fees awarded by the District Court. The balance remaining in the Settlement Fund,
13 that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in
14 ¶¶ 16-25 below.

15 7. Except as provided herein or pursuant to orders of the District Court, the Net
16 Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held
17 by the Escrow Agent shall be deemed to be in the custody of the District Court and shall remain
18 subject to the jurisdiction of the District Court until such time as the funds shall be distributed or
19 returned pursuant to the terms of this Stipulation and/or further Order of the District Court. The
20 Escrow Agent shall invest any funds in the Escrow Account in United States Treasury Bills (or a
21 mutual fund invested solely in such instruments) and shall collect and reinvest all interest
22 accrued thereon, except that any residual cash balance in the Escrow Account of less than
23 \$250,000.00 may be invested in money market mutual funds comprised exclusively of
24

1 investments secured by the full faith and credit of the United States. In the event that the yield
2 on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any
3 portion of the funds held by the Escrow Agent may be deposited in a non-interest bearing
4 account that is fully insured by the FDIC.

5 8. The Settling Parties agree that the Settlement Fund is intended to be a Qualified
6 Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel,
7 as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-
8 2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax
9 returns as may be necessary or appropriate (including, without limitation, the returns described in
10 Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Such returns shall be consistent
11 with this paragraph and in all events shall reflect that all taxes on the income earned on the
12 Settlement Fund shall be paid out of the Settlement Fund as provided below. Lead Counsel shall
13 also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed
14 with respect to the Settlement Fund. Upon written request, Settling Defendants will provide to
15 Lead Counsel the statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as
16 administrator of the Settlement Fund within the meaning of Treasury Regulation §1.468B-
17 2(k)(3), shall timely make such elections as are necessary or advisable to carry out this
18 paragraph, including, as necessary, making a “relation back election,” as described in Treasury
19 Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the
20 earliest allowable date, and shall take or cause to be taken all actions as may be necessary or
21 appropriate in connection therewith.
22

23 9. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the
24

STIPULATION AND AGREEMENT OF SETTLEMENT
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1 Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement,
2 and without prior Order of the District Court. Any tax returns prepared for the Settlement Fund
3 (as well as the election set forth therein) shall be consistent with the previous paragraph and in
4 all events shall reflect that all Taxes (including any interest or penalties) on the income earned by
5 the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

6 10. This is not a claims-made settlement. Upon the occurrence of the Effective Date,
7 none of the Settling Defendants, their insurers, nor any other person or entity who or which paid
8 any portion of the Settlement Amount on behalf of any of the Settling Defendants, shall have any
9 right to the return of the Settlement Fund or any portion thereof irrespective of the number of
10 Claims filed, the collective amount of losses of Authorized Claimants, the percentage of
11 recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement
12 Fund.

13
14 11. The Claims Administrator shall discharge its duties under Lead Counsel's
15 supervision and subject to the jurisdiction of the District Court. Except as otherwise provided
16 herein, the Released Defendant Parties shall have no responsibility whatsoever for the
17 administration of the Settlement, and shall have no liability whatsoever to any person, including,
18 but not limited to, the Class Members, in connection with any such administration. Lead
19 Counsel shall cause the Claims Administrator to mail the Notice and Proof of Claim to those
20 members of the Class at the address of each such person as set forth in the records of WMI (to
21 the extent that it is able to obtain such records) or its transfer agent, or who otherwise may be
22 identified through further reasonable effort. Lead Counsel will cause the Summary Notice to be
23 published pursuant to the terms of the Preliminary Approval Order or whatever other form or
24

STIPULATION AND AGREEMENT OF SETTLEMENT
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1 manner might be ordered by the District Court.

2 12. Lead Counsel may pay from the Settlement Fund, without further approval from
3 Settling Defendants or further order of the District Court, all reasonable Notice and
4 Administration Costs actually incurred. Such costs and expenses shall include, without
5 limitation, the actual costs of publication, printing and mailing the Notice, reimbursements to
6 nominee owners for forwarding the Notice to their beneficial owners, the administrative
7 expenses incurred and fees charged by the Claims Administrator in connection with providing
8 Notice and processing the submitted claims, and the fees, if any, of the Escrow Agent. In the
9 event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and
10 Administration Costs paid or incurred, including any related fees, shall not be returned or repaid
11 to the Settling Defendants, their insurers, or to any other person or entity who or which paid any
12 portion of the Settlement Amount on their behalf.
13

14 **ATTORNEYS' FEES AND LITIGATION EXPENSES**

15 13. Lead Counsel will apply to the District Court for a collective award of attorneys'
16 fees to Plaintiffs' Counsel which shall be a percentage of the Settlement Fund to be approved by
17 Lead Plaintiff. Lead Counsel also will apply to the District Court for reimbursement of
18 Litigation Expenses to be paid from the Settlement Fund. No Settling Defendant, insurer, nor
19 any other Released Defendant Party, shall take any position with respect to Lead Counsel's
20 application for an award of attorneys' fees and/or Litigation Expenses. Such matters are not the
21 subject of any agreement between Settling Defendants and Lead Plaintiff other than what is set
22 forth in this Stipulation, and this Stipulation shall otherwise be enforceable according to its terms
23 without regard to any modification, denial, appeal or other adverse ruling with respect to Lead
24

1 Counsel's application for an award of attorneys' fees, costs or expenses.

2 14. Any attorneys' fees and Litigation Expenses that are awarded by the District
3 Court shall be paid to Lead Counsel immediately from the Settlement Fund upon award,
4 notwithstanding the existence of any timely filed objections thereto, or potential for appeal
5 therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiffs'
6 Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, plus
7 accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is
8 terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further
9 proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or
10 Litigation Expenses is reduced or reversed. Plaintiffs' Counsel shall make the appropriate refund
11 or repayment in full no later than thirty (30) days after receiving from Settling Defendants'
12 Counsel or from a court of appropriate jurisdiction notice of the termination of the Settlement or
13 notice of any reduction of the award of attorneys' fees and/or Litigation Expenses. An award of
14 attorneys' fees and/or Litigation Expenses is not a necessary term of this Stipulation or this
15 Settlement and is not a condition of this Stipulation or this Settlement. Lead Plaintiff and Lead
16 Counsel may not cancel or terminate the Stipulation or the Settlement based on the District
17 Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses.
18 Apart from their obligation to pay or cause the payment of the Settlement Amount as set forth in
19 ¶ 5 above, the Settling Defendants shall have no liability or obligation to Lead Plaintiff, any
20 other Class Members or their respective counsel or Lead or Liaison Counsel for Plaintiffs, with
21 respect to any attorneys' fees, costs or expenses, regardless of the amount of any attorneys' fees,
22 costs or expenses approved by the District Court, and regardless of any termination of this
23
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1 Stipulation or the Settlement contained herein.

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

5 **CLAIMS ADMINISTRATOR**

6 16. The Claims Administrator shall administer the process of receiving, reviewing
7 and approving or denying claims under Lead Counsel's supervision and subject to the
8 jurisdiction of the District Court. The Settling Defendants shall have no responsibility
9 whatsoever for the administration of the Settlement or the claims process and shall have no
10 liability whatsoever to any person, including, but not limited to, Lead Plaintiff, any other Class
11 Members or Lead Counsel in connection with such administration. Settling Defendants' Counsel
12 shall cooperate in the administration of the Settlement to the extent reasonably necessary to
13 effectuate its terms.
14

15 17. The Claims Administrator shall receive Claims and determine first, whether the
16 Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's *pro rata* share
17 of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim compared
18 to the total Recognized Claims of all Authorized Claimants (as set forth in the Plan of Allocation
19 set forth in the Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of
20 allocation as the District Court approves).

21 18. The Plan of Allocation proposed in the Notice is not a necessary term of this
22 Stipulation and it is not a condition of this Stipulation that any particular plan of allocation be
23 approved by the District Court. Lead Plaintiff and Lead Counsel may not cancel or terminate the
24

1 Stipulation or the Settlement based on the District Court's or any appellate court's ruling with
2 respect to the Plan of Allocation, any modification made to the Plan of Allocation, or any other
3 plan of allocation as may be ordered by the District Court in this Action. No Settling Defendant,
4 nor any other Released Defendant Party, shall have any involvement in or responsibility or
5 liability whatsoever for the Plan of Allocation or the allocation of the Net Settlement Fund.

6 19. Any Class Member who does not submit a valid Claim Form will not be entitled
7 to receive any distribution from the Net Settlement Fund but will otherwise be bound by all of
8 the terms of this Stipulation and the Settlement, including the terms of the Judgment to be
9 entered in the Action and the releases provided for therein, and will be permanently barred and
10 enjoined from bringing any action, claim, or other proceeding of any kind against any Released
11 Defendant Party concerning any Settled Claim.

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

22 21. For purposes of determining the extent, if any, to which a Class Member shall be
23 entitled to be treated as an Authorized Claimant, the following conditions shall apply:
24

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1 a. Each Class Member shall be required to submit a Claim Form, substantially in
2 the form attached hereto as Exhibit 2 to Exhibit A, supported by such documents as are
3 designated therein, including proof of the Claimant's loss, or such other documents or proof as
4 the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable;

5 b. All Claim Forms must be submitted by the date set by the District Court in the
6 Preliminary Approval Order and specified in the Notice, unless such deadline is extended by
7 Order of the District Court. Any Class Member who fails to submit a Claim Form by such date
8 shall be forever barred from receiving any distribution from the Net Settlement Fund or payment
9 pursuant to this Stipulation (unless, by Order of the District Court, late-filed Claim Forms are
10 accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the
11 Settlement, including the terms of the Judgment and the releases provided for therein and herein,
12 and will be permanently barred and enjoined from bringing any action, claim or other proceeding
13 of any kind against any Released Defendant Party concerning the Settled Claims. Provided that
14 it is received before the motion for the Class Distribution Order is filed, a Claim Form shall be
15 deemed to be submitted when posted, if received with a postmark indicated on the envelope and
16 if mailed by first-class mail and addressed in accordance with the instructions thereon. In all
17 other cases, the Claim Form shall be deemed to have been submitted when actually received by
18 the Claims Administrator;

19 c. Each Claim Form shall be submitted to and reviewed by the Claims
20 Administrator, under the supervision of Lead Counsel, who shall determine in accordance with
21 this Stipulation the extent, if any, to which each Claim shall be allowed, subject to review by the
22 District Court pursuant to subparagraph (e) below;
23
24

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

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

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

20 22. Each Claimant shall be deemed to have submitted to the jurisdiction of the
21 District Court with respect to the Claimant's Claim, and the Claim will be subject to
22 investigation and discovery under the Federal Rules of Civil Procedure, provided that such
23 investigation and discovery shall be limited to that Claimant's status as a Class Member and the
24

STIPULATION AND AGREEMENT OF SETTLEMENT
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1 validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this
2 Action or this Settlement in connection with the processing of Claim Forms.

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

9 24. Payment pursuant to the Class Distribution Order shall be final and conclusive
10 against all Class Members. All Class Members whose Claims are not approved by the District
11 Court shall be barred from participating in distributions from the Net Settlement Fund. Whether
12 or not a Class Member submits a Claim, or any Claim is not allowed either in whole or in part,
13 all Class Members shall be bound by all of the terms of this Stipulation and the Settlement,
14 including the terms of the Judgment to be entered in the Action and the releases of all Released
15 Defendant Parties as provided for therein and herein, and will be permanently barred and
16 enjoined from bringing any action, claim or other proceeding against any and all Released
17 Defendant Parties concerning the Settled Claims.

18 25. All proceedings with respect to the administration, processing and determination
19 of Claims and the determination of all controversies relating thereto, including disputed
20 questions of law and fact with respect to the validity of Claims, shall be subject to the
21 jurisdiction of the District Court.
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23
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1 arbitration proceeding, administrative agency, or other forum in the United States or
2 elsewhere. For purposes of this paragraph, “Barred Claims” means (i) any claim for
3 contribution or indemnity (whether by contract, by operation of law or equitable
4 principles, or based on any other source) arising out of or related to the claims or
5 allegations asserted by Lead Plaintiff in the Action, or (ii) any other claim of any type,
6 whether arising under state, federal, common, or foreign law, for which the injury
7 claimed is that person’s or entity’s actual or threatened liability to Lead Plaintiff and/or
8 members of the Class, *provided that* (i) Barred Claims shall not include claims that arise
9 out of or relate to a cause of action that may be asserted by any person or entity who
10 timely opts out of this Settlement and does not revoke that request for exclusion within
11 the applicable time period, or insofar as such person or entity has asserted claims in any
12 of the actions specifically excluded from the Action as set forth in paragraph 1(a) and (rr)
13 of the Stipulation; (ii) nothing in this Bar Order alters the rights between and among the
14 Settling Defendants under the terms of any written agreements governing the
15 underwriting syndicates involved in the Action, as to which claims are not barred,
16 released or discharged; (iii) Barred Claims does not include any claims for contribution
17 or indemnity arising under the Underwriting Agreements relating to the offerings of the
18 Series R Stock, the Floating Rate Notes and the 7.250% Notes or any defenses that any
19 person or entity may have to such claims; and (iv) Barred Claims does not include any
20 claims or defenses of the Settling Defendants in connection with the Chapter 11 Cases,
21 including but not limited to any claims or defenses they have or may have against WMI,
22 Washington Mutual Bank, or any other affiliate of WMI.

23 29. The Judgment shall also contain a provision substantially in the form set forth in
24 Exhibit B 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 shall be reduced

1 by the greater of: (i) an amount that corresponds to the percentage of responsibility of the
2 Settling Defendants for common damages; or (ii) the amount paid by or on behalf of the Settling
3 Defendants to the Class or Class Member for common damages.

4 **CONDITIONS OF SETTLEMENT AND EFFECT OF TERMINATION**

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

7 (a) the District Court has entered the Preliminary Approval Order,
8 substantially in the form set forth in Exhibit A annexed hereto;

9 (b) the Settlement Amount has been deposited in an Escrow Account in
10 accordance with the provisions of ¶ 5 hereof;

11 (c) the Settling Defendants have not exercised their option to terminate the
12 Settlement pursuant to ¶¶ 31 or 32 hereof; and

13 (d) the District Court has entered the Judgment with respect to the Settlement,
14 substantially in the form set forth in Exhibit B annexed hereto and the Judgment has become
15 Final, or the District Court has entered an Alternative Judgment and the Settling Defendants have
16 not elected to terminate the Settlement and the Alternative Judgment has become Final.

17 31. Settling Defendants, provided they collectively agree, and Lead Plaintiff shall
18 each have the right to terminate the Settlement and this Stipulation by providing written notice of
19 their election to do so to the other parties to this Stipulation within thirty (30) days of: (a) the
20 District Court's declining to enter the Preliminary Approval Order in any material respect; (b)
21 the District Court's refusal to approve this Stipulation and Settlement or any material part of it;
22 (c) the District Court's declining to enter the Judgment, or any Alternative Judgment to which
23
24

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

8 32. In addition to the grounds set forth in ¶ 31, the Underwriter Defendants, provided
9 they collectively agree, shall have the right to terminate the Settlement and this Stipulation in the
10 event 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
13 filed with the District Court and its terms shall not be disclosed in any other manner (other than
14 the statements herein and in the Notice) unless and until the District Court requires the Settling
15 Parties to file the Supplemental Agreement or disclose its terms or a dispute arises between Lead
16 Plaintiff and the Settling Defendants concerning its interpretation or application. If submission
17 of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by
18 the District Court, Lead Plaintiff and Settling Defendants will undertake to have the
19 Supplemental Agreement submitted to the District Court *in camera*.

21 33. Except as otherwise provided herein, in the event that the Settlement is
22 terminated, the Settlement and this Stipulation shall be null and void, and without prejudice, and
23 none of their terms shall be effective or enforceable and the facts of the Settlement shall not be
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1 admissible in any trial of this Action, and the Settling Parties shall be deemed to have reverted to
2 their respective status in this Action immediately prior to March 30, 2011 and, except as
3 otherwise expressly provided, the parties shall proceed in all respects as if this Stipulation and
4 any related orders had not been entered, and any portion of the Settlement consideration
5 previously paid or caused to be paid by Settling Defendants, together with any interest earned
6 thereon, less any Taxes paid or due with respect to such income, and less Notice and
7 Administration Costs actually incurred and paid or payable, shall be returned to the persons or
8 entities who or which funded the Settlement, as appropriate, within fourteen (14) business days
9 after joint written notification of such event by Settling Defendants' Counsel and Lead Counsel
10 to the Escrow Agent pursuant to the terms of the Escrow Agreement.

11
12 **NO ADMISSION OF WRONGDOING**

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

15 a. shall not be offered or received against any of the Released Defendant
16 Parties as evidence of, or construed as, or deemed to be evidence of, any presumption,
17 concession, or admission by any of the Released Defendant Parties with respect to the truth of
18 any fact alleged by Lead Plaintiff or the validity of any claim that was or could have been
19 asserted against any of the Released Defendant Parties in this Action or in any litigation, or the
20 deficiency of any defense that has been or could have been asserted in the Action or in any
21 litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the
22 Released Defendant Parties;

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

1 Released Defendant Parties, or against the Lead Plaintiff or any other Class Members as
2 evidence of any infirmity in the claims of Lead Plaintiff or the other Class Members;

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

13 d. shall not be construed against any of the Released Defendant Parties, Lead
14 Plaintiff or any other Class Members as an admission, concession, or presumption that the
15 consideration to be given hereunder represents the amount which could be or would have been
16 recovered after trial; and

17 e. shall not be construed against Lead Plaintiff or any other Class Members
18 as an admission, concession, or presumption that any of their claims are without merit or that
19 damages recoverable under the Amended Complaint would not have exceeded the Settlement
20 Amount.
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22 **MISCELLANEOUS PROVISIONS**

23 35. All of the exhibits attached hereto are hereby incorporated by reference as though
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1 fully set forth herein.

2 36. Each of the Settling Defendants warrants that, as to the payments made or to be
3 made by or on behalf of it, at the time of entering into this Stipulation and at the time of such
4 payment that it made or caused or will make or cause to be made pursuant to the terms above, it
5 was not insolvent, nor will the payment required to be made by or on behalf of it render it
6 insolvent, within the meaning of and/or for the purposes of the Bankruptcy Code, including but
7 not limited to §§ 101 and 547 thereof. This representation is made by each of the Settling
8 Defendants and not by their counsel.

9 37. In the event of the entry of a final order of a court of competent jurisdiction
10 determining the transfer of money to the Settlement Fund or any portion thereof to be a
11 preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is
12 required to be returned, and such amount is not promptly deposited to the Settlement Fund by
13 others, then, at the election of Lead Plaintiff, (i) the Settling Parties shall jointly move the
14 District Court to vacate and set aside the releases given and the Judgment or Alternative
15 Judgment, if applicable, entered in favor of the Settling Defendants and their Related Parties
16 pursuant to this Stipulation, which releases and Judgment, or Alternative Judgment, shall be null
17 and void and the Settling Parties shall be restored to their respective positions in the litigation as
18 provided in ¶ 33 upon repayment to the Underwriter Defendants of the full amount paid into the
19 Settlement Fund pursuant to ¶ 5 above (less any Taxes paid or due, and less any Notice and
20 Administration Costs incurred and paid or payable), or (ii) the Settling Parties shall jointly move
21 the Court to vacate and set aside the releases given and the Judgment or Alternative Judgment, if
22 applicable, entered pursuant to this Stipulation in respect of the Underwriter Defendant which is
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STIPULATION AND AGREEMENT OF SETTLEMENT
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1 the subject of such order, the Judgment entered pursuant to this Stipulation shall be null and void
2 as against such Underwriter Defendant and its Related Parties, such Underwriter Defendant shall
3 become an “Other Defendant” for purposes of this Settlement, and Plaintiffs and such
4 Underwriter Defendant shall be restored to their respective positions in the litigation as provided
5 in ¶ 33, but the Settlement and Judgment shall remain effective in respect of all other Settling
6 Parties.

7 38. The Settling Parties intend this Settlement to be a final and complete resolution of
8 all disputes asserted or which could be asserted by the Lead Plaintiff or any other Class Members
9 against any of the Released Defendant Parties with respect to the Settled Claims. Accordingly,
10 Lead Plaintiff and each Settling Defendant agree not to assert that this Action was brought by
11 Lead Plaintiff or defended by Settling Defendants in bad faith or without a reasonable basis. No
12 Settling Party shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil
13 Procedure relating to the prosecution, defense, or settlement of this Action. The Settling Parties
14 agree that the amount paid and the other terms of this Settlement were negotiated at arm’s-length
15 in good faith by the parties, including at a mediation conducted by a former United States
16 District Judge, and reflect a Settlement that was reached voluntarily after consultation with
17 experienced legal counsel.

19 39. This Stipulation may not be modified or amended, nor may any of its provisions
20 be waived except by a writing signed by all signatories hereto or their successors-in-interest.

21 40. The headings herein are used for the purpose of convenience only and are not
22 meant to have legal effect.

23 41. The administration and consummation of this Settlement as embodied in this
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STIPULATION AND AGREEMENT OF SETTLEMENT
WITH THE UNDERWRITER DEFENDANTS

1 Stipulation shall be under the authority of the District Court, and the District Court shall retain
2 jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and
3 Litigation Expenses to Lead Counsel and enforcing the terms of this Stipulation.

4 42. The waiver by one party of any breach of this Stipulation by any other party shall
5 not be deemed a waiver by any party of any other prior or subsequent breach of this Stipulation.

6 43. This Stipulation and its exhibits constitute the entire agreement among the
7 Settling Parties concerning this Settlement, and no representations, warranties, or inducements
8 have been made by any Settling Party concerning this Stipulation and its exhibits other than
9 those contained and memorialized in such documents and the Supplemental Agreement.

10 44. This Stipulation may be executed in one or more original and/or faxed
11 counterparts. All executed counterparts and each of them shall be deemed to be one and the
12 same instrument.

13 45. This Stipulation shall be binding upon, and inure to the benefit of, the successors
14 and assigns of the Settling Parties.

15 46. The construction, interpretation, operation, effect and validity of this Stipulation,
16 and all documents necessary to effectuate it, shall be governed by the internal laws of the State of
17 Washington without regard to conflicts of laws, except to the extent that federal law requires that
18 federal law govern.

19 47. This Stipulation shall not be construed more strictly against one party than
20 another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel
21 for one of the parties, it being recognized that it is the result of arm's-length negotiations among
22 the parties and all parties have contributed substantially and materially to the preparation of this
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STIPULATION AND AGREEMENT OF SETTLEMENT
WITH THE UNDERWRITER DEFENDANTS

1 Stipulation.

2 48. All counsel and any other person executing this Stipulation and any of the
3 exhibits hereto, or any related Settlement documents, warrant and represent that they have the
4 full authority to do so and that they have the authority to take appropriate action required or
5 permitted to be taken pursuant to the Stipulation to effectuate its terms.

6 49. Lead Counsel and Settling Defendants' Counsel agree to cooperate fully with one
7 another in seeking District Court approval of the Preliminary Approval Order, the Stipulation
8 and this Settlement, and to use best efforts to promptly agree upon and execute all such other
9 documentation as may be reasonably required to obtain such approvals.

10 50. If any party is required to give notice to another party under this Stipulation, such
11 notice shall be in writing and shall be deemed to have been duly given upon receipt of hand
12 delivery or facsimile transmission with confirmation of receipt. Notice shall be provided as
13 follows:
14

15 If to Lead Plaintiff or 16 Lead Counsel:	Bernstein Litowitz Berger & Grossmann LLP 1285 Avenue of the Americas New York, New York 10019 Telephone: (212) 554 1400 Facsimile: (212) 554 1444 Attn: Hannah G. Ross, Esq.
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17 18 19 If to the Underwriter 20 Defendants:	Gibson, Dunn & Crutcher LLP 200 Park Avenue New York, New York 10166 Telephone: (212) 351-4000 Facsimile: (212) 351-4035 Attn: Jonathan C. Dickey, Esq.
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STIPULATION AND AGREEMENT OF SETTLEMENT
WITH THE UNDERWRITER DEFENDANTS

1
2 DATED: New York, New York
3 June 30, 2011

4 **BERNSTEIN LITOWITZ BERGER &
5 GROSSMANN LLP**

6 By: Hannah R. Ross
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8 1285 Avenue of the Americas
9 New York, New York 10019
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12 *Lead Counsel for Lead Plaintiff
13 and the Class*

14 **BYRNES KELLER CROMWELL LLP**

15 By: Bradley S. Keller (HK)
16 Bradley S. Keller, WSBA #10665
17 Jofrey M. McWilliam, WSBA# 28441
18 1000 Second Avenue, Suite 3800
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22 *Liaison Counsel for Plaintiffs*

23 #556606.2
24

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Counsel for the Underwriter Defendants

STIPULATION AND AGREEMENT OF SETTLEMENT
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