

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE WASHINGTON MUTUAL, INC.  
SECURITIES LITIGATION,

This Document Relates to: ALL ACTIONS

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

**NOTICE OF PROPOSED SETTLEMENT OF CLASS CLAIM  
FILED IN THE SIPA LIQUIDATION OF LEHMAN BROTHERS INC.**

**TO: All persons or entities who purchased or acquired any of the WMI Class Securities during the period from October 19, 2005 to July 23, 2008, were damaged thereby and who are members of the Class certified in the above captioned Action.<sup>1</sup>**

**PLEASE READ THIS NOTICE CAREFULLY; YOUR RIGHTS  
WILL BE AFFECTED BY THE PROPOSED SETTLEMENT.**

**INTRODUCTION AND SUMMARY**

1. This Notice is to apprise Class Members that, in addition to the three settlements previously achieved in this Action totaling \$208.5 million with certain former officers and directors of Washington Mutual, Inc. ("WMI") and WMI, certain underwriters of WMI securities' offerings, and Deloitte & Touche LLP, an additional proposed settlement has now been reached with James W. Giddens (the "SIPA Trustee"), as trustee for the liquidation of Lehman Brothers Inc. ("Lehman") under the Securities Investors Protection Act of 1970 ("SIPA") that provides for the resolution of the Class Claim filed in Lehman's SIPA liquidation proceeding in the United States Bankruptcy Court (the "Settlement").

2. **The Proposed Settlement:** The proposed Settlement, if approved by the Court, will result in the allowance of a general, unsecured creditor claim against Lehman's estate in its SIPA liquidation proceeding in the amount of \$16,500,000 for the benefit of the Class (the "Allowed Class Claim"). The amount that will ultimately be recovered from Lehman's estate with respect to the Allowed Class Claim is currently unknown but it is estimated that it will potentially be 50% of the value of the Allowed Class Claim, or approximately \$8,250,000.

3. The amount recovered with respect to the Allowed Class Claim, less Court-approved fees and expenses,<sup>2</sup> will be allocated among eligible Authorized Claimants who purchased Floating Rate Notes, 7.250% Notes and/or Series R Stock (the "Relevant Securities") during the Class Period based on their Securities Act Losses as calculated under the Court-approved Plan of Allocation. **Please note:** only those Authorized Claimants (i) who purchased any of the Relevant Securities during the Class Period; (ii) whose claim calculated to a Securities Act Loss under the Court-approved Plan of Allocation; (iii) who received a distribution with respect to that loss; and (iv) who cashed their distribution checks will be eligible to share in the funds obtained through the Settlement.<sup>3</sup>

4. **You do not need to submit a claim form or take any other action to be eligible to participate in the proposed Settlement.** If the Settlement is approved, the funds obtained as a result of the Allowed Class Claim will be distributed to eligible Authorized Claimants together with future distributions of the net settlement funds from the previous achieved settlements.

<sup>1</sup> The WMI Class Securities are: WMI common stock; Floating Rate Notes due August 24, 2009, offered in August 2006 ("Floating Rate Notes"); 7.250% Subordinated Notes due November 1, 2017, offered in October 2007 ("7.250% Notes"); 7.75% Series R Non-Cumulative Perpetual Convertible Preferred Stock, offered in December 2007 ("Series R Stock"); and Washington Mutual Capital Trust 2001's 5.375% Trust Preferred Income Equity Redeemable Securities (PIERS) Units, maturing July 1, 2041. **Please note, however, that only purchasers of Floating Rate Notes, 7.250% Notes and Series R Stock will be eligible to receive proceeds of this Settlement, if it is approved.**

The full definition of the Class is set forth below in paragraph 21. All capitalized terms that are not otherwise defined herein have the meanings provided in the Stipulation and Order Regarding Proofs of Claim of Brockton Contributory Retirement System, et al. (No. 5765, as Amended by No. 6802, and 5762) and Limited Related Stay Relief dated March 20, 2015 (the "Stipulation") or in the Stipulation and Agreement of Settlement with the Underwriter Defendants dated June 30, 2011, both of which are available at [www.WashingtonMutualSecuritiesLitigationSettlement.com](http://www.WashingtonMutualSecuritiesLitigationSettlement.com).

<sup>2</sup> Such expenses include any Court-approved fees and expenses, any Taxes that may be due on the recovered amounts, and the reasonable expenses of the Claims Administrator in providing notice of the Settlement and disseminating the Settlement funds.

<sup>3</sup> Class Members who purchased any of the Relevant Securities and receive a distribution with respect to those securities as the result of a Claim-in-Process or Disputed Claim that is approved for payment will also be eligible.

5. **Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses:** Before final approval of the Settlement, Lead Counsel Bernstein Litowitz Berger & Grossmann LLP<sup>4</sup> will apply to the Court for an award of attorneys' fees not to exceed 7.5% of the proceeds of the Settlement and for reimbursement of litigation expenses in an amount not to exceed \$225,000. Any fees and expenses awarded by the Court will be paid from the funds received as a result of the Allowed Class Claim in the SIPA Proceeding pursuant to the Settlement. Class Members are not personally liable for any such fees or expenses.

6. **Settlement Hearing:** The Court has scheduled a Settlement Hearing to consider approval of the proposed Settlement and Lead Counsel's motion for fees and expenses. The Settlement Hearing will be held on February 5, 2016 at 9:00 a.m. at the United States Courthouse, 700 Stewart Street, Courtroom 14206, Seattle, WA 98101.

7. As discussed below in paragraphs 27-30, if you wish to object to the Settlement and/or Lead Counsel's motion for fees and expenses, you must submit an objection in accordance with the instructions set forth below, so that it is **received** no later than January 15, 2016.

## BACKGROUND

8. On August 5, 2008, Plaintiffs filed their Consolidated Class Action Complaint in which they, among other things, asserted claims against the underwriters of WMI's Floating Rate Notes, 7.250% Notes and Series R Stock, including Lehman, for violations of Sections 11 and 12(a)(2) of the Securities Act of 1933 in connection with those offerings.<sup>5</sup>

9. However, the Action could not be prosecuted against Lehman because, after Lehman's SIPA Proceeding was commenced in September 2008, an automatic stay was triggered under Section 362(a) of the Bankruptcy Code.

10. On May 29, 2009, Plaintiffs timely filed three general creditor claims in Lehman's SIPA Proceeding based on Lehman's alleged violations of federal securities laws as asserted in this Action. Claim No. 5765 was filed on behalf of the Class (the "Original Class Claim"), and two individual claims, Claim Nos. 5762 and 5764, were filed on behalf of two plaintiffs in the Action. The Original Class Claim has since been amended by Claim No. 6802 (the "Class Claim"). The Class Claim and Claim No. 5762, the individual claim of Brockton Contributory Retirement System ("Brockton"), are collectively referred to herein as the "Claims."

11. In 2011, as noted above, Plaintiffs reached three settlements in this Action for a total of \$208.5 million: (i) a \$105 million settlement with WMI and certain of its former officers and directors; (ii) an \$85 million settlement with fifteen underwriters of WMI securities' offerings other than Lehman (the "Underwriter Settlement"); and (iii) an \$18.5 million settlement with Deloitte & Touche LLP. Lehman was not included as a settling defendant or as a released party in any of the 2011 settlements.

12. At the time of the 2011 settlements, it appeared unlikely that Lehman's estate in bankruptcy would have any substantial funds available to pay claims asserted by unsecured creditors, such as the claim asserted on behalf of the Class. However, Lead Counsel and Plaintiffs' retained Bankruptcy Counsel continued to monitor the progress of the SIPA Proceeding in order to protect the interests of Class Members. During this time, Lead Counsel and Bankruptcy Counsel responded to requests for information from the SIPA Trustee's counsel and responded to pleadings and motions filed in the SIPA Proceeding where necessary.

13. When it became apparent that Lehman's estate would have funds available to make meaningful distributions to holders of unsecured claims, Lead Counsel and Bankruptcy Counsel began negotiations with counsel for the SIPA Trustee to resolve the Class Claim. Following extensive arm's-length negotiations, Brockton, a certified class representative of the Class, and the SIPA Trustee have agreed to a proposed Settlement that provides for the resolution of the Class Claim filed in the SIPA Proceeding on the terms and conditions set forth in the Stipulation, subject to the approval of the Court.<sup>6</sup> On April 7, 2015, the United States Bankruptcy Court approved the Stipulation and modified the automatic stay pertaining to Lehman to the extent necessary to permit the District Court to entertain the motion for approval of the Settlement.

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<sup>4</sup> Lead Counsel may be contacted by mail at the address set forth in paragraph 27 or by telephone at (800) 380-8496 and by email at blbg@blbglaw.com.

<sup>5</sup> Claims were also asserted in connection with two other offerings, but those claims were dismissed pursuant to the Court's October 27, 2009 decision on defendants' motion to dismiss and the Court's October 12, 2010 class certification order.

<sup>6</sup> Upon the Effective Date of the Settlement, Brockton's individual claim will be deemed withdrawn. Under the proposed Settlement, Brockton (and any other named plaintiffs) will receive payment under the Allowed Class Claim on the same basis as all other Class Members.

## WHAT DOES THE PROPOSED SETTLEMENT PROVIDE?

14. If the Settlement is approved, on the Effective Date,<sup>7</sup> Brockton, on behalf of itself and as a certified class representative on behalf of the Class, will have an allowed, general unsecured creditor claim against the Lehman general estate in the SIPA Proceeding in the amount of \$16,500,000 (the "Allowed Class Claim") in respect of the Class Claim and this Allowed Class Claim shall constitute the full and final settlement of any and all Claims Brockton has asserted against the Lehman estate under or in connection with the matters, transactions, and accounts that are the subject of the Class Claim. Brockton, on behalf of itself and as a certified class representative on behalf of the Class, will receive proportionately the same in payments or distributions (including with respect to the timing and type of payments or distributions) in respect of the Allowed Class Claim as are generally received by holders of other allowed, general unsecured claims against the Lehman estate. Promptly after receiving notice of the District Court's approval of the Settlement, the SIPA Trustee shall cause the Lehman general creditor claims register to be updated to reflect the Allowed Class Claim.

15. The amount that will ultimately be recovered from Lehman's estate with respect to the Allowed Class Claim is currently unknown but it is estimated that it will potentially be 50% of the value of the Allowed Class Claim, or approximately \$8,250,000. This estimate is based on the amount of the distributions made to date in the SIPA Proceeding and the estimated potential amount of all future distributions. Future distributions will depend on several factors, including how other disputed unliquidated contingent claims are resolved as well as litigation in which the SIPA Trustee is currently involved. The SIPA Trustee has agreed to reserve funds with respect to the Class Claim to bring it in parity with payments already made on other allowed claims and such amount will become payable to the Class upon the occurrence of the Effective Date of the Settlement. As of this date, a total of 27% of the allowed amount of the Class Claim, or approximately \$4,455,000, has been reserved by the SIPA Trustee as a catch-up payment. The balance of the estimated potential \$8,250,000 recovery will be paid as future distributions are made.

16. If the Settlement is approved, the funds recovered with respect to the Allowed Class Claim, less Court-approved fees and expenses, will be allocated among eligible Authorized Claimants who purchased the Relevant Securities during the Class Period based on their Securities Act Losses as calculated under the Court-approved Plan of Allocation. Only those Authorized Claimants (i) who purchased any of the Relevant Securities during the Class Period; (ii) whose claim calculated to a Securities Act Loss under the Court-approved Plan of Allocation; (iii) who received a distribution with respect to that loss; and (iv) who cashed their distribution checks will be eligible to share in the funds obtained through the Settlement.

17. Except for the obligations under the Stipulation, on the Effective Date, Brockton, on behalf of itself, its successors and assigns, and on behalf of any other party, person, or entity claiming by, through or under it (the "Claimant Releasing Parties"), forever waives and releases (i) the Claims and (ii) any and all claims, liabilities, causes of action, demands, and damages (of whatever kind or nature and whether known or unknown or asserted or unasserted) that the Claimant Releasing Parties may prior to the Effective Date have ever had, may at the Effective Date have, or at any time after the Effective Date can, could, shall, or may have against Lehman, its estate, the SIPA Trustee, and the SIPA Trustee's agents or attorneys, related to or arising out of any of the matters, transactions, and accounts that are the subject of the Claims.

18. If any Class Members have timely filed their own proofs of claim in Lehman's SIPA Proceeding, the proposed Settlement will not bar, release or otherwise affect such claims.

## WHAT ARE THE REASONS FOR THE SETTLEMENT?

19. Brockton and Lead Counsel believe that the proposed Settlement is fair, reasonable and adequate and in the best interests of the Class given the substantial size of the proposed recovery, the substantial costs of litigating a disputed claim in the SIPA Proceeding, and the uncertainty as to the amount, if any, that could be recovered pursuant to the Claim. In the absence of the Settlement, Brockton would be required to seek certification of the Class in the Bankruptcy Court, engage in extensive discovery concerning the Class Claim, and prove the merits and damages of the Class Claim in order to obtain any recovery. The Settlement will avoid these substantial costs and risks and is a particularly favorable result for the Class in light of the SIPA Proceeding, which is akin to a bankruptcy proceeding under Chapter 11 of the Bankruptcy Code, and the limited funds that were available for payment of unsecured claims in that proceeding.

20. Based on their consideration of these factors, Brockton and Lead Counsel believe that the Settlement, providing for an Allowed Class Claim in the amount of \$16,500,000, is fair, reasonable and adequate to Class Members, and in their best interests.

<sup>7</sup> "Effective Date" means the date on which the District Court enters an order approving the Settlement on the terms and conditions set forth in the Stipulation and that order has become Final (as that term is defined in the Stipulation).

## WHO IS A MEMBER OF THE CLASS?

21. The Court certified this Action to proceed as a class action in its order dated October 12, 2010. The Class includes:

all persons and/or entities who purchased or otherwise acquired the following securities issued by WMI and its subsidiaries: WMI common stock (CUSIP 939322103); Floating Rate Notes offered in WMI's August 2006 Offering (CUSIP 939322AW3); the 7.250% Notes offered in WMI's October 2007 Offering (CUSIP 939322AY9); the 7.75% Series R Non-Cumulative Perpetual Convertible Preferred Stock offered in WMI's December 2007 Offering (CUSIP 939322814); and Washington Mutual Capital Trust 2001's 5.375% Trust Preferred Income Equity Redeemable Securities (PIERS) Units, maturing 7/1/2041 (CUSIP 939322848) (collectively, the "WMI Class Securities") during the period from October 19, 2005 to July 23, 2008 (the "Class Period"), and were damaged thereby.

Excluded from the Class are (i) Defendants; (ii) members of the Immediate Family of each Individual Defendant; (iii) any other person who was an officer or director of WMI, Deloitte, any of the Underwriter Defendants, Lehman, or BOA during the Class Period; (iv) any firm, trust, corporation, officer, or other entity in which any Defendant has or had a controlling interest; (v) any person who participated in the wrongdoing alleged in the Action; (vi) TPG Capital and other purchasers of equity securities issued by WMI in connection with the \$7 billion capital issuance pursuant to the agreements entered into by and among TPG Capital and WMI and other investors, announced by the Company on April 8, 2008 (the "TPG Deal"), to the extent that such purchasers exercised distinct rights and diligence opportunities afforded them in connection with the TPG Deal; and (vii) the legal representatives, agents, affiliates, heirs, beneficiaries, successors-in-interest, or assigns of any such excluded party, provided that any Investment Vehicle shall not be deemed an excluded person or entity by definition. Also excluded from the Class are any persons or entities who previously excluded themselves pursuant to a request for exclusion that was approved by the Court.

## WHAT PAYMENT ARE ATTORNEYS FOR THE CLASS SEEKING?

22. The Court-approved Lead Counsel for the Class, Bernstein Litowitz Berger & Grossmann LLP, will apply to the Court for an award of attorneys' fees in an amount to exceed 7.5% of the proceeds of the Settlement and reimbursement of litigation expenses in an amount not to exceed \$225,000. The Court will determine the amount of fees and expenses to be awarded, which will be paid from the funds obtained as a result of the Allowed Class Claim in the SIPA Proceeding pursuant to the Settlement. Class Members are not individually responsible for any of such fees and expenses.

## WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

23. A hearing will be held on February 5, 2016, at 9:00 a.m., before the Honorable Marsha J. Pechman in the United States District Court for the Western District of Washington, United States Courthouse, 700 Stewart Street, Courtroom 14206, Seattle, WA 98101 (the "Settlement Hearing"). At the Settlement Hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate and should be approved and whether Lead Counsel's motion for fees and expenses should be approved.

24. Class Members may appear at the Settlement Hearing and be heard on any of the foregoing matters, if they have satisfied the procedures identified in paragraphs 27-34, below. Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a Class Member does not attend the hearing.

## WHAT DO I NEED TO DO?

25. Nothing. Unless you wish to object to the Settlement and/or the motion for fees and expenses, or be heard at the Settlement Hearing (discussed below), you do not need to take any action.

**HOW WILL THE FUNDS RECEIVED AS A RESULT OF THE SETTLEMENT BE DISTRIBUTED?**

26. **You do not need to submit a claim form or take any other action.** If the Settlement is approved, the funds received as a result of the Allowed Class Claim in the SIPA Proceeding will be added to the balance remaining for distribution to previously approved Authorized Claimants who received or receive a distribution from the Underwriter Settlement, and who, pursuant to the Order Approving Distribution Plan dated September 9, 2013 (the "Distribution Order"), are eligible to participate in subsequent distributions.<sup>8</sup>

**WHAT ARE THE PROCEDURES FOR OBJECTING TO THE PROPOSED SETTLEMENT?**

27. Any Class Member may object to the proposed Settlement and/or Lead Counsel's motion for attorneys' fees and litigation expenses. Objections must be in writing. Any objection, together with copies of all other papers and briefs supporting the objection, must be filed with the Clerk's Office at the United States District Court for the Western District of Washington on or before January 15, 2016. The papers must also be served on Lead Counsel and counsel for the SIPA Trustee at the addresses set forth below so that the papers are **received** on or before January 15, 2015.

**Clerk's Office**

Clerk of the Court  
United States District Court for the  
Western District of Washington  
700 Stewart Street  
Seattle, WA 98101

**Lead Counsel**

Hannah G. Ross, Esq.  
BERNSTEIN LITOWITZ BERGER &  
GROSSMANN LLP  
1251 Avenue of the Americas, 44th Floor  
New York, NY 10020

**Counsel for the SIPA Trustee**

Robert B. Funkhouser, Esq.  
HUGHES HUBBARD  
& REED LLP  
One Battery Park Plaza  
New York, NY 10004

28. Any objection (a) must state the name, address and telephone number of the person or entity objecting and must be signed by the objector; and (b) must contain a statement of the Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention. If you wish to object but you have not received a distribution payment in this Action, you must also include documents sufficient to show your membership in the Class with your objection.

29. You may not object to the Settlement or Lead Counsel's motion for attorneys' fees and litigation expenses if you are not a member of the Class.

30. Unless otherwise ordered by the Court, any Class Member who does not make and serve his, her or its objection or opposition in the manner provided shall be deemed to have waived his, her or its right to object to the Settlement and Lead Counsel's motion for attorneys' fees and litigation expenses and shall forever be barred and foreclosed from objecting to the fairness, reasonableness or adequacy of the Settlement or the requested fees and expenses, or from otherwise being heard concerning the Settlement.

**HOW CAN I SPEAK AT THE SETTLEMENT HEARING?**

31. If you wish to be heard at the hearing in opposition to approval of the Settlement and/or Lead Counsel's motion for attorneys' fees and litigation expenses, and if you file and serve a timely written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Counsel and counsel for the SIPA Trustee at the addresses set forth above so that it is **received** on or before January 15, 2016.

32. You may file an objection without having to appear at the Settlement Hearing. You may not, however, present your objection at the Settlement Hearing unless you first file and serve a written objection in accordance with the procedures described above.

33. You do not need to hire an attorney in order to make a written objection to the Settlement and/or Lead Counsel's motion for attorneys' fees and litigation expenses or to appear at the Settlement Hearing. If you do decide to hire an attorney, which will be at your own expense, however, he or she must file a notice of appearance with the Court and serve it on Lead Counsel and counsel for the SIPA Trustee at the addresses set forth above so that the notice is **received** on or before January 15, 2016.

<sup>8</sup> Pursuant to the terms of the Distribution Order, only those Authorized Claimants who cashed their previous distribution check(s) are eligible to receive checks in subsequent distributions. See Distribution Order ¶¶ 3(f), (h).

34. The Settlement Hearing may be adjourned by the Court without further notice to the Class. If you plan to attend the Settlement Hearing, you should confirm the date and time with Lead Counsel.

**HOW CAN I GET MORE INFORMATION ABOUT THE SETTLEMENT?**

35. You may obtain a full copy of the Stipulation at [www.WashingtonMutualSecuritiesLitigationSettlement.com](http://www.WashingtonMutualSecuritiesLitigationSettlement.com), or by writing to the Court-approved Administrator, as follows:

*In re Washington Mutual, Inc. Securities Litigation*  
c/o Garden City Group, LLC  
P.O. Box 91310  
Seattle, WA 98111-9410  
Telephone: (888) 588-3788  
Email: [info@WashingtonMutualSecuritiesLitigationSettlement.com](mailto:info@WashingtonMutualSecuritiesLitigationSettlement.com)

You may also obtain additional copies of this Notice by calling, writing or emailing the Administrator at the number or addresses above at any time prior to the Settlement Hearing. Additional information about the Action and the previous settlements is also available at [www.WashingtonMutualSecuritiesLitigationSettlement.com](http://www.WashingtonMutualSecuritiesLitigationSettlement.com). Papers in support of approval of the Settlement and Lead Counsel's motion for fees and expenses will also be posted on [www.WashingtonMutualSecuritiesLitigationSettlement.com](http://www.WashingtonMutualSecuritiesLitigationSettlement.com)

36. For other inquiries, you may contact Lead Counsel at the address set out in paragraph 27 above, by telephone at (800) 380-8496 or by email at [blbg@blbglaw.com](mailto:blbg@blbglaw.com).

**PLEASE DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE  
CLERK OF COURT FOR INFORMATION OR ADVICE.**

Dated: Revised November 23, 2015

By Order of the United States District Court  
for the Western District of Washington