

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

WASHINGTON MUTUAL, INC., et al.,¹

Debtors.

Chapter 11

Case No. 08-12229 (MFW)

Jointly Administered

Hearing Date: August 10, 2010 at 1:30 p.m.

**EXAMINER'S WORK AND EXPENSES PLAN/REPORT AND
MOTION FOR ADDITIONAL RELIEF**

Joshua R. Hochberg, the Examiner appointed on July 26, 2010 in the above-captioned bankruptcy cases (the "Chapter 11 Cases") of the above-captioned debtors and debtors-in-possession (the "Debtors") by the United States Trustee for Region 3 (the "U.S. Trustee"), pursuant to the Court's Agreed Order Directing the Appointment of an Examiner, entered July 22, 2010 [Docket No. 5120] ("the "Examiner Order"), and whose appointment was approved by the Court in an Order entered on July 28, 2010 [Docket No. 5162] (the "Examiner"), hereby makes and files his Work and Expenses Plan/Report and his Motion for Additional Relief and respectfully represents as follows:

BACKGROUND

1. On September 26, 2008 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their affairs as debtors and debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

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2. On January 11, 2010, the U.S. Trustee for the District of Delaware appointed an official committee of equity security holders (the “Equity Committee”).

3. On June 8, 2010, the Equity Committee filed its Motion in Support of Order Directing Appointment of an Examiner Under 11 U.S.C. § 1104(c) [Docket No. 4644].

4. On July 22, 2010, this Court entered the Examiner Order [Docket No. 5120].

5. On July 26, 2010, the U.S. Trustee appointed Joshua R. Hochberg as Examiner in the Chapter 11 Cases, subject to further Court approval, and filed her Notice of Appointment of Examiner [Docket No. 5141]. Also on July 26, 2010, the U.S. Trustee filed her Application for Order Approving Appointment of Examiner [Docket No. 5142].

6. On July 28, 2010, this Court entered an order approving the appointment by the U.S. Trustee of Joshua R. Hochberg as Examiner in the Chapter 11 Cases. [Docket No. 5162].

7. In the Examiner Order, the Court directed the Examiner to investigate “(a) the claims and assets that may be property of the Debtors’ estates that are proposed to be conveyed, released or otherwise compromised and settled under the Plan² and Settlement Agreement, including all Released Claims, as defined in the Settlement Agreement, and the claims and defenses of third parties thereto (the ‘Settlement Component’) and (b) such other claims, assets and causes of actions which shall be retained by the Debtors and/or the proceeds thereof, if any, distributed to creditors and/or equity interest holders pursuant to the Plan, and the claims and defenses of third parties thereto (the ‘Retained Asset Component’)” (collectively, the “Investigation”). *See* Examiner Order at ¶ 2.

8. The Examiner Order also directed that the Examiner file a “Work and Expenses Plan/Report” (the “Work Plan”) no later than 5:00 p.m. on Friday, August 6, 2010. The Court

² Capitalized terms used but not defined herein shall have the meaning set forth in the Examiner Order.

directed that the Work Plan, “include a good faith estimate of the fees and expenses to be incurred by or on behalf of the Examiner in connection with the Investigation and a status report detailing the Examiner’s efforts to date.” This Work Plan is filed in connection with this directive and will be divided into the following sections: a summary of work completed to date by the Examiner; a summary of Investigative Areas; a proposed Work Plan which includes the issues to be investigated by the Examiner and a good faith estimate of the fees and expenses which may be incurred in connection with the Proposed Work Plan; and a request for additional relief.

WORK COMPLETED TO DATE

9. The United States Trustee notified the Examiner of his appointment herein on July 26, 2010 and the Examiner immediately began work on the Investigation. In particular, the Examiner organized a team of professionals from his law firm, McKenna Long & Aldridge LLP (“MLA”), and began to review publicly available documents regarding the proposed Investigation, including the Examiner Order, the proposed Plan of Liquidation and other pleadings. In addition, the Examiner arranged conference calls and/or meetings with the Equity Committee, the Debtors, the Unsecured Committee, Trust Preferred Securities Investors (“TPS Consortium”), JP Morgan Chase (“JPMC”), the WMI Noteholders Group and a group of noteholders represented by Fried Frank.

10. The Examiner and attorneys from MLA participated in a conference call with counsel for the Equity Committee on July 27. During this conference call, counsel for the Equity Committee provided the Examiner with a summary of the issues they believed required investigation, the status of pending litigation related to the Investigation and possible sources of documents and investigative materials. The Equity Committee pledged full cooperation with the Examiner and also agreed to produce their own internal analyses, work product and other

documents related to the Examination. Since that call, the Equity Committee has provided additional information to the Examiner.

11. On July 28, the Examiner and attorneys from MLA met with counsel for the Debtors at the offices of Weil Gotshal in New York. Prior to the meeting, counsel for the Debtors provided the Examiner with two large binders of documents. Attorneys from both Weil Gotshal and Quinn Emmanuel were present on behalf of the Debtors at this meeting. This meeting included a detailed review of issues related to the Investigation and a detailed discussion of the location of and access to documents and information which would be required to conduct the Investigation. The Debtors agreed to fully cooperate with the Examiner and, in particular, agreed to provide the Examiner with complete access to a document database maintained by Weil Gotshal (the "Weil Gotshal Database") and to make employees and agents of the Debtors available for interviews by the Examiner. The Examiner was advised that the Weil Gotshal Database contains all documents and records collected by or produced to the Debtors during the course of this Bankruptcy Case. It includes the Debtors' existing work product analyses with respect to the Settlement Component and the Retained Assets Component and also includes documents produced by JPMC. Counsel for the Debtors have now provided the Examiner and his team with passcodes which they advise provide the Examiner with access to all of the documents contained in the database. The Examiner has assigned specific attorneys and paralegals to coordinate with the Debtors to identify significant documents related to the Investigation. At the conclusion of the meeting, the Debtors and the Examiner agreed to conduct a follow up conference call on August 3, 2010. This conference call was conducted and the Examiner and the Debtors have begun discussions to schedule interviews of Debtor employees and agents during the week of August 16.

12. On July 28, 2010, the Examiner and an attorney from MLA met with counsel for the Unsecured Committee. In addition to counsel, representatives of the Committee's Financial Advisor were present at this meeting. The Unsecured Committee also pledged to fully cooperate with the Examiner and to provide the Examiner with documents and materials including their work product analysis of the issues to be investigated. At the meeting, the Committee reviewed and provided the Examiner with three binders of materials.

13. On August 2, 2010, the Examiner and attorneys from MLA met with counsel for and representatives of the FDIC. During the course of this meeting, the FDIC explained their legal position regarding several of the critical issues related to the Investigation and further agreed to provide the Examiner with a detailed memorandum setting forth their legal positions. Counsel for the FDIC advised the Examiner that many of the claims asserted against the FDIC were barred under applicable law, thereby rendering fact discovery unnecessary and, in some cases, prohibited under applicable law and regulation. In further discussing the issue, the FDIC did agree to consider discovery requests from the Examiner on a case by case basis, but made clear that any discovery would be voluntary and would be limited. The Examiner has reserved all rights with respect to this issue and is currently reviewing the memorandum which the FDIC subsequently provided on August 4.

14. On August 2, 2010, the Examiner and an attorney from MLA met with representatives of the TPS Consortium in response to a request from them for a meeting with the Examiner. The TPS Consortium provided the Examiner with a summary of their position and documents related to the Examination.

15. On August 4, 2010, the Examiner and attorneys from MLA held a meeting with counsel for JPMC. During this meeting, counsel for JPMC provided the Examiner with detailed information concerning their position with respect to the Settlement. JPMC advised the

Examiner that all of the documents it had collected related to its consideration of Settlement Component Issues had been or were being produced and were available in the Weil Gotshal Database. The Examiner and the JPMC representative engaged in a detailed discussion of the scope of document searches conducted by JPMC. JPMC pledged cooperation and agreed to consider further requests for documents, and information by the Examiner. JPMC also agreed to make employees and agents of JPMC available for interviews by the Examiner. The Examiner has begun the process of identifying additional information and documents to be requested from JPMC and to identify possible witnesses.

16. The Examiner and attorneys from MLA conducted a conference call with counsel for the WMI Noteholders Group on August 5, 2010. On that same date, the Examiner and attorneys from MLA conducted a conference call with attorneys from the law firm of Fried Frank who represent a separate group of noteholders. In each call, counsel for these noteholders provided their thoughts regarding the Investigation to the Examiner and agreed to cooperate in the Investigation.

AREAS OF INVESTIGATION

17. The Examiner will evaluate the overall reasonableness of the proposed settlement by evaluating, investigating and understanding the merits of the issues that have been compromised. In addition to the evaluation of the Settlement Component, the Examiner will consider the Retained Asset Component. The Examination will build off analyses conducted by various parties. As part of the Investigation, interviews of witnesses will be conducted and discovery materials obtained that have not been available to the settling parties. An analysis will be conducted to determine the effect of potential recoveries, specifically whether they would likely impact Equity or other out of the money claimants' potential recovery. This analysis will consider whether there are significant potential assets of the estate, that have not been fully

pursued or evaluated, who would benefit from their recovery, and whether recovery of those assets is reasonably likely. The following is a description of each of the issues to be investigated:

- (a) Issues Related to JPMC. The Examiner will evaluate work completed to date by the Debtors and other parties in investigating claims which might exist against JPMC and will conduct his own investigation of these issues to the extent necessary. The issues related to the Settlement Component as they pertain to JPMC are as follows:
 - (1) Business Tort Claims: The Examiner will identify and investigate possible business tort and other claims which may exist against JPMC. The Examiner will review and consider claims identified by the Debtors and other parties to date and will also attempt to identify other possible claims and theories of recovery;
 - (2) Rights to Tax Refunds: The Examiner will identify and evaluate the competing claims to Tax Refunds totaling \$6 Billion, the division of which is a critical part of the Settlement Component;
 - (3) Disputed Assets: During the course of his initial meetings, the parties have identified several categories of disputed assets which are to be allocated between the Debtors and JPMC. These include, but are not limited to, rights to approximately \$4 Billion in deposit accounts which the Examiner is advised is a central part of the Settlement Component. The Examiner will investigate the competing claims to material portions of these assets.
- (b) Issues Related to the FDIC: The parties have advised the Examiner that a review and investigation of the rights, duties and obligations by and between the Debtors, JPMC and the FDIC relating to the takeover of Washington Mutual Bank and concerning the duties and obligations of the FDIC are a critical part of the Settlement Component. The Examiner intends to conduct both a legal and factual investigation of these issues.
- (c) Avoidance Actions: The parties have advised the Examiner that significant transfers of funds were made between WMI, a Debtor herein, and Washington Mutual Bank (“WMB”), which is WMI’s non-debtor bank subsidiary, within one year of WMI seeking bankruptcy protection. The Examiner intends to investigate these conveyances to determine whether they are avoidable and, if so, from whom they are recoverable and the consequences of avoiding such transfers to the Debtors Bankruptcy Estates.
- (d) TPS Securities: Under the terms of the Proposed Settlement, JPMC is entitled to retain approximately \$4 Billion of securities identified as the TPS Securities. The Examiner will consider the competing claims to these securities.

- (e) Third Party Claims: This is the Retained Asset Component. The Examiner will conduct a preliminary investigation of potential Third Party Claims for the purpose of identifying possible claims and causes of action which may exist against third parties, which may require further investigation, and which may provide for further recoveries in this case. The Examiner will focus his investigation on claims against parties involved in the sale and marketing of the Debtor prior to seeking bankruptcy protection, the failure and seizure of Washington Mutual Bank and conduct which has taken place since the Petition Date.

WORK PLAN AND GOOD FAITH ESTIMATE OF FEES

18. The Examiner is a partner in MLA, and has selected MLA to serve as his principal counsel. An Application to retain MLA was filed with the Court on July 30, 2010. In addition, the Examiner has retained the firm of Cole Schotz to serve as Delaware Counsel in this matter. At present, the Examiner has not determined whether he will require the services of a financial advisory or consulting firm, or will have to consult with select experts on specific issues.

19. The Examiner's consultations with parties in interest have confirmed that the scope of the proposed Investigation is large and that it will require significant factual and legal analysis of many complex issues. In addition, several parties in interest have made clear that they encourage the Examiner to conduct an expeditious examination. The Examiner will outline in his preliminary report the status of the Investigation as of that date and whether he anticipates completing the final report as scheduled by the Court or whether he will seek further relief. At present, the Examiner's focus is to assemble a large enough team to complete the Investigation as soon as possible within the schedule established by the Appointment Order.

20. The Examiner has determined that the most efficient manner in which to conduct the Investigation is to establish teams to investigate discrete areas of the Investigation. Each of these teams will report to the Examiner who will direct the Investigation. Due to the very short time deadlines established in the Examiner Order, the Examiner, in choosing MLA professionals

to assist on this matter, has attempted to identify professionals with high levels of experience and expertise who have immediate availability to assist in the Investigation. MLA is staffing the examination with a large number of professionals because of the significant amount of analysis that is necessary to review prior litigation, evaluate the legal and factual issues and to further investigate these issues.

21. A team leader will be appointed for each team and regular meetings between team leaders and the Examiner will be held to coordinate the activities of the teams. The Examiner will direct and coordinate the activities of the teams. The number of teams may be expanded as the Investigation continues to address specific issues. The following is a description of the teams established by the Examiner and their current staffing:

(a) FDIC Team. This team will consider and evaluate the merits of the Settlement Component as they pertain to FDIC and legal and factual issues relating to potential claims and causes of actions against the FDIC. The MLA Partner directing this portion of this investigation has an hourly rate of \$450 per hour. He will be assisted by at least two associates having hourly rates averaging \$325 per hour.

(b) J.P. Morgan Chase Team. An MLA partner will coordinate and conduct the Examination of the settlement claims as they pertain to JP Morgan Chase and also fully consider and evaluate potential claims and causes of action in which the bankruptcy estate may have against JPMC. Among the issues that will be analyzed and investigated by this team are the so-called “business tort” issues. The MLA Partner leading this portion of the investigation has an hourly rate of \$700 per hour and will be assisted by at least four associates with rates of between \$375 and \$450 per hour.

(c) Avoidance and Asset Claims. An MLA Partner will investigate avoidance actions and matters relating to disputes over assets existing between the Debtor

and JPMC. The partner assigned to lead this portion of the investigation has an hourly rate of \$575 per hour and will be assisted by at least three associates with rates of between \$320 and \$480 per hour. In addition, the Examiner has tasked a consultant employed by MLA to assist in evaluating financial issues concerning this portion of the investigation at an hourly of \$450 per hour.

(d) Tax Issues. An MLA tax partner will investigate and report on the tax aspects of the settlement reached between the Debtor and the FDIC and JPMC. The hourly rate for the MLA Tax Partner tasked with conducting this portion of the investigation is \$620. He will be assisted by an MLA litigation partner with an hourly rate of \$495 to conduct this portion of the investigation. It is likely that this group will require associate assistance in conducting any legal research which might be required in developing and formulating that portion of the report pertaining to the tax issues. The anticipated hourly rate for the associate who will assist on this portion of the investigation is \$350.

(e) Third Party Claims. An MLA partner will investigate potential claims against third parties. The hourly rate for the MLA partner tasked with investigating these claims is \$495 per hour. In addition, this partner will be assisted by at least one associate with an anticipated rate of approximately \$350.

(f) TPS Securities. An MLA Securities/Banking lawyer will evaluate the status of TPS issues and their impact on the settlement. The hourly rate of that partner is \$615 per hour. It is anticipated that one associate will assist in this portion of the investigation with an hourly rate of approximately \$350 per hour.

(g) Bankruptcy Issues and Overall Coordination. Several MLA attorneys will assist the examiner in coordinating the examination, addressing any issues which remain

to be resolved in the bankruptcy court and addressing any administrative issues in the bankruptcy case. The MLA partners who will be assisting on this portion of the investigation have hourly rates of \$495 and \$480 per hour. It is anticipated that one of these partners will work full time on the matter and the second partner will work at least half time on the matter. In addition, an MLA associate with the rate of \$325 will also likely work full time.

22. The contemplated Investigation will require the collection and organization of voluminous documents. The Examiner will utilize a team of MLA professionals and paralegals with expertise in collecting and organizing documents and information. The hourly rates of the members of this group vary between \$235 and \$265 per hour. Their activities will be directed and coordinated by one of the MLA Partners already assigned to a team above and by one or more associates.

23. Based upon the work conducted by the Examiner to date, the Examiner anticipates that he will spend at least 180 hours per month on this matter during the months of August and September. In addition, the Examiner anticipates that the equivalent of eighteen MLA professionals will work on this matter on a full time basis (180 hours per month), certainly in August and most likely throughout the month of September. The Examiner anticipates that the blended hourly rate for MLA professionals working on this matter will be below \$500 per hour, but for purposes of providing an estimate of fees will assume a blended rate of \$500 per hour. In addition, the Examiner's Delaware counsel will incur fees in representing the Examiner. As of July 31, the Examiner and MLA had incurred fees of approximately \$220,000.

24. Based upon the estimates set forth in the paragraph above, the Examiner anticipates Examiner and professional fees of \$2,000,000 for each of August and September will be incurred if this Work Plan is followed. These estimates do not include estimates for any

financial consultants or advisors. If the Examiner determines that it is necessary to retain a financial advisor, the Examiner will, of course, file a motion for authority to retain such financial advisors and will provide a good faith estimate of the fees and expenses to be incurred in connection therewith. The Examiner's estimate of potential fees assumes that the parties in interest continue to cooperate and that disputes do not have to be litigated. The Examiner's best good faith estimate is that Examiner and professional fees in this matter could total \$4 Million or more through September 30, 2010.

25. In addition to estimated fees, the Examiner will incur out of pocket expenses for the Examiner and his professionals. The Examiner anticipates that substantial out of pocket expenses will be incurred in conducting the Examination, including witness interviews. Travel will be require to meet with witnesses and to collaborate in the preparation of the reports required by the Examiner Order. In addition, the cost of collecting and using documents produced to the Examiner will also be significant. The Examiner anticipates monthly expenses of \$200,000 per month.

ADDITIONAL RELIEF

26. At Paragraph 5 of the Examiner Order, the Court stated it would hold a status conference on August 10, 2010 at 1:30 p.m. to consider the Work and Expenses Plan/Report and also, "order, if appropriate, further relief as will aid the Examiner in the performance of the Examiner's duties and/or to accommodate the needs of the Debtors' Estates." The Examiner respectfully requests that the Court provide additional relief to the Examiner. First, the Examiner requests that this Court clarify that the voluntarily production of privileged or work product materials to the Examiner by parties in interest shall not constitute a waiver of such protection by the party producing such materials, and to further clarify that no discovery of any kind may be propounded upon the Examiner during the course of the Investigation. Second, the Examiner

requests that he be authorized, without further order of the Court, to demand and compel by way of subpoena, the production of documents that may be relevant to the Investigation or sworn testimony of witnesses with knowledge of facts relevant to the Examination.

A. Protections for Work Product Information and Documents and Prohibition on Discovery from Examiner

27. The Examiner has learned that the Debtor, the Equity Committee, the Unsecured Committee and other parties in interest have significant attorney work product and privileged documents and information (the “Work Product”) relating to the Investigation which they are prepared to voluntarily turn over to the Examiner. This information will be extremely helpful to the Examiner in conducting the Investigation. In order to encourage parties to turn over Work Product to the Examiner, the Examiner requests a finding and order by this Court that the delivery of any documents or information to the Examiner or to his counsel is not intended to constitute a waiver of attorney-client privilege, attorney work product protection, confidentiality or any other applicable privilege, protection, immunity, or confidentiality, and the delivery of such documents or information shall not be the basis for any third party or any other party to assert that any of the parties or their counsel or other professionals have waived, in whole or in part, any privilege, protection, immunity, or confidentiality with respect to such documents or information or with respect to any other documents or information that may concern the same subject matter. The Examiner believes that establishing such a condition with respect to Work Product voluntarily produced to the Examiner will encourage parties to quickly turn over Work Product to the Examiner. The Examiner currently anticipates that he will use Work Product in his report, without attribution to the source of the Work Product and will, at the conclusion of the Investigation, destroy or return Work Product to the party which produced it.

28. In order to further protect the Work Product and other information collected by the Examiner during the course of the Investigation from disclosure, encourage parties to turn over Work Product to the Examiner, and ensure that no disruption to the Investigation process occurs, the Examiner also requests that the Court prohibit any party from propounding any discovery of any kind upon the Examiner during the pendency of the Investigation.

B. Authority to Issue Subpoenas

29. Because the Examiner Order contemplates that the Examiner will file his Preliminary Report by September 7, 2010 and his Final Report by October 8, 2010, it would not be efficient for the Examiner to wait until any potential non-cooperation occurs before seeking authority from the Court to propound formal discovery should it become necessary to do so, and such delay could potentially imperil the Investigation. In addition, based upon information provided to the Examiner, it may be necessary to obtain documents and information from persons and entities which are not parties to the Settlement Agreement, but who may have facts related to the Investigation. These could include documents requests and requests for oral testimony from professionals such as investment bankers and accountants and also from banks identified as potential competing bidders for the assets of WMB. Accordingly, the Examiner respectfully submits that granting the relief requested herein will give him the necessary tools to deal with non-cooperation, increase the likelihood that parties will voluntarily cooperate with the Examiner in the first instance, and preserve the rights of parties from whom the Examiner may request discovery ("Discovery Party") to seek relief if they have legitimate grounds to object to any subpoena.

30. Accordingly, the Examiner seeks authority, without further order of the Court, to demand and compel by way of subpoena: (1) the production of documents that may be relevant to the Investigation or lead the Examiner to information that is relevant to the Investigation and

(2) the oral examination, under oath, of persons who have may have knowledge of facts related to the Investigation. The Examiner proposes the following procedures in connection with the Examiner's issuance of any subpoena:

(a) Except as otherwise agreed by the Examiner, or subsequently ordered by the Court, a Discovery Party to which a subpoena that seeks documents (whether or not it also seeks testimony) is directed shall, within five (5) days of service of such subpoena: (i) produce all non-privileged documents responsive to such subpoena (unless otherwise agreed by the Examiner); or (ii) file and serve a motion seeking a protective order or making other objections to the subpoena, which the Court shall hear on shortened notice, no later than five (5) days from the filing of such motion.

(b) If a Discovery Party withholds any documents based upon a claim of privilege, he, she, or it must provide the Examiner with a privilege log containing the information required by Bankruptcy Rule 7026 no later than five (5) days after service of a subpoena upon such party (unless otherwise agreed by the Examiner).

(c) If the subpoena so directs, a Discovery Party may be required to appear for an oral examination within five (5) days of service of a deposition subpoena on the Discovery Party, which notice is deemed to be reasonable; provided the party may voluntarily agree to appear for an oral examination sooner and provided that the Discovery Party shall have five (5) days to bring a motion to contest the requirement that he appear for an examination..

(d) As necessary to implement the foregoing, the Examiner and his counsel are authorized to sign and issue a subpoena from any United States Bankruptcy Court for the applicable district in which a Discovery Party resides, does business, maintains documents, or is found, both to obtain documents from a Discovery Party and to

command the attendance of a party at a deposition. The Examiner and his counsel are also authorized to take such actions as may be necessary in any other court in order to enforce subpoenas and otherwise effectuate the terms of the Court's order with respect to this Motion.

31. The relief requested herein is not intended to limit the substantive rights of any Discovery Party or any other party under applicable law to object to or oppose any subpoena the Examiner may serve. In addition, and consistent with the relief requested above with respect to voluntary productions to the Examiner, the delivery of any documents or information to the Examiner or to his counsel is not intended to constitute a waiver of attorney-client privilege, attorney work product protection, confidentiality or any other applicable privilege, protection, immunity, or confidentiality, and the delivery of such documents or information shall not be the basis for any third party or any other party to assert that any of the parties or their counsel or other professionals have waived, in whole or in part, any privilege, protection, immunity, or confidentiality with respect to such documents or information or with respect to any other documents or information that may concern the same subject matter.

32. This Court granted similar relief to the examiner in *In re Tribune Company, et al.* (Case No. 08-13141) (Bankr. D. Del.). This Court and other courts have granted similar relief to examiners in similar situations. *See In Re DBSI* (Case No. 08-12687) (Bankr.D. Del.) (granting pre-approval to issue subpoenas); *New Century TRS Holdings, Inc.* (Case No. 07-10416) (Bankr. D. Del.) (same); *SemCrude, L.P., et al.* (Case No. 08-11525) (Bankr. D. Del.) (same); *Lehman Brothers Holdings Inc.* (Case No. 08-13555) (Bankr. S.D.N.Y.) (same). The *Tribune*, *DBSI*, *New Century*, *SemCrude* and *Lehman* orders are collectively attached hereto as Exhibit "A". The same considerations for expedience, thoroughness, and fulfillment of statutory and court-ordered mandates apply here. The Examiner does note that the proposed time deadlines for Discovery

Parties to object to subpoenas which may be served by the Examiner are shorter in this case than in the examples cited herein; however, the time deadlines for this Investigation are much more compressed than in those cases and thus shorter objection periods would be appropriate. The Examiner will attempt to conduct all discovery on a voluntarily and negotiated basis, but must have some ability to quickly seek discovery if a Discovery Party is unwilling to cooperate.

33. The requested relief will not unduly prejudice any party that may become the subject of a subpoena issued by the Examiner. The proposed order contemplates that the substantive rights of any party that becomes the subject of a subpoena to seek protective relief are fully preserved.

34. Attached hereto as Exhibits "B", "C" and "D", respectively, are proposed orders Approving the Examiner's Work Plan and Budget; Preserving Work Product Protection in Connection with Voluntarily Productions of Documents and Authorizing the Examiner to Issue Subpoenas. The Examiner respectfully requests that this Court enter the attached Orders.

WHEREFORE, the Examiner respectfully requests that the Court enter the orders, substantially in the form annexed hereto as Exhibits "B", "C" and "D", authorize the Examiner to proceed with the Work Plan set forth herein, granting the additional relief granted herein and such other and further relief as is just and proper.

Dated: August 6, 2010

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Proposed Counsel to the Examiner

Exhibit "A"

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re : Chapter 11
TRIBUNE COMPANY, *et al.*,¹ : Case Number 08-13141 (KJC)
 : (Jointly Administered)
 :
Debtors. : Re: Dkt Nos. 4354, 4474, 4497
 :

**AMENDED ORDER GRANTING EXAMINER'S MOTION FOR AN ORDER
AUTHORIZING THE EXAMINER TO DEMAND AND ISSUE SUBPOENAS
COMPELLING THE PRODUCTION OF DOCUMENTS AND ORAL EXAMINATION
OF PERSONS AND ENTITIES**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Tribune Company (0355); 435 Production Company (8655); 5800 Sunset Productions Inc. (5510); Baltimore Newspaper Networks, Inc. (8258); California Community News Corporation (5306); Candle Holdings Corporation (5626); Channel 20, Inc. (7399); Channel 20, Inc. (7399); Channel 39, Inc. (5256); Channel 40, Inc. (3844); Chicago Avenue Construction Company (8634); Chicago National League Ball Club n/k/a Tribune CNLBC, LLC (0347); Chicago River Production Company (5434); Chicago Tribune Company (3437); Chicago Tribune Newspapers, Inc. (0439); Chicago Tribune Press Service, Inc. (3167); Chicagoland Microwave Licensee, Inc. (1579); Chicagoland Publishing Company (3237); Chicagoland Television News, Inc. (1352); Courant Specialty Products, Inc. (9221); Direct Mail Associates, Inc. (6121); Distribution Systems of America, Inc. (3811); Eagle New Media Investments, LLC (6661); Eagle Publishing Investments, LLC (6327); forsalebyowner.com corp. (0219); ForSaleByOwner.com Referral Services, LLC (9205); Fortify Holdings Corporation (5628); Forum Publishing Group, Inc. (2940); Gold Coast Publications, Inc. (5505); GreenCo., Inc. (7416); Heart & Crown Advertising, Inc. (9808); Homeowners Realty, Inc. (1507); Homestead Publishing Co. (4903); Hoy, LLC (8033); Hoy Publications, LLC (2352); InsertCo, Inc. (2663); Internet Foreclosure Service, Inc. (6550); JuliusAir Company, LLC (9479); JuliusAir Company II, LLC; KLAH, Inc. (4014); KPLR, Inc. (7943); KSWB Inc. (7035); KTLA Inc. (3404); KWGN Inc. (5347); Los Angeles Times Communications LLC (1324); Los Angeles Times International, Ltd. (6079); Los Angeles Times Newspapers, Inc. (0416); Magic T Music Publishing Company (6522); NBBF, LLC (0893); Neocomm, Inc. (7208); New Mass. Media, Inc. (9553); new River Center Maintenance Association, Inc. (5621); Newscom Services, Inc. (4817); Newspaper Readers Agency, Inc. (7335); North Michigan Production Company (5466); North Orange Avenue Properties, Inc. (4056); Oak Brook Productions, Inc. (2598); Orlando Sentinel Communications Company (3775); Patuxnet Publishing Company (4223); Publishers Forest Brook Productions, Inc. (2598); Sentinel Communications News Ventures, Inc. (2027); Shepard's Inc. (7931); Signs of Distinction, Inc. (3603); Southern Connecticut Newspapers, Inc. (1455); Star Community Publishing Group, Inc. (5612); Stemweb, Inc. (4276); Sun-Sentinel Company (2684); The Baltimore Sun Company (6880); The Daily Press, Inc. (9368); The Hartford Courant Company (3490); The Morning Call, Inc. (7560); The Other Company LLC (5337); Times Mirror Land and Timber Company (7088); Times Mirror Payroll Processing Company, Inc. (4227); Times Mirror Services Company, Inc. (1326); TMLH 2, Inc. (0720); TMLS I, Inc. (0719); TMS Entertainment Guides, Inc. (6325); Tower Distribution Company (9066); Towering T Music Publishing Company (2470); Tribune Broadcast Holdings, Inc. (4438); Tribune Broadcasting Company (2569); Tribune Broadcasting Holdco, LLC (2534); Tribune Broadcasting News Network, Inc. (1088); Tribune California Properties, Inc. (1629); Tribune Direct Marketing, Inc. (1479); Tribune Entertainment Company (6232); Tribune Entertainment Production Company (5393); Tribune Finance, LLC (2537); Tribune Finance Service Center, Inc. (7844); Tribune License, Inc. (1035); Tribune Los Angeles, Inc. (4522); Tribune Manhattan Newspaper Holdings, Inc. (7279); Tribune Media Net, Inc. (7847); Tribune Media Services, Inc. (1080); Tribune Network Holdings Company (9936); Tribune New York Newspaper Holdings, LLC (7278); Tribune NM, Inc. (9939); Tribune Publishing Company (9720); Tribune Television Company (1634); Tribune Television Holdings, Inc. (1630); Tribune Television New Orleans, Inc. (4055); Tribune Television Northwest, Inc. (2975); ValuMail, Inc. (9512); Virginia Community Shoppers, LLC (4025); Virginia Gazette Companies, LLC (9587); WATL, LLC (7384); WCWN LLC (5982); WDCW Broadcasting, Inc. (8300); WGN Continental Broadcasting Company (9530); WLVI Inc. (8074); WPIX, Inc. (0191); and WTXN Inc. (1268). The Debtors' corporate headquarters and the mailing address for each Debtor is 435 North Michigan Avenue, Chicago, Illinois 60611.

Upon the *Examiner's Motion For An Order Authorizing The Examiner To Demand And Issue Subpoenas Compelling The Production Of Documents And Oral Examination Of Persons And Entities* [Docket No. 4354] ("Motion")² filed by Kenneth N. Klee as examiner in these cases (the "Examiner"); and the Motion notice thereof having been served upon counsel for the Debtors, counsel for the Unsecured Creditors Committee, the Office of the United States Trustee and all other parties requesting notice pursuant to Fed. R. Bankr. P. 2002; the Court finding that such notice is good and sufficient under the circumstances; the Court having reviewed the Motion and other papers filed in respect thereof; and finding good cause to grant the Motion, it is

ORDERED, ADJUDGED and DECREED:

1. The Motion is granted.
2. The Examiner is hereby authorized, pursuant to Bankruptcy Rule 2004, to demand and compel by way of subpoena: (i) the oral examination, under oath, of Discovery Parties and (ii) the production of documents that may be relevant to the Investigation or lead the Examiner to information that is relevant to the Investigation.
3. The Examiner is hereby authorized to use the following procedures in connection with the Examiner's issuance of any subpoena:
 - (a) Except as otherwise agreed by the Examiner, or subsequently ordered by the Court, a Discovery Party to which a subpoena which seeks documents (whether or not it also seeks testimony) is directed shall, within ten (10) days of service of such subpoena: (i) produce all non-privileged documents responsive to such subpoena, or (ii) file and serve a motion seeking a protective order, which the Court shall hear on shortened notice, no later than 5 days from the filing of such motion;
 - (b) If a Discovery Party withholds any documents based upon a claim of privilege, he, she or it must provide the Examiner with a privilege log containing the

² Capitalized terms that are not otherwise defined herein are intended to have the same meaning attributed to them in the Motion.

information required under Bankruptcy Rule 7026, no later than ten (10) days after service of a subpoena upon such Discovery Party (unless otherwise agreed by the Examiner);

(c) If the subpoena so directs, the Discovery Party may be required to appear for an oral examination within ten (10) days of service of a deposition subpoena on the Discovery Party, which notice is deemed to be reasonable; provided the Discovery Party may voluntarily agree to appear for an oral examination sooner.

(d) As necessary to implement the foregoing, the Examiner and his counsel are authorized to sign and issue a subpoena from any United States Bankruptcy Court for the applicable district in which a Discovery Party resides, does business, maintains documents or is found, both to obtain documents from a Discovery Party and to command the attendance of a Discovery Party at a deposition. The Examiner and his counsel also are authorized to take such actions as may be necessary in any other court in order to enforce subpoenas and otherwise effectuate the terms of the Court's order with respect to this Motion.

(e) Unless the Examiner determines that doing so would unduly interfere with the Investigation, the Examiner will file in these cases a notice advising that the subpoena has been issued and attaching a copy of the subpoena. Nothing in this Order shall be deemed or construed to modify the provisions of the "Order Approving Work and Expense Plan and Modifying Examiner Order" [Docket No. 4321] specifying that the Examiner shall be under "no obligation to furnish to any Party or other person or entity any communications, documents or information received from any Party or other person or entity to the Examiner in the course of his Investigation and shall be under no obligation to invite any Party or other person or entity to participate in any meetings or conversations between the Examiner and such Party or other person or entity," nor prejudice any right of any party to seek relief from such provisions and any party to oppose the same.

(f) Nothing herein limits the substantive rights of any Discovery Party or other party under applicable law to object to or oppose any subpoena the Examiner may serve.

5. This Court shall retain jurisdiction to resolve any disputes arising or related to this Order including any discovery disputes that may arise between or among the parties and to interpret, implement and enforce the provisions of this Order.

6. This Order is without prejudice to the Trustee's right to file further motions seeking additional documents and testimony pursuant to Bankruptcy Rule 2004(a) or any other applicable law.

7. This Amended Order supersedes the prior order entered at Docket No. 4497.

So ORDERED THIS 20th DAY of May, 2010.



THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

DBSI, INC., et al.,

Debtors.

Chapter 11

Case No. 08-12687 (PJW)

Jointly Administered

Related to Docket No. 3516, 3515

**ORDER GRANTING EXAMINER'S MOTION PURSUANT TO DEL.
BANKR. L.R. 9006-1(e) FOR AN ORDER SCHEDULING A HEARING
AND SHORTENING THE TIME FOR NOTICE OF THE HEARING TO
CONSIDER THE EXAMINER'S MOTION FOR AUTHORITY TO
CONDUCT BANKRUPTCY RULE 2004 EXAMINATIONS AND TO
ESTABLISH PROCEDURES IN CONNECTION THEREWITH**

Upon consideration of the motion (the "Motion to Shorten") for entry of an order scheduling a hearing and shortening the time for notice of the Examiner's Motion for Authority to Conduct Bankruptcy Rule 2004 Examinations and to Establish Procedures in Connection Therewith (the "Motion") for entry of an order providing that the applicable notice period for the Motion be shortened pursuant to Rule 9006-1(e) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware; and the Court having determined that granting the relief requested in the Motion to Shorten is in the best interest of the Debtors, their estates and creditors and other parties in interest; and it appearing that due and adequate notice of the Motion to Shorten has been given under the circumstances, and that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefore, it is hereby:


ORDERED, that the Motion to Shorten is granted; and it is further

ORDERED, that the Motion shall be heard on May 22, 2009 at 10:30(ET); and it is further

ORDERED, that objections to the relief requested in the Motion shall be filed and served upon counsel for the Examiner no later than May 23, 2009 at 12:00 (ET); and it is further

ORDERED, that this Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
May 14, 2009


The Honorable Peter J. Walsh
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----X
In re: :
NEW CENTURY TRS HOLDINGS, INC., : Chapter 11
a Delaware Corporation, et al., : Case No. 07-10416 (KJC)
: Debtors. : Jointly Administered
: Related to Docket No. _____
-----X

**ORDER PURSUANT TO FED. R. BANKR. P. 2004(a) AUTHORIZING
THE EXAMINER TO EXAMINE THE DEBTORS' CURRENT AND
FORMER OFFICERS, DIRECTORS AND EMPLOYEES, AND OTHER PERSONS**

UPON the Examiner's Motion for an Order Authorizing the Examination of the Debtors' Current and Former Officers, Directors and Employees, and Other Persons (the "Motion"), and the Motion having been served upon counsel for the Debtors, counsel for the Unsecured Creditors Committee, any witness the Examiner already has requested to appear for an interview and who has refused to cooperate on a timely basis or their known counsel, the Office of the United States Trustee and all other parties requesting notice pursuant to Fed. R. Bankr. P. 2002; and the Court finding that such notice is good and sufficient under the circumstances; and the Court further finding sufficient cause to grant the Motion, it is

ORDERED that the Motion is GRANTED; and it is further

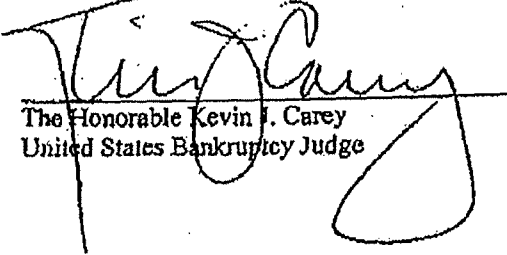
ORDERED that the Examiner is authorized, pursuant to Fed. R. Bankr. P. 2004(a), to conduct examinations of the Debtors' current and former officers, directors and employees, and other persons (the "Witnesses") with respect to issues to be inquired into by the Examiner as set forth in this Court's Order Denying in Part and Granting in Part Motion of the United States Trustee for an Order Directing the Appointment of a Chapter 11 Trustee, or in the Alternative, an Examiner entered herein on June 1, 2007; and it is further

ORDERED that the Examiner is authorized to issue such subpoenas as may be necessary to compel the production of documents and the testimony of Witnesses in connection with his examination of the Witnesses; and it is further

ORDERED that nothing herein shall limit any Witness' rights under applicable law to object to any subpoena the Examiner may issue; and it is further

ORDERED that this Order is without prejudice to the Examiner's right to file further motions seeking additional documents and testimony pursuant to Fed. R. Bankr. P. 2004(a).

SO ORDERED THIS 16th DAY OF Oct 2007


The Honorable Kevin J. Carey
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

_____ X	:	
In re:	:	Chapter 11
	:	
SEMGCRUDE, L.P., et al.,	:	
	:	Case No. 08-11525 (BLS)
Debtors.	:	Jointly Administered
	:	
	:	Related to Docket No. 2273
_____ X	:	

**ORDER GRANTING EXAMINER'S MOTION DIRECTING THE PRODUCTION OF
DOCUMENTS AND AUTHORIZING THE EXAMINATIONS OF THE DEBTORS'
CURRENT AND FORMER OFFICERS, DIRECTORS AND EMPLOYEES, AND
OTHER PERSONS**

Upon the Examiner's Motion for an Order Directing the Production of Documents and Authorizing the Examination of the Debtors' Current and Former Officers, Directors and Employees, and Other Persons (the "Motion"), and the Motion having been served upon counsel for the Debtors, counsel for the Official Committee of Unsecured Creditors, counsel for Bank of America, N.A., the agent for itself and certain other banking and financial institutions as pre-petition secured lenders and administrative agent for the Debtors'¹ post-petition secured lenders, any witness the Examiner already has requested to appear for an interview and who has refused to cooperate on a timely basis or conditioned their cooperation upon the issuance of a subpoena or their known counsel, the Office of the United States Trustee, and all other parties requesting notice pursuant to Bankruptcy Rule 2002; and the Court finding that such notice is good and sufficient under the circumstances; and the Court further finding sufficient cause to grant the Motion, it is

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

ORDERED, that the Motion is GRANTED; and it is further

ORDERED, that the Examiner is authorized, pursuant to Bankruptcy Rule 2004(a), to conduct examinations of the Debtors' current and former officers, directors and employees, and other persons or entities with relevant information regarding the matters included in the Investigation including, without limitation, the Debtors' auditors, corporate counsel, lenders, investors and other financial transaction counterparties to certain transactions with the Debtors (collectively, the "Witnesses") with respect to the Investigation and the issues to be inquired into by the Examiner as set forth in this Court's Order Directing the United States Trustee to Appoint an Examiner, entered on September 10, 2008; and it is further

ORDERED, that the Examiner is authorized to issue such subpoenas as may be necessary to compel the production of documents and the testimony of Witnesses in connection with his examination of the Witnesses; and it is further

ORDERED, that unless otherwise agreed to by the Examiner, Witnesses shall have ten (10) days from the service of a subpoena to either (1) produce to the Examiner all responsive documents requested in the Examiner's subpoena; or (2) file with the Bankruptcy Court an objection or response to the subpoena, with a hearing promptly scheduled on the objection/response; and it is further

ORDERED, that if a Witness produces some but not all documents, withholding the production of any documents based upon a claim of privilege, such Witness is directed to provide counsel for the Examiner with a privilege log, containing the information required under Bankruptcy Rule 7026, within ten (10) days of the service of a subpoena upon the Witnesses (unless otherwise agreed to by the Examiner); and it is further

ORDERED, that the Witness is directed to submit to oral examination upon reasonable

notice and, absent other agreement with the Examiner, in no event more than fifteen (15) days from the date of the service of a deposition subpoena upon such Witness; and it is further

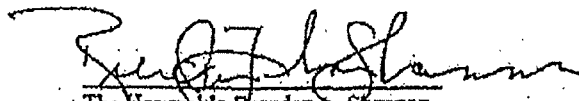
ORDERED, that nothing herein shall limit the rights of any Witness or any other party under applicable law to object to any subpoena the Examiner may issue under Bankruptcy Rule 9016, other applicable Bankruptcy Rules, the Local Bankruptcy Rules or applicable non-bankruptcy law; and it is further

ORDERED, that this Court shall retain jurisdiction to resolve any disputes arising or related to this Order including any discovery disputes that may arise between or among the parties and to interpret, implement and enforce the provisions of this Order; and it is further

ORDERED, that in accordance with Bankruptcy Rules 2004 and 9016, the Clerk of this Court shall issue subpoenas, signed but otherwise in blank, as requested by the Examiner; and it is further

ORDERED, that this Order is without prejudice to the Examiner's right to file further motions seeking additional documents and testimony pursuant to Bankruptcy Rules 2004(a) or any other applicable Bankruptcy Rules.

SO ORDERED THIS 25th DAY OF NOVEMBER 2008


The Honorable Brendan L. Shannon
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

LEHMAN BROTHERS HOLDINGS INC., *et al.*,

Debtors.

Chapter 11 Case No.

08-13555 (JMP)

(Jointly Administered)

**ORDER GRANTING EXAMINER'S MOTION DIRECTING THE PRODUCTION OF
DOCUMENTS AND AUTHORIZING THE EXAMINATIONS OF THE DEBTORS'
CURRENT AND FORMER OFFICERS, DIRECTORS AND
EMPLOYEES, AND OTHER PERSONS AND ENTITIES**

Upon the Motion of Anton R. Valukas (the "Examiner") for an Order Directing the Production of Documents and Authorizing the Examination of the Debtors' Current and Former Officers, Directors and Employees, and Other Persons and Entities (the "Motion"); and the Court having reviewed the Motion and the exhibits submitted in support; and the Court being satisfied that adequate notice of the Motion has been provided in accordance with the procedures set forth in the order entered September 22, 2008 governing case management and administrative procedures [Docket # 285] (i) to the Court; (ii) counsel for the Debtors; (iii) the U.S. Trustee; (iv) counsel for the Official Committee of Unsecured Creditors; (v) counsel for the Debtors' postpetition lenders; (vi) the Securities and Exchange Committee; (vii) the Internal Revenue Service; (viii) the United States Attorney for the Southern District of New York; (ix) any person with a particularized interest in the subject matter of the Motion; and (x) all parties who have requested notice in these Chapter 11 Cases; and (xi) it appearing that no other or further notice of the Motion need be provided; and after due deliberation and sufficient cause appearing therefor; it is hereby ORDERED

¹ Capitalized terms not otherwise defined shall have the meaning ascribed to them in the Motion.

1. The Motion is granted.
2. The Examiner is authorized, pursuant to Bankruptcy Rule 2004, to issue such subpoenas as may be necessary to compel the production of documents and the testimony of Witnesses in connection with the Examiner's Investigation.
3. The Examiner shall serve each subpoena and a copy of this Order on the target of the subpoena, with copy to (i) the Debtor; (ii) the Securities and Exchange Commission; (iii) the Internal Revenue Service; (iii) the SIPA Trustee; and (iv) the United States Attorney for the Southern District of New York.
4. As directed in ¶ 8 of the Examiner Order, the Examiner shall cooperate fully with any government agencies including, but not limited to, any Federal, state or local government agency that currently or in the future may be investigating the Debtors, their management or their financial condition, and the Examiner shall use best efforts to coordinate with such agencies in order to avoid unnecessary interference with, or duplication of, any investigations conducted by such agencies. The Examiner will follow a protocol to be established with the governmental agencies for the sharing of information to the extent that such sharing benefits the Debtors' estates, and such sharing of information shall be subject to appropriate conditions to protect the Debtors' estates.
5. The Examiner shall file with the Court an affidavit or declaration of service for each subpoena he serves.
6. Unless otherwise agreed to by the Examiner, Witnesses shall have ten (10) days from the service of a subpoena to either (1) produce to the Examiner all responsive documents requested in the Examiner's subpoena, except as provided in ¶ 7 *infra*; or (2) file with the Bankruptcy Court an objection or response to the subpoena, with a hearing promptly scheduled.

7. Unless otherwise agreed by the Examiner, if a Witness withholds any documents from the production based upon a claim of privilege, such Witness is directed to provide counsel for the Examiner with a privilege log, containing the information required under Bankruptcy Rule 7026, within ten (10) days of the service of a subpoena upon the Witnesses.

8. The Witness is directed to submit to oral examination upon reasonable notice and, absent other agreement with the Examiner, in no event more than fifteen (15) days from the date of service of a deposition subpoena upon such Witness

9. Nothing herein limits the substantive rights of Witnesses or other parties under applicable law to object to or oppose any subpoena the Examiner may serve.

10. This Court shall retain jurisdiction to resolve any disputes arising or related to this Order including any discovery disputes that may arise between or among the parties and to interpret, implement and enforce the provisions of this Order.

11. In accordance with Bankruptcy Rules 2004 and 9016, the Clerk of this Court shall issue subpoenas, signed but otherwise in blank, as requested by the Examiner.

12. This Order is without prejudice to the Trustee's right to file further motions seeking additional documents and testimony pursuant to Bankruptcy Rule 2004(a) or any other applicable law.

Dated: February 11, 2009
New York, New York

/s/ James M. Peck
UNITED STATES BANKRUPTCY JUDGE

Exhibit “B”

(Proposed Order Approving Work Plan)

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

In re:

WASHINGTON MUTUAL, INC., et al.,¹

Debtors.

Chapter 11

Case No. 08-12229 (MFW)

Jointly Administered

Related to Docket No. _____

ORDER APPROVING EXAMINER'S WORK PLAN

Upon the *Examiner's Work and Expenses Plan/Report and his Motion for Additional Relief* (the "Work Plan")² filed by Joshua R. Hochberg as examiner in these cases (the "Examiner"); and notice thereof having been served upon the United States Trustee, counsel to the Debtors, counsel to the Equity Committee, and all parties who have filed a notice of appearance in the Chapter 11 Cases pursuant to Fed. R. Bankr. P. 2002; the Court finding that such notice is appropriate and sufficient under the circumstances; the Court having reviewed the Motion and other papers filed in respect thereof; and finding good cause to grant the Motion, it is

ORDERED, ADJUDGED, and DECREED:

1. The Work Plan is approved.
2. The scope of the Investigation proposed by the Examiner in the Work Plan is approved. The Examiner is authorized to conduct the Investigation under the terms and conditions set forth in the Work Plan.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

² Capitalized terms used but not defined herein shall have the meaning set for in the Work Plan.

3. This Court shall retain jurisdiction to resolve any disputes arising or related to this Order and to interpret, implement, and enforce the provisions of this Order.

4. This Order is without prejudice to the Examiner's right to alter, amend, or modify the Work Plan.

SO ORDERED THIS ___ DAY of August, 2010

MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit “C”

(Proposed Order Regarding Documents)

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

In re:

WASHINGTON MUTUAL, INC., et al.,¹

Debtors.

Chapter 11

Case No. 08-12229 (MFW)

Jointly Administered

Related to Docket No. _____

**ORDER REGARDING THE VOLUNTARY PRODUCTION OF
DOCUMENTS TO THE EXAMINER**

Upon the *Examiner's Work and Expenses Plan/Report and his Motion for Additional Relief* (the "Work Plan")² filed by Joshua R. Hochberg as examiner in these cases (the "Examiner"); and notice thereof having been served upon the United States Trustee, counsel to the Debtors, counsel to the Equity Committee, and all parties who have filed a notice of appearance in the Chapter 11 Cases pursuant to Fed. R. Bankr. P. 2002; the Court finding that such notice is appropriate and sufficient under the circumstances; the Court having reviewed the Motion and other papers filed in respect thereof; and finding good cause to grant the Motion, it is

ORDERED, ADJUDGED, and DECREED:

1. The delivery of any documents or information by any of the parties, or by counsel or other professionals engaged by any of the parties, to the Examiner or to any of the parties in connection with the Investigation does not constitute a waiver of attorney-client privilege, attorney work product protection, confidentiality, or any other applicable privilege, protection,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

² Capitalized terms used but not defined herein shall have the meaning set for in the Work Plan.

immunity, or confidentiality; and the delivery of such documents or information to the Examiner or to any of the parties shall not be the basis for any third party or any other party to assert that any of the parties or their counsel or other professionals have waived, in whole or in part, any privilege, protection, immunity, or confidentiality with respect to such documents or information or with respect to any other documents or information that may concern the same subject matter. The Examiner may use Work Product in his report, without attribution to the source of the Work Product and will, at the conclusion of the Investigation, destroy or return Work Product to the party which produced it..

2. During the pendency of the Investigation, no discovery of any kind (whether by way of depositions, document production, or otherwise) may be propounded upon the Examiner. Nothing herein shall be deemed or construed to subject the Examiner to any such discovery after completion of the Investigation, which matter shall be considered by the Court prior to the discharge of the Examiner of his engagement, or to waive or modify any immunity available to the Examiner under applicable law.

3. As used in this Order, reference to the Examiner includes the Examiner's professionals.

4. This Court shall retain jurisdiction to resolve any disputes arising or related to this Order including any discovery disputes that may arise between or among the parties and to interpret, implement, and enforce the provisions of this Order.

5. This Order is without prejudice to the Examiner's right to alter, amend, or modify the Work Plan.

SO ORDERED THIS ____ DAY of August, 2010

MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit “D”

(Proposed Order Regarding Subpoenas)

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

In re:

WASHINGTON MUTUAL, INC., et al.,¹

Debtors.

Chapter 11

Case No. 08-12229 (MFW)

Jointly Administered

Related to Docket No. _____

**ORDER AUTHORIZING THE EXAMINER TO DEMAND AND ISSUE SUBPOENAS
COMPELLING THE PRODUCTION OF DOCUMENTS AND THE ORAL
EXAMINATION OF PERSONS AND ENTITIES**

Upon the *Examiner's Work and Expenses Plan/Report and his Motion for Additional Relief* (the "Work Plan")² filed by Joshua R. Hochberg as examiner in these cases (the "Examiner"); and notice thereof having been served upon the United States Trustee, counsel to the Debtors, counsel to the Equity Committee, and all parties who have filed a notice of appearance in the Chapter 11 Cases pursuant to Fed. R. Bankr. P. 2002; the Court finding that such notice is appropriate and sufficient under the circumstances; the Court having reviewed the Motion and other papers filed in respect thereof; and finding good cause to grant the Motion, it is

ORDERED, ADJUDGED, and DECREED:

1. The Examiner is hereby authorized, pursuant to Bankruptcy Rule 2004, to demand and compel by way of subpoena: (1) the oral examination, under oath, of Discovery Parties and (2) the production of documents that may be relevant to the Investigation or lead the Examiner to information that is relevant to the Investigation.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

² Capitalized terms used but not defined herein shall have the meaning set for in the Work Plan.

2. The Examiner is hereby authorized to use the following procedures in connection with the Examiner's issuance of any subpoena:

(a) Except as otherwise agreed by the Examiner, or subsequently ordered by the Court, a Discovery Party to which a subpoena that seeks documents (whether or not it also seeks testimony) is directed shall, within five (5) days of service of such subpoena: (i) produce all non-privileged documents responsive to such subpoena (unless otherwise agreed by the Examiner); or (ii) file and serve a motion seeking a protective order or making other objections to the subpoena, which the Court shall hear on shortened notice, no later than five (5) days from the filing of such motion.

(b) If a Discovery Party withholds any documents based upon a claim of privilege, he, she, or it must provide the Examiner with a privilege log containing the information required by Bankruptcy Rule 7026 no later than five (5) days after service of a subpoena upon such party (unless otherwise agreed by the Examiner).

(c) If the subpoena so directs, a Discovery Party may be required to appear for an oral examination within five (5) days of service of a deposition subpoena on the Discovery Party, which notice is deemed to be reasonable; provided the party may voluntarily agree to appear for an oral examination sooner and provided that the Discovery Party shall have five (5) days to bring a motion to contest the requirement that he appear for an examination..

(d) As necessary to implement the foregoing, the Examiner and his counsel are authorized to sign and issue a subpoena from any United States Bankruptcy Court for the applicable district in which a Discovery Party resides, does business, maintains documents, or is found, both to obtain documents from a Discovery Party and to

command the attendance of a party at a deposition. The Examiner and his counsel are also authorized to take such actions as may be necessary in any other court in order to enforce subpoenas and otherwise effectuate the terms of the Court's order with respect to this Motion.

(e) Unless the Examiner determines that doing so would unduly interfere with the Investigation, the Examiner will file in these cases a notice advising that the subpoena has been issued and attaching a copy of the subpoena. The Examiner shall be under no obligation to furnish to any party or other person or entity any communications, documents, or information received from any party or other person or entity to participate in any meetings or conversations between the Examiner and such party.

3. Nothing herein limits the substantive rights of any Discovery Party or any other party under applicable law to object to or oppose any subpoena the Examiner may serve.

4. This Court shall retain jurisdiction to resolve any disputes arising or related to this Order including any discovery disputes that may arise between or among the parties and to interpret, implement, and enforce the provisions of this Order.

5. This Order is without prejudice to the Examiner's right to alter, amend, or modify the Work Plan.

SO ORDERED THIS ___ DAY of August, 2010

MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE