

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

-----X	
<i>In re</i>	: Chapter 11
	: Case No. 08-12229 (MFW)
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:
	:
Debtors.	: (Jointly Administered)
	:
-----X	Re: Docket No. 8368

ORDER (I) APPROVING SETTLEMENT AGREEMENT IN FLAHERTY ACTION PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, AND (II) MODIFYING AUTOMATIC STAY PURSUANT TO SECTION 362 OF THE BANKRUPTCY CODE TO ALLOW PAYMENT OF SETTLEMENT AMOUNT UNDER DIRECTORS AND OFFICERS INSURANCE POLICIES

Upon the motion, dated August 2, 2011 (the "Motion"),² of Washington Mutual, Inc. ("WMI") and WMI Investment Corp., as debtors and debtors in possession (collectively, the "Debtors"), for entry of an order pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure, (i) authorizing and approving that certain Settlement Agreement and Mutual Release (the "Settlement Agreement"), dated July 11, 2011, in the litigation captioned *Flaherty & Crumrine Preferred Income Fund Incorporated, et al. v. Killinger, et al.*, No. C09-1756 MJP (the "Flaherty Action") in the United States District Court for the Western District of Washington, and (ii) modifying the automatic stay provided for in section 362(a) of the Bankruptcy Code, to the extent applicable, to allow payment of the Settlement Amount in connection with the Settlement

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.

² Capitalized terms used but not otherwise defined herein will have the meanings ascribed to them in the Motion.

Agreement, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to those parties identified therein, including, without limitation, notice to the Insureds listed on Exhibit D to the Motion being sufficient to satisfy Local Rule 2002-1(b) under the circumstances; and no other or further notice being required; and the Court having determined that the relief sought in the Motion is in the best interest of the Debtors, their creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Settlement Agreement, a copy of which is attached hereto as Exhibit 1, is approved in all respects as fair and reasonable; and it is further

ORDERED that the automatic stay, extant pursuant to section 362 of the Bankruptcy Code, is hereby modified so as to permit, and the D&O Carriers are hereby authorized, to the extent necessary, to pay Four Million Two Hundred Eighteen Thousand Seven Hundred Fifty Dollars (\$4,218,750.00) on behalf of the Individual Defendants from the D&O Policies; and it is further

ORDERED that, on and effective as of the Effective Date of the Settlement Agreement, consistent with this Order and the Settlement Agreement, the D&O Carriers who contribute to payment of the Settlement Amount will be deemed discharged from any liability to

any Insureds (as defined by the D&O Policies) or other claimants for having paid the Settlement Amount on behalf of the Individual Defendants; and it is further

ORDERED that, upon Plaintiffs' receipt of the entire Settlement Amount, Plaintiffs shall absolutely and unconditionally waive any rights with respect to and release any and all claims in the Chapter 11 Cases; provided, however, that, except to the extent released in the Settlement Agreement as a Released Claim, Plaintiffs shall retain their rights to receive any distributions in the Chapter 11 Cases to which Plaintiffs are entitled on account of their ownership of debt or equity securities of WMI; and it is further

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

Dated: September 6, 2011
Wilmington, Delaware



THE HONORABLE MARY F. WALRATH
UNITED STATE BANKRUPTCY JUDGE

Exhibit 1

Settlement Agreement

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement"), dated as of July 11, 2011, by and among (i) Flaherty & Crumrine Preferred Income Fund Incorporated, Flaherty & Crumrine Preferred Income Opportunity Fund Incorporated, Flaherty & Crumrine/Claymore Preferred Securities Income Fund Incorporated, Flaherty & Crumrine/Claymore Total Return Fund Incorporated and Flaherty & Crumrine Investment Grade Fixed Income Fund (collectively, "Plaintiffs"), and (ii) Kerry Killinger, Thomas Casey, Stephen Rotella, Ronald Cathcart, David Schneider, Anne Farrell, Stephen Frank, Thomas Leppert, Charles Lillis, Phillip Matthews, Regina Montoya, Michael Murphy, Margaret Osmer McQuade, Mary Pugh, William Reed, Jr., Orin Smith, James Stever, and Willis Wood, Jr. (collectively, "Individual Defendants"), and (iii) Washington Mutual, Inc. ("WMI"). Plaintiffs, Individual Defendants and WMI are collectively referred to herein as the "Parties."

WHEREAS, Plaintiffs filed an action in the Superior Court of California, which action was thereafter removed to the United States District Court for the Central District of California and transferred to the United States District Court for the Western District of Washington (the "Court") and styled *Flaherty & Crumrine Preferred Income Fund Incorporated, et al. v. Killinger, et al.*, No. C09-1756 MJP (the "Action"), asserting claims against Individual Defendants arising from their roles as officers and/or directors of WMI and/or Washington Mutual Bank ("WMB");

WHEREAS, Individual Defendants asserted defenses in the Action;

WHEREAS, on September 25, 2008, the Office of Thrift Supervision, by order number 2008-36, closed WMB, appointed the FDIC Receiver as receiver for WMB and advised that the FDIC Receiver was immediately taking possession of WMB's assets. Upon its appointment as receiver, the FDIC Receiver sold substantially all the assets of WMB to JPMorgan Chase Bank, National Association, pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008;

WHEREAS, on September 26, 2008, WMI and WMI Investment Corp. (together, the "Debtors") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), as jointly administered, *In re Washington Mutual, Inc.*, Case No. 08-12229 (MFW) (the "Bankruptcy Cases");

WHEREAS, by order, dated January 30, 2009, the Bankruptcy Court established March 31, 2009 at 5:00 p.m. (Eastern Time) (the "Bar Date") as the deadline for filing proofs of claim against the Debtors and their chapter 11 estates;

WHEREAS, Plaintiffs did not file any proofs of claim in the Bankruptcy Cases prior to or after the Bar Date;

WHEREAS, on May 3, 2010, the Bankruptcy Court entered an Order Modifying Automatic Stay to Allow Advancement Under Insurance Policies that, among other things, authorized the applicable insurance carriers (the "D&O Policy Carriers") to advance the Individual Defendants' defense fees and

costs incurred in the Action under the applicable directors' and officers' liability insurance policies ("D&O Policies");

WHEREAS, each of the Individual Defendants expressly denies any wrongdoing and expressly denies that he or she has committed any act or omission giving rise to any liability to Plaintiffs whatsoever, and states that this Agreement shall in no event be construed or deemed to be evidence of, or an admission or concession on the part of any Individual Defendants with respect to, any claim or for any fault, liability, wrongdoing or damage whatsoever, or any infirmity in the defenses that the Individual Defendants have asserted or could have asserted in the Action, and states that the Individual Defendants are entering into this Agreement solely to eliminate the uncertainties, burden, expense, costs and distraction of potential or further protracted litigation; and

WHEREAS, the Parties desire to finally resolve and settle all claims relating to, concerning or arising out of the facts and circumstances alleged in the Action that were or could have been asserted against Individual Defendants in the Action or WMI in the Bankruptcy Cases to avoid potential or further protracted litigation, as provided herein;

NOW THEREFORE, in consideration of the covenants and agreements contained in this Agreement, and in full, complete and final release and discharge and settlement of all claims relating in any way to the Action, including, but not limited to, the prosecution, defense or settlement of the Action except as expressly provided otherwise herein, and any claims by Plaintiffs in the Bankruptcy Cases, the Parties agree as follows:

1. Upon the later of (1) the tenth business day after the Bankruptcy Court enters the Approval Order, as defined below; (2) receipt by the D&O Policy Carriers of an executed Form W-9; and (3) execution of a mutually agreeable escrow agreement with Gilardi & Co. ("Escrow Agent") and in full and complete settlement of the Plaintiff Released Claims and Released Claims, each as defined below, the D&O Policy Carriers (which, as represented by the Individual Defendants, have consented to payment pursuant to the terms of the Agreement) shall pay the total sum of Four Million Two Hundred Eighteen Thousand Seven Hundred Fifty Dollars (\$4,218,750.00) (the "Settlement Amount") into an interest bearing escrow account ("Escrow Account") established by the Escrow Agent by check or wire transfer pursuant to the following wire transfer instructions:

Bank:	Bank of the West Business Services 2527 Camino Ramon San Ramon, CA 94583
Routing #:	121100782
Account Name:	Killinger et al., Settlement Fund
Account #:	024-975359

Taxpayer ID #: 45-2654267

The settlement funds shall remain in the Escrow Account, and shall be used for no other purposes, until the Effective Date, as defined below. Neither WMI, the D&O Policy Carriers or the Individual Defendants shall have any responsibility or liability for the settlement funds while they are held in the Escrow Account. If the Effective Date does not occur, the Agreement shall be rendered null and void, as provided by paragraph 7 herein except that within two (2) business days of the receipt of written instructions from Individual Defendants' counsel, the Escrow Agent shall refund the settlement funds, plus any interest earned thereon, to the D&O Policy Carriers in accordance with the written instructions.

2. Upon Plaintiffs' receipt of the entire Settlement Amount, Plaintiffs shall absolutely and unconditionally waive any and all rights to file any proofs of claim in the Bankruptcy Cases; provided, however, that, except to the extent released herein as a Released Claim, nothing in this Agreement shall release, impair or otherwise impact Plaintiffs' rights to receive any distributions in the Bankruptcy Cases to which Plaintiffs are entitled on account of their ownership of debt or equity securities of WMI and to continue to retain such securities and receive such distributions as provided in any confirmed chapter 11 plan or otherwise.

3. Neither WMI, the D&O Policy Carriers or the Individual Defendants shall have any responsibility or liability for the allocation or distribution of the Settlement Amount among the Plaintiffs upon the Effective Date. In all other respects, each of the Parties shall be responsible for their own fees and costs incurred in the Action.

4. This Agreement is expressly conditioned on entry of a final order by the Bankruptcy Court in the Bankruptcy Cases (the "Approval Order") authorizing the D&O Policy Carriers to pay Four Million Two Hundred Eighteen Thousand Seven Hundred Fifty Dollars (\$4,218,750.00), on behalf of the Individual Defendants from the D&O Policies, and containing provisions substantially the same as those set forth in paragraph 5 below.

5. As soon as possible after the Parties execute this agreement, WMI, Plaintiffs and the Individual Defendants shall use their reasonable best efforts to seek entry of the Approval Order, with a hearing before the Bankruptcy Court to be set on the first available date thereafter. Plaintiffs and the Individual Defendants shall cooperate with the Debtors in drafting a proposed Approval Order, which shall contain, in substantially the following form, the following provisions, in addition to any other usual and customary terms:

ORDERED that the Settlement Agreement and Mutual Release is fair and reasonable; and it is further

ORDERED that the automatic stay, extant pursuant to section 362 of the Bankruptcy Code, is hereby modified so as to permit, and the D&O Policy Carriers are hereby authorized, to the extent necessary, to pay Four Million Two Hundred Eighteen Thousand Seven Hundred Fifty

Dollars (\$4,218,750.00) on behalf of the Individual Defendants from the D&O Policies; and it is further

ORDERED that, on and effective as of the Effective Date of the Settlement Agreement and Mutual Release, consistent with this Order and the Settlement Agreement and Mutual Release, the D&O Policy Carriers who contribute to payment of the Settlement Amount will be deemed discharged from any liability to any Insureds (as defined by the D&O Policies) or other claimants for having paid the Settlement Amount; and it is further

ORDERED that, upon Plaintiffs' receipt of the entire Settlement Amount, Plaintiffs shall absolutely and unconditionally waive any rights with respect to, and release any and all claims in, the Bankruptcy Cases; provided, however, that, except to the extent released in the Settlement Agreement and Mutual Release as a Released Claim, Plaintiffs shall retain their rights to receive any distributions in the Bankruptcy Cases to which Plaintiffs are entitled on account of their ownership of debt or equity securities of WMI.

6. The "Effective Date" of this Agreement shall be the third (3) business day following the latest of: (i) the expiration of the time for appeal or appellate review of the Approval Order, with no appeal having been taken; (ii) if there has been an appeal from the Approval Order, and the appeal has been decided without causing a material change in the Approval Order, the expiration of the time for petitioning for rehearing and/or certiorari; or (iii) if rehearing or certiorari is granted, the date that the appeal has been decided without causing a material change in entry of the Approval Order.

7. In the event that the Bankruptcy Court enters the Approval Order and an appeal is taken therefrom, the Parties shall use their reasonable best efforts to obtain final approval of the Approval Order. However, if the Bankruptcy Court denies entry of the Approval Order and (a) no appeal is taken, or (b) appeal is taken and final approval of the Approval Order is denied, then this Agreement shall be deemed null and void and the Parties shall revert to their positions as of May 8, 2011 except that any amounts paid by or on behalf of the Individual Defendants pursuant to this Agreement shall be returned to the D&O Policy Carriers in accordance with paragraph 1 herein.

8. The Parties recognize that, on May 11, 2011, the Court dismissed the Action and all claims with prejudice and without costs to any party. Upon the Effective Date, no party to the Action shall take any steps to vacate, appeal or otherwise challenge that dismissal order.

9. Upon Plaintiffs' receipt of the entire Settlement Amount, and without any further action by anyone, Plaintiffs, on behalf of themselves, their affiliates, predecessors, successors, assigns, agents, officials, employees and all other persons or entities controlled by, or under common control with Plaintiffs, including, but not limited to, Flaherty & Crumrine Incorporated, shall be deemed to have, and by operation of law shall have, fully, finally and forever released, relinquished, settled and discharged Individual Defendants, WMI, WMB, any and all of their respective predecessors, successors, parents, affiliates, and their respective divisions, shareholders, employees, agents, servants, marital communities, heirs, consultants, advisors, insurers, reinsurers, attorneys, accountants, underwriters and

representatives, and their successors and assigns, from any and all claims, rights, demands, liabilities, defenses or causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorney's fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, that relate in any way to the prosecution, defense or settlement of the Action, including any and all actions, causes of action, proceedings, and suits, whether in law or in equity, whether based on any federal law, state law, common law, or foreign law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, whether brought directly or derivatively, existing now or to be created in the future, that (i) (a) have been asserted in the Action or the Bankruptcy Cases; or (b) could have been asserted in the Action or the Bankruptcy Cases, or in any other forum, that are based on, relate to or arise out of the allegations, transactions, facts, matters, events, disclosures, statements, occurrences, representations, acts or omissions or failures to act that have been or could have been asserted or alleged in the Action, or (ii) relate to Plaintiffs' purchase, holding or acquisition of WMI debt or equity securities, that would be barred by the principles of *res judicata* had the claims that have been or could have been asserted in the Action or the Bankruptcy Cases been fully litigated and resulted in a final judgment or order (the "Released Claims").

10. Upon Plaintiffs' receipt of the entire Settlement Amount, and without any further action by anyone, Individual Defendants, on behalf of themselves, their affiliates, predecessors, successors, assigns, agents, partners, employees and all other persons or entities controlled by, or under common control with Individual Defendants, shall be deemed to have, and by operation of law shall have, fully, finally and forever released, relinquished, settled and discharged Plaintiffs, any or all of their predecessors, successors, parents, affiliates, and their respective divisions, officials, employees, agents, servants, consultants, advisors, insurers, reinsurers, attorneys, accountants, underwriters and representatives, and their successors and assigns, from any and all claims that relate in any way to the prosecution, defense or settlement of the Action, including any and all actions, causes of action, proceedings, and suits, whether in law or in equity, whether based on any federal law, state law, common law, or foreign law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, existing now or to be created in the future, that relate to the same transactions and occurrences that give rise to the claims alleged in the Action (the "Plaintiff Released Claims").

11. The Released Claims and Plaintiff Released Claims include, without limitation, any claims that any of the Parties does not know or suspect to exist in its favor at the time of the release of such claims, which if known by it might have affected its decision(s) with respect to the Agreement. The Parties shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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

Each of the Parties waives and relinquishes any right or benefit which it has or may have under California Civil Code Section 1542, or any similar provision of the statutory or non-statutory law of any other jurisdiction, to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter hereof. The Parties acknowledge and agree that this waiver is an essential and material term of this Agreement and, without such waiver, the Agreement would not have been made. Notwithstanding the releases set forth in this Agreement, each Party specifically retains the right to enforce the terms of this Agreement.

12. For the avoidance of doubt, (a) nothing herein shall be deemed to release, bar, waive, impair or otherwise impact any claims belonging to WMI, its affiliates or successors in interest against any Individual Defendants; nor shall anything herein be deemed to release, bar, waive, impair or otherwise impact the defenses of any Individual Defendants to any such claims belonging to WMI or its affiliates and asserted against such persons or entities by WMI or its successors in interest; and (b) to the extent that any of the Individual Defendants have claims against WMI in the Chapter 11 Cases, other than claims for indemnification with respect to payments made to defend or settle the Action, nothing herein shall be deemed to release, bar, waive, impair or otherwise impact any such claims, or any defenses of WMI with respect thereto; except that to the extent that any insurers who issued any of the Directors' and Officers' Liability Insurance Policies claim subrogation rights against WMI on the basis of the Individual Defendants' indemnification claims, all such claims are preserved, as are WMI's defenses thereto.

13. This Agreement and the terms of the settlement and releases embodied in this Agreement represent a compromise of disputed claims, and the negotiations, discussions and communications in connection with or leading up to and including the settlement are not and shall not be construed as admissions or concessions by the Parties, or any of them, either as to any liability or wrongdoing or as to the merits of any claim or defense. Neither the existence of this Agreement nor any of its provisions shall be admissible in any proceeding for any purpose whatsoever, except that this Agreement shall only be admissible for all purposes solely in proceedings brought by WMI, Plaintiffs or Individual Defendants to enforce the terms of this Agreement.

14. The Parties agree that the amount paid and the other terms of the settlement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel. The Parties further agree that the settlement set forth in this Agreement constitutes a fair, reasonable and adequate resolution of the claims asserted or which could have asserted in this Action or the Bankruptcy Cases. The Parties agree not to assert any claim that the Action or any defense or counterclaim was prosecuted by Plaintiffs or Individual Defendants in bad faith under Federal Rule of Civil Procedure 11.

15. The Amended Stipulated Protective Order in the Action, dated December 9, 2010, shall survive this Agreement to the extent permitted by law and by its terms.

16. This Agreement and the escrow agreement referenced in paragraph 1 of this Agreement constitute the entire and complete agreement between the Parties, the terms and conditions herein are contractual and not a mere recital, and such terms and conditions shall not be amended, supplemented or abrogated other than by a written instrument signed by each affected Party hereto or by the authorized representative of each Party.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to choice of law principles. The Bankruptcy Court shall have exclusive jurisdiction over any action involving or pertaining to WMI and relating to this Agreement or the enforcement of any of its terms.

18. Each Party represents and warrants that it is authorized to enter into this Agreement and all the releases, representations and warranties contained in this Agreement. The signatories to this Agreement represent and warrant that they have the authority to enter into this Agreement and all the releases, representations and warranties contained in this Agreement. This Agreement and each and all of the representations, warranties and covenants of the Parties made herein are binding upon the Parties and each and all of their respective successors, assigns, heirs and representatives.

19. With the exception of the representations and warranties made in this Agreement, in entering into this Agreement and the settlement contemplated herein, the Parties assume the risk of any misrepresentation, concealment or mistake. If any Party to this Agreement subsequently discovers that any fact that he, she or it relied upon in entering into this Agreement was untrue, or that any fact was concealed from him, her or it, or that his, her or its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including, without limitation, any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be and is final and binding between and among the Parties hereto, regardless of any claims of misrepresentation, promises made, lack of intention to perform, concealment of facts, mistakes of fact or law, or of any other circumstances whatsoever.

20. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21. This Agreement was prepared jointly by the Parties and their counsel, and shall be construed as if the Parties jointly prepared this Agreement, and any uncertainty or ambiguity shall not on that ground be interpreted against any one Party.

22. Notices required by this Agreement shall be submitted by any form of overnight mail, facsimile or in person to:

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Carlsbad, CA 92008
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Counsel for Washington Mutual, Inc.

AGREED TO BY:

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-9-

AGREED TO BY:

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and

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-9-

AGREED TO BY:

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Income Fund Incorporated, Flaherty & Crumrine
Preferred Income Opportunity Fund Incorporated,
Flaherty & Crumrine/Claymore Preferred Securities
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James Stever, and Willis Wood, Jr.**

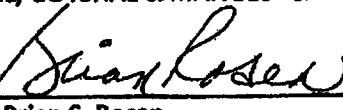
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