



04-CV-01599-CMP

FILED ENTERED
LODGED RECEIVED
JUL 20 2004 DJ
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

316998 82155

Individually And On
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

KERRY K. KILLINGER, THOMAS W.
CASEY, DEANNA W. OPPENHEIMER,
WILLIAM W. LONGBRAKE, CRAIG J.
CHAPMAN, JAMES G. VANASEK,
MICHELLE MCCARTHY, and
WASHINGTON MUTUAL, INC.,

Defendants.

No.: CV4 1599 C

CLASS ACTION

CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS

DEMAND FOR JURY TRIAL

COMPLAINT FOR VIOLATION OF THE FEDERAL
SECURITIES LAWS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

INTRODUCTION

1. This is a federal class action on behalf of purchasers of the securities and/or sellers of put options of Washington Mutual, Inc. ("Washington Mutual," or the "Company") between April 15, 2003 and June 28, 2004, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

OVERVIEW

2. By April 2003, Washington Mutual had grown from \$21 billion in banking assets in 1990 to over \$261 billion in assets under management. After recently making almost \$25 billion in major banking acquisitions, including acquisitions of New York-based Dime Bancorp (\$5.3 billion in cash and stock) and Fleet Mortgage Corp. (\$7.5 billion in cash), Washington Mutual emerged as one of the 10 largest U.S. banks (measured by assets); by far the largest Savings & Loan and loan servicing entity and the second largest mortgage-loan originator in the country. Moreover, by the inception of the Class Period, Washington Mutual had publicly promoted itself as a "Category Killer" - - the "Wal-Mart of Consumer Finance." According to defendants, Washington Mutual's plan for profits and disciplined management would allow it to "revolutionize" consumer banking.

3. Accordingly, throughout the Class Period, defendants consistently represented that Washington Mutual could achieve organic growth regardless of any expected interest rate increases because of its dynamic business model. In addition, defendants also claimed that they engaged in sophisticated financial hedging strategies that allowed Washington Mutual to diversify any additional risk that would otherwise subject the Company to disruptive volatility.

1 4. Unbeknownst to investors, however, throughout the Class Period the Company
2 was suffering from a host of undisclosed adverse factors which were negatively impacting its
3 business, and which would foreseeably cause Washington Mutual to report declining financial
4 results, materially less than the market expectations defendants had caused and cultivated. In
5 particular:

6 • At all times during the Class Period, it was materially false and misleading for
7 defendants to claim that defendants were able to properly hedge the Company's financial
8 and market risk.

9 • At all times during the Class Period, it was materially false and misleading for
10 defendants to claim that Washington Mutual maintained a unique business strategy that
11 would allow the Company to achieve growth and profitability in light of foreseeable
12 changes in market conditions for interest rates.

13 • At all times during the Class Period, it was materially false and misleading for
14 defendants to claim that defendants maintained adequate systems of internal financial,
15 operational or market controls, so as to assure investors that defendants public statements
16 were true and accurate at all times.

17 • At all times during the Class Period, it was materially false and misleading for
18 defendants to claim that Washington Mutual's \$25 billion acquisition spree was being
19 integrated seamlessly into the Company and that, as a result, Washington Mutual was
20 operating according to guidance sponsored and/or endorsed by defendants.

21 • As a result of the aforementioned adverse conditions which defendants failed to
22 disclose, throughout the Class Period, defendants lacked any reasonable basis to claim
23 that Washington Mutual was operating according to plan, that sufficient sources of
24 funding were achieved and/or available to Washington Mutual or that the Company could
25 maintain profitability or even remain a viable entity in the foreseeable near-term.

26 5. On June 29, 2004, however, investors learned the truth about Washington Mutual
after defendants issued a press release announcing a very significant earnings and net income
shortfall which far exceeded any guidance previously sponsored and endorsed by defendants.
According to this release, increases in interest rates had, in fact, impacted the Company's
mortgage banking business to such an extent that earnings for the full year were revised to as low

1 as \$3.00 per share, compared to up to \$4.80 per share guidance provided at the inception of the
2 Class Period. Also, according to defendants, they had not properly hedged the Company's
3 interest rate risk such that it was now having a material adverse impact on Washington Mutual.

4
5 **JURISDICTION AND VENUE**

6 6. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of
7 the Exchange Act [15 U.S.C. §§ 78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by
8 the United States Securities and Exchange Commission ("SEC") [17 C.F.R. § 240.10b-5].

9 7. This Court has jurisdiction over the subject matter of this action pursuant to 28
10 U.S.C. §§ 1331 and 1337, and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

11 8. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and
12 28 U.S.C. § 1391(b). Washington Mutual maintains its principal place of business in this
13 District and many of the acts and practices complained of herein occurred in substantial part in
14 this District.
15

16 9. In connection with the acts alleged in this complaint, defendants, directly or
17 indirectly, used the means and instrumentalities of interstate commerce, including, but not
18 limited to, the mails, interstate telephone communications and the facilities of the national
19 securities markets.
20

21 **PARTIES**

22 10. Plaintiff [REDACTED] as set forth in the accompanying certification,
23 incorporated by reference herein, purchased the securities and/or sold put options of Washington
24 Mutual at artificially inflated prices during the Class Period, and has been damaged thereby.
25
26

1 11. Defendant Washington Mutual, Inc. is a Washington corporation with its principal
2 place of business at 1201 Third Avenue, Seattle, Washington. According to the Company's
3 press releases, Washington Mutual is a retailer of financial services that provides a diversified
4 line of products and services to consumers and commercial clients. At March 31, 2004,
5 Washington Mutual and its subsidiaries had assets of \$280.77 billion, and currently operates
6 more than 2,400 retail banking, mortgage lending, commercial banking and financial services
7 offices throughout the United States.
8

9 12. Defendant Kerry K. Killinger ("Killinger") maintained dominance and control
10 over the Company during the Class Period and, throughout this time, consolidated power over
11 the Company by simultaneously holding the offices of Chairman of the Board of Directors,
12 President and Chief Executive Officer of Washington Mutual.

13 13. Defendant Thomas W. Casey ("Casey") was during the Class Period, Executive
14 Vice President and Chief Financial Officer of the Company.
15

16 14. Defendant Deanna W. Oppenheimer ("Oppenheimer") was during the Class
17 Period, President of the Consumer Group, the Company's other division.

18 15. Defendant William W. Longbrake ("Longbrake") was, during the Class Period,
19 Vice Chairman of the Board of Directors and Controller of Washington Mutual.

20 16. Defendant Craig J. Chapman ("Chapman") was during the Class Period, President
21 of the Company's Commercial Group and Chief Administrative Officer of the Company.
22

23 17. Defendant James G. Vanasek ("Vanasek") was during the Class Period, Executive
24 Vice President and Chief Enterprise Risk Officer of the Company.
25
26

1 18. Defendant Michelle McCarthy ("McCarthy") was during the Class Period, Senior
2 Vice President and Market Risk Manager of the Company, having assumed this position on or
3 about April 28, 2003.

4 19. The defendants referenced above in ¶¶ 12 - 18 are referred to herein as the
5 "Individual Defendants."

6 20. Because of the Individual Defendants' positions with the Company, they had
7 access to the adverse undisclosed information about its business, operations, products,
8 operational trends, financial statements, hedging and related activities, markets and present and
9 future business prospects *via* access to internal corporate documents (including the Company's
10 operating plans, budgets and forecasts and reports of actual operations compared thereto),
11 conversations and connections with other corporate officers and employees, attendance at
12 management and Board of Directors meetings and committees thereof and via reports and other
13 information provided to them in connection therewith.
14

15 21. It is appropriate to treat the Individual Defendants as a group for pleading
16 purposes and to presume that the false, misleading and incomplete information conveyed in the
17 Company's public filings, press releases and other publications as alleged herein are the
18 collective actions of the narrowly defined group of defendants identified above. Each of the
19 above officers of Washington Mutual, by virtue of their high-level positions with the Company,
20 directly participated in the management of the Company, was directly involved in the day-to-day
21 operations of the Company at the highest levels and was privy to confidential proprietary
22 information concerning the Company and its business, operations, products, growth, financial
23 statements, hedging and related activities and financial condition, as alleged herein. Said
24
25
26

1 defendants were involved in drafting, producing, reviewing and/or disseminating the false and
2 misleading statements and information alleged herein, were aware, or deliberately disregarded,
3 that the false and misleading statements were being issued regarding the Company, and approved
4 or ratified these statements, in violation of the federal securities laws.

5 22. As officers and controlling persons of a publicly-held company whose securities
6 were, and are, registered with the SEC pursuant to the Exchange Act, and was traded on the New
7 York Stock Exchange (the "NYSE"), and governed by the provisions of the federal securities
8 laws, the Individual Defendants each had a duty to disseminate promptly, accurate and truthful
9 information with respect to the Company's financial condition and performance, growth,
10 operations, hedging and related activities, financial statements, business, products, markets,
11 management, earnings and present and future business prospects, and to correct any previously-
12 issued statements that had become materially misleading or untrue, so that the market price of
13 the Company's publicly-traded securities would be based upon truthful and accurate information.
14 The Individual Defendants' misrepresentations and omissions during the Class Period violated
15 these specific requirements and obligations.
16

17
18 23. The Individual Defendants participated in the drafting, preparation, and/or
19 approval of the various public and shareholder and investor reports and other communications
20 complained of herein and were aware of, or deliberately disregarded, the misstatements
21 contained therein and omissions therefrom, and were aware of their materially false and
22 misleading nature. Because of their Board membership and/or executive and managerial
23 positions with Washington Mutual, each of the Individual Defendants had access to the adverse
24 undisclosed information about Washington Mutual's business prospects and financial condition
25
26

1 and performance as particularized herein and knew (or deliberately disregarded) that these
2 adverse facts rendered the positive representations made by or about Washington Mutual and its
3 business issued or adopted by the Company materially false and misleading.

4 24. The Individual Defendants, because of their positions of control and authority as
5 officers and/or directors of the Company, were able to and did control the content of the various
6 SEC filings, press releases and other public statements pertaining to the Company during the
7 Class Period. Each Individual Defendant was provided with copies of the documents alleged
8 herein to be misleading prior to or shortly after their issuance and/or had the ability and/or
9 opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the
10 Individual Defendants is responsible for the accuracy of the public reports and releases detailed
11 herein and is therefore primarily liable for the representations contained therein.
12

13 25. Each of the defendants is liable as a participant in a fraudulent scheme and course
14 of business that operated as a fraud or deceit on purchasers of Washington Mutual securities
15 and/or sellers of put options by disseminating materially false and misleading statements and/or
16 concealing material adverse facts. The scheme: (i) deceived the investing public regarding
17 Washington Mutual's business, operations, management and the intrinsic value of Washington
18 Mutual securities; and (ii) caused plaintiff and other members of the Class to purchase
19 Washington Mutual securities and/or sell put options at artificially inflated prices.
20
21

22 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

23 26. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
24 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or
25 otherwise acquired the securities and/or sold put options of Washington Mutual between April
26

1 15, 2003 and June 28, 2004, inclusive (the "Class") and who were damaged thereby. Excluded
2 from the Class are defendants, the officers and directors of the Company, at all relevant times,
3 members of their immediate families and their legal representatives, heirs, successors or assigns
4 and any entity in which defendants have or had a controlling interest.

5 27. The members of the Class are so numerous that joinder of all members is
6 impracticable. Throughout the Class Period, Washington Mutual common shares were actively
7 traded on the NYSE. As of April 30, 2003, the Company had over 930 million shares issued and
8 outstanding. While the exact number of Class members is unknown to plaintiff at this time and
9 can only be ascertained through appropriate discovery, plaintiff believes that there are hundreds
10 or thousands of members in the proposed Class. Record owners and other members of the Class
11 may be identified from records maintained by Washington Mutual or its transfer agent and may
12 be notified of the pendency of this action by mail, using the form of notice similar to that
13 customarily used in securities class actions.
14

15 28. Plaintiff's claims are typical of the claims of the members of the Class as all
16 members of the Class are similarly affected by defendants' wrongful conduct in violation of
17 federal law that is complained of herein.
18

19 29. Plaintiff will fairly and adequately protect the interests of the members of the
20 Class and has retained counsel competent and experienced in class and securities litigation.
21

22 30. Common questions of law and fact exist as to all members of the Class and
23 predominate over any questions solely affecting individual members of the Class. Among the
24 questions of law and fact common to the Class are:
25
26

1 (a) whether the federal securities laws were violated by defendants' acts as
2 alleged herein;

3 (b) whether statements made by defendants to the investing public during the
4 Class Period misrepresented material facts about the business, operations and management of
5 Washington Mutual; and

6 (c) to what extent the members of the Class have sustained damages and the
7 proper measure of damages.
8

9 31. A class action is superior to all other available methods for the fair and efficient
10 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as
11 the damages suffered by individual Class members may be relatively small, the expense and
12 burden of individual litigation make it impossible for members of the Class to individually
13 redress the wrongs done to them. There will be no difficulty in the management of this action as
14 a class action.
15

16 SUBSTANTIVE ALLEGATIONS

17 **Defendants' Materially False and Misleading** 18 **Statements Made During the Class Period**

19 32. **1Q:03 Results.** On April 15, 2003, the beginning of the Class Period,
20 Washington Mutual published a release on *Business Wire* which purported to announce "record"
21 financial results for the first quarter of 2003, the period ended March 31, 2003, in part, as
22 follows:

23 "Washington Mutual entered 2003 in an excellent position and we're poised to
24 continue the momentum as the year progresses," said Kerry Killinger, the
25 company's chairman, president and CEO. "Our record-breaking first quarter
26 results reflect the strength of our underlying strategy of serving the broad middle

1 market by providing the combination of great value and efficient, friendly service.
2 We are extremely proud of the first quarter results that our talented employees
3 produced.” (Emphasis added.)¹

4 33. The Company’s April 15, 2003 release also purported to provide near-term
5 earnings and revenue guidance, in part, as follows:

6 **Outlook**

7 “Despite the current challenges both domestically and internationally, our
8 management team fully expects 2003 will be another record year for Washington
9 Mutual,” Killinger said. “Our business fundamentals remain strong and credit
10 quality continues to perform in line with management’s expectations.”

11 “Our primary focus for the foreseeable future will be successfully executing our
12 key business strategies, which are focused on internal growth and increased
13 productivity, and continuing to make progress toward our long-term goal of
14 building the nation’s leading retailer of financial services to the broad middle
15 market.”

16 34. **Killinger CNBC Interview.** The following day, April 16, 2003, defendant
17 Killinger appeared on the financial news cable-television network, CNBC, and granted an
18 interview during which he continued to condition the market to believe that Washington Mutual
19 was operating according to plan, and that the expected rise in interest rates would not have a
20 foreseeable material adverse impact on Washington Mutual, as follows:

21 [W]e carefully manage all of the various portfolios we’re in and we watch the
22 national housing market very carefully. We do not have concerns that there is a
23 housing bubble being created on a national basis. However, you know, at certain
24 localities around the country we have been watching things very carefully and
25 have adjusted our underwriting standards in certain parts of the country when
26 that’s appropriate. So, overall, you may have noticed that our credit quality
actually improved in the most recent quarter. So we’re very comfortable where
things are at this point.

¹ Unless otherwise indicated, emphasis has been added.

1 35. The statements contained in Washington Mutual's April 15, 2003 release and
2 those made by defendants during the Company's 1Q:03 conference call, referenced above, were
3 each materially false and misleading when made and were known by defendants to be false or
4 were deliberately disregarded as such thereby at that time, for the following reasons, among
5 others:

6 (a) At all times during the Class Period, it was materially false and misleading
7 for defendants to claim that defendants were able to properly hedge the Company's financial and
8 market risk;

9 (b) At all times during the Class Period, it was materially false and misleading
10 for defendants to claim that Washington Mutual maintained a unique business strategy that
11 would allow the Company to achieve growth and profitability in light of foreseeable changes in
12 market conditions for interest rates;

13 (c) At all times during the Class Period, it was materially false and misleading
14 for defendants to claim that defendants maintained adequate systems of internal financial,
15 operational or market controls, so as to assure investors that defendants public statements were
16 true and accurate at all times;

17 (d) At all times during the Class Period, it was materially false and misleading
18 for defendants to claim that Washington Mutual's \$25 billion acquisition spree was being
19 integrated seamlessly into the Company and that, as a result, Washington Mutual was operating
20 according to guidance sponsored and/or endorsed by defendants; and

21 (e) As a result of the aforementioned adverse conditions which defendants
22 failed to disclose, throughout the Class Period, defendants lacked any reasonable basis to claim
23
24
25
26

1 that Washington Mutual was operating according to plan, that sufficient sources of funding were
2 achieved and/or available to Washington Mutual or that the Company could maintain
3 profitability or even remain a viable entity in the foreseeable near-term.

4 36. 1Q:03 Form 10-Q. On or about May 15, 2003, defendants filed with the SEC the
5 Company's quarterly financial report, pursuant to Form 10-Q. In addition to making many of the
6 same, or substantially similar, representations to those made previously on April 15, 2003, the
7 1Q:03 Form 10-Q also stated, in part, the following:

8
9 **Basis of Presentation**

10 The accompanying Consolidated Financial Statements are unaudited and include
11 the accounts of Washington Mutual, Inc. (together with its subsidiaries
12 "Washington Mutual" or the "Company"). Washington Mutual's accounting and
13 financial reporting policies are in accordance with accounting principles generally
14 accepted in the United States of America. The information furnished in these
15 interim statements reflects all adjustments that are, in the opinion of management,
16 necessary for a fair statement of the results for such periods....

17 * * *

18 The Company continues to enhance its segment reporting process methodologies.
19 Changes to the operating segment structure and to certain of the foregoing
20 performance measurement methodologies, specifically funds transfer pricing,
21 were made during the first quarter of 2003. Additionally, effective January 1,
22 2003, the primary management responsibilities for the Company's originated
23 home loan mortgage-backed securities portfolio were transferred from the Home
24 Loans and Insurance Services Group to the Company's corporate treasury
25 operations.

26 The 1Q:03 Form 10-Q also contained representations that the Company maintained adequate
27 systems of internal operational controls as well as adequate systems of risk management and
28 fiscal controls. In addition to the foregoing, the 1Q:03 Form 10-Q also contained certifications
29 by defendants Killinger and Casey purporting to certify the veracity of the Company's financial
30 statements.

1 37. The statements made by defendants to the investing public in late-April and early-
2 May 2003, including those statements contained in the Company's 1Q:03 Form 10-Q filed with
3 the SEC, referenced above, were each materially false and misleading when made and were
4 known by defendants to be false or were deliberately disregarded as such thereby at that time, for
5 the reasons stated herein in ¶ 35, *supra*.

6 38. **2Q:03 Results.** On July 15, 2003, Washington Mutual published a release on
7 *Business Wire* which purported to announce record setting financial results for the second quarter
8 of 2003, the period ending June 30, 2003, in part, as follows:
9

10 Based on the company's continued strong operating fundamentals, financial
11 performance and capital generating ability, Washington Mutual's Board of
12 Directors declared a cash dividend of 40 cents per share on the company's
13 common stock, up 33 percent or 10 cents from 30 cents per share in the previous
14 quarter. The company has now increased its cash dividend for 32 consecutive
15 quarters.

16 "The board's decision to significantly increase the cash dividend reflects the
17 overall strength of our business and capital position as well as management's
18 continued commitment to creating shareholder value," said Kerry Killinger, the
19 company's chairman, president and CEO. "In addition, the recent reduction in the
20 tax rate on dividend income allows us to more efficiently return capital to our
21 shareholders."

22 Killinger emphasized that in addition to the higher dividend payout, the company
23 is maintaining its stated growth targets.

24 * * *

25 "Building on first quarter's momentum, Washington Mutual's balanced business
26 model continued to deliver strong results in the second quarter," said Killinger.
"Our record-breaking results reflect the strength of our underlying strategy of
serving the broad middle market. We are extremely proud of the results that our
talented employees have produced."

39. **2Q:03 Form 10-Q.** On or about August 14, 2003, defendants filed with the SEC
the Company's quarterly financial report pursuant to Form 10-Q. The 2Q:03 Form 10-Q also

1 contained representations that the Company maintained adequate systems of internal operational
2 controls as well as adequate systems of risk management and fiscal controls. In addition to the
3 foregoing, the 2Q:03 Form 10-Q also contained certifications by defendants Killinger and Casey
4 purporting to certify the veracity of this report which were substantially similar, if not identical,
5 to those certifications previously executed by these defendants and filed along with the
6 Company's 1Q:03 Form 10-Q.

7
8 40. The statements made by defendants to the investing public during investor
9 conferences in June 2003, as well as those statements contained in the Company's July 15, 2003
10 release and its 2Q:03 Form 10-Q filed with the SEC, referenced above, were each materially
11 false and misleading when made and were known by defendants to be false, or were deliberately
12 disregarded as such thereby at that time, for the reasons stated herein in ¶ 35, *supra*.

13 41. **Realignment.** In an effort to further condition investors to believe that the
14 Company continued to employ sufficient controls and procedures so as to assure the accuracy
15 and truth of the Company's public disclosures, on September 30, 2003, defendants published a
16 release on *Business Wire*, which purported to announce a Realignment "Intended to Drive
17 Growth and Streamline Operations," which stated in part, the following:
18

19 **Washington Mutual Realigns Business Units; Move Intended To Drive Growth
20 and Streamline Operations**

21 In a move that continues its evolution toward becoming America's leading retailer
22 of financial services, Washington Mutual, Inc. (NYSE:WM) announced today its
23 plans to align its principal business units around the company's primary customer
24 groups of retail consumers and commercial clients.

25 The realignment is designed to:
26

1 43. The statements made by defendants to the investing public and contained in the
2 Company's September 30, 2003 release and its October 21, 2003 release, were each materially
3 false and misleading when made and were known by defendants to be false, or were deliberately
4 disregarded as such thereby at that time, for the reasons stated herein in ¶ 35, *supra*.

5 44. **3Q:03 Form 10-Q.** Later, on November 14, 2003, defendants also filed with the
6 SEC the Company's quarterly financial report pursuant to Form 10-Q. In addition to making
7 many of the same, or substantially similar, representations to those made previously on October
8 21, 2003, the 3Q:03 Form 10-Q also contained representations that the Company maintained
9 adequate systems of internal operational controls as well as adequate systems of risk
10 management and fiscal controls. In addition to the foregoing, the 3Q:03 Form 10-Q also
11 contained certifications by defendants Killinger and Casey purporting to certify the truth of the
12 Company's financial statements to certify the veracity of this report which were also
13 substantially similar, if not identical, to those certifications previously executed by these
14 defendants and filed along with the Company's 1Q:03 and 2Q:03 Forms 10-Q.

15
16
17 45. The statements made by defendants and contained in the Company's 3Q:03 Form
18 10-Q filed with the SEC, referenced above, were materially false and misleading when made and
19 were known by defendants to be false, or were deliberately disregarded as such thereby at that
20 time, for the reasons stated herein in ¶ 35, *supra*.

21 46. **Moderate Revision: Continuing Misrepresentations.** On December 9, 2003,
22 Washington Mutual issued a release which purported to reaffirm and moderately adjust
23 defendants' growth initiatives and guidance for 2004, and which also announced massive cost
24 reduction and growth initiatives campaign, in part, as follows:
25
26

1 Washington Mutual, Inc. (NYSE: WM) today announced that in light of lower
2 mortgage loan volume, increasingly competitive pricing in the mortgage market
3 and a greater emphasis on the origination of adjustable-rate mortgages by the
4 company, gain from mortgage loans will be significantly lower in the fourth
5 quarter than in the second quarter of 2003. As a result, the company expects
6 earnings per diluted share for 2003 to range between \$4.15 and \$4.25, up from
7 earnings of \$4.02 per diluted share in 2002.

8 In light of the changed conditions and uncertain outlook for the mortgage market,
9 the company also said it will broaden its outlook for diluted earnings per share for
10 2004 to a range of \$4.30 to \$4.80.

11 "Washington Mutual benefited from extraordinary mortgage volumes over the
12 past few years, which allowed us to fund the expansion of a national retail
13 banking franchise and multi-family lending business while producing solid
14 earnings growth," said Kerry Killinger, chairman, president and chief executive
15 officer, who spoke at the company's investor day in New York. "Now that the
16 mortgage market has clearly slowed, we are adjusting our business to adapt to the
17 new realities of the current environment. Therefore, we are taking steps to
18 substantially reduce operating costs and streamline and improve operations to
19 drive efficiency, enhance customer service and continue the growth of our leading
20 national franchise."

21 Fourth Quarter 2003 Trends

22 The company said its mortgage volume in the fourth quarter is projected to
23 decrease by approximately 50 percent from third quarter levels. Competitive
24 pricing pressure throughout the fourth quarter has also eroded the expected gain
25 from mortgage loans. Washington Mutual's average gain per loan, net of risk
26 management instruments, was 47 basis points in this year's second quarter and is
estimated to decline to approximately 10 basis points in the fourth quarter. In
addition, Washington Mutual has recently placed greater emphasis on the
origination of adjustable-rate mortgages for portfolio, a core strength of the
company, further reducing the opportunity for gain from mortgage loans.

* * *

2004 Plans for Efficiencies, Continued Growth

As part of its organizational realignment, the company has stepped up its plans to
streamline operations, gain added efficiency, and improve operational
performance. Together with the cost savings efforts in the mortgage business,
these initiatives will provide Washington Mutual with opportunities for further
growth in its core consumer and commercial businesses.

1 Key elements of the 2004 plan include:

2 Identifying and eliminating approximately \$1 billion in noninterest expense over a
3 six-quarter time period, beginning in the first quarter of 2004. By mid-2005, the
4 company's actual level of expenses is expected to fully reflect these cost
5 reductions, but also the effects of normal inflation, business volumes, growth
6 initiatives and any potential acquisitions. The \$1 billion of cost reductions
7 represents approximately 13 percent of the company's projected annualized
8 noninterest expense base for the fourth quarter of 2003. The cost reductions will
9 be accomplished by completing the full integration of Washington Mutual's
10 mortgage acquisitions from 2001 and 2002, as well as capturing significant cost
11 saving opportunities company-wide.

12 * * *

13 Implementation of a series of initiatives to drive operational excellence
14 throughout the company to gain added productivity and continuously improve
15 upon the company's customer service levels.

16 "We are instilling a discipline of operational excellence as we work to make
17 further inroads to be a low-cost leader in our industry," Killinger said. "Our
18 management team is now more focused than ever on driving process efficiency
19 and reducing cycle times to improve our operational performance and customer
20 service levels throughout the organization."

21 47. The statements made by defendants and contained in the Company's December 9,
22 2003 release, referenced above, were each materially false and misleading when made and were
23 known by defendants to be false, or were deliberately disregarded as such thereby at that time,
24 for the reasons stated herein in ¶ 35, *supra*.

25 48. **Moderate Analysts Revisions.** As evidence that defendants' December 9, 2003
26 release did not communicate to investors the true scope of the adverse conditions which were the
adversely impacting the Company, immediately following the publication of this release, Fitch
debt rating service did not lower its rating on the Company's debt or adjust its credit rating in
any way. Moreover, at that time, analysts at Citigroup and USBancorp, among others, only
moderately adjusted their EPS estimates and near term price targets to account for defendants'

1 minor revisions. Accordingly, at that time, Citigroup lowered its 2003 estimate to \$4.18 per
2 share, from \$4.40, and 2004 EPS estimate to \$4.35, from \$4.76 per share; lowering its near-term
3 market cap estimate to approximately **\$44 billion**. USBancorp lowered its 2003 and 2004 EPS
4 estimates to \$4.18 and \$4.40, respectively, from \$4.41 and \$4.75, respectively; lowering its near-
5 term price target to \$42 per share, representing a market capitalization forecast of approximately
6 **\$42 billion**.

7
8 **49. 4Q and FY:03 Results.** On January 20, 2004, Washington Mutual published a
9 release on *Business Wire* which purported to announce record setting financial results for the
10 fourth quarter and full year 2003, the period ending December 31, 2003, as follows:

11 "The fourth quarter of 2003 brought to a close a successful year in which we
12 continued to profitably expand our key businesses nationally and enhance the
13 value of our franchise," said Kerry Killinger, the company's chairman, president
14 and CEO. "We continued to see marked improvement in our credit position as
15 the year progressed as well. While 2003 was a solid year for our company, rising
16 interest rates for mortgages in the second half of the year placed pressure on our
17 business results. Our management team is meeting the challenge head on, as
18 reflected in the \$180 million of technology write-downs and severance charges
19 taken during the fourth quarter, and we expect our efforts to reduce costs will
20 contribute to our results in 2004."

21 BOARD OF DIRECTORS INCREASES CASH DIVIDEND

22 Based on the company's continued strong operating fundamentals and financial
23 performance, Washington Mutual's Board of Directors declared a cash dividend
24 of 42 cents per share on the company's common stock, up from 41 cents per share
25 in the previous quarter. Dividends on the common stock are payable on February
26 13, 2004 to shareholders of record as of January 30, 2004.

27
28 **50. FY:2003 Form 10-K.** On or about March 15, 2004, defendants filed with the
29 SEC the Company's year end financial report pursuant to Form 10-K. In addition to making
30 many of the same or substantially similar representations to those made previously on January
31 20, 2004, the FY:2003 Form 10-K also contained representations that the Company maintained

1 adequate systems of internal operational controls as well as adequate systems of risk
2 management and fiscal controls. In addition to the foregoing, the FY:2003 Form 10-K also
3 contained certifications by defendants Killinger and Casey purporting to certify the veracity of
4 this report which were also substantially similar, if not identical, to those certifications
5 previously executed by these defendants during the Class Period.

6 51. The statements made by defendants and contained in the Company's January 20,
7 2004 release and in its FY:2003 Form 10-K filed with the SEC, referenced above, were each
8 materially false and misleading when made and were known by defendants to be false, or were
9 deliberately disregarded as such thereby at that time, for the reasons stated herein in ¶ 35, *supra*.

10 52. **1Q:04 Results.** On April 19, 2004, Washington Mutual published a release on
11 *Business Wire* which purported to announce continued strong financial results for the first
12 quarter of 2004, the period ending March 31, 2004, as follows:

13
14 Based on the company's continued strong operating fundamentals and financial
15 performance, Washington Mutual's Board of Directors declared a cash dividend
16 of 43 cents per share on the company's common stock, up from 42 cents per share
17 previously. Dividends on the common stock are payable on May 14, 2004 to
shareholders of record as of April 30, 2004.

18 **Key highlights:**

19 The company's results were led by strong growth in its Retail Banking and
20 Financial Services business, whose net income increased by 23 percent year over
year;

21 The net interest margin remained essentially unchanged at 2.89 percent due to
22 stable short-term rates and the company's successful interest rate risk
management activities.

23 53. **1Q:04 Form 10-Q.** On or about May 10, 2004, defendants also filed with the
24 SEC the Company's quarterly financial report pursuant to Form 10-Q. In addition to making
25
26

1 many of the same, or substantially similar, representations to those made previously on April 19,
2 2004, the 1Q:04 Form 10-Q also contained representations that the Company maintained
3 adequate systems of internal operational controls as well as adequate systems of risk
4 management and fiscal controls. In addition to the foregoing, the 1Q:04 Form 10-Q also
5 contained certifications by defendants Killinger and Casey purporting to certify truth of the
6 Company's financial statements which were also substantially similar, if not identical, to those
7 certifications previously executed by these defendants during the Class Period.
8

9 54. The statements made by defendants and contained in the Company's April 19,
10 2004 release and its 1Q:04 Form 10-Q filed with the SEC, referenced above, were each
11 materially false and misleading when made and were known by defendants to be false, or were
12 deliberately disregarded as such thereby at that time, for the reasons stated herein in ¶ 35, *supra*.
13

14 **THE TRUE FINANCIAL AND OPERATIONAL CONDITION**
15 **OF WASHINGTON MUTUAL IS DISCLOSED**

16 55. On June 29, 2004, Washington Mutual issued a release which surprised and
17 alarmed investors. On that day, defendants suddenly announced a very significant earnings and
18 net income shortfall which far exceeded any guidance previously sponsored and endorsed by
19 defendants, as follows:

20 Washington Mutual Adjusts Earnings Outlook for 2004; Rising Interest Rates
21 Impact Mortgage Banking; Growth in Retail Banking & Financial Services
22 Continues

23 Washington Mutual, Inc. (NYSE: WM) today announced that expectations *for a*
24 *sustained increase in long-term interest rates will significantly impact the*
25 *company's Mortgage Banking business resulting in 2004 earnings below*
26 *previous guidance*. Higher interest rates have lowered the company's mortgage
production expectations at a time when cost reduction plans have not yet fully
taken effect. The rise in interest rates is not expected to have a material effect on

1 the 2004 performance of the company's Retail Banking & Financial Services and
Commercial Group businesses.

2 "It now appears to us that the shift in the interest rate environment in recent
3 months, with a sharp increase in long-term rates and a related reduction in
4 mortgage volumes, will continue through the rest of the year. The effects of these
5 changes are likely to outpace the timing of ongoing cost reduction plans in our
Mortgage Banking business," said Kerry Killinger, Chairman, President and Chief
Executive Officer.

6 "We're disappointed in this change in our 2004 outlook and we will not be
7 satisfied until we have completed the resizing of our expense base and improved
8 the efficiency and performance of our Mortgage Banking business," continued
Killinger. "At the same time, we will remain focused on executing our core
9 middle-market retail strategy."

10 ***Earnings for the full year are now estimated to range from \$3.00 to \$3.60 per
diluted share.***

11 The following table provides additional detail on the company's expectations
12 regarding 2004 earnings composition, based upon the company's operating
13 segment reporting. The 2004 estimate range is based on the assumption that the
14 Fed Funds rate will increase gradually by between 75 and 125 basis points during
the second half of the year and that the 10-year treasury yield will end the year
between 4.5 percent and 5.0 percent:

	Earnings Per Diluted Share		
	2003 Actual	1Q04 Actual	2004 Estimate
Mortgage Banking	\$1.44	\$0.25	\$(0.15)-\$0.35
Rest of Washington Mutual	\$2.77	\$0.93	\$ 3.15 - \$3.25
Total	\$4.21	\$1.18	\$ 3.00 - \$3.60

15
16
17
18
19 **56. \$5.0 Billion in Market Cap. Eviscerated.** Following the publication of the
20 Company's surprising and belated release, shares of the Company fell precipitously, *reducing its*
21 *market capitalization by nearly \$5 billion in after-market trading.* Washington Mutual
22 common shares fell to \$36.50 per share, from a closing price of \$41.31 per share on June 29,
23 2004; a decline of nearly 12%. The decline in the price of the Company's common shares also
24 had a dramatic, negative impact on the value of the Company's options and other securities.
25
26

1 57. The market for Washington Mutual's securities was open, well-developed and
2 efficient at all relevant times. As a result of these materially false and misleading statements and
3 failures to disclose, Washington Mutual securities traded at artificially inflated prices during the
4 Class Period. Plaintiff and other members of the Class purchased or otherwise acquired
5 Washington Mutual securities and/or sold put options relying upon the integrity of the market
6 price of Washington Mutual securities and market information relating to Washington Mutual,
7 and have been damaged thereby.

8
9 58. During the Class Period, defendants materially misled the investing public,
10 thereby inflating the price of Washington Mutual securities by publicly issuing false and
11 misleading statements and omitting to disclose material facts necessary to make defendants'
12 statements, as set forth herein, not false and misleading. Said statements and omissions were
13 materially false and misleading in that they failed to disclose material adverse information and
14 misrepresented the truth about the Company, its business and operations, as alleged herein.

15
16 59. At all relevant times, the material misrepresentations and omissions particularized
17 in this Complaint directly or proximately caused or were a substantial contributing cause of the
18 damages sustained by plaintiff and other members of the Class. As described herein, during the
19 Class Period, defendants made or caused to be made a series of materially false or misleading
20 statements about Washington Mutual's business, prospects and operations. These material
21 misstatements and omissions had the cause and effect of creating in the market an unrealistically
22 positive assessment of Washington Mutual and its business, prospects and operations, thus
23 causing the Company's securities to be overvalued and artificially inflated at all relevant times.
24 Defendants' materially false and misleading statements during the Class Period resulted in
25
26

1 plaintiff and other members of the Class purchasing the Company's securities and/or selling put
2 options at artificially inflated prices, thus causing the damages complained of herein.

3 **Applicability Of Presumption Of Reliance:**
4 **Fraud-On-The-Market Doctrine**

5 60. At all relevant times, the market for Washington Mutual's securities was an
6 efficient market for the following reasons, among others:

7 (a) Washington Mutual's securities met the requirements for listing, and was
8 listed and actively traded on the New York Stock Exchange, a highly efficient and automated
9 market;

10 (b) As a regulated issuer, Washington Mutual filed periodic public reports
11 with the SEC and the New York Stock Exchange;

12 (c) Washington Mutual regularly communicated with public investors *via*
13 established market communication mechanisms, including through regular disseminations of
14 press releases on the national circuits of major newswire services and through other wide-
15 ranging public disclosures, such as communications with the financial press and other similar
16 reporting services; and

17 (d) Washington Mutual was followed by several securities analysts employed
18 by major brokerage firm(s) who wrote reports which were distributed to the sales force and
19 certain customers of their respective brokerage firm(s). Each of these reports was publicly
20 available and entered the public marketplace.

21 61. As a result of the foregoing, the market for Washington Mutual securities
22 promptly digested current information regarding Washington Mutual from all publicly available
23 sources and reflected such information in Washington Mutual securities prices. Under these
24
25
26

1 circumstances, all purchasers and/or sellers of Washington Mutual securities during the Class
2 Period suffered similar injury through their purchase of Washington Mutual securities and/or sale
3 of put options at artificially inflated prices and a presumption of reliance applies.

4 5 **NO SAFE HARBOR**

6 62. The statutory safe harbor provided for forward-looking statements under certain
7 circumstances does not apply to any of the allegedly false statements pleaded in this complaint.
8 Many of the specific statements pleaded herein were not identified as "forward-looking
9 statements" when made. To the extent there were any forward-looking statements, there were no
10 meaningful cautionary statements identifying important factors that could cause actual results to
11 differ materially from those in the purportedly forward-looking statements. Alternatively, to the
12 extent that the statutory safe harbor does apply to any forward-looking statements pleaded
13 herein, defendants are liable for those false forward-looking statements because at the time each
14 of those forward-looking statements was made, the particular speaker knew that the particular
15 forward-looking statement was false, and/or the forward-looking statement was authorized
16 and/or approved by an executive officer of Washington Mutual who knew that those statements
17 were false when made.
18

19 20 **BASIS OF ALLEGATIONS**

21 63. Plaintiff has alleged the following based upon the investigation of plaintiff's
22 counsel, which included a review of SEC filings by Washington Mutual, as well as regulatory
23 filings and reports, securities analysts' reports and advisories about the Company, press releases
24 and other public statements issued by the Company, and media reports about the Company, and
25
26

1 plaintiff believes that substantial additional evidentiary support will exist for the allegations set
2 forth herein after a reasonable opportunity for discovery.

3
4 **FIRST CLAIM**

5 **Violation Of Section 10(b) Of**
6 **The Exchange Act And Rule 10b-5**
7 **Promulgated Thereunder Against All Defendants**

8 64. Plaintiff repeats and realleges each and every allegation contained above as if
9 fully set forth herein.

10 65. During the Class Period, defendants carried out a plan, scheme and course of
11 conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing
12 public, including plaintiff and other Class members, as alleged herein; and (ii) caused plaintiff
13 and other members of the Class to purchase Washington Mutual securities and/or sell put options
14 at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct,
15 defendants, jointly and individually (and each of them,) took the actions set forth herein.

16 66. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made
17 untrue statements of material fact and/or omitted to state material facts necessary to make the
18 statements not misleading; and (c) engaged in acts, practices, and a course of business which
19 operated as a fraud and deceit upon the purchasers of the Company's securities and/or sellers of
20 put options in an effort to maintain artificially high market prices for Washington Mutual's
21 securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are
22 sued either as primary participants in the wrongful and illegal conduct charged herein or as
23 controlling persons as alleged below.
24
25
26

1 67. Defendants, individually and in concert, directly and indirectly, by the use, means
2 or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
3 continuous course of conduct to conceal adverse material information about the business,
4 operations and future prospects of Washington Mutual as specified herein.

5 68. These defendants employed devices, schemes and artifices to defraud, while in
6 possession of material adverse non-public information and engaged in acts, practices, and a
7 course of conduct as alleged herein in an effort to assure investors of Washington Mutual's value
8 and performance and continued substantial growth, which included the making of, or the
9 participation in the making of, untrue statements of material facts and omitting to state material
10 facts necessary in order to make the statements made about Washington Mutual and its business
11 operations and future prospects in the light of the circumstances under which they were made,
12 not misleading, as set forth more particularly herein, and engaged in transactions, practices and a
13 course of business which operated as a fraud and deceit upon the purchasers of Washington
14 Mutual securities during the Class Period.
15

16 69. Each of the Individual Defendants' primary liability, and controlling person
17 liability, arises from the following facts: (i) the Individual Defendants were high-level executives
18 and/or directors at the Company during the Class Period and members of the Company's
19 management team or had control thereof; (ii) each of these defendants, by virtue of his
20 responsibilities and activities as a senior officer and/or director of the Company was privy to and
21 participated in the creation, development and reporting of the Company's internal budgets, plans,
22 projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and
23 familiarity with the other defendants and was advised of and had access to other members of the
24
25
26

1 Company's management team, internal reports and other data and information about the
2 Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants
3 was aware of the Company's dissemination of information to the investing public which they
4 knew or deliberately disregarded was materially false and misleading.

5 70. The defendants had actual knowledge of the misrepresentations and omissions of
6 material facts set forth herein, or acted with deliberate disregard for the truth in that they failed to
7 ascertain and to disclose such facts. Such defendants' material misrepresentations and/or
8 omissions were done knowingly or deliberately and for the purpose and effect of concealing
9 Washington Mutual's operating condition and future business prospects from the investing
10 public and supporting the artificially inflated price of its securities. As demonstrated by
11 defendants' overstatements and misstatements of the Company's business, operations and
12 earnings throughout the Class Period, defendants, if they did not have actual knowledge of the
13 misrepresentations and omissions alleged, deliberately disregarded their obligation to obtain such
14 knowledge by deliberately refraining from taking those steps necessary to discover whether those
15 statements were false or misleading.
16
17

18 71. As a result of the dissemination of the materially false and misleading information
19 and failure to disclose material facts, as set forth above, the market price of Washington Mutual
20 securities was artificially inflated during the Class Period. In ignorance of the fact that market
21 prices of Washington Mutual's publicly-traded securities was artificially inflated, and relying
22 directly or indirectly on the false and misleading statements made by defendants, or upon the
23 integrity of the market in which these securities trade, and/or on the absence of material adverse
24 information that was known to or deliberately disregarded by defendants but not disclosed in
25
26

1 public statements by defendants during the Class Period, plaintiff and the other members of the
2 Class acquired and/or sold Washington Mutual securities during the Class Period at artificially
3 high prices and were damaged thereby.

4 72. At the time of said misrepresentations and omissions, plaintiff and other members
5 of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the
6 other members of the Class and the marketplace known the truth regarding the problems that
7 Washington Mutual was experiencing, which were not disclosed by defendants, plaintiff and
8 other members of the Class would not have purchased or otherwise acquired their Washington
9 Mutual securities, or, if they had acquired such securities during the Class Period, and/or if they
10 had sold put options, they would not have done so at the artificially inflated prices.

12 73. By virtue of the foregoing, defendants have violated Section 10(b) of the
13 Exchange Act, and Rule 10b-5 promulgated thereunder.

14 74. As a direct and proximate result of defendants' wrongful conduct, plaintiff and
15 the other members of the Class suffered damages in connection with their respective purchases
16 and sales of the Company's securities during the Class Period.

18 **SECOND CLAIM**

19 **Violation Of Section 20(a) Of**
20 **The Exchange Act Against Individual Defendants**

21 75. Plaintiff repeats and realleges each and every allegation contained above as if
22 fully set forth herein.

23 76. The Individual Defendants acted as controlling persons of Washington Mutual
24 within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their
25
26

1 high-level positions, and their ownership and contractual rights, participation in and/or
2 awareness of the Company's operations and/or intimate knowledge of the false financial
3 statements filed by the Company with the SEC and disseminated to the investing public, the
4 Individual Defendants had the power to influence and control and did influence and control,
5 directly or indirectly, the decision-making of the Company, including the content and
6 dissemination of the various statements which plaintiff contends are false and misleading. The
7 Individual Defendants were provided with or had unlimited access to copies of the Company's
8 reports, press releases, public filings and other statements alleged by plaintiff to be misleading
9 prior to and/or shortly after these statements were issued and had the ability to prevent the
10 issuance of the statements or cause the statements to be corrected.
11

12 77. In particular, each of these defendants had direct and supervisory involvement in
13 the day-to-day operations of the Company and, therefore, is presumed to have had the power to
14 control or influence the particular transactions giving rise to the securities violations as alleged
15 herein, and exercised the same.
16

17 78. As set forth above, Washington Mutual and the Individual Defendants each
18 violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint.
19 By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant
20 to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful
21 conduct, plaintiff and other members of the Class suffered damages in connection with their
22 purchases and/or sales of the Company's securities during the Class Period.
23

24 **WHEREFORE**, plaintiff prays for relief and judgment, as follows:
25
26

1 A. Determining that this action is a proper class action, designating plaintiff
2 as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal
3 Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;

4 B. Awarding compensatory damages in favor of plaintiff and the other Class
5 members against all defendants, jointly and severally, for all damages sustained as a result of
6 defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

7 C. Awarding plaintiff and the Class their reasonable costs and expenses
8 incurred in this action, including counsel fees and expert fees;

9 D. Awarding extraordinary, equitable and/or injunctive relief as permitted by
10 law, equity and the federal statutory provisions sued hereunder, pursuant to Rules 64 and 65 and
11 any appropriate state law remedies to assure that the Class has an effective remedy; and
12

13 E. Such other and further relief as the Court may deem just and proper.
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: July 20, 2004