

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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| <i>In re</i> | : | Chapter 11 |
| | : | |
| WASHINGTON MUTUAL, INC., <i>et al.</i> , ¹ | : | Case No. 08-12229 (MFW) |
| | : | |
| Debtors. | : | Jointly Administered |
| | : | |
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| WASHINGTON MUTUAL, INC. and | : | |
| WMI INVESTMENT CORP., | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| – and – | : | |
| | : | |
| THE OFFICIAL COMMITTEE OF | : | |
| UNSECURED CREDITORS OF | : | |
| WASHINGTON MUTUAL, INC. AND | : | |
| WMI INVESTMENT CORP. | : | Adversary Proceeding No. 09-50934 (MFW) |
| | : | |
| Intervenor Plaintiff, | : | |
| | : | |
| – v – | : | |
| | : | |
| JPMORGAN CHASE BANK, | : | |
| NATIONAL ASSOCIATION | : | |
| | : | |
| Defendant. | : | |
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**STATEMENT OF THE WASHINGTON MUTUAL, INC. NOTEHOLDERS GROUP
IN OPPOSITION TO (A) THE MOTION OF INTERVENOR-DEFENDANT FEDERAL
DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR WASHINGTON
MUTUAL BANK, TO STAY OR DISMISS THE ADVERSARY COMPLAINT, AND**

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 1301 Second Avenue, Seattle, Washington 98101.



(B) THE MOTION OF DEFENDANT JPMORGAN CHASE BANK, NATIONAL ASSOCIATION FOR STAY OF DEBTORS' ADVERSARY PROCEEDING

The Washington Mutual, Inc. Noteholders Group (the “Noteholders Group”), which collectively holds at least \$3.3 billion in face amount of outstanding debt securities issued by Debtor Washington Mutual, Inc. (with WMI Investment Corp., the “Debtors”), hereby submits this statement pursuant to section 1109 of the Bankruptcy Code in opposition to JPMorgan Chase Bank, National Association’s (“JPMorgan”) motion seeking to stay this adversary proceeding in which the Debtors seek a turnover of property of the estates (the “Turnover Action”) and the Federal Deposit Insurance Corporation’s, as receiver for Washington Mutual Bank (“FDIC”), motion seeking to intervene and to stay or dismiss the Turnover Action (the “Motions”).² The members of the Noteholders Group are collectively the principal stakeholders in these chapter 11 cases and have a bona fide interest in protecting the assets of the estates and ensuring maximum value for creditors. Accordingly, the Noteholders Group joins in the Debtors’ and the Official Committee of Unsecured Creditors’ opposition to the Motions and submits this statement in further support of their opposition.

1. JPMorgan and the FDIC seek a stay to effectively defeat this Court’s fundamental purpose of protecting assets of a bankruptcy estate and in the process derail these chapter 11 cases. As set forth in the Debtors’ adversary complaint and summary judgment papers, the property at issue in this turnover proceeding—over \$4 billion in demand deposits made in Debtors’ names (the “Deposits”)—represent core assets of the estates. The basis for this proceeding is that JPMorgan is, in effect, refusing to honor a withdrawal request by its

² JPMorgan has filed a motion to stay the Turnover Action. [Docket No. 31] The FDIC has filed a motion and two briefs: one brief in support of its motion to intervene in the Turnover Action [Docket No. 28], and one in support of its motion to stay or dismiss the Turnover Action and to stay the adversary proceeding brought by JPMorgan (Adversary Proceeding No. 09-50551) (the “JPMorgan Adversary Proceeding”) [Docket No. 29, Exhibit A]. The Noteholders Group opposes all of these motions—JPM’s motion to stay the Turnover Action, the FDIC’s motion to intervene in the Turnover Action and the FDIC’s motion to stay or dismiss the Turnover Action—and join in the Debtors and the Official Committee of Unsecured Creditors’ opposition to those motions.

depositors. Thus, this turnover proceeding seeks to have JPMorgan pay a debt owed to these Debtors' estates and is therefore a core bankruptcy dispute within this Court's exclusive bankruptcy jurisdiction. *See, e.g.*, 28 U.S.C. § 1334(e)(1) (providing that the bankruptcy court has "exclusive jurisdiction of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate . . .").

2. The Court must retain its exclusive jurisdiction over the determination of the Deposits as core assets of the estates. Simply put, the Deposits represent one of the most significant assets of these estates. Thus, the Court's resolution of this turnover action will have a substantial and material impact on the main bankruptcy proceedings. In fact, retention of jurisdiction over the resolution of the Deposit disputes will not only serve to resolve such disputes, but will also permit the parties in interest in these cases to advance a plan of reorganization. The plan process remains the best forum and opportunity to foster an ultimate resolution of the material issues facing these estates, including potential resolution of the Debtors' pending action against the FDIC in the District Court for the District of Columbia (the "DC Action"). While there can be no assurance that the plan process will in fact result in a complete resolution of all such issues, ceding jurisdiction over the Deposits will almost certainly forfeit any chance for an expeditious resolution of these cases and likely leave the cases at an effective standstill, mired in years of protracted litigation.

3. JPMorgan and the FDIC's contentions regarding certain peripheral claims and litigation issues are no basis for granting a stay and delaying resolution of these cases. The appropriate resolution of those issues can be addressed in a number of ways at another time. For now, the Court should retain its exclusive jurisdiction over the Deposits to ensure these cases move forward and that issues related to essential assets of the estates are resolved. Not only will this assist the Debtors and stakeholders move towards a plan that maximizes benefits to

creditors, it will also likely facilitate the resolution of some if not all of the issues raised by JPMorgan and the FDIC.

4. JPMorgan and the FDIC's attempts to dismiss this adversary proceeding are similarly flawed. First, the FDIC contends that the Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA") strips this Court of its core jurisdiction over property of the estate held, not by the FDIC, but by a third party JPMorgan. To the contrary, FIRREA only applies to claims against the FDIC for assets in receivership. Here, the Debtors seek to recover assets, including \$4 billion in deposits, which rightfully belong in the estates and fall under this Court's exclusive jurisdiction. 28 U.S.C. § 1334(e)(1). The Debtors' turnover claim is directed not against the FDIC but against JPMorgan, which assumed liability for Debtors' accounts as successor to Washington Mutual Bank and its subsidiary bank, Washington Mutual Bank fsb ("WMB fsb"). Indeed, approximately \$3.67 billion of the approximately \$4 billion in deposits are in an account that JPMorgan administers as successor to WMB fsb, an entity that was never in receivership. Furthermore, even if this Court were to construe the claims asserted in the adversary proceedings as claims relating to the FDIC, FIRREA does not strip this Court of its exclusive jurisdiction to decide in the first instance whether, as Debtors' have demonstrated, the Deposits qualify as estate assets. The Court should not simply defer to the FDIC and allow the FDIC to dictate the forum for the disposition of core assets of the estates.

5. Second, the FDIC seeks to apply the "first-filed" rule to stay this proceeding in deference to the DC Action. The first-filed rule does not apply here because the two cases are not duplicative or "on all fours." The Debtors filed the DC Action as required by statute to challenge the FDIC's disallowance of claims in connection with the receivership and seek certain

damages. The Debtors do not seek to recover assets of the estates in that action.³ Instead, the Debtors filed this turnover action pursuant to this Court's exclusive jurisdiction over the assets of the estates. Alternatively, there is ample reason for the Court to exercise its discretion to retain jurisdiction. This action has progressed much further than the DC Action and should be allowed to continue to resolution. The parties have appeared before this Court on this matter, JPMorgan has filed and the parties have briefed a Motion to Dismiss, and the Debtors have filed a Motion for Summary Judgment with voluminous evidence demonstrating that the Deposits are assets of the estates and should be turned over. In contrast, the FDIC only just filed responsive pleadings in the DC Action and JPMorgan's motion to intervene is still pending. Moreover, litigation in the district court is notoriously lengthy and time-consuming. Thus, ceding jurisdiction to the district court will only further delay these cases and impairs Debtors' ability to administer the estates, while also depriving the Debtors and stakeholders of the ability to move forward with an estate plan for the ultimate resolution of these cases and for the benefit of creditors.

6. For these reasons and those set forth in the Debtors' and the Official Committee of Unsecured Creditors' oppositions, the Court should deny the Motions and allow this adversary proceeding to continue to a resolution.

7. The Noteholders Group hereby expressly reserves and does not waive its rights to seek to intervene in this adversary proceeding and to seek such other and further relief as may be just and appropriate.

³ The claims and allegations asserted against the FDIC in the DC Action that relate to the Deposits were included to preserve the estates' recovery against the FDIC for damages in the event that the Debtors' claims for the Deposits were compromised or modified by this Court. Thus, in the DC Action the Debtors only asserted a protective claim for damages related to the Deposits which is predicated on this Court retaining its jurisdiction and resolving this Turnover Action.

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