

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re : Chapter 11
: :
WASHINGTON MUTUAL, INC., *et al.* : Case No. 08-12229 (MFW)
: :
Debtors¹ : Jointly Administered
: :
JPMORGAN CHASE BANK, :
NATIONAL ASSOCIATION, : Adv. Pro. No. 09-50551 (MFW)
: :
Plaintiff, :
: :
v. :
: :
WASHINGTON MUTUAL, INC. AND :
WMI INVESTMENT CORP., :
: :
Defendant for all claims: :
: :
– and – :
: :
FEDERAL DEPOSIT INSURANCE :
CORPORATION, :
: :
Additional Defendant: :
for Interpleader claim.: :
: :
X

WASHINGTON MUTUAL, INC. AND :
WMI INVESTMENT CORP., : Adv. Pro. No. 09-50934 (MFW)
: :
Plaintiffs, :
: :
v. :
: :
X

¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors continue to share the principal offices with the employees of JPMorgan Chase located at 1301 Second Avenue, Seattle, Washington 98101.



JPMORGAN CHASE BANK, :
NATIONAL ASSOCIATION, :
 :
 :
 Defendant. :
_____ X

MOTION OF JPMORGAN CHASE BANK, NATIONAL ASSOCIATION FOR DETERMINATION WITH RESPECT TO WHETHER MATTERS ARE CORE OR NON CORE AND STATEMENT WITH RESPECT TO MOTION TO WITHDRAW THE REFERENCE

JPMorgan Chase Bank, National Association (“JPMC”), by and through its undersigned counsel, submits this statement in connection with its Motion For Withdrawal of the Reference of the Adversary Proceedings (the “Withdrawal Motion”), a true and correct copy of which is attached as Exhibit A.² JPMC hereby requests that this Court determine whether the matters at issue in the Adversary Proceedings are core or non-core as required by Local Rule 5011-1. In support of that request, JPMC respectfully states as follows:

As required by Local Rule 5011-1, JPMC has concurrently filed the Withdrawal Motion with the Clerk of this Court for transmission to the United States District Court for the District of Delaware (the “Delaware District Court”) in order to withdraw the reference with respect to the two above-captioned adversary proceedings (the “Adversary Proceedings”).³ For the reasons set forth in the Withdrawal Motion, withdrawal of the reference with respect to the Adversary Proceedings is required under 11 U.S.C. § 157(d). In the alternative, for the reasons

² Terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Withdrawal Motion.

³ If the reference is withdrawn, JPMC will move to transfer the Adversary Proceedings to the United States District Court for the District of Columbia (the “DC Court”). For the convenience of the Court, attached to the Memorandum of Law in Support of the Motion of JPMC for Withdrawal of the Reference of the Adversary Proceedings Pursuant to U.S.C. § 157(d) is a proposed Motion to Transfer Adversary Proceedings to the District of Columbia.

explained fully in those motions, permissive withdrawal of the Adversary Proceedings also is appropriate under 11 U.S.C. § 157(d).

JPMC's filing of the Withdrawal Motion at this time is a consequence of the counterclaims filed by the Debtors in the JPMC Adversary Proceeding on May 29, 2009. Although JPMC in prior pleadings reserved the right to bring these Motions, in light of the recent filing of Debtors' counterclaims JPMC determined that it was important to file the Withdrawal Motion in advance of the hearing scheduled for June 24, 2009 so that there would not be any question about delay and so that the Court will be aware of the Withdrawal Motion when it decides the matters that are scheduled to be considered on June 24, 2009. These related matters include the FDIC's motion to stay the Adversary Proceedings and JPMC's request, in connection with the FDIC's motion, that the Court transfer the Adversary Proceedings to the DC Court as a preferred alternative to staying them.

The counterclaims recently filed by the Debtors in this Court substantially implicate federal non-bankruptcy law—Title 12—and involve the very same facts, circumstances and assets that are at issue before the DC Court. The Debtors' counterclaims overlap substantially with the claims originally filed by the Debtors in the D.C. Court and the counterclaims filed by the FDIC-Receiver in that action on June 11, 2009. The Debtors' counterclaims filed in this Court, like the Debtors' claims in the D.C. Action, directly challenge and put at issue the FDIC's receivership ("FDIC-Receiver") of Washington Mutual Bank, Henderson, Nevada ("WMB"), the sale of assets by the FDIC-Receiver to JPMC, and the disallowance of the claims filed by Debtors with the FDIC-Receiver. Thus, the claims and counterclaims in the D.C. Action directly implicate and materially affect JPMC's interests,

crystallizing the risk that JPMC and the assets it purchased from the FDIC-Receiver may be subject to inconsistent determinations in different federal courts.

Irrespective of the core/non-core determination, the reference must be mandatorily withdrawn because the Debtors have put at issue in their counterclaims the very core of Title 12's insolvency regime and the receivership proceeding by claiming that JPMC's acquisition from the FDIC-Receiver can be avoided as a fraudulent transfer.⁴ Notwithstanding WMI's bankruptcy and the creation of its estate under Title 11 of the United States Code, the Debtors' counterclaims and claims in this Court go well beyond a determination of the legal, equitable or beneficial ownership, setoff or other interests in specific assets, as between the Debtors and JPMC, but instead challenge the transactions entered into by WMI and WMB under regulation by the Office of Thrift Supervision ("OTS"), the entire FDIC receivership of WMB, and the transaction entered into by the FDIC-Receiver with JPMC. Simply put, there can be no resolution of the Adversary Proceedings without substantial consideration of Title 12 and therefore withdrawal is mandatory under 11 U.S.C. § 157(d).

JPMC, like the FDIC, believes that the jurisdictional bar imposed by FIRREA, 12 U.S.C. § 1821(d)(13)(D), requires that the disputes, as framed, be adjudicated by the DC Court. As JPMC stated in its Response to the FDIC's Motion to Stay Adversary Proceedings, "transfer to the D.C. Action is the best way to effectuate . . . the Title 12 Jurisdictional Bar. In addition, mandatory withdrawal of the Adversary Proceedings is required because the Debtors' claims asserted in the Adversary Proceedings raise substantial and material issues under the federal

⁴ The counterclaim by this Title 11 estate to avoid a sale conducted by a receiver under Title 12—whether asserted under 11 U.S.C. § 548 or § 544 and applicable state law—is the clearest example among the counterclaims as to which the reference must be withdrawn and the Adversary Proceeding transferred to the DC Court. That claim is the Tenth Counterclaim in the Debtors' Answer and Counterclaims In Response to the Complaint of JPMorgan Chase, N.A.

banking laws. Alternatively, JPMC supports a stay of its Adversary Proceeding at this juncture, on the expectation that the District Court of the District of Columbia will permit its intervention in the DC Action and resolve most (if not all) of the parties claims.” (Response of Plaintiff JPMorgan Chase Bank, National Association, to Defendant Federal Deposit Insurance Corporation’s Motion to Stay Adversary Proceedings, p. 2.)

The nature of the disputes among the parties—including whether assets were property of the receivership estate under Title 12 that passed to JPMC or whether those assets were property of WMI and these estates under Title 11—makes withdrawal of the reference mandatory irrespective of whether these matters are core or non-core. In contrast, a determination of permissive withdrawal includes consideration by this Court concerning whether the subject proceedings are core or non-core. Accordingly, to the extent pertinent to determine permissive withdrawal, JPMC respectfully requests that this Court determine whether the Adversary Proceedings are core or non-core matters under 28 U.S.C. § 157(b).

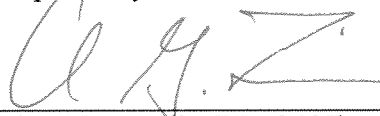
JPMC believes that at least some of the matters at issue in the Adversary Proceedings are core proceedings. However, certain of the issues raised by the counterclaims are not “core proceedings arising under Title 11” within the meaning of 28 U.S.C. § 157(b)(1) because they necessarily “arise under” Title 12 and their resolution requires substantial consideration and determination of fundamental issues under that title. To the extent the Court makes such a determination as part of its consideration of whether a permissive withdrawal of the reference is appropriate, JPMC does not object to the characterization of the Adversary Proceedings as core or non-core; as in its Complaint, JPMC takes no position on which of the disputes among the parties is core or non-core. Instead, JPMC submits that permissive withdrawal of the reference would be appropriate in deference to the Title 12 receivership

proceeding and the DC Action, as a matter of judicial efficiency and as a matter of fairness to the parties in order to avoid inconsistent determinations.

Accordingly, JPMC respectfully requests that this Court (a) make any determinations as to the core/non-core nature of the matters that may be required for the Delaware District Court to withdraw the reference and transfer the Adversary Proceedings to the DC Court; and (b) grant such other and further relief as the Court deems just and appropriate.

Dated: June 23, 2009
Wilmington, Delaware

Respectfully submitted,



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