UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	Chapter 11
WASHINGTON MUTUAL, INC., *et al.*,[1]	:	Case No. 08-12229 (MFW)
Debtors.	:	Jointly Administered
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	Adversary Proceeding No. 09-50934 (MFW)
Plaintiffs and Counterclaim Defendants,	:	
v.	:	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
Defendant and Counterclaimant.	:	

[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, Cross-Claimant, v. FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver of Washington Mutual Bank, Henderson, Nevada, Cross-Claim Defendant.	:

OPENING BRIEF OF DEFENDANT JPMORGAN CHASE BANK, N.A. IN SUPPORT OF ITS MOTION TO STRIKE AFFIDAVIT OF DOREEN LOGAN

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Defendant JPMorgan Chase Bank, National Association ("JPMC") submits this brief in support of its Motion to Strike the Affidavit of Doreen Logan ("Logan Affidavit"), which constitutes the sole evidentiary support submitted by Debtors Washington Mutual, Inc. and Washington Mutual Investment Corp. (collectively, "Debtors" or "WMI") in support of their motion for summary judgment. Because Debtors have refused to make Ms. Logan available to be cross-examined about her affidavit, under settled law the affidavit may not properly be considered on the Debtors' summary judgment motion and should be stricken.

SUMMARY OF ARGUMENT

Even before an answer had been filed in this action, before a discovery conference had taken place or a discovery schedule set, and before any discovery was even permitted (much less had occurred), Debtors moved for summary judgment seeking to determine their entitlement to recover almost $4 billion from JPMC as a "deposit liability." The sole factual foundation for Debtors' motion is the affidavit of WMI employee Doreen Logan. Because JPMC is precluded by Fed. R. Civ. P. 26(d) from serving discovery as of right, JPMC requested that Debtors make Ms. Logan available for a deposition prior to the time JPMC was required to respond to Debtors' motion. Debtors refused to do so and thus JPMC has had no opportunity to cross-examine Ms. Logan prior to responding to Debtors' $4 billion motion. As a result, the proper – indeed, the only appropriate – remedy is to strike Ms. Logan's affidavit in its entirety.

A court should strike an affidavit where the party opposing summary judgment has not been afforded an opportunity to depose the affiant. Not only would it be fundamentally unfair to accept as undisputed any fact presented in an untested

affidavit showing only one side of a disputed controversy, but an affidavit that has been immunized from cross-examination is inadmissible hearsay.

The Third Circuit has cautioned more than once against prematurely rushing to adjudicate a matter on summary judgment before a party has had an opportunity to take appropriate discovery and present a full factual record, particularly as to issues "at the heart of" a party's case. *E.g.*, *Pennsylvania* v. *Gen. Pub. Utils. Corp.*, 710 F.2d 117, 121 (3d Cir. 1983), *superseded by statute on other grounds*, Price Anderson Amendments Act, Pub. L. No. 100-408, 102 Stat. 1066 (1988), *as recognized in*, *In re TMI Litig. Cases Consol. II*, 940 F.2d 832 (3d Cir. 1991). Nowhere is that warning more appropriate than in a case of this nature, where Debtors have sought summary judgment before any discovery at all on the basis of a single, self-serving affidavit from their own employee whom they have further shielded from basic cross-examination. Without cross-examination, one is unable to expose problems with the employee's credibility and demonstrate inaccuracies and omissions in her factual presentation.

Although Ms. Logan's affidavit should be stricken in its entirety, many of her statements also fail on basic evidentiary grounds. Under Rule 56(e)(1), "[a] supporting . . . affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show the affiant is competent to testify on the matters stated." Fed. R. Civ. P. 56(e)(1). Ms. Logan's affidavit is rife with inadmissible hearsay and contains numerous other objectionable assertions, arguments, opinions, and other speculative statements, which do not have a proper evidentiary basis and should be stricken.

FACTUAL BACKGROUND

This proceeding has been pending for less than three months. Debtors filed their complaint on April 27, 2009. On May 19, 2009, before an answer had been filed and while a motion to dismiss was pending, Debtors filed their motion for summary judgment (the "Motion").

With the exception of two ancillary documents attached to an attorney's declaration, Debtors base their Motion entirely on the affidavit of Doreen Logan, a WMI employee. Through their Motion, Debtors seek to have the Court adjudicate their complaint in its entirety and find both that there exists and that they own outright – without being subject to rights of setoff or claims by others – almost $4 billion credited in six accounts that Debtors claim to be demand deposit accounts at Washington Mutual Bank, Henderson, Nevada ("WMB") and Washington Mutual Bank fsb ("WMB fsb"). JPMC has filed an answer denying Debtors' claims and has asserted counterclaims that are also the subject of two other actions pending between the parties. The Federal Deposit Insurance Corporation ("FDIC") has also intervened in this action, and on July 15, 2009, a group of bondholders of WMB also moved to intervene, asserting an interest in the funds that Debtors seek to claim as their own in this action.

No discovery has yet taken place in this action and under Fed. R. Civ. P. 26(d)(1) no discovery as of right is permitted because no discovery conference has occurred. (*See* B929, Decl. of Robert A. Sacks ("Sacks Decl.") ¶ 3). Thus, JPMC cannot yet notice or compel witnesses to attend a deposition. Consequently, on June 30, 2009, counsel for JPMC requested that Debtors agree to make Ms. Logan available for a deposition so that JPMC could cross-examine her about her declaration prior to

responding to the motion for summary judgment. (*Id*. ¶ 4.) Debtors refused to make Ms. Logan available and further stated that they would only consider doing so only if JPMC would agree to refrain from filing an affidavit pursuant to Fed. R. Civ. P. 56(f) seeking further discovery and requesting that the Motion be denied pending such additional discovery. (*Id*. ¶¶ 4, 41.)

ARGUMENT

I. THE COURT SHOULD STRIKE THE LOGAN AFFIDAVIT BECAUSE DEBTORS HAVE NOT PERMITTED JPMC TO TAKE MS. LOGAN'S DEPOSITION

"[I]t is axiomatic that when a party files an affidavit or declaration in support of a motion for summary judgment . . . the opposing party has the right to depose the affiant or declarant on the assertions made." *Blackwell Publ'g, Inc.* v. *Excel Research Group, LLC*, No. 07-12731, 2008 WL 506329, at *1 (E.D. Mich. Feb. 22, 2008) (denying motion for summary judgment as premature) (citations omitted); *see also Wilfong* v. *Hord*, No. CS-05-746, 2007 WL 1057396, at *2 (S.D. Ohio Apr. 4, 2007) ("Prohibiting [opposing party] to depose [affiant] would only present one version of the facts at issue in this case. [Non-movant] is entitled to test the credibility and context of the statements made by [the affiant].") It is "grossly unfair" and prejudicial to require a party to contest summary judgment where it has been deprived of the right to cross-examine the affiant through a deposition. *Phila Hous. Auth.* v. *U.S. Dept. of Hous. & Urban Dev.*, 553 F. Supp. 2d 433, 441 (E.D. Pa. 2008); *see also I R Constr. Prods. Co.* v. *D.R. Allen & Sons*, 737 F. Supp. 895, 897 (W.D.N.C. 1990) (finding it unfair to consider affidavit on motion to dismiss where opposing party had no opportunity to depose affiant). As the Third Circuit recognized in *Schiavone Constr. Co.* v. *Time, Inc.*, relying on an untested affidavit

to grant summary judgment without affording the opposing party the opportunity to depose the affiant is reversible error. 847 F.2d 1069, 1084-85 (3d Cir. 1988); *see also Miller* v. *Wolpoff & Abramson, LLP*, 321 F.3d 292, 303-06 (2d Cir. 2005). Simply put, "untested affidavits are not acceptable" at summary judgment. *G-I Holdings* v. *Baron & Budd*, 213 F.R.D. 146, 149 (S.D.N.Y. 2003) (collecting cases).

Indeed, not only is considering an affidavit by a person not subject to cross-examination unfair, but an affidavit or declaration by someone who is not available for cross-examination constitutes inadmissible hearsay. *See In re Brown*, 82 F.3d 801, 805-06 (8th Cir. 1996) (excluding affidavits as hearsay where affiant is not available for cross examination); *In re Roberts*, 210 B.R. 325, 328-29 (Bankr. N.D. Iowa 1997) ("Excluding affidavits as hearsay is not an abuse of discretion, where the related parties are not present to authenticate the documents and for cross-examination." (citing *Brown*)); *see also United States* v. *Glass*, 744 F.2d 460, 461 (5th Cir. 1984) (refusing to take judicial notice of affidavit on appeal where affidavit was not presented to district court to allow cross-examination); *Rodriguez-Laboy* v. *R & R Eng'g Prods., Inc.*, No. Civ. 03-1367(DRD), 2006 WL 852086, at *1 (D.P.R. Mar. 30, 2006) (striking summary judgment affidavit as inadmissible hearsay where deceased affiant had not been and could not be cross-examined).

Here, the reason Ms. Logan has not been deposed about her affidavit is not due to any lack of diligence or failure on the part of JPMC, but because JPMC currently has no right to take discovery in this action and Debtors refused JPMC's request that they make Ms. Logan available for a deposition. Courts, including the United States Supreme Court, regularly emphasize the critical importance of cross-examination in testing and

evaluating the quality and reliability of proffered evidence. *See, e.g., Crawford* v. *Washington*, 541 U.S. 36, 61 (2004) (in context of Sixth Amendment, law commands "not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination.") Considering Ms. Logan's affidavit in this context – where Debtors (i) are proffering her affidavit as their sole evidence, (ii) have Ms. Logan within their control and (iii) have willfully elected to shield her from a deposition – would undermine the foundation of our adversary system and reward Debtors for insulating their evidence from meaningful examination. It would be tantamount to accepting, just on Debtors' say so, the reliability and correctness of their *ex parte* and biased version of events.

The proper remedy in this situation is to strike Ms. Logan's affidavit and deny Debtors' Motion pending further discovery. *See e.g. United States ex rel Fago* v. *M & T Mortgage Corp.*, 518 F. Supp. 2d. 108, 113-14 (D.D.C. 2007); *Medina* v. *Multaler, Inc.*, 547 F. Supp. 2d 1099, 1106 n.8 (C.D. Cal. 2007); *G-I Holdings*, 213 F.R.D. at 149; *Messina* v. *Mazzeao*, 854 F. Supp. 116, 133 (E.D.N.Y. 1994); *cf. Ambat* v. *City & County of San Francisco*, No. C 07-03622 SI, 2008 WL 5048560, at *2 (N.D. Cal. Nov. 24, 2008) (refusing to rule on summary judgment motion where affidavits bearing on issue were untested through depositions). This rule avoids the risk of an unfair proceeding as an inevitable result of forcing a party to rebut allegations that have not been subject to challenge through discovery. *See Russell* v. *Harms*, 397 F.3d 458 (7th Cir. 2005) (upholding refusal to consider affidavit where late filing deprived party of ability to depose affiant); *Lohnes* v. *Level 3 Commc'ns, Inc.*, 272 F.3d 49, 60-61 (1st Cir. 2001) (upholding district court's decision to strike purported expert affidavit where it was not

presented in time to allow for deposition); *cf also Historic Pres. Guild of Bay View* v. *Burnley*, 896 F.2d 985, 993 (6th Cir. 1989) (noting that district court should have allowed party opposing summary judgment to depose affiants before granting motion); *Ventrassist Pty Ltd.* v. *Heartware, Inc.*, 377 F. Supp. 2d 1278, 1287-88 (S.D. Fla. 2005) (rejecting motion for summary judgment before the beginning of discovery as premature and noting that opposing party had not even had opportunity to depose declarants).

Striking Ms. Logan's affidavit is entirely consistent with the rule in related contexts that a party may not rely on evidence that it is unwilling to subject to cross-examination. Thus, as the Fourth Circuit recognized in *In re Edmond*, a party cannot rely on affirmative statements in an affidavit and simultaneously shield the affiant from the opposing party's scrutiny by deposition. *In re Edmond*, 934 F.2d 1304, 1308-09 (4th Cir. 1991) (affirming bankruptcy court's decision to strike affidavit and deny summary judgment where sole affiant refused to submit to deposition based on claim of Fifth Amendment Privilege); *see also United States* v. *Parcels of Land*, 903 F.2d 36, 42-46 (1st. Cir. 1990) (finding that district court had "ample authority" to strike affidavit where affiant refused to answer deposition questions based on claim of Fifth Amendment privilege).

The Third Circuit has held that where an "issue is at the heart of a party's case, [that] party should be given the opportunity to present evidence before summary judgment is granted." *Gen. Pub. Utils. Corp.*, 710 F.2d at 120-21 (reversing grant of summary judgment motion made prior to start of discovery); *see also Schiavone Constr. Co.*, 847 F.2d at 1084-85. Debtors' effort to shield from cross-examination the sole evidence on which they rely precisely highlights the inappropriateness of their pre-

discovery motion for summary judgment. The Court should strike the Logan Affidavit and deny the Motion.

II. THE COURT SHOULD STRIKE THE PORTIONS OF THE LOGAN AFFIDAVIT THAT CONTAIN INADMISSIBLE MATERIAL

Federal Rule of Civil Procedure 56(e)(1) requires that an affidavit submitted in support of a motion for summary judgment be "made on personal knowledge" and "set out facts that would be admissible in evidence. . . ." "On a motion for a summary judgment . . . [the movant's] supporting affidavits and depositions, if any, are carefully scrutinized by the court." *See Walling* v. *Fairmont Creamery Co.*, 139 F.2d 318, 322 (8th Cir. 1943). Where an affidavit contains material that fails to meet the requirements of personal knowledge and admissibility, the court should strike it. *Carey* v. *Beans*, 500 F. Supp. 580, 583 (E.D. Pa. 1980), *aff'd*, 659 F.2d 1065 (1981) (rejecting statements outside of affiant's personal knowledge); *Transportes Aereos Pegaso S.A. de C.V.* v. *Bell Helicopter Textron, Inc.*, __ F. Supp. 2d __, 2009 WL 1585996, at *10-11 (D. Del. 2009) (rejecting hearsay statements); *Maldonado* v. *Ramirez*, 757 F.2d 48, 51 (3d Cir. 1985) (reversing district court's grant of summary judgment in reliance on conclusory affidavit).

The table of objections attached as Exhibit A summarizes the statements in Ms. Logan's affidavit that do not meet the test for admissibility. Many of the objections contained on the attached Exhibit A are of the type that lawyers would work out, make the subject of a stipulation, or potentially overlook in a matter where both sides have a full and fair opportunity to present their cases, cross-examine the witnesses and present other witnesses on the relevant subject matter. And in the ordinary course, JPMC

would expect that many of the objections identified on Exhibit A would be treated in that reasonable manner, whether by stipulation between the parties as to authenticity and admissibility, or by mutual agreement to allow reasonable levels of testimony that might technically be hearsay, conclusory or exceed the strict bounds of personal knowledge. However, at this stage Debtors are asking the Court to decide this matter based upon a single, biased affidavit from their own employee without affording JPMC the opportunity to discover and present countervailing evidence or even to cross-examine the witness. This compels JPMC to assert these objections to avoid being prejudiced.

The affidavit contains defects of various kinds: a variety of hearsay statements, statements for which Ms. Logan lacks personal knowledge, statements that lack foundation, impermissible statements of opinion, argumentative and conclusory assertions, irrelevant matter, and documents for which a proper foundation is lacking. The Court should strike the objectionable material set forth in the Exhibit. *See, e.g.*, *Rolick* v. *Collins Pine Co.*, 708 F. Supp. 111, 115-16 (W.D. Pa. 1989), *rev'd on other grounds*, 925 F.2d 661 (1991) ("Compliance with Rule 56(e)'s requirements for affidavits is essential if the court is to consider the evidence contained therein."); *Walling*, 139 F.2d at 322 ("[A]ffidavits . . . offered in support of a motion for summary judgment . . . must not only be made on the personal knowledge of the affiant, but must show that the affiant possesses the knowledge asserted."); *Automatic Radio Mfg. Co.* v. *Hazeltine Research*, 339 U.S. 827, 831 (1950) (statements of party's understanding or opinion inadmissible on summary judgment); *Carey*, 500 F. Supp. at 583 ("[S]tatements . . . made upon an 'understanding' are properly subject to a motion to strike") (citing *Cermetek, Inc.* v. *Butler Avpak, Inc.*, 573 F.2d 1370, 1377 (9th Cir. 1978)); *Philbin* v.

Trans Union Corp., 101 F.3d 957, 961 n.1 (3d Cir. 1996) (rejecting hearsay by unidentified declarant in summary judgment affidavit); *Transportes Aereos Pegaso*, __ F. Supp. 2d __, 2009 WL 1585996, at *12-13 (refusing to consider legal conclusion asserted in declaration); *Aronson* v. *Capital One Fin. Corp.*, 125 F. Supp. 2d 142, 143-44 (W.D. Pa. 2000) (striking affidavits that "contain[ed] . . . a recitation or clarification of allegations set forth in the Complaint, assertions of legal conclusions, and legal argument"). Pursuant to Fed. R. Civ. P. 56(e), the Court should strike the portions of the Logan Affidavit identified, and for the reasons set forth, in Exhibit A.

CONCLUSION

For the foregoing reasons, JPMC respectfully requests that the Court strike the Logan Affidavit.

Dated: July 24, 2009
Wilmington, Delaware

Respectfully submitted,

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EXHIBIT A

Paragraph	Statement	Objection
Entire Affidavit	All statements and exhibits	Hearsay with no opportunity to cross-examine. *See* Fed. R. Evid. 801 & 802.
3	"I understand that on September 25, 2008, JPMorgan Chase Bank, N.A. ('JPMorgan Chase') purportedly purchased substantially all of the secured liabilities of WMB and all of WMB's deposit liabilities (the "P&A Transaction"), pursuant to the Purchase and Assumption Agreement Whole Bank, dated September 25, 2008 (the "P&A Agreement.")	Beyond the scope of Ms. Logan's personal knowledge, inadmissible legal conclusion. *See* Fed. R. Evid. 602 & 701.
4	"As of September 25, 2008, WMI and WMI Investment Corp. had cash on deposit with WMB and with WMI's indirect wholly-owned subsidiary, Washington Mutual Bank fsb, Park City, Utah, in excess of $3.8 billion, consisting of more than $135 million in five demand deposit accounts at WMB and $3.668 billion in a single demand deposit account at WMB fsb. Following the P&A Transaction, JPMC continues to hold approximately the same amount in the same six accounts."	Beyond the scope of Ms. Logan's personal knowledge and based on hearsay. *See* Fed. R. Evid. 602, 801 & 802.
5	[Setting out chart with purported deposit accounts as of September 30, 2008 and March 31, 2009]	Beyond the scope of Ms. Logan's personal knowledge and based on hearsay. *See* Fed. R. Evid. 602, 801 & 802.
6	"Copies of the September 30, 2008 and March 31, 2009 'Washington Mutual Internal Checking Detail Information' forms which reflect monthly balance and transactions for the accounts, addressed to WMI or WMI Investment Corp., are attached hereto as Exhibits A and B, respectively."	No foundation established to authenticate referenced documents as Ms. Logan is not a custodian of records and has not otherwise stated the basis of familiarity with these documents. *See* Fed. R. Evid. 602, 901. Based on hearsay. *See* Fed. R. Evid. 801 & 802. Impermissible opinion testimony as to meaning of documents. *See* Fed. R. Evid. 701.

7	"As of September 25, 2008 and on the following day, upon commencement of the Chapter 11 bankruptcy cases, WMI and WMI Investment Corp. had no material debts or liabilities owing to WMB fsb."	Beyond the scope of Ms. Logan's personal knowledge, no foundation for the statement, offers a legal conclusion, and based on hearsay. *See* Fed. R. Evid. 602, 801 & 802.
8	"Prior to the P&A Transaction, WMI transferred $3.674 billion in demand deposits from its primary checking account held at its wholly-owned subsidiary WMB (account shown in the chart above ending in numbers '0667' to a demand deposit account held at WMB fsb (account shown in the chart above ending in numbers '4234'). I understand that JPMorgan Chase has suggested that the $3.674 billion transferred to the demand deposit account at WMB fsb was not a deposit, but rather, was a capital contribution made to WMB fsb. (I understand that JPMorgan Chase has not made this suggestion with respect to the other funds held in the accounts shown in the chart above - i.e., JPMorgan Chase apparently concedes that, aside from the $3.674 billion, all funds in the accounts identified in the chart above are in fact demand deposits.)"	Beyond the scope of Ms. Logan's personal knowledge, offers a legal conclusion, and contains hearsay. *See* Fed. R. Evid. 602,,701, 801 & 802.
9	"JPMorgan Chase's suggestion that the $3.674 billion is a capital contribution, and not a deposit in a demand deposit account, is incorrect and entirely insupportable. As discussed below, the $3.674 billion transfer was at all times intended to be, and in fact was, funds belonging to WMI kept in the form of a deposit made into a demand deposit account. It was never intended to be a capital contribution or anything other than a demand deposit."	Beyond the scope of Ms. Logan's personal knowledge, lack of foundation, offers a legal conclusion, contains hearsay, irrelevant. *See* Fed. R. Evid. 402, 602, 701, 801 & 802.
10	"From June 17, 2002 to September 19, 2008, WMI's primary non-interest bearing checking account was held at WMB in a demand deposit account ending with the last four digits '0667' (hereinafter, that account is referred to as '0667'). Demand deposit accounts are accounts from which deposited funds can be withdrawn at any time without any advance notice to the depository institution. As 0667 was WMI's primary non-interest bearing checking account, it was very active and typically had approximately 10 to 15 transactions per day, as shown in the September 2008 account statement	Beyond the scope of Ms. Logan's personal knowledge, lack of foundation, impermissible opinion testimony, and based on hearsay. *See* Fed. R. Evid. 602, 701, 801 & 802.

	a copy of which is attached hereto as Exhibit A. From this account, WMI serviced its outstanding debt, paid dividends on its preferred and common equity, and disbursed payments on account of tax obligations and myriad other operating expenses."	
11	"All of the accounts shown in the chart above, including 0667, were established and maintained in accordance with internal policies and procedures of WMI and its subsidiaries governing what is known as 'On-Us,' or intra-corporate, deposit accounts. Per WMI's 'GL Administration Policy,' a document used to 'communicate policies for the establishment and usage of 'On-Us' bank accounts for all Washington Mutual entities and departments,' On-Us accounts are internal 'corporately owned Demand Deposit Account (DDA) accounts.'"	Beyond the scope of Ms. Logan's personal knowledge, lack of foundation, contains impermissible opinion testimony, offers legal conclusions, and based on hearsay. *See* Fed. R. Evid. 602, 701, 801, 802 & 901.
12	"At all times, the accounts, including 0667, were properly accounted for in the books and records of WMB and WMB fsb as demand deposit accounts and deposit liabilities owing to WMI or WMI Investment. On many occasions, I have seen the books and records that reflect such accounting. WMB reported the accounts as deposit accounts to federal banking regulators and paid federal deposit insurance premiums on the deposits in the Accounts prior to the P&A Transaction. With respect to 0667 in particular, copies of excerpts of account statements for the period January 2007 to March 2009 are attached hereto as Exhibit D, and state that the funds in 0667 are 'Deposits' and that the 'Deposits are FDIC Insured.'"	Improper opinion testimony, beyond the scope of Ms. Logan's personal knowledge, and lack of foundation. *See* Fed. R. Evid. 602, 701, 801, 802 & 901.
13	"On September 18, 2008, Carey Brennan, WMB's Senior Vice President, Deputy Chief Legal Officer & General Counsel – Capital Markets, initiated a telephone conversation with Patricia Schulte, WMB's Senior Vice President, Treasury, Cash Management."	Beyond the scope of Ms. Logan's personal knowledge and lack of foundation. *See* Fed. R. Evid. 602.
13	"On that call, Mr. Brennan instructed that the maximum amount of funds possible deposited in the 0667 demand deposit checking account at WMB should immediately be moved to a demand deposit account at WMB fsb."	Hearsay. *See* Fed. R. Evid. 801 & 802.
13	"Although I did not ask about the reason for this transfer at the time, I later learned that management's intent was	Beyond the scope of Ms. Logan's personal knowledge, lack of foundation,

	to transfer WMI's bank account to the more well-capitalized bank within the consolidated group."	and hearsay. *See* Fed. R. Evid. 602, 801 & 802.
15	"I determined that approximately $50 million needed to remain in the account to cover scheduled pending payments, which meant that the remainder of $3.674 billion could be transferred to a demand deposit account at WMB fsb."	Impermissible opinion testimony, lack of foundation, and beyond the scope of Ms. Logan's personal knowledge. *See* Fed. R. Evid. 602, 701, 801 & 802.
16	"The demand deposit account to which the transfer was to be made at WMB fsb was to be newly created."	Beyond the scope of Ms. Logan's personal knowledge, lack of foundation and hearsay to the extent that she purports to testify to the intent of third parties in purportedly opening this account. *See* Fed. R. Evid. 602, 801 & 802.
16	"Thus, as was customary with any transfer to a newly-established deposit account, and as required by Washington Mutual's GL Administration Policy, this transfer was to be effectuated by (a) submitting to the Washington Mutual Back Office Branch a 'New Account Request Form' utilized to open a new demand deposit account, (b) completing a 'Journal Entry Request Form' to record the transaction on the general ledger of each company, and (c) completing a 'Journal Entry Posting Form,' accounting for the transfer of deposits from 0667 to the new account."	Impermissible opinion based on hearsay, and lack of foundation to testify as to what was "customary" and what was "required." *See* Fed. R. Evid. 602, 701, 801 & 802.
17	"Copies of the New Account Request form that Ms. Noblezada prepared on Friday, September 19, 2008, and the supporting Journal Entry Request and Journal Entry Posting forms, are attached hereto as Exhibit F."	Lack of foundation to authenticate documents for which Ms. Logan is not a custodian of records and has not otherwise stated the basis of personal knowledge; hearsay. *See* Fed. R. Evid. 602, 801, 802, 901.
17	"As required by the GL Administration Policy (Exhibit C hereto), the New Account Request form was signed and approved by Patricia Schulte; the Journal Entry Request Form was signed and approved by me; and the Journal Entry Posting Form was signed and approved by Patricia Schulte and WMB's Vice President, Cash Management Manager, Treasury, Brandon Winder."	Improper opinion testimony, lack of foundation, lack of personal knowledge, hearsay. *See* Fed. R. Evid. 701, 801, 802 & 901.
18	"The New Account Request form completed on Friday, September 19, 2008 expressly denotes that the new	Lack of personal knowledge or foundation as to date of preparation, improper

	account was to be an 'On-Us' corporate checking account to be assigned a product code of 'B3.' The GL Administration Policy states that 'B3's are non-interest bearing DDA [Demand Deposit Account] accounts.' (Ex. C hereto.)"	opinion testimony interpreting document, hearsay. *See* Fed. R. Evid. 602, 901, 802, 901.
18	"The GL Administration Policy likewise provides that 'On-Us' accounts are 'Demand Deposit Accounts.' Moreover, although New Account Request Forms may be used to open several different account types (e.g., loss drafts, commercial loans, insurance drafts, and investors/custodial accounts), these forms are used to create only deposit accounts, not any other type of account."	Lack of personal knowledge or foundation, improper opinion testimony, hearsay. *See* Fed. R. Evid. 602, 701, 801, 802 & 901.
19	"In addition to these forms prepared on Friday, September 19, 2008, there is an email that was sent on the same day that confirms that the intent was to transfer the $3.674 billion to a demand deposit account. Rosa Cox, WMB's Vice President, Accounting Manager, Corporate Accounting, sent an email to Tawnya Ryason, WMB's Assistant Vice President, Manager, Accounting II – Corporate Accounting, with a 'cc:' to me. The email accurately reported to Ms. Ryason that I had told Ms. Cox that I needed a "'Due From FSB' account to use this month for a new deposit account." A copy of that email, which is the first in a string of emails, is attached hereto as Exhibit G."	Hearsay and lack of foundation or personal knowledge as to "intent." *See* Fed. R. Evid. 602, 801 & 802.
19 n.2	"As this email indicates, the only intercompany GL account available at the time that was open to reflect money on deposit at WMB fsb was one with a "Money Market Deposit Account – Interest Checking" description (rather than a [sic] one described as a non-interest bearing demand deposit account) . . . ."	Lack of foundation, lack of personal knowledge, improper opinion testimony, hearsay. *See* Fed. R. Evid. 602, 701, 801 & 802.
19 n.2	"[A]nd therefore the plan was to use that GL account and open a new GL account for a 'Non-interest checking account' at the beginning of the next calendar month."	Lack of foundation or personal knowledge as to "plan." *See* Fed. R. Evid. 602.
19 n.2	"The change was to be made at the beginning of the next month because, per the GL Administration Policy (Ex. H), new GL accounts could only be opened during 14 business days prior to month-end (approximately the first 6 days of the month). Before the correction could	Lack of foundation, lack of personal knowledge, hearsay, improper opinion testimony. *See* Fed. R. Evid. 602, 701, 801 & 802.

	be made, the FDIC became receiver and seized WMB on September 25, 2008."	
20	"Although the New Account Request Form properly indicated that the deposit account was to be opened at WMB fsb, an administrative back office processing error caused a new demand deposit account ending in numbers '4218' ('4218') to be opened not at WMB fsb, but rather, at WMB."	Lack of personal knowledge, lack of foundation, hearsay, improper opinion testimony. *See* Fed. R. Evid. 602, 701, 801 & 802.
20	"On Monday, September 22, 2008, Ms. Noblezada reported to me that the Processing Representative in the Back Office Branch in Stockton, California who had processed the transfer had mistakenly ignored the directions on the completed forms that the deposit account be opened at 'Co. 40' (the company designation for WMB fsb). Instead, the Processing Representative had erroneously opened the 4218 deposit account at WMB ('Co. 1'). Ms. Noblezada reported to me that the Processing Representative had explained to her that this clerical error had been made because WMB fsb did not have an overhead cost center open on the Hogan system (which was needed to ensure that the demand deposit account eliminated properly in consolidation), and the Processing Representative therefore erroneously used a cost center that was available and that corresponded to WMB."	Multiple-level hearsay. *See* Fed. R. Evid. 801 & 802.
21	"This clerical error, and its immediate correction, is reflected on the Monday, September 22, 2008 emails, copies of which are also included in the email string attached hereto as Exhibit G. An email from Ms. Ryason to me and others states that the 'DDA [Demand Deposit Account] was opened on Co 1 [WMB] and not on Co 40 [WMB fsb]. Was this an oversight?' Ms. Noblezada responded 'Yes, we are fixing this right now. We will be closing the DDA [Demand Deposit Account] on Co 1 and will open one on Co 40 ....'"	Hearsay, lack of foundation, lack of authentication. *See* Fed. R. Evid. 801, 802 & 901.
22	"On Monday, September 22, 2008, a revised New Account Request Form and supporting Journal Posting Form were created and the mistake was corrected, retroactively to September 19, 2008, with the creation of a demand deposit account at WMB fsb ending in numbers 4234 ('4234'). Account 4218 at WMB was	Hearsay, lack of foundation, lack of personal knowledge, improper opinion testimony, lack of authentication. *See* Fed. R. Evid. 602, 701, 801, 802 & 901.

	closed the same day (while WMI's Account 0667 remained at WMB)."	
23	"Copies of the revised New Account Request form and Journal Entry Posting forms that Ms. Noblezada prepared on September 22, 2008 are attached hereto as Exhibit I. As required by the GL Administration Policy (Exhibit C hereto), the revised New Account Request form was signed and approved by Tim Smallow, WMB's First Vice President, Treasury – Cash Management, and the Journal Entry Posting Form was signed and approved by Messrs. Smallow and Winder."	Lack of foundation, lack of authentication, lack of personal knowledge, improper opinion testimony, hearsay. *See* Fed. R. Evid. 701, 801, 802 & 901.
23 n.3	"A revised New Journal Entry Request form was not neede because there was no error in the use of the GL account 10441 representing the account on deposit at WMB fsb."	Lack of personal knowledge, lack of foundation, improper opinion testimony. *See* Fed. R. Evid. 602 & 701.
24	"Just as was the case with the prior New Account Request Form, the revised New Account Request form expressly denotes that the new 4234 account was to be an 'On-Us' corporate checking account to be assigned a product code of 'B3.' As noted, the GL Administration Policy states that 'B3's are non-interest bearing DDA [Demand Deposit Account] accounts' and further provides that 'On-Us' accounts are 'Demand Deposit Accounts.' Moreover, the Journal Entry Posting Forms used to account for the transfer of funds from Account 4218 at WMB to Account 4234 at WMB fsb denote that Account 4234 was to be a 'DDA' account which, per the GL Administration Policy, means 'Demand Deposit Account.'"	Hearsay, lack of foundation, lack of authentication. *See* Fed. R. Evid. 801, 802 & 901.
25	"The September 30, 2008 Account Statement for Account 0667 shows four debits on September 19, 2009 in an aggregate amount of $3.674 billion. The September 30, 2008 Account Statement for Account 4234 at WMB fsb shows four corresponding credits (deposits), effective retroactively to September 19, 2009, in an aggregate amount of $3.674 billion. The September 30, 2008 Account Statement for Account 4234 properly reflects such amounts as 'Customer Deposits.' Copies of the September 2008 Account Statements for 0667 and 4234 are attached hereto as	Hearsay, improper opinion testimony regarding content of documents, lack of foundation, lack of authentication. *See* Fed. R. Evid. 701, 801, 802 & 901.

	Exhibit A."	
26	"In sum, I received an instruction to move funds from demand deposit account 0667 at WMB to a demand deposit account at WMB fsb."	Hearsay. *See* Fed. R. Evid. 801 & 802.
26	"My colleagues and I implemented that instruction and we completed the paperwork and carried out the Washington Mutual procedures required to transfer the $3.674 billion into demand deposit account 4234 at WMB fsb."	Lack of personal knowledge as to conduct of others, improper opinion testimony, and legal conclusion. *See* Fed. R. Evid. 602 & 701.
26	"As the facts detailed above demonstrate, and as I know from my personal involvement, there is simply no question but that the $3.674 billion was always intended to be, and in fact was, a deposit made into a demand deposit account at WMB fsb in accordance with Washington Mutual policies applicable to demand deposit accounts."	Improper legal conclusion, lack of personal knowledge, improper opinion testimony, irrelevant. *See* Fed. R. Evid. 402, 602 & 701.
27	"In addition to the facts described above that make plain that the $3.674 billion was always intended to be, and was in fact, a deposit, I am also aware of facts that show the $3.674 billion transfer could not have been a capital contribution."	Improper legal conclusion, lack of personal knowledge, lack of foundation, improper opinion testimony, irrelevant. *See* Fed. R. Evid. 402, 602, 701.
28	"*Washington Mutual Policies And Procedures For Requesting And Processing Capital Contributions Were Not Carried Out.* As discussed above, the Washington Mutual internal policies and procedures applicable to depositing the $3.674 billion into a demand deposit account were followed."	Improper legal conclusion, lack of personal knowledge, improper opinion testimony, and relies on hearsay. *See* Fed. R. Evid. 602, 701, 801, 802 & 901.
28	"If the intention had been for the $3.674 billion to be a capital contribution, there are different internal policies and procedures that would have been applicable, but these policies and procedures were not followed, nor were the relevant forms prepared."	Improper conclusion, lack of personal knowledge as to "intention" and as to what was or was not prepared, improper opinion testimony, irrelevant. *See* Fed. R. Evid. 402, 602 & 701.
28	"As set forth on the 'WMI and Banking Affiliates General Standards: Authorized Individuals for Intercompany Transactions' and as reflected on the 'Washington Mutual Request for Contribution' form (copies of which are attached hereto as Exhibit J), a	Hearsay, lack of foundation, lack of personal knowledge, improper opinion testimony. *See* Fed. R. Evid. 602, 701, 801, 802 & 901.

	capital contribution cannot be made without the approval of the CFO, Treasurer or Corporate Controller, and to make a capital contribution a 'Request for Contribution' form must be filled out. That form requires the requester to supply details about the proposed capital contribution, including the nature and purpose of the proposed capital contribution. The requester is to be 'as detailed as possible with the Proposal/Purpose description (i.e., why the capital contribution is being requested, what it will be used for, is it a one-time request or ongoing, etc.).'"	
29	"As reflected in the 'Approvals Required' section of the form, after the requester completes the form it is to be presented via email to representatives of each of the following four departments for approval: Legal, Tax, Controllers, and Treasury."	Lack of foundation, lack of authentication, hearsay, improper opinion testimony. *See* Fed. R. Evid. 701, 801, 802 & 901.
30	"Upon receiving approvals from all four departments, copies of the approvals and the fully approved request is to be forwarded to Legal, which then 'prepare[s] and circulate[s] for execution the legal documentation required to authorize the contribution and will forward the approval to the requesting party, Entity Accounting, Tax and Treasury.'"	Lack of foundation, lack of authentication, hearsay, improper opinion testimony. *See* Fed. R. Evid. 701, 801, 802 & 901.
31	"Per Washington Mutual policy, all of these steps would have been required before processing a capital contribution. Indeed, WMI followed these procedures in connection with capital contributions that it made to WMB in December 2007, April 2008, July 2008 and September 2008. The Request for Contribution forms and email approvals for these transactions are attached hereto as Exhibit Q."	Improper opinion testimony, lack of personal knowledge, lack of foundation, lack of authentication, hearsay. *See* Fed. R. Evid. 602, 701, 801, 802 & 901.
31	"In my position at WMB, I would have been made aware if these same steps had been taken, and same forms prepared, in connection with the transfer to WMB fsb of the $3.674 billion. Not one of these steps was taken, however, belying any suggestion that the $3.674 billion deposit was, or ever was intended to be, a capital contribution."	Lack of personal knowledge, lack of foundation, speculation, improper opinion testimony, improper legal conclusion, irrelevant. *See* Fed. R. Evid. 402, 602 & 701.
32	"A capital contribution would have fundamentally revised the capital structure of various Washington	Lack of personal knowledge, lack of foundation, improper opinion testimony,

	Mutual entities, and such a transaction simply would not have made sense."	irrelevant. *See* Fed. R. Evid. 402, 602 & 701.
32	"Prior to the September 25, 2008 FDIC seizure, WMI owned WMB, which owned Pike Street Holdings, Inc. ('Pike Street Holdings'), which, in turn, owned WMB fsb."	Lack of personal knowledge, lack of foundation. *See* Fed. R. Evid. 602.
32	"A $3.674 billion capital contribution would have fundamentally changed this capital and ownership structure, with WMI becoming a new partial owner of WMB fsb."	Lack of personal knowledge, speculation, lack of foundation, improper opinion testimony. *See* Fed. R. Evid. 602 & 701.
32	"There was no plan or effort at WMI to achieve such a result."	Lack of personal knowledge, lack of foundation, speculation, irrelevant. *See* Fed. R. Evid. 402 & 602.
33	"*WMI Liquidity Management Policies And Procedures Are Inconsistent With Any Notion That The $3.674 Billion Deposit Is A Capital Contribution.* Another clear indication that the $3.674 billion deposit was never a capital contribution, and was never considered or intended to be a capital contribution, is the 'WMI Liquidity Management Standard' (the 'Liquidity Standard')."	Improper opinion, legal conclusion, improper argument, lack of foundation, lack of personal knowledge, irrelevant. *See* Fed. R. Evid. 402, 602, 701, 801, 802 & 901.
33	"The stated objective of the Liquidity Standard is to 'prudently manage [WMI's] ability to meet its financial obligations.' A copy of the Liquidity Standard is attached hereto as Exhibit K." The Liquidity Standard states that cash must be maintained at a minimum daily balance of $150 million with an 'early warning' limit of $250 million. The Liquidity Standard further states that '[i]n the event that the WMI cash balance is expected to or falls below $150 million, the Treasurer will be notified immediately. The Treasurer may approve being below the target minimum for up to ten days of the month. In the event that the target minimum is not met for over ten days MRC [Market Risk Committee] chair will be notified and a report of the daily cash balances will be taken to the next MRC with an explanation for any approved variation and an action plan.'"	Hearsay, lack of personal knowledge, lack of authentication. *See* Fed. R. Evid. 801, 802 & 901.
34	"The Liquidity Standard also states that net short term position (liquid assets / short term liabilities) must be	Hearsay, lack of personal knowledge, lack of authentication. *See* Fed. R. Evid. 801,

	maintained at 100% or greater with a 'warning trigger' if the ratio falls below 110%. The Liquidity Standard further states that '[a]ny expected or actual exceptions to the positive net short term position forecasted within a 90 day period will be reported to the Treasurer and MRC chair immediately and to the MRC at their next meeting with an explanation and proposal to remediate the potential shortfall.'"	802 & 901.
35	"Before the $3.674 billion transfer into demand deposit account 4234, WMI's cash position was $3.724 billion. The net short term position was 236% in September, 234% in October, 230% in November and 229% in December (as shown in the cash position work sheets copies of which are attached hereto as Exhibit L.)"	Lack of foundation, lack of personal knowledge, improper opinion testimony, hearsay, lack of authentication. *See* Fed. R. Evid. 701, 801, 802 & 901.
35	"Had the $3.674 billion been a capital contribution and not a transfer into the deposit account, cash would have fallen to about $50 million — well below the $250 million early earning and the minimum of $150 million. Net short term position would have fallen to 17% in September, 15% in October, 12% in November and 10% in December — well below the 110% warning trigger and the minimum of 100%."	Improper opinion testimony, lack of personal knowledge, speculation, lack of foundation, hearsay, irrelevant. *See* Fed. R. Evid. 402, 602, 701, 801 & 802.
36	"In my position at WMB and as a member of the Liquidity Management Working Group (a subcommittee of the Market Risk Committee), I would have been aware if these procedures required by the Liquidity Standard had been carried out with respect to the transfer of the $3.674 billion. These procedures were not implemented, again belying any suggestion that the $3.674 billion deposit was, or ever was intended to be, a capital contribution."	Lack of personal knowledge, lack of foundation, speculation, improper opinion testimony, improper argument, irrelevant. *See* Fed. R. Evid. 402, 602, 701.
37	"*WMI Paid Invoices Using A Portion Of The $3.674 Billion In The 4234 Account, Which Is Inconsistent With The Notion That $3.674 Billion Deposit Is A Capital Contribution.* On September 24 and 25, 2008, WMI paid two invoices that had been billed directly to WMI using a portion of the $3.674 billion in account 4234. One payment was to Goldman Sachs for advisory services for a total of $3,056,827.50. Another payment was to Morgan Stanley for advisory services for a total of $3,000,000.00. Copies of the invoices are attached	Lack of personal knowledge, lack of foundation, improper opinion testimony, improper argument, hearsay, lack of authentication, irrelevant. *See* Fed. R. Evid. 402, 602, 701, 801, 801 & 901.

	hereto as Exhibit M, and the September 2009 account statement for 4234 reflecting the two payments is included in Exhibit A."	
37	"WMI's use of the 4234 account to make payments in satisfaction of invoices to WMI demonstrates its use of the account as a demand deposit account. Had the $3.674 billion been a capital contribution to WMB fsb, the funds would not have been available to WMI to pay WMI invoices."	Improper opinion testimony, speculation, improper argument, lack of personal knowledge, lack of foundation, irrelevant. *See* Fed. R. Evid. 402, 602 & 701.
38	"*Washington Mutual Sought Regulatory Approval To Reduce WMB fsb's Capital Base By $20 Billion — Which Is Inconsistent With Any Notion That There Was Any Intent During The Same Time Period To <u>Increase</u> WMB fsb's Capital By $3.674 Billion.*"	Improper argument, improper opinion testimony, lack of personal knowledge, speculation, lack of foundation, irrelevant. *See* Fed. R. Evid. 402, 602 & 701.
38	"For months prior to the September 2008 transfer of the $3.674 billion deposit, the Treasury group of Washington Mutual had proposed and planned to decapitalize WMB fsb by transferring $20 billion in excess capital from WMB fsb to Pike Street Holdings, Inc., its direct parent entity. The plan to move the $20 billion is reflected in (a) the August 14, 2008 memorandum from WMB's Senior Vice President – Funding & Capital, Treasury, Peter Freilinger, to the Board of Directors of Washington Mutual Bank fsb, and (b) the August 15, 2008 Application for Capital Distribution that was submitted to the Office of Thrift and Supervision (copies of which are attached hereto as Exhibit N.)" As explained in Mr. Freilinger's memorandum, the purpose of the planned decapitalization was to free up low-earning and non-earning assets and make it easier for WMB fsb to stay in compliance with the federal 'Qualified Thrift Lender' test, which provides that the institution must hold qualified thrift assets (i.e., housing-related investments) equal to at least 65% of its portfolio assets. By shrinking WMB fsb's capital base, its mortgage-related assets would increase as a total percentage of its portfolio assets, thereby ensuring compliance with the 'Qualified Thrift Lender' test, and the $20 billion could be put to use by Pike Street Holdings, Inc. As stated in Mr. Freilinger's memo, the decapitalization would decrease WMB fsb's leverage ratio from 62% to 25%,	Lack of personal knowledge, lack of foundation, hearsay, improper opinion testimony, lack of authentication, irrelevant. *See* Fed. R. Evid. 402, 602, 701, 801, 802 & 901.

	which was still more than sufficient since a 'well capitalized institution requires an 8% or higher leverage ratio.'"	
38	"Since I was told by Regulatory Reporting that the capital distribution notice required 60 days for approval, and the application was filed with the OTS on about August 15, 2008, at the time of the transfer of the $3.674 billion in September of 2008 it was my expectation that the OTS would approve the application by October 15, 2008. Of course, this never happened after the FDIC seized the assets of WMB (including the stock of WMB fsb) on September 25, 2008."	Hearsay, improper opinion testimony, lack of personal knowledge, lack of foundation, speculation, irrelevant. *See* Fed. R. Evid. 402, 602, 801 & 802.
39	"In sum, JPMorgan Chase's suggestion that WMI intended to make a capital contribution of $3.674 billion to WMB fsb makes no sense in view of the fact that Washington Mutual had in reality determined that the already abundant capital base of WMB fsb needed to be reduced (not increased) and had applied to the OTS in order to reduce WMB fsb's capital base by $20 billion during this very same time period."	Improper legal argument, lack of personal knowledge, speculation, lack of foundation, improper opinion testimony, hearsay, irrelevant. *See* Fed. R. Evid. 402, 602, 701, 801, 802 & 901.
40	"As discussed above, however, I was personally involved in the preparation of the transfer forms that generated the general ledger entries. The phrase 'WMI contributes' appears as an obscure note in some forms and entries as a result of a simple clerical error (which is explained in the footnote below). As set forth above, I have personal knowledge that the phrase could not have been and was never intended to reflect that the $3.674 billion deposit was a capital contribution. The errant phrase has no impact on the nature of the $3.674 billion deposit which always was intended to be, and was in fact, transferred into demand deposit 4234 account pursuant to Washington Mutual policies and procedures for demand deposit accounts, as described in detail above."	Improper opinion testimony, lack of foundation, lack of personal knowledge, speculation, hearsay, irrelevant. *See* Fed. R. Evid. 402, 602, 701, 801, 802 & 901.
41	"JPMorgan Chase's Complaint also states that 'no cash or other funds were actually moved to or received by WMB fsb in connection with the transfer' and the transfer 'could not have created a deposit liability of WMB fsb to WMI without receipt of good funds.' (Complaint ¶¶ 114-117.) However, this ignores the	Improper argument, lack of foundation, lack of personal knowledge, lack of authentication. *See* Fed. R. Evid. 602, 701 & 901.

	Revolving Master Note (the 'Master Note'), a copy of which is attached hereto as Exhibit O."	
41	"Pursuant to the Master Note, WMB fsb typically lent billions of dollars to WMB each day. Rather than wire the $3.674 billion from WMB to WMB fsb, WMB added that amount to the amount it owed WMB fsb under the Master Note and WMB fsb increased its receivable from WMB. WMB decreased the 0667 demand deposit account by that amount and the 4234 demand deposit account was funded by that amount."	Lack of personal knowledge, lack of foundation, improper opinion testimony, hearsay. *See* Fed. R. Evid. 602, 701, 801 & 802.
41	"The fact that the Master Note (instead of a wire) was used as the vehicle to fund the 4234 demand deposit account does not change the fact that the transfer of the $3.674 billion always was intended to be, and was in fact, a deposit. (I also note that, in the years prior to the P&A Transaction, WMB and WMB fsb regularly and in the ordinary course of business settled their intercompany balances to the Master Note without wiring funds. as shown on the attached emails detailing to Cash Management how the settlement of intercompany balances between Co 2 and Co 40 would be recorded. *See* Ex. P hereto.)"	Improper legal argument, improper opinion testimony, lack of personal knowledge, lack of foundation, lack of authentication, irrelevant. *See* Fed. R. Evid. 402, 602, 701 & 901
42	"I am surprised that JPMorgan Chase has attempted to use these clerical issues as a supposed basis for suggesting that WMI made a $3.674 billion capital contribution. especially since JPMorgan Chase and its personnel have repeatedly recognized that 4234 is indeed a demand deposit account."	Improper legal argument and conclusion, irrelevant, hearsay, lack of personal knowledge, lack of foundation. *See* Fed. R. Evid. 402, 602, 801 & 802.
43	"*Account statements issued by JPMorgan Chase state that the $3.674 billion is a deposit.* For example, the 4234 account statements that JPMorgan Chase issues to WMI include the following description: 'Deposit accounts now held by JPMorgan Chase Bank.. N.A.' and further state that the 'Deposits are FDIC Insured.' A copy of the September 2008 and March 2009 account statements received from JPMC are attached hereto as Exhibits A and B, respectively."	Improper argument and conclusion, hearsay, lack of personal knowledge, lack of foundation, lack of authentication, irrelevant. *See* Fed. R. Evid. 402, 602, 801, 802 & 901.
44	"*JPMorgan Chase Personnel Have Acknowledged That The $3.674 Billion Is a Deposit.* Likewise, multiple current and former employees of JPMorgan Chase have	Improper legal argument and conclusion, irrelevant, multiple-level hearsay, lack of personal knowledge, lack of foundation.

	told me that they have advised JPMorgan Chase that the $3.674 billion is not a capital contribution, and is in fact a deposit. A number of those JPMC employees, moreover, were employed by WMB prior to the P&A Transaction and were directly involved in opening Account 4234. For example, in December 2008, I spoke with a former member of WMB's senior management, who told me that after being hired by JPMorgan Chase he informed JPMorgan Chase that Account 4234 is a demand deposit account, that the $3.674 billion is a deposit, and that there is no basis for JPMorgan Chase to contest this fact."	*See* Fed. R. Evid. 402, 602, 801 & 802.
45	"In early 2009, including on about March 17, 2009, I had several telephone conversations with Beverly Bruce. Prior to the September 25, 2008 FDIC seizure of WMB, Ms. Bruce was WMB's Vice President, Manager – Treasury – Sr. Treasury. Since the seizure, my understanding is that Ms. Bruce was employed by JPMorgan Chase as a Treasury Manager through April 30, 2009 whose responsibilities included budget planning related to the net interest margin. Ms. Bruce advised me during our discussions in early 2009 that the $3.674 billion in the 4234 account is reflected in JPMorgan Chase's books and records as a deposit. More specifically, she stated that the $3.674 billion is 'a deposit liability in their segment results' and it 'is throwing off their segment profitability.'"	Hearsay, irrelevant, lack of personal knowledge, lack of foundation. *See* Fed. R. Evid. 402, 801 & 802.
46	"In April 2009, I had a telephone conversation with Rosa Cox. Prior to the September 25, 2008 FDIC seizure of WMB, Ms. Cox was WMB's Vice President, Accounting Manager, Corporate Accounting. Since the seizure, my understanding is that Ms. Cox has been employed by JPMorgan Chase. As discussed above, Ms. Cox had assisted in ensuring that the transaction was accounted for correctly at both WMI and WMB fsb. In my April 2009 conversation with Ms. Cox, she asked whether WMI planned to move the $3.674 billion out of that account soon and she explained that, under proposed new rules for calculating federal deposit insurance premiums, JPMorgan Chase's federal deposit insurance premiums may increase by about 10 basis points on the $3.674 billion deposit."	Hearsay, irrelevant, lack of foundation. *See* Fed. R. Evid. 402, 801 & 802.

47	"*JPMorgan Chase Apparently Has Represented To Regulators That The $3.674 Billion Is A Deposit.* On information and belief (based on the conversations I have had with JPMorgan Chase personnel), JPMC has been reporting the 4234 account as a deposit liability to the Office of the Comptroller of the Currency and has been paying federal deposit insurance premiums to the FDIC on the deposits in that account."	Hearsay, irrelevant, lack of foundation, lack of personal knowledge. *See* Fed. R. Evid. 402, 602, 801 & 802.
48	"*Those With First-Hand Knowledge Are Uniformly Of The View That The $3.674 Billion Deposit Is A Deposit.* As the above indicates, to the best of my knowledge every single person (including me and those now employed by JPMorgan Chase) with first-hand knowledge of the circumstances surrounding WMI's decision to move its demand deposit account from WMB to WMB fsb is of the view that the 4234 account at WMB fsb holding the $3.674 billion is, and has always been, a deposit liability owed to WMI by WMB fsb. There can be no legitimate dispute as to these facts."	Improper argument, lack of foundation, lack of personal knowledge, improper opinion, irrelevant. *See* Fed. R. Evid. 402, 602 & 701.
*	In sum, I have personal knowledge that the $3.674 billion transfer from WMI's demand deposit account at WMB to the demand deposit account at WMB fsb always was intended to be, and always was, a deposit (and not a capital contribution). I was instructed to transfer the funds into a demand deposit account at WMB fsb and I know from my personal involvement that the Washington Mutual policies and procedures for making a deposit into a demand deposit account at WMB fsb were carried out. The Washington Mutual policies and procedures that would have been required had the deposit been a capital contribution were not carried out. Furthermore, WMl paid invoices that had been billed directly to WMI using a portion of the $3.674 billion in the 4234 demand deposit account at WMB fsb, which is consistent with the transfer being a deposit and inconsistent with any notion that it was a capital contribution. Moreover, Washington Mutual had sought regulatory approval to reduce WMB fsb's capital base by $20 billion during the same time period that the $3.674 billion transfer was made, which is inconsistent with any notion that the $3.674 billion was intended to be a capital contribution to WMB fsb (which would	Improper argument, lack of foundation, lack of personal knowledge, improper opinion, improper legal conclusion, irrelevant, hearsay. *See* Fed. R. Evid. 402, 602, 701, 801 & 802.

	have had the opposite effect of increasing the capital base of WMB fsb). Finally, JPMorgan Chase itself has acknowledged and represented – through the account statements JPMorgan Chase has issued and through statements made by its own personnel – that the $3.674 billion deposit was in fact a deposit made into a demand deposit account.	