IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
WASHINGTON MUTUAL, INC., *et al.*,[1]	:	Case No. 08-12229 (MFW)
Debtors.	:	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	
Plaintiffs,	:	Adversary No. 09-50934 (MFW)
v.	:	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
Defendant.	:	
and	:	
FEDERAL DEPOSIT INSURANCE CORPORATION,	:	
Intervenor-Defendant.	:	

DEBTORS' OPENING BRIEF IN SUPPORT OF
MOTION TO DISMISS COUNTERCLAIMS OF JPMORGAN CHASE BANK, N.A.

[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).

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PRELIMINARY STATEMENT

Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment," and with WMI, "Debtors") file this opening brief in support of their motion to dismiss (the "Motion") the counterclaims (the "JPMC Counterclaims") asserted by JPMorgan Chase Bank, National Association ("JPMC") in this adversary proceeding captioned, *Washington Mutual, Inc. et al.* v. *JPMorgan Chase Bank, N.A.*, Adv. Proc. No. 09-50934 (MFW) (the "Turnover Action").

The Debtors commenced this Turnover Action, seeking the turnover of more than $4 billion in deposits (the "Deposits") formerly kept with their subsidiary bank, to adjudicate efficiently and expeditiously their unquestionable right to their Deposits. JPMC – in possession of these Deposits – sought to have the Turnover Action dismissed or, in the alternative, consolidated with the adversary proceeding that JMPC had commenced, which is captioned *JPMorgan Chase Bank, N.A. v. Washington Mutual, Inc. et al.*, Adv. Proc. No. 09-50551 (MFW) (the "JPMC Adversary Proceeding," and with the Turnover Action, the "Adversary Proceedings"). The Court denied that motion. Undeterred by this Court's ruling, JPMC now asserts these counterclaims, which are nearly identical to the claims it already asserted in the JPMC Adversary Proceeding. Thus, JPMC seeks to do what this Court has already rejected – effectively consolidate the JPMC Adversary Proceeding with the Turnover Action. The Court should reject this latest act of gamesmanship and dismiss as duplicative those claims that JPMC re-asserts in an end-run around this Court's prior ruling.

Perhaps to add a flavor of legitimacy to its tactical maneuvers, JPMC also asserts three "new" claims, none of which state a viable claim. Two of these purportedly new claims have already been decided by this Court and JPMC is seeking to appeal from that decision. The third claim, alleging fraud, really is new; it was not mentioned in any of JPMC's 40 proofs of claim,

and is thus barred as untimely. Further, the claim suffers from other deficiencies – it fails to state a claim for which relief may be granted and is not pled with the requisite particularity.

In short, the JPMC Counterclaims represent JPMC' s latest attempt to delay and impede the Debtors' chapter 11 cases. JPMC has sought to withdraw the reference to this Court and to have the District Court transfer the Adversary Proceedings to the District of Columbia notwithstanding this Court's denial of motions by JPMC and the Federal Deposit Insurance Corporation ("FDIC") to stay or transfer the Adversary Proceedings to the District of Columbia on June 24, 2009. And, in connection with its motion for withdrawal of the reference, JPMC has advanced to the District Court its own redefined interpretation of this Court's ruling concerning the inapplicability of the FDI Act's jurisdictional bar, claiming that it is limited only to certain of the Debtors' counterclaims. Also in spite of this Court's ruling, JPMC continues to seek dismissal of this Turnover Action based on the asserted applicability of the FDI Act's jurisdictional bar. Finally, JPMC has refused to produce documents to the Debtors notwithstanding this Court's entry of an order granting the Debtors' Rule 2004 Motion.

The Debtors respectfully request that this Court dismiss the JPMC Counterclaims with prejudice and make clear that JPMC's vexatious litigation strategy will not be tolerated.

STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING

This Turnover Action was commenced by the Debtors on April 27, 2009, under the Bankruptcy Code's turnover provision (11 U.S.C. § 542(b)). In this Turnover Action, the Debtors assert their unquestionable right to approximately $4 billion in Deposits formerly held at Washington Mutual Bank ("WMB") and at Washington Mutual Bank fsb ("WMB fsb"), demanding the payment of those funds to the Debtors' estates.

On May 13, 2009, JPMC filed a motion to dismiss or, in the alternative, consolidate the Turnover Action with the JPMC Adversary Proceeding (the "Motion to Dismiss/Consolidate")

(Docket No. 8). The Debtors opposed the Motion to Dismiss/Consolidate, and JPMC filed a reply brief on June 3, 2009. At a hearing held on June 24, 2009 (the "June 24 Hearing"), the Court denied JPMC's Motion to Dismiss/Consolidate, and on July 6, 2009, the Court entered an order to that effect (the "July 6 Order"). (A1).[2] On that same day, JPMC answered the Debtors' complaint and asserted the eleven JPMC Counterclaims, eight of which are wholly duplicative of JPMC's claims asserted in the JPMC Adversary Proceeding.[3] Through its assertion of the JPMC Counterclaims, JPMC has acted unilaterally to consolidate the Adversary Proceedings in direct contravention of this Court's July 6 Order.

SUMMARY OF ARGUMENT

1. The Debtors commenced this Turnover Action to adjudicate efficiently and expeditiously their unquestionable right to their Deposits. JPMC – in possession of these Deposits – sought to have the action dismissed or, in the alternative, consolidated with the JPMC Adversary Proceeding. The Court denied that motion. Undeterred by this Court's ruling, JPMC took matters into its own hands. Through the assertion of the JPMC Counterclaims (the majority of which are identical to the claims filed in the JPMC Adversary Proceeding), JPMC has wrongfully sought to get around the Court's ruling denying consolidation.

2. Additionally, JPMC has asserted three "new" claims which could not have been asserted as a matter of right in its own adversary proceeding. One of the "new" claims asserted

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[2] The Court may consider documents that are attached to or submitted with the complaint, and any matters incorporated by reference or integral to the claims asserted therein, items subject to judicial notice, matters of public record, orders, and items appearing in the record of the case. *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006).

[3] On May 19, 2009, Debtors filed their Motion for Summary Judgment in the Turnover Action, in which they present extensive and compelling evidence demonstrating that they in fact are owed the Deposits and that they are entitled to have JPMC promptly remit those funds. JPMC's responsive papers were filed on July 24, 2009.

by JPMC is a common law fraud count concerning the prepetition transfer of Deposits from WMB to WMB fsb. However, this is the first that the Debtors, their creditors, or this Court have ever been put on notice of this specious claim. The bar date, as ordered by this Court, operates to block the claim, and JPMC has not moved for relief because it has no basis to do so given that over nine months have passed since the vague time period in which JPMC claims the "fraud" took place. During these nine months, JPMC has had possession of all of the Debtors' banking subsidiaries' books and records and has substantially considered the Debtors' Deposits. In fact JPMC entered into a stipulation with the Debtors concerning the Deposits back in October 2008. Still, not a peep was made concerning any "fraud." Given the amount of time that has passed with no mention of "fraud," it is hardly surprising that JPMC's fraud claim fails to plead with the requisite particularity. Moreover, the fraud claim fails to allege any damages. JPMC pleads that one bank (WMB), whose assets JPMC acquired, was made to transfer deposit liabilities to another bank (WMB fsb), whose assets JPMC also acquired. However, JPMC assumed the deposit liabilities of both banks and alleges no resulting benefit to WMI, the supposed mastermind behind this scheme. Given the insufficiency of pleading and the fact that JPMC has suffered no damages, the claim must be dismissed.

3. JPMC's two other "new" claims may be "new" with respect to its own adversary proceeding, but the Court has seen these before. Referencing the FDIC's disallowance of the Debtors' claims against WMB in receivership, JPMC now informs the Court that, with respect to the Debtors' claims against JPMC, "both the Debtors and this Court are bound to honor and respect the determination under Title 12." First, this "theory" rests upon a premise already rejected by this Court – that the Debtors' claims asserted in the District of Columbia against the FDIC are the same claims asserted herein against JPMC. Second, even if the claims were in fact

the same – which they are clearly not – the case law is clear that the receiver's disallowance is not binding on any federal court. In fact, the FDI Act itself provides for de novo review of such disallowance. Accepting the facts as pleaded, there is no basis in law to find that the disallowance of certain Debtor claims in the FDI Act's claims administration process has any binding effect upon this Court's resolution of distinct claims asserted against JPMC. Further, a review of the notice of issues JPMC has presented to the District Court for the District of Delaware in connection with its appeal of this Court's ruling on the FDIC's and JPMC's motions to stay makes clear that JPMC is appealing the very issue that it now asks this Court to grant relief upon again – that the FDI Act is applicable to distinct Debtor claims asserted against JPMC. These "new" claims should be dismissed pursuant to the doctrines of the law of the case and collateral estoppel.

FACTUAL BACKGROUND

I. THE CLOSURE OF WMB, THE TITLE 12 RECEIVERSHIP, AND THE DC ACTION

On September 25, 2008, WMB was closed and placed into receivership with the FDIC appointed receiver. On the same day, the FDIC purportedly sold substantially all of WMB's assets, including the stock of its subsidiary WMB fsb, to JPMC for $1.88 billion, and the assumption of all of WMB's deposit liabilities, including those deposit liabilities owed the Debtors (the "P&A Transaction"), pursuant to that certain Purchase and Assumption Agreement Whole Bank (the "P&A Agreement"). Shortly thereafter, JPMC assumed all of WMB fsb's deposit liabilities, including those deposit liabilities owed the Debtors, by merging WMB fsb with its own banking operations.

In connection with WMB's receivership, as required by section 11(d) of the FDI Act (12 U.S.C. § 1821(d)), the FDIC set December 30, 2008, as the last day to file claims against WMB.

On January 23, 2009, the FDIC disallowed the Debtors' claims in a one-page notice of disallowance (the "Disallowance Notice"). Because the FDI Act's claims administration procedures required the Debtors to challenge the disallowance of claims within 60 days,[4] the Debtors filed a Complaint in the District Court for the District of Columbia, on March 20, 2009, challenging the FDIC's disallowance of claims (the "DC Action," with the claims asserted therein referred to as the "DC Claims").[5] The FDIC, in its capacity as receiver, issued its answer to the Debtors' complaint, along with a motion to dismiss in which it seeks to have dismissed all of the Debtors' claims other than those for which it filed proofs of claim. The Debtors filed their response on July 16, 2009. On the date hereof, the Debtors have also filed a motion to dismiss the FDIC's counterclaims as being in violation of the automatic stay and to stay the remainder of the proceedings in their entirety. Although JPMC has moved to intervene, the Debtors have contested the motion.

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[4] The Disallowance Notice stated in part: "[I]f you do not agree with this disallowance, you have the right to file a lawsuit on your claim ... in the United States District (or Territorial) Court for the District within which the failed Institution's principal place of business was located or the United States District Court for the District of Columbia within 60 days from the date of this notice. **IF YOU DO NOT FILE A LAWSUIT ... BEFORE THE END OF THE 60-DAY PERIOD, THE DISALLOWANCE WILL BE FINAL, YOUR CLAIM WILL BE FOREVER BARRED AND YOU WILL HAVE NO FURTHER RIGHTS OR REMEDIES WITH RESPECT TO YOUR CLAIM. 12 U.S.C. Section 1821(d)(6)(B).**" (Emphasis and capitalization in original.)

[5] Once a creditor files a claim with the agency, the FDIC has 180 days to either allow or disallow it. 12 U.S.C. § 1821(d)(5)(A)(i). A claimant who is dissatisfied with the agency's determination then has 60 days either to request administrative review or to file suit on the claim. 12 U.S.C. § 1821(d)(6)(A). The claimant is authorized to bring suit either in "the district within which the depository institution's principal place of business is located or the United States District Court for the District of Columbia." *Id.*

II. THE BANKRUPTCY CASES AND ADVERSARY PROCEEDINGS COMMENCED THEREIN

On September 26, 2008, (the "Petition Date") the Debtors each commenced a voluntary case pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code").

A. The Adversary Proceedings

On March 24, 2009, JPMC commenced the JPMC Adversary Proceeding in which JPMC asserts an ownership interest in various assets that it allegedly purchased from the FDIC pursuant to the P&A Agreement, including the Trust Securities, Tax Refunds, the Debtors' Deposit Accounts, Goodwill Litigation, Rabbi Trusts, Pension and 401(k) Plans, Bank Owned Life Insurance Policies, Visa Shares, and certain Intangible Assets (each as defined in the complaint filed in the JPMC Adversary Proceeding). (A3). The Debtors filed this Turnover Action on April 22, 2009. On May 22, 2009, the Debtors filed their answer to JPMC's complaint including eighteen counterclaims asserting, among other things, affirmative claims under the Bankruptcy Code's avoidance provisions and under state law as incorporated by the Bankruptcy Code for the avoidance of more than $10 billion in preferential and fraudulent prepetition transfers of the Debtors' assets that were transferred to JPMC (the "Debtors' Counterclaims").

B. The Court's Ruling Denying JPMC's Motion to Stay and Rejecting JPMC's Arguments Concerning the FDI Act's Jurisdictional Bar

JPMC and the FDIC filed motions to stay the Adversary Proceedings, in which both parties argued that the Turnover Action and the Debtors' Counterclaims are jurisdictionally barred under section 1821(d)(13)(D) of the FDI Act. The issue was fully briefed and extensively argued by the Debtors, JPMC, and the FDIC at the June 24 Hearing. The Court properly denied the motions. (A70). The Court, applying controlling Third Circuit authority, found that the FDI Act applies to claims against the FDIC for assets in receivership and that the Debtors' claims

against a successor bank, JPMC, are appropriately before it. (Tr. 6/24/09 at 93-94.) The Court also rejected arguments by the FDIC and JPMC, which invoked the "first filed rule" as an alternative basis to defer to the DC Action, reasoning that the Court has "exclusive" jurisdiction over the Turnover Action and the Debtors' Counterclaims and noting that the DC Action and the Adversary Proceedings do not involve "the same claims." (Tr. 6/24/09 at 94.) JPMC and the FDIC have sought leave to appeal this Court's rulings with respect to both Adversary Proceedings.

C. JPMC's Continued Refusal to Acknowledge, and Attempts to Frustrate, the Court's Rulings

Well after the FDIC's and JPMC's motions to stay the Adversary Proceedings were fully briefed by all three parties, on the literal eve of the June 24 Hearing, JPMC filed a motion to withdraw the reference of both Adversary Proceedings to the District Court for the District of Delaware, seeking to have the actions transferred to the District Court for the District of Columbia. In its reply papers filed on July 15, 2009, JPMC continues to assert the applicability of the FDI Act's jurisdictional bar to the Debtors' Counterclaims and the Turnover Action, notwithstanding this Court's clear ruling to the contrary.

In the JPMC Adversary Proceeding, JPMC filed a motion to dismiss the Debtors' Counterclaims on June 18, 2009. JPMC's position is based on the identical argument that the Court rejected—*i.e.*, that section 1821(d)(13)(D) of the FDI Act bars the Debtors' Counterclaims against JPMC. In light of the Court's ruling that the bar does not apply, the Debtors contacted JPMC, by email dated June 26, 2009, and requested that JPMC withdraw the motion to dismiss. JPMC declined to do so without explanation, and, again, has elected to continue to pursue an argument that the Court has specifically rejected. The Debtors filed their opposition to JPMC's motion to dismiss on July 2, 2009, and JPMC filed a reply brief on July 10, 2009. In its reply

brief, JPMC has taken it upon itself to demarcate the confines of this Court's ruling, stating that it "plainly does not reach" one of the Debtors' Counterclaims that was already asserted by the Debtors and considered by this Court at the time of the June 24 Hearing.

ARGUMENT

A motion to dismiss pursuant to Federal Rule of Civil Procedure (the "Federal Rules") 12 (b)(6), made applicable to the Adversary Proceedings by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, serves to test the sufficiency of the allegations in the plaintiff's complaint. *Kost v. Kozakiewicz*, 1 F.3d 176, 183 (3d Cir. 1993). The plaintiff is required to set forth sufficient information to outline the elements of its claim or to permit inferences to be drawn that these elements exist. *Id.*

While factual allegations in the complaint are to be treated as true,[6] the Court is not required to accept legal conclusions either alleged or inferred from the pleaded facts. *Mescall v. Burrus*, 603 F.2d 1266, 1269 (7th Cir. 1979). Moreover, JPMC must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). This determination will be "a context-specific task that requires the [Court] to draw on its judicial experience and common sense" regarding JPMC's asserted claims. *See id.* at 1950.

I. JPMC'S COUNTERCLAIMS MUST BE DISMISSED AS DUPLICATIVE AND IN CONTRAVENTION OF THIS COURT'S ORDER

The Debtors commenced the Turnover Action as a separate proceeding because they deemed it to be in the best interests of their estates to obtain a prompt recovery of estate property

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[6] *Wisniewski v. Johns-Manville Corp.*, 759 F.2d 271, 273 (3d Cir. 1985).

– and because the issue of liability for turnover is narrow and discrete. Adjudication of the Turnover Action should be expeditious and efficient and therefore should not be needlessly linked to resolution of the disputes concerning the litany of Other Assets (as defined in the JPMC Counterclaims). This approach is consistent with the pre-Bankruptcy Code roots of the turnover provision. *See Maggio v. Zeitz*, 333 U.S. 56, 61 (1948) (turnover "is a judicial innovation by which the court seeks efficiently and expeditiously to accomplish ends prescribed by the [Bankruptcy] statute"); *Soviero v. Franklin Nat'l Bank*, 328 F.2d 446, 448 (2d Cir. 1964) (same); *In re Himoff Maritime Enterprises, Ltd.*, 1979 Bankr. LEXIS 696, *36 (Bankr. S.D.N.Y. 1979) (same).

JPMC responded to the Turnover Action by first moving unsuccessfully to dismiss or consolidate that action with the JPMC Adversary Proceeding, and now by re-asserting each of its claims in the JPMC Adversary Proceeding in this Turnover Action. By commencing identical, duplicative litigation, JPMC has attempted to unilaterally consolidate the Adversary Proceedings – in contravention of this Court's order – in order to extend its stranglehold on the Debtors' Deposits and further delay and frustrate the Debtors' chapter 11 efforts to construct a plan and effect distributions to their creditors.

A. JPMC's Attempt to Unilaterally Consolidate the Adversary Proceedings is in Direct Contravention with this Court's Ruling and Should be Rejected

In its Motion to Dismiss/Consolidate, JPMC requested that the Court consolidate the Turnover Proceeding with the JPMC Adversary Proceeding. JPMC's motion was denied. Now, JPMC seeks the exact same relief under the guise of asserting counterclaims in the Turnover Proceeding.

JPMC admits, and it is clear from even a cursory review of the JPMC Counterclaims, that it has "cut and pasted" the complaint filed in the JPMC Adversary Proceeding into the JPMC

Counterclaims asserted in this Turnover Action. (JPMC Counterclaims at ¶¶ 74, 110 ("Certain of these counterclaims and cross-claims are among the claims that have already been asserted in [the JPMC Adversary Proceeding].")) JPMC's attempt to end-run around this Court's July 6 Order denying its Motion to Dismiss/Consolidate should be rejected by this Court under the doctrines of the "law of the case" and collateral estoppel.

The "law of the case" doctrine instructs that "when a court decides upon a rule of law, the decision should continue to govern the same issues in subsequent stages in the same case." *Friedman & Assocs. v. Smith (In re Smith)*, 165 Fed. Appx. 961, 965 (3d Cir. 2006).[7] Collateral estoppel, or issue preclusion, is the general rule requiring courts to give preclusive effect to prior decisions involving an issue of fact or law that has been actually litigated and determined by a valid and final judgment. *Frazier v. Am. Airlines, Inc.*, 2004 U.S. Dist. LEXIS 614, at *6 (D. Del. Jan. 16, 2004).[8]

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[7] The "law of the case" doctrine directs the court's discretion not to rehear matters *ad nauseam*. *Arizona v. California*, 460 U.S. 605, 618, 75 L. Ed. 2d 318, 103 S. Ct. 1382 (1983). This doctrine applies regardless of whether the issue was decided expressly or by necessary implication. *FDIC v. McFarland*, 243 F.3d 876, 884 (5th Cir. 2001).

[8] As a formal matter, even though the instant case is not a separate "suit" from that pending before the Court, all of the "standard requirements for the application of collateral estoppel" nevertheless are satisfied here; to wit: "(1) the identical issue was previously adjudicated; (2) the issue was actually litigated; (3) the previous determination was necessary to the decision; and (4) the party being precluded from relitigating the issue was fully represented in the prior action." *See Jean Alexander Cosmetics, Inc. v. L'Oreal USA, Inc.*, 458 F.3d 244, 249 (3d Cir. 2006), *cert. denied*, 127 S. Ct. 1878 (2007) (citation and quotation marks omitted). The fact that the July 6 Order is interlocutory in nature, rather than a "final" order giving JPMC the option to appeal as a matter of right, does not alter the analysis; for purposes of issue preclusion, the July 6 Order involved a dispute that was fully litigated and a ruling that was in no way tentative, which makes the decision sufficiently final now to preclude the Motion to Strike. *See, e.g., Henglein v. Colt Indus. Operating Corp.*, 260 F.3d 201, 209-10 (3d Cir. 2001) (discussing how preclusive effect may be given to rulings that are not subject to immediate appeal), *cert. denied*, 535 U.S. 955 (2002); *Metromedia Co. v. Fugazy*, 983 F.2d 350, 366-67 (2d Cir. 1992) (giving preclusive effect to non-final bankruptcy order where party "had a full and fair opportunity to litigate [the] issues in the bankruptcy court" and "[t]here was nothing tentative about the bankruptcy court's decision"), *cert. denied*, 508 U.S. 952 (1993).

In its Motion to Dismiss/Consolidate, JPMC argued that it would be more efficient to consolidate the Adversary Proceedings under Bankruptcy Rule 7042, and that the Debtors' turnover claim "can be resolved efficiently . . . in JPMC's Adversary Proceeding." (JPMC Motion to Dismiss/Consolidate at 17.) JPMC stated further, "to the extent the Court does not dismiss [the Turnover Action] in its entirety, JPMC respectfully submits that any remaining claims . . . should be consolidated with the [JPMC Adversary Proceeding]." (*Id.* at 16.) However, the Court considered JPMC's motion and, in denying the motion, allowed the Turnover Action to survive as a separate adversary proceeding.

In spite of this, JPMC has acted unilaterally to consolidate the Adversary Proceedings through the assertion of the JPMC Counterclaims. However, the issue of Adversary Proceeding-consolidation has already been litigated and ruled upon. In light of the Court's July 6 Order, the JPMC Counterclaims should be dismissed.

B. JPMC Has Asserted Duplicative Litigation Designed to Vex the Debtors' Chapter 11 Efforts

As part of its general power to administer its docket, a federal court may stay or dismiss a suit that is duplicative of another federal suit. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817, 47 L. Ed. 2d 483, 96 S. Ct. 1236 (1976) ("the general principle is to avoid duplicative litigation."); *Porter v. NationsCredit Consumer Disc. Co. (In re Porter)*, 295 B.R. 529, 544 (Bankr. E.D. Pa. 2003) (dismissing duplicative adversary proceeding brought in bankruptcy court asserting *the same cause of action* as prior pending adversary proceeding). The complex problems that can arise from duplicative litigation do not call for application of a rigid test, but instead require the court to consider the equities of the situation when exercising its discretion. *See Colorado River,* 424 U.S. at 817. "For an action to be deemed duplicative, there must be the same parties, or at least such as represent the same interest; *there must be the same*

rights asserted and the same relief prayed for; the relief must be founded upon the same facts; and the essential basis of the relief sought must be the same." *Tara M. v. City of Philadelphia*, 1998 U.S. Dist. LEXIS 12184, at *6 (E.D. Pa. Aug. 6, 1998) (dismissing action asserting same rights and seeking same relief) quoting *United States v. Haytian Republic*, 154 U.S. 118, 124 (U.S. 1894) (emphasis added).[9]

The Debtors submit that the JPMC Counterclaims were filed primarily to delay and bog down the Turnover Action and should be dismissed as duplicative on that basis. The majority of the JPMC Counterclaims are exact replicates of already asserted claims. The Debtors should not be required to defend against such claims repeatedly in more than one action. Furthermore, JPMC has taken this opportunity to assert new claims (*i.e.*, Counts I, IV, and VI) which, if asserted in the JPMC Adversary Proceeding, could not be brought as a matter of course. *See* Fed. R. Civ. P. 15 (requiring amendment prior to 20 days after receipt of responsive pleading or upon written consent or with leave of court when justice so requires). Rather than seek leave to amend the complaint in the JPMC Adversary Proceeding, JPMC has chosen to assert the JPMC Counterclaims in the Turnover Action. JPMC's vexatious litigation strategy requires dismissal of the JPMC Counterclaims (duplicative and new).

II. COUNT IV MUST BE DISMISSED (I) AS UNTIMELY, (II) FOR FAILURE TO PLEAD FRAUD WITH PARTICULARITY, AND (III) FOR FAILURE TO STATE A CLAIM

A. JPMC Should Not be Permitted to Assert Count IV Over Three Months After the Bar Date has Passed

Count IV of the JPMC Counterclaims must be dismissed because it constitutes a "new claim" asserted subsequent to the March 31, 2009 bar date established in the Debtors' chapter 11

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[9] When duplicative litigation is discovered, judicial power typically will be directed against the second of the two claims. *NationsCredit*, 295 B.R. at 543-544.

cases (the "Bar Date").[10] Although JPMC has filed a proof of claim related to the Debtors' Deposits, filed on March 30, 2009, it did not assert any fraud claim, nor any claim for punitive damages as sought in Count IV. (A98).[11] Allowing JPMC to assert an entirely new claim nearly four months after the passage of the Bar Date undermines the entire purpose of establishing deadlines for creditors to file proofs of claims and prejudices the Debtors' chapter 11 efforts.

As the Third Circuit has recognized, a principal purpose of bankruptcy law is to secure the efficient administration and settlement of a debtor's estate within a reasonably limited period of time. *See Chemetron Corp. v. Jones*, 72 F.2d 341, 346 (3d Cir. 1995). Deadlines for filing proofs of claim are to be "strictly construed" to ensure the efficient administration of bankruptcy cases and to provide all parties with finality. *In re Pigott*, 684 F.2d 239, 242 (3d Cir. 1982). While a creditor may, under certain circumstances, amend a timely-filed proof of claim, purported amendments will not be permitted if they actually constitute "new claims." *In re Metro Transp. Co.*, 117 B.R. 143, 147 -48 (Bankr. E.D. Pa. 1990) (citing *In re International Horizons, Inc.*, 751 F.2d 1213, 1216 (11th Cir. 1985); *Szatkowski v. Meade Tool & Die Co.*, 164 F.2d 228, 230 (6th Cir. 1947); *In re G. L. Miller & Co.*, 45 F.2d 115, 116 (2d Cir. 1930)). New claims asserted subsequent to the bar date must be dismissed unless "the nature of the claim . . .

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[10] The Court entered an order establishing March 31, 2009 as the deadline for filing proofs of claim against the Debtors on January 31, 2009 (the "Bar Date Order"). (A73). JPMC was well aware of the implications of the Bar Date Order given its previous request that the Court provide it with an exclusive extension of the Bar Date. The Court properly rejected that request, making clear to JPMC that it would need to investigate and present its claims by the specified deadline. JPMC has not offered, and cannot offer, any reason it should now be entitled to the relief this Court previously rejected. *See also, e.g., Taylor v. Freeland & Kronz*, 503 U.S. 638, 644 (1992) ("Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality.").

[11] Further, JPMC has not sought an extension of the Bar Date in order to assert Count IV. *See* Fed. R. Bankr. P. 3003(c)(3) (providing that the court may extend the time within which proofs of claim or interest may be filed only for "cause shown.").

is clearly and timely announced." *In re Hanscom Retail Foods, Inc.*, 96 B.R. 33, 35 (Bankr. E.D. Pa. 1988).

More than three months after filing more than 40 proofs of claim and the passage of the Bar Date, JPMC attempts to assert a fraud claim against the estate for the first time. JPMC's Count IV appears to be based on (insufficient) allegations that WMI failed to disclose certain information to WMB fsb or failed to seek WMB fsb's consent with respect to a prepetition $3.67 billion transfer of Debtor Deposits. However, nowhere in JPMC's proofs of claim (or in the JPMC Adversary Proceeding) is there any mention of fraud, any alleged failure on WMI's part to disclose information to WMB fsb, or any reference to punitive damages. Further, in Count IV, JPMC raises for the first time that purportedly, "at least $1 billion in purported funds associated [with the Debtors' Deposits] were invented by WMI" prior to the P&A Transaction. (JPMC Counterclaims ¶ 94.) Also unveiled for the first time in Count IV is the theory that WMI "recognized" or had "knowledge" of the impending seizure of WMB. (JPMC Counterclaims ¶¶ 92, 94.) It is clear that Count IV does not purport to cure a defect in JPMC's previously asserted claims, describe the previously asserted claims in more detail, or simply increase the dollar amount claimed. Thus, Count IV is clearly a "new" claim asserted subsequent to the Bar Date and is thus barred.

In ruling upon the propriety of a post-bar date amendment filed by the IRS, the bankruptcy court in *Metro Transportation* considered the following five equitable factors: (1) whether the bankrupt and creditors relied upon the earlier proofs of claim or whether they had reason to know that subsequent proofs of claim would be filed; (2) whether the other creditors would receive a windfall to which they are not entitled on the merits by the court not allowing this amendment to the proof of claim; (3) whether the claimant intentionally or negligently

delayed in filing the proof of claim; (4) the justification for the failure of the creditor to seek an extension of the bar date; and (5) whether or not there are any other considerations which should be taken into account in assuring a just and equitable result. *In re Metro Transp. Co.*, 117 B.R. at 149.

Here, each of the factors militates in favor of dismissing Count IV. First, the Debtors, and their creditors, had no reason to know that JPMC would assert a fraud claim after the Bar Date. As discussed above, JPMC made no such assertions in the JPMC Adversary Proceeding nor in its more than 40 proofs of claim. Moreover, JPMC has had possession of WMB's and WMB fsb's books and records since the time of the P&A Transaction – more than six months prior to the Bar Date. Additionally, as this Court is well aware, JPMC negotiated and entered into a stipulation with the Debtors concerning the Deposits back in October 2008.[12] This stipulation was ultimately withdrawn, in part, due to JPMC's insistence on examining all possible issues related to those Deposits.[13] Thus, JPMC had significant time in advance of the Bar Date to investigate all possible claims, was in possession of all the pertinent information, and has considered significantly the Debtors' Deposits. During all of this, not once has JPMC even suggested the possibility of a fraud claim.

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12 At the very least, JPMC had at least five months after entering into the stipulations, by which time it had surely given significant consideration to what claims it may have with respect to the Deposits, until the Bar Date. *See* Tr. 10/20/08 at 7 ("And we want to make certain that we do not waive whatever rights we may have in or to funds. People were pretty excited during the beginning of this case about what were the various rights of WMI versus the bank. And we entered into a standstill and worked very cooperatively with Debtors' counsel to try to create some space simply to let each of the parties catch their breath and try to determine what the respective rights of the parties were.").) Three months later, JPMC objected to the proposed Bar Date but understood and acknowledged that its claims would need to be filed in advance thereof if the Court so ordered. *See* Tr. 1/29/09 at 50-51 ("If in fact this Court orders us to file proofs of claims by March 31, that is what we will do.").

13 *See* Tr. 10/20/08 at 7 ("we simply need to regroup and go back on our side of the table and determine what it is that we can agree to, without undue risk. And that's what we're asking for the time to do. We're hoping we can do it fairly quickly.").

Second, there is no concern that the Debtors' other creditors would receive a windfall if Count IV is dismissed. The funds are the Debtors' Deposits formerly held by their subsidiary banks, representing value that the Debtors' legitimate creditors assessed before entering into a debtor-creditor relationship with the Debtors.

Third, assuming there is any legitimate basis for Count IV, for the reasons discussed above concerning debtor/creditor expectations, it is apparent that JPMC was at best negligent in not asserting the claim earlier. The failure of JPMC to raise this issue for the more than nine months it has held the Debtors' Deposits and books and records is telling.

Fourth, JPMC offers no justification for its failure to file for a time extension for the submission of further proofs of claim. Rather, it has attempted to slip in Count IV with the balance of JPMC's Counterclaims – the majority of which were previously asserted in the JPMC Adversary Proceeding.

Finally, there are other considerations which should be taken into account to assure a just and equitable result, *i.e.*, the dismissal of Count IV. Count IV is without merit. As discussed below, even assuming fraudulent conduct, JPMC, as the purchaser of substantially all of WMB's assets, including the equity interests in WMB fsb, suffered no damages. JPMC has asserted this fraud claim only to improve its bargaining position in the context of its already vexatious litigation with the Debtors.

For all of the foregoing reasons, Count IV should be dismissed pursuant to the Court-ordered Bar Date.

B. Count IV Fails to Satisfy the Particularity Requirements Imposed by Federal Rule of Civil Procedure 9(b)

Count IV, a claim that JPMC pleads "solely in the event" and "to the extent" the Debtors' Deposits are in fact deposits, must be dismissed because JPMC fails to plead with particularity as

required by Federal Rule 9(b). JPMC's fraud claim makes only generalized accusations of concealment or omission, without alleging any individuals, any duties to disclose or inform, nor any specific time and place when or where such "ghost" individuals failed to act. JPMC's bald assertion that WMI's actions were "a complete fraud" is patently insufficient and falls woefully short of Federal Rule 9(b)'s stringent pleading requirements.

To satisfy Federal Rule 9(b)'s pleading requirement, plaintiffs must "state with particularity the circumstances constituting fraud," with the exception of the defendant's mental state. *Pennsylvania Ave. Funds v. Borey*, 2009 U.S. Dist. LEXIS 26136, *28 (W.D. Wash. Mar. 30, 2009); Fed. R. Civ. P. 9(b). In order to satisfy Rule 9(b)'s strict standard, the party "must plead or allege the date, time and place of the alleged fraud or otherwise inject precision or some measure of substantiation into a fraud allegation." *Frederico v. Home Depot*, 507 F.3d 188, 200-01 (3d Cir. 2007).[14] The purpose of Rule 9(b)'s particularity requirements is "to place the defendants on notice of the precise misconduct with which they are charged, and to safeguard defendants against spurious charges of immoral and fraudulent behavior." *Lum v. Bank of America*, 361 F.3d 217, 223-24 (3d Cir. 2004).

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[14] *See also Carroll v. Fort James Corp.*, 470 F.3d 1171, 1174 (5th Cir. 2006) (noting that Rule 9(b) requires that plaintiffs plead enough facts to illustrate "the who, what, when, where, and how of the alleged fraud," and holding that complaint failed to allege facts showing when, if ever, it was incumbent upon the defendants to disclose any information, or how they should have done so); *Lerner v. Fleet Bank, N.A.*, 459 F.3d 273, 290 (2nd Cir. 2006) ("[I]n order to comply the complaint must: (1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent.") (internal quotation omitted); *Shields v. Citytrust Bancorp, Inc.*, 25 F.3d 1124, 1128 (2d Cir. 1994) (holding that vague and generic allegations regarding the defendants' intentional concealment of risks to the corporation's financial health did not satisfy Rule 9(b)'s requirements).

JPMC does not approach pleading the circumstances of the alleged fraud with sufficient particularity. JPMC does not plead who directed the allegedly fraudulent transfer of funds or when that decision was made. (JPMC Counterclaims ¶ 87.) JPMC does not plead who failed to make disclosures to WMB fsb, who did not seek WMB fsb's consent, when any of these acts or omissions should have taken place, who had a duty to do either, or when such a duty arose or was breached. (JPMC Counterclaims ¶ 92.) Further, JPMC fails to plead who omitted to disclose to WMB fsb that "good funds" would never be deposited, that "federal banking regulators were about to seize WMB," or that WMB "was unable to raise sufficient capital in order to keep WMB operating," or why or when any of these disclosures should have taken place. Finally, JPMC does not and cannot plead who "invented" $1 billion in funds, and, with respect to timing, can only plead vaguely that this fictitious event occurred "in the weeks leading up to the receivership." (JPMC Counterclaims ¶ 92.) JPMC's failure to name *even one* of the individuals involved in the alleged fraud is fatal to its claim. *See Seattle Pac. Indus. v. Melmarc Prods.*, 2007 U.S. Dist. LEXIS 7547, *6 (W.D. Wash. Jan. 31, 2007) ("Defendant's identification of 'authorized agents' is insufficient to state who was involved in the fraudulent conduct under Rule 9(b)"); *Segal Co. v. Amazon.com*, 280 F. Supp.2d 1229, 1231 (W.D. Wash. 2003) ("a complaint's reference to certain 'representatives' of [plaintiff] is too vague to sufficiently identify the alleged perpetrators."). Further, JPMC's failure to plead specificity as to dates and occurrences is similarly defective. *See First Global Communs., Inc. v. Bond*, 2006 U.S. Dist. LEXIS 5919, *17-19 (W.D. Wash. 2006) (dismissing fraud claim that did not "satisfy the time and place particularity requirements of Rule 9(b)).

Additionally, further evincing JPMC's lack of a basis to plead fraud with requisite particularity, JPMC's assertions concern serious factual errors that JPMC knows to be errant as

reflected by statements found in other Court filings. For example, JPMC's assertion that "WMI knew that the amount purportedly being transferred contained at least $234 million in tax refunds that belonged to WMB and not to WMI" is simply false. (JPMC Counterclaims ¶ 93.) Putting aside the substantive issue that such funds did not and could not "belong" to WMB as a matter of law, the funds that JPMC asserts were transferred fraudulently were not received by the Debtors until September 30, 2008 – postpetition and weeks after the transfer that JPMC now asserts as fraudulent. JPMC references the Debtors' receipt of these funds on that date in numerous pleadings and in at least two of its more than 40 proofs of claim.[15] Concerning the "transfer" of these funds, JPMC could not have pled with particularity given that such funds were never part of any transfer.

In sum, JPMC asserts general, vague allegations, but pleads none of them with the requisite particularity. JPMC alleges no individual decision-makers and no specific dates when it allegedly may have been incumbent upon such individuals to make the disclosures and seek the consents that it alleges were required. Rather, JPMC merely makes generic references to WMI's purported acts or omissions. This is hardly surprising considering this is a count that JPMC pleads only contingently, "to the extent" the Debtors' Deposits are in fact determined to be just that. JPMC's frivolous fraud claim is of the precise nature that Rule 9(b) is intended to prevent – spurious charges of fraudulent behavior that fails to place WMI on notice of the precise misconduct with which it is charged.[16] For these reasons, Count IV should be dismissed.

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15 *See* JPMC Proof of Claim re: Deposits and Tax Refunds ("On September 30, 2008, the IRS wired the $234.5 million to WMI."). (A105).

16 Courts have noted how "[t]he purpose of Rule 9(b) is to protect the defending party's reputation, to discourage meritless accusations, and to provide detailed notice of fraud claims to defending parties." *Silverman v. Actrade Capital, Inc. (In re Actrade Fin. Techs. Ltd.)*, 337 B.R. 791, 801 (Bankr. S.D.N.Y. 2005) (citation and quotation marks omitted). Put differently, Rule 9(b) is intended to "ensure that 'a complaint alleging fraud' is filed 'only after a wrong is reasonably

(footnote continued)

C. Count IV Should be Dismissed for Failure to State a Claim

Count IV must also be dismissed because JPMC's contrived theory fails as a matter of law. Essentially, JPMC asserts a common law fraud claim grounded in fraudulent transfer between two entities for which it asserts it has acquired all of the consolidated assets (and therefore was not harmed), against a parent entity which JPMC fails to assert was the recipient of the transfer (and therefore is being targeted wrongly). In other words, JPMC's fraud claim fails to state a claim for which relief may be granted because it pleads no damages. *See Noyes v. State Farm Gen. Ins. Co.*, 2009 U.S. Dist. LEXIS 26920, *9 (W.D. Wash. Apr. 1, 2009) ("To succeed with a common law fraud claim a plaintiff must prove the following nine elements: (1) a representation of an existing fact, (2) the fact's materiality, (3) falsity, (4) the speaker's knowledge of the falsity or ignorance of its truth, (5) the speaker's intention that it be acted upon by the plaintiff, (6) the plaintiff's ignorance of its falsity, (7) reliance, (8) plaintiff's right to rely, and (9) *damages*") (emphasis added.); *Weaver v. Chrysler Corp.*, 172 F.R.D. 96, 99 (S.D.N.Y. 1997) (claims for breach of warranty, fraud, and violation of state consumer protection statute dismissed for failure to plead damages). By alleging facts that show JPMC has not been harmed as a matter of law, JPMC has managed to plead itself out of Court. *See Soo Line R. Co. v. St. Louis Southwestern Ry. Co.*, 125 F.3d 481 (7th Cir. 1997).

As alleged in the JPMC Counterclaims, JPMC "acquired the business and related assets of WMB, including ownership of all of WMB's direct and indirect subsidiaries, and all right, title and interest of the Receiver in those assets." (JPMC Counterclaims ¶ 4.) Thus, after assessing both entities' net asset value, JPMC allegedly purchased substantially all of WMB's assets,

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believed to have occurred,' and 'not to find one.'" *See, e.g., Abercrombie v. Andrew College*, 438 F. Supp. 2d 243, 272 (S.D.N.Y. 2006) (quoting *Segal v. Gordon*, 467 F.2d 602, 607-08 (2d Cir. 1972)).

including the equity interests in WMB fsb and shortly thereafter merged WMB fsb into itself. (JPMC Counterclaims ¶ 97.) Notwithstanding JPMC's effective substantive consolidation of the transferor and the transferee, JPMC asserts its convoluted, outlandish fraud claim as the "successor to WMB fsb." Count IV, in essence, is premised on the assertion that WMB transferred $3.67 billion of deposit liabilities, along with assets that WMI knew were likely worthless, thereby "effectively stealing" from WMB fsb. (JPMC Counterclaims ¶ 2.) However, even assuming that WMI did effectuate such a transfer with the requisite intent to defraud WMB fsb (notwithstanding the irreconcilable fact that WMB fsb was the bank to which WMI was transferring the lion's share of its Deposits), given that JPMC, as alleged, acquired substantially all of WMB's assets and WMB fsb in the same P&A Transaction, such a "fraudulent" act would not have harmed JPMC. JPMC alleges no dissipation of assets, nor any dividends, waste, or looting on the part of parent WMI. Under JPMC's theory, any assets not transferred from WMB to WMB fsb were acquired by JPMC in any event. Moreover, JPMC, as the "Assuming Bank" under the P&A Agreement (JPMC Counterclaims ¶ 10), would have assumed the Debtors' Deposits had they remained at WMB (as they have done for all of WMB's deposit liabilities, including the Debtors').

Furthermore, as discussed above, JPMC fails to plead the existence of any duty to disclose or inform WMI's decision to effectuate the transfer of Deposits from WMB to WMB fsb. Absent this element, the fraud claim must fail. *See Minvielle v. Smile Seattle Invs., L.L.C.*, 2008 U.S. Dist. LEXIS 96848, *12 (W.D. Wash. Nov. 19, 2008) ("Under Washington law . . . an action for intentional misrepresentation or fraud 'may be asserted where one party to a transaction has a duty to speak . . . yet that party fails to state' a material fact."); *Wessa v. Watermark Paddlesports, Inc.*, 2006 U.S. Dist. LEXIS 32412 (W.D. Wash. May 22, 2006)

("concealment only constitutes fraud or inequitable conduct when the party possessing the knowledge has a duty to disclose that knowledge to the other party").

JPMC was not harmed by such a transfer and has failed to plead a duty on the part of WMI to inform or disclose its decision or direction to cause the transfer. Indeed, JPMC's entire theory of liability is deeply at odds with any semblance of common sense. Thus, JPMC fails to state a claim for which relief may be granted. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949-50 (2009).

III. COUNTS I AND VI SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM AND PURSUANT TO THE LAW OF THE CASE

In Counts I and VI, JPMC requests a declaratory judgment finding that (i) the Debtors "are bound by the disallowance of their claim" to their Deposits and to the Other Assets, "have no right to assert such a claim against JPMC", and (ii) "any challenge by Debtors to the disallowance of their claim to the [Debtors' Deposits and Other Assets] must proceed" in the DC Action. (JPMC Counterclaims at ¶¶ 74, 110.) In essence, JPMC is now asserting that the Turnover Action and the Debtors' Counterclaims are barred by the FDIC's disallowance of the DC Claims, notwithstanding the fact that such claims are clearly distinct from each other as recognized by this Court and the Court of Appeals for the Third Circuit. JPMC's claims must be dismissed based on the case doctrine, collateral estoppel, and because they fail to state a claim upon which relief can be granted.

A. JPMC's Counterclaims Ignore the Law of the Case

In determining that the "first filed rule" was inapplicable, the Court has already rejected Counts I and VI of the JPMC Counterclaims pursuant to its determination that the Debtors' claims asserted in the Turnover Action and the Debtors' Counterclaims are separate and distinct claims from the DC Claims and therefore, not barred by the FDIC's Disallowance Notice. Specifically, this Court has already recognized that the DC Action and the Turnover Action "are

not . . . dealing with the same claims . . . [but] are distinct claims against distinct parties." (Tr. 6/24/09 at 94-95.). JPMC is advancing a strained legal theory, the underpinnings of which have already been rejected by this Court.

If there is any question as to whether Counts I and VI were disposed of on June 24, 2009, JPMC's Statement of Issues Presented ("Statement of Issues") filed with the Court to be transmitted to the District Court for the District of Delaware in connection with JPMC's appeal of this Court's rulings makes clear that they were. *See* JPMC Statement of Issues Presented and Designation of Record on Appeal (Docket No. 86). (A125). The Statement of Issues sets forth the following issue: "Does FIRREA bar these Debtors, who have availed themselves of the FIRREA claims process, whose claims have been disallowed, and when their appeal of that disallowance is pending before the D.C. District Court, from bringing separate claims, this time as against a purchaser from the FDIC, to collaterally attack in the Bankruptcy Court the disallowance of their claims?" (Statement of Issues ¶ 2.) In nearly identical fashion, Counts I and VI assert that the Debtors "asserted a claim . . . in the Receivership and its claims were disallowed by the Receiver"; "WMI is currently challenging the disallowance of its claims in the D.C. Action"; the Debtors "have no right to assert such a claim against JPMC"; and the Debtors "are bound by the disallowance." (JPMC Counterclaim ¶71-74). Thus, at the same time JPMC is seeking to appeal this Court's ruling, it is unabashedly re-asserting its rights on the issue via the JPMC Counterclaims.

The issue was fully-briefed, argued, and ruled upon by this Court. The determination that the claims were distinct was integral to the Court's finding regarding the inapplicability of the "first filed" rule and its ultimate denial of the FDIC's and JPMC's motions to stay. JPMC's claim that the Debtors "have no right to continue to claim" the Deposits or the Other Assets is in direct

contravention of this Court's findings on June 24, 2009 and therefore should be dismissed pursuant to the law of the case doctrine and collateral estoppel. *See Smith*, 165 Fed. Appx. at 965 ("when a court decides upon a rule of law, the decision should continue to govern the same issues in subsequent stages in the same case"); *Frazier*, 2004 U.S. Dist. LEXIS 614, at *6 ("Collateral estoppel, or issue preclusion, is the general rule requiring courts to give preclusive effect to prior decisions involving 'an issue of fact or law [that has been] actually litigated and determined by a valid and final judgment'").

B. JPMC's Counterclaims Fail to State a Claim

JPMC seeks a judgment that the Debtors "are bound by the [FDIC's] disallowance of their claim to the [Deposit Accounts and the Other Assets] and have no right to assert such a claim against JPMC to the same assets." However, the Debtors' claims are clearly distinct from the DC Claims (disallowed by the FDIC and challenged in the DC Action), and are not subject to the FDI Act claims procedure which concerns claims against a failed depository institution in receivership. *See generally* 12 U.S.C. § 1821(d)(3)-(13) (administrative claims procedure contemplates claims of a "depository institution's creditors"). JPMC's claims must be dismissed (as this Court has already recognized) because the Debtors' claims are distinct claims against distinct parties. *See Rosa v. R.T.C.*, 938 F.2d 383 (3d Cir.), *cert. denied*, 502 U.S. 981 (1991) (recognizing the distinction between claims asserted against a successor bank concerning assets acquired from the FDIC as receiver for failed depository institution and substantially identical claims as asserted against the failed depository institution in receivership). JPMC cannot establish that the FDIC's disallowance would have any effect on the Debtors' claims in the Adversary Proceedings.

JPMC's theory – that the disallowance of claims asserted against a failed depository institution, subject to the FDI Act, operates to bar distinct claims with potentially common issues

of fact against third parties such as a successor bank not in receivership – is inadequate as a matter of law. First, the FDI Act's administrative claims procedure concerns claims against failed depository institutions in receivership. *See National Union Fire Ins. Co. v. City Sav., F.S.B.*, 28 F.3d 376, 386 (3d Cir. 1994) ("the administrative claims procedure of FIRREA contained in § 1821 (d)(3), (d)(5) and (d)(6) addresses a debtor-creditor relationship"); *Rosa*, 938 F.2d at 394-395 ("The claims procedure provides RTC with the authority to determine claims, to allow and disallow claims, and to pay creditor claims") (internal quotation omitted); *Auction Co. of Am. v. FDIC*, 141 F.3d 1198, 1200 (D.C. Cir. 1998) ("provides for administrative determination of 'any claim against a depository institution for which the Corporation is receiver' and thereafter for adjudication in district court"). Courts are clear that with respect to claims for assets which the FDIC does not purport to own, the FDI Act's claims procedures are simply inapplicable. *See FDIC v. McFarland*, 243 F.3d 876, 887 (5th Cir. 2001) ("The claim procedures articulated in 12 U.S.C. § 1821(d)(5)-(11) are predicated on the FDIC's possession of the property in question. When the FDIC relinquishes ownership, the procedures governing its role as a receiver no longer apply to the property.") This is the case with respect to each of the Deposits and the Other Assets – the FDIC claims to have transferred such assets to JPMC pursuant to the P&A Transaction. JPMC has no legal basis to argue that the disallowance of the Debtors' DC Claims has any implication whatsoever on claims against JPMC.

Specifically, the Turnover Action has nothing whatsoever to do with the assets of WMB or any debtor-creditor relationship between WMI and WMB – the depository institution in receivership. First, prior to the receivership of WMB, the great majority of the Deposits were in an account at WMB fsb, a bank that was not seized by the FDIC and whose assets were never part of the receivership estate. Second, any Deposits that were in receivership have been

assumed by JPMC and no longer are in receivership. Thus, the Turnover Action names JPMC as defendant, and not the FDIC. As already made clear to this Court in determining the inapplicability of the FDI Act's jurisdictional bar, the Debtors' Turnover Action is not a case involving "the assets of [a] depository institution" in receivership. As such, the Turnover Action is not subject to the FDI Act's administrative claims procedure.

The same is true with respect to the Debtors' Counterclaims. The Debtors seek declaratory relief that the Other Assets (which JPMC claims to have purchased pursuant to the P&A Agreement) are in fact property of their estates. The Debtors also assert various avoidance actions against JPMC as subsequent transferee seeking to avoid preferential and fraudulent transfers of estate assets. These are distinct claims as specifically contemplated by the Bankruptcy Code. *See* 11 U.S.C. §550(a) (providing for recovery by transferor from "any immediate or mediate transferee of such initial transferee"). The FDI Act does not operate as a bar to such actions. *See In re First Republicbank Corp.*, 1990 Bankr. LEXIS 2840 (Bankr. N.D. Tex. June 19, 1990) ("Congress can, but has not provided that Section 548 of the Bankruptcy Code not apply to FDIC bank assistance packages given under Section 13(c) of the Federal Deposit Insurance Act."). The Debtors' Counterclaims, as is the Turnover Action, are distinct from the DC Claims, and there is no legal basis to find that the Disallowance Notice operates to bind these distinct claims.[17]

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[17] Even assuming that the Turnover Action and the Debtors Counterclaims were in fact reasserting the DC Claims, which they are clearly not, the FDIC's disallowance would not operate to "bind" any subsequent challenge. Title 12 provides that a court's review is de novo, moreover, and is without deference to the FDIC's disallowance of the claim. *See, e.g., Rosa,* 938 F.2d at 393 ("claims are subject to de novo judicial action following the initial determination by RTC"); *Bueford v. RTC*, 991 F.2d 481, 486 (8th Cir. 1993) ("FIRREA is not a model of statutory clarity . . . However, a reading of the statute as a whole clearly spells out when and how judicial review is available. We are particularly persuaded by the interpretation advanced by other circuits that section 1821(d)(5)(E) directs the district courts to analyze claims against failed banking

(footnote continued)

JPMC's absurd claims are based upon the inapposite holding of the Sixth Circuit in *Village of Oakwood v. State Bank & Trust Co.*, 39 F.3d 373 (6th Cir. 2008). In *Oakwood*, a case that is not controlling on this Court, the claimants conceded that they "failed to comply with the administrative-claims process" under the FDI Act and the court refused to allow the claimants to dress up those same claims and assert them against a third party successor bank. *Id.* at 386 ("Moreover, because the claims that the Uninsured Depositors are attempting to assert are disallowed as a result of their failure to comply with the administrative-claims process, they have no further rights or remedies ***with respect to such claims*** despite the fact that they purport to bring them against State Bank rather than the FDIC") (emphasis added and internal quotation omitted). Integral to the court's holding was its determination that the putative claimants had no valid claim against the purchasing bank. Unlike here, however, the *Oakwood* plaintiffs, uninsured depositors of the failed bank, held deposits that were not transferred by the purchase and assumption agreement between the FDIC and the successor bank. *Id.* at 375-76. Thus, although the plaintiffs ostensibly brought suit against the successor bank, they had no viable claim for their deposits against that successor institution and were in reality pursuing relief available only through the receivership. The court recognized that the plaintiffs were pursuing an "attempt to recover the value of their uninsured deposits." *Id.* at 375. The court therefore applied the FDI Act's jurisdictional bar and rejected plaintiffs' argument that their claims were not "claims against a depository institution for which the [FDIC] was receiver." *Id.* at 386. By

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institutions de novo"); *Emerald International v. FDIC*, 190 B.R. 701, 703 (S.D. Fla. 1995) ("Congress instructed district courts to determine claims against failed banks de novo rather than merely to review the receiver's initial determination for error or abuse of discretion"); *RTC v. Elman*, 761 F.Supp. 245, 247 (SDNY 1991) ("If the claimant is unhappy with the outcome of the initial claim review procedure, she may request either an administrative review in accordance with the statute, or file suit on that claim and obtain a de novo judicial review of the RTC's initial determination. Id. at § (d)(6). In addition, the statute provides for expedited determination of claims by the RTC in certain instances.").

contrast, the Debtors in the Adversary Proceedings are asserting claims against JPMC, as this Court has already found, and as the Third Circuit in *Rosa* recognized. Clearly, *Oakwood* does not mean that the disallowance of the Debtors' claims by the FDIC "binds" the Debtors from asserting distinct claims against JPMC.[18]

JPMC also seeks a declaration that "any challenge by Debtors to the disallowance of their claim[s]" must proceed in the DC Action. This request only highlights the absurdity of the first prong of JPMC's claim. The Debtors are doing just that in the District Court for the District of Columbia. However, they are challenging the FDIC's disallowance only with respect to the DC Claims asserted against, and disallowed by, the FDIC – claims distinct from those asserted against JPMC in the Adversary Proceedings.

C. Debtors Should be Awarded Fees and Costs Incurred in Opposing Counts I and VI

Although litigants generally bear their own costs, when an attorney "multiplies the proceedings in any case unreasonably and vexatiously," the attorney "may be required by the court to satisfy personally the excess costs, expenses and attorney fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. It is appropriate for a court to assess sanctions upon an attorney under section 1927 "where an attorney has: (1) multiplied proceedings; (2) unreasonably and vexatiously; (3) thereby increasing the cost of the proceedings; (4) with bad faith or with intentional misconduct." *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 278 F.3d 175, 188 (3d Cir. 2002). Bad faith can be inferred where "a claim is advocated despite the fact that it is patently frivolous or where a litigant continues to pursue a claim in the

[18] JPMC's legal theory would lead to absurd results, requiring every former WMB depositor to have filed a claim with the FDIC. Any depositor that failed to file such a claim, or any depositor whose claim was disallowed by the FDIC, would be "bound" by such disallowance, having effectively foregone its deposit which would amount to an underserved windfall for JPMC – the assumer of all of WMB's deposit liabilities.

face of an irrebuttable defense." *Loftus v. Se. Pa. Transp. Auth.*, 8 F. Supp. 2d 458, 461 (E.D. Pa. 1998); *see also Boykin v. Bloomsburg Univ. Of Pa.*, 905 F. Supp. 1335, 1346 (M.D. Pa. 1995).

JPMC has unreasonably "multiplied" the proceedings in the Debtors' chapter 11 cases, notwithstanding the Court's rulings on June 24, 2009. There, the Court ruled that the FDI Act's jurisdictional bar and the "first filed" rule were inapplicable, in part because the Court recognized that the claims the Debtors were asserting against JPMC were distinct from the DC Claims. Notwithstanding this ruling, JPMC has brought Claims I and VI – claims that rest on the premise that the claims are the same in nature. As discussed above, JPMC has also sought to effectively consolidate the Adversary Proceedings, notwithstanding this Court's rejection of its prior Motion to Dismiss/Consolidate the Turnover Action. This conduct is hardly surprising. Subsequent to the Court's ruling on June 24th that the FDI Act's jurisdictional bar did not apply to the Debtors' Counterclaims, JPMC has continued to assert this already-failed argument by refusing to withdraw its motion to dismiss the Debtors' Counterclaims and in its reply to the Debtors' opposition to JPMC's motion to withdraw the reference.

These tactics should not be tolerated. The Debtors have already prevailed on the issue of whether the FDI Act acts as a bar to this Court's subject matter jurisdiction. Further, the Court has already issued one ruling premised upon a finding that the Debtors' Counterclaims were distinct from the DC Claims and one ruling refusing to consolidate the Adversary Proceedings. Neither this Court, nor the Debtors and their estates, should have to sustain the costs of defending claims resting on an argument the Court has already resolved against JPMC. *See In Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1254 (2d Cir.), *cert. denied*, 506 U.S. 820 (1992) (imposing sanctions on defendant who re-submitted previously denied motion).

It is essential that the Court exercise its discretion to ensure that the Debtors' massive chapter 11 cases move forward at an efficient pace without being delayed unnecessarily through repeated examination and re-examination of issues that have already been fully resolved. By pressing the same settled issue in multiple pleadings, and by tacking on additional frivolous arguments, JPMC has demonstrated that its primary goal in this litigation is delay. This delay greatly prejudices the Debtors' efforts to construct and confirm a chapter 11 plan and, resultantly, the Debtors' creditors who await recovery. The Debtors respectfully request that the Court make clear that this is not a valid strategy going forward by imposing sanctions against JPMC as authorized under 28 U.S.C. § 1927.

CONCLUSION

For the reasons discussed, Debtors respectfully request that the Court grant the Motion and dismiss JPMC's Counterclaims with prejudice.

Dated: July 27, 2009
Wilmington, Delaware

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
WASHINGTON MUTUAL, INC., *et al.*,[1]	:	Case No. 08-12229 (MFW)
Debtors.	:	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	
Plaintiffs,	:	Adversary No. 09-50934 (MFW)
v.	:	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
Defendant.	:	
and	:	
FEDERAL DEPOSIT INSURANCE CORPORATION,	:	
Intervenor-Defendant.	:	

APPENDIX TO DEBTORS' OPENING BRIEF IN SUPPORT OF MOTION TO DISMISS COUNTERCLAIMS OF JPMORGAN CHASE BANK, N.A.

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July 27, 2009

[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).

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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.,	:	**Adv. Pro. No. 09-50934 (MFW)**
Plaintiffs,	:	
v.	:	Re: 9 1 e O
JPMORGAN CHASE BANK, N.A.,	:	
Defendant.	:	

ORDER DENYING MOTION TO DISMISS ADVERSARY PROCEEDING FILED BY JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

Upon the motion, dated May 13, 2009 (the "Motion") [Docket No. 8], of JPMorgan Chase Bank, National Association ("JPMorgan") for an order (a) dismissing the complaint of Washington Mutual, Inc. and WMI Investment Corp. (together, the "Debtors"), dated April 27, 2009, for turnover of estate property or (b) in the alternative, consolidating the above-captioned adversary proceeding with JPMorgan's adversary proceeding, styled JPMorgan Chase Bank, National Association v. Washington Mutual, Inc. and WMI Investment Corp., Adv. Proc. No. 09-50551 (MFW), all as more fully set forth in the Motion and the Opening

[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.

Brief in Support of Motion to Dismiss Adversary Proceeding filed by JPMorgan [Docket No. 9]; and the Debtors having filed a response to the Motion on May 27, 2009 (the "Response") [Docket No. 22]; and the Court having jurisdiction to consider the Motion, the Response, and all related filings in connection therewith and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409 to consider the Motion; and due and proper notice of the Motion and the Response having been provided, and it appearing that no other or further notice need be provided; and a hearing having been held before the Court with respect to the Motion, the Response, and related filings on June 24, 2009 (the "Hearing"); and upon the record of the Hearing and for the reasons set forth on the record of the Hearing, it is hereby

ORDERED that the Motion and the relief requested therein is denied.

Dated: Wilmington, Delaware
July 6, 2009

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

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
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	Adversary Proceeding No. _____
Plaintiff,	
v.	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	
Defendants for all claims,	
- and-	
FEDERAL DEPOSIT INSURANCE CORPORATION,	
Additional Defendant for Interpleader claim.	

[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 their principal offices with the employees of JPMorgan Chase located at 1301 Second Avenue, Seattle, Washington 98101.

COMPLAINT

JPMorgan Chase Bank, National Association ("JPMorgan Chase" and, together with its subsidiaries and affiliates, "JPMC"), by and through its attorneys, Sullivan & Cromwell LLP and Landis Rath & Cobb LLP, for its Complaint, alleges upon knowledge as to itself and its conduct and upon information and belief as to all other matters, as follows:

NATURE OF ACTION

1. JPMorgan Chase brings this action in order to ensure that JPMorgan Chase and its subsidiaries are not divested of their assets and interests purchased in good faith from the Federal Deposit Insurance Corporation ("FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson Nevada ("WMB") under Title 12 of the United States Code pursuant to that certain Purchase and Assumption Agreement (Whole Bank) dated as of September 25, 2008, a true and correct copy of which is attached as Exhibit A hereto (the "P&A"). JPMC also brings this action for indemnification and recovery against the Debtors for certain liabilities that may be asserted against JPMorgan Chase as the successor by merger to Washington Mutual Bank, fsb, Utah ("WMB fsb"), a former subsidiary of WMB, or against other former subsidiaries of WMB that currently are subsidiaries of JPMorgan Chase.

2. Under the P&A, JPMorgan Chase acquired the business and related assets of WMB, including ownership of all of WMB's direct and indirect subsidiaries, and all right, title and interest of the Receiver in those assets. As provided for in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest" to these assets, pursuant to and in accordance with the Federal Deposit Insurance Act, as amended (the "FDI Act"). Among the assets acquired by JPMorgan Chase under the P&A were certain assets that have been claimed by Washington Mutual, Inc. ("WMI", and collectively with WMI Investment Corp. ("WMI

Investment"), the "Debtors").

3. Many of the assets the Debtors now improperly claim belong to them (but that JPMorgan Chase in fact acquired from the FDIC) have already been determined not to be the Debtors' property pursuant to the resolution procedures under Title 12. On December 30, 2008, the Debtors submitted claims in the Receivership for, among other things, ownership of these assets. On January 23, 2009, the FDIC, as Receiver, disallowed the Debtors' claims. The Debtors elected not to appeal the disallowance of their claims to ownership of these assets. Rather, on March 20, 2009, the Debtors filed an action against the FDIC in the United States District Court for the District of Columbia, *Washington Mutual, Inc.*, et al. v. *Federal Deposit Insurance Corporation*, Case No.1:09-cv-00533 (the "District Court Action"), challenging to the disallowance of their claims and also claiming ownership of those assets. The Debtors have exercised their purported right to demand a trial by jury in the District Court Action.

4. The assets that are the subject of the Debtors' disallowed claims are also among the assets set forth in the Debtors' Schedules and Statements of Financial Affairs filed with this Court on December 19, 2008, January 27, 2009 and February 24, 2009 (collectively, the "Schedules"). Notwithstanding the assertions in the Schedules and the District Court Action, the assets put at issue by the Debtors are not property of the Debtors' estates under 11 U.S.C. §541, nor are they property of the Receiver any longer, but rather the assets are property of JPMC, which acquired them in good faith and for value from the FDIC pursuant to the FDI Act.

5. In response to the Debtors' actions and in order to protect its economic interests in the assets the Debtors chose to put at issue in the District Court Action, JPMorgan Chase has filed this Complaint.

6. The assets of the Receiver that were sold to JPMC, as to which WMI has

asserted rights or has refused to acknowledge JPMC 's ownership, include (i) approximately $4 billion in the aggregate face amount of Trust Securities (as defined below) contributed by WMI to WMB, the amount of which constitutes regulatory core capital of WMB; (ii) the right to tax refunds arising from overpayments attributable to operations of WMB and its subsidiaries for the 2008 tax year and prior tax years and net operating loss, net capital loss, and excess tax credit carrybacks from 2008 to prior tax years; (iii) approximately $3.7 billion credited by book entry shortly prior to the receivership of WMB so as to create a purported deposit account at WMB fsb in the name of WMI without any apparent deposit of funds; (iv) at least $234 million in tax refunds that belonged to WMB and/or WMB subsidiaries and were acquired by JPMorgan Chase under the P&A but were deposited to the credit of WMI in the days following the Receivership; (v) goodwill judgments that arise from pending and prior litigation; (vi) assets of certain trusts supporting deferred compensation arrangements covering the former and current employees of WMB and its subsidiaries; and (vii) other assets of WMB, including Visa shares, intellectual property and contractual rights, as described below. The Debtors are also refusing to recognize the Receiver's ability to transfer to JPMorgan Chase certain tax qualified pension and 401(k) plans pursuant to which the trust assets are held for the exclusive benefit of participants, most of whom were WMB's employees.

7. The liabilities at issue in this adversary proceeding are liabilities that did not transfer to the Receiver or to JPMorgan Chase, but rather are liabilities of the Debtors that relate to acts, conduct or omissions of WMI in connection with events prior to the commencement of the receivership proceedings for WMB and for which WMB and/or its former subsidiaries would be entitled to indemnification and contribution from the Debtors as primary actors. These liabilities relate principally to (i) the issuance of "Trust Securities" with the

aggregate face amount of approximately $4 billion; (ii) so-called "deposit accounts," which in the aggregate were recorded as having a book balance of approximately $4.3 billion as of the commencement of these Chapter 11 cases; and (iii) the restructuring and transfer of assets and liabilities among the Debtors and their former subsidiaries.

8. In this action, JPMorgan Chase seeks, pursuant to Title 12 and the P&A, (i) a declaration that, as the successor of the Receiver, it has or is entitled to full legal title to and the beneficial interest in the assets at issue, (ii) a declaration that it has lien rights against, and/or is entitled to setoff, recoupment and/or imposition of a constructive trust with respect to any amounts to which the Debtors may otherwise claim to be entitled, (iii) a declaration of the rights of JPMC to indemnification, contribution and/or reimbursement for amounts paid or advanced by JPMC or WMB with respect to any of the assets at issue that are not transferred to JPMC, and (iv) adjudication of any and all conflicting claims to the so-called "deposit accounts" and any funds in them. JPMorgan Chase intends to file its proofs of claim for the amounts, if any, that this Court may determine in this adversary proceeding constitute claims against the Debtors and their estates.

PARTIES AND BACKGROUND RELATIONSHIPS

9. Plaintiff JPMorgan Chase is a national banking association organized under the laws of the United States of America with its principal place of business in Columbus, Ohio. JPMorgan Chase is a wholly-owned subsidiary of JPMorgan Chase & Co., a corporation organized under the laws of the State of Delaware. JPMorgan Chase is the "Assuming Bank" as that term is defined in the P&A and is the successor to and good faith purchaser for value from the Receiver under the P&A and under Title 12 of the United States Code.

10. Defendant WMI is a holding company incorporated in Washington with

its principal place of business in Seattle, Washington and is one of the debtors and debtors-in-possession in these cases, having filed its voluntary petition for reorganization under chapter 11 of Title 11 of the United States Code on September 26, 2008 (the "Petition Date") before the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

11. Defendant WMI Investment is a Delaware corporation with its principal place of business in Seattle, Washington and is the other debtor and debtor-in-possession in these cases.

12. Defendant FDIC is a federal corporation with its principal place of business in the District of Columbia. The FDIC is named as a defendant solely in connection with the interpleader claim.

13. At all times relevant hereto, WMI was a savings and loan holding company, WMI directly owned WMI Investment and directly or indirectly owned WMB and WMB's subsidiaries, including WMB fsb (WMB and WMB fsb as in existence prior to the Receivership are sometimes collectively referred to herein as the "Affiliated Banks").

14. At all times relevant hereto, the Debtors, WMB and WMB's direct and indirect subsidiaries, including WMB fsb, were subject to regulation by the Office of Thrift Supervision ("OTS") and various other state and federal depository institutions regulatory agencies and banking authorities, including the FDIC, which insured the banks' deposits.

15. On September 25, 2008, the Director of the OTS by order number 2008-36, appointed the FDIC as Receiver for WMB and the Receiver took possession of WMB in a receivership proceeding under section 1821 of Title 12 of the United States Code (the "Receivership").

16. On September 25, 2008, the FDIC, as Receiver and in its corporate

capacity, also entered into a Purchase and Assumption transaction with JPMorgan Chase under the P&A, whereby JPMorgan Chase acquired substantially all of the assets and assumed the deposit liabilities (as defined in the P&A and under 12 U.S.C. § 1813(1)) and certain other liabilities of WMB's banking operations under the authority vested in the FDIC by Title 12.

17. On September 26, 2008, at approximately 10:16 p.m., WMI and WMI Investment filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (as amended, the "Bankruptcy Code") in the Bankruptcy Court, thereby commencing the Chapter 11 cases in which this adversary proceeding is filed.

18. On January 30, 2009, the Bankruptcy Court entered its order setting March 31, 2009 as the date by which all proofs of claim against the Debtors and their estates must be filed.

19. On February 24, 2009, the Debtors filed amended schedules in these cases.

20. On March 20, 2009, the Debtors commenced the District Court Action.

JURISDICTION AND VENUE

21. Since the Petition Date, the Debtors have been and continue to be authorized to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

22. On October 3, 2008, this Court entered an order pursuant to Federal Rule of Bankruptcy Procedure 1015(b) (collectively, the "Bankruptcy Rules") authorizing the joint administration of the Debtors' Chapter 11 cases.

23. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 2201 and 2202, 28 U.S.C. § 1334, 28 U.S.C. § 157, and Bankruptcy Rule 7001.

24. Venue of this adversary proceeding in this Court is proper pursuant to 28 U.S.C. § 1409(a).

STATEMENT OF FACTS

A. The Bank Failure and Acquisition.

25. On September 18, 2008, the OTS designated WMB as a "problem institution," thus subjecting it to closer control and scrutiny by the federal regulatory authorities and on September 25, 2008, the OTS placed WMB in receivership because of significant concerns over the safety and soundness of the institution. To ensure continuity of operations, maximize public confidence and minimize cost to the public treasury, the FDIC ran an accelerated bidding process in accordance with statutorily mandated procedures under Title 12 that, subject to certain limited exceptions, resulted in the sale of all of the Receiver's right, title and interest to or in WMB's assets whether or not reflected on the books and records of WMB, to JPMorgan Chase pursuant to the terms of the P&A.

26. At the time of the Receivership, WMB was the sixth largest bank in the United States, with 2207 branches, more than 43,000 employees, and more than 13 million depositors with more than $140 billion of deposit liabilities insured by the FDIC.

27. WMB also indirectly owned 100% of WMB fsb. WMB fsb or "the little bank" (as it has sometimes been called) had 26 offices to WMB's 2,207 and less than $5 billion in customer deposits insured by the FDIC to WMB's more than $140 billion.

28. The FDIC's ability to promptly find a suitable acquirer of WMB's banking operations had significant economic and policy ramifications. This was a bank failure of unprecedented magnitude that occurred in the midst of the most severe financial crisis in decades. Had the FDIC been unable to sell the assets of WMB, 13 million depositors would

have lost their bank and the confidence of consumers in the banking system generally would likely have been further undermined. The protection of the title conveyed by the FDIC to institutions like JPMorgan Chase, who are encouraged to step into the breach and provide the stability and continuity necessary to avert a run on a failing bank and disruption of its services to the public, is critical to the ability of the regulators to manage bank failures under Title 12 and the government to administer an insurance fund that can maintain public confidence in the banking system.

29. That WMB stands as the largest bank failure in United States history stems in large part from the financial crisis and crisis of confidence that still grips the nation. In the ten days immediately prior to the Receivership, WMB experienced deposit outflows of more than $16.7 billion, amounting to more than $2 billion per banking business day, as its customers and even WMI itself were apparently moving their assets so as to avoid the effects of what was increasingly perceived to be an inevitable bank failure.

30. JPMorgan Chase had only two days after being briefed by the FDIC to submit a bid and then only twenty-four hours from the time that its bid was accepted by the FDIC until the time the acquisition closed to complete the single largest acquisition of a failed institution in United States history. The circumstances which led to execution of the P&A meant that JPMorgan Chase had limited opportunity to prepare for this unprecedented transaction.

31. The acquisition included, among other things, a nationwide credit card lending business, a multi-family and commercial real estate lending business, and nationwide mortgage banking activities. JPMorgan Chase's acquisition avoided an interruption in banking services. It assured that the 2,207 branches operated by WMB, as well as the 26 additional branches operated by WMB fsb, opened for business on September 26, 2008, protecting the

interests of employees, customers, vendors, and communities who were dependent on WMB's banking operations. JPMorgan Chase paid $1.88 billion dollars to the FDIC for these and other assets, and assumed all deposits. This transaction involved no financial assistance from, or cost to, the FDIC's Deposit Insurance Fund. This stands in contrast to other recent bank failures such as the FDIC's sale of IndyMac Federal Bank FSB, which cost the FDIC approximately $10.7 billion, despite IndyMac being a much smaller bank than WMB.

32. The task of stabilizing, integrating and creating as smooth a transition as possible has been time-consuming and arduous. But its success has been vital to the banking system, the communities served by WMB and the general public interest.

B. Combined Operations of Washington Mutual

33. As a federal savings association committed to serving consumers and small businesses, WMB accepted deposits from the general public, originated, purchased, serviced and sold home loans, made credit card, home equity, multi-family and other commercial real estate loans, and to a lesser degree, engaged in certain commercial banking activities. WMB's substantial mortgage business was hit especially hard by increasing home and commercial mortgage delinquencies in late 2007 and 2008.

34. As the financial crisis took root toward the end of 2007, WMI focused its efforts on raising capital for WMB. In late 2007, WMI raised approximately $3 billion in new capital through the issuance of a series of debt securities. In early 2008, WMI sought out merger partners and equity investors. A number of companies participated in the process (including JPMorgan Chase which submitted a bid to acquire WMI, but whose bid was rejected by WMI). In April 2008, in lieu of an acquisition or a merger, WMI negotiated a capital infusion of approximately $7.2 billion from a group of investment funds led by Texas Pacific Group, a

private equity firm, through an issuance of preferred stock, which included anti-dilution provisions that severely constricted the ability of WMI to raise additional capital.

35. WMI formally contributed to WMB at least $6.5 billion of the approximately $10.2 billion in capital it had raised. As discussed below, certain book entries made between September 19 and September 24, 2008 reflect an additional contribution of $3.7 billion from WMI to WMB fsb, accounting for much of the remaining debt and equity capital raised by WMI during 2007 and 2008. While book entries were made, neither WMI nor WMB transferred cash or other good funds to WMB fsb corresponding to the book entries, whether as a contribution or otherwise.

36. Prior to the Receivership, WMI and WMB had identical and overlapping directors and held joint meetings of the Boards of Directors of both entities on a combined basis, resulting in effect in a single Board of Directors with identical directors that met on the same topics at the same time and made decisions for both entities collectively. WMI's officers and employees were also officers and directors of WMB and WMI and WMB shared a joint general ledger and other books and records, and centralized their decision making, treasury, cash management, finance, governance, regulatory and executive functions in the same individuals. The overlap was so extensive that as of the time of the Receivership and subsequent Petition Date, WMI claimed it had only a handful of employees remaining as the result of the Receivership.

37. Likewise, the assets and liabilities of the Debtors and their direct and indirect subsidiaries, including the Affiliated Banks, were connected and in many cases, commingled and intertwined. Prior to the Receivership, the Debtors and their direct and indirect subsidiaries operated a centralized and consolidated cash management system pursuant to which

external receipts and payments were accounted for on a consolidated basis and internal receipts or payments were done in whole or in part by book or journal entry as "due to/from" accounts on the general ledger or other books of account.

38. At various times prior to the Receivership, WMI entered into agreements with third parties that titled assets or contractual rights in WMI's name although WMB or a subsidiary of WMB paid for the asset or contractual right or was the entity liable on the payment or liability therefore. At various times prior to the Receivership, WMI also entered into intercompany arrangements with the Affiliated Banks with documentation different than the documentation that the Affiliated Banks would have obtained in an arm's-length transaction with an unaffiliated party.

39. In 2007 and 2008, WMI undertook a series of projects and other acts, at least some of which appear to have moved assets away from WMB or its subsidiaries to WMI or another of WMI's subsidiaries. This included transfers undertaken during August and September 2008 as part of WMI's self-titled "WMI Cash Optimization Program", for the apparent benefit of WMI.

40. To the extent that that any person has or may assert claims against JPMC that resulted from these transactions, JPMC is entitled to be indemnified and held harmless by WMI since all pre-petition transactions were consummated at the behest and direction of WMI and for its benefit.

C. Trust Securities

41. Between March 2006 and October 2007, certain issuer trusts (the "Issuing Trusts") formed by WMI and its then subsidiaries issued securities (the "Trust Securities") in the aggregate face amount of approximately $4 billion, exchangeable into depository shares

representing preferred stock of WMI upon the occurrence of certain events. A complete list of the Trust Securities is attached as Exhibit B. The Trust Securities were issued in global form registered in the name of Cede & Co., as nominee, and held by Wilmington Trust as depositary for the Depositary Trust Corporation ("DTC"). The sole assets of the Issuing Trusts, in turn, were preferred securities issued by Washington Mutual Preferred Funding LLC ("WMPF").

42. As set forth below, JPMorgan Chase acquired the Trust Securities under the P&A and all steps required to transfer the Trust Securities as required were completed prior to the Petition Date save and except for the ministerial formality of changing record title as reflected at DTC and described below.

43. The Trust Securities, like other trust securities issued by financial institutions, qualified as regulatory core capital of WMB under applicable banking laws and regulations with specific approvals and requirements governing their issuance and treatment. They were, by their express terms, mandatorily and automatically exchangeable for a like amount of newly issued depository shares representing WMI preferred stock upon the occurrence of an exchange event. In addition, for the Trust Securities to be treated as core capital of WMB or any other regulated institution when issued, the Trust Securities would have to be structured in a manner that assured they would become property of the regulated institution upon exchange.

44. On January 30, 2006, WMB submitted a Notice for Establishment of an Operating Subsidiary (the "Notice") to the OTS and the FDIC regarding the establishment of WMPF. WMPF's assets consisted of indirect interests in various residential mortgage and home equity loans and other permitted investments. WMPF in turn issued preferred securities to the Issuing Trusts that entitled the Issuing Trusts to a liquidation preference against the assets of WMPF. In the Notice to the OTS and the FDIC, WMB sought confirmation from the OTS that

the Trust Securities would qualify for inclusion in the core capital of WMB.

45. On February 23, 2006, WMI committed to contribute the Trust Securities to WMB and stated that WMI "hereby undertakes that if, as a result of a Supervisory Event," WMI exchanges its preferred stock for the Trust Securities, "WMI will contribute to WMB the [Trust Securities]." A true and correct copy of that commitment is attached as Exhibit C.

46. WMI's written commitment to contribute the Trust Securities to WMB in exchange for including the Trust Securities in the core capital of WMB constituted a capital commitment to a federal depository institutions regulatory agency or its predecessor which was deemed assumed as of the Petition Date under 11 U.S.C. Section 365(o). That commitment also constituted a binding agreement (the "Contribution Agreement"), the breach of which would give rise to post-petition administrative claims against WMI.

47. At all times relevant hereto solely by virtue of the Contribution Agreement, WMB was permitted to include the Trust Securities in its core capital and counted the amount of the Trust Securities as regulatory core capital. The Trust Securities have never been beneficially owned by WMI and have always been subject to a concomitant obligation to contribute the Trust Securities to WMB as a necessary corollary to the treatment of the Trust Securities as core capital of WMB.

48. The issuance of the Trust Securities and the Contribution Agreement were duly authorized by all requisite corporate action on the part of WMI and WMB. True and correct copies of the minutes of the Board of Directors authorizing the transaction are attached as Exhibit D.

49. On September 25, 2008, in a letter to WMI, the OTS declared an Exchange Event had occurred and directed an immediate exchange of the Trust Securities for

WMI preferred stock. WMI responded to the OTS letter later on September 25, 2008, confirming the exchange and contribution. .

50. On September 25, 2008, WMI contributed the Trust Securities to WMB pursuant to an Assignment Agreement, a true and correct copy of which is attached as Exhibit E, pursuant to which, among other things, effective as of September 25, 2008, WMI transferred "all of [WMI's] right, title and interest, whether now owned or hereafter acquired, in and to the [Trust] Securities" to WMB. Furthermore, upon execution, WMI assigned to WMB all present and future "rights and benefits arising out of the [Trust] Securities which come into the possession of [WMI]."

51. Under the express terms of the P&A, JPMorgan Chase purchased "all right, title, and interest of the Receiver in and to all of the assets . . . of [WMB] whether or not reflected on the books of [WMB] as of Bank Closing," which includes WMB's and the Receiver's rights to receive the Trust Securities, a transfer that was effected on September 25, 2008. The Receiver sold the Trust Securities to JPMorgan Chase under the P&A and, therefore, JPMorgan Chase is the sole owner of all equitable and beneficial right, title and interest in the Trust Securities, leaving only the ministerial act of correcting the record at DTC (or with the Issuing Trusts and their trustees) undone before the filing of these Chapter 11 cases.

52. Although the Debtors did not initially dispute JPMorgan Chase's ownership of the Trust Securities and the parties drafted and agreed to a stipulation to transfer the Trust Securities to JPMorgan Chase to accompany the account stipulation, the Debtors amended their schedules on January 27, 2009 to add a Footnote 4 to Schedule B regarding the Trust Securities which had not been mentioned in the Schedules originally filed on December 19, 2008. In that footnote, which is repeated verbatim in the Debtors' Second Amended Schedules

filed on February 24, 2009, the Debtors assert unspecified and potential rights to or interests in the Trust Securities.

53. To the extent that WMI ever held or now holds any interest in the Trust Securities — and JPMorgan Chase believes WMI had and has no legally cognizable interest in them — that interest has never consisted of anything more than bare legal title to a securities entitlement to the Trust Securities for the moment in time of the conditional exchange and contribution. Section 541(iv) of the Bankruptcy Code provides that "property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate . . . only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold."

54. As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest," in the Trust Securities, pursuant to and in accordance with the FDI Act. On December 30, 2008, WMI nonetheless submitted a claim to the Receiver asserting, among other things, ownership of the Trust Securities. On January 23, 2009, the Debtors' claims were disallowed by the Receiver. The Receiver's disallowance is dispositive of the fact that the Debtors do not own the Trust Securities. On March 20, 2009, the Debtors commenced the District Court Action with respect to the disallowance of their claims to the Trust Securities.

55. Accordingly, JPMorgan Chase seeks a declaration that it owns the Trust Securities and an order directing third parties including, DTC, Cede & Co., Wilmington Trust Corporation and any other trustee, custodian, depository or other securities intermediary, to take all actions reasonably necessary or appropriate, as requested by JPMorgan Chase, to have the record legal title reflect JPMorgan Chase as the sole owner of the Trust Securities.

56. In addition, JPMC is entitled to be indemnified and held harmless by WMI for any liabilities associated with the issuance, exchange, contribution or recovery of the Trust Securities, including without limitation any claims regarding authorization, enforceability, avoidability or inadequate disclosure. JPMC seeks a determination that WMI, as the controlling parent, the primary issuer and the principal actor, has the obligation to indemnify and hold harmless its indirect formerly wholly owned subsidiaries from any liability to third parties associated with or related to the Trust Securities.

D. Tax Refunds

57. To the extent WMB is or was entitled to tax refunds, the right to receive those refunds was purchased by JPMorgan Chase under the P&A.

58. For taxable years prior to 2008, the Washington Mutual entities, consisting of WMI, WMB, and other direct and indirect subsidiaries of WMI (collectively, the "WaMu Group"), filed a consolidated tax return, a unitary tax report or a combined tax return with appropriate taxing authorities wherever permissible. WMB (and its subsidiaries) made payments to WMI in the same manner and at the same time as if filing separate returns or separate consolidated returns.

59. For all tax refunds and rights to receive tax refunds attributable to tax attributes of WMB or its subsidiaries, pursuant to applicable rules and regulations, and as between the Debtors and WMB (or their respective subsidiaries), WMB (or such subsidiary) is the beneficial owner of such tax refund or such right to receive a tax refund attributable to its tax attributes. All or substantially all of the refunds received by, now due and hereafter expected to be due to the WaMu Group are attributable to income and losses of, and taxes paid by, WMB and its subsidiaries, and, therefore, as among the members of the WaMu Group, WMB and its

subsidiaries were and are the beneficial owners of all or substantially all tax refunds received, tax refunds due and rights to receive tax refunds.

(i) California Tax Refunds

60. For taxable years prior to 2008, the WaMu Group filed a unitary tax report with the California Franchise Tax Board ("FTB"), pursuant to the filing of FTB Form 2523A (for years prior to 1991), and pursuant to a Schedule R-7 (for taxable years after 1991). For taxable years on or after 2005, the Schedule R-7 was filed in compliance with FTB regulations promulgated in 2005 and effective for returns filed after January 8, 2005. In each case, the WaMu Group filed group returns under California tax law, with WMI as the "key corporation." In each case, the agent and surety for the other members included in the unitary tax report was WMI, the "key corporation" as defined under California tax law.

61. Even though each taxpayer corporation in the combined group is required under California law to file its own California return and pay its own tax due, as a matter of administrative convenience, the FTB permits groups to file a group return.

62. A "key corporation" only acts as agent for the other taxpayer members. Thus, (i) all California refunds are identifiable to an individual taxpayer in the WMI Group, and (ii) all California tax refunds WMI receives that are identified to California income taxes of WMB (or any of WMB's subsidiaries) are held by WMI merely as agent for WMB (or its respective subsidiary) and WMB (or its respective subsidiary) is the beneficial owner of such California tax refunds.

63. California tax refunds, substantially all of which are expected to be attributable to WMB and its subsidiaries, are expected for the 2008 tax year and for tax years prior to 2008 relating to overpayments of taxes to the FTB.

64. All facts and circumstances necessary to determine the amount of California tax refunds for WMB and for any of WMB's subsidiaries are fixed and determinable.

65. The Debtors have wrongly asserted that WMI—and not WMB (or its respective subsidiaries)—is entitled to the California tax refunds due to the WaMu Group. Accordingly, JPMorgan Chase requests that the Court enter an order declaring that, pursuant to the P&A, JPMorgan Chase and its subsidiaries own the rights to such refunds.

66. WMI has already received at least a portion of the California income tax refunds due as agent for the WaMu Group and owes those amounts to JPMorgan Chase and the former WMB subsidiaries acquired by JPMorgan Chase under the P&A.

67. The beneficial interest in all or a portion of the California income tax refunds received by WMI as agent for the WaMu Group belongs to JPMorgan Chase, as successor in interest to WMB.

68. WMI has refused to turn over to JPMorgan Chase those California income tax refunds received already or in the future that are properly allocable to WMB (and its subsidiaries). As a result, JPMorgan Chase seeks an order from the Court compelling the Debtors to turn over those tax refunds.

69. Various employees and agents of WMB and its subsidiaries had been in discussions with the FTB regarding ongoing California tax matters, such as the progress of audits, and anticipated tax refunds, prior to September 26, 2008. WMI had threatened FTB and its officials with sanctions for violation of the stay to prevent them from continuing their communications with WMB.

70. JPMorgan Chase has been significantly prejudiced by not being able to communicate directly without restrictions with the FTB about matters concerning WMB or its

subsidiaries since the Petition Date. Certain employees and agents of JPMorgan Chase need to continue these discussions with the FTB about California tax matters related to WMB and its subsidiaries, in order to preserve beneficial tax attributes, to complete pending audits and refund applications, and to arrange for the receipt of California income tax refunds.

71. JPMorgan Chase is entitled to communicate with the FTB about matters concerning refunds that may be due to WMB and its subsidiaries, or WMB's successors. WMI only recently directed a letter to the FTB granting them "permission" to speak to WMB for the limited purpose of continuing negotiation of audit matters previously under discussion subject to numerous restrictions, including that WMI retained rights as the "key corporation" for the WaMu Group.

72. WMI is ineligible to serve as a "key corporation" under California law and its attempt to exercise continuing control over assets and property that do not belong to it is without legal authority or basis. WMI is no longer able to act as an agent for either WMB or any successors in interest to WMB, for matters involving both years prior to 2008, and for years on or after 2008, because WMI is no longer affiliated with WMB or its former subsidiaries and filing for bankruptcy has caused WMI to have interests adverse to those of WMB and WMB's successors in interest. As a result, JPMorgan Chase is entitled to unrestricted communications with the FTB about all matters concerning WMB, including but not limited to audit activity, assessments, tax refunds and notices. JPMorgan Chase therefore requests that the Court enter an Order authorizing it to engage in such communications and precluding the Debtors or anyone else from interfering with those communications.

(ii) Federal and Other State Tax Refunds

73. For taxable years prior to 2008, the WaMu Group filed a consolidated

U.S. federal tax return pursuant to regulations promulgated by the U.S. Department of the Treasury ("Treasury Regulations") and the Internal Revenue Service (the "IRS") under Internal Revenue Code ("IRC") Section 1501 *et seq*. For the tax year of 2008, WMB and its subsidiaries were members of the WaMu Group consolidated group until at least September 25, 2008. For each time period, WMI was the common parent of the consolidated group.

74. To the extent permissible under applicable state law, the WaMu Group filed consolidated tax returns, unitary reports or similar, combined returns with other (non-California) state revenue authorities with which it was required to file tax returns. Such consolidated or combined returns were filed in those states listed on Exhibit F.

75. Pursuant to applicable law, WMI acted as agent for the WaMu Group in filing the consolidated tax returns.

76. As with California tax filings, for all tax refunds attributable to tax attributes of WMB or its subsidiaries, WMB (or its respective subsidiary) is, and under applicable law and regulation is required to be, the beneficial owner of the portions of such tax refund attributable to its tax attributes.

77. WMI has already received certain U.S. federal and state income tax refunds as agent for the WaMu Group that have not been allocated and transferred to WMB (or its subsidiaries).

78. WMI has likely received additional U.S. federal and state income tax refunds as agent for the WaMu Group of which JPMorgan Chase is presently unaware.

79. The beneficial interest in all or a portion of the U.S. federal and state income tax refunds received by WMI as agent for the WaMu Group belongs to JPMorgan Chase, as successor in interest to WMB (and its subsidiaries).

80. WMI has refused to turn over to JPMorgan Chase those U.S. federal and state income tax refunds received that are properly allocable to WMB (and its subsidiaries).

81. U.S. federal and state income tax refunds, substantially all of which are expected to be attributable to WMB and its subsidiaries, are expected for the 2008 tax year and for tax years prior to 2008 relating to overpayments of taxes by the WaMu Group to the various state taxing authorities.

82. For the 2008 tax year, the WaMu Group is expected to have a variety of tax attributes such as net operating losses, net capital losses, and excess tax credits, and a substantial portion of such tax attributes are expected to be attributable to the operations of WMB and its subsidiaries. The WaMu Group expects to be able to carry back these favorable tax attributes to prior tax years, where such carrybacks will result in additional U.S. federal and state income tax refunds for such prior tax years.

83. All facts and circumstances necessary to determine the amount of U.S. federal and state tax refunds for WMB and for any of WMB's subsidiaries are fixed and determinable.

84. Debtors have wrongly asserted that WMI—and not WMB (nor its respective subsidiaries)—is entitled to the U.S. federal and state tax refunds due to the WaMu Group.

85. As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest," in these tax refunds, pursuant to and in accordance with the FDI Act. On December 30, 2008, WMI nonetheless submitted a claim to the Receiver asserting, among other things, ownership of the tax refunds. On January 23, 2009, the Debtors' claims were disallowed by the Receiver. The Receiver's disallowance is dispositive of the fact that the

Debtors do not own or have an interest the tax refunds. On March 20, 2009, the Debtors filed the District Court Action with respect to the disallowance of their claims to the tax refunds.

86. Accordingly, JPMorgan Chase requests that in addition to an order directing the turnover of the funds, the Court enter an order declaring that as the acquirer of WMB's interests pursuant to the P&A, JPMorgan Chase and its subsidiaries own the rights to such refunds and further ordering Debtors to turn over to JPMorgan Chase any such refunds already received.

87. In addition, during the time that WMI, WMB and their respective eligible subsidiaries filed a consolidated tax return for U.S. federal income tax purposes, items of income, deduction, loss and credit were combined in one consolidated return, filed by WMI on behalf of the consolidated group.

88. During this time, WMB was subject to a variety of state and local taxes. The accrual and payment of these state and local taxes generated by WMB created a deduction against income for the combined U.S. federal income tax return. Said differently, the state and local taxes accrued by virtue of WMB's operations created deductions that were used to offset the WMI consolidated group taxable income.

89. Although these deductions should have been recognized as a benefit that was solely WMB's, WMI did not credit WMB in any way for the state and local income tax deductions attributable to WMB's operations. In effect, WMI claimed for itself the state and local tax deductions properly attributable to WMB. Debtors have wrongly asserted that WMI—and not WMB (nor its respective subsidiaries)—is entitled to these deductions.

90. The total dollar value of such deductions is at least approximately $517 million. As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title

and interest," in these assets, pursuant to and in accordance with the FDI Act. JPMorgan Chase requests that the Court enter an order declaring that as the acquirer of WMB's interests pursuant to the P&A, JPMorgan Chase and its subsidiaries own the rights to any cash value generated by such deductions and further ordering Debtors to turn over to JPMorgan Chase the value of any such deductions.

(iii) Tax Sharing Agreement

91. On August 31, 1999, WMI and members of the WaMu Group entered into a Tax Sharing Agreement, which required various members of the WaMu Group to pay WMI for each member's share of the WaMu Group's consolidated income, and required WMI to return to each member such member's share of any tax refunds paid to WMI.

92. The Tax Sharing Agreement provides further support that WMI would receive any tax refund attributable to WMB's or WMB's subsidiaries' tax attributes merely as agent, and that WMB (or its respective subsidiary) would be the beneficial owner of such tax refund. At all times the Tax Sharing Agreement was subject, by law and by its own terms, to applicable bank and thrift regulatory guidelines. The ownership of the tax refunds that would result from application of either applicable law or the Tax Sharing Agreement should be identical—in neither event may WMI retain refunds that are not attributable to the tax attributes of its regulated subsidiaries.

E. The Intercompany Amounts and Accounts

(i) The "On-Us" Accounting Entries

93. On the Petition Date, WMI claimed that JPMorgan Chase was liable to pay a total purported deposit liability to WMI and its non-WMB subsidiaries, originally claimed in the amount of $5 billion and then ultimately asserted in the total amount of $4,358,492,498

(the "Intercompany Amounts"). According to WMI, the Intercompany Amounts represented deposits maintained by WMI at the Affiliated Banks, all as non-interest bearing demand deposit accounts. A true and correct copy of the original list of twenty-nine account numbers (the "Accounts") provided to JPMorgan Chase by WMI shortly after the Petition Date is attached as Exhibit G.

94. As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest," in the Intercompany Amounts, pursuant to and in accordance with the FDI Act. On December 30, 2008, the Debtors nonetheless submitted a claim to the Receiver asserting, among other things, ownership of the Intercompany Amounts. On January 23, 2009, the Debtors' claims were disallowed by the Receiver. On March 20, 2009, the Debtors commenced the District Court Action with respect to the disallowance of their claims, assert that the Intercompany Amounts are deposit accounts at JPMorgan Chase, and claim damages relating to the Intercompany Amounts.

95. With the exception of signature cards for several of the smaller Accounts, JPMC has not located and believes there do not exist pre-petition any deposit account agreements, signature cards or any other documentation for the Accounts as deposit accounts. Notwithstanding that fact and while it continued to investigate whether such documents existed somewhere, JPMorgan Chase was prepared to treat the Accounts as if they were deposit accounts so long as all rights of all parties, including JPMorgan Chase's rights, were acknowledged and approved by order of this Court. Toward that end, on or about October 15, 2008, JPMorgan Chase and the Debtors entered into a proposed stipulation (the "Account Stipulation") with respect to the Accounts that was filed with the Court for approval. The Account Stipulation was ultimately withdrawn following objections filed by certain creditors of the Receivership and the

FDIC and was never entered by the Court.

96. Pursuant to the Account Stipulation, and before it was withdrawn, JPMorgan Chase and the Debtors executed customary deposit account agreements regarding the Accounts on or about October 21, 2008 that provided, among other things, customary rights of setoff, recoupment and banker's liens to secure JPMorgan Chase's rights to recover claims JPMC may have against the Debtors or their subsidiaries and affiliates from the funds on deposit in the Accounts.

97. After the execution of those documents but prior to December 19, 2008, JPMorgan Chase acceded to a request of the Debtors and the Official Committee of Unsecured Creditors (the "Committee") to agree to the accrual of interest on the Intercompany Amounts as a sign of good faith in the event that it were ultimately determined that any of the Intercompany Amounts were in fact deposit accounts, without prejudice to its rights. Similarly, JPMorgan Chase agreed to the Debtors' further request that as a sign of "goodwill" it agree to release $292 million of the Intercompany Amounts attributable to the Accounts of the non-debtor subsidiaries of WMI, without prejudice to its rights.

98. JPMorgan Chase agreed to those requests from the Debtors in good faith, without prejudice to its rights, and on the understanding that the parties were working diligently to resolve open questions and issues with respect to the Intercompany Amounts. It did so in reliance on the Debtors' execution of account documentation for the Accounts that protected the interests of JPMC, and on the understanding that the Debtors would respect those rights. However, on or about December 19, 2008, after obtaining from JPMorgan Chase the benefit of these concessions, the Debtors advised JPMorgan Chase that the execution of those deposit account agreements on October 21, 2008, was only in anticipation of the proposed Account

Stipulation and, since that stipulation had never been approved, the execution and delivery of the agreements was in error, unauthorized and considered by the Debtors to be null, void and without legal effect.

99. The execution and effectiveness of the account documentation executed by the Debtors on October 21, 2008, was a key factor in JPMorgan Chase's decision to agree to the request that it accrue interest on the Intercompany Amounts and to the release of $292 million to the Debtors and their non-debtor affiliates. While JPMorgan Chase does not dispute that the Account Stipulation was never so ordered, to the extent that such documentation is ineffective, it should be ineffective for all parties and for all purposes, including the effectiveness of any post-petition book entries reflecting any portion of the Intercompany Amounts or Accounts as deposit liabilities and the release of any funds to the Debtors or their non-Debtor affiliates.

100. Although JPMorgan Chase still has not discovered any pre-petition deposit account agreements, signature cards or other documentation for the Accounts that would have been required of depositors that were not affiliates in order to treat the Accounts as deposit accounts (except for the signature cards on a few accounts as described above), it is nonetheless clear that if these are deposit accounts—not capital contributions—they were and are subject to the standard terms and conditions specified in the Master Business Account Disclosures and Regulations (the "MBA Policy") of the Affiliated Banks.

101. The Accounts were associated with the DDA numbers provided by WMI. Of the twenty-nine, most were so-called "On–Us Accounts", the internal nomenclature for intercompany receivables that were understood to represent deposit accounts at the Affiliated Banks. Thus, the balances in these Accounts as of any point in time, unlike third party deposit

accounts, were maintained both at the depository institution and as intercompany book entries on the general ledger of WMI and the Affiliated Banks that were its subsidiaries.

102. The decision on how to characterize an intercompany transaction was made by a single centralized Treasury group for WMI and all of its affiliates. That Treasury group was under the direct supervision of Robert Williams, currently the Chief Executive Officer of WMI.

103. To the extent the Intercompany Amounts and the Accounts reflect capital contributions, they are the property of JPMorgan Chase under the terms of the P&A. To the extent they are deposit liabilities, they must be governed by standard terms and conditions governing unaffiliated deposit accounts, as a result of which they become subject to any liens, claims and interests that JPMC may have, and are also subject to setoff, recoupment or other offset.

(ii) Deposit Liabilities

104. To the extent the Intercompany Amounts in the Accounts are not capital contributions and are in fact deposit liabilities of WMB or WMB fsb assumed by JPMorgan Chase under the P&A, WMI and its subsidiaries, like every other Affiliated Bank depositor (expressly or otherwise), are bound by the standard terms and conditions for deposits at the Affiliated Banks.

105. The Accounts were utilized to settle intercompany obligations, including obligations arising from the payment and allocation of expenses among WMI and all of its subsidiaries, with intercompany allocations, payments and settlements on a periodic, usually monthly, basis. The balances on the Accounts were reflected on "On-Us Elevation Reports" generated on a monthly basis and on paper "Washington Mutual Internal Checking Detail"

statements mailed to an employee of WMB on a monthly basis. Copies of the "On-Us Elevation Reports" and of the "Washington Mutual Internal Checking Detail" statements for August, September and October, 2008 are attached as Exhibits H and I, respectively.

106. These Accounts were established by WMI or one of its non-bank subsidiaries at the Affiliated Banks pursuant to WMI's Internal Corporate Demand Deposit Account Establishment and Usage Policy (the "On-Us Policy"). According to that policy, WMB had the right to use the Intercompany Amounts for, among other things, processing and clearing transactions between WMB and WMI or their respective subsidiaries, customers, vendors, or investors, again raising the question of whether the Intercompany Amounts represented a continuing deposit liability or should be characterized as a general reserve, a capital contribution or a form of intercompany advance to the Affiliated Banks. The On-Us Policy was silent regarding the rules and terms governing the acceptance by the Affiliated Banks of amounts under the On-Us Policy as deposit accounts and services related to such accounts maintained at the Affiliated Banks.

107. WMI and the Affiliated Banks maintained a detailed, forty-page policy, the MBA Policy, that operated as a contract setting forth the terms and conditions governing all deposit accounts established at the Affiliated Banks. The MBA Policy contained, among other things, a self-executing clause that made the terms of the policy binding upon all depositors, even those who did not expressly give permission, through consent implied by the opening and continued use of the deposit account.

108. The MBA Policy and its terms and conditions apply to and govern any accounts that are in fact deposit accounts at the Affiliated Banks, including the Accounts to the extent any are deposit accounts. WMI as the sole shareholder and parent of the Affiliated Banks

is charged with knowledge and acceptance of the MBA Policy for any deposit account it maintained at the Affiliated Banks.

109. Any claim that WMI is entitled to terms more favorable to it than the terms imposed on third party depositors under the MBA Policy would violate applicable federal law and regulations and be untenable. The provision of services, including deposit services, to WMI by its Affiliated Banks, under relevant banking laws and regulations, were required to have been conducted on terms and conditions no less favorable to the bank than would have been undertaken in a comparable transaction with an unaffiliated third party. Thus, these accounts, to the extent they reflect deposits, were required by law to be maintained on terms no less favorable to the Affiliated Banks than those clearly set forth in the MBA Policy.

110. The MBA Policy expressly grants the Affiliated Banks a right to offset any and all claims against all deposit account liabilities. Specifically, the MBA Policy provides, "you agree we have the right to offset any account or asset of yours then held by us, by our sister bank, or any subsidiary of ours or our sister bank." Said differently, to the extent the Accounts and the Intercompany Amounts contained therein are deposit liabilities of the Affiliated Banks, the MBA Policy created a broad contractual right of setoff against the Accounts and the Intercompany Amounts for the benefit of the Affiliated Banks and their subsidiaries.

111. Accordingly, to the extent that any of the Accounts or Intercompany Amounts are found by the Court to constitute deposit liabilities of JPMorgan Chase as assignee of the Receiver, they are deposit liabilities subject to and created under the MBA Policy and JPMorgan Chase has a security interest in, lien rights against and rights of set off and recoupment against the Intercompany Amounts as deposit liabilities under the MBA Policy and standard deposit account agreement terms and conditions applicable to all third party depositors

and as in effect at the time that the Affiliated Banks and their parent entered into the transactions creating and maintaining the Accounts.

(iii) JPMorgan Chase Also Has an Express Security Interest in at Least One Account

112. In addition, WMI entered into at least one specific security agreement with WMB (the "Security Agreement") whereby WMB received a security interest in and lien upon at least one of the Accounts in return for providing value to WMI. According to its terms, the Security Agreement "shall be binding upon [WMI] and its successors and assigns, and shall inure to the benefit of, and may be enforced by [WMB] and its successors, transferees, and assigns." This express security interest creates a lien to secure any and all intercompany obligations. JPMorgan Chase is the successor, transferee or assignee of the Security Agreement and entitled to enforce its terms against WMI at least as to Intercompany Amounts associated with Account No. 177-8911206. A true and correct copy of the Security Agreement is attached as Exhibit J.

(iv) The September $3.67 Billion Book Entry Transfer

113. Between September 19, 2008 and September 24, 2008, in the days immediately preceding the impending takeover of WMB by its regulators, WMI directed book entries purporting to transfer approximately $3.67 billion (the "$3.67 Billion Book Entry Transfer") from WMB to WMB fsb. The entries direct the transfer from the triple 070-10450-009909 "On-Us" Account No. 17900001650667, which is reflected in the internal On-Us Elevation Report and the Internal Checking Detail as an account at WMB, to what WMI now claims was a deposit account at WMB fsb identified as triple 070-10441-0009909 "On-Us" Account No. 44100000064234.

114. The general ledger entries for this transaction indicate that the entries were

posted on September 24, 2008 with a "retro" date to September 19, 2008 and describe the $3.67 Billion Book Entry Transfer as "WMI contributes to FSB." WMI has asserted that the transaction was intended to be a transfer of funds from a WMI deposit account at WMB to a WMI deposit account at WMB fsb. What is clear, however, is that no cash or other funds were actually moved to or received by WMB fsb in connection with the transfer.

115. The Debtor's agreement to the terms of the Account Stipulation and the deposit agreements that provide JPMorgan Chase on behalf of itself and its affiliates and subsidiaries with broad post-petition lien rights and rights of setoff and recoupment resulted in the entry of the $3.67 Billion Book Entry Transfer as a deposit liability on the books and records of JPMC. Having executed the standard deposit agreements with JPMorgan Chase necessary to have this account reflected as a deposit at JPMorgan Chase, WMI should be estopped from taking the position that these account agreements were a mistake and not binding on it or from enjoying the benefit of having the Accounts reflected as deposit liabilities free of the lien and setoff rights created by those very same agreements. To the extent that any post-petition book entry is considered as relevant to the status of the purported deposit, any such resulting deposit should similarly be considered subject to the depository institution's rights, including post-petition contractual and statutory rights of setoff, that accompany the post-petition deposit.

116. WMB fsb would never have accepted a deposit liability from an unaffiliated third party without first receiving good funds, or at least not a deposit liability of the magnitude its parent now asserts was created on or about September 19, 2008. The $3.67 Billion Book Entry Transfer represented approximately 44% of the total deposits at WMB fsb, an increase of nearly 80% in total deposit liabilities. In no way was this an ordinary course transaction. Regardless of the fact that WMI and its affiliates may have operated a centralized

cash management system for efficiency as members of the same corporate family, intracompany transfers, unaccompanied by actual movement of funds, cannot create obligations and liabilities as third parties when the corporate ownership link is broken. Because no cash or other funds were actually transferred by WMI to WMB fsb, the $3.67 Billion Book Entry Transfer could not have created a deposit liability of WMB fsb to WMI without receipt of good funds. To the extent the $3.7 Billion Book Entry Transfer is nonetheless deemed to create such a liability, JPMC is entitled to a complete offset for WMI's failure to deliver good funds representing that $3.67 billion deposit.

117. The $3.7 Billion Book Entry Transfer was not a deposit account and WMI should be estopped from making any claims to the contrary.

118. Alternatively, to the extent any third party has or may have a claim against WMB fsb and/or JPMorgan Chase with respect to or as a result of the $3.7 Billion Book Entry Transfer, JPMorgan Chase is entitled to be indemnified by WMI for any liability it may incur and is entitled to recover the amount by which it is or may be liable to any such third party from the Intercompany Amounts.

(v) The Tax Refunds and other Funds in the Accounts

119. A substantial portion of the Intercompany Amounts were, at the time of the Receivership and the Petition Date, in fact the property of the Affiliated Banks, representing tax payments made by the Affiliated Banks either as (i) accelerated payments of amounts previously claimed by WMI against the Affiliated Banks purportedly for taxes paid in prior years by WMI on behalf of the Affiliated Banks; or (ii) amounts transferred to WMI in payment of estimated or actual 2008 taxes.

120. In addition, after the Petition Date, at least approximately $234 million of

tax refunds due to WMB — the rights to which were purchased by JPMorgan Chase as assets of WMB (the "Tax Refunds Received") — were paid to WMI. An amount equal to at least this $234 million of the Tax Refunds Received are included in the balance of the Intercompany Amounts and the Accounts and should be paid over to JPMorgan Chase as the lawful owner of those funds.

121. The Tax Refunds Received should not have been, and at various times were not in fact, recorded in any way as a deposit liability. The Tax Refunds Received were and are property of JPMorgan Chase purchased under the P&A.

(vi) Section 9.5 of P&A

122. To the extent any of the Accounts are deposit liabilities assumed by JPMorgan Chase, pursuant to Section 9.5 of the P&A, "[a]t any time, the [FDIC] may, in its discretion, determine that all or any portion of any deposit balance assumed by [JPMorgan Chase] pursuant to this Agreement does not constitute a "Deposit" . . . and may direct [JPMorgan Chase] to withhold payment of all or any portion of any such deposit. Upon such direction, [JPMorgan Chase] agrees to hold such deposit and not make payment of such deposit balance to or on behalf of the depositor, or to itself, whether by way of transfer, set-off, or otherwise. [JPMorgan Chase] shall be obligated to reimburse the [FDIC], . . . for the amount of any deposit balance or portion thereof paid by [JPMorgan Chase] in contravention of any previous direction to withhold payment of such deposit balance or return such deposit balance, the payment of which was withheld pursuant to this Section."

123. The FDIC has not to date notified JPMorgan Chase that all or any portion of the Intercompany Amounts or Accounts are or are not Deposit Liabilities within the meaning of the P&A. Nor has the FDIC directed JPMorgan Chase to withhold payment on all or any

portion of the Accounts. JPMorgan Chase requests that to the extent this Court orders JPMorgan Chase to pay any portion of the Intercompany Amounts or Accounts to the Debtors or into the registry of this Court, that the Court do so by way of interpleader under Rule 7022, releasing JPMorgan Chase from any liability for such amounts to any person and preserving the rights of all parties and all possible claimants with respect to those funds (including JPMorgan Chase). Specifically, JPMorgan Chase requests a finding that it only has to pay or credit the Accounts or the Intercompany Amounts once and that this Court's determination regarding ownership, character and rights in or to the Intercompany Amounts or the Accounts is final so that JPMorgan Chase has no further liability in any capacity for the Intercompany Amounts or Accounts except as may be determined by this Court in this proceeding.

124. In the District Court Action, the Debtors assert that JPMorgan Chase assumed these liabilities as deposit liabilities under the P&A and that they are now depositors of JPMorgan Chase.

F. Goodwill Litigation

125. JPMorgan Chase, as the successor in interest to the Receiver and WMB—and not WMI—is the proper recipient of both the $356,454,911 judgment entered in *Anchor Savings Bank, FSB* v. *United States*, No. 95-39C (Fed. Cl.) (the "Anchor Judgment") and the $55,028,000 partial judgment entered in *American Savings Bank, F.A.* v. *United States*, No. 92-872C (Fed. Cl.) (the "ASB Judgment"), as well as the proper plaintiff in the continuing *Anchor Savings Bank* and *American Savings Bank* cases.

126. The *Anchor Savings Bank* and *American Savings Bank* cases are two of the numerous actions brought against the United States, asserting that passage of the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA") breached supervisory merger

contracts that permitted financial institutions to apply special accounting treatment to their acquisitions of failing savings and loan thrifts. Specifically, the contracts permitted the treatment of supervisory goodwill as regulatory capital that was no longer permissible under FIRREA.

127. As the facts and court decisions in the *Anchor Savings Bank* action establish, the damages resulting from the United States' breach of a series of contracts were incurred by Anchor Savings Bank. Ownership of the *Anchor Savings Bank* cause of action remained at all times with Anchor Savings Bank—the sole plaintiff in the action—and the successor thrifts so that the Anchor Judgment thereby became an asset of WMB. In 1995, the operations and assets of Anchor Savings Bank were merged with those of Dime Savings Bank. In 2002, Dime Savings Bank was merged into WMB.

128. Similarly, the capital at issue in the *American Savings Bank* action was provided and posted by American Savings Bank, F.A. and consisted of inventory capital and retained earnings held by American Savings Bank, F.A. As the facts and court decisions in the *American Savings Bank* action establish, the damages resulting from the United States' breach of the Note Forbearance—which are the damages comprising the ASB Judgment—were incurred by American Savings Bank, F.A. The plaintiff that provided the capital, American Savings Bank, F.A., was the predecessor in interest to WMB and amended its Federal Stock Charter in 1997 to change its corporate title from American Savings Bank, F.A. to Washington Mutual Bank, F.A. In addition, the parent company of American Savings Bank, F.A., New American Capital, Inc., was subsequently liquidated and merged into WMB, not WMI.

129. WMI has asserted that it is entitled to the ASB Judgment, which on February 16, 2009, this Court ordered be paid into its registry. This Court further directed that any party, other than the Debtors, asserting an ownership interest in the ASB Judgment bring its

claim through an adversary proceeding in accordance with Bankruptcy Rule 7001. JPMorgan Chase hereby does so.

G. Legacy Rabbi Trusts and Benefit Plans

(i) Legacy Rabbi Trusts

130. The Debtors have refused to acknowledge JPMorgan Chase's ownership of the assets of certain rabbi trusts ("Legacy Rabbi Trusts") that belong to JPMorgan Chase under the terms of the P&A, even though these assets were reflected on WMB's books and records and WMB was the successor to the original settlor. These assets support obligations under certain non-qualified retirement and pension plans covering current or former employees of or retirees from WMB or its predecessors in interest.

131. In a series of mergers in the late 1990s and the early part of this decade, WMI, through a variety of subsidiaries, acquired a number of financial institutions, which were merged into, or the assets of which were purchased by, WMB. As part of these acquisitions, WMB also acquired a number of non-qualified plans funded through Legacy Rabbi Trusts as well as liabilities for other plans not supported by trust assets. Rabbi Trusts are used to fund the payment of benefits under nonqualified deferred compensation plans that were adopted by some of the financial institutions WMI acquired. As of September 30, 2008, the books and records of WMB and WMI reflected 16 separate legacy plan Rabbi Trusts with aggregate legacy Rabbi Trust assets of over $550 million.

132. The "Legacy Rabbi Trusts" support the liabilities created under a number of non-qualified deferred compensation and supplemental retirement plans ("legacy plans") adopted by predecessor institutions acquired by the Washington Mutual family over the years.

133. Since the execution of the P&A, JPMorgan Chase has been prepared to

assume the obligations supported by the rabbi trust assets that it purchased under the P&A but the Debtors have refused to provide joint instructions to the trustees even where it is incontrovertible that the assets for a particular trust were acquired by JPMorgan Chase under the P&A. In so refusing to acknowledge JPMC's ownership and utilizing the automatic stay, the Debtors in effect have halted the payment of benefits to employees and many elderly retirees.

134. Under the P&A, the assets of twelve Legacy Rabbi Trusts were sold to JPMorgan Chase by the FDIC. With respect to five of these Legacy Rabbi Trusts, the FDIC has directed the trustees to turn the assets over to JPMorgan Chase and, when that happens, JPMorgan Chase has agreed to recommence the payment of benefits to retirees and others whose benefits were supported by the Legacy Rabbi Trust assets. With respect to the other seven Legacy Rabbi Trusts—four Dime Savings Bank Rabbi Trusts (the "Dime Rabbi Trusts"), two Great Western Rabbi Trusts (the "Great Western Rabbi Trusts"), and a Providian Rabbi Trust (the "Providian Rabbi Trust" and, together with the Dime Rabbi Trusts and the Great Western Rabbi Trusts, the "Bank Rabbi Trusts")[2]—there was some initial ambiguity as to either the identity of the successor to the original settlor of the Bank Rabbi Trust or the source of funding for the trust assets. JPMorgan Chase has since provided the Debtors with documentation for the conclusion that WMB had properly accounted for the assets of the Bank Rabbi Trusts on its books and that WMB was the successor to the original settlor. Accordingly, the assets of the Bank Rabbi Trusts were confirmed as property of WMB and thus also purchased by JPMorgan

[2] JPMorgan Chase does not assert an ownership interest in the Rabbi Trusts previously sponsored by H.F. Ahmanson and Co. Accordingly, the Ahmanson Rabbi Trusts' assets and related liabilities are not included in the definition of Rabbi Trusts for the purposes of this Complaint.

Chase under the P&A. To date, the Debtors have refused to acknowledge JPMorgan Chase's ownership of the Bank RabbiTrust assets in writing.

135. To determine with finality the ownership of the assets of the Legacy Rabbi Trusts, JPMorgan Chase requests that the Court enter an order declaring that JPMorgan Chase purchased the assets of the Legacy Rabbi Trusts, and an order authorizing JPMorgan Chase and the trustees of each of the Legacy Rabbi Trusts to take all actions necessary or appropriate to transfer ownership of the assets to JPMorgan Chase and compel Debtors to cooperate in the transfer of them to JPMorgan Chase.

(ii) The Pension Plan and the 401(k) Plan

136. As of the Petition Date, WMI sponsored the WaMu Savings Plan, a tax qualified savings plan under section 401(k) of the Internal Revenue Code (the "401(k) Plan"), and a tax qualified cash balance pension plan, the WaMu Pension Plan (the "Pension Plan") (collectively, the "Plans"). In 2007, WMB booked an intercompany receivable of approximately $316 million payable by WMI to WMB, of which approximately $275 million is still owed to WMB.

137. While WMI was the sponsor of the Plans as of the Petition Date, nearly all of the employees covered by the Plans were employees of WMB or its subsidiaries, many of whom are now employed by JPMorgan Chase.

138. Employees who participate in the 401(k) Plan contribute a percentage of their pre-tax income to the 401(k) Plan. Prior to the Petition Date, WMB would then match a portion of participants' contributions and fund that amount directly or indirectly by making a payment to the trust associated with the 401(k) Plan, which was administered by Fidelity Management Trust Company. The 401(k) Plan is administered by an administration committee

and investments are overseen by an investment committee, whose members were appointed by WMI.

139. The Pension Plan is a defined benefit plan in which no employee contributions are required. Instead, required funding contributions were made by WMI and/or participating employers. As with the 401(k) Plan, the Pension Plan was administered, and investments were overseen, by individuals appointed by WMI. As of Petition Date, the Pension Plan had approximately 32,000 participants and assets valued at approximately $1 billion.

140. Since the Petition Date, WMI has refused to relinquish sponsorship of the Plans. Members of the committees for each plan have made all administrative and investment decisions. WMI has retained responsibility for making payments to participants in the Plans.

141. Since September 25, 2008, JPMorgan Chase has been seeking to assume the Plans to ensure that covered employees retain their benefits and interests under the Plans. In anticipation of sponsoring the Plans, JPMorgan Chase, for the benefit of former WMB employees currently employed by JPMorgan Chase, has continued to record accruals for the Pension Plan. JPMorgan Chase also has directed employee contributions into the 401(k) Plan and funded significant matching contributions.

142. WMB, not WMI, had the real economic interest in the Plans, having (i) incurred most of the pension and other expenses associated with the Pension Plan and funded the contributions for the 401(k) Plan and (ii) employed nearly all of the participants. As of the Petition Date, the Pension and 401(k) Plans were not material to WMI's business or reorganization because WMI, by its own account, had only a handful of employees as of the Petition Date and, even since the Petition Date, has added only a dozen or two additional former employees of WMB. Thus, JPMorgan Chase believed that that it would ultimately assume

sponsorship of the Plans.

143. The Debtors have nonetheless refused to allow JPMorgan Chase to assume the Plans. With respect to the Pension Plan, the Debtors' refusal appears to be based on the unfounded claim that the Pension Plan is over-funded and the desire to extract from JPMorgan Chase the purported over-funding as a condition to assuming sponsorship. There is no support for this assertion under fact, law (including the Employee Retirement Income Security Act of 1974, which likely would prevent such a recapture) or the P&A. JPMorgan Chase intends to assume and continue the Pension Plan and the sufficiency of the Pension Plan's assets to cover benefit obligations will continue to vary depending upon ongoing market and economic fluctuations that affect the value of plan assets, as well as the interest rate used to discount liabilities. It therefore makes no sense to suggest that there is "over-funding" that is due to the Debtors today as a practical matter, under relevant law or pursuant to the P&A.

144. With respect to the 401(k) Plan, Debtors' position is even less well reasoned. Debtors cannot obtain any value from the 401(k) Plan or its termination because the assets belong to the employees. Likewise, there is no basis for Debtors' assertion that, in connection with assumption of the Plans, JPMorgan Chase should acquire litigation pending against WMI and certain individual officers and directors arising from their pre-petition alleged misconduct.

145. Debtors have no rational basis on which to retain sponsorship of the Plans given the pending Chapter 11 proceeding and JPMorgan Chase's repeated attempts to assume the sponsorship and to ensure that the participants and beneficiaries are protected on an ongoing basis. To avoid hardship to its employees, JPMorgan Chase has continued to accrue benefits and make contributions into the 401(k) Plan, while waiting for WMI to stop holding the participants

and their benefits hostage as the value of the assets in the Pension Plan has dropped. The decline in value of those assets may be of little moment to WMI since it no longer employs the participants and is a debtor in bankruptcy, but it does matter to others.

146. JPMorgan Chase seeks a determination that either (i) JPMorgan Chase be permitted immediately to assume sponsorship of the Plans without making payments to the Debtors that they have no right to demand; or (ii) the Debtors and their estates are responsible for, and must indemnify and hold JPMorgan Chase harmless for any liabilities due to the decline in value of the Pension Plan during this Chapter 11 case.

147. JPMorgan Chase further requests that this Court allow its administrative claims against the Debtors for (i) the amount of all contributions made from and after the Petition Date to the 401(k) Plan; and (ii) the amount by which the decline in the value of the assets in the Pension Plan from and after the Petition Date has resulted from WMI's inattention and failure properly to administer the Pension Plan assets. Finally, whatever the outcome of the sponsorship issue, the pending litigation matters are and should remain the responsibility of WMI and its estate and JPMC is entitled to be fully indemnified and held harmless for any and all claims related to the Pension and 401(k) Plans prior to the date upon which JPMC may assume their sponsorship.

148. As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest," in the Plans, pursuant to and in accordance with the FDI Act. On December 30, 2008, the Debtors nonetheless submitted a claim to the Receiver asserting, among other things, ownership of various of the employee benefits plans. On January 23, 2009, the Debtors' claims were disallowed by the Receiver. On March 20, 2009, the Debtors commenced the District Court Action with respect to the disallowance of their claims and put ownership of

the plans and its liabilities at issue in that action.

H. Other Assets

(i) Company and Bank Owned Life Insurance Policies

149. JPMorgan Chase also seeks an order confirming that certain life insurance policies owned by WMB and the cash surrender value of which were reflected on the books and records of WMB as of September 25, 2008 are JPMorgan Chase's property and were purchased under the P&A. These life insurance policies are known as Bank Owned Life Insurance ("BOLI").

150. The BOLI policies are types of life insurance policies purchased by WMB (or a predecessor company) on the lives of employees. Under these types of plans, WMB paid the premiums on the insurance and was also the primary beneficiary of the policies. In the case of a split dollar policy, the insurance proceeds are split by both WMB (or a predecessor company) and the insured employee's designated beneficiary. WMB used these BOLI policies and split dollar policies as a tax-deferred way to fund the costs of various welfare plans, hedge deferred compensation arrangements and to provide insurance benefits to certain employees.

151. By letter dated November 7, 2008, a true and correct copy of which is attached as Exhibit K (the "Cease and Desist Letter"), counsel for the Debtors demanded that JPMorgan Chase cease exercising control over the BOLI policies on the ground that the Debtors believed they might have an ownership interest in those policies and demanded access to books and records regarding the BOLI policies. JPMorgan Chase complied with the demand in the Cease and Desist Letter in order to provide the Debtors with the information they requested. JPMorgan Chase and Debtor have provided each other with documentation establishing the ownership of each party in certain policy list bills. (*See* Exhibit L for list bills owned by

JPMorgan Chase.) Accordingly, each of the parties have exercised their respective ownership rights over the policies that they own.

152. There are two BOLI policies issued by Pacific Life list bills of 7675A and 7729A on which the Debtors and JPMorgan Chase could not reach agreement as to ownership (the "Pac Life List Bill Policies"). As between WMI and WMB, these BOLI policies are reflected on WMB's books and records and owned by WMB. WMB acquired the policies from a banking institution that merged with WMB and these policies were on the books of that institution at the time of the merger. The accounting records of WMB do not show a dividend of these policies to WMI or a purchase of these policies by WMI, the only lawful ways that these policies could have been acquired by WMI from WMB. However, the carrier has advised JPMorgan Chase that, according to the records of the carrier, Washington Mutual Revocable Trust, not WMB, is shown as the policy owner. Because Debtors have refused to acknowledge JPMorgan Chase's ownership of these policies, JPMorgan Chase has not taken any action with respect thereto. JPMorgan Chase requests that the Court determine that JPMorgan Chase acquired all right, title and interest in and to these policies under the P&A and that WMI has no interest in them. To the extent that the carrier's records reflect WMI as the policy owner, WMI has no more than bare legal title under Section 541(iv) of the Bankruptcy Code and JPMorgan Chase is entitled to a declaration that it, and not WMI, is the rightful owner of the policies.

153. The parties did not address and no action has been taken by JPMorgan Chase with respect to certain other policies, the cash surrender value of which is reflected on WMB's books and records as of September 25, 2008. These policies consist of ING Security Life List Bills E208090000 and E208090001 and approximately 955 Split Dollar policies issued by a number of carriers.

154. The ING Security Life policies were reflected on the books and records of American Savings Bank, F.A. when it merged into WMB and supported American Savings Bank's executive life insurance plan. These policies were reflected on WMB's books and records as of September 25, 2008 and therefore were acquired by JPMorgan Chase from the Receiver under the P&A. WMI has no legal, record, equitable or beneficial interest in any of these policies and no right to continue to interfere with JPMorgan Chase's administration of these policies.

155. As of the date of the P&A, the 955 Split Dollar policies were recorded on the books of WMB. These policies initially belonged to Commercial Capital Bancorp Inc. ("CCBI") when it was merged into WMB in April 2006 and were reflected on its books as of the date of the merger. Correspondence with the insurance carriers for these Split Dollar policies—Beneficial Life, Jefferson Pilot Financial, John Hancock, Massachusetts Mutual, Midland National, New York Life, Northwestern Mutual, Security Life of Denver, and West Coast Life—confirms that WMB was the owner of these policies as of September 25, 2008. Once again, there can be no legitimate dispute regarding JPMorgan Chase's ownership of these policies. WMI has no legal, record, equitable, or beneficial interest in any of these policies and no right to interfere with JPMorgan Chase's administration of these policies as they clearly are property of JPMorgan Chase acquired from the Receiver under the P&A.

156. Accordingly, JPMorgan Chase seeks a determination that it owns the BOLI policies and Split Dollar policies discussed above, along with an administrative claim for its damages, fees, costs, and expenses, including for any deterioration in the value of these policies during the administration of these cases.

157. As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's

right, title and interest," in the BOLI policies and Split Dollar policies, pursuant to and in accordance with the FDI Act. On December 30, 2008, the Debtors nonetheless submitted a claim to the Receiver asserting, among other things, ownership of certain of these policies. On January 23, 2009, the Debtors' claims were disallowed by the Receiver. The Receiver's disallowance is dispositive of the fact that the Debtors do not own these policies. On March 20, 2009, the Debtors commenced the District Court Action with respect to the disallowance of their claims.

(ii) Visa Shares

158. WMB was the original WaMu Group member of Visa U.S.A. Inc. WMB fsb became a member on July 27, 1994, when it signed the Visa U.S.A Inc. Membership Agreement with Washington Mutual, a Federal Savings Bank (predecessor to WMB) serving as its sponsor. WMB conducted the Visa payment card business for WaMu Group, paid all service fees, and bore the risk of the Visa payment card business.

159. As part of Visa's restructuring and initial public offering, members of Visa U.S.A. were allocated shares of Class B common stock in Visa, Inc. The shares were allocated based on each member's ownership interest, which was calculated on the basis of service fees paid over a period of time.

160. The allocation of Class B shares and Visa's retrospective responsibility plan (the "Plan") are outlined in Visa, Inc.'s Prospectus dated March 18, 2008 (the "Final Prospectus") (filed with the U.S. Securities and Exchange Commission), as well as in certain transaction documents. Class B shares are subject to the restrictions and are encumbered by contingent liabilities. The Class B shares are convertible into Class A shares upon the satisfaction of certain conditions and pursuant to a conversion formula, all as described in Visa

Inc.'s Final Prospectus and certain related transaction documents.

161. Pursuant to the restructuring documents, Visa U.S.A. members have litigation indemnification obligations to Visa Inc. with respect to certain antitrust litigation (whether a named defendant or not) referred to in the transaction documents as "Covered Litigation." The Class B shares are restricted until the later of three years or the conclusion of all Covered Litigation. If shares remain at the conclusion of the Covered Litigation and after the passage of three years, the Class B shares may be converted to Class A shares.

162. In connection with and in furtherance of the restructuring, certain Visa U.S.A. members executed a Loss Sharing Agreement (the "LSA") and an Interchange Judgment Sharing Agreement (the "JSA"), each document is dated July 2007. Each agreement provides that its signatories will indemnify Visa Inc. for potential liabilities associated with the Covered Litigation whether the signatory is a named defendant or not. The obligation is limited to their Visa U.S.A. respective membership portions. WMB signed the JSA on July 2, 2007; WMI signed the LSA, which applied to all Covered Litigation, on July 2, 2007.

163. Indemnity obligations that may arise in connection with the Covered Litigation are to be funded by an escrow account established by Visa. The escrow was established with some proceeds of Visa Inc.'s initial public offering and, to the extent that the escrow must be replenished, through further dilution of the Class B common stock. If the funds contained in the escrow account (after continued Class B share dilution) prove insufficient to satisfy a Covered Litigation, the Final Prospectus as well as certain transaction documents, provide that in addition to the dilution of the Visa Class B shares, any shortfall is to be paid from the voting members' own funds in accordance with their respective ownership proportion. The foregoing is clearly set out in the Final Prospectus, as well as in the LSA and in other transaction

documents.

164. On October 2, 2007, a notice of pre-true up share allocation was sent to WMI, indicating that WaMu Group would be allocated 5,465,562 shares of Visa Inc. class USA common stock. Pursuant to a true-up procedure, on March 17, 2008, the share allocation was adjusted to 5,130,523 shares of Visa Class B common stock. In the course of the initial public offering, Visa Inc. redeemed some of the Class B Shares of its members and paid proceeds to the members. On March 28, 2008, after redemption and payment of proceeds, 3,147,059 shares of Visa Inc. Class B common stock (the "Visa shares") were allocated to WaMu Group.

165. JPMorgan Chase believes that the Visa shares were issued in the name of WMI consistent with Visa's general practice of issuing its stock to the holding company of its issuing bank members. The Visa shares were not in the name of the bank entity issuing the credit and/or debit payment cards, which entity had paid fees to Visa and also had responsibility for the gains and losses associated with being a card issuing Visa member.

166. The proceeds Visa paid to its members in the initial public offering were in the case of WaMu Group, distributed to WMB.

167. Although WMI may have received bare legal title from Visa upon distribution of the shares, WMB at all times remained, and was required by applicable regulations and law to be, the beneficial owner of the Visa shares.

168. The expense and reserve associated with the Covered Litigation were posted to WMB and recorded in the profit and loss statement at the WMB level. For example, in 2007, WMB recognized a guarantee liability of $50 million for the modified indemnification obligation that resulted from Visa's reorganization and initial public offering. According to publicly filed documents, therefore, WMB accounted for loss with respect to the Covered

Litigation which burdens the Visa shares. WMB was the beneficial owner of the Visa shares, ownership which passed to JPMorgan Chase as the successor to the Receiver under the P&A.

169. Debtors have refused to transfer title in the Visa shares to JPMorgan Chase. In WMI's Schedule of Assets and Liabilities, originally filed December 19, 2008, first amended on January 27, 2009 and then amended again on February 24, 2009, Debtors list approximately 5.4 million shares of Visa Inc. Class B stock as an asset of the estate in "Schedule B – Personal Property," Item 13.

170. Upon information and belief, WMI holds only 3.147 million Visa shares, which it received post-redemption.

171. As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest," in the Visa shares, pursuant to and in accordance with the FDI Act. JPMorgan Chase seeks an order determining that the Visa shares in which WMI has bare legal title were owned by WMB are JPMorgan Chase's property and were purchased pursuant to the P&A.

(iii) Contracts, Intellectual Property and Other Intangible Assets

172. Prior to the Receivership, WMB was the primary operating subsidiary of WMI and both WMI and WMB had registered the trademarks "Washington Mutual" and the "W" logo ("Trademarks") and utilized the marks interchangeably in their operations, agreements and transactions.

173. Prior to the Receivership, a number of contracts and other counterparty transactions to lease property, perform services, deliver goods, license, develop or acquire software were entered into for the benefit of the banking operations formerly owned by WMB, now owned and operated by JPMorgan Chase (the "Vendor Contracts"), were bought or paid for

by WMB and were utilized extensively if not exclusively by WMB. Some of the Vendor Contracts include prepaid rights, incentives, rebates or developed software (all of the foregoing, together with the Trademarks and the Vendor Contracts, the "Intangible Assets").

174. As a result of the Receivership and the P&A, WMB's banking operations and subsidiaries no longer belong directly or indirectly to WMI. Vendors have, nonetheless, continued to provide goods and services under the Vendor Contracts. By order dated December 16, 2008, this Court authorized and approved a stipulation between the Debtors and JPMorgan Chase regarding certain of the Vendor Contracts (the "Vendor Stipulation"). The Vendor Stipulation, among other things, (i) facilitates the transfer of the services to JPMorgan Chase, (ii) requires JPMorgan Chase to pay for the services provided under those contracts until twenty days after notice of the rejection of a contract is given by JPMorgan Chase to the Debtors, thereby reducing or eliminating certain expenses of administration, and (iii) allows the Debtors to use any new contracts negotiated by JPMorgan Chase for such services to mitigate any damage claims filed by such vendors for rejection of their contracts.

175. While the Vendor Stipulation resolved a number of the outstanding issues and protected the estates against administrative liability, the Vendor Stipulation did not resolve issues regarding ownership of the Intangible Assets. There are a number of Intangible Assets which JPMorgan Chase believes were properly assets of WMB, not WMI, and which have not been resolved to date.

176. Any interest of WMI in these Intangible Assets consists of nothing more than bare legal title and all beneficial and equitable rights thereunder were WMB's and now belong to JPMorgan Chase as the successor to the Receiver under the P&A and Title 12. While WMI may have been the nominal contracting party for contracts entered by the WaMu Group

entities, WMB held all beneficial and equitable title and interest in each Intangible Asset. WMB paid for the Intangible Assets, recorded the Intangible Assets on its books, and interacted directly with the counterparties as the Intangible Assets supported WMB's business, now owned and operated by JPMorgan Chase. All payments and pre-payments on the Vendor Contracts and other Intangible Assets were made by WMB.

177. WMI's Schedule of Assets and Liabilities appears to assert ownership over a number of these Intangible Assets in Schedule G—Executory Contracts and Unexpired Leases.

178. As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest," in the Vendor Contracts, pursuant to and in accordance with the FDI Act. On December 30, 2008, WMI nonetheless submitted a claim to the Receiver asserting, among other things, an interest in certain of these contracts. On January 23, 2009, the WMI's claims were disallowed by the Receiver. The Receiver's disallowance is dispositive of the fact that the Debtors do not own these contracts. On March 20, 2009, the Debtors commenced the District Court Action with respect to the disallowance of their claims.

179. JPMorgan Chase is entitled to a declaration that it has all right, title and interest to these Intangible Assets or, in the alternative, JPMorgan Chase is entitled to a claim for the full amount of all damages it may suffer from the loss of these Intangible Assets and to exercise rights of offset and recoupment for that loss.

RELIEF REQUESTED BY JPMORGAN CHASE

TRUST SECURITIES

Count One: Trust Securities (Declaratory Judgment)

180. JPMorgan Chase realleges and incorporates by reference each and every

allegation set forth above, as though fully set forth herein.

181. As set forth above, JPMorgan Chase contends that, pursuant to the P&A, it purchased the Trust Securities. The Debtors have disputed JPMorgan Chase's ownership of these assets in this bankruptcy case, in their Schedules and in the filing of the District Court Action.

182. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

183. JPMorgan Chase requests a declaratory judgment finding that Debtors must proceed with any claim to the Trust Securities through the District Court Action it chose to commence. In the alternative, JPMorgan Chase requests a declaratory judgment determining that the Trust Securities are assets purchased by and belonging to JPMorgan Chase.

Count Two: Trust Securities
(Breach of Contract)

184. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

185. WMI assumed a direct obligation to WMB upon entering into the Contribution Agreement to immediately contribute and transfer the Trust Securities to WMB following the conditional exchange. In the alternative, WMB was the third party beneficiary of WMI's commitment to the OTS and the FDIC under the Contribution Agreement. WMI also assumed a direct obligation to WMB pursuant to the Assignment Agreement.

186. To the extent the Assignment Agreement is interpreted as leaving WMI with anything other than bare legal title, WMI breached the Contribution Agreement. WMI further breached the Contribution Agreement and the Assignment Agreement by refusing to assist JPMorgan Chase in obtaining registered ownership of the Trust Securities.

187. JPMorgan Chase (as successor in interest to WMB), has suffered, and will suffer, substantial monetary damages as a proximate result of WMI's breach of the Contribution Agreement and the Assignment Agreement.

Count Three: Trust Securities
(Unjust Enrichment)

188. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

189. The Debtors would be unjustly enriched if they retained the Trust Securities. From the time of the creation of the Trust Securities, the Debtors benefited from the treatment of the Trust Securities as core capital, which permitted the Debtors to, among other things, satisfy regulatory requirements and report higher capital ratios.

190. Thus, to the extent the Court does not enter a declaratory judgment determining that the Trust Securities are assets purchased by and belonging to JPMorgan Chase, JPMorgan Chase requests that the Court establish a constructive trust for the benefit of JPMorgan Chase consisting of the value recognized by Debtors as a result of the treatment of the Trust Securities as core capital.

TAX REFUNDS

Count Four: Tax Refunds
(Declaratory Judgment)

191. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

192. As discussed above, JPMorgan Chase is the beneficial owner of tax refunds due to, and deductions generated by, the WaMu Group. JPMorgan Chase is also the beneficial owner of tax refunds already received by, and deductions taken by, WMI. The

Debtors dispute JPMorgan Chase's ownership of these refunds and deductions.

193. Furthermore, JPMorgan Chase should be permitted to communicate directly without restriction with the taxing authorities concerning ongoing tax matters affecting WMB and its subsidiaries. The Debtors have sought to prohibit JPMorgan Chase from engaging in these communications.

194. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

195. JPMorgan Chase requests a declaratory judgment finding that Debtors must proceed with any claim to the tax refunds and deduction through the District Court Action they elected to commence. In the alternative, JPMorgan Chase requests a declaratory judgment determining that the tax refunds and deductions are assets purchased by and belonging to JPMorgan Chase.

Count Five: Tax Refunds
(Unjust Enrichment)

196. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

197. In the alternative, WMI would be unjustly enriched if it retained any tax refunds received on behalf of, or generated by, the WaMu Group that are attributable to tax attributes of WMB or its subsidiaries.

198. WMI received the tax refunds and deductions merely as agent for the WaMu Group. If WMI is permitted to retain the tax refunds, it will have received a windfall by receiving a refund on income tax paid by WMB (or its subsidiaries).

199. JPMorgan Chase requests that the Court establish a constructive trust for the benefit of JPMorgan Chase consisting of the tax refunds received by and/or deductions

recognized by WMI to which WMB is entitled.

200. Furthermore, any future tax refunds received by and/or deductions recognized by WMI as agent for the WaMu Group should be similarly deposited into the constructive trust for the benefit of JPMorgan Chase.

DISPUTED INTERCOMPANY AMOUNTS

Count Six: Disputed Funds
(Declaratory Judgment: $3.7 Billion Book Entry Transfer)

201. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

202. WMI has asserted that the $3.7 Billion Book Entry Transfer creates a deposit liability owed to it by WMB fsb, now JPMorgan Chase. JPMorgan Chase disputes that there is a valid deposit liability due to Debtors as the result of the $3.7 Billion Book Entry Transfer.

203. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

204. JPMorgan Chase requests a declaratory judgment finding that Debtors must proceed with any claim to assert ownership of or interest in the $3.7 Billion Book Entry Transfer through the District Court Action they elected to commence. In the alternative, JPMorgan Chase requests a declaratory judgment determining that there is no valid deposit liability due to Debtors as a result of the $3.7 Billion Book Entry Transfer.

Count Seven: Disputed Funds
(Declaratory Judgment: Setoff, Recoupment, and Other Equitable Limitations)

205. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

206. To the extent that JPMC has any liabilities to Debtors, including deposit account liabilities, it is entitled to (i) recoup and or setoff all such amounts under the MBA Policy and/or any other applicable terms and conditions governing those liabilities or deposit accounts; (ii) imposition of a constructive trust for the amount of all such liabilities over any funds of Debtors it possesses; and (iii) enforce any security interest determined to apply to the funds of the Debtors. Debtors dispute that JPMorgan Chase has these rights.

207. The amounts owed to JPMorgan Chase include, but are not limited to, the at least approximately $234 million in tax refunds deposited in the Accounts and due to WMB, which the Debtors have claimed as their own, the intercompany receivables of $275 million due from WMI to WMB, and any amounts awarded by the Court under this Complaint.

208. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

209. JPMorgan Chase requests a declaratory judgment determining its right to setoff, recoupment, imposition of a constructive trust, and/or enforcement of its security interests.

Count Eight: Any Remaining Deposit Liabilities (Interpleader Pursuant to Bankruptcy Rule 7022)

210. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

211. Pursuant to the terms of the P&A, JPMorgan Chase, WMI, and the FDIC have asserted, or may assert, competing claims to any funds that constitute deposit liabilities and JPMorgan Chase may be exposed to double liability if it were to pay these claims to the wrong party.

212. JPMorgan Chase seeks to interplead any remaining funds that constitute

deposit liabilities pursuant to Bankruptcy Rule 7022, less any attorneys' fees and costs, so that all claims to the amounts can be adjudged and the funds can be properly disbursed.

GOODWILL LITIGATION

Count Nine: Goodwill Litigations (Declaratory Judgment)

213. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

214. There is an actual and substantial controversy between JPMorgan Chase and WMI as to whether WMI or WMB (as successor in interest to Anchor Savings Bank and American Savings Bank) is entitled to the Anchor and ASB Judgments and any future judgment entered in either litigation.

215. This is an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

216. JPMorgan Chase requests a declaratory judgment determining that WMB (and thus JPMorgan Chase as successor in interest) owns the beneficial interest in the Anchor and American Judgments and all monies paid on account of those judgments and directing payment of the Anchor and ASB Judgments, as well as any future judgment in either the *Anchor Savings Bank* or the *American Savings Bank* litigations, to JPMorgan Chase.

RABBI TRUSTS

Count Ten: Rabbi Trusts (Declaratory Judgment)

217. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

218. As set forth above, JPMorgan Chase contends that, pursuant to the P&A, it

purchased the Legacy Rabbi Trusts. The Debtors dispute JPMorgan Chase's ownership of these assets.

219. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

220. JPMorgan Chase requests a declaratory judgment determining that JPMorgan Chase purchased the assets of the Legacy Rabbi Trusts and an order authorizing JPMorgan Chase and the trustees of each of the Legacy Rabbi Trusts to take all actions necessary or appropriate to transfer ownership to JPMorgan Chase.

Count Eleven: Rabbi Trusts
(Unjust Enrichment)

221. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

222. In the alternative, in the event that this Court finds that JPMorgan Chase did not purchase the assets of the Legacy Rabbi Trusts, the Debtors would be unjustly enriched if they were allowed to retain the assets. The Debtors did not fund the Trusts and the assets were owned by WMB.

223. JPMorgan Chase requests that the Court establish a constructive trust for the benefit of JPMorgan Chase consisting of the value of the assets of the Legacy Rabbi Trusts.

PENSION AND 401(K) PLANS

Count Twelve: Pension and 401(k) Plans
(Declaratory Judgment)

224. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

225. JPMorgan Chase stands ready, willing and able to assume the Pension and

401(k) Plans, and continues to record accruals for the Pension Plan and fund significant matching contributions to the 401(k) Plan in anticipation of doing so.

226. As set forth above, JPMorgan Chase contends that it may assume the Pension and 401(k) Plans in their entirety. The Debtors dispute this contention. Debtors assert that JPMorgan Chase is required to pay them an amount reflecting a purported "excess funding" in the Pension Plan. However, the Pension and 401(k) Plans will not be terminated if they are assumed by JPMorgan Chase. Rather, JPMorgan Chase would assume the Pension Plan on an ongoing basis without any termination but, instead, with the continuing obligation to pay accrued benefits. And, because the Pension Plan is continuing, the sufficiency of their assets to cover benefit obligations will continue to vary depending upon ongoing fluctuations in the value of plan assets as well as the interest rate used to discount liabilities. It therefore makes no sense to suggest that there exists some excess value to which Debtors are presently entitled as though the Pension Plan was being terminated with no further liabilities.

227. In addition, the Debtors have claimed that, in order to assume the Pension and 401(k) Plans, JPMorgan Chase must assume the liabilities associated with litigation against WMI and its officers and directors for their conduct in administrating the Pension and 401(k) Plans before the Petition Date. JPMorgan Chase does not have any obligation to assume these liabilities.

228. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

229. JPMorgan Chase requests a declaratory judgment finding that Debtors must proceed with any claim to assert ownership of any assets in any employee benefit plans through the District Court Action they elected to commence. Alternatively, JPMorgan Chase

requests a declaratory judgment determining that JPMorgan Chase may assume the Pension and 401(k) Plans without requiring it to forfeit any hypothetical over-funding to Debtors and without imposing liability for litigation that does not belong to JPMorgan Chase. In the alternative, JPMorgan Chase requests a declaratory judgment determining that, if it is not permitted to assume the Pension and 401(k) Plans, it has no further liability to any person for any liabilities associated with those plans.

Count Thirteen: Pension and 401(k) Plans
(Unjust Enrichment)

230. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

231. In the alternative, in the event that this Court finds that JPMorgan Chase can only assume the Pension and 401(k) Plans by either paying the hypothetical excess funding or assuming pending litigation liabilities upon assumption of the Pension and 401(k) Plans, and JPMorgan Chase does not assume the Pension and 401(k) Plans, the Debtors would be unjustly enriched by benefiting through JPMorgan Chase's contributions to the 401(k) Plan that were made in the expectation that it would be able to assume the 401(k) Plan pursuant to the P&A. Debtors and JPMorgan Chase understood that JPMorgan Chase was making these payments in anticipation of assumption of the plans.

232. The Debtors would unjustly realize a windfall from the circumstances alleged herein if they do not reimburse JPMorgan Chase for the funds contributed to the 401(k) and resources it allocated to the Plans, which Debtors (or another party) would have needed to contribute if JPMorgan Chase had not done so. The Debtors did not contribute any of these funds or resources relating to the post-September 25, 2008 operation of the Pension and 401(k) Plans and have no right to them.

233. By reason of the foregoing, a post-petition constructive trust should be imposed on the Debtors in the full amount necessary to reimburse JPMorgan Chase for the amounts it contributed to the 401(k) Plan.

BANK OWNED LIFE INSURANCE POLICIES

Count Fourteen: Life Insurance Policies (Declaratory Judgment)

234. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

235. As set forth above, there is an actual and substantial controversy between JPMorgan Chase and the Debtors. JPMorgan Chase contends that, pursuant to the P&A, it purchased the BOLI policies and Split Dollar policies referenced above. The Debtors appear to contend to the contrary.

236. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

237. JPMorgan Chase requests a declaratory judgment finding that Debtors must proceed with any claim to assert ownership of or interest in the BOLI Policies and Split Dollar policies through the District Court Action they elected to commence. Alternatively, JPMorgan Chase requests a declaratory judgment determining that the BOLI policies and Split Dollar policies are assets purchased by and belonging to JPMorgan Chase.

Count Fifteen: Life Insurance Policies (Unjust Enrichment)

238. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

239. In the alternative, in the event that this Court finds that JPMorgan Chase

did not purchase the BOLI policies and Split Dollar policies, the Debtors would be unjustly enriched if they were allowed to retain the policies. The Debtors were never the policyholders for the BOLI policies and Split Dollar policies. Accordingly, they have no right to the BOLI policies and Split Dollar policies and would unjustly realize a windfall from the circumstances alleged herein if they are permitted to retain the BOLI policies and Split Dollar policies.

240. JPMorgan Chase requests that the Court establish a constructive trust for the benefit of JPMorgan Chase consisting of the value of the BOLI policies and Split Dollar policies.

VISA SHARES

Count Sixteen: Visa Shares (Declaratory Judgment)

241. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

242. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

243. JPMorgan Chase requests a declaratory judgment determining that the Visa shares are assets purchased by and belonging to JPMorgan Chase. In the alternative, if the Court should determine that the Visa shares are assets belonging to the Debtors, JPMorgan Chase requests a declaratory judgment determining that Debtors assume the full liabilities associated with the Visa Inc. restructuring and initial public offering in which those shares were issued by requiring that the Debtors pay and discharge any Covered Litigation obligation not satisfied by the Visa shares.

Count Seventeen: Visa Shares
(Unjust Enrichment)

244. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

245. The Debtors would be unjustly enriched if they retained title to the Visa shares.

246. If the Debtors are permitted to retain the Visa shares without bearing full liability associated with the reorganization and creation of the asset, they will incur a windfall if and to the extent JPMorgan Chase is responsible for any Covered Litigation shortfall relating to the Visa shares.

247. Thus, to the extent the Court does not enter a declaratory judgment protecting JPMorgan Chase from any such liabilities, JPMorgan Chase requests that the Court establish a constructive trust for the benefit of JPMorgan Chase over any Visa shares remaining after satisfaction of obligations related to the Covered Litigation.

INTANGIBLE ASSETS

Count Eighteen: Intangible Assets
(Declaratory Judgment)

248. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

249. As set forth above, JPMorgan Chase contends that, pursuant to the P&A and Title 12, it owns the Intangible Assets. The Debtors dispute this.

250. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

251. JPMorgan Chase requests a declaratory judgment determining that

JPMorgan Chase is the owner of the Intangible Assets. In the alternative, JPMorgan Chase requests a declaratory judgment determining that, if it is not the owner of the Intangible Assets, it has no liability to any person for any liabilities associated with those Intangible Assets.

Count Nineteen: Intangible Assets
(Unjust Enrichment)

252. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

253. In the alternative, in the event that this Court finds that JPMorgan Chase does not own the Intangible Assets, the Debtors would be unjustly enriched if they were allowed to retain the Intangible Assets or were not ordered to repay JPMorgan Chase for amounts paid by WMB in connection with the Intangible Assets.

254. JPMorgan Chase requests that the Court establish a constructive trust for the benefit of JPMorgan Chase consisting of the value of Intangible Assets.

ADMINISTRATIVE CLAIM

Count Twenty: Administrative Expenses

255. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

256. To the extent the Court accepts WMI's claims of ownership of any of the Pension and 401(k) Plans or other assets and JPMorgan Chase has made payments and incurred expenses in connection with these assets, JPMorgan Chase is entitled to reimbursement from Debtors of all post-petition expenses it has incurred and payments it has made on account of those assets.

257. To the extent JPMorgan Chase incurs any liability or suffers any loss as the result of conduct by Debtors after the Petition Date, including conduct by the Debtors as the

sponsor of any of the Pension and 401(k) Plans, JPMorgan Chase is entitled to post-petition administrative claim for those amounts.

INDEMNIFICATION

Count Twenty-One: Indemnification

258. JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

259. Claims have been threatened against JPMC arising out of or relating to the acts, omissions or conduct of Debtors prior to the Petition Date. To the extent that any claim is asserted against JPMC as a result of such matters, JPMC is entitled to be indemnified and held harmless by the Debtors for any loss, damage or liability they might incur.

PRAYER FOR RELIEF

WHEREFORE, plaintiff JPMorgan Chase respectfully requests that this Court grant judgment:

(i) declaring that the legal title and all beneficial interest in each of the assets described in this Complaint belong to JPMorgan Chase;

(ii) ordering WMI to deliver the assets to JPMorgan Chase;

(iii) ordering WMI to take steps to allow, and where appropriate, direct third parties to act in accordance with JPMorgan Chase's ownership of its assets;

(iv) awarding JPMorgan Chase damages as a result of Debtors' failure to transfer, or facilitate the transfer of, assets JPMorgan Chase acquired under the P&A;

(v) ordering Debtors to indemnify JPMorgan Chase for any losses JPMC incurs as a result of Debtors' pre-petition actions;

(vi) awarding JPMorgan Chase damages for losses resulting from Debtors' post-petition actions, including the Debtors' failure to deliver the Pension and 401(k) Plans and other assets to JPMorgan Chase;

(vii) granting JPMorgan Chase an administrative claim for amounts paid into or on account of the Pension and 401(k) Plans and other assets;

(viii) requiring Debtors to reimburse JPMorgan Chase for all amounts by which they have been unjustly enriched;

(ix) determining that JPMorgan Chase is entitled to setoff, recoup, or impose a lien against any liabilities that JPMC may owe to Debtors, for all amounts JPMC may be entitled to under this Complaint;

(x) determining that any and all interested persons, entities or agencies are restrained from instituting any actions against JPMC for recovery of any amounts being interplead with the Court;

(xi) determining that JPMC be discharged from any and all liability with regard to claims to the interplead funds;

(xii) awarding JPMorgan Chase, to the extent permissible, pre-judgment interest and punitive damages;

(xiii) awarding JPMorgan Chase its attorney's fees and costs; and

(xiv) awarding JPMorgan Chase such other and further relief as this Court deems just and proper.

Dated: March 24, 2009
Wilmington, Delaware

Respectfully submitted,

Adam G. Landis w/permission MBM #4366

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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.,	:	Adv. Pro. No. 09-50934 (MFW)
Plaintiffs,	:	
v.	:	Re: 31460
JPMORGAN CHASE BANK, N.A.,	:	
Defendant.	:	

ORDER DENYING (A) MOTION OF DEFENDANT JPMORGAN CHASE BANK, N.A. TO STAY AND (B) MOTION OF INTERVENOR-DEFENDANT FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER, TO STAY OR DISMISS ADVERSARY PROCEEDING

Upon (a) the motion, dated June 1, 2009 (the "JPMC Motion") [Docket No. 31], of JPMorgan Chase Bank, National Association ("JPMorgan") for an order staying, in the event it is not dismissed in its entirety, the above-captioned adversary proceeding (the "Adversary Proceeding") commenced by Washington Mutual, Inc. and WMI Investment Corp. (collectively, the "Debtors"), and (b) the motion of intervenor-defendant Federal Deposit

[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.

Insurance Corporation, as receiver for Washington Mutual Bank (the "FDIC-Receiver") to stay, or in the alternative, dismiss the Adversary Proceeding [Docket Entry No. 29, Exhibit A] (the "FDIC-R Motion", and together with the JPMC Motion, the "Motions"), all as more fully set forth in the Motions; and the Washington Mutual, Inc. Noteholders Group [Docket No. 38] and the Debtors [Docket No. 39] having each filed an opposition to the Motion on June 15, 2009; and a joinder in the Debtors' opposition having been filed by the Official Committee of Unsecured Creditors on June 15, 2009 [Docket No. 40] (collectively, the "Opposition Papers"); and the Court having jurisdiction to consider the Motions, the Opposition Papers, and all related filings in connection therewith and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having granted by separate Order the motion of the FDIC-Receiver to intervene in the Adversary Proceeding; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409 to consider the Motions; and due and proper notice of the Motions and the Opposition Papers having been provided, and it appearing that no other or further notice need be provided; and a hearing having been held before the Court with respect to the Motions, the Opposition Papers, and related filings on June 24, 2009 (the "Hearing"); and upon the record of the Hearing and for the reasons set forth on the record of the Hearing, it is hereby

ORDERED that the Motions and the relief requested therein are denied in their entirety; and

ORDERED that this Order having resolved all matters for which the intervention of the FDIC-Receiver in this Adversary Proceeding was granted, no further pleading or response shall be required from the FDIC-Receiver in this Adversary Proceeding.

Dated: Wilmington, Delaware
December 9, 2009

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

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)
	:	D.I. 549

ORDER PURSUANT TO SECTION 502(b)(9) OF THE BANKRUPTCY CODE, BANKRUPTCY RULES 2002(a)(7), (f), (*l*), AND 3003(c)(3), AND LOCAL RULE 2002-1(e) ESTABLISHING DEADLINE FOR FILING PROOFS OF CLAIMS AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF

Upon the motion, dated January 9, 2009 (the "Motion")[2] of Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment"), as debtors and debtors in possession (collectively, the "Debtors"), for entry of an order, pursuant to section 502(b)(9) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002(a)(7), (f), and (*l*) and 3003(c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2002-1(e) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "Local Rules") (i) setting March 31, 2009 at 5:00 p.m. (prevailing Eastern Time) as the deadline for all persons or entities, including Governmental Units (as such term is defined in section 101(27) of the Bankruptcy Code), to file proofs of claims (each a "Proof of Claim," and, collectively, "Proofs of Claims") against the Debtors;

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[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.

[2] Capitalized terms used herein but not defined have the meanings ascribed in the Motion.

(ii) approving the proposed form of Proof of Claim in substantially the form attached hereto as Exhibit "A" (the "Proof of Claim Form"); (iii) approving the proposed notice of the Bar Date in substantially the form attached hereto as Exhibit "B" (the "Bar Date Notice"); (iv) approving the proposed publication notice in substantially the form attached hereto as Exhibit "C" (the "Publication Notice"); and (v) approving the proposed notice procedures for the filing of Proofs of Claim (the "Notice Procedures"), all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and a hearing having been held on January 29, 2009, to consider the Motion and the relief requested therein (the "Hearing"), and the appearances of all interested parties having been noted in the record of the Hearing; and upon the Motion, the papers in support thereof, and the record of the Hearing; and the Court, after due deliberation, having found and determined that the proposed deadline for filing Proofs of Claim provides sufficient time for all parties in interest (including Governmental Units) to file Proofs of Claims in the Debtors' chapter 11 cases; that the Notice Procedures as provided herein are fair and reasonable and will provide good, sufficient, and proper notice to all affected creditors of the means by which they may assert claims against the Debtors in these chapter 11 cases and the deadlines therefor, and that the relief requested in the Motion is in the best interests of the Debtors, their estates, and all parties in interest; and due and proper notice of the Motion having been provided and no other notice is necessary; and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted in all respects; and it is further

ORDERED that **March 31, 2009, at 5:00 P.M. (prevailing Eastern Time)** shall

be the deadline (the "Bar Date") for each person or entity, including Governmental Units (as such term is defined in section 101(27) of the Bankruptcy Code), to file a Proof of Claim against the Debtors; and it is further

ORDERED that, except as otherwise provided herein, each person or entity (including, without limitation, each individual, partnership, joint venture, corporation, estate, trust and Governmental Unit) that asserts a claim against any of the Debtors that arose on or prior to September 26, 2008, including any such claims which may have been preserved in any written agreement with the Debtors or in any pleading filed with this Court, shall do so by filing an original Proof of Claim so that the Washington Mutual Claims Processing Center (as defined below) receives such Proof of Claim on or before the Bar Date; and it is further

ORDERED that the following procedures for filing Proofs of Claims are hereby approved and adopted in these cases:

(a) Proofs of Claims shall substantially conform to the Proof of Claim Form, attached hereto as Exhibit "A", which form is hereby approved in all respects, or Official Bankruptcy Form No. 10 ("Official Form 10") (a copy of which is available at http://www.uscourts.gov/bkforms/index.html);

(b) Proofs of Claims must be received on or before the Bar Date by Kurtzman Carson Consultants LLC ("KCC"), the official claims agent in the Debtors' chapter 11 cases, at:

Washington Mutual Claims Processing
c/o Kurtzman Carson Consultants LLC
2335 Alaska Ave.
El Segundo, CA 90245

(the "Washington Mutual Claims Processing Center");

(c) The Debtors and KCC shall **not** be required to accept a Proof of Claim sent by facsimile, telecopy, or electronic mail transmission;

(d) Proofs of Claims will be deemed timely filed only if **actually received** by the Washington Mutual Claims Processing Center on or before the Bar Date;

(e) Proofs of Claims shall: (i) be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant; (ii) include supporting documentation or, if voluminous, a summary or explanation as to why documentation is not available; (iii) be in the English language; and (iv) be denominated in United States currency;

(f) Proofs of Claims shall specify by name the Debtor against which the Proof of Claim is asserted; and if the holder asserts a claim against more than one Debtor, a separate Proof of Claim must be filed against each Debtor; and

(g) Any entity that files a Proof of Claim by mail and wishes to receive a clocked-in copy by return mail must include an additional copy of the Proof of Claim and a self-addressed postage-paid envelope; and it is further

ORDERED that the following persons or entities are **not** required to file a Proof of Claim on or before the Bar Date:

(a) any person or entity that has **already** properly filed a Proof of Claim against a Debtor with the Clerk of the United States Bankruptcy Court for the District of Delaware or KCC in a form substantially similar to Official Form No. 10;

(b) any person or entity whose claim is listed on a Debtor's Schedule D, E, or F (collectively, the "Schedules"), and (i) the claim is **not** described as "disputed," "contingent," or "unliquidated"; (ii) the claimant agrees with the amount, nature, and priority of the claim set forth in the Schedules; and (iii) the claimant agrees that the claim is an obligation of the specific Debtor which has listed the claim its Schedules;

(c) any holder of a claim that has been allowed by order of the Court extended prior to the Bar Date;

(d) any person or entity whose claim has been satisfied in full prior to the Bar Date;

(e) any Debtor holding a claim against another Debtor;

(f) any officer, director, or employee for a claim for indemnification, contribution, or reimbursement; **provided, however**, that any officer, director, or employee must file a Proof of Claim if they wish to assert any other claims against any of the Debtors, unless another exception identified herein applies;

(g) any holder of a claim allowable under sections 503(b) or 507(a) of the Bankruptcy Code as an administrative expense of the Debtors' chapter 11 cases;

(h) any person or entity that holds an interest in any Debtor, which interest is based exclusively upon the ownership of common or preferred stock, membership interests, partnership interests, or warrants or rights to purchase, sell or subscribe to such a security or interest; **provided, however**, that any interest holder who wishes to assert any claim (as opposed to ownership interest) against any of the Debtors that arises out of or relates to the ownership or purchase of an interest, including claims arising out of or relating to the sale, issuance, or distribution of the interest, must file its Proof of Claim on or before the Bar Date, unless another exception identified herein applies;

(i) any holder of a claim for repayment of outstanding principal or interest arising under, or with respect to, the Debtors' unsecured notes and related instruments (collectively, the "Notes," and each holder thereof, a "Noteholder") set forth below:

Principal Amount	CUSIP	Description	Due Date
$1,000,000,000	939322AL7	4.00% Fixed Rate Notes	due 2009
$500,000,000	939322AW3	Floating Rate Notes	due 2009
$600,000,000	939322AP8	4.2% Fixed Rate Notes	due 2010
$250,000,000	939322AQ6	Floating Rate Notes	due 2010
$500,000,000	939322AE3	8.250% Subordinated Notes	due 2010
$400,000,000	939322AX1	5.50% Fixed Rate Notes	due 2011
$400,000,000	939322AT0	5.0% Fixed Rate Notes	due 2012
$450,000,000	939322AS2	Floating Rate Notes	due 2012
$500,000,000	939322AU7	Floating Rate Notes	due 2012
$750,000,000	939322AN3	4.625% Subordinated Notes	due 2014
$750,000,000	939322AV5	5.25% Fixed Rate Notes	due 2017
$500,000,000	939322AY9	7.250% Subordinated Notes	due 2017
$1,150,000,000	93933U08/ 939322848/ 93933U407/ 939322111	5.375% Junior Subordinated Deferrable Interest Debentures/Trust PIERS[4]	due 2041

provided, however, that (i) the foregoing exclusion shall not apply to the

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[3] Principal Amount due as of date of issuance.

[4] "Trust PIERS" refers to the Trust Preferred Income Equity Redeemable Securities Units, issued by Washington Mutual Capital Trust 2001.

indenture trustee under each of the indentures pursuant to which the Notes were issued (each an "Indenture Trustee" and, collectively, the "Indenture Trustees"), (ii) each Indenture Trustee shall be required to file one proof of claim on or before the Bar Date for principal, interest, other applicable fees and charges, and/or any amounts due in respect, or on account, of the applicable Notes, (iii) any Noteholder that wishes to assert a claim arising out of or related to the Notes, other than a claim for repayment of outstanding prepetition principal and interest thereunder, shall be required to file a proof of claim on or before the Bar Date, and (iv) the Proof of Claim filed by Wells Fargo Bank, N.A. ("Wells Fargo") in connection with the Note Documents (as hereinafter defined) for the Trust PIERS, including with respect to the Declaration of Trust, dated as of April30, 2001, shall also be recognized and deemed to have been filed by Wells Fargo with respect to any principal and interest due to each beneficial holder in connection with such Declaration of Trust; and

(j) any holder of a claim for which the Court has already fixed a specific deadline to file a Proof of Claim; and it is further

ORDERED that, notwithstanding anything in this Order to the contrary, the Indenture Trustees are authorized to file, on behalf of themselves and the Noteholders, a single Proof of Claim in case number 08-12229 in respect of claims arising under or in connection with the related Notes and related agreements and documents (collectively, as amended, supplemented or otherwise modified, the "Note Documents"), and such single Proof of Claim shall be deemed to have been filed by the Indenture Trustees for each such Noteholder against all Debtors liable under any one or more of the Note Documents; and it is further

ORDERED that, notwithstanding anything in this Order to the contrary, the Indenture Trustees shall not be required to file with their respective Proof of Claim any Note Documents, which shall be provided to the Debtors within five (5) business days of the Debtors' written request to counsel for the respective Indenture Trustee; and it is further

ORDERED that, in the event a Proof of Claim incorrectly identifies as obligor a Debtor instead of the Debtor that should have been identified (the "Misidentifying Claim"), such Proof of Claim shall be subject to reclassification as a Proof of Claim asserted against the Debtor

that should have been identified (the "Reclassified Claim"), and upon such reclassification, (a) the Misidentifying Claim shall be disallowed and expunged and (b) the Reclassified Claim shall be subject to all rights, defenses, counterclaims, actions, and objections to which the Misidentifying Claim would have been subject had the Misidentifying Claim been asserted against the correctly identified Debtor; **provided, however**, that, any claimant asserting a Misidentifying Claim subject to reclassification shall be given fifteen (15) days' notice of the proposed reclassification and, in the absence of an objection to such reclassification, the Court may enter an order reclassifying the Misidentifying Claim without conducting a hearing thereon; and it is further

ORDERED that any person or entity (including, without limitation, individuals, partnerships, corporations, joint ventures, trusts, and Governmental Units) that asserts a claim arising from the rejection of an executory contract or unexpired lease shall file a Proof of Claim based on such rejection on or before the later of (i) the Bar Date, or (ii) the date that is twentieth (20th) after the effective date of such rejection (unless the order authorizing such rejection provides otherwise); and it is further

ORDERED that any party to an executory contract or unexpired lease with the Debtor that asserts a claim on unpaid of amounts accrued and outstanding as of September 26, 2008 pursuant to an executory contract or unexpired lease (other than a rejection damages claim) shall file a Proof of Claim for amounts on or before the Bar Date, unless an exception contained in this Order applies; and it is further

ORDERED that any holder of a claim against the Debtors who receives notice of the Bar Date (whether such notice was actually or constructively received) and is required, but fails, to file a Proof of Claim in accordance with this Order on or before the Bar Date, shall not

be permitted to vote to accept or reject any chapter 11 plan filed in these chapter 11 cases, or participate in any distribution in Debtors' chapter 11 cases on account of such claim or to receive further notices regarding such claim; and it is further

ORDERED that the Bar Date Notice is approved in all respects; and it is further

ORDERED that, pursuant to Bankruptcy Rule 2002(a)(7), the Debtors shall serve the Bar Date Notice and a form Proof of Claim by first-class mail on:

(a) the Office of the United States Trustee for the District of Delaware;

(b) counsel to the Creditors' Committee;

(c) the OTS;

(d) the FDIC;

(e) counsel to JPMorgan Chase;

(f) all parties that have requested notice in these chapter 11 cases;

(g) all person or entities that have previously filed proofs of claims;

(h) all creditors and other known holders of claims as of the Commencement Date including all persons or entities listed in the Debtors' Schedules, unless otherwise specified;

(i) all parties to executory contracts and unexpired leases of the Debtors;

(j) all parties to litigation with the Debtors;

(k) all Governmental Units in these cases; and

(l) the United States Attorney's Office for the Western District of Washington; and it is further

ORDERED that the Publication Notice, attached hereto as Exhibit "C", is hereby approved in all respects; and it is further

ORDERED that, pursuant to Bankruptcy Rules 2002(f) and (*l*), the Debtors shall publish the Publication Notice once in The New York Times (National Edition), The Wall Street Journal, and The Seattle Times, each at least forty-five (45) days prior to the Bar Date, which

publication is hereby approved in all respects and shall be deemed good, adequate, and sufficient publication notice of the Bar Date and the procedures for filing Proofs of Claim in these cases; and it is further

ORDERED that, if the Debtors amend or supplement their Schedules subsequent to the date hereof, and if an amendment to the Schedules reduces the liquidated amount of a scheduled claim, or reclassifies a scheduled, undisputed, liquidated, non-contingent claim as disputed, unliquidated, or contingent and the affected claimant has not filed a proof of claim, the affected claimant may file a proof of claim on the later of (i) the Bar Date or (ii) the first business day following thirty (30) calendar days after the mailing of the notice of such amendment in accordance with Bankruptcy Rule 1009(a), but, in the case of any amendment to the Schedules after the Bar Date where the affected claimant did not file a proof of claim prior to the Bar Date, only to the extent such proof of claim does not exceed the amount scheduled for such claim before the amendment; **provided**, **however**, that creditors are not entitled to an extension of the Bar Date if an amendment to the Schedules increases the scheduled amount of an undisputed, liquidated, non-contingent claim; and it is further

ORDERED that, if the Debtors determine after the mailing date of the Bar Date Notice (the "Mailing Date") that an additional party or parties should appropriately receive the Bar Date Notice, the date by which a proof of claim must be filed by such party or parties shall be the later of (i) the Bar Date or (ii) the date that is thirty (30) days from the mailing date of an amended notice to such additional party or parties; and it is further

ORDERED that, notwithstanding the above decretal paragraphs, the last day for any entity asserting a claim arising from the recovery of a voidable transfer will be the later of (i) the Bar Date, or (ii) the first business day that is at least thirty (30) calendar days after the

mailing of notice of entry of any order approving the avoidance of the transfer; and it is further

ORDERED that the Debtors and KCC are authorized and empowered to take such steps and perform such acts as may be necessary or appropriate to implement and effectuate the terms of this Order; and it is further

ORDERED that entry of this Order is without prejudice to the right of the Debtors to seek a further order of this Court fixing a date by which holders of claims or interests **not** subject to the Bar Date established herein shall file such proofs of claims or interests or be forever barred from asserting such claims or interests against the Debtors or their estates; and it is further

ORDERED that, inasmuch as no person or entity that holds an interest in any Debtor that is based exclusively upon the ownership of common or preferred stock, membership interests, partnership interests, or warrants or rights to purchase, sell or subscribe to such a security or interest (collectively, the "Equity Security Holders") is required to file a Proof of Claim on account of such interest, the Debtors are not required to serve notice of the Bar Date on such Equity Security Holders and the requirement, if any, set forth in Local Rule 2002-1(e) for the service of the Bar Date on such Equity Security Holders is deemed inapplicable and hereby waived; and it is further

ORDERED that the Court shall retain jurisdiction with respect to this Order and any related proceedings.

Dated: Jan. 30, 2009
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Proof of Claim Form

United States Bankruptcy Court District of Delaware	**PROOF OF CLAIM**

Name of Debtor *(check only one)*:

☐ Washington Mutual, Inc. 08-12229 (MFW) ☐ WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor): Telephone number: Email Address:	☐ Check this box to indicate that this claim amends a previously filed claim. **Court Claim Number:** _____ *(If known)* Filed on: _____	**Your Claim Is Scheduled as Follows:**
Name and address where payment should be sent (if different from above) Telephone number: Email Address:	☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. ☐ Check this box if you are the debtor or trustee in this case.	You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:

☐ Claim existing as of the date case was filed. **Amount of Claim as of Date Case Filed: $**_____

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

☐ Check this box if claim is filed by a governmental unit.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: _____
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other

Describe: _____

Value of Property: $_____ Annual Interest Rate _____%

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

$_____ Basis for perfection: _____

Amount of Secured Claim: $_____ **Amount Unsecured: $**_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries or commissions (up to $10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

☐ Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

☐ Up to $2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

☐ Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

Amount entitled to priority:

$_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. *(See definition of "redacted" on reverse side.)* **DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.**

If the documents are not available, please explain:

FOR COURT USE ONLY

Date:	**Signature:** The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

Name of Debtor, and Case Number:
Check the box of the Debtor against whom you have a claim. If your Claim is against multiple Debtors, complete a separate form for each Debtor.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Type of Claim:
State the type of claim being filed and the total amount owed to the creditor. Follow the instructions concerning whether to complete items 4 and 5. Check the box if you are filing the claim on behalf of a governmental unit or if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the Debtor's account or other number used by the creditor to identify the Debtor.

3a. Debtor May Have Scheduled Account As:
Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the Debtor.

4. Secured Claim:
Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).
If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the Debtor credit for any payments received toward the debt.

7. Documents:
Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:
The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case. The Debtors in these Chapter 11 cases are:

Washington Mutual, Inc. 08-12229 (MFW)
WMI Investment Corp. 08-12228 (MFW)

Creditor
A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101(10)

Claim
A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form at the following address:

By mail, overnight mail, or hand delivery:

Washington Mutual Claims Processing
c/o Kurtzman Carson Consultants LLC
2335 Alaska Ave.
El Segundo, CA 90245

Secured Claim Under 11 U.S.C. §506(a)
A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)
Priority claims are certain categories of unsecured Claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim, or you may access the Claims Agent's system (http://www.kccllc.net/wamu) to view your filed proof of claim.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

Governmental Unit
A governmental unit means the United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under title 11), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government. See 11 U.S.C. § 101(27).

Exhibit B

Bar Date Notice

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
	:	**(Jointly Administered)**
Debtors.	:	

NOTICE OF DEADLINES FOR FILING PROOFS OF CLAIMS

TO ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST THE FOLLOWING ENTITIES (COLLECTIVELY, THE "DEBTORS"):

Washington Mutual, Inc., Case No. 08-12229	WMI Investment Corp., Case No. 08-12228

PLEASE TAKE NOTICE THAT, on September 26, 2008, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11, United States Code (the "Bankruptcy Code").

PLEASE TAKE FURTHER NOTICE THAT, on January 29, 2009, the United States Bankruptcy Court for the District of Delaware (the "Court") having jurisdiction over the Debtors' chapter 11 cases entered an order (the "Bar Date Order") establishing **March 31, 2009 at 5:00 p.m. (prevailing Eastern Time)** (the "Bar Date") as the deadline for each person or entity (including, without limitation, individuals, partnerships, corporations, joint ventures, trusts, and Governmental Units (as defined in section 101(27) of the Bankruptcy Code)) to file a proof of claim ("Proof of Claim") against any of the Debtors that arose on or prior to **September 26, 2008**.

PLEASE TAKE FURTHER NOTICE THAT, depositors and other creditors of WMB and WMBfsb do not have claims against the Debtors as a result of such deposits or other claims and are not required to file a Proof of Claim in these cases. Such persons or entities

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[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.

should contact the Federal Deposit Insurance Corporation for information regarding the receivership of WMB.

A CLAIMANT SHOULD CONSULT AN ATTORNEY IF THE CLAIMANT HAS ANY QUESTIONS, INCLUDING WHETHER TO FILE A PROOF OF CLAIM.

If you have any questions with respect to this notice, you may contact the Debtors' claim agent, Kurtzman Carson Consultants ("KCC") at (866) 381-9100 or the Washington Mutual Restructuring Hotline at (888) 830-4644.

1. WHO MUST FILE A PROOF OF CLAIM

You **MUST** file a Proof of Claim if you have a claim that arose on or prior to September 26, 2008, and it is not a claim described in Section 2 below. Acts or omissions of the Debtors that arose on or prior to September 26, 2008 may give rise to claims against the Debtors that must be filed by the Bar Date, notwithstanding that such claims may not have matured or become fixed or liquidated as of September 26, 2008.

Under section 101(5) of the Bankruptcy Code and as used herein, the word "claim" means: (i) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

2. WHO NEED NOT FILE A PROOF OF CLAIM

You need **not** file a Proof of Claim if:

(a) You have **already** properly filed a Proof of Claim against the Debtors with the Clerk of the United States Bankruptcy Court for the District of Delaware or KCC in a form substantially similar to Official Bankruptcy Form No. 10;

(b) Your claim is listed on a Debtor's Schedule D, E, or F (collectively, the "Schedules"), and (i) the claim is **not** described as "disputed," "contingent," or "unliquidated"; (ii) you agree with the amount, nature, and priority of the claim set forth in the Schedules; and (iii) you agree that the claim is an obligation of the specific Debtor which has listed the claim in its Schedules;

(c) Your claim has been allowed by order of the Court prior to the Bar Date;

(d) Your claim has been satisfied in full prior to the Bar Date;

(e) You are a Debtor holding a claim against another Debtor;

(f) You are an officer, director, or employee asserting **only** a claim for indemnification, contribution, or reimbursement; **provided, however**, you must file a Proof of Claim if you wish to assert any other claims against any of the Debtors, unless another exception identified herein applies;

(g) Your claim is allowable under sections 503(b) or 507(a) of the Bankruptcy Code as an administrative expense of the Debtors' chapter 11 cases;

(h) You hold an interest in any Debtor, which interest is based **exclusively** upon the ownership of common or preferred stock, membership interests, partnership interests, or warrants or rights to purchase, sell or subscribe to such a security or interest; **provided, however**, that, if you wish to assert any claim (as opposed to ownership interest) against any of the Debtors that arises out of or relates to the ownership or purchase of an interest, including claims arising out of or relating to the sale, issuance, or distribution of the interest, you must file a Proof of Claim on or before the Bar Date, unless another exception identified herein applies;

(i) You are a holder of a claim (a "Noteholder") for repayment of outstanding principal or interest arising under, or with respect to, the Debtors' unsecured notes and related documents (collectively, the "Notes") set forth below:

Principal Amount	CUSIP	Description	Due Date
$1,000,000,000	939322AL7	4.00% Fixed Rate Notes	due 2009
$500,000,000	939322AW3	Floating Rate Notes	due 2009
$600,000,000	939322AP8	4.2% Fixed Rate Notes	due 2010
$250,000,000	939322AQ6	Floating Rate Notes	due 2010
$500,000,000	939322AE3	8.250% Subordinated Notes	due 2010
$400,000,000	939322AX1	5.50% Fixed Rate Notes	due 2011
$400,000,000	939322AT0	5.0% Fixed Rate Notes	due 2012
$450,000,000	939322AS2	Floating Rate Notes	due 2012
$500,000,000	939322AU7	Floating Rate Notes	due 2012
$750,000,000	939322AN3	4.625% Subordinated Notes	due 2014
$750,000,000	939322AV5	5.25% Fixed Rate Notes	due 2017
$500,000,000	939322AY9	7.250% Subordinated Notes	due 2017
$1,150,000,000	93933U08/ 939322848/ 93933U407/	5.375% Junior Subordinated Deferrable Interest Debentures/Trust PIERS[3]	due 2041

[2] Principal Amount due as of date of issuance.

[3] "Trust PIERS" refers to the Trust Preferred Income Equity Redeemable Securities Units, issued by Washington Mutual Capital Trust 2001.

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provided, however, that (i) the foregoing exclusion shall not apply to the indenture trustee under each of the indentures pursuant to which the Notes were issued (each an "Indenture Trustee" and, collectively, the "Indenture Trustees"), (ii) each Indenture Trustee shall be required to file one proof of claim on or before the Bar Date for principal, interest, other applicable fees and charges, and/or any amounts due in respect, or on account, of the applicable Notes, (iii) any Noteholder that wishes to assert a claim arising out of or related to the Notes, other than a claim for repayment of outstanding prepetition principal and interest thereunder, shall be required to file a proof of claim on or before the Bar Date, and (iv) the Proof of Claim filed by Wells Fargo Bank, N.A. ("Wells Fargo") in connection with the Note Documents (as defined in the Bar Date Order) for the Trust PIERS, including with respect to the Declaration of Trust, dated as of April 30, 2001, shall also be recognized and deemed to have been filed by Wells Fargo with respect to any principal and interest due to each beneficial holder in connection with such Declaration of Trust; or

(j) The Court has already fixed a specific deadline for a Proof of Claim to be filed with respect to your claim.

YOU SHOULD NOT FILE A PROOF OF CLAIM IF YOU DO NOT HAVE A CLAIM AGAINST ANY OF THE DEBTORS.

THE FACT THAT YOU HAVE RECEIVED THIS NOTICE DOES NOT MEAN THAT YOU HAVE A CLAIM OR THAT THE DEBTORS OR THE COURT BELIEVE THAT YOU HAVE A CLAIM.

3. CLAIMS ARISING UNDER EXECUTORY CONTRACTS AND UNEXPIRED LEASES

If you are a party to an executory contract or unexpired lease with a Debtor and assert a claim for amounts accrued and unpaid on September 26, 2008 pursuant to such executory contract or unexpired lease (other than a rejection damages claim), you must file a Proof of Claim for such amounts on or before the Bar Date, unless an exception in Section 2 otherwise applies.

If you hold a claim that arises from the rejection of an executory contract or unexpired lease, you **must** file a Proof of Claim based on such rejection on or before the later of (i) the Bar Date, or (ii) the date that is twenty (20) days following the effective date of such rejection (unless the order authorizing such rejection provides otherwise).

4. WHEN AND WHERE TO FILE

All Proofs of Claim must be filed so as to be **received** on or before **the Bar Date**, at the following address:

Washington Mutual Claims Processing
c/o Kurtzman Carson Consultants LLC
2335 Alaska Ave.
El Segundo, CA 90245

(the "Washington Mutual Claims Processing Center").

Proofs of Claims will be deemed timely filed only if **actually received** by the Washington Mutual Claims Processing Center on or before the Bar Date. Proofs of Claims may **not** be delivered by facsimile, telecopy, or electronic mail transmission.

5. WHAT TO FILE

You may receive a Debtor-specific Proof of Claim form for use in these chapter 11 cases. If your claim is scheduled by a Debtor, the form will also set forth the amount of your claim as scheduled by the Debtors, the specific Debtor against which the claim is scheduled, and whether the claim is scheduled as disputed, contingent, or unliquidated. You will receive a different Proof of Claim form for each claim scheduled in your name by the Debtors. You may utilize the Proof of Claim form(s) provided by the Debtors to file your claim. Additional Proof of Claim forms may be obtained at http://www.uscourts.gov/bkforms or http://www.kccllc.net/wamu.

If you file a Proof of Claim, your filed Proof of Claim must (i) be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant; (ii) include supporting documentation (if voluminous, attach a summary) or explanation as to why documentation is not available; (iii) be in the English language; (iv) be denominated in United States currency; and (v) conform substantially with the Proof of Claim Form approved pursuant to the Bar Date Order or Official Bankruptcy Form No. 10.

Any holder of a claim against more than one Debtor must file a separate Proof of Claim with each Debtor and all holders of claims must identify on their Proof of Claim the specific Debtor against which the claim is asserted and the case number of that Debtor's bankruptcy case. The Debtors' names and case numbers are set forth above.

If you file a Proof of Claim and wish to receive a clocked-in copy by return mail, you must include with your Proof of Claim an additional copy of your Proof of Claim and a self-addressed, postage-paid envelope.

YOU SHOULD ATTACH TO YOUR COMPLETED PROOF OF CLAIM FORM COPIES OF ANY WRITINGS UPON WHICH YOUR CLAIM IS BASED.

6. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE BAR DATE

Except with respect to claims described in Section 2 above, any creditor who fails to file a Proof of Claim on or before the Bar Date (whether notice of the Bar Date was actually or constructively received) shall not be permitted to vote on any chapter 11 plan or participate in any distribution in such Debtor's chapter 11 case on account of such claim or to receive further notices regarding such claim or with respect to such Debtor's chapter 11 case.

7. THE DEBTORS' SCHEDULES AND ACCESS THERETO

You may be listed in the Schedules as the holder of a claim against the Debtors.

To determine if and how you are listed on the Schedules, please refer to the description set forth on the customized Proof of Claim you have received regarding the nature, amount, and status of your claim(s). If you received postpetition payments from the Debtors (which payments were authorized by the Court) on account of your claim(s), the Proof of Claim form(s) will reflect the net amount of your claim(s) (*i.e.*, the amount listed in the Schedules reduced by the postpetition payments). If the Debtors believe that you hold claims against more than one Debtor, you will receive multiple Proofs of Claim, each of which will reflect the nature and amount of your claims, as listed in the Schedules.

If you rely on the Debtors' Schedules, it is your responsibility to determine that the claim is accurately listed in the Schedules.

As set forth above, if you agree with the nature, amount, and status of your claim as listed in the Debtors' Schedules, and if you do not dispute that your claim is only against the Debtor specified, and if your claim is not described as "disputed," "contingent," or "unliquidated," you need not file a Proof of Claim. Otherwise, or if you decide to file a Proof of Claim, you must do so before the Bar Date, in accordance with the procedures set forth in this Notice.

If the Debtors amend or supplement their Schedules subsequent to the date hereof, and if an amendment to the Schedules reduces the liquidated amount of a scheduled claim, or reclassifies a scheduled, undisputed, liquidated, non-contingent claim as disputed, unliquidated, or contingent and the affected claimant has not filed a proof of claim, you may file a proof of claim on the later of (i) the Bar Date or (ii) the first business day following thirty (30) calendar days after the mailing of the notice of such amendment in accordance with Bankruptcy Rule 1009(a), but, in the case of any amendment to the Schedules after the Bar Date where you did not file a proof of claim prior to the Bar Date, only to the extent such proof of claim does not exceed the amount scheduled for such claim before the amendment; provided, however, that you are not entitled to an extension of the Bar Date if an amendment to the Schedules increases the scheduled amount of an undisputed, liquidated, non-contingent claim.

8. EFFECT OF SUBSEQUENT NOTICE

If the Debtors determine after the mailing date of this Notice that an additional party or parties should appropriately receive the Bar Date Notice, the date by which a proof of claim must be filed by such party or parties shall be the later of (i) the Bar Date or (ii) the date that is thirty (30) days from the mailing date of an amended notice to such additional party or parties.

Notwithstanding the above, the last day for any entity asserting a claim arising from the recovery of a voidable transfer will be the later of (i) the Bar Date, or (ii) the first business day that is at least thirty (30) calendar days after the mailing of notice of entry of any order approving the avoidance of the transfer.

[CONTINUED ON NEXT PAGE]

Interested parties may examine copies of the Schedules at http://www.kccllc.net/wamu or on the Court's electronic docket http://ecf.deb.uscourts.gov (a PACER login and password are required and can be obtained through the PACER Service Center at http://pacer.psc.uscourts.gov).

DATED: Wilmington, Delaware
January ___, 2009

BY ORDER OF THE COURT

RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
Telephone: (302) 651-7700

– and –

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000

Attorneys to the Debtors
and Debtors in Possession

Exhibit C

Publication Notice

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re WASHINGTON MUTUAL, INC., et al.,[1] Debtors.	Chapter 11 Case No. 08-12229 (MFW) (Jointly Administered)

NOTICE OF DEADLINES FOR FILING PROOFS OF CLAIMS TO ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST THE FOLLOWING ENTITIES (COLLECTIVELY, THE "DEBTORS"):

Washington Mutual, Inc., Case No. 08-12229	WMI Investment Corp., Case No. 08-12228

PLEASE TAKE NOTICE THAT, on September 26, 2008, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11, United States Code (the "Bankruptcy Code").

PLEASE TAKE FURTHER NOTICE THAT, on January __, 2009, the United States Bankruptcy Court for the District of Delaware (the "Court") having jurisdiction over the Debtors' chapter 11 cases entered an order (the "Bar Date Order") establishing March 31, 2009 at 5:00 p.m. (prevailing Eastern Time) (the "Bar Date") as the deadline for each person or entity (including, without limitation, individuals, partnerships, corporations, joint ventures, trusts, and Governmental Units (as defined in section 101(27) of the Bankruptcy Code)) to file a proof of claim ("Proof of Claim") against any of the Debtors that arose on or prior to September 26, 2008.

PLEASE TAKE FURTHER NOTICE THAT, depositors and other creditors of WMI and WMBfsb do not have claims against the Debtors as a result of such deposits or other claims and are not required to file a Proof of Claim in these cases. Such persons or entities should contact the Federal Deposit Insurance Corporation for information regarding the receivership of WMB.

A CLAIMANT SHOULD CONSULT AN ATTORNEY IF THE CLAIMANT HAS ANY QUESTIONS, INCLUDING WHETHER TO FILE A PROOF OF CLAIM.

If you have any questions with respect to this notice, you may contact the Debtors' claims agent, Kurtzman Carson Consultants ("KCC") at (866) 381-9100 or the Washington Mutual Restructuring Hotline at (888) 830-4644.

1. **WHO MUST FILE A PROOF OF CLAIM.** You MUST file a Proof of Claim if you have a claim that arose on or prior to September 26, 2008, and it is not a claim described in Section 2 below. Acts or omissions of the Debtors that arose on or prior to September 26, 2008 may give rise to claims against the Debtors that must be filed by the Bar Date, notwithstanding that such claims may not have matured or become fixed or liquidated as of September 26, 2008.

Under section 101(5) of the Bankruptcy Code and as used herein, the word "claim" means: (i) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

2. **WHO NEED NOT FILE A PROOF OF CLAIM.** You need not file a Proof of Claim if:

(a) You have already properly filed a Proof of Claim against the Debtors with the Clerk of the United States Bankruptcy Court for the District of Delaware or KCC in a form substantially similar to Official Bankruptcy Form No. 10;

(b) Your claim is listed on a Debtor's Schedule D, E, or F (collectively, the "Schedules"), and (i) the claim is not described as "disputed," "contingent," or "unliquidated"; (ii) you agree with the amount, nature, and priority of the claim set forth in the Schedules; and (iii) you agree that the claim is an obligation of the specific Debtor which has listed the claim in its Schedules;

(c) Your claim has been allowed by order of the Court prior to the Bar Date;

(d) Your claim has been satisfied in full prior to the Bar Date;

(e) You are a Debtor holding a claim against another Debtor;

(f) You are an officer, director, or employee asserting only a claim for indemnification, contribution, or reimbursement; provided, however, you must file a Proof of Claim if you wish to assert any other claims against any of the Debtors, unless another exception identified herein applies;

(g) Your claim is allowable under sections 503(b) or 507(a) of the Bankruptcy Code as an administrative expense of the Debtors' chapter 11 cases;

(h) You hold an interest in any Debtor, which interest is based exclusively upon the ownership of common or preferred stock, membership interests, partnership interests, or warrants or rights to purchase, sell or subscribe to such a security or interest; provided, however, that, if you wish to assert any claim (as opposed to ownership interest) against any of the Debtors that arises out of or relates to the ownership or purchase of an interest, including claims arising out of or relating to the sale, issuance, or distribution of the interest, you must file a Proof of Claim on or before the Bar Date, unless another exception identified herein applies;

(i) You are a holder of a claim (a "Noteholder") for repayment of outstanding principal or interest arising under, or with respect to, the Debtors' unsecured notes and related documents (collectively, the "Notes") set forth below:

Principal Amount	CUSIP	Description	Due Date
$1,000,000,000	939322AL7	4.00% Fixed Rate Notes	due 2009
$500,000,000	939322AW3	Floating Rate Notes	due 2009
$600,000,000	939322AP8	4.2% Fixed Rate Notes	due 2010
$250,000,000	939322AQ6	Floating Rate Notes	due 2010
$500,000,000	939322AE3	8.250% Subordinated Notes	due 2010
$400,000,000	939322AX1	5.50% Fixed Rate Notes	due 2011
$400,000,000	939322AT0	5.0% Fixed Rate Notes	due 2012
$450,000,000	939322AS2	Floating Rate Notes	due 2012
$500,000,000	939322AU7	Floating Rate Notes	due 2012
$750,000,000	939322AN3	4.625% Subordinated Notes	due 2014
$750,000,000	939322AY5	5.25% Fixed Rate Notes	due 2017
$500,000,000	939322AY9	7.250% Subordinated Notes	due 2017
$1,150,000,000	939330U06/ 939322BA8/ 939330U07/ 939322111	5.375% Junior Subordinated Deferrable Interest Debentures/Trust PIERS[2]	due 2041

provided, however, that (i) the foregoing exclusion shall not apply to the indenture trustee under each of the indentures pursuant to which the Notes were issued (each an "Indenture Trustee" and, collectively, the "Indenture Trustees"), (ii) each Indenture Trustee shall be required to file one proof of claim on or before the Bar Date for principal, interest, other applicable fees and charges, and/or any amounts due in respect, or on account, of the applicable Notes, (iii) any Noteholder that wishes to assert a claim arising out of or related to the Notes, other than a claim for repayment of outstanding prepetition principal and interest thereunder, shall be required to file a proof of claim on or before the Bar Date, and (iv) the Proof of Claim filed by Wells Fargo Bank, N.A. ("Wells Fargo") in connection with the Note Documents (as defined in the Bar Date Order) for the Trust PIERS, including with respect to the Declaration of Trust, dated as of April 30, 2001, shall also be recognized and deemed to have been filed by Wells Fargo with respect to any principal and interest due to each beneficial holder in connection with such Declaration of Trust; or

(j) The Court has already fixed a specific deadline for a Proof of Claim to be filed with respect to your claim.

YOU SHOULD NOT FILE A PROOF OF CLAIM IF YOU DO NOT HAVE A CLAIM AGAINST ANY OF THE DEBTORS.

THE FACT THAT YOU HAVE RECEIVED THIS NOTICE DOES NOT MEAN THAT YOU HAVE A CLAIM OR THAT THE DEBTORS OR THE COURT BELIEVE THAT YOU HAVE A CLAIM.

3. **CLAIMS ARISING UNDER EXECUTORY CONTRACTS AND UNEXPIRED LEASES.** If you are a party to an executory contract or unexpired lease with a Debtor and assert a claim for amounts accrued and unpaid on September 26, 2008 pursuant to such executory contract or unexpired lease (other than a rejection damages claim), you must file a Proof of Claim for such amounts on or before the Bar Date, unless an exception in Section 2 otherwise applies.

If you hold a claim that arises from the rejection of an executory contract or unexpired lease, you must file a Proof of Claim based on such rejection on or before the later of (i) the Bar Date, or (ii) the date that is twenty (20) days following the effective date of such rejection (unless the order authorizing such rejection provides otherwise).

4. **WHEN AND WHERE TO FILE.** All Proofs of Claim must be filed so as to be received on or before the Bar Date, at the following address:

Washington Mutual Claims Processing
c/o Kurtzman Carson Consultants LLC
2335 Alaska Ave., El Segundo, CA 90245
(the "Washington Mutual Claims Processing Center").

Proofs of Claims will be deemed timely filed only if actually received by the Washington Mutual Claims Processing Center on or before the Bar Date. Proofs of Claims may not be delivered by facsimile, telecopy, or electronic mail transmission.

5. **WHAT TO FILE.** You may receive a Debtor-specific Proof of Claim form for use in these chapter 11 cases. If your claim is scheduled by a Debtor, the form will also set forth the amount of your claim as scheduled by the Debtors, the specific Debtor against which the claim is scheduled, and whether the claim is scheduled as disputed, contingent, or unliquidated. You will receive a different Proof of Claim form for each claim scheduled in your name by the Debtors. You may utilize the Proof of Claim form(s) provided by the Debtors to file your claim. Additional Proof of Claim forms may be obtained at http://www.uscourts.gov/bkforms or http://www.kccllc.net/wamu.

If you file a Proof of Claim, your filed Proof of Claim must (i) be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant; (ii) include supporting documentation (if voluminous, attach a summary) or explanation as to why documentation is not available; (iii) be in the English language; (iv) be denominated in United States currency; and (v) conform substantially with the Proof of Claim Form approved pursuant to the Bar Date Order or Official Bankruptcy Form No. 10.

Any holder of a claim against more than one Debtor must file a separate Proof of Claim with each Debtor and all holders of claims must identify on their Proof of Claim the specific Debtor against which the claim is asserted and the case number of that Debtor's bankruptcy case. The Debtors' names and case numbers are set forth above.

If you file a Proof of Claim and wish to receive a docket-in copy by return mail, you must include with your Proof of Claim an additional copy of your Proof of Claim and a self-addressed, postage-paid envelope.

YOU SHOULD ATTACH TO YOUR COMPLETED PROOF OF CLAIM FORM COPIES OF ANY WRITINGS UPON WHICH YOUR CLAIM IS BASED.

6. **CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE BAR DATE.** Except with respect to claims described in Section 2 above, any creditor who fails to file a Proof of Claim on or before the Bar Date (whether notice of the Bar Date was actually or constructively received) shall not be permitted to vote on any chapter 11 plan or participate in any distribution in such Debtor's chapter 11 case on account of such claim or to receive further notices regarding such claim or with respect to such Debtor's chapter 11 case.

7. **THE DEBTORS' SCHEDULES AND ACCESS THERETO.** You may be listed in the Schedules as the holder of a claim against the Debtors.

To determine if and how you are listed on the Schedules, please refer to the description set forth on the customized Proof of Claim you have received regarding the nature, amount, and status of your claim(s). If you received postpetition payments from the Debtors (which payments were authorized by the Court) on account of your claim(s), the Proof of Claim form(s) will reflect the net amount of your claim(s) (*i.e.*, the amount listed in the Schedules reduced by the postpetition payments). If the Debtors believe that you hold claims against more than one Debtor, you will receive multiple Proofs of Claim, each of which will reflect the nature and amount of your claims, as listed in the Schedules.

If you rely on the Debtors' Schedules, it is your responsibility to determine that the claim is accurately listed in the Schedules.

As set forth above, if you agree with the nature, amount, and status of your claim as listed in the Debtors' Schedules, and if you do not dispute that your claim is only against the Debtor specified, and if your claim is not described as "disputed," "contingent," or "unliquidated," you need not file a Proof of Claim. Otherwise, or if you decide to file a Proof of Claim, you must do so before the Bar Date, in accordance with the procedures set forth in this Notice.

If the Debtors amend or supplement their Schedules subsequent to the date hereof, and if an amendment to the Schedules reduces the liquidated amount of a scheduled claim, or reclassifies a scheduled, undisputed, liquidated, non-contingent claim as disputed, unliquidated, or contingent and the affected claimant has not filed a proof of claim, you may file a proof of claim on the later of (i) the Bar Date or (ii) the first business day following thirty (30) calendar days after the mailing of the notice of such amendment (in accordance with Bankruptcy Rule 1009(a)), but, in the case of any amendment to the Schedules after the Bar Date where you did not file a proof of claim prior to the Bar Date, only to the extent such proof of claim does not exceed the amount scheduled for such claim before the amendment; provided, however, that you are not entitled to an extension of the Bar Date if an amendment to the Schedules increases the scheduled amount of an undisputed, liquidated, non-contingent claim.

8. **EFFECT OF SUBSEQUENT NOTICE.** If the Debtors determine after the mailing date of this Notice that an additional party or parties should appropriately receive the Bar Date Notice, the date by which a proof of claim must be filed by such party or parties shall be the later of (i) the Bar Date or (ii) the date that is thirty (30) days from the mailing date of an amended notice to such additional party or parties.

Notwithstanding the above, the last day for any entity asserting a claim arising from the recovery of a voidable transfer will be the later of (i) the Bar Date, or (ii) the first business day that is at least thirty (30) calendar days after the mailing of notice of entry of any order approving the avoidance of the transfer.

Interested parties may examine copies of the Schedules at http://www.kccllc.net/wamu or on the Court's electronic docket http://ecf.deb.uscourts.gov (a PACER login and password are required and can be obtained through the PACER Service Center at http://pacer.psc.uscourts.gov).

DATED: Wilmington, Delaware
[January ____], 2009

BY ORDER OF THE COURT

RICHARDS, LAYTON & FINGER, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801, Telephone: (302) 651-7700	WEIL, GOTSHAL & MANGES LLP, 767 Fifth Avenue, New York, New York 10153, Telephone: (212) 310-8000

Attorneys to the Debtors and Debtors in Possession

[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.

[2] Principal Amount due as of date of issuance.

[3] Trust Preferred Income Equity Redeemable Securities Units, issued by Washington Mutual Capital Trust 2001.

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)

NOTICE OF DEADLINES FOR FILING PROOFS OF CLAIMS

TO ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST THE FOLLOWING ENTITIES (COLLECTIVELY, THE "DEBTORS"):

Washington Mutual, Inc.,	WMI Investment Corp.,
Case No. 08-12229	Case No. 08-12228

PLEASE TAKE NOTICE THAT, on September 26, 2008, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11, United States Code (the "Bankruptcy Code").

PLEASE TAKE FURTHER NOTICE THAT, on January __, 2009, the United States Bankruptcy Court for the District of Delaware (the "Court") having jurisdiction over the Debtors' chapter 11 cases entered an order (the "Bar Date Order") establishing **March 31, 2009 at 5:00 p.m. (prevailing Eastern Time)** (the "Bar Date") as the deadline for each person or entity (including, without limitation, individuals, partnerships, corporations, joint ventures, trusts, and Governmental Units (as defined in section 101(27) of the Bankruptcy Code)) to file a proof of claim ("Proof of Claim") against any of the Debtors that arose on or prior to **September 26, 2008.**

PLEASE TAKE FURTHER NOTICE THAT, depositors and other creditors of WMB and WMBfsb do not have claims against the Debtors as a result of such deposits or other claims and are not required to file a Proof of Claim in these cases. Such persons or entities should contact the Federal Deposit Insurance Corporation for information regarding the receivership of WMB.

A CLAIMANT SHOULD CONSULT AN ATTORNEY IF THE CLAIMANT HAS ANY QUESTIONS, INCLUDING WHETHER TO FILE A PROOF OF CLAIM.

If you have any questions with respect to this notice, you may contact the Debtors' claim agent, Kurtzman Carson Consultants ("KCC") at (866) 381-9100 or the Washington Mutual Restructuring Hotline at (888) 830-4644.

1. WHO MUST FILE A PROOF OF CLAIM. You **MUST** file a Proof of Claim if you have a claim that arose on or prior to September 26, 2008, and it is not a claim described in Section 2 below. Acts or omissions of the Debtors that arose on or prior to September 26, 2008 may give rise to claims against the Debtors that must be filed by the Bar Date, notwithstanding that such claims may not have matured or become fixed or liquidated as of September 26, 2008.

Under section 101(5) of the Bankruptcy Code and as used herein, the word "claim" means: (i) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

2. WHO NEED NOT FILE A PROOF OF CLAIM. You need not file a Proof of Claim if:

(a) You have already properly filed a Proof of Claim against the Debtors with the Clerk of the United States Bankruptcy Court for the District of Delaware or KCC in a form substantially similar to Official Bankruptcy Form No. 10;

(b) Your claim is listed on a Debtor's Schedule D, E, or F (collectively, the "Schedules"), and (i) the claim is not described as "disputed," "contingent," or "unliquidated"; (ii) you agree with the amount, nature, and priority of the claim set forth in the Schedules; and (iii) you agree that the claim is an obligation of the specific Debtor which has listed the claim in its Schedules;

(c) Your claim has been allowed by order of the Court prior to the Bar Date;

(d) Your claim has been satisfied in full prior to the Bar Date;

(e) You are a Debtor holding a claim against another Debtor;

(f) You are an officer, director, or employee asserting only a claim for indemnification, contribution, or reimbursement; provided, however, you must file a Proof of Claim if you wish to assert any other claims against any of the Debtors, unless another exception identified herein applies;

(g) Your claim is allowable under sections 503(b) or 507(a) of the Bankruptcy Code as an administrative expense of the Debtors' chapter 11 cases;

(h) You hold an interest in any Debtor, which interest is based exclusively upon the ownership of common or preferred stock, membership interests, partnership interests, or warrants or rights to purchase, sell or subscribe to such a security or interest; provided, however, that, if you wish to assert any claim (as opposed to ownership interest) against any of the Debtors that arises out of or relates to the ownership or purchase of an interest, including claims arising out of or relating to the sale, issuance, or distribution of the interest, you must file a Proof of Claim on or before the Bar Date, unless another exception identified herein applies;

(i) You are a holder of a claim (a "Noteholder") for repayment of outstanding principal or interest arising under, or with respect to, the Debtors' unsecured notes and related documents (collectively, the "Notes") set forth below:

Principal Amount:[2]	CUSIP	Description:	Due Date:
$1,000,000,000	939322AL7	4.00% Fixed Rate Notes	due 2009
$500,000,000	939322AW3	Floating Rate Notes	due 2009
$600,000,000	939322AP8	4.2% Fixed Rate Notes	due 2010
$250,000,000	939322AQ6	Floating Rate Notes	due 2010
$500,000,000	939322AE3	8.250% Subordinated Notes	due 2010
$400,000,000	939322AX1	5.50% Fixed Rate Notes	due 2011
$400,000,000	939322AT0	5.0% Fixed Rate Notes	due 2012
$450,000,000	939322AS2	Floating Rate Notes	due 2012
$500,000,000	939322AU7	Floating Rate Notes	due 2012
$750,000,000	939322AN3	4.625% Subordinated Notes	due 2014
$750,000,000	939322AV5	5.25% Fixed Rate Notes	due 2017
$500,000,000	939322AY9	7.250% Subordinated Notes	due 2017
$1,150,000,000	93933U08/ 939322848/ 93933U407/ 939322111	5.375% Junior Subordinated Deferrable Interest Debentures/Trust PIERS[3]	due 2041

provided, however, that (i) the foregoing exclusion shall not apply to the indenture trustee under each of the indentures pursuant to which the Notes were issued (each an "Indenture Trustee" and, collectively, the "Indenture Trustees"), (ii) each Indenture Trustee shall be required to file one proof of claim on or before the Bar Date for principal, interest, other applicable fees and charges, and/or any amounts due in respect, or on account, of the applicable Notes, (iii) any Noteholder that wishes to assert a claim arising out of or related to the Notes, other than a claim for repayment of outstanding prepetition principal and interest thereunder, shall be required to file a proof of claim on or before the Bar Date, and (iv) the Proof of Claim filed by Wells Fargo Bank, N.A. ("Wells Fargo") in connection with the Note Documents (as defined in the Bar Date Order) for the Trust PIERS, including with respect to the Declaration of Trust, dated as of April 30, 2001, shall also be recognized and deemed to have been filed by Wells Fargo with respect to any principal and interest due to each beneficial holder in connection with such Declaration of Trust; or

(j) The Court has already fixed a specific deadline for a Proof of Claim to be filed with respect to your claim.

YOU SHOULD NOT FILE A PROOF OF CLAIM IF YOU DO NOT HAVE A CLAIM AGAINST ANY OF THE DEBTORS.

THE FACT THAT YOU HAVE RECEIVED THIS NOTICE DOES NOT MEAN THAT YOU HAVE A CLAIM OR THAT THE DEBTORS OR THE COURT BELIEVE THAT YOU HAVE A CLAIM.

3. CLAIMS ARISING UNDER EXECUTORY CONTRACTS AND UNEXPIRED LEASES. If you are a party to an executory contract or unexpired lease with a Debtor and assert a claim for amounts accrued and unpaid on September 26, 2008 pursuant to such executory contract or unexpired lease (other than a rejection damages claim), you must file a Proof of Claim for such amounts on or before the Bar Date, unless an exception in Section 2 otherwise applies.

If you hold a claim that arises from the rejection of an executory contract or unexpired lease, you must file a Proof of Claim based on such rejection on or before the later of (i) the Bar Date, or (ii) the date that is twenty (20) days following the effective date of such rejection (unless the order authorizing such rejection provides otherwise).

4. WHEN AND WHERE TO FILE. All Proofs of Claim must be filed so as to be received on or before the Bar Date, at the following address:

Washington Mutual Claims Processing
c/o Kurtzman Carson Consultants LLC
2335 Alaska Ave., El Segundo, CA 90245
(the "Washington Mutual Claims Processing Center").

Proofs of Claims will be deemed timely filed only if **actually received** by the Washington Mutual Claims Processing Center on or before the Bar Date. Proofs of Claims may not be delivered by facsimile, telecopy, or electronic mail transmission.

5. WHAT TO FILE. You may receive a Debtor-specific Proof of Claim form for use in these chapter 11 cases. If your claim is scheduled by a Debtor, the form will also set forth the amount of your claim as scheduled by the Debtors, the specific Debtor against which the claim is scheduled, and whether the claim is scheduled as disputed, contingent, or unliquidated. You will receive a different Proof of Claim form for each claim scheduled in your name by the Debtors. You may utilize the Proof of Claim form(s) provided by the Debtors to file your claim. Additional Proof of Claim forms may be obtained at http://www.uscourts.gov/bkforms or http://www.kccllc.net/wamu.

If you file a Proof of Claim, your filed Proof of Claim must (i) be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant; (ii) include supporting documentation (if voluminous, attach a summary) or explanation as to why documentation is not available; (iii) be in the English language; (iv) be denominated in United States currency; and (v) conform substantially with the Proof of Claim Form approved pursuant to the Bar Date Order or Official Bankruptcy Form No. 10.

Any holder of a claim against more than one Debtor must file a separate Proof of Claim with each Debtor and all holders of claims must identify on their Proof of Claim the specific Debtor against which the claim is asserted and the case number of that Debtor's bankruptcy case. The Debtors' names and case numbers are set forth above.

If you file a Proof of Claim and wish to receive a clocked-in copy by return mail, you must include with your Proof of Claim an additional copy of your Proof of Claim and a self-addressed, postage-paid envelope.

YOU SHOULD ATTACH TO YOUR COMPLETED PROOF OF CLAIM FORM COPIES OF ANY WRITINGS UPON WHICH YOUR CLAIM IS BASED.

6. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE BAR DATE. Except with respect to claims described in Section 2 above, any creditor who fails to file a Proof of Claim on or before the Bar Date (whether notice of the Bar Date was actually or constructively received) shall not be permitted to vote on any chapter 11 plan or participate in any distribution in such Debtor's chapter 11 case on account of such claim or to receive further notices regarding such claim or with respect to such Debtor's chapter 11 case.

7. THE DEBTORS' SCHEDULES AND ACCESS THERETO. You may be listed in the Schedules as the holder of a claim against the Debtors.

To determine if and how you are listed on the Schedules, please refer to the description set forth on the customized Proof of Claim you have received regarding the nature, amount, and status of your claim(s). If you received post-petition payments from the Debtors (which payments were authorized by the Court) on account of your claim(s), the Proof of Claim form(s) will reflect the net amount of your claim(s) (*i.e.*, the amount listed in the Schedules reduced by the postpetition payments). If the Debtors believe that you hold claims against more than one Debtor, you will receive multiple Proofs of Claim, each of which will reflect the nature and amount of your claims, as listed in the Schedules.

If you rely on the Debtors' Schedules, it is your responsibility to determine that the claim is accurately listed in the Schedules.

As set forth above, if you agree with the nature, amount, and status of your claim as listed in the Debtors' Schedules, and if you do not dispute that your claim is only against the Debtor specified, and if your claim is not described as "disputed," "contingent," or "unliquidated," you need not file a Proof of Claim. Otherwise, or if you decide to file a Proof of Claim, you must do so before the Bar Date, in accordance with the procedures set forth in this Notice.

If the Debtors amend or supplement their Schedules subsequent to the date hereof, and if an amendment to the Schedules reduces the liquidated amount of a scheduled claim, or reclassifies a scheduled, undisputed, liquidated, non-contingent claim as disputed, unliquidated, or contingent and the affected claimant has not filed a proof of claim, you may file a proof of claim on the later of (i) the Bar Date or (ii) the first business day following thirty (30) calendar days after the mailing of the notice of such amendment in accordance with Bankruptcy Rule 1009(a), but, in the case of any amendment to the Schedules after the Bar Date where you did not file a proof of claim prior to the Bar Date, only to the extent such proof of claim does not exceed the amount scheduled for such claim before the amendment; provided, however, that you are not entitled to an extension of the Bar Date if an amendment to the Schedules increases the scheduled amount of an undisputed, liquidated, non-contingent claim.

8. EFFECT OF SUBSEQUENT NOTICE. If the Debtors determine after the mailing date of this Notice that an additional party or parties should appropriately receive the Bar Date Notice, the date by which a proof of claim must be filed by such party or parties shall be the later of (i) the Bar Date or (ii) the date that is thirty (30) days from the mailing date of an amended notice to such additional party or parties.

Notwithstanding the above, the last day for any entity asserting a claim arising from the recovery of a voidable transfer will be the later of (i) the Bar Date, or (ii) the first business day that is at least thirty (30) calendar days after the mailing of notice of entry of any order approving the avoidance of the transfer.

Interested parties may examine copies of the Schedules at http://www.kccllc.net/wamu or on the Court's electronic docket http://ecf.deb.uscourts.gov (a PACER login and password are required and can be obtained through the PACER Service Center at http://pacer.psc.uscourts.gov).

DATED: Wilmington, Delaware
[January ___], 2009

BY ORDER OF THE COURT

RICHARDS, LAYTON & FINGER, P.A.,
One Rodney Square, 920 North King Street, Wilmington, DE 19801,
Telephone: (302) 651-7700

WEIL, GOTSHAL & MANGES LLP,
767 Fifth Avenue, New York, New York 10153, Telephone: (212) 310-8000

Attorneys to the Debtors and Debtors In Possession

[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.

[2] Principal Amount due as of date of issuance.

[3] Trust Preferred Income Equity Redeemable Securities Units, issued by Washington Mutual Capital Trust 2001.

United States Bankruptcy Court District of Delaware	PROOF OF CLAIM

Name of Debtor *(check only one)*:
☒ Washington Mutual, Inc. 08-12229 (MFW) ☐ WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
c/o Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725
310.712.6600
feldsteinh@sullcrom.com

With a copy to:

JPMorgan Chase Bank, National Association
c/o Kevin G. Mruk
10 South Dearborn, Mail Code IL1-0080
Chicago, Illinois 60603-2003
312.732.7105
kevin.g.mruk@jpmchase.com

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)

Filed on: _____

Your Claim Is Scheduled as Follows:

■ Date Stamped Copy Returned
☐ No self addressed stamped envelope
☐ No copy to return

Name and address where payment should be sent (if different from above):

JPMorgan Chase Bank, National Association
c/o Joseph A. Giampapa
1111 Polaris Parkway, 4P0265
Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Type of Claim:
☒ Claim existing as of the date case was filed. **Amount of Claim as of Date Case Filed:** $ See Attachment A.

If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority (other than under 11 U.S.C. § 507(a)(2)), complete Item 5.

☐ Check this box if claim is filed by a governmental unit.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: See Attachment A.
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.
Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☒ Other

Describe: See Attachment A.

Value of Property: $ See Attachment A. Annual Interest Rate ____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:
$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: $ See Attachment A. **Amount of Unsecured:** $ See Attachment A.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries or commissions (up to $10,950), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4).

☐ Contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5).

☐ Up to $2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use under 11 U.S.C. § 507(a)(7).

☐ Taxes or penalties owed to governmental units under 11 U.S.C. § 507(a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. § 507(a)(____).

Amount entitled to priority:
$_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. *(See definition of "redacted" on reverse side.)* **DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.**

If the documents are not available, please explain:

FOR COURT USE ONLY

RECEIVED
MAR 30 2009
KURTZMAN CARSON CONSULTANTS

Date:
March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

03 Deposit Accounts (non-complaint)
WMI original

08122290903300000000000277

ATTACHMENT A

Intercompany Deposit Accounts

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

On the Petition Date, WMI claimed a total purported deposit liability of approximately $4,358,492,498 (the "Intercompany Amounts") identified on the books of the Affiliated Banks and associated with twenty-nine different account numbers in the name of WMI or one of its non-bank subsidiaries (the "Accounts"). According to WMI, the Intercompany Amounts represented deposits maintained by WMI and its non-banking subsidiaries at the Affiliated Banks, all as non-interest bearing demand deposit accounts. With the exception of signature cards for several of the smaller Accounts, JPMC has not located and believes there do not exist pre-petition any deposit account agreements, signature cards or any other documentation for the Accounts as deposit accounts.

On or about October 15, 2008, JPMCB and the Debtors entered into a stipulation with respect to the Accounts (the "Account Stipulation") that was filed with the Bankruptcy Court for approval. The Account Stipulation was ultimately withdrawn following objections filed by certain creditors of the Receivership and the FDIC and was never entered by the Bankruptcy Court. Pursuant to the Account Stipulation, and before it was withdrawn, JPMCB and the Debtors executed customary deposit account agreements regarding the Accounts on or about October 21, 2008 that provided, among other things, customary rights of setoff, recoupment and banker's liens to secure JPMCB's rights to recover claims JPMCB may have against the Debtors or their subsidiaries and affiliates from the funds in the Accounts. After the execution of the customary account agreement documents, JPMCB acceded to a request of the Debtors and the Official Committee of Unsecured Creditors (the "Committee") to agree to the accrual of interest on the Intercompany Amounts as a sign of good faith in the event that it were ultimately determined that any of the Intercompany Amounts were in fact deposit accounts, without prejudice to its rights. Similarly, JPMCB agreed to release $292 million of the Intercompany Amounts attributable to the Accounts of the non-debtor subsidiaries of WMI, without prejudice to its rights.

JPMCB agreed to those requests from the Debtors in good faith and on the understanding that the parties were working diligently to resolve open questions and issues with respect to the Intercompany Amounts. It did so in reliance on the Debtors' execution of account documentation for the Accounts that protected the interests of JPMCB, and on the understanding that the Debtors would respect those rights. However, on or about December 19, 2008, after obtaining from JPMCB the benefit of these concessions, the Debtors advised JPMCB that the execution of those deposit account agreements, was only in anticipation of the proposed Account Stipulation and, since that stipulation had never been approved, the execution and delivery of the agreements was in error, unauthorized and considered by the Debtors to be null, void and without legal effect. While JPMCB does not dispute that the Account Stipulation was never ordered, to the extent that such documentation is not effective, it should be ineffective for all parties and for all purposes, including the effectiveness of any post-petition book entries reflecting any portion of the Intercompany Amounts or Accounts as deposit liabilities and the release of any funds to the Debtors or their non-Debtor affiliates.

Deposit Liabilities

JPMCB still has not discovered any pre-petition deposit account agreements, signature cards or other customary documentation for the Accounts as deposit accounts except for the few accounts described above, but to the extent the Intercompany Amounts in the Accounts assumed by JPMCB under the P&A are in fact deposit liabilities, WMI and its subsidiaries are expressly or otherwise bound by the standard terms and conditions for deposits at the Affiliated Bank. These Accounts were established by WMI or one of its non-bank subsidiaries at the Affiliated Banks pursuant to WMI's Internal Corporate Demand Deposit Account Establishment and Usage Policy (the "On-Us Policy"). According to that policy, WMB had the right to use the Intercompany Amounts for, among other things, processing and clearing transactions between WMB and WMI or their respective subsidiaries, customers, vendors, or investors, again raising the question of whether the Intercompany Amounts represented a continuing deposit liability or should be characterized as a capital contribution, a liquidity reserve or other form of intercompany advance to the Affiliated Banks.

WMI and the Affiliated Banks maintained a detailed, forty-page policy, named the Master Business Account Disclosures and Regulations (the "MBA Policy"), that operated as a contract setting forth the terms and conditions governing all deposit accounts established at the Affiliated Banks. The MBA Policy contained, among other things, a self-executing clause that made the terms of the policy binding upon all depositors, even those who did not expressly give permission, through consent implied by the opening and continued use of the deposit account. The MBA Policy and its terms and conditions apply to and govern any accounts that are in fact deposit accounts at the Affiliated Banks, including the Accounts to the extent any are deposit accounts. The MBA Policy expressly grants the Affiliated Banks a right to offset any and all claims against all deposit account liabilities. Specifically, the MBA Policy provides, "you agree we have the right to offset any account or asset of yours then held by us, by our sister bank, or any subsidiary of ours or our sister bank." Said differently, to the extent the Accounts and the Intercompany Amounts contained therein are deposit liabilities of the Affiliated Banks, the MBA Policy created a broad contractual right of setoff against the Accounts and the Intercompany Amounts for the benefit of the Affiliated Banks and their subsidiaries. Whether pursuant to the

MBA Policy or otherwise, under applicable law, JPMCB has a security interest in, lien rights against and rights of set off and recoupment against the Intercompany Amounts.

JPMCB's Express Security Interest

WMI entered into at least two security agreements with WMB, copies of which are attached hereto (the "Security Agreements"). Pursuant to the Security Agreements, WMI granted a security interest in and lien upon at least two accounts to WMB—Account No. 177-8911206 and Account No. 314-197966-3.

JPMCB believes that its secured claims against Account No. 177-8911206 exceed the balance therein. With respect to Account No. 314-197966-3, JPMCB is entitled to recover any amounts WMI may owe under that certain Indemnification and Collateral Account Pledge and Security Agreement, dated March 1, 2006 (the "Indemnification Agreement"), between WMI and WMB, pursuant to which WMI agreed to indemnify WMB and its subsidiaries for certain liabilities of Long Beach Mortgage Company, a Delaware corporation ("Long Beach"). At the time the parties entered into the Indemnification Agreement, Long Beach became a wholly owned subsidiary of WMB in a series of reorganization transactions. As a condition to its receipt of regulatory approval of the reorganization transactions, WMI indemnified WMB for certain future Long Beach liabilities and secured its indemnification obligations by establishing a blocked deposit account (the "Pledged Account") with WMB. WMI granted WMB a security interest in the Pledged Account and all deposits credited thereto, which JPMCB believes do not exceed $750,000.

The September $3.67 Billion Book Entry Transfer for Account No. 44100000064234

WMI has asserted that JPMCB is liable for a WMI deposit account allegedly maintained at WMB as of the Petition Date and identified as Account No. 44100000064234. It appears that neither WMBfsb nor JPMCB ever received cash or other funds at any time from or after the establishment of that account. Accordingly, even if that account were a deposit account, JPMCB is not liable therefor and is entitled to recover and recoup the full balance claimed for WMI's failure to deposit funds.

The Debtor has been receiving monthly statements reflecting the account due to its agreement to the terms of the Account Stipulation and the deposit agreements that provide JPMCB on behalf of itself and its affiliates and subsidiaries with broad post-petition lien rights and rights of set off and recoupment resulted in the entry of the $3.67 Billion Book Entry Transfer as a deposit liability on the books and records of JPMCB. Having executed the standard deposit agreements with JPMCB necessary to have this account reflected as a deposit at JPMCB, WMI should be estopped from taking the position that these account agreements were a mistake and not binding on it or from enjoying the benefit of having the Accounts reflected as deposit liabilities free of the lien and setoff rights created by those very same agreements. To the extent that any post-petition book entry is considered as relevant to the status of the purported deposit, any such resulting deposit should similarly be considered subject to the depository institution's rights, including post-petition contractual and statutory rights of setoff, that accompany the post-petition deposit.

The Tax Refunds in the Accounts

A substantial portion of the Intercompany Amounts were, at the time of the Receivership and the Petition Date, in fact the property of the Affiliated Banks, representing tax payments made by the Affiliated Banks either as (i) accelerated payments of amounts previously claimed by WMI against the Affiliated Banks purportedly for taxes paid in prior years by WMI on behalf of the Affiliated Banks; or (ii) amounts transferred to WMI in payment of estimated or actual 2008 taxes. JPMCB believes those payments totaled at least $922 million between August 19 and September 19, 2008.

In addition, after the Petition Date, an amount equal to at least $248 million of tax refunds due to WMB—the rights to which were purchased by JPMCB as assets of WMB (the "Tax Refunds Received")—were paid to WMI. An amount equal to at least approximately $234 million of the Tax Refunds Received are included in the balance of the Intercompany Amounts and the Accounts and should be paid over to JPMCB as the lawful owner of those funds.

The Tax Refunds Received should not have been, and at various times were not in fact, recorded in any way as a deposit liability. The Tax Refunds Received were and are property of JPMCB purchased under the P&A Agreement.

The following documents, all of which are attached to the Declaratory Relief Complaint are submitted in support of this claim:

- Exhibit A: List of the Accounts provided to JPMCB by WMI shortly after the Petition Date.
- Exhibit B: Account Stipulation, dated October 15, 2008, by and between JPMCB and the Debtors.
- Exhibit C: Deposit Account Agreements, dated on or about October 21, 2008, executed by Debtors for the Accounts.
- Exhibit D: WMI's Internal Corporate Demand Deposit Account Establishment and Usage Policy (the "On-Us Policy").
- Exhibit E: WaMu's Master Business Account Disclosures and Regulations (the "MBA Policy").
- Exhibit F: Security Agreement for Account No. 177-8911206.
- Exhibit G: General Ledger Journal Entry for $3.67 Billion Book Entry Transfer.
- Exhibit H: On-Us Elevation Reports for August, September and October of 2008.
- Exhibit I: Tax related support.

- Exhibit J: Form of Indemnification and Collateral Account Pledge and Security Agreement, dated March 1, 2006.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

United States Bankruptcy Court District of Delaware	PROOF OF CLAIM

Name of Debtor *(check only one)*:
☒ Washington Mutual, Inc. 08-12229 (MFW) ☐ WMI Investment Corp. 08-12228 (MFW)

Name and address of Creditor (and name and address where notices should be sent if different from Creditor):

JPMorgan Chase Bank, National Association
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Los Angeles, California 90067-1725
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feldsteinh@sullcrom.com

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☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)

Filed on: _____

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Columbus, Ohio 43271-0152
614.248.6056
joseph.a.giampapa@jpmchase.com

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

Your Claim Is Scheduled as Follows:

■ Date Stamped Copy Returned
☐ No self addressed stamped envelope
☐ No copy to return

You have a claim scheduled against the Debtor listed above in the amount and priority set forth above. (This scheduled amount may be an amendment to a previously scheduled amount.) If you agree that you have a claim against the Debtor listed above and in the amount and priority set forth above and you have no other claim against that Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is DISPUTED, UNLIQUIDATED or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

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☒ Claim existing as of the date case was filed. **Amount of Claim as of Date Case Filed:** $ See Attachment A.

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☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

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(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: Federal Tax ID Number 3725

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(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.) See Attachment A.
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.
Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☒ Other

Describe: See Attachment A.

Value of Property: $ See Attachment A. Annual Interest Rate ____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any:
$ See Attachment A. Basis for perfection: See Attachment A.

Amount of Secured Claim: $ See Attachment A. **Amount of Unsecured:** $ See Attachment A.

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Specify the priority of the claim:

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If the documents are not available, please explain:

Date:
March 30, 2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Donald H. McCree III, Managing Director
JPMorgan Chase Bank, National Association
270 N. Park Ave., Floor 46
New York, New York 10017-2104; 212-270-4360

FOR COURT USE ONLY

RECEIVED
MAR 30 2009
KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

02 Tax
WMI original

ATTACHMENT A

Tax Refunds

On September 26, 2008 (the "Petition Date"), Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). References herein to the "Debtor" or "Debtors" are intended to refer to WMI and WMI Investment Corp. as debtors and debtors-in-possession in their pending Chapter 11 cases. Prior to the Petition Date, on September 25, 2008, the Director of the Office of Thrift Supervision (the "OTS") appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson, Nevada, a federal savings banking association ("WMB"), a subsidiary of the Debtors, and advised that the Receiver was immediately taking possession of WMB. On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption Agreement Whole Bank (the "P&A Agreement") with JPMorgan Chase Bank, National Association ("JPMCB"), whereby JPMCB acquired substantially all of the assets of WMB's banking operations, including one of its subsidiaries, Washington Mutual Bank fsb ("WMBfsb" and collectively with WMB, the "Affiliated Banks"), and assumed the deposit liabilities and certain other liabilities of WMB's banking operations. The Affiliated Banks also had a number of direct and indirect subsidiaries that are now subsidiaries of or have been merged into JPMCB or one of its subsidiaries or affiliates. JPMCB asserts its claims herein on behalf of itself and its subsidiaries and affiliates. JPMCB believes that its claims are against WMI rather than WMI Investment, but because the intercompany relationships between the Debtors are not clear and because these are jointly administered cases, JPMCB files its claims against both Debtors out of an abundance of caution.

Although JPMCB purchased the assets of WMB, the Debtors have wrongfully refused to acknowledge that purchase in material respects, and have interfered with JPMCB's ability to use and enjoy the benefits of its purchase of those assets. On March 20, 2009, the Debtors jointly filed a complaint before the United States District Court for the District of Columbia (the "District Court") placing at issue a number of the claims and assets JPMCB acquired from the FDIC under the P&A Agreement (the "District Court Action"). On March 24, 2009, JPMCB filed its Complaint commencing Adversary Proceeding No. 09-50551-MFW (the "Adversary Proceeding") before the Bankruptcy Court seeking, among other things, declaratory relief regarding a number of the assets at issue in the District Court Action and to interplead any amounts that may be due from JPMCB to the Debtors. On March 30, 2009, JPMCB moved to intervene in the District Court Action.

JPMCB is submitting this and certain other proofs of claim to preserve JPMCB's right to distributions from the estate for (a) any amounts awarded as monetary damages to JPMCB in the District Court Action or the Adversary Proceeding; (b) the amounts paid or contributed by WMB or its subsidiaries on or prior to the Petition Date for the acquisition, creation or maintenance of various identified assets, including the assets at issue in the Adversary Proceeding; and (c) the amounts paid or contributed by JPMCB after the Petition Date on account of the assets at issue in the Adversary Proceeding or otherwise for costs and expenses arising on account of or relating to such estates, including without limitation, payments to or for

the benefit of participants in the pension, 401(k) and other benefit plans at issue. This claim, together with certain of the other claims of JPMCB that are filed in these Chapter 11 cases, is filed as (1) a secured claim under section 506(a) to the extent of any liabilities of JPMCB or any of its subsidiaries or affiliates to the Debtors or to the extent JPMCB or any of its subsidiaries or affiliates is secured, possesses a lien, or is entitled to a lien under contract, applicable non-bankruptcy law, or equity; (2) an administrative claim under section 503(b) for amounts paid by JPMCB or its subsidiaries, or damages to JPMCB resulting from acts or omissions of the Debtors, on or after the Petition Date; (3) a priority claim to the extent specified in each individual proof of claim; and (4) a general unsecured claim to the extent it is not deemed to be entitled to secured, priority or administrative status.

JPMCB believes that with respect to the assets at issue in the District Court Action or the Adversary Proceeding, ownership will be determined by the District Court or the Bankruptcy Court in those actions, as applicable. JPMCB hereby reserves all of its rights and remedies against the Debtors, including the right to continue the District Court Action and the Adversary Proceeding, to commence other actions or proceedings, to seek allowance and payment of administrative claims and amounts by application, motion or other appropriate proceeding before the Bankruptcy Court at any time, to request and seek adequate protection of JPMCB's interest in property, to seek relief from and request the lifting of the stay at any time, whether to permit the exercise of its rights of setoff, recoupment or other remedies or otherwise.

This proof of claim discusses JPMCB's tax-related claims against the Debtor's estate. It should be considered in conjunction with and as an explanation of the attached Excel Spreadsheet entitled "Claims Against WMI Bankruptcy".

Background

The tax-related claims of JPMCB against WMI fall into three general categories:

I. refunds expected to be paid by taxing authorities to WMI as agent for WMB and/or the FDIC (hereafter, for ease of reading of this proof of claim only, WMB and the FDIC are referred to collectively as "WMB")

II. refunds already paid by taxing authorities to WMI as agent for WMB; and

III. amounts due from WMI to WMB where WMI remitted funds to taxing authorities as agent for WMB and WMB over-reimbursed WMI for such remittances.

As previously noted, this proof of claim should be read in conjunction with the attached Excel Spreadsheet. The Spreadsheet is broken down into the three categories discussed above. This memorandum for clarity further divides Category I claims into sub-categories: (i) refunds expected to be paid by taxing authorities to WMI as agent for WMB where such refund claims are either actively being litigated or where litigation may be pending; (ii) refunds expected to be paid by taxing authorities to WMI as agent for WMB where such refund claims are being negotiated at either IRS Appeals or at Audit; (iii) refunds expected to be paid by taxing authorities to WMI as agent for WMB where such refund claims relate to overpayments of taxes paid by WMI as agent for WMB; (iv) refunds expected to be paid by taxing authorities to WMI as agent for WMB where such refund claims relate to expected carryback of net operating and

capital losses incurred by WMB in 2008; and (v) refunds expected to be paid by taxing authorities to WMI as agent for WMB where such refund claims relate to excess credits in tax accounts, miscalculation of interest by taxing authorities, assessed penalties expected to be waived, and other similar items involving WMI's tax accounts maintained with taxing authorities as agent for WMB. Finally, each of these sub-categories of Federal refunds has associated sub-categories relating to state tax refunds.

The following document is submitted in support of this claim:

- Exhibit A. Excel Workbook "Washington Mutual Bank – Claims Against WMI Bankruptcy"

All other supporting documents, due to volume, are available upon request.

Discussion:

Category I:

Category I claims represent refunds expected to be paid by taxing authorities to WMI, where WMI is acting as agent for WMB. They have been sub-categorized into groups depending on the nature of the claim and where such claim is currently being evaluated. The following is a description of each sub-category and of each specific tax issue within each sub-category.

Sub-Category I – Federal Tax Litigation Claims:

WMI and WMB are the successors in interest to numerous thrifts, banks and thrift and bank holding companies. These financial institutions include, most notably, Providian Financial, parent to Providian Bank, Dime Bancorp Inc., parent to Dime Savings Bank, HomeSide Lending, Inc. ("HomeSide"), formerly the U.S. mortgage unit of National Australia Bank Limited, H.F. Ahmanson & Company, parent to Home Savings of America ("Home"), Great Western Financial Corporation, parent to Great Western Bank, and Keystone Holdings, Inc., parent to American Savings Bank. Each of the predecessor financial institutions were themselves successors in interest to numerous financial institutions, including, most notably, Coast Savings Financial, Inc., parent to Coast Savings Bank, and the Bowery Savings Bank, among others.

The following describes refund claims that are attributable to these predecessor financial institutions where the claims are currently being litigated and/or where litigation is pending.

1. Supervisory Goodwill Claims In Court: In general, these cases concern whether Home, in government assisted acquisitions of various failed thrift institutions, acquired a tax basis in "Branching Rights" and "Regulatory Accounting Principals Rights" (aka "RAP Rights"). Branching Rights refer to a right to establish branch offices in states outside of a thrift's principal operating state. RAP Rights refer to a specific regulatory accounting principle that allowed goodwill recorded in acquisitions of certain troubled institutions to be included in a thrift's regulatory capital calculation.

Washington Mutual, Inc., as Successor in Interest to H.F. Ahmanson & Co. And Subsidiaries v. The United States of America (United States District Court, Western District (October 2007): Case involves Home's acquisition of Missouri Branching Rights, as well as Missouri and Florida RAP Rights, both acquired as part of a 1981 transaction facilitated by the Federal Home Loan Bank Board ("FHLBB") and Federal Savings and Loan Insurance Corporation ("FSLIC"). The original complaint was filed January 12, 2006 in United States District Court, Western District of Seattle. The tax years at issue are 1990, 1992, and 1993.

WMI, as successor to Ahmanson, contends that it acquired tax basis in both the Branching Rights and RAP Rights. As outlined in the Complaint, WMI is requesting amortization deductions for RAP rights for tax years 1990, and 1992-1993. If WMI prevails, WMI should be entitled to additional amortization deductions in 1999-2005. Since both the Branching Rights and the RAP Rights were rights of Ahmanson's banking subsidiary, Home,

and since Home was merged into WMB, WMB should be entitled to any benefits resulting from the litigation. Further, since the taxes paid by Ahmanson were attributable to the activities of Home, and were therefore paid as agent for Home, any refunds of such taxes should be the property of Home's successor, WMB.

In November of 1993, Home sold its deposit taking business in Missouri. As outlined in the Complaint, HFA is requesting an abandonment deduction for tax year 1993. Again, WMB, as successor to Home, should be entitled to any refunds received by its agent, WMI.

On August 12, 2008, the Court granted the Department of Justice's Motion for Summary Judgment. One additional open issue is related to the carryback of a net operating loss Ahmanson suffered in 1996, where such loss was carried back by Ahmanson to 1993. WMI is working with outside counsel to resolve the carryback claim. Once that issue is resolved, the Court will issue a final judgment. To date, outside counsel is still completing its formal analysis of the court's decision. Based on very preliminary discussions, an appeal to the Ninth Circuit is likely.

Washington Mutual, Inc. as Successor in Interest to H.F. Ahmanson & Co. and Subsidiaries v. The United States of America (The United States Court of Federal Claims) (March 2008): Case involves Home's acquisition of Illinois Branching Rights and RAP Rights as part of various transactions facilitated by the FHLBB and FSLIC.[1] The original complaint was filed March 31, 2008 in the United States Court of Federal Claims. The tax years at issue are 1991 and 1994.

WMI, as successor to Ahmanson, contends that it acquired tax basis in both the Branching Rights and RAP Rights. As outlined it the Complaint, WMI is requesting amortization deductions for RAP rights for tax years 1991 and 1994. If WMI prevails, WMI should be entitled to additional amortization deductions in 1997, and 1999-2005. Since both the Branching Rights and the RAP Rights were rights of Ahmanson's banking subsidiary, Home, and since Home was merged into WMB, WMB should be entitled to any benefits resulting from the litigation. Further, since the taxes paid by Ahmanson were attributable to the activities of Home, and were therefore paid as agent for Home, any refunds of such taxes should be the property of Home's successor, WMB.

In November of 1994, Home sold its deposit taking business in Illinois. As outlined in the Complaint, HFA is requesting an abandonment deduction for tax year 1994. Again, WMB, as successor to Home, should be entitled to any refunds received by its agent, WMI.

WMI is waiting for the Department of Justice to respond to the filed complaint. The case is required to go to Alternative Dispute Resolution after which, the parties will prepare a Joint Status Report. Based on preliminary discussions with outside counsel, it is anticipated that a Joint Status Report will ask the court to freeze the branching rights issue pending appeal.

[1] Case includes the amortization of RAP Rights associated with the 1981 Missouri/Florida acquisition as well as Home's acquisition of insolvent Thrift's in Illinois, Texas, New York and Ohio.

Washington Mutual, Inc. as Successor in Interest to H.F. Ahmanson & Co. and Subsidiaries v. The United States of America (The United States Court of Federal Claims) (April 2008): Case involves two issues. The first issue is Home's acquisition of Florida, New York and Ohio Branching Rights and RAP Rights, acquired as part of various transactions facilitated by the FHLBB and FSLIC.[2] The second issue is discussed in greater detail below. The tax years at issue are 1995 and 1998.

WMI, as successor to Ahmanson, contends that it acquired tax basis in both the Branching Rights and RAP Rights. As outlined it the Complaint, HFA is requesting amortization deductions for RAP rights for tax years 1995 and 1998. If HFA prevails, HFA should be entitled to additional amortization deductions in 1997, and 1999-2005. Since both the Branching Rights and the RAP Rights were rights of Ahmanson's banking subsidiary, Home, and since Home was merged into WMB, WMB should be entitled to any benefits resulting from the litigation. Further, since the taxes paid by Ahmanson were attributable to the activities of Home, and were therefore paid as agent for Home, any refunds of such taxes should be the property of Home's successor, WMB.

In 1995, Home sold its deposit taking business in New York and Ohio. In 1998, Home sold its deposit taking business in Florida. As outlined in the Complaint, HFA is requesting an abandonment deduction for tax years 1995 and 1998. Again, WMB, as successor to Home, should be entitled to any refunds received by its agent, WMI.

The second issue relates to a 1995 transfer from Home of $13 billion of mortgage backed securities and deferred loan fees to its wholly-owned subsidiary, 1905 Agency. IRS required Home to recognize income on that transfer asserting that IRC § 351 does not apply to prevent the immediate recognition of all deferred fee income.

The original complaint was filed April 30, 2008 in the United States Court of Federal Claims. WMI is waiting for the Department of Justice to respond to the filed complaint. The case is required to go to Alternative Dispute Resolution, after which the parties will prepare a Joint Status Report. Based on preliminary discussions with outside counsel, it is anticipated that a Joint Status Report will ask the court to freeze the branching rights issue pending appeal and to allow the 1905 Agency issue to move forward. Based on further discussions with WMI representatives Curt Brouwer and Dora Arash, the 1905 claim has been severed from the Supervisory Goodwill claim and is the discovery phase.

2. Supervisory Goodwill Claims Not in Court: Claims represent the same issues discussed above, just with respect to different tax years. Subsequent to the conclusion of the three current cases discussed above, claims covering a range of tax years were to be filed in the appropriate court. The claims again represent issues associated with activities of WMB and would again result in refunds that are the property of WMB.

3. 1905 Agency Claim (Court of Federal Claims) (April 2008): See discussion above.

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[2] Case includes the amortization of RAP rights associated with the acquisition of insolvent Thrifts in New York as well as amortization of favorable financing received by Bowery, a New York Thrift.

4. Ahmanson Obligation: During 1997, Home Servicing of America, a subsidiary of Home, recognized a loss on the sale of preferred stock of Ahmanson Obligation Company, a subsidiary of Ahmanson. The loss was disallowed by the IRS. In addition, the IRS imposed a Section 6662 accuracy-related penalty.

On January 10, 2006, WMI paid the IRS for the loss claimed on the sale of Ahmanson Obligation Company stock.[3] In June of 2006, an amended return was filed for tax years 1995, 1997 and 1998. The amended returns included Branching Rights claims as well a claims for the tax and penalty paid with respect to the stock sale loss. On May 27, 2008, the IRS denied the claim for a second time and issued a 30-day letter. A protest was filed on June 26, 2008 and requests consideration of new developments in the law, namely; Coltec Industries, Inc. vs. United States, 454 F 3d 1340 (4th Cir, 2006); The Black & Decker Corporation v. United States, 434 F. 3rd 1340 (4th Cir. 2006). The case has not yet been assigned to an Appeal Officer.

Sub-Category I – Unitary State Claims for Federal Litigation Claims:

As deductible items for federal tax purposes are generally deductible for state tax purposes, all of the items described above, except one, will generally result in state tax refunds that will be paid to WMI on behalf of WMB. The refunds will be attributable to so-called "combined return" and/or "consolidated return" states where WMI was the paying agent for WMB. The one exception is the Ahmanson Obligation Company stock sale loss; California taxes were not paid with respect to this issue. Accordingly, there is no potential refund associated with the stock sale loss. As it is unknown at this point whether additional taxes will be due for this issue, we do not reduce our state refund amounts for any potential exposure on this issue.

Sub-Category I – Federal Audit Cycle Claims:

WMI/WMB had Federal Income Tax receivables representing tax refund claims for periods ending prior to and including December 31, 2005. The refunds have been claimed either on amended returns or through the audit process between WMI and its subsidiaries and the various taxing authorities. The refunds are attributable to a host of issues. Some of the issues have been resolved with the IRS and refunds have already been paid. Those issues that have not been resolved, and thus represent additional potential refunds, are discussed individually below.

WMI 2001-2003 Audit Cycle:

1. Abatement of Failure-to-Pay (File) Penalty: For tax year 2003, WMI's federal tax return reflected an underpayment of tax. Consequently, WMI self-assessed a Failure-to-Pay Penalty. The IRS audited the 2001-2003 tax year and issued an RAR reflecting an overpayment of tax. As a result of the overpayment, the failure-to-pay penalty was erroneous. Although the IRS abated the penalty, the penalty has not been refunded. As the original tax was attributable to WMB's activities, and as WMB paid the penalty, the refund is the property of WMB.

[3] Generally, a complaint must be filed 2 years after payment of tax. Although not known by JPMorgan Chase at this time, it is possible that WMI filed a complaint in an appropriate jurisdiction on or before January 10, 2009. Because of the possibility of a court filing, this issue is included in the *Federal Tax Litigation Claims* section.

Note: Items 2 through 7, below, represent deficiencies asserted by the IRS against WMI/WMB. The IRS offset the asserted deficiencies against refunds the IRS had agreed to pay to WMI/WMB (i.e., the IRS retained the agreed upon refunds). It is presumed that items 2 through 7 will be resolved in WMI'/WMB's favor; therefore, the previously agreed upon refunds will be ultimately paid by the IRS. The vast majority of the previously agreed upon refunds are attributable to WMB and its subsidiaries. Accordingly, when or if such refunds are paid to WMI by the IRS, WMI will be collecting the refunds only as agent for WMB.

2. Transaction Costs: Whether pre-decisional investigatory costs incurred by Bank United, Dime, Ahmanson and Washington Mutual should be capitalized and amortized under IRC § 195, or alternatively should be deducted as ordinary and necessary business expense under IRC § 162. The IRS has contested the treatment of these costs, however, it is anticipated that such treatment will ultimately be settled substantially in Washington Mutual's favor.

3. Ahmanson Ranch Charitable Contribution: Charitable contribution deduction was disallowed based on the limitation which reduces deduction by amount that would have been long-term capital gain if property had been sold at fair market value. The IRS claimed that the property, know as Ahmanson Ranch, did not qualify as a capital asset at the time of sale to the State of California, but should have been classified as inventory. IRS has tentatively agreed to allow the full deduction.

4. REMIC Income: Washington Mutual conducted an extensive review of its REMIC tax returns filed in the 2000-2004 years. As result of the review, the company proposed various adjustments to its taxable income after the RAR had been issued. These adjustments were accepted by the IRS. Additionally, the IRS agreed to give up assessments against WMB for purported unreported REMIC income.

5. Concord Stock Contribution: On Appeal, the IRS has agreed that shares of Concord common stock contributed by WMB to the Washington Mutual Foundation were freely transferable on the date of contribution. Therefore the IRS has allowed a full fair market value deduction for contribution of the shares rather than a deduction limited to WMB's basis in the stock.

6. Partnership Distributions: Partnerships holding high value low basis assets completely or partially redeemed member interests with related party financial assets (debt securities). The effect of the transactions was to transfer the outside basis of partnership interest to the debt securities, triggering a step-up in basis in the assets in the partnerships. The debt securities were then recapitalized into equity. Question is whether the distributions lacked economic substance, were step-transactions, and/or were violations of anti-abuse regulations. IRS Exam required gain recognition on the transaction. IRS Appeals is currently examining depreciation deductions taken at the partnership level.

7. Grant Thornton Cost Seg Studies: Grant Thornton performed a Cost Segregation analysis of Washington Mutual's financial centers placed in service in 2000-2004. As a result of the study, Washington Mutual made a IRC § 481 adjustment and claimed additional depreciation expense from the allocation of costs from Sec 1250 to Sec 1245 property, and additional bonus

depreciation amounts. The IRS denied the accelerated depreciation reported or claimed for 2000-2004.

Note: Items 8 through 12, below, represent refund claims submitted by WMI/WMB to the IRS where the IRS has denied such claims. It is presumed that items 8 through 12 will be resolved in WMI'/WMB's favor; therefore, the refunds will be ultimately paid by the IRS. As the vast majority of the refund claims are attributable to the activities of WMB and its subsidiaries, when or if such refunds are paid to WMI by the IRS, WMI will be collecting the refunds only as agent for WMB.

8. Grant Thornton Cost Seg Studies: See Item 7 discussion above.

9. Transaction Costs: See Item 2 discussion above.

10. Section 9 Payments: As a result of the Keystone Transaction, WMI and WMB are parties to an agreement with a predecessor of the FDIC (Federal Savings and Loan Insurance Corporation Resolution Fund), which generally provides that 75% of most of the federal tax savings and approximately 19.5% of most of the California tax savings attributable to American Savings Bank's utilization of certain tax loss carryovers of New West Federal Savings and Loan Association are to be paid by WMI/WMB to the FDIC.

The issue is whether Washington Mutual is entitled to deduct these tax benefit sharing payments remitted to the FDIC. Taxpayer reached a tentative settlement with the IRS Appeals which considered the risks of litigation under IRC § 483 and therefore allowed an interest deduction equal to 20% of the "Section 9" payments. The losses were utilized by WMB to offset its tax; therefore, any deduction (and associated refund) is properly that of WMB.

11. IPO Costs: The IRS disallowed full deductions claimed on an amended 2002 return for costs incurred by Dime and HomeSide in the initial public offerings of their stock. The costs had been capitalized and no portion deducted at the time Washington Mutual acquired all of the outstanding stock of Dime and HomeSide. The IRS position is that such costs do not reduce proceeds from the stock issuance but must be capitalized.

12. Contested Liability Trust: The CLAS transaction generated deductions in 1999 via the contribution of assets to a trust. Washington Mutual settled the matter with the IRS during the 1998-2000 cycle at less than 100% favorable. In 2002, the trust was unwound. Washington Mutual is entitled to a deduction in 2002 of income previously taxed by virtue of the less than 100% favorable settlement. The trust was a subsidiary of, and all the assets contributed to the trust were owned by, WMB. Thus any adjustment of income is attributable to WMB.

<u>WMI 2004-2005 Audit Cycle</u>

All of the below described items represent income or deductions attributable to WMB's activities or the activities of entities merged into WMB. Accordingly, all the items represent refunds that are the property of WMB but which will be paid to WMI as agent for WMB. We note that, on an overall basis, 2004 reflects a net payable to the IRS and, thus, no refunds are expected. 2005, on an overall basis, reflects a net receivable from the IRS. Such receivable, when received by WMI as agent for WMB, is the property of WMB.

1. Carryforward Adjustments: This item is comprised of a number of different issues, each briefly described below. All carryforward adjustments have been accepted by Exam through the issuance of a Notice of Proposed Adjustment ("NOPA"). All of the issues related to the activities of WMB or those of entities merged into WMB.

OID/Interest Income – Loan Sales (NOPA #1): In the 1993-1996 audit of Great Western, Great Western Bank (merged into WMB) agreed to the application of § 1286 to loan sales originated between 1988 and 1990. For those loans sold in 1991 or 1992, a proposed change in calculations allowed the taxpayer to reduce the net income from the sales of loans for 1988 – 1992.

Amortization Florida 21 Branch Core Deposit (NOPA #2): In 1987, Great Western Bank acquired 21 branches in southern Florida. There was an issue as to the value and life of core deposits but in Appeals a settlement was reached and a deduction was allowed.

Leasehold Improvements (NOPA#3): Leasehold improvement expense deductions as capital expenditures. However, even though the expenses were not deductible, they were depreciable over a period of 39 years on a straight line method.

Core Deposit Intangible Amortization (NOPA #4): In the 1988-1992 audit cycle of Great Western, changes were made to the amortizable value and lives of intangible assets (called core deposit) for four bank acquisitions. In Appeals, there was a settlement with recalculations to the remaining amortization amounts - adjustments to income were necessary to reflect the agreed changes.

Excess Mortgage Servicing Rights (NOPA#5): This is a carryover from 1993-1996 Great Western cycle where there was a 906 agreement resolving a dispute regarding the correct accounting for the excess servicing rights. It was concluded that the income from the mortgage servicing rights must be reduced based on the changes made and agreed for 1993-1996.

Amortization of Core Deposit Intangibles (NOPA#6): Issue reflects the agreed rollover adjustments from the 1990-1993 cycle of Ahmanson. WMI is able to deduct additional amounts for the amortization of core deposits.

Home Excess Servicing Amortization (NOPA #7): In the 1990-1993 cycle of Ahmanson, there was an adjustment related to the basis of the excess servicing generated in 1990. Therefore the amortization expense was adjusted as well. For the purposes of settlement, it was determined that: 1. WMI is allowed a 15% discount rate in computing the basis of the servicing and the excess servicing strip; and 2. WMI is permitted to report the remaining balance of the interest income and OID in 2004.

Coast Savings Excess Servicing Amortization (NOPA#8): Ahmanson acquired Coast Financial, parent to Coast Savings Bank, in 1998. Coast Savings Bank merged into Home, and Home was subsequently merged into WMB. There was an excess servicing asset tax basis and that amount had not been incorporated into Home's M1 schedule. As agreement was reached allowing for an adjustment based on the PRM percentage, resulting in a decrease to taxable income. The remaining basis carried over to WMB.

Home Excess Rights Amortization (NOPA#9): This NOPA addresses adjustments related to excess deductible basis maintained by Home (prior to merger into WMB) that had not been amortized. Additional amortization deductions were allowed.

Inventory Reserves (NOPA#11): WMI acquired Ahmanson in 1998. Ahmanson had a subsidiary, Ahmanson Residential Development (ARD). Prior to the acquisition, ARD had established reserves against its real estate held for sale or investment. The book reserves were reversed for tax purposes and subsequent charges were deducted for tax purposes. The balances were transferred to Washington Mutual and netted into other property balances. In the 2001-2003 cycle, the Service agreed that tax deductions for the charge offs were allowable, but that such deductions should have been claimed when the property accounts were closed out in 2004.

1997 REMIC Carryover (NOPA#12): Great Western Bank was merged into WMB in 1997. WMB transferred certain Great Western loans to a REMIC. In return, WMBFA received several classes of debt. For book purposes, WMI classified certain classes of debt using the Lower of Cost of Market (LOCOM) valuation technique. WMI originally requested a $99 million loss on a 1997 amended return but the full amount of the loss was denied. The denial of the loss resulted in an overstatement of income in subsequent years. WMI resolved the issue by proposing to amortize the balance of the LOCOM deduction (then $88 million).

PWC – Cost Seg Study (NOPA#16): This is a carryover issue from 2000. In 2000, Washington Mutual filed a 3115 to change the accounting method for the depreciable lives of assets based upon costs segregation studies conducted by PWC and KPMG. The purpose of the study was to reclassify §1250 real property (with 39 yr. lives) as § 1245 tangible property (with 15, 7 or 5 yr. lives). The IRS raised issue with the studies and in Appeals, there was a resolution.

Odd-Days Interest (NOPA#21): Odd-days interest is interest attributable to part of the first payment period when that period is longer than a regular payment period. It is a finance charge related to the short or long days for a loan and must be taken into account. Washington Mutual did not accurately report the correct odd-days interest from Home Savings on the originally filed returns for 2001-2003. Washington Mutual amended its 2001 return by adding an amount into income because the carryover adjustment was discovered after the return had been filed.

Provision – Government Loan Loss (NOPA#49): This is a carryover adjustment resulting from the 2001-2003 cycle. In that cycle, the IRS disallowed a bad debt deduction on the federal return. Although the deduction was appropriate per GAAP, Exam determined that there was no economic performance, therefore no deduction was available for tax purposes. Exam agreed that economic performance occurred in 2004.

2. MSR Gains and Amortization (NOPA#35): Washington Mutual filed an informal claim October 27, 2007, requesting an adjustment of its 2004 MSR Gains and the related Amortization, consistent with the methodology agreed upon during the 2001-2003 cycle. The claim reflects the differences in book and tax methods of allocating loan basis between the MSR retained, and the underlying mortgage sold. For tax purposes, only the "excess servicing rights" are required to be capitalized. The portion of the book gain deferred for tax purposes reverses in subsequent years as a reduction in tax amortization expense relative to book amortization.

3. Loan Costs and Fees (NOPA#29-33): Washington Mutual filed an amended tax return on April 8, 2006, and a summary claim on Feb 28, 2008, regarding 2004 and 2005 Loan Fees and Loan Origination Costs. The claim was filed to make the following corrections to the tax returns as filed: (1) apply carryover adjustments from the 2001-2003 cycle, (2) revise the FAS 91 adjustments and reversals based on a review of balance sheet rather than P&L accounts.

4. Loan Costs and Fees – Prior Years (NOPA#50): On a memorandum dated July 7, 2008, Washington Mutual reported additional income for 2004 and 2005. The adjustments were the result of an ongoing review of accounts by the Corporate Tax Department, and reflect the final reconciliation of balance sheet accounts as of December 31, 2006.

5. HomeSide Built-in Loss (NOPA#22): Washington Mutual acquired HomeSide in 2002. In an amended return for 2002, Washington Mutual proposed an adjustment to income relating to the § 382 limitation on recognition of built-in losses. Washington Mutual assumed that the MSRs acquired in the HomeSide transaction were sold, but it was determined later that the MSR asset related to HomeSide had not sold but was rather was transferred within the consolidated group. This adjustment was calculated applying the §382(h)(7) 5 year limitation period. Since the HomeSide MSRs were not sold in 2002, the recognized built-in loss with respect to these MSRs in 2002–2006 consists of (1) the amount of amortization Washington Mutual could claim on the MSR (by stepping into the shoes of HomeSide) and (2) the purchase accounting adjustments related to the acquisition. Since it is impossible to determine the amount that any realized built-in loss exceeds the net unrealized built-in loss, only the §382 limitation amount was allowed.

6. Section 9 Payments (NOPA#10R): See discussion of *Section 9 Payments* (Sub-Category I B – Federal Audit Cycle Claims).

7. Mark-to-Market: A memorandum was submitted to the IRS on November 30, 2007. The following claims were included in the memorandum and were accepted by the IRS:

MSR Hedges (NOPA#36): This adjustment is based on the IRS's review of revised computations of MSR Hedges. The adjustment is based on the IRS conclusion that Washington Mutual's method of accounting for hedging gains and losses did not clearly reflect income because the timing of the income, deduction, gain or loss from the hedges did not correspond to the period of the MSR income stream.

Rate Locks (NOPA#37): For GAAP purposes, Interest Rate Lock Commitments ("Rate Locks") are subject to MTM accounting for derivatives under FAS 133. For tax purposes for these years, the Rate Locks were identified as assets held for investment and not subject to MTM. The Sch M items for the book – tax differences were calculated by comparing year-end balances to prior year-end balances for GL accounts 32911 and 52111.

Warehouse Loans (NOPA#38): The warehouse loans were loans originated or purchased by Washington Mutual to be sold in the secondary market. For GAAP purposes, the loans were accounted for under FAS 65 at Lower of Cost or Market (LOCOM). For tax purposes, the loans were assets held for sale and subject to MTM. The Accounting group at Washington Mutual did not capture the 2004 tax MTM data on the warehouse, as the loans were increasing in value due to falling interest rates and no GAAP adjustment was required under LOCOM; however, for tax

Washington Mutual should have included income or MTM. The IRS accepted the revised computation.

Hedges on Liability (NOPA#39): For GAAP purposes Washington Mutual did record MTM adjustments on certain of its liabilities (our borrowings); however, such adjustments were recorded net of the MTM adjustments on the hedges associated with the borrowings under FAS 133. Because the hedges were perfect during these years, no gain or loss was recorded in the income statement. For tax purposes liabilities (borrowings) are not subject to MTM under IRC Sec. 475, since borrowing are not "securities". Washington Mutual did not MTM the associated hedges for tax purposes. Accordingly, no M adjustment was necessary. The IRS accepted the revised computations.

8. Partnership Adjustments (NOPA#34): Pacific Center Associates is a partnership which consists of five partners, all of which were subsidiaries of Washington Mutual. The original Form 1065 was timely filed. It was later determined that several items needed to be included or revised on the return. The partnership filed an amended return to report the following items: (1) gain on sale of Irvine property assets, (2) recapture of prior year depreciation, and (3) rental income. The audit adjustment reflects these changes.

9. Depreciation (NOPA#13): This adjustment is the correction of an error reported on the 2004 return. Washington Mutual reported and deducted the cumulative depreciation of its fixed assets instead of the current depreciation amounts.

10. General Reserves (NOPA#14): Washington Mutual filed an informal claim Dec 20, 2007 requesting adjustments related to several reserve accounts such as Legal Reserves, Servicing Reserves, and Inventory Reserves. The reserves represent estimates of future expenses for GAAP financial reporting purposes. These amounts were not included in any Sch M adjustments.

11. Other Adjustments:

Amortization 1(NOPA#15): This adjustment is the correction of an error. Amortization expense for Purchase Credit Card Receivables, Alliance Contracts and Non-compete Covenants are not deductible for tax. Accordingly, Washington Mutual reported the book expense as Sch M for Amortization. Washington Mutual also reported the same amount as a Sch M for Purchase Accounting. This NOPA adjusts for double counting of the income.

Amortization 2(NOPA#17): This adjustment is also the correction of an error. Washington Mutual inadvertently deducted one month of amortization for intangibles acquired in the purchase of PNC Mortgage. This NOPA allows Washington Mutual to take a full year's amount of amortization on the asset.

Transaction Costs (NOPA#18): Adjustment for transaction fees paid to Morgan Stanley and Lehman Brothers. These costs were previously deducted but on audit were determined to be non-deductible as facilitative services.

REMIC Income (NOPA#23/#24R1): In December 2006, Long Beach Mortgage Co filed amended REMIC forms 1066 and Sch Q for the 2001-2003 years that impacted the amount of

income to be reported in 2004 and 2005. In March 2007, Long Beach provided additional corrections for REMIC residual income for 2001-2003. These corrections also impacted the amount of income to be reported in 2004 and 2005.

Amortization of Project Saturn Fees (NOPA#26): Washington Mutual acquired Providian Financial Corporation and affiliates effective Oct 1, 2005. The IRS concluded its audit of Providian for the 2000-2004 years. Item represents a carryforward adjustment from the audit allowing an additional 2005 deduction for amortization of Project Saturn structuring fees.

Amortization of Broker Fees (NOPA#27): Washington Mutual acquired Providian Financial Corporation and affiliates effective Oct 1, 2005. The IRS concluded its audit of Providian for the 2000-2004 years. Item represents a carryforward adjustment from the audit allowing an additional 2005 deduction for amortization of brokers' fees.

Transaction Costs-Keystone & Dime (NOPA#40): The taxpayer filed Form 3115 requesting a Change in Accounting Method for the treatment of "pre-decisional investigatory costs." The IRS granted the request and allowed a deduction for expenses incurred prior to the time decisions were made as to "whether and which" an acquisition is made.

HomeSide Net Unrealized Built-in Losses (NOPA#41): In 2002, Washington Mutual acquired the assets and stock of HomeSide Lending. From Oct 1, 2002 through Nov 15, 2002 HomeSide filed a short period return. Subsequent to Nov 15, HomeSide was merged into WMBFA. After further review of the transaction, Washington Mutual determined corrections were needed and filed an amended return to reflect the changes. This adjustment reflects the Net Unrealized Built-in Loss as accepted by the IRS.

Amortization 3(NOPA#53): Item represents a correction of an error in signage on the Sch M-1 item as filed.

Partnership Income (NOPA#47): Various adjustments to income from Washington Mutual's interests in partnerships and LLCs. The income was not included on the original returns because the K-1's were received after the returns were filed.

12. Credits (NOPA#42, 46, 47): Increase in General Business Credits as a result of interests in partnerships and LLCs. The credits were not included on the original returns because the K-1's were received after the returns were filed.

Sub-Category I – Unitary State Claims for Federal Adjustments:

As deductible items for federal tax purposes are generally deductible for state tax purposes, all of the items described above will generally result in state tax refunds that will be paid to WMI on behalf of WMB. The refunds will be attributable to so-called "combined return" and/or "consolidated return" states where WMI was the paying agent for WMB.

Sub-Category I – Federal Overpayment Claims:

On its 2007 Federal Income Tax Return, WMI elected to apply $40 million of its $274 million overpayment to its expected 2008 federal income tax liability. As WMI's 2008 Federal

Income Tax Return has not yet been prepared, it is possible that the $40 million applied payment will ultimately be refunded to WMI. Since all tax payments made by WMI are as agent for its subsidiaries, principally WMB, the refund is properly the property of WMB. The remaining $234 million overpayment from 2007 is discussed under Category II, below.

Sub-Category I –Unitary State Overpayment Claims:

On its 2005 to 2007 state tax returns, WMI elected to have overpayments refunded. Since all tax payments made by WMI are as agent for its subsidiaries, principally WMB, the refunds are properly the property of WMB.

Sub-Category I – Federal Loss Carryback Claims:

As a result of the sale of all of its assets to JPMCB, WMB will realize a significant loss on its 2008 Federal Income Tax Return. The loss will be comprised of both ordinary and capital losses, where such losses may be carried back. Additionally, due to the size of the loss carryback, WMB will have Federal tax credits that were utilized in one year available for carryback to the preceding year, since Federal tax credits generally can be carried back one year. Currently, net operating losses can be carried back two years and capital losses can be carried back three years, however, President Obama's budget proposal may permit net operating losses to be carried back beyond two years. Since all tax payments made by WMI are as agent for its subsidiaries, principally WMB, all amounts received by WMI related to loss and/or credit carrybacks are the property of WMB.

Sub-Category I – Unitary State Carryback Claims:

As a result of the sale of all of its assets to JPMCB, WMB will realize a significant loss on its 2008 state income tax returns. The loss will be comprised of both ordinary and capital losses. Ordinary losses and capital losses can be carried back up to three years in certain jurisdictions. There are not credits significant enough to consider. As noted under Federal Loss Carryback Claims section, President Obama's budget proposal may permit net operating losses to be carried back beyond the period to which they may be carried back now. Certain jurisdictions may automatically conform to any new federal law; accordingly, certain jurisdictions' carryback periods may be extended. Since all tax payments made by WMI are as agent for its subsidiaries, principally WMB, all amounts received by WMI related to loss carrybacks are the property of WMB.

Sub-Category I – Miscellaneous Tax-Related Claims:

Prior to WMB's closure by the Office of Thrift Supervision and the appointment of the FDIC as receiver, Washington Mutual was conducting a review of tax account transcripts (i.e., statements of account maintained by taxing authorities detailing final assessments made against taxpayers, payments made, taxes recorded as due from return and estimated tax filings, etc.). While the review was never completed, certain items had been identified which represent net refunds due to WMI as agent for WMB. The following is a brief summary of each of the identified items. Upon completion of the review, certain additional items could be identified which would change the amount of the total refund due to WMI as agent for WMB for both federal and state tax purposes.

Federal Transcripts

1998: A credit balance was identified as due to WMI/WMB, with associated interest. The credit relates to taxes associated with the activities of WMB and accordingly any refund of such amount should be the property of WMB rather than WMI.

2002: The IRS erroneously posted an assessment to the account of WMI/WMB in advance of posting an overpayment from a prior year, thus causing interest on amounts otherwise owed by WMI/WMB to be overpaid. Additionally, an overpayment of tax was identified that, net of two amounts owed by WMI/WMB, results in a refund due to WMI/WMB. The interest and the overpayment, net of amounts identified on the transcripts as due to the IRS, represent refunds due to WMI as agent for WMB, as all items relate to taxes associated with the activities of WMB rather than WMI.

2003: As a result of under-estimating its Federal Income Tax liability for 2003, WMI/WMB incurred and paid an estimated tax penalty. Subsequent to the filing of the 2003 original return, numerous deductions of WMB not claimed on the original return were identified and amended returns were filed claiming such deductions. The subsequently claimed deductions are sufficient to eliminate the under-payment of estimated taxes. It is possible that the estimated tax penalty will be abated and refunded by the IRS to WMI as agent for WMB. Such refunds are properly those of WMB since all of deductions are related to WMB's activities.

California Transcripts

1998: Ahmanson engaged in a series of transactions involving its real estate owned. The real estate was owned by Home, Ahmanson's banking subsidiary. Home was ultimately merged into what is now WMB. The transactions resulted in losses being claimed for both Federal and state tax purposes. The State of California initially disallowed all of the claimed losses. After paying the taxes and protesting the State's action, WMI/WMB was successful in realizing the deductions. For various reasons, WMI elected to leave the resulting refund on deposit with the State. The amount represents a refund that owed by the State to WMI as agent for WMB, as WMB owned all the properties that gave rise to the claimed deductions.

2006: As noted previously, Washington Mutual acquired H.F. Ahmanson, Great Western, and Keystone. The banking operations of the acquired entities were heavily concentrated in California and incurred significant California tax. The State of California asserted that the banking operations of the acquired entities were instantly unitary with the operations of WMB, causing WMB's tax liability to be significantly increased in the first year after each acquisition. WMI/WMB protested the findings of the State and ultimately reached a negotiated settlement with the State, resulting in a refund. As all of the assessed tax related to the banking operations of the acquired entities, and as all of the banking operations of the acquired entities were merged into WMB, the refund is properly that of WMB.

2008: WMI/WMB has a potential constitutional claim against the State of California for the State's taxation of certain income earned by WMB in past years. As WMI asserts that it is the only entity within the Washington Mutual group eligible to act as agent in California with respect to past years, WMI could attempt to file the claim and secure the associated refund of

taxes paid on such income. However, as all of the income in question was earned by WMB, any such refund would be the property of WMB.

Category II:

For Federal Income Tax purposes, pursuant to Treasury Regulation § 1.1502-77, and for unitary and/or consolidated return states, WMI was the taxpaying agent for the rest of the Washington Mutual group of entities. As agent for the group, it is customary for WMI to be recipient of any refunds paid by taxing authorities, regardless of which entity to which the tax relates. However, WMI was not an entity with any material operations; the vast majority of taxes incurred by Washington Mutual were attributable to the activities of WMB and its subsidiaries. Accordingly, and as noted repeatedly above, any refunds received by WMI are merely received as agent on behalf of WMB.

The amounts in Category II represent refunds, Federal and state alike, received by WMI where such refunds have been retained by WMI. Again, since WMI was merely the agent of WMB, and since the vast majority of taxes of the group were attributable to the activities of WMB and its subsidiaries, all refunds received by WMI are WMB's property.

Federal Refunds Received by WMI - Dime '99 to '01 Audit Cycle: In January of 2002, Dime Bancorp Inc., which was merged into WMI, and Dime Savings Bank, which was merged into WMB, were acquired by Washington Mutual. In Dime's last stand-alone audit cycle, Dime Bancorp Inc. filed refund claims for tax years 1999-2001 related to a capital loss carryback. On audit, the IRS initially disallowed the loss carryback and also disallowed Dime Bancorp's deduction of payments made to terminate a merger agreement with Hudson United Bancorp. The termination payment was made because Dime broke-off its merger with Hudson United in order to merge with Washington Mutual. The IRS' position was that such termination payments were required to be capitalized. The Issues were settled at Appeals and a net refund was approved by Joint Committee. On September 23, 2008, the US Treasury issued refund checks. Such refund checks were received on or about September 29, 2008 and WMI took possession of the checks shortly thereafter.

Federal Refunds Received by WMI - 2007 Federal Tax Overpayment: On its 2007 Federal Income Tax Return, filed in September of 2008, WMI reflected an overpayment of $274.5 million; $40 million of the overpayment was applied to WMI's 2008 tax year, and $234.5 million was requested to be refunded. On September 30, 2008, the IRS wired the $234.5 million to WMI.

State Tax Refunds Received by WMI: As discussed previously, Washington Mutual under-reported its deductions on its Federal Income Tax Returns from 1998 through 2004. Correspondingly, Washington Mutual under-reported its deductions on its state income tax returns for the same period. State amended returns were filed for each of the years. Most of the state refunds reflected on those amended returns remain outstanding; however, certain of the refunds have been received by WMI as agent for WMB. Additionally, Washington Mutual reflected overpayments on certain of its state income tax returns for 2006 and 2007. Certain of these overpayments were refunded by the states to WMI as agent for WMB. Since the vast majority of the activities giving rise to the tax payments, the amended return refunds, and the

overpayments are attributable to WMB and its subsidiaries, the refunds received by WMI as paying agent are the property of WMB.

Category III:

WMI and WMB, along with most of the other entities within the Washington Mutual group, maintained tax receivable and tax payable accounts. WMI, as tax agent for the group, would pay taxes on behalf of the group for Federal Income Tax purposes and for unitary and consolidated return state tax purposes. Upon paying a taxing authority, WMI would credit its cash account and would record a debit in its Federal Income Taxes Payable account. As noted previously, the tax liability of the Washington Mutual group was almost exclusively attributable to the activities of WMB. As part of its tax provision process, WMB would record a credit to its Federal Income Taxes Payable account and a debit to its Federal Income Tax Expense. WMB would as a matter of course settle its Federal Income Tax Payable account by remitting cash to WMI in satisfaction of its tax obligation (credit cash and debit Federal Income Taxes Payable; thus, zeroing out the account). As of September 25, the day of WMB's receivership, WMI reflected a current payable in its Federal Income Tax Payable account, and WMB reflected a current receivable in its Federal Income Tax Payable account. Such balances suggest that WMB in fact overpaid WMI for taxes WMI outlaid on WMB's behalf, since WMI had no tax liability (or tax refunds) attributable to its own activities. The balance in WMI's tax account represents overpayment of taxes by WMB to WMI and, thus, represents the property of WMB, since WMI was merely the tax paying agent for the Washington Mutual group.

Assertion of this proof of claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise. The identification or enumeration of JPMCB's rights and remedies set forth in this claim is not intended to be and should not be deemed to be exhaustive or to preclude JPMCB from asserting specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, indemnification, contribution, and/or reimbursement from the Debtors for any claims of third parties that may be asserted against JPMCB.

JPMCB reserves all rights to amend, augment, supplement, reduce or withdraw, in whole or in part, this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, add additional claims presently unknown to JPMCB that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, the FDIC, to make claims similar to or parallel with this claim.

In some instances, supporting documents identified herein as relating to claims have not been submitted herewith because (i) the specific documents identified are voluminous and either believed to already be in the Debtors' possession, or of such quantity that their submission herewith would be administratively impracticable, (ii) such documents are subject to confidentiality restrictions or some other agreement or restriction binding on JPMCB that

prevents their lawful inclusion in a filing of this nature without additional steps being taken to assure they are provided under seal or otherwise in compliance with law and any agreements binding on JPMCB, and (iii) of JPMCB's limited familiarity at this point in time with the extensive books and records of WMB acquired from the FDIC and time constraints resulting from the claims deadline. In each such case, JPMCB includes herein a detailed reference, and in some cases a description and summary, of documents identified to date by JPMCB on which the claim is based. Any party in interest seeking additional access to or copies of such documents or other related information may contact Cecelia Rodine at JPMorgan Chase & Co., Legal & Compliance Department, 1 Chase Manhattan Plaza, 25th Floor, Mail Code: NY1-A425, New York, New York 10081 with respect thereto.

Nothing in this claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve this claim in the Debtors' pending bankruptcy cases, and neither the submission of this claim, nor any provision hereof or statement herein shall be construed or deemed to be evidence that JPMCB or any other person has waived or intends to waive any rights or claims afforded it under the P&A Agreement, any other agreement with persons other than the Debtors, or as may otherwise be available under applicable law, including, without limitation, the Bankruptcy Code.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
WASHINGTON MUTUAL, INC., *et al.*,[1]	:	Case No. 08-12229 (MFW)
Debtors.	:	Jointly Administered
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
Plaintiff,	:	
v.	:	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	Adv. Proc. No. 09-50551 (MFW)
Defendants for all claims,	:	
-and-	:	
FEDERAL DEPOSIT INSURANCE CORPORATION,	:	
Additional Defendant for Interpleader Claim.	:	

(Caption continued on next page)

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

WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP., *Plaintiffs,* v. JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, *Defendant.*	:	Adv. Proc. No. 09-50934 (MFW)

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION'S STATEMENT OF ISSUES PRESENTED AND DESIGNATION OF THE RECORD ON APPEAL

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Counsel for JPMorgan Chase Bank, National Association

Dated: July 17, 2009

JPMORGAN CHASE BANK, N.A.'S STATEMENT OF ISSUES PRESENTED AND DESIGNATION OF THE RECORD ON APPEAL

Pursuant to Federal Rule of Bankruptcy Procedure 8006, Appellant JPMorgan Chase Bank, N.A. ("JPMC") hereby states the following issues to be presented to the United States District Court for the District of Delaware with respect to JPMC's Notice of Appeal dated July 10, 2009 and designates the following items for inclusion in the record on appeal.

STATEMENT OF ISSUES PRESENTED

1. Does the jurisdictional bar imposed by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 (1989) ("FIRREA"), codified in relevant part at 12 U.S.C. § 1821(d)(13)(D), preclude the Bankruptcy Court from exercising subject matter jurisdiction over claims regarding the scope, validity or avoidability of a sale by and actions of the receiver for a failed depository institution under Title 12 of the U.S. Code, as against a purchaser from the FDIC?

2. Does FIRREA bar these Debtors, who have availed themselves of the FIRREA claims process, whose claims have been disallowed, and when their appeal of that disallowance is pending before the D.C. District Court, from bringing separate claims, this time as against a purchaser from the FDIC, to collaterally attack in the Bankruptcy Court the disallowance of their claims?

DESIGNATION OF THE RECORD

JPMC designates for inclusion in the record on appeal the following items, including any attachments thereto, filed in *JPMorgan Chase Bank, National Association* v. *Washington Mutual, Inc.*, Adv. Pro. No. 09-50551 (MFW):

	Title	Date Filed	Docket Item Number
1.	Official Case Docket as of July 17, 2009		
2.	Complaint by JPMorgan Chase Bank, National Association against Washington Mutual, Inc., WMI Investment Corp., Federal Deposit Insurance Corporation	3/24/2009	1
3.	Motion to Extend Time for Asserting Counterclaims Against JPMorgan Chase Bank, N.A. Filed by WMI Investment Corp., Washington Mutual, Inc.	5/1/2009	10
4.	Objection and Response to Debtors' Motions for (A) an Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1 Directing the Examination of JPMorgan Chase, N.A. and (b) an Order Pursuant to 11 U.S.C. Section 105(a) and Federal Rules of Bankruptcy Procedure 7013 and 9006(b) Enlarging the Time for Asserting Counterclaims Against JPMorgan Chase Bank, N.A., Filed by JPMorgan Chase Bank, National Association	5/13/2009	13
5.	Reply of Debtor to Objection of JPMorgan Chase Bank, N.A. to Debtors' Motion for an Order (A) Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1 Directing the Examination of JPMorgan Chase Bank, N.A.; and (B) Pursuant to 11 U.S.C. § 503(a) and Federal Rules of Bankruptcy Procedure 7013 and 9006(b) Enlarging the Time for Asserting Counterclaims Against JPMorgan Chase Bank, N.A. Filed by WMI Investment Corp., Washington Mutual, Inc.	5/18/2009	15

6.	Brief in Support of the Motion of the Ad Hoc and Trust Committees for the Dime Savings Bank Umbrella Trust Beneficiaries to Intervene in Adversary Proceeding Pursuant to 11 U.S.C. Section 1109(a) and Fed.R.Bankr.P. 7024 Filed by Ad Hoc Committee, Trust Committee	5/19/2009	18
7.	Answer to Complaint in Response to the Complaint of JPMorgan Chase Bank, N.A., Counterclaim by WMI Investment Corp., Washington Mutual, Inc. against JPMorgan Chase Bank, National Association	5/29/2009	23
8.	Motion to Stay Adversary Proceeding Filed by Federal Deposit Insurance Corporation	6/1/2009	25
9.	Memorandum of Law in Support of Motion to Stay Adversary Proceedings Filed by Federal Deposit Insurance Corporation	6/1/2009	26
10.	Memorandum of Law in Support of the Motion for Intervention of the Official Committee of Unsecured Creditors of Washington Mutual, Inc., and WMI Investment Corp.	6/11/2009	32
11.	Debtors' Opposition to (I) the Motion of the FDIC to Intervene, (II) the Motion of the FDIC to Stay Adversary Proceedings, and (III) the Motion of JPMorgan Chase Bank, National Association for Stay of Debtors' Adversary Proceeding	6/15/2009	36
12.	Joinder and Brief of the Official Committee of Unsecured Creditors in Opposition to the Motion of the Federal Deposit Insurance Corporation to Stay Adversary Proceeding	6/15/2009	37
13.	Response to Defendant Federal Deposit Insurance Corporation's Motion to Stay Adversary Proceedings Filed by JPMorgan Chase Bank, National Association	6/15/2009	38
14.	Motion to Dismiss Adversary Proceeding/Motion to Dismiss Debtors' Counterclaims Filed by JPMorgan Chase Bank, National Association	6/18/2009	41
15.	Opening Brief in Support of Motion to Dismiss Debtors' Counterclaims Filed by JPMorgan Chase Bank, National Association	6/18/2009	42

16.	Appendix Filed by JPMorgan Chase Bank, National Association	6/18/2009	43
17.	Reply Memorandum of the FDIC-Receiver in Support of its Motion to Stay Adversary Proceedings	6/22/2009	45
18.	Motion to Determine Whether Matters are Core or Non Core and Statement with Respect to Motion to Withdraw the Reference Filed by JPMorgan Chase Bank, National Association	6/23/2009	47
19.	Exhibit A to Motion to Determine Whether Matters are Core or Non Core and Statement with Respect to Motion to Withdraw the Reference Filed by JPMorgan Chase Bank, National Association	6/23/2009	48
20.	Motion for Withdrawal of the Reference of the Adversary Proceedings Pursuant to 28 U.S.C. § 157(d) Filed by JPMorgan Chase Bank, National Association	6/23/2009	49
21.	Memorandum of Law in Support of Motion for Withdrawal of the Reference of the Adversary Proceedings Pursuant to 28 U.S.C. § 157(d) Filed by JPMorgan Chase Bank, National Association	6/23/2009	51
22.	Appendix Filed by JPMorgan Chase Bank, National Association	6/23/2009	52
23.	Certification of Counsel Concerning Statements on the Record at the June 24, 2009 Hearing Filed by Federal Deposit Insurance Corporation	6/29/2009	58
24.	Official Final Transcript regarding Hearing Held 6/24/2009	6/30/2009	59
25.	Order Denying Motion of Federal Deposit Insurance Corporation, as Receiver, to Stay Adversary Proceeding	7/6/2009	68

JPMC also designates for inclusion in the record on appeal the following items, including any attachments thereto, filed in *Washington Mutual, Inc.* v. *JPMorgan Chase Bank, National Association*, Adv. Pro. No. 09-50934 (MFW):

	Title	Date Filed	Docket Item Number
1.	Official Case Docket as of July 17, 2009		
2.	Complaint for Turnover of Estate Property by Washington Mutual, Inc., WMI Investment Corp. against JPMorgan Chase Bank, N.A.	4/27/2009	1
3.	Motion to Dismiss Adversary Proceeding Filed by JPMorgan Chase Bank, National Association	5/13/2009	8
4.	Opening Brief in Support of Motion to Dismiss Adversary Proceeding Filed by JPMorgan Chase Bank, N.A.	5/13/2009	9
5.	Appendix Filed by JPMorgan Chase Bank, N.A.	5/13/2009	10
6.	Motion of Plaintiffs Washington Mutual, Inc. and WMI Investment Corp. for Summary Judgment Filed by WMI Investment Corp., Washington Mutual, Inc.	5/19/2009	14
7.	Brief in Support of the Motion of Plaintiffs for Summary Judgment Filed by WMI Investment Corp., Washington Mutual, Inc.	5/19/2009	15
8.	Appendix to the Brief in Support of the Motion of Plaintiffs for Summary Judgment	5/19/2009	16
9.	Motion to Allow/Expedited Motion for Additional Time to Respond to Debtors' Summary Judgment Motion Filed by JPMorgan Chase Bank, N.A.	5/27/2009	21
10.	Response to JPMorgan Chase Bank, N.A.'s Motion to Dismiss Filed by WMI Investment Corp., Washington Mutual, Inc.	5/27/2009	22
11.	Memorandum of Law in Support of Motion to Intervene Filed by Federal Deposit Insurance Corporation	6/1/2009	28
12.	Motion to Intervene Filed by Federal Deposit Insurance Corporation	6/1/2009	29

13.	Motion to Stay Debtors' Adversary Proceeding Filed by JPMorgan Chase Bank, N.A.	6/1/2009	31
14.	Reply Brief of Defendant JPMorgan Chase Bank, National Association in Further Support of Its Motion to Dismiss	6/3/2009	33
15.	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 (B) the Motion of Defendant JPMorgan Chase Bank, National Association for Stay of Debtors' Adversary Proceeding	6/15/2009	38
16.	Debtors' Opposition to (I) the Motion of the Federal Deposit Insurance Corporation ("FDIC") to Intervene, (II) the Motion of the FDIC to Stay Adversary Proceedings, and (III) the Motion of JPMorgan Chase Bank, National Association for Stay of Debtors' Adversary Proceeding	6/15/2009	39
17.	Joinder and Brief of the Official Committee of Unsecured Creditors in Opposition to (A) the Motion of the Federal Deposit Insurance Corporation to Intervene in the Turnover Action and to Stay Adversary Proceedings; and (B) the Motion of Defendant JPMorgan Chase Bank, National Association, to Stay	6/15/2009	40
18.	Reply Memorandum of the FDIC-Receiver in Support of Its Motion to Stay Adversary Proceedings and to Intervene	6/22/2009	43
19.	Reply Brief in Further Support of Motion for Stay of Debtors' Adversary Proceeding Filed by JPMorgan Chase Bank, N.A.	6/22/2009	44
20.	Appendix Filed by JPMorgan Chase Bank, National Association	6/22/2009	45
21.	Motion to Determine Whether Matters are Core or Non Core and Statement with Respect to Motion to Withdraw the Reference Filed by JPMorgan Chase Bank, National Association	6/23/2009	47

22.	Motion for Withdrawal of the Reference of the Adversary Proceedings Pursuant to 28 U.S.C. § 157(d) Filed by JPMorgan Chase Bank, National Association	6/23/2009	48
23.	Memorandum of Law in Support of Motion for Withdrawal of the Reference of the Adversary Proceedings Pursuant to 28 U.S.C. § 157(d) Filed by JPMorgan Chase Bank, National Association	6/23/2009	50
24.	Appendix Filed by JPMorgan Chase Bank, N.A.	6/23/2009	51
25.	Response to 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 (B) the Motion of Defendant JPMorgan Chase Bank, National Association for Stay of Debtors' Adversary Proceeding Filed by JPMorgan Chase Bank, N.A.	6/24/2009	52
26.	Certification of Counsel Concerning Statements on the Record at the June 24, 2009 Hearing Filed by Federal Deposit Insurance Corporation	6/29/2009	57
27.	Official Final Transcript regarding Hearing Held 6/24/2009	6/30/2009	58
28.	Order Denying (A) Motion of Defendant JPMorgan Chase Bank, N.A. to Stay and (B) Motion of Intervenor-Defendant Federal Deposit Insurance Corporation, as Receiver, to Stay or Dismiss Adversary Proceeding	7/6/2009	62
29.	Order Granting Motion of Federal Deposit Insurance Corporation, as Receiver, to Intervene	7/6/2009	63
30.	Order Denying Motion to Dismiss Adversary Proceeding Filed by JPMorgan Chase Bank, National Association	7/6/2009	64

Dated: July 17, 2009
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
WASHINGTON MUTUAL, INC., *et al.*,[1]	:	Case No. 08-12229 (MFW)
Debtors.	:	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	
Plaintiffs,	:	Adversary No. 09-50934 (MFW)
v.	:	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
Defendant.	:	
and	:	
FEDERAL DEPOSIT INSURANCE CORPORATION,	:	
Intervenor-Defendant.	:	

CERTIFICATE OF SERVICE
REGARDING DEBTORS' OPENING BRIEF IN SUPPORT OF
MOTION TO DISMISS COUNTERCLAIMS OF JPMORGAN CHASE BANK, N.A.

I, Neil R. Lapinski, Esquire, Delaware counsel to Washington Mutual, Inc. and WMI Investment Corp., hereby certify that I caused copies of the Debtors' Opening Brief in Support of Motion to Dismiss Counterclaims of JPMorgan Chase Bank, N.A. and the Appendix in Support

[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).

Thereof to be served on July 27, 2009 to all Notice Parties via hand delivery on all local parties; and via U.S. First Class Mail upon the remaining parties listed on the attached service list.

Dated: July 27, 2009
Wilmington, Delaware

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