

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	Jointly Administered
-----	X	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	:	
	:	Adversary Proceeding No. 09-50934 (MFW)
Plaintiffs and Counterclaim Defendants,	:	
	:	
v.	:	
	:	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
	:	
Defendant and Counterclaimant.	:	
-----	X	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	:	
	:	
Cross-Claimant,	:	
	:	
v.	:	
	:	
FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver of Washington Mutual Bank, Henderson, Nevada,	:	
	:	
Cross-Claim Defendant.	:	
-----	X	

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



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

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September 11, 2009

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Defendant JPMorgan Chase Bank, National Association (“JPMC”) submits this brief in support of its Amended Motion to Strike the Affidavit of Doreen Logan (“Logan Affidavit”), the sole evidentiary support (aside from documents attached to an attorneys’ declaration) submitted by Debtors Washington Mutual, Inc. (“WMI”) and Washington Mutual Investment Corp. (collectively “Debtors”) in support of their motion for summary judgment (the “Motion”).

### **SUMMARY OF ARGUMENT**

In its original Motion to Strike, JPMC asked the Court to strike the Logan Affidavit in its entirety because, *inter alia*, Debtors refused to make Ms. Logan available for a deposition. On August 26, 2009, more than a month after JPMC filed its opposition to Debtors’ motion for summary judgment, and after discussions with the Official Creditors Committee (the “Committee”) regarding JPMC’s and the Committee’s shared view that Ms. Logan should be deposed, Debtors agreed to make Ms. Logan available for a deposition for the limited purpose responding to the Motion. Ms. Logan’s deposition exposed serious inconsistencies in her testimony, which cast doubt on her credibility and the accuracy of her affidavit as set forth in JPMC’s supplemental opposition brief filed contemporaneously herewith. Because JPMC has deposed Ms. Logan, however, it withdraws its motion to strike Ms. Logan’s affidavit in its entirety based on her failure to appear for a deposition.

With respect to its remaining evidentiary objections, JPMC does not object to the Court considering any of the evidence presented by Debtors for what it is worth, provided that Debtors do not object to the Court giving the same consideration to

evidence presented by JPMC in opposition to the Motion. Because JPMC is confident that the Court may accurately assess all of the evidence presented, accounting for the limited probative value of some of this evidence, it does not believe that rulings on the objections are necessary. *See SEC v. Glass Marine Indus., Inc.*, 194 F. Supp. 879, 884 (D. Del. 1961) (expressing preference for provisional admission of all evidence and reservation of questions of admissibility); *Builders Steel Co. v. Comm’r*, 179 F.2d 377, 379 (8th Cir. 1950) (“One who is capable of ruling accurately upon the admissibility of evidence is equally capable of sifting it accurately after it has been received, and, since he will base his findings upon the evidence which he regards as competent, material and convincing, he cannot be injured by the presence in the record of testimony which he does not consider competent or material.” (quoting *Donnelly Garment Co. v. NLRB*, 123 F.2d 215, 224 (8th Cir. 1941))).

If, however, Debtors do stand on evidentiary objections to preclude the Court from considering evidence presented by JPMC, then JPMC respectfully seeks the same relief. To the extent that the Court is inclined to consider evidentiary objections at this time, JPMC objects to many of the statements in Ms. Logan’s affidavit and exhibits referenced therein. *See Fed. R. Civ. P. 56(e)(1)* (requiring personal knowledge and admissible evidence in summary judgment affidavit). As identified in the attached amended table of objections, Ms. Logan’s affidavit is rife with inadmissible hearsay and numerous other objectionable assertions, arguments, opinions, and other speculative statements, which do not have a proper evidentiary basis and should be stricken.

## **FACTUAL BACKGROUND**

Debtors filed their complaint in this proceeding on April 27, 2009. Less than one month later, on May 19, 2009, before an answer had been filed and while a motion to dismiss was pending, Debtors filed their motion for summary judgment.

With the exception of two ancillary documents attached to an attorney's declaration, Debtors base their Motion entirely on the affidavit of Doreen Logan, a WMI employee. Through their Motion, Debtors seek to have the Court adjudicate their turnover claim in its entirety and find both that there exists and that they own outright – without being subject to rights of setoff, counterclaims or claims by third parties – almost \$4 billion purportedly credited in six accounts that Debtors claim to be demand deposit accounts at Washington Mutual Bank, Henderson, Nevada (“WMB”) and Washington Mutual Bank fsb (“WMB fsb”). JPMC has filed an answer denying Debtors' claims and has asserted counterclaims. The Federal Deposit Insurance Corporation, Receiver (“FDIC”) is a cross-claim defendant and a group of WMB bondholders has intervened. Both the FDIC and these bondholders assert an interest in the funds that Debtors seek to claim as their own in this action.

Prior to JPMC's opposition to the Motion in accordance with Fed. R. Civ. P. 26(d)(1), because no discovery conference has occurred, JPMC was not entitled to compel discovery. Accordingly, on June 30, 2009, counsel for JPMC requested that Debtors agree to make Ms. Logan available for a deposition so that JPMC could cross-examine her about her declaration prior to responding to the motion for summary judgment. In the weeks leading up to JPMC filing its opposition, Debtors' counsel

repeatedly refused to make Ms. Logan available for a deposition. Instead, counsel attempted to condition Ms. Logan's deposition on JPMC agreeing not to request additional discovery under Rule 56(f).

JPMC filed its opposition to Debtor's motion on July 24, 2009. After JPMC filed its opposition, it reached agreement with the Committee that Ms. Logan should be deposed prior to this Court ruling on the Motion. Debtors thereafter agreed to make Ms. Logan available. On August 26, 2009 – more than a month after JPMC filed its opposition and three months after Debtors filed their Motion – counsel for JPMC took Ms. Logan's deposition.

### **ARGUMENT**

JPMC believes that the Court may reasonably weigh all of the evidence presented on this motion in light of the relative probative value of that evidence. Many of the objections identified in the amended table of objections, attached as Exhibit A, are of the type that lawyers would work out, make the subject of a stipulation, or potentially overlook in a matter where both sides have a full and fair opportunity to present their cases. And in the ordinary course, JPMC would expect that many of the objections identified on Exhibit A would be treated in that reasonable manner, whether by stipulation between the parties as to authenticity and admissibility, or by mutual agreement to allow reasonable levels of testimony that might technically be hearsay, conclusory or exceed the strict bounds of personal knowledge. Accordingly, JPMC is amenable to an agreement allowing the Court to consider all of the evidence presented by Debtors and JPMC, for what it is worth. However, should Debtors choose to raise



evidentiary objections in an effort to preclude consideration of certain evidence, JPMC interposes the objections detailed herein and in the attached table.

Before accepting an affidavit on summary judgment, the Court must carefully scrutinize the affidavit and be persuaded that (a) it was “made on personal knowledge,” (b) it “set[s] out facts that would be admissible in evidence. . . ,” and (c) it “show[s] affirmatively that the affiant is competent to testify in all matters stated therein.” Fed. R. Civ. P. 56(e)(1); *Maldonado v. Ramirez*, 757 F.2d 48, 50-51 (3d Cir. 1985) (reversing district court’s grant of summary judgment in reliance on conclusory affidavit); *Walling v. Fairmont Creamery Co.*, 139 F.2d 318, 322 (8th Cir. 1943) (“On a motion for a summary judgment . . . [the movant’s] supporting affidavits and depositions, if any, are carefully scrutinized by the court.”) Where an affidavit contains material that fails to meet the requirements of personal knowledge and admissibility, the court should strike it. *Carey v. Beans*, 500 F. Supp. 580, 583 (E.D. Pa. 1980), *aff’d*, 659 F.2d 1065 (1981) (rejecting statements outside of affiant’s personal knowledge); *Transportes Aereos Pegaso S.A. de C.V. v. Bell Helicopter Textron, Inc.*, 623 F. Supp. 2d 518, 531-32 (D. Del. 2009) (rejecting hearsay statements).

Here, Ms. Logan’s affidavit contains defects of various kinds: a variety of hearsay statements, statements for which Ms. Logan lacks personal knowledge, statements that lack foundation, impermissible statements of opinion, argumentative and conclusory assertions, irrelevant matter, and documents for which a proper foundation is lacking. This evidence is inadmissible and should be stricken. *See, e.g., Rolick v. Collins Pine Co.*, 708 F. Supp. 111, 115-16 (W.D. Pa. 1989), *rev’d on other grounds*, 925 F.2d

661 (1991) (“Compliance with Rule 56(e)’s requirements for affidavits is essential if the court is to consider the evidence contained therein.”); *Walling*, 139 F.2d at 322 (“[A]ffidavits . . . offered in support of a motion for summary judgment . . . must not only be made on the personal knowledge of the affiant, but must show that the affiant possesses the knowledge asserted.”); *Automatic Radio Mfg. Co. v. Hazeltine Research*, 339 U.S. 827, 831 (1950) (statements of party’s understanding or opinion inadmissible on summary judgment); *Carey*, 500 F. Supp. at 583 (“[S]tatements . . . made upon an ‘understanding’ are properly subject to a motion to strike”) (citing *Cermetek, Inc. v. Butler Avpak, Inc.*, 573 F.2d 1370, 1377 (9th Cir. 1978)); *Philbin v. Trans Union Corp.*, 101 F.3d 957, 961 n.1 (3d Cir. 1996) (rejecting hearsay by unidentified declarant in summary judgment affidavit); *Transportes Aereos Pegaso*, 623 F. Supp. 2d at 533 (refusing to consider legal conclusion asserted in declaration); *Aronson v. Capital One Fin. Corp.*, 125 F. Supp. 2d 142, 143-44 (W.D. Pa. 2000) (striking affidavits that “contain[ed] . . . a recitation or clarification of allegations set forth in the Complaint, assertions of legal conclusions, and legal argument”). Accordingly, pursuant to Fed. R. Civ. P. 56(e), the Court should strike the portions of the Logan Affidavit identified, and for the reasons set forth, in Exhibit A.

## CONCLUSION

For the foregoing reasons, should Debtors raise evidentiary objections to JPMC's submissions, JPMC respectfully requests that the Court strike the portions of the Logan Affidavit identified in Exhibit A as inadmissible.

Dated: September 11, 2009  
Wilmington, Delaware

Respectfully submitted,

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**EXHIBIT A**

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

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

	a copy of which is attached hereto as Exhibit A. From this account, WMI serviced its outstanding debt, paid dividends on its preferred and common equity, and disbursed payments on account of tax obligations and myriad other operating expenses.”	
11	“All of the accounts shown in the chart above, including 0667, were established and maintained in accordance with internal policies and procedures of WMI and its subsidiaries governing what is known as ‘On-Us,’ or intra-corporate, deposit accounts. Per WMI’s ‘GL Administration Policy,’ a document used to ‘communicate policies for the establishment and usage of ‘On-Us’ bank accounts for all Washington Mutual entities and departments,’ On-Us accounts are internal ‘corporately owned Demand Deposit Account (DDA) accounts.’”	Beyond the scope of Ms. Logan’s personal knowledge, lack of foundation, contains impermissible opinion testimony, offers legal conclusions, and based on hearsay. <i>See</i> Fed. R. Evid. 602, 701, 801, 802 & 901.
12	“At all times, the accounts, including 0667, were properly accounted for in the books and records of WMB and WMB fsb as demand deposit accounts and deposit liabilities owing to WMI or WMI Investment. On many occasions, I have seen the books and records that reflect such accounting. WMB reported the accounts as deposit accounts to federal banking regulators and paid federal deposit insurance premiums on the deposits in the Accounts prior to the P&A Transaction. With respect to 0667 in particular, copies of excerpts of account statements for the period January 2007 to March 2009 are attached hereto as Exhibit D, and state that the funds in 0667 are ‘Deposits’ and that the ‘Deposits are FDIC Insured.’”	Improper opinion testimony, beyond the scope of Ms. Logan’s personal knowledge, and lack of foundation. <i>See</i> Fed. R. Evid. 602, 701, 801, 802 & 901.
13	“On that call, Mr. Brennan instructed that the maximum amount of funds possible deposited in the 0667 demand deposit checking account at WMB should immediately be moved to a demand deposit account at WMB fsb.”	Hearsay. <i>See</i> Fed. R. Evid. 801 & 802.
13	“Although I did not ask about the reason for this transfer at the time, I later learned that management’s intent was to transfer WMI’s bank account to the more well-capitalized bank within the consolidated group.”	Beyond the scope of Ms. Logan’s personal knowledge, lack of foundation, and hearsay. <i>See</i> Fed. R. Evid. 602, 801 & 802.
14	“In order to determine the maximum amount that could be transferred, on September 19, 2008, I reviewed the 0667 account balance online via the Hogan mainframe	Improper conclusion and beyond the scope of Ms. Logan’s personal knowledge to the extent account entries are

	computer system (WMB's deposit accounting system) to determine how much cash needed to stay in 0667 to cover payments that had already been scheduled to be made from the funds in that account. One of the Hogan screen printouts that I reviewed for this purpose, including the handwritten notes I made on that printout, is attached hereto as Exhibit E. The Hogan screen printout shows the 0667 account number, the 'DDA' (Demand Deposit Account) account type, and the amount of funds that were available in the account."	characterized as "cash" or "funds." <i>See</i> Fed. R. Evid. 602 & 701.
15	"I determined that approximately \$50 million needed to remain in the account to cover scheduled pending payments, which meant that the remainder of \$3.674 billion could be transferred to a demand deposit account at WMB fsb."	Impermissible opinion testimony, beyond the scope of Ms. Logan's personal knowledge, and based on hearsay. <i>See</i> Fed. R. Evid. 701, 801 & 802.
16	"The demand deposit account to which the transfer was to be made at WMB fsb was to be newly created."	Beyond the scope of Ms. Logan's personal knowledge, lack of foundation and hearsay to the extent that she purports to testify to the intent of third parties in purportedly opening this account. <i>See</i> Fed. R. Evid. 602, 801 & 802.
16	"Thus, as was customary with any transfer to a newly-established deposit account, and as required by Washington Mutual's GL Administration Policy, this transfer was to be effectuated by (a) submitting to the Washington Mutual Back Office Branch a 'New Account Request Form' utilized to open a new demand deposit account, (b) completing a 'Journal Entry Request Form' to record the transaction on the general ledger of each company, and (c) completing a 'Journal Entry Posting Form,' accounting for the transfer of deposits from 0667 to the new account."	Impermissible opinion based on hearsay, and lack of foundation to testify as to what was "customary." <i>See</i> Fed. R. Evid. 701, 801 & 802.
17	"Copies of the New Account Request form that Ms. Noblezada prepared on Friday, September 19, 2008, and the supporting Journal Entry Request and Journal Entry Posting forms, are attached hereto as Exhibit F."	Lack of foundation to authenticate documents for which Ms. Logan is not a custodian of records and has not otherwise stated the basis of personal knowledge; hearsay. <i>See</i> Fed. R. Evid. 801, 802 & 901.
17	"As required by the GL Administration Policy (Exhibit C hereto), the New Account Request form was signed	Improper opinion testimony, lack of foundation, lack of personal knowledge,

	and approved by Patricia Schulte; the Journal Entry Request Form was signed and approved by me; and the Journal Entry Posting Form was signed and approved by Patricia Schulte and WMB's Vice President, Cash Management Manager, Treasury, Brandon Winder.”	hearsay. <i>See</i> Fed. R. Evid. 701, 801, 802 & 901.
18	“The GL Administration Policy likewise provides that ‘On-Us’ accounts are ‘Demand Deposit Accounts.’ Moreover, although New Account Request Forms may be used to open several different account types (e.g., loss drafts, commercial loans, insurance drafts, and investors/custodial accounts), these forms are used to create only deposit accounts, not any other type of account.”	Lack of personal knowledge or foundation, improper opinion testimony, hearsay. <i>See</i> Fed. R. Evid. 602, 701, 801, 802 & 901.
19	“In addition to these forms prepared on Friday, September 19, 2008, there is an email that was sent on the same day that confirms that the intent was to transfer the \$3.674 billion to a demand deposit account. Rosa Cox, WMB's Vice President, Accounting Manager, Corporate Accounting, sent an email to Tawnya Ryason, WMB's Assistant Vice President, Manager, Accounting II – Corporate Accounting, with a ‘cc:’ to me. The email accurately reported to Ms. Ryason that I had told Ms. Cox that I needed a “‘Due From FSB’ account to use this month for a new deposit account.” A copy of that email, which is the first in a string of emails, is attached hereto as Exhibit G.”	Hearsay and lack of foundation or personal knowledge as to “intent.” <i>See</i> Fed. R. Evid. 602, 801 & 802.
19 n.2	“As this email indicates, the only intercompany GL account available at the time that was open to reflect money on deposit at WMB fsb was one with a “Money Market Deposit Account – Interest Checking” description (rather than a [sic] one described as a non-interest bearing demand deposit account) . . . .”	Hearsay. <i>See</i> Fed. R. Evid. 801 & 802.
19 n.2	“The change was to be made at the beginning of the next month because, per the GL Administration Policy (Ex. H), new GL accounts could only be opened during 14 business days prior to month-end (approximately the first 6 days of the month). Before the correction could be made, the FDIC became receiver and seized WMB on September 25, 2008.”	Hearsay, improper opinion testimony. <i>See</i> Fed. R. Evid. 701, 801 & 802.



20	<p>“Although the New Account Request Form properly indicated that the deposit account was to be opened at WMB fsb, an administrative back office processing error caused a new demand deposit account ending in numbers ‘4218’ (‘4218’) to be opened not at WMB fsb, but rather, at WMB.”</p>	<p>Lack of personal knowledge, lack of foundation, hearsay, improper opinion testimony. <i>See</i> Fed. R. Evid. 602, 701, 801 &amp; 802.</p>
20	<p>“On Monday, September 22, 2008, Ms. Noblezada reported to me that the Processing Representative in the Back Office Branch in Stockton, California who had processed the transfer had mistakenly ignored the directions on the completed forms that the deposit account be opened at ‘Co. 40’ (the company designation for WMB fsb). Instead, the Processing Representative had erroneously opened the 4218 deposit account at WMB (‘Co. 1’). Ms. Noblezada reported to me that the Processing Representative had explained to her that this clerical error had been made because WMB fsb did not have an overhead cost center open on the Hogan system (which was needed to ensure that the demand deposit account eliminated properly in consolidation), and the Processing Representative therefore erroneously used a cost center that was available and that corresponded to WMB.”</p>	<p>Multiple-level hearsay. <i>See</i> Fed. R. Evid. 801 &amp; 802.</p>
21	<p>“This clerical error, and its immediate correction, is reflected on the Monday, September 22, 2008 emails, copies of which are also included in the email string attached hereto as Exhibit G. An email from Ms. Ryason to me and others states that the ‘DDA [Demand Deposit Account] was opened on Co 1 [WMB] and not on Co 40 [WMB fsb]. Was this an oversight?’ Ms. Noblezada responded ‘Yes, we are fixing this right now. We will be closing the DDA [Demand Deposit Account] on Co 1 and will open one on Co 40 ....’”</p>	<p>Hearsay, lack of foundation, lack of authentication. <i>See</i> Fed. R. Evid. 801, 802 &amp; 901.</p>
22	<p>“On Monday, September 22, 2008, a revised New Account Request Form and supporting Journal Posting Form were created and the mistake was corrected, retroactively to September 19, 2008, with the creation of a demand deposit account at WMB fsb ending in numbers 4234 (‘4234’). Account 4218 at WMB was closed the same day (while WMI’s Account 0667 remained at WMB).”</p>	<p>Hearsay, lack of foundation, lack of personal knowledge, improper opinion testimony, lack of authentication. <i>See</i> Fed. R. Evid. 602, 701, 801, 802 &amp; 901.</p>

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

	deposit account at WMB fsb.”	
26	“My colleagues and I implemented that instruction and we completed the paperwork and carried out the Washington Mutual procedures required to transfer the \$3.674 billion into demand deposit account 4234 at WMB fsb.”	Improper opinion testimony, and legal conclusion. <i>See</i> Fed. R. Evid. 701.
26	“As the facts detailed above demonstrate, and as I know from my personal involvement, there is simply no question but that the \$3.674 billion was always intended to be, and in fact was, a deposit made into a demand deposit account at WMB fsb in accordance with Washington Mutual policies applicable to demand deposit accounts.”	Improper legal conclusion, lack of personal knowledge, improper opinion testimony. <i>See</i> Fed. R. Evid. 602 & 701.
27	“In addition to the facts described above that make plain that the \$3.674 billion was always intended to be, and was in fact, a deposit, I am also aware of facts that show the \$3.674 billion transfer could not have been a capital contribution.”	Improper legal conclusion, lack of personal knowledge, lack of foundation, improper opinion testimony. <i>See</i> Fed. R. Evid. 602 & 701.
28	“ <i>Washington Mutual Policies And Procedures For Requesting And Processing Capital Contributions Were Not Carried Out.</i> As discussed above, the Washington Mutual internal policies and procedures applicable to depositing the \$3.674 billion into a demand deposit account were followed.”	Improper legal conclusion, lack of personal knowledge, improper opinion testimony, and relies on hearsay. <i>See</i> Fed. R. Evid. 602, 701, 801, 802 & 901.
28	“If the intention had been for the \$3.674 billion to be a capital contribution, there are different internal policies and procedures that would have been applicable, but these policies and procedures were not followed, nor were the relevant forms prepared.”	Improper conclusion, lack of personal knowledge as to “intention” and as to what was or was not prepared, improper opinion testimony, irrelevant. <i>See</i> Fed. R. Evid. 402, 602 & 701.
28	“As set forth on the ‘WMI and Banking Affiliates General Standards: Authorized Individuals for Intercompany Transactions’ and as reflected on the ‘Washington Mutual Request for Contribution’ form (copies of which are attached hereto as Exhibit J), a capital contribution cannot be made without the approval of the CFO, Treasurer or Corporate Controller, and to make a capital contribution a ‘Request for Contribution’ form must be filled out. That form requires the requester to supply details about the	Hearsay, lack of foundation, lack of personal knowledge, improper opinion testimony. <i>See</i> Fed. R. Evid. 602, 701, 801, 802 & 901.

	proposed capital contribution, including the nature and purpose of the proposed capital contribution. The requester is to be ‘as detailed as possible with the Proposal/Purpose description (i.e., why the capital contribution is being requested, what it will be used for, is it a one-time request or ongoing, etc.).’”	
29	“As reflected in the ‘Approvals Required’ section of the form, after the requester completes the form it is to be presented via email to representatives of each of the following four departments for approval: Legal, Tax, Controllers, and Treasury.”	Lack of foundation, lack of authentication, hearsay, improper opinion testimony. <i>See</i> Fed. R. Evid. 701, 801, 802 & 901.
30	“Upon receiving approvals from all four departments, copies of the approvals and the fully approved request is to be forwarded to Legal, which then ‘prepare[s] and circulate[s] for execution the legal documentation required to authorize the contribution and will forward the approval to the requesting party, Entity Accounting, Tax and Treasury.’”	Lack of foundation, lack of authentication, hearsay, improper opinion testimony. <i>See</i> Fed. R. Evid. 701, 801, 802 & 901.
31	“Per Washington Mutual policy, all of these steps would have been required before processing a capital contribution. Indeed, WMI followed these procedures in connection with capital contributions that it made to WMB in December 2007, April 2008, July 2008 and September 2008. The Request for Contribution forms and email approvals for these transactions are attached hereto as Exhibit Q.”	Improper opinion testimony, lack of personal knowledge, lack of foundation, hearsay. <i>See</i> Fed. R. Evid. 602, 701, 801 & 802.
31	“In my position at WMB, I would have been made aware if these same steps had been taken, and same forms prepared, in connection with the transfer to WMB fsb of the \$3.674 billion. Not one of these steps was taken, however, belying any suggestion that the \$3.674 billion deposit was, or ever was intended to be, a capital contribution.”	Lack of personal knowledge, lack of foundation, speculation, improper opinion testimony, improper legal conclusion, irrelevant. <i>See</i> Fed. R. Evid. 402, 602 & 701.
32	“A capital contribution would have fundamentally revised the capital structure of various Washington Mutual entities, and such a transaction simply would not have made sense.”	Lack of personal knowledge, lack of foundation, improper opinion testimony, irrelevant. <i>See</i> Fed. R. Evid. 402, 602 & 701.
32	“Prior to the September 25, 2008 FDIC seizure, WMI owned WMB, which owned Pike Street Holdings, Inc.	Lack of personal knowledge, lack of

	(‘Pike Street Holdings’), which, in turn, owned WMB fsb.”	foundation. <i>See</i> Fed. R. Evid. 602.
32	“A \$3.674 billion capital contribution would have fundamentally changed this capital and ownership structure, with WMI becoming a new partial owner of WMB fsb.”	Lack of personal knowledge, speculation, lack of foundation, improper opinion testimony. <i>See</i> Fed. R. Evid. 602 & 701.
32	“There was no plan or effort at WMI to achieve such a result.”	Lack of personal knowledge, lack of foundation, speculation, irrelevant. <i>See</i> Fed. R. Evid. 402 & 602.
33	“ <i>WMI Liquidity Management Policies And Procedures Are Inconsistent With Any Notion That The \$3.674 Billion Deposit Is A Capital Contribution.</i> Another clear indication that the \$3.674 billion deposit was never a capital contribution, and was never considered or intended to be a capital contribution, is the ‘WMI Liquidity Management Standard’ (the ‘Liquidity Standard’).”	Improper opinion, legal conclusion, improper argument, lack of foundation, lack of personal knowledge, irrelevant. <i>See</i> Fed. R. Evid. 402, 602, 701, 801, 802 & 901.
33	“The stated objective of the Liquidity Standard is to ‘prudently manage [WMI’s] ability to meet its financial obligations.’ A copy of the Liquidity Standard is attached hereto as Exhibit K.” The Liquidity Standard states that cash must be maintained at a minimum daily balance of \$150 million with an ‘early warning’ limit of \$250 million. The Liquidity Standard further states that ‘[i]n the event that the WMI cash balance is expected to or falls below \$150 million, the Treasurer will be notified immediately. The Treasurer may approve being below the target minimum for up to ten days of the month. In the event that the target minimum is not met for over ten days MRC [Market Risk Committee] chair will be notified and a report of the daily cash balances will be taken to the next MRC with an explanation for any approved variation and an action plan.’”	Hearsay, lack of personal knowledge, lack of authentication. <i>See</i> Fed. R. Evid. 602, 801, 802 & 901.
34	“The Liquidity Standard also states that net short term position (liquid assets / short term liabilities) must be maintained at 100% or greater with a ‘warning trigger’ if the ratio falls below 110%. The Liquidity Standard further states that ‘[a]ny expected or actual exceptions to the positive net short term position forecasted within a 90 day period will be reported to the Treasurer and MRC	Hearsay, lack of personal knowledge, lack of authentication. <i>See</i> Fed. R. Evid. 602, 801, 802 & 901.

	chair immediately and to the MRC at their next meeting with an explanation and proposal to remediate the potential shortfall.”	
35	“Before the \$3.674 billion transfer into demand deposit account 4234, WMI’s cash position was \$3.724 billion. The net short term position was 236% in September, 234% in October, 230% in November and 229% in December (as shown in the cash position work sheets copies of which are attached hereto as Exhibit L.)”	Lack of foundation, lack of personal knowledge, improper opinion testimony, hearsay, lack of authentication. <i>See Fed. R. Evid. 602, 701, 801, 802 &amp; 901.</i>
35	“Had the \$3.674 billion been a capital contribution and not a transfer into the deposit account, cash would have fallen to about \$50 million — well below the \$250 million early earning and the minimum of \$150 million. Net short term position would have fallen to 17% in September, 15% in October, 12% in November and 10% in December — well below the 110% warning trigger and the minimum of 100%.”	Improper opinion testimony, lack of personal knowledge, speculation, lack of foundation, hearsay, irrelevant. <i>See Fed. R. Evid. 402, 602, 701, 801 &amp; 802.</i>
36	“In my position at WMB and as a member of the Liquidity Management Working Group (a subcommittee of the Market Risk Committee), I would have been aware if these procedures required by the Liquidity Standard had been carried out with respect to the transfer of the \$3.674 billion. These procedures were not implemented, again belying any suggestion that the \$3.674 billion deposit was, or ever was intended to be, a capital contribution.”	Lack of personal knowledge, lack of foundation, speculation, improper opinion testimony, improper argument, irrelevant. <i>See Fed. R. Evid. 402, 602, 701.</i>
37	“ <i>WMI Paid Invoices Using A Portion Of The \$3.674 Billion In The 4234 Account, Which Is Inconsistent With The Notion That \$3.674 Billion Deposit Is A Capital Contribution.</i> On September 24 and 25, 2008, WMI paid two invoices that had been billed directly to WMI using a portion of the \$3.674 billion in account 4234. One payment was to Goldman Sachs for advisory services for a total of \$3,056,827.50. Another payment was to Morgan Stanley for advisory services for a total of \$3,000,000.00. Copies of the invoices are attached hereto as Exhibit M, and the September 2009 account statement for 4234 reflecting the two payments is included in Exhibit A.”	Lack of personal knowledge, lack of foundation, improper opinion testimony, improper argument, hearsay, lack of authentication, irrelevant. <i>See Fed. R. Evid. 402, 602, 701, 801, 802 &amp; 901.</i>

37	<p>“WMI’s use of the 4234 account to make payments in satisfaction of invoices to WMI demonstrates its use of the account as a demand deposit account. Had the \$3.674 billion been a capital contribution to WMB fsb, the funds would not have been available to WMI to pay WMI invoices.”</p>	<p>Improper opinion testimony, speculation, improper argument, lack of personal knowledge, lack of foundation, irrelevant. <i>See Fed. R. Evid. 402, 602 &amp; 701.</i></p>
38	<p><i>“Washington Mutual Sought Regulatory Approval To Reduce WMB fsb’s Capital Base By \$20 Billion — Which Is Inconsistent With Any Notion That There Was Any Intent During The Same Time Period To <u>Increase</u> WMB fsb’s Capital By \$3.674 Billion.”</i></p>	<p>Improper argument, improper opinion testimony, lack of personal knowledge, speculation, lack of foundation, irrelevant. <i>See Fed. R. Evid. 402, 602 &amp; 701.</i></p>
38	<p>“For months prior to the September 2008 transfer of the \$3.674 billion deposit, the Treasury group of Washington Mutual had proposed and planned to decapitalize WMB fsb by transferring \$20 billion in excess capital from WMB fsb to Pike Street Holdings, Inc., its direct parent entity. The plan to move the \$20 billion is reflected in (a) the August 14, 2008 memorandum from WMB’s Senior Vice President – Funding &amp; Capital, Treasury, Peter Freilinger, to the Board of Directors of Washington Mutual Bank fsb, and (b) the August 15, 2008 Application for Capital Distribution that was submitted to the Office of Thrift and Supervision (copies of which are attached hereto as Exhibit N.)” As explained in Mr. Freilinger’s memorandum, the purpose of the planned decapitalization was to free up low-earning and non-earning assets and make it easier for WMB fsb to stay in compliance with the federal ‘Qualified Thrift Lender’ test, which provides that the institution must hold qualified thrift assets (i.e., housing-related investments) equal to at least 65% of its portfolio assets. By shrinking WMB fsb’s capital base, its mortgage-related assets would increase as a total percentage of its portfolio assets, thereby ensuring compliance with the ‘Qualified Thrift Lender’ test, and the \$20 billion could be put to use by Pike Street Holdings, Inc. As stated in Mr. Freilinger’s memo, the decapitalization would decrease WMB fsb’s leverage ratio from 62% to 25%, which was still more than sufficient since a ‘well capitalized institution requires an 8% or higher leverage ratio.’”</p>	<p>Lack of personal knowledge, lack of foundation, hearsay, improper opinion testimony, lack of authentication, irrelevant. <i>See Fed. R. Evid. 402, 602, 701, 801, 802 &amp; 901.</i></p>

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



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

	<p>moreover, were employed by WMB prior to the P&amp;A Transaction and were directly involved in opening Account 4234. For example, in December 2008, I spoke with a former member of WMB’s senior management, who told me that after being hired by JPMorgan Chase he informed JPMorgan Chase that Account 4234 is a demand deposit account, that the \$3.674 billion is a deposit, and that there is no basis for JPMorgan Chase to contest this fact.”</p>	
45	<p>“In early 2009, including on about March 17, 2009, I had several telephone conversations with Beverly Bruce. Prior to the September 25, 2008 FDIC seizure of WMB, Ms. Bruce was WMB’s Vice President, Manager – Treasury – Sr. Treasury. Since the seizure, my understanding is that Ms. Bruce was employed by JPMorgan Chase as a Treasury Manager through April 30, 2009 whose responsibilities included budget planning related to the net interest margin. Ms. Bruce advised me during our discussions in early 2009 that the \$3.674 billion in the 4234 account is reflected in JPMorgan Chase’s books and records as a deposit. More specifically, she stated that the \$3.674 billion is ‘a deposit liability in their segment results’ and it ‘is throwing off their segment profitability.’”</p>	<p>Hearsay, irrelevant, lack of foundation. <i>See Fed. R. Evid. 402, 801 &amp; 802.</i></p>
46	<p>“In April 2009, I had a telephone conversation with Rosa Cox. Prior to the September 25, 2008 FDIC seizure of WMB, Ms. Cox was WMB’s Vice President, Accounting Manager, Corporate Accounting. Since the seizure, my understanding is that Ms. Cox has been employed by JPMorgan Chase. As discussed above, Ms. Cox had assisted in ensuring that the transaction was accounted for correctly at both WMI and WMB fsb. In my April 2009 conversation with Ms. Cox, she asked whether WMI planned to move the \$3.674 billion out of that account soon and she explained that, under proposed new rules for calculating federal deposit insurance premiums, JPMorgan Chase’s federal deposit insurance premiums may increase by about 10 basis points on the \$3.674 billion deposit.”</p>	<p>Hearsay, irrelevant, lack of foundation. <i>See Fed. R. Evid. 402, 801 &amp; 802.</i></p>
47	<p><i>“JPMorgan Chase Apparently Has Represented To Regulators That The \$3.674 Billion Is A Deposit.</i> On information and belief (based on the conversations I</p>	<p>Hearsay, irrelevant, lack of foundation, lack of personal knowledge. <i>See Fed. R.</i></p>

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

	statements JPMorgan Chase has issued and through statements made by its own personnel – that the \$3.674 billion deposit was in fact a deposit made into a demand deposit account.	
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