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
	:	**Ref. Docket No. 1997**

OBJECTION OF THE FDIC-RECEIVER TO THE DEBTORS' MOTION FOR AN ORDER PURSUANT TO BANKRUPTCY RULE 2004

The Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank (the "FDIC-Receiver"), submits the following objection to the Debtors' Motion for an Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1 Directing the Examination of Witnesses and Production of Documents from Knowledgeable Parties [D.I. 1997] (the "Motion"). For the reasons that follow, the Motion should be denied.

SUMMARY OF OBJECTION

1. The Debtors' Motion represents a misuse of the discovery power under Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") that would impose unnecessary burden and expense on numerous third parties, including a number of agencies of the United States government which will be unnecessarily distracted by the proposed discovery from discharging their regulatory responsibilities. The Debtors *do not* assert that the purpose of the discovery they seek is to investigate potential claims against any of these third parties. To the contrary, the Debtors repeatedly state in their Motion that they are seeking the

[1] The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification numbers are: (a) Washington Mutual, Inc. (3725); and (b) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

authority to burden third parties with Rule 2004 discovery in order to investigate potential claims against JPMorgan Chase Bank, N.A. ("JPMC").

2. Even courts that have found the authority provided under Rule 2004 to be broad have recognized that there are limits to that authority, and the Debtors' Motion clearly exceeds them. The Debtors argue that the claims against JPMC are "assets of the Debtors' chapter 11 bankruptcy estates" and that they need the information requested to discharge their duties "as estate fiduciaries." Mot., ¶ 2. Yet, if this is the case, why have the Debtors allowed nearly a year to elapse without seeking to intervene in or stay the state law action brought by bondholders of WMI and WMB that is the basis for their Motion, *American Nat'l Ins. Co. v. JPMorgan Chase*? The Debtors have been on notice of what they describe as the "serious and detailed allegations" of the complaint in that action since February 2009, but they have done nothing in that action to assert the estates' alleged interests in those claims.

3. Even if the Debtors have for some reason concluded that allowing the *American National* case to proceed without them is in the best interests of their constituents, the Debtors admit that they already have substantially more information available to them about JPMC's supposed wrongdoing than did the *American National* plaintiffs. If the Debtors believe they have a claim against JPMC, they should assert it and defend those allegations in court. Third parties, such as the FDIC-Receiver and the other "Knowledgeable Parties," including a former Secretary of the Treasury, the United States Department of the Treasury, the Office of Thrift Supervision, the Securities and Exchange Commission and others, should not be forced to endure the burden and expense of the Debtors' latest tactic in their litigation with JPMC in the guise of a Rule 2004 investigation when the Debtors will have access to third-party discovery when or if such a complaint ever survives to discovery.

4. The Motion suffers other flaws as well. The Debtors contend that the discovery they seek is unrelated to their two adversary proceedings with JPMC, but that discovery is related to their pending district court action against the FDIC-Receiver, *Washington Mutual, Inc. v. F.D.I.C.*, No. 1:09-cv-0533 (RMC) (D.D.C.). A copy of the complaint filed in the D.C. action is attached hereto as Exhibit A. JPMC was not a party to that action at the time of this Court's June 24, 2009 Order allowing Rule 2004 discovery against JPMC, which was the reason the Court cited in allowing the discovery notwithstanding the pendency of that action. *See In re Wash. Mut., Inc.*, 408 B.R. 45, 53 (Bankr. D. Del. 2009). However, the FDIC-Receiver is and always has been a party to that action, and therefore the Debtors cannot seek discovery against the FDIC-Receiver (or FDIC-Corporate) that relates to that pending action. Moreover, at the Debtors' request, that action has been stayed by the district court. Rule 2004 was not designed to permit a debtor to avail itself of the jurisdiction of a federal district court, ask that court to stay the debtor's own case, and then seek discovery relating to that stayed action in the guise of a purported "investigation of potential claims."

5. Finally, the Debtors' assertion that they have complied with the pre-motion requirements of this Court's Local Rule 2004-1 is inaccurate, at least in the case of the FDIC-Receiver and the Federal Deposit Insurance Corporation in its corporate capacity ("FDIC-Corporate"). The Debtors broke off their discussions with the FDIC without responding to a proposal to resolve the Debtors' requests, choosing instead to file their motion and inviting further discussion only after the motion was filed.

6. The Motion is merely a litigation tactic in the Debtors' ongoing disputes with JPMC. Rule 2004 was not intended to burden third parties in order to provide a debtor litigation leverage against another party. The Motion should be denied.

RELEVANT BACKGROUND

A. The Debtors' First Rule 2004 Motion

7. Over eight months ago, on May 1, 2009, the Debtors filed their first motion in these cases under Bankruptcy Rule 2004. The Debtors asserted in that motion that they wanted to "investigate potential claims against JPMC based on alleged misconduct that is the subject of a recently filed lawsuit pending in Texas federal court captioned *American Nat'l Ins. Co., et al. v. JPMorgan Chase & Co., et al.*" [D.I. 974, ¶ 1] On June 24, 2009, this Court issued an opinion and order granting the Debtors' original Rule 2004 motion [D.I. 1219, 1220]. *In re Wash. Mut., Inc.*, 408 B.R. 45 (Bankr. D. Del. 2009). Since the June 24th Order, JPMC has produced tens of thousands of pages of documents to the Debtors. According to the Debtors, JPMC produced documents pursuant to the June 24th Order on August 26, 2009, September 8, 2009, and September 25, 2009. Mot., ¶ 11.

B. The *American National* Action

8. The complaint in the *American National* action was filed in February 2009 in Texas state court in Galveston, Texas. Plaintiffs in that action are a number of insurance companies that allege that they are holders of WMI common stock and of bonds that were issued by either WMI or its former bank subsidiary, Washington Mutual Bank ("WMB"). In their complaint, the *American National* plaintiffs allege that JPMC tortiously interfered with plaintiffs' bond contracts when those defendants "used their insider status and financial strength" to "obtain the sale of WMB assets from [the FDIC-Receiver] to JPMC at a below-market price . . . ." Pet., ¶ 92. Likewise, plaintiffs allege they were harmed by JPMC's breach of an alleged confidentiality agreement with WMI because the regulatory closure of WMB and the ensuing sale of its assets by the FDIC-Receiver "prevent[ed] WMI from obtaining a purchaser for itself or improving its financial health enough so that it could weather the market turmoil." Pet.,

¶¶ 98-99. Plaintiffs similarly claim that JPMC was unjustly enriched because it allegedly failed to pay full value for the assets it purchased from the FDIC-Receiver. Pet., ¶ 102-03.

9. The Debtors were aware of the *American National* complaint shortly after it was filed. Indeed, when the FDIC-Receiver learned about the action it forwarded a copy of the complaint to the Debtors' counsel in case the Debtors wanted to be heard. Yet the Debtors made no attempt to intervene, nor have the Debtors asserted in this Court or elsewhere that the *American National* complaint asserts claims that are the property of the Debtors' estate.

10. In March 2009, the FDIC-Receiver intervened in, and removed, the *American National* complaint. Thereafter, the FDIC-Receiver moved to transfer the action to the United States District Court for the District of Columbia. That motion was granted by a Texas federal district judge in September 2009, and the plaintiffs' motion to remand was denied. Currently, motions to dismiss the complaint are pending before United States District Judge Rosemary M. Collyer of the District for the District of Columbia.

C. <u>The Current Rule 2004 Motion</u>

11. The Debtors did not contact the FDIC-Receiver or FDIC-Corporate concerning the possible issuance of Rule 2004 discovery until December 3, 2009, nearly six months after this Court's June 24, 2009 Order and several months after the last installment of JPMC's Rule 2004 production. Several conversations followed, but the Debtors elected to file this Motion, which included both the FDIC-Receiver and FDIC-Corporate, rather than responding to the FDIC's most recent joint proposal to resolve the parties' disagreements.

12. In addition to the FDIC-Receiver and FDIC-Corporate, the putative "Knowledgeable Parties" from which the Debtors are seeking authority to conduct third-party discovery in the Motion are: the United States Department of the Treasury; former Secretary of the Treasury Henry M. Paulson, Jr.; the Board of Governors of the Federal Reserve System; the

Office of Thrift Supervision; the Office of the Comptroller of the Currency; the United States Securities and Exchange Commission; the Federal Home Loan Bank – San Francisco; the Federal Home Loan Bank – Seattle; Standard and Poor's Corporation; Banco Santander, S.A.; The Toronto-Dominion Bank; TD Bank, N.A.; Wells Fargo, N.A.; The Goldman Sachs Group, Inc.; PricewaterhouseCoopers; Equale & Associates; Richard F. Holt; and David Horne LLC. Mot., at 1 n.2.

OBJECTION

THE MOTION SHOULD BE DENIED

13. The Motion seeks to use the authority permitted under Bankruptcy Rule 2004 for an improper purpose – to gain leverage against JPMC in ongoing litigation. This is not an appropriate basis to impose the substantial burdens that would arise from compliance with the Debtors' proposed discovery requests on numerous third parties, including not only the FDIC-Receiver but also a number of other agencies of the United States government. *See* Bankruptcy Rule 2004(b).[2] Other methods are, or will be, available to the Debtors to pursue such third-party discovery that would more appropriately balance the Debtors' asserted need for the information requested with the rights of such third parties.

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[2] Bankruptcy Rule 2004(b) provides:

> **(b) Scope of Examination.** The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefore, and any other matter relevant to the case or to the formulation of a plan.

I. The Debtors' Open-Ended Investigation of Potential Claims Does Not Justify Third-Party Discovery Under Rule 2004

14. Although the scope of Bankruptcy Rule 2004 is broad, it is not without limits. "Examinations cannot be used to harass or oppress . . . ." *Snyder v. Soc'y Bank of Ann Arbor*, 52 F.3d 1067, at *1 (5th Cir. 1995) (*per curiam*) (citing *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 516 (E.D.N.Y. 1991). Nor may Rule 2004 be used "as a device to launch into a wholesale investigation of a non-debtor's private business affairs." *In re Wilcher*, 56 B.R. 428, 434 (Bankr. N.D. Ill. 1985). As one bankruptcy court has observed:

> Rule 2004 requires that we balance the competing interests of the parties, weighing the relevance of and necessity of the information sought by examination. That documents meet the requirement of relevance does not alone demonstrate that there is good cause for requiring their production. . . . The burden of showing good cause is an affirmative one in that it is not satisfied merely by a showing that justice would not be impeded by production of the documents. . . . Good cause may ordinarily be sustained by a claim that the requested documents are necessary to establishment of the moving party's claim or that denial of production would cause undue hardship or injustice.

In re Drexel Burnham Lambert Group, Inc., 123 B.R. 702, 712 (Bankr. S.D.N.Y. 1991) (citations omitted).

15. In this case, the Debtors do not assert that their Motion seeks discovery from the FDIC-Receiver or any of the other "Knowledgeable Parties" to investigate potential claims against them. To the contrary, the Debtors state repeatedly that the purpose of their Motion is to continue their months old investigation into potential claims against JPMC. *See, e.g.*, Mot., ¶ 31 ("The Debtors need the Requested Examination to further unearth the facts and assess the merits of potentially valuable causes of action *against JPMC* that would enure to the benefit of their estates.") (emphasis added); *see also* Mot., ¶ 2 ("To the extent the Requested Examination demonstrates that the Debtors have viable claims *against JPMC*, such claims are assets of the Debtors' chapter 11 bankruptcy estates") (emphasis added); *id.*, ¶ 12 (asserting that

third parties "likely have information relevant to potential estate claims arising from *JPMC's pre-seizure misconduct*") (emphasis added).

16. There is no basis to impose the burden and expense of non-party discovery on the FDIC-Receiver and other "Knowledgeable Parties" under the circumstances here, much less the "good cause" that is required to obtain relief under Rule 2004. The Debtors have been aware of the purportedly "serious and detailed" allegations about JPMC's alleged wrongdoing that are set forth in the *American National* complaint for nearly a year. Although they now contend that the claims asserted against JPMC in that action may represent an asset of their estates, *see* Mot., ¶ 2, the Debtors never have sought to intervene in the *American National* action to assert their rights, nor have they taken any steps to stay or dismiss the *American National* action in this Court or otherwise. Instead, they have sat on their hands while the action was removed to federal court, transferred to the District of Columbia and there proceeded through briefing on motions to determine whether the claims at issue are even actionable, which are still pending.

17. The Debtors' lassitude in acting with respect to the supposedly significant *American National* action is equaled by their failure to file their own "business tort" or breach of contract claims against JPMC, in this Court or elsewhere, despite being in possession of not only the "serious and detailed" allegations in the *American National* complaint but also roughly 30,000 pages of discovery from JPMC itself. There is no suggestion that the *American National* plaintiffs had access to such JPMC documents when they filed their complaint. Yet the Debtors claim they still have a need for discovery from the FDIC-Receiver and other "Knowledgeable Parties" before they can decide whether to file their own claims.

18. Courts have rejected Rule 2004 motions in similar circumstances. The Debtors' Motion similarly should be rejected here. *See Deloite & Touche v. Hassett*, 123 B.R. 488, 491 (Bankr. S.D.N.Y. 1991) ("Before placing on D&T the burden of producing thousands of pages of internal documents which are proprietary and then engaging in oral discovery relating to those documents, a Rule 11 determination should be made that the Trustee has an adequate basis for filing a claim against D&T.") (citing cases); *see also In re Wilcher*, 56 B.R. at 433-34 (quashing subpoena served on third party purchaser of property absent evidence of duplicity).

II. Rule 2004 Is Not Available Because the Third-Party Discovery Sought Is the Subject of the Debtors' Pending D.C. Action Against the FDIC

19. The Motion also should be denied because it seeks discovery that is the subject of pending litigation brought by the Debtors outside of the Bankruptcy Court against the FDIC-Receiver and FDIC-Corporate, which are both among the targets of the current Motion. As this Court has recognized, Rule 2004 discovery is inappropriate "where the party requesting the Rule 2004 examination *could benefit* their pending litigation outside of the bankruptcy court against the proposed Rule 2004 examinee." *In re Wash. Mut., Inc.*, 408 B.R. at 50 (emphasis added) (quoting *In re Enron Corp.*, 281 B.R. 836, 842 (Bankr. S.D.N.Y. 2002)); *see also Snyder*, 52 F.3d at *1 (examination under Rule 2004 should not be used, as would be the case here, "to obtain information for use in an unrelated case or proceeding pending before another tribunal") (citing *Coffee Cupboard, Inc.*, 128 B.R. at 516).

20. The discovery sought in the Motion directly relates to, and overlaps with, the claims the Debtors have asserted against the FDIC-Receiver and FDIC-Corporate in *Washington Mutual, Inc. v. F.D.I.C.*, No. 1:09-cv-0533 (RMC) (D.D.C.). In that action, the Debtors claim that the FDIC "breached its statutory duty to maximize the net present value of

WMB's assets" by "failing to liquidate WMB in a manner allowing WMB's creditors and other claimants to recover what they would have recovered in a straight liquidation." D.C. Compl., ¶ 89. WMI asserts two different claims against the FDIC-Receiver and FDIC-Corporate predicated on this allegation. *See id.*, ¶¶ 81-92. In the Motion, the Debtors similarly assert the need to investigate the circumstances surrounding JPMC's purchase of WMB assets from the FDIC-Receiver at what the Debtors describe as a "fire sale" price. Mot., ¶ 16. Such an inquiry either directly relates to, or at least significantly overlaps, the Debtors' "dissipation" or "breach of duty" claims against the FDIC.

21. In its June 24 Opinion, the Court suggested that these similar allegations were not sufficiently related to bar Rule 2004 discovery *against JPMC*. *See In re Wash. Mut., Inc.*, 408 B.R. at 53 n.14. But JPMC was not a party to the D.C. action at that time, and the Court rejected JPMC's "related proceeding" argument on that basis alone, concluding that "'relatedness' of the D.C. Action to the Debtors' requested 2004 examination [was] not relevant." *Id.* at 53; *see also id.* ("The possibility that JPM may intervene in the DC Action is not a sufficient reason to deny the Debtors' Motion at this time. The 'pending proceeding' rule is predicated on there actually being a pending action *involving the two parties*.") (emphasis added).

22. In contrast to those circumstances, however, the D.C. action is a pending proceeding by the Debtors against both the FDIC-Receiver and FDIC-Corporate. Moreover, in proceedings since the Court's earlier Rule 2004 opinion, the Debtors have made it even more clear that their "dissipation" claims against the FDIC are substantially related to their "business tort" claims against JPMC. In opposing the FDIC's motions to dismiss the "dissipation" claim, the Debtors' counsel argued to the district court that: "You can't have a situation where the

government decides because it would like to see improvement to the balance sheet of an acquiring institution that they simply hand over the keys to the failed bank and say, you know what, you guys take it. We don't have to worry about it because we're immune from lawsuit." Transcript of Hearing on November 4, 2009, at 74-75 (attached as Exhibit B).

23. As in the Rule 2004 motion here, the Debtors' argument to the district court is that the FDIC favored, or conspired with, JPMC in the sale of assets to WMB. Whether such a claim is based on the theory that the FDIC wanted "to see improvement to the balance sheet" of JPMC, as the Debtors argued to Judge Collyer in November, or that "JPMC and the Regulators worked together to craft a deal for JPMC to acquire WMB at a fire-sale price . . . ," as the Debtors have argued to this Court in the Motion, there is no question that the matters are substantially related.

24. "[U]se of Rule 2004 discovery to circumvent discovery limitations in" parallel litigation is a recognized "abuse of Rule 2004." *Snyder*, 52 F.3d 1067, at *2 (citing *Coffee Cupboard*, 128 B.R. at 516). In this case, that abuse is even more egregious given that all proceedings in the debtor-initiated litigation pending in the District of Columbia – including discovery to the extent it might have been available – have been stayed at the request of the Debtors.

25. Third parties, who are not defendants in that action, similarly are entitled to the greater procedural protections provided under the Federal Rules of Civil Procedure that would apply to Rule 45 subpoenas issued by the Debtors in the D.C. action if they were required to take this discovery in that action, to which it clearly relates. Courts have recognized that the discovery provisions of the Federal Rules "are more restrictive [than Rule 2004] in scope with respect to requirements of relevance and to protections available to the party required to

comply." *2345 Plainfield Ave., Inc. v. Township of Scotch Plains (In re 2345 Plainfield Ave., Inc.)*, 223 B.R. 440, 456 (Bankr. D.N.J. 1998) (quashing Rule 2004 subpoena) (quoting *In re Sunridge Assoc.*, 202 B.R. 761, 762 (Bankr. E.D. Cal. 1996)).

26. The Debtors cannot have their cake and eat it too. They asked the district court to stay the D.C. action. That motion has been granted. They cannot now come to this Court and pursue discovery with respect to their claims in that stayed litigation under the guise of a Rule 2004 examination into possible claims against JPMC.

III. The Debtors Did Not Confer in Good Faith Before Bringing Their Rule 2004 Motion

27. The Motion also should be denied based on the Debtors' failure to confer in good faith with the FDIC-Receiver prior to filing it, as required by this Court's Local Rule 2004-1(a).[3]

28. The first contact the FDIC-Receiver had from the Debtors with respect to their demand for Rule 2004 discovery occurred on December 3, 2009, although the FDIC-Receiver understands that the Debtors had been speaking with other third parties about their requests for some time before then. During that and subsequent conversations, the FDIC-Receiver informed the Debtors that their attempt to take Rule 2004 discovery was improper for the reasons set forth above (among others). Nevertheless, counsel for the FDIC-Receiver and for FDIC-Corporate engaged in several telephone conversations with the Debtors' counsel in an

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[3] Local Rule 2004-1(a) provides:

> Conference Required. Prior to filing a motion for examination or for production of documents under Fed. R. Bankr. P. 2004, counsel for the moving party shall attempt to confer (in person or telephonically) with the proposed examinee or the examinee's counsel (if represented by counsel) to arrange for a mutually agreeable date, time, place and scope of an examination or production. If an agreement is reached, no motion shall be required, but a notice setting forth the identity of the examinee, and the date, time, place and scope of the examination or production shall be filed and served in accordance with this Local Rule.

effort to reach a resolution of the parties' disagreements regarding the propriety and scope of the Debtors' requests. During the last of these conversations, on Monday December 14, 2009, the FDIC made a specific proposal for a resolution. The Debtors' lawyers did not respond to that proposal, however, instead informing the FDIC-Receiver and FDIC-Corporate that they would be filing their Motion.

29. The tenor of the conversations throughout the process suggested that the Debtors were intent on bringing the Motion. Indeed, on several occasions the Debtors' counsel stated that there was time pressure for the FDIC-Receiver and FDIC-Corporate to accept their demands because the Debtors had obtained a January 4, 2010 hearing date for the Motion that they were unwilling to postpone. At least with respect to the Debtors' discussions with the FDIC, the discussions largely amounted to a demand by the Debtors' counsel that the FDIC simply agree to produce the documents that the Debtors were seeking rather than subjecting the Debtors to the burden of this Motion.

30. The Debtors' failure to meet and confer in a genuine effort to reach agreement as required under the Local Rules is sufficient grounds, standing alone, to deny the Motion.[4]

[4] The FDIC-Receiver reserves all of its other objections to the Debtors' proposed discovery in the event that the Motion is granted in whole or part.

CONCLUSION

For all of the foregoing reasons, the Motion should be denied.

Dated: Wilmington, Delaware
January 15, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP

M. Blake Cleary (No. 3614)
Jaime N. Luton (No. 4936)
1000 West Street, 17th Floor
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
mbcleary@ycst.com
jluton@ycst.com

- and -

Thomas R. Califano
John J. Clarke, Jr.
DLA PIPER LLP (US)
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 335-4500
Facsimile: (212) 335-4501

Attorneys for the FDIC-Receiver

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WASHINGTON MUTUAL, INC.,
1301 Second Avenue
Seattle, Washington 98101,

and

WMI INVESTMENT CORP.,
1301 Second Avenue
Seattle, Washington 98101,
Plaintiffs,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION,
550 17th Street, NW
Washington, DC 20429,
in its capacity as receiver for Washington Mutual Bank, and in its corporate capacity,

Defendant.

Case: 1:09-cv-00533
Assigned To : Collyer, Rosemary M.
Assign. Date : 3/20/2009
Description: General Civil

JURY ACTION

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment" and together with WMI, the "Plaintiffs"), by their undersigned counsel alleges as follows:

PARTIES

1. Washington Mutual Bank, Henderson, Nevada ("WMB") was a federal savings bank chartered pursuant to the Home Owners' Loan Act, 12 U.S.C. §§ 1461-70.

2. Defendant Federal Deposit Insurance Corporation ("FDIC") is the agency charged by law with, among other duties, administering the Federal Deposit Insurance Act and the federal bank deposit insurance system. The FDIC is sued in its corporate capacity ("FDIC-

Corporate") and in its capacity as the Receiver of WMB ("FDIC-Receiver"). This Complaint uses "FDIC" to refer to FDIC-Receiver and FDIC-Corporate collectively.

3. WMI is a holding company incorporated in the State of Washington with its principal place of business at 1301 Second Avenue, Seattle, Washington 98101. Prior to the Receivership Date and the Bankruptcy Petition Date (both as defined below), WMI was a savings and loan holding company that owned WMB, and indirectly owned WMB's subsidiaries, including Washington Mutual Bank fsb ("WMBfsb" and together with WMB and their respective banking subsidiaries, the "Banking Subsidiaries").

4. WMI Investment is a corporation organized under the laws of Delaware, with its principal place of business at 1301 Second Avenue, Seattle, Washington 98101, and is a wholly-owned subsidiary of WMI.

JURISDICTION AND VENUE

5. This action arises under the Constitution and laws of the United States, including, without limitation, the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. § 1811 et seq., as amended, the Fifth Amendment to the United States Constitution, and the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-80. This Court has jurisdiction over the subject matter of this action pursuant to 12 U.S.C. §§ 1819(b)(2)(A) and 1821(d)(6), and 28 U.S.C. § 1331.

6. Venue is proper in this Court under 12 U.S.C. § 1821(d)(6) and 28 U.S.C. § 1391(e).

BACKGROUND

7. On September 25, 2008 (the "Receivership Date"), the Director of the Office of Thrift Supervision ("OTS"), by order number 2008-36, appointed FDIC-Receiver as receiver for WMB and advised that FDIC-Receiver was immediately taking possession of WMB.

8. Immediately after its appointment as receiver, FDIC-Receiver, together with FDIC-Corporate, sold substantially all the assets of WMB, including the stock of WMBfsb, to JPMorgan Chase Bank, National Association ("JPMorgan Chase") pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008 (the "Purchase and Assumption Agreement").

9. On September 26, 2008 (the "Bankruptcy Petition Date"), the Plaintiffs each commenced a voluntary case (the "WMI Bankruptcy Proceeding") pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). The automatic stay in the Plaintiffs' chapter 11 cases prohibits any entity, including the FDIC and JPMorgan Chase, from, among other things, taking any action to obtain possession of property of the Plaintiffs' estates or to exercise control over such property.

THE PROOF OF CLAIM

10. Pursuant to section 11(d) of the FDI Act, 12 U.S.C. § 1821(d), FDIC-Receiver set December 30, 2008, as the last day to file claims against the Receivership. As described in detail below, Plaintiffs asserted claims against the Receivership (each a "Claim") by filing a proof of claim on December 30, 2008 (the "Proof of Claim").

11. Plaintiffs reserved all rights to amend and/or supplement the Proof of Claim at any time and in any respect and to assert any and all other claims of whatever kind or

nature that they have, or may have, against WMB. (This includes, but is not limited to, the reservation of rights set forth in paragraphs 60-65 of the Proof of Claim.) Plaintiffs likewise reserve all rights to amend and/or supplement this Complaint under the Federal Rules of Civil Procedure.

12. The Claims are unsecured, unless otherwise noted, and except to the extent that WMB asserts claims against the Plaintiffs. To the extent of any such claims asserted by WMB, Plaintiffs assert that the claims asserted hereunder are secured.

13. On the Receivership Date, many of the Plaintiffs' books and records were seized by the FDIC and transferred to the custody of JPMorgan Chase. As a result, the Proof of Claim was prepared, and this Complaint has been prepared, using the information available to the Plaintiffs, which was, in certain instances, only summary information set forth in the Plaintiffs' books and records. Plaintiffs endeavored to support the Claims with documentation in the Proof of Claim, where such documentation was reasonably available to the Plaintiffs. However, Plaintiffs did not attach supporting documentation where it would have been too voluminous but rather stated that such supporting documentation may be made available upon the FDIC's request.

A. Intercompany Loans

14. As of the Receivership Date, WMB was indebted to WMI, or to one of its subsidiaries identified below, for the outstanding principal, accrued interest, and other amounts due under the following promissory notes (the "Promissory Notes"):

- $82,048,081 under that certain Revolving Master Note, dated as of December 22, 2005, by and between WMB, as borrower, and H.S. Loan Corporation, as lender. H.S. Loan Corporation is a subsidiary of WMI, in which WMB owns 1.5748%.

- $73,670,153 under that certain Revolving Master Note, dated as of December 22, 2005, by and between WMB, as borrower, and H.S. Loan Partners, as lender. H.S. Loan Partners is an indirect, wholly-owned subsidiary of WMI.

- $7,781,240 under that certain Revolving Master Note, dated as of February 11, 2005, by and between WMB, as borrower, and WMHFA Delaware Holdings LLC, as lender. WMHFA Delaware Holdings LLC is an indirect, wholly-owned subsidiary of WMI.

- $13,576,245 under that certain Registered Security, Note A, dated as of December 17, 2004, by and between University Street, Inc., as payor and predecessor in interest to WMB, and WMRP Delaware Holdings LLC, as payee, and predecessor in interest to PCA Asset Holdings LLC. This Promissory Note is recorded on WMI's books and records as an obligation owed to PCA Asset Holdings LLC, an indirect subsidiary of WMI, by WMB.

15. Accordingly, WMI asserts a claim in the aggregate amount of $177,075,719 on account of the outstanding principal and accrued interest due under the Promissory Notes, plus a liquidated, unsecured claim for all other amounts due under the Promissory Notes, as described in paragraphs 8-9 of the Proof of Claim and Exhibit A to the Proof of Claim.

B. Intercompany Receivables

16. Prior to the Receivership Date, Plaintiffs incurred expenses on behalf of WMB, which expenses resulted in intercompany receivables owed by WMB to the respective Plaintiff and are reflected as such in the books and records of Plaintiffs and WMB (the "Intercompany Receivable Claims").

17. In particular, WMI has Intercompany Receivable Claims against WMB and WaMu Capital Corp., a subsidiary of WMB, for $22,528,014, relating principally to WMI's issuance of stock-based compensation to certain WMB and WaMu Capital Corp. employees. A summary of the amounts owed to WMI and the corresponding intercompany account numbers is as follows:

Account Debtor	WMI Account Receivable Number	Amount
WMB	28101	$9,298,479
WMB	28120	$13,200,977
WaMu Capital Corp.	28025	$28,558

18. In addition, as of the Receivership Date, pursuant to certain servicing agreements and pursuant to that certain Administrative Services Agreement (collectively, the "Servicing Agreements"), WMB or one of the Banking Subsidiaries serviced certain mortgage loans held by WMI or its subsidiaries. Pursuant to the Servicing Agreements, WMB, as servicer, collected amounts due under the mortgage loans and, at pre-determined intervals, remitted such amounts to WMI or its subsidiaries, as the holders of such mortgage loans. As of the Receivership Date, WMB had failed to remit certain amounts due to Plaintiffs in the aggregate approximate amount of $184,849 on account of the mortgage loans. A summary of the amounts owed to WMI and certain of its subsidiaries on account of such Servicing Agreements is as follows:

Account Debtor	Obligee	Amount
WMB	H.S. Loan Corp.	$17,477
WMB	Ahmanson Obligation Co.	$143,657
WMB	Sutter Bay Corp.	$11,129
WMB	Flower Street Corp.	$10,396
WMB	H.S. Loan Partners LLC	$2,190

19. Accordingly, Plaintiffs assert Claims for each of these amounts owed, as described in paragraphs 10-14 of the Proof of Claim and Exhibit B to the Proof of Claim.

C. Taxes

20. WMI, WMB, WMBfsb, and certain other direct and indirect subsidiaries of WMI and WMB are parties to that certain Tax Sharing Agreement, dated as of August 31, 1999. Pursuant to the Tax Sharing Agreement, all federal income taxes were paid directly by WMI on behalf of the consolidated tax group, which includes WMB and its subsidiaries. A

copy of the Tax Sharing Agreement is set forth at Exhibit C to the Proof of Claim. Historically, in accordance with the Tax Sharing Agreement, each subsidiary member to the Tax Sharing Agreement made federal-tax related payments to WMI in respect of the hypothetical, separate federal income tax liabilities of such member and its subsidiaries. Prior to the Receivership Date, pursuant to the Tax Sharing Agreement, WMI paid federal taxes due and owing by the consolidated tax group, including amounts due and owing by WMB and/or its subsidiaries. However, as of the Receivership Date, WMB and its subsidiaries had not paid WMI all federal-tax related amounts under the Tax Sharing Agreement. Accordingly, WMI asserts an unliquidated claim against WMB on account of any and all federal taxes paid on behalf of WMB and/or its subsidiaries and WMI reserved all rights to assert any and all such claims against WMB and its subsidiaries, including any claims arising from any ongoing federal tax audits, as described in paragraph 15 of the Proof of Claim.

21. In addition, WMI has certain claims against WMB and its subsidiaries on account of state, local and possibly foreign taxes paid on behalf of WMB and its subsidiaries and WMI reserved all rights to assert any and all such claims against WMB and its subsidiaries, as described in paragraph 16 of the Proof of Claim.

22. Further, on account of WMI's payment of federal, state and local taxes for the consolidated or combined tax group, WMI is, or will be, entitled to tax refunds currently estimated to be approximately $3 billion (the "Tax Refunds"). Pursuant to the Tax Sharing Agreement, all refunds for federal taxes are payable to WMI, regardless of whether such refunds are on account of federal taxes paid in respect of WMB or its subsidiaries or any of WMI's other subsidiaries. In addition, certain state and local tax refunds are payable to WMI in respect of group tax filings that included WMB or its subsidiaries. In anticipation of the receipt of certain

Tax Refunds in respect of which certain amounts would be payable by WMI to WMB pursuant to or in furtherance of the Tax Sharing Agreement, WMI paid such amounts to WMB prior to the Receivership Date by crediting such amounts against tax payments otherwise due from WMB at such time. WMI therefore asserts a claim against WMB for the amounts so paid by WMI. In addition, in the event that FDIC-Receiver asserts a claim to and obtains any portion of the Tax Refunds directly or indirectly from the Internal Revenue Service, WMI asserts a claim against WMB and/or its subsidiaries on account of such refunded amounts. WMI may also have claims against WMB and its subsidiaries in respect of all or a portion of state, local and foreign tax refunds received by WMB and its subsidiaries and asserts a claim against WMB and its subsidiaries for any and all such claims, as described in paragraph 17 of the Proof of Claim.

23. WMI is currently undergoing several federal, state, local and foreign tax audits. To the extent that any federal, state, local or foreign taxing authority, including, without limitation, those taxing authorities that are currently auditing WMI, assesses additional taxes against WMI, WMI expressly reserves all rights to supplement and/or amend the Proof of Claim to include any amounts attributable to WMB or its subsidiaries.

24. In the event FDIC-Receiver seeks to repudiate the Tax Sharing Agreement in accordance with section 1821(e) of title 12 of the United States Code, Plaintiffs assert a claim for any and all damages or claims that arise from such repudiation (and Plaintiffs expressly reserve all rights to oppose any such attempt to repudiate the Tax Sharing Agreement).

D. Capital Contribution Claims

25. From December, 2007, through April, 2008, WMI raised approximately $10 billion in the capital markets. During that period, WMI's principal assets consisted of cash, the stock of WMB, and the stock of the other Plaintiff and other WMI subsidiaries. Throughout 2008, WMI's debt obligations approximated $7 billion. In 2007 and 2008, WMI made $6.5

billion of capital contributions to WMB in the amounts and on the dates specified below (the "Capital Contributions"):

Date	Amount
December 1, 2007	$1,000,000,000.00
April 18, 2008	$3,000,000,000.00
July 21, 2008	$2,000,000,000.00
September 10, 2008	$500,000,000.00

The Capital Contributions are more fully described in paragraph 20 of the Proof of Claim and Exhibit D to the Proof of Claim.

26. At the time of each of the Capital Contributions, WMB had public debt obligations of approximately $22 billion.[1] WMI or WMB may have been insolvent at the time that the Capital Contributions were made. If, at the time of each Capital Contribution, WMB was insolvent, had unreasonably small capital, and/or was unable to pay its own debt obligations as they matured, WMI did not receive any value in exchange for the Capital Contributions. In addition, the Capital Contributions may have (i) been made while WMI was insolvent or rendered WMI insolvent, (ii) been made while WMI had unreasonably small capital for its business operations, and/or (iii) left WMI unable to repay its own obligations as they matured.

27. Moreover, upon information and belief, the FDIC or the OTS induced WMI to make one or more of the Capital Contributions at a time when such agencies knew or should have known that appointment of the FDIC as receiver for WMB was imminent.

28. Accordingly, if WMI was insolvent at the time any of the Capital Contributions were made, WMI asserts a fraudulent transfer claim pursuant to sections 544 and

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[1] Due to some debt repurchases, the principal balance outstanding is approximately $21.3 billion.

548 of the Bankruptcy Code in an amount up to $6.5 billion, and for all other claims or causes of action, under any theory, applicable to the Capital Contributions.

E. Trust Preferred Securities Claims

29. In February 2006, Washington Mutual Preferred Funding LLC ("WMPF"), a Delaware limited liability company, was formed to facilitate capital-raising transactions through the issuance of preferred securities to investors (such preferred securities are referred to herein collectively as "Trust Preferred Securities") by certain special purpose entities (the "SPEs"). These securities were offered solely to "qualified institutional buyers" or "qualified purchasers." The Trust Preferred Securities have an aggregate liquidation preference of $4 billion.

30. WMPF's assets were limited to direct or indirect interests in mortgages or mortgage-related assets, cash and other permitted assets. These assets were held in certain Delaware statutory trusts (the "Asset Trusts"). WMPF issued preferred securities (the "WMPF Preferred Securities"), which were held by and were the sole asset of the SPEs and which were senior in priority to WMB's indirect common equity interest in WMPF. Thus, the Trust Preferred Securities issued by the SPEs (which had no material creditors) represented an interest in the WMPF Preferred Securities and, in turn, an indirect interest in the assets held by the Asset Trusts. Immediately before the Receivership Date, WMPF was an indirect subsidiary of WMB and as a result, WMB held an indirect interest in the assets held in the Asset Trusts, subordinate to the liquidation preference of the Trust Preferred Securities.

31. The Trust Preferred Securities were sold to investors subject to a "conditional exchange" feature. This feature provided that if the OTS so directed, upon (i) WMB becoming undercapitalized, (ii) WMB being placed into receivership or conservatorship or (iii) the OTS anticipating, in its sole discretion, WMB becoming undercapitalized in the near

term or taking a supervisory action that limited the payment of dividends by WMB, then the Trust Preferred Securities were required to be exchanged into shares of preferred stock of WMI (or depositary shares representing an interest in preferred stock of WMI). The OTS notified WMI on the Receivership Date that an "exchange event" occurred, as such term is defined in the documentation governing the Trust Preferred Securities. According to the terms of the Trust Preferred Securities, the exchange of the Trust Preferred Securities for preferred stock of WMI (or depositary shares representing an interest in preferred stock of WMI) is deemed to occur automatically following the issuance by WMI of a press release announcing the exchange event. WMI issued such a press release and the conditional exchange became effective at 8:00 a.m. ET on September 26, 2008.

32. In addition, WMI purportedly executed an assignment as of September 25, 2008, in which it purported to assign to WMB all its right, title, and interest in and to any and all of the Trust Preferred Securities or preferred securities issued by WMPF, as the case may be, in its possession or coming into its possession (the "Assignment Agreement"). Assuming arguendo that the terms of the Trust Preferred Securities (and the documents and agreements related to the issuance of such securities) and the Assignment Agreement are legally effective and enforceable, and that there are no defenses to the enforceability of such agreements under the Bankruptcy Code or other applicable law, all of which defenses and claims WMI expressly reserves and hereby asserts, the effect of these transactions was to cause the Trust Preferred Securities to be owned by WMI and then purportedly transferred to WMB immediately before the commencement of WMI's chapter 11 bankruptcy case on September 26, 2008.

33. On information and belief, the Trust Preferred Securities have a value of as much as $4 billion. WMI may not have received any value for the purported transfer of the

Trust Preferred Securities to WMB because, at the time of such purported transfer, WMB may have been insolvent, may have had unreasonably small capital, and/or may have been unable to pay its own debt obligations as they matured. With respect to the purported transfer of the Trust Preferred Securities, WMI asserts fraudulent transfer claims against WMB pursuant to sections 544 and 548 of the Bankruptcy Code in connection with the transfer of the Trust Preferred Securities.

34. Furthermore, if WMI was insolvent at the time of such purported transfer and the Trust Preferred Securities were transferred to WMB on account of an antecedent debt owed to WMB, WMI also asserts a claim to recover such securities as a voidable preference pursuant to sections 544 and 547 of the Bankruptcy Code.

35. In addition, if the Trust Preferred Securities were wrongfully transferred to WMB, WMI asserts a claim for such wrongful transfer and the return of such assets. In the alternative, WMI asserts that the purported transfer of the Trust Preferred Securities was not properly executed, and, therefore, ineffectual. Accordingly, WMI asserts that it is the owner of the Trust Preferred Securities. Finally, as a result of the FDIC's actions purporting to transfer the Trust Preferred Securities from WMI to WMB, and then to JPMorgan Chase or any other party, WMI has been deprived of the use of the Trust Preferred Securities and their proceeds from the Receivership Date onward and asserts a claim with respect thereto against WMB. WMI reserves all other claims or causes of action, under any theory, with respect to the Trust Preferred Securities, as set forth in paragraphs 24-30 of the Proof of Claim.

F. Preference Claims

36. On or before the Receivership Date, on numerous occasions, WMI transferred property to, or caused its property (or an interest in its property) to be transferred to, WMB or to certain third parties for the benefit of WMB (the "Transfers") on account of

antecedent obligations of WMI to WMB. The approximate amount of the Transfers occurring during the one-year period before the Bankruptcy Petition Date is $151,934,564. A list of such Transfers is attached hereto as Exhibit 1.[2]

37. At the time of the Transfers, WMB was (i) an "insider" of WMI as that term is defined in the Bankruptcy Code or under applicable non-bankruptcy law and (ii) a "creditor" of WMI, as that term is defined in the Bankruptcy Code or under applicable non-bankruptcy law.

38. If WMI was insolvent at the time the Transfers were made to WMB, the Transfers may be voidable pursuant to, among other applicable law, (i) sections 544 (applying applicable non-bankruptcy law) and 547 of the Bankruptcy Code and (ii) applicable non-bankruptcy law.

39. Specifically, if WMI was insolvent at the time such Transfers were made, WMI seeks to recover each Transfer from WMB as a voidable preference on the grounds that such Transfer (i) was to or for the benefit of a creditor, (ii) was to or on account of an antecedent debt of WMI, (iii) was made while WMI was insolvent, (iv) was made within one year or less from the date that WMI's bankruptcy case was commenced, and (v) would permit WMB to receive more than it would receive in a case under chapter 7 of the Bankruptcy Code if such Transfer had not been made.

40. Accordingly, Plaintiffs assert a claim for all transactions constituting a voidable preference, as described in paragraphs 31-35 of the Proof of Claim.

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[2] Exhibit 1 may not be an exhaustive list of all Transfers. Accordingly, Plaintiffs reserve their rights to amend and/or supplement Exhibit 1 and the corresponding aggregate amount of the Transfers.

G. Vendor Contract Claims

41. WMI is party to numerous agreements with vendors (the "Vendors") who lease property, perform services, deliver goods, or license software that primarily benefit the banking operations formerly owned by WMB (the "Vendor Contracts"). Typically, prior to the Receivership, WMB, as the primary beneficiary, paid Vendors for goods and services received pursuant to the Vendor Contracts. After the Receivership Date, JPMorgan Chase paid certain Vendors for outstanding pre- and post-Receivership obligations incurred in connection with the Vendor Contracts. Notwithstanding these payments, there continue to be unpaid obligations outstanding in connection with certain of the Vendor Contracts. Accordingly, as a party to the Vendor Contracts, WMI asserts a claim against WMB for any and all outstanding liabilities on account of goods or services provided to WMB. Similarly, to the extent Vendors assert claims against WMI for WMI's rejection of any of the Vendor Contracts in its bankruptcy cases, WMI asserts a claim against WMB for any and all such Vendor claims.

H. Subrogation Claims

42. Predecessors in interest to WMB issued the debt securities identified below (the "WMB Predecessor Notes") pursuant to the indentures listed opposite such WMB Predecessor Notes below (the "Indentures"). The WMB Predecessor Notes were issued to evidence loans made to WMB's predecessors in interest of the proceeds from the issuance by certain statutory trusts (the "CCB Capital Trusts") of preferred and common beneficial interests in the assets of such trusts:

- 10.18% Junior Subordinated Deferrable Interest Debentures due 2031 issued pursuant to that certain Indenture by and between Hawthorne Financial Corporation, as Issuer, and Wilmington Trust Company, as Debenture Trustee, dated as of March 28, 2001, as amended from time to time.
- Floating Rate Junior Subordinated Debt Securities due 2033 issued pursuant to that certain Indenture by and between Commercial Capital Bancorp, Inc., as

Issuer, and Wilmington Trust Company, as Trustee, dated as of September 25, 2003, as amended from time to time.

- Floating Rate Junior Subordinated Debt Securities due 2034 issues pursuant to that certain Indenture by and between Commercial Capital Bancorp, Inc., as Issuer, and Wilmington Trust Company, as Trustee, dated as of December 19, 2003, as amended from time to time.

- Floating Rate Junior Subordinated Notes due 2034 issued pursuant to that certain Junior Subordinated Indenture by and between Commercial Capital Bancorp, Inc., as Issuer, and Deutsche Bank Trust Company Americas, as Trustee, dated as of March 31, 2004, as amended from time to time.

- Floating Rate Junior Subordinated Debt Securities due 2034 issued pursuant to that certain Indenture by and between Commercial Capital Bancorp, Inc., as Issuer, and Wilmington Trust Company, as Trustee, dated as of May 27, 2004, as amended from time to time.

- Floating Rate Junior Subordinated Debt Securities due 2034 issued pursuant to that certain Indenture by and between Commercial Capital Bancorp, Inc., as Issuer, and Wilmington Trust Company, as Trustee, dated as of June 22, 2004, as amended from time to time.

- Junior Subordinated Notes due 2035 issued pursuant to that certain Junior Subordinated Indenture by and between Commercial Capital Bancorp, Inc., as Issuer, and Deutsche Bank Trust Company Americas, as Trustee, dated as of February 2, 2005, as amended from time to time.

43. By supplemental indentures or other agreements relating to each of the Indentures, dated as of November 1, 2007, WMB assumed all obligations of the issuers pursuant to the Indentures. Pursuant to the terms of certain Indenture Guarantees, dated as of November 1, 2007, WMI guaranteed WMB's obligations under the WMB Predecessor Notes.

44. WMI asserts a subrogation claim against WMB for any amount it is obligated to pay pursuant to the Indenture Guarantees or any other guarantee of WMB's obligations, as described in paragraphs 37-39 of the Proof of Claim and Exhibit F to the Proof of Claim.

I. Improper Asset Sales

45. On the Receivership Date, the FDIC may have taken possession and control of certain property (including, but not limited to, furniture, fixtures, equipment, and other tangible and intangible assets) owned by Plaintiffs or for which transfer of such property from Plaintiffs' ownership was improper or subject to avoidance and recovery. To date, the FDIC has neither accounted for nor compensated the Plaintiffs for this property. The FDIC, may have converted Plaintiffs' property by purporting to transfer an ownership interest in some or all of such property to JPMorgan Chase. Plaintiffs thus assert a claim against WMB for recovery of such property or payment, in full, for such transferred property, to the extent applicable, in an amount to be determined.

46. Plaintiffs expressly reserve their rights to make additional claims against WMB for reasonable payment for the use-value of such property, plus interest, until such time as the property is returned to Plaintiff's use.

J. Deposit Claim

47. On the Receivership Date, WMI and its subsidiaries maintained twenty-eight separate demand deposit accounts with WMB (the "WMB Deposits Accounts") and a twenty ninth account with WMBfsb (the "FSB Deposit Account"). Of the accounts owned by non-debtor subsidiaries of WMI, as of the date of the Proof of Claim and this Complaint, twenty of the accounts (the "Non-Debtor Deposit Accounts") have been moved to other financial institutions and three (3) accounts remain on deposit with JPMorgan Chase (the "Non-Debtor WMB Deposit Accounts"). Furthermore, as of the date of the Proof of Claim and this Complaint, six (6) accounts owned by WMI or WMI Investment (the "Debtor Deposit Accounts") also remain on deposit with JPMorgan Chase.

48. On information and belief, each of the WMB Deposit Accounts was transferred to JPMorgan Chase pursuant to the Purchase and Assumption Agreement and JPMorgan Chase assumed all liability to WMI as a depositor with respect to the WMB Deposit Accounts. On information and belief, JPMorgan Chase acquired the stock of WMBfsb pursuant to the Purchase and Assumption Agreement and subsequently merged WBMfsb into JPMorgan Chase, thereby assuming all liability to WMI as a depositor with respect to the FSB Deposit Account.

49. Although WMI believes that it now is a depositor of JPMorgan Chase with respect to the Debtor Deposit Accounts and the Non-Debtor WMB Deposit Accounts and a depositor of an unrelated financial institution with respect to the Non-Debtor Deposit Accounts, on information and belief the FDIC and JPMorgan Chase continue to reserve certain rights with respect to the Debtor Deposit Accounts, the Non-Debtor WMB Deposit Accounts, and/or the Non-Debtor Deposit Accounts, including rights under the Purchase and Assumption Agreement. If Plaintiffs' rights to the Debtor Deposit Accounts, the Non-Debtor WMB Deposit Accounts, or the Non-Debtor Deposit Accounts are in any way compromised or modified, WMI asserts a claim against WMB for any lost value or other consequential damages. Without prejudice to WMI's position that it is a depositor of JPMorgan Chase, Plaintiffs asserted a protective claim for the outstanding balance on each of the Debtor Deposit Accounts, the Non-Debtor WMB Deposit Accounts, and the Non-Debtor Deposit accounts in the event FDIC exercises any rights it may have under the Purchase and Assumption Agreement, or otherwise, with respect to the Debtor Deposit Accounts, the Non-Debtor WMB Deposit Accounts, or the Non-Debtor Deposit Accounts, as described in paragraphs 43-45 of the Proof of Claim. This claim is entitled to priority pursuant to 12 U.S.C. § 1821(d)(11)(a)(ii). Furthermore, the FDIC does not have any

right of setoff with respect to either the Debtor Deposit Accounts, the Non-Debtor WMB Deposit Accounts, or the Non-Debtor Deposit Accounts on account of any claims it may assert against WMI or the other Plaintiffs.

50. In addition, by reason of the Receivership and the subsequent sale of substantially all of WMB's assets to JPMorgan Chase, Plaintiffs have been denied access to, control, and use of the WMB Deposit Accounts and the FSB Deposit Account by JPMorgan Chase and were unable to, among other things, invest the funds in the WMB Deposit Accounts and the FSB Deposit Account, move the funds to another institution, or transfer the funds to interest-bearing accounts. Accordingly, Plaintiffs hereby assert a claim against WMB for damages, including interest, for the lost use of the funds in the WMB Deposit Accounts and the FSB Deposit Account from September 25, 2008, until such time as Plaintiffs are able to transfer such funds to interest bearing accounts at other institutions.

K. Administrative Claims

51. In certain instances, WMI may have paid or become liable for costs and/or expenses that inured to the benefit of WMB subsequent to the Receivership Date. These amounts may include, without limitation, liability incurred by WMI as a result of JPMorgan Chase's decision to exclude certain contracts from the Purchase and Assumption Agreement and expenses incurred by WMI that may have benefited WMB. WMI asserts claims against WMB for all such costs and expenses, as described in paragraph 47 of the Proof of Claim.

L. Employee/Employer Related Costs and Insurance Claims

52. Prior to the Receivership, WMI was the sponsor of all employee benefit plans, including, among others, the Washington Mutual, Inc. Cash Balance Pension Plan, the Washington Mutual, Inc. Savings Plan, and the Washington Mutual, Inc. Flexible Benefits Plan (the "Benefit Plans"). These plans covered all of WMI's employees, as well as employees of

WMB. WMI may transfer sponsorship of certain of the Benefit Plans to JPMorgan Chase; however, WMI reserves all rights to assert a claim against WMB on account of all amounts paid by WMI on account of such plans for the benefit of WMB employees for which WMI was not reimbursed, as described in paragraph 48 of the Proof of Claim.

53. In addition, prior to the Receivership, WMI sponsored certain deferred compensation plans. To the extent that WMI is or becomes liable for amounts due under such deferred compensation plans, WMI asserts a claim for amounts due on account of past and/or present WMB employees and directors.

54. In addition, with respect to the Cash Balance Pension Plan (the "Pension Plan"), if it is determined that the Pension Plan is underfunded, WMI asserts a claim against WMB for the amount of such underfunding that is attributable to WMB and any other costs, expenses or liabilities associated therewith.

55. WMI also reserves all rights to assert claims against WMB for any and all other employee or employer related costs incurred by WMI on behalf of WMB and its employees, which may include, without limitation, payroll, severance and related taxes, as described in paragraphs 48-51 of the Proof of Claim.

56. In addition, WMI is the owner of certain bank-owned and corporation-owned life insurance policies (the "BOLI-COLI Policies"). In certain instances, as reflected in WMI's Schedules, WMI's ownership interest in the BOLI-COLI Policies is reflected on its books and records and in certain other instances, WMI may have an ownership interest in BOLI-COLI Policies reflected on WMB's books and records. WMI asserts a claim against WMB for any and all premiums and other charges paid by WMI on account of BOLI-COLI Policies owned by WMB. WMI also reserves all rights to assert a claim against WMB for the value and

proceeds of any BOLI-COLI Policies owned by WMI, but reflected on the books and records of WMB, as described in paragraph 52 of the Proof of Claim.

57. WMI also has an ownership interest in a variety of insurance policies. Certain of WMI's insurance policies name WMI and its subsidiaries, including WMB and its subsidiaries as insured persons. To the extent that WMB asserts claims to proceeds of such insurance policies, WMI asserts a claim against WMB for such amounts, as described in paragraph 53 of the Proof of Claim.

M. Indemnification Claims

58. WMI's bylaws provide for the indemnification of all WMI directors and officers. Prior to the Bankruptcy Petition Date, approximately sixty employees of WMB were officers of WMI. To the extent that such officers (or any directors, officers, or employees of WMB) assert indemnification or contribution claims against WMI, WMI asserts claims for reimbursement of such claims against WMB.

59. In addition, after the Bankruptcy Petition Date, WMI purchased an extension of the coverage period for its directors' and officers' liability insurance policy. To the extent that this extended insurance coverage benefits officers of WMB, WMI asserts a claim against WMB and/or its subsidiaries for their share of the cost of procuring the extended coverage.

N. Other Claims

60. Out of an abundance of caution, Plaintiffs assert contingent, unliquidated claims against WMB to the extent any of Plaintiffs are obligated, or become obligated, on account of WMB, including, but not limited to, on account of claims arising from WMB's mortgage loan origination business, as described in paragraph 53 of the Proof of Claim.

61. Plaintiffs further assert a claim for any other amounts due to Plaintiffs described in the Proof of Claim, including, but not limited to the amounts more fully described in paragraphs 57-59 of the Proof of Claim that are due to Plaintiffs for fees, costs, and expenses, for interest, and pursuant to WMI's equity interest in WMB.

THE FDIC'S DENIAL OF PLAINTIFFS' PROOF OF CLAIM

62. As alleged more fully above, Plaintiffs filed their proof of claim with FDIC-Receiver on December 30, 2008.

63. In a letter dated January 23, 2009, FDIC-Receiver provided WMI notice that Plaintiffs' claims had been disallowed. A copy of the FDIC-Receiver's notice is attached as Exhibit 2.

64. The FDIC-Receiver's notice stated that Plaintiffs' claims were disallowed because:

> The claims presented are unproven to the satisfaction of the Receiver since they lack sufficient documentation or specificity, they fail to state claims against the receivership, they appear to assert claims against a third party or there is no legal basis for the claims. Equity claims are paid in accordance with 12 U.S.C. sec. 1821(d)(11).

65. The notice provides no additional detail or explanation regarding the FDIC-Receiver's decision.

66. On information and belief, it is the FDIC-Receiver's practice to request further information from claimants if the FDIC-Receiver requires further information to determine whether a claim and/or the amount of such claim is valid. See, e.g., ALLTEL Info. Servs., Inc. v. FDIC, 970 F. Supp. 775, 776 (C.D. Cal. 1997) ("In response to a request by an FDIC claims representative, ALLTEL provided the FDIC a letter . . . which provided calculations in support of both Proofs of Claims.")

67. FDIC-Receiver did not request any further information from Plaintiffs or their counsel regarding the Proof of Claim.

68. On information and belief, FDIC-Receiver typically issues receivership certificates when it allows a claim, but has not yet determined the amount (if any) that the claimant will receive when the proceeds of the receivership estate are distributed.

69. FDIC-Receiver did not provide Plaintiffs with any receivership certificates, but rather disallowed their Claims outright.

70. Section 11(d)(2)(H) of the FDI Act states that FDIC-Receiver "shall pay all valid obligations of the insured depository institution in accordance with the prescriptions and limitations of this chapter." 12 U.S.C. § 1821(d)(2)(H).

71. FDIC-Receiver's refusal to consider Plaintiffs' Claims and cryptic disallowance of those Claims violated the FDIC-Receiver's statutory duty to pay all valid claims in accordance with the FDI Act.

72. Section 11(d)(5)(B) of the FDI Act further obligates FDIC-Receiver to "allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver." 12 U.S.C. § 1821(d)(5)(B).

73. FDIC-Receiver provided no grounds regarding why Plaintiffs' claims were not proven to its satisfaction. The FDIC-Receiver's failure to do so is a violation of its statutory duties.

74. The FDI Act provides that, when FDIC Receiver has disallowed a claim, the claimant may "request administrative review of the claim" or "file suit on such claim (or continue an action commenced before the appointment of the receiver) in the district or territorial

court of the United States for 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 (and such court shall have jurisdiction to hear such claim)." 12 U.S.C. § 1821(d)(6)(A).

75. The FDI Act further provides that, "[i]f any claimant requests review under this subparagraph in lieu of filing or continuing any action under paragraph (6) and the Corporation agrees to such request, the Corporation shall consider the claim after opportunity for a hearing on the record." 12 U.S.C. § 1821(d)(7)(A). "The Corporation shall also establish such alternative dispute resolution processes as may be appropriate for the resolution of claims . . . ." 12 U.S.C. § 1821(d)(7)(B)(i).

76. Notwithstanding these statutory directives, the FDIC-Receiver's notice sets forth no administrative review process in which Plaintiffs could seek a hearing regarding their claims. Nor does it appear that the FDIC has established any alternative dispute resolution mechanism to resolve proof of claim disputes.

77. Rather, FDIC-Receiver's notice directs Plaintiffs to file a lawsuit if Plaintiffs disagree with the disallowance of their claims. Accordingly, Plaintiffs filed this action.

CLAIMS FOR RELIEF

Count I
Determination of Plaintiffs' Proof of Claim

78. Plaintiffs incorporate the allegations and averments contained in paragraphs 5 through 77 as if set forth fully herein.

79. Under 12 U.S.C. § 1821(d)(6)(A), the Court has de novo jurisdiction to consider Plaintiffs' Claims set forth in the Proof of Claim. See, e.g. Freeman v. FDIC, 56 F. 3d 1394, 1400 (D.C. Cir. 1995) ("[U]nder section 1821(d)(6) [claimant] had recourse to de novo

judicial review of the FDIC's denial of [their] claim."); Benjamin Franklin Shareholders Litig. Fund v. FDIC, 501 F. Supp. 2d 103, 106 (D.D.C. 2007) ("[T]his Court reviews de novo claims filed with, and processed by the FDIC under its administrative claims process.") (citing Freeman v. FDIC, 56 F. 3d 1394, 1400 (D.C. Cir. 1995)).

80. Each Claim is a valid and proven claim against the Receivership and FDIC-Receiver is obligated to pay such Claims (subject to, and in accordance with, 12 U.S.C. § 1821(d)(11)).

Count II
Dissipation of WMB's Assets

81. Plaintiffs incorporate the allegations and averments contained in paragraphs 5 through 80 as if set forth fully herein.

82. According to the OTS's press release announcing the FDIC's appointment as receiver for WMB, the OTS stated that WMB had "insufficient liquidity to meet its obligations" and thus "was in an unsafe and unsound condition to transact business." A fact sheet accompanying that press release further stated that "[s]ignificant deposit outflows began on September 15, 2008" and that "[g]iven the Bank's limited sources of funds and significant deposit outflows, it was highly likely to be unable to pay its obligations and meet its operating liquidity needs." (Copies of the press release and fact sheet are attached as Exhibit 3.) Accordingly, on information and belief, the OTS's rationale for placing WMB into receivership was illiquidity, rather than insolvency.

83. According to the OTS fact sheet (see Exhibit 3), the OTS stated that WMB qualified as "well-capitalized" under the OTS's regulatory capital regulations through the Receivership Date.

84. Notwithstanding this, the FDIC has indicated that it "does not anticipate that subordinated debt holders of the bank will receive any recovery on their claims."[3] On information and belief, general creditors of WMB are unlikely to be paid in full as well.

85. Rather than a straight liquidation of WMB's assets, the FDIC entered into the Purchase and Assumption Agreement with JPMorgan Chase, described more fully above, for the purchase price of $1.9 billion.

86. On information and belief, the assets of WMB sold, less the liabilities assumed, were worth more than $1.9 billion, had such assets been liquidated in a prudent and reasonable manner.

87. On information and belief, Plaintiffs will not receive payments from the Receivership for their Claims that would be equal to or greater than the payments for that Plaintiffs would have received had the FDIC conducted a straight liquidation of WMB's assets and liabilities (and had the FDIC not improperly disallowed Plaintiffs' Claims).

88. The FDI Act requires "the Corporation [to] conduct its operations in a manner which . . . maximizes the net present value return from the sale or disposition of such assets . . . ." 12 U.S.C. § 1821(d)(13)(E)(i).

89. By failing to liquidate WMB in a manner allowing WMB's creditors and other claimants to recover what they would have recovered in a straight liquidation, the FDIC breached its statutory duty to maximize the net present value of WMB's assets.

90. The FDI Act further provides that "[t]he maximum liability of the [FDIC], acting as receiver or in any other capacity, to any person having a claim against the receiver or

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[3] FDIC, Information for Washington Mutual Bank, Henderson, NV and Washington Mutual Bank, FSB, Park City, UT, *available at* http://www.fdic.gov/bank/individual/failed/wamu.html

the insured depository institution for which such receiver is appointed shall equal the amount such claimant would have received if the [FDIC] had liquidated the assets and liabilities of such institution . . . ." 12 U.S.C. § 1821(i)(2). Pursuant to this provision, the FDIC is obligated to pay damages to Plaintiffs equal to the difference between what Plaintiffs would have received in a straight liquidation of WMB and what they actually received.

Count III
Taking of Plaintiffs' Property Without Just Compensation

91. Plaintiffs incorporate the allegations and averments contained in paragraphs 5 through 90 as if set forth fully herein.

92. The FDIC's wasting of WMB's assets and failure to compensate Plaintiffs for their claims against WMB equivalent to what Plaintiffs would have received for such claims in a straight liquidation of WMB's assets constitutes a taking of Plaintiffs' property without just compensation in violation of the Fifth Amendment to the United States Constitution.

Count IV
Conversion of Plaintiffs' Property

93. Plaintiffs incorporate the allegations and averments contained in paragraphs 5 through 90 as if set forth fully herein.

94. The FDIC's refusal to compensate Plaintiffs for property taken into the Receivership that (a) belonged to Plaintiffs rather than WMB, (b) was improperly transferred to WMB, and/or (c) is property that otherwise should be returned to Plaintiffs under applicable law, constitutes conversion of Plaintiffs' property.

95. The FDIC's conversion of Plaintiffs' property is actionable under the Federal Tort Claims Act (28 U.S.C. §§ 1346(b), 2671-80).

Count V
Declaration That the FDIC-Receiver's Disallowance Is Void

96. Plaintiffs incorporate the allegations and averments contained in paragraphs 5 through 90 as if set forth fully herein.

97. FDIC-Receiver's failure to consider Plaintiffs' Proof of Claim and the FDIC-Receiver's summary disallowance of the Proof of Claim without any meaningful explanation is an abrogation of FDIC-Receiver's statutory duties. Therefore, FDIC-Receiver's disallowance should be declared void and FDIC-Receiver should be required to reconsider Plaintiffs' Proof of Claim as if FDIC-Receiver's January 23rd disallowance never occurred.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the Court to grant the following relief:

1. An order declaring Plaintiffs' Claims to be valid and proven against the Receivership;
2. An order directing FDIC-Receiver to pay the Claims from the assets of the Receivership in accordance with 12 U.S.C. § 1821(d)(11);
3. An order directing FDIC-Receiver to provide Plaintiffs with an accounting of the disposition of the assets of the Receivership if any Claim is not satisfied in full;
4. An order directing FDIC-Receiver to provide Plaintiffs with an accounting of all property transferred from Plaintiffs in connection with the Receivership;
5. Enter a judgment against FDIC-Corporate and FDIC-Receiver for damages, in an amount to be determined, equal to the amount of money Plaintiffs would have received in a straight liquidation of WMB's assets and liabilities less any amounts actually received from the Receivership;
6. Enter a judgment against FDIC-Corporate and FDIC-Receiver for damages, in an amount to be determined, equal to the value of Plaintiffs' property converted by the FDIC;
7. An order declaring that the FDIC's January 23, 2009 disallowance to be void, and that the parties should proceed as if such disallowance never occurred;
8. Award Plaintiffs costs and attorneys fees as may be permitted by law; and

9. Award Plaintiffs such other relief as may be just.

DEMAND FOR JURY TRIAL

Plaintiffs, by and through their attorneys, hereby demand a trial by jury on all claims otherwise triable by jury asserted in the complaint.

Dated: Washington, D.C.
March 20, 2009

David R. Berz, Esq. (D.C. Bar No. 182105)
Adam P. Strochak, Esq. (D.C. Bar No. 439308)
WEIL. GOTSHAL & MANGES LLP
1300 Eye Street, NW, Suite 900
Washington, DC 20005
Telephone: (202) 682-7001
Facsimile: (202) 857-0939

– and –

Marcia L. Goldstein, Esq.
Brian S. Rosen, Esq.
Michael F. Walsh, Esq.
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Plaintiffs WMI and WMI Investment

EXHIBIT 1

Exhibit 1
(Payments to WMB)

Date Paid	Amount Paid to WMB
10/11/2007	857,230.47
10/18/2007	3,446,107.42
11/8/2007	1,189.73
11/15/2007	254,364.42
12/13/2007	186,438.82
1/10/2008	6,863,343.95
1/17/2008	2,190.72
2/7/2008	2,319,329.88
3/6/2008	7,948.56
3/13/2008	773,837.68
3/31/2008	14,030,414.67
4/10/2008	4,488,747.40
4/24/2008	3,759,043.02
5/8/2008	2,598,863.39
5/30/2008	1,240.005.70
6/19/2008	170.28
6/26/2008	10,520,771.72
7/24/2008	581,788.51
8/14/2008	1,431,922.60
8/21/2008	4,194,820.96
9/11/2008	112,923.51
9/25/2008	4,101,278.69
10/18/2007	175,635.71
10/25/2007	305,110.56
10/31/2007	1,434,522.37
11/8/2007	4,966,409.90
11/15/2007	725,599.67
12/13/2007	8,865,013.39
12/31/2007	6,205.49
1/10/2008	6,362,822.58
1/17/2008	914,011.32
1/31/2008	12,447,072.22
2/7/2008	3,377,908.39
2/14/2008	292,691.98
2/21/2008	671,242.69
2/29/2008	750,288.31
3/13/2008	3,256,230.57
3/20/2008	1,096,451.96

Date Paid	Amount Paid to WMB
4/10/2008	3,429,936.11
5/15/2008	1,956,466.25
5/22/2008	3,062,583.76
6/19/2008	1,422,177.59
6/30/2008	5,284,659.08
7/10/2008	2,598,631.45
7/24/2008	2,879,785.16
8/7/2008	1,805,099.83
8/14/2008	2,573,609.62
9/11/2008	614,326.45
9/18/2008	17,205,753.61
9/25/2008	1,681,646.07
Total:	151,934,564.19

EXHIBIT 2

FDIC
Federal Deposit Insurance Corporation
1601 Bryan Street, Dallas, TX 75201
Division of Resolutions and Receiverships

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7008 1830 0000 8032 2550

January 23, 2009

Washington Mutual, Inc.
ATTN: John Marciel
1301 Second Avenue, WMC3501
Seattle, WA 98101

SUBJECT: 10015–Washington Mutual Bank
Henderson, NV – In Receivership
NOTICE OF DISALLOWANCE OF CLAIM

Dear Claimant:

The Receiver of Washington Mutual Bank has reviewed your claim against the receivership. After a thorough review of your filed claim along with your supporting documentation, the Receiver has determined to disallow your claim for the following reason(s) :

> The claims presented are unproven to the satisfaction of the Receiver since they lack sufficient documentation or specificity, they fail to state claims against the receivership, they appear to assert claims against a third party or there is no legal basis for the claims. Equity claims are paid in accordance with 12 U.S.C. sec. 1821(d)(11).

Pursuant to 12 U.S.C. Section 1821 (d) (6), if you do not agree with this disallowance, you have the right to file a lawsuit on your claim (or continue any lawsuit commenced before the appointment of the Receiver), 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 (or continue any lawsuit commenced before the appointment of the Receiver) **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).**

However, if a portion of your claim is for an insured deposit, your claim is not against the Receiver but rather is against the FDIC in its "corporate" capacity as deposit insurer. An insured depositor's rights are prescribed in 12 U.S.C. Section 1821(f) and differ from the rights described in the preceding paragraphs.

If you have any questions about this letter, please contact the undersigned at (972) 761-8049.

Sincerely,

Donald Grieser

Donald Grieser
Claims Department

RLS7218

EXHIBIT 3

Press Releases

September 25, 2008

OTS 08-046 - Washington Mutual Acquired by JPMorgan Chase

FOR RELEASE:
Thursday, Sept. 25, 2008

CONTACT: William Ruberry
(202) 906-6677
Cell – (202) 368-7727

Recent Upd
Press Relea
Events
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Testimony
Website Su

Washington, DC — Washington Mutual Bank, the $307 billion thrift institution headquartered in Seattle, was acquired today by JPMorgan Chase, the Office of Thrift Supervision (OTS) announced.

The change will have no impact on the bank's depositors or other customers. Business will proceed uninterrupted and bank branches will open on Friday morning as usual.

Washington Mutual, or WaMu, specialized in providing home mortgages, credit cards and other retail lending products and services. WaMu became an OTS-regulated institution on December 27, 1988 and grew through acquisitions between 1996 and 2002 to become the largest savings association supervised by the agency. As of June 30, 2008, WaMu had more than 43,000 employees, more than 2,200 branch offices in 15 states and $188.3 billion in deposits.

"The housing market downturn had a significant impact on the performance of WaMu's mortgage portfolio and led to three straight quarters of losses totaling $6.1 billion," noted OTS Director John Reich.

Pressure on WaMu intensified in the last three months as market conditions worsened. An outflow of deposits began on September 15, 2008, totaling $16.7 billion. With insufficient liquidity to meet its obligations, WaMu was in an unsafe and unsound condition to transact business. The OTS closed the institution and appointed the Federal Deposit Insurance Corporation (FDIC) as receiver. The FDIC held the bidding process that resulted in the acquisition by JPMorgan Chase.

Customer questions regarding the institution, including questions about federal deposit insurance coverage, should be directed to the FDIC at 1-877-ASK-FDIC. WaMu customers with questions can also call the bank's service center at 1-800-788-7000.

Office of Thrift Supervision

FACT SHEET

1700 G Street, N.W., Washington, D.C. 20552 • Telephone (202) 906-6677 • www.ots.treas.gov

FOR RELEASE:
Thursday, September 25, 2008
OTS 08-046A

CONTACT:
William Ruberry
(202) 906-6677
Cell – (202) 368-7727

OTS Fact Sheet on Washington Mutual Bank

Institution Profile

- Total assets as of June 30, 2008: $307.02 billion
- Primary executive and business segment headquarters are located in Seattle, Washington.
- Branches: 2,239 retail branch offices operating in 15 states
- 4,932 owned and branded ATMs
- Employees: 43,198 at June 30, 2008

Recent Deposit Flows

- Because of adverse events in the financial markets, material outflows began on September 15, 2008. Coupled with further rating agency downgrades of Washington Mutual Inc. (WMI, the top-tier holding company) and Washington Mutual Bank (WMB or the Bank), the Bank experienced a net deposit loss of $16.7 billion through September 24, 2008.

Other Financial Details (as of June 30, 2008)

- Total deposits: $188.3 billion
- Brokered deposits: $34.04 billion
- Total borrowings: $82.9 billion primarily comprising Federal Home Loan Bank advances of $58.4 billion and $7.8 billion of subordinated debt
- Loans held: $118.9 billion in single-family loans held for investment - this includes $52.9 billion in payment option ARMs and $16.05 billion in subprime mortgage loans
- Home Equity Lines of Credit (HELOCs): $53.4 billion
- Credit Card Receivables: $10.6 billion

- Total loan servicing: $689.7 billion total loans serviced, including $442.7 billion in loans serviced for others and $26.3 billion of subprime mortgage loans
- Non-performing assets: $11.6 billion, including $3.23 billion payment option ARMs and $3.0 billion subprime mortgage loans

Institution History

- WMI is the top-tier savings and loan holding company and owns two banking subsidiaries, WMB and Washington Mutual Bank, fsb (WMBfsb), as well as nonbank subsidiaries.
- Since the early 1990s, WMI expanded its retail banking and lending operations organically and through a series of key acquisitions of retail banks and mortgage companies. The majority of growth resulted from acquisitions between 1996 and 2002. On October 1, 2005, the Bank entered the credit card lending business by acquiring Providian Financial Corporation. These acquisitions enabled WMB to expand across the country, build its customer base, and become the largest savings and loan association in the country.
- The Bank had four business segments: the Retail Banking Group, the Card Services Group, the Commercial Group and the Home Loans Group. WMB is a leading originator and servicer of both single- and multi-family mortgages and a major issuer of credit cards.

Recent Events

- *Changes in Business Strategy* - Beginning in late 2006 through today, WMB was proactively changing its business strategy to respond to declining housing and market conditions. Changes included tightening credit standards, eliminating purchasing and originating subprime mortgage loans, and discontinuing underwriting option ARM and stated income loans. Management reduced loans originated for sale and transferred held for sale loans to the held for investment portfolio. WMB was focusing on shrinking its balance sheet and developing a retail strategy through its branch operations.

- *Reduction of Overhead Expenses* - In December 2007, WMB announced the resizing of its Home Loans business including the elimination of approximately 2,600 employee positions, closure of approximately 190 home loan centers and sales offices, and closure of nine loan processing and call centers.

- *Maintaining Capital* - In late 2006 and 2007, WMB began to build its capital level through asset shrinkage and the sale of lower-yielding assets. In April 2008, WMI received $7.0 billion of new capital from the issuance of common stock. Since December 2007, WMI infused $6.5 billion into WMB. WMB met the well-capitalized standards through the date of receivership.

- *Operating Losses* - WMB recorded a net loss of $6.1 billion for the three quarters ended June 30, 2008. In the second quarter of 2008, WMB management disclosed that the Bank's credit quality had deteriorated and it might incur up to $19 billion in losses on its single-family residential mortgage portfolio. WMB increased its loan loss provisioning in response to the deteriorating housing market. Loan loss provisions increased from $1.6 billion in the fourth quarter of 2007, to $3.6 billion in the first quarter of 2008 and $6.0 billion in the second quarter of 2008.

- *Deposit Outflows* – Since July 2008, the pressure on WMB increased as market conditions continued to worsen. Significant deposit outflows began on September 15, 2008. During the next eight business days, WMB deposit outflows totaled $16.7 billion, shortening the time available to augment capital, improve liquidity, or find an equity partner. Given the Bank's limited sources of funds and significant deposit outflows, it was highly likely to be unable to pay its obligations and meet its operating liquidity needs.

- *Receivership* - With insufficient liquidity to meet its obligations, WMB was in an unsafe and unsound condition to transact business. OTS placed WMB into receivership on September 25, 2008. WMB was acquired today by JPMorgan Chase. The change will have no impact on the bank's depositors or other customers. Business will proceed uninterrupted and bank branches will open on Friday morning as usual.

OTS Enforcement Actions

- October 17, 2007 – Issued a Cease and Desist Order related to deficiencies in Bank Secrecy Act/Anti-Money Laundering (BSA/AML) programs
- October 17, 2007 – Assessed Civil Money Penalties (CMPs) related to violation of flood insurance regulations
- November 14, 2007 – Initiated a formal examination of the appraisal process to assess the validity of a complaint filed by the New York Attorney General's (NYAG) Office
- February 27, 2008 – Issued overall composite ratings downgrade and received a Board resolution in response to the supervisory action
- June 30, 2008 – Initiated discussions about Memorandums of Understanding with WMI and WMB
- September 7, 2008 - Issued Memorandums of Understanding to WMI and WMB
- September 18, 2008 – Issued overall composite ratings downgrade

OTS Profile
Established - 1989
Thrift institutions supervised as of June 30, 2008 - 829
Thrift industry assets supervised as of June 30, 2008 - $1.51 trillion
OTS employees - 1,055
Washington Mutual Bank assessment revenue – 12.2 percent of 2008 OTS budget

EXHIBIT B

situation, this goes back to missed by a mile, missed by an inch analogy.

You can't have a situation where the FDIC has no incentive and no accountability with respect to the disposition of assets of a failed bank.

You can't have a situation where the government decides because it would like to see improvement to the balance sheet of an acquiring institution that they simply hand over the keys to the failed bank and say, you know what, you guys take it. We don't have to worry about it because we're immune from lawsuit. Nobody will sue us for breech of any duty to maximize the value of those assets. Dispositors will get satisfied. They'll bolster the balance sheet of the acquiring bank and everyone who's left behind, the creditors and shareholders of the failed bank they don't have any remedy except to file their proof of claim through the administrative process and take whatever they get to the waterfall which by the way will be nothing if they just give the keys to the acquiring institution.

So that's why we think it's so critically important that Congress could not have intended to foreclose all lawsuits against FDIC in either its capacity as receiver or as in its corporate capacity under these circumstances.

We could have a long debate and a long battle in this courtroom and we may have to have it whether there was actually

any breech of duty. Whether they got as much as they could have in a liquidation or whether they gave the keys away. Those are factual issues that will get explored in a litigation, but the basic premise is that those claims logically, constitutionally there has to be a mechanism to adjudicate that somewhere. We think we have asserted the right claims. Thank you, Your Honor.

THE COURT: Thank you. And perhaps you could explain to me how -- I should have asked this question to Ms. Doherty.

How does the FDIC, which is in fact a single institution, handle these things internally so that you can stand in front of me and Mr. Clarke can stand in front of me in different guises as if you were arms length strangers?

MS. DOHERTY: It probably doesn't seem as odd to me, Your Honor, as perhaps it does to you because this is the second time I've been in this situation. When I was at the Justice Department, I worked for the Environmental Defense section which had its offices right next door to the Environmental Enforcement section. The Environmental Enforcement section would regularly sue the Department of Army which the Environmental Defense section would defend.

And both of us had our responsibilities in the scheme of administering the environmental laws. In this case, I'm here as a member of the corporate litigation unit which represents and defends corporations in lawsuits.