

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:
WASHINGTON MUTUAL, INC., et al., 1
Debtors.
Chapter 11
Case No. 08-12229 (MFW)
(Jointly Administered)
Requested Hearing Date: June 3, 2010 at 10:30 a.m. (ET)
Requested Obj. Deadline: June 2, 2010 at 12:00 p.m. (ET)

MOTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS FOR AN ORDER DIRECTING EXPEDITED DISCOVERY PURSUANT TO FED. R. CIV. P. 34(B), FED. R. BANKR. P. 9006, 9014 AND 7034, AND DEL. BANKR. LR 9006-1(E)

The Official Committee of Equity Security Holders (the "Equity Committee") of Washington Mutual, Inc. ("WMI" and, together with its chapter 11 debtor-affiliate, WMI Investment Corp., the "Debtors") moves the Court pursuant to Fed. R. Bankr. P. 9006 and Fed. R. Civ. P. 34(b), made applicable to this contested matter by Fed. R. Bankr. P. 9014 and 7034, and Del. Bankr. LR 9006-1(e), for the entry of an Order substantially in the form attached hereto as Exhibit 1 (the "Proposed Order") directing the Debtors to (i) produce documents responsive to the Equity Committee's requests for documents (the "Document Requests") and (ii) respond to the interrogatories (the "Interrogatories" and with the Document Requests, the "Discovery Requests") that are attached to the Proposed Order as Exhibit A on or before June 15, 2010. In support of this Motion, the Equity Committee respectfully states as follows:

I.
PRELIMINARY STATEMENT

Despite the Court's May 5th instruction to the Debtors and Committee to provide the Equity Committee with open access to information, the Debtors have refused or otherwise failed

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



to timely respond to the Equity Committee's repeated requests for certain information and documents that underlie the Plan and Proposed Settlement and, in particular, the Debtors' rationale for abandoning the potential multi-billion dollar claims against JPMC arising out of the prepetition seizure and sale of WMB to JPMC. Given that the Debtors have requested the Court consider confirmation of the Plan as early as July 20, 2010 – with objections due on or before June 25, 2010 – the Equity Committee can no longer await Debtors' voluntarily compliance with the Equity Committee's requests. The Equity Committee requires, and indeed is entitled to, sufficient time to obtain, review and analyze the documents produced and to formulate an informed objection to approval of the Plan and the Proposed Settlement. Thus, the Debtors should be required to respond to the Equity Committee's Discovery Requests on or before June 15, 2010.

In addition, as part of their response to the Equity Committee's Discovery Requests, the Debtors should be required to turn over their work product and analysis of claims against JPMC that they investigated and now intend to abandon as part of the Proposed Settlement. As discussed herein, the Debtors' objections to turnover of those materials are unfounded. The Equity Committee and the Debtors share a common interest in the subject matter of the Debtors' investigation of the potential claims against JPMC and, therefore, under applicable law, disclosure to the Equity Committee would not compromise the Debtors' attorney-client (or other applicable) privilege. Even assuming for the sake of argument that Debtors' objections rest on solid footing (which they do not), Rule 502(d) of the Federal Rules of Evidence provides a safeguard to preserve any applicable privilege or protection notwithstanding disclosure to the Equity Committee. Moreover, the Debtors' suggestion that the Equity Committee can re-create the Debtors' work product that they have generated over the course of these Chapter 11 cases is

simply unrealistic and would be a colossal waste of time and money given that the Debtors claim so much work has already been done. Thus, Debtors' refusal to turnover their work product, despite the Equity Committee's offer to receive such information subject to a 502(d) order, should be seen for what it really is – simply a continuation of their efforts to exclude the Equity Committee from the plan negotiation and confirmation process.

II. JURISDICTION AND VENUE

1. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core bankruptcy proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein include Fed. R. Bankr. P. 9006 and Fed. R. Civ. P. 34(b), made applicable to this contested matter by Fed. R. Bankr. P. 9014 and 7034, and Del. Bankr. LR 9006-1(e).

III. BACKGROUND

2. On September 26, 2008, (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Since the Petition Date, the Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors' cases are being jointly administered for procedural purposes only, pursuant to an Order of this Court entered on October 3, 2008.

3. On October 15, 2008, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Creditors Committee"). On January 11, 2010, the U.S. Trustee appointed the Equity Committee.

The Debtors' Plan and Proposed Settlement

4. On March 12, 2010, the Debtors announced on the record the broad strokes of the proposed settlement among the Debtors, JPMC, the FDIC and certain other entities (as amended, the "Proposed Settlement"), under which the Debtors intend, *inter alia*, to compromise the most valuable assets of the Debtors' estates, namely those actual and potential claims and causes of action against JPMC, the FDIC and others relating to the downfall, seizure and sale of WMB. On March 26, 2010, the Debtors filed their initial proposed plan of reorganization (Docket No. 2622) and related disclosure statement (Docket No. 2623), together with an unsigned draft of the Proposed Settlement.

5. On May 13, 2010, the Equity Committee filed its Objection (Docket No. 3726) to approval of the Disclosure Statement and, on May 18, 2010, filed its Supplemental Objection to approval of the Disclosure Statement (Docket No. 3796).

6. On May 21, 2010, the Debtors filed the Second Amended Joint Plan (Docket No. 4241) (as amended, the "Plan") and an amended proposed Disclosure Statement (as amended, the "Disclosure Statement"), together with an executed copy of an amended Proposed Settlement. The Court has scheduled a hearing on June 3, 2010 to consider approval of the Disclosure Statement. The Debtors have requested the Court establish June 25, 2010 as the deadline by which all objections to confirmation of the Plan must be filed (the "Confirmation Objection Deadline") and schedule the hearing to consider confirmation of the Plan on July 20, 2010 (the "Confirmation Hearing"). (*See* Docket No. 3568 at 17)

The Equity Committee's Attempts to Obtain Information

7. On April 26, 2010, the Equity Committee moved for appointment of an examiner pursuant to Section 1104(c) of the Bankruptcy Code. (Docket No. 3579.) At a hearing on May

5, 2010, the Court denied appointment of an examiner. The Court articulated two reasons for that decision. First, the Court observed that the debtor had already been the subject of numerous investigations and expressed doubt that an examiner would “find any stone unturned.”² Second, the Court concluded that appointment of an examiner was unnecessary because the Equity Committee itself has the ability to conduct the investigation that it sought to have an examiner conduct:

. . . I think the equity committee is fully able to conduct the investigation that it seeks to have the examiner conduct. It has the benefit of Rule 2004, it has the benefit of the discovery rules, because there are contested matters presently and anticipated in which the equity committee could fully avail itself of that discovery.³

8. With respect to an investigation that the Equity Committee might conduct itself, the Court made clear that the Debtors and the Creditors Committee should cooperate in making information available on a voluntary basis:

In this case specifically, the debtor and the creditors’ committee have investigated the specific assets owned by the debtor, or that the debtor claims it owns. The debtor has vigorously appeared in and prosecuted its position in several adversaries in this case, in addition to filing a claim in the FDIC receivership and prosecuting claims it has in that forum. All of that information should be available to the equity committee. And I don’t want to hear about obstacles being placed in their path to getting full and open access to that information, whether its documentary or interviews with the debtors’ management or others who have conducted these investigations; and the same goes with the creditors’ committee, who’s been actively involved in all of this.

. . . .

² Transcript of Hearing, May 5, 2010, at (Docket #3699) at 98 (emphasis added) (excerpts attached as **Exhibit 2**).

³ *Id.*

[A]gain, I'm strongly urging the committee and the debtor to provide all the information to the equity committee without testing the Court's patience with discovery motions.⁴

9. To date, despite the Court's instruction to provide the Equity Committee with open access to information, the Debtors have not provided all of the information and documents requested by the Equity Committee concerning the Plan and the Proposed Settlement. On May 3, 2010, the Equity Committee served the Debtors with an initial request for production of documents. Since then, the Debtors have created an electronic data room (separate and apart from the data room created for the benefit of the Creditors Committee), in which they have posted only a relative handful of documents that, for the most part, are not responsive to the Equity Committee's requests for information and documents that underlie the Plan and Proposed Settlement.⁵ And although the debtors' professionals have conferred with the Equity Committee's financial advisor, Peter J. Solomon Company, on a few occasions they have provided little in the way of substantive information, nor have they committed to provide copies of the documents requested by the Equity Committee, concerning the Plan and Proposed Settlement. In short, the Debtors have largely ignored the Equity Committee's requests.

10. In addition, on May 7, 2010, Steve Susman, counsel for the Equity Committee, sent an email to Peter Calamari at Quinn Emanuel and others requesting that Mr. Calamari make available the work product and claims analysis Quinn Emanuel had performed. A copy of that

⁴ *Id.* at 99, 100.

⁵ As this Motion was being finalized for filing, the Debtors informed the Equity Committee that some additional documents had been posted to the data room late this afternoon. Although the limited amount of time available to the Equity Committee does not permit it to delay filing this Motion or to determine the extent to which the additional production is truly responsive, it appears that essential documents remain unproduced. The Equity Committee will continue to try to resolve the disputes regarding production of necessary information by the Debtors.

email is attached as **Exhibit 3**.⁶ Mr. Susman's email requests a number of specific categories of documents, including: (1) any analysis of the claims in the three major cases involving the Debtors and JPMC or of the claims at issue in the Rule 2004 examination of JPMC that the Debtors conducted pursuant to this Court's order of June 24, 2009; (2) any analysis of claims against any current or former directors or officers of WMI or WMB; (3) any analysis of any business tort claim against JPMC; (4) any analysis of potential claims against any third-parties, including Goldman Sachs, Bank Santander, and any accounting firm; (5) summaries of transcripts or interviews with any witnesses conducted in connection with the bankruptcy; (6) any analysis of any federal or state criminal or civil investigation, including the United States Senate investigation into Washington Mutual; (7) any internally created cast of characters, hot document set, memos analyzing documents, or other work-product related to documents, dates, or people involved in the litigation or the Debtors' investigation; (8) any expert work product; (9) any analysis by the Debtors' tax advisors; (10) copies of all document requests served on any party and any analysis of the responses. Other than category (10), the Debtors have refused to turnover these documents citing attorney-client privilege and the work product doctrine.

IV. RELIEF REQUESTED

11. Pursuant to Fed. R. Bankr. P. 9006 and Fed. R. Civ. P. 34(b), made applicable to this contested matter by Fed. R. Bankr. P. 9014 and 7034, and Del. Bankr. LR 9006-1(e), the Equity Committee requests entry of an order substantially in the form attached hereto directing the Debtors to respond to the Discovery Requests on or before June 15, 2010, including without

⁶ The same day, Mr. Susman sent an email making an identical request to Akin Gump Strauss Hauer & Feld, counsel to the Creditors' Committee. A copy of that email is attached as **Exhibit 4**.

limitation, providing copies of the work product generated by Debtors' litigation counsel and consultants of the following type:

- a. Any analysis of the claims in the cases involving the Debtors and JPMC or of the claims at issue in the Rule 2004 examination of JPMC that the Debtors conducted pursuant to this Court's order of June 24, 2009;
- b. Any analysis of claims against any current or former directors or officers of WMI or WMB;
- c. Any analysis of any business tort claim against JPMC;
- d. Any analysis of potential claims against any third-parties, including Goldman Sachs, Bank Santander, and any accounting firm;
- e. Summaries of transcripts or interviews with any witnesses conducted in connection with the bankruptcy;
- f. Any analysis of any federal or state criminal or civil investigation, including the United States Senate investigation into Washington Mutual;
- g. Any cast of characters, hot document set, memos analyzing documents, or other work-product created by Debtors' counsel related to documents, dates, or people involved in the litigation or the Debtors' investigation;
- h. Any expert work product created in conjunction with any of the claims or potential claims against JPMC, FDIC, former officers and directors, Goldman Sachs, Bank Santander, or any accounting firm;
- i. Any analysis by the Debtors' advisors of any issues relevant to any of the claims against JPMC, the FDIC, former officers and directors, Goldman Sachs, Bank Santander, or any accounting firm;

- j. Any analysis of any party's responses to discovery requests.

This information is essential to the Equity Committee's effort to evaluate as efficiently as possible the Plan and Proposed Settlement including the claims and potential claims held by the Debtors, and in particular those claims that the Debtors propose to release in the Proposed Settlement.

12. The Debtors have refused to produce this information, with the exception of document requests and FOIA requests that were finalized and served on third-parties, citing concerns that production to the Equity Committee would create a risk that the attorney-client privilege and work product protection enjoyed by these documents might be waived, making them subject to discovery by JPMC and the other potential adverse parties in litigation. As discussed below, the Debtors' concerns are unfounded. Because the Equity Committee represents the owners of the Debtors—one of the constituencies for whose benefit the privileged material was created in the first place—any privilege asserted by the Debtors can be overruled for good cause. Even more importantly, production to the Equity Committee in these circumstances will not waive applicable privileges with regard to third-parties because the Debtors and the Equity Committee share a common interest in the underlying litigation. Moreover, any risk of waiver can be eliminated entirely by an order from this Court under F.R.E. 502(d) declaring the privilege survives disclosure of the documents to the Equity Committee.

13. The Debtors have also argued that the Equity Committee has been provided with copies of all underlying documents and can recreate the work product generated by Debtors' counsel. That is true, but only in part. The Debtors have provided counsel for the Equity Committee with approximately 40,000 pages of documents produced by JPMC pursuant to the Debtors' Rule 2004 requests, and a volume of additional documents voluntarily produced by

third parties.⁷ However, the Debtors also claim to be in possession of approximately 7.6 million pages of WMI and WMB documents, many of which pre-date the seizure and sale of WMB by the FDIC.⁸ The Debtors' litigation counsel apparently has reviewed at least some of that material to identify documents relevant to the claims they have been investigating that would be released under the Proposed Settlement. The Debtors have refused to make any such identified documents available to the Equity Committee, and have made clear that access to the 7.6 million-page universe itself will require formal discovery requests pursuant to court order.⁹ Moreover, even if the Equity Committee had a sufficient time to re-create Debtors' work product prior to the Confirmation Objection Deadline, which clearly there is not, the Equity Committee does not believe that exercise would be an efficient use of the estate's resources.

V. ARGUMENT

A. The Debtors should Produce all Responsive Documents on an Expedited Basis.

14. Pursuant to Rule 34(b) of the Federal Rules of Civil Procedure, although a party normally is allowed 30 days to respond to a discovery request, a shorter time may be set by the court. "The party to whom the request is directed must respond in writing within 30 days after being served. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court." Fed. R. Civ. P. 34(b). A shorter time is necessary here.

⁷ These documents consist of approximately 650 pages of documents from the Office of Thrift Supervision; approximately 240 pages of heavily redacted documents produced by the FDIC pursuant to FOIA requests; approximately 900 documents produced by Citigroup; approximately 500 documents produced by Blackstone; and approximately 27,500 pages of documents from TPG Capital, the company that made a significant equity investment in WMI in the summer of 2008. *See* Sargent Decl. ¶ 10 (attached hereto as **Exhibit 5**).

⁸ Debtors' Objection to Motion and Supporting Memorandum of the Official Committee of Equity Security Holders for the Appointment of An Examiner (Docket #3629), filed May 4, 2010, at ¶ 22.

15. The Equity Committee is a relative newcomer to these proceedings having only been formed by the U.S. Trustee on January 11, 2010. Since its formation, the Equity Committee has been completely closed out of the negotiations that led to the formation of the Plan and the Proposed Settlement. The Debtors have proposed that the Court establish (i) June 25, 2010 as the Confirmation Objection Deadline and (ii) July 20, 2010 at 10:30 a.m. as the date and time for the Confirmation Hearing. If the normal 30-day period under Rule 34 were to govern in this instance, the Equity Committee would not have sufficient time to obtain, review and analyze the documents produced by the Debtors, obtain necessary deposition testimony, and prepare an informed objection to approval of the Plan and Proposed Settlement prior to the confirmation Objection Deadline. Thus, expedited discovery is required.

16. The Equity Committee respectfully submits that its request for expedited discovery does not significantly prejudice the Debtors' estates. The Equity Committee has intentionally limited the scope of its discovery requests to information and documents necessary to determine whether (i) the Proposed Settlement is appropriate, (ii) the Plan is confirmable under the Bankruptcy Code, and (iii) approval of the Proposed Settlement and confirmation of the Plan is in the best interests of the Debtors' estates. For several weeks now, the Equity Committee has requested copies of documents and other information concerning these topics. Therefore, the Debtors have been aware of the Equity Committee's concerns and document requests for quite a while. Moreover, all of the information and documents sought by the Equity Committee would have been required by the Debtors to formulate the Plan and Proposed Settlement and, therefore, the Debtors should have all of the requested information readily at hand. Responding to the Equity Committee's discovery requests by June 15, 2010 should not over-burden the Debtors.

⁹ See Sargent Decl. ¶¶ 12-14.

i. **The Debtors' Work Product and Privilege Objections Are Unfounded.**

17. In addition, the Debtors should be directed to produce their work product and claims analysis to the Equity Committee. Production to the Equity Committee would result in no waiver of attorney-client privilege or work product protection with regard to third-parties. Both the Debtors and the Equity Committee share a common interest with regard to the underlying litigation and claims: The Debtors should be seeking to maximize the recovery to the Estate and that is certainly what the Equity Committee also seeks. Parties with a common interest in litigation may share work product without waiver. *In re Teleglobe Communications*, 493 F.3d 345, 363-366 (3rd Cir. 2007). In a closely analogous case, the Bankruptcy Court for the District of Colorado held that there was no waiver when Creditors' Committee counsel shared litigation analysis work product with counsel for the Debtor. *In re Kaiser Steel*, 84 B.R. 202, 205 (Bankr. D. Colo. 1988) (holding that work product protection was not waived because both the Creditors Committee and the Debtor had an interest in maximizing litigation recovery).

18. To remove any conceivable doubt that the privileged status of the requested documents would be preserved, the Equity Committee requests that the Court enter an Order pursuant to F.R.E. 502(d). Under that newly adopted rule, “[a] Federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other Federal or State proceeding.” *Id.* The rule gives the Court discretion to issue an order maintaining the privilege over any produced documents, not only those that are disclosed inadvertently. *See Whitaker, Chalk, Swindle, & Sawyer L.L.P. v. Dart Oil & Gas Corp.*, 2009 WL 464989 *4 (N.D. Tex. 2009). Such an Order is enforceable even if state law controls the rule of decision in another

case where an adverse party seeks access to the same information. *Id.* Any legitimate concerns the Debtor has about waiver can be resolved by issuance of an order under F.R.E. 502(d).

19. If the Debtors seek, regardless of their waiver concerns, to assert privilege and work product protections as a means of concealing their litigation analysis from the Equity Committee, the Court should overrule the objections and order the documents produced. Because a corporation has a fiduciary obligation to carry out its affairs in the best interest of its shareholders, shareholders are ultimately the beneficiaries of legal advice provided to the corporation. *Garner v. Wolfinbarger*, 430 F.2d 1093, 1101 (5th Cir. 1970). As a result, under the “*Garner* exception” to the attorney-client privilege, a shareholder can obtain privileged material from the corporation on a showing of good cause. *See, e.g., Official Committee of Asbestos Claimants of G-I Holding, Inc. v. Heyman*, 342 B.R. 416, 423-24 (S.D.N.Y. 2006) (collecting cases and discussing the scope of the *Garner* exception).

20. This Court recently considered this issue in conjunction with the *Teleglobe* bankruptcy. *In re Teleglobe Communications*, 392 B.R. 561, 604 (Bankr. D. Del. 2008) (finding that a creditor seeking to overcome the privilege had not established grounds for existence of a fiduciary duty from the corporation to the creditor and so was not entitled to obtain privileged material under the *Garner* exception). Of course, there is no doubt that fiduciary duties continue to run to the shareholders of a corporation after insolvency, even though those duties may expand to include the interests of creditors at that point. *See, e.g., N. American Catholic Ed. Programming Found., Inc. v. Gheewalla*, 930 A.2d 92, 101 (Del. 2007) (“When a solvent corporation is navigating in the zone of insolvency, the focus for Delaware directors does not change: directors must continue to discharge their fiduciary duties to the corporation and its shareholders by exercising their business judgment in the best interests of the corporation for the

benefit of its shareholder owners."); *Production Resources Group LLC v. NCT Group*, 863 A.2d 772, 792-93 (Del. Ch. 2004) (either creditors or shareholders have standing to enforce derivative fiduciary duty claims against directors of an insolvent corporation).

21. Some courts have found that *Garner* does not apply to assertions of work product. See, e.g., *In re International Systems*, 693 F.2d 1234, 1239 (5th Cir. 1982); *In re Teleglobe Communications*, 493 F.3d at 385. The reasoning supporting these decisions is not applicable here. These cases involved attempts by shareholders (or other corporate constituents) to discover work product bearing on disputed claims in the course of litigation between the corporation and the party seeking disclosure, typically a derivative claim brought by a shareholder against the corporation. As the Court noted in *International Systems*, work product can only be created once an adversarial relationship has formed between the parties. *International Systems*, 693 F.2d at 1239. If the corporation and the shareholder are adverse in litigation on issues for which the work product was created, it makes no sense to also find that the corporation's attorney is working on behalf of the shareholder, which is the premise for the *Garner* exception. *Id.* Here, the Equity Committee and the Debtors are *not* adverse with regard to the litigation that is the subject of the work product. On the contrary, the Debtors' counsel was hired to pursue claims against third parties for the potential benefit of the shareholders, precisely the type of fiduciary relationship that is the basis for the *Garner* exception.

22. Courts apply a multi-factor analysis when determining whether good cause exists to permit discovery of privileged material under *Garner*. These factors include (1) the discovering party's stake in the fiduciary relationship; (2) the apparent merit of the claim; (3) the need of the discovering party for the information; and (4) the nature of the communication itself. *Asbestos Claimants*, 342 B.R. at 424. All four factors favor disclosure here.

23. **Stake in the Fiduciary Relationship:** This factor focuses on the portion of corporate ownership represented by the requesting party. *Id.* Here, the Equity Committee represents the owners of outstanding equity in the Debtors, not just a minority or partial share. Although insolvency creates a second corporate constituency—the creditors—the Equity Committee’s actions are not intended to advance equity’s interests over those of any other corporate constituents. Rather, the Equity Committee seeks to maximize recovery for the estates as a whole. When the discovering party is acting to benefit the corporation and not an individual constituency, this factor weighs heavily in favor of disclosure and may be sufficient on its own to justify the requested discovery. *Id.* (citing several cases, including *Garner*, 430 F.2d at 1101).

24. **The apparent merit of the claim:** This factor assumes that the shareholder’s request for privileged information has arisen in litigation between the shareholder and the corporation and that the work product pertains to the issues in dispute. Such is not the case here and so this factor is likely irrelevant. If there is a dispute between the Equity Committee and the Debtors equivalent to the “claim” addressed in this factor, it would be the potential disagreement over the reasonableness of the Proposed Settlement. The Equity Committee’s concerns that this settlement has been negotiated prematurely, without adequate consideration being given to potentially large but as yet undeveloped claims, appear well-founded based (at the very least) on the extremely limited discovery apparently taken by the Debtors to date. If this factor is relevant, it favors discovery.

25. **The Need of the Discovering Party For the Information:** As discussed above, the alternative to production in this instance is to have the Equity Committee endeavor to repeat work that the Debtors’ counsel has already done within a very limited time frame, which will

entail significant cost both in terms of time and money. The discovery is necessary to avoid a wasteful expenditure of resources and time. This factor plainly favors discovery.

26. **The Nature of the Communications Sought:** The Equity Committee seeks litigation counsel's analysis of the claims the Debtors' propose to settle, collections of documents culled by them based on their review of potentially relevant documents, and other relevant information. This is information that was generated by lawyers hired by the Debtors to pursue claims for the ultimate benefit of creditors and shareholders. Because the shareholders were among the intended beneficiaries of this work all along, disclosure to the Equity Committee is both fitting and just. Again, this factor favors discovery.

27. As the *Garner* analysis indicates, the Court should find good cause to overrule the Debtors' assertion of privilege over the requested material.¹⁰

ii. Reconstruction of the Debtors' Work Product Is an Unjustified and Impractical Waste of Resources.

28. It would be a blatant waste of estate resources to adopt the Debtors' suggestion that the Equity Committee and its attorneys and consultants re-create work already performed by Debtors' counsel. Rather than do that, the Equity Committee, as part of its own investigation, seeks access to the results of investigation already performed by the Debtors and their attorneys. No conceivable purpose is served by forcing the Equity Committee to expend resources reviewing boxes and boxes of documents if the Debtors' counsel have already done such a review and identified all relevant material other than to undermine the Equity Committee's

¹⁰ If the Court does not order the Debtors to produce to the Equity Committee the information requested by this, it should at least require the Debtors to promptly provide a privilege log describing the title and nature of the documents being withheld; the basis for the claim of privilege; and the date, author, and all recipients of the information (including the identity of all persons to whom the information has been disclosed). This is the type of information required pursuant to Federal Rule of Civil Procedure 26(b)(5)(A). To date, the Debtors have refused to provide even a privilege log for the material they are withholding.

ability to prosecute its objection to confirmation of the Plan. Whatever further review by the Equity Committee may prove necessary, it would clearly be accomplished more efficiently if aided by knowledge of what the Debtors have already accomplished.

29. At the May 5, 2010 hearing, this Court specifically instructed all parties to cooperate with the Equity Committee's efforts to conduct an investigation into the claims. (Transcript of Hearing, May 5, 2010 (Docket No. 3699) at 99-100) (excerpts attached as **Exhibit 2**). The Equity Committee's request for material evaluating the claims and other litigation work product falls squarely within this mandate. And the Debtors' obstructionism is particularly inexcusable given the alignment of interests at issue; Debtors' litigation counsel—the attorneys who performed the bulk of the work being withheld—were hired to generate a recovery that would benefit the estates, with recoveries flowing first to the creditors and then, ultimately, to the equity holders. By refusing to provide any substantive analysis of the claims, the Debtors are asking the Equity Committee to accept a settlement proposal that would wipe-out equity's interests without the benefit of any explanation or analysis provided to the Debtors by the attorneys who were retained to investigate and pursue the claims.

30. In addition to the sheer waste involved in the Debtors' suggestion that the Equity Committee duplicate the Debtors' work, time constraints make the Debtors' proposal impractical if not impossible. The Debtors have requested the Court establish June 25, 2010 as the Confirmation Objection Deadline. Counsel for the Equity Committee are diligently pursuing all available avenues of information as part of the Committee's efforts to assess the claims and the reasonableness of the settlement, including reviewing the raw document productions made available by the Debtor, but these are substantial undertakings and it is not clear that they can be completed thoroughly before the deadline for objections. By contrast, the Debtors' counsel has

had many months to review and analyze the same material. The prejudice to the Equity Committee's interests created by this unnecessary time pressure is obvious and is alone sufficient to justify production of the Debtors' analysis of the claims and other work product.

CERTIFICATION PURSUANT TO DEL. BANKR. LR 7026-1(c)

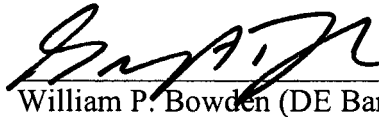
31. As described herein, the Equity Committee has made a reasonable effort to reach agreement with the Debtors on the scope and timing of the Debtors' responses to the Discovery Requests. Accordingly, the Equity Committee now files this Motion seeking entry of an Order compelling the Debtors to respond to the Equity Committee's Discovery Requests on or before June 15, 2010.

VI.
CONCLUSION

WHEREFORE, the Equity Committee respectfully requests that the Court enter an order substantially in the form of the Proposed Order attached hereto as **Exhibit 1** (a) directing the Debtors to respond to the Discovery Requests (attached to the Proposed order as Exhibit A) on or before June 15, 2010 and (b) for such further and other relief as the Court deems just and proper.

Dated: May 26, 2010

ASHBY & GEDDES, P.A.



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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹)	Case No. 08-12229 (MFW)
)	
Debtors.)	(Jointly Administered)
)	
)	Requested Hearing Date: June 3, 2010 at 10:30 a.m. (ET)
)	Requested Obj. Deadline: June 2, 2010 at 12:00 p.m. (ET)

NOTICE OF MOTION

PLEASE TAKE NOTICE that on May 26, 2010, the Official Committee of Equity Security Holders (the "Equity Committee") filed the *Motion of the Official Committee of Equity Security Holders for an Order Directing Expedited Discovery Pursuant to Fed. R. Civ. P. 34(b), Fed. R. Bankr. P. 9006, 9014, and 7034, and Del. Bankr. LR 9006-1(e)* (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that concurrently with the filing of the Motion, the Debtors also filed the *Motion to Shorten Notice and Schedule a Hearing on the Motion of the Official Committee of Equity Security Holders for an Order Directing Expedited Discovery Pursuant to Fed. R. Civ. P. 34(b), Fed. R. Bankr. P. 9006, 9014, and 7034, and Del. Bankr. LR 9006-1(e)* (the "Motion to Shorten").

PLEASE TAKE FURTHER NOTICE that pursuant to the Motion to Shorten, the Equity Committee has requested that the Court enter an order scheduling a hearing on the Motion at the hearing scheduled for June 3, 2010 omnibus hearing at 10:30 a.m. (Prevailing Eastern Time) (the "Hearing"), and setting an objection deadline for June 2, 2010 at 12:00 p.m. (the "Objection Deadline"). In accordance with the Local Rules of Practice and Procedure for the United States Bankruptcy Court of the District of Delaware (the "Local Rules"), the Bankruptcy Court will rule on the Motion to Shorten without a hearing.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

Dated: May 26, 2010

ASHBY & GEDDES, P.A.



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-and-

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*Co-Counsel for the Official Committee of
Equity Security Holders of Washington
Mutual, Inc., et al.*

EXHIBIT 1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

			Chapter 11
In re:			
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹			Case No. 08-12229 (MFW)
Debtors.			(Jointly Administered)
			Related Docket No. _____

**ORDER APPROVING MOTION OF THE OFFICIAL COMMITTEE OF
EQUITY SECURITY HOLDERS FOR AN ORDER DIRECTING
EXPEDITED DISCOVERY PURSUANT TO FED. R. CIV. P. 34(B), FED. R.
BANKR. P. 9006, 9014 AND 7034, AND DEL. BANKR. LR 9006-1(E)**

Upon consideration of the motion (the "Motion") of the Official Committee of Equity Security Holders (the "Equity Committee") of Washington Mutual, Inc. ("WMI" and, together with its chapter 11 debtor-affiliate, WMI Investment Corp., the "Debtors"), seeking entry of an order directing the Debtors to produce any and all documents responsive to the Discovery Requests attached hereto as **Exhibit A** on or before June 15, 2010; and the Court being satisfied that the relief requested therein is; and sufficient notice of the Motion having been provided; and it appearing that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Debtor shall respond to the Discovery Request on or before June 15, 2010; and it is further

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

ORDERED that Debtor shall produce the documents identified in the Motion that Debtors have withheld from the Equity Committee on the ground of privilege. Pursuant to Federal Rule of Evidence 502(d), the Court hereby orders that any privilege or protection from disclosure claimed by the Debtors is not waived by the disclosure to the Equity Committee; and it is further

ORDERED, that the Court will retain jurisdiction over the interpretation and implementation of this Order.

Dated: _____, 2010

Mary F. Walrath
United States Bankruptcy Court Judge

EXHIBIT A

FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

DEFINITIONS

The following terms (whether or not capitalized) shall have the meanings set forth below:

1. “Adversary Proceedings” means or refers to the JPMC Adversary Proceeding and the Turnover Proceeding.
2. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
3. “Bankruptcy Code” means or refers to the Bankruptcy Reform Act of 1978, as amended, to the extent codified in Title 11, United States Code, as applicable to the Chapter 11 Cases.
4. “Chapter 11 Cases” means the jointly administered cases commenced by the Debtors styled as *In re Washington Mutual, Inc., et al.* and being jointly administered in the Bankruptcy Court, Case No. 08-12229 (MFW), under chapter 11 of the Bankruptcy Code.
5. “Communication” means any oral, written or electronic transmission of information, including without limitation any letter, correspondence, memorandum, electronic-mail message, note or meeting log, conversation, meeting, discussion, telephone call, facsimile, telegram, telex, conference or message.
6. “Concerning” means comprising, consisting of, concerning, referring to, reflecting, regarding, supporting, evidencing, or relating to, the matter or document described, referred to or discussed.
7. “DC Action” refers to *Washington Mutual, Inc. and WMI Investment Corp. v. Federal Deposit Insurance Corporation*, No. 1:09-cv-00533 (D.D.C.).

8. The “Disclosure Statement” means or refers to the Disclosure Statement for the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, filed on or about March 26, 2010, in the Chapter 11 Cases; the Disclosure Statement for the First Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, filed on or about May 16, 2010, in the Chapter 11 Cases; and any subsequently filed Disclosure Statement for any further amended Joint Plan filed by WMI in the Chapter 11 Cases.

9. “Document” is used in its broadest sense and mean and include any written or graphic matter or other means of preserving thought or expression and all tangible things from which information can be processed or transcribed, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copy or otherwise, including but not limited to, correspondence, communications, memoranda, notes, messages, letters, telegrams, teletype, telefax, bulletins, records of meetings or other communications, records of interoffice and intraoffice telephone calls, diaries, chronological data, minutes, books, reports, studies, summaries, pamphlets, bulletins, printed matter, charts, ledgers, invoices, worksheets, receipts, returns, computer printouts, prospectuses, financial statements, schedules, affidavits, contracts, cancelled checks, statements, transcripts, statistics, surveys, magazine or newspaper articles, releases (and any and all drafts, alterations and modifications, changes and amendments of any of the foregoing), graphic or aural records or representations of any kind (including without limitation photographs, microfiche, microfilm, videotape, records and motion pictures) and electronic, mechanical or electric records or representations of any kind (including without limitation tapes, cassettes, discs and records).

10. “Entity” means a person, corporation, general partnership, limited partnership,

limited liability company, limited liability partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, governmental unit or any subdivision thereof, including, without limitation, the office of the United States Trustee, or any other entity.

11. “Equity Committee” means or refers to the official committee of equity security holders appointed in the Chapter 11 Cases.

12. “FDIC” means or refers to the Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank, Henderson Nevada, and in its corporate capacity.

13. “Federal Home Loan Bank System” means or refers to the Federal Home Loan Bank System, including its regional federal home loan banks and any of their present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

14. “Governmental Unit” has the meaning set forth at 11 U.S.C. § 101(27).

15. “Including” means including but not limited to the referenced subject.

16. “JPMC” means JPMorgan Chase Bank, National Association, JPMorgan Chase & Co., any Entity or bank acquired by JPMorgan Chase Bank, National Association or any of its subsidiaries or affiliates pursuant to the P&A Agreement (as defined below), and any of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

17. “JPMC Adversary Proceeding” refers to *JPMorgan Chase Bank, National Association v. Washington Mutual, Inc., et al.*, Adversary Proceeding No. 09-50551 (Bankr. D. Del.).

18. “JPMC’s Responses” means the “Responses and Objections of JPMorgan Chase Bank, National Association to Debtors’ First Request for Production of Documents,” dated July 20, 2009, and served by JPMC on the debtors in the Chapter 11 Cases.

19. “OTS” means the Office of Thrift Supervision, and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

20. “P&A Agreement” means or refers to the Purchase and Assumption Agreement, Whole Bank, among the Federal Deposit Insurance Corporation, as receiver of Washington Mutual Bank, Henderson, Nevada, the Federal Deposit Insurance Corporation and JPM, dated as of September 25, 2008.

21. The “Proposed Global Settlement Agreement” means the Proposed Global Settlement Agreement described in the Disclosure Statement and any subsequent or revised drafts of that agreement.

22. “Purchase Price” means the approximately \$1.88 billion that JPMC paid to the FDIC for the purchase of substantially all of the assets of WMB as reflected in Schedule 3.2 to the P&A Agreement.

23. “Texas Action” refers to *American Nat’l Ins Co., et al., v. JPMorgan Chase & Co., et al.*, Case No. 3:09-cv-00044 (S.D. Tex.), which was transferred to the United States District Court for the District of Columbia and docketed there as Civil Action No. 09-1743 (RMC).

24. “Transaction” means or refers to any means by which JPMC or any of them might obtain, receive or succeed to Washington Mutual’s businesses or properties, or any portion thereof, including any stock tender, stock purchase, asset purchase, assumption of deposit or

other liabilities, merger, joint venture or partnership.

25. “Turnover Proceeding” means *WMI and WMI Investment Corp. v. JPMC*, No. 09-50934 (Bankr. D. Del.).

26. “U.S. Department of the Treasury” means or refers to the U.S. Department of the Treasury and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

27. “Washington Mutual” means or refers to WMI and WMB, and any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

28. “WMB” means or refers to Washington Mutual Bank, Henderson, Nevada, and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

29. “WMB fsb” means or refers to Washington Mutual Bank, fsb, Utah, and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

30. “WMI” means or refers to Washington Mutual, Inc. and WMI Investment Corp. (collectively, the “Debtors”) and any and all of their current or former officers, directors,

employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

31. “WMI RFPs” means or refers to the WMI’s First Request for Production of Documents served on JPMC on or about July 6, 2009.

32. “You” or “Your” means or refers to WMI.

33. Any ambiguity in a discovery request shall be construed to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.

INSTRUCTIONS

Each response must be made in accordance with the following instructions:

1. The responsive documents should be produced in the manner prescribed by the Federal Rules of Civil Procedure, as made applicable herein by the Federal Rules of Bankruptcy Procedure, including producing the requested documents as they are kept in the usual course of business or organized and labeled to correspond with the categories in the requests, and identifying the name of the person from whose files the documents were produced.

2. You are to produce the original and all non-identical copies, including all drafts, of each document requested. If you are not able to produce the original of any document, please produce the best available copy and all non-identical copies, including drafts.

3. Each request herein extends to all documents and communications in your possession, custody or control. A document is deemed to be in your possession, custody, or control if it is in your physical custody, or if it is in the physical custody of any other person and

you: (1) own such document in whole or in part; (2) have a right, by contract, statute or otherwise, to use, inspect, examine or copy such document on any terms; (3) have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or (4) as a practical matter, have been able to use, inspect, examine, or copy such document when you sought to do so. If any requested document was, but no longer is, in your control, state the disposition of each such document.

4. Any reference in these document requests to an individual or person include any and all agents, advisors, employees, representatives, attorneys, and successors-in-interest.

5. If any document is withheld under any claim of privilege, including without limitation, attorney-client privilege and attorney work product, you should provide the following information with respect to such document:

- (1) The date of the document;
- (2) The title of the document;
- (3) The name of its author(s) or preparer(s) and an identification by employment and title of each such person;
- (4) The name of each person who was sent or furnished with, received, viewed or has custody of the document or a copy thereof together with an identification by employment and title of each such person;
- (5) The request to which the document relates;
- (6) The title and description of the document sufficient to identify it without revealing the information for which privilege is claimed;
- (7) The claim of privilege under which it is withheld; and

(8) A description of the subject matter of the document in sufficient detail to support your contention that the document is privileged;

6. If, after exercising due diligence to secure them, you cannot provide some or any of the requested documents, so state and provide all documents to the extent possible, specifying the reason for your inability to produce the remainder of the documents.

7. If any requested document or other document potentially relevant to this action is subject to destruction under any document retention or destruction program, the document(s) should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this action or unless otherwise permitted by the Court.

8. If any document responsive to these requests is known to have existed and cannot now be located, or has been destroyed or discarded, set forth a complete statement of the circumstances surrounding such loss or destruction.

9. If an objection is made to any request, state your objection and the ground or grounds with particularity in your written response. If an objection is made only to part of the request, identify that part in your written response and state your objection and the ground(s) therefor.

10. This request is a continuing one. If, after producing the requested documents, you obtain or become aware of any further documents responsive to this request, you are required to produce such additional documents promptly.

11. Unless otherwise specified, the time period covered by these requests is from September 1, 2007 to the present.

REQUESTS FOR PRODUCTION OF DOCUMENTS

The Plan

1. All analyses, valuations, or reports performed or created by or on behalf of the Debtors concerning the current value of the assets comprising the Debtors' estates, and all communications related thereto.
2. All analyses, valuations, or reports performed or created by or on behalf of the Debtors concerning the current liabilities of the Debtors' estates, and all communications related thereto.
3. All analyses, valuations, reports and other documents that informed the Debtors in the preparation of the Liquidation Analysis attached as an Exhibit to the Plan (the "Liquidation Analysis"), and all communications related thereto.
4. All analyses, valuations, reports and other documents that informed the Debtors in the preparation of the Proposed Global Settlement Agreement, and all communications related thereto.
5. All analyses, valuations, reports and other documents in the possession or control of the Debtors concerning consideration and evaluation of alternatives to the transactions/structure comprising the Plan and Proposed Global Settlement Agreement.
6. All analyses, valuation, reports and other documents in the possession or control of the Debtors concerning the consideration and evaluation of litigation claims, including without limitation any litigation claims against any of the Debtors' auditors or underwriters, that could be or have been brought by or against the Debtor's Estate.
7. All tax sharing and tax allocation agreements between or among WMI and any subsidiary entity (including WMB) from 2005 to date (collectively, "Tax Agreements").

8. All analyses of, and reports and communications regarding, the Tax Agreements (regardless of origin) as they relate to the division of tax liability or tax refunds among WMI and its subsidiary entities including WMB.

9. All schedules, analyses, reports and communications (regardless of origin) concerning capital contributions and intercompany indebtedness among or between WMI and any subsidiary entity (including WMB) in the two year preceding September 25, 2008.

10. All schedules, analyses, reports and communications regarding potential preference claims under section 547 of the Bankruptcy Code prepared by the Debtors or their Advisors, and all schedules, analyses, reports and communications regarding potential fraudulent conveyance claims under section 548 and/or section 544 of the Bankruptcy Code prepared by the Debtors or their advisors.

11. All documents (including certificates of designation) concerning the collateral of the different series of: (a) Washington Mutual Preferred (Cayman) I Ltd.; and (b) Washington Mutual Preferred Funding Trust Fixed-to-Floating Securities.

12. All documents served on or otherwise provided to WMI by the OTS: (a) to effect the exchange event discussed in Article IV.B.6 of the Disclosure Statement; and (b) concerning the transfer and ownership of the corpus or assets owned by Washington Mutual Preferred Funding LLC.

13. All minutes, transcripts and recordings of, and all communications regarding, meetings of the Board of Directors of WMI or WMI Investment held following the Petition Date, and all documents provided to the Directors in connection with those meetings.

14. All documents the Debtors or its Advisors considered to determine whether each of the JPMC Claims listed on Exhibit 4 to the Proposed Global Settlement Agreement is valid and

enforceable, and all related analyses, valuations, reports and communications (regardless of origin) concerning the JPMC Claims.

15. All analyses, valuations, reports and other documents (regardless of origin) concerning any claims or potential claims assertable by the Debtors against the Debtors' Directors and Officers.

16. All analyses, valuations, reports and other documents (regardless of origin) concerning any claims or potential claims assertable by the Debtors against the Settling Noteholders.

17. All analyses, valuations, reports and communications (regardless of origin) concerning the consideration provided by the Debtors' estates to JPMC under the Plan and Proposed Global Settlement Agreement.

18. All analyses, valuations, reports and communications (regardless of origin) concerning the consideration, including assumption of liabilities, received by the Debtors' estates from JPMC under the Plan and Proposed Global Settlement Agreement.

19. All analyses, valuations, reports and other documents considered by the Debtors in reaching the decision to accept \$25 million in exchange for the 3.147 million Class B Shares of Visa Inc. held by WMI, and all communications concerning that decision.

20. All analyses, valuations, reports and other documents considered by the Debtors concerning the allocation of the Tax Refunds described in article I.C.2. of the Disclosure Statement among the Debtors' estates, JPMC and the FDIC, and all communications concerning those allocations.

21. All analyses, valuations, reports and other documents considered by the Debtors concerning the distribution the Debtors expect the holders of the CCB Securities may receive from the WMB Receivership, and all communications concerning that distribution.

22. All analyses, valuations, reports and other documents considered by the Debtors concerning the value of the assets to be retained by the Reorganized Debtor under the Plan, and all communications concerning the value of those assets.

23. All documents concerning the proposed Rights Offering.

24. All documents identified in, or referred to or consulted in responding to, the Interrogatories set forth below.

25. To the extent not otherwise produced in response to these Requests, all communications concerning: (a) the claims, consideration and releases referenced in Interrogatory Nos. 1-2; and (b) the compensation and related obligation or agreement regarding payment referenced in Interrogatory No.3.

26. All documents concerning the conveyance of any interest in the assets or corpus of Washington Mutual Preferred Funding LLC, University Street, Inc. and Washington Mutual Home Equity Trust I.

The Proposed Global Settlement Agreement

27. All documents concerning the negotiation of the Proposed Global Settlement Agreement or any agreements reflected in the proposed Global Settlement Agreement, including all demands and offers made to settle any claims or disputes among WMI, the FDIC, and/or JPMC. This request includes records of communications among two or more parties to the Proposed Global Settlement Agreement and drafts of the Proposed Global Settlement Agreement.

28. All documents concerning the Proposed Global Settlement Agreement or any agreements reflected in the Proposed Global Settlement Agreement. This request includes (a) analysis of, or communications about, any of the disputes that would be compromised or released under the Proposed Global Settlement Agreement by any party to the Proposed Global Settlement Agreement; and (b) your communications with anyone about the Proposed Global Settlement Agreement, any agreements reflected in the Proposed Global Settlement Agreement, and/or the settlement of any claims or disputes among the parties to the Proposed Global Settlement Agreement.

29. All documents on which You based your decision to settle any claims against JPMC or the FDIC.

30. All documents concerning the evaluation or valuation of any claims, rights, or causes of action that the Debtors would release under the proposed Global Settlement.

31. All documents concerning the “careful analysis” referenced in Section I.C of the Disclosure Statement for the Second Amended Joint Plan (at p. 7).

32. All documents concerning the Debtors’ conclusions as to the “substantial expense of litigating the issues,” as that phrase is used in Section I.C of the Disclosure Statement for the Second Amended Joint Plan (at p. 7).

33. All documents concerning the Debtors’ conclusions as to the “length of time necessary to resolve each of the issues presented in the pending litigation,” as that phrase is used in Section I.C of the Disclosure Statement for the Second Amended Joint Plan (at p. 7).

34. All documents concerning the Debtors’ conclusions as to the “complexity and uncertainty involved,” as that phrase is used in Section I.C of the Disclosure Statement for the Second Amended Joint Plan (at p. 7).

35. All documents concerning the Debtors' conclusions as to "the existence of potential additional claims and causes of action of the Debtors and the Debtors' chapter 11 estates against JPMC," as that phrase is used in Section I.C of the Disclosure Statement for the Second Amended Joint Plan (at p. 8).

36. If not previously produced to the Equity Committee, all documents that you received or prepared as part of the investigation referenced on pages 69-70 of the January 28, 2010, transcript of proceedings before the Honorable Mary F. Walrath.

37. If not previously produced to the Equity Committee, the information and documents that you obtained after the January 28, 2010 hearing before the Honorable Mary F. Walrath that assisted with your "assess[ment] of the tort claims against [JPMC]." Transcript of January 28, 2010 Proceedings before the Honorable Mary F. Walrath, page 71.

38. All documents concerning your investigation of any claims or potential claims that would be released pursuant to the proposed Global Settlement Agreement.

39. All documents provided to the Creditors' Committee of WMI and/or other stakeholders concerning claims and causes of action to be settled against JPMC and the FDIC, other than documents publicly filed in this bankruptcy case.

40. Documents provided to the WMI's board of directors concerning the claims and causes of action against JPMC and the FDIC that would be released under the proposed Global Settlement, and any other documents provided to the board concerning the proposed Global Settlement, as well as all communications related thereto.

Potential Claims Against JPMC

41. All documents concerning any plans or efforts by WMI during 2008 to raise capital or increase liquidity (for itself or for WMB) through the sale of securities (including debt

instruments), the sale of assets (including WMI subsidiaries), the sale of WMI itself, a merger, or any other corporate or financial transaction.

42. All documents disclosed or provided by Washington Mutual to JPMC during the course of any discussions by Washington Mutual with JPMC in 2008 concerning a potential Transaction; all documents referring to or discussing information provided by Washington Mutual to JPMC during the course of any discussions by Washington Mutual with JPMC in 2008 concerning a potential Transaction; and any agreements restricting JPMC's use or disclosure of any such documents or information.

43. All documents concerning JPMC's disclosure to anyone of any documents or other information provided by Washington Mutual to JPMC during the course of any discussions by Washington Mutual with JPMC in 2008 concerning a potential Transaction, including non-public, confidential or proprietary information and including the disclosure of such information to third parties to secure financing or raise capital in connection with any potential Transaction.

44. All documents concerning any potential Transaction, including all documents prepared by Washington Mutual that refer to, discuss, or analyze any potential Transaction.

45. All documents concerning any communications between JPMC and the media (including The Wall Street Journal and any other print, online, broadcast, or cable news outlet) related to Washington Mutual, including any such communications related to Washington Mutual's financial status, financial condition, assets, and liabilities.

46. All documents concerning any communications (including communications between Washington Mutual and either JPMC or any Governmental Unit) concerning a possible governmental seizure or receivership of Washington Mutual, and/or the sale of Washington Mutual.

47. All documents concerning actions taken by any Governmental Unit concerning Washington Mutual after July 2008, including the seizure of WMB by the OTS and the appointment of FDIC as receiver.

48. All documents concerning any assessment, evaluation, consideration or analysis of the consideration received by JPMC under the P&A Agreement, including the value of the assets of WMB that JPMC acquired pursuant to the P&A Agreement.

49. All documents concerning any communications between JPMC and any third party concerning Washington Mutual's actual or projected financial condition, including any communications with the FDIC and/or OTS.

50. All documents concerning JPMC's placement of former JPMC employees at Washington Mutual, including the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

51. All documents concerning the disclosure of any of Washington Mutual's non-public, confidential or proprietary information by former JPMC employees working at Washington Mutual, including Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

52. All documents from July 1, 2007 through September 26, 2008, concerning or reflecting any communications between JPMC and any of its former employees working at Washington Mutual, including Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

53. All balance sheets for WMI and WMB for the period June 1, 2008 through September 26, 2008.

54. All documents reflecting the daily inflows and outflows of deposits on account at WMB from June 1, 2008 through September 26, 2008.

55. Documents sufficient to identify the names and contact information of all Entities who withdrew deposits of \$100,000.00 or more (in the aggregate) from WMB or WMB fsb in September 2008 and the amounts of such withdrawals.

56. All documents you received from any Governmental Unit regarding the assessment, evaluation, consideration or analysis of the capitalization of Washington Mutual.

57. Documents sufficient to show the number and dollar amount of residential mortgage loans originated or purchased by WMB from June 1, 2008 through September 26, 2008.

58. Documents sufficient to show the number and dollar amount of commercial mortgage loans originated or purchased by WMB between June 1, 2008 and September 26, 2008.

59. All documents concerning the amount of deposits on account at WMB each day between June 1, 2008 and September 26, 2008.

60. All documents, including reports, summaries or compilations, concerning or concerning the status and performance of WMB's mortgage portfolio in 2008.

61. All documents, including reports, summaries, analyses, or compilations, concerning the performance of WMB's loan portfolio, excluding mortgages, during 2008.

62. All documents concerning Washington Mutual's efforts to obtain credit or to draw upon any credit facilities from any bank in the Federal Home Loan Bank System.

63. All documents concerning any communications and/or agreements between WMI and JPMC concerning JPMC's production of documents in response to the WMI RFPs, including documents concerning the scope of JPMC's search for and production of documents as compared to the scope of the requests in the WMI RFPs.

64. All documents concerning the E-Discovery Protocol, including all drafts thereof, referenced in the 11/25/2009 Letter from Erica Taggart to Stacey Friedman.

65. The Information Access Agreement dated November 21, 2008, referred to in ¶ 10 of the General Objections in JPMC's Responses.

66. All documents concerning any actions considered or implemented by JPMC to affect the market price of WMI securities and/or market perceptions of WMI's solvency, liquidity, and/or financial health.

67. All documents that you received since September 25, 2008, pursuant to any FOIA requests.

INTERROGATORIES

1. With respect to each entity to whom the Debtors propose to grant a release in connection with the Plan or the Proposed Global Settlement Agreement, describe (i) such entity by name and relationship to the Debtors, (ii) any claims known or believed by the Debtors to be assertable against such entity, and (iii) the consideration to be received by the Debtors' estates in exchange for such release.

2. With respect to each entity proposed to be released pursuant to Section 43.6 of the Plan entitled "Releases by Holders of Claims and Equity Interests," describe (i) such entity by name and relationship to the Debtors, (ii) the basis upon which such entity is being released, and (iii) the consideration provided or to be provided by such entity in exchange for such release.

3. With respect to each professional retained by a non-debtor whose fees the Debtors intend to pay according to Section 43.18 of the Plan, identify (i) such professional; (ii) the

amount of compensation the Debtors anticipate paying to such professional, and (iii) the basis on which the Debtors are obligated, or have agreed, to pay the fees of such professional.

4. Identify each document (by Bates/production number or, if no such numbering is apparent from the face of a given document, by providing at least the information required by Rule 33(d)(1) of the Federal Rules of Civil Procedure):

- (a) upon which the board of directors of WMI relied in approving the Proposed Global Settlement Agreement;
- (b) upon which the board of directors of WMI Investment Corp. relied in approving the Proposed Global Settlement Agreement;
- (c) upon which the board of directors of WMI relied in approving the Plan;
- (d) upon which the board of directors of WMI Investment Corp. relied in approving the Plan; and
- (e) provided to the Creditors' Committee of WMI and/or other stakeholders concerning claims and causes of action to be settled against JPMC and the FDIC, other than documents publicly filed in this bankruptcy case.

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 08-12229 (MFW)

-----x

In the Matter of:

WASHINGTON MUTUAL, INC., et al.,

Debtors.

-----x

United States Bankruptcy Court
824 North Market Street
Wilmington, Delaware

May 5, 2010

10:30 AM

B E F O R E:

HON. MARY F. WALRATH

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY

VERITEXT REPORTING COMPANY

1 find that this is a litigation tactic, although it's been
2 suggested that the shareholders are simply seeking to delay
3 things while they replace management so that they can have --
4 or, excuse me, the directors -- board of directors, so that
5 they can tank the settlement. I'll accept their motion as
6 being -- as they state it: an effort to have an investigation
7 conducted by an independent third party to determine whether or
8 not the plan proposed by the debtor, or this global settlement
9 referred to by the parties, is appropriate and whether,
10 instead, prosecution of those claims would result in a greater
11 recovery for the estate.

12 Notwithstanding that, reviewing the factors, I think
13 it is clear that the motion has to be denied at this point.
14 First, it is clear to me that this debtor has been investigated
15 to death. And I'm sure that even the most experienced and
16 talented examiner that the United States Trustee could appoint
17 would not find any stone unturned. The investigations have
18 been conducted not only by the debtor and the creditors'
19 committee, but by -- the equity committee itself has done some
20 investigation; the Office of Thrift Supervision; the FDIC; the
21 government task force, including the U.S. Attorney for the
22 Western District of Washington; the Department of Labor; the
23 Department of Justice; the FBI; the IRS; the SEC; the Attorney
24 General for the State of New York; the class action plaintiffs;
25 Congress; the U.S. Treasury; and the President's Financial

1 Fraud Task Force have all taken a look at Washington Mutual.
2 It is true that their investigations exceeded the scope of what
3 this Court need concern itself with. They have talked about
4 systemic problems. They have investigated possible criminal
5 actions by the parties. In this case the Court is limited to,
6 as the equity committee suggests, the value of the estates and
7 how they will be distributed in this bankruptcy case.

8 I don't think it is fair to the creditors in this case
9 to be saddled with the cost of an investigation into systemic
10 problems, that would only benefit future parties but not
11 benefit the parties in this case. In this case specifically,
12 the debtor and the creditors' committee have investigated the
13 specific assets owned by the debtor, or that the debtor claims
14 it owns. The debtor has vigorously appeared in and prosecuted
15 its position in several adversaries in this case, in addition
16 to filing a claim in the FDIC receivership and prosecuting
17 claims it has in that forum. All of that information should be
18 available to the equity committee. And I don't want to hear
19 about obstacles being placed in their path to getting full and
20 open access to that information, whether it's documentary or
21 interviews with the debtors' management or others who have
22 conducted these investigations; and the same goes with the
23 creditors' committee, who's been actively involved in all of
24 this.

25 Again, the appointment of an examiner here really

1 would -- an examiner really would only have the task of
2 reviewing what others have already done. I don't think there's
3 any original investigation left to be done. So I think that's
4 just a waste of assets.

5 Secondly, I think the equity committee is fully able
6 to conduct the investigation that it seeks to have the examiner
7 conduct. It has the benefit of Rule 2004, it has the benefit
8 of the discovery rules, because there are contested matters
9 presently and anticipated in which the equity committee could
10 fully avail itself of that discovery. But, again, I'm strongly
11 urging the committee and the debtor to provide all the
12 information to the equity committee without testing the Court's
13 patience with discovery motions.

14 The -- again, the appointment of a third party to
15 conduct that investigation and to report to the Court its
16 conclusion is no substitute for the adversarial process extant
17 in bankruptcy court and the duty of the Court, after hearing
18 the views of the opposing parties, to make a decision as to
19 what assets the debtor owns, what the value of those assets is,
20 whether a settlement is reasonable, in resolving a conflicting
21 claim to those -- to ownership to those assets.

22 Finally, the timing of the motion. I don't think that
23 this is a factor that I'll rely on in this case. I think that
24 in other cases it's been evident that parties have been
25 litigating for many, many months, and only at the last minute

EXHIBIT 3

GTaylor

From: Steve Susman [SSusman@SusmanGodfrey.com]
Sent: Friday, May 07, 2010 5:12 PM
To: Peter Calamari; brian.rosen@weil.com
Cc: David Elsberg; Benjamin Finestone; Jeffrey Benner; Andrew Sole; Dorthea Barr; Edgar G. Sargent; GTaylor; Joe Criscione; Justin A. Nelson; Kenneth I. Feldman; Lauren Krueger; Michael Willingham; Parker Folse; Robert Ajiashvili; Rose Dolan; Saul Sutton; Seth Ard; Steve Susman

Importance: High
Sensitivity: Confidential

Peter, thanks for returning my call from Asia this morning. As I mentioned over the phone, we don't think it's a prudent use of the estate's resources to try to re-create the wheel, e.g., reviewing voluminous documents that your firm has already reviewed and analyzed. We also need to know precisely what you did not do.

We request your help in allowing us access to the work product and claim analysis of your firm, the Debtors' other firms, the Debtors themselves or your various experts. Specifically, your brief mentions the work you've performed in going through these documents and analyzing the claims. It would be a great help to our getting up to speed on these issues in a compressed time frame to have access to those. You mentioned some concern about whether you can keep these materials privileged if you provide them to us, but

it seems to me clear that since you represent the debtor and we represent its shareholders, our interests are aligned and we would enjoy a common interest privilege. We have already signed the NDA and will execute whatever other agreement you think necessary to preserve the privilege. If necessary, I bet the Judge would enter an order to such effect also. In any event, we expect that you can start producing some of these items immediately, and please produce the rest on a rolling basis.

Here's what we'd like to see, and if you don't have it, just tell us so:

- any analysis you've performed (including analysis on the relative merits) of any of the claims or assets at issue in the Turnover Action, the JPM Adversary Proceeding, the authorized Rule 2004 examination and the D.C. Action. These would include the "larger" elements in dispute such as the turnover action, the trust preferred securities, the tax refunds, and the NOLs, along with some of the "smaller" items such as the dime warrant litigation, the Visa shares, the wind farm, the planes, etc.

- any analysis you've performed on claims against officers and directors of WMI or WMB
- any analysis you've performed on a business tort or other claim against JP Morgan
- any analysis you've performed on claims against other third parties, including but not limited to Goldman Sachs, Santander, or the accounting firms
- any summaries and transcripts of witness interviews or depositions conducted by the Debtors or their retained professionals in connection with this bankruptcy.
- any transcripts and summaries from any depositions you've taken related to this matter
- any analysis of the Senate Investigation, any federal or state civil or criminal investigation, or any investigation you've performed
- any material you've received from these investigations and any analysis you've performed of these materials
- a copy of any cast of characters, hot document chronology, any analysis of the documents you've

reviewed, or other work product you've done in keeping track of the documents or their relative importance, the dates, or persons in the lawsuit

- access to the work product of your experts
- a copy of all analyses performed by the Debtors' tax advisors
- a copy of any other analyses you have received or performed related to this case

There are also some specific items that you mention in your brief:

- A copy of all factual and legal analyses and investigations performed by the Debtors, its conflicts counsel, and its retained professionals in connection with this bankruptcy.

- A copy of all formal or informal document requests served by the Debtors on any entity in connection with this bankruptcy, including, but not limited to:

- o All Freedom of Information requests made to the FDIC, OTS, the SEC, the DOT, the Federal Reserve and the OCC, as referenced in Paragraph 24 of the Debtors' Objection to Motion

and Supporting Memorandum of the Official Committee of Equity Security Holders for the Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy Code ("Debt. Obj."), and any analysis of those documents;

- o All formal and informal requests made to JPM and the FDIC in connection with the Turnover Action, the JPMC Adversary Action, the DC Action, the American National Action, the authorized Rule 2004 examination and the denied Rule 2004 motion, any analysis of what to ask for, what to expect, or what they actually produced; and

- o All formal or informal requests to third parties discussed in Paragraph 24 of the Debtors Obj., and any analysis of what to ask for, what to expect, or what they actually produced.

- Any analysis, coding, or other work product generated from the review of the "over 40,274 pages of documents produced by JPMC" referenced in Paragraph 24 of the Debt. Obj.

- Any analysis, coding, or other work product generated from the review of the 7.6 million

documents that the Debtors and their advisors have collected in this matter referenced in Paragraph 22 of the Debt. Obj.

We'd also appreciate your written consent to allow the Venable firm to transfer to us the documents that the debtors obtained from JPM and gave to Venable.

Finally we would appreciate the opportunity to meet with you and your team in NY next Friday afternoon, say at 2pm, to get the same type of tutorial you gave to Venable.

Thanks in advance for your help. Please let us know when we can expect to receive the first of these.

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EXHIBIT 4

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From: Steve Susman [SSusman@SusmanGodfrey.com]
Sent: Friday, May 07, 2010 5:35 PM
To: rajshaman@mac.com
Cc: pgurfein@akingump.com; Andrew Sole; Dortehea Barr; Edgar G. Sargent; GTaylor; Joe Criscione; Justin A. Nelson; Kenneth I. Feldman; Lauren Krueger; Michael Willingham; Parker Folse; Robert Ajiashvili; Rose Dolan; Saul Sutton; Seth Ard; Steve Susman

Importance: High
Sensitivity: Confidential

Robert-

Thanks for your offer of help you made to us at the conclusion of the hearing. We think the Court made clear that it expects us to work in conjunction and specifically not to have us try to re-create the wheel. See, e.g., Hearing Transcript at 99. We thus request your help in allowing us access to your work product and claim analysis. Specifically, your brief and the Debtors' brief mentions the work you've performed in going through these documents and analyzing the claims. You've also stated that you and the Debtors have worked together on these matters. It would be a great help to our getting up to speed on these issues in a compressed time frame to have access to these materials and for us to have access to what you've shared with the Debtors along with any other work product you've created in the analysis of these documents and the

underlying claims. If necessary, we are happy to sign any common interest or work product agreement to preserve any privilege, and we also believe that the Court can enter an agreed order on this as well if we want further protection. We expect that you can start producing some of these items immediately, and please produce the rest on a rolling basis.

Here's what we'd like to see, to the extent you have it:

- any analysis you've performed (including analysis on the relative merits) of any of the claims or assets at issue in the Turnover Action, the JPM Adversary Proceeding, the authorized Rule 2004 examination and the D.C. Action. These would include the "larger" elements in dispute such as the turnover action, the trust preferred securities, the tax refunds, and the NOLs, along with some of the "smaller" items such as the dime warrant litigation, the Visa shares, the wind farm, the planes, etc.
- any analysis you've performed on claims against officers and directors of WMI or WMB

- any analysis you've performed on a business tort or other claim against JP Morgan
- any analysis you've performed on claims against other third parties, including but not limited to Goldman Sachs, Santander, or the accounting firms
- any summaries and transcripts of witness interviews or depositions conducted by the Debtors, the Unsecured Creditors' Committee, or their retained professionals in connection with this bankruptcy.
- any transcripts and summaries from any depositions you've taken related to this matter
- any analysis of the Senate Investigation, any federal or state civil or criminal investigation, or any investigation you've performed
- any material you've received from these investigations and any analysis you've performed of these materials
- a copy of any cast of characters, hot document chronology, any analysis of the documents you've reviewed, or other work product you've done in

keeping track of the documents or their relative importance, the dates, or persons in the lawsuit

- access to any experts you've hired and any work product they've created
- a copy of all analyses performed by the Creditors' Committee's tax advisors and the Debtors' tax advisors
- a copy of any other analyses you have received or performed related to this case
- a copy of any other analyses included in what you told the Court at pages 61-71 and 93-94 of the May 5 hearing transcript regarding the work you've done in analyzing these claims

There are also some specific items that you or the Debtors mention in your brief. We'd like all of those. These include, but are not limited to:

- A copy of all factual and legal analyses and investigations performed by the Creditors' Committee and its retained professionals and advisors in connection with this bankruptcy, including but not limited to those performed in connection with the topics listed in Paragraph 12

of the Objection of the Official Committee of Unsecured Creditors of Washington Mutual, INC. ET AL., to the Official Committee of Equity Security Holders' Motion for the Appointment of an Examiner ("Uns. Cr. Obj."), and the "extensive legal and financial analyses" discussed in Paragraph 31 of that objection.

- A copy of all factual and legal analyses and investigations performed by the Creditors' Committee or its retained professionals in connection with this bankruptcy.

- A copy of all formal or informal document requests served by the Debtors and/or the Unsecured Creditors' Committee on any entity in connection with this bankruptcy, including, but not limited to:

- o All Freedom of Information requests made to the FDIC, OTS, the SEC, the DOT, the Federal Reserve and the OCC, as referenced in Paragraph 24 of the Debtors' Objection to Motion and Supporting Memorandum of the Official Committee of Equity Security Holders for the Appointment of an Examiner Pursuant to Section

1104(c) of the Bankruptcy Code ("Debt. Obj."), and any analysis of those documents;

- o All formal and informal requests made to JPM and the FDIC in connection with the Turnover Action, the JPMC Adversary Action, the DC Action, the American National Action, the authorized Rule 2004 examination and the denied Rule 2004 motion, any analysis of what to ask for, what to expect, or what they actually produced; and

- o All formal or informal requests to third parties discussed in Paragraph 24 of the Debt. Obj., and any analysis of what to ask for, what to expect, or what they actually produced.

- Any analysis, coding, or other work product generated from the review of the "30,000 pages of JPMC documents produced pursuant to the Rule 2004 examination," Uns. Cr. Obj. ¶ 27.

- Any analysis, coding, or other work product generated from the review of the other documents you discussed reviewing at the hearing.

- Any analysis, coding, or other work product generated from the review of the of the "thousands

of pages of documents" that were voluntarily produced by third parties in connection with the Third Party Rule 2004 motion, Uns. Cr. Obj. ¶ 28.

- Any analysis, coding, or other work product generated from the review of the FDIC productions in response to Freedom of Information requests referenced at Uns. Cr. Obj. ¶ 26.

Thanks in advance, and let us know how we can facilitate this.

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EXHIBIT 5

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Edgar Sargent

*Counsel to the Official Committee of Equity Security Holders
of Washington Mutual, Inc., et al.*

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

WASHINGTON MUTUAL, INC., et al.,

Debtors

Chapter 11

Case No. 08-12229 (MFW)

Jointly Administered

**DECLARATION OF EDGAR SARGENT IN SUPPORT OF THE
MOTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS
FOR AN ORDER PURSUANT TO BANKRUPTCY RULE 2004 AND LOCAL
BANKRUPTCY RULE 2004-1 DIRECTING THE EXAMINATION OF JPMORGAN
CHASE**

I, Edgar Sargent, declare that the following is based on my personal knowledge except as indicated and is true and correct to the best of my knowledge and belief:

1. I am a partner at Susman Godfrey L.L.P. and am counsel of record for the Official Committee of Equity Security Holders ("Equity Committee") in this action. I submit this declaration in support of the *Motion of the Official Committee of Equity Security Holders For an Order Pursuant To Bankruptcy Rule 2004 And Local Bankruptcy Rule 2004-1 Directing the Examination of JPMorgan Chase* (the "Motion").

2. Immediately following the May 5, 2010 hearing on the Equity Committee's motion to appoint an examiner, I and others at my firm began seeking information from the

Debtors concerning their investigation of claims and disputes among the Debtors, JPMorgan Chase (“JPMC”), the FDIC, and others. We sought this information largely in order to assess the merits of the claims that would be released pursuant to the Debtors’ proposed Global Settlement agreement and their potential value to the estate.

3. On May 7, 2010, my partner Steve Susman sent an email to Peter Calamari of the firm Quinn Emanuel, lead litigation counsel for the Debtors in their disputes with JPMC and the FDIC, informally requesting documents gathered and generated during the course of the Debtors’ investigation. The email requested generally that the Debtors make available all work-product and claim analysis. It went on to specify (1) any analysis of the claims in the three major cases involving the Debtors and JPMC or of the claims at issue in the Rule 2004 examination of JPMC that the Debtors conducted pursuant to this Court’s order of June 24, 2009; (2) any analysis of claims against any current or former directors or officers of WMI or WMB; (3) any analysis of any business tort claim against JPMC; (4) any analysis of potential claims against any third-parties, including Goldman Sachs, Bank Santander, and any accounting firm; (5) summaries of transcripts or interviews with any witnesses conducted in connection with the bankruptcy; (6) any analysis of any federal or state criminal or civil investigation, including the Senate investigation into Washington Mutual; (7) any internally created cast of characters, hot document set, memos analyzing documents, or other work-product related to documents, dates, or people involved in the litigation or the Debtors’ investigation; (8) any expert work product; (9) any analysis by the Debtors’ tax advisors; (10) copies of all document requests served on any party, including FOIA requests and other government requests, and any analysis of the responses.

4. Also on May 7, 2010, Mr. Susman sent a similar e-mail with similar information requests to Robert Johnson, attorney for the Creditors' Committee in this bankruptcy.

5. Mr. Susman's email to Mr. Calamari also requested a meeting at Quinn Emanuel's offices in New York for the following Friday, May 14, 2010. Attorneys for the Debtors did not immediately respond to the requests, but agreed to the meeting and indicated that we could discuss the document requests at that time.

6. I attended the meeting on May 14th at Quinn Emanuel in New York with Steve Susman and Lauren Krueger, a representative of Esopus Creek Advisors and one of the members of the Equity Committee. On behalf of the Debtors, Peter Calamari, David Elsberg, and Ben Finestone of Quinn Emanuel attended. Robert Johnson of Aken Gump Strauss Hauer & Feld also attended on behalf of the Creditors' Committee.

7. At the meeting, we were told by Debtors' counsel that they would not agree to produce any of their litigation work-product in response to Mr. Susman's requests. Specifically, they advised that they would not produce any of the categories of documents set out in paragraph 3, above, other than copies of document requests the Debtors had served, including FOIA requests and other government requests. The attorneys indicated that they were concerned about the possibility that making the information available to counsel for the Equity Committee might constitute a waiver of privilege and render the documents discoverable by JPMC or other third parties.

8. Counsel for the Debtors did agree to make available to us documents they had obtained voluntarily or via discovery requests from third parties. Since the May 14 meeting, we have received from the Debtors copies of the productions by Citigroup and Blackstone. Debtors' counsel indicated that they also has documents produced by Moody's and by a lobbying

organization named OB-C Group, but that these third-parties have not authorized release of the documents to the Equity Committee's counsel. Debtors' counsel represents to us that, altogether, these productions total less than twenty documents.

9. My firm also recently obtained from the Equity Committee's previous counsel (the Venable firm) copies of what we understand to be JPMC's production of documents to the Debtors in response to the Debtors' Rule 2004 document requests served in the summer of 2009, and copies of productions to the Debtors by Washington Mutual investor TPG Capital and by the Office of Thrift Supervision (OTS.)

10. The Debtors have represented that the volume of documents in the JPMC production is approximately 40,000 pages, or between fifteen and twenty boxes. The volume of the Citigroup production is approximately 900 documents. The volume of the Blackstone production is approximately 500 documents. The volume of the OTS production is approximately 650 pages. The TPG Capital production is approximately 27,500 pages.

11. At the May 14th meeting, we also discussed documents obtained by the Debtors from the FDIC, apparently through FOIA requests. Mr. Johnson indicated that the total volume of FDIC-produced documents to date fits in one binder and that many of the documents were heavily redacted. Mr. Johnson has subsequently indicated that the total number of pages produced by the FDIC was approximately 240 and represented that copies of these documents have been sent to my firm. I have not received those documents yet, but expect to shortly.

12. At the same meeting, we discussed the availability of WMI and WMB documents created before the bankruptcy and FDIC receivership that might be relevant to the claims under discussion. We were told by Debtors's counsel that these documents are in the control of JPMC, which acquired them with the Washington Mutual assets. We were told that JPMC obtained

ownership of Washington Mutual's headquarters office building in Seattle, which contained information systems managing documents belonging to both WMB and WMI. We were also told at this meeting that the Debtors had been given some access to some of these documents.

13. I discussed the pre-bankruptcy WMI and WMB documents with Debtors' counsel a second time on a conference call May 21, 2010. On that call with me was my partner Parker Folsie. On behalf of the Debtors, Mr. Calamari, Mr. Elsberg, Mr. Finestone and Jeff Benner were on the call. Mr. Calamari explained that pursuant to an information access agreement, JPMC had made a number of pre-bankruptcy WMI and WMB documents available to the Debtors for purposes related to the ongoing administration of the estate (such as the preparation of tax returns.) However, based on what Mr. Calamari told us, it does not appear that the Debtors have attempted to search pre-bankruptcy WMI and WMB documents now in the custody and control of JPMC for documents relevant to any of the Debtors' potential claims against JPMC. Even after that conversation, it was unclear to me whether the Debtors requested that JPMC provide access to the pre-bankruptcy WMI and WMB documents for that purpose and were denied, or instead simply did not make the request. It also appears that JPMC did not produce any documents from the pre-bankruptcy WMI and WMB files now in its control in response to the Debtors' Rule 2004 document requests directed to JPMC.

14. Mr. Calamari indicated that attorneys for the Debtors had begun a review of the pre-bankruptcy WMI/WMB documents now in the Debtors' possession that JPMC had provided for estate administration purposes to determine if any of them are relevant to the claims against JPMC, but he said that review had not been completed at the time the Debtors agreed to settle with JPMC. We asked if the Debtors would provide us with copies of any materials identified in the review to date. Debtors' counsel refused this request on the ground that it would disclose

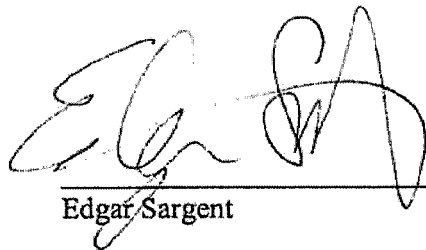
work product and result in waiver of the work product privilege. We were told that if the Equity Committee wanted to determine if pre-seizure WMI and WMB documents in the Debtors' possession were relevant to claims in dispute between the Debtors and JPMC, the Committee would have to serve formal document requests pursuant to a scheduling order. To date, the Debtors have not produced any pre-bankruptcy WMI or WMB documents to the Equity Committee that might be relevant to existing or potential claims between the Debtors and JPMC.

15. On the May 21, 2010 call, we again requested that the Debtors make available to us any collections of key documents that had been sifted by Quinn Emmanuel from the JPMC production or their own review of other WMI and WMB documents now in the Debtors' possession. Mr. Calamari declined to do that, claiming a work product privilege; he said there was no reason why the Equity Committee couldn't do the same work itself, at least with respect to the JPMC production.

16. Earlier in the week, I had also sent an email to the attorneys at Quinn Emanuel asking that they provide us with a privilege log listing the items that the Debtors were withholding from among those that were covered by the requests identified in ¶ 3 of this Declaration, to enable us to better evaluate the merits of the privilege claim and to obtain an indication of the volume of work product involved. I also asked that the log include information about whether the Debtors had shared the requested documents with other persons or organizations. On the May 21 call, Mr. Calamari indicated that Debtors' counsel would not provide such a log. He said, however, that at least "some" documents exist in "most" of the following categories: memos analyzing the legal or factual basis for the claims; damages analysis; substantive communication with experts or consultants; summaries of documents; interview notes; and draft discovery requests.

Dated: Seattle, Washington

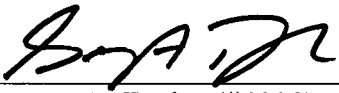
May 24, 2010



Edgar Sargent

CERTIFICATE OF SERVICE

I, Gregory A. Taylor, hereby certify that on May 26, 2010, I caused one copy of the foregoing document to be served upon the parties on the attached service list by first class U.S. Mail, postage prepaid, unless otherwise indicated.



Gregory A. Taylor (#4008)

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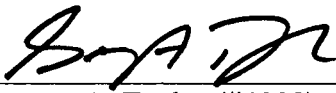
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