

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

**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 THE FDIC  
AND CERTAIN THIRD PARTIES**

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 Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1 for an order authorizing the Equity Committee to conduct an examination of the FDIC (in both its corporate and receiver capacities) and nine third parties – Goldman Sachs, Banco Santander, Office of Thrift Supervision, the Securities and Exchange Commission, the Federal Reserve, Henry Paulson, the Department of Treasury, Standard & Poor’s, and Moody’s – and represents as follows:

**I.**

**PRELIMINARY STATEMENT**

1. On May 25, 2010, the Equity Committee filed a Motion for an order authorizing the examination of J.P. Morgan Chase (“JPMC”) pursuant to Bankruptcy Rule 2004 (Docket Number 4301). That Motion (the “JPMC 2004 Motion”) is attached as **Exhibit A**, and is

<sup>1</sup> 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.



incorporated here by reference. In the JPMC 2004 Motion, the Equity Committee discussed in detail the reasons why it seeks 2004 discovery – namely, the representations by the Debtors to this Court regarding the existence of serious and significant claims against JPMC and the subsequent settlement of those claims that appears to place zero value on any business tort claim against JPMC and on any claim against the FDIC for its handling of the receivership and for selling WMB for well under its worth.

2. At the May 5, 2010 hearing, this Court specifically mentioned Rule 2004 requests as a source of the Equity Committee’s ability to fully investigate the claims held by the Debtors. The Equity Committee now seeks to use Rule 2004 to do what the Debtors have not yet done – examine documents of the FDIC and third parties that relate specifically to the claims that the Debtor propose to release through settlement. The subpoenas to these parties are attached as **Exhibit B**.

3. In December 2009, the Debtors brought a 2004 Motion against the FDIC and twenty third parties. This Court denied the Debtors’ Motion, in large part because the Court believed that the Debtors had failed to demonstrate that they needed additional information in order to decide whether to assert business tort claims against JPMC. *See Exhibit C* (transcript of Jan. 28, 2010 hearing) at 89. Rather than file suit against JPMC or try to obtain additional discovery through other means, however, the Debtors abandoned their efforts to investigate these claims and now propose to settle them.

4. The Equity Committee’s current Motion narrows both the group of targets and the subject matter of the subpoenas. Instead of seeking discovery against 20 parties as in the Debtors’ original Motion, the Equity Committee seeks authority to obtain necessary information from the FDIC and nine third parties. And the Equity Committee has attempted to draft requests

limited in subject matter to the claims being released by the Proposed Settlement. To the extent that any party views a request as more broad than that scope, the Equity Committee remains open to working with the parties to discuss any breadth objections they may have. The Equity Committee has conveyed this point to those parties who have substantively responded to the meet and confer requests initiated by the Committee pursuant to Local Rule 2004-1.

5. By this Motion, the Equity Committee seeks authority to investigate the claims that the Debtors propose to release in the Settlement. This authority is necessary in order to understand the scope of the claims that the Debtors are releasing as well as to pursue the investigation that the Debtors terminated. The purpose of this Motion is to allow the Equity Committee to investigate what has not yet been investigated by obtaining document discovery from these third parties and by taking depositions of the persons most knowledgeable about the claims that the Debtors propose to abandon.

6. The Equity Committee also seeks authority to conduct document and deposition discovery of the FDIC directed to the negotiation and meaning of the proposed Global Settlement, and the circumstances that led to its adoption.

## **II.**

### **JURISDICTION AND VENUE**

7. This 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.

**III.**  
**BACKGROUND**

8. After this Court's May 5, 2010 hearing, where this Court denied the Equity Committee's Motion for Appointment of an Examiner but specifically discussed the ability of the Equity Committee to conduct its own investigation, the Equity Committee has diligently attempted to determine (1) the extent and results of investigations conducted by Debtors' counsel and counsel to the Official Committee of Unsecured Creditors (the "Creditors Committee"); and (2) the documents in the hands of third parties that may bear upon the claims that the Debtors, JPMC, and the FDIC are settling. As discussed in more detail in Paragraphs 37-51 of the JPMC 2004 Motion, the Debtors obtained very limited and woefully incomplete discovery on a voluntary basis. The Declaration of Edgar Sargent (attached to the JPMC 2004 Motion and attached as **Exhibit D** here) further outlines the steps that the Equity Committee has taken to obtain documents and the limited nature of cooperation received from counsel to the Debtors and Creditors Committee.

9. The Sargent Declaration also details the paucity of production that the Debtors and Creditors Committee received from third parties, including those who were the subject of the Debtors' December 2009 motion for examination pursuant to Rule 2004. *See, e.g.*, Sargent Dec., **Exhibit D**, at ¶¶ 8-11. The sum total of the Debtors' third party discovery appears to be:

10. Approximately 650 pages of documents from the Office of Thrift Supervision

11. Approximately 240 pages of heavily redacted documents produced by the FDIC pursuant to FOIA requests. This appears to be the entirety of information that the Debtors obtained through all of the various discovery efforts they have directed to the FDIC to date, whether in court cases or pursuant to FOIA. In opposing the Debtors' December 2009 motion

for a Rule 2004 examination, the FDIC in its corporate capacity described to the Court three different sets of discovery requests it had received from the Debtors – the Rule 2004 subpoena, a set of FOIA requests, and a request for FDIC Exempt Records and Information. Objection of FDIC-Corporate to the Debtors’ Motion For An Order Pursuant to Bankruptcy Rule 2004 (Docket #2170), filed Jan. 15, 2010, at 3. The FDIC further stated that it was “processing” the Debtors’ FOIA requests. *Id.* at 2. The FDIC also explained that it was then engaged in responding to “a massive document request from Congress regarding the resolution of Washington Mutual Bank (WMB),” and that once that production was complete, the FDIC expected to begin “an appropriate production of documents to the Debtors pursuant to its administrative processes.” *Id.* at 2. The net result of the FDIC’s production to the Debtors, after all that, appears to be the roughly 240 pages referred to in the text. At this writing, the Equity Committee has not yet received this FDIC production, though we expect to receive a copy shortly.

12. Less than 20 documents produced by Moody’s and a lobbying firm called the OB-C Group. Those documents have not been provided to the Equity Committee because Moody’s and the OB-C have refused to consent to such disclosure.

13. Approximately 900 documents produced by Citigroup and approximately 500 documents produced by Blackstone. The Debtors provided those documents to the Equity Committee for the first time on May 24, 2010.

14. Approximately 27,500 pages of documents from TPG Capital, the company that made a significant equity investment in WMI in the summer of 2008. This production constitutes the vast majority of documents obtained by the Debtors from third parties – yet it would appear to have only a limited (if any) relationship to the potential business tort claims

against JPMC. Of that mass of TPG Capital documents, the Equity Committee is unable to access more than 22,000 pages of the production because the disk provided by the Debtors which contains them is password-protected and the Debtors have not provided the password.

15. In opposing the Equity Committee's motion for appointment of an examiner, the Debtors represented to the Court as follows:

The Debtors have also engaged in extensive negotiations with Sullivan & Cromwell, LLP. The Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System (the "Federal Reserve"), the U.S. Department of the Treasury (the "DOT"), Cerberus Capital Management, L.P., Lehman Brothers, and Morgan Stanley for further documents related to the Business Tort Investigation. Supplementing the Business Tort Investigation, the Debtors also issued information requests pursuant to the Freedom of Information Act to the FDIC, OTS, the Securities Exchange Commission, the DOT, the Federal Reserve and the OCC.

16. However much negotiating, discussing, and supplemental requesting the Debtors have done, the actual result in terms of obtaining actual documentary evidence consists of what the Equity Committee has described above – unless the Debtors are holding back information from the Equity Committee without saying so.

#### IV.

#### **RELIEF REQUESTED**

17. Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1, the Equity Committee requests authorization to conduct an examination of the FDIC and the nine other third-parties identified in the subpoenas attached as **Exhibit B**, including production of documents responsive to the document requests attached to the respective subpoenas and oral examination of the party's witnesses most knowledgeable about the subjects described in those requests. The Equity Committee seeks entry of an order substantially in the same form of the Proposed Order filed with this Motion as **Exhibit E**.

18. For the nine third parties, the document requests are targeted toward obtaining information about the claims that the Debtors are releasing through the proposed Global Settlement. These document requests are a subset of the Debtors' requests to this Court a few months ago, but targeted solely at the claims that the Debtors now seek to settle. In addition to narrowing the scope of the actual subpoenas, the Equity Committee also cut the list in half for the parties subject to the Rule 2004 Motion from the Debtors' original request.

19. For the FDIC, in addition to the category of documents relating to the claims being released, the Equity Committee seeks information concerning the negotiation and impact of the proposed Global Settlement. This information is highly relevant because this Proposed Settlement is the cornerstone of the Debtors' proposed plan of reorganization.

## V.

### **BASIS FOR RELIEF**

20. Bankruptcy Rule 2004(a) provides that “[o]n motion of any party in interest, the court may order the examination of any entity.” The purpose of a Rule 2004 examination “is to enable the trustee to discover the nature and extent of the bankruptcy estate.” Opinion of the Court (Docket #1219) dated June 24, 2009 (“June 24 Opinion”) at 8 (citing *In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702, 708 (Bankr. S.D.N.Y. 1991); *see also In re Symington*, 209 B.R. 678, 684 (Bankr. D. Md. 1997). Among the “[l]egitimate goals of Rule 2004 examinations” are “determining whether wrongdoing has occurred,” June 24 Opinion, at 8 (quoting *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002), and exposing any fraudulent conduct. *Symington*, 209 B.R. at 683-84.

21. Rule 2004 grants parties in interest “broad rights of examination of a third-party’s records.” *Snyder v. Society Bank*, 181 B.R. 40, 41 (S.D. Tex. 1994); *see also In re Cousins*

*Barricades & Metal Prods. Inc.*, No. Civ. A. 99-2035, 200 WL 245860, \*3 (E.D. La. Mar. 2, 2000). Emphasizing the broad purpose of Rule 2004, courts permit examination of any third party that has “knowledge of the debtor’s affairs,” *In re Ecam Publ’ns*, 131 B.R. 556, 559 (Bankr. S.D.N.Y. 1991), or who can be shown to have had dealings with the debtor, *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 432 (S.D.N.Y. 1993), *aff’d*, 17 F.3d 600 (2d Cir. 1994). See Bankruptcy Rule 2004(b) (noting that Rule 2004 examination may concern “any matter which may affect the administration of the debtor’s estate”).

22. While this Court denied the Debtors’ request for an expansive set of Rule 2004 requests to third parties earlier this year, the context now is significantly different. The Debtors have chosen to release their claims rather than assert them and then use federal discovery rules to gather additional information.

23. This Motion should be granted because (1) the Equity Committee has no other way to obtain this information; and (2) the requested information is vital to determining the appropriateness of the Proposed Settlement and the Plan which is predicated on that Settlement.

24. First, unlike the Debtors, the Equity Committee cannot simply file suit to assert these claims against JPMC and then use third-party discovery in those cases. When this Court denied the Debtors’ Rule 2004 Motion, it noted that Debtors could bring a business tort claim themselves. See **Exhibit C** at 89:12-14. Here, the Equity Committee cannot bring that claim. More fundamentally, there is no other proceeding through which the Committee can obtain this discovery. Other adversary proceedings have been stayed, as the Court is aware. Thus, discovery is unavailable in those actions; no pending proceeding provides an alternate vehicle through which the requested discovery could be expeditiously obtained. See *In re Int’l Fibercom, Inc.*, 283 B.R. 290, 292 (Bankr. D. Ariz. 2002) (holding that pending proceeding rule



was inapplicable when discovery was unavailable in other litigation due to a stay). In short, unlike the Debtors' earlier Rule 2004 Motion, the Equity Committee cannot obtain these documents any other way.

25. Second, the requested information is essential for the Equity Committee's analysis of the Proposed Settlement and the Proposed Plan. Indeed, the reasonableness of the bargain reflected in that Proposed Settlement turns in large measure on an assessment of the claims against JPMC that the Debtors propose to give up, including the potential business tort claims that are the primary subject of the examination requested by this motion. The Equity Committee has limited the scope and number of subpoenas as compared to those originally proposed to be issued by the Debtors. These subpoenas specifically are designed to obtain information highly relevant to the underlying action by directing the requests to the claims being released by the Proposed Settlement. This Court recognized the propriety of the Equity Committee using Rule 2004 to obtain the relevant information in the May 5, 2010 hearing. *See* JPMC 2004 Motion at ¶ 34 (quoting this Court's statement that the Equity Committee "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").

**CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 2004-1**

26. By e-mails on May 26 and May 27, 2010, counsel for the Equity Committee provided counsel for the requested parties with the document requests attached in their respective subpoenas, described the substance of the relief requested by this motion, and asked whether the parties would agree to the requested examination and to respond to the document requests without a court order. Counsel requested that the parties respond by 12 or 12:30 Eastern (depending on the party and when the email was sent) on May 28 and also asked that counsel for

the respective parties identify a time when they would be available to discuss the requests. Counsel for the Equity Committee has conferred with attorneys for the FDIC Receiver, FDIC-Corporate, Moody's, the Department of Treasury, Henry Paulson, the OTS, Goldman Sachs, and the Federal Reserve. Counsel for the Equity Committee conferred with Moody's and the FDIC-Receiver on the substance of the requests, and they preserve their objections to the subpoenas but the parties are conferring in good faith. Counsel for FDIC-Corporate, Department of Treasury, and Henry Paulson are conferring in good faith with the Equity Committee about the subpoenas. Counsel for the OTS and counsel for the Equity Committee have scheduled a time to discuss next week because OTS counsel could not talk this week. Counsel for the Federal Reserve has stated it is premature to have meet and confer discussions until the Court grants authority to conduct a Rule 2004 examination. Counsel for Goldman Sachs has indicated it will oppose this motion. Counsel for Banco Santander, Standard and Poors, and the SEC have not responded. However, neither Goldman Sachs nor Banco Santander objected to the Debtors' Rule 2004 subpoenas. Despite this lack of objection, it appears that the Debtors never obtained any documents from these parties. Standard and Poors filed an objection to the Debtors' original Rule 2004 request, but stated that the parties were working in good faith to narrow the subpoena. The SEC also opposed the Debtors' original Rule 2004 request to it.

27. To prevent unnecessary delay arising from disputes concerning, among other things, the Equity Committee's entitlement to the information requested and claims of confidentiality, the Equity Committee requests that this motion be set for hearing and thereby ensure an expeditious resolution of any such disputes. Prior to the hearing, the Equity Committee will continue attempting to discuss the relief requested and attempt to resolve any legitimate objections raised by any of the parties.

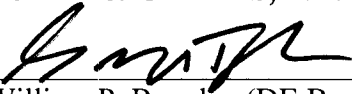
28. Accordingly, the Equity Committee seeks the Court's authority to conduct an examination under Bankruptcy Rule 2004 and Local Rule 2004-1 that includes production of all documents responsive to the requests attached as Exhibit A, as well as related oral examination of witnesses most knowledgeable about the subjects described in the document requests.

29. The Equity Committee has made no previous request for the relief sought herein to this Court or any other court.

30. WHEREFORE, the Equity Committee respectfully requests that the Court grant the relief requested by this motion, and for such other and further relief as it deems just and proper.

Dated: May 28, 2010

**ASHBY & GEDDES, P.A.**

  
\_\_\_\_\_  
William P. Bowden (DE Bar No. 2553)  
Gregory A. Taylor (DE Bar No. 4008)  
Stacy L. Newman (DE Bar No. 5044)  
500 Delaware Avenue, 8<sup>th</sup> Floor  
P.O. Box 1150  
Wilmington, DE 19899  
Telephone: (302) 654-1888  
Facsimile : (302) 654-2067  
E-mail: [wbowden@ashby-geddes.com](mailto:wbowden@ashby-geddes.com)  
[gtaylor@ashby-geddes.com](mailto:gtaylor@ashby-geddes.com)  
[snewman@ashby-geddes.com](mailto:snewman@ashby-geddes.com)

-and-

**SUSMAN GODFREY, L.L.P.**

Stephen D. Susman (NY Bar No. 3041712)  
Seth D. Ard (NY Bar No. 4773982)  
654 Madison Avenue, 5th Floor  
New York, NY 10065  
E-mail:  
Telephone: (212) 336-8330  
Facsimile: (212) 336-8340  
[ssusman@susmangodfrey.com](mailto:ssusman@susmangodfrey.com)  
[sard@susmangodfrey.com](mailto:sard@susmangodfrey.com)

Parker C. Folse, III (WA Bar No. 24895)  
Edgar Sargent (WA Bar No. 28283)  
Justin A. Nelson (WA Bar No. 31864)  
1201 Third Ave., Suite 3800  
Seattle, WA 98101  
Telephone: (206) 516-3880  
Facsimile: (206) 516-3883  
E-mail:  
[pfolse@susmangodfrey.com](mailto:pfolse@susmangodfrey.com)  
[esargent@susmangodfrey.com](mailto:esargent@susmangodfrey.com)  
[jnelson@susmangodfrey.com](mailto:jnelson@susmangodfrey.com)

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

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

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

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**NOTICE OF MOTION**

**PLEASE TAKE NOTICE** that on May 28, 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 Pursuant to Rule 2004 and Local Rule 2004-1 Directing the Examination of FDIC and Certain Third Parties* (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 Motion of the Official Committee of Equity Security Holders for an Order Pursuant to Rule 2004 and Local Rule 2004-1 Directing the Examination of FDIC and Certain Third Parties* (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.**

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<sup>1</sup> 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 28, 2010

ASHBY & GEDDES, P.A.



William F. Bowden (#2553)  
Gregory A. Taylor (#4008)  
Stacy L. Newman (#5044)  
500 Delaware Avenue, 8th Floor  
P.O. Box 1150  
Wilmington, Delaware 19899  
Telephone: 302-654-1888  
Facsimile: 302-654-2067

-and-

**SUSMAN GODFREY, L.L.P.**

Stephen D. Susman (NY Bar No. 3041712)  
Seth D. Ard (NY Bar No. 4773982)  
654 Madison Avenue, 5th Floor  
New York, NY 10065

Parker C. Folse, III (WA Bar No. 24895)  
Edgar Sargent (WA Bar No. 28283)  
Justin A. Nelson (WA Bar No. 31864)  
1201 Third Ave., Suite 3800  
Seattle, WA 98101  
Telephone: (206) 516-3880  
Facsimile: (206) 516-3883

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

# **EXHIBIT A**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	)	Chapter 11
In re:	)	
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 08-12229 (MFW)
Debtors.	)	(Jointly Administered)
	)	Requested Hearing Date: June 3, 2010 at 10:30 a.m. (ET)
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**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 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 Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1 for an order authorizing the Equity Committee to conduct an examination of JPMorgan Chase Bank, N.A. ("JPMC Bank"), its parent company JPMorgan Chase & Co., and certain of their subsidiaries and affiliates as defined in Exhibit A hereto (collectively, "JPMC"), and represents as follows:

**I.**  
**PRELIMINARY STATEMENT**

1. Following commencement of this Chapter 11 case, the Debtors identified potential legal claims against JPMC stemming from the events that led to the closure of Washington Mutual Bank ("WMB") in September 2008 and the simultaneous sale of its assets to JPMC Bank by the Federal Deposit Insurance Corporation ("the FDIC"). By motion filed in May

<sup>1</sup> 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.





2009, the Debtors sought authority to conduct a Rule 2004 examination of JPMC, focusing on potential business tort claims that had been alleged in a Texas action filed by bondholders against JPMC.<sup>2</sup> The Court granted that motion on June 24, 2009 (Docket #1219).

2. Thereafter, the Debtors served document requests on JPMC. JPMC objected to all of those requests, and that led to a lengthy dialogue between the Debtors and JPMC ostensibly intended to resolve the objections. That dialogue stretched into 2010 and eventually came to a final halt when the Debtors and JPMC reached agreement on a so-called Global Settlement that would release (among other things) the potential business tort claims that the Debtors had been investigating. The Debtors disclosed the existence of the settlement to the Court on March 12, 2010.

3. Despite the blizzard of written objections that JPMC served in response to the Debtor's investigative requests, JPMC did produce approximately 40,000 pages of documents in August and September 2009.<sup>3</sup> Although JPMC's production was materially restricted in its scope, given the substantial objections that remained outstanding at the time, the disclosures it did make were enough to sharpen the Debtors' interest in their potential business tort claims against JPMC, and the Debtors sought to expand their investigation through a second Rule 2004 motion filed in December 2009.<sup>4</sup>

4. That second motion sought authority to serve subpoenas on 20 third parties,

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<sup>2</sup> See Motion for Rule 2004 Examination of JPMorgan Chase Bank, N.A. (Docket # 974) ("May Rule 2004 Motion").

<sup>3</sup> See Debtors' Motion for an Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1 Directing the Examination of Witnesses and Production of Documents from Knowledgeable Parties (Docket # 1997), filed on December 14, 2009 ("Dec. Rule 2004 Motion"), at ¶ 11; Debtors' Objection to Motion and Supporting Memorandum of the Official Committee of Equity Security Holders for the Appointment of An Examiner (Docket # 3626), filed May 4, 2010, at ¶ 22.

<sup>4</sup> The Debtors represented in the motion that "[c]ertain of the documents in the JPMC productions highlight the need to expand to third parties the investigation this Court authorized concerning 'JPM[C]'s alleged malfeasance prior to the seizure and sale of WMB.'" Dec. Rule 2004 Motion at 2 (quoting Opinion of the Court dated June 24, 2009 (Docket #1219), at 17 & n.14).

including government agencies, potential suitors for an acquisition of WMB, and outside professionals retained by WMB to assist it in addressing its financial difficulties. In their briefing on the motion, the Debtors represented as follows:

As detailed in Debtors' Motion, the discovery sought through the Requested Examination concerns possible misconduct by JPMC preceding the seizure and sale of WMB, including gaining access to WMI's confidential information in connection with JPMC's supposed interest in bidding for the company, improperly disclosing such information to third parties to cause market panic and foment a government seizure of the bank, and destroying a 119-year old institution that once had more than \$50 billion in market capital.<sup>5</sup>

5. By order dated February 16, 2010, this Court denied the Debtors' motion. The Court did not express disagreement with the seriousness of the potential claims against JPMC or the probative nature of the supporting evidence the Debtors detailed in their motion. Instead, the Court concluded that the Debtors had failed to show that it was necessary to obtain additional information, particularly from third parties who were not themselves the subject of the claims Debtors were seeking to investigate, in order to determine whether they should assert those claims; and the Court further expressed concern that the Debtors' proposed subpoenas were not narrowly tailored to the potential tort claims against JPMC.<sup>6</sup>

6. Less than a month later, the Debtors announced the proposed Global Settlement that would release the potential business tort claims against JPMC, apparently without having conducted any further factual investigation of those claims. The proposed Global Settlement, as initially disclosed, also released significant claims against the FDIC, as well as potential claims against numerous unidentified third parties.

7. In light of the Debtors' dramatic change of course, the Equity Committee moved

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<sup>5</sup> Debtors' Reply to the Objections of the Knowledgeable Parties to Debtors' Motion for An Order Pursuant to Bankruptcy Rule 2005 and Local Bankruptcy Rule 2004-1 Directing the Examination of Witnesses and Production of Documents From Knowledgeable Parties (Docket #2212), filed Jan. 25, 2010, at 7.

<sup>6</sup> Transcript of Hearing, Jan. 28, 2010 (Docket # 2312), at 88-90 (excerpts attached as Exhibit D).

on April 26, 2010, for appointment of an examiner pursuant to Section 1104(c) of the Bankruptcy Code with authority to investigate, among other things, the broad range of claims that the Debtors proposed to release. (Docket #3579) At a hearing on May 5, 2010, the Court denied appointment of an examiner. One significant ground for the Court's decision was that the Equity Committee had the ability itself to conduct the investigation that it sought to have an examiner conduct, and the Court made explicit reference to Rule 2004 as an appropriate vehicle for that effort.<sup>7</sup>

8. Since the Court's ruling on the examiner motion, the Equity Committee has attempted to finish collecting and more carefully analyze the information that the Debtors had assembled before deciding to abandon their potential claims against JPMC, and to obtain a more detailed understanding of what the Debtors did and did not do in the course of their own investigation. What the Equity Committee has learned only further convinces it that the investigation was indeed dramatically incomplete and was terminated prematurely.

9. The Equity Committee has also attempted to avoid reinventing the wheel and to save precious time by asking the Debtors to share the fruits of their own analysis, including any collections of key documents sifted from the admittedly incomplete universe of documents that the Debtors had collected from JPMC and others. Invoking the work-product privilege, the Debtors have refused to provide any written analysis (legal or factual) of the claims against JPMC they propose to release, or any selection of key documents. Instead, their message to the Equity Committee, in a nutshell, has been: "Do the work yourselves."

10. The Equity Committee made similar requests to the Creditors Committee for their analysis and selections of key documents, but nothing has been forthcoming.

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<sup>7</sup> Transcript of Hearing, May 5, 2010, at (Docket #3699) at 100 (excerpts attached as Exhibit E).

11. The Equity Committee does not believe that disclosure of the Debtors' analysis to it would result in waiver of any applicable privileges and will be bringing that dispute to the Court's attention shortly. The purpose of this motion is to enable the Equity Committee (and other interested parties) to pursue further the investigation that the Debtors abruptly terminated, by completing discovery of documents within JPMC's control – including pre-seizure business records of WMB that are now within JPMC's exclusive possession – and by taking depositions of JPMC personnel with the most knowledge of subjects relevant to the claims that the Debtors propose to abandon.

12. The Equity Committee also seeks authority to conduct document and deposition discovery of JPMC directed to the negotiation and meaning of the proposed Global Settlement, and the circumstances that led to its adoption.

## **II.** **JURISDICTION AND VENUE**

13. 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.

## **III.** **BACKGROUND**

14. Prior to commencing this Chapter 11 case, WMI was a savings and loan holding company that owned Washington Mutual Bank ("WMB") and indirectly WMB's subsidiaries, including Washington Mutual Bank fsb ("FSB"). (DS 1)<sup>8</sup> It was the largest savings and loan holding company in the country, and WMB and its subsidiaries collectively constituted the

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<sup>8</sup> Except as otherwise noted, parenthetical citations in this motion with the "DS" prefix refer to the Debtor's proposed Disclosure Statement for the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (Docket #2623), filed in this case on March 26, 2010. That Disclosure Statement has since been twice superseded.

seventh largest U.S.-based bank. (DS 22)

15. On September 25, 2008, the Office of Thrift Supervision (the "OTS") ordered the closure of WMB and appointed the FDIC as receiver for WMB. (DS 2) Immediately after its appointment as receiver, the FDIC took possession of WMB's assets and sold substantially all of them to JPMC Bank for \$1.88 billion and the assumption of WMB's deposit liabilities. (DS 2) That precipitated this bankruptcy. (DS 29)

16. Before those dramatic actions by the OTS and FDIC, WMI's financial condition had been adversely affected by significant disruptions during 2007 and 2008 in the U.S. residential mortgage market. (DS 28) And yet, WMI had weathered the storm, due in part to completion in April 2008 of a significant recapitalization that resulted in a \$7.2 billion capital infusion by institutional investors. (DS 28) Moreover, although the OTS lowered WMB's supervisory rating in a way that made it ineligible to receive primary credit from the Federal Reserve Board's Discount Window, WMB was able to receive secondary credit from the Discount Window of the Federal Reserve Bank of San Francisco, and was able to maintain borrowings up to the time of its seizure. (DS 29) Nevertheless, speculation began to circulate in the market that WMI's and WMB's operations and capital positions were unstable, and in the ten days prior to the FDIC receivership, WMB experienced significant deposit withdrawals of more than \$16.7 billion. (DS 29)

17. During this ongoing process, WMI pursued a merger or sale transaction with another financial institution and investigated other strategic alternatives intended to increase WMI's capital and liquidity levels. (DS 29) WMI was continuing to pursue those alternatives when the OTS stepped in and appointed the FDIC as receiver for WMB.

18. In a nutshell, those are the events, as described by the Debtor in the most recent

version of its proposed Disclosure Statement, that led to this bankruptcy. But a multitude of serious questions existed at the commencement date about how and why WMI failed, about the events that led to intervention by the OTS and the FDIC, about the events and communications that led to the sale of WMB's assets to JPMC, and in particular about the role of JPMC in events such as the "run on the bank," the seizure of WMB, and the immediate sale of its assets.

A. American National Action

19. In February 2009, various insurance companies that hold bonds issued by WMB and WMI filed suit against JPMC in state district court in Galveston County, Texas. "Specifically, the plaintiffs asserted that there was a premeditated plan by JPMC designed to damage WMB and FSB, and thereby enable JPMC to acquire WMI's banking operations at a 'fire sale' price." (DS 34) Among other things, the allegations in the complaint raised disturbing questions about the extent to which JPMC had been working with the FDIC behind the scenes for weeks before the seizure of WMB, and had withdrawn from negotiations for the purchase of WMB after concluding that government seizure of WMB would happen and that it could then acquire the assets more cheaply.

20. The FDIC intervened in the suit as a defendant and removed it to the U.S. District Court for the Southern District of Texas, which then transferred it to the District Court for the District of Columbia. (DS 34) On April 13, 2010, that court granted motions by JPMC and the FDIC to dismiss the suit for lack of subject matter jurisdiction and entered a final order dismissing the suit and closing the case. The court did not reach the merits of the allegations against JPMC, but rather held that the FDIC was a necessary party to the plaintiffs' claims and that plaintiffs were required to pursue their claims against the FDIC exclusively through an administrative claims process established by Congress in the Financial Institutions Reform,

Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 83 (1989).<sup>9</sup>

B. The Debtors' Rule 2004 Examination Requests

21. As a result of the American National Action, the Debtors filed a motion for Rule 2004 examination on May 1, 2009, seeking an order directing the examination of JPMC.<sup>10</sup> In that motion, the Debtors summarized the allegations in the American National Action and sought the authority to investigate the underlying merit of those claims, as well as other potential estate claims suggested by the American National allegations.

22. The Creditors Committee in this case has represented that it also carefully examined the American National allegations and consulted in advance with the Debtors about a potential Rule 2004 examination of JPMC.<sup>11</sup>

23. This Court granted the Debtors' motion on June 24, 2009, over JPMC's opposition. (Docket #1220) Pursuant to the Court's order, the Debtors served JPMC with a subpoena requesting production of documents.<sup>12</sup> On July 20, 2010, JPMC served objections to all of the requests.<sup>13</sup> The Debtors and JPMC began holding a series of meet-and-confer sessions, but JPMC agreed to begin producing certain documents in August and September 2009 as those discussions continued.<sup>14</sup>

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<sup>9</sup> See *Am. Nat'l Ins. Co. v. JPMorgan Chase & Co.*, 2010 U.S. Dist. LEXIS 36487, \*10-12 (D.D.C. April 13, 2010).

<sup>10</sup> See Motion for 2004 Examination of JPMorgan Chase Bank, N.A. (Docket # 974) ("May Rule 2004 Motion").

<sup>11</sup> 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 (Docket # 3629), filed on May 4, 2010 ("Creditors Committee Objection to Examiner"), at ¶ 27.

<sup>12</sup> Dec. Rule 2004 Motion, at ¶ 9 and Exhibit 4 thereto.

<sup>13</sup> *Id.*; see Exhibit C hereto (JPMC objections).

<sup>14</sup> See Dec. Rule 2004 Motion, at ¶¶ 10-11.

24. JPMC's production totaled approximately 40,000 pages.<sup>15</sup> The Debtors reviewed those documents, as did the Creditors Committee, and they concluded that further investigation was warranted.<sup>16</sup>

25. Accordingly, on December 14, 2009, the Debtors moved for authority to conduct a further Rule 2004 examination of witnesses and to request production of documents from various third parties – including the FDIC, the OTS, the U.S. Department of the Treasury, and former U.S. Treasury Secretary Henry M. Paulson, Jr.<sup>17</sup> The Debtors also sought to obtain testimony and documents from rating agencies, banks (including Goldman Sachs, the investment bank that WMI retained in September 2007 to assist it in finding a suitor), and third-party professionals that WMI had at one time used.<sup>18</sup>

26. In that motion, the Debtors described the contents of certain documents they had obtained pursuant to the first Rule 2004 examination – documents that the Debtors themselves fairly characterized as warranting the need for further investigation from third parties who “are likely to have information currently unobtainable by Debtors relevant to potential estate claims sounding in business tort and tortious interference against JPMC, including information relevant to allegations made in [the American National Case].”<sup>19</sup> The Debtors explained in their reply brief:

As detailed in Debtors' Motion, the discovery sought through the Requested Examination concerns possible misconduct by JPMC preceding the seizure and sale of WMB, including gaining access to WMI's confidential information in

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<sup>15</sup> Dec. Rule 2004 Motion, at 5; Debtors' Objection to Motion and Supporting Memorandum of the Official Committee of Equity Security Holders for the Appointment of An Examiner (Docket # 3626), filed May 4, 2010, at ¶ 22.

<sup>16</sup> Creditors Committee Objection to Examiner, at ¶¶ 27-28.

<sup>17</sup> Dec. Rule 2004 Motion at 1, n. 2.

<sup>18</sup> Dec. Rule 2004 Motion at 1, n. 2.

<sup>19</sup> *Id.* at 3.



connection with JPMC's supposed interest in bidding for the company, improperly disclosing such information to third parties to cause market panic and foment a government seizure of the bank, destroying a 119-year-old institution that once had more than \$50 billion in market capital.<sup>20</sup>

27. It was apparent from the December Rule 2004 motion that the Debtors had not obtained the requested information through discovery in any of the lawsuits to which it was then a party.

28. This Court denied the Debtors' motion from the bench at a hearing on January 28, 2010. As noted earlier, the Court did not express disagreement with the seriousness of the potential claims against JPMC or the probative nature of the supporting evidence the Debtors detailed in their motion. Instead, the Court concluded that the Debtors had failed to show that it was necessary to obtain additional information, particularly from third parties who were not themselves the subject of the claims Debtors were seeking to investigate, in order to determine whether they should assert those claims; and the Court further expressed concern that the Debtors' proposed subpoenas were not narrowly tailored to the potential tort claims against JPMC.<sup>21</sup>

29. Less than one month later, on March 12, 2010, the Debtors publicly announced the settlement and proposed release of the substantial claims they had told the Court as late as the January 28 hearing on their motion that they vitally needed to investigate further through Rule 2004.

C. The Equity Committee's Motion for Appointment of An Examiner

30. In light of the Debtors' dramatic change of course, the Equity Committee moved on April 26, 2010, for appointment of an examiner pursuant to Section 1104(c) of the

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<sup>20</sup> See Reply of the Debtors to the Objections to Dec. 2004 Motion (Docket # 2212), filed on January 25, 2010 ("Reply Br. Dec. Rule 2004 Motion").

<sup>21</sup> Transcript of Hearing, Jan. 28, 2010 (Docket # 2312), at 88-90 (excerpts attached as Exhibit D).

Bankruptcy Code. (Docket #3579.) The Equity Committee proposed that the examiner be empowered and directed to investigate the following matters, among others:

- The extent to which there are potential claims and causes of action held by the Debtors' estates against any person or entity, and the merit and value of those claims, arising from circumstances leading to the OTS's closure of WMB and appointment of FDIC as receiver and the FDIC's sale of WMB assets to JPMC;
- The extent to which there are potential claims and causes of action held by the Debtors' estates arising from breach of fiduciary duty or other legal duties by WMI officers, directors, and employees in their supervision or direction of WMB investment in subprime residential mortgages during 2007 and 2008, or in other actions and events that led to WMB's seizure and sale in September 2008;
- The disputes at issue between the Debtors and JPMC concerning the existence and valuation of WMI tax attributes (principally its NOLs) and the meaning and impact of a tax sharing agreement between WMI and WMB on those disputes;
- The proper ownership, valuation, and asset affiliation of the trust preferred securities at issue in the adversary litigation between JPMC and the Debtors, and the proper ownership of all other assets that are the subject of claims and counterclaims in that adversary proceeding;
- Potential claims belonging to the Debtors for fraudulent conveyance or for the recovery of preferential transfers, including but not limited to any such claims that arise from WMI's capital contributions to WMB;
- The identification, nature, and valuation of assets held by the Debtors post-bankruptcy, including assets that would be conveyed to JPMC and the FDIC under the proposed Global Settlement Agreement.

31. At a hearing on May 5, 2010, the Court denied appointment of an examiner. The Court articulated two reasons for that decision.

32. 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."<sup>22</sup> The Court made those observations in the context of the broad scope of the examination that the

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<sup>22</sup> Transcript of Hearing, May 5, 2010, at (Docket #3699) at 98 (emphasis added) (excerpts attached as Exhibit E).

Equity Committee proposed. The Court made reference to numerous investigations by governmental agencies and legislative bodies<sup>23</sup> and stated as follows:

It is true that their investigations exceeded the scope of what the Court need concern itself with. They have talked about systemic problems. They have investigated possible criminal actions by the parties. . . . I don't think it is fair to the creditors in this case to be saddled with the cost of an investigation into systemic problems, that would only benefit future parties but not benefit the parties in this case.<sup>24</sup>

33. As we will explain below, while it is correct that many public agencies and private parties have conducted factual investigations that concerned WMB's massive investment in subprime residential mortgages and certain aspects of the OTS/FDIC decisions to seize and then sell the assets of WMB, JPMC's role in the failure and forced sale of WMB has not been thoroughly investigated to death, either in this case or in any other forum.

34. Second, leaving aside the investigation of "systemic problems" that may have contributed to WMB's closure, the Court turned to narrower issues such as "what assets the debtor owns, what the value of those assets is, whether a settlement is reasonable,"<sup>25</sup> and in that context 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.<sup>26</sup>

35. With respect to an investigation that the Equity Committee might conduct itself,

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<sup>23</sup> *Id.* at 98-99.

<sup>24</sup> *Id.* at 99.

<sup>25</sup> *Id.* at 100.

<sup>26</sup> *Id.*

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.

....

[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.<sup>27</sup>

D. Events Following the Court's Denial of the Equity Committee's Motion for Appointment of An Examiner

36. Since the Court's ruling on the examiner motion, the Equity Committee has attempted to finish collecting and more carefully analyze the information that the Debtors had assembled before deciding to abandon their potential claims against JPMC, and to obtain a more detailed understanding of what the Debtors did and did not do in the course of their own investigation. What the Equity Committee has learned only further convinces it that the investigation was indeed dramatically incomplete and was terminated prematurely.

37. In particular, the Equity Committee's litigation counsel has begun more closely reviewing the documents that the Debtors obtained through their Rule 2004 requests to JPMC and the documents the Debtors obtained through voluntary productions by a handful of third parties that were among those identified in the Debtors' unsuccessful Rule 2004 motion filed in December of last year.

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<sup>27</sup> *Id.* at 99, 100.

38. With respect to JPMC, it is clear that the production was woefully incomplete. In a November 2, 2009 letter to JPMC, the Debtors identified four major deficiencies in JPMC's production, none of which was cured during the ensuing eight additional weeks of negotiation:<sup>28</sup> (1) The Debtors identified 37 JPMC employees who had a significant involvement in JPMC's purchase of WMB's assets according to JPMC's internal documents,<sup>29</sup> but JPMC only searched the records of 13 of these custodians; JPMC later admitted that eight whose documents were not searched had more than limited involvement, but it refused to conduct that search unless the Debtors waived their right to have the files of any other custodians searched, including 16 others the Debtors had already identified and any others they might identify in the future<sup>30</sup>; (2) the production from the 12 custodians whose files were searched appeared to be woefully inadequate—for example, only 9 documents were produced from the C.E.O. of JPMC, who drafted one of the main agreements and corresponded directly with the FDIC about the purchase—and JPMC refused to reveal the search terms it used to conduct the searches of those 9 custodians; (3) JPMC admitted that it was withholding a number of documents on the ground of third-party confidentiality, notwithstanding a confidentiality agreement between JPMC and WMI that would protect that confidentiality; and (4) the overall production was remarkably sparse—for example, JPMC produced very few responsive documents in connection with document requests 7, 8, 12, and 13, which sought documents concerning JPMC's communications with WMI, governmental entities, the media, and third parties relating to JPMC's interest in acquiring WMB assets and the seizure, sale and financial condition of

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<sup>28</sup> See 11/2/09 Letter from WMI to JPMC (describing deficiencies), attached hereto as Exhibit F; see also 12/28/09 Letter from WMI to JPMC (describing impasse in negotiations on these deficiencies), attached hereto as Exhibit G.

<sup>29</sup> See Exhibit H attached hereto (list of knowledgeable JPMC employees, sent by WMI to JPMC on 11/25/09).

<sup>30</sup> See 12/21/09 Letter from WMI to JPMC, attached hereto as Exhibit I.

WMB.<sup>31</sup>

39. In addition, it appears that one especially significant source of information relevant to JPMC's conduct remains almost entirely untapped: The pre-seizure business records of both WMI and WMB. Among other things, those records would contain information about the nature of confidential information that WMI and WMB disclosed to JPMC during discussions over JPMC's supposed interest in making an offer for WMB; the details of those discussions themselves; the communications between WMI and other potential suitors; intelligence about market rumors concerning WMI's financial condition that JPMC may have had a hand in generating; and a wide range of other subjects directly germane to the Debtors' potential business tort claims against JPMC. The problem (as explained to us by Debtors' counsel) is that after the FDIC's sale of WMB assets to JPMC in September 2008, JPMC took control of all WMB documents and information systems. JPMC also took control of the former corporate offices of WMI in Seattle, including the WMI documents and information systems located in those offices. While JPMC agreed to provide the Debtors, at the Debtors' request, with access to certain documents necessary for the administration of the bankruptcy estates (such as information relevant to the preparation of tax returns), the Debtors have either not had -- or not availed themselves of -- general access to the pre-seizure universe of WMI/WMB business records for the purpose of searching those records for information relevant to the potential business tort claims against JPMC.<sup>32</sup>

40. In any event, whatever documents the Debtors may have retrieved (if any) from the pre-seizure information now in JPMC's control for purposes relevant to the JPMC business

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<sup>31</sup> See 11/2/09 Letter from WMI to JPMC, attached hereto as Exhibit F.

<sup>32</sup> 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, filed herewith ("Sargent Decl.") (attached hereto as Exhibit B) at ¶¶ 12-14.

tort claims has not been produced to the Equity Committee.<sup>33</sup> Nor have the Debtors produced to the Equity Committee any WMI/WMB documents they have identified as relevant to the business tort claims against JPMC from among pre-seizure WMI/WMB documents obtained for other purposes. The Debtors' position is that any such documents constitute privileged work product, and that if the Equity Committee wants to obtain access to relevant documents within that universe of material, it must do so by serving discovery requests on the Debtors.<sup>34</sup>

41. While the Debtors' Rule 2004 subpoena to JPMC, on its face, was broad enough to call for relevant information from the pre-seizure WMI/WMB business records now under JPMC control, JPMC itself never agreed to conduct a search for relevant information from those sources.

42. Moreover, apart from the significant gaps in JPMC's document production, the Debtors have taken no depositions of JPMC personnel or former WMB personnel who now work for JPMC.

43. With respect to the numerous third parties that were the subject of the Debtors' December 2009 motion for examination pursuant to Rule 2004, the Debtors obtained only limited production of documents on a voluntary basis from some of those third parties.<sup>35</sup>

44. Approximately 650 pages of documents from the Office of Thrift Supervision.

45. Approximately 240 pages of heavily redacted documents produced by the FDIC

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<sup>33</sup> In opposing the Equity Committee's motion for appointment of an examiner, the Debtors vaguely represented that: "[I]n connection with discovery and data presentation efforts, the Debtors and their advisors have undertaken a collection and review of the documents in their possession (or provided to the Debtors under information access arrangements with JPMC). In this regard, the Debtors and their advisors have collected approximately 7.6 million pages of documents." 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. These documents apparently have not been thoroughly reviewed by the Debtors for the purpose of identifying information relevant to the business tort claims against JPMC; they were not obtained from JPMC for that purpose in any event; and anything the Debtors found has not been provided to the Equity Committee. See Sargent Decl. ¶ 14.

<sup>34</sup> See Sargent Decl. ¶ 14.

<sup>35</sup> The following description of third-party documents is supported by the Sargent Decl., ¶¶ 8-11.

pursuant to FOIA requests. This appears to be the sum total of information that the Debtors obtained through all of the various discovery efforts they have directed to the FDIC to date, whether in court cases or pursuant to FOIA.<sup>36</sup> At this writing, the Equity Committee has not yet received this FDIC production, though we expect to receive a copy shortly.

46. Less than 20 documents produced by Moody's and a lobbying firm called the OB-C Group. Those documents have not been provided to the Equity Committee because Moody's and the OB-C have refused to consent to such disclosure.

47. Approximately 900 documents produced by Citigroup and approximately 500 documents produced by Blackstone. The Debtors provided those documents to the Equity Committee for the first time on May 24, 2010.

48. Approximately 27,500 pages of documents from TPG Capital, the company that made a significant equity investment in WMI in the summer of 2008. This production constitutes the vast majority of documents obtained by the Debtors from third parties – yet it would appear to have only a limited (if any) relationship to the potential business tort claims against JPMC.<sup>37</sup>

49. In opposing the Equity Committee's motion for appointment of an examiner, the Debtors represented to the Court as follows:

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<sup>36</sup> In opposing the Debtors' December 2009 motion for a Rule 2004 examination, the FDIC in its corporate capacity described to the Court three different sets of discovery requests it had received from the Debtors – the Rule 2004 subpoena, a set of FOIA requests, and a request for FDIC Exempt Records and Information. Objection of FDIC-Corporate to the Debtors' Motion For An Order Pursuant to Bankruptcy Rule 2004 (Docket #2170), filed Jan. 15, 2010, at 3. The FDIC further stated that it was "processing" the Debtors' FOIA requests. *Id.* at 2. The FDIC also explained that it was then engaged in responding to "a massive document request from Congress regarding the resolution of Washington Mutual Bank (WMB)," and that once that production was complete, the FDIC expected to begin "an appropriate production of documents to the Debtors pursuant to its administrative processes." *Id.* at 2. The net result of the FDIC's production to the Debtors, after all that, appears to be the roughly 240 pages referred to in the text.

<sup>37</sup> Of that mass of TPG Capital documents, the Equity Committee is unable to access more than 22,000 pages of the production because the disk provided by the Debtors which contains them is password-protected and the Debtors have not provided the password.



The Debtors have also engaged in extensive negotiations with Sullivan & Cromwell, LLP. The Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System (the "Federal Reserve"), the U.S. Department of the Treasury (the "DOT"), Cerberus Capital Management, L.P., Lehman Brothers, and Morgan Stanley for further documents related to the Business Tort Investigation. Supplementing the Business Tort Investigation, the Debtors also issued information requests pursuant to the Freedom of Information Act to the FDIC, OTS, the Securities Exchange Commission, the DOT, the Federal Reserve and the OCC.

50. However much negotiating, discussing, and supplemental requesting the Debtors have done, the actual result in terms of obtaining actual documentary evidence consists of what the Equity Committee has described above – unless the Debtors are holding back information from the Equity Committee without saying so.

51. In sum, although many aspects of WMI and WMB's pre-seizure affairs may have been extensively investigated, the Debtors and the Creditors Committee have certainly not conducted a complete or thorough investigation of JPMC's role in the loss of WMB and the precipitation of this bankruptcy – and JPMC has succeeded in significantly confining its own production of information while at the same time participating in the negotiation of a Global Settlement that would release all the potential business tort claims against it -- so that the investigation never will be completed.

52. Even with respect to analyzing the modest amount of information assembled by the Debtors before pulling the plug on their own investigation, the Equity Committee has attempted to avoid reinventing the wheel and to save precious time by asking the Debtors to share the fruits of their own analysis, including any collections of key documents sifted from the admittedly incomplete universe of documents that the Debtors collected from JPMC and others. Invoking the work-product privilege, the Debtors have refused to provide any written analysis (legal or factual) of the claims against JPMC they propose to release or any selection of key documents. Instead, their message to the Equity Committee, in a nutshell, has been: "Do the

work yourselves.”<sup>38</sup>

### **III.** **RELIEF REQUESTED**

53. Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1, the Equity Committee requests authorization to conduct an examination of JPMC, including production of documents responsive to the document requests attached hereto as **Exhibit A** and oral examination of JPMC witnesses most knowledgeable about the subjects described in those requests. The Equity Committee seeks entry of an order substantially in the form of the Proposed Order filed with this motion as **Exhibit J**.

54. The document requests fall into four categories. First, the majority of them are substantially similar (and in most cases identical) to requests that the Court permitted the Debtors to serve when it granted their first Rule 2004 request in June 2009. With respect to those requests, of course, JPMC need not re-produce the documents it previously produced to the Debtors, as long as it will verify that the Equity Committee’s copy of those documents is complete and may be used as if produced in response to the Equity Committee’s own Rule 2004 requests. However, as explained earlier, JPMC’s production of documents in response to those requests was materially incomplete. Serving essentially the same requests propounded by the Debtors will permit the Equity Committee to take steps intended to obtain a complete production – including responsive, pre-seizure WMI/WMB documents and JPMC’s pre-seizure communications with government agencies and other third parties.

55. Second, additional requests have been added that are designed to explore other pre-seizure JPMC activities that may have been part of a scheme to impair WMI’s ability to raise

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<sup>38</sup> See Sargent Decl., ¶¶ 3-7. The Equity Committee also requested that the Creditors Committee share any selection of key documents that the Creditors Committee had culled from its own review of documents supplied by the Debtors or from other sources, as well as any factual or legal analysis of the potential claims. The Creditors Committee refused. See *id.*

capital and avoid a government takeover.

56. Third, an additional series of requests specifically targets certain categories of pre-seizure WMB/WMI documents, including financial data, information that WMB/WMI provided JPMC under confidentiality agreements, and documents concerning WMB/WMI's efforts to address its financial difficulties, including WMI's search for a potential acquiror.

57. Fourth, the requests seek information concerning the negotiation and impact of the proposed Global Settlement. This information is highly relevant in the broad context of this bankruptcy case because the proposed settlement is the cornerstone of the Debtors' proposed plan of reorganization.

#### **IV.** **BASIS FOR RELIEF**

58. Bankruptcy Rule 2004(a) provides that “[o]n motion of any party in interest, the court may order the examination of any entity.” The purpose of a Rule 2004 examination “is to enable the trustee to discover the nature and extent of the bankruptcy estate.” Opinion of the Court (Docket #1219) dated June 24, 2009 (“June 24 Opinion”) at 8 (citing *In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702, 708 (Bankr. S.D.N.Y. 1991); see also *In re Symington*, 209 B.R. 678, 684 (Bankr. D. Md. 1997). Among the “[l]egitimate goals of Rule 2004 examinations” are “determining whether wrongdoing has occurred,” June 24 Opinion, at 8 (quoting *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002), and exposing any fraudulent conduct. *Symington*, 209 B.R. at 683-84.

59. Rule 2004 grants parties in interest “broad rights of examination of a third-party’s records.” *Snyder v. Society Bank*, 181 B.R. 40, 41 (S.D. Tex. 1994); see also *In re Cousins Barricades & Metal Prods. Inc.*, No. Civ. A. 99-2035, 200 WL 245860, \*3 (E.D. La. Mar. 2, 2000). Emphasizing the broad purpose of Rule 2004, courts permit examination of any third

party that has “knowledge of the debtor’s affairs,” *In re Ecam Publ’ns*, 131 B.R. 556, 559 (Bankr. S.D.N.Y. 1991), or who can be shown to have had dealings with the debtor, *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 432 (S.D.N.Y. 1993), *aff’d*, 17 F.3d 600 (2d Cir. 1994). See Bankruptcy Rule 2004(b) (noting that Rule 2004 examination may concern “any matter which may affect the administration of the debtor’s estate”).

60. The Court has already once determined that examination of JPMC under Rule 2004 was appropriate and warranted, both factually and legally. Unfortunately, the examination was never completed – though in light of the proposed Global Settlement, its importance has grown in significance. Indeed, the reasonableness of the bargain reflected in that proposed settlement turns in large measure on an assessment of the claims against JPMC that the Debtors propose to give up, including the potential business tort claims that are the primary subject of the examination requested by this motion.

61. The Rule 2004 discovery sought by this motion is particularly appropriate because the requested examination to continue investigation of the potential business tort claims against JPMC is unrelated to any pending adversary proceeding in which the Equity Committee is or could become a party. It is even unrelated to any adversary proceeding or other litigation against JPMC in which the Debtors are parties, because the Debtors have never asserted the potential business tort claims against JPMC.

62. Moreover, even if the pending adversary proceeding and other litigation involving the Debtors and JPMC actually included allegations against JPMC of the kind that are the subject of the requested Rule 2004 examination, all such matters have been stayed, as the Court is aware. Thus, discovery is unavailable in those actions; no pending proceeding provides an alternate vehicle through which the requested discovery could be expeditiously obtained. See *In re Int’l*

*Fibercom, Inc.*, 283 B.R. 290, 292 (Bankr. D. Ariz. 2002) (holding that pending proceeding rule was inapplicable when discovery was unavailable in other litigation due to a stay).

**CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 2004-1**

63. By e-mail on May 21, 2001, counsel for the Equity Committee provided all counsel of record for JPMC with a copy of Exhibit A hereto, described the substance of the relief requested by this motion, and asked whether JPMC would agree to the requested examination and to respond to the document requests without a court order. Counsel requested that JPMC respond by close of business on May 24 and also asked that JPMC identify a time when JPMC counsel would be available to discuss the requests. As of the time of the filing of this motion, JPMC has not responded. However, JPMC opposed the examination sought by the Debtors in May 2009, and it is likely JPMC will oppose the relief requested here. To prevent unnecessary delay arising from disputes concerning, among other things, the Equity Committee's entitlement to the information requested and claims of confidentiality, the Equity Committee requests that this motion be set for hearing and thereby ensure an expeditious resolution of any such disputes. Prior to the hearing, the Equity Committee will continue attempting to discuss the relief requested and attempt to resolve any legitimate objections raised by JPMC.


64. Accordingly, the Equity Committee seeks the Court's authority to conduct an examination under Bankruptcy Rule 2004 and Local Rule 2004-1 that includes JPMC's production of all documents responsive to the requests attached as Exhibit A, as well as related oral examination of witnesses most knowledgeable about the subjects described in the document requests.

65. The Equity Committee has made no previous request for the relief sought herein to this Court or any other court.

WHEREFORE, the Equity Committee respectfully requests that the Court grant the relief requested by this motion, and for such other and further relief as it deems just and proper.

Dated: May 25, 2010

**ASHBY & GEDDES, P.A.**

  
\_\_\_\_\_  
William P. Bowden (DE Bar No. 2553)  
Gregory A. Taylor (DE Bar No. 4008)  
Stacy L. Newman (DE Bar No. 5044)  
500 Delaware Avenue, 8<sup>th</sup> Floor  
P.O. Box 1150  
Wilmington, DE 19899  
Telephone: (302) 654-1888  
Facsimile : (302) 654-2067  
E-mail: [wbowden@ashby-geddes.com](mailto:wbowden@ashby-geddes.com)  
[gtaylor@ashby-geddes.com](mailto:gtaylor@ashby-geddes.com)  
[snewman@ashby-geddes.com](mailto:snewman@ashby-geddes.com)

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

**SUSMAN GODFREY, L.L.P.**

Stephen D. Susman (NY Bar No. 3041712)  
Seth D. Ard (NY Bar No. 4773982)  
654 Madison Avenue, 5th Floor  
New York, NY 10065  
E-mail:  
[ssusman@susmangodfrey.com](mailto:ssusman@susmangodfrey.com)  
[sard@susmangodfrey.com](mailto:sard@susmangodfrey.com)

Parker C. Folse, III (WA Bar No. 24895)  
Edgar Sargent (WA Bar No. 28283)  
Justin A. Nelson (WA Bar No. 31864)  
1201 Third Ave., Suite 3800  
Seattle, WA 98101  
Telephone: (206) 516-3880  
Facsimile: (206) 516-3883  
E-mail:  
[pfolse@susmangodfrey.com](mailto:pfolse@susmangodfrey.com)  
[esargent@susmangodfrey.com](mailto:esargent@susmangodfrey.com)  
[jnelson@susmangodfrey.com](mailto:jnelson@susmangodfrey.com)

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

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

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In re:	)	Chapter 11
	)	
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	)	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)
	)	

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**NOTICE OF MOTION**

**PLEASE TAKE NOTICE** that on May 25, 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 Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1 Directing the Examination of JPMorgan Chase* (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 Hearing on 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 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.

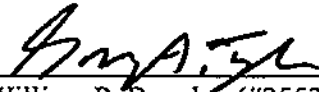
**IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

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<sup>1</sup> 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 25, 2010

ASHBY & GEDDES, P.A.

  
William P. Bowden (#2553)  
Gregory A. Taylor (#4008)  
Stacy L. Newman (#5044)  
500 Delaware Avenue, 8th Floor  
P.O. Box 1150  
Wilmington, Delaware 19899  
Telephone: 302-654-1888  
Facsimile: 302-654-2067

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

**SUSMAN GODFREY, L.L.P.**  
Stephen D. Susman (NY Bar No. 3041712)  
Seth D. Ard (NY Bar No. 4773982)  
654 Madison Avenue, 5th Floor  
New York, NY 10065

Parker C. Folse, III (WA Bar No. 24895)  
Edgar Sargent (WA Bar No. 28283)  
Justin A. Nelson (WA Bar No. 31864)  
1201 Third Ave., Suite 3800  
Seattle, WA 98101  
Telephone: (206) 516-3880  
Facsimile: (206) 516-3883

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



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, 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).

**PLEASE NOTE:** The Documents requested herein include Documents that came within

JPMC's possession, custody, or control as a result of the acquisitions reflected in the P&A Agreement (as defined below) and that formerly were within the possession, custody, or control of WMI, WMB, or WMB fsb (as those terms are defined below).

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 JPMC, individually or collectively, to whom this subpoena is addressed, and any owner, director, officer, employee, agent, custodian, parent, subsidiary, affiliate, predecessor, successor, attorney, accountant, representative, and other Persons purporting to act on your behalf.

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.

12. To the extent you have previously produced documents requested herein to WMI in response to the WMI RFPs, you need not produce them again to the Equity Committee if you instead (a) provide information (such as Bates-number ranges) sufficient to allow the Equity Committee to verify that it has previously received such documents from WMI; and (b) consent to the Equity Committee's use of such documents as if JPMC had produced them directly to the Equity Committee in response to these requests.

#### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

The Equity Committee requests that JPMC produce the following documents in its possession, custody or control:

##### **REQUEST NO. 1:**

All documents that you have produced to WMI in response to the WMI RFPs.

##### **REQUEST NO. 2:**

All documents that you have produced to any party in response to any discovery requests served in the Adversary Proceedings.

##### **REQUEST NO. 3:**

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, but is not limited to records of communications among two or more parties to the Proposed Global Settlement Agreement and drafts of the Proposed Global Settlement Agreement.

**REQUEST NO. 4:**

All documents concerning the Proposed Global Settlement Agreement or any agreements reflected in the Proposed Global Settlement Agreement. This request includes, but is not limited to (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.

**REQUEST NO. 5:**

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.

**REQUEST NO. 6:**

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.

**REQUEST NO. 7:**

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 but not limited to non-public, confidential or proprietary information and including but not limited to disclosure of such information to third parties to secure financing or raise capital in connection with any potential Transaction.

**REQUEST NO. 8:**

All documents concerning any communications with any Governmental Unit regarding non-public, confidential or proprietary information related to Washington Mutual, including but not limited to JPMC's receipt of non-public, confidential or proprietary information concerning Washington Mutual.

**REQUEST NO. 9:**

Documents sufficient to identify JPMC's company policies and procedures concerning the protection or disclosure of non-public, confidential or proprietary information.

**REQUEST NO. 10:**

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

**REQUEST NO. 11:**

All documents concerning any attempt by JPMC to engage in any Transaction in the spring and summer of 2008, including but not limited to JPMC's bid to merge with, purchase, or acquire Washington Mutual in or about April 2008.

**REQUEST NO. 12:**

All documents concerning any communications between JPMC and Washington Mutual concerning any potential Transaction in 2008.

**REQUEST NO. 13:**

All documents concerning any communications between JPMC and anyone, concerning any potential Transaction in 2008, including any communications with the FDIC or any other Governmental Unit.

**REQUEST NO. 14:**

All documents concerning any due diligence performed by JPMC in connection with any potential Transaction in 2008.

**REQUEST NO. 15:**

All documents concerning any attempt by JPMC to engage in any potential Transaction in or about September 2008, including but not limited to any bid or offer by JPMC to merge with, invest in, or purchase Washington Mutual in or about September 2008.

**REQUEST NO. 16:**

All documents concerning any communications between JPMC and the media, including but not limited to The Wall Street Journal, any other print, on-line, broadcast, or cable news outlet, related to Washington Mutual, including but not limited to any such communications related to Washington Mutual's financial status, financial condition, assets, and liabilities.

**REQUEST NO. 17:**

All documents concerning any due diligence performed by JPMC in connection with its execution of the P&A Agreement.

**REQUEST NO. 18:**

All documents concerning any communications between JPMC and any Governmental Unit concerning Washington Mutual, a governmental seizure or receivership of Washington Mutual, and/or the sale of Washington Mutual, including but not limited to communications with the US Department of the Treasury, the FDIC, and/or the OTS.

**REQUEST NO. 19:**

All documents concerning actions considered or taken by any Governmental Unit concerning Washington Mutual, including but not limited to the seizure of WMB by the OTS and the appointment of FDIC as receiver.

**REQUEST NO. 20:**

All documents concerning any agreement or arrangement between JPMC and any Governmental Unit concerning any potential Transaction or Transaction on or prior to September 25, 2008, including but not limited to any agreement, understanding, or arrangement with the OTS and/or FDIC.

**REQUEST NO. 21:**

All documents concerning any communications between JPMC and any Governmental Unit concerning any Transaction on September 25, 2008.

**REQUEST NO. 22:**

Documents sufficient to identify the names of all persons who negotiated on behalf of JPMC in connection with entering into the P&A Agreement.

**REQUEST NO. 23:**

All documents concerning any assessment, evaluation, consideration or analysis of the consideration provided by JPMC under the P&A Agreement, including but not limited to the assumption of any liabilities.

**REQUEST NO. 24:**

All documents concerning any assessment, evaluation, consideration or analysis of the Purchase Price.

**REQUEST NO. 25:**

All documents concerning any communications between JPMC and Washington Mutual concerning the Purchase Price.

**REQUEST NO. 26:**

All documents concerning any communications between JPMC and any third party concerning the Purchase Price, including but not limited to communications with the FDIC and/or the OTS concerning the Purchase Price.

**REQUEST NO. 27:**

All documents concerning the bid process established by the FDIC for the purchase of WMB, including documents concerning any communication between JPMC and the FDIC about the bid process for the purchase of WMB.

**REQUEST NO. 28:**

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.

**REQUEST NO. 29:**

Documents sufficient to show JPMC's valuation of the assets of WMB on or about September 25, 2008.

**REQUEST NO. 30:**

All documents forming the basis for the statement in JPMC's Form 10-K for the period ending December 31, 2008 that "the fair value of the net assets [of WMB] acquired exceeded the purchase price. . . ."

**REQUEST NO. 31:**

All documents concerning JPMC's allocation of the Purchase Price, including but not limited to allocation of the Purchase Price to the assets acquired by JPMC under the P&A Agreement on or about September 25, 2008.

**REQUEST NO. 32:**

All documents concerning JPMC's refinement of the allocation of the Purchase Price during the fourth quarter of 2008.

**REQUEST NO. 33:**

All documents concerning JPMC's recognition of extraordinary gains related to its acquisition of the assets of WMB.

**REQUEST NO. 34:**

All documents concerning any assessment, evaluation, consideration or analysis of negative goodwill resulting from the acquisition of the assets of WMB.

**REQUEST NO. 35:**

All documents concerning any assessment, evaluation, consideration or analysis of Washington Mutual's financial condition, including but not limited to Washington Mutual's debts, assets, liabilities, financial resources and capital, business reputation, and/or credit rating.

**REQUEST NO. 36:**

All documents concerning any communications between JPMC and any third party concerning Washington Mutual's actual or projected financial condition, including but not limited to any communications with the FDIC and/or OTS.

**REQUEST NO. 37:**

All documents concerning any assessment, evaluation, consideration or analysis of the capitalization of Washington Mutual in or about September 2008.

**REQUEST NO. 38:**

Documents sufficient to show JPMC's weighted average cost of capital, including but not limited to JPMC's cost of debt, cost of equity, yield on outstanding debt and the weighted average cost of capital for any loan or other financing obtained by JPMC.

**REQUEST NO. 39:**

All documents concerning any investigations by federal, state or municipal government bodies of JPMC related to its acquisition of the assets of WMB.

**REQUEST NO. 40:**

All documents concerning any investigation of JPMC, or lawsuit or other legal action brought against JPMC related to its acquisition of the assets of WMB.

**REQUEST NO. 41:**

All documents concerning JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

**REQUEST NO. 42:**

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 but not limited to Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

**REQUEST NO. 43:**

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 but not limited to Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

**REQUEST NO. 44:**

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

**REQUEST NO. 45:**

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

**REQUEST NO. 46:**

Documents sufficient to identify the names of all Entities who withdrew deposits from WMB or WMB fsb in September 2008 and the amounts of such withdrawals.

**REQUEST NO. 47:**

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.

**REQUEST NO. 48:**

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.

**REQUEST NO. 49:**

All documents reflecting the amount of deposits on account at WMB each day between



June 1, 2008 and September 26, 2008.

**REQUEST NO. 50:**

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

**REQUEST NO. 51:**

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

**REQUEST NO. 52:**

All schedules of assets acquired by JPMC pursuant to the P&A Agreement and all drafts of any such schedules.

**REQUEST NO. 53:**

Documents sufficient to identify in detail all assets obtained by JPMC pursuant to P&A Agreement.

**REQUEST NO. 54:**

All schedules to the P&A and all drafts of schedules to the P&A Agreement.

**REQUEST NO. 55:**

All documents concerning any credit extended to Washington Mutual by any bank in the Federal Home Loan Bank System.

**REQUEST NO. 56:**

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.

**REQUEST NO. 57:**

All discovery requests, responses, and objections served on JPMC in the Adversary Proceedings, the DC Action, the Texas Action, and the Chapter 11 Cases.

**REQUEST NO. 58:**

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 but not limited to 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.

**REQUEST NO. 59:**

Documents sufficient to identify and describe what JPMC did to identify and collect documents responsive to the WMI RFPs, including any lists of search terms used in the retrieval of electronic information.

**REQUEST NO. 60:**

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

**REQUEST NO. 61:**

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

**REQUEST NO. 62:**

All documents concerning JPMC's purchase or sale of credit default swaps during 2008 where WMI was the reference entity.

**REQUEST NO. 63:**

All documents concerning short selling of WMI securities by JPMC during 2008.

**REQUEST NO. 64:**

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

EXHIBIT B

**DECLARATION OF EDGAR SARGENT**

SUSMAN GODFREY  
1201 Third Avenue, Suite 3800  
Seattle, Washington 98101  
Telephone: (212) 336-8330  
Facsimile: (212) 336-8340  
Edgar Sargent

*Proposed Special Counsel to the Official Committee of  
Unsecured Creditors of Old Carco LLC, 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 Folse. 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



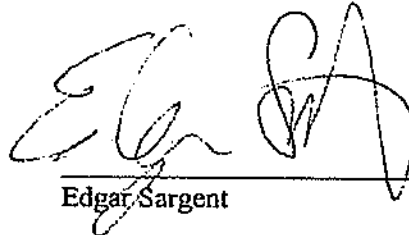
work product and result in waiver of the work product privilege. We were told that if the Equity Committee wanted to determine if pre-seizure WMI and WMB documents in the Debtors' possession were relevant to claims in dispute between the Debtors and JPMC, the Committee would have to serve formal document 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



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Edgar Sargent

EXHIBIT C

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000  
FACSIMILE: 1-212-558-3588  
WWW.SULLCROM.COM

*125 Broad Street  
New York, NY 10004-2498*

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.  
FRANKFURT • LONDON • PARIS  
BEIJING • HONG KONG • TOKYO  
MELBOURNE • SYDNEY

July 20, 2009

Via Federal Express

Benjamin I. Finestone,  
Quinn Emanuel Urquhart Oliver & Hedges, LLP,  
51 Madison Avenue, 22nd Floor,  
New York, New York 10010.

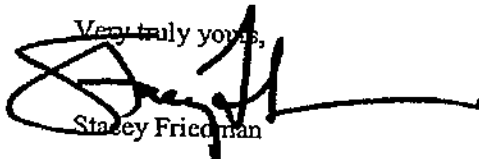
Re: *In re Washington Mutual Bank, et al.,*  
Case No. 08-12229 (MFW)

Dear Ben:

I enclose the Responses and Objections of JPMorgan Chase Bank, National Association ("JMPC") to Debtors' First Request for Production of Documents (the "First Request").

As indicated by the Responses and Objections, JPMC is prepared to meet and confer to discuss the production of certain categories of non-privileged documents that are responsive to the First Request under a reasonable, rolling production schedule.

Please contact me (212) 558-3104 to discuss.

Very truly yours,  
  
Stacey Friedman

(Enclosure)

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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<i>In re</i>	:
	:
WASHINGTON MUTUAL, INC., <i>et al.</i> , <sup>1</sup>	: CHAPTER 11
	:
Debtors.	: Case No. 08-12229 (MFW)
	:
	: Jointly Administered
	:
	: Ref. Docket No. 974

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RESPONSES AND OBJECTIONS OF  
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION TO  
DEBTORS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Adam G. Landis (I.D. 3407)  
Matthew B. McGuire (I.D. 4366)  
LANDIS RATH & COBB LLP  
919 Market Street, Suite 1800  
Wilmington, DE 19899  
Tel: (302) 467-4400

(Additional Counsel Listed on Signature Page)

July 20, 2009

*Counsel for JPMorgan Chase Bank,  
National Association*

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

Pursuant to the Federal Rules of Civil Procedure, Local Rules of the District of Delaware, and any other applicable rules (collectively, the "Applicable Rules"), JPMorgan Chase Bank, National Association ("JPMC"), by its undersigned counsel, hereby responds and objects to Washington Mutual, Inc. and WMI Investment Corp.'s (together, "Debtors") First Request for Production of Documents (the "First Request"), served on July 6, 2009, as follows:

#### GENERAL OBJECTIONS

The following General Objections apply to each individually numbered document request set forth in the First Request and shall have the same force and effect as if set forth in full in response to each document request.

1. JPMC objects to the First Request to the extent it purports to be a request for discovery pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1 in accordance with the Court's June 24, 2009 Order. That Order is subject to a motion for reconsideration. Debtors did not obtain the Court's authorization to issue the First Request. JPMC views the First Request as Debtors' first request for documents in *JPMorgan Chase Bank, National Association v. Washington Mutual, Inc.*, Adv. Proc. No. 09-50551 (MFW) and *Washington Mutual, Inc. v. JPMorgan Chase Bank, National Association*, Adv. Proc. No. 09-50934 (MFW) (collectively, the "Adversary Proceedings").

2. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they purport to impose burdens or

duties upon JPMC that exceed the requirements or permissible scope of discovery under the Applicable Rules. JPMC will respond to the First Request in accordance with its obligations under the Applicable Rules, or as otherwise required by the Court.

3. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they seek information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity from disclosure. Any disclosure of information protected from discovery by the attorney-client privilege, the work product doctrine or any other applicable privilege, protection, immunity, law or rule is inadvertent and should not be construed to constitute a waiver.

4. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they seek information that is privileged or otherwise protected from disclosure pursuant to applicable (i) domestic or foreign banking privileges or bank regulatory laws and regulations, (ii) domestic or foreign bank secrecy laws, blocking laws or similar laws, or (iii) domestic or foreign criminal or civil laws (including privacy laws).

5. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they are overly broad, unduly burdensome and/or seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or in the above-captioned action (the

"Chapter 11 Case"), nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate.

6. To the extent that the Court may determine that the First Request is an appropriate request for discovery pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1, JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they seek information that is discoverable in the Adversary Proceedings, or that could be sought in connection with these proceedings under the Applicable Rules.

7. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they purport to impose burdens or duties, or seek information, beyond the scope of permissible discovery in the Adversary Proceedings or Chapter 11 Case.

8. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they seek confidential information of JPMC or its customers, clients or counterparties. JPMC will produce such information only after the entry of an appropriate confidentiality agreement, stipulation and/or order.

9. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they purport to seek documents not in JPMC's possession, custody or control.



10. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they purport to seek documents that are publicly available or available to Debtors from a more convenient, less expensive or less burdensome source than from JPMC, including documents available to Debtors pursuant to the Information Access Agreement dated November 21, 2008, as it may be amended.

11. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they purport to require JPMC to reach legal conclusions about any document, thing or event.

12. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they purport to require any search for information beyond a reasonable search. In responding to the Request, JPMC will conduct, if necessary, a reasonable search of those files in its possession, custody or control in the United States in which information responsive to the First Request (as limited by these objections) is reasonably likely to be located in the reasonably accessible electronic files and hard copy files maintained by, or on behalf of, those individuals who are believed to have had significant involvement in the relevant matters.

13. JPMC reserves all objections that may be available to it at any hearing or trial or on any motion to the use or admissibility of any material produced. The

production of any material does not constitute an admission by JPMC that such material or the information contained therein is relevant to this action or admissible in evidence.

14. JPMC reserves the right to amend or supplement this response with additional objections and to produce additional documents that may become available or come to its attention in the future. JPMC may rely upon such information or documents in any hearing, trial or other proceeding in this litigation.

15. The failure of JPMC to make a specific objection to a particular, individual request is not, and shall not be construed as, an admission that responsive information exists. Likewise, any statement herein that JPMC will produce documents in response to an individual request does not mean that JPMC in fact has any such documents, or that any such document exists, or that JPMC will search all files maintained by any person, but instead reflects JPMC's intention, subject to its objections, to conduct a reasonable search for responsive documents.

16. JPMC objects to Definition 3 ("Any," "all" and "each") and to any specific document requests incorporating that definition on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase "otherwise could be construed outside of its scope"), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate.

17. JPMC objects to Definition 4 (“Communication”) and to any specific document requests incorporating that definition on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase “transmission of information, fact, opinion, belief, idea, statement, inquiry or otherwise”), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate.

18. JPMC objects to Definition 5 (“Concerning”) and to any specific document requests incorporating that definition on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrases “prepared in connection with” and “in any way legally, logically or factually concerned with the matter or document described, referred to or discussed”), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate.

19. JPMC objects to Definition 6 (“Document”) and to any specific document requests incorporating that definition on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase “meetings or other communications”), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Chapter 11

Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate.

20. JPMC objects to Definitions 10 ("JPMC"), 12 ("Washington Mutual"), 13 ("WMB"), 14 ("WMB fsb"), 15 ("WMI"), Instruction 4, and to any specific document requests incorporating those definitions and instruction on the grounds that such definitions and instruction and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase "persons acting or purporting to act on its behalf"), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate. For purposes of this First Request, JPMC will interpret the terms (i) "JPMC" to mean JPMorgan Chase Bank, National Association and JPMorgan Chase & Co., (ii) "Washington Mutual" to mean Washington Mutual, Inc. or Washington Mutual Bank, (iii) "WMB" to mean Washington Mutual Bank, (iv) "WMB fsb" to mean Washington Mutual Bank fsb, and (v) "WMI" to mean Washington Mutual, Inc.

21. JPMC objects to Definition 20 ("Transaction") and to any specific document requests incorporating that definition on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase "or any transaction preliminary, preparatory or incident thereto"), and seek information that is neither relevant to the claims, rights, or

interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate.

22. JPMC objects to Instruction 3 and to any specific document requests incorporating that instruction on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase "you or anyone acting on your behalf"), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate.

23. JPMC objects to Instruction 4 and to any specific document requests incorporating that instruction on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase "all other persons or entities acting in his, her, or its behalf or under his, her or its control"), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate. For purposes of this First Request, JPMC will construe the Instruction as seeking documents from only the individual, person or entity named in the Request.

24. JPMC objects to Instruction 6 and to any specific document requests incorporating that instruction on the grounds that such definition and any such document

requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase “whatever information or knowledge you have concerning each document not produced”), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate.

25. JPMC objects to Instruction 8 and to any specific document requests incorporating that instruction on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous, and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate.

26. JPMC objects to Instruction 10 and to any specific document requests incorporating that instruction on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous, and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate.

27. JPMC objects to Instruction 11 and to any specific document requests incorporating that instruction on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous, and seek information

that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate.

28. JPMC objects to Instruction 12 and to any specific document requests incorporating that instruction on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase "relating in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior to that date"), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate. Without waiving any objections, JPMC will produce non-privileged responsive documents, subject to objections interposed, for the period March 1, 2008 to September 26, 2008.

29. JPMC objects to the First Request on the ground that it seeks to impose an obligation on JPMC to produce responsive documents by August 1, 2009. Without waiving any objections, JPMC will produce responsive documents on a rolling basis and will comply with any scheduling order entered in the Adversary Proceedings. JPMC is also available to meet and confer with Debtors concerning the timing of production of documents.

## SPECIFIC OBJECTIONS

### REQUEST NO. 1

All documents concerning any agreement between JPMC and Washington Mutual concerning access to and/or disclosure of non-public, confidential or proprietary information in connection with any potential Transaction in 2008.

### Response to Request No. 1

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is vague and ambiguous.

### REQUEST NO. 2

All documents concerning JPMC's disclosure of Washington Mutual's non-public, confidential or proprietary information to third parties, including but not limited to disclosure of such information to third parties to secure financing or raise capital in connection with any potential Transaction.

### Response to Request No. 2

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrases "non-public,



confidential or proprietary information” and “in connection with any potential Transaction” are vague and ambiguous.

REQUEST NO. 3

All documents concerning any communications with any Governmental Unit regarding non-public, confidential or proprietary information related to Washington Mutual, including but not limited to JPMC’s receipt of non-public, confidential or proprietary information concerning Washington Mutual.

Response to Request No. 3

In addition to JPMC’s General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase “non-public, confidential or proprietary information concerning Washington Mutual” is vague and ambiguous.

REQUEST NO. 4

Documents sufficient to identify JPMC’s company policies and procedures concerning the protection or disclosure of non-public, confidential or proprietary information.

Response to Request No. 4

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrases "company policies and procedures" and "non-public, confidential or proprietary information" are vague and ambiguous.

REQUEST NO. 5

All documents concerning JPMC's interest in any potential Transaction.

Response to Request No. 5

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "JPMC's interest in any potential Transaction" is vague and ambiguous.

REQUEST NO. 6

All documents concerning any attempt by JPMC to engage in any Transaction in the spring and summer of 2008, including but not limited to JPMC's bid to merge with, purchase, or acquire Washington Mutual in or about April 2008.

Response to Request No. 6

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "concerning any attempt by JPMC to engage in any Transaction" is vague and ambiguous.

REQUEST NO. 7

All documents concerning any communications between JPMC and Washington Mutual concerning JPMC's interest in any potential Transaction in the spring and summer of 2008.

Response to Request No. 7

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the

Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC also objects to this Request on the ground that the phrase "JPMC's interest in any potential Transaction in the spring and summer of 2008" is vague and ambiguous.

REQUEST NO. 8

All documents concerning any communications between JPMC and any third party, concerning JPMC's interest in any potential Transaction in the spring and summer of 2008, including any communications with the FDIC or any other Governmental Unit.

Response to Request No. 8

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrases "concerning any communication between JPMC and any third party" and "any communications with the FDIC or any Governmental Unit" are vague and ambiguous.

REQUEST NO. 9

All documents concerning any due diligence performed by JPMC in connection with its interests in any potential Transaction in 2008.

Response to Request No. 9

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "in connection with its interests in any potential Transaction" is vague and ambiguous.

REQUEST NO. 10

All documents concerning any attempt by JPMC to engage in any potential Transaction in or about September 2008, including but not limited to any bid or offer by JPMC to merge with, invest in, or purchase Washington Mutual in or about September 2008.

Response to Request No. 10

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the

Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "concerning any attempt by JPMC to engage in any potential Transaction" is vague and ambiguous.

REQUEST NO. 11

All documents concerning capital contributions or investments received by JPMC in connection with any potential Transaction in or about September 2008.

Response to Request No. 11

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "concerning capital contributions or investments received" is vague and ambiguous.

REQUEST NO. 12

All documents concerning any communications between JPMC and the media, including but not limited to The Wall Street Journal, any other print, on-line,

broadcast, or cable news outlet, related to Washington Mutual, including but not limited to Washington Mutual's financial status, assets, and liabilities.

Response to Request No. 12

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "including but not limited to Washington Mutual's financial status, assets, and liabilities" is vague and ambiguous.

REQUEST NO. 13

All documents concerning any communications between JPMC and any Governmental Unit concerning the seizure and/or sale of Washington Mutual, including but not limited to communications with the US Department of the Treasury, the FDIC, and/or the OTS.

Response to Request No. 13

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the

Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "concerning the seizure and/or sale of Washington Mutual" is vague and ambiguous.

REQUEST NO. 14

All documents concerning actions considered or taken by any Governmental Unit concerning Washington Mutual, including but not limited to the seizure of WMB by the OTS and the appointment of FDIC as receiver.

Response to Request No. 14

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrases "concerning actions considered or taken" and "the seizure of WMB by the OTS and the appointment of FDIC as receiver" are vague and ambiguous.



JPMC further objects to this Request on the ground that it seeks documents not in JPMC's possession, custody or control, and/or which are publicly available or available to Debtors from the Governmental Units referred to in the Request.

REQUEST NO. 15

All documents concerning any agreement or arrangement between JPMC and any Governmental Unit concerning any potential Transaction or Transaction on or prior to September 25, 2008, including but not limited to any agreement or arrangement with the OTS and/or FDIC.

Response to Request No. 15

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it seeks information or documents that are neither relevant to the claims, rights, or interests of the Adversary Proceedings or Debtors in the Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate. JPMC further objects to this Request on the ground that the phrases "concerning any agreement or arrangement" and "any agreement or arrangement with the OTS and/or FDIC" are vague and ambiguous.

REQUEST NO. 16

All documents concerning any communications between JPMC and any Governmental Unit concerning any Transaction on September 25, 2008.

Response to Request No. 16

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "concerning any communications between JPMC and any Governmental Unit" is vague and ambiguous.

REQUEST NO. 17

Documents sufficient to identify the names of all persons who negotiated on behalf of JPMC in connection with entering into the P&A Agreement.

Response to Request No. 17

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate. JPMC further objects to this Request on the ground that the phrase "in connection with entering into the P&A Agreement" is vague and ambiguous.

REQUEST NO. 18

Documents sufficient to show JPMC's weighted average cost of capital, including but not limited to JPMC's cost of debt, cost of equity, yield on outstanding debt and the weighted average cost of capital for any loan or other financing obtained by JPMC.

Response to Request No. 18

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate. JPMC further objects to this Request on the ground that the phrases "weighted average cost of capital" and "other financing obtained" are vague and ambiguous.

REQUEST NO. 19

All documents concerning any investigations by federal, state or municipal government bodies of JPMC related to its acquisition of the assets of WMB.

Response to Request No. 19

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the

burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrases "related to its acquisition" and "municipal government bodies" are vague and ambiguous.

REQUEST NO. 20

All documents concerning any lawsuit or other legal action brought against JPMC related to its acquisition of the assets of WMB.

Response to Request No. 20

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrases "concerning any lawsuit or other legal action" and "related to its acquisition of the assets of WMB" are vague and ambiguous.

REQUEST NO. 21

All documents concerning JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

Response to Request No. 21

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "concerning JPMC's placement of former JPMC employees" is vague and ambiguous.

REQUEST NO. 22

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 but not limited to Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

Response to Request No. 22

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material.

JPMC further objects to this Request on the ground that the phrases “concerning the disclosure” and “non-public, confidential or proprietary information” are vague and ambiguous.

REQUEST NO. 23

To the extent not otherwise covered by these requests, all documents produced in the Texas Action that relate to Washington Mutual.

Response to Request No. 23

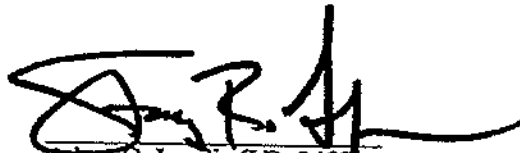
In addition to JPMC’s General Objections, JPMC objects to this Request on the grounds that it seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate. JPMC further objects to this Request on the ground that the phrase “that relate to” is vague and ambiguous.

\* \* \*

Subject to and without waiving the foregoing objections, JPMC is prepared to meet and confer to discuss the production of certain categories of non-privileged documents that are responsive to the First Request, that are relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, that are not available from another more convenient, less expensive or less burdensome

source (including but not limited to Debtors), and that are not unduly burdensome to collect, review and produce.

Dated: July 20, 2009  
Wilmington, Delaware



Adam G. Landis (I.D. 3407)  
Matthew B. McGuire (I.D. 4366)  
LANDIS RATH & COBB LLP  
919 Market Street, Suite 1800  
Wilmington, DE 19899  
Tel: (302) 467-4400  
Fax: (302) 467-4450  
landis@lrclaw.com  
mcguire@lrclaw.com

-- and --

Robert A. Sacks  
Hydee R. Feldstein  
SULLIVAN & CROMWELL LLP  
1888 Century Park East  
Los Angeles, California 90067  
Tel: (310) 712-6600  
Fax: (310) 712-8800  
sacksr@sullcrom.com  
feldsteinh@sullcrom.com

Bruce E. Clark  
Stacey R. Friedman  
SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, New York 10004  
Tel: (212) 558-4000  
Fax: (212) 558-3588  
clarkb@sullcrom.com  
friedmans@sullcrom.com

*Counsel for JPMorgan Chase Bank,  
National Association*

EXHIBIT D



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Chapter 11  
WASHINGTON MUTUAL, INC., .  
et al., . Case No. 08-12229 (MFW)  
. (Jointly Administered)  
. .  
. January 28, 2010  
. 4:00 p.m.  
Debtors. . (Wilmington)

.....  
JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION,

Plaintiff,

v.

Adv.Proc.No. 09-50551 (MFW)

WASHINGTON MUTUAL, INC. AND  
WMI INVESTMENT CORP.,

Defendant for all claims

-and-

FEDERAL DEPOSIT INSURANCE  
CORPORATION,  
Additional Defendant  
for Interpleader claim

.....  
WASHINGTON MUTUAL, INC. AND  
WMI INVESTMENT CORP.,

Plaintiffs,

v.

Adv.Proc.No. 09-50934 (MFW)

JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION,

Defendant.  
.....

1 MS. TAGGART: We do have to show that the discovery  
2 that we request relates to the Debtors and that it is  
3 necessary for our investigation.

4 THE COURT: Right. Why is it necessary?

5 MS. TAGGART: It is possible - -

6 THE COURT: For an investigation?

7 MS. TAGGART: It is possible because we don't yet  
8 have the third party documents that those may be sufficient  
9 to determine that. What we know is that the FDIC has  
10 relevant documents to determining whether there were claims  
11 in a very material way. I know I go back to it, but for  
12 example, that indemnification clause is really at the heart  
13 of whether or not JPMorgan believed that it may be exposed to  
14 the very tort claims we're pursuing. Without, right now,  
15 because we still don't have the documents from third parties  
16 or really correspondence with third parties, I can't tell you  
17 whether once we get those, those will be sufficient. But I  
18 know the FDIC has relevant documents that will be important  
19 to evaluating the merits of these claims. And I believe that  
20 meets the standard that's set out for Rule 2004 examinations  
21 of third parties

22 THE COURT: Well, I'm going to deny the Debtors'  
23 request, and here's why. I did grant the 2004 discovery.  
24 Against JPMC. To allow the Debtor to explore whether the  
25 Debtor did have any potential claims against it under a

1 business tort theory. Despite the arguments that the Debtor  
2 could get that information by other means. I felt the 2004  
3 did allow the Debtor to conduct that discovery. But quite  
4 frankly, I think issuing subpoenas against dozens of third  
5 parties just goes too far. I don't think that's an  
6 appropriate use of Rule 2004. I think the Debtor has a dual  
7 burden in using 2004. First that it's absolutely necessary  
8 that we do an investigation, that we are unable, at this  
9 point, to determine we have a claim, that under Rule 11 we  
10 can file against JPMC. Now the Debtor has done extensive  
11 discovery and gotten extensive numbers of documents from  
12 JPMC. I'm not hearing that the Debtor does not believe it  
13 has a claim against JPMC or cannot determine that it has a  
14 claim against JPMC at this point. But the second prong is  
15 the Debtor has to prove that it is absolutely necessary to  
16 use Rule 2004 because the Debtor cannot obtain these  
17 documents any other way, and I'm not convinced at this point  
18 that that's correct. The Debtor already has obtained some  
19 voluntarily, the Debtor has obtained extensive discovery from  
20 JPMC. What I'm hearing with respect to the FDIC specifically  
21 is that really, looking at the discovery request and  
22 arguments of counsel, it's getting awfully close to claims  
23 that they may have against the FDIC itself. And I think that  
24 fact leads me to believe that specifically asked of them,  
25 this is really trying an end run against, around the rules

1 that would otherwise comply with the Federal Rules of Civil  
2 Procedure regarding discovery of claims between parties that  
3 are in a litigation posture. Again, you're getting documents  
4 voluntarily from the third parties. You're getting responses  
5 under Freedom of Information, and through other  
6 administrative means. I just do not see that the Debtor is  
7 prejudiced at this point from not being allowed to issue  
8 subpoenas against third parties that go on for paragraph  
9 after paragraph, not narrowly tailored to specific claims of  
10 a business tort against JPMC. So I'm not prepared to enter  
11 the order on the Debtors' motion. Do we want to take another  
12 short break?

13 MR. ROSEN: Well Your Honor, I just wanted to  
14 apprise the Court as to where we are. We have one additional  
15 matter on the agenda, and I have been informed that all told,  
16 it will probably take about an hour and a half to handle that  
17 matter.

18 THE COURT: Okay.

19 MR. ROSEN: We had informed the Court of that  
20 possibility and suggested that we have a Washington Mutual  
21 calendar tomorrow at 10:30 on a discrete matter, but that  
22 matter should take probably an hour and a half to two hours.  
23 If the Court recalls, it's the continuation and hopefully  
24 ending of the HF Almonton (phonetic) matter. I don't, and we  
25 had asked the Court at that time whether the Court would be

EXHIBIT E

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 THE COURT: Good afternoon.

2 MR. CLARKE: John Clarke from DLA Piper, for the FDIC  
3 receiver.

4 As the Court is aware, we haven't taken a position  
5 either for or against this motion. I just needed to respond to  
6 Mr. Rosen's comments. I would refer back to the comments that  
7 I made at the omnibus hearing on April 6 as to the status. We  
8 don't have any changed status to report from those comments,  
9 and the record stands for itself as to what I said then. Thank  
10 you, Your Honor.

11 THE COURT: You want to remind us what you said then?

12 MR. CLARKE: We said that there were still significant  
13 open issues with the parties to the proposed settlement; that  
14 we continued to have discussions with those parties; that we  
15 had not yet resolved those issues; and there are other  
16 conditions to the settlement that still haven't been satisfied,  
17 but we're working with the goal of trying to achieve all that  
18 and get the proposed settlement agreed to and presented to this  
19 Court.

20 THE COURT: Thank you.

21 MR. CLARKE: Thank you.

22 THE COURT: Well, let me make my ruling. First, a  
23 preliminary issue. The filing of a motion to appoint a trustee  
24 will not eliminate the need for the Court to address the equity  
25 committee's motion to appoint an examiner. I made that point

1 the other day. And it could certainly lead to strategic  
2 filings of motions for appointment of trustees just to defeat a  
3 motion for appointment of an examiner. So that is of no moment  
4 to my ruling on this motion.

5 As I have recently ruled orally, so you can't really  
6 rely on it, but I will follow myself. I do believe that  
7 1104(c)(2) gives the Court some discretion, even if the debt  
8 level is reached, and the discretion is that the Court has the  
9 discretion to determine what appropriate investigation of the  
10 debtor should occur and that, if the Court determines that  
11 there's no appropriate investigation that needs to be  
12 conducted, the Court has the discretion to deny the appointment  
13 of an examiner.

14 The Courts have looked at various factors in  
15 determining whether an appropriate investigation is warranted.  
16 They include whether that investigation, that same  
17 investigation, has already been conducted by other parties.  
18 They have looked at whether the appointment of an examiner will  
19 increase costs and cause a delay with no corresponding benefit.  
20 Of course I've looked at the timing of the motion. I've looked  
21 at whether the motion is a litigation tactic, which includes  
22 the consideration of the timing, not just how soon it is in a  
23 case but whether it is timed such as to evidence a litigation  
24 tactic.

25 I think in this case it's a very close call. I don't



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

1 when a party thought it was going to lose did it file the  
2 motion for a tactical reason. In this case, the equity  
3 committee is relatively new to this case, only since January,  
4 and I don't think that the timing was meant -- is too late to  
5 consider it, nor was it meant as a litigation strategy.

6 Let's see. I don't know whether -- I'm not going to  
7 accept the debtors' arguments or the committee's arguments  
8 regarding delay here being a negative. I'm not sure how  
9 quickly the debtor honestly can proceed with its proposed plan  
10 but, at any rate, I think there is sufficient time -- should be  
11 sufficient time for the equity committee to conduct whatever  
12 investigation it feels is relevant. So I will deny the motion.

13 MR. ROSEN: Your Honor, we have prepared a very short  
14 order that says "Ordered that the motion is denied. And it is  
15 further ordered that this Court shall retain jurisdiction over  
16 any and all matters arising from or related to the  
17 implementation or interpretation of this order." With that,  
18 may I approach the bench?

19 THE COURT: You may. All right, I'll enter that  
20 order.

21 MR. ROSEN: Thank you. That concludes this morning's  
22 agenda.

23 THE COURT: Well, before we conclude, where do we  
24 stand on the 2019? Did you send out a notice of a hearing on  
25 that?

EXHIBIT F

**quinn emanuel trial lawyers | los angeles**

865 South Figueroa Street, 10th Floor, Los Angeles, California 90017 | TEL: (213) 443-3000 FAX: (213) 443-3100

WRITER'S DIRECT DIAL NO.  
(213) 443-3196  
WRITER'S INTERNET ADDRESS  
ericataggart@quinnemanuel.com

NOVEMBER 2, 2009

VIA EMAIL

Stacey Friedman, Esq.  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004-2498

Dear Stacey:

I write to meet and confer regarding JPMC's production of documents in response to the Subpoena for Rule 2004 Examination served on July 2, 2009 incorporating Debtors' First Request For Production of Documents pursuant to Bankruptcy Rule 2004 and Local Rule 2004.1. Despite JPMC's representation that it has completed its production of all requested documents, it appears that many categories of responsive documents remain outstanding.

JPMC's Responses to Debtors' First Request for Production of Documents

Following a thorough review of JPMC's production, it appears that there are few or no documents responsive to a number of requests, described below. Please confirm that no additional documents responsive to these requests exist, or let us know when JPMC will supplement its production as to these categories:

- Debtors' request No. 4 seeks "[d]ocuments sufficient to identify JPMC's company policies and procedures concerning the protection or disclosure of non-public, confidential or proprietary information." Based on our review, it appears that JPMC has failed to produce any such policies.
- Debtors' request No. 7 seeks "[A]ll documents concerning any communication between JPMC and Washington Mutual concerning JPMC's interest in any potential Transaction in the spring and summer of 2008." JPMC's production contains few documents that are potentially responsive to this request.

**quinn emanuel urquhart oliver & hedges, llp**

NEW YORK | 51 Madison Avenue, 22nd Floor, New York, NY 10010 | TEL (212) 849-7000 FAX (212) 849-7100  
SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, CA 94111 | TEL (415) 875-6600 FAX (415) 875-6700  
SILICON VALLEY | 555 Twin Dolphin Drive, Suite 560, Redwood Shores, CA 94065 | TEL (650) 801-5000 FAX (650) 801-5100  
CHICAGO | 250 South Wacker Drive, Suite 230, Chicago, IL 60606 | TEL (312) 463-2961 FAX (312) 463-2962  
LONDON | 76 Old Bailey, London EC4M 7EG United Kingdom | TEL +44(0) 20 7653 2000 FAX +44(0) 20 7653 2100  
TOKYO | Akasaka Twin Tower Main Bldg., 6th Fl., 17-22 Akasaka 2-Chome, Minato-ku, Tokyo 107-0052 Japan | TEL +81 3 5561-1711 FAX +81 3 5561-1712

October 29, 2009

Page 2

- Debtors' request No. 8 seeks "[a]ll documents concerning any communication between JPMC and any third party, concerning JPMC's interest in any potential transaction in the spring and summer of 2008, including any communication with the FDIC or any other Governmental Unit." JPMC's production of very few documents in response to this request appears insufficient.
- Debtors' request No. 12 seeks "[a]ll documents concerning any communication between JPMC and the media, including but not limited to The Wall Street Journal, any other print, on-line, broadcast, or cable news outlet, related to Washington Mutual, including but not limited to Washington Mutual's financial status, assets, and liabilities." JPMC's production has very few documents that are responsive to this request.
- Debtors' request No. 13 seeks "[a]ll documents concerning any communication between JPMC and any Governmental Unit concerning the seizure and/or sale of Washington Mutual, including but not limited to communications with the US Department of the Treasury, the FDIC, and/or the OTS." It is Debtors' understanding that JPMC was in frequent contact with government regulators concerning Washington Mutual, yet JPMC's production contains very few documents that are responsive to this request. For example, JPMC has produced only a limited number of documents pertaining to the P&A transaction. According to our review, JPMC has produced only 24 email chains over the entire relevant period addressed to persons at the FDIC. Please confirm that JPMC has produced its entire correspondence on this topic, or explain the basis for JPMC to continue to withhold such relevant information.
- Debtors' request No. 14 seeks "[a]ll documents concerning actions considered or taken by any Governmental Unit concerning Washington Mutual, including but not limited to the seizure of WMB by the OTS and the appointment of FDIC as receiver." JPMC's production contains very few documents that are responsive to this request.
- Debtors' request No. 15 seeks "[a]ll documents concerning any agreement or arrangement between JPMC and any Governmental Unit concerning any potential Transaction or Transaction on or prior to September 25, 2008, including but not limited to any agreement or arrangement with the OTS and/or FDIC." JPMC's production contains very few documents that are responsive to this request.
- Debtors' request No. 19 seeks "[a]ll documents concerning any investigations by federal, state or municipal government bodies of JPMC related to its acquisition of the assets of WMB." JPMC has not produced any documents responsive to this request.

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- Debtors' request No. 20 seeks "[a]ll documents concerning any lawsuit or other legal action brought against JPMC related to its acquisition to the assets of WMB." JPMC has not produced any documents responsive to this request.
- Debtors' request No. 21 seeks "[a]ll documents concerning JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray." JPMC has not produced any documents responsive to this request.

#### Concerns about Completeness of Review

We also have some concerns about the completeness of JPMC's review based on some incomplete production of documents and lack of documents from seemingly relevant custodians. For example, an email exchange (JPM\_EX00026119) between S. Polakoff at the OTS and R. Cohen at Sullivan & Cromwell appears relevant but does not contain the original email in the conversation.

Also glaring is the absence of communications from numerous JPMC individuals working on "Project West." See JPM\_EX0000870. It appears that each of the custodians that were part of that team would have relevant documents. However, although they were listed as members of the Project West team, JPMC produced only three emails written by Chris Sieve. Similarly, Jim Hibbert, although Head of the REB Commercial Credit department at JPMC and listed as a member of Project West, does not have any email correspondence in JPMC's production.

Thus, please confirm that JPMC searched the files of all persons involved in Project West, and investigate whether the email referred to above or any other responsive emails should also have been included in JPMC's production.

#### Privilege log

Although JPMC asserts that its production was complete over a month ago -- September 25, 2009 -- Debtors have yet to receive JPMC's privilege log. Please provide a date certain on which JPMC will provide a privilege log listing all documents withheld on privilege grounds, the basis for the privilege, and information sufficient to justify any privilege.

#### Government and Third Party Confidentiality Issues

We understand that JPMC has withheld a number of documents on the basis of confidentiality restrictions by the OTS and other governmental agencies. As an initial matter, very little if any of JPMC's materials are likely to fall under this confidentiality restriction given the limitations of 12 C.F.R. § 510.5 given that none of the requests would implicate materials concerning any OTS



October 29, 2009

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regulation of JPMC. We do not understand how JPMC can claim that WMI, the former holding company of two OTS-regulated banks, is not permitted to view regulatory material from before September 25, 2008. Thus, please explain the basis for your decision to withhold documents on this basis.

Even if those regulations did cover any documents held by JPMC, JPMC cannot use those restrictions as a basis to withhold documents indefinitely. It is Debtors' understanding that many of these issues can be resolved through an appropriate protective order and agreement with those agencies. In fact, the most recent draft of the Confidentiality Stipulation and Protective Order circulated by Debtors includes language approved by the OTS permitting the disclosure of unpublished OTS information to Debtors and certain other parties pursuant to certain confidentiality protections. Thus, we expect JPMC will promptly produce any documents initially withheld on the basis of an OTS confidentiality issue as soon as such a confidentiality agreement has been executed.

At any rate, please confirm that JPMC is working with those government agencies to obtain their consent for disclosure. And please promptly provide a log of all documents JPMC continues to withhold on the basis of confidentiality restrictions by the OTS or other government agencies.

#### Unprocessed Documents

Debtors were unable to access documents with the following Bates numbers: JPM\_EX00015741, JPM\_EX00015756, JPM\_EX00015760, JPM\_EX00017758, JPM\_EX00016965, JPM\_EX00005405, JPM\_EX00005872-73, JPM\_EX00028776-81, JPM\_EX00031528-9, JPM\_EX00031537-8, and JPM\_EX00027861-71, JPM\_EX00033402-5, JPM\_EX00033496-7, JPM\_EX00034307-310, JPM\_EX00034313-4, JPM\_EX00034322-3, JPM\_EX00034329-30, JPM\_EX00034348-9, JPM\_EX00036061-2, JPM\_EX00036328, JPM\_EX00036920-1, JPM\_EX00036923-4. Please provide native files for these unprocessed documents.

#### Undisclosed recipients

Debtors have identified a number of documents, in the form of emails, which do not disclose the name/names of the recipients to whom they were addressed. The documents in question have the following Bates numbers: JPM\_EX00012252, JPM\_EX00012305, JPM\_EX00012461, JPM\_EX00004103, JPM\_EX00030765, and JPM\_EX00030307. Please provide the list of all the recipients for these emails.

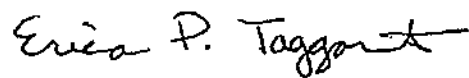
#### Documents with 7/6/2009 modified date

JPMC's production includes a large number of documents with a modified date of 7/6/2009. Debtors request that JPMC provide an explanation for why so many documents were modified on that date.

October 29, 2009  
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We appreciate your prompt attention to the matters raised in this letter. We ask that JPMC provide a response to these issues before next Wednesday November 2. We would also be glad to discuss these issues in a telephonic meet-and-confer at your earliest convenience.

Very truly yours,

Handwritten signature of Erica P. Taggart in cursive script.

Erica Taggart

03935.61559/3181192.1

EXHIBIT G

**quinn emanuel trial lawyers | los angeles**

865 South Figueroa Street, 10th Floor, Los Angeles, California 90017 | TEL 213-443-3000 FAX 213-443-3100

WRITER'S DIRECT DIAL NO.  
(213) 443-3196  
WRITER'S INTERNET ADDRESS  
ericataggart@quinnemanuel.com

DECEMBER 28, 2009

VIA EMAIL AND U.S. MAIL

Brian Glueckstein, Esq.  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004-2498

Dear Brian:

I write in response to your December 21, 2009 letter continuing our discussion regarding JPMorgan Chase Bank, N.A.'s ("JPMC") production pursuant to the Court's June 24, 2009 order granting a rule 2004 examination of JPMC. In particular, this letter addresses the following issues: (1) deficiencies in JPMC's production from custodians it identified as having produced from already, (2) reasons to doubt JPMC's conclusion that the custodians it excluded lack relevant documents; and (3) WMI's unwillingness to agree not to seek additional documents based on discovery still to be produced.

JPMC's 2004 PRODUCTION

Deficiencies in JPMC's 2004 Production

Although JPMC's offer to search additional custodians is a step in the right direction for both parties, it bears noting at the outset that JPMC's production from the custodians it claims it searched remains deficient. A review of the production from the seventeen custodians identified in JPMC's November 27, 2009 letter shows that JPMC did not produce sufficient documents even from those individuals it identifies as searched custodians. For example, JPMC produced few documents from the following custodians included in JPMC's search:

**quinn emanuel urquhart oliver & hedges, llp**

NEW YORK | 51 Madison Avenue, 22nd Floor, New York, New York 10010 | TEL 212-549-7000 FAX 212-549-7100  
SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, California 94111 | TEL 415-875-6600 FAX 415-875-6700  
03935.61559/37527362  
SILICON VALLEY | 555 Twin Dolphin Drive, Suite 560, Redwood Shores, California 94065 | TEL 650-801-5000 FAX 650-801-5100  
TOKYO | Akasaka Twin Tower Main Building, 6th Floor, 17-22 Akasaka 2-Chome, Minato-ku, Tokyo 107-0052, Japan | TEL +81-3-5561-1711 FAX +81-3-5561-1712  
LONDON | 16 Old Bailey, London EC4A 3DF, United Kingdom | TEL +44-20-7653-2000 FAX +44-20-7653-2100

- Only nine documents sent by Jamie Dimon, CEO and Chairman of JPMC, despite the fact that Dimon was the author of the main negotiating documents sent to Washington Mutual and the recipient of communications from the FDIC.<sup>1</sup>
- Only three documents sent by Douglas Braunstein, head of Americas IBC and M&A.
- Fourteen documents sent by Kevin Willsey, head of Equity Capital Markets at JPMC.
- Although JPMC produced over a 100 documents from Charlie Scharf, that remains a strikingly low number given Mr. Scharf's involvement in the deal and a time period for production that covered March through September of 2008.

For this reason, we continue to request that JPMC either supplement its production for the custodians included in its search or reveal JPMC's search and review process, including the search terms or other methods to narrow the documents reviewed for production, so that we can assess the reasonableness of JPMC's methods.

#### The Custodians Which JPMC Proposes Not Be Searched

Of the thirty-seven custodians identified by WMI, JPMC has represented that it already searched thirteen of them and proposes to search an additional eight. This leaves sixteen custodians that WMI listed as likely having relevant documents that would not be included in any document collection. Keeping in mind that it is JPMC's obligation to identify relevant custodians, we have reason to believe that many of the remaining sixteen custodians do in fact have relevant documents.

- Scott Albinson, Managing Director in the Financial Institutions and Government Group (FIG). Albinson was previously employed by the OTS and while at the OTS covered Washington Mutual as part of his duties. In addition, it appears that Mr. Albinson's work for JPMC involved continued contact with government regulators.<sup>2</sup>

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<sup>1</sup> See, e.g., JPM\_EX00026607-11, a March 7, 2008 email from Jamie Dimon to Kerry Killinger seeking a "prompt" response answering whether Washington Mutual has a true interest in pursuing a transaction with JPMC; see also JPM\_EX00036140, a September 24, 2009 email from Sheila Bair at the FDIC to Mr. Dimon stating that JPMC is "the high bid."

<sup>2</sup> For example, Mr. Albinson sent an internal JPMC email on July 11, 2008 (JPM\_EX00012238), asking if "we have a call this weekend or Monday morn to sort out possible advisory roles for FDIC vs. buy side advisory (not to mention possible JPM principal interest in asset management world) in future receivership actions." Furthermore, it appears Mr. (footnote continued)

- Brian Keegan, Managing Director, Capital Structure Advisory & Solutions, was heavily involved in due diligence and met with ratings agencies regarding Washington Mutual.<sup>3</sup>
- Genevieve Hovde, an analyst in FIG. Documents produced thus far reveal Hovde was intimately involved in due diligence to acquire Washington Mutual and was aware of meetings between high-ranking JPMC employees and government regulators.
- Tom Kelly, a member of JPMC's PR Department, who, on information and belief, had access to WMI's deposit outflows and was monitoring them closely. In addition, Tom Kelly worked with the FDIC on at least September 25, 2009.<sup>4</sup>
- Sean Carmody, an associate in the Investment Banking (IB) and FIG group who was involved in due diligence for JPMC throughout 2008.<sup>5</sup> Mr. Carmody also prepared a presentation for the ratings agencies regarding WMI.<sup>6</sup>
- John R. Chrin, a Managing Director in Investment Banking / FIG. Mr. Chrin was involved in due diligence and potential disclosure of WMI information.<sup>7</sup> Mr. Chrin was also aware of disclosure of WMI information to ratings agencies.<sup>8</sup>

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Albinson was selected based on his prior work at the OTS. See JPM\_EX00014809, a March 10, 2008 internal JPMC email from Tim Main to Charlie Scharf and Michael Cavanagh suggesting including Albinson on the "West FIG Team" because he "covered WAMU at OTS."

<sup>3</sup> See JPM\_EX00012938-47, a September 19, 2008 internal JPMC e-mail from Mr. Keegan regarding meetings with Moody's about JPMC's potential acquisition of WaMu in which the parties also discussed "Paulson's 'rtc' plan". According to Mr. Keegan's email, Jamie Dimon was also at this meeting.

<sup>4</sup> See JPM\_EX00037102, a September 25 email from the FDIC to JPMC inviting a JPMC representative to participate on a "conference call tonight." The email is then forwarded internally within JPMC by Joseph Evangelisti to Mr. Scharf. Mr. Evangelisti tells Mr. Scharf: "just talked to my FDIC counterpart. Tom Kelly is planning to join the call and simply make a couple positive statements (from our press release)".

<sup>5</sup> See, e.g., JPM\_EX00010958 (estimating employee insurance for WMI in March 2008); JPM\_EX00012782 (performing additional due diligence in September 2008).

<sup>6</sup> See JPM\_EX00023132, a March 29, 2008 email from Mr. Carmody to various Project West members attaching a "rating agency deck." The attached PowerPoint contains WMI information and details JPMC's plan to acquire Washington Mutual's banking franchise. JPM\_EX00023133-74.

- Barry L. Zubrow, Chief Risk Officer in the Credit Department, was heavily involved in due diligence and aware of potential government involvement in the acquisition.<sup>9</sup>
- Adam Gilbert, a Managing Director in Accounting. JPMC's documents identify Mr. Gilbert as involved in JPMC's September 2008 due diligence, including directly contacting WMI employees seeking the disclosure of information.<sup>10</sup>
- Thomas D. Novack, Managing Director, IB-FIG, was a Project West Team Leader involved in due diligence and suggested to Charlie Scharf that Mr. Scharf speak with Steve Rotella at WMI in order to acquire information on WMI.<sup>11</sup>
- Frank J. Bisignano, Chief Administrative Officer, was a team leader on Project West and involved in due diligence, including on-site in Seattle.<sup>12</sup>
- Jay Mandelbaum, an Executive VP, was a Project West Team Leader involved in due diligence and emailed directly and met with Mr. Scharf and Mr. Cavanagh regarding WMI.<sup>13</sup>

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<sup>7</sup> See JPM\_EX00011679-81, an April 12, 2008 internal JPMC email from Oliver X de Grivel to various, including John Chrin, asking for "a ready made analysis of the wamu deal which [JPMC] could share with external clients in China".

<sup>8</sup> See JPM\_EX00023132, a March 29, 2008 email from Mr. Carmody to Mr. Chrin and others attaching a PowerPoint presentation to be shown to ratings agencies which includes information on WMI and JPMC's plan to acquire WMI's banking assets.

<sup>9</sup> See JPM\_EX00031948 a September 19, 2008 JPMC internal email between Mr. Zubrow to Mr. Cavanagh asking if "the RTC/RFC kills project Ocean? Or just redistribute the economics?" Mr. Cavanagh responds that he has considered the possibility but that "I don't see how that helps."

<sup>10</sup> See JPM\_EX00004647-48, a September 24, 2008 email chain regarding FDIC's assessment of WaMu's deposits. The chain includes an email from Mr. Gilbert regarding his conversation with John Robinson of WaMu regarding the FDIC's assessment.

<sup>11</sup> See JPM\_EX00007617, a March 12, 2008 email from Mr. Novack to Mr. Scharf. About a week later, Mr. Rotella and Mr. Scharf exchanged emails in which Mr. Scharf thanked Mr. Rotella for his "time" and "openness."

<sup>12</sup> See JPM\_EX00016653, a March 13, 2008 email from Fernando Rivas to Project West members, advising the team leaders of travel plans for due diligence in Seattle.

<sup>13</sup> See, e.g., JPM\_EX00016773, JPM\_EX00013787, and JPM\_EX00013935 (March emails discussing due diligence matters and setting up a meeting).

- John F. Bradley, HR Director and Project West Team Leader, was intimately involved in due diligence and therefore had access to internal WMI information.<sup>14</sup>
- Kevin Watters, Business Banking executive and Project West Team Leader, was involved in due diligence and had access to internal WMI information.<sup>15</sup> Mr. Watters was also aware of a likely takeover of WMB's banking assets on September 17, 2008.<sup>16</sup>
- Martha Gallo, General Auditor in the Accounting Department, a Project West Team Leader involved in due diligence.<sup>17</sup>
- Todd Maclin, Head of Commercial Banking Real Estate, a Project West Team Leader involved in due diligence with respect to commercial banking.<sup>18</sup>
- William King, former IB executive, was a Project West Team Leader involved in due diligence. On at least one occasion, Mr. King expressed concerns regarding the maintenance of confidentiality with respect to WMI information.<sup>19</sup>

Thus, we continue to believe that all of these custodians likely have relevant documents that should be involved in JPMC's collection.

#### Reservation of Rights

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<sup>14</sup> See, e.g., JPM\_EX00016510, a March 2008 email from Mr. Bradley to Mr. Bessey regarding due diligence.

<sup>15</sup> See, e.g., JPM\_EX00018068, a March 2008 email from Mr. Watters requesting access to the WMI Data Room.

<sup>16</sup> See JPM\_EX00031133, a September 17, 2008 email from Mr. Watters to Mr. Scharf discussing how JPMC would manage business banking "in a quick transition."

<sup>17</sup> See, e.g., JPM\_EX00001982, JPM\_EX00001698, emailing Mr. Bessey and others discussing the audit department's work on due diligence matters.

<sup>18</sup> See, e.g., JPM\_EX00004333, a September 25, 2008 email exchange between Mr. Maclin and Sally Durdan regarding WMI commercial loans. Mr. Maclin's importance in the project is exemplified by his direct contact with Mr. Scharf and his ability to add team members. See JPM\_EX00016975-77, a March 14, 2008 email exchange between Mr. Maclin and Mr. Scharf and Mr. Cavanagh, in which Mr. Maclin requests an additional team member and Mr. Scharf acquiesces.

<sup>19</sup> See JPM\_EX00016718, a March 13, 2009 email from Mr. King to Mr. Cavanagh regarding "portfolio evaluation work" and expressing concern about "keeping this confidential" and explaining that "if the CIO begins requesting this kind of information internally or around the Street it may become obvious" to "those that are asked that something larger is happening."

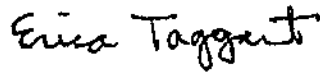


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Finally, we cannot agree to your premise that WMI must give up its rights to search for documents from additional custodians before JPMC will agree to conduct a more extensive search. Although WMI has identified relevant custodians above, it remains JPMC's obligation to identify relevant custodians. Thus, if WMI learns of information identifying additional custodians as relevant in the future, it must maintain the right to request a search of that custodian's files.

We continue to hope that we can reach an agreement short of court intervention about a supplemental production from JPMC, but believe these disagreements prevent any agreement on the terms proposed in your letter. Please contact me if you would like to discuss further.

Very truly yours,

A handwritten signature in cursive script that reads "Erica Taggart".

Erica Taggart

EXHIBIT H

<b>PROJECT WEST TEAM LEADERS</b>		
	<b>Name</b>	<b>Title</b>
1	Althea L Duersten	Managing Director – Chief Investment Office
2	Barry L Zubrow	Chief Risk Officer – Credit Dept
3	Benjamin Lopata	Managing director – Tax Dept
4	Brian A Bessey	Corp -M&A Dept
5	Charlie Scharf	EVP/CEO - CEO Chase Retail Financial Services
6	David B Lowman	CEO – Home Lending Dept
7	Douglas Braunstein	Head of Americas IBC and M&A
8	Fernando Rivas	Managing Director IB-FIG
9	Frank J Bisignano	Chief Administrative Officer
10	Gordon Smith	CEO- Card Service Dept
11	Gregg B Gunselman	Executive Director – IB-FIG
12	Jay Mandelbaum	EVP/ Strategy & Development Exec – Admin Dept
13	John F Bradley	HR Director
14	John R Chrin	Managing Director (IB-FIG)
15	Kevin Watters	SVP/Business Banking Executive
16	Louis Rauchenberger	MD & Corporate Controller – Accounting Dept
17	Martha Gallo	General Auditor– Accounting Dept
18	Mike Cavanagh	EVP/CFO
19	Neila Radin	Legal Compliance
20	Raymond Fischer	CFO – LOB
21	Sally E Durdan	EVP/Corporate Finance Executive – Retail Admin Dept
22	Scott E Powell	Branch Banking
23	Stephen M Cutler	General Counsel
24	Thomas D. Novack	Managing Director IB-FIG

<b>ADDITIONAL RELEVANT PEOPLE</b>		
25	Adam Gilbert	Managing Director
26	Brian Keegan	Managing Director - CSAS
27	Dan Cooney	SVP / General Counsel
28	Genevieve E Hovde	Analyst IB-FIG
29	Jamie Dimon	JPMC CEO
30	Joseph Evangelisti	Corporate Communications and media Relations
31	Scott Albinson	JPMC banker
32	Sean Carmody	Associate IB-FIG
33	Tim Main	Head of NA FIG

EXHIBIT I

# SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000  
FACSIMILE: 1-212-558-3588  
WWW.SULLCROM.COM

*125 Broad Street  
New York, NY 10004-2498*

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.

FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

December 21, 2009

Via E-mail

Erica Taggart, Esq.,  
Quinn Emanuel Urquhart Oliver & Hedges, LLP,  
865 South Figueroa Street, 10th Floor,  
Los Angeles, California 90017.

Re: Washington Mutual Litigation Discovery

Dear Erica:

I write in response to your December 18, 2009 letter continuing the dialogue regarding JPMorgan Chase Bank, N.A.'s ("JPMC") response to the Subpoena for Rule 2004 Examination (the "Rule 2004 Requests"). While your summary of my two conversations with Debtors' counsel on December 11, 2009 (one of which you did not participate in) is less than complete and in certain respects inaccurate, it would be a waste of resources to respond to your letter point-by-point simply to reiterate what has been discussed orally. Instead, I will focus on JPMC's proposal in response to Debtors' request for additional JPMC custodians to be searched in response to the Rule 2004 Requests so to avoid having to burden the Court with an avoidable discovery dispute.

As we have told you numerous times, JPMC did not "exclude" any custodian JPMC reasonably believed should be searched. JPMC's response to the Rule 2004 Requests—which is a response to a third-party subpoena—satisfies its obligations under all applicable rules. Nonetheless, Debtors have provided a list of 34 JPMC custodians who you believe might have relevant documents ("Debtors' List"). Your December 18, 2009 letter confirms that, in Debtors' opinion, those 34 custodians constitute "a reasonable list of those people WMI can identify as having relevant documents."

As detailed in my letter dated November 27, 2009, JPMC searched and produced documents from the 12 custodians on Debtors' List (plus 5 other custodians) whom JPMC identified as potentially having documents responsive to the Rule 2004

Requests. JPMC disagrees with Debtors as to the utility of additional searches. Of the 22 remaining custodians on Debtors' List, there are 14 custodians who, as discussed with Justin Brownstone on December 11, 2009, had limited or no substantive, decision-making involvement in Project West, and therefore are not among the primary custodians who are most likely to have documents responsive to Debtors' Rule 2004 Requests. In an effort to be reasonable and to avoid wasting the Court's resources on this dispute, however, JPMC is prepared to incur the cost and proceed with the search and review of documents from the remaining 8 custodians on Debtors' List: Althea Duersten, Joseph Evangelisti, Raymond Fischer, Ben Lopata, David Lowman, Scott Powell, Neila Radin, and Gordon Smith. JPMC will search another custodian or two from Debtors' List that Debtors select, regardless of the fact that these individuals were not centrally involved with the relevant events. Nothing contained in JPMC's proposal is a concession that JPMC's response to the Rule 2004 Requests is deficient in any way, or that any of the custodians on Debtors' List are likely to possess documents responsive to the Rule 2004 Requests. JPMC reserves the right to object to any formal discovery requests directed to it relating to these or other JPMC custodians.

JPMC's proposal is contingent upon Debtors agreeing that this voluntary search and review will conclusively resolve the current issue of the number of JPMC custodians searched in response to the Rule 2004 Requests. Moreover, any additional JPMC custodians will be searched once both in response to the Rule 2004 Requests and Debtors' First Request for Documents in the bankruptcy adversary proceedings, and any documents responsive to either request will be produced as responsive to both requests.

We are available to discuss this proposal at any mutually convenient time.

Sincerely,

  
Brian D. Glueckstein

EXHIBIT J

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

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

**ORDER PURSUANT TO BANKRUPTCY RULE 2004 AND LOCAL BANKRUPTCY  
RULE 2004-1 DIRECTING THE EXAMINATION OF JPMORGAN CHASE**

Upon the motion (the "Motion") of the Official Committee of Equity Security Holders, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure and Local Rule 2004-1 of the United States Bankruptcy Court for the District of Delaware, for the entry of an order directing discovery from and the examination of JP Morgan Chase ("JPMC," as defined in the Motion); and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B); and upon consideration of the Motion; and due and proper notice of the Motion having been given, it is hereby

ORDERED that the Motion is granted; and it is

ORDERED that JPMC shall produce documents on or before the date that is fifteen (15) days after entry of this Order responsive to the discovery requests set forth in Schedule 1 attached hereto, at the offices of Susman Godfrey, LLP, 654 Madison Ave., 5th Floor, New York, NY 10065; and it is

ORDERED that the Equity Committee is authorized to issue deposition subpoenas to JPMC pursuant to Federal Rule of Civil Procedure 30(b)(6) concerning the

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<sup>1</sup> 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.



subpoenas to JPMC pursuant to Federal Rule of Civil Procedure 30(b)(6) concerning the documents produced pursuant to this Order and the subject matter described in the requests attached hereto as Schedule 1, as well as subpoenas for specifically identified persons believed by the Equity Committee to be knowledgeable about those documents and subjects; and it is

ORDERED that the Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

DATED: Wilmington, Delaware

\_\_\_\_\_, 2010

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Honorable Mary F. Walrath  
United States Bankruptcy Judge

## SCHEDULE 1

### 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, 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).

**PLEASE NOTE:** The Documents requested herein include Documents that came within JPMC's possession, custody, or control as a result of the acquisitions reflected in the P&A Agreement (as defined below) and that formerly were within the possession, custody, or control of WMI, WMB, or WMB fsb (as those terms are defined below).

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 JPMC, individually or collectively, to whom this subpoena is addressed, and any owner, director, officer, employee, agent, custodian, parent, subsidiary, affiliate, predecessor, successor, attorney, accountant, representative, and other Persons purporting to act on your behalf.

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.

12. To the extent you have previously produced documents requested herein to WMI in response to the WMI RFPs, you need not produce them again to the Equity Committee if you instead (a) provide information (such as Bates-number ranges) sufficient to allow the Equity Committee to verify that it has previously received such documents from WMI; and (b) consent to the Equity Committee's use of such documents as if JPMC had produced them directly to the Equity Committee in response to these requests.

### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

The Equity Committee requests that JPMC produce the following documents in its possession, custody or control:

#### **REQUEST NO. 1:**

All documents that you have produced to WMI in response to the WMI RFPs.

#### **REQUEST NO. 2:**

All documents that you have produced to any party in response to any discovery requests served in the Adversary Proceedings.

#### **REQUEST NO. 3:**

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, but is not limited to records of communications among two or more parties

to the Proposed Global Settlement Agreement and drafts of the Proposed Global Settlement Agreement.

**REQUEST NO. 4:**

All documents concerning the Proposed Global Settlement Agreement or any agreements reflected in the Proposed Global Settlement Agreement. This request includes, but is not limited to (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.

**REQUEST NO. 5:**

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.

**REQUEST NO. 6:**

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.

**REQUEST NO. 7:**

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 but not limited to non-public, confidential or proprietary information and including but not limited to disclosure of such information to third parties to secure financing or raise capital in connection with any potential Transaction.

**REQUEST NO. 8:**

All documents concerning any communications with any Governmental Unit regarding non-public, confidential or proprietary information related to Washington Mutual, including but not limited to JPMC's receipt of non-public, confidential or proprietary information concerning Washington Mutual.

**REQUEST NO. 9:**

Documents sufficient to identify JPMC's company policies and procedures concerning the protection or disclosure of non-public, confidential or proprietary information.

**REQUEST NO. 10:**

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

**REQUEST NO. 11:**

All documents concerning any attempt by JPMC to engage in any Transaction in the spring and summer of 2008, including but not limited to JPMC's bid to merge with, purchase, or acquire Washington Mutual in or about April 2008.

**REQUEST NO. 12:**

All documents concerning any communications between JPMC and Washington Mutual concerning any potential Transaction in 2008.

**REQUEST NO. 13:**

All documents concerning any communications between JPMC and anyone, concerning any potential Transaction in 2008, including any communications with the FDIC or any other Governmental Unit.

**REQUEST NO. 14:**

All documents concerning any due diligence performed by JPMC in connection with any potential Transaction in 2008.

**REQUEST NO. 15:**

All documents concerning any attempt by JPMC to engage in any potential Transaction in or about September 2008, including but not limited to any bid or offer by JPMC to merge with, invest in, or purchase Washington Mutual in or about September 2008.

**REQUEST NO. 16:**

All documents concerning any communications between JPMC and the media, including but not limited to The Wall Street Journal, any other print, on-line, broadcast, or cable news outlet, related to Washington Mutual, including but not limited to any such communications related to Washington Mutual's financial status, financial condition, assets, and liabilities.

**REQUEST NO. 17:**

All documents concerning any due diligence performed by JPMC in connection with its execution of the P&A Agreement.

**REQUEST NO. 18:**

All documents concerning any communications between JPMC and any Governmental Unit concerning Washington Mutual, a governmental seizure or receivership of Washington Mutual, and/or the sale of Washington Mutual, including but not limited to communications with the US Department of the Treasury, the FDIC, and/or the OTS.

**REQUEST NO. 19:**

All documents concerning actions considered or taken by any Governmental Unit concerning Washington Mutual, including but not limited to the seizure of WMB by the OTS and the appointment of FDIC as receiver.

**REQUEST NO. 20:**

All documents concerning any agreement or arrangement between JPMC and any Governmental Unit concerning any potential Transaction or Transaction on or prior to September 25, 2008, including but not limited to any agreement, understanding, or arrangement with the OTS and/or FDIC.

**REQUEST NO. 21:**

All documents concerning any communications between JPMC and any Governmental Unit concerning any Transaction on September 25, 2008.

**REQUEST NO. 22:**

Documents sufficient to identify the names of all persons who negotiated on behalf of JPMC in connection with entering into the P&A Agreement.

**REQUEST NO. 23:**

All documents concerning any assessment, evaluation, consideration or analysis of the consideration provided by JPMC under the P&A Agreement, including but not limited to the assumption of any liabilities.

**REQUEST NO. 24:**

All documents concerning any assessment, evaluation, consideration or analysis of the Purchase Price.

**REQUEST NO. 25:**

All documents concerning any communications between JPMC and Washington Mutual concerning the Purchase Price.

**REQUEST NO. 26:**

All documents concerning any communications between JPMC and any third party concerning the Purchase Price, including but not limited to communications with the FDIC and/or the OTS concerning the Purchase Price.

**REQUEST NO. 27:**

All documents concerning the bid process established by the FDIC for the purchase of WMB, including documents concerning any communication between JPMC and the FDIC about the bid process for the purchase of WMB.

**REQUEST NO. 28:**

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.

**REQUEST NO. 29:**

Documents sufficient to show JPMC's valuation of the assets of WMB on or about September 25, 2008.

**REQUEST NO. 30:**

All documents forming the basis for the statement in JPMC's Form 10-K for the period ending December 31, 2008 that "the fair value of the net assets [of WMB] acquired exceeded the purchase price. . . ."

**REQUEST NO. 31:**

All documents concerning JPMC's allocation of the Purchase Price, including but not limited to allocation of the Purchase Price to the assets acquired by JPMC under the P&A Agreement on or about September 25, 2008.

**REQUEST NO. 32:**

All documents concerning JPMC's refinement of the allocation of the Purchase Price during the fourth quarter of 2008.

**REQUEST NO. 33:**

All documents concerning JPMC's recognition of extraordinary gains related to its acquisition of the assets of WMB.

**REQUEST NO. 34:**

All documents concerning any assessment, evaluation, consideration or analysis of negative goodwill resulting from the acquisition of the assets of WMB.

**REQUEST NO. 35:**

All documents concerning any assessment, evaluation, consideration or analysis of Washington Mutual's financial condition, including but not limited to Washington Mutual's debts, assets, liabilities, financial resources and capital, business reputation, and/or credit rating.

**REQUEST NO. 36:**

All documents concerning any communications between JPMC and any third party concerning Washington Mutual's actual or projected financial condition, including but not limited to any communications with the FDIC and/or OTS.

**REQUEST NO. 37:**

All documents concerning any assessment, evaluation, consideration or analysis of the capitalization of Washington Mutual in or about September 2008.

**REQUEST NO. 38:**

Documents sufficient to show JPMC's weighted average cost of capital, including but not limited to JPMC's cost of debt, cost of equity, yield on outstanding debt and the weighted average cost of capital for any loan or other financing obtained by JPMC.

**REQUEST NO. 39:**

All documents concerning any investigations by federal, state or municipal government bodies of JPMC related to its acquisition of the assets of WMB.

**REQUEST NO. 40:**

All documents concerning any investigation of JPMC, or lawsuit or other legal action brought against JPMC related to its acquisition of the assets of WMB.

**REQUEST NO. 41:**

All documents concerning JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

**REQUEST NO. 42:**

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 but not limited to Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

**REQUEST NO. 43:**

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 but not limited to Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

**REQUEST NO. 44:**

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

**REQUEST NO. 45:**

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

**REQUEST NO. 46:**

Documents sufficient to identify the names of all Entities who withdrew deposits from WMB or WMB fsb in September 2008 and the amounts of such withdrawals.

**REQUEST NO. 47:**

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.

**REQUEST NO. 48:**

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.

**REQUEST NO. 49:**

All documents reflecting the amount of deposits on account at WMB each day between



June 1, 2008 and September 26, 2008.

**REQUEST NO. 50:**

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

**REQUEST NO. 51:**

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

**REQUEST NO. 52:**

All schedules of assets acquired by JPMC pursuant to the P&A Agreement and all drafts of any such schedules.

**REQUEST NO. 53:**

Documents sufficient to identify in detail all assets obtained by JPMC pursuant to P&A Agreement.

**REQUEST NO. 54:**

All schedules to the P&A and all drafts of schedules to the P&A Agreement.

**REQUEST NO. 55:**

All documents concerning any credit extended to Washington Mutual by any bank in the Federal Home Loan Bank System.

**REQUEST NO. 56:**

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.

**REQUEST NO. 57:**

All discovery requests, responses, and objections served on JPMC in the Adversary Proceedings, the DC Action, the Texas Action, and the Chapter 11 Cases.

**REQUEST NO. 58:**

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 but not limited to 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.

**REQUEST NO. 59:**

Documents sufficient to identify and describe what JPMC did to identify and collect documents responsive to the WMI RFPs, including any lists of search terms used in the retrieval of electronic information.

**REQUEST NO. 60:**

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

**REQUEST NO. 61:**

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

**REQUEST NO. 62:**

All documents concerning JPMC's purchase or sale of credit default swaps during 2008 where WMI was the reference entity.

**REQUEST NO. 63:**

All documents concerning short selling of WMI securities by JPMC during 2008.

**REQUEST NO. 64:**

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

# **Exhibit 1**

## **Proposed Confirmation Order**

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

----- X  
:   
In re : Chapter 11  
:   
East West Resort Development V, L.P., L.L.L.P., : Case No. 10-10452 (BLS)  
et al.,<sup>1</sup> :   
: (Jointly Administered)  
Debtors. :   
:   
: Re: Docket Nos. 291, 356, 364, 391, 395, 397, 415,  
: 419, 422, 425 and 426  
:   
----- X

**ORDER CONFIRMING DEBTORS' SECOND AMENDED  
JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11  
OF THE BANKRUPTCY CODE, AS MODIFIED**

The above-captioned debtors and debtors-in-possession having:<sup>2</sup>

- on February 16, 2010 (the "Petition Date"), commenced chapter 11 cases (collectively, the "Chapter 11 Cases") by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code");

<sup>1</sup> The debtors and debtors in possession in the above-captioned cases are the following 12 entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): East West Resort Development V, L.P., L.L.L.P., a Delaware limited partnership registered as a limited liability limited partnership (9275), NMP Holdings, LLC, a Delaware limited liability company (9716), Northstar Mountain Properties, LLC, a Delaware limited liability company (0823), Northstar Iron Horse, LLC, a Delaware limited liability company (1031), Northstar Big Horn, LLC, a Delaware limited liability company (1132), Northstar Village Townhomes, LLC, a Delaware limited liability company (7166), Northstar Trailside Townhomes, LLC, a Delaware limited liability company (7251), Old Greenwood, LLC, a Delaware limited liability company (3812), Old Greenwood Realty Inc., a California corporation (4355), Gray's Station, LLC, a Delaware limited liability company (8308), Tahoe Mountain Resorts, LLC, a Delaware limited liability company (0093), and Tahoe Club Company, LLC, a Delaware limited liability company (5142). The address of each of the Debtors is 126 Riverfront Lane, 5th Floor, PO Drawer 2770, Avon, Colorado 81620.

As made clear in the Plan, the Plan constitutes a separate chapter 11 plan for each of the foregoing debtors and debtors in possession except for EWRD V and Gray's, which are not subject to the Plan and will be resolved through separate plans of liquidation, dismissals or alternative processes. Therefore, for purposes herein, the term "Debtors," shall include each of the preceding debtors and debtors in possession except for EWRD V and Gray's.

<sup>2</sup> Capitalized terms used but not otherwise defined in this Order (the "Confirmation Order") shall have the meanings ascribed to them in the Plan (as defined herein).

- continued to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;
- filed, on March 8, 2010, the Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Docket No. 96] and the Disclosure Statement for the Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Docket No. 97];
- filed, on April 15, 2010, the Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, as Modified [Docket No. 291] (the "First Amended Plan") and the Amended Disclosure Statement for Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, as Modified [Docket No. 292] (the "Disclosure Statement");
- obtained approval of, the Disclosure Statement and, among other things, solicitation procedures and related notices, forms and ballots (collectively, the "Solicitation Materials") by that certain Order [Docket No. 295] (the "Disclosure Statement and Solicitation Procedures Order") on April 15, 2010;
- published notice of the Confirmation Hearing (the "Publication Notice") in the National Edition of USA Today on April 21, 2010, consistent with the Disclosure Statement and Solicitation Procedures Order, as evidenced by the Affidavit of Erika Fowler of USA Today [Docket No. 311] (the "Fowler Affidavit");
- completed distributing the Solicitation Materials on or before April 23, 2010, consistent with the Bankruptcy Code, the Bankruptcy Rules, the Disclosure Statement and Disclosure Statement and Solicitation Procedures Order, as evidenced by the Affidavit of Service of Christine Azzaro of Epiq Bankruptcy Solutions LLC [Docket No. 355] (the "Azzaro Declaration");
- filed, on May 12, 2010, the Amendment to Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, as Modified [Docket No. 356] (the "First Plan Amendment");
- filed, on May 14, 2010, the Plan Supplement which included an initial list of Executory Contracts to be assumed by the Debtors (including all amendments and modifications thereto, the "Assumed Contracts Schedule"), the New EWRD V Operating Agreement, the New Submanagement Agreements and the Reorganized Management Agreement [Docket No. 364];

- filed, on May 19, 2010, the Second Amendment to Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, as Modified [Docket No. 391] (the "Second Plan Amendment" and together with the First Plan Amendment, the "Plan Amendments");
- filed, on May 27, 2010, an amendment to the Assumed Contracts Schedule which included an amended list of Executory Contracts to be assumed by the Debtors [Docket No. 419];
- filed, on May 28, 2010, the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, as Modified [Docket No. 422] (as the same may have been subsequently amended, supplemented or modified from time to time, including without limitation, the Plan Supplement, the Plan Amendments, and any exhibits thereto and any documents incorporated therein by reference, the "Plan");
- filed, on May 28, 2010, the Memorandum of Law of In Support of Confirmation of Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, as Modified and Omnibus Reply to Objections [Docket No. 425] (the "Plan Confirmation Brief"); and
- filed, on May 28, 2010, the Declaration of Christine Azzaro of Epiq Bankruptcy Solutions LLC Certifying the Voting on, and Tabulation of Ballots Accepting and Rejecting, the Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, as Modified, detailing the results of the Plan voting process [Docket No. 426] (the "Voting Declaration").

The Bankruptcy Court having:

- entered the Disclosure Statement and Solicitation Procedures Order on April 15, 2010 [Docket No. 295];
- set June 2, 2010 at 1:30 p.m. prevailing Eastern Time, as the date and time for the commencement of the Confirmation Hearing pursuant to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128 and 1129 of the Bankruptcy Code;
- reviewed the Disclosure Statement, Plan, the Plan Confirmation Brief, the Morrow Declaration, the Voting Declaration and all filed pleadings, exhibits, statements and comments regarding confirmation of the Plan ("Confirmation");

- reviewed the objections and statements in opposition to Confirmation, including, without limitation, Docket Nos. 395, 397 and 415 (collectively, the “Objections”);
- heard and considered the statements of counsel and all other testimony and evidence proffered and/or adduced at the Confirmation Hearing, and in respect of, Confirmation, including, but not limited to, the Declaration of Andrew R. Morrow of Houlihan, Lokey, Howard & Zukin Capital, Inc. In Support of Confirmation of Debtors’ Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, As Modified (the “Morrow Declaration”).
- approved all amendments to the Plan all as set forth in the various modifications filed with this Court and stated by the Debtors on the record at the Confirmation Hearing;
- overruled any and all Objections and all statements and reservations of rights not consensually resolved or withdrawn; and
- taken judicial notice of the papers and pleadings filed in the Chapter 11 Cases.

NOW, THEREFORE, it appearing to the Bankruptcy Court that notice of the Confirmation Hearing and the opportunity for any party in interest to object to Confirmation have been adequate and appropriate as to all entities affected or to be affected by the Plan and the transactions contemplated thereby, and the legal and factual bases set forth in the documents filed in support of Confirmation and presented at the Confirmation Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing therefore, the Bankruptcy Court hereby makes and issues the following Findings of Fact, Conclusions of Law and Order:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

IT IS HEREBY FOUND AND DETERMINED THAT:

**A. Jurisdiction and Venue**

1. This Court has jurisdiction under 28 U.S.C. §§ 157 and 1334 to consider confirmation of the Plan and all provisions thereof. Confirmation of the Plan is a core

proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and this Bankruptcy Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

2. Venue of the Debtors' chapter 11 cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**B. Commencement of the Cases and Joint Administration**

3. On the Petition Date, the Debtors commenced these Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors were and are qualified to be Debtors under section 109 of the Bankruptcy Code. On February 18, 2010, the Court entered an order authorizing the joint administration of the Debtors' Chapter 11 Cases. Since the Petition Date, the Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No statutory committee, trustee or examiner has been appointed in the Chapter 11 Cases.

**C. Judicial Notice**

4. The Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the clerk of this Court and/or its duly appointed agent (the "Docket"), including, without limitation, all pleadings and other documents on file, all orders entered, and the transcripts of, and all evidence (that was not subsequently withdrawn) and arguments made, proffered or adduced at, the hearings held before this Court during the pendency of the Chapter 11 Cases, including, but not limited to, the Disclosure Statement Hearing and the hearings on Confirmation of the Plan.

**D. Burden of Proof**

5. The Debtors, as the Plan proponents, have met their burden of proving the elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the



evidence, which is the applicable evidentiary standard in the Bankruptcy Court. The Bankruptcy Court also finds that the Debtors have satisfied the elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by clear and convincing evidence.

**E. Bankruptcy Rule 3016**

6. The Plan is dated and identifies the Debtors submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the clerk of the Bankruptcy Court satisfies Bankruptcy Rule 3016(b).

**F. Disclosure Statement and Solicitation Procedures Order**

7. On April 15, 2010, the Bankruptcy Court entered the Disclosure Statement and Solicitation Procedures Order that, among other things: (a) approved the Disclosure Statement as containing adequate information within the meaning of section 1125 of the Bankruptcy Code and Fed. R. Bankr. P. 3017; (b) fixed the deadline for voting to accept or reject the Plan; (c) fixed the date and time for the commencement of the Confirmation Hearing; (d) established the objection deadline and procedures for objecting to the Plan; (e) approved the form and method of notice of the Confirmation Hearing Notice; and (f) established the record date and certain procedures for soliciting and tabulating votes with respect to the Plan.

**G. Transmittal and Mailing of Materials; Notice**

8. As evidenced by the Azzaro Declaration, the Debtors complied with the service requirements and procedures approved in the Disclosure Statement and Solicitation Procedures Order, the Debtors have provided notice of the Confirmation Hearing to all holders of claims and interests and solicited ballots accepting or rejecting the Plan by timely transmitting the Plan, the Disclosure Statement, the Disclosure Statement and Solicitation Procedures Order, the Confirmation Hearing Notice and appropriate ballot and voting instructions (collectively, the "Solicitation Package") to all holders of claims and interests entitled to vote to accept or reject

the Plan, in accordance with the Disclosure Statement and Solicitation Procedures Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the local rules for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

9. As evidenced by the Fowler Affidavit, the Debtors published the Publication Notice in the National Edition of USA Today on April 21, 2010. The notice of the Confirmation Hearing was adequate and sufficient and no other notice need be given.

#### **H. Solicitation**

10. On April 23, 2010, in accordance with the Disclosure Statement and Solicitation Procedures Order, the Debtors transmitted ballots to the holders of claims in those classes that were entitled to vote to accept or reject the First Amended Plan as of the record date of April 14, 2010.

11. The Debtors and their respective directors, officers, agents, affiliates, representatives, attorneys and advisors have solicited votes to accept and reject the Plan in good faith and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Disclosure Statement and Solicitation Procedures Order and all other applicable statutes, rules, laws and regulations, and only after disclosure of “adequate information” to holders of claims or equity interests, as section 1125(a) of the Bankruptcy Code defines that term. Accordingly, the Debtors and their respective directors, officers, employees, agents, members affiliates and representatives have acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code.

#### **I. Voting Report**

12. On May 28, 2010, the Debtors filed with this Court the Voting Declaration certifying the method and results of the ballot tabulation for each of the classes entitled to vote to

accept or reject the Plan. As evidenced by the Voting Declaration, all ballots were properly tabulated.

13. **Accepting Classes.** Pursuant to sections 1124 and 1126 of the Bankruptcy Code, Holders of Claims in Classes 4 (JPMorgan Secured Claim), 5 (Plumas Secured Claim), 7.A (NMPH General Unsecured Claims), 7.B (NMP General Unsecured Claims), 7.C (Iron Horse General Unsecured Claims), 7.D (Big Horn General Unsecured Claims), 7.E (Village Townhomes General Unsecured Claims), 7.F (Trailside Townhomes General Unsecured Claims), 7.G (Greenwood General Unsecured Claims), 7.H (Realty General Unsecured Claims), 7.J (Resorts General Unsecured Claims), 7.K(a) (Club General Unsecured Claims) and 7.K(b) (Golf Member Club General Unsecured Claims), which are the only classes entitled to vote on the Plan other than Class 3 (Citizens Model Secured Claim), have affirmatively voted in favor of the Plan.<sup>3</sup> Citizens, which is the Holder of Class 3 (Citizens Model Secured Claim) failed to vote its Claim, and therefore, is deemed to have accepted the Plan. Claims in Classes 1.A (NMPH Priority Claims), 1.B (NMP Priority Claims), 1.C (Iron Horse Priority Claims), 1.D (Big Horn Priority Claims), 1.E (Village Townhomes Priority Claims), 1.F (Trailside Townhomes Priority Claims), 1.G (Greenwood Priority Claims), 1.H (Realty Priority Claims), 1.J (Resorts Priority Claims), 1.K (Club Priority Claims) and Class 8 (Convenience Class Claims) are unimpaired and conclusively deemed to accept the Plan.

14. **Rejecting Classes.** Holders of Claims in Classes 9.A, 9.B, 9.C., 9.D, 9.E, 9.F, 9.G, 9.H, 9.J and 9.K (Intercompany Claims) and Holders of Claims in Classes 10.A, 10.B, 10.C,

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<sup>3</sup> Pursuant to the First Amended Plan, in addition to Holders of Claims in Classes 3, 4, 5, 7.A, 7.B, 7.C, 7.D, 7.E, 7.F, 7.G, 7.H, 7.J, 7.K(a) and 7.K(b), Holders of Claims in Classes 2 and 6 were impaired and therefore, the Debtors solicited Holders of Claims in Classes 2 and 6. Classes 2 and 6 were subsequently removed pursuant to the Plan and, therefore, are not included in the tabulation of votes. Furthermore, no ballots were voted in either Class 2 or Class 6.

10.D, 10.E, 10.F, 10.G, 10.H, 10.J and 10.K (Interest and Interest Related Claims) are impaired and will receive no distribution under the Plan, and therefore, are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.<sup>4</sup>

**J. Plan Supplement**

15. On May 14, 2010, the Debtors filed the Plan Supplement and served it on all parties requesting notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. On May 14, 2010, the Debtors filed the Assumed Contracts Schedule and served it on all counterparties to Assumed Contracts, and on May 27, 2010, the Debtors filed an amendment to the Assumed Contracts Schedule and served it on all counterparties to Assumed Contracts that were affected by the amendment. The documents identified in the Plan Supplement, including the Assumed Contracts Schedule, were filed as required by the Disclosure Statement, and the filing and notice of such documents was good and proper in accordance with the Bankruptcy Code, Bankruptcy Rules, Local Rules and the Disclosure Statement and Solicitation Procedures Order, and no other or further notice is necessary or required or shall be required.

**K. Modifications to the Plan**

16. Any modifications to the Plan described or set forth herein constitute technical changes or changes with respect to particular Claims by agreement with Holders of such Claims, and do not materially or adversely affect or change the treatment of any other Claims or Interests. Pursuant to Bankruptcy Rule 3019, these modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of votes under section 1126 of

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<sup>4</sup> Pursuant to the First Amended Plan, in addition to Holders of Claims in Class 9.A, 9.B, 9.C., 9.D, 9.E, 9.F, 9.G, 9.H, 9.J and 9.K and Interests and Interest Related Claims in Class 10.A, 10.B, 10.C, 10.D, 10.E, 10.F, 10.G, 10.H, 10.J and 10.K, Holders of Claims in Classes 1.I and 7.I were impaired and deemed to reject the First Amended Plan because no distributions were being made to Holders in such Classes. Classes 1.I and 7.I were subsequently removed pursuant to the Plan and, therefore, Holders of Claims in such Classes are not subject to this Confirmation Order or the Plan.

the Bankruptcy Code, nor do they require that the Holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

**L. Compliance with the Requirements of Section 1129 of the Bankruptcy Code**

17. The Plan complies with all applicable provisions of section 1129 of the Bankruptcy Code as set forth below:

**(a) Section 1129(a)(1): Compliance of the Plan with Applicable Provisions of the Bankruptcy Code**

18. The Plan complies with all applicable provisions of the Bankruptcy Code, including Bankruptcy Code sections 1122 and 1123.

**(i) Section 1122 and 1123(a)(1): Proper Classification**

19. The classification of claims and equity interests under the Plan is proper under the Bankruptcy Code. Pursuant to sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, Article II of the Plan designates classes of claims and equity interests. In addition to the Administrative Claims, Priority Tax Claims and Secured Tax Claims and DIP Lenders Secured Claims listed in Article II of the Plan, which need not be designated, the Plan designates 8 Classes of Claims and Interests. As required by section 1122(a) of the Bankruptcy Code, each class of claims and equity interests contains only claims or equity interests that are substantially similar to the other claims or equity interests within that class. Valid reasons exist for separately classifying the various classes of claims and equity interests created under the Plan, and such classes do not unfairly discriminate between holders of claims and equity interests. The Plan therefore satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

**(ii) Section 1123(a)(2): Specification of Unimpaired Classes**

20. Article II of the Plan specifies that claims in 1.A, 1.B, 1.C, 1.D, 1.E, 1.F, 1.G, 1.H, 1.J, 1.K and Class 8 are unimpaired under the Plan. Additionally, Article II of the Plan

specifies that Administrative Claims, Priority Tax Claims, Secured Tax Claims and DIP Lenders Secured Claims are unimpaired, and these claims are not classified under the Plan. As a result thereof, the requirements of section 1123(a)(2) of the Bankruptcy Code have been satisfied.

**(iii) Section 1123(a)(3): Specification of Treatment of Impaired Classes**

21. Article II of the Plan specifies the treatment of each impaired class under the Plan, including Classes 3, 4, 5, 7.A, 7.B, 7.C, 7.D, 7.E, 7.F, 7.G, 7.H, 7.J, 7.K(a), 7.K(b), 9.A, 9.B, 9.C, 9.D, 9.E., 9.F, 9.G, 9.H, 9.J, 9.K, 10.A, 10.B, 10.C, 10.D, 10.E, 10.F, 10.G, 10.H, 10.J and 10.K. Additionally, Article II of the Plan specifies the treatment of each class that is either unimpaired or impaired by agreement under the Plan, including Classes 8.B, 8.G, 8.J and 8.K(a). As a result thereof, the requirements of section 1123(a)(3) of the Bankruptcy Code have been satisfied.

**(iv) Section 1123(a)(4): No Discrimination**

22. In accordance with section 1123(a)(4) of the Bankruptcy Code, Article II of the Plan provides for the same treatment of each claim or equity interest in a particular class, as the case may be, unless the holder of a particular claim or equity interest has agreed to a less favorable treatment with respect to such claim or equity interest. As a result thereof, the requirements of section 1123(a)(4) of the Bankruptcy Code have been satisfied.

**(v) Section 1123(a)(5): Adequate Means for Plan Implementation**

23. Pursuant to section 1123(a)(5) of the Bankruptcy Code, Article IV of the Plan provides adequate and proper means for the Plan's implementation, including, among other things, (a) the continued corporate existence of the Reorganized Subsidiaries, (b) the creation and governance of a new Delaware limited liability company, New EWRD V, to replace EWRD V as the holding company of the Reorganized Subsidiaries; (c) the transfer of certain of the Debtors' assets to New EWRD V; (d) the dissolution of certain of the Debtors, (e) certain asset sales, (f)

the terms of the New Money Investment; and (g) the governance of New EWRD V and Reorganized NMP. Accordingly, the Debtors submit the Plan provides for an adequate means of implementation.

**(vi) Section 1123(a)(6): Voting Power of Equity Securities**

24. The Debtors' Plan does not provide for the issuance of nonvoting securities by New EWRD V. Therefore, section 1123(a)(6) is satisfied.

**(vii) Section 1123(a)(7): Selection of Officers and Directors**

25. The selection of the initial board of managers of New EWRD V as set forth in the Plan Supplement was consistent with the interests of holders of creditors and equity security holders and public policy. As a result, the requirements of section 1123(a)(7) of the Bankruptcy Code have been satisfied.

**(b) Section 1123(b): Discretionary Contents of the Plan**

26. **Compromise and Settlement.** The Plan contains various provisions that may be construed as discretionary but are not required for Confirmation under the Bankruptcy Code. As set forth below, such discretionary provisions comply with section 1123(b) of the Bankruptcy Code and are not inconsistent with the applicable provisions of the Bankruptcy Code. As a result, section 1123(b) of the Bankruptcy Code is satisfied.

**(i) Section 1123(b)(1-2): Claims and Executory Contracts**

27. Pursuant to sections 1123(b)(1) and 1123(b)(2) of the Bankruptcy Code, respectively, Article II of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Interests, and Article V of the Plan provides for the assumption, assumption and assignment, or rejection of the executory contracts and unexpired leases of the Debtors not previously assumed, assigned or rejected pursuant to section 365 of the Bankruptcy Code and appropriate authorizing orders of the Bankruptcy Court.

(ii) **Section 1123(b)(3): Release, Exculpation, Injunction and Discharge**

28. **Compromise and Settlement.** The settlements reflected in the Plan are (a) in the best interest of the Debtors, the estates and all holders of claims; (b) fair, equitable and reasonable; (c) made in good faith; and (d) approved pursuant to applicable law, including section 363 of the Bankruptcy Code and Bankruptcy Rule 9019.

29. **Discharge of the Debtors.** The discharge pursuant to section 1141(d) of the Bankruptcy Code and described in the Plan of Claims and Interests in the Debtors, the New EWRD V Entities, their successors or assignees or any of their assets or properties is valid, binding and enforceable in accordance with the terms of section 1141(d) of the Bankruptcy Code and the Plan.

30. **Exculpation.** The Exculpation set forth in Article VIII.F of the Plan is an essential provision of the Plan. The record in these Chapter 11 Cases fully supports the Exculpation and the Exculpation provisions set forth in Article VIII.F of the Plan. The provisions are appropriately tailored to protect the Debtors, the Estates, New EWRD V, the New Money Investors, the DIP Lenders and the Support Parties and their respective officers, directors, current (but not former) employees, members, shareholders, advisors, attorneys, representatives, professionals and other agents (the "Protected Parties") from inappropriate litigation relating to acts or omissions arising from or relating to the Chapter 11 Cases on or after the Petition Date, including any act taken or omitted to be taken in connection with, or related to, the formulation, negotiation and/or pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan and/or the property to be distributed under the Plan. Each Protected Party shall be entitled to reasonably rely upon the advice of counsel concerning its duties and responsibilities (if any) under the Plan and such reasonable reliance shall form an absolute defense to any such claim, cause of action or liability; provided further the Exculpation does not



apply to acts, omissions, claims, Causes of Action or other obligations expressly set forth in and preserved by the Plan.

31. **Injunction.** The injunction provisions set forth in Article VIII.D of the Plan are necessary to preserve and enforce the releases granted by the Plan in Article VIII.F and are narrowly tailored to achieve that purpose.

32. Each of the discharge, release, indemnification, and exculpation provisions set forth in the Plan: (a) is within the jurisdiction of the Bankruptcy Court under 28 U.S.C. §§ 1334(a), 1334(b), and 1334(d); (b) is an essential means of implementing the Plan; (c) is an integral element of the transactions incorporated into the Plan; (d) confers material benefits on, and is in the best interests of, the Debtors, their estates, and their creditors; (e) is important to the overall objectives of the Plan to finally resolve all Claims among or against the parties in interest in these Chapter 11 Cases with respect to the Debtors; and (f) is consistent with sections 105, 1123, 1129, and other applicable provisions of the Bankruptcy Code. The record of the Confirmation Hearing on these Chapter 11 Cases is sufficient to support the discharge, release, exculpation, and injunction provisions contained in Article VIII of the Plan.

33. **Reservation of Causes of Action/Reservation of Rights.** Article VIII.G of the Plan provides that subject to Article VIII.F of the Plan, nothing contained in the Plan shall be deemed to be a waiver or the relinquishment of any rights or Causes of Action that the Debtor, their Estates or the New EWRD V Entities may have or may choose to assert against any Person. The provisions regarding the retained Causes of Action in the Plan are appropriate and are in the best interests of the Debtors and the holders of claims. From and after the Effective Date, the New EWRD V Entities shall have the exclusive right to prosecute any and all avoidance or equitable subordination actions, recovery causes of action and objections to Claims under

sections 105, 502, 510, 542 through 551, and 553 of the Bankruptcy Code that belong to the Debtors or their Estates. It is in the best interests of the estates and their creditors that rights and Causes of Action that are not expressly released under the Plan or the Confirmation Order be retained by the New EWRD V Entities as specified in Article VIII.A of the Plan.

**(c) Section 1129(a)(2): Compliance of the Debtors with the Applicable Provisions of the Bankruptcy Code**

34. The Debtors, as proponents of the Plan, have complied with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(2), including, without limitation, sections 1123, 1125 and 1126 of the Bankruptcy Code and Bankruptcy Rules 3017, 3018 and 3019.

35. In particular, the Debtors are proper debtors under section 109 of the Bankruptcy Code and proper Plan proponents under section 1121(a) of the Bankruptcy Code.

**(d) Section 1129(a)(3): Proposal of the Plan in Good Faith**

36. The Debtors have proposed the Plan in good faith and not by any means forbidden by law, as required by section 1129(a)(3) of the Bankruptcy Code. In so determining, this Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself and the process leading to its formulation. The Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate and honest purposes of reorganizing the Debtors' estates and maximizing their value.

**(e) Section 1129(a)(4): Bankruptcy Court Approval of Certain Payments Reasonable**

37. The procedures set forth in the Plan for the Bankruptcy Court's review and ultimate determination of the fees and expenses to be paid by the Debtors in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, comply

with section 1129(a)(4) of the Bankruptcy Code. As a result, the requirements of section 1129(a)(4) of the Bankruptcy Code have been satisfied.

**(f) Section 1129(a)(5): Disclosure and Identity of Proposed Management**

38. The Plan complies with Bankruptcy Code section 1129(a)(5) by providing for the appointment of New EWRD V Manger as the initial managing member of New EWRD V. Furthermore, the Plan complies with the requirements of section 1129(a)(5) of the Bankruptcy Code because the Debtors have disclosed in the Plan Supplement the identity and affiliations of the proposed manager of New EWRD V. The method of appointment of the managers and officers was consistent with the interests of holders of Claims and public policy; provided, however, that nothing set forth herein shall prevent any of the foregoing individuals from resigning or from being removed or replaced as an officer or manager without further order of the Court.

**(g) Section 1129(a)(6): Approval of Rate Changes**

39. The requirements of Bankruptcy Code section 1129(a)(6) are not applicable to the Plan because the Debtors are not subject to any regulatory commission with jurisdiction over the rates of the Debtors.

**(h) Section 1129(a)(7): Best Interests of Creditors**

40. Each entity that holds a claim or interest in a class that is impaired under the Plan either: (a) has accepted the Plan; or (b) as demonstrated by the liquidation analysis annexed to the Disclosure Statement (the "Liquidation Analysis"), will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the entity would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. The methodology used and assumptions made in the Liquidation Analysis, as supplemented by the evidence proffered or adduced at or prior to, or in declaration filed in connection with, the Confirmation

Hearing, are persuasive and credible, have not been controverted by other evidence, and are reasonable. As a result, the requirements of section 1129(a)(7) of the Bankruptcy Code have been satisfied.

**(i) Section 1129(a)(8): Acceptance by the Plan by Certain Impaired Classes**

41. As set forth in the Voting Declaration, Classes 4, 5, 7.A, 7.B, 7.C, 7.D, 7.E, 7.F, 7.G, 7.H, 7.J, 7.K(a) and 7.K(b), as impaired classes entitled to vote on the Plan, voted overwhelmingly in favor of the Plan. Additionally, the Holder of Citizens Model Secured Claim in Class 3 is deemed to accept the Plan.

42. Classes 1.A, 1.B, 1.C, 1.D, 1.E, 1.F, 1.G, 1.H, 1.J, 1.K, 8.B, 8.J and 8.K(a) are unimpaired and conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code.

43. Section 1129(a)(8) of the Bankruptcy Code has not been satisfied with respect to Holders of Claims in Class 9 (Intercompany Claims) and Class 10 (Interest and Interest Related Claims), who are deemed to have rejected the Plan (collectively, the "Rejecting Classes"). The Court finds the Plan is confirmable because the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to the Rejecting Classes, as described below.

**(j) Section 1129(a)(9): Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code**

44. The treatment of Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Secured Tax Claims under Plan Article II respectively, satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

45. The treatment of DIP Lender Claims satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code. On the Effective Date, all Allowed DIP Lenders Secured Claims, if any, shall be paid in full in Cash from the New Money Investment. Upon final and

indefeasible payment and satisfaction in full of all Allowed DIP Lenders Secured Claims, all Liens and security interests granted to secure such obligations shall be terminated and of no further force or effect. All DIP Lenders Secured Claims are deemed Allowed under the Plan with interest and consistent with all terms of the DIP Facility and related documents.

**(k) Section 1129(a)(10): Acceptance by at Least One Impaired Class**

46. As set forth in the Voting Declaration and above, each impaired class, other than Holders of Claims in Classes 9.A, 9.B, 9.C., 9.D, 9.E, 9.F, 9.G, 9.H, 9.J and 9.K and Holders of Interests and Interest Related Claims in Class 10.A, 10.B, 10.C, 10.D, 10.E, 10.F, 10.G, 10.H, 10.J and 10.K which are deemed to reject, has either voted to accept the Plan or is deemed to have accepted the Plan. Accordingly, section 1129(a)(10) of the Bankruptcy Code is satisfied.

**(l) Section 1129(a)(11): Feasibility of the Plan**

47. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code. The Plan, Disclosure Statement, Plan Supplements, Confirmation Memorandum, Voting Declaration, Morrow Declaration, and all evidence proffered or adduced at, or prior to, the Confirmation Hearing: (a) is reasonable, persuasive, credible and accurate as of the dates such analysis or evidence was prepared, presented or proffered; (b) utilizes reasonable and appropriate methodologies and assumptions; (c) has not been controverted by other evidence; and (d) establishes that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the New EWRD V Entities. As a result, the requirements of section 1129(a)(11) of the Bankruptcy Code have been satisfied.

**(m) Section 1129(a)(12): Payment of Bankruptcy Fees**

48. In accordance with section 1129(a)(12) of the Bankruptcy Code, Article X.B of the Plan provides for the payment of all fees payable under 28 U.S.C. § 1930(a). As a result, the requirements of section 1129(a)(12) of the Bankruptcy Code have been satisfied.

**(n) Section 1129(a)(13): Retiree Benefits**

49. The requirements of section 1129(a)(13) of the Bankruptcy Code are inapplicable to the Plan because the Debtors are not obligated to fund any retiree benefits within the meaning of this statute.

**(o) Section 1129(a)(14), (15) and (16)**

50. The Debtors owe no domestic support obligations, are not individuals and are not nonprofit corporations. Sections 1129(a)(14), (15) and (16) of the Bankruptcy Code thus do not apply in these Chapter 11 Cases.

**(p) Section 1129(b): Confirmation of the Plan Over Nonacceptance of Impaired Classes**

51. **Fair and Equitable; No Unfair Discrimination.** Based upon the evidence proffered, adduced, or presented by the Debtors at the Confirmation Hearing, the Plan does not discriminate unfairly and is fair and equitable with respect to the Rejecting Classes as required by section 1129(b)(1) of the Bankruptcy Code. The Plan is fair and equitable, in that no holder that is junior to the Interests classified in the Rejecting Classes will receive or retain under the Plan on account of such junior interest any property. The Plan does not discriminate unfairly with respect to any Holders of Claims in the Rejecting Classes. The legal rights of holders of Claims and Interests in such Classes are treated consistently with the treatment of other classes whose legal rights are substantially similar, and such holders of Claims and Interests do not receive more than they legally are entitled to receive for their Interests. Therefore, the Plan satisfies section 1129(b) of the Bankruptcy Code. Thus, the Plan may be confirmed notwithstanding the Debtors' failure to satisfy section 1129(a)(8) of the Bankruptcy Code. Accordingly, upon confirmation and the occurrence of the Effective Date, the Plan shall be binding upon the members of the Rejecting Classes.

**(q) Satisfaction of Confirmation Requirements**

52. Based on the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129(b) of the Bankruptcy Code.

**(r) Section 1129(c): Only One Plan**

53. Other than the Plan (including previous versions thereof), no other plan has been filed in the Chapter 11 Cases. As a result, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

**(s) Section 1129(d): Principal Purpose of the Plan is Not the Avoidance of Taxes or Application of the Securities Law**

54. In accordance with section 1129(d) of the Bankruptcy Code, the principal purpose of the Plan is not the avoidance of the application of Section 5 of the Securities Act of 1933 (15 U.S.C. § 77e).

**M. Satisfaction of Conditions Precedent to Effective Date**

55. The Confirmation Order is entered and shall satisfy the conditions precedent to the Effective Date set forth in Article IX.A of the Plan.

**N. Retention of Jurisdiction**

56. The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article X.A of the Plan.

**ORDER**

Based on the foregoing, it is hereby ORDERED:

**A. Order**

1. The Confirmation Order shall and does confirm the Plan under section 1129 of the Bankruptcy Code. A copy of the Plan is attached hereto as Exhibit A.

**B. Amendments**

2. The amendments and supplements of the Plan as reflected on the record at the Confirmation Hearing, in the Plan Supplements and any other amendments reflected on the Docket, meet the requirements of sections 1127(a) and (c), such amendments do not adversely change the treatment of the Claim of any creditor or Interest of any equity security holder within the meaning of Bankruptcy Rule 3019, and no further solicitation or voting is required.

**C. Objections**

3. To the extent that any objections to Confirmation have not been resolved, withdrawn, waived or settled prior to entry of the Confirmation Order or otherwise resolved as stated on the record of the Confirmation Hearing, they are hereby overruled on their merits.

**D. Findings of Fact and Conclusions of Law**

4. The findings of fact and the conclusions of law stated in the Confirmation Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the proceeding by Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

**E. Provisions of Plan and Confirmation Order Nonseverable and Mutually Dependant**

5. The provisions of the Plan and this Confirmation Order, including the findings of fact and conclusions of law set forth herein, are nonseverable and mutually dependent.

**F. Record Closed**

6. The record of the Confirmation Hearing is closed.

**G. Notice**

7. The Debtors have complied with all applicable rules, regulations and the Disclosure Statement and Solicitation Procedures Order in serving notice of the date for



objections to the Plan, the Confirmation Hearing, and notice of all applicable injunctions, releases, bar dates, and all matters related to the Plan, and such notice is hereby approved.

**H. Plan Classification Controlling**

8. The terms of the Plan shall solely govern the classification of claims and equity interests for purposes of the distributions to be made thereunder. The classifications set forth on the ballots tendered to or returned by the Debtors' creditors in connection with voting on the Plan: (a) were set forth on the ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such claims under the Plan for distribution purposes; (c) may not be relied upon by any creditor as representing the actual classification of such claims under the Plan for distribution purposes; and (d) shall not bind the Debtors or the New EWRD V Entities except for voting purposes.

**I. Binding Effect and Validity**

9. The provisions of the Plan and this Confirmation Order shall bind the Debtors, the New EWRD V Entities, the Disbursing Agent, any entity acquiring or receiving property or a distribution under the Plan, or any Holder of a Claim against, or Interest in, the Debtors, the Estates, New EWRD V Entities and their respective successors or assigns, whether or not the Claim or Interest of such Holders is impaired under the Plan and whether or not such Holder has accepted the Plan. Each Plan term and provision, as it may be interpreted in accordance with the Plan, is valid and enforceable under its terms. The rights, benefits and obligations of any entity named or referred to in the Plan, whose actions may be required to effectuate the terms of the Plan, shall be binding on and shall inure to the benefit of any heir, executor, administrator, successor or assign of such entity (including, without limitation, the New EWRD V Entities and any trustee appointed for the Debtors under chapters 7 or 11 of the Bankruptcy Code).

**J. Appointment of Disbursing Agent**

10. Wilmington Trust Federal Savings Bank is appointed as the Disbursing Agent.

**K. Means for Implementation of the Plan**

11. **Effectuation of the Plan.** The Debtors and the New EWRD V Entities, subject to the terms and conditions of this Plan, are authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Plan and this Confirmation Order and to effect any other transactions contemplated therein or thereby and to take such other actions as any such individual may determine to be necessary or desirable to effectuate the Plan and such transactions, regardless of whether such actions or documents are specifically referred to in the Plan or this Confirmation Order. To the extent that, under applicable non-bankruptcy law, any of these actions otherwise would require the consent or approval of any governing body of the Debtors, this Confirmation Order constitutes such consent and approval. The Support Parties are authorized to execute and deliver such documents as the New EWRD V Entities shall reasonably request to effectuate or further evidence the terms and conditions of the Plan.

12. On or before substantial consummation of the Plan, and without the need for any further order or authority, the Debtors may file with the Bankruptcy Court such agreements or other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and this Confirmation Order.

13. **Continued Corporate Existence.** Pursuant to the Plan, each of NMP, Club, Village Townhomes, Resorts, Realty, Greenwood and Trailside Townhomes, as the Reorganized Subsidiaries, shall continue to exist after the Effective Date each as a limited liability company, with all the powers of a limited liability company in the jurisdiction in which each particular

Debtor is organized or otherwise formed and pursuant to its certificate of formation or articles of organization, and other organizational documents, as such documents are amended pursuant to the Plan. To the extent that any of the organizational documents of any of the Reorganized Subsidiaries are amended pursuant to the Plan, such documents are deemed to be pursuant to the Plan and require no further action or approval.

14. **New EWRD V.** On the Effective Date or as soon thereafter as practicable, a new Delaware limited liability company will be established to replace EWRD V as the holding company and 100% owner of the Reorganized Subsidiaries.

15. **New Money Investment.** On and after the Effective Date, CRDI or a designated affiliate (the "CRDI Investor") shall provide 95% and EW Investor shall provide 5% of the New Money Investment in an aggregate amount not to exceed \$32,500,000 which amount shall be sufficient to satisfy and fund the payment of the DIP Lender Secured Claims, Allowed Administrative Claims, Priority Claims, Priority Tax Claims, Secured Tax Claims, Professional Fee Claims and distributions to Allowed General Unsecured Claims and future capital requirements of the New EWRD V Entities (collectively, the "Expenses"). Following the Effective Date, the CRDI Investor and EW Investor shall unanimously determine the amount of New Money Investment required to be funded to pay for Expenses and the timing for delivery of each party's pro rata share of such cash to New EWRD V.

**L. Dissolution of the Dissolving Subsidiaries**

16. **Dissolving Subsidiaries.** On the Effective Date, the Dissolving Subsidiaries shall be deemed to have been fully and finally dissolved for all purposes under Delaware law without the necessity for any further filing or actions to be taken by or on behalf of the Dissolving Subsidiaries or payments to be made in connection therewith; provided, however, that each Dissolving Subsidiary shall file with the Office of the Secretary of State of Delaware a certificate

of dissolution, which may be executed by an officer of East West without need for approval by the holders of Interests in the applicable Dissolving Subsidiary. From and after the Effective Date, each Dissolving Subsidiary shall not be required to file any document, or take any other action, or obtain any approval from the holders of Interests, to withdraw their business operations from any states in which the Debtors previously conducted their business operations.

17. To the extent that anything in this section is inconsistent or conflicts with any bylaws, organizational documents, and related corporate documents of any Dissolving Subsidiary, such organizational documents are deemed amended by the Plan to permit and authorize the Debtors to take the actions contemplated by Article IV.C. of the Plan.

**M. Gray's and EWRD V**

18. Notwithstanding anything to the contrary herein or in the Plan, nothing in the Plan or Confirmation Order shall have any effect whatsoever on the property of the Estates of Gray's or EWRD V, or alter, affect or impair in any manner the rights, claims or interests of any creditor of Gray's or EWRD V with respect thereto. Furthermore, notwithstanding anything to the contrary herein or in the Plan, nothing in the Plan or Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights or Causes of Action that EWRD V or Gray's may have or may choose to assert against any Person.

**N. Effect of Confirmation**

19. **Transfer of Assets.** All property of the Estates of Debtors that are being dissolved under the Plan that is not distributed to the Holders of Claims on the Effective Date including, without limitation, any moneys held in escrow or separate segregated accounts during the pendency of the Chapter 11 Cases, shall be managed by New EWRD V and shall be held in the name of New EWRD V free and clear of all Claims against and Interests in New EWRD V, except for (i) the rights to Distribution afforded to Holders of Claims under the Plan and (ii) the

Statutory Property Rights, to the extent applicable. After the Effective Date, New EWRD V shall have no liability to Holders of Claims or Interests other than as provided for in the Plan.

20. **Vesting of Property in the New EWRD V Entities.** Subject to Article VIII.D of the Plan, on the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, the New EWRD V Assets shall be released from the custody and jurisdiction of the Bankruptcy Court, and all of New EWRD V Assets shall vest in the New EWRD V Entities free and clear of all Claims, Liens, encumbrances, charges and other interests, except for Statutory Property Rights or as provided in the Plan. From and after the Effective Date, the New EWRD V Entities may operate their businesses and may use, acquire and dispose of property free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules or the Local Bankruptcy Rules, subject to the terms and conditions of the Plan.

21. **Discharge of Claims and Termination of Interests.** Except as otherwise provided in the Plan, the rights afforded in and the payments and Distributions to be made under the Plan shall terminate all Interests and discharge all existing debts and Claims of any kind, nature or description whatsoever against or in the Debtors, or their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as otherwise provided in the Plan, upon the Effective Date, all existing Claims against the Debtors and Interests shall be, and shall be deemed to be, discharged and terminated, and all holders of such Claims and Interests shall be precluded and enjoined from asserting against the Debtors, the New EWRD V Entities, their successors or assignees or any of their assets or properties, any other or further Claim or Interest based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such Holder has filed a Proof of

Claim or proof of interest and whether or not the facts or legal bases therefore were known or existed prior to the Effective Date.

22. For the avoidance of doubt, the Statutory Property Rights shall not be discharged or terminated and shall be unimpaired by the Plan, and all initial and subsequent transferees of any and all real property, to the extent previously subject to the Statutory Property Rights, whether transferred by dissolution or reorganization, are and shall remain subject to those Statutory Property Rights to the same extent.

23. **Reservation of Causes of Action/Reservation of Rights.** Subject to Article VIII.F of the Plan, nothing contained in the Plan shall be deemed to be a waiver or the relinquishment of any rights or Causes of Action that the Debtor, their Estates or the New EWRD V Entities may have or may choose to assert against any Person.

24. **Avoidance Actions/Objections.** Other than any releases granted by the Plan, the Confirmation Order and by Final Order of the Bankruptcy Court, as applicable, from and after the Effective Date, the New EWRD V Entities shall have the right to prosecute any and all avoidance or equitable subordination actions, recovery causes of action and objections to Claims under sections 105, 502, 510, 542 through 551, and 553 of the Bankruptcy Code that belong to the Debtors or their Estates.

25. **Cancellation of Instruments and Agreements.** Upon the occurrence of the Effective Date, except as otherwise provided herein, all promissory notes, shares, certificates, instruments, indentures, stock or agreements evidencing, giving rise to or governing any Claim or Interest shall be deemed canceled and annulled without further act or action under any applicable agreement, law, regulation, order or rule; the obligations of the Debtors under such promissory notes, share certificates, instruments, indentures or agreements shall be discharged

and the Holders thereof shall have no rights against the Debtors, the New EWRD V Entities or the Estates; and such promissory notes, share certificates, instruments, indentures or agreements shall evidence no such rights, except the right to receive the distributions provided for in the Plan.

**O. The Releases, Exculpation, Injunction and Related Provisions Under the Plan**

26. The following releases, exculpations, injunctions and related provisions set forth in Article VIII of the Plan are essential provisions of the Plan and are hereby approved and authorized in their entirety:

- **Exculpation and Releases.** None of the Debtors, the Estates, New EWRD V, the New Money Investors, the DIP Lenders and the Support Parties and their respective officers, directors, current (but not former) employees, members, shareholders, advisors, attorneys, representatives, professionals and other agents (as defined above, the Protected Parties) shall have or incur any liability for any act or omission taken in connection with, arising from or relating to the Chapter 11 Cases, the formulation, negotiation and/or pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan and/or the property to be distributed under the Plan, except for claims, Causes of Action or liabilities arising from the gross negligence, willful misconduct or fraud of any Protected Party, in each case subject to determination of such by final order of a court of competent jurisdiction and provided that any Protected Party shall be entitled to reasonably rely upon the advice of counsel with respect to its duties and responsibilities (if any) under the Plan and such reasonable reliance shall form an absolute defense to any such claim, cause of action or liability. Without limiting the generality of the foregoing, each Protected Party shall be entitled to and granted the protections and benefits of section 1125(e) of the Bankruptcy Code.
- **Injunction.** Except as otherwise expressly provided in the Plan or in the Confirmation Order, and except in connection with the enforcement of the terms of the Plan or any documents provided for or contemplated in the Plan, all entities who have held, hold or may hold Claims against or Interests in the Debtors or the Estates that arose prior to the Effective Date are permanently enjoined from: (a) commencing or continuing in any manner, directly or indirectly, any action or other proceeding of any kind against any Protected Party or any property of any Protected Party with respect to any such Claim

or Interest; (b) the enforcement, attachment, collection or recovery by any manner or means, directly or indirectly, of any judgment, award, decree or order against any Protected Party or any property of any Protected Party with respect to any such Claim or Interest; (c) creating, perfecting or enforcing, directly or indirectly, any lien or encumbrance of any kind against any Protected Party or any property of any Protected Party with respect to any such Claim or Interest; (d) effecting, directly or indirectly, any setoff or recoupment of any kind against any obligation due to any Protected Party or any property of any Protected Party with respect to any such Claim or Interest, unless approved by the Bankruptcy Court; and (e) any act, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan with respect to such Claim or Interest. Nothing contained in this Article shall prohibit the Holder of a Claim or Interest with respect to which a Proof of Claim was timely filed from litigating its right to seek to have such Claim or Interest declared an Allowed Claim or Interest and paid in accordance with the distribution provisions of the Plan, or enjoin or prohibit the interpretation or enforcement by the Holder of such Claim or Interest of any of the obligations of the Debtors or the New EWRD V Entities under the Plan. Notwithstanding anything to the contrary in this paragraph, nothing in this paragraph or the Plan shall affect (i) the rights of the California Taxing Authorities, Districts, Truckee or IFIC to enforce the Statutory Property Rights or (ii) the rights of SocGen with respect to Gray's or its property.

**P. Discharge of the Debtors' Professionals and Final Fee Applications.**

27. **Discharge of Professionals.** Upon the Effective Date, the Debtors' Professionals and agents shall be released from any further duties and responsibilities in the Chapter 11 Cases and under the Bankruptcy Code, except with respect to: (i) obligations arising under confidentiality agreements, joint interest agreements and protective orders entered during the Chapter 11 Cases which shall remain in full force and effect according to their terms; (ii) applications for Professional Fee Claims; (iii) requests for compensation and reimbursement of expenses pursuant to section 503(b) of the Bankruptcy Code for making a substantial contribution in any of the Chapter 11 Cases; and (iv) any pending motions, or any motions or other actions seeking enforcement or implementation of the provisions of the Plan or the Confirmation Order. The Professionals retained by the Debtors and the respective members



thereof shall not be entitled to compensation and reimbursement of expenses for services rendered to or on behalf of the Debtors after the Effective Date (including, but not limited to, any agreements for compensation during a "tail period"), except for services rendered in connection with applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or filed after the Effective Date.

28. **Final Fee Applications.** The Professionals shall not be required to file a request for payment of any Administrative Claim on or before the Administrative Bar Date for fees and expenses arising under sections 327-330 or 503(b)(2) - (b)(6) of the Bankruptcy Code, as such Professionals will instead file final fee applications as required by the Bankruptcy Code and the Bankruptcy Rules. The last day for filing final applications or motions for Professional fees and expenses shall be 45 days after the Effective Date. The hearing on such motions and applications shall be held on \_\_\_\_\_, 2010 at \_\_:\_\_\_ .m.

**Q. Executory Contracts**

29. **Assumption and Cure of Executory Contracts.** Pursuant to the Plan, and the Assumed Contracts Schedule, any non-Debtor party to an Executory Contract contained in the Assumed Contract Schedule was required to file and serve its objection thereto in writing no later than 4:00 p.m. (prevailing Eastern Time) on May 21, 2010. The failure of any non-Debtor party to an Executory Contract to file and serve an objection by such date is deemed to consent to the assumption or assumption and assignment of the contract or lease and to such cure amount.

30. On the Effective Date, in addition to all Executory Contracts that have been previously assumed by the Debtors by order of the Bankruptcy Court, each of the Executory Contracts of the Debtors that are identified in the Assumed Contracts Schedule, shall be deemed assumed in accordance with the provisions and requirements of sections 365 and 1123 of the

Bankruptcy Code and each of the Executory Contracts of EWRD V that are identified in the Assumed Contracts Schedule shall be deemed assumed and assigned to New EWRD V in accordance with the provisions and requirements of section 365 and 1123 of the Bankruptcy Code. The Confirmation Order shall constitute adequate assurance of the performance of such assumed contracts. For the avoidance of doubt, any Executory Contracts of the Reorganized Subsidiaries that are identified in the Assumed Contracts Schedule shall be deemed assumed by the respective Reorganized Subsidiary but shall not be assigned to New EWRD V.

31. The assumption of the Vacation Sports Membership Agreements (the "Old Greenwood Membership Agreements") with Old Greenwood Cabins Shared Ownership Association ("Cabins Association") and Old Greenwood Townhomes Shared Ownership Association ("Townhomes Association") (i) is not a determination that the Old Greenwood Membership Agreements are valid and enforceable and (ii) is without prejudice of the rights of Cabins Association and Townhomes Association to seek to amend or invalidate such agreements following assumption and confirmation of the Plan.

32. **Rejection Damages Claims.** Except to the extent another Bar Date applies pursuant to an order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts under the Plan must be filed with the Voting and Claims Agent at the following applicable address:

Epiq Bankruptcy Solutions, LLC 757 Third Avenue, 3rd Floor New York, NY 10017 Attn: East West Resort Development V, L.P., L.L.L.P. Claims Processing Center
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and a copy served on counsel for the Debtors within thirty (30) days from the entry of this Confirmation Order, or such Claim shall be forever barred and shall not be entitled to a

Distribution or be enforceable against the Debtors, their Estates, their successors or their assigns.

**R. Insurance Policies**

33. To the extent any or all of the insurance policies set forth on Exhibit A to the Plan are considered to be Executory Contracts, such insurance policies are hereby assumed. No payments are required to cure any defaults of the Debtors existing as of the Confirmation Date with respect to any insurance policy set forth on Exhibit A to the Plan.

**S. Claims**

34. **Objections to Claims.** From and after the Effective Date, the New EWRD V Entities will retain responsibility for administering, disputing, objecting to, compromising or otherwise resolving and making Distributions, if any, with respect to all Claims subject to the other provisions of the Plan. Unless otherwise provided in the Plan or by order of the Bankruptcy Court, any objections to Claims by the New EWRD V Entities will be filed and served not later than 90 days after the Effective Date, provided that the New EWRD V Entities may request (and the Bankruptcy Court may grant) an extension of such deadline by filing a motion with the Bankruptcy Court, based upon a reasonable exercise of business judgment. A motion seeking to extend the deadline to object to any Claim shall not be deemed an amendment to the Plan. The New EWRD V Entities shall be substituted for the Debtors with respect to any objections pending as of the Effective Date.

35. **No Recourse.** No holder of any disputed Claim that becomes an Allowed Claim in any applicable Class shall have recourse against the Disbursing Agent, the Debtors, the New EWRD V Entities or any other holder of an Allowed Claim or any of their respective professional consultants, advisors, officers, directors or members or their successors or assigns, or any of their respective property, if the distributions allocated to such Class and not previously

distributed are insufficient to provide a distribution to such holder in the same proportion to that received by other holders of Allowed Claims in such Class.

**T. Administrative Claims**

36. Except as otherwise provided in the Bar Date Order, each Holder of an Administrative Claim, other than the DIP Lenders, must file an Administrative Expense Request requesting payment of such Administrative Claim with the Bankruptcy Court by no later than thirty (30) days after the Effective Date (the “Administrative Expense Request Deadline”), provided, that nothing herein shall extend a Bar Date established in the Bar Date Order. Holders of Administrative Claims that are required to file and serve a request for payment of such Administrative Claims that do not file and serve such a request by the Administrative Expense Request Deadline shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtors or the New EWRD V Entities or their estates and property and such Administrative Claims shall be deemed discharged as of the Effective Date.

37. The form of Administrative Expense Request attached hereto as **Exhibit B** is hereby approved.

**U. DIP Lender Claims**

38. On the Effective Date, all Allowed DIP Lenders Secured Claims, if any, shall be paid in full in Cash. Upon final and indefeasible payment and satisfaction in full of all Allowed DIP Lenders Secured Claims, all Liens and security interests granted to secure such obligations shall be terminated and of no further force or effect. All DIP Lenders Secured Claims are deemed Allowed under the Plan consistent with all terms of the DIP Facility and related documents.

**V. Payment of Statutory Fees**

39. All fees through the Effective Date pursuant to 28 U.S.C. §1930 shall be paid on or before the Effective Date to the extent that an invoice for such fees has been provided to the

Debtors prior to the Effective Date. All fees invoiced after the Effective Date pursuant to 28 U.S.C. §1930 shall be paid by the New EWRD V Entities out of the New EWRD V Assets.

**W. Reserve for Governmental Claims**

40. **Deposit of Cash on the Effective Date.** On the Effective Date (or as soon thereafter as is reasonably practicable), New EWRD V shall deposit Cash in the amount of \$25,000 in the Governmental Claims Reserve. In the event that a Governmental Unit files a Future Governmental Claim, the following procedures will apply.

41. **Distribution After Allowance.** Any Future Governmental Claim shall be subject to the provisions in Article VII of the Plan. The Disbursing Agent shall make a distribution from the Governmental Claims Reserve to the Holder of an Future Governmental Claim that has become an Allowed Future Governmental Claim, as soon as practicable as soon as practicable after such Future Governmental Claim becomes an Allowed Future Governmental Claim in an amount equal to the distribution that would have been payable with respect to such Claim if it had been an Allowed Claim on the Effective Date.

42. **Property Held in the Governmental Claims Reserve.** Cash held in the Governmental Claims Reserve will (i) be deposited and held in trust, pending distribution by the Disbursing Agent for the benefit of holders of Allowed Future Governmental Claims, (ii) be accounted for separately and (iii) not constitute property of the New EWRD V Entities.

43. Each holder of a Future Governmental Claim that ultimately becomes an Allowed Claim will have recourse only to the Cash and their proportionate share of the proceeds from the investment of Cash, if any, held in the Governmental Claims Reserve for satisfaction of the Distributions to which Holders of Allowed Claims are entitled under the Plan, and not to any of the New EWRD V Entities, their property or any assets previously distributed on account of an Allowed Claim.

44. On the date on which all Distributions on account of any Allowed Future Governmental Claims have been made, or, in the event that there are no Future Governmental Claims, on the Governmental Bar Date, any Cash remaining in the Governmental Claims Reserve will revert to New EWRD V.

**X. HOA Bonds**

45. Notwithstanding any provision to the contrary in the Plan, nothing in the Plan or Confirmation Order is intended to or shall relieve, discharge or release Debtors and the Reorganized Subsidiaries of their post confirmation obligations to the obliges and identified counterparties under the HOA Bonds listed on the Assumed Contracts Schedule. Those HOA Bonds that are not listed on the Assumed Contracts Schedule are rejected in accordance with the Plan and shall be and hereby are discharged as of the Effective Date of the Plan. Neither the inclusion of the HOA Bonds on the Assumed Contracts Schedule nor IFIC's consent to the Reorganized Subsidiaries' assumption of certain HOA Bonds shall constitute an admission by IFIC that the HOA Bonds are legally or factually assumable executory contracts.

**Y. Truckee Donner Land Trust Fee Agreements**

46. Certain of the Debtors are parties to various community benefit fee agreements with the Truckee Donner Land Trust (the "Fee Agreements"). Pursuant to the terms of the Fee Agreements (and subsequent assignments), a fee is to be paid to Truckee Donner Land Trust upon each transfer of subject real property, with certain types of transfers excepted from the requirement. For the avoidance of doubt, notwithstanding anything to the contrary in the Plan or any other pleading or other document filed in the Debtors' bankruptcy cases, the Fee Agreements and the covenants and obligations existing thereunder run with the land and, as a matter of law, are not terminated, discharged, nullified, modified, altered or affected in any way what so ever by the confirmation of the Plan. Moreover, any transferee under the terms of the Plan (or

through any sale under Section 363 of the Bankruptcy Code) who holds or acquires any real property subject to the Fee Agreements will be subject to the covenants and obligations existing thereunder.

**Z. NMP Operating Agreement**

47. As set forth in the Booth Creek 9019 Motion, the NMP Operating Agreement shall be rejected; however, TLH shall maintain each of its rights and obligations under the NMP Operating Agreement as they exist immediately prior to the date of the Agreement embodied in the Booth Creek 9019 Motion as if the NMP Operating Agreement was assumed, except that (i) the ownership interest of TLH in the profits and losses of NMP will be 0.1% instead of 20%, (ii) the provisions relating to the calculation and payment of the Booth Creek Return (as that term is used in the NMP Operating Agreement) will remain in effect and (iii) approval rights of TLH that relate in any substantial respect to the calculation and payment of the Booth Creek Return will remain in effect.

**AA. Plan Supplements.**

48. The documents contained in the Plan Supplements and any amendments, modifications, and supplements thereto (to the extent consistent with the terms of the Plan as the Debtors may approve), and the execution, delivery, and performance thereof by the New EWRD V Entities, are authorized and approved, including, but not limited to, the Assumed Contract Schedule, the New EWRD V Operating Agreement, the New Submanagement Agreements and the Reorganized NMP Management Agreement.

49. Without need for further order or authorization of the Bankruptcy Court, the Debtors and New EWRD V Entities are authorized and empowered to make any and all modifications to any and all documents included as part of the Plan Supplements that do not

materially modify the terms of such documents and are consistent with the Plan (subject to the terms of such documents and applicable law, as applicable).

**BB. Governmental Approvals Not Required**

50. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement, and any documents, instruments, or agreements, and any amendments or modifications thereto.

**CC. Exemption From Certain Taxes**

51. Pursuant to section 1146 of the Bankruptcy Code, any transfers from a Debtor, New EWRD V Entity or any subsidiary thereof to any other Person or entity pursuant to the Plan, or any agreement regarding the transfer of title to or ownership of any of the Debtors' or the New EWRD V Entities' real or personal property, or the issuance, transfer or exchange of any security under the Plan, or the execution, delivery or recording of an instrument of transfer pursuant to, in implementation of or as contemplated by the Plan, including, without limitation, any transfers of the Debtors' property in implementation of or as contemplated by the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee or other similar tax or governmental assessment. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any documentary stamp tax, deed stamps, stamp tax, transfer tax, intangible tax or



similar tax. The Debtors and New EWRD V Entities are authorized to request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for any or all returns filed for, on or behalf of, the Debtors for any or all taxable periods (or portions thereof) ending after the Petition Date through and including the Effective Date.

52. **Headings.** Headings utilized herein are for convenience and reference only, and shall not constitute a part of the Plan or this Confirmation Order for any other purpose.

53. **References to Plan Provisions.** The Plan is confirmed in its entirety and hereby incorporated into this Confirmation Order by reference. The failure to reference or discuss any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of, or otherwise affect, the validity, binding effect and enforceability of such provision, and each provision of the Plan shall have the same validity, binding effect and enforceability as if fully set forth in this Confirmation Order.

54. **Effect of Conflict Between Plan and Confirmation Order.** If there is any direct conflict between the terms of the Plan or the Plan Supplement and the terms of this Confirmation Order, the terms of this Confirmation Order shall control.

55. **Notice of Effective Date.** Pursuant to Bankruptcy Rules 2002(f), 2002(k) and 3020(c), as soon as reasonably practicable, but in no event later than five (5) days after the Effective Date, the Debtors shall electronically file with the Court and serve notice of entry of this Confirmation Order and occurrence of the Effective Date by causing notice of entry of the Confirmation Order, the Administrative Expense Request Deadline, the Rejection Damages Bar Date, and occurrence of the Effective Date in substantially the same form as attached hereto as **Exhibit C** (the "Notice of Confirmation and Effective Date"), with such changes as the Court may require, to be delivered on all holders of Claims and Interests, and the United States Trustee

for the District of Delaware by email or first-Class mail, postage prepaid, and on the parties entitled to notice in these cases pursuant to Bankruptcy Rule 2002. The notice described herein is adequate under the particular circumstances and no other or further notice is necessary.

56. **Authorization to File Conformed Plan.** The Debtors are authorized to file a conformed Plan, dated on the date hereof, that incorporates all amendments to the Plan authorized consistent with this Confirmation Order within thirty (30) days of the entry of this Confirmation Order.

57. **Severability.** Each term and provision of the Plan, as it may have been altered or interpreted by the Bankruptcy Court in accordance with its retention of jurisdiction under the Plan, is valid and enforceable pursuant to its terms.

58. **Non-Material Modifications.** After the Confirmation Date and prior to substantial consummation of the Plan, any Debtor or any New EWRD V Entity may remedy any defect or omission or reconcile any inconsistencies in the Plan and such matters as may be necessary to carry out the purposes and effects of the Plan, by filing a revised Plan on the docket of these Chapter 11 Cases in advance of the effective date of such revised Plan, and the solicitation of all Creditors and other parties-in-interest shall not be required.

59. **Final Order.** This Confirmation Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof.

60. **Effectiveness.** Notwithstanding the possible applicability of Fed. R. Bankr. P. 6004(h), 7062, 9014, or otherwise, the terms and conditions of this Confirmation Order shall be immediately effective and enforceable upon its entry.

61. If any or all of the provisions of this Confirmation Order are hereafter reversed, modified or vacated by subsequent order of this Court or any other court, such reversal,

modification or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan prior to the Debtors' receipt of written notice of such order. Notwithstanding any such reversal, modification or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Confirmation Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Confirmation Order and the Plan and all related documents or any amendments or modifications thereto.

62. **Nonoccurrence of Effective Date.** In the event that the Effective Date does not occur, then (i) the Plan, (ii) assumption or rejection of executory contracts or unexpired leases pursuant to the Plan, (iii) any document or agreement executed pursuant to the Plan, and (iv) any actions, releases, waivers, or injunctions authorized by this Confirmation Order or any order in aid of consummation of the Plan shall be deemed null and void. In such event, nothing contained in this Confirmation Order, any order in aid of consummation of the Plan, or the Plan, and no acts taken in preparation for consummation of the Plan, (a) shall be deemed to constitute a waiver or release of any Claims or Interests by or against the Debtors or any other persons or entities, to prejudice in any manner the rights of the Debtors or any person or entity in any further proceedings involving the Debtors or otherwise, or to constitute an admission of any sort by the Debtors or any other persons or entities as to any issue, or (b) shall be construed as a finding of fact or conclusion of law in respect thereof.

63. **Authorization to Consummate.** The Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order, subject to the satisfaction or waiver of the conditions precedent to the Effective Date set forth in Article IX.A. of the Plan.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2010  
Wilmington, Delaware

\_\_\_\_\_  
THE HONORABLE BRENDAN L. SHANNON  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**

**Plan**

**Exhibit B**

**Administrative Expense Request Form**

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

East West Resort Development V, L.P., L.L.L.P. Claims Processing  
 c/o Epiq Bankruptcy Solutions, LLC  
 FDR Station, P.O. Box 5011  
 New York, NY 10150-5011

**ADMINISTRATIVE  
 EXPENSE CLAIM**

In re  
 East West Resort Development V, L.P., L.L.L.P., et al.  
 Debtors.

Chapter 11  
 Case No. 10-10452 (BLS)  
 (Jointly Administered)

Name of Debtor Against Which Claim is Held

Case No. of Debtor

This form should be used to make a claim for an administrative expense arising after February 16, 2010, the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor  
*(The person or other entity to whom the debtor owes money or property)*

- Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy or statement giving particulars.
- Check box if you have never received any notices from the bankruptcy court in this case.
- Check box if this address differs from the address on the envelope sent to you by the court.

Name and Address Where Notices Should be Sent

Telephone No.

THIS SPACE IS FOR  
 COURT USE ONLY

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:

Check here  replaces  
 if this claim  amends a previously filed claim, dated \_\_\_\_\_

1. BASIS FOR CLAIM
- Goods sold
  - Services performed
  - Money loaned
  - Personal injury/wrongful death
  - Taxes
  - Other (describe briefly)

- Retiree benefits as defined in 11 U.S.C. § 1114(a)
- Wages, salaries, and compensation (Fill out below)  
 Your social security number \_\_\_\_\_  
 Unpaid compensation for services performed  
 from \_\_\_\_\_ (date) to \_\_\_\_\_ (date)

2. DATE DEBT WAS INCURRED

3. IF COURT JUDGMENT, DATE OBTAINED:

4. Pursuant to 11 U.S.C. § 503(a), "an entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause." 11 U.S.C. § 503(b) describes those administrative expenses which may be allowed in a debtor's chapter 11 case.

5. TOTAL AMOUNT OF ADMINISTRATIVE CLAIM

\$ \_\_\_\_\_

Check this box if claim includes charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.

6. SUPPORTING DOCUMENTS: Attach copies of supporting documents. If the documents are not available, explain. If the documents are voluminous, attach a summary.
7. TIME-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

THIS SPACE IS FOR  
 COURT USE ONLY

Date:

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power attorney, if any)

# **EXHIBIT B**



UNITED STATES BANKRUPTCY COURT  
for the District of New York

In re: Washington Mutual, . Inc. et al.  
Debtor

**SUBPOENA FOR RULE 2004 EXAMINATION**

Case No.\* 08-12229 (MFW) U.S. Bankruptcy Court for the District of Delaware

To: Banco Santander, S.A., New York Branch Chapter Chapter 11  
45 East 53rd Street  
New York, New York 10022

YOU ARE COMMANDED to appear and testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure, at the place, date, and time specified below. A copy of the court order authorizing the examination is attached.

PLACE OF TESTIMONY

DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see First Request for Production of Documents, attached hereto as "Exhibit A."

PLACE

SUSMAN GODFREY, LLP  
654 Madison Avenue, 5th Floor  
New York, NY 10065

DATE AND TIME

ISSUING OFFICER SIGNATURE AND TITLE

DATE

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER

Greg Taylor, Esq. 500 Delaware Avenue, 8th Floor  
Ashby & Geddes Wilmington, DE 19899  
(302) 654-1888

\* If the bankruptcy case is pending in a district other than the district in which the subpoena is issued, state the district under the case number.

**PROOF OF SERVICE**

<b>SERVED</b>	DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE	
SERVED BY (PRINT NAME)	TITLE	

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2007, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure:

**(c) Protecting a Person Subject to a Subpoena.**

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications,

or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) **Contempt.**

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

**EXHIBIT A**

**FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

**BANCO SANTANDER,S.A.**

The Debtors request that Banco Santander, S.A.. produce the following documents in its possession, custody or control:

1. All documents concerning, or communications with, Washington Mutual with respect to any entity's efforts to acquire all or part of Washington Mutual, and/or any of its substantial assets.
2. All documents concerning any Washington Mutual board of directors meeting attended by You.
3. All documents concerning any communications with or among JPMC, the FDIC, the media, ratings agencies, investors, and/or any third party regarding Washington Mutual.
4. All documents concerning a meeting in or about June 2008 with or among JPMC executives, including CEO Jamie Dimon, and Banco Santander executives, including Chairman Emilio Botin.
5. All documents produced by you to any governmental entity (including but not limited to Congress, the SEC, the DOJ, or the New York Attorney General's office), concerning Washington Mutual, or any potential acquisition or disposition of Washington Mutual, your or JPMC's or any other third party's interest in acquiring, investing, or buying assets of Washington Mutual, or concerning the positions you held in Washington Mutual's stock or bonds.

6. All documents concerning any actual or possible merger with Washington Mutual, or any actual or possible purchase or investment by any entity of any stake in or portion of Washington Mutual.

7. All documents, including communications with or among Washington Mutual, JPMC, the FDIC, any Government Unit and/or any third party, concerning Your and/or any other entity's interest in merging with, investing in, or purchasing any stake in or portion of Washington Mutual.

8. All documents concerning JPMC's knowledge of Your and/or any other entity's interest in potentially merging with, investing in, or purchasing any stake in or portion of Washington Mutual.

9. All documents concerning any actual, potential, or contemplated bid, term sheet, offer, or other expression of interest from You and/or any other entity to merge with, invest in, or purchase any stake in or portion of Washington Mutual.

10. All documents concerning You and/or any other entity's access to Washington Mutual information.

11. All documents concerning any due diligence concerning Washington Mutual performed by You or any other entity.

12. All documents concerning Washington Mutual provided to You by JPMC, the FDIC, and/or any third party.

13. All documents concerning JPMC's disclosure of any Washington Mutual information, or disclosure of any information about Washington Mutual, to You, any

Governmental Unit, the media, ratings agencies, investors, and/or any other third parties.

14. All documents concerning any effect JPMC's disclosure of any Washington Mutual information or disclosure of any information about Washington Mutual had on any actual, potential, or contemplated bid, term sheet, offer, or other expression of interest to merge with, invest in, or purchase any stake in or portion of Washington Mutual.

**UNITED STATES BANKRUPTCY COURT**  
for the District of Columbia

In re: Washington Mutual, . Inc. et al.  
Debtor

**SUBPOENA FOR RULE 2004 EXAMINATION**

Case No.\* 08-12229 (MFW) U.S. Bankruptcy Court for the District of Delaware

To: Federal Deposit Insurance Corporation Chapter Chapter 11  
Corporate  
Mr. Michael Bradfield, General Counsel  
Legal Division  
550 17th Street, NW  
Washington, DC 20429

YOU ARE COMMANDED to appear and testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure, at the place, date, and time specified below. A copy of the court order authorizing the examination is attached.

PLACE OF TESTIMONY	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see First Request for Production of Documents, attached hereto as "Exhibit A."

PLACE Weil, Gotshal & Manges, LLP 1300 Eye Street, NW, Suite 900 Washington, DC 20005	DATE AND TIME

ISSUING OFFICER SIGNATURE AND TITLE	DATE

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER	Greg Taylor, Esq. 500 Delaware Avenue, 8th Floor Ashby & Geddes Wilmington, DE 19899 (302) 654-1888
---	---

\* If the bankruptcy case is pending in a district other than the district in which the subpoena is issued, state the district under the case number.

**PROOF OF SERVICE**

<b>SERVED</b>	DATE	PLACE
	SERVED ON (PRINT NAME)	
SERVED BY (PRINT NAME)		MANNER OF SERVICE
		TITLE

**DECLARATION OF SERVER**

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Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

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(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

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(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.  
(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;  
(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and  
(ii) ensures that the subpoenaed person will be reasonably compensated.

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(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and  
(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

**EXHIBIT A**

**FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

**FDIC - Corporate**

The Debtors request that FDIC produce the following documents in its possession, custody or control:

1. All documents concerning, or communications with, Washington Mutual with respect to any entity's efforts to acquire all or part of Washington Mutual, and/or any of its substantial assets.

2. All documents concerning communications with or among JPMC, any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of Treasury, Federal Reserve, and the SEC, the media, ratings agencies, investors, and/or any third party concerning Washington Mutual.

3. All documents concerning any meetings and/or communications between Washington Mutual and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, including (a) any meetings between OTS and WMI on or about April 5, 2008, (b) any meetings between Washington Mutual, OTS, and the FDIC on or about July 31, 2008, and/or (c) any communications with or among U.S. Treasury Secretary Hank Paulson and WMI Chairman and CEO Kerry Killinger and/or JPMC President and CEO Jami Dimon regarding Washington Mutual.



4. All documents related to any investigation you have conducted regarding JPMC's acquisition of WMB or JPMC's documents or communications about WMI and WMB.

5. All documents concerning any meetings and/or communications between JPMC and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC concerning Washington Mutual including (a) any meetings on or about March 28, 2008, (b) any meetings between JPMC and the U.S. Department of the Treasury in April 2008, and/or (c) any meetings on or about July 18, 2008.

6. All documents concerning JPMC's trading activity in Washington Mutual stock, including any actual, potential, or contemplated decision by JPMC to short Washington Mutual stock in the three months prior to the OTS seizure of WMB.

7. All documents concerning JPMC's disclosure of any Washington Mutual information, or disclosure of any information about Washington Mutual, to any governmental Unit, the media, ratings agencies, investors, and/or any other third parties.

8. All documents concerning any agreement between JPMC and Washington Mutual concerning access to and/or disclosure of non-public, confidential or proprietary information in connection with a potential transaction in which JPMC would acquire, merge with, or invest in Washington Mutual.

9. All documents concerning JPMC's access to Washington Mutual data, including but not limited to (a) JPMC due diligence of Washington Mutual and/or (b) any effort by JPMC to place "moles" at Washington Mutual for the purpose of obtaining confidential Washington Mutual information, which JPMC used "to bargain and work with federal regulators for the seizure and sale of Washington Mutual's assets." *See* Texas Action Complaint at ¶ 32, including JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen, and Bill Murray, *see id.* at ¶ 38.

10. All documents concerning JPMC's interest in any potential Transaction and any attempt by JPMC to engage in any potential Transaction, including but not limited to any actual, potential, or contemplated bid or offer by JPMC to merge with, invest in our purchase Washington Mutual, including but not limited to (a) Washington Mutual's rejection of JPMC's offer to merge with, invest in, or acquire Washington Mutual in or about April 2008, (b) capital contributions or investments received by JPMC in connection with any potential Transaction in or about September 2008, and/or (c) any agreement or arrangement between JPMC and any Government Unit, including but not limited to the FDIC, OTS, OCC, Federal Reserve, SEC and/or the U.S. Department of the Treasury, concerning any potential transaction in which JPMC might or did acquire WMB, or any stake or portion of WMB.

11. All documents concerning the potential for WMB to be seized by OTS and the decision to seize WMB, as well as the potential for the FDIC to be appointed receiver to WMB and the decision to place WMB into receivership with the FDIC, including all documents concerning any communication from FDIC officials to JPMC in early September 2008, to inform JPMC in words or substance that “the FDIC was carefully monitoring [WMB] and that a seizure of its assets was likely” and that the FDIC “would want to immediately action off [WMB’s] assets.” *See* Heidi N. Moore, *Deal Journal*, Wall St. J., Sept. 30, 2008, at C7.

12. All documents concerning the FDIC’s efforts in September 2008 to restore JPMC’s access to Washington Mutual data.

13. All documents concerning the bid process established by the FDIC for the purchase of WMB, including but not limited to (a) all documents concerning any communication with or among JPMC, any Government Unit and/or any third party about the bid process.

14. All documents concerning the FDIC’s consideration of and decision to “modify the standard indemnification to include a limited indemnity in favor of JPMorgan Chase in an amount not to exceed \$500 million for any damages JPMorgan Chase may sustain as a result of litigation brought by WMI against JPMorgan Chase for violation of the agreement between WMI and JPMorgan Chase dated March 11, 2008, “including all documents concerning JPMC’s request for such and indemnification provision” *see* 9/24/08 Memorandum from James Wigand and

Hebert Held to FDIC Board of Directors and FDIC Board of Directors Resolution Approving P&A Transaction.

15. All documents concerning any OCC indication to OTS, FDIC, and/or JPMC that “as the federal regulator of JPMorgan Chase . . . it will provide its approval of the transfer of assets and liabilities [of WMB to JPMC] on September 25, 2008,” *See* FDIC Board of Directors Resolution Board of Directors Approving JPMC’s Bid for WMB, at 4.

16. All documents concerning OTS’s determination that “WMB met the well-capitalized standards through the date of receivership.” *See* OTS Fact Sheet, Sept. 25, 2008.

17. All documents concerning OTS’s determination that “adverse publicity” caused WMB to “suffer[] significant cash outflows.” *See* OTS Order 208-36, dated September 25, 2008.

18. All documents produced by you to any governmental entity (including but not limited to Congress, the SEC, the DOJ, or the New York Attorney General’s office), concerning Washington Mutual.

19. All documents that you have produced to WMI in response to the WMI RFP’s.

20. All documents that you have produced to any party in response to any discovery requests served in the Adversary Proceedings.

21. 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, but is not limited to records of communications among two or more parties to the Proposed Global Settlement Agreement and drafts of the Proposed Global Settlement Agreement.

22. All documents concerning the proposed Global Settlement Agreement or any agreements reflected in the Proposed Settlement Agreement. This request includes, but is not limited to (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.

**UNITED STATES BANKRUPTCY COURT**  
for the District of Columbia

In re: Washington Mutual, . Inc. et al.  
Debtor

**SUBPOENA FOR RULE 2004 EXAMINATION**

Case No.\* 08-12229 (MFW) U.S. Bankruptcy Court for the District of Delaware

To: Board of Governors of the Federal Reserve System

Chapter Chapter 11

Mr. Scott G. Alvarez, General Counsel  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

YOU ARE COMMANDED to appear and testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure, at the place, date, and time specified below. A copy of the court order authorizing the examination is attached.

PLACE OF TESTIMONY

DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see First Request for Production of Documents, attached hereto as "Exhibit A."

PLACE

Weil, Gotshal & Manges, LLP  
1300 Eye Street, N.W., Suite 900  
Washington, D.C. 20005

DATE AND TIME

ISSUING OFFICER SIGNATURE AND TITLE

DATE

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER

Greg Taylor  
Ashby & Geddes

500 Delaware Avenue, 8th Floor  
Wilmington, DE 19899  
(302) 654-1888

\* If the bankruptcy case is pending in a district other than the district in which the subpoena is issued, state the district under the case number.

**PROOF OF SERVICE**

<b>SERVED</b>	DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE	
SERVED BY (PRINT NAME)	TITLE	

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2007, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure:

**(c) Protecting a Person Subject to a Subpoena.**

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**(2) Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.  
(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.**

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

**EXHIBIT A**

**FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

**FEDERAL RESERVE**

The Debtors request that the Federal Reserve produce the following documents in its possession, custody or control:

1. All documents concerning, or communications with, Washington Mutual with respect to any entity's efforts to acquire all or part of Washington Mutual, and/or any of its substantial assets.

2. All documents concerning communications with or among JPMC, the FDIC, the media, ratings agencies, investors, and/or any third party concerning Washington Mutual.

3. All documents concerning any meetings and/or communications between Washington Mutual and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve and the SEC, including (a) any meetings between OTS and WMI on or about April 5, 2008, (b) any meetings between Washington Mutual, OTS, and the FDIC on or about July 31, 2008, and/or (c) any communications with or among U.S. Treasury Secretary Hank Paulson and WMI Chairman and CEO Kerry Killinger and/or JPMC President and CEO Jamie Dimon regarding Washington Mutual.

4. All documents related to any investigation you have conducted regarding JPMC's acquisition of WMB or JPMC's documents or communications about WMI and WMB.



5. All documents concerning JPMC's trading activity in Washington Mutual stock, including any actual, potential, or contemplated decision by JPMC to short Washington Mutual stock in the three months prior to the OTS seizure of WMB.

6. All documents concerning JPMC's disclosure of any Washington Mutual information, or disclosure of any information about Washington Mutual, to any Governmental Unit, the media, ratings agencies, investors, and/or other third parties.

7. All documents concerning JPMC's trading activity in Washington Mutual stock, including any actual, potential, or contemplated decision by JPMC to short Washington Mutual stock in the three months prior to the OTS seizure of WMB.

8. All documents concerning JPMC's disclosure of any Washington Mutual information, or disclosure of any information about Washington Mutual, to any Governmental Unit, the media, ratings agencies, investors, and/or any other third parties.

9. All documents concerning any agreement between JPMC and Washington Mutual concerning access to and/or disclosure of non-public, confidential or proprietary information in connection with a potential transaction in which JPMC would acquire, merge with, or invest in Washington Mutual.

10. All documents concerning JPMC's access to Washington Mutual data, including but not limited to (a) JPMC due diligence of Washington Mutual and/or (b) any effort by JPMC to place "moles" in Washington Mutual for the purpose of obtaining confidential Washington Mutual information which JPMC used "to bargain

and work with federal regulators for the seizure and sale of Washington Mutual's assets," *see* Texas Action Complaint at ¶ 32, including JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen, and Bill Murray, *see id.*, at ¶ 38.

11. All documents concerning the potential for WMB to be seized by OTS and the decision to seize WMB, as well as the potential for the FDIC to be appointed receiver of WMB and the decision to place WMB into receiver ship with the FDIC, including all documents concerning any communication from FDIC officials to JPMC in early September 2008, to inform JPMC in words or substance that "the FDIC was carefully monitoring [WMB] and that a seizure of its assets was likely" and that the FDIC "would want to immediately auction off [WMB's] assets." *See* Heidi N. Moore, *Deal Journal*, Wall St. J., Sept. 30, 2008, at C7.

12. All documents produced by you to any governmental entity (including but not limited to Congress, the SEC, the DOJ, or the New York Attorney General's office), concerning Washington Mutual.

UNITED STATES BANKRUPTCY COURT  
for the District of Delaware

In re: Washington Mutual, . Inc. et al.  
Debtor

SUBPOENA FOR RULE 2004 EXAMINATION

Case No.\* 08-12229 (MFW)

To: Moody's Investors Service  
c/o The Corporation Trust Company  
2711 Centerville Road, Suite 400,  
Wilmington, DE 19808

Chapter Chapter 11

YOU ARE COMMANDED to appear and testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure, at the place, date, and time specified below. A copy of the court order authorizing the examination is attached.

PLACE OF TESTIMONY	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see First Request for Production of Documents, attached hereto as "Exhibit A."

PLACE	DATE AND TIME
Ashby & Geddes 600 Delaware Avenue, 8th Floor Wilmington, DE 19899	

ISSUING OFFICER SIGNATURE AND TITLE	DATE

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER	Greg Taylor, Esq. 500 Delaware Avenue, 8th Floor Ashby & Geddes Wilmington, DE 19899 (302) 654-1888
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\* If the bankruptcy case is pending in a district other than the district in which the subpoena is issued, state the district under the case number.

## PROOF OF SERVICE

<b>SERVED</b>	DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE	
SERVED BY (PRINT NAME)	TITLE	

### DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2007, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure:

**(c) Protecting a Person Subject to a Subpoena.**

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does

not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications,

or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.**

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

**EXHIBIT A**

**FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

**MOODY'S**

The Debtors request that Moody's produce the following documents in its possession, custody or control:

1. All documents concerning, or communications with respect to any entity's efforts to acquire all or part of Washington Mutual, and/or any of its substantial assets.
2. All documents or communications provided to you by JPMC about Washington Mutual.
3. All documents concerning communications with or among JPMC, the FDIC, the media, ratings agencies, investors, and/or any third party concerning Washington Mutual.
4. All documents concerning any meeting with or among JPMC, the FDIC, and/or any third party regarding Washington Mutual.
5. All documents concerning any meetings with JPMC in or about March 2008, April 2008, and/or September 2008.
6. All documents, including any presentations, provided to You by JPMC, the FDIC, and/or any third party concerning Washington Mutual.
7. All documents concerning JPMC's disclosure of any Washington Mutual information, or disclosure of any information about Washington Mutual, to You or

other ratings agencies, any Governmental Unit, the media, investors, and/or any third parties.

8. All documents concerning any effect JPMC's disclosure of any Washington Mutual information, or disclosure of any information about Washington Mutual had on any consideration or to decision to downgrade, upgrade, or take no action with respect to the credit ratings of any Washington Mutual entity, whether regular or unscheduled.

9. All documents, including communications with JPMC, concerning JPMC's consideration of and/or decision to negotiate, discuss, participate, or work with the FDIC in conjunction with any potential Transaction.

10. All documents concerning Your and/or any other entity's access to Washington Mutual information, including any terms or conditions applicable to such access.

11. All documents concerning JPMC's access to Washington Mutual data, including but not limited to (a) JPMC due diligence of Washington Mutual and/or (b) any effort by JPMC to place "moles" was Washington Mutual for the purpose of obtaining confidential Washington Mutual information which JPMC used "to bargain and work with federal regulators for the seizure and sale of Washington Mutual's assets," *see* Texas Action Complaint at ¶ 32, including JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement

or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen, and Bill Murray, *see id.*, at ¶ 38.

12. All documents produced by you to any governmental entity (including but not limited to Congress, the SEC, the DOJ, or the New York Attorney General's office), concerning Washington Mutual.

UNITED STATES BANKRUPTCY COURT  
for the District of Columbia

In re: Washington Mutual, . Inc. et al.  
Debtor

**SUBPOENA FOR RULE 2004 EXAMINATION**

Case No.\* 08-12229 (MFW) U.S. Bankruptcy Court for the District of Delaware

To: Henry M. Paulson, Jr.  
1619 Massachusetts Ave., N.W.  
Rome Building - 810  
Washington, D.C. 20336

Chapter Chapter 11

YOU ARE COMMANDED to appear and testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure, at the place, date, and time specified below. A copy of the court order authorizing the examination is attached.

PLACE OF TESTIMONY

DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see First Request for Production of Documents, attached hereto as "Exhibit A."

PLACE

Weil, Gotshal & Manges, LLP  
1300 Eye Street, NW, Suite 900  
Washington, DC 20005

DATE AND TIME

ISSUING OFFICER SIGNATURE AND TITLE

DATE

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER

Greg Taylor, Esq. 500 Delaware Avenue, 8th Floor  
Ashby & Geddes Wilmington, DE 19899  
(302) 654-1888

\* If the bankruptcy case is pending in a district other than the district in which the subpoena is issued, state the district under the case number.



## PROOF OF SERVICE

<b>SERVED</b>	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

### DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2007, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure:

**(c) Protecting a Person Subject to a Subpoena.**

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications,

or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.**

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

**EXHIBIT A**

**FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

**HENRY M. PAULSON, JR.**

The Debtors request that Henry M. Paulson, Jr. produce the following documents in its possession, custody or control:

1. All documents concerning or communications with, Washington Mutual, including any communications with or among You and WMI Chairman and CEO Kerry Killinger and/or JPMC President and CEO Jamie Dimon regarding Washington Mutual.
2. All documents concerning in form or in substance the “Paulson RTC-like structure” and/or “Paulson’s ‘RTC’ plan” concerning Washington Mutual.
3. All documents concerning communications with or among JPMC, the FDIC, the media, ratings agencies, investors, and/or any third party concerning Washington Mutual.
4. All documents concerning any meetings and/or communications between Washington Mutual and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, including (a) any meetings between OTS and WMI on or about April 5, 2008, and/or (b) any meetings between Washington Mutual, OTS, and the FDIC on or about July 31, 2008.
5. All documents related to any investigation you have conducted regarding JPMC’s acquisition of WMB or JPMC’s documents or communications about WMI and WMB.

6. All documents concerning any meetings and/or communications between JPMC and any Government Unit, including FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, concerning Washington Mutual including (a) any meetings on or about March 28, 2008, (b) any meetings between JPMC and the U.S. Department of the Treasury in April 2008, and/or (c) any meetings on or about July 18, 2008.

7. All documents concerning JPMC's trading activity in Washington Mutual stock, including any actual, potential, or contemplated decision by JPMC to short Washington Mutual stock in the three months prior to the OTS seizure of WMB.

8. All documents concerning JPMC's disclosure of any of Washington Mutual information, or disclosure of any information about Washington Mutual, to any Governmental Unit, the media, ratings agencies, investors, and/or any other third parties.

9. All documents concerning any agreement between JPMC and Washington Mutual concerning access to and/or disclosure of non-public, confidential or proprietary information in connection with a potential transaction in which JPMC would acquire, merge with, or invest in Washington Mutual.

10. All documents concerning JPMC's access to Washington Mutual data, including but not limited to (a) JPMC due diligence of Washington Mutual and/or (b) any effort by JPMC to place "moles" at Washington Mutual for the purpose of obtaining confidential Washington Mutual information, which JPMC used "to bargain

and work with federal regulators for the seizure and sale of Washington Mutual's assets," *see* Texas Action Complaint at ¶ 32, including JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen, and Bill Murray, *see id.* at ¶ 38.

11. All documents concerning JPMC's interest in any potential Transaction and any attempt by JPMC to engage in any potential Transaction, including but not limited to any actual, potential, or contemplated bid or offer by JPMC to merge with, invest in, or purchase Washington Mutual, including but not limited to (a) Washington Mutual's rejection of JPMC's offer to merge with, invest in, or acquire Washington Mutual in or about April 2008, (b) capital contributions or investments received by JPMC in connection with any potential Transaction in or about September 2008, and/or (c) any agreement or arrangement between JPMC and any Government Unit, including but not limited to the FDIC, OTS, OCC, Federal Reserve, SEC and/or the U.S. Department of Treasury, concerning any potential transaction in which JPMC might or did acquire WMB, or any stake or portion of WMB.

12. All documents concerning the potential for WMB to be seized by OTS and the decision to seize WMB, as well as the potential for the FDIC to be appointed receiver of WMB and the decision to place WMB into receiver ship with the FDIC, including all documents concerning any communication from FDIC officials to JPMC in early September 2008, to inform JPMC in words or substance that "the FDIC was

carefully monitoring [WMB] and that a seizure of its assets was likely” and that the FDIC “would want to immediately auction off [WMB’s] assets.” *See* Heidi N. Moore, *Deal Journal*, Wall St. J., Sept. 30, 2008, at C7.

13. All documents concerning JPMC’s potential interest in acquiring or investing in Washington Mutual.

14. All documents concerning, or communications with, Washington Mutual with respect to any entity’s efforts to acquire all or part of Washington Mutual, and/or any of its substantial assets.

15. All documents produced by you to any governmental entity (including but not limited to Congress, the SEC, the DOJ, or the New York Attorney General’s office), concerning Washington Mutual.

UNITED STATES BANKRUPTCY COURT  
for the District of Delaware

In re: Washington Mutual, . Inc. et al.  
Debtor

SUBPOENA FOR RULE 2004 EXAMINATION

Case No.\* 08-12229 (MFW)

To: Standard and Poor's Corporation  
c/o The Prentice Hall Corporation  
System, Inc.,  
2711 Centerville Road, Suite 400,  
Wilmington, DE 19808

Chapter Chapter 11

YOU ARE COMMANDED to appear and testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure, at the place, date, and time specified below. A copy of the court order authorizing the examination is attached.

PLACE OF TESTIMONY

DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see First Request for Production of Documents, attached hereto as "Exhibit A."

PLACE

Ashby & Geddes  
600 Delaware Avenue, 8th Floor  
Wilmington, DE 19899

DATE AND TIME

ISSUING OFFICER SIGNATURE AND TITLE

DATE

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER

Greg Taylor, Esq. 500 Delaware Avenue, 8th Floor  
Ashby & Geddes Wilmington, DE 19899  
(302) 654-1888

\* If the bankruptcy case is pending in a district other than the district in which the subpoena is issued, state the district under the case number.

**PROOF OF SERVICE**

<b>SERVED</b>	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2007, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure:

**(c) Protecting a Person Subject to a Subpoena.**

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.  
(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.**

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

**EXHIBIT A**

**FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

**S&P**

The Debtors request that S&P produce the following documents in its possession, custody or control:

1. All documents concerning, or communications with, Washington Mutual with respect to any entity's efforts to acquire all or part of Washington Mutual, and/or any of its substantial assets.

2. All documents concerning communications with or among JPMC, the FDIC, the media, ratings agencies, investors, and/or any third party concerning Washington Mutual.

3. All documents concerning any meeting with or among JPMC, the FDIC, and/or any third party regarding Washington Mutual.

4. All documents concerning any meetings with JPMC in or about March 2008, April 2008, and/or September 2008.

5. All documents, including any presentations, provided to You by JPMC, the FDIC, and/or any third party concerning Washington Mutual.

6. All documents concerning JPMC's disclosure of any Washington Mutual information, or disclosure of any information about Washington Mutual, to You or other ratings agencies, any Governmental Unit, the media, investors, and/or any third parties.



7. All documents concerning any effect JPMC's disclosure of any Washington Mutual information, or disclosure of any information about Washington Mutual had on any consideration or to decision to downgrade, upgrade, or take no action with respect to the credit ratings of any Washington Mutual entity, whether regular or unscheduled.

8. All documents, including communications with JPMC, concerning JPMC's consideration of and/or decision to negotiate, discuss, participate, or work with the FDIC in conjunction with any potential Transaction.

9. All documents concerning Your and/or any other entity's access to Washington Mutual information, including any terms or conditions applicable to such access.

10. All documents or communications provided to you by JPMC about Washington Mutual.

11. All documents concerning JPMC's access to Washington Mutual data, including but not limited to (a) JPMC due diligence of Washington Mutual and/or (b) any effort by JPMC to place "moles" was Washington Mutual for the purpose of obtaining confidential Washington Mutual information which JPMC used "to bargain and work with federal regulators for the seizure and sale of Washington Mutual's assets," *see* Texas Action Complaint at ¶ 32, including JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement

or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen, and Bill Murray, *see id.*, at ¶ 38.

12. All documents produced by you to any governmental entity (including but not limited to Congress, the SEC, the DOJ, or the New York Attorney General's office), concerning Washington Mutual.

UNITED STATES BANKRUPTCY COURT  
for the District of Columbia

In re: Washington Mutual, Inc. et al.  
Debtor

**SUBPOENA FOR RULE 2004 EXAMINATION**

Case No.\* 08-12229 (MFW) U.S. Bankruptcy Court for the District of Delaware

To: Mr. George W. Madison, General Counsel Chapter Chapter 11

U.S. Department of the Treasury  
Office of General Counsel  
1500 Pennsylvania Ave, N.W.  
Washington, DC 20220

YOU ARE COMMANDED to appear and testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure, at the place, date, and time specified below. A copy of the court order authorizing the examination is attached.

PLACE OF TESTIMONY	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see First Request for Production of Documents, attached hereto as "Exhibit A."

PLACE	DATE AND TIME
Weil, Gotshal & Manges, LLP 1300 Eye Street, N.W., Suite 900 Washington, D.C. 20005	

ISSUING OFFICER SIGNATURE AND TITLE	DATE

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER	Greg Taylor, Esq. 500 Delaware Avenue, 8th Floor Ashby & Geddes Wilmington, DE 19899 (302) 654-1888
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\* If the bankruptcy case is pending in a district other than the district in which the subpoena is issued, state the district under the case number.

**PROOF OF SERVICE**

<b>SERVED</b>	DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE	
SERVED BY (PRINT NAME)	TITLE	

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2007, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure:

**(c) Protecting a Person Subject to a Subpoena.**

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.  
(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) **Contempt.**

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

**EXHIBIT A**

**FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

**U.S. DEPARTMENT OF TREASURY**

The Debtors request that the U.S. Department of Treasury produce the following documents in its possession, custody or control:

1. All documents concerning, or communications with, Washington Mutual with respect to any entity's efforts to acquire all or part of Washington Mutual, and/or any of its substantial assets.

2. All documents concerning communications with or among JPMC, the FDIC, the media, ratings agencies, investors, and/or any third party concerning Washington Mutual.

3. All documents concerning any meetings and/or communications between Washington Mutual and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve and the SEC, including (a) any meetings between OTS and WMI on or about April 5, 2008, (b) any meetings between Washington Mutual, OTS, and the FDIC on or about July 31, 2008, and/or (c) any communications with or among U.S. Treasury Secretary Hank Paulson and WMI Chairman and CEO Kerry Killinger and/or JPMC President and CEO Jamie Dimon regarding Washington Mutual.

4. All documents concerning any meetings and/or communications between JPMC and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of Treasury, Federal Reserve and the SEC concerning Washington

Mutual including (a) any meetings on or about March 28, 2008, (b) any meetings between JPMC and the U.S. Department of Treasury in April 2008, and/or (c) any meetings on or about July 18, 2008.

5. All documents concerning JPMC's trading activity in Washington Mutual stock, including any actual, potential, or contemplated decision by JPMC to short Washington Mutual stock in the three months prior to the OTS seizure of WMB.

6. All documents concerning JPMC's disclosure of any Washington Mutual information, or disclosure of any information about Washington Mutual, to any Governmental Unit, the media, ratings agencies, investors, and/or other third parties.

7. All documents concerning any agreement between JPMC and Washington Mutual concerning access to and/or disclosure of non-public, confidential or proprietary information in connection with a potential transaction in which JPMC would acquire, merge with, or invest in Washington Mutual.

8. All documents concerning JPMC's access to Washington Mutual data, including but not limited to (a) JPMC due diligence of Washington Mutual and/or (b) any effort by JPMC to place "moles" in Washington Mutual for the purpose of obtaining confidential Washington Mutual information which JPMC used "to bargain and work with federal regulators for the seizure and sale of Washington Mutual's assets," *see* Texas Action Complaint at ¶ 32, including JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement

or employment of Stephen J. Rotella, Steved Fortunato, Taj Bindra, John Berens, Youyi Chen, and Bill Murray, *see id.*, at ¶ 38.

9. All documents concerning JPMC's interest in any potential Transaction and any attempt by JPMC to engage in any potential Transaction, including but not limited to any actual, potential, or contemplated bid or offer by JPMC to merge with, invest in, or purchase Washington Mutual, including but not limited to (a) Washington Mutual's rejection of JPMC's offer to merge with, invest in, or acquire Washington Mutual in or about April 2008, (b) capital contributions or investments received by JPMC in connection with any potential Transaction in or about September 2008, and/or (c) any agreement or arrangement between JPMC and any Government Unit, including but not limited to the FDIC, OTS, OCC, Federal Reserve, SEC and/or the U.S. Department of Treasury, concerning any potential transaction in which JPMC might or did acquire WMB, or any stake or portion of WMB.

10. All documents concerning the potential for WMB to be seized by OTS and the decision to seize WMB, as well as the potential for the FDIC to be appointed receiver of WMB and the decision to place WMB into receiver ship with the FDIC, including all documents concerning any communication from FDIC officials to JPMC in early September 2008, to inform JPMC in words or substance that "the FDIC was carefully monitoring [WMB] and that a seizure of its assets was likely" and that the FDIC "would want to immediately auction off [WMB's] assets." *See Heidi N. Moore, Deal Journal, Wall St. J., Sept. 30, 2008, at C7.*

11. All documents concerning the FDIC's consideration of and decision to "modify the standard indemnification to include a limited indemnity in favor of JPMorgan Chase in an amount not to exceed \$500 million for any damages JPMorgan Chase may sustain as a result of litigation brought by WMI against JPMorgan Chase for violation of the agreement between WMI and JPMorgan Chase dated March 11, 2008," including all documents concerning JPMC's request for such an indemnification provision. *See* 9/24/08 Memorandum from James Wigand and Herbert Held to FDIC Board of Directors and FDIC Board of Directors Resolution Approving P&A Transaction.

12. All documents concerning OTS's determination that "adverse publicity" caused WMB to "suffer[] significant cash outflows." *See* OTS Order 2008-36, dated September 25, 2008.

13. All documents produced by you to any governmental entity (including but not limited to Congress, the SEC, the DOJ, or the New York Attorney General's office), concerning Washington Mutual.



UNITED STATES BANKRUPTCY COURT  
for the District of Columbia

In re: Washington Mutual, . Inc. et al.  
Debtor

**SUBPOENA FOR RULE 2004 EXAMINATION**

Case No.\* 08-12229 (MFW) U.S. Bankruptcy Court for the District of Delaware

To: Federal Deposit Insurance Corporation Chapter Chapter 11  
Receiver

Mr. Michael Bradfield, General Counsel  
Legal Division  
550 17th Street, NW  
Washington, DC 20429

YOU ARE COMMANDED to appear and testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure, at the place, date, and time specified below. A copy of the court order authorizing the examination is attached.

PLACE OF TESTIMONY

DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see First Request for Production of Documents, attached hereto as "Exhibit A."

PLACE

Weil, Gotshal & Manges, LLP  
1300 Eye Street, NW, Suite 900  
Washington, DC 20005

DATE AND TIME

ISSUING OFFICER SIGNATURE AND TITLE

DATE

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER

Greg Taylor, Esq. 500 Delaware Avenue, 8th Floor  
Ashby & Geddes Wilmington, DE 19899  
(302) 654-1888

\* If the bankruptcy case is pending in a district other than the district in which the subpoena is issued, state the district under the case number.

## PROOF OF SERVICE

<b>SERVED</b>	DATE	PLACE	
SERVED ON (PRINT NAME)		MANNER OF SERVICE	
SERVED BY (PRINT NAME)		TITLE	

### DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

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(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.  
(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

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(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;  
(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;  
(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.  
(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;  
(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and  
(ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

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(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and  
(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

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The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

**EXHIBIT A**

**FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

**FDIC – Receiver**

The Debtors request that FDIC produce the following documents in its possession, custody or control:

1. All documents concerning, or communications with, Washington Mutual with respect to any entity's efforts to acquire all or part of Washington Mutual, and/or any of its substantial assets.

2. All documents concerning communications with or among JPMC, any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of Treasury, Federal Reserve, and the SEC, the media, ratings agencies, investors, and/or any third party concerning Washington Mutual.

3. All documents concerning any meetings and/or communications between Washington Mutual and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, including (a) any meetings between OTS and WMI on or about April 5, 2008, (b) any meetings between Washington Mutual, OTS, and the FDIC on or about July 31, 2008, and/or (c) any communications with or among U.S. Treasury Secretary Hank Paulson and WMI Chairman and CEO Kerry Killinger and/or JPMC President and CEO Jami Dimon regarding Washington Mutual.

4. All documents related to any investigation you have conducted regarding JPMC's acquisition of WMB or JPMC's documents or communications about WMI and WMB.

5. All documents concerning any meetings and/or communications between JPMC and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC concerning Washington Mutual including (a) any meetings on or about March 28, 2008, (b) any meetings between JPMC and the U.S. Department of the Treasury in April 2008, and/or (c) any meetings on or about July 18, 2008.

6. All documents concerning JPMC's trading activity in Washington Mutual stock, including any actual, potential, or contemplated decision by JPMC to short Washington Mutual stock in the three months prior to the OTS seizure of WMB.

7. All documents concerning JPMC's disclosure of any Washington Mutual information, or disclosure of any information about Washington Mutual, to any governmental Unit, the media, ratings agencies, investors, and/or any other third parties.

8. All documents concerning any agreement between JPMC and Washington Mutual concerning access to and/or disclosure of non-public, confidential or proprietary information in connection with a potential transaction in which JPMC would acquire, merge with, or invest in Washington Mutual.

9. All documents concerning JPMC's access to Washington Mutual data, including but not limited to (a) JPMC due diligence of Washington Mutual and/or (b) any effort by JPMC to place "moles" at Washington Mutual for the purpose of obtaining confidential Washington Mutual information, which JPMC used "to bargain and work with federal regulators for the seizure and sale of Washington Mutual's assets." See Texas Action Complaint at ¶ 32, including JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen, and Bill Murray, *see id.* at ¶ 38.

10. All documents concerning JPMC's interest in any potential Transaction and any attempt by JPMC to engage in any potential Transaction, including but not limited to any actual, potential, or contemplated bid or offer by JPMC to merge with, invest in our purchase Washington Mutual, including but not limited to (a) Washington Mutual's rejection of JPMC's offer to merge with, invest in, or acquire Washington Mutual in or about April 2008, (b) capital contributions or investments received by JPMC in connection with any potential Transaction in or about September 2008, and/or (c) any agreement or arrangement between JPMC and any Government Unit, including but not limited to the FDIC, OTS, OCC, Federal Reserve, SEC and/or the U.S. Department of the Treasury, concerning any potential transaction in which JPMC might or did acquire WMB, or any stake or portion of WMB.

11. All documents concerning the potential for WMB to be seized by OTS and the decision to seize WMB, as well as the potential for the FDIC to be appointed receiver to WMB and the decision to place WMB into receivership with the FDIC, including all documents concerning any communication from FDIC officials to JPMC in early September 2008, to inform JPMC in words or substance that “the FDIC was carefully monitoring [WMB] and that a seizure of its assets was likely” and that the FDIC “would want to immediately action off [WMB’s] assets.” *See* Heidi N. Moore, *Deal Journal*, Wall St. J., Sept. 30, 2008, at C7.

12. All documents concerning the FDIC’s efforts in September 2008 to restore JPMC’s access to Washington Mutual data.

13. All documents concerning the bid process established by the FDIC for the purchase of WMB, including but not limited to (a) all documents concerning any communication with or among JPMC, any Government Unit and/or any third party about the bid process.

14. All documents concerning the FDIC’s consideration of and decision to “modify the standard indemnification to include a limited indemnity in favor of JPMorgan Chase in an amount not to exceed \$500 million for any damages JPMorgan Chase may sustain as a result of litigation brought by WMI against JPMorgan Chase for violation of the agreement between WMI and JPMorgan Chase dated March 11, 2008, “including all documents concerning JPMC’s request for such and indemnification provision” *see* 9/24/08 Memorandum from James Wigand and

Hebert Held to FDIC Board of Directors and FDIC Board of Directors Resolution Approving P&A Transaction.

15. All documents concerning any OCC indication to OTS, FDIC, and/or JPMC that “as the federal regulator of JPMorgan Chase . . . it will provide its approval of the transfer of assets and liabilities [of WMB to JPMC] on September 25, 2008,” *See* FDIC Board of Directors Resolution Board of Directors Approving JPMC’s Bid for WMB, at 4.

16. All documents concerning OTS’s determination that “WMB met the well-capitalized standards through the date of receivership.” *See* OTS Fact Sheet, Sept. 25, 2008.

17. All documents concerning OTS’s determination that “adverse publicity” caused WMB to “suffer[] significant cash outflows.” *See* OTS Order 208-36, dated September 25, 2008.

18. All documents produced by you to any governmental entity (including but not limited to Congress, the SEC, the DOJ, or the New York Attorney General’s office), concerning Washington Mutual.

19. All documents that you have produced to WMI in response to the WMI RFP’s.

20. All documents that you have produced to any party in response to any discovery requests served in the Adversary Proceedings.

21. 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, but is not limited to records of communications among two or more parties to the Proposed Global Settlement Agreement and drafts of the Proposed Global Settlement Agreement.

22. All documents concerning the proposed Global Settlement Agreement or any agreements reflected in the Proposed Settlement Agreement. This request includes, but is not limited to (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.



UNITED STATES BANKRUPTCY COURT  
for the District of Delaware

In re: Washington Mutual, . Inc. et al.  
Debtor

**SUBPOENA FOR RULE 2004 EXAMINATION**

Case No.\* 08-12229 (MFW)

To: The Goldman Sachs Group, Inc.  
c/o The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

Chapter Chapter 11

YOU ARE COMMANDED to appear and testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure, at the place, date, and time specified below. A copy of the court order authorizing the examination is attached.

PLACE OF TESTIMONY	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see First Request for Production of Documents, attached hereto as "Exhibit A."

PLACE	DATE AND TIME
Ashby & Geddes 600 Delaware Avenue, 8th Floor Wilmington, DE 19899	

ISSUING OFFICER SIGNATURE AND TITLE	DATE

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER	Greg Taylor, Esq. 500 Delaware Avenue, 8th Floor Ashby & Geddes Wilmington, DE 19899 (302) 654-1888
---	---

\* If the bankruptcy case is pending in a district other than the district in which the subpoena is issued, state the district under the case number.

**PROOF OF SERVICE**

<b>SERVED</b>	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2007, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure:

(c) Protecting a Person Subject to a Subpoena.  
 (1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.  
 (2) Command to Produce Materials or Permit Inspection.  
 (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.  
 (B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:  
 (i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.  
 (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.  
 (3) Quashing or Modifying a Subpoena.  
 (A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:  
 (i) fails to allow a reasonable time to comply;  
 (ii) requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;  
 (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or  
 (iv) subjects a person to undue burden.  
 (B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:  
 (i) disclosing a trade secret or other confidential research, development, or commercial information;  
 (ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or  
 (iii) a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.  
 (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:  
 (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and  
 (ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.  
 (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:  
 (A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.  
 (B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.  
 (C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.  
 (D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.  
 (2) Claiming Privilege or Protection.  
 (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:  
 (i) expressly make the claim; and  
 (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.  
 (B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.  
 (e) Contempt.  
 The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

**EXHIBIT A**

**FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

**GOLDMAN SACHS**

The Debtors request that Goldman Sachs produce the following documents in its possession, custody or control:

1. All documents concerning, or communications with, Washington Mutual with respect to any entity's efforts to acquire all or part of Washington Mutual, and/or any of its substantial assets.

2. All documents or communications concerning JPMC's interest in Washington Mutual.

3. All documents concerning any Washington Mutual board of directors meeting attended by You.

4. All documents concerning any communications with or among JPMC, the FDIC, Banco Santander, Blackstone, Carlyle, Cerberus, Citigroup, Oak Hill, TPG, TD Bank, and/or Wells Fargo, the media, ratings agencies, investors, and/or any third party regarding Washington Mutual.

5. All documents or communications provided to you by JPMC about Washington Mutual Bank.

6. All documents concerning Washington Mutual's efforts to raise capital and/or locate a potential merger partner or acquiror, including without limitation (a) any actual or possible acquisition, purchase, or investment by any entity of any stake in or portion of Washington Mutual, including any communications with or among

Banco Santander, Blackstone, Carlyle, Cerberus, Citigroup, JPMC, Oak Hill, TPG, TD Bank, and/or Wells Fargo and their affiliates concerning any interest in Washington Mutual; (b) any efforts to raise capital through the issuance of debt securities in December 2007 (including the issuance of approximately \$3 billion in debt securities on or about December 17, 2007); (c) any efforts to raise capital and/or locate a potential merger partner or acquiror during the first quarter of 2008; (d) TPG's investment of about \$7.2 billion into Washington Mutual on or about April 7, 2008; and/or (e) any efforts to raise capital and/or locate a potential merger partner or acquiror in September 2008, including any efforts by You or any other entity on Washington Mutual's behalf.

7. All documents produced by you to any governmental entity (including but not limited to Congress, the SEC, the DOJ, or the New York Attorney General's office), concerning Washington Mutual, or your activities as an advisor to Washington Mutual, or any potential acquisition or disposition of Washington Mutual, or your or JPMC's or any other third party's interest in acquiring, investing, or buying assets of Washington Mutual, or concerning the positions you held in Washington Mutual's stock or bonds.

8. All documents, including communications, concerning Washington Mutual's retention of You and/or any other entity to work on Washington Mutual's behalf to raise capital and/or locate a potential merger partner or acquiror.

9. All documents concerning work performed by You and/or any other entity on Washington Mutual's behalf to raise capital and/or locate a potential merger partner or acquiror.

10. All documents concerning any actual or possible merger with Washington Mutual, or any actual or possible purchase or investment by any entity of any stake in or portion of Washington Mutual.

11. All documents, including communications with or among Washington Mutual, JPMC, the FDIC, any Government Unit and/or any third party, concerning any entity's interest in merging with, investing in, or purchasing a stake in or portion of Washington Mutual.

12. All documents concerning JPMC's knowledge of any entity's interest in potentially merging with, investing in, or purchasing any stake in or portion of Washington Mutual.

13. All documents concerning any actual, potential, or contemplated bid, term sheet, offer, or other expression of interest to merge with, invest in, or purchase any stake in or portion of Washington Mutual.

14. All documents concerning Washington Mutual's consideration or evaluation of any bid, term sheet, offer, or other expression of interest to merge with, invest in, or purchase any stake in or portion of Washington Mutual.

15. All documents concerning Your consideration or evaluation of any bid, term sheet, offer, or other expression of interest from any entity to merge with, invest in, or purchase any stake in or portion of Washington Mutual.

16. All documents concerning Your and/or any other entity's access to Washington Mutual information.

17. All documents concerning any due diligence concerning Washington Mutual performed by You or any other entity.

18. All documents concerning trading activity in Washington Mutual stock or bonds.

19. All documents concerning any actual, potential, or contemplated decision to short Washington Mutual stock in the three months prior to the OTS seizure of WMB.

20. All documents concerning any advice given to JPMC representatives to any third parties, including any customers, concerning Washington Mutual securities.

21. All documents concerning any advice given to JPMC representatives to any third parties, including any customers, concerning the short sale of Washington Mutual securities.

22. All documents concerning Washington Mutual provided to You by JPMC, the FDIC, and/or any third party.

23. All documents concerning JPMC's disclosure of any Washington Mutual information, or disclosure of any information about Washington Mutual, to You, any

Governmental Unit, the media, ratings agencies, investors, and/or any other third parties.

24. All documents concerning any effect JPMC's disclosure of any Washington Mutual information, or disclosure of any information about Washington Mutual had on any actual, potential, or contemplated bid, term sheet, offer, or other expression of interest to merge with, invest in, or purchase any stake in or portion of Washington Mutual.

25. All documents concerning any agreement between JPMC and Washington Mutual concerning access to and/or disclosure of non-public, confidential or proprietary information in connection with a potential transaction in which JPMC would acquire, merge with, or invest in Washington Mutual.

26. All documents, including communications with JPMC, concerning JPMC's consideration of and/or decision about whether or not to negotiate, discuss, participate, or work with You and or any other entity in connection with any potential Transaction.

27. All documents, including communications with JPMC, concerning JPMC's consideration of and/or decision to negotiate, discuss, participate, or work with You and/or any other entity in conjunction with any potential Transaction.

28. All documents, including communications with JPMC, concerning JPMC's consideration of and/or decision not to negotiate, discuss, participate, or work with You and/or any other entity in conjunction with any potential Transaction.

29. All documents concerning the FDIC's bid process for Washington Mutual, including (a) documents sufficient to demonstrate when You and/or any other entity first became aware of the FDIC's bid process for Washington Mutual, (b) any entity's consideration of whether to submit a bid, and/or (c) all documents concerning any draft, potential, or actual bids submitted to the FDIC.

30. All documents concerning any effort by JPMC to negotiate, discuss, participate, or work with the FDIC "to design bidding parameters that would suit JPMC's needs, and which would rule out other potential bidders" and/or "to sell assets to Washington Mutual without an adequate or fair bidding process." *See Texas Action Complaint at ¶¶25, 32.*

31. All documents concerning the potential for WMB to be seized by OTS and the decision or plans to seize WMB, as well as the potential for the FDIC to be appointed receiver of WMB and the decision to place WMB into receivership with the FDIC, including all documents concerning any communication from FDIC officials to JPMC in early September 2008, to inform JPMC in words or substance that "the FDIC was carefully monitoring [WMB] and that a seizure of its assets was likely" and that the FDIC "would want to immediately auction off [WMB's] assets." *See Heidi N. Moore, Deal Journal, Wall St. J., Sept. 30, 2008, at C7.*

32. All documents concerning JPMC's access to Washington Mutual data, including but not limited to (a) JPMC due diligence of Washington Mutual and/or (b) any effort by JPMC to place "moles" at Washington Mutual for the purpose of



obtaining confidential Washington Mutual information, which JPMC used “to bargain and work with federal regulators for the seizure and sale of Washington Mutual’s assets,” *see* Texas Action Complaint at ¶ 32, including JPMC’s placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen, and Bill Murray, *see id.* at ¶ 38.

33. All documents concerning JPMC’s interest in any potential Transaction and any attempt by JPMC to engage in any potential Transaction, including but not limited to any actual, potential, or contemplated bid or offer by JPMC to merge with, invest in, or purchase Washington Mutual, including but not limited to (a) Washington Mutual’s rejection of JPMC’s offer to merge with, invest in, or acquire Washington Mutual in or about April 2008, (b) capital contributions or investments received by JPMC in connection with any potential Transaction in or about September 2008, and/or (c) any agreement or arrangement between JPMC and any Government Unit, including but not limited to the FDIC, OTS, OCC, Federal Reserve, SEC and/or the U.S. Department of Treasury, concerning any potential transaction in which JPMC might or did acquire WMB, or any stake or portion of WMB.

34. All documents concerning any potential or actual regulatory and/or supervisory actions, ratings, or examinations directed toward or taken with respect to Washington Mutual by any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, including but not

limited to (a) OTS's decision to initiate discussions about Memorandums of Understanding with WMI and WMB, (b) the Memorandums of Understanding OTS issued to WMI and WMB on or about September 7, 2008, (c) any regulatory classification of Washington Mutual by the OTS, including without limitation any decision by OTS to classify WMB as a "problem institution," and/or (d) U.S. Treasury Secretary Henry Paulson's "RTC plan" concerning Washington Mutual.

35. All documents concerning Washington Mutual's responses or potential responses to any regulatory and/or supervisory actions, ratings, or examinations by any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of Treasury, Federal Reserve and the SEC.

36. All documents concerning any meetings and/or communications between JPMC and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, concerning Washington Mutual including (a) any meetings on or about March 28, 2008, (b) any meetings between JPMC and the U.S. Department of the Treasury in April 2008, and/or (c) any meetings on or about July 18, 2008.

UNITED STATES BANKRUPTCY COURT  
for the District of Columbia

In re: Washington Mutual, . Inc. et al.  
Debtor

**SUBPOENA FOR RULE 2004 EXAMINATION**

Case No.\* 08-12229 (MFW) U.S. Bankruptcy Court for the District of Delaware

To: Ms. Deborah Dakin, Acting Chief  
Counsel  
Office of Thrift Supervision  
Office of Chief Counsel  
1700 G Street, NW  
Washington, D.C. 20552

Chapter Chapter 11

YOU ARE COMMANDED to appear and testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure, at the place, date, and time specified below. A copy of the court order authorizing the examination is attached.

PLACE OF TESTIMONY	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see First Request for Production of Documents, attached hereto as "Exhibit A."

PLACE	DATE AND TIME
Weil, Gotshal & Manges, LLP 1300 Eye Street, N.W., Suite 900 Washington, D.C. 20005	

ISSUING OFFICER SIGNATURE AND TITLE	DATE

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER	Greg Taylor. Esq. 500 Delaware Avenue, 8th Floor Ashby & Geddes Wilmington, DE 19899 (302) 654-1888
---	---

\* If the bankruptcy case is pending in a district other than the district in which the subpoena is issued, state the district under the case number.

**PROOF OF SERVICE**

<b>SERVED</b>	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2007, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure:

**(c) Protecting a Person Subject to a Subpoena.**

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.  
(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;  
(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;  
(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or  
(iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;  
(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or  
(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and  
(ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and  
(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.**

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

**EXHIBIT A**

**FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

**OTS**

The Debtors request that the OTS produce the following documents in its possession, custody or control:

1. All documents concerning, or communications with, Washington Mutual with respect to any entity's efforts to acquire all or part of Washington Mutual, and/or any of its substantial assets.

2. All documents concerning communications with or among JPMC, the FDIC, the media, ratings agencies, investors, and/or any third party concerning Washington Mutual.

3. All documents concerning any meetings and/or communications between Washington Mutual and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve and the SEC, including (a) any meetings between OTS and WMI on or about April 5, 2008, (b) any meetings between Washington Mutual, OTS, and the FDIC on or about July 31, 2008, and/or (c) any communications with or among U.S. Treasury Secretary Hank Paulson and WMI Chairman and CEO Kerry Killinger and/or JPMC President and CEO Jamie Dimon regarding Washington Mutual.

4. All documents related to any investigation you have conducted regarding JPMC's acquisition of WMB or JPMC's documents or communications about WMI and WMB.

5. All documents concerning any meetings and/or communications between JPMC and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve, and the SEC, concerning Washington Mutual including (a) any meetings on or about March 28, 2008, (b) any meetings between JPMC and the U.S. Department of the Treasury in April 2008, and/or (c) any meetings on or about July 18, 2008.

6. All documents concerning JPMC's trading activity in Washington Mutual stock, including any actual, potential, or contemplated decision by JPMC to short Washington mutual stock in the three months prior to the OTS seizure of WMB.

7. All documents concerning JPMC's disclosure of any of Washington Mutual information, or disclosure of any information about Washington Mutual, to any Governmental Unit, the media, ratings agencies, investors, and/or any other third parties.

8. All documents concerning any agreement between JPMC and Washington Mutual concerning access to and/or disclosure of non-public, confidential or proprietary information in connection with a potential transaction in which JPMC would acquire, merge with, or invest in Washington Mutual.

9. All documents concerning JPMC's access to Washington Mutual data, including but not limited to (a) JPMC due diligence of Washington Mutual and/or (b) any effort by JPMC to place "moles" at Washington Mutual for the purpose of obtaining confidential Washington Mutual information, which JPMC used "to bargain

and work with federal regulators for the seizure and sale of Washington Mutual's assets," *see* Texas Action Complaint at ¶ 32, including JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen, and Bill Murray, *see id.* at ¶ 38.

10. All documents concerning JPMC's interest in any potential Transaction and any attempt by JPMC to engage in any potential Transaction, including but not limited to any actual, potential, or contemplated bid or offer by JPMC to merge with, invest in, or purchase Washington Mutual, including but not limited to (a) Washington Mutual's rejection of JPMC's offer to merge with, invest in, or acquire Washington Mutual in or about April 2008, (b) capital contributions or investments received by JPMC in connection with any potential Transaction in or about September 2008, and/or (c) any agreement or arrangement between JPMC and any Government Unit, including but not limited to the FDIC, OTS, OCC, Federal Reserve, SEC and/or the U.S. Department of Treasury, concerning any potential transaction in which JPMC might or did acquire WMB, or any stake or portion of WMB.

11. All documents concerning the potential for WMB to be seized by OTS and the decision to seize WMB, as well as the potential for the FDIC to be appointed receiver of WMB and the decision to place WMB into receiver ship with the FDIC, including all documents concerning any communication from FDIC officials to JPMC in early September 2008, to inform JPMC in words or substance that "the FDIC was

carefully monitoring [WMB] and that a seizure of its assets was likely” and that the FDIC “would want to immediately auction off [WMB’s] assets.” *See* Heidi N. Moore, *Deal Journal*, Wall St. J., Sept. 30, 2008, at C7.

12. All documents concerning the FDIC’s consideration of and decision to “modify the standard indemnification to include a limited indemnity in favor of JPMorgan Chase in an amount not to exceed \$500 million for any damages JPMorgan Chase may sustain as a result of litigation brought by WMI against JPMorgan Chase for violation of the agreement between WMI and JPMorgan Chase dated march 11, 2008,” including all documents concerning JPMC’s request for such an indemnification provision. *See* 9/24/08 Memorandum from James Wigand and Herbert held to FDIC Board of Directors and FDIC Board of Directors Resolution Approving P&A Transaction.

13. All documents concerning OTS’s determination that “adverse publicity” caused WMB to “suffer[] significant cash outflows.” *See* OTS Order 2008-36, dated September 25, 2008.

14. All documents produced by you to any governmental entity (including but not limited to Congress, the SEC, the DOJ, or the New York Attorney General’s office), concerning Washington Mutual.





**PROOF OF SERVICE**

<b>SERVED</b>	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2007, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure:

**(c) Protecting a Person Subject to a Subpoena.**

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development,

or commercial information;

(ii) disclosing an unretained expert's opinion or information that does

not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications,

or

tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.**

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

**EXHIBIT A**

**FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

**SEC**

The Debtors request that the SEC produce the following documents in its possession, custody or control:

1. All documents concerning, or communications with, Washington Mutual with respect to any entity's efforts to acquire all or part of Washington Mutual, and/or any of its substantial assets.

2. All documents concerning communications with or among JPMC, the FDIC, the media, ratings agencies, investors, and/or any third party concerning Washington Mutual.

3. All documents concerning any meetings and/or communications between Washington Mutual and any Government Unit, including the FDIC, OTS, OCC, the U.S. Department of the Treasury, Federal Reserve and the SEC, including (a) any meetings between OTS and WMI on or about April 5, 2008, (b) any meetings between Washington Mutual, OTS, and the FDIC on or about July 31, 2008, and/or (c) any communications with or among U.S. Treasury Secretary Hank Paulson and WMI Chairman and CEO Kerry Killinger and/or JPMC President and CEO Jamie Dimon regarding Washington Mutual.

4. All documents related to any investigation you have conducted regarding JPMC's acquisition of WMB or JPMC's documents or communications about WMI and WMB.

5. All documents produced by you to any governmental entity (including but not limited to Congress, the SEC, the DOJ, or the New York Attorney General's office), concerning JPMC's acquisition of WMB or Washington Mutual.

# **EXHIBIT C**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
WASHINGTON MUTUAL, INC.,	.	Case No. 08-12229 (MFW)
<i>et al.</i> ,	.	(Jointly Administered)
	.	
	.	January 28, 2010
	.	4:00 p.m.
Debtors.	.	(Wilmington)
	.	
.....		
JPMORGAN CHASE BANK,	.	
NATIONAL ASSOCIATION,	.	
	.	
Plaintiff,	.	
	.	
v.	.	Adv.Proc.No. 09-50551 (MFW)
	.	
WASHINGTON MUTUAL, INC. AND	.	
WMI INVESTMENT CORP.,	.	
	.	
Defendant for all claims	.	
	.	
-and-	.	
	.	
FEDERAL DEPOSIT INSURANCE	.	
CORPORATION,	.	
Additional Defendant	.	
for Interpleader claim	.	
	.	
.....		
WASHINGTON MUTUAL, INC. AND	.	
WMI INVESTMENT CORP.,	.	
	.	
Plaintiffs,	.	
	.	
v.	.	Adv.Proc.No. 09-50934 (MFW)
	.	
JPMORGAN CHASE BANK,	.	
NATIONAL ASSOCIATION,	.	
	.	
Defendant.	.	
	.	
.....		

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:

Bill Kosturos, Esq.  
Jonathan Goulding, Esq.  
John Maciel, Esq.  
Alvarez & Marsal, Inc.

Brian S. Rosen, Esq.  
Kelly DiBlasi, Esq.  
Matthew L. Curro, Esq.  
Weil, Gotshal & Manges, LLP

Erica P. Taggart, Esq.  
Peter E. Calamari, Esq.  
David Elsberg, Esq.  
Benjamin I. Finestone, Esq.  
Quinn, Emanuel, Urquhart, Oliver  
& Hedges, LLP

Bradford J. Sandler, Esq.  
Jennifer R. Hoover, Esq.  
Benesch

Neil R. Lapinski, Esq.  
Andrew G. Mirisis, Esq.  
Rafael X. Zahralddin, Esq.  
Elliott Greenleaf

Mark D. Collins, Esq.  
Richards, Layton & Finger, P.A.

For Centerbridge,  
*et al.*:

Michael B. de Leeuw, Esq.  
Carl I. Stapen, Esq.  
Fried, Frank, Harris, Shriver  
& Jacobson, LLP

For the Equity  
Committee:

Gregory A. Cross, Esq.  
Jorian L. Rose, Esq.  
Venable, LLP

For JPMorgan Chase: Stacey R. Friedman, Esq.  
Joshua J. Fritsch, Esq.  
Bruce E. Clark, Esq.  
Sullivan & Cromwell, LLP

Adam G. Landis, Esq.  
Landis, Rath & Cobb, LLP

For the Committee: David B. Stratton, Esq.  
Pepper Hamilton, LLP

Robert A. Johnson, Esq.  
Fred S. Hodara, Esq.  
Akin, Gump, Strauss, Hauer &  
Feld, LLP

Paul M. O'Connor, III, Esq.  
Kasowitz, Benson, Torres  
& Friedman, LLP

Philip J. Nichols, Esq.  
Sara Lewis, Esq.  
White & Case, LLP

(No Client Listed): Andrew J. Mytelka, Esq.  
James M. Roquemore, Esq.  
Greer, Herz & Adams, LLP

For the U.S. Securities  
& Exchange Commission: Kevin Solonsky, Esq.  
U.S. Securities & Exchange Commission

For the Bank  
Bondholders: Philip D. Anker, Esq.  
Wilmer Hale

For Dow Jones: Peg Brickley, Esq.  
Dow Jones

For BlackHorse Capital: Ian Connor Bifferato, Esq.  
Bifferato, LLC

David Heroy, Esq.  
Baker & McKenzie



For PriceWaterhouse  
Coopers & Wells Fargo: Donna L. Culver, Esq.  
Morris, Nichols, Arsht & Tunnell, LLP

Alexander B. Lees, Esq.  
Wachtell, Lipton, Rosen & Katz

Walter H. Curchack, Esq.  
Loeb & Loeb, LLP

For Standard & Poors: Curtis Miller, Esq.  
Morris, Nichols, Arsht & Tunnell, LLP

For the WMB Noteholder  
Group: R. Stephen McNeill, Esq.  
Potter, Anderson & Corroon, LLP

For Toronto-Dominion  
Bank & TD Bank, N.A.: Richard W. Riley, Esq.  
Duane Morris, LLP

For the Noteholders: Timothy P. Cairns, Esq.  
Pachulski, Stang, Ziehl & Jones, LLP

For the US Trustee: Joseph J. McMahon, Jr., Esq.  
US Department of Justice

For the Law Debenture: Daniel A. Lowenthal, Esq.  
Patterson, Belknap, Webb & Tyler, LLP

For the FDIC(Receiver): M. Blake Cleary, Esq.  
Young, Conaway, Stargatt  
& Taylor, LLP

John J. Clarke, Jr., Esq.  
DLA Piper

VIA TELEPHONE:

For Federal HomeLoan  
Bank of San Francisco: Duane M. Geck, Esq.  
Severson & Werson

Audio Operator:

Brandon McCarthy

Transcriptionist:

Jennifer Ryan Enslen  
43 Bay Boulevard  
Newark, De 19702  
(302) 836-1905

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1 business tort theory. Despite the arguments that the Debtor  
2 could get that information by other means. I felt the 2004  
3 did allow the Debtor to conduct that discovery. But quite  
4 frankly, I think issuing subpoenas against dozens of third  
5 parties just goes too far. I don't think that's an  
6 appropriate use of Rule 2004. I think the Debtor has a dual  
7 burden in using 2004. First that it's absolutely necessary  
8 that we do an investigation, that we are unable, at this  
9 point, to determine we have a claim, that under Rule 11 we  
10 can file against JPMC. Now the Debtor has done extensive  
11 discovery and gotten extensive numbers of documents from  
12 JPMC. I'm not hearing that the Debtor does not believe it  
13 has a claim against JPMC or cannot determine that it has a  
14 claim against JPMC at this point. But the second prong is  
15 the Debtor has to prove that it is absolutely necessary to  
16 use Rule 2004 because the Debtor cannot obtain these  
17 documents any other way, and I'm not convinced at this point  
18 that that's correct. The Debtor already has obtained some  
19 voluntarily, the Debtor has obtained extensive discovery from  
20 JPMC. What I'm hearing with respect to the FDIC specifically  
21 is that really, looking at the discovery request and  
22 arguments of counsel, it's getting awfully close to claims  
23 that they may have against the FDIC itself. And I think that  
24 fact leads me to believe that specifically asked of them,  
25 this is really trying an end run against, around the rules

# **EXHIBIT D**

SUSMAN GODFREY  
1201 Third Avenue, Suite 3800  
Seattle, Washington 98101  
Telephone: (212) 336-8330  
Facsimile: (212) 336-8340  
Edgar Sargent

*Proposed Special Counsel to the Official Committee of  
Unsecured Creditors of Old Carco LLC, 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 Folse. 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

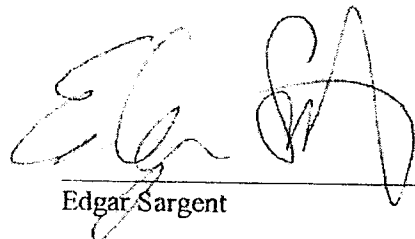
work product and result in waiver of the work product privilege. We were told that if the Equity Committee wanted to determine if pre-seizure WMI and WMB documents in the Debtors' possession were relevant to claims in dispute between the Debtors and JPMC, the Committee would have to serve formal document 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

# **EXHIBIT E**

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

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

**ORDER PURSUANT TO BANKRUPTCY RULE 2004 AND LOCAL BANKRUPTCY  
RULE 2004-1 DIRECTING THE EXAMINATION OF THIRD PARTIES**

Upon the motion (the “Motion”) of the Official Committee of Equity Security Holders, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure and Local Rule 2004-1 of the United States Bankruptcy Court for the District of Delaware, for the entry of an order directing discovery from and the examination of Goldman Sachs, Banco Santander, Office of Thrift Supervision, the Securities and Exchange Commission, the Federal Reserve, Henry Paulson, the Department of Treasury, Standard & Poor’s, and Moody’s, Federal Deposit Insurance Corporation – Corporate, and Federal Deposit Insurance Corporation -- Receiver; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B); and upon consideration of the Motion; and due and proper notice of the Motion having been given, it is hereby

ORDERED that the Motion is granted; and it is

ORDERED that the parties shall produce documents on or before the date that is fifteen (15) days after entry of this Order responsive to the discovery requests set forth in Exhibit C attached to this Motion, at the offices specified in the subpoena; and it is

---

<sup>1</sup> 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 the Equity Committee is authorized to issue deposition subpoenas to Goldman Sachs, Banco Santander, Office of Thrift Supervision, the Securities and Exchange Commission, the Federal Reserve, Henry Paulson, the Department of Treasury, Standard & Poor's, and Moody's, Federal Deposit Insurance Corporation – Corporate, and Federal Deposit Insurance Corporation -- Receiver pursuant to Federal Rule of Civil Procedure 30(b)(6) concerning the documents produced pursuant to this Order and the subject matter described in the requests attached as Exhibit C to the Motion, as well as subpoenas for specifically identified persons believed by the Equity Committee to be knowledgeable about those documents and subjects; and it is

ORDERED that the Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

DATED: Wilmington, Delaware

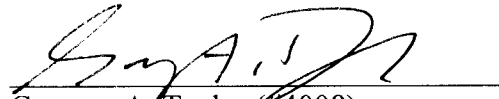
\_\_\_\_\_, 2010

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Honorable Mary F. Walrath  
United States Bankruptcy Judge

**CERTIFICATE OF SERVICE**

I, Gregory A. Taylor, hereby certify that on May 28, 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)

**Axiom Corporation**  
CB Blackard III  
301 E Dave Ward Dr  
PO Box 2000  
Conway, AR 72033-2000

**Akin Gump Strauss Hauer & Feld LLP**  
Fred S Hodara  
One Bryant Park  
New York, NY 10036

**Akin Gump Strauss Hauer & Feld LLP**  
Scott L Alberino  
1333 New Hampshire Ave NW  
Washington, DC 20036

**Akin Gump Strauss Hauer & Feld LLP**  
Peter J Gurfein  
2029 Century Park E Ste 2400  
Los Angeles, CA 90067-3012

**Akin Gump Strauss Hauer & Feld LLP**  
David P Simonds  
2029 Century Park E Ste 2400  
Los Angeles, CA 90067-3012

**Alston & Bird LLP**  
J William Boone  
1201 W Peachtree St  
Atlanta, GA 30309-3424

**Angelo Gordon & Co**  
Edward W Kressler  
245 Park Ave 26th Fl  
New York, NY 10167

**Arapahoe County Attorneys Office**  
George Rosenberg  
5334 S Prince St  
Littleton, CO 80166

**Archer & Greiner PC**  
Charles J Brown III  
300 Delaware Ave Ste 1370  
Wilmington, DE 19801

**Arent Fox LLP**  
Andrew Silfen  
1675 Broadway  
New York, NY 10019

**Arent Fox LLP**  
Jeffrey N Rothleder  
1050 Connecticut Ave NW  
Washington, DC 20036

**Arnall Golden Gregory LLP**  
Darryl S Laddin  
171 17th St NW Ste 2100  
Atlanta, GA 30363-1031

**Arnall Golden Gregory LLP**  
Michael F Holbein  
171 17th St NW Ste 2100  
Atlanta, GA 30363-1031

**Severson & Werson, PC**  
Duane M. Geck  
One Embarcadero Center, 26<sup>th</sup> Floor  
San Francisco, CA 94111

**Michael P. Morton, PA**  
Michael P. Morton  
1203 North Orange Street  
Wilmington, DE 19801

**Rosenthal Monhait & Goddess, PA**  
Carmella Keener  
919 N. Market Street, Suite 1401  
P.O. Box 1070  
Wilmington, DE 19899-1070

**Bartlett Hackett Feinberg PC**  
Frank F McGinn  
155 Federal St 9th Fl  
Boston, MA 02110

**Fox Roghtschild**  
Jeffrey M Schlerf  
919 N. Market Street  
Suite 1300  
Wilmington, DE 19801

**Bernstein Litowitz Berger & Grossmann LLP**  
Chad Johnson  
1285 Avenue of the Americas 38th Fl  
New York, NY 10019

**Bernstein Litowitz Berger & Grossmann LLP**  
Hannah Ross  
1285 Avenue of the Americas 38th Fl  
New York, NY 10019

**Bernstein Litowitz Berger & Grossmann LLP**  
Jerald Bien Willner  
1285 Avenue of the Americas 38th Fl  
New York, NY 10019

**Bifferato LLC**  
Ian Connor Bifferato  
800 N King St Plaza Level  
Wilmington, DE 19801

**Bifferato LLC**  
Kevin G Collins  
800 N King St Plaza Level  
Wilmington, DE 19801

**Blank Rome LLP**  
Michael DeBaecke  
1201 Market St Ste 800  
Wilmington, DE 19801

**Buchalter Nemer PC**  
Shawn M Christianson  
333 Market St 25th Fl  
San Francisco, CA 94105-2126

**Bronwen Price**  
Gail B Price  
2600 Mission St Ste 206  
San Marion, CA 91108

**Brown & Connery LLP**  
Donald K Ludman  
6 N Broad St Ste 100  
Woodbury, NJ 08096



**Centerbridge Capital Partners LP**

Vivek Melwani  
375 Park Ave 12th Fl  
New York, NY 10152-0002

**California Dept of Toxic Substances**

James Potter  
Deputy Attorney General  
300 South Spring Street, Ste 1702  
Los Angeles, CA 90013

**Capehart & Scatchard PA**

William G Wright  
8000 Midlantic Dr Ste 300S  
Mt Laurel, NJ 08054

**Connolly Bove Lodge & Hutz LLP**

Jeffrey C Wisler  
1007 N Orange St  
PO Box 2207  
Wilmington, DE 19899

**City and County of Denver**

Eugene J Kottenstette  
Municipal Operations  
201 W Colfax Ave Dept 1207  
Denver, CO 80202-5332

**City of Fort Worth**

Christopher B Mosley  
1000 Throckmorton St  
Fort Worth, TX 76102

**Cox Smith Matthew Inc**

Patrick L Huffstickler  
112 E Pecan Ste 1800  
San Antonio, TX 78205

**Connolly Bove Lodge & Hutz LLP**

Marc J Phillips  
1007 N Orange St  
PO Box 2207  
Wilmington, DE 19899

**County Attorneys Office**

Erica S Zaron Asst County Attorney  
2810 Stephen P Clark Center  
111 NW First St  
Miami, FL 33128-1993

**David D Lennon**

Asst Attorney General  
Revenue Section  
PO Box 629  
Raleigh, NC 27602-0629

**Cross & Simon LLC**

Christopher P Simon  
913 N Market St 11th Fl  
Wilmington, DE 19801

**Curtis Mallet Prevost Colt & Mosle LLP**

Steven J Reisman  
101 Park Ave  
New York, NY 10178-0061

**Dexter D Joyner**

Attorney for Pasadena ISD & Pearland ISD  
4701 Preston Ave  
Pasadena, TX 77505

**Dewey & LeBoeuf LLP**

Peter A Ivanick  
1301 Avenue of the Americas  
New York, NY 10019

**Dewey & LeBoeuf LLP**

Andrew Z Lebowhl  
1301 Avenue of the Americas  
New York, NY 10019

**Eckert Seamans Cherin & Mellot LLC**

Ronald S Gellert  
300 Delaware Ave Ste 1210  
Wilmington, DE 19801

**DLA Piper LLP**

Thomas R Califano  
1251 Avenue of the Americas  
New York, NY 10020-1104

**DLA Piper LLP**

Jeremy R Johnson  
1251 Avenue of the Americas  
New York, NY 10020-1104

**Electronic Data Systems LLC**

Ayala A Hassell  
5400 Legacy Dr  
MS H3 3A 05  
Plano, TX 75024

**Edwards Angell Palmer & Dodge LLP**

Stuart M Brown  
919 N Market St 15th Fl  
Wilmington, DE 19801

**Edwards Angell Palmer & Dodge LLP**

Craig R Martin  
919 N Market St 15th Fl  
Wilmington, DE 19801

**Entwistle & Cappucci LLP**

Joshua K Porter  
280 Park Ave 26th Fl  
New York, NY 10017

**Entwistle & Cappucci LLP**

Andrew J Entwistle  
280 Park Ave 26th Fl  
New York, NY 10017

**Entwistle & Cappucci LLP**

Johnston de F Whitman Jr  
280 Park Ave 26th Fl  
New York, NY 10017

**Fox Rothschild LLP**

Jeffrey M Schlerf  
919 N Market St  
Citizens Bank Center Ste 1600  
Wilmington, DE 19801

**First Pacific Bank of California**

Jame Burgess  
9333 Genesee Ave Ste 300  
San Diego, CA 92121

**Fox Hefter Swibel Levin & Carroll LLP**

Margaret Peg M Anderson  
200 W Madison St Ste 3000  
Chicago, IL 60606

**Freshfields Bruckhaus Deringer US LLP**

Harvey Dychiao  
520 Madison Ave  
New York, NY 10022

**Freshfields Bruckhaus Deringer LLP**

Will Higgs  
65 Fleet St  
London, EC4Y 1HS UK

**Fried Frank Harris Shriver & Jacobson LLP**

Matthew M Roose  
One New York Plaza  
New York, NY 10004-1980

**Friedlander Misler**

Robert E Greenberg  
1101 17th St NW Ste 700  
Washington, DC 20036-4704

**Fried Frank Harris Shriver & Jacobson LLP**

Brian D Pfeiffer  
One New York Plaza  
New York, NY 10004-1980

**Goulston & Storrs PC**

Christine D Lynch  
400 Atlantic Ave  
Boston, MA 02110-333

**Greer Herz & Adams LLP**

Frederick Black  
One Moody Plz 18th Fl  
Galveston, TX 77550

**Gay McCall Isaacks Gordon & Roberts**

David McCall  
777 E 15th St  
Plano, TX 75074

**Gulf Group Holdings Acquisitions &**

**Applications**  
Beatriz Agramonte  
18305 Biscayne Blvd Ste 400  
Aventura, FL 33160

**Hagens Berman Sobol Shapiro LLP**

Andrew M Volk  
1301 Fifth Ave Ste 2900  
Seattle, WA 98101

**Greer Herz & Adams LLP**

Tara B Annweiler  
One Moody Plz 18th Fl  
Galveston, TX 77550

**Hewlett Packard Company**

Ken Higman  
2125 E Katella Ave Ste 400  
Anaheim, CA 92806

**Hennigan Bennet Dorman LLP**

Bennett J Murphy  
865 S Figueroa St Ste 2900  
Los Angeles, CA 90017

**Hennigan Bennet Dorman LLP**

Michael C Schneidereit  
865 S Figueroa St Ste 2900  
Los Angeles, CA 90017

**IBM Credit LLC**

Bill Dimos  
North Castle Dr  
MD 320  
Armonk, NY 10504

**Hodges and Associates**

A Clifton Hodges  
4 E Holly St Ste 202  
Pasadena, CA 91103-3900

**IBM Corporation**

Vicky Namken  
13800 Diplomat Dr  
Dallas, TX 75234

**Kasowitz Benson Torres & Friedman**

Paul M Oconnor III  
1633 Broadway  
New York, NY 10019

**Johnson Pope Bokor Ruppel & Burns LLP**

Angelina E Lim  
PO Box 1368  
Clearwater, FL 33757

**Kasowitz Benson Torres & Friedman**

David S Rosner  
1633 Broadway  
New York, NY 10019

**Keller Rohrback LLP**

Derek W Loeser  
Lynn L. Sarko  
Karin B. Swope  
1201 Third Ave Ste 3200  
Seattle, WA 98101

**Kasowitz Benson Torres & Friedman**

Trevor J Welch  
1633 Broadway  
New York, NY 10019

**Kasowitz Benson Torres & Friedman**

Daniel A Fliman  
1633 Broadway  
New York, NY 10019

**Landis Rath & Cobb LLP**

Adam G Landis  
919 N. Market St Ste 1800  
Wilmington, DE 19801-3033

**Kelley Drye & Warren LLP**

Howard S Steel  
101 Park Ave  
New York, NY 10178

**Kelley Drye & Warren LLP**

Eric R Wilson  
101 Park Ave  
New York, NY 10178

**Lichtsinn & Haensel**

Kathleen R. Dahlgren  
111 E Wisconsin Ave Ste 1800  
Milwaukee, WI 53202

**Landis Rath & Cobb LLP**

Matthew B McGuire  
919 Market St Ste 600  
Wilmington, DE 19801

**Law Offices of Lippe & Associates**

Emil Lippe Jr  
600 N Pearl St Ste S2460  
Plaza of the Americas South Tower  
Dallas, TX 75201

**Loeb & Loeb LLP**

Vadim J Rubinstein  
345 Park Ave  
New York, NY 10154

**Linebarger Goggan Blair & Sampson LLP**

Elizabeth Weller  
2323 Bryan St Ste 1600  
Dallas, TX 75201

**Lichtsinn & Haensel**

Michael J Bennett  
111 E Wisconsin Ave Ste 1800  
Milwaukee, WI 53202

**Lowenstein Sandler PC**

Ira M Levee  
65 Livingston Ave  
Roseland, NJ 07068

**Loeb & Loeb LLP**

Daniel B Besikof  
345 Park Ave  
New York, NY 10154

**Loeb & Loeb LLP**

Walter H Curchack  
345 Park Ave  
New York, NY 10154

**Lowenstein Sandler PC**

Joseph M Yar  
65 Livingston Ave  
Roseland, NJ 07068

**Lowenstein Sandler PC**

Vincent A Dagostino  
65 Livingston Ave  
Roseland, NJ 07068

**Lowenstein Sandler PC**

Michael S Etkin  
65 Livingston Ave  
Roseland, NJ 07068

**McCreary Veselka Bragg & Allen**

Michael Reed  
PO Box 1269  
Round Rock, TX 78680

**Manatee County Tax Collector**

Ken Burton  
Michelle Leeson  
PO Box 25300  
Bradenton, FL 34206-5300

**Lowenstein Sandler PC**

Eric H Horn  
65 Livingston Ave  
Roseland, NJ 07068

**McGuire Woods LLP**

Sally E Edison  
625 Liberty Ave 23rd Fl  
Pittsburgh, PA 15222

**McDermott Will & Emery LLP**

Gary O Ravert  
340 Madison Ave  
New York, NY 10173-1922

**Manatee County Tax Collector**

Ken Burton  
Michelle Leeson  
819 US 301 Blvd W  
Bradenton, FL 34205

**Morris James LLP**

Brett D Fallon  
500 Delaware Ave Ste 1500  
PO Box 2306  
Wilmington, DE 19899-2306

**McGuire Woods LLP**

Nicholas E Meriwether  
625 Liberty Ave 23rd Fl  
Pittsburgh, PA 15222

**McDermott Will & Emery LLP**

Nava Hazan  
340 Madison Ave  
New York, NY 10173-1922

**O Melveny & Myers LLP**

Michael J Sage  
Time Square Tower  
7 Times Square  
New York, NY 10036

**Morrison & Foerster LLP**

Brett H Miller  
1290 Avenue of the Americas  
New York, NY 10104

**Miami Dade Bankruptcy Unit**

Alberto Burnstein  
140 W Flagler St Ste 1403  
Miami, FL 33130-1575

**Oregon Dept of Justice**

Carolyn G Wade  
Senior Asst Attorney General  
1162 Court St NE  
Salem, OR 97301-4096

**O Melveny & Myers LLP**

Jason Alderson  
Time Square Tower  
7 Times Square  
New York, NY 10036

**Newstart Factors Inc**

Gregory Vadasdi  
2 Stamford Plaza Ste 1501  
281 Tresser Blvd  
Stamford, CT 06901

**Pension Benefit Guaranty Corp**

Joel W Ruderman  
Office of the Chief Counsel  
1200 K St NW  
Washington, DC 20005-4026

**Patterson Belknap Webb & Tyler**

Daniel A Lowenthal  
1133 Avenue of the Americas  
New York, NY 10036-6710

**Office of Thrift Supervision**

Christopher A Sterbenz  
Trial Counsel Litigation Div  
1700 G St NW  
Washington, DC 20552

**Pepper Hamilton LLP**

David M Fournier  
Hercules Plaza Ste 5100  
1313 N Market St  
Wilmington, DE 19801

**Pepper Hamilton LLP**

David B Stratton  
Hercules Plaza Ste 5100  
1313 N Market St  
Wilmington, DE 19801

**Patterson Belknap Webb & Tyler**

Brian P Guiney  
1133 Avenue of the Americas  
New York, NY 10036-6710

**Perkins Coie LLP**

Ronald L Berenstein  
1201 Third Ave 48th Fl  
Seattle, WA 98101

**Perdue Brandon Fielder Collins & Mott LLP**

Elizabeth Banda  
PO Box 13430  
Arlington, TX 76094-0430

**Pepper Hamilton LLP**

Evelyn J Meltzer  
Hercules Plaza Ste 5100  
1313 N Market St  
Wilmington, DE 19801

**Pillsbury Winthrop Shaw Pittman LLP**

Rick B Antonoff  
1540 Broadway  
New York, NY 10036-4039

**Perkins Coie LLP**

Brian A Jennings  
1201 Third Ave 48th Fl  
Seattle, WA 98101

**Perkins Coie LLP**

Alan D Smith  
1201 Third Ave 48th Fl  
Seattle, WA 98101

**Platzer Sergold Karlin Levine Goldberg**

**Jaslow LLP**

Sydney G Platzer  
1065 Avenue of the Americas 18th Fl  
New York, NY 10018

**Pillsbury Winthrop Shaw Pittman LLP**

Erica Carrig  
1540 Broadway  
New York, NY 10036-4039

**Phillips Goldman & Spence PA**

Stephen W Spence  
1200 N Broom St  
Wilmington, DE 19806

**Reed Smith LLP**

James C McCarroll  
599 Lexington Ave 30th Fl  
New York, NY 10022

**Procopio Cory Hargreaves & Savitch LLP**

Jeffrey Isaacs  
530 B St Ste 2100  
San Diego, CA 92101

**Plains Capital Bank Building**

Michael S Mitchell  
18111 N Preston Rd Ste 810  
Dallas, TX 75252

**Riddell Williams PS**

Joseph E Shickich Jr  
1001 4th Ave Ste 4500  
Seattle, WA 98154-1192

**Reed Smith LLP**

Kurt F Gwynne  
1201 Market St Ste 1500  
Wilmington, DE 19801

**Reed Smith LLP**

J Cory Falgowski  
1201 Market St Ste 1500  
Wilmington, DE 19801

**San Diego Treasurer Tax Collector of  
California**

Bankruptcy Desk  
Dan McAllister  
1600 Pacific Hwy Rm 162  
San Diego, CA 92101

**Robert M Menar**

700 S Lake Ave Ste 325  
Pasadena, CA 91106

**Reed Smith LLP**

J Andrew Rahl  
599 Lexington Ave  
New York, NY 10022

**Satterlee Stephens Burke & Burke LLP**

Pamela A Bosswick  
230 Park Ave  
New York, NY 10169

**San Joaquin County Treasurer & Tax  
Collector**

Christine M Babb  
500 E Mail St 1st Fl  
PO Box 2169  
Stockton, CA 95201

**Satterlee Stephens Burke & Burke LLP**

Christopher R Belmonte  
230 Park Ave  
New York, NY 10169

**Singer & Levick PC**

Michelle E Shiro  
16200 Addison Rd Ste 140  
Addison, TX 75001

**Saul Ewing LLP**

Mark Minuti  
222 Delaware Ave Ste 1200  
PO Box 1266  
Wilmington, DE 19899

**Shipman & Goodwin LLP**

Julie A Manning  
One Constitution Plaza  
Hartford, CT 06103-1919

**Sullivan & Cromwell LLP**

Hydee R Feldstein  
1888 Century Park E  
Los Angeles, CA 90067-1725

**State of Washington Dept of Revenue**

Zachary Mosner Asst Attorney General  
800 Fifth Ave Ste 2000  
Seattle, WA 98104-3188

**Steckbauer Weinhart Jaffe LLP**

Barry S Glaser  
333 S Hope St Ste 3600  
Los Angeles, CA 90071

**Tannenbaum Helpers Syracuse & Hirschtritt**

Roy H Carlin  
900 Third Ave 13th Fl  
New York, NY 10022

**Sullivan & Cromwell LLP**

Robert R Urband  
1888 Century Park E  
Los Angeles, CA 90067-1725

**Sullivan & Cromwell LLP**

Robinson B Lacy  
125 Broad St  
New York, NY 10004-2498

**Treasurer Tax Collector**

Dan McAllister Bankruptcy Desk  
1600 Pacific Hwy Room 162  
San Diego, CA 92101

**Tax Collector for Polk County**

Office of Joe G Tedder  
Bonnie Holly Delinquency & Enforcement  
PO Box 2016  
Bartow, FL 33831-2016

**Tennessee Dept of Revenue**

TN Attorney Generals Office Bankruptcy Div  
PO Box 20207  
Nashville, TN 37202-0207

**US Department of Justice**

Jan M Geht Trial Attorney Tax Division  
PO Box 227  
Washington, DC 20044

**Tulare County Tax Collector**

Melissa Quinn  
221 S Mooney Blvd Rm 104 E  
Visalia, CA 93291-4593

**Unisys Corporation**

Janet Fitzpatrick Legal Asst  
Unisys Way  
PO Box 500 MS E8 108  
Blue Bell, PA 19424

**Weiss Serota Helfman**

Douglas R Gonzales  
200 E Broward Blvd Ste 1900  
Fort Lauderdale, FL 33301

**Vedder Price PC**

Douglas J Lipke  
222 N LaSalle St Ste 2600  
Chicago, IL 60601

**Walter R Holly Jr**

10853 Garland Ave  
Culver City, CA 90232

**White & Case LLP**

Thomas E Lauria  
Wachovia Financial Center  
200 S Biscayne Blvd Ste 4900  
Miami, FL 33131

**Werb & Sullivan**

Duane D Werb  
300 Delaware Ave Ste 1300  
PO Box 25046  
Wilmington, DE 19899

**Werb & Sullivan**

Matthew P Austria  
300 Delaware Ave Ste 1300  
PO Box 25046  
Wilmington, DE 19899

**Willkie Farr & Gallagher LLP**

Shaunna D Jones  
787 Seventh Ave  
New York, NY 10019-6099

**Willkie Farr & Gallagher LLP**

Shelley Chapman  
787 Seventh Ave  
New York, NY 10019-6099

**Willkie Farr & Gallagher LLP**

Thomas H Golden  
787 Seventh Ave  
New York, NY 10019-6099

**Attorney Generals Office**

Joseph R Biden III  
Carvel State Office Bldg  
820 N French St 8th Fl  
Wilmington, DE 19801

**Young Conaway Stargatt & Taylor LLP**

Robert S Brady  
1000 West St 17th Fl  
Wilmington, DE 19801

**Young Conaway Stargatt & Taylor LLP**

M Blake Cleary  
1000 West St 17th Fl  
Wilmington, DE 19801

**Delaware Secretary of the State**

Division of Corporations  
PO Box 898  
Franchise Tax Division  
Dover, DE 19903

**Bank of New York Mellon**

Attn Gary S Bush  
Global Corporate Trust  
101 Barclay St  
New York, NY 10286

**Delaware Dept of Justice**

Attn Bankruptcy Dept  
Div of Securities  
820 N French St 5th Fl  
Wilmington, DE 19801

**Federal Deposit Insurance Corp**

Donald McKinley  
1601 Bryan St  
PAC 04024  
Dallas, TX 75201

**Delaware Secretary of the Treasury**

PO Box 7040  
Dover, DE 19903

**Department of Labor**

Division of Unemployment Ins  
4425 N Market St  
Wilmington, DE 19802

**Internal Revenue Service**

Centralized Insolvency Operation  
11601 Roosevelt Blvd  
Mail Drop N781  
Philadelphia, PA 10154

**Federal Deposit Insurance Corp**

Stephen J Pruss  
1601 Bryan St  
PAC 04024  
Dallas, TX 75201

**Internal Revenue Service**

Centralized Insolvency Operation  
PO Box 21126  
Philadelphia, PA 19114-0326

**Office of Thrift Supervision**

Darrell W Dochow  
Pacific Plaza  
2001 Junipero Serra Blvd Ste 650  
Daly City, CA 94014-1976

**Law Debenture Trust Company of New York**

Jame Heaney  
400 Madison Ave 4th Fl  
New York, NY 10017

**Office of the United States Trustee Delaware**

Joseph McMahon  
844 King St Ste 2207  
Lockbox 35  
Wilmington, DE 19899-0035

**Wilmington Trust Company**

Jame McGinley  
520 Madison Ave 33rd Fl  
New York, NY 10022

**Wells Fargo Bank NA**

Thomas M Korsman  
625 Marquette Ave  
Minneapolis, MN 55479

**Weil Gotshal & Manges LLP**

Michael F Walsh  
767 Fifth Ave  
New York, NY 10153

**Richards Layton & Finger PA**

Mark D Collins  
One Rodney Square  
920 N King St  
Wilmington, DE 19899

**Richards Layton & Finger PA**

Chun I Jang  
One Rodney Square  
920 N King St  
Wilmington, DE 19899

**Securities & Exchange Commission**

15th & Pennsylvania Ave NW  
Washington, DC 20020

**Securities & Exchange Commission**

100 F Street NE  
Washington, DC 20549

**Securities & Exchange Commission**

Daniel M Hawke  
The Mellon Independence Ctr  
701 Market St  
Philadelphia, PA 19106-1532

**Securities & Exchange Commission**

Allen Maiza  
Northeast Regional Office  
3 World Financial Center Rm 4300  
New York, NY 10281

**State of Delaware Division of Revenue**

Randy R Weller MS No 25  
820 N French St 8th Fl  
Wilmington, DE 19801-0820

**US Attorney General US Department of Justice**

Michael Mukasey  
950 Pennsylvania Ave NW  
Washington, DC 20530-0001

**US Attorneys Office**

Ellen W Slights  
1007 N Orange St Ste 700  
PO Box 2046  
Wilmington, DE 19899-2046

**Verizon Services Corp**

William M Vermette  
22001 Loudon County Parkway  
Room E1 3 113  
Ashburn, VA 20147

**Washington Mutual Claims Processing**

c o Kurtzman Carson Consultants  
2335 Alaska Ave  
El Segundo, CA 90245

**Weil Gotshal & Manges LLP**

Marcia L Goldstein  
767 Fifth Ave  
New York, NY 10153

**Weil Gotshal & Manges LLP**

Brian S Rosen  
767 Fifth Ave  
New York, NY 10153

**Quinn Emanuel Urquhart Oliver & Hedges**

Peter E. Calamari  
Michael B. Carlinsky  
51 Madison Avenue  
New York, NY 10010

**Quinn Emanuel Urquhart Oliver & Hedges**

Susheel Kirpalani  
David Elsberg  
51 Madison Avenue  
New York, NY 10010

**Elliott Greenleaf**

Neil R. Lapinski  
1105 North Market Street, Suite 1700  
Wilmington, DE 19801

**Wilmer Cutler Pickering Hale & Dorr**

Philip D. Anker  
399 Park Avenue  
New York, NY 10022

**Wilmer Cutler Pickering Hale & Dorr**

Russell J. Bruemmer  
Gianna Ravenscourt  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006

**Pachulski Stang Ziehl & Jones**

Timothy Cairns  
919 North Market Street, 17<sup>th</sup> Floor  
Wilmington, DE 19801

**Morris Nichols Arsht & Tunnell**

Donna L. Culver  
1201 N. Market Street  
P.O. Box 1347  
Wilmington, DE 19801

**Ulmer & Berne LLP**

Scott A. Meyers  
500 West Madison Street  
Suite 3600  
Chicago, IL 60661-4587

**Wilmer Cutler Pickering Hale & Dorr**

Nancy L. Manzer  
Lisa Ewart  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006

**Schindler Cohen & Hochman LLP**

Jonathan L. Hochman  
Daniel E. Shaw  
100 Wall Street, 15<sup>th</sup> Floor  
New York, NY 10005

**King & Spaulding LLP**

Arthur J. Steinberg  
1185 Avenue of the Americas  
New York, NY 10036-4003

**Brice Vander Linden & Wernick PA**

Hilary B. Bonial  
9441 LBJ Freeway, Suite 350  
Dallas, TX 75243

**John Malone**

1838 N. Valley Mills Drive  
Waco, TX 76710

**Priscilla Walker**

3604 Eastfield Road  
Carmel, CA 93929

**Rosenthal Monhait & Goddess PA**

Norman M. Monhait  
919 Market Street, Suite 1401  
P.O. Box 1070  
Wilmington, DE 19899

**Pillsbury Winthrop Shaw Pittman LLP**

Leo T. Crowley  
Margot P. Erlich  
1540 Broadway  
New York, NY 10036-4039

**Campbell & Levine LLC**

Bernard G. Conaway  
800 North Kind Street, Suite 300  
Wilmington, DE 19801

**Brown Rudnick LLP**

Jeremy B. Coffey  
One Financial Center  
Boston, MA 02111

**Brown Rudnick LLP**

Sigmund S. Wissner-Gross  
Seven Times Square  
New York, NY 10036

**Andrews Kurth LLP**

Paul Silverstein  
450 Lexington Avenue, 15<sup>th</sup> Floor  
New York, NY 10017