

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

In re

WASHINGTON MUTUAL, INC., et al.,¹

Debtors.

:
: Chapter 11
:
: Case No. 08-12229 (MFW)
:
: Jointly Administered
:
:

**OBJECTIONS OF THE OFFICE OF THRIFT SUPERVISION TO
THE REQUEST OF THE CONSORTIUM OF TRUST PREFERRED
SECURITY HOLDERS FOR PRODUCTION OF DOCUMENTS**

The Office of Thrift Supervision (“OTS” or “Agency”) submits the following objections to the Consortium of Trust Preferred Security Holders’ (“Consortium”) June 11, 2010 Request for Production of Documents (“Request”) addressed to OTS pursuant to Fed. R. Civ. P. 26 and 34, Fed. R. Bankr. P. 9014, 7026, and 7034, and the Local Rules of the U.S. Bankruptcy Court for the District of Delaware.

1. The Request is Improper Because OTS is Not a Party to Any Adversary Proceeding or Contested Matter Relating to This Bankruptcy Case and Involving the Consortium.

OTS objects to the Request and to each of its numbered document requests because OTS is not a party to any adversary proceeding or contested matter involving the Consortium and relating to this bankruptcy case.

2. The Request is Improper Because It Provides Only Four (4) Days for OTS to File Objections to It and Only Nineteen Days to Comply.

Fed. R. Civ. P. 34(b)(2)(A) provides thirty (30) days from service for a party served with a request for production of documents to respond in writing. The Request allows OTS only four

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



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(4) days to respond and is therefore improper. For this reason, and for the further reason that it only provides nineteen (19) days for OTS to comply, OTS objects to the Request and to each of its numbered document requests.

3. The Request Violates this Court's Instructions and Order Concerning Discovery of Third Parties Issued During the Hearing Held in This Case on June 3, 2010.

OTS objects to the Request and to each of its numbered document requests because during the June 3, 2010 hearing in this case, the Court stated:

[A]t this stage, I'm not inclined to allow discovery of the third parties other than FDIC and JPMorgan.

Tr. 6/3/10 Hearing at 94, lines 20-22. Moreover, at that hearing the Court directed that the claimants, respondents, the principal objecting parties, but excluding the third parties,² meet and confer regarding discovery and report back to the Court at the next omnibus hearing on June 17, 2010 concerning the results of their conference. The Court's clear direction was that there was to be no discovery of third parties initiated in the interim.

Because the Request violates the Court's direction and order, OTS objects to the Request and to each of its numbered document requests.

4. The Request is Improper in Light of the Court's Indication That It Might Be Open to Reconsideration of Its Decision Denying the Appointment of an Examiner, the U.S. Trustee's Support for the Appointment of an Examiner, and the Equity Committee's Subsequent Filing of a New Motion Seeking the Appointment of an Examiner.

During the June 3, 2010 hearing the Court indicated it might be open to a reconsideration of its prior Order denying the Equity Committee's³ motion for the appointment of an Examiner. Tr. 6/3/10 Hearing at 55, lines 4-6; at 63, lines 9-14. The U.S. Trustee stated its support for the appointment of an Examiner. Tr. 6/3/10 Hearing at 84, line 25 thru 86, line 21. And on June 8, 2010, the Equity Committee filed a new motion seeking the appointment of an Examiner

² See Tr. 6/3/10 Hearing at 121, line 25, thru 122, line 8.

³ The Equity Committee refers to the Committee of Equity Security Holders.

[Docket # 4644]. In light of these statements and actions relating to the June 3, 2010 hearing, as well as those noted above, the Request is improper. For this reason OTS objects to the Request and to each of its numbered document requests.

5. The Request is Improper Because It is Overly Broad, Unduly Burdensome and Expensive, and Unreasonable as to Time for Response.

Fed. R. Civ. P. 26(b)(2) protects a party such as OTS against requests for production of documents that are overly broad, unduly burdensome and expensive, and provide an unreasonably short time for compliance. OTS objects to the Request and to each of its numbered document requests because it is subject to each of these flaws. It seeks “[a]ny and all documents relating to the seizure and sale of the operations of Washington Mutual Bank in September 2008. . .” OTS has already produced to the Debtors the entire administrative record on which its Director’s decision to place Washington Mutual Bank in receivership was made. OTS has given its permission for the Debtors to share this information, and the other materials the Agency has produced, with the Equity Committee and the Creditors’ Committee, subject to their written commitments to be bound by the terms of the Court-approved Confidentiality Stipulation in this case. The Agency would do the same for the Consortium. Thus, there is no need for duplicitous requests that seek material OTS has already produced. The Request also seeks “[a]ny and all documents reflecting the assets of Washington Mutual Bank purportedly purchased by JPMC on September 25, 2008.” The Consortium knows that the FDIC, and not the OTS, determined what assets of Washington Mutual Bank would be sold from the receivership and to whom. To require OTS to search for “any and all documents” that reflect those assets is unreasonable, burdensome, and expensive. The Request would also burden the OTS greatly from the standpoint of resources needed to conduct the searches requested, the cost of conducting the

searches and making a resulting production, and doing so in nineteen (19) days from the date of the Request.

6. The Request is Improper to the Extent It Seeks the Production of Privileged Information.

OTS objects to the Request and to each of its numbered document requests to the extent it seeks the production of privileged information.

For all of the reasons stated above, OTS objects to the Request and to each of its numbered document requests.

Date: June 15, 2010

Respectfully submitted,

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