

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:	§	
	§	CASE NO. 08-12229 (MFW)
WASHINGTON MUTUAL, INC., <i>et al.</i> ,	§	
	§	CHAPTER 11
DEBTORS.	§	(Jointly Administered)
	§	
	§	Hearing Date: July 8, 2010 at 10 a.m. ET
	§	RE: D.I. No. 4739
	§	

**THE TEXAS GROUP’S RESPONSE AND OPPOSITION TO MOTION OF JPMORGAN CHASE BANK, N.A. FOR ENTRY OF A PROTECTIVE ORDER WITH RESPECT TO THE PLAN OBJECTORS’ REQUESTS FOR DISCOVERY**

American National Insurance Company, American National Property and Casualty Company, Farm Family Life Insurance Company, Farm Family Casualty Insurance Company, and National Western Life Insurance Company (collectively, the “Texas Group”), parties in interest, file this Response and Opposition to the Motion of JPMorgan Chase Bank, N.A. (“JPMC Bank”) for Entry of a Protective Order With Respect to Plan Objectors’ Requests For Discovery (“JPMC Bank’s Motion”), and respectfully submits the following:

**I.  
PRELIMINARY STATEMENT**

JPMC Bank asks the Court to “stop” the “ANICO Plaintiffs efforts to open a new Rule 2004 investigation.”<sup>1</sup> However, the Texas Group does not seek to open a new Rule 2004 investigation, nor has it ever stated that it intended to open a Rule 2004 investigation. There is already pending before this court a Motion for a Rule 2004 examination against JPMorgan Chase & Co. (“JPMC & Co.”) and JPMC Bank, filed by the Official Committee of Equity Security Holders (the “Equity Committee”) on May 25, 2010, which the Texas Group considers

<sup>1</sup> JPMC Bank’s Motion and Response, p. 13. JPMC Bank refers to the Texas Group as the “ANICO Plaintiffs.” The Texas Group will continue referring to themselves, as in all previous pleadings to this Court, as the “Texas Group.”



to be sufficient.<sup>2</sup> Moreover, the Texas Group does not seek any discovery directly from JPMC Bank. JPMC Bank's Motion therefore fails because it is founded upon a misunderstanding of the Texas Group's communications and intentions.<sup>3</sup>

However, JPMC Bank's Motion should be denied for the additional reason that it seeks to obscure the fact that JPMC & Co. has never responded to any formal discovery requests in these bankruptcy cases. By way of background, on May 1, 2009, the Debtors filed a motion for a Rule 2004 examination, seeking to investigate potential claims against JPMC Bank "based on the alleged misconduct that is the subject of [the Texas Action]."<sup>4</sup> The May 1, 2009 Rule 2004 Motion attached the Texas Group's state court complaint as Exhibit A, and extensively quoted the complaint in support of its motion.<sup>5</sup> On June 24, 2009, the Court granted the Debtors' Rule 2004 Motion, and ordered that an examination of JPMC Bank be conducted. *In re: Washington Mutual, Inc.*, 408 B.R. 45 (Bankr. D. Del. 2009). Notably, the Debtors did not ask for and the Court did not order an examination of JPMC & Co.

In response to the Debtors' document requests, JPMC Bank fired off a "blizzard of written objections,"<sup>6</sup> and ultimately made responses that were "woefully incomplete."<sup>7</sup> It is unclear whether the Debtors ever determined whether JPMC Bank was limiting its responses to documents in the possession, custody and control of JPMC Bank rather than JPMC & Co.<sup>8</sup> The

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<sup>2</sup> See Equity Committee's 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 (Docket No. 4301), filed May 25, 2010 ("EC Motion for Rule 2004 Examination of JPMC").

<sup>3</sup> Docket No. 4739

<sup>4</sup> See Motion for 2004 Examination of JPMorgan Chase Bank, N.A. (Docket No. 974) ("May 1, 2009 Rule 2004 Motion"), ¶1.

<sup>5</sup> *Id.*, Exhibit A.

<sup>6</sup> EC Motion for Rule 2004 Examination of JPMC, ¶3.

<sup>7</sup> *Id.*, ¶38.

<sup>8</sup> *Cf. Id.*, Exhibits G and H (Debtors' correspondence regarding JPMC Bank's incomplete Rule 2004 responses, which fails to discuss whether JPMC & Co. documents were produced) and Exhibit I (correspondence from JPMC Bank counsel regarding discovery, which refers only to JPMC Bank).

current EC Motion for a Rule 2004 Examination of JPMC rectifies the previous motion's shortcoming – it specifically requests an examination of JPMC & Co.

It is clear that JPMC & Co. considers itself separate from JPMC Bank. For example, in the Texas Litigation, JPMC & Co. submitted an affidavit of a Senior Vice President and Secretary of JPMC & Co. who averred that JPMC Bank “is a wholly separate entity from JPMC & Co. The Board of Directors of JPMC & Co. is separate from the Board of JPMC Bank and consists of fully independent directors and one inside director.”<sup>9</sup> Given other evidence of “discovery games” by JPMC Bank, it is entirely reasonable to inquire whether JPMC Bank may have obscured the limited scope of its discovery responses in order to prevent discovery of a greater amount of relevant material from its parent company.

The primary role that JPMC & Co. played in the claims asserted in the Texas Litigation, which the Debtors seek to release by way of its plan of reorganization (“Plan”) and the related global settlement, is evident from the Texas Group’s proposed Plaintiffs’ First Amended Complaint, attached to the Motion to Amend or Alter Judgment and Request for Leave to File Amended Complaint, which motions are pending.<sup>10</sup> For example:

- “JPMC & Co. created a project group from top executives from multiple business units within the company with the goal to exploit Washington Mutual’s financial difficulties in order to acquire its banking operations. This group was given the code name ‘Project West,’ which was known only to JPMC & Co. insiders and certain third parties such as rating agencies and regulators. . . .” (Amended Complaint, ¶20).
- “According to emails between JPMC & Co. executives, in March of 2008, JPMC & Co. was developing a plan to acquire WMB through government intervention, with stakeholders of WMB being stripped of their rights.” (Amended Complaint ¶23).

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<sup>9</sup> Affidavit of Anthony J. Horan, paragraph 2, attached as Exhibit A to Declaration of James Roquemore (the “Roquemore Decl.”).

<sup>10</sup> *American National, et al., v. JPMorgan Chase & Co*, No. 09-1743 (RMC) (D.D.C. May 10, 2010), Doc. 119-1, attached as Exhibit B to the Roquemore Decl.

- JPMC & Co. acquired confidential information of Washington Mutual for purposes of its unlawful scheme. (Amended Complaint ¶¶21, 36-39, 45-47, 51).
- JPMC & Co. obstructed potential Washington Mutual suitors. (Amended Complaint ¶¶29, 30).
- JPMC & Co. conducted sham negotiations with WMI. (Amended Complaint ¶¶46, 47, 51, 54).
- JPMC & Co. negotiated with federal regulators using illegally acquired Washington Mutual information (Amended Complaint ¶¶65).
- JPMC & Co. leaked confidential information to media in order to incite depositor withdrawals. (Amended Complaint ¶¶56-58).
- JPMC & Co.'s Powerpoint presentations and other internal documents show that it intended that WMB bondholders would lose their rights to cash flows from WMB assets as a result of JPMC & Co.'s scheme, and which otherwise show JPMC & Co.'s and JPMC Bank's culpability (Amended Complaint ¶¶20, 26, 28-34, 53-55).
- JPMC & Co. disregarded at least one confidentiality agreement made with the FDIC. (Amended Complaint ¶¶37-41).

Thus, when it became apparent to the Texas Group that the Debtors' proposed discovery protocol created an ambiguity as to whether JPMC & Co. would be subject to reasonable discovery,<sup>11</sup> the Texas Group wrote to the Debtors, and asked:

Is JPMorgan Chase & Co. a "Settling Party" upon whom "Permitted Discovery" may be made? The term "Settling Parties" is not defined in the Proposed Agreed Order. The Debtors' prior Rule 2004 examination was limited to an examination of JPMorgan Chase Bank, N.A., not JPMorgan Chase & Co. As you know, JPMC Bank interposed sweeping objections to all production requests by the Debtors. It is unclear whether JPMC & Co. ever meaningfully produced documents regarding its involvement in the business torts alleged in the Texas Litigation. If JPMC & Co. will not voluntarily agree to be a "Settling Party" subject to requirements to produce documents pursuant to the Agreed Order and Confidentiality Provisions, then a Rule 2004 examination should be conducted

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<sup>11</sup> The Settlement Agreement does not list JPMC & Co. as a party, either in its prefatory language or in its signature sections. See Settlement Agreement, pp. 1 and 75. JPMC Bank is a party, and is described as "JPMC" and, collectively with those of JPMC's affiliates that have filed proofs of claim against the Debtors and the Debtors' chapter 11 estates or that are Acquisition JPMC Entities, as defined below, the "JPMC Entities." *Id.* at p. 1. The Settlement Agreement was executed by a representative of JPMC Bank, but not JPMC & Co. *Id.* at p. 75. The Settlement Agreement does, however, seek to release the JPMC Entities' "parent entities." *Id.* at p. 51.

upon JPMC & Co., independent of this discovery protocol and confidentiality agreement.<sup>12</sup>

The Debtors subsequently failed to address this ambiguity in the discovery protocol, so the Texas Group sent an email to the Debtors on June 30, 2010, asking that the term “Settling Parties” be defined.<sup>13</sup> As the Texas Group explained, “It would be efficient to be clear as to whether JPMC & Co. is subject to the proposed Discovery Procedures Order. This is especially true given the uncertainty as to whether JPMC & Co. fully responded to the Debtors’ prior Rule 2004 discovery requests, which will presumably populate WMI’s Depository.”<sup>14</sup> To date, neither JPMC Bank nor JPMC & Co. has confirmed whether JPMC & Co. fully responded to formal discovery other than to state, “JPMorgan stands by its discovery responses.”<sup>15</sup>

## II. DISCUSSION

JPMC Bank has failed to meet its burden to establish good cause for a protective order with regard to the Texas Group.

The burden of proving that good cause exists for the entry of a protective order rests on the party seeking the order.

In the context of discovery, it is well-established that a party wishing to obtain an order of protection over discovery material must demonstrate that “good cause” exists for the order of protection. Good cause is established on a showing that disclosure will work a clearly defined and serious injury to the party seeking closure. The injury must be shown with specificity.

*In re Am. Business Financial Servs. Inc.*, No. 05-10203, 2008 WL 3906894, at \*3-4 (Bankr. D. Del. 2008) (Walrath, J.) (punctuation and citations omitted).

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<sup>12</sup> See Exhibit C to Roquemore Decl.

<sup>13</sup> See Email from James Roquemore to Brian Rosen, counsel to the Debtors, dated June 30, 2010, attached as Exhibit D to Roquemore Decl.

<sup>14</sup> *Id.*

<sup>15</sup> Statement of Stacey Friedman, counsel to JPMC and JPMC & Co., dated June 16, 2010 (paraphrased). See Roquemore Decl., paragraph 6.

JPMC Bank fails to specify any formal or informal discovery request made by the Texas Group to JPMC Bank. The letter cited by JPMC Bank does not refer to JPMC Bank, but instead refers to JPMC & Co., a wholly separate entity. In any event, even as to JPMC & Co., the June 15, 2010 letter states only that “a Rule 2004 examination should be conducted upon JPMC & Co.,” not that the Texas Group intends to ask for one. To be clear, the Texas Group has no intention to seek any Rule 2004 investigation as imagined by JPMC Bank. As such, JPMC Bank falls far short of showing any injury with specificity that would warrant issuance of a protective order, as required by Federal Rule of Civil Procedure 26(c).<sup>16</sup>

The remainder of JPMC Bank’s discussion relating to the Texas Group provides no basis for entry of a protective order, even if discovery was being sought by the Texas Group directly against JPMC Bank. JPMC Bank argues that the Texas Group has “not filed a claim in the bankruptcy” and has “no claims against the Debtors.”<sup>17</sup> These factors, even if assumed to be true, have no effect on the Texas Group’s right to participate in reasonable discovery.

The Texas Group undoubtedly is a party in interest in these bankruptcy cases. The Debtors, and JPMC Bank and the FDIC, both non-debtor third parties, are attempting, by way of releases contained in the Debtors’ Plan, to forever extinguish claims of the Texas Group asserted against JPMC Bank, JPMC & Co., and the FDIC in the Texas Action. If the releases in the Plan are approved by this Court, the Texas Groups’ claims against the above parties will be forever waived and released.

Bankruptcy case law makes plain that the Texas Group is a party in interest and, notwithstanding the Debtors’ and JPMC Bank’s contentions, has a right to engage in discovery

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<sup>16</sup> JPMC Bank’s concerns of “discovery issues that are necessarily and inextricably intertwined” (JPMC Bank’s Motion, n. 2) and its lament of “collective efforts” by parties including the Texas Group (*Id.* at 16) to overburden JPMC Bank are similarly baseless.

<sup>17</sup> JPMC Bank’s Motion, p. 14.

in these bankruptcy cases. More to the point, under 11 U.S.C. § 1109(b), any party in interest may appear and be heard in a chapter 11 case. A “party in interest” is defined as a party “with a sufficient stake in the proceeding so as to require representation.” *In re Amatex Corp.*, 755 F.2d 1034, 1042 (3d Cir. 1985) (future claimants are sufficiently affected by proceedings to require representation). There is no requirement that the party file a proof of claim against a debtor or make a “claim” against the debtor in order to be a party in interest. *See Unofficial Comm. of Zero Coupon Noteholders v. Grand Union Co.*, 179 B.R. 56, 58 (D. Del. 1995) (district court granted party-in-interest standing to bondholders of the debtor's parent corporation who claimed that a plan of reorganization would render the parent unable to meet its obligations on the bonds); *see also, In Re Ionosphere Clubs*. 101 B.R. 844 (S.D.N.Y. 1989) (if a party is affected by the reorganization process, then that party should be considered a party in interest). Notwithstanding the Debtors’ and JPMC Bank’s misunderstanding of the relevant case law, the Texas Group clearly will be directly effected by the releases in the Plan and is, therefore, a party in interest.

The Debtors in the instant case seek to “settle” and “release” the Texas Group’s claims against JPMC Bank and JPMC & Co. despite not being a party to the Texas Litigation and without providing any consideration to the Texas Group.<sup>18</sup> *See In re: Washington Mutual, Inc.*, 408 B.R. 45, 51 n. 12 (Bankr. D. Del. 2009) (in the Court’s opinion regarding the Debtors’ Rule 2004 motion, “the Debtor is not a party to the Texas Action.”). The Texas Group has a clear and direct financial stake in the outcome of these bankruptcy cases - if the releases in the Debtors’ Plan are approved, then the Texas Group’s claims against JPMC Bank, JPMC & Co., and the FDIC will be forever extinguished. The Texas Group members are, therefore, parties in interest

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<sup>18</sup> *See, e.g.*, Chapter 11 Plan of Reorganization (Docket No. 2622), filed March 26, 2010, §§ 1.182 (naming the Texas Group’s action as the “Texas Litigation”), 1.146 (including “Texas Litigation” in “Related Actions”), and 2.1 (releasing “Related Actions”).

entitled to participate fully in these cases, including participation in reasonable discovery regarding the Debtors' Plan, including the reasonableness of the Plan and the proposed settlements and releases of parties' claims and parties' liability contained therein.

**WHEREFORE**, based on the foregoing, counsel respectfully submits that JPMC Bank's Motion regarding the Texas Group should be denied, the proposed form of Order filed contemporaneously herewith should be entered, and the Court should grant all other relief it deems necessary and appropriate.

Dated: July 2, 2010

Respectfully Submitted.

SMITH, KATZENSTEIN & FURLOW LLP

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Counsel to The Texas Group



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:

WASHINGTON MUTUAL, INC., *et al.*,

DEBTORS.

§  
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CASE NO. 08-12229 (MFW)

CHAPTER 11  
(Jointly Administered)

**DECLARATION OF JAMES M. ROQUEMORE**

I, JAMES M. ROQUEMORE, declare under penalty of perjury as follows:

1. I am a member of the bar of the State of Texas and an associate at the law firm of Greer, Herz & Adams, L.L.P. I am counsel for American National Insurance Company, American National Property and Casualty Company, Farm Family Life Insurance Company, Farm Family Casualty Insurance Company, and National Western Life Insurance Company (collectively, the “Texas Group”), parties in interest in this action and plaintiffs in *American National v. JPMorgan Chase & Co*, No. 09-1743 (RMC) (D.D.C.) (the “Texas Litigation”). I submit this declaration in support of the Texas Group’s Response and Opposition To Motion Of JPMorgan Chase Bank, N.A. for Entry of a Protective Order With Respect to Plan Objectors’ Requests For Discovery.

2. Attached as Exhibit A is a true and accurate copy of an Affidavit of Anthony J. Horan, submitted by JPMorgan Chase & Co. as part of its special appearance in the Texas Litigation.

3. Attached as Exhibit B is a true and accurate copy of the Texas Group’s proposed Plaintiffs’ First Amended Complaint, submitted as an exhibit to the Texas Group’s Motion to

Amend or Alter Judgment and Request for Leave to File Amended Complaint, which motion is pending in the District Court for the District of Columbia.

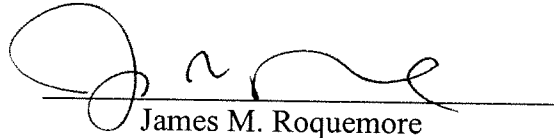
4. Attached as Exhibit C is a true and accurate copy of correspondence from me to the Debtors, dated June 15, 2010.

5. Attached as Exhibit D is a true and accurate copy of an email sent by me to the Debtors, dated June 30, 2010.

6. On a global meet and confer teleconference conducted on June 16, 2010, in the context of the paragraph 4 of the letter attached hereto as Exhibit C, when asked whether a discovery request to JPMC & Co. would yield significantly more documents than were produced by JPMC Bank, the attorney for JPMC Bank replied, "JPMorgan stands by its discovery responses" (paraphrased).

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 2<sup>nd</sup> day of July, 2010, Galveston, Texas.

  
James M. Roquemore

STATE OF TEXAS

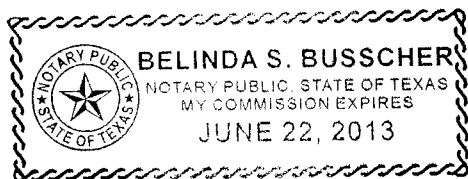
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COUNTY OF GALVESTON

Before me, the undersigned authority, a Notary Public, on this day personally appeared JAMES M. ROQUEMORE, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed.

Given under my hand and notarial seal this 2<sup>nd</sup> day of July, 2010.

Belinda S. Busscher  
Notary Public, State of Texas



# **EXHIBIT A**



Stock Exchange. JPMC & Co. is a bank holding company; its principal business consists of holding stocks in various banking institutions and other corporations.

2. JPMC & Co. is the sole shareholder of JPMorgan Chase Bank, N.A. ("JPMC Bank"), which is a National Bank organized under the laws of the United States of America and is a wholly separate entity from JPMC & Co. The Board of Directors of JPMC & Co. is separate from the Board of JPMC Bank and consists of fully independent directors and one inside director.

3. JPMC Bank may own property and does business in Texas, as may certain other subsidiaries of JPMC & Co., but JPMC & Co. itself does not have or do business with individual customers anywhere, including in the State of Texas. JPMC & Co. is not now nor has it been engaged in or conducted other business in the State of Texas.

4. JPMC & Co. does not maintain, and has never maintained, a place of business in the State of Texas, and has no property, business records, employees, bank accounts, or telephone numbers in the State of Texas.

5. No meetings of JPMorgan Chase & Co.'s Board of Directors have been held in the State of Texas.

6. JPMC & Co. was not a party to the Purchase & Assumption Agreement by which JPMC Bank purchased certain assets of Washington Mutual Bank.

I voluntarily made this Affidavit and can state that I have read JPMC & Co.'s Special Appearance and the statements contained therein and in this Affidavit are within my personal knowledge true and correct."

I voluntarily made this Affidavit and can state that I have read JPMC & Co.'s Special Appearance and the statements contained therein and in this Affidavit are within my personal knowledge true and correct."

FURTHER AFFIANT SAYETH NOT.

*Horan*  
Anthony J. Horan

SUBSCRIBED AND SWORN TO before me on the 20<sup>th</sup> day of March, 2009.

DENISE G. CONNORS  
NOTARY PUBLIC, STATE OF NEW YORK  
N.O. 01004961973 QUALIFIED IN NASSAU COUNTY  
CERTIFICATE FILED IN NEW YORK COUNTY  
MY COMMISSION EXPIRES FEB. 12 2010

*Denise G Connors*  
NOTARY PUBLIC  
State of New York

My commission expires:

2/12/2010

# **EXHIBIT B**



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN NATIONAL INSURANCE	§	
COMPANY, AMERICAN NATIONAL	§	
PROPERTY AND CASUALTY	§	
COMPANY, FARM FAMILY LIFE	§	C.A. No. 1:09-CV-01743-RMC
INSURANCE COMPANY, FARM	§	
FAMILY CASUALTY INSURANCE	§	
COMPANY, NATIONAL WESTERN	§	
LIFE INSURANCE COMPANY	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	
	§	
JPMORGAN CHASE & CO.	§	JURY TRIAL DEMANDED
and JP MORGAN CHASE BANK,	§	
NATIONAL ASSOCIATION,	§	
	§	
Defendants,	§	

PLAINTIFFS' FIRST AMENDED COMPLAINT

Plaintiffs, American National Insurance Company, American National Property and Casualty Company, Farm Family Life Insurance Company, Farm Family Casualty Insurance Company, and National Western Life Insurance Company (collectively, "Plaintiffs"),<sup>1</sup> without waiving and expressly reserving their right to seek remand of this action to the District Court of Galveston County, Texas, file this, their First Amended Complaint against Defendants JPMorgan Chase & Co. ("JPMC & Co.") and JPMorgan Chase Bank, National Association ("JPMC Bank") (together, referred to as

<sup>1</sup> In accordance with Plaintiffs' Notice of Dismissal of Washington Mutual, Inc. Bondholder and Stockholder Claims, this First Amended Complaint reflects, among other things, the dismissal of former Plaintiffs, American National General Insurance Company, Pacific Property and Casualty Company and American National Lloyds

“JPMC” or “Defendants”).

**Parties**

1. Plaintiff American National Insurance Company (“ANICO”) is a Texas insurance company with its principal place of business at One Moody Plaza, Galveston, Galveston County, Texas 77550.

2. American National Property and Casualty Company (“ANPAC”) is a Missouri insurance company with its principal place of business at 1949 East Sunshine, Springfield, Missouri 65808.

3. Farm Family Life Insurance Company (“FFLIC”) is a New York insurance company with its principal place of business at 344 Route 9W, Glenmont, New York 12077.

4. Farm Family Casualty Insurance Company (“FFCIC”) is a New York insurance company with its principal place of business at 344 Route 9W, Glenmont, New York 12077.

5. National Western Life Insurance Company (“NWL”) is a Colorado insurance company with its principal place of business at 850 East Anderson Lane, Austin, Travis County, Texas 78752.

6. JPMorgan Chase & Co. (“JPMC & Co.”) is a bank holding company incorporated in Delaware with its principle place of business at 1 Chase Manhattan Plaza, 59<sup>th</sup> Floor, New York, New York, 10005-1401. JPMC & Co. was served with the Plaintiffs’ Original Petition, filed in Texas state court, and process on February 24, 2009, and thereafter filed a Special Appearance and,

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Insurance Company, as parties from this lawsuit, as well as claims arising out of ownership of bonds and stock of Washington Mutual, Inc.

subject thereto, an Original Answer and other pleas. JPMC & Co. has may be served with this Plaintiffs' First Amended Complaint by service upon its counsel of record.

7. JPMorgan Chase Bank, National Association ("JPMC Bank") is a wholly owned subsidiary of JPMC & Co. JPMC Bank is a national banking association incorporated in the state of New York with its principal place of business at 270 Park Ave., New York, New York 10017-2070, according to filings made by the JPMC Bank made with the State of Texas as part of an application for authority to do business in the State of Texas. JPMC Bank was served with Plaintiffs' Original Petition and process on February 24, 2009, and thereafter filed an Original Answer and other pleas. JPMC Bank may be served with this Plaintiffs' First Amended Complaint by service upon its counsel of record.

#### **Jurisdiction and Venue**

8. Plaintiffs initiated this action on February 16, 2009 by filing a state-court petition in the 122nd District Court of Galveston County, Texas. Subsequently, the FDIC, as Receiver for Washington Mutual Bank, Henderson, Nevada ("FDIC"), intervened. The FDIC and both Defendants removed this case to the United States District Court for the Southern District of Texas. The Court, on September 9, 2009, issued a Memorandum and Order, ordering that the Plaintiffs' action be transferred to the United States District Court for the District of Columbia.

9. Plaintiffs contend that the FDIC's intervention was improper and that the FDIC should be dismissed as a party pursuant to Federal Rules of Civil Procedure 21 and 24. The Plaintiffs respectfully maintain that the Court lacks subject matter jurisdiction over their claims, and the case should be remanded to the 122nd District Court of Galveston County, Texas.

**Factual Background**

10. In 2004, JPMC & Co. and its then-Chief Operating Officer, James “Jamie” Dimon, recognized a weakness in JPMC & Co.’s market share in fast-growing areas of the south and west coast regions of the country. Washington Mutual<sup>2</sup> possessed a strong branch banking presence in those areas.

11. In 2004, Dimon set a goal for JPMC & Co. to acquire the Washington Mutual banking franchise and geographic market by any means necessary. In the months and years that followed, the JPMC & Co. developed and executed an unlawful scheme designed to achieve this end.

12. In January of 2005, a number of senior and junior executives of JPMC & Co. and/or JPMC Bank went to Washington Mutual to begin “new chapters” in their lives. Upon information and belief, JPMC & Co. due to personal friendships and prior business contacts unwittingly used these persons as a conduit of information to assist JPMC & Co. in gaining an unfair advantage in its efforts to acquire Washington Mutual.

13. The most significant transfer to Washington Mutual was Stephen J. Rotella, an 18-year veteran of various JPMC & Co.-related companies, who held posts of chief executive officer for Chase Home Finance, executive vice president for JPMorgan Chase, and member of the JPMorgan Chase executive committee. At Washington Mutual, Rotella took the job of president and chief operating officer.

<sup>2</sup> Unless otherwise noted, the term “Washington Mutual” refers the business enterprise comprised primarily of Washington Mutual, Inc. (“WMI”), a holding company, and Washington Mutual Bank (including Washington Mutual Bank, Henderson, NV and Washington Mutual Bank, FSB, Park City, UT (“WMB”), a subsidiary, as well as all affiliated Washington Mutual companies.

14. In addition to Rotella, at least four senior vice presidents and a chief financial officer transferred from JPMC & Co. companies to Washington Mutual as plants in late 2004 and 2005. These included, Steve Fortunato, a 12 year veteran of JPMC entities, serving as Senior Vice President, Chase Home Finance, who was responsible at JPMC for, among other things, merger analysis, forecasting and mortgage servicing valuation; Taj Bindra, Chief Financial Officer and Executive Vice President for Chase Home Finance; John Berens, senior vice president of default services, managing over 2,000 employees; Youyi Chen, PhD, senior vice president responsible for managing the interest rate risks of JPMC Bank's mortgage servicing rights (MSR) portfolio; and Bill Murray, a senior vice president, who led the MSR valuation, pricing and reporting functions for JPMC & Co.'s Capital Markets group.

15. JPMC & Co.'s strategy of gaining an insider position and knowledge was a well-trodden approach. For example, in 2006, JPMC & Co. used confidential information and misstatements about the solvency of a client, Amaranth, to prevent attempts to sell a block of its natural gas position to an outside party. JPMC & Co. then inserted itself into the deal and reaped a profit of more than \$725 million. As reported by an online news source on November 15, 2006 and later cited in Amaranth's lawsuit against JPMC & Co., a JPMC & Co. executive boasted of the company's ability to leverage its inside information sources:

We are not exposed from a credit perspective, materially, which allows us to respond quickly to opportunities when they come up. . . . Amaranth was one obvious example of that. I imagine there will be others as we go through time where our ability to be on the inside, but not compromised, is extremely powerful.

16. From 2005 to 2007, upon information and belief, JPMC & Co. gathered confidential information regarding Washington Mutual's financial status and business operations from former JPMC executives.

17. In 2006, Washington Mutual's credit rating was securely investment grade. However, beginning in 2006 and continuing through 2008, lending institutions faced a difficult business environment due to a deteriorating housing market, an increase in mortgage delinquencies and foreclosures, illiquidity and loss of value of asset-backed and mortgage-backed securities, and a general downturn in the global credit markets.

18. In the Spring of 2008, Washington Mutual was the nation's largest savings and loan association. Washington Mutual had more than 43,000 employees, more than 2,200 branch offices in 15 states and \$188.3 billion in deposits. WMB was the wholly owned subsidiary of WMI, a savings bank holding company with a thrift charter.

19. WMB was subject to regulation and examination by the Office of Thrift Supervision (the "OTS"), an agency of the United States Department of the Treasury. In addition, WMB was supervised by the FDIC, among other state and federal agencies.

20. Around the Spring of 2008, JPMC & Co. created a project group from top executives from multiple business units within the company with the goal to exploit Washington Mutual's financial difficulties in order to acquire its banking operations. This group was given the code name "Project West," which was known only to JPMC & Co. insiders and certain third parties such as rating agencies and regulators, as is evident from JPMC & Co's presentation materials to

these third parties. In these Project West documents, JPMC & Co. gave itself the code name, "Park."

21. One member of JPMC & Co.'s Project West was Executive Vice President / Chief Executive Officer of Retail Financial Services, Charlie Scharf. As Mr. Scharf admitted on October 2, 2008:

During the last few years as we have been building our own business, we kept track of banks that would complement our franchise and help us become a better bank for our customers, our employees and our shareholders. Washington Mutual consistently was at the top of the list.

22. According to statements of executives of JPMC & Co. made after JPMC & Co. acquired WMB, JPMC & Co. created a Project West "war room" in JPMC & Co.'s headquarters in New York, where JPMC & Co. closely monitored the financial activity of Washington Mutual. As an executive boasted, "We were watching money 'fly out of the bank.'"

23. According to emails between JPMC & Co. executives, in March of 2008, JPMC & Co. was developing a plan to acquire WMB through government intervention, with stakeholders of WMB being stripped of their rights.

24. On March 11, 2008, JPMC & Co. entered into a confidentiality agreement with WMI and subsidiaries regarding a "proposed transaction" involving purchase of WMI and/or WMB (the "March 11, 2008 WMI Confidentiality Agreement"). The March 11, 2008 WMI Confidentiality Agreement, among other things, prohibited JPMC & Co. from disclosing Washington Mutual confidential information to third parties. The Defendants filed a copy of the March 11, 2008 WMI Confidentiality Agreement under seal with the Court in the instant case, and seek to keep its terms confidential.

25. JPMC & Co. violated the March 11, 2008 confidentiality before the month was out. JPMC & Co. disclosed confidential information to and discussed the potential Washington Mutual acquisition with regulators and other third parties. An internal JPMC & Co. email dated March 25, 2008 details a "Project West timetable" that refers to "Regulatory meetings," "Investor/agency communication," and meetings with "rating agencies." Particularly, a meeting with regulators was scheduled for March 28, 2008. A meeting with rating agencies was scheduled for early April.

26. A March 30, 2008 JPMC & Co. email chain shows that JPMC & Co. sought government intervention in its plan to acquire Washington Mutual. In the email, a JPMC & Co. executive commented on negotiations with federal regulators, stating "[i]t sounds to me like the government is really concerned as they should be about taking losses, so they should like this versus alternative."

27. On March 31, 2008, JPMC & Co. submitted a bid to WMI purchase WMI for at or less than \$8 per share, with the final price depending on how WMB's loans performed. Washington Mutual declined, and instead accepted a capital infusion by a private investor group of approximately \$7.2 billion, at \$8.75 per share.

28. Not to be deterred, in April of 2008, JPMC & Co. made presentations to rating agencies concerning Washington Mutual's creditworthiness. For example, an April 4, 2008 internal JPMC e-mail attaches a draft presentation to ratings agencies including selective information about "West's" mortgage portfolio. The analysis of the data used in this, and later rating presentations, contained assumptions that unfairly reflected Washington Mutual's credit worthiness. JPMC & Co.'s



intent in all of its presentations and communications to ratings agencies throughout the summer of 2008 was to drive down Washington Mutual's credit ratings.

29. During the Summer of 2008, JPMC & Co. cleared the field of potential investors and purchasers of Washington Mutual who might compete with JPMC & Co. For example, on or about June 5, 2008, JPMC & Co. Chief Executive Officer, Dimon, met with officials of a bank that had expressed interest in purchasing or investing in Washington Mutual. Dimon dissuaded this bank by disclosing confidential Washington Mutual financial information and by misstating Washington Mutual's financial condition. After the meeting, Dimon instructed his staff to monitor this potential purchaser in order to ensure that WMI's efforts to find an investment partner: "[i]t is important to have an open dialogue with [this bank], as [the bank] would not pursue any one of these opportunities if JPMorgan were to do the same."

30. A June 17, 2008 email string between JPMC & Co. executives with a subject of "West output" shows JPMC & Co.'s summary of "West Potential partners," companies that could compete with JPMC & Co. in seeking to invest in or purchase Washington Mutual at a fair negotiated price, without JPMC & Co.'s interference.

31. In June and July of 2008, JPMC & Co. continued to meet with regulators in furtherance of its plan to acquire WMB through regulatory intervention. An internal JPMC e-mail chain from July 17, 2008, refers to an upcoming meeting with regulators, and states that "[w]e are thinking through how to make up the assisted scenario – we may get more color tomorrow with the regulators – if not we'll make something up." Upon information and belief, the information and analysis disclosed to regulators misstated the true financial health of Washington Mutual.

32. Attached to the July 17, 2008 e-mail is a presentation disclosing information containing an “Analysis of West capital strategy,” which compared three alternatives for acquisition of Washington Mutual by JPMC & Co. The presentation contained a detailed analysis of Washington Mutual’s asset and mortgage portfolios. Of the three alternatives, the alternative described as “Regulatory relief” was deemed superior by JPMC & Co., because it had a “Meaningfully less capital impact than other options.” Other options were variously described as “Dilutive,” “Unrealistic,” or less favorable because it “Erodes quality of Tier I composition” or faced limitations regarding “Market capacity.” The presentation noted that, regarding “Regulatory relief,” JPMC & Co. representatives “Have discussed with Fed on prior occasions.”

33. An August 3, 2008 JPMC & Co. presentation shows that the company anticipated acquiring WMB through the FDIC receivership process. Among the matters discussed in the presentation were, “Park acquires West lead thrift subsidiary from Receiver”; “Accounting for an acquisition of a business – resulting in a negative goodwill situation”; and “REIT preferred securities (\$3.9bn) are extinguished as they are assumed to become liabilities of the holding company upon receivership or bankruptcy, increasing net asset value of lead thrift bank.” Among other things, JPMC & Co. analyzed an acquisition of WMB from an FDIC receivership under circumstances where “Senior and unsecured debt [was] left behind.”

34. On August 10, 2008, according to documents made public by JPMC & Co., JPMC & Co. made another presentation to rating agencies that unfairly represented WMB’s financial health.

35. JPMC & Co.’s disclosure of WMB’s confidential data and presentation of negatively skewed analyses of WMB’s financial health to ratings agencies led to credit ratings downgrades,

which in turn decreased in the value of Plaintiffs' WMB bonds from April through August of 2008. JPMC & Co.'s communications was a substantial factor in Moody's action of putting WMB on a credit watch on July 22, 2008, and led S&P to negatively change WMB's credit rating on July 23, 2008. These credit events directly led to a loss of 25 percent or more of the value of Plaintiffs' WMB bonds.

36. In early September, three weeks before WMB was seized, FDIC officials informed JPMC & Co. 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.

37. Upon information and belief, JPMC & Co., as a condition to discussing a potential purchase of assets from an FDIC receivership, signed a separate confidentiality agreement with the FDIC in which JPMC & Co. agreed to keep information relating to the potential FDIC sale strictly confidential (the "FDIC Confidentiality Agreement"). According to the FDIC web site, all prospective purchasers of assets of a receivership must enter into a confidentiality agreement prior to release of information. As the FDIC explains, "Prospective purchasers must execute the Confidentiality Agreement that is provided either online or in person at the due diligence location. The FDIC must receive an executed Confidentiality Agreement before it will allow access to files or other specific loan information."<sup>3</sup>

38. The FDIC Confidentiality Agreement signed by JPMC & Co. on or about September 4, 2008 was substantially similar to the form Confidentiality Agreement that is available on

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<sup>3</sup> <http://www.fdic.gov/buying/loan/loan/index.html>

the FDIC's web site, upon information and belief.<sup>4</sup> The confidentiality agreement on the FDIC's web site states, "Bidder's execution of this [agreement], **without modification**, is a prerequisite to receipt of such Evaluation Material" (emphasis in original).

39. The FDIC Confidentiality Agreement required that JPMC & Co. "may use the Evaluation Materials *solely* for the purpose of evaluating any Loans offered for sale by FDIC" (emphasis added). In addition, the FDIC Confidentiality Agreement provided that JPMC & Co. "may not disseminate or divulge the Evaluation Material to any individual or entity," with certain exceptions not applicable to this case.

40. One of the FDIC's remedies against JPMC & Co. for breach of the FDIC Confidentiality Agreement is a right of indemnification. As the FDIC Confidentiality Agreement provides, JPMC & Co. "must defend, indemnify and hold harmless FDIC from and against *any and all claims*, demands, causes of action, losses, damages, liabilities, judgments, costs and expenses (including attorneys' fees) asserted against or incurred by FDIC as a result of 1) any violation of, or failure to comply with, the provisions of this [agreement] by Bidder . . ." (emphasis added). Given the broad scope of the FDIC's indemnification rights, injury to WMB stakeholders such as the Plaintiffs was a risk that was contemplated as a result of improper disclosure of information by a bidder such as JPMC & Co.

41. JPMC & Co. nevertheless freely disclosed the fact of FDIC's involvement in the WMB bidding process to various third parties, including rating agencies, investors, and news media,

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<sup>4</sup> <http://www.fdic.gov/buying/loan/confidentiality/confidentiality.pdf>

in an effort to incite a bank run on Washington Mutual deposits and to drive down WMB's credit rating.

42. On September 7, 2008, Washington Mutual entered into a memorandum of understanding with the OTS concerning "aspects of the bank's operations, principally in several areas of its risk management and compliance functions, including its Bank Secrecy Act compliance program." In this memorandum of understanding, Washington Mutual committed to provide the OTS "an updated, multi-year business plan and forecast for its earnings, asset quality, capital and business segment performance." However, the business plan did not require the company to raise capital, increase liquidity or make changes to the products and services it provides to customers.

43. On September 11, 2008, Washington Mutual released preliminary third quarter financial results, which showed that the company was well capitalized and liquid. In its release, the company stated

"[T]he company continues to maintain a strong liquidity position with approximately \$50 billion of liquidity from reliable funding sources. The company's tier 1 leverage and total risk-based capital ratios at June 30, 2008 were 7.76% and 13.93%, respectively, which were significantly above the regulatory requirements for well-capitalized institutions. The company expects both ratios to remain significantly above the levels for well-capitalized institutions at the end of the third quarter."

44. On or about September 12, Washington Mutual hired Goldman Sachs as an advisor to help find a buyer for Washington Mutual.

45. On September 12, 2008, the Bloomberg financial news organization reported that JPMC & Co. was in "advanced talks" to buy Washington Mutual. Negotiations were described as being conducted "at the highest levels of both companies" and included JPMC & Co.'s CEO Dimon and Washington Mutual's CEO Alan Fishman.

46. JPMC & Co.'s "advanced talks" with Washington Mutual were a sham and a pretext designed to gain access Washington Mutual's confidential financial information. JPMC & Co. misrepresented to Washington Mutual that it would negotiate in good faith for the purchase of the company. On information and belief, JPMC & Co. did not disclose to Washington Mutual that JPMC & Co. was negotiating separately with the FDIC for the seizure of WMB and purchase of its assets.

47. JPMC & Co. required, as a term of its "negotiations" with Washington Mutual, that JPMC & Co. be permitted access to Washington Mutual's financial non-public, confidential, financial records. Washington Mutual required that JPMC & Co. either agree to the terms of the March 11, 2008 WMI Confidentiality Agreement, as amended for the new proposed transaction, or enter into a new confidentiality agreement. JPMC & Co. misrepresented to Washington Mutual that it would not disclose Washington Mutual's confidential information. JPMC & Co., however, had no intention of keeping the confidence of the information gathered as part of its due diligence, or of restricting the use of such confidential information to proper purposes.

48. Furthermore, in its dealings with Washington Mutual, JPMC & Co. implicitly represented to Washington Mutual that it would abide by the rules and expectations set forth in JPMC & Co.'s own Code of Conduct (the "Code"). However, in dealing with Washington Mutual, JPMC & Co. failed to meet the ethical standards and rules contained in its Code.

49. The Code, which is publically available on JPMC & Co.'s web site, "sets forth certain minimum expectations that JPMorgan Chase has for . . . employees and directors of JPMorgan Chase & Co. and its direct and indirect subsidiaries." The Code states that "We are all

expected to conduct the firm's business in accordance with the highest ethical standards, respecting the firm's customers, suppliers, and other business counterparties, dealing responsibly with the firm's assets, and complying with applicable legal and regulatory requirements."

50. The Code of Conduct states regarding "Confidential Information, Public Communication, Data Privacy":

"We are all responsible for the safeguarding of confidential information, whether it is information entrusted to us by our customers, information regarding JPMorgan Chase's businesses and activities, or information about other employees.

\* \* \*

You may not . . . directly or indirectly use or disclose to anyone any such confidential information, except as permitted by the Code and other policies applicable to you

\* \* \*

(d) Do not disclose confidential information to anyone outside the firm unless you are authorized to do so. Where such disclosure is authorized, a confidentiality or privacy agreement may be required; check with the Legal Department"

51. In gaining access to Washington Mutual's confidential records, JPMC & Co. falsely promised that JPMC & Co. would maintain the secrecy of Washington Mutual financial information. However, JPMC & Co. never had any intention of abiding by its Code of Conduct or maintaining the confidentiality of Washington Mutual financial records.

52. A September 11, 2008 email from a JPMC & Co. executive shows that JPMC & Co. did not intend to deal directly or honestly with Washington Mutual, but instead planned to obtain WMB from an FDIC receivership, in which JPMC & Co. would "acquire assets and liabilities of West's thrift subsidiaries but leave behind senior and unsecured debt with the FDIC (\$15.2bn)."

53. On September 12, 2008, JPMC froze the assets of Lehman Brothers, thus precipitating Lehman Brothers' collapse and sending financial markets into turmoil. The resulting fear

and uncertainty in the financial markets further hindered Washington Mutual's efforts to find a bidder for itself. Those actions have led to other lawsuits against JPMC & Co.

54. On September 12 and 14, 2008, JPMC & Co. made presentations providing further detail on a transaction in which JPMC & Co. would acquire "West's thrift subsidiaries from Receiver" and "Senior and unsecured debt [of WMB] left behind (\$14.1bn) remain with Receiver."

55. According to JPMC & Co. documents dated September 19, 2008, JPMC & Co. presented its plan regarding "Park potential acquisition of West," to rating agencies. In this presentation material, JPMC & Co. informed ratings agencies that:

- JPMC & Co. "Had spoken to FDIC about Bank only in receivership with protection" acquisition;
- JPMC & Co. had been "Contacted by FDIC about interest in West";
- "They met with West – had to open books";
- FDIC "Want[s] a solution by Friday, September 26<sup>th</sup>";
- JPMC & Co. "indicated we would analyze, but did not expect it to work for us";
- JPMC & Co.'s "Approach is to work directly with the FDIC.

56. In these September 19, 2008 presentations to ratings agencies, and in a presentation of the same date to JPMC & Co.'s board of directors, JPMC & Co. discussed its plan to "Buy bank out of receivership," which included the potential "to leave debt behind."

57. Upon information and belief, during the summer of 2008, JPMC & Co. engineered a campaign involving adverse media "leaks," stock sales, and deposit withdrawals designed to distort the market and regulatory perception of Washington Mutual's financial health. JPMC & Co. continued this campaign up until the seizure of WMB.

58. During this time, news media ran many stories that discussed Washington Mutual's unsuccessful efforts to sell itself, the FDIC's pending involvement in the sale of WMB assets, and



other aspects of Washington Mutual's financial health. Many of these news stories were sourced by unnamed "investment bankers" close to the negotiations. As a CNN Money article dated September 18, 2008 stated regarding the merger rumors about Washington Mutual and other banks, "You have bankers throwing rumors around trying to see how the market would react to things." The Wall Street Journal on September 19, 2008 reported that JPMC & Co. was reviewing Washington Mutual's books, "which are packed with shaky mortgages," and was "biding its time on a potential bid," according to "people close to J.P. Morgan."

59. By September 23, 2008, the Financial Times was reporting that "people familiar with the talks" involving the Washington Mutual purchase said that the OTS was pushing for a speedy solution, but "[o]ne challenge for an outright sale of Washington Mutual is that the acquiring bank would have to take on WaMu's troubled mortgage portfolio, as well as the bank's litigation risk."

60. Between September 15, 2008 and September 25, 2008, WMB customers withdrew \$16.7 billion in deposits, thus achieving JPMC & Co.'s goal of creating a bank run. Former OTS director John M. Reich testified to the United States Senate Permanent Subcommittee on Investigations that WMB's seizure was caused by an asserted liquidity crisis prompted by this "run on deposits".

61. In September of 2008, JPMC & Co. shared the confidential information with outside investors in order to arrange an \$8 billion capital infusion that would enable JPMC Bank to maintain its Tier 1 capital ratio. An investigative article published by the Wall Street Journal on September 29, 2008 details how JPMC & Co. contacted 10 major financial firms, many of whom were significant JPMC & Co. shareholders, asked them if they were interested in investing in the "strategic acquisition

of a retail bank,” and shared material non-public information relating to the acquisition. Nine out of the ten firms contacted chose to invest, and JPMC & Co. was able to raise over \$11.5 billion within 24 hours after the FDIC awarded JPMC & Co. WMB’s assets in late September of 2008.

62. On September 22, 2008, JPMC & Co. scheduled additional meetings with the rating agencies "to tell them about the FDIC process and that we intend to be a bidder" for WMB and prepared materials for the rating agencies "concerning our credit due diligence [of WaMu] in March and again now."

63. JPMC’s & Co.’s disclosures, misstatements, and other misconduct fomented panic relative to WMB’s liquidity and viability. JPMC’s & Co.’s direct communications with credit rating agencies substantially caused such agencies to downgrade WMB’s credit rating. For example, Moody’s downgraded WMB’s credit rating from Baa2 to Baa3 on September 11, 2008 and put WMB on another credit watch on September 22, 2008. S&P negatively changed WMB’s credit rating on September 15, 2008, and Fitch likewise negatively changed WMB’s credit rating on September 18, 2008 and September 24, 2008. The panic and credit downgrades caused by JPMC & Co.’s actions and wrongful disclosures and misstatements further caused injury to the Plaintiffs by reducing the value of their bond holdings significantly.

64. As part of its negotiations with FDIC for the purchase of WMB assets, JPMC & Co. demanded an indemnification “from the FDIC for any potential breach of an agreement dated March 11, 2006 with Washington Mutual, Inc. (WMI) caused by its acquisition of the assets and liabilities of the Bank from the Receiver as set forth in its bid” The FDIC Board of Directors refused and granted

indemnity only for claims by WMI or claims based on liabilities of WMI or WMB, but not for claims by third parties against JPMC & Co. or JPMC Bank.

65. On Tuesday, September 23, 2008, according to a September 29, 2008 Wall Street Journal article, the FDIC purportedly sought bids from select bidders, including JPMC & Co., through its subsidiary, JPMC Bank, for the sale of WMB. Upon information and belief, an agreement had already been reached at this time between the FDIC and JPMC & Co. for the seizure and sale of WMB to JPMC & Co. In addition, the requirements for a “conforming bid” had been reached after previous negotiations between the FDIC and JPMC & Co.

66. On September 24, 2008 JPMC & Co. and JPMC Bank submitted a bid to the FDIC for JPMC Bank to purchase WMB (the “JPMC bid”). The JPMC bid improperly utilized WMB confidential financial information gained as a result of false promises made as part of the confidentiality agreement made with Washington Mutual.

67. The JPMC bid attached a “JPMorgan Chase & Co. Secretary’s Certificate” that attested that the Board of Directors of JPMorgan Chase & Co. authorized JPMC & Co. and JPMC Bank “to enter into the proposed transaction involving the purchase and assumption by [JPMC & Co.] and/or [JPMC Bank] of selected assets and liabilities of thrift subsidiaries of Washington Mutual, Inc. from the Federal Deposit Insurance Corporation . . .” The JPMC bid listed as “designated contact person for the Potential Acquirer:” Stephen M Cutler, an Executive Vice President and General Counsel of JPMC & Co. The JPMC bid also listed as contact persons, Brian A. Bessey, who, according to the Secretary’s Certificate attached to the bid, was an officer of JPMC

& Co, and Daniel P. Cooney, a general counsel, who was listed as an officer of JPMC Bank. Brian Bessey signed the bid that was submitted to the FDIC.

68. Each of the JPMC contact persons named in the JPMC bid were part of the “Project West” working group, according to JPMC & Co. documents.

69. On September 24, 2008 JPMC & Co. was the only company that submitted a conforming bid for the assets of WMB. According to records obtained from the FDIC, the only other bid was from Citigroup, Inc. This bid, by its own admitted terms, was not a conforming bid under the structure the FDIC offered. As it was nonconforming, the FDIC rejected this bid.

70. On September 24, 2008, the FDIC board of directors “approved the Bid from JPMorgan Chase & Co.” On Thursday evening September 25, 2008, the OTS seized WMB and placed WMB into receivership with the FDIC.

71. Upon information and belief, the seizure of WMB was conducted a day earlier than had been originally planned due to an expected legislative banking relief plan—the “bailout”—that appeared imminent earlier that week. On Tuesday, September 23, 2008, Federal Reserve Chairman Ben Bernanke and Treasury Secretary Henry Paulson testified before the Senate Banking Committee regarding the dire implications for the broader economy if the bailout was not passed by the end of the week. The \$700 billion financial bailout would have provided financial relief to Washington Mutual as it ultimately did for other non-seized national financial institutions, thus making seizure more difficult to justify.

72. On September 25, 2008, the FDIC and JPMC Bank signed a “Whole Bank Purchase and Assumption” agreement whereby the FDIC, as receiver, sold WMB assets, including

its branches, deposit liabilities, loan portfolio, and covered bonds and secured debts to JPMC Bank for \$1.9 billion.

73. On October 3, 2008, the FDIC announced that it would raise the ceiling for deposit insurance from \$100,000 to \$250,000. Many of the deposits Washington Mutual lost in mid-September came from accounts exceeding the earlier \$100,000 limit. According to Reich's testimony to the U.S. Senate on April 16, 2010, had WMB's bank run occurred two weeks later, there would have been no seizure because of the FDIC's decision to increase deposit insurance limits.

74. The WMB bonds held by Plaintiffs are subject to liquidation as part of the FDIC receivership. Upon information and belief, these Bonds are substantially without value. The FDIC, in an informational sheet provided to claimants in Washington Mutual Bank states, "The FDIC as Receiver for Washington Mutual Bank does not anticipate that subordinated debt holders of the bank will receive any recovery on their claims."

75. As a result of the FDIC deal, according to JPMC & Co.'s fourth quarter 2008 financial reports, JPMC Bank gained 2237 branches and \$126.3 billion in deposits (an increase of 63%), and reported a positive impact upon its retail financial services, card services and commercial banking divisions. More tellingly, in this fourth quarter 2008 statement, JPMC & Co. admitted that the fair value of the assets it obtained from Washington Mutual was \$1.3 billion more than the \$1.9 billion it paid, and booked a gain in that amount. This \$1.3 billion extraordinary gain was in addition to the \$581 million extraordinary gain reported on October 15, 2008 as being the result of the acquisition of

Washington Mutual's assets. As JPMC & Co. stated in the footnote to its fourth quarter 2008 Consolidated Financial Highlights statement, explaining the gain:

JPMorgan Chase acquired the banking operations of Washington Mutual Bank for \$1.9 billion. The fair value of the net assets acquired exceeded the purchase price which resulted in negative goodwill. In accordance with SFAS 141, nonfinancial assets that are not held-for-sale were written down against that negative goodwill. The negative goodwill that remained after writing down nonfinancial assets is recognized as an extraordinary gain.

**Plaintiffs' WMB bonds and the Defendants' Knowledge**

76. The Plaintiffs owned the bonds listed below, which were issued by WMB. Each bond evidences debt owed to them by the issuer. As such, the Bonds evidence the contractual obligation of WMB to pay to each Plaintiff a stream of future cash payments consisting of coupon payments and a payment of the principal value of the bond.

77. WMB utilized a Global Note Program under which some of Plaintiffs' bond investments were offered. The specifics of those offerings were described in Pricing Supplements. More specifically, the 2002 Offering Circular covering the Note Issuance program for WMB states:

[Washington Mutual Bank] is obligated to make payments of principal of, and premium, if any, and interest on all of its Notes in the applicable specified currency . . .

The Circular further provides:

The applicable Pricing Supplement will specify a fixed interest rate per annum payable on a Fixed Rate Note. Unless otherwise specified in the applicable Pricing Supplement, the interest payment dates (the "Interest Payment Dates") for Fixed Rate Notes (other than Zero Coupon Notes) having a maturity greater than one year will be semi-annual on such dates specified in the applicable Pricing Supplement. Payments of interest on Fixed Rate Notes having maturities of greater than one year will include interest accrued to but excluding the relevant Interest Payment Date or Maturity. Unless otherwise specified in the applicable Pricing Supplement, interest

on Fixed Rate Notes denominated in U.S. dollars with maturities of greater than one year will be computed on the basis of 360-day year of twelve 30-day months.

78. Consistent with those terms, the Pricing Supplements utilized the interest payment dates of "January 15 and July 15 for each year . . ." up to the stated Maturity Date of the specific Bond at which time remaining principal or par value of the Bond would be returned to the investor. These types of various Bond obligations entitled Plaintiffs to specific interest and principal payments from WMB.

79. JPMC & Co., by way of a wholly-owned subsidiary, served as registrar and/or depository for some or all of the Global Bank Note Programs under which the Plaintiffs' bonds were issued, and thereby had knowledge of the terms and conditions of Plaintiffs' bond contracts. JPMC & Co.'s access to knowledge of the Bond contracts is described in the program circular for WMB's Global Bank Note Program of April 2002, on page 37:

J.P. Morgan Trust Company, National Association will serve initially as the Registrar for the Registered Notes. In such capacity, the Registrar will cause to be kept at its offices in The City of New York, as register (the "Note Register") in which, subject to such reasonable regulations as it may prescribe, the Registrar will provide for the registration of the Registered Notes and of transfers thereof.

80. Through this special role with regard to WMB's bonds, its examination of Washington Mutual's confidential financial information, and access of publically available information, JPMC & Co. had actual knowledge of the contractual rights and obligations associated with the Plaintiffs' bond contracts and was well aware of the contractual rights with which its scheme would interfere. Because of this actual knowledge of the bond contracts at issue, JPMC & Co. knew that its scheme to effect the seizure and sale of WMB's valuable assets would create a default and totally prevent WMB from otherwise being able to perform their obligations under the contracts.

81. ANICO owns the following WMB bonds:

<b>ISSUER</b>	<b>CUSIP</b>	<b>COUPON</b>	<b>MATURITY</b>	<b>PURCHASE DATE</b>	<b>PAR/FACE</b>
Washington Mutual Bank	93933VAS7	5.5%	January 15, 2013	October 9, 2003	\$5,300,000
Washington Mutual Bank	93933VAS7	5.5%	January 15, 2013	October 14, 2003	\$5,079,000
Washington Mutual Bank	93933WAA4	6.875%	June 15, 2011	October 15, 2002	\$3,000,000
Washington Mutual Bank	93933WAB2	5.65%	August 15, 2014	September 16, 2004	\$5,000,000

82. ANPAC owns the following WMB bond:

<b>ISSUER</b>	<b>CUSIP</b>	<b>COUPON</b>	<b>MATURITY</b>	<b>PURCHASE DATE</b>	<b>PAR/FACE</b>
Washington Mutual Bank	93933WAA4	6.875%	June 15, 2011	October 15, 2002	\$2,000,000

83. FFLIC owns the following WMB bond:

<b>ISSUER</b>	<b>CUSIP</b>	<b>COUPON</b>	<b>MATURITY</b>	<b>PURCHASE DATE</b>	<b>PAR/FACE</b>
Washington Mutual Bank	93933WAA4	6.875%	June 15, 2011	May 16, 2002	\$5,000,000



84. FFCIC owns the following WMB bond:

ISSUER	CUSIP	COUPON	MATURITY	PURCHASE DATE	PAR/FACE
Washington Mutual Bank	93933WAA4	6.875%	June 15, 2011	October 15, 2002	\$3,200,000

85. NWL owns the following bonds:

ISSUER	CUSIP	COUPON	MATURITY	PURCHASE DATE	PAR/FACE
Washington Mutual Bank	93933VAS7	5.5%	January 15, 2013	January 23, 2004	\$5,000,000
Washington Mutual Bank	93933VAS7	5.5%	January 15, 2013	January 26, 2004	\$4,000,000

**FDIC Receivership**

86. The instant lawsuit asserts no claim against the FDIC, as receiver for WMB, or any claim for which WMB, if it had not been put into receivership, could have been liable. As such, the FDIC receivership claims administration process is not applicable to this lawsuit.

87. Nevertheless, in December of 2008, the Plaintiffs contacted the FDIC and requested information regarding the FDIC WMB receivership. Later, on December 10, 2008, the FDIC sent to the Plaintiffs a "Notice to Claimant" letter. That letter instructed Plaintiffs, "[i]f in fact, you do not have a claim against the Failed Institution, please disregard this notice."

88. The Plaintiffs filed timely proofs of claim against the WMB receivership, asserting claims against the receivership based on their WMB bonds. The Plaintiffs, in their proofs of claim to

the FDIC, expressly “reserve[d] the right to pursue appropriate legal action against any responsible party.”

89. On May 20, 2009, the FDIC acknowledged receipt of the Plaintiffs’ proofs of claim and declared that WMB’s obligations for the bonds owned by the Plaintiffs were valid. No mention was made of any prohibition of Plaintiffs’ right to pursue legal action against any responsible third party.

**Causes of Action**  
**Count One: Tortious Interference with Existing Contract**  
**JPMC & Co. and JPMC Bank**

90. The allegations in the preceding paragraphs are hereby incorporated by reference as if fully set forth herein.

91. JPMC & Co. was specifically aware of the bond obligations to Plaintiffs. JPMC & Co. through sources of information publically available to all participants in the marketplace for financial instruments, through its position and responsibilities as depositary and/or registrar for some or all of Global Bank Note Programs under which the Plaintiffs’ bonds were issued, through sources available to its subsidiaries, and through its extensive due diligence into the financial circumstances of Washington Mutual, was aware of terms and conditions of all of the contractual relations and rights relating to the outstanding debt obligations of WMB. As such, the JPMC & Co. had actual knowledge of the existence of the Plaintiffs’ WMB bond contracts and the fact that their actions would interfere with Plaintiffs’ rights under the bond contracts.

92. All knowledge held by JPMC & Co., as parent, is imputed to JPMC Bank, its subsidiary.

93. JPMC & Co. and JPMC Bank willfully and intentionally interfered with Plaintiffs' bond contracts by inducing WMB to breach the contracts. As a proximate result of Defendants' actions, WMB was seized by regulatory authorities and has failed and refused to meet its obligations under the Bond contracts.

94. JPMC & Co. and JPMC Bank made WMB's performance under the Plaintiffs' WMB bond contracts impossible, more burdensome, difficult and expensive by executing a scheme to strip away the source of revenue from which WMB was to meet its obligations under the contracts. The scheme included, among other things, gaining access to Washington Mutual's confidential financial information under false pretenses, breaching an agreement to maintain the confidentiality of such information, driving down the credit ratings of WMB, inciting depositor withdrawals, and misusing the information. In addition, JPMC & Co. obstructed Washington Mutual's efforts to sell itself. JPMC & Co. and JPMC Bank used their insider status and financial strength to work to bring about a regulatory seizure of WMB and obtain the sale of WMB assets from federal regulators to JPMC & Co. at a below-market price under terms that would sever the Plaintiffs' contractual rights under the WMB bonds.

95. JPMC & Co.'s and JPMC Bank's actions proximately caused the Plaintiffs to suffer actual damage and loss.

**Count Two:**  
**Breach of Confidentiality Agreement – JPMC & Co.**

96. The allegations in the preceding paragraphs are hereby incorporated by reference as if fully set forth herein.

97. On or about March 11, 2008, JPMC & Co. entered into a confidentiality agreement

with WMI and its subsidiaries “[i]n connection with [JPMC’s] interest in a possible negotiated transaction (a “Transaction”) involving Washington Mutual, Inc. [and WMB].” The Transaction contemplated by the March 11, 2008 agreement resulted in JPMC & Co.’s failed bid for Washington Mutual at \$8.00 per share.

98. In September of 2008, JPMC & Co. expressed renewed interest in purchasing Washington Mutual. At this time JPMC & Co. entered into sham negotiations with Washington Mutual, purportedly for the purchase of Washington Mutual and the assumption of liabilities of bondholders of WMB such as the Plaintiffs.

99. As part of JPMC & Co.’s September of 2008 negotiations, JPMC & Co. either agreed to be bound by the terms of the March 11, 2008 WMI Confidentiality Agreement, as amended to comport with the new “Transaction” and assumption of liabilities, or signed a new confidentiality agreement. Washington Mutual required the protection of this confidentiality agreement for the benefit of its stakeholders, including debt holders of WMB.

100. Upon information and belief, the Confidentiality Agreement under which JPMC accessed Washington Mutual’s information in September and March of 2008 was made in order to facilitate a Transaction, according to the understanding of Washington Mutual, in which WMB bondholders such as the Plaintiffs would have their debt obligations assumed by JPMC. As such, Plaintiffs were intended beneficiaries of the confidentiality agreement as it existed in September of 2008.

101. As intended beneficiaries of the said confidentiality agreement, the Plaintiffs have a valid and enforceable interest in protecting Washington Mutual’s confidential financial information from

disclosure or misuse. As a result, Plaintiffs have standing to sue for breach of the confidentiality agreement.

102. The Plaintiffs and WMI and/or WMB have performed all obligations under the agreement.

103. JPMC & Co. violated the confidentiality agreement by, among other things, disclosing selected data and misleading analysis to ratings agencies, misusing confidential financial information of Washington Mutual to negotiate with and develop a bid to submit to the FDIC, communicating with the FDIC regarding raw data and analyzed data for purposes that were wholly contrary to the purposes and intentions of the confidentiality agreement, disclosing confidential information with potential investors in order to obtain capital, and disclosing confidential information to third parties in order to cause depositors to withdraw deposits, hamper Washington Mutual's efforts to obtain a purchaser for itself, and drive down Washington Mutual's credit rating and stock price.

104. JPMC & Co.'s breach caused the Plaintiffs injury by preventing Washington Mutual from obtaining a purchaser for itself or improving its financial health enough so that it could weather the market turmoil.

105. As a result, the value of Plaintiffs' WMB bonds has been substantially harmed.

**Count Three: Unjust Enrichment – JPMC & Co. and JPMC Bank**

106. The allegations in the preceding paragraphs are hereby incorporated by reference as if fully set forth herein.

107. JPMC & Co. and JPMC Bank received a benefit from its transaction with the FDIC whereby it obtained the valuable assets of WMB at a price less than its fair market value. By JPMC

& Co.'s admission in its year-end 2007 financial statement, the fair value of WMB's assets was almost \$1.9 billion more than the amount JPMC & Co. and/or JPMC Bank paid.

108. JPMC & Co. and JPMC Bank unjustly failed to pay the Plaintiffs for the benefits they received, and the Plaintiffs received overwhelmingly less than the value of what JPMC & Co. and JPMC Bank extracted from the Plaintiffs.

109. The failure of JPMC & Co. and JPMC Bank to pay for the benefits they received was to the Plaintiffs' detriment and occurred only because JPMC & Co. and JPMC Bank used fraud, duress, and took undue advantage by way of false pretenses, deceit, breached trust, and broken promises, in order to obtain the WMB assets at below market prices out of the FDIC receivership, unencumbered of Plaintiffs' contractual rights to payment.

**Prayer**

Plaintiffs pray that Defendants be cited to appear and answer herein, and that upon trial of this cause judgment be rendered for Plaintiffs as follows:

- a. All actual, consequential, and special damages;
- b. Punitive damages as provided by statutory and common law;
- c. Attorneys fees and legal expenses (including expert fees);
- d. Pre- and Post- judgment interest;
- e. Equitable relief to which Plaintiffs may be entitled; and,
- f. Costs of court.

Plaintiffs pray for general relief and such other and further relief to which they may be entitled in equity or at law.



# **EXHIBIT C**



# GREER, HERZ & ADAMS, L.L.P.

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June 15, 2010

Brian Rosen  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
(via email: brian.rosen@weil.com)

Re: *In re: Washington Mutual, Inc.*, Case No. 08-12229 (MFW);  
Proposed discovery protocol and confidentiality agreement

Dear Brian,

Thank you for circulating the draft of the Agreed Order Establishing, Among Other Things, Procedures and Deadlines Concerning Objections to Confirmation and Discovery in Connection Therewith (the "Proposed Agreed Order"), with its Exhibit 1, "Provisions Governing Confidential Information and Highly Confidential Information" (the "Confidentiality Provisions"). What follows are our initial comments to facilitate discussion at tomorrow's telephone conference call.

Confidentiality Provisions. We have no disagreement with the general terms of the Confidentiality Provisions. Specifically, we agree to maintain the confidentiality of all materials produced by the Debtors and other parties in this case, and agree to use such material only for prosecution of our objection to confirmation of the Plan.

Proposed Agreed Order. We have concerns regarding the discovery protocol outlined in the Proposed Agreed Order. These concerns are described below in order of appearance in the Proposed Agreed Order.

1. Recital. We do not agree that the Disclosure Statement is reasonable or adequate. (p. 2). In addition, we doubt that August 2, 2010 is a realistic date for the Confirmation Hearing given the quantity of discovery that remains to be conducted and analyzed. (p. 2). However, we will work within the timetable agreed to by the parties as long as the settling parties are cooperative in meeting their discovery obligations.

2. Timing of filing witness list by objecting parties. If the Debtors grant access to the Document Depository on June 30, 2010, the July 1, 2010 deadline for Eligible Objectors to file a list of witnesses is unreasonable. (p. 10). We will need at least two weeks to review the available documents and to identify witnesses for the confirmation hearing. In addition, if Additional Discovery is necessary, a reasonable time following that discovery will be needed in order to identify witnesses.

3. Timing of Discovery in addition to that produced in the Document Depository. We agree that the creation and unfettered access to the documents in the proposed Document Depository will streamline the discovery process. However, if the Debtors propose to establish and staff the depository on June 30, 2010, the Eligible Objectors will need more than two days to review and determine whether additional Production Requests will be needed. (p. 3). Again two weeks would seem to be a reasonable, expedited, time frame.

4. Is JPMorgan Chase & Co. a "Settling Party" upon whom "Permitted Discovery" may be made? The term "Settling Parties" is not defined in the Proposed Agreed Order. The Debtors' prior Rule 2004 examination was limited to an examination of JPMorgan Chase Bank, N.A., not JPMorgan Chase & Co. As you know, JPMC Bank interposed sweeping objections to all production requests by the Debtors. It is unclear whether JPMC & Co. ever meaningfully produced documents regarding its involvement in the business torts alleged in the Texas Litigation. If JPMC & Co. will not voluntarily agree to be a "Settling Party" subject to requirements to produce documents pursuant to the Agreed Order and Confidentiality Provisions, then a Rule 2004 examination should be conducted upon JPMC & Co., independent of this discovery protocol and confidentiality agreement.

5. Burden-shifting to justify Additional Discovery is improper. There is no legitimate reason to alter an objecting party's right to conduct discovery as provided by the Federal Rules of Civil Procedure. Under the FRCP, a party does not have a burden to establish a deponent's "testimony is reasonably necessary, and not duplicative" or to certify the relationship of a document request to a claim or defense or to show necessity for such discovery. (p. 6). We would agree, however, to the setting of a status conference so that you or a Settling Party could oppose discovery on an appropriate ground.

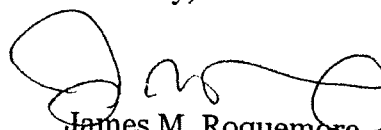
6. Population of Document Depository by parties other than Debtors. At the meet and confer, you stated that documents produced by JPMC and other third parties would be put into the Document Depository, maintained by the Debtors, and would be available to all Eligible Objectors. The Proposed Agreed Order has no provision for this procedure.

7. Other limits on Depositions of Settling Parties. The limitation of depositions of Settling parties to Rule 30(b)(6) is potentially unfair. Upon a review of documents produced in this case, it may appear that there exists a fact witness who has

knowledge regarding a claim that the Plan and Global Settlement Agreement seeks to release. The objecting parties should have an avenue available to depose this witness.

Thank you for your efforts in this regard.

Sincerely,



James M. Roquemore

Cc: Stacey Friedman (by email)  
John Clarke (by email)  
All parties to WMI's "meet and confer" email list

# **EXHIBIT D**

## James M. Roquemore

---

**From:** James M. Roquemore  
**Sent:** Wednesday, June 30, 2010 11:43 AM  
**To:** 'brian.rosen@weil.com'  
**Cc:** 'Michael P. Migliore'; 'Friedman, Stacey'; 'Clarke, John J., Jr.'  
**Subject:** RE: DISCOVERY PROCEDURES ORDER

Brian,

After reviewing the proposed Discovery Procedures Order, I have two comments:

1. The term "Settling Parties," is still not defined. As I mentioned in my June 15, 2010 letter regarding the proposed discovery protocol, it is unclear whether JPMorgan Chase & Co. ("JPMC & Co.") is included as a Settling Party. JPMC & Co. was the primary actor in the misconduct alleged in the Texas Litigation, as that term is defined in WMI's Joint Plan. However, the current proposed Discovery Procedures Order appears to limit discovery to the Debtors and Settling Parties. It would be efficient to be clear as to whether JPMC & Co. is subject to the proposed Discovery Procedures Order. This is especially true given the uncertainty as to whether JPMC & Co. fully responded to the Debtors' prior Rule 2004 discovery requests, which will presumably populate WMI's Depository.
2. In paragraph 13, the date "October 13, 2010" appears to be in error.

Jim

James M. Roquemore  
Greer, Herz & Adams, L.L.P.  
One Moody Plaza, 18th floor  
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409-797-3264  
409-766-6424 (fax)

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**From:** Rosen, Brian [mailto:brian.rosen@weil.com]

**Sent:** Tue 6/29/2010 4:46 PM

**To:** Justin A. Nelson; Edgar G. Sargent; Friedman, Stacey; Sacks, Robert; Glueckstein, Brian D.; Califano, Thomas R.; Clarke, John J., Jr.; Scheler, Brad Eric; Nagle, Shannon Lowry; de Leeuw, Michael; Hodara, Fred; Johnson, Robert; collins@rlf.com; David Stratton; Peter Calamari; David Elsberg; Susheel Kirpalani; Benjamin Finestone; Silverstein, Paul; Steinberg, Arthur; Coffey, Jeremy B.; McMahon, Joseph (USTP); m.murray@bingham.com; tbrown-edwards@potteranderson.com; James Potter; gjarvis@gelaw.com; Michael P. Migliore; chatalian.jon@pbgc.gov; metkin@lowenstein.com; jmorris@pszjlaw.com; gstarner@ny.whitecase.com; Uzzi, Gerard

**Cc:** Chad Smith; BKosturos@alvarezandmarsal.com; 'jgoulding@alvarezandmarsal.com'; Maciel, John; Strochak, Adam;

Schloss, Adam; benjaminfinestone@quinnemanuel.com; Susheel Kirpalani; Peter Calamari; Michael Carlinsky; David Elsberg; Mastando III., John; Eng, Diana; James, Cheryl; Sapeika, Tal; DiBlasi, Kelly; Sharma, Rahul; Mills, Marvin; Litvack, David; Goldring, Stuart; Horton, William

**Subject:** DISCOVERY PROCEDURES ORDER

Folks,

Annexed please find for your review a clean and blacklined version of the Discovery Procedures Order. It incorporates comments and suggestions received to date and has been updated to include contemplated dates for confirmation. If people have any additional comments, please provide them to me as soon as possible.

As per our prior discussions, the Depository continues to be populated and will be available for review by the close of business on June 30, 2010. The Debtors are prepared to grant access to the Depository to those that have executed a confidentiality agreement. Inasmuch as the Discovery Procedures Order will not have been entered prior to July 8, 2010, to the extent that a party has not executed a confidentiality agreement, the Debtors are prepared to grant access upon execution of an acknowledgement consistent with what is attached to the proposed Discovery Procedures Order. In that regard, please respond to the undersigned and one will be forwarded to you for execution.

Thank you.

Brian

Brian S. Rosen  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
Phone: (212) 310-8602  
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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE:

WASHINGTON MUTUAL, INC., *et al.*

DEBTORS.

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CASE NO. 08-12229 (MFW)

CHAPTER 11

(Jointly Administered)

**ORDER REGARDING MOTION OF JPMORGAN CHASE BANK, N.A.  
FOR ENTRY OF A PROTECTIVE ORDER WITH RESPECT  
TO PLAN OBJECTORS' REQUESTS FOR DISCOVERY**

Upon consideration of the Motion of JPMorgan Chase Bank, N.A. ("JPMC Bank") for Entry of a Protective Order With Respect to Plan Objectors' Requests For Discovery ("Motion"), and the Court having jurisdiction to consider the Motion and the relief requested therein; and the Court having determined that the relief requested in the Motion is not appropriate; and after due deliberation and sufficient cause failing to appear therefore,

**IT IS HEREBY ORDERED THAT** the Motion is DENIED with regard to any discovery by the Texas Group.

This \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
The Honorable Mary F. Walrath  
United States Bankruptcy Court Judge