

**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)
	§	
	§	
	§	

**REPLY TO DEBTORS' OBJECTION TO THE TEXAS GROUP'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS FROM THE DEBTORS
AND TO EXERCISE ITS RIGHT TO PARTICIPATE IN GENERAL DISCOVERY
AVAILABLE TO ALL PARTIES**

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") reply and oppose the *Debtors' Objection to Texas Group's Motion to Compel Production of Documents from Debtors and to Exercise its Right to Participate in General Discovery Available to All Parties* (the "Objection") as follows.

A. The Debtors Wrongfully Seek to Preclude Discovery Relating to the Global Settlement, the Plan, and the Treatment of the Texas Litigation

1. The Texas Group contends that the Debtors cannot show a good faith basis to believe that they "owned" or held any right to compromise claims asserted against JPMC in the Texas Litigation.¹

2. Accordingly, because the Debtors did not have a good faith basis to include the Texas Litigation in the Global Settlement Agreement² and the Joint Plan,³ the Debtors' Joint

¹ *American National Insurance Co., et al., v. JPMorgan Chase & Co., et al.*, Case No. 09-1743 (Dist. D.C.) (RMC).



Plan is fatally flawed, for this reason among others. In relevant part, Section 1129(a)(3) of the Bankruptcy Code requires that “The court shall confirm a plan only if all of the following requirements are met: . . . (3) The plan has been proposed in good faith and not by any means forbidden by law.”

3. In fact, the Debtors, in the Global Settlement Agreement, admitted that they do not hold claims that are asserted in the Texas Litigation. Specifically, in section 4.4, entitled “Representation of the WMI Entities as to Debtors’ Claims,” the Debtors represented and warranted:

Each of the WMI Entities hereby represents and warrants for itself, and on behalf of the other Debtors that: (a) *other than the claims asserted in the Actions,*⁴ *none of the Debtors holds any claim or cause of action against the JPMC Entities, the FDIC Parties or the Receivership* and that any such claims or causes of actions are included among the JPMC Release Claims and the FDIC Release Claims, respectively and (b) they are not aware of any proofs of claim filed by or on behalf of the WMI Entities other than the claims set forth in the Recitals herein.⁵ (emphasis added)

² Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, [D.I. No. 4850], Exhibit H (“Global Settlement Agreement”).

³ The Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, [D.I. No. 4850] (the “Joint Plan”).

⁴ “Actions” is defined as “collectively, the WMI Action, the JPMC Action, the Turnover Action, the Record Requests, the Rule 2004 Inquiry and the Bankruptcy Stay Motions, together with any and all appeals therefrom, the Rule 2019 Appeal and any proceeding arising from the motions, dated June 23, 2009, to withdraw the reference for the WMI Action and the JPMC Action, respectively.” Global Settlement Agreement, p. 6.

Importantly, the “Texas Litigation” is defined separately and is not included within the scope of the term “Actions”. See Global Settlement Agreement, p. 6.

The terms “Actions” and “Texas Litigation” are individually named in the definition of “Related Actions” – “‘Related Actions’ shall mean the Actions, the Texas Litigation or any claims objection process with respect to the JPMC Claims or the FDIC Claim or any similar proceeding that could have been brought by the Parties against any Releasees in the Bankruptcy Court or such other court of competent jurisdiction prior to the date hereof.” Global Settlement Agreement, p. 13.

⁵ Global Settlement Agreement, p. 59.

4. To investigate why the Debtors sought to extinguish the Texas Litigation, despite having no ownership over the claims asserted therein, the Texas Group served requests for production of documents upon the Debtors.⁶ In their requests, the Texas Group sought, among other things, documents relating to the Debtors' inclusion of the Texas Litigation as a released claim in the Global Settlement Agreement and the Joint Plan.⁷ The Debtors refused to permit any discovery. Consequently, the Texas Group filed the instant Motion to Compel.⁸

5. After the Texas Group filed their Motion to Compel, the Debtors gave the Texas Group access to the Debtors' online document depository. The Texas Group agreed to hold the Motion to Compel in abeyance while the Texas Group evaluated adequacy of the production of documents via the depository.

6. Subsequently, the Texas Group determined that the Debtors' depository contained restrictions on searches and downloads that reduced its utility. In addition, it became apparent that certain categories of documents were withheld from the depository.

7. The Texas Group therefore requested that the Debtors either supplement their production or specifically identify in the depository the documents that were exchanged by or

⁶ See First Request of American National Insurance Company, *et al.*, to the Debtors for Production of Documents, attached as Exhibit B to the Texas Group's Motion to Compel, served June 8, 2010.

⁷ *Id.*, Requests Nos. 2, 3, 9, 34, 36, and 37.

⁸ See the Texas Group's Motion to Compel, pp. 2-5, describing the Texas Group's efforts to work with the Debtors in good faith regarding reasonable discovery prior to filing the Motion to Compel, and the Debtors' refusal to permit discovery. After filing the Motion, the Texas Group has continued its efforts to resolve this dispute with the Debtors. However, these efforts have been fruitless.

among, the Debtors, JPMC and/or the FDIC, relating to the “*American National* litigation,” including:

- Documents relating to telephone conferences and/or communications by WMI and/or its counsel with JPMC and/or the FDIC regarding the American National litigation, including telephone conferences on February 10, 11, 12, and 19, 2010;
 - A stipulation submitted to WMI by JPMC on or about February 22, 2010, and any other documents exchanged by, between or among WMI, JPMC and/or the FDIC regarding release of any and all claims asserted in the Texas Litigation, WMI’s potential intervention in the Texas Litigation, and other activity by WMI relating to the Texas Litigation;
 - All documents provided or shared at, and any communications of any kind related to an “all-hands litigation assessment conference” on March 10, 2010;
 - Any draft of a pleading or memorandum containing an opinion that WMI did not own the Texas Litigation and/or have grounds to intervene in the Texas Litigation, and any opinion regarding WMI’s right to release the claims asserted by the plaintiffs in the Texas Litigation as part of a plan of reorganization in this bankruptcy case.
8. The Debtors have flatly refused to produce any additional documents.

B. The Debtors Offer no Legal or Factual Basis to Deny the Texas Group’s Reasonable Discovery

9. As the Texas Group shows in the Motion to Compel, the Texas Group members are “parties in interest” pursuant to Section 1109(b) of the Bankruptcy Code, and have standing to fully participate in these Bankruptcy proceedings and to challenge the Debtors’ improper Joint Plan.⁹

⁹ *Id.*, pp. 6-9.

10. The Debtors offer only specious arguments and half-truths in their Objection. The unsupported arguments and factual inaccuracies are easily disposed of.

11. The Debtors mistakenly argue that “Movants do not hold a claim against the Debtors’ estates,” are “third parties,” and therefore are “not parties in interest with standing.”¹⁰ The Debtors cite no authority for their novel legal argument. Contrary to the Debtors’ contention, Section 1109(b) of the Bankruptcy Code grants “party in interest” status to any person who has a financial stake in the outcome of the bankruptcy proceedings. *See Unofficial Comm. of Zero Coupon Noteholders v. Grand Union Co.* 179 B.R. 56, 59 (D. Del. 1995) (granting party-in-interest status to bondholders of debtor’s parent corporation who claim that plan of reorganization would render parent unable to meet obligations on 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).

12. The Debtors state in their Objection that “Movants formerly were plaintiffs in a now-dismissed action in the United States District Court for the District of Columbia . . .” However, as the Debtors are or should be aware, the Texas Group has appealed the District Court’s order of dismissal, and the appeal is currently pending in the Court of Appeals for the District of Columbia.¹¹ Thus, the Texas Group has a significant and vital financial stake in the claims being pursued in the Texas Litigation. The Debtors’ failure to mention the appeal is

¹⁰ Objection, p. 1-2.

¹¹ See Exhibit A, Docket Order, *American National Insurance Company, et al. v. FDIC, as Receiver for Washington Mutual Bank, Henderson, Nevada, et al.*, No. 10-5245, District of Columbia Court of Appeals (filed July 20, 2010).

especially disingenuous given that the Global Settlement Agreement clearly calls for the Debtors to seek to extinguish any appeal if the Joint Plan is approved.¹²

13. The Debtors, more egregiously, misstate the circumstances and meaning of a Notice of Dismissal in the Texas Litigation.¹³ On February 18, 2010, certain plaintiffs – those asserting claims based on injuries arising out of their ownership of Washington Mutual Inc. bonds and stock – dismissed their claims with prejudice. As the plaintiffs who were dismissing their claims explained in their Notice of Dismissal, the plaintiffs continued to assert that they had standing to pursue their claims against JPMC based on the plaintiffs’ injuries stemming from JPMC’s “purposeful misconduct that was directed towards and intended to harm the Plaintiffs and that the injury caused to the Plaintiffs – stripping away of their contract and property rights – is direct and not shared by WMI.”¹⁴

14. The plaintiffs explicitly stated in their Notice of Dismissal that “the WMI bankruptcy trustee has no standing to bring the claims asserted by the Plaintiffs, which belong exclusively to Plaintiffs.”¹⁵ *Citing Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416, 433-34 (1972) (Trustee lacked standing to sue a third party for damages incurred by debenture

¹² See Global Settlement Agreement, p. 32, Section 2.7, Texas Litigation, discussing using “reasonable best efforts to seek rulings from . . . the relevant appellate court . . . enjoining the plaintiffs in the Texas Litigation . . . to the extent that a final non-appealable judgment has not been entered previously against the plaintiffs in the Texas Litigation . . .”

¹³ See Exhibit B, Plaintiffs’ Notice of Dismissal of Washington Mutual, Inc. Bondholder and Stockholder Claims, *American National Insurance Co. et al. v. JPMorgan Chase & Co., et al.*, Case No. 09-1743 (Dist. D.C.) (RMC). [Doc. No. 105].

¹⁴ *Id.* at p. 2 (punctuation omitted).

¹⁵ *Id.*

holders of the corporate debtor); *In re Seven Seas Petroleum, Inc.*, 522 F.3d 575, 584 (5th Cir. 2008) (bondholders and bankruptcy estate both had standing to assert separate claims against a third party arising out of the same set of facts and circumstances). The plaintiffs explained that they “continue to contend that they have standing to assert all of the claims asserted in their Petition,” but that that “dismissal of the named claims will simplify the procedural issues before this Court, [and] will promote the economic and speedy disposition of the entire controversy between the parties[.]” A copy of the Notice of Dismissal was sent to Debtors’ counsel as a courtesy, and billing statements show that Debtors’ counsel reviewed the Notice of Dismissal.

15. Nevertheless, in their Objection the Debtors tell the Court that “Movant previously voluntarily dismissed with prejudice all claims against JPMC that related to Movants’ statuses as former shareholders of WMI, recognizing that those claims were derivative in nature and plainly were property of the WMI bankruptcy estate.”¹⁶ This statement is inaccurate.

16. In any event, the Notice of Dismissal speaks for itself. As a result of the dismissal of certain claims in the Notice of Dismissal, the remaining plaintiffs in the Texas Litigation – the Texas Group – are only bondholders of Washington Mutual Bank, Henderson Nevada (“WMB”). It was the claims of these WMB bondholders that the Debtors sought to bargain away when it signed the Global Settlement Agreement the following month.

17. The Debtors do not have a good faith basis to include the Texas Litigation in the Global Settlement Agreement. The only purpose served by the Global Settlement Agreement and the Joint Plan as it relates to the Texas Litigation is to abet JPMC in an unlawful attempt to

¹⁶ Objection, p. 2.

make an “end-run” around the jurisdiction of the United States Court of Appeals for the District of Columbia Circuit.

WHEREFORE, the Texas Group requests that the Court issue an order compelling the Debtors to produce all documents in their possession responsive to the Texas Group’s requests numbers: 2, 3, 9, 34, 36, and 37, and to respond to the particularized requests set forth in paragraph seven, above.

Dated: September 21, 2010

Respectfully Submitted,

SMITH, KATZENSTEIN & FURLOW LLP

By: /s/ Michael P. Migliore
Michael P. Migliore (Del. Bar No. 4331)
800 Delaware Avenue
Suite 1000, P.O. Box 410
Wilmington, DE 19899
Tel. 302-652-8400 x216
Fax 302-652-8405
Email: mpm@skfdelaware.com

-and-

GREER, HERZ & ADAMS, LLP
Andrew J. Mytelka (Texas Bar No. 14767700)
Frederick E. Black (Texas Bar No. 02371100)
Tara B. Annweiler (Texas Bar No. 00783547)
James M. Roquemoire (Texas Bar No. 24058082)
One Moody Plaza, 18th Floor
Galveston, Texas 77550
(409) 797-3200
(409) 766-6424 - telecopier

Counsel to 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

EXHIBIT A

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5245

September Term 2009

1:09-cv-01743-RMC

Filed On: July 26, 2010 [1257162]

American National Insurance Company and
American National Property And Casualty
Company,

Appellants

American National General Insurance
Company,

Appellee

Farm Family Life Insurance Company and
Farm Family Casualty Insurance Company,

Appellants

Pacific Property and Casualty Company
and American National Lloyds Insurance
Company,

Appellees

National Western Life Insurance Company,

Appellant

Garden State Life Insurance Company,

Appellee

v.
FDIC, As Receiver For Washington Mutual
Bank, Henderson, Nevada, et al.,

Appellees

ORDER

The notice of appeal was filed on July 20, 2010, and docketed in this court on July 26, 2010. It is, on the court's own motion,

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5245

September Term 2009

ORDERED that appellants submit the documents listed below by the dates indicated.

Certificate as to Parties, Rulings, and Related Cases	August 25, 2010
Docketing Statement Form	August 25, 2010
Entry of Appearance Form	August 25, 2010
Procedural motions, if any	August 25, 2010
Statement of Intent to Utilize Deferred Joint Appendix	August 25, 2010
Statement of Issues to be Raised	August 25, 2010
Transcript Status Report	August 25, 2010
Underlying Decision from Which Appeal or Petition Arises	August 25, 2010
Dispositive Motions, if any (Original and 4 copies)	September 9, 2010

It is

FURTHER ORDERED that appellee submit the documents listed below by the dates indicated.

Certificate as to Parties, Rulings, and Related Cases	August 25, 2010
Entry of Appearance Form	August 25, 2010
Procedural motions, if any	August 25, 2010
Dispositive Motions, if any (Original and 4 copies)	September 9, 2010

It is

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5245

September Term 2009

FURTHER ORDERED that appellant submit a transcript status report every 30 days after the filing of the initial report, until all transcripts have been received. Within three days of receipt of all transcripts, appellant is directed to file a Final Status Report indicating the date the complete transcript was received. All reports must be served on the parties and each reporter. It is

FURTHER ORDERED that briefing in this case be deferred pending further order of the court.

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken R. Meadows
Deputy Clerk

The following forms and notices are available on the Court's website:

Civil Docketing Statement Form
Entry of Appearance Form
Transcript Status Report Form
Request to Enter Appellate Mediation Program
Notice Concerning Expedition of Appeals and Petitions for Review
Stipulation to be Placed in Stand-By Pool of Cases

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN NATIONAL
INSURANCE COMPANY, *et. al.*

Plaintiffs,

VS.

JPMORGAN CHASE & CO.
and JP MORGAN CHASE BANK,
NATIONAL ASSOCIATION,

Defendants,

and

FDIC, AS RECEIVER FOR
WASHINGTON MUTUAL BANK,
HENDERSON, NEVADA

Intervenor.

[illegible]

C.A. No. 1:09-CV-01743-RMC

**PLAINTIFFS' NOTICE OF DISMISSAL OF
WASHINGTON MUTUAL, INC. BONDHOLDER AND STOCKHOLDER CLAIMS**

Plaintiffs, American National Insurance Company et al. (“Plaintiffs”), give notice that they dismiss the claims noted below. As a result, Plaintiffs no longer allege any claims arising from their ownership of bonds and securities of Washington Mutual, Inc. (“WMI”).

1. Plaintiffs, bondholders of Washington Mutual Bank (“WMB”), bondholders of WMI and stockholders of WMI—all stakeholders of Washington Mutual Bank—initiated this instant lawsuit (the “Action”) in the 122nd District Court of Galveston County, Texas, on February 16, 2009. In their Original Petition (the “Petition”), Plaintiffs alleged that the Defendants, JPMorgan Chase & Co and JPMorgan Chase Bank, N.A. (“JPMC”), employed an unlawful scheme to obtain the assets of WMB, stripped of obligations to stakeholders such as the

Plaintiffs. Plaintiffs asserted Texas state law causes of action of tortious interference with existing contract, breach of confidentiality agreement, and unjust enrichment against JPMC.

2. The Action was subsequently removed to federal court and venue was transferred to the United States District Court for the District of Columbia. On November 6, 2009, the Court established a briefing schedule for dispositive motions, setting oral argument for February 18, 2010. In accordance with the Court's briefing schedule, the Plaintiffs, JPMC and the FDIC filed the following motions, which are currently pending before the Court: (1) Plaintiffs' Motion to Dismiss FDIC as a Party and for Remand [Doc. 88], (2) JPMC's Motion to Dismiss [Doc. 89], and (3) the FDIC's Motion to Dismiss [Doc. 87].

3. In JPMC's motion to dismiss, filed on December 7, 2009, JPMC alleged that "the claims asserted by the ANICO WMI Stockholder and ANICO WMI Bondholder Plaintiffs fail for lack of standing[.]"¹

4. Plaintiffs dispute JPMC's contention regarding standing. As explained in Plaintiffs' memorandum, the Plaintiffs, in their Petition, "allege purposeful misconduct that was directed towards and intended to harm the Plaintiffs,"² and that "[t]he injury caused to the Plaintiffs—stripping away of their contract and property rights—is direct and not shared by WMI."³ Contrary to JPMC's assertion, the WMI bankruptcy trustee has no standing to bring the claims asserted by the Plaintiffs, which belong exclusively to Plaintiffs. See *Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416, 433-34 (1972) (Trustee lacked standing to sue a third party for damages incurred by debenture holders of the corporate debtor); *In re Seven Seas Petroleum, Inc.*, 522 F.3d 575, 584 (5th Cir. 2008) (bondholders and bankruptcy estate both had

¹ Doc. 90, p. 9.

² Doc. 96, p. 16.

³ Doc. 96, p. 17.

standing to assert separate claims against a third party arising out of the same set of facts and circumstances).

5. During the week of February 8, 2010, counsel for WMI and counsel for JPMC contacted Plaintiffs on various occasions and requested that Plaintiffs agree to a continuance of the scheduled oral argument. Plaintiffs declined the requests. JPMC filed a motion for continuance on Friday, February 12, 2010, attaching a letter from WMI to the Court as the basis for the motion, which expressed WMI's desire for a continuance because "Debtors have concluded that several issues have been raised that may affect Debtors' interests."⁴ In addition, WMI suggested that it may seek "a limited intervention" in this Action or take "action with respect to the automatic stay under the Bankruptcy Code, 11 U.S.C. § 362(a)."⁵

6. The Court subsequently granted in part, and denied in part, JPMC's request for a continuance, and reset the oral argument for March 9, 2010.

7. Plaintiffs continue to contend that they have standing to assert all of the claims asserted in their Petition, and are prepared to argue that issue to the Court. However, in light of the recent representations made by counsel for WMI, Plaintiffs believe that it is in their best interest to avoid the delay and expense inherent in litigating the standing of WMI bondholder and WMI stockholder Plaintiffs in this forum and in the United States Bankruptcy Court for the District of Delaware, where the WMI bankruptcy is pending. In addition, Plaintiffs have now sold the WMI bonds that they described in the Petition.

8. The dismissal of the named claims will simplify the procedural issues before this Court, will promote the economic and speedy disposition of the entire controversy between the

⁴ See Doc. 103-1.

⁵ *Id.*

parties, will not cause any delay or trial inconvenience, and will not prejudice the rights of any of the parties to this action.

9. Plaintiffs American National Insurance Company (“ANICO”), American National General Insurance Company (“ANGIC”), Farm Family Life Insurance Company (“FFLIC”), Pacific Property and Casualty Company (“Pacific”), and American National Lloyds Insurance Company (“AN Lloyds”), therefore dismiss the claims against the JPMC that are based on injuries due to ownership of WMI bonds.

10. In addition, Plaintiffs ANPAC, Garden State Life Insurance Company (“Garden State”), FFLIC and NWL, dismiss their claims against JPMC that are based on injuries due to ownership of WMI common stock.

11. As a result of this dismissal, the following Plaintiffs no longer have any interest in this lawsuit: ANGIC, Pacific, AN Lloyds, and Garden State.

12. Plaintiffs ANICO, ANPAC, FFLIC, FFCIC and NWL, who suffered injury as a result of their ownership of bonds of WMB, expressly do not dismiss any of their remaining claims against JPMC, as described in the Petition.

13. Plaintiff ANICO continues to assert the claims of tortious interference with contract, breach of confidentiality agreement, and unjust enrichment as described in the Petition, which arise from injury due to ownership of the following WMB bonds:

ISSUER	CUSIP	COUPON	MATURITY	PURCHASE DATE	PAR/FACE
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

14. Plaintiff ANPAC continues to assert the claims of tortious interference with contract, breach of confidentiality agreement, and unjust enrichment as described in the Petition, which arise from injury due to ownership of the following WMB bond:

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

15. Plaintiff FFLIC continues to assert the claims of tortious interference with contract, breach of confidentiality agreement, and unjust enrichment as described in the Petition, which arise from injury due to ownership of the following WMB bond:

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

16. Plaintiff FFCIC continues to assert the claims of tortious interference with contract, breach of confidentiality agreement, and unjust enrichment as described in the Petition, which arise from injury due to ownership of 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

17. Plaintiff NWL continues to assert the claims of tortious interference with contract, breach of confidentiality agreement, and unjust enrichment as described in the Petition, which arise from injury due to ownership of the following WMB 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

18. The Plaintiffs, by this Notice, do not intend to cause any amendment to the Petition that will necessitate a responsive pleading by JPMC or the FDIC, or that will justify postponing the scheduled oral argument in this case. After oral argument in this case, if appropriate, Plaintiffs intend to seek leave to amend their Petition to reflect the dismissal of claims described in this notice.

Respectfully submitted,

By: /s/ Gregory S. Smith
Gregory S. Smith (D.C. Bar #472802)
Law Offices of Gregory S. Smith
913 East Capitol Street, S.E.
Washington, D.C. 20003
Telephone: (202) 460-3381
Facsimile: (877) 809-9113
Email: gregsmithlaw@verizon.net

Andrew J. Mytelka
Texas State Bar No. 14767700
Joseph R. Russo, Jr.
Texas State Bar No. 24002879
Steve Windsor
Texas State Bar No. 21760650
James M. Roquemore
Texas State Bar No. 24058082
GREER, HERZ & ADAMS, LLP
One Moody Plaza, 18th Floor
Galveston, Texas 77550
(409) 797-3200
(409) 766-6424 (FAX)

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on February 18, 2010, a copy of this document was filed with the Court's ECF filing system, which will provide electronic notification of its filing to all counsel who have noticed their appearance in this action.

/s/ Gregory S. Smith
Gregory S. Smith

CERTIFICATE OF SERVICE

I, Michael P. Migliore, hereby certify that I caused a true and correct copy of the
REPLY TO DEBTORS' OBJECTION TO TEXAS GROUP'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS FROM DEBTORS AND TO EXERCISE ITS RIGHT TO
PARTICIPATE IN GENERAL DISCOVERY AVAILABLE TO ALL PARTIES to be served on
all parties in this case via the Court's CM-ECF filing system and on the parties listed below as
indicated on this 21st day of September, 2010.

Debtors' Counsel:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attn: Brian S. Rosen, Esq.
(via first class mail)

Debtors' Co-Counsel:

Richards Layton & Finger P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19899
Attn: Mark D. Collins, Esq.
(via hand delivery)

Counsel for JPMorgan Chase:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attn: Stacey R. Friedman, Esq.
(via first class mail)

Co-Counsel for JPMorgan Chase:

Landis Rath & Cobb LLP
919 Market Street, Suite 1800
P. O. Box 2087
Wilmington, Delaware 19899
Attn: Adam G. Landis, Esq.
(via hand delivery)

Counsel for FDIC-Receiver:

DLA Piper LLP

1251 Avenue of the Americas

New York, NY 10020

Attn: John J. Clarke, Jr.

(via first class mail)

Counsel for the FDIC-Receiver:

M. Blake Cleary, Esq.

Jaime N. Luton, Esq.

Young Conaway Stargatt & Taylor, LLP

The Brandywine Building

1000 West Street, 17th Floor

Wilmington, DE 19801

(via hand delivery)

/s/ Michael P. Migliore

Michael P. Migliore (ID No. 4331)