VIA FEDERAL EXPRESS

November 6, 2010

Hon. Mary F. Walrath
United States Bankruptcy Court
District of Delaware
824 Market Street, 3rd Floor
Wilmington, DE 19801

Re: In re Washington Mutual, Inc., et al., Case Number 08-12229 (MFW) (Jointly Administered)

Dear Judge Walrath:

I am writing regarding the chapter 11 case of the above-referenced debtors ("WMI"). I own WMI equity – common and preferred – securities.

Specifically, I am writing to object to any provisions in the GSA or the Plan which require abandonment or any form of release of the WMI Claims.

On December 30, 2008, WMI filed with the Federal Deposit Corporation ("FDIC"), in its capacity as receiver for Washington Mutual Bank (the "FDIC Receiver") a claim against Washington Mutual Bank's ("WMB") receivership asserting claims on behalf of WMI's bankruptcy estate for the seized assets, WMB and its wholly-owned subsidiary, Washington Mutual Bank fsb. That claim was rejected on January 23, 2009, and pursuant to 12 U.S.C. § 1819(b)(2)(A) and 12 U.S.C. § 1821(d)(6)(A), WMI commenced litigation against the FDIC-Receiver, Washington Mutual, Inc. and WMI Investment Corp. v. FDIC, Case No. 09-00533, in the United States District Court for the District of Columbia (the "D.C. Court") alleging, among other things, several claims for relief ("WMI Claims").[1]

[1] The WMI Claims are as follows:

(1) Count I: Determination of Plaintiffs' Proof of Claim;
(2) Count II: Dissipation of WMB's Assets;
(3) Count III: Taking of Plaintiff's Property Without Just Compensation;
(4) Count IV: Conversion of Plaintiff's Property; and
(5) Count V: Declaration that the FDIC-Receiver's Disallowance is Void.

Additionally, WMI's complaint makes the following prayer for relief:

(1) An order declaring Plaintiffs' Claims to be valid and proven against the Receivership;

(2) An order directing FDIC-Receiver to pay the Claims from the assets of the Receivership in accordance with 12 U.S.C. § 1821(d)(11);

(3) An order directing FDIC-Receiver to provide Plaintiffs with an accounting of the disposition of the assets of the Receivership if any Claim is not satisfied in full;

(4) An order directing FDIC-Receiver to provide Plaintiffs with an accounting of all property transferred from Plaintiffs in connection with the Receivership;

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Section 541(a) of 11 U.S.C . § 101 et seq. (the "Bankruptcy Code") defines property of the bankruptcy estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." The scope of section 541 is broad, and includes causes of action. United States v. Whiting Pools, Inc., 462 U.S. 198, 205 n. 9 (1983); Integrated Solutions, Inc. v. Service Support Specialties, 124 F.3d 487, 490-91 (3d Cir. 1997). Accordingly, the WMI claims are property of WMI's estate.

WMI has filed a proposed global settlement agreement ("GSA") which is intended to form a key element of WMI's proposed plan of reorganization (the "Plan"). Pursuant to the GSA and Plan WMI will abandon the WMI Claims.

Section 554 of the Bankruptcy Code provides that "the trustee may abandon any property of the estate . . . that is of inconsequential value and benefit to the estate." 11 U.S.C . § 554(a). It is the law of the Third Circuit and elsewhere that a trustee or debtor in possession has broad discretion in deciding whether to abandon litigation claims that are property of a debtor's bankruptcy estate. See Hanover Insurance Co. v. Tyco Industries, Inc., 500 F. 2d 654 (3rd Cir. 1974)(in carrying out the trustee's duty to maximize the bankruptcy estate, a trustee may abandon a cause of action that is deemed less valuable than the cost of asserting the claim); In re Northview Motors, Inc., 202 B.R. 389, 393 (W.D. Pa. Bankr. 1996)(trustee was free to abandon a suit where the secured interest of other principals in the suit were greater than the proposed settlement value of the suit thus resulting in no net recovery for the estate); see also In re Wilson, 94 B.R. 886 (E.D. Va. Bankr. 1989)(the court held that the only consideration in determining whether to abandon a claim under the Bankruptcy Code is whether such an action is in the best interests of the estate).

Nevertheless, a debtor's power to abandon property is not unfettered. The party seeking to abandon the property must show it to be of "inconsequential value and benefit to the estate", a finding of the presiding court. See Northview Motors, Inc. v. Chrysler Motors Corporation, 186 F.3d 346 (3rd Cir. 1999) (noting bankruptcy court ordered trustee to abandon property).

Nothing in the Plan discusses why the FC actions should be abandoned under Section 554, it merely states that the Plan "is in the best interests of [WMI's] estate[] and creditors" and further says that:

> "[E]ntering into the Global Settlement Agreement is the best way to secure considerable value for the[] estates as opposed to proceeding with expensive, protracted litigation with no

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(5) Enter a judgment against FDIC-Corporate and FDIC-Receiver for damages, in an amount to be determined, equal to the amount of money Plaintiffs would have received in a straight liquidation of WMB's assets and liabilities less any amounts actually received from the Receivership;

(6) Enter a judgment against FDIC-Corporate and FDIC-Receiver for damages, in an amount to be determined, equal to the value of Plaintiffs' property converted by the FDIC;

(7) An order declaring that the FDIC's January 23, 2009 disallowance to be void, and that the parties should proceed as if such disallowance never occurred;

(8) Award Plaintiffs costs and attorneys' fees as may be permitted by law; and

(9) Award Plaintiffs such other relief as may be just.

certainty of additional gain. In the absence of the Global Settlement Agreement, the Debtors would be forced to continue to prosecute the litigation pending to the risk of ultimately obtaining less net value for their estates and creditors." GSA, at p. 176.

Accordingly, under Section 554 WMI must establish that abandoning the WMI Claims, a key element of its Plan, is in the best interests of its estate because the WMI Claims are of inconsequential value and benefit.

As stated previously, the WMI Claims are under the jurisdiction of the D.C. Court, U.S. District Judge Rosemary Collyer presiding and, as the defendant is the FDIC Receiver, pursuant to 12 U.S. C. 1819(b)(2)(A) and 12 U.S.C. § 1821(d)(6)(A), Congress has granted her exclusive jurisdiction over those claims. As stated by Judge Collyer in her January 7, 2010 order denying the 'Partial Motion to Dismiss of Defendant Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank' ("Collyer Order") (attached as Exhibit A): "[t]he Bankruptcy Court's determination of what constitutes the property of the estate . . . is an issue over which it has exclusive jurisdiction" and "the main factor weighing against [my] abstention is that some of WMI's claims arise under the FDI Act; thus the District Court has **exclusive** jurisdiction over those claims." Collyer Order, pp. 4, 6. (Emphasis in original.) Accordingly, while this court has jurisdiction over WMI's bankruptcy estate, and the WMI Claims are assets of that estate, it does not have jurisdiction over the assets themselves.

As the WMI Claims arise under 12 U.S.C. § 1821(d)(6)(A) and this court cannot adjudicate their value, it therefore cannot order their abandonment under Section 554. Of course, this court can order WMI (or another party in interest) to go to Judge Collyer to have matters (including value and validity) pertaining to the WMI Claims adjudicated in her forum.

As abandonment of the WMI Claims is a key component of the GSA and Plan this court cannot order the consummation of until and unless the value and validity of the WMI Claims is adjudicated by Judge Collyer. Afterwards, if her rulings with respect to the WMI Claims' allow WMI to establish that the WMI Claims are of inconsequential value and benefit to the estate this court could order abandonment under Section 554.

Though the foregoing analysis only discusses jurisdictional limits arising under Section 554, it leaves open the question of what else in the GSA and the Plan are beyond your jurisdiction but that WMI is asking you to order regardless.

For the foregoing reasons I object to any provisions in the GSA or the Plan which requires abandonment or any form of release of the WMI Claims.

Respectfully,

Daniel Hoffman

Daniel Hoffman, Pro Se
Southern California

EXHIBIT A

ORDER DENYING THE PARTIAL MOTION TO DISMISS OF DEFENDANT FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR WASHINGTON MUTUAL BANK

Entered January 7, 2010

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WASHINGTON MUTUAL, INC., *et al.*,	
Plaintiffs,	
v.	**Civil Action No. 09-533 (RMC)**
FEDERAL DEPOSIT INSURANCE CORPORATION, in its capacity as receiver of Washington Mutual Bank, *et al.*,	
Defendants.	

ORDER

Washington Mutual, Inc. *et al.* ("WMI") sued Federal Deposit Insurance Corporation ("FDIC") under the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. § 1811 *et seq.*, alleging, among other things, that the FDIC improperly disallowed WMI's claims with respect to the sale of assests of Washington Mutual Bank to J.P. Morgan Chase. On November 4, 2009, the Court heard arguments regarding the motion to dismiss by the FDIC in it's corporate capacity ("FDIC-C") [Dkt. # 27], the partial motion to dismiss by the FDIC in it's capacity as receiver of Washington Mutual Bank ("FDIC-R") [Dkt. # 24], and WMI's motion to dismiss FDIC's counterclaims and stay the proceedings pending the resolution of the concurrent proceedings in the Bankruptcy Court for the District of Delaware [Dkt. # 45]. The Court will deny without prejudice the FDIC-C's motion to dismiss, FDIC-R's partial motion to dismiss, and WMI's motion to dismiss the FDIC's counterclaims, and will grant the motion to stay the case.

I. LEGAL STANDARDS

Federal district courts and bankruptcy courts have concurrent jurisdiction over claims

arising under Title 11 of the Bankruptcy Code:

> The subject matter jurisdiction of the bankruptcy court is defined by statute in 28 U.S.C. §§ 157 and 1334. Section 1334(b) grants the district courts "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b) (2003). Section 157(a) allows the district courts to refer "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11" to the bankruptcy judges for the district. 28 U.S.C. § 157 (a) (2003). Thus, § 157 (a) vests four categories of subject matter in the jurisdiction of the bankruptcy court: (1) cases "under title 11;" (2) civil proceedings "arising under title 11;" (3) civil proceedings "arising in" a case under title 11; and (4) civil proceedings "related to" a case under title 11. 28 U.S.C. § 157(a); *see also Plaza at Latham Assocs. v. Citicorp N. Am., Inc.*, 150 B.R. 507, 510-12 (N.D.N.Y. 1993) (discussing the distinctions between the four categories of subject matter jurisdiction). Bankruptcy courts have the power to enter "appropriate orders and judgments" in cases under title 11 and in all "core proceedings arising under title 11, or arising in a case under title 11." 28 U.S.C. § 157(b)(1).

In re Garnett, 303 B.R. 274, 277 (E.D.N.Y. 2003); *see also Plum Run Serv. Corp. v. U.S., Dep't of Navy (In re Plum Run Serv. Corp.)*, 167 B.R. 460, 463 (Bankr. S.D. Ohio 1994). In simpler terms, and addressing the issues most relevant to the instant case, while both the bankruptcy court and district court may have jurisdiction over civil proceedings arising in or related to a case under title 11, neither has *exclusive* jurisdiction under the Bankruptcy Code. However, the Bankruptcy Court has already asserted jurisdiction over most, although not all, elements of this action. *See* WMI Aff. re Mot. to Dismiss [Dkt. # 47], Ex. C (Bankr. Tr. at 95 (June 24, 2009)).

The facts and property at issue here are similar, but not identical, to those at issue in the bankruptcy proceeding because there are claims in this action that did not arise under Title 11 and thus do not fall within the Bankruptcy Court's jurisdiction. Nonetheless, there is still cause for this Court to abstain from deciding the issues presented in this case during the pendency of the

bankruptcy case. In the first instance, the Bankruptcy Code explicitly states: "[N]othing in this section prevents a district court in the interest of justice, or in the interest of comity with the State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." 28 U.S.C. § 1334(c). Therefore, if the Court finds that it is in the interest of justice to abstain from hearing this case at this time, it may do so. Application of the abstention doctrine to concurrent proceedings in federal and state courts is sufficiently analogous to lend guidance here.

"Abstention from the exercise of federal jurisdiction is the exception, not the rule." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976). The Supreme Court recognizes three basic exceptions to the rule that a district court should adjudicate any controversy properly before it. *Id.* First, a federal court should abstain where the case presents a federal constitutional issue that may be mooted or altered by a state court's interpretation of the relevant state law issues. *Id.* at 814. Second, a federal court should abstain where "there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case at bar." *Id.* And finally, a federal court should abstain where federal jurisdiction has been invoked for the purpose of restraining state criminal proceedings, nuisance proceedings, or tax collection. *Id.* at 816. Furthermore,

> [i]n assessing the appropriateness of dismissal in the event of an exercise of concurrent jurisdiction, a federal court may also consider such factors as the inconvenience of the federal forum; the desirability of avoiding piecemeal litigation; and the order in which jurisdiction was obtained by the concurrent forums. No one factor is necessarily determinative; a carefully considered judgment taking into account both the obligation to exercise jurisdiction and the combination of factors counselling [sic] against that exercise is required.

Id. at 819.

II. ANALYSIS

Courts have recognized that

> parallel litigation of factually related cases in separate fora is inefficient. Indeed, separate parallel proceedings have long been recognized as a judicial inconvenience. For "reasons of wise judicial administration," the district court is given discretion to dismiss or stay a pending suit in favor of a consolidated action in another forum but it is a discretion both the Supreme Court and our court have limited. In the case of parallel litigation in two federal district courts, the "general principle is to avoid duplicative litigation." So long as the parallel cases involve the same subject matter, the district court should – for judicial economy – resolve both suits in a single forum.

Handy v. Shaw, Bransford, Veilleux & Roth, 325 F.3d 346, 350 (D.C. Cir. 2003); *see Columbia Plaza Corp. v. Sec. Nat'l Bank*, 525 F.2d 620, 626 (D.C. Cir. 1975) ("Sound judicial administration counsels against separate proceedings, and the wasteful expenditure of energy and money incidental to separate litigation of identical issues should be avoided.") (footnotes omitted).

The Supreme Court has noted that the "task in cases such as this is not to find some substantial reason for the exercise of federal jurisdiction by the district court; rather, the task is to ascertain whether there exist 'exceptional' circumstances, the 'clearest of justifications,' . . . to justify the surrender of that jurisdiction." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25-26 (1983). The first exception justifying abstention, i.e., that issues may be mooted or altered by the other court's interpretation of the relevant issues over which it has jurisdiction, *see Colorado River*, 424 U.S. at 814, is applicable here. The Bankruptcy Court's determination of what constitutes the property of the estate — an issue over which it has exclusive jurisdiction — could alter many of the issues raised and relief sought in WMI's Complaint.

Furthermore, several additional factors weigh in favor of staying the proceeding until the resolution of the bankruptcy proceeding. For example:

- **Avoiding parallel litigation:** "[T]he desirability of avoiding piecemeal litigation favors abstention. Piecemeal litigation occurs when different tribunals consider the same issue, thereby duplicating efforts and possibly reaching different results." *Foster-El v. Beretta U.S.A. Corp.*, 163 F. Supp. 2d 67, 71 (D.D.C. 2001) (internal citations and quotation marks omitted).
- **Order of filing:** WMI commenced the bankruptcy action in Delaware on September 26, 2008, and did not file its action here until March 20, 2009. Furthermore, "[t]he Supreme Court has made clear that the focus of this factor is not only the timing of the filing of the complaint but also the progress that has been made in each case." *Sheehan v. Koonz*, 102 F. Supp. 2d 1, 5 (D.D.C. 1999). The bankruptcy case has been proceeding at a faster pace than has this one; thus, this factor weighs in favor of abstention.
- **Jurisdiction over property:** Finally, and perhaps most significantly, "a court that assumes jurisdiction over property first may exercise that jurisdiction to the exclusion of other courts." *Foster-El*, 163 F. Supp. 2d at 71. To the extent any of WMI's claims here relate to property that may be considered part of the bankruptcy estate, this Court is barred from making any determinations as to the ownership of that property. *See In re Devitt*, 126 B.R. 212, 215 (Bankr. D. Md. 1991) (finding that "once equitable jurisdiction has been properly invoked it will proceed to render a full and complete disposition of the controversy. This is obvious, not only to prevent a duplication of effort and a multiplicity of suits, but . . . because the bankruptcy court alone has exclusive jurisdiction to determine dischargeability of debts

. . ."); *Rare, LLC v. Marciano (In re Rare, LLC)*, 298 B.R. 762, 764 (Bankr. D. Colo. 2003) ("Defendants have taken it upon themselves to make the determination of what is and is not property of the bankruptcy estate. They did, and continue to do so, at their peril, for it lies within the exclusive province of the bankruptcy courts to determine what interests are part of the estate."). Relatedly, "the Bankruptcy Code's automatic stay functions as a quasi-jurisdictional statute that precludes proceedings, without leave of the bankruptcy court, in nonbankruptcy courts that otherwise have concurrent jurisdiction." *Fidelity Nat'l Title Ins. Co. v. Franklin (In re Franklin)*, 179 B.R. 913, 919 (Bankr. E.D. Cal. 1995); 11 U.S.C. § 362(a). However, the automatic stay only applies to acts to obtain possession of property of the estate. Claims unrelated to the property of the estate may proceed.

Conversely, the main factor weighing against abstention is that some of WMI's claims arise under the FDI Act; thus, the District Court has *exclusive* jurisdiction over those claims. Nonetheless, the Bankruptcy Court's decisions regarding the property of the estate could impact WMI's claims here.

III. CONCLUSION

Although the Court has concurrent or even exclusive jurisdiction over many of WMI's claims, this Court will stay this case pending the outcome of the bankruptcy proceeding. The Bankruptcy Court's decision as to what constitutes the property of the estate may impact the Court's decision about whether to dismiss certain of WMI's claims as well as Defendant FDIC's and Intervenor-Defendant J.P. Morgan Chase's counterclaims. Accordingly, it is hereby

ORDERED that WMI's Motion to Dismiss the FDIC's Counterclaims and Stay the Proceeding in its Entirety [Dkt. # 45] is **GRANTED IN PART** and **DENIED IN PART**

WITHOUT PREJUDICE; and it is further

ORDERED that WMI's Motion to Dismiss the FDIC's Counterclaims [*see* Dkt. # 45] is **DENIED WITHOUT PREJUDICE**; and it is further

ORDERED that the FDIC-C's Motion to Dismiss [Dkt. # 27] is **DENIED WITHOUT PREJUDICE**; and it is further

ORDERED that the FDIC-R's Motion to Dismiss in Part [Dkt. # 24] is **DENIED WITHOUT PREJUDICE**; and it is further

ORDERED that WMI's Motion to Stay the Proceeding in its Entirety [*see* Dkt. # 45] is **GRANTED**. This case is stayed pending further order of the Court. The parties shall submit joint status reports every 120 days, with the first due May 7, 2010, updating the Court on the progress and status of the bankruptcy case.

SO ORDERED.

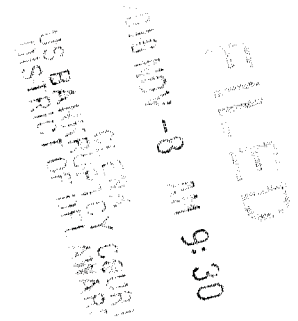
Date: January 7, 2010

/s/
ROSEMARY M. COLLYER
United States District Judge

November 6, 2010

RE: In re Washington Mutual, Inc, et al, Case Number 08-12229 (MFW)(Jointly Administered)

To: Clerk, United States Bankruptcy Court, District of Delaware



Dear Sir or Madam:

Please include the enclosed letter in the court's docket.

Thank you.

Daniel Hoffman
Southern California