

VIA EXPRESS MAIL

November 8, 2010

Hon. Mary F. Walrath
 United States Bankruptcy Court
 District of Delaware
 824 Market Street, 5th Floor
 Wilmington, DE 19801

FILED
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 9:35 AM
 U.S. BANKRUPTCY COURT
 DISTRICT OF DELAWARE

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

Dear Judge Walrath:

I am writing to you regarding these Chapter 11 cases of the above-referenced debtors ("WMI"). First, I would apologise for taking time out of your busy day. I do so only because **I believe this to be a time critical matter of significant importance** that must be brought to your attention given the current status of these cases.

I own both preferred and common equity securities of WMI. I include by reference all of the arguments in Mr. Hoffman's letter in these cases, docket #5753, and argue that I too am a party in interest in these cases with a significant interest in the outcome due to my substantial ownership of preferred equity of WMI.

In the thousands of hours of research I have conducted to better understand my investment in WMI, a watershed moment was the discovery of "**Project Fillmore**", and an understanding of the implications that result. Project Fillmore was first referenced in the Doreen Logan Affidavit filed with your court. It was buried in an appendix, and additional publicly available documentation is required to understand the full significance.

To my knowledge, **neither the Debtors nor the Creditor's Committee have seen fit to expound on Project Fillmore.** Both of those entities appear to have a strong desire to close out this bankruptcy in a manner that excludes equity and benefits only them, JP Morgan Chase, and the FDIC. It is my goal with this letter to provide that documentation so that you could take **judicial notice** of these publicly filed documents and obtain a better understanding why many equityholders believe that they should be entitled to a recovery.

So what was Project Fillmore, and why is it important? In a nutshell, **Project Fillmore was a plan to upstream \$20 billion** from Washington Mutual Bank FSB ("WMBfsb") to its parent. Approval of the plan would have provided a tremendous source of immediately available liquidity to Washington Mutual Bank ("WMB").

In fact, it was more than a plan; On August 15, 2008, a request (Appendix A) was filed with the Office of Thrift Supervision ("OTS") to implement that plan. Since the amount to be transferred (\$20 billion in assets) was greater than WMBfsb's earnings in 2008, upstreaming that amount required regulatory approval.



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WMBfsb was a subsidiary of WMB, the entity that was seized and sold to JP Morgan. WMBfsb did not pass through the receivership, but since WMB owned all of the common stock of WMBfsb, WMB's common stock ownership of WMBfsb was included in the sale under the Purchase and Assumption Agreement. Immediately after the sale, JP Morgan folded the assets of WMBfsb into itself. WMBfsb was commonly referred to as the "Little Bank", but in terms of net assets, it was not little at all. WMBfsb's June 30 2008 Thrift Financial Report ("TFR") listed **WMBfsb's net assets**, or total assets minus deposits and other liabilities, as **\$29.23 billion**. This resulted in an amazing **Tier 1 Risk-Based Capital Ratio of 165.24 percent** (Appendix B). Since an institution is considered "Adequately Capitalized" with a ratio of eight percent, WMBfsb was exceptionally well capitalized. This amount of excess capital is almost unheard of in the banking world.

Washington Mutual Bank fsb
Total Risk-Based Capital Ratio
(dollars in thousands)

	Per Capital Projection (Attached)	
	Projected <u>9/30/08</u>	Projected <u>12/31/08</u>
Risk-Weighted Assets	\$ 20,213	\$ 18,877
Risk-Based Capital	15,163	9,389
Total Risk-Based Capital Ratio	79.96%	49.63%
"Adequately Capitalized" Minimum Capital Ratio	8.00%	8.00%
"Well-Capitalized" Minimum Capital Ratio	10.00%	10.00%

Project Fillmore intended to **transfer over \$20 billion** of these net assets to its' parent Pike Street Holdings, for further distribution to WMB as needed to maintain a strong liquidity position. This transfer was intended to be in two stages. It planned to move \$13.95 billion by 9/30/2008 (just days before the seizure), and an additional \$6.8 billion by 12/31/2008. Even after the transfers, WMBfsb would have had exceptional Risk Based Capital Ratios. (79.96% on 9/30/08, and 49.63% 12/31/08)

Typically, regulatory approval would take about 60 days for such a request, but WMB had requested expedited processing so expected approval at any time. Instead they were seized and sold for a pittance. While I realize issues surrounding the seizure are more properly put before Judge Collyer in the DC court, it is in your court that the Debtors, JP Morgan, and the FDIC seek approval of a settlement agreement which would dismiss the DC action and provide very broad releases to all parties. JP Morgan, which often croons over its "Fortress Balance Sheet", no doubt was assisted significantly by WMBfsb's net assets detailed in the enclosed balance sheets.

I find it no happy coincidence that the Creditors Committee, having negotiated a settlement agreement with all parties but equity, managed to come up with just enough that they are paid nearly in full. This allows them to maintain control of the bankruptcy, gaining an additional prize: the reorganized WMI with billions of remaining Net Operating Losses and an additional \$26 billion Capital Loss due to the loss in value of the WMB stock. This allows them to later merge with an entity capable of utilizing these losses, resulting in many billions of dollars in tax savings and a huge potential windfall at equity's expense. A similar result happened (through undervalued real estate) in the K-Mart case, resulting in the term "K-Marted" to reflect a raw deal for equity and an obscene profit for bondholders at equity's expense.

Sheila Bair, the FDIC chairwoman, has publicly stated various reasons for the seizure she had apparently been planning for many months. First, she claimed it was the bank run despite the fact that she began marketing WMB prior to that run. Then she claimed it was due to all of the "toxic" mortgages, but it was later found that the majority of WMB's mortgage portfolio was performing significantly above industry averages. Her latest claim is that WMB was unable to raise additional capital, despite a pending request (Project Fillmore) to add \$20 billion in assets to WMB's capital. While I will not go so far as to accuse Ms. Bair of lying, I will say that I believe she is not telling the whole truth regarding her actions in the seizure of WMB. I can only speculate her motive for doing so.

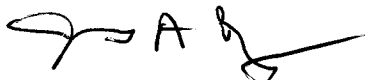
Conclusions:

Had the regulatory agencies been truly been acting in good faith, they could have simply have approved Project Fillmore to increase WMB's liquidity so that WMB would survive. While I am not a conspiracy theorist, preferring to deal with facts, for the regulators to have done otherwise suggests an ulterior motive. WMB's Capital Ratios would have increased significantly above the "Well Capitalized" standard it already met according to the OTS, and WMBfsb would have still have maintained an exceptionally strong capital ratio. **WMB need not have been seized, and WMI would not now be in bankruptcy.**

The Creditors and Equity are like baby chicks in a nest high up in a tree at the top of a cliff. By virtue of being larger and stronger due to their higher priority, the Creditors are able to squawk louder causing their parents to give them most of the food and attention. When no longer content with merely starving equity, I fear they will push us out of the nest.

Please consider Project Fillmore and its implications as you consider equity's prospects in coming litigation. It is such a very long way down to the rocky coast below, and we have not yet learned how to fly.

Respectfully,

A handwritten signature in black ink, appearing to read 'James Berg', with a stylized flourish extending to the right.

James Berg, Pro Se
Minnesota

APPENDIX A

APPLICATION FOR CAPITAL DISTRIBUTION

August 15, 2008

Docket Number: 11905

OFFICE OF THRIFT SUPERVISION
NOTICE OR APPLICATION FOR CAPITAL DISTRIBUTION

Office of Thrift Supervision
Applications Unit
2001 Junipero Serra Boulevard, Suite 650
Daly City, CA 94014-1976

Date of Filing: August 15, 2008

We, the undersigned executive officer and secretary, prior to the resolution of a majority of the members of the board of directors, of:

Washington Mutual Bank fsb
Savings Institution Name

6250 N Sagewood Drive, Park City, UT 84098
Street Address of Savings Institution (include City, State and Zip Code)

(hereinafter the Institution), hereby provide _____ notice / x application (select one) to the Office of Thrift Supervision (OTS) that the Institution intends to issue a capital distribution in an amount not to exceed \$20,000,000,000 (3rd and 4th Quarter Capital Distribution), pursuant to 12 C.F.R. Section 563.140, and do hereby certify:

1. That to the best of our belief, the institution x qualifies / _____ does not qualify (select one) for expedited treatment, pursuant to 12 C.F.R. Section 563.143 and 516.25(a);
2. That the Institution has attached any additional information required, pursuant to 12 C.F.R. Section 563.146; and
3. That we are aware that the OTS may request additional information required or may impose conditions for the distribution of capital and may determine that such distribution does not comply with the requirements of 12 C.F.R. Section 563.143.


Senior Vice President


Secretary

Date of Receipt by OTS

cc: Darrel Dochow
Penny Marshall

Enclosures

OTS Form 1583

Washington Mutual Bank fsb
 Capital Distribution - Income Limitation
 8/15/2008

Objective: To determine if an application with the OTS of the proposed Dividend is required in accordance with the income limitation set forth in Sec. 563.143 of 12 CFR.

		(dollars in millions)
2008 Capital Distribution:		
In-kind dividend paid on credit card receivables -- 1st quarter in-kind dividend	\$	29.3
Proposed cash dividend on common stock: -- 3rd Quarter Common Dividend		750.0
Proposed cash dividend -- 3rd and 4th Quarter Capital Distribution		<u>20,000.0</u>
Total)		<u>\$ 20,779.3</u>
Income Limitation:		
Net Income for 2006 & 2007	\$	1,969.0
2006 and 2007 capital distributions		<u>(2,692.0)</u>
2006 and 2007 retained net income		(723.0)
Estimated net income through year-to-date December 31, 2008		<u>606.9</u>
Total		<u>\$ (116.1)</u>
Deficit		<u>\$ (20,895.4)</u>

Does the total amount of capital distributions for 2008 exceed net income for 2008 plus retained net income for the years 2006 and 2007?

Yes

Conclusion: Application for OTS approval of the proposed Dividends is required in accordance with the above Income Limitation set forth in Sec. 563.143 of 12 CFR.

WM:Confidential

Washington Mutual Bank fsb
Leverage Capital Ratio
(dollars in thousands)

	Per Capital Projection (Attached)	
	Projected <u>9/30/08</u>	Projected <u>12/31/08</u>
Regulatory Assets	\$ 39,024	\$ 36,425
Tier 1 Capital	16,133	9,339
Leverage Capital Ratio	41.34%	25.64%
"Adequately Capitalized" Minimum Capital Ratio	4.00%	4.00%
"Well-Capitalized" Minimum Capital Ratio	5.00%	5.00%

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Washington Mutual Bank fsb
Total Risk-Based Capital Ratio
(dollars in thousands)

	Per Capital Projection (Attached)	
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Risk-Weighted Assets	\$ 20,213	\$ 18,877
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FBS Capital Projections

	Q1-2008	Q2-2008	Q3-2008	Q4-2008	Q1-2009	Q2-2009	Q3-2009	Q4-2009
Beginning GAAP Equity	29,454,169	29,230,275	29,229,987	15,151,978	9,357,989	8,486,515	8,630,377	8,787,087
Earnings	257,615	71,448	171,970	106,011	128,526	143,861	138,710	131,135
Preferred Dividends	0	0	0	0	0	0	0	0
Change in AFS Valuation Reserve	(574,071)	(64,498)	(169,979)	0	0	0	0	0
Other Capital Movement	92,562	(7,238)	(100,000)	(100,000)	0	0	0	0
Hybrids Outstanding	0	0	0	0	0	0	0	0
Qualifying Subdebt Outstanding	0	0	0	0	0	0	0	0
Transactions								
Intercompany Dividends to/from	0	0	0	0	0	0	0	0
Hybrids Called/Matured	0	0	0	(8,800,000)	0	0	0	0
Hybrids Issued	0	0	0	0	0	0	0	0
Subordinated Debt Issued	0	0	0	0	0	0	0	0
Ending Capital								
GAAP Equity	29,230,275	29,230,275	29,229,987	15,151,978	9,357,989	8,486,515	8,630,377	8,787,087
Tangible Capital Adj: FAS 115/133	(716,586)	(781,084)	(981,063)	(981,063)	(981,063)	(981,063)	(981,063)	(981,063)
Goodwill and Other Intangibles	109	109	109	109	109	109	109	109
Other Tangible Adjustments	0	14	14	14	14	14	14	14
Tangible Equity	29,946,752	30,010,848	16,132,918	9,338,929	9,467,456	9,511,317	9,748,027	9,879,162
Regulatory Capital Adjmts	0	0	0	0	0	0	0	0
Qualifying Hybrids	0	0	0	0	0	0	0	0
Total Tier 1 Capital	29,946,752	30,010,848	16,132,918	9,338,929	9,467,456	9,511,317	9,748,027	9,879,162
Qualifying Loan Loss Reserves	85,612	65,032	64,791	64,791	64,791	64,791	64,791	64,791
Other Adjustments	(36,186)	(34,728)	(34,728)	(34,728)	(34,728)	(34,728)	(34,728)	(34,728)
Total Risk Based Capital	29,996,176	30,041,252	16,162,981	9,368,992	9,497,518	9,641,379	9,778,090	9,909,225
Total GAAP Assets (Ending)	43,637,513	45,326,861	36,727,235	34,128,798	32,829,383	30,957,767	29,410,399	28,046,797
Total Adjusted GAAP Assets	44,300,505	46,048,007	37,448,381	34,849,944	33,250,529	31,688,913	30,131,545	28,767,944
Pretax SFAS 115	(1,150,688)	(1,254,236)	(1,575,355)	(1,575,355)	(1,575,355)	(1,575,355)	(1,575,355)	(1,575,355)
Goodwill & Other Intangibles	109	109	109	109	109	109	109	109
Tangible Assets (Ending)	44,788,192	46,580,958	36,302,480	35,704,043	34,104,628	32,543,012	30,986,645	29,822,043
Regulatory Asset Adjustments	0	0	0	0	0	0	0	0
Other Adjustments	0	0	0	0	0	0	0	0
Total RAP Assets	44,788,192	46,580,958	36,302,480	35,704,043	34,104,628	32,543,012	30,986,645	29,822,043
Risk-based Assets	45,451,084	47,302,134	39,023,628	36,425,189	34,825,775	33,254,159	31,706,791	30,343,188
RWA/Total Assets	18,944,675	18,140,959	20,213,228	18,876,817	18,014,018	17,150,495	16,243,042	15,435,933
	43.4%	40.0%	55.0%	55.3%	55.4%	55.4%	55.2%	55.1%
Regulatory Capital Ratios:								
Leverage (>6.00%)	65.89%	63.45%	41.34%	25.64%	27.19%	28.85%	30.74%	32.56%
Total Capital/Risk-based (>11.00%)	183.34%	165.50%	79.96%	49.63%	52.72%	56.22%	60.20%	64.18%
Tier 1 Capital/Risk-based assets	157.86%	155.24%	78.64%	49.29%	52.36%	55.84%	59.80%	63.76%

APPENDIX B

Washington Mutual Bank FSB Thrift Financial Report

June 30, 2008

Washington Mutual Bank FSB
 6250 NORTH SAGEWOOD DRIVE
 PARK CITY, UT 84098
 Docket Number: 11905
 for the quarter ending: 06/30/2008

Office of Thrift Supervision
 2008 Thrift Financial Report
 Schedule - SC
 Consolidated Statement of Condition

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ASSETS		Lines	(Report in Thousands of Dollars)
Cash, Deposits, and Investment Securities:	Total	SC11	7,160,335
Cash and Non-Interest-Earning Deposits		SC110	101,528
Interest-Earning Deposits in FHLBs		SC112	1,248
Other Interest-Earning Deposits		SC118	0
Federal Funds Sold and Securities Purchased Under Agreements to Resell		SC125	0
U.S. Government, Agency, and Sponsored Enterprise Securities		SC130	3,362,053
Equity Securities Subject to FASB Statement No. 115		SC140	74
State and Municipal Obligations		SC180	1,400,726
Securities Backed by Nonmortgage Loans		SC182	1,059,221
Other Investment Securities		SC185	1,196,729
Accrued Interest Receivable		SC191	38,756
Mortgage-Backed Securities:	Total	SC22	16,877,894
Pass-Through:			
Insured or Guaranteed by an Agency or Sponsored Enterprise of the U.S.		SC210	5,124,697
Other Pass-Through		SC215	1,328
Other Mortgage-Backed Securities (Excluding Bonds):			
Issued or Guaranteed by FNMA, FHLMC, or GNMA		SC217	2,547,923
Collateralized by Mortgage-Backed Securities Issued or Guaranteed by FNMA, FHLMC, or GNMA		SC219	0
Other		SC222	9,125,023
Accrued Interest Receivable		SC228	78,923
General Valuation Allowances		SC229	0
Mortgage Loans:	Total	SC26	8,644,219
Construction Loans on:			
1-4 Dwelling Units		SC230	0
Multifamily (5 or More) Dwelling Units		SC235	0
Nonresidential Property		SC240	0

Permanent Mortgages on:			
1-4 Dwelling Units:			
Revolving, Open-End Loans	SC251	285,807	
All Other:			
Secured by First Liens	SC254	88,670	
Secured by Junior Liens	SC255	6,320	
Multifamily (5 or More) Dwelling Units	SC256	8,281,808	
Nonresidential Property (Except Land)	SC260	480	
Land	SC265	4,137	
Accrued Interest Receivable	SC272	40,874	
Advances for Taxes and Insurance	SC275	0	
<i>Allowance for Loan and Lease Losses</i>	SC283	63,877	
Nonmortgage Loans:	Total	SC31	11,898,262
Commercial Loans:	Total	SC32	11,894,794
Secured	SC300	258	
Unsecured	SC303	11,894,536	
Lease Receivables	SC306	0	
Consumer Loans:	Total	SC35	4,372
Loans on Deposits	SC310	17	
Home Improvement Loans (Not secured by real estate)	SC316	0	
Education Loans	SC320	0	
Auto Loans	SC323	2	
Mobile Home Loans	SC326	0	
Credit Cards	SC328	0	
Other, Including Lease Receivables	SC330	4,353	
Accrued Interest Receivable	SC348	10	
<i>Allowance for Loan and Lease Losses</i>	SC357	914	
Reposessed Assets:	Total	SC40	253
Real Estate:			
Construction	SC405	0	
1-4 Dwelling Units	SC415	253	
Multifamily (5 or More) Dwelling Units	SC425	0	
Nonresidential (Except Land)	SC426	0	
Land	SC428	0	
U.S. Government-Guaranteed or -Insured Real Estate Owned	SC429	0	

Other Repossessed Assets	SC430	0
General Valuation Allowances	SC441	0
Real Estate Held for Investment	SC45	0
Equity Investments Not Subject to FASB Statement No. 115:	Total SC51	676,707
Federal Home Loan Bank Stock	SC510	676,501
Other	SC540	206
Office Premises and Equipment	SC55	8,641
Other Assets:	Total SC59	781,696
Bank-Owned Life Insurance:		
Key Person Life Insurance	SC615	0
Other	SC625	0
Intangible Assets:		
Servicing Assets On:		
Mortgage Loans	SC642	0
Nonmortgage Loans	SC644	0
Goodwill and Other Intangible Assets	SC660	110
Interest-Only Strip Receivables and Certain Other Instruments	SC665	0
Other Assets	SC689	781,586

Memo: Detail of Other Assets

	Code	Amount	
SC691	4	SC692	728,096
SC693	14	SC694	22,818
SC697	13	SC698	20,621
			Report in Thousands of Dollars
		Line	
General Valuation Allowances			SC699 0
Total Assets			SC60 46,048,007

LIABILITIES

Deposits and Escrows:	Total SC71	4,809,310
Deposits	SC710	4,809,638
Escrows	SC712	6,880
Unamortized Yield Adjustments on Deposits and Escrows	SC715	-7,208
Borrowings:	Total SC72	10,712,608
Advances from FHLBank	SC720	10,712,439

Federal Funds Purchased and Securities Sold Under Agreements to Repurchase	SC730	169
Subordinated Debentures (Including Mandatory Convertible Securities and Limited-Life Preferred Stock)	SC736	0
Mortgage Collateralized Securities Issued:		
CMOs (including REMICs)	SC740	0
Other Borrowings	SC760	0

Other Liabilities:	Total	SC75	1,296,102
Accrued Interest Payable - Deposits	SC763		20,073
Accrued Interest Payable - Other	SC766		74,193
Accrued Taxes	SC776		59,775
Accounts Payable	SC780		1,182
Deferred Income Taxes	SC790		0
Other Liabilities and Deferred Income	SC796		1,140,879

Memo: Detail of Other Liabilities

Code		Amount	
SC791	10	SC792	1,138,117
SC794	18	SC795	1,500
SC797	11	SC798	513

		Line	Report in Thousands of Dollars	
Total Liabilities				SC70 16,818,020
Minority Interest				SC800 0

EQUITY CAPITAL

Perpetual Preferred Stock:

Cumulative	SC812	0
Noncumulative	SC814	0

Common Stock:

Par Value	SC820	0
Paid in Excess of Par	SC830	29,392,778

Accumulated Other Comprehensive Income:

Total	SC86	-781,084
Unrealized Gains (Losses) on Available-for-Sale Securities	SC860	-781,084
Gains (Losses) on Cash Flow Hedges	SC865	0
Other	SC870	0

Retained Earnings	SC880	618,293
Other Components of Equity Capital	SC891	0
Total Equity Capital	SC80	29,229,987
Total Liabilities, Minority Interest, and Equity Capital	SC90	46,048,007

Washington Mutual Bank FSB
 6250 NORTH SAGEWOOD DRIVE
 PARK CITY, UT 84098
 Docket Number: 11905
for the quarter ending: 06/30/2008

Office of Thrift Supervision
 2008 Thrift Financial Report
 Schedule - SO
 Consolidated Statement of Operations

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			<i>(Report in Thousands of Dollars)</i>
		Lines	For the Quarter
Interest Income:	Total	SO11	507,870
Deposits and Investment Securities		SO115	77,547
Mortgage-Backed Securities		SO125	245,477
Mortgage Loans		SO141	138,824
Prepayment Fees, Late Fees, and Assumption Fees for Mortgage Loans		SO142	1,128
Nonmortgage Loans:			
Commercial Loans and Leases		SO160	44,744
Prepayment Fees, Late Fees, and Assumption Fees for Commercial Loans		SO162	1
Consumer Loans and Leases		SO171	146
Prepayment Fees, Late Fees, and Assumption Fees for Consumer Loans		SO172	3
Dividend Income on Equity Investments Not Subject to FASB Statement No. 115:	Total	SO18	2,437
Federal Home Loan Bank Stock		SO181	2,437
Other		SO185	0
Interest Expense:	Total	SO21	109,157
Deposits		SO215	26,408
Escrows		SO225	1
Advances from FHLBank		SO230	82,747
Subordinated Debentures (Including Mandatory Convertible Securities)		SO240	0
Mortgage Collateralized Securities Issued		SO250	0
Other Borrowed Money		SO260	1
Capitalized Interest		SO271	0
Net Interest Income (Expense) Before Provision for Losses on Interest-Bearing Assets		SO312	401,150
<i>Net Provision for Losses on Interest-Bearing Assets</i>		SO321	-14,634
Net Interest Income (Expense) After Provision for Losses on Interest-Bearing Assets		SO332	415,784

Noninterest Income:	Total	SO42	-298,761
Mortgage Loan Servicing Fees		SO410	0
Amortization of and Fair Value Adjustments to Loan Servicing Assets and Loan Servicing Liabilities		SO411	0
Other Fees and Charges		SO420	16,769
Net Income (Loss) from:			
Sale of Assets Held for Sale and Available-for-Sale Securities		SO430	-315,625
Operations and Sale of Repossessed Assets		SO461	21
LOCOM Adjustments Made to Assets Held for Sale		SO465	0
Sale of Securities Held-to-Maturity		SO467	0
Sale of Loans Held for Investment		SO475	0
Sale of Other Assets Held for Investment		SO477	0
Gains and Losses on Financial Assets and Liabilities Carried at Fair Value		SO485	27
Other Noninterest Income		SO488	47

Memo: Detail of Other Noninterest Income

	Code		Amount
SO489	99	SO492	47
SO495	0	SO496	0
SO497	0	SO498	0

	Line	Report in Thousands of Dollars
Noninterest Expense:	Total SO51	25,721
All Personnel Compensation and Expense	SO510	2,875
Legal Expense	SO520	15
Office Occupancy and Equipment Expense	SO530	1,002
Marketing and Other Professional Services	SO540	16,324
Loan Servicing Fees	SO550	0
Goodwill and Other Intangibles Expense	SO560	0
Net Provision for Losses on Non-Interest-Bearing Assets	SO570	0
Other Noninterest Expense	SO580	5,505

Memo: Detail of Other Noninterest Expense

	Code		Amount
SO581	99	SO582	3,261
SO583	13	SO584	1,375
SO585	99	SO586	320

	Line	Report in Thousands of Dollars
Income (Loss) Before Income Taxes:	SO60	91,302

Income Taxes:	Total	SO71	29,987
Federal		SO710	26,095
State, Local, and Other		SO720	3,892
Income (Loss) Before Extraordinary Items and Effects of Accounting Changes		SO81	61,315
Extraordinary Items, Net of Tax Effect, and Cumulative Effect of Changes in Accounting Principles		SO811	0
NET INCOME (LOSS)		SO91	61,315

Washington Mutual Bank FSB
 6250 NORTH SAGEWOOD DRIVE
 PARK CITY, UT84098
 Docket Number: 11905
for the quarter ending: 06/30/2008

Office of Thrift Supervision
 2008 Thrift Financial Report
 Schedule - VA
 Consolidated Valuation Allowances and Related Data

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(Report in Thousands of Dollars for the Quarter)

Reconciliation

Valuation Allowances

	General	Specific	Total
Beginning Balance	VA105	VA108	VA110
	80,847	0	80,847
<i>Add or Deduct:</i>			
Net Provision for Loss	VA115	VA118	VA120
	-14,634	0	-14,634
Transfers	VA125	VA128	
	0	0	
<i>Add:</i>			
Recoveries	VA135		VA140
	9		9
Adjustments	VA145	VA148	VA150
	0	0	0
<i>Deduct:</i>			
Charge-offs	VA155	VA158	VA160
	1,431	0	1,431
Ending Balance	VA165	VA168	VA170
	64,791	0	64,791

Charge-offs, Recoveries, and Specific Valuation Allowance Activity

(Report in Thousands of Dollars for the Quarter)

	<u>General Valuation Allowances</u>		Specific Valuation Allowance Provisions & Transfers from General Allowances	Adjusted Net Charge-offs
	Charge-Offs (VA155)	Recoveries (VA135)	(VA118+VA128)	
Deposits and Investment Securities			VA38	VA39
			0	0
Mortgage-Backed Securities	VA370	VA371	VA372	VA375
	0	0	0	0

Mortgage Loans: Total	VA46	VA47	VA48	VA49
	1,334	2	0	1,332
Construction:				
1-4 Dwelling Units	VA420	VA421	VA422	VA425
	0	0	0	0
Multifamily (5 or More) Dwelling Units	VA430	VA431	VA432	VA435
	0	0	0	0
Nonresidential Property	VA440	VA441	VA442	VA445
	0	0	0	0
Permanent:				
1-4 Dwelling Units:				
Revolving, Open-End Loans	VA446	VA447	VA448	VA449
	1,334	2	0	1,332
All Other:				
Secured by First Liens	VA456	VA457	VA458	VA459
	0	0	0	0
Secured by Junior Liens	VA466	VA467	VA468	VA469
	0	0	0	0
Multifamily (5 or More) Dwelling Units	VA470	VA471	VA472	VA475
	0	0	0	0
Nonresidential Property (Except Land)	VA480	VA481	VA482	VA485
	0	0	0	0
Land	VA490	VA491	VA492	VA495
	0	0	0	0
Nonmortgage Loans: Total	VA56	VA57	VA58	VA59
	97	7	0	90
Commercial Loans	VA520	VA521	VA522	VA525
	50	2	0	48
Consumer Loans:				
Loans on Deposits	VA510	VA511	VA512	VA515
	0	0	0	0
Home Improvement Loans	VA516	VA517	VA518	VA519
	0	0	0	0
Education Loans	VA530	VA531	VA532	VA535
	0	0	0	0
Auto Loans	VA540	VA541	VA542	VA545
	0	0	0	0
Mobile Home Loans	VA550	VA551	VA552	VA555

	0	0	0	0
Credit Cards	VA556	VA557	VA558	VA559
	0	0	0	0
Other	VA560	VA561	VA562	VA565
	47	5	0	42
Reposessed Assets: Total	VA60		VA62	VA65
	0		0	0
Real Estate:				
Construction	VA605		VA606	VA607
	0		0	0
1-4 Dwelling Units	VA613		VA614	VA615
	0		0	0
Multifamily (5 or More) Dwelling Units	VA616		VA617	VA618
	0		0	0
Nonresidential (Except Land)	VA625		VA626	VA627
	0		0	0
Land	VA628		VA629	VA631
	0		0	0
Other Repossessed Assets	VA630		VA632	VA633
	0		0	0
Real Estate Held for Investment			VA72	VA75
			0	0
Equity Investments Not Subject to FASB Statement No.115			VA822	VA825
			0	0
Other Assets	VA930	VA931	VA932	VA935
	0	0	0	0

OTHER ITEMS

*(Report in
Thousands
of Dollars)*

Troubled Debt Restructured:

Amount this Quarter

VA940 1,085

Amount Included in Schedule SC in Compliance with Modified Terms

VA942 7,133

Mortgage Loans Foreclosed During the Quarter: Total**VA95 121**

Construction

VA951 0

Permanent Loans Secured By:

1-4 Dwelling Units

VA952 121

Multifamily (5 or More) Dwelling Units

VA953 0

Nonresidential (Except Land)

VA954 0

Land

VA955 0

Purchased Impaired Loans Held for Investment Accounted for in Accordance with AICPA SOP 03-3 (Exclude Loans Held for Sale):

Outstanding Balance (Contractual)	VA980	0
Recorded Investment (Carrying Amount Before Deducting Any Loan Loss Allowances)	VA981	0
Allowance Amount Included in Allowance for Loan and Lease Losses (SC283, SC357)	VA985	0

Line items VA960 through VA975 are not available to the public for individual institutions.

Washington Mutual Bank FSB
 6250 NORTH SAGEWOOD DRIVE
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 Docket Number: 11905
for the quarter ending: 06/30/2008

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		<i>(Report in Thousands of Dollars)</i>
Miscellaneous:	Lines	
Number of Full-time Equivalent Employees	SI370	187
Financial Assets Held for Trading Purposes	SI375	12,577
Financial Assets Carried at Fair Value Through Earnings	SI376	12,577
Financial Liabilities Carried at Fair Value Through Earnings	SI377	0
Available-for-Sale Securities	SI385	21,808,910
Assets Held for Sale	SI387	0
Loans Serviced for Others	SI390	0
Residual Interests:		
Residual Interests in the Form of Interest-Only Strips	SI402	0
Other Residual Interests	SI404	29,386
Qualified Thrift Lender Test:		
Actual Thrift Investment Percentage at Month-end:		
First Month of Quarter	SI581	87.43 %
Second Month of Quarter	SI582	77.23 %
Third Month of Quarter	SI583	69.23 %
IRS Domestic Building and Loan Test:		
Percent of Assets Test	SI585	0.00 %
Do you meet the DBLA business operations test?	SI586	No
Aggregate Investment in Service Corporations	SI588	0

Extensions of credit by the reporting association (and its controlled subsidiaries) to its executive officers, principal shareholders, directors, and their related interests as of the report date:

Report in Thousands of
Line Dollars

Aggregate amount of all extensions of credit	SI590	0
Number of executive officers, principal shareholders, and directors to whom the amount of all extensions of credit (including extensions of credit to related interests) equals or exceeds the lesser of \$500,000 or 5 percent of unimpaired	SI595	0

capital and unimpaired surplus (CCR30 + CCR35 +
CCR530 + CCR105)

Summary of Changes in Equity Capital:

	Line	Report in Thousands of Dollars
Beginning Equity Capital	SI600	29,233,170
Net Income (Loss) (SO91)	SI610	61,315
Dividends Declared:		
Preferred Stock	SI620	0
Common Stock	SI630	0
Stock Issued	SI640	0
Stock Retired	SI650	0
Capital Contributions (Where No Stock is Issued)	SI655	0
New Basis Accounting Adjustments	SI660	0
Other Comprehensive Income	SI662	-64,498
Prior Period Adjustments	SI668	0
Other Adjustments	SI671	0
Ending Equity Capital (SC80) (600 + 610 - 620 - 630 + 640 - 650 + 655 + 660 + 662 + 668 + 671)	SI680	29,229,987

Mutual Fund and Annuity Sales:

	Line	Report in Thousands of Dollars
Do you sell private-label or third-party mutual funds and annuities?	SI805	No
Total Assets you Manage of Proprietary Mutual Funds and Annuities	SI815	0
Fee Income from the Sale and Servicing of Mutual Funds and Annuities	SI860	0

Average Balance Sheet Data (Based on Month-End Data):

	Line	Report in Thousands of Dollars
Total Assets	SI870	44,978,598
Deposits and Investments Excluding Non-Interest-Earning Items	SI875	9,383,326
Mortgage Loans and Mortgage-Backed Securities	SI880	25,693,271
Nonmortgage Loans	SI885	8,674,109
Deposits and Escrows	SI890	3,129,206
Total Borrowings	SI895	11,471,451

Line items SI750 and SI760 are not available to the public for individual institutions.

Washington Mutual Bank FSB
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Office of Thrift Supervision
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 Consolidated Capital Requirement

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		<i>(Report in Thousands of Dollars)</i>
TIER 1 (CORE) CAPITAL REQUIREMENT:	Lines	
Tier 1 (Core) Capital		
Equity Capital (SC80)	CCR100	29,229,987
<i>Deduct:</i>		
Investments in and Advances to "Nonincludable" Subsidiaries	CCR105	0
Goodwill and Certain Other Intangible Assets	CCR115	109
Disallowed Servicing Assets, Disallowed Deferred Tax Assets, Disallowed Residual Interests, and Other Disallowed Assets	CCR133	0
Other	CCR134	0
<i>Add:</i>		
Accumulated Losses (Gains) on Certain Available-for-Sale Securities and Cash Flow Hedges, Net of Taxes	CCR180	781,070
Intangible Assets	CCR185	0
Minority Interest in Includable Consolidated Subsidiaries Including REIT Preferred Stock Reported as a Borrowing	CCR190	0
Other	CCR195	0
Tier 1 (Core) Capital (100-105-115-133-134+180+185+190+195)	CCR20	30,010,948
Adjusted Total Assets		
Total Assets (SC60)	CCR205	46,048,007
<i>Deduct:</i>		
Assets of "Nonincludable" Subsidiaries	CCR260	0
Goodwill and Certain Other Intangible Assets	CCR265	109
Disallowed Servicing Assets, Disallowed Deferred Tax Assets, Disallowed Residual Interests, and Other Disallowed Assets	CCR270	0
Other	CCR275	0
<i>Add:</i>		
Accumulated Losses (Gains) on Certain Available-for-Sale Securities and Cash Flow Hedges	CCR280	1,254,236

Intangible Assets	CCR285	0
Other	CCR290	0
Adjusted Total Assets (205-260-265-270-275+280+285+290)	CCR25	47,302,134
Tier 1 (Core) Capital Requirement (25 x 4%)	CCR27	1,892,085

	Lines	(Report in Thousands of Dollars)
TOTAL RISK-BASED CAPITAL REQUIREMENT:		
Tier 1 (Core) Capital (20)	CCR30	30,010,948
Tier 2 (Supplementary) Capital:		
Unrealized Gains on Available-for-Sale Equity Securities	CCR302	0
Qualifying Subordinated Debt and Redeemable Preferred Stock	CCR310	0
Other Equity Instruments	CCR340	0
Allowances for Loan and Lease Losses	CCR350	65,032
Other	CCR355	0
Tier 2 (Supplementary) Capital (302 + 310 + 340 + 350 + 355)	CCR33	65,032
Allowable Tier 2 (Supplementary) Capital	CCR35	65,032
Equity Investments and Other Assets Required to be Deducted	CCR370	0
Deduction for Low-Level Recourse and Residual Interests	CCR375	34,728
Total Risk-based Capital (30 + 35 - 370 - 375)	CCR39	30,041,252
Risk-Weight Categories		
0% Risk-Weight:		
Cash	CCR400	5,638
Securities Backed by Full Faith and Credit of U.S. Government	CCR405	297,889
Notes and Obligations of FDIC, Including Covered Assets	CCR409	0
Other	CCR415	1,970
Total (400 + 405 + 409 + 415)	CCR420	305,497
0% Risk-Weight Total (420 x 0%)	CCR40	0

20% Risk-Weight:

Mortgage and Asset-Backed Securities Eligible for 20% Risk Weight	CCR430	17,898,656
Claims on FHLBs	CCR435	2,125,392
General Obligations of State and Local Governments	CCR440	679,494
Claims on Domestic Depository Institutions	CCR445	13,559,609

Other	CCR450	1,799,469
Total (430 + 435 + 440 + 445 + 450)	CCR455	36,062,620
20% Risk-Weight Total (455 x 20%)	CCR45	7,212,524

50% Risk-Weight:

Qualifying Single-Family Residential Mortgage Loans	CCR460	198,772
Qualifying Multifamily Residential Mortgage Loans	CCR465	2,276,016
Mortgage and Asset-Backed Securites Eligible for 50% Risk Weight	CCR470	148,711
State and Local Revenue Bonds	CCR475	744,057
Other	CCR480	43,399
Total (460 + 465 + 470 + 475 + 480)	CCR485	3,410,955
50% Risk-Weight Total (485 x 50%)	CCR50	1,705,478

100% Risk-Weight:

Securities Risk Weighted at 100% (or More) Under the Ratings-Based Approach	CCR501	196,793
All Other Assets	CCR506	9,026,166
Total (501 + 506)	CCR510	9,222,959
100% Risk-Weight Total (510 x 100%)	CCR55	9,222,959

Amount of Low-Level Recourse and Residual Interests Before Risk-Weighting	CCR605	0
Risk-Weighted Assets for Low-Level Recourse and Residual Interests (605 x 12.50)	CCR62	0

Assets to Risk-Weight (420 + 455 + 485 + 510 + 605)	CCR64	49,002,031
Subtotal Risk-Weighted Assets (40 + 45 + 50 + 55 + 62)	CCR75	18,140,961
Excess Allowances for Loan and Lease Losses	CCR530	0
Total Risk-Weighted Assets (75 - 530)	CCR78	18,140,961
Total Risk-Based Capital Requirement (78 x 8%)	CCR80	1,451,277

CAPITAL AND PROMPT CORRECTIVE ACTION RATIOS:

Tier 1 (Core) Capital Ratio (Tier 1 (Core) Capital / Adjusted Total Assets)	CCR810	63.45 %
Total Risk-Based Capital Ratio (Total Risk-Based Capital / Risk-Weighted Assets)	CCR820	165.60 %
Tier 1 Risk-Based Capital Ratio ((Tier 1 (Core) Capital – Deduction for Low-level Recourse and Residual Interests) / Risk-Weighted Assets)	CCR830	165.24 %

Tangible Equity Ratio	CCR840	63.45 %
((Tangible Capital + Cumulative Perpetual Preferred Stock) / Tangible Assets)		

APPENDIX C

**Dan Hoffman Letter
Regarding Sealed Documents
November 1, 2010**

VIA FEDERAL EXPRESS

November 1, 2010

Hon. Mary F. Walrath
United States Bankruptcy Court
District of Delaware
824 Market Street, 5th 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 request that the following documents, which currently are under seal or have been otherwise withheld from public view, be docketed and posted for public viewing:

- a. the order granting the Official Committee of Equity Security Holders' (the "EC") 'Motion for Order Authorizing the Official Committee of Equity Security Holders to File Supplemental Filing Regarding the Examiner Motion and the Scope of Production Under Seal', filed July 7, 2010, Docket # 4893 (the "Sealing Motion");
- b. the order granting the EC's 'Motion to Shorten Notice and Schedule Hearing on Motion For Order Authorizing the Official Committee of Equity Security Holders to File Supplemental Filing Regarding Examiner Motion and the Scope of Production Under Seal', filed July 7, 2010, Docket # 4895 (the "Motion to Shorten Time");
- c. the cover sheet for the Sealing Motion (the "Cover Sheet"), as required by Rule 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules");
- d. the order granting the EC's 'Motion for Order Authorizing the Official Committee of Equity Security Holders to File Supplemental Statement in Support of Motion for Examiner and on Timing for Resolution of Shareholder Meeting Under Seal', filed July 19, 2010, Docket # 5091 (the "July 19th Sealing Motion");
- e. the order granting the EC's 'Motion to Shorten Notice and Schedule Hearing on Motion For Order Authorizing the Official Committee of Equity Security Holders to File Supplemental Statement in Support of Motion for Examiner and on Timing for Resolution of Shareholder Meeting Under Seal', filed July 19, 2010, Docket # 5092 (the "July 19th Motion to Shorten Time");
- f. the cover sheet for the July 19th Sealing Motion (the "July 19th Cover Sheet");
- g. the document filed under seal pursuant to the Sealing Motion (the "Sealed Document");

- h. the document filed under seal pursuant to the July 19th Sealing Motion (the "July 19th Sealed Document"); and
- i. the transcript of a hearing you held in your chambers on July 8, 2010 relating to the Sealed Document (the "*In Camera* Hearing").

I. BACKGROUND

On July 22, 2010 you signed the 'Agreed Order Directing the Appointment of An Examiner' (the "Examiner Order"). The hearing on the motion for the Examiner Order (the "Examiner Motion") was held on July 20, 2010. Also heard that day was a hearing on the Sealing Motion and the Motion to Shorten Time (collectively, the "Sealing Motions") as well as the July 19th Sealing Motion and the July 19th Motion to Shorten Time (collectively, the "July 19th Sealing Motions"), all of which had bearing on the Examiner Motion.¹ At that hearing you orally granted the Sealing Motions and the July 19th Sealing Motions (collectively, the "Motions"), effectively sealing the Sealed Document and the July 19th Sealed Document (collectively, the "Sealed Documents") from public access.

Also on July 8, 2010, and in advance of the hearing on the Examiner Motion, you met with counsel for the *In Camera* Hearing. According to the Sealing Motions, the Sealed Document was provided to the EC by WMI pursuant to the 'Interim Order Pursuant to Federal Rule of Evidence 502(d)' (the "502(d) Order"), and the EC is required not to disclose its contents.

You reviewed the Sealed Documents prior to your ruling granting the Examiner Motion, but the public, given that the Sealed Documents were sequestered,² did not. You would also have had the opportunity to discuss the contents of the Sealed Documents with those present at the *In Camera* Hearing, and they were discussed given the EC's recount of that discussion in the July 19th Sealing Motion at p. 3, ¶ 7.

You denied a previous motion by the EC for appointment for an examiner on May 5, 2010 and signed an order to that effect on the same day (the "May 5th Order"), and it can be inferred that your review of the Sealed Documents and the *In Camera* Hearing (both of which immediately precipitated your bench ruling that an order appointing an examiner would be issued) had bearing on your decisions to (1) reverse the May 5th Order, (2) grant the Examiner Motion, and (3) issue the Examiner Order. As will be discussed later, the public, without explanation or paper trail other than the Motions themselves, has no information about either the content of the Sealed Documents or the statements made at the *In Camera* Hearing, and therefore has no information regarding the facts that influenced your July 8th rulings despite, as will be discussed, *infra*, the strong policy of openness in American jurisprudence and the express mandate of Rule 5001(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") that "[a]ll . . . hearings shall be conducted in open court".

¹ "[T]he document [to be sealed] is relevant to the issue of whether to appoint an examiner in these cases, and therefore would be helpful to the Court in considering the Equity Committee's examiner motion". See Motion to Shorten Time, p. 3, ¶ 7.

² Given Local Rule 9018-1(b), the EC presented the document proposed for sealing to you at least two days in advance of the *In Camera* Hearing.

II. STANDING

WMI is owned by its equity holders until and unless its equity is cancelled. I assert that as WMI's equity has not been canceled, I am a party in interest. You have recognized the right of WMI shareholders to appear as parties in interest. As a party in interest I am entitled to challenge the orders³ sealing Sealed Documents, respectively, under Bankruptcy Rule 2018(a) (see *In re Alterra Healthcare Corporation*, 353 B.R. 66, 70 (Bankr. D. Del. 2006)), and I contend that public right of access to the Sealed Documents arises under 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), specifically 11 U.S.C. § 107 ("Section 107") and (b) the law of the Third Circuit.

I have standing to challenge the sealing of both of the Sealed Documents as they present an obstacle to my attempt to access the information each contains and your decisions to disclose their respective contents would remedy that injury. Sitting as the court, you have recognized the standing of one seeking to unseal a document where the challenger of the sealed document alleges concealment of the document causes injury to himself, and not just to the public at large. *In re Alterra Healthcare Corporation*, 353 B.R. 66, 70 (Bankr. D. Del. 2006) (citing *United States v. Cianfrani*, 573 F.2d 835, 845 (3d Cir. 1994)). In *Alterra* you held that "[t]o find standing the Court must 'only find that the Order . . . being challenged presents an obstacle to the [challenger's] attempt to obtain access' and that a decision to unseal the [Sealed Documents] would remedy the injury." *Alterra*, at 70 (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 777 (3d Cir. 1994)). Applying that case to the facts of the instant case, to grant me standing as one injured by the orders sealing the Sealed Documents you must only find that the orders sealing the Sealed Documents present obstacles to my attempt to obtain access to the Sealed Documents and that a decision to unseal the Sealed Documents would remedy that injury.

Additionally, however, I assert standing (1) because the Sealed Documents may contain information favorable to me as a shareholder, and (2) as a member of the public.

As stated previously, the filing of the Sealed Documents immediately precipitated your decision to vacate the May 5th Order and issue the Examiner Order, so logic dictates that the Sealed Documents contain information you relied upon in determining that an examiner was necessary. As I discuss later, given that all classes of equity holders receive little or nothing under WMI's plan of reorganization (the "Plan"), and therefore cannot receive less under the Plan, fulfillment of the EC's request to appoint an examiner suggests that the Sealed Documents contained information which could have a beneficial effect on WMI's equity classes.⁴ Accordingly, concealment of the contents of the Sealed Documents injures me as a shareholder as it prohibits me from (a) determining if the Sealed Documents contain information helpful to WMI shareholders, and (b) if they do, accessing and using that information.

³ The sealings would have been effected on your order because, as will be discussed, *infra*, Bankruptcy Rule 9018 provides that a party doesn't have the power to file a document under seal, a court 'orders' a document sealed. See Fed. R. Bankr. P. 9018. Moreover before such an order can issue, Third Circuit law requires the court to conduct a hearing on the matter. See *Publiker Industries, Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984).

⁴ The effect must be beneficial as under all versions of WMI's Plan common shareholders receive nothing and preferred shareholders receive 0% - 1%, virtually nothing. As it is not possible for things to be worse for equity classes under the Plan logically an examiner would not have been appointed unless such an appointment would improve equity classes' chances of a financial recovery.

Moreover, under *Alterra* I am not required to prove that the contents of the Sealed Documents are favorable to my interests as a shareholder; however, if the Sealed Documents contain information helpful to me as a shareholder then their concealment harms me and benefits someone probably adverse to WMI shareholders, and unless that someone can establish that Section 107 dictates the Sealed Documents should remain under seal, Section 107 and Third Circuit law require that they be unsealed.

Accordingly, as (1) a WMI shareholder, (2) a person injured (under *Alterra*) by the orders sealing the Sealed Documents, and (3) a member of the public, I have standing to request access to the contents of the Sealed Documents.

The foregoing claims of standing also hold for my request for release of these documents not under seal, but which have been withheld from the public: (1) the orders granting the Motions; (2) the Cover Sheets; and (3) any transcript of the *In Camera* Hearing.

III. DISCLOSING THE (A) ORDERS GRANTING THE MOTIONS, (B) COVER SHEETS, AND (C) TRANSCRIPT (IF ANY) OF THE IN CAMERA HEARING

A. The Orders Granting the Motions

Notwithstanding your rulings granting the Motions, no orders in respect of those rulings appears in the court's docket. Bankruptcy Courts, like all other courts in our American legal system may issue their rulings verbally (i.e., 'from the bench'), but those rulings are ordinarily evidenced by an order. Further, as Bankruptcy Rule 5003 requires that the orders granting the Motions, be docketed. See Bankruptcy Rule 5003(a).

B. The Cover Sheets

Local Rule 9018-1 provides that "[i]f the Court grants [a] motion to file under seal, the Clerk . . . shall electronically docket the cover sheet." Therefore, though you granted the Motions in court on July 20, 2010, no orders granting the Motions has been docketed for public viewing, electronically or otherwise, and the same is true of both the Cover Sheet and the July 19th Cover Sheet (collectively, the "Cover Sheets"). Nothing in Local Rule 9018-1, nor any other rule or law governing WMI's bankruptcy exempts any of these documents from public viewing.

C. The Transcript of the In Camera Hearing

A motion to seal a document requires a hearing. See Bankruptcy Rule 9018. Bankruptcy Rule 5001(b) requires that "[a]ll . . . hearings shall be conducted in open court". When a motion to seal a document is filed the court sets a time for a hearing on that motion so the moving party can present its case and any opposition has the chance to be heard. The *In Camera* Hearing was held out of the presence of the public and while a document may be withheld from public view while a determination is made that it is suitable for sealing, the discussion concerning whether it is suitable for sealing – i.e., the hearing on the matter – is not. Indeed, such dialogue should be in open court and on the record as otherwise the merits of the claim for sealing would not be vetted in a public forum and there would be no record for a reviewing court to examine if the sealing were challenged later.

In the instant case a shareholder attending the July 20th hearing (none of the Motions were heard on July 8th) would have expected to have the Motions discussed in open court, so he could ascertain the reasons for the sealings. Instead all he heard concerning them is the following except from pp. 123-124 of the transcript of that hearing:

18 THE COURT: Okay. Anything else set off for today?
19 MR. TAYLOR: Good afternoon, Your Honor. Greg Taylor
20 from Ashby & Geddes on behalf of the equity committee.
21 Just one or two clean up items, Your Honor. I think
22 agenda item 26 is a seal motion by the equity committee but I
23 don't believe we've seen an order one. It's one that was filed
24 several weeks ago.
25 THE COURT: Item 26?
1 MR. TAYLOR: And there's also a related motion to
2 shorten notice on that. I have copies of those orders with me.
3 THE COURT: I'll enter that unless anybody opposes it?
4 (No response)
5 THE COURT: All right. I'll enter that order.
6 MR. TAYLOR: The second item, Your Honor, is what we
7 filed last night. It was similarly a seal motion and a motion
8 to shorten notice, given that it was filed just yesterday I'm
9 happy to carry that to the next hearing or if there's no
10 objection we can deal with that today.
11 THE COURT: I think the debtors don't object to that.
12 MR. ROSEN: Your Honor, that can be filed under seal.
13 THE COURT: All right. I'll grant both motions to
14 seal.
15 MR. TAYLOR: If I may approach, Your Honor.
16 (Pause)
17 THE COURT: Thank you. All right. I'll enter those
18 orders.

The official transcript reflects no discussion of the merits of the Motions because obviously that dialogue took place in advance of the hearing, *in camera*. All the shareholders know (from the Motions, only) is that the EC believed the Sealed Documents would make a material difference to its effort to get an examiner appointed and the EC could not make the Sealed Documents public because of the 502(d) Order. If there is no transcript of the *In Camera* Hearing there is no official record evidencing that the Third Circuit substantive and procedural requirements for determining if a document may be sealed, discussed *infra*, were met. Furthermore, as the Third Circuit said in *Publicker Industries v. Cohen*, 733 F.2d 1059, 1072, "it would be in the sound discretion of the [bankruptcy] court to consider an alleged confidential problem '*in camera* but with counsel present and on the record'". (Emphasis added.)

IV. UNSEALING THE SEALED DOCUMENTS

A. Section 107

Section 107 and Bankruptcy Rule 9018 do not allow a bankruptcy court to issue an order forbidding public access to information filed in connection with a bankruptcy case unless necessary to protect (1)

an entity with respect to a trade secret or confidential research, development, or commercial information; or (2) a person with respect to scandalous or defamatory matter contained in a paper filed in a case filed under Title 11. See 11 U.S.C. § 107(b); Bankruptcy Rule 9018. See also *In re Muma Services Inc.*, 279 B.R. 478, 484 (Bankr. D. Del. 2002) ("Section 107(b) provides a narrow statutory exception to public accessibility in bankruptcy cases."). As the public doesn't know the nature of the information in the Sealed Documents shareholders cannot determine whether that information falls within the very limited category of information Section 107 protects from public view.

Section 107 is the U. S. Bankruptcy Code's embodiment of the Anglo-American policy of free access to court documents that Judge Higginbotham exhaustively discusses in *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059 (3d Cir. 1984) (the court discussed the surpassing importance of openness in America's court system dating from its inception as a British colony), and that you echoed in *Alterra* where you said "[t]here is a strong presumption in favor of public access to bankruptcy proceedings and records." *Alterra*, at 73. Obviously, subject to its very limited restrictions, Congress designed Section 107 to create a mechanism to (a) prevent documents to be filed in court from being placed under seal, and (b) expose documents that have been placed under seal.

B. Applicable Third Circuit Case Law

In *In re Alterra Healthcare Corporation*, 353 B.R. 66 (Bankr. D. Del. 2006), you said that documents filed in bankruptcy cases have historically been open to the press and general public. *Alterra*, 353 B.R., at 74 ("In fact, [with Section 107(a)] Congress has codified the history of open access in bankruptcy.").

In addition to your *Alterra* holding recognizing the public's right of access to court documents the Third Circuit Court of Appeals has held that the First Amendment grants a right of access to civil proceedings, *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984), which you acknowledged in *Alterra*.

Publicker is also important because in that case the Third Circuit set forth the procedural and substantive steps a Third Circuit court must take in assessing whether information should be withheld from the public:

Procedurally, a trial court in closing a proceeding must both articulate the countervailing interest it seeks to protect and make 'findings specific enough that a reviewing court can determine whether the closure order was properly entered.' Substantively, the record before the trial court must demonstrate 'an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.' *Publicker*, 733 F.2d at 1071. (Citations omitted.)

Although the *Publicker* court was not deciding whether a bankruptcy court properly sealed a document and, therefore, did not apply Section 107, *Publicker's* procedural and substantive instructions are applicable to the instant case for two reasons.

First, this court is a trial court within the Third Circuit, and therefore *Publicker* has stare decisis effect. Procedurally, a trial court in the Third Circuit of plenary or limited jurisdiction sealing a document must (a) "articulate the countervailing interest it seeks to protect", and (b) make "findings specific enough that a reviewing court can determine whether the closure order was properly entered." *Publicker*, at 1071. Indeed, if a trial court did not follow both (a) and (b) an appeals court would be unable to determine whether the court followed either procedural or substantive standards. Accordingly, though

the *Publicker* court was referring to U.S. District Courts, its reasoning holds for federal courts of limited jurisdiction, so Third Circuit bankruptcy courts are required to conform to the procedural standards set forth in *Publicker*.

Per *Publicker* the Third Circuit requires 'findings', which of course would be transcribed in some sort of record ("it would be in the sound discretion of the district court to consider an alleged confidential problem 'in camera but with counsel present and on the record'"; *Publicker*, at 1072), and therefore instructs that on July 8, 2010 a transcribed record should have been made during the *In Camera* Hearing including your articulation of (1) the compelling countervailing interests to be protected, and (2) your legal reasoning and factual determinations. To my knowledge, the public has no information about whether a transcript or other record of the *In Camera* Hearing was made. Also, *Publicker* findings should have been made at the July 20, 2010 hearing during which you granted the Motions, but were not.

Second, substantively, a trial court must find sealing a necessity. In bankruptcy cases Congress has limited the categories of documents requiring protection to those set forth in Section 107,⁵ so a bankruptcy court in the Third Circuit can only seal a document if its contents fall into one or more of the categories set forth in Section 107.

Applying *Publicker* to the Sealed Documents nothing in the public record of WMI's Chapter 11 filing indicates that (1) there were any findings evidenced by a record stating precisely why the Sealed Documents were withheld from public view, or (2) the Sealed Documents are in the category of protected information as set forth in Section 107.

In *Miller v. Indiana Hospital*, 16 F.3d 549, 551 (3d Cir. 1994), the Third Circuit held that a party seeking to keep a document under seal has the formidable task of proving necessity of the non-disclosure. In that case the court said "[t]he party seeking to seal any part of a judicial record bears the heavy burden of showing that 'the material is the kind of information that courts will protect' and that 'disclosure will work a clearly defined and serious injury to the party seeking closure.'" Id. (citing *Publicker*, 733 F.2d at 1071); see also *Goldstein v. Forbes (In re Cendant Corp.)*, 260 F.3d 183, 194 (3d Cir. 2001) (holding that the party seeking to seal a document must clearly define the serious injury that would ensue from public disclosure of the sealed document). As in *Publicker* *Miller* must be viewed in light of Section 107's requirements that its substantive criteria be applied, not federal common law and, therefore, applying *Miller* to the Sealed Documents means anyone contesting their unsealing must show the content in each of the Sealed Documents is protected from exposure by Section 107. Given the utter lack of transparency neither the public nor a reviewing court can determine if the EC met this heavy burden.

Moreover, as the *Miller* court held, "[e]ven if the initial sealing was justified, when there is a subsequent motion to remove such a seal, the [bankruptcy] court should closely examine whether circumstances have changed sufficiently to allow the presumption allowing access to court records to prevail." *Miller*, at 551-552. The public does not know whether the initial concealment of the Sealed Documents and

⁵ The substantive standard in *Publicker* is restricted by Section 107(b). To wit, *Publicker's* substantive instruction that "closure is essential to preserve higher values" is modified by Section 107(b) to mean 'closure is essential if the sealed document is a trade secret, confidential research, development or commercial information; or to protect an individual from scandalous or defamatory material contained in a filed document.' See *Publicker*, 733 F.2d at 1071; Section 107(b).

any transcript of the *In Camera* Hearing were in compliance with Section 107 and Third Circuit law, but their continued concealment must satisfy the rigid strictures set forth in *Miller* as discussed, supra.

The EC and its counsel were unable to advocate on behalf of shareholders at the July 8th hearing with respect to the Motions because of the 502(d) which, one expects, is precisely why the Sealed Documents were issued to the EC subject to that order. However, nothing in the 502(d) Order prevents me as a shareholder from demanding that the Sealed Documents be unsealed unless an objecting party shows at an open hearing that the contents of the Sealed Documents are protected under Section 107.

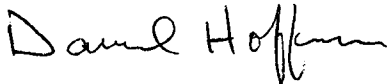
V. CONCLUSION

In addition to being a party in interest I am (a) a member of the public, and (b) injured by the non-disclosure of the contents of the Sealed Documents. Therefore, I am entitled to know the contents of the Sealed Documents, and hereby request that you make them available to me and the public.

For the foregoing reasons I am also entitled to access (1) the orders granting the Motions, (2) the Cover Sheets, and (3) any transcript of the *In Camera* Hearing.

I can appear in court to be heard at a hearing regarding the foregoing.

Respectfully,

A handwritten signature in cursive script that reads "Daniel Hoffman".

Daniel Hoffman, Pro Se
Southern California