UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
	Case No. 08-12229 (MFW)
WASHINGTON MUTUAL, INC., el al.,[1]	Jointly Administered
Debtors.	

Complaint against Debtors' Bankruptcy Frauds

Pursuant to 11 U.S.C. §1109(b), I, Gang Chen, a party in interest and an equity holder of Washington Mutual Inc.("WMI") securities, on behalf of my sole benefits, hereby file this complaint to this Court in regard to Debtors' and their counsels'[2] commitments of bankruptcy frauds and violations of their fiduciary duties to the estate.

JURISDICTION

This Court has jurisdiction and discretion on Debtors' bankruptcy cases pursuant to 28 U.S.C. §157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2) [Core proceedings include matters concerning the administration of the estate]. Venue is proper before this Court pursuant to 28 U.S.C. §1408 and 1409.

BACKGROUND

On September 25, 2008, the Office of Thrift Supervision (the "OTS") seized Washington Mutual Bank ("WMB") citing the bank's illiquidity issue without prior and proper formal regulatory notice and placed the bank into receivership. Later, the OTS appointed the Federal Deposit Insurance Corp. (the "FDIC") as receiver. Within a day, the FDIC sold virtually all of WMB's assets and limited liabilities, including its ownership of WMB fsb, to JPMC for $1.88 billion pursuant to the Purchase and Assumption Agreement (the "P&A Agreement") arrived by the FDIC and JPMC prior to the WMB seizure. WMB's debts and equities were wiped out in the receivership. WMI's common interest in WMB became worthless.

On September 26, 2008(the "Bankruptcy Date"), each of Debtors filed a voluntary bankruptcy petition with this Court pursuant to the Bankruptcy Code. In subsequence, Weil Gotshal & Manges ("WGM") was retained as Debtors' Chapter 11 petition attorneys.[3] Specifically, WGM's Marcia L. Goldstein, Michael F. Walsh and Brian S.

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1 The Debtors in these bankruptcy cases and the last four digits of each above Debtor's federal tax identification numbers are: Washington Mutual, Inc. (3725); and WMI Investment Corp. (5395).

2 Respectively, they are Weil Gotshal & Manges LLP (Marcia L. Goldstein, Michael F. Walsh and Brian S. Rosen), Alvarez & Marshal (Bill Kosturos), Richards Layton & Finger PA (Mar D. Collins and Chun I, Jang), and Quinn Emanuel Urquhart & Sullivan, LLP.

3 In the WGM employment and retention motion [Docket No. 64], Exhibit B, JP Morgan Chase Bank, Chase Home Finance and J.P. Morgan Securities Inc. are listed as WGM's current clients. In addition, in the Transcript of Deposition of Doreen A. Logan, dated as August 26, 2009, pp

Rosen, members with good standing of *the Bar of the State of New York* and *the United States District Court for the Southern District of New York*, were hired as the prime attorneys to the Debtors.

Pursuant to 12 U.S.C. §1821(d), the FDIC set December 30, 2008 as the deadline for Debtors to file claims against WMB. Debtors submitted a timely proof of claims to preserve their rights. On January 23, 2009, the FDIC officially denied all of the Debtors' claims through the Notice of Disallowance. The Debtors was further advised that they are allowed to continue to challenge the decision in the capacity of filing a lawsuit against the FDIC claims disallowance in either the United States District Court for the District of Columbia or the United States District Court in where WMB's principle place of business located within 60 days or the claims will be barred forever. On March 20, 2009, the Debtors commenced a lawsuit against the FDIC in the United States District Court for the District of Columbia regarding the FDIC's disallowance of the Debtor's claims decision.[4]

On March 24, 2009, JPMC, named the Debtors as defendant and the FDIC as codefendant, filed a litigation in this Court and request a summary judgment on ownership of certain disputed assets. JPMC purported to own all of the assorted assets pursuant to the P&A Agreement.[5] On March 30, 2009, JPMorgan Chase Bank National Association, thorough its undersigned counsel, Sullivan & Cromwell LLP, filed an unliquidated proof of claim against the Debtors.

On April 27, 2009, the Debtors filed an action against JPMC as successor to WMB and WMB fsb, pursuant to 11 U.S.C. §542, to recollect $4 billion as deposit at WMB fsb that belongs to the Debtors.[6] JPMC filed a counter-argument motion citing that there is a genuine dispute as to the ownership of the $4 billion deposit on May 13, 2009. This Court rejected JPMC's argument and found no indication of genuine dispute on the deposit ownership at a hearing dated as June 24, 2009. (B117, Tr. 6/24/09 at 117.)

On May 1, 2009, Debtors filed a motion to compel discovery on JPMorgan Chase Bank, N.A. pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1. [Docket No. 974] This Court entered an order and issued an opinion granting the Debtor's relief of request.[7]

At a hearing on March 12, 2010, Debtors announced that a global settlement agreement (the "GSA") was arrived between Debtors, JPMC, the FDIC and the Creditor Committee. Since then, all adversary proceedings and discoveries on JPMorgan Chase Bank, N.A. were halted.

237-241, it is perceived that WGM was employed by WMI as counsel to WMI in preparation of filing a possible bankruptcy case as early as September 20, 2008.

4 **The DC Action.** See Washington Mutual, Inc. and WMI Investment Corp. v. FDIC, Case No. 09-00533.

5 **The JPMC Adversary Proceeding.** See JPMorgan Chase Bank, N.A. v. Washington Mutual, Inc. et al., Adv. Pro. No.09-50551 (MFW).

6 **The Turnover Action.** See Washington Mutual, Inc. et al. v. JPMorgan Chase Bank, N.A., Adv. Pro. No.09-50934 (MFW).

7 See *EXHIBIT I.*

COMPLAINT

WMI board of directors, Debtors and their undersigned legal and financial counsels including but not limited to the above-referenced, WMI Creditors' Committee, the Settlement Note Holders[8] (collectively, the "Bankruptcy Group") have violated 18 U.S.C. §154, 18 U.S.C. §157 and 18 U.S.C. §371.

The Bankruptcy Group and the JPM Entities have been openly, shamefully, shadily, awfully, and unethically engaging and exercising a calculated, well-known "mysterious" plan proposed by JPMC after the initial discovery on JPMC by Debtors pursuant to the Court Order on June 24, 2009. *Id.* The calibrated scheme devised by JPMC, drafted by WGM[9], aims to bribe the WMI creditors. It is this very proposal that triggered the change of cause of action of Debtors in late 2009. In a clear attempt to bring a "turf war" within WMI (i.e., credit v. equity interests), JPMC with the "conquer and divide" strategy inundated and tamed the WMI credit interests with a deal that gives them prerogative to steal an egregious amount of windfalls – billions of dollars. As the stakes are at billions, the Debtors that are in WMI credit interests' control, driven by and surrendering to their avarice, in complete abstention of serving their fiduciary duties to the estate, concede to commit bankruptcy frauds in order to (1) release JPMC and FDIC's legal liabilities in conspiring to take down WMB, to injure the Debtors as the former owner of WMB and to fraudulently convey the Debtors' assets to JPMC, (2) intentionally conceal, undervalue and neglect critical assets, (3) artificially account the estate assets less than liabilities in a malicious attempt to justify the planned cancellation of existing WMI equity classes and remain in control in WMI's bankruptcy and later the reorganized estate, (4) protect third parties or non-Debtor parties from future legal challenges who may have engaged in illegal activities that cause injury to the estate, and (5) conceal critical documents from the Court and Public access.[10]

A. Conflict of Interest of Weil Gotshal & Manges LLP and Releases of JPMC

As of to date, WGM is still representing JPM Entities in various occasions and fields. *Id.* Since the commencement of WMI's bankruptcy, WGM, as the still-in-position legal counsel to JPMC, somehow survived the ***Conflict-Checking Test*** and serves as the lead legal counsel to the Debtors. JPMC, as the successor of WMB and WMB fsb in the transaction brokered by the FDIC, has adverse interest to the Debtors and the estate. That is further supported by the Debtors' employment and retention of Quinn Emanuel Urquhart Oliver & Hedges, LLP ("Quinn Emanuel") as ***Conflicts Counsel.***[11] One must be naïve to believe WGM has no influence on the Debtors' decisions regarding the cease of Rule 2004 discovery on JPMC, abandonment of DC Action, partition of valuable NOLs

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8 Specifically, the group is defined in Debtors' Disclosure Statement as Settlement Note Holders – Appaloosa Management L.P., Centerbridge Partners, L.P., the Owl Creek Management, L.P. and Aurelius Capital Management, LP. According to Kasowitz, Benson, Torres & Friedman LLP's verified statement to this Court [Docket No.1521], listed WMI note holders including Aurelius and Owl Creek are holding $3.3 billion face value of WMI outstanding debt securities.

9 See Final Report of the Examiner, pp 345 & 348. [Docket No. 5735].

10 Bankruptcy Fraud Warning Signs
- a. Concealment of assets
- b. Concealment or destruction of documents
- c. Conflict of interest
- d. Fraudulent claims
- e. False statements or declaration
- f. Recent departure of debtor's officers, directors or general partners
- g. Unanswered questions or incomplete information on debtor's schedules and statement of financial affairs
- h. Inconsistencies among recent financial statements, tax returns and debtor's schedules and statements of financial affairs

11 See Docket No.1043.

carry-back tax refunds with JPMC and the FDIC, supply of VISA shares, BOLI/COLI, Wind Farm, TPS collaterals, Avoidance Action and etc gratis or barely charged. It is not a coincidence that the above-mentioned serves completely the benefits of the Debtors' adversary party – JPMC.

In the Debtors' action against JPMC[12], to negate the suspicion and criticism of its conflict of interest in its role, WGM argues that the Debtors and the WMI board of directors, in reality, *aka* Mr. Kosturos and Creditors' Committee, relied on the advice of Quinn Emanuel in actions regarding JPMC.[13] Even with Quinn Emanuel as the conflict softener, WGM cannot deny the "short-life" of Quinn Emanuel and that WGM has been in the leading position of amending WMI's bankruptcy litigation and exit strategies. WGM's mission, at the very beginning of the WMI's bankruptcy, is to release JPMC. This type of trick plotted by WGM is well detected. By molding Quinn Emanuel as the JPMC action legal commander and further ascribing the decision to its advice, Quinn Emanuel was sacrificed as, simply, the scapegoat. Through the hand of Quinn Emanuel, WGM's recital seems to well satisfy the audience in the seat - JPMC.

There is no better example of WGM's conflict of interest than that the Debtors filed a motion of requesting this Court to allow the JPMC Claims solely for the Debtors' Sixth Amended Chapter11 Plan of Reorganization voting purpose. [Docket No. 6015] This transparent and "irrational" behavior in permitting a deemed-to-be adversary party's bogus claims of $10 billion dollars, not to mention the moot and dubious JPMC claims, and while the total liabilities of the estate is only $ 8.3 billion dollars, the Debtors and WGM fearlessly expose their intent and position of not serving the client of the estate – the WMI Equities before this Court, the very Court that questioned the representation of Quinn Emanuel at a hearing dated as June 3, 2010. [14]

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12 See The JPMC Adversary Proceeding and The Turnover Action. *Id.*

13 The Debtors, regardless, must submit proofs to justify their decision in settling the JPMC actions. By referring to Quinn Emanuel's advice is not sufficient. *See also* Douglas W. Hawes & Thomas J. Sherrard, *Reliance on Advice of Counsel as a Defense in Corporate and Securities Cases,* 62 VA. L. REV . 1, 7-8 (1976) ("[R]eliance is recognized only as a factor or circumstance tending to show the defendant's good faith or exercise of due care; it is not in itself a complete and absolute defense."); Gregory E. Maggs, *Consumer Bankruptcy Fraud and the "Reliance on Advice of Counsel" Argument,* 69 AM. BANKR. L.J. 1, 10 (1995) ("[R]eliance on the advice of counsel is not an affirmative defense. Instead, when a defendant introduces evidence of reliance on counsel, the defendant is usually trying to negate an element of a particular crime or tort, such as fraudulent intent.").

14 See Docket No. 4652; See also *EXHIBIT II* for quotes.

B. Debtors' Concealment, Undervaluing and Negligence of Critical Assets and Fraudulent Inflation of Claims Liabilities

From an estate recovery perspective, given the lack of supporting material proofs by the Bankruptcy Group, the new appearance of values on TPS, BOLI/COLI, NOLs carry-forward and tax benefits from WMI capital losses caused by WMB seizure, the flippant and meritless decision on abandoning the DC Action, the give-away of VISA shares and Wind Farm to JPMC free of charge or nearly naught, one must wonder whether the recovery of the estate following the regular steps is way more than the one under the GSA scheme. It is evidently enlightened by Ben Mason's letter to this Court that the GSA provides tiny recovery to the estate. The threshold that the Bankruptcy Group that is ferociously defending is that the estate's assets **have to** be insufficient to its liabilities.

The Debtor's decision on discharging their WMB common interests of $26 billion and then passing the whole interest to the FDIC begs one more "why".[15] Reporting by the examiner, there is an estimated of $17 billion NOLs carry-forward tax benefits arising mainly from the banking operation. Moreover, the Debtors are suing the FDIC in the DC court on the agency's violation of 5th Amendment regarding unjust compensation to the former owner of the bank in the transaction that JPMC acquired $300 billion banking assets for $1.88 billion. *Id.* Whereas the Debtors enjoy the tax benefits as the only tax recipient in the WMI tax group. By abandoning the interest in WMB to the FDIC, they are essentially saying they do not want the $17 billion tax benefits NOLs and billions worth of litigation but intend to pursue for a $5 billion tax deduction from capital losses on WMB's investment. Also, what it is shown is that they, the Debtors, have no interest in restructuring and reorganizing the current in bankruptcy estate into a viable business. Arising from I.R.C. §382, their utilization of the NOLs tax benefits requires a limited company ownership change. As explicitly expressed by the Debtors, they are intended to cancel the current equities and to issue new equities. The above alone suggests their negligence of important tax assets, violation of fiduciary duties to the estate and execution of a self-interest serving POR and GSA.

At the hearing dated as January 28, 2010, in which after the appointment of WMI Official Equity Committee, Brian Rosen from WGM intentionally lied about the total amount of claims against WMI in an attempt to convince this Court to limit the EC authority in WMI's bankruptcy. Specifically, he argued with this Court that the adverse claims against WMI are estimated to be around $54 billion after an expected deduction of a $40 billion Marta claim and a $9.7 billion IRS claim. He further explained that that $54 billion claims could be higher due to the existence of $24 billion liquidated and unliquidated FDIC claims and 30 claims from JPMC.[16] However, in the Debtors' Fourth Amended Disclosure Statement ("DS"), in Exhibit C, the Debtors wrote, "However, **the Debtors' best estimate of eventually allowed claims in both cases will be approximately $375 million.**"[17] (Emphasis added) The direct contradictory opinions made by the Debtors themselves very well demonstrate their intent of handicapping the estate owner – WMI Equities represented by the WMI EC – who has the absolute interest to bring the most recovery to the estate.[18]

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15 See Docket No. 5885.

16 Transcript of Hearing for January 28, 2009 at 4:00 P.M. (EST). Case No. 08-12229 (MFW) pp14-16.

17 See the Debtors' 4th Amended DS. By "in both cases", the Debtors were referring to the estate's Chapter 7 and Chapter 11 scenarios.

18 I respectfully request this Court to consider holding Brian S. Rosen, Esq of WGM in Contempt of Court for lying in court hearing with two eyes widely-open pursuant to 18 USC §401. [Contempt is generally defined as an act of disobedience to an order of a court, or an act of disrespect of a court.]

C. Debtors' Intentional Relinquishment in Pursuing Discovery on Adversaries

Before exhausting available resources for pursuing in-depth discovery on adversary party – JPMC, the Debtors' prematurely and surprisingly arrived an agreement with the party being inspected shortly after this Court's order granting Debtors' Rule 2004 authority on June 24, 2009. *Id.*

Months prior to the announcement of GSA, the Debtors, on May 1,2009, directed JPMC as the custodian entity of WMB books and records, pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1 to produce, among other documents, the specific record of assets that JPMC acquired through the transaction with the FDIC in September 2008.[19] On May 13, JPMC filed an objection to the Debtors' discovery direction citing that JPMC won the race to the courthouse by filing an adversary proceeding earlier that ought to block the Rule 2004 effect on it.[20] In reply, on May 18, the Debtors rebuffed JPMC's argument and case laws, and reinstated that their discovery is very narrow and reasonable and JPMC is deemed to be a subject of Rule 2004 investigation.[21] On May 19, the Official Committee of Unsecured Creditors of WMI (the "UCC")[22] requested to join the JPMC discovery campaign.[23]

Amazingly, after obtaining this Court's approval on Debtors' Rule 2004 discovery motion, without a single deposition and formal examination on JPMC, the Debtors voluntarily ceased the discovery on JPMC with no countervailing resistance by adversary parties. Only several months later, the Debtors announced the current GSA with JPMC and the FDIC. Ironically, JPMC, in a recent filing in support of the approval of the sixth amended POR, at footnote 9, wrote, "Had the BOLI assets (or any other significant asset) been excluded from the FDIC acquisition, the value of the excluded asset would have been deducted from JPMC's bid."[24] In accordance to the examiner's report, BOLI/COLI assets are expected to have a $5 billion net value.[25] Following JPMC's logic, if BOLI/COLI are not included in the WMB assets sale, then it should have paid a negative value of $3 billion for WMB's $295 (300 - 5) billion assets, more than two thousands national-wide branches, WaMu intelligence properties, Providian Credit Card Company and etc. This is the biggest **BANK HEIST** ever in the America history.

Under insufficient in-depth discovery and the indirect admission of wrongdoing by JPMC[26], no one should close the investigation process, especially the injured parties – the Debtors.

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19 See Docket No.974.

20 See Docket No.1017.

21 See Docket No.1031.

22 UCC members include The Bank of New York Mellon, Law Debenture Trust Company of New York, Wells Fargo Bank, N.A., Wilmington Trust Company and Verizon Services Crop..

23 See Docket No.1045.

24 See Docket No.6008.

25 See *Id.* at pp6

26 In JPM 3Q 2010 Earning Call, on October 13, 2010, James Dimon, the Chairman and CEO of JPM, said," You know our society, right. How many lawsuits go on and Class Action suits and (stop crop) suits and Bear Stearns suits and WaMu suits and Morgan suits and it isn't going away. It's becoming a cost of doing business. So, yes, we always try to get ahead of it. We're not going to give you specific detail. We'll move on, we're going to settle; when we are right, we're going to fight. Not all those reserves were mortgage related. They were related to other items we have to deal with as a Company and we do try to be ahead of it. We try to be very ahead of it because we think it's the right thing to do." See *EXHIBIT III* for transcript.

CONCLUSION

This Court has received numerous letters from individual shareholders who have expressed their objections to and concerns on the Debtor's Plan of Reorganization and provisions therein.[27] In light of Debtors' artificial suppression of the estate assets recovery, their collusive actions during this bankruptcy case, the obvious conflict of interest of Debtor's lead counsel – WGM, and the unexplainable friendliness of Debtors to the adversary parties warrant the removal of the Debtors in Possession ("DIP") and WGM. Given the affluence of evidentiary phenomenon, it should not be hard for a rational person to conclude the illogical actions by the Debtors. Even lack of black-and-white evidence, bankruptcy frauds should be focused on the *Mens rea* of a particular set of actions.[28] While in this case, we found written evidence, *aka* DS and POR (Gifts & Releases), and evidence that can be perceived – RELINQUISHMENT OF AUTHORITY GIVEN BY BANKRUPTCY RULE 2004.

Under the implication and significance of this case to the U.S. Bankruptcy System, I solemnly submit that this Court,

(1) Remove the current DIP and its respective legal and financial counsels
(2) Complaint to the Department of Justice regarding the behaviours of the Bankruptcy Group
(3) Notify the **United States District Court for the Southern District of New York** and **Bar of the State of New York** of the unethical and unlawful behaviour committed by Weil Gotshal & Manges LLP
(4) Deny and nullify the latest submitted POR and its respective voting
(5) Elect new directors and DIP for the estate

With the highest respect to this Court, submitted,

Dated: November 24, 2010

_____, Pro se
GANG CHEN

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27 I respectfully request this Court to take "Judicial Notice" on the letters as follows,
- Daniel Hoffman's letters to this Court docketed respectively as 5753, 5802, 6029 and 6063.
- Ben Mason's letter docketed as 5960.
-Charles S. McCurry 's letter docketed as 5868.

28 *See 140 Cong. Rec. S14, 461 (daily ed. Oct. 6, 1994);* see *18 U.S.C. sec 152.*

Service List to Selected Parties (via UPS Worldwide Express)

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EXHIBIT I

Court's Opinion on the Debtors' Motion for an order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1 Direct the Examination of JPMorgan Chase Bank, National Association ("JPM") and Order granting the Debtors' Motion.
(Wednesday, June 24, 2009)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
WASHINGTON MUTUAL, INC., et al.,	)	Case No. 08-12229 (MFW)
	)	
Debtors.	)	Jointly Administered
	)	

OPINION[1]

Before the Court is the Debtors' Motion for an Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1 Directing the Examination of JPMorgan Chase Bank, National Association ("JPM"). For the reasons set forth below, the Court will grant the Debtors' Motion.

I. FACTUAL BACKGROUND

Prior to the filing of a chapter 11 petition, Washington Mutual, Inc. ("WMI") was a savings and loan holding company,[2] which owned Washington Mutual Bank ("WMB"). WMB owned the subsidiary bank Washington Mutual Bank fsb ("WMBfsb"). Before failing, WMB was the nation's largest savings and loan association, with over 2,200 branches and $188.3 billion in deposits.

[1] This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure, which is made applicable to contested matters by Rule 9014 of the Federal Rules of Bankruptcy Procedure.

[2] See 12 U.S.C. § 1467a.

Beginning in mid-2007, the slowdown in the nation's economy and, in particular, the deterioration in the residential housing market resulted in decreased revenue and earnings at WMI and trouble in the asset portfolio of WMB. By September 2008, in the midst of a global credit crisis of unprecedented proportions (which included the bankruptcy of Lehman Brothers Holdings Inc.[3]), WMI and WMB faced a wave of ratings downgrades by the major credit rating agencies. Deteriorating confidence in WMB fueled a bank run beginning September 15, with $16.7 billion in deposits withdrawn over a ten-day period.

On September 25, 2008, WMB's primary regulator,[4] the Office of Thrift Supervision (the "OTS"), closed WMB and appointed the Federal Deposit Insurance Corporation (the "FDIC") as receiver. WMB's takeover by the FDIC was the largest bank failure in the nation's history. Immediately after its appointment as receiver, the FDIC sold substantially all the assets of WMB to JPM. On September 26, the Debtors filed chapter 11 petitions.

On December 30, 2008, the Debtors asserted various claims against the WMB receivership by filing proofs of claim with the FDIC in its capacity as receiver of WMB. Specifically, the

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[3] See In re Lehman Brothers Holdings Inc., No. 08-13555 (Bankr. S.D.N.Y. filed Sept. 15, 2008).

[4] WMB was also subject to regulatory oversight by the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System (the "Fed"), and the FDIC.

Debtors' claims are claims for damages related to intercompany loans and receivables, taxes paid on behalf of WMB, tax refunds, capital contributions, certain trust preferred securities, preferential transfers, vendor contract claims, subrogation claims, improper asset sales, cash in demand deposit accounts, administrative claims, employment-related costs and insurance claims, and indemnification claims. The FDIC denied all claims filed by the Debtors in a letter dated January 23, 2009.

On March 20, 2009, the Debtors filed suit in the United States District Court for the District of Columbia (the "DC Court") against the FDIC (the "DC Action")[5] with the following five counts: (1) seeking review of the FDIC's denial of the Debtors' proofs of claim; (2) wrongful dissipation of WMB's assets; (3) taking of the Debtors' property without just compensation; (4) conversion of the Debtors' property; and (5) seeking a declaration that the FDIC's disallowance of the Debtors' claims is void. JPM moved to intervene in the DC Action; the Debtors have opposed JPM's motion to intervene.

On March 24, 2009, JPM filed an adversary proceeding in this Court naming the Debtors as defendants (the "JPM Adversary Action").[6] In it, JPM seeks a series of declaratory judgments

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[5] See Washington Mutual, Inc., et al. v. Federal Deposit Insurance Corp., No. 1:09-cv-00533 (D.D.C. filed Mar. 20, 2009).

[6] See JPMorgan Chase Bank, National Association v. Washington Mutual, Inc. et al., Case No. 08-12229, Adv. No. 09-

regarding the ownership of various assets which JPM asserts it acquired in good faith and for value from the FDIC as receiver for WMB. Specifically, the assets at issue include approximately $4 billion in trust securities, a $3.7 billion book entry at WMBfsb purporting to create a deposit account in the name of WMI, tax refunds, judgments from certain prior litigation, assets of certain trusts supporting deferred compensation of former and current employees of WMB, shares of Class B common stock in Visa, Inc., intellectual property and contractual rights. JPM characterizes the JPM Adversary Action as "in many ways the flip side of the DC Action," as JPM "broadly asserts claims that result from Debtors' efforts to assert ownership rights over assets [JPM purportedly] purchased from the FDIC."[7]

On April 27, 2009, the Debtors filed an adversary proceeding in this Court naming JPM as defendant (the "Turnover Action").[8] In that action, the Debtors seek turnover of approximately $4 billion in cash held in demand deposit accounts in the name of the Debtors at WMB and WMBfsb at the time WMB was seized and sold

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50551 (Bankr. D. Del. filed Mar. 24, 2009). The JPM Adversary Action also names the FDIC as an additional defendant solely on an interpleader claim related to the deposit account liabilities.

[7] JPM Objection at 2.

[8] See Washington Mutual, Inc. et al. v. JPMorgan Chase Bank, National Association, Case No. 08-12229, Adv. No. 09-50934 (Bankr. D. Del. filed Apr. 27, 2009).

to JPM. JPM has filed a motion to dismiss the Turnover Action; the Debtors have filed a motion for summary judgment.[9]

A fourth action was filed on February 16, 2009, in the 122d Judicial District Court of Galveston County, Texas (the "Texas Action") by a group of insurance companies[10] which held common stock of WMI and debt securities of WMI and WMB (collectively, the "Insurance Company Plaintiffs") against defendants JPM and its parent company, JPMorgan Chase & Co. ("JPMC"). On March 25, 2009, the FDIC, as an intervening defendant, JPM and JPMC removed the Texas Action to the United States District Court for the Southern District of Texas.[11] In addition, the FDIC filed a motion to transfer the Texas Action to the DC Court. The Insurance Company Plaintiffs opposed the motion to transfer venue and sought to remand the action to the Texas state court. The District Court has yet to rule on the motion to transfer venue.

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[9] The FDIC has filed a motion to intervene in the Turnover Action. In addition, both the FDIC and JPM seek to stay the Turnover Action pending the result of the DC Action.

[10] The plaintiffs in the Texas Action are: American National Insurance Company, American National Property and Casualty Company, American National General Insurance Company, Farm Family Life Insurance Company, Farm Family Casualty Insurance Company, Pacific Property and Casualty Company, American National Lloyds Insurance Company, National Western Life Insurance Company, and Garden State Life Insurance Company.

[11] See American National Insurance Company et al. v. JPMorgan Chase & Co., No. 3:09-CV-00044 (S.D. Tex. Mar. 25, 2009).

The Complaint in the Texas Action ("Texas Complaint") alleges causes of action for tortious interference with an existing contract, breach of a confidentiality agreement, and unjust enrichment. Specifically, the Texas Complaint alleges that JPM, which had long coveted WMB's depositor base and branch network, drove down WMB's value so it could purchase WMB's assets at a fire-sale price well below their fair market value. Key aspects of the alleged scheme include entering into false negotiations with WMI and WMB under the guise of a good-faith bidder during the summer of 2008, gaining access to confidential and proprietary information, and disseminating that confidential information, as well as false information, to the media and investors in an effort to drive down WMI's credit rating and stock price.

The instant dispute is based on the Debtors' Motion for an Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1 Directing the Examination of JPM (the "Motion"), which was filed on May 1, 2009. Specifically, the Debtors' Motion seeks production of documents and related depositions regarding four areas of investigation:

- potential business tort claims against JPM based on the allegations in the Texas Action;

- potential fraudulent transfer claims against JPM arising from approximately $6.5 billion of capital contributions made by WMI to WMB since December 2007;
- potential turnover claims against JPM related to (i) approximately $177 million owed by WMB under outstanding promissory notes held by non-Debtor subsidiaries of WMI, and (ii) approximately $22.5 million in intercompany receivables owed to WMI by WMB; and
- potential preferential transfer claims against JPM arising from approximately $152 million transferred to WMB or third parties on behalf of WMB in the one-year period preceeding the filing of the Debtors' chapter 11 petitions.

JPM opposes the Motion, asserting that the requested Rule 2004 examination seeks information related to the pending DC Action, as well as the JPM Adversary Action and the Turnover Action, and thus the applicable discovery rules of the Federal Rules of Civil Procedure should apply. The Court held a hearing on May 20, at which the parties presented oral argument on the Motion. At the conclusion of the hearing, the Court took the matter under advisement. Upon consideration of the parties' pleadings and arguments, the Motion is ripe for decision.

II. JURISDICTION

This Court has jurisdiction over this matter, which is a core proceeding pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(A).

III. DISCUSSION

A. Rule 2004 Examination Standards

Rule 2004(a) of the Federal Rules of Bankruptcy Procedure states that "[o]n motion of any party in interest, the court may order the examination of any entity." The scope of a Rule 2004 examination is "unfettered and broad." In re Bennett Funding Group, Inc., 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996).

> The examination . . . may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate. [Additionally, in a] case under chapter 11 .
> . . the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

Fed. R. Bankr. P. 2004(b). A Rule 2004 examination "is commonly recognized as more in the nature of a 'fishing expedition.'" Bennett Funding, 203 B.R. at 28. The purpose of the examination is to enable the trustee to discover the nature and extent of the bankruptcy estate. In re Drexel Burnham Lambert Group, Inc., 123

B.R. 702, 708 (Bankr. S.D.N.Y. 1991). Legitimate goals of Rule 2004 examinations include "discovering assets, examining transactions, and determining whether wrongdoing has occurred." In re Enron Corp., 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002). There are, however, limits to the use of Rule 2004 examinations. Id. "It may not be used for 'purposes of abuse or harassment' and it 'cannot stray into matters which are not relevant to the basic inquiry.'" In re Table Talk, Inc., 51 B.R. 143, 145 (Bankr. D. Mass. 1985) (quoting In re Mittco, Inc., 44 B.R. 35, 36 (Bankr. E.D. Wis. 1984)).

At issue in this case is the potential limitation on the use of the Rule 2004 examination device caused by the shadow of pending adversary proceedings or litigation in other forums. The "pending proceeding" rule states "that once an adversary proceeding or contested matter has been commenced, discovery is made pursuant to Federal Rules of Bankruptcy Procedure 7026 et seq., rather than by a [Rule] 2004 examination." Bennett Funding, 203 B.R. at 28. See also Enron, 281 B.R. at 840; In re 2435 Plainfield Ave., Inc., 223 B.R. 440, 455-56 (Bankr. D.N.J. 1998) (collecting cases); Intercontinental Enters., Inc. v. Keller (In re Blinder, Robinson & Co., Inc.), 127 B.R. 267, 274 (D. Colo. 1991) (quoting In re Valley Forge Plaza Assocs., 109 B.R. 669, 674-75 (Bankr. E.D. Pa. 1990)). In addition to restricting the use of Rule 2004 examinations when proceedings

are pending against the examinee in the bankruptcy court, courts have also recognized that Rule 2004 examinations may be inappropriate "where the party requesting the Rule 2004 examination could benefit their pending litigation outside of the bankruptcy court against the proposed Rule 2004 examinee." Enron, 281 B.R. at 842. See also, Snyder v. Soc'y Bank, 181 B.R. 40, 42 (S.D. Tex. 1994), aff'd sub nom., In re Snyder, 52 F.3d 1067 (5th Cir. 1995) (mem.) (characterizing the use of Rule 2004 to further a state court action as an abuse of Rule 2004 and stating that the bankruptcy court did not abuse its discretion by denying production under a subpoena issued under Rule 2004, where appellant's primary motivation was to use those materials in a state court action against the examinee).

The reasons supporting these restrictions on the use of Rule 2004 examinations are twofold. First, the discovery rules apply both in adversary proceedings and contested matters. See Fed. R. Bankr. P. 7001 & 9014(c). Furthermore, a Rule 2004 examination does not provide the same procedural safeguards as Rule 7026. For example, a witness has no general right to representation by counsel during a deposition, and the right to object to immaterial or improper questions is limited. In re Dinubilo, 177 B.R. 932, 940 (E.D. Cal. 1993).

The prohibition on use of Rule 2004 examinations once an adversary proceeding or litigation in another forum is commenced,

however, has an exception best expressed by the court in Bennett Funding: "[d]iscovery of evidence related to the pending proceeding must be accomplished in accord with more restrictive provisions of [the Federal Rules of Bankruptcy Procedure], while unrelated discovery should not be subject to those rules simply because there is an adversary proceeding pending." 203 B.R. at 29 (emphasis in original). See also In re Buick, 174 B.R. 299, 305 (D. Colo. 1994) (noting that "even after the trustee has commenced adversary proceeding(s), the trustee may conduct Rule 2004 examinations of entities which are not parties to or are not affected by the pending adversary proceeding(s)"); Blender, Robinson, 127 B.R. at 275 ("Entities not affected by the adversary proceeding do not require the greater protections afforded under the Federal Rules, and the Trustee should be permitted to examine them under Rule 2004"); In re Int'l Fibercom, Inc., 283 B.R. 290, 292 (Bankr. D. Ariz. 2002) ("Consequently when the Rule 2004 examination relates not to the pending adversary litigation, but to another matter, the 'pending proceeding' rule does not apply"); In re M4 Enters., Inc., 190 B.R. 471, 475 n.4 (Bankr. N.D. Ga. 1995) (finding that the 2004 examination did not relate to the pending adversary proceeding and thus the 'pending proceeding' rule did not apply).

The primary concern of courts is the use of Rule 2004 examinations to circumvent the safeguards and protections of the

Federal Rules of Civil Procedure. Enron, 281 B.R. at 841. Yet aggressive application of the "pending proceeding" rule may prevent legitimate Rule 2004 examinations on matters wholly unrelated to the pending proceeding, thereby interfering with the trustee's fiduciary duty to maximize estate assets. See Bennett Funding, 203 B.R. at 29 (noting that precluding the use of the 2004 examination device when any adversary proceeding has been commenced would allow entities unaffected by the proceeding to avoid examination); Drexel Burnham Lambert, 123 B.R. at 708 ("A trustee in bankruptcy . . . is under a duty to maximize the realization of estate liquidation").

In this Court's view, the proper approach is that of Bennett Funding. Where a party requests a Rule 2004 examination and an adversary proceeding or other litigation in another forum is pending between the parties, the relevant inquiry is whether the Rule 2004 examination will lead to discovery of evidence related to the pending proceeding or whether the requested examination seeks to discover evidence unrelated to the pending proceeding.

B. Relatedness of the Requested 2004 Examination to the Pending Proceedings

In this case, JPM argues that the Debtors' requested Rule 2004 examination is improper because it seeks to elicit information directly related to issues and parties already named

in the JPM Adversary Action as well as the DC Action.[12]

1. The JPM Adversary Action

JPM argues that the Debtors' requested 2004 examination seeks documents related to the JPM Adversary Action. In support of this, JPM created a detailed chart which purports to delineate the overlapping areas between the Complaint in the JPM Adversary Action and the Debtors' document production requests.[13] The overlap, however, is premised on a single alleged fact in the JPM Adversary Action Complaint: "[T]he OTS placed WMB in receivership because of significant concerns over the safety and soundness of the institution. To ensure continuity of operations, maximize public confidence and minimize cost to the public treasury, the FDIC ran an accelerated bidding process." JPM Adversary Action Complaint at ¶ 25. Simply because JPM chose to include background information regarding the relationship of the parties

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[12] JPM does not argue that the Debtors' 2004 examination request is improper due to its relationship to either the Texas Action or the Turnover Action. Nothing in the document production request seeks any information related to the Turnover Action, thus the Turnover Action is not an obstacle to Debtors' examination request.

The requested Rule 2004 examination does seek extensive discovery related to the Texas Action. However, the Debtor is not a party to the Texas Action. Nor has the Texas Action been transferred to the DC Court, nor consolidated with the DC Action. Therefore, because the Debtor is not a party to the Texas Action, the requested 2004 examination is proper, even though it seeks information related to the Texas Action.

[13] See JPM Objection at 11-12.

involved in the JPM Adversary Action in its Complaint does not mean that any Rule 2004 examination request dealing with those background facts is "related" to the JPM Adversary Action.

Rather, the Court must determine whether the requested 2004 examination will result in the "discovery of evidence related to the pending proceeding." Bennett Funding, 203 B.R. at 29 (emphasis added).

The JPM Adversary Action primarily seeks a series of declaratory judgments that JPM owns a number of disputed assets it asserts that it purchased when it acquired the assets of WMB from the FDIC. The Debtors' Motion seeks production of documents and related depositions relating to potential business tort claims, potential fraudulent transfer claims, potential turnover claims against JPM, and potential preferential transfer claims against JPM.

The Court concludes that the Debtors' Motion does not seek the discovery of evidence "related" to the JPM Adversary Action. With respect to the potential business tort claims, the Debtors seek to investigate conduct which occurred before the OTS closed WMB. In contrast, the JPM Adversary Action seeks to have the Court determine the ownership of certain disputed assets from the sale of WMB's assets to JPM, which occurred after the OTS closed WMB.

Furthermore, the Debtors' document requests for information related to fraudulent transfer claims, turnover claims and preference claims are also unrelated to the JPM Adversary Action. Specifically, the JPM Adversary Action Complaint does not seek a determination of ownership of the potential assets the Debtors seek to investigate: (1) the $6.5 billion of capital contributions made by WMI to WMB since December 2007; (2) the $177 million owed by WMB under outstanding promissory notes held by non-Debtor subsidiaries of WMI; (3) the $22.5 million in intercompany receivables owed to WMI by WMB; and (4) the $152 million transferred to WMB or to third parties on behalf of WMB in the one-year period preceding the Debtors' filing of chapter 11 petitions.

Accordingly, the Court finds that the Debtors' Motion does not seek to discover evidence related to the JPM Adversary Action.

2. The DC Action

JPM also argues that the Debtors' requested 2004 examination seeks documents related to the DC Action. However, JPM is not a party to the DC Action. JPM admits it is not a party to the DC Action, but notes there is a "substantial likelihood" that JPM's motion to intervene in the DC Action will be granted. JPM then argues that since it has a "clear interest" in the DC Action, any

discovery related to the DC Action is improper. The Court disagrees.

The possibility that JPM may intervene in the DC Action is not a sufficient reason to deny the Debtors' Motion at this time. The "pending proceeding" rule is predicated on there actually being a pending action involving the two parties. Bennett Funding, 203 B.R. at 28. JPM has not cited any authority for the proposition that a Rule 2004 examination of an entity is improper when a proceeding is pending in another venue against a third party and there is a "substantial likelihood" that the examinee may intervene.

Thus, the Court concludes that there is no justification to prevent the Rule 2004 examination of JPM simply because the Debtors may obtain evidence which could be used in a pending proceeding in which JPM is not yet a party. One of the primary purposes of a Rule 2004 examination is as a pre-litigation device. See Table Talk, 51 B.R. at 145-46. Consequently, the Court should not permit a party to avoid examination by simply filing a motion to intervene in a pending proceeding against a third party. Since JPM is not a party to the DC Action, the concern that the Debtors are attempting to circumvent the Federal Rules of Civil Procedure is not present. The "relatedness" of

the DC Action to the Debtors' requested 2004 examination is not relevant.[14]

Accordingly, the Court concludes that the Debtors' Motion to conduct a Rule 2004 examination of JPM is appropriate. The Court will grant the Debtor's Motion.

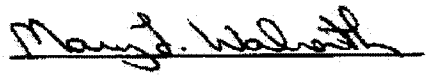
IV. CONCLUSION

For the reasons set forth above, the Court will grant the Debtors' Motion.

An appropriate order is attached.

Dated: June 24, 2009

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge

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[14] With respect to the business tort claims, even if JPM successfully intervened in the DC Action, the requested 2004 examination does not seek to discover evidence related to the DC Action. The Debtors seek to discover evidence regarding JPM's alleged malfeasance prior to the seizure and sale of WMB. JPM argues that discovery of this evidence is related to the Debtors alleged causes of action against the FDIC for dissipation of WMB's assets and the taking of Debtors' property without just compensation. However, these causes of action are premised on the FDIC's failure to maximize the value of the receivership's assets in the sale of WMB to JPM. Specifically, the Debtors assert the FDIC would have received a higher value through the liquidation of WMB than the sale to JPM. The requested 2004 examination does not seek to discover evidence related to the hypothetical liquidation analysis implicated in the dissipation and takings causes of action asserted in the DC Action.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
WASHINGTON MUTUAL, INC., et al.,	)	Case No. 08-12229 (MFW)
	)	
Debtors.	)	Jointly Administered
	)	

ORDER

AND NOW, this **24th** day of **JUNE, 2009**, upon consideration of the Motion filed by the Debtors and for the reasons set forth in the accompanying Opinion, it is hereby

ORDERED that the Debtors' Motion for an Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1 Directing the Examination of JPMorgan Chase Bank, National Association is **GRANTED**.

BY THE COURT:

Mary F. Walrath
United States Bankruptcy Court

cc: Rafael X. Zahralddin-Aravena, Esquire[1]

[1] Counsel shall serve a copy of this Order and the accompanying Opinion on all interested parties and file a Certificate of Service with the Court.

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EXHIBIT II

Excerpt of Transcript of
Hearing, Case No 08-12229 (MFW)
(Thursday, June 3, 2010)

THE COURT: How are the shareholders and the creditors on a different side from the debtor on that litigation?

MR. ELSBERG: Your Honor, they're on a different sidein the following sense recognized by the Eleventh Circuit in Cox and the Third Circuit in Wachtel. What those cases recognize is that the fiduciary who is in the center of this -- the fiduciary needs to be able to work and to serve the best interest of the group as a collective. And so, when you have a conflict as between the constituents

--

THE COURT: How is there a conflict in the litigation?

MR. ELSBERG: In the li --

THE COURT: Doesn't everybody want to pursue -- everybody's on the same side of the litigation against JPMorgan and FDIC, correct?

MR. ELSBERG: Respectfully, Your Honor, no, I don't --

THE COURT: How? How are they different?

MR. ELSBERG: This -- let me give you one -- let me give you one example. So, for example, we've seen briefs where, from time to time, the view has been expressed that what the equity committee would like to do is, quote unquote, swing for the fences because --

THE COURT: That's a different issue. That deals with the settlement. I'm talking about the litigation.

MR. ELSBERG: No, no --

THE COURT: Let's start with the litigation.

MR. ELSBERG: In a litigation -- in a litigation, certain claims that different -- when different groups right from the beginning -- and again, from its inception, the equity committee recognized it has conflicting, not just different, interests. When you have groups with different interests, that can apply to the liti --

THE COURT: Explain to me the different interest in the litigation. Doesn't everybody want the most money?

MR. ELSBERG: Everyone wants the most money, yes.

THE COURT: Okay.

MR. ELSBERG: And then the way that you can try to get to the most money are judgment calls and strategies that could differ radically -- in fact, I think we're –

THE COURT: Yes, they can. But the debtor is suggesting we want to settle this litigation. And I think equity committee is entitled to your analysis of those claims and your analysis of why they should be settled.

MR. ELSBERG: Well, Your Honor --

THE COURT: They're your cli -- they're one of your clients."

EXHIBIT III

JPM 3Q Earning Call Transcript Excerpt
(Wednesday, October 13, 2010)

J.P. Morgan Chase & Co. JPM
Q3 2010 Earnings Call Transcript

Executives

- Douglas L. Braunstein : CFO
- James Dimon : Chairman and CEO

Analysts

- James Mitchell : Buckingham Research
- Paul Miller : FBR Capital Markets
- John McDonald : Sanford Bernstein
- Jeffery Harte : Sandler O'Neill
- Glenn Schorr : Nomura
- Carole Berger : Soleil Securities
- Betsy Graseck : Morgan Stanley
- Matthew Burnell : Wells Fargo Securities
- Mike Mayo : CLSA
- Nancy Bush : NAB Research
- Edward Najarian : ISI Group
- Matthew O'Connor : Deutsche Bank
- Moshe Orenbuch : Credit Suisse
- Chris Kotowski : Oppenheimer
- Guy Moszkowski : Banc of America Securities Merrill Lynch

Transcript Call Date 10/13/2010

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James Dimon - Chairman and CEO: You know our society, right. How many lawsuits go on and Class Action suits and (stop crop) suits and Bear Stearns suits and WaMu suits and Morgan suits and it isn't going away. It's becoming a cost of doing business. So, yes, we always try to get ahead of it. We're not going to give you specific detail. We'll move on, we're going to settle; when we are right, we're going to fight. Not all those reserves were mortgage related. They were related to other items we have to deal with as a Company and we do try to be ahead of it. We try to be very ahead of it because we think it's the right thing to do.

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