

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	Jointly Administered
	:	
	:	

THE FDIC-RECEIVER’S (I) RESPONSE TO THE CONSORTIUM OF TRUST PREFERRED SECURITY HOLDERS’ SUBMISSION FOR INCLUSION IN THE RECORD OF EXCERPTS OF THE UNITED STATES SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS’ REPORT ENTITLED: WALL STREET AND THE FINANCIAL CRISIS: ANATOMY OF A FINANCIAL COLLAPSE, AND (II) STATEMENT IN SUPPORT OF PLAN CONFIRMATION

The Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank (the “FDIC-Receiver”), respectfully submits this (i) response to the submission in the record by the Consortium of Trust Preferred Security Holders (the “TPS Consortium”) of excerpts of the U.S. Senate Permanent Subcommittee on Investigations’ report entitled *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse* [D.I. 8312] (the “Senate Report”), and (ii) statement in support of confirmation of the *Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* (the “Plan”). Consistent therewith, the FDIC-Receiver respectfully states the following:

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification numbers are: (a) Washington Mutual, Inc. (3725); and (b) WMI Investment Corp. (5395). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



RESPONSE

1. At the confirmation hearing on the Plan, the Court permitted the TPS Consortium to submit a ten page summary/excerpt of the Senate Report. The Senate Report includes sections discussing the collapse of Washington Mutual Bank and various lending practices authorized by the directors and officers of Washington Mutual Bank that may have contributed to its collapse.

2. On July 26, 2011, the TPS Consortium filed various excerpts from the Senate Report for the stated purpose of assisting “the Court’s evaluation of the viability of estate claims and causes of action to be vested in the liquidating trust to be formed under the Plan.” Yet, in its submission, the TPS Consortium fails to identify any claims supported by the Senate Report that would vest in the liquidating trust under the Plan. In fact, all the claims and causes of action referenced in the Senate Report excerpt submitted by the TPS Consortium belong to the FDIC-Receiver, not the Debtors or their bankruptcy estates, and will not vest in the liquidating trust. For example, the FDIC-Receiver has already commenced actions against certain former officers of Washington Mutual Bank based on, among other things, breaches of fiduciary duties that are discussed in the Senate Report.

3. When the FDIC-Receiver was appointed as receiver for Washington Mutual Bank, it succeeded to “all rights, titles, powers, and privileges of the insured depository institution, and any stockbroker . . . of such institution with respect to the institution and the assets of the institution.” 12 U.S.C. § 1821(d)(2)(A)(i). Accordingly, the FDIC-Receiver was granted ownership over all claims for harm caused to Washington Mutual Bank, including harm caused by its officers and directors. Only the FDIC-Receiver may assert claims for recovery based on such harm. *See Lubin v. Skow*, 382 Fed. App’x 866, 870–71 (11th Cir. 2010) (claims against a failed bank’s officers and directors belong to the FDIC, as receiver, and not its bankrupt

holding company); *Brandt v. Basset (In re Southeast Banking Corp.)*, 827 F. Supp. 742, 746 (S.D. Fla. 1993), *aff'd in relevant part, rev'd in part on other grounds*, 69 F.3d 1359 (11th Cir. 1995) (same).

4. Indeed, at the hearing on confirmation of the Plan, William Kosturos, the Chief Restructuring Officer for Washington Mutual, Inc., testified that the Senate Report contains various findings regarding the collapse of Washington Mutual Bank that may be relevant to potential claims against former directors and officers of Washington Mutual Bank, and that those claims belong to the FDIC-Receiver and not the Debtors or their estates. See Hearing Tr. at 227:24 – 228:11.

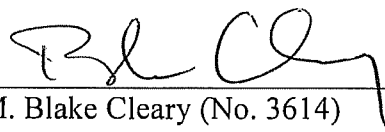
5. Therefore, the FDIC-Receiver believes that the excerpts of the Senate Report submitted by the TPS Consortium have no relevance or probative value in these cases, particularly with respect to the value of any claims that the TPS Consortium believes may vest in the liquidating trust to be formed under the Plan.

STATEMENT IN SUPPORT OF PLAN CONFIRMATION

6. The FDIC-Receiver strongly supports confirmation of the Plan. During the course of these cases, various key parties in interest, including the FDIC-Receiver, engaged in intensive negotiations that culminated in a global settlement agreement. This settlement agreement provides for the recovery of billions of dollars for the Debtors' estates while eliminating billions of dollars of claims against the estates. It also paved the way for the formulation of the Plan. The Plan represents the best opportunity for creditors to receive maximum distributions in these cases, and any further delay in its confirmation will only reduce any creditor recoveries. Accordingly, the FDIC-Receiver respectfully requests that the Plan be confirmed promptly.

Date: Wilmington, Delaware
August 3, 2011

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