

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

In re:)	Chapter 11
)	
Washington Mutual, Inc., <u>et al.</u> ,)	Case No. 08-12229 (MFW)
)	
Debtors.)	Jointly Administered
)	
)	

CLAIMANT BRIAN T. FOSTER'S FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, made applicable by Rules 7026 and 7033 of the Federal Rules of Bankruptcy Procedure, Brian T. Foster ("Claimant") hereby requests that the Washington Mutual Inc. Liquidating Trust ("Movant"), furnish written answers to the following interrogatories (the "Interrogatories").

All responses to these Interrogatories should be directed to Claimant, 563 Park Ave NE, Bainbridge Island, WA 98110.

Claimant demands that Movant answer these interrogatories according to the general instructions and employing the definitions that follow.

INSTRUCTIONS AND DEFINITIONS

A. These interrogatories are continuing in character, so as to require Movant to file supplemental answers if Movant obtains further, contradictory or different information. Movant shall file such supplemental answers, if any, from time to time promptly upon discovery by you of such supplemental information. Each Interrogatory is to be answered separately and as completely as possible. The fact that an investigation is continuing and discovery is not complete shall not be used as a reason for failure to answer any such Interrogatory as fully as possible. The omission of any name, fact or item of information from the answer shall be



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deemed a representation that Movant, its counselors, other representatives or agents of Movant do not know such name, fact or item.

B. Answers shall be based upon information known to Movant, its agents, attorneys, partners, associates, employees, servants, partners, associates, representatives, investigators or any other party or entity acting or who acted by or on behalf of Movant. To the extent that the answer to any Interrogatory is not based upon information known to Movant, Movant shall specify that fact and the person or entity possessing such information.

C. If the answer to all or any part of an Interrogatory is not presently known or available, include a statement to that effect, specifying the portion of the Interrogatory that cannot be completely answered. However, once information is available, Movant is required to furnish all information available in response to the entire Interrogatory by supplemental answer as required above.

D. If Movant refuses to answer any Interrogatory or any part thereof on the grounds of privilege, Movant must identify the basis for the privilege claimed, the nature of any information that it refuses to disclose, referring specifically to the Interrogatory or any part thereof to which the privilege applies and by identifying the form in which said information exists, the date of the document or oral communication and the general subject matter of the document or oral communication.

E. As used in these Interrogatories, the following terms shall have the following meanings:

1. "All Documents" shall mean every document, whether an original or copy, as defined below, know to you, and every such document or writing which you can locate or discover by reasonably diligent efforts.

2. "And" shall mean and/or.
3. "Any" shall mean any and all.
4. "Claimant" means Brian T. Foster.
5. "Communicate" or "Communication" shall mean any manner of disclosure, transfer, exchange, and any disclosure, transfer or exchange of information whether orally or by document, or whether face to face, by telephone, electronic mail, mail, facsimile or personal delivery. Where you are requested to identify or list any communications, your identification or list of such communications shall require you separately as to each communication, to identify the mode of such communication, to identify the persons who participated in such communication, to identify the persons who overheard or had access to such communication, and to state the date of such communication, the time and/or place of such communication, and the subject matter of such communication.
6. "Contested Matter" shall mean the contested matter commenced by the filing of the Motions and Claimant's responses thereto.
7. "Describe" means:
 - a. Describe fully by reference to underlying facts rather than by ultimate facts or conclusions of law or fact;
 - b. Where applicable, particularize as to (i) time; and (ii) manner; and
 - c. Identify each and every person having knowledge of such facts.
8. "Document" and "writing" are used interchangeably and shall mean any written or graphic matter of any kind whatsoever, however produced or reproduced, any electronically or magnetically recorded matter of any kind or character, however produced or reproduced, and any other matter constituting the recording of data or information upon any

tangible thing by any means, including but not limited to, the original and any non-identical copy of any of the following: books, records, contracts, agreements, promissory notes, invoices, purchase orders, statements of account, credit and debit memoranda, orders, loan agreements, bills, installment contracts, mortgages, deeds of trust, security agreements, certificates of title, financing statements, instruments, expense accounts, cancelled checks, bank statements, bank books, receipt and disbursement journals, tax returns, financial statements, check stubs, drafts, certificates, tabulations, questionnaires, tables, sketches, tax reports, working papers, computer data (including information or programs stored in a computer, whether or not ever printed out or displayed), resumes, medical records, address books, appointment books or telephone logs, notes, speeches, schedules, worksheets, pictures, income statements, profit and loss statements, deposit slips, credit card receipts, records and notations of telephone or personal conversations, conferences, inter-office communications, letters, telexes, partnership agreements, articles of incorporation, catalogue price lists, sound, tape and video recordings, memoranda (including written memoranda of telephone activities), minutes, manuals, diaries, calendars or desk pads, calendar or diary entries, scrapbooks, notebooks, correspondence, bulletins, circulars, policies, forms, pamphlets, notices, statements, journals, postcards, letters, emails, text messages, social media posts, telegrams, facsimile transmissions, reports, magazines, booklets, brochures, instructions, interoffice communications, photostats, microfilm, microfiche, maps, deposition transcripts, pleadings, orders, releases, appraisals, estimates, valuations, opinions, studies, analyses, summaries, drawings, blueprints, photographs, negatives, graphs, charts, publicly viewable websites, non-public websites (such as a company or employee intranets) and other data, information or statistics contained within any storage modules, tapes, discs or any other memory devices (including flash drives, CDs, DVDs, or internet-based data storage or data

backup or similar methods or storage of information, data and programs) or any other information retrievable on storage systems (including computer generated reports and printouts).

9. "Employee Agreements" shall mean any employment agreement, employment offer letter, employment incentive offer, leadership bonus offer, change in control agreement, special bonus opportunity offer and/or long term incentive agreement, including, but not limited to, equity award agreement. The term "Employee Agreements" shall include, but not be limited to, the agreements objected to as "wrong party" agreements in the Motions.

10. "Employment Offer Date" shall mean 6/18/2023.

11. "Identify" or "state the identity of" shall have the following meaning when used in the following contexts:

a. When used in connection with a natural person, you are required to state his or her: (i) full name; (ii) present or last known home address (including street name, number, city and state); (iii) present position, business affiliation and job description and, if unknown, so state and set forth the corresponding last known instance of such information; (iv) position, business affiliation and job description at the time in question, with respect to the Interrogatory or other request involved.

b. When used in connection with a document or writing, you are required to state in the answer in each instance: (i) whether or not such document is known to be in existence at the time of the answer; (ii) the date of the document; (iii) type of document (*e.g.* letter, memorandum, computer printout, estimate, etc.); (iv) identity of the author(s), addressee(s) and any other person to whom the document was shown or distributed; (v) any filing or identifying number; and (vi) the present or last known location and/or custodian thereof.

If any such document was, but is no longer in the possession of or subject to control of the WMILT or any affiliated business entity, state what and when disposition was made of it.

c. When used in connection with an oral communication, you are required to state in the answer in each instance: (i) the identity of each person communicating; (ii) the identity of the recipient(s) and intended recipient(s) of the communication; (iii) the identity of each person present or otherwise aware of the substance of the communication; (iv) the date and the place where it was made; (v) the identity of any document or writing that embodies, includes, reflects, concerns, relates, refers to or is based upon such oral communication; and (vi) a detailed description of the substance of the communication.

d. When used in connection with a transaction, you are required to state in the answer in each instance: (i) a description of the property or thing that is the subject of the transaction; (ii) the identity of the parties to the transaction; (iii) the date of the transaction; (iv) the place or site where the transaction took place; (v) the location of the property or thing that was the subject to the transaction at the time the transaction took place; (vi) the identity of all persons who have knowledge of the transaction; and (vii) the identity of all documents that refer or relate to the transaction.

12. "Motions" shall mean, together, Debtors' Fifth Omnibus (Substantive) Objection to Claims [Docket No. 1233], WMI Liquidating Trust's Seventy-Ninth Omnibus (Substantive) Objection to Claims [Docket No. 10504] and WMI Liquidating Trust's Eighty-Eighth Omnibus (Substantive) Objection to Claims [Docket No. 10681].

13. "Movant" shall mean Washington Mutual, Inc. Liquidating Trust and its agents, employees, consultants, servants, attorneys, accountants, partners, associates, representatives and any person or entity acting or who has acted on its behalf.

14. "Or" shall mean and/or.

15. "Person" shall mean any and all entities, as well as natural persons, and, without limitation, shall be defined to include natural persons, corporations, partnerships, joint owners, associations, limited liability companies, companies, and joint ventures.

16. "Refer," "relate," "reflect," "regard," "refer to," "relate to," "relating to," and "concerning" (or forms thereof) shall mean directly or indirectly in whole or in part, referring to, relating to, connected with, commenting upon, relevant to, impinging or impacting upon, affecting, responding to, showing, describing, representing, supporting, contradicting, stating, mentioning, showing, evaluating, recording, noting, analyzing, reflecting or constituting.

17. "Signatories" shall mean Dayle D. David, Tony Bozart;

18. "State the basis" or "state the factual basis" with reference to an assertion in the Motions or other pleadings means:

- a. State with specificity the underlying facts (rather than ultimate facts or conclusions of fact or law) upon which such allegation is based;
- b. The source of your information and belief as to such facts;
- c. Identify each and every person having knowledge of such facts;
- d. Describe in detail the facts known to each such person; and
- e. Identify each and every Document or Communication of whatever nature evidencing such fact.

19. "WMB" shall mean Washington Mutual Bank.

20. "WMI" shall mean Washington Mutual, Inc.

21. "You" and "your" shall mean Movant, and/or any of its agents, attorneys, partners, associates, employees, consultants, servants, representatives, investigators and any person or entity acting or who has acted by or on behalf of Movant.

All other terms used in these Interrogatories have the meaning given by the Bankruptcy Code or by common usage unless other required by the context.

F. The answers to the Interrogatories shall be signed and verified by an authorized representative of Movant and the objections signed by the attorney making them.

INTERROGATORIES

1. Please identify each person involved in or consulted with respect to answering each of these Interrogatories.

ANSWER:

2. For Claimant, please state all facts that support or relate to your contention that the Employee Agreements are not obligations of WMI as stated in the Motions.

ANSWER:

3. Please identify all persons who have knowledge of the facts stated in response to Interrogatory no. 2 above; and, provide a general description of the facts and/or subject matter known by each such person.

ANSWER:

4. Please identify all Documents that support or relate to the facts set forth in response to Interrogatory no. 2 above.

ANSWER:

5. For Claimant, please state all facts that support or relate to your contention that a change-in-control as defined in each of the Employee Agreements did not occur in connection with the Office of Thrift Supervision's seizure of, and appointment of the FDIC as receiver for, WMB and the FDIC's sale of substantially all of WMB's assets to JPMorgan Chase Bank, National Association.

ANSWER:

6. Please identify all persons who have knowledge of the facts stated in response to Interrogatory no. 5 above; and, provide a general description of the facts and/or subject matter known by each such person.

ANSWER:

7. Please identify all Documents that support or relate to the facts set forth in response to Interrogatory no. 5 above.

ANSWER:

8. For Claimant, please state all facts that support or relate to your contention that the contractual predicates to payment in the Employee Agreements have not been met.

ANSWER:

9. Please identify all persons who have knowledge of the facts stated in response to Interrogatory no. 8 above; and, provide a general description of the facts and/or subject matter known by each such person.

ANSWER:

10. Please identify all Documents that support or relate to the facts set forth in response to Interrogatory no. 8 above.

ANSWER:

11. For Claimant, please state all facts that support or relate to your contention that Movant is entitled to a credit for any severance payments or other relevant benefits actually received by Claimant from JPMorgan Chase Bank, National Association on account of Claimant's employment with WMB.

ANSWER:

12. Please identify all persons who have knowledge of the facts stated in response to Interrogatory no. 11 above; and, provide a general description of the facts and/or subject matter known by each such person.

ANSWER:

13. Please identify all Documents that support or relate to the facts set forth in response to Interrogatory no. 11 above.

ANSWER:

14. Please state Claimant's employment position and executive level designation (*e.g.* 1-8) within the Washington Mutual organization (including WMI and any of its subsidiaries or affiliates) during the period from the Employment Offer Date through September 26, 2008.

ANSWER:

15. Please describe Claimant's job duties and reporting duties within the Washington Mutual organization (including WMI and any of its subsidiaries or affiliates) during the period from the Employment Offer Date through September 26, 2008.

ANSWER:

16. Please state the authority of each of the Signatories to bind WMI in contract during the period from the Employment Offer Date through September 26, 2008.

ANSWER:

17. Please identify all Documents that support or relate to you response to Interrogatory no. 15 above.

ANSWER:

18. Please identify all persons with knowledge regarding the drafting, issuance or amendment of any of the Employee Agreements during the period from the Employment Offer Date through September 26, 2008.

ANSWER:

19. Please identify all persons who recommended, or who have knowledge regarding the reasons for, offering Claimant a special bonus opportunity agreement.

ANSWER:

20. Please identify all Documents relating to the evaluation of Claimant's job performance during the period January 1, 2005 through September 26, 2008.

ANSWER:

21. Please identify all witnesses which you will or may use at the hearing on the Motions or any hearings or proceedings related thereto, and for each such witness state the subject matter on which the witness is expected to testify; the substance of the facts to which the witness is expected to testify, identifying all Documents upon which you and each witness will rely or otherwise utilize for purposes of the hearing.

ANSWER:

22. Please identify any experts that you intend to call to provide testimony on your behalf at the hearing on the Motions or any hearings or proceedings related thereto.

ANSWER:


23. With respect to each person identified in response to Interrogatory no. 21 above, please state the subject matter, facts and opinions to which such witness is expected to testify.

ANSWER:

24. With respect to each person identified in response to Interrogatory no. 21 above, please identify all Documents, data or other information considered by each person identified.

ANSWER:

Dated: December 7, 2012



Brian T. Foster, *Pro Se*