

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

		)	Chapter 11
In re:		)	
		)	Case No. 08-12229 (MFW)
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>		)	
		)	(Jointly Administered)
Debtors.		)	
		)	<b>Requested Hearing Date: June 3, 2010 at 10:30 a.m. (ET)</b>
		)	<b>Requested Obj. Deadline: June 2, 2010 at 12:00 p.m. (ET)</b>

**MOTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY  
HOLDERS FOR AN ORDER PURSUANT TO BANKRUPTCY RULE 2004  
AND LOCAL BANKRUPTCY RULE 2004-1 DIRECTING THE  
EXAMINATION OF JPMORGAN CHASE**

The Official Committee of Equity Security Holders (the "Equity Committee") of Washington Mutual, Inc. ("WMI" and, together with its chapter 11 debtor-affiliate, WMI Investment Corp., the "Debtors") moves the Court pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1 for an order authorizing the Equity Committee to conduct an examination of JPMorgan Chase Bank, N.A. ("JPMC Bank"), its parent company JPMorgan Chase & Co., and certain of their subsidiaries and affiliates as defined in **Exhibit A** hereto (collectively, "JPMC"), and represents as follows:

**I.**  
**PRELIMINARY STATEMENT**

1. Following commencement of this Chapter 11 case, the Debtors identified potential legal claims against JPMC stemming from the events that led to the closure of Washington Mutual Bank ("WMB") in September 2008 and the simultaneous sale of its assets to JPMC Bank by the Federal Deposit Insurance Corporation ("the FDIC"). By motion filed in May

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



2009, the Debtors sought authority to conduct a Rule 2004 examination of JPMC, focusing on potential business tort claims that had been alleged in a Texas action filed by bondholders against JPMC.<sup>2</sup> The Court granted that motion on June 24, 2009 (Docket #1219).

2. Thereafter, the Debtors served document requests on JPMC. JPMC objected to all of those requests, and that led to a lengthy dialogue between the Debtors and JPMC ostensibly intended to resolve the objections. That dialogue stretched into 2010 and eventually came to a final halt when the Debtors and JPMC reached agreement on a so-called Global Settlement that would release (among other things) the potential business tort claims that the Debtors had been investigating. The Debtors disclosed the existence of the settlement to the Court on March 12, 2010.

3. Despite the blizzard of written objections that JPMC served in response to the Debtor's investigative requests, JPMC did produce approximately 40,000 pages of documents in August and September 2009.<sup>3</sup> Although JPMC's production was materially restricted in its scope, given the substantial objections that remained outstanding at the time, the disclosures it did make were enough to sharpen the Debtors' interest in their potential business tort claims against JPMC, and the Debtors sought to expand their investigation through a second Rule 2004 motion filed in December 2009.<sup>4</sup>

4. That second motion sought authority to serve subpoenas on 20 third parties,

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<sup>2</sup> See Motion for Rule 2004 Examination of JPMorgan Chase Bank, N.A. (Docket # 974) ("May Rule 2004 Motion").

<sup>3</sup> See Debtors' Motion for an Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1 Directing the Examination of Witnesses and Production of Documents from Knowledgeable Parties (Docket # 1997), filed on December 14, 2009 ("Dec. Rule 2004 Motion"), at ¶ 11; Debtors' Objection to Motion and Supporting Memorandum of the Official Committee of Equity Security Holders for the Appointment of An Examiner (Docket # 3626), filed May 4, 2010, at ¶ 22.

<sup>4</sup> The Debtors represented in the motion that "[c]ertain of the documents in the JPMC productions highlight the need to expand to third parties the investigation this Court authorized concerning 'JPM[C]'s alleged malfeasance prior to the seizure and sale of WMB.'" Dec. Rule 2004 Motion at 2 (quoting Opinion of the Court dated June 24, 2009 (Docket #1219), at 17 & n.14).

including government agencies, potential suitors for an acquisition of WMB, and outside professionals retained by WMB to assist it in addressing its financial difficulties. In their briefing on the motion, the Debtors represented as follows:

As detailed in Debtors' Motion, the discovery sought through the Requested Examination concerns possible misconduct by JPMC preceding the seizure and sale of WMB, including gaining access to WMI's confidential information in connection with JPMC's supposed interest in bidding for the company, improperly disclosing such information to third parties to cause market panic and foment a government seizure of the bank, and destroying a 119-year old institution that once had more than \$50 billion in market capital.<sup>5</sup>

5. By order dated February 16, 2010, this Court denied the Debtors' motion. The Court did not express disagreement with the seriousness of the potential claims against JPMC or the probative nature of the supporting evidence the Debtors detailed in their motion. Instead, the Court concluded that the Debtors had failed to show that it was necessary to obtain additional information, particularly from third parties who were not themselves the subject of the claims Debtors were seeking to investigate, in order to determine whether they should assert those claims; and the Court further expressed concern that the Debtors' proposed subpoenas were not narrowly tailored to the potential tort claims against JPMC.<sup>6</sup>

6. Less than a month later, the Debtors announced the proposed Global Settlement that would release the potential business tort claims against JPMC, apparently without having conducted any further factual investigation of those claims. The proposed Global Settlement, as initially disclosed, also released significant claims against the FDIC, as well as potential claims against numerous unidentified third parties.

7. In light of the Debtors' dramatic change of course, the Equity Committee moved

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<sup>5</sup> Debtors' Reply to the Objections of the Knowledgeable Parties to Debtors' Motion for An Order Pursuant to Bankruptcy Rule 2005 and Local Bankruptcy Rule 2004-1 Directing the Examination of Witnesses and Production of Documents From Knowledgeable Parties (Docket #2212), filed Jan. 25, 2010, at 7.

<sup>6</sup> Transcript of Hearing, Jan. 28, 2010 (Docket # 2312), at 88-90 (excerpts attached as Exhibit D).

on April 26, 2010, for appointment of an examiner pursuant to Section 1104(c) of the Bankruptcy Code with authority to investigate, among other things, the broad range of claims that the Debtors proposed to release. (Docket #3579) At a hearing on May 5, 2010, the Court denied appointment of an examiner. One significant ground for the Court's decision was that the Equity Committee had the ability itself to conduct the investigation that it sought to have an examiner conduct, and the Court made explicit reference to Rule 2004 as an appropriate vehicle for that effort.<sup>7</sup>

8. Since the Court's ruling on the examiner motion, the Equity Committee has attempted to finish collecting and more carefully analyze the information that the Debtors had assembled before deciding to abandon their potential claims against JPMC, and to obtain a more detailed understanding of what the Debtors did and did not do in the course of their own investigation. What the Equity Committee has learned only further convinces it that the investigation was indeed dramatically incomplete and was terminated prematurely.

9. The Equity Committee has also attempted to avoid reinventing the wheel and to save precious time by asking the Debtors to share the fruits of their own analysis, including any collections of key documents sifted from the admittedly incomplete universe of documents that the Debtors had collected from JPMC and others. Invoking the work-product privilege, the Debtors have refused to provide any written analysis (legal or factual) of the claims against JPMC they propose to release, or any selection of key documents. Instead, their message to the Equity Committee, in a nutshell, has been: "Do the work yourselves."

10. The Equity Committee made similar requests to the Creditors Committee for their analysis and selections of key documents, but nothing has been forthcoming.

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<sup>7</sup> Transcript of Hearing, May 5, 2010, at (Docket #3699) at 100 (excerpts attached as Exhibit E).

11. The Equity Committee does not believe that disclosure of the Debtors' analysis to it would result in waiver of any applicable privileges and will be bringing that dispute to the Court's attention shortly. The purpose of this motion is to enable the Equity Committee (and other interested parties) to pursue further the investigation that the Debtors abruptly terminated, by completing discovery of documents within JPMC's control – including pre-seizure business records of WMB that are now within JPMC's exclusive possession – and by taking depositions of JPMC personnel with the most knowledge of subjects relevant to the claims that the Debtors propose to abandon.

12. The Equity Committee also seeks authority to conduct document and deposition discovery of JPMC directed to the negotiation and meaning of the proposed Global Settlement, and the circumstances that led to its adoption.

## **II.** **JURISDICTION AND VENUE**

13. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core bankruptcy proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **III.** **BACKGROUND**

14. Prior to commencing this Chapter 11 case, WMI was a savings and loan holding company that owned Washington Mutual Bank (“WMB”) and indirectly WMB's subsidiaries, including Washington Mutual Bank fsb (“FSB”). (DS 1)<sup>8</sup> It was the largest savings and loan holding company in the country, and WMB and its subsidiaries collectively constituted the

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<sup>8</sup> Except as otherwise noted, parenthetical citations in this motion with the “DS” prefix refer to the Debtor's proposed Disclosure Statement for the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (Docket #2623), filed in this case on March 26, 2010. That Disclosure Statement has since been twice superseded.

seventh largest U.S.-based bank. (DS 22)

15. On September 25, 2008, the Office of Thrift Supervision (the “OTS”) ordered the closure of WMB and appointed the FDIC as receiver for WMB. (DS 2) Immediately after its appointment as receiver, the FDIC took possession of WMB’s assets and sold substantially all of them to JPMC Bank for \$1.88 billion and the assumption of WMB’s deposit liabilities. (DS 2) That precipitated this bankruptcy. (DS 29)

16. Before those dramatic actions by the OTS and FDIC, WMI’s financial condition had been adversely affected by significant disruptions during 2007 and 2008 in the U.S. residential mortgage market. (DS 28) And yet, WMI had weathered the storm, due in part to completion in April 2008 of a significant recapitalization that resulted in a \$7.2 billion capital infusion by institutional investors. (DS 28) Moreover, although the OTS lowered WMB’s supervisory rating in a way that made it ineligible to receive primary credit from the Federal Reserve Board’s Discount Window, WMB was able to receive secondary credit from the Discount Window of the Federal Reserve Bank of San Francisco, and was able to maintain borrowings up to the time of its seizure. (DS 29) Nevertheless, speculation began to circulate in the market that WMI’s and WMB’s operations and capital positions were unstable, and in the ten days prior to the FDIC receivership, WMB experienced significant deposit withdrawals of more than \$16.7 billion. (DS 29)

17. During this ongoing process, WMI pursued a merger or sale transaction with another financial institution and investigated other strategic alternatives intended to increase WMI’s capital and liquidity levels. (DS 29) WMI was continuing to pursue those alternatives when the OTS stepped in and appointed the FDIC as receiver for WMB.

18. In a nutshell, those are the events, as described by the Debtor in the most recent

version of its proposed Disclosure Statement, that led to this bankruptcy. But a multitude of serious questions existed at the commencement date about how and why WMI failed, about the events that led to intervention by the OTS and the FDIC, about the events and communications that led to the sale of WMB's assets to JPMC, and in particular about the role of JPMC in events such as the "run on the bank," the seizure of WMB, and the immediate sale of its assets.

A. American National Action

19. In February 2009, various insurance companies that hold bonds issued by WMB and WMI filed suit against JPMC in state district court in Galveston County, Texas. "Specifically, the plaintiffs asserted that there was a premeditated plan by JPMC designed to damage WMB and FSB, and thereby enable JPMC to acquire WMI's banking operations at a 'fire sale' price." (DS 34) Among other things, the allegations in the complaint raised disturbing questions about the extent to which JPMC had been working with the FDIC behind the scenes for weeks before the seizure of WMB, and had withdrawn from negotiations for the purchase of WMB after concluding that government seizure of WMB would happen and that it could then acquire the assets more cheaply.

20. The FDIC intervened in the suit as a defendant and removed it to the U.S. District Court for the Southern District of Texas, which then transferred it to the District Court for the District of Columbia. (DS 34) On April 13, 2010, that court granted motions by JPMC and the FDIC to dismiss the suit for lack of subject matter jurisdiction and entered a final order dismissing the suit and closing the case. The court did not reach the merits of the allegations against JPMC, but rather held that the FDIC was a necessary party to the plaintiffs' claims and that plaintiffs were required to pursue their claims against the FDIC exclusively through an administrative claims process established by Congress in the Financial Institutions Reform,

Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 83 (1989).<sup>9</sup>

B. The Debtors' Rule 2004 Examination Requests

21. As a result of the American National Action, the Debtors filed a motion for Rule 2004 examination on May 1, 2009, seeking an order directing the examination of JPMC.<sup>10</sup> In that motion, the Debtors summarized the allegations in the American National Action and sought the authority to investigate the underlying merit of those claims, as well as other potential estate claims suggested by the American National allegations.

22. The Creditors Committee in this case has represented that it also carefully examined the American National allegations and consulted in advance with the Debtors about a potential Rule 2004 examination of JPMC.<sup>11</sup>

23. This Court granted the Debtors' motion on June 24, 2009, over JPMC's opposition. (Docket #1220) Pursuant to the Court's order, the Debtors served JPMC with a subpoena requesting production of documents.<sup>12</sup> On July 20, 2010, JPMC served objections to all of the requests.<sup>13</sup> The Debtors and JPMC began holding a series of meet-and-confer sessions, but JPMC agreed to begin producing certain documents in August and September 2009 as those discussions continued.<sup>14</sup>

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<sup>9</sup> See *Am. Nat'l Ins. Co. v. JPMorgan Chase & Co.*, 2010 U.S. Dist. LEXIS 36487, \*10-12 (D.D.C. April 13, 2010).

<sup>10</sup> See Motion for 2004 Examination of JPMorgan Chase Bank, N.A. (Docket # 974) ("May Rule 2004 Motion").

<sup>11</sup> Objection of the Official Committee of Unsecured Creditors of Washington Mutual Inc., et al., to the Official Committee of Equity Security Holders' Motion for the Appointment of An Examiner (Docket # 3629), filed on May 4, 2010 ("Creditors Committee Objection to Examiner"), at ¶ 27.

<sup>12</sup> Dec. Rule 2004 Motion, at ¶ 9 and Exhibit 4 thereto.

<sup>13</sup> *Id.*; see Exhibit C hereto (JPMC objections).

<sup>14</sup> See Dec. Rule 2004 Motion, at ¶¶ 10-11.



24. JPMC's production totaled approximately 40,000 pages.<sup>15</sup> The Debtors reviewed those documents, as did the Creditors Committee, and they concluded that further investigation was warranted.<sup>16</sup>

25. Accordingly, on December 14, 2009, the Debtors moved for authority to conduct a further Rule 2004 examination of witnesses and to request production of documents from various third parties – including the FDIC, the OTS, the U.S. Department of the Treasury, and former U.S. Treasury Secretary Henry M. Paulson, Jr.<sup>17</sup> The Debtors also sought to obtain testimony and documents from rating agencies, banks (including Goldman Sachs, the investment bank that WMI retained in September 2007 to assist it in finding a suitor), and third-party professionals that WMI had at one time used.<sup>18</sup>

26. In that motion, the Debtors described the contents of certain documents they had obtained pursuant to the first Rule 2004 examination – documents that the Debtors themselves fairly characterized as warranting the need for further investigation from third parties who “are likely to have information currently unobtainable by Debtors relevant to potential estate claims sounding in business tort and tortious interference against JPMC, including information relevant to allegations made in [the American National Case].”<sup>19</sup> The Debtors explained in their reply brief:

As detailed in Debtors' Motion, the discovery sought through the Requested Examination concerns possible misconduct by JPMC preceding the seizure and sale of WMB, including gaining access to WMI's confidential information in

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<sup>15</sup> Dec. Rule 2004 Motion, at 5; Debtors' Objection to Motion and Supporting Memorandum of the Official Committee of Equity Security Holders for the Appointment of An Examiner (Docket # 3626), filed May 4, 2010, at ¶ 22.

<sup>16</sup> Creditors Committee Objection to Examiner, at ¶¶ 27-28.

<sup>17</sup> Dec. Rule 2004 Motion at 1, n. 2.

<sup>18</sup> Dec. Rule 2004 Motion at 1, n. 2.

<sup>19</sup> *Id.* at 3.

connection with JPMC's supposed interest in bidding for the company, improperly disclosing such information to third parties to cause market panic and foment a government seizure of the bank, destroying a 119-year-old institution that once had more than \$50 billion in market capital.<sup>20</sup>

27. It was apparent from the December Rule 2004 motion that the Debtors had not obtained the requested information through discovery in any of the lawsuits to which it was then a party.

28. This Court denied the Debtors' motion from the bench at a hearing on January 28, 2010. As noted earlier, the Court did not express disagreement with the seriousness of the potential claims against JPMC or the probative nature of the supporting evidence the Debtors detailed in their motion. Instead, the Court concluded that the Debtors had failed to show that it was necessary to obtain additional information, particularly from third parties who were not themselves the subject of the claims Debtors were seeking to investigate, in order to determine whether they should assert those claims; and the Court further expressed concern that the Debtors' proposed subpoenas were not narrowly tailored to the potential tort claims against JPMC.<sup>21</sup>

29. Less than one month later, on March 12, 2010, the Debtors publicly announced the settlement and proposed release of the substantial claims they had told the Court as late as the January 28 hearing on their motion that they vitally needed to investigate further through Rule 2004.

C. The Equity Committee's Motion for Appointment of An Examiner

30. In light of the Debtors' dramatic change of course, the Equity Committee moved on April 26, 2010, for appointment of an examiner pursuant to Section 1104(c) of the

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<sup>20</sup> See Reply of the Debtors to the Objections to Dec. 2004 Motion (Docket # 2212), filed on January 25, 2010 ("Reply Br. Dec. Rule 2004 Motion").

<sup>21</sup> Transcript of Hearing, Jan. 28, 2010 (Docket # 2312), at 88-90 (excerpts attached as Exhibit D).

Bankruptcy Code. (Docket #3579.) The Equity Committee proposed that the examiner be empowered and directed to investigate the following matters, among others:

- The extent to which there are potential claims and causes of action held by the Debtors' estates against any person or entity, and the merit and value of those claims, arising from circumstances leading to the OTS's closure of WMB and appointment of FDIC as receiver and the FDIC's sale of WMB assets to JPMC;
- The extent to which there are potential claims and causes of action held by the Debtors' estates arising from breach of fiduciary duty or other legal duties by WMI officers, directors, and employees in their supervision or direction of WMB investment in subprime residential mortgages during 2007 and 2008, or in other actions and events that led to WMB's seizure and sale in September 2008;
- The disputes at issue between the Debtors and JPMC concerning the existence and valuation of WMI tax attributes (principally its NOLs) and the meaning and impact of a tax sharing agreement between WMI and WMB on those disputes;
- The proper ownership, valuation, and asset affiliation of the trust preferred securities at issue in the adversary litigation between JPMC and the Debtors, and the proper ownership of all other assets that are the subject of claims and counterclaims in that adversary proceeding;
- Potential claims belonging to the Debtors for fraudulent conveyance or for the recovery of preferential transfers, including but not limited to any such claims that arise from WMI's capital contributions to WMB;
- The identification, nature, and valuation of assets held by the Debtors post-bankruptcy, including assets that would be conveyed to JPMC and the FDIC under the proposed Global Settlement Agreement.

31. At a hearing on May 5, 2010, the Court denied appointment of an examiner. The Court articulated two reasons for that decision.

32. First, the Court observed that the debtor had already been the subject of numerous investigations and expressed doubt that an examiner would "find any stone unturned."<sup>22</sup> The Court made those observations in the context of the broad scope of the examination that the

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<sup>22</sup> Transcript of Hearing, May 5, 2010, at (Docket #3699) at 98 (emphasis added) (excerpts attached as Exhibit E).

Equity Committee proposed. The Court made reference to numerous investigations by governmental agencies and legislative bodies<sup>23</sup> and stated as follows:

It is true that their investigations exceeded the scope of what the Court need concern itself with. They have talked about systemic problems. They have investigated possible criminal actions by the parties. . . . I don't think it is fair to the creditors in this case to be saddled with the cost of an investigation into systemic problems, that would only benefit future parties but not benefit the parties in this case.<sup>24</sup>

33. As we will explain below, while it is correct that many public agencies and private parties have conducted factual investigations that concerned WMB's massive investment in subprime residential mortgages and certain aspects of the OTS/FDIC decisions to seize and then sell the assets of WMB, JPMC's role in the failure and forced sale of WMB has not been thoroughly investigated to death, either in this case or in any other forum.

34. Second, leaving aside the investigation of "systemic problems" that may have contributed to WMB's closure, the Court turned to narrower issues such as "what assets the debtor owns, what the value of those assets is, whether a settlement is reasonable,"<sup>25</sup> and in that context the Court concluded that appointment of an examiner was unnecessary because the Equity Committee itself has the ability to conduct the investigation that it sought to have an examiner conduct:

. . . I think the equity committee is fully able to conduct the investigation that it seeks to have the examiner conduct. It has the benefit of Rule 2004, it has the benefit of the discovery rules, because there are contested matters presently and anticipated in which the equity committee could fully avail itself of that discovery.<sup>26</sup>

35. With respect to an investigation that the Equity Committee might conduct itself,

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<sup>23</sup> *Id.* at 98-99.

<sup>24</sup> *Id.* at 99.

<sup>25</sup> *Id.* at 100.

<sup>26</sup> *Id.*

the Court made clear that the Debtors and the Creditors Committee should cooperate in making information available on a voluntary basis:

In this case specifically, the debtor and the creditors' committee have investigated the specific assets owned by the debtor, or that the debtor claims it owns. The debtor has vigorously appeared in and prosecuted its position in several adversaries in this case, in addition to filing a claim in the FDIC receivership and prosecuting claims it has in that forum. All of that information should be available to the equity committee. And I don't want to hear about obstacles being placed in their path to getting full and open access to that information, whether its documentary or interviews with the debtors' management or others who have conducted these investigations; and the same goes with the creditors' committee, who's been actively involved in all of this.

....

[A]gain, I'm strongly urging the committee and the debtor to provide all the information to the equity committee without testing the Court's patience with discovery motions.<sup>27</sup>

D. Events Following the Court's Denial of the Equity Committee's Motion for Appointment of An Examiner

36. Since the Court's ruling on the examiner motion, the Equity Committee has attempted to finish collecting and more carefully analyze the information that the Debtors had assembled before deciding to abandon their potential claims against JPMC, and to obtain a more detailed understanding of what the Debtors did and did not do in the course of their own investigation. What the Equity Committee has learned only further convinces it that the investigation was indeed dramatically incomplete and was terminated prematurely.

37. In particular, the Equity Committee's litigation counsel has begun more closely reviewing the documents that the Debtors obtained through their Rule 2004 requests to JPMC and the documents the Debtors obtained through voluntary productions by a handful of third parties that were among those identified in the Debtors' unsuccessful Rule 2004 motion filed in December of last year.

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<sup>27</sup> *Id.* at 99, 100.

38. With respect to JPMC, it is clear that the production was woefully incomplete. In a November 2, 2009 letter to JPMC, the Debtors identified four major deficiencies in JPMC's production, none of which was cured during the ensuing eight additional weeks of negotiation.<sup>28</sup>

(1) The Debtors identified 37 JPMC employees who had a significant involvement in JPMC's purchase of WMB's assets according to JPMC's internal documents,<sup>29</sup> but JPMC only searched the records of 13 of these custodians; JPMC later admitted that eight whose documents were not searched had more than limited involvement, but it refused to conduct that search unless the Debtors waived their right to have the files of any other custodians searched, including 16 others the Debtors had already identified and any others they might identify in the future<sup>30</sup>; (2) the production from the 12 custodians whose files were searched appeared to be woefully inadequate—for example, only 9 documents were produced from the C.E.O. of JPMC, who drafted one of the main agreements and corresponded directly with the FDIC about the purchase—and JPMC refused to reveal the search terms it used to conduct the searches of those 9 custodians; (3) JPMC admitted that it was withholding a number of documents on the ground of third-party confidentiality, notwithstanding a confidentiality agreement between JPMC and WMI that would protect that confidentiality; and (4) the overall production was remarkably sparse—for example, JPMC produced very few responsive documents in connection with document requests 7, 8, 12, and 13, which sought documents concerning JPMC's communications with WMI, governmental entities, the media, and third parties relating to JPMC's interest in acquiring WMB assets and the seizure, sale and financial condition of

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<sup>28</sup> See 11/2/09 Letter from WMI to JPMC (describing deficiencies), attached hereto as Exhibit F; *see also* 12/28/09 Letter from WMI to JPMC (describing impasse in negotiations on these deficiencies), attached hereto as Exhibit G.

<sup>29</sup> See Exhibit H attached hereto (list of knowledgeable JPMC employees, sent by WMI to JPMC on 11/25/09).

<sup>30</sup> See 12/21/09 Letter from WMI to JPMC, attached hereto as Exhibit I.

WMB.<sup>31</sup>

39. In addition, it appears that one especially significant source of information relevant to JPMC's conduct remains almost entirely untapped: The pre-seizure business records of both WMI and WMB. Among other things, those records would contain information about the nature of confidential information that WMI and WMB disclosed to JPMC during discussions over JPMC's supposed interest in making an offer for WMB; the details of those discussions themselves; the communications between WMI and other potential suitors; intelligence about market rumors concerning WMI's financial condition that JPMC may have had a hand in generating; and a wide range of other subjects directly germane to the Debtors' potential business tort claims against JPMC. The problem (as explained to us by Debtors' counsel) is that after the FDIC's sale of WMB assets to JPMC in September 2008, JPMC took control of all WMB documents and information systems. JPMC also took control of the former corporate offices of WMI in Seattle, including the WMI documents and information systems located in those offices. While JPMC agreed to provide the Debtors, at the Debtors' request, with access to certain documents necessary for the administration of the bankruptcy estates (such as information relevant to the preparation of tax returns), the Debtors have either not had – or not availed themselves of -- general access to the pre-seizure universe of WMI/WMB business records for the purpose of searching those records for information relevant to the potential business tort claims against JPMC.<sup>32</sup>

40. In any event, whatever documents the Debtors may have retrieved (if any) from the pre-seizure information now in JPMC's control for purposes relevant to the JPMC business

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<sup>31</sup> See 11/2/09 Letter from WMI to JPMC, attached hereto as Exhibit F.

<sup>32</sup> Declaration of Edgar Sargent in Support of the Motion of the Official Committee of Equity Security Holders for An order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1 Directing the Examination of JPMorgan Chase, filed herewith ("Sargent Decl.") (attached hereto as Exhibit B) at ¶¶ 12-14.

tort claims has not been produced to the Equity Committee.<sup>33</sup> Nor have the Debtors produced to the Equity Committee any WMI/WMB documents they have identified as relevant to the business tort claims against JPMC from among pre-seizure WMI/WMB documents obtained for other purposes. The Debtors' position is that any such documents constitute privileged work product, and that if the Equity Committee wants to obtain access to relevant documents within that universe of material, it must do so by serving discovery requests on the Debtors.<sup>34</sup>

41. While the Debtors' Rule 2004 subpoena to JPMC, on its face, was broad enough to call for relevant information from the pre-seizure WMI/WMB business records now under JPMC control, JPMC itself never agreed to conduct a search for relevant information from those sources.

42. Moreover, apart from the significant gaps in JPMC's document production, the Debtors have taken no depositions of JPMC personnel or former WMB personnel who now work for JPMC.

43. With respect to the numerous third parties that were the subject of the Debtors' December 2009 motion for examination pursuant to Rule 2004, the Debtors obtained only limited production of documents on a voluntary basis from some of those third parties.<sup>35</sup>

44. Approximately 650 pages of documents from the Office of Thrift Supervision.

45. Approximately 240 pages of heavily redacted documents produced by the FDIC

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<sup>33</sup> In opposing the Equity Committee's motion for appointment of an examiner, the Debtors vaguely represented that: "[I]n connection with discovery and data presentation efforts, the Debtors and their advisors have undertaken a collection and review of the documents in their possession (or provided to the Debtors under information access arrangements with JPMC). In this regard, the Debtors and their advisors have collected approximately 7.6 million pages of documents." Debtors' Objection to Motion and Supporting Memorandum of the Official Committee of Equity Security Holders for the Appointment of An Examiner (Docket #3629), filed May 4, 2010, at ¶ 22. These documents apparently have not been thoroughly reviewed by the Debtors for the purpose of identifying information relevant to the business tort claims against JPMC; they were not obtained from JPMC for that purpose in any event; and anything the Debtors found has not been provided to the Equity Committee. See Sargent Decl. ¶ 14.

<sup>34</sup> See Sargent Decl. ¶ 14.

<sup>35</sup> The following description of third-party documents is supported by the Sargent Decl., ¶¶ 8-11.



pursuant to FOIA requests. This appears to be the sum total of information that the Debtors obtained through all of the various discovery efforts they have directed to the FDIC to date, whether in court cases or pursuant to FOIA.<sup>36</sup> At this writing, the Equity Committee has not yet received this FDIC production, though we expect to receive a copy shortly.

46. Less than 20 documents produced by Moody's and a lobbying firm called the OB-C Group. Those documents have not been provided to the Equity Committee because Moody's and the OB-C have refused to consent to such disclosure.

47. Approximately 900 documents produced by Citigroup and approximately 500 documents produced by Blackstone. The Debtors provided those documents to the Equity Committee for the first time on May 24, 2010.

48. Approximately 27,500 pages of documents from TPG Capital, the company that made a significant equity investment in WMI in the summer of 2008. This production constitutes the vast majority of documents obtained by the Debtors from third parties – yet it would appear to have only a limited (if any) relationship to the potential business tort claims against JPMC.<sup>37</sup>

49. In opposing the Equity Committee's motion for appointment of an examiner, the Debtors represented to the Court as follows:

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<sup>36</sup> In opposing the Debtors' December 2009 motion for a Rule 2004 examination, the FDIC in its corporate capacity described to the Court three different sets of discovery requests it had received from the Debtors – the Rule 2004 subpoena, a set of FOIA requests, and a request for FDIC Exempt Records and Information. Objection of FDIC-Corporate to the Debtors' Motion For An Order Pursuant to Bankruptcy Rule 2004 (Docket #2170), filed Jan. 15, 2010, at 3. The FDIC further stated that it was "processing" the Debtors' FOIA requests. *Id.* at 2. The FDIC also explained that it was then engaged in responding to "a massive document request from Congress regarding the resolution of Washington Mutual Bank (WMB)," and that once that production was complete, the FDIC expected to begin "an appropriate production of documents to the Debtors pursuant to its administrative processes." *Id.* at 2. The net result of the FDIC's production to the Debtors, after all that, appears to be the roughly 240 pages referred to in the text.

<sup>37</sup> Of that mass of TPG Capital documents, the Equity Committee is unable to access more than 22,000 pages of the production because the disk provided by the Debtors which contains them is password-protected and the Debtors have not provided the password.

The Debtors have also engaged in extensive negotiations with Sullivan & Cromwell, LLP. The Office of the Comptroller of the Currency (the “OCC”), the Board of Governors of the Federal Reserve System (the “Federal Reserve”), the U.S. Department of the Treasury (the “DOT”), Cerberus Capital Management, L.P., Lehman Brothers, and Morgan Stanley for further documents related to the Business Tort Investigation. Supplementing the Business Tort Investigation, the Debtors also issued information requests pursuant to the Freedom of Information Act to the FDIC, OTS, the Securities Exchange Commission, the DOT, the Federal Reserve and the OCC.

50. However much negotiating, discussing, and supplemental requesting the Debtors have done, the actual result in terms of obtaining actual documentary evidence consists of what the Equity Committee has described above – unless the Debtors are holding back information from the Equity Committee without saying so.

51. In sum, although many aspects of WMI and WMB’s pre-seizure affairs may have been extensively investigated, the Debtors and the Creditors Committee have certainly not conducted a complete or thorough investigation of JPMC’s role in the loss of WMB and the precipitation of this bankruptcy – and JPMC has succeeded in significantly confining its own production of information while at the same time participating in the negotiation of a Global Settlement that would release all the potential business tort claims against it -- so that the investigation never will be completed.

52. Even with respect to analyzing the modest amount of information assembled by the Debtors before pulling the plug on their own investigation, the Equity Committee has attempted to avoid reinventing the wheel and to save precious time by asking the Debtors to share the fruits of their own analysis, including any collections of key documents sifted from the admittedly incomplete universe of documents that the Debtors collected from JPMC and others. Invoking the work-product privilege, the Debtors have refused to provide any written analysis (legal or factual) of the claims against JPMC they propose to release or any selection of key documents. Instead, their message to the Equity Committee, in a nutshell, has been: “Do the

work yourselves.”<sup>38</sup>

### **III.** **RELIEF REQUESTED**

53. Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1, the Equity Committee requests authorization to conduct an examination of JPMC, including production of documents responsive to the document requests attached hereto as **Exhibit A** and oral examination of JPMC witnesses most knowledgeable about the subjects described in those requests. The Equity Committee seeks entry of an order substantially in the form of the Proposed Order filed with this motion as **Exhibit J**.

54. The document requests fall into four categories. First, the majority of them are substantially similar (and in most cases identical) to requests that the Court permitted the Debtors to serve when it granted their first Rule 2004 request in June 2009. With respect to those requests, of course, JPMC need not re-produce the documents it previously produced to the Debtors, as long as it will verify that the Equity Committee’s copy of those documents is complete and may be used as if produced in response to the Equity Committee’s own Rule 2004 requests. However, as explained earlier, JPMC’s production of documents in response to those requests was materially incomplete. Serving essentially the same requests propounded by the Debtors will permit the Equity Committee to take steps intended to obtain a complete production – including responsive, pre-seizure WMI/WMB documents and JPMC’s pre-seizure communications with government agencies and other third parties.

55. Second, additional requests have been added that are designed to explore other pre-seizure JPMC activities that may have been part of a scheme to impair WMI’s ability to raise

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<sup>38</sup> See Sargent Decl., ¶¶ 3-7. The Equity Committee also requested that the Creditors Committee share any selection of key documents that the Creditors Committee had culled from its own review of documents supplied by the Debtors or from other sources, as well as any factual or legal analysis of the potential claims. The Creditors Committee refused. *See id.*

capital and avoid a government takeover.

56. Third, an additional series of requests specifically targets certain categories of pre-seizure WMB/WMI documents, including financial data, information that WMB/WMI provided JPMC under confidentiality agreements, and documents concerning WMB/WMI's efforts to address its financial difficulties, including WMI's search for a potential acquiror.

57. Fourth, the requests seek information concerning the negotiation and impact of the proposed Global Settlement. This information is highly relevant in the broad context of this bankruptcy case because the proposed settlement is the cornerstone of the Debtors' proposed plan of reorganization.

#### **IV.** **BASIS FOR RELIEF**

58. Bankruptcy Rule 2004(a) provides that “[o]n motion of any party in interest, the court may order the examination of any entity.” The purpose of a Rule 2004 examination “is to enable the trustee to discover the nature and extent of the bankruptcy estate.” Opinion of the Court (Docket #1219) dated June 24, 2009 (“June 24 Opinion”) at 8 (citing *In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702, 708 (Bankr. S.D.N.Y. 1991); see also *In re Symington*, 209 B.R. 678, 684 (Bankr. D. Md. 1997). Among the “[l]egitimate goals of Rule 2004 examinations” are “determining whether wrongdoing has occurred,” June 24 Opinion, at 8 (quoting *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002), and exposing any fraudulent conduct. *Symington*, 209 B.R. at 683-84.

59. Rule 2004 grants parties in interest “broad rights of examination of a third-party’s records.” *Snyder v. Society Bank*, 181 B.R. 40, 41 (S.D. Tex. 1994); see also *In re Cousins Barricades & Metal Prods. Inc.*, No. Civ. A. 99-2035, 200 WL 245860, \*3 (E.D. La. Mar. 2, 2000). Emphasizing the broad purpose of Rule 2004, courts permit examination of any third

party that has “knowledge of the debtor’s affairs,” *In re Ecam Publ’ns*, 131 B.R. 556, 559 (Bankr. S.D.N.Y. 1991), or who can be shown to have had dealings with the debtor, *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 432 (S.D.N.Y. 1993), *aff’d*, 17 F.3d 600 (2d Cir. 1994). See Bankruptcy Rule 2004(b) (noting that Rule 2004 examination may concern “any matter which may affect the administration of the debtor’s estate”).

60. The Court has already once determined that examination of JPMC under Rule 2004 was appropriate and warranted, both factually and legally. Unfortunately, the examination was never completed – though in light of the proposed Global Settlement, its importance has grown in significance. Indeed, the reasonableness of the bargain reflected in that proposed settlement turns in large measure on an assessment of the claims against JPMC that the Debtors propose to give up, including the potential business tort claims that are the primary subject of the examination requested by this motion.

61. The Rule 2004 discovery sought by this motion is particularly appropriate because the requested examination to continue investigation of the potential business tort claims against JPMC is unrelated to any pending adversary proceeding in which the Equity Committee is or could become a party. It is even unrelated to any adversary proceeding or other litigation against JPMC in which the Debtors are parties, because the Debtors have never asserted the potential business tort claims against JPMC.

62. Moreover, even if the pending adversary proceeding and other litigation involving the Debtors and JPMC actually included allegations against JPMC of the kind that are the subject of the requested Rule 2004 examination, all such matters have been stayed, as the Court is aware. Thus, discovery is unavailable in those actions; no pending proceeding provides an alternate vehicle through which the requested discovery could be expeditiously obtained. See *In re Int’l*

*Fibercom, Inc.*, 283 B.R. 290, 292 (Bankr. D. Ariz. 2002) (holding that pending proceeding rule was inapplicable when discovery was unavailable in other litigation due to a stay).

**CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 2004-1**

63. By e-mail on May 21, 2001, counsel for the Equity Committee provided all counsel of record for JPMC with a copy of Exhibit A hereto, described the substance of the relief requested by this motion, and asked whether JPMC would agree to the requested examination and to respond to the document requests without a court order. Counsel requested that JPMC respond by close of business on May 24 and also asked that JPMC identify a time when JPMC counsel would be available to discuss the requests. As of the time of the filing of this motion, JPMC has not responded. However, JPMC opposed the examination sought by the Debtors in May 2009, and it is likely JPMC will oppose the relief requested here. To prevent unnecessary delay arising from disputes concerning, among other things, the Equity Committee's entitlement to the information requested and claims of confidentiality, the Equity Committee requests that this motion be set for hearing and thereby ensure an expeditious resolution of any such disputes. Prior to the hearing, the Equity Committee will continue attempting to discuss the relief requested and attempt to resolve any legitimate objections raised by JPMC.

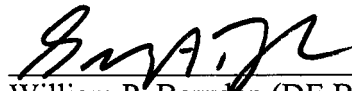
64. Accordingly, the Equity Committee seeks the Court's authority to conduct an examination under Bankruptcy Rule 2004 and Local Rule 2004-1 that includes JPMC's production of all documents responsive to the requests attached as Exhibit A, as well as related oral examination of witnesses most knowledgeable about the subjects described in the document requests.

65. The Equity Committee has made no previous request for the relief sought herein to this Court or any other court.

WHEREFORE, the Equity Committee respectfully requests that the Court grant the relief requested by this motion, and for such other and further relief as it deems just and proper.

Dated: May 25, 2010

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

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In re:	)	Chapter 11
	)	
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 08-12229 (MFW)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Requested Hearing Date: June 3, 2010 at 10:30 a.m. (ET)</b>
	)	<b>Requested Obj. Deadline: June 2, 2010 at 12:00 p.m. (ET)</b>

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**NOTICE OF MOTION**

**PLEASE TAKE NOTICE** that on May 25, 2010, the Official Committee of Equity Security Holders (the “Equity Committee”) filed *The Motion of the Official Committee of Equity Security Holders for an Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1 Directing the Examination of JPMorgan Chase* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

**PLEASE TAKE FURTHER NOTICE** that concurrently with the filing of the Motion, the Debtors also filed the *Motion to Shorten Notice and Schedule Hearing on the Motion of the Official Committee of Equity Security Holders for an Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1 Directing the Examination of JPMorgan Chase* (the “Motion to Shorten”).

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Motion to Shorten, the Equity Committee has requested that the Court enter an order scheduling a hearing on the Motion at the hearing scheduled for June 3, 2010 omnibus hearing at 10:30 a.m. (Prevailing Eastern Time) (the “Hearing”), and setting an objection deadline for June 2, 2010 at 12:00 p.m. (the “Objection Deadline”). In accordance with the Local Rules of Practice and Procedure for the United States Bankruptcy Court of the District of Delaware (the “Local Rules”), the Bankruptcy Court will rule on the Motion to Shorten without a hearing.

**IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

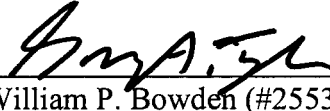
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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



Dated: May 25, 2010

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-and-

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EXHIBIT A

## FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

### DEFINITIONS

The following terms (whether or not capitalized) shall have the meanings set forth below:

1. “Adversary Proceedings” means or refers to the JPMC Adversary Proceeding and the Turnover Proceeding.

2. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

3. “Bankruptcy Code” means or refers to the Bankruptcy Reform Act of 1978, as amended, to the extent codified in Title 11, United States Code, as applicable to the Chapter 11 Cases.

4. “Chapter 11 Cases” means the jointly administered cases commenced by the Debtors styled as *In re Washington Mutual, Inc., et al.* and being jointly administered in the Bankruptcy Court, Case No. 08-12229 (MFW), under chapter 11 of the Bankruptcy Code.

5. “Communication” means any oral, written or electronic transmission of information, including without limitation any letter, correspondence, memorandum, electronic-mail message, note or meeting log, conversation, meeting, discussion, telephone call, facsimile, telegram, telex, conference or message.

6. “Concerning” means comprising, consisting of, concerning, referring to, reflecting, regarding, supporting, evidencing, or relating to, the matter or document described, referred to or discussed.

7. “DC Action” refers to *Washington Mutual, Inc. and WMI Investment Corp. v. Federal Deposit Insurance Corporation*, No. 1:09-cv-00533 (D.D.C.).

8. The "Disclosure Statement" means or refers to the Disclosure Statement for the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, filed on or about March 26, 2010, in the Chapter 11 Cases; the Disclosure Statement for the First Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, filed on or about May 16, 2010, in the Chapter 11 Cases; and any subsequently filed Disclosure Statement for any further amended Joint Plan filed by WMI in the Chapter 11 Cases.

9. "Document" is used in its broadest sense and mean and include any written or graphic matter or other means of preserving thought or expression and all tangible things from which information can be processed or transcribed, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copy or otherwise, including but not limited to, correspondence, memoranda, notes, messages, letters, telegrams, teletype, telefax, bulletins, records of meetings or other communications, records of interoffice and intraoffice telephone calls, diaries, chronological data, minutes, books, reports, studies, summaries, pamphlets, bulletins, printed matter, charts, ledgers, invoices, worksheets, receipts, returns, computer printouts, prospectuses, financial statements, schedules, affidavits, contracts, cancelled checks, statements, transcripts, statistics, surveys, magazine or newspaper articles, releases (and any and all drafts, alterations and modifications, changes and amendments of any of the foregoing), graphic or aural records or representations of any kind (including without limitation photographs, microfiche, microfilm, videotape, records and motion pictures) and electronic, mechanical or electric records or representations of any kind (including without limitation tapes, cassettes, discs and records).

**PLEASE NOTE:** The Documents requested herein include Documents that came within

JPMC's possession, custody, or control as a result of the acquisitions reflected in the P&A Agreement (as defined below) and that formerly were within the possession, custody, or control of WMI, WMB, or WMB fsb (as those terms are defined below).

10. "Entity" means a person, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, governmental unit or any subdivision thereof, including, without limitation, the office of the United States Trustee, or any other entity.

11. "Equity Committee" means or refers to the official committee of equity security holders appointed in the Chapter 11 Cases.

12. "FDIC" means or refers to the Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank, Henderson Nevada, and in its corporate capacity.

13. "Federal Home Loan Bank System" means or refers to the Federal Home Loan Bank System, including its regional federal home loan banks and any of their present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

14. "Governmental Unit" has the meaning set forth at 11 U.S.C. § 101(27).

15. "Including" means including but not limited to the referenced subject.

16. "JPMC" means JPMorgan Chase Bank, National Association, JPMorgan Chase & Co., any Entity or bank acquired by JPMorgan Chase Bank, National Association or any of its subsidiaries or affiliates pursuant to the P&A Agreement (as defined below), and any of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments,

predecessors and/or successors-in-interest.

17. “JPMC Adversary Proceeding” refers to *JPMorgan Chase Bank, National Association v. Washington Mutual, Inc., et al.*, Adversary Proceeding No. 09-50551 (Bankr. D. Del.).

18. “JPMC’s Responses” means the “Responses and Objections of JPMorgan Chase Bank, National Association to Debtors’ First Request for Production of Documents,” dated July 20, 2009, and served by JPMC on the debtors in the Chapter 11 Cases.

19. “OTS” means the Office of Thrift Supervision, and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

20. “P&A Agreement” means or refers to the Purchase and Assumption Agreement, Whole Bank, among the Federal Deposit Insurance Corporation, as receiver of Washington Mutual Bank, Henderson, Nevada, the Federal Deposit Insurance Corporation and JPM, dated as of September 25, 2008.

21. The “Proposed Global Settlement Agreement” means the Proposed Global Settlement Agreement described in the Disclosure Statement and any subsequent or revised drafts of that agreement.

22. “Purchase Price” means the approximately \$1.88 billion that JPMC paid to the FDIC for the purchase of substantially all of the assets of WMB as reflected in Schedule 3.2 to the P&A Agreement.

23. “Texas Action” refers to *American Nat’l Ins Co., et al., v. JPMorgan Chase & Co., et al.*, Case No. 3:09-cv-00044 (S.D. Tex.), which was transferred to the United States District Court for the District of Columbia and docketed there as Civil Action No. 09-1743

(RMC).

24. “Transaction” means or refers to any means by which JPMC or any of them might obtain, receive or succeed to Washington Mutual’s businesses or properties, or any portion thereof, including any stock tender, stock purchase, asset purchase, assumption of deposit or other liabilities, merger, joint venture or partnership.

25. “Turnover Proceeding” means *WMI and WMI Investment Corp. v. JPMC*, No. 09-50934 (Bankr. D. Del.).

26. “U.S. Department of the Treasury” means or refers to the U.S. Department of the Treasury and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

27. “Washington Mutual” means or refers to WMI and WMB, and any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

28. “WMB” means or refers to Washington Mutual Bank, Henderson, Nevada, and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

29. “WMB fsb” means or refers to Washington Mutual Bank, fsb, Utah, and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on its behalf, any of its

parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

30. "WMI" means or refers to Washington Mutual, Inc. and WMI Investment Corp. (collectively, the "Debtors") and any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

31. "WMI RFPs" means or refers to the WMI's First Request for Production of Documents served on JPMC on or about July 6, 2009.

32. "You" or "Your" means or refers to JPMC, individually or collectively, to whom this subpoena is addressed, and any owner, director, officer, employee, agent, custodian, parent, subsidiary, affiliate, predecessor, successor, attorney, accountant, representative, and other Persons purporting to act on your behalf.

33. Any ambiguity in a discovery request shall be construed to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.

### **INSTRUCTIONS**

Each response must be made in accordance with the following instructions:

1. The responsive documents should be produced in the manner prescribed by the Federal Rules of Civil Procedure, as made applicable herein by the Federal Rules of Bankruptcy Procedure, including producing the requested documents as they are kept in the usual course of business or organized and labeled to correspond with the categories in the requests, and



identifying the name of the person from whose files the documents were produced.

2. You are to produce the original and all non-identical copies, including all drafts, of each document requested. If you are not able to produce the original of any document, please produce the best available copy and all non-identical copies, including drafts.

3. Each request herein extends to all documents and communications in your possession, custody or control. A document is deemed to be in your possession, custody, or control if it is in your physical custody, or if it is in the physical custody of any other person and you: (1) own such document in whole or in part; (2) have a right, by contract, statute or otherwise, to use, inspect, examine or copy such document on any terms; (3) have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or (4) as a practical matter, have been able to use, inspect, examine, or copy such document when you sought to do so. If any requested document was, but no longer is, in your control, state the disposition of each such document.

4. Any reference in these document requests to an individual or person include any and all agents, advisors, employees, representatives, attorneys, and successors-in-interest.

5. If any document is withheld under any claim of privilege, including without limitation, attorney-client privilege and attorney work product, you should provide the following information with respect to such document:

- (1) The date of the document;
- (2) The title of the document;
- (3) The name of its author(s) or preparer(s) and an identification by employment and title of each such person;
- (4) The name of each person who was sent or furnished with, received,

viewed or has custody of the document or a copy thereof together with an identification by employment and title of each such person;

- (5) The request to which the document relates;
- (6) The title and description of the document sufficient to identify it without revealing the information for which privilege is claimed;
- (7) The claim of privilege under which it is withheld; and
- (8) A description of the subject matter of the document in sufficient detail to support your contention that the document is privileged;

6. If, after exercising due diligence to secure them, you cannot provide some or any of the requested documents, so state and provide all documents to the extent possible, specifying the reason for your inability to produce the remainder of the documents.

7. If any requested document or other document potentially relevant to this action is subject to destruction under any document retention or destruction program, the document(s) should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this action or unless otherwise permitted by the Court.

8. If any document responsive to these requests is known to have existed and cannot now be located, or has been destroyed or discarded, set forth a complete statement of the circumstances surrounding such loss or destruction.

9. If an objection is made to any request, state your objection and the ground or grounds with particularity in your written response. If an objection is made only to part of the request, identify that part in your written response and state your objection and the ground(s) therefor.

10. This request is a continuing one. If, after producing the requested documents, you

obtain or become aware of any further documents responsive to this request, you are required to produce such additional documents promptly.

11. Unless otherwise specified, the time period covered by these requests is from September 1, 2007 to the present.

12. To the extent you have previously produced documents requested herein to WMI in response to the WMI RFPs, you need not produce them again to the Equity Committee if you instead (a) provide information (such as Bates-number ranges) sufficient to allow the Equity Committee to verify that it has previously received such documents from WMI; and (b) consent to the Equity Committee's use of such documents as if JPMC had produced them directly to the Equity Committee in response to these requests.

### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

The Equity Committee requests that JPMC produce the following documents in its possession, custody or control:

#### **REQUEST NO. 1:**

All documents that you have produced to WMI in response to the WMI RFPs.

#### **REQUEST NO. 2:**

All documents that you have produced to any party in response to any discovery requests served in the Adversary Proceedings.

#### **REQUEST NO. 3:**

All documents concerning the negotiation of the Proposed Global Settlement Agreement or any agreements reflected in the proposed Global Settlement Agreement, including all demands and offers made to settle any claims or disputes among WMI, the FDIC, and/or JPMC. This request includes, but is not limited to records of communications among two or more parties to the Proposed Global Settlement Agreement and drafts of the Proposed Global Settlement Agreement.

**REQUEST NO. 4:**

All documents concerning the Proposed Global Settlement Agreement or any agreements reflected in the Proposed Global Settlement Agreement. This request includes, but is not limited to (a) analysis of, or communications about, any of the disputes that would be compromised or released under the Proposed Global Settlement Agreement by any party to the Proposed Global Settlement Agreement; and (b) your communications with anyone about the Proposed Global Settlement Agreement, any agreements reflected in the Proposed Global Settlement Agreement, and/or the settlement of any claims or disputes among the parties to the Proposed Global Settlement Agreement.

**REQUEST NO. 5:**

All documents concerning any plans or efforts by WMI during 2008 to raise capital or increase liquidity (for itself or for WMB) through the sale of securities (including debt instruments), the sale of assets (including WMI subsidiaries), the sale of WMI itself, a merger, or any other corporate or financial transaction.

**REQUEST NO. 6:**

All documents disclosed or provided by Washington Mutual to JPMC during the course of any discussions by Washington Mutual with JPMC in 2008 concerning a potential Transaction; all documents referring to or discussing information provided by Washington Mutual to JPMC during the course of any discussions by Washington Mutual with JPMC in 2008 concerning a potential Transaction; and any agreements restricting JPMC's use or disclosure of any such documents or information.

**REQUEST NO. 7:**

All documents concerning JPMC's disclosure to anyone of any documents or other information provided by Washington Mutual to JPMC during the course of any discussions by Washington Mutual with JPMC in 2008 concerning a potential Transaction, including but not limited to non-public, confidential or proprietary information and including but not limited to disclosure of such information to third parties to secure financing or raise capital in connection with any potential Transaction.

**REQUEST NO. 8:**

All documents concerning any communications with any Governmental Unit regarding non-public, confidential or proprietary information related to Washington Mutual, including but not limited to JPMC's receipt of non-public, confidential or proprietary information concerning Washington Mutual.

**REQUEST NO. 9:**

Documents sufficient to identify JPMC's company policies and procedures concerning the protection or disclosure of non-public, confidential or proprietary information.

**REQUEST NO. 10:**

All documents concerning any potential Transaction, including all documents prepared by JPMC that refer to, discuss, or analyze any potential Transaction.

**REQUEST NO. 11:**

All documents concerning any attempt by JPMC to engage in any Transaction in the spring and summer of 2008, including but not limited to JPMC's bid to merge with, purchase, or acquire Washington Mutual in or about April 2008.

**REQUEST NO. 12:**

All documents concerning any communications between JPMC and Washington Mutual concerning any potential Transaction in 2008.

**REQUEST NO. 13:**

All documents concerning any communications between JPMC and anyone, concerning any potential Transaction in 2008, including any communications with the FDIC or any other Governmental Unit.

**REQUEST NO. 14:**

All documents concerning any due diligence performed by JPMC in connection with any potential Transaction in 2008.

**REQUEST NO. 15:**

All documents concerning any attempt by JPMC to engage in any potential Transaction in or about September 2008, including but not limited to any bid or offer by JPMC to merge with, invest in, or purchase Washington Mutual in or about September 2008.

**REQUEST NO. 16:**

All documents concerning any communications between JPMC and the media, including but not limited to The Wall Street Journal, any other print, on-line, broadcast, or cable news outlet, related to Washington Mutual, including but not limited to any such communications related to Washington Mutual's financial status, financial condition, assets, and liabilities.

**REQUEST NO. 17:**

All documents concerning any due diligence performed by JPMC in connection with its execution of the P&A Agreement.

**REQUEST NO. 18:**

All documents concerning any communications between JPMC and any Governmental Unit concerning Washington Mutual, a governmental seizure or receivership of Washington Mutual, and/or the sale of Washington Mutual, including but not limited to communications with the US Department of the Treasury, the FDIC, and/or the OTS.

**REQUEST NO. 19:**

All documents concerning actions considered or taken by any Governmental Unit concerning Washington Mutual, including but not limited to the seizure of WMB by the OTS and the appointment of FDIC as receiver.

**REQUEST NO. 20:**

All documents concerning any agreement or arrangement between JPMC and any Governmental Unit concerning any potential Transaction or Transaction on or prior to September 25, 2008, including but not limited to any agreement, understanding, or arrangement with the OTS and/or FDIC.

**REQUEST NO. 21:**

All documents concerning any communications between JPMC and any Governmental Unit concerning any Transaction on September 25, 2008.

**REQUEST NO. 22:**

Documents sufficient to identify the names of all persons who negotiated on behalf of JPMC in connection with entering into the P&A Agreement.

**REQUEST NO. 23:**

All documents concerning any assessment, evaluation, consideration or analysis of the consideration provided by JPMC under the P&A Agreement, including but not limited to the assumption of any liabilities.

**REQUEST NO. 24:**

All documents concerning any assessment, evaluation, consideration or analysis of the Purchase Price.

**REQUEST NO. 25:**

All documents concerning any communications between JPMC and Washington Mutual concerning the Purchase Price.

**REQUEST NO. 26:**

All documents concerning any communications between JPMC and any third party concerning the Purchase Price, including but not limited to communications with the FDIC and/or the OTS concerning the Purchase Price.

**REQUEST NO. 27:**

All documents concerning the bid process established by the FDIC for the purchase of WMB, including documents concerning any communication between JPMC and the FDIC about the bid process for the purchase of WMB.

**REQUEST NO. 28:**

All documents concerning any assessment, evaluation, consideration or analysis of the consideration received by JPMC under the P&A Agreement, including the value of the assets of WMB that JPMC acquired pursuant to the P&A Agreement.

**REQUEST NO. 29:**

Documents sufficient to show JPMC's valuation of the assets of WMB on or about September 25, 2008.

**REQUEST NO. 30:**

All documents forming the basis for the statement in JPMC's Form 10-K for the period ending December 31, 2008 that "the fair value of the net assets [of WMB] acquired exceeded the purchase price. . . ."

**REQUEST NO. 31:**

All documents concerning JPMC's allocation of the Purchase Price, including but not limited to allocation of the Purchase Price to the assets acquired by JPMC under the P&A Agreement on or about September 25, 2008.

**REQUEST NO. 32:**

All documents concerning JPMC's refinement of the allocation of the Purchase Price during the fourth quarter of 2008.

**REQUEST NO. 33:**

All documents concerning JPMC's recognition of extraordinary gains related to its acquisition of the assets of WMB.

**REQUEST NO. 34:**

All documents concerning any assessment, evaluation, consideration or analysis of negative goodwill resulting from the acquisition of the assets of WMB.

**REQUEST NO. 35:**

All documents concerning any assessment, evaluation, consideration or analysis of Washington Mutual's financial condition, including but not limited to Washington Mutual's debts, assets, liabilities, financial resources and capital, business reputation, and/or credit rating.

**REQUEST NO. 36:**

All documents concerning any communications between JPMC and any third party concerning Washington Mutual's actual or projected financial condition, including but not limited to any communications with the FDIC and/or OTS.

**REQUEST NO. 37:**

All documents concerning any assessment, evaluation, consideration or analysis of the capitalization of Washington Mutual in or about September 2008.

**REQUEST NO. 38:**

Documents sufficient to show JPMC's weighted average cost of capital, including but not limited to JPMC's cost of debt, cost of equity, yield on outstanding debt and the weighted average cost of capital for any loan or other financing obtained by JPMC.

**REQUEST NO. 39:**

All documents concerning any investigations by federal, state or municipal government bodies of JPMC related to its acquisition of the assets of WMB.

**REQUEST NO. 40:**

All documents concerning any investigation of JPMC, or lawsuit or other legal action brought against JPMC related to its acquisition of the assets of WMB.

**REQUEST NO. 41:**



All documents concerning JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

**REQUEST NO. 42:**

All documents concerning the disclosure of any of Washington Mutual's non-public, confidential or proprietary information by former JPMC employees working at Washington Mutual, including but not limited to Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

**REQUEST NO. 43:**

All documents from July 1, 2007 through September 26, 2008, concerning or reflecting any communications between JPMC and any of its former employees working at Washington Mutual, including but not limited to Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

**REQUEST NO. 44:**

All balance sheets for WMI and WMB for the period June 1, 2008 through September 26, 2008.

**REQUEST NO. 45:**

All documents reflecting the daily inflows and outflows of deposits on account at WMB from June 1, 2008 through September 26, 2008.

**REQUEST NO. 46:**

Documents sufficient to identify the names of all Entities who withdrew deposits from WMB or WMB fsb in September 2008 and the amounts of such withdrawals.

**REQUEST NO. 47:**

Documents sufficient to show the number and dollar amount of residential mortgage loans originated or purchased by WMB from June 1, 2008 through September 26, 2008.

**REQUEST NO. 48:**

Documents sufficient to show the number and dollar amount of commercial mortgage loans originated or purchased by WMB between June 1, 2008 and September 26, 2008.

**REQUEST NO. 49:**

All documents reflecting the amount of deposits on account at WMB each day between

June 1, 2008 and September 26, 2008.

**REQUEST NO. 50:**

All documents, including reports, summaries or compilations, concerning or relating to the status and performance of WMB's mortgage portfolio.

**REQUEST NO. 51:**

All documents, including reports, summaries, analyses, or compilations, concerning or relating to the performance of WMB's loan portfolio, excluding mortgages.

**REQUEST NO. 52:**

All schedules of assets acquired by JPMC pursuant to the P&A Agreement and all drafts of any such schedules.

**REQUEST NO. 53:**

Documents sufficient to identify in detail all assets obtained by JPMC pursuant to P&A Agreement.

**REQUEST NO. 54:**

All schedules to the P&A and all drafts of schedules to the P&A Agreement.

**REQUEST NO. 55:**

All documents concerning any credit extended to Washington Mutual by any bank in the Federal Home Loan Bank System.

**REQUEST NO. 56:**

All documents concerning Washington Mutual's efforts to obtain credit or to draw upon any credit facilities from any bank in the Federal Home Loan Bank System.

**REQUEST NO. 57:**

All discovery requests, responses, and objections served on JPMC in the Adversary Proceedings, the DC Action, the Texas Action, and the Chapter 11 Cases.

**REQUEST NO. 58:**

All documents concerning any communications and/or agreements between WMI and JPMC concerning JPMC's production of documents in response to the WMI RFPs, including but not limited to documents concerning the scope of JPMC's search for and production of documents as compared to the scope of the requests in the WMI RFPs.

**REQUEST NO. 59:**

Documents sufficient to identify and describe what JPMC did to identify and collect documents responsive to the WMI RFPs, including any lists of search terms used in the retrieval of electronic information.

**REQUEST NO. 60:**

All documents concerning the E-Discovery Protocol, including all drafts thereof, referenced in the 11/25/2009 Letter from Erica Taggart to Stacey Friedman.

**REQUEST NO. 61:**

The Information Access Agreement dated November 21, 2008, referred to in ¶ 10 of the General Objections in JPMC's Responses.

**REQUEST NO. 62:**

All documents concerning JPMC's purchase or sale of credit default swaps during 2008 where WMI was the reference entity.

**REQUEST NO. 63:**

All documents concerning short selling of WMI securities by JPMC during 2008.

**REQUEST NO. 64:**

All documents concerning any actions considered or implemented by JPMC to negatively affect the market price of WMI securities and/or market perceptions of WMI's solvency, liquidity, and/or financial health.

EXHIBIT B

**DECLARATION OF EDGAR SARGENT**

SUSMAN GODFREY  
1201 Third Avenue, Suite 3800  
Seattle, Washington 98101  
Telephone: (212) 336-8330  
Facsimile: (212) 336-8340  
Edgar Sargent

*Proposed Special Counsel to the Official Committee of  
Unsecured Creditors of Old Carco LLC, et al.*

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

In re:

WASHINGTON MUTUAL, INC., et al.,

Debtors

Chapter 11

Case No. 08-12229 (MFW)

Jointly Administered

**DECLARATION OF EDGAR SARGENT IN SUPPORT OF THE  
MOTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS  
FOR AN ORDER PURSUANT TO BANKRUPTCY RULE 2004 AND LOCAL  
BANKRUPTCY RULE 2004-1 DIRECTING THE EXAMINATION OF JPMORGAN  
CHASE**

I, Edgar Sargent, declare that the following is based on my personal knowledge except as indicated and is true and correct to the best of my knowledge and belief:

1. I am a partner at Susman Godfrey L.L.P. and am counsel of record for the Official Committee of Equity Security Holders (“Equity Committee”) in this action. I submit this declaration in support of the *Motion of the Official Committee of Equity Security Holders For an Order Pursuant To Bankruptcy Rule 2004 And Local Bankruptcy Rule 2004-1 Directing the Examination of JPMorgan Chase* (the “Motion”).

2. Immediately following the May 5, 2010 hearing on the Equity Committee’s motion to appoint an examiner, I and others at my firm began seeking information from the

Debtors concerning their investigation of claims and disputes among the Debtors, JPMorgan Chase (“JPMC”), the FDIC, and others. We sought this information largely in order to assess the merits of the claims that would be released pursuant to the Debtors’ proposed Global Settlement agreement and their potential value to the estate.

3. On May 7, 2010, my partner Steve Susman sent an email to Peter Calamari of the firm Quinn Emanuel, lead litigation counsel for the Debtors in their disputes with JPMC and the FDIC, informally requesting documents gathered and generated during the course of the Debtors’ investigation. The email requested generally that the Debtors make available all work-product and claim analysis. It went on to specify (1) any analysis of the claims in the three major cases involving the Debtors and JPMC or of the claims at issue in the Rule 2004 examination of JPMC that the Debtors conducted pursuant to this Court’s order of June 24, 2009; (2) any analysis of claims against any current or former directors or officers of WMI or WMB; (3) any analysis of any business tort claim against JPMC; (4) any analysis of potential claims against any third-parties, including Goldman Sachs, Bank Santander, and any accounting firm; (5) summaries of transcripts or interviews with any witnesses conducted in connection with the bankruptcy; (6) any analysis of any federal or state criminal or civil investigation, including the Senate investigation into Washington Mutual; (7) any internally created cast of characters, hot document set, memos analyzing documents, or other work-product related to documents, dates, or people involved in the litigation or the Debtors’ investigation; (8) any expert work product; (9) any analysis by the Debtors’ tax advisors; (10) copies of all document requests served on any party, including FOIA requests and other government requests, and any analysis of the responses.

4. Also on May 7, 2010, Mr. Susman sent a similar e-mail with similar information requests to Robert Johnson, attorney for the Creditors' Committee in this bankruptcy.

5. Mr. Susman's email to Mr. Calamari also requested a meeting at Quinn Emanuel's offices in New York for the following Friday, May 14, 2010. Attorneys for the Debtors did not immediately respond to the requests, but agreed to the meeting and indicated that we could discuss the document requests at that time.

6. I attended the meeting on May 14th at Quinn Emanuel in New York with Steve Susman and Lauren Krueger, a representative of Esopus Creek Advisors and one of the members of the Equity Committee. On behalf of the Debtors, Peter Calamari, David Elsberg, and Ben Finestone of Quinn Emanuel attended. Robert Johnson of Aken Gump Strauss Hauer & Feld also attended on behalf of the Creditors' Committee.

7. At the meeting, we were told by Debtors' counsel that they would not agree to produce any of their litigation work-product in response to Mr. Susman's requests. Specifically, they advised that they would not produce any of the categories of documents set out in paragraph 3, above, other than copies of document requests the Debtors had served, including FOIA requests and other government requests. The attorneys indicated that they were concerned about the possibility that making the information available to counsel for the Equity Committee might constitute a waiver of privilege and render the documents discoverable by JPMC or other third parties.

8. Counsel for the Debtors did agree to make available to us documents they had obtained voluntarily or via discovery requests from third parties. Since the May 14 meeting, we have received from the Debtors copies of the productions by Citigroup and Blackstone. Debtors' counsel indicated that they also has documents produced by Moody's and by a lobbying

organization named OB-C Group, but that these third-parties have not authorized release of the documents to the Equity Committee's counsel. Debtors' counsel represents to us that, altogether, these productions total less than twenty documents.

9. My firm also recently obtained from the Equity Committee's previous counsel (the Venable firm) copies of what we understand to be JPMC's production of documents to the Debtors in response to the Debtors' Rule 2004 document requests served in the summer of 2009, and copies of productions to the Debtors by Washington Mutual investor TPG Capital and by the Office of Thrift Supervision (OTS.)

10. The Debtors have represented that the volume of documents in the JPMC production is approximately 40,000 pages, or between fifteen and twenty boxes. The volume of the Citigroup production is approximately 900 documents. The volume of the Blackstone production is approximately 500 documents. The volume of the OTS production is approximately 650 pages. The TPG Capital production is approximately 27,500 pages.

11. At the May 14th meeting, we also discussed documents obtained by the Debtors from the FDIC, apparently through FOIA requests. Mr. Johnson indicated that the total volume of FDIC-produced documents to date fits in one binder and that many of the documents were heavily redacted. Mr. Johnson has subsequently indicated that the total number of pages produced by the FDIC was approximately 240 and represented that copies of these documents have been sent to my firm. I have not received those documents yet, but expect to shortly.

12. At the same meeting, we discussed the availability of WMI and WMB documents created before the bankruptcy and FDIC receivership that might be relevant to the claims under discussion. We were told by Debtors's counsel that these documents are in the control of JPMC, which acquired them with the Washington Mutual assets. We were told that JPMC obtained



ownership of Washington Mutual's headquarters office building in Seattle, which contained information systems managing documents belonging to both WMB and WMI. We were also told at this meeting that the Debtors had been given some access to some of these documents.

13. I discussed the pre-bankruptcy WMI and WMB documents with Debtors's counsel a second time on a conference call May 21, 2010. On that call with me was my partner Parker Folsie. On behalf of the Debtors, Mr. Calamari, Mr. Elsberg, Mr. Finestone and Jeff Benner were on the call. Mr. Calamari explained that pursuant to an information access agreement, JPMC had made a number of pre-bankruptcy WMI and WMB documents available to the Debtors for purposes related to the ongoing administration of the estate (such as the preparation of tax returns.) However, based on what Mr. Calamari told us, it does not appear that the Debtors have attempted to search pre-bankruptcy WMI and WMB documents now in the custody and control of JPMC for documents relevant to any of the Debtors' potential claims against JPMC. Even after that conversation, it was unclear to me whether the Debtors requested that JPMC provide access to the pre-bankruptcy WMI and WMB documents for that purpose and were denied, or instead simply did not make the request. It also appears that JPMC did not produce any documents from the pre-bankruptcy WMI and WMB files now in its control in response to the Debtors' Rule 2004 document requests directed to JPMC.

14. Mr. Calamari indicated that attorneys for the Debtors had begun a review of the pre-bankruptcy WMI/WMB documents now in the Debtors' possession that JPMC had provided for estate administration purposes to determine if any of them are relevant to the claims against JPMC, but he said that review had not been completed at the time the Debtors agreed to settle with JPMC. We asked if the Debtors would provide us with copies of any materials identified in the review to date. Debtors' counsel refused this request on the ground that it would disclose

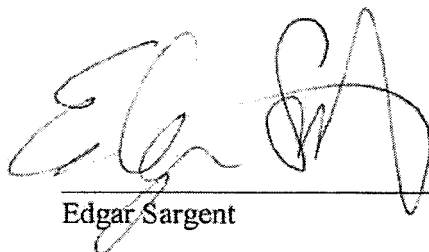
work product and result in waiver of the work product privilege. We were told that if the Equity Committee wanted to determine if pre-seizure WMI and WMB documents in the Debtors' possession were relevant to claims in dispute between the Debtors and JPMC, the Committee would have to serve formal document requests pursuant to a scheduling order. To date, the Debtors have not produced any pre-bankruptcy WMI or WMB documents to the Equity Committee that might be relevant to existing or potential claims between the Debtors and JPMC.

15. On the May 21, 2010 call, we again requested that the Debtors make available to us any collections of key documents that had been sifted by Quinn Emmanuel from the JPMC production or their own review of other WMI and WMB documents now in the Debtors' possession. Mr. Calamari declined to do that, claiming a work product privilege; he said there was no reason why the Equity Committee couldn't do the same work itself, at least with respect to the JPMC production.

16. Earlier in the week, I had also sent an email to the attorneys at Quinn Emanuel asking that they provide us with a privilege log listing the items that the Debtors were withholding from among those that were covered by the requests identified in ¶ 3 of this Declaration, to enable us to better evaluate the merits of the privilege claim and to obtain an indication of the volume of work product involved. I also asked that the log include information about whether the Debtors had shared the requested documents with other persons or organizations. On the May 21 call, Mr. Calamari indicated that Debtors' counsel would not provide such a log. He said, however, that at least "some" documents exist in "most" of the following categories: memos analyzing the legal or factual basis for the claims; damages analysis; substantive communication with experts or consultants; summaries of documents; interview notes; and draft discovery requests.

Dated: Seattle, Washington

May 24, 2010



Edgar Sargent

EXHIBIT C

**SULLIVAN & CROMWELL LLP**

TELEPHONE: 1-212-558-4000  
FACSIMILE: 1-212-558-3588  
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MELBOURNE • SYDNEY

July 20, 2009

Via Federal Express

Benjamin I. Finestone,  
Quinn Emanuel Urquhart Oliver & Hedges, LLP,  
51 Madison Avenue, 22nd Floor,  
New York, New York 10010.

Re: *In re Washington Mutual Bank, et al.,*  
Case No. 08-12229 (MFW)

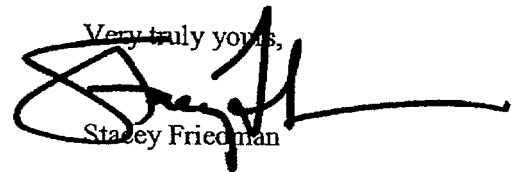
Dear Ben:

I enclose the Responses and Objections of JPMorgan Chase Bank, National Association ("JMPC") to Debtors' First Request for Production of Documents (the "First Request").

As indicated by the Responses and Objections, JPMC is prepared to meet and confer to discuss the production of certain categories of non-privileged documents that are responsive to the First Request under a reasonable, rolling production schedule.

Please contact me (212) 558-3104 to discuss.

Very truly yours,



Stacey Friedman

(Enclosure)

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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*In re*

WASHINGTON MUTUAL, INC., *et al.*,<sup>1</sup>

Debtors.

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: CHAPTER 11  
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: Case No. 08-12229 (MFW)  
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: Jointly Administered  
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: Ref. Docket No. 974  
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**RESPONSES AND OBJECTIONS OF  
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION TO  
DEBTORS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Adam G. Landis (I.D. 3407)  
Matthew B. McGuire (I.D. 4366)  
LANDIS RATH & COBB LLP  
919 Market Street, Suite 1800  
Wilmington, DE 19899  
Tel: (302) 467-4400

(Additional Counsel Listed on Signature Page)

*Counsel for JPMorgan Chase Bank,  
National Association*

July 20, 2009

---

<sup>1</sup> Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (a) Washington Mutual, Inc. (3725); and (b) WMI Investment Corp. (5395). Debtors continue to share their principal offices with the employees of JPMorgan Chase located at 1301 Second Avenue, Seattle, Washington 98101.

Pursuant to the Federal Rules of Civil Procedure, Local Rules of the District of Delaware, and any other applicable rules (collectively, the “Applicable Rules”), JPMorgan Chase Bank, National Association (“JPMC”), by its undersigned counsel, hereby responds and objects to Washington Mutual, Inc. and WMI Investment Corp.’s (together, “Debtors”) First Request for Production of Documents (the “First Request”), served on July 6, 2009, as follows:

### **GENERAL OBJECTIONS**

The following General Objections apply to each individually numbered document request set forth in the First Request and shall have the same force and effect as if set forth in full in response to each document request.

1. JPMC objects to the First Request to the extent it purports to be a request for discovery pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1 in accordance with the Court’s June 24, 2009 Order. That Order is subject to a motion for reconsideration. Debtors did not obtain the Court’s authorization to issue the First Request. JPMC views the First Request as Debtors’ first request for documents in *JPMorgan Chase Bank, National Association v. Washington Mutual, Inc.*, Adv. Proc. No. 09-50551 (MFW) and *Washington Mutual, Inc. v. JPMorgan Chase Bank, National Association*, Adv. Proc. No. 09-50934 (MFW) (collectively, the “Adversary Proceedings”).

2. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they purport to impose burdens or

duties upon JPMC that exceed the requirements or permissible scope of discovery under the Applicable Rules. JPMC will respond to the First Request in accordance with its obligations under the Applicable Rules, or as otherwise required by the Court.

3. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they seek information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity from disclosure. Any disclosure of information protected from discovery by the attorney-client privilege, the work product doctrine or any other applicable privilege, protection, immunity, law or rule is inadvertent and should not be construed to constitute a waiver.

4. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they seek information that is privileged or otherwise protected from disclosure pursuant to applicable (i) domestic or foreign banking privileges or bank regulatory laws and regulations, (ii) domestic or foreign bank secrecy laws, blocking laws or similar laws, or (iii) domestic or foreign criminal or civil laws (including privacy laws).

5. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they are overly broad, unduly burdensome and/or seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or in the above-captioned action (the



“Chapter 11 Case”), nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate.

6. To the extent that the Court may determine that the First Request is an appropriate request for discovery pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1, JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they seek information that is discoverable in the Adversary Proceedings, or that could be sought in connection with these proceedings under the Applicable Rules.

7. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they purport to impose burdens or duties, or seek information, beyond the scope of permissible discovery in the Adversary Proceedings or Chapter 11 Case.

8. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they seek confidential information of JPMC or its customers, clients or counterparties. JPMC will produce such information only after the entry of an appropriate confidentiality agreement, stipulation and/or order.

9. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they purport to seek documents not in JPMC’s possession, custody or control.

10. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they purport to seek documents that are publicly available or available to Debtors from a more convenient, less expensive or less burdensome source than from JPMC, including documents available to Debtors pursuant to the Information Access Agreement dated November 21, 2008, as it may be amended.

11. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they purport to require JPMC to reach legal conclusions about any document, thing or event.

12. JPMC objects to the First Request and to each Definition, Instruction and Specific Request contained therein to the extent that they purport to require any search for information beyond a reasonable search. In responding to the Request, JPMC will conduct, if necessary, a reasonable search of those files in its possession, custody or control in the United States in which information responsive to the First Request (as limited by these objections) is reasonably likely to be located in the reasonably accessible electronic files and hard copy files maintained by, or on behalf of, those individuals who are believed to have had significant involvement in the relevant matters.

13. JPMC reserves all objections that may be available to it at any hearing or trial or on any motion to the use or admissibility of any material produced. The

production of any material does not constitute an admission by JPMC that such material or the information contained therein is relevant to this action or admissible in evidence.

14. JPMC reserves the right to amend or supplement this response with additional objections and to produce additional documents that may become available or come to its attention in the future. JPMC may rely upon such information or documents in any hearing, trial or other proceeding in this litigation.

15. The failure of JPMC to make a specific objection to a particular, individual request is not, and shall not be construed as, an admission that responsive information exists. Likewise, any statement herein that JPMC will produce documents in response to an individual request does not mean that JPMC in fact has any such documents, or that any such document exists, or that JPMC will search all files maintained by any person, but instead reflects JPMC's intention, subject to its objections, to conduct a reasonable search for responsive documents.

16. JPMC objects to Definition 3 ("Any," "all" and "each") and to any specific document requests incorporating that definition on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase "otherwise could be construed outside of its scope"), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate.

17. JPMC objects to Definition 4 (“Communication”) and to any specific document requests incorporating that definition on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase “transmission of information, fact, opinion, belief, idea, statement, inquiry or otherwise”), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate.

18. JPMC objects to Definition 5 (“Concerning”) and to any specific document requests incorporating that definition on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrases “prepared in connection with” and “in any way legally, logically or factually concerned with the matter or document described, referred to or discussed”), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate.

19. JPMC objects to Definition 6 (“Document”) and to any specific document requests incorporating that definition on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase “meetings or other communications”), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Chapter 11

Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate.

20. JPMC objects to Definitions 10 ("JPMC"), 12 ("Washington Mutual"), 13 ("WMB"), 14 ("WMB fsb"), 15 ("WMI"), Instruction 4, and to any specific document requests incorporating those definitions and instruction on the grounds that such definitions and instruction and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase "persons acting or purporting to act on its behalf"), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate. For purposes of this First Request, JPMC will interpret the terms (i) "JPMC" to mean JPMorgan Chase Bank, National Association and JPMorgan Chase & Co., (ii) "Washington Mutual" to mean Washington Mutual, Inc. or Washington Mutual Bank, (iii) "WMB" to mean Washington Mutual Bank, (iv) "WMB fsb" to mean Washington Mutual Bank fsb, and (v) "WMI" to mean Washington Mutual, Inc.

21. JPMC objects to Definition 20 ("Transaction") and to any specific document requests incorporating that definition on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase "or any transaction preliminary, preparatory or incident thereto"), and seek information that is neither relevant to the claims, rights, or

interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate.

22. JPMC objects to Instruction 3 and to any specific document requests incorporating that instruction on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase "you or anyone acting on your behalf"), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate.

23. JPMC objects to Instruction 4 and to any specific document requests incorporating that instruction on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase "all other persons or entities acting in his, her, or its behalf or under his, her or its control"), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate. For purposes of this First Request, JPMC will construe the Instruction as seeking documents from only the individual, person or entity named in the Request.

24. JPMC objects to Instruction 6 and to any specific document requests incorporating that instruction on the grounds that such definition and any such document

requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase “whatever information or knowledge you have concerning each document not produced”), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate.

25. JPMC objects to Instruction 8 and to any specific document requests incorporating that instruction on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous, and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate.

26. JPMC objects to Instruction 10 and to any specific document requests incorporating that instruction on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous, and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate.

27. JPMC objects to Instruction 11 and to any specific document requests incorporating that instruction on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous, and seek information

that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate.

28. JPMC objects to Instruction 12 and to any specific document requests incorporating that instruction on the grounds that such definition and any such document requests are overbroad, unduly burdensome, vague and ambiguous (including but not limited to the phrase "relating in whole or in part to such period, or to events or circumstances during such period, even though dated, prepared, generated or received prior to that date"), and seek information that is neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate. Without waiving any objections, JPMC will produce non-privileged responsive documents, subject to objections interposed, for the period March 1, 2008 to September 26, 2008.

29. JPMC objects to the First Request on the ground that it seeks to impose an obligation on JPMC to produce responsive documents by August 1, 2009. Without waiving any objections, JPMC will produce responsive documents on a rolling basis and will comply with any scheduling order entered in the Adversary Proceedings. JPMC is also available to meet and confer with Debtors concerning the timing of production of documents.



## SPECIFIC OBJECTIONS

### REQUEST NO. 1

All documents concerning any agreement between JPMC and Washington Mutual concerning access to and/or disclosure of non-public, confidential or proprietary information in connection with any potential Transaction in 2008.

#### Response to Request No. 1

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is vague and ambiguous.

### REQUEST NO. 2

All documents concerning JPMC's disclosure of Washington Mutual's non-public, confidential or proprietary information to third parties, including but not limited to disclosure of such information to third parties to secure financing or raise capital in connection with any potential Transaction.

#### Response to Request No. 2

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrases "non-public,

confidential or proprietary information” and “in connection with any potential Transaction” are vague and ambiguous.

REQUEST NO. 3

All documents concerning any communications with any Governmental Unit regarding non-public, confidential or proprietary information related to Washington Mutual, including but not limited to JPMC’s receipt of non-public, confidential or proprietary information concerning Washington Mutual.

Response to Request No. 3

In addition to JPMC’s General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase “non-public, confidential or proprietary information concerning Washington Mutual” is vague and ambiguous.

REQUEST NO. 4

Documents sufficient to identify JPMC’s company policies and procedures concerning the protection or disclosure of non-public, confidential or proprietary information.

Response to Request No. 4

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrases "company policies and procedures" and "non-public, confidential or proprietary information" are vague and ambiguous.

REQUEST NO. 5

All documents concerning JPMC's interest in any potential Transaction.

Response to Request No. 5

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "JPMC's interest in any potential Transaction" is vague and ambiguous.

REQUEST NO. 6

All documents concerning any attempt by JPMC to engage in any Transaction in the spring and summer of 2008, including but not limited to JPMC's bid to merge with, purchase, or acquire Washington Mutual in or about April 2008.

Response to Request No. 6

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "concerning any attempt by JPMC to engage in any Transaction" is vague and ambiguous.

REQUEST NO. 7

All documents concerning any communications between JPMC and Washington Mutual concerning JPMC's interest in any potential Transaction in the spring and summer of 2008.

Response to Request No. 7

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the

Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC also objects to this Request on the ground that the phrase "JPMC's interest in any potential Transaction in the spring and summer of 2008" is vague and ambiguous.

REQUEST NO. 8

All documents concerning any communications between JPMC and any third party, concerning JPMC's interest in any potential Transaction in the spring and summer of 2008, including any communications with the FDIC or any other Governmental Unit.

Response to Request No. 8

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrases "concerning any communication between JPMC and any third party" and "any communications with the FDIC or any Governmental Unit" are vague and ambiguous.

REQUEST NO. 9

All documents concerning any due diligence performed by JPMC in connection with its interests in any potential Transaction in 2008.

Response to Request No. 9

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "in connection with its interests in any potential Transaction" is vague and ambiguous.

REQUEST NO. 10

All documents concerning any attempt by JPMC to engage in any potential Transaction in or about September 2008, including but not limited to any bid or offer by JPMC to merge with, invest in, or purchase Washington Mutual in or about September 2008.

Response to Request No. 10

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the

Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "concerning any attempt by JPMC to engage in any potential Transaction" is vague and ambiguous.

REQUEST NO. 11

All documents concerning capital contributions or investments received by JPMC in connection with any potential Transaction in or about September 2008.

Response to Request No. 11

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "concerning capital contributions or investments received" is vague and ambiguous.

REQUEST NO. 12

All documents concerning any communications between JPMC and the media, including but not limited to The Wall Street Journal, any other print, on-line,

broadcast, or cable news outlet, related to Washington Mutual, including but not limited to Washington Mutual's financial status, assets, and liabilities.

Response to Request No. 12

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "including but not limited to Washington Mutual's financial status, assets, and liabilities" is vague and ambiguous.

REQUEST NO. 13

All documents concerning any communications between JPMC and any Governmental Unit concerning the seizure and/or sale of Washington Mutual, including but not limited to communications with the US Department of the Treasury, the FDIC, and/or the OTS.

Response to Request No. 13

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the



Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "concerning the seizure and/or sale of Washington Mutual" is vague and ambiguous.

REQUEST NO. 14

All documents concerning actions considered or taken by any Governmental Unit concerning Washington Mutual, including but not limited to the seizure of WMB by the OTS and the appointment of FDIC as receiver.

Response to Request No. 14

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrases "concerning actions considered or taken" and "the seizure of WMB by the OTS and the appointment of FDIC as receiver" are vague and ambiguous.

JPMC further objects to this Request on the ground that it seeks documents not in JPMC's possession, custody or control, and/or which are publicly available or available to Debtors from the Governmental Units referred to in the Request.

REQUEST NO. 15

All documents concerning any agreement or arrangement between JPMC and any Governmental Unit concerning any potential Transaction or Transaction on or prior to September 25, 2008, including but not limited to any agreement or arrangement with the OTS and/or FDIC.

Response to Request No. 15

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it seeks information or documents that are neither relevant to the claims, rights, or interests of the Adversary Proceedings or Debtors in the Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate. JPMC further objects to this Request on the ground that the phrases "concerning any agreement or arrangement" and "any agreement or arrangement with the OTS and/or FDIC" are vague and ambiguous.

REQUEST NO. 16

All documents concerning any communications between JPMC and any Governmental Unit concerning any Transaction on September 25, 2008.

Response to Request No. 16

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "concerning any communications between JPMC and any Governmental Unit" is vague and ambiguous.

REQUEST NO. 17

Documents sufficient to identify the names of all persons who negotiated on behalf of JPMC in connection with entering into the P&A Agreement.

Response to Request No. 17

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate. JPMC further objects to this Request on the ground that the phrase "in connection with entering into the P&A Agreement" is vague and ambiguous.

REQUEST NO. 18

Documents sufficient to show JPMC's weighted average cost of capital, including but not limited to JPMC's cost of debt, cost of equity, yield on outstanding debt and the weighted average cost of capital for any loan or other financing obtained by JPMC.

Response to Request No. 18

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate. JPMC further objects to this Request on the ground that the phrases "weighted average cost of capital" and "other financing obtained" are vague and ambiguous.

REQUEST NO. 19

All documents concerning any investigations by federal, state or municipal government bodies of JPMC related to its acquisition of the assets of WMB.

Response to Request No. 19

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the

burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrases “related to its acquisition” and “municipal government bodies” are vague and ambiguous.

REQUEST NO. 20

All documents concerning any lawsuit or other legal action brought against JPMC related to its acquisition of the assets of WMB.

Response to Request No. 20

In addition to JPMC’s General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrases “concerning any lawsuit or other legal action” and “related to its acquisition of the assets of WMB” are vague and ambiguous.

REQUEST NO. 21

All documents concerning JPMC’s placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

Response to Request No. 21

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material. JPMC further objects to this Request on the ground that the phrase "concerning JPMC's placement of former JPMC employees" is vague and ambiguous.

REQUEST NO. 22

All documents concerning the disclosure of any of Washington Mutual's non-public, confidential or proprietary information by former JPMC employees working at Washington Mutual, including but not limited to Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

Response to Request No. 22

In addition to JPMC's General Objections, JPMC objects to this Request on the grounds that it is overbroad and unduly burdensome and/or seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors' bankruptcy estate, or whose relevance is outweighed by the burden JPMC would bear in attempting to collect, review and produce such material.

JPMC further objects to this Request on the ground that the phrases “concerning the disclosure” and “non-public, confidential or proprietary information” are vague and ambiguous.

REQUEST NO. 23

To the extent not otherwise covered by these requests, all documents produced in the Texas Action that relate to Washington Mutual.

Response to Request No. 23

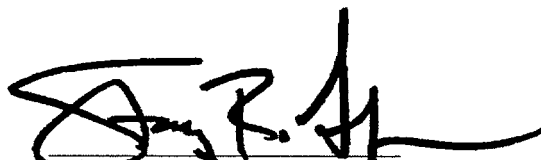
In addition to JPMC’s General Objections, JPMC objects to this Request on the grounds that it seeks information or documents that are neither relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, nor reasonably calculated to assist in the administration of Debtors’ bankruptcy estate. JPMC further objects to this Request on the ground that the phrase “that relate to” is vague and ambiguous.

\* \* \*

Subject to and without waiving the foregoing objections, JPMC is prepared to meet and confer to discuss the production of certain categories of non-privileged documents that are responsive to the First Request, that are relevant to the claims, rights, or interests of Debtors in the Adversary Proceedings or Chapter 11 Case, that are not available from another more convenient, less expensive or less burdensome

source (including but not limited to Debtors), and that are not unduly burdensome to collect, review and produce.

Dated: July 20, 2009  
Wilmington, Delaware



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EXHIBIT D

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Chapter 11  
 .  
WASHINGTON MUTUAL, INC., . Case No. 08-12229 (MFW)  
et al., . (Jointly Administered)  
 .  
 . January 28, 2010  
 . 4:00 p.m.  
Debtors. . (Wilmington)  
 .  
.....  
JPMORGAN CHASE BANK, .  
NATIONAL ASSOCIATION, .  
 .  
Plaintiff, .  
 .  
v. . Adv.Proc.No. 09-50551 (MFW)  
 .  
WASHINGTON MUTUAL, INC. AND .  
WMI INVESTMENT CORP., .  
 .  
Defendant for all claims .  
 .  
-and- .  
 .  
FEDERAL DEPOSIT INSURANCE .  
CORPORATION, .  
Additional Defendant .  
for Interpleader claim .  
 .  
.....  
WASHINGTON MUTUAL, INC. AND .  
WMI INVESTMENT CORP., .  
 .  
Plaintiffs, .  
 .  
v. . Adv.Proc.No. 09-50934 (MFW)  
 .  
JPMORGAN CHASE BANK, .  
NATIONAL ASSOCIATION, .  
 .  
Defendant. .  
.....

1 MS. TAGGART: We do have to show that the discovery  
2 that we request relates to the Debtors and that it is  
3 necessary for our investigation.

4 THE COURT: Right. Why is it necessary?

5 MS. TAGGART: It is possible - -

6 THE COURT: For an investigation?

7 MS. TAGGART: It is possible because we don't yet  
8 have the third party documents that those may be sufficient  
9 to determine that. What we know is that the FDIC has  
10 relevant documents to determining whether there were claims  
11 in a very material way. I know I go back to it, but for  
12 example, that indemnification clause is really at the heart  
13 of whether or not JPMorgan believed that it may be exposed to  
14 the very tort claims we're pursuing. Without, right now,  
15 because we still don't have the documents from third parties  
16 or really correspondence with third parties, I can't tell you  
17 whether once we get those, those will be sufficient. But I  
18 know the FDIC has relevant documents that will be important  
19 to evaluating the merits of these claims. And I believe that  
20 meets the standard that's set out for Rule 2004 examinations  
21 of third parties

22 THE COURT: Well, I'm going to deny the Debtors'  
23 request, and here's why. I did grant the 2004 discovery.  
24 Against JPMC. To allow the Debtor to explore whether the  
25 Debtor did have any potential claims against it under a

1 business tort theory. Despite the arguments that the Debtor  
2 could get that information by other means. I felt the 2004  
3 did allow the Debtor to conduct that discovery. But quite  
4 frankly, I think issuing subpoenas against dozens of third  
5 parties just goes too far. I don't think that's an  
6 appropriate use of Rule 2004. I think the Debtor has a dual  
7 burden in using 2004. First that it's absolutely necessary  
8 that we do an investigation, that we are unable, at this  
9 point, to determine we have a claim, that under Rule 11 we  
10 can file against JPMC. Now the Debtor has done extensive  
11 discovery and gotten extensive numbers of documents from  
12 JPMC. I'm not hearing that the Debtor does not believe it  
13 has a claim against JPMC or cannot determine that it has a  
14 claim against JPMC at this point. But the second prong is  
15 the Debtor has to prove that it is absolutely necessary to  
16 use Rule 2004 because the Debtor cannot obtain these  
17 documents any other way, and I'm not convinced at this point  
18 that that's correct. The Debtor already has obtained some  
19 voluntarily, the Debtor has obtained extensive discovery from  
20 JPMC. What I'm hearing with respect to the FDIC specifically  
21 is that really, looking at the discovery request and  
22 arguments of counsel, it's getting awfully close to claims  
23 that they may have against the FDIC itself. And I think that  
24 fact leads me to believe that specifically asked of them,  
25 this is really trying an end run against, around the rules

1 that would otherwise comply with the Federal Rules of Civil  
2 Procedure regarding discovery of claims between parties that  
3 are in a litigation posture. Again, you're getting documents  
4 voluntarily from the third parties. You're getting responses  
5 under Freedom of Information, and through other  
6 administrative means. I just do not see that the Debtor is  
7 prejudiced at this point from not being allowed to issue  
8 subpoenas against third parties that go on for paragraph  
9 after paragraph, not narrowly tailored to specific claims of  
10 a business tort against JPMC. So I'm not prepared to enter  
11 the order on the Debtors' motion. Do we want to take another  
12 short break?

13 MR. ROSEN: Well Your Honor, I just wanted to  
14 apprise the Court as to where we are. We have one additional  
15 matter on the agenda, and I have been informed that all told,  
16 it will probably take about an hour and a half to handle that  
17 matter.

18 THE COURT: Okay.

19 MR. ROSEN: We had informed the Court of that  
20 possibility and suggested that we have a Washington Mutual  
21 calendar tomorrow at 10:30 on a discrete matter, but that  
22 matter should take probably an hour and a half to two hours.  
23 If the Court recalls, it's the continuation and hopefully  
24 ending of the HF Almonton (phonetic) matter. I don't, and we  
25 had asked the Court at that time whether the Court would be

EXHIBIT E

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 08-12229 (MFW)

- - - - -x

In the Matter of:

WASHINGTON MUTUAL, INC., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court  
824 North Market Street  
Wilmington, Delaware

May 5, 2010

10:30 AM

B E F O R E:

HON. MARY F. WALRATH

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY

1 THE COURT: Good afternoon.

2 MR. CLARKE: John Clarke from DLA Piper, for the FDIC  
3 receiver.

4 As the Court is aware, we haven't taken a position  
5 either for or against this motion. I just needed to respond to  
6 Mr. Rosen's comments. I would refer back to the comments that  
7 I made at the omnibus hearing on April 6 as to the status. We  
8 don't have any changed status to report from those comments,  
9 and the record stands for itself as to what I said then. Thank  
10 you, Your Honor.

11 THE COURT: You want to remind us what you said then?

12 MR. CLARKE: We said that there were still significant  
13 open issues with the parties to the proposed settlement; that  
14 we continued to have discussions with those parties; that we  
15 had not yet resolved those issues; and there are other  
16 conditions to the settlement that still haven't been satisfied,  
17 but we're working with the goal of trying to achieve all that  
18 and get the proposed settlement agreed to and presented to this  
19 Court.

20 THE COURT: Thank you.

21 MR. CLARKE: Thank you.

22 THE COURT: Well, let me make my ruling. First, a  
23 preliminary issue. The filing of a motion to appoint a trustee  
24 will not eliminate the need for the Court to address the equity  
25 committee's motion to appoint an examiner. I made that point



1 the other day. And it could certainly lead to strategic  
2 filings of motions for appointment of trustees just to defeat a  
3 motion for appointment of an examiner. So that is of no moment  
4 to my ruling on this motion.

5 As I have recently ruled orally, so you can't really  
6 rely on it, but I will follow myself. I do believe that  
7 1104(c)(2) gives the Court some discretion, even if the debt  
8 level is reached, and the discretion is that the Court has the  
9 discretion to determine what appropriate investigation of the  
10 debtor should occur and that, if the Court determines that  
11 there's no appropriate investigation that needs to be  
12 conducted, the Court has the discretion to deny the appointment  
13 of an examiner.

14 The Courts have looked at various factors in  
15 determining whether an appropriate investigation is warranted.  
16 They include whether that investigation, that same  
17 investigation, has already been conducted by other parties.  
18 They have looked at whether the appointment of an examiner will  
19 increase costs and cause a delay with no corresponding benefit.  
20 Of course I've looked at the timing of the motion. I've looked  
21 at whether the motion is a litigation tactic, which includes  
22 the consideration of the timing, not just how soon it is in a  
23 case but whether it is timed such as to evidence a litigation  
24 tactic.

25 I think in this case it's a very close call. I don't

1 find that this is a litigation tactic, although it's been  
2 suggested that the shareholders are simply seeking to delay  
3 things while they replace management so that they can have --  
4 or, excuse me, the directors -- board of directors, so that  
5 they can tank the settlement. I'll accept their motion as  
6 being -- as they state it: an effort to have an investigation  
7 conducted by an independent third party to determine whether or  
8 not the plan proposed by the debtor, or this global settlement  
9 referred to by the parties, is appropriate and whether,  
10 instead, prosecution of those claims would result in a greater  
11 recovery for the estate.

12 Notwithstanding that, reviewing the factors, I think  
13 it is clear that the motion has to be denied at this point.  
14 First, it is clear to me that this debtor has been investigated  
15 to death. And I'm sure that even the most experienced and  
16 talented examiner that the United States Trustee could appoint  
17 would not find any stone unturned. The investigations have  
18 been conducted not only by the debtor and the creditors'  
19 committee, but by -- the equity committee itself has done some  
20 investigation; the Office of Thrift Supervision; the FDIC; the  
21 government task force, including the U.S. Attorney for the  
22 Western District of Washington; the Department of Labor; the  
23 Department of Justice; the FBI; the IRS; the SEC; the Attorney  
24 General for the State of New York; the class action plaintiffs;  
25 Congress; the U.S. Treasury; and the President's Financial

1 Fraud Task Force have all taken a look at Washington Mutual.  
2 It is true that their investigations exceeded the scope of what  
3 this Court need concern itself with. They have talked about  
4 systemic problems. They have investigated possible criminal  
5 actions by the parties. In this case the Court is limited to,  
6 as the equity committee suggests, the value of the estates and  
7 how they will be distributed in this bankruptcy case.

8 I don't think it is fair to the creditors in this case  
9 to be saddled with the cost of an investigation into systemic  
10 problems, that would only benefit future parties but not  
11 benefit the parties in this case. In this case specifically,  
12 the debtor and the creditors' committee have investigated the  
13 specific assets owned by the debtor, or that the debtor claims  
14 it owns. The debtor has vigorously appeared in and prosecuted  
15 its position in several adversaries in this case, in addition  
16 to filing a claim in the FDIC receivership and prosecuting  
17 claims it has in that forum. All of that information should be  
18 available to the equity committee. And I don't want to hear  
19 about obstacles being placed in their path to getting full and  
20 open access to that information, whether it's documentary or  
21 interviews with the debtors' management or others who have  
22 conducted these investigations; and the same goes with the  
23 creditors' committee, who's been actively involved in all of  
24 this.

25 Again, the appointment of an examiner here really

1 would -- an examiner really would only have the task of  
2 reviewing what others have already done. I don't think there's  
3 any original investigation left to be done. So I think that's  
4 just a waste of assets.

5           Secondly, I think the equity committee is fully able  
6 to conduct the investigation that it seeks to have the examiner  
7 conduct. It has the benefit of Rule 2004, it has the benefit  
8 of the discovery rules, because there are contested matters  
9 presently and anticipated in which the equity committee could  
10 fully avail itself of that discovery. But, again, I'm strongly  
11 urging the committee and the debtor to provide all the  
12 information to the equity committee without testing the Court's  
13 patience with discovery motions.

14           The -- again, the appointment of a third party to  
15 conduct that investigation and to report to the Court its  
16 conclusion is no substitute for the adversarial process extant  
17 in bankruptcy court and the duty of the Court, after hearing  
18 the views of the opposing parties, to make a decision as to  
19 what assets the debtor owns, what the value of those assets is,  
20 whether a settlement is reasonable, in resolving a conflicting  
21 claim to those -- to ownership to those assets.

22           Finally, the timing of the motion. I don't think that  
23 this is a factor that I'll rely on in this case. I think that  
24 in other cases it's been evident that parties have been  
25 litigating for many, many months, and only at the last minute

1 when a party thought it was going to lose did it file the  
2 motion for a tactical reason. In this case, the equity  
3 committee is relatively new to this case, only since January,  
4 and I don't think that the timing was meant -- is too late to  
5 consider it, nor was it meant as a litigation strategy.

6 Let's see. I don't know whether -- I'm not going to  
7 accept the debtors' arguments or the committee's arguments  
8 regarding delay here being a negative. I'm not sure how  
9 quickly the debtor honestly can proceed with its proposed plan  
10 but, at any rate, I think there is sufficient time -- should be  
11 sufficient time for the equity committee to conduct whatever  
12 investigation it feels is relevant. So I will deny the motion.

13 MR. ROSEN: Your Honor, we have prepared a very short  
14 order that says "Ordered that the motion is denied. And it is  
15 further ordered that this Court shall retain jurisdiction over  
16 any and all matters arising from or related to the  
17 implementation or interpretation of this order." With that,  
18 may I approach the bench?

19 THE COURT: You may. All right, I'll enter that  
20 order.

21 MR. ROSEN: Thank you. That concludes this morning's  
22 agenda.

23 THE COURT: Well, before we conclude, where do we  
24 stand on the 2019? Did you send out a notice of a hearing on  
25 that?

EXHIBIT F

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WRITER'S DIRECT DIAL NO.  
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WRITER'S INTERNET ADDRESS  
ericataggart@quinnemanuel.com

NOVEMBER 2, 2009

VIA EMAIL

Stacey Friedman, Esq.  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004-2498

Dear Stacey:

I write to meet and confer regarding JPMC's production of documents in response to the Subpoena for Rule 2004 Examination served on July 2, 2009 incorporating Debtors' First Request For Production of Documents pursuant to Bankruptcy Rule 2004 and Local Rule 2004.1. Despite JPMC's representation that it has completed its production of all requested documents, it appears that many categories of responsive documents remain outstanding.

JPMC's Responses to Debtors' First Request for Production of Documents

Following a thorough review of JPMC's production, it appears that there are few or no documents responsive to a number of requests, described below. Please confirm that no additional documents responsive to these requests exist, or let us know when JPMC will supplement its production as to these categories:

- Debtors' request No. 4 seeks "[d]ocuments sufficient to identify JPMC's company policies and procedures concerning the protection or disclosure of non-public, confidential or proprietary information." Based on our review, it appears that JPMC has failed to produce any such policies.
- Debtors' request No. 7 seeks "[A]ll documents concerning any communication between JPMC and Washington Mutual concerning JPMC's interest in any potential Transaction in the spring and summer of 2008." JPMC's production contains few documents that are potentially responsive to this request.

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- Debtors' request No. 8 seeks "[a]ll documents concerning any communication between JPMC and any third party, concerning JPMC's interest in any potential transaction in the spring and summer of 2008, including any communication with the FDIC or any other Governmental Unit." JPMC's production of very few documents in response to this request appears insufficient.
- Debtors' request No. 12 seeks "[a]ll documents concerning any communication between JPMC and the media, including but not limited to The Wall Street Journal, any other print, on-line, broadcast, or cable news outlet, related to Washington Mutual, including but not limited to Washington Mutual's financial status, assets, and liabilities." JPMC's production has very few documents that are responsive to this request.
- Debtors' request No. 13 seeks "[a]ll documents concerning any communication between JPMC and any Governmental Unit concerning the seizure and/or sale of Washington Mutual, including but not limited to communications with the US Department of the Treasury, the FDIC, and/or the OTS." It is Debtors' understanding that JPMC was in frequent contact with government regulators concerning Washington Mutual, yet JPMC's production contains very few documents that are responsive to this request. For example, JPMC has produced only a limited number of documents pertaining to the P&A transaction. According to our review, JPMC has produced only 24 email chains over the entire relevant period addressed to persons at the FDIC. Please confirm that JPMC has produced its entire correspondence on this topic, or explain the basis for JPMC to continue to withhold such relevant information.
- Debtors' request No. 14 seeks "[a]ll documents concerning actions considered or taken by any Governmental Unit concerning Washington Mutual, including but not limited to the seizure of WMB by the OTS and the appointment of FDIC as receiver." JPMC's production contains very few documents that are responsive to this request.
- Debtors' request No. 15 seeks "[a]ll documents concerning any agreement or arrangement between JPMC and any Governmental Unit concerning any potential Transaction or Transaction on or prior to September 25, 2008, including but not limited to any agreement or arrangement with the OTS and/or FDIC." JPMC's production contains very few documents that are responsive to this request.
- Debtors' request No. 19 seeks "[a]ll documents concerning any investigations by federal, state or municipal government bodies of JPMC related to its acquisition of the assets of WMB." JPMC has not produced any documents responsive to this request.



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- Debtors' request No. 20 seeks "[a]ll documents concerning any lawsuit or other legal action brought against JPMC related to its acquisition to the assets of WMB." JPMC has not produced any documents responsive to this request.
- Debtors' request No. 21 seeks "[a]ll documents concerning JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray." JPMC has not produced any documents responsive to this request.

#### Concerns about Completeness of Review

We also have some concerns about the completeness of JPMC's review based on some incomplete production of documents and lack of documents from seemingly relevant custodians. For example, an email exchange (JPM\_EX00026119) between S. Polakoff at the OTS and R. Cohen at Sullivan & Cromwell appears relevant but does not contain the original email in the conversation.

Also glaring is the absence of communications from numerous JPMC individuals working on "Project West." See JPM\_EX0000870. It appears that each of the custodians that were part of that team would have relevant documents. However, although they were listed as members of the Project West team, JPMC produced only three emails written by Chris Sieve. Similarly, Jim Hibbert, although Head of the REB Commercial Credit department at JPMC and listed as a member of Project West, does not have any email correspondence in JPMC's production.

Thus, please confirm that JPMC searched the files of all persons involved in Project West, and investigate whether the email referred to above or any other responsive emails should also have been included in JPMC's production.

#### Privilege log

Although JPMC asserts that its production was complete over a month ago -- September 25, 2009 -- Debtors have yet to receive JPMC's privilege log. Please provide a date certain on which JPMC will provide a privilege log listing all documents withheld on privilege grounds, the basis for the privilege, and information sufficient to justify any privilege.

#### Government and Third Party Confidentiality Issues

We understand that JPMC has withheld a number of documents on the basis of confidentiality restrictions by the OTS and other governmental agencies. As an initial matter, very little if any of JPMC's materials are likely to fall under this confidentiality restriction given the limitations of 12 C.F.R. § 510.5 given that none of the requests would implicate materials concerning any OTS

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regulation of JPMC. We do not understand how JPMC can claim that WMI, the former holding company of two OTS-regulated banks, is not permitted to view regulatory material from before September 25, 2008. Thus, please explain the basis for your decision to withhold documents on this basis.

Even if those regulations did cover any documents held by JPMC, JPMC cannot use those restrictions as a basis to withhold documents indefinitely. It is Debtors' understanding that many of these issues can be resolved through an appropriate protective order and agreement with those agencies. In fact, the most recent draft of the Confidentiality Stipulation and Protective Order circulated by Debtors includes language approved by the OTS permitting the disclosure of unpublished OTS information to Debtors and certain other parties pursuant to certain confidentiality protections. Thus, we expect JPMC will promptly produce any documents initially withheld on the basis of an OTS confidentiality issue as soon as such a confidentiality agreement has been executed.

At any rate, please confirm that JPMC is working with those government agencies to obtain their consent for disclosure. And please promptly provide a log of all documents JPMC continues to withhold on the basis of confidentiality restrictions by the OTS or other government agencies.

#### Unprocessed Documents

Debtors were unable to access documents with the following Bates numbers: JPM\_EX00015741, JPM\_EX00015756, JPM\_EX00015760, JPM\_EX00017758, JPM\_EX00016965, JPM\_EX00005405, JPM\_EX00005872-73, JPM\_EX00028776-81, JPM\_EX00031528-9, JPM\_EX00031537-8, and JPM\_EX00027861-71, JPM\_EX00033402-5, JPM\_EX00033496-7, JPM\_EX00034307-310, JPM\_EX00034313-4, JPM\_EX00034322-3, JPM\_EX00034329-30, JPM\_EX00034348-9, JPM\_EX00036061-2, JPM\_EX00036328, JPM\_EX00036920-1, JPM\_EX00036923-4. Please provide native files for these unprocessed documents.

#### Undisclosed recipients

Debtors have identified a number of documents, in the form of emails, which do not disclose the name/names of the recipients to whom they were addressed. The documents in question have the following Bates numbers: JPM\_EX00012252, JPM\_EX00012305, JPM\_EX00012461, JPM\_EX00004103, JPM\_EX00030765, and JPM\_EX00030307. Please provide the list of all the recipients for these emails.

#### Documents with 7/6/2009 modified date

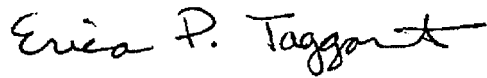
JPMC's production includes a large number of documents with a modified date of 7/6/2009. Debtors request that JPMC provide an explanation for why so many documents were modified on that date.

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We appreciate your prompt attention to the matters raised in this letter. We ask that JPMC provide a response to these issues before next Wednesday November 2. We would also be glad to discuss these issues in a telephonic meet-and-confer at your earliest convenience.

Very truly yours,

A handwritten signature in black ink that reads "Erica P. Taggart". The signature is written in a cursive style with a long horizontal flourish at the end.

Erica Taggart

03935.61559/3181192.1

03935.61559/3181192.1

EXHIBIT G

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DECEMBER 28, 2009

**VIA EMAIL AND U.S. MAIL**

Brian Glueckstein, Esq.  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004-2498

Dear Brian:

I write in response to your December 21, 2009 letter continuing our discussion regarding JPMorgan Chase Bank, N.A.'s ("JPMC") production pursuant to the Court's June 24, 2009 order granting a rule 2004 examination of JPMC. In particular, this letter addresses the following issues: (1) deficiencies in JPMC's production from custodians it identified as having produced from already, (2) reasons to doubt JPMC's conclusion that the custodians it excluded lack relevant documents; and (3) WMI's unwillingness to agree not to seek additional documents based on discovery still to be produced.

**JPMC's 2004 PRODUCTION**

**Deficiencies in JPMC's 2004 Production**

Although JPMC's offer to search additional custodians is a step in the right direction for both parties, it bears noting at the outset that JPMC's production from the custodians it claims it searched remains deficient. A review of the production from the seventeen custodians identified in JPMC's November 27, 2009 letter shows that JPMC did not produce sufficient documents even from those individuals it identifies as searched custodians. For example, JPMC produced few documents from the following custodians included in JPMC's search:

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- Only nine documents sent by Jamie Dimon, CEO and Chairman of JPMC, despite the fact that Dimon was the author of the main negotiating documents sent to Washington Mutual and the recipient of communications from the FDIC.<sup>1</sup>
- Only three documents sent by Douglas Braunstein, head of Americas IBC and M&A.
- Fourteen documents sent by Kevin Willsey, head of Equity Capital Markets at JPMC.
- Although JPMC produced over a 100 documents from Charlie Scharf, that remains a strikingly low number given Mr. Scharf's involvement in the deal and a time period for production that covered March through September of 2008.

For this reason, we continue to request that JPMC either supplement its production for the custodians included in its search or reveal JPMC's search and review process, including the search terms or other methods to narrow the documents reviewed for production, so that we can assess the reasonableness of JPMC's methods.

#### The Custodians Which JPMC Proposes Not Be Searched

Of the thirty-seven custodians identified by WMI, JPMC has represented that it already searched thirteen of them and proposes to search an additional eight. This leaves sixteen custodians that WMI listed as likely having relevant documents that would not be included in any document collection. Keeping in mind that it is JPMC's obligation to identify relevant custodians, we have reason to believe that many of the remaining sixteen custodians do in fact have relevant documents.

- Scott Albinson, Managing Director in the Financial Institutions and Government Group (FIG). Albinson was previously employed by the OTS and while at the OTS covered Washington Mutual as part of his duties. In addition, it appears that Mr. Albinson's work for JPMC involved continued contact with government regulators.<sup>2</sup>

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<sup>1</sup> See, e.g., JPM\_EX00026607-11, a March 7, 2008 email from Jamie Dimon to Kerry Killinger seeking a "prompt" response answering whether Washington Mutual has a true interest in pursuing a transaction with JPMC; see also JPM\_EX00036140, a September 24, 2009 email from Sheila Bair at the FDIC to Mr. Dimon stating that JPMC is "the high bid."

<sup>2</sup> For example, Mr. Albinson sent an internal JPMC email on July 11, 2008 (JPM\_EX00012238), asking if "we have a call this weekend or Monday morn to sort out possible advisory roles for FDIC vs. buy side advisory (not to mention possible JPM principal interest in asset management world) in future receivership actions." Furthermore, it appears Mr. (footnote continued)

- Brian Keegan, Managing Director, Capital Structure Advisory & Solutions, was heavily involved in due diligence and met with ratings agencies regarding Washington Mutual.<sup>3</sup>
- Genevieve Hovde, an analyst in FIG. Documents produced thus far reveal Hovde was intimately involved in due diligence to acquire Washington Mutual and was aware of meetings between high-ranking JPMC employees and government regulators.
- Tom Kelly, a member of JPMC's PR Department, who, on information and belief, had access to WMI's deposit outflows and was monitoring them closely. In addition, Tom Kelly worked with the FDIC on at least September 25, 2009.<sup>4</sup>
- Sean Carmody, an associate in the Investment Banking (IB) and FIG group who was involved in due diligence for JPMC throughout 2008.<sup>5</sup> Mr. Carmody also prepared a presentation for the ratings agencies regarding WMI.<sup>6</sup>
- John R. Chrin, a Managing Director in Investment Banking / FIG. Mr. Chrin was involved in due diligence and potential disclosure of WMI information.<sup>7</sup> Mr. Chrin was also aware of disclosure of WMI information to ratings agencies.<sup>8</sup>

---

Albinson was selected based on his prior work at the OTS. *See* JPM\_EX00014809, a March 10, 2008 internal JPMC email from Tim Main to Charlie Scharf and Michael Cavanagh suggesting including Albinson on the "West FIG Team" because he "covered WAMU at OTS."

<sup>3</sup> *See* JPM\_EX00012938-47, a September 19, 2008 internal JPMC e-mail from Mr. Keegan regarding meetings with Moody's about JPMC's potential acquisition of WaMu in which the parties also discussed "Paulson's 'rtc' plan". According to Mr. Keegan's email, Jamie Dimon was also at this meeting.

<sup>4</sup> *See* JPM\_EX00037102, a September 25 email from the FDIC to JPMC inviting a JPMC representative to participate on a "conference call tonight." The email is then forwarded internally within JPMC by Joseph Evangelisti to Mr. Scharf. Mr. Evangelisti tells Mr. Scharf: "just talked to my FDIC counterpart. Tom Kelly is planning to join the call and simply make a couple positive statements (from our press release)".

<sup>5</sup> *See, e.g.*, JPM\_EX00010958 (estimating employee insurance for WMI in March 2008); JPM\_EX00012782 (performing additional due diligence in September 2008).

<sup>6</sup> *See* JPM\_EX00023132, a March 29, 2008 email from Mr. Carmody to various Project West members attaching a "rating agency deck." The attached PowerPoint contains WMI information and details JPMC's plan to acquire Washington Mutual's banking franchise. JPM\_EX00023133-74.

- Barry L. Zubrow, Chief Risk Officer in the Credit Department, was heavily involved in due diligence and aware of potential government involvement in the acquisition.<sup>9</sup>
- Adam Gilbert, a Managing Director in Accounting. JPMC's documents identify Mr. Gilbert as involved in JPMC's September 2008 due diligence, including directly contacting WMI employees seeking the disclosure of information.<sup>10</sup>
- Thomas D. Novack, Managing Director, IB-FIG, was a Project West Team Leader involved in due diligence and suggested to Charlie Scharf that Mr. Scharf speak with Steve Rotella at WMI in order to acquire information on WMI.<sup>11</sup>
- Frank J. Bisgnano, Chief Administrative Officer, was a team leader on Project West and involved in due diligence, including on-site in Seattle.<sup>12</sup>
- Jay Mandelbaum, an Executive VP, was a Project West Team Leader involved in due diligence and emailed directly and met with Mr. Scharf and Mr. Cavanagh regarding WMI.<sup>13</sup>

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<sup>7</sup> See JPM\_EX00011679-81, an April 12, 2008 internal JPMC email from Oliver X de Grivel to various, including John Chrin, asking for "a ready made analysis of the wamu deal which [JPMC] could share with external clients in China".

<sup>8</sup> See JPM\_EX00023132, a March 29, 2008 email from Mr. Carmody to Mr. Chrin and others attaching a PowerPoint presentation to be shown to ratings agencies which includes information on WMI and JPMC's plan to acquire WMI's banking assets.

<sup>9</sup> See JPM\_EX00031948 a September 19, 2008 JPMC internal email between Mr. Zubrow to Mr. Cavanagh asking if "the RTC/RFC kills project Ocean? Or just redistribute the economics?" Mr. Cavanagh responds that he has considered the possibility but that "I don't see how that helps."

<sup>10</sup> See JPM\_EX00004647-48, a September 24, 2008 email chain regarding FDIC's assessment of WaMu's deposits. The chain includes an email from Mr. Gilbert regarding his conversation with John Robinson of WaMu regarding the FDIC's assessment.

<sup>11</sup> See JPM\_EX00007617, a March 12, 2008 email from Mr. Novack to Mr. Scharf. About a week later, Mr. Rotella and Mr. Scharf exchanged emails in which Mr. Scharf thanked Mr. Rotella for his "time" and "openness."

<sup>12</sup> See JPM\_EX00016653, a March 13, 2008 email from Fernando Rivas to Project West members, advising the team leaders of travel plans for due diligence in Seattle.

<sup>13</sup> See, e.g., JPM\_EX00016773, JPM\_EX00013787, and JPM\_EX00013935 (March emails discussing due diligence matters and setting up a meeting).



- John F. Bradley, HR Director and Project West Team Leader, was intimately involved in due diligence and therefore had access to internal WMI information.<sup>14</sup>
- Kevin Watters, Business Banking executive and Project West Team Leader, was involved in due diligence and had access to internal WMI information.<sup>15</sup> Mr. Watters was also aware of a likely takeover of WMB's banking assets on September 17, 2008.<sup>16</sup>
- Martha Gallo, General Auditor in the Accounting Department, a Project West Team Leader involved in due diligence.<sup>17</sup>
- Todd Maclin, Head of Commercial Banking Real Estate, a Project West Team Leader involved in due diligence with respect to commercial banking.<sup>18</sup>
- William King, former IB executive, was a Project West Team Leader involved in due diligence. On at least one occasion, Mr. King expressed concerns regarding the maintenance of confidentiality with respect to WMI information.<sup>19</sup>

Thus, we continue to believe that all of these custodians likely have relevant documents that should be involved in JPMC's collection.

#### Reservation of Rights

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<sup>14</sup> See, e.g., JPM\_EX00016510, a March 2008 email from Mr. Bradley to Mr. Bessey regarding due diligence.

<sup>15</sup> See, e.g., JPM\_EX00018068, a March 2008 email from Mr. Watters requesting access to the WMI Data Room.

<sup>16</sup> See JPM\_EX00031133, a September 17, 2008 email from Mr. Watters to Mr. Scharf discussing how JPMC would manage business banking "in a quick transition."

<sup>17</sup> See, e.g., JPM\_EX00001982, JPM\_EX00001698, emailing Mr. Bessey and others discussing the audit department's work on due diligence matters.

<sup>18</sup> See, e.g., JPM\_EX00004333, a September 25, 2008 email exchange between Mr. Maclin and Sally Durdan regarding WMI commercial loans. Mr. Maclin's importance in the project is exemplified by his direct contact with Mr. Scharf and his ability to add team members. See JPM\_EX00016975-77, a March 14, 2008 email exchange between Mr. Maclin and Mr. Scharf and Mr. Cavanagh, in which Mr. Maclin requests an additional team member and Mr. Scharf acquiesces.

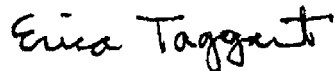
<sup>19</sup> See JPM\_EX00016718, a March 13, 2009 email from Mr. King to Mr. Cavanagh regarding "portfolio evaluation work" and expressing concern about "keeping this confidential" and explaining that "if the CIO begins requesting this kind of information internally or around the Street it may become obvious" to "those that are asked that something larger is happening."

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Finally, we cannot agree to your premise that WMI must give up its rights to search for documents from additional custodians before JPMC will agree to conduct a more extensive search. Although WMI has identified relevant custodians above, it remains JPMC's obligation to identify relevant custodians. Thus, if WMI learns of information identifying additional custodians as relevant in the future, it must maintain the right to request a search of that custodian's files.

We continue to hope that we can reach an agreement short of court intervention about a supplemental production from JPMC, but believe these disagreements prevent any agreement on the terms proposed in your letter. Please contact me if you would like to discuss further.

Very truly yours,

A handwritten signature in black ink that reads "Erica Taggart". The signature is written in a cursive, slightly slanted style.

Erica Taggart

EXHIBIT H

**PROJECT WEST TEAM LEADERS**

	<b>Name</b>	<b>Title</b>
1	Althea L Duersten	Managing Director – Chief Investment Office
2	Barry L Zubrow	Chief Risk Officer – Credit Dept
3	Benjamin Lopata	Managing director – Tax Dept
4	Brian A Bessey	Corp -M&A Dept
5	Charlie Scharf	EVP/CEO - CEO Chase Retail Financial Services
6	David B Lowman	CEO – Home Lending Dept
7	Douglas Braunstein	Head of Americas IBC and M&A
8	Fernando Rivas	Managing Director IB-FIG
9	Frank J Bisignano	Chief Administrative Officer
10	Gordon Smith	CEO- Card Service Dept
11	Gregg B Gunselman	Executive Director – IB-FIG
12	Jay Mandelbaum	EVP/ Strategy & Development Exec – Admin Dept
13	John F Bradley	HR Director
14	John R Chrin	Managing Director (IB-FIG)
15	Kevin Watters	SVP/Business Banking Executive
16	Louis Rauchenberger	MD & Corporate Controller – Accounting Dept
17	Martha Gallo	General Auditor– Accounting Dept
18	Mike Cavanagh	EVP/CFO
19	Neila Radin	Legal Compliance
20	Raymond Fischer	CFO – LOB
21	Sally E Durdan	EVP/Corporate Finance Executive – Retail Admin Dept
22	Scott E Powell	Branch Banking
23	Stephen M Cutler	General Counsel
24	Thomas D. Novack	Managing Director IB-FIG

**ADDITIONAL RELEVANT PEOPLE**

25	Adam Gilbert	Managing Director
26	Brian Keegan	Managing Director - CSAS
27	Dan Cooney	SVP / General Counsel
28	Genevieve E Hovde	Analyst IB-FIG
29	Jamie Dimon	JPMC CEO
30	Joseph Evangelisti	Corporate Communications and media Relations
31	Scott Albinson	JPMC banker
32	Sean Carmody	Associate IB-FIG
33	Tim Main	Head of NA FIG

EXHIBIT I

# SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000  
FACSIMILE: 1-212-558-3588  
WWW.SULLCROM.COM

*125 Broad Street*  
*New York, NY 10004-2498*

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MELBOURNE • SYDNEY

December 21, 2009

Via E-mail

Erica Taggart, Esq.,  
Quinn Emanuel Urquhart Oliver & Hedges, LLP,  
865 South Figueroa Street, 10th Floor,  
Los Angeles, California 90017.

Re: Washington Mutual Litigation Discovery

Dear Erica:

I write in response to your December 18, 2009 letter continuing the dialogue regarding JPMorgan Chase Bank, N.A.'s ("JPMC") response to the Subpoena for Rule 2004 Examination (the "Rule 2004 Requests"). While your summary of my two conversations with Debtors' counsel on December 11, 2009 (one of which you did not participate in) is less than complete and in certain respects inaccurate, it would be a waste of resources to respond to your letter point-by-point simply to reiterate what has been discussed orally. Instead, I will focus on JPMC's proposal in response to Debtors' request for additional JPMC custodians to be searched in response to the Rule 2004 Requests so to avoid having to burden the Court with an avoidable discovery dispute.

As we have told you numerous times, JPMC did not "exclude" any custodian JPMC reasonably believed should be searched. JPMC's response to the Rule 2004 Requests—which is a response to a third-party subpoena—satisfies its obligations under all applicable rules. Nonetheless, Debtors have provided a list of 34 JPMC custodians who you believe might have relevant documents ("Debtors' List"). Your December 18, 2009 letter confirms that, in Debtors' opinion, those 34 custodians constitute "a reasonable list of those people WMI can identify as having relevant documents."

As detailed in my letter dated November 27, 2009, JPMC searched and produced documents from the 12 custodians on Debtors' List (plus 5 other custodians) whom JPMC identified as potentially having documents responsive to the Rule 2004

Requests. JPMC disagrees with Debtors as to the utility of additional searches. Of the 22 remaining custodians on Debtors' List, there are 14 custodians who, as discussed with Justin Brownstone on December 11, 2009, had limited or no substantive, decision-making involvement in Project West, and therefore are not among the primary custodians who are most likely to have documents responsive to Debtors' Rule 2004 Requests. In an effort to be reasonable and to avoid wasting the Court's resources on this dispute, however, JPMC is prepared to incur the cost and proceed with the search and review of documents from the remaining 8 custodians on Debtors' List: Althea Duersten, Joseph Evangelisti, Raymond Fischer, Ben Lopata, David Lowman, Scott Powell, Neila Radin, and Gordon Smith. JPMC will search another custodian or two from Debtors' List that Debtors select, regardless of the fact that these individuals were not centrally involved with the relevant events. Nothing contained in JPMC's proposal is a concession that JPMC's response to the Rule 2004 Requests is deficient in any way, or that any of the custodians on Debtors' List are likely to possess documents responsive to the Rule 2004 Requests. JPMC reserves the right to object to any formal discovery requests directed to it relating to these or other JPMC custodians.

JPMC's proposal is contingent upon Debtors agreeing that this voluntary search and review will conclusively resolve the current issue of the number of JPMC custodians searched in response to the Rule 2004 Requests. Moreover, any additional JPMC custodians will be searched once both in response to the Rule 2004 Requests and Debtors' First Request for Documents in the bankruptcy adversary proceedings, and any documents responsive to either request will be produced as responsive to both requests.

We are available to discuss this proposal at any mutually convenient time.

Sincerely,

  
Brian D. Glueckstein

EXHIBIT J



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

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

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**ORDER PURSUANT TO BANKRUPTCY RULE 2004 AND LOCAL BANKRUPTCY  
RULE 2004-1 DIRECTING THE EXAMINATION OF JPMORGAN CHASE**

Upon the motion (the "Motion") of the Official Committee of Equity Security Holders, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure and Local Rule 2004-1 of the United States Bankruptcy Court for the District of Delaware, for the entry of an order directing discovery from and the examination of JP Morgan Chase ("JPMC," as defined in the Motion); and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B); and upon consideration of the Motion; and due and proper notice of the Motion having been given, it is hereby

ORDERED that the Motion is granted; and it is

ORDERED that JPMC shall produce documents on or before the date that is fifteen (15) days after entry of this Order responsive to the discovery requests set forth in Schedule 1 attached hereto, at the offices of Susman Godfrey, LLP, 654 Madison Ave., 5th Floor, New York, NY 10065; and it is

ORDERED that the Equity Committee is authorized to issue deposition subpoenas to JPMC pursuant to Federal Rule of Civil Procedure 30(b)(6) concerning the

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

subpoenas to JPMC pursuant to Federal Rule of Civil Procedure 30(b)(6) concerning the documents produced pursuant to this Order and the subject matter described in the requests attached hereto as Schedule 1, as well as subpoenas for specifically identified persons believed by the Equity Committee to be knowledgeable about those documents and subjects; and it is

ORDERED that the Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

DATED: Wilmington, Delaware

\_\_\_\_\_, 2010

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Honorable Mary F. Walrath  
United States Bankruptcy Judge

## SCHEDULE 1

### FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

#### DEFINITIONS

The following terms (whether or not capitalized) shall have the meanings set forth below:

1. “Adversary Proceedings” means or refers to the JPMC Adversary Proceeding and the Turnover Proceeding.
2. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
3. “Bankruptcy Code” means or refers to the Bankruptcy Reform Act of 1978, as amended, to the extent codified in Title 11, United States Code, as applicable to the Chapter 11 Cases.
4. “Chapter 11 Cases” means the jointly administered cases commenced by the Debtors styled as *In re Washington Mutual, Inc., et al.* and being jointly administered in the Bankruptcy Court, Case No. 08-12229 (MFW), under chapter 11 of the Bankruptcy Code.
5. “Communication” means any oral, written or electronic transmission of information, including without limitation any letter, correspondence, memorandum, electronic-mail message, note or meeting log, conversation, meeting, discussion, telephone call, facsimile, telegram, telex, conference or message.
6. “Concerning” means comprising, consisting of, concerning, referring to, reflecting, regarding, supporting, evidencing, or relating to, the matter or document described, referred to or discussed.
7. “DC Action” refers to *Washington Mutual, Inc. and WMI Investment Corp. v.*

*Federal Deposit Insurance Corporation*, No. 1:09-cv-00533 (D.D.C.).

8. The “Disclosure Statement” means or refers to the Disclosure Statement for the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, filed on or about March 26, 2010, in the Chapter 11 Cases; the Disclosure Statement for the First Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, filed on or about May 16, 2010, in the Chapter 11 Cases; and any subsequently filed Disclosure Statement for any further amended Joint Plan filed by WMI in the Chapter 11 Cases.

9. “Document” is used in its broadest sense and mean and include any written or graphic matter or other means of preserving thought or expression and all tangible things from which information can be processed or transcribed, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copy or otherwise, including but not limited to, correspondence, memoranda, notes, messages, letters, telegrams, teletype, telefax, bulletins, records of meetings or other communications, records of interoffice and intraoffice telephone calls, diaries, chronological data, minutes, books, reports, studies, summaries, pamphlets, bulletins, printed matter, charts, ledgers, invoices, worksheets, receipts, returns, computer printouts, prospectuses, financial statements, schedules, affidavits, contracts, cancelled checks, statements, transcripts, statistics, surveys, magazine or newspaper articles, releases (and any and all drafts, alterations and modifications, changes and amendments of any of the foregoing), graphic or aural records or representations of any kind (including without limitation photographs, microfiche, microfilm, videotape, records and motion pictures) and electronic, mechanical or electric records or representations of any kind (including without limitation tapes, cassettes, discs and records).

**PLEASE NOTE:** The Documents requested herein include Documents that came within JPMC's possession, custody, or control as a result of the acquisitions reflected in the P&A Agreement (as defined below) and that formerly were within the possession, custody, or control of WMI, WMB, or WMB fsb (as those terms are defined below).

10. "Entity" means a person, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, governmental unit or any subdivision thereof, including, without limitation, the office of the United States Trustee, or any other entity.

11. "Equity Committee" means or refers to the official committee of equity security holders appointed in the Chapter 11 Cases.

12. "FDIC" means or refers to the Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank, Henderson Nevada, and in its corporate capacity.

13. "Federal Home Loan Bank System" means or refers to the Federal Home Loan Bank System, including its regional federal home loan banks and any of their present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

14. "Governmental Unit" has the meaning set forth at 11 U.S.C. § 101(27).

15. "Including" means including but not limited to the referenced subject.

16. "JPMC" means JPMorgan Chase Bank, National Association, JPMorgan Chase & Co., any Entity or bank acquired by JPMorgan Chase Bank, National Association or any of its subsidiaries or affiliates pursuant to the P&A Agreement (as defined below), and any of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on its behalf, any of its

parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

17. “JPMC Adversary Proceeding” refers to *JPMorgan Chase Bank, National Association v. Washington Mutual, Inc., et al.*, Adversary Proceeding No. 09-50551 (Bankr. D. Del.).

18. “JPMC’s Responses” means the “Responses and Objections of JPMorgan Chase Bank, National Association to Debtors’ First Request for Production of Documents,” dated July 20, 2009, and served by JPMC on the debtors in the Chapter 11 Cases.

19. “OTS” means the Office of Thrift Supervision, and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

20. “P&A Agreement” means or refers to the Purchase and Assumption Agreement, Whole Bank, among the Federal Deposit Insurance Corporation, as receiver of Washington Mutual Bank, Henderson, Nevada, the Federal Deposit Insurance Corporation and JPM, dated as of September 25, 2008.

21. The “Proposed Global Settlement Agreement” means the Proposed Global Settlement Agreement described in the Disclosure Statement and any subsequent or revised drafts of that agreement.

22. “Purchase Price” means the approximately \$1.88 billion that JPMC paid to the FDIC for the purchase of substantially all of the assets of WMB as reflected in Schedule 3.2 to the P&A Agreement.

23. “Texas Action” refers to *American Nat’l Ins Co., et al., v. JPMorgan Chase & Co., et al.*, Case No. 3:09-cv-00044 (S.D. Tex.), which was transferred to the United States

District Court for the District of Columbia and docketed there as Civil Action No. 09-1743 (RMC).

24. “Transaction” means or refers to any means by which JPMC or any of them might obtain, receive or succeed to Washington Mutual’s businesses or properties, or any portion thereof, including any stock tender, stock purchase, asset purchase, assumption of deposit or other liabilities, merger, joint venture or partnership.

25. “Turnover Proceeding” means *WMI and WMI Investment Corp. v. JPMC*, No. 09-50934 (Bankr. D. Del.).

26. “U.S. Department of the Treasury” means or refers to the U.S. Department of the Treasury and any of its present and former officers, directors, employees, representatives, agents or attorneys; and any other Person acting on behalf of any of them.

27. “Washington Mutual” means or refers to WMI and WMB, and any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

28. “WMB” means or refers to Washington Mutual Bank, Henderson, Nevada, and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

29. “WMB fsb” means or refers to Washington Mutual Bank, fsb, Utah, and any and all of its current or former officers, directors, employees, shareholders, agents, staff, attorneys,

accountants, outside consultants, representatives and other persons acting on its behalf, any of its parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

30. “WMI” means or refers to Washington Mutual, Inc. and WMI Investment Corp. (collectively, the “Debtors”) and any and all of their current or former officers, directors, employees, shareholders, agents, staff, attorneys, accountants, outside consultants, representatives and other persons acting on their behalf, any of their parent corporations, holding companies, subsidiaries, affiliates, divisions, departments, predecessors and/or successors-in-interest.

31. “WMI RFPs” means or refers to the WMI’s First Request for Production of Documents served on JPMC on or about July 6, 2009.

32. “You” or “Your” means or refers to JPMC, individually or collectively, to whom this subpoena is addressed, and any owner, director, officer, employee, agent, custodian, parent, subsidiary, affiliate, predecessor, successor, attorney, accountant, representative, and other Persons purporting to act on your behalf.

33. Any ambiguity in a discovery request shall be construed to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.

### **INSTRUCTIONS**

Each response must be made in accordance with the following instructions:

1. The responsive documents should be produced in the manner prescribed by the Federal Rules of Civil Procedure, as made applicable herein by the Federal Rules of Bankruptcy Procedure, including producing the requested documents as they are kept in the usual course of



business or organized and labeled to correspond with the categories in the requests, and identifying the name of the person from whose files the documents were produced.

2. You are to produce the original and all non-identical copies, including all drafts, of each document requested. If you are not able to produce the original of any document, please produce the best available copy and all non-identical copies, including drafts.

3. Each request herein extends to all documents and communications in your possession, custody or control. A document is deemed to be in your possession, custody, or control if it is in your physical custody, or if it is in the physical custody of any other person and you: (1) own such document in whole or in part; (2) have a right, by contract, statute or otherwise, to use, inspect, examine or copy such document on any terms; (3) have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or (4) as a practical matter, have been able to use, inspect, examine, or copy such document when you sought to do so. If any requested document was, but no longer is, in your control, state the disposition of each such document.

4. Any reference in these document requests to an individual or person include any and all agents, advisors, employees, representatives, attorneys, and successors-in-interest.

5. If any document is withheld under any claim of privilege, including without limitation, attorney-client privilege and attorney work product, you should provide the following information with respect to such document:

- (1) The date of the document;
- (2) The title of the document;
- (3) The name of its author(s) or preparer(s) and an identification by employment and title of each such person;

- (4) The name of each person who was sent or furnished with, received, viewed or has custody of the document or a copy thereof together with an identification by employment and title of each such person;
- (5) The request to which the document relates;
- (6) The title and description of the document sufficient to identify it without revealing the information for which privilege is claimed;
- (7) The claim of privilege under which it is withheld; and
- (8) A description of the subject matter of the document in sufficient detail to support your contention that the document is privileged;

6. If, after exercising due diligence to secure them, you cannot provide some or any of the requested documents, so state and provide all documents to the extent possible, specifying the reason for your inability to produce the remainder of the documents.

7. If any requested document or other document potentially relevant to this action is subject to destruction under any document retention or destruction program, the document(s) should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this action or unless otherwise permitted by the Court.

8. If any document responsive to these requests is known to have existed and cannot now be located, or has been destroyed or discarded, set forth a complete statement of the circumstances surrounding such loss or destruction.

9. If an objection is made to any request, state your objection and the ground or grounds with particularity in your written response. If an objection is made only to part of the request, identify that part in your written response and state your objection and the ground(s) therefor.

10. This request is a continuing one. If, after producing the requested documents, you obtain or become aware of any further documents responsive to this request, you are required to produce such additional documents promptly.

11. Unless otherwise specified, the time period covered by these requests is from September 1, 2007 to the present.

12. To the extent you have previously produced documents requested herein to WMI in response to the WMI RFPs, you need not produce them again to the Equity Committee if you instead (a) provide information (such as Bates-number ranges) sufficient to allow the Equity Committee to verify that it has previously received such documents from WMI; and (b) consent to the Equity Committee's use of such documents as if JPMC had produced them directly to the Equity Committee in response to these requests.

### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

The Equity Committee requests that JPMC produce the following documents in its possession, custody or control:

#### **REQUEST NO. 1:**

All documents that you have produced to WMI in response to the WMI RFPs.

#### **REQUEST NO. 2:**

All documents that you have produced to any party in response to any discovery requests served in the Adversary Proceedings.

#### **REQUEST NO. 3:**

All documents concerning the negotiation of the Proposed Global Settlement Agreement or any agreements reflected in the proposed Global Settlement Agreement, including all demands and offers made to settle any claims or disputes among WMI, the FDIC, and/or JPMC. This request includes, but is not limited to records of communications among two or more parties

to the Proposed Global Settlement Agreement and drafts of the Proposed Global Settlement Agreement.

**REQUEST NO. 4:**

All documents concerning the Proposed Global Settlement Agreement or any agreements reflected in the Proposed Global Settlement Agreement. This request includes, but is not limited to (a) analysis of, or communications about, any of the disputes that would be compromised or released under the Proposed Global Settlement Agreement by any party to the Proposed Global Settlement Agreement; and (b) your communications with anyone about the Proposed Global Settlement Agreement, any agreements reflected in the Proposed Global Settlement Agreement, and/or the settlement of any claims or disputes among the parties to the Proposed Global Settlement Agreement.

**REQUEST NO. 5:**

All documents concerning any plans or efforts by WMI during 2008 to raise capital or increase liquidity (for itself or for WMB) through the sale of securities (including debt instruments), the sale of assets (including WMI subsidiaries), the sale of WMI itself, a merger, or any other corporate or financial transaction.

**REQUEST NO. 6:**

All documents disclosed or provided by Washington Mutual to JPMC during the course of any discussions by Washington Mutual with JPMC in 2008 concerning a potential Transaction; all documents referring to or discussing information provided by Washington Mutual to JPMC during the course of any discussions by Washington Mutual with JPMC in 2008 concerning a potential Transaction; and any agreements restricting JPMC's use or disclosure of any such documents or information.

**REQUEST NO. 7:**

All documents concerning JPMC's disclosure to anyone of any documents or other information provided by Washington Mutual to JPMC during the course of any discussions by Washington Mutual with JPMC in 2008 concerning a potential Transaction, including but not limited to non-public, confidential or proprietary information and including but not limited to disclosure of such information to third parties to secure financing or raise capital in connection with any potential Transaction.

**REQUEST NO. 8:**

All documents concerning any communications with any Governmental Unit regarding non-public, confidential or proprietary information related to Washington Mutual, including but not limited to JPMC's receipt of non-public, confidential or proprietary information concerning Washington Mutual.

**REQUEST NO. 9:**

Documents sufficient to identify JPMC's company policies and procedures concerning the protection or disclosure of non-public, confidential or proprietary information.

**REQUEST NO. 10:**

All documents concerning any potential Transaction, including all documents prepared by JPMC that refer to, discuss, or analyze any potential Transaction.

**REQUEST NO. 11:**

All documents concerning any attempt by JPMC to engage in any Transaction in the spring and summer of 2008, including but not limited to JPMC's bid to merge with, purchase, or acquire Washington Mutual in or about April 2008.

**REQUEST NO. 12:**

All documents concerning any communications between JPMC and Washington Mutual concerning any potential Transaction in 2008.

**REQUEST NO. 13:**

All documents concerning any communications between JPMC and anyone, concerning any potential Transaction in 2008, including any communications with the FDIC or any other Governmental Unit.

**REQUEST NO. 14:**

All documents concerning any due diligence performed by JPMC in connection with any potential Transaction in 2008.

**REQUEST NO. 15:**

All documents concerning any attempt by JPMC to engage in any potential Transaction in or about September 2008, including but not limited to any bid or offer by JPMC to merge with, invest in, or purchase Washington Mutual in or about September 2008.

**REQUEST NO. 16:**

All documents concerning any communications between JPMC and the media, including but not limited to The Wall Street Journal, any other print, on-line, broadcast, or cable news outlet, related to Washington Mutual, including but not limited to any such communications related to Washington Mutual's financial status, financial condition, assets, and liabilities.

**REQUEST NO. 17:**

All documents concerning any due diligence performed by JPMC in connection with its execution of the P&A Agreement.

**REQUEST NO. 18:**

All documents concerning any communications between JPMC and any Governmental Unit concerning Washington Mutual, a governmental seizure or receivership of Washington Mutual, and/or the sale of Washington Mutual, including but not limited to communications with the US Department of the Treasury, the FDIC, and/or the OTS.

**REQUEST NO. 19:**

All documents concerning actions considered or taken by any Governmental Unit concerning Washington Mutual, including but not limited to the seizure of WMB by the OTS and the appointment of FDIC as receiver.

**REQUEST NO. 20:**

All documents concerning any agreement or arrangement between JPMC and any Governmental Unit concerning any potential Transaction or Transaction on or prior to September 25, 2008, including but not limited to any agreement, understanding, or arrangement with the OTS and/or FDIC.

**REQUEST NO. 21:**

All documents concerning any communications between JPMC and any Governmental Unit concerning any Transaction on September 25, 2008.

**REQUEST NO. 22:**

Documents sufficient to identify the names of all persons who negotiated on behalf of JPMC in connection with entering into the P&A Agreement.

**REQUEST NO. 23:**

All documents concerning any assessment, evaluation, consideration or analysis of the consideration provided by JPMC under the P&A Agreement, including but not limited to the assumption of any liabilities.

**REQUEST NO. 24:**

All documents concerning any assessment, evaluation, consideration or analysis of the Purchase Price.

**REQUEST NO. 25:**

All documents concerning any communications between JPMC and Washington Mutual concerning the Purchase Price.

**REQUEST NO. 26:**

All documents concerning any communications between JPMC and any third party concerning the Purchase Price, including but not limited to communications with the FDIC and/or the OTS concerning the Purchase Price.

**REQUEST NO. 27:**

All documents concerning the bid process established by the FDIC for the purchase of WMB, including documents concerning any communication between JPMC and the FDIC about the bid process for the purchase of WMB.

**REQUEST NO. 28:**

All documents concerning any assessment, evaluation, consideration or analysis of the consideration received by JPMC under the P&A Agreement, including the value of the assets of WMB that JPMC acquired pursuant to the P&A Agreement.

**REQUEST NO. 29:**

Documents sufficient to show JPMC's valuation of the assets of WMB on or about September 25, 2008.

**REQUEST NO. 30:**

All documents forming the basis for the statement in JPMC's Form 10-K for the period ending December 31, 2008 that "the fair value of the net assets [of WMB] acquired exceeded the purchase price. . . ."

**REQUEST NO. 31:**

All documents concerning JPMC's allocation of the Purchase Price, including but not limited to allocation of the Purchase Price to the assets acquired by JPMC under the P&A Agreement on or about September 25, 2008.

**REQUEST NO. 32:**

All documents concerning JPMC's refinement of the allocation of the Purchase Price during the fourth quarter of 2008.

**REQUEST NO. 33:**

All documents concerning JPMC's recognition of extraordinary gains related to its acquisition of the assets of WMB.

**REQUEST NO. 34:**

All documents concerning any assessment, evaluation, consideration or analysis of negative goodwill resulting from the acquisition of the assets of WMB.

**REQUEST NO. 35:**

All documents concerning any assessment, evaluation, consideration or analysis of Washington Mutual's financial condition, including but not limited to Washington Mutual's debts, assets, liabilities, financial resources and capital, business reputation, and/or credit rating.

**REQUEST NO. 36:**

All documents concerning any communications between JPMC and any third party concerning Washington Mutual's actual or projected financial condition, including but not limited to any communications with the FDIC and/or OTS.

**REQUEST NO. 37:**

All documents concerning any assessment, evaluation, consideration or analysis of the capitalization of Washington Mutual in or about September 2008.

**REQUEST NO. 38:**

Documents sufficient to show JPMC's weighted average cost of capital, including but not limited to JPMC's cost of debt, cost of equity, yield on outstanding debt and the weighted average cost of capital for any loan or other financing obtained by JPMC.

**REQUEST NO. 39:**

All documents concerning any investigations by federal, state or municipal government bodies of JPMC related to its acquisition of the assets of WMB.

**REQUEST NO. 40:**

All documents concerning any investigation of JPMC, or lawsuit or other legal action brought against JPMC related to its acquisition of the assets of WMB.

**REQUEST NO. 41:**



All documents concerning JPMC's placement of former JPMC employees at Washington Mutual, including but not limited to, the placement or employment of Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

**REQUEST NO. 42:**

All documents concerning the disclosure of any of Washington Mutual's non-public, confidential or proprietary information by former JPMC employees working at Washington Mutual, including but not limited to Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

**REQUEST NO. 43:**

All documents from July 1, 2007 through September 26, 2008, concerning or reflecting any communications between JPMC and any of its former employees working at Washington Mutual, including but not limited to Stephen J. Rotella, Steve Fortunato, Taj Bindra, John Berens, Youyi Chen and Bill Murray.

**REQUEST NO. 44:**

All balance sheets for WMI and WMB for the period June 1, 2008 through September 26, 2008.

**REQUEST NO. 45:**

All documents reflecting the daily inflows and outflows of deposits on account at WMB from June 1, 2008 through September 26, 2008.

**REQUEST NO. 46:**

Documents sufficient to identify the names of all Entities who withdrew deposits from WMB or WMB fsb in September 2008 and the amounts of such withdrawals.

**REQUEST NO. 47:**

Documents sufficient to show the number and dollar amount of residential mortgage loans originated or purchased by WMB from June 1, 2008 through September 26, 2008.

**REQUEST NO. 48:**

Documents sufficient to show the number and dollar amount of commercial mortgage loans originated or purchased by WMB between June 1, 2008 and September 26, 2008.

**REQUEST NO. 49:**

All documents reflecting the amount of deposits on account at WMB each day between

June 1, 2008 and September 26, 2008.

**REQUEST NO. 50:**

All documents, including reports, summaries or compilations, concerning or relating to the status and performance of WMB's mortgage portfolio.

**REQUEST NO. 51:**

All documents, including reports, summaries, analyses, or compilations, concerning or relating to the performance of WMB's loan portfolio, excluding mortgages.

**REQUEST NO. 52:**

All schedules of assets acquired by JPMC pursuant to the P&A Agreement and all drafts of any such schedules.

**REQUEST NO. 53:**

Documents sufficient to identify in detail all assets obtained by JPMC pursuant to P&A Agreement.

**REQUEST NO. 54:**

All schedules to the P&A and all drafts of schedules to the P&A Agreement.

**REQUEST NO. 55:**

All documents concerning any credit extended to Washington Mutual by any bank in the Federal Home Loan Bank System.

**REQUEST NO. 56:**

All documents concerning Washington Mutual's efforts to obtain credit or to draw upon any credit facilities from any bank in the Federal Home Loan Bank System.

**REQUEST NO. 57:**

All discovery requests, responses, and objections served on JPMC in the Adversary Proceedings, the DC Action, the Texas Action, and the Chapter 11 Cases.

**REQUEST NO. 58:**

All documents concerning any communications and/or agreements between WMI and JPMC concerning JPMC's production of documents in response to the WMI RFPs, including but not limited to documents concerning the scope of JPMC's search for and production of documents as compared to the scope of the requests in the WMI RFPs.

**REQUEST NO. 59:**

Documents sufficient to identify and describe what JPMC did to identify and collect documents responsive to the WMI RFPs, including any lists of search terms used in the retrieval of electronic information.

**REQUEST NO. 60:**

All documents concerning the E-Discovery Protocol, including all drafts thereof, referenced in the 11/25/2009 Letter from Erica Taggart to Stacey Friedman.

**REQUEST NO. 61:**

The Information Access Agreement dated November 21, 2008, referred to in ¶ 10 of the General Objections in JPMC's Responses.

**REQUEST NO. 62:**

All documents concerning JPMC's purchase or sale of credit default swaps during 2008 where WMI was the reference entity.

**REQUEST NO. 63:**

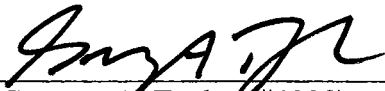
All documents concerning short selling of WMI securities by JPMC during 2008.

**REQUEST NO. 64:**

All documents concerning any actions considered or implemented by JPMC to negatively affect the market price of WMI securities and/or market perceptions of WMI's solvency, liquidity, and/or financial health.

**CERTIFICATE OF SERVICE**

I, Gregory A. Taylor, hereby certify that on May 25, 2010, I caused one copy of the foregoing document to be served upon the parties on the attached service list by first class U.S. Mail, postage prepaid, unless otherwise indicated.

  
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