EXHIBIT C

1

2 UNITED STATES BANKRUPTCY COURT

3 DISTRICT OF DELAWARE

4 Case No. 08-12229 (MFW)

5 -x

6 In the Matter of:

7

8 WASHINGTON MUTUAL, INC., et al.,

9

10 Debtors.

11

12 -x

13

14 United States Bankruptcy Court

15 824 North Market Street

16 Wilmington, Delaware

17

18 June 3, 2010

19 10:34 AM

20

21 B E F O R E:

22 HON. MARY F. WALRATH

23 U.S. BANKRUPTCY JUDGE

24

25 ECR OPERATOR: BRANDON MCCARTHY

1 put us on hold for two minutes and then said we could not
2 receive any of the information at all.
3 The creditors' committee also refused to provide us
4 with their analysis or the results of their investigation.
5 After extended delay, the debtors did provide us with most of
6 the third party documents they had gathered which are quite
7 limited. There are 238 pages. This is, Your Honor -- may I
8 approach?
9 THE COURT: No.
10 MR. EDELSON: Okay.
11 THE COURT: I don't need to see it.
12 MR. EDELSON: This is the enti -- the sum total of the
13 FDIC's production in this case, 238 pages received from a FOIA
14 request substantially blacked out. It reads like a classified
15 version of the Kennedy assassination. This is all we have from
16 the FDIC. From the Office of Thrift Supervision, we've gotten
17 650 documents. From JPMorgan, we've gotten about fourteen
18 boxes of discovery which we've reviewed. We just got that a
19 couple weeks ago. This, Your Honor, we got on May 25th, just
20 last week. The debtors mention this data room that they've
21 given us access to it. They forgot to mention they gave us
22 access to it last night around 7 p.m. That's when we got the
23 access to it.
24 So, the debtors represent to this Court on paragraph
25 21 of the examiner motion that with respect to JPMorgan and the

1 Honor, we gave to the Venable firm, which was the first counsel
2 for the equity committee, we gave them the 2004 discovery that
3 we had months ago. We didn't wait. I don't why it is that the
4 Venable firm didn't get it to them more quickly. But it is not
5 the case that we waited until a week or two ago to give that to
6 them. They've had that.
7 Now their other complaint about the 2004 discovery
8 isn't that we held anything back. They can't say that and they
9 can't say that we delayed because we didn't. Your Honor, what
10 they're complaining about is there were parties that were
11 saying that they would voluntarily give us information. But
12 then after this Court ruled that we could not compel those
13 third parties to give discovery, a number of them said well, we
14 don't believe that we should be giving you anything voluntarily
15 anymore. That's what happened with that. It's not that we
16 held it back.
17 So, really, when you look at all of the specifics that
18 he mentioned -- there were a lot of generalities, but when you
19 look at the specifics, the data room, the 2004 discovery,
20 everything they asked for voluntarily, we did give it; we did
21 give it promptly. The one place where we did draw the line is
22 where he said we had a phone call and we did put him on hold
23 because what he said is we don't just want your collection of
24 2004 documents. He said and the question was do you have an
25 internal set of documents that you have marked hot. And we

1 that the debtor would produce to the equity committee all of
2 its work product and any document protected by attorney/client
3 privilege because, in my view, they are your constituents as
4 are the creditors. And in the absence of that, maybe I should
5 reconsider my denial on the motion for an examiner and let an
6 examiner get everybody's privileged documents.
7 The committee, the equity committee, is on the same
8 side as the debtor. The equity committee is not the adversary
9 in this issue. The FDIC and JPMorgan may be. But why aren't
10 they entitled to those under the Garner and other common
11 interest cases?
12 MR. ELSBERG: Your Honor, actually, I think that the
13 case law that does address this question precisely is very
14 clear that they are not entitled to this information and
15 they're not entitled to it for several reasons. First, this is
16 work product which is not subject to the Garner exception. And
17 I will address that first if you'll allow me.
18 THE COURT: But why should it not be produced to your
19 co-client?
20 MR. ELSBERG: You mean, why should we not be --
21 THE COURT: Work product, yes.
22 MR. ELSBERG: One reason is that work product cannot
23 be, under the case law -- the standard applicable to work
24 product is a nearly absolute protection, Your Honor. And --
25 THE COURT: It is from protection by the other side.

1 still willing to stand down and have an independent party to do
2 that investigation. So, I think it's important to note, Your
3 Honor, that these cases have to be in a certain posture before
4 solicitation begins.
5 There are interests of completeness and transparency
6 that have to be served in connection with the way the
7 settlement amongst other issues are resolved. And to the
8 extent that the Court is willing to reconsider its ruling with
9 respect to the examiner motion, we would support the Court
10 doing so.
11 We think that on balance, the cost benefit analysis
12 favors the appointment of an examiner in the short term as
13 opposed to miring the process immediately and what seems to be
14 protected litigation between the parties over a host of issues.
15 And, in fact, the cooling down period, Your Honor, may, in
16 turn, allow the parties to get their arms around some issues,
17 to have further discussions, and hopefully, potentially,
18 resolve some points. But, again, to the extent that the
19 Court's comments were -- raised the possibility that the Court
20 would be willing to entertain such reconsideration, we fully
21 support that path.
22 THE COURT: Thank you.
23 MR. ROSEN: Your Honor, I just want to address what
24 Mr. McMahon said because not only is it out of the blue, I
25 don't think it's appropriate. Specifically, Your Honor, I just

1 THE COURT: Well, let me rule on this issue. First,
2 with respect to the production of work product, in the absence
3 of clear authority, I don't think I can require the production
4 at this point. But I agree to the extent there is any issue
5 raised at confirmation with respect to the reasonableness of
6 the settlement. I cannot conceive how the debtor is going to
7 meet its burden of proof without waiver of the privilege. But
8 I'd be surprised. But given the fact that the equity committee
9 will not have the advantage of the debtors' work product or
10 attorney privilege, I think an extension of all the deadlines
11 is going to be necessary. So I'm not inclined today to deal
12 with the disclosure statement. Instead, I will direct the
13 parties to meet and see if they can work out a consensual
14 discovery schedule before the next omnibus, which I believe is
15 June 17th.
16 MR. ROSEN: Yes, it is, Your Honor.
17 THE COURT: And I'd like a report at that time. In
18 addition, between now and then, I will review the debtors'
19 chart and make a ruling on whether, in my opinion, the debtor
20 has satisfied all of the objections to the adequacy of the
21 information in the disclosure statement. If I think not, I
22 will address the issues I think still remain at that time.
23 With respect to the motion for an examiner, I probably
24 do not have jurisdiction to reconsider my decision, but I'm not
25 sure that a new motion is preempted by the fact that my denial

1 MR. CALIFANO: And the problem is, and what I've tried
2 to do, Mr. Nelson, is tailor what we might have to what might
3 be relevant to the issues. But, instead, they're insistent,
4 the equity committee is insistent on opening this thing up, as
5 if the last twenty-one months never happened, because they're
6 unhappy with the result.
7 Now, there has to be a way that they can get the
8 information they need through the debtor to determine the
9 issues that are relevant. But it is completely irrelevant, and
10 it's completely improper to go searching through our files to
11 find what they would have gotten if we litigated these cases.
12 We're not litigating these cases. That's why we're settling.
13 You know, yes, we were motivated to settle these cases. That's
14 why we settled them. I can stipulate to that now. So I don't
15 think they need to go searching through our files to find out
16 why we were motivated. We negotiated for months. Months.
17 This deal almost died a couple of times. But we negotiated for
18 months. There was the requisite arm's length negotiation. I
19 don't think they need to see whether we were vigorously
20 contesting these cases. There was litigation in Texas, D.C and
21 in this court.
22 Now, I understand that they feel they may need to
23 examine whether the settlement is reasonable. And Your Honor
24 was correct. They stand in the debtors' shoes. They don't
25 stand in our shoes. They don't get to look at why the FDIC