

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

WASHINGTON MUTUAL, INC. and  
WMI INVESTMENT CORP.

Plaintiffs,

v.

FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its capacity as receiver of  
Washington Mutual Bank, and FEDERAL  
DEPOSIT INSURANCE CORPORATION, in  
its corporate capacity,

Defendants.

Case No. 1:09-cv-0533 (RMC)

**DECLARATION OF JOHN J. CLARKE, JR.**

Pursuant to 28 U.S.C. § 1756, JOHN J. CLARKE, JR., declares:

1. I am an attorney admitted to practice in the State of New York and various federal courts and am a partner of DLA Piper LLP (US), counsel for defendant the Federal Deposit Insurance Corporation, in its capacity as receiver for Washington Mutual Bank (the “FDIC-Receiver”). I have been admitted *pro hac vice* by an Order of this Court dated April 21, 2009.

2. I submit this declaration to place before the Court two documents that are referred to, and incorporated by reference, in the complaint in this action (the “Complaint”) in connection with the FDIC-Receiver’s partial motion to dismiss the Complaint.

3. Attached hereto as Exhibit 1 is a true and correct copy of the Purchase and Assumption Agreement, Whole Bank, among the FDIC-Receiver, Federal Deposit Insurance Corporation (the “FDIC”) and JPMorgan Chase Bank, N.A. dated as of September 25, 2008 (the “P&A Agreement”), in the form that is available publicly on the FDIC’s website at <http://www.fdic.gov/about/freedom/popular.html>.

4. Attached hereto as Exhibit 2 is a true and correct copy, without exhibits, of the proof of claim filed with the FDIC-Receiver by plaintiff Washington Mutual, Inc. (“WMI”) in the form in which it was provided to counsel for the FDIC-Receiver by WMI’s counsel.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of June, 2009.

/s/ John J. Clarke, Jr.

John J. Clarke, Jr.

**CERTIFICATE OF SERVICE**

The undersigned attorney for the FDIC-Receiver certifies that on this 11th day of June 2009, he caused a copy of the foregoing document to be filed via ECF which will cause electronic notice of its filing to be served on all parties who have appeared in this action.

/s/ John J. Clarke, Jr.

John J. Clarke, Jr.