

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-00533 RMC

**CONSENT MOTION FOR AN EXTENSION OF TIME
AND FOR BRIEFING SCHEDULE**

Plaintiffs Washington Mutual, Inc. and WMI Investment Corp. (“Plaintiffs”), by and through undersigned counsel, hereby respectfully move the Court for an extension of time and an order setting a briefing schedule on the pending motions to dismiss filed by Defendants Federal Deposit Insurance Corporation in its capacity as receiver of Washington Mutual Bank (“FDIC-Receiver”), and Federal Deposit Insurance Corporation, in its corporate capacity (“FDIC-Corporate”), and any motion under Federal Rule 12 filed by Plaintiffs with respect to the Counterclaims filed by FDIC-Receiver. Subject to the approval of the Court, under the schedule agreed to among the parties: (1) Plaintiffs’ opposition to Defendants’ motions to dismiss shall be served and filed no later than July 16, 2009; (2) Plaintiffs’ answer to FDIC-Receiver’s Counterclaims shall be

served and filed no later than July 16, 2009; (3) each Defendant shall file its reply in further support of its motion to dismiss the complaint by August 3, 2009; and (4) Defendants shall respond to any motion filed by Plaintiffs under Fed. R. Civ. P. Rule 12 with respect to FDIC-Receiver's Counterclaims no later than August 17, 2009.

In support of this motion, Plaintiffs state as follows:

1. On June 11, 2009, Defendant Federal Deposit Insurance Corporation, in its capacity as receiver of Washington Mutual Bank ("FDIC-Receiver"), filed and served a partial motion to dismiss the Complaint filed by Plaintiffs on March 20, 2009 (the "FDIC-Receiver Motion to Dismiss"). Plaintiffs' response to FDIC-Receiver's Motion to Dismiss currently is due June 22, 2009. LCvR 7(b). Defendant FDIC-Receiver also filed and served an Answer and Counterclaims on June 11, 2009.

2. On June 15, 2009, Defendant Federal Deposit Insurance Corporation, in its corporate capacity ("FDIC-Corporate"), filed and served a motion to dismiss the Complaint pursuant to Federal Rules 12(b)(1) and (6) (the "FDIC-Corporate Motion to Dismiss"). Plaintiffs' response to FDIC-Corporate's Motion to Dismiss currently is due June 26, 2009. LCvR 7(b).

3. Both the FDIC-Receiver Motion to Dismiss and the FDIC-Corporate Motion to Dismiss (collectively, the "Motions") purport to be dispositive of Counts II, III, IV, and V of the Complaint and seek dismissal of one part of Count I. Both Motions raise complex legal issues regarding, *inter alia*, the Federal Deposit Insurance Act and the U.S. Constitution. These issues should be briefed in a thoughtful manner. The nature of the Motions warrants an extension of time within which the Plaintiffs may oppose the Motions, for Defendants to prepare reply memoranda with

respect to the Motions and to provide for a similar schedule for the FDIC-Receiver to respond to any Rule 12 motion that Plaintiffs might make with respect to its Counterclaims.

4. Because Plaintiffs' opposition to Defendants' Motions will be substantively similar, it would reduce litigation costs and conserve judicial resources to combine them into a single document. Accordingly, to synchronize the briefing schedule, there is good cause to extend by 24 days, from June 22 to July 16, 2009, Plaintiffs' deadline to oppose the FDIC-Receiver Motion to Dismiss; and to extend by 20 days, from June 26th to July 16th, 2009, Plaintiffs' deadline to oppose FDIC-Corporate's motion to dismiss.

5. Similarly, good cause exists to extend Defendants' time to file reply memoranda with respect to their motions to dismiss by 13 days, from July 21, 2009 to August 3, 2009

6. Under the Federal Rules of Civil Procedure, Plaintiffs have until July 1, 2009 to respond to FDIC-Receiver's Counterclaims. Because Plaintiffs' response to the FDIC-Receiver Motion to Dismiss and FDIC-Receiver's Counterclaims are related, it would serve judicial efficiency for Plaintiffs' answer or other response to FDIC-Receiver's Counterclaims to be synchronized with Plaintiffs' response to the Motions. Therefore, there is good cause to extend by 15 days, from July 1 to July 16, 2009, Plaintiffs' deadline to answer or otherwise respond to FDIC-Receiver's Counterclaims.

7. Similarly, good cause exists to extend the deadline for the FDIC-Receiver to respond to any Rule 12 motion that Plaintiffs may make with respect to the FDIC-Receiver's Counterclaims by 21 days, from July 27 to August 17, 2009.

8. Both Defendants waived service on April 14, 2009 and had 60 days to respond to the Complaint. Given this period of time, it is reasonable for Plaintiffs to have an extension of time within which the Plaintiffs may oppose the Motions and answer or otherwise respond to FDIC-Receiver's Counterclaims.

9. In light of the current procedural posture of this case, no party will be prejudiced by the requested extension of time.

10. Pursuant to Local Rule 7(m), undersigned counsel has conferred with Defendants' counsel, who consent to the relief requested herein.

WHEREFORE, Plaintiffs respectfully request that the Court enter an order setting July 16, 2009 as Plaintiffs' deadline to oppose Defendants' motions to dismiss and to answer or otherwise respond to FDIC-Receiver's Counterclaims and otherwise establishing the briefing schedule set forth above. A proposed order is attached.

Dated: June 16, 2009

Respectfully submitted,

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*Attorneys for Plaintiffs Washington Mutual, Inc.
and WMI Investment Corp.*

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June 2009, I caused the foregoing document to be served on Defendants' counsel of record electronically by means of the Court's CM/ECF system.

/s/ Adam P. Stochak

Adam P. Stochak, Esq.