IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
	:	Case No. 08-12229 (MFW)
WASHINGTON MUTUAL, INC., *et al.*,[1]	:	
	:	Jointly Administered
Debtors.	:	
	:	**Re: Dockets No. 10, 974 & 1017**

DEBTORS' REPLY TO OBJECTION OF JPMORGAN CHASE BANK, N.A. TO DEBTORS' MOTION FOR AN ORDER (A) PURSUANT TO BANKRUPTCY RULE 2004 AND LOCAL BANKRUPTCY RULE 2004.1 DIRECTING THE EXAMINATION OF JPMORGAN CHASE BANK, N.A.; AND (B) PURSUANT TO 11 U.S.C. § 105(a) AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 7013 AND 9006(b) ENLARGING THE TIME FOR ASSERTING COUNTERCLAIMS AGAINST JPMORGAN CHASE BANK, N.A.

Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment," and with WMI, "Debtors"), through their undersigned counsel, hereby file this reply (the "Reply") to the objection and response of JPMorgan Chase Bank, National Association ("JPMC")(Docket No. 1017), to the Debtors' motion (the "Motion")[1] pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 2004.1 of the United States Bankruptcy Court for the District of Delaware seeking the entry of an order directing the examination (the "Requested Examination") of JPMC (Docket No. 974) and the Debtors' motion (the "Motion to

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[1] The Debtors in these chapter 11 cases (the "Chapter 11 Cases") and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395).

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

Enlarge") seeking the entry of an order enlarging the time for asserting counterclaims against JPMC (the "Objection")(Docket No. 10) and respectfully represent:

PRELIMINARY STATEMENT

1. Reduced to its essentials, JPMC argues that Rule 2004 discovery is inappropriate because JPMC commenced an adversary proceeding before the Debtors could file their Motion. Had the Debtors filed their motion before JPMC commenced its Adversary Proceeding, there would be no doubt the Debtors would be entitled to the requested relief. But the fact that JPMC won the race to the Courthouse and filed its Adversary Proceeding before the Debtors filed their Motion should have no impact on the Debtors' application. Otherwise, a party such as JPMC, that knows and expects to be the subject of a Rule 2004 investigation, could effectively preempt such discovery by the filing of what is, at best, a questionable and curious adversary proceeding. That should not be – and is not – the law. The great majority of cases cited in the Objection, where courts denied Rule 2004 discovery, involved a party who commenced an adversary proceeding or brought affirmative claims in another court, and then sought related Rule 2004 discovery from that same party. None of the cases cited by JPMC where courts denied Rule 2004 discovery involved a party (such as the Debtors here) being denied Rule 2004 discovery from another party because that party had won the race to the courthouse and already commenced an adversary proceeding on distinct issues. The Debtors here did not initiate claims against JPMC; rather, JPMC did so in an apparent attempt to block Rule 2004 discovery. Moreover, the Debtors rightfully seek discovery on a very specific and discrete set of facts relating to JPMC's actions that led to the destruction of WMB. They should not be deprived of their rights to do so

2. The Requested Examination is necessary to explore and uncover potential business-destruction tort claims that the Debtors, as estate fiduciaries, must bring for the benefit of all stakeholders. One of the reasons the Debtors need Rule 2004 discovery is that much of the Debtors' institutional knowledge is now in the hands of JPMC or third parties no longer employed by the Debtors. While JPMC commenced the Adversary Proceeding, it may well be that JPMC's holding company, JPMorgan Chase & Co. is the principal (though not exclusive) party against which the Debtors have business destruction claims. Indeed, it was that entity that executed the confidentiality agreement (referenced in the Motion) and conducted due diligence upon the Debtors pre-petition. JPMC's Objection may be largely inapplicable because the entity from which the Debtors ultimately will be seeking discovery may be JPMorgan Chase & Co. (dependent upon review of documents and correspondence), which is not a party to the Adversary Proceeding or the DC Action. Moreover, even assuming the line of authority cited by JPMC could theoretically apply here, notwithstanding that the party seeking Rule 2004 discovery did not initiate the adversary proceeding, the Debtors' request should be granted because the subject matter of the Requested Examination does not overlap with the issues JPMC raised in the Adversary Proceeding. The Adversary Proceeding effectively asks this Court to make a series of legal determinations (including contractual interpretations) regarding JPMC's interests in certain assets it claims to have purchased from the FDIC as receiver to WMB. In stark contrast, the discovery sought through the Requested Examination concerns alleged JPMC misconduct leading up to the Petition Date, including gaining access to WMI confidential information in connection with its supposed interest in bidding for the company, then causing market panic, thereby

fomenting an FDIC seizure, and destroying a 119 year old institution with more than $50 billion in market capital at one point in time. Such targeted discovery would neither be confusing to the parties nor duplicative with discovery in the Adversary Proceeding when and if it goes forward. Conversely, it would be entirely inequitable to allow JPMC's legally and factually discrete Adversary Proceeding to act as a bar to Rule 2004 investigations, particularly where the allegations concerning JPMC's conduct are so serious.

3. Putting aside the inequity of depriving the Debtors of Rule 2004 discovery on the basis of JPMC's Adversary Proceeding, JPMC's Objection also signals that JPMC intends to oppose (and certainly delay considerably) such discovery even if sought within the Adversary Proceeding. Further, the Debtors may desire a trial by jury upon uncovering any such claims if they deem it in the best interests of their estates. Only after completion of the Requested Examination will the Debtors be able to fully assess whether to bring these claims as an adversary proceeding in this Court or in another forum. To the extent the Requested Examination demonstrates that the Debtors have viable claims against JPMC, the Debtors should not be limited in choosing the proper venue to bring them.

4. There is no concern here that the Debtors will use Rule 2004 to seek a "backdoor" around the Federal Rules of Civil Procedure (the "Federal Rules") or to unfairly gain a litigation advantage in pending litigation with JPMC by depriving JPMC of the protections of the Federal Rules. JPMC cannot seriously be concerned that the Debtors, in seeking the Requested Examination, are actually intent upon seeking supplemental discovery in order to gain a tactical advantage in the Adversary

Proceeding's disputes (*e.g.*, which party has an interest in tax refunds paid to the Debtors as agent of a consolidated tax group or which party has a claim to impending proceeds from litigation concerning previously booked "goodwill"). Moreover, JPMC is represented by very able counsel, who will certainly be involved with discovery taken in connection with the Requested Examination and in attendance at any depositions taken under Rule 2004. In short, JPMC's argument is disingenuous because the concerns of the case law cited in its Objection are not present.

5. It is well settled that Rule 2004 allows for a fishing expedition. Congress justified such a grant in light of the woeful conditions faced by debtors and their stakeholders. A recent press release by former WMI shareholders indicates that the Debtors' stakeholders understand and appreciate the import of the Requested Examination to their hopes for recovery. The Requested Examination will permit the Debtors – as estate fiduciaries – to determine, in the most efficient manner, the validity of certain potentially significant claims. By contrast, discovery in the Adversary Proceeding will be a much slower process and, from the looks of things, will involve significant resistance by JPMC to provide the business-destruction discovery sought by the Debtors. This Court must not allow JPMC's filing of a series of clone-like declaratory judgment actions (which are also duplicative of JPMC's proofs of claim filed in the Chapter 11 Cases), arising out of one particular purchase and assumption transaction, to write Rule 2004 out of the Bankruptcy Rules, leaving the Debtors without the investigatory resources contemplated by Congress.

DEBTORS' REPLY

A. JPMC'S ADVERSARY PROCEEDING THREATENS TO FURTHER PREJUDICE AND EXERT CONTROL OVER THE DEBTORS

6. As made clear in the Motion, the Requested Examination is necessary to uncover whether there exist potential business-destruction tort claims that the Debtors, as estate fiduciaries, must bring for the benefit of all stakeholders. JPMC, through the filing of its Adversary Proceeding, attempts to thwart the Debtors' investigation of these potential assets of the estates. JPMC commenced the Adversary Proceeding with a complaint that is wholly duplicative of the more than 40 proofs of claim it has filed in the Chapter 11 Cases. For each of the disputed asset classes which JPMC has asserted an ownership right to in the complaint (*i.e.*, Trust Securities, Tax Refunds, Disputed Funds, Deposit Liabilities, Goodwill Litigation, Rabbi Trusts, Pension and 401(K) Plans, BOLI Policies, Split Dollar Policies, Visa Shares and Intangible Assets, collectively, the "Disputed Assets"), JPMC also has filed a corresponding and substantially similar proof of claim related to each Disputed Asset. Against this backdrop, JPMC asks this Court, on the basis of the pendency of the Adversary Proceeding alone, to preclude the Debtors from pursuing their statutorily-granted right to investigate the pre-petition acts and conduct of JPMC in the period preceding the Petition Date. *See* 11 U.S.C. § 1107; Fed. R. Bankr. P. 2004. Not surprisingly, the conduct that the Debtors seek to investigate, in the exercise of their fiduciary duties, is of the kind that, if established, would likely lead to substantial liability on the part of the party seeking to foreclose the Requested Examination, JPMC.

7. Rule 2004 allows debtors to conduct significant and broad discovery – the litigation equivalent of a fishing expedition. Debtors in possession are charged with marshalling estate assets and, if necessary to achieve that end, instituting all necessary litigation. *In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702, 708 (Bankr. S.D.N.Y. 1991). The Requested Examination will permit the Debtors to determine the validity of these potentially significant business-destruction claims. *See In re Table Talk Inc.*, 51 B.R. 143, 145 (Bankr. D. Mass. 1985) (finding that Bankruptcy Rule 2004 examinations are allowed for the purpose of discovering assets and unearthing frauds).

8. Given the virtually complete overlap between JPMC's proofs of claims and the claims raised in its Adversary Proceeding, it appears that JPMC raced to file the Adversary Proceeding as a preemptive measure to preclude the Debtors from seeking Rule 2004 discovery. Indeed, it is rather telling that, after JPMC filed the Adversary Proceeding, it has sought to intervene in the litigation pending in the District of Columbia (the "DC Action"). JPMC has offered no explanation why it filed the adversary proceeding here, and then sought to intervene in the DC Action. At a minimum, JPMC's filing of the Adversary Proceeding should be viewed by the Court with the most skeptical eye and should not be allowed to interfere with, or prejudice the Debtors' rights to conduct the specific, targeted Requested Examination.

9. JPMC's filing of the Adversary Proceeding has already prejudiced the Debtors in several ways. As this Court is aware, by burying over $4 billion of the Debtors' funds within the laundry list of Disputed Assets to which JPMC lays claim to, it has attempted to use this Court's judicial process to allow it to continue to withhold such funds, unjustly enriching itself, preventing the Debtors from moving forward with a plan

of reorganization, and significantly harming the estates and its creditors from earning interest at a market rate on such funds. The Debtors were forced to file their Turnover Action in order to save that issue from being obfuscated by JPMC's Adversary Proceeding, given that JPMC has no possible basis to continue to withhold such funds. JPMC now seeks to have the simple pendency of its Adversary Proceeding further shape the Chapter 11 Cases and harm the estates (while protecting JPMC's own unjust enrichment) by truncating the Debtors' rights to investigate other potential causes of action against JPMC.

B. RULE 2004 DISCOVERY IS APPROPRIATE NOTWITHSTANDING THE PENDING ADVERSARY PROCEEDING

The Requested Examination is Separate and Distinct from the Adversary Proceeding

10. The Debtors, cognizant of the value of Rule 2004 to their estates, tailored and targeted the Requested Examination to the business-destruction issues (and other limited issues not raised in the Adversary Proceeding) to ensure that it was not duplicative of the Adversary Proceeding's limited subject matter. Whereas the Adversary Proceeding effectively asks this Court to make a contractual law determination with respect to JPMC's interests in the Disputed Assets it claims to have purchased from the FDIC as receiver to WMB, the Requested Examination concerns very serious allegations concerning JPMC misconduct in the years preceding the Petition Date that, if true, destroyed a financial institution that was more than a century old and had over $50 billion in market capital at one point in time.

11. For example, the Requested Examination could potentially uncover claims that would require that the Debtors prove that JPMC leaked confidential information to

the media, outside investors, WMB customers and potential customers, and various government agencies, including but not limited to the U.S. Department of the Treasury, the OTS, and the FDIC, and that such conduct prevented the Debtors from procuring a private equity investment or consummating a favorable business combination transaction well in advance of the seizure of WMB or the filing of the Chapter 11 Cases. Such claims, to the extent they are uncovered, are distinct from those asserted by JPMC in the Adversary Proceeding "to ensure that [JPMC] and its subsidiaries are not divested of their assets and interests purchased in good faith from the [FDIC] as received for [WMB] under Title 12 of the United States Code pursuant to the [P&A]." (Adversary Proceeding Complaint ¶1). In the former, damages would likely be shown at trial based on the amount by which WMI's equity value in its primary operating subsidiary, WMB, was diminished from its value years ago. In the latter, damages would likely be based on specific valuations of the Disputed Assets as of the time of the P&A. In short, the subject matter of the Requested Examination is distinct from and will not overlap with the Adversary Proceeding.

12. Where the subject matter of the requested Rule 2004 examination is distinct from pending litigation, courts have repeatedly found that the "pending proceeding" rule does not apply to bar Rule 2004 discovery. *See In re International Fibercom, Inc.*, 283 B.R. 290, 293 (Bankr. D. Ariz. 2002) (permitting requested discovery where it was not clear that that all of the debtor's potential claims were the subject of pending litigation and that the sought discovery was broader than the pending litigation and designed to uncover additional claims which was "precisely in line with the purpose of Rule 2004"); *In re M4 Enters., Inc.*, 190 B.R. 471, 475 (Bankr. N.D. Georgia

1995) (finding that where Rule 2004 investigation "specifically limits itself to avoid any overlap with issues in the adversary proceeding . . . the 'pending proceeding' rule finds no direct application to the present controversy by simple virtue of an ongoing adversary case existing"); *In re Buick,* 174 B.R. 299, 305 (Bankr. D.Colo. 1994) ("As long as the examinations involve only issues which are not directly or specifically part of the . . . pending adversary, the inquiry is permissible").

13. The Objection relies heavily upon *In re Bennett Funding Group, Inc.*, 203 B.R. 24 (Bankr. N.D.N.Y. 1996) in arguing that the Requested Examination will overlap with the subject of the Adversary Proceeding. *Bennett*, however, is distinguishable for several reasons. In *Bennett*, the trustee had commenced a separate adversary proceeding alleging that the defendants (and Rule 2004 targets) had spun "a financial superweb." *Id.* at 29. The same trustee then sought Rule 2004 discovery that, if permitted, threatened to overlap with the claims the trustee had brought in the separate adversary proceeding. Given the breadth of the factual content implicated by the pending action in that case, the Court denied Rule 2004 discovery because the issues were "not easily separable." *Id.* at 30.

14. By contrast, the Debtors have not commenced an adversary proceeding or separate litigation against JPMC for which they are seeking to gain Rule 2004 discovery. Rather, JPMC inexplicably filed an adversary proceeding against the Debtors and now seeks to use that proceeding to preclude the Debtors from availing themselves of Rule 2004. Thus, the concerns of unfairness raised by the courts in the cases cited by JPMC simply do not apply.

15. A review of JPMC's Adversary Proceeding complaint reveals that it is little more than a series of declaratory judgment claims and seeks to have this Court rule on the ownership of the Disputed Assets. JPMC has not asked the Court to examine or rule upon the propriety or unlawfulness of its actions leading up to the Petition Date. Thus, the issues for which the Debtors seek the Requested Examination are not covered by, and fall outside the scope of, the issues raised by JPMC in the Adversary Proceeding and are better characterized as "in addition to or beyond the scope" of the Adversary Proceeding. *Buick*, 174 B.R. at 306. Whereas in *Bennett,* the court found it "difficult, if not impossible, to differentiate" between the pending action and the sought discovery, *Bennett,* 203 B.R. at 29-30, here, the Court will have no problem differentiating between the different sets of claims; further, for these same reasons, the Requested Examination would not be duplicative of discovery – when and if it goes forward – in the Adversary Proceeding.

16. The Debtors respectfully submit that the proper lens through which to view their request in light of the Adversary Proceeding is the approach used by the Court in *In re Sun Medical Management, Inc.*, 104 B.R. 522 (Bankr. M.D.Ga. 1989). In that case, the Court rejected a blanket rule that the filing of an adversary proceeding against an entity is an automatic bar to the use of a Rule 2004 examination by the debtor against that entity. In *Sun Medical*, the Court authorized a Rule 2004 examination so that the debtor could "ferret out" facts given the swirling implications of fraud that could potentially give rise to claims that would have a definite impact on the financial affairs of the debtor. *Id.* at 524. The court considered the pendency of a separate adversary proceeding, but gave more weight to the import of the potential causes of action that the

Rule 2004 discovery could uncover, particularly where the debtor was not rehabilitated and such claims could be substantial estate assets. *Id. See also In re Table Talk, Inc.*, 51 B.R. 143, 145 (Bankr. D. Mass 1985) ("Bankruptcy Rule 2004 examinations are allowed for the purpose of discovering assets and unearthing frauds").

17. Thus, JPMC ignores – and hopes the Court will overlook – that fact that the Requested Examination is separate and distinct from the issues germane to the Adversary Proceeding. This is in contrast to *Snyder v. Soc'y Bank,* 181 B.R. 40 (S.D. Tex. 1994). JPMC cites *Snyder* for the proposition that Rule 2004 discovery is inappropriate where the subject clearly relates to a pending action. However, unlike *Snyder*, in which the debtor sought discovery pursuant to Rule 2004 on the same topics as a pending state court litigation that the debtor itself commenced, the Requested Examination was tailored to avoid overlap with the Adversary Proceeding. *See also M4 Enters.*, 190 B.R. at 475 (granting Rule 2004 investigation where the motion "specifically limits itself to avoid any overlap with issues in the adversary proceeding."). Even *Bennett* recognizes that discovery should be permitted under Rule 2004 if that discovery is "unrelated" to the pending proceedings: "Discovery of evidence *related* to the pending proceeding must be accomplished in accord with more restrictive provisions of [the Federal Rules] while *unrelated* discovery should not be subject to those rules simply because there is an adversary proceeding pending." *Bennett,* 203 B.R. at 29.

18. JPMC cherry-picks and splices various snippets from the Motion to argue that the Requested Examination seeks discovery that concerns matters related to the subject of the Adversary Proceeding and, thus, should be denied. However, an actual comparison of the Adversary Proceeding with the issues for which Rule 2004 discovery

is sought reveals that JPMC's argument is meritless. For example, JPMC categorizes the Requested Examination into three areas of discovery: 1) allegations that JPMC orchestrated a scheme to drive down the value of WMB in order to walk away with its assets purchased on the cheap; 2) certain Capital Contributions made by WMI to WMB pre-petition and pre-receivership, respectively; and 3) certain assets and liabilities of WMB and determination of which assets and liabilities were acquired by JPMC under the P&A.

19. The first category concerns alleged acts of JPMC during the years preceding the Petition Date, including entering into false negotiations with WMI and disclosing confidential information to the media and investors in an effort to drive down WMI's credit rating and stock price. The nature of these allegations is quite distinct – both temporally and topically – from the subject matter of the Adversary Proceeding. That JPMC's complaint includes a statement of fact that WMB was placed into receivership and subjected to an accelerated bidding process is an insufficient nexus to such allegations that may give rise to business-destruction tort claims. (Objection at 11).

20. Discovery in connection with the second category would concern, among other things, the solvency of WMI and WMB at the time various Capital Contributions were made dating back to December 2007 and whether or not JPMC had knowledge of the respective financial health of the entities, given its pre-petition dealings with the Debtors. Again, incredibly, JPMC cites to a single, passing reference contained in its complaint that the Capital Contributions were made, notwithstanding that the Capital Contributions at issue are irrelevant to the Disputed Assets which JPMC asserts a claim to and are not the subject of any of the complaint's counts. (Objection at 12).

21. Third, and perhaps most egregious, JPMC states that WMI seeks to pursue discovery into "certain assets and liabilities," attempting to create a nexus to its complaint which seeks rulings as to certain *other* WMB assets and liabilities. (Objection at 12). What JPMC's quick and fast chart fails to disclose is that the assets to which JPMC attempts to connect to its complaint, the Intercompany Amounts Due and the Preferences, are nowhere to be found in JPMC's complaint and are not the subject of the Adversary Proceeding. For example, the Preferences concern transfers of an interest in the Debtors' property in the year preceding the Petition Date. Their absence from JPMC's complaint is not surprising as JPMC would not have raised with this Court the fact that it is in receipt of hundreds of millions of dollars of potentially avoidable preferential transfers nor would it desire that discovery be sought in the context of the Adversary Proceeding concerning such transfers.

22. Finally, with respect to the DC Action, the Debtors were compelled under Title 12 of the United States Code to commence said action after the FDIC summarily dismissed its claim in WMB's receivership. *See* 12 U.S.C. § 1821(d). JPMC is not a party to the action. While it has filed a motion to intervene and asks this Court to accept that there is "substantial likelihood" that it will be granted, the Debtors oppose this motion. Although JPMC would have this Court pre-determine the outcome of its motion, the fact remains that there is no current concern that JPMC will be exposed to any duplicative discovery and it is clear that the Debtors are not using Rule 2004 to seek discovery to avoid the operation of the Federal Rules when JPMC is not even party to the action. *See Fibercom,* 539 F.3d at 293 (noting that the reason to prohibit Rule 2004 discovery is "to avoid Rule 2004 usurping the narrower rules for discovery in a pending

adversary proceeding"). In essence, JPMC is attempting to limit the Debtors' statutory right to Rule 2004 discovery on the grounds of an administrative action that the Debtors were compelled to bring and to which JPMC is not a party.

The Debtors Are Not Trying To Avoid the Federal Rules

23. JPMC asserts that Rule 2004 discovery cannot be used in lieu of the compulsory process procedures of discovery under the Federal Rules (Objection at 7). The Debtors of course do not dispute that Rule 2004 should not be used to circumvent the Federal Rules and that within a pending adversary proceeding the discovery devices provided for in Federal Rules 7026 through 7037 apply. However, the Requested Examination is not designed to evade the Federal Rules nor bolster the Debtors' defenses in the Adversary Proceeding. Rather, the Debtors are properly using Rule 2004 as a pre-litigation tool for identifying separate potential claims. *See In re Barnes,* 365 B.R. 1, 5 (Bankr. D.C. 2007).

24. As discussed above, in *Bennett,* it was the trustee (and ultimate Rule 2004 movant) and not another party in interest who commenced the pending adversary proceeding. *Bennett,* 203 B.R. at 26. The court's primary concern was that the defendants in the pending proceeding not be stripped of the protections of the Federal Rules. *Id.* at 28. *See also Fibercom,* 539 F.3d at 293 ("The reason for the [pending proceeding] rule is to avoid Rule 2004 usurping the narrower rules for discovery in a pending adversary proceeding."). Specifically, the court was concerned that the Rule 2004 discovery would expose a witness without a right to representation by counsel, and without an unlimited right to object to immaterial or improper questions. *Bennett,* 203 B.R. at 28.

25. Here, however, as discussed above, JPMC commenced its Adversary Proceeding to further a tactical scheme to exert control over the Debtors' Chapter 11 Cases and limit the confines of the Debtors' investigatory scope as it saw fit. While JPMC strives to shoe-horn this case into Bennett, it is not the case that the Debtors commenced the Adversary Proceeding and then sought to strategically supplement discovery therein under the Federal Rules with Rule 2004 discovery. The Debtors have no intention of examining individuals without representation of counsel or limiting the right of individuals to object to any questioning. *Bennett,* 203 B.R. at 28. *Bennett's* concerns are completely irrelevant to these cases.

26. Further, the Debtors may desire a trial by jury if they determine that certain business tort claims exist against JPMC. *See In re Jensen*, 946 F.2d 369, 374 (5th Cir. Tex. 1991) ("Nor do we find that the petition for bankruptcy somehow 'waives' the debtor's jury trial right."). Only after completion of the Requested Examination will the Debtors be able to assess whether to bring these claims in this Court or in another forum. To the extent the Requested Examination demonstrates that the Debtors have such viable claims against JPMC, the Debtors should not be limited as to the proper venue in which to bring such claims.

C. THE REQUESTED DISCOVERY IS NOT SOUGHT TO INVESTIGATE COUNTERCLAIMS

27. JPMC claims that to the extent that the Debtors seek the Requested Examination to formulate counterclaims against JPMC, such investigation is by definition related to the pending Adversary Proceeding such that Rule 2004 is an inappropriate vehicle. However, JPMC fails to grasp the intent of the Requested

Examination. As discussed above, the Debtors seek to unearth potential estate claims that may be properly brought in a forum that allows for a jury trial and which relate to business tort claims against JPMC not raised by JPMC in the Adversary Proceeding.

D. ENLARGEMENT OF TIME TO ASSERT COUNTERCLAIMS IS APPROPRIATE

28. JPMC inaccurately asserts that the Debtors' Motion To Enlarge hinges on the outcome of the Motion. Specifically, JPMC argues that "the primary predicate" for the Motion to Enlarge is "to delay the assertion of counterclaims until after the Requested Examination is complete," and that "if the Rule 2004 Motion is denied, there is no need for this delay." (Objection at 14).

29. In fact, as clearly set forth in the Motion to Enlarge, the Debtors need additional time to assert counterclaims against JPMC because the Debtors are severely understaffed and suffering from a lack of institutional memory due to JPMC's purchase of WMB from the FDIC. The Debtors hardly seek an "extraordinary free pass" – rather, the Debtors merely seek an enlargement of time to enable its team to fully review and understand the facts surrounding the Adversary Proceeding to assert counterclaims regardless of the outcome of a ruling on the Motion.

CONCLUSION

30. For all of the above reasons, the Debtors request the Court enter an order denying the Objection and granting the Motion and the Motion to Enlarge.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: May 18, 2009
Wilmington, Delaware

ELLIOTT GREENLEAF

Rafael X. Zahralddin-Aravena (DE Bar No. 4166)
Neil R. Lapinski (DE Bar No. 3645)
Shelley A. Kinsella (DE Bar No. 4023)
1105 North Market Street, Suite 1700
Wilmington, Delaware 19801
Telephone: (302) 384-9400
Facsimile: (302) 384-9399
E-mail: rxza@elliottgreenleaf.com
E-mail: nrl@elliottgreenleaf.com
E-mail: sak@elliottgreenleaf.com

-and-

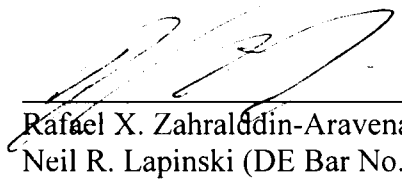
QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
Peter E. Calamari
Michael B. Carlinsky
Susheel Kirpalani
David Elsberg
51 Madison Avenue
New York, New York 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

Proposed Special Litigation and Conflicts Co-Counsel to Washington Mutual, Inc. and WMI Investment Corp

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: May 18, 2009
Wilmington, Delaware

ELLIOTT GREENLEAF



Rafael X. Zahralddin-Aravena (DE Bar No. 4166)
Neil R. Lapinski (DE Bar No. 3645)
Shelley A. Kinsella (DE Bar No. 4023)
1105 North Market Street, Suite 1700
Wilmington, Delaware 19801
Telephone: (302) 384-9400
Facsimile: (302) 384-9399
E-mail: rxza@elliottgreenleaf.com
E-mail: nrl@elliottgreenleaf.com
E-mail: sak@elliottgreenleaf.com

-and-

QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
Peter E. Calamari
Michael B. Carlinsky
Susheel Kirpalani
David Elsberg
51 Madison Avenue
New York, New York 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

Proposed Special Litigation and Conflicts Co-Counsel to Washington Mutual, Inc. and WMI Investment Corp