UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	)	Case No. 08-12228(MFW)
	)	Chapter 11
WMI INVESTMENT CORP.,	)	
	)	
	)	
Debtor.	)	
	)	
IN RE:	)	Case No. 08-12229(MFW)
	)	Chapter 11
WASHINGTON MUTUAL, INC.,	)	
	)	Courtroom 4
	)	824 Market Street
Debtor.	)	Wilmington, Delaware 19801
	)	
	)	October 3, 2008
	)	9:43 A.M.

TRANSCRIPT OF FIRST DAY MOTIONS and STATUS HEARING
BEFORE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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THE COURT: Good morning.

MR. COLLINS: Good morning, Your Honor. For the record, Mark Collins of Richards Layton and Finger on behalf of Washington Mutual, Inc., and WMI Investment Corp.

First of all, Your Honor, thank you very much for scheduling today's both status hearing, as well, as the hearing on certain first day motions. We do very much appreciate that.

Your Honor, very briefly, some introductions on behalf of the companies. With me are my co-counsel, Marcia Goldstein, Michael Walsh, and Adam Strochak with the law firm of Weil Gotshal & Manges.

I know there are a number of other parties in the courtroom. Instead of having a number of people coming up to the podium, I think it may make sense if people have certain comments, then we could have the introductions at that point in time. And what I would propose is we turn the podium over to Ms. Goldstein to provide Your Honor with some additional information regarding the status of these cases, and what we hope to accomplish.

THE COURT: All right. Thank you.

MR. COLLINS: Thank you, Your Honor.

THE COURT: I'd just ask those parties on the phone to keep their phones muted so we don't get a lot of feedback. Thank you.

Ms. Goldstein?

MS. GOLDSTEIN: Yes. Thank you very much, Judge. I think, as everybody here knows, Washington Mutual, Inc., the holding company for Washington Mutual Bank and Washington Mutual Bank FSB had a major change -- or the former holding company for those banks had a major change of circumstances late last week that led to this Chapter 11 filing.

Up until last Thursday evening, the company's most important asset was its ownership interest in Washington Mutual Bank, which was the largest thrift in the United States.

On Thursday evening, the Office of Thrift Supervision appointed the FDIC as receiver for the bank. And immediately, the FDIC sold the bank to JPMorgan Chase.

The debtors filed the Chapter 11 petitions that are now before this Court approximately 24 hours later. As you can imagine, there were numerous complications created by that situation, but an immediate one certainly for the holding company is that it and the bank shared premises, e-mail, computer systems, and employees.

We initiated the filing as quickly as we did, frankly, because with FDIC and JPMorgan on the premises, the Board determined that the protection of Chapter 11 was important to protecting the remaining assets of the holding company.

So, where are we now? It's been a week since the filing. The Board of Directors -- and I'll refer to Washington

Mutual, Inc. as WMI, just for clarity. The Board of Directors of WMI is fully functioning, it's engaged on the issues that are confronting the holding company, and they are pursuing, as evidenced by the filing of this Chapter 11 case, the protection of the assets that would be available for the creditors and other stakeholders of WMI.

Obviously they are focused on maximizing the value of these remaining assets, and putting a plan of action together to do so. And as we have learned this morning, and are pleased to see that the creditors are getting represented, and we are going to be pleased to make sure they are informed of the plans of action of the debtors.

There was a fair amount of chaos, frankly, starting Thursday evening when it was unexpected that the transition would happen so quickly, indeed, particularly for the employees of the bank. But the debtors are now working with JPMorgan -- and when I say the employees of the bank, we also have employees of the holding company. There was some overlap, and some separate employees. We are trying to work with JPMorgan to resolve any remaining confusion with respect to those employees.

We have been in close touch with JPMorgan on their plans for the employees. And we hope to know, or resolve relatively quickly, what employee resources will be available to the debtors. We have one senior executive who is a --

solely a WMI employee who has been functioning in that capacity and interfacing on a daily basis, seven days a week with both the FDIC and JPMorgan on numerous matters. But we hope to have additional employees available to WMI in the short term.

And so, Your Honor, as you can imagine, this is one of the reasons why we did not have the usual list of first day pleadings. For example, at this time, we don't have an employee motion. We are not certain at this time that there are prepetition amounts due to the WMI employees; we may get some clarity on that. But at this point in time, it was premature to file a motion.

Just as another note, we do not have a motion for debtor in possession financing because this debtor has adequate cash available to it to cover the cost of administration and to cover the cost of managing the assets and any continuing operations in the subsidiaries.

At this point in time, Your Honor, we are also in discussion with JPMorgan about providing certain transitional services to these debtors since they are now in possession of all of the accounting systems that were utilized by both the debtors and the bank. And they have access to information that these debtors will need on an ongoing basis to accomplish the preservation of assets that we see as the function of these debtors.

In addition, the debtors are likely to retain

professionals to assist in this regard, and we hope to identify that firm and make a motion shortly. And that will be of great assistance in terms of identifying and preserving the parent company assets.

In terms of cooperation, as I mentioned, we are working with JPMorgan to resolve that. At least at the moment, we are not getting the access to the information that we need, but we are hopeful that that will be resolved in the short term.

In the short term, in addition to resolving the access to information with JPMorgan and, I'll get to in a few moments, the FDIC, we will be putting in place a team greater than what we have right now to manage the process of running the remaining businesses, at least until they can be sold, and managing the assets. That will likely be a combination of former WMI employees, as well as the professional firm that we will bring on board to assist.

Now, we also -- and there's been much press about it -- will be pursuing key issues in this case. Perhaps the one that's caused the most attention is the $5 billion of cash that had been on deposit in WMV and WMVFSB prior to the takeover. It is our understanding that those deposits were taken as part of the transaction with JPMorgan Chase. They have indicated to us that they would like some opportunity to review the facts that relate to those deposits. And we hope that we can resolve

our entitlement to those deposits with JPMorgan based on a study of the relevant information. And we have, therefore, entered into a standstill agreement with JPMorgan which we have agreed to give them 48 hours before making a draw request, or filing a motion with this Court concerning the account. And similarly, JPMorgan has agreed to give us 48 hours' notice before commencing any legal proceedings in this Court regarding that account. It's a very simple standstill, Your Honor. It was designed simply to prevent both sides from running to court with limited notice when, in fact, we do hope that reviewing information will lead to the ability of our debtor to at least establish the status of those accounts as property of the estate.

We had --

THE COURT: Well, one clarification.

MS. GOLDSTEIN: Yes.

THE COURT: I think you stated that the debtor would provide 48 hours before drawing or filing a motion.

MS. GOLDSTEIN: Notice, yes.

THE COURT: And that JPMorgan will give 48 hours before filing a motion or doing litigation. Does that suggest that they may take the money out without giving notice?

MS. GOLDSTEIN: Your Honor, we do not believe that JPMorgan may take that money out. If -- either it is a deposit, or it is something else. We believe it's a deposit.

But we do not regard JPMorgan as an unsafe depository in any way.

We believe it would be a blatant violation of the automatic stay if they were to take the money out, Your Honor. And I think their indication that they would come to this Court for a determination regarding the status, I take, as an acknowledgment that the automatic stay certainly would preclude them from, in effect, doing anything to remove the money from that account.

We have -- we had initially entered into that standstill to be effective through today. We have agreed with JPMorgan that it would be effective through October 15th. We expect to have conversations with them shortly about a process for resolving their issues regarding the deposit.

THE COURT: Thank you.

MS. GOLDSTEIN: Longer term, Your Honor, we put that as a -- perhaps our key short-term issue. Longer term, we would with the assistance of the appropriate team that I referenced earlier, that we would determine a course of action for WMI's numerous subsidiaries. There are approximately 100 subsidiaries of the debtors. A number of them are inactive, some of them may have ongoing operations, and some of them may become additional debtors in these proceedings. Obviously we want to propose a course of action that will maximize their value, and particularly if there is a sale process, and

ultimately propose a plan that would provide for distributions to the various classes of creditors here.

A little bit more on these nondebtor subs. Obviously because of the limitations on accessing information, we don't have complete information about them but, again, we hope to get that. But most of them are vestiges of prior acquisitions, some of them are real estate development subsidiaries. Some may have real estate, or may have mortgage portfolios. These are not the so-called toxic mortgages that may have been heard about.

There are subsidiaries that have some insurance business, and there is a 1031 exchange entity. So, in effect, Your Honor, we need to have the ability, and we expect to have the ability to understand those subsidiaries and propose an appropriate course of action that would maximize their value to the creditors here.

Your Honor, I think I would, at this point, unless you have additional questions, turn the podium back to Mark Collins, who will present the motions that are calendared for today.

THE COURT: All right. Thank you.

MS. GOLDSTEIN: Thank you, Your Honor.

MR. COLLINS: Your Honor, turning to the agenda itself, Agenda Item Number 4, Your Honor, is simply our motion for an order directing joint administration of these two

Chapter 11 cases. We have had discussions with Mr. McMahon regarding the form of that order. We have made some minor modifications, and if I could present that form of order and walk Your Honor briefly through those changes.

THE COURT: You may. Thank you.

MR. COLLINS: Very briefly, Your Honor. We did modify the caption that will be used going forward as noted on Page 3 of the proposed form of order or the black line. So, now we referenced both the last four digits of the tax ID number, as well as the business address for the two debtor entities.

Your Honor, we have also included in this form of order, and a couple of the other ones, an ability to have this type of order, which is really procedural in nature, it doesn't seek true substantive relief, to be applicable to any future Chapter 11 cases that we may file that are affiliates of these debtor entities.

We have proposed that if we do file a future Chapter 11 case, we would submit to Your Honor a certification of counsel that would note that these entities are, in fact, affiliates as required under Bankruptcy Rule 1015(b), and any other supplemental information that we believe Your Honor would like to see, or to be made aware of. And attached to that certification of counsel a simple proposed form of order that would make this order applicable to those go-forward Chapter 11

cases.

We thought that would streamline the process because the relief sought in these motions is really procedural. We're not seeking in any of those orders that we have this provision approval to pay prepetition amounts, to deal with employee obligations, or the like.

I know that has given Mr. McMahon some pause. And if Your Honor is uncomfortable, as well, we will do the -- you know, file a separate motion and deal with it at that time. We are simply seeking to streamline the process for ease of administration.

THE COURT: Well, let me hear from the U.S. Trustee's Office then.

MR. McMAHON: Your Honor, good morning. Joseph McMahon for the United States Trustee.

I don't know if I necessarily agree with the debtors' counsel's characterization of what's being done as procedural. A couple of points here, Your Honor:

First, even on something like joint administration where parties in interest have the ability, the right to be heard with respect to it, that's our Office's basic concern here. Which is when these subsidiaries come in, there should be some ability for parties in interest to consider whether or not the relief that's being sought via these motions should be applicable for those debtors.

Another concern that we raise with debtors' counsel is, I guess, a loss in translation concern, which is let's take the 1031 exchange entity, for example. I don't know what bank accounts that entity may have independent of the specific accounts that are referenced herein. There's some broad language dealing with depository accounts and the like that's in the bank accounts motion. Those accounts automatically, I guess, covered by this form of order, it's -- I think what we need to do, Your Honor, is to take up those issues at the time that the -- I guess to the extent that the debtors are -- nondebtor affiliates are going to voluntarily file for bankruptcy protection, it's appropriate to reach that issue at that time.

THE COURT: Well, I don't understand, and I'll let the debtor clarify, I don't understand that by entering a joint administration order for later filed subsidiaries that any of the orders entered in this case with respect to the debtors would be applicable, such as the cash management order, or any other order. Does the debtor disagree with that?

MR. COLLINS: No, Your Honor. And our procedure would be that if we wanted a specific order to be applicable to those new debtor entities, such as extension of time to file schedules and statements, joint administration, maintenance of bank accounts, we would have to submit a certification of counsel explaining why that would be appropriate, and attach a

form of order. And if Your Honor would rather us proceed by motion --

THE COURT: I'd rather you not -- I think you need to file a motion then.

MR. COLLINS: Okay. We will do so, Your Honor. We'll strike that provision from the clean order.

THE COURT: Okay.

MR. COLLINS: Other than that, Your Honor, I believe the order is standard, and we'd ask for its approval.

THE COURT: All right. I will grant the normal joint administration order.

MR. COLLINS: Thank you, Your Honor. I would note I believe that I handed Your Honor the original. So, if Your Honor wouldn't mind striking that one provision, or I can take it back; either way, Your Honor.

THE COURT: Let me strike it. It's the provision immediately after the paragraph that starts with, "Ordered that a docket entry shall be made?"

MR. COLLINS: That's correct, Your Honor.

THE COURT: So, the following Paragraph will be stricken.

MR. COLLINS: Thank you.

THE COURT: All right. Without that provision, I will enter the order then.

MR. COLLINS: Your Honor, Agenda Item Number 5 is our

motion to seek a waiver of the requirement to file our list of creditors with our petition, an extension -- and an extension of time to file a list of creditors, and authority to establish procedures for serving out the 341 notice.

Your Honor, given the comments of Ms. Goldstein, along with the affidavit of Mr. Landefeld, obviously the debtors did not have the opportunity or access to the appropriate information to file a detailed list of creditors with our petition.

We have been in dialogue with both Mr. McMahon, as well as counsel to JPMorgan, about when it is we will have access to the computers that are now under the control of JPM and the employees of JPM so that we can prepare this list of creditors. We are prepared to do so immediately, but given that we don't have control over those computers, and access to the employees, we are somewhat at their mercy in the timing of filing our list of creditors.

I know that Mr. McMahon would like us to file it very quickly so that we could go forward with serving out notice of the 341 meeting, which has been tentatively set for October 30th.

So, Your Honor, in the proposed form of order that we have, I have currently left the date by which we must file our list of creditors blank.

I would expect that if -- with JPM's cooperation, we

could have this accomplished next week. But we are somewhat at their mercy with respect to that.

THE COURT: Well, let me ask a question. Because I understood from your motion that the bulk of your -- you suggest that the bulk of the creditors are public debt holders. The debtor surely can get that information from either the indenture trustee or the public records.

MR. COLLINS: That's correct, Your Honor. But there are also contract parties and other third party creditors that we would need to have access to the computers and the employees to obtain a more fulsome list. I mean I think we could file it -- a reduced list, but we were hopeful to file a more fulsome list so that we could then feel comfortable sending out the 341 notice.

And clearly we had talked about filing a list of creditors on a rolling basis where we would file what we had, and then continue to supplement it. But I think that made Mr. McMahon also uncomfortable.

So -- and I know that JPMorgan's counsel is in the courtroom. If they could advise us as to when we could get access to that information, that would obviously be helpful.

THE COURT: Do they want to volunteer?

MS. FELDSTEIN: Your Honor?

THE COURT: Yes.

MS. FELDSTEIN: Hello?

THE COURT: Yes?

MS. FELDSTEIN: Hydee Feldstein from Sullivan and Cromwell.

MR. LANDIS: Your Honor, Ms. Feldstein -- Adam Landis is here in the courtroom, as well, from Landis, Rath and Cobb on behalf of JPMorgan. In response to Mr. Collins' questions, I'll defer to Ms. Feldstein on this matter.

MS. FELDSTEIN: Your Honor, I think we are working as hard as we can. If the debtors -- I'm sorry. It's Hydee Feldstein from Sullivan and Cromwell representing JPMorgan Chase.

We have been working with Weil Gotshal and WMI, and have had various conversations regarding some of these issues. We understand the need for access to the records of WMI, and have -- if they were neatly segregated, Your Honor, I think this would be a simple proposition.

We had started to talk about a transition services agreement, but it is not a simple situation in a circumstance where we, as well as WMI, have really been attempting for the last week to effect an orderly transition of the operations and really first and foremost, to ensure that customers, depositors, and employees, and some of those confusion regarding those issues was clarified. We have made substantial progress in that regard. We have a senior team of finance professionals working through the books and records of the

failed bank. We have many time priority items, but we do understand that this is one of them, and we are working as cooperatively and as quickly as we can.

I wish I could give a date to the Court. But at this point, I don't have a date by which it is realistic. I can tell Your Honor that we will be speaking further to debtors' counsel after this hearing and over the weekend to try to prioritize some of the information and see what we can do to meet the legitimate requests that have been made of us.

We only bought the assets and the books and records of the failed bank. Under our agreement with the FDIC, we obviously did not acquire assets or books and records of the parent company. And it is a question of identification, and having the personnel and the knowledge base in which to respond on a timely basis.

I'm happy to report back to the Court once we've gotten a further report from our client later today.

THE COURT: Let me hear from the U.S. Trustee then.

MR. McMAHON: Your Honor, good morning. Joseph McMahon for the United States Trustee again.

With respect to our Office's position, as was communicated to debtors' counsel yesterday, first the list needs to get filed with this Court, that's point number one. So, when you see the form of order, the second ordered paragraph from our perspective, should be deleted.

Second thing, timing. We appreciate the fact that the first day affidavit raises some logistical issues for the debtors insofar as obtaining information. Here's the problem we have right now. This is a pretty big bankruptcy case, and we are aware of exactly one entity, the indenture trustee for the 12, I believe it is, separate note issues. And they're the only entity that's receiving notice in connection with these proceedings formally, aside from the other related governmental units and other entities that are noted in the debtors' various motions.

Our Office has to conduct a 341 meeting within 40 days. I believe that the drop dead date is the middle of the first full week of November. It's a tough week, there is Election Day that Tuesday. We've worked our way back to the 30th with the debtors; we propose that date. I haven't received formal confirmation that Thursday the 30th of October works for them. But if we're going to make this work, that notice has to go out early next week for the creditors to receive the notice --

THE COURT: Twenty --

MR. McMAHON: -- they're obligated to receive under the rules.

THE COURT: Require 20 days' notice, yes.

MR. McMAHON: So, with respect to the list then, it's a "now" issue. And, you know, from our perspective, if we're

going to have a meaningful meeting of creditors, meaningful notice of these cases, it's an issue that has to be turned immediately.

One final concern the form of order. We just bridged it with the automatic applicability point, there's a paragraph in this form of order with respect to that point at the end. But ultimately, Your Honor, while we're -- we do understand the debtors find themselves where they are, there has to be substantial effort made to be getting that list filed, hopefully by early next week so we can do the things that a debtor in possession needs to.

MR. COLLINS: Your Honor, may I make a suggestion? Based upon Ms. Feldstein's comments in the hope that certain items are prioritized, including preparation of this list of creditors, that we would include in this form of order that the debtor shall file the list of creditors by October 8th. That would then give a day or two to be able to serve out the 341 notice to make that October 30th date. But all with the understanding that we are somewhat at the mercy of JPM with respect to this. But we will use all of our good faith efforts, and we hope JPM will do so, as well, in order to get this on file by the 8th, get it served out by the 9th or 10th so we can have the 341 meeting on the 30th. But obviously with our rights reserves to seek a further extension if, for reasons really out of our control, we are unable to comply with that.

And obviously we'll strike the provision with respect to the auto apply, and we'll do that in every order that we're going to present to Your Honor.

THE COURT: Okay.

MR. SCHLERF: Good morning, Your Honor. Jeffrey Schlerf for Bayard.

Your Honor, I think this is a good time to introduce, or re-introduce, the Court to Mr. Lauria of White and Case, appearing on behalf of some bondholders who did not have time to file motion papers, Your Honor, but I'd like to orally move his admission for purposes of this hearing. We will file papers later today.

THE COURT: All right. It will be granted.

MR. SCHLERF: Thank you.

THE COURT: So, at least somebody got notice of today.

(Laughter)

THE COURT: Indirectly.

MR. LAURIA: From the newspaper, Your Honor. Thank you, Your Honor. Tom Lauria with White and Case.

I'm here today representing 16 holders of senior notes of Washington Mutual, Inc. that, in the aggregate, hold approximately $800 million of the senior notes. Those holders are Anchorage Advisors, Advent, Capital Management, Carval Investors, Chicago Fundamental Investment Partners, Concordia

Advisors, CRT Capital Group, Deutsche Bank Securities, Inc., Ivory Investment, K.S. Capital Partners, Latigo Partners, Lexor Capital, J.P. Schoenfeld Asset Management, Stark and Ruth, Inc., Taconic Capital Advisors, VSO Capital, and Alcreek (phonetic). And as Mr. Schlerf mentioned, we will be filing our appearance as quickly as possible and other related papers. I apologize for not having them on file for this hearing. However, we first met with our clients yesterday, and were retained yesterday afternoon. Things are moving pretty rapidly.

Your Honor, the first thing I want to mention here is that the bondholders that I represent are, in fact, deeply concerned about the circumstances they find themselves in, and that we find our borrower in at this point. We -- to this point in the case, which has been pending for a week, have learned more through the media about the status of the debtor, and its assets, and liabilities than we have as a consequence of any filings or proceedings that have been conducted in this Court.

And fundamentally, this goes to the whole principle of bankruptcy. Transparency is the debtors' obligation, and where the debtor stands. And what we feel like we've been experiencing is, instead, an opaque process to this point, and this is not just form over substance.

Immediately before the bankruptcy was filed, we are

told that an agreement was reached between the bank subsidiaries and JPMorgan Chase pursuant to which substantially all the assets of the bank's subsidiaries were transferred to JPMorgan Chase. To this point, that agreement has not been made public anywhere. We don't understand how that could be, given the apparent dramatic impact that it is having on the rights, and perhaps liabilities of these bankruptcy estates.

And since the bankruptcy has occurred, we are told that the debtor has entered into a standstill agreement with JPMorgan Chase. This is an agreement that also has not been made available, nor has notice of it been provided or any permission sought from this Court as to that agreement. And I understand that, you know, it could be argued as to whether not such an agreement is an ordinary course arrangement; I'm not sure that it is. I have no factual predicate for making an assessment of that other than to say it sounds very unusual for the holder of a $5 billion account to agree not to make withdraws out of that account.

Certainly by virtue of being a debtor, the automatic stay, we would all assume, protects the debtors' interest in the account. So, to standstill seems to be giving the bank where the account is protections that it's not otherwise entitled to as a consequence of the bankruptcy, and it's something that we'd all like to understand. Now, we, this morning, raised our concerns about the standstill and status

with debtors' counsel. And I think that we have an understanding, as soon as we're done here this morning, that we're going to sit down and try to start sharing information and getting an understanding of what's going on.

But standing here today, we have precious little in the way of real facts. And we're certainly concerned, based on precedent that has already occurred in connection with other financial institution insolvencies and takeovers, that under the circumstances, the government is moving very swiftly, things are done that are very hard to undo, if not impossible to undo. And we are concerned that we don't want to be the barking dog chasing the U.S. federal government truck down the street. We're very happy that there is a case pending here because it is clear to us that this Court and this case exists for the purpose of protecting the assets of the debtor and, importantly, protecting the rights of the debtors' stakeholders, which include my clients, which we hope, properly exercised, will balance whatever other policies and interests other branches of the government are simultaneously pursuing, but we won't find ourselves in a situation where all we've got to do here is cry over what's already happened.

And so we're very concerned about the status of our debtor, and the status and inaction in this case to this point, recognizing how fast things seem to be moving outside the court.

A procedural matter I want to make note of. Your Honor, a declaration has been filed in support of this motion, and the other first days that the debtors were asking the Court to grant today. However, the declarant is not available for cross examination. We think that's highly unusual, and probably renders it impossible for any statements in the declaration to be treated as an evidentiary predicate for the relief the debtor has sought -- is seeking. And we want to make sure that we're not waiving any rights that we have to revisit any of the relief, to the extent the Court does grant this relief today, if, after a proper evidentiary predicate, it is determined that that relief was inappropriate. Specifically --

THE COURT: Well, with respect to that, our local rules make it clear that any order entered on the first day is an interim order, and subject to being revisited at any time on motion of any creditor.

MR. LAURIA: Your Honor, the one concern we have is a potential shifting of burden. We don't want to be bearing a burden of seeking reconsideration. You know, if, upon an appropriate evidentiary predicate --

THE COURT: The burden does not shift.

MR. LAURIA: Thank you, Your Honor. There have been some extraordinary statements, by the way, in the declaration, and a couple have been made on the record this morning. In

particular, I would draw the Court's attention to Paragraphs 32 and 36 of the first day declaration of Mr. Landefeld. In 32, he makes the statement, I'll just -- "Prior to the commencement date, the debtors began gathering the information necessary to generate a complete list of their creditors for filing with the Court. But the bank receivership disrupted this process by limiting the debtors' access to their employees, and their books and records."

This statement is reiterated in Paragraph 36 where the declarant says, "Assembling the necessary information will be a significant task for the debtors especially in light of the bank receivership and its disruption to the debtors' business operations. Indeed, the debtors believe that many of their books and records may be in the possession of the FDIC or JPMorgan Chase, and retrieving such information will take additional time. The debtors also lost a number of employees to JPMorgan Chase."

Your Honor, I believe the Bankruptcy Code provides protections and rights to a debtor that are supposed to go to these types of problems, Section 542 and 543 of the Code come to mind, in particular. And to listen to debtors' counsel say that they are at the mercy of JPMorgan Chase in terms of getting the information, to me, sounds upside down. I think JPMorgan Chase is at the mercy of this Court to turn over to the debtors promptly the property and books and records of the

debtor, to the extent it's in their possession, either as a custodian or otherwise.

And so we're very troubled that, you know, as this Court and this process remains in stasis, and we talk about doing things by October 8th and October 30th. In the meantime, the real world around us is moving rapidly and things are happening, all of which may be ultimately accruing to the great prejudice to this estate and its stakeholders. So, we're very troubled by that situation.

And we're troubled by some of the comments of counsel promising that there will be a full fleet of professionals and other team members assembled in the future. We need -- we, the stakeholders, need to understand what this staffing exercise is going to be. We need to understand if there is a debtor, are there actual employees who work for this debtor, and not for anybody else, the banks, JPMorgan? Are there employees who have fiduciary duties only to this estate, and not to other entities?

And I think that we need to have an opportunity to understand that before we go down a path of what sounds to me potentially like creating a debtor that today may not exist. And we need to think about what the appropriate measures or consequences should be to make sure that the interest of stakeholders are properly protected.

So, against that backdrop, we want to make sure that

our rights are preserved here, and we want to have the opportunity to actively participate in the protection of our rights in connection with this Chapter 11 case.

THE COURT: All right. Thank you.

MS. GOLDSTEIN: Your Honor, I think this is out of order, but I think it's appropriate to respond to a number of those comments before Mr. Collins completes the presentation of the motions.

For one, as to the standstill, we did advise Mr. Lauria earlier today that we would provide him a copy of the standstill. And as I thought I quite explicitly described to the Court, all it is is an agreement between two parties that each would give 48 hours' notice to the other before it does something. I don't think that requires court approval, no substantive rights of anybody were given up. And so we -- happy to share that very, very short document with Mr. Lauria, but we do not believe that is anything --

UNIDENTIFIED SPEAKER: Negotiations with -- involving Wells and Wachovia.

THE COURT: Who is this peaking?

UNIDENTIFIED MALE SPEAKERS: Who said what to whom over the next --

THE COURT: Excuse me.

UNIDENTIFIED MALE SPEAKERS: -- today, I believe.

UNIDENTIFIED FEMALE SPEAKER: And we certainly will.

Although I --

THE COURT: Excuse me. Would the parties on the phone please stop talking.

UNIDENTIFIED FEMALE SPEAKER: Would even be grateful to not have to take --

THE COURT: I'm going to ask CourtCall to cut off the people that are talking if they can't respond to the Court.

UNIDENTIFIED MALE SPEAKER: We're going to do that right now, hit and run, we'll be right back.

UNIDENTIFIED FEMALE SPEAKER: Yes, we do.

(Music playing)

THE COURT: CourtCall. Excuse me. Somebody put us on hold instead of mute. Is the CourtCall operator there?

MS. FELDSTEIN: This is Hydee Feldstein from Sullivan Cromwell. It's not me, Your Honor. Would it help if I hung up and dialed back in so you could cut off the call?

THE COURT: No, I'm going to get -- try to get the CourtCall operator, who should be on the call. Let's take a two-minute recess.

(Recess 10:25 A.M./Reconvene 10:27 A.M.)

THE COURT: We're back on the record then.

MS. GOLDSTEIN: Thank you very much, Your Honor. It's much easier to speak to you now.

I think I had left off on, you know, addressing the standstill and that we certainly will share it with Mr. Lauria.

We have shared a copy with the United States Trustee. As I said, it is not a substantive matter. It is merely two parties agreeing to give each other 48 hours' notice before, in our case, making a withdrawal. We're not giving up any withdrawal rights, just giving -- agreeing to give 48 hours' notice.

Even JPMorgan might have trouble with a withdrawal request of $5 billion, Your Honor. So, we did not think it was a major give-up of rights to give them 48 hours' notice, if any give up of rights.

So, in any event, we -- that will be in place until October 15th.

THE COURT: Well, I'm not being asked to approve it.

MS. GOLDSTEIN: No, you're not, Your Honor.

THE COURT: So, I'm making no comment on it.

MS. GOLDSTEIN: Okay. Thank you, Your Honor. One thing I certainly do agree with Mr. Lauria, in terms of his comments, is we do believe that the asset purchase agreement between the FDIC and JPMorgan Chase should be made public, and we certainly support that.

We note that a FOIA request can be made for that at this point in time, and we are hopeful that the FDIC will make that document public.

THE COURT: Well, there are other means by which parties in a bankruptcy case can get access to information.

MS. GOLDSTEIN: Yes, and we are pursuing -- and we

are pursuing all of those options, Your Honor.

Now, in terms of Mr. Lauria's comments, I'm not sure he accurately quoted me with regard to the WMI employees. Let's just step back a minute. Before the seizure, there were 43,000 employees of the bank, and there were about 14 employees who were only WMI employees.

Thursday evening when the OTS order was issued, and then the sale to JPMorgan occurred, all of those employees were given the opportunity to become JPMorgan employees.

Today there is one executive level employee, the declarant, who is a WMI employee only. We do expect to have back, we hope, a few who -- employees who were WMI employees, who will be released, if you will, by JPM, or who will not have long-term jobs with JPMorgan, to be back on the team. We are not bringing in a fleet, this is not a job for a fleet.

However, there are a number of things that a small team -- remember, this is not the same business it was. Obviously the debtor has to reassess the specific needs. Some of those needs are very bankruptcy driven, and there will be a need for a small team from an appropriate firm. And I'm -- we're not, at this point, ready to make that motion to the Court. But we will be very shortly, and Mr. Lauria and other counsel for parties in interest will have certainly an opportunity to look at that, and what the scope of that will be.

Your Honor, I think -- while I still have the podium, and before Mr. Collins goes back to the motions, I thought I would at least try for the efficiency of finishing everything I was going to say later in terms of what we anticipate bringing before this Court in the short term.

As I mentioned, we have been working with JPMorgan on certain transitional issues. So, we will be hopefully coming to court to seek approval of a transition services agreement. We will be making a motion under Section 363 and 365 to assign several qualified benefit plans to JPMorgan. These are plans that WMI was the sponsor of, but the plans were to cover, and did cover, the 43,000 bank employees. So, we will make a motion very shortly to assign those plans to JPMorgan, who will become the sponsor.

We will also be seeking approval of the Court for a stipulation with JPMorgan, which also relates to the transition, and this relates to vendor contracts. WMI was a party to a number of contracts with vendors, but they -- the vendors provided services to the bank. In some instances, some of those services would be provided to WMI. But in order to enable JPM to have an orderly transition of their business, we are going to present stipulation which would, in effect, permit them to take 90 days to look at those contracts, and if it's appropriate, and they elect to do so, we may seek a motion or make a motion to assume and assign certain of those contracts

to JPMorgan. In the interim period, we agree that they may continue to pay those vendors who are providing interim services to them, and we agree that that, from the debtors' point of view, that their interaction with those vendors would not constitute violation of the automatic stay.

I'm not going to -- I'm not prepared at this time, frankly, Your Honor, to read a stipulation into the record that's the subject matter of it. We are still working on it to make sure that the debtors' rights are fully protected, as well. But we would hope to provide a certification of counsel on this, and seek approval of this stipulation very, very shortly.

Your Honor, other things that I think the Court could anticipate: The FDIC, at this point in time, is exercising control over not just the bank documents, but we learned in the last day that also over the WMI documents. And if we don't resolve this quickly, we will be coming to this Court for emergency relief.

In connection with the JPMorgan situation where they have control of certain documents, as Ms. Feldstein indicated, we intend to keep working to get that done. And obviously if there is no resolution of that, then we may seek the assistance of the Court on that, as well.

So, Your Honor, I think that -- in addition, Your Honor, of course, you will be seeing the retention applications

for counsel. We haven't filed those yet, but we will be filing those very shortly, as well.

So, on that note -- and we can discuss this at the end of the hearing, we will be asking for future hearing dates, perhaps for the beginning of the case, two hearings a month. But we can take that back up at the conclusion of the hearing.

THE COURT: All right.

MS. GOLDSTEIN: Thank you.

THE COURT: Thank you. Let's go back to our motions.

MR. COLLINS: Your Honor, if I may present a form of order that I believe we have reached resolution with Mr. McMahon regarding the list of the filing or the filing of the list of creditors -- one moment, Your Honor.

(Pause)

MR. COLLINS: May I present the form of order, Your Honor?

THE COURT: You may. Are these revisions acceptable then to you, Mr. McMahon?

MR. McMAHON: Your Honor, I handed Mr. Collins a markup. He's represented that the changes that we requested are incorporated in that form of order, and that's acceptable.

THE COURT: All right. Then I will grant the motion to the extent it seeks an extension of time to file the list of creditors to October 8th.

MR. COLLINS: Thank you, Your Honor. Your Honor,

turning to Agenda Item Number 6, this is our motion to obtain an extension of time and to file schedules and statements of financial affairs, as well as a waiver of the requirement to serve all of the equity holders with our Section 341 notice.

Your Honor, the reason why we filed this as a first day motion, typically these are served out, at least the request to extend the time to file schedules and statements is typically heard at the next hearing. We were somewhat concerned given the fact that we did not file a list of creditors and thereby establish more than 200 creditors, that we would not have fallen within the local rule that would have automatically given us an additional 15 days.

I have spoken with Mr. McMahon, and based upon the comments and assertions set forth both in Mr. Landefeld's affidavit which says, "In good faith, we believe we have more than 200 creditors," as well as what was set forth in the motion. I believe we're comfortable that we have met the local rule and, therefore, have the full 30 days under the local rule. As a result, we can put off that aspect of the motion to the next hearing date in these cases.

The other aspect of the motion really sought two items, they're somewhat related:

One was we were seeking a waiver of the requirement to file a list of equity security holders. We have withdrawn that request. We will, in fact, work with DTC and others to

obtain a list of record holders, and we'll then file that with the Court.

What we're also seeking, and this is important for purposes of today, Your Honor, is a waiver to the extent it is even applicable under the Rules, to serve out by mail the 341 notice to all of the record holders of our equity. We believe that we could have in excess of 50,000 record holders of our equity, and did not think it was a worthwhile use of the estate's resources to serve that out upon all of those record holders.

And, in fact, I would note in Bankruptcy Rule 2002, it talks about that the Court can order that such notice need not be given, or can direct the manner in which it is given. It is not required that it be served by mail. So, we wanted to bring this to Your Honor's attention --

THE COURT: And what manner do you suggest?

MR. COLLINS: Your Honor, what we have done -- we think a couple of things:

One is obviously the publicity associated with this filing, I think, is very well known.

We have also filed an 8-K with the Securities and Exchange Commission noting the fact that we have, in fact, commenced a Chapter 11 case in this Court.

A third way to proceed would be to public a 341 notice in a national newspaper, whether it be the Wall Street

Journal or U.S.A. Today, to provide further notice.

But we're at the discretion of the Court. If Your Honor believes, under 2002, we should, in fact, serve it out upon all 55,000 people, we will do so. I don't think it is possible that it would be done within a day or two of obtaining the list, just given the magnitude of it.

So, we wanted to raise that with Your Honor. And given the nature of this case, we really didn't think it was appropriate and wanted to get some relief from that potential obligation.

THE COURT: Let me hear from the U.S. Trustee then.

MR. McMAHON: Your Honor, good morning again. To make something clear as a distinction here, Your Honor. Typically claims agents with this Court merge the notice of the commencement of the voluntary case with notice of the 341 meeting to creditors. And here we're dealing with equity security holders with respect to this particular aspect of the relief.

So, as a technical matter, under Rule 2002(d), the equity security holders are entitled to notice of the order for relief. Any meeting of equity security holders, not creditors. So, there is a distinction to be drawn here. Meetings of equity security holders are not mandatory. And the meeting we're talking about is a creditors' meeting. So, that's one issue.

With respect to cause for seeking a waiver, the requirement to give notice, we are concerned, Your Honor, with respect to that request. And, in fact, we object to it for the following reasons: There -- this is a big company that has a substantial capital contribution at the equity level. And specifically if you look at the first affidavit, most recently, the seven or eight billion number, just slipped me, capital raised in April of this year is a substantial amount of money that is a threat of being erased in a very short period of time after it was raised.

The interest of equity security holders being aware that these cases are out there, we think, when measured against the cost of sending them a piece of paper, I know that the number of them are substantial, but we believe that the cost is justified with respect to ensuring that everyone who holds equity is aware that these cases are pending.

THE COURT: Thank you.

MR. COLLINS: Your Honor, just so we're clear with the Rule that we're talking about. If you turn to Bankruptcy Rule 2002(d) --

THE COURT: I have it.

MR. COLLINS: -- it says, "In a Chapter 11 reorganization case, unless otherwise ordered by the court, the clerk or some other person, as the court may direct, shall in the manner and form directed by the court give notice to all

equity security holders of the order for relief."

If you compare that, Your Honor, to 2002(a), 2002(a) says, with respect to the 341 notice that the trustee -- "The court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days' notice by mail of the 341 meeting," that's 2002(a)(1).

So, clearly 2002(d) talks -- does not mandate mail. It is first to determine if this requirement to give notice should be ordered. And if so, what is the appropriate manner of that notice given the nature and size of the equity security holder's body, given in excess of 50,000 potential record holders. The fact that we have filed an 8-K, that equity security holders could easily determine the fact that this has been -- these cases have been commenced, along with the publicity. We thought it best to not go through the process of mailing all of those record holders with the simple notice of commencement of these Chapter 11 cases. So, that is why we're before Your Honor on this.

THE COURT: Well, with respect only to the notice of the order for relief and 341, I will grant the debtors' request of relief. I think this is an unusual case, given the large number of equity holders, the uncertainty of what's going on, or what will be the result in this case, and the need to get the notice out quickly. I will authorize the debtor to provide notice to the equity security holders by filing such a notice

or -- excuse me, by publishing such a notice in a national newspaper.

MR. COLLINS: Okay.

THE COURT: And I'd request that it be done next week before the October 10th --

MR. COLLINS: We'll do everything we can, Your Honor, to make that happen.

We will obviously be submitting a revised form of order. Because the order that we have dealt with both the extension of schedules and statements, along with this aspect. So, we'll submit that by certification of counsel, Your Honor.

THE COURT: All right.

MR. COLLINS: Thank you. Your Honor, turning to the last motion we have before the Court. And I'd like to do a couple of things. I would like to first submit a black line of the form of order, which reflects a number of changes that were requested by the Office of the United States Trustee. I know that Mr. Lauria had certain concerns regarding this motion, as well. And what we have agreed to do, I believe, is to continue to work with Mr. Lauria and his group of clients, and not submit the form of order for execution until Monday where hopefully we have resolved his concerns and can submit an order to be executed by Your Honor under certification of counsel.

If we are unable to reach agreement on that form of order, then we would obviously be back before Your Honor at the

next hearing bringing this item back up.

THE COURT: All right. Thank you.

(Pause)

MR. COLLINS: Your Honor, turning to Page 3 of the order, we have made a number of changes at the request of Mr. McMahon. To note, that those entities that we have depository bank accounts, to the extent they are -- have already entered into depository agreements with the Office of the United States Trustee, then we're obviously in compliance with Section 345(b), and it provides that we could -- or without prejudice to our rights to deposit into future bank accounts, provided that they meet either Section 345 or otherwise approved by an order of Your Honor.

Further, Your Honor, on Page 4, we have noted that to the extent we open any new account or close any account, we would provide notice of that to any official committee appointed in these cases, along with the Office of the United States Trustee.

And we will, obviously, Your Honor, delete that -- the one paragraph that we included in the other orders with respect to the applicability of this order to future affiliated debtors.

So, as I mentioned, Your Honor, if we could defer consideration of this order until hopefully Monday so we can have a continuation of a dialogue with Mr. Lauria and his

group, that would be, I think, helpful to the process.

THE COURT: Well, it would also be helpful if I had a list of your bank accounts.

MR. COLLINS: Yes, Your Honor, we understand. And that is part of the dialogue that we're going to be having with Mr. Lauria, putting together that list, and potentially having that on file as early as Monday. That is something that we're -- is a work in process, as well.

THE COURT: Well, two other comments that you may want to consider:

One, to the extent that the debtors' checks are computer-generated, I think it's not a burden to have the debtor change and add the debtor in possession language with the bankruptcy case number.

MR. COLLINS: We will do that, Your Honor.

THE COURT: In addition to the lack of the list of the accounts, I didn't understand what the debtors' investment practices are. It's not really described in the motion. And you want me to approve your normal investment practices, I think I --

MR. COLLINS: Well, Your Honor, what we're seeking actually at this point is simply an extension of the time to come into compliance with Section 345(b). So, we're not, at this point, seeking approval of our investment practices.

THE COURT: Okay.

MR. COLLINS: It's simply to give us certain time to determine how to comply. Or if we cannot comply with the literal language of 345, we'll be back before Your Honor on that motion.

Your Honor, with respect to your comments regarding electronic checks, I assume that's to the extent we have access to those, the ability to modify the checks to so state. So, in other words, if we had the ability to do so, then we will do so as soon as practicable. If we do not, and we use existing check stock, we can continue to use the existing check stock.

THE COURT: You may.

MR. COLLINS: Thank you, Your Honor.

THE COURT: All right. Those are my only comments, and I'll look for a certification of counsel on Monday then.

MR. COLLINS: Thank you, Your Honor.

MR. JOHNSON: Good morning, Your Honor. Jeremy Johnson from DLA Piper.

We just want to be on the record that we're going to be involved. We represent the FDIC and we've been brought up several times today, as you've already heard, and I'm sure we're going to be engaged. Our firm is in the process of associating with local counsel, and we'll certainly get a notice on as soon as we've retained local counsel. But we've requested, and I believe the debtors have agreed, for us -- our involvement with respect to the cash management order and the

bank account issues, to the extent the FDIC would have any concerns with that.

THE COURT: Okay.

MR. JOHNSON: Thank you, Your Honor.

MS. BROWN-EDWARDS: Good morning, Your Honor. For the record, Terri Brown-Edwards of Potter Anderson and Corroon on behalf of the Washington Mutual Noteholder Group, certain noteholders at the bank level.

Your Honor, I'd like to introduce to the Court my co-counsel from the law firm of Bracewell Giuliani, Jeff Ansley from the Houston Office of Bracewell Giuliani, and he's a member of the Texas Bar, Your Honor. I'd like to move his admission pro hac vice orally, and we will follow that up with papers.

And also Lashon Kells, from the Washington, D.C. Office of Bracewell Giuliani. Ms. Kells is a member of the New York and D.C. Bars, and we will file papers for her motion -- file papers on a motion for pro hac vice on behalf of her. But I'd like to move orally for their admission today.

THE COURT: All right. It will be granted. Thank you.

MS. BROWN-EDWARDS: Thank you, Your Honor. At this time, I'd like to cede the podium to Mr. Ansley, who will have a brief discussion of many of the issues that you've heard already today.

THE COURT: Thank you.

MS. BROWN-EDWARDS: Thank you.

MS. ANSLEY: Thank you, Your Honor. And I will be more brief than most as we were just engaged literally a few hours ago. Jeff Ansley and Ms. Kells, along with Terri Brown-Edwards representing the Washington Mutual Noteholders Group.

I want to echo, Your Honor, a lot of the comments Mr. Lauria has already made this morning. Our group, to begin with, I can't identify who all those clients are because they were just hired -- at least we were just hired. But our clients consist exclusively of both senior and subordinate noteholders with Washington Mutual.

That's a group, Your Honor, first of all, I wanted to inform both the Court and the parties here that the group has been formed, and also that the group has engaged us to represent that group throughout this entire process. We are interested, and our clients are interested, in this process, and in particular about the $5 billion cash deposit that we've been talking about at some length this morning. We're concerned, in particular, about the fact that the holding company had $5 billion cash apparently, an amount of money that was far more significant than the amount that Washington Mutual itself had. So, we're concerned about the fact that money was there, and we'd like to be involved in the process as it goes forward concerning what happens with that $5 billion.

I think on that point, Your Honor, the issue of the standstill agreement with JPMorgan Chase has already been addressed through Mr. Lauria.

We would also like, as interested parties, we would also request Ms. Goldstein provide a copy of that standstill agreement, as short and brief as it may be. We're interested in the contents of that, and feel that our clients need to see a copy of that agreement, as well.

So, bottom line, Your Honor, we're asking for transparency through this process, and that as things develop, and as actions are taken, that our group as interested equity holders here be as involved in that transparent process as we possibly can.

THE COURT: Thank you.

MS. GOLDSTEIN: Your Honor, it's not clear to me that the creditors of the bank have standing in this case. And I am not prepared to agree to anything today that would, in any way, impair my ability to argue that.

THE COURT: Thank you.

MR. McMAHON: Your Honor, Joseph McMahon for the United States Trustee.

One housekeeping matter. I just wanted to make an announcement on the record. We have scheduled a formation meeting for Wednesday, October 15th. We put something on the docket given that the top 20 list consist of --

THE COURT: One entity?

MR. McMAHON: Exactly. So, we're hoping that word of mouth spreads to the beneficial holders. We're trying our best to provide notice. And to the extent that there are parties in the courtroom interested in serving on the committee, they're free to contact our office to obtain a questionnaire.

THE COURT: Well, the debtor will be providing the full list of creditors by the 8th, presumably. Should I require the debtor to amend the 20 largest list of creditors at that time, as well?

MR. McMAHON: Your Honor, we were anticipating -- well, first, it's our understanding that while the Bank of New York Mellon may be transitioning out of its position as indenture trustee on one or more of those issues, that's a possibility.

To the extent that that occurs by early next, we're certainly going to serve the successor indenture trustees with respect to that matter. And we're happy, obviously, to serve -- reserve the formation meeting notice when we obtain that amended list of top 20 creditors.

MS. GOLDSTEIN: Your Honor, the identification of the bondholders and -- you know, particularly the amounts that they hold is not something that the debtor has in its possession, even when we get access to the JPMorgan records or the FDIC's records as the case may be. That will not tell us

who the largest bondholders are. We know who the indenture trustees are, we've been serving them. And I think it's incumbent upon them to identify the bondholders.

THE COURT: Either that or you list them as number one and the other creditors as --

MS. GOLDSTEIN: Yeah, I mean we clearly are listing the indenture trustee. Right now it's only one, and as Mr. McMahon indicated, there is a succession process going on. But for the moment, we're dealing with Bank of New York Mellon.

THE COURT: Well, but they're only one per series --

MS. GOLDSTEIN: Well, I think they're -- they're --

THE COURT: -- but do you have 20 series of debt?

MS. GOLDSTEIN: Three, Your Honor.

THE COURT: All right. So, that they may -- possibly be three entities, but certainly there are 17 other creditors.

MS. GOLDSTEIN: Your Honor, those are the creditors we're trying to identify through access to the bank record. So, we have -- well, right now, it's one -- one institution, that is the indenture trustee on all three.

THE COURT: Right.

MS. GOLDSTEIN: There may be, you know, changes there obviously.

THE COURT: Understood.

MS. GOLDSTEIN: But we will do our best to get the information on the other 17.

THE COURT: All right. And amend your 20 largest list then. All right.

MR. COLLINS: Your Honor, then I think we have left is just to talk briefly about scheduling. We were hopeful to have another hearing at the end of next week, potentially October 10th, as emergent matters come before the company. In many respects, it might be considered a continuation of the first day hearing in these cases given the circumstances of this case.

The next hearing we would look for at the end of the month. Obviously our 341 meeting is in the morning of October 30th. To the extent Your Honor has time in the afternoon, that would be helpful simply because the debtors' professionals and others would all be in town for that.

THE COURT: I could do two o'clock on the 10th. And on the 30th, let's see. How about two o'clock on the 30th, as well, does that work?

MR. COLLINS: Yes, Your Honor. Thank you.

THE COURT: All right. And for any other dates, you'll contact Ms. Capp, and let's get two a month set up.

MR. COLLINS: Will do.

THE COURT: All right.

MR. COLLINS: Thank you, Your Honor.

THE COURT: Anything else?

MR. COLLINS: Nothing further.

THE COURT: All right. We'll stand adjourned. Thank you.

(Proceedings Adjourn at 10:59 A.M.)

C E R T I F I C A T I O N

I, Karen Hartmann, certify that the foregoing is a correct transcript to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ *Karen Hartmann* Date: October 6, 2008

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