

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

Case No. 08-12229 (MFW)

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In the Matter of:

WASHINGTON MUTUAL, INC., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court  
824 North Market Street  
Wilmington, Delaware

November 25, 2008  
10:38 a.m.

B E F O R E:  
HON. MARY F. WALRATH  
U.S. BANKRUPTCY JUDGE

1 APPLICATION of Debtors Pursuant to Sections 327(e) and 328(a)  
2 of the Bankruptcy Code and Rule 2014 of the Federal Rules of  
3 Bankruptcy Procedure for Authorization to Employ and Retain  
4 Perkins Coie LLP as Special Counsel to the Debtors Nunc Pro  
5 Tunc to the Commencement Date

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7 DEBTORS' Motion Pursuant to Sections 105(a), 327, 328, and 330  
8 of the Bankruptcy Code Authorizing the Debtors to Employ  
9 Professionals Used in the Ordinary Course of Business

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11 MOTION Pursuant to 28 U.S.C. Section 959(b) for an Order  
12 Compelling the Debtor to Comply With Section 8-401 of the  
13 Delaware Uniform Commercial Code by Registering Stock Transfers  
14 and Issuing New Certificates Without a Restrictive Legend

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16 MOTION Pursuant to 28 U.S.C. Section 959(b) for an Order  
17 Compelling the Debtor to Comply With Section 8-401 of the  
18 Delaware Uniform Commercial Code by Registering Stock Transfers  
19 and Issuing New Certificates Without a Restrictive Legend

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1 APPLICATION of Debtors and Debtors in Possession Pursuant to  
 2 Sections 327(e) and 328(a) of the Bankruptcy Code and Rule 2014  
 3 of the Federal Rules of Bankruptcy Procedure for Authorization  
 4 to Employ and Retain Miller & Chevalier Chartered as Special  
 5 Tax Litigation Counsel to the Debtors Nunc Pro Tunc to  
 6 October 8, 2008

7  
 8 APPLICATION of Debtors and Debtors in Possession Pursuant to  
 9 Sections 327(e) and 238(a) of the Bankruptcy Code and Rule 2014  
 10 of the Federal Rules of Bankruptcy Procedure for Authorization  
 11 to Employ and Retain Shearman & Sterling LLP as Special Tax  
 12 Litigation Counsel to the Debtors Nunc Pro Tunc to  
 13 October 8, 2008

14  
 15 APPLICATION for an Order Pursuant to 11 U.S.C. Sections 328(a)  
 16 and 1103 Authorizing and Approving the Employment and Retention  
 17 of Pepper Hamilton LLP as Delaware Counsel to the Official  
 18 Committee of Unsecured Creditors

19  
 20 APPLICATION of the Official Committee of Unsecured Creditors of  
 21 Washington Mutual, Inc., et al., to Retain and Employ Akin Gump  
 22 Strauss Hauer & Feld LLP as Co-Counsel, Nunc Pro Tunc to  
 23 October 15, 2008

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1 AMENDED Motion of Debtors to Authorize Washington Mutual, Inc.  
2 to Provide Financial Support to WM Mortgage Reinsurance  
3 Company, Inc.

4  
5 MOTION of Debtors Pursuant to Sections 105(a), 361, 362 and  
6 542(b) of the Bankruptcy Code Seeking Approval of a Stipulation  
7 and Agreement Concerning Deposit Accounts at JPMorgan Chase  
8 Bank, National Association

9  
10 MOTION of Debtors for an Order Pursuant to Section 365(a) of  
11 the Bankruptcy Code and Bankruptcy Rule 6006, Approving  
12 Rejection of Transfer Agent Agreement

13  
14 MOTION of Debtors Pursuant to Bankruptcy Rules 1007(c) and  
15 2002(c) and Local Rule 1007-1(b) for an (I) Extension of Time  
16 to File Schedules of Assets and Liabilities, Schedules of  
17 Current Income and Expenditures, Schedules of Executory  
18 Contracts and Unexpired Leases, and Statements of Financial  
19 Affairs and (II) a Waiver of the Requirements to File the  
20 Equity Security Holders

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24 Transcribed by: Barb Enneking

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## P R O C E E D I N G S

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THE COURT: Good morning.

MR. KAUFMAN: Good morning, Your Honor. Lee Kaufman of Richards, Layton & Finger on behalf of the debtors. I'm joined today with my cocounsel from the Washington, DC office of Weil, Gotshal & Manges. I have David Berz and Jennifer Wine. We did file a pro hac motion for Mr. Berz yesterday. I don't know that it's been entered yet, but he is --

THE COURT: It will be granted. I think I saw it this morning.

MR. KAUFMAN: Thank you, Your Honor. So then I will just turn over the podium to Mr. Berz to go through the agenda.

THE COURT: Thank you.

MR. BERZ: Good morning, Your Honor, David Berz, Weil, Gotshal & Manges, for the debtors. The amended agenda has eleven matters on it today. Ten of them relate to motions and I think we can go in the order of the agenda, the last matter, the eleventh, is a status conference related to producing the schedules for this proceeding.

I want to say at the outset that there's been a lot of conversation in respect to just about all of these motions in anticipation of today, and I think we're in pretty good order in terms of agreement on orders that I will pass up to you as we go through each motion.

THE COURT: Okay.

1 MR. BERZ: Okay? So the first item on the agenda is  
2 debtor's request to retain the law firm of Perkins Coie to  
3 provide legal advice and representation in the number of  
4 different kinds of matters, including intellectual property,  
5 litigation labor law, advice on SEC filing, advice to the board  
6 and general corporate advice.

7 Perkins Coie has a historic relationship with WMI,  
8 and we think it makes eminent sense for them to continue in  
9 that role. There's been no formal objection to Perkins Coie  
10 continuing to represent the debtors. I should point out one  
11 adjustment which is reflected in the order and that was we had  
12 Perkins Coie's lead lawyer file a supplemental affidavit just  
13 to be more specific about the matters in which they would be  
14 representing WMI and that came from some informal comments,  
15 which we appreciated, from the trustee.

16 THE COURT: And is the U.S. Trustee all right with  
17 the application, then?

18 MR. MCMAHON: Your Honor, good morning. Joseph  
19 McMahon for the acting United States Trustee. In light of the  
20 filing of the supplemental declaration, yes, we are.

21 THE COURT: Okay.

22 MR. BERZ: Your Honor, do you want me to pass the  
23 orders up to on a -- as when you do them or shall we wait till  
24 the end?

25 THE COURT: I'd like them all in advance, if

1 that's --

2 MR. BERZ: You got them.

3 THE COURT: It will save you some trips. Thank you.

4 MR. BERZ: Your Honor, the second matter before the  
5 Court is the debtor's motion to retain ordinary course  
6 professionals and the real focus, I suppose, on this motion is  
7 the arrangements that have been made in respect of fees to be  
8 paid. And I would just point out that the motion does call for  
9 a hundred percent of fees and expenses sought by ordinary  
10 course professionals with certain caveats. And they are,  
11 first, that fees and expenses shall not exceed 35,000 a month.

12 However, if there is a application for a month that's  
13 less than 35,000, that amount may be carried over for another  
14 month so that, in fact, another monthly bill, or succeeding  
15 bill, could exceed 35. However, the cap on that is 50,000  
16 without leave of Court.

17 And then we have also included a provision in here  
18 that puts a limit for the entire case, on any of the ordinary  
19 course professionals hired, of 500,000 dollars in the  
20 aggregate. We did receive an objection, and I can explain to  
21 you that -- by the way, there's an appendix to the motion that  
22 lists the professionals -- it's actually five, not four, that  
23 we'd like to add to the list. And maybe I just ought to  
24 identify who those professionals would be.

25 One is Joel Frank, that's a consulting firm that does



1 communications, crisis management, investor relations  
2 communications and communications with employees. The second  
3 is Grant Thornton, will provide tax advice and also  
4 interaction, to the extent necessary, with the Internal Revenue  
5 Service.

6 The third is Milliman, which is a reinsurance,  
7 performing metrics and actuarial service firm that the debtors  
8 are working with now. And the fourth professional listed in  
9 the appendix is the law firm of Arnold & Porter which has been  
10 involved in a litigation involving American Savings v. the  
11 United States, in which the debtor is a party, and we believe  
12 it makes sense for them to continue in their role.

13 So those are the four. There was a fifth, Towers  
14 Perrin, but we withdrew them because there was a conclusion  
15 that they couldn't operate under the fee structure that we had  
16 created. Now, in this one, Your Honor, I believe there was an  
17 objection from the trustee.

18 There were some comments from the committee, but I  
19 think we sorted those out, but there was an objection from the  
20 trustee, and I believe in a markup of the order that I received  
21 there was a proposal that the limit on the monthly fees be  
22 20,000 dollars and that the rolling limit be 30,000 dollars,  
23 and those were essentially what I read from the markup of the  
24 proposed order.

25 Maybe I should let Mr. McMahon speak at this point if

1 he still has an objection, because I don't want to presume to  
2 have covered the entire scope of the objection.

3 MR. MCMAHON: Your Honor, good morning. Joseph  
4 McMahon for the acting United States Trustee. The ordinary  
5 course professional's motion, we have, or raised, three points.  
6 The point with respect to the affidavit has been addressed, so  
7 we're down to two. Let me start with the cap.

8 Our office's general view on this motion is that it  
9 is a administrative accommodation used in larger bankruptcy  
10 cases where you have multiple professionals to be employed such  
11 that the cost of their services on a monthly basis, when  
12 measured against the cost to the estate of those professionals  
13 filing the applications on a monthly basis, becomes a burden to  
14 the estate.

15 So if we had a series of professionals billing below  
16 a certain threshold, let's just say 10,000 dollars, it makes no  
17 sense for the bankruptcy estate to bear the cost of someone to  
18 prepare a fee application in the amount of 5000, 7,000 dollars  
19 to address that 10,000 dollar invoice.

20 The caps, as the debtors have posited them, are a bit  
21 high for our liking. We have adjusted them downward to, I  
22 think, address our world view, Your Honor, with respect to  
23 cost, generally. I have no idea whether or not that revised  
24 cost structure accommodates or addresses the projected amounts  
25 that these professionals were to bill.

1           The debtors did not provide them in either the  
2           initial motion or the supplemental filing that they made adding  
3           certain ordinary course professionals, but that's point number  
4           one. Point number two is who gets to be on the list, and with  
5           respect to that point, Your Honor, I'm happy to proceed with  
6           that as the Court would like.

7           Grant Thornton, providing certain tax advisory  
8           services, that's a professional we typically see retained  
9           separately in these bankruptcy cases. They should not be -- to  
10          the extent of providing tax advice relating to reorganization  
11          and/or accounting services, and I don't have more than that,  
12          based upon what the debtors have provided. That's a separate  
13          application in our cases.

14          With respect to the other professionals, I will tell  
15          Your Honor that I'm quite happy or content addressing this  
16          subject generally when the professional files its affidavit. I  
17          can get a better sense of what they're doing and then raise  
18          that issue on objection at that point.

19          But we have some specific concern with respect to  
20          Grant Thornton, and those are our two points.

21          MR. BERZ: Well, Your Honor, I can't represent to you  
22          that we went through an exhaustive process where we asked these  
23          professionals to budget for the next twelve months on this  
24          matter because things are still arising. But we did reach  
25          these numbers based on our discussions about what we thought

1 had to be done, particularly early on in this proceeding, and  
2 also, with respect to Arnold & Porter, looking at the  
3 litigation that they've been involved in.

4 And in addition to that, these numbers -- the  
5 proposal is also based, and I don't mean to minimize it, on our  
6 own experience with what things like tax advice, communications  
7 advice, have the potential to cost in the course of a  
8 proceeding like this.

9 So for those reasons, we think that this is wholly  
10 appropriate. I'm not overly concerned about professionals just  
11 filling up the space that they have on a given month to bill.  
12 I can assure you that we're going to be overseeing what goes  
13 on, and monitoring these professionals, but each of them is  
14 providing what we believe is clearly support and advice and  
15 counseling in the normal course of things. And I just would  
16 note that the only objection we got on this is from the  
17 trustee.

18 THE COURT: Well, I don't know that that's  
19 significant, but with respect to Grant Thornton, why not a  
20 normal 327 application with respect to them?

21 MR. BERZ: I think that our view was that they were  
22 just going to be providing ongoing advice and that in that role  
23 they qualified as an ordinary course professional.

24 THE COURT: Well, the default is that they file an  
25 application, that they're not ordinary course. Ordinary course

1 is a creation of counsel. It's not in the Bankruptcy Code.  
2 And I'm inclined to require tax consultants, such as Grant  
3 Thornton, to do a separate application.

4 With respect to the remaining three, I'm not so  
5 troubled by the cap suggested by the debtors. If on review of  
6 those applications, or the affidavits, if the U.S. Trustee  
7 wants to revisit the issues, that's fine, but I'll approve it  
8 at the 35,000 dollars for this period.

9 MR. BERZ: Okay. And so you want us to file a  
10 separate filing on Grant Thornton?

11 THE COURT: Correct.

12 MR. BERZ: Okay. No problem. Thank you.

13 THE COURT: So if you get me a revised order on that,  
14 I'll enter it without the Grant Thornton.

15 MR. BERZ: Okay. Fine. Thank you, Your Honor. Your  
16 Honor, I believe the third item on the agenda involved the  
17 Brandes matter and I think as of yesterday, Your Honor approved  
18 the proposed stipulation between the debtors and Brandes  
19 regarding the motion. It's a transfer agent motion, so we  
20 appreciate that and we don't think there's anything more we  
21 need to say about that today.

22 THE COURT: Okay.

23 MR. BERZ: Thank you. The next agenda item, in fact  
24 the next two agenda items, 4 and 5, are motions to retain  
25 Shearman & Sterling and Miller & Chevalier, in particular for a

1 pending tax case that's been going on for some time.

2 Let me just say, at the outset, that the reason for  
3 both law firms is that one of the lawyers that had been  
4 previously at Miller & Chevalier, and this is before the  
5 filing, had moved over to Shearman & Sterling and was  
6 continuing his work on the matter. His name is Thomas Johnson,  
7 and after discussing the matter, it appears that that  
8 arrangement should continue. We did receive a response from  
9 the U.S. Trustee, but not a formal objection, I believe.

10 THE COURT: Well, then is Miller & Chevalier still  
11 doing the work? Doing any work on this?

12 MR. BERZ: They're both doing the work because Miller  
13 had people who remained, who were still working on it.

14 THE COURT: Okay. Why is it necessary?

15 MR. BERZ: Well, I think the expertise -- this is the  
16 way the case has been managed in the past, and the expertise is  
17 in both places to support the litigation.

18 THE COURT: But not in one?

19 MR. BERZ: But not in one; simply because of the  
20 history.

21 MR. MCMAHON: Your Honor, good morning. Joseph  
22 McMahon for the acting United States Trustee. We did do a fair  
23 amount of diligence with respect to the two applications and  
24 basically, if I understand it correctly, Mr. Johnston was with  
25 one firm, moved to the other, and the way the litigation was

1 arranged -- and it potentially involves multiple tax years and  
2 the debtors have filed lawsuits relating to certain of those  
3 tax years. They led with one suit and then I think there were  
4 one or two others filed. And I believe counsels on the phone  
5 can describe this for me better, but one firm, Miller, if I  
6 understand it correctly, is handling more of the damages  
7 related to issues and analysis and Shearman is handling more I  
8 think we call it the liability aspect of matters.

9 And, again, they can correct me if I'm wrong about  
10 that but as a practical matter, Your Honor, what's not in the  
11 application, or may not be readily apparent from it, is the  
12 following. In the lead lawsuit, and I'll just call it that,  
13 summary judgment was rendered in favor of the United States.  
14 And, therefore, it's in the Ninth Circuit.

15 My understanding is that the debtors do intend, or if  
16 they haven't appealed from it already, there will be an appeal.  
17 And as a practical matter, unless this case lasts -- I don't  
18 know how long it takes to get a case on the merits to the Ninth  
19 Circuit, we very well may be in an appellate mode for the  
20 balance of these bankruptcy cases without the other related but  
21 tangential pieces of litigation moving forward.

22 So, basically, if I understand it correctly, we're  
23 talking about one appeal and services relating to that.

24 THE COURT: And you agree that the attorney who moved  
25 to Shearman & Sterling should remain involved? You have no

1 objection with that?

2 MR. MCMAHON: We have no objection to that occurring,  
3 Your Honor. And to complete the record on this point, Your  
4 Honor, we did express some concern with respect to -- there's  
5 reference in the application, shift from a slightly discounted  
6 hourly rate to a full hourly rate upon filing of the  
7 bankruptcy.

8 My understanding is that the firms, by virtue of  
9 their prepetition arrangements with the debtors, have reserved  
10 the right to seek a success fee, or negotiate one with the  
11 client at the close of matters. That is no longer the case.  
12 In other words, that term has effectively been lifted as of the  
13 bankruptcy filing. And in light of our discussions overall,  
14 Your Honor, we've decided not to take a position on the only  
15 two applications.

16 MR. BERZ: Your Honor, just briefly, Mr. McMahon is  
17 absolutely right. There was a prior arrangement regarding some  
18 discounted amount for fees with a success fee built in. And  
19 the company, in discussions with counsels and with us, simply  
20 moved to a regular billing rate arrangement for these matters.

21 THE COURT: All right. Well, I will approve both of  
22 them, then, since the U.S. Trustee is satisfied of the need.

23 MR. BERZ: Thank you. Your Honor, I believe the next  
24 two matters on the agenda are from the committees, so I'll step  
25 aside and let Akin Gump proceed.



1 MR. FOURNIER: Your Honor, David Fournier on behalf  
2 of the creditors' committee. Your Honor, the first of the  
3 applications of this type is the Pepper Hamilton application.  
4 There has been no objection asserted with respect to that  
5 application and no changes were proposed on the form of order.

6 And following that we have the Akin, Gump  
7 application. There have been changes to the form of order.  
8 There, what I'd like to do is hand up both forms of order  
9 together with a red line of the Akin, Gump application and  
10 Mr. Hodara could address the specific changes.

11 THE COURT: Okay. You may.

12 MR. HODARA: Good morning, Your Honor, Fred Hodara,  
13 Akin Gump Strauss Hauer & Feld, proposed counsel for the  
14 official committee. Your Honor, as Mr. Fournier has indicated,  
15 received no objections to our retention application.

16 We have had discussions with the office of the United  
17 States Trustee and Mr. McMahon about certain aspects of our  
18 disclosures and as a result of that, and also as a result of  
19 becoming aware of additional parties-in-interest, we have  
20 prepared and filed a supplemental declaration of myself with  
21 disclosure schedules, and I believe that was filed on Friday.  
22 So among other things, in the supplemental declaration, we made  
23 note of the 2019 statements that have been filed and run all of  
24 the names on those schedules as well as of other professionals  
25 who have become retained since the time that we filed our

1 retention application.

2 So those are the kinds of things that are dealt with  
3 in the declaration. With respect to the form of order,  
4 Mr. McMahon had one request there, which we accommodated,  
5 pertaining to the reference to Section 328 as that concerns  
6 rates, and so we conformed that reference to the other orders,  
7 respect the retention of professionals that have been filed in  
8 this case.

9 THE COURT: Okay. All right. And the U.S. Trustee  
10 is satisfied with the revisions?

11 MR. MCMAHON: We are, Your Honor.

12 THE COURT: All right. I'll enter the order then.

13 MR. HODARA: Thank you very much.

14 THE COURT: Okay. Thank you. Next?

15 MR. BERZ: Your Honor, the next agenda item is the  
16 amended motion of the debtors to authorize Washington Mutual,  
17 Inc. to provide financial support to WM Mortgage Reinsurance  
18 Company, which I will refer to as WMRC.

19 I think, Your Honor, this one requires some  
20 background and a fair amount of explanation. WMRC is a wholly  
21 owned subsidiary of WMI and subject to the laws and regulations  
22 surrounding reinsurance in Hawaii where it is incorporated.

23 Essentially, WMRC is an entity created by WMI that  
24 reinsures a layer of coverage in a broader insurance regime for  
25 mortgage insurance. The best way I can explain this to you is

1 when there is a claim by a bank or a lender for insurance to  
2 cover a mortgage, or a servicer, the first four percent of that  
3 obligation, if it arises, is paid for by a mortgage insurer.

4 From four to fourteen percent, or the next ten  
5 percent, is paid for by WMRC, if a claim arises, and then the  
6 remaining eighty-six percent is paid by the mortgage insurer.  
7 The construct for this insurance regime for WMRC, as the  
8 reinsurer, constitutes seven mortgage insurers, each of whom  
9 has created a trust, and the proceeds of the trust include  
10 insurance premiums that are paid by the person or people  
11 seeking insurance.

12 The value of that trust, based on investment in a  
13 very conservative investment regime -- but there is also an  
14 obligation, under the terms of the trust agreement, that WMRC  
15 must maintain certain minimum amounts of money in the trust so  
16 that if the trusts are drawn down below a certain amount of  
17 money, WMRC is required -- WMI is required to true up that  
18 trust, if you will, and keep the funding at a certain level.

19 One of the seven trusts has fallen below the minimum  
20 amount of what we'll call the reinsurance reserve, and that's  
21 this amount that has to be kept as the minimum in the trust.  
22 And this particular trust is the one for Genworth Company, one  
23 of the seven, and the shortfall in the amended motion, as  
24 you'll see, that we are seeking to fund, is 11.9 million  
25 dollars.

1           Now, the point that we want to make here is that one,  
2 we are asking for the authority to fund this capital call, if  
3 you will, just for Genworth now. Right now, our experts and  
4 consultants believe that even in these very difficult times,  
5 based not only on their last report, which was filed in June of  
6 2008 but their projections for a report that will be filed in  
7 the end of September, that the trust has a value in excess of  
8 300 million dollars.

9           And our purpose today is just to preserve that asset  
10 of the estate. Genworth gave us notice that we had thirty days  
11 to reserve the deficiency, and originally the deadline was  
12 November 14th to true up the trust but by agreement, we have  
13 now been able to extend that to December 14th, and Genworth  
14 anticipates that the deficiency represents anticipated amounts  
15 that it's going to need to cover delinquent loans insured by  
16 Genworth and reinsured by WMRC.

17           The major issue for us are the implications of our  
18 not meeting the request of Genworth at this point. And,  
19 essentially, Genworth has two options. It can simply, quote,  
20 "run off the policy", which means WMRC remains liable for  
21 outstanding reinsured nonperforming loans and WMRC still  
22 receives premium.

23           Our concern about this is the economics. That might  
24 be an acceptable resolution, but what we are concerned about is  
25 if we're in technical default, there is likely to be concern

1 from the regulators in Hawaii, as well as in Vermont, and we  
2 may end up in what amounts to an administrative proceeding,  
3 involving reinsurance regulators, that could bring the program  
4 to a standstill and jeopardize our access to the assets. But  
5 more onerous is the other option that under the trust  
6 agreements Genworth has, if we don't true up the trust, and  
7 that is they could cut off the program, which would mean that  
8 WMRC could no -- while WMRC would no longer be responsible for  
9 reinsurance obligations, it would not receive insurance  
10 premiums and it would still be liable for maintaining  
11 reinsurance reserves.

12 Bottom line here is that Genworth would have control  
13 of the trust proceeds and likely claim that most, if not all of  
14 them, were needed to cover losses. Now, it's true that if we  
15 ended up in that situation, Genworth simply just couldn't take  
16 the money; there would ultimately have to do some sort of a  
17 proceeding but that proceeding would be analogous, and perhaps  
18 Your Honor has had experience with this too, a liquidation of a  
19 reinsurer and be a protracted expensive process. And, again,  
20 Genworth would be in a position to control the cash in this  
21 trust account, and we would also worry about the potential  
22 overflow.

23 We think the value of the Genworth trust is between  
24 forty-five and sixty-five million dollars. At least that's  
25 what Milliman, our consultant, insurance actuaries and

1 specialists in the reinsurance area, believe. And that the  
2 support for the trust, we're asking for eleven million dollars  
3 now, it could go up; we don't know exactly what that number is.  
4 We don't expect it to be substantial, but I do want to point  
5 out to the Court that --

6 THE COURT: Have you submitted any declaration  
7 regarding the value? That's not a matter of the record.

8 MR. BERZ: It is not and, Your Honor, I have with me  
9 today the principal from Milliman who assesses the loss and  
10 projects the losses, and I also have Mr. Michael Schmitz. And  
11 I also have with me Chris Wells, from Alvarez & Marsal, who  
12 does the calculation of what it's going to take to true up the  
13 trust based on the projected losses.

14 THE COURT: Well, do you want to submit a proffer of  
15 any of their testimony on this?

16 MR. BERZ: Well, I have proffers that I'm prepared to  
17 enter into the record, if you would like them.

18 THE COURT: Yes.

19 MR. BERZ: Okay.

20 THE COURT: I think you need a record.

21 MR. BERZ: Yes. That's fine. Okay. Let me just  
22 finish one point, if I may, about how we've tried to deal with  
23 this issue and resolve it and then I'll turn to the proffers,  
24 if that's okay with Your Honor?

25 THE COURT: All right.

1           MR. BERZ: We recognized that this is an incremental  
2 process. I can tell you, and I can read to you, what our level  
3 of confidence is that we're talking about a substantial --  
4 hundreds of millions of dollar opportunity here. I'm also  
5 mindful that we are in difficult economic times, and that there  
6 is a need for reinsurance -- reassurance of the Court and  
7 others that we're not just simply putting bad money -- good  
8 money after bad money and making that bad money. And that's  
9 why we prepared these proffers and I brought these gentlemen  
10 with me.

11           But I also want to point out that in the order that  
12 we are proposing that you have for the amended motion, we have  
13 built into that two what I'll call safety valves. The first is  
14 that we will give notice to, obviously -- we're not asking for  
15 a blank check here. On an incremental basis, if we need to  
16 come back and ask for more money to true up one of these  
17 trusts, we're going to come back to the Court. Now, the order  
18 that you have talked mainly about, the creditors' committee and  
19 the bondholders' committee, and Mr. McMahon and I had a  
20 discussion earlier about amending that order to make sure that  
21 the notice went out to the whole 2002 list that in any motion  
22 that we file there has to be an explanation about why we need  
23 the money, much like what we have incorporated in this motion  
24 in respect to Genworth, and that ultimately the approval for  
25 providing the capital infusion must be approved by the Court.

1 And we have no problem with that, and we're prepared to further  
2 amend the draft order that we -- the order that we gave you,  
3 the black line that we gave you, to accommodate the trustee's  
4 suggestions, which actually we think are good ones.

5 The second element of the order that's important is  
6 that the order is conditioned on our obtaining -- essentially  
7 securing the payment, in this case the 11.9 million dollars,  
8 with other assets in the Genworth trust, so that when we would  
9 come back to you WMI would be putting up the money but it would  
10 have a security interest in the trust for the amount and a  
11 priority for the 11.9 million dollars and if it put in more  
12 money -- any more money.

13 Now, that documentation has been discussed with the  
14 regulator in Hawaii. It's our understanding that they are  
15 going to be comfortable with that, but they do want to see the  
16 documentation. So we've put it in the order that -- provided,  
17 however, that we get this security agreement in place with the  
18 regulator also as a condition to making these infusions of  
19 capital.

20 Your Honor, with respect to the proffers, apart from  
21 bearing with me as I go through them, they sort of break down  
22 into two major pieces.

23 THE COURT: Just give them to me, how about that? No  
24 previews.

25 MR. BERZ: Okay. This is the proffer of Michael C.



1 Schmitz in support of debtor's motion to authorize Washington  
2 Mutual, Inc. to provide financial support to WM Mortgage  
3 Reinsurance Co., Inc., or WMRC. I offer this proffer as  
4 testimony that would be given by Michael Schmitz, a principal  
5 in the Milwaukee office of Milliman, Inc. Mr. Schmitz is  
6 present in the courtroom today, and pursuant to Rule 103(a)(2)  
7 of the Federal Rules of Evidence, this Court may accept this  
8 proffer in lieu of his testimony, as you know. Mr. Schmitz is  
9 familiar with the debtor's motion to authorize Washington  
10 Mutual to provide financial support to WMRC that is before the  
11 Court today. I'll refer to the aforementioned motion as the  
12 WMRC motion. Mr. Schmitz's background: Mr. Schmitz would  
13 testify that he holds a bachelor's degree in business  
14 administration from the University of Wisconsin with majors in  
15 actuarial science and risk management insurance. He would also  
16 testify that he is a fellow of the Casualty Actuarial Society  
17 and a member of the American Academy of Actuaries. Mr. Schmitz  
18 would testify that he is a principal and consulting actuary in  
19 the Milwaukee office of Milliman and has been with the firm  
20 since 1993.

21 He would testify that he manages a practice dedicated  
22 to financial risk, such as mortgage guarantee, financial  
23 guarantee and credit enhancement products. He would testify  
24 that he has consulted to the majority of the insurers that  
25 comprise the private mortgage insurance industry, as well as

1 many lenders with captive mortgage reinsurance operations, on  
2 topics including reserving, pricing, financial analysis,  
3 mortgage portfolio credit analysis, product development,  
4 structured transactions and risk transfer analysis.

5           Regarding Mr. Schmitz's responsibility in these  
6 Chapter 11 cases, Mr. Schmitz would testify that Milliman is an  
7 actuarial and consulting firm that has provided various  
8 consulting services, including reinsurance performance metrics,  
9 or RPM services, to WMRC, as well as other actuarial consulting  
10 services since 1999.

11           Mr. Schmitz is the senior consultant responsible for  
12 the consulting services to WMRC, including the loss forecast  
13 included in the RPM services. Mr. Schmitz would testify that  
14 the purpose of his testimony is to explain Milliman's  
15 calculation of loss and premium forecasts for WMRC, WMRC's  
16 reinsured loan portfolio, which were provided as part of the  
17 Milliman RPM service.

18           Mr. Schmitz would testify that these forecasts were  
19 subsequently incorporated into the debtor's calculations of  
20 WMRC's anticipated value and the capital needed to preserve  
21 such anticipated value as more fully set out in our motion.  
22 With regard to Milliman's loss and premium forecasts, Your  
23 Honor, Mr. Schmitz would testify that in the ordinary course of  
24 business, to assist WMRC in understanding the risk  
25 characteristics of its reinsured portfolio, Milliman provides a

1 quarterly service that includes, among other things, loss and  
2 premium forecasting. This is the RPM service.

3 Mr. Schmitz would testify that future losses in  
4 premiums are projected at the book year level for each of  
5 WMRC's seven primary mortgage insurer partners, these are the  
6 seven trusts, and are set forth in reports provided to WMRC.

7 Mr. Schmitz would testify that as of June 30, 2008,  
8 Milliman projected WMRC's future losses and premiums on a  
9 runoff basis, that is assuming no new loans would be written  
10 for WMRC's reinsured loan portfolio subsequent to June 30th,  
11 2008 which in fact, Your Honor, is the case. There will be no  
12 new loans.

13 Mr. Schmitz would testify that by applying the  
14 methodology, which will be described shortly, to the data  
15 available as of June 30, 2008, Milliman's forecasts various  
16 magnitude of loss scenarios for WMRC. Mr. Schmitz would  
17 testify that based on this analysis as of June 30, 2008,  
18 Milliman's baseline estimate of WMRC's ultimate loss is  
19 approximately 330 million dollars.

20 Mr. Schmitz would testify that at the debtor's  
21 request, Milliman also prepared a more pessimistic projection,  
22 on a ninety percent probability level, pursuant to which WMRC's  
23 losses would be approximately 505 million. Mr. Schmitz would  
24 testify that any adverse loss scenario of this probability  
25 level indicates that based on the data as of June 30, 2008,

1       there is a ninety percent probability that the ultimate loss  
2       would be less than 505 million.

3               Mr. Schmitz would testify that any analysis of future  
4       losses involves estimates of future contingencies. He would  
5       testify that the uncertainty associated with William's  
6       estimate -- Milliman's estimates, excuse me, is also magnified  
7       by the nature of the mortgage insurance industry.

8               Mr. Schmitz would testify that mortgage insurance  
9       results are sensitive to external facts, such as unemployment  
10      and housing market conditions. He would testify that a loan  
11      underwritten in a given year is generally insured over several  
12      calendar years. He would testify that for this reason, adverse  
13      economic conditions in a given calendar year could affect  
14      results not only for the current underwriting year, but also  
15      prior underwriting years.

16              Mr. Schmitz would testify that, moreover, WMRC losses  
17      are subject to uncertainty due to the excessive loss structure  
18      of its reinsurance business. He would testify that excess  
19      losses tend to be more volatile as they are associated with  
20      more severe economic deteriorations. Mr. Schmitz would testify  
21      that future economic developments would give rise to additional  
22      delinquencies and losses, will impact ultimate losses.

23              He would testify that while variation from Milliman's  
24      projections is likely, such projections represent Milliman's  
25      professional judgment after careful analysis and arrival of the

1 information.

2 Milliman's forecast methodology. Mr. Schmitz would  
3 testify that Milliman's forecast of losses and premiums, as of  
4 June 30, 2008, were generated through a multistep process.  
5 Mr. Schmitz would testify that to generate loss forecast,  
6 Milliman developed estimates of expected underwriting and  
7 economic risk factors for each book year of business reinsured,  
8 based on the individual underwriting and economic qualities of  
9 each book of business. He would also testify that these  
10 estimates were derived from loan data provided to Milliman by  
11 the primary mortgage insurance companies on behalf of WMRC.

12 Mr. Schmitz would testify that the underwriting risk  
13 factors were developed by analyzing the loan characteristics of  
14 the cohort of loans that make up the respective book year. He  
15 would testify that some characteristics considered are, for  
16 example, credit score, loan to value ratio, documentation type  
17 and purchase type. Mr. Schmitz would testify that Milliman  
18 used a loss model to assign these underwriting qualities  
19 corresponding loss expectations which were, in turn, used to  
20 generate an expected underwriting based loss estimate.

21 He would then testify that the economic risk profile  
22 was developed through the use of a home price forecast that was  
23 based on purchase only index information generated by the  
24 Office of Federal Housing Oversight, for which data was current  
25 through March 31, 2008, as of the time of Milliman's

1 evaluation.

2 Mr. Schmitz would testify that based on the  
3 forecasted home price trends purchased by Milliman from Global  
4 Insight, an economics consulting firm, the geographical mix  
5 within the book year and its to date home price appreciation or  
6 depreciation, Milliman assigned loss expectations to each  
7 individual book year and ceding company reflecting the economic  
8 risks embedded in the home prices of the geographical regions  
9 to which each book is exposed.

10 Mr. Schmitz would testify that once the expected  
11 underwriting and economic risk factors were estimated, Milliman  
12 next considered the paid loss and incurred loss experience of  
13 each book of business as of June 30, 2008. He would testify  
14 that paid losses are those losses for which money has been  
15 disbursed by the primary insurer reinsured by WMRC and are  
16 distinct from incurred losses, which also include losses  
17 outstanding but still unpaid by the primary insurer.

18 Mr. Schmitz would testify that actual paid loss and  
19 incurred loss amounts were incorporated into Milliman's  
20 standard actuarial projection methods, along with the  
21 aforementioned underwriting and economic risk factors, to  
22 project the amount of loss that would be sustained by the  
23 primary insurer prior to the application of reinsurance on both  
24 a paid and incurred basis.

25 Mr. Schmitz would testify that unpaid and unreported

1 losses were also projected forward using payment and incurral  
2 timing patterns developed by Milliman and based on industry  
3 data. Mr. Schmitz would testify that, finally, Milliman  
4 applied the loss amounts, as calculated above, to WMRC's  
5 reinsured layers for each book year, to determine loss amounts  
6 that would be ceded to WMRC from each primary mortgage insurer  
7 on both a paid and incurred basis.

8 He would testify that like Milliman's loss forecast,  
9 Milliman's premium forecasts were also based on loan data  
10 provided to Milliman by the primary mortgage insurance  
11 companies on behalf of WMRC.

12 Mr. Schmitz would testify that to generate premium  
13 forecasts, Milliman examined the reinsurance premium levels by  
14 book year by primary mortgage insurance company reflecting the  
15 loan volume remaining in force to generate renewal premiums.

16 Mr. Schmitz would testify that in forecasting future  
17 premiums, Milliman assumed a future premium persistency rate  
18 based on characteristics of the book of business and experience  
19 to date. He would testify that these persistency rates were  
20 used to project premiums for the remainder of the runoff term  
21 for each book of business.

22 Mr. Schmitz would testify that Milliman also  
23 incorporated into the calculation the weighted average premium  
24 rate for the remaining insurance in force as derived from the  
25 loan level data provided by the primary mortgage insurance

1 companies.

2 Mr. Schmitz would also testify that in order to  
3 develop the pessimistic loss forecast requested by WMRC and  
4 counsel, Milliman developed a series of statistical  
5 distributions to project based runoff losses for each book year  
6 of business and ceding company.

7 Mr. Schmitz would testify that these statistical  
8 distributions were used to model the volatility associated with  
9 the projected future loss amounts for WMRC. Mr. Schmitz would  
10 testify that after considering several possible distribution  
11 curves for each of the components, Milliman selected a gamma  
12 distribution for the runoff loss and calibrated the mean of  
13 each gamma distribution to the ground up loss projections; that  
14 is, projected losses prior to the application of reinsurance.

15 Mr. Schmitz would testify that Milliman then selected  
16 the ninety probability level for each book year and ceding  
17 company to determine the losses ceded to WMRC. Mr. Schmitz  
18 would testify that utilizing the ninety percent probability  
19 level for each book year and ceding company, loss distribution  
20 to set the overall ninety percent probability level  
21 conservatively assumes all book years are one hundred percent  
22 correlated.

23 He would testify that while the distributions for  
24 consecutive book years are often strongly correlated, Milliman  
25 has observed that they are not typically one hundred percent



1 correlated. He would testify that accordingly, if using a  
2 simulation model with less than perfect correlation, the  
3 resulting ninety percent probability level for the future  
4 losses would likely be lower than the corresponding estimate  
5 using perfect correlation.

6 Information and data reliance by Milliman as of June  
7 30, 2008. Mr. Schmitz would testify that in preparing  
8 projections, Milliman relied on information and data supplied  
9 by third parties by or on behalf of WMRC. Mr. Schmitz would  
10 testify that the loan level data which were used in Milliman's  
11 analysis to develop both loss and premium forecasts contain  
12 data through June 30, 2008, whereas the economic data used to  
13 calculate economic based loss estimates included actual data  
14 through March 31, 2008, with a forecast extending forward from  
15 that date.

16 He would testify that Milliman has not audited,  
17 verified or reviewed this data and other information for  
18 reasonableness and consistency as such a review was beyond the  
19 scope of his employment. Mr. Schmitz would testify that  
20 Milliman's forecasts were based on its actuarial estimates at  
21 the time the study was conducted, and based on the data  
22 available at that time, as previously described.

23 He would testify that any study of future operating  
24 results involves estimates of future contingency. He would  
25 testify that while this analysis represents Milliman's best

1 professional judgment arrived at after careful analysis of  
2 available information, it is important to note that a  
3 significant degree of variation from Milliman's projections is  
4 possible.

5 Mr. Schmitz would testify that Milliman has attempted  
6 to reflect this variability by providing a range of projected  
7 outcomes under various scenarios. Mr. Schmitz would testify  
8 that there cannot be a guarantee that actual ultimate outcomes  
9 will fall within the range provided.

10 Mr. Schmitz would testify that a simulation model  
11 illustrates the projected impact of actual results varying from  
12 projected results due to estimated variability inherent in the  
13 insurance process.

14 Mr. Schmitz would testify that the economic and loss  
15 environment of the marketplace in which WMRC operates is  
16 changing. He would testify that for this reason, quarterly  
17 updates of this analysis are recommended and have historically  
18 been provided for WMRC. Mr. Schmitz would testify that at  
19 present Milliman is working to update its loss and premium  
20 forecasts using data as of September 30th, 2008.

21 He would testify that he anticipates that this update  
22 will likely produce a higher estimate of ultimate losses than  
23 the June 30, 2008 estimate, estimated at 330 million, and that  
24 the estimate of the timing of the incurred loss is likely to  
25 accelerate.

1           Mr. Schmitz would testify that this is due, in large  
2 part, to the economic deterioration and rising delinquencies  
3 since the June 30, 2008 evaluation, as well as the inclusion of  
4 additional business insured subsequent to June 30, 2008.

5           Mr. Schmitz would testify that he agrees the updated  
6 loss in estimate is likely to be closer to the upper end of the  
7 loss estimates used to estimate the value of WMRC -- estimated  
8 value of WMRC provided in the motion as the range has been  
9 presented to him, but he does not believe that Milliman's loss  
10 estimate, when updated as of September 30, 2008, is likely to  
11 exceed the range previously used to estimate the value of WMRC.

12           That would be Mr. Schmitz's testimony today, Your  
13 Honor.

14           THE COURT: Does anybody wish to cross-examine  
15 Mr. Schmitz? All right. I'll accept the proffered testimony.

16           MR. BERZ: Thank you, Your Honor. The second witness  
17 we have available today, whose testimony I'll proffer, is  
18 Mr. Chris Wells from Alvarez & Marsal North America. This  
19 proffer is of similar length.

20           I offer as a proffer testimony that was given by  
21 Chris Wells, a senior director of Alvarez & Marsal North  
22 America, which has been retained as the debtor's restructuring  
23 advisor. Mr. Wells is present in the courtroom today, and  
24 pursuant to Rule 103(a)(2) of the Federal Rules of Evidence  
25 this Court may accept this proffer in lieu of his testimony, as

1 the Court knows.

2 Mr. Wells is thoroughly familiar with the debtor's  
3 motion to authorize Washington Mutual, or WMI, to provide  
4 financial support to WMRC that is before the Court today. I  
5 will refer to the aforementioned motion as the WMRC motion.

6 If Mr. Wells were called to testify in support of the  
7 WMRC motion, his direct testimony would be as follows.

8 Mr. Wells would testify that he holds a bachelor's degree in  
9 business administration from the University of Arizona. He  
10 would also testify that he is a certified public accountant in  
11 the state of Arizona, a chartered financial analyst and a  
12 certified insolvency and restructuring advisor.

13 Mr. Wells would testify that since joining A&M in  
14 April of 2002, his professional experience has included various  
15 interim management and financial advisory positions across a  
16 wide range of industries including health care, entertainment,  
17 land development and manufacturing.

18 Mr. Wells would testify that he has extensive  
19 experience in operational and financial analysis, financial  
20 forecasting, cash management, business plan information and  
21 feasibility, debt restructuring and business valuations.

22 Mr. Wells would testify that before joining A&M he  
23 spent four years in Phoenix serving as a senior associate in  
24 the corporate restructuring group of Arthur Andersen LLP,  
25 advising a wide spectrum of clients across various industries.

1           With regard to Mr. Wells' responsibilities in these  
2 Chapter 11 cases, Mr. Wells would testify that A&M's  
3 involvement with the debtor commenced on October 2, 2008. He  
4 would testify that on October 10, 2008 A&M filed an application  
5 to be retained in these Chapter 11 cases pursuant to Section  
6 363 of the Bankruptcy Code and that the application was  
7 approved pursuant to this Court's order dated November 7, 2008.

8           He would testify that he was recently designated as  
9 an officer of the debtors and that A&M intends to file a motion  
10 requesting modification of this Court's order authorizing the  
11 retention of A&M in order to approve the designation of  
12 Mr. Wells, and certain other A&M professionals, as officers of  
13 the debtor.

14           Mr. Wells would testify that since joining A&M, on  
15 the debtor's engagement on October 20, 2008, he has run the day  
16 to day operations of WMI's two insurance captives, WMRC and  
17 Marion Insurance Co., Inc. Mr. Wells would testify that in  
18 this capacity, he has been in communication with FTI  
19 consultants, the financial advisers to the official committee  
20 of unsecured creditors and others regarding the status of WMRC.

21           Mr. Wells would testify as to the WM mortgage  
22 business. And in this regard, he would testify that the  
23 purpose of the WMRC motion is to preserve a reinsurance program  
24 established by WMI. He would testify that WMRC is a wholly  
25 owned direct subsidiary of WMI and it is incorporated under the

1 laws of Hawaii.

2 He would testify that WMRC operates a captive  
3 reinsurance program that reinsures the risk associated with  
4 residential mortgages originated and acquired by Washington  
5 Mutual Bank which, going forward, I will refer to as WMB.

6 Mr. Wells would testify that to this end, WMRC  
7 entered into reinsurance agreements with each of the seven  
8 mortgage insurers that had historically provided mortgage  
9 insurance for WMB originated or acquired loans. Mr. Wells  
10 would further testify that pursuant to these reinsurance  
11 agreements, WMRC reinsures only a layer of risk associated with  
12 the mortgage loan portfolio held by the mortgage insurer. He  
13 would testify that under the WMRC reinsurance program, WMRC  
14 generally pays nothing on the first four percent of a loss, and  
15 then pays the next ten percent of the claimed loss and then  
16 nothing on any further losses.

17 Mr. WMRC (sic) would testify that in consideration  
18 for this risk, WMRC typically receives forty percent of the  
19 mortgage insurance premium paid on the insured loans. Mr.  
20 Wells would testify that pursuant to each reinsurance agreement  
21 WMRC establishes a trust account with U.S. Bank NA for the  
22 benefit of the respective mortgage insurers.

23 These trusts hold premiums collected and secure  
24 WMRC's obligation to each mortgage insurer with respect to the  
25 insured loans. Trust funds are invested principally in

1 government backed securities. Mr. Wells would testify that  
2 WMRC is party to seven trust agreements, one for each  
3 reinsurance agreement to which it is a party.

4 He would further testify that as of September 30,  
5 2008, the aggregate value of all trust assets was approximately  
6 386 million dollars. Mr. Wells would testify that generally  
7 WMRC is only permitted to withdraw funds from the trust for the  
8 payment of reasonable operating expenses, including taxes and  
9 other trust expenses, and when the trusts are deemed to be  
10 overfunded pursuant to formulas set forth in the applicable  
11 reinsurance agreements.

12 He would testify that in addition to funds held in  
13 trust, WMRC has approximately one million dollars in  
14 unrestricted funds which are reserved for the payment of WMRC's  
15 operating expenses. He would testify that the majority of  
16 WMRC's unrestricted funds are held in custodial accounts at  
17 U.S. Bank NA, with the remainder, in an approximate amount of  
18 150,000 dollars, held in an operating account at WMB.

19 Mr. Wells would testify that notwithstanding WMRC's  
20 ability to withdraw funds for certain purposes, trust balances  
21 may not drop below a certain minimum amount which amount is  
22 determined by each reinsurance agreement and includes  
23 contingency reserves which are determined either under Hawaiian  
24 law or the law of the mortgage insurer's domicile state as well  
25 as each mortgage insurer's calculation of necessary loss

1 reserves which are based on known delinquencies within a loan  
2 portfolio and anticipated losses associated with those  
3 portfolios.

4 Mr. Wells would testify that the minimum reserve or  
5 capital requirements fluctuate on a monthly basis and are  
6 reflected in monthly session statements provided by each  
7 mortgage insurer to WMRC. Mr. Wells would testify that the  
8 monthly session statements provide WMRC with information  
9 regarding, among other things, WMRC's share of loss reserves  
10 needed to cover anticipated claims, including any deficiency in  
11 trust assets needed to satisfy such amounts.

12 He would also testify that WMRC is generally required  
13 to cure capital deficiencies within thirty days of receiving  
14 notice of any such deficiency. Mr. Wells would further testify  
15 that failure to cure a capital deficiency gives rise to a  
16 mortgage insurer's right to terminate the insurance agreement  
17 and to elect whether to terminate the agreement on a runoff or  
18 cutoff basis.

19 He would testify that in the event of a termination  
20 on a runoff basis, WMRC could continue to be subject to all the  
21 terms and conditions of the reinsurance agreement and would  
22 remain liable on the reinsurance loans until the natural  
23 expiration, cancellation or termination of coverage for each  
24 reinsured loan. He would also testify that WMRC would continue  
25 to receive reinsurance, to which it would be entitled, under



1 the applicable reinsurance agreement -- excuse me. He would  
2 also testify that WMRC would continue to receive reinsurance  
3 premiums, Your Honor, to which it would be entitled under the  
4 applicable reinsurance agreement.

5 Mr. Wells would further testify that as of September  
6 26, 2008, the commencement date of these Chapter 11 cases, all  
7 the trusts have been operating on a runoff basis because WMRC  
8 has ceased to reinsure any new WMB originated loans.

9 Mr. Wells would testify that alternatively, in the  
10 event of WMRC's failure to cure a capital deficiency, the  
11 mortgage insurer may elect to terminate his reinsurance  
12 agreement on a cutoff basis. This means that WMRC would no  
13 longer be liable for the reinsured loans and would no longer  
14 receive reinsurance premiums with respect thereto. He would  
15 further testify, however, that WMRC would remain accountable  
16 for reserve amounts needed to cover losses which may, in  
17 certain cases, result in the depletion of all assets on account  
18 in the trust -- with respect to the trust at issue.

19 With respect to preserving the value of the Genworth  
20 trusts and other WMRC trusts, Mr. Wells would testify that the  
21 WMRC trusts have an estimated aggregate net present value of  
22 between 330 and 395 million dollars and that the Genworth trust  
23 alone has an estimated net present value of between 45 and 65  
24 million dollars.

25 Mr. Wells would also testify that capital

1 contributions between 15 million and 40 million in the  
2 aggregate and on a net annual basis may be needed to preserve  
3 the value of all seven WMRC trusts. Mr. Wells would testify  
4 that the estimated values of WMRC and the Genworth trust are  
5 exclusive of capital contributions. For example, if capital  
6 contributions totaling 15 million dollars are required and  
7 WMRC's total value would be between 345 million dollars and 410  
8 million dollars. Mr. Wells would testify that in order to  
9 calculate the collective and individual anticipated values of  
10 the WMRC trusts and the amount of capital necessary to preserve  
11 such anticipated values, he relied on the loss and premium  
12 projections provided by Milliman USA, or Milliman, in its  
13 reinsurance performance metric report dated June 30, 2008.

14 Mr. Wells would testify that as set forth in the  
15 Milliman affidavit, projected losses are approximately 330  
16 million. Mr. Wells would further testify that in addition to  
17 Milliman's projection, his valuations assumed continued runoff  
18 treatment and accounted for, among other things, the continued  
19 accrual of interest on the assets in the WMRC trust and the  
20 continued collection of premiums over the next ten years, which  
21 is the anticipated duration of the outstanding reinsured  
22 policies.

23 Mr. Wells would testify that WMRC and Genworth  
24 Mortgage Insurance Corporations are parties to certain  
25 reinsurance agreements. He would testify that pursuant to

1 these agreements with Genworth, WMRC established a trust which,  
2 as of September 2008, held approximately 74 million dollars in  
3 assets.

4 Mr. Wells would testify that due to an increasing  
5 delinquency rate within the Genworth loans, WMRC is required to  
6 shore up and hold in trust sufficient funds to cover  
7 anticipated losses. He would testify that increased  
8 delinquencies in Genworth's insured loans reflect the current  
9 state of the mortgage industry which, as a whole, is facing an  
10 increasing number of delinquencies and a corresponding increase  
11 in foreclosure rates.

12 He would testify that by notice dated October 14,  
13 2008, Genworth declared a capital deficiency with respect to  
14 the Genworth trust in the approximate amount of 7.4 million  
15 dollars, which amount was payable in full by WMRC on or before  
16 November 14th. He would testify that on November 12, 2008,  
17 subsequent to the filing of debtor's first motion to authorize  
18 provision for financial support to WMRC, Genworth agreed to  
19 grant WMRC a thirty day extension of the deadline to satisfy  
20 its capital deficiency.

21 Mr. Wells would testify that on November 12th,  
22 Genworth provided a session statement for the month of October  
23 which, based on Genworth's updated projection of anticipated  
24 losses, declared a capital deficiency in the Genworth trust of  
25 11.9 million dollars, which amount is inclusive of the previous

1 7.4 million capital deficiency.

2 Mr. Wells would testify that the capital deficiency  
3 declared by Genworth represents anticipated amounts needed to  
4 cover claims with respect to delinquent loans insured by  
5 Genworth and reinsured by WMRC. Mr. Wells would testify that  
6 failure to satisfy the capital deficiency in the Genworth trust  
7 in the approximate amount of 11.9 million dollars by December  
8 12, 2008, may result in Genworth's termination of the Genworth  
9 reinsurance agreements.

10 Mr. Wells would testify that as described above,  
11 Genworth would then have the right and sole discretion to  
12 terminate the Genworth agreements on a runoff or cutoff basis.  
13 He would testify that if Genworth elects to terminate the  
14 Genworth reinsurance agreements on a cutoff basis, WMRC would  
15 no longer be liable for the reinsured loans and would cease  
16 collecting reinsurance premiums with respect thereto. He would  
17 also testify that if Genworth agreements are terminated on a  
18 cutoff basis, the debtor anticipates that a substantial portion  
19 of the funds in the Genworth trust would be claimed by Genworth  
20 to satisfy all existing and future liabilities on the reinsured  
21 loans eliminating most, if not all, residual value for WMRC.

22 Mr. Wells would testify that at this time, the  
23 debtors have no knowledge regarding whether Genworth would  
24 elect to terminate on a runoff or cutoff basis. Mr. Wells  
25 would further testify that based on the anticipated value of

1 the Genworth trust between 45 and 65 million dollars, it is in  
2 the debtor's best economic interest to assist WMRC in  
3 satisfying the capital deficiency in the Genworth trust so as  
4 to preserve this value.

5 He would also testify that WMI's provision of funds  
6 necessary to cure the capital deficiency is the only way to  
7 preserve the value of the Genworth trust at this time because  
8 WMRC does not have sufficient capital to satisfy the capital  
9 deficiency on its own. He would testify that notwithstanding a  
10 recent increase in the amount of capital deficiency in the  
11 Genworth trust from approximately 7.4 million to 11.9 million,  
12 the debtor's estimate of the aggregate financial support needed  
13 for WMRC remains the same.

14 Moreover, Mr. Wells would testify that it is in the  
15 debtor's best economic interest to provide financial support  
16 for WMRC as needed from time to time in order to preserve the  
17 value of WMRC's interest in all of the trusts, pending a final  
18 determination regarding the disposition of WMRC.

19 Mr. Wells would again testify that further financial  
20 support of between 15 and 40 million dollars, in the aggregate  
21 and on a net basis, may likely be needed to preserve the value  
22 of all seven WMRC trusts. Mr. Wells would testify that the  
23 calculation of the additional reserves needed is predicated on,  
24 among other things, WMRC's continued receipt of capital  
25 contingency reserve releases.

1           Mr. Wells would testify that the Hawaiian law  
2 requires WMRC to hold fifty percent of the premiums collected  
3 with respect to a book of business in a given year as a  
4 contingency reserve for the next ten years. He would also  
5 testify that upon request, the Hawaiian insurance commissioner  
6 may authorize the release of contingency reserves in an amount  
7 equal to the sum of the ceded loss reserves and claims paid in  
8 the current year, less thirty-three of the premiums earned in  
9 the same year.

10           He would testify that on September 30, 2008, the  
11 Hawaiian insurance commissioner approved the release of  
12 contingency reserves for WMRC. The contingency reserves  
13 release reduced WMRC's reserve requirements as of September 30,  
14 2008, with respect to the Genworth trust, by approximately 5.5  
15 million dollars.

16           Mr. Wells would also testify that his calculation of  
17 anticipated reserve requirements for the trust was derived in  
18 part from Milliman's reinsurance performance metrics report  
19 dated June 30, 2008, which are updated on a quarterly basis.

20           Mr. Wells would again testify that if WMRC can  
21 sustain its current runoff status for all trusts, including the  
22 Genworth trust, it is anticipated that it would have a net  
23 present aggregate value of between 330 and 395 million dollars.

24           Mr. Wells would testify that in the alternative,  
25 should WMRC fail to cure future capital deficiencies and the

1 mortgage insurers elect to terminate on a cutoff basis, the  
2 existing trust assets would likely be used to satisfy all  
3 existing and future liabilities of the mortgage insurers,  
4 eliminating substantially all of the value for WMRC and  
5 ultimately for WMI's creditors.

6 Mr. Wells would testify, therefore, that for good  
7 business reasons, and in the company's business judgment, there  
8 is justification for the debtor's request to use approximately  
9 11.9 million dollars in WMI funds to cure the capital  
10 deficiency in the Genworth trust and to provide further  
11 financial support to WMRC as may be needed from time to time.

12 This would be Mr. Wells' testimony today, Your Honor.  
13 Thank you.

14 THE COURT: Does anybody wish to cross-examine  
15 Mr. Wells? All right. I'll accept the proffered testimony.  
16 Any others? Any other testimony?

17 MR. BERZ: No other testimony, Your Honor.

18 THE COURT: I had one question. When will the  
19 Milliman report for -- using the September numbers be ready?

20 MR. BERZ: We believe it'll be ready sometime the  
21 first half of December. Correct? Your Honor, if I may, I make  
22 no pretense that this is complicated and Byzantine in some  
23 respects. We're talking about reinsurance. It's not something  
24 a lot of people have a tremendous amount of familiarity with.  
25 However, what we've tried to do in the order that we presented

1 to you is ensure that we take this one step to keep the program  
2 in place and that we continuously reevaluate this program and  
3 its value to the estate. And in that regard, I want to make  
4 clear that as we have in this go-around, we're prepared to make  
5 our consultants, as well as Mr. Wells, available to all  
6 interested parties any time we need to come back for any other  
7 capital contributions.

8 THE COURT: Well, let me hear from the U.S. Trustee.  
9 Do you have a continuing objection?

10 MR. BERZ: And I was going to say, and include the  
11 U.S. Trustee in that process.

12 MR. MCMAHON: Your Honor, good morning. We filed an  
13 objection. It was directed at the open-ended blank check  
14 aspect of the proposed form of order that was appended to the  
15 original motion. Consistent with the discussions I had with  
16 counsel immediately prior to the hearing, provided that the  
17 Court acts as a backstop as is contemplated under 363, i.e., to  
18 the extent that there was a noticed procedure, notice would go  
19 out to the 2002 list. The notice would be detailed and explain  
20 both the amount and the reason why an additional -- additional  
21 monies would have to be used for the purpose described in the  
22 motion, then -- and also, Your Honor, that the allowance of the  
23 authority would be subject to court order. Those three  
24 concerns, as put into a revised form of order, if not the one  
25 Your Honor has, would address our concerns going forward with



1 respect to the few days of notice procedures.

2 Our point is, simply, that while we certainly  
3 contemplated that the committee and the ad hoc committee of  
4 noteholders will have input on these subjects, they shouldn't  
5 be the only entities that get to weigh in on it.

6 THE COURT: All right.

7 MR. HODARA: Your Honor, Fred Hodara for the official  
8 committee. Not surprisingly, when the committee was approached  
9 by the debtor and told of the interest of WMI to put these  
10 considerable sums into a mortgage reinsurer, the committee met  
11 that approach with some healthy skepticism.

12 Considerable time has been spent by the committee,  
13 and in particular in the first instance by our financial  
14 advisors at FTI, who were given access to all of the kinds of  
15 information that were heard in the proffers and in Mr. Berz's  
16 statements today, and fair opportunity for FTI, and then for  
17 the committee and the committee members themselves to question  
18 the company about the merits of what the company seeks to do  
19 here.

20 The committee and FTI were fully satisfied that this  
21 program does make sense and is in the interests of creditors  
22 for all of the reasons that were explained in the proffers and  
23 by Mr. Berz, and in the end of the day, only two requests that  
24 the committee had beyond what was suggested in the original  
25 draft order, and those were items that Mr. Berz has mentioned.

1 The first was the security interest, and that security interest  
2 in WMRC's residual interest in the trust extends to all of the  
3 trusts, and that's an important factor for us. And the second  
4 was the notice provisions, which have now been expanded beyond  
5 our request to include the entire 2002 list and the United  
6 States Trustee. So with those modifications, the committee is  
7 fully supportive, even in light of the recognition that there  
8 will definitely be further requests for funding into the trust  
9 of considerable sums, and we go into this with our eyes open.

10 THE COURT: Okay. Well, I'm inclined, based on the  
11 proffered testimony, to approve the incident request, but I'm  
12 not happy to approve future -- even with the notice procedures  
13 articulated, I think a separate motion needs to be filed any  
14 time you want additional funds and put you to your proof and  
15 each time.

16 MR. BERZ: I'm not sure we really have a problem with  
17 that, Your Honor. I mean, I think the process that we  
18 outlined, although compressed in time, was really not intended  
19 to take away anyone's rights or this Court's opportunity to  
20 review things on an ongoing basis.

21 THE COURT: All right.

22 MR. BERZ: We'll just deal with that burden and we'll  
23 put together an order, then I guess that we should probably  
24 circ -- we'll need a little time because I want to make sure we  
25 get it right, that we'll circulate.

1 THE COURT: All right.

2 MR. BERZ: Is that right? All right. And thank you  
3 for your consideration, Your Honor.

4 THE COURT: All right.

5 MR. STARNER: Your Honor, if I may?

6 THE COURT: Yes.

7 MR. STARNER: It's Greg Starner of White & Case on  
8 behalf of the WMI noteholders' group.

9 THE COURT: Yes.

10 MR. STARNER: We just wanted to note, with respect to  
11 the relief sought in this motion, that the noteholders' group  
12 has been engaged with Weil Gotshal in the very open discussions  
13 with respect to the material issues in this case, and respect  
14 to the motion, and I expect to continue in that dialogue.

15 I just wanted to note that they do support the relief  
16 sought in the motion but do expect to continue to play a very  
17 active and constructive role in reviewing any additional  
18 funding that's required or requested by Weil Gotshal with  
19 respect to the trusts. But with respect to the modifications  
20 requested by the trustee, the creditors' committee and now the  
21 Court, we do support the relief sought in the motion.

22 THE COURT: All right. Thank you.

23 MR. BERZ: Thank you, Your Honor, and thank you for  
24 your patience.

25 THE COURT: All right.

1 MR. BERZ: Okay. Let's go back to the agenda for  
2 today. I think the next agenda item was the deposit  
3 stipulation, which we've adjourned until the next hearing. I  
4 know that others in my office are working to reach a settlement  
5 on some outstanding issues, and the hope is to proceed with  
6 that motion at the omnibus hearing on December 16th.

7 THE COURT: Okay.

8 MR. BERZ: The next agenda item, Your Honor, was the  
9 motion of debtors for an order pursuant to 365(a) of the code  
10 and Bankruptcy Rule 6006, approving rejection of a transfer  
11 agent agreement involving Mellon investors.

12 We received two responses to this motion. The first  
13 was by the Ontario Teachers' Pension Plan board, and the second  
14 was from the U.S. Trustee. The first objection, from the  
15 plaintiffs, related to a concern that we would somehow -- and I  
16 think it was a legitimate concern that we take steps to make  
17 sure that we were preserving records and information that might  
18 be necessary or relevant to discovery. And in that regard, we  
19 took the order that had previously been submitted, and the  
20 proposed order provides that the transfer agent will turn over  
21 all information to the debtors within three days of  
22 termination.

23 And it is our intent that all information includes  
24 the debtor's books and records, and we hope that this language  
25 appropriately addresses any concern lead plaintiff's counsel.

1 THE COURT: Well, explain to me first why you need  
2 this. We're talking about saving 40,000 dollars a month which,  
3 based on your ordinary course professionals motion, seems de  
4 minimis.

5 MR. BERZ: Well, I think the conclusion was, Your  
6 Honor -- also, I think it relates to some other orders that  
7 were issued here, that the debtors can undertake this  
8 responsibility if we have the wherewithal to do that now,  
9 ourselves. And that this was just not necessary, although I  
10 would point out that we would like Mellon to continue through  
11 the end of the year to facilitate the transfer of information.

12 So I just think it's something that we feel we're  
13 capable of doing that the debtor can manage.

14 THE COURT: All right. And let me hear from the lead  
15 plaintiff's counsel?

16 MR. BERZ: In fairness, I just dropped the revised  
17 order on him, and I know he's been shuttling between two  
18 courtrooms.

19 MR. ETKIN: Thank you, Your Honor, Michael Etkin,  
20 Lowenstein Sandler, on behalf of the lead plaintiff, the  
21 Ontario pension board. Mr. Berz is correct, and my apologies.  
22 He had advised me immediately prior to the hearing that a  
23 change was made in the form of order and I'd like to just spend  
24 a moment looking at it, with the Court's permission.

25 THE COURT: All right.

1 MR. ETKIN: But I think Mr. Berz also articulated our  
2 concern and it was articulated in our limited objection. I  
3 must confess, Your Honor, that this is an unusual motion.

4 THE COURT: Um-hum.

5 MR. ETKIN: I have not seen this very often, if at  
6 all, with respect to a public company, even one that's  
7 liquidating. But we did not make an issue of the propriety of  
8 the rejection itself. Our major concern was the retention and  
9 preservation of these records, and I know the U.S. Trustee  
10 filed papers as well.

11 I'll take a moment, perhaps while the U.S. Trustee is  
12 addressing their objection, to take a look. And if I have any  
13 comments, I'll raise them with the Court.

14 MR. BERZ: Your Honor, I believe the trustee still  
15 has some outstanding objections and I just thought Mr. McMahon  
16 would speak to them.

17 THE COURT: All right.

18 MR. MCMAHON: Your Honor, good afternoon. Our  
19 initial reaction was one of a bit of surprise to see this  
20 motion to the extent that it's not one, Your Honor, that our  
21 office typically sees in cases where there is publicly traded  
22 securities. And in that vein, we've raised two issues in our  
23 objection.

24 The first is just simply notice, which is the --  
25 certain entities that would be interested in the subject matter

1 of the proceeding simply were not given, I think, full notice  
2 of what's been proposed by the debtors. While certainly to the  
3 extent that the ad hoc noteholders and other groups here  
4 represented on the debt side would have received notice, some  
5 of the larger equity security holders, to the extent that they  
6 are not -- have not filed 2002 notices, I do not believe  
7 received notice of the motion.

8 Putting that issue aside, Your Honor, the debtors  
9 indicate that -- if I understand it correctly, that they're  
10 prepared to do this stuff in-house and I want to -- well, a  
11 couple things. First, I don't think we have a record to  
12 demonstrate that that's cost-effective.

13 Your Honor knows what we're dealing with in these  
14 cases. Basically, we're talking about a company that has no  
15 W-2 employees at this point, and if I understand it correctly,  
16 there is some professional help from Alvarez & Marsal, and  
17 those services certainly cost something. And the -- we don't  
18 have a record to demonstrate whether 31,000 dollars, or  
19 whatever it is a month, if the services typically provided by  
20 the transfer agent take up 100, 150 hours of administrative  
21 time, it very well may be cost-effective to let the agreement  
22 remain in place.

23 But beyond that, Your Honor, when the debtors say  
24 they're going to do this, I guess provide these services in-  
25 house, there's a couple of things here that -- I'm not exactly

1 sure really what the relief requested by the motion is targeted  
2 at, which are -- to take a step backward.

3 The SEC, on their Web site, has a basic page  
4 describing what a transfer agent does and there's three main  
5 functions that are described. First, the issuing -- in  
6 canceled certificates to reflect changes in ownership.

7 Second, they act as an intermediary for the company,  
8 as a mailing agent, the like, and third, they handle lost,  
9 destroyed or stolen certificates. Now, two is less important  
10 in these cases, and we're not going to be using the transfer  
11 agent as a disbursing agent or the like, but with respect to  
12 functions one and three, I don't know whether the debtors  
13 intend to provide those administrative services at the cost  
14 that that's referenced in the motion, but I will also say, Your  
15 Honor, that we spoke with SEC staff yesterday, our office did,  
16 and while -- you know, I don't believe that they're on the  
17 phone today.

18 We were authorized to represent their concern, with  
19 respect to the motion, along the lines of what's voiced in our  
20 objection. So, again, it's important that we know who's  
21 holding the debt and who's holding the equity of this company  
22 so that appropriate notice can be given at later important  
23 stages of the process, i.e., confirmation.

24 THE COURT: All right. Let me hear from the debtor.

25 MR. BERZ: Your Honor, I think we should put this



1 over. I'm particularly concerned, Judge. I think we can do  
2 this. I think there are prior orders that indicate that we can  
3 do this. I understand the trustee's concern. I'm a little  
4 concerned about the SEC discussion, which I was not a party to,  
5 but that's my only issue. So --

6 THE COURT: We can continue this, if you'd like.

7 MR. BERZ: I think we should continue this one.

8 THE COURT: Okay.

9 MR. BERZ: Okay? The last item on the agenda is a  
10 status conference regarding the statement of financial affairs  
11 and schedules.

12 THE COURT: It's your motion to extend the time to  
13 file them.

14 MR. BERZ: Right. That's right. But I think I was  
15 not here at the -- I thought we were basically to give you a  
16 status report, but we do want an extension of time and we have  
17 filed a motion to that effect. The current deadline for the  
18 filing of schedules and SOFAs is December 1st.

19 The bottom line is we simply don't have all the  
20 information that we need. Although I think we've been working  
21 with others to get that information but there's still a lot  
22 that remains to be done. And so we're asking Your Honor to  
23 extend the deadline to December 19th, I guess, which is almost  
24 a three-week extension.

25 THE COURT: Why don't you have all the information?

1 MR. BERZ: Well, while A&M and others have made  
2 progress in preparing the schedules and SOFAs, working with  
3 JPMorgan Chase, to secure as much information as possible,  
4 there's still a significant amount of information and tasks  
5 that remain outstanding.

6 We need the time for A&M to receive information we  
7 have yet to receive; we don't know that we're not going to get  
8 it, we just haven't gotten it yet, and to review and process  
9 the information. And most of that comes from JPMorgan Chase  
10 and primarily relates to the schedules. We want to give A&M  
11 some time, also, to review the data so that the schedules are  
12 accurate. Right now, we have limited --

13 THE COURT: We'll say it again. Do you have all the  
14 data you need?

15 MR. BERZ: I don't think we have everything we need  
16 yet. We are still getting information. For example, we have  
17 limited access to information regarding the debtors, creditors,  
18 vendors needed to complete the schedules, and much of that  
19 information is in the hands of JPMC/former WaMu employees.

20 THE COURT: Yes. Is JPMorgan's counsel here?

21 MR. LANDIS: Your Honor, I am here. Adam Landis from  
22 Landis, Rath & Cobb on behalf of JPMorgan Chase, and I believe  
23 that cocounsel is on the phone, Ms. Hydee Feldstein from  
24 Sullivan & Cromwell. She may be on the phone.

25 THE COURT: Do you know why we don't have all the

1 information?

2 MR. LANDIS: Your Honor, I know the parties are  
3 working together, and I know the parties are working  
4 diligently. There are a number of challenges that JPMorgan has  
5 faced in connection with meeting its own regulatory  
6 requirements, but I can assure you that if there is a reason  
7 that the information isn't all in one place, it's not because  
8 of any dilatory tactics. It's just a matter of extracting --  
9 from my understanding, extracting information from various  
10 programs, separating it out and getting it into the right  
11 hands.

12 THE COURT: What's the U.S. Trustee's position on  
13 this?

14 MR. MCMAHON: Your Honor, I don't think our position  
15 has changed much from the last hearing. Basically, the debtors  
16 have known since early October that this issue has been on the  
17 radar and notwithstanding the fact that this Court is  
18 available, if necessary, to compel the production of necessary  
19 information, the debtors have chosen not to avail themselves of  
20 that ability.

21 So, Your Honor, I think for today's purposes, we  
22 would oppose a further extension. To the extent that the  
23 Court's willing to grant additional time, I think that should  
24 be done with prejudice at this point. Enough is enough.

25 MR. LANDIS: Your Honor, if I may make one comment,

1 and I can't speak entirely for the debtors, but I would suggest  
2 that the debtors wouldn't seek to compel or to use process of  
3 the Court to acquire information that they're getting on a  
4 consensual basis where cooperation is ongoing.

5 So while I respect Mr. McMahon and his desire and the  
6 office of the United States Trustee's desire to see this done  
7 because enough is enough --

8 THE COURT: Well, the rules require it in fifteen  
9 days.

10 MR. LANDIS: Understood, Your Honor.

11 THE COURT: That would be October 10th, is it?  
12 Something like that?

13 MR. LANDIS: Understood, and in extraordinary  
14 circumstances, and I won't argue the debtor's motion, but in  
15 circumstances that warrant it, the rules allow for extension.  
16 And in a situation where you've got a whole bank sale, a  
17 transfer of massive proportions that I think is relatively  
18 unprecedented, certainly in this jurisdiction and in my  
19 experience, that kind of unprecedented transfer might require  
20 for unprecedented relief.

21 So I will leave it to the debtors, but I just didn't  
22 want to leave out there the notion that because the debtors  
23 haven't compelled process that there's a suggestion that the  
24 parties aren't working together to get this done.

25 THE COURT: Okay.

1 MR. HODARA: Your Honor, if I may, very briefly, Fred  
2 Hodara for the committee. Your Honor, I'm not in the business  
3 of defending debtors, typically, on these kinds of issues, but  
4 we have observed very closely and been involved in the process  
5 of seeking to get the information. I think this debtor has  
6 been very diligent in trying to get the information that it  
7 needs.

8 I think they've also made the right judgment in not  
9 coming to the Court yet in seeking a motion to compel through  
10 turnover, although that may be needed at some point. There has  
11 been a loosening up between the parties in the very recent  
12 past; we finally have made progress on some issues that somehow  
13 have become related, such as getting interest to accrue on the  
14 large deposit with the bank, but this issue of information  
15 access remains a serious one, and I believe that it is not for  
16 any fault of the debtor that they have not been able to get  
17 access to all the information that they need on as fast a basis  
18 as they would have liked.

19 MR. ETKIN: Your Honor, since this was characterized  
20 as a conference, I'll view that as an invitation to perhaps  
21 weigh in and make one observation. At the formation meeting, I  
22 did pose a question to the debtor's representatives concerning  
23 the issue of historical documentation in what was being done.  
24 And I should point out that at the organizational meeting,  
25 obviously that's an issue for my clients, historical

1 information and documentation with respect to the debtor and  
2 the bank, there was mention of the entering into some formal  
3 protocol with JPMorgan in connection with information sharing.

4 I just don't know where that stands. I haven't been  
5 in every hearing and perhaps I'm behind the curve with respect  
6 to that, but in response to that question that I posed at the  
7 formation meeting, the response was that there was efforts to  
8 establish a formal protocol with respect to document and  
9 information sharing. And apropos of the issues that are before  
10 the Court now, I just wonder out loud where that stands, if  
11 anywhere.

12 THE COURT: Well, let's find out.

13 MR. LANTIS: Your Honor, I don't know that I'm  
14 personally in a position to shed light on that, but I believe  
15 Ms. Feldstein is on the phone and her line, I'm advised through  
16 the wonders of BlackBerry, may be muted. And I don't know if  
17 we can get CourtCall to unmute that.

18 THE COURT: Well, let's get the operator -- CourtCall  
19 to unmute that call, that line.

20 THE OPERATOR: Certainly. What was the name again?

21 THE COURT: Feldstein.

22 MR. LANTIS: Feldstein.

23 THE OPERATOR: And the line is open.

24 MS. FELDSTEIN: Hello?

25 THE COURT: Yes.

1 THE WITNESS: Good morning, Your Honor, Hydee  
2 Feldstein.

3 THE COURT: You can be heard now, but can you speak  
4 louder?

5 MS. FELDSTEIN: Yes. I sort of have been saying  
6 hello and trying to speak repeatedly over the past five  
7 minutes, so I apologize to the Court. I believe that there has  
8 been a number of issues in play. To the best of my knowledge,  
9 Your Honor, the issue has been as much one of personnel as it  
10 has been of access.

11 My understanding is that Alvarez & Marsal, and the  
12 debtor's employees at this point, are housed in the same  
13 location as they were, have access to the same records as they  
14 did. We are working on a protocol that would address  
15 principally the issues of privilege and access with respect  
16 to -- JPMorgan Chase finds itself in the position of apparently  
17 having custody of computer records that include books and  
18 records of Washington Mutual, Inc., books and records of the  
19 former Washington Mutual Bank, books and records that were  
20 retained by the FDIC as receiver and books and records  
21 regarding the operations of the bank or the bank operations  
22 that JPMorgan acquired from and after September 26, 2008.

23 As I understand it, Your Honor, those records are all  
24 housed in the same computer system. As I understand it, Your  
25 Honor, there's been no restriction with respect to access of

1 the parties other than that which comes naturally from what was  
2 a rather sudden transfer of operations and perhaps incomplete  
3 ability or knowledge with which to access information.

4 I will represent to the Court that of late, as  
5 employees have moved from Washington Mutual Bank or JPMorgan  
6 Chase to working for WMI and the debtor, JPMorgan Chase finds  
7 itself in the unusual position of, in fact, also asking WMI for  
8 information. There is an information access agreement as well  
9 as a vendor stipulation both of which have been, I think,  
10 negotiated with the active participation of the committee,  
11 JPMorgan Chase and the debtor, and I believe that both those  
12 documents are ready to be filed with the Court, and I actually  
13 had anticipated that they would be filed today.

14 So I don't know where precisely they stand  
15 procedurally, as I've been in this hearing all morning, but I  
16 will check on it as soon as I get to the office. They are the  
17 debtor's motions as opposed to ours, of course, but we have  
18 been working with the debtor and the committee in getting those  
19 done.

20 MR. HODARA: Your Honor, Fred Hodara. Let me report  
21 to the Court and to Ms. Feldstein that, in fact, last night, I  
22 believe, signatures were exchanged on the information access  
23 agreement, including a separate agreement with the FDIC to deal  
24 with some of the issues that Ms. Feldstein mentioned. So the  
25 debtor will know better when the motion will be filed, but I



1 think that could be as early as today. And, finally, that will  
2 also enable the vendor stipulation that the Court has inquired  
3 about from time to time to move forward.

4 So as I mentioned, we've had progress in the last  
5 past week on payment of interest, on the information access  
6 agreement, which is now done, and on the vendor stipulation.

7 MS. FELDSTEIN: Mr. Hodara, I'm sorry. I do need to  
8 correct the record. I don't think the payment of interest has  
9 been finalized. That was my last word as of yesterday.

10 THE COURT: Okay.

11 MR. HODARA: Well, that will be chief issue of  
12 interest as soon as we leave the courtroom.

13 THE COURT: All right.

14 MR. BERZ: I just want to clarify one thing.

15 THE COURT: Yes.

16 MR. BERZ: We didn't come here today to complain or  
17 compel JPMorgan Chase with respect to the documents, but I do  
18 want to clear up one thing, and perhaps I misunderstood. There  
19 is information that's in JPMorgan Chase's possession that we  
20 don't believe we have access to that we need and, in fact,  
21 we've have recently gotten some of that.

22 Now, I'm not ascribing any bad motives to that but  
23 from our point of view, at this point, there were these  
24 agreements to work out. I think you're right, Fred, I think  
25 we're going to try and file this motion if not today, tomorrow,

1 because the e-mail traffic is such that we have everybody,  
2 including the FDIC, on board.

3 But our purpose today, Your Honor, was to say that  
4 from a practical standpoint, we just can't get it done and we  
5 think we need till December 19th, when we do think we can get  
6 it done.

7 THE COURT: All right. I'm going to give you to the  
8 19th, but no further extensions. You've got to file something.  
9 I think the parties-in-interest have waited long enough.

10 MR. BERZ: Fair enough.

11 THE COURT: Okay.

12 MR. BERZ: Thank you. We'll prepare an order to that  
13 effect.

14 THE COURT: Okay.

15 MR. BERZ: Your Honor, that concludes everything I  
16 have on for the agenda today, unless there is something I  
17 overlooked or something else you wanted to take up.

18 THE COURT: That's fine.

19 MR. ETKIN: Just as a housekeeping matter, Your  
20 Honor, the transfer agent agreement, that's going to be on  
21 for -- continued until when?

22 THE COURT: Is it the -- when's the next omnibus?

23 MR. BERZ: The 16th, I believe, Your Honor.

24 THE COURT: December 16th.

25 MR. ETKIN: Thank you, Your Honor.

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THE COURT: Okay.

MR. BERZ: Thank you, Your Honor.

THE COURT: We'll stand adjourned.

(Proceedings concluded at 12:22 p.m.)

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## I N D E X

## RULINGS

PAGE LINE

Motion Pro Hac Vice of David Berz Granted	22	9
Application to Retain Perkins Coie LLP	23	21
Granted		
Motion to Employee Professionals Used in	29	7
the Ordinary Course of Business Granted		
Application to Retain Miller & Chevalier	32	21
Granted		
Application to Retain Sherman & Sterling	32	21
Granted		
Application to Retain Pepper Hamilton	34	12
Granted		
Application to Retain Akin Gump Strauss	34	12
Hauer & Feld Granted		
Motion to Authorize Washington Mutual, Inc.	66	11
To Provide Financial Support to WM Mortgage		
Reinsurance Company, Inc. Granted		
Motion for an Extension of Time to File	82	7
Schedules Granted		

1  
2  
3  
4  
5  
6  
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C E R T I F I C A T I O N

I, Barb Enneking, certify that the foregoing transcript is a true and accurate record of the proceedings.

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BARB ENNEKING

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Date: December 2, 2008