

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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<i>In re</i>	:	
	:	Chapter 11
WASHINGTON MUTUAL, INC., <i>et al.</i> , ¹	:	
	:	Case No. 08-12229 (MFW)
Debtors.	:	Jointly Administered
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WASHINGTON MUTUAL, INC. AND	:	
WMI INVESTMENT CORP.,	:	
	:	Adversary Proceeding
Plaintiffs,	:	No. 09-50934
and	:	
	:	
THE OFFICIAL COMMITTEE OF	:	
UNSECURED CREDITORS OF	:	
WASHINGTON MUTUAL, INC. AND WMI	:	
INVESTMENT CORP.	:	
	:	
Intervenor-Plaintiff,	:	
	:	
v.	:	
	:	
JPMORGAN CHASE BANK, NATIONAL	:	
ASSOCIATION,	:	
	:	
Defendant.	:	Related Docket No. 39
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JOINDER AND BRIEF OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN OPPOSITION TO (A) THE MOTIONS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION TO INTERVENE IN THE TURNOVER ACTION AND TO STAY ADVERSARY PROCEEDINGS; AND (B) THE MOTION OF DEFENDANT JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, TO STAY

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

Intervenor the Official Committee of Unsecured Creditors (the “Committee”) of Washington Mutual, Inc. and WMI Investment Corp. (the “Debtors”) hereby joins in Debtors’ filing entitled “Debtors’ Opposition to (I) the Motion of the Federal Deposit Insurance Corporation (‘FDIC’) to Intervene, (II) the Motion of the FDIC to Stay Adversary Proceedings, and (III) the Motion of JPMorgan Chase Bank, National Association for Stay of Debtors’ Adversary Proceeding” (the “Opposition”) (filed June 15, 2009), adopting as its own the arguments contained therein, and states the following additional reasons why the FDIC’s motions should be denied. The Committee further contends, for the same reasons set forth herein, that the motion of Defendant JPMorgan Chase Bank, National Association (“JPMC”) to stay this adversary proceeding should be denied.

As stated in the Opposition, this Court has exclusive jurisdiction over all property of the estate pursuant to 28 U.S.C. § 1334(e)(1), and is expressly authorized, under 11 U.S.C. § 542, to decide this action (the “Turnover Action”). *See United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983) (“To facilitate the rehabilitation of the debtor’s business, all the debtor’s property must be included in the reorganization estate.”). The determination of whether an asset constitutes property of the estate (including orders to turn over property of the estate) are considered so integral to the bankruptcy proceeding that they are expressly labeled as “core proceedings.” *See* 28 U.S.C. § 157(b)(2)(E) (“Core proceedings include . . . orders to turn over property of the estate . . .”).

Here, the funds at issue in the Turnover Action are not assets of the failed bank. The vast majority of the funds were on deposit at Washington Mutual Bank fsb (“WMB fsb”),

which was never seized by the FDIC.² Furthermore, any remaining deposits that were initially placed into receivership were promptly transferred to a successor bank, JPMC. Thus, the turnover of the deposit accounts is not a claim against the FDIC or against assets in receivership and falls outside the FDIC's jurisdictional claims. Consequently, the FDIC fails to demonstrate that any of the provisions of FIRREA (including 12 U.S.C. § 1821(d)(13)(A)) act to divest this Court of its core original and exclusive jurisdiction over property of the estate which, is not in the possession of the FDIC, and, for the most part, never was.³ (*See generally* Opposition at 9-25.)

Regardless of whether the \$4 billion of funds were in fact assets of the failed bank, this Court nonetheless has jurisdiction to determine in the first instance whether these funds remained property of the estate. *See All Season's Kitchen, Inc. v. FDIC (In re All Season's Kitchen, Inc.)*, 145 B.R. 391, 402 (Bankr. D. Vt. 1992) ("The plain language of [FIRREA], as we understand it, limits our jurisdiction only if the FDIC in fact has an asset. Accordingly, we believe that the bankruptcy court, in the exercise of its jurisdiction to determine jurisdiction, must determine whether the FDIC in fact has an asset."). A number of bankruptcy courts have exercised jurisdiction over property of the estate notwithstanding assertion of a competing interest by the FDIC. *See, e.g., id.* at 402; *Indep. Bankgroup, Inc. v. FDIC (In re Indep. Bankgroup Inc.)*, 217 B.R. 442, 444 (Bankr. D. Vt. 1998); *cf. In re Colonial Realty Co.*, 980 F.2d 125, 129 (2d Cir. 1992) (finding that "the § 1821(j) ban upon 'court . . . action . . . to restrain or affect the exercise of powers or functions of the [FDIC] as a conservator or a receiver' does not

² Approximately \$3.7 billion of the \$4 billion was on deposit at WMB fsb at the time of the transfer. The balance was on deposit at Washington Mutual Bank ("WMB"), the failed bank.

³ The FDIC has repeatedly stated that no insurance funds were expended to pay depositor claims.

inhibit the operation of the automatic statutory stay imposed by § 362(a)").

The FDIC's interests under Title 12 to effectively administer WMB's receivership estate will not be adversely affected by leaving resolution of this matter to this Court: if this Court determines that the funds are property of the estate, there is no reason to hesitate in entering an order requiring the turnover of these funds to the Debtors; if the Court determines that the assets are not property of the estate, the Court then can defer to the district court. In either event, a prompt determination by this Court will foster the prompt and efficient administration of these estates. The approximately \$4 billion in funds that are the subject of the Turnover Action are assets that are necessary for the effective administration of the Chapter 11 Cases because any plan of liquidation or reorganization would require determinations as to the ownership and distribution of these sums. Thus, a stay of the turnover proceeding not only would delay the ultimate turnover of these assets but could also delay the prompt confirmation of a plan of liquidation or reorganization in the Chapter 11 Cases.

The FDIC has stated no valid basis to intervene in the Turnover Action, much less a basis to stay either the Turnover Action or Adversary Proceeding No. 50551 (the "JPMC Adversary Proceeding") in light of this Court's exclusive jurisdiction over the matters raised therein. It has not, in any pleading, asserted that the \$4 billion in question is property of the FDIC or of the estate in receivership. Accordingly, for the reasons set forth in the Opposition, the Committee joins in the Opposition and respectfully requests that the Court deny the FDIC and JPMC motions.

Dated: June 15, 2009
Wilmington, Delaware

Respectfully submitted,

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