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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
-----	:	X
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,	:	X
	:	
v.	:	
JPMORGAN CHASE BANK, NATIONAL	:	
ASSOCIATION,	:	
	:	
Defendant.	:	

**MEMORANDUM OF LAW IN SUPPORT OF THE MOTION FOR
INTERVENTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF WASHINGTON MUTUAL, INC., AND WMI INVESTMENT CORP.**

The Official Committee of Unsecured Creditors (the “Committee”) of Washington Mutual, Inc. and WMI Investment Corp. (collectively, the “Debtors”) respectfully submit this Memorandum of Law in support of their Motion to Intervene (the “Motion”) in the

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).

adversary proceeding, titled “Complaint for Turnover of Estate Property” and captioned Washington Mutual, Inc. and WMI Investment Corp. v. JPMorgan Chase Bank, National Association, Adversary Proceeding No. 09-50934 (the “Turnover Action”).

PRELIMINARY STATEMENT

As the statutory fiduciary representative of all unsecured creditors and a party-in-interest under 11 U.S.C. § 1109(b), the Committee has an absolute right to intervene in any adversary proceeding in connection with the Debtors’ Chapter 11 cases. 11 U.S.C. § 1109(b); Fed. R. Civ. P. 24(a)(1); In re Marin Motor Oil, Inc., 689 F.2d 445, 454 (3d Cir. 1982), cert. denied, 459 U.S. 1206 (1983). The outcome of the Turnover Action will have a significant impact on the ultimate recoveries available for unsecured creditors. The Committee’s intervention in the Turnover Action is necessary to allow the Committee to exercise its fiduciary duties to assert and protect the unsecured creditors’ interests, and the Committee’s intervention will cause no prejudice or delay. Accordingly, the Motion should be granted.

JURISDICTION AND VENUE

The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b)(2). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409. The predicates for the relief sought herein are 11 U.S.C. § 1109(b) and Rule 24 of the Federal Rules of Civil Procedure, made applicable by Rule 7024 of the Federal Rules of Bankruptcy Procedure. In satisfaction of the requirement of Rule 24(c) that a motion to intervene be accompanied by a pleading setting out the claim for which intervention is sought, the Committee’s Joinder in the Turnover Complaint is attached hereto as *Exhibit A*. Fed. R. Civ. P. 24(c); Trent v. Dial Med. of Fla., Inc., 33 F.3d 217, 225 (3d Cir. 1994) (overruled in part on other grounds).

BACKGROUND

On September 25, 2008, the Director of the Office of Thrift Supervision (“OTS”), by order number 2008-36, appointed the Federal Deposit Insurance Company (“FDIC”) as receiver for Washington Mutual Bank (“WMB”), a federal savings bank chartered pursuant to the Home Owners’ Loan Act, 12 U.S.C. §§ 1461-70, and advised that FDIC immediately was taking possession of WMB. Immediately after its appointment as receiver, the FDIC sold substantially all the assets of WMB to Defendant JPMorgan Chase Bank, National Association (“JPMC”) pursuant to the Purchase and Assumption Agreement dated as of September 25, 2008 (the “P&A”).

On September 26, 2008 (the “Petition Date”), the Debtors commenced voluntary cases under chapter 11 of title 11 of the U.S. Code. The Debtors are authorized to operate their properties as debtors in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108, and the cases are being jointly administered. On October 15, 2008, the Office of the United States Trustee appointed the Committee as the statutory fiduciary representative of all of the Debtors’ unsecured creditors. *See* 11 U.S.C. §§ 1102, 1103.

On April 27, 2009, Debtors filed the Turnover Action against JPMC seeking turnover of the more than \$4 billion in Debtor funds on deposit with JPMC in demand deposit accounts that belong to Plaintiff. As alleged in the Turnover Action, JPMC has no basis to withhold the Debtors’ funds, which are accruing interest at a rate significantly less than what the Debtors’ estates otherwise would be earning. Thus, every day that JPMC continues to withhold the deposits, the Debtors’ estates suffer further damage because the deposits are earning interest at a significant discount to a market rate and the estates’ assets are not being maximized.

The Committee has a direct and substantial interest to ensure that all funds due the Debtor are marshaled and made available to satisfy the claims of the Committee's members.

ARGUMENT

I. The Committee Has an Absolute Right to Intervene in the Adversary Proceeding Pursuant to Rule 24(a)(1) of the Federal Rules of Civil Procedure and 11 U.S.C. § 1109(b).

Rule 24(a)(1) of the Federal Rules of Civil Procedure, incorporated into the Bankruptcy Code by Rule 7024, states that “[o]n timely motion, the court must permit anyone to intervene who is given an unconditional right to intervene by a federal statute...” Here, the statute granting this “unconditional right” to a creditors’ committee is 11 U.S.C. § 1109(b). This section provides:

[a] party in interest, including the debtor, the trustee, *a creditors’ committee*, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter. (emphasis added).

In Marin, the leading case in this Circuit, the Court of Appeals for the Third Circuit recognized the absolute right of an official creditors’ committee to intervene in an adversary proceeding under Section 1109(b). In Marin, the bankruptcy court rejected a creditor’s committee’s motion to intervene in an adversary action initiated by a trustee. On appeal, the trustee argued that the creditor’s committee did not have a right to intervene in the case below because the word “case” in Section 1109 did not include an adversary action. The Third Circuit rejected the trustee’s narrow interpretation of the term “case,” noting that the very language of Section 1109(b) grants a right to appear and be heard not only in “a case” but “on any issue in a case.” Id. Therefore, the court held that “[i]t is unlikely that Congress would have used such sweeping language if it had not meant ‘case’ to be a broadly inclusive term” and “Congress’ failure specifically to mention adversary proceedings in section 1109(b) is hardly

surprising, given that Congress did not specifically mention adversary proceedings anywhere in the Bankruptcy Code.” Marin, 689 F. 2d at 451.

In addition to holding that the language of Section 1109 supported the creditors’ committee’s right to intervene in the adversary action, the court in Marin emphasized the practical implications of disallowing intervention as follows:

The broad and absolute construction of section 1109(b) comports with the usual expectations of parties in interest that they will have a right to be heard, as parties in interest, by the parties adjudicating their interests. This expectation has its roots in notions of due process and fair play . . . We are especially reluctant to adopt the extremely strained interpretation of section 1109(b) proposed by [the trustee] when to do so would frustrate this expectation of participation.

Id. at 457.

The Third Circuit further explained this rationale in Phar-Mor, Inc. v. Coopers & Lybrand, 22 F. 3d 1228 (3d Cir. 1994), adding that “interests of efficiency and fair play underlie §1109(b), and the driving force behind the Marin decision was the belief that allowing intervention into adversary proceedings would best serve those interests.” Id. at 1240 (holding that §1109(b) as interpreted by Marin allows intervention in non-core, “related to” proceedings pending in a federal district court). Following the Phar-Mor and Marin cases, courts in this Circuit have continued to apply Marin and allow creditors’ committees broad rights to intervene in adversary proceedings – and even “related” proceedings pending in federal district court. See, e.g., In re: Big V Holding Corp., No. 00-04372, 2002 U.S. Dist. LEXIS 12609, at *9 (D. Del. July 11, 2002) (creditors’ committee filed a motion to intervene and “since 11 U.S.C. § 1109(b) gives a creditors’ committee an unconditional right to intervene in light of Phar-Mor, the Creditors’ Committee is a proper intervenor in this matter pursuant to Rule 24(a)(1)”; In re Allegheny Int’l, Inc., 107 B.R. 518, 525 (W.D. Pa. 1989) (following Marin and allowing

committee to intervene in adversary proceeding); In re Hanover Indus. Mach. Co., 61 B.R. 551, 554 (Bankr. E.D. Pa. 1986); see also In re Caldor, 303 F.3d 161, 169 (2d Cir. 2002) (following Marin); In re Scott Cable Commc'ns, Inc., 2002 WL 417013, at *2 (Bankr. D. Del. Mar. 4, 2002) (following Marin and granting Debtor's motion to intervene in adversary proceeding); In re G-I Holdings, Inc., 292 B.R. 804, 812 (Bankr. D.N.J. 2003) (following Marin and Phar-Mor and granting legal representative of present and future asbestos-related claimants the right to intervene in an avoidance action).


Thus, under the statutory language and the applicable case law, the Committee has a clear right to intervene in the Turnover Action under Rule 24(a)(1) and Section 1109(b) and, therefore, the Motion should be granted.²

² Alternatively, if this Court did not grant this motion pursuant to Rule 24(a)(1), then this Court should grant the motion pursuant to Rule 24(a)(2). The complaint seeks the turnover of some of the Debtors' largest assets, and recovery of these deposits and interest owed on them will have a significant effect on the recoveries realized by the Committee's constituents, for whom the Committee acts and to whom it owes fiduciary duties. The Committee should be involved as a party to this Turnover Action so that it can protect the interests of unsecured creditors and discharge its duties to them.

WHEREFORE, for the reasons set forth above, the Committee respectfully requests that this Court (a) grant the Motion; and (b) grant the Committee such other relief as is fair, just, and proper.

Dated: Wilmington, Delaware
April 29, 2009

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Creditors of Washington Mutual, Inc., *et al.*

EXHIBIT A

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	Chapter 11
WASHINGTON MUTUAL, INC., <i>et al.</i> , ¹	:
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Debtors.	Case No. 08-12229 (MFW)
	:
	Jointly Administered
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WASHINGTON MUTUAL, INC. AND	:
WMI INVESTMENT CORP.,	:
	:
Plaintiffs,	Adversary Proceeding
	No. 09-50934
and	:
	:
	:
THE OFFICIAL COMMITTEE OF	:
UNSECURED CREDITORS OF	:
WASHINGTON MUTUAL, INC. AND WMI	:
INVESTMENT CORP.	:
	:
Intervenor Plaintiff,	x
v.	
JPMORGAN CHASE BANK, NATIONAL	
ASSOCIATION,	
Defendant.	

**JOINDER OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF WASHINGTON MUTUAL, INC., AND WMI INVESTMENT CORP.
IN DEBTORS' COMPLAINT FOR TURNOVER OF ESTATE PROPERTY**

The Official Committee of Unsecured Creditors (the “Committee”) of Washington Mutual, Inc. and WMI Investment Corp. (collectively, the “Debtors”), as its proposed complaint in intervention in this matter, hereby joins in Debtors’ Complaint for

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).

Turnover of Estate Property (filed April 27, 2009) and repeats, realleges, and adopts as its own all of the allegations and the prayer for relief therein.

Dated: Wilmington, Delaware
April 29, 2009

PEPPER HAMILTON LLP



By: /s/ David B. Stratton

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CERTIFICATE OF SERVICE

I, David B. Stratton, do hereby certify that on the 29th day of April, 2009, I did serve the foregoing *Memorandum of Law in Support of the Motion for Intervention of the Official Committee of Unsecured Creditors of Washington Mutual, Inc., and WMI Investment Corp.* by causing a true and correct copy thereof to be served via the manner indicated upon those parties listed on the attached service list.



/s/ David B. Stratton

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