UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	
WASHINGTON MUTUAL, INC., *et al.*,	.	Case No. 08-12229(MFW) (Jointly Administered)
	.	
	.	January 28, 2010 4:00 p.m.
Debtors.	.	(Wilmington)
	.	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	.	
	.	
Plaintiff,	.	
	.	
v.	.	Adv.Proc.No. 09-50551(MFW)
	.	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	.	
	.	
Defendant for all claims	.	
	.	
-and-	.	
	.	
FEDERAL DEPOSIT INSURANCE CORPORATION,	.	
Additional Defendant for Interpleader claim	.	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	.	
	.	
Plaintiffs,	.	
	.	
v.	.	Adv.Proc.No. 09-50934(MFW)
	.	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	.	
	.	
Defendant.	.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:	Bill Kosturos, Esq. Jonathan Goulding, Esq. John Maciel, Esq. Alvarez & Marsal, Inc. Brian S. Rosen, Esq. Kelly DiBlasi, Esq. Matthew L. Curro, Esq. Weil, Gotshal & Manges, LLP Erica P. Taggart, Esq. Peter E. Calamari, Esq. David Elsberg, Esq. Benjamin I. Finestone, Esq. Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP Bradford J. Sandler, Esq. Jennifer R. Hoover, Esq. Benesch Neil R. Lapinski, Esq. Andrew G. Mirisis, Esq. Rafael X. Zahralddin, Esq. Elliott Greenleaf Mark D. Collins, Esq. Richards, Layton & Finger, P.A.
For Centerbridge, *et al.*:	Michael B. de Leeuw, Esq. Carl I. Stapen, Esq. Fried, Frank, Harris, Shriver & Jacobson,LLP
For the Equity Committee:	Gregory A. Cross, Esq. Jorian L. Rose, Esq. Venable, LLP

For JPMorgan Chase:	Stacey R. Friedman, Esq. Joshua J. Fritsch, Esq. Bruce E. Clark, Esq. Sullivan & Cromwell, LLP
	Adam G. Landis, Esq. Landis, Rath & Cobb, LLP
For the Committee:	David B. Stratton, Esq. Pepper Hamilton, LLP
	Robert A. Johnson, Esq. Fred S. Hodara, Esq. Akin, Gump, Strauss, Hauer & Feld, LLP
	Paul M. O'Connor, III, Esq. Kasowitz, Benson, Torres & Friedman, LLP
	Philip J. Nichols, Esq. Sara Lewis, Esq. White & Case, LLP
(No Client Listed):	Andrew J. Mytelka, Esq. James M. Roquemore, Esq. Greer, Herz & Adams, LLP
For the U.S. Securities & Exchange Commission:	Kevin Solonsky, Esq. U.S. Securities & Exchange Commission
For the Bank Bondholders:	Philip D. Anker, Esq. Wilmer Hale
For Dow Jones:	Peg Brickley, Esq. Dow Jones
For BlackHorse Capital:	Ian Connor Bifferato, Esq. Bifferato, LLC
	David Heroy, Esq. Baker & McKenzie

For PriceWaterhouse Coopers & Wells Fargo:	Donna L. Culver, Esq. Morris, Nichols, Arsht & Tunnell, LLP
	Alexander B. Lees, Esq. Wachtell, Lipton, Rosen & Katz
	Walter H. Curchack, Esq. Loeb & Loeb, LLP
For Standard & Poors:	Curtis Miller, Esq. Morris, Nichols, Arsht & Tunnell, LLP
For the WMB Noteholder Group:	R. Stephen McNeill, Esq. Potter, Anderson & Corroon, LLP
For Toronto-Dominion Bank & TD Bank, N.A.:	Richard W. Riley, Esq. Duane Morris, LLP
For the Noteholders:	Timothy P. Cairns, Esq. Pachulski, Stang, Ziehl & Jones, LLP
For the US Trustee:	Joseph J. McMahon, Jr., Esq. US Department of Justice
For the Law Debenture:	Daniel A. Lowenthal, Esq. Patterson, Belknap, Webb & Tyler, LLP
For the FDIC(Receiver):	M. Blake Cleary, Esq. Young, Conaway, Stargatt & Taylor, LLP
	John J. Clarke, Jr., Esq. DLA Piper

VIA TELEPHONE:

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THE CLERK: All rise. You may be seated.

THE COURT: Good afternoon. Mr. Rosen.

MR. ROSEN: Good afternoon, Your Honor. Brian Rosen, Weil, Gotshal & Manges, together with Matt Curro on behalf of the Debtors, Washington Mutual, Inc. and WMI Investment. Also with us today, Your Honor, is Mr. Mark Collins from Richards, Layton & Finger, and then for some subsequent matters, we have representatives from Quinn Emanuel who will be taking care of those.

THE COURT: Okay.

MR. ROSEN: Your Honor, if I could turn to the agenda and to page 7, I think that's where we would start, and move very quickly. Item number 9, Your Honor, was the Debtors' objection to the proof of claim filed by Wells Fargo Bank. It's my understanding, although we have not seen it hit the docket yet, that an order has been entered with respect to that.

THE COURT: Yes.

MR. ROSEN: The 18th omnibus, which is number 10, Your Honor, we know that an order has been received for that one, as well as number 11, which is relief from the Local Rule 3007. Item number 12, Your Honor, is a motion of the Debtors pursuant to §105 and Bankruptcy Rule 9019 to approve a settlement. And the parties, although there were no objections that were filed, Your Honor, the parties are

making certain modifications to the settlement agreement itself, and we would like to adjourn that matter to the next hearing, which is next week, Your Honor, we believe that's all it will take, to February 5th, when we have a hearing. And at that time, we will be able to present the order with the final agreement. As I said, Your Honor, it's mere ministerial changes to some of the language within the settlement agreement itself, that will be agreed to by all the parties.

THE COURT: All right.

MR. ROSEN: Your Honor, with that, what I would like to do is skip then, to item number 15, on page 11 of the agenda, which is the 17th omnibus objection. There was one objection that had been filed that was by First American CoreLogic, Inc., and the parties have agreed to adjourn the hearing with respect to the CoreLogic objection and the CoreLogic claim itself. And with respect to the balance of the claims that were objected to, Your Honor, there were no responses by any of the parties. And so Your Honor, we would ask the Court at this time to enter an order approving the 17th omnibus objection to the extent of all of the other claims that were covered by that 17th omnibus objection. For the Court's benefit, the omnibus objection dealt with the fact that these claims did not include any detail as to why they should be allowed, and this was an objection on

substantive grounds, Your Honor. And I believe that we have attached - -

THE COURT: Okay.

MR. ROSEN: I'm sorry?

THE COURT: I had no comments on that.

MR. ROSEN: Okay.

THE COURT: Except with respect to CoreLogic. So we'll all right on that.

MR. ROSEN: Okay, Your Honor. If I could present an order?

THE COURT: You may. Thank you. All right. I'll enter that order, then, as unopposed.

MR. ROSEN: Thank you, Your Honor. Your Honor, again, if we could jump a little bit around on the agenda, I would like to move, at this time, to what I believe has brought a lot of people into the room, which is item number 16. Which is the motion of Washington Mutual, Inc. and WMI Investment for an order with respect to the Equity Committee. If that's all right, Your Honor?

THE COURT: Yes. Let's do that.

MR. ROSEN: Your Honor, also, if I could approach now to provide the Court with three documents that we're going to seek to introduce. And these have been provided to counsel in the courtroom.

THE COURT: You may.

MR. ROSEN: Your Honor, as I indicated, we're here at this time to deal with the motion of the Debtors for an order seeking to disband the recently formed Equity Holders Committee, or in the alternative, to ask the Court to impose a cap on the fees and expenses that could be incurred by that Equity Committee. We received several responses, Your Honor. The first, as we expected, was from the Equity Committee. And of course, the Equity Committee in their papers said that the Debtors are doing a knock up job with respect to all of their efforts on the litigation. Such a good job, as a matter of fact, that they are establishing, in the Equity Committee's mind, that there is solvency, and therefore, people need to be represented at this point in time.

THE COURT: Well, let me interrupt you for a moment. Are we going to have any testimony or - -

MR. ROSEN: Your Honor - -

THE COURT: - - just argument?

MR. ROSEN: - - it is going to be just argument, as far as I know. The three documents that I provided, I believe, are, will be admitted into evidence on a consensual basis. And that will go to the asset and liability issue, Your Honor.

THE COURT: All right. Sorry to interrupt.

MR. ROSEN: That's quite all right. Secondly, Your Honor, we received an objection from Black Horse Management,

LLC, who also says that the Debtors have done a great job and they believe that there is solvency. But that the solvency that they foresee will not dip down to the common equity level. So they're asking for a reconstitution of the Equity Committee so that it only provides for membership by preferred stockholders. Third we received a joinder by the Creditors Committee to the Debtors' motion itself. And the Creditors Committee, and they will certainly speak for themselves, they focused really on the adequate representation of all parties in interest in these cases. Next, there were two pleadings that were filed by the United States Trustee. The first was an objection to the motion itself, and the second was an objection by the United States Trustee to the request by Black Horse as to the reconstitution of the Committee. Next, Your Honor, there was a response interposed by the Bank Bondholders, and we were very happy to see that the Bank Bondholders agreed with the Debtors with respect to something in this case. And they believe that before anything goes down to the equity holders in this case, that the bank, the creditors of the bank itself have to be paid in full. And it was their view there - -

THE COURT: I think they suggested that before anything goes to the Debtors, the creditors and the - -

MR. ROSEN: Well - -

THE COURT: - - subsidiary have to be paid first.

MR. ROSEN: We'll let Mr. Anker speak. But - -

THE COURT: Well, I was - -

MR. ROSEN: - - before he - -

THE COURT: I was - -

MR. ROSEN: - - does speak, Your Honor, I would like to just bring up one small point. And that is, the Court has already entered an order in this case with respect to 2019. And the imposition of that with respect to what was previously referred to as the senior noteholder group that had been represented by White & Case. Your Honor, we would just like to point out for the record that as far as we know, there has not been a 2019 statement filed by any of the Bank Bondholders, and we think that based upon the law of the case, that there probably should be one before pleadings are permitted to be filed, or that counsel is permitted to be heard. Lastly, Your Honor, the next item that was filed was a reply by the Debtors with respect to all of the pleadings that I referred to earlier. Initially, Your Honor, I would like to point out that it is the Debtors' goal, the Debtors' responsibility, and the Debtors' obligation to look after the interests of all stakeholders. Creditors and shareholders alike. And the Debtors, in that regard, have served, and will continue to serve, as the custodian for the whole. For the entire creditor and shareholder body. And in a case like this, there is no basis to draw a distinction between

creditors and shareholders. And no distinction, in fact, has been drawn, Your Honor. The Debtors and the professionals have adhered to a simple mantra throughout this case. Which is do whatever is necessary to maximize the assets of the Debtors' estates, and to minimize the liabilities that may be allowed against the creditors. In that regard, Your Honor, the Debtors have liquidated assets, the Debtors have commenced litigation, and they have taken other actions - - excuse me - - to provide for, or to investigate and see whatever claims and causes of actions may exist on behalf of the estate. Conversely, the Debtors have filed 20 omnibus objections to claims, and they have served miscellaneous others. And each of those is designed to reduce the magnitude of allowed claims in these Chapter 11 cases. In doing so, Your Honor, the Debtors have no favorites. The Debtors merely do what is necessary, and at the end of the day will provide for distributions as are required by the Bankruptcy Code and the underlying contractual documentation that was, that WMI was a party to. At the same time, Your Honor, the Debtors cannot turn a blind eye to what the economic realities are of these cases. And as currently presented, the Debtors are insolvent. But let's look at what we know, Your Honor. First, we have the latest monthly operating report that was filed with the Court. And Your Honor, that is marked as Debtors' Exhibit 1 before you. It

represents the Debtors' view as to what the assets and liabilities are as of November 30th, 2009. And it has a balance sheet depicting these assets and liabilities. And Your Honor, I believe that is page 7 of that exhibit, and we also have a blow up there for you, Your Honor, off to the side. And as you can see from the balance sheet, Your Honor, the Debtors reflect assets and liabilities as of November 30th, 2009, assets of 6.932 billion and liabilities of 8.294 billion respectively. Now everyone, Your Honor, in the pleadings that you've seen, they jump on what they perceive to be that sliver, that $1.3 billion of negative equity, if you will, Your Honor. And they say, Aha! Let's get a $20 billion recovery in the litigation that's currently pending, and by the way the Debtors have asserted viable, valid, and knock down winners on all of these claims, and we have solvency. Well Your Honor, unfortunately, it's not that simple on so many levels. First, the number is not truly $20 billion, as certainly in this case the Equity Committee contends. The $20 billion, Your Honor, includes $4 billion of deposits. And as reflected on the monthly operating report, which is already before you, Your Honor, the $4 billion is factored into the $6.9 billion. So Your Honor, what we're really talking about as . . . (indiscernible) . . . for relief, is approximately $16 billion. But Your Honor, let's assume for the moment that there is solvency. Then

creditors would be entitled to receive post-petition interest on their claims. And based upon the Debtors' analysis, such amount would be approximately $600 million. Assuming that the plan went effective and creditors' claims were paid in full no later than June 30th, 2010.

THE COURT: And where do you get that figure?

MR. ROSEN: Based upon the contractual interest that is set forth, Your Honor, on the respective scheduled debt as well as a Federal judgment rate for general unsecured.

THE COURT: So you think I can do that calculation, or take judicial notice of the Federal rate, and multiply it times your liabilities? Is that - -

MR. ROSEN: Your Honor, I am just giving it to you as an example.

THE COURT: Okay.

MR. ROSEN: Applying that spread, Your Honor, would increase what we know already to be that 1.3 billion spread to about $1.9 billion. And likewise, Your Honor, as we know, unfortunately, claims will not be paid in full on that date. Either because assets will not be available, or claims will not be reduced to such a level to allow the payment to be made in full. And the Debtors know that interest will therefore continue to accrue at the approximate amount of $30 million per month. Third, Your Honor, what else doesn't the balance sheet show? It doesn't reflect any amounts

associated with disputed and unliquidated claims. Your Honor, Debtors' Exhibit 2, which you have before you, is the claims register in these Chapter 11 cases. And Your Honor, this claims register was put together by KCC, which is the Court appointed agent. Several things to note, Your Honor. If you go to the last page, and we've taken the liberty of making that number a little bit larger so people could actually see it. You'll see that the total amount of claims filed, and by that I mean, Your Honor, claims filed with a number associated with it, and nothing more than a number, is $104 billion. Now I would call your attention to the fact, Your Honor, that that $104 billion includes a $40 billion Marta claim, as we call it, and a $9.7 billion IRS claim. Both of which, Your Honor, will be objected to as being amended and superceded. So let's reduce that 104 right now to approximately $54 billion. Taking out that $50 billion of excess. The problem, Your Honor, is this chart doesn't even include a number for unliquidated claims. Case in point, Your Honor, Exhibit 3, which we have before you, and it's reflected, Your Honor, on page 28 of the, the large chart, is the FDIC claim that was filed in the case. And the FDIC claim is asserted a liquidated amount of $24 billion, plus an unliquidated portion. And as a result, KCC reflects that claim as totally unliquidated. The point, Your Honor, is that 104 may become 54, but we know that there are a large

component of claims that have liquidated pieces that are not even reflected. So the 54 gets ballooned up yet again. The claim, Your Honor, that was filed by JPMorgan Chase is similar. And when I say the claim, Your Honor, JPMorgan Chase filed approximately 30 claims against the estate, some having a liquidated, some having an unliquidated portion, therefore each enlarging the amount of what would be the denominator base of claims in these cases. And while the Debtors are still in the process of evaluating these claims, Your Honor, we cannot at this time provide any sort of estimate as to what the ultimate recovery would be. Let's go back to the $16 billion number that we talked about earlier, Your Honor, which was the 20 billion minus the 4 billion which is already included in the monthly operating report. A lot of people have been focused on those claims, as I said. And they say, You're going to hit a home run, slam dunk, whatever sports analogy you want to use, Your Honor, and therefore all that money is going to come into the estate. But is it really? I don't think so. Unfortunately, Your Honor. We know, Your Honor, that there are approximately $1.9 billion of cash in the receivership. And that was due to the acquisition by JPMorgan Chase of the bank. And we know that the receivership probably has some other money, and so conservatively we'll say $100 million for a total of 2 billion. And we know that WMB, based upon everything that

we've said, had funded debt of approximately $13.8 billion. And when you add that slam dunk recovery against the WMB receivership for the lawsuit that we have filed, you take the 16 billion and the 13.8 of funded debt and you come up with about $29.8 billion of debt. The problem is, Your Honor, you only have $2 billion of assets to satisfy that. So therefore, Your Honor, we look at it on the other side and say, We don't see that $16 billion coming back as a recovery, necessarily. There will be some recovery, Your Honor, but it would be a fraction of that. Thus Your Honor, any way we look at it, even without adding the disputed claims that we know of, and the unliquidated claims that we don't know of, the Debtors are still insolvent, and we don't, therefore, see any reason for an equity committee to be involved at this time. But take it on the flip side, Your Honor. To argue that the Debtors are solvent, the Committee has to assume that we're 100% successful not only on all the litigations, on the recoveries that we are to get, as well as defeating any claims that emanate back against the estate as a result of the victory that we would have achieved in the receivership. That necessarily when you get a, an avoidance action recovery, there's not a corresponding avoidance action claim back against the estate for payment back into the estate. It's hard to understand it, Your Honor, but there would be claims. If there's a breakdown in any of these

scenarios, Your Honor, the equity would not recover anything. As far as we can see, there's simply not a scenario under which anyone can conclude that equity has enough of an economic stake in these cases to warrant the continuation of the Equity Committee. But Your Honor, assume for the moment that there might be solvency, then you have to go to the case law, and you have to look at the factors. You have to look at adequate representation. None of the objecting parties have established why an equity committee is necessary to ensure that adequate representation, Your Honor.

THE COURT: Well, aren't we beyond that? This is not a motion for appointment of an equity committee. One has been appointed.

MR. ROSEN: Your Honor, and that perhaps gets to the issue of what sort of review should be undertaken.

THE COURT: Right.

MR. ROSEN: The *de novo* or the abuse of discretion standard.

THE COURT: Right.

MR. ROSEN: And Your Honor, we believe that there is no question. That the *de novo* review should be undertaken. The cases that have been cited by the Equity Committee and the United States Trustee, they go to a determination of this Court being made subsequently on appeal by a District Court. And that's why the abuse of discretion standard is used.

THE COURT: But do you point me to any case?

MR. ROSEN: The Williams decision, Your Honor. We believe it's squarely on point. And in fact, Your Honor, I believe in Williams, the Court explicitly used the *de novo* standard of review to determine whether committees should be formed after the US Trustee denied an equity holder's request to form it. So Your Honor, we believe that that is where this Court should go. And so therefore we need to look back at the requisite factors.

THE COURT: But there is no case that you, the parties can point to where the Trustee has appointed a committee and a motion to disband is being considered by the Court.

MR. ROSEN: Your Honor, I believe in our reply - - and I want to find that for Your Honor - - we referred the Court to the Texaco decision. And there, Your Honor - - and that's on page 7 of our reply. And for the Court's benefit, the Texaco cite 79BR 560. In Texaco, the Bankruptcy Court reviewed the decision by the United States Trustee to appoint two committees of unsecured creditors. And the Court found that two committees were no longer needed and ordered the US Trustee to combine the two into one, effectively disbanding one of the two committees. And in doing so, the Court specifically noted that the issue of adequate representation, quote, "is determined on a *de novo* basis, after the

administrative task of appointing committees is performed by the United States Trustee." Close quote. The quote went on to hold that, quote, "An abuse of discretion standard does not apply with respect to the United States Trustee's initial exercise of discretion, because the concept of adequate representation is a legal issue which must be resolved judicially." So Your Honor, we would ask the Court to look at those two decisions. With respect to the adequate representation, Your Honor, as I mentioned, nobody is claiming at this point in time that the Debtors are not doing everything that they have said that they would do. And in fact, everybody has lauded the Debtors and their counsel, specifically Quinn Emanuel, for what they have been able to achieve in connection with the litigation that's before this Court and the litigation that was recently stayed in the District of Columbia. Really what it comes down to, Your Honor, is that people are only concerned if we decide to settle this case. Settle this litigation. Not that we're not going to zealously pursue it, but if the Debtors, at the end of the day decide that they believe, based upon whatever factors we take into account, a resolution among the FDIC, JPMorgan, WMI is appropriate to be resolved consensually. And at that point in time, Your Honor, as our papers clearly set it out, that's when the Equity Committee, if at all, should come into being. Because it's that point in time,

Your Honor, that people will be unhappy with that resolution. Not that we're proceeding in the litigation right now, but that we've decided to settle at a number that they don't think is appropriate. And therefore, they would argue, Your Honor, that it falls beneath the lowest range in the range of reasonableness. To us, Your Honor, that's the time when someone needs to rear their head. It's not now. We don't need any additional help in litigating Your Honor, because we're doing a pretty good job. And we already have the help of the Creditors Committee in that, in those litigations. People are casting stones at the Debtors, they're casting stones at the Creditors Committee saying they're not, at that point in time, they won't be looking out for the interests of the equity holders. Your Honor, we're doing everything we can to maximize those assets. That was the mantra that we started out with in this presentation, that's the mantra that we're going to carry through to the end of the case. And if in fact the waterfalls that would be presented in this case show that there should be a distribution to flow down south to the preferred holders and the common equity holders, that will be appropriate, that will be contained in the disclosure statement, that will be something that will be put forth in a Chapter 11 plan. But at this juncture, in these cases, we believe that there already is adequate representation of the equity holders. It's also worth noting, Your Honor, that to

the extent that an equity holder and ad hoc group of equity holders substantially contributes to these cases, they are statutorily entitled to apply to the Court for compensation. We have never said anything other than that, Your Honor. We included that in our motion in the first instance. We stand by that, Your Honor. Lastly Your Honor, if the Court decides that it's not appropriate at this time to disband that Committee, and we do think that it is, and we ask the Court to do so, we ask the Court to consider capping the fees and expenses of the Equity Committee. As I just indicated, Your Honor, we think the role of this Committee should not be to get involved in any litigation, but rather should be to have the opportunity to review any settlement if in fact one is ever brought before this Court. We believe, Your Honor, that the cost, the fees and expenses associated with that would be relatively *de minimis*. We would certainly work with that Equity Committee to bring them up to speed so that they could understand what the relevant issues are. And we believe that the appropriate cap, as we set forth in our motion, of $250 thousand should be implemented. Thank you, Your Honor.

THE COURT: Okay. Thank you.

MR. ROSEN: With that, Your Honor - - excuse me. I would just ask for the admission of those three exhibits. And I would also note, Your Honor, I failed to mention that we did receive a letter this afternoon. It hit the docket.

It was an independent letter by a shareholder with respect to the motion itself. Just asking that the Court deny the relief. And if the Court does not have a copy, I'm happy to hand one up.

THE COURT: I don't have a copy, you may hand it up. Thank you. Okay.

MR. HODARA: Good afternoon, Your Honor. Fred Hodara for the Official Committee of Unsecured Creditors from Akin, Gump, Strauss, Hauer & Feld. Your Honor, as Mr. Rosen indicated, on behalf of the Creditors Committee, I'm going to focus my comments on the adequate representation issue. And the manner in which we believe that the existence of adequate representation in this case, coupled with the expense of a creditor, of an additional official committee, in this instance of equity holders, outweighs any perceived need, any conceivable need, for an official committee of equity holders. The case law which Mr. Rosen touched on we believe is clear, notwithstanding that it exists primarily in the context of equity holders seeking a Court to determine that a committee should be appointed. It's clear that the representation need not be exclusive, but merely needs to be adequate. Here we don't have an instance of merely being adequate, we believe that there's circumstances of perfect adequacy, and that's with respect to many different levels. Three to be specific. The role of the Debtors themselves,

which Mr. Rosen articulated very clearly, and Your Honor has seen throughout these cases. The role of the Board of Directors. And in this case, unlike many cases, there are still nine members of this Board of Directors, which meet from time to time, and have been active throughout these cases. And of course, the role of the Creditors Committee. Now in the Edison Brothers case, District Judge Robinson here in Delaware didn't find grounds appropriate for the appointment of the equity committee. She said there that she could revisit the issue if the shareholders could provide evidence suggesting that management's interests were not aligned with shareholders. Again, there's no reason that we've seen in this case why one would believe that those interests are not aligned. No reason to believe that the dual duty of management, and of the Debtors, to equity and to creditors, is not being exerted appropriately. We all know the plethora of litigation in these cases. We know how aggressive the Debtor, with the Creditors Committee, has been in pursuing these litigations. There's no reason to believe that an equity committee would somehow add anything to those litigation efforts. The role of the Creditors Committee, while obviously not on behalf of equity holders, we think is absolutely relevant to the issue of adequate representation. The Creditors Committee is not only focused on the litigations, but we're focused on the claims process. The

objections, 20 of them that have been filed by the Debtors, and which have been done working hand in hand with the Creditors Committee reviewing those claims, are focused obviously on minimizing the number of claims and the amount of the ultimate claims that have to be paid in this case. That's exactly what equity holders would want to see happen. There can be no inference that somehow this Creditors Committee is being lax in their effort and in their scrutiny of those claims to reduce that claims base. Now in our pleading, we cite to a series of cases that talk about other protections for equity holders who don't get the benefit of an equity committee, and it's not been said, but it's obviously the case that it's not the norm for there to be an appointment of an equity committee. And in these various cases, AMPEX in the Southern District, the Williams case that Mr. Rosen references, the Leap Wireless case in the Southern District, the Courts refer to these other protections that equity holders have. For instance, in the Leap case, the court explained that the equity holders who were seeking a committee still have recourse. They have standing to be heard under 1109(b), and they can be reimbursed for their efforts, if their efforts result in substantial contribution under 503(b)(3)(d). Now in this particular case, we should look at whether these equity holders have the ability to represent themselves. One thing that's come out through the

discussions and the papers of the appointment of this Equity Committee is that they not only have been organized, but they've been organized for quite some time. And they've been advocating, it appears, effectively through a law firm. So what they're really doing is trying to shift the expense of that effort to this estate. And we think that's the final point, and very important point, in balancing whether it's appropriate to appoint another official committee in this case. Because the cost, Your Honor, comes in two forms. There's the obvious out of pocket expense of another official committee, clearly with a law firm, it appears two law firms, as most of us seem to have. Perhaps there'll be a third, as most of us, or at least the Debtors have had with respect to the litigation. In fact, I think at last count the Debtors, and this is not a criticism, have 19 professional firms in all retained, because of the nature of the litigations all over the country, as well as the need for financial advice. And so is this Equity Committee going to seek a financial advisor? So we have that kind of cost. The obvious out of pocket expense. But then we have the cost that we would expect if an equity committee is allowed to stand here of delay. And of the burden that this Equity Committee, being funded, if they are deemed to be official, and are not capped, straight out of the estate, will put on all of the parties by demanding to get up to speed on every last thing

that has happened in this case, everything that's pending. And then, and this is the most difficult part for, from a creditor's perspective, presumably holding things up, trying to extract what can only be considered a gift, unless we are successful in all of the litigation. Now it's the hope of the Creditors Committee that the estate will be successful in all of the litigations, and that we'll all be showered with compensation beyond expectations, and that there could be value for the equity. But as Mr. Rosen indicated, that would require success up and down the line. That effort is being made in spades by the Debtor and by the Creditors Committee. To inject another party just for the sake of piling on and pursuing that, which is the only thing we think it would be for, is going to delay the process. And what we don't want is for our creditors' money to be used to ultimately hold us up to try to extract something in the end of the day for the equity holders. So for those reasons, Your Honor, we believe that this is not the case, this is not the time, for appointment of an equity committee.

THE COURT: Thank you.

MR. ANKER: Good afternoon, Your Honor. I'll be brief. Philip Anker, filed the papers on behalf of the bank bondholders. We have filed a 2019 statement. We have had other members join our group and we will amend promptly to add them.

THE COURT: When did you file that?

MR. ANKER: Several months ago. I can look it up. I don't have the exact date, Your Honor. I can look it up in the - -

THE COURT: In compliance with my order?

MR. ANKER: It was filed before the order, Your Honor. It was filed before the order.

THE COURT: Did it disclose what was required?

MR. ANKER: It disclosed consistent with what the WMI noteholders did at the time. We have not amended since your order, Your Honor, nor have the WMI noteholders. They have taken an appeal from that decision. The filing did pre-date it. But I wanted to simply correct the record that there was no filing. Your Honor, let me just make a couple of remarks briefly. I don't stand up here to discuss the law with you. I appreciate there isn't a lot of law in this area, and I understand the Court may feel its hands are tied. But I do want to correct a couple of statements of fact, frankly, that in our own pleading weren't quite accurate. I stated, or we stated in our pleading, that the total amount of the WMB bond debt was about $13 billion. It's actually closer, and this is without interest, Your Honor, of any kind, to 14 billion. There's 6.1 of the senior bank debt, 7.6 billion of the junior debt. I suggested in our pleading that the junior bonds were trading at pennies on the dollar,

the senior bonds at 45¢ on the dollar. We attached an exhibit. And again, I wasn't quite right. The junior bonds are trading at less then 1 penny on the dollar. I stand up with trepidation. There are many - -

THE COURT: Well am I to take judicial notice of that fact? What evidence do I have of that?

MR. ANKER: There is a, Your Honor, I don't think that the Equity Committee will dispute. Attached as Exhibit A to our pleading is a copy of a Bloomberg - -

THE COURT: I remember it.

MR. ANKER: - - and it does show that. WMB juniors, I'm referring to. I thought I was clear, but Mr. Rosen wants me to clarify. Your Honor, obviously if you want an affidavit of authenticity, we can put that in front of you. Let me just underscore a couple of points Mr. Rosen made on the numbers here. And point out to you one thing the Debtor has said. The Debtor, obviously, has a claim to the deposit. If it wins that claim, and there's no setoff, and there's no argument, if Your Honor rules all their way, it's $4 billion and change. The senior bonds at WMI are greater than that amount. What else is there? There are claims against the receivership estate. And Mr. Rosen has noted those. He has noted that the receivership estate has in this case claims of even a greater amount. But let's say that at the end of the day, they succeed in their litigation, those claims are

allowed, the claims of the receivership estate are disallowed. As Mr. Rosen notes, and I hope the comment didn't get lost in the translation, that's a claim against a receivership estate that right now is holding $1.9 billion, the proceeds paid by JPMorgan Chase, pursuant to the purchase and assumption agreement, and has against it $13.8 billion in liability already. That claim, if there were a net claim allowed for WMI, is a pennies on the dollar claim. There is much talk in this case about the tax asset. We'll be back before Your Honor relatively soon on an objection that was filed to claims that my clients filed in this case. But attached to that was a declaration filed by WMI of Mr. Brauer (phonetic). And he notes there, and I quote, "Where WMB would have been entitled to a refund on a separate company basis, then under the tax sharing agreement, WMB would be owed the, that amount by WMI." And so even under their view of the tax sharing agreement, which is that they have the right to file the tax returns and the money in the first instance flows into the WMI estate, even under their view, which is not the view of JPMorgan Chase, not the view of the FDIC, not the view of the bank bondholders, all of whom think the property right remained on the WMB side, or if the asset has been sold, to JPMorgan Chase. But whoever it is - -

THE COURT: We don't have to get into the merits of all that.

MR. ANKER: But the point is that even the Debtor concedes, even the Debtor concedes - -

THE COURT: All right.

MR. ANKER: - - there would be a claim back, and that claim would obviously come ahead of equity. Your Honor, I want to underscore one other point, which we hint at at the pleadings, and I want to be circumspect in what I say. Obviously, the hope of a lot of parties here is that we don't go through nuclear war and litigate until, for years, and years, and years. But rather, that ultimately there is a resolution that helps, or at least satisfies all constituencies. JPMorgan Chase, the FDIC, the WMB bondholders, the WMI creditors, at least at some level, and the WMI Debtor. That process obviously hasn't, today, produced a settlement yet. It will only get that much harder if equity is at the table, because there's just not enough money to go around. Your Honor, I wish there were a prospect that WMI equity could get something, because that would mean not only would my creditors, the senior bank bondholders, my clients, be paid in full, but so too would the juniors. I wish it were true. I have no beef against the people in this courtroom. But simply that is not the economic reality of the world in which we find ourselves. Thank you, Your Honor.

THE COURT: Thank you.

MR. CROSS: Greg Cross on behalf of the Official

Committee of Equity Security Holders from Venable. Your Honor, before I begin, I have two slides I'd like to hand up. Both are trading slides, and they've been shared with the Debtor. I'd ask that the Court take judicial notice of them.

THE COURT: All right. Any objection? All right. You may hand them up.

MR. CROSS: I'd also like to ask the Court to take judicial notice of the Exhibits that are attached to our opposition, which are all publicly available trading slides and information from Google.

THE COURT: Any objections?

UNIDENTIFIED SPEAKER: No, Your Honor.

THE COURT: All right. I will take judicial notice of that.

MR. CROSS: Your Honor, §1102 vests with the Trustee the discretion to appoint additional committees.

THE COURT: The US Trustee.

MR. CROSS: The US Trustee, correct. It vests with the Court the power to expand that representation or to alter the representation if it deems that the representation is inadequate. It does not vest with the Court the power to constrict representation by disbanding committees. And notwithstanding what the Debtor said, they've not cited a single case in their papers which stands for that proposition. The Texaco case isn't that case. The Texaco

case is a case of two unsecured creditors committees where the Court was reallocating the representation into one effectively. Saying that there was no longer a need for two separate committees which were advocated to the Court because there was a perceived conflict. The in re: New Life case is the only case that's directly on point. In that case, the Court concluded that it lacked authority and power to disband the committee. Now there are cases that have said it's an abuse of discretion standard. I frankly think, though, the New Life case is the correct standard. All of the papers that are in front of you, all of the tests that have been advanced are under (a)(2). They are entities, they are individuals coming to the Court asking for the creation of an unsecured committee, an additional unsecured committee, or an equity committee, and they are trying to satisfy the standards for the Court's *de novo* review and creation of additional representation. There are no cases which speak to how you evaluate whether the Trustee appropriately exercised his discretion. At a minimum, he should be afforded an abuse of discretion standard. But I would argue that the Court lacks any authority to disband the Committee. We have, however, addressed each of the four factors, and believe that had we come here, and the Trustee turned us down, we would have a compelling argument for the creation of an equity committee, addressing each of the five factors, actually.

And there are only two that are relevant. This is obviously a widely traded stock. It's obviously a complex case. Nobody disputes that. So there are only three issues. Is this Debtor hopelessly insolvent? Is the equity adequately represented? And what's the cost/benefit analysis of adding an equity committee to this case? Now with respect to hopeless insolvency, in the papers, no one takes the position, other than the bondholders for WMB, other than that they are hopeless, that this case is hopelessly insolvent. They say, there's no proof of solvency, but they don't argue that the estate is hopelessly insolvent. And in fact, the Debtors said in their discussions before you, I don't know. I don't know what the claims are going to be, what the recoveries will be, and I don't know what the claims, the validity of the claims that are pending will be. You have in front of you a motion to extend exclusivity, and the Debtors justification for extending exclusivity is that the Debtor has an inability at this time to assess the assets and liabilities of this estate. Yet the Debtor bears the burden of coming before you and showing that the estate is hopelessly insolvent. They can't make both statements. And in the statement before you just moments ago, they conceded that they can't. That they don't know. The Unsecured Creditors Committee really doesn't address the point. They argue just adequacy of representation. The bondholders say,

It's got to be hopelessly insolvent, because I'm going to win every single argument at the WMB level. Nothing is going to flow to WMI. And gee, my noteholders are trading at fractions of cents on the dollar. Well frankly, if you look at the noteholders at the WMI level, which were the two sheets that I gave you, the WMI noteholders think they're going to do a lot better than WMB. The senior notes at the WMI level, are trading, have traded in the past month at above 100¢ on the dollar. The junior noteholders are trading at 50¢ on the dollar. The stock, the common, and the preferred shares show $500 million of equity value in these cases. In the normal case, $500 million would be a staggering sum. It's only - -

THE COURT: Not in this case. But - -

MR. CROSS: Not in this case. And 500 million in and of itself would warrant the creation of an equity committee. It's only in a case where we're tossing billions here and billions there, without any specificity, where all parties admit that there are years of litigation ahead, that they say equity shouldn't have a voice. There has been no satisfying of a burden by the Debtor that the estate is hopelessly insolvent. The second test is, Is equity adequately represented? The unsecured creditors, and the Debtor, argue, We're doing a great job. They may be or they may not be. I don't know. I'm going to presume that they

are. That doesn't mean that equity has a seat at the table, or a voice. And it doesn't mean that they have the type of fiduciary duties that the equity should enjoy. The unsecured creditors have no fiduciary duty to the equity. The unsecured creditors make the argument in their motion, it's just litigation. We're doing a good job in the litigation, so why does equity need to participate? But you know, actions speak louder than words. When the Debtors were litigating the cases, in both adversary proceedings in the DC action, the unsecureds joined. They actually filed a motion to intervene in the DC action. Why is it that the Debtor is not adequately representing their interests in those litigations? Why is it that the unsecureds need to participate? What is the justification for that expenditure, and why wouldn't equity be afforded the same opportunity. It should be identical. And the reason equity needs representation here is precisely why everyone in the room is fighting so hard to keep us out. Settlement will be more complicated only if they're settling with the equity's money. If these cases are truly insolvent, if there is no hope of recovery, any objection I lodge is going to be overruled. Any efforts to extend the period is going to be overruled. We've all been in cases where unsecureds get nothing. They object to a settlement. It's approved. That shouldn't be the fear. The fear is, as the bondholders acknowledge, Hey

we can cut a deal if it's just WMI, WMB, and the FDIC. But if we've got to include equity, and they're really looking out for that last dollar, it will be much more difficult. Now what are the relative costs? This Debtor has more than $800 million in liquid assets. By any measure, we're talking about billions of dollars at stake. The Debtor has 19 sets of professionals, but adding one more is the straw that breaks the camel's back? We can't afford a few million dollars so that equity actually has a voice? The equity owns this company. The costs of adding a committee are *de minimis*. And the reasonableness of those costs are going to be subject to your review. I mean, I have to come in and defend whatever those charges are. Were they reasonable, weren't they reasonable. We don't just run up the meter. We're already spent 63 million, $65 million on professionals in this case. And I think to the Debtors' point, it's the perfect time to create an equity committee. There is no way, in fact it's laughable, to say that equity could come in at the twelfth hour and review a settlement and make any educated judgment. At this juncture, I hope, for 65 million, much of the spade work has been done. We should enjoy the benefit of that spade work and be able to make a knowledgeable and intelligent decision and recommendation to the Court of our view and assessment of the litigation. Now what are the benefits? You know, I listened to the State of

the Union last night. The President is accusing all the financial institutions of causing the financial calamity that we presently are experiencing. Saying that the government mishandled it. The Debtor is arguing that one of the largest financial institutions in the United States caused the problems that it has, and is suing the government to recover funds that it says were wrongfully taken. I brought with me nine binders of these books. There were 35 hundred shareholders who wrote the Trustee independently, who organized themselves through a website, asking for the creation of an equity committee. 19% of the preferred holders asked for the creation of an equity committee. More than 100 million shares asked for the creation of an equity committee. They asked for a voice. They asked for an opportunity to be heard. And I think Black Horse, the case that Black Horse attached to their pleading from Judge Robinson was instructive. I mean, the Judge there said, There are circumstances where the process is as important as the ultimate outcome of the case. The integrity of the bankruptcy process rests in large measure on the committee structure, a statutory creation that ensures presentation to the Court of views adverse to, or at least different from those of the Debtor. In this case, if equity is denied representation with billions of dollars at stake, and all of the allegations of malfeasance, for the relatively

insignificant costs that would be incurred to give them that voice, there's no settlement, there's no outcome that will have any validity for the people who are sitting in this courtroom or the 35 hundred people who wrote their, wrote to the Trustee asking for representation. I mean, for that reason, the Trustee made the right decision. The Trustee decided they needed a voice in these cases, and that was an appropriate exercise of discretion that should be supported by the Court. Thank you.

THE COURT: Thank you.

MR. BIFFERATO: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. BIFFERATO: Connor Bifferato on behalf of Black Horse Capital. With me in the courtroom today, Your Honor, is David Heroy of Baker & McKenzie. I have filed a motion for admission *pro hac*, Your Honor. At this time, I'd ask that Mr. Heroy be permitted to address the Court.

THE COURT: He will be heard.

MR. BIFFERATO: Thank you, Your Honor.

MR. HEROY: Thank you and good afternoon, Your Honor. David Heroy from Baker & McKenzie on behalf of Black Horse Capital. Black Horse is a holder in the preferred issuances in this case. It's a holder in both what's known as the hybrid preferreds and the regular preferreds, and I'll circle back to that when I conclude. But hopefully I'll be

as brief as possible given the length of the argument so far, and the time of the day.

THE COURT: Okay.

MR. HEROY: But let me first start with two items that directly address issues that first Your Honor raised, and secondly were mentioned in argument prior to my speaking. Abuse of discretion. Do we have a case where a court, a reviewing court in the first instance, either a Bankruptcy Court or a District Court in the years when District Courts were hearing bankruptcies in the first instance, reviewed the United States Trustee's decision to appoint a committee and review it with a disbandment motion? Well that case, is attached to my, the pleading we filed, Your Honor. And that's the decision by former Chief Judge Robinson in the Imperial Sugar case, known as Imperial Distributing. And Mr. Hodara knows this case well, because that was his motion on behalf of an unsecured creditors committee to disband an equity committee represented by me. And there, Chief Judge Robinson, then Chief Judge, decided at page 3 of the decision, it's an abuse of discretion standard. And she denied the motion. And I just thought that I should point that out, although it's not directly relevant to our particular relief we're seeking today, I think it directly answers Your Honor's question on that point.

THE COURT: Thank you.

MR. HEROY: Secondly, the notion of adequate representation of equity by an unsecured creditors committee. I can't get into my argument before at least mentioning that, because that issue also was brought up in the Imperial Distributing case, as Mr. Hodara knows, and the fact is, as a matter of law, the only fiduciary duties owed by a creditors committee are to the class of creditors it represents. That's axiomatic, it's black letter law under the Bankruptcy Code. Now in terms of the pleading we filed in the case, I believe that Mr. Rosen accurately set forth what our position is. We're a holder in the preferred issues. The preferred issues are approximately $7.5 billion that stand between the unsecured creditors return of Washington Mutual, the parent company, and the common shareholders, who are largely representing and dominating the Equity Committee that's been appointed. Our position is in the middle ground between what is being urged by the Debtors in the various creditor groups on the one hand, and by the US Trustee and the Equity Committee on the other.

THE COURT: Well, do you agree that the abuse of discretion standard applies to a motion or request to reconstitute the committee?

MR. HEROY: Absolutely, Your Honor.

THE COURT: Okay.

MR. HEROY: It has to, I believe.

THE COURT: Okay.

MR. HEROY: And secondly, we agree that all of the data indicates, and again, this is not an evidentiary hearing, but all the data indicates that the common stock is hopelessly insolvent. We do not disagree with the Debtors' allegations in that regard, but we're not supplying Your Honor with any further evidence or proof, etcetera, because obviously we do not have the same access to this information as do the creditor groups and the Debtors. So we agree as to hopelessly insolvent, we agree as to the abuse of discretion standard. Where we disagree is that we believe that this is the perfect case for this Court to address whether §1102(a)(4) of the Bankruptcy Code should be applied. And the reason we asked for this is that we believe that since the common is out of the money, and is hopelessly insolvent, first of all the best justification for an equity committee, is for it to be a preferred equity committee, and secondly, to the extent common is on the committee, it's another different interest and we would adopt the Debtors' interest in that, arguments in that regard. Now §1102(a)(4) of the Bankruptcy Code is relatively new. It was enacted to give the Bankruptcy Courts this power precisely in the amendments in 2005. There have only been two reported decisions that even mention §1102(a)(4), neither one of them decided this question. It was mentioned in the Pilgrim's Pride case, from

the Northern District of Texas. And it was mentioned in a case called Kings River in 2007. But neither court addressed this specific question. We do not know of any authority, either published or unpublished, within the District of Delaware or the 3rd Circuit on this point. So we believe, really, it's a question of first instance. Now why do I say it's the perfect case for this? I think it's the perfect case for this, Your Honor, because there is hopeless insolvency as to one junior class, but not as to the other. In the terminology that's commonly used in many of these cases, investors look at the capital structure of an insolvent business to determine which security is the fulcrum security. The one that's just below the group that perhaps is going to get paid in full but isn't going to get so much. I don't think there's been a single dispute, a single disagreement heard today, Your Honor, that the preferred is the fulcrum security here. There is certainly a lot of sympathy for 35 hundred shareholders who might be hopelessly insolvent, but there's been no dispute on the numbers. That the 7.5 billion of preferred come ahead of the shareholders. Or that that is the fulcrum security. So what we have, Your Honor, from the facts that have been put forth, and again, it's not an evidentiary hearing, but we have some other details that were in our motion that I would just like to repeat and emphasize to the Court. Because the notion that

the creditors at the bank level, the debt is trading very low means there shouldn't be an equity committee is, as we all know, not really relevant in the absence of consolidation or inter-corporate claims. What's really relevant is what's the debt at the legal entity that we're talking about who's here in this Court as a Chapter 11 Debtor. And there, the most junior class of creditors, as we've alleged in our motion, and I do, did not hear any response that's inconsistent with it, trading 75, or I was told this morning, 79¢ on the dollar. As we all know, that indicates an expectation of a nearly full recovery. Secondly, based upon many of the analyses and we included one in our papers, the indication is that given the good job that Weil, Gotshal & Manges is doing, and all the other lawyers, and the Creditors Committee, and everybody else, in maximizing the estate, we believe the recovery may be close to full. What does that mean for adequate representation, which is really the legal question before this Court? Let's first turn to Mr. Rosen's argument the Debtor is adequately representing it. Well, with respect to the maximization of the value of the assets in the estate, I can't disagree with Mr. Rosen. They're trying, they're maximizing the value of the estate. But Your Honor, we all know that that is only one half of the bankruptcy equation. The other half is who gets what out of that value that's maximized. And that's where the equity, the preferred equity

in this case, is not being represented. And it's not being represented in two ways. First of all, there's no entity that has fiduciary duties solely to the preferred shareholders who can act on behalf of the preferred in this case, and secondly, within the preferred group, there's a separate class of 4 billion in preferred that's subject to one of the counts in the law suit that's been brought against JPMorgan Chase and the FDIC, that may have slightly superior rights to some of the collateral that this law suit also seeks to recover. So within that 7.5 billion of preferred, we've got additional rights of preferred, and they are not being represented as to how much they might get out of this pie that's being maximized. And I think, Your Honor, that that really describes in detail what the nature of the inadequate representation here is today. So Your Honor, as we sit here, the relief that we're asking for is that this Court apply 1102(a)(4) to reconstitute the committee so as to be a preferred committee in recognition of the hopelessly insolvent argument, but to preserve representation for the equity. In the event that the recovery exceeds all that, an order can be entered, or the US Trustee can monitor the situation, either to enlarge the committee later, or to appoint common members to it. That possibility is always open. But at this time, with the preferred sitting on top of the common for $7.5 billion, the preferred is really, as the

US Trustee has indicated, has some members on a committee, the preferred is really not adequately represented.

THE COURT: What is the constituency of the Committee? How many preferreds? How many common?

MR. HEROY: Your Honor, the US Trustee addressed that briefly in its pleading, and I'm sure he's going to address it. He said, well, it was said in the pleading that four of the members hold preferreds. But again, the two issues there are we don't know what preferreds. Because Your Honor, it's, the labels are difficult in this case. There is a class of preferred stock that's really debt. I was not including that class in my definition of preferreds, but we don't know whether those preferred issues, which are called trust preferreds, are held by committee members or not. Secondly, there's the disparity between the hybrid preferreds and the real preferreds. And we do not believe that the hybrid preferreds are represented at all, or at the most by one member. But Your Honor, this goes to the objection that the US Trustee filed, which is really the only objection to the relief that we seek. The US Trustee first said it's an abuse of discretion standard. Same question as the Court. We agree. Secondly, as to the fact that preferred is adequately represented because some members hold some preferred, we do not know that to be the case. We've been told otherwise, but of course, the facts are the facts, Your

Honor, and ultimately we believe the US Trustee and the Committee representative can provide the Court with the accurate facts. The final argument that the US Trustee made with respect to the relief that we seek is he made a procedural argument. That we're really asking for separate relief, which should be brought by a separate motion, notice, and a hearing, etcetera. Your Honor, we would just argue that after a thorough review of the Local Rules, we believe that filing a pleading in the form of an objection that merely asks for different relief of the same nature sought by the Debtor in its original pleading, does not require a separate motion. But of course, we would be pleased to file a separate motion should this Court require us to do so.

THE COURT: Thank you.

MR. HEROY: Now Your Honor, just a couple, just one other point with respect to the fee cap argument. And this is also another legal issue, that although it doesn't directly relate to the relief we're seeking, I was involved in the controlling 3rd Circuit precedent on that subject, which is the Federal Mogul case at 348F.3d 390. And there the 3rd Circuit reversed a decision by visiting Judge Newsome as to the financial advisors to an equity committee, and stated that although the Court had the power to impose a cap, it could only be done based on a sufficient record, evidentiary hearing as to the reasons for the cap. And in

terms of the actual business reasons for a cap, I believe that those would be the subject of an evidentiary hearing, and should not be controlled by merely representations of counsel as then the author of the opinion, then Circuit Judge Alito, now Mr. Justice Alito, said, The statements of counsel shouldn't, shouldn't supply the record in that regard. So Your Honor, in conclusion, as complicated as this case is, and believe me as a newcomer to the case, it's extremely complicated with a lot of parties, all I can submit to the Court is we think that this is a fairly straightforward question that we're raising. And that is that since the existence of an equity committee is before the Court today, on the abuse of discretion standard, whether this Court should either grant the motion to disband, deny it, or perhaps exercise its powers under §1102(a)(4), to reconstitute it so that it, so that it consists of the representatives of the class who are definitely not hopelessly insolvent. And that's the relief we urge for this Court. And thank you very much.

THE COURT: Thank you. Well am I going to hear from the United States Trustee?

MR. CROSS: I'm just going to give a factual statement, so that you can know.

THE COURT: Okay.

MR. CROSS: The Committee is composed of seven

members, six of whom are preferred shareholders. None of them hold the hybrid preferred. None of them hold real debt preferred. We only have one committee member that owns just common.

THE COURT: Wait. Tell me that again. I'm sorry.

MR. CROSS: Six of the seven committee members own preferred shares. Preferred R and Preferred K. None of the committee members own hybrid preferred. None of the Committee members own what was characterized as the real debt preferred.

THE COURT: Thank you.

MR. CROSS: The US Trustee wanted me to point out. Some of the six also own common shares.

THE COURT: I see.

MR. McMAHON: Your Honor, good evening. Joseph McMahon for the acting United States Trustee. Your Honor, the acting US Trustee acted well within her discretion in appointing the Equity Committee. And let's start there with the standard of review. This is very simple, in our view. And it's gotten muddled by parties across the aisle from our office in connection with this contested matter, but let me put it simply. 1102(a)(1) gives our office the authority to appoint additional committees of creditors and equity security holders in addition to the standard official committee of unsecured creditors. 1102(a)(2) gives a party

in interest a right to come to this Court to seek an appointment of an official committee, if it's necessary to ensure adequate representation of whatever class is sought to be represented by such committee. Creditors or equity security holders, again. The two cases that the, I'll call them the disbanding parties harp on in support of their request for a disbandment are either, A, factually inapposite, or two, frankly just premised upon fallacious reasoning. With respect to factually inapposite, Your Honor, I will turn to the Williams case. Williams Communications. What's different about that? Well, the party there came to the US Trustee's Office, the US Trustee's Office decides not to appoint a committee. So party comes to court under, not under 1102(a)(1), our section, comes to court under 1102(a)(2), and seeks an appointment of such an official committee from the court. So again, it's the 1102(a)(1) 1102(a)(2) distinction we make in our papers. It's very simple. C'est la vie. With respect to the Texaco decision, Your Honor, I would respectfully disagree with the Court's reasoning there. On page 566 the Court seems to confuse what §1102(a)(2) means insofar as review of US Trustee action under 1102(a)(1). And let me read from the opinion. "There is no requirement under §1102(a)(2) that an interested party must first submit such a request" - - meaning a request for appointment of an official committee - - "to the United

States Trustee." And here's where the jump is, Your Honor, for my editorial. "Therefore, whether or not such a request was first submitted to the United States Trustee, the Court must arrive at its own judgement. Although the Court may consider reasons advanced by the United States Trustee in the event that such a request was previously submitted to the United States Trustee." In other words, the fact that 1102(a)(2) exists as it's phrased, means that the Court has carte blanche authority to, and excuse the sports analogy, Monday morning quarter back the US Trustee's decision, affirmative decisions to appoint a committee or otherwise under 1102(a)(1). And with that, Your Honor, we couldn't disagree more. In paragraph 6 of our response to the motion to disband, we articulate what abuse of discretion means. And to quote from that without citing to the cases, "Abuse of discretion will be found if a decision maker acted in an irrational, arbitrary, or capricious manner clearly contrary to reason, and not justified by the evidence. A decision is not arbitrary and capricious unless it is based on an erroneous conclusion of law, a record devoid of evidence on which the decision maker could rationally have based its decision, or is otherwise patently unreasonable, arbitrary, or fanciful." And turning now, Your Honor, to a general observation with respect to what has transpired here today. What you have heard amongst the parties on the one hand

supporting the Debtors' disbandment request, and on the other hand supporting the United States Trustee's decision, is a debate. Essentially. It has not been a, any, frankly, as I sit here, accusation that the US Trustee acted arbitrarily or capriciously. Rather, it's been a debate about whether or not under these circumstances, the home run scenarios advanced by the Debtors mean that we should have acted, whether the cost concerns raised by the Debtors, the Committee, warrant complete disbandment of the Committee. But we submit that the critical inquiry, Your Honor, is not so much what these parties would have done in light of these circumstances so much as whether our office acted, again, in an arbitrary, capricious manner, abused its discretion. And turning to, primarily Your Honor, the Equity Committee's presentation, the factual portion of it, we submit that it's clear that what this decision was was not an abuse of discretion. It can be debated. It certainly was here today. Insofar as the parties having different views of whether or not the, our office should have taken this action. But Your Honor, we are resolute. We firmly believed that the equity security holders, some of which are in the courtroom today, should have a voice in this proceeding, and we share the Equity Committee's view that the relative costs, viewed in light of the fact that this is, I believe, the largest bank failure in US history, the fact that there is a solvency

dispute at the, insofar as the upper levels of equity are concerned. All of these facts weigh in favor of the exercise of discretion that the US Trustee took. And therefore, we ask this Court to find that the US Trustee did not abuse her discretion in forming the Committee. I want to turn, specifically, to Black Horse Capital Management's, this request for a reconstitution.

THE COURT: Okay.

MR. McMAHON: In light of the factual statement that Equity Committee counsel made with respect to the constitution of the Committee, I'm just struggling, Your Honor, with what I'm supposed to say in response. Six of the seven members of the Committee hold preferred shares. I didn't hear one argument made by counsel to Black Horse that such a circumstance meant that, you know, his client's interest was inadequately represented by this Committee. Therefore, in the absence of, you know, such an argument, I, you know, would respectfully request that this Court decline Black Horse's request for relief. Unless the Court has any questions for me with respect to either the motion to disband or the reconstitution request, I would turn the podium over.

THE COURT: No. No questions. Thank you.

MR. McMAHON: Thank you.

THE COURT: Any replies?

MR. ROSEN: Yes, Your Honor. Very limited. Again

Your Honor, Brian Rosen, Weil, Gotshal & Manges on behalf of the Debtors' estates. First Your Honor, I can't think of a better advocate for our cause than Mr. McMahon, because the cases he cites I believe that he just misinterprets them. And I ask the Court to look at the Williams decision and the Texaco decision. The cases he refers to, Your Honor, deal with the composition of a committee, not as to the actual formation of it. And the cases do cite and go to the *de novo* and not the abuse of discretion standard. I appreciate that he cited, Your Honor, what abuse of discretion means, but that's not what is really at issue here. Your Honor, with respect to Mr. Heroy's comments, and I accept that he is new to the party, as he put it. But I don't think he understood the math. Because when he came up with what he perceived to be the fulcrum security, I think he got it wrong. He did talk about $7½ billion of preferred stock, Your Honor. If Your Honor would look at either the big board over there, or page 7 of Exhibit 1, you'll see that we reflect a preferred stock number of approximately $3.392 billion. You get to the $7½ billion, Your Honor, if in fact the Debtors lose the litigation with respect to the Retrust Preferred, as it's referred to. And then that $4 billion all of a sudden becomes a preferred stock instrument of the Debtors. But at the same time, Your Honor, if you were to look at that page 7, you would see that there is a number of approximately $16

billion of retained earnings. That number would balloon up by an additional 4 and you would have $4 billion more of insolvency. So to accept Mr. Heroy's comment of 7½, you have to assume Your Honor, that there's a loss in the litigation and $4 billion worth of value is lost from the estate. Your Honor, any way we look at it, we perceive the fulcrum security to be the junior subordinated debt. We have, we know we have, Your Honor, approximately $6.9 billion of assets. If we were lucky enough to win the litigation, we might have an increase of that, based upon our recovery from the receivership. We know we currently have debt, Your Honor, of 8.3 billion with 104 billion or at least $54 billion worth of disputed claims. We know that there are untold amounts of unliquidated claims. I don't understand how we can argue at this point in time that a fulcrum security is the preferred stock. I am happy to finally learn who is actually on this Committee. Previously we knew the names, Your Honor. We asked Mr. McMahon what the composition of the holdings were two weeks ago, he refused to even reply to us. We asked the proposed counsel, and they were unable to provide us with any answers at this time, either. So we're happy to hear, Your Honor, that there are R and K Preferred shareholders, but as we reflected, those are trading at 7 and 9¢, I believe, respectively, Your Honor. Clearly they believe that they are not going to seek a

recovery here. In opposition to what the so-called 71% holder is, or trading one is, therefore he assumes he gets 100¢. I don't know how you make up that 29¢, Your Honor. We believe that there's an insolvency here, Your Honor. We believe everything that, about the adequate representation, and we believe that we are going to do and continue to do what we can to maximize the value and minimize the liabilities. And if at the end of the day there is something that were to trickle down to preferred and to common, that would be a wonderful result, Your Honor. But at this point in time, we do not see it.

MR. HEROY: Your Honor, may I just add one comment about the facts?

THE COURT: Yes.

MR. HEROY: Both as related by counsel to the Committee and as to Mr. Rosen. First of all, the difference between the 7.5 and the 3.5 is the 4 billion of hybrids that I mentioned earlier. And Mr., again, although I am new, I think I do know enough to know that if you're successful, those hybrids would share, pro rata, in a pool of home equity loans that have a face value of 5 billion and are worth God knows what. But certainly a significant amount of money. So that the hybrid preferreds do have that extra incremental value potential that I mentioned earlier and are entitled to representation in this case. And then secondly, with respect

to the membership of the Committee currently, I just wanted to add that from our perspective, when we filed the motion, we were told that only one member held preferred. When the US Trustee filed its papers a few days ago, that was up to four holding preferred, after they read our papers. And now they have six holders of preferred. I don't know what the amounts are. Whether it's material, or significant, or trading, but I think put together with Mr. Rosen's statement about his inability to obtain information about the holdings of the Equity Committee members, that perhaps a reconstitution under 1102(a)(4) so as to include preferred, might be appropriate. Thank you, Your Honor.

MR. McMAHON: Two very quick points, Your Honor. With respect to the point made by counsel to Black Horse, our papers in paragraph 6 said that a majority of the Equity Committee's representatives hold preferred shares. I don't see where we're getting the number four. Six of seven is a majority. With respect to Debtors' counsels' point about, you know, the Committee composition, I will say that, you know, frankly while we appreciate Equity Committee's counsel's presentation with respect to the composition of the Committee, for today's purposes, Your Honor, it's only relevant insofar as we're discussing Black Horse's piece. Meaning that with respect to the disbandment request, it's neither relevant nor reasonably calculated to lead to

discoverable or admissible evidence. Thanks.

THE COURT: Thank you. Well, let me issue my ruling. First on the appropriate standard. I'm not sure the United States Trustee is suggesting that the Court has no power to review, but the US Trustee suggests that 1102(a)(2) gives the United States Trustee authority to appoint additional committees. And I'll quote the language, because I think it is significant as, excuse me, 1102(a)(1), as the United States Trustee deems appropriate. The Committee argues that the Court has no power, therefore, to review that appointment by the US Trustee. And there is at least one case that does suggest that. The New Life Fellowship case. But I disagree. I think that to suggest that the Court has no power to review that appointment, particularly where there might be changed circumstances that affect that, I think the Williams and the Texaco cases suggest that the Court does have the power to review it. While I don't agree with the standard they suggest, I think that clearly the Court has to have some power to review the US Trustee's decision in that regard. I think the standard of review, however, is not *de novo*. Clearly Congress did suggest that in the first instance it would be the United States Trustee to make that decision, and I think that if I have the power to review it, it's clearly not within my power to substitute my judgment for that of the United States Trustee. So I do agree with

the Imperial decision and the Edison decision that it's an abuse of discretion. Whether reviewing under (a)(1) or the other provisions of §1102. I think that in this instance, we all know what the standard is for abuse of discretion. Whether the United States Trustee acted irrationally, capriciously, or arbitrarily. And I, quite frankly, cannot find that on the record before me. There is clearly evidence both ways as to the insolvency of the Debtor. And if the Debtors' pleadings filed in this case are accepted, I think the Debtor believes that it is not hopelessly insolvent. That it has legitimate claims against others that would result in there being sufficient funds in this estate to pay all creditors in full. I don't have to find that the Debtor is going to win those. I think the standard is not to make a final determination as to whether the Debtor is insolvent, just whether I can determine that the Debtor is hopelessly insolvent. And again, on this record, I cannot find that. I think the evidence that the debt and equity in this case are still trading, at any number, establishes that at least the market thinks that the Debtor is not hopelessly insolvent. With respect to whether there's adequate protection of the interests of the Equity Committee, excuse me, the equity holders, which is the other prong of a determination of whether or not the decision was inappropriate. I think that certainly falls in favor of the equity. While the Debtor

clearly is representing all constituents in this case, and fulfilling its fiduciary duty, I think that the fact that we have §1102 in the Code makes it clear that there are instances where other parties have a right to be, have a right to have a place at the table. And the US Trustee has made a determination that the equity should be present, and I don't think they're wrong. Even if I were reviewing this under a *de novo* review. I think that at this point it is appropriate to have the equity represented in this case. With respect to Black Horse Capital's request that I reconstitute it, I won't make them go through the motions of filing a separate motion, because I think that under this case, I think there's certainly sufficient representation of the preferreds on the existing Equity Committee, that no reconstitution need be done. So I don't think they've met the 1102(a)(4) standard, even had they filed a motion. So I will deny the Debtors' motion and I will deny Black Horse Capital's - -

MR. ROSEN: Your Honor?

THE COURT: - - request in its response.

MR. ROSEN: Your Honor, not that I'm glutton here, but we did file alternative relief.

THE COURT: Ah. Thank you. I do have comments on that. With respect to the issue of capping the fees, I've been instructed that I can't cap fees without a full

evidentiary hearing, and I'm not, I am not prepared today to impose a cap under the Federal Mogul case. But I think it's clear that I do have the power to monitor the case, and that power can be exercised in two ways. First with respect to any retention applications that are filed by the Equity Committee. And if professionals are appointed, my power to review the fee applications, I think gives me sufficient power to assure that, I'll use a colloquialism, they don't run amuck. I think the parties certainly have heard the arguments as to what the role of the Equity Committee is in this case, and I have not heard anything from counsel for the Equity Committee that they don't understand their role here. So with that said, I will not grant the alternative relief of capping the fees. But will exercise my authority with respect to retention applications and fee applications. All right. The Debtor will get me a form of order?

MR. ROSEN: We will, Your Honor.

THE COURT: Okay.

MR. ROSEN: Your Honor, I know that there are many people in the courtroom who came for this motion just now. Perhaps - -

THE COURT: Let's take a short break and then we'll go on with the remainder of the agenda.

MR. ROSEN: Thank you, Your Honor.

(Whereupon at 5:33 p.m. a recess was taken in the

hearing in this matter.)

(Whereupon at 5:49 p.m. the hearing in this matter reconvened and the following proceedings were had:)

THE CLERK: All rise. Please be seated.

THE COURT: Okay.

MR. ROSEN: Your Honor, there are two items that are left on the agenda for this afternoon. I would ask, Your Honor, because we have some third parties that we might be able to excuse, that we take them, perhaps, out of order as they are reflected on the agenda.

THE COURT: Okay.

MR. ROSEN: And if we could, Your Honor, take the Debtors' motion first with respect to Rule 2004.

THE COURT: What number is that?

MR. ROSEN: I believe it's item number 14 on the agenda.

THE COURT: Okay.

MR. ROSEN: And I will turn the podium over to Quinn Emanuel.

MS. TAGGART: Good afternoon, Your Honor. Erica Taggart with Quinn Emanuel on behalf of the Debtors. In this motion, Debtors seek an order authorizing the Court to issue subpoenas for documents and testimony for certain third parties in connection with the same Rule 2004 investigation the Court has already approved. Specifically our

investigation into potential business tort claims against JPMorgan. Before I turn to the substance, there was a filing that Debtors made related to this earlier today, and my guess is it hasn't come up to Your Honor yet. If I may approach?

THE COURT: What is it?

MS. TAGGART: We did a revision to the proposed order. More specifically, in response to some third parties, we wanted to make it clear that the Court today would only be issuing the subpoenas and that those parties could still object to the specific requests in the normal course, and it sets out a very standard schedule for it will be 30 days to give objections and responses and some timing for production.

THE COURT: All right. It wasn't included. It was mentioned on the amended agenda, but I didn't get it.

MS. TAGGART: May I approach to give you copies?

THE COURT: You may. Thank you.

MS. TAGGART: And that, Your Honor, the first one is a clean proposed order, and the other one shows the red line from the previous proposed order.

THE COURT: All right. Since you've withdrawn this as to some of the third parties, do you want to tell me who you're still seeking this relief against?

MS. TAGGART: Yes. I believe still in are primarily the FDIC, both in its receiver and corporate capacity. There are a few others that have objected primarily only to

preserve their right to make objections in the future. And then the SEC and David Horn have objected on the basis that they do not have any relevant documents. I'll also note that in their objection, S&P and the Federal HomeLoan Bank of San Francisco said that they joined in the FDIC's objections. But Your Honor is correct that most of the entities and individuals that we originally sought have been resolved through some meet and confer process and a voluntary production.

THE COURT: Okay.

MS. TAGGART: So turning to the substance of the motion, as Your Honor may recall in June, 2009, Your Honor granted Debtors' request for a 2004 investigation of JPMorgan Chase about potential business torts whereby JPMorgan attempted to drive down the value of Washington Mutual to enable it to acquire Washington Mutual Bank's assets out of receivership at a fire sale price. Since that time, JPMorgan has produced numerous documents. It has not completed its production, including it has not produced a number of documents related to its correspondence with third parties. And I think that was subject to a confidentiality order. And we have not done depositions. Nevertheless, from the documents that have been produced, it is clear that JPMorgan had correspondence with a number of third party entities about Washington Mutual that are relevant to investigating

these potential claims. Those entities including rating agencies and many regulators. Although our initial motion was directed at 20 entities and individuals, as I mentioned, most of them no longer object to the issuance of subpoenas, although they have reserved the right to say that specific requests are too burdensome or too broad. Specifically, there are five entities that have reached agreement after filing the motion at, that they will produce some narrowed subset of documents. Those include the Federal Reserve, the Department of Treasury, Moodys, and others. Three entities reserve their rights to object to production, but do not object to the issuance of subpoenas, which is all that we were requesting today. Those include Wells Fargo and TD Bank. Five entities did not object in any way to the motion, including Banco Santander and Goldman Sachs. And it's worth noting that there were another ten entities that reached agreement with the Debtors even before we filed the motion, and they have agreed to voluntary production as requested in full to the extent they have those documents. So let me turn to the remaining objections. I think two of them should be somewhat quickly disposed of. Those are the objections from the SEC and a lobbyist named David Horn. Both of those parties objected on the basis that they don't have any relevant documents. I would suggest that this is the sort of objection that can take place after the subpoena is issued.

We will work with those entities, and if in fact they have no responsive documents, they will not have to produce any documents. The main objection that was filed was by the FDIC. They filed both in their corporate and receiver capacity. But most of the substantive objections were in the receivership's objection. And as I noted, two parties, S&P and FHLB San Francisco joined in those objections. The FDIC really makes four object, reasons to object, and I'd like to briefly address each of them. The first is FDIC says that this discovery is so related to the DC case that discovery should be taken in that DC case rather than in this 2004 investigation. And with all due respect, this issue in particular has already been addressed by Your Honor in connection with the initial request for the 2004 investigation, because JPMorgan at the time made that very same argument. And in the Court's order granting the Rule 2004 discovery, the Court held that the business tort claims that were being investigated were sufficiently distinct from the DC action that discovery should go forward here. And in particular, it's the Court's June 24th opinion, at page 17, note 14, that has a paragraph explaining the distinctions. But I'll just quote two sentences where the Court says, "The Debtors seek to discover evidence regarding JPM's alleged malfeasance prior to the seizure and sale of WMB." And later, "The requested 2004 examination does not seek

discovery evidence related to the hypothetical liquidation analysis that is implicated in the dissipation and takings causes of action asserted in the DC action." So the Court has already determined in going forward with this 2004 investigation that this is the right place for that to be. Furthermore, even setting aside the fact that the claims in DC are distinct, it's worth noting that that case is stayed. And so it is not an avenue of discovery right now. And in particular, as the Bankruptcy Court held in in re: International Fibercom, Inc., that's at 283B.R. 290, the pending proceeding rule that sometimes makes discovery not go forward in a 2004 action and instead in a pending proceeding doesn't apply when another proceeding is stayed. The second argument that the FDIC makes is that it is an unnecessary burden. And in particular for Federal regulatory agencies, because it takes away from their important regulatory job. Now to the extent that the FDIC is making an objection to any specific request that it is too burdened to comply with, that is the sort of objection that can be addressed after the subpoenas are issued. And as we have with many of the other parties, we can try to reach the appropriate compromise that gets to the most relevant evidence in an attempt to reduce the burden. But as far as the general proposition that there should not be discovery against the FDIC because they are a regulator, that is not a proper basis not to issue the

subpoena here. For one thing, 2004 examinations are routinely expanded to third parties, and especially ones that have a very close connection to the Debtor, and that might have evidence that's related to the Debtors' estate. This discovery is especially appropriate for the FDIC. After all, the potential business tort claims that are under investigation concern whether JPMorgan used its confidential information about Washington Mutual to receive an unfair preference in the FDIC's own bid process for Washington Mutual. We also have significant evidence from even the documents so far produced that the FDIC does have relevant information. Those documents show that JPMorgan has been in correspondence with the FDIC as early as the Spring of 2008, before it engaged in negotiations with Washington Mutual, where it received the confidential information. And all the way up leading to the bid process. Those documents include correspondence prior to the bid process going public, and also include information where the FDIC modified its standard indemnification agreement for this very case, to provide additional indemnity to JPMorgan for potential claims that WMI might bring against it for violating WMI's confidentiality agreement. Thus the FDIC is at the heart of the potential claims against JPMorgan, and so the relevance of its discovery outweighs the burden here. Also, there is a practical reason that we believe the FDIC might not have the,

a burden that it might otherwise have. And that is, as the FDIC-Corporate explains in its objection, it's currently responding to a Congressional subpoena from the permanent subcommittee on investigations. And as part of that, it is collecting documents which we believe are an even broader group of documents relating to Washington Mutual. And it is our belief that the documents we request are mostly in a subset of what is gathered in that production. So it is our hope that the burden that is generally associated with searching and collecting those documents, might largely have been done, at least for the FDIC-Corporate. The third argument that FDIC makes is that the Debtors should just go ahead and file their business tort claims. And begin a case right now. Or intervene in the pending American National case, which is dealing with these business torts. But the whole point of 2004 investigations, and as Your Honor found in allowing this investigation, was for Debtors to investigate the facts before, to see if those facts support the theories that were outlined in the American National complaint. Debtors don't have to decide whether to pursue claims because other litigants have asserted them, and the 2004 mechanism is the way to look at those facts and determine whether those claims exist. Also, Debtors are entitled to continue their investigation before filing those claims. And that investigation has not concluded. It

hasn't, just from what is already authorized, we have not yet taken depositions of JPMorgan, and they have not produced a number of documents with correspondence with third parties. There's obviously documents coming in now from all the third parties who agreed voluntarily to produce in response to these requests. So Debtors are doing exactly what Rule 2004 contemplated. It's conducting an investigation into potential claims before it has to make the decision whether those facts support an actual lawsuit. The final argument that the FDIC makes is that, and this was more on the FDIC-Corporate, that the Debtors should first exhaust administrative procedures. Now the Debtors have already filed the appropriate administrative procedures. And there's been over a month and a half since that happened. Without the FDIC giving any formal response to those, or indicating in any way that it would produce documents in response to them. So as a practical matter, we have fulfilled the FOIA requirements and the regulation requirements that are set out in the cases referred to as the Tuey (phonetic) requests. But to the extent that they are going to produce those documents at some time in the future, there's no harm in issuing the subpoenas and they will be fulfilled for both. But there's no reason to wait until there is a more official rejection. Especially since in the case of FOIA, the timing that they were supposed to comply has already elapsed.

Moreover, administrative regulations do not take the place of the Federal Rules guiding discovery in civil cases, and this was set out in, for example, the Exxon Shipping Co. case at 34F.3d 774, saying that District Courts should apply the Federal Rules of Discovery when deciding on discovery requests made against government agencies. And this is also referred to in the CFR regulations which will talk about, for example 12 CFR 309.5, how classification of records from disclosures should not be construed as authority to withhold the record if it's otherwise subject to a directive or order from any court of competent jurisdiction. So that is not a reason why the subpoena should not issue here. Thus, in conclusion, Debtors ask this Court to issue the subpoenas for the few remaining entities so it can obtain the discovery it needs to assess the potential tort claims against JPMorgan. Those entities will continue to have the right to object to the specific requests in the normal course, and we'll work with them on the proper scope. But the subpoenas are proper, and they're necessary for a full investigation that's permitted under Rule 2004. Thank you.

THE COURT: Any replies?

MR. CLARKE: Good evening, Your Honor. John Clarke from DLA Piper, representing the FDIC as receiver. As the court undoubtedly is aware, we don't represent the FDIC in its corporate capacity, but I do want to just make one

factual point that I do think deserves a response from Ms. Taggart's comments. Which is that I think Ms. Taggart asserted that the FDIC in its corporate capacity had given no indication as to whether it would be willing to produce documents in response to the Debtors' Tuey request. And whether or not there has been a response to the Debtors' Tuey request. I found that factual assertion somewhat surprising, since I'm aware of ongoing discussions between FDIC in its corporate capacity and Ms. Taggart and her partners about documents that the FDIC-Corporate might be willing to produce. Having clarified that, I have only a few comments to make in response to the motion. First, the Debtors have never addressed the balancing test that Courts have recognized for whether or not an order should be issued allowing examination under Rule 2004. That balancing test is an appropriate subject of examination here, because the Debtors repeatedly acknowledge that the discovery that they are seeking, and Ms. Taggart said it again today, does not relate to potential claims against the third parties that they're seeking discovery from. Including the FDIC receiver. It relates to claims against JPMorgan Chase. If there are such claims. Now that balancing test, Your Honor, requires that the party seeking the discovery so that the discovery is necessary to the establishment of the moving party's claim, and to show that denial of production of the requested

discovery would cause undue hardship. Neither showing has been made with respect to the FDIC-Receiver here. The Debtors have made no effort in their motion to show that there is any discovery that the FDIC receiver could produce, in response to these proposed requests, that would materially add to their proposed business tort claim and breach of contract claim against JPMorgan. They already have 30 thousand pages of documents from JPMorgan. The plaintiffs in the American National case have been litigating their claims, which are the predicate for this motion for a year having not even had that 30 thousand pages of documents. The Debtor said today that they have successfully negotiated the production of various documents from other third parties, which includes the Office of Thrift Supervision, the Federal Reserve Board of Governors, the US Department of the Treasury. In fact the only people left, pretty much, are the two people that the Debtors are actively in litigation with, Federal Deposit Insurance Corporation as receiver, and the Federal Deposit Insurance Corporation in its corporate capacity. Against both of whom the Debtors have a pending case in the United States District Court for the District of Columbia. Now Ms. Taggart said, Well, but the case is stayed. It's the Debtors who asked for that stay, Your Honor. And they were granted it. The Debtors brought that case, and then they asked the District Court to stay that

case so they could come litigate issues in this case. Judge Collier in her stay decision, the Court has undoubtedly seen it, recognized that there are issues in that case over which that Court has exclusive jurisdiction, but expressed concerns about judicial comity, and decided to stay the case while these proceedings were pending. That does not give the Debtors license to immediately turn around, and in the form of a Rule 2004 request seek discovery related to the case that they stayed from the very party that they're purporting to sue there. The International Fibercom case that Ms. Taggart pointed the Court to was not on anything like the similar facts. The case involved a motion to take Rule 2004 discovery by a subrogee of a debtor against a party that was in litigation separately. But it was also in bankruptcy, so it had an automatic stay. And in those circumstances, the Court said, Well, since there's an automatic stay in that other litigation, we'll let you do the Rule 2004 discovery in this case. That's nothing like this case where the Debtors started a case against our client, and then asked the Court to stay that case. And then came back to this Court and tried to conduct discovery against us here. With respect to relatedness, Your Honor. We read your, the Court's decision on June 24th differently than the Debtor. We recognized in our objection that the Court mentioned in a footnote the relatedness point. However, my reading of the decision, and

I know there's one person in the court who knows the right answer, and I defer to that. But my reading of the decision is that that foot note is dicta. Because on the preceding page, the Court said, Relatedness is not relevant, because JPMorgan is not a party to that case. And therefore, I can't, I can't deny Rule 2004 discovery merely on the basis that JPMorgan has sought to intervene in that case. Now a lot of stuff has happened since June 24th, undoubtedly, in this litigation. One of the things that happened is since then Judge Collier did allow JPMorgan to intervene in that case. But at the time of the June 24th decision, that decision had not been made yet. And JPMorgan was a proposed intervener at that time only. And that was the basis for the Court's determination on the relatedness point. Now there is the footnote about relatedness. And the Court made the observation that it made. However, the Debtors arguments in this, in the DC case since this Court's decision, demonstrate that the claims they are seeking to pursue against the FDIC there are exactly the same subject as they're seeking Rule 2004 discovery from the FDIC here. In an argument on November 4th with respect to motions to dismiss certain of their claims in the DC case, Mr. Rosen's partner told Judge Collier, quote, "You can't have a situation where the government decides, because it would like to see improvement to the balance sheet of an acquiring institution, that they

simply hand over the keys to the failed bank and say, You know what? You guys take it. We don't have to worry about it, because we're immune from lawsuit. Nobody will sue us for breach of any duty to maximize the value of those assets. Depositors will get satisfied. They'll bolster the balance sheet of the acquiring bank, and everyone who's left behind, the creditors and shareholders of the failed bank, they don't have any remedy except to file their proof of claim through the administrative process, etcetera." Your Honor, the claims in Washington, and the Rule 2004 discovery here are the same. They might be crafted carefully with this argument in mind, but they are undoubtedly overlapping. And this Court, itself, recognized on June 24th that Rule 2004 is not appropriate where a Debtor would get - - let me see if I can find the exact wording so I don't state it wrong. Where the party requesting a Rule 2004 examination could benefit their pending litigation outside of the Bankruptcy Court against the proposed Rule 2004 examinee. That's what this Court said on June 24th, quoting in re: Enron Corp., 281B.R. 836. Unquestionably, this discovery could benefit the Debtors. And they should go through the normal party discovery process with us. If that process is a problem because they got a stay of their case, that's a strategic decision that the Debtor made. The Debtors made. The FDIC should not bear the burden of that. And I'd like to make one more point, which

is that less than 36 hours ago, I was on the phone with Debtors' counsel discussing our objections and responses to their party discovery request in these adversary proceedings. In this court. Which ask for the same materials. And we were in the middle of discussing what we will give, and what we think is inappropriate because it relates to DC, and how we can narrow the scope of those requests, and hopefully we'll be able to come to some agreement on that. But granting this Rule 2004 motion with respect to the FDIC is not the way to go. We're parties, we'll do party discovery with all the rights and obligations that accompany that. So therefore, Your Honor, we object to the motion.

THE COURT: Thank you.

MR. GECK (Telephonic): Your Honor, Duane Geck for the Federal HomeLoan Bank of San Francisco. Please advise when you'd like to receive telephone appearances.

THE COURT: All right. I'll hear from you. Do you wish to be heard on the motion?

MR. GECK (Telephonic): Yes I do, Your Honor. Again, Duane Geck for the Federal HomeLoan Bank of San Francisco. One, first one clarifier. The Federal HomeLoan Bank of San Francisco did not file a joinder with the FDIC receiver as identified by Ms. Taggart before.

THE COURT: Okay.

MR. GECK (Telephonic): The Federal HomeLoan Bank is

a lender that makes loans to its member banks. Washington Mutual Bank of Henderson, Nevada was a member bank and a borrower form the Federal HomeLoan Bank of San Francisco. The Federal HomeLoan Bank of San Francisco is a third party with no stake in this proceeding. It has no relationship with the Debtor entities, it has no claim in the Bankruptcy case, it's not a creditor. The Federal HomeLoan Bank of San Francisco files its response simply because it is concerned with the breadth of the subpoena requested. The Debtor filed the motion for its 2004 examination because it's investigating, as we understand it, JPMorgan Chase's alleged malfeasance prior to the seizure and sale of Washington Mutual Bank. Nonetheless, the Debtor seeks documents from the Federal HomeLoan Bank of San Francisco far beyond this purpose. Including all documents concerning Washington Mutual Bank's participation as a member bank. And all documents concerning the Federal HomeLoan Bank's of San Francisco's decision to lend or not lend funds to Washington Mutual Bank. Now these objections to breadth may be addressed at a later point in time, but given the overwhelming breadth of them for a unrelated third party, the Federal HomeLoan Bank of San Francisco felt compelled to bring these issues to the Court's attention at this early stage. Thank you, Your Honor.

THE COURT: Thank you. Anybody else wish to be

heard? Yes.

MR. SOLONSKY: Kevin Solonsky on behalf of the Securities & Exchange Commission. I'll be very brief. And I just have three points here. First, I'd like to state that in terms of our response to the motion, we'd basically like to rest on our response to the motion. But there's been absolutely no indication in any of the papers of Debtors that the SEC has any, has any documents that have any relationship to Debtors' claim. That's the first point. The second point is in their reply in support of their motion, they state in footnote 8 on page 14 that the SEC makes the internally inconsistent objection that there is no basis to expect that it possesses responsive documents and that Debtors' Rule 2004 discovery requests are nevertheless unduly burdensome. I just wanted to point out that we do not believe that those are internally inconsistent statements. We believe that we do not have any documents that are responsive, and that are, or that are relevant to their lawsuit, but at the same time, their document request, or their proposed subpoena, would request an unduly burdensome amount of documents from the SEC. For example, it requests all documents that are related to any type of regulatory action regarding Debtors, Washington Mutual, or, and it could potentially request any and all documents relating to any investigations we have concerning Washington Mutual or JPMorgan as well. And at any

one time, we do always have many regulatory actions, and there are always all types of investigatory actions we have that have absolutely nothing to do with Debtors' potential claims. Then the third thing is that they request documents concerning an order that we issued in 2008 banning the sale, short sales in Washington Mutual. And that had nothing to do with, or as far as we can tell, their potential actions that they have. And in fact, they were just one bank of over 700 banks who here listed on that order. And then they state, Well, that, that we, that there's relevance because in an earlier order they were excluded from that order. And a few months earlier, there was a ban also on short selling, an order, emergency order issued against Fannie Mae, Freddie Mac and 17 other institutions. And Debtors state that, you know, it's relevant that we get documents concerning that, because they were left out of that order. But that order was just issued against the short sale of securities in particular institutions. And those institutions were the primary dealers of US Treasuries. And they didn't fall into that category. So there was no really relevance concerning Washington Mutual in either the first or second order. And other than that, we'd like to rest on our papers. Thank you.

THE COURT: Thank you.

MR. RILEY: Good evening, Your Honor. Richard Riley from Duane Morris on behalf of Toronto-Dominion Bank and TD

Bank. I just wanted to clarify that we had reached an agreement with the Debtors on the timing and the scope of a subpoena to the banks. So we no longer have an objection to the motion, as long as the revised proposed form of order which was handed up to you is the last order that I saw.

THE COURT: Okay. Anybody else? Any reply by the Debtors?

MS. TAGGART: Yes. I'll try to take it in order briefly. Mr. Clarke's first argument of the FDIC was that the FDIC-Corporate is responding to the Tuey requests in that they are speaking with Debtors. Certainly we will continue to speak with them to try to come up with the right scope that fits FDIC-Corporate. My point was that there isn't any time that they say they're going to give some sort of official either production or response, after which we should come back and the motion becomes ripe. They have had the administrative requests and so far have not produced documents. And the fact that they are working with us is not a reason not to issue the subpoena now. Second, he says that under the balancing test, the discovery is not proper against the FDIC in particular, because we have so much other discovery there. But there is discovery that the FDIC, and documents that the FDIC has that are not going to be available for, through anyone else. First of all, as a matter of fact, JPMorgan is not yet producing the

correspondence that it has with FDIC. It is making confidentiality objections that I hope are going to be resolved now that there's a confidentiality order. But at any rate, coming up with the FDIC's decision to be speaking with JPMorgan, what confidential information it may or may not have received, how that affected its decision, and why it entered into that very strange change to its indemnification are all - -

THE COURT: Let me interrupt you here, because what I authorized you to pursue are claims against JPMC on a business tort.

MS. TAGGART: Yes.

THE COURT: What possible relevance is there of the FDIC's actions taken, and what they were thinking? I think that's what you're suggesting is relevant here.

MS. TAGGART: Yes. Absolutely. First, what did JPMorgan tell the FDIC in its long discussions coming up to the bid process? For example - -

THE COURT: That's not what you were suggesting, you were asking for, as I read here.

MS. TAGGART: You mean in the scope of the request?

THE COURT: The scope of the requests and what you just referred to as what you're looking for.

MS. TAGGART: We are definitely, and to be clear, looking for documents that relate to business tort claims

against JPMorgan. We - -

THE COURT: Well, you say that.

MS. TAGGART: We believe that JPMC might have that. For example, FDIC may have documents and correspondence with JPMorgan that JPMOrgan says, We, for example, We have given away a lot of confidential information. And we think that we are now having a tort maybe against Washington Mutual. Can you please indemnify us for that. The fact that there is that indemnification suggests there was some concern, and that concern was shared with the FDIC. Also, the price that was taken as part of the damages that we would be seeking in any of our tort claims. How come that price was so much lower than we believe Washington Mutual was worth. And how much of that was affected by the fact that perhaps there weren't other bidders, due to the fact that we believe JPMorgan was speaking to other bidders to dissuade them. For the fact that they have shared confidential information that brought down the value. So we do want to find out how much all of those factors went into the bid price that ultimately became what JPMorgan paid, and we believe was what we've described as a fire sale price. But you're right. We are not looking, in this case, to any conduct about the FDIC or tort claims against them. But they still may have relevant evidence.

THE COURT: Really? Well, look at your request for

production of documents. Other than paragraph 2, which I think deal with communications with and among JPMC, the FDIC, etcetera. I mean, aren't all the rest of them relating to potential claims you may have against the FDIC?

MS. TAGGART: I don't think that's the case. I will bring up the document request. Its correspondence with JPMorgan is, correspondence with JPMorgan is obviously going to be relevant to what JPMorgan is communicating with them. The setting of the price is going to be relevant to the extent that JPMorgan's torts, either in disclosing confidential information, driving down - -

THE COURT: Do you need that information now?

MS. TAGGART: I'm sorry. Say that again?

THE COURT: In determining whether you have a claim against JPMC. That goes to damages.

MS. TAGGART: That goes, how they set the price could go to damages. But also could go to, and the fact that they had a price that was so low that they let JPMorgan be the first bidder, and arguably not the full public process. What was the reason behind that? And whether that was because of torts that were committed by JPMorgan. So those documents would be relevant. To the extent that Your Honor looks at certain requests, as have most of the parties, and said, Well, for us in particular we think that this is too broad, we would be willing to work with the FDIC, as we have

with a number of entities, to more narrowly tailor it. But we are seeking, we think that the FDIC has documents that are going to be relevant to the business tort claims. I, if I may turn now to the FDIC's argument again that this is, too, related to the DC case, I think Your Honor has its order, and it is true that in the text of the order, the first reason that Your Honor said it did not overlap with DC was because JPMC was not a party. But it clearly, in the footnote, you do say with respect to those business tort claims, even if JPM successfully intervened in the DC action, the requested 2004 examination does not seek to discover evidence related to the DC action. And for the same reason I just explained, the tort claims that we are looking to are against JPMorgan. And those are in no way part of our DC case. In fact, the part of the transcript that he read was more about what the FDIC, and whether it, knowing that it was insulated by its claims process, decided for whatever arbitrary reasons to set the bid price, that is not the reason that we're seeking the discovery, and that's not what we're going to be pursuing with it. Not to mention that it's just, as a matter of law, the pending proceeding doctrine is for pending proceedings where you can have discovery. And the fact that discovery could overlap in both of those claims is not a reason not to issue the subpoena here. I think the FDIC is suggesting that there was some improper motive that really we're trying to

have some affect on that stayed case by making an end run. But there's really no evidence of that. We are seeking documents about JPMorgan. And if the FDIC wants to talk about those specific requests and say, Those aren't narrowly tailored enough to JPMorgan, we'll work with them, or they can file a motion. But all that needs to be decided here is that third parties, including the FDIC, have relevant documents. And that this is the proper way to explore these claims. But we will have to show that they are narrowly tailored to these claims. I'm just going to briefly address the objections that were made by the other parties. I believe with FHLB San Francisco, again, as that attorney said, this really only goes to the breadth of the request and not to the fact that they would comply with a subpoena to the extent that it was relevant to business claims. And that was the same agreement that we have reached with TD Bank. As for the SEC, again, if they do not have documents related to the business tort claims that we're investigating here, such as correspondence with JPMorgan or information taken from JPMorgan that would have informed their decision to take, to not list Washington Mutual in their first order that prohibited short selling, but then added to their second order, then we wouldn't be seeking documents about them. I think Your Honor's objection is well taken. That we are going to have to prove that any discovery that we seek is

tied to claims against JPMorgan. And to the extent that there are, that there are requests that are in those subpoenas that seem to go more broad, I'm sure that the FDIC will be objecting to those very specifically, and we'll have to narrow them. And if we don't - -

THE COURT: That's not the standard. You have to prove to me before I issue the 2004 order that they're related. You just can't come in and get authority to issue subpoenas to anybody you want. You have to prove that it's, it relates to a claim that you may have, and you have to prove its necessary. Well the fact that if you file a lawsuit against - - excuse me - - against JPMC, you can have all the discovery you want against all the third parties you want.

MS. TAGGART: I understand we have to show now. I think the documents that we have now, even with the fact that we have not had the correspondence with JPMorgan and the FDIC, we know that they were speaking before and after about Washington Mutual, before JPMorgan had negotiations. They made their - -

THE COURT: It's not enough to show they may possibly have relevant documents. That's not enough. You have to show that the 2004 is necessary to get it. That you can't simply get it through regular discovery once you file your claim.

MS. TAGGART: We do have to show that the discovery that we request relates to the Debtors and that it is necessary for our investigation.

THE COURT: Right. Why is it necessary?

MS. TAGGART: It is possible - -

THE COURT: For an investigation?

MS. TAGGART: It is possible because we don't yet have the third party documents that those may be sufficient to determine that. What we know is that the FDIC has relevant documents to determining whether there were claims in a very material way. I know I go back to it, but for example, that indemnification clause is really at the heart of whether or not JPMorgan believed that it may be exposed to the very tort claims we're pursuing. Without, right now, because we still don't have the documents from third parties or really correspondence with third parties, I can't tell you whether once we get those, those will be sufficient. But I know the FDIC has relevant documents that will be important to evaluating the merits of these claims. And I believe that meets the standard that's set out for Rule 2004 examinations of third parties

THE COURT: Well, I'm going to deny the Debtors' request, and here's why. I did grant the 2004 discovery. Against JPMC. To allow the Debtor to explore whether the Debtor did have any potential claims against it under a

business tort theory. Despite the arguments that the Debtor could get that information by other means. I felt the 2004 did allow the Debtor to conduct that discovery. But quite frankly, I think issuing subpoenas against dozens of third parties just goes too far. I don't think that's an appropriate use of Rule 2004. I think the Debtor has a dual burden in using 2004. First that it's absolutely necessary that we do an investigation, that we are unable, at this point, to determine we have a claim, that under Rule 11 we can file against JPMC. Now the Debtor has done extensive discovery and gotten extensive numbers of documents from JPMC. I'm not hearing that the Debtor does not believe it has a claim against JPMC or cannot determine that it has a claim against JPMC at this point. But the second prong is the Debtor has to prove that it is absolutely necessary to use Rule 2004 because the Debtor cannot obtain these documents any other way, and I'm not convinced at this point that that's correct. The Debtor already has obtained some voluntarily, the Debtor has obtained extensive discovery from JPMC. What I'm hearing with respect to the FDIC specifically is that really, looking at the discovery request and arguments of counsel, it's getting awfully close to claims that they may have against the FDIC itself. And I think that fact leads me to believe that specifically asked of them, this is really trying an end run against, around the rules

that would otherwise comply with the Federal Rules of Civil Procedure regarding discovery of claims between parties that are in a litigation posture. Again, you're getting documents voluntarily from the third parties. You're getting responses under Freedom of Information, and through other administrative means. I just do not see that the Debtor is prejudiced at this point from not being allowed to issue subpoenas against third parties that go on for paragraph after paragraph, not narrowly tailored to specific claims of a business tort against JPMC. So I'm not prepared to enter the order on the Debtors' motion. Do we want to take another short break?

MR. ROSEN: Well Your Honor, I just wanted to apprise the Court as to where we are. We have one additional matter on the agenda, and I have been informed that all told, it will probably take about an hour and a half to handle that matter.

THE COURT: Okay.

MR. ROSEN: We had informed the Court of that possibility and suggested that we have a Washington Mutual calendar tomorrow at 10:30 on a discrete matter, but that matter should take probably an hour and a half to two hours. If the Court recalls, it's the continuation and hopefully ending of the HF Almonton (phonetic) matter. I don't, and we had asked the Court at that time whether the Court would be

okay with, perhaps continuing this matter for prior to that, because I think the Court had availability before the 10:30 calendar. I may be wrong but I thought we had heard that.

THE COURT: Well I have a, no, I have a 9:30, and then I have 2 o'clock first days.

MR. ROSEN: Oh, okay.

MR. CLARKE: Your Honor, I hadn't heard about this at all. I am aware that there's something on the calendar tomorrow, but I'm not available. There's an omnibus hearing next week. I'm available. I don't object to putting this over to the omnibus hearing next week given the lateness of the hour. Although our motion's been on since November, and we've rolled it at several, at the Debtors' request. We're happy to do it now, or we, we're happy to do it next week.

MR. ROSEN: Your Honor, it's Mr. Clarke's motion. If the Court wants to go for another hour and a half, we're here.

THE COURT: Yes.

MR. RILEY: Your Honor, Richard Riley from Duane Morris for TD Bank. I just wanted to clarify your last ruling. We had reached an agreement with the Debtor subject to the, to them being able to issue the subpoena to us. So if they were able to issue the subpoena to us, we had agreed to scope and timing. So I, we'll continue to be in discussions with the Debtor, but what I heard is not allowing

them to issue the subpoenas to any of the third parties.

THE COURT: Correct. Well let's take a break. I mean, I'm willing to proceed if the parties are. But I'd be happier if I could go home. But - -

UNIDENTIFIED SPEAKER: Do we get a vote, Your Honor?

THE COURT: Let's take five minutes, and the parties can talk about which they prefer. I'm, I'll leave it to the parties.

(Whereupon at 6:36 p.m. a recess was taken in the hearing in this matter.)

(Whereupon at 6:49 p.m. the hearing in this matter reconvened and the following proceedings were had:)

THE CLERK: All rise. You may be seated.

MR. ROSEN: Good evening.

THE COURT: Good evening.

MR. ROSEN: Your Honor, on February 5th, there is a 10:30 calendar already which deals with an omnibus objection to claim, what we refer to as the wrong Debtor claims, litigation related claims that we are seeking to have dismissed. Your Honor, we believe that that presentation is probably going to take about an hour and a half. It so happens that the 11:30 calendar for that day is another case that I'm aware of called Magna, and Mr. Cross and I are the parties for hearing at that time. And we believe that we can adjourn that hearing at 11:30. Which creates an opening,

Your Honor, from 10:30 until your next item, which would be at 2 o'clock. And so we would suggest, Your Honor, that we move the item which is on now, which is, what we'll refer to as the 9.5 motion, or the FDIC's motion for relief from automatic stay, to add to that 10:30 calendar next Friday. And I believe that that is acceptable to Mr. Clarke and to the Debtors' counsel who are handling that matter.

MR. CLARKE: I just want to thank Mr. Rosen for moving the other hearing. I do appreciate that.

MR. ROSEN: Not a problem.

THE COURT: Okay.

MR. ROSEN: So we would see you then, Your Honor. 10:30 next Friday.

THE COURT: Okay. What item is that on the agenda, just so I keep track?

MR. ROSEN: Oh, I believe it was 15 or 14, actually. Because we went out of order. It was 15, Your Honor.

THE COURT: No. That was the omnibus objection. Let's see. 13.

MR. ROSEN: 13. Sorry. 13 will get moved to the 5th, Your Honor.

THE COURT: All right. Good. Thank you - -

MR. ROSEN: Thank you.

THE COURT: - - for letting me go home. All right.

MR. ROSEN: Have a nice evening.

THE COURT: We'll stand adjourned.

(Whereupon at 6:51 p.m. the hearing in this matter was concluded for this date.)

I, Jennifer Ryan Enslen, approved transcriber for the United States Courts, certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above entitled matter.

/s/Jennifer Ryan Enslen February 1, 2010

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UNITED STATES BANKRUPTCY COURT
District of Delaware

In Re:
Washington Mutual, Inc.
1301 Second Avenue
Seattle, WA 98101
EIN: 91−1653725

Chapter: 11

Case No.: 08−12229−MFW

NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION

A transcript of the proceeding held on 1/28/2010 was filed on 2/1/2010 . The following deadlines apply:

The parties have 7 days to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is 2/22/2010 .

If a request for redaction is filed, the redacted transcript is due 3/4/2010 .

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To review the transcript for redaction purposes, you may purchase a copy from the transcriber (see docket for Transcriber's information) or you may view the document at the clerk's office public terminal.

Clerk of Court

Date: 2/1/10

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