

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

AMERICAN NATIONAL INSURANCE
COMPANY, AMERICAN NATIONAL
PROPERTY AND CASUALTY
COMPANY, AMERICAN NATIONAL
GENERAL INSURANCE COMPANY,
FARM FAMILY LIFE INSURANCE,
COMPANY, FARM FAMILY CASUALTY
INSURANCE COMPANY, PACIFIC
PROPERTY AND CASUALTY
COMPANY, AMERICAN NATIONAL
LLOYDS INSURANCE COMPANY,
NATIONAL WESTERN LIFE
INSURANCE COMPANY and GARDEN
STATE LIFE INSURANCE COMPANY,

Plaintiffs,

vs.

JP MORGAN CHASE & CO. and
JP MORGAN CHASE BANK,
NATIONAL ASSOCIATION,

Defendants.

CIVIL ACTION NO. _____

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant in Intervention, the Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank, Henderson, Nevada (the "FDIC-Receiver"), files this Notice of Removal pursuant to 28 U.S.C. § 1446(a), and respectfully shows the Court as follows:

I. Introduction

1. On or about February 16, 2009, Plaintiffs filed suit against defendants JPMorgan Chase & Co. ("JPMC & Co.") and JPMorgan Chase Bank, National Association ("JPMC Bank")

in Cause No. 09-CV-0199, in the 122nd District Court of Galveston County, Texas. Plaintiffs seek damages allegedly arising from the sale of assets of Washington Mutual Bank ("WMB") to JPMC Bank pursuant to a Purchase and Assumption Agreement, Whole Bank (the "P&A Agreement"), dated September 25, 2008, between the FDIC-Receiver and JPMC Bank. Plaintiffs requested a jury trial in the state court proceeding.

2. JPMC Bank was served with the state court suit on February 24, 2009, and filed its Original Answer, Pleas to the Jurisdiction, Verified Plea and Other Defenses on March 20, 2009. JPMC & Co. was served with the suit on February 24, 2009, as well, and filed its Special Appearance and, subject thereto, its Original Answer, Pleas to the Jurisdiction, and Other Defenses on March 20, 2009.

3. The FDIC-Receiver filed its Plea in Intervention as a defendant in the state-court proceeding on March 25, 2009.

4. The FDIC-Receiver files this Notice of Removal within the thirty-day time period of 28 U.S.C. § 1446(b) and ninety-day time period of 12 U.S.C. § 1819(b)(2)(B).

5. Attached hereto as Exhibit "A" are copies of all pleadings, process, orders and other filings in the state-court suit, a state-court docket sheet, an index of those documents and a listing of all counsel of record, as required by 28 U.S.C. § 1446(a) and this Court's Local Rule 81.

II. Bases for Removal

6. Removal to this Court is proper because this is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331, and is one that may be removed to this Court pursuant to 12 U.S.C. § 1819(b)(2)(B) and 28 U.S.C. § 1441(b).

A. Statutory Right to Remove

7. Pursuant to 12 U.S.C. § 1819(b)(2)(A), “all suits of a civil nature at common law or in equity to which the [FDIC], in any capacity, is a party shall be deemed to arise under the laws of the United States.” 12 U.S.C. § 1819(b)(2)(A). The FDIC-Receiver has a statutory right to remove cases in which it is a party pursuant to 12 U.S.C. § 1819(b)(2)(B). *See Bank One Tex., N.A. v. Morrison*, 26 F.3d 544, 547 (5th Cir. 1994) (concluding that once the FDIC in its capacity as a receiver intervened in state-court proceeding, the suit was deemed to arise under federal law, and the FDIC had the right to remove the case.) Because the FDIC-Receiver is a party, the entire case is deemed to arise under the laws of the United States. *Buchner v. FDIC*, 981 F.2d 816, 819 (5th Cir. 1993).

B. Federal Question

8. Resolution of Plaintiffs’ claims of tortious interference with an existing contract, breach of confidentiality agreement, and unjust enrichment against JPMC Bank and JPMC & Co. depend on application and interpretation of the FDIC’s regulatory scheme and administrative framework as set forth in Chapter 16 of Title 12 of the United States Code, 12 U.S.C. §§ 1811 through 1835a.

9. On or about September 25, 2008, by order number 2008-36, the FDIC-Receiver was duly appointed by the Office of Thrift Supervision (“OTS”) as Receiver for WMB, pursuant to 12 U.S.C. § 1821(c)(6)(B). Before the receivership, WMB was a savings association that was a subsidiary of Washington Mutual, Inc..

10. Immediately after its appointment as receiver, the FDIC-Receiver sold substantially all of the assets of WMB to JPMC Bank, pursuant to the P&A Agreement.

11. The Plaintiffs in this action allege that they are holders of debt securities issued by WMB. *See* Pls. Orig. Pet. ¶¶ 29, 71, 80-87. Plaintiffs allege that, “[u]pon information and belief, these Bonds are worthless.” Pls. Orig. Pet. ¶ 71. The alleged loss of value of the WMB bonds is a central element of all counts alleged in the Original Petition. *See* Pls. Orig. Pet. ¶¶ 89-93, 96-99, 100-03. Plaintiffs’ sole and exclusive remedy for their claims is to assert a claim against the FDIC-Receiver as provided for under 12 U.S.C. § 1821(d)(5). *See* 12 U.S.C. § 1821(d)(13)(D); *see also* 12 U.S.C. § 1821(j).

III. Additional Removal Matters

12. Under 28 U.S.C. § 1446(a), this case is removed to the district and division that embrace the place in which the removed action has been pending. As set forth in its Plea In Intervention, the FDIC-Receiver contends that venue is not proper and intends to move for transfer to a court of proper venue, among other relief.

13. Contemporaneously with the filing of this Notice of Removal, the FDIC-Receiver will provide all parties with written notice of the filing of this Notice of Removal and will promptly file a copy of this Notice of Removal with the Clerk of the 122nd District Court of Galveston County, Texas.

WHEREFORE, the FDIC-Receiver hereby removes the above-referenced state court action to the United States District Court for the Southern District of Texas, Galveston Division.

Respectfully submitted,

DLA PIPER LLP (US)

By: /s/ Jack O'Neill

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ATTORNEYS FOR DEFENDANT IN
INTERVENTION, THE FEDERAL DEPOSIT
INSURANCE CORPORATION, AS RECEIVER
FOR WASHINGTON MUTUAL BANK,
HENDERSON, NEVADA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of March, 2009, a true and correct copy of the foregoing instrument was served by hand delivery upon the following counsel of record:

Andrew J. Mytelka
Greer, Herz & Adams, L.L.P.
One Moody Plaza, 18th Floor
Galveston, Texas 77550

ATTORNEYS FOR PLAINTIFFS

Glen M. Boudreaux
Maryellen Shea
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1401 McKinney, Suite 1900
Houston, Texas 77010

ATTORNEYS FOR DEFENDANTS

/s/ Jack O'Neill
Edward John "Jack" O'Neill, Jr.

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EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
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**AMERICAN NATIONAL INSURANCE
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Defendants.

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INDEX OF MATTERS FILED WITH THE NOTICE OF REMOVAL

Defendant Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank, Henderson, Nevada (the "FDIC-Receiver") hereby files its Index of Matters Filed with the Notice of Removal, in compliance with Local Rule 81:

1. Plaintiffs' Original Petition;
2. Executed Process of Service of Citation for JPMorgan Chase & Co.;
3. Executed Process of Service of Citation for JPMorgan Chase Bank, National Association;
4. Defendant JPMorgan Chase & Co.'s Special Appearance;

5. Subject to JPMorgan Chase & Co.'s Special Appearance, JPMorgan Chase & Co.'s Original Answer, Pleas to the Jurisdiction, and Other Defenses;
6. JPMorgan Chase Bank, National Association's Original Answer, Pleas to the Jurisdiction, Verified Plea and Other Defenses;
7. Defendant in Intervention, the Federal Deposit Insurance Corporation's, as Receiver for Washington Mutual Bank, Henderson, Nevada, Plea in Intervention;
8. Civil Docket, 122nd Judicial District Court, Galveston County, Cause 9CV0199; and;
9. List of All Counsel of Record.

Respectfully submitted,

DLA PIPER LLP (US)

By: /s/ Jack O'Neill

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ATTORNEYS FOR DEFENDANT IN
INTERVENTION, THE FEDERAL DEPOSIT
INSURANCE CORPORATION, AS RECEIVER
FOR WASHINGTON MUTUAL BANK,
HENDERSON, NEVADA

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