

# SULLIVAN & CROMWELL LLP

TELEPHONE: 1-310-712-6600  
FACSIMILE: 1-310-712-8800  
WWW.SULLCROM.COM



July 30, 2014

Via Federal Express

Federal Deposit Insurance Corporation,  
Receiver of Washington Mutual Bank, Henderson, Nevada,  
1601 Bryan St., Suite 1701,  
Dallas, Texas 75201.

Attention: Regional Counsel (Litigation Branch) &  
Deputy Director (DRR - Filed Operations Branch)

Re: Indemnification Obligations

Dear Sirs:

We refer to the Purchase and Assumption Agreement Whole Bank, dated as of September 25, 2008 (the "Agreement") by and among the Federal Deposit Insurance Corporation in its corporate capacity ("FDIC Corporate") and as receiver ("FDIC Receiver" and, together with FDIC Corporate, "FDIC") and JPMorgan Chase Bank, N.A. (together with its subsidiaries and affiliates, "JPMC") relating to the resolution of Washington Mutual Bank, Henderson, Nevada ("WMB"). This letter supplements our prior indemnification notices and provides you with written notice of additional matters for which JPMC is entitled to indemnification under Section 12.1 of the Agreement.

The additional matter that gives rise to JPMC's indemnity rights is *K&W Insurance Associates, Inc. v. Washington Mutual Bank, FA*, Index No. 08-80862-CA 02, filed in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. Enclosed for your convenience is a copy of the Second Amended Complaint in this action, in which K&W Insurance Associates, Inc. ("Plaintiff") alleged that "Washington Mutual Bank, F.A. n/k/a JP Morgan Chase Bank, N.A." (Compl. at 1) and other individual defendants "engaged in an elaborate scheme whereby they wrongfully converted" approximately \$400,000.00 between 2004 and 2007—prior to WMB's closure and the FDIC receivership. (Compl. ¶ 20.) JPMC has decided to settle this claim in the amount of \$60,000. In light of Plaintiff's intent to pursue litigation for this claim, settling at this time and for this amount—before liability continues to accrue to the detriment of not only JPMC, but of the receivership as well—is the prudent course.

Federal Deposit Insurance Corporation

Our informing you of this settlement is not a request for consent nor should it be construed as implying that Section 12.2(f) functions as a condition precedent to JPMC's indemnification rights with respect to claims for which FDIC is responsible. As you know, the liabilities assumed by JPMC were limited to those on WMB's "Books and Records," with a "Book Value," when WMB was closed. JPMC did not assume any WMB liabilities that did not have a book value on WMB's books and records at the time WMB was placed into receivership, nor did it assume, for those liabilities on WMB's books and records, liability for any amounts in excess of such book value. Thus, any liability for conduct that precedes WMB's closure remains with the FDIC.

Thus, this letter merely serves to apprise you of this settlement, as well as to inform you that, because the claim at issue was clearly retained by the FDIC, the amount of this settlement, as well as any costs or expenses JPMC incurred in the process of settling and defending against the claim, are subject to indemnification pursuant to Section 12.1 of the Agreement. We understand the FDIC Receiver consents to our defending and, if we deem it to be prudent, settling such claims to this extent. As you know, and as the FDIC has acknowledged in court, if the FDIC disclaims responsibility for any liabilities that may arise in connection with these actions and instead asserts that Section 12 of the Agreement does not apply to any such liabilities, then the FDIC may not purport to exercise its rights to direct the defense of these actions or determine whether to settle them.

As you are aware from previous correspondence notifying you of the FDIC's indemnification obligations in other matters, the matters identified in this letter are not intended to be exhaustive or to constitute a statement that no other facts have or may come to our attention that could result in claims for which indemnification is provided, and we reserve the right to supplement this notice as additional facts or circumstances may arise.

Sincerely,

  
Robert A. Sacks

cc: Lawrence N. Chanen  
Annette C. Rizzi  
Joanna Jagoda  
Edward J. McNamara  
Sheila Carson  
(JPMorgan Chase Bank, N.A.)  
(Via Email without enclosures)

Federal Deposit Insurance Corporation

Richard Osterman  
James Wigand  
David Gearin  
Kathryn Norcross  
(Federal Deposit Insurance Corporation)  
(Via Federal Express with enclosures)

Brent McIntosh  
(Sullivan & Cromwell LLP)  
(Via Email without enclosures)