

# SULLIVAN & CROMWELL LLP

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February 24, 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 the action entitled, *Dubow v. JPMorgan Chase Bank, NA.*, Case No. 10-031604 (09), in the Circuit Court of the 17th Judicial Circuit, Broward County, Florida ("Dubow"). A copy of the amended complaint in the *Dubow* suit is enclosed. In this action, plaintiff alleges that, on January 25, 2008, [REDACTED] tripped and fell at 200 S. Pine Island Rd, Suite 100, Plantation, Florida 33324 (the "Premises"). (Compl. ¶¶ 5 & 19.) Although [REDACTED] Dubow's complaint characterizes the Premises as a JPMC bank branch, at the time of the alleged injury, the Premises were owned and operated not by JPMC but by WMB.

[REDACTED]  
[REDACTED] Plaintiff continues to litigate this action against JPMC in Broward County.

Federal Deposit Insurance Corporation

JPMC is advising you that any liability JPMC incurs in connection with this claim, including settling this claim, as well as the costs it incurs in defending against the claim, are subject to indemnification by the FDIC pursuant to Section 12.1 of the Agreement. In addition, should JPMC decide to settle any of claims, the costs and expenses incurred by any such settlement would also be subject to indemnification. We understand the FDIC Receiver consents to our defending and, if we deem it to be prudent, settling such claims. 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 this action 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 this action or determine whether to settle it.

While we take no position on whether plaintiff's [REDACTED] the type of claim at issue—*i.e.*, a personal-injury claim arising several months before receivership—is clearly one retained by the FDIC under the Agreement and in many respects echoes the situation in *Izzo*, which is currently part of JPMC's ongoing lawsuit against the FDIC seeking to enforce the FDIC's indemnification obligations under the Agreement. Accordingly, JPMC requests that the FDIC promptly inform the plaintiff that it acknowledges that this was not a claim assumed by JPMC and take responsibility for defending or resolving this dispute with plaintiff.

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. In particular, there may be other "slip and fall" type actions, or other small claims, that have been brought against JPMC based upon events at WMB branches prior to September 25, 2008 for which the FDIC is obligated to indemnify JPMC under the terms of the Agreement that, based upon the modest size of such matters, have not been brought to our attention for purposes of providing notice.

Sincerely,

[REDACTED]  
Robert A. Sacks [REDACTED]

cc: Stacey R. Friedman  
Lawrence N. Chanen  
Alla Lerner  
Annette C. Rizzi  
Joanna Jagoda

Federal Deposit Insurance Corporation

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(JPMorgan Chase Bank, N.A.)  
(Via Email without enclosure)

Richard Osterman  
James Wigand  
David Gearin  
(Federal Deposit Insurance Corporation)  
(Via Federal Express with enclosure)