

IN THE SUPREME COURT OF OHIO

WASHINGTON MUTUAL BANK, FKA )  
WASHINGTON MUTUAL BANK FA, ) Case No. 2008-1056  
)  
Plaintiff-Appellant, )  
) On Appeal from the Franklin County Court  
vs. ) of Appeals, Tenth Appellate District  
)  
JACK K. BEATLEY, *et al.*, ) Court of Appeals Case No. 06AP-1189  
)  
Defendant-Appellee. )

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PLAINTIFF-APPELLANT WASHINGTON MUTUAL BANK'S REQUEST FOR THE  
ISSUANCE OF A 90 DAY STAY PURSUANT TO 12 U.S.C. § 1821(d)(12)(B)

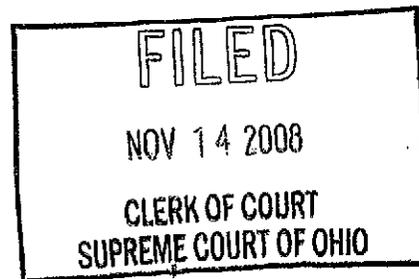
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*Counsel of Record for Defendant-Appellee*

*Counsel of Record for Plaintiff-Appellant*

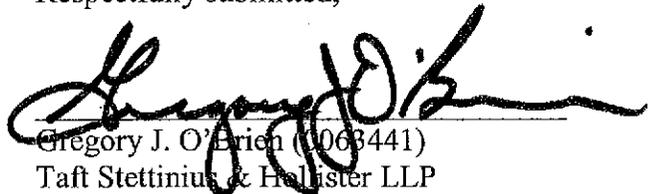


Plaintiff-Appellant, Washington Mutual Bank (“Appellant”), by and through undersigned counsel, on behalf of the Federal Deposit Insurance Corporation, as Receiver of Washington Mutual Bank (“Receiver”) hereby respectfully requests a ninety (90) day stay of all judicial actions or proceedings in the above-captioned matter. In support of this request, Appellant states as follows:

1. On September 25, 2008, the Office of Thrift Supervision declared Washington Mutual Bank insolvent, and appointed the Federal Deposit Insurance Corporation (the “Corporation”) its Receiver. See Exhibit “A.”
2. The Corporation accepted the appointment as Receiver pursuant to 12 U.S.C. § 1821(c)(6)(B).
3. According to 12 U.S.C. § 1821(d)(12)(A)(ii), the Receiver may request a stay for a period not to exceed ninety (90) days in any judicial action or proceeding to which the Receiver is or becomes a party.
4. If the Receiver requests a stay of any judicial action or proceeding in a court with competent jurisdiction, “. . . the court shall grant such stay as to all parties.” 12 U.S.C. § 1821 (d)(12)(B).

WHEREFORE, based upon the foregoing, the Receiver hereby requests a ninety (90) day stay of the above-captioned matter

Respectfully submitted,



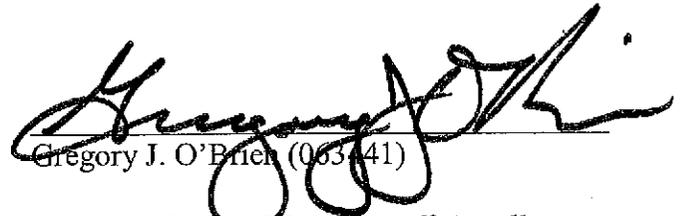
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gobrien@taftlaw.com

*Counsel of Record for Plaintiff-Appellant*

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Plaintiff-Appellant Washington Mutual Bank's Request for the Issuance of a 90 Day Stay was served this 13<sup>th</sup> day of November, 2008, via regular US mail, upon:

Kevin E. Humphreys  
545 East Town Street  
Columbus, Ohio 43215

  
Gregory J. O'Brien (063141)  
*Counsel of Record for Plaintiff-Appellant*



**Office of Thrift Supervision**  
Department of the Treasury

*West Region*

Pacific Plaza, 2001 Junipero Serra Boulevard, Suite 650, Daly City, CA 94014-1976  
P.O. Box 7165, San Francisco, CA 94120-7165 • Telephone: (650) 746-7000 • Fax: (650) 746-7001

Hand Delivered

September 25, 2008

OTS No. 08551

Washington Mutual Bank  
1301 Second Avenue  
Seattle, Washington 98101

Re: Appointment of a Receiver

Dear Sirs/Madam:

This is to notify you that the Director, Office of Thrift Supervision, by Order Number 2008-36, dated September 25, 2008, appointed the Federal Deposit Insurance Corporation as receiver (Receiver) for Washington Mutual Bank, Henderson, Nevada (Bank), and authorized the undersigned to deliver notice of such appointment.

The Receiver is now taking possession of the Bank pursuant to the terms of its appointment as set forth in Order No. 2008-36, a copy of which is attached. In connection with the appointment of the Receiver, we respectfully call your attention to Section 5(d)(4) of the Home Owners' Loan Act of 1933, 12 U.S.C. § 1464(d)(4), which establishes criminal penalties for refusal to comply with the Receiver's demand for possession of the property, business and assets of an association in receivership.

Please countersign a copy of this letter and indicate the time and date of your receipt of the letter and attachment in the space provided on the following page and return such copy to me.

Sincerely,

Darrel W. Dochow  
Regional Director

Notice of Appointment of a Receiver  
Washington Mutual Bank, Henderson, NV  
September 25, 2008  
Page 2

Attachment

Received by: STEPHEN E. FRANK CHAIRMAN  
Print Name and Title

At 6<sup>15</sup>, P.M., P.D.T., on Thursday, September 25, 2008

Signature: [Handwritten Signature]

Accepting Appointment of FDIC as Receiver for Washington Mutual Bank, Henderson, NV:

[Handwritten Signature] ROBERT SCHOPPE  
Print Name and Title ATTORNEY-IN-FACT

At 6<sup>15</sup>, P.M., P.D.T., on Thursday, September 25, 2008

Signature: \_\_\_\_\_



**FDIC**

**Division of Resolutions and Receiverships**

**Dallas Regional Office**

1601 Bryan Street  
Dallas, Texas 75201

Telephone (214) 754-0098

September 25, 2008

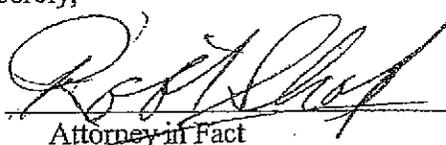
Office of Thrift Supervision  
Washington, D.C.

**Subject: Washington Mutual Bank  
Henderson, NV – In Receivership  
Acceptance of Appointment as Receiver**

Dear Sir or Madam:

Please be advised that the Federal Deposit Insurance Corporation accepts its appointment as Receiver of the captioned depository institution, in accordance with the Federal Deposit Insurance Act, as amended.

Sincerely,

By: 

Attorney in Fact

Printed Name: Robert Schoppe

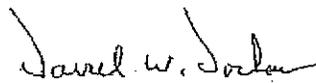
**Office of Thrift Supervision**  
**Department of the Treasury**



I certify that annexed hereto is a true copy of the document described below made from records of the Office of Thrift Supervision, Department of the Treasury.

Copy of the Office of Thrift Supervision  
Order Number 2008-36, executed on September  
25, 2008, appointing a receiver for Washington  
Mutual Bank, Henderson, Nevada, consisting of  
three (3) pages.

Signed this 25<sup>th</sup> day of September, 2008



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**Darrel W. Dochow**  
**Regional Director**  
**West Region**

## OFFICE OF THRIFT SUPERVISION

### Receivership Of A Federal Savings Association

**Date:** September 25, 2008  
**Order No.:** 2008-36  
**OTS No.:** 08551

The Director of the Office of Thrift Supervision (OTS), or his designee, in cooperation with the Federal Deposit Insurance Corporation (FDIC), has determined to appoint the FDIC as receiver of Washington Mutual Bank, Henderson, Nevada (Savings Bank).

#### GROUND FOR APPOINTMENT OF FDIC AS RECEIVER FOR THE SAVINGS BANK

The Director, or his designee, based upon the administrative record finds and determines the following:

- (i) The Savings Bank is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business; and
- (ii) The Institution is in an unsafe or unsound condition to transact business.

The Savings Bank is a Federally chartered savings bank, the accounts of which are insured by the Deposit Insurance Fund (DIF). The Savings Bank has its home office in Henderson, Nevada. As of June 30, 2008, the Savings Bank reported total assets of \$307 billion.

#### DISCUSSION OF GROUNDS FOR APPOINTMENT OF A RECEIVER FOR THE SAVINGS BANK

Section 5(d)(2)(A) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1464(d)(2)(A), provides that the Director may appoint a receiver for any insured savings association if the Director determines that one or more grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1821(c)(5), exist.

Under section 11(c)(5)(F) of the FDIA, the Director may appoint a receiver if a savings association is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business because it does not have sufficient liquid assets to fund expected withdrawals. The Savings Bank has insufficient cash and liquid assets convertible to cash necessary to pay its obligations and the expected withdrawal demands of its depositors. The Savings Bank has suffered significant cash outflows, exceeding

\$22 billion since July 2008, in part because of adverse publicity. The Savings Bank has limited and diminishing liquidity sources available to it and the current rate of outflow will deplete the Savings Bank's cash resources and liquidity within a short period of time.

Therefore, the Director concludes that the Savings Bank is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business because it does not have sufficient liquid assets to pay those obligations and fund the expected withdrawals.

Under section 11(c)(5)(C) of the FDIA, the Director may appoint a receiver if a savings association is in an unsafe or unsound condition to transact business. The Savings Bank is in an unsafe and unsound condition as a result of its severe liquidity strain, deteriorating asset quality, and continuing significant negative operating earnings with no realistic prospects for raising capital to ensure that it can repay all of its liabilities, including deposits.

The Director, or his designee, therefore, has determined that grounds for the appointment for a receiver for the Savings Bank exist under section 5(d)(2) of the HOLA, and sections 11(c)(5)(C) and (F) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(C) and (F).

#### ACTIONS ORDERED OR APPROVED

##### Appointment of a Receiver

The Director, or his designee, hereby appoints the FDIC as receiver for the Savings Bank, for the purpose of liquidation, pursuant to section 5(d)(2) of the HOLA, and section 11(c)(6)(B) of the FDIA, 12 U.S.C. § 1821(c)(6)(B).

##### Delegation of Authority to Act for OTS

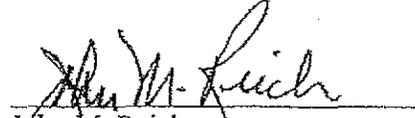
The Director, or his designee, hereby authorizes the OTS West Regional Director, or his designee, and the Deputy Chief Counsel for the Business Transactions Division of the Chief Counsel's office, or his designee, to: (i) certify orders; (ii) sign, execute, attest, or certify other documents of OTS issued or authorized by this Order; (iii) designate the persons or entity that will give notice of the appointment of a receiver for the Savings Bank and serve the Savings Bank with a copy of this Order pursuant to 12 C.F.R. § 558.2; and (iv) perform such other functions of OTS necessary or appropriate for implementation of this Order. All documents to be issued under the authority of this Order must be first approved, in form and content, by the Chief Counsel's Office. In addition, the Director, or his designee, hereby authorizes the Deputy Chief Counsel for the Business Transactions Division of the Chief Counsel's office, or his designee, to

Order No.: 2008-36

Page: 3

make any subsequent technical corrections, that might be necessary, to this Order, or any documents issued under the authority of this Order.

By Order of the Director of OTS, effective September 25, 2008.

  
\_\_\_\_\_  
John M. Reich  
Director



**FDIC**

**Division of Resolutions and Receiverships**

**Dallas Regional Office**

1601 Bryan Street  
Dallas, Texas 75201

Telephone (214) 754-0098

September 25, 2008

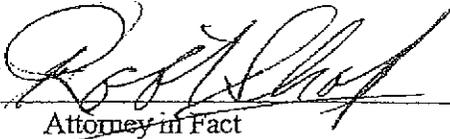
Office of Thrift Supervision  
Washington, D.C.

**Subject: Washington Mutual Bank  
Henderson, NV – In Receivership  
Acceptance of Appointment as Receiver**

Dear Sir or Madam:

Please be advised that the Federal Deposit Insurance Corporation accepts its appointment as Receiver of the captioned depository institution, in accordance with the Federal Deposit Insurance Act, as amended.

Sincerely,

By: 

Attorney in Fact

Printed Name: Robert Schoppe