

Judge Marsha J. Pechman

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THE FEDERAL DEPOSIT INSURANCE CORPORATION, as RECEIVER of WASHINGTON MUTUAL BANK,

Plaintiff,

v.

KERRY K. KILLINGER, STEPHEN J. ROTELLA, DAVID C. SCHNEIDER, LINDA C. KILLINGER, and ESTHER T. ROTELLA,

Defendants.

No.: 2:11-cv-00459-MJP

**DECLARATION OF STEVEN P. CAPLOW IN SUPPORT OF DEFENDANTS' MOTION FOR A REASONABLENESS DETERMINATION AND ENTRY OF FINAL JUDGMENT OF DISMISSAL PURSUANT TO SETTLEMENT**

**Note on Motion Calendar:  
February 24, 2012**

1 I, Steven P. Caplow, declare:

2 1. I am a member at the law firm of Davis Wright Tremaine LLP and counsel of  
3 record in this action. I make this declaration in support of Defendants Kerry K. Killinger,  
4 Stephen J. Rotella, David C. Schneider, Linda C. Killinger and Esther T. Rotella's  
5 ("Defendants") Motion for Reasonableness Determination and Entry of Final Judgment of  
6 Dismissal Pursuant to Settlement, filed concurrently herewith. I am familiar with the facts set  
7 forth herein and could and would testify thereto if necessary.

8 2. Attached hereto as **Exhibit A** is a true and correct copy of the December 13, 2011  
9 Settlement and Release Agreement between the Defendants and The Federal Deposit Insurance  
10 Corporation, as Receiver for Washington Mutual Bank (individually, the "FDIC," and  
11 collectively with the Defendants, the "Parties").

12 3. Attached hereto as **Exhibit B** is a proposed Final Judgment of Dismissal Pursuant  
13 to Settlement.

14 4. Attached hereto as **Exhibit C** is a true and correct copy of the Declaration of the  
15 Hon. Layn R. Phillips (U.S. District Judge, Ret.), the mediator who facilitated the Parties'  
16 settlement, dated February 22, 2012.

17 5. Attached hereto as **Exhibit D** is a true and correct copy of an Order dated  
18 February 15, 2012, issued in the Washington Mutual, Inc. ("WMI") chapter 11 bankruptcy  
19 proceedings in the United States Bankruptcy Court, District of Delaware, granting the debtor's  
20 motion for An Order Pursuant to Section 105(a) of the Bankruptcy Code and Rule 9019 of the  
21 Federal Rules of Bankruptcy Procedure (I) Approving Settlement Agreement in FDIC Litigation  
22 and Authorizing the Debtors' Consummation thereof and (II) Modifying Automatic Stay under  
23 Section 362 of the Bankruptcy Code, as Necessary, to Allow Payment of Settlement Amount  
24 under Directors and Officers Insurance Policies ("9019 Motion"), approving the Settlement  
25 Agreement in this action.



**CERTIFICATE OF SERVICE**

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I hereby certify that on February 24, 2012, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record who receive CM/ECF notification, and that the remaining parties shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 24<sup>th</sup> day of February, 2012.

Davis Wright Tremaine LLP

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