

The Honorable Marsh J. Pechman

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

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  
**JOINT REQUEST FOR ENTRY  
OF JUDGMENT IN A  
SEPARATE DOCUMENT**  
NOTE ON MOTION CALENDAR:  
Thursday May 3, 2012

Pursuant to Rule 58(d) of the Federal Rules of Civil Procedure (“Rule”), the parties respectfully request that the Court enter a separate judgment in this action.

On December 13, 2011, the parties entered into a Settlement and Release Agreement, dated December 13, 2011 (the “Settlement Agreement”). On February 15, 2012, the United States Bankruptcy Court for the District of Delaware entered an Order approving the Settlement Agreement and making it “binding upon the parties.” On April 26, 2012, this action was dismissed by stipulation of the parties pursuant to Rule 41(a)(1)(A)(ii) [Dkt. 91]. Now that this action has been dismissed, Section I(B)(ii) of the Settlement Agreement establishes the timing for a payment out of escrow and from the defendants of \$40 million to the FDIC, as receiver of Washington Mutual Bank, *inter alia*, based on this Court’s issuance of a “judgment of dismissal with prejudice.”

1 With certain exceptions not applicable here, Rule 58(a) provides in relevant part that  
2 “[e]very judgment . . . must be set out in a separate document.” Rule 58(d) provides that a  
3 “party may request that judgment be set out in a separate document as required by Rule 58(a).”  
4 The parties therefore respectfully request that the Court direct the Clerk of Court to issue a  
5 judgment for dismissal with prejudice in a separate document pursuant to Rule 58(d).

6 Dated this 3rd day of May, 2012.

7 **DAVIS WRIGHT TREMAINE LLP**

8 By: s/ Steven P. Caplow  
9 Stephen M. Rummage, WSBA #11168  
10 Steven P. Caplow, WSBA #19843  
11 1201 Third Avenue, Suite 2200  
12 Seattle, Washington 98101-3045  
13 Tel.: (206) 757-8108 / Fax: (206) 757-7136  
14 E-mail: steverummage@dwt.com  
15 stevenaplow@dwt.com

16 *Attorneys for Stephen J. Rotella, David C.  
17 Schneider, and Esther T. Rotella*

8 **SIMPSON THACHER & BARTLETT  
9 LLP**

10 Barry R. Ostrager (*pro hac vice*)  
11 Mary Kay Vyskocil (*pro hac vice*)  
12 425 Lexington Avenue  
13 New York, New York 10017  
14 Tel.: (212) 455-2000 / Fax: (212) 455-2502  
15 Email: bostrager@stblaw.com  
16 mvyskocil@stblaw.com

17 -and-

18 Deborah L. Stein (*pro hac vice*)  
19 1999 Avenue of the Stars, 29th Floor  
20 Los Angeles, California 90067  
21 Tel.: (310) 407-7500 / Fax: (310) 407-7502  
22 Email: dstein@stblaw.com

16 **REED SMITH LLP**

17 By: s/ Barry Rosen  
18 Barry Rosen (*pro hac vice*)  
19 10 South Wacker Drive  
20 Suite 4000  
21 Chicago, IL 60606  
22 Tel.: (312) 207-1000  
23 Email: brosen@reedsmith.com

24 *Attorneys for Federal Deposit Insurance  
25 Corporation*

16 **KARR TUTTLE CAMPBELL**

17 By: s/ Bruce E. Larson  
18 Bruce E. Larson, WSBA #6209  
19 Walter E. Barton, WSBA #26408  
20 Dennis H. Walters, WSBA #9444  
21 1201 Third Avenue, Suite 2900  
22 Seattle, WA 98101  
23 Tel.: (206) 223-1313  
24 Email: blarson@karrtuttle.com  
25 gbarton@karrtuttle.com  
26 dwalters@karrtuttle.com

27 *Attorneys for Federal Deposit Insurance  
Corporation*

1 **FEDERAL DEPOSIT INSURANCE**  
2 **CORPORATION**

3 By: s/ Leonard J. DePasquale  
4 Leonard J. DePasquale (*pro hac vice*)  
5 3501 North Fairfax Drive  
6 VS-B-7058  
7 Arlington, VA 22226  
8 Tel.: (703) 562-2063  
9 Email: ldepasquale@FDIC.gov

10 *Attorneys for Federal Deposit Insurance*  
11 *Corporation*

12 **WILLIAMS & CONNELLY LLP**

13 By: s/ David D. Aufhauser  
14 David D. Aufhauser (*pro hac vice*)  
15 725 Twelfth Street, NW  
16 Washington, D.C. 20005  
17 Tel.: (202) 434-5000 / Fax.: (202) 434-5029  
18 Email: daufhauser@wc.com

19 *Attorneys for Kerry and Linda Killinger*

20 **WILSON SONSINI GOODRICH &**  
21 **ROSATI PC**

22 By: s/ Barry Kaplan  
23 Barry Kaplan, WSBA #8661  
24 701 Fifth Avenue, Suite 5100  
25 Seattle, WA 98104-7036  
26 Tel.: (206) 883-2500  
27 Email: bkaplan@wsgr.com

*Attorneys for Kerry and Linda Killinger*

1 **CERTIFICATE OF SERVICE**

2  
3 I hereby certify that on May 3, 2012, I electronically filed the foregoing with the Clerk  
4 of the Court using the CM/ECF system, which will send notification of such filing to all parties  
5 listed to receive electronic notice in this case.

6 DATED this 3rd day of May, 2012.

7 DAVIS WRIGHT TREMAINE LLP

8  
9 By: s/ Steven P. Caplow

10 Steven P. Caplow, WSBA #19843  
11 1201 Third Avenue, Suite 2200  
12 Seattle, Washington 98101-3045  
13 Tel.: (206) 757-8018  
14 Fax: (206) 757-7018  
15 Email: stevencaplow@dwt.com