

Plaintiffs. Plaintiffs asserted Texas state law causes of action of tortious interference with existing contract, breach of confidentiality agreement, and unjust enrichment against JPMC.

2. The Action was subsequently removed to federal court and venue was transferred to the United States District Court for the District of Columbia. On November 6, 2009, the Court established a briefing schedule for dispositive motions, setting oral argument for February 18, 2010. In accordance with the Court's briefing schedule, the Plaintiffs, JPMC and the FDIC filed the following motions, which are currently pending before the Court: (1) Plaintiffs' Motion to Dismiss FDIC as a Party and for Remand [Doc. 88], (2) JPMC's Motion to Dismiss [Doc. 89], and (3) the FDIC's Motion to Dismiss [Doc. 87].

3. In JPMC's motion to dismiss, filed on December 7, 2009, JPMC alleged that "the claims asserted by the ANICO WMI Stockholder and ANICO WMI Bondholder Plaintiffs fail for lack of standing[.]"¹

4. Plaintiffs dispute JPMC's contention regarding standing. As explained in Plaintiffs' memorandum, the Plaintiffs, in their Petition, "allege purposeful misconduct that was directed towards and intended to harm the Plaintiffs,"² and that "[t]he injury caused to the Plaintiffs—stripping away of their contract and property rights—is direct and not shared by WMI."³ Contrary to JPMC's assertion, the WMI bankruptcy trustee has no standing to bring the claims asserted by the Plaintiffs, which belong exclusively to Plaintiffs. *See Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416, 433-34 (1972) (Trustee lacked standing to sue a third party for damages incurred by debenture holders of the corporate debtor); *In re Seven Seas Petroleum, Inc.*, 522 F.3d 575, 584 (5th Cir. 2008) (bondholders and bankruptcy estate both had

¹ Doc. 90, p. 9.

² Doc. 96, p. 16.

³ Doc. 96, p. 17.

standing to assert separate claims against a third party arising out of the same set of facts and circumstances).

5. During the week of February 8, 2010, counsel for WMI and counsel for JPMC contacted Plaintiffs on various occasions and requested that Plaintiffs agree to a continuance of the scheduled oral argument. Plaintiffs declined the requests. JPMC filed a motion for continuance on Friday, February 12, 2010, attaching a letter from WMI to the Court as the basis for the motion, which expressed WMI's desire for a continuance because "Debtors have concluded that several issues have been raised that may affect Debtors' interests."⁴ In addition, WMI suggested that it may seek "a limited intervention" in this Action or take "action with respect to the automatic stay under the Bankruptcy Code, 11 U.S.C. § 362(a)."⁵

6. The Court subsequently granted in part, and denied in part, JPMC's request for a continuance, and reset the oral argument for March 9, 2010.

7. Plaintiffs continue to contend that they have standing to assert all of the claims asserted in their Petition, and are prepared to argue that issue to the Court. However, in light of the recent representations made by counsel for WMI, Plaintiffs believe that it is in their best interest to avoid the delay and expense inherent in litigating the standing of WMI bondholder and WMI stockholder Plaintiffs in this forum and in the United States Bankruptcy Court for the District of Delaware, where the WMI bankruptcy is pending. In addition, Plaintiffs have now sold the WMI bonds that they described in the Petition.

8. The dismissal of the named claims will simplify the procedural issues before this Court, will promote the economic and speedy disposition of the entire controversy between the

⁴ See Doc. 103-1.

⁵ *Id.*

parties, will not cause any delay or trial inconvenience, and will not prejudice the rights of any of the parties to this action.

9. Plaintiffs American National Insurance Company (“ANICO”), American National General Insurance Company (“ANGIC”), Farm Family Life Insurance Company (“FFLIC”), Pacific Property and Casualty Company (“Pacific”), and American National Lloyds Insurance Company (“AN Lloyds”), therefore dismiss the claims against the JPMC that are based on injuries due to ownership of WMI bonds.

10. In addition, Plaintiffs ANPAC, Garden State Life Insurance Company (“Garden State”), FFLIC and NWL, dismiss their claims against JPMC that are based on injuries due to ownership of WMI common stock.

11. As a result of this dismissal, the following Plaintiffs no longer have any interest in this lawsuit: ANGIC, Pacific, AN Lloyds, and Garden State.

12. Plaintiffs ANICO, ANPAC, FFLIC, FFCIC and NWL, who suffered injury as a result of their ownership of bonds of WMB, expressly do not dismiss any of their remaining claims against JPMC, as described in the Petition.

13. Plaintiff ANICO continues to assert the claims of tortious interference with contract, breach of confidentiality agreement, and unjust enrichment as described in the Petition, which arise from injury due to ownership of the following WMB bonds:

ISSUER	CUSIP	COUPON	MATURITY	PURCHASE DATE	PAR/FACE
Washington Mutual Bank	93933VAS7	5.5%	January 15, 2013	October 9, 2003	\$5,300,000
Washington Mutual Bank	93933VAS7	5.5%	January 15, 2013	October 14, 2003	\$5,079,000
Washington Mutual Bank	93933WAA4	6.875%	June 15, 2011	October 15, 2002	\$3,000,000
Washington Mutual Bank	93933WAB2	5.65%	August 15, 2014	September 16, 2004	\$5,000,000

14. Plaintiff ANPAC continues to assert the claims of tortious interference with contract, breach of confidentiality agreement, and unjust enrichment as described in the Petition, which arise from injury due to ownership of the following WMB bond:

ISSUER	CUSIP	COUPON	MATURITY	PURCHASE DATE	PAR/FACE
Washington Mutual Bank	93933WAA4	6.875%	June 15, 2011	October 15, 2002	\$2,000,000

15. Plaintiff FFLIC continues to assert the claims of tortious interference with contract, breach of confidentiality agreement, and unjust enrichment as described in the Petition, which arise from injury due to ownership of the following WMB bond:

ISSUER	CUSIP	COUPON	MATURITY	PURCHASE DATE	PAR/FACE
Washington Mutual Bank	93933WAA4	6.875%	June 15, 2011	May 16, 2002	\$5,000,000

16. Plaintiff FFCIC continues to assert the claims of tortious interference with contract, breach of confidentiality agreement, and unjust enrichment as described in the Petition, which arise from injury due to ownership of the following WMB bond:

ISSUER	CUSIP	COUPON	MATURITY	PURCHASE DATE	PAR/FACE
Washington Mutual Bank	93933WAA4	6.875%	June 15, 2011	October 15, 2002	\$3,200,000

17. Plaintiff NWL continues to assert the claims of tortious interference with contract, breach of confidentiality agreement, and unjust enrichment as described in the Petition, which arise from injury due to ownership of the following WMB bonds:

ISSUER	CUSIP	COUPON	MATURITY	PURCHASE DATE	PAR/FACE
Washington Mutual Bank	93933VAS7	5.5%	January 15, 2013	January 23, 2004	\$5,000,000
Washington Mutual Bank	93933VAS7	5.5%	January 15, 2013	January 26, 2004	\$4,000,000

18. The Plaintiffs, by this Notice, do not intend to cause any amendment to the Petition that will necessitate a responsive pleading by JPMC or the FDIC, or that will justify postponing the scheduled oral argument in this case. After oral argument in this case, if appropriate, Plaintiffs intend to seek leave to amend their Petition to reflect the dismissal of claims described in this notice.

Respectfully submitted,

By: /s/ Gregory S. Smith
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on February 18, 2010, a copy of this document was filed with the Court's ECF filing system, which will provide electronic notification of its filing to all counsel who have noticed their appearance in this action.

/s/ Gregory S. Smith
Gregory S. Smith