

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK IAS PART 39**

<p>In the Matter of the Application of</p> <p>THE BANK OF NEW YORK MELLON, in its Capacity as Trustee or Indenture Trustee of 530 Countrywide Residential Mortgage-Backed Securitization Trusts,</p> <p style="text-align: right;"><i>Petitioner,</i></p> <p>For Judicial Instructions under CPLR Article 77 on the Distribution of a Settlement Payment.</p>	<p style="text-align: center;">Index No. 150973/2016 (Scarpulla, J.)</p> <p style="text-align: center;">BLUE MOUNTAIN PARTIES’ MEMORANDUM OF LAW ON ALLOCATION OF THE SETTLEMENT PAYMENT</p>
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BlueMountain Credit Alternatives Master Fund L.P., BlueMountain Guadalupe Peak Fund L.P., BlueMountain Monteners Master Fund SCA SICAV-SIF, BlueMountain Kicking Horse Fund L.P., BlueMountain Logan Opportunities Master Fund L.P., BlueMountain Foinaven Master Fund L.P., and BlueMountain Credit Opportunities Master Fund I L.P. (collectively, “BlueMountain”), by their undersigned counsel, submit this memorandum of law in response to submissions of American International Group, Inc., Aegon and Blackrock Financial Management, Inc. concerning distribution of the portion of the \$8.5 billion Bank of America settlement payment (the “Settlement Payment”) relating to the CWALT 2007-OA3 trust (the “OA3 Trust”).

PRELIMINARY STATEMENT

BlueMountain adopts the arguments of Respondents Prosirris Capital Management LP and Tilden Park Capital Management LP. BlueMountain writes separately very briefly to address two fundamental flaws in the senior tranche-holders’ arguments.

First, the explicit and unambiguous terms of the Settlement Agreement and the PSA for the OA3 Trust mandate the distribution of the Settlement Payment advocated by BlueMountain, Prosirris, and Tilden. As a matter of law, this should end the Court’s inquiry.

Second, the Settlement Agreement and the PSA compensate bondholders for losses realized by the trusts in a fair and reasonable manner that respects the senior tranche holders' position in the payment waterfall. To the extent senior tranche holders have suffered realized losses, they will be compensated for those losses before the more junior bondholders.

ARGUMENT

The Settlement Agreement unambiguously mandates that the Settlement Payment be treated as a "Subsequent Recovery" and, under the pooling and servicing agreement ("PSA") governing the OA3 Trust, Subsequent Recoveries unambiguously must, among other things, be used to compensate bondholders for realized losses. (*See, e.g.*, AIG Br. at 8; OA3 Trust PSA § 4.02.) As matter of law, this should end of the Court's analysis.

The Settlement Agreement and the PSA are unambiguous and, in such a circumstance, the Court should reject the senior tranche holders' invitation to ignore those unambiguous terms in favor of supposed evidence of the general structure of the trusts, the senior tranche holders' intent, course of dealings and practice in the industry. *See, e.g., R/S Assoc. v. New York Job Dev. Auth.*, 98 N.Y.2d 29, 32, 744 N.Y.S.2d 358, 360 (2002) ("[W]hen parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms."); *Greenfield v. Philles Records, Inc.*, 98 N.Y.2d 562, 569 – 570 (2002) ("if the agreement on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect its personal notions of fairness and equity"); *W.W.W. Associates, Inc. v. Giancontieri*, 77 N.Y.2d 157, 162, 65 N.Y.S.2d 440, 443 (1990) ("A familiar and eminently sensible proposition of law is that, when parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms. Evidence outside the four corners of the document as to what was really intended but unstated or misstated is

generally inadmissible to add to or vary the writing.”); *Varsity Transit, Inc. v. Bd. of Educ. of City of New York*, 300 A.D.2d 38, 40, 752 N.Y.S.2d 603, 605 (1st Dep’t 2002) (holding that a party “may not ask that the court resort to evidence of a subsequent course of dealing” when a contract is unambiguous).

To the extent the Court chooses to look beyond the unambiguous text of the Settlement Agreement and the PSA—and it should not—the senior tranche holders’ appeals to fairness and avoiding unintended “leakage” ignores that the distribution required by the Settlement Agreement and the PSA is entirely fair.

The point of the Settlement Payment is to compensate trust beneficiaries for losses inflicted on the trusts. All BlueMountain seeks—and what the Settlement Agreement and the PSA require—is that the Settlement Payment be used to compensate bondholders for losses realized by the trusts. They do this in a completely fair and reasonable manner that respects the senior tranche holders’ position in the payment waterfall. To the extent senior tranche holders have suffered realized losses, they will be compensated for those losses before the more junior bondholders.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the submission by Prosirris, and Tilden, the Court should hold that the Settlement Payment should be paid by distributing the Allocable Shares prior to writing-up certificate principal balances.

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