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VANESSA MILLER
Senior Court Reporter

1 Proceedings

2 THE COURT: Okay. So I have the second group
3 of objectors today; correct? You've sent me some
4 information and some documents by e-mail a couple of days
5 ago; correct?

6 All right. How do you want to present this?
7 Someone has a screen up, so I assume that someone wants
8 to use that screen, unless you're giving it to me as a
9 gift, then I say thank you very much.

10 MR. MOLO: I want to use the screen, your
11 Honor.

12 THE COURT: Okay. So why don't we start with
13 AIG?

14 All right. Go ahead.

15 MR. GOLDSTEIN: Can I speak from, your Honor,
16 here?

17 THE COURT: Where's our podium? I mean, it
18 might be better, if you'd like to, you can use the
19 podium.

20 MR. GOLDSTEIN: Sure. Thank you.

21 And, your Honor, I have some demonstratives
22 which I may refer to, if that's all right.

23 THE COURT: Okay. Good.

24 Let's mark this as a Court exhibit as Defendant
25 AIG's 1.

26 (Whereupon Defendant AIG's Exhibit 1, was marked

Proceedings

and received into evidence by the court reporter.)

MR. GOLDSTEIN: Thank you, your Honor. Jordan Goldstein for AIG and its affiliates.

As we argued in our August 12th submission, your Honor, and in prior submissions, the Standard Intex Method is the most appropriate way to distribute the remaining settlement payment as to the 17 trusts that are still at issue, and that's for four reasons: The first is that it's the most consistent with the structure and intent of the settlement agreement; second, it's the most consistent with the structure and intent of the pooling and servicing agreements; the third, it avoids a absurd and commercially unreasonable result, which is what would occur were Tilden's preferred methods to be followed; and the fourth is it's the most consistent with the expectations of the market participants.

Just to address each of them in turn --

THE COURT: Okay.

MR. GOLDSTEIN: -- the trustee testified in the first Article 77 proceeding before Justice Kapnick that the purpose of the settlement agreement was to ensure that the most senior holders were paid in advance of the more junior holders and the Standard Intex Method assures that.

The second is that the settlement agreement

1 Proceedings

2 reflects a paid-first-write-up-second methodology, which
3 obviously, we spent a lot of time on in the earlier parts
4 of this proceeding. The purpose of that
5 paid-first-write-up-second methodology is that money is
6 distributed based upon the pre-distribution balance of
7 the certificates. In other words, if the certificate is
8 entirely written down, it's generally going to get
9 nothing. And to the extent it has a small principal
10 balance, it would only get a very small pro-rata portion.
11 Again, the Standard Intex Method reflects that.

12 In terms of the pooling and servicing
13 agreements, we've cited a lot of law in our briefs which
14 are -- the main point being that you read agreements as a
15 whole, and you read it contextually and you don't read
16 clauses in isolation. The key purpose of the PSAs,
17 pooling and service agreements, is that the most senior
18 bonds are insulated from losses, and that's through two
19 methods: One is over collateralization. In other words,
20 the underlying collateral exceeds the balance of the
21 certificate; and the second is, to the extent that
22 collateral arose, the most junior certificates take
23 losses first in order to insulate the more senior ones in
24 the capital structure --

25 THE COURT: So if I went back to those 65 days
26 of hearing that we had on the first settlement on the

1 Proceedings

2 settlement agreement, would that be reflected in the
3 transcript of those hearings that the philosophy of the
4 settlement agreement was that senior secured were going
5 to be over collateralized, junior secured were going to
6 take the losses first, which is the way it generally
7 occurs, right? Junior certificate holders take the
8 losses first. And so they may be written up to a hundred
9 percent; correct? And then if there are additional
10 losses, the senior certificate holders take them and
11 payment is the other way; correct?

12 MR. GOLDSTEIN: Yes.

13 THE COURT: And is that reflected in the
14 transcript from the settlement agreement, that that was
15 how the parties intended that this settlement be
16 distributed?

17 MR. GOLDSTEIN: Yes.

18 Your Honor, on Page 15 of the brief we put in on
19 August 12th, there is a quote from Jason Kravitt,
20 attorney at Mayer Brown, counsel for the trustee, where
21 he says precisely that. And we have a fairly lengthy
22 block quote. I'm not going to read it, but it reflects
23 that principle.

24 THE COURT: And so does someone who buys, for
25 example, a junior subordinated debt in the market, would
26 that be -- or subordinated bond, I guess it would be,

Proceedings

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2 would that be the same price as a senior bond? In other
3 words, the value of the junior bond is much less;
4 correct?

5 MR. GOLDSTEIN: Right, right.

6 THE COURT: And that reflects the understanding
7 that it may or may not be that the junior bonds get paid,
8 so, therefore, you can buy them in much more, I guess,
9 cheaply than senior bonds; is that correct?

10 MR. GOLDSTEIN: That's correct.

11 So we don't have visibility on what Tilden and
12 Prosiris paid for their bonds. But our understanding --

13 THE COURT: Were Tilden and Prosiris holders of
14 junior bonds at the time of the settlement agreement?

15 MR. GOLDSTEIN: I --

16 THE COURT: Or I will ask them.

17 MR. GOLDSTEIN: Perhaps --

18 THE COURT: Where are they?

19 MR. MOLO: What was the question?

20 THE COURT: Were you holders of bonds at the
21 time of the settlement agreement?

22 MR. MOLO: Excuse me. I'll find out for sure.

23 (Pause in proceedings.)

24 MR. MOLO: To be clear, at the time that the
25 settlement was presented, we were not, but --

26 THE COURT: You were not.

1 Proceedings

2 MR. MOLO: But by the time --

3 THE COURT: So you had no -- by the time the
4 settlement agreement had already been put into place, you
5 bought.

6 MR. MOLO: No. By the time it was final, we
7 had --

8 THE COURT: So the testimony --

9 MR. MOLO: So it was during the period of time.

10 THE COURT: So the testimony had already
11 occurred when you bought.

12 MR. MOLO: Correct. As is the case --

13 THE COURT: So there was no surprise to you
14 that the testimony had occurred when you bought -- the
15 testimony that we're talking about right now and in front
16 of Judge Kapnick where the scheme was --

17 MR. MOLO: Right. We very much bought with
18 purpose.

19 THE COURT: Okay. Good.

20 MR. MOLO: And AIG, by the way, I believe is
21 similar --

22 THE COURT: I'm just asking you. I don't want
23 there to be any dispute that you bought in knowing what
24 the deal was.

25 MR. MOLO: Correct, correct.

26 THE COURT: It wasn't what you bought in after

1 Proceedings

2 all the testimony explaining how this was supposed to
3 happen.

4 Okay. Good. Thanks. Okay. Go ahead.

5 MR. GOLDSTEIN: Sure.

6 So, as I said, there are four reasons, starting
7 with the settlement agreement, and that's what we just
8 discussed. In terms of the pooling and servicing
9 agreements, the structure of those deals is to protect
10 the most senior holders from losses and Tilden's approach
11 usually flipped that on its head. It has the senior
12 holders receiving less than half of the settlement and
13 has junior holders, including ones that are completely
14 written down, receiving the lion's share of the
15 settlement.

16 Tilden put in two experts affidavits. What's
17 interesting is that neither of them has any coherent
18 explanation for why the result that Tilden's advocating
19 makes any sense. For example, if the settlement payment,
20 we gave this example in our brief, instead of being paid
21 all next month, for example, were just spaced out over
22 ten months, one ten next month, one ten the month after,
23 one ten the month after that, virtually all of this flows
24 to the super senior holder. It really is this fortuity
25 that all of this would actually come in in a single
26 month, that, under their interpretation, leads to this

1 Proceedings

2 leakage to the more junior holders.

3 And the second point is their experts have not
4 put forward any explanation that this structure was
5 intentional; that the parties to the PSAs ever intended
6 that this would result. In addition, their experts don't
7 contest that the Standard Intex Method most accurately
8 reflects how market participants understood these deals
9 to function.

10 And, finally, we put in an affidavit from Intex.
11 And, obviously, as your Honor knows, we took discovery
12 from them in order to get to that point. In Intex, that
13 affidavit make very clear that the Standard Intex Method
14 is; A, a default method for all 17 trusts; and, B, for,
15 really, the last all or nearly all of the last five years
16 has been the default method for all of those trusts.

17 So, again, to your Honor's point, certainly
18 Prosirris and Tilden would've been aware, at the time they
19 purchased, it appears, that this is how the market
20 understood these to function. And I'm happy to answer
21 any questions about that, your Honor. I'm also happy to
22 address some of the points in their brief that they put
23 in on August 26th.

24 So on --

25 THE COURT: I guess I have two questions.

26 MR. GOLDSTEIN: Yes.

Vanessa Miller Senior Court Reporter

1 Proceedings

2 THE COURT: One is that I know I spoke with
3 Justice Friedman weeks ago about her decision that she
4 recently made. And I wanted to ask you whether you
5 thought there was anything in Justice Friedman's decision
6 that is relevant here. I've read it a couple of times,
7 but, I mean, it's not quite the same issue. It's more an
8 issue of whether or not the settlement was, I guess,
9 similar to an arbitrary and capricious type of --

10 MR. GOLDSTEIN: Right.

11 THE COURT: But is there anything in that
12 decision that you want to point out here?

13 MR. GOLDSTEIN: Yes, your Honor.

14 So the Gibbs & Brun law firm, on behalf of their
15 holders, put in a submission, but I think the key point
16 that they highlighted was on this record date argument.
17 So Tilden and Prosirris were basically arguing that if
18 there is a payment that occurs subsequent to the Court
19 entering judgment, that the trustee should, essentially,
20 relate -- should pay it based upon the principal balances
21 as they existed in February 2016.

22 So the key point, key response to this -- and
23 this is consistent with a portion of the opinion that you
24 just mentioned that Gibbs & Bruns flagged their
25 supplemental submission, which I believe they put in on
26 August 12. It was a little later in the day after we put

1 Proceedings

2 in our primary submissions, is, there's nothing in the
3 pooling and servicing agreements that permits payment
4 based upon principal balances or based upon the principal
5 balances other than on the date of which the payment is
6 made. So there's simply nothing in the PSAs that
7 support -- there's no logic that really supports that.

8 I mean, the settlement agreement was agreed to
9 in June of 2011. There's no reason why February 2016 is
10 some magic date that everything should relate back to.
11 And Tilden and Prosirris have not put in any principal
12 reason for why February 2016 is the relevant date other
13 than, I presume, that they would make more on that date
14 rather than June of 2011.

15 They do cite the delay that's occurred since
16 February. I mean, that, quote, unquote, "delay" is
17 because the trustee filed a verified petition seeking an
18 instruction from the Court. And Tilden singled out its
19 14 trust as unique, and that's their word, unique and
20 deserving of some special treatment. And so we've
21 litigated that. And so that's the nature of these
22 things. Tilden also argues that part of the reason
23 there's been delay is because we sought discovery on
24 Intex. Now, Tilden actually cites that Intex discovery
25 in support of its position. And it seems difficult to
26 come to understand why the Intex discovery is relevant

1 Proceedings

2 when Tilden cites it, but somehow, irrelevant or dilatory
3 when we cite it. And then, finally, the trustee itself,
4 in prior hearings before your Honor, has said that
5 Tilden's approach would be impractical, and that's the
6 trustee's word.

7 So the J.P. Morgan decision has some references
8 to record date issues and so on, and it's consistent with
9 the position that AIG has articulated.

10 THE COURT: And the last thing: You brought up
11 that one trust -- Prosirris and Tilden didn't have any
12 interest in one of the trusts?

13 MR. GOLDSTEIN: Right.

14 THE COURT: And I didn't see anything that was
15 inconsistent with that; is that correct? I wrote it
16 down.

17 MR. GOLDSTEIN: There's the CWALT 2007 OA10.

18 THE COURT: Right.

19 MR. GOLDSTEIN: I mean, in one of their initial
20 pleadings, they gave a list --

21 THE COURT: Right. But, okay. And so in your
22 pleading, I tagged it. Let me --

23 MR. GOLDSTEIN: I don't believe they disputed
24 that point.

25 THE COURT: Is that correct? That you
26 don't -- one of the AIG trusts, CWALT 207 OA10, Prosirris

1 Proceedings

2 and Tilden doesn't have an interest in; is that correct,
3 Counsel?

4 MR. MOLO: Yes.

5 THE COURT: So that's going to go. I mean, you
6 can prepare a judgment for that one.

7 MR. GOLDSTEIN: Okay. Thank you, your Honor.

8 THE COURT: Because you don't have standing to
9 object to that one; correct?

10 MR. MOLO: Right.

11 THE COURT: Okay.

12 MR. GOLDSTEIN: I'm sorry. I just want to
13 respond quickly to just a couple of points that they
14 mentioned in their August 26 brief.

15 One of the points they make is that AIG is
16 somehow collaterally estopped from maintaining its
17 present position. And there are three responses to that,
18 your Honor: The first is that our arguments in the
19 initial pleadings that they're citing are the March 4th
20 ones were made in response to the verified petition. The
21 verified petition raised an issue of transitory over
22 collateralization, this idea of whether or not there
23 would be a mid-month calculation of over
24 collateralization that would result in leakage. So our
25 arguments were directly responsive to that. It was not
26 responsive to distribution amount or the 17 trusts. So

1 Proceedings

2 we simply did not join issue in those initial pleadings.

3 Secondly, to the extent there is an overlap, our
4 position has been consistent. It's been that the super
5 senior holders, based upon the structure of the bond,
6 should receive priority and there should not be leakage
7 with the juniors. So there's simply not a conflict.

8 And the third, in our later submissions, we
9 specifically carved out, at the point that we knew that
10 the 17 bonds were at issue, we responded only to the --
11 at one point, 515 then it was 512, but we responded to
12 the bulk of the bonds. And we expressly carved out, and
13 then the parties disagreed about these remaining bonds.
14 We're going to deal with them separately. So there
15 really is no collateral estoppel issue, but I just wanted
16 to respond to that.

17 And, also, they raised a res adjudicata issue.
18 I don't quite see what that would be. We've always
19 agreed that the settlement agreement should be enforced,
20 the question is how to interpret things. But AIG's
21 position, just to be clear, is that the settlement
22 agreement is binding and should be enforced.

23 THE COURT: No. I don't think that -- I mean,
24 you can argue that, but I didn't argue that with you. I
25 don't think there's any res adjudicata or collateral
26 estoppel here. But I'm happy to hear argument on it, if

1 Proceedings

2 you want to. I wouldn't focus on it if I were you, okay.

3 Anything else?

4 MR. GOLDSTEIN: Just quickly to conclude, your
5 Honor --

6 THE COURT: Go ahead.

7 MR. GOLDSTEIN: -- just to go back to your
8 Honor's question at the beginning: Tilden purchased
9 these bonds for, it appears, a very small percentage on
10 the dollar. Presumably this was --

11 THE COURT: After the settlement.

12 MR. GOLDSTEIN: After settlement.

13 THE COURT: And this is going to be my first
14 question to you, Counsel: You were not involved in
15 negotiating, drafting, hearing anything with your clients
16 about the settlement agreement. That's the first
17 question I asked you. You took afterwards, and you took
18 a look at these two documents, and my sense is that you
19 found a little hook, and so now you're arguing something
20 that I don't really think anyone who entered into that
21 settlement agreement ever thought was going to happen.
22 So that is my first discussion with you.

23 And, frankly, since you weren't around and you
24 didn't have anything at the time of the settlement
25 agreement was put in place, from an overall perspective,
26 that's what it looks like. And so the question then

Proceedings

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2 becomes is your interpretation what the parties, who
3 entered into the settlement agreement, thought was going
4 to happen? Number one; number two, is it commercially
5 reasonable to pay junior written-off debt more than
6 senior debt? I mean, these are issues that you really
7 need to focus on.

8 MR. MOLO: I look forward --

9 THE COURT: I don't see them.

10 MR. MOLO: -- to doing it.

11 THE COURT: And I'm sure you can hear the
12 reason why I'm asking you these questions, because what
13 you are arguing is, in some ways, viscerally
14 counterintuitive. So --

15 MR. MOLO: I look forward to it.

16 THE COURT: Good. Let's go.

17 MR. GOLDSTEIN: Thank you, your Honor.

18 MR. SHEEREN: And, your Honor, it might make
19 sense for the remainder of the super seniors to present
20 before --

21 THE COURT: Oh. Does anyone else have any
22 other arguments that they want to add in?

23 MR. SHEEREN: Yes, your Honor. Just briefly.

24 THE COURT: Sure. Absolutely.

25 I'm sorry. I didn't mean to --

26 MR. GOLDSTEIN: No.

1 Proceedings

2 THE COURT: I didn't mean for you to only take
3 AIG's position.

4 MR. SHEEREN: Not at all. Not at all. Thank
5 you, your Honor.

6 David Sheeren on behalf of AEGON and BlackRock,
7 who, like AIG, are super senior holders. Our clients
8 hold in 16 of the 17 trusts, so they hold them broadly.

9 We join in the arguments you just heard from
10 AIG, but I wanted to make a couple of additional points:
11 The fundamental goal of any contract interpretation has
12 to be the effectuated intent of the parties; that's the
13 goal. And, your Honor, Tilden Park and Prosirir's
14 interpretation isn't just inconsistent with the intent of
15 the parties, the settlement agreement, to the governing
16 document, the PSAs and with respect to prospectus
17 supplements. It's the total opposite. It would flip
18 seniority structure in these trusts. As your Honor
19 pointed out, that is viscerally counterintuitive. Not
20 only is it counterintuitive, it's just a flawed
21 interpretation of a contract read as a whole. It doesn't
22 make any sense. And the case law in New York says, Look
23 at the commercial reasonableness of the outcome that the
24 parties are advocating. And, here, the outcome is
25 fundamentally unreasonable. And I'm going to walk
26 through a couple of points about that.

Vanessa Miller Senior Court Reporter

1 Proceedings

2 And, by the way, the trustee's petition pointed
3 out what should be the obvious point, which is the
4 essential purpose of over collateralization is to
5 insulate the senior from losses. They recognize that.
6 That's obviously front and center of our arguments. And
7 to follow the Tilden Park interpretation would be the
8 exact opposite of insulating the seniors from losses. We
9 pointed out in our briefs that the prospectus
10 supplements, which are, by law, incorporated into the
11 parties' contract, and, therefore, form part of the
12 agreement among the parties, those prospectus supplements
13 describe in detail the purpose of subordination and the
14 purpose of over collateralization. And you see exactly
15 the trustee's point that they had central purpose is to
16 insulate the seniors from losses. So that's the purposes
17 of these deals.

18 We showed in our brief that if you followed
19 Tilden's Park approach, shortly after the settlement
20 payment was made, the seniors are going to suffer tens of
21 millions in losses; that can't be the purpose of these
22 contracts, your Honor. Under the standard commercially
23 reasonable Intex approach, the seniors wouldn't suffer
24 losses for six to eight years in the example we gave in
25 our brief. And on that basis alone, frankly, you can see
26 whose interpretation reasonably effectuates the intent of

1 Proceedings

2 the drafters here.

3 Second main point, your Honor, is when you read
4 the Tilden Park response, they talk about a cap on
5 principal distribution. There's this cap. They call it
6 a cap. It's a cap. That's the sole basis on which they
7 say tens of millions of dollars should flow to their
8 junior bonds because of this cap. But there's no
9 explanation of the cap in the brief. But as your Honor
10 knows, the cap is this defined termed called the over
11 collateralization target amounts. Tilden Park says, Once
12 you reach the over collateralization target amounts, any
13 marginal dollar on top of that goes to their bonds. Your
14 Honor, if that was a reasonable basis to allow leakage,
15 you would think their brief would reference the term
16 "over collateralization target amount." When you look at
17 the brief, they don't even talk about it. It's in one of
18 the 120 footnotes. They are running from that term
19 because it doesn't make any sense to cap the principal
20 distributions by that thing called the over
21 collateralization target amount.

22 And, by the way, over collateralization target
23 amount, it sure sounds like it has something to do with
24 over collateralization, but even Tilden Park, in their
25 prior briefs to the Court, admitted that the settlement
26 payment itself doesn't create over collateralization.

1 Proceedings

2 There's no temporary illusory over collateralization;
3 Tilden Park argued that. And so they're running from
4 that term because it doesn't make sense to cap
5 distributions based on the appearance of the over
6 collateralization target being met. So that's an
7 important point. And you also see that the expert
8 reports that they've submitted totally ignore that term.
9 It doesn't appear in the expert reports because,
10 candidly, it doesn't make any sense. So what can they
11 say about it?

12 So just to close, your Honor, we agree with AIG
13 that the commercially and reasonable outcome here is the
14 payments of the settlement funds in full to the
15 senior-most bonds. And, your Honor, you see the market
16 expectations not only in the Jason Kravitt testimony, who
17 obviously was a key witness at the trial --

18 THE COURT: I did see it. I read the
19 testimony. Yes.

20 MR. SHEEREN: But, your Honor, Intex hadn't
21 even created this toggle that would align with Tilden
22 Park's interpretation until 2014. The settlement
23 agreement was posted in June of 2011 and the trial
24 concluded in November of 2013 and we got a trial order
25 shortly thereafter. So they're late to the game. And
26 they clearly have, you know, an opportunistic textural

1 Proceedings

2 argument, but it doesn't make any sense. For that
3 reason, we would ask the Court to overrule their
4 objection.

5 Thank you.

6 THE COURT: Okay. Thank you, Counsel.

7 Did you want to add to that?

8 MS. KLEIN: Your Honor, we are a senior
9 support certificate holder. And we suggest that it's
10 probably best for us to bring up arrears since we are
11 advocating for the write up first pay second.

12 MR. MOLO: Yes. It is my screen.

13 THE COURT: And a very nice one it is.

14 MR. MOLO: Thank you very much. Thank you very
15 much. I hope you'll agree with the contents that you're
16 about to see on it.

17 We are here, Judge, seeking to enforce the
18 settlement agreements as written and the PSA as
19 written --

20 THE COURT: Well, let me just say this, let's
21 lay this out: You weren't a party to the original
22 proceeding, although AIG, BlackRock and AEGON were.

23 MR. MOLO: Correct.

24 THE COURT: So at the time that this settlement
25 agreement was reached, you had no interest in this; you
26 had no idea what the intent of the parties from the

1 Proceedings

2 settlement agreement is; you weren't here for the
3 testimony; you didn't hear any of that; correct?

4 MR. MOLO: Right.

5 THE COURT: So I hear from the parties who
6 actually were --

7 MR. MOLO: Right.

8 THE COURT: -- negotiating the settlement
9 agreement, who were part of the settlement agreement, and
10 they tell me this is what everyone intends, that's what I
11 see. And I certainly was not a party to that. But it is
12 clear to me that everyone who was here at the time is
13 taking a different view from you about how this
14 settlement agreement should be read.

15 MR. MOLO: Okay. Well --

16 THE COURT: So we start with that.

17 MR. MOLO: Two points of clarification.

18 THE COURT: Yes.

19 MR. MOLO: I don't believe that AIG owned these
20 bonds.

21 THE COURT: Okay. They may not have owned
22 these particular bonds.

23 MR. MOLO: Right. But they were clearly
24 involved. They were at the table.

25 THE COURT: They knew what was going on.
26 Everyone knew what you intended to do and everyone that

Proceedings

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2 was there, at the time when the settlement agreement was
3 entered into, is telling me exactly the opposite from
4 you, the buyer later, thinks that the settlement
5 agreement --

6 MR. MOLO: I, with all due respect, disagree
7 with you --

8 THE COURT: Tell me who agrees with you who was
9 there at the time.

10 MR. MOLO: Jason Kravitt.

11 THE COURT: Okay. He was not -- and he didn't
12 hold any --

13 MR. MOLO: No. He was the lead negotiator, as
14 Mr. --

15 THE COURT: He was not a holder.

16 MR. MOLO: He was the -- they quote Jason
17 Kravitt in their brief, and I agree with Jason Kravitt.

18 THE COURT: All right.

19 MR. MOLO: I embrace the quotation that he
20 gave.

21 THE COURT: Yes. All right.

22 MR. MOLO: Let me just tell you what he said.
23 This was his testimony: "The tranches who are the most
24 senior who suffered losses get the cash first." That's
25 from their brief. "The tranches who are the most senior
26 who suffered losses get the cash first." And in these

Proceedings

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2 particular trusts, with the language of these PSAs, those
3 tranches are the tranches that are held, the bonds that
4 are held by Tilden Park and Prosiris.

5 Let me just show you, Judge --

6 THE COURT: Okay.

7 MR. MOLO: You know, we're painted as these
8 evil junior bondholders --

9 THE COURT: Not evil. Let me say, I don't
10 think you look -- in fact, I see a halo over your head.

11 MR. MOLO: Thank you very much.

12 THE COURT: But what I am saying is you
13 certainly paid a lot less, a lot less for your interest
14 in this trust than the senior bondholders; correct?

15 MR. MOLO: Well, I --

16 THE COURT: And why do you think you paid less?
17 Because you're supposed to get half of the recovery? Do
18 you think that that makes sense?

19 MR. MOLO: Well --

20 THE COURT: I mean --

21 MR. MOLO: I'd like to explain to you how it
22 does.

23 THE COURT: Okay. Let me see how this does.
24 Yes.

25 MR. MOLO: Okay. So, first, we start with this
26 proposition that we're not the super seniors.

1 Proceedings

2 THE COURT: Correct.

3 MR. MOLO: That's the people here who are on
4 the other side of this table --5 THE COURT: Is that like a super delegate? You
6 can never -- you have to vote and that's it? You can't
7 change your mind?

8 All right. Yes.

9 MR. MOLO: But what we are are the senior
10 support certificate. We're the second tranche in the
11 debt class. And this is a debt class that as whatever it
12 is, 14, 15 classes up there in this particular
13 securitization. And that's the position that we
14 routinely maintained in these trusts.

15 Now, we're not risky junk bonds --

16 THE COURT: Wait a second. Now, let me ask
17 you: You see this list?

18 MR. MOLO: Yes.

19 THE COURT: Is any of the other certificate
20 holders but you making this claim about how the money
21 should be distributed?

22 MR. MOLO: Well, those --

23 THE COURT: Yes or no? All those other
24 classes, have any of them put in briefs about how they
25 should -- the money should be distributed? You're
26 agreeing that this is --

1 Proceedings

2 MR. LUNDIN: Yes. Our submission, which is very
3 short, makes a couple of points, but, basically,
4 Tilden --

5 THE COURT: Which class are you?

6 MR. LUNDIN: I must confess, your Honor, I
7 don't know the particular tranche. And to anticipate
8 your question, sitting here today, I do not know when my
9 clients purchased their bonds.

10 THE COURT: Well, then, you weren't here at the
11 time? You, Counsel, were not?

12 MR. LUNDIN: No. I was not in the proceeding.

13 THE COURT: Okay. So then you are after
14 settlement, probably prior to when this is --

15 MR. LUNDIN: I don't know, your Honor. But I
16 can assure you that I certainly had no involvement in the
17 settlement.

18 THE COURT: Okay. Thank you.

19 MR. MOLO: Okay. So the point of this chart is
20 to show that we're not at the bottom. In fact, we were
21 very, very senior. And, in fact, these bonds are
22 triple-A rated. And what these bonds had, again, putting
23 these transactions in context, 14 deals, the average
24 value of the deals was a billion dollars. It ranged from
25 375 million to two-and-a-half billion. You had the five
26 primary securitization underwriters involved in this;

1 Proceedings

2 UBS, Deutsche Bank, Barclays, Countrywide, Bank of
3 America. And the three key law firms, Sidley, McKee
4 Nelson, Thacher Proffitt. So these are highly
5 negotiated, sophisticated transactions. And I think your
6 Honor knows, these are not deals where somebody says,
7 Let's go to a securitization deal and then let's go sell
8 bonds. They put these deals together with key
9 bondholders, or the key tranches having negotiated the
10 terms. So no two deals are necessarily alike. Some of
11 them are alike.

12 And the reason I showed you this is we're not
13 talking about this being like a Sidley Austin form or a
14 Thacher, Proffitt form or a UBS form. These are all
15 different deals with these key players all involved and
16 they have this language --

17 THE COURT: So what I suspect is that all these
18 bonds are out there and you're buying bonds only because
19 now your PSAs have an interesting twist to them, or
20 something going on with them, that 90 percent of the
21 other bonds don't have.

22 MR. MOLO: Yes.

23 THE COURT: And so you say, Hey, maybe I might
24 get Scarpulla, in terms of my bonds, to interpret the
25 settlement agreement in a way that is different because
26 all of the other 500 trusts have taken their money in a

Proceedings

1
2 certain way.

3 MR. MOLO: You don't have to do that.

4 THE COURT: Right?

5 MR. MOLO: You don't have to do that.

6 THE COURT: No?

7 MR. MOLO: No. You don't have to do that at
8 all. In fact, you should interpret the settlement
9 agreement just as its written, just as Jason Kravitt said
10 it, on the senior-most tranche, or, "the tranches who
11 were more senior who suffered the losses get the cash
12 first." So that's what the settlement agreement says and
13 that's what was intended.

14 These particular PSAs, you're absolutely right.
15 The language in these PSAs is a little bit different,
16 although significantly so when we are talking about the
17 amount of money at stake in this particular situation,
18 but it's a little bit different --

19 THE COURT: And that's why you bought those
20 bonds.

21 MR. MOLO: Correct.

22 THE COURT: Correct?

23 MR. MOLO: Absolutely.

24 THE COURT: That's my whole point. You bought
25 the bonds thinking, Maybe I'm going to get come into
26 court and convince this Court that my interpretation

1 Proceedings

2 between the PSA and the settlement agreement gets me
3 something that the other 500 trusts, which have a little
4 bit different language, don't get.

5 MR. MOLO: Well, a little bit different
6 language is, we know in the world we live in, can make a
7 great deal of difference.

8 THE COURT: I don't know that that makes a
9 difference in a commercially reasonable -- whether a
10 interpretation of the settlement agreement is
11 commercially reasonable as a whole.

12 MR. MOLO: Okay. Well, may I?

13 THE COURT: Yes.

14 MR. MOLO: Okay. All right.

15 THE COURT: Yes.

16 MR. MOLO: So I want to address two points.
17 I'm going to talk about the language in one second. But
18 before that, what the super seniors have here in over
19 collateralization, put very plainly, is credit
20 enhancement; right? These are bonds that were safer
21 than people further down the chain because of that
22 feature of over collateralization; right? That was
23 negotiated among these parties in the various deals that
24 were done. What the senior support certificate holders
25 had, again, because, you know, they're at the top, you
26 know. I can't tell you right now what the interest rates

Proceedings

1
2 were for each of these bonds, but, obviously, you know,
3 they're getting some kind of protection here. The
4 protection they got was the specific language in the
5 waterfall here that wasn't present in these other deals,
6 just as you said. I agree, Judge. This is language that
7 is different.

8 Now, you asked me is it commercially reasonable.
9 Absolutely it's commercially reasonable, because if
10 you're going to buy that bond, and you're subordinated,
11 there's no question you're subordinated to the super
12 senior. If you're subordinated, you want to still get
13 whatever protection you can get. And, you know, between
14 Sidley Austin, McKee Nelson, Thacher Proffitt and all
15 those underwriters in these 14 deals, with whoever the
16 original bondholders were, that negotiation occurred and.
17 This was the credit enhancement that number two in the
18 debt stack get.

19 THE COURT: But that is after the settlement
20 agreement. So you can --

21 MR. MOLO: No. This was here before the
22 settlement agreement. This is here when these parties
23 decided, no, the settlement agreement says what it says,
24 what these parties decided is reflected in the PSA. I'm
25 not --

26 THE COURT: I have to say, when I looked back

Proceedings

1
2 and looked at the transcript and I asked Judge Kapnick
3 this question, did anyone suggest, while these days and
4 days and days of hearings, that this is the way any part
5 of the settlement was going to be paid out, she said no.
6 And if you can point to me testimony during the hearing
7 of the settlement agreement where this -- the way that
8 specifically now you're asking me to interpret the
9 settlement agreement would be, I'd love to read that.
10 That would be very helpful.

11 MR. MOLO: Sure. I mean, but I'm telling you
12 right now what was designed here -- and I'm going to get
13 the language, okay. We'll go to the language of the PSA.
14 What was designed in these bonds. You're absolutely
15 right. We bought these afterwards. This wasn't
16 something that we came up with. This was something that
17 at the time these deals closed between 2005 and 2007,
18 these sophisticated parties, advised by top Wall Street
19 lawyers, came to the conclusion that the super seniors
20 would get credit enhancement through over
21 collateralization and the senior support certificates
22 would get credit support, being number two in the chain,
23 they would get credit support by the language in the
24 waterfall --

25 THE COURT: Again, I would like you to point me
26 out anywhere, in the entirety of the settlement agreement

1 Proceedings

2 testimony, where anyone said, By the way, Judge Kapnick,
3 with respect to some of these trusts, the senior over
4 collateralized will not get paid before the junior
5 bondholders. I didn't see that anywhere.

6 MR. MOLO: Well --

7 THE COURT: And that leads me to believe that
8 no one anticipated that. If you have testimony, and I
9 won't hold you to it today, but if you have testimony to
10 that effect, I would love to see it.

11 MR. MOLO: Okay. But the question is --

12 THE COURT: Because my job here is not about
13 what happened between you in 2005 --

14 MR. MOLO: I understand.

15 THE COURT: -- and 2007. Mine is a settlement
16 agreement was reached; the parties negotiated that
17 settlement agreement; they intended to have a certain
18 effect. And so what I need to do is to put that intent
19 in place.

20 MR. MOLO: Agreed.

21 And the number one intent -- I mean, in addition
22 to what Mr. Kravitt said, is apply the PSAs as written --

23 THE COURT: No.

24 MR. MOLO: It says that.

25 THE COURT: That is not correct.

26 MR. MOLO: It says --

1 Proceedings

2 THE COURT: It does not say -- the settlement
3 agreement does not say apply it as -- it says that to the
4 extent there is inconsistency, but that was a different
5 thing.

6 MR. MOLO: This was not inconsistent. And it
7 was fully intended. Again --

8 THE COURT: Yes.

9 MR. MOLO: -- allow me for one second.

10 THE COURT: Yes. All right. Whether or not,
11 I'm going to let you go for a while.

12 MR. MOLO: Okay. You can do whatever you want.
13 I want to make sure any question that you have is
14 answered.

15 Settlement Agreement 3(d), it says "Nothing --

16 THE COURT: Believe me. I've read this
17 settlement agreement more times than I wish I had.
18 Believe me when I tell you.

19 MR. MOLO: "Nothing is intended or shall be
20 construed" --

21 THE COURT: No, no. I tell you lawyers,
22 lawyers, lawyers. Only lawyers can come up with an
23 agreement like that.

24 So, yes. Go ahead.

25 MR. MOLO: But the agreement does say that
26 "nothing is intended or shall be construed to amend the

Proceedings

1 governing agreements"; right?

2 THE COURT: Right. Yes.

3 MR. MOLO: Now, Judge, again, this is highly
4 negotiated. And, I mean, it may have been required, this
5 waterfall provision, in order to get the triple-A rating
6 on these specific deals, that's a possibility here too.
7 But when you say, Well, how could anyone have anticipated
8 it, right? And res adjudicata obviously raises -- it
9 bars any issue that was raised or could have been raised;
10 right?
11

12 In 2010, eight months before the settlement
13 agreement was signed, Credit-Suisse issued an analyst
14 report telling the world that this trustee, BONY,
15 actually paid, as we're saying it should be paid, through
16 the waterfall in this way, all right, on one of the very
17 14 bonds at issue. So there was no mystery about this.
18 This wasn't some little secret gotcha. It was a
19 provision that was negotiated and it was a provision that
20 was tested.

21 In fact, frankly, I don't even think the trustee
22 had to even come here with this proceeding. I think the
23 trustee was pushed because these other big investors were
24 barking at the trustee saying, You can't let this happen,
25 I've got to come to court and have this straightened out.
26 The trustee has done exactly what we're asking be done in

1 Proceedings

2 the past. So now, if, in fact, a different distribution
3 through the waterfall occurred, it's going to be contrary
4 to the only course of dealing that's occurred on these
5 bonds through this PSA.

6 THE COURT: I think that the settlement
7 agreement makes clear that there are things that are in
8 the bonds that are no longer applicable. That's the
9 whole point of the settlement agreement.

10 MR. MOLO: It doesn't --

11 THE COURT: It does. For example, how we treat
12 certain money is set forth in the settlement agreement
13 and it's set forth differently than some of the PSAs.
14 That's what the settlement agreement was there for.

15 MR. MOLO: But the waterfall provision is
16 followup --

17 THE COURT: Okay.

18 MR. MOLO: -- and the way this PSA works is that
19 the settlement proceeds, these are called subsequent
20 recoveries under the settlement agreement, are considered
21 available funds. The available funds under this
22 waterfall first go to pay interest; second, they pay
23 principal up to a principal distribution amount, that's
24 an amount that's calculated. When we were talking about
25 over collateralization, that's not -- I mean, that wasn't
26 something that moved from month to month. The principal

1 Proceedings

2 distribution amount is the key amount. And then, to the
3 most senior tranches of bonds with losses, most senior
4 tranches of bonds.

5 And so the difference here between these other
6 over collateralization trusts that's already been
7 resolved, that those are settled. And these are that the
8 balance, the distribution, the cap, on what the super
9 seniors get is calculated before the balances get written
10 up. You see it uses the term -- this PSA uses the term
11 "immediately prior and not the balance on the
12 distribution date."

13 And if you'll forgive the basicness of these
14 graphics, this is just being done for illustrative
15 purposes. I just want to show you. This is the way the
16 waterfall would normally work when the bonds -- people
17 were paying their mortgages and the bonds would work.
18 The senior holders would get what they get, and this
19 would be the principal distribution, this red line here.
20 So the seniors would get what they get. Then, we, the
21 senior support certificates, would get what we get. And
22 all way on down the line, all the way down the chart that
23 I showed.

24 Now, what happened was in the crux, when people
25 stopped paying their mortgages, okay, or people stopped
26 paying the mortgages that caused the crisis, but the

Proceedings

1 mortgages stopped getting paid. So what was
2 traditionally the revenue into the trust dries up.

3 Who gets paid first? Of course, the super
4 seniors. They're getting their principal distribution;
5 they're getting in interest. And, we, the senior support
6 holders are taking a loss. And these other losses, the
7 other tranches all the way down the road, they're
8 completely out. We were at least getting something,
9 okay.
10

11 So what the settlement agreement does is it
12 treats the payment as a subsequent recovery, okay, and
13 that subsequent recovery comes in. And just like Jason
14 Kravitt said, I just asked you to do what Jason Kravitt
15 said should be done. The senior-most bonds with losses
16 get paid first. And that would be the super seniors. To
17 the extent that they have losses, their losses -- and
18 we're talking across 14 trusts that would make it a very
19 broad generalization. But, I mean, it might be three
20 percent, four percent, or something like that. Our bonds
21 are devalued probably by 35 percent or so. Okay. So
22 they get whatever they get coming to them. We get then,
23 being the senior-most bond that suffered losses, right?
24 The senior-most tranches that suffered losses. So
25 tranche one, tranche two. If there's no more to make up
26 their losses and there isn't enough for us to hit our

Proceedings

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2 principal distribution amount, you know. We're still
3 going to go from maybe 35 percent losses, if this pays
4 as we're saying it should pay and as the trustee paid in
5 2010, we're still going to be 25 percent. I mean, there
6 are still going to be significant losses that these bonds
7 will have experienced. And then it ends.

8 So this is the system. And it makes sense;
9 right? I mean, it makes perfect --

10 THE COURT: No. It doesn't really make sense
11 to me that you paid very little and you get a lot. That
12 doesn't make sense.

13 MR. MOLO: That's a completely different issue.
14 That issue --

15 THE COURT: That doesn't make sense to me.
16 Then why would anyone agree to settle that way?

17 MR. MOLO: Because what we paid --

18 THE COURT: Why would AIG and BlackRock and
19 AEGON, who are there at the time of the settlement, agree
20 to that scheme?

21 MR. MOLO: Because what we paid for the bonds
22 is wholly irrelevant.

23 THE COURT: Okay. Only if I interpret it this
24 way; right?

25 MR. MOLO: No, no. Not at all. Because all
26 I'm asking you to do is interpret the settlement

Proceedings

1 agreement as written and then enforce the PSA as it is --

2 THE COURT: So the one thing I asked you, why
3 were the people that negotiated this settlement
4 agreement, who have the most to lose, agree to that
5 scheme at the time?
6

7 MR. MOLO: Because -- I don't know why. AIG --

8 THE COURT: Well, okay. I have to figure out
9 why, because I have to interpret the settlement --

10 MR. MOLO: No, no. You don't have to figure out
11 why --

12 THE COURT: I do have to figure out what the
13 parties intended when they entered into the settlement
14 agreement. I didn't draft the settlement agreement, nor
15 did your clients. Your clients weren't even around when
16 it came to being negotiated and drafted.

17 MR. MOLO: Because --

18 THE COURT: Sir, can you sit down please?

19 Hold on. Let's go off the record.

20 (Discussion held off the record.)

21 THE COURT: All right. So I'm just going to
22 ask you, my court officer is instructed not to let anyone
23 in the well. I mean, it's just a safety issue.

24 Okay. So what I was saying is that the question
25 of what is irrelevant -- because what the Court is doing
26 and what the Court should be doing is looking first to

1 Proceedings

2 the face of the agreement; right? And the
3 agreement -- when I say "the agreement", it's really two
4 agreements here; it's the settlement agreement and then
5 it's the PSA. And the fact that this bond, again, and
6 these 14 bonds had this waterfall provision, was not a
7 secret. These are smart and sophisticated parties --

8 THE COURT: I know. That's what I'm saying.
9 So the people who negotiated the settlement agreement,
10 which is not verified --

11 MR. MOLO: Right.

12 THE COURT: -- must have known that -- and I
13 cannot imagine that they would have intended this result
14 in negotiating the settlement agreement. Why would they?

15 MR. MOLO: Well, the reason that they would do
16 that is because when you go back to the issue of where
17 these folks were, that high, senior-most bonds,
18 senior-most tranches who've suffered losses. Jason
19 Kravitt didn't say, Our intention is that the super
20 senior be made 100 percent whole and that any over
21 collateralization that they may have enjoined would
22 persist --

23 THE COURT: And he certainly didn't say that in
24 a big payout like this, the junior would get way more
25 than the more senior bondholders.

26 MR. MOLO: No. He said that the senior-most

Proceedings

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2 bonds with losses. And in this situation, we are, to a
3 small extent, the super seniors, but we are the
4 senior-most bond. And that was something that was
5 negotiated by those five underwriters, those three law
6 firms in 14 different deals.

7 Now, I don't know that my friend, Mr. Goldstein,
8 actually read the affidavit that we supplied because the
9 affidavits -- and you're asking about commercial
10 reasonableness, right? So one of them was from somebody
11 that was a senior trader, a person who had done a number
12 of other things related to RMBS. The other gentleman,
13 Aronoff is a lawyer, Cornell-trained lawyer, who started
14 out at Thacher Proffitt, who then went to Paine Webber,
15 who worked for a bond insurer, had extraordinary
16 experience, extraordinary experience in this area. And
17 to the extent the Court -- this is what Aronoff said in
18 his affidavit: "I have over 30 years experience
19 analyzing and designing payment priority, waterfalls, in
20 RMBS transactions." He said, "in payment priority that
21 limits certain cash flow distributions to senior bonds is
22 not at all unusual or unique." He goes onto say that,
23 "the reason that you would do that is to make the
24 less-senior bond more marketable to investors. It's
25 credit enhancement."

26 THE COURT: This is assuming that there's no

1 Proceedings

2 settlement agreement. That's what I'm saying to you.
3 That the settlement agreement -- it's almost like you're
4 pretending that that didn't occur.

5 MR. MOLO: Not at all, because --

6 THE COURT: But you are, because when the
7 settlement agreement comes in, it is not what the parties
8 intended under the original trust agreement. It's how
9 the parties that settled the loss under these trust
10 agreements agreed and intended for the money to be paid
11 out. That's what I'm here to determine.

12 MR. MOLO: Right.

13 THE COURT: Not what the people in 2005 or 2007
14 agreed upon.

15 MR. MOLO: Right.

16 And what they said, the parties in the
17 settlement agreement, was that, "nothing in the
18 settlement agreement is intended or shall be construed to
19 amend the governing agreement."

20 THE COURT: Right. But amending it doesn't --
21 interpreting how to pay out money, I said this at the
22 last hearing, is not amending the settlement agreement. I
23 can tell you that that is where I'm heading.

24 MR. MOLO: It says you treat it as a subsequent
25 recovery, right? That's a designed term in these
26 agreements --

1 Proceedings

2 THE COURT: In the settlement agreement, it is
3 said that they're going to be treated as a subsequent --

4 MR. MOLO: Correct. And this is how subsequent
5 recoveries work under this waterfall in these bonds. And
6 for good reason, because this is a form of credit
7 enhancement to the second-most senior bond tranche of
8 bonds. So it makes perfect sense. It's commercially
9 reasonable. And they've failed to say -- to provide one
10 piece of evidence that says it's commercially
11 unreasonable other than, you know, we want more money and
12 we want to be over collateralized to --

13 THE COURT: I think they put in a lot of
14 information.

15 MR. MOLO: Not on the point of commercial
16 reasonableness.

17 And let's talk about Intex. Okay.
18 Intex -- when I got involved in this case, as your Honor
19 may recall, Intex was -- we were hotly contesting whether
20 Intex should be deposed --

21 THE COURT: We were.

22 MR. MOLO: -- whether we should go to
23 Massachusetts.

24 THE COURT: I wasn't, but you were.

25 MR. MOLO: No. You were there saying, Why are
26 these people in my courtroom bothering me over Intex.

Vanessa Miller Senior Court Reporter

1 Proceedings

2 And I had to ask myself the same thing. Just getting
3 involved in the case, I thought, Wow, this must be really
4 an important thing. And we almost went to Massachusetts
5 for a motion to compel and we got delayed several times
6 and we had a phone conference. And at the end of the
7 day, finally, finally, the skies parted and we were
8 marching forward to have the Intex deposition taken.

9 And what happened? That backfired on Mr.
10 Goldstein, completely backfired. Instead of having this
11 robust deposition where we were going to go forward and
12 depose the President of Intex and find out what Intex
13 means, he comes forward sheepishly with this affidavit.
14 And the affidavit -- you might remember another phone
15 call we had about whether the deposition was going
16 forward. I said, you know, Judge, I haven't seen the
17 affidavit, and, you said, Well, take a look at it and let
18 me know whether there's something there that's going to
19 cause you to take the deposition a little more. And I
20 did. And I said, why would I ever want to depose this
21 man. And here's why:

22 First of all, you have to understand what Intex
23 is: Intex is a modeling tool. All right. When a bank
24 is buying bonds like these and it wants to price them and
25 have its own forecast and modeling, it often has to have
26 that modeling system served by or blessed by regulators.

1 Proceedings

2 That's how -- this is not what we're talking about here.
3 This is a software provider -- I don't know this, but my
4 guess is given the holdings that BlackRock and AIG have
5 in this sort of security that they're probably two of the
6 biggest customers of Intex.

7 And what could they get Mr. Intex to say? This
8 is what they got him to say, Intex: They got him to say
9 that -- can we put up the Intex? Yeah, okay. This is
10 what he says, George Jigarjian, the President of Intex,
11 on behalf of Intex says, "Intex provides no assurances as
12 to how a trustee...will or should pay on any given
13 deal."; that, "these models did not reflect Intex's
14 opinion or belief that either the Standard Intex Model or
15 one of the other models is the correct or best way to
16 pay." In other words, he said, it's a modeling tool.
17 And we have -- what they call toggles, you know, these
18 different ways that you can configure it. And then
19 there's the quote, "Standard Intex Model", which happened
20 to be the first one which happened to coincide -- I
21 believe it first shows up in 2015 after AIG buys these
22 bonds.

23 So they don't say -- because I would've asked
24 this at the deposition, you know, Did AIG call you up and
25 ask you about, you know, this modeling. And we never got
26 that. Instead, we got the affidavit. I didn't need to

Proceedings

1
2 take the deposition because I got the man who is Mr.
3 Intex saying, We provide no assurances as to how a
4 trustee will or should pay. And, by the way, Intex has
5 never actually -- there's never been a payment consistent
6 with the Intex model.

7 THE COURT: Well, the Standard Intex Method
8 doesn't reflect the way that you're asking me to;
9 correct?

10 MR. MOLO: Correct. Absolutely. Because it's
11 wrong.

12 THE COURT: Does not --

13 MR. MOLO: Because it's wrong.

14 THE COURT: Well, that's your opinion. But
15 they're not saying -- he's not saying, And by the way,
16 the Standard Intex Method is wrong. He's not saying that
17 at all.

18 MR. MOLO: No. He's saying it is what it is.

19 THE COURT: It is what it is.

20 MR. MOLO: It is a model.

21 THE COURT: And that is absolutely a way to pay
22 under your trust.

23 MR. MOLO: Which, it would be a way --

24 THE COURT: Is that correct? That's correct.
25 I could take the Standard Intex Method, apply them to
26 your trust and it would result in payment the way that

1 Proceedings

2 AIG and BlackRock and AEGON are asking you to pay;
3 correct?

4 MR. MOLO: Or they can ask us to load up a car
5 with cash --

6 THE COURT: I'm just asking if that is a true
7 statement? Yes? It is a true statement.

8 MR. MOLO: If they want to pay according to
9 the, quote, "Standard Intex Model" --

10 THE COURT: Yes.

11 MR. MOLO: -- which is wrong, by the way. But,
12 more importantly, I'll come to that in a second. More
13 importantly, to pay it that way, it's like if the trustee
14 had a car loaded up with this cash and rolled down the
15 windows and drove on the FDR and have the cash goes
16 elsewhere. It doesn't matter. What they would like to
17 do is rewrite the PSAs to follow the Standard Intex
18 Model.

19 If I could have Chart 11 up, please. The
20 Standard Intex Model violates the settlement agreement
21 and the PSA. Settlement Agreement 3(d) requires that you
22 follow the PSAs and the trustee shall distribute in
23 accordance with the distribution provisions of the PSAs.
24 The PSAs say you compute the principal distribution
25 amount before you write up the certificate balances and
26 the Standard Intex Model says you compute the principal

Proceedings

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2 distribution amount after writing up the certificate
3 balances. So Intex gets it wrong to the extent that you
4 can even rely on it.

5 What seems to be overlooked here, and what AIG
6 and BlackRock and no one else has addressed, the trustee
7 has actually applied the waterfall payment method that we
8 are urging the Court to apply --

9 THE COURT: Prior to the settlement agreement.

10 MR. MOLO: Correct.

11 THE COURT: Correct. So, again, that is prior
12 to the settlement agreement.

13 MR. MOLO: Which would have the settlement
14 agreement modifying the terms of the PSA.

15 THE COURT: All the settlement agreement says
16 is that it would not amend the PSAs.

17 MR. MOLO: Right. And this would be a
18 substantial amendment.

19 THE COURT: And I am unwilling, at this
20 point -- and I may not agree with you that this is an
21 amendment of distributing money. I'm not making a
22 decision today. But I am having a difficult time with
23 the prospect that determining how to pay the money is an
24 amendment to the PSA under the settlement agreement; that
25 is my issue. And it has always been my issue. It's my
26 issue with the other --

1 Proceedings

2 MR. MOLO: Sure.

3 THE COURT: -- group of trusts who want me to
4 pay them above senior certificate holders too.

5 MR. MOLO: Right.

6 THE COURT: I don't think anyone --

7 MR. MOLO: Okay.

8 THE COURT: -- frankly, I don't think anyone,
9 at the time the settlement agreement was negotiated and
10 days and days of testimony about it, anticipated that
11 anyone would come in and say what you are saying now.
12 And so you cannot ignore that. The settlement agreement
13 intervened between this, the PSA and payment today. And
14 I feel like you're not -- except for saying to me that
15 the settlement agreement can't change this, and, I agree,
16 you can't amend your PSA.

17 MR. MOLO: Right.

18 THE COURT: But my problem with that is that I
19 don't believe that determining how to pay what is termed
20 money under the settle agreement necessarily is an
21 amendment to the PSAs.

22 MR. MOLO: Okay. Going back a bit. In our
23 conversation this afternoon --

24 THE COURT: I mean, you know, let me say again,
25 these are difficult issues. And I'm raising them with
26 you now for a conversation. I have not made up my mind.

Proceedings

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2 MR. MOLO: I agree. I'm confident you're going
3 to --

4 THE COURT: I'm listening to what you're
5 saying. I promise you that I'm listening with both ears.

6 MR. MOLO: And I don't doubt it for a minute.

7 THE COURT: All right.

8 MR. MOLO: Going back three steps, right, is,
9 as I said, this structure -- and it's not me saying it,
10 it's Aronoff, it's our other experts saying, This is not
11 just one-off unicorn structure. This is a structure that
12 is there for a purpose, okay. And so it was on the radar
13 screen. And, in fact --

14 THE COURT: So then show me some testimony.

15 MR. MOLO: I'm showing that in 2010, there is
16 a --

17 THE COURT: I'm asking you, again, if you think
18 that the parties who negotiated this settlement agreement
19 anticipated and believed that this is how the money was
20 going to be distributed with respect to these trusts,
21 show me some testimony. There were 65 days of testimony,
22 maybe 64. I don't recall. It was around --

23 MR. MOLO: It was a lot.

24 THE COURT: It was a lot. Show me some
25 testimony where the parties who actually negotiated this
26 settlement said, Yeah, and under at least 17 trusts of

1 Proceedings

2 several hundred million dollars, this is how it's going
3 to work. I didn't see it. And I, again, invite you
4 to --

5 MR. MOLO: Okay. And you know what? I'm going
6 to go back through the transcript after I leave here.

7 THE COURT: Good.

8 MR. MOLO: But I don't know that we need to go
9 back further than --

10 THE COURT: I think you do because it is the
11 intent. You cannot ignore the settlement agreement to
12 the extent that you are.

13 MR. MOLO: I don't disagree with you.

14 But what does Kravitt's testimony mean? What
15 does his statement mean? If we can go back to
16 the -- here. This one. What does it mean?

17 THE COURT: Did he put that up when he was
18 testifying?

19 MR. MOLO: No. He didn't put it up.

20 THE COURT: That's my whole point. That's you
21 putting that demonstrative up saying, Here's how I'd like
22 the settlement agreement to be interpreted. But I would
23 like to know what the parties, at the time, anticipated.

24 MR. MOLO: Well, when he said the senior-most
25 tranches, right, that experienced losses, that's what
26 happens here with what we're talking about. The

1 Proceedings

2 senior-most tranches.

3 THE COURT: Okay.

4 MR. MOLO: I don't know how much clearer it can
5 be. We, the senior support holders, suffered significant
6 loss. And we're not talking about compensating all these
7 people down here. We're saying, Take these proceeds and
8 apply them first to the seniors --9 THE COURT: So if I apply these proceeds, how
10 much would the senior holders get and how much will the
11 senior support holders get?12 MR. MOLO: The difference -- I can't tell you
13 the exact dollars.

14 THE COURT: Just give me a ballpark.

15 MR. MOLO: May I talk to my client for one
16 second?

17 THE COURT: Of course.

18 (Pause in proceedings.)

19 THE COURT: I don't think it should be that
20 difficult. I'm sure you've been thinking about this and
21 you have these numbers.22 MR. MOLO: I was expressing percentages, by the
23 way.24 THE COURT: No. I'm talking about a dollar
25 number. How much of the payment would go to the senior
26 holders and how much would go to the senior support

Proceedings

1 holders? I won't hold you to a penny.

2 MR. MOLO: We're talking about across all --

3 THE COURT: Approximately.

4 MR. MOLO: -- all of this in these trusts, not
5 what our --

6 THE COURT: Yes.

7 MR. MOLO: -- holders would get? I mean, the
8 difference is several hundred million dollars.

9 THE COURT: Well, let me hear.

10 So if the difference is, the second layer will
11 get several hundred million dollars more than the
12 more-senior level; is that what you're telling me?

13 MR. MOLO: I'm saying the senior-most tranche
14 with losses.

15 THE COURT: Okay. So here, let me make it
16 easier.

17 MR. MOLO: Okay.

18 THE COURT: The senior support holders --

19 MR. MOLO: Right.

20 THE COURT: -- a junior class --

21 MR. MOLO: Right.

22 THE COURT: -- of bondholders --

23 MR. MOLO: Correct.

24 THE COURT: -- will get several hundred million
25 dollars more than the senior holders?
26

1 Proceedings

2 MR. MOLO: Correct.

3 THE COURT: The holders of more senior bonds,
4 if I interpret --

5 MR. MOLO: Correct.

6 THE COURT: -- the settlement agreement your
7 way.

8 MR. MOLO: But they're not experiencing the
9 losses.

10 THE COURT: I just --

11 MR. MOLO: That's the difference.

12 THE COURT: I'm asking you if that's the bottom
13 line.

14 MR. MOLO: Yes.

15 THE COURT: Okay.

16 MR. MOLO: But because it was intended by the
17 settlement agreement, because it was intended by the PSA,
18 all right.

19 THE COURT: I haven't seen it intended by the
20 settlement agreement. You ma be have it intended by the
21 PSA. I'm not taking any position on that right now.

22 MR. MOLO: Okay.

23 THE COURT: But can I say I haven't seen
24 anything, which is why I keep asking you show me some
25 testimony, show me something from the people at the time
26 the settlement agreement was negotiated, because I

Proceedings

1
2 haven't seen anything at the time the settlement
3 agreement was negotiated, or the testimony afterwards,
4 that would indicate that the parties intended that the
5 senior support holders, a junior class of bondholders,
6 would receive from the settlement proceeds several
7 hundred million dollars more than the more-senior
8 bondholder.

9 MR. MOLO: Okay.

10 THE COURT: That is what I'm saying.

11 MR. MOLO: Can I offer you a construct to think
12 about it --

13 THE COURT: Sure.

14 MR. MOLO: -- that would make it more
15 acceptable, perhaps? No. The reason I'm saying that is
16 because what I'm hearing from you, Judge, is that you're
17 saying, How could it possibly be that these junior people
18 are getting money and the senior people --

19 THE COURT: I'm not saying that so much is how
20 could it possibly be that the people who negotiated the
21 settlement agreement --

22 MR. MOLO: Okay.

23 THE COURT: -- wanted that to occur. That is
24 what I'm saying. I can't imagine that anyone would
25 actually negotiate a settlement agreement, someone who
26 was in the best and the toughest position -- I mean, the

1 Proceedings

2 senior holders were driving this truck. And I can't
3 imagine, at the time they were negotiating the
4 settlement, they said, And by the way, I'll take several
5 hundred million dollars less than the less senior support
6 holders, of which your clients didn't even hold at the
7 time.

8 MR. MOLO: Okay. But they did get what they
9 were entitled to. They got what they were entitled to.
10 They get the subsequent recovery to the extent that they
11 experienced the losses, then it flows down to the
12 senior-most tranches.

13 Now, they could've written it, right, they
14 could've written it to say, Only the senior-most tranche
15 shall recover ever. And there is some language in there
16 about very junior classes that are completely wiped out
17 not getting anything. There's language to that effect in
18 various parties, so they could've done that. They
19 thought about that sort of concept. But, instead, what
20 Kravitt said is, the senior-most tranches --

21 THE COURT: I don't think that's true because
22 your client wasn't even there when the settlement
23 agreement was negotiated. How could you make that
24 representation? You don't know what the seniors
25 bondholders negotiated.

26 MR. MOLO: No. The trustee's counsel.

Proceedings

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THE COURT: Oh. I'm sorry. Okay.

MR. MOLO: He's the lead negotiator for the trustee.

THE COURT: All right. All right.

MR. MOLO: If anyone is going to speak with sort of the most pure voice as to what was intended, you would think it would be the lead negotiator for the trustee. And he's the one saying, Here's what -- through the back and forth of that -- and, by the way, you know, if they brought the wrong bonds, they bought these bonds at the time, they'd be saying, of course that was the case. These bonds were bought after as well.

THE COURT: No, no. But they were holders at the time.

MR. MOLO: They were holders, certainly.

THE COURT: And they were at the table negotiating hard during this settlement agreement.

MR. MOLO: Which is why it's res adjudicata because it wasn't raised in negotiation and it wasn't raised at any point --

THE COURT: And so then if that's -- then I should accept the interpretation of the people who are there at the time that the settlement was negotiated.

MR. MOLO: No. You should accept the language in the documents.

Proceedings

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2 THE COURT: Well, here's the problem: If the
3 two sides had a disagreement about what the documents
4 say, and there is a side that is there at the time the
5 document are negotiated, and there's a side that
6 wasn't --

7 MR. MOLO: We only get to that if they show
8 there was a absurdity. And there is no absurdity when a
9 triple-A rated bondholder --

10 THE COURT: Okay.

11 MR. MOLO: -- is compensated for losses. And
12 the second-highest bondholder, in the whole series of
13 debt holders, is compensated. It's a lost compensation
14 provision that is in this PSA.

15 And as I said, don't take my word for it.
16 Aronoff says in his affidavit and our other experts say
17 in their affidavit say that this is something that is
18 contemplated sometimes. And when these parties are going
19 back and forth, like we talked about before, you know,
20 they have this level of intensity and you've got a group
21 of investors saying, You know what, I'll get in on that
22 deal, but if I want to get in that deal, the super
23 seniors have credit support, they're getting over
24 collateralization, I want my credit support. Now credit
25 support can take a lot of different forms, but in these
26 deals --

1 Proceedings

2 THE COURT: Yes. But we're not talking about
3 just that deal. I keep saying this to you is that deal
4 plus the settlement agreement.

5 MR. MOLO: I agree.

6 THE COURT: No. I feel that you want me to just
7 take the deal as the deal, but it's not the deal as the
8 deal. It's the deal as the settlement agreement.

9 MR. MOLO: I agree. And the settlement
10 agreement, the settlement proceeds are treated as
11 subsequent recoveries and then considered under the PSAs
12 available funds, and this is how you pay available funds
13 under this agreement. It's not a hundred percent the
14 same in every PSA, just as many things are not because
15 they're negotiated.

16 THE COURT: Okay.

17 MR. MOLO: So, I mean -- and, again, the
18 difference in the language that we talked about, and this
19 is the result -- which is not, you know, it's not like
20 some great unfairness here and it's not as if --

21 THE COURT: But wait a second. Let's talk
22 about that.

23 MR. MOLO: Sure.

24 THE COURT: At the end of the day, are you
25 going to get more money than the senior holders?

26 MR. MOLO: I'm not -- we are going to get more

Proceedings

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2 cash.

3 THE COURT: Yeah. Okay. Well, cash is money;
4 right? It's not like you can hold a worthless security.
5 But you are actually going to get more --

6 MR. MOLO: But our losses are going to go,
7 again, it's a very broad generalization, from around 35
8 percent to 25 percent. Their losses are going to be
9 probably around two percent. All right.

10 THE COURT: Okay. But let me say that, at the
11 end of the day, you will get paid more on your bonds than
12 the senior --

13 MR. MOLO: As the contract calls for.

14 THE COURT: -- is that correct?

15 MR. MOLO: Correct.

16 THE COURT: No. As the way that you want me to
17 interpret the settlement agreement.

18 MR. MOLO: Well, I mean --

19 THE COURT: Yes. Okay.

20 MR. MOLO: Yes. And the only way, by the way,
21 that we rewrite it, the only way we get to where you're
22 saying, well, we should go back and look and see what
23 they said and what they thought, is if this would somehow
24 be rendered an absurdity, that the contract would somehow
25 be absurd. And it is not absurd; it's something that
26 made these bonds more marketable; it's something that got

1 Proceedings

2 them that a triple-A credit rating; it's something that,
3 in these highly-negotiated transactions, all right, was
4 put in there for a reason. And that negotiation that
5 occurred from the settlement agreement said treated as a
6 recovery. And so, whatever that means in each PSA, not a
7 subsequent recovery, only if it means that the super
8 seniors get even further over collateralized and the
9 negotiated for or the classic negotiated for, this other
10 form of credit support, doesn't get that.

11 THE COURT: It definitely doesn't say that. I
12 agree.

13 MR. MOLO: And, no. And they could've done
14 that, though, and said -- they could've done that because
15 they do it in certain respects with other things.

16 THE COURT: Okay. Anything else you want to
17 talk about?

18 MR. MOLO: If you're not convinced yet --

19 THE COURT: I mean --

20 MR. MOLO: How much time do you have?

21 THE COURT: This is a very difficult --

22 MR. MOLO: I don't disagree with you. I don't
23 disagree with you.

24 Let me just address one other thing: The date
25 of the payment, you know. The trustee received the funds
26 on February 10th. The settlement agreement requires

1 Proceedings

2 distribution on the next available distribution date,
3 which is February 25th. These proceeds were filed, even
4 though there was this prior course of dealing in 2010.
5 And because of these other holders pushing, this
6 proceeding is what it is. We had to go through the whole
7 Intex brouhaha and we wound up -- that went over like a
8 lead balloon. And so we've been delayed here.

9 And as we explained before, \$400,000 a month on
10 one bond alone, AIG benefits by this delay. So we would
11 ask that the fair thing, this is an equitable proceeding,
12 is to go back and treat it nunc pro tunc.

13 THE COURT: I have to say, Judge Friedman did
14 say something --

15 MR. MOLO: You know what was different there?
16 The settlement proceeds had not yet been received by the
17 trustee.

18 THE COURT: Yeah, but --

19 MR. MOLO: There's a difference.

20 THE COURT: But she made sort of a legal point
21 that I don't disagree with. So I'll go back and look.

22 MR. MOLO: Fine. But there is a difference.

23 THE COURT: But I'm not going to -- on the
24 legal point, I'm not going to --

25 MR. MOLO: I appreciate you indulging me.

26 MR. GOLDSTEIN: Your Honor, may I respond to

Proceedings

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2 one --

3 THE COURT: Well, I want to hear from someone
4 who I haven't heard from.

5 MR. WARE: Your Honor, Michael Ware, Mayer
6 Brown, for the trustee.

7 As the Court knows, we are completely,
8 completely neutral on the merits of this interesting
9 dispute, although we are glad we filed the case rather
10 than let this all happen when one of these guys was
11 suing --

12 THE COURT: That is so true.

13 So, I mean, but you're there. You're the
14 negotiator. Do you recall any testimony at the hearing
15 about how -- do you recall anyone testifying that this is
16 how any of the money was going to be paid out?

17 MR. WARE: I didn't attend the whole trial --

18 THE COURT: Right. But do you recall anyone
19 putting in testimony to that effect?

20 MR. WARE: Well, I will say that Section
21 3(d)(1) of the settlement agreement is really pretty
22 clear on a couple of things. And this is actually why I
23 wanted to speak now because -- and I'll hit that point in
24 a second on this record date issue. There is a very
25 comprehensive -- I thought this issue had dropped out of
26 the case, which is why we didn't put papers in.

1 Proceedings

2 My friend, Mr. Molo, said that the trustee
3 received the money in February. That's not the relevant
4 test. The relevant test --

5 THE COURT: What does the settlement agreement
6 say?

7 MR. WARE: Well, the relevant test is in the
8 settlement agreement, and this is Section 3(d)(1) that,
9 "after the allocable share for each covered trust has
10 been deposited into the certificate account or collection
11 account for each covered trust, then the mechanism for
12 payment starts."

13 When we came to you in February --

14 THE COURT: And I put the money in
15 treasuries --

16 MR. WARE: You put the money in treasuries and
17 it never hit those accounts.

18 THE COURT: It hasn't hit the accounts. I
19 agree.

20 MR. WARE: That is the first part, the first
21 decretal paragraph of the order to show cause: "As an
22 interim measure necessary to permit the Court to direct a
23 trustee on the distribution of the allocable shares, the
24 trustee is directed to enter into the escrow
25 agreement" -- skipping words here, "and to deposit the
26 settlement payment into escrow before the settlement

1 Proceedings

2 payment is deposited into the certificate accounts or
3 collection accounts."

4 So what we did in February, as lawyers for the
5 bank, and then the Court approved, was we stopped that
6 process from happening so that to predetermine this exact
7 argument. And I thought it had dropped out of the case
8 until I saw counsel's papers over the weekend.

9 Let me answer the question put to me: I wasn't
10 there at every day of the trial and partners of mine
11 tried the case, but I know the answer. Section 3(d)(1)
12 of the settlement agreement provides that, "once the
13 allocable shares has hit those accounts, the trustee
14 shall distribute it to investors in accordance with the
15 distribution provisions of the governing agreements." So
16 that it was our understanding, then and now, that there
17 could be different results obtaining a different trusts.

18 THE COURT: So there could be -- and that was
19 the understanding at the time, that some senior
20 bondholders were not going to get paid under the junior
21 bond, whatever the trusts were?

22 MR. WARE: The only break that was put on that
23 in the settlement agreement is at the very bottom of
24 Section 3(d)(1), which does specify a class of securities
25 so low, that no matter what, they get nothing.

26 THE COURT: So at the time, you're saying that

1 Proceedings

2 people anticipated that the senior-most bondholders do
3 not get paid first.

4 MR. WARE: I won't put it that way. But the
5 last sentence of Section 3(d)(1) provides that, blahdee
6 blah, blah, skipping words, "distribution of allocable
7 shares in a particular covered trust governed would
8 result" -- skip, skip, "in money being payable to class
9 of REMIC residual interest", then there's a fix to stop
10 that. So those are the lowest.

11 These are -- with these common law PSAS are
12 basically all equity rather than debt, but most of them
13 look like debt. This is the one that looks like equity.
14 And so the settlement agreement does contemplate what
15 classes other than the highest most might get some.
16 And it draws the line below which they won't go --

17 THE COURT: Will get some or will get more?

18 MR. WARE: I --

19 THE COURT: Depending on whatever the PSA --

20 MR. WARE: Whatever the PSA or the indenture
21 said.

22 THE COURT: Okay. So that is very helpful.
23 Thank you.

24 MR. MOLO: I second what Mr. Ware said.

25 MS. KLEIN: Some demonstratives, your Honor.

26 THE COURT: Thank you.

1 Proceedings

2 (Handing.)

3 MS. KLEIN: I did not hire Mr. Molo.

4 Your Honor, Gail Klein from Goldsmith for Center
5 Court. Center Court is a senior support certificate
6 holder and Center Court was there at the time and owned
7 its bonds, even though we did not appear in the Article
8 77 proceeding. And I am here today to close whatever
9 loop Tilden and Prosirris claim that there is.

10 I first want to address the absurdity argument
11 because I do think that Tilden Park and Prosirris's
12 argument on how the PSAs work does produce an absurd
13 result that is highly time dependent and that's why
14 they're arguing so staunchly for the February date.

15 If you go to the 11-by-17 sheet of paper that I
16 just gave you --

17 THE COURT: Yes.

18 MS. KLEIN: -- there are four different buckets
19 here. And the top row that you'll see is Center Court's
20 interpretation on the C --

21 THE COURT: Oh, my goodness. Wait a second,
22 Counsel. I need to put my glasses on.

23 MS. KLEIN: I apologize for the size, your
24 Honor. I did the best I could.

25 THE COURT: No. Listen...

26 MS. KLEIN: So the top row of this is Center

1 Proceedings

2 Court's interpretation of Group 1 of the CWALT 2005-61
3 Trust, which is the trust that we have alleged we own in.
4 And the OC target for Group 1 of this trust is 1,542,918.
5 The left side of this row is just assuming that the
6 distribution of the allocable share of \$7.3 million comes
7 in May of 2016, and the right side assumes that it came
8 in May of 2012. You can see there is no difference in
9 the principal distribution amount highlighted under the
10 Center Court interpretation.

11 The next row is the Tilden and Prosirris
12 interpretation. Again, the same distribution of the \$7.3
13 million. On the left side of this second row is assuming
14 on May 2016 and the right side is assuming May 2012 and
15 you can see the difference in the distribution that
16 happens. Meaning, the senior bondholders may get
17 \$925,751. But, oh my goodness, wouldn't it be great, in
18 May of 2012 to be a 1M3 bondholder and it would be great
19 to be a 1M1 bondholder in 2016. This is exactly the
20 absurd result that happens and why Tilden Park and
21 Prosirris keep saying, your Honor, set the record date
22 earlier, because the senior tranches are incurring losses
23 and, in fact, they're going to hit the senior
24 certificates and the most senior certificates soon, which
25 is why they're desperate to move this back, because
26 that's their magic date. So here is the evidence of your

Proceedings

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2 absurd result.

3 And the next two rows are the same thing with
4 just the second group of the CWALT '05-61, again,
5 demonstrating that it is magic to be a holder in a
6 certain date. But if you interpret the PSA on a write up
7 first pay second, which is if you have to default to the
8 PSA we are going to demonstrate to you is the right way,
9 the distribution to the certificate holders for the
10 allocable shares never, ever changes depending on the
11 date. And, therefore, that is the most fair
12 interpretation; it is the right interpretation under the
13 PSA; and it is uncontrovertible that what Prosirris and
14 Tilden are seeking is an unfair windfall based upon
15 identifying, as your Honor said, some random loophole
16 that no one else saw, that no one intended.

17 If you turn with me to the deck that I put
18 together --

19 THE COURT: Yes.

20 MS. KLEIN: -- I will demonstrate to you now how
21 the write up first pay second is the appropriate
22 methodology.

23 THE COURT: Okay.

24 MS. KLEIN: First of all, the settlement
25 agreement, Section 3(d)(i) says that, "the settlement
26 payment shall be treated as though it were a subsequent

Proceedings

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2 recovery available for distribution on that distribution
3 date." So the money comes in to the distribution account
4 and the trustee says, Aha, it is available on the next
5 distribution date.

6 If you turn the page with me to Page 2, the
7 settlement amount or the settlement agreement says,
8 "nothing in the subparagraphs is intended to or shall be
9 construed to amend any governing agreements." This is
10 why Tilden and Prosirris say the settlement agreement is
11 wrong. You have to go to the settlement agreement. And
12 the next sentence says, Well, if your Honor modifies
13 Subparagraph 3(d)(i), "it shall not constitute a material
14 change to the settlement agreement."

15 So if your Honor does not believe that it should
16 follow the pay first write up second, it can, in fact,
17 follow the PSA's plain terms and do write up first pay
18 second, which is the most fair and reasonable. And
19 which, by the way, we are a senior support certificate.
20 More money goes to our friends, the super senior
21 certificates. So we are here coming in good faith with,
22 really, not supporting our own interests, but the
23 interest of the right thing under --

24 THE COURT: And you were there at the time the
25 settlement was negotiated.

26 MS. KLEIN: Our clients -- my client did own, at

1 Proceedings

2 the time of the settlement agreement was approved, and
3 during the Article --

4 THE COURT: During the hearing.

5 MS. KLEIN: -- Article 77 proceeding.

6 THE COURT: And did anyone of those
7 proceedings, when they were looking at that settlement
8 agreement in intense detail, did anyone talk about the
9 possibility of what Prosirris is talking about today?

10 MS. KLEIN: Your Honor --

11 THE COURT: And Tilden?

12 MS. KLEIN: I'm not aware if Center Court
13 participated in the proceeding. I certainly did not.
14 But I will tell you that it's fundamental to bondholders,
15 who are the ones who are pressing the interest, that they
16 get recovered for their losses. And Mr. Molo made a big
17 deal about Mr. Kravitt saying the bonds that suffered
18 losses. Well, guess what? The loss is the fact that the
19 trusts were stuffed with mortgages that were not as they
20 were represented. The loss is not a Realized Loss, big
21 "R", big "L", under the PSA. The loss is the loss of the
22 value of your bond because, ultimately, one day, you are
23 going to suffer a loss and not going to be made whole as
24 the trust was intended. And so that's when, when you
25 talk about losses, it's the loss of the value to the
26 trust which hits the most senior bonds first and

1 Proceedings

2 ultimately trickles down.

3 So if you turn to Page 3 of the deck that I put
4 in front of you, each month, only available funds are
5 distributed. Each of these 17 agreements say, under
6 Section 4.02, "on each distribution date, the available
7 funds for distribution shall be distributed in this order
8 of priority."

9 If you turn with me to Page 4, available fund
10 includes those that are in the certificate account net of
11 what's called the amount held for future distribution.
12 And I apologize for walking you through these very long
13 contract terms --

14 THE COURT: No. I'm very happy, because I
15 didn't draft this.

16 MS. KLEIN: So, again, you have available funds.

17 If you turn to Page 5 of the deck, these
18 available funds are net of the amount held for
19 distribution. And if you look at the definition of
20 amount held for distribution, which is on Page 5, guess
21 what? It includes subsequent recoveries received in the
22 month of such distribution date. So these funds are
23 treated as though they are subsequent recoveries
24 available for distribution, which means they have to have
25 previously been held for distribution while the
26 certificates are written up. It's the only way it works.

Proceedings

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2 And it's very important because you write up --

3 THE COURT: You're saying that that whole thing
4 about "before" as opposed to "on" or "after" doesn't
5 comport with what's in the settlement agreement.

6 MS. KLEIN: It doesn't. The funds -- now,
7 remember, this is a one-time payment --

8 THE COURT: Right. I agree. It's a one-time
9 payment --

10 MS. KLEIN: It's unanticipated by anyone. It's
11 a huge amount of money. So if you treat it as it were a
12 subsequent recovery, you assume it's going to be held for
13 a month before it's distributed.

14 And during that time, if you flip the page to
15 Page 6, that during that time, the funds and the
16 certificate account, as of the 22nd of the month, are
17 held for distribution while it is written up for the
18 certificates.

19 And if you turn to Page 7, the advances, the
20 reason Page 7 is of interest is that the purpose of an
21 amount held for future distribution is to allow
22 compensation to the master servicer because the master
23 servicer has advances. So you get the subsequent
24 recoveries, which are usually only about 10 or \$20,000,
25 they go help pay the master servicers whose advanced
26 fees, who owes them back and then they get put in while

Proceedings

1
2 the certificates have already been written up.

3 THE COURT: So why wasn't this one giant
4 payment as opposed to -- was that the way the settlement
5 agreement was structured at the time?

6 MS. KLEIN: Again, I was not a party to the
7 negotiation, but I assume that Countrywide wanted to
8 ameliorate its liability and make one payment.

9 THE COURT: And that was it.

10 MS. KLEIN: And be done.

11 THE COURT: Okay.

12 MS. CLIENT: Certainly, this probably could've
13 been structured another way.

14 But, again, demonstrating that these subsequent
15 recoveries are properly an amount held for distribution,
16 if you look at the settlement agreement, which I've
17 excerpted again on Page 8, under 3(d)(i), it says
18 "provided, however, the master servicer shall not be
19 entitled to receive any portion of the allocable shared
20 distributed to any covered trust." So while a subsequent
21 recovery generally helps first pay the master servicers,
22 the parties agree, no, no, no that doesn't happen this
23 time.

24 Moving onto Page 9, it then says, "on each
25 distribution date, the trustee shall allocate the amount
26 of subsequent recoveries for the loan group to increase

Proceedings

1
2 the class certificate balance of the certificates." Here
3 we go to the guts of the agreement. The subsequent
4 recoveries are in; they're being held for the next
5 distribution date because they're not available funds.
6 And, yet, under 4.02(j), they are written up the class
7 certificate balances. So this is the crux of you write
8 up first under these PSAs and then distributed second.
9 And if you do that, in fact, what happens is the most
10 senior bonds are compensated.

11 Page 10 is just similarly the application under
12 a separate agreement, which is CWALT '06-A3.

13 And, again, the principal distribution amount
14 definition, which is on Page 11, says that the principal
15 distribution amount is the excess of the aggregate
16 certificate balance immediately prior to the distribution
17 date over the excess of the stated principal balance over
18 the Group 1 target.

19 And then finally, your Honor, on Page 12 of the
20 deck, again, showing --

21 THE COURT: This is the shrunken version of
22 what you gave me in the larger version?

23 MS. KLEIN: It is. But I did want to show you
24 that the difference is once you add the principal
25 distribution amount --

26 THE COURT: Oh, okay.

Proceedings

1
2 MS. KLEIN: -- what happens. So that's
3 just -- the larger page is just what happens with the
4 allocable share.

5 THE COURT: Right.

6 MS. KLEIN: If you assume, in May of 2016, you
7 actually are adding it into the OC target amounts, now
8 you'll see that the principal distribution amount under
9 the Center Court interpretation is 7.3 million, but the
10 principal distribution amount under the Tilden Park and
11 Prosirris interpretation is only \$1.8 million. And,
12 again, oh, my goodness, how great it is to be a
13 one-and-one bondholder and this most senior bondholders
14 are in trouble.

15 Finally, your Honor, we do believe that this is
16 the most appropriate methodology. We do understand the
17 trustee's argument that you're supposed to distribute
18 pursuant to the PSA. This is, in fact, consistent with
19 the settlement agreement and with the parties'
20 interpretations. If you don't find that it should be
21 properly write up first pay second as we agreed with the
22 other 512 trusts, of course, we are amenable to a
23 one-time adjustment for the over collateralization
24 because we do believe this is the way that it should
25 work. And, in any event, we would ask that your Honor
26 limit your ruling to the 17 trusts such that --

1 Proceedings

2 THE COURT: Absolutely.

3 Okay. Thank you very much.

4 I've heard from everyone. If I start with the
5 rebuttals and sur-rebuttals and other rebuttals, we will
6 be here till next Thursday.

7 So I appreciate very much everyone's very, very
8 helpful, useful discussion today. I really need to think
9 and take a lot of steps back. I'm going to go back. I
10 think I have to look at the transcript of the hearing. I
11 will see what the trial court -- I read Judge Kapnick's
12 original decision, but I'm not really sure that either
13 was particularly relevant to this.

14 But what I think what -- and here's the one
15 thing I invite anyone to do, which is, that if anyone
16 finds trial testimony during the first Article 77
17 proceeding that they think would shed light on what the
18 parties intended the settlement agreement to mean and how
19 it should function, if you will give me that in the next
20 30 days, that would be very useful and helpful to me.
21 Please don't put in any argument. The only thing, if you
22 are going to give me trial testimony, is a cover letter,
23 Dear Scarpulla, here's some trial testimony, enjoy.

24 MS. KLEIN: Your Honor, may I ask that my
25 demonstratives be put into the record?

26 THE COURT: All these demonstratives are going

Vanessa Miller Senior Court Reporter

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Proceedings

to be a part of the record.

Okay. So thank you very much. I'm going to ask all the parties, if they would, to get me a copy of the transcript of today's hearing. When I get the transcript, I'll mark the motion submitted or this part of it submitted.

All right. Thanks very much.

MR. MOLO: Thank you, your Honor.

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS PROCEEDING.

VANESSA MILLER
Senior Court Reporter

	15:17,25;35:9; 58:19	9,26;33:16,17;34:3, 15,17,23,25;35:13; 36:7,9,12,14,20; 38:11;40:2,5,14,14; 41:2,3,3,4,9,14;43:2, 3,7,8,17,18,19,22; 44:2;48:20,21;49:9, 12,14,15,24;50:9,12, 15,20;51:18;52:11, 22;55:6,17,20,26; 56:3,21,25;57:23; 58:18;60:4,8,10,13; 61:17;62:5,26;64:21; 65:5,8,25;66:12,23; 67:14;70:25;71:7,10, 11,14;72:2,8;74:5; 75:5,16;76:3,12; 77:19;78:18	77:22 amend (5) 34:26;43:19;49:16; 50:16;71:9 amending (2) 43:20,22 amendment (4) 49:18,21,24;50:21 America (1) 28:3 among (2) 19:12;30:23 amount (26) 14:26;20:16,21,23; 29:17;36:23,24;37:2, 2;39:2;48:25;49:2; 69:9;71:7;73:11,18, 20;74:11,21;75:15, 25;76:13,15,25;77:8, 10 amounts (3) 20:11,12;77:7 analyst (1) 35:13 analyzing (1) 42:19 answered (1) 34:14 anticipate (1) 27:7 anticipated (6) 33:8;35:8,50:10; 51:19;52:23;67:2 apologize (2) 68:23;73:12 appear (2) 21:9;68:7 appearance (1) 21:5 appears (2) 10:19;16:9 applicable (1) 36:8 application (1) 76:11 applied (1) 49:7 apply (6) 33:22;34:3;47:25; 49:8;53:8,9 appreciate (2) 63:25;78:7 approach (4) 9:10;13:5;19:19,23 appropriate (3) 4:7;70:21;77:16 approved (2) 66:5;72:2 Approximately (1) 54:4 arbitrary (1) 11:9 area (1)	42:16 argue (2) 15:24,24 argued (2) 4:5;21:3 argues (1) 12:22 arguing (4) 11:17;16:19;17:13; 68:14 argument (8) 11:16;15:26;22:2; 66:7;68:10,12;77:17; 78:21 arguments (5) 14:18,25;17:22; 18:9;19:6 Aronoff (4) 42:13,17;51:10; 59:16 arose (1) 5:22 around (5) 16:23;40:15;51:22; 61:7,9 arrears (1) 22:10 Article (5) 4:21;68:7;72:3,5; 78:16 articulated (1) 13:9 assume (4) 3:7;74:12;75:7; 77:6 assumes (1) 69:7 assuming (4) 42:26;69:5,13,14 assurances (2) 46:11;47:3 assure (1) 27:16 assures (1) 4:24 attend (1) 64:17 attorney (1) 6:20 August (5) 4:5;6:19;10:23; 11:26;14:14 Austin (2) 28:13;31:14 available (14) 36:21,21;60:12,12; 63:2;71:2,4;73:4,6,9, 16,18,24;76:5 average (1) 27:23 avoids (1) 4:13 aware (2)
\$				
\$1.8 (1) 77:11	adjustment (1) 77:23			
\$20,000 (1) 74:24	admitted (1) 20:25			
\$400,000 (1) 63:9	advance (1) 4:23			
\$7.3 (2) 69:6,12	advanced (1) 74:25			
\$925,751 (1) 69:17	advances (2) 74:19,23			
	advised (1) 32:18			
A	advocating (3) 9:18;18:24;22:11			
above (1) 50:4	AEGON (4) 18:6;22:22;39:19; 48:2			
Absolutely (8) 17:24;29:14,23; 31:9;32:14;47:10,21; 78:2	affidavit (10) 10:10,13;42:8,18; 45:13,14,17;46:26; 59:16,17	agreements (14) 4:13;5:13,14,17; 9:9;12:3;22:18;35:2; 41:4;43:10,26;66:15; 71:9;73:5		
absurd (6) 4:13;61:25,25; 68:12;69:20;70:2	affidavits (2) 9:16;42:9	agrees (1) 24:8		
absurdity (4) 59:8,8;61:24;68:10	affiliates (1) 4:4	Aha (1) 71:4		
accept (2) 58:23,25	afternoon (1) 50:23	ahead (4) 3:14;9:4;16:6; 34:24		
acceptable (1) 56:15	afterwards (3) 16:17;32:15;56:3	AIG (19) 3:13;4:4;8:20;13:9, 26;14:15;18:7,10; 21:12;22:22;23:19; 39:18;40:7;46:4,21, 24;48:2;49:5;63:10		
accordance (2) 48:23;66:14	Again (23) 5:11;10:17;27:22; 30:25;32:25;34:7; 35:4;41:5;49:11; 50:24;51:17;52:3; 60:17;61:7;69:12; 70:4;73:16;75:6,14, 17;76:13,20;77:12	AIG's (4) 3:25,26;15:20;18:3		
according (1) 48:8	aggregate (1) 76:15	align (1) 21:21		
account (5) 65:10,11;71:3; 73:10;74:16	ago (2) 3:5;11:3	alike (2) 28:10,11		
accounts (5) 65:17,18;66:2,3,13	agree (16) 21:12;22:15;24:17; 31:6;39:16,19;40:5; 49:20;50:15;51:2; 60:5,9;62:12;65:19; 74:8;75:22	alleged (1) 69:3		
accurately (1) 10:7	agreed (6) 12:8;15:19;33:20; 43:10,14;77:21	allocable (8) 65:9,23;66:13; 67:6;69:6;70:10; 75:19;77:4		
across (2) 38:18;54:3	agreeing (1) 26:26	allocate (1) 75:25		
actually (12) 9:25;12:24;23:6; 35:15;42:8;47:5; 49:7;51:25;56:25; 61:5;64:22;77:7	agreement (122) 4:11,22,26;6:2,4, 14;7:14,21;8:4;9:7; 12:8;15:19,22;16:16, 21,25;17:3;18:15; 19:12;21:23;22:25; 23:2,9,9,14;24:2,5; 28:25;29:9,12;30:2, 10;31:20,22,23;32:7,	allow (3) 20:14;34:9;74:21		
add (3) 17:22;22:7;76:24		almost (2) 43:3;45:4		
adding (1) 77:7		alone (2) 19:25;63:10		
addition (2) 10:6;33:21		although (3) 22:22;29:16;64:9		
additional (2) 6:9;18:10		always (2) 15:18;49:25		
address (5) 4:18;10:22;30:16; 62:24;68:10		ameliorate (1) 75:8		
addressed (1) 49:6		amenable (1)		
adjudicata (4)				

10:18;72:12	27:24,25	15,17;24:17,25	21:10	12:24;13:2
B	binding (1) 15:22	briefly (1) 17:23	cap (10) 20:4,5,6,6,8,9,10, 19;21:4;37:8	citing (1) 14:19
back (19) 5:25;12:10;16:7; 31:26;41:16;50:22; 51:8;52:6,9,15;58:9; 59:19;61:22;63:12, 21;69:25;74:26;78:9, 9	bit (5) 29:15,18;30:4,5; 50:22	briefs (4) 5:13;19:9;20:25; 26:24	capital (1) 5:24	claim (2) 26:20;68:9
backfired (2) 45:9,10	BlackRock (6) 18:6;22:22;39:18; 46:4;48:2;49:6	bring (1) 22:10	capricious (1) 11:9	clarification (1) 23:17
balance (8) 5:6,10,20;37:8,11; 76:2,16,17	blah (2) 67:6,6	broad (2) 38:19;61:7	car (2) 48:4,14	class (9) 26:11,11;27:5; 54:21;56:5;66:24; 67:8;76:2,6
balances (7) 11:20;12:4,5;37:9; 48:25;49:3;76:7	blahdee (1) 67:5	broadly (1) 18:8	carved (2) 15:9,12	classes (4) 26:12,24;57:16; 67:15
balloon (1) 63:8	blessed (1) 45:26	brought (2) 13:10;58:11	case (9) 8:12;18:22;44:18; 45:3;58:12;64:9,26; 66:7,11	classic (1) 62:9
ballpark (1) 53:14	block (1) 6:22	brouhaha (1) 63:7	cash (9) 24:24,26;29:11; 42:21;48:5,14,15; 61:2,3	clauses (1) 5:16
Bank (4) 28:2,2;45:23;66:5	bond (14) 6:26;7:2,3;15:5; 31:10;38:23;41:5; 42:4,15,24;44:7; 63:10;66:21;72:22	Brown (2) 6:20;64:6	caused (1) 37:26	clear (6) 7:24;10:13;15:21; 23:12;36:7;64:22
Barclays (1) 28:2	bondholder (6) 56:8;59:9,12; 69:18,19;77:13	Brun (1) 11:14	cause (2) 45:19;65:21	clearer (1) 53:4
barking (1) 35:24	bondholders (14) 25:8,14;28:9; 31:16;33:5;41:25; 54:23;56:5;57:25; 66:20;67:2;69:16; 72:14;77:13	Bruns (1) 11:24	center (9) 19:6;68:4,5,6,19, 26;69:10;72:12;77:9	clearly (2) 21:26;23:23
bars (1) 35:10	bonds (59) 5:18;7:7,9,12,14, 20;15:10,12,13;16:9; 20:8,13;21:15;23:20, 22;25:3;26:15;27:9, 21,22;28:8,18,18,21, 24;29:20,25;30:20; 31:2;32:14;35:17; 36:5,8;37:3,4,16,17; 38:15,20;39:6,21; 41:6,17;42:2,21;44:5, 8;45:24;46:22;55:3; 58:11,11,13;61:11, 26;68:7;72:17,26; 76:10	buckets (1) 68:18	central (1) 19:15	clients (7) 16:15;18:7;27:9; 40:15,15;57:6;71:26
based (7) 5:6;11:20;12:4,4; 15:5;21:5;70:14		bulk (1) 15:12	central (1) 19:15	client (4) 53:15;57:22;71:26; 75:12
basically (3) 11:17;27:3;67:12		buy (2) 7:8;31:10	certain (6) 29:2;33:17;36:12; 42:21;62:15;70:6	close (2) 21:12;68:8
basicness (1) 37:13		buyer (1) 24:4	certainly (8) 10:17;23:11;25:13; 27:16;41:23;58:16; 72:13;75:12	closed (1) 32:17
basis (3) 19:25;20:6,14		buying (2) 28:18;45:24	certificate (21) 5:7,21;6:7,10;22:9; 26:10,19;30:24; 48:25;49:2;50:4; 65:10;66:2;68:5; 70:9;71:19;73:10; 74:16;76:2,7,16	coherent (1) 9:17
becomes (1) 17:2		buys (2) 6:24;46:21	certificates (11) 5:7,22;32:21; 37:21;69:24,24; 71:21;73:26;74:18; 75:2;76:2	coincide (1) 46:20
beginning (1) 16:8		calculated (2) 36:24;37:9	change (3) 26:7;50:15;71:14	collateral (4) 5:20,22;15:15,25
behalf (3) 11:14;18:6;46:11		calculation (1) 14:23	changes (1) 70:10	collateralization (22) 5:19;14:22,24; 19:4,14;20:11,12,16, 21,22,24,26;21:2,6; 30:19,22;32:21; 36:25;37:6;41:21; 59:24;77:23
belief (1) 46:14	BONY (1) 35:14	call (4) 20:5;45:15;46:17, 24	chart (3) 27:19;37:22;48:19	collateralized (4) 6:5;33:4;44:12; 62:8
below (1) 67:16	both (1) 51:5	called (4) 20:10,20;36:19; 73:11	cheaply (1) 7:9	collaterally (1) 14:16
benefits (1) 63:10	bothering (1) 44:26	calls (1) 61:13	cite (2) 12:15;13:3	collection (2) 65:10;66:3
best (4) 22:10;46:15;56:26; 68:24	bottom (3) 27:20;55:12;66:23	came (5) 32:16,19;40:16; 65:13;69:7	cited (1) 5:13	coming (2) 38:22;71:21
better (1) 3:18	bought (11) 8:5,11,14,17,23,26; 29:19,24;32:15; 58:11,13	Can (31) 3:15,18;7:8;14:6; 15:24;17:11;19:25; 21:10;26:6;27:16; 30:6;31:13,20;32:6; 34:12,22;40:18; 43:23;46:9,18;48:4; 49:4;52:15;53:4; 55:23;56:11;59:25; 61:4;69:8,15;71:16	cites (2)	commercial (3) 18:23;42:9;44:15
big (5) 35:23;41:24;72:16, 20,21	break (1) 66:22	called (4) 20:10,20;36:19; 73:11		commercially (10) 4:14;17:4;19:22; 21:13;30:9,11;31:8, 9;44:8,10
biggest (1) 46:6	brief (11) 6:18;9:20;10:22; 14:14;19:18,25;20:9,	calls (1) 61:13		
billion (2)		candidly (1)		

<p>common (1) 67:11</p> <p>compel (1) 45:5</p> <p>compensated (3) 59:11,13;76:10</p> <p>compensating (1) 53:6</p> <p>compensation (2) 59:13;74:22</p> <p>completely (7) 9:13;38:9;39:13; 45:10;57:16;64:7,8</p> <p>comport (1) 74:5</p> <p>comprehensive (1) 64:25</p> <p>compute (2) 48:24,26</p> <p>concept (1) 57:19</p> <p>conclude (1) 16:4</p> <p>concluded (1) 21:24</p> <p>conclusion (1) 32:19</p> <p>conference (1) 45:6</p> <p>confess (1) 27:6</p> <p>confident (1) 51:2</p> <p>configure (1) 46:18</p> <p>conflict (1) 15:7</p> <p>considered (2) 36:20;60:11</p> <p>consistent (8) 4:10,12,16;11:23; 13:8;15:4;47:5;77:18</p> <p>constitute (1) 71:13</p> <p>construct (1) 56:11</p> <p>construed (4) 34:20,26;43:18; 71:9</p> <p>contemplate (1) 67:14</p> <p>contemplated (1) 59:18</p> <p>contents (1) 22:15</p> <p>contest (1) 10:7</p> <p>contesting (1) 44:19</p> <p>context (1) 27:23</p> <p>contextually (1) 5:15</p>	<p>contract (6) 18:11,21;19:11; 61:13,24;73:13</p> <p>contracts (1) 19:22</p> <p>contrary (1) 36:3</p> <p>conversation (2) 50:23,26</p> <p>convince (1) 29:26</p> <p>convicted (1) 62:18</p> <p>Cornell-trained (1) 42:13</p> <p>counsel (7) 6:20;14:3;16:14; 22:6;27:11;57:26; 68:22</p> <p>counsel's (1) 66:8</p> <p>counterintuitive (3) 17:14;18:19,20</p> <p>Countrywide (2) 28:2;75:7</p> <p>couple (7) 3:4;11:6;14:13; 18:10,26;27:3;64:22</p> <p>course (6) 36:4;38:4;53:17; 58:12;63:4;77:22</p> <p>COURT (253) 3:2,12,17,23,24; 4:2,19;5:25;6:13,24; 7:6,13,16,18,20,26; 8:3,8,10,13,19,22,26; 10:25;11:2,11,18; 12:18;13:10,14,18, 21,25;14:5,8,11; 15:23;16:6,11,13; 17:9,11,16,21,24; 18:2;20:25;21:18; 22:3,6,13,20,24;23:5, 8,16,18,21,25;24:8, 11,15,18,21;25:6,9, 12,16,20,23;26:2,5, 16,19,23;27:5,10,13, 18;28:17,23;29:4,6, 19,22,24,26,26;30:8, 13,15;31:19,26; 32:25;33:7,12,15,23, 25;34:2,8,10,16,21; 35:3,25;36:6,11,17; 39:10,15,18,23;40:3, 8,12,18,21,22,25,26; 41:8,12,23;42:17,26; 43:6,13,20;44:2,13, 21,24;47:7,12,14,19, 21,24;48:6,10;49:8,9, 11,15,19;50:3,6,8,18, 24;51:4,7,14,17,24; 52:7,10,17,20;53:3,9, 14,17,19,24;54:4,7,</p>	<p>10,16,19,21,23,25; 55:3,6,10,12,15,19, 23;56:10,13,19,23; 57:21;58:2,5,14,17, 22;59:2,10;60:2,6,16, 21,24;61:3,10,14,16, 19;62:11,16,19,21; 63:13,18,20,23;64:3, 7,12,18;65:5,14,18, 22;66:5,18,26;67:17, 19,22,26;68:5,5,6,17, 21,25;69:10;70:19, 23;71:24;72:4,6,11, 12;73:14;74:3,8; 75:3,9,11;76:21,26; 77:5,9;78:2,11,26</p> <p>courtroom (1) 44:26</p> <p>Court's (2) 68:19;69:2</p> <p>cover (1) 78:22</p> <p>covered (4) 65:9,11;67:7;75:20</p> <p>create (1) 20:26</p> <p>created (1) 21:21</p> <p>credit (12) 30:19;31:17;32:20, 22,23;42:25;44:6; 59:23,24,24;62:2,10</p> <p>Credit-Suisse (1) 35:13</p> <p>crisis (1) 37:26</p> <p>crux (2) 37:24;76:7</p> <p>customers (1) 46:6</p> <p>CWALT (5) 13:17,26;69:2; 70:4;76:12</p>	<p>8:24;15:14;28:7; 30:7;46:13;59:22,22; 60:3,3,7,7,7,8,8; 72:17</p> <p>dealing (2) 36:4;63:4</p> <p>deals (16) 9:9;10:8;19:17; 27:23,24;28:6,8,10, 15;30:23;31:5,15; 32:17;35:7;42:6; 59:26</p> <p>Dear (1) 78:23</p> <p>debt (9) 6:25;17:5,6;26:11, 11;31:18;59:13; 67:12,13</p> <p>decided (2) 31:23,24</p> <p>decision (6) 11:3,5,12;13:7; 49:22;78:12</p> <p>deck (4) 70:17;73:3,17; 76:20</p> <p>decretal (1) 65:21</p> <p>default (3) 10:14,16;70:7</p> <p>Defendant (2) 3:24,26</p> <p>defined (1) 20:10</p> <p>definitely (1) 62:11</p> <p>definition (2) 73:19;76:14</p> <p>delay (4) 12:15,16,23;63:10</p> <p>delayed (2) 45:5;63:8</p> <p>delegate (1) 26:5</p> <p>demonstrate (2) 70:8,20</p> <p>demonstrating (2) 70:5;75:14</p> <p>demonstrative (1) 52:21</p> <p>demonstratives (4) 3:21;67:25;78:25, 26</p> <p>dependent (1) 68:13</p> <p>Depending (2) 67:19;70:10</p> <p>depose (2) 45:12,20</p> <p>deposed (1) 44:20</p> <p>deposit (1) 65:25</p>	<p>deposited (2) 65:10;66:2</p> <p>deposition (6) 45:8,11,15,19; 46:24;47:2</p> <p>describe (1) 19:13</p> <p>deserving (1) 12:20</p> <p>designed (3) 32:12,14;43:25</p> <p>designing (1) 42:19</p> <p>desperate (1) 69:25</p> <p>detail (2) 19:13;72:8</p> <p>determine (1) 43:11</p> <p>determining (2) 49:23;50:19</p> <p>Deutsche (1) 28:2</p> <p>devalued (1) 38:21</p> <p>difference (13) 30:7,9;37:5;53:12; 54:9,11;55:11;60:18; 63:19,22;69:8,15; 76:24</p> <p>different (18) 23:13;28:15,25; 29:15,18;30:4,5; 31:7;34:4;36:2; 39:13;42:6;46:18; 59:25;63:15;66:17, 17;68:18</p> <p>differently (1) 36:13</p> <p>difficult (5) 12:25;49:22;50:25; 53:20;62:21</p> <p>dilatory (1) 13:2</p> <p>direct (1) 65:22</p> <p>directed (1) 65:24</p> <p>directly (1) 14:25</p> <p>disagree (5) 24:6;52:13;62:22, 23;63:21</p> <p>disagreed (1) 15:13</p> <p>disagreement (1) 59:3</p> <p>discovery (4) 10:11;12:23,24,26</p> <p>discussed (1) 9:8</p> <p>discussion (3) 16:22;40:20;78:8</p>
		D		
		<p>date (22) 11:16;12:5,10,12, 13;13:8;37:12;62:24; 63:2;64:24;68:14; 69:21,26;70:6,11; 71:3,5;73:6,22; 75:25;76:5,17</p> <p>David (1) 18:6</p> <p>day (6) 11:26;45:7;60:24; 61:11;66:10;72:22</p> <p>days (9) 3:4;5:25;32:3,4,4; 50:10,10;51:21; 78:20</p> <p>deal (15)</p>		

dispute (2) 8:23;64:9	dropped (2) 64:25;66:7	entering (1) 11:19	42:16,16,18	final (1) 8:6
disputed (1) 13:23	drove (1) 48:15	entirely (1) 5:8	experienced (3) 39:7;52:25;57:11	finally (6) 10:10;13:3;45:7,7; 76:19;77:15
distribute (4) 4:7;48:22;66:14; 77:17	due (1) 24:6	entirety (1) 32:26	experiencing (1) 55:8	find (3) 7:22;45:12;77:20
distributed (10) 5:6;6:16;26:21,25; 51:20;73:5,7;74:13; 75:20;76:8	during (8) 8:9;32:6;58:18; 72:3,4;74:14,15; 78:16	entitled (3) 57:9,9;75:19	expert (2) 21:7,9	finds (1) 78:16
distributing (1) 49:21	E	equitable (1) 63:11	experts (5) 9:16;10:3,6;51:10; 59:16	Fine (1) 63:22
distribution (46) 14:26;20:5;36:2, 23;37:2,8,12,19;38:5; 39:2;48:23,24;49:2; 63:2,2;65:23;66:15; 67:6;69:6,9,12,15; 70:9;71:2,2,3,5;73:6, 7,11,19,20,22,24,25; 74:17,21;75:15,25; 76:5,13,15,16,25; 77:8,10	earlier (2) 5:3;69:22	equity (2) 67:12,13	explain (1) 25:21	firm (1) 11:14
distributions (3) 20:20;21:5;42:21	ears (1) 51:5	escrow (2) 65:24,26	explained (1) 63:9	firms (2) 28:3;42:6
document (2) 18:16;59:5	easier (1) 54:17	essential (1) 19:4	explaining (1) 9:2	first (37) 4:9,21;5:23,26;6:6, 8;14:18;16:13,16,22; 22:11;24:24,26; 25:25;29:12;36:22; 38:4,16;40:26;45:22; 46:20,21;53:8;65:20, 20;67:3;68:10;70:7, 21,24;71:16,17; 72:26;75:21;76:8; 77:21;78:16
documents (4) 3:4;16:18;58:26; 59:3	effect (4) 33:10,18;57:17; 64:19	essentially (1) 11:19	explanation (3) 9:18;10:4;20:9	five (3) 10:15;27:25;42:5
dollar (3) 16:10;20:13;53:24	effectuated (1) 18:12	estopped (1) 14:16	expressing (1) 53:22	fix (1) 67:9
dollars (9) 20:7;27:24;52:2; 53:13;54:9,12,26; 56:7;57:5	effectuates (1) 19:26	estoppel (2) 15:15,26	expressly (1) 15:12	flagged (1) 11:24
done (10) 30:24;35:26,26; 37:14;38:15;42:11; 57:18;62:13,14; 75:10	eight (2) 19:24;35:12	even (12) 20:17,24;21:21; 35:21,22;40:15;49:4; 57:6,22;62:8;63:3; 68:7	extent (10) 5:9,21;15:3;34:4; 38:17;42:3,17;49:3; 52:12;57:10	flawed (1) 18:20
doubt (1) 51:6	either (2) 46:14;78:12	event (1) 77:25	extraordinary (2) 42:15,16	flip (2) 18:17;74:14
down (12) 5:8;9:14;13:16; 30:21;37:22,22;38:8; 40:18;48:14;53:7; 57:11;73:2	else (5) 16:3;17:21;49:6; 62:16;70:16	event (1) 77:25	F	flipped (1) 9:11
draft (2) 40:14;73:15	elsewhere (1) 48:16	everyone (5) 23:10,12,26,26; 78:4	face (1) 41:2	flow (2) 20:7;42:21
drafted (1) 40:16	e-mail (1) 3:4	everyone's (1) 78:7	fact (13) 25:10;27:20,21; 29:8;35:21;36:2; 41:5;51:13;69:23; 71:16;72:18;76:9; 77:18	flows (2) 9:23;57:11
drafters (1) 20:2	embrace (1) 24:19	evidence (3) 4:2;44:10;69:26	failed (1) 44:9	focus (2) 16:2;17:7
drafting (1) 16:15	end (3) 45:6;60:24;61:11	evil (2) 25:8,9	fair (3) 63:11;70:11;71:18	folks (1) 41:17
draws (1) 67:16	ends (1) 39:7	exact (3) 19:8;53:13;66:6	fairly (1) 6:21	follow (5) 19:7;48:17,22; 71:16,17
dries (1) 38:3	enforce (2) 22:17;40:2	exactly (4) 19:14;24:3;35:26; 69:19	faith (1) 71:21	followed (2) 4:15;19:18
driving (1) 57:2	enforced (2) 15:19,22	example (6) 6:25;9:19,20,21; 19:24;36:11	FDR (1) 48:15	followup (1) 36:16
	enhancement (5) 30:20;31:17;32:20; 42:25;44:7	exceeds (1) 5:20	feature (1) 30:22	footnotes (1) 20:18
	enjoined (1) 41:21	except (1) 50:14	February (10) 11:21;12:9,12,16; 62:26;63:3;65:3,13; 66:4;68:14	forecast (1) 45:25
	enjoy (1) 78:23	excerpted (1) 75:17	feel (2) 50:14;60:6	forgive (1) 37:13
	enough (1) 38:26	excess (2) 76:15,17	fees (1) 74:26	form (6) 19:11;28:13,14,14; 44:6;62:10
	ensure (1) 4:22	Excuse (1) 7:22	figure (3) 40:8,10,12	forms (1)
	enter (1) 65:24	exhibit (2) 3:24,26	filed (3) 12:17;63:3;64:9	
	entered (4) 16:20;17:3;24:3; 40:13	existed (1) 11:21		
		expectations (2) 4:17;21:16		
		experience (3)		

59:25 forth (4) 36:12,13;58:10; 59:19 fortuity (1) 9:24 forward (7) 10:4;17:8,15;45:8, 11,13,16 found (1) 16:19 four (4) 4:9;9:6;38:20; 68:18 fourth (1) 4:16 frankly (4) 16:23;19:25;35:21; 50:8 Friedman (2) 11:3;63:13 Friedman's (1) 11:5 friend (2) 42:7;65:2 friends (1) 71:20 front (3) 8:15;19:6;73:4 full (1) 21:14 fully (1) 34:7 function (3) 10:9,20;78:19 fund (1) 73:9 fundamental (2) 18:11;72:14 fundamentally (1) 18:25 funds (14) 21:14;36:21,21; 60:12,12;62:25;73:4, 7,16,18,22;74:6,15; 76:5 further (3) 30:21;52:9;62:8 future (2) 73:11;74:21	5:8;6:6;75:21 gentleman (1) 42:12 George (1) 46:10 gets (3) 30:2;38:4;49:3 giant (1) 75:3 Gibbs (2) 11:14,24 gift (1) 3:9 given (2) 46:4,12 giving (1) 3:8 glad (1) 64:9 glasses (1) 68:22 goal (2) 18:11,13 goes (4) 20:13;42:22;48:15; 71:20 Goldsmith (1) 68:4 GOLDSTEIN (29) 3:15,20;4:3,4,20; 6:12,17;7:5,10,15,17; 9:5;10:26;11:10,13; 13:13,17,19,23;14:7, 12;16:4,7,12;17:17, 26;42:7;45:10;63:26 Good (7) 3:23;8:19;9:4; 17:16;44:6;52:7; 71:21 goodness (3) 68:21;69:17;77:12 gotcha (1) 35:18 governed (1) 67:7 governing (5) 18:15;35:2;43:19; 66:15;71:9 graphics (1) 37:14 great (5) 30:7;60:20;69:17, 18;77:12 group (8) 3:2;50:3;59:20; 69:2,4;70:4;75:26; 76:18 guess (7) 6:26;7:8;10:25; 11:8;46:4;72:18; 73:20 guts (1) 76:3	guys (1) 64:10 H half (2) 9:12;25:17 halo (1) 25:10 Handing (1) 68:2 happen (6) 9:3;16:21;17:4; 35:24;64:10;75:22 happened (5) 33:13;37:24;45:9; 46:19,20 happening (1) 66:6 happens (6) 52:26;69:16,20; 76:9;77:2,3 happy (4) 10:20,21;15:26; 73:14 hard (1) 58:18 head (2) 9:11;25:10 heading (1) 43:23 hear (6) 15:26;17:11;23:3, 5;54:10;64:3 heard (3) 18:9;64:4;78:4 hearing (8) 5:26;16:15;32:6; 43:22;56:16;64:14; 72:4;78:10 hearings (3) 6:3;13:4;32:4 held (12) 25:3,4;40:20; 73:11,18,20,25; 74:12,17,21;75:15; 76:4 help (1) 74:25 helpful (4) 32:10;67:22;78:8, 20 helps (1) 75:21 here's (6) 45:21;52:21;58:9; 59:2;78:14,23 Hey (1) 28:23 high (1) 41:17 highest (1) 67:15	highlighted (2) 11:16;69:9 highly (3) 28:4;35:4;68:13 highly-negotiated (1) 62:3 hire (1) 68:3 hit (6) 38:26;64:23;65:17, 18;66:13;69:23 hits (1) 72:26 hold (8) 18:8,8;24:12;33:9; 40:19;54:2;57:6;61:4 holder (5) 9:24;22:9;24:15; 68:6;70:5 holders (36) 4:23,24;6:7,10; 7:13,20;9:10,12,13; 10:2;11:15;15:5; 18:7;26:20;30:24; 37:18;38:7;50:4; 53:5,10,11,26;54:2,8, 19,26;55:3;56:5; 57:2,6;58:14,16; 59:13;60:25;63:5; 70:9 holdings (1) 46:4 Honor (45) 3:11,15,21;4:3,6; 6:18;10:11,21;11:13; 13:4;14:7,18;16:5; 17:17,18,23;18:5,13, 18;19:22;20:3,9,14; 21:12,15,20;22:8; 27:6,15;28:6;44:18; 63:26;64:5;67:25; 68:4,24;69:21;70:15; 71:12,15;72:10; 76:19;77:15,25; 78:24 Honor's (2) 10:17;16:8 hook (1) 16:19 hope (1) 22:15 hotly (1) 44:19 huge (1) 74:11 hundred (8) 6:8;52:2;54:9,12, 25;56:7;57:5;60:13 I idea (2) 14:22;22:26	identifying (1) 70:15 ignore (3) 21:8;50:12;52:11 illusory (1) 21:2 illustrative (1) 37:14 imagine (3) 41:13;56:24;57:3 immediately (2) 37:11;76:16 important (3) 21:7;45:4;74:2 importantly (2) 48:12,13 impractical (1) 13:5 includes (2) 73:10,21 including (1) 9:13 inconsistency (1) 34:4 inconsistent (3) 13:15;18:14;34:6 incorporated (1) 19:10 increase (1) 75:26 incurring (1) 69:22 indenture (1) 67:20 indicate (1) 56:4 indulging (1) 63:25 information (2) 3:4;44:14 initial (3) 13:19;14:19;15:2 instead (4) 9:20;45:10;46:26; 57:19 instructed (1) 40:22 instruction (1) 12:18 insulate (3) 5:23;19:5,16 insulated (1) 5:18 insulating (1) 19:8 insurer (1) 42:15 intended (23) 6:15;10:5;23:26; 29:13;33:17;34:7,19, 26;40:13;41:13;43:8, 10,18;55:16,17,19, 20;56:4;58:7;70:16;
G				
Gail (1) 68:4 game (1) 21:25 gave (6) 9:20;13:20;19:24; 24:20;68:16;76:22 generalization (2) 38:19;61:7 generally (3)				

<p>71:8;72:24;78:18 intends (1) 23:10 intense (1) 72:8 intensity (1) 59:20 intent (9) 4:11,12;18:12,14; 19:26;22:26;33:18, 21;52:11 intention (1) 41:19 intentional (1) 10:5 interest (11) 13:12;14:2;22:25; 25:13;30:26;36:22; 38:6;67:9;71:23; 72:15;74:20 interesting (3) 9:17;28:19;64:8 interests (1) 71:22 interim (1) 65:22 interpret (10) 15:20;28:24;29:8; 32:8;39:23,26;40:9; 55:4;61:17;70:6 interpretation (19) 9:26;17:2;18:11, 14,21;19:7,26;21:22; 29:26;30:10;58:23; 68:20;69:2,10,12; 70:12,12;77:9,11 interpretations (1) 77:20 interpreted (1) 52:22 interpreting (1) 43:21 intervened (1) 50:13 Intex (43) 4:6,24;5:11;10:7, 10,12,13;12:24,24, 26;19:23;21:20; 44:17,18,19,20,26; 45:8,12,12,22,23; 46:6,7,8,9,10,11,11, 14,19;47:3,4,6,7,16, 25;48:9,17,20,26; 49:3;63:7 Intex's (1) 46:13 into (15) 4:2;8:4;16:20; 17:3;19:10;24:3; 29:25;38:3;40:13; 65:10,24,26;66:2; 77:7;78:25 investors (4)</p>	<p>35:23;42:24;59:21; 66:14 invite (2) 52:3;78:15 involved (6) 16:14;23:24;27:26; 28:15;44:18;45:3 involvement (1) 27:16 irrelevant (3) 13:2;39:22;40:25 isolation (1) 5:16 issue (19) 4:9;11:7,8;14:21; 15:2,10,15,17;35:10, 17;39:13,14;40:23; 41:16;49:25,25,26; 64:24,25 issued (1) 35:13 issues (3) 13:8;17:6;50:25</p>	<p style="text-align: center;">K</p> <p>Kapnick (4) 4:21;8:16;32:2; 33:2 Kapnick's (1) 78:11 keep (3) 55:24;60:3;69:21 key (10) 5:16;11:15,22,22; 21:17;28:3,8,9,15; 37:2 kind (1) 31:3 KLEIN (22) 22:8;67:25;68:3,4, 18,23,26;70:20,24; 71:26;72:5,10,12; 73:16;74:6,10;75:6, 10;76:23;77:2,6; 78:24 knew (3) 15:9;23:25,26 knowing (1) 8:23 known (1) 41:12 knows (4) 10:11;20:10;28:6; 64:7 Kravitt (12) 6:19;21:16;24:10, 17,17;29:9;33:22; 38:14,14;41:19; 57:20;72:17 Kravitt's (1) 52:14</p>	<p>32:19;34:21,22,22, 22;66:4 lay (1) 22:21 layer (1) 54:11 lead (4) 24:13;58:3,8;63:8 leads (2) 9:26;33:7 leakage (4) 10:2;14:24;15:6; 20:14 least (2) 38:9;51:26 leave (1) 52:6 left (2) 69:5,13 legal (2) 63:20,24 lengthy (1) 6:21 less (7) 7:3;9:12;25:13,13, 16;57:5,5 less-senior (1) 42:24 letter (1) 78:22 level (2) 54:13;59:20 liability (1) 75:8 light (1) 78:17 limit (1) 77:26 limits (1) 42:21 line (4) 37:19,22;55:13; 67:16 lion's (1) 9:14 list (2) 13:20;26:17 Listen (1) 68:25 listening (2) 51:4,5 litigated (1) 12:21 little (9) 11:26;16:19;29:15, 18;30:3,5;35:18; 39:11;45:19 live (1) 30:6 load (1) 48:4 loaded (1) 48:14</p>	<p>loan (1) 75:26 logic (1) 12:7 long (1) 73:12 longer (1) 36:8 look (13) 16:18;17:8,15; 18:22;20:16;25:10; 45:17;61:22;63:21; 67:13;73:19;75:16; 78:10 looked (2) 31:26;32:2 looking (2) 40:26;72:7 looks (2) 16:26;67:13 loop (1) 68:9 loophole (1) 70:15 lose (1) 40:5 loss (10) 38:7;43:9;53:6; 72:18,20,20,21,21,23, 25 losses (37) 5:18,23;6:6,8,10; 9:10;19:5,8,16,21,24; 24:24,26;29:11;37:3; 38:7,15,17,17,23,24, 26;39:3,6;41:18; 42:2;52:25;54:15; 55:9;57:11;59:11; 61:6,8;69:22;72:16, 18,25 lost (1) 59:13 lot (10) 5:3,13;25:13,13; 39:11;44:13;51:23, 24;59:25;78:9 love (2) 32:9;33:10 low (1) 66:25 lowest (1) 67:10 LUNDIN (4) 27:2,6,12,15</p> <p style="text-align: center;">M</p> <p>ma (1) 55:20 magic (3) 12:10;69:26;70:5 main (2) 5:14;20:3</p>
---	--	---	---	--

<p>maintained (1) 26:14</p> <p>maintaining (1) 14:16</p> <p>makes (8) 9:19;25:18;27:3; 30:8;36:7;39:8,9; 44:8</p> <p>making (2) 26:20;49:21</p> <p>man (2) 45:21;47:2</p> <p>many (1) 60:14</p> <p>March (1) 14:19</p> <p>marching (1) 45:8</p> <p>marginal (1) 20:13</p> <p>mark (1) 3:24</p> <p>marked (1) 3:26</p> <p>market (5) 4:17;6:25;10:8,19; 21:15</p> <p>marketable (2) 42:24;61:26</p> <p>Massachusetts (2) 44:23;45:4</p> <p>master (5) 74:22,22,25;75:18, 21</p> <p>material (1) 71:13</p> <p>matter (2) 48:16;66:25</p> <p>may (20) 3:22;6:8;7:7,7; 23:21;30:12;35:5; 41:21;44:19;49:20; 53:15;63:26;69:7,8, 14,14,16,18;77:6; 78:24</p> <p>maybe (4) 28:23;29:25;39:3; 51:22</p> <p>Mayer (2) 6:20;64:5</p> <p>McKee (2) 28:3;31:14</p> <p>mean (30) 3:17;11:7;12:8,16; 13:19;14:5;15:23; 17:6,25;18:2;25:20; 32:11;33:21;35:5; 36:25;38:19;39:5,9; 40:23;50:24;52:14, 15,16;54:8;56:26; 60:17;61:18;62:19; 64:13;78:18</p> <p>Meaning (1)</p>	<p>69:16</p> <p>means (4) 45:13;62:6,7;73:24</p> <p>measure (1) 65:22</p> <p>mechanism (1) 65:11</p> <p>mentioned (2) 11:24;14:14</p> <p>merits (1) 64:8</p> <p>met (1) 21:6</p> <p>Method (11) 4:7,24;5:11;10:7, 13,14,16;47:7,16,25; 49:7</p> <p>methodology (4) 5:2,5;70:22;77:16</p> <p>methods (2) 4:15;5:19</p> <p>Michael (1) 64:5</p> <p>mid-month (1) 14:23</p> <p>might (6) 3:18;17:18;28:23; 38:19;45:14;67:15</p> <p>million (11) 27:25;52:2;54:9, 12,25;56:7;57:5; 69:6,13;77:9,11</p> <p>millions (2) 19:21;20:7</p> <p>mind (2) 26:7;50:26</p> <p>Mine (2) 33:15;66:10</p> <p>minute (1) 51:6</p> <p>Model (8) 46:14,19;47:6,20; 48:9,18,20,26</p> <p>modeling (5) 45:23,25,26;46:16, 25</p> <p>models (2) 46:13,15</p> <p>modifies (1) 71:12</p> <p>modifying (1) 49:14</p> <p>MOLO (167) 3:10;7:19,22,24; 8:2,6,9,12,17,20,25; 14:4,10;17:8,10,15; 22:12,14,23;23:4,7, 15,17,19,23;24:6,10, 13,16,19,22;25:7,11, 15,19,21,25;26:3,9, 18,22;27:19;28:22; 29:3,5,7,21,23;30:5, 12,14,16;31:21;</p>	<p>32:11;33:6,11,14,20, 24,26;34:6,9,12,19, 25;35:4;36:10,15,18; 39:13,17,21,25;40:7, 10,17;41:11,15,26; 43:5,12,15,24;44:4, 15,22,25;47:10,13, 18,20,23;48:4,8,11; 49:10,13,17;50:2,5,7, 17,22;51:2,6,8,15,23; 52:5,8,13,19,24;53:4, 12,15,22;54:3,5,8,14, 18,20,22,24;55:2,5,8, 11,14,16,22;56:9,11, 14,22;57:8,26;58:3,6, 16,19,25;59:7,11; 60:5,9,17,23,26;61:6, 13,15,18,20;62:13, 18,20,22;63:15,19, 22,25;65:2;67:24; 68:3;72:16</p> <p>money (24) 5:5;26:20,25; 28:26;29:17;36:12; 43:10,21;44:11; 49:21,23;50:20; 51:19;56:18;60:25; 61:3;64:16;65:3,14, 16;67:8;71:3,20; 74:11</p> <p>month (12) 9:21,22,22,23,26; 36:26,26;63:9;73:4, 22;74:13,16</p> <p>months (2) 9:22;35:12</p> <p>more (29) 4:24;5:23;7:8; 10:2;11:7;12:13; 17:5;29:11;34:17; 38:25;41:24,25; 42:24;44:11;45:19; 48:12,12;54:12,26; 55:3;56:7,14;60:25, 26;61:5,11,26;67:17; 71:20</p> <p>more-senior (2) 54:13;56:7</p> <p>Morgan (1) 13:7</p> <p>mortgages (5) 37:17,25,26;38:2; 72:19</p> <p>most (24) 4:7,10,11,16,23; 5:17,22;9:10;10:7; 24:23,25;37:3,3; 40:5;58:7;67:12,15; 69:24;70:11;71:18; 72:26;76:9;77:13,16</p> <p>motion (1) 45:5</p> <p>move (1)</p>	<p>69:25</p> <p>moved (1) 36:26</p> <p>Moving (1) 75:24</p> <p>much (16) 3:9;7:3,8;8:17; 22:14,15;25:11;53:4, 10,10,25,26;56:19; 62:20;78:3,7</p> <p>must (3) 27:6;41:12;45:3</p> <p>myself (1) 45:2</p> <p>mystery (1) 35:17</p>	<p>22:13</p> <p>nor (1) 40:14</p> <p>normally (1) 37:16</p> <p>November (1) 21:24</p> <p>number (7) 17:4,4;31:17; 32:22;33:21;42:11; 53:25</p> <p>numbers (1) 53:21</p> <p>nunc (1) 63:12</p>
			N	O
			<p>nature (1) 12:21</p> <p>nearly (1) 10:15</p> <p>necessarily (2) 28:10;50:20</p> <p>necessary (1) 65:22</p> <p>need (6) 17:7;33:18;46:26; 52:8;68:22;78:8</p> <p>negotiate (1) 56:25</p> <p>negotiated (24) 28:5,9;30:23; 33:16;35:5,19;40:4, 16;41:9;42:5;50:9; 51:18,25;55:26;56:3, 20;57:23,25;58:24; 59:5;60:15;62:9,9; 71:25</p> <p>negotiating (5) 16:15;23:8;41:14; 57:3;58:18</p> <p>negotiation (4) 31:16;58:20;62:4; 75:7</p> <p>negotiator (4) 24:13;58:3,8;64:14</p> <p>neither (1) 9:17</p> <p>Nelson (2) 28:4;31:14</p> <p>net (2) 73:10,18</p> <p>neutral (1) 64:8</p> <p>New (1) 18:22</p> <p>next (10) 9:21,22;63:2; 69:11;70:3;71:4,12; 76:4;78:6,19</p> <p>nice (1)</p>	<p>OA10 (2) 13:17,26</p> <p>object (1) 14:9</p> <p>objection (1) 22:4</p> <p>objectors (1) 3:3</p> <p>obtaining (1) 66:17</p> <p>obvious (1) 19:3</p> <p>obviously (6) 5:3;10:11;19:6; 21:17;31:2;35:9</p> <p>OC (2) 69:4;77:7</p> <p>occur (3) 4:15;43:4;56:23</p> <p>occurred (7) 8:11,14;12:15; 31:16;36:3,4;62:5</p> <p>occurs (2) 6:7;11:18</p> <p>off (2) 40:19,20</p> <p>offer (1) 56:11</p> <p>officer (1) 40:22</p> <p>often (1) 45:25</p> <p>Once (3) 20:11;66:12;76:24</p> <p>One (42) 5:19;9:22,22,23; 11:2;13:11,12,19,26; 14:6,9,15;15:11; 17:4;20:17;22:13; 30:17;33:8,21;34:9; 35:16;38:25;40:3; 42:10;44:9;46:15,20; 49:6;52:16;53:15; 58:9;62:24;63:10; 64:2,10;67:13;70:16,</p>

16;72:22;75:3,8; 78:14 one-and-one (1) 77:13 one-off (1) 51:11 ones (4) 5:23;9:13;14:20; 72:15 one-time (3) 74:7;8;77:23 only (20) 5:10;15:10;18:2, 20;21:16;28:18; 34:22;36:4;39:23; 57:14;59:7;61:20,21; 62:7;66:22;73:4,26; 74:24;77:11;78:21 onto (2) 42:22;75:24 opinion (3) 11:23;46:14;47:14 opportunistic (1) 21:26 opposed (2) 74:4;75:4 opposite (3) 18:17;19:8;24:3 order (6) 5:23;10:12;21:24; 35:6;65:21;73:7 original (4) 22:21;31:16;43:8; 78:12 out (26) 7:22;9:21;11:12; 12:18;15:9,12;18:19; 19:3,9;22:21;28:18; 32:5,26;35:25;38:9; 40:8,10,12;42:14; 43:11,21;45:12; 57:16;64:16,25;66:7 outcome (3) 18:23,24;21:13 over (34) 5:19;6:5;9:21; 14:21,23;19:4,14; 20:10,12,16,20,22,24, 26;21:2,5;25:10; 30:18,22;32:20;33:3; 36:25;37:6;41:20; 42:18;44:12,26; 59:23;62:8;63:7; 66:8;76:17,17;77:23 overall (1) 16:25 overlap (1) 15:3 overlooked (1) 49:5 overrule (1) 22:3 owes (1)	74:26 own (4) 45:25;69:3;71:22, 26 owned (3) 23:19,21;68:6 P Page (17) 6:18;71:6,6;73:3,9, 17,20;74:14,15,19, 20;75:17,24;76:11, 14,19;77:3 paid (22) 4:23;7:7,12;9:20; 25:13,16;32:5;33:4; 35:15,15;38:2,4,16; 39:4,11,17,21;43:10; 61:11;64:16;66:20; 67:3 paid-first-write-up-second (2) 5:2,5 Paine (1) 42:14 painted (1) 25:7 paper (1) 68:15 papers (2) 64:26;66:8 paragraph (1) 65:21 Park (11) 18:13;19:7,19; 20:4,11,24;21:3; 25:4;68:11;69:20; 77:10 Park's (1) 21:22 part (5) 12:22;19:11;23:9; 32:4;65:20 parted (1) 45:7 participants (2) 4:17;10:8 participated (1) 72:13 particular (7) 23:22;25:2;26:12; 27:7;29:14,17;67:7 particularly (1) 78:13 parties (28) 6:15;10:5;15:13; 17:2;18:12,15,24; 19:12;22:26;23:5; 30:23;31:22,24; 32:18;33:16;40:13; 41:7;43:7,9,16;51:18, 25;52:23;56:4;57:18; 59:18;75:22;78:18	parties' (2) 19:11;77:19 partners (1) 66:10 parts (1) 5:3 party (3) 22:21;23:11;75:6 past (1) 36:2 Pause (2) 7:23;53:18 pay (25) 11:20;17:5;22:11; 36:22,22;39:4;43:21; 46:12,16;47:4,21; 48:2,8,13;49:23;50:4, 19;60:12;70:7,21; 71:16,17;74:25; 75:21;77:21 payable (1) 67:8 paying (3) 37:17,25,26 payment (25) 4:8;6:11;9:19; 11:18;12:3,5;19:20; 20:26;38:12;42:19, 20;47:5,26;49:7; 50:13;53:25;62:25; 65:12,26;66:2;70:26; 74:7,9;75:4,8 payments (1) 21:14 payout (1) 41:24 pays (1) 39:3 penny (1) 54:2 people (16) 26:3;30:21;37:16, 24,25;40:4;41:9; 43:13;44:26;53:7; 55:25;56:17,18,20; 58:23;67:2 percent (12) 6:9;28:20;38:20, 20,21;39:3,5;41:20; 60:13;61:8,8,9 percentage (1) 16:9 percentages (1) 53:22 perfect (2) 39:9;44:8 Perhaps (2) 7:17;56:15 period (1) 8:9 permit (1) 65:22 permits (1)	12:3 persist (1) 41:22 person (1) 42:11 perspective (1) 16:25 petition (4) 12:17;14:20,21; 19:2 philosophy (1) 6:3 phone (2) 45:6,14 piece (1) 44:10 place (3) 8:4;16:25;33:19 plain (1) 71:17 plainly (1) 30:19 players (1) 28:15 pleading (1) 13:22 pleadings (3) 13:20;14:19;15:2 please (3) 40:18;48:19;78:21 plus (1) 60:4 podium (2) 3:17,19 point (26) 5:14;10:3,12,17; 11:12,15,22;13:24; 15:9,11;19:3,15; 20:3;21:7;27:19; 29:24;32:6,25;36:9; 44:15;49:20;52:20; 58:21;63:20,24; 64:23 pointed (3) 18:19;19:2,9 points (8) 10:22;14:13,15; 18:10,26;23:17;27:3; 30:16 pooling (5) 4:12;5:12,17;9:8; 12:3 portion (3) 5:10;11:23;75:19 position (9) 12:25;13:9;14:17; 15:4,21;18:3;26:13; 55:21;56:26 possibility (2) 35:7;72:9 possibly (2) 56:17,20 posted (1)	21:23 precisely (1) 6:21 predetermine (1) 66:6 pre-distribution (1) 5:6 preferred (1) 4:15 prepare (1) 14:6 present (4) 3:6;14:17;17:19; 31:5 presented (1) 7:25 President (2) 45:12;46:10 pressing (1) 72:15 Presumably (1) 16:10 presume (1) 12:13 pretending (1) 43:4 pretty (1) 64:21 previously (1) 73:25 price (2) 7:2;45:24 primary (2) 12:2;27:26 principal (22) 5:9;11:20;12:4,4, 11:20;5:19;36:23,23, 26;37:19;38:5;39:2; 48:24,26;69:9;76:13, 14,17,24;77:8,10 principle (1) 6:23 prior (9) 4:6;13:4;20:25; 27:14;37:11;49:9,11; 63:4;76:16 priority (4) 15:6;42:19,20;73:8 pro (1) 63:12 probably (6) 22:10;27:14;38:21; 46:5;61:9;75:12 problem (2) 50:18;59:2 proceeding (11) 4:21;5:4;22:22; 27:12;35:22;63:6,11; 68:8;72:5,13;78:17 Proceedings (79) 3:1;4:1;5:1;6:1; 7:1,23;8:1;9:1;10:1; 11:1;12:1;13:1;14:1;
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<p>15:1;16:1;17:1;18:1; 19:1;20:1;21:1;22:1; 23:1;24:1;25:1;26:1; 27:1;28:1;29:1;30:1; 31:1;32:1;33:1;34:1; 35:1;36:1;37:1;38:1; 39:1;40:1;41:1;42:1; 43:1;44:1;45:1;46:1; 47:1;48:1;49:1;50:1; 51:1;52:1;53:1;18; 54:1;55:1;56:1;57:1; 58:1;59:1;60:1;61:1; 62:1;63:1;64:1;65:1; 66:1;67:1;68:1;69:1; 70:1;71:1;72:1,7; 73:1;74:1;75:1;76:1; 77:1;78:1</p> <p>proceeds (7) 36:19;53:7,9;56:6; 60:10;63:3,16</p> <p>process (1) 66:6</p> <p>produce (1) 68:12</p> <p>Proffitt (4) 28:4,14;31:14; 42:14</p> <p>promise (1) 51:5</p> <p>properly (2) 75:15;77:21</p> <p>proposition (1) 25:26</p> <p>pro-rata (1) 5:10</p> <p>Prosirir (15) 7:12,13;10:18; 11:17;12:11;13:11, 26;25:4;68:9;69:11, 21;70:13;71:10;72:9; 77:11</p> <p>Prosirir's (2) 18:13;68:11</p> <p>prospect (1) 49:23</p> <p>prospectus (3) 18:16;19:9,12</p> <p>protect (1) 9:9</p> <p>protection (3) 31:3,4,13</p> <p>provide (2) 44:9;47:3</p> <p>provided (1) 75:18</p> <p>provider (1) 46:3</p> <p>provides (3) 46:11;66:12;67:5</p> <p>provision (6) 35:6,19,19;36:15; 41:6;59:14</p> <p>provisions (2)</p>	<p>48:23;66:15</p> <p>PSA (26) 22:18;30:2;31:24; 32:13;36:5,18;37:10; 40:2;41:5;48:21; 49:14,24;50:13,16; 55:17,21;59:14; 60:14;62:6;67:19,20; 70:6,8,13;72:21; 77:18</p> <p>PSAs (20) 5:16;10:5;12:6; 18:16;25:2;28:19; 29:14,15;33:22; 36:13;48:17,22,23, 24;49:16;50:21; 60:11;67:11;68:12; 76:8</p> <p>PSA's (1) 71:17</p> <p>purchased (3) 10:19;16:8;27:9</p> <p>pure (1) 58:7</p> <p>purpose (11) 4:22;5:4,16;8:18; 19:4,13,14,15,21; 51:12;74:20</p> <p>purposes (2) 19:16;37:15</p> <p>pursuant (1) 77:18</p> <p>pushed (1) 35:23</p> <p>pushing (1) 63:5</p> <p>put (32) 6:18;8:4;9:16;10:4, 10,22;11:15,25,26; 12:11;16:25;26:24; 28:8;30:19;33:18; 44:13;46:9;52:17,19; 62:4;64:26;65:14,16; 66:9,22;67:4;68:22; 70:17;73:3;74:26; 78:21,25</p> <p>putting (3) 27:22;52:21;64:19</p>	<p>radar (1) 51:12</p> <p>raised (6) 14:21;15:17;35:10, 10;58:20,21</p> <p>raises (1) 35:9</p> <p>raising (1) 50:25</p> <p>random (1) 70:15</p> <p>ranged (1) 27:24</p> <p>rated (2) 27:22;59:9</p> <p>rates (1) 30:26</p> <p>rather (3) 12:14;64:9;67:12</p> <p>rating (2) 35:6;62:2</p> <p>reach (1) 20:12</p> <p>reached (2) 22:25;33:16</p> <p>read (13) 5:14,15,15;6:22; 11:6;18:21;20:3; 21:18;23:14;32:9; 34:16;42:8;78:11</p> <p>Realized (1) 72:20</p> <p>really (13) 9:24;10:15;12:7; 15:15;16:20;17:6; 39:10;41:3;45:3; 64:21;71:22;78:8,12</p> <p>reason (12) 12:9,12,22;17:12; 22:3;28:12;41:15; 42:23;44:6;56:15; 62:4;74:20</p> <p>reasonable (10) 17:5;19:23;20:14; 21:13;30:9,11;31:8, 9;44:9;71:18</p> <p>reasonableness (3) 18:23;42:10;44:16</p> <p>reasonably (1) 19:26</p> <p>reasons (2) 4:9;9:6</p> <p>rebuttals (2) 78:5,5</p> <p>recall (5) 44:19;51:22;64:14, 15,18</p> <p>receive (3) 15:6;56:6;75:19</p> <p>received (5) 4:2;62:25;63:16; 65:3;73:21</p> <p>receiving (2)</p>	<p>9:12,14</p> <p>recently (1) 11:4</p> <p>recognize (1) 19:5</p> <p>record (7) 11:16;13:8;40:19, 20;64:24;69:21; 78:25</p> <p>recover (1) 57:15</p> <p>recovered (1) 72:16</p> <p>recoveries (9) 36:20;44:5;60:11; 73:21,23;74:24; 75:15,26;76:4</p> <p>recovery (10) 25:17;38:12,13; 43:25;57:10;62:6,7; 71:2;74:12;75:21</p> <p>red (1) 37:19</p> <p>refer (1) 3:22</p> <p>reference (1) 20:15</p> <p>references (1) 13:7</p> <p>reflect (2) 46:13;47:8</p> <p>reflected (3) 6:2,13;31:24</p> <p>reflects (5) 5:2,11;6:22;7:6; 10:8</p> <p>regulators (1) 45:26</p> <p>relate (2) 11:20;12:10</p> <p>related (1) 42:12</p> <p>relevant (7) 11:6;12:12,26; 65:3,4,7;78:13</p> <p>rely (1) 49:4</p> <p>remainder (1) 17:19</p> <p>remaining (2) 4:8;15:13</p> <p>remember (2) 45:14;74:7</p> <p>REMIC (1) 67:9</p> <p>rendered (1) 61:24</p> <p>report (1) 35:14</p> <p>reporter (1) 4:2</p> <p>reports (2) 21:8,9</p>	<p>representation (1) 57:24</p> <p>represented (1) 72:20</p> <p>required (1) 35:5</p> <p>requires (2) 48:21;62:26</p> <p>res (4) 15:17,25;35:9; 58:19</p> <p>residual (1) 67:9</p> <p>resolved (1) 37:7</p> <p>respect (4) 18:16;24:6;33:3; 51:20</p> <p>respects (1) 62:15</p> <p>respond (3) 14:13;15:16;63:26</p> <p>responded (2) 15:10,11</p> <p>response (3) 11:22;14:20;20:4</p> <p>responses (1) 14:17</p> <p>responsive (2) 14:25,26</p> <p>result (11) 4:14;9:18;10:6; 14:24;41:13;47:26; 60:19;67:8;68:13; 69:20;70:2</p> <p>results (1) 66:17</p> <p>revenue (1) 38:3</p> <p>rewrite (2) 48:17;61:21</p> <p>right (69) 3:6,14,22;6:7;7:5, 5;8:15,17;11:10; 13:13,18,21;14:10; 23:4,7,23;24:18,21; 26:8;29:4,14;30:14, 20,22,26;32:12,15; 34:10;35:2,3,9,11,16; 38:23;39:9,24;40:21; 41:2,11;42:10;43:12, 15,20,25;45:23; 49:17;50:5,17;51:7, 8;52:25;54:20,22; 55:18,21;57:13;58:5, 5;61:4,9;62:3;64:18; 69:7,14;70:8,12; 71:23;74:8;77:5</p> <p>risky (1) 26:15</p> <p>RMBS (2) 42:12,20</p> <p>road (1)</p>
Q				
	<p>quickly (2) 14:13;16:4</p> <p>quite (2) 11:7;15:18</p> <p>quotation (1) 24:19</p> <p>quote (6) 6:19,22;12:16; 24:16;46:19;48:9</p>			
R				

<p>38:8 robust (1) 45:11 rolled (1) 48:14 routinely (1) 26:14 row (5) 68:19,26;69:5,11, 13 rows (1) 70:3 ruling (1) 77:26 running (2) 20:18;21:3</p>	<p>Section (7) 64:20;65:8;66:11, 24;67:5;70:25;73:6 secured (2) 6:4,5 securities (1) 66:24 securitization (3) 26:13;27:26;28:7 security (2) 46:5;61:4 seeking (3) 12:17;22:17;70:14 seems (2) 12:25;49:5 sell (1) 28:7 senior (61) 4:23;5:17,23;6:4, 10;7:2,9;9:10,11,24; 15:5;17:6;18:7;19:5; 22:8;24:24,25;25:14; 26:9;27:21;29:11; 30:24;31:12;32:21; 33:3;37:3,3,18,21; 38:6;41:20,25;42:11, 21;44:7;50:4;53:5, 10,11,25,26;54:19, 26;55:3;56:5,18; 57:2,5;60:25;61:12; 66:19;68:5;69:16,22, 23,24;71:19,20; 72:26;76:10;77:13 seniority (1) 18:18 senior-most (16) 21:15;29:10;38:15, 23,24;41:17,18,26; 42:4;52:24;53:2; 54:14;57:12,14,20; 67:2 seniors (17) 17:19;19:8,16,20, 23;25:26;30:18; 32:19;37:9,20;38:5, 16;42:3;53:8;57:24; 59:23;62:8 sense (14) 9:19;16:18;17:19; 18:22;20:19;21:4,10; 22:2;25:18;39:8,10, 12,15;44:8 sent (1) 3:3 sentence (2) 67:5;71:12 separate (1) 76:12 separately (1) 15:14 series (1) 59:12 served (1)</p>	<p>45:26 service (1) 5:17 servicer (3) 74:22,23;75:18 servicers (2) 74:25;75:21 servicing (4) 4:13;5:12;9:8;12:3 set (3) 36:12,13;69:21 settle (2) 39:16;50:20 settled (2) 37:7;43:9 settlement (140) 4:8,11,22,26;5:26; 6:2,4,14,15;7:14,21, 25;8:4;9:7,12,15,19; 11:8;12:8;15:19,21; 16:11,12,16,21,24; 17:3;18:15;19:19; 20:25;21:14,22; 22:18,24;23:2,8,9,14; 24:2,4;27:14,17; 28:25;29:8,12;30:2, 10;31:19,22,23;32:5, 7,9,26;33:15,17;34:2, 15,17;35:12;36:6,9, 12,14,19,20;38:11; 39:19,26;40:4,9,13, 14;41:4,9,14;43:2,3, 7,17,18,22;44:2; 48:20,21;49:9,12,13, 15,24;50:9,12,15; 51:18,26;52:11,22; 55:6,17,20,26;56:2,6, 21,25;57:4,22;58:18, 24;60:4,8,9,10;61:17; 62:5,26;63:16;64:21; 65:5,8,26,26;66:12, 23;67:14;70:24,25; 71:7,7,10,11,14,25; 72:2,7;74:5;75:4,16; 77:19;78:18 several (7) 45:5;52:2;54:9,12, 25;56:6;57:4 shall (12) 34:19,26;43:18; 48:22;57:15;66:14; 70:26;71:8,13;73:7; 75:18,25 share (4) 9:14;65:9;69:6; 77:4 shared (1) 75:19 shares (4) 65:23;66:13;67:7; 70:10 shed (1) 78:17</p>	<p>sheepishly (1) 45:13 SHEEREN (5) 17:18,23;18:4,6; 21:20 sheet (1) 68:15 short (1) 27:3 shortly (2) 19:19;21:25 show (11) 25:5;27:20;37:15; 51:14,21,24;55:24, 25;59:7;65:21;76:23 showed (3) 19:18;28:12;37:23 showing (2) 51:15;76:20 shows (1) 46:21 shrunk (1) 76:21 side (7) 26:4;59:4,5;69:5,7, 13,14 sides (1) 59:3 Sidley (3) 28:3,13;31:14 signed (1) 35:13 significant (2) 39:6;53:5 significantly (1) 29:16 similar (2) 8:21;11:9 similarly (1) 76:11 simply (3) 12:6;15:2,7 single (1) 9:25 singled (1) 12:18 sit (1) 40:18 sitting (1) 27:8 situation (2) 29:17;42:2 six (1) 19:24 size (1) 68:23 skies (1) 45:7 skip (2) 67:8,8 skipping (2) 65:25;67:6 small (4)</p>	<p>5:9,10;16:9;42:3 smart (1) 41:7 software (1) 46:3 sole (1) 20:6 somebody (2) 28:6;42:10 somehow (4) 13:2;14:16;61:23, 24 someone (5) 3:7,7;6:24;56:25; 64:3 sometimes (1) 59:18 soon (1) 69:24 sophisticated (3) 28:5;32:18;41:7 sorry (3) 14:12;17:25;58:2 sort (4) 46:5;57:19;58:6; 63:20 sought (1) 12:23 sounds (1) 20:23 spaced (1) 9:21 speak (3) 3:15;58:6;64:23 special (1) 12:20 specific (2) 31:4;35:7 specifically (2) 15:9;32:8 specify (1) 66:24 spent (1) 5:3 spoke (1) 11:2 stack (1) 31:18 stake (1) 29:17 Standard (15) 4:6,24;5:11;10:7, 13;19:22;46:14,19; 47:7,16,25;48:9,17, 20,26 standing (1) 14:8 start (4) 3:12;23:16;25:25; 78:4 started (1) 42:13 starting (1)</p>
S				
<p>safer (1) 30:20 safety (1) 40:23 same (6) 7:2;11:7;45:2; 60:14;69:12;70:3 saw (2) 66:8;70:16 saying (35) 25:12;35:15,24; 39:4;40:24;41:8; 43:2;44:25;47:3,15, 15,16,18;50:11,14; 51:5,9,10;52:21; 53:7;54:14;56:10,15, 17,19,24;58:9,12; 59:21;60:3;61:22; 66:26;69:21;72:17; 74:3 Scarpulla (2) 28:24;78:23 scheme (3) 8:16;39:20;40:6 screen (5) 3:7,8,10;22:12; 51:13 second (27) 3:2,4;11,26;5:21; 10:3;20:3;22:11; 26:10,16;30:17;34:9; 36:22;48:12;53:16; 54:11;60:21;64:24; 67:24;68:21;69:13; 70:4,7,21;71:16,18; 76:8;77:21 second-highest (1) 59:12 Secondly (1) 15:3 second-most (1) 44:7 secret (2) 35:18;41:7</p>				

<p>9:6 starts (1) 65:12 stated (1) 76:17 statement (3) 48:7,7;52:15 staunchly (1) 68:14 steps (2) 51:8;78:9 still (5) 4:9;31:12;39:2,5,6 stop (1) 67:9 stopped (4) 37:25,25;38:2;66:5 straightened (1) 35:25 Street (1) 32:18 structure (10) 4:10,12;5:24;9:9; 10:4;15:5;18:18; 51:9,11,11 structured (2) 75:5,13 stuffed (1) 72:19 submission (4) 4:5;11:15,25;27:2 submissions (3) 4:6;12:2;15:8 submitted (1) 21:8 subordinated (5) 6:25,26;31:10,11, 12 subordination (1) 19:13 Subparagraph (1) 71:13 subparagraphs (1) 71:8 subsequent (19) 11:18;36:19;38:12, 13;43:24;44:3,4; 57:10;60:11;62:7; 70:26;73:21,23; 74:12,23;75:14,20, 26;76:3 substantial (1) 49:18 suffer (3) 19:20,23;72:23 suffered (8) 24:24,26;29:11; 38:23,24;41:18;53:5; 72:17 suggest (2) 22:9;32:3 suing (1) 64:11</p>	<p>super (17) 9:24;15:4;17:19; 18:7;25:26;26:5; 30:18;31:11;32:19; 37:8;38:4,16;41:19; 42:3;59:22;62:7; 71:20 supplemental (1) 11:25 supplements (3) 18:17;19:10,12 supplied (1) 42:8 support (22) 12:7,25;22:9; 26:10;30:24;32:21, 22,23;37:21;38:6; 53:5,11,26;54:19; 56:5;57:5;59:23,24, 25;62:10;68:5;71:19 supporting (1) 71:22 supports (1) 12:7 supposed (3) 9:2;25:17;77:17 Sure (13) 3:20;7:22;9:5; 17:11,24;20:23; 32:11;34:13;50:2; 53:20;56:13;60:23; 78:12 surprise (1) 8:13 sur-rebuttals (1) 78:5 suspect (1) 28:17 system (2) 39:8;45:26</p>	<p>54:13 temporary (1) 21:2 ten (4) 9:22,22,22,23 tens (2) 19:20;20:7 term (7) 20:15,18;21:4,8; 37:10,10;43:25 termed (2) 20:10;50:19 terms (7) 5:12;9:8;28:10,24; 49:14;71:17;73:13 test (3) 65:4,4,7 tested (1) 35:20 testified (1) 4:20 testifying (2) 52:18;64:15 testimony (26) 8:8,10,14,15;9:2; 21:16,19;23:3;24:23; 32:6;33:2,8,9;50:10; 51:14,21,21,25; 52:14;55:25;56:3; 64:14,19;78:16,22,23 textural (1) 21:26 Thacher (4) 28:4,14;31:14; 42:14 Thanks (1) 9:4 thereafter (1) 21:25 therefore (3) 7:8;19:11;70:11 thinking (2) 29:25;53:20 third (2) 4:13;15:8 though (5) 62:14;63:4;68:7; 70:26;73:23 thought (8) 11:5;16:21;17:3; 45:3;57:19;61:23; 64:25;66:7 three (5) 14:17;28:3;38:19; 42:5;51:8 Thursday (1) 78:6 Tilden (30) 7:11,13;9:16; 10:18;11:17;12:11, 18,22,24;13:2,11; 14:2;16:8;18:13; 19:7;20:4,11,24;21:3,</p>	<p>21;25:4;27:4;68:9; 11;69:11,20;70:14; 71:10;72:11;77:10 Tilden's (5) 4:15;9:10,18;13:5; 19:19 till (1) 78:6 times (3) 11:6;34:17;45:5 today (8) 3:3;27:8;33:9; 49:22;50:13;68:8; 72:9;78:8 together (2) 28:8;70:18 toggle (1) 21:21 toggles (1) 46:17 took (3) 10:11;16:17,17 tool (2) 45:23;46:16 top (5) 20:13;30:25;32:18; 68:19,26 total (1) 18:17 totally (1) 21:8 toughest (1) 56:26 trader (1) 42:11 traditionally (1) 38:3 tranche (8) 26:10;27:7;29:10; 38:25,25;44:7;54:14; 57:14 tranches (16) 24:23,25;25:3,3; 28:9;29:10;37:3,4; 38:8,24;41:18;52:25; 53:2;57:12,20;69:22 transactions (4) 27:23;28:5;42:20; 62:3 transcript (5) 6:3,14;32:2;52:6; 78:10 transitory (1) 14:21 treasuries (2) 65:15,16 treat (4) 36:11;43:24;63:12; 74:11 treated (5) 44:3;60:10;62:5; 70:26;73:23 treatment (1)</p>	<p>12:20 treats (1) 38:12 trial (9) 21:17,23,24;64:17; 66:10;78:11,16,22,23 trickles (1) 73:2 tried (1) 66:11 triple-A (4) 27:22;35:6;59:9; 62:2 trouble (1) 77:14 truck (1) 57:2 true (4) 48:6,7;57:21;64:12 trust (17) 12:19;13:11;25:14; 38:3;43:8,9;47:22, 26;65:9,11;67:7; 69:3,3,4;72:24,26; 75:20 trustee (26) 4:20;6:20;11:19; 12:17;13:3;35:14,21, 23,24,26;39:4;47:4; 48:13,22;49:6;58:4, 8;62:25;63:17;64:6; 65:2,23,24;66:13; 71:4;75:25 trustee's (5) 13:6;19:2,15; 57:26;77:17 trustee's will (1) 46:12 trusts (24) 4:8;10:14,16; 13:12,26;14:26;18:8, 18;25:2;26:14;28:26; 30:3;33:3;37:6; 38:18;50:3;51:20,26; 54:5;66:17,21;72:19; 77:22,26 tunc (1) 63:12 turn (7) 4:18;70:17;71:6; 73:3,9,17;74:19 twist (1) 28:19 two (16) 5:18;9:16;10:25; 16:18;17:4;23:17; 28:10;30:16;31:17; 32:22;38:25;41:3; 46:5;59:3;61:9;70:3 two-and-a-half (1) 27:25 type (1) 11:9</p>
T				
	<p>table (3) 23:24;26:4;58:17 tagged (1) 13:22 talk (9) 20:4,17;30:17; 44:17;53:15;60:21; 62:17;72:8,25 talked (2) 59:19;60:18 talking (12) 8:15;28:13;29:16; 36:24;38:18;46:2; 52:26;53:6,24;54:3; 60:2;72:9 target (9) 20:11,12,16,21,22; 21:6;69:4;76:18;77:7 telling (4) 24:3;32:11;35:14;</p>			

<p>U</p>	<p>uses (2) 37:10,10 usually (2) 9:11;74:24</p>	<p>21;67:4;70:8;71:19; 73:26;75:4,13;77:24 ways (2) 17:13;46:18 Webber (1) 42:14 weekend (1) 66:8 weeks (1) 11:3 weren't (5) 16:23;22:21;23:2; 27:10;40:15 What's (3) 9:16;73:11;74:5 Where's (1) 3:17 Whereupon (1) 3:26 whole (12) 5:15;18:21;29:24; 30:11;36:9;41:20; 52:20;59:12;63:6; 64:17;72:23;74:3 wholly (1) 39:22 whose (2) 19:26;74:25 who've (1) 41:18 windfall (1) 70:14 windows (1) 48:15 wiped (1) 57:16 wish (1) 34:17 witness (1) 21:17 word (3) 12:19;13:6;59:15 words (6) 5:7,19;7:3;46:16; 65:25;67:6 work (6) 37:16,17;44:5; 52:3;68:12;77:25 worked (1) 42:15 works (2) 36:18;73:26 world (2) 30:6;35:14 worthless (1) 61:4 wound (1) 63:7 Wow (1) 45:3 write (9) 22:11;48:25;70:6; 21;71:16,17;74:2;</p>	<p>76:7;77:21 writing (1) 49:2 written (15) 5:8;6:8;9:14;22:18, 19;29:9;33:22;37:9; 40:2;57:13,14;73:26; 74:17;75:2;76:6 written-off (1) 17:5 wrong (7) 47:11,13,16;48:11; 49:3;58:11;71:11 wrote (1) 13:15</p>	<p>15:10;18:8;51:26; 73:5;77:26 1M1 (1) 69:19 1M3 (1) 69:18</p>
<p>UBS (2) 28:2,14 ultimately (2) 72:22;73:2 unanticipated (1) 74:10 uncontrovertible (1) 70:13 under (25) 9:26;19:22;36:20, 21;43:8,9;44:5; 47:22;49:24;50:20; 51:26;60:11,13; 66:20;69:9;70:12; 71:23;72:21;73:5; 75:17;76:6,8,11;77:8, 10 underlying (1) 5:20 understood (2) 10:8,20 underwriters (3) 27:26;31:15;42:5 unfair (1) 70:14 unfairness (1) 60:20 unicorn (1) 51:11 unique (3) 12:19,19;42:22 unless (1) 3:8 unquote (1) 12:16 unreasonable (3) 4:14;18:25;44:11 unusual (1) 42:22 unwilling (1) 49:19 up (36) 3:7;6:8;13:10; 22:10,11;26:12; 32:16;34:22;36:23; 37:10;38:3,25;46:9, 21,24;48:4,14,19,25; 49:2;50:26;52:17,19, 21;63:7;70:6,21; 71:16,17;73:26;74:2, 17;75:2;76:6,8;77:21 upon (7) 5:6;11:20;12:4,4; 15:5;43:14;70:14 urging (1) 49:8 use (3) 3:8,10,18 useful (2) 78:8,20</p>	<p>V</p> <p>value (4) 7:3;27:24;72:22,25 various (2) 30:23;57:18 verified (4) 12:17;14:20,21; 41:10 version (2) 76:21,22 view (1) 23:13 violates (1) 48:20 virtually (1) 9:23 viscerally (2) 17:13;18:19 visibility (1) 7:11 voice (1) 58:7 vote (1) 26:6</p>	<p>Webber (1) 42:14 weekend (1) 66:8 weeks (1) 11:3 weren't (5) 16:23;22:21;23:2; 27:10;40:15 What's (3) 9:16;73:11;74:5 Where's (1) 3:17 Whereupon (1) 3:26 whole (12) 5:15;18:21;29:24; 30:11;36:9;41:20; 52:20;59:12;63:6; 64:17;72:23;74:3 wholly (1) 39:22 whose (2) 19:26;74:25 who've (1) 41:18 windfall (1) 70:14 windows (1) 48:15 wiped (1) 57:16 wish (1) 34:17 witness (1) 21:17 word (3) 12:19;13:6;59:15 words (6) 5:7,19;7:3;46:16; 65:25;67:6 work (6) 37:16,17;44:5; 52:3;68:12;77:25 worked (1) 42:15 works (2) 36:18;73:26 world (2) 30:6;35:14 worthless (1) 61:4 wound (1) 63:7 Wow (1) 45:3 write (9) 22:11;48:25;70:6; 21;71:16,17;74:2;</p>	<p>Y</p> <p>years (3) 10:15;19:24;42:18 York (1) 18:22</p>	<p>2</p> <p>2 (1) 71:6 2005 (3) 32:17;33:13;43:13 2005-61 (1) 69:2 2007 (4) 13:17;32:17;33:15; 43:13 2010 (4) 35:12;39:5;51:15; 63:4 2011 (3) 12:9,14;21:23 2012 (3) 69:8,14,18 2013 (1) 21:24 2014 (1) 21:22 2015 (1) 46:21 2016 (7) 11:21;12:9,12; 69:7,14,19;77:6 207 (1) 13:26 22nd (1) 74:16 25 (2) 39:5;61:8 25th (1) 63:3 26 (1) 14:14 26th (1) 10:23</p>
<p>W</p> <p>Wait (3) 26:16;60:21;68:21 walk (1) 18:25 walking (1) 73:12 Wall (1) 32:18 wants (2) 3:7;45:24 Ware (12) 64:5,5,17,20;65:7, 16,20;66:22;67:4,18, 20,24 waterfall (11) 31:5;32:24;35:6, 16;36:3,15,22;37:16; 41:6;44:5;49:7 waterfalls (1) 42:19 way (44) 4:7;6:6,11;8:20; 19:2;20:22;28:25; 29:2;32:4,7;33:2; 35:16;36:18;37:15, 22,22;38:8;39:16,24; 41:24;46:15;47:4,8, 15,21,23,26;48:11, 13;53:23;55:7;57:4; 58:10;61:16,20,20,</p>	<p>W</p> <p>Wait (3) 26:16;60:21;68:21 walk (1) 18:25 walking (1) 73:12 Wall (1) 32:18 wants (2) 3:7;45:24 Ware (12) 64:5,5,17,20;65:7, 16,20;66:22;67:4,18, 20,24 waterfall (11) 31:5;32:24;35:6, 16;36:3,15,22;37:16; 41:6;44:5;49:7 waterfalls (1) 42:19 way (44) 4:7;6:6,11;8:20; 19:2;20:22;28:25; 29:2;32:4,7;33:2; 35:16;36:18;37:15, 22,22;38:8;39:16,24; 41:24;46:15;47:4,8, 15,21,23,26;48:11, 13;53:23;55:7;57:4; 58:10;61:16,20,20,</p>	<p>windfall (1) 70:14 windows (1) 48:15 wiped (1) 57:16 wish (1) 34:17 witness (1) 21:17 word (3) 12:19;13:6;59:15 words (6) 5:7,19;7:3;46:16; 65:25;67:6 work (6) 37:16,17;44:5; 52:3;68:12;77:25 worked (1) 42:15 works (2) 36:18;73:26 world (2) 30:6;35:14 worthless (1) 61:4 wound (1) 63:7 Wow (1) 45:3 write (9) 22:11;48:25;70:6; 21;71:16,17;74:2;</p>	<p>Y</p> <p>years (3) 10:15;19:24;42:18 York (1) 18:22</p> <p>0</p> <p>05-61 (1) 70:4 06-A3 (1) 76:12</p>	<p>1</p> <p>1 (5) 3:25,26;69:2,4; 76:18 1,542,918 (1) 69:4 10 (2) 74:24;76:11 100 (1) 41:20 10th (1) 62:26 11 (2) 48:19;76:14 11-by-17 (1) 68:15 12 (2) 11:26;76:19 120 (1) 20:18 12th (2) 4:5;6:19 14 (8) 12:19;26:12;27:23; 31:15;35:17;38:18; 41:6;42:6 15 (2) 6:18;26:12 16 (1) 18:8 17 (8) 4:8;10:14;14:26;</p>
			<p>1</p> <p>1 (5) 3:25,26;69:2,4; 76:18 1,542,918 (1) 69:4 10 (2) 74:24;76:11 100 (1) 41:20 10th (1) 62:26 11 (2) 48:19;76:14 11-by-17 (1) 68:15 12 (2) 11:26;76:19 120 (1) 20:18 12th (2) 4:5;6:19 14 (8) 12:19;26:12;27:23; 31:15;35:17;38:18; 41:6;42:6 15 (2) 6:18;26:12 16 (1) 18:8 17 (8) 4:8;10:14;14:26;</p>	<p>2</p> <p>2 (1) 71:6 2005 (3) 32:17;33:13;43:13 2005-61 (1) 69:2 2007 (4) 13:17;32:17;33:15; 43:13 2010 (4) 35:12;39:5;51:15; 63:4 2011 (3) 12:9,14;21:23 2012 (3) 69:8,14,18 2013 (1) 21:24 2014 (1) 21:22 2015 (1) 46:21 2016 (7) 11:21;12:9,12; 69:7,14,19;77:6 207 (1) 13:26 22nd (1) 74:16 25 (2) 39:5;61:8 25th (1) 63:3 26 (1) 14:14 26th (1) 10:23</p> <p>3</p> <p>3 (1) 73:3 30 (2) 42:18;78:20 35 (3) 38:21;39:3;61:7 375 (1) 27:25 3d (2) 34:15;48:21 3d1 (5) 64:21;65:8;66:11, 24;67:5 3di (3)</p>

70:25;71:13;75:17				
4				
4 (1) 73:9 4.02 (1) 73:6 4.02j (1) 76:6 4th (1) 14:19				
5				
5 (2) 73:17,20 500 (2) 28:26;30:3 512 (2) 15:11;77:22 515 (1) 15:11				
6				
6 (1) 74:15 64 (1) 51:22 65 (2) 5:25;51:21				
7				
7 (2) 74:19,20 7.3 (1) 77:9 77 (4) 4:21;68:8;72:5; 78:16				
8				
8 (1) 75:17				
9				
9 (1) 75:24 90 (1) 28:20				