

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of : Index No. 150973/2016
IAS Part 39
THE BANK OF NEW YORK MELLON, in its : Justice Scarpulla
Capacity as Trustee or Indenture Trustee of 530
Countrywide Residential Mortgage-Backed : Mot. Seq. 001
Securitization Trusts, :
 : **PARTIAL FINAL**
 : **JUDGMENT**
 : **(FOURTEEN TRUSTS)**
 :
Petitioner, :
 :
For Judicial Instructions under CPLR Article 77 :
on the Distribution of a Settlement Payment. :

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APPEARANCES:

MAYER BROWN LLP (Matthew D. Ingber and Michael O. Ware, of counsel)
*Attorneys for Petitioner The Bank of New York Mellon in its capacity as Trustee
or Indenture Trustee of the Covered Trusts (the "Trustee")*

QUINN EMANUEL URQUHART & SULLIVAN LLP (Michael B. Carlinsky,
Jordan A. Goldstein, David D. Burnett, and Joshua Margolin, of counsel)
*Attorneys for Respondents American International Group, Inc., AIG Financial
Products Corp.; AIG Property Casualty Company; American General Life
Insurance Company; American Home Assurance Company; American
International Reinsurance Company, Ltd.; Commerce and Industry
Insurance Company; Lexington Insurance Company; National Union Fire
Insurance Company of Pittsburgh, PA; The United States Life Insurance
Company in the City of New York; and The Variable Annuity Life Insurance
Company*

SCHLAM STONE & DOLAN LLP (John M. Lundin, of counsel)
*Attorneys for Respondents Blue Mountain Credit Alternatives Master Fund
L.P., BlueMountain Guadalupe Peak Fund L.P., Blue Mountain Monteners
Master Fund SCA SICAV-SIF, BlueMountain Kicking Horse Fund L.P.,
BlueMountain Logan Opportunities Master Fund L.P., BlueMountain
Foinaven Master Fund L.P., and BlueMountain Credit Opportunities Master
Fund I L.P.*

McKOOL SMITH, P.C. (Gayle R. Klein, Robert W. Scheef, Matthew P. Rand
and Melody L. McGowin, of counsel)
Attorneys for Respondent Center Court, LLC

WARNER PARTNERS, P.C. (Kenneth E. Warner, of counsel) and GIBBS & BRUNS LLP (Kathy D. Patrick, Robert J. Madden and David Sheeren, all pro hac vice, of counsel)

Attorneys for Respondents AEGON (including Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, pLc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio); BlackRock Financial Management, Inc.; Federal Home Loan Bank of Atlanta; Federal National Mortgage Association; Goldman Sachs Asset Management L.P.; Invesco Advisers, Inc.; Kore Advisors, L.P.; Metropolitan Life Insurance Company; Nationwide Mutual Insurance Company and its affiliate companies; Neuberger Berman Europe Limited; Pacific Investment Management Company LLC; Teachers Insurance and Annuity Association of America; Thrivent Financial for Lutherans; Trust Company of the West and the affiliated companies controlled by The TCW Group, Inc.; Voya Investment Management LLC; and Western Asset Management Company

MOLOLAMKEN LLP (Steven F. Molo and Justin M. Ellis, of counsel)
Attorneys for Respondents Prosirris Capital Management LP (“Prosirris”) and Tilden Park Capital Management LP (“Tilden Park”)

WOLLMUTH MAHER & DEUTSCH LLP (Michael C. Ledley, of counsel) and PERRY, JOHNSON, ANDERSON, MILLER & MOSKOWITZ LLP (Isaac M. Gradman, pro hac vice, of counsel)
Attorneys for TIG Securitized Asset Master Fund LP (“TIG”)

WHEREAS, the Trustee commenced this proceeding under CPLR Article 77 to obtain judicial instructions on the distribution of a settlement payment in the amount of \$8.5 billion (the “Settlement Payment”) to which it had become entitled in its capacity as trustee or indenture trustee of the 530 residential mortgage-backed securities trusts (the “Covered Trusts”) specified in Exhibit A to the Verified Petition herein under a settlement agreement dated June 28, 2011 (the “Settlement Agreement”); and,

WHEREAS, under the Settlement Agreement, each Covered Trust has been assigned an “Allocable Share” of the overall Settlement Payment; and,

WHEREAS, by Order to Show Cause dated February 5, 2016 (the “February 5 Order”) the Court directed the Trustee to serve the Verified Petition and certain other materials on investors (“Certificateholders”) in the Covered Trusts and certain other persons, and directed that interested persons answer the Verified Petition; and,

WHEREAS, the February 5 Order authorized and directed the Trustee to place the Settlement Payment in escrow with The Bank of New York Mellon as escrow agent; and,

WHEREAS, the Court has been advised that the escrow provisions of the February 5 Order have been complied with and that the Settlement Payment, plus the earnings thereon and less amounts distributed pursuant to the Prior Partial Judgments discussed below, is currently invested as directed in the February 5 Order; and,

WHEREAS, the Court has previously resolved this proceeding as to 515 of the Covered Trusts by partial final judgments (the “Prior Partial Judgments”) entered on consent on May 12, 2016, and November 29, 2016, leaving for the determination by the Court disputed contentions concerning fifteen Covered Trusts. This Partial Final Judgment resolves the case as to CWALT 2005-61, CWALT 2005-69, CWALT 2005-72, CWALT 2005-76, CWALT 2005-IM1, CWALT 2006-OA10, CWALT 2006-OA14, CWALT 2006-OA3, CWALT 2006-OA7, CWALT 2006-OA8, CWALT 2007-OA3, CWALT 2007-OA8, CWHL 2006-3 and CWHL 2006-OA5 (together, the “Fourteen Trusts”); and,

WHEREAS, on August 31, 2016, the Court heard oral argument from all counsel on the Fourteen Trusts; and,

WHEREAS, the Court, in its Decision/Order dated March 31, 2017 and entered April 4, 2017 (the “Order”), severed and granted (in the manner set forth in the Order) the

branch of the Verified Petition seeking judicial instructions concerning the Fourteen Trusts, and directed the settlement of judgment; and,

WHEREAS, as used herein, the term “Judgment Entry Date” means the date on which the Clerk’s docketing of this Partial Final Judgment first appears publicly on the New York State Court Electronic Filing System, without regard to when the Court actually signs or the Clerk actually enters this Partial Final Judgment; and,

WHEREAS, as used herein the term “Transfer Month” means the month of the Judgment Entry Date if the Judgment Entry Date is on or before the fifteenth calendar date of that month, and otherwise the month immediately following; and,

WHEREAS, as used herein, the term “Transfer Target Date” means the twenty-second day of the Transfer Month; and,

WHEREAS, as used herein, the term “AS Distribution Date” means, for each of the Fourteen Trusts, that trust’s next distribution date following the Transfer Target Date,

NOW, THEREFORE, on the motion of MoloLamken LLP, attorneys for Prosirris and Tilden Park, it is hereby

ORDERED, ADJUDGED and DECREED that, no later than the Transfer Target Date, for each of the Fourteen Trusts the Trustee is to reduce to cash escrow assets with a value equal to that trust’s Allocable Share plus the earnings thereon and to deposit that amount in that trust’s distribution account or payment account, as applicable. From the time of that deposit, the amount so deposited will be treated as that trust’s Allocable Share for all purposes under the Settlement Agreement; and it is further

ORDERED, ADJUDGED and DECREED that sums representing interest on the Allocable Share of each of the Fourteen Trusts not received by the Trustee at the time of

the deposit directed by the immediately preceding paragraph (“Trailing Interest”) shall be distributed to certificateholders in that trust in the month it is received unless such receipt takes place after that month’s determination date, in which event distribution will be effected in the month after the month in which the Trailing Interest is received. Trailing Interest shall be distributed within each of the Fourteen Trusts in the manner the Settlement Agreement, the relevant Governing Agreements and this Final Judgment provide for distribution of the Allocable Share; and it is further

ORDERED, ADJUDGED and DECREED that the Trustee shall distribute the Allocable Share of each of the Fourteen Trusts on that trust’s AS Distribution Date; and it is further

ORDERED, ADJUDGED and DECREED that, in distributing the Allocable Shares of the Fourteen Trusts, the Trustee shall adhere to Section 3(d) of the Settlement Agreement, including the order of operations specified in Subsections 3(d)(i) and 3(d)(ii) therein; and it is further

ORDERED, ADJUDGED and DECREED that, because the principal distribution amount for each of the Fourteen Trusts is based on certificate balances immediately prior to a given distribution date, in distributing the Allocable Share of each of the Fourteen Trusts, the Trustee shall determine the principal distribution amount for such trust’s AS Distribution Date without reference to the pay down and the write up of certificate balances that will occur on such AS Distribution Date. To the extent that the principal distribution amount in any of the Fourteen Trusts is calculated in part by reference to an aggregate stated principal balance of the mortgage loans after giving effect (among other things) to subsequent recoveries, the effect to be given to subsequent recoveries is zero

because subsequent recoveries do not affect mortgage loan balances. Accordingly, and in contrast with the result directed for certain other Covered Trusts with different structures, in the Fourteen Trusts any available funds remaining after distribution of the principal distribution amount and after payment of all other payments that are senior in priority to reimbursement payments for unpaid realized loss amounts according to the priority of payments set out in the related Governing Agreement are to be distributed to reimburse unpaid realized loss amounts in accordance with the relevant Governing Agreement; and it is further

ORDERED, ADJUDGED and DECREED that no party may have costs or disbursements of this proceeding insofar as it concerned the Fourteen Trusts; and it is further

ORDERED that the Clerk of New York County be, and he hereby is, directed to enter this Partial Final Judgment forthwith and without delay.

Dated: New York, New York

_____, 2017

Hon. Saliann Scarpulla, J.S.C.

Judgment signed and entered this _____ day of _____ 2017.

Clerk of New York County