Exhibit 1

From: Rollin, Mike [mailto:mrollin@rplaw.com]
Sent: Friday, May 10, 2013 4:22 PM
To: Espana, Mauricio
Subject: Cowan Simulation Study

Mauricio-

As we just discussed by telephone, we are withdrawing the Cowan simulation study and will not be relying on that portion of his opinion.

Thanks much,

Mike

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Exhibit 2

EXECUTION COPY

CWALT, INC.,
Depositor
COUNTRYWIDE HOME LOANS, INC.,
Seller
PARK GRANADA LLC,
Seller
PARK MONACO INC.,
Seller
PARK SIENNA LLC,
Seller
COUNTRYWIDE HOME LOANS SERVICING LP,
Master Servicer
and
THE BANK OF NEW YORK,
Trustee

POOLING AND SERVICING AGREEMENT
Dated as of August 1, 2006

ALTERNATIVE LOAN TRUST 2006-OC7

MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-OC7

ARTICLE II
CONVEYANCE OF MORTGAGE LOANS;
REPRESENTATIONS AND WARRANTIES

SECTION 2.01. Conveyance of Mortgage Loans.

(a) Each Seller, concurrently with the execution and delivery of this Agreement, hereby sells, transfers, assigns, sets over and otherwise conveys to the Depositor, without recourse, all its respective right, title and interest in and to the related Mortgage Loans, including all interest and principal received or receivable by such Seller, on or with respect to the applicable Mortgage Loans after the Cut-off Date and all interest and principal payments on the related Mortgage Loans received prior to the Cut-off Date in respect of installments of interest and principal due thereafter, but not including payments of principal and interest due and payable on such Mortgage Loans on or before the Cut-off Date. On or prior to the Closing Date, Countrywide shall deliver to the Depositor or, at the Depositor's direction, to the Trustee or other designee of the Depositor, the Mortgage File for each Mortgage Loan listed in the Mortgage Loan Schedule (except that, in the case of the Delay Delivery Mortgage Loans (which may include Countrywide Mortgage Loans, Park Granada Mortgage Loans, Park Monaco Mortgage Loans and Park Sienna Mortgage Loans), such delivery may take place within thirty (30) days following the Closing Date). Such delivery of the Mortgage Files shall be made against payment by the Depositor of the purchase price, previously agreed to by the Sellers and Depositor, for the Mortgage Loans. With respect to any Mortgage Loan that does not have a first payment date on or before the Due Date in the month of the first applicable Distribution Date, Countrywide shall deposit into the Distribution Account on or before the Distribution Account Deposit Date relating to the first Distribution Date, an amount equal to one month's interest at the related Adjusted Mortgage Rate on the Cut-off Date Principal Balance of such Mortgage Loan.

(b) Immediately upon the conveyance of the Mortgage Loans referred to in clause (a), the Depositor sells, transfers, assigns, sets over and otherwise conveys to the Trustee for the benefit of the Certificateholders, without recourse, all the right, title and interest of the Depositor in and to the Trust Fund together with the Depositor's right to require each Seller to cure any breach of a representation or warranty made in this Agreement by such Seller or to repurchase or substitute for any affected Mortgage Loan in accordance herewith.

(c) In connection with the transfer and assignment set forth in clause (b) above, the Depositor has delivered or caused to be delivered to the Trustee (or, in the case of the Delay Delivery Mortgage Loans, will deliver or cause to be delivered to the Trustee within thirty (30) days following the Closing Date) for the benefit of the Certificateholders the following documents or instruments with respect to each Mortgage Loan so assigned:

(i) (A) the original Mortgage Note endorsed by manual or facsimile signature in blank in the following form: "Pay to the order of _____ without recourse," with all intervening endorsements showing a complete chain of endorsement from the originator to the Person endorsing the Mortgage Note (each such endorsement being sufficient to transfer all right, title and interest of the party so endorsing, as noteholder or assignee thereof, in and to that Mortgage Note); or

(B) with respect to any Lost Mortgage Note, a lost note affidavit from Countrywide stating that the original Mortgage Note was lost or destroyed, together with a copy of such Mortgage Note;

(ii) except as provided below and for each Mortgage Loan that is not a MERS Mortgage Loan, the original recorded Mortgage or a copy of such Mortgage, with recording information, (or, in the case of a Mortgage for which the related Mortgaged Property is located in the Commonwealth of Puerto Rico, a true copy of the Mortgage certified as such by the applicable notary) and in the case of each MERS Mortgage Loan, the original Mortgage or a copy of such mortgage, with recording information, noting the presence of the MIN of the Mortgage Loans and either language indicating that the Mortgage Loan is a MOM Loan if the Mortgage Loan is a MOM Loan or if the Mortgage Loan was not a MOM Loan at origination, the original Mortgage and the assignment thereof to MERS, with evidence of recording indicated thereon, or a copy of the Mortgage certified by the public recording office in which such Mortgage has been recorded;

(iii) in the case of each Mortgage Loan that is not a MERS Mortgage Loan, a duly executed assignment of the Mortgage or a copy of such assignment, with recording information, (which may be included in a blanket assignment or assignments), together with, except as provided below, all interim recorded assignments of such mortgage or a copy of such assignment, with recording information, (each such assignment, when duly and validly completed, to be in recordable form and sufficient to effect the assignment of and transfer to the assignee thereof, under the Mortgage to which the assignment relates); provided that, if the related Mortgage has not been returned from the applicable public recording office, such assignment of the Mortgage may exclude the information to be provided by the recording office; provided, further, that such assignment of Mortgage need not be delivered in the case of a Mortgage for which the related Mortgaged Property is located in the Commonwealth of Puerto Rico;

(iv) the original or copies of each assumption, modification, written assurance or substitution agreement, if any;

(v) except as provided below, the original or a copy of lender's title policy or a printout of the electronic equivalent and all riders thereto; and

(vi) in the case of a Cooperative Loan, the originals of the following documents or instruments:

(A) The Coop Shares, together with a stock power in blank;

(B) The executed Security Agreement;

(C) The executed Proprietary Lease;

(D) The executed Recognition Agreement;

(E) The executed UCC-1 financing statement with evidence of recording thereon which have been filed in all places required to perfect the applicable Seller's interest in the Coop Shares and the Proprietary Lease; and

(F) The executed UCC-3 financing statements or other appropriate UCC financing statements required by state law, evidencing a complete and unbroken line from the mortgagee to the Trustee with evidence of recording thereon (or in a form suitable for recordation).

In addition, in connection with the assignment of any MERS Mortgage Loan, each Seller agrees that it will cause, at the Trustee's expense, the MERS® System to indicate that the Mortgage Loans sold by such Seller to the Depositor have been assigned by that Seller to the Trustee in accordance with this Agreement for the benefit of the Certificateholders by including (or deleting, in the case of Mortgage Loans which are repurchased in accordance with this Agreement) in such computer files the information required by the MERS® System to identify the series of the Certificates issued in connection with such Mortgage Loans. Each Seller further agrees that it will not, and will not permit the Master Servicer to, and the Master Servicer agrees that it will not, alter the information referenced in this paragraph with respect to any Mortgage Loan sold by such Seller to the Depositor during the term of this Agreement unless and until such Mortgage Loan is repurchased in accordance with the terms of this Agreement.

In the event that in connection with any Mortgage Loan that is not a MERS Mortgage Loan the Depositor cannot deliver (a) the original recorded Mortgage or a copy of such mortgage, with recording information, or (b) all interim recorded assignments or a copy of such assignments, with recording information, or (c) the lender's title policy or a copy of lender's title policy (together with all riders thereto) satisfying the requirements of clause (ii), (iii) or (v) above, respectively, concurrently with the execution and delivery of this Agreement because such document or documents have not been returned from the applicable public recording office in the case of clause (ii) or (iii) above, or because the title policy has not been delivered to either the Master Servicer or the Depositor by the applicable title insurer in the case of clause (v) above, the Depositor shall promptly deliver to the Trustee, in the case of clause (ii) or (iii) above, such original Mortgage or a copy of such mortgage, with recording information, or such interim assignment or a copy of such assignments, with recording information, as the case may be, with evidence of recording indicated thereon upon receipt thereof from the public recording office, or a copy thereof, certified, if appropriate, by the relevant recording office, but in no event shall any such delivery of the original Mortgage and each such interim assignment or a copy thereof, certified, if appropriate, by the relevant recording office, be made later than one year following the Closing Date, or, in the case of clause (v) above, no later than 120 days following the Closing Date; provided, however, in the event the Depositor is unable to deliver by such date each Mortgage and each such interim assignment by reason of the fact that any such documents have not been returned by the appropriate recording office, or, in the case of each such interim assignment, because the related Mortgage has not been returned by the appropriate recording office, the Depositor shall deliver such documents to the Trustee as promptly as possible upon receipt thereof and, in any event, within 720 days following the Closing Date. The Depositor shall forward or cause to be forwarded to the Trustee (a) from time to time additional original documents evidencing an assumption or modification of a Mortgage Loan and (b) any other documents required to be delivered by the Depositor or the Master Servicer to the Trustee. In the

event that the original Mortgage is not delivered and in connection with the payment in full of the related Mortgage Loan and the public recording office requires the presentation of a "lost instruments affidavit and indemnity" or any equivalent document, because only a copy of the Mortgage can be delivered with the instrument of satisfaction or reconveyance, the Master Servicer shall execute and deliver or cause to be executed and delivered such a document to the public recording office. In the case where a public recording office retains the original recorded Mortgage or in the case where a Mortgage is lost after recordation in a public recording office, Countrywide shall deliver to the Trustee a copy of such Mortgage certified by such public recording office to be a true and complete copy of the original recorded Mortgage.

As promptly as practicable subsequent to such transfer and assignment, and in any event, within one-hundred twenty (120) days after such transfer and assignment, the Trustee shall (A) as the assignee thereof, affix the following language to each assignment of Mortgage: "CWALT, Inc., Series 2006-OC7, The Bank of New York, as trustee", (B) cause such assignment to be in proper form for recording in the appropriate public office for real property records and (C) cause to be delivered for recording in the appropriate public office for real property records the assignments of the Mortgages to the Trustee, except that, (i) with respect to any assignments of Mortgage as to which the Trustee has not received the information required to prepare such assignment in recordable form, the Trustee's obligation to do so and to deliver the same for such recording shall be as soon as practicable after receipt of such information and in any event within thirty (30) days after receipt thereof and (ii) the Trustee need not cause to be recorded any assignment which relates to a Mortgage Loan, the Mortgaged Property and Mortgage File relating to which are located in any jurisdiction (including Puerto Rico) under the laws of which the recordation of such assignment is not necessary to protect the Trustee's and the Certificateholders' interest in the related Mortgage Loan as evidenced by an opinion of counsel delivered by Countrywide to the Trustee within 90 days of the Closing Date (which opinion may be in the form of a "survey" opinion and is not required to be delivered by counsel admitted to practice law in the jurisdiction as to which such legal opinion applies).

In the case of Mortgage Loans that have been prepaid in full as of the Closing Date, the Depositor, in lieu of delivering the above documents to the Trustee, will deposit in the Certificate Account the portion of such payment that is required to be deposited in the Certificate Account pursuant to Section 3.05.

Notwithstanding anything to the contrary in this Agreement, within thirty (30) days after the Closing Date with respect to the Mortgage Loans, Countrywide (on its own behalf and on behalf of Park Granada, Park Monaco and Park Sienna) shall either (i) deliver to the Depositor, or at the Depositor's direction, to the Trustee or other designee of the Depositor the Mortgage File as required pursuant to this Section 2.01 for each Delay Delivery Mortgage Loan or (ii) either (A) substitute a Substitute Mortgage Loan for the Delay Delivery Mortgage Loan or (B) repurchase the Delay Delivery Mortgage Loan, which substitution or repurchase shall be accomplished in the manner and subject to the conditions set forth in Section 2.03 (treating each Delay Delivery Mortgage Loan as a Deleted Mortgage Loan for purposes of such Section 2.03); *provided, however*, that if Countrywide fails to deliver a Mortgage File for any Delay Delivery Mortgage Loan within the thirty (30)-day period provided in the prior sentence, Countrywide (on its own behalf and on behalf of Park Granada, Park Monaco and Park Sienna) shall use its best reasonable efforts to effect a substitution, rather than a repurchase of, such Deleted Mortgage Loan and provided further that the cure period provided for in Section 2.02 or in Section 2.03

shall not apply to the initial delivery of the Mortgage File for such Delay Delivery Mortgage Loan, but rather Countrywide (on its own behalf and on behalf of Park Granada, Park Monaco and Park Sienna) shall have five (5) Business Days to cure such failure to deliver. At the end of such thirty (30)-day period the Trustee shall send a Delay Delivery Certification for the Delay Delivery Mortgage Loans delivered during such thirty (30)-day period in accordance with the provisions of Section 2.02.

(d) Neither the Depositor nor the Trust will acquire or hold any Mortgage Loan that would violate the representations made by Countrywide set forth in clause (50) of Schedule III-A hereto.

SECTION 2.02. Acceptance by Trustee of the Mortgage Loans.

(a) The Trustee acknowledges receipt of the documents identified in the Initial Certification in the form annexed hereto as Exhibit F-1 (an "***Initial Certification***") and declares that it holds and will hold such documents and the other documents delivered to it constituting the Mortgage Files, and that it holds or will hold such other assets as are included in the Trust Fund, in trust for the exclusive use and benefit of all present and future Certificateholders. The Trustee acknowledges that it will maintain possession of the Mortgage Notes in the State of California, unless otherwise permitted by the Rating Agencies.

The Trustee agrees to execute and deliver on the Closing Date to the Depositor, the Master Servicer and Countrywide (on its own behalf and on behalf of Park Granada, Park Monaco and Park Sienna) an Initial Certification in the form annexed to this Agreement as Exhibit F-1. Based on its review and examination, and only as to the documents identified in such Initial Certification, the Trustee acknowledges that such documents appear regular on their face and relate to the Mortgage Loans. The Trustee shall be under no duty or obligation to inspect, review or examine said documents, instruments, certificates or other papers to determine that the same are genuine, enforceable or appropriate for the represented purpose or that they have actually been recorded in the real estate records or that they are other than what they purport to be on their face.

On or about the thirtieth (30^{th}) day after the Closing Date, the Trustee shall deliver to the Depositor, the Master Servicer and Countrywide (on its own behalf and on behalf of Park Granada, Park Monaco and Park Sienna) a Delay Delivery Certification with respect to the Mortgage Loans in the form annexed hereto as Exhibit G-1 (a "***Delay Delivery Certification***"), with any applicable exceptions noted thereon.

Not later than 90 days after the Closing Date, the Trustee shall deliver to the Depositor, the Master Servicer and Countrywide (on its own behalf and on behalf of Park Granada, Park Monaco and Park Sienna) a Final Certification with respect to the Mortgage Loans in the form annexed hereto as Exhibit H-1 (a "***Final Certification***"), with any applicable exceptions noted thereon.

If, in the course of such review, the Trustee finds any document constituting a part of a Mortgage File that does not meet the requirements of Section 2.01, the Trustee shall list such as an exception in the Final Certification; provided, however that the Trustee shall not make any determination as to whether (i) any endorsement is sufficient to transfer all right, title and interest

(b) [Reserved].

(c) [Reserved].

(d) The Trustee shall retain possession and custody of each Mortgage File in accordance with and subject to the terms and conditions set forth in this Agreement. The Master Servicer shall promptly deliver to the Trustee, upon the execution or receipt thereof, the originals of such other documents or instruments constituting the Mortgage File as come into the possession of the Master Servicer from time to time.

(e) It is understood and agreed that the respective obligations of each Seller to substitute for or to purchase any Mortgage Loan sold to the Depositor by it which does not meet the requirements of Section 2.01 above shall constitute the sole remedy respecting such defect available to the Trustee, the Depositor and any Certificateholder against that Seller.

SECTION 2.03. Representations, Warranties and Covenants of the Sellers and Master Servicer.

(a) Countrywide hereby makes the representations and warranties set forth in (i) Schedule II-A, Schedule II-B, Schedule II-C and Schedule II-D hereto, and by this reference incorporated herein, to the Depositor, the Master Servicer and the Trustee, as of the Closing Date, (ii) Schedule III-A hereto, and by this reference incorporated herein, to the Depositor, the Master Servicer and the Trustee, as of the Closing Date, or if so specified therein, as of the Cut-off Date with respect to the Mortgage Loans, and (iii) Schedule III-B hereto, and by this reference incorporated herein, to the Depositor, the Master Servicer and the Trustee, as of the Closing Date, or if so specified therein, as of the Cut-off Date with respect to the Mortgage Loans that are Countrywide Mortgage Loans. Park Granada hereby makes the representations and warranties set forth in (i) Schedule II-B hereto, and by this reference incorporated herein, to the Depositor, the Master Servicer and the Trustee, as of the Closing Date and (ii) Schedule III-C hereto, and by this reference incorporated herein, to the Depositor, the Master Servicer and the Trustee, as of the Closing Date, or if so specified therein, as of the Cut-off Date with respect to the Mortgage Loans that are Park Granada Mortgage Loans. Park Monaco hereby makes the representations and warranties set forth in (i) Schedule II-C hereto, and by this reference incorporated herein, to the Depositor, the Master Servicer and the Trustee, as of the Closing Date and (ii) Schedule III-D hereto, and by this reference incorporated herein, to the Depositor, the Master Servicer and the Trustee, as of the Closing Date, or if so specified therein, as of the Cut-off Date with respect to the Mortgage Loans that are Park Monaco Mortgage Loans. Park Sienna hereby makes the representations and warranties set forth in (i) Schedule II-D hereto, and by this reference incorporated herein, to the Depositor, the Master Servicer and the Trustee, as of the Closing Date and (ii) Schedule III-E hereto, and by this reference incorporated herein, to the Depositor, the Master Servicer and the Trustee, as of the Closing Date, or if so specified therein, as of the Cut-off Date with respect to the Mortgage Loans that are Park Sienna Mortgage Loans.

(b) The Master Servicer hereby makes the representations and warranties set forth in Schedule IV hereto, and by this reference incorporated herein, to the Depositor and the Trustee, as of the Closing Date.

(c) Upon discovery by any of the parties hereto of a breach of a representation or warranty with respect to a Mortgage Loan made pursuant to Section 2.03(a) that materially and adversely affects the interests of the Certificateholders in that Mortgage Loan, the party discovering such breach shall give prompt notice thereof to the other parties, the NIM Insurer and the Swap Counterparty. Each Seller hereby covenants that within 90 days of the earlier of its discovery or its receipt of written notice from any party of a breach of any representation or warranty with respect to a Mortgage Loan sold by it pursuant to Section 2.03(a) that materially and adversely affects the interests of the Certificateholders in that Mortgage Loan, it shall cure such breach in all material respects, and if such breach is not so cured, shall, (i) if such 90-day period expires prior to the second anniversary of the Closing Date, remove such Mortgage Loan (a "***Deleted Mortgage Loan***") from the Trust Fund and substitute in its place a Substitute Mortgage Loan, in the manner and subject to the conditions set forth in this Section; or (ii) repurchase the affected Mortgage Loan or Mortgage Loans from the Trustee at the Purchase Price in the manner set forth below; provided, however, that any such substitution pursuant to (i) above shall not be effected prior to the delivery to the Trustee of the Opinion of Counsel required by Section 2.05, if any, and any such substitution pursuant to (i) above shall not be effected prior to the additional delivery to the Trustee of a Request for Release substantially in the form of Exhibit N and the Mortgage File for any such Substitute Mortgage Loan. The Seller repurchasing a Mortgage Loan pursuant to this Section 2.03(c) shall promptly reimburse the Master Servicer and the Trustee for any expenses reasonably incurred by the Master Servicer or the Trustee in respect of enforcing the remedies for such breach. With respect to the representations and warranties described in this Section which are made to the best of a Seller's knowledge, if it is discovered by either the Depositor, a Seller or the Trustee that the substance of such representation and warranty is inaccurate and such inaccuracy materially and adversely affects the value of the related Mortgage Loan or the interests of the Certificateholders therein, notwithstanding that Seller's lack of knowledge with respect to the substance of such representation or warranty, such inaccuracy shall be deemed a breach of the applicable representation or warranty. Any breach of a representation set forth in clauses (45) through (64) of Schedule III-A with respect to a Mortgage Loan in Loan Group 1 shall be deemed to materially and adversely affect the Certificateholders.

With respect to any Substitute Mortgage Loan or Loans sold to the Depositor by a Seller, Countrywide (on its own behalf and on behalf of Park Granada, Park Monaco and Park Sienna) shall deliver to the Trustee for the benefit of the Certificateholders the Mortgage Note, the Mortgage, the related assignment of the Mortgage, and such other documents and agreements as are required by Section 2.01, with the Mortgage Note endorsed and the Mortgage assigned as required by Section 2.01. No substitution is permitted to be made in any calendar month after the Determination Date for such month. Scheduled Payments due with respect to Substitute Mortgage Loans in the month of substitution shall not be part of the Trust Fund and will be retained by the related Seller on the next succeeding Distribution Date. For the month of substitution, distributions to Certificateholders will include the monthly payment due on any Deleted Mortgage Loan for such month and thereafter that Seller shall be entitled to retain all amounts received in respect of such Deleted Mortgage Loan. The Master Servicer shall amend the Mortgage Loan Schedule for the benefit of the Certificateholders to reflect the removal of such Deleted Mortgage Loan and the substitution of the Substitute Mortgage Loan or Loans and the Master Servicer shall deliver the amended Mortgage Loan Schedule to the Trustee. Upon such substitution, the Substitute Mortgage Loan or Loans shall be subject to the terms of this

Agreement in all respects, and the related Seller shall be deemed to have made with respect to such Substitute Mortgage Loan or Loans, as of the date of substitution, the representations and warranties made pursuant to Section 2.03(a) with respect to such Mortgage Loan. Upon any such substitution and the deposit to the Certificate Account of the amount required to be deposited therein in connection with such substitution as described in the following paragraph, the Trustee shall release the Mortgage File held for the benefit of the Certificateholders relating to such Deleted Mortgage Loan to the related Seller and shall execute and deliver at such Seller's direction such instruments of transfer or assignment prepared by Countrywide (on its own behalf and on behalf of Park Granada, Park Monaco and Park Sienna), in each case without recourse, as shall be necessary to vest title in that Seller, or its designee, the Trustee's interest in any Deleted Mortgage Loan substituted for pursuant to this Section 2.03.

For any month in which a Seller substitutes one or more Substitute Mortgage Loans for one or more Deleted Mortgage Loans, the Master Servicer will determine the amount (if any) by which the aggregate principal balance of all Substitute Mortgage Loans sold to the Depositor by that Seller as of the date of substitution is less than the aggregate Stated Principal Balance of all Deleted Mortgage Loans repurchased by that Seller (after application of the scheduled principal portion of the monthly payments due in the month of substitution). The amount of such shortage (the "***Substitution Adjustment Amount***") plus an amount equal to the aggregate of any unreimbursed Advances with respect to such Deleted Mortgage Loans shall be deposited in the Certificate Account by Countrywide (on its own behalf and on behalf of Park Granada, Park Monaco and Park Sienna) on or before the Distribution Account Deposit Date for the Distribution Date in the month succeeding the calendar month during which the related Mortgage Loan became required to be purchased or replaced hereunder.

In the event that a Seller shall have repurchased a Mortgage Loan, the Purchase Price therefor shall be deposited in the Certificate Account pursuant to Section 3.05 on or before the Distribution Account Deposit Date for the Distribution Date in the month following the month during which that Seller became obligated hereunder to repurchase or replace such Mortgage Loan and upon such deposit of the Purchase Price, the delivery of the Opinion of Counsel required by Section 2.05 and receipt of a Request for Release in the form of Exhibit N hereto, the Trustee shall release the related Mortgage File held for the benefit of the Certificateholders to such Person, and the Trustee shall execute and deliver at such Person's direction such instruments of transfer or assignment prepared by such Person, in each case without recourse, as shall be necessary to transfer title from the Trustee. It is understood and agreed that the obligation under this Agreement of any Person to cure, repurchase or replace any Mortgage Loan as to which a breach has occurred and is continuing shall constitute the sole remedy against such Persons respecting such breach available to Certificateholders, the Depositor or the Trustee on their behalf.

The representations and warranties made pursuant to this Section 2.03 shall survive delivery of the respective Mortgage Files to the Trustee for the benefit of the Certificateholders.

SECTION 2.04. Representations and Warranties of the Depositor as to the Mortgage Loans.

The Depositor hereby represents and warrants to the Trustee with respect to each Mortgage Loan as of the date of this Agreement or such other date set forth in this Agreement

that as of the Closing Date, and following the transfer of the Mortgage Loans to it by each Seller, the Depositor had good title to the Mortgage Loans and the Mortgage Notes were subject to no offsets, defenses or counterclaims.

The Depositor hereby assigns, transfers and conveys to the Trustee all of its rights with respect to the Mortgage Loans including, without limitation, the representations and warranties of each Seller made pursuant to Section 2.03(a), together with all rights of the Depositor to require a Seller to cure any breach thereof or to repurchase or substitute for any affected Mortgage Loan in accordance with this Agreement.

It is understood and agreed that the representations and warranties set forth in this Section 2.04 shall survive delivery of the Mortgage Files to the Trustee. Upon discovery by the Depositor or the Trustee of a breach of any of the foregoing representations and warranties set forth in this Section 2.04 (referred to herein as a "breach"), which breach materially and adversely affects the interest of the Certificateholders, the party discovering such breach shall give prompt written notice to the others and to each Rating Agency and the NIM Insurer.

SECTION 2.05. Delivery of Opinion of Counsel in Connection with Substitutions.

(a) Notwithstanding any contrary provision of this Agreement, no substitution pursuant to Section 2.02 or Section 2.03 shall be made more than 90 days after the Closing Date unless Countrywide delivers to the Trustee an Opinion of Counsel, which Opinion of Counsel shall not be at the expense of either the Trustee or the Trust Fund, addressed to the Trustee, to the effect that such substitution will not (i) result in the imposition of the tax on "prohibited transactions" on the Trust Fund or contributions after the Startup Date, as defined in Sections 860F(a)(2) and 860G(d) of the Code, respectively, or (ii) cause any REMIC created under this Agreement to fail to qualify as a REMIC at any time that any Certificates are outstanding.

(b) Upon discovery by the Depositor, a Seller, the Master Servicer, or the Trustee that any Mortgage Loan does not constitute a "qualified mortgage" within the meaning of Section 860G(a)(3) of the Code, the party discovering such fact shall promptly (and in any event within five (5) Business Days of discovery) give written notice thereof to the other parties and the NIM Insurer. In connection therewith, the Trustee shall require Countrywide (on its own behalf and on behalf of Park Granada, Park Monaco and Park Sienna) at its option, to either (i) substitute, if the conditions in Section 2.03(c) with respect to substitutions are satisfied, a Substitute Mortgage Loan for the affected Mortgage Loan, or (ii) repurchase the affected Mortgage Loan within 90 days of such discovery in the same manner as it would a Mortgage Loan for a breach of representation or warranty made pursuant to Section 2.03. The Trustee shall reconvey to Countrywide the Mortgage Loan to be released pursuant to this Section in the same manner, and on the same terms and conditions, as it would a Mortgage Loan repurchased for breach of a representation or warranty contained in Section 2.03.

SECTION 2.06. Execution and Delivery of Certificates.

The Trustee acknowledges the transfer and assignment to it of the Trust Fund and, concurrently with such transfer and assignment, has executed and delivered to or upon the order of the Depositor, the Certificates in authorized denominations evidencing directly or indirectly the entire ownership of the Trust Fund. The Trustee agrees to hold the Trust Fund and exercise

In accordance with the standards of the preceding paragraph, the Master Servicer shall advance or cause to be advanced funds as necessary for the purpose of effecting the payment of taxes and assessments on the Mortgaged Properties, which advances shall be reimbursable in the first instance from related collections from the Mortgagors pursuant to Section 3.06, and further as provided in Section 3.08. The costs incurred by the Master Servicer, if any, in effecting the timely payments of taxes and assessments on the Mortgaged Properties and related insurance premiums shall not, for the purpose of calculating monthly distributions to the Certificateholders, be added to the Stated Principal Balances of the related Mortgage Loans, notwithstanding that the terms of such Mortgage Loans so permit.

SECTION 3.02. Subservicing; Enforcement of the Obligations of Subservicers.

(a) The Master Servicer may arrange for the subservicing of any Mortgage Loan by a Subservicer pursuant to a subservicing agreement; provided, however, that such subservicing arrangement and the terms of the related subservicing agreement must provide for the servicing of such Mortgage Loans in a manner consistent with the servicing arrangements contemplated under this Agreement; provided, however, that the NIM Insurer shall have consented to such subservicing agreements (which consent shall not be unreasonably withheld). Unless the context otherwise requires, references in this Agreement to actions taken or to be taken by the Master Servicer in servicing the Mortgage Loans include actions taken or to be taken by a Subservicer on behalf of the Master Servicer. Notwithstanding the provisions of any subservicing agreement, any of the provisions of this Agreement relating to agreements or arrangements between the Master Servicer and a Subservicer or reference to actions taken through a Subservicer or otherwise, the Master Servicer shall remain obligated and liable to the Depositor, the Trustee and the Certificateholders for the servicing and administration of the Mortgage Loans in accordance with the provisions of this Agreement without diminution of such obligation or liability by virtue of such subservicing agreements or arrangements or by virtue of indemnification from the Subservicer and to the same extent and under the same terms and conditions as if the Master Servicer alone were servicing and administering the Mortgage Loans. All actions of each Subservicer performed pursuant to the related subservicing agreement shall be performed as an agent of the Master Servicer with the same force and effect as if performed directly by the Master Servicer.

(b) For purposes of this Agreement, the Master Servicer shall be deemed to have received any collections, recoveries or payments with respect to the Mortgage Loans that are received by a Subservicer regardless of whether such payments are remitted by the Subservicer to the Master Servicer.

SECTION 3.03. Rights of the Depositor, the NIM Insurer and the Trustee in Respect of the Master Servicer.

The Depositor may, but is not obligated to, enforce the obligations of the Master Servicer under this Agreement and may, but is not obligated to, perform, or cause a designee to perform, any defaulted obligation of the Master Servicer under this Agreement and in connection with any such defaulted obligation to exercise the related rights of the Master Servicer under this Agreement; provided that the Master Servicer shall not be relieved of any of its obligations under this Agreement by virtue of such performance by the Depositor or its designee. None of the Trustee, the NIM Insurer or the Depositor shall have any responsibility or liability for any action

or failure to act by the Master Servicer nor shall the Trustee or the Depositor be obligated to supervise the performance of the Master Servicer under this Agreement or otherwise.

SECTION 3.04. Trustee to Act as Master Servicer.

In the event that the Master Servicer shall for any reason no longer be the Master Servicer under this Agreement (including by reason of an Event of Default or termination by the Depositor), the Trustee or its successor shall then assume all of the rights and obligations of the Master Servicer under this Agreement arising thereafter (except that the Trustee shall not be (i) liable for losses of the Master Servicer pursuant to Section 3.09 or any acts or omissions of the predecessor Master Servicer under this Agreement), (ii) obligated to make Advances if it is prohibited from doing so by applicable law, (iii) obligated to effectuate repurchases or substitutions of Mortgage Loans under this Agreement including, but not limited to, repurchases or substitutions of Mortgage Loans pursuant to Section 2.02 or 2.03, (iv) responsible for expenses of the Master Servicer pursuant to Section 2.03 or (v) deemed to have made any representations and warranties of the Master Servicer under this Agreement). Any such assumption shall be subject to Section 7.02. If the Master Servicer shall for any reason no longer be the Master Servicer (including by reason of any Event of Default or termination by the Depositor), the Trustee or its successor shall succeed to any rights and obligations of the Master Servicer under each subservicing agreement.

The Master Servicer shall, upon request of the Trustee, but at the expense of the Master Servicer, deliver to the assuming party all documents and records relating to each subservicing agreement or substitute subservicing agreement and the Mortgage Loans then being serviced thereunder and an accounting of amounts collected or held by it and otherwise use its best efforts to effect the orderly and efficient transfer of the substitute subservicing agreement to the assuming party.

SECTION 3.05. Collection of Mortgage Loan Payments; Certificate Account; Distribution Account; Carryover Reserve Fund; Principal Reserve Fund.

(a) The Master Servicer shall make reasonable efforts in accordance with the customary and usual standards of practice of prudent mortgage servicers to collect all payments called for under the terms and provisions of the Mortgage Loans to the extent such procedures shall be consistent with this Agreement and the terms and provisions of any related Required Insurance Policy. Consistent with the foregoing, the Master Servicer may in its discretion (i) waive any late payment charge or, subject to Section 3.20, any Prepayment Charge or penalty interest in connection with the prepayment of a Mortgage Loan and (ii) extend the due dates for payments due on a Mortgage Note for a period not greater than 180 days; provided, however, that the Master Servicer cannot extend the maturity of any such Mortgage Loan past the date on which the final payment is due on the latest maturing Mortgage Loan as of the Cut-off Date. In the event of any such arrangement, the Master Servicer shall make Advances on the related Mortgage Loan in accordance with the provisions of Section 4.01 during the scheduled period in accordance with the amortization schedule of such Mortgage Loan without modification thereof by reason of such arrangements. In addition, the NIM Insurer's prior written consent shall be required for any waiver of Prepayment Charges or for the extension of the due dates for payments due on a Mortgage Note, if the aggregate number of outstanding Mortgage Loans that

ARTICLE VII
DEFAULT

SECTION 7.01. Events of Default.

"***Event of Default***," wherever used in this Agreement, means any one of the following events:

(i) any failure by the Master Servicer to deposit in the Certificate Account or remit to the Trustee any payment required to be made under the terms of this Agreement, which failure shall continue unremedied for five days after the date upon which written notice of such failure shall have been given to the Master Servicer by the Trustee, the NIM Insurer or the Depositor or to the Master Servicer, the NIM Insurer and the Trustee by the Holders of Certificates having not less than 25% of the Voting Rights evidenced by the Certificates; or

(ii) any failure by the Master Servicer to observe or perform in any material respect any other of the covenants or agreements on the part of the Master Servicer contained in this Agreement (except with respect to a failure related to a Limited Exchange Act Reporting Obligation), which failure materially affects the rights of Certificateholders, that failure continues unremedied for a period of 60 days after the date on which written notice of such failure shall have been given to the Master Servicer by the Trustee, the NIM Insurer or the Depositor, or to the Master Servicer and the Trustee by the Holders of Certificates evidencing not less than 25% of the Voting Rights evidenced by the Certificates; *provided, however*, that the sixty day cure period shall not apply to the initial delivery of the Mortgage File for Delay Delivery Mortgage Loans nor the failure to substitute or repurchase in lieu of delivery; or

(iii) a decree or order of a court or agency or supervisory authority having jurisdiction in the premises for the appointment of a receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding-up or liquidation of its affairs, shall have been entered against the Master Servicer and such decree or order shall have remained in force undischarged or unstayed for a period of 60 consecutive days; or

(iv) the Master Servicer shall consent to the appointment of a receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings of or relating to the Master Servicer or all or substantially all of the property of the Master Servicer; or

(v) the Master Servicer shall admit in writing its inability to pay its debts generally as they become due, file a petition to take advantage of, or commence a voluntary case under, any applicable insolvency or reorganization statute, make an assignment for the benefit of its creditors, or voluntarily suspend payment of its obligations; or

(vi) the Master Servicer shall fail to reimburse in full the Trustee within five days of the Master Servicer Advance Date for any Advance made by the Trustee pursuant to Section 4.01(b) together with accrued and unpaid interest.

If an Event of Default described in clauses (i) to (vi) of this Section shall occur, then, and in each and every such case, so long as such Event of Default shall not have been remedied, the Trustee may, or, if an Event of Default described in clauses (i) to (v) of this Section shall occur, then, and in each and every such case, so long as such Event of Default shall not have been remedied, at the direction of either the NIM Insurer or the Holders of Certificates evidencing not less than 66-2/3% of the Voting Rights, evidenced by the Certificates; the Trustee shall by notice in writing to the Master Servicer (with a copy to each Rating Agency and the Depositor), terminate all of the rights and obligations of the Master Servicer under this Agreement and in and to the Mortgage Loans and the proceeds thereof, other than its rights as a Certificateholder hereunder. In addition, if during the period that the Depositor is required to file Exchange Act Reports with respect to the Trust Fund, the Master Servicer shall fail to observe or perform any of the obligations that constitute a Limited Exchange Act Reporting Obligation or the obligations set forth in Section 3.16(a) or Section 11.01(a)(1) and (2), and such failure continues for the lesser of 10 calendar days or such period in which the applicable Exchange Act Report can be filed timely (without taking into account any extensions), so long as such failure shall not have been remedied, the Trustee shall, but only at the direction of the Depositor, terminate all of the rights and obligations of the Master Servicer under this Agreement and in and to the Mortgage Loans and the proceeds thereof, other than its rights as a Certificateholder hereunder. The Depositor shall not be entitled to terminate the rights and obligations of the Master Servicer if a failure of the Master Servicer to identify a Subcontractor "participating in the servicing function" within the meaning of Item 1122 of Regulation AB was attributable solely to the role or functions of such Subcontractor with respect to mortgage loans other than the Mortgage Loans.

On and after the receipt by the Master Servicer of such written notice, all authority and power of the Master Servicer hereunder, whether with respect to the Mortgage Loans or otherwise, shall pass to and be vested in the Trustee. The Trustee shall thereupon make any Advance which the Master Servicer failed to make subject to Section 4.01 whether or not the obligations of the Master Servicer have been terminated pursuant to this Section. The Trustee is hereby authorized and empowered to execute and deliver, on behalf of the Master Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such notice of termination, whether to complete the transfer and endorsement or assignment of the Mortgage Loans and related documents, or otherwise. Unless expressly provided in such written notice, no such termination shall affect any obligation of the Master Servicer to pay amounts owed pursuant to Article VIII. The Master Servicer agrees to cooperate with the Trustee in effecting the termination of the Master Servicer's responsibilities and rights hereunder, including, without limitation, the transfer to the Trustee of all cash amounts which shall at the time be credited to the Certificate Account, or thereafter be received with respect to the Mortgage Loans.

Notwithstanding any termination of the activities of the Master Servicer hereunder, the Master Servicer shall be entitled to receive, out of any late collection of a Scheduled Payment on a Mortgage Loan which was due prior to the notice terminating such Master Servicer's rights and obligations as Master Servicer hereunder and received after such notice, that portion thereof to which such Master Servicer would have been entitled pursuant to Sections 3.08(a)(i) through

(viii), and any other amounts payable to such Master Servicer hereunder the entitlement to which arose prior to the termination of its activities under this Agreement.

If the Master Servicer is terminated, the Trustee shall provide the Depositor in writing and in form and substance reasonably satisfactory to the Depositor, all information reasonably requested by the Depositor in order to comply with its reporting obligation under Item 6.02 of Form 8-K with respect to a successor master servicer in the event the Trustee should succeed to the duties of the Master Servicer as set forth herein.

SECTION 7.02. Trustee to Act; Appointment of Successor.

On and after the time the Master Servicer receives a notice of termination pursuant to Section 7.01, the Trustee shall, subject to and to the extent provided in Section 3.04, be the successor to the Master Servicer in its capacity as master servicer under this Agreement and the transactions set forth or provided for in this Agreement and shall be subject to all the responsibilities, duties and liabilities relating thereto placed on the Master Servicer by the terms and provisions of this Agreement and applicable law including the obligation to make Advances pursuant to Section 4.01. As compensation therefor, the Trustee shall be entitled to all funds relating to the Mortgage Loans that the Master Servicer would have been entitled to charge to the Certificate Account or Distribution Account if the Master Servicer had continued to act hereunder. Notwithstanding the foregoing, if the Trustee has become the successor to the Master Servicer in accordance with Section 7.01, the Trustee may, if it shall be unwilling to so act, or shall, if it is prohibited by applicable law from making Advances pursuant to Section 4.01 or if it is otherwise unable to so act, (i) appoint any established mortgage loan servicing institution reasonably acceptable to the NIM Insurer (as evidenced by the prior written consent of the NIM Insurer), or (ii) if it is unable for 60 days to appoint a successor servicer reasonably acceptable to the NIM Insurer, petition a court of competent jurisdiction to appoint any established mortgage loan servicing institution, the appointment of which does not adversely affect the then-current rating of the Certificates and the NIM Insurer guaranteed notes (without giving any effect to any policy or guaranty provided by the NIM Insurer) by each Rating Agency as the successor to the Master Servicer hereunder in the assumption of all or any part of the responsibilities, duties or liabilities of the Master Servicer hereunder. Any successor to the Master Servicer shall be an institution which is a FNMA and FHLMC approved seller/servicer in good standing, which has a net worth of at least $15,000,000, and which is willing to service the Mortgage Loans and (i) executes and delivers to the Depositor and the Trustee an agreement accepting such delegation and assignment, which contains an assumption by such Person of the rights, powers, duties, responsibilities, obligations and liabilities of the Master Servicer (other than liabilities of the Master Servicer under Section 6.03 incurred prior to termination of the Master Servicer under Section 7.01), with like effect as if originally named as a party to this Agreement; and provided further that each Rating Agency acknowledges that its rating of the Certificates in effect immediately prior to such assignment and delegation will not be qualified or reduced as a result of such assignment and delegation and (ii) provides to the Depositor in writing, fifteen (15) days prior to the effective date of such appointment, and in form and substance reasonably satisfactory to the Depositor, all information reasonably requested by the Depositor in order to comply with its reporting obligation under Item 6.02 of Form 8-K with respect to a replacement master servicer. The Trustee shall provide written notice to the Depositor of such successor pursuant to this Section. Pending appointment of a successor to the Master Servicer hereunder, the Trustee, unless the Trustee is prohibited by law from so acting, shall, subject to Section 3.04, act in such

ARTICLE VIII
CONCERNING THE TRUSTEE

SECTION 8.01. Duties of Trustee.

The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform such duties and only such duties as are specifically set forth in this Agreement. In case an Event of Default has occurred and remains uncured, the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

The Trustee, upon receipt of all resolutions, certificates, statements, opinions, reports, documents, orders or other instruments furnished to the Trustee that are specifically required to be furnished pursuant to any provision of this Agreement shall examine them to determine whether they are in the form required by this Agreement; provided, however, that the Trustee shall not be responsible for the accuracy or content of any such resolution, certificate, statement, opinion, report, document, order or other instrument.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct; provided, however, that:

(i) unless an Event of Default known to the Trustee shall have occurred and be continuing, the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, no implied covenants or obligations shall be read into this Agreement against the Trustee and the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement which it believed in good faith to be genuine and to have been duly executed by the proper authorities respecting any matters arising hereunder;

(ii) the Trustee shall not be liable for an error of judgment made in good faith by a Responsible Officer or Responsible Officers of the Trustee, unless it shall be finally proven that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the direction of Holders of Certificates evidencing not less than 25% of the Voting Rights of Certificates relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Agreement; and

(iv) without in any way limiting the provisions of this Section 8.01 or Section 8.02, the Trustee shall be entitled to rely conclusively on the information delivered to it by the Master Servicer in a Trustee Advance Notice in determining whether it is required

to make an Advance under Section 4.01(b), shall have no responsibility to ascertain or confirm any information contained in any Trustee Advance Notice, and shall have no obligation to make any Advance under Section 4.01(b) in the absence of a Trustee Advance Notice or actual knowledge of a Responsible Officer of the Trustee that (A) such Advance was not made by the Master Servicer and (B) such Advance is not a Nonrecoverable Advance.

The Trustee hereby represents, warrants, covenants and agrees that, except as permitted by Article IX hereof, it shall not cause the Trust Fund to consolidate or amalgamate with, or merge with or into, or transfer all or substantially all of the Trust Fund to, another Person.

SECTION 8.02. Certain Matters Affecting the Trustee.

Except as otherwise provided in Section 8.01:

(i) the Trustee may request and rely upon and shall be protected in acting or refraining from acting upon any resolution, Officers' Certificate, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties and the Trustee shall have no responsibility to ascertain or confirm the genuineness of any signature of any such party or parties;

(ii) the Trustee may consult with counsel, financial advisers or accountants of its selection and the advice of any such counsel, financial advisers or accountants and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and in accordance with such Opinion of Counsel;

(iii) the Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement;

(iv) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other paper or document, unless requested in writing so to do by the NIM Insurer or Holders of Certificates evidencing not less than 25% of the Voting Rights allocated to each Class of Certificates;

(v) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, accountants or attorneys;

(vi) the Trustee shall not be required to risk or expend its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it;

(vii) the Trustee shall not be liable for any loss on any investment of funds pursuant to this Agreement (other than as issuer of the investment security);

(viii) the Trustee shall not be deemed to have knowledge of an Event of Default until a Responsible Officer of the Trustee shall have received written notice thereof; and

(ix) the Trustee shall be under no obligation to exercise any of the trusts, rights or powers vested in it by this Agreement or to institute, conduct or defend any litigation hereunder or in relation hereto at the request, order or direction of the NIM Insurer or any of the Certificateholders, pursuant to the provisions of this Agreement, unless the NIM Insurer or such Certificateholders shall have offered to the Trustee reasonable security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which may be incurred therein or thereby.

The Depositor hereby directs the Trustee to execute, deliver and perform its obligations under the Swap Administration Agreement (in its capacity as Swap Trustee). The Sellers, the Depositor, the Master Servicer and the Holders of the LIBOR Certificates by their acceptance of such Certificates acknowledge and agree that the Trustee shall execute, deliver and perform its obligations under the Swap Administration Agreement and shall do so solely in its capacity as Swap Trustee, as the case may be, and not in its individual capacity. Every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall apply to the Trustee's execution of the Swap Administration Agreement in its capacity as Swap Trustee, and the performance of its duties and satisfaction of its obligations thereunder.

SECTION 8.03. Trustee Not Liable for Certificates or Mortgage Loans.

The recitals contained in this Agreement and in the Certificates shall be taken as the statements of the Depositor or a Seller, as the case may be, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Agreement or of the Certificates or of any Mortgage Loan or related document or of MERS or the MERS® System other than with respect to the Trustee's execution and counter-signature of the Certificates. The Trustee shall not be accountable for the use or application by the Depositor or the Master Servicer of any funds paid to the Depositor or the Master Servicer in respect of the Mortgage Loans or deposited in or withdrawn from the Certificate Account by the Depositor or the Master Servicer.

SECTION 8.04. Trustee May Own Certificates.

The Trustee in its individual or any other capacity may become the owner or pledgee of Certificates with the same rights as it would have if it were not the Trustee.

SECTION 8.05. Trustee's Fees and Expenses.

The Trustee, as compensation for its activities hereunder, shall be entitled to withdraw from the Distribution Account on each Distribution Date an amount equal to the Trustee Fee for such Distribution Date. The Trustee and any director, officer, employee or agent of the Trustee shall be indemnified by the Master Servicer and held harmless against any loss, liability or

expense (including reasonable attorney's fees) (i) incurred in connection with any claim or legal action relating to (a) this Agreement, (b) the Certificates or (c) in connection with the performance of any of the Trustee's duties hereunder, other than any loss, liability or expense incurred by reason of willful misfeasance, bad faith or negligence in the performance of any of the Trustee's duties hereunder or incurred by reason of any action of the Trustee taken at the direction of the Certificateholders and (ii) resulting from any error in any tax or information return prepared by the Master Servicer. Such indemnity shall survive the termination of this Agreement or the resignation or removal of the Trustee hereunder. Without limiting the foregoing, the Master Servicer covenants and agrees, except as otherwise agreed upon in writing by the Depositor and the Trustee, and except for any such expense, disbursement or advance as may arise from the Trustee's negligence, bad faith or willful misconduct, to pay or reimburse the Trustee, for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Agreement with respect to: (A) the reasonable compensation and the expenses and disbursements of its counsel not associated with the closing of the issuance of the Certificates, (B) the reasonable compensation, expenses and disbursements of any accountant, engineer or appraiser that is not regularly employed by the Trustee, to the extent that the Trustee must engage such persons to perform acts or services hereunder and (C) printing and engraving expenses in connection with preparing any Definitive Certificates. Except as otherwise provided in this Agreement, the Trustee shall not be entitled to payment or reimbursement for any routine ongoing expenses incurred by the Trustee in the ordinary course of its duties as Trustee, Registrar, Tax Matters Person or Paying Agent hereunder or for any other expenses.

SECTION 8.06. Eligibility Requirements for Trustee.

The Trustee hereunder shall at all times be a corporation or association organized and doing business under the laws of a state or the United States of America, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least $50,000,000, subject to supervision or examination by federal or state authority and with a credit rating which would not cause either of the Rating Agencies to reduce or withdraw their respective then current ratings of the Certificates (or having provided such security from time to time as is sufficient to avoid such reduction) as evidenced in writing by each Rating Agency. If such corporation or association publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 8.06 the combined capital and surplus of such corporation or association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 8.06, the Trustee shall resign immediately in the manner and with the effect specified in Section 8.07. The entity serving as Trustee may have normal banking and trust relationships with the Depositor and its affiliates or the Master Servicer and its affiliates; provided, however, that such entity cannot be an affiliate of the Master Servicer other than the Trustee in its role as successor to the Master Servicer.

SECTION 8.07. Resignation and Removal of Trustee.

The Trustee may at any time resign and be discharged from the trusts hereby created by giving written notice of resignation to the Depositor, the Master Servicer and each Rating Agency not less than 60 days before the date specified in such notice when, subject to

deemed given when mailed, first class postage prepaid, to their respective addresses appearing in the Certificate Register.

SECTION 10.06. Severability of Provisions.

If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement or of the Certificates or the rights of the Holders of the Certificates.

SECTION 10.07. Assignment.

Notwithstanding anything to the contrary contained in this Agreement, except as provided in Section 6.02, this Agreement may not be assigned by the Master Servicer without the prior written consent of the Trustee and the Depositor.

SECTION 10.08. Limitation on Rights of Certificateholders.

The death or incapacity of any Certificateholder shall not operate to terminate this Agreement or the trust created hereby, nor entitle such Certificateholder's legal representative or heirs to claim an accounting or to take any action or commence any proceeding in any court for a petition or winding up of the trust created by this Agreement, or otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

No Certificateholder shall have any right to vote (except as provided in this Agreement) or in any manner otherwise control the operation and management of the Trust Fund, or the obligations of the parties hereto, nor shall anything set forth in this Agreement or contained in the terms of the Certificates be construed so as to constitute the Certificateholders from time to time as partners or members of an association; nor shall any Certificateholder be under any liability to any third party by reason of any action taken by the parties to this Agreement pursuant to any provision of this Agreement.

No Certificateholder shall have any right by virtue or by availing itself of any provisions of this Agreement to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Agreement, unless such Holder previously shall have given to the Trustee a written notice of an Event of Default and of the continuance thereof, as provided in this Agreement, and unless the Holders of Certificates evidencing not less than 25% of the Voting Rights evidenced by the Certificates shall also have made written request to the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses, and liabilities to be incurred therein or thereby, and the Trustee, for 60 days after its receipt of such notice, request and offer of indemnity shall have neglected or refused to institute any such action, suit or proceeding; it being understood and intended, and being expressly covenanted by each Certificateholder with every other Certificateholder and the Trustee, that no one or more Holders of Certificates shall have any right in any manner whatever by virtue or by availing itself or themselves of any provisions of this Agreement to affect, disturb or prejudice the rights of the Holders of any other of the Certificates, or to obtain or seek to obtain priority over or preference

to any other such Holder or to enforce any right under this Agreement, except in the manner provided in this Agreement and for the common benefit of all Certificateholders. For the protection and enforcement of the provisions of this Section 10.08, each and every Certificateholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

SECTION 10.09. Inspection and Audit Rights.

The Master Servicer agrees that, on reasonable prior notice, it will permit and will cause each Subservicer to permit any representative of the Depositor or the Trustee during the Master Servicer's normal business hours, to examine all the books of account, records, reports and other papers of the Master Servicer relating to the Mortgage Loans, to make copies and extracts therefrom, to cause such books to be audited by independent certified public accountants selected by the Depositor or the Trustee and to discuss its affairs, finances and accounts relating to the Mortgage Loans with its officers, employees and independent public accountants (and by this provision the Master Servicer hereby authorizes said accountants to discuss with such representative such affairs, finances and accounts), all at such reasonable times and as often as may be reasonably requested. Any out-of-pocket expense incident to the exercise by the Depositor or the Trustee of any right under this Section 10.09 shall be borne by the party requesting such inspection; all other such expenses shall be borne by the Master Servicer or the related Subservicer.

SECTION 10.10. Certificates Nonassessable and Fully Paid.

It is the intention of the Depositor that Certificateholders shall not be personally liable for obligations of the Trust Fund, that the interests in the Trust Fund represented by the Certificates shall be nonassessable for any reason whatsoever, and that the Certificates, upon due authentication thereof by the Trustee pursuant to this Agreement, are and shall be deemed fully paid.

SECTION 10.11. [Reserved].

SECTION 10.12. Protection of Assets.

(a) Except for transactions and activities entered into in connection with the securitization that is the subject of this Agreement, the Trust Fund created by this Agreement is not authorized and has no power to:

(i) borrow money or issue debt;

(ii) merge with another entity, reorganize, liquidate or sell assets; or

(iii) engage in any business or activities.

(b) Each party to this Agreement agrees that it will not file an involuntary bankruptcy petition against the Trustee or the Trust Fund or initiate any other form of insolvency proceeding until after the Certificates have been paid.

SECTION 10.13. Rights of NIM Insurer

Exhibit 3

CONFIDENTIAL

EXPERT REBUTTAL REPORT OF PROFESSOR ADAM J. LEVITIN

In the matter of the application of The Bank of New York Mellon
No. 651786/2011 (N.Y. Sup. Ct.)

TABLE OF CONTENTS

INTRODUCTION

1. My name is Adam Jeremiah Levitin. I was retained by Reilly Pozner LLP ("Firm"), as counsel to the American International Group ("AIG") in *In the matter of the application of The Bank of New York Mellon*, No. 651786/2011 (N.Y. Sup. Ct.) (the "Proceeding"), to provide expert testimony regarding the order proposed by Bank of New York Mellon ("BONY") in its 530 separate capacities as trustee for 530 separate securitization trusts (the "Covered Trusts") approving a settlement on behalf of the Covered Trusts with Bank of America ("BofA") and certain of BofA's affiliates.

SUMMARY OF OPINIONS OFFERED

2. The Firm has requested that I prepare this report to evaluate claims made in the expert reports submitted by Mr. Phillip R. Burnaman, II, Professor Daniel R. Fischel, Mr. Robert I. Landau, and Professor John H. Langbein on behalf of BONY (the "BONY Litigation Experts") as petitioner in the Proceeding. In addition to the reports of the BONY Litigation Experts, I have relied on the documents listed in Appendix A to this report and relied on my own pre-existing knowledge of housing finance, the securitization industry, mortgage servicing, and securitization trustees.

3. It is my opinion that the reports of all of the BONY Litigation Experts are fundamentally flawed with respect to their assumption that BONY acted in good faith when negotiating the settlement. BONY did not. At every step of the settlement process, BONY took actions consistent with advancing its own interests or the interests of BofA, rather than those of the Covered Trusts or the beneficial certificateholders of the Covered Trusts in general. BONY's Litigation Experts fail to factor in the business and financial relationships within the securitization industry in general, and between BONY and BofA in particular. Either BONY's Litigation Experts ignore these crucial facts or they are simply unaware of the economic incentives for BONY to act in the interests of BofA rather than in the interests of the Covered Trusts. Once BONY's economic incentives are understood, BONY's actions in regard to the settlement make sense, and BONY's true motiviation becomes manifest in the following ways:

- BONY's pretense that an Event of Default had not occurred;
- BONY's failure [redacted]
- BONY's failure [redacted]
- BONY's reliance on an insider subset of certificateholders--many of whom had interests in supporting BofA--[redacted] I have seen no evidence that BONY ever verified that these insiders were in fact net "long" on the Covered Trusts and not net "short" on the settlement;

- BONY's failure to ever [redacted]
- BONY's failure to [redacted]
- BONY's failure to [redacted]
- BONY's reliance on BofA's positions on Countrywide's solvency (including possible fraudulent transfer claims against BofA) without independent investigation or obtaining an independent solvency opinion;
- BONY's use of expert reports based on artificially limited parameters, used to paper its approval of a settlement that had [redacted]
- BONY's trust committee [redacted]
- BONY's treatment of its trusteeship for each of the 530 Covered Trusts as a unitary trusteeship despite the Covered Trusts' mutually adverse positions to each other as competing creditors of Countrywide and BofA;
- BONY's repeat conversion of trust property [redacted]
- BONY's approval of a settlement premised in part on the value of documentation exception cures that is actually narrower than BofA's existing legal duties and which expressly excludes the majority of loans in the Covered Trusts;
- BONY's continued support for a settlement premised in part on the value of servicing improvements, even though those "improvements" basically recreate BofA's existing legal duties;
- BONY's approval of a settlement that permits BofA to place the cost of up to $17.82 billion of loan modifications required in settlements for *BofA*'s alleged improper conduct on the *Covered Trusts*, making the Settlement of possibly *negative value* for the Covered Trusts.

4. Viewed as a whole, there is no escaping the conclusion that the Proposed Settlement is a "sweetheart deal" that serves the interests of BONY and BofA, and not the interests of the Covered Trusts. Simply put, nearly every aspect of the settlement benefits BONY and BofA. The BONY Litigation Experts may quibble with the interpretation of particular actions taken or not taken by BONY, but it is impossible for an unbiased party to view the entirety of BONY's actions and conclude that BONY in its 530 legally distinct roles as Trustee for each of 530 legally separate Covered Trusts has acted in the interests of the Covered Trusts, much less that it has comported with "a punctilio of honor the most sensitive" that New York law demands of fiduciaries. Instead, BONY's actions throughout the entire settlement process are problematic and appear to be contrary to the interests of the Covered Trusts.

5. This report first presents some background on the structure of the mortgage securitization industry and of the business relationships between BONY, BofA, and the group of certificateholders in some, but not all of the 530 trusts, that have been supporting the Proposed Settlement (the "Inside Investors").

6. Next this report goes through the history of the Proposed Settlement and its features, including the use of this Article 77 proceeding, to illustrate how BONY's actions throughout the entire process have been consistent with pursuit of its own economic interest and not the interest of the Covered Trusts. Throughout the report I point out the shortcomings of the BONY Litigation Expert opinions, which appear to ignore the economic framework in which BONY is operating.

7. The report concludes with a discussion of the parallels between BONY's behavior and the actions of trustees of the mortgage bonds of the 1920s, which built the great skyscrapers of Manhattan and prefigured modern mortgage-backed securities. BONY's actions in this case are simply following a strategy that it and other trustee banks used following the 1929 market crash. It took Herculean law reform efforts in the State of New York and Congress (resulting in two of the seven major federal securities statutes) to address the problem previously.

8. This Court has an opportunity to nip the problem in the bud. Doing so will help restore damaged investor confidence in financial markets and in the New York market in particular, by showing investors that they can rely on New York courts to ensure that New York trustees carry out their duties with "a punctilio of honor the most sensitive." Meinhard v. Salmon, 164 N.E. 545 (N.Y. 1928) (Cardozo, J.).

PROFESSIONAL BACKGROUND AND QUALIFICATIONS

9. I am currently the Bruce W. Nichols Visiting Professor of Law at Harvard Law School in Cambridge, Massachusetts. I am also a tenured Professor of Law at the Georgetown University Law Center in Washington, D.C., where I have taught since 2007. I teach courses in structured finance, bankruptcy, consumer finance, contracts, payment systems, and secured lending.

10. I also currently serve as a Directorial appointee to the statutory Consumer Advisory Board (CAB) of the Consumer Financial Protection Bureau, and am chair of the CAB's mortgage committee. The views expressed in this opinion are solely my own and not those of the CAB or the Consumer Financial Protection Bureau.

11. From 2008-2010, I served as Special Counsel for Mortgage Affairs to the Congressional Oversight Panel that supervised the Troubled Asset Relief Program (TARP). In that position I was in charge of the Oversight Panel's extensive reporting on the government's response to the mortgage crisis, with particular emphasis on mortgage servicing issues.

12. I have also previously served as the Robert Zinman Scholar in Residence at the American Bankruptcy Institute, as a faculty member for the Practicing Law Institute's Consumer Financial Services program, and as the faculty instructor for the Federal Trade Commission's training program for its Division of Financial Practices

personnel. I am also a member of the Mortgage Finance Working Group (MFWG) convened by the Center for American Progress. The MFWG has produced one of the major proposals for the reform of the US housing finance system and presented the proposal before the Treasury Department, Department of Housing and Urban Development, and the President's Council of Economic Advisors.

13. Since 2008, I have testified nineteen times before Congress on financial regulatory issues, including at eight hearings dealing specifically with housing finance. I have also testified before the Government Accountability Office on housing policy issues twice and testified before the Financial Crisis Inquiry Commission about mortgage securitization. I have served as an expert for the New York Attorney General in relation to mortgage servicing issues and as a Volunteer Deputy Attorney General for the State of Delaware for a mortgage securitization-related litigation. In addition, I have presented on mortgage securitization at Federal Reserve, FDIC, and mortgage industry conferences and to Citigroup's institutional clients. I serve as a for-fee consultant on an occasional basis for various investment funds, and consult informally with members of Congress, the Consumer Financial Protection Bureau, the Federal Reserve, International Monetary Fund, World Bank, and non-profit policy groups on financial regulation.

14. The securitization industry and its role in the financial crisis is a major focus of my academic research. I have authored over forty academic articles and book chapters and encyclopedia entries, nearly half of which address the securitization, housing finance industry or the financial crisis of 2008. In particular, two years prior to this engagement I published an article on mortgage servicing that specifically discusses the problematic incentives for mortgage securitization trustees with the business relationship between BONY and BofA servicing as the illustration of the problem.

15. My work has been published in leading law and real estate journals and has been awarded prizes from the American College of Consumer Financial Services Lawyers, the *American Bankruptcy Law Journal*, the George Washington University Center for Law, Economics and Finance, and the *Yale Journal on Regulation*. I serve as a peer reviewer for *Housing Policy Debate* and for *Cityscape*, a housing journal published by the Department of Housing and Urban Development. A complete list of my academic publications from the last ten years may be found in Appendix A to this report.

16. I hold a J.D., *cum laude* from Harvard Law School. I also hold a Bachelor of Arts (A.B.) degree *magna cum laude with highest honors in field* from Harvard College, a Master of Arts (A.M.) degree and a Master of Philosophy degree (M.Phil) from Columbia University. I have served as law clerk to Judge Jane R. Roth on the United States Court of Appeals for the Third Circuit. I am admitted to practice before the bars of the State of New York, the Third Circuit, the Southern District of New York, and the Eastern District of New York. I attached a copy of my curriculum vitae as Appendix B to this report.

17. Based on the foregoing experiences as well as my research following my engagement in this case, I am familiar with the mortgage securitization industry, including the roles of securitization trustees and servicers, and the specifics of the instant litigation.

18. My compensation for preparing this report and for any testimony in this Proceeding is at the rate of $800/hour. My compensation is not dependent either on the opinions I express or the outcome of this Proceeding.

I. The Securitization Industrial Complex

19. In order to understand what is afoot in the Proposed Settlement and the deficiencies of the BONY Litigation Expert reports, it is necessary to understand the basic structure of the securitization industry and how the various parties to this proceeding fit into it. An understanding of the business relationships and economic incentives in the securitization industry shows that the Proposed Settlement is not in the interests of the Covered Trusts, but is instead in the interests of BONY and BofA.

A. An Overview of the Mortgage Securitization Transaction

20. Securitization is a financing mechanism based on segregating selected cashflows of a firm from the firm's liabilities in order to enable investment based solely on the risks inherent in the selected cashflows, rather than in the total package of the selected cashflows' risks as well as all of the firm's other assets and liabilities.

21. Thus, with mortgage securitization, the idea is that investors will be able to invest solely in the risks associated with the mortgages (credit risk and rate risk), rather than in all the risks attendant to an investment in a mortgage lender as an operating entity, such as agency risk[1] and asset substitution risk.[2]

22. This type of financing is often advantageous for both investors and borrowers. Investors can invest in a more targeted, bespoke package of risks than if investing in an operating firm, and securitization borrowers may be able to raise capital at a lower cost than if they borrowed directly. For example, a firm with high quality cashflows, but significant liabilities can raise funds at costs set solely on the quality of the cashflows. Thus, a petroleum company with excellent cashflows but major environmental liabilities might be able to borrow itself at BBB rates, but it could raise funds through securitization at AAA rates.

23. For mortgage-backed securities to be a viable financial product, investors need to be confident that they are subject to the risks in which they believed they invested—and no others. Thus, if investors believe that they are assuming credit and rate risk and find out instead that they are subject to agency or asset substitution risk, they will be wary about investing in the mortgage-based securities in the future.

24. Therefore, a central goal of mortgage securitization is to remove as much uncertainty as possible from the investment. This means utilizing deal structures that minimize agency costs, avoid the possibility of bankruptcy court supervision, and use credit enhancements to ensure regular cash flows to investors.

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[1] E.g., the risk the firm's managers will make bad and possibly self-interested decisions regarding the firms' assets and liabilities.

[2] E.g., the risk the firm will substitute credit card receivables for mortgages as its assets.

25. To this end, private-label residential mortgage securitizations—meaning those mortgage securitizations not guaranteed by the federal government or government-sponsored entities—are done by segregating the mortgages [3] into a "bankruptcy remote" entity.[4] In the typical private-label residential mortgage securitization (and all of the securitizations at issue in this Proceeding), this is done in a two-step process.[5] A financial institution (the securitization "sponsor" or "seller") owns a pool of mortgages, which it either generated itself ("originated") itself or purchased. The sponsor sells the loans to a special-purpose subsidiary (the "depositor") that has no other assets or liabilities. This is done to segregate the mortgages from the sponsor's assets and liabilities. The sale makes the mortgages "bankruptcy remote" meaning that they cannot be consolidated with those of the sponsor in the event the sponsor files for bankruptcy or is placed in an FDIC receivership.

26. The sponsor, however, still controls the depositor, so there is still agency and asset substitution risk. (Additionally, there would be undesirable consolidation for accounting and U.S. tax purposes.) For example, the sponsor could dividend the mortgages up from the depositor or have them sold. Therefore, mortgage securitizations involve a second transaction. The depositor sells the mortgages to a specially purpose entity, typically a trust. The trust pays for the mortgages by issuing certificates of beneficial interest, which the depositor (or its underwriting affiliate) then sells to investors.

27. A trust is commonly used for residential mortgage transactions for reasons that are not germane to this litigation.

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[3] For the purposes of this report, except when otherwise noted, I use the term "mortgage" in its colloquial sense as referring to both the note and the security instrument.

[4] My description of securitization refers to private-label residential mortgage securitizations, like the Covered Trusts. The structure of Ginnie Mae, Fannie Mae, and Freddie Mac securitizations is distinctive.

[5] The process I describe here applies to securitizations done under Pooling and Servicing Agreements. A small subset of residential mortgage securitizations, including 17 of the 530 Covered Trusts, are not governed by a Pooling and Servicing Agreement. Instead, they are governed by a combination of two documents: a Sale and Servicing Agreement and an Indenture. These 17 Covered Trusts are Delaware statutory trusts, not New York common law business trusts. For the Delaware statutory trusts, the Sale and Servicing Agreement covers the transfer of the mortgages from the sponsor to the depositor to the trust and also provides for the servicing of the mortgages. The trust has a Delaware statutory trustee with no duties other than being a Delaware entity and complete indemnification.

The Sale and Servicing Agreement does not govern the issuance of the securities by the trust. Instead, those securities (called notes, rather than certificates) are issued under a subsequent indenture. Under the Indenture, the trust transfers the mortgages to the indenture trustee (BONY) in trust to secure repayment of the notes issued by the trust under the indenture.

The contractual rights of the noteholders under the indenture are *not* identical to those of certificateholders under PSAs. For example, the Event of Default provisions of the indentures are materially different from the PSAs in terms of what is an Event of Default, the ability of noteholders to waive Events of Default, the remedies available to the indenture trustee, and the Event of Default notice requirement. *See, e.g.,* Indenture Dated as of September 30, 2004, CWABS Asset-Backed Notes Trust 2004-SD3, Articles V-VI.

Because most of the Covered Trusts are governed by PSAs, I will refer to PSAs throughout this report rather than Indentures. The different rights of the noteholders under the indentures, however, is an important point as BONY [redacted]

28. Securitization investors want their investments held by a firm that operates robotically, following a nearly complete pre-programmed set of instructions. They do not want the firm's managers exercising discretion in all but a few narrow circumstances: dealing with defaulted loans and dealing with a default by a manager of the firm. Even then, in both cases, discretion is still limited by contractual provisions requiring or forbidding particular actions.

29. The reason that securitization investors want only very limited and closely cabined exercise of discretion by servicers and trustees is because greater range of discretion could result in mismanagement of trust assets (agency costs), asset substitution, or non-contractual liability. Securitization trusts allocate losses among certificateholders via a contractual subordination system known as a "cashflow waterfall". *See* PSA §§ 4.02, 4.04.[6] Losses are borne first by those at the bottom of the waterfall, and only once the position of those at the bottom has been wiped out are the losses then borne by those higher up.[7]

30. Such a system only works if there are no non-contractual creditors, such as tort and tax creditors. The concerns about agency costs, asset substitution, and non-contractual liability are for certificateholders all aspects of credit risk. But they are aspects of credit risk distinct from the credit risk on the mortgages themselves.

31. Limitation of credit risk, as well as accounting and tax treatments mandate that the trust be essentially passive; it is little more than a shell to hold the mortgages and put them beyond the reach of the sponsor's creditors.[8] Use of a trust form requires a trustee to hold legal title to the mortgages in trust for the certificateholders.

32. Mortgages, however, need to be managed. Billing statements must be mailed and payments collected. In theory, this management role could be performed by the trustee; such is the duty of indenture trustees for corporate and municipal bonds. Instead, it is handled by another party known as a "servicer". The reason the roles of trustee and servicer are separate is because servicing is frequently done by the sponsor or one of its affiliates. (Indeed, historically servicing was often a profitable endeavor and one that offered countercyclical revenues to mortgage origination.)

33. If the sponsor (or an affiliate) were to do the servicing and hold the mortgages in trust for the certificateholders, the mortgages might not be bankruptcy remote from the sponsor. There would be a real risk that if the sponsor were to end up in bankruptcy or receivership the mortgages would be treated as if they were the sponsor's, but pledged as collateral for a loan from the certificateholders. This could result in the

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[6] PSA citations in this report refer to the Pooling and Servicing Agreement for Countrywide Alternative Loan Trust 2005-35CB, dated July 1, 2005. While I cite consistently to this particular PSA for convenience, none of the provisions cited are particular to this PSA or to its shelf. Instead, they are standard throughout Countrywide PSAs, include those at issue in this Proceeding.

[7] I oversimply the waterfall here. In most securitizations there are separate waterfalls for principal and interest payments and sometimes payments above a certain level are allocated differently than those below that level.

[8] *See* Anna Gelpern & Adam J. Levitin, *Rewriting Frankenstein Contracts: Workout Prohibitions in Residential Mortgage-Backed Securities*, 82 S. CALIF. L. REV. 1075, 1081–84 (2009).

certificateholders not getting the contractual loss allocation that was the basis for their investment.[9]

34. Accordingly, securitization splits the management and title holding functions. The mortgages are managed by the servicer. The servicer is sometimes called a "Master Servicer." Depending on the particulars of a securitization, the servicer will either handle the servicing of the loans directly or subcontract it out to "subservicers."

35. Title to the mortgages is held by a trustee. The trustee's role in mortgage securitization transactions is primarily ministerial. Beyond holding title to the mortgages, the major responsibilities of the trustee are: to verify that the mortgage loans deposited in trust have the proper documentation; to remit payments received by the trust to the certificateholders according to the trust's "cashflow waterfall"; to make periodic reports to the certificateholders on trust performance, PSA § 4.06; and to serve as a financial backstop for the servicer, so that if the servicer ceases to perform its duties, the trustee will take over the servicing function or hire a third party to do so. *See, e.g.*, Jason H.P. Kravitt et al., SECURITIZATION OF FINANCIAL ASSETS, § 9.01[B][3] (2d ed.).

36. The particular ministerial tasks a trustee performs depend on the securitization; sometimes the ministerial tasks are contracted out to various agents, such as document custodians, payment agents, and trust administrators. The trustee does not handle the daily management of the mortgages.

37. A single transactional document called a Pooling and Servicing Agreement (PSA) usually controls the transfer of the mortgages from the sponsor to the depositor, from the depositor to the trust, the creation of the trust, and the issuance of the certificates. The PSA also governs the management of the mortgages by the servicer and the trustee.

B. The Securitization Triangle

38. As the preceding section has detailed, securitization involves at least a quartet of financial entities: the sponsor, the depositor, the servicer, and the trustee. As the depositor is a wholly-owned subsidiary of the sponsor, it can be disregarded for most purposes and treated as virtually synonymous with the sponsor. The sponsor is referred to as the "seller" in Countrywide PSAs because Countrywide securitizations could include loans from more than one Countrywide origination channel (*i.e.*, Park Monaco, Park Granada, Park Sienna), each of which is a separate "seller". To avoid confusing terminology, I use the term sponsor instead of seller. Thus, a securitization transaction is really a triangle between the sponsor, servicer, and trustee. Each of these entities has distinct liability and compensation.

[9] It is important to note, that the bankruptcy remoteness of the trust does *not* mean that the trust's potential claims against the depositor and sponsor are in any way limited. Bankruptcy remoteness here is about the inability of other creditors of the sponsor to recover from the trust's assets and about the trust's inability to file for bankruptcy itself.

1. The Role of Sponsors

39. The securitization sponsor (through the depositor) sells mortgages to the trust. The sponsor's compensation in the transaction is the proceeds of the sale (typically the trust certificates). The sale includes a set of representations and warranties by the sponsor about itself and the mortgages. To the extent that mortgages do not conform with the representations and warranties, it means that the sponsor was overpaid for the mortgages.

40. The critical representations and warranties deal with the underwriting of the mortgages, the accuracy of the borrowers' credit information, and the credit and collateral documentation. If the mortgages do not conform to the representations and warranties, then the sponsor may be obligated to repurchase them. PSA §§ 2.03, 2.04. The sponsor thus has representation and warranty liability on the mortgages.

2. The Role of Servicers

41. In this case, the servicer is an affiliate of the sponsor. The servicer is compensated in a number of ways. First, the servicer receives a "servicing fee". This fee is between 25 and 50 basis points annually on the unpaid principal balance of the mortgages in the trust. The particular rate depends on the type of mortgages securitized. The servicing fee gets paid before any money flows to certificateholders in the cashflow waterfall. Second, the servicer may receive an "excess servicing fee". This fee is the spread between the interest rate on the mortgages and the interest rate the trust must pay to the certificateholders minus the servicing fee and the trustee's fee. For adjustable or step-rate loans, the excess servicing fee can vary over time. Third, the servicer gets to keep any "float" generated. Servicers collect mortgage payments on the 1st of the month, but are not obligated to remit them to the trustee until the 25th of the month. In the interim, the servicer may invest the mortgage payments (subject to investment restrictions) and keep the investment earnings. Fourth, servicers are entitled to keep most types of "ancillary fees" they collect. These include late fees, various ministerial fees charged to homeowners, and a variety of fees relating to defaults, forbearance, loan modification, and foreclosure.

42. The servicer's primary duty is to manage the mortgage loans, meaning collecting payments and remitting them to the trust and, if a loan defaults, handling the default per the standards required by the PSA. Servicers' incentives in managing defaulted loans may diverge from those of the trust because servicers are paid before the certificateholders—they are in effect the senior creditors of the trust. *See* Adam J. Levitin & Tara Twomey, *Mortgage Servicing*, 28 YALE J. ON REG. 1 (2011). As senior creditor of the trust, servicers have little incentive to maximize the return on a loan in a foreclosure sale once their own fees are paid. Similarly, servicers are incentivized to foreclose rather than restructure a defaulted loan, even if a restructuring would maximize value for the trust, because the foreclosure results in a certain recovery of funds for the servicer. *Id.*

43. Servicers are also responsible for ensuring that mortgage documentation is correct. Upon receipt of the mortgages, the trustee is required to present the servicer with an

"exceptions report" detailing noncompliance with the trust's documentation requirements. The servicer is then obligated to remediate the documentation problems. Remediation must be done at the expense of the servicer and the sponsor (again, typically an affiliate of the servicer). In my experience, exceptions reports for a typical securitization will contain hundreds to thousands of documentation problems requiring remediation. The expense of doing so would be not insignificant, which incentivizes a servicer not to undertake the remediation of exceptions.

44. The servicer is also required to give notice of violations of the sponsor's representations and warranties, and act as a prudent servicer (which includes the duty to enforce putbacks).[10] When servicers are affiliates of sponsors, as the servicer is here, they are disincentivized from giving notice of or enforcing representation and warranty violations, which would be costly to their sponsor affiliates. Although servicers are entitled to compensation from the sponsor for their costs in enforcing putbacks of representations and warranties, this compensation is without interest and, more importantly, is only available if the putback is successful. PSA § 2.03(c). If the sponsor successfully denies the breach of the representations and warranties, then the servicer is stuck with the costs of the putback effort. As a result, servicers are strongly disincentivized to prosecute representations and warranties, particularly if the sponsor is an affiliate, as it is in the case of the 530 Covered Trusts in this Proceeding.

45. Servicers thus have contractual liability for servicing of the loans, document exception remediation, and failure to give notice of or enforce representation and warranty violations. They also have adverse incentives to comply with all of their duties. To the extent that the servicer can avoid compliance with its own duties, it not only benefits itself, but also the sponsor, which is able to retain the benefit of having sold noncompliant mortgages for compliant mortgage pricing.

46. Yet servicers are gatekeepers for the information necessary to determine their own liability. They are also the gatekeepers for the information necessary to determine the sponsor's liability for representation and warranty breaches, and their own compliance or noncompliance with their duties.[11]

3. The Role of Trustees

47. Trustees are the final part of the securitization triangle. Trustees perform some rote ministerial tasks and provide limited oversight of servicers. This oversight obligation

[10] Additionally, servicers have liability for "advancing" payments to the trust. PSA § 4.01. If a mortgagor fails to pay on the mortgage, the servicer must advance the payment out of its own pocket to the trust, so long as recovery of the advances from the mortgagor or its property are reasonably foreseeable. The duty to advance ensures regular cashflows for investors, which is important because fixed income investor often have regular liquidity needs of their own. The servicer's advances are reimbursed—but without interest—from any recovery from the mortgagor (such as foreclosure sale proceeds), and if that is insufficient, then from the payments on the other mortgages held by the trust. The servicer's recovery of advances is also senior to the certificateholders in the cashflow waterfall.

[11] The PSAs give the Trustee the power to acquire certain information from the servicer that is necessary to determine compliance. In this case it appears [redacted]

typically requires no particular action prior to an Event of Default, and the trustee is not deemed to have knowledge of an Event of Default unless notified. PSA § 8.02(viii). Prior to an Event of Default, the trustee can be held liable for negligent actions or omissions or willful misconduct.[12]

48. Following an Event of Default the trustee must act as a prudent person would under the circumstances. PSA § 8.01.

49. Trustees are compensated with a fixed fee rate based on the unpaid principal balance of a trust. BONY's compensation for the Covered Trusts was nine-tenths of a basis point or 0.009% (0.00009) of the unpaid principal balance of a trust. PSA § 8.05. Trustees are also indemnified by the servicer for any liability, loss, or expense incurred in any legal action related to the PSA that is not taken at the direction of the certificateholders and is in good faith and taken with due care. PSA § 8.05.

50. Investors in securitizations typically have the right to enforce the duties of the servicer or the representations and warranties of the sponsor through a demand on the trustee to act. Such a demand, however, typically requires compliance with a collective action clause that mandates that it be supported by 25% of the voting rights of the certificates, sometimes in each class of certificates. PSA §§ 8.01(iii), 8.02(iv), 10.08. The trustee controls the list of the certificateholders who are otherwise anonymous to each other, unless the requisite number of certificateholders gather to demand the list from the trustee. The certificateholders must also offer the trustee indemnity for its actions. PSA § 10.08. Only if the trustee refuses to act for 60 days following notice and indemnity may a certificateholder bring suit regarding the PSA. PSA § 10.08. The trustee is removable only upon the action of certificate holders representing 51% of the voting rights of the certificates. PSA § 8.07. Thus, trustees are typically the gateway to claims against servicers, and servicers are the gateway to claims against sellers for mortgage underwriting violations.

51. The result of this set-up is a self-protective triangle that controls access to information necessary to enforce trust rights but none of the members of the triangle have any incentive—and in fact are disincentivized—to do so. As a result, it was easy for non-compliant mortgages to be securitized with the losses being borne by the certificateholders, rather than being placed on the sponsors as the result of representation and warranty enforcement. The entire design of the system by sell-side deal attorneys greatly benefits sponsors and facilitated the securitization of the bad loans that fueled the housing bubble and primed the financial system for the acute crisis in the fall of 2008.

[12] Under common law, a trustee can never be exculpated from the duties of good faith, care, and loyalty, no matter the limitations in the trust document. Robert H. Sitkoff, *Trust as "Uncorporation": A Research Agenda*, 2005 ILL. L. REV. 31, 39 (2005). *See also* Beck v. Manufacturers Hanover Trust Co., 218 A.D.2d 1, 12 (N.Y. App. Div. 1st Dep't 1995); Dabney v. Chase Nat'l Bank, 196 F.2d 668 (2d Cir. 1952) (Hand, L., J.); UNIF. TRUST CODE § 1008, 7C U.L.A. 258 (Supp. 2004); RESTATEMENT (SECOND) OF TRUSTS § 222 (1959). It is worthwhile noting that an organization form exists that offers trustees the potential for complete exculpation, including from good faith duties. This is the Delaware statutory trust. 12 DEL. CODE ANN. § 3807(a). *See also* Sitkoff, *supra*.

a. The "Pocket Trustee" Problem and BONY's Relationships with Bank of America

52. Trustees also lack any incentive to be pro-active and they are strongly incentivized to turn a blind eye to servicer malfeasance and non-compliance. This is because trustees are selected by securitization sponsors, not by investors. Trustees get their business from sponsors. While trustees represent the investors, their client is the sponsor. BofA, not the certificateholders, is BONY's customer.

53. Moreover, there are often close, repeat business relationships between securitization trustees and securitization sponsors. Fischel Report at ¶ 32. BONY, for example, gets two-thirds of its private-label residential mortgage securitization trusteeships from BofA. Adam J. Levitin & Tara Twomey, *Mortgage Servicing*, 28 YALE J. ON REG. 1, 60-63 (2011). BONY was also [redacted] Stanley Dep. at 27-29.

54. BONY's Litigation Expert Professor Fischel assumes that these "preferred trustee" relationships are unproblematic because they are common. He is mistaken. *See In re E. Transp. Co. (The T.J. Hooper)*, 60 F.2d 737, 740 (2d Cir. 1932) (Hand. L., J.) (common industry practice may nonetheless be negligent). Professor Fischel does not consider how the repeat business relationship might affect the incentives of the trustee when dealing with a default by the sponsor. The "preferred trustee" remains "preferred" only so long as it is compliant with the wishes of the sponsor. In other words, to be a "preferred trustee," it is necessary to also be a "pet trustee" or "pocket trustee." And that means turning a blind eye to the sponsor and affiliated servicer breaches.

55. Furthermore, despite his extensive use of public securities data for his report, Professor Fischel fails to note that BONY had as of the end of 2012 a $1.5 billion equity position in BofA (either for itself or for its clients), accounting for 1.21% of BofA's outstanding stock.[13] This position makes BONY "long" on BofA, and thus "short" on the enforcement of trust rights; to the extent that BofA can shed its MBS-related liability at low cost, it should boost BofA's equity price, which would in turn benefit BONY (or BONY's asset management clients) as a shareholder.

56. BONY claims to have a [redacted] Griffin Dep. at 331. [redacted] *Id.* at 331-32. Moreover, Robert Griffin, [redacted] as well as various other individuals, [redacted] *Id.* at 340-43.

[13] It is unclear if this is an investment for BONY's own account or an investment managed for others.

b. BONY's Litigation Experts Fail to Recognize the Function of a Trustee in the Securitization Context

57. The reports of BONY's Litigation Experts Professor Langbein and Mr. Landau are both predicated on serious misunderstandings about the function of a securitization trustee. Professor Langbein bases his report on the assumption that BONY's actions are to be judged by default trust law. Mr. Landau's report, in contrast, assumes that BONY as a securitization trustee is equivalent to a trustee under a corporate bond indenture. Not only is it hard to square the assumptions of BONY's Litigation Experts with each other, but there are fundamental flaws in both, and those flaws compromise the reliability and utility of their reports.

58. Professor Langbein appears to believe that it is general principles of trust law, such as the "Principle of Necessary Powers" or "The Power to Compromise or Settle Claims," that apply in this Proceeding. To that end, he makes repeated reference to general sources such as the Restatement (Third) of Trusts. Professor Langbein's central premise is that "a trustee has all the powers necessary to perform the trust." Langbein Report at 3.

59. Professor Langbein's contentions of broad trustee powers make no sense within the context of the economics of securitizations. Securitization trustees are paid very little (less than a single basis point!) because they are expected to do very little. Professor Langbein would have the Court believe that sophisticated investors would entrust the fate of their investment to a trustee given wide authority, but with little liability or compensation. If Professor Langbein's contentions were correct, there would be a dramatic mismatch between BONY's powers as trustee and its accountability in the exercise of those powers.

60. Professor Langbein must be read one of two ways: either his claims beg incredulity because a securitization trustee simply does not have the expansive powers described by Professor Langbein; or Professor Langbein's claims are incomplete because in describing the expansive powers under default trust law, he fails to describe the equally expansive duties attendant to the exercise of broad powers.

61. The thrust of Mr. Landau's position is that so long as the Trustee complied with "industry custom and practice" the Trustee has met its obligations and acted reasonably. Mr. Landau's description of "industry custom and practice" is flawed because the duties of a securitization trustee are distinct from those of many types of corporate trustees, including the fact that securitization trustees perform a financial backstop role for the servicer and represent multiple classes of certificateholders. However, as a threshold matter, even if Mr. Landau's discussion of industry custom and practice were correct, that is hardly evidence that the settlement should be approved. The standard for approval of the settlement is not whether the trustee complied with industry standards, not least because industry standards may be problematic. *See, e.g.*, *In re E. Transp. Co.*, 60 F.2d at 740.

C. The Inside Investors (the "Protective Committee)

62. The Inside Investors are a group of financial institutions that have banded together to act as a type of bondholder "protective committee"[14] regarding the MBS.

63. A number of the Inside Investors have business relationships with Bank of America outside of this litigation. It would be surprising if most or all of the Inside Investors were not derivatives and repo counterparties, creditors, debtors, or equityholders of Bank of America in some context. The Federal Reserve Bank of New York has a unique business-regulatory relationship with BofA, and BofA is one of Freddie Mac's major business partners with a clear interest in preserving that relationship. Federal Housing Finance Agency Office of Inspector General, *Evaluation of the Federal Housing Finance Agency's Oversight of Freddie Mac's Repurchase Settlement with Bank of America*, Evaluation Report EVL-2011-006, Sept. 27, 2011, at, 22, 25, 29, 31 n.58 (discussing how Freddie Mac failed to prosecute many repurchase claims because of its interest in maintaining its business relationship with BofA); Federal Housing Finance Agency Office of Inspector General, *Follow-up on Freddie Mac's Loan Repurchase Process,* Evaluation Report EVL-2012-007, Sept. 13, 2012, at 10, 12 (noting that Freddie Mac believed that it "would not recover enough from a more expansive loan review process to offset the loss of business from loan sellers" like BofA); Dep. Ex. 201.

64. According to NASDAQ's listing of the largest institutional holders of the stock of Bank of America Corporation, a number of the Inside Investors hold sizable equity stakes in Bank of America.[15] (It is unclear to the extent this reflects the Inside Investors own funds and those that they manage on behalf of clients, but the distinction is immaterial here.) It is possible that some of the Inside Investors are invested in securitizations not covered by the Proposed Settlement for which BofA may have liability, such as Merrill Lynch and First Franklin securitizations. Like the Trustee, the Inside Investors have interests that indicate they may be "long" on BofA, and hence "short" on maximizing recovery to the Covered Trusts. I have seen no indication that BONY verified one way or the other.

65. Deposition testimony has also established that [redacted] Waterstredt Dep. at 151-52.

66. Additionally, BofA was the largest single equityholder in Blackrock and has a seat on its board of directors. Sree Vidya Bhaktavatsalam, *Bank of America, PNC Unload $8.3 Billion of BlackRock Shares,* Bloomberg, Nov. 9, 2010 (BofA as BlackRock's largest shareholder); Sree Vidya Bhaktavatsalam, *BlackRock Says Montag Joins Board as Krawcheck, Linsz Depart*, Bloomberg, April 7, 2011 (Bank of America Corp.'s joins BlackRock's board).

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[14] I by no means suggest that the Inside Investors banded together to "protect" all investors in the Covered Trusts. In fact, it is just the opposite. Historically, protective committees were creatures of bond houses and their trustees. They would consist of hand-picked favored creditors of the bond houses, which controlled the non-public lists of bondholders and operated to protect the bond houses from other investors.

[15] http://www.nasdaq.com/symbol/bac/institutional-holdings.

67. Moreover, recent media reports suggest that one of the Inside Investors, the Federal Reserve Bank of New York, may have its own reasons to support BofA, unlike other investors. Specifically, the Federal Reserve Bank of New York confidentially agreed to support BofA in other litigation against AIG and released any claims it had against BofA in exchange for a nominal settlement payment. Gretchen Morgenson, *Promises, Promises at the New York Fed*, N.Y. Times, Mar. 3, 2013, at BU1; Gretchen Morgenson, *Don't Blink, or You'll Miss Another Bailout*, N.Y. Times, Feb. 17, 2013 at BU1. This indicates that for whatever reason (its own economic self-interest or the interests of its member banks), the Federal Reserve Bank of New York has an interest in protecting BofA from mortgage litigation.

68. Even within the Covered Trusts, the Inside Investors are not representative of other certificateholders in the following ways:

- First, the particular 189 Covered Trusts in which the Inside Investors have 25% of the Voting Rights may have a different collateral makeup than the other 341 Covered Trusts.[16] To wit, the trusts in which the Inside Investors have 25% of the Voting Rights may have more subprime or Alt-A collateral than the other trusts or vice-versa.

- Second, the Inside Investors may not be invested in similarly exposed tranches of the Covered Trusts to the certificateholders in general. They may be concentrated in the senior tranches, for example. If so, they would likely not have incurred much if any credit losses, but the market value of their certificates would be severely depressed because of the uncertainty of future losses for the trusts. The settlement might increase the market value of their certificates even if they are not compensated for actual losses. In such a situation, the Inside Investors would not be particularly concerned about the level of compensation for actual or future losses, as long as the market value of their certificates was increased. If so, their interests would not be representative of many other certificateholders

- Third, if the Inside Investors accumulated part or all of their positions in the Covered Trusts at distressed prices they would have different incentives regarding the Proposed Settlement from an investor that purchased at par. As I understand it, the Inside Investors have refused a number of discovery requests regarding the details of their positions, including dates and prices at which they purchased their positions. Absent this information, it is impossible to determine whether the Inside Investors are representative of the certificateholders in general. Nothing in the record appears to support an inference that BONY ever attempted to determine the representativeness of the Inside Investors for the certificateholders in either the 189 Covered Trusts in which the Inside Investors have at least 25% of the Voting Rights or in the other 341 Covered Trusts.

[16] At the time the Inside Investors filed their statement in support of the settlement, they held at least 25% of the voting rights in 189 Covered Trusts, but not in the remaining 341 Covered Trusts. *See* Doc. No. 124, p. 5. The Inside Investors' holdings may have changed since then, but for purposes of my report I rely on these figures.

69. Additionally, counsel for the Inside Investors has expressly stated that the Inside Investors did not represent the interests of absent certificateholders during negotiations. Doc. No. 250, at 13 (Inside Investors' Response Brief).

70. Professor Fischel's report contends that because the Inside Investors support the settlement it means it is reasonable. Professor Fischel notes, "Presumably, these highly sophisticated Institutional Investors…were perfectly capable of assessing the Settlement's reasonableness and adequacy in light of their economic self-interest since they had the most to lose by settling for too low an amount." Fischel ¶ 26.

71. The Inside Investors' support of the settlement cannot be taken as evidence for its reasonableness. The only conclusion that can be reached from the Inside Investors' support of the Proposed Settlement is that it is good for the Inside Investors, who may or may not be representative of the other certificateholders.

72. Further, the Insider Investors' letters to BONY notifying BONY of an Event of Default and directing BONY to undertake action provided an opportunity for BofA to create certainty about its exposure to PLS related litigation.[17] The Inside Investors' support for the Proposed Settlement is therefore uninformative.

73. Additionally, Professor Fischel's assumption appears uninformed. Some of the Inside Investors' extraneous relationships with BofA are matters of public record, such as Bank of America's ownership stake in Blackrock. Others are part of the discovery record that Professor Fischel apparently did not consider as he refers solely to AIG's Verified Petition, which was filed before discovery. The likelihood of any major financial market participants like the Inside Investors lacking direct or indirect business relationships with or financial ties to BofA outside of the Covered Trusts is incredibly low. The Inside Investors' interests in BofA cut against Professor Fischel's assumption that their support of the settlement is indicative of the settlement's reasonableness.

74. BONY's Litigation Expert Mr. Burnaman, makes a similarly flawed assumption with respect to his theory that the negotiated settlement amount is the market price for BofA's liability. Burnaman Report at 28. As a necessary condition for this theory, Mr. Burnaman assumes that the settlement was reached by "truly adversarial counterparties negotiating at arms length." *Id.* at 12. Mr. Burnaman admits no basis for this foundational assumption, *id.* at 9, and fails to acknowledge that BofA's repurchase liability is defined by the trust documents, not by what any particular subset of certificateholders is willing to agree to, particularly when the Trustee failed [redacted]

75. Moreover, there is evidence that the Inside Investors actually benefitted from cutting a deal with BofA. Not only could they control the shape of the negotiations and thus craft a deal that was in their interests (but not necessarily the interests of other certificateholders), but they were able to get their attorneys fees covered and secure a

[17] Creation of certainty about PLS-related litigation exposure is hugely important to BofA because of it is believed to be one of the factors dragging down its share price and pushing its market capitalization some $85 billion dollars below its book value. http://finance.yahoo.com/q/ks?s=BAC+Key+Statistics.

release from the indemnity that they were required to provide to BONY under PSA §§ 8.02(ix). *See* Doc. No. 3, at Ex. C (Side Letter) (unwinding Inside Investor instructions).

D. BONY Failed to Honor its Obligations to Each Individual Covered Trust

76. BONY is not a generic trustee. No such entity can exist—a trustee only exists for a discrete trust corpus. In this proceeding there are 530 legally distinct trusts. Accordingly, BONY wears 530 separate legal hats in this Proceeding. BONY appears in this Proceeding as "BONY as trustee for trust 1", "BONY for trustee for trust 2", "BONY as trustee for trust 3"... all the way through "BONY as trustee for trust 530." Crosson Dep. at 79-81. In each case, BONY has distinct contractual and fiduciary duties that may in fact conflict with each other.

77. The distinct legal identity of these trusts is at the heart of securitization. The whole point of securitization is that the trusts are not Countrywide. Instead, each trust is a distinct pool of assets, a separate firm.

78. While BONY appears to believe that for administrative convenience it may treat all of its trusts as a single entity and the BONY Litigation Expert reports treat the trusts as an aggregate entity, doing so is contrary to the fundamental nature of securitization. The 530 trusts are as legally distinct as 530 people.

79. BONY owes each trust a separate and distinct duty of care, and that involves evaluating each trust's specific rights as set forth in the trusts' governing agreement. These rights often vary in subtle ways between trusts, including in the representations and warranties made to the trusts. They also may vary in terms of the rights of the certificateholders or noteholders regarding Events of Default. This is certainly the case as between 513 trusts governed by Pooling and Servicing Agreements and the 17 trusts governed by Indentures. Fulfilling a duty of care to each trust would involve, at the very least, a consideration of the specific rights of the trust.

80. Because each trust is its own separate entity and the Trustee has an individual trusteeship with respect to each Covered Trust, any settlement or potential recovery must be evaluated on a trust-by-trust basis. This is particularly true, where there may be a limited source of recovery. *See* Fischel Report at ¶ 37. Indeed, Countrywide's purportedly limited resources was allegedly a major consideration for BONY when approving the Proposed Settlement. Because of its alleged resource constraints, the recovery for any one trust reduces the assets available for the other trusts. This means that BONY's various trusteeships may be competing with one another for the same resources and BONY must now allow recovery for one trust to prejudice another.

81. The lumping together of the 530 trusts is particularly problematic because [redacted] but the Inside Investors do not even have 25% of the voting rights in 341 of the trusts. There is no evidence that BONY took any steps to determine whether those 341 trusts or any subset of them had distinct rights from those in which the Inside Investors had 25% of the voting rights.

82. A perfect example of the problems with treating the trusts as an aggregate entity is BONY's allocation methodology. If approved, each Covered Trust will be paid its pro rata share of the Settlement Amount based solely on each Trust's losses. But because each Trust is comprised of different collateral, different ratios of collateral types, and other factors affecting the likelihood that any particular Trust suffered more or less losses as a result of breaches of representations and warranties, the allocation will unduly advantage some Trusts and prejudice others. BONY could not possibly approve of such an allocation if it were actually performing its trusteeship faithfully to each Trust individually.

83. The Inside Investors lack any holdings whatsoever in many of the Covered Trusts, yet continue to prosecute the Proposed Settlement that impacts all investors in all of the Covered Trusts. The Inside Investors seek not only for a majority to oppress a minority within some trusts, but for a minority to oppress a majority in other trusts and for non-investors to oppress investors in yet other trusts. Everything about this is contrary to nearly 75 years of business trust law, where since 1939 majorities cannot bind minorities in any way that affects minorities' right to payment. Moreover, an Article 77 proceeding is not an ersatz bankruptcy proceeding under which a majority of creditors can bind a minority. The preferences of the Inside Investors are not those of all investors.

84. Nonetheless, Professor Fischel's report concludes that the Inside Investors are doing a great favor for the 341 trusts in which they do not hold 25% of the Voting Power. Fischel Report at ¶ 34. He assumes that these other 341 trusts will likely get nothing outside of the proposed settlement. Professor Fischel's assumption is unfounded.

85. The certificateholders in the other 341 trusts can—if they so choose—organize and pursue their own remedies and possibly their own settlements. Indeed, the attorneys for the Inside Investors, Gibbs & Bruns, were competing with another firm (Talcott Franklin P.C.) for organizing investors. Alison Frankel, *Did Gibbs pre-empt rival investor group in BofA's MBS deal?* REUTERS, Oct. 3, 2011, *at* http://blogs.reuters.com/alison-frankel/2011/10/03/did-gibbs-pre-empt-rival-investor-group-in-bofas-mbs-deal/. Talcott Franklin P.C. promised to take a more aggressive approach than that of Gibbs & Bruns. *Id.*

86. By expanding the Proposed Settlement to cover the other 341 trusts, the Inside Investors took power that was not theirs to use and imposed themselves on trusts and beneficiaries where they had no right to do so.

87. By dragging in the other 341 trusts, the Inside Investors effectively forestalled any alternative global settlement and thereby made their settlement possible. This was only feasible, however, if BONY was complicit. If BONY had recognized its 530 legally separate roles, it might not have consented in at least 341 cases to be part of the Proposed Settlement. BONY's disregard of the Covered Trusts' legal separateness inured to the benefit of the Inside Investors. It also benefitted BofA, which was able to negotiate a low-ball global settlement, rather than getting ratcheted into higher payments by successive settlements. And this benefitted BONY because BONY will only get BofA's future business if BofA finds BONY to be a sufficiently docile trustee. *See supra,* ¶¶ 52-56.

II. BONY's Actions in Negotiating the Settlement Appear Aimed at Protecting Itself and Bank of America Rather than the Covered Trusts

88. Notwithstanding the position BONY's Litigation Experts have taken—that the Trustee acted reasonably in connection with Proposed Settlement—evidence in the record reveals that BONY's actions throughout the negotiation of the Proposed Settlement have all been aimed at protecting itself and BofA rather than the Covered Trusts, an unsurprising outcome given that BONY receives its trusteeship business from BofA, rather than from the certificateholders.

A. An Event of Default Occurred Under the PSAs

89. BONY [redacted]. The PSA does not require "declaration" of an Event of Default. Instead, an Event of Default simply occurs under PSA § 7.01. While a trustee is not deemed to have knowledge of an Event of Default prior to notice, once a trustee receives notice of an Event of Default, it is required to proceed accordingly. PSA § 8.02(viii). PSAs require merely notice from a requisite minority of certificateholders, not proof of allegations in the notice, and the trustee's assent is not required for an Event of Default.[19] PSA § 8.02(viii). There is no language in the PSAs that requires proof or assent by the Trustee.

90. Indeed, it would make little sense if the PSAs were to require proof of allegations of default. The Trustee and the servicer are the parties with access to the information about servicer defaults: they, not the investors, have access to the loan files and servicing records.

91. Irrespective, not just [redacted] contrary to what BONY's attorney Mr. Kravitt has self-servingly claimed. Kravitt Deposition Transcript at 32. Instead, the PSA requires certain voting thresholds.

92. The notice given by certificateholders is an exercise of contractual rights and must be done in good faith. [redacted] Waterstredt Dep. at 99. Moreover, the Trustee is not required to take action at certificateholder direction without first receiving satisfactory indemnification. *See* PSA § 8.02(vi); *see also id.*

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[18] Again, I continue to refer to the Pooling and Servicing Agreement for Countrywide Alternative Loan Trust 2005-35CB, dated July 1, 2005, as standard language (and often section numbering) among the Covered Trusts' PSAs, but also note that there is sometimes variation among the PSAs and that the 17 Covered Trusts governed by Indentures are subject to provisions, including on Events of Default, that are materially different from the Covered Trusts governed by PSAs. *See supra* notes 5, 6.

[19] The PSAs provide: "the Trustee shall not be deemed to have knowledge of an Event of Default until a Responsible Officer of the Trustee shall have received written notice thereof." PSA § 8.02(viii). While this may not be the wisest of contract structures, as "Anybody can allege that there in fact had been noncompliance within the provisions of an indenture," Kravitt Dep. at 32, it is the structure that BONY and the certificateholders all signed-up for, and it is not BONY's to unilaterally second-guess.

at § 10.08. In other words, anyone notifying the Trustee of an Event of Default is required to put their money where their mouth is.

93. Here, an Event of Default occurred. [redacted] 16 (characterizing [redacted] as "advis[ing BONY] of facts and circumstances constituting Events of Default under the applicable PSAs."). These letters stated the factual predicates for an Event of Default, and there is evidence in the record that an Event of Default occurred:

- First, [redacted]. *See, e.g.*, Waterstredt Dep. at 71-87; Smith Dep. at 202-21; Robertson Dep. at 106-28.
- Second, BONY's entry into settlement negotiations is itself evidence of an Event of Default. BONY's negotiation and agreement to Proposed Settlement is an exercise of discretion that could only be available to the Trustee after an Event of Default.
- Third, in November 2010, BONY's attorney, Mr. Kravitt, [redacted] Dep. Ex. 368. [redacted] Master Servicer could only be replaced if there was an Event of Default. *See* PSA § 7.02.
- Fourth, the terms of the Proposed Settlement themselves evidence servicing failures. The Proposed Settlement contains a number of purported "servicing improvements," and BONY's Litigation Expert, Mr. Burnaman, goes on at length about their purported value to the Covered Trusts.
- Fifth, entry into the Forbearance Agreement is evidence that all parties believed the 60-day Event of Default cure period was running. Dep. Ex. 46.[20]

B. BONY Undertook No Investigation of [redacted]

94. When an Event of Default occurs, the Trustee is held to a prudent person standard, and it is required to send out notice to the certificateholders—at its own expense—within 60 days unless the default is cured. PSA §§ 8.01, 7.03. The PSAs for the Covered Trusts—unlike many other PSAs and corporate bond indentures—contain no exception permitting the Trustee to delay notice if doing so would be in the best interests of the certificateholders.

95. [redacted] Kravitt Dep. at 37-38; Bailey Dep. at 100-22. [redacted] *See* Dep. Ex. 44. These are the actions of a pet trustee trying to ensure a future business flow, not the actions of a trustee fulfilling its duties.

[20] [redacted]

96. Even the Inside Investors who support the Proposed Settlement have stated that they [redacted] Dep. Ex. 16. [redacted] " *Id.*

97. Among other things, [redacted] Exhibit 16; Exhibit 18. [redacted] Lundberg Deposition Transcript at 149-161. BONY, therefore, failed [redacted] Without looking at loan-level documentation—which BONY was contractually entitled to under PSA § 3.07—BONY could not determine if losses to the trusts were caused by underwriting representation violations, document exceptions, or servicing violations, much less if there was variation among the Covered Trusts, as might be expected given different shelves and vintages.

C. BONY Acted to Avoid the Consequences of an Event of Default

98. Instead of acting per its contractually prescribed duties, or at least [redacted], or seeking judicial guidance (such as through an Article 77 proceeding), BONY acted to cover up the Event of Default. BONY entered into the Forbearance Agreement with Bank of America (Exhibit 46) as well as repeated extensions of the Forbearance Agreement, despite lack of any express contractual authority to do so.

99. BONY's failure to undertake *any* investigation of the Gibbs & Bruns allegations, even while negotiating a settlement, is also consistent with attempting to cover up the Event of Default. [redacted] Lundberg Dep. at 151-61.

100. And perhaps most tellingly, BONY's attorney Jason Kravitt, emailed Bank of America's attorneys at Wachtell, Lipton, Rosen & Katz [redacted]

[redacted]

Dep. Ex. 50. [redacted], thereby relieving the Trustee of its obligation to provide post-Event of Default notice to the certificateholders as required under PSA §7.03. [redacted] *See* Dep. Ex. 50; *see also* Dep. Ex. 44.

101. BONY's actions are particularly striking given what BONY's counsel, Mr. Kravitt, has written on the subject:

> The trustee should prepare and send timely notice of the default to investment holders. Most securitization agreements and TIA Section 315(b) require timely notice unless precipitous notice of a default (other than a nonpayment default) might adversely affect the investors in the trustee's view. *In any case, not only should the trustee send an initial notice, but periodic communications with investors may be appropriate to both inform investors and protect the trustee from after-the-fact second-guessing by investors.*

Jason H.P. Kravitt, SECURITIZATION OF FINANCIAL ASSETS at § 9.03[B][2] (emphasis added) (emphasis added).

102. BONY was strongly incentivized to cover up the Event of Default for several related reasons.

103. First, many of a securitization trustee's duties—and therefore authority—spring only upon the occurrence of an Event of Default. *See* KRAVITT, *supra* ¶ 102, § 9.02[C][1]. Prior to an Event of Default, BONY as trustee was required "to perform such duties and only such duties as are specifically set forth in [the PSA or Indenture]." PSA § 8.01(i). This means that prior to an Event of Default, BONY only had minimal ministerial duties to perform.[21] Following an Event of Default, however, BONY would be required to act as a prudent person. PSA § 8.01. That requirement carries with it significant responsibilities. KRAVITT, *supra* ¶ 102, §§ 9.02-9.03; *see also* Steven L. Schwarcz & Gregory M. Sergi, *Bond Defaults and the Dilemma of the Indenture Trustee,* 59 ALA. L. REV. 1037, 1046 (2008), (noting that "a prudent indenture trustee will seek such direction from bondholders *for any* unilateral action by the indenture trustee that entails a degree of risk.") (emphasis added).

104. Second, the occurrence of an Event of Default could lead to the termination of the Master Servicer. If that were to occur, BONY would have to step in as Master Servicer or find a successor, a complicated task as BONY would be restricted in the compensation it could pay a successor master servicer to the Basic Master Servicing Fee (generally 25 basis points on the unpaid principal balance). PSA § 7.02. Other types of servicing income, such as float, excess spread, and ancillary fees appear to be expressly prohibited for a successor master servicer under the PSA.

105. Likewise, if BofA were terminated as Master Servicer or were insolvent, BONY might be required to make advances to the trust. PSA § 4.01(b). While such advances are reimbursable with interest, they can still place liquidity strains on an institution, especially given the size and number of the Covered Trusts.

106. Additionally, if BONY had to assume the duties of Master Servicer, it would be required to hold regulatory capital against the servicing rights, meaning that BONY

[21] The law still imposes certain non-waivable duties on trustees both before and after an Event of Default.

might have to raise equity capital in order to perform its servicing duties.[22] Mortgage servicing rights have the highest regulatory capital requirements (dollar-for-dollar capital) of any type of asset. 12 C.F.R. Pt. 3, App. A, § 4(f)(4).

107. Third, notice of an Event of Default to certificateholders would increase the likelihood that other investors and investor groups would exercise their rights under the PSAs, or otherwise express competing views on how to deal with BofA.

108. Finally, notice of an Event of Default might have jeopardized BONY's own trusteeship. A simple majority of certificateholders may terminate a trusteeship. PSA § 8.07. If BONY had alerted the certificateholders to the Event of Default as required by the PSA, the certificateholders might have started to ask uncomfortable questions about BONY's relationships with BofA and BONY's own performance under the PSA (particularly in regard to ensuring the cure of mortgage loan document exceptions). Removal from a trusteeship would have been a major reputational hit to BONY's trustee business and it would also cost it trustee fees.

109. Despite greater liabilities and duties, BONY's compensation under the PSA remains unchanged following an Event of Default. Irrespective of an Event of Default, BONY is paid less than a single basis point on the outstanding principal balance of the trusts. Because of the greater duties and potential liabilities, an Event of Default would make BONY's trusteeships less profitable and possibly unprofitable. This compensation structure created an incentive for BONY to cover up the Event of Default.

110. The problematic incentive structure hardwired into BONY's compensation is well-known to scholars of business trusts. Professor Marcel Kahan, [redacted] has written about the conflicts created by the compensation of indenture trustees:

> The Trustee . . . receives no extra compensation for its own efforts if its duties increase as a result of an Event of Default. The structure of the trusteeship . . . creates few incentives for the trustee to act as an effective representative of the bondholders. The trustee has no direct monetary stake in preserving the value of the bonds, and neither the trustee's compensations structure nor its pre-Event of Default duties creates any incentives to do so. Prior to an Event of Default, the trustee's basic incentive is to do nothing, as taking any action entails effort for which the trustee is not compensated. To be sure, after an Event of Default, the liability regime creates incentives to satisfy the "prudent person" standard. It is, however, doubtful whether the fear of liability alone is sufficient to induce the trustee to take optimal actions to represent bondholder interests. *Moreover, the heightened post-Event of Default duties create incentives for the trustee to refrain from any*

[22] It is unclear how a trustee would account for assumption of servicing duties under generally accepted accounting principles (GAAP). If the trustee booked the servicing rights as an asset, however, then bank regulatory capital requirements would apply.

> *action that could trigger an Event of Default, such as investigating suspicions of a default or giving a notice of default to the company.*
>
> Marcel Kahan, *Rethinking Corporate Bonds: The Trade-Off Between Individual and Collective Rights*, 77 N.Y.U. L. REV. 1040, 1063-64 (2002) (emphasis added).

111. Third, BONY's business relationship with BofA created a strong incentive for BONY to avoid declaring an Event of Default. Declaring a master servicer Event of Default could have resulted in the termination of BofA as Master Servicer. Not only would that deprive BofA of servicing rights and the associated income, but it would potentially spring servicing rating downgrades or cross-defaults on other contracts. For a pocket trustee like BONY, such a move would endanger future business flows from BofA with no benefit for BONY. Roughly two-thirds of BONY's residential mortgage-backed securities comes from BofA/Countrywide. Adam J. Levitin & Tara Twomey, *Mortgage Servicing*, 28 YALE J. ON REG. 1 (2011); *see also* Stanley Dep. at 137.[23]

112. These factors help explain why BONY would not want to declare an Event of Default and why it would seek to have the 60-day cure period tolled.

D. Evidence in the Record Shows That BONY [redacted]

113. Evidence in the record shows that BONY [redacted] The three key decision-makers in the settlement process at BONY were [redacted] *See* Griffin Dep. at 45. It appears they never meaningfully contemplated [redacted] Lundberg Dep. at 134-38; [redacted] Dep. at 219-23; [redacted] Dep. at 127-31.

114. BONY did not [redacted]. Instead, BONY retained Jason Kravitt, a *sell-side* securitization *deal* lawyer.[24] Kravitt Dep. at 19-20. Mr. Kravitt's practice is based around [redacted]. *Id.* at 20. Mr. Kravitt is not [redacted]. *Id.* at 236, 448. Instead, Mr. Kravitt's [redacted] *Id.* at 22. In other words, [redacted]

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[23] [redacted] Stanley Dep. at 30-33. To the extent that the Inside Investors were "long" on Bank of America and thus net "short" on a settlement, BONY would be further incentivized to reach a settlement the Inside Investors liked, irrespective of whether such a settlement were in the interest of the Covered Trusts or other certificateholders.

[24] The sell-side of the securitization industry refers to securitization sponsors and underwriters—those parties looking to sell mortgage-backed securities. The buy-side of the industry refers to securitization investors. Mr. Kravitt is an officer and founder of sell-side securitization trade associations such as the American Securitization Forum and the European Securitization Forum. The trade association for the buy-side of the securitization industry (investors) is the Association of Mortgage Investors, which was formed in part because the American Securitization Forum was unresponsive to investor concerns including about representation and warranty violations.

[redacted]

115. Mr. Kravitt never considered [redacted] Kravitt Dep. at 603-04.

116. Despite BONY's indemnification under PSA § 8.05 by [redacted] the Master Servicer [redacted] BONY failed to undertake basic investigation of representation and warranty violations, servicing violations, or document exception violations. BONY did not even undertake the most basic step of pulling the loan files to examine them. Lundberg Dep. at 150-51.

117. Not surprisingly, BONY began negotiating a settlement [redacted] Kravitt Dep. at 437; *see also id.* at 143, 438. Mr. Kravitt's follow-up email [redacted] Mr. Kravitt wrote, [redacted] Dep. Ex. 44.

118. The very act of proceeding with settlement negotiations seems inconsistent with BONY's denial that an Event of Default had occurred—if it had not, there would be nothing to settle. Moreover, if BONY ever had the power to negotiate a settlement on behalf of the trusts, it certainly was not until and unless there was an Event of Default, as prior to an Event of Default BONY's powers are narrow and necessarily confined to the letter of the PSA. BONY cannot have its cake and eat it too.

119. BONY does not appear to have considered how litigation could have been useful in developing a record to better understand the strength of its negotiating position, as Professor Coates has suggested in his expert report. Coates Report at 13.

120. As BONY's own expert Professor Fischel notes, "In [failing to bring litigation], the Trustee gave up the possibility of getting a better outcome...." Fischel Report ¶ 16. While Professor Fischel correctly notes that there are circumstances when the trade-off between settling and litigating is reasonable, BONY did not undertake sufficient diligence to make an informed decision here (despite being indemnified for its costs by [redacted] BofA). [redacted] BONY surrendered significant potential negotiating leverage.

E. Evidence in the Record Shows That BONY Used the Settlement Experts to Paper Over the Position It Wished to Adopt, Rather than to Provide Objective Evaluation or to Strengthen Its Negotiating Position

121. Similarly, BONY did not engage experts to create leverage or even objectively evaluate the strength of its claims, but instead to attempt to devalue the Covered Trusts' claims. BONY, either directly or through its counsel Mayer Brown, engaged experts (the "Settlement Experts") during the settlement process. The timing and content of the Settlement Expert reports indicate that BONY's use of the Settlement

Experts was neither to create negotiating leverage nor to provide truly expert evaluation of the strength of its position, but instead, to justify BofA's legal positions.

122. BONY hired two legal experts, Professors Adler and Daines quite late in the settlement process, [redacted] *See* Dep. Ex. 11 (dated May 27, 2011) (Adler Report); Dep. Ex. 10 (dated June 7, 2011) (Daines Report). Moreover, both Professors Adler and Daines testified that [redacted] Adler Dep. at 155-56; Daines Dep. at 151-57. This means that Professors Adler and Daines were not consulted by BONY to either [redacted] Instead, they were hired to [redacted] That is, Professors Adler and Daines's work was used simply [redacted] This conclusion becomes readily apparent when [redacted]

1. BONY's Reliance on the Settlement Experts Was Not Reasonable or Authorized by the PSAs Because It Was Not "In Good Faith and in Accordance with 'Opinion of Counsel'"

123. The manner in which BONY utilized the Settlement Experts refutes the claims of Professor Fischel, Professor Langbein, and Mr. Landau that BONY acted reasonably by relying on experts. Professor Fischel claims that the Trustee acted reasonably by relying on experts. Fischel Report ¶ 15, 16. Similarly, Professor Langbein writes "I see nothing improper in the Trustee's consulting experts after settlement terms had been negotiated in the course of arms'-length bargaining but before the Trustee had bound itself to any of those terms in a final agreement." Langbein Report at 8. And Mr. Landau notes that the fact that "the Trustee hired the Experts and reviewed their reports before making any binding decision" indicates that the Trustee acted "well within industry custom and practice." Landau Report ¶ 27.

124. It is reasonable for a trustee to rely on experts, *if it is relying on them for the right purpose.* [redacted] Instead, it employed experts to provide rubber-stamp confirmation of the position it already wished to take. This is not reliance on experts in any meaningful sense. [redacted]

125. Read narrowly, Professor Langbein's report is correct: there is nothing "improper" about a final check with an expert prior to signing a settlement. That is not what occurred. BONY was consulting with experts about fundamental points of its negotiating leverage *after* negotiating. This is different than checking with an expert about a point that has arisen in the course of negotiations.

126. Professor Langbein and Mr. Landau both emphasize that BONY had not bound itself to a settlement at the time the expert opinions were sought. [redacted] Langbein Report at 8; Landau Report ¶ 29; *see also* Lundberg Dep. at 56. The [redacted]

[redacted], each of which has a separate contractual relationship with BONY and each of which is separately owed duties by BONY as trustee, including a duty of prudent care following an Event of Default.

127. [redacted]. Stanley Dep. at 219-20; Lundberg Dep. at 217. [redacted] Lundberg Dep. at 59. As evidenced by the scope of this and the other expert reports, and the amount of discovery that was necessary to develop the facts of this case, [redacted] roposed Settlement, and its effect on each of the 530 Covered Trusts, each of which was owed a separate and distinct duty of care.

128. [redacted] Lundberg Dep. at 136-39, 212-13, 217, 280-82. [redacted] Stanley Dep. at 100. *Id.* at 226-28. [redacted]. *Id.* at 217-18. [redacted]. *Id.* at 226-27.

129. Both Professor Langbein and Mr. Landau emphasize in their reports that BONY is exculpated under PSA § 8.02(ii) for actions taken in reliance of experts. Langbein Report at 7; Landau Report ¶¶ 22-27. Both of them fail to note that the exculpation in the PSA is only for actions taken "*in good faith* and in accordance with [] *Opinion of Counsel*." PSA § 8.02(ii) (emphasis added). Both of these terms are significant.

130. First, there is evidence that BONY did not act in good faith when it relied on its Settlement Expert Reports.

131. When given notice of an Event of Default by a large group of investors, BONY sought to deny and cover-up that an Event of Default had occurred. BONY failed to [redacted]. Likewise, BONY refused to [redacted]

132. Instead, BONY agreed to a settlement that was highly favorable to BofA and which left BONY indemnified. BONY utilized the Settlement Experts simply to help "paper" the settlement that it had already decided to pursue, rather than to help it form opinions.

133. None of this comports with good faith, especially when seen in the context of BONY's business relationships with Bank of America and BONY's own incentives for reaching a deal that resolved the Event of Default issue.

134. Second, reliance on experts is only exculpatory when "in accordance with Opinion of Counsel." "Opinion of Counsel" is defined in the PSAs as "A *written* opinion of counsel..." PSA § 1.01 (definitions) (emphasis added). The requirement of a written opinion letter is significant because it would involve counsel more explicitly assuming malpractice liability; an attorney's opinion letter is functionally an insurance contract. [redacted] *See* Lundberg Dep. at 460.

135. Instead, [redacted] Lundberg Dep. at 274-281, 241-242, 136-137, 143.

136. Moreover, because an Event of Default had occurred, the Trustee was held to a prudent person standard, not merely a "good faith" standard. Therefore, PSA § 8.02(ii), could not apply to exculpate the Trustee.

137. Even if there had not been an Event of Default, the Trustee was still subject to heightened duties because in entering into settlement negotiations and ultimately the Proposed Settlement, the Trustee assumed broad powers that necessarily subjected it to broad duties. It therefore cannot simply delegate its trusteeship to outside experts and avoid its own duty of prudence and care.

138. Accordingly, both Professor Langbein and Mr. Landau are incorrect when they claim that BONY was entitled to rely on the Settlement Expert Reports. Because there was an Event of Default, the Trustee could not rely on PSA § 8.02(ii), and even if there was no Event of Default, the PSAs do not authorize reliance on expert reports absent good faith and a written Opinion of Counsel.

2. BONY Was Not Justified in Relying on Professor Adler's Report Because of Its Express Limitations

139. Professor Adler opined on the "materially and adversely affects" clause in section 2.03(c) of the PSAs. BONY relied heavily on Professor Adler's report in approving the Proposed Settlement. Lundberg Dep. at 136-37, 281. His report, however, notes that

> My opinion here is based solely on general principles of contract law as supported by references provided below. I have not broadly reviewed documents relevant to the Potential Settlement. I do not have knowledge of relevant events or of customary documents or practice in the commercial lending industry.

Dep. Ex. 11 at 3. He further noted that:

> Notably, in addition to the competing considerations discussed here, *there may be cases or circumstances of which I am unaware, including but not limited to industry standards or practices*, that would lead a court—through the admission of extrinsic evidence or otherwise—to reach one conclusion or another. But for the reasons described here,

> *based solely on general contract principles, and taking the language of the provision at face value,* it appears to be a reasonable position that a determination of whether a breach materially and adversely affects the interests of Certificateholders *should* turn on the harm caused by the breach.

Id. at 12-13 (emphasis added). In other words, Professor Adler was expressing an opinion on the "materially and adversely affects" clause in a virtual vacuum, without knowing the context of the clause. Contracts, however, are interpreted in context.

140. If Professor Adler had known more about the context, he might well have opined differently about the "materially and adversely affects" clause.

141. By narrowly cabining Professor Adler's inquiry to generic interpretation of language out of context, BONY ensured that the opinion would be nothing more than a guess. Indeed, Professor Adler's opinion is expressed in "should" language, rather than "would." A securitization industry participant like BONY should be highly attuned to the difference between a "should" and a "would" opinion.

142. The very choice of Professor Adler as an expert was itself unusual. Professor Adler does not have experience in mortgage putback litigation. If BONY wanted expertise about the particular clause in issue, it would not have relied on a general contract law professor, but would instead have turned to someone with experience concerning mortgage putback claims.

143. [redacted] legal position: [redacted]

3. BONY Relied on Professor Adler's Opinion, But the PSA Language Analyzed by Professor Adler Was Not Applicable to All of the Covered Trusts.

144. BONY's [redacted] approval of the settlement relied [redacted] on the expert reports, [redacted] There are numerous problems with Professor Adler's report, but by far the most critical is that it fails to account for the fact that many of the PSAs directly contradict the proposition for which the Trustee uses his report, and Professor Adler's report contains no indication as to what PSA(s) he reviewed.

145. It is well known throughout the securitization industry that there are variations among PSAs even from certain sponsors and within certain "shelves" or series of similar securitizations. BONY's own outside counsel Mr. Kravitt testified in deposition that [redacted]

[redacted] Kravitt Dep. at 77. Indeed, Loretta Lundberg, noted in deposition testimony that [redacted] Lundberg Dep. at 116; *see also id.* at 117.

146. As it happens, the analysis in Professor Adler's report is clearly wrong in regard to at least some of the 530 Covered Trusts. Professor Adler's report refers to section 2.03(c) from an unspecified Countrywide PSA. The representations and warranties in section 2.03(c), however, are not consistent among the PSAs for the Covered Trusts.

147. Some of the Covered Trusts' PSAs contain language in section 2.03(c) to the effect of:

> Any breach of a representation set forth in clauses [(x) through (y)] of Schedule III-A with respect to a Mortgage Loan ... *shall be deemed to materially and adversely affect* the Certificateholders.

See, e.g., PSAs for CWALT 2005-24; CWALT-2005-35; CWALT-2005-36; CWALT 2007-4CB (emphasis added).

148. The particular representations in Schedule III-A in the PSAs with such a "deemed to materially and adversely affect" clause vary by PSA, but they include representations regarding completeness of documentation, compliance with various state and federal predatory lending laws, particular rate or prepayment or arbitration clause features of the loans, the underwriting methodology confirming that at the time of origination "the borrower had the reasonable ability to make timely payments on the mortgage loan," that "The Mortgage Loans, individually and in the aggregate, conform in all material respects to the descriptions thereof in the Prospectus Supplement." *See* PSA for CWALT 2007-4CB, Schedule III-A.

149. Professor Adler's expert report does not consider the effect of the "deemed to materially and adversely affect" clause in some PSAs on his interpretation of the language in general. It is hard to imagine, however, that he would have given the same opinion for the trusts with PSAs containing the "deemed to materially and adversely affect" language. Given the very clear "deemed to materially and adversely affect" in some of the Covered Trusts' PSAs, and purported litigation risk BONY assigned to its settlement decisionmaking would not have been present for at least some of the Covered Trust (once again confirming my point that BONY should have engaged in a trust-by-trust analysis).

150. The importance of the "deemed to materially and adversely affect" language is amplified by the fact that BONY looked at no loans files in the course of purportedly settling BofA's putback liability for the Covered Trusts. Because some PSAs include the language, and because the language applies to some but not all representations and warranties, and because the covered representations and warranties varied from trust-to-trust, BONY's failure to review loan files meant that it could not determine which breaches were deemed to materially and adversely affect and which were subject to further analysis. Nevertheless, BONY applied a material and adverse discount to the aggregated settlement.

4. BONY Litigation Expert Professor Fischel's Report Makes Similar Erroneous Assumptions to Professor Adler's Settlement Report

151. Similarly, BONY Litigation Expert Professor Fischel fails to consider whether the putback mechanism would be enforceable. Instead, he assumes that the only possibility would be loan-by-loan litigation, as BofA claims. Fischel Report ¶ 36. Professor Fischel is incorrect on this account as well.

152. Putbacks based on sampling methodologies have been approved in the monoline bondholder litigation. *See e.g.*, *MBIA v. Countrywide*, Doc. No. 276 (Dec. 22, 2010 Order). Professor Fischel's report uncritically accepts BofA's position that only loan-by-loan litigation is possible.

153. Likewise, Professor Fischel assumes that the only actionable breaches are breaches of underwriting guidelines. Fischel Report at ¶ 35. He further assumes that underwriting guideline violations are difficult to prove. *Id.*

154. Based on my experience and knowledge of mortgage underwriting guidelines, these assumptions are incorrect. Depending on the type of underwriting guideline violation at issue, proof is not particularly difficult. While some underwriting guidelines allow for permissible variance, there can be loans underwritten outside of permissible variance.

155. Even if Professor Fischel were correct, however, regarding the difficulties of proof in regard to underwriting guideline violations, there are other types of breaches that are actionable and easy to prove, such as breaches relating to the accuracy of the information provided on the loan data tape or the sufficiency of loan documentation.

156. Indeed, despite having allegedly reviewed all 530 PSAs or Indentures for the Covered Trusts, Fischel Report ¶ 30, Professor Fischel fails to distinguish between PSAs and Indentures that have deemed materiality and adversity clauses and those that do not. Instead, Professor Fischel assumes that the trusts will have "difficulty ... determining whether a breach existed and if so whether it had a material and adverse effect on the interests of the Certificateholders." Fischel Report ¶ 33, 36. This statement is clearly wrong when applied to the representations and warranties covered by deemed materiality and adversity clauses.

5. BONY Was Not Justified in Relying on Professor Daines's Report Because It Was Expressly Limited in Its Analytic Scope and Predicated on Self-Serving Factual Assumptions Provided by BofA

157. Throughout the course of the settlement negotiations, including in the Settlement Experts' reports, and now in the Litigation Experts' Reports, BONY adopted BofA's legal theories in an apparent attempt to devalue the claims of the Covered Trusts (and certificateholders) in order to justify its agreement to the Proposed Settlement.

158. Professor Daines's report was limited to a strangely narrow task and was predicated on questionable factual assumptions provided by BofA. As these issues are addressed by Professor Coates, I omit further discussion here.

6. Capstone Report

159. Another report on which BONY relied in approving the Proposed Settlement was a valuation report from Capstone Valuation Services LLC. The express and implied limitations of the Capstone report made it inappropriate for BONY to rely on it without further diligence. BONY did not undertake that additional diligence.

160. The Capstone report was [redacted] Bingham Dep. at 125. It was also conducted on a [redacted] *Id.* at 18-19.

161. The Capstone report was explicitly premised, in part, on legal assumptions deriving from Professor Daines' report regarding BONY's ability to recover from BofA on account of Countrywide's liability. Dep. Ex. 12 at 3, 5; *see* also [redacted] Griffin Dep. at 284. To the extent that Professor Daines' report was flawed or incomplete, as stated above and discussed in more detail in Professor Coates's opinion, so too was the Capstone valuation. Any problems with the Daines report were necessarily compounded in the Capstone report.

162. Moreover, the Capstone report explicitly relied on "information gathered from [Capstone's] discussions with certain senior members of [Countrywide Financial Corporation] management without independent verification." Dep. Ex. 12 at 3; *see also* [redacted] BONY was relying on an expert report specifically premised on information provided by an adverse party.

163. Because of the limiting assumptions of the Capstone report, the basis of the Capstone report's information, and the limited scope of the Capstone analysis, BONY was not justified in relying on the Capstone report. Instead, the assumptions that BONY provided to Capstone virtually guaranteed that BONY would end up with a report producing a low-ball estimate of the ability of the Covered Trusts to recover on their claims. If BONY had been serious about wanting to evaluate the Covered Trusts' potential recovery, it could have commissioned an expert report on Countrywide's solvency and a broader report on potential theories of recovery from BofA. BONY did not.

7. RRMS/Lin Report on Valuation of Representation and Warranty Claims

164. BONY also relied on the analysis of Brian Lin and RRMS for a valuation of the Covered Trusts' representation and warranty claims. The methodology used by Lin and RRMS did not involve examination or even a sampling of loan files. Instead, Lin and RRMS relied on a model that turned on a series of economic and legal assumptions about potential losses due to representation and warranty claims.

165. As Dr. Cowan notes in his expert report, Mr. Lin and RRMS did not follow standard procedures for calculating representation and warranty claims. Cowan Report at 1, 3-4; *see also* [redacted] In part this is because [redacted] Lin Dep. at 94-98. A review of actual loan files [redacted]

Lin Dep. at 98. Nor was Mr. Lin requested to reunderwrite the loan files. Lin Dep. at 98-99. Instead, BONY simply provided Mr. Lin and RRMS [redacted] Lin Dep. at 73-74, 97-98.

166. Mr. Lin also does not appear to have considered [redacted] Lin Dep. at 528-529. His report was also based on a series of assumptions from unrelated repurchase experiences of the GSEs. [redacted] He did not determine [redacted] Lin Dep. at 559-60. He also failed [redacted] was affected by the GSEs' on-going business relationship with BofA. Lin Dep. at 442-44. As Dr. Cowan has explained in his report, the GSEs' repurchase experience was obviously distinct and therefore a poor basis for Mr. Lin's modeling assumptions. Cowan Report at 13-16.

167. Similarly, Mr. Lin apparently never considered the Covered Trusts' potential direct claims on BofA for servicing and documentation exceptions or its ability to recover from BofA under contractual successor liability per PSA §§ 6.02 and 6.04. Mr. Lin's report on servicing "improvements" did not cover liability for past servicing breaches, although [redacted] Lin Dep. at 484-89.

168. BONY [redacted] and then "relied" on the resulting report. As with the other Settlement Expert reports, this is not a true expert report on which reliance is justified.

F. BONY Failed to Pursue or Even Value Servicing Breaches and Documentation Exceptions, but Released Both in the Settlement Anyway

1. BONY Failed to Investigate or Value Servicing Breaches and Documentation Exceptions

169. The Inside Investors' letters to BONY regarding the Event of Default repeatedly mentioned deficiencies in servicing and loan documentation (Dep. Exs. 18 & [redacted]), not just breaches of representations and warranties relating the underwriting of the mortgage loans.

170. Prior to approving the Proposed Settlement, however, BONY [redacted] Bailey Dep. at 226-35, 237-39, 246-47; Lundberg Dep. at 329-30, 361-62, 377-79; Stanley Dep. at 189-91.

171. [redacted] despite consenting to the release of these claims in the Proposed Settlement. Nothing I have seen in the discovery record indicates that [redacted] although it is released in the Proposed Settlement.

172. None of the Settlement Expert Reports on which BONY relied—those of Professor Adler, Professor Daines, Capstone, and RRMS—addressed BofA's direct liability for

servicing or documentation exceptions or its assumption of Countrywide's representation and warranty liability as the successor Master Servicer under PSA § 6.04. [redacted]

173. The valuation report by Brian Lin at RRMS was based solely on representation and warranty liability. Lin Report (Dep. Ex. 9). BONY's attorney Jason Kravitt stated in deposition testimony that [redacted] Kravitt Dep. at 275. Loretta Lundberg, the head of BONY's default services testified that [redacted] Lundberg Dep. at 337-338. And Robert Griffin, Lundberg's boss at BONY, testified that [redacted] Griffin Dep. at 292.

174. BONY's failure to pursue servicing and documentation claims is particularly noteworthy, as servicing claims apply directly to BofA as successor Master Servicer. PSA § 6.04. The question of successor liability does not apply to the Covered Trusts' servicing and documentation claims, nor does the PSA § 2.03(c) material and adverse clause apply.

175. Professor Fischel opines that successful claims for servicing liability would require both factual and legal determinations that he implies are not possible. Fischel Report ¶ 40. The determinations, however, *are* possible.

176. There is ample evidence of the failure of BofA to meet its servicing duties and of resultant harm to the Covered Trusts. [redacted] letters from Gibbs & Bruns to BONY set forth the various servicing violations. Dep. Exs. 18 & [redacted]. The letter sent from intervenor Triaxx funds to Justice Kapnick dated February 1, 2013, sets forth evidence of BofA's self-dealing and other misconduct in connection with loan modifications and the harm to the Covered Trusts. Similarly, the FTC's 2011 $108 million settlement with Countrywide for servicer overbilling provides significant evidence of servicing violations and harm to the Covered Trusts, as Countrywide's overbilling was paid out of foreclosure sale proceeds before any recovery to the Covered Trusts. [redacted]. Dep. Ex. 58.

177. Further, one of BONY's own advisors— [redacted] Sabry Dep. at 31-36.

178. Additionally, the document exceptions reports prepared by BONY pursuant to § 6(a) of the Proposed Settlement show [redacted]. This alone is evidence of the massive scale of [redacted]

3. The Document Exception Provisions of the Proposed Settlement Are Largely Illusory

179. As it stands, the Proposed Settlement amends the PSAs by requiring a much narrower cure of documentation exceptions than required by the PSAs. Section 6 of the Proposed Settlement requires BofA to cure a document exception if and only if a

foreclosure is attempted and is unsuccessful. A successful, but more expensive or delayed foreclosure due to documentation problems would result in greater losses for the certificateholders (but not for BofA), yet is not covered by the Proposed Settlement's cure requirement.

180. Astonishingly, § 6(a)(i) excludes mortgages registered with the Mortgage Electronic Registration System (MERS) from the all of the cure requirements of the Settlement. MERS registry covers around 60% of mortgages in the United States. Kate Berry, *Foreclosures Turn Up Heat on MERS*, AM. BANKER, July 10, 2007. For more recent originations and securitized mortgages, an even higher percentage are registered with MERS.

181. Moreover, the exclusion of MERS mortgages from the documentation cure requirements is shocking because problems with the MERS registry have been a central issue in a great deal of consumer foreclosure litigation.

182. MERS has also entered into consent decrees or settlements with federal bank regulators and the Delaware Attorney General for its inadequate documentation practices and systems. *See In re MERSCORP, Inc.* Consent Order (Apr. 13, 2011), *available at* http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47h.pdf; *see also* Press Release, *Biden Secures Reforms from National Mortgage Registry* (July 13, 2012), *available at* http://attorneygeneral.delaware.gov/media/releases/2012/registry7-13.pdf; Press Release, *A.G. Schneiderman Secures $136 Million For Struggling New York Homeowners In Mortgage Servicing Settlement* (Feb. 9, 2012), *available at* http://www.ag.ny.gov/press-release/schneiderman-secures-major-settlement-allows-sweeping-mortgage-investigations-proceed; Consent Order, In the Matter of MERSCORP, Inc., OCC No. AA-EC-11-20; Board of Governors Docket Nos., 11-051-B-SC-1, 11-051-B-SC-2; FDIC-11-194b; OTS No. 11-040; FHFA No. EAP-11-01, April 12, 2011; Final Stipulation and Order, Delaware v. MERSCORP Holdings, Inc., Civ. Action No. 6987-CS (Del. Ch. Ct. July 13, 2012).

183. The exclusion of MERS mortgages from the documentation cure requirement indicates that BONY and BofA have no real intention of undertaking the—expensive and sometimes impossible—cure of faulty documentation. Instead, the losses due to faulty documentation will be borne by the certificateholders.

184. Proposed Settlement also requires BofA to cure either the "Mortgage Exceptions" or the "Title Exceptions" for any given loan, not both. Proposed Settlement § 6(b). The PSAs make no such distinction between "Mortgage Exceptions" and "Title Exceptions" and require cure of both. PSA § 2.02.

185. Moreover, the Proposed Settlement requires BofA to reimburse the Covered Trusts only for uncured document exceptions for non-MERS mortgages if there is both a "Mortgage Exception" and a "Title Exception" *and* the a loss to the Covered Trust because of the exceptions following an unsuccessful attempted foreclosure. Proposed Settlement § 6(c). Even then, reimbursement may be delayed by up to a year, and there is no provision for interest. Proposed Settlement § 6(c). PSA § 2.02 does not require both exceptions or for there to be an unsuccessful attempted foreclosure or for there to be a loss to the Covered Trust. Instead, it simply requires that the document

exceptions be cured. What this means is that the Proposed Settlement's § 6 requirement for cure of document exception cure is narrower than the PSA 2.02 cure requirement.

4. The Document Exceptions Provisions of the Settlement Effect an Amendment of the PSAs without the Requisite Certificateholder Consent

186. The Proposed Settlement's amendment of the PSAs' requirement of the cure of document exception violates the PSA requirement of consent of certificateholders representing 2/3s of the Voting Rights of each individual Covered Trust. PSA § 10.01.

H. BONY Converted Trust Property During the Settlement Process by Using the Trusts' Negotiating Leverage for Its Own Benefit

187. BONY used the Covered Trusts' negotiating power to gain or attempt to gain benefits. BONY also acted to shield BofA from liability, which is consistent with its interest in remaining BofA's "preferred trustee."

188. BONY's Litigation Experts Professor Fischel, Mr. Landau, and Professor Langbein all deny that BONY had conflicts of interest, particularly in regard to the indemnity provisions in the Forbearance Letter and Side Letter and the release in the Proposed Final Order and Judgment. Fischel Report ¶¶ 27-32; Landau Report ¶¶ 37-40, 47; Langbein Report at 9-11.

189. As an initial matter, none of BONY's Litigation Experts address the incentives BONY had by virtue of its business relationship with BofA (and possibly with the Inside Investors) or its $1.5 billion equity stake in BofA. *See supra* ¶¶ 53-55. Being the "preferred trustee" is how BONY gets its business. This is clearly a financial benefit for BONY. Despite recognizing BONY's position as BofA's "preferred trustee," Professor Fischel contends in his report that there is no evidence of BONY's benefit from the settlement. Fischel Report ¶¶ 27, 32. Professor Fischel, however, refers solely to AIG's Verified Petition (Doc. No. 131). Fischel Report ¶ 27. AIG filed its Verified Petition prior to discovery, however, and substantial evidence of conflicts has been developed in discovery, as discussed in Professor Frankel's report. Professor Fischel's report does not address this evidence. None of BONY's Litigation Experts recognize BONY's incentives to act in the interest of BofA rather than the interest of the Covered Trusts.

1. The Forbearance Agreement and the Indemnity BONY Secured

190. [redacted]

191. Specifically, on [redacted]

[redacted]

Dep. Ex. 53. [redacted]

192. Ultimately, BONY did receive the indemnity [redacted]. The Forbearance Agreement of December 9, 2010 (Dep. Ex. 46) was followed by a letter, dated December 10, 2010 from BofA to BONY (Dep. Ex. 52). The letter states that [redacted] BofA was agreeing to pay BONY's expenses and indemnify it from all liability that "arise solely out of its entry into the Forbearance Agreement." Dep. Ex. 52.

193. BONY and its Litigation Experts contend that the indemnity BONY received was not truly a new indemnity, but just a confirmation of the existing indemnity under section 8.05 of the PSA. Fischel ¶¶ 28-29; Landau ¶ 39; Langbein Report at 10-11. They are wrong.

194. Section 8.05 of the PSAs provides that BONY is indemnified by BofA as Master Servicer for "any loss, liability or expense relating to (a) this Agreement, (b) the Certificates or (c) in connection with the performance of any of the Trustee's duties hereunder." PSA § 8.05. There is an exception, however, for loss, liability or expense "incurred by reason of any action of the Trustee taken at the direction of the Certificateholders…" *Id.*

195. There is evidence in the record that BONY *was* acting under the direction of certificateholders. *See* Letter from Mayer Brown to Anonymous Inside Investor, at 1 (Jan. 7, 2011) (BNYM_CW-00285677-78); Letter from Mayer Brown to Lincoln Finkenberg, at 1 (Nov. 9, 2010) (BNYM_CW-00285661-74); Hr. Tr. 7:5-34 (Sept. 9, 2011) (S.D.N.Y.). Therefore, pursuant to PSA § 8.05 it had lost its indemnity from the BofA Master Servicer. Accordingly, BONY was bargaining with BofA for an indemnity it did not have.

196. Even if BONY's Litigation Experts were correct, and there was no new indemnity, it does not matter. BONY subjectively placed some value on the indemnity language and undertook action on that basis. It is irrelevant in evaluating BONY's actions whether the indemnity language was objectively valuable. BONY traded an asset of the Covered Trusts for what it subjectively believed to be a private benefit.

197. [redacted] Exhibit 58 at 3. BONY again was using Covered Trust leverage for its own benefit, not for that of the Covered Trusts.

2. The Side Letter

198. As part of the Proposed Settlement, BONY received an additional indemnification from the BofA Master Servicer (and a guarantee of it from BAC) as part of the Side Letter (Exhibit C to BONY's Verified Petition).

199. BONY's Litigation Experts' response is that the Side Letter does not create a new indemnity.

200. The meaning of the Side Letter indemnity provision depends on whether the original indemnity of BONY by the Master Servicer under PSA § 8.05 had been extinguished. And as set forth above, the indemnity *had* been extinguished when BONY acted in response to certificateholder direction.

201. However, even if the BONY Litigation Experts were right about the operation of the indemnity provision in the Side Letter, the mere existence of the provision indicates that BONY *subjectively* believed it to be valuable. Whether the indemnity provision in the Side Letter is *objectively* valuable, the focus of BONY's Litigation Experts argument is irrelevant. BONY expended some of the Covered Trusts' finite negotiating leverage obtaining a private, subjective benefit.

202. Mr. Landau opines that indemnification is standard trust industry custom. Landau Report ¶ 38. This is only partially correct. Indemnification provisions such as those found in PSA § 8.05 are standard in securitizations. But the indemnifications at issue in this Proceeding are not those under PSA § 8.05. Any indemnification BofA may have owed to the Trustee under PSA § 8.05 was lost when the Trustee acted at the direction of the Inside Investors. [redacted] Similarly, the Side Letter is not part of PSA § 8.05 and raises a troubling specter of BofA paying the Inside Investors for their support of the Proposed Settlement by relieving them of their indemnification liability. Elimination of the "money where your mouth is" indemnification requirement for those certificateholders that demand trustee action [redacted] The indemnification requirement for certificateholder demands imposes a certificateholder buy-in, which ensures that only serious meritorious claims are brought to the Trustee's attention. The shift in indemnification liability undermines this important structure of the PSA.

3. BONY's Attempt to [redacted]

203. [redacted] Exhibit 210 (BNYM_CW-00254996 at Deleted) [redacted] *See also* Exhibit 235 [redacted]

204. [redacted]

Exhibit 210 (BNYM_CW-00254996 at Cmt. A5).

205. [redacted]. Mirvis Deposition Transcript at 115-16, 169; Golin Deposition Transcript at 109, 111-112.

206. Professor Langbein's report dismisses this language as nothing more than "debris on the cutting room floor." Langbein Report at 10. He is wrong. It is irrelevant that [redacted]. Not only is this problematic in itself in this instance, but it comports with the pattern of BONY seeking a deal aimed at protecting itself from liability and preserving goodwill and future business flows from BofA.

207. [redacted]

4. A Release from Indemnification

208. Paragraph (p) of the Proposed Final Order and Judgment contains a broad permanent injunction against any suits by the certificateholders against BONY for its actions in connection with the settlement.

209. This provision functions as a release for BofA because while paragraph (p) of the Proposed Final Order and Judgment formally enjoins suits against BONY, it actually protects BofA, by ensuring that BONY will never have to call on BofA to pay on the indemnification.

210. The release of BofA from its indemnity to BONY through the injunction is a benefit to BofA, and to BONY to the extent it is seeking to curry favor with BofA. It does *not* inure to the benefit of the Covered Trusts.

211. The fact that the release is in BofA's interest, rather than the Covered Trusts' is evident from [redacted]

I. BONY's Use of the Article 77 Proceeding Appears to Be Designed to Protect Bank of America

212. [redacted] Lundberg Dep. 222-23; Doc. No. 3 ("Proposed Settlement"). BONY is coming before this Court seeking protection for its actions, but at the same time attempting to avoid meaningful scrutiny.

213. A trustee acting in good faith could use an Article 77 proceeding to seek court guidance, rather than the court's blessing. Section 7701of the New York Civil Practice Law and Rules authorizes a special proceeding "to determine a matter relating to any express trust..." Thus, BONY had a procedural mechanism for seeking guidance, be it about whether an Event of Default had occurred, or what to do about the conflict between the 530 trusts competing for a finite pool of assets, etc. In fact, BONY's counsel told the Court that, "what trustees typically do under these circumstances—if there's a question about whether there's an event of default, they file an Article 77 proceeding and they come to court for guidance." Feb. 7, 2013 Hrg. Trnscrpt. 166:18-21.

214. The concept of seeking court guidance is one that trustees periodically use, *see e.g.*, *Wilmington Trust Co. v. Tropicana Entm't, LLC*, 2008 Del. Ch. LEXIS 30 (Del. Ch. Feb. 29, 2008). BONY's outside counsel, [redacted] Kravitt Dep. at 186-87.

215. Indeed, getting court guidance is a practice BONY as trustee has utilized recently in regard to another structured financial product case in the United Kingdom. *See Bank of New York v. Montana Board of Investments*, [2008] EWHC 1584 (Ch.). In the *Montana Board of Investments* case, BONY sought court guidance for how to resolve an inter-class conflict in a structured investment vehicle (SIV). Why BONY did not do so here is unclear, but it is worthwhile noting that the sponsor of the SIV in the *Montana Board of Investments* case was an entity called "Eiger Capital Ltd.," which is not a major repeat business generator for BONY, unlike BofA.

216. Here, BONY is not using Article 77 to obtain guidance, but instead a court order blessing past actions and providing it with a broad release for those actions.

217. Notably, BONY has fought for a limited and deferential standard of review and for limited discovery. *See* Doc. No. 228. BONY is thus seeking the Court's blessing while trying to avoid its scrutiny.

J. The Proposed Settlement's Servicing Provisions Have Zero Value Because They Replicate Bank of America's Pre-Existing Legal Duties

218. I have reviewed the Proposed Settlement's servicing provisions and conclude that the servicing provisions have virtually no material value because with one exception they merely recreate pre-existing legal duties for BofA, and the value of that exception depends on the quality of BofA's future servicing, which cannot be determined. Accordingly, the servicing provisions are largely, if not completely, illusory.

219. Moreover, the servicing provisions of the Proposed Settlement amend the PSAs without the requisite consent of a majority of certificateholders, despite (and indeed indicated by) the provision in the Proposed Settlement that deems the servicing provisions not to amend the PSAs. Settlement § 5(g).

220. Finally, the servicing provisions include a vague commercial impracticability provision that may permit BofA to avoid compliance, including on the basis of existing government regulations. Settlement § 5(h).

221. The Proposed Settlement has five major provisions dealing with mortgage servicing.[25] Mr. Burnaman's report, BONY's sole Litigation Expert report dealing with servicing, addresses only one of those five provisions, namely the Settlement § 5(a)-(b) requirement that BAC transfer the servicing of "High Risk" loans to specialty subservicers. Mr. Burnaman contends that the "the incremental out-of-pocket cost which BANA agreed to bear in order to transfer certain delinquent and defaulted loans to Subservicers is a direct and quantifiable benefit to the Covered Trusts." Burnaman Report at 7. He calculates its value as between $98 million and $411 million. *Id.*

222. Mr. Burnaman's valuation of the servicing transfer provision is incorrect. The value of the servicing transfer provision is zero.

223. It would appear that Mr. Burnaman does not impute any value to any of the other four provisions, as he does not discuss them in his report. To the extent that this is his opinion, I concur with it. None of the servicing provisions in the settlement have any certain material value to the trusts.

224. Table 1, below, presents a summary of the Proposed Settlement's servicing provisions and their valuation. It shows that all but one of the provisions have a value of zero (or close thereto) because BofA is already subject to existing legal duties based on federal law (the CFPB's Mortgage Servicing Rule), the National Mortgage Servicing Settlement, the OCC's Consent Order with BofA, or the PSA's prudent servicing standard, which is generally thought to incorporate relevant Fannie Mae/Freddie Mac servicing standards. The other provision, § 5(c), has uncertain, but possibly zero value, as explained below.

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[25] BONY's Verified Petition ¶ 46 seems to treat cures of document deficiencies in loan files as part of servicing improvements, although it is included under a separate provision in the Proposed Settlement. To the extent that the document deficiency provisions are a servicing improvements, they have no value because they merely oblige BofA to do *less* than what it is already contractually obligated to do under PSA § 2.02 and what would be consistent with prudent servicing. *See infra* ¶ 180-187.

Table 1. Summary of Servicing Provision Valuation

Settlement Provision	Summary of Settlement Provision	Value of Settlement Provision	Basis of Valuation
§ 5(a)-(b)	Requires transfer of high-risk loans to subservicers.	$0	Already required by: • Prudent Servicing Standard (PSA § 3.01); • 12 C.F.R. § 1024.38(a)-(b); • Nat'l Mtg. Settlement §§ II.A, IV.H; • OCC Consent Order §§ III(3), IV(1)(l)-(p), IX(1)(f); • Freddie Mac Seller/Servicer Guide § 51.3.
§ 5(c)	Requires benchmarking of servicing and servicing expense reimbursement recoveries adjusted.	Dependent on loan performance, BofA's servicing performance & PSA interpretation.	Express terms of Proposed Settlement.
§ 5(d)	Requires evaluation of borrowers for modifications within 60 days of receipt of documentation.	$0	Already required by: • 12 C.F.R. § 1024.38(b)(2)(v); • Nat'l Mtg. Settlement § IV.F.4.; • OCC Consent Order § IX(1)(b); • Freddie Mac Seller/Servicer Guide § 64.6(d)(5); • Fannie Mae Single Family 2012 Servicing Guide § 205.08.
§ 5(e)	Requires prudent servicing.	$0	Already required by: • Prudent Servicing Standard (PSA § 3.01) • Nat'l Mtg. Settlement, § IV.A.2; • Freddie Mac Seller/Servicer Guide § 65.1
§ 5(f)	Requires compliance attestations and audit.	$0	Already required by: • PSA §§ 3.16, 3.17 • 12 C.F.R. §§ 1024.38(a)-(b)(1)(iv).

1. Subservicing of High Risk Loans, Settlement § 5(a)-(b)

225. Settlement § 5(a)-(b) requires BofA to transfer certain "High Risk" loans to specialty subservicers. Settlement § 5(a)-(b). BONY's Litigation Expert Mr. Burnaman values this provision as between $98-$411 million because BofA must shoulder the costs of the subservicing. Burnaman Report at 7, 45. Mr. Burnaman's valuation is incorrect because BofA is under an existing legal duty to engage in prudent servicing, which would include use of specialty subservicers to the extent that it was incapable of adequately servicing the mortgages.

226. Mr. Burnaman correctly notes that there is no requirement in the PSAs for BofA as master servicer to use subservicers. Burnaman Report at 32. Mr. Burnaman neglects to mention, however, that BofA is under an existing legal duty to use subservicers. This existing legal duty stems from several sources: federal mortgage servicing regulations; the April 4, 2012 National Mortgage Settlement; the Office of the Comptroller of the Currency's March 29, 2011 Consent Order regarding BofA; and the PSA's prudent servicing standard (interpreted in reference to Fannie Mae/Freddie Mac servicing guidelines).

227. Regulation X under the Real Estate Settlement Procedures Act, 12 C.F.R. Pt. 1024, imposes federal regulatory requirements on mortgage servicers. Among these requirements are that servicers adopt policies and procedures that ensure that it "*Properly evaluat[es] loss mitigation applications,*" "*provid[es] timely and accurate information,*" and "*[f]acilitates oversight of, and compliance by, service providers.*" 12 C.F.R. § 1024.38(a)-(b). In other words, federal regulations require competent servicing. To the extent that BofA cannot itself provide such servicing for High Risk loans, BofA would need to engage subservicers in order to comply with Regulation X. The cost of subservicing transfers is one that is normally borne by the Master Servicer and is a risk that a Master Servicer presumably prices into its servicing fee, as higher risk loan pools generally have higher servicing fees.

228. In February 9, 2012, BofA entered into a settlement agreement (the "National Mortgage Settlement") with the federal government and 49 states regarding its mortgage servicing practices. On April 4, 2012, the United States District Court for the District of Columbia entered an order approving the settlement. The National Mortgage Settlement requires BofA to "maintain adequate staffing and systems". NMS § IV.H.1-2. The National Mortgage Settlement further requires BofA to "oversee and manage" various subservicers and other third-party providers of servicing activities, including by (1) performing due diligence of third-party qualifications and expertise; (2) amending agreements with third-party providers to require them to comply with the attorney general settlement; (3) ensuring that all agreements provide for adequate and timely oversight; (4) providing accurate and complete information to all third-party providers; (5) conducting periodic reviews of third-party providers; and (6) implementing appropriate remedial measures when problems and complaints arise. NMS § II.A.

229. To the extent that BofA lacks the internal capacity to adequately service the High Risk loans, compliance with the National Mortgage Settlement would require the use of subservicers.

230. On March 29, 2011 BofA agreed to a Consent Order with the Office of Comptroller of the Currency regarding its mortgage servicing practices. *In the Matter of: Bank of America, N.A. Charlotte, N.C.*, AA-EC-11-12. The Consent Order requires BofA:

- "to develop and implement an adequate infrastructure to support existing and/or future Loss Mitigation and foreclosure activities";
- to have an "organizational structure, managerial resources, and staffing to support existing and/or future Loss Mitigation and foreclosure activities";
- to have "processes to ensure the qualifications of current management and supervisory personnel responsible for mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation and loan modification, are appropriate and a determination of whether any staffing changes or additions are needed;"
- to have "processes to ensure that staffing levels devoted to mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation, and loan modification, are adequate to meet current and expected workload demands;"
- to have "processes to ensure that workloads of mortgage servicing, foreclosure and Loss Mitigation, and loan modification personnel, ... are reviewed and managed";
- To have "processes to ensure that the risk management, quality control, audit, and compliance programs have the requisite authority and status within the organization so that appropriate reviews of the Bank's mortgage servicing, Loss Mitigation, and foreclosure activities and operations may occur and deficiencies are identified and promptly remedied;"
- To have "appropriate training programs for personnel involved in mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation, and loan modification, to ensure compliance with applicable Legal Requirements and supervisory measures to ensure that staff are trained specifically in handling mortgage delinquencies, Loss Mitigation, and loan modifications;"

In the Matter of: Bank of America, N.A. Charlotte, N.C., AA-EC-11-12 (Mar. 29, 2011), §§ III(3), IV(1)(l)-(p), IX(1)(f).

231. Additionally, BofA is required to service the loans "in accordance with the terms of this Agreement and customary and usual servicing standards of practice of prudent mortgage loan servicers," PSA § 3.01. This includes "represent[ing] and protect[ing] the interests of the Trust Fund in the same manner as it protects its own interest in mortgage loans in its own portfolio". PSA § 3.01. The PSAs also explicitly contemplate the possibility of subservicing. PSA § 3.02 ("Subservicing; Enforcement of the Obligations of Subservicers"). Mr. Burnaman neglects to mention this in his report.

232. It is my opinion—based on my academic study of the mortgage servicing industry and government service—that prudent mortgage loan servicing would require the use of subservicers if a master servicer's own operations are inadequate to handle the task.

233. Prudent servicing standards are often measured against the requirements of Fannie Mae and Freddie Mac for their servicers. Freddie Mac, for instance, requires that servicers warrant that they "will maintain adequate facilities and experienced staff and will take all actions necessary to" properly service the mortgages. Freddie Mac Seller/Servicer Guide § 51.3.

234. BofA is under an existing legal duty (from several sources) to adequately and prudently service the mortgage loans in the Covered Trusts. Adequate or prudent servicing would include subservicing when necessary.

2. Benchmark Adjusted Recovery of Servicing Advances, Settlement § 5(c)

235. Section 5(c) of the Proposed Settlement requires BofA to benchmark and report its servicing performance on non-High-Risk loans. BofA's ability to recover servicing Advances is adjusted based on how its monthly performance compares with the benchmarks on a net Trust-by-Trust basis. Thus, if BofA underperforms the benchmark on some loans, those are offset against the loans for which it outperforms the benchmark to derive a net effect.

236. BofA is obligated under the PSAs to make servicing Advances. This means that if a mortgagor fails to make a required monthly payment, BofA, as Master Servicer, is obligated to advance the payment to the Trust. BofA is entitled to recover its Advances from recoveries first on the individual mortgage for which it advanced and then, if that is insufficient, from payments on other mortgages. PSA §§ 3.08(a)(ii)-(iii), (v), 4.01. No interest is paid on these servicing Advances. BofA is not required, however, to make advances that it deems nonrecoverable. PSA § 4.01, definition of "Advance".

237. If BofA's net benchmark performance for a Covered Trust in any given month is severely negative, then section 5(c) of the Proposed Settlement reduces BofA's right recover the servicing Advances it makes to the Trust that month. As servicing Advances are reimbursed prior to any payment to certificateholders, a reduction in servicing Advance reimbursement frees up more cash for the certificateholders at the bottom of the cashflow waterfall (but has no effect on other certificateholders).

238. Section 5(c) does not have any necessary value to the Covered Trusts. Its value is captured only by the junior-most in-the-money tranche of certificateholder. More importantly, its value is dependent upon both the mortgages' future performance and BofA's future servicing performance. To the extent the mortgages perform, there is no Advancing required, so section 5(c)'s value is dependent on the mortgages performing poorly.

239. Moreover, the value of section 5(c) depends on BofA's future performance on a cherry-picked group of loans relative to it's the servicing industry overall. If BofA's future servicing performance for *non-High Risk loans* reasonably matches *overall* industry performance, BofA's servicing advances will not be reduced. The exclusion of the High-Risk loans from the section 5(c) benchmarks reduces the likelihood that BofA will fail to perform up to industry benchmarks and thus reduces the potential value of section 5(c) to the Covered Trusts.

240. Furthermore, the reduction of servicing Advances under section 5(c) may well be entirely illusory, not merely contingent. PSA § 3.08(a)(v) permits BofA to recover "unreimbursed Servicing Advances" at a separate point in the cashflow waterfall than "Servicing Advances". If section 5(c) only limits recovery of Servicing Advances, BofA may still be able to recover the same advances as "unreimbursed Servicing Advances" under a separate cashflow waterfall provision that would still be paid before the certificateholders. It is unclear how section 5(c) will be interpreted by BofA and BONY in light of PSA § 3.08(a)(v), but there is a quite plausible interpretation that will effectively render section 5(c) meaningless, as BofA will be prohibited from recovering of Advances under one PSA provision and instead recover them under another PSA provision, still with priority over the certificateholders. Accordingly, no certain value can be assigned to section 5(c), and BONY's Litigation Expert Mr. Burnaman assigns no value to the provision in his report.

3. Consideration of Borrowers for Loan Modifications, Settlement § 5(d)

241. Section 5(d) of the Proposed Settlement requires that for all borrowers considered for loan modification programs, BofA must consider them for all modification programs available. Settlement § 5(d). It also requires that BofA make a decision regarding a loan modification within 60 days of receiving all requested documentation from the borrower. Settlement § 5(d).

242. Section 5(d) of the Proposed Settlement provides no material value to the Covered Trusts because BofA is already under an existing legal duty to make loan modification evaluations within 60 days *or less*. Regulation X under the Real Estate Settlement Procedures Act requires that a servicer "[p]roperly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options for which the borrower may be eligible..." 12 C.F.R. § 1024.38(b)(2)(v). Regulation X also requires that

> If a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, then, within 30 days of receiving a borrower's complete loss mitigation application, a servicer shall:
>
> (i) Evaluate the borrower for all loss mitigation options available to the borrower; and
>
> (ii) Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage loan.

12 C.F.R. § 1024.41(c)(1). Given that Regulation X prohibits foreclosure procedures from commencing until a mortgage is at least 120 days delinquent, 12 C.F.R. § 1024.41(f), the borrower will always have the possibility of submitting a loss mitigation application prior to the foreclosure sale. This means section 5(d) of the Proposed Settlement merely requires BofA to comply with a less stringent rule than is required by federal law. Likewise, the National Mortgage Settlement requires that BofA "shall review the complete first lien loan modification application submitted by

borrower and shall determine the disposition of borrower's trial or preliminary loan modification request no later than 30 days after receipt of the complete loan modification application, absent compelling circumstances beyond Servicer's control." National Mortgage Settlement, § IV.F.4.

243. Similarly, the OCC Consent Order requires BofA to set "appropriate deadlines for responses to borrower communications and requests for consideration of Loss Mitigation, including deadlines for decision-making on Loss Mitigation Activities, with the metrics established not being less responsive than the timelines in the HAMP program". OCC Consent Order § IX(1)(b).

244. The HAMP program requires servicers to evaluate borrower eligibility within 30 days of receiving sufficient documentation. Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages, § 4.6. Thus, the OCC Consent Order already obligates BofA to evaluate borrowers for loan modifications within 30 days, rather than the 60 days required under section 5(d) of the Proposed Settlement.

245. The Prudent Servicing Standard also suggests that an evaluation of all possible modification options is required and must be done in a timely fashion. *See* Freddie Mac Seller/Servicer Guide § 64.6(d)(5); Fannie Mae Single Family 2012 Servicing Guide § 205.08.

246. In short, BofA is already under multiple existing legal duties to perform the evaluation required by section 5(d) of the Proposed Settlement Agreement. Accordingly, section 5(d) confers no new material value to the Covered Trusts.

4. Consideration of Prudent Servicing Factors, Settlement § 5(e)

247. Section 5(e) of the Proposed Settlement requires BofA to consider several factors in its loss mitigation decisions. These include maximization of the net present value of the mortgage, the likelihood of a mortgage re-performing, whether the borrower is acting strategically, alternatives to foreclosure, the requirements of the PSA, "such other factors as would be deemed prudent in its judgment" and "all requirements imposed by applicable Law." Proposed Settlement § 5(e).

248. All that section 5(e) does is spell out the Prudent Servicing Standard in more detail. BofA was already obligated to consider all of these factors under PSA § 3.01. It is also required to consider net present value under the National Mortgage Settlement, and the Freddie Mac Seller/Servicer Guide (as applied through the Prudent Servicing Standard). Nat'l Mtg. Settlement, § IV.A.2; Freddie Mac Seller/Servicer Guide § 65.1.

249. Section IV of the National Mortgage Settlement has extensive loss mitigation requirements, including that BofA: (a) send pre-foreclosure notices that will include a summary of loss mitigation options offered; (b) thoroughly evaluate lenders for all available loss mitigation options before foreclosure referral, thereby preventing "dual tracks" where a lender may be subject to foreclosure and loan modification; (c) consider the net present value of each mortgage (and specifically a requirement that banks offer a loan modification if NPV is positive); (d) possess certain loss mitigation obligations, including customer outreach and communications, time lines to respond

to loss mitigation applications, and e-portals for borrowers to keep informed of loan modification status; (e) establish an easily accessible and reliable single point of contact for each potentially-eligible first lien mortgage borrower so that the borrower has access to an employee of the servicer to obtain information; and (f) maintain adequate trained staff to handle the demand for loss mitigation relief. NMS § IV. Section 5(e) of the Settlement does not appear to add anything to this list.

250. Accordingly, section 5(e) of the Proposed Settlement provides no new material value to the Covered Trusts.[26]

5. Compliance Attestation, Settlement § 5(f)

251. Finally, section 5(f) of the Settlement requires BofA to make monthly compliance Settlement attestations to BONY and to undergo an annual compliance audit by an auditor of BofA's choice. Settlement § 5(f). This provision adds virtually nothing to BofA's existing legal duties and accordingly should be valued at zero.

252. BofA is already required to make annual compliance attestations under the PSAs. PSA § 3.16. It is also required to have an annual compliance audit.[27] PSA § 3.17. The benefit of going from annual to monthly self-attestation is virtually zero, particularly given that most failures to comply with the Settlement's servicing requirements are deemed not to be a material breach of the Settlement. Settlement § 5(j). Because of BofA's existing legal duties, the Covered Trusts receive no new material value from section 5(f) of the Proposed Settlement.

253. In all, the servicing provisions of the Proposed Settlement provide virtually no new material value to the Covered Trusts. Mr. Burnaman's estimate of the servicing provisions value is simply incorrect because he does not recognize that BofA is already legally obligated to perform the duties required by the Proposed Settlement.

K. The Proposed Settlement Improperly Passes Modification Costs and Losses to the Covered Trusts

254. One other servicing provision is worthy of note.[28] It is perhaps the most troubling

[26] Indeed, Settlement § 5(e) arguably reduces the Proposed Settlement by deeming compliance with § 5(e) sufficient to satisfy the Prudent Servicing Standard and thereby limiting BofA's liability.

[27] The recent experience with the "independent" foreclosure review mandated by the OCC Consent Order underscores the dubious value of the annual compliance audit. Under section 5(f)(i), BofA gets to select this auditor (subject to veto by BONY). This is exactly what BofA was permitted to do under the OCC Consent Order and it produced an unjustifiably favorable audit of BofA by Promontory Financial. US Gov't Accountability Office, *Foreclosure Review: Lessons Learned Could Enhance Continuing Reviews and Activities under Amended Consent Orders*, GAO-13-277, Mar. 2013. *See also* YVES SMITH, WHISTLEBLOWERS REVEAL HOW BANK OF AMERICA DEFRAUDED HOMEOWNERS AND PAID FOR A COVER UP—ALL WITH THE HELP OF "REGULATORS" (2013). Accordingly, there should be significant skepticism about the "independence" and hence value of such an outside audit. A more effective audit would involve an auditor selected by the certificateholders.

[28] Additionally, section 5(h) gives a commercially impracticable "out" to BofA to the extent that the "Law," which includes consent decrees and settlement agreements with the government changes. Thus, the Covered Trusts cannot be sure that they will in fact get the servicing "improvements" promised under the Proposed Settlement.

provision in the entire Proposed Settlement.

255. Section 5(i) places the costs of the servicing "improvements" on BofA, but contains an enormous carve-out for "any modification or loss mitigation strategy that may be required or permitted by Law" and "any Advance that is required or permitted by Law," and "any Realized Loss associated with the implementation of such modification or loss mitigation strategy." All of these costs "shall be borne by the relevant Covered Trust." Proposed Settlement § 5(i).

256. **On its face, this provision means that the Covered Trusts must bear the cost of BofA complying with its obligations under the Law—a term defined under the Settlement Agreement, to include the National Mortgage Settlement and BofA's various other settlements with the OCC and various state Attorneys General.** In other words, the Proposed Settlement makes the Covered Trusts liable for BofA's alleged wrongdoing as a mortgage servicer or as an originator *in violation of the PSAs.*

257. Thus not only do the servicing provisions in the Proposed Settlement fail to create value for the Covered Trusts, but they appear to shift enormous liability onto the Covered Trusts.

258. BofA is currently obligated to perform as much as $17.82 billion in loan modifications under various settlements:

- BofA's modification requirements under the National Mortgage Settlement are up to $7.63 billion. Nat'l Mortgage Settlement Consent Judgment ¶5.
- BofA's modification requirements under the amended OCC Consent Order are up to $1.76 billion. OCC Amended Consent Order § IV(1).
- Countrywide's 2008 settlement with state Attorneys General includes approximately $8.43 billion in loan modifications. *See* Press Release, Oct. 6, 2008, *Attorney General Brown Announces Landmark $8.68 Billion Settlement with Countrywide, available at* http://oag.ca.gov/news/press-releases/attorney-general-brown-announces-landmark-868-billion-settlement-countrywide.

259. While the Covered Trusts are not the entire universe of loans that BofA can modify, the Proposed Settlement actually incentivizes BofA to put as much of the modification cost on the Covered Trusts as possible. The potential cost to the Covered Trusts may exceed the $8.5 billion that BofA will contribute to the Covered Trusts under the Proposed Settlement. **Put succinctly, section 5(i) of the Proposed Settlement could potentially render the Proposed Settlement of *negative value* to the Covered Trusts.** BofA may be coming out *ahead* with the Proposed Settlement.

260. I have not seen any evidence that BONY made an attempt to value this servicing provision or even to investigate it.

III. The Settlement Will Impede the Recovery of the Housing Market

A. The Private Risk Capital Will Not Return to the Housing Finance Market Unless Investors Are Assured of Receiving the Benefit of Their Bargain

261. The housing market has been on government life-support since 2008. It has been five years now since the financial crisis and the private-label residential securitization market remains moribund, with only a handful of deals having been done since 2008. Adam J. Levitin & Susan M. Wachter, *The Commercial Real Estate Bubble*, 2 Harv. Bus. L. Rev. (forthcoming 2013).

262. There are two primary reasons for this. First, MBS investors do not trust mortgage underwriting any more. They have learned that they cannot count on protections such as "putbacks" to shield them from underwriting mistakes because the putback mechanism is only as good as the servicers and trustees, and the servicers are frequently affiliates of the originators, while the trustees are no-doing entities that lack the motivation to act on behalf of investors.

263. Second, MBS investors have learned that losses-given-default depend heavily on the quality of servicing. Even six years into the foreclosure crisis, servicers are still not set up to deal with large volumes of defaults. What's more servicers' compensation structures fail to align their interests with investors', and investors cannot rely on trustees to monitor servicers.

264. Approval of the settlement proposed by BONY will further undermine investor confidence in the mortgage securities market. If the settlement is approved, mortgage investors—themselves often fiduciaries such as pension plans and mutual funds—will be facing a market in which they *know* that they will have to blindly trust servicers to act in *their* interest, despite years of evidence of servicers acting in their *own* interest. Approval of the Proposed Settlement will send a message to mortgage investors that securitization trustees cannot be held to accountable or relied upon to act in the interest of investors.

B. Professor Fischel's Event Study Is Flawed

265. Professor Fischel's Report contains an event study of the effect of the announcement of the Proposed Settlement on BofA's stock price. Fischel Report at ¶¶ 43-48. Professor Fischel contends that the market reaction his study finds is "inconsistent with the objectors' claim that Bank of America received a windfall in the settlement." Fischel Report at Header to ¶ 43. Professor Fischel's analysis is based on a basic logic fallacy.[29]

266. Statistical regression analysis is based on the axiomatic principle of logic that failure to disprove a proposition does not mean that the proposition is true. For example, if the proposition is that "all swans are white," confirmatory evidence in the form of lots of white swans does not mean that the proposition is true. Proving the truth of the

[29] I note that Professor Fischel repeatedly makes assertions in his report based solely on AIG's Verified Petition, rather than on the discovery record.

proposition would require showing that there are no black swans. Failure to spot a black swan does not mean that they do not exist. If we can produce evidence of a black swan, we can determine that the proposition is false. We cannot determine if the proposition is true, only whether it is false.

267. This is what statistical regression analysis does: it tests to see if a proposition can be *disproven*. Failure to disprove the proposition does *not* make the proposition true. All it means is that there was no "black swan" discernible from the data examined.

268. Professor Fischel's event study tests to see if there was a statistically significant (meaning highly likely non-random) movement in Bank of America's share price above its residual return following the announcement of the Proposed Settlement. The method Professor Fischel uses to test for statistical significance is an ordinary least squares (OLS) regression analysis. Such a test is used to determine if a proposition called the "null hypothesis" (e.g., all swans are white) can be rejected or "disproven" (by showing a "black swan").

269. The null hypothesis in Professor Fischel's experiment is that there is only a random relationship between the BofA share price and the announcement of the settlement: "In this case, we conducted a one-tailed test of whether the residual return following the Settlement announcement was positive and statistically significant to test the Objectors' claim that the Settlement was too favorable to Bank of America." Fischel at ¶ 46.

270. Professor Fischel's experiment is not able to disprove the null hypothesis. He finds that the correlation between Bank of America's share price and the announcement of the Proposed Settlement was not statistically significant:

> [O]ur event study finds that the residual return on June 29 was only 0.31 percent with a t-statistic of 0.28, which is positive but far from the minimum threshold for statistical significance. Further, both the residual return (t-statistic) on June 30 and the two-day cumulative residual return over June 29 and June 30 were negative at -2.01 percent (-1.82) and -1.70 percent (-1.09), respectively, and thus obviously not both positive and statistically significant.

271. Fischel Report at ¶ 48. This means that he is not able to *disprove* that the relationship is random. It *does not* mean that he has proven that the relationship is random. That is not within the power of an ordinary least squares regression. Confusing failure to disprove the null hypothesis with proving the null hypothesis is one of the most elementary errors in statistical interpretation. In essence, then, Professor Fischel's report says "I didn't see any black swans. Therefore all swans must be white."

272. An event study that fails to disprove the null hypothesis is basically meaningless. Such a study would not be publishable in any peer-reviewed social science journal.[30]

[30] A more robust analysis would have included controls for other possible events that could have affected BofA's share price. The use of a residual return only captures market-wide events (if done properly), not other firm-specific events. No discussion of controls or even whether Professor Fischel examined for other potentially firm-specific significant events is included in the Report. Likewise, Professor Fischel's Report does not attempt to see the impact of other settlement-related events on the BofA share price. For example, he could have considered the

273. It is also worth noting that there are numerous reasons why BofA's stock price would not have rallied following the announcement of the Proposed Settlement. Two illustrative examples:

- First, Professor Fischel's event study fails to consider the possibility that the market interpreted the Proposed Settlement as an admission by BofA that it would accept its legacy Countrywide MBS liability. BofA's position had been that it would fight every putback on a loan-by-loan basis and that for Countrywide loans, the liability was Countrywide's and not BofA's.
- Second, the participation of the Inside Investors in the settlement could well have shaped market reactions. The presence of the Inside Investors in the Proposed Settlement could well be taken by uninformed analysts as signaling that the Proposed Settlement is reasonable. Moreover, analysts' interpretation of the Proposed Settlement might well be colored by conversations with employees of the Inside Investors. A failure to understand the dynamics surrounding the role of the Inside Investors in the settlement would mean that BofA's share price might not properly reflect a true valuation of the Proposed Settlement.

274. Finally, stock market prices alone are hardly reliable proof of *anything* other than the stock market's valuation of a firm. Professor Fischel exhibits unshaken faith in the efficient market even after the mortgage bubble. Yet, if there is any lesson to be learned from MBS, it is that market prices may not be accurate. MBS were themselves difficult for the market to evaluate. *A fortiori*, it is harder for the market to evaluate a complex settlement of MBS liability, much less do so accurately within the two-day window measured by Professor Fischel.

IV. Financial Jurassic Park: BONY's Actions Follow a Playbook for Trustees Colluding with Issuers and Insiders Against Other Investors.

275. This is not the first time New York courts have been called upon to deal with this very problem. While modern mortgage securitization dates from 1971, its predecessor was the mortgage bonds issued by New York mortgage guarantee companies. These bonds financed the great Art Deco skyscrapers of Manhattan, but collapsed in scandal between 1926 and early 1930s in what Justice William O. Douglas called "one of the greatest tragedies in the history of finance". *SEC Urges Curbing Realty Bond Field*, N.Y. Times, June 4, 1936.

276. Numerous underwriting problems plagued the mortgages that supported these bonds, just like with today's MBS. Appraisals were inflated, documentation was incomplete, and junior mortgages were passed off as senior. The bonds backed by these mortgages were sold to investors as far sounder investments than they in fact were.

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impact on the BofA share price of major rulings in the monoline insurer litigations or the filing of the various interventions in the Article 77 Proceeding, including those of the the New York and Delaware Attorneys General. There is no indication in the Report that Professor Fischel undertook such analysis, which could be used to interpret the findings of his study. Instead, he did a narrow and incomplete analysis, found nothing of statistical significance, and then declared that his finding shows that the Proposed Settlement is reasonable. Professor Fischel's event study is not a serious analysis.

277. There were also serious problems with the trustees of these mortgage bonds. The trustees would frequently permit substitutions of collateral to the detriment of the bondholders or commingle revenues from the collateral for separate bonds so as to use excess cash flow from some projects to cover shortfalls on others. Trustees also failed to notify investors of defaults. As one investment firm from the 1930s noted, "More adequate trusteeship also is a point of vital necessity—a trusteeship which, for example, would not allow a property to continue year after year in default of taxes without advising the bond holders of the situation." *Public Confidence in Realty Bonds*, N.Y. TIMES, Sept. 13, 1931.

278. The mortgage bond trustees of the 1920s permitted this malfeasance and indeed enabled it because they were hopelessly conflicted, just like BONY. As the *New York Times* reported of the '20s mortgage bonds, "The indenture trustee was practically never an independent and aggressive champion of the rights of investors, since he was usually an officer, employee or affiliate of the house of issue." *SEC Urges Curbing Realty Bond Field*, N.Y. TIMES, June 4, 1936.

279. While portraying themselves as independent representatives of the bondholders, the trustees engaged in a "process of 'window dressing' by which some banks and other institutions sold their names for a nominal fee to the issuers of such securities." *State Curb Urged on Realty Bonds*, N.Y. TIMES, Jan. 15, 1933. Thus, even when the trustee was in fact a nominally independent bank, they routinely failed in to protect bondholders, as Justice Douglas noted:

> by and large, the corporate trustee had been sitting idly by while bondholders had been exploited....And when I speak of the corporate trustees, I am speaking about some of the leading banks of the country, some of which served their proprietary interests in an issuing company before fiduciary interests were served.

SEC Asks New Law to Guard Investors under Trustees, N.Y. TIMES, June 19, 1936. Trustees received their business from the deal sponsors, so their future business flow depended upon pleasing the deal sponsors. The mortgage bond trustees were nothing short of "pocket trustees," just like BONY is today.

280. The problem of pet trustees was summed up by Charles G. Edwards, President of the Real Estate Securities Exchange:

> Until trustees actually assume the responsibility of a trustee toward the bondholders for whom they act, the bondholders will still be helpless and without control. It is difficult to understand the attitude of some of the largest banks and trust companies which accept these trusts with no sense whatsoever of the helplessness of their beneficiaries or of their own responsibility as trustees....for while the present method may exonerate them from legal liability, it does not cover them with glory.

Points Out Evils in Bond Issues, N.Y. TIMES, May 17, 1931. Do-nothing, pocket trustees lull investors through the use of the term "trustee," but then eschewing any duties or responsibility and in fact facilitated all sorts of actions against the interests

of the mortgage investors. This is precisely what BONY has done in regard to the MBS investors.

281. New York Attorneys General Albert Ottinger and John Bennett, Jr., both attempted to clean house in the mortgage bond market, but were unsuccessful in compelling compliance. The result was that the New York courts had to deal with a deluge of litigation in the aftermath of the mortgage bond houses failures. *See generally,* Note, *Present Problems in New York Guaranteed Mortgages*, 34 COLUM. L. REV. 663 (1934) (detailing litigation).

282. It took nearly 40 years before the private mortgage securities market reawakened after the scandal of the mortgage bonds. The New York Courts did not have an opportunity in the 1920s to address the failings of the mortgage bond market until the market had collapsed. All that was left for the courts was to pick up the pieces.

283. Today, courts presented with an opportunity to review trustee conduct in the wake of the mortgage crisis are uniquely situated to ensure that trustees act in the interest of trust beneficiaries with "a punctilio of honor the most sensitive." Judicial scrutiny is critical for ensuring that history does not repeat itself.

284. I reserve the right to amend and supplement this report.

APPENDIX A
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DEP. EX. NO.	DEPOSITION EXHIBITS
8	Brian Lin's 6/28/2011 Opinion (BNYM_CW-00120294-300)
9	Brian Lin's 6/07/2011 Opinion (BNYM_CW-00252597-605)
10	Robert Daines' 6/07/2011 Opinion (BNYM_CW-00249578-635)
11	Barry E. Adler's Report dated 5/27/11 (BNYM_CW-00120115-128)
12	Capstone Valuation Services, LLC's Countrywide's valuation analysis dated 6/07/2011 (BNYM_CW-00249770-784)
13	Pooling and Servicing Agreement dated as of July 1, 2005, Countrywide Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2005-35CB (BNYM_CW-00217617-857)
15	Letter [redacted] (BNYM_CW-00008697-702)
16	Faxed Letter [redacted] (BNYM_CW-00008742-759)
18	Letter dated 10/22/10 [redacted] (BNYM_CW-00008766-768)
44	Email [redacted] (BNYM_CW-00271138-139)
46	Letter [redacted] (BNYM_CW-00271275-281)
50	Email [redacted] (BNYM_CW-00270959-960)
52	Letter [redacted] (BNYM_CW-00270587-589)
53	Email [redacted] (BNYM_CW-00270970)
58	Email [redacted] (BNYM_CW-00270570-572)
138	Email [redacted] (BNYM_CW-00273353-357)
185	Letter [redacted] (BNYM_CW-00275367-380)
210	Email [redacted] (BNYM_CW-00254990-998)
235	Email [redacted] (BNYM_CW-00261204)
368	Email [redacted] (BNYM_CW-00276323-325)
DATE	**COURT DOCUMENTS**
6/29/2011	The Bank of New York Mellon's Verified Petition and Exhibits A-F (DKT0001-DKT0007)
8/08/2011	AIG's Memorandum of Law in Support of Verified Petition to Intervene (DKT0109)
8/10/2011	AIG's Verified Petition to Intervene (DKT0131)
	II ISO Settlement (DKT 124 fed)
DATE	**DEPOSITION TRANSCRIPTS**

APPENDIX A
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10/02-10/03/2012	Lundberg Deposition Transcripts, October 2-3, 2012
10/16-10/17/2013	Lin Deposition Transcripts, October 16-17, 2012
11/09/2012	Crosson Deposition Transcript, November 9, 2012
11/12/2012	Golin Deposition Transcript, November 12, 2012
11/28/2012	Mirvis Deposition Transcript, November 28, 2012
11/29/2012	Robertson Deposition Transcript, November 29, 2012
12/05/2012	Waterstredt Deposition Transcript, December 5, 2012
12/05/2012	Smith Deposition Transcript, December 5, 2012
12/13/2012	Adler Deposition Transcript, December 13, 2012
1/03/2013	Griffin Deposition Transcript, January 3, 2013
1/08/2013	Stanley Deposition Transcript, January 8, 2013
1/18/2013	Bingham (Capstone) Deposition Transcript, January 18, 2013
1/24/2013	Daines Deposition Transcript, January 24, 2013
12/03/2012	Bailey Deposition Transcript, December 3, 2012
12/4/2012	Sabry Deposition Transcript, December 4, 2012
DATE	**EXPERTS' OPINIONS**
2/28/2013	John Coates 2/28/2013 Opinion (Unredacted)
2/28/2013	Tamar Frankel's 2/28/2013 Opinion (Unredacted)
3/14/2013	Phillip Burnaman's 3/14/2013 Opinion (Unredacted)
3/14/2013	Charles Cowan's 3/14/2013 Opinion (Unredacted)
3/14/2013	Daniel Fischel's 3/14/2013 Opinion (Unredacted)
3/14/2013	Robert Landau's 3/14/2013 Opinion (Unredacted)
3/14/2013	John Langbein's 3/14/2013 Opinion (Unredacted)
DATE	**SECURITIZATION AGREEMENTS**
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9/30/2004	Indenture dated as of September 30, 2004, CWABS Asset-Backed Notes Trust 2004-SD3 (BNYM_CW-00121905-122032)
	Pooling and Servicing Agreement CWALT 2005-24
	Pooling and Servicing Agreement CWALT 2005-35
	Pooling and Servicing Agreement CWALT 2005-36
	Pooling and Servicing Agreement CWALT 2007-4CB
DATE	**ARTICLES**
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3/17/2013	New York Times article, *Don't Blink or You'll Miss Another Bailout*, by Gretchen Morgensen
10/03/2011	Thomson Reuters article, *Did Gibbs pre-empt rival investor group in BofA's MBS deal,* by Alison Frankel (http://blogs.reuters.com/alison-frankel/2011/10/03/did-gibbs-pre-empt-rival-investor-group-in-bofas-mbs-deal/)
DATE	**ADDITIONAL DOCUMENTS**
2/01/2013	Letter from John G. Moon to The Honorable Barbara R. Kapnick, Re: In re the Application of The Bank of New York Mellon, Index. No. 651786/2011 and attachments
4/28/2011	Email [redacted] (BNYM_CW-00255675-684)
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4/27/2011	Email [redacted] (BNYM_CW-00264539-540)
3/21/2011	Email [redacted] (BNYM_CW-00267655-793)

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	National Mortgage Settlement
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APPENDIX B

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– Thomas Temple Hoopes Prize for Outstanding Senior Honors Thesis

APPENDIX B

LEGAL PUBLICATIONS

Articles

- *Bankruptcy Law and the Cost of Credit: The Impact of Cramdown on Mortgage Interest Rates* (with Joshua Goodman) (in submission)
- *Duties to Serve After the Fall: Rethinking Community Reinvestment and Housing Goals*, Harvard Joint Center of Housing working paper, 2013 (with Janneke Ratcliffe)
- *The Paper Chase: Securitization, Foreclosure, and the Uncertainty of Mortgage Title*, 63 DUKE L.J. (forthcoming 2013)
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- *Hydraulic Regulation: Regulating Credit Markets Upstream*, 26 YALE J. ON REG. 143 (2009)
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APPENDIX B

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- *Remote Deposit Capture: A Legal and Transactional Overview*, 126 BANKING L.J. 115 (2009) (peer-edited journal)
- *Helping Homeowners: Modification of Mortgages in Bankruptcy*, 3 HARV. L. & POL'Y REV. (online) (Jan. 19, 2009) (invited contribution), *at* http://www.hlpronline.com/Levitin_HLPR_011909.pdf
- *Reforming Mortgage* Servicing, Research Brief, American Association of Retired Persons, Dec. 2008
- *All But Accurate: A Critique of the American Bankers Association Study on Credit Card Regulation*, white paper, December 6, 2007, *at* http://papers.ssrn.com/abstract=900444
- *Gifting Plans and Absolute Priority*, 124 BANKING L.J. 722 (2007) (peer-edited journal)
- *The Problematic Case for Incentive Compensation in Bankruptcy*, 155 UNIV. PA. L. REV. PENNUMBRA 88 (2007)
- *Health Care Privacy Issues in Corporate Reorganizations*, Materials Presented Before the American Bankruptcy Institute 2007 New York City Bankruptcy Conference, May 7, 2007 (co-authored with Arthur R. Cormier & Andrew M. Troop)

LEGAL SCHOLARSHIP AWARDS AND GRANTS

- Pew Charitable Trusts, Grant for Strategies for Reviving the Housing Market, 2012
- George Washington University, Center for Law, Economics & Finance, Junior Faculty Scholarship Prize, 2011
- Walton H. Hamilton Prize for Outstanding Scholarship, Yale Journal on Regulation, 2009
- Best Professional Article, American College of Consumer Financial Services Lawyers Annual Writing Competition, 2009
- Stanford-Yale Junior Faculty Forum, 2009
- American Bankruptcy Law Journal's 2007 Editors' Prize

LEGISLATIVE TESTIMONY AND BRIEFINGS

- Testimony Before the House Judiciary Committee, Subcommittee on Intellectual Property, Competition, and the Internet, July 10, 2012 ("The Dodd-Frank Act's Effects on Financial Services Competition")
- Testimony Before the House Financial Services Committee, Subcommittee on Capital Markets and Government Sponsored Institutions, June 7, 2012 ("Investor Protection: The Need to Protect Investors from Government")
- Testimony Before the House Financial Services Committee, Subcommittee on Financial Institutions and Consumer Credit, May 9, 2012 ("Rising Regulatory Compliance Costs and Their Impact on the Health of Small Financial Institutions")
- Testimony Before the House Financial Services Committee, Subcommittee on Financial Institutions and Consumer Credit & Subcommittee on Capital Markets and Government Sponsored Enterprises, Nov. 16, 2011 (Joint Hearing on "H.R. 1697: The Communities First Act").
- Testimony Before the Senate Committee on Banking, Housing, and Urban Affairs, Sept. 13, 2011 ("Housing Finance Reform: Should There Be a Government Guarantee?").
- Testimony Submitted to the House Committee on the Judiciary, Sept. 8, 2011 (H.R. 2533, the "Chapter 11 Bankruptcy Venue Reform Act of 2011").

APPENDIX B

- Testimony Before the House Committee on Small Business, Subcommittee on Oversight, Investigations & Regulation, July 28, 2011 ("Open for Business: The Impact of the CFPB on Small Business").
- Testimony Before the Senate Committee on Banking, Housing, and Urban Affairs, July 19, 2011 ("Enhanced Consumer Financial Protection After the Financial Crisis").
- Testimony Before the House Government Oversight and Reform Committee, Subcommittee on TARP, Financial Institutions, and Bailouts of Public and Private Institutions, May 24, 2011 ("Who's Watching the Watchmen? Oversight of the Consumer Financial Protection Bureau").
- Testimony Before the House Financial Services Committee, Subcommittee on Financial Institutions and Consumer Credit, Apr. 6, 2011 ("Legislative Proposals to Improve the Structure of the Consumer Financial Protection Bureau").
- Testimony Before the House Financial Services Committee, Subcommittee on Housing and Community Opportunity, Nov. 18, 2010 ("Robo-Signing, Chain of Title, Loss Mitigation, and Other Issues in Mortgage Servicing").
- Testimony Before the Senate Committee on Banking, Housing, and Urban Affairs, Nov. 16, 2010 ("Problems in Mortgage Servicing from Modifications to Foreclosures").
- Testimony Before the Financial Crisis Inquiry Commission, Oct. 28, 2010, *at* http://fcic.law.stanford.edu/interviews/view/421.
- "Future of Housing Finance," Center for American Progress Mortgage Finance Working Group Presentation to the U.S. Department of Treasury, August 2, 2010.
- Testimony Before the House Judiciary Committee, Subcommittee on Commercial and Administrative Law, December 11, 2009 ("Home Foreclosures: Will Voluntary Mortgage Modification Help Families Save Their Homes? Part II?").
- Testimony Before the Senate Judiciary Committee, Subcommittee on Administrative Oversight and the Courts, July 23, 2009 ("The Worsening Foreclosure Crisis: Is It Time to Reconsider Bankruptcy Reform?).
- Testimony Before the House Judiciary Committee, Subcommittee on Commercial and Administrative Law, April 2, 2009 (re: Consumer Debt — Are Credit Cards Bankrupting Americans?).
- Testimony Before the Senate Judiciary Committee, Subcommittee on Administrative Oversight and the Courts, Mar. 24, 2009 ("Abusive Credit Card Practices and Bankruptcy," re: Consumer Credit Fairness Act, S.257).
- Testimony Before the Senate Committee on Banking, Housing and Urban Affairs, Feb. 12, 2009 (re: Modernizing Consumer Protection in the Financial Regulatory System: Strengthening Credit Card Protections).
- Testimony Before the House Judiciary Committee, Jan. 22, 2009 (re: Helping Families Save Their Homes in Bankruptcy Act, H.R. 220, and the Emergency Homeownership and Equity Protection Act, H.R. 225).
- Testimony Before the Senate Judiciary Committee, Nov. 19, 2008 (re: Helping Families Save Their Homes in Bankruptcy Act, now S.61).
- "Bankruptcy Modification of Mortgages," Democratic Staff Briefing, United States House of Representatives, November 14, 2008.
- Testimony Before the House Financial Services Committee, Subcommittee on Financial Institutions and Consumer Credit on March 13, 2008 (re: Credit Cardholders' Bill of Rights).
- Testimony Submitted to the Economic Matters Committee, Maryland State House of Delegates, March 6, 2008.
- "Credit Card Regulation," Democratic Staff Briefing, United States House of Representatives, March 5, 2008.

APPENDIX B

PROFESSIONAL SERVICE AND ACTIVITIES

- Reporter, Advisory Committee on Multiple Debtor Cases, American Bankruptcy Institute Commission to Study the Reform of Chapter 11
- World Bank Insolvency and Debtor/Creditor Regime Task Force
- Fellow, Center for Law, Economics and Finance (C-LEAF) at George Washington University Law School
- Center for American Progress, Mortgage Finance Working Group
- Editorial Board, AMERICAN BANKRUPTCY INSTITUTE LAW REVIEW
- Manuscript reviewer for AMERICAN BANKRUPTCY LAW JOURNAL; Cambridge University Press; CITYSCAPE; Conference on Empirical Legal Studies; GEORGETOWN LAW JOURNAL; HOUSING POLICY DEBATE; JOURNAL OF EMPIRICAL LEGAL STUDIES; LAW & SOCIETY REVIEW; Netherlands Organization for Scientific Research; Oxford University Press; YALE LAW JOURNAL; Yale University Press
- Area Organizer for Bankruptcy, American Law and Economics Association (2009)
- Executive Committee Member, AALS Section on Financial Institutions & Consumer Financial Services (2009)
- United States Court of Appeals for the Third Circuit (2006)
- United States District Court for the Southern District of New York (2006)
- United States District Court for the Eastern District of New York (2006)
- New York State Courts (2006)

APPENDIX A
DOCUMENTS RELIED ON

DEP. EX. NO.	DEPOSITION EXHIBITS
8	Brian Lin's 6/28/2011 Opinion (BNYM_CW-00120294-300)
9	Brian Lin's 6/07/2011 Opinion (BNYM_CW-00252597-605)
10	Robert Daines' 6/07/2011 Opinion (BNYM_CW-00249578-635)
11	Barry E. Adler's Report dated 5/27/11 (BNYM_CW-00120115-128)
12	Capstone Valuation Services, LLC's Countrywide's valuation analysis dated 6/07/2011 (BNYM_CW-00249770-784)
13	Pooling and Servicing Agreement dated as of July 1, 2005, Countrywide Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2005-35CB (BNYM_CW-00217617-857)
15	Letter [redacted] (BNYM_CW-00008697-702)
16	Faxed Letter [redacted] (BNYM_CW-00008742-759)
18	Letter dated 10/22/10 [redacted] (BNYM_CW-00008766-768)
44	Email [redacted] (BNYM_CW-00271138-139)
46	Letter [redacted] (BNYM_CW-00271275-281)
50	Email [redacted] (BNYM_CW-00270959-960)
52	Letter [redacted] (BNYM_CW-00270587-589)
53	Email [redacted] (BNYM_CW-00270970)
58	Email [redacted] (BNYM_CW-00270570-572)
138	Email [redacted] (BNYM_CW-00273353-357)
185	Letter [redacted] (BNYM_CW-00275367-380)
210	Email [redacted] (BNYM_CW-00254990-998)
235	Email [redacted] (BNYM_CW-00261204)
368	Email [redacted] (BNYM_CW-00276323-325)
DATE	**COURT DOCUMENTS**
6/29/2011	The Bank of New York Mellon's Verified Petition and Exhibits A-F (DKT0001-DKT0007)
8/08/2011	AIG's Memorandum of Law in Support of Verified Petition to Intervene (DKT0109)
8/10/2011	AIG's Verified Petition to Intervene (DKT0131)
	II ISO Settlement (DKT 124 fed)
DATE	**DEPOSITION TRANSCRIPTS**

APPENDIX A
DOCUMENTS RELIED ON

9/19-9/20/2012	Kravitt Deposition Transcripts, September 19-20, 2012
10/02-10/03/2012	Lundberg Deposition Transcripts, October 2-3, 2012
10/16-10/17/2013	Lin Deposition Transcripts, October 16-17, 2012
11/09/2012	Crosson Deposition Transcript, November 9, 2012
11/12/2012	Golin Deposition Transcript, November 12, 2012
11/28/2012	Mirvis Deposition Transcript, November 28, 2012
11/29/2012	Robertson Deposition Transcript, November 29, 2012
12/05/2012	Waterstredt Deposition Transcript, December 5, 2012
12/05/2012	Smith Deposition Transcript, December 5, 2012
12/13/2012	Adler Deposition Transcript, December 13, 2012
1/03/2013	Griffin Deposition Transcript, January 3, 2013
1/08/2013	Stanley Deposition Transcript, January 8, 2013
1/18/2013	Bingham (Capstone) Deposition Transcript, January 18, 2013
1/24/2013	Daines Deposition Transcript, January 24, 2013
12/03/2012	Bailey Deposition Transcript, December 3, 2012
12/4/2012	Sabry Deposition Transcript, December 4, 2012
DATE	**EXPERTS' OPINIONS**
2/28/2013	John Coates 2/28/2013 Opinion (Unredacted)
2/28/2013	Tamar Frankel's 2/28/2013 Opinion (Unredacted)
3/14/2013	Phillip Burnaman's 3/14/2013 Opinion (Unredacted)
3/14/2013	Charles Cowan's 3/14/2013 Opinion (Unredacted)
3/14/2013	Daniel Fischel's 3/14/2013 Opinion (Unredacted)
3/14/2013	Robert Landau's 3/14/2013 Opinion (Unredacted)
3/14/2013	John Langbein's 3/14/2013 Opinion (Unredacted)
DATE	**SECURITIZATION AGREEMENTS**
9/01/2004	Sale and Servicing Agreement dated as of September 1, 2004, CWABS Asset-Backed Notes Trust 2004-SD3 (BNYM_CW-00121815-904)
9/30/2004	Indenture dated as of September 30, 2004, CWABS Asset-Backed Notes Trust 2004-SD3 (BNYM_CW-00121905-122032)
	Pooling and Servicing Agreement CWALT 2005-24
	Pooling and Servicing Agreement CWALT 2005-35
	Pooling and Servicing Agreement CWALT 2005-36
	Pooling and Servicing Agreement CWALT 2007-4CB
DATE	**ARTICLES**
3/02/2013	New York Times article, *Promises, Promises at the New York Fed,* by Gretchen Morgensen
3/17/2013	New York Times article, *Don't Blink or You'll Miss Another Bailout* , by Gretchen Morgensen
10/03/2011	Thomson Reuters article, *Did Gibbs pre-empt rival investor group in BofA's MBS deal,* by Alison Frankel (http://blogs.reuters.com/alison-frankel/2011/10/03/did-gibbs-pre-empt-rival-investor-group-in-bofas-mbs-deal/)
DATE	**ADDITIONAL DOCUMENTS**
2/01/2013	Letter from John G. Moon to The Honorable Barbara R. Kapnick, Re: In re the Application of The Bank of New York Mellon, Index. No. 651786/2011 and attachments
4/28/2011	Email [redacted] (BNYM_CW-00255675-684)
4/14/2011	Email [redacted] (BNYM_CW-00255774-882)
4/27/2011	Email [redacted] (BNYM_CW-00264539-540)
3/21/2011	Email [redacted] (BNYM_CW-00267655-793)

APPENDIX A
DOCUMENTS RELIED ON

3/10/20122	Email [redacted] (BNYM_CW-00268125-251)
	[redacted] (BNYM_CW00285677-678; BNYM_CW00285675-676; BNYM_CW00285661-674)
	Anna Gelpern & Adam J. Levitin, *Rewriting Frankenstein Contracts: Workout Prohibitions in Residential Mortgage-Backed Securitie* s, 82 S. Calif. L. Rev. 1075, 1081–84 (2009).
	Jason H.P. Kravitt, Securitization of Financial Assets (2d ed.)
	Adam J. Levitin & Tara Twomey, *Mortgage Servicing* , 28 Yale J. on Reg. 1 (2011).
	Robert H. Sitkoff, Trust as "Uncorporation": A Research Agenda, 2005 Ill. L. Rev. 31 (2005).
	http://www.nasdaq.com/symbol/bac/institutional-holdings
	Kate Berry, *Foreclosures Turn Up Heat on MERS,* Am. Banker, July 10, 2007
	National Mortgage Settlement
	OCC Consent Order
	Freddie Mac Seller/Servicer Guide
	Fannie Mae Single Family 2012 Servicing Guide
	Consent Order with the Office of Comptroller of the Currency regarding its mortgage servicing practices (In the Matter of: Bank of America, N.A. Charlotte, N.C., AA-EC-11-12 (Mar. 29, 2011))
	Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages
	US Gov't Accountability Office, *Foreclosure Review: Lessons Learned Could Enhance Continuing Reviews and Activities under Amended Consent Orders* , GAO-13-277, Mar. 2013
	Yves Smith, Whistleblowers Reveal How Bank of America Defrauded Homeowners and Paid for a Cover Up—All With the Help of "Regulators" (2013)
	National Mortgage Settlement Consent Judgment
	Press Release, Oct. 6, 2008, Attorney General Brown Announces Landmark $8.68 Billion Settlement with Countrywide, at http://oag.ca.gov/news/press-releases/attorney-general-brown-announces-landmark-868-billion-settlement-countrywide
	Adam J. Levitin & Susan M. Wachter, *The Commercial Real Estate Bubble* , 2 Harv. Bus. L. Rev. (forthcoming 2013)
	SEC Urges Curbing Realty Bond Field , N.Y. Times, June 4, 1936
	Public Confidence in Realty Bonds , N.Y. Times, Sept. 13, 1931
	State Curb Urged on Realty Bonds , N.Y. Times, Jan. 15, 1933
	SEC Asks New Law to Guard Investors under Trustees , N.Y. Times, June 19, 1936
	Points Out Evils in Bond Issues , N.Y. Times, May 17, 1931
	See generally, Note, *Present Problems in New York Guaranteed Mortgages* , 34 Colum. L. Rev. 663 (1934)
	February 7, 2013 Hearing Transcript
	Steven L. Schwarcz & Gregory M. Sergi, *Bond Defaults and the Dilemma of the Indenture Trustee* , 59 Alabama L. Rev. 1037-1073 (2008)
DATE	**NON-CITED**
	Ernest Allen Barbeau, The Mortgage Bond Racket (1932).
	MORTGAGE-BACKED SECURITIES: PRODUCTS, STRUCTURING, AND ANALYTICAL TECHNIQUES (2011).
	FRANK J. FABOZZI & VINOD KOTHARI, INTRODUCTION TO SECURITIZATION (2008).
	JAMES GRANT, MONEY OF THE MIND (1995)
	Vinod Kothari, Securitization: The Financial Instrument of the Future (2006).
	Thomas P. Lemke, Gerald T. Lins, & Marie E. Picard, Mortgage-Backed Securities: Developments and Trends in the Secondary Mortgage Market (2012-2013 edition).
	Bernard J. Reis, False Security: The Betrayal of the American Investor (1938).

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	Steven L. Schwarcz, *The Conflicted Trustee Dilemma* , 54 N.Y.L. School L. Rev. 707-715 (2010).
	United States Securities & Exchange Commission, *Report on the Study and Investigation of the Work, Activities, Personnel and Functions of the Protective and Reorganization Committees, Part III: Committees for the Holders of Real Estate Bonds* (June 3, 1936)
	Inside Mortgage Finance, 2012 Mortgage Market Statistical Annual
	Email [redacted] (Deposition Ex. 118, BNYM_CW-00255381-384)
	Faxed Letter [redacted] s (Deposition Ex. 143, BNYM_CW-00008697-702)
	Faxed Letter [redacted] (Deposition Ex. 184, BNYM_CW-00273465-469)
	Email dated [redacted] (Deposition Ex. 514, BNYM_CW-00264469-471)
	Email dated [redacted] (Deposition Ex. 515, BNYM_CW-00264453-454)
	Email [redacted] (Deposition Ex. 517, BNYM_CW-00264397-400)
	The Bank of New York Mellon's Consolidated Response to Objections filed 10/31/2011
	Chavez Deposition Transcript, November 30, 2012

APPENDIX B

ADAM J. LEVITIN

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LEGAL EMPLOYMENT & APPOINTMENTS

HARVARD LAW SCHOOL 2012-2013
Bruce W. Nichols Visiting Professor of Law

GEORGETOWN UNIVERSITY LAW CENTER 2007-present
Professor of Law (2011-present)
Associate Professor of Law (2007-2011)

CONSUMER FINANCIAL PROTECTION BUREAU, CONSUMER ADVISORY BOARD 2012-2014
Chair, Mortgage Committee

CONGRESSIONAL OVERSIGHT PANEL FOR TROUBLED ASSET RELIEF PROGRAM Nov. 2008-Dec. 2010
Special Counsel

AMERICAN BANKRUPTCY INSTITUTE Fall 2009
Robert Zinman Scholar in Residence

FEDERAL TRADE COMMISSION Summer 2008
Faculty, Division of Financial Practices Academy

WEIL, GOTSHAL & MANGES LLP, New York, New York 2006-2007
Associate, Business Finance & Restructuring Department

HON. JANE R. ROTH, THIRD CIRCUIT COURT OF APPEALS, Wilmington, Delaware 2005-2006
Judicial Clerk

EDUCATION

HARVARD LAW SCHOOL, J.D., *cum laude*, 2005
– Notes Chair, *Harvard Journal on Legislation*

COLUMBIA UNIVERSITY, M.PHIL. IN HISTORY, 2001, A.M. IN HISTORY, 2000
– Mellon Fellowship in Humanistic Studies
– President's Fellow of the University
– Richard Hofstader Fellow of the Faculty in History

HARVARD COLLEGE, A.B. IN NEAR EASTERN LANGUAGES & CIVILIZATIONS AND HISTORY, *magna cum laude with highest honors in field*, 1998
– Thomas Temple Hoopes Prize for Outstanding Senior Honors Thesis

APPENDIX B

LEGAL PUBLICATIONS

Articles

- *Bankruptcy Law and the Cost of Credit: The Impact of Cramdown on Mortgage Interest Rates* (with Joshua Goodman) (in submission)
- *Duties to Serve After the Fall: Rethinking Community Reinvestment and Housing Goals*, Harvard Joint Center of Housing working paper, 2013 (with Janneke Ratcliffe)
- *The Paper Chase: Securitization, Foreclosure, and the Uncertainty of Mortgage Title*, 63 DUKE L.J. (forthcoming 2013)
- *A Transactional Genealogy of Scandal from Michael Milken to Enron to Goldman Sachs*, 86 S. CAL. L. REV. (forthcoming 2013) (with William Bratton)
- *The Public Option in Housing Finance*, 46 U.C. DAVIS L. REV. (forthcoming 2013) (with Susan Wachter)
- *Skin-in-the-Game: Risk Retention Lessons from Credit Card Securitization*, 81 GEO. WASH. L. REV. (forthcoming 2013)
- *The Commercial Real Estate Bubble*, 2 HARV. BUS. L. REV. (forthcoming 2013) (with Susan Wachter)
- *The Tenuous Case for Derivatives Clearinghouses*, 101 GEO. L.J. 445 (2013)
- *Why Housing?* 23 HOUSING POL'Y DEBATE 5 (2013) (with Susan Wachter) (peer reviewed)
- *Bankrupt Politics and the Politics of Bankruptcy*, 97 CORNELL L. REV. 100 (2012)
- *Explaining the Housing Bubble*, 100 GEO. L.J. 1177 (2012) (with Susan Wachter)
- *The Dodd-Frank Act and Housing Finance: Can It Restore Private Risk-Capital to the Securitization Market?* 29 YALE J. ON REG. 101 (2012) (symposium volume) (with Andrey D. Pavlov & Susan M. Wachter)
- *Rate Jacking: Risk-Based and Opportunistic Pricing in Credit Cards*, 2011 UTAH L. REV. 339 (2011) (symposium issue)
- *Private Disordering? Payment Card Fraud Liability Rules*, 5 BROOKLYN J. OF CORP., FIN. & COMM. LAW 1 (2011) (symposium issue)
- *Mortgage Servicing*, 28 YALE J. ON REG. 1 (2011) (with Tara Twomey)
- *In Defense of Bailouts*, 99 GEO. L.J. 435 (2011)
- *Rewriting Frankenstein Contracts: The Workout Prohibition in Residential Mortgage Backed Securities*, 82 S. CAL. L. REV. 1075 (2010) (with Anna Gelpern)
- *Bankruptcy Markets: Making Sense of Claims Trading*, 4 BROOKLYN J. OF CORP., FIN. & COMM. LAW 64 (2010) (symposium issue)
- *Resolving the Foreclosure Crisis: Modification of Mortgages in Bankruptcy*, 2009 WISC. L. REV. 565 (2009)
- *Hydraulic Regulation: Regulating Credit Markets Upstream*, 26 YALE J. ON REG. 143 (2009)
- *Priceless? The Costs of Credit Cards*, 55 UCLA L. REV. 1321 (2008)
- *Priceless? The Social Costs of Credit Card Merchant Restraints*, 45 HARV. J. ON LEGIS. 1 (2008)
- *Payment Wars: The Merchant-Bank Struggle for Control of Consumer Payment Systems*, 12 STAN. J. L., BUS. & FIN. 425 (2007)
- *Finding Nemo: Rediscovering the Virtues of Negotiability in the Wake of Enron*, 2007 COLUM. BUS. L. REV. 83 (2007)
- *Toward a Federal Common Law of Bankruptcy: Judicial Lawmaking in a Statutory Regime*, 80 AM. BANKR. L.J. 1 (2006) (double-blind peer-reviewed journal, published by National Conference of Bankruptcy Judges)
- *The Limits of Enron: Counterparty Risk in Bankruptcy Claims Trading*, 15 J. BANKR. L. & PRAC. 389 (2006) (peer-reviewed journal)

APPENDIX B

- *The Merchant-Bank Struggle for Control of Payment Systems*, 17 J. FIN. TRANSFORMATION 73 (2006) (peer-reviewed journal)
- *The Antitrust Super Bowl: America's Payment Systems, No-Surcharge Rules, and the Hidden Costs of Credit*, 3 BERKELEY BUS. L.J. 265 (2005)

Book Chapters and Encyclopedia Entries

- *Electronic Transfers from the Consumer's Account*, in CONSUMER BANKING AND PAYMENTS LAW (Nat'l Consumer Law Center, 5th ed. 2013)
- *Deregulation and the Financial Crisis of 2008,* in REGULATORY BREAKDOWN? THE CRISIS OF CONFIDENCE IN U.S. REGULATION, Cary Coglianese, ed. (University of Pennsylvania Press 2012) (with Susan M. Wachter)
- *Mortgage Market Character and Trends: USA*, in THE HOUSING ENCYCLOPEDIA, Susan Smith, ed., (Cambridge University Press 2012) (with Susan Wachter)
- *American Mortgages,* in THE HOUSING ENCYCLOPEDIA, Susan Smith, ed., (Cambridge University Press 2012) (with Susan Wachter)
- *Fiscal Federalism and the Limits of Bankruptcy*, in WHEN STATES GO BROKE: ORIGINS, CONTEXT, AND SOLUTIONS FOR THE AMERICAN STATES IN FISCAL CRISIS, Peter Conti-Brown & David A. Skeel, Jr., eds. (Cambridge University Press 2011)
- *Information Asymmetries in the U.S. Mortgage Crisis*, in THE AMERICAN MORTGAGE SYSTEM: RETHINK, RECOVER, REBUILD, Susan M. Wachter & Martin M. Smith, eds. (University of Pennsylvania Press 2011) (with Susan M. Wachter)
- *Modification of Mortgages in Bankruptcy*, LESSONS FROM THE FINANCIAL CRISIS: INSIGHTS AND ANALYSIS FROM TODAY'S LEADING MINDS, Richard W. Kolb, ed. (Wiley 2009)

Shorter Articles and Research Papers

- *An Analysis of the Proposed Interchange Fee Litigation Settlement, at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2133361
- *Clearing the Mortgage Market Through Principal Reduction: A Bad Bank for Housing (RTC 2.0),* Pew Charitable Trusts Strategies to Improve the Housing Market Research Paper (2012), *available at* http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Clearing_the_Mortgage_Market.pdf.
- *What Next for Housing Finance?* 15 WHARTON REAL ESTATE REV. (forthcoming 2012) (with Susan Wachter)
- *Cross-Routing: PIN and Signature Debit Interchangeability Under the Durbin Amendment,* 2 LYDIAN J.16 (Dec. 2010)
- *Interchange Regulation: Implications for Credit Unions*, Research Brief #224, The Filene Research Institute, November 2010
- *Back to the Future with Chapter 13: A Reply to Professor Scarberry*, 37 PEPPERDINE L. REV. 1261 (2010).
- *Overdraft Regulation: A Silver Lining to the Regulatory Clouds?*, Research Brief #211, The Filene Research Institute, April 2010
- *The Credit C.A.R.D. Act: Opportunities and Challenges for Credit Unions*, Research Brief #202, The Filene Research Institute, Dec. 2009
- *Critique of Evans and Wright's Study of the Consumer Financial Protection Agency Act*, white paper, Oct. 22, 2009, *available at* http://ssrn.com/abstract=1492471
- *Bad and Good Securitization*, 13 WHARTON REAL ESTATE REV. 23 (2010) (with Andrey Pavlov and Susan Wachter), *available at* http://papers.ssrn.com/abstract=1462895
- *The Consumer Financial Protection Agency*, Policy Analysis, Pew Charitable Trusts Financial Reform Project, Research Brief #2, July 2009

APPENDIX B

- *The Crisis Without a Face: Emerging Narratives of the Financial Crisis*, 63 U. MIAMI L. REV. 999 (2009) (invited foreword to themed volume)
- *Remote Deposit Capture: A Legal and Transactional Overview*, 126 BANKING L.J. 115 (2009) (peer-edited journal)
- *Helping Homeowners: Modification of Mortgages in Bankruptcy,* 3 HARV. L. & POL'Y REV. (online) (Jan. 19, 2009) (invited contribution), *at* http://www.hlpronline.com/Levitin_HLPR_011909.pdf
- *Reforming Mortgage* Servicing, Research Brief, American Association of Retired Persons, Dec. 2008
- *All But Accurate: A Critique of the American Bankers Association Study on Credit Card Regulation*, white paper, December 6, 2007, *at* http://papers.ssrn.com/abstract=900444
- *Gifting Plans and Absolute Priority*, 124 BANKING L.J. 722 (2007) (peer-edited journal)
- *The Problematic Case for Incentive Compensation in Bankruptcy*, 155 UNIV. PA. L. REV. PENNUMBRA 88 (2007)
- *Health Care Privacy Issues in Corporate Reorganizations*, Materials Presented Before the American Bankruptcy Institute 2007 New York City Bankruptcy Conference, May 7, 2007 (co-authored with Arthur R. Cormier & Andrew M. Troop)

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- Walton H. Hamilton Prize for Outstanding Scholarship, Yale Journal on Regulation, 2009
- Best Professional Article, American College of Consumer Financial Services Lawyers Annual Writing Competition, 2009
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LEGISLATIVE TESTIMONY AND BRIEFINGS

- Testimony Before the House Judiciary Committee, Subcommittee on Intellectual Property, Competition, and the Internet, July 10, 2012 ("The Dodd-Frank Act's Effects on Financial Services Competition")
- Testimony Before the House Financial Services Committee, Subcommittee on Capital Markets and Government Sponsored Institutions, June 7, 2012 ("Investor Protection: The Need to Protect Investors from Government")
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APPENDIX B

- Testimony Before the House Committee on Small Business, Subcommittee on Oversight, Investigations & Regulation, July 28, 2011 ("Open for Business: The Impact of the CFPB on Small Business").
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- Testimony Before the House Financial Services Committee, Subcommittee on Financial Institutions and Consumer Credit, Apr. 6, 2011 ("Legislative Proposals to Improve the Structure of the Consumer Financial Protection Bureau").
- Testimony Before the House Financial Services Committee, Subcommittee on Housing and Community Opportunity, Nov. 18, 2010 ("Robo-Signing, Chain of Title, Loss Mitigation, and Other Issues in Mortgage Servicing").
- Testimony Before the Senate Committee on Banking, Housing, and Urban Affairs, Nov. 16, 2010 ("Problems in Mortgage Servicing from Modifications to Foreclosures").
- Testimony Before the Financial Crisis Inquiry Commission, Oct. 28, 2010, *at* http://fcic.law.stanford.edu/interviews/view/421.
- "Future of Housing Finance," Center for American Progress Mortgage Finance Working Group Presentation to the U.S. Department of Treasury, August 2, 2010.
- Testimony Before the House Judiciary Committee, Subcommittee on Commercial and Administrative Law, December 11, 2009 ("Home Foreclosures: Will Voluntary Mortgage Modification Help Families Save Their Homes? Part II?").
- Testimony Before the Senate Judiciary Committee, Subcommittee on Administrative Oversight and the Courts, July 23, 2009 ("The Worsening Foreclosure Crisis: Is It Time to Reconsider Bankruptcy Reform?).
- Testimony Before the House Judiciary Committee, Subcommittee on Commercial and Administrative Law, April 2, 2009 (re: Consumer Debt — Are Credit Cards Bankrupting Americans?).
- Testimony Before the Senate Judiciary Committee, Subcommittee on Administrative Oversight and the Courts, Mar. 24, 2009 ("Abusive Credit Card Practices and Bankruptcy," re: Consumer Credit Fairness Act, S.257).
- Testimony Before the Senate Committee on Banking, Housing and Urban Affairs, Feb. 12, 2009 (re: Modernizing Consumer Protection in the Financial Regulatory System: Strengthening Credit Card Protections).
- Testimony Before the House Judiciary Committee, Jan. 22, 2009 (re: Helping Families Save Their Homes in Bankruptcy Act, H.R. 220, and the Emergency Homeownership and Equity Protection Act, H.R. 225).
- Testimony Before the Senate Judiciary Committee, Nov. 19, 2008 (re: Helping Families Save Their Homes in Bankruptcy Act, now S.61).
- "Bankruptcy Modification of Mortgages," Democratic Staff Briefing, United States House of Representatives, November 14, 2008.
- Testimony Before the House Financial Services Committee, Subcommittee on Financial Institutions and Consumer Credit on March 13, 2008 (re: Credit Cardholders' Bill of Rights).
- Testimony Submitted to the Economic Matters Committee, Maryland State House of Delegates, March 6, 2008.
- "Credit Card Regulation," Democratic Staff Briefing, United States House of Representatives, March 5, 2008.

APPENDIX B

PROFESSIONAL SERVICE AND ACTIVITIES

- Reporter, Advisory Committee on Multiple Debtor Cases, American Bankruptcy Institute Commission to Study the Reform of Chapter 11
- World Bank Insolvency and Debtor/Creditor Regime Task Force
- Fellow, Center for Law, Economics and Finance (C-LEAF) at George Washington University Law School
- Center for American Progress, Mortgage Finance Working Group
- Editorial Board, AMERICAN BANKRUPTCY INSTITUTE LAW REVIEW
- Manuscript reviewer for AMERICAN BANKRUPTCY LAW JOURNAL; Cambridge University Press; CITYSCAPE; Conference on Empirical Legal Studies; GEORGETOWN LAW JOURNAL; HOUSING POLICY DEBATE; JOURNAL OF EMPIRICAL LEGAL STUDIES; LAW & SOCIETY REVIEW; Netherlands Organization for Scientific Research; Oxford University Press; YALE LAW JOURNAL; Yale University Press
- Area Organizer for Bankruptcy, American Law and Economics Association (2009)
- Executive Committee Member, AALS Section on Financial Institutions & Consumer Financial Services (2009)
- United States Court of Appeals for the Third Circuit (2006)
- United States District Court for the Southern District of New York (2006)
- United States District Court for the Eastern District of New York (2006)
- New York State Courts (2006)

Exhibit 4

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY : CIVIL TERM : PART 39

In the matter of the application of

THE BANK OF NEW YORK MELLON, (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), BlackRock Financial Management Inc.(intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor), Metropolitan Life Insurance Company (intervenor), Trust Company of the West and affiliated companies controlled by the TCW Group, Inc. (intervenor), Neuberger Berman Europe Limited (intervenor), Pacific Investment Management Company LLC (intervenor), Goldman Sachs Asset Management, L.P. (intervenor), Teachers Insurance and Annuity Association of America (intervenor), Invesco Advisors, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank Baden-Wuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital LLC (intervenor), ING Investment Management LLC (intervenor), Nationwide Mutual Insurance Company and its affiliated companies (intervenor), AEGON USA Investment Management LLC, authorized signatory for 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 (intervenor), Federal Home Loan Bank of Atlanta (intervenor), Bayerische Landesbank (intervenor), Prudential Investment Management, Inc. (intervenor), and Western Asset Management Company (intervenor),

Petitioners,

Index No.
6517886/2011

For an order, pursuant to C.P.L.R. 7701, seeking judicial instructions and approval of a proposed settlement.

February 7, 2013

60 Centre Street
New York, New York

B E F O R E:

HON. BARBARA R. KAPNICK, Justice

Proceedings

THE COURT: Do they change?

MR. INGBER: No.

What's different, okay, what's different is that, before an event of default, the trustee doesn't have to exercise any rights whatsoever. It has to fulfill its obligations, it's duties. It doesn't have to fulfill any rights. It doesn't have to exercise any of its rights before an event of default. After an event of default, it has to exercise those rights that a prudent trustee would exercise. That is the difference between before an event of default and an after an event of default.

And the reason why I said it's irrelevant is because the trustee exercised the right -- the trustee exercised the right to pursue remedies against Bank of America and Countrywide. It had nine months of negotiations, which culminated in the largest private settlement in history. It did more than any other trustee was doing at the time. So it not only acted prudently, it acted above and beyond what every trustee was doing. So the argument about whether an event of default occurred or didn't occur is -- it's a non sequitur, in a way, it's a red herring, because we fulfilled whatever obligations we had post event of default by having these discussions, by looking for a remedy that was in the best interests of the trust and having that discussion, that nine-month discussion

culminating in this settlement agreement. So this has nothing to do with -- the question of whether there's an event of default is irrelevant and it has nothing to do with the question of whether we've put legal advice at issue.

What we -- and I'd like to respond. I know we're running out of time. I'd like to respond to some of the points before we --

THE COURT: Okay. What about the second thing on his chart, the second item, where he says the event of default would also, in addition to requiring you to act as a prudent person -- and you're telling me you acted as an exceedingly prudent person --

MR. INGBER: Yes.

THE COURT: -- whether it occurred or not. But what about the obligation to give notice of the event of default to all the certificate holders, not just Ms. Patrick's clients, but their clients and everybody else?

MR. INGBER: If there is, in fact, an event of default -- and let's be clear about what was going on at the time. Ms. Patrick issued what's called a notice, a notice of nonperformance.

THE COURT: Okay.

MR. INGBER: That was not a notice of an event of default, it was a notice of nonperformance. And it purported to trigger a 60-day cure period.

Exhibit 5

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

In the Matter of the Application of THE BANK OF NEW YORK MELLON (As Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), et al., Petitioners, for an order, pursuant to C.P.L.R. 7701, seeking judicial instructions and approval of a proposed Settlement.	Index No. 651786/2011

VIDEOTAPED DEPOSITION OF

JOHN LANGBEIN

Thursday, April 18, 2013

51 Madison Avenue

New York, New York

Reported by:
AYLETTE GONZALEZ, CLR
JOB NO. 60113

A. 7.03b is not what I'm looking at. I'm looking at 7.01(ii), which is a precondition.

Q. And what do you understand the forbearance to do with this precondition in 7.01(ii)?

A. This is a provision that talks about a failure continuing unremedied for 60 days after the date on which written notice has been given by the holders of the 25 percent.

And what happened here is, that they gave notice, but then extended the effective date for purposes of trying to negotiate appropriate settlement.

I believe that implicit in their control over the triggering event here in 7.01(ii) is their power for -- their power to extend that 60-day period. And I think the Trustee has a fiduciary power and fiduciary duty to agree to that if it thinks it's acting in the best interest of all the beneficiaries.

Q. And so that I may know what definitions you're using, what your words meant there, when you said "they gave notice,"

first, who is the "they"? Is that Kathy Patrick and the firm of Gibbs & Bruns?

A. Yes.

Q. When you say "they gave notice," you mean Gibbs & Bruns gave notice of the event of default and then entered in the Forbearance Agreement?

MR. HOUPT: Objection to form.

A. Yes, Gibbs & Dunn gave notice on behalf of its 25 percent-plus group of a failure of the sort indicated in Section 7.01(ii).

Having done so, however, as I've said, they had the ability to -- to extend out that date in order to -- in order to achieve a suitable settlement. They had the right to insist on the 60 days, they had the right by implication to extend it.

Q. Well, actually, they have the rights and duties that relate to 60 days because it's written into 7.01(ii), but the words or such other date as the parties may agree upon doesn't appear there, right?

A. The language you've just indicated does not appear there, but I've indicated why

first sentence appears to limit the Trustee to only those duties specifically set forth in this agreement, whereas after an event of default, that limitation is not again repeated, but, on the other hand, there's a general reference to fiduciary obligation.

I've indicated to you that I think that the language in the 200s provides a basis for the trustee's activity here, and that if you compare that activity with what would have happened in the event of default from the standpoint of the trustee's standard of care and fiduciary duty, I don't think that there's much difference.

Q. I'd like to look at this, though, from the position of the certificate holders, so let's look at that.

Under well-established trust law, you'd agree that in the event of a default and pursuant to the PSAs, the trustee's duties increase?

A. Well, I hear you, now tell me where and how?

Q. You don't see it?

A. What I have said is, that I think

that the trustee's duty is related to its ownership of these assets, and that the Trustee certainly had the power to take the kinds of steps that it did. And once it exercised that power, then the exercise carries with it fiduciary duties appropriate to the power.

Q. Let me come at it a different way if we could.

You certainly agree that pursuant to the PSAs, once the -- one of the consequences of an event of default is that the certificate holders can give the Trustee a written request to sue?

A. Yes, remind me where that is. That's over in --

Q. 10.08.

A. Yes.

Q. You do recall that?

A. Yes.

Q. Professor?

A. Yes.

Q. Let me direct you to my questioning here. We've talked earlier about the "for" in event of default, when somebody wants to

Exhibit 6

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

----------X

In the Matter of the Application of

Index No. 651786/

THE BANK OF NEW YORK MELLON
(As trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), et al.,

Assigned to Kapnick, J.

Petitioners,

for an order, pursuant to C.P.L.R. Rule 7701, seeking judicial instructions and approval of a proposed settlement.

----------X

* C O N F I D E N T I A L *

VIDEOTAPED DEPOSITION

OF

ROBERT GRIFFIN

New York, New York

Thursday, January 3, 2013

Reported by:
ANNETTE ARLEQUIN, CCR, RPR, CCR, CLR
JOB NO. 56770

[redacted]

R. Griffin - Confidential

A. No, not because we were being indemnified from Bank of America. We looked at this as being very beneficial for holders.

MR. INGBER: Don't get into substance of communications with counsel.

THE WITNESS: Okay.

BY MS. BRASWELL:

Q. You saw this as being beneficial to holders, correct?

A. Correct.

Q. And you believed that the trustee had the authority to enter into the forbearance agreement?

MR. INGBER: You're asking Mr. Griffin's personal opinion on the question of whether the trustee was authorized or could enter into the forbearance agreement?

MS. BRASWELL: Correct.

A. Yes.

Q. Can you tell me what provision of the Pooling and Servicing Agreement authorizes the trustee to enter into a forbearance agreement?

A. No.

[redacted]

Exhibit 7

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

In the Matter of the Application of

Case No. 11-cv-5988(WHP)

THE BANK OF NEW YORK MELLON
(As trustee under various Pooling and
Servicing Agreements and Indenture
Trustee under various indentures),
et al.,

Petitioners,

v.

WALNUT PLACE LLC, et al.,

Intervenor-Respondents.

----------X

VOLUME I

VIDEOTAPED DEPOSITION

OF

JASON H.P. KRAVITT, ESQUIRE

New York, New York

Wednesday, September 19, 2012

Reported by:
ANNETTE ARLEQUIN, CCR, RPR, CCR, CLR
JOB NO. 53618

confirmation of verification of required holdings, an indemnity, confidentiality requirements, what the bondholders are precisely instructing the trustee to do, who are going to be the legal parties, et cetera. It defines the bounds of their relationship.

And up to that point, the certificate holders and the Bank of New York had not been able to negotiate and accept an instruction acceptable to both sides.

I had been through that in a general way. I had what I thought were the issues dividing the two parties and I went to Houston on a very basic level with the hope that I could work out all those issues with Ms. Patrick, and that we could then proceed to a binding instruction and then follow the directions of the instruction.

Q. The instruction that you were talking about is not called for in the subject Pooling and Servicing Agreements, correct?

MR. GONZALEZ: Objection to the form.

And also objection to -- or an instruction to the witness that he may

own selfish interests.

She never said I repre -- she never said or not that I represent other certificate holders, only she characterized what she could negotiate for.

Q. Did you in any of those meetings ever say to anyone that the Bank of New York Mellon was acting in the interests of the certificate holders not represented by Gibbs & Bruns?

A. We stated many times in front of all the parties that we might disagree with other parties at one time or another and in each case it might be because we were taking into consideration what was best for the certificate holders as a whole. That was our job and sometimes that would lead us into conflict with other parties.

Q. Did it ever lead you into conflict with your representation with Bank of New York Mellon?

MR. GONZALEZ: Objection to form. Vague.

And I'd also instruct the witness not to answer to the extent he has to reveal

forbearance agreement right at that meeting. I don't remember if we started discussions of it then or subsequent.

Q. Who then raised the forbearance agreement?

A. I have to amend what I just said, okay?

Q. Um-hmm.

A. I think I read an email that was not a privileged email, talking about the forbearance agreement coming out of the November 18th meeting. That's the best of my memory, so we may very well have discussed it at that meeting.

Q. And my question was who raised it.

A. I don't recall who would have raised it initially.

Q. And what was its purpose?

A. What was what's purpose?

Q. The purpose of the forbearance agreement.

A. It's very difficult in my experience, and I know you guys are going to start to roll your eyes now, in my 42 years of experience to

negotiate something as big and complicated as this with the possible threat of an event of default outstanding hanging over it. It makes you go too fast instead of considering everything very carefully. It has potential instability because other parties can start things that disrupt the negotiations.

So the purpose of the forbearance agreement was to create stability while we thought there was a still a good chance of negotiating something constructive.

And I'd like to point out that the way the forbearance agreement was drafted, that everybody would be in exactly the same position they'd been in when the forbearance started if the discussions fell through. Nobody was waiving any rights permanently, including the trustee, so that if the discussions fell through, the notice period ended, the certificate holders would potentially have an event of default and the trustee would also potentially have an event of default and have to decide what its rights and obligations were at that time to deal with it.

Jason H.P. Kravitt

[redacted]

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

----------X
In the Matter of the Application of

Index No. 651786/

THE BANK OF NEW YORK MELLON
(As trustee under various Pooling and Servicing Agreements
and Indenture Trustee under various Indentures), et al.,

Assigned to Kapnick, J.

Petitioners,

for an order, pursuant to C.P.L.R. Rule 7701, seeking judicial instructions and approval of a proposed settlement.
----------X

* C O N F I D E N T I A L *

VOLUME II

VIDEOTAPED DEPOSITION

OF

JASON H.P. KRAVITT, ESQUIRE

New York, New York

Thursday, September 20, 2012

Reported by:
ANNETTE ARLEQUIN, CCR, RPR, CCR, CLR
JOB NO. 53619

But in my discussions with Gibbs & Bruns, both before November 18th and after November 18th, Ms. Patrick never threatened, to the best of my memory, never threatened to sue Bank of New York over any action in connection with these matters.

Q. Did you see any media coverage before November 18th that suggested that she was considering a suit against Bank of New York Mellon?

MR. GONZALEZ: Objection. Asked and answered.

A. All I remember reading was an article on the letter of non -- notice of noncompliance that she had sent.

I don't -- at this point I don't recall whether in that article there was any speculation or quotation on whether she was going to sue the Bank of New York.

Q. So were you -- is your testimony that from November 18th, 2010 until June 29th, 2011, that in every conversation you had on an almost daily basis with Ms. Patrick you were aligned on the same issues?

event of default with Ms. Patrick at that time frame?

A. We discussed the forbearance agreement.

Q. And within that was the concept of the event of default considered?

A. As I stated yesterday, my strategy, and as far as I could tell Bank of America's strategy as well, was to try to negotiate what we could agree on and not waste time on things that parties would have to fight on unless it became necessary to fight on them.

So to the best of my recollection, Ms. Patrick and I never had a debate on whether an event of default was outstanding, but what to do about the allegation of noncompliance.

Q. Well, my question is intended to be as broad as possible on that issue so I'm asking, did you have any conversation in that time frame with Ms. Patrick about the concept of an event of default?

MR. GONZALEZ: Objection to form. Asked and answered.

A. We didn't discuss what an event of

default was, we discussed what to do about the notice she had sent.

Q. Because there was a question about whether an event of default had been triggered?

MR. MADDEN: I'm going to object. That's getting into the substance. He's told you they generally discussed issues around the event of default and the forbearance agreement.

MR. GONZALEZ: And I'm going to object also as to form and lacking foundation and in light of Mr. Madden's objection, I'll instruct the witness not to answer.

A. I'm following the instruction.

Q. You did discuss with Ms. Patrick in that time frame the concept of a forbearance agreement, correct?

A. That is correct.

Q. And you did discuss in that time frame whether or not Bank of New York Mellon was going to get an indemnity through that process?

MR. MADDEN: Objection. Vague.

A. To the best of my recollection, we

Jason H. P. Kravitt - Confidential

Are you saying you represented the certificate holders' interests and not the bank's interest separately?

MR. GONZALEZ: Objection. Asked and answered.

With the same instruction, you can try to help Mr. Reilly out here.

THE WITNESS: Okay. I'll try to help him out.

A. We represented the Bank of New York Mellon as trustee.

However, the bank, I don't know if however is the right word, semicolon, and the Bank of New York Mellon as trustee in asking for advice, as we stated publicly, wished to take the interests of the non-participating certificate holders into consideration whenever it would make a decision.

Q. And what about the interest of the Bank of New York Mellon trustee as a potential defendant in a lawsuit brought by Gibbs & Bruns?

Are you representing in that regard at this time?

MR. GONZALEZ: Objection to form.

Jason H. P. Kravitt - Confidential

Objection by counsel.

"ANSWER: According to the press and as played out in the press, there was hostility.

"QUESTION: Well, I thought you testified yesterday you knew there was hostility between Bank of New York Mellon and Gibbs & Bruns before you were retained?")

A. I think that's a fair question.

It was my impression that there was actual hostility between Gibbs & Bruns and Bank of America before I got involved.

Q. And how did you get that impression? Separate from the media.

A. Well, from talking to each of them.

Q. And you spoke to Gibbs & Bruns about that hostility?

A. Again, Dan, I don't mean this in any evil way, it was my strategy to try and have progress based on getting parties to agree on what they would agree on and not have them fight about what they probably couldn't agree on.

So when I talked to Gibbs & Bruns, we

didn't spend a lot of time talking about their hostility to B of A; rather I talked to them about what we could agree on in terms of a letter of direction.

And then when I talked to B of A, it was just to get their impression of where things stood. I didn't debate any issue with them.

Q. When you went to Houston to meet with Ms. Patrick for the first time, did you know that Pillsbury, the previous law firm, had taken the position that before Bank of New York Mellon could retain Gibbs & Bruns on a contingency fee, that the bank would need to give notice to all certificate holders?

MR. GONZALEZ: Objection to form.

And also instruct the witness that to the extent he knows and his answer requires him to reveal attorney-client communications or communications with other attorneys for the bank, he's instructed not to do so.

A. I just don't recall.

Q. Well, did you read the correspondence between Pillsbury on behalf of the Bank of New

okay? I think they were all below 1.5.

Q. Okay.

A. Then I said, I also said that when it came time for them to present their own analysis, they presented an analysis that had a range of somewhere in the 20s to the low 50s.

I also stated that I attended a negotiating session where B of A offered something on the order of $4.5 billion and they were told that was inadequate.

Q. And you saw that happen --

A. I saw that happen.

Q. -- before your very eyes.

A. With my very eyes. I saw Terry Laughlin state that and he was told that was inadequate.

Q. And who told him that?

A. Kathy told him, but I would have told him that if she hadn't.

Q. You thought 4, was it 4-and-a-half?

A. Yes, sir.

Q. $4-and-a-half billion was inadequate?

A. Yes.

Q. Did you have a high end number that

it all up, but I just haven't been keeping a running total in my mind.

Q. As to the experts, is Bank of America paying the experts directly or is Bank of New York billing them and then sending them on to Bank of America?

A. Like our fees, Bank of New York is being billed and then they're being sent on to Bank of America.

Q. Do you know if there's any redaction process through the bills sent by the experts to Bank of New York before they're sent to Bank of America?

A. I just don't recall.

Q. Are there any experts that were retained by Bank of New York Mellon that Bank of America has refused to pay?

A. Not to the best of my recollection.

Q. Does Mayer Brown have to clear any work that it's going to do on this matter before it does it with Bank of America?

A. No, sir.

Q. Do the experts have to clear any work they might do on this matter before they do it

with Bank of America?

A. No, sir.

Q. I'm handing you what's been marked as deposition Exhibit 53.

THE REPORTER: Previously marked?

MR. REILLY: Previously marked.

MR. GONZALEZ: Fifty-three.

BY MR. REILLY:

Q. And this is an email from you to the lawyers for Bank of America on December 1st, 2010, correct?

A. That's correct.

Q. And this was -- at that time Bank of New York Mellon was considering giving notice to certificate holders; is that correct?

A. That's correct.

Q. And that would have been notice of the event of default, correct?

A. I don't know precisely what the notice would have been with regard to. It may very well not have been notice with regard to the notice of default, but, for example, to the agreement of forbearance.

Q. Well, was there a discussion about

MR. REILLY: I think he said there was.

A. I said it was a reasonable infer -- I believe I said there was a reasonable inference this was in response to a phone call.

MR. REILLY: Ninety-seven.

(Handing.)

BY MR. REILLY:

Q. I'm handing you what's been previously marked as deposition Exhibit 97.

Did you have conversations with Mr. Mirvis about how the settlement funds would be allocated among the trusts?

A. I had numerous conversations with both B of A and its representatives, and Kathy Patrick, her team, on what was the fairest way to do the allocation between the trust and within the trust.

Q. And there were a number of different possibilities, correct?

A. There were a large number of pockets.

Q. And what was ultimately decided as to the methodology among the trusts?

A. Well, as the Settlement Agreement

Jason H. P. Kravitt - Confidential

provides in Article 3, if I remember correctly, there is a percentage calculated as follows:

With regard to each trust, you take the losses that have occurred to the date of calculation. Then our ex -- calculated by NERA, our expert.

Then NERA predicts the losses that will occur through the end of that trust and that you get a number which is the sum of those two things for each trust.

You add all those numbers together and get a denominator.

Then each trust takes that individual sum, divides it by the denominator and that's its percentage of the $8.5 billion cash payment.

Q. And why was it determined that that was a fair way to handle the allocation?

MR. GONZALEZ: I'm going to instruct the witness to be mindful in answering that question to not divulge attorney work product or attorney-client communication.

A. Well, as the parties discussed, our overleaning goal was to figure out what was a practical way to do it that was fair.

Jason H. P. Kravitt - Confidential

And let's just think for a second about the settlement and breach of warranty. Let's say that you have two trusts; one that's had more losses than the other, but the one that's had fewer losses has more breaches of warranty. It's certainly possible, okay?

Since the settlement was not repurchasing mortgage loans that were leaving the trust but just paying a lump sum of cash, if you put the cash into the trusts in proportion to some calculation of breaches, you would be unduly benefiting the trusts that didn't have losses because you weren't taking the loans out of them.

So they wouldn't need the cash because they didn't have losses and they'd be getting extra cash, whereas the trust that had losses, even though they might have fewer breaches or more breaches and needed the money, would not be getting it.

So what we did is allocate the cash based on the percentage of breaches -- percentage of losses we felt would be related to breach of warranties and multiplied that

percentage times losses. In that fashion the money would go where it was needed and not go to where it wasn't needed.

Q. What was the purpose of the institutional investor agreement?

A. Well, the settlement was between the trust and B of A. It was a two-party agreement. It was not an agreement between the institutional investors and the trust -- excuse me, the trustee and B of A. It was not an agreement between the three different sets of parties.

So the parties decided that to the extent the institutional investors wanted to make sure something happened and to the extent that either B of A or the trustee wanted to make sure the institutional investors behaved in a particular way, we needed a separate three-party agreement to make sure of that.

Q. And what do you understand the effect of its existence to be?

MR. GONZALEZ: I'm going to instruct the witness to be mindful to not divulge any privileged communications or attorney

quite rationally that using that as a model was at least as good as sampling and probably better.

(Mr. Madden not present.)

Q. Now, you've been asked a number of questions regarding the forbearance agreement.

Do you recall generally those questions?

A. Yes.

Q. Now, were there any discussions among the parties to the forbearance agreement regarding whether the forbearance agreement had any effect on the ability of any certificate holder to send its own notice of an event of default?

A. As we discussed among the parties, there is nothing in the forbearance agreement which prevented any group of certificate holders with the requisite percentage of holdings in any trust from giving the same notice to the trustee that Ms. Patrick's clients had done, waiting for the period to -- notice period to expire, and then give an instruction to the trustee to take action and sue if the trustee didn't.

Exhibit 8

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

In the Matter of the Application of THE BANK OF NEW YORK MELLON (As Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), et al., Petitioners, for an order, pursuant to C.P.L.R. 7701, seeking judicial instructions and approval of a proposed Settlement.	Index No. 651786/2011

VIDEOTAPED DEPOSITION OF

ROBERT LANDAU

Friday, April 19, 2013

51 Madison Avenue

New York, New York

Reported by:
AYLETTE GONZALEZ, CLR
JOB NO. 60114

Servicing Agreements which authorize the Trustee, Bank of New York Mellon, to enter into a Forbearance Agreement?

A. There is no specific language in the PSA that talks about a Forbearance Agreement, that is correct.

In my view, this flows out of the provisions dealing with the assignment basically of ownership rights to the Trustee the rights it's given under the PSA, including the right to pursue legal action. And this is part and parcel of a legal action.

So I concluded that this was a fair -- fairly within the scope of their responsibilities and their duties.

MR. REILLY: I'm going to move to strike everything after "correct" as nonresponsive.

Q. The Trustee has mere legal right to the claims in this case, correct?

MR. INGBER: Calls for a legal conclusion.

A. Well, that's what PSA says.

Q. I'm sorry?

A. Yeah.

made a difference because --

Q. They were acting as if they had that standard before?

MR. INGBER: Objection to form.

A. They were acting, in my opinion, in good faith. They were acting thoroughly. They were acting responsibly. They were doing all of those things that, in my experience, as a Trustee, corporate trust officer, you would do even as a prudent person.

It didn't make any difference whether you called them a prudent person or a pre-default Trustee. What they did, in my opinion, measured up to the highest standard.

Q. Whatever the standard was?

A. Regardless of the standard and the highest test as -- as we know, as I've testified to, is that of a prudent person. And, in my opinion, they measured up to that standard, even though the standard wasn't in affect as such.

Q. And do you know whether Bank of New York Mellon believed that it was subject to that prudent person's standard before the Forbearance Agreement was entered into?

Exhibit 9

Exhibit 9 contains materials that have been designated Confidential pursuant to the Court's Protective Order dated June 14, 2012. A copy of Exhibit 9 has been delivered to the Court and served on all parties of record.

Exhibit 10

Exhibit 10 contains materials that have been designated Confidential pursuant to the Court's Protective Order dated June 14, 2012. A copy of Exhibit 10 has been delivered to the Court and served on all parties of record.

Exhibit 11

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and among (i) The Bank of New York Mellon (f/k/a The Bank of New York) in its capacity as trustee or indenture trustee of certain mortgage-securitization trusts identified herein ("BNY Mellon" or the "Trustee"), and (ii) Bank of America Corporation ("BAC"), and BAC Home Loans Servicing, LP ("BAC HLS") (collectively, "Bank of America") and Countrywide Financial Corporation ("CFC") and Countrywide Home Loans, Inc. ("CHL") (collectively, "Countrywide").

WHEREAS, BNY Mellon is the trustee or indenture trustee for the trusts corresponding to the five hundred and thirty (530) residential mortgage-backed securitizations listed on Exhibit A hereto (the "Covered Trusts");

WHEREAS, Countrywide sold Mortgage Loans, which served as collateral for the Covered Trusts;

WHEREAS, the Trustee, CHL, and/or BAC HLS are parties to the Pooling and Servicing Agreements and in some cases Sale and Servicing Agreements and Indentures governing the Covered Trusts (as amended, modified, and supplemented from time-to-time, the "Governing Agreements"), and CHL, Countrywide Home Loans Servicing, LP, and/or BAC HLS has acted as Master Servicer for the Covered Trusts ("Master Servicer");

WHEREAS, certain significant holders of certificates or notes representing interests in certain of the Covered Trusts and investment managers of accounts holding such certificates or notes (the "Institutional Investors," as defined in more detail in the Institutional Investor Agreement) have entered into a separate Institutional Investor Agreement with the Trustee, Bank of America and Countrywide, the due execution of which is a condition to the effectiveness of this Settlement Agreement;

WHEREAS, allegations have been made of breaches of representations and warranties contained in the Governing Agreements with respect to the Covered Trusts (including alleged failure to comply with underwriting guidelines (including limitations on underwriting exceptions), to comply with required loan-to-value and debt-to-income ratios, to ensure appropriate appraisals of mortgaged properties, and to verify appropriate owner-occupancy

status) and of the repurchase provisions contained in the Governing Agreements;

WHEREAS, the Institutional Investors have sought to provide notice pursuant to certain of the Governing Agreements claiming failure by Bank of America and Countrywide, and affiliates, divisions, and subsidiaries thereof, to perform thereunder, and have alleged Mortgage Loan-servicing breaches and documentation defects against Bank of America and Countrywide, and affiliates, divisions, and subsidiaries thereof, and Bank of America and Countrywide dispute such allegations and waive no rights, and preserve all of their defenses, with respect to such allegations and putative notices;

WHEREAS, the Institutional Investors have asserted that Bank of America is liable for the obligations of Countrywide with respect to the Covered Trusts, and Bank of America disputes that contention and waives no rights, and preserves all of its defenses, with respect to such contention;

WHEREAS, the Institutional Investors formed a steering committee (comprised of BlackRock Financial Management, Inc., Pacific Investment Management Company LLC, certain ING companies, Metropolitan Life Insurance Company, and the Federal Home Loan Mortgage Corporation ("Freddie Mac"));

WHEREAS, the Trustee, Bank of America, Countrywide, and the Institutional Investors have engaged in arm's-length settlement negotiations that included the exchange of confidential materials;

WHEREAS, in the settlement negotiations, the Trustee received and evaluated information presented by Bank of America, Countrywide, and the Institutional Investors related to potential liabilities and defenses, and alleged damages, and has determined, in the exercise of its discretion as Trustee, that entry into this Settlement Agreement and the settlement contemplated thereby (the "Settlement") is within the Trustee's powers under the Governing Agreements and applicable law and in the best interests of and advantageous to the Covered Trusts; and

WHEREAS, as set forth below, the Settlement is subject to judicial approval, and, toward that end, the Trustee will commence in the Supreme Court of the State of New York, County of

New York (the "Settlement Court"), in its capacity as trustee or indenture trustee under the Governing Agreements, a proceeding under Article 77 of the New York Civil Practice Law and Rules (the "Article 77 Proceeding") and file a verified petition that seeks a final order and judgment that conforms in all material respects to the form attached as Exhibit B hereto (the "Final Order and Judgment").

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Definitions**. Any capitalized terms not defined herein shall have the definition given to them in the Governing Agreements. As used in this Settlement Agreement, in addition to the terms otherwise defined herein or in the Governing Agreements, the following terms shall have the meanings set forth below (the definitions to be applicable to both the singular and the plural forms of each term defined if both forms of such term are used in this Settlement Agreement):

(a) "Approval Date" shall mean the date upon which Final Court Approval, as defined in Paragraph 2, is obtained;

(b) "Bank of America Parties" shall mean BAC and any of its past, present, or future, direct or indirect affiliates, parents, divisions, or subsidiaries (including BAC HLS and Bank of America, N.A.), and each of their respective past, present, or future, direct or indirect affiliates, parents, divisions, subsidiaries, general partners, limited partners, shareholders, officers, directors, trustees, members, employees, agents, servants, attorneys, accountants, insurers, co-insurers, and re-insurers, and the predecessors, successors, heirs, and assigns of each of the foregoing;

(c) "BNY Mellon Parties" shall mean BNY Mellon and any of its past, present, or future, direct or indirect affiliates, parents, divisions, or subsidiaries, on behalf of themselves and each of their respective past, present, or future, direct or indirect affiliates, parents, divisions, subsidiaries, general partners, limited partners, officers, directors, trustees, co-trustees, members, employees, agents, servants, attorneys, accountants, insurers, co-insurers, and re-insurers, and the predecessors, successors, heirs, and assigns of the foregoing;

(d) "Code" means the Internal Revenue Code of 1986, as amended;

(e) "Countrywide Parties" shall mean CFC and any of its past, present, or future, direct or indirect affiliates, parents, divisions, or subsidiaries (including CHL, Countrywide Capital Markets, Countrywide Bank FSB, Countrywide Securities Corporation, Countrywide Home Loans Servicing, LP (now known as BAC Home Loans Servicing, LP), CWMBS, Inc., CWABS, Inc., CWALT, Inc., CWHEQ, Inc., Park Granada LLC, Park Monaco Inc., Countrywide LFT LLC, and Park Sienna LLC), and each of their respective past, present, or future, direct or indirect affiliates, parents, divisions, subsidiaries, general partners, limited partners, shareholders, officers, directors, trustees, members, employees, agents, servants, attorneys, accountants, insurers, co-insurers, and re-insurers, and the predecessors, successors, heirs, and assigns of the foregoing;

(f) "Governmental Authority" shall mean any United States or foreign government, any state or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to the foregoing, or any other authority, agency, department, board, commission, or instrumentality of the United States, any State of the United States or any political subdivision thereof or any foreign jurisdiction, and any court, tribunal, or arbitrator(s) of competent jurisdiction, and any United States or foreign governmental or non-governmental self-regulatory organization, agency, or authority (including the New York Stock Exchange, Nasdaq, and the Financial Industry Regulatory Authority);

(g) "Investors" shall mean all certificateholders and noteholders in the Covered Trusts, and their successors in interest, assigns, and transferees;

(h) "Law" shall mean collectively (whether now or hereafter enacted, promulgated, entered into, or agreed to) all laws (including common law), statutes, ordinances, codes, rules, regulations, directives, decrees, and orders, whether by consent or otherwise, of Governmental Authorities, or publicly-disclosed agreements between any Party and any Governmental Authority;

(i) "Losses" shall mean any and all claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, assessments, demands, charges, fees, judgments, awards, disbursements and amounts paid in settlement, punitive damages, foreseeable and unforeseeable damages, incidental or

consequential damages, of whatever kind or nature (including attorneys' fees and other costs of defense and disbursements);

(j) "Party" shall refer individually to each of the Trustee, Bank of America, and Countrywide, which shall collectively be the "Parties";

(k) "Person" shall mean any individual, corporation, company, partnership, limited liability company, joint venture, association, trust, or other entity, including a Governmental Authority;

(l) "REMIC" shall mean a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code;

(m) "REMIC Provisions" shall mean the provisions of United States federal income tax law relating to real estate mortgage investment conduits, which appear at Section 860A through Section 860G of the Code, and related provisions and regulations promulgated thereunder, as the foregoing may be in effect from time to time;

(n) "Settlement Agreement" shall mean this settlement agreement, together with all of its Exhibits; and

(o) "Signing Date" shall mean the date on which this Settlement Agreement is first executed by all of the Parties. The Signing Date may also be referred to herein as the date of this Settlement Agreement.

2. Final Court Approval.

(a) Requirement of Final Court Approval. Where provided for herein, the terms of this Settlement Agreement are subject to and conditioned upon "Final Court Approval." Final Court Approval shall have occurred only after (i) the Article 77 Proceeding is commenced, (ii) notice of the Settlement and related matters is provided to the extent reasonably practicable to the Investors in a form and by a method approved by the Settlement Court, (iii) the Investors are given an opportunity to object and to make their views known to the Settlement Court in such manner as the Settlement Court may direct, (iv) the Trustee and any other supporter of the Settlement are given the opportunity to make their views known to the Settlement Court in such

manner as the Settlement Court may direct, (v) the Settlement Court enters in the Article 77 Proceeding (including in a subsequent proceeding following an appeal and remand) the Final Order and Judgment (provided that if the Settlement Court enters an order that does not conform in all material respects to the form of order attached as Exhibit B hereto, the Parties may, by the written agreement of all Parties, deem that order to be the Final Order and Judgment; and provided further that, if the Settlement Court modifies Subparagraphs 3(d)(i), (ii), or (iii) (in each case in a manner consistent with the Governing Agreements) that modification shall not be considered to be a material change to the form of order attached as Exhibit B hereto), and (vi) either the time for taking any appeal of the Final Order and Judgment has expired without such an appeal being filed or, if an appeal is taken, upon entry of an order affirming the Final Order and Judgment and when the applicable period for the appeal of such affirmance of the Final Order and Judgment has expired, or, if an appeal is taken from any decision affirming the Final Order and Judgment, upon entry of an order in such appeal finally affirming the Final Order and Judgment without right of further appeal or upon entry of any stipulation dismissing any such appeal with no right of further prosecution of the appeal (in all circumstances there being no possibility of such Final Order and Judgment being upset on appeal therefrom, or in any related appeal from an order of the Settlement Court in the Article 77 Proceeding, or in any other proceeding pending at the time when all other prerequisites for Final Court Approval are met that puts into issue the validity of the Settlement). All Parties will use their reasonable best efforts to obtain Final Court Approval.

(b) Effect of Failure to Obtain Final Court Approval. If at any time Final Court Approval of the Settlement shall become legally impossible (including by reason of the denial of Final Court Approval by a court with no possibility of further appeal or proceedings that could result in Final Court Approval), the Settlement Agreement shall be null and void and have no further effect as to the Parties except as set forth in this Subparagraph 2(b) and other provisions not specifically provided for herein as being subject to or conditioned upon Final Court Approval. In such event: (i) except as provided in Paragraph 7, the Parties hereto shall be deemed to have reverted to their respective status as to all claims, positions, defenses, and responses as of the date a day prior to the Signing Date, and (ii) the provisions of Paragraph 20 shall apply, along with such other provisions hereof not specifically provided for as being subject to or conditioned upon Final Court Approval. If Final Court Approval has not been obtained by

December 31, 2015, then Bank of America and Countrywide shall be permitted to withdraw from this Settlement Agreement and from the Settlement with like effect as if Final Court Approval had become legally impossible but only if the Trustee consents to such withdrawal in writing if in good faith it deems such withdrawal to be in the best interests of the Covered Trusts.

(c) Preliminary Order. As an initial step towards seeking Final Court Approval, as soon as is practicable after the Signing Date, the Trustee shall commence the Article 77 Proceeding and seek a preliminary order (the "Preliminary Order") to be entered by the Settlement Court providing for and/or requiring: (i) a form and method of notice of the Settlement and related matters to Investors (in a form and by a method agreed to after consultation with the other Parties), (ii) a deadline for the filing of written objections to the Settlement and responses thereto, (iii) a hearing date at which the Settlement Court would consider whether to enter the Final Order and Judgment, (iv) a direction that all actions subsequently filed that contain claims that would be within the release and waiver provided for in Paragraph 9 should be assigned or transferred to the justice of the Settlement Court before whom the Article 77 Proceeding is pending, and (v) ordering that the Trustee may seek direction from the Settlement Court before taking any action in respect of a Covered Trust that relates to the subject matter of the Article 77 Proceeding. At the same time as the Trustee seeks the Preliminary Order, it shall also file with the Settlement Court a petition stating its support for the Settlement Agreement.

(d) Cost of Notice. All costs related to the giving of notice of this Settlement and related matters as part of the Article 77 Proceeding shall be borne by Bank of America and/or Countrywide.

(e) Federal Tax Ruling. Final Court Approval shall be deemed not to have been obtained unless and until there has been received private letter ruling(s) applicable to all of the Covered Trusts from the Internal Revenue Service to the effect that: (i) the execution of, and the transactions contemplated by, this Settlement Agreement, including (A) allocation of the Settlement Payment to a Covered Trust and the methodology for determining such allocation, (B) the receipt of the Settlement Payment by a Covered Trust, (C) the distribution of the Settlement Payment by a Covered Trust to any of its Investors and the methodology for

determining such distributions, and (D) any monthly Master Servicing Fee Adjustment received by or otherwise credited to such Covered Trust will not cause any portion of a Covered Trust for which a REMIC election has been made in accordance with the applicable Governing Agreement to fail to qualify at any time as a REMIC, and (ii) the receipt of the Settlement Payment by the Covered Trusts and the receipt or other credit of any monthly Master Servicing Fee Adjustment by the Covered Trusts will not cause, or result in, the imposition of any taxes on the Covered Trusts or on any portion of a Covered Trust for which a REMIC election has been made in accordance with the terms of the applicable Governing Agreement. The Trustee shall cause a request for such letter ruling(s) to be submitted to the Internal Revenue Service within thirty (30) days of the Signing Date, or, if the Internal Revenue Service is not amenable to receipt of the Trustee's request for rulings within this thirty day period, as promptly as practicable thereafter, and shall use reasonable best efforts to pursue such request; such request may not be abandoned without the consent (which shall not unreasonably be withheld) of Bank of America, Countrywide, and the Institutional Investors. Bank of America and Countrywide shall use their reasonable best efforts to assist in the Trustee's preparation and pursuit of the request for the rulings. In the event that the provisions of Subparagraph 3(d)(i), (ii), or (iii) of this Settlement Agreement are modified by the Settlement Court, the Trustee shall update its request to the Internal Revenue Service to take account of such modifications, and the requirements of this Subparagraph 2(e) necessary for there to be Final Court Approval shall be deemed not to have been satisfied until there has been received private letter ruling(s) applicable to the Covered Trusts that takes account of such modifications and otherwise meets the requirements of (i) and (ii) of this Subparagraph 2(e).

(f) State Tax Rulings or Opinions. Final Court Approval shall be deemed not to have been obtained unless and until there has been received at the Trustee's request an opinion of Trustee tax counsel with respect to the States of New York and California, in each case, to the same legal effect as the requested rulings described in Subparagraph 2(e)(i) and (ii). The Trustee shall use reasonable best efforts to pursue such requests for opinions; any such requests may not be abandoned without the consent (which shall not unreasonably be withheld) of Bank of America, Countrywide, and the Institutional Investors. Bank of America and Countrywide shall use their reasonable best efforts to assist in the Trustee's preparation and pursuit of the foregoing requests. In the event that the provisions of Subparagraphs 3(d)(i), (ii), or (iii) of this Settlement

Agreement are modified by the Settlement Court, the Trustee shall update its requests for such opinions to take account of such modifications, and the requirements of this Subparagraph 2(f) necessary for there to be Final Court Approval shall be deemed not to have been satisfied until each of the opinions described in this Subparagraph 2(f) is received in a form that takes account of such modifications and otherwise meets the requirements of this Subparagraph 2(f).

(g) The Parties may collectively agree, each acting in its sole discretion, to deem the requirements of Subparagraphs 2(e) ("Federal Tax Ruling") or 2(f) ("State Tax Rulings or Opinions") to have been met by the receipt of tax rulings or opinions, as the case may be, that are substantially in accord with the requirements of such Subparagraphs 2(e) or 2(f).

3. **Settlement Amount**.

(a) Settlement Payment. If and only if Final Court Approval is obtained, Bank of America and/or Countrywide shall pay or cause to be paid eight billion five hundred million dollars ($8,500,000,000.00) (the "Settlement Payment") within one-hundred and twenty (120) days of the Approval Date, in accordance with the following provisions.

(b) Method of Payment. Each Covered Trust's Allocable Share of the Settlement Payment shall be wired to the Certificate Account or Collection Account for such Covered Trust by Bank of America as directed by the Trustee following determination of the Allocable Share of each Covered Trust pursuant to Subparagraph 3(c); provided, that if the Allocable Share of each Covered Trust has not been determined pursuant to Subparagraph 3(c) at the time at which the Settlement Payment is due pursuant to Subparagraph 3(a), the Settlement Payment shall be wired to a non-interest-bearing escrow account at BNY Mellon (the "Escrow Account") set up for the sole purpose of holding the Settlement Payment until the relevant Allocable Shares have been determined, at which time each Allocable Share of the Settlement Payment shall be wired from the Escrow Account to the Certificate Account or Collection Account for each applicable Covered Trust. The Parties undertake to use reasonable best efforts to enter into a reasonably satisfactory escrow agreement in the event that an Escrow Account is required, which shall include instructions regarding the payment of the Allocable Shares from the Escrow Account to the Covered Trusts by the Trustee. All of the Trustee's reasonable costs and expenses associated with performing its obligations under this Subparagraph 3(b) that exceed its ordinary costs and

expenses as Trustee shall be borne by Bank of America and/or Countrywide. If, after the Approval Date, all or any portion of the Settlement Payment is voided or rescinded for any reason, including as a preferential or fraudulent transfer (an "Avoided Payment"), that Avoided Payment shall be treated for purposes of this Paragraph 3 as though it were not made at all (provided that written notice has been given by the Trustee to Bank of America and Countrywide and Bank of America or Countrywide has not cured, made, or restored such payment within sixty (60) days). In the event of an Avoided Payment, the BNY Mellon Parties shall have no liability to any Person whatsoever for any Avoided Payment or any liability or losses relating thereto.

(c) Allocation Formula. The Settlement Payment shall be allocated by the Trustee amongst the Covered Trusts. The Trustee shall retain a qualified financial advisor (the "Expert") to make any determinations and perform any calculations that are required in connection with the allocation of the Settlement Payment among the Covered Trusts. For avoidance of doubt, for purposes of this Subparagraph 3(c), the term "Covered Trust" shall include any Excluded Covered Trusts. To the extent that the collateral in any Covered Trust is divided by the Governing Agreements into groups of loans ("Loan Groups") so that ordinarily only certain classes of Investors benefit from the proceeds of particular Loan Groups, those Loan Groups shall be deemed to be separate Covered Trusts for purposes of the allocation and distribution methodologies set forth below. The Trustee shall instruct the Expert to apply the following allocation formula:

(i) *First*, the Expert shall calculate the amount of net losses for each Covered Trust that have been or are estimated to be borne by that trust from its inception date to its expected date of termination as a percentage of the sum of the net losses that are estimated to be borne by all Covered Trusts from their inception dates to their expected dates of termination (such amount, the "Net Loss Percentage");

(ii) *Second*, the Expert shall calculate the "Allocable Share" of the Settlement Payment for each Covered Trust by multiplying (A) the amount of the Settlement Payment by (B) the Net Loss Percentage for such Covered Trust, expressed as a decimal; provided that the Expert shall be entitled to make adjustments to the Allocable Share of each Covered Trust to

ensure that the effects of rounding do not cause the sum of the Allocable Shares for all Covered Trusts to exceed the applicable Settlement Payment;

(iii) *Third*, if applicable, the Expert shall calculate the portion of the Allocable Share that relates to principal-only certificates or notes and the portion of the Allocable Share that relates to all other certificates or notes; and

(iv) The Expert shall calculate the Allocable Share within ninety (90) days of the Approval Date.

(d) Distribution of the Allocable Shares; Increase of Balances.

(i) After the Allocable Share for each Covered Trust has been deposited into the Certificate Account or Collection Account for each Covered Trust, the Trustee shall distribute it to Investors in accordance with the distribution provisions of the Governing Agreements (taking into account the Expert's determination under Subparagraph 3(c)(iii)) as though it was a Subsequent Recovery available for distribution on that distribution date (provided that if the Governing Agreement for a particular Covered Trust does not include the term "Subsequent Recovery," the Allocable Share of such Covered Trust shall be distributed as though it was unscheduled principal available for distribution on that distribution date); provided, however, that the Master Servicer shall not be entitled to receive any portion of the Allocable Share distributed to any Covered Trust, it being understood that the Master Servicer's other entitlements to payments, and to reimbursement or recovery, including of Advances and Servicing Advances, under the terms of the Governing Agreements shall not be affected by this Settlement Agreement except as expressly provided in this Subparagraph 3(d)(i) and in Subparagraph 5(c)(iv). To the extent that as a result of the distribution of the Allocable Share in a particular Covered Trust a principal payment would become payable to a class of REMIC residual interests, whether on the distribution of the Allocable Share or on any subsequent distribution date that is not the final distribution date under the Governing Agreement for such Covered Trust, such payment shall be maintained in the distribution account and the Trustee shall distribute it on the next distribution date according to the provisions of this Subparagraph 3(d)(i).

(ii) In addition, after the distribution of the Allocable Share to Investors pursuant to Subparagraph 3(d)(i), the Trustee will allocate the amount of the Allocable Share for that Covered Trust in the reverse order of previously allocated Realized Losses, to increase the Class Certificate Balance, Component Balance, Component Principal Balance, or Note Principal Balance, as applicable, of each class of Certificates or Notes (or Components thereof) (other than any class of REMIC residual interests) to which Realized Losses have been previously allocated, but in each case by not more than the amount of Realized Losses previously allocated to that class of Certificates or Notes (or Components thereof) pursuant to the Governing Agreements. For the avoidance of doubt, for Covered Trusts for which the Senior Credit Support Depletion Date shall have occurred prior to the allocation of the amount of the Allocable Share in accordance with the immediately preceding sentence, in no event shall the foregoing allocation be deemed to reverse the occurrence of the Senior Credit Support Depletion Date in such Covered Trusts. Holders of such Certificates or Notes (or Components thereof) will not be entitled to any payment in respect of interest on the amount of such increases for any interest accrual period relating to the distribution date on which such increase occurs or any prior distribution date. Any such increase shall be applied pro rata to the Certificate Balance, Component Balance, Component Principal Balance, or Note Principal Balance of each Certificate or Note of each class. For the avoidance of doubt, this Subparagraph 3(d)(ii) is intended only to increase Class Certificate Balances, Component Balances, Component Principal Balances, and Note Principal Balances, as provided for herein, and shall not affect the distribution of the Settlement Payment provided for in Subparagraph 3(d)(i).

(iii) In no event shall the deposit or distribution of any amount hereunder into any Covered Trust be deemed to reduce the collateral losses experienced by such Covered Trust.

(iv) For any of the Covered Trusts in which there is a third-party guaranty or other financial guaranty provided for one or more tranches by an entity that has not previously released the right to seek repurchase of Mortgage Loans, notwithstanding anything else in this Settlement Agreement, Bank of America and Countrywide shall, up to the Approval Date, have the option to exclude such Covered Trust from the Settlement, unless and until an agreement is reached by Bank of America, Countrywide, and the third-party guarantor or financial-guaranty provider, pursuant to which the third-party guarantor or financial guaranty provider agrees not to make any

repurchase demands with relation to that Covered Trust. In the event that a Covered Trust is excluded under this Subparagraph 3(d)(iv), it shall be treated in accordance with Subparagraph 4(a).

(v) Nothing in Subparagraphs 3(d)(i), (ii), or (iii) is intended to or shall be construed to amend any Governing Agreements; a modification of Subparagraphs 3(d)(i), (ii), or (iii) (in each case in a manner consistent with the Governing Agreements) by the Settlement Court shall not constitute a material change to the terms of this Settlement Agreement.

(vi) The Trustee shall administer the distribution of the Allocable Shares pursuant to this Settlement Agreement and the Governing Agreements. Under no circumstances shall Bank of America or Countrywide have any liability to the Trustee, the Investors, the Covered Trusts, or any other Person in connection with such determination, administration, or distribution (including distribution within each Covered Trust) of the Allocable Shares, including under any indemnification obligation provided for in any Governing Agreement (including as clarified by the side-letter attached as Exhibit C to this Settlement Agreement).

(e) Determinations by the Expert. In the absence of bad faith or manifest error, the Expert's determinations and calculations in connection with the Allocable Share of each Covered Trust shall be treated as final and accepted by all Parties for purposes of Paragraph 3.

4. Effect of Exclusion of Trusts.

(a) Excluded Covered Trusts. In the event that any Covered Trust is excluded from the Settlement (an "Excluded Covered Trust"), the Allocable Share that would otherwise become payable to that Excluded Covered Trust shall be paid to Bank of America (as a matter of convenience for allocation as between Bank of America and Countrywide as appropriate), and there shall be no obligation by any of the Bank of America Parties or the Countrywide Parties to make any payments or provide any of the benefits of the Settlement to such Excluded Covered Trust or to Investors therein, or to comply with any of the provisions of Paragraphs 5 or 6 (except as specifically provided therein) with respect to such Excluded Covered Trust. The Trustee shall not be limited in the actions that it may take with respect to any Excluded Covered Trust (subject to the provisions of Paragraphs 17 and 20).

(b) Withdrawal From Settlement. In the event that one or more Covered Trusts, holding, in the aggregate, Mortgage Loans with unpaid principal balances as of the first Trustee report after the Signing Date aggregating in excess of a confidential percentage of the total unpaid principal balance of the Covered Trusts as of that date, such percentage having been provided to the Trustee by Bank of America and Countrywide prior to the execution of this Settlement Agreement, shall become Excluded Covered Trusts, Bank of America and Countrywide shall have the option, in their sole discretion, to withdraw from the Settlement with like effect as if Final Court Approval had become legally impossible. For purposes of calculating the unpaid principal balance of Excluded Covered Trusts in connection with this Subparagraph 4(b), the unpaid principal balance of Covered Trusts that become Excluded Covered Trusts at the election of Bank of America or Countrywide pursuant to Subparagraph 3(d)(iv) shall not be included.

5. **Servicing**. The Master Servicer shall implement the following servicing improvements (the "Servicing Improvements"). Material compliance with the provisions of this Paragraph 5 shall satisfy the Master Servicer's obligation to service the Mortgage Loans prudently in accordance with the relevant provisions of the Governing Agreements:

(a) Subservicer Selection and Assignment. In conformity with the subservicing provisions of the Governing Agreements:

(i) Within thirty (30) days of the Signing Date, the Institutional Investors and the Master Servicer shall agree on a list (the "Agreed List") of no fewer than eight and no more than ten subservicers (each a "Subservicer" and together the "Subservicers") to service High Risk Loans (as defined in Subparagraph 5(b)) and submit the Agreed List to the Trustee for review. If agreed by the Institutional Investors and the Master Servicer, the Master Servicer or an affiliate of the Master Servicer may serve as a Subservicer (in addition to the eight to ten to be otherwise agreed) and be included on the Agreed List. Within forty-five (45) days of receipt of the Agreed List, the Trustee, after consulting with an expert of its choice (whose advice shall be deemed full and complete authorization and protection in respect of the Trustee's decision), may object to any of the Subservicers on the Agreed List or reduce the maximum number of Mortgage Loans from the Covered Trusts that any such Subservicer may service at any one time to less than

30,000; provided that the Trustee may object to a Subservicer, or reduce the maximum number of Mortgage Loans from the Covered Trusts that any such Subservicer may service at any one time, only on the grounds listed in Exhibit D hereto and none other. The Trustee shall act in good faith in its approval decisions and shall include in any decision to object to a particular Subservicer the grounds for such objection. In the absence of an objection by the Trustee, all of the Subservicers on the Agreed List shall be deemed to be approved. If the Trustee objects to one or more Subservicers, all of the Subservicers on the Agreed List as to which there has been no objection shall be deemed approved. The Subservicers approved, or deemed approved, by the Trustee shall make up the "Approved List."

(ii) If the Trustee objects to a Subservicer on the Agreed List, or if a Subservicer on the Approved List at any time fails to meet, or ceases to meet, any of the qualifications described in Subparagraph 5(a)(iii), the Master Servicer shall remove such Subservicer from the Agreed List and/or the Approved List, as applicable, and may: (A) propose to replace any such Subservicer with a new subservicer by written notice to the Trustee, subject to such new subservicer meeting the qualifications described in Subparagraph 5(a)(iii) or (B) if applicable, re-submit such Subservicer to the Trustee for approval, provided that the Master Servicer has a commercially reasonable basis for believing that the grounds for the Trustee's objection to the subservicer are no longer applicable. Within fourteen (14) days of receipt of such notice or re-submission, the Trustee, after consulting with an expert of its choice (whose advice shall be deemed full and complete authorization and protection in respect of the Trustee's decision), may object to the proposed subservicer or reduce the maximum number of Mortgage Loans from the Covered Trusts that such proposed subservicer may service at any one time to less than 30,000; provided that the Trustee may object to a proposed subservicer or reduce the maximum number of Mortgage Loans from the Covered Trusts only on the grounds listed in Exhibit D hereto and none other. In the absence of an objection, the proposed subservicer shall be deemed approved and included on the Approved List. If the Trustee objects to a proposed subservicer, the Master Servicer may propose another subservicer pursuant to the process set out above, which process may be repeated multiple times. If the Trustee, pursuant to this Subparagraph 5(a)(ii), reduces the maximum number of Mortgage Loans that a Subservicer may service at any one time to less than 30,000, the Master Servicer may request from time to time that the Trustee lift or revise any such reduction of the maximum number of Mortgage Loans that that Subservicer may service

(subject to the maximum of 30,000 outstanding Mortgage Loans at any one time established by this Paragraph 5), and the Trustee, after consulting with an expert of its choice (whose advice shall be deemed full and complete authorization and protection in respect of the Trustee's decision), may agree or disagree, provided that the Trustee shall make such decision only on the grounds listed in Exhibit D hereto and none other. Nothing herein shall be construed as requiring the Master Servicer to obtain the Trustee's approval prior to terminating a Subservicer for cause.

(iii) To qualify for the transfer of loans for subservicing, a Subservicer must: (1) possess and maintain all material state and local licenses and registrations and be qualified to do business in the relevant jurisdictions, (2) agree to comply, and comply, with any laws, regulations, orders, mandates, or rulings of any Governmental Authority and/or any agreement or settlement between the Master Servicer or any of the other Bank of America Parties with any Governmental Authority applicable to subservicing, (3) maintain sufficient capable staff and facilities located in the United States, agree to meet, and meet, specified service level and performance requirements, and meet reasonable financial criteria, (4) agree to indemnify and hold harmless the Master Servicer for any servicing failures or breaches committed by it, (5) be eligible to service in accordance with the Home Affordable Modification Program ("HAMP") either pursuant to a Servicer Participation Agreement or an Assignment and Assumption Agreement with the U.S. Department of Treasury, (6) meet, and otherwise be subject to, all relevant third-party provider requirements of the Office of the Comptroller of the Currency, (7) meet, and otherwise be subject to, the Master Servicer's vendor management policies, provided that such policies are of general application and do not address the specific requirements for performance under this Settlement Agreement, any agreement for the transfer of loans to subservicing, or any agreement for the sale of servicing rights, and (8) otherwise meet the requirements of the subservicing provisions of the Governing Agreements. In determining whether a Subservicer meets the qualifications described in this Subparagraph 5(a)(iii), the Master Servicer shall act in good faith and shall use commercially reasonable standards. Notwithstanding any other provision of this Settlement Agreement, the Master Servicer shall have no obligation to, and shall not, enter into a subservicing contract with, or transfer any Mortgage Loan for subservicing to, any Subservicer that does not meet the qualifications described in this Subparagraph 5(a)(iii) at the relevant time. Any Subservicer on the Approved

List that, at any time, does not meet the qualifications described in this Subparagraph 5(a)(iii) and that subsequently has a commercially reasonable basis for believing that it can meet the qualifications described in this Subparagraph 5(a)(iii), can request that the Master Servicer re-evaluate whether it meets the qualifications described in this Subparagraph 5(a)(iii), and if the Master Servicer determines that the Subservicer meets the qualifications described in this Subparagraph 5(a)(iii), such Subservicer shall be considered eligible for the transfer of High Risk Loans (subject to, if applicable, negotiation of a subservicing contract pursuant to Subparagraph 5(a)(iv)).

(iv) Beginning on the date of the Trustee's approval (or deemed approval, as applicable) of at least four Subservicers, the Master Servicer shall negotiate a servicing contract that includes commercially reasonable terms (including without limitation the right to terminate the Subservicer for cause) and map the computer-transfer of Mortgage Loans with not less than one Subservicer per quarter until all of the Subservicers on the Approved List are operational. The terms on which the Subservicers are compensated shall be commercially reasonable pool-performance incentives and/or activity-based incentives substantially similar to, and not materially less favorable than, those set forth on Exhibit E hereto. The servicing contract with each Subservicer shall prohibit the Subservicer from subcontracting the servicing, subservicing, selling the servicing rights, or otherwise transferring the servicing rights of any of the High Risk Loans to another party, provided that nothing herein shall be construed to limit the right of the Subservicers to engage third-party vendors or subcontractors to perform tasks that prudent mortgage banking institutions commonly engage third party vendors or subcontractors to perform with respect to mortgage loans and related property, including, but not limited to, tax monitoring, insurance monitoring, property inspection, reconveyance, services provided by licensed field agents, and brokering REO property ("Routinely Outsourced Tasks").

(v) The Master Servicer will complete the contract negotiation and computer-transfer mapping for each Subservicer in a three-month time period running from the commencement of computer-transfer mapping with that Subservicer, provided, however, that the Master Servicer shall have no obligation to contract with any Subservicer that does not meet the qualifications described in Subparagraph 5(a)(iii) or on terms that are not commercially reasonable, and shall incur no liability whatsoever nor be subject to any other form of remedy if it cannot comply with

any provision of this Paragraph 5 because it is unable to contract with such a Subservicer on commercially reasonable terms (provided, however, that the other provisions of this Paragraph 5 shall remain in force).

(vi) If the Master Servicer exceeds the three month time frame to complete the required computer mapping specified in Subparagraph 5(a)(v), the Master Servicer shall retain a competent third party, at its own expense, to complete the computer mapping as soon as reasonably practical (and shall have no other liability for exceeding the time frame provided that it retains such third party and proceeds diligently to complete the computer mapping).

(vii) After at least one Subservicer is operational, the Master Servicer shall initiate the transfer of Mortgage Loans to at least one Subservicer per quarter; provided, however, that each Subservicer shall have no more than 30,000 outstanding Mortgage Loans from the Covered Trusts at any one time. If each operational Subservicer has 30,000 outstanding Mortgage Loans from the Covered Trusts (or such lesser maximum number as the Trustee directs pursuant to Subparagraphs 5(a)(i) and (ii), as applicable), the Master Servicer shall have no obligation to transfer any Mortgage Loans until such time as an operational Subservicer has enough less than 30,000 outstanding Mortgage Loans from the Covered Trusts (or such lesser maximum number as the Trustee directs pursuant to Subparagraphs 5(a)(i) and (ii), as applicable) so as to make a transfer of Mortgage Loans commercially reasonable.

(viii) Only one Subservicer shall be assigned to each Covered Trust.

(ix) Any Mortgage Loan in subservicing for which twelve (12) consecutive timely payments have been made by or on behalf of the borrower shall be transferred back to the Master Servicer. The Master Servicer shall include a provision to this effect in the subservicing contract with each Subservicer. This provision shall not apply to any Mortgage Loan for which the Master Servicer has sold the servicing rights.

(x) All costs associated with implementation of these subservicing provisions shall be borne by the Master Servicer and/or the Subservicers, as applicable; provided, however, that the costs of the Subservicer compensation described in Subparagraph 5(a)(iv) and on Exhibit E hereto shall be borne by the Master Servicer. For the avoidance of doubt, if a Mortgage Loan is

transferred to subservicing, the Master Servicer shall retain all rights to receive payment for accrued but unpaid Master Servicing Fees and to be reimbursed for outstanding Advances at the same time and in the same manner as if the Master Servicer had retained the servicing function.

(xi) Beginning on the date of the Trustee's approval or deemed approval of at least four Subservicers, the Master Servicer may, at its option, sell the servicing rights on High Risk Loans to any Subservicer on the Approved List, provided that: (1) such sale complies with the applicable provisions of the applicable Governing Agreements; (2) the Subservicer possesses all material state and local licenses and registrations and is qualified to do business in the relevant jurisdictions; (3) the Subservicer maintains sufficient capable staff and facilities located in the United States, meets specified service level and performance requirements, and meets reasonable financial criteria; (4) the Subservicer complies with applicable laws, regulations, orders, mandates, or rulings of any Governmental Authority; (5) the Master Servicer ensures that the terms of the contract of sale include terms not materially less favorable than, similar to, and designed to substantially maintain the effect of, the commercially reasonable pool performance incentives and/or activity-based incentives set forth on Exhibit E hereto; (6) the total number of outstanding Mortgage Loans from the Covered Trusts serviced by any Subservicer, whether as a result of a sale of servicing rights or of a transfer to subservicing, shall not exceed 30,000 at any one time; (7) the Master Servicer covenants to provide Advance financing on commercially reasonable terms or otherwise guarantee such payment, if necessary to ensure the creditworthiness of the Subservicer in connection with Advances; (8) the Master Servicer ensures that the terms of the contract of sale prohibit the Subservicer from subcontracting the servicing, subservicing, selling the servicing rights, or otherwise transferring the servicing rights of any of the High Risk Loans to another party, provided that the Master Servicer is not required to restrict the Subservicer's ability to engage third-party vendors or subcontractors to perform Routinely Outsourced Tasks; (9) the Master Servicer shall enforce its rights under any contract of sale in good faith; (10) the Master Servicer ensures that the terms of the contract of sale include provisions similar to, and that are designed to substantially maintain the effect of, Subparagraphs 5(d) and 5(e); and (11) the Master Servicer obtains whatever powers of attorney may be necessary from the Trustee (which power of attorney shall not be unreasonably withheld) and the Subservicer so that the Master Servicer may cure document exceptions and comply with its obligations pursuant to Paragraph 6. For the avoidance of doubt, (1) nothing in this

Settlement Agreement shall limit in any way the Master Servicer's rights, if any, under the Governing Agreements, to sell servicing rights on current Mortgage Loans; (2) the Master Servicer's sale of servicing rights in conformity with this Subparagraph 5(a)(xi) shall be the equivalent of transferring High Risk Loans to subservicing for the purposes of satisfying the obligation of the Master Servicer under this Paragraph 5 to transfer High Risk Loans; and (3) in any quarter in which the Master Servicer is obligated to transfer High Risk Loans to subservicing, the Master Servicer shall remain obligated to do so unless it sells servicing rights on High Risk Loans pursuant to this Subparagraph 5(a)(xi).

(xii) Nothing in this Settlement Agreement shall limit in any way the Master Servicer's right to sell, transfer, or assign the servicing rights for the loans in the Covered Trusts, including High Risk Loans, to a bank affiliate of the Master Servicer reasonably expected to be capable of performing the obligations of the Master Servicer under this Settlement Agreement and the Governing Agreements, and the provisions of Subparagraph 5(a)(xi) shall not apply to such a sale, transfer, or assignment. Upon the sale, transfer, or assignment of servicing rights for any loans in the Covered Trusts to such a bank affiliate of the Master Servicer, it shall be deemed to be a Master Servicer for purposes of this Settlement Agreement and all provisions of this Settlement Agreement applicable to the Master Servicer shall be fully applicable to it.

(b) Subservicing Implementation for High Risk Loans. Mortgage Loans in groups (i) through (v) below shall be termed "High Risk Loans" for the purposes of this Settlement Agreement. High Risk Loans shall be transferred to subservicing in the following priority, provided that Mortgage Loans from groups (i), (ii), and (iii) below may be grouped together for transfer and treated as a single group for priority purposes:

(i) Mortgage Loans that are 45+ days past due without right party contact (*i.e.*, the Master Servicer has not succeeded in speaking with the borrower about resolution of a delinquency);

(ii) Mortgage Loans that are 60+ days past due and that have been delinquent more than once in any rolling twelve (12) month period;

(iii) Mortgage Loans that are 90+ days past due and have not been in the foreclosure process for more than 90 days and that are not actively performing on trial modification or in the underwriting process of modification;

(iv) Mortgage Loans in the foreclosure process that do not yet have a scheduled sale date; and

(v) Mortgage Loans where the borrower has declared bankruptcy regardless of days past due.

(c) Servicing Improvements for Mortgage Loans *Not* in Subservicing. Beginning five (5) months after the Signing Date or on the Approval Date, whichever is later, the servicing improvements set forth below shall apply to all Mortgage Loans that are (i) ***not*** in subservicing pursuant to Subparagraphs 5(a) and 5(b) or (ii) for which the servicing rights have not been sold to a Subservicer; except that for Mortgage Loans secured by collateral in the state of Florida, the Industry Standard benchmark set forth in Subparagraph 5(c)(i)(B) and any associated Master Servicing Fee Adjustment shall not apply until the Approval Date or until twenty-four (24) months after the Signing Date, whichever is later; provided, however, that the Master Servicer shall have no liability under this Subparagraph 5(c) until such time as eight Subservicers have been approved or been deemed approved by the Trustee.

(i) The Master Servicer shall, on a monthly basis, benchmark its performance against the following industry standards (the "Industry Standards"). For the avoidance of doubt, only one Industry Standard shall apply to each Mortgage Loan:

(A) First-lien Mortgage Loans Only: Delinquency status of borrower at time of referral to the Master Servicer's foreclosure process: 150 days. This benchmark will exclude for each Mortgage Loan all time periods during which the borrower is in bankruptcy.

(B) First-lien Mortgage Loans Only: Time period between referral to the Master Servicer's foreclosure process and foreclosure sale or other liquidation event: The relevant state timeline in the most current (as of the time of each calculation) FHFA referral to foreclosure timelines. This benchmark will exclude for each Mortgage Loan all time periods during which

(a) the borrower is in bankruptcy or (b) the borrower is performing pursuant to HAMP or other loss mitigation efforts mandated by Law.

(C) Second-lien Mortgage Loans Only: Delinquency status of borrower at the time of reporting of charge-off to Trustee: Standards in relevant Governing Agreement.

(ii) The Master Servicer shall, once a month on the last business day of the month, send to the Trustee statistics for each Covered Trust comparing its performance for the prior month with respect to the Mortgage Loans in each Covered Trust to the Industry Standards (the "Monthly Statement"). The Trustee shall use reasonable commercial efforts to make such statement available on its Global Corporate Trust Investor Reporting website (https://www.gctinvestorreporting.bnymellon.com or any successor thereto) within five (5) business days of its receipt of such Monthly Statement.

(iii) Once a month, in connection with the preparation of the Monthly Statement, the Master Servicer shall calculate for the prior month: (a) a Compensatory Fee (as defined below) for each Mortgage Loan in each Covered Trust; (b) a Loan Level Amount (as defined below) for each Mortgage Loan in each Covered Trust; (c) whether there is a Master Servicing Fee Adjustment (as defined below) owed for each Covered Trust; and shall report to the Trustee as a line item on the Monthly Statement the Master Servicing Fee Adjustment, if any, for the relevant Covered Trust. The "Compensatory Fee" for a Mortgage Loan shall be calculated by multiplying the coupon applicable to that Mortgage Loan times the unpaid principal balance for that Mortgage Loan, and dividing the product of those two numbers by twelve (12). The "Loan Level Amount" for each Mortgage Loan shall be the amount equal to the applicable percentage in the applicable table below of the Compensatory Fee for such Mortgage Loan. The "Master Servicing Fee Adjustment" for each Covered Trust shall be the greater of zero and the sum of all the Loan Level Amounts for all the Mortgage Loans in such Covered Trust for that month.

Days Delinquent at Time of Referral to the Master Servicer's Foreclosure Process (First-lien Mortgage Loans only)	
Day Variance to Industry Standard (150 days)	%
Earlier than -60	-50%
-60 to -30	-20%
-30 to 0	0%
0 to 15	0%
15 to 30	0%
30 to 60	40%
60 to 90	60%
90 to 120	80%
Over 120	100%

Days Between Referral to Foreclosure Process and Foreclosure Sale or Other Liquidation Event (First-lien Mortgage Loans only)	
Day Variance to Relevant State's Timeline as set Forth in the FHFA Referral to Foreclosure Timelines	%
Earlier than -120	-50%
-120 to -90	-40%
-90 to -60	-30%
-60 to -30	-20%
-30 to 0	0%
0 to 15	0%
15 to 30	0%
30 to 60	20%
60 to 90	30%
90 to 120	40%
120 to 150	50%
150 to 180	60%
180 to 210	80%
Over 210	100%

Days Delinquent at Time of Reporting of Charge Off (Second-lien Mortgage Loans only)	
Day Variance to Standard in the Governing Agreement	%
0 to 30	0%
30 to 60	40%
60 to 90	60%
90 to 120	80%
Over 120	100%

(iv) For each Covered Trust other than CWHEQ 2006-A and CWHEQ 2007-G, the Master Servicer shall, on a monthly basis, deduct the Master Servicing Fee Adjustment from unreimbursed Advances due to it. For each of CWHEQ 2006-A and CWHEQ 2007-G, the Master Servicer shall, on a monthly basis, wire the Master Servicing Fee Adjustment to the Collection Account for the applicable Covered Trust and the Trustee shall distribute the Master Servicing Fee Adjustment in the same manner as is specified for an Allocable Share pursuant to Subparagraph 3(d)(i), provided, however, that the provisions of Subparagraph 3(d)(ii) shall not apply to Master Servicing Fee Adjustments.

(d) Loss Mitigation Requirements Applicable to All Loans. Beginning on the Signing Date, for each borrower with a Mortgage Loan in the Covered Trusts that is considered for modification programs, the Master Servicer and/or each of the Subservicers, as applicable, shall simultaneously evaluate the borrower's eligibility for all applicable modification programs in accordance with the factors set forth in Subparagraph 5(e) (including, as applicable, HAMP and proprietary modification programs, which programs may, pursuant to the Governing Agreements, include principal reductions), and shall render a decision within sixty (60) days of receiving all requested documents from the borrower; provided that nothing herein shall be deemed to create an obligation on the part of Master Servicer to offer any modification or loss mitigation strategy to any borrower.

(e) Loss Mitigation Considerations. In considering modifications and/or other loss mitigation strategies, including, without limitation, short sales and deeds in lieu of foreclosure, the Master Servicer and all Subservicers shall consider the following factors: (a) the net present value of the Mortgage Loan at the time the modification and/or other loss mitigation strategy is

considered and whether the contemplated modification and/or other loss mitigation strategy would have a positive effect on the net present value of the Mortgage Loan as compared to foreclosure; (b) where loan performance is the goal, whether the modification and/or other loss mitigation strategy is reasonably likely to return the Mortgage Loan to permanently performing status; (c) whether the borrower has the ability to pay, but has defaulted strategically or is otherwise acting strategically; (d) reasonably available avenues of recovery of the full principal balance of the Mortgage Loan other than foreclosure or liquidation of the loan; (e) the requirements of the applicable Governing Agreement; (f) such other factors as would be deemed prudent in its judgment; and (g) all requirements imposed by applicable Law. When the Master Servicer and/or Subservicer, in implementing a modification and/or other loss mitigation strategy (which may, pursuant to the Governing Agreements, include principal reductions), considers the factors set forth above, and/or acts in accordance with the policies or practices that the Master Servicer is then applying to its or any of its affiliates' "held for investment" portfolios, the Master Servicer shall be deemed to be in compliance with its obligation to service the Mortgage Loans prudently in keeping with the relevant servicing provisions of the relevant Governing Agreement and the requirements of this Subparagraph 5(e), the modification and/or other loss mitigation strategy so implemented shall be deemed to be permissible under the terms of the applicable Governing Agreement, and the judgments in applying such factors to a particular loan shall not be subject to challenge under the applicable Governing Agreement, this Settlement Agreement, or otherwise. Notwithstanding anything else in this Subparagraph 5(e), no principal modification by the Master Servicer or any Subservicer shall reduce the principal amount due on any Mortgage Loan below the current market value of the property, as determined by a third-party broker price opinion, using a fair market value method, applying normal marketing time criteria and excluding REO or short sale comparative sales in the valuation calculation.

(f) Reporting and Attestation of Compliance with Servicing Improvements. Beginning on the Approval Date, the Master Servicer shall: (i) report monthly to the Trustee, for each Covered Trust, concerning its compliance with the Servicing Improvements required by this Settlement Agreement (the "Monthly Report"); and (ii) pay for an annual attestation report for the Covered Trusts as a group (the "Attestation Report") to be completed no later than February 15 of each year that any Covered Trust holds Mortgage Loans (or owns real estate related to liquidated Mortgage Loans). The Trustee shall use reasonable commercial efforts to make such

report available on its Global Corporate Trust Investor Reporting website (https://www.gctinvestorreporting.bnymellon.com or any successor thereto) within five (5) business days of its receipt of such report.

(i) The Attestation Report shall be prepared by an audit firm selected in accordance with the following selection process: (A) the Master Servicer shall propose in writing to the Trustee an audit firm meeting the qualifications described in Subparagraph 5(f)(ii); (B) within seven (7) business days of receipt of such written notice, the Trustee may object to the Master Servicer's selection if it reasonably determines that the proposed audit firm does not meet the qualifications described in Subparagraph 5(f)(ii); (C) if the Trustee objects to a proposed audit firm in accordance with Subparagraph 5(f)(i)(B) above, a different audit firm shall be selected by repeating the process set out in Subparagraphs 5(f)(i)(A) and 5(f)(i)(B) above; and (D) in the absence of an objection by the Trustee within the time frame set out in Subparagraph 5(f)(i)(B) above, the proposed audit firm shall be deemed approved.

(ii) To qualify to prepare the Attestation Report, a firm must (A) possess sufficient relevant expertise in the mortgage loan servicing industry; (B) be duly licensed to conduct its business in all relevant jurisdictions; (C) not be indicted in any state; and (D) not be engaged by Bank of America, Countrywide, or any of their respective subsidiaries and affiliates for any major engagement.

(iii) The Attestation Report shall be distributed to all Investors as part of the Trustee's Monthly Statement for April of each year, provided that the Trustee shall not be required to execute, sign, or deliver to the audit firm any consent, acknowledgement, or other documentation whatsoever in connection with its receipt of the Attestation Report or the making of the Attestation Report available to the Investors.

(g) No Amendment. Nothing in this Paragraph 5 is, or shall be construed to be, an amendment of any Governing Agreement.

(h) Governmental Authority. The Master Servicer shall: (i) have no liability (and shall be subject to no other remedy) to the Covered Trusts, the Trustee, or the Investors under any part of this Settlement Agreement or under the provisions of the Governing Agreements that

relate to the matters and aspects of servicing addressed in whole or in part by the provisions of this Paragraph 5, including no liability for any Master Servicing Fee Adjustment, if it becomes commercially impracticable for the Master Servicer to perform its obligations under this Paragraph 5 in a manner reasonably similar to the intent thereof because any provision of this Paragraph 5 is rendered inoperative or invalid by Law and (ii) not be liable for any portion of a Master Servicing Fee Adjustment that is the result of actions mandated or required by Law.

(i) Cost of Compliance with Law. All expenses associated with compliance with Law related to the servicing of the Mortgage Loans in the Covered Trusts shall be borne by the Master Servicer and/or the Subservicers, as applicable, provided that (i) any modification or other loss mitigation strategy that may be required or permitted by Law, and/or (ii) any Advance that is required or permitted by Law, that is permissible under the terms of this Settlement Agreement and/or the Governing Agreements shall not be deemed to be an expense associated with compliance with Law related to the servicing of the Mortgage Loans in the Covered Trusts, and any Realized Loss associated with the implementation of such modification or loss mitigation strategy shall be borne by the relevant Covered Trust.

(j) Effect of Failure to Meet Timelines. The Master Servicer's failure to complete any task or obligation set forth in this Paragraph 5 in the time period required by this Paragraph 5 shall not be deemed a material breach of this Settlement Agreement, provided that the Master Servicer has used and is using reasonable best efforts to comply with the time periods set forth in this Paragraph 5 and that the Master Servicer completes the task or obligation in no more than 133% of the time period required by this Paragraph 5. For the avoidance of doubt, nothing in this Subparagraph 5(j) shall affect the amount of any Master Servicing Fee Adjustment otherwise due under Subparagraph 5(c).

(k) Effect of Legal Impossibility of Final Court Approval; Excluded Covered Trusts. If Final Court Approval becomes legally impossible, then at such time, neither the Master Servicer nor the Trustee shall have any further obligations under Subparagraph 5(a) or under Subparagraph 5(b) and Subparagraphs 5(c) and 5(f) shall be null and void. Subparagraphs 5(d) and 5(e) shall remain binding upon the Master Servicer and the Trustee. As to any trust that shall become an Excluded Covered Trust, neither the Master Servicer nor the Trustee shall have

any further obligations with respect to such Excluded Covered Trust under Subparagraph 5(a) or under Subparagraph 5(b) and Subparagraphs 5(c) and 5(f) shall be null and void with respect to such Excluded Covered Trust; Subparagraphs 5(d) and 5(e) shall remain binding upon the Master Servicer and the Trustee as to such Excluded Covered Trust.

6. **Cure of Certain Document Exceptions**.

(a) Initial Exceptions Report Schedule. Not later than six (6) weeks after the Signing Date, the Master Servicer shall submit to the Trustee an "Initial Exceptions Report Schedule" as provided for below. Subject to Paragraph 12, the Trustee shall use reasonable best efforts to make the Initial Exceptions Report Schedule available on the Trustee's Global Corporate Trust Investor Reporting website (https://www.gctinvestorreporting.bnymellon.com, or any successor thereto) within five (5) business days of its receipt of such report.

(i) The Initial Exceptions Report Schedule shall be prepared in good faith, after reasonable diligence, and shall include each Mortgage Loan in the Covered Trusts (including, for the avoidance of doubt, Mortgage Loans for which the servicing rights are sold following the Signing Date) that, on the Trustee's Loan-Level Exception Reports (as defined below), is subject to both (A) a document exception relating to mortgages coded "photocopy" (CO), "copy with recording information" (CR), "document missing" (DM), "county recorded copy with comments" (IN), "certified copy not recorded" (NR), "original with comments" (OO), "unrecorded original" (OX), "pool review pending" (PR), "contract" (CONT), and "certified copy-issuer" (CI) on the Trustee's Loan-Level Exception Reports, ("Mortgage Exceptions") and (B) a document exception relating to title policies or their legal equivalent coded "document missing" (DM), "title commitment" (CM), or "preliminary title report" (PL) on the Trustee's Loan-Level Exception Reports, ("Title Policy Exceptions"), provided that it shall exclude any such Mortgage Loan registered on the Mortgage Electronic Registration Systems ("MERS"). Mortgage Loans paid in full or liquidated as of the Signing Date shall not be included in the Initial Exceptions Report Schedule.

(ii) The Master Servicer may elect, in its sole discretion, to resolve any Mortgage Exception or Title Policy Exception listed on the Initial Exceptions Report Schedule, in which

case the Trustee shall cooperate in good faith with the Master Servicer to resolve any such Mortgage Exception or Title Policy Exception.

(iii) If any Mortgage Loan is Cured (as defined below), the Master Servicer shall promptly provide evidence of such cure to the Trustee.

(iv) "Trustee's Loan-Level Exception Reports" shall mean the loan level exception reports for the Covered Trusts provided by the Trustee to the Master Servicer on April 14, 2011, April 27, 2011, and April 28, 2011.

(b) Monthly Exceptions Report. Beginning the first month following the month in which the Master Servicer submits the Initial Exceptions Report Schedule, the Master Servicer shall provide to the Trustee on the last business day of each month a Monthly Exceptions Report listing all Mortgage Loans on the Initial Exceptions Report Schedule exclusive of any Mortgage Loan that has been Cured and shall separately list all Mortgage Loans that have been Cured.

(i) A Mortgage Loan listed on the Initial Exceptions Report Schedule shall be considered "Cured" for all purposes if (A) either the Mortgage Exception or Title Policy Exception associated with that Mortgage Loan has been resolved, (B) the Mortgage Loan has been paid in full or otherwise satisfied as a first lien, (C) the Mortgage Loan has been liquidated as a first lien on the Mortgaged Property, or (D) pursuant to Subparagraph (6)(c), the Master Servicer has reimbursed the Covered Trust for 100% of any related Realized Loss associated with that Mortgage Loan's liquidation.

(ii) Within fifteen (15) business days of receipt of each Monthly Exceptions Report, the Trustee shall determine whether reasonable evidence has been provided in respect of each Mortgage Loan listed as Cured in such report. In the event that the Trustee determines that a decision by the Master Servicer to list a loan as Cured is not supported by reasonable evidence, after consultation with the Master Servicer regarding the reasonableness of such evidence, the Trustee shall direct the Master Servicer to issue a revised Monthly Exceptions Report. All of the Trustee's reasonable costs and expenses associated with performing its obligations under this Subparagraph 6(b)(ii) that exceed the Trustee's ordinary costs and expenses in connection with its record-keeping duties under the Governing Agreements shall be borne by the Master Servicer.

(iii) The Master Servicer shall continue providing Monthly Exceptions Reports until such time as all Mortgage Loans listed in the Initial Exceptions Report Schedule have been Cured.

(iv) Subject to Paragraph 12, the Trustee shall use reasonable best efforts to make each Monthly Exceptions Report available on its Global Corporate Trust Investor Reporting website (https://www.gctinvestorreporting.bnymellon.com or any successor thereto) within five (5) business days of its receipt of such report.

(c) Remedy for Uncured Exceptions. If, at the time of liquidation, a Mortgage Loan (including, for the avoidance of doubt, Mortgage Loans for which the servicing rights are sold following the Signing Date) is listed on the then-current Monthly Exceptions Report as having an outstanding Mortgage Exception and an outstanding Title Policy Exception, the Master Servicer shall promptly provide notice to the Trustee and shall reimburse the trust that owns the Mortgage Loan for 100% of any Realized Loss (as defined in the applicable Governing Agreements) (i) if the Master Servicer is prevented from foreclosing as a first-lien holder by reason of an outstanding Mortgage Exception and the trust is not made whole by a title policy or equivalent by reason of an outstanding Title Policy Exception within the earlier of (A) twelve (12) months after the denial of such foreclosure or (B) thirty (30) days after the Master Servicer determines that no insurance will be payable or (ii) if a court of competent jurisdiction denies foreclosure as a first-lien holder by reason of an outstanding Mortgage Exception and the trust is not made whole by a title policy or equivalent by reason of an outstanding Title Policy Exception within the earlier of (A) twelve (12) months after the denial of such foreclosure or (B) thirty (30) days after the Master Servicer determines that no insurance will be payable. In the event that the Master Servicer makes the trust whole with respect to any Mortgage Loan pursuant to this Subparagraph 6(c), the Master Servicer shall be entitled to reimbursement for such make-whole payment from any proceeds that it or the trust subsequently receives from any title policy or equivalent with respect to such Mortgage Loan.

(d) If Final Court Approval becomes legally impossible, then at such time, neither the Master Servicer nor the Trustee shall have any further obligations or rights under this Paragraph 6 and the remedy provisions of Subparagraph 6(c) shall be null and void. Likewise, if the trust in

which the Mortgage Loan is held is designated an Excluded Covered Trust pursuant to Subparagraph 4(a), then at such time, neither the Master Servicer nor the Trustee shall have any further obligations or rights under this Paragraph 6 and the remedy provisions of Subparagraph 6(c) shall be null and void with respect to such Mortgage Loan. Notwithstanding the foregoing, the Master Servicer may elect in its sole discretion to resolve any Mortgage Exception or Title Policy Exception that is outstanding, in which case the Trustee shall cooperate in good faith with the Master Servicer to resolve any such Mortgage Exception or Title Policy Exception.

7. **Extension of Forbearance; Tolling**. The Parties agree (and the Institutional Investors have so agreed in the Institutional Investor Agreement) that the Agreement of Forbearance entered into by certain of the Parties on December 9, 2010 and extended on January 28, 2011, February 28, 2011, March 31, 2011, April 19, 2011, May 2, 2011, May 9, 2011, May 25, 2011, and June 13, 2011 (the "Forbearance Agreement") is hereby extended and shall remain in effect in all respects until the first to occur of: (a) the Approval Date, (b) a date ninety (90) days after Final Court Approval shall become legally impossible, (c) a date ninety (90) days after the Settlement Agreement has been terminated in accordance with its terms, or (d) a date ninety (90) days after the cure period has expired for any uncured material breach of the Settlement Agreement by Bank of America and Countrywide for which notice has been provided (the cure period being the ninety (90) days following such notice of such breach provided by a party to this Settlement Agreement or the Institutional Investor Agreement). For Covered Trusts not subject to the Forbearance Agreement, all statutes of limitation, repose, or laches related to the Trust Released Claims shall be tolled, for the benefit of the Precluded Persons, to the same extent that they are tolled under the Forbearance Agreement; provided that, except as set forth in this Settlement Agreement, all Parties expressly reserve all rights, arguments, and defenses, including all rights, arguments, and defenses with respect to Investor voting rights and interest requirements under the Governing Agreements. If the Forbearance Agreement is extended pursuant to Subparagraphs 7(b) or 7(c) herein, the Parties agree (and the Institutional Investors have so agreed in the Institutional Investor Agreement) during the first eighty (80) days of such time periods to use their reasonable best efforts to negotiate an alternate settlement of the Trust Released Claims on terms that are economically substantially equivalent to the Settlement and not inconsistent with any final ruling of the Settlement Court or on any appeal therefrom, and

(during the same time periods) not to pursue any non-consensual actions or remedies with respect to the Covered Trusts except as the Trustee may be directed by the Settlement Court.

8. **Retraction of Notice**. The Trustee agrees (and the Institutional Investors have so agreed in the Institutional Investor Agreement) that, as of the Approval Date, any notice that may have been contained in the letters sent by and on behalf of certain of the Institutional Investors on June 17, 2010, October 18, 2010, and November 12, 2010 and addressed to the Trustee and/or the Master Servicer, as well as any notice that may have been contained in a letter deemed to have been provided under the Forbearance Agreement and its extensions (the "Letters"), is and shall be rendered null and void. The Letters themselves shall thereafter be rendered inoperative, as if never sent, and shall be deemed for all purposes to be withdrawn with prejudice (the Institutional Investors have so agreed by the Institutional Investor Agreement).

9. **Release**.

(a) Effective as of the Approval Date, except as set forth in Paragraph 10, the Trustee on behalf of itself and all Investors, the Covered Trusts, and/or any Persons claiming by, through, or on behalf of any of the Trustee, the Investors, or the Covered Trusts or under the Governing Agreements (collectively, the Trustee, Investors, Covered Trusts, and such Persons being defined together as the "Precluded Persons"), irrevocably and unconditionally grants a full, final, and complete release, waiver, and discharge of all alleged or actual claims, counterclaims, defenses, rights of setoff, rights of rescission, liens, disputes, liabilities, Losses, debts, costs, expenses, obligations, demands, claims for accountings or audits, alleged Events of Default, damages, rights, and causes of action of any kind or nature whatsoever, whether asserted or unasserted, known or unknown, suspected or unsuspected, fixed or contingent, in contract, tort, or otherwise, secured or unsecured, accrued or unaccrued, whether direct, derivative, or brought in any other capacity that the Precluded Persons may now or may hereafter have against any or all of the Bank of America Parties and/or Countrywide Parties arising out of or relating to (i) the origination, sale, or delivery of Mortgage Loans to the Covered Trusts, including the representations and warranties in connection with the origination, sale, or delivery of Mortgage Loans to the Covered Trusts or any alleged obligation of any Bank of America Party and/or Countrywide Party to repurchase or otherwise compensate the Covered Trusts for any Mortgage

Loan on the basis of any representations or warranties or otherwise or failure to cure any alleged breaches of representations and warranties, including all claims arising in any way from or under Section 2.03 ("Representations, Warranties and Covenants of the Sellers and Master Servicer")[1] of the Governing Agreements, (ii) the documentation of the Mortgage Loans held by the Covered Trusts (including the documents and instruments covered in Sections 2.01 ("Conveyance of Mortgage Loans") and 2.02 ("Acceptance by the Trustee of the Mortgage Loans") of the Governing Agreements and the Mortgage Files) including with respect to alleged defective, incomplete, or non-existent documentation, as well as issues arising out of or relating to recordation, title, assignment, or any other matter relating to legal enforceability of a Mortgage or Mortgage Note, and (iii) the servicing of the Mortgage Loans held by the Covered Trusts (including any claim relating to the timing of collection efforts or foreclosure efforts, loss mitigation, transfers to subservicers, Advances, Servicing Advances, or that servicing includes an obligation to take any action or provide any notice towards, or with respect to, the possible repurchase of Mortgage Loans by the Master Servicer, Seller, or any other Person), in all cases prior to or after the Approval Date (collectively, all such claims being defined as the "Trust Released Claims").

(b) The Trust Released Claims shall also be deemed to have been released as of the Approval Date to the full and same extent by the Master Servicer of the Covered Trusts (including the current Master Servicer, BAC HLS, and any subsequent servicer who may in the future be substituted for the current Master Servicer with respect to one or more of the Covered Trusts or any loans therein) and the Master Servicer shall be deemed to be a Precluded Person.

(c) The release and waiver in Subparagraphs 9(a) and 9(b) is intended to include, and upon its effectiveness shall include, any claims or contentions that Bank of America or any non-Countrywide affiliate, division, or subsidiary of Bank of America, and any of the predecessors or assigns thereof, is liable on any theory of successor liability, vicarious liability, veil piercing, de facto merger, fraudulent conveyance, or other similar claim or theory for the obligations,

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[1] Which provision is numbered 2.04 in the Sale and Servicing Agreements relating to CWHEQ 2006-A and CWHEQ 2007-G.

exposure, or liability of Countrywide or any of its affiliates, divisions, or subsidiaries, and any of the predecessors or assigns thereof concerning any of the Covered Trusts, with respect to the Trust Released Claims.

10. Claims Not Released.

(a) Administration of the Mortgage Loans. The release and waiver in Paragraph 9 does not include claims based solely on the action, inaction, or practices of the Master Servicer in its aggregation and remittance of Mortgage Loan payments, accounting for principal and interest, and preparation of tax-related information in connection with the Mortgage Loans and the ministerial operation and administration of the Covered Trusts and of the Mortgage Loans held by the Covered Trusts for which the Master Servicer receives servicing fees unless, as of the Signing Date, the Trustee has or should have knowledge of the actions, inactions, or practices of the Master Servicer in connection with such matters.

(b) Servicing of the Mortgage Loans. Except as provided in Subparagraph 10(a), the release and waiver in Paragraph 9 includes: (i) all claims based in whole or in part on any actions, inactions, or practices of the Master Servicer prior to the Approval Date as to the servicing of the Mortgage Loans held by the Covered Trusts; and (ii) as to all actions, inactions, or practices by the Master Servicer after the Approval Date, only (A) actions, inactions, and practices that relate to the aspects of servicing addressed in whole or in part by the provisions of Paragraph 5 (material compliance with which shall satisfy the Master Servicer's obligation to service the Mortgage Loans prudently in accordance with all relevant sections of the Governing Agreements) and (B) actions, inactions, or practices that relate to the aspects of servicing not addressed by the provisions of Paragraph 5 that are consistent with (or improvements over) the Master Servicer's course of conduct prior to the Signing Date. It is further understood and agreed that Investors may pursue such remedies as are available under Section 10.08 ("Limitation on Rights of Certificateholders") of the Governing Agreements with respect to an Event of Default as to any servicing claims not released by this Settlement.

(c) Certain Individual Investor Claims. The release and waiver in Paragraph 9 does not include any direct claims held by Investors or their clients that do not seek to enforce any rights under the terms of the Governing Agreements but rather are based on disclosures made (or

failed to be made) in connection with their decision to purchase, sell, or hold securities issued by any Covered Trust, including claims under the securities or anti-fraud laws of the United States or of any state; provided, however, that the question of the extent to which any payment made or benefit conferred pursuant to this Settlement Agreement may constitute an offset or credit against, or a reduction in the gross amount of, any such claim shall be determined in the action in which such claim is raised, and the Parties reserve all rights with respect to the position they may take on that question in those actions and acknowledge that all other Persons similarly reserve such rights.

(d) Financial-Guaranty Provider Rights and Obligations. To the extent that any third-party guarantor or financial-guaranty provider with respect to any Covered Trust has rights or obligations independent of the rights or obligations of the Investors, the Trustee, or the Covered Trusts, the release and waiver in Paragraph 9 is not intended to and shall not release such rights, or impair or diminish in any respect such obligations or any insurance or indemnity obligations owed by or to such Person.

(e) Indemnification Rights. The Parties do not release any rights to indemnification under the Governing Agreements including the Trustee's right to indemnification by the Master Servicer of the Covered Trusts.

(f) Settlement Agreement Rights. The Parties do not release any rights or claims against each other to enforce the terms of this Settlement Agreement.

(g) Excluded Covered Trusts. The release and waiver in Paragraph 9 does not include claims with respect to any Excluded Covered Trust.

11. Release of Unknown Claims. Each of the Parties acknowledges that it has been advised by its attorneys concerning, and is familiar with, California Civil Code Section 1542 and expressly waives any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to the provisions of the California Civil Code Section 1542, including that provision itself, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

The Parties acknowledge that inclusion of the provisions of this Paragraph 11 to this Settlement Agreement was a material and separately bargained for element of this Settlement Agreement.

12. **Concerning the Trustee**. All of the Trustee's privileges, indemnity rights, limitations on liability and other contractual protections under the Governing Agreements shall equally apply to all of the Trustee's duties and obligations under this Settlement Agreement. Without limiting the foregoing:

(a) The duties and obligations of the Trustee under this Settlement Agreement shall be determined solely by the express provisions of this Settlement Agreement. The Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Settlement Agreement, and no implied fiduciary duties shall be read into this Settlement Agreement against the Trustee. Nor, except as expressly set forth herein, shall anything in this Settlement Agreement imply that the Trustee owes any greater duties under the Governing Agreements, fiduciary or otherwise, than it otherwise would owe under those agreements.

(b) In this Settlement Agreement, whenever the Trustee is required to make any report, schedule, or other information available to the Investors:

(i) The Trustee's responsibility for making such information available to the Investors is limited to the availability, timeliness, and accuracy of the information provided to the Trustee; and

(ii) The Trustee's obligation to post such information on the Trustee's Global Corporate Trust Investor Reporting website is subject to the timely provision of such information to the Trustee in form and format satisfactory to the Trustee and (if applicable) to the Trustee's ability to timely break-out such information by the Covered Trust.

13. **Representations and Warranties by Each Party**. Each Party to this Settlement Agreement represents, warrants, and agrees as to itself as follows:

(a) It is duly organized, validly existing, and (to the extent applicable) in good standing under the Law of the jurisdiction in which it is organized. It has the corporate, trust or other power and authority (including contractual and/or regulatory authority to the extent applicable) necessary to execute, deliver, and perform its obligations under this Settlement Agreement, and to complete the transactions contemplated hereby, including with respect to any other entities, account-holders, or accounts for which or on behalf of which it is signing this Settlement Agreement, and the execution, delivery, and performance of this Settlement Agreement and the completion of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate, trust, or other action. Assuming the due authorization, execution, and delivery of this Settlement Agreement by the other Parties, this Settlement Agreement constitutes the legal, valid, and binding obligations of it, enforceable against it in accordance with its terms.

(b) It has not relied upon any statement, representation, or promise of any other Party (or of any representative or attorney of or for any other Party), in executing this Settlement Agreement, or in connection with the Settlement, (i) except for the representations, warranties, covenants, and other obligations set forth in this Settlement Agreement, and (ii) except that Bank of America and Countrywide represent to the Trustee that neither Bank of America nor Countrywide had, as of the date it was provided, or has, as of the date of this Settlement Agreement, actual knowledge that any factual information provided to the Trustee, its counsel and its experts in connection with the negotiation of the Settlement concerning: (A) historical factual information concerning prior repurchase experience, (B) factual information concerning historical losses and historical delinquencies experienced by the Covered Trusts, (C) the financial statements of CFC and/or CHL, and (D) documents reflecting, or information concerning, corporate transactions involving the exchange of assets between CFC and its subsidiaries and BAC and its non-Countrywide subsidiaries that were taken subsequent to the merger of CFC and a BAC subsidiary, was materially false or materially inaccurate at the time the information or documents were provided (unless subsequently corrected), and acknowledge that the Trustee's experts are relying on such information and documents. In addition, Bank of

America and Countrywide represent to the Trustee that the information contained on the CD-ROM provided to the Trustee's counsel and experts on June 3, 2011 contains business records of BAC HLS as kept on its computer systems in the ordinary course of its business. It is further acknowledged and understood that the Trustee has made its own independent judgment concerning the reasonableness and advantageousness of the Settlement and its terms.

(c) It is not entering into this Settlement Agreement with the intent of hindering, delaying, or defrauding any of its respective current or future creditors.

(d) It has made such investigation of the facts pertaining to this Settlement and this Settlement Agreement and of all the matters pertaining thereto as it deems necessary.

(e) It has read this Settlement Agreement and understands the contents hereof, has consulted with counsel of its choice with respect to this Settlement Agreement, and has executed this Settlement Agreement voluntarily and without duress or undue influence on the part of or on behalf of any other Party.

(f) It has not heretofore assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the claims, demands, or causes of action released or waived by this Settlement Agreement.

14. Nonsurvival of Representations and Warranties. None of the representations or warranties set forth in this Settlement Agreement shall survive after the Approval Date or if Final Court Approval becomes legally impossible.

15. Additional Agreements.

(a) Trustee's Agreement Regarding Post-Signing Date Actions. Absent direction from the Settlement Court in accordance with the next sentence below, between the Signing Date and the Approval Date (or such time as Final Court Approval becomes legally impossible), the Trustee covenants that it will not take any action with respect to any Covered Trust that is intended or reasonably could be expected to be adverse to or inconsistent with the intent, terms, and conditions of the Settlement and this Settlement Agreement, and will not commence or assist in the commencement of any litigation based upon any of the claims subject to the release and

waiver in Paragraph 9. The Trustee intends to seek an order from the Settlement Court providing that the Trustee may seek direction from the Settlement Court before taking any action in respect of a Covered Trust that is the subject matter of the Article 77 Proceeding, and the Trustee reserves all rights to seek such order or direction.

(b) Post-Signing Date Repurchases. If after the Signing Date and before the Settlement Payment is made, any Bank of America Party or Countrywide Party either (i) repurchases any Mortgage Loan(s) from any Covered Trust(s) or (ii) makes any make-whole payment with respect to any such Mortgage Loan(s) to any Covered Trust(s) except as provided in Paragraph 6, the Settlement Payment provided for in this Settlement Agreement shall be reduced dollar-for-dollar by the economic benefit to the Covered Trust(s) of such repurchase or make-whole payment(s) and the Allocable Share(s) for the Covered Trust(s) from which the Mortgage Loan(s) was (or were) repurchased or to which the make-whole payment(s) was (or were) made shall be reduced by that same amount, provided that no amount used to retire Advances or Servicing Advances owed to the Master Servicer shall be considered an economic benefit for purposes of this Subparagraph 15(b). The Parties agree that if the amount of economic benefit received by a Covered Trust as a result of such repurchases or make-whole payments exceeds the amount of that Covered Trust's Allocable Share, then the reduction in the Settlement Payment shall be equal to, but shall not exceed, that Covered Trust's Allocable Share. Under no circumstances shall a repurchase of a Mortgage Loan or payment of a make-whole amount cause any portion of the Settlement Payment to be required to be returned.

(c) Institutional Investor Agreement. The Parties acknowledge and agree (and the Institutional Investors have so acknowledged and agreed in the Institutional Investor Agreement) that the Institutional Investors' entry into, and performance of their obligations under, the Institutional Investor Agreement is a material part of the consideration for entry by Bank of America and Countrywide into this Settlement Agreement.

16. Indemnification. BAC HLS acknowledges that it has certain obligations under the Governing Agreements to indemnify the Trustee. As of the execution of this Settlement Agreement, BAC HLS has delivered to the Trustee the side-letter attached hereto as Exhibit C and BAC has delivered to the Trustee the guaranty attached thereto with respect to BAC HLS's

obligations to indemnify the Trustee to the extent specified in the side-letter and in the Governing Agreements.

17. **Confidentiality**. All matters relating to the negotiation of this Settlement Agreement, including confidential information exchanged between any Parties hereto in connection with such negotiation, other than the Settlement Agreement and the Institutional Investor Agreement, shall be and remain confidential (the "Confidential Information") and shall not be disclosed to anyone other than the Parties hereto and their counsel, except that such information may be disclosed: (a) in an action by any Party to enforce this Settlement Agreement or the Institutional Investor Agreement, to the extent reasonably required for the purposes of enforcement, (b) in response to a court order, subpoena, or other demand made in accordance with applicable law, rule, or regulation, (c) (i) as required by law, rule, accounting rule, or regulation, including Federal securities law, including any change in law, rule, accounting rule, or regulation, or (ii) in response to a request to a Party made by a Governmental Authority having jurisdiction over such Party, or (iii) as any Bank of America Party may elect in its sole discretion as part of its filings with the Securities and Exchange Commission on Forms 8-K, 10-Q, or 10-K and related disclosures, including disclosures and communications to any Bank of America Party's current or potential shareholders, investors, or other Governmental Authorities, and (d) to such Party's subsidiaries, affiliates, their respective directors, officers, external or internal agents, representatives, professional advisers, attorneys, accountants, auditors, insurers and reinsurers, successors, assigns, and employees, who have a need to know and are under a duty to implement appropriate measures to maintain the confidentiality, security, and integrity of such information. Should any Party receive a request for disclosure with respect to any Confidential Information except as part of the Article 77 Proceeding or pursuant to subsection (c) or (d) of this Paragraph 17, the Party receiving such a request shall promptly, and in no case more than five (5) business days following receipt of such a request (so long as it is legally permitted to provide such notification), notify the other Parties to afford them the opportunity to object or seek a protective order prior to the disclosure of any such information.

18. **Release and Covenants Valid Even if Additional or Different Facts; Effect of Breach**. The Parties acknowledge that they may discover facts that are additional to, inconsistent with, or different from those which they now know or believe to be true regarding

the Covered Trusts. Nonetheless, except as expressly set forth in this Settlement Agreement, it is intended that this Settlement Agreement shall fully and finally compromise all claims that exist or may exist arising from or relating to the Covered Trusts to the extent set forth herein. Following Final Court Approval, in the event of a material breach of this Settlement Agreement by any Party, the non-breaching Party's sole remedy shall be to seek to enforce the Settlement Agreement; provided, however, that if the Settlement Payment is not made by Bank of America or Countrywide in accordance with Subparagraphs 3(a) and (b) in all material respects or if at any time after the Approval Date the Settlement Payment is voided or rescinded for any reason, including as a preferential or fraudulent transfer (in all such cases, written notice having been given by the Trustee to Bank of America and Countrywide and Bank of America or Countrywide not having cured, made, or restored such payment within sixty (60) days), then the release and waiver contained in Paragraph 9 shall have no further force or effect; provided, however, that the Trustee may instead elect to seek to enforce this Settlement Agreement in which event the release and waiver contained in Paragraph 9 shall remain in full force and effect. Under no other circumstances shall any breach of the Settlement Agreement by any Party impair or effect in any respect the release and waiver provided in Paragraph 9, or the other injunctive or other provisions to be contained in the Final Order and Judgment.

19. **Attorneys' Fees**. Within thirty (30) days of the Approval Date, Bank of America shall pay the attorneys' fees of the Institutional Investors and their attorneys' costs according to the schedule and terms set forth on Exhibit F (except that those fees and costs described in such Exhibit as being payable on a current basis shall be so paid following the Signing Date, unless and until Final Court Approval shall have become legally impossible, at which time any such payment obligations shall cease).

20. **No Admission**. In no event shall this Settlement, or this Settlement Agreement, the activities performed in contemplation of, in connection with, or in furtherance of this Settlement Agreement or the Article 77 Proceeding (including but not limited to statements in court filings, testimony, arguments, and expert opinions), public statements made by any Party or any of their representatives, concerning or relating to the Settlement, or any communications or negotiations with respect thereto be construed, deemed, used, asserted, or admitted as evidence of an admission or a concession on the part of any Party on any subject whatsoever; provided

that nothing in this Paragraph 20 shall preclude the use of the Settlement Agreement and the circumstances surrounding its execution to enforce the Settlement Agreement. The Bank of America Parties and the Countrywide Parties have denied and continue to deny any and all wrongdoing of any kind whatsoever, and retain, and do not waive, any and all positions, defenses, and responses that they may have with respect to such matters. The BNY Mellon Parties retain, and do not waive, any positions and responses they may have with respect to such matters other than as set forth explicitly in this Settlement Agreement.

21. **No Amendment of Governing Agreements**. Nothing in this Settlement Agreement is intended to, or does, amend any of the Governing Agreements.

22. **Binding Agreement on Successors and Assigns**. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties' successors and assigns. This Settlement Agreement may not be assigned by any of the Parties without the prior written consent of each of the other Parties hereto and any attempted assignment in violation of this provision shall be null and void.

23. **Governing Law; Waiver of Jury Trial**. This Settlement Agreement and any claim, controversy, or dispute arising under or related to this Settlement Agreement or the Settlement shall be governed by, and construed in accordance with, the laws of the State of New York and the laws of the United States applicable to contracts entered into and completely performed in New York. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS SETTLEMENT AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

24. **Consent to Jurisdiction**. Each Party consents and irrevocably submits to the continuing exclusive jurisdiction of the Settlement Court and any appellate courts thereof, or, if Final Court Approval becomes legally impossible, to the exclusive jurisdiction of the Supreme Court of the State of New York in the County of New York or the United States District Court for the Southern District of New York, and any appellate courts thereof, in any action, suit, or proceeding arising from or related to this Settlement Agreement. The Parties agree that a final

unappealable judgment in any such action, suit, or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each Party waives and agrees not to assert by way of motion, as a defense or otherwise in any such suit, action, or proceeding, any claim that it is not personally subject to the jurisdiction of such courts, that the suit, action, or proceeding is brought in an inconvenient forum, that the venue of the suit, action, or proceeding is improper or that the related documents or the subject matter thereof may not be litigated in or by such courts. This consent to jurisdiction shall not be construed, deemed, used, asserted, or admitted as evidence of an admission or a concession of jurisdiction on the part of any Party in any action unrelated to this Settlement Agreement.

25. **Construction**. The terms, provisions, and conditions of this Settlement Agreement represent the results of negotiations among the Parties. The terms, provisions, and conditions of this Settlement Agreement shall be interpreted and construed in accordance with their usual and customary meanings. Each of the Parties expressly, knowingly, and voluntarily waives the application, in connection with the interpretation and construction of this Settlement Agreement, of any rule of law or procedure to the effect that ambiguous or conflicting terms, conditions, or provisions shall be interpreted or construed against the Party whose legal counsel prepared the executed version or any prior drafts of this Settlement Agreement. The headings contained in this Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Settlement Agreement. Whenever the words "include," "includes," or "including" are used in this Settlement Agreement, they shall be deemed to be followed by the words "without limitation." References to specific numbered sections of the Governing Agreements are intended to refer to those sections and other similar sections of like effect in other Governing Agreements if the numbering differs.

26. **Severability**. If any provision of this Settlement Agreement other than the Settlement Payment contained in Paragraph 3 or the release and waiver contained in Paragraph 9 shall, for any reason or to any extent, be invalidated or ruled to be unenforceable, the remainder of this Settlement Agreement shall be enforced to the fullest extent permitted by law.

27. **No Third-Party Rights or Obligations**. No Person not a Party to this Settlement Agreement shall have any third-party beneficiary or other rights under this Settlement

Agreement. Under no circumstances shall any Person not a Party hereto have any right to sue under or otherwise directly enforce this Settlement Agreement. For the avoidance of doubt, nothing in this Settlement Agreement confers any right or ability to sue to any present or former Mortgage Loan borrower, nor does this Settlement Agreement create any obligation on the part of any Person to any such borrower.

28. **Multiple Counterparts**. This Settlement Agreement may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement. The Parties intend that faxed signatures and electronically-imaged signatures such as PDF files shall constitute original signatures and are binding on all Parties. An executed counterpart signature page delivered by facsimile or by electronic mail shall have the same binding effect as an original signature page. This Settlement Agreement shall not be binding until all Parties have signed and delivered a counterpart of this Settlement Agreement whether by mail, facsimile, or electronic mail.

29. **Modification and Waiver**. This Settlement Agreement may not be amended, altered or modified, and no provision hereof may be waived, except by written instrument executed by the Parties. No waiver shall constitute a waiver of, or estoppel with respect to, any subsequent or other inaccuracy, breach or failure to comply strictly with the provisions of this Settlement Agreement.

30. **Further Assurances**. The Parties agree (a) to use their reasonable best efforts and cooperate in good faith to fully effectuate the intent, terms, and conditions of this Settlement Agreement and the Settlement, including by executing and delivering all additional documents and instruments, doing all acts not specifically referred to herein that are reasonably necessary to fully effectuate the intent, terms, and conditions of this Settlement Agreement, and refraining from taking any action (or assisting others to take any action) contrary to or inconsistent with the intent, terms, and conditions of this Settlement Agreement; provided, however, that, as to the Trustee, seeking to obtain direction from the Settlement Court before taking any action in respect of a Covered Trust that is the subject matter of the Article 77 Proceeding, pursuant to Subparagraph 2(c) of this Settlement Agreement, shall not be deemed to be contrary to or inconsistent with the intent, terms, and conditions of this Settlement Agreement; (b) that any

actions taken by the Master Servicer and/or any Subservicer prior to the Approval Date pursuant to or that are consistent with the provisions of Paragraph 5 herein shall be deemed to satisfy the Master Servicer's obligation to service the Mortgage Loans prudently in accordance with all relevant sections of the Governing Agreements; and (c) in the absence of an intentional violation of a representation or warranty contained herein, to perform these obligations even if they discover facts that are additional to, inconsistent with, or different from those which they now know or believe to be true regarding the Covered Trusts.

31. **Entire Agreement**. The Settlement Agreement and the Institutional Investor Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof, except as expressly provided herein, and supersedes all prior agreements and understandings, discussions, negotiations and communications, written and oral, among the Parties with respect to the subject matter hereof. Notwithstanding the preceding sentence, the Confidentiality Undertaking dated January 27, 2011, and agreed to by the Trustee, BAC HLS, and Gibbs & Bruns LLP on behalf of its clients, shall remain in full force and effect, and the Forbearance Agreement shall remain in full force and effect according to its terms and conditions and Paragraph 7 herein.

32. **Notices**. Any notice or other communication required or permitted under this Settlement Agreement shall be in writing and shall be deemed to have been duly given when (a) mailed by United States registered or certified mail, return receipt requested, (b) mailed by overnight express mail or other nationally recognized overnight or same-day delivery service, or (c) delivered in person, to the parties at the following addresses:

If the Trustee, to:

The Bank of New York Mellon
101 Barclay Street, 8 West
New York, New York 10286

Attention: Loretta A. Lundberg
Managing Director
Corporate Trust Default Services

with a copy to:

The Bank of New York Mellon
One Wall Street
New York, New York 10286

Attention: Jane Sherburne
General Counsel

If Bank of America, to:

Bank of America Corporation
100 N. Tryon Street
Charlotte, NC 28255-0001

Attention: Edward P. O'Keefe
General Counsel
NC1-007-57-25

with a copy to:

Bank of America Corporation
Consumer Real Estate Services Division, Legacy Asset Servicing Unit
Hearst Tower
214 N. Tryon St.
Charlotte, NC 28255

Attention: Jana J. Litsey
Deputy General Counsel
NC1-027-20-05

If Countrywide, to:

Countrywide Home Loans, Inc.
4500 Park Granada
Calabassas, CA 91302

Attention: Michael Schloessman
President

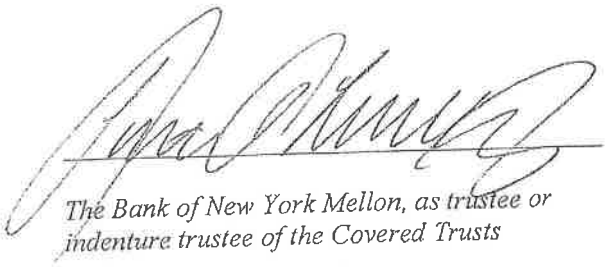
with a copy to

Bank of America Corporation
Consumer Real Estate Services Division, Legacy Asset Servicing Unit
Hearst Tower
214 N. Tryon St.
Charlotte, NC 28255

Attention: Jana J. Litsey
Deputy General Counsel
NC1-027-20-05

A Party may change the names or addresses where notice is to be given to it by providing notice to the other Parties of such change in accordance with this Paragraph 32.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the day and year so indicated.



The Bank of New York Mellon, as trustee or indenture trustee of the Covered Trusts

Name: Loretta A. Lundberg

Title: Managing Director

Dated: June 28, 2011

Countrywide Financial Corporation

Name: Michael Schloessmann

Title: President and CEO

Dated: June 28, 2011

Countrywide Home Loans, Inc.

Name: Michael Schloessmann

Title: President and CEO

Dated: June 28, 2011

Bank of America Corporation

Name: Terrence P. Laughlin

Title: Legacy Asset Servicing Division President.

Dated: June 28, 2011

BAC Home Loans Servicing, LP

Name: Terrence P. Laughlin

Title: Legacy Asset Servicing Division President, Bank of America, N.A.

By: BAC GP, LLC, its general partner

By: Bank of America, N.A., its manager

Dated: June 28, 2011

Exhibit 12

In The Matter Of:

Bank of New York Mellon v.

Oral Argument

April 12, 2013

Supreme Court State of New York - Civil Term

60 Centre Street, Room 420

New York, New York 10007

(646) 386-3012

Harristshams@aol.com

Original File Apr-12 Bank of Mellon.txt

Min-U-Script® with Word Index

option of making a finding that certificate holders are barred from suing the trustee for general administrative activities associated with the trust.

That provision, and I won't bring up the slide unless your Honor wants to see it. That provision was modeled after the order to show cause in the IBJ Schroeder case. If you compare that provision to the provision that was submitted to the court in the IBJ Schroeder case, it is nearly identical.

You saw Mr. Madden's response to that draft proposed final order and judgment. He said we think this is a bad idea. That was on June 23rd. Later that day on June 23rd I circulated another draft of that proposed final order and judgment and it was out. So if this was such a big deal for the trustee, okay, the same day Mr. Madden said we don't think this is a good idea the trustee said, okay, it's out. It never made its way into the proposed final order and judgment that was presented to the court. Even if it did, it's up to your Honor to decide whether it makes sense given the evidence. That's all that the trustee was proposing at the time, give the Court the option of adopting this finding. The Court may, the Court may not, ultimately it came out so it didn't matter. It was obviously not something that the trustee was focused on given Mr. Bailey's testimony. Given what I represent to, your Honor, was Miss

is -- the question is did the trustee care about the settlement amount or did they care about not getting sued when the institutional investors have their shotgun pointed at the trustee saying, you have to act, there is preventable default, you are going to get sued. Did they care about getting out of that jeopardy or did they care about settlement amount.

Your Honor, what we want to know and why we keep fighting about this is the only place that anyone can answer that question is in the legal advice they got about their trust duties.

MR. INGBER: Your Honor, we are still in jeopardy. We are being sued across the street, we are being sued in this courtroom. We didn't have any relief. That's really one of the most fundamental points. The second point is that when we talk about loan files and whether we should have done a full loan re-underwriting and trustee was for some reason just buying Bank of America's position, it ignores that Miss Patrick and her clients with their 40 billions of dollars worth of holdings were in the room and were part of that discussion, were active, were leading that discussion. It just doesn't make any sense, your Honor.

THE COURT: Since you were involved in it I have this case called Knights of Columbus, Inc.

MR. INGBER: I am very well aware of it.

Proceedings

THE COURT: Is that case extinguished by this argument.

MR. INGBER: Absolutely not. During that oral argument on motion to dismiss I said to your Honor it would be nice if I could get rid of this case because it's extinguished by virtual of the settlement. I can't. I have stood up here on a number of occasions and said there is no OR relief of claims. They understand that. They understand that when you look at the settlement agreement there is not a relief of claims against the trustee, we are being sued by Knights of Columbus, unfortunately, we are being sued in a punitive class action across the street in Judge Pauly's chambers, we are disputing those on the merits, we are fighting them on the merits because unfortunately it is just reality, we can't stand up and say that this settlement agreement contains a relief, it didn't. Again, we are getting nothing out of this deal. And the notion that the indemnity was some real benefit for us, it ignores that the indemnity only applies with respect to the settlement activities. It's not an indemnity that goes on forever and ever and ever.

How can an indemnity that applies only to the activities in connection with the settlement incentivize the trustee to make a bad deal in connection with the settlement, it just doesn't add up, it doesn't make any

Exhibit 13

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: CIVIL TERM: PART 39

- -X

KNIGHTS OF COLUMBUS,
Plaintiff,

- against -

Index Number:
651442-11

BANK OF NEW YORK/MELLON,
Defendant.

- -X

Supreme Court
60 Centre Street
New York, New York 10007

April 25, 2012

BEFORE:

HONORABLE BARBARA KAPNICK,
Justice of the Supreme Court

APPEARANCES:

TALCOTT FRANKLIN PC
Attorneys for the Plaintiff
208 Market Square
Dallas, New York 75202
BY: TALCOTT FRANKLIN, ESQ.

MAYER BROWN LLP
Attorneys for the Defendant
1675 Broadway
New York, New York 10019
BY: MATTHEW D. INGBER, ESQ.

Claudette Gumbs, Official Court Reporter
60 Centre Street
New York, New York 10007
646.386.3693

is -- the question is did the trustee care about the settlement amount or did they care about not getting sued when the institutional investors have their shotgun pointed at the trustee saying, you have to act, there is preventable default, you are going to get sued. Did they care about getting out of that jeopardy or did they care about settlement amount.

Your Honor, what we want to know and why we keep fighting about this is the only place that anyone can answer that question is in the legal advice they got about their trust duties.

MR. INGBER: Your Honor, we are still in jeopardy. We are being sued across the street, we are being sued in this courtroom. We didn't have any relief. That's really one of the most fundamental points. The second point is that when we talk about loan files and whether we should have done a full loan re-underwriting and trustee was for some reason just buying Bank of America's position, it ignores that Miss Patrick and her clients with their 40 billions of dollars worth of holdings were in the room and were part of that discussion, were active, were leading that discussion. It just doesn't make any sense, your Honor.

THE COURT: Since you were involved in it I have this case called Knights of Columbus, Inc.

MR. INGBER: I am very well aware of it.

because parties have settled after they have done some re-underwriting and seen what the liability is. And here the idea that you have to spend five-years, it's not true. It's Bank of America's position, your Honor, they said that in every case, they have always said you can't do any underwriting, they have always said statistical sampling, you have to look at every loan, but they always lost that argument.

When you have the trustee and Mr. Kravitz testifying, essentially taking Bank of America's position, arguing that no, we can't -- underwriting would take forever, it's too complicated, and at the end everybody would disagree on the results of re-underwriting. This is the trustee taking a position that favors Bank of America when the trustees have a duty of loyalty to us. Everyone is frustrated, we are still here arguing about this. It would be a lot easier if they showed up and gave everyone their one month, or whatever it was, for the Court to approve the settlement be done. It would be lot easier if everyone said, okay, fine, they have billions, a lot of money.

But there is some really important questions about the fact that they don't even know what the liability is because they never tried to figure it out.

So when you ask them what did the trustee get out of this, did they trade billions for indemnity the answer

Exhibit 14

Exhibit 14 contains materials that have been designated Confidential pursuant to the Court's Protective Order dated June 14, 2012. A copy of Exhibit 14 has been delivered to the Court and served on all parties of record.

Exhibit 15

Exhibit 15 contains materials that have been designated Confidential pursuant to the Court's Protective Order dated June 14, 2012. A copy of Exhibit 15 has been delivered to the Court and served on all parties of record.

Exhibit 16

Exhibit 16 contains materials that have been designated Confidential pursuant to the Court's Protective Order dated June 14, 2012. A copy of Exhibit 16 has been delivered to the Court and served on all parties of record.

Exhibit 17

Exhibit 17 contains materials that have been designated Confidential pursuant to the Court's Protective Order dated June 14, 2012. A copy of Exhibit 17 has been delivered to the Court and served on all parties of record.

Exhibit 18

Exhibit 18 contains materials that have been designated Confidential pursuant to the Court's Protective Order dated June 14, 2012. A copy of Exhibit 18 has been delivered to the Court and served on all parties of record.

Exhibit 19

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

----------X

In the Matter of the Application of

Index No. 651786/

THE BANK OF NEW YORK MELLON
(As trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), et al.,

Assigned to Kapnick, J.

Petitioners,

for an order, pursuant to C.P.L.R. Rule 7701, seeking judicial instructions and approval of a proposed settlement.

----------X

* C O N F I D E N T I A L *

VIDEOTAPED DEPOSITION

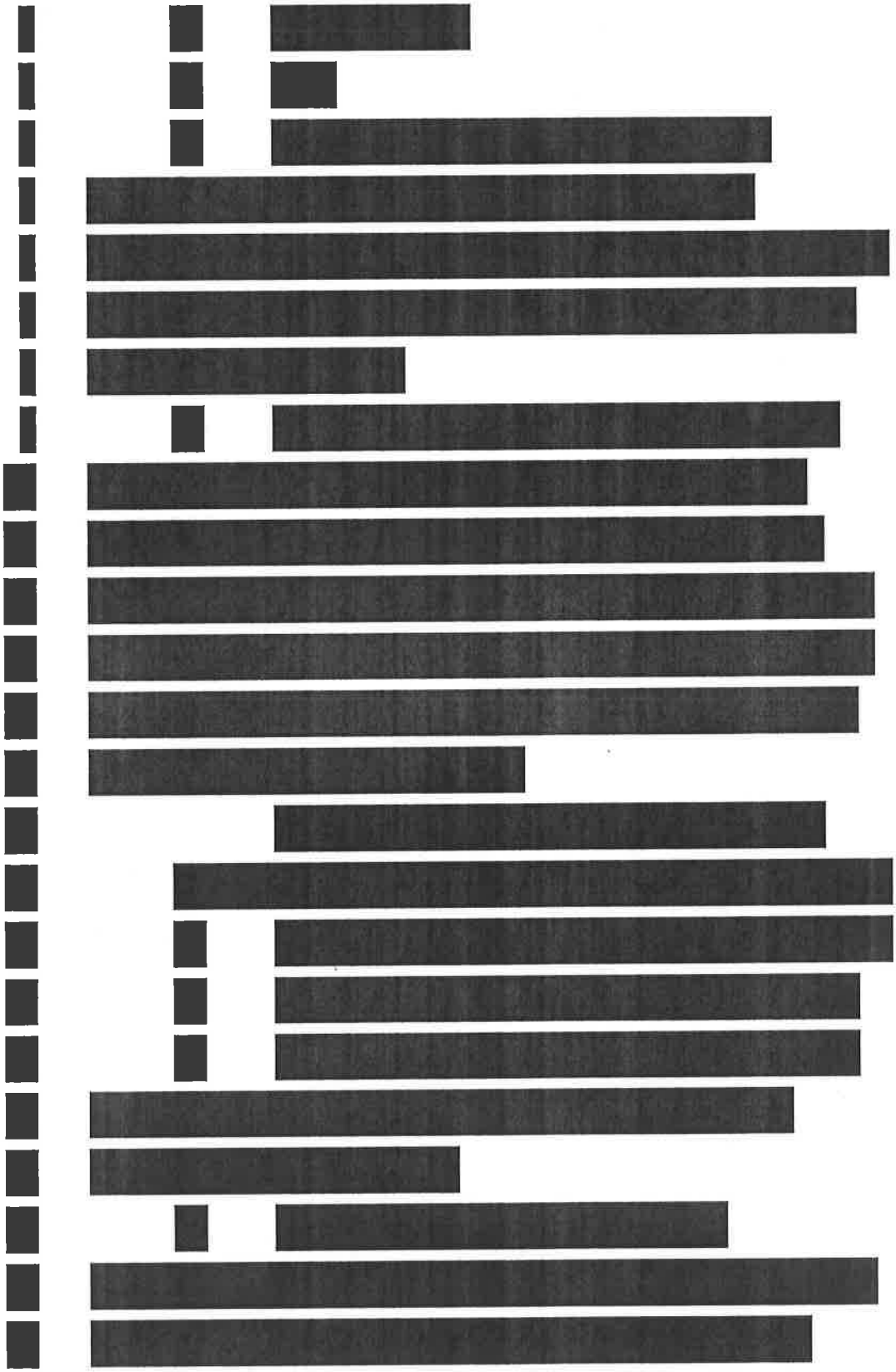
OF

ROBERT E. BAILEY

New York, New York

Monday, December 3, 2012

Reported by:
ANNETTE ARLEQUIN, CCR, RPR, CCR, CLR
JOB NO. 55069



[redacted]

Asked and answered. Calls for speculation.

A. I don't believe Ms. Patrick ever said or threatened to bring suit against the trustee. I just want to make that clear, right? To my knowledge, that was never raised by Ms. Patrick. She had a view as to what the trustee was required to do and the trustee had a different view.

Q. And without, assuming that's true, without ever even threatening a lawsuit, Bank of New York Mellon recognized it could be sued by Ms. Patrick and her certificate holders?

MR. GONZALEZ: Objection to form.

Asked and answered.

BY MR. REILLY:

Q. Correct?

MR. GONZALEZ: You can answer that question, again, to the extent it doesn't require you to reveal attorney/client or work product communication.

A. As I said before, any certificate holder can sue the trustee at any point whether it threatens litigation, doesn't threaten litigation, whether the suit is meritorious or

R. E. Bailey - Confidential

A F T E R N O O N S E S S I O N

(Time noted: 1:37 p.m.)

THE VIDEOGRAPHER: The time is 1:37 p.m. We're on the record.

* * *

R O B E R T E. B A I L E Y, resumed and testified as follows:

EXAMINATION BY (Cont'd.)

MR. REILLY:

Q. I'm handing you what's been previously marked as Exhibit 154, and this is the RRMS Advisors report of June 7th, 2011, correct?

A. It is an RRMS report dated June 7th, 2011, yes.

Q. And did you read this report before it was submitted to the court?

A. Yes.

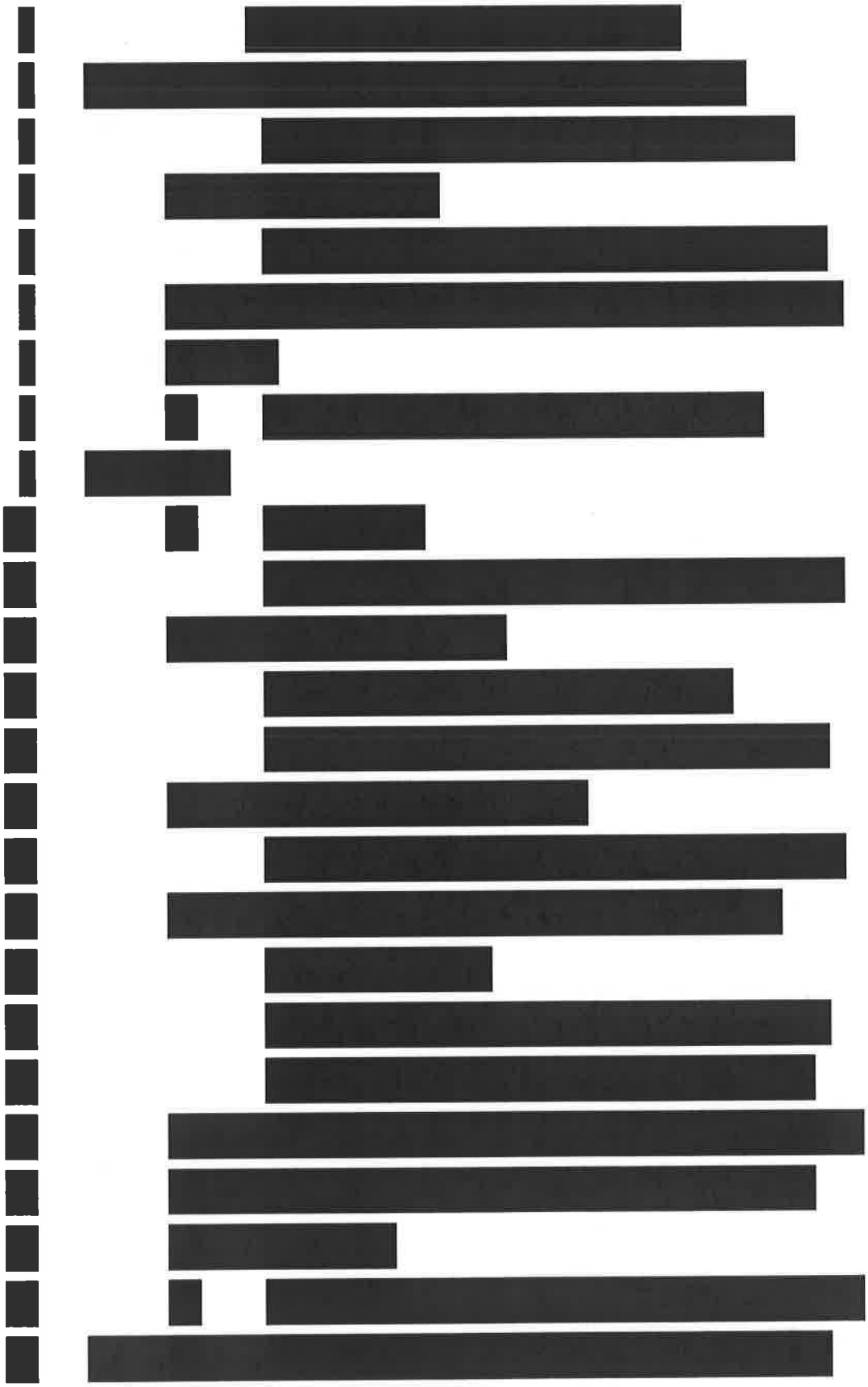
Q. Okay. Mr. Lin was also retained by the Bank of New York Mellon as an expert on servicing also.

Do you recall that?

A. Correct.

Q. And did you interview him with regard

[redacted]



[redacted]

[redacted]

[redacted]

[redacted]

Exhibit 20

EXECUTION COPY

BAC Home Loans Servicing, LP
6400 Legacy Drive
Plano, TX 75024

June 28, 2011

The Bank of New York Mellon, as Trustee or Indenture Trustee
101 Barclay Street
New York, New York 10286
Attn: Mortgage-Backed Securities Group

Ladies and Gentlemen:

Re: Pooling and Servicing Agreements and Sale and Servicing Agreements

We refer to the Pooling and Servicing Agreements (the "PSAs") and Sale and Servicing Agreements (the "SSAs" and together with the PSAs, the "Sale Agreements"), as applicable, for the transactions identified on Exhibit 1 hereto, each, in PSAs, among the Depositor thereunder, the Sellers thereunder, BAC Home Loans Servicing, LP (f/k/a Countrywide Home Loans Servicing, LP), as Master Servicer (the "Master Servicer") and The Bank of New York Mellon (f/k/a The Bank of New York), as trustee (or, in the case of SSAs, the indenture trustee, together the "Trustee") and each, in SSAs, among the Depositor thereunder, BAC Home Loans Servicing, LP (f/k/a Countrywide Home Loans Servicing, LP), as Sponsor and Master Servicer, the Trust thereunder and the Trustee. We also refer to the Guaranty of Bank of America Corporation, dated as of June 28, 2011, attached hereto as Exhibit 2 (the "Guaranty"). Capitalized terms used but not defined in this letter have the meanings specified in the Sale Agreements.

Section 8.05 (*Trustee's Fees and Expenses*) of each PSA and Section 7.03 (*Master Servicer to pay Indenture Trustee's and Owner Trustee's Fees and Expenses*) of each SSA (together, the "Indemnity") each provide, in part, that "The Trustee and any director, officer, employee or agent of the Trustee shall be indemnified by the Master Servicer and held harmless against any loss, liability or expense (including reasonable attorneys fees) (i) incurred in connection with any claim or legal action relating to (a) [the Sale Agreement], (b) the [applicable securities] or (c) in connection with the performance of any of the Trustee's duties [under the Sale Agreement], other than any loss, liability or expense incurred by reason of willful malfeasance, bad faith or negligence in the performance of any of the Trustee's duties hereunder . . . ." Certain Sale Agreements also exclude from the scope of the Indemnity "any loss, liability or expense incurred . . . by reason of any action of the Trustee taken at the direction of the [investors]."[1]

---

[1] We note that the language referenced in this letter may vary in certain ways in the Sale Agreements. Notwithstanding such variances, we intend this letter to apply, with same effect, to all the Sale Agreements for the transactions identified on Exhibit 1 hereto, except if such variances are material, in which case the parties hereto will consider in good faith how to implement the intent of this letter to such variances if the need arises.

We confirm that we view any actions taken by the Trustee in connection with its entry into the settlement in respect of Mortgage Loan repurchase and other alleged claims against the Sellers and Master Servicer relating to the transactions identified on Exhibit 1 hereto (the "Settlement"), including but not limited to the Trustee's participation in settlement negotiations, the Trustee's analysis of the Settlement, the filing by the Trustee of any petition in connection with the Settlement, the provision of notices concerning the Settlement to interested parties (including investors), and any further actions by the Trustee in support of the Settlement, including the response by the Trustee to any objections to the Settlement and any implementation of the Settlement by the Trustee (such actions together being the "Trustee Settlement Activities") as being actions that, for purposes of the Indemnity, relate to the Sale Agreements, the applicable securities, or the performance of the Trustee's duties under the Sale Agreements. We also confirm that the manner of entering into the Settlement or undertaking the activities to prepare therefor or contemplated thereby will not serve to disqualify the Trustee from receiving the benefits of the Indemnity or the Guaranty.

We also confirm that we view the Institutional Investor Agreement and any letter or other correspondence from the investors or their counsel which requests that the Trustee take the Trustee Settlement Activities, or any portion thereof, as not being the equivalent of a direction from the investors for purposes of the Indemnity. We further confirm that neither the receipt by the Trustee of any such letter or other correspondence nor the entry by the Trustee into the Institutional Investor Agreement will disqualify the Trustee from receiving the benefit of either the Indemnity or the Guaranty.

Finally, we note that the Indemnity also provides, with certain exceptions expressly provided for, that "the Master Servicer covenants and agrees . . . to pay or reimburse the Trustee for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of [the Sale Agreement] with respect to (A) the reasonable compensation and the expenses and disbursements of its counsel not associated with the closing of the issuance of the [applicable securities], (B) the reasonable compensation, expenses and disbursements of any accountant, engineer or appraiser that is not regularly employed by the Trustee, to the extent that the Trustee must engage such persons to perform acts or services [under the Sale Agreement] and (C) printing and engraving expenses in connection with preparing any Definitive [securities]."[2] We confirm that we view reasonable expenses, disbursements and advances otherwise within the Indemnity, if incurred or made by the Trustee in connection with the Trustee Settlement Activities, as being reimbursable by the Master Servicer under the Indemnity.

Without limiting any of the foregoing, we confirm that following the entry by the Trustee into the Settlement, Bank of America Corporation, BAC Home Loans Servicing, LP, Countrywide Financial Corporation and/or Countrywide Home Loans, Inc. shall pay the reasonable fees and expenses of the Trustee for Trustee Settlement Activities (including its reasonable attorneys' fees and expenses) on a current and ongoing basis (including all accrued

---

[2] We note that the language referenced in this letter may vary in certain ways in the Sale Agreements. Notwithstanding such variances, we intend this letter to apply, with same effect, to all the Sale Agreements for the transactions identified on Exhibit 1 hereto, except if such variances are material, in which case the parties hereto will consider in good faith how to implement the intent of this letter to such variances if the need arises.

and unpaid fees and expenses as of the date hereof, which shall be paid in full no later than 15 days from the execution of the Settlement).

Except as noted above, nothing herein is intended to limit, modify, supersede, or in any way affect any exceptions to the liability of the Master Servicer under the Indemnity that are based on the conduct of the Trustee. It is understood and agreed that the Indemnity does not cover any loss or liability incurred by reason of any tax consequences of the Settlement or arising out of the determination, administration or distribution (including distribution within each Covered Trust) of the Allocable Shares pursuant to the Settlement, which the Final Order and Judgment to be entered with respect to the Settlement shall provide shall not give rise to liability on the part of the BNYM Parties, the Bank of America Parties or the Countrywide Parties (all as defined in the Settlement Agreement). Nothing herein is intended to limit, modify, or in any way affect the limitations on the liability of the Master Servicer under Section 6.03 (*Limitation on Liability of the Depositor, the Sellers, the Master Servicer and Others*) of each PSA and Section 5.03 (*Limitation on Liability of the Seller, the Master Servicer and Others*) of each SSA.

Please acknowledge your agreement by countersigning this letter in the space provided below and returning a copy to us.

Sincerely,

BAC HOME LOANS SERVICING, L.P.

By: _____
Name: Terrence P. Laughlin
Title: Legacy Asset Servicing
Division President,
Bank of America, N.A.
By: BAC GP, LLC, its general partner
By: Bank of America, N.A., its manager

Accepted and Agreed:

BANK OF AMERICA CORPORATION

By: _____
Name: Terrence P. Laughlin
Title: Legacy Asset Servicing Division President.

THE BANK OF NEW YORK MELLON

By: _____
Name:
Title:

Accepted and Agreed:

BANK OF AMERICA CORPORATION

By: _____
Name:
Title:

THE BANK OF NEW YORK MELLON

By: _____
Name: Loretta A. Lundberg
Title: Managing Director

Exhibit 21

Bank of America

December 10, 2010

The Bank of New York Mellon
101 Barclay Street
New York, New York 10286
Attention: J. Kevin McCarthy

Re: Forbearance Agreement Relating to Certain Countrywide Mortgage-Backed Securities

Ladies and Gentlemen:

We refer to the letter agreement, dated as of December 9, 2010, among Theodore N. Mirvis, Brian E. Pastuszenski and Marc T.G. Dworsky on behalf of BAC Home Loans Servicing, LP (the "Servicer"), Kathy D. Patrick on behalf of the parties listed therein and Jason H.P. Kravitt on behalf of The Bank of New York Mellon (the "Trustee") attached hereto as Exhibit A (the "Forbearance Agreement"). Capitalized terms used and not defined herein have the meanings ascribed to such terms in the Forbearance Agreement.

In consideration of the Forbearance Agreement, the Servicer shall pay the reasonable legal fees and expenses that the Trustee incurs (or has incurred) in connection with its counsel's participation in, and planning with regard to, ongoing discussions regarding the October 18 Letter and any modifications thereof. The Servicer agrees to indemnify the Trustee and hold it harmless from and against any and all costs, losses, damages, expenses, fees, court costs, judgments, penalties, obligations, suits, disbursements and liabilities of any kind or character whatsoever that may be imposed upon, incurred by or asserted against the Trustee that arise solely out of its entry into the Forbearance Agreement. For the avoidance of doubt, nothing herein is intended to limit, modify, supersede, expand or in any way affect any indemnity rights already available to the Trustee under each PSA for each Original Trust and Additional Trust.

Please acknowledge your agreement by countersigning this letter in the space provided below and returning a copy to us.

Sincerely,

BAC HOME LOANS SERVICING, LP

By: Terrell A. Hearn
Name: Terrence A. Laughlin
Title: Executive Vice President

Accepted and Agreed to:

THE BANK OF NEW YORK MELLON

By: _____

Name: J. Kevin McCarthy

Title: Executive Vice President and Deputy General Counsel

17660783 10446324

EXHIBIT A

FORBEARANCE AGREEMENT

(see attached)

Exhibit 22

Exhibit 22 contains materials that have been designated Confidential pursuant to the Court's Protective Order dated June 14, 2012. A copy of Exhibit 22 has been delivered to the Court and served on all parties of record.

Exhibit 23

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 39

- X

In the Matter of the Application of

THE BANK OF NEW YORK MELLON,
(As Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures),

PETITIONER,

For an Order, pursuant to CPLR Section 7701, seeking judicial instructions and approval of a proposed settlement.

-- X

INDEX NO: 651786/11

60 Centre Street
New York, New York
August 2, 2012

BEFORE: HONORABLE BARBARA R. KAPNICK, Justice

APPEARANCES:

MAYER BROWN
Attorneys for Bank of NY Mellon (Trustee)
1675 Broadway
New York, New York
BY: MATTHEW D. INGBER, ESQ.

GIBBS & BRUNS, LLP
Attorneys for Institutional Investors
1100 Louisiana
Suite 5300
Houston, Texas
BY: KATHY PATRICK, ESQ.
ROBERT J. MADDEN, ESQ.

WARNER PARTNERS, P.C.
Attorneys for Institutional Investors
950 Third Avenue
New York, New York
BY: KENNETH E. WARNER, ESQ.

Servicer -- " that's Bank of America -- "and held harmless against loss, liability or expense, including reasonable attorney's fees and expenses, incurred in connection with any claim or legal action relating to this agreement, the certificates or in connection with the Trustee's duties hereunder."

So, the suggestion that there is something alarming about the Trustee having the audacity to say, you know, I want my contract to be performed, is quite startling in its own right.

THE COURT: What did the side letter, how did that -- did it just continue?

MS. PATRICK: Yes.

THE COURT: Continue the obligations under the PSAs? Is that what --

MS. PATRICK: Yes. What they call the side letter, and we are not parties to the side letter, but what they call the side letter is a letter in which Bank of America confirmed that it was not going to take the position that our activities in connection with trying to achieve a resolution that we would be comfortable recommending to the Trustee for its decision, somehow constituted a direction that voided this indemnity.

Because, if you read on down the line, down after that section, if you read to the next page, that Master

Servicer indemnity doesn't apply, if our clients give a binding direction to the Trustee. But, we didn't give a binding direction to the Trustee. We were going to request that if the settlement were satisfactory, the Trustee do it.

The Trustee was going to make its own decision. All of those documents are produced. You have seen them here. You have seen them in the 150,000 -- you haven't, but they have -- that were produced originally. They have seen the direction letter.

So, all this was, was a confirmation that the request that we made didn't void this otherwise required indemnity by the Master Servicer.

And then, it did one other thing. When the settlement was entered into, when the settlement was entered into, the Master Servicer was Countrywide Home Loans Servicing. Right. Three days later, the Trust, the Servicer became Bank of America North America. North America.

So, there is a stitch that covers that. Says it applies to the Bank of America, will not take that position and Bank of America will honor the indemnity because Bank of America was going to become the Master Servicer three or four days or a week later, and so that's stitched up.

But, the indemnity is not broader than the indemnity the Trustee was entitled to get under the Pooling

would make no sense to maintain the mortgage files of the -- you would have to acquire possession before you can maintain the possession.

So that is the first point, your Honor.

Second point. Just to -- you had asked a good question, your Honor, as to why this is not covered by the settlement agreement. We have said numerous times in the context of the Article 77 in response to allegations that the trustee was conflicted because it negotiated a release for itself, we said look at the settlement agreement. There is no release of the claims against the trustee. We are not conflicted. There is no release.

We asked for an injunctive provision in the proposed final order and judgment if your Honor were to find that we acted within our reasonable discretion, but there is no release claimed, and we said if certificate holders want to sue Bank of New York they can go ahead and do so, we will fight it on the merits, but they are not released.

So that is why this case, why we are not arguing that it is released by the settlement agreement. There was not a release in the settlement agreement of claims.

Again, the trustee we will fight it on the merits and we think it should be dismissed at this stage and we don't think we should have to go beyond this motion to dismiss.

Exhibit 24

19lrbynm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

THE BANK OF NEW YORK MELLON,

Petitioner,

v. 11 Civ. 5988 (WHP)

WALNUT PLACE LLC, et al.,

Respondents.

----------x

RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO, et al.,

Plaintiffs,

v. 11 Civ. 5459 (WHP)

THE BANK OF NEW YORK MELLON,

Defendant.

----------x Argument

New York, N.Y.
September 21, 2011
10:30 a.m.

Before:

HON. WILLIAM H. PAULEY III

District Judge

APPEARANCES

MAYER BROWN LLP
Attorneys for Petitioner
BY: MATTHEW D. INGBER
CHRISTOPHER J. HOUPT

that constitutes the bulk of the Countrywide trust for which The Bank of New York is the trustee.

THE COURT: Why 530? Why not 1 or 1,000? How did it come to be 530?

MR. INGBER: It came to be 530, your Honor, because The Bank of New York received an instruction with respect to -- it started out as 65 trusts. We received an instruction from holders which today I believe hold more than $40 billion of holdings in these 530 trusts. They had the requisite percentage of holdings to instruct the trustee. That's how this all started.

The institutional investors sent a letter of direction to The Bank of New York Mellon as trustee for those trusts and instructed the trustee to investigate and eventually to file claims against Bank of America and Countrywide relating to those trusts. As discussions commenced and were under way, many trusts were added to that initial list, trusts for which these holders, these institutional investors, had the requisite holdings to instruct the trustee.

Then, through discussions with Bank of America and Countrywide and discussions with the institutional investors, the list grew to include now up to 530 trusts, in part because this represented the bulk of the Countrywide trusts over which The Bank of New York was the trustee.

THE COURT: Twice you have said the bulk of the trusts

Exhibit 25

Exhibit 25 contains materials that have been designated Confidential pursuant to the Court's Protective Order dated June 14, 2012. A copy of Exhibit 25 has been delivered to the Court and served on all parties of record.

Exhibit 26

pillsbury

Pillsbury Winthrop Shaw Pittman LLP
1540 Broadway | New York, NY 10036-4039 | tel 212 858 1000 | fax 212 858 1500

September 3, 2010

Kathy Patrick
Gibbs & Bruns LLP
1100 Louisiana
Suite 5300
Houston, TX 77002

Re: Purported Binding Instruction to Act to Trustee Regarding Certain Trusts

Dear Ms. Patrick:

I am writing at my client's request, in response to your letter dated August 20, 2010 (the "August 20th Letter") purporting to give a binding instruction to The Bank of New York Mellon in its capacity as trustee (the "Trustee") with respect to the Trusts identified on Exhibit A thereto (the "Trusts") on behalf of certain holders of certificates issued by the Trusts (the "Holders"). Many statements in the August 20th Letter do not accurately reflect the terms of the Agreements governing the Trusts and the communications among the parties since your initial letter to the Trustee on June 17, 2010 (the "June 17th Letter").

Overview

The August 20th letter, which among other things, seeks to have your firm engaged on a contingent fee basis, is deficient on a number of levels: it is not actually signed by the investors; the investors who you represent do not have the required percentage ownership to direct the Trustee; and the letter does not contain an indemnity satisfactory to the Trustee although several weeks ago you were furnished with the form of such indemnity.

Authority of Holders to Direct the Trustee

Section 8.02(iv) of the pooling and servicing agreements (the "PSAs") states that the Trustee is not bound to make any investigation unless requested in writing to do so by holders of certificates evidencing not less than 25% of the voting rights allocated to each class of certificates. The information provided by the Holders (which is now several months out of date) indicates that there are no Trusts in which the Holders

own 25% of voting rights of each class of certificates in that Trust. Therefore, it is not possible for the Holders to give the Trustee a "binding direction."

The August 20th Letter Does Not Constitute a Valid Direction

In addition, the August 20th Letter is not a valid direction for the following reasons:

- No Holders signed the August 20th Letter. As you may know, it is customary for the direction to come from the beneficial holders themselves, and not their outside counsel. Moreover, although the Holders did advise us that they retained your law firm, the letters confirming such did not authorize the sweeping requests contained in the August 20th Letter. While certain holder information was provided to the Trustee in June, the Trustee requires such information to be updated, in a form that expresses the Holders' positions in dollars of principal held, and included in each direction letter since Holders' positions can change.

- The August 20th Letter does not include indemnity satisfactory to the Trustee and therefore the Trustee has no obligation to comply with it pursuant to Section 8.02(ix) of the PSAs. That section states that the Trustee is not obligated to take action at the request of the holders of certificates unless "*such Certificateholders* shall have offered to the Trustee reasonable security or indemnity *satisfactory to the Trustee* against the costs, expenses and liabilities which may be incurred therein or thereby" (emphasis added). On July 21, 2010, I sent you the Trustee's standard form of direction letter as well as two separate confidentiality agreements (the "Direction Documents"). Execution of each of the Direction Documents is required before the Trustee can commence any of the actions contemplated by the August 20th Letter. In the August 2, 2010 meeting you indicated that you found elements of the form of direction letter unsatisfactory. We invited your comments on all of the Direction Documents. To date we have not received any comments from you with respect to any of the Direction Documents.

- Your contention that the $250,000 "cost deposit" should be sufficient to defray out-of-pocket costs of the Trustee is belied by the fact that the deposit is not to be held by the Trustee to cover its potential losses, liabilities and expenses. Rather, it is intended to be held by, and defray the out-of-pocket costs of, Gibbs & Bruns LLP.

- The August 20th letter insofar as it purports to direct the Trustee to commence certain litigations in the future based on potential future events is problematic for several reasons.

- It is premature to direct litigation against the sellers of mortgage loans until the investigation has been completed, at least in part. A decision to initiate litigation must be made and directed by the Holders at that time (which may not be the same as the Holders today).

- The August 20th Letter purports to direct the Trustee to commence litigation to claim indemnity from the Master Servicer for costs associated with the proposed investigation. However, in nearly all of the relevant PSAs, Section 8.05 specifically exempts from the Master Servicer's indemnity obligations expenses incurred by reason of any action taken by the Trustee at the direction of certificateholders.

- Any direction to initiate litigation must include provision for the Trustee to retain its own independent counsel at the Holders' expense and require that all pleadings, motions and other steps in the litigation be approved in advance by the Trustee and its independent counsel.

- The Trustee does not customarily engage counsel on a contingent fee basis and would want, at a minimum, to notice all certificateholders of the proposed engagement to enable them to express any concerns that they might have. The Trustee is not ruling out a contingent fee agreement but would need a proposed engagement letter to evaluate.

Characterization of the Substance of the August 2, 2010 Meeting in the Cover Letter to the August 20th Letter

The Trustee does not agree with your characterization of our discussions regarding allegations of breaches and representations and warranties and the repurchase by Countrywide of modified mortgage loans. We quite clearly communicated that the PSAs disclaim any obligation on the Trustee's part to conduct any such investigation. Your clients - sophisticated investors - could not have been "dismayed" to learn that the Trustee has been acting in accordance with the express terms of the governing documents.

Alleged Events of Default

In the August 20th Letter you asserted that in the June 17th Letter the Holders advised the Trustee of facts and circumstances constituting Events of Default under the PSAs. The June 17th Letter purported to notify the Trustee of certain evidence suggesting breaches of representations and warranties made by the sellers of mortgage loans into the Trusts and said nothing about Events of Default. Breaches of representations and warranties by the sellers of the mortgage loans do not constitute "Events of Default"

under the PSAs (see Section 7.01). Accordingly we do not view your August 20th Letter or June 17th Letter as putting the Trustee of notice of Events of Default.

There are a number of other respects in which your August 20th letter inaccurately describes the Trustee's rights and responsibilities and we reserve the right to supplement this letter.

As we mentioned in the August 2, 2010 meeting, the Trustee wishes to work cooperatively with the Holders to get this process up and running as soon as possible. However, the Trustee can not and will not move forward without an acceptable direction letter from the Holders that includes an indemnity from the Holders. We therefore urge you to review and comment on the Direction Documents and contact me to resolve any comments or questions you may have.

Very truly yours,

s/ Leo T. Crowley

Leo T. Crowley

Exhibit 27

Kathy D. Patrick
kpatrick@gibbsbruns.com
713.751.5253

June 23, 2011

BNY Mellon, Trustee
c/o Mr. Robert Bailey
One Wall Street
New York, NY

Re: Proposed Settlement of Claims by Certain Countrywide-issued RMBS Trusts

Dear Mr. Bailey:

Gibbs & Bruns LLP has been retained by the institutions listed on the attached Exhibit "A" to act on their behalf to pursue contract claims arising from Pooling and Servicing Agreements (PSAs) governing residential mortgage-backed securities trusts issued by affiliates of Countrywide Home Loans, Inc. or Countrywide Financial Corporation (collectively the "Countrywide RMBS Trusts" or "Trusts"). Specifically, our clients retained us to pursue repurchase claims relating to ineligible Mortgage Loans[1] securitized in the Trusts and claims relating to deficient servicing of those Mortgage Loans by Bank of America Home Loan Servicing, L.P., the Master Servicer (collectively, the "Trust Claims"). Our clients have previously advised you that they hold Voting Rights in 502 of the 530 Trusts listed on Exhibit "B." BNY Mellon serves as Trustee for these Trusts.

We, and our clients, understand that Bank of America Corporation, Countrywide and the Master Servicer are willing to settle the Trust Claims for *all* of the CW RMBS Trusts listed on Exhibit B. The terms of the proposed settlement are described in full in the attached final for execution copy of the Settlement Agreement. Our clients participated in negotiating this settlement by and through their counsel.

[1] Unless otherwise indicated, capitalized terms have the meaning assigned to them in the relevant PSAs.

On behalf of all of our clients except Freddie Mac,[2] we ask BNY to exercise its independent business judgment to accept the settlement on the Trusts' behalf. Though this is not a binding instruction from our clients, our clients believe the settlement is in the best interests of all of the Trusts included in the settlement, so they urge the Trustee to accept it.

Very truly yours,

Kathy Patrick

cc: Mr. Stephen Ahrens (Blackrock)
Mr. Cory Nass (Kore Advisors)
Ms. Stephanie Heller (Federal Reserve Bank of New York)
Mr. Kevin Finnegan (MetLife)
Mr. Sean Plater (TCW)
Mr. Paul deFrancisci (Neuberger Berman Europe Limited)
Mr. Rick LeBrun (PIMCO)
Mr. Francis Chlapowski (Goldman Sachs Asset Management)
Mr. Duane Nelson (TIAA-CREF)
Mr. Jeffrey Kupor (Invesco)
Ms. Tina Smith (Thrivent Financial)
Mr. Frank Damerow (LBBW)
Mr. Steffen Nies (LBBW Asset Management (Ireland) plc, Dublin)
Ms. Kristine Wellman (ING Bank fsb)
Mr. Tim Meehan (ING Capital LLC)
Mr. Paul Howell (ING Investment Management LLC)
Ms. Maureen Cronin (New York Life)
Ms. Marie Malloy (Nationwide Mutual Insurance Company)
Mr. Clint Woods (AEGON USA)
Mr. Reggie O'Shields (Federal Home Loan Bank of Atlanta)
Ms. Lorraine Briganti (Bayerische Landesbank)
Mr. Robert Lawrence (Prudential Investment Management, Inc.)
Mr. Stephen Venable (Western Asset Management Company)
Mr. Robert Bostrom (Freddie Mac)

[2] Freddie Mac takes no position at this time concerning our request that the Trustee accept the settlement. Final decision-making authority concerning Freddie Mac's assets resides in its Conservator, the Federal Housing Finance Administration (FHFA).

Exhibit "A" – List of Clients of Gibbs & Bruns LLP

1. BlackRock Financial Management Inc. and its advisory affiliates
2. Kore Advisors, L.P.
3. Maiden Lane, LLC; Maiden Lane II, LLC; and Maiden Lane III, LLC by Federal Reserve Bank of New York, as managing member
4. Metropolitan Life Insurance Company
5. Trust Company of the West and affiliated companies controlled by The TCW Group, Inc.
6. Neuberger Berman Europe Limited
7. PIMCO Investment Management Company LLC
8. Goldman Sachs Asset Management, L.P., as adviser to its funds and accounts
9. Teachers Insurance and Annuity Association of America
10. Invesco Advisers, Inc.
11. Thrivent Financial for Lutherans
12. Landesbank Baden-Wuerttemberg
13. LBBW Asset Management (Ireland) plc, Dublin
14. ING Bank fsb
15. ING Capital LLC
16. ING Investment Management LLC
17. New York Life Investment Management LLC, as investment manager
18. Nationwide Mutual Insurance Company and its affiliated companies
19. AEGON USA Investment Management LLC, authorized signatory for 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.
20. Federal Home Loan Bank of Atlanta
21. Bayerische Landesbank, acting through its New York Branch
22. Prudential Investment Management, Inc.
23. Western Asset Management Company
24. Federal Home Loan Mortgage Corporation

Exhibit "B" – List of Covered Trusts

CWALT 2004-10CB
CWALT 2004-12CB
CWALT 2004-13CB
CWALT 2004-14T2
CWALT 2004-15
CWALT 2004-16CB
CWALT 2004-17CB
CWALT 2004-18CB
CWALT 2004-20T1
CWALT 2004-22CB
CWALT 2004-24CB
CWALT 2004-25CB
CWALT 2004-26T1
CWALT 2004-27CB
CWALT 2004-28CB
CWALT 2004-29CB
CWALT 2004-2CB
CWALT 2004-30CB
CWALT 2004-32CB
CWALT 2004-33
CWALT 2004-34T1
CWALT 2004-35T2
CWALT 2004-36CB
CWALT 2004-3T1
CWALT 2004-4CB
CWALT 2004-5CB
CWALT 2004-6CB
CWALT 2004-7T1
CWALT 2004-8CB
CWALT 2004-9T1
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CWL 2007-2
CWL 2007-4

Exhibit 28

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

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In the Matter of the Application of

THE BANK OF NEW YORK MELLON (As Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), et al,

Petitioners,

for an order, pursuant to C.P.L.R. 7701, seeking judicial instructions and approval of a proposed settlement.

Index No. 651786/2001

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VIDEOTAPED DEPOSITION OF ROBERT DAINES

New York, New York

January 24, 2013

Reported by:
Bonnie Pruszynski, RMR
JOB NO. 56220

you represented by counsel today?

A Yes.

Q And is that Mr. Gonzalez?

A That is, yeah, Mr. Gonzalez and Mayer Brown. I don't know how they sift out the -- the organization, but Mayer Brown and Hector Gonzalez.

Q Are they representing you as an individual? In other words, you, Professor Daines, are the client, and they are your lawyers?

A That's how I think of it.

Q Okay. Is that pursuant to an agreement with the Bank of New York Mellon about providing counsel in connection with this case?

A I -- I spoke with counsel for -- I spoke with counsel and they agreed to represent me in this. It was just, we agreed on the phone.

Q Are you paying their bills, or is the Bank of New York Mellon paying their bills?

MR. GONZALEZ: Objection to form, lacks foundation.

A I hope I am not ultimately paying their bills. Whether I am paying and somebody is reimbursing me, I -- I hope it's not coming out of my pocket.

Q Do you know -- just to respond to

Mr. Gonzalez's objection, do you know who is actually paying their bills?

A No.

Q And in preparing for the deposition today, did you speak with counsel?

A Yes.

Q When?

A A couple times over the last couple days.

Q In person or by phone or both?

A In person.

Q In preparing -- I don't want you to tell me what happened.

A Okay.

Q I don't want you to give me the details of your communications, but I want to ask some more general questions.

Did they talk to you about the theory of the case?

MR. GONZALEZ: Objection, form, vague.

A I don't know what you mean by "the theory of the case."

Q Did they tell you what the intervenor's theory of the case is in connection

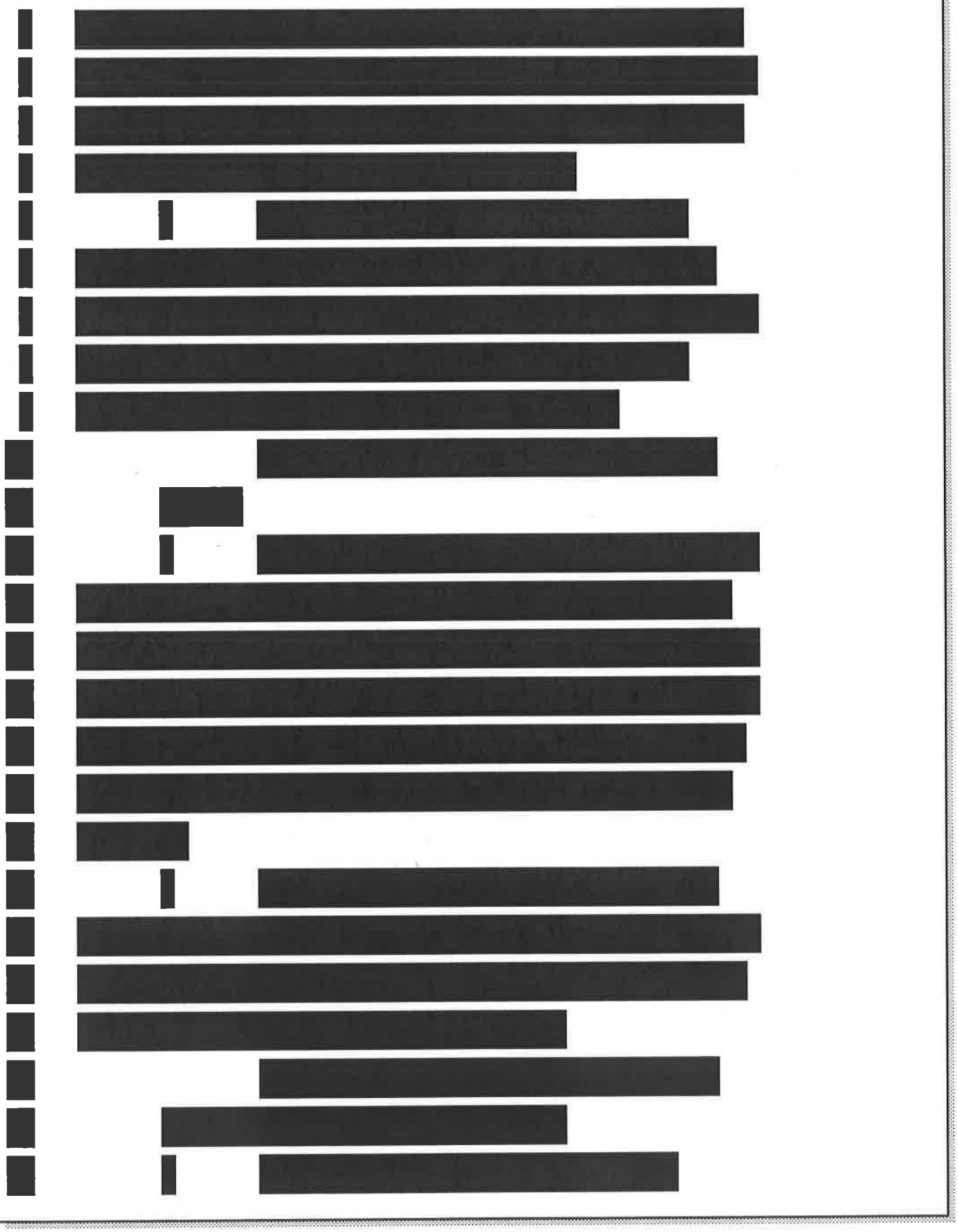

Exhibit 29

Exhibit 29 contains materials that have been designated Confidential pursuant to the Court's Protective Order dated June 14, 2012. A copy of Exhibit 29 has been delivered to the Court and served on all parties of record.

Exhibit 30

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. 651786/

THE BANK OF NEW YORK MELLON
(As trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), et al.,

Assigned to Kapnick, J.

Petitioners,

for an order, pursuant to C.P.L.R. Rule 7701, seeking judicial instructions and approval of a proposed settlement.
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* C O N F I D E N T I A L *

VIDEOTAPED DEPOSITION

OF

BARRY ADLER, Ph.D.

New York, New York

Thursday, December 13, 2012

Reported by:
ANNETTE ARLEQUIN, CCR, RPR, CCR, CLR
JOB NO. 55550

Q. Do you know whether Bank of America is actually ultimately responsible for your bills?

A. Do I know? No. I suspect that's the case.

Q. Do you suspect that's the case?

MR. INGBER: You should give an answer that is based on your understanding that excludes discussion with Mayer Brown when Mayer Brown was your counsel.

A. I don't know.

Q. Do you know that your material and adverse opinion was filed with the court in support of the settlement agreement, but your substantive consolidation opinion was not?

MR. INGBER: I just want to be clear and I don't think you intended to mislead, but neither report was actually filed with the court.

There were -- do you want to go off the for a second and we can talk about this?

MR. ROLLIN: Sure, if you'd like to edify me.

A. I wanted it to be clear in the retention letter that I represented no one and my only obligation was to issue an honest opinion.

And I wanted to be protected against frivolous lawsuits as I always want to be protected against frivolous lawsuits when I'm engaged as an expert, so there was some discussion of indemnification language.

Q. Is there a standard -- is that a standard procedure for you when you're an expert?

A. I hope so. I mean as I hope I have done this in the past, I hope.

Q. Do you always -- I just want to make sure we're clear.

To the best of your knowledge as you sit here today, do you always ask for indemnification from your client?

A. I actually don't remember.

Q. Were you worried about the potential of being sued in connection with your work in this case?

A. It depends what you mean by worried.

Exhibit 31

Exhibit 31 contains materials that have been designated Confidential pursuant to the Court's Protective Order dated June 14, 2012. A copy of Exhibit 31 has been delivered to the Court and served on all parties of record.

Exhibit 32

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Exhibit 33

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Exhibit 34

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

In the Matter of the Application of THE BANK OF NEW YORK MELLON (As Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), et al., Petitioners, for an order, pursuant to C.P.L.R. 7701, seeking judicial instructions and approval of a proposed Settlement.	Index No. 651786/2011

VIDEOTAPED DEPOSITION OF

BRUCE B. BINGHAM

Friday, January 18, 2013

51 Madison Avenue

New York, New York

Reported by:
AYLETTE GONZALEZ, CLR
JOB NO. 56772

call extraordinary confidentiality and we make very sure that everybody understands that.

Q. Were you told that your report would be used in litigation or did that come as a surprise to you?

A. I was told that it was not likely that my report would be used in litigation.

Q. Who told you that your report was not likely to be used in litigation?

A. Probably one of the Mayer Brown attorneys.

Q. And was that when you were hired?

A. Yes.

Q. Well, tell us about the conversation. Were you led to understand that a client would like to pay the least they could pay to settle a problem?

MR. GONZALEZ: Objection to form; vague.

A. I was -- that phraseology did not occur in any conversation.

Q. But you know that is where a party comes from, the desire to pay the least amount they have to pay?

MR. GONZALEZ: Objection to form;

vague.

A. That's absolutely not in the mindset that I entered this engagement. I was asked to quantify the maximum amount that the trustees would have to distribute if a judgment were rendered against them. I had nothing to do with the external process of whether a settlement should be a trillion or 10 trillion. I was working strictly to quantify the maximum settlement amount.

MR. GONZALEZ: And I just want to be clear, because I think if I can correct it here, I think the witness said that the Trustee could pay, but I think he meant to say that Countrywide could pay.

THE WITNESS: Countrywide could pay on behalf of the trust.

Q. A dead Countrywide, a Countrywide that's not an ongoing concern, that is what you were told?

MR. GONZALEZ: Objection to form.

A. It's what -- I didn't have to be told it. I observed it in my analysis.

Q. That the income producing assets no

Exhibit 35

RRMS ADVISORS
Tactical Mortgage Strategists
10 East 40th Street New York, NY 10016
www.rrmsco.com

Brian Lin
Managing Director
RRMS Advisors
10 East 40th Street
New York, NY 10016

June 28, 2011

The Bank of New York Mellon
One Wall Street, 11th Floor
New York, NY 10286

Subject: Opinion Concerning Contemplated Settlement Agreement - Mortgage Loan Servicing and Loan Administration

Gentlemen:

Attached please find my opinion regarding the mortgage loan servicing and loan administration components of the contemplated settlement agreement for 530 Trusts rendered at the request of your counsel, Mayer Brown.

Should you have any question, please feel free to contact me at (212) 843-9413.

Yours truly,

Brian Lin
Managing Director

RRMS ADVISORS

Tactical Mortgage Strategists

Servicing Opinion
Prepared for: The Bank of New York Mellon
June 28, 2011

Summary of Opinion

I, in conjunction with selected RRMS Advisors personnel under my supervision (collectively, RRMS), have performed a review of the mortgage loan servicing and loan administration components of the settlement agreement (Settlement Agreement or Agreement) between The Bank of New York Mellon (BNYM), in its capacity as Trustee or Indenture Trustee for the mortgage securitization Trusts identified in the agreement (Covered Trusts), and Bank of America Corporation, BAC Home Loan Servicing, LP (collectively, BofA), Countrywide Financial Corporation and Countrywide Home Loan, Inc. (collectively, Countrywide). Based upon the analysis performed and the documentation provided, I find the approaches as outlined for both first and second lien mortgage assets to be reasonable and in accordance with or exceeding customary and usual standards of practice for prudent mortgage loan servicing and administration. Further, it is my opinion that this settlement can be viewed as an industry precedent setting, pro-active approach in regard to establishing a framework to enhance recovery efforts for underperforming loan pools.

This review and opinion is specifically related to servicing and loan administration components for:

- Transfer to subservicing or sale of mortgage servicing rights (MSRs) of non-performing assets from BofA to qualifying subservicers;
- Servicing of performing and non-performing assets by BofA;
- Loss mitigation requirements and considerations;
- Reporting and attestation of compliance; and
- Administration and cure of document deficiencies.

Summarized below is the background relating to the engagement, along with a summary of the methodologies and approaches undertaken in performing this review and support for the conclusions reached relating to each of the components listed above.

Background

BNYM currently acts as Trustee or Indenture Trustee of the Covered Trusts. In this capacity, BNYM has engaged me to render an independent professional opinion relating to the agreed-upon mortgage servicing and loan administration protocols outlined in the Settlement Agreement. The Agreement covers five hundred and thirty (530) Trusts, of which five hundred and thirteen (513) are governed by Pooling and Servicing Agreements (PSAs) and seventeen (17) are governed by Indentures and Sale and Servicing Agreements (SSAs). The aforementioned trusts are comprised of residential mortgage loans that are being serviced by BofA as the Master Servicer. Individual asset composition predominately includes:

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Sub-Prime, Alt "A", Prime and Pay Option Arm residential mortgage loans, with originations occurring between the years 2004 through 2008.

High default rates and large loss severities have occurred pertaining to the underlying collateral. Breaches of loan servicing obligations and failure to cure documentation defects have been alleged against BofA. These and other alleged breaches are the subject of the Settlement Agreement. In the Agreement, the parties have decided to institute a transparent mortgage servicing and loan administration model. This model utilizes qualifying subservicers to optimize loan servicing performance and defines criteria and guidelines for the transfer of mortgage loan assets to selected qualifying subservicer and/or sale of MSRs. In addition, loss mitigation requirements and considerations are set forth in the Agreement as well as administration guidelines relating to document deficiencies and cure processes. In addition, the Settlement Agreement mandates monthly reporting and annual attestation reports with respect to the servicing and loan administration improvements.

My review and assessment of the Settlement Agreement encompassed the servicing and loan administration provisions of the agreement. It is my understanding that these provisions have been designed by the parties to ensure compliance with the servicing and loan administration terms of the underlying PSAs and SSAs.

Set out below is my opinion with respect to these provisions.

Transfer to Subservicing or Sale of MSRs of Non-Performing Assets from BofA to Qualifying Subservicers

A great amount of focus and attention is included in the Settlement Agreement relating to the transfer of non-performing or high risk residential mortgage loans from BofA to selected qualifying subservicers whose incentive compensation is dependent on servicing competency and quality. In my opinion, this arrangement is in line with and supports the goal of improving individual asset performance in order to positively impact overall pool performance.

Key components of the Settlement Agreement relating to the transfer of non-performing assets to qualifying subservicers include, among other things, the following:

- A detailed selection process for "qualifying mortgage subservicers";
- The Trustee has the ability to veto any proposed subservicer (selected by the institutional investor and BofA) after consultation with an expert of its choice, on the basis of specific grounds summarized in the Settlement Agreement;

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- Protocols and timelines have been established for contracting with qualifying subservicers and for mapping of underlying data;
- Stated and agreed upon quarterly loan servicing transfers are specifically detailed;
- Assignment of only one qualifying subservicer per Covered Trust;
- Each subservicer shall have no more 30,000 outstanding mortgage loans from the Covered Trusts;
- Sale of MSRs on high risk loans is subject to certain limitations, including among other things, that they can only be sold to qualifying subservicers that are subject to the same pool performance incentives and activity based incentives compensation methods that is implemented for subservicing. In addition, BofA is obligated to provide or guarantee principal and interest advances to subservicers lacking the economic means to make such payments;
- Purchaser of MSRs are prohibited to sub-service or re-sell their respective rights to any third party entity; and
- Subservicers are prohibited (under subservicing and sale of MSRs scenarios) from sub-contracting servicing, sub-servicing, selling servicing rights or transferring those rights for any high risk loans to another party.

In addition, the Settlement Agreement contains specific criteria to be considered when determining whether or not assets should be transferred to qualifying subservicers. This is prudent in that it reduces the potential for delinquency spikes related to unnecessary transfers of assets. The establishment of delinquency triggers provides structure relating to asset transfers. In addition, the assessment of loss mitigation efforts underway (i.e., in-process loan modifications and foreclosures greater than ninety days) is also prudent in that in-process efforts designed to improve asset performance are less subject to potential failures due to issues related to lack of servicing and processing continuity.

Based on my review and consistent with the summary above, I conclude that the portions of the Settlement Agreement dealing with the transfer (or sale of MSRs) of non-performing assets from BofA to qualifying subservicers are reasonable and can be viewed as an industry precedent setting model.

Servicing of Performing and Non-Performing Assets by BofA

To incentivize BofA to service mortgage loans prudently at industry standard levels, benchmarks have been factored into the Settlement Agreement, along with penalties for failure to adhere to those improvements. These mortgage servicing improvements are to take effect the later of five months after the signing date of the Settlement Agreement or the date of final court approval of the Settlement

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Agreement. Specifically, BofA's servicing performance shall be measured and evaluated, on a monthly basis, against defined industry benchmark metrics relating to:

- Loss mitigation referral timelines to foreclosure (first lien mortgage loans);
- Liquidation or foreclosures per FHFA guidelines (first lien mortgage loans);
- Delinquency status of borrower at the time reporting of charge-off to Trustee (second lien mortgage loans); and
- Comparative Trustee pool statistics with monthly reporting vs. industry standards.

With respect to any month in which BofA fails to meet the agreed-upon industry benchmark, the Settlement Agreement provides for deficient performance payments payable by BofA. These payments relate specifically to servicing timeline failures associated with certain loss mitigation activities.

Based on my review and consistent with the summary above, I have concluded that the portions of the Settlement Agreement dealing with the servicing of assets by BofA are reasonable and meet industry standards.

Loss Mitigation Requirements and Considerations

I have reviewed the loss mitigation requirements and considerations for the mortgage loans in the Covered Trusts as stated in the Settlement Agreement. The Settlement Agreement is intended to create a framework for utilization of all reasonable avenues of recovery for the full principal of the mortgage balance other than through foreclosure or liquidation actions. I note the following provisions with respect to the mortgage loss mitigation servicing activities by BofA and/or each of the qualifying subservicers:

- Borrower's eligibility shall be evaluated simultaneously for all applicable loan modifications in accordance with the principles set forth in each of these programs and the applicable servicing entity must render a decision within sixty days of receiving all requested documentation from the borrower;
- Modifications and/or loss mitigation strategies shall consider the following factors: (i) NPV based recoveries, (ii) return of delinquent mortgage loans to permanent performing status, (iii) assessment of borrower's ability to make payments, (iv) alternative recovery strategies to minimize foreclosure or liquidation, (v) adherence to all applicable governing agreements and law, and (vi) consideration of other judgment factors that a prudent mortgage servicer would utilize;
- No principal modification shall reduce the principal amount due on any mortgage loan below the current market value using third party valuation sources; and

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- BofA may implement modification or loss mitigation strategies taking into consideration factors set forth above, and/or act in accordance with the policies that BofA utilizes for its own held for investment portfolio shall be deemed in compliance with the Settlement Agreement.

I find that this section of the Settlement Agreement dealing with loss mitigation and considerations as outlined is reasonable and meet industry standards.

Reporting and Attestation of Compliance

Upon final court approval of the Settlement Agreement, BofA is required to perform the following:

- Report to the Trustee on a monthly basis, for each Covered Trust, concerning its compliance with the servicing improvement required by the Settlement Agreement; and
- Pay for an annual attestation report by an audit firm, selected by the Master Servicer in accordance with a selection process and that allows the Trustee to veto BofA's selection for the Covered Trusts as a group no later than February 15th of each year.

The Trustee will use reasonable commercial efforts to make the above reports available via its website within five business days of its receipt of such report. In addition, the Trustee will distribute the attestation report to all Investors as part of its monthly statement issued in April of each year.

I find this section of the Settlement Agreement dealing with reporting and attestation of compliance as outlined above is reasonable and it meets or exceeds industry standards.

Administration and Cure of Documentation Deficiencies

The Settlement Agreement provides for agreed-upon procedures to cure certain document deficiencies. Such procedures include, among other things, the following:

- Not later than six weeks after the signing date of the Settlement Agreement, BofA (as Master Servicer) will compile an "Initial Exceptions Report Schedule";
- Each month following the month in which BofA submits the "Initial Exceptions Report Schedule", BofA will provide to the Trustee a monthly exception report listing separately all loans which remain uncured and those that have been cured;
- BNYM has fifteen business days following receipt of the monthly exception report to determine whether BofA's decision to list loans as cured is supported by reasonable evidence. If it is determined that reasonable evidence has not been provided, BNYM is required to direct BofA to revise its exception report accordingly; and

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- The Trustee will use reasonable best efforts to make the monthly exception reports available on its website within five business days of its receipt of such report.

BofA may elect, at its sole discretion, to resolve any document exception that is identified in the monthly exception reports. Failure to do so will subject BofA to reimburse the trust 100% of the mortgage loan's realized loss as defined in the applicable governing agreement.

Based on my review and consistent with the summary above, I conclude that the portions of the Settlement Agreement dealing with administration and cure of document deficiencies are reasonable and industry precedent setting.

* * * *

As summarized at the beginning of this opinion, based upon the documentation provided and the work performed by RRMS related to the mortgage loan servicing and administration portion of the Settlement Agreement, I find the approaches as outlined for both first and second lien mortgage assets to be reasonable and in accordance with or exceeding customary and usual standards of practice for prudent mortgage loan servicing and administration. It is my opinion that this settlement can be viewed as an industry precedent setting, pro-active approach in regard to establishing a framework to enhance recovery efforts for underperforming loan pools.

Yours truly,

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Managing Director

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Exhibit 36

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Exhibit 37

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Exhibit 38

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Exhibit 39

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Exhibit 40

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Exhibit 41

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Exhibit 42

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 39
----------X
In the Matter of the Application of

THE BANK OF NEW YORK MELLON,
(As Trustee Under Various Pooling and Servicing Agreements and Indenture Trustee Under Various Indentures) et al,

Petitioners,

For an Order Pursuant to CPLR Section 7701, Seeking Judicial Instructions and Approval of a Proposed Settlement.

----------X
Index No. 651786/11

October 12, 2012
60 Centre Street
New York, New York

B E F O R E: HONORABLE BARBARA R. KAPNICK, JSC

A P P E A R A N C E S:

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Attorneys for Intervenor
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BY: DEREK W. LOESER, ESQ.

THE COURT: You are all characterizing things differently. It seems to me if the person was sitting in the courtroom being asked those questions and there was a hearsay objection, you would say, Say if there was a meeting, say if you know who was there, but don't tell us what was discussed.

If she says there were 500,000 meetings and I don't know a darn thing because they never let me come in the door, then I would be concerned. I haven't yet heard that. Maybe I will, but I haven't. So that's where I would be concerned. It seems like Bank of New York was at an awful lot of these meetings, and that's what you should discover. But I am right now taking it that you are trying to represent your clients and the truth at the same time.

So when do you want to come back, approximately?

MS. PATRICK: Your Honor, the fact discovery cutoff is December 14. I would suggest we come in after that. That way you will be able to -- you know, you set the hearing for May. If we come in after the fact discovery deadline of December 14, people can report to you on any difficulties they have had, we can see whether there is anything else that needs to be done; but it seems to me that that in the next 60 days we ought to be able to knock out these 26 depositions they have noticed and deal with any issues. There are four firms on the Steering Committee