

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), BlackRock Financial Management Inc. (intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor), Maiden Lane II, LLC (intervenor), Maiden Lane III, 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 Advisers, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank BadenWuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital LLC (intervenor), ING Investment Management LLC (intervenor), New York Life 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,

-against-

[VARIOUS PROPOSED INTERVENORS],

Respondents,

for an order pursuant to CPLR § 7701 seeking judicial instructions and approval of a proposed settlement.

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Index No. 651786/2011

Assigned to: Kapnick, J.

**OBJECTION TO SETTLEMENT**

Respondent intervenors, the Knights of Columbus (the “Knights”), by and through their attorneys, Peter N. Tsapatsaris, LLC, submit this Objection to Settlement, pursuant to CPLR 401, 1012 and 1013 to protect the Knights’ greater than \$500 million investment in trusts included in the proposed settlement.<sup>1</sup> The Knights object to the Settlement because:

- The Bank of New York Mellon (“BNYM” or the “Trustee”) may be positioning itself to use the Settlement and related Order to obtain for itself a release of claims brought by the Knights and other investors. The Knights of Columbus requested via letter that BNYM clarify that its proposed order approving the Settlement and barring claims arising prior to and related to the Settlement would not preclude the claims asserted by the Knights in its pending action against BNYM. BNYM failed to unequivocally confirm that request.
- The Trustee failed in its duty to treat all Trust beneficiaries equally, and in fact affirmatively misled the Knights in contravention of its duties as Trustee.
- The Trustee received detailed notice of claims relating to loan servicing

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<sup>1</sup> On June 28, 2011, 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 (“BNYM” or the “Trustee”), and 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”) entered into a settlement agreement (the “Settlement Agreement”).

violations against Bank of America and failed to assess the value of those claims prior to granting Bank of America a release on those claims.

The Knights further reserve the right to incorporate by reference into this objection the Steering Committee's objection to the Settlement.

#### **SUMMARY**

1. The Knights are the world's largest Catholic family fraternal service organization. The Trustee serves as trustee for a number of trusts in which the Knights have invested (a list of relevant trusts is attached as Exhibit 1). On May 24, 2011, the Knights filed a non-adversarial lawsuit against the Trustee demanding an accounting with respect to two of the trusts (the "Accounting Action"). The Accounting Action contained detailed allegations regarding the servicing practices of Bank of America and its affiliates, sought to assess the resulting damages, and sought to protect borrowers and investors against future servicing abuses. Despite the fact that the Knights made the Trustee keenly aware of the Knights' interest in preventing servicing abuses by filing the Accounting Action, the Trustee failed to make the Knights aware of the on-going settlement negotiations and claims evaluation and/or allow the Knights to participate in such negotiations and evaluation, even though the Settlement purports to resolve the Knights' concerns regarding servicing abuses. After excluding the Knights from the settlement process, the Trustee subsequently demanded that the Knights participate in the result.

2. The exclusion of the Knights from the settlement process resulted in an incomplete evaluation of the claims the Trustee intends to release. Affirmative evidence exists that the Trustee failed to attempt, as the Knights were seeking to do in the

Accounting Action, to assess the damages related to the servicing claims that sparked this settlement process.<sup>2</sup> This is evidenced by direct testimony and, perhaps more tellingly, an absence of any expert reports submitted by BNYM in support of the Settlement that attempted to value the servicing claims being released.

3. Further, based on additional information that has come to light since the filing of the Accounting Action, the Knights believe sufficient grounds exist to hold the Trustee liable for its actions in administering the Trust. Public reports, claims by the Attorney General of the State of New York, and provisions in the Proposed Settlement Agreement indicate that the Trustee failed to fulfill critical duties. Further, the Trustee has failed to answer the Knights' discovery served in the Accounting Action, which was narrowly tailored to determine whether or not the Trustee engaged in wrongdoing. As a consequence, the Knights amended the Complaint in the Accounting Action to hold the Trustee liable for its wrongful acts, and object to any provision of the Settlement Agreement that allows or could be construed to allow the Trustee to settle claims against itself. This Court recently denied BNYM's Motion to Dismiss as to one count of the Knights' Amended Complaint and granted the Knights leave to re-plead another count. *See* Decision and Order, April 26, 2013.

4. Further, the Knights asked BNYM by letter whether BNYM would "take the position in the case styled *Knights of Columbus v. The Bank of New York Mellon*, Index No. 651442/2011 (N.Y. Sup. Ct.) [...] or in any similar cases (collectively, the 'Trustee Cases') that an award of the relief sought by BNYM in the [Article 77] Case will

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<sup>2</sup> The letter that began the settlement process was from Gibbs & Bruns dated October 18, 2010, and noticed an Event of Default based on the Master Servicer's violations of the Pooling and Servicing Agreements in servicing loans in various trusts.

have any effect on the Trustee Cases other than: (1) as an offset to damages; and (2) as grounds to dismiss the request for an accounting?” The Trustee refused to simply acknowledge this point, instead claiming the Settlement Agreement did not provide BNYM a release, but concluding vaguely that “We expect any orders or judgments in the Article 77 case will have *res judicata* effect.” (underlining added). Of course, the Proposed Order approving the Settlement does, in fact, provide BNYM a release from claims.

5. In refusing to acknowledge that the Settlement will allow the Knights’ case to proceed unaffected against it, BNYM made clear that it was attempting, through sleight of hand, to obtain a release against the Knights’ claims.

6. Therefore, the Knights object to the Settlement based on the Trustee’s disparate treatment of Certificateholders, the release of unevaluated servicing claims against Bank of America, N.A. and its affiliates, and the Trustee seeking through the Settlement to release itself from claims by Certificateholders.

#### **BACKGROUND – THE KNIGHTS OF COLUMBUS**

7. The Knights of Columbus, the world’s largest Catholic family fraternal service organization, were chartered as a fraternal benefit society by the Connecticut state legislature in 1882 to render financial aid to the sick, disabled, and needy members. Founded on the principles of charity, unity, patriotism, and fraternity, the Knights promote social and intellectual fellowship among members and their families through educational, charitable, religious, social welfare, war relief, and public relief works. Membership in the Knights is open to men 18 years of age or older who are practicing Catholics and are committed to supporting the Catholic Church and making their

community a better place. The Order has been called “the strong right arm of the Church” and has been praised by popes, presidents, and other world leaders for support of the Church, civic involvement, and aid to those in need. In 2008, the Holy See gave the founder of the Knights, parish priest Father Michael J. McGivney, the title “Venerable Servant of God”, which marks an important step on the journey to his beatification and canonization.

8. In 2009, the Knights raised and donated more than \$151 million to charitable needs and projects, and members volunteered more than 69 million hours of their time to charitable initiatives including 227,900 hours to Habitat for Humanity. In the decade prior to filing their complaint against the Trustee, the Knights donated more than \$1.367 billion to charity and provided nearly 640 million service hours. The charitable work performed by the Knights is vast and varied and includes disaster relief in Japan, Haiti, and the Philippines; donations of over \$1 million to local food banks; and the distribution of new coats to children and wheelchairs to those in need. More recently the Knights have begun an extensive program in Haiti to assist the children who lost limbs in the earthquake by fitting them with prosthetics, providing rehabilitation services, and operating “The Return to Sports” program so that amputees can run and play soccer once again.

9. Since its inception the Knights have sought to protect members through the tool of insurance. Initially the founding parish priest, Father McGivney, instituted a not-for-profit life insurance program to provide for the widows and orphans of deceased members. This not-for-profit program has expanded substantially to more effectively serve the organization’s 1.8 million members worldwide and now includes annuity,

disability, and long term care products. Today the Knights maintain a \$17 billion investment portfolio and operate a fraternal insurance organization doing business in the 50 states of the United States, the District of Columbia, the 10 provinces of Canada, Puerto Rico, the Virgin Islands, Northern Mariana Islands, Guam, Mexico, the Philippines, and Poland. In April of 2011, life insurance in force exceeded \$80 billion. The Knights are one of only five insurers in North America to receive the highest possible rating for financial stability from both A.M. Best and Standard & Poor's, and one of only three U.S. insurers to have earned both those accolades plus the Insurance Marketplace Standards Association certification for ethical business and marketing practices.

10. As a fraternal benefit society, the Knights have no stockholders; the Knights' "owners" are its members, and just as those members are committed to performing an impressive array of charitable, religious, and patriotic works, the Knights are committed to protecting the financial futures of members and their families. One way the Knights do this is by paying claims and dividends to insured members. In 2009, the Knights paid well over \$431 million in death claims and other benefits and more than \$309 million in dividends to policyholders. From 2000 to 2009, the Knights paid \$3.191 billion in dividends to insured members.

#### **BACKGROUND – THE ACCOUNTING ACTION**

11. The Knights own securities in the trusts listed in Exhibit 1, which are included among the 530 trusts for which The Bank of New York Mellon filed this Article

77 proceeding to seek judicial approval of the Settlement Agreement.<sup>3</sup> The Knights paid more than \$500 million for these securities.

12. Prior to filing their Complaint against the Trustee, the Knights, through widespread media reports, learned of the poor servicing of the mortgage loans that make up the corpus of the trusts in which the Knights hold certificates. Among other things, the Knights learned that one or more trust administrators have: (1) been examined by the Office of Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Federal Reserve Board, which “found critical deficiencies and shortcomings in foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third party law firms and vendors”; (2) been found by the Office of the Comptroller of Currency to have “engaged in unsafe or unsound banking practices” “[i]n connection with certain foreclosures of loans in its residential mortgage servicing portfolio”, which is subjecting each trust to unknown costs and expenses; (3) been accused by the City of Buffalo, among others, of failing to care properly for and dispose of unoccupied properties, contributing to the deterioration of neighborhoods and increasing losses to the trusts’ beneficiaries; (4) been accused by the Federal Trade Commission of engaging in a deliberate strategy to “mark up” the actual cost of services that are ultimately paid by each trust; (5) been exposed by AMERICAN BANKER for using affiliates to place on homes insurance costing up to ten times the price of regular policies, which premiums are ultimately charged to the trust beneficiaries; and (6) had a court find that a practice that

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<sup>3</sup> Two BNYM trusts in which the Knights are Certificateholders were not included in this settlement.



an employee of a trust administrator testified under oath was “customary” precluded a similar trust from enforcing its rights under a mortgage.

13. Given these alarming revelations, on May 26, 2011, the Knights filed a Complaint in the Supreme Court of the State of New York, County of New York, against BNYM as Trustee for two trusts known as CWALT 2005-6CB and CWALT 2006-6CB. The Accounting Action<sup>4</sup> requests the Court to order an immediate accounting of these two trusts under New York law. The Accounting Action Complaint provides detailed allegations of servicing and other abuses by trust administrators.

14. The Accounting Action was not adversarial against BNYM as BNYM itself recognized. According to Reuters, “Kevin Heine, a spokesman for BNY Mellon, said, ‘The complaint does not assert any claims against BNY Mellon or seek damages. The complaint merely seeks an accounting.’”

#### **THE TRUSTEE EXCLUDED THE KNIGHTS FROM THE SETTLEMENT PROCESS**

15. As part of the Accounting Action, the Knights served a Notice for Discovery and Inspection on BNYM with the original state court Complaint, pursuant to CPLR 3120. The discovery was narrowly tailored to confirm that BNYM did not bear responsibility for the myriad issues described by the Knights in the Complaint. Under New York procedural rules, BNYM was to answer the suit on June 16, 2011, and produce the requested discovery on June 30, 2011.

16. According to paragraph 13(b) of the Settlement Agreement, BNYM received a CD-ROM “provided to the Trustee’s counsel and experts on June 3, 2011,

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<sup>4</sup> The case is currently pending before Your Honor and is styled *Knights of Columbus v. The Bank of New York Mellon*, Index No. 651442/2011.

contain[ing] business records of BAC HLS as kept on its computer systems in the ordinary course of business.” This CD-ROM appears relevant to the Knights’ Accounting Action.

17. On or about June 7, 2011, RRMS Advisors provided to BNYM a “Settlement Amount Opinion” at the request of BNYM’s counsel. *See* Letter to BNYM from RRMS Advisors, June 7, 2011. This “Settlement Amount Opinion” purports to be “an independent professional opinion relating to the settlement amount of 530 Trusts”. *See* RRMS Settlement Opinion, June 7, 2011, at 1.

18. On or about June 9, 2011, counsel for BNYM contacted counsel for the Knights, requesting an extension of time to respond to the Complaint. Counsel for the Knights agreed to the extension subject to the Knights’ approval. Counsel for the Knights then asked opposing counsel whether BNYM intended to oppose the Complaint. Counsel for BNYM responded, “We don’t know yet. We’ve never thought of this [an accounting] before.”

19. On or about June 24, 2011, counsel for BNYM contacted counsel for the Knights requesting an extension to respond to discovery served on BNYM. Counsel for the Knights asked whether BNYM’s plan was to file a motion to dismiss the Complaint and then claim that BNYM did not need to answer the discovery because of a pending motion to dismiss. In response, counsel for BNYM stated: “I can tell you that is not the plan because we still do not know what we are going to do in this case.”

20. *Two business days later*, BNYM executed the Settlement Agreement. And on the following day, June 29, counsel for BNYM signed a petition, filed in this Court, with respect to the Settlement Agreement. The petition specifically described the

Knights' suit as follows: "In early June 2011, a different Certificateholder commenced an action against BNY Mellon, as Trustee, for an accounting relating to two separate trusts that are part of the Settlement. *See Knights of Columbus v. The Bank of New York Mellon*, Index No. 651442/2011 (N.Y. Sup. Ct. N.Y. County)." According to BNYM, "the Settlement will release the claims [...] underlying plaintiff's accounting claim here." *See Memorandum in Support of the Bank of New York Mellon's Motion to Transfer or Stay*, July 20, 2011, at 2. BNYM characterized the Knights' non-adversarial Accounting Action as one of the "conflicting demands" that was "creating the potential for conflicts among Certificateholders and placing the Trustee squarely in the middle of those conflicts." As the United States District Court for the Southern District of New York observed: "While BNYM knew that several trust beneficiaries had already begun litigation, BNYM proceeded *ex parte* and did not name a single respondent or defendant." *The Bank of New York Mellon v. Walnut Place LLC*, 819 F.Supp.2d 354, 357 (S.D.N.Y. 2011), *rev'd on other grounds by BlackRock Financial Management Inc. v. Segregated Account of Ambac Assur. Corp.*, 673 F.3d 169 (2nd Cir. 2012).

21. Further, the RRMS "Servicing Opinion" is dated June 28, 2011. Thus, the Trustee uncontrovertibly had the opportunity to review the servicing claims during the pendency of the Knights' lawsuit.

22. In an affidavit filed in this Court on July 11, 2011, counsel for BNYM claimed that BNYM informed other investors, called eleven Walnut Place LLC entities (collectively "Walnut Place"), that "the Trustee, Bank of America, and Countrywide were actively negotiating a settlement", offered Walnut Place "the opportunity to be appraised

on a current and ongoing basis about the settlement discussions”, and invited Walnut Place “to provide input on settlement discussions”.<sup>5</sup>

23. In stark contrast, and despite the non-adversarial nature of the Accounting Action, BNYM failed to include the Knights in the settlement process. Never once during any conversation between the Knights and BNYM did any representative of BNYM mention that BNYM was engaged in settlement discussions with Bank of America and 22 other institutional investors. Nor did BNYM attempt to involve the Knights in the process or seek its input in any way despite the existence of the Accounting Action, which seeks information directly relevant to the Proposed Settlement Agreement.

24. Instead of involving the Knights in the settlement process, BNYM repeatedly and prominently used the Knights’ non-adversarial Accounting Action to support its claim that “the Trustee has been presented with conflicting demands”. BNYM’s Memorandum of Law in Support of its Verified Petition Seeking Judicial Instructions and Approval of Proposed Settlement, June 29, 2011, at 13-14; *see also id.* at 1-2; BNYM’s Verified Petition ¶ 14. Thus, after excluding the Knights from the settlement process, BNYM decided to thrust the Knights into the result.

25. BNYM – a Trustee – has determined to deal with certain Certificateholders while excluding other Certificateholders from the process entirely. As more fully explained in the Affidavit attached as Exhibit 2, the Knights have also learned that BNYM failed without explanation to produce to a Certificateholder a relevant

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<sup>5</sup> Walnut Place disputes these characterizations. *See* Affirmation of Owen Cyrulnik in Further Support of Petition to Intervene ¶¶ 3-11.

document to which that Certificateholder was plainly entitled. Thus, while one group of Certificateholders was being provided with confidential information, BNYM was denying another Certificateholder a document to which it was plainly entitled under the relevant PSA. BNYM never explained how it represents the interests of all Certificateholders when BNYM: (a) excluded a Certificateholder from the settlement process despite knowledge of a claim by that Certificateholder; (b) prevented a Certificateholder from exercising contractual rights under the PSA; and (c) discharged the duties as Trustee inconsistently as to different Certificateholders.

#### **THE TRUSTEE FAILED TO EVALUATE THE VALUE OF SERVICING CLAIMS**

26. As a consequence of excluding the Knights from the settlement process, the servicing claims so critical to the Knights were released without being evaluated in any way. For example, the RRMS “Servicing Opinion” dated June 28, 2011 makes no effort to assign a value to the servicing claims being released against the Master Servicer, Bank of America, N.A. Discovery has further revealed that the Trustee completely failed to evaluate the servicing claims, despite having detailed notice of the same. *See, e.g.*, Kravitt Dep. at 37-38, 275; Bailey Dep. at 100-22; Lundberg Dep. at 149-161, 337-338; Griffin Dep. at 292.

27. Part of the rationale for the Settlement is the idea that the entities that sold mortgage loans to the Trusts (Countrywide Home Loans, Inc., Park Granada LLC, Park Monaco Inc., and Park Sienna LLC) are stand-alone entities for whom Bank of America, N.A. has no responsibility. This rationale does not apply to claims against the Master Servicer, which is now Bank of America, N.A. Because Bank of America, N.A. ultimately succeeded Countrywide Home Loans Servicing L.P. as Master Servicer on the

Covered Trusts via various mergers, Bank of America, N.A. inherited liability for servicing violations pre-merger. Additionally, many of the servicing violations occurred during the time Bank of America, N.A. was acting as Master Servicer for the Trusts and some of those violations even took place after the Proposed Settlement Agreement was entered. The losses to the Trusts related to servicing violations have never been assessed and therefore it cannot have been reasonable for the Trustee to release Bank of America, N.A., or any responsible affiliates, for such violations, and the Knights object to any provision of the Settlement that does so.

#### **THE TRUSTEE IS SEEKING A RELEASE FOR ITSELF**

28. As noted above and demonstrated by the exchange of correspondence attached as Exhibits 3 and 4, the Knights have requested that BNYM state whether BNYM would “take the position in the case styled *Knights of Columbus v. The Bank of New York Mellon*, Index No. 651442/2011 (N.Y. Sup. Ct.) [...] or in any similar cases (collectively, the ‘Trustee Cases’) that an award of the relief sought by BNYM in the [Article 77] Case will have any effect on the Trustee Cases other than: (1) as an offset to damages; and (2) as grounds to dismiss the request for an accounting?” BNYM refused to simply acknowledge this point, instead claiming the Settlement Agreement did not provide BNYM a release, but concluding vaguely that “We expect any orders or judgments in the Article 77 case will have *res judicata* effect.” (underlining added).

29. The Proposed Order approving the Settlement provides the Trustee a release:

**All Trust Beneficiaries ...are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either directly, derivatively, or in any other capacity, any suit, proceeding, or other action asserting against the**

**Trustee any claims arising from or in connection with the Trustee's entry into the Settlement**, including but not limited to the Trustee's participation in negotiations regarding the Settlement, 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 Potentially Interested Persons, 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; provided, however, that nothing herein precludes any Party from asserting any claims arising out of a breach of the Settlement Agreement.

Proposed Order paragraph (p) (emphasis added). The Proposed Order is attached as Exhibit B to the Settlement Agreement and is required to be entered as a condition of the Settlement. Settlement Agreement ¶ 2(a)(v). Therefore, it is not accurate to state that “the Settlement Agreement contains no release of claims against BNY Mellon.” Exhibit 4 (letter from M. Ingber to T. Franklin, March 29, 2013).

30. The release from “claims arising from or in connection with the Trustee's entry into the Settlement” is not defined, but does include “but is not limited to” various activities related to the Settlement such as participation in negotiations leading up to the Settlement. This release constitutes an enormous benefit to BNYM, in part because it arguably releases the Trustee from actions taken during the time an Event of Default had been declared.

#### **OBJECTIONS TO THE PROPOSED SETTLEMENT AGREEMENT**

31. A Trustee cannot engage in misconduct and then release itself from claims brought by Trust beneficiaries. The Knights object to any provision of the Settlement Agreement or related orders of this Court that releases or purports to release BNYM from any claim asserted against BNYM in the Knights' Amended Complaint filed in this Court, or in any similar complaint filed by any other Certificateholder. A “release” would also include any effort to obtain a “back-door” release by, for example, construing the Court's

approval of all aspects of the Settlement as adequately compensating Certificateholders, and subsequently using that Order under *res judicata* or a similar doctrine to argue that no claim can survive against BNYM because the plaintiff has no damages.

32. Similarly, BNYM should not be able to use the Order, and its release and bar of various pre-settlement claims against the Bank of America Parties and the Countrywide Parties, including claims related to breaches of representations and warranties, document defects, repurchase claims, faulty servicing, events of default, robo-signing, foreclosure deficiencies, and exception reports, to preclude similar claims against BNYM. Neither contribution nor indemnity, neither *res judicata* nor collateral estoppel, or any other theory should allow BNYM to use the Settlement to cut off claims against itself.

33. The Order approving the Settlement, if adopted, should include the following statements: (a) “this Order shall not serve to release or relieve the Trustee from any liability whatsoever; 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”;<sup>6</sup> and (b) “this Order

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<sup>6</sup> To the extent the Court determines that the Trustee should get some form of release, the Knights respectfully submit that, because BNYM treated some Certificateholders differently than others while negotiating the Proposed Settlement Agreement (at times in abrogation of its duties to Certificateholders under the relevant Pooling and Servicing Agreements), any Order approving the Settlement, if adopted, should contain language stating that: “Notwithstanding any other provision of this Order, the Trustee shall not be released from liability to any Trust Beneficiary who can demonstrate either that: (a) the Trustee failed to take into account that Trust Beneficiary’s interests in negotiating, entering, or effectuating the



shall not be interpreted as a finding by this Court that any Trust Beneficiary has received full compensation for any losses or injuries related to its purchase, sale, or holding of Certificates”.

34. Because the Trustee never assessed the value of the Master Servicer’s servicing violations, it was not reasonable for the Trustee to release them, and the Knights object to a release Bank of America, N.A., or any responsible affiliates, for such servicing violations. Any Order approving the Settlement, if adopted, should not release any entity (including Bank of America, N.A.) for servicing violations.

#### **TRUST BENEFICIARIES JOINING OBJECTION**

35. The following Trust Beneficiaries join in this objection: Amici Associates L.P., Amici Qualified Associates L.P., The Collectors Fund L.P., Amici Offshore Ltd., Manichaeon Capital, Cedar Hill Capital Partners, Kerndt Brothers Savings Bank, Lea County State Bank, People’s Independent Bank, First Bank, Thomaston Savings Bank, First National Banking Company, First National Bank and Trust of Rochelle, LL Funds LLC, DoubleLine Capital LP, First Financial of Maryland Federal Credit Union, Valley National Bank, and Radian Asset Assurance, Inc.

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Settlement; or (b) the Trustee violated its duties to that Trust Beneficiary under a Pooling and Servicing Agreement or other document governing the Trustee’s duties to any Trust Beneficiary.”

**RELIEF REQUESTED**

WHEREFORE, the Knights respectfully object to the Proposed Settlement Agreement. In the event the Court approves the Settlement, the Knights respectfully request that the Court's Order approving the Settlement be modified in the manner set forth in this Objection.

Dated: May 3, 2013

Respectfully Submitted,

/s Peter N. Tsapatsaris  
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