

September 30, 2016

The Honorable Saliann Scarpulla
New York State Supreme Court
Commercial Division
60 Centre Street
New York, NY 10007

Re: *In the Matter of the Application of the Bank of New York Mellon, No. 150973/2016*


Dear Justice Scarpulla:

We write on behalf of American International Group, Inc., the Institutional Investors AEGON and BlackRock Financial Management, Inc., and certain of their affiliates. As requested by the Court during the August 31, 2016 hearing, we enclose testimony and other materials from the 2013 hearings in the prior Article 77 matter (No. 651786/2011) relevant to how the parties that negotiated the Settlement Agreement intended the settlement to be allocated. The testimony demonstrates that the parties to the Settlement Agreement understood the settlement to compensate senior bondholders for past *and future* losses, and that Trustee counsel Jason Kravitt's statements cited by the parties about compensating investors for losses must be understood in that context. (By contrast, Tilden's methodology would compensate investors only for *past* losses.)


We have listed the testimony excerpts below in Annex A, with relevant text highlighted in the enclosed exhibits. We have also included excerpts from trial exhibits referenced in the testimony.

Please let us know if you need anything further, including hard copies delivered to the Court.

Respectfully submitted,


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cc: All counsel of record (via NYSCEF)

ANNEX A

Testimony And Related Materials

Topic 1. The Settlement Agreement Was Intended To Compensate For Total Losses, Both Past And Future, And The Settlement Amount Was Calculated Based On Total Losses, Not Based Only On Past Losses, As Tilden Advocates.

- Exhibit A: Settlement Agreement, §3(c)(i)-(ii), specifying that the settlement allocation shall be calculated based on both prior realized losses and future projected losses.
- Exhibit B: Testimony of Kent Smith, Executive Vice President of Portfolio Management at PIMCO, one of the Institutional Investors, describing Petitioner's Exhibit ("PTX") 562 (attached hereto as Exhibit G), a settlement presentation by the Institutional Investors to Bank of America, showing that the Institutional Investors included future losses in Bank of America's total exposure. Testimony from 6/6/13, pp. 355:15-360:7.
- Exhibit C: Testimony of Kent Smith describing PTX604 (attached hereto as Exhibit H), a settlement negotiation presentation by the Institutional Investors to Bank of America, explaining that the Institutional Investors calculated cumulative losses, including estimated future losses, for purposes of negotiating the settlement. 6/7/13, pp. 609:14-610:7.
- Exhibit D: Testimony of Terrence Laughlin, Chief Risk Officer of Bank of America, that PTX604 (attached hereto as Exhibit H) reflects prior realized losses and estimated future losses. 6/10/13, pp. 709:5-711:3.
- Exhibit E: Testimony of Scott Waterstredt, a Director at MetLife, one of the Institutional Investors, that PTX604 (attached hereto as Exhibit H) reflected prior losses and estimated future losses. 6/10/13, pp. 851:23-853:14.
- Exhibit F: Testimony of Thomas Scrivener, Bank of America executive, that PTX562 (attached hereto as Exhibit G) reflected past losses and estimated future losses. 6/13/13, p. 1134:2-19.
- Exhibit G: PTX562, settlement negotiation presentation by the Institutional Investors to Bank of America, showing cumulative realized losses and projected losses. Record on Appeal, p. 10036.
- Exhibit H: PTX604, settlement negotiation presentation by the Institutional Investors to Bank of America, showing cumulative realized losses and projected losses. Record on Appeal, p. 10037.

- Exhibit I: Testimony of Jason Kravitt, counsel for Trustee, that the settlement is allocated based on total losses per trust, including projected future losses. 7/12/13, p. 1876:3-13.
- Exhibit J: Testimony of Jason Kravitt that Brian Lin of RRMS Advisors, consultant to the Trustee on the settlement amount, calculated total current and projected losses on the trusts for purposes of negotiating the settlement. 7/12/13, p. 1970:11-16.
- Exhibit K: Testimony of Phillip Burnaman, Institutional Investors' expert, that Bank of America and the Institutional Investors calculated cumulative lifetime losses for the trusts, including prior realized losses and estimated future losses, for purposes of negotiating the settlement. 7/22/13, pp. 2733:17-2738:25, 2744:12-2747:22.
- Exhibit L: Testimony of Brian Lin of RRMS Advisors, consultant to the Trustee on the settlement amount, that the Institutional Investors' settlement position considered projected losses. 9/12/13, pp. 3881:14-3882:6.
- Exhibit M: Testimony of Dr. Faten Sabry, an employee of National Economic Research Associates ("NERA"), that NERA was hired by the Trustee to estimate current and future losses for the trusts, and that the settlement will be allocated *pro rata* based on both prior and projected future losses. 9/17/13, pp. 4343:16-4345:20.
- Exhibit N: PX7, "NERA's Proposed Method for Computing Actual Loses and *Expected Future Losses* for the Countrywide Securitization Trusts, dated June 29, 2011." Record on Appeal, pp. 6259-61 (emphasis added).

Topic 2. The Settlement Agreement Was Intended To Favor Senior Tranches Over Subordinate Tranches.

- Exhibit O: Testimony of Jason Kravitt, counsel for the Trustee, that the settlement payment goes to the senior bonds first, and junior bonds may not recover any money from the settlement, but that junior bonds might receive *interest* payments (*i.e.*, not principal payments or the settlement payment itself) in a future period if their certificate balances are written up (*i.e.*, "restore[d]") as a result of the settlement payment (consistent with the Standard Intex Method). 7/12/13, pp. 1877:16-1878:16.
- Exhibit P: Testimony of Jason Kravitt that the parties that negotiated the settlement agreement added rules, beyond the PSAs' waterfalls, to make sure junior certificateholders do not get paid before senior certificateholders; and that junior tranches could receive nothing. 7/12/13, p. 1879:5-22.

Topics For Which We Were Unable To Locate Relevant Testimony Or Related Materials

We were unable to find testimony, trial exhibits, or settlement agreement language on the following topics in the 2013 Article 77 proceeding:

1. Any testimony by employees or representatives of the Objectors in the present proceeding (Prosis Capital Management, Tilden Park Capital Management LP, and the Blue Mountain parties).
2. Any evidence that any of the Objectors participated in negotiating the Settlement Agreement or objected to it.
3. Any testimony that junior certificateholders might recover *more* from the settlement than senior certificateholders.
4. Any testimony that junior certificateholders *should* recover more from the settlement than senior certificateholders.
5. Any testimony suggesting that the parties anticipated a windfall for junior certificateholders.
6. Any testimony by junior certificateholders that the Settlement Agreement unfairly favored senior certificateholders.
7. Any testimony about the specific Disputed Trusts currently at issue, including any testimony about the distribution waterfalls in those trusts.
8. Any testimony that the settlement was intended to compensate only for *realized* losses or was intended to exclude projected future losses.
9. Any testimony about the Principal Distribution Amount or the Overcollateralization Target Amount, and the effect they might have on the settlement allocation between super-senior bonds and more junior bonds.
10. Any testimony that the parties to the Settlement Agreement intended the settlement payment to be distributed as of any date other than after the settlement is so-ordered by the Court and judgment issued.

EXHIBIT A

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).

EXHIBIT B

1 Smith - for Petitioner - Direct/Patrick
2 believed their exposure to be.

3 Q You said "dismissive of that idea." Were you
4 dismissive of the relevance of the GSE data?

11:11 5 A No.

6 Q Why not?

7 A Again, it provided a repurchase rate, an actual
8 success rate from an adversarial process and it was certainly a
9 data point that was useful in calculating what we thought their
11:12 10 ultimate exposure was.

11 Q Now, you said you prepared, your group prepared your
12 own analysis. Was presented to Bank of America in this
13 meeting?

14 A This is the February meeting, yes.

11:12 15 Q Could we take a look at Plaintiff's Exhibit 562,
16 please.

17 Mr. Smith, do you recognize Plaintiff's Exhibit 562 as
18 the analysis that was presented to Bank of America and the
19 trustee in the February meeting by the investor group?

11:12 20 A I do.

21 Q Were you a part of the preparation of this document?

22 A Yes, I was present.

23 Q And did you participate in putting it together and
24 deciding on how the analysis would be done?

11:12 25 A Yes.

26 Q And do you believe that the data that is reflected

1 Smith - for Petitioner - Direct/Patrick
2 there -- are the source data -- strike that.

3 Mr. Smith, could you tell us in the first box at the
4 top, what is the source data there?

11:13 5 A Intex, which is a data information analysis tool that
6 is widely used by investors and broker-dealers.

7 Q Is this a compilation of Intex data?

8 A Yes, and so on the --

9 Q Let me ask you, this is a compilation of Intex data?

11:13 10 A Yes.

11 Q From that data did you perform certain analyses to
12 reflect various scenarios?

13 A Yes.

14 Q What was your purpose in preparing this document?

11:13 15 A Well, it was to counter Countrywide's or Bank of
16 America's assertion that their repurchase exposure, let's say
17 it this way, their undiscounted repurchase exposure ranged from
18 1.3 to 1.7 billion. We wanted to make sure that, you know,
19 they understood that it was our perception that their
11:13 20 undiscounted repurchase exposure was much larger, and we
21 prepared this -- we prepared this presentation or this analysis
22 to deliver them what we believed our -- what was our estimate
23 of their exposure. Basically to counter, you know, 1.3 billion
24 being an anchor for these -- for this process.

11:14 25 Q And Mr. Smith, on Plaintiff's Exhibit 562, did you
26 consider litigation risks or defenses?

1 Smith - for Petitioner - Direct/Patrick

2 A Not on this document, no.

3 Q So these are undiscounted numbers?

4 A Correct.

11:14 5 MS. PATRICK: We offer Plaintiff's Exhibit 562.

6 MR. ROLLIN: No objection, your Honor.

7 THE COURT: Okay.

8 (Plaintiff's Exhibit 562 received in evidence.)

9 MS. PATRICK: Your Honor, could Mr. Smith step
11:14 10 down. I would like to ask him to walk you through what
11 this analysis was, if that's all right?

12 THE COURT: Sure.

13 Q Mr. Smith, could you step down, please.

14 Directing your attention to the first box there,
11:15 15 Mr. Smith, would you explain to Justice Kapnick what that first
16 box is?

17 A Sure. This column here is the first column that
18 identifies subprime ALT_A, POA, which is an acronym for pay
19 option arm, second lien scratch and debt re-performing. These
11:15 20 are loan types and this is the way these securities are
21 typically marketed. They are marketed by loan type and they
22 have basically different collateral performance by the -- that
23 is characteristic of that loan type.

24 And so what we did was we broke out for the deals that
11:16 25 were being negotiated the current deal balance, the deal count
26 by loan type, and the actual realized loss as of that date, the

1 Smith - for Petitioner - Direct/Patrick
2 serious delinquency of each one of those categorizations of
3 securitizations and then the prevailing -- the trailing three
4 months of severity. And we used that as source data to then
11:16 5 apply assumptions to each one of those -- each of the
6 categories of serious delinquency. And then the modified --
7 the loans had been modified, but were then reperforming to
8 arrive at a total estimated loss assumption for the aggregate
9 of these deals.

11:16 10 Q So let's look at the second box there, Mr. Smith, and
11 you can show Justice Kapnick that.

12 What is this box, what are you using here?

13 A This box is just bringing down the totals from the
14 prior box to again estimate the total losses associated with
11:17 15 this population of deals as a means to estimate the damages or
16 the maximum claim size, again undiscounted for any litigation
17 risk.

18 Q So Mr. Smith, there are in the middle ranges here, in
19 the middle of this box where it says performing default rate 60
11:17 20 plus and 60 plus loss severity?

21 A Yes.

22 Q The percentages there, 50 plus, what were you saying
23 there?

24 A We were saying that on the performing loans, most of
11:18 25 which, if not all of which, were not previously delinquent,
26 would ultimately default at a rate of 50 percent. So loans

1 Smith - for Petitioner - Direct/Patrick

2 that, in some of these trusts had been performing for seven
3 years, we were assuming that half of them would ultimately
4 default and result in losses.

11:18 5 And you know, we did that to estimate the potential
6 exposure of -- to the certificate holders -- of breaches of the
7 rep and warrant violation that were material and adverse, but
8 had yet to result in a loss to the trust. If a rep and warrant
9 is violated but it never resulted in the loss, there is no
11:18 10 damage. So anyway, that was our attempt to capture that risk
11 in arriving at the total -- total loss exposure and then
12 ultimately, the total claim size. I shouldn't say claim size,
13 I should say repurchase exposure.

14 Q Mr. Smith, how would you characterize the estimate of
11:19 15 a 50 percent default rate on performing loans given these pools
16 and their age? Was that a conservative assumption?

17 A No, it was pretty aggressive since the peak of the
18 default curve is typically five years since the origination and
19 these are, most of them, past five years.

11:19 20 Q Now, go to the bottom, Mr. Smith, and let's pull out
21 this box here.

22 MS. PATRICK: All the way across the bottom,
23 please, Ed. Thank you. All right.

24 Q So what have you done in this analysis here,
11:19 25 Mr. Smith?

26 A So for, again, the deals that weren't in question, we

1 Smith - for Petitioner - Direct/Patrick
2 estimated the total losses and then we applied a series of
3 scenarios or we then estimated the ultimate repurchase rate
4 associated with that cumulative loss to describe or to provide
11:20 5 Bank of America our estimate using various -- various levels of
6 breach and success rate to come up with our estimate of the
7 ultimate repurchase exposure, undiscounted repurchase exposure.

8 Q All right, Mr. Smith, you can go back to the witness
9 stand, please.

11:20 10 Now, Mr. Smith, the number here in the right-hand
11 column that says BOA assumption, do you see that? It's got a
12 35 percent breach rate and a 40 percent success rate and a
13 defect rate of 14 percent.

14 Do you see that?

11:21 15 A Yes.

16 Q What is the source of that column of information?

17 A That was their experience with the GSEs.

18 MS. KASWAN: Objection, your Honor. The witness
19 is testifying to hearsay. There's been no witness who's
11:21 20 testified as to what BOA's experience was with the GSE. I
21 believe this witness is testifying to something that he was
22 told in negotiations, but he has no knowledge as to what
23 the GSE experience is or what BOA's experience was with
24 respect to the GSEs.

11:21 25 MS. PATRICK: Your Honor, I can rephrase it and
26 make it very easy.

EXHIBIT C

1 Smith - by Petitioner - Cross/Reilly

2 A That's not true.

3 MS. PATRICK: Objection.

4 Q Let me ask that. There had been no review of loans in
14:33:47 5 the 530 trusts; correct?

6 A No review of the actual loan documents, no.

7 MR. REILLY: Thank you.

8 MR. ROLLIN: Thank you, your Honor. Michael
9 Rollin.

10 CROSS-EXAMINATION.

11 BY MR. ROLLIN

12 Q Good afternoon, Mr. Smith.

13 A Good afternoon.

14 Q We're showing up on the screen a document marked
14:34:31 15 Exhibit PTX 604. You remember seeing that yesterday; correct?

16 A Yes.

17 Q Now, reflected in PTX 604 includes the exercise
18 performed by the Institutional Investor group of which you are a
19 member to calculate the estimated cumulative losses in the
14:34:51 20 Trusts that are reflected in this document; right?

21 A Yes.

22 Q And that means it's a combination of the losses
23 realized as of the date this was put together, together with
24 your group's estimate of future losses; correct?

14:35:06 25 A Yes.

26 Q And that number is found in the -- about in the middle

1 Smith - by Petitioner - Cross/Rollin

2 of the page, \$107.8 billion; right?

3 A Yes.

4 Q That is a product of the calculation of the default

14:35:20 5 rates for the various loan types and the severity rate that you
6 used an average of; correct?

7 A Yes.

8 Q And one can find the default rates in the -- for the
9 various collateral types along the left-hand side in the middle
14:35:40 10 -- I'm sorry, the bottom left; is that right?

11 A Yes.

12 Q And one can find the average severity rate that you
13 used in the up -- towards the upper right of 66 percent; is that
14 right?

14:35:55 15 A Yes.

16 Q Is that how you calculated the losses; those default
17 rates multiplied by that average severity rate?

18 A For the individual loan types, yes.

19 Q And the information that forms the default rate for
14:36:13 20 everything except for mod -- I'm sorry, performing loans, comes
21 from -- does it all come from InTex?

22 A It's coming from their remittance reports.

23 Q And the remittance reports come from the Trustee?

24 A The remittance reports come from information that the
14:36:33 25 Trustee receives from the Servicers.

26 Q Is it the Trustee that passes it on to the Certificate

EXHIBIT D

1 Laughlin - by Petitioner - Direct/Madden
2 coming out of the trusts would be and both sides as an
3 analytical framework ascribing potential values to that
4 Countrywide might pay to the investors.

10:36 5 Q I want to show you a document that's previously been
6 admitted in this case. It's Plaintiff's Exhibit 604. Do you
7 recognize this document as one of the analyses on losses that
8 was presented by the investor group?

9 A Yes. Could I have clarification? Is this -- was this
10:36 10 presented in February? Was this February or April?

11 Q This is all 5 -- actually more than the 530 deals.
12 This is the April presentation.

13 A Okay.

14 Q Is one of the things that this document was attempting
10:36 15 to show was to get at an estimate of total losses for the
16 trusts?

17 A It was a document that basically was an estimate of the
18 total losses coming out of the trusts, which is the -- in the
19 bottom left-hand box, the estimated losses of \$107.8 billion.

10:37 20 Q Then over on the right-hand side, as you understood it,
21 was that an attempt to take those total losses and come up with
22 some scenarios under which you could attribute losses, you could
23 identify losses associated with defective mortgages?

24 A Yes. That was the investors' attempt to potentially
10:37 25 assign those losses or attribute those losses to Countrywide.

26 Q Okay. If we could go back out to the main page here.

1 Laughlin - by Petitioner - Direct/Madden

2 And then with respect to losses, now, were there two
3 components of losses here that you had to kind of add together
4 to get to this estimate of the total losses? And what I'm
10:37 5 referring to here are, there are realized losses, which were
6 actual losses, and then there were -- there was an estimate of
7 future losses?

8 MR. POZNER: Objection. Leading.

9 THE COURT: Sustained.

10:38 10 MR. MADDEN: Just trying to lay a foundation.

11 THE COURT: I understand, but you are still
12 leading.

13 Q Mr. Laughlin, did you understand that one of the things
14 that this chart -- let me ask you this: What did you understand
10:38 15 that cumulative realized losses on this chart referred to?

16 A In general, my understanding of the cumulative realized
17 losses were the losses that had been incurred to date from the
18 mortgages inside the securities that had been incurred to date
19 but were not future losses.

10:38 20 Q As you recall it, was that an area of dispute about
21 what the actual losses to date were?

22 A No. They were realized losses.

23 Q All right. Now, how about on the estimated losses that
24 were being added to that, was that an area of dispute, as you
10:38 25 understood it?

26 A Yes. That was an area where both sides had developed

1 Laughlin - by Petitioner - Direct/Madden

2 their own viewpoints and estimates in terms of what future
3 losses arising out of the loans in the trusts might be.

4 Q Now, as you understand it, sir, to make a projection
10:39 5 about losses were there certain assumptions that had to be made?

6 A Yes.

7 Q Is the rate at which loans are going to default in the
8 future? Is that one of those assumptions?

9 A Absolutely.

10:39 10 Q Is the severity, what's called the severity, the amount
11 of the loss that would be suffered on defaulting loans? Is that
12 another assumptions that has to be made?

13 A Yes, it is.

14 Q Did you form an opinion about what in your mind was the
10:39 15 reasonableness of the assumptions that the Institutional
16 Investors were using in connection with coming up with their
17 loss numbers?

18 A I did.

19 Q What was it?

10:39 20 A You know, I thought -- I thought they were being
21 extremely aggressive and one-sided in terms of what they thought
22 future losses would be arising from, arising out of these
23 trusts.

24 Q What was your impression as to why the Institutional
10:40 25 Investors were using what you characterize as aggressive
26 assumptions?

EXHIBIT E

1 Waterstredt - by Petitioner - Cross/Rollin

2 MR. ROLLIN: I will, your Honor. Can we have a
3 few minutes to move the podium.

4 THE COURT: Yes.

03:57 5 THE COURT: Okay?

6 MR. ROLLIN: Yes, your Honor, thank you.

7 CROSS-EXAMINATION

8 BY MR. ROLLIN:

9 Q Hello, Mr. Waterstredt.

03:58 10 A How do you do?

11 Q You testified a couple of minutes ago that after the
12 8.5 was approved, each of the certificate holders or asset
13 managers who were a member of the institutional investor group
14 had to separately vote for it, right?

03:58 15 A They each had to approve it.

16 Q And when did that happen? When did that communication
17 to that larger group happen?

18 A It would have been sometime probably in April of 2011.

19 Q Middle of April, end of April?

03:58 20 A I would -- I would guess towards the end April, just
21 based on the dates of the meetings that I'm aware of, but I'm
22 not for certain.

23 MR. ROLLIN: Can I have Petitioner's 604 please
24 on the screen.

03:59 25 Q We have talked about this a lot. You know what it is,
26 right?

1 Waterstredt - by Petitioner - Cross/Rollin

2 A Yes, I do.

3 Q And for the record, it's Petitioner's 604, right?

4 A Yes.

03:59 5 Q And you testified a few minutes ago you played a role
6 in creating it, right?

7 A I played a role in creating a lot of assumptions that
8 were in it, yes.

9 Q But it was fair to say it was assembled by the
03:59 10 representatives on the institutional investors steering
11 committee from Freddie Mac?

12 A Aaron Pas owned the spreadsheet, generally put the
13 numbers in at our direction, at the steering committee's
14 direction.

03:59 15 Q He is from Freddie Mac?

16 A Yes.

17 Q But the numbers were approved by all the members of
18 the steering committee?

19 A They were generally discussed, yes.

03:59 20 Q Were they approved by all the members of the larger
21 bondholder group of 22?

22 A I don't recall discussing the individual assumptions
23 with the larger group.

24 Q If anybody disagreed with the numbers set forth on
03:59 25 PTX 604, they were certainly able to express that disagreement,
26 right?

1 Waterstredt - by Petitioner - Cross/Rollin

2 A They were.

3 Q And ultimately this is a consensus, these figures
4 represent the consensus of the institutional investor group,
04:00 5 right?

6 A They represent the consensus of the steering committee
7 on what we should present to B of A.

8 Q And as you discussed, just to reorient ourselves, it
9 has a calculation of the losses in the covered trusts, correct?

04:00 10 A Correct.

11 Q Prior and estimated future, right?

12 A Correct.

13 Q And that's the 107.8 billion?

14 A That is the number that we presented, yes.

04:00 15 Q And some calculation of breach and success rates that
16 are reflected in the lower right-hand portion of the
17 spreadsheet?

18 A Correct.

19 Q And these are your ranges of estimated repurchase
04:00 20 exposure to Bank of America?

21 A This was our range of exposures that we wanted to
22 present to Bank of America within the negotiation.

23 Q Now one of MetLife's specific contributions was the
24 estimated default rate for performing loans, right?

04:01 25 A It was an area that we opined on, yes.

26 Q That's -- you see the yellow highlight where it says

EXHIBIT F

1 Scrivener - by Petitioner - Cross/Rollin

2 MR. ROLLIN: Could we put up PT X 562, please.

3 Q Is this the document you remember seeing?

4 A Yes, without all the scribble.

04:06:06 5 Q And you asked for information about this document, but
6 it was not provided to you?

7 A I don't know if it was Terry Laughlin or me or
8 somebody else who asked, but there were questions asked about
9 why the losses were so high and what support they had for the
04:06:30 10 breach and success rates/defect rate that were shown on this
11 sheet. And I didn't believe the responses were adequate to
12 explain to me.

13 Q The losses that you are referring to that you said
14 were so high, that's the -- in the middle of the bottom about,
04:06:53 15 I think it says, \$51 billion; is that right?

16 A Yes.

17 Q And that's the estimated -- that's the past losses and
18 estimated future losses, right?

19 A Correct.

04:07:04 20 Q Do you know what the losses are on those 225 trusts
21 are today?

22 A Not sitting here, but I could check.

23 Q And you didn't receive adequate information from the
24 institutional investor group to support that estimation of
04:07:22 25 losses?

26 A No.

EXHIBIT G

PETITIONERS' EXHIBIT PTX562 - ALL CONSORTIUM DEAL ANALYSIS

All Consortium Deal Analysis

Privileged and Confidential -- Subject to Fed. R. Civ. P. 408

Intex Collateral Type	Deal Original Balance	Deal Balance	Deal Count	Deal Realized Loss \$'s	60+ (Including P&K, FCL, REO) \$'s	3mo Severity %	Modified Current
Subprime	\$54	\$25.2	48	\$5.3	\$14.8	81%	
ALT_A	\$48.6	\$24.6	75	\$2.7	\$7.6	60%	
POA	\$44.8	\$18.2	38	\$3.1	\$10.3	64%	
Prime	\$28.9	\$13.4	52	\$6	\$2.8	53%	
Second Lien	\$2.2	\$8	3	\$7	\$	98%	
Scratch & Dent	\$1.6	\$4	7	\$1	\$2	79%	
Reperforming	\$9	\$3	2	\$	\$1	7%	
Grand Total	\$180.9	\$83	225	\$12.6	\$35.9	66%	\$6.4

Aggregated Deal Information	Realized Loss Percentage	60+ Percentage
	6.9%	43%

Estimated Loss Amounts	Realized Loss	60+ Loss	Estimated Loss
Cumulative Realized Loss	(a) \$12.6		
Current but modified loans	(b) \$6.4		
60+ days Delinquent	(c) \$35.9		
Performing - Non Mod Balance	(d) \$40.7		
Performing Default Rate	(e) 50%		
60+ default rate	(f) 90%		
60+ Loss Severity	(g) 66%		
Projected Loss on Delinquent Loans	(h) = (b + c) * (f) * (g)		\$25.2
Projected Loss on Performing Loans	(i) = (d) * (e) * (g)		\$13.5
Total Projected and Realized Loss	(j) = (a) + (h) + (i)		\$51.2

Estimated Breach Amounts	Breach Rate	Success Rate	Required Compensation = (m) = (j) * (k) * (l)
Liquidated Loans	NA	NA	\$12.6
60+ Loans	90%	66%	\$21.4
Modified Current Loans	90%	66%	\$3.8
Non - Modified Current/D30	50%	66%	\$13.5
			\$51.2

Indicative amounts	Scenario 1	Scenario 2	Scenario 3	BOA Assumption
Breach	60%	60%	65%	36%
Success	50%	60%	75%	40%
Defect Rate*	30%	36%	49%	14%
Estimated Losses	\$3.8	\$4.5	\$6.1	\$1.8
	\$6.4	\$7.7	\$10.4	\$3
	\$1.1	\$1.4	\$1.9	\$5
	\$4	\$4.8	\$6.6	\$1.9
	\$15.4	\$18.4	\$25	\$7.3

Where from?

Uncertainty only comes from performing loan default rate

CAUTION: RISKY



EXHIBIT H

PETITIONERS' EXHIBIT PTX604 -
ALL CONSORTIUM DEALS: ASSUMES 50% PERFORMING LOAN DEFAULT RATE

All Consortium Deals: Assumes 50% Performing Loan Default Rate

Aggregated Deal Information		Deal Original Balance	Deal Balance - Curr	Deal Count	Realized Loss \$'s	60+ (Including BK, FCL, REO) \$'s	3mo Severity	Estimated Modified Current
Intex Collateral Type								
	ALT_A	\$179.9	\$83.9	255	\$9.2	\$28.8	61%	
	Subprime	\$127.6	\$45.6	102	\$9.7	\$26.	85%	
	Prime	\$68.1	\$33.2	123	\$1.4	\$6.4	51%	
	POA	\$44.8	\$18.	38	\$3.2	\$10.2	66%	
	Scratch & Dent	\$3.4	\$1.2	15	\$.	\$.	116%	
	Second Lien	\$3.7	\$1.1	6	\$1.	\$1	99%	
	HELOC	\$1.4	\$.	2	\$2	\$1	100%	
	Reperforming	\$9	\$3	2	\$.	\$1	9%	
	Grand Total	\$429.8	\$183.8	543	\$25.	\$72.5	66%	\$12.8
Realized Loss Percentage				5.8%				
60+ Percentage				39%				
Estimated Loss Amounts								
	Cumulative Realized Loss	(a)		\$25.	<---			
	Current but modified loans**	(b)		\$12.8	<---			
	60+ days Delinquent	(c)		\$72.5	<---			
	Performing - Non Mod Balance	(d)		\$98.6	<---			
	Performing Default Rate	(e)		50%	<---			
	60+ default rate	(f)		90%	<---			
	60+ Loss Severity	(g)		66%	<---			
	Projected Loss on Delinquent Loans	(h) = (b+c) * (f) * (g)		\$50.4	<---			
	Projected Loss on Performing Loans	(i) = (d) * (e) * (g)		\$32.4	<---			
	Total Projected and Realized Loss	(j) = (a) + (h) + (i)		\$107.8	<---			
Estimated Breach Amounts								
	Liquidated Loans	NA	NA	NA	\$25.			
	60+ Loans	\$72.5	90%	66%	\$42.9			
	Modified Current Loans	\$12.8	90%	66%	\$7.5			
	Non - Modified Current/D30	\$98.6	50%	66%	\$32.4			
		\$183.8			\$107.8			

Scenario	BOA	2	3	4	5
Breach	36%	50%	60%	60%	65%
Success	40%	50%	50%	60%	75%
--->	\$3.6	\$6.3	\$7.5	\$9.	\$12.2
--->	\$6.2	\$10.7	\$12.9	\$15.4	\$20.9
--->	\$1.1	\$1.9	\$2.3	\$2.7	\$3.7
--->	\$4.7	\$8.1	\$9.7	\$11.7	\$15.8
	\$15.5	\$27.	\$32.3	\$38.8	\$52.6

Certainty	100%	100%	100%	100%	Estimate	Based on roll rates	Historical Average (pool specific)
	<---	<---	<---	<---	<---	<---	<---

Uncertainty only comes from performing loan default rate

PETITIONERS' TRIAL EXHIBIT
PTX 604

EXHIBIT I

1 J. Kravitt - by Petitioner - Cross/Mr. Pozner

2 A That is my understanding.

3 Q And so, what happens now is we get to the proposed
4 waterfall in this case, and what you are proposing is that you
11:59:29 5 will look at the trusts, you will compute the losses in the
6 trusts, you will compare that loss in the trust to the overall
7 settlement number and divide the number up that way including
8 projections of future losses?

9 A Correct, you stated it precisely. The formula is each
11:59:57 10 trust gets a fraction of the 8.5 billion, the numerator, which
11 is -- for it is the sum of experienced losses plus projected
12 losses and the denominator of which is the sum of all trusts
13 enumerated.

14 Q Now, let's talk about the sophisticated investors who
12:00:18 15 purchased into the tranches at deep discounts, and you are
16 aware that that happened, are you not?

17 A I assume that that has happened with regard to
18 Countrywide, but I don't know who bought their tranches when.

19 Q You don't know who bought the tranches when, but
12:00:37 20 everything in the securitization world is trackable and you
21 can't hide that you purchased it?

22 A Well, you can. I'm not trying to create a controversy
23 with you, but it's very easy to hide who owns things because
24 who owns things goes through so many names. In fact, if you
12:00:58 25 look at the number of holders in the trust, it looks like there
26 is only 12 holders because it's held in the dealers' names, and

EXHIBIT J

1 J. Kravitt - by Petitioner - Cross/Ms. Kaswan

2 A Right.

3 Q And --

4 A Well, if that was a warranty in the particular trust.

03:26:47 5 Q -- and you assume, because you lumped all 530 trusts
6 together, that basically you had the same reps and warranties
7 or the important reps and warranties in all the trusts, right,
8 because they are pretty much comparable among the 530, right.
9 In fact, that was a predicate to this entire settlement?

03:27:12 10 A Yes. We believed they were generally comparable.

11 Q And so, what your side did, all right, or what Mr. Lin
12 did in his analysis is he calculated what he thought was --
13 would be the total current and projected losses in the 530
14 trusts and then discounted that number by 86 percent on the
03:27:49 15 assumptions that 86 percent were prudently originated, right?

16 A Correct.

17 Q Now, didn't that seem farfetched knowing what you know
18 about Countrywide?

19 A No. I am willing to bet that Brian's numbers will
03:28:10 20 turn out to be the closest numbers to correct after all these
21 trusts are liquidated.

22 Q Well, I'm talking about the amount of the losses in
23 trusts or in loans that violated the prudent underwriting and
24 prudent origination representation warranties, all right?

03:28:33 25 A It --

26 Q To say that 86 percent were good loans based upon an

EXHIBIT K

1 Burnaman - by Petitioners - Direct/Gonzalez
2 balance that are currently delinquent, but in mortgage parlance
3 not seriously delinquent.

4 Q And then the next shaded area referencing 18 percent is
00:02:59 5 delinquent 60-plus days, foreclosure, and then REO.

6 A Delinquent 60 days, foreclosure and REO are generally
7 deemed to be seriously delinquent or in default, and this is the
8 percentage of that unpaid principal balance, the original unpaid
9 principal balance that was seriously delinquent or in default.

00:03:21 10 Q And then the last entry you have there in red is losses
11 at 7 percent. What does that stand for?

12 A That is the amount of the original 409 billion that as
13 of June 2011 had been charged off due to liquidation.

14 Q Just to be clear, this is a snapshot of what the
00:03:41 15 Covered Trust portfolio looked like in June 2011?

16 A That's correct.

17 Q Now, let's turn back to your first two opinions
18 regarding the \$8.5 billion settlement amount.

19 Can you please describe for the Court the process
00:03:57 20 that you went through to reach these first two conclusions?

21 A As I mentioned previously, the first step was to look
22 at the negotiation that was entered into, to try to find the
23 materials that were presented and used during this negotiation
24 to consider the process that these two parties went to in order
00:04:20 25 to frame their positions and calculate the potential outcomes
26 that they expected, and then to see how they used those

1 Burnaman - by Petitioners - Direct/Gonzalez

2 analytics to come to a -- ultimately, to come to a settlement.

3 Q Now, in your report, you make -- in your initial
4 report, PTX 64, you make reference to a number of quantitative
00:04:46 5 considerations. Can you explain what you mean by that?

6 A Certainly.

7 In mortgage finance, the calculation of expected
8 performance involves a quantitative analysis and certain
9 assumptions with respect to the timing of defaults and losses,
00:05:13 10 and those are the quantitative analysis that I referred to as
11 primarily relates to the calculation of losses or a loss
12 estimate for the Covered Trusts.

13 Q And as part of your analysis, did you have to conduct
14 that kind of calculation in terms of losses?

00:05:32 15 A I did. As both Bank of America and the Institutional
16 Investor group calculated an estimate of lifetime losses, I did
17 as well.

18 Q And have you prepared a slide to help you explain how
19 you calculated cumulative lifetime losses?

00:05:49 20 A Certainly, I have.

21 Q Let's take a look at the next slide in your
22 presentation.

23 Can you take us through this slide and explain to
24 us how it is that you calculated cumulative lifetime losses?

00:06:04 25 A I can. This is a fairly standard description of
26 mortgage finance analytics, and in order to calculate an

1 Burnaman - by Petitioners - Direct/Gonzalez

2 estimate of the lifetime losses for the Covered Trusts I had to
3 go through this process, starting with the current loan balance,
4 applying to that an estimated default rate --

00:06:28 5 Q Let me stop you right there.

6 What do you mean when you say you applied an
7 estimated default rate?

8 A I took from the default rates that had been experienced
9 in 2010 an estimate of default rates by vintage, which would be
00:06:45 10 year of origination, and by product type, which are the types of
11 loans, and applied those default rates across the portfolio
12 which comprised the 530 Covered Trusts.

13 Q Can you take us to the next step in your flow chart
14 there?

00:07:01 15 A The next step of the analysis is, once I have an
16 estimate of the loans that I expect to default, I then estimate
17 the severity of losses or how much would be recovered upon that
18 default, and that's the severity rate.

19 Q Can you give us an example? What does that mean, the
00:07:18 20 severity of loss?

21 A The severity of the loss refers to, if I have a loan of
22 a thousand dollars and it defaults and is liquidated, if the
23 recovery is \$500, then by definition the severity rate is 50
24 percent.

00:07:34 25 Q Now, after estimating the default rate and then the
26 severity rate, what did you do next?

1 Burnaman - by Petitioners - Direct/Gonzalez

2 A The next step in this analysis is to take that product,
3 which are the estimate of future losses, and add to that the
4 losses that had been actually realized to date. And the sum of
00:07:56 5 those two numbers is the estimate of cumulative lifetime losses
6 for the Covered Trusts.

7 Q So I won't ask you to go back to your earlier slide
8 but, for example, on the pie chart the red section that was
9 losses as of that date, is that what would be in the losses to
00:08:11 10 date box?

11 A That would be exactly the number that was in the losses
12 to date box, yes.

13 Q And then the future losses, which is an estimate that
14 you did, would be added to come up with the cumulative lifetime
00:08:24 15 loss?

16 A The future losses would be losses expected on the other
17 parts of that pie chart that are not blue or red.

18 Q And did you come up with a cumulative lifetime loss
19 estimate?

00:08:36 20 A I calculated my own estimate of cumulative lifetime
21 losses, yes.

22 Q What was that estimate?

23 A My estimate of cumulative lifetime losses was 84.7
24 billion.

00:08:47 25 Q Now, when you calculated that estimate, did you rely on
26 data, for lack of a better term, an as of date, a certain

1 Burnaman - by Petitioners - Direct/Gonzalez

2 particular date?

3 A I used data available to the parties in this
4 negotiation as of June 2011. So I used information up to that
00:09:03 5 date, but not afterwards.

6 Q And why did you use data from that period?

7 A Because I was charged with understanding the
8 reasonableness of this Settlement Agreement at that time, and
9 that was the information that was available to the parties to
00:09:19 10 this negotiation at that time.

11 Q How do you expect that estimation would be affected if
12 you use current market data?

13 A Since 2011 house prices have appreciated, the economy
14 has improved somewhat and there is generally an improvement in
00:09:36 15 the housing market. So I would expect that the data might be a
16 little bit more favorable.

17 Q More favorable in which direction? What do you mean by
18 that?

19 A More favorable with respect to improved performance
00:09:48 20 from the mortgages in the Covered Trusts.

21 Q Have you done those calculations?

22 A I have not.

23 Q Now, how does the methodology that you just described
24 compare with the methodologies used by the negotiating parties
00:10:02 25 and the Trustee's settlement adviser RRMS?

26 A The general framework that I outline here is the

1 Burnaman - by Petitioners - Direct/Gonzalez

2 framework that was used by Bank of America, by the Institutional
3 Investors and by RRMS. It's standard mortgage finance industry
4 analysis and they used this framework, yes.

00:10:23 5 Q Now, have you prepared a slide showing how Bank of
6 America calculated the potential repurchase liability?

7 A I have.

8 Q Let's take a look at your next slide.

9 Looking at slide 6, can you explain to us your
00:10:41 10 understanding of how it is that Bank of America calculated
11 potential repurchase liability?

12 A Certainly.

13 Unlike the calculation of cumulative lifetime
14 losses, there is not necessarily a standard for the calculation
00:10:55 15 of a potential repurchase liability. So I investigated the
16 process that Bank of America used, as well as that of the
17 Institutional Investors. Bank of America's estimate of its
18 potential repurchase liability began with an estimate of
19 cumulative lifetime losses.

00:11:13 20 Q And what was that calculation that Bank of America did
21 of cumulative lifetime losses?

22 A What was the number they used?

23 Q The number, yes. Sorry.

24 A Bank of America's estimate of cumulative lifetime
00:11:24 25 losses for the Covered Trusts was, I believe, \$67.8 billion.

26 Q Now, once that figure is done or calculated, what did

1 BURNAMAN-PETITIONERS-DIRECT (GONZALEZ)

2 T3 BY MR. GONZALEZ:

3 Q And, do you recall approximately how long that
4 conversation lasted?

00:00:52 5 A 30 to 40 minutes.

6 Q And you mentioned that you had a second conversation
7 with him.

8 What was the topic of that conversation?

9 A I had a second conversation with Mr. Scrivener, which
00:01:04 10 was primarily related to Bank of New York Mellon's settlement
11 with the GSEs regarding repurchase claims.

12 Q Now, we can go back to the power point.

13 Have you also prepared a slide showing how the
14 Institutional Investors calculated the potential repurchase
00:01:27 15 claim, and I have up slide 7 for you.

16 A I have. This is my slide.

17 Q What does slide 7 show? Please walk us through your
18 analysis.

19 A Slide 7 indicates, like Bank of America and the
00:01:42 20 Trustee's advisor, Institutional Investors started with a
21 statement of cumulative lifetime losses, as I previously
22 described.

23 Q Now, let me just -- the heading for this slide you have
24 both. You list they are both Institutional Investors and RRMS.

00:01:57 25 What is the significance of that heading?

26 A I put that heading on here because the Institutional

1 BURNAMAN-PETITIONERS-DIRECT (GONZALEZ)

2 Investors and RRMS basically used the same methodology to
3 calculate a potential repurchase claim amount using the steps
4 outlined here.

00:02:13 5 Q Now, the first box there is "cumulative lifetime loss".
6 Did the Institutional Investors have their own
7 estimate of that lifetime loss?

8 A They did.

9 Q What was that figure?

00:02:26 10 A As I recall, it was \$107.8 billion.

11 Q Now, to that figure, your next step in the flow chart
12 is apply "breach rate".

13 What is that?

14 A That means the Institutional Investors, RRMS to an
00:02:39 15 estimate of cumulative lifetime losses, applied a breach rate
16 which was a expectation of the number of breaches that they
17 would find in the mortgage loans.

18 Q These are breaches to the reps and warranties?

19 A Reps and warranties, yes.

00:03:07 20 Q And, the next step in that process you have listed in
21 the box applies "success rate".

22 What does that mean?

23 A The second and final step in their process was to a
24 supply an estimated rate of success, meaning those breaches that
00:03:23 25 weren't curable, and were accepted by the writer of the reps and
26 warranties by the originator.

1 BURNAMAN-PETITIONERS-DIRECT (GONZALEZ)

2 Q Now, after applying that, what was the next step in
3 their process?

4 A The final step is the calculation of a potential
00:03:39 5 repurchase claim amount.

6 Q And, did the Institutional Investors have an estimated
7 potential repurchase claim amount that you are aware of?

8 A They had several, but yes, they had a range.

9 Q What was that range?

00:03:55 10 A That range was between 27 and 50, approximately
11 \$50 billion.

12 Q Now, in trying to understand the method that they
13 applied to reach that range, did you review any documents
14 prepared by the Institutional Investors?

00:04:12 15 A I did. I reviewed a spread sheet that they had used
16 in their negotiation, in addition to obviously, the deposition
17 testimony.

18 Q Now, if I can have you look in your binder at what is
19 in evidence as PTX 604. If we can put that up on the screen.

00:04:32 20 Do you recognize PTX 604?

21 A I do. This is the spread sheet that I reviewed.

22 Q And, how did you use this exhibit in connection with
23 rendering your opinion?

24 A In two ways, as I previously described.

00:04:48 25 First, to see how they had arrived at an estimate of
26 cumulative lifetime losses and secondly, to see how they took

1 BURNAMAN-PETITIONERS-DIRECT (GONZALEZ)

2 that estimate of cumulative lifetime losses and used it to come
3 up with a range of potential repurchase claims.

4 Q And the range in reference to, is that captured in the
00:05:08 5 lower right hand corner of the exhibit?

6 A It is right down there, which you just made big, is the
7 range of 27 to 50 billion.

8 Q Now, in order to come up with their estimates of
9 lifetime losses and potential repurchase claims, did the parties
00:05:30 10 have to employ any assumptions?

11 A They did.

12 Q Did you review those assumptions as part of your work
13 in this matter?

14 A I did.

00:05:40 15 Q And based on that review, did you have an opinion
16 regarding the assumptions used by the parties in calculating --
17 first, let's look at cumulative loss figures.

18 A Cumulative loss assumptions I reviewed, and with one
19 exception, with one exception I couldn't say that any of the
00:06:02 20 assumptions employed were necessarily unreasonable and, in fact,
21 there is a degree of reasonableness to the assumptions that were
22 used.

23 Q That's with respect to both sides?

24 A Correct.

00:06:13 25 Q You said with "one exception".

26 Can you elaborate on that?

EXHIBIT L

1 B. Lin - By Respondent - Direct/Rollin

2 default?

3 A It was good information for me to use on my report.

4 Q Because it was informative of the likelihood that
12:31:52 5 borrowers would go into default; right?

6 A It was good information for me to use, yes, if you
7 could say it's informative. I mean, if you compare loans of
8 60-plus delinquent versus current, yes. I mean, I factored
9 that in when I used my assumptions.

10 Q And that's exactly what was done. It was divided up
11 that way so you can factor the likelihood of default into
12 your analysis?

13 A That's on content.

14 Q Now, the third pro that you list with respect to the
12:32:28 15 institutional investors' report, R-21, here, is that there
16 were "logical calculations in order to determine projected
17 losses"; right?

18 A Yes.

19 MR. ROLLIN: And R-21 please. I'm sorry to go
12:32:49 20 back and forth.

21 (Exhibit displayed.)

22 Q And the projected losses -- and you're welcome, Mr.
23 Lin, to look at the one you have in the binder if that's
24 helpful, but the projected losses, you find, approximately,
12:33:09 25 in the middle of the page but towards the bottom right?

26 A I'm sorry, where again? Could you repeat that?

1 B. Lin - By Respondent - Direct/Rollin

2 Q Sure. If you look across the bottom of the page

3 sort of in the middle, there is a projected losses?

4 A That's right.

12:33:23 5 Q \$107.8 billion?

6 A That is correct.

7 Q And that was -- you identified that as a pro, that
8 it was a logical calculation; right?

9 A I identified the logic was logical not the number
10 itself.

11 Q When you say "logical calculations", logical is the
12 adjective, but now you're talking about calculations; right?

13 A I'm talking about the logic, how it was calculated,
14 not necessarily the assumptions. You can clearly see in my
12:33:56 15 report that I thought the assumptions was part of the con.

16 Q So the way they went about doing it, you say, was
17 logical?

18 A Correct.

19 Q And such a logical method, actually, that you
12:34:16 20 adopted it; didn't you?

21 A I adopted it, and that's actually pretty common in
22 the industry how this is calculated for projected losses.

23 Q And the fourth pro is "logical calculations and
24 utilization of breach rate and success rate haircuts"; right?

12:34:40 25 A Yes.

26 Q And you also adopted that approach?

EXHIBIT M

1 Dr. Sabry-by Respondents-Direct/Mr. Rollin
2 witness?

3 MR. ROLLIN: Your Honor, we'll call Dr. Sabry.

4 THE COURT: Please, step up.

12:02:05 5 F A T E N S A B R Y,

6 called as a witness in behalf of the Respondents,
7 having been first duly sworn, was examined and testified as
8 follows:

9 THE CLERK: State and spell your name and your
10 full address, business address for the record.

11 THE WITNESS: My name is Faten Sabry, F-A-T-E-N,
12 S-A-B-R-Y, and my address is 1166 Avenue of the Americas,
13 New York, New York.

14 MR. ROLLIN: May I inquire?

12:03:00 15 THE COURT: Obviously.

16 DIRECT-EXAMINATION

17 BY MR. ROLLIN:

18 Q Good afternoon, Dr. Sabry.

19 A Good afternoon.

12:03:07 20 Q Dr. Sabry, you work for a company called NERA?

21 A That's correct.

22 Q What does NERA stand for?

23 THE COURT: Can you spell that?

24 Q N-E-R-A.

12:03:17 25 A NERA stands for National Economic Research
26 Associates.

1 Dr. Sabry-by Respondents-Direct/Mr. Rollin

2 Q And you and NERA were hired by the trust, the Bank of
3 New York Mellon as an expert advisor in this case; correct?

4 A That's correct.

12:03:29 5 Q And specifically, the task that you were given was to
6 estimate all losses, including taking current losses and
7 estimating out the future losses for the 530 Covered Trusts;
8 correct?

9 A That's correct. And just to clarify, these would
12:03:50 10 be either lifetime losses for the mortgages that were used
11 as collateral for the deal, yes.

12 Q And you understood that the purpose of that exercise
13 would be so that the Trustee would be able to allocate the
14 settlement payment among the 530 trusts; correct?

12:04:08 15 A That's correct.

16 Q And your methodology involves beginning with estimating
17 the losses for each and every loan in the Covered Trusts,
18 correct?

19 A That's right.

12:04:23 20 Q And then you could roll that up so that you would have
21 losses to each and every trust among the 530 trusts; correct?

22 A That's right. The analysis would be based on loan
23 level modeling, yes.

24 Q And then if you wanted to, you could aggregate that and
12:04:40 25 just have to add up the losses for each of the 530 trusts and
26 the sum would be the total estimated losses for the entire

1 Dr. Sabry-by Respondents-Direct/Mr. Rollin

2 settlement portfolio; right?

3 A That's correct.

4 Q And you, your understanding of the allocation
12:05:02 5 methodology is that the loss, the settlement payment if approved
6 will be allocated on the basis of the losses suffered by the
7 Covered Trusts and by each Covered Trust; is that right?

8 MR. HOUP: Objection, relevance. Why is her
9 understanding of the settlement relevant?

10 THE COURT: It may be for the work she did. I'll
11 allow it.

12 A Right, can you just repeat the question again.

13 Q I will try.

14 A Okay.

12:05:28 15 Q It might come out a little bit differently.

16 You understand that the allocation methodology for
17 the settlement payment, if it's approved, will be based on
18 losses, meaning that each trust will receive its pro-rata share
19 but calculated based on losses suffered; correct?

12:05:48 20 A Yes, it will be the net, a net loss percent, yes.

21 Q You understand that the settlement payment methodology
22 will not allocate the payment if approved based on the losses
23 caused by breaches of representations and warranties, but
24 instead based on losses resulting from any reason to each trust;
12:06:14 25 correct?

26 A I was asked -- we were asked a very specific task

EXHIBIT N

6259

PETITIONERS' EXHIBIT PTX7 -
NERA'S PROPOSED METHOD FOR COMPUTING ACTUAL LOSSES AND EXPECTED
FUTURE LOSSES FOR THE COUNTRYWIDE SECURITIZATION TRUSTS, DATED JUNE
29, 2011 [6259-6261]

FILED: NEW YORK COUNTY CLERK 06/29/2011
NYSCEF DOC. NO. 6

INDEX NO. 651786/2011
RECEIVED NYSCEF: 06/29/2011

EXHIBIT E

PETITIONERS'
TRIAL EXHIBIT

PTX 7

Griffin 1/3/13
In Re BNY Mellon
Index No. 651786/11
Depo. Exh. 014

PTX 7.1

NERA's Proposed Method for Computing Actual Losses and Expected Future Losses for the Countrywide Securitization Trusts

This note describes NERA's method for computing the past and expected future losses for the mortgage loans used as collateral for the identified Countrywide securitization trusts ("CW RMBS"). We understand that the proposed settlement involves 530 trusts in vintages from 2004 to 2008 and includes prime, Alt-A, and subprime loans. There are over 1.6 million individual first- and second-lien loans in the 530 trusts. We also understand that the settlement agreement defines the "Net Loss Percentage" for each CW RMBS Trust to be the past and expected future losses for that trust as a percentage of the sum of the net past and expected future losses for all 530 trusts. We will report the estimates by loan group and trust, and if applicable and if the data are available, we will also report the estimates for the loans related to the principal-only certificates or notes.

I. The Past Losses

Per the Settlement Agreement, we propose to calculate past losses for each CW RMBS trust that have accrued from the closing date through the most recent reporting date.

II. Expected Future Losses

The estimation of expected future losses for each of Countrywide's securitization trusts requires the use of loan-level models to assess the performance of the mortgage collateral underlying each trust.

In order to project expected future losses, NERA will simulate the possible paths that a given loan will follow through time, conditional on its characteristics and economic conditions. First, we will estimate probability of default for each loan using an econometric hazard model,¹ and will also account for various states to which a loan can transition (such as prepayment, modification, and varying delinquency status, *i.e.*, has the loan ever been delinquent or delinquent

¹ This approach can produce estimates of conditional probability that a loan transitions to a different state (such as default, prepayment, 60+ days delinquent, etc), given that the loan has survived up until a given point in time. (A *hazard* function indicates the probability of defaulting (or transitioning to another state) at any given time conditional on surviving (or staying in a given state) up to that time.)

in a pre-specified previous period), and the duration of time in each state. In our model, we will also control for aging of a loan and for characteristics of the borrowers and the mortgage loans.

Our statistical model will also take into account the following:

- a. **Static variables**, e.g., product (e.g., ARM vs. Fixed), product detail (15- or 30-year, interest-only, negative amortization, etc.), loan vintage and size, FICO, documentation, occupancy, loan purpose, lien, property type, loan to value (LTV), SATO (spread-at-origination), and geography.
- b. **Macroeconomic and environmental variables**, e.g., geography-specific housing price appreciation (HPA), relevant state characteristics (such as judicial vs. non-judicial foreclosure, and state-specific foreclosure timelines), interest rates, and unemployment rate.
- c. **Time varying variables**, e.g., updated LTV (i.e., any changes in LTV), changes in loan size, payment schedule changes, refinance incentives, change in unemployment, and change in HPA.

Next, NERA will estimate *loss severity*. Loss severity is the ratio of charge-off amount to the loan amount, or losses given defaults. In modeling loss severity, we will take into account various loan-specific factors (such as loan vintage, rate, size, purpose and type, geography, LTV ratios, among others), servicer advances, foreclosure-related information (e.g., judicial vs. non-judicial foreclosure, state-specific foreclosure timelines, REO), and mortgage insurance information.

Once we assess the performance of the loans and estimate severity, we would then estimate future losses. In particular, we would simulate the paths that a given loan may follow over time, conditional on its characteristics and economic conditions, as described above. We then tally the paths that result in default relative to the total number of paths. Then, we will adjust these obtained default estimates by multiplying them by the relevant loss severity estimates. Finally, we will aggregate all the projected loan-level losses in the trusts to determine the expected future losses by loan group and trust.

EXHIBIT O

1 J. Kravitt - by Petitioner - Cross/Mr. Pozner

2 then the dealers have people who hold the beneficial -- the
3 beneficial interest in those securities, even though the
4 dealers, the Pro Forma owners of those securities, and then
12:01:18 5 there will be people who own interests in the second level and
6 there will be people who own interests in the third level and
7 then some people whose are actually investment managers and
8 don't hold anything for their own benefit at all, but for the
9 benefit of their customers.

12:01:43 10 So, in fact, when you try and find out who holds your
11 securities, it is actually almost impossible.

12 Q You can find the large institutions who have them in
13 their mutual funds, right?

14 A I don't know a lot about the disclosure that mutual
12:02:06 15 funds make on a monthly basis.

16 Q Now, let's tell the Court what the effect is. For a
17 large Institutional Investor who has bought into any of these
18 tranches, any of the trusts that we are dealing with, at a deep
19 discount, the amount of money they are going to get back on the
12:02:27 20 proposed waterfall will be substantially greater a return than
21 somebody who bought into the tranche and has suffered the
22 downturn and not sold out? They are at par?

23 MS. PATRICK: Objection. Calls for speculation,
24 lacks foundation.

12:02:45 25 THE COURT: If you can answer that I will let
26 you.

1 J. Kravitt - by Petitioner - Cross/Mr. Pozner

2 A Well, I disagree. Here is why I disagree. The way we
3 wrote the Settlement Agreement is that it's the tranches who
4 are most senior who suffered losses who get the cash first,
12:03:06 5 therefore, the people who are holding subordinated and most
6 subordinated tranches, likely, will not get any cash out of the
7 settlement if the losses in the settlement went to any of the
8 senior level tranches. So, if you made a bet on a subordinated
9 tranche, this wouldn't necessarily get you any cash distributed
12:03:35 10 out of the settlement. The way the cash is distributed would
11 restore the face amount of some of this -- or the face amount
12 or the partial portion of the face amount of any lower
13 seniority tranche, it might get some interest in a future
14 period it might not otherwise get.

12:04:01 15 But the recovery goes first in line to the senior
16 holders and then the next level and so on down to the bottom.

17 Q Exactly. You wrote the waterfall yourself, your firm?

18 A No.

19 MS. PATRICK: Objection.

12:04:18 20 Q Who wrote it for you?

21 A There is no --

22 Q Let me -- maybe I'm asking it wrong. Let me ask it
23 again.

24 MS. PATRICK: Excuse me. Can the witness finish
12:04:26 25 his answer?

26 THE COURT: I'm sorry?

EXHIBIT P

1 J. Kravitt - by Petitioner - Cross/Mr. Pozner

2 MS. PATRICK: Can the witness finish his answer?

3 THE COURT: Well, he withdrew the question, so
4 let's start again.

12:04:30 5 Q You are aware of the waterfall that is being proposed?

6 A The waterfall is the distribution that is set out
7 within the trust documents themselves. All we did is
8 characterize how the payments would be -- is characterize the
9 payments within the various defined terms in the agreement and
12:04:54 10 then the agreement tells you how to use those, and we also set
11 in some rules to make sure that subordinate tranches didn't get
12 money before senior tranches.

13 Q That is my next point.

14 You are aware that in all likelihood many tranches of
12:05:15 15 investors, certificate holders in the lower tranches, will get
16 nothing?

17 A Correct. Well, I wouldn't say "likelihood." I'm
18 aware of the reasonable possibility that that will happen.

19 Q And not only will the lower tranches -- well, what did
12:05:31 20 you say are likely?

21 A A reasonable -- that I was aware of the reasonable
22 possibility that they may not get any money.

23 Q Not only are the lower tranches suffering the
24 reasonable possibility that they will get zero out of this --
12:05:44 25 this settlement, but those senior tranches that were traded at
26 discounts, and you know that happened?