

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT**

In the Matter of the Application of

THE BANK OF NEW YORK MELLON, in its
Capacity as Trustee or Indenture Trustee of 530
Countrywide Residential Mortgage-Backed
Securitization Trusts,

Petitioner,

For Judicial Instructions under CPLR Article 77
on the Distribution of a Settlement Payment.

Index No. 150973/2016

IAS Part 39

Hon. Saliann Scarpulla

**PRE-ARGUMENT
STATEMENT**

Respondents Prosirris Capital Management LP (“Prosirris”) and Tilden Park Capital Management LP (“Tilden Park”), by and through their counsel, MoloLamken LLP, submit this pre-argument statement pursuant to C.P.L.R. 5531 and 22 N.Y.C.R.R. 600.17(b) and state as follows:

1. The index number and full title of this action are set forth in the caption.
2. The full names of the original parties are set forth below:

Original Petitioner:

The Bank of New York Mellon, in its capacity as Trustee or Indenture Trustee of 530 Countrywide Residential Mortgage-Backed Securitization Trusts

Original Respondents:

American International Group, Inc., AIG Financial Products Corp.; AIG Property Casualty Company; American General Life Insurance Company; American Home Assurance Company; American International Reinsurance Company, Ltd.; Commerce and Industry Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; The United States Life Insurance Company in the City of New York; and The Variable Annuity Life Insurance Company (collectively “AIG”); AEGON (including Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica

Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, pic, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio); BlackRock Financial Management, Inc.; Federal Home Loan Bank of Atlanta; Federal National Mortgage Association; Goldman Sachs Asset Management L.P.; Invesco Advisers, Inc.; Kore Advisors, L.P.; Metropolitan Life Insurance Company; Nationwide Mutual Insurance Company and its affiliate companies; Neuberger Berman Europe Limited; Pacific Investment Management Company LLC; Teachers Insurance and Annuity Association of America; Thrivent Financial for Lutherans; Trust Company of the West and the affiliated companies controlled by The TCW Group, Inc.; Voya Investment Management LLC; and Western Asset Management Company; Federal Home Loan Mortgage Corporation; Center Court, LLC; Blue Mountain Credit Alternatives Master Fund L.P., BlueMountain Guadalupe Peak Fund L.P., BlueMountain Monteners Master Fund SCA SICAV-SIF, BlueMountain Kicking Horse Fund L.P., BlueMountain Logan Opportunities Master Fund L.P., BlueMountain Foinaven Master Fund L.P., and BlueMountain Credit Opportunities Master Fund I L.P.; Prosirris Capital Management LP; Tilden Park Capital Management LP.; Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd., and Triaxx Prime CDO 2007-1, Ltd.; TIG Securitized Asset Master Fund LP.

3. The names, address, and telephone number of counsel for Petitioner, Bank of New York Mellon, in its capacity as Trustee:

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4. The names, addresses, and telephone numbers of counsel for Respondents are:

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5. This cross-appeal is taken from the Decision/Order of Supreme Court of the State of New York, County of New York (Scarpulla, J.), dated March 31, 2017 and entered on April 5, 2017 (attached hereto as Exhibit A).

6. The nature and object of the proceeding is as follows:

On February 5, 2016, Petitioner The Bank of New York Mellon, as trustee or indenture trustee for 530 residential mortgage-backed securities (RMBS) trusts, filed a Verified Petition, pursuant to CPLR Section 7701, seeking judicial instructions on how to distribute \$8.5 billion in settlement proceeds from a global resolution of RMBS repurchase and servicing claims which

received judicial approval in 2015. See *In re Bank of New York Mellon*, 127 A.D.3d 120, 128 (1st Dep't 2015).

7. The result reached below is as follows:

On May 12, 2016, the Supreme Court issued a partial severance order and partial final judgment for 512 of the trusts. On November 18, 2016, the Supreme Court issued a second partial severance order and partial final judgment for three additional uncontested trusts.

In the Decision/Order entered May 5, 2017, the Supreme Court gave the Trustee instructions for the payment methodology to be applied for the fifteen remaining trusts. With respect with to one of those fifteen trusts, CWABS 2006-12, the Supreme Court “direct[ed] the Trustee to distribute the Allocable Share for the 2006-12 Trust as though it was a Subsequent Recovery, pursuant to the terms of the Settlement Agreement and the PSA for the 2006-12 Trust.” Decision at 7. Prosirir and Tilden Park do not appeal the Supreme Court’s foregoing ruling on the CWABS 2006-12 trust.

With respect to the remainder of the trusts (the “Fourteen Trusts”)¹, the Supreme Court directed the Trustee to distribute the settlement proceeds for the Fourteen Trusts “using the pay first, write up second method” according to the texts of the settlement agreement and the governing agreements for such trusts. Decision at 15, 18. Prosirir and Tilden Park do not appeal the Supreme Court’s foregoing ruling on the Fourteen Trusts.

8. The grounds for seeking reversal are as follows:

Prosirir and Tilden Park cross-appeal from the Decision/Order with respect to the Supreme Court’s ruling “that there is no support in the Governing Agreements for a distribution

¹ The Fourteen Trusts are: CWALT 2005-61; CWALT 2005-69; CWALT 2005-72; CWALT 2005-76; CWALT 2005-IM1; CWALT 2006-OA3; CWALT 2006-OA7; CWALT 2006-OA8; CWALT 2006-OA10; CWALT 2006-OA14; CWALT 2007-OA3; CWALT 2007-OA8; CWMBBS 2006-3; and CWMBBS 2006-OA5.

to relate back to a prior set of certificate balances.” Decision at 18. The Supreme Court erred by misapplying controlling principles of law and equity and by not ordering that settlement funds be distributed as of February 25, 2016.

9. Additional appeals are set forth below:

AIG filed a notice of appeal on May 4, 2017 from the Decision/Order’s ruling on the payment methodology for the CWALT 2006-OA10 and CWALT 2007-OA3 trusts only. AEGON and Blackrock filed a notice of appeal on May 4, 2017 from the Decision/Order’s ruling on the payment methodology for the Fourteen Trusts. TIG filed a notice of appeal on May 4, 2017 from the Decision/Order’s ruling on the payment methodology for the CWABS 2006-12 trust only. On May 5, 2017, Center Court filed a notice of appeal from “each and every part of the Order, as well as the whole thereof.” Prosirris and Tilden Park take this cross-appeal from AIG’s, AEGON’s, and Blackrock’s May 4 notices of appeal and from Center Court’s May 5 notice of appeal.

Further, the approval of the underlying \$8.5 billion settlement was the subject of the First Department’s decision in *In re Bank of New York Mellon*, 127 A.D.3d 120, 128 (1st Dep’t 2015).

Dated: May 15, 2017
New York, New York

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