

September 7, 2017

Hon. Saliann Scarpulla
Supreme Court of the State of New York
New York County
Commercial Division
60 Centre Street
New York, NY 10007

VIA NYSCEF

Re: *In re Bank of N.Y. Mellon*, No. 150973/2016: Settlement of Judgment

Dear Justice Scarpulla:

We represent the AEGON, AIG, BlackRock, BlueMountain, Prosirris, and Tilden Park respondents in this action. We write to follow up regarding the proposed judgment and counter-proposed judgment that the respondents submitted in May 2017 regarding fourteen of the fifteen remaining trusts at issue in this case. *See* Dkt. Nos. 255, 257.

On a June 8, 2017 telephone conference, the Court instructed the parties to work together to resolve their disagreements over the form of judgment. We can now report that, for thirteen of the trusts at issue – CWALT 2005-69, CWALT 2005-72, CWALT 2005-76, CWALT 2005-IM1, CWALT 2006-OA10, CWALT 2006-OA14, CWALT 2006-OA3, CWALT 2006-OA7, CWALT 2006-OA8, CWALT 2007-OA3, CWALT 2007-OA8, CWMBBS 2006-3, and CWMBBS 2006-OA5 – the undersigned, as the only respondents with standing as to those trusts, have reached a settlement agreement resolving their disputes.

As part of that settlement, we respectfully request that the Court sign and direct entry of a judgment for the thirteen trusts, attached as Exhibit A. The proposed judgment implements the Court's ruling in its April 4, 2017 Order, "direct[ing] the Trustee to distribute the Allocable Share [for these trusts] using the pay first, write up second method, which includes the calculation of the Principal Distribution Amount pursuant to the terms of the Governing Agreements." Dkt. No. 193 at 17.

The proposed judgment attached as Exhibit A is identical to the judgment that Prosirris and Tilden Park proposed on May 24, 2017 (Dkt. No. 255), except that the attached judgment omits one trust, CWALT 2005-61, for which all involved parties have yet to reach agreement. A redline of the proposed judgment against the May 24 judgment is attached as Exhibit B. The Trustee has advised that it approves that judgment as to form and will be able to execute it promptly.

Thank you for your consideration.

Respectfully submitted,

/s/ Steven F. Molo

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Management LP and Prosirir Capital
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/s/ Jordan A. Goldstein

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Attorneys for the AIG Respondents

/s/ Kenneth E. Warner

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/s/ John Lundin

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Attorneys for the BlueMountain Respondents

CC: All counsel of record via NYSCEF

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

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

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APPEARANCES:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, the Court, in its Decision/Order dated March 31, 2017 and entered April 4, 2017 (the "Order"), severed and granted (in the manner set forth in the Order) the branch of the Verified Petition seeking judicial instructions concerning the fifteen Disputed Trusts, and directed the settlement of judgment; and,

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

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

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

WHEREAS, as used herein, the term "AS Distribution Date" means, for each of the Thirteen Trusts, that trust's next distribution date following the Transfer Target Date,

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

ORDERED, ADJUDGED and DECREED that, no later than the Transfer Target Date, for each of the Thirteen Trusts the Trustee is to reduce to cash escrow assets with a value equal to that trust's Allocable Share plus the earnings thereon and to deposit that

amount in that trust's distribution account or payment account, as applicable. From the time of that deposit, the amount so deposited will be treated as that trust's Allocable Share for all purposes under the Countrywide Settlement Agreement; and it is further

ORDERED, ADJUDGED and DECREED that sums representing interest on the Allocable Share of each of the Thirteen Trusts not received by the Trustee at the time of the deposit directed by the immediately preceding paragraph ("Trailing Interest") shall be distributed to certificateholders in that trust in the month it is received unless such receipt takes place after that month's determination date, in which event distribution will be effected in the month after the month in which the Trailing Interest is received. Trailing Interest shall be distributed within each of the Thirteen Trusts in the manner the Countrywide Settlement Agreement, the relevant Governing Agreements, and this Final Judgment provide for distribution of the Allocable Share; and it is further

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

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

ORDERED, ADJUDGED and DECREED that, because the principal distribution amount for each of the Thirteen Trusts is based on certificate balances immediately prior to a given distribution date, in distributing the Allocable Share of each of the Thirteen Trusts,

the Trustee shall determine the principal distribution amount for such trust's AS Distribution Date without reference to the pay down and the write up of certificate balances that will occur on such AS Distribution Date. To the extent that the principal distribution amount in any of the Thirteen Trusts is calculated in part by reference to an aggregate stated principal balance of the mortgage loans after giving effect (among other things) to subsequent recoveries, the effect to be given to subsequent recoveries is zero because subsequent recoveries do not affect mortgage loan balances. Accordingly, and in contrast with the result directed for certain other Covered Trusts with different structures, in the Thirteen Trusts any available funds remaining after distribution of the principal distribution amount and after payment of all other payments that are senior in priority to reimbursement payments for unpaid realized loss amounts according to the priority of payments set out in the related Governing Agreement are to be distributed to reimburse unpaid realized loss amounts in accordance with the relevant Governing Agreement; and it is further

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

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

Dated: New York, New York

_____, 2017

Hon. Saliann Scarpulla, J.S.C.

Judgment signed and entered this _____ day of _____ 2017.

Clerk of New York County

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

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

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APPEARANCES:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, the Court, in its Decision/Order dated March 31, 2017 and entered April 4, 2017 (the “Order”), severed and granted (in the manner set forth in the Order) the branch of the Verified Petition seeking judicial instructions concerning the ~~Fourteen~~fifteen Disputed Trusts, and directed the settlement of judgment; and,

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

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

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

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

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

ORDERED, ADJUDGED and DECREED that, no later than the Transfer Target Date, for each of the ~~Fourteen~~Thirteen Trusts the Trustee is to reduce to cash escrow assets

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with a value equal to that trust's Allocable Share plus the earnings thereon and to deposit that amount in that trust's distribution account or payment account, as applicable. From the time of that deposit, the amount so deposited will be treated as that trust's Allocable Share for all purposes under the Countrywide Settlement Agreement; and it is further

ORDERED, ADJUDGED and DECREED that sums representing interest on the Allocable Share of each of the ~~Fourteen~~Thirteen Trusts not received by the Trustee at the time of the deposit directed by the immediately preceding paragraph ("Trailing Interest") shall be distributed to certificateholders in that trust in the month it is received unless such receipt takes place after that month's determination date, in which event distribution will be effected in the month after the month in which the Trailing Interest is received. Trailing Interest shall be distributed within each of the ~~Fourteen~~Thirteen Trusts in the manner the Countrywide Settlement Agreement, the relevant Governing Agreements, and this Final Judgment provide for distribution of the Allocable Share; and it is further

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

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

ORDERED, ADJUDGED and DECREED that, because the principal distribution amount for each of the ~~Fourteen~~Thirteen Trusts is based on certificate balances immediately

prior to a given distribution date, in distributing the Allocable Share of each of the ~~Fourteen~~Thirteen Trusts, the Trustee shall determine the principal distribution amount for such trust's AS Distribution Date without reference to the pay down and the write up of certificate balances that will occur on such AS Distribution Date. To the extent that the principal distribution amount in any of the ~~Fourteen~~Thirteen Trusts is calculated in part by reference to an aggregate stated principal balance of the mortgage loans after giving effect (among other things) to subsequent recoveries, the effect to be given to subsequent recoveries is zero because subsequent recoveries do not affect mortgage loan balances. Accordingly, and in contrast with the result directed for certain other Covered Trusts with different structures, in the ~~Fourteen~~Thirteen Trusts any available funds remaining after distribution of the principal distribution amount and after payment of all other payments that are senior in priority to reimbursement payments for unpaid realized loss amounts according to the priority of payments set out in the related Governing Agreement are to be distributed to reimburse unpaid realized loss amounts in accordance with the relevant Governing Agreement; and it is further

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

_____ 5

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

Dated: New York, New York

_____, 2017

Hon. Saliann Scarpulla, J.S.C.

Judgment signed and entered this _____ day of _____ 2017.

Clerk of New York County

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