

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

----- X
In the matter of the application of
:

U.S. BANK NATIONAL ASSOCIATION, THE BANK OF NEW YORK:
MELLON, THE BANK OF NEW YORK MELLON TRUST COMPANY,
N.A., WILMINGTON TRUST, NATIONAL ASSOCIATION, LAW:
DEBENTURE TRUST COMPANY OF NEW YORK, WELLS FARGO:
BANK, NATIONAL ASSOCIATION, HSBC BANK USA, N.A., and:
DEUTSCHE BANK NATIONAL TRUST COMPANY (as Trustees under:
various Pooling and Servicing Agreements and Indenture Trustees under:
various Indentures), AEGON USA Investment Management, LLC:
(intervenor), Bayerische Landesbank (intervenor), BlackRock Financial:
Management, Inc. (intervenor), Cascade Investment, LLC (intervenor), the:
Federal Home Loan Bank of Atlanta (intervenor), the Federal Home Loan:
Mortgage Corporation (Freddie Mac) (intervenor), the Federal National:
Mortgage Association (Fannie Mae) (intervenor), Goldman Sachs Asset:
Management L.P. (intervenor), Voya Investment Management LLC (f/k/a:
ING Investment LLC) (intervenor), Invesco Advisers, Inc. (intervenor),
Kore Advisors, L.P. (intervenor), Landesbank Baden-Wuerttemberg:
(intervenor), Metropolitan Life Insurance Company (intervenor), Pacific:
Investment Management Company LLC (intervenor), Sealink Funding:
Limited (intervenor), Teachers Insurance and Annuity Association of:
America (intervenor), The Prudential Insurance Company of America:
(intervenor), the TCW Group, Inc. (intervenor), Thrivent Financial for:
Lutherans (intervenor), and Western Asset Management Company:
(intervenor),

Petitioners,

-against-

FEDERAL HOME LOAN BANK OF BOSTON (intervenor), TRIAXX:
PRIME CDO 2006-1, LTD., TRIAXX PRIME CDO 2006-2, LTD.,
TRIAXX PRIME CDO 2007-1, LTD. (intervenor), QVT FUND V LP,
QVT FUND IV LP, QUINTESSENCE FUND L.P., QVT FINANCIAL LP:
(intervenor), BREVAN HOWARD CREDIT CATALYSTS MASTER:
FUND LIMITED AND BREVAN HOWARD CREDIT VALUE MASTER:
FUND LIMITED (intervenor), THE NATIONAL CREDIT UNION:
ADMINISTRATION BOARD AS LIQUIDATING AGENT FOR U.S.:
CENTRAL FEDERAL CREDIT UNION, WESTERN CORPORATE:
FEDERAL CREDIT UNION, MEMBERS UNITED CORPORATE:
FEDERAL CREDIT UNION, SOUTHWEST CORPORATE FEDERAL:
CREDIT UNION, AND CONSTITUTION CORPORATE FEDERAL:
CREDIT UNION (intervenor), and AMBAC ASSURANCE:
CORPORATION, THE SEGREGATED ACCOUNT OF AMBAC:
ASSURANCE CORPORATION (intervenor), AND W&L:
INVESTMENTS, LLC (intervenor).

Respondents,

for an order, pursuant to CPLR § 7701, seeking judicial instruction, and:
approval of a proposed settlement.
----- X

Index No. 652382/2014

Assigned to: Friedman, J.

**AFFIDAVIT OF KATHY
PATRICK IN
OPPOSITION TO THE
OBJECTORS' OMNIBUS
MOTION TO COMPEL**

Motion Sequence No. 21

STATE OF TEXAS)
) ss.:
COUNTY OF HARRIS)

KATHY D. PATRICK, being duly sworn, deposes and says:

1. I am a partner with the law firm of Gibbs & Bruns, LLP, 1100 Louisiana, Suite 5300, Houston, Texas 77002, national counsel for the Institutional Investors. The Institutional Investors are AEGON USA Investment Management, LLC, Bayerische Landesbank, BlackRock Financial Management, Inc., Cascade Investment, LLC, the Federal Home Loan Bank of Atlanta, the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), Goldman Sachs Asset Management L.P., Voya Investment Management LLC (f/k/a ING Investment Management LLC), Invesco Advisers, Inc., Kore Advisors, L.P., Landesbank Baden-Wuerttemberg, Metropolitan Life Insurance Company, Pacific Investment Management Company LLC, Sealink Funding Limited, Teachers Insurance and Annuity Association of America, The Prudential Insurance Company of America, the TCW Group, Inc., Thrivent Financial for Lutherans, and Western Asset Management Company (the "Institutional Investors"). I am over 18 years of age, competent to make this affidavit, and I have personal knowledge of the facts and circumstances described herein.

2. Three of the Institutional Investors, Pacific Investment Management Company LLC, Western Asset Management Company, and the TCW Group, Inc., are headquartered in California (the "California Institutional Investors"). The holdings of the California Institutional Investors make up 43% of all certificates held by the Institutional

Investors in the Accepting Trusts.¹ In comparison, only 25% of certificates held by the Institutional Investors in the Accepting Trusts are held by New York based members of the Institutional Investor group.

3. Beginning in July 2012, the Institutional Investors and JPMorgan, with the assistance of a nationally recognized California mediator, Robert Meyer of the law firm of Loeb & Loeb, engaged in a series of mediation discussions regarding JPMorgan's potential repurchase and servicing liability to certain RMBS trusts in which the Institutional Investors hold certificates. The parties' agreement to mediate, and the terms of conditions they agreed would govern their mediation, is set forth in a mediation agreement, dated July 25, 2012, a true and correct copy of which is attached hereto as Exhibit 1 (the "Mediation Agreement"). The Mediation Agreement provides that all communications made by the parties: (a) are to be confidential and not disclosed to third parties; (b) shall not be discoverable in any legal proceeding; (c) shall be subject to and governed by the California mediation statute; and (d) are "without prejudice" to any party's position regarding the matters in controversy. In reliance on the Mediation Agreement, the California mediation statute, and the contacts between California and the mediation, it was the expectation and intent of the Institutional Investors that their mediation communications would remain privileged and confidential, and would not be disclosed to any third party.

4. Mediation sessions were conducted by way of in-person meeting and telephone conference calls. In addition the parties exchanged writings from time to time through the mediator. Lead counsel for JPMorgan in these discussions was Robert Sacks,

¹ Except where otherwise indicated, capitalized terms used herein have the same meaning as assigned to them in the Trustees First Amended Petition (Doc. No. 57).

the managing partner of Sullivan & Cromwell's Los Angeles office. I led the negotiations for our clients from my office in Houston. In person mediation sessions were held in both California and New York. There were also many telephone negotiating sessions with the mediator at his office in California. The mediation continued from July 2012 to November 2013. The mediation spanned more than fifteen months, included multiple negotiating sessions, and involved a dozen or more participants.

5. At all times, the mediation communications have remained confidential and have not been disclosed to any third party. The Petitioner Trustees in the above captioned matter (the "Trustees") did not participate in, nor were they informed of the contents of, these discussions.

6. At the conclusion of the mediation, the Institutional Investors and JPMorgan reached agreement on the terms of a binding offer of settlement that JPMorgan would be obligated to make to the Trustees that would be acceptable to and supported by the Institutional Investors, if accepted by the Trustees. It was agreed that the binding offer of settlement would be made to the Trustees, for them to independently evaluate and accept or reject, on behalf of the relevant trusts.

7. In the course of their evaluation of the settlement offer, the Trustees requested information from the Institutional Investors and JPMorgan regarding the details of the mediation communications. In response, JPMorgan and the Institutional Investors elected not to waive their claims of confidentiality and privilege, and did not disclose their confidential mediation communications to the Trustees.

8. In the Countrywide Article 77 proceeding before Justice Kapnick, the Trustees sought a finding that the negotiation of that settlement was conducted at arms'

length. The objectors therefore demanded and conducted twelve depositions of participants in the settlement negotiations (depositions were conducted of: Meyer Koplow, Theodore Mirvis, Chris Garvey, Terry Laughlin, Kathy Patrick, Scott Waterstredt, Randy Robertson, Kent Smith, Jason Kravitt, Robert Bostrom, Tom Scrivener, and Elaine Golin). At the final hearing before Justice Kapnick, more than 11 full days of court time (June 6, 7, 10, 11, 13, 14 and July 8, 9, 11, 12, 15, and 16, 2013) were consumed by the examination of five different settlement negotiators (Kent Smith, Terry Laughlin, Scott Waterstredt, Tom Scrivener, and Jason Kravitt) with additional submissions of lengthy written deposition excerpts from witnesses who were not examined live in court (Robert Bostrom, Randy Robertson). Notably, though she ordered the production of settlement negotiations in which the Trustees had participated, Justice Kapnick expressed doubt that she would order the production of settlement communications between an objector and Bank of America, because those communications had occurred in a mediation, so those communications were never produced.

9. Objector W&L Investments, Inc. has filed a motion seeking to require the Institutional Investors to produce, among other things, all communications between and/or among the Institutional Investors, and all investigations, evaluations, notes, analyses, and communications of the Institutional Investors relating to the distribution methodology described in section 3.06 of the Settlement Agreement. As stated in the Institutional Investors' responses and objections, these requests for production seek confidential attorney/client communications between and among the Institutional Investors and their counsel, Gibbs & Bruns, made for the purpose of obtaining legal

advice. These requests for production also seek attorney work product prepared by Gibbs & Bruns in anticipation of litigation of both the underlying claims and judicial approval of the settlements negotiated by the Institutional Investors. Both the attorney client privileged documents, and work product documents, referenced above, have remained confidential, have not been disclosed to third parties, and no waiver of either privilege has occurred.

10. The document attached hereto as Exhibit 2 is a true and correct copy of excerpts from the Expert Report of Daniel R. Fischel, dated July 17, 2014.

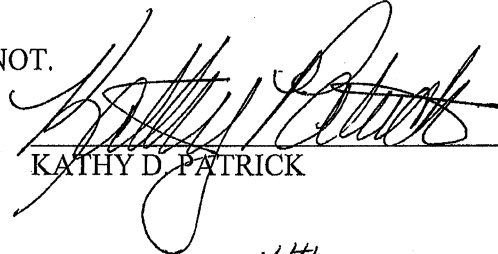
11. The document attached hereto as Exhibit 3 is a true and correct copy of the November 15, 2013 RMBS Trust Settlement Agreement between the Institutional Investors and JPMorgan that bound JPMorgan to make the binding settlement offers to the Trustee that the Trustees accepted on behalf of the Accepting Trusts.

12. The document attached hereto as Exhibit 4 is a true and correct copy of excerpts from the Transcript of a June 14, 2012 Hearing in the Countrywide Article 77 proceeding before the Honorable Barbara R. Kapnick.

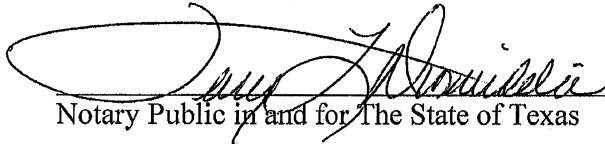
13. The document attached hereto as Exhibit 5 is a true and correct copy of excerpts from the Countrywide RMBS settlement agreement at issue in the *In re The Bank of New York Mellon* Article 77 proceeding before Justice Kapnick.

14. The document attached hereto as Exhibit 6 is a true and correct copy of the Proposed Final Order and Judgment submitted in the *In re The Bank of New York Mellon* Article 77 proceeding before Justice Kapnick.

FURTHER AFFIANT SAYETH NOT.


KATHY D. PATRICK

SWORN TO AND SUBSCRIBED before me on the 14th day of July, 2015.


Notary Public in and for The State of Texas

