

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

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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), :

Index No. 652382/2014

Part 60

The Honorable Marcy S. Friedman,
J.S.C.

Petitioners,

-against-

QVT FUND V LP, QVT FUND IV LP, QUINTESSENCE FUND:
L.P., QVT FINANCIAL LP (intervenor), AMBAC ASSURANCE:
CORPORATION, AND 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. :

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**AFFIDAVIT OF JAMES H. BYRNES IN SUPPORT OF
THE TRUSTEES' FIRST AMENDED PETITION**

STATE OF MASSACHUSETTS)
)
COUNTY OF SUFFOLK) ss

James H. Byrnes, being duly sworn, deposes and says:

1. I am a Vice President in Global Corporate Trust Services of Petitioner U.S. Bank National Association (“U.S. Bank”). I offer this affidavit with respect to the objection to the Proposed Settlement made by QVT Fund V LP, QVT Fund IV LP, Quintessence Fund L.P., and QVT Financial LP (collectively, “QVT”) concerning JPMAC 2006-WMC1, a residential mortgage-backed securitization trust for which U.S. Bank is trustee.¹

2. The facts set forth herein are based upon my personal knowledge or, in my capacity as a designated corporate representative of U.S. Bank, based upon information contained in U.S. Bank’s business records, information supplied to me by other U.S. Bank personnel, or information related to this matter. On August 1, 2014, U.S. Bank accepted the Proposed Settlement on behalf of JPMAC 2006-WMC1 based on, among other things, the recommendation of Prof. Fischel.

3. While QVT purported to direct U.S. Bank to reject the Proposed Settlement for JPMAC 2006-WMC1, in all of my communications with QVT, both orally and in writing, QVT never offered to provide U.S. Bank with an indemnity in connection with its purported direction, much less a reasonable indemnity satisfactory to U.S. Bank as required by the relevant contract governing JPMAC 2006-WMC1. Neither to my understanding did QVT provide a direction and indemnity to The Bank of New York Mellon (“BNYM”), as securities administrator, the deal party with the authority to enforce claims against JPMorgan related to breaches of mortgage loan representations and warranties.

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Affidavit of Nicolas Valaperta in Support of the Trustees’ First Amended Petition, dated January 15, 2016. All references to exhibits herein are from the Trustees’ Exhibit List (“Trustees’ Ex.”).

I. JPMAC 2006-WMC1 POOLING AND SERVICING AGREEMENT

4. JPMAC 2006-WMC1 is governed by a Pooling and Servicing Agreement, dated as of March 1, 2006, including all amendments thereto (hereinafter, the “JPMAC 2006-WMC1 PSA”).²

5. Section 8.01(iv) of the JPMAC 2006-WMC1 PSA states:

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial or other liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it

6. Section 8.02(a)(iii) of the JPMAC 2006-WMC1 PSA states:

The Trustee shall not be under any obligation to exercise any of the trusts or powers vested in it by this Agreement or to institute, conduct or defend any litigation hereunder or in relation hereto at the request, order or direction of any of the Certificateholders, pursuant to the provisions of this Agreement, unless such Certificateholders shall have offered to the Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby

7. Section 8.02(a)(v) of the JPMAC 2006-WMC1 PSA states:

[The] Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other paper or document, unless requested in writing to do so by the Holders of Certificates entitled to at least 25% of the Voting Rights; provided, however, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee not reasonably assured to the Trustee by such Certificateholders, the Trustee may require reasonable indemnity satisfactory to it against such expense, or liability from such Certificateholders as a condition to taking any such action

² A true and correct copy of the JPMAC 2006-WMC1 PSA is included in **Trustees’ Ex. 014**.

8. Voting Rights are defined in Section 1.01 of the JPMAC 2006-WMC1 PSA. Further, the way in which voting rights are calculated is discussed by Prof. Fischel in the Fischel Report. *See* **Trustees' Ex. 020 at 11, n.23.**

II. U.S. BANK'S COMMUNICATIONS WITH QVT

9. On January 10, 2014, Arthur Chu of QVT emailed to U.S. Bank a letter (the "January 10 Letter") stating that "[f]unds under [its] management are holders . . . in the JPMAC 2006-WMC1 trust and . . . JPMAC 2006-WMC3 trust . . . total[ing] 21.3% and 5.2%, respectively, of each current trust balance." **Trustees' Ex. 133** (footnotes omitted). The January 10 Letter stated that QVT "would instruct that [U.S. Bank] not vote in favor of the [Proposed Settlement] in its current form." *Id.* QVT made no offer of indemnification to U.S. Bank in the January 10 Letter, and QVT's holdings at the time of the January 10 Letter were less than the 25% required to direct U.S. Bank. *Id.*

10. On April 11, 2014, Joel Wollman also of QVT emailed to U.S. Bank another letter signed by Mr. Chu (the "April 11 Letter"). *See* **Trustees' Ex. 145.** In the April 11 Letter, QVT "reiterate[d] [its] instruction that [U.S. Bank] not vote in favor of the [Proposed Settlement] in its current form" for JPMAC 2006-WMC1 and JPMAC 2006-WMC3. Again, QVT made no offer of indemnification to U.S. Bank, and QVT's holdings at the time of the April 11 Letter were still less than the 25% required to direct U.S. Bank. *Id.*

11. On April 17, 2014, Jones Day, counsel for U.S. Bank, emailed Erica Taggart of Quinn Emanuel, counsel for QVT, to inquire whether QVT was available "to share its views on the [Proposed Settlement] by phone . . . on [April 22, 2014.]." **Trustees' Ex. 146.** Jones Day requested that "[QVT] provide some preliminary verification of its holdings." *Id.* QVT's counsel agreed to the proposed call and provided "[QVT's] proof of holdings" as of April 16, 2014. *Id.*; *see also* **Trustees' Ex. 148.**

12. On April 22, 2014, I participated in a conference call with Mr. Wollman, QVT's counsel, Ms. Taggart of Quinn Emanuel, and Jones Day. On this call, Jones Day informed QVT that it had forwarded to certain of the Experts retained to assist the Trustees in evaluating the Proposed Settlement redacted versions of QVT's January 10 and April 11 Letters pursuant to these Experts' request to receive copies of all pertinent written correspondence received from Investors in the Trusts regarding the Proposed Settlement. QVT's identity and holdings information were redacted from such letters.

13. On April 25, 2014, three days after the conference call, Jones Day sent a letter (the "April 25 Letter") to Mr. Chu stating that "[a]s of the date of this letter, [U.S. Bank] has not made any determination on behalf of any trust regarding the advisability of entering into the Proposed Settlement." **Trustees' Ex. 149**. The April 25 Letter directed QVT to the Settlement Website "[f]or information and updates with respect to the Proposed Settlement." *Id.*

14. In addition, the April 25 Letter confirmed that U.S. Bank "ha[d] delivered copies of [QVT's letters] to [certain of the Experts] after redacting the holdings amounts stated therein as well as indicia concerning [QVT's] identity." *Id.* It further informed QVT that the Trustees' Experts "have also requested disclosure of the identity and holdings amounts of investors that contact [U.S. Bank] concerning the [Proposed Settlement], to more fully assist the experts with their analyses," and asked QVT to "confirm whether [QVT's] clients will authorize [U.S. Bank] to release such information to the experts." *Id.* at 2.

15. By email dated April 28, 2014, Mr. Wollman declined to give permission to U.S. Bank to disclose QVT's identity or holdings amounts to the Experts, stating, "As to your question about providing our identity and holdings, we're not sure why the expert is requesting this information. Unless it is so that we can have a direct correspondence with the expert to discuss our concerns in more detail, it seems irrelevant." **Trustees' Ex. 151**.

16. On April 29, 2014, the Trustees posted to the Settlement Website (to which U.S. Bank had previously directed QVT) a notice to Investors, stating, among other things, that Investors who “wish to provide a direction with respect to the Proposed Settlement . . . for consideration by a[] . . . Trustee should contact the applicable . . . Trustee as soon as possible to verify their holdings and receive a confidential form of direction and indemnity letter.”

Trustees’ Ex. 011 at 3.

17. On May 5 and on May 22, 2014, Mr. Wollman sent emails to me and Jones Day requesting the direction and indemnity forms in connection with JPMAC 2006-WMC1 and JPMAC 2006-WMC3. *See **Trustees’ Exs. 155, 169.***

18. On May 21, 2014, I participated in a conference call with Mr. Wollman, QVT’s counsel, Ms. Taggart of Quinn Emanuel, and Jones Day. During the call, Jones Day explained to QVT that the Experts requested the identity and holdings amounts of Investors that contacted the Trustees concerning the Proposed Settlement as among the potential factors to be taken into consideration in determining the relative weight to be afforded to such Investors’ views concerning the Proposed Settlement based on, among other things, the type of investor and size of the holdings. QVT again refused to permit U.S. Bank to disclose QVT’s identity or holdings information to the Experts.

19. On May 23, 2014, QVT and two other Investors in JPMAC 2006-WMC3 sent a joint letter to U.S. Bank purporting to direct it to reject the Proposed Settlement for JPMAC 2006-WMC3. *See **Trustees’ Ex. 171 at 9.***

20. On June 23, 2014, Mr. Wollman emailed to U.S. Bank a letter signed by Mr. Chu (the “June 23 Letter”) stating that QVT “h[ad] acquired additional bonds in the JPMAC 2006-WMC1 deal and now have the requisite 25% of Voting Rights necessary to instruct [U.S. Bank].” **Trustees’ Ex. 171 at 3** (footnote omitted). The June 23 Letter further stated that QVT

“direct[s] . . . [U.S. Bank] to reject [the Proposed Settlement] for JPMAC 2006-WMC1 (and JPMAC 2006-WMC3).” QVT made no offer of indemnification to U.S. Bank in connection with that direction, but instead stated, “[i]f U.S. Bank . . . [is] unwilling to conduct loan file review . . . QVT may be willing to provide such direction and indemnity. In order to make this decision, we reiterate our request for information about the tolling status for JPMAC 2006-WMC1. . . .” *Id.*

21. On June 26, 2014, I participated in a conference call with Mr. Wollman, QVT’s counsel, Ms. Taggart of Quinn Emanuel, and Jones Day. During the call, Jones Day informed QVT that all of the information regarding the tolling status of JPMAC 2006-WMC1 was and remained available on the Settlement Website.

22. Pursuant to his request, on July 10, 2014, I sent an email to Mr. Wollman attaching the direction and indemnity forms “for an investor to direct US Bank as Trustee to reject the [Proposed Settlement].” **Trustees’ Ex. 184**. One form would be applicable to Trusts for which Prof. Fischel recommended acceptance of the Proposed Settlement, and the other form would be applicable to Trusts for which Prof. Fischel recommended rejection of the Proposed Settlement.

23. Mr. Wollman responded to my July 10 email on the same day as follows:

We don’t understand why you would require a D&I from us in the event that the experts suggest rejecting the settlement. We would assume that if this were the recommendation, you would simply reject on your own. In the event that the experts do recommend accepting, the terms in Form B seem unreasonable; the amount of the indemnity and attempts to expand trustee rights while limiting certificateholder rights are not reasonable. We maintain that the amount of the settlement for these trusts is too low and reiterate our recommendation that a loan review is in order. In the event that the experts do decide to accept, please let us know and we can attempt to agree on a reasonable indemnity at that point.

Trustees’ Ex. 185.

24. On July 16, 2014, I participated in a telephone call with Mr. Wollman. During

the call, I indicated that the reports of the Experts would be available shortly and directed him to the Settlement Website for updates.

25. On July 22, 2014, the Trustees made the Expert reports publicly available through the Settlement Website. See **Trustees' Ex. 026 at 5**. In the Fischel Report, Prof. Fischel recommended that U.S. Bank accept the Proposed Settlement for JPMAC 2006-WMC1 and reject the Proposed Settlement for JPMAC 2006-WMC3. See **Trustees' Exs. 020, 022**.³

26. With respect to JPMAC 2006-WMC3, QVT ultimately decided to join with two other investors to negotiate a direction and indemnity with U.S. Bank. On July 23, 2014, U.S. Bank provided to QVT and the other two investors of JPMAC 2006-WMC3 two direction and indemnity forms identical to the forms previously provided to QVT on July 10, 2014.

27. On July 29, 2014, Mr. Wollman emailed to U.S. Bank a letter signed by Mr. Chu (the "July 29 Letter") informing U.S. Bank that it "ha[d] recently reviewed the Expert Reports published to the [Settlement Website]," "disagree[d] with the conclusions of the experts," and "reiterate[d] [its] direction that [U.S. Bank] reject the [Proposed Settlement] in the case of JPMAC 2006-WMC1." **Trustees' Ex. 193**. QVT made no offer of indemnification to U.S. Bank in the July 29 Letter. *Id.* Nor did QVT at that time (or any other time for that matter) provide any proposed revisions to the form of direction and indemnity U.S. Bank had previously provided on July 10 or otherwise make any effort to engage U.S. Bank in negotiations regarding the form of direction and indemnity.

28. On July 30, 2014, QVT and the other two inquiring Investors of JPMAC 2006-WMC3 provided comments to U.S. Bank's direction and indemnity form. Thereafter, U.S. Bank engaged in negotiations with QVT and the two other Investors in JPMAC 2006-WMC3

³ In the Supplemental Fischel Report, Prof. Fischel made Loan Group recommendations and recommended rejecting the Proposed Settlement for JPMAC 2006-WMC3, Loan Group 2 and accepting it for JPMAC 2006-WMC3, Loan Group 1. See **Trustees' Ex. 022 at Ex. F**.

regarding the form of direction and indemnity.

29. On July 31, 2014, having received no proposed revisions from QVT to the proposed form of direction and indemnity U.S. Bank previously provided on July 10 nor any indication from QVT that it was interested in negotiating the terms of that proposed form with respect to JPMAC 2006-WMC1, Jones Day sent a letter to Mr. Chu, stating, “as previously communicated on numerous occasions, [U.S. Bank] will not follow the ‘direction’ referred to in the July 29, 2014 letter . . . in the absence of a reasonable indemnity satisfactory to the Trustee.”

Trustees’ Ex. 197.

30. On July 31, 2014, the Acceptance Date for JPMAC 2006-WMC3, Loan Group 2 was extended from August 1, 2014 to October 1, 2014 to allow U.S. Bank and QVT and the other two Investors in JPMAC 2006-WMC3 to continue negotiations concerning a potential direction and indemnity. *See **Trustees’ Ex. 040.***

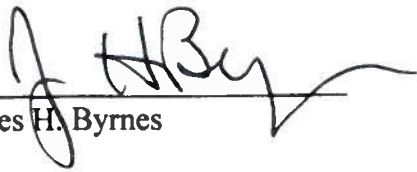
31. On August 1, 2014, U.S. Bank followed Prof. Fischel’s recommendation and accepted the Proposed Settlement for JPMAC 2006-WMC1.

32. On September 15, 2014, after the completion of negotiations, U.S. Bank agreed to the terms of a direction and indemnity for JPMAC 2006-WMC3, Loan Group 2 with QVT and the two other inquiring Investors, directing U.S. Bank to reject the Proposed Settlement. At or around the same time, the same group of Investors agreed to the terms of a direction and indemnity with BNYM, as securities administrator, directing it to litigate claims on behalf of JPMAC 2006-WMC3, Loan Group 2.

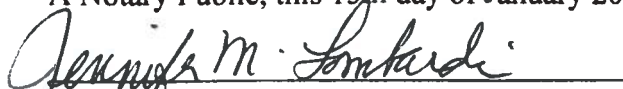
33. On October 1, 2014, U.S. Bank rejected the Proposed Settlement for JPMAC 2006-WMC3, Loan Group 2. *See **Trustees’ Ex. 030 at Ex. C.*** Shortly thereafter, on or around October 10, 2014, BNYM, as securities administrator, filed suit on behalf of JPMAC 2006-WMC3, Loan Group 2 against JPMorgan and WMC Mortgage, LLC. *See Bank of N.Y. Mellon v.*

WMC Mortgage LLC, Index No. 653099/2014 (N.Y. Sup. Ct. 2014).

Dated: January 15, 2016
Boston, Massachusetts


James H. Byrnes

Sworn to and subscribed before me,
A Notary Public, this 15th day of January 2016.


Notary Public

