

In The Matter Of:

US BANK v.

January 26, 2016

Original File 012616 USBANK.txt

Min-U-Script® with Word Index

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK CIVIL TERM PART 60
 3 -----X
 4 In the Matter of the Application of,
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 6 US BANK NATIONAL ASSOCIATION, THE BANK OF NEW YORK
 7 MELLON, THE BANK OF NEW YORK MELLON TRUST COMPANY,
 8 NA, WILMINGTON TRUST, NATIONAL ASSOCIATION, LAW
 9 DEBENTURE TRUST COMPANY OF NEW YORK, WELLS FARGO
 10 BANK, NATIONAL ASSOCIATION, HSBC BANK USA, NA, and
 11 DEUTSCHE BANK NATIONAL TRUST (as Trustees under
 12 Various Pooling and Servicing Agreements and
 13 Indenture Trustees under various Indentures),
 14 AEGON USA Investment Management, LLC (Intervenor),
 15 BAYERISCHE LANDESBANK (Intervenor), Blackrock
 16 Financial Management, Inc., (Intervenor), CASCADE
 17 INVESTMENT, LLC, (Intervenor), the Federal Home
 18 Loan Bank of Atlanta (Intervenor), The Federal Home
 19 Mortgage Corporation (Freddie Mac)(Intervenor), the
 20 Federal National Mortgage Association (Fannie
 21 Mae)(Intervenor), GOLDMAN SACHS ASSET MANAGEMENT,
 22 LP, (Intervenor), VOYA INVESTMENT MANAGEMENT, LLC,
 23 (F/k/a ING Investment)(Intervenor), INVESCO ADVISORS,
 24 INC., (Intervenor), Kore Advisors, LP, (Intervenor),
 25 LANDESBANK BADEN-WURTEMBERG, (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 -

January 26, 2016

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1 (Intervenor), PACIFIC INVESTMENT MANAGEMENT COMPANY, LLC
 2 (Intervenor), SEALINK FUNDING LIMITED (Intervenor),
 3 TEACHES INSURANCE and ANNUITY ASSOCIATION OF AMERICA
 4 (Intervenor), THE PRUDENTIAL INSURANCE COMPANY OF
 5 AMERICA (Intervenor), THE TCW GROUP, INC., (Intervenor),
 6 THRIVENT FINANCIAL FOR LUTHERANS (Intervenor), WESTERN
 7 ASSET MANAGEMENT COMPANY (Intervenor)

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 4 BY: MATTHEW D. INGBER, ESQ.

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1 TRIAXX PRIME CDO 2006-1, LTD., TRIAXX PRIME CDO
 2 2006-2, LTD., TRIAXX PRIME CDO 2007-1, LTD.,
 3 (Intervenors), QVT FUND V LP, QVT FUND IV LP,
 4 QUINTESSENCE FUND, LP, QVT FINANCIAL LP,
 5 (Intervenors), AMBAC ASSURANCE CORPORATION,
 6 and the SEGREGATED ACCOUNT OF AMBAC ASSURANCE
 7 CORPORATION (Intervenors), and W&L INVESTMENTS, LLC
 8 (Intervenor),

Respondents,

9 For an order, pursuant to CPLR 7701, seeking judicial
 10 instruction.
 11 -----X
 12 INDEX NUMBER 652382/14

60 Centre Street
 New York, New York
 January 26, 2016

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HONORABLE MARCY S. FRIEDMAN,
 Supreme Court Justice.

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1 FOR THE PETITIONERS:
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1 US BANK ASSOCIATION, THE BANK of NEW YORK MELLON, THE
 2 BANK OF NEW YORK MELLON TRUST COMPANY, NA, WILMINGTON
 3 TRUST, NATIONAL ASSOCIATION, LAW DEBENTURE TRUST COMPANY
 4 OF NEW YORK, WELLS FARGO BANK, NATIONAL ASSOCIATION,
 5 HSBS BANK USA, NS, DEUTSCHE BANK NATIONAL TRUST COMPANY
 6 AEGON USA INVESTMENT MANAGEMENT, LLC (Intervenor),
 7 BAYERISCHE LANDESBANK (Intervenor), BLACKROCK FINANCIAL
 8 MANAGEMENT, INC. (Intervenor), CASCADE INVESTMENT, LLC,
 9 (Intervenor), THE FEDERAL HOME LOAN BANK OF ATLANTA
 10 (Intervenor), THE FEDERAL HOME MORTGAGE CORPORATION
 11 (Intervenor), THE FEDERAL HOME LOAN MORTGAGE
 12 CORPORATION, FREDDIE MAC (Intervenor), THE FEDERAL
 13 NATIONAL MORTGAGE ASSOCIATION, FANNIE MAE (Intervenor),
 14 GOLDMAN SACHS ASSET MANAGEMENT LP (Intervenor), VOYA
 15 INVESTMENT MANAGEMENT LLC (f/k/a) ING INVESTMENT LLC,
 16 (Intervenor), INVESCO ADVISERS, INC., (Intervenor), KORE
 17 ADVISORS, LP, (Intervenor), LANDESBANK BADEN-WURTEMBERG
 18 (Intervenor), METROPOLITAN LIFE INSURANCE COMPANY

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1 FOR THE RESPONDENTS:
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1 FEDERAL HOME LOAN BANK of BOSTON, (Intervenor
 2 Respondent), TRIAXX PRIME CDO 2006-1, LTD., TRIAXX PRIME
 3 CDO 2006-2, LTD., TRIAXX PRIME CDO 2007-1, LTD., QVT
 4 FUND V LP, QVT FUND IV LP, QUINTESSENTIAL FUND, LP, QVT
 5 FINANCIAL LP & AMBAC

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1 W&L INVESTMENTS
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1 ROLLIN BRASWELL FISHER, LLC
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 5 MARITZA BRASWELL, ESQ.

Kathy Jones,
 Denise Paternoster
 Senior Court Reporters

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1 Proceedings

2 THE COURT: Good morning. Will each of the counsel

3 who are seated at the table, without a full appearance,

4 state your name and who you represent.

5 MR. INGBER: Sure. Good morning, your Honor.

6 Matthew Ingber on behalf of the Bank of New York

7 Mellon.

8 MR. HOUP: Good morning, Christopher Houpt, for

9 the Bank of NY Mellon.

10 MS. PATRICK: Good morning, Kathy Patrick for the

11 Institutional Investors.

12 MR. ROLLIN: Good morning, Michael Rollin for W & L

13 Investments.

14 MS. BRASWELL: Good morning, your Honor. Maritza

15 Braswell for W & L Investors.

16 MR. WOLLMUTH: Good morning, your Honor. Dave

17 Wollmuth for Ambac.

18 THE COURT: Thank you.

19 How are we going to proceed this morning? It is my

20 understanding, correct, that a witness is going to be taking

21 out of turn, and that that will be Loretta Lundberg?

22 MS. PATRICK: If I could clarify, your Honor.

23 Given Ambac's withdrawal, W & L has already cross-examined

24 Professor Fischel. So his examination is concluded, unless

25 the Court had questions for him.

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1 Proceedings

2 withdrawn.

3 MR. WOLLMUTH: If I could, your Honor, we have

4 filed a stipulation for withdrawal last night. We can't get

5 filed a stamped copy for filing yet, but we wanted to offer

6 it to the part clerk or whatever your Honor deems

7 appropriate. But we have filed a withdrawal and are

8 withdrawing.

9 THE COURT: May I have a copy of that, please?

10 MR. WOLLMUTH: Yes, your Honor.

11 (Handing.)

12 MR. WOLLMUTH: On the cover is the confirmation

13 notice of filing, and attached to the cover is the

14 stipulation.

15 THE COURT: Have all appearing parties stipulated

16 to Ambac's withdrawal?

17 MR. WOLLMUTH: I believe they have, your Honor.

18 Mr. Sachs is nodding in affirmation, so....

19 MR. SACHS: Yes.

20 MR. WOLLMUTH: So I believe my understanding his

21 correct. Miss Patrick seems to be in agreement, as well.

22 MS. PATRICK: Yes, your Honor, it has been

23 stipulated.

24 THE COURT: And that includes, of course, W & L?

25 MR. WOLLMUTH: It does.

26 MR. ROLLIN: It does.

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1 Proceedings

2 MR. WOLLMUTH: We specifically spoke with W & L.

3 THE COURT: I will see counsel in chambers, please.

4 (Discussion held off the record.)

5 THE COURT: Back on the record. The record will

6 reflect that I have conferred with counsel. Mr. Wollmuth,

7 you have handed up a stipulation of withdrawal, you are

8 withdrawing your objection in its entirety in this

9 proceeding; is that correct?

10 MR. WOLLMUTH: That is, your Honor.

11 THE COURT: And you are also withdrawing your

12 motions in limine; I believe there were two, one with

13 respect to the -- with respect to a privilege issue and one

14 with respect to a motion to strike an ordering provision in

15 the proposed order, by which this case might ultimately be

16 resolved.

17 MR. WOLLMUTH: We are withdrawing this, your Honor.

18 THE COURT: Is there anything further?

19 MR. WOLLMUTH: Other than we're going to get the

20 stipulation stamped, as we advised your Honor. And, any

21 other matters that you have open from us -- I don't believe

22 there are any -- but they are withdrawn, as well.

23 THE COURT: Mr. Wollmuth, you have withdrawn any

24 request to conduct any further cross-examination of

25 Professor Fischel; is that correct?

26 MR. WOLLMUTH: That is correct, your Honor. I

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1 Proceedings

2 believe the examination was open prior to today. We close

3 it and withdraw the request for any further examination of

4 him or any other witness.

5 THE COURT: As discussed in chambers, there is no

6 need for you to remain at the counsel table while we proceed

7 on the remaining claims. But you are certainly free to do

8 so, if you wish to.

9 MR. WOLLMUTH: Thank you, your Honor. And thank

10 you for your listening to the Ambac's case during the

11 pendency of this matter.

12 MR. INGBER: Your Honor --

13 THE COURT: One moment, please. Let me just

14 confirm now that we are going to proceed on the W & L

15 objection.

16 We will proceed, as previously agreed by the

17 parties on the record, with the direct testimony of Loretta

18 Lundberg by the affidavit which has previously been

19 submitted to the Court, it is Exhibit 12 in the binder that

20 has been provided to the Court, and we will mark it as an

21 exhibit.

22 We will discuss off the record the way in which it

23 should be marked, the identification which it should be

24 given.

25 Is Miss Lundberg here today?

26 MR. INGBER: Your Honor, she is here today and

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1 Proceedings
 2 prepared to testify this morning.
 3 THE COURT: Mr. Rollin, you will then proceed with
 4 cross-examination of -- it will not be Mr. Rollin --
 5 MS. BRASWELL: Maritza Braswell, I will be
 6 examining the witness.
 7 THE COURT: Then you will be responsible for making
 8 all objections and responding to any objections with respect
 9 to this witness?
 10 MS. BRASWELL: Yes.
 11 THE COURT: Is that your understanding?
 12 MS. BROS WELL: Yes, it is, your Honor.
 13 THE COURT: And you are ready to proceed in that
 14 fashion?
 15 MS. BRASWELL: I am.
 16 THE COURT: Then you will have W & L's expert, Mr.
 17 Lewis?
 18 MS. BROS WELL: Correct.
 19 MR. INGBER: Your Honor, there is one
 20 administrative matter that I wanted to raise before we start
 21 Miss Lundberg's testimony.
 22 We prepared a stipulation listing all the exhibits
 23 that we intend to introduce into evidence. Mr. Rollin and
 24 Miss Braswell are reviewing it. We anticipate after Mr.
 25 Lewis's examination we will be able to hand that up.
 26 But because, I guess, technically we are resting

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1 Lundberg - Cross/Ms. Braswell
 2 our case and W & L Investments is starting their case, we
 3 wanted to make sure that we had the opportunity, after their
 4 case concludes, to introduce those exhibits. So it is
 5 really just a matter of timing.
 6 THE COURT: That is true. You are technically
 7 resting and will the other petitioners be resting, as well?
 8 MS. PATRICK: We will, subject to the offering of
 9 the documentary evidence which we have agreed we will do at
 10 the end of the day.
 11 THE COURT: Is there any objection to that,
 12 Mr. Rollin?
 13 MR. ROLLIN: No, your Honor.
 14 MR. INGBER: Thank you.
 15 THE COURT: Thank you.
 16 Can we have the witness placed in the witness box,
 17 please?
 18 (So done.)
 19 LORETTA LUNDBERG, called as a witness by and on
 20 behalf of the Defendant, having been first duly sworn, testified
 21 as follows:
 22 THE COURT CLERK: State your full name and business
 23 address for the record, please.
 24 THE WITNESS: Loretta A Lundberg, care of the Bank
 25 of New York Mellon, 101 Barclay Street, New York, New York
 26 10286, L-U-N-D-B-E-R-G.

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1 Lundberg - Cross/Ms. Braswell
 2 THE COURT: Good morning, Miss Lundberg.
 3 THE WITNESS: Good morning.
 4 THE COURT: You may inquire.
 5 MS. BROS WELL: Thank you, your Honor.
 6 DIRECT EXAMINATION
 7 BY MS. BRASWELL:
 8 Q Good morning, Miss Lundberg. My name is Maritza
 9 Braswell and I am counsel for W & L Investments.
 10 MS. BRASWELL: Before that, can I hand up a binder
 11 that will reference any exhibits that I will ask her about?
 12 THE COURT: These exhibits have been marked in
 13 evidence or for identification?
 14 MS. BROS WELL: Correct.
 15 THE COURT: No. Is there one or the other?
 16 MS. BROS WELL: Oh, I'm sorry. It is a combination
 17 of both.
 18 THE COURT: And has the binder been provided to
 19 counsel for petitioners?
 20 MS. PATRICK: Yes, your Honor.
 21 THE COURT: Has the Court also been provided with a
 22 binder?
 23 MS. BROS WELL: Your Honor has all of these exhibits
 24 in the various volumes. And I can refer to the exhibits
 25 based on the volume, as the Court instructed.
 26 THE COURT: Don't you have a binder for the Court

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1 Lundberg - Cross/Ms. Braswell
 2 with just your exhibits?
 3 MS. BROS WELL: No, your Honor, we don't. We didn't
 4 want to inundate the Court with another set. You have all
 5 of these.
 6 THE COURT: But there are ten volumes there for me
 7 to go through to try to stay with you.
 8 MS. BROS WELL: I apologize, your Honor.
 9 THE COURT: Let's proceed. You may hand the binder
 10 up to the witness.
 11 MS. BROS WELL: Your Honor, if it is helpful, all of
 12 the exhibits that I will be talking referring to are all
 13 exhibits in the 300 series. So it should be just one binder
 14 the Court is referring to the entire time.
 15 THE COURT: All right.
 16 Q Miss Lundberg, you submitted direct testimony through
 17 an affidavit submitted by counsel to this Court, correct?
 18 A Yes.
 19 Q And that affidavit provided a general overview of the
 20 Bank of New York Mellon's process before accepting a Settlement
 21 Agreement that is presented before this Court, correct?
 22 A Yes, it did.
 23 Q And I won't walk through your entire affidavit, but
 24 just to orient ourselves and provide some context, can you give
 25 a brief overview of your role at the Bank of New York Mellon as
 26 it concerns the Bank of New York Mellon's acceptance of the

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1 Lundberg - Cross/Ms. Braswell
2 Settlement Agreement?
3 A Yes. I'm a managing director in the corporate trust
4 division, and I have oversight of the mortgage-backed securities
5 group, as well as the default administration group.
6 Q And as it concerns the Settlement Agreement at issue in
7 this case, you reviewed an evaluated it and participated in the
8 decision by the Bank of New York Mellon to accept the Settlement
9 Agreement, correct?
10 A Yes.
11 Q And you signed the Settlement Agreement on behalf of
12 the Bank of New York Mellon?
13 A On behalf of the bank, yes.
14 Q I can assume that you are generally familiar with the
15 terms of the Settlement Agreement, right?
16 A Yes, I am.
17 Q Miss Lundberg, the Settlement Agreement releases
18 representation and warranty claims in exchange for a five
19 billion dollar settlement payment, right?
20 A Among other things.
21 Q The representation and warranties claims that are
22 released in the Settlement Agreement have been valued at
23 approximate 4.5 billion dollars, correct?
24 A This Settlement Agreement contains a four-and-a-half
25 billion dollar payment plus some servicing improvements on a go
26 forward basis in exchange for servicing breaches, as well as

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1 Lundberg - Cross/Ms. Braswell
2 breaches of reps and warranties.
3 Q Okay. And I would like to break that up into two
4 parts. The Settlement Agreement releases servicing claims,
5 correct?
6 A Can you repeat the question?
7 Q The Settlement Agreement releases servicing claims held
8 by the trust?
9 A It does.
10 Q As a consideration for the release of those claims, the
11 Settlement Agreement provides forward looking servicing
12 improvements as you just testified about, right?
13 A The Settlement Agreement does contain forward looking
14 improvements.
15 Q And the Settlement Agreement also releases breach of
16 representations and warranty claims, correct?
17 A Yes, it does.
18 Q As consideration for that, the Settlement Agreement
19 constitutes a 4.5 billion dollar cash payment?
20 A There is a four-and-a-half billion dollar cash payment,
21 but my understanding of the Settlement Agreement is it is not
22 one for the other. There are two benefits that come into the
23 trust; cash and the servicing improvements.
24 Q Do you remember being deposed in this case, Miss
25 Lundberg?
26 A Yes, I do.

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1 Lundberg - Cross/Ms. Braswell
2 Q And you answered truthfully at your deposition,
3 correct?
4 A I did.
5 Q You have next to you a binder that has deposition
6 transcripts. Can you turn to your deposition, it is tabbed
7 Lundberg.
8 MS. BROSSELL: Your Honor, I have a copy here for
9 the Court, if it is something that you would like to follow.
10 (Handing.)
11 MS. BRASWELL: For the record, your Honor, the
12 deposition transcript is marked for identification as RX
13 331.
14 THE COURT: Just a moment, please.
15 (Short pause taken.)
16 Q Miss Lundberg, can you turn to page 14 of your
17 deposition transcript?
18 THE COURT: We need to have voices up, please.
19 MS. BROSSELL: I will, your Honor.
20 (Transcript continues on the following page.)
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1 Lundberg - Cross - Braswell
2 T2
3 Q Ms. Lundberg, are you at page 14?
4 A Yes, I am.
5 Q Take a look at line five and I will read the question
6 to you.
7 "Question: And do you understand that with
8 respect to the servicing claims the remedies that are
9 provided are forward looking servicing improvements?
10 "Answer: Yes.
11 Did I read that correctly?
12 A Yes.
13 Q Next question.
14 "Question: And you understand that with respect
15 to the alleged breaches of representations and warranties
16 the remedies is cash payment?
17 "Answer: Yes.
18 Did I read that correctly?
19 A Yes.
20 Q Next question.
21 "Question: And in what amount is that cash
22 payment?
23 "Answer: 4.5 billion.
24 Did I read that correctly?
25 A Yes.
26 Q Ms. Lundberg, under the settlement agreement, the

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1 Lundberg - Cross - Braswell
 2 \$4.5 billion cash payment is divided into allocable shares that
 3 then get allocated to the various trusts in the settlement,
 4 correct?
 5 A The four and a half billion is allocated amongst the
 6 trusts, will be allocated amongst the trusts based on each
 7 trust's pro rata share of losses.
 8 Q Okay. And the amount that gets allocated to each
 9 trust is called the allocable share, correct?
 10 A Yes.
 11 Q And the allocable share for each trust gets
 12 distributed to certificateholders in each trust, correct?
 13 A It will.
 14 Q And under the settlement agreement, the distribution
 15 of those proceeds goes to senior certificateholders first
 16 regardless of what caused their losses, correct?
 17 A Yes.
 18 Q Now, you had previously experience reviewing and
 19 evaluating settlement agreements, right?
 20 A I have.
 21 Q Particularly like the one presented to this Court,
 22 right?
 23 A Yes.
 24 Q And one such experience is with respect to the
 25 Countrywide proceeding where a settlement agreement between the
 26 Bank of New York Mellon and Countywide was presented to Justice

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1 Lundberg - Cross - Braswell
 2 Kapnick for approval, correct?
 3 A That's correct.
 4 Q And in determining whether to accept the Countrywide
 5 settlement, the Bank of New York Mellon considered what
 6 obligations it had or didn't have under the relevant pooling
 7 and servicing agreements for that case, correct?
 8 A Yes, we did.
 9 Q And there were hundreds of pooling and servicing
 10 agreements, right?
 11 A 570.
 12 Q And similar in this case, there are hundreds of
 13 pooling and servicing agreements that govern the trusts at
 14 issue, right?
 15 A Yes. More than 300.
 16 THE COURT: Did you say more than 300?
 17 THE WITNESS: Yes.
 18 Q And they are all similar, right?
 19 MR. INGBER: Objection. It's vague.
 20 THE COURT: Overruled.
 21 You may answer.
 22 A In general, yes, but there are different structures
 23 amongst the RMBS trust both in this settlement as well as in
 24 the Countywide settlement.
 25 Q Right. So they are similar but not identical, right?
 26 A That's correct.

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1 Lundberg - Cross - Braswell
 2 Q Every pooling and servicing agreement can be different
 3 in various respects?
 4 A Yes, they can.
 5 Q So, if I ask you a question about the W & L trusts
 6 which are Chase 2007 A3 and Chase 2007 S6 and the question
 7 depends on a particular provision in the Pooling Servicing
 8 Agreement, you would need to reference the particular Pooling
 9 and servicing agreement that governs that particular deal,
 10 right?
 11 A Yes.
 12 Q And it's important to the Bank of New York Mellon that
 13 it adhere to the governing agreements, i.e., the pooling and
 14 servicing agreements, right?
 15 A Yes.
 16 Q Ms. Lundberg, if you can turn to your binder of
 17 exhibits which are the more voluminous binder next to you.
 18 There is an exhibit identified as RX305?
 19 A Volume I or volume II.
 20 Q Volume II?
 21 A What was the exhibit number again.
 22 Q RX305.
 23 Do you see that, Ms. Lundberg?
 24 A Yes, I did.
 25 Q It's a letter from William Stern on behalf of W & L
 26 Investments, right?

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1 Lundberg - Cross - Braswell
 2 A Yes, it is.
 3 Q And the Bank of New York Mellon received that letter,
 4 correct?
 5 A Yes.
 6 Q And it's dated June 11, 2012?
 7 A It is.
 8 Q And that is a date that occurred before the settlement
 9 agreement was accepted by the Bank of New York Mellon, correct?
 10 A Yes, it did.
 11 MS. BRASWELL: Your Honor, I move for the
 12 admission of RX305 into evidence.
 13 MR. INGBER: Your Honor, no objection other than
 14 hearsay. So, if it's not being offered for the truth,
 15 then we have no objection.
 16 THE COURT: How many exhibits are you going to
 17 be offering?
 18 MS. BRASWELL: Three letters and then two
 19 agreements to legal prospectus.
 20 THE COURT: I'm only asking because the transfer
 21 of paper between me and my law clerk is rather unwieldy
 22 but I think with a limited number of exhibits, it won't be
 23 a problem.
 24 MS. BRASWELL: If there is anything that your
 25 Honor has a question about, I have a copy here and I'm
 26 happy to answer the questions, your Honor.

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1 Lundberg - Cross - Braswell
 2 THE COURT: Thank you.
 3 MS. BRASWELL: In response to Mr. Ingber's
 4 hearsay objection, your Honor, we would offer this exhibit
 5 for the limited purpose of showing that the Bank of New
 6 York Mellon received the letters from W & L before
 7 accepting the settlement agreement and not for the truth
 8 of the matter stated in the letter.
 9 THE COURT: This is being offered as a notice to
 10 Bank of New York Mellon that there is a desire to be
 11 included in settlement negotiations?
 12 MS. BRASWELL: Correct, your Honor.
 13 THE COURT: Do you have an objection to that?
 14 MR. INGBER: Well, that is for the truth. So,
 15 we would object to this being offered for the truth of the
 16 matter asserted.
 17 THE COURT: Overruled. This will be marked into
 18 evidence.
 19 What will be the identification number?
 20 MS. BRASWELL: RX305, your Honor.
 21 THE COURT: Okay. I believe the procedure is
 22 that once I've marked an exhibit, it's being handed back
 23 to counsel and they will put it into the original exhibits
 24 and stored in the courtroom and accessible to them.
 25 MS. BRASWELL: Yes, your Honor. We will do
 26 that.

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1 Lundberg - Cross - Braswell
 2 (Exhibit RX305 deemed marked in
 3 evidence)
 4 Q Ms. Lundberg, can you turn next to the tab marked
 5 RX311?
 6 A Yes.
 7 Q This is also a letter from William Stern on behalf of
 8 W & L, correct?
 9 A Yes, it is.
 10 Q And the Bank of New York Mellon received this letter,
 11 correct?
 12 A Yes, we did.
 13 Q And it's dated May 14, 2014, correct?
 14 A It is.
 15 Q That is also a date before the trustee accepted the
 16 settlement agreement, correct?
 17 A It is.
 18 MS. BRASWELL: Your Honor, I would move for the
 19 admission of 311 also for the limited purpose of showing
 20 that the trustee received this information from W & L
 21 Investments before the trustee accepted the settlement
 22 agreement.
 23 MR. INGBER: With that qualification, we have no
 24 objection, your Honor.
 25 THE COURT: This is marked in evidence for the
 26 reasons stated on the record.

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1 Lundberg - Cross - Braswell
 2 One moment please while I look at this.
 3 Please continue.
 4 Q Ms. Lundberg, the letter that's been marked 3X312 -- I
 5 am sorry, 3X311 that's in front of you was not submitted to the
 6 corporate trust committees that ultimately made the decision to
 7 approve the settlement agreement; is that true?
 8 A The letter itself was not presented. The trustee
 9 committee -- the trust committee was aware that we had received
 10 letters.
 11 Q The trust committee was generally aware of letters
 12 being sent to the Bank of New York Mellon but this specific
 13 letter outlining W & L's objections to the proposed settlement
 14 was not submitted to the trust committees, correct?
 15 A That is correct.
 16 Q I would like to show you what's been marked 3X317 -- I
 17 am sorry, the tab that is marked 3X317 -- RX. I am sorry.
 18 RX317.
 19 Do you have that in front of you, Ms. Lundberg?
 20 A I do.
 21 Q That's also a letter from William Stern on behalf of
 22 W & L Investments, correct?
 23 A It is.
 24 Q And it's sent to JP Morgan Chase, right?
 25 A Did you say 17 or -- hold on.
 26 Q I am sorry. My apologies. It's sent to the Bank of

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1 Lundberg - Cross - Braswell
 2 New York Mellon. Correct?
 3 A Yes, it is. Yes, it was.
 4 Q That is also dated May 14, 2014, correct?
 5 A Yes.
 6 MS. BRASWELL: Your Honor, I move to admit RX317
 7 into evidence with the same qualifications as the other
 8 letters.
 9 MR. INGBER: No objection, your Honor.
 10 THE COURT: So marked.
 11 (Exhibit RX317 deemed marked in
 12 evidence)
 13 Q Ms. Lundberg, can you turn to the tab identified as
 14 RX313.
 15 Are you there, Ms. Lundberg?
 16 A Yes.
 17 Q That's also a letter from Mr. Stern on behalf of W & L
 18 Investments, correct?
 19 A It appears to be, yes.
 20 Q And that's the letter that's addressed to JP Morgan
 21 Chase, right?
 22 A Yes.
 23 Q Do you know how the Bank of New York Mellon came into
 24 possession of this letter?
 25 A If it were in our files, I'm assuming Mr. Stern would
 26 have sent it to us.

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1 Lundberg - Cross - Braswell
 2 Q You can assume it was in your files based on the bate
 3 stamp at the bottom of that page that says BNYM00027488,
 4 correct?
 5 A Yes.
 6 MS. BRASWELL: Your Honor, I move to admit RX313
 7 with the same qualifications as the previous letters.
 8 MR. INGBER: No objection, your Honor.
 9 THE COURT: So marked.
 10 (Exhibit RX313 deemed marked in
 11 evidence)
 12 Q Ms. Lundberg, when the settlement agreement was
 13 presented to the trustees, the method by which the settlement
 14 proceeds would be distributed to certificateholders was already
 15 incorporated into that settlement agreement, correct?
 16 A My recollection is the settlement agreement had a
 17 treatment of the settlement proceeds in it.
 18 Q And that treatment was to treat the settlement
 19 proceeds as a subsequent recovery when paying into the trusts,
 20 correct?
 21 A Yes.
 22 Q And the parties that settled on that term before they
 23 presented it to the Bank of New York Mellon were the
 24 institutional investors on the one hand and JP Morgan Chase on
 25 the other, correct?
 26 A They were the parties to those negotiations, yes.

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1 Lundberg - Cross - Braswell
 2 Q They were the parties to those negotiations and
 3 therefore you would infer that they were the parties that
 4 determined how the settlement proceeds would be distributed to
 5 certificateholders, correct?
 6 A It was a term that was in the settlement agreement
 7 when it was presented to the trustees. Whose suggestion it was
 8 I cannot tell you.
 9 Q And the settlement agreement was presented to the
 10 trustees by the institutional investors, correct?
 11 A I believe that's where we first received a copy of it.
 12 Q Do you believe or do you know that the institutional
 13 investors --
 14 A That's my recollection.
 15 Q Ms. Lundberg, before accepting the settlement
 16 agreement, the Bank of New York Mellon did not compare the
 17 affect of distributing settlement proceeds as subsequent
 18 recoveries versus distributing settlement proceeds as
 19 repurchase proceeds, correct?
 20 A We did not.
 21 Q And before accepting a settlement agreement, the Bank
 22 of New York Mellon did not analyze whether distributing
 23 settlement proceeds as subsequent recoveries would or would not
 24 compensate the certificates that suffered losses as a result of
 25 breaches of representations and warranties, correct?
 26 A Would you please repeat that question.

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1 Lundberg - Cross - Braswell
 2 Q Sure. Before accepting the settlement agreement, the
 3 Bank of New York Mellon did not analyze whether distributing
 4 settlement proceeds as subsequent recoveries would or would not
 5 compensate the certificates that suffered losses as a result of
 6 breaches of representations and warranties?
 7 A The -- treating the settlement proceeds as a
 8 subsequent recovery we knew would compensate holders who had
 9 incurred losses.
 10 Q Okay. And you're focused on losses and I'm focused on
 11 the cause of losses. I'll repeat my question with that comment
 12 and maybe it will help you focus on the piece of question that
 13 I'm interested in having you answer.
 14 Before accepting the settlement agreement, the Bank of
 15 New York Mellon did not analyze whether distributing settlement
 16 proceeds as subsequent recoveries would or would not compensate
 17 the certificates that suffered losses as a result of breaches
 18 of representations and warranties?
 19 A There is no way to determine how those losses were
 20 incurred.
 21 (Continued on next page)
 22
 23
 24
 25
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1 Lundberg - Cross/Ms. Braswell
 2 Q It's your testimony that the Bank of New York Mellon
 3 has no way to determine which certificates suffered losses as a
 4 result of breaches of reps and warranties?
 5 A Not without a specific admission or investigation of a
 6 particular loan on a loan by loan basis, we would have no way of
 7 determining that.
 8 Q Okay. So there is a way to determine which losses were
 9 suffered as a result of breaches of reps and warranties, it
 10 might be difficult to get there but there is a way to do it;
 11 correct?
 12 A It would be extremely difficult to get this.
 13 Q Has the Bank of New York Mellon ever been involved in
 14 loan level repurchase claims?
 15 A In a few instances where we have been directed by
 16 holders to pursue.
 17 Q In those instances, had the Bank of New York Mellon
 18 ever relied on loan file review in support of the prosecution of
 19 those loan level breaches of reps and warranties claims?
 20 A There were -- in some of these directed litigations,
 21 there has been some loan level -- loan file review. Those --
 22 any cases to date have settled or are still ongoing.
 23 Q Thank you.
 24 And the Bank of New York Mellon received and considered
 25 the expert reports of Professor Daniel Fischel, correct?
 26 A Yes.

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1 Lundberg - Cross/Ms. Braswell
 2 Q And you understand those expert reports contain
 3 information about analyzing breaches in the trust, correct?
 4 A Yes.
 5 Q And Miss Lundberg, prior to accepting the distribution
 6 methodology in the proposed Settlement Agreement, the Bank of
 7 New York Mellon did not consider whether the provisions in the
 8 Countrywide were the same or difficult than the W & L PSA's;
 9 isn't that true?
 10 A One more time, please.
 11 MS. BRASWELL: Your Honor, may I have the question
 12 read back?
 13 THE COURT: Yes.
 14 MS. BRASWELL: Thank you.
 15 THE COURT: Ma'am reporter.
 16 (Whereupon, at this time, the reporter read back
 17 the requested portion.)
 18 A I still do not fully understand the point. The
 19 treatment of the settlement proceeds in both the Countrywide
 20 settlement, as well as the JP Morgan settlement, was to treat
 21 the settlement proceeds as subsequent recoveries.
 22 We did not necessarily make a comparison of every PSA.
 23 We did not from Countrywide to JP Morgan. But our counsel
 24 reviewed the PSA's for the JP Morgan, as well as the
 25 Countrywide.
 26 Q Are you relying on your counsel's review of and

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1 Lundberg - Cross/Ms. Braswell
 2 comparison of the Countrywide PSA's and the JP Morgan PSA's to
 3 satisfy yourself that that comparison was done and was adequate
 4 as it related to the acceptance of the distribution methodology
 5 in the Settlement Agreement?
 6 A I did not say that my counsel compared the Countrywide
 7 and the JP Morgan PSA's. My counsel did review the PSA's in
 8 both settlements.
 9 Q Okay, thank you for that clarification. And just to
 10 make sure I have an answer to my question, there was no
 11 comparison then of the Countrywide PSA's and the JP Morgan PSA's
 12 as it relates to the distribution of settlement proceeds to
 13 determine whether using the same provision was appropriate under
 14 the circumstances?
 15 A I don't recall that analysis being done, no.
 16 Q And if you don't recall it, it likely wasn't done,
 17 right, given your role in evaluating and considering the
 18 settlement agreement before the Bank of New York Mellon Trust
 19 Company approved it?
 20 A Again, I can't say for certain, but I believe I might
 21 have been aware.
 22 Q Miss Lundberg, the Bank of New York Mellon is capable
 23 of determining a date on which a loan level loss was realized in
 24 a particular trust, correct?
 25 A You mean if a loan became delinquent or liquidated
 26 through a foreclosure, yes, we are provided that information.

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1 Lundberg - Cross/Ms. Braswell
 2 Q So any type of loss that is realized in a particular
 3 trust you can pinpoint the date on which that loss occurred,
 4 right?
 5 A Yeah. If the date we received from the server is
 6 accurate, yes.
 7 Q Right. Miss Lundberg, will you please turn to what has
 8 been identified with a tab as RX 303 in your binder.
 9 (Witness complies.)
 10 A Okay.
 11 Q That is the prospectus settlement for Chase 2007 A 3,
 12 correct?
 13 A Yes.
 14 Q I have one more exhibit, 304, which is the tab that
 15 follows. I'm --
 16 MS. BRASWELL: I'm sorry, your Honor, I move for
 17 the admission of RX 303 into evidence.
 18 THE COURT: This is for which?
 19 MS. BRASWELL: It is for Chase 2007 A 3.
 20 MR. INGBER: No objection, your Honor.
 21 (Whereupon, at this time, Defendant's Exhibit
 22 RX 303 was received in evidence, as of this date.)
 23 Q I have a similar question, Miss Lundberg for RX 304.
 24 A Okay.
 25 Q Can you confirm that that is the prospective settlement
 26 for Chase 2007 S 6?

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1 Lundberg - Redirect/Mr. Ingber
 2 A That's what it says, yes.
 3 MS. BRASWELL: Your Honor, I move for the admission
 4 of RX 304.
 5 MR. INGBER: No objection, your Honor.
 6 THE COURT: It will be marked into evidence.
 7 (Whereupon, at this time, Defendant's Exhibit
 8 RX 304 was deemed received in evidence, as of this
 9 date.)
 10 Q Miss Lundberg, the prospectus and the prospectus
 11 supplements are prepared for investors to invest in securities,
 12 right?
 13 A That is my understanding.
 14 Q Miss Lundberg, the Bank of New York Mellon has an
 15 analytics department, correct?
 16 A Yes.
 17 Q They can modify different waterfall scenarios?
 18 A Yes, they do.
 19 MS. BRASWELL: No further, questions, your Honor.
 20 MR. INGBER: Just a few questions, your Honor.
 21 THE COURT: Yes re-direct.
 22 MR. INGBER: Thank you.
 23 REDIRECT EXAMINATION
 24 BY MR. INGBER:
 25 Q Miss Lundberg, we have been talking about two concepts;
 26 treatment of settlement proceeds and distribution methodology.

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1 Lundberg - Redirect/Mr. Ingber
 2 Where does the trustee look to determine how to distribute funds
 3 of any kind?
 4 A The PSA or, if applicable, the indenture.
 5 Q So in this case does the Settlement Agreement itself
 6 describe how funds should be distributed?
 7 A No, it does not.
 8 Q Okay. So what is the import of characterizing
 9 settlement proceeds as subsequent recoveries as opposed to, say,
 10 repurchase proceeds?
 11 A The PSA's in this case did not contemplate a
 12 settlement, so there had to have been a characterization in
 13 order for the trustees or the bond administrators to apply the
 14 proceeds. And in this -- my understanding in this settlement,
 15 like the Countrywide and similarly the Res Cap, it was decided
 16 by the parties that the appropriate treatment should be as a
 17 subsequent recovery.
 18 Q Okay. So once it is characterized as subsequent
 19 recoveries and it is time to distribute the funds, can you take
 20 the Court --
 21 THE COURT: Excuse me. When you say it was decided
 22 by the parties, who do you mean by "the parties"?
 23 THE WITNESS: Well, in Countrywide, my recollection
 24 was the -- it was a discussion among Countrywide, Bank of
 25 America, the Institutional Investors and BNY Mellon as
 26 trustee.

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1 Lundberg - Redirect/Mr. Ingber
 2 In this particular settlement, this was a term that
 3 had already been -- that the Institutional Investors and JP
 4 Morgan had agreed to, as it was in the initial Settlement
 5 Agreement that was presented to us in November of 2013.
 6 THE COURT: Thank you.
 7 Q And just on that topic, Miss Lundberg, are you aware of
 8 other settlements in which Bank of New York Mellon participated
 9 in which settlement proceeds were capitalized as subsequent
 10 recoveries?
 11 A We were involved in a settlement on six or seven
 12 Countrywide trusts that involved FGIC post, the larger
 13 settlement.
 14 Q And the larger settlement, you mean the post eight
 15 and-a-half billion dollar settlement?
 16 A Yes.
 17 Q That was before the JP Morgan settlement was entered
 18 into?
 19 A I believe it was in the spring of 2013 or '14. At this
 20 point I can't remember the exact.
 21 More recently, there's been a settlement on a single
 22 trust with GEW-MC that also was treated as a subsequent
 23 recovery.
 24 Q Are you aware of any settlements in which Bank of New
 25 York Mellon was a party that characterized settlement
 26 proceeds -- RMBS settlements that characterized settlement

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1 Lundberg - Redirect/Mr. Ingber
 2 proceeds as anything other than settlement recoveries?
 3 A There is in Res Cap, and I believe most of the others.
 4 If the PSA or the indenture does not have the subsequent
 5 recovery concept, then it's characterized as an unscheduled
 6 principal.
 7 Q Is it your understanding that that is the fallback in
 8 this settlement agreement, as well?
 9 A Yes, it is.
 10 MS. BRASWELL: Your Honor, objection. The counsel
 11 is leading the witness and has done so for a while. And I
 12 don't want to object too much, but leading.
 13 MR. INGBER: Okay, I'll try to do better.
 14 THE COURT: Before you ask the next question, what
 15 are the governing agreements for each of these trusts?
 16 THE WITNESS: These two trusts?
 17 THE COURT: For 2007 A 3 and 2007 S 6, does each of
 18 them just have one PSA or there are other governing
 19 documents?
 20 THE WITNESS: They each have a PSA.
 21 THE COURT: Just one?
 22 THE WITNESS: Yes.
 23 THE COURT: And your testimony was that those PSA's
 24 did not contemplate settlement and did not have a provision
 25 which directly addressed the settlement?
 26 THE WITNESS: Yes.

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1 Lundberg - Redirect/Mr. Ingber
 2 THE COURT: Do we have the PSA's for these two
 3 trusts in the record?
 4 MR. INGBER: They are in the record, insofar as we
 5 submitted a CD that is in our exhibits, and will be in the
 6 stipulated exhibits we hand up to your Honor at the end of
 7 the day.
 8 MS. BRASWELL: I believe they were also provided in
 9 a separate hardcopy that is marked; all of the exhibits, all
 10 the PSA's. And also for ours, I'm sorry, 14.8 and 14.9 are
 11 the W & L PSA's.
 12 THE COURT: Thank you.
 13 Q So I think we digressed a little bit to talk about
 14 Settlement Agreements, but we were talking about subsequent
 15 recovery versus repurchased proceeds.
 16 Once a settlement is entered into and a trustee is then
 17 responsible for distributing proceeds, it looked -- what does it
 18 look to? What are the steps the trustee will take?
 19 A Once the money is allocated, we will process it through
 20 the waterfalls in accordance with the PSA.
 21 Q And do you have an understanding as to whether there is
 22 any difference in how the proceeds flow through the waterfall,
 23 if the settlement proceeds in this case are treated as
 24 subsequent recoveries versus repurchase proceeds?
 25 MS. BRASWELL: Objection, calling for an illegal
 26 conclusion.

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1 Lundberg - Redirect/Mr. Ingber
 2 THE COURT: I'll allow the understanding from a
 3 business point of view.
 4 A My understanding is that proceeds, whether its from
 5 regular scheduled principal interest, a subsequent recovery, or
 6 repurchase, all come into the collection accounts and then are
 7 flowed down through the waterfalls in accordance with the PSA.
 8 Q Miss Lundberg, if you could take a look at RX 311,
 9 which is the May 14, 2014 letter from Mr. Stern to Mr. Major at
 10 BNY Mellon.
 11 (Witness complies.)
 12 A Yes.
 13 Q Can you just tell us who Mr. Major is?
 14 A Robert Major was a vice-president in the default
 15 administration group. He has since left the Bank of New York
 16 Mellon, but he was -- he worked on both the Res Cap settlement
 17 and on the JP Morgan settlement.
 18 Q Okay. Do you have an understanding as to whether
 19 Mr. Major responded to Mr. Stern in response to this May 14,
 20 2014 letter?
 21 A I know Mr. Major talked to Mr. Stern on several
 22 occasions, I don't recall if there was a written response.
 23 Q Okay. Do you have an understanding as to what
 24 Mr. Major did with this letter after he received it?
 25 A I know that this letter was sent over to Mayor Brown
 26 and ultimately included information that was passed onto

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1 Lundberg - Redirect/Mr. Ingber
 2 Professor Fischel for his review and recommendation.
 3 Q Was that the case with respect to all of the investor
 4 correspondence that BNY Mellon received in connection with the
 5 settlement?
 6 A Yes.
 7 Q Why was that the practice? Or why was that the process
 8 here?
 9 A Because that was something that all the trustees
 10 determined was important in valuating the settlement, that we
 11 look at the investor inquiries.
 12 Q Miss Lundberg, why was BNY Mellon comfortable with the
 13 treatment of settlement proceeds in this settlement agreement as
 14 subsequent recoveries?
 15 A I mean, intuitively it made sense. We had already
 16 entered into two other significantly sized settlements, meaning
 17 Countrywide and Res Cap, as well as the FGIC -- that was much
 18 smaller -- and that was the treatment and no one had objected.
 19 Q Right. No one had objected to the specific treatment
 20 of the proceeds as subsequent recovery?
 21 A That's what I meant, they had objected to the
 22 settlement, but not the treatment of the proceeds.
 23 Q And W & L was objecting to how the proceeds would
 24 ultimately be distributed within the trust?
 25 A That's my understandings, yes.
 26 Q And you view that as a PSA issue or a Settlement

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1 Lundberg - Redirect/Mr. Ingber
 2 Agreement issue?
 3 A Well, they are objecting to the settlement, but in
 4 order to pay the way W & L would like us to pay, that would go
 5 completely against the PSA.
 6 Q Miss Lundberg, you talked about what would be required
 7 to determine what specifically caused losses in a particular
 8 loan. And I believe you said it would require looking at
 9 specific loans in each of these two trusts, correct?
 10 A Yes.
 11 Q Do you recall how many trusts were settlement trusts
 12 where Bank of New York Mellon was the trustee?
 13 A Around 60 or so.
 14 Q And the process that you described, would it have been
 15 limited to -- the extent it was possible, would it have been
 16 limited to the two W & L trusts?
 17 A I don't know. It would have been significant
 18 undertaking and expense to have undergone that type of analysis.
 19 Q Miss Lundberg, are you familiar with the concept of a
 20 credit support depletion date?
 21 A Generally.
 22 Q Can you describe in laymen's terms what that is, or
 23 what you understand that to be?
 24 A It is the --
 25 MS. BRASWELL: Objection, it calls for a legal
 26 conclusion. It is interpreting a provision in the pooling

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1 Lundberg - Redirect/Mr. Ingber
 2 and servicing agreements, and that is the province of the
 3 Court.
 4 THE COURT: Don't you have to have an understanding
 5 of the provisions in pooling and servicing agreements in
 6 order to perform your managerial functions for the trustee?
 7 THE WITNESS: Yes. And our analytics teams has to
 8 have a better understanding, and they are not attorneys.
 9 THE COURT: You can answer from a business point of
 10 view or a lay person's point of view.
 11 A My understanding is a credit support depletion date
 12 occurs when you have a multi-class structure and all of the
 13 subordinates have been written off.
 14 Q Do you have an understanding as to whether there was a
 15 credit support depletion date or whether a credit support
 16 depletion date occurred with respect to the two trusts that are
 17 the subject of W & L's objection?
 18 A They did, both.
 19 Q Approximately when did that happen?
 20 A In 2012.
 21 THE COURT: Can you explain what a credit support
 22 depletion date is, to the best of your understanding as a
 23 business person?
 24 THE WITNESS: In the structures, you have senior
 25 bonds and then subordinate bonds. So the subordinate bonds
 26 get paid last. The money flows down the waterfall and pays

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1 Lundberg - Redirect/Mr. Ingber
 2 the senior certificates first and eventually, if there is
 3 enough money, it will also pay the sub.
 4 But also as the losses are incurred, they are
 5 incurred from the bottom up. And when -- the subordinate
 6 class is there to protect the senior class from losses. And
 7 when they are gone, it is known -- all the subordinate bonds
 8 have been --incurred losses and are no longer outstanding,
 9 that's called credit support, the depletion date.
 10 THE COURT: Thank you.
 11 (Transcript continues on the following page.)
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1 Lundberg - Redirect - Ingber
 2 T4
 3 Q And you have an understanding as to whether the
 4 principal balance in the W & L certificates have been written
 5 down?
 6 A That's my understanding.
 7 Q To zero?
 8 A Yes.
 9 Q What is the significance of the fact if you know of
 10 there being a credit support depletion date with respect to the
 11 W & L certificates?
 12 A Well, with respect to certificates in those classes,
 13 they will like receive any payments in the future on those
 14 spots.
 15 Q Speaking of those classes, have any certificates --
 16 THE COURT: Excuse me. Do you know when they
 17 were written down, when W & L certificates were written
 18 down?
 19 THE WITNESS: I can't -- all of the subordinate
 20 classes were completely gone in 2012. I don't know when
 21 W & L's particular securities, when the write down started
 22 or ended.
 23 Q You mentioned the class of certificates.
 24 Are you aware of any certificateholders holding the
 25 same class of certificates as W & L objecting to the treatment
 26 of subsequent -- the treatment of settlement proceeds as

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1 Lundberg - Redirect - Patrick
 2 subsequent recoveries in this settlement agreement?
 3 A I am not aware.
 4 Q How about objecting to the application of the
 5 waterfall provisions of the PSA once the allocable share is
 6 determined?
 7 A I'm not aware of anyone.
 8 Q Are you aware of any certificateholder in any of the
 9 trusts in which Bank of New York Mellon was the trustee and
 10 that was subject to this settlement that had asserted the same
 11 or even similar objections as the one asserted by W & L?
 12 A There have been none to my knowledge.
 13 Q And does that -- I'll leave it at that.
 14 MR. INGBER: Thank you. I have no further
 15 questions at this time.
 16 THE COURT: Is there anything further?
 17 MS. PATRICK: Your Honor, may I?
 18 MS. BRASWELL: If I may ask just one question.
 19 MR. INGBER: Your Honor, I think Ms. Patrick.
 20 THE COURT: I am sorry, Ms. Patrick.
 21 Redirect examination by the institutional
 22 investors.
 23 REDIRECT EXAMINATION
 24 BY MS. PATRICK:
 25 Q Ms. Lundberg, turning to something that was just
 26 discussed. Would you turn to Exhibit 313 in your binder

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1 Lundberg - Redirect - Patrick
 2 please. This is the letter that W & L sent to Mr. Horner at JP
 3 Morgan Chase in October of 2013 and that BNY Mellon received a
 4 copy of; is that correct?
 5 A Yes.
 6 Q Directing your attention to paragraph three of that
 7 letter. Do you have it?
 8 A Yes, I do.
 9 Q Do you see there Mr. Stern indicates that he is
 10 attaching brokerage statements reflecting ownership in the B1
 11 and B2 pieces in December of 2009?
 12 A Yes.
 13 Q And in the prior paragraph, do you see a reference to
 14 the Class B certificates having been eliminated by losses "at
 15 the time of purchase?"
 16 A I am sorry, Ms. Patrick.
 17 Q The second paragraph.
 18 A Okay. Okay. Yes, I see.
 19 Q My question, Ms. Lundberg, did anyone from W & L ever
 20 tell you that it actually owned the Class B certificates before
 21 they were written off?
 22 A I am not aware but I never spoke to W & L.
 23 Q And there was nothing in the correspondence that you
 24 received from W & L that indicated that they suffered the
 25 losses so far as you know?
 26 A I am not aware.

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1 Lundberg - Recross - Braswell
 2 MS. PATRICK: That's all I have, your Honor.
 3 THE COURT: Excuse me.
 4 What does that mean in the second paragraph of
 5 that letter that the trustee would not issue the B5 of the
 6 S6 deal -- is it S6?
 7 Has it been eliminated by losses at the time of
 8 purchase?
 9 What's your understanding of what that sentence
 10 means?
 11 THE WITNESS: The only thing I can think it may
 12 reference is at the time that he purchased the securities,
 13 okay, that those classes had already been written down.
 14 So, therefore, once they're written down, we can't issue
 15 certificates nor will DTC in practice.
 16 MS. PATRICK: That's all I have.
 17 THE COURT: Is there anything further?
 18 MS. PATRICK: No, your Honor.
 19 THE COURT: Recross examination.
 20 MS. BRASWELL: Thank you, your Honor.
 21 **RECROSS-EXAMINATION**
 22 **BY MS. BRASWELL:**
 23 Q Ms. Lundberg, can you please turn to RX311. That's
 24 the letter dated May 14, 2014, from W & L Investments to the
 25 Bank of New York Mellon, correct?
 26 A Yes.

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1 Lundberg - Recross - Braswell
 2 Q And Ms. Lundberg, just a few minutes ago in response
 3 to Ms. Patrick's question you testified that W & L never
 4 informed the Bank of New York Mellon that they had suffered
 5 losses, correct?
 6 MR. INGBER: Objection. I think that
 7 mischaracterizes the witness' testimony.
 8 THE COURT: Was that your testimony?
 9 THE WITNESS: I don't believe that's what I
 10 said.
 11 Q Okay. Maybe I misheard but just to clarify.
 12 Can you look at the last paragraph on RX311. If you
 13 look at the second sentence in that last paragraph, it says I
 14 owned the whole tranches of the B1, 2, 3, 4?
 15 A Paragraph?
 16 Q I am sorry. On the front page of RX311. It is the
 17 last paragraph on that front page that begins with the
 18 allocation of settlement funds.
 19 A Okay. Which sentence?
 20 Q If you look at the second sentence it says I owned the
 21 whole tranches of the B1, 2, 3 4, 5 of both Chase 2007 A3 and
 22 S6 securitizations. Then it says I took the first losses in
 23 each deal.
 24 A Yes.
 25 Q Did I read that correctly?
 26 A That's what it says, yes.

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1 Lundberg - Recross - Braswell
 2 MS. BRASWELL: No further questions, your Honor.
 3 MR. INGBER: No questions, your Honor.
 4 THE COURT: Thank you.
 5 Ms. Lundberg, you may step down.
 6 (Witness excused)
 7 THE COURT: I'd like to take a recess of 10 to
 8 15 minutes before the next witness.
 9 Thank you.
 10 (Recess taken)
 11 THE COURT: W & L may now call its witness.
 12 MR. ROLLIN: Thank you, your Honor.
 13 W & L calls its final witness, Mr. Matthew
 14 Lewis.
 15 M A T T H E W L E W I S called
 16 as a witness on behalf of W & L, having
 17 been first duly sworn, was examined and
 18 testified as follows:
 19 COURT CLERK: State your full name and business
 20 address for the record please?
 21 THE WITNESS: Matthew Lewis.
 22 COURT CLERK: L-E-W?
 23 THE WITNESS: I-S. For NewOak, 485 Lexington
 24 Avenue, New York New York, 10017.
 25 COURT CLERK: 100?
 26 THE WITNESS: 17.

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1 Lewis - Rollin - Direct
 2 THE COURT: Good morning, Mr. Lewis.
 3 THE WITNESS: Good morning.
 4 THE COURT: You may inquire.
 5 MR. ROLLIN: Thank you, your Honor.
 6 **DIRECT EXAMINATION**
 7 **BY MR. ROLLIN:**
 8 Q Mr. Lewis, could you please state your name again for
 9 the record and tell the Court what your occupation is?
 10 A My name is Matthew Lewis and I am a consultant at
 11 NewOak.
 12 Q What is your title at NewOak?
 13 A Managing Director.
 14 Q In what section or department?
 15 A Group is called Financial Markets Advisory.
 16 Q Will you please describe NewOak's business for the
 17 Court.
 18 A Sure. We are a multiservice line financial markets
 19 advisory firm providing consulting services to generally the
 20 securitization market participants in the form of valuation,
 21 asset disposition and acquisition advisory, stress testing and
 22 litigation support.
 23 Q I'd like to ask you to give a little more detail about
 24 the things that NewOak does that you just described in summary
 25 fashion.
 26 I think the first thing you mentioned was valuation.

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1 Lewis - Rollin - Direct
 2 Could you please describe that.
 3 A Sure. Our valuation process is generally for
 4 securitized products, things like mortgage back securities,
 5 residential mortgage back securities, commercial mortgage back
 6 securities, consumer asset back securities, such as ABS backed
 7 by auto loans or student loans. And the valuations we deliver,
 8 that we perform and deliver are generally used as a third-party
 9 validation of the values that our clients establish for these
 10 assets on their balance sheets.
 11 Q I didn't quite catch all of the second topic but it
 12 related to the disposition of assets?
 13 A Sure. From time to time our clients -- it's a little
 14 less common but our clients may look to have seller or
 15 seller-hold analysis done and our recommendation on whether
 16 they should retain or sell a security.
 17 Q You also mentioned stress testing. Would you explain
 18 that please.
 19 A Sure. So, the value -- the valuation we do on -- it
 20 helps to understand the valuation in a little bit more detail.
 21 The valuation we do on securities is what would
 22 generally be deemed to be a fundamental value which is the
 23 present value of a projection of future cash flows on a given
 24 security discounted at a market-type yield, a market-based
 25 yield. That valuation is generally done on what's called a
 26 case or expected case. However, because they are projections,

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1 Lewis - Rollin - Direct
 2 nobody knows exactly what cash flows will be realized on a
 3 security. So, client oftentimes ask us to test how the value
 4 would change or certain characteristics of security would
 5 change under different scenarios, maybe a pessimistic scenario
 6 assuming worse performance and potentially an optimistic
 7 scenario and sometimes variance of the two.
 8 Q I believe the last type of service that you had
 9 described NewOak performs is litigation consulting. Can you
 10 describe that please.
 11 A Sure. We generally provide analytical support to
 12 experts testifying in various financial markets disputes. The
 13 majority of those have been related to residential mortgage
 14 back securities but we've also participated in matters
 15 including appropriateness of investor -- sorry -- investment
 16 management firm actions and suitability of investments that
 17 they've made on behalf of clients. We've lent support in
 18 matters relating to collateralized debt obligation,
 19 collateralized loan obligations, pretty much a broad range of
 20 financial market practices.
 21 Q Approximately how much of your time do you spend doing
 22 litigation consultation as contrasted with the other functions
 23 that you perform at NewOak?
 24 A It's probably close to 50/50. There are -- given
 25 court schedules and the kind of chunkiness of assignments,
 26 there may be times when it's 100 percent dealing with valuation

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1 Lewis - Rollin - Direct
 2 and stress testing and other times when it's 100 percent
 3 litigation support as we approach a deadline but on an average
 4 it shakes out to half each time.
 5 Q How many times have you testified before as an expert
 6 witness?
 7 A This is my first.
 8 Q Do you spend the majority of your time providing
 9 support in consultations to other people?
 10 A In terms of our litigation support, a good deal of it
 11 is done doing analytics as directed by experts that they are
 12 going to use in support of their expert reports. Some of that
 13 does -- some of that work does involve consultation with both
 14 the expert as well as the attorneys.
 15 Q Are there firms that you are familiar with that
 16 provide services similar to NewOak that you consider either
 17 competitors of yours?
 18 A Sure. We do operate in a competitive market. The
 19 firms like Duff & Phelps and Navigant, Cornerstone Research,
 20 Compass Lexecon, STI. There is a number of others.
 21 Q Now, with respect to the expert consultation and
 22 litigation services, does NewOak generally provide services to
 23 plaintiffs versus defendants or do they provide to both?
 24 A It's been on both sides. I've personally participated
 25 on both sides. I've been on some residential mortgage back
 26 security cases where I've been on the side of defense side. So

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1 Lewis - Rollin - Direct
 2 on behalf of either originators or underwriters of securities.
 3 I worked on other matters where I was on the
 4 plaintiff's side. There was one dealing with suitability of
 5 investments by an asset manager and a couple of other matters
 6 dealing with disputes on the liquidation of a securities
 7 repurchase facility. So, really depends on the matter itself.
 8 Q Does NewOak provide services to large financial
 9 institutions?
 10 A Yes, we do. Those cases where we've been on defense
 11 side have generally been the large investment banks.
 12 Q Has NewOak in the past provided services to JP Morgan
 13 Chase?
 14 A We have.
 15 (Continued on next page)
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1 Lewis - Direct/Mr. Rollin
 2 Q I would like to know what you specifically do in your
 3 role as a managing director.
 4 A Sure. It is really a combination, our president
 5 describes, as kind of player coach. So it is a combination of
 6 reviewing and directing our staff, who are performing some
 7 directs, analytics and doing cash flow analysis in Excel or
 8 using various other tools, as well as performing that work
 9 myself.
 10 So that would be in kind of the valuation context. And
 11 in doing so a big chunk of that work is really determining what
 12 is an appropriate -- what are the appropriate assumptions to use
 13 in order to project cash flow on the securities. As an example,
 14 for a residential mortgage-backed security it might be to try to
 15 determine future path of default rates and loss severities upon
 16 those defaults.
 17 In the case of litigation support, sometimes we are
 18 called upon to do that same analysis. A portion of it might be
 19 actually a valuation of securities. We also -- some of that
 20 work involves assisting experts in actually writing the report
 21 -- and so trying to bring out the analytics in a clear fashion
 22 that will be understandable to people that don't do this every
 23 day.
 24 Q Can you please give the Court a sense of dimension with
 25 respect to the amount of time you work on RMBS matters as
 26 contrast with other matters during the period of time that you

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1 Lewis - Direct/Mr. Rollin
 2 have been at NewOak?
 3 A Sure. So if you combine the litigation support and the
 4 other analytics and valuation of stress testing, it is probably,
 5 I would say, in the order of 75 to 80 percent of my time on
 6 RMBS. And that is really a function of both my main experience,
 7 as well as the size of the market relative to other asset types.
 8 Q How long have you been with NewOak?
 9 A I'm coming up on my four year anniversary, will be in
 10 April, I believe.
 11 Q Okay. So you started in April of 2012?
 12 A Correct.
 13 Q What did you do before you joined NewOak?
 14 A So immediately prior to that, I was in the asset-back
 15 securities group at a large reinsurer called Swiss Re.
 16 And prior to that I -- the bulk of my career was eleven
 17 years as a sub prime mortgage banker at Lehman Brothers, where I
 18 had a team working with and for me, brought sub prime mortgage
 19 securitizations to market on behalf of our clients.
 20 The three years prior to that I did a similar function,
 21 but mainly with respect to other types of asset-back securities
 22 at Goldman Sachs.
 23 And then my main start of my career for the seven years
 24 prior to that was both as a consultant and then working the
 25 mortgage-backed securities group at Deloitte & Deutsch.
 26 Q Let's go back a little bit and start with Swiss Re,

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1 Lewis - Direct/Mr. Rollin
 2 okay?
 3 A Yes.
 4 Q For what period of time were you at Swiss Re?
 5 A I was there from June of 2007 through March of 2012.
 6 Q About five years?
 7 A Yeah, just about.
 8 Q And your title there was?
 9 A I'm trying to remember, I believe it was director. We
 10 changed titles. I believe I started as a senior vice-president
 11 and then we changed title to director, which is equivalent.
 12 Q And you testified a moment ago that was in the
 13 asset-back securities group?
 14 A Yes.
 15 Q Are residential mortgage-backed securities a subset of
 16 asset-back securities?
 17 A Some people would consider sub prime mortgage-backed
 18 securities to be a subset, or sometimes people use the term
 19 generally, but market participants generally distinguish
 20 asset-back securities as generally being nonmortgage-backed
 21 securities.
 22 Q Did you do any work in connection with mortgage-backed
 23 securities during the period of time that you were at Swiss Re?
 24 A Yes, I did.
 25 Q So the group was -- actually, can I get some water?
 26 (So done.)

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1 Lewis - Direct/Mr. Rollin
 2 MS. PATRICK: Your Honor, may I approach?
 3 THE COURT: The court officer will have some for
 4 you in just a moment.
 5 MR. ROLLIN: Thank you, your Honor.
 6 THE WITNESS: Should I continue?
 7 MR. ROLLIN: Would you like to wait, your Honor?
 8 THE COURT: Can you continue, please.
 9 MR. ROLLIN: I will. I will.
 10 Q I believe my last question was whether the work you did
 11 at Swiss Re involved mortgage-back securities?
 12 A It did, among other asset types. Again, RMBS was our
 13 largest holding. So the group was composed of five individuals,
 14 four traders and myself. So I was the only non-trader within
 15 the group.
 16 And the group was responsible for investing reinsurance
 17 premiums, revenues received by the firm in both mortgage and
 18 asset-back securities.
 19 Q I would like to know more about the specific work that
 20 you did in connection with mortgage-backed securities while you
 21 were at Swiss Re.
 22 A Sure. So I assisted the traders in performing
 23 valuation of those securities. There was also what we call a
 24 surveillance function, so we would monitor the performance of
 25 those -- of the loans backing those securities over time. And
 26 because shortly after I got there, you know, a distress period

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1 Lewis - Direct/Mr. Rollin
 2 of performance began to occur, it became very important to stay
 3 on top of that and review all the monthly trustee reports we
 4 received and determine the direction in whether or not we wanted
 5 to consider selling the securities.
 6 After a period of time, we -- a group within the firm,
 7 a new division was formed called Legacy. As it sounds, it was
 8 meant to house those groups and those assets that eventually the
 9 firm was trying to wind down and get out of those investments,
 10 as they were losing value.
 11 And so one of the things I assisted traders in was in
 12 determining -- based upon then current market prices, we felt
 13 the value securities either was around -- more fundamental value
 14 based upon the future cash flows was either right around the
 15 value the market was placing on them, above or below, and help
 16 them determine at which points we should try to potentially sell
 17 off those securities, especially as the mandate became more firm
 18 to eventually work our way out of those securities. So that was
 19 a big part of the work with respect to mortgage-backed
 20 securities.
 21 In addition, I was charged with monitoring our risk in
 22 a couple of different lending arrangements. We had a loan out
 23 to an originator of what is called middle market loans. So
 24 corporate loans to middle market size companies, anywhere from
 25 five to 50 million dollar loan positions.
 26 And we participated in the syndicate that lent the company funds

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1 Lewis - Direct/Mr. Rollin
 2 so they can then lend it to the borrowers. It was a secured
 3 financing. We had a similar one secured by commercial real
 4 estate.
 5 And then finally over my last, probably close to two
 6 years, I was directly involved in managing a repurchase program
 7 where we sought to have an originator who originated the loans
 8 backing one of our securities. We sought to have them
 9 repurchase securities which we believed to be in breach of reps
 10 and warranties.
 11 Q Could you please describe --
 12 THE COURT: What year was that, I'm sorry?
 13 THE WITNESS: That would be probably the last two
 14 years, so kind of the mid 2010 through when I left in March
 15 of 2012.
 16 THE COURT: Thank you.
 17 Q Can you describe the role that you performed in
 18 connection with that loan repurchase effort?
 19 A Sure. I really was left to monitor -- I had some
 20 amount of help from internal legal counsel in terms of things
 21 that required potential legal noticing of the originator.
 22 But I was otherwise tasked with all functions from
 23 putting the process in place, hiring outside counsel, hiring a
 24 firm to re-underwrite the loans which we were going to select,
 25 working with that firm to identify the population of loans we
 26 wanted to select for review, working with the re-underwriting

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1 Lewis - Direct/Mr. Rollin
 2 firm to establish the re-underwriting protocol; in other words,
 3 basically the tolerances, so when they had findings, what sorts
 4 of deviations we would be concerned with.
 5 As an example, one of the characteristics of a loan is
 6 its loan to value ratio. We set a tolerance of, I think it was,
 7 somewhere in the order of five points. But we didn't care if
 8 the prospectus say the loan to value ratio was 70 and it turned
 9 out to be 72, that wasn't going to concern us. But if they said
 10 it was 70 and our re-underwriting firm deemed it to be more like
 11 100, we care about that.
 12 Then reviewed on a periodic basis -- as they would
 13 produce reports of their findings, we would review those
 14 findings, understand fact patterns where anything wasn't clear,
 15 and then work with the re-underwriter to narrow that down to a
 16 subset of those for which we would like to then present the
 17 repurchase demand to the originator.
 18 And, finally, working with the re-underwriter to refine
 19 that schedule and identify the specific breaches that we were
 20 presenting on a given loan.
 21 Q Approximately, how many loans were involved in that?
 22 A Somewhere between like 900 and 1000, I don't remember
 23 the exact number. And we would get findings in batches of 50 on
 24 a periodic basis.
 25 Q Does your current company do loan reviews?
 26 A We do. We generally work with contract re-underwriters

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1 Lewis - Direct/Mr. Rollin
 2 to perform those reviews. And to date, those reviews have been
 3 exclusively on behalf of originators on mortgages in defense of
 4 claims.
 5 Q Prior to your joining Swiss Re, you mentioned that you
 6 worked at Lehman Brothers. Can you describe for the Court your
 7 experience there?
 8 A Sure. So I was brought in, given my background in
 9 mortgages, to specifically work on sub prime mortgage
 10 securitizations.
 11 This was the summer of 2006 -- I'm sorry, 1996. At the
 12 time the market was much, much smaller than it eventually
 13 became, and so my mandate was to work with my boss to initially
 14 present and pitch to potential clients, those being the
 15 originators of the sub prime mortgages, in order to secure a
 16 mandate or an assignment from that originator of the loans to do
 17 a securitization on their behalf to act as securities
 18 underwriter.
 19 Upon successful award of a mandate, I, along with a
 20 team of others who worked with me and for me, would then do
 21 everything that it took to bring that securitization to market.
 22 So it was working with another group who would process
 23 the loan tape with all the characteristics of each of the loans,
 24 and produce tables and understand the pool and the composition
 25 of the pool, work with that group to prepare a loan tape to
 26 present to the rating agencies who we would then ask to provide,

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1 Lewis - Direct/Mr. Rollin
 2 based upon providing them a tape and an assumed structure of the
 3 proposed securitization, as well as assumed interest rates on
 4 the securities, the required credit enhancement levels for each
 5 rating that we sought.
 6 We basically would be looking for multiple ratings from
 7 triple A, double A, and the various notches there; double A
 8 plus, double A minus, all the way down to a triple B minus
 9 rating.
 10 Upon finally finalizing the structure and receiving the
 11 required credit enhancement levels from the rating agencies, we
 12 would then produce analytics -- working with our structure,
 13 produce analytics in support of the offering that we would then
 14 present to investors. That was in the form of offering
 15 materials, term sheets with various tables of projected
 16 performance on the securities under differing prepayment,
 17 default and loss assumptions, as well as characteristics of the
 18 loan as presented in tables of those characteristics, such as
 19 stratified by interest rate and ranges of principal balance,
 20 ranges of loan to value ratio, ranges of credit score, et
 21 cetera.
 22 We would then bring that transaction to market and work
 23 with our syndicate desk and our salespeople to then offer those
 24 securities to the market.
 25 And frequently upon releasing that to the market,
 26 participate in calls with investors and salespeople trying to

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1 Lewis - Direct/Mr. Rollin
 2 understand either a specific nuance of the securities or the
 3 program of the particular originator of the loans and how they
 4 underwrote their loans; their performance history and so forth,
 5 in order to enable the investors to better understand the
 6 offering we were presenting.
 7 Q In connection with those transactions, can you describe
 8 what role you had, if any, with respect to the supervision of
 9 performance of loan level reviews?
 10 A Sure. So one of the things we did with respect to
 11 every securitization, we had a due diligence requirement to
 12 satisfy, which, as our underwriter, we wanted to ensure -- even
 13 though we were not directly taking responsibility for the
 14 accuracy of the disclosures, we had a duty as underwriter to do
 15 our best to make sure that those disclosures were not misleading
 16 in any way.
 17 And so we would -- given that a lot of the disclosures
 18 were about the characteristics of the loans and the various
 19 things -- characteristics I mentioned before, we would work with
 20 a third-party re-underwriting firm to have a sample of those
 21 loans re-underwritten. So they would, basically, place
 22 themselves in the shoes of the mortgage underwriter and pretend
 23 that at the time they were presented with this application and
 24 then go through the steps and using the guidelines that were
 25 available at the time from that originator, re-underwrite that
 26 loan and determine whether or not they believed it was under

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1 Lewis - Direct/Mr. Rollin
 2 written in compliance with those underwriting guidelines.
 3 And they would generally work with a group called
 4 Clayton Holdings. And they would grade every loan they
 5 re-underwrote as one of three different grades. Grade one would
 6 be any within the guidelines of the particular originator.
 7 Grade two would be -- has some exceptions to the guidelines, but
 8 has what they deem to be sufficient compensating factors to
 9 enable the loan to be determined to be materially in compliance.
 10 As an example, the loan program may say the minimum
 11 credit score is a 620. A particular loan has a credit score of
 12 615, let's say, but the loan program might allow a maximum LTV
 13 of 85 percent, but the particular loan -- LTV, sorry, loan to
 14 value ratio -- of only 50 percent, so they would deem that to be
 15 a sufficient compensating factor and deem that to be a loan that
 16 is materially within those guidelines.
 17 And, finally, a grade three, where they found the loan
 18 to deviate from the guidelines and they're not to be the
 19 presence of compensating factors within that loan.
 20 The other thing we would do is we would engage
 21 accountants who were providing comfort letters on our -- or
 22 negative assurance letters that the numbers presented -- the
 23 disclosure presented in the offering document was not -- they
 24 found no evidence of inaccuracy or misleading or omissions.
 25 They would also -- we would engage them to do what is
 26 called the data integrity check on those loans. So they

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1 Lewis - Direct/Mr. Rollin
 2 wouldn't re-underwrite the loans, but they would compare the
 3 characteristics of the loans stated and determine, based upon
 4 the source documents, whether or not those characteristics were
 5 accurate. As an example, they might recalculate a debt to
 6 income ratio based upon the debts and income provided in the
 7 file and determine if it was accurate as presented for that
 8 loan.
 9 Ms. PATRICK: Objection, your Honor. We are not
 10 proceeding any more by question and answer, we are talking
 11 about you how he underwrote loans as an underwriter in
 12 Lehman Brothers, it's irrelevant and cumulative in nature.
 13 THE COURT: What is the purpose of this testimony?
 14 MR. ROLLIN: It's background to establish his
 15 experience and expertise to render the opinions he renders
 16 in this case.
 17 THE COURT: Given the absence of any claim of
 18 prejudice, I'll give you leeway on this.
 19 MR. ROLLIN: Thank you, your Honor.
 20 Q Mr. Lewis, after the loans were placed in the
 21 securitization, did you then have the opportunity to -- or the
 22 duty to perform surveillance on them?
 23 A I'm not sure if I would call it a duty, but certainly
 24 with our standing in the market and our desire to make sure that
 25 investors were satisfied with and were transparent with the
 26 information provided, we would on a monthly basis monitor the

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1 Lewis - Direct/Mr. Rollin
 2 performance of the securitizations we underwrote, which also
 3 informed our -- to the extent we brought that -- either that
 4 issue to market a second time or another time, we would inform
 5 our understanding of their program and their performance and
 6 also inform our understanding of trends in the market at the
 7 time, trends in performance.
 8 Q When you say you monitored the performance of the
 9 securities, does that depend on the performance of the loans?
 10 A Yes, to be more specific we are really monitoring,
 11 mainly, the performance of the underlying loans for delinquency,
 12 prepayment rates, default rates, loss and severities.
 13 Q Over what period of time did you do the work that you
 14 just described that you did at Lehman Brothers?
 15 A Sure. That was from the time I got there, really until
 16 the end. So it was, I believe, May of 1996 through February of
 17 2007.
 18 Q So almost eleven years you did the work you just
 19 described?
 20 A Yes.
 21 Q You mentioned before that you worked at Goldman Sachs.
 22 In just very brief terms, would you explain to the Court what
 23 you did at Goldman?
 24 A Yeah. Very similar, more common asset types that I
 25 worked on at that time were auto loans, credit card receivables,
 26 and also agricultural equipment receivables. One of our main

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1 Lewis - Direct/Mr. Rollin
 2 client's was John Deere, the manufacturer.
 3 So the way it was structured, the market was a lot
 4 smaller at that point in time. The entire AVS market, including
 5 sub prime mortgage securitization, exceeded 100 billion only
 6 after I had been there for close to a year.
 7 By the end of 2004, it first, for the very first time,
 8 crossed the 100 billion mark, where later sub prime
 9 securitizations alone were in excess of four to five billion on
 10 an annual basis.
 11 So, you were -- it was easier to be a kind of more of a
 12 jack of all trades, it was mainly based more on which particular
 13 client's you were covering as opposed to which sector.
 14 Q Thank you.
 15 Before that you were at Deloitte?
 16 A Correct.
 17 Q Let's talk about your education for a moment. Would
 18 you please describe your formal education to the Court?
 19 A Sure. I did my undergraduate degree in economics and
 20 Spanish, a dual major. And after working for approximately two
 21 years, went back to business school at NYU and obtained my MBA
 22 with a concentration in finance.
 23 Q Where did you get your bachelor's degree, I'm sorry?
 24 A I received my bachelor's degree in from Pitzer College,
 25 it is one of five schools called the Claremont Colleges in
 26 Orange County, California.

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1 Lewis - Direct/Mr. Rollin
 2 Q Do you have any professional licenses?
 3 A I hold a series 7 and 63 in licenses.
 4 Q Are you a member of any trade groups or attend any
 5 trade conferences?
 6 A I haven't in the last few years, but prior to that I
 7 was a regular participant at the industry conferences for
 8 securitization. Initially, they were called ABS East and West,
 9 organized by, I think, it was called I&N. It was a company that
 10 bought that from Professor Fabosi (phonetic).
 11 And then later on the main provider of the industry
 12 conferences or sponsors of those was the American Securitization
 13 forum would hold annual conferences.
 14 Q When you attend these conferences, do you have an
 15 opportunity to interact with other members of the industry?
 16 A Yes. Really, our function there was to assist our
 17 originator clients in helping investors understand their
 18 programs.
 19 So, generally, we would work with our salespeople to
 20 arrange one-on-one meetings between our investor clients --
 21 sorry, our investors in the security and our originator clients.
 22 And they would be anywhere from half an hour to an hour in
 23 length, generally.
 24 Q Did you attend any of the panel conferences?
 25 A I did. I was a panelist. I attended as an observer in
 26 many, particularly those over time when regulation became more

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1 Lewis - Direct/Mr. Rollin
 2 and more important in our industry.
 3 And, I also participated as a panelist on at least one
 4 -- it might have been two -- different panels on net interest
 5 margin securitizations.
 6 Q Thank you.
 7 Did you prepare a CV for this matter?
 8 A I did.
 9 Q In your -- in those binders where you just placed your
 10 cup of water, I believe it is in volume one of two, there is an
 11 exhibit marked 238. Would you please look at that.
 12 MR. ROLLIN: Your Honor, this is Trustee Exhibit
 13 238, and it was already previously marked.
 14 THE COURT: Previously marked?
 15 MR. ROLLIN: Previously marked as an exhibit, not
 16 contested. It is in the same volume series, I believe, that
 17 Miss Braswell was using.
 18 A Yes, that is my CV.
 19 Q Let's do it in question and answer. Is that your CV,
 20 Exhibit 238?
 21 A Yes, it is.
 22 MR. ROLLIN: Your Honor, I move in 238.
 23 MS. PATRICK: No objection to the CV, your Honor.
 24 THE COURT: It is marked into evidence.
 25 (Whereupon, at this time, Trustee Exhibit 238
 26 was deemed received in evidence, as of this date.)

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1 Lewis - Direct/Mr. Rollin
 2 THE COURT: This is marked Exhibit 2.
 3 MR. ROLLIN: That's from his deposition, your
 4 Honor. We will make sure there is a clearer copy.
 5 THE COURT: I'm sorry, I see it has been marked
 6 238.
 7 Q Mr. Lewis, in your preparation for this matter, have
 8 you had the occasion to review any documents?
 9 A Yes, I reviewed my report and I also reviewed the
 10 transcript of my deposition.
 11 Q I understand. I apologize, I didn't phrase that very
 12 well.
 13 I was asking in preparation for creating the opinion,
 14 for writing the report, were there any documents that you
 15 reviewed?
 16 A Yes. I reviewed a very small section, I believe it is
 17 Sabry, one of the experts in the matter, just to determine what
 18 the amount of allocable proceeds were, the amounts that were
 19 allocated to the two trusts at issue here for W & L.
 20 THE COURT: Excuse me, what was the name you just
 21 mentioned?
 22 THE WITNESS: I think it is Faten Sabry.
 23 MR. ROLLIN: Yes, your Honor, S-A-B-R-Y.
 24 A I reviewed the realized loss allocations and the timing
 25 of those to the class B 1 through B 5 certificates of these two
 26 trusts. I reviewed a data set, an aggregate of both the amount

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1 Lewis - Direct/Mr. Rollin
 2 and timing of losses for various origination years, a group by
 3 origination year for prime mortgage-backed securitizations
 4 starting, I believe, in 1996 and ending in 2007.
 5 Q Did you review W & L's holdings?
 6 A I did. I was aware that they held the B 1 through B 5
 7 in each of the two trusts.
 8 Q Did you have occasion to review Intes or do you use
 9 Intes?
 10 A Yes, we used Intes.
 11 THE COURT: What word is that?
 12 MR. ROLLIN: Intes, I N -- capital I-N-T-E-S.
 13 A Yes, I did pull the -- both the performance history and
 14 the write down history of the B 1 through B 5 securities in the
 15 two trusts, as well as I reviewed the initial balances to
 16 determine the portions of each trust represented by the various
 17 classes of securities.
 18 (Transcript continues on the next page.)
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1 Matthew - Direct - Rollin
 2 T6
 3 Q And will you please describe for the Court what Intex
 4 is?
 5 A Sure. Intex is a third party -- I characterize it
 6 more as a calculator.
 7 So, Intex for the vast majority of the securitizations
 8 both residential, commercial, various asset types, they take
 9 the governing documents of a transaction pooling and servicing
 10 agreement where provided or whatever they are provided with and
 11 take those documents and the payment priorities to waterfall
 12 and use their proprietary software to model the payment
 13 priorities of the various securities.
 14 They also have a module which, based upon user input
 15 assumptions, will project future cash flows on the underlying
 16 assets. Backing securitization will then funnel those through
 17 the waterfall and distribute those cash -- those underlying
 18 cash flows among the various class of securities subject to the
 19 payment priorities and any other special rules such as triggers
 20 things which will otherwise change paying priority over time.
 21 Q What information did you glean with respect to this
 22 case from Intex?
 23 A Just the initial balances and thus the recalculation
 24 of the initial percentage interest of each of the B1 through B5
 25 securities in the aggregate as well as the Class A securities,
 26 the senior securities in each transaction, and then finally the

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1 Matthew - Direct - Rollin
 2 amount and timing of write downs of allocations of realized
 3 losses among the B1 through B5 certificates in the two deals.
 4 Q Did you -- do you know when the B1 through 5
 5 certificates were fully written down?
 6 A Yes.
 7 Q For the Chase 2007 A3 deal?
 8 A Yes. I don't want to confuse the two. I believe that
 9 was the one that was in month 39. The other one was in month
 10 44.
 11 THE COURT: What does that mean?
 12 THE WITNESS: So, looking -- sorry. When we
 13 project out at the time we're starting a projection.
 14 So, in this case as of the initial, the closing
 15 date of each securitization, the first payment date would
 16 be with month one, month two and so on. So, the 39th
 17 payment date of that transaction or the 44th in the case
 18 of the S6 deal.
 19 THE COURT: So, can you tell me when that was
 20 for 2007 A3 and for 2007 S6?
 21 THE WITNESS: A3 I believe was a November
 22 closing. So, the first would have been December of 2007.
 23 So, I believe February of 2010 if I'm not mistaken.
 24 And the other one I don't recall offhand the
 25 actual closing date of the security when I believe it was
 26 the 44th payment.

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1 Matthew - Direct - Rollin
 2 THE COURT: And what is -- is it Intext or
 3 Intex?
 4 THE WITNESS: T-E-X, ending in X.
 5 THE COURT: What is it, is it software?
 6 THE WITNESS: Yes. So, it's a licensed
 7 software. It's the primary tool used by various market
 8 participants from investors, issuers, analysts, securities
 9 underwriters. Not sure if it's used on the trustee side
 10 at all but anyone who is looking to project and determine
 11 the cash flows or the value of a security based upon
 12 certain assumptions that they will provide to Intex,
 13 that's the primary tool they use.
 14 There is a few small competitors to Intex but
 15 they are the predominant, have the largest market share by
 16 a wide margin.
 17 THE COURT: And where did you get the data to
 18 input into Intex?
 19 THE WITNESS: So, actually I didn't do any
 20 projections with Intex. I simply looked at the historical
 21 cash flows to determine when the -- when the securities
 22 were finally written down to zero.
 23 NewOak maintain licenses for various classes of
 24 securities through Intex including residential mortgage
 25 back securities. So, we have access to the software.
 26 THE COURT: What was the purpose for which you

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1 Matthew - Direct - Rollin
 2 used it then that you did not do projections?
 3 THE WITNESS: Was simply to look at the realized
 4 loss experience on those particular -- on those two
 5 particular securitizations and the timing of the realized
 6 losses allocated to each of those classes.
 7 THE COURT: Well, where did the information come
 8 from for that conclusion?
 9 THE WITNESS: Intex maintains -- so, it would
 10 project cash flows forward as to any date including dates
 11 in the past you could ignore which actually happened or
 12 what you could do is query Intex for a given transaction
 13 or series of transactions and they maintain a database of
 14 the actual distributions on every single payment date that
 15 has occurred on every single transaction they've modeled.
 16 THE COURT: Thank you.
 17 Q One of the documents that you did not review was the
 18 PSA, right?
 19 A Correct.
 20 Q Either PSA for either of the W & L trusts, right?
 21 A I did not.
 22 Q Can you explain why you didn't see the need to do
 23 that?
 24 A It was beyond my scope. I was instructed to evaluate
 25 the time of the losses on mortgage loans generally and
 26 specifically those which have material breaches of

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1 Matthew - Direct - Rollin
 2 representations and warranties.
 3 Q Did you review the settlement agreement?
 4 A I did not. I saw -- the only thing I had was
 5 reference to it by virtue of that section of the Sabry report.
 6 Q Why didn't you review the settlement agreement for
 7 purposes of coming to the conclusions that you've come to in
 8 this case?
 9 A It had nothing -- it wouldn't inform my analysis. It
 10 didn't deal with timing of losses on breaches. It simply laid
 11 out a settlement amount was my understanding of it.
 12 Q Well, let's get clear about that. What is your
 13 opinion in this case?
 14 A My opinion is that loans which breach -- have material
 15 breaches of their representations and warranties which
 16 ultimately lead to loss on those default and subsequent loss on
 17 those mortgage loans, that those losses -- that the default,
 18 the cessation of payments will occur substantially earlier on
 19 average than loans which incur loss that do not have material
 20 breaches that the loss was related to some other event and that
 21 after a period of time to finally liquidate that loan, go
 22 through the various stages of foreclosure and sell of the
 23 underlying property, that those losses would also occur
 24 generally earlier than losses on loans which do not have
 25 material breach or whose breaches did not lead to such default.
 26 Q Is there a period of time -- let me make sure I

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1 Matthew - Direct - Rollin
 2 understand what you said.
 3 Is there a period of time between the cessation of
 4 payment by the borrower and the realization of the loss by the
 5 trust?
 6 A Yes. So, generally there are various paths but
 7 generally it follows a process. The first cessation of the
 8 loan would go one month past due depending on the servicer.
 9 Generally at something over two months past due, they would
 10 send out a demand letter and either bring the loan current or
 11 foreclosure proceedings would begin.
 12 Then the loan would go through a foreclosure process
 13 which will vary depending on the state, primarily whether it's
 14 a judicial state or non-judicial state with foreclosure process
 15 being generally significantly longer in a judicial state such
 16 as New York, New Jersey.
 17 Eventually -- general practice is the servicer would
 18 actually repurchase the property out of foreclosure, generally
 19 would not be a third party at that point. They would take it
 20 into inventory, what's called REO, real estate owned and over
 21 time market that generally using standard marketing process,
 22 hire a real estate broker and market that property, either a
 23 loan or sometimes it would be done in bulk to prospective
 24 purchasers and eventually that property would be sold and
 25 liquidation proceeds of that loan would be realized.
 26 Q So, that would explain any gap in time between the

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1 Matthew - Direct - Rollin
 2 cessation of payment by the borrower and the actual realization
 3 of loans?
 4 MS. PATRICK: Objection. Leading.
 5 MR. ROLLIN: I'll rephrase it, your Honor. He
 6 already testified to that.
 7 THE COURT: Just a moment. Please.
 8 Sustained.
 9 MR. ROLLIN: Thank you, your Honor.
 10 Would your Honor like to break?
 11 THE COURT: No. Would you?
 12 We still have another 15 or 20 minutes. As I
 13 said before, given that the court day is so short, I think
 14 we should use the full time.
 15 MR. ROLLIN: That's fine with me, your Honor.
 16 Thank you.
 17 Q Did you prepare -- did you prepare a report in this
 18 case?
 19 A I did.
 20 Q In preparing your report, did you receive assistance
 21 from any other people?
 22 A Sure. There are a couple of different folks in the
 23 New York staff that assisted me in terms of the analysis of the
 24 origination year, loss experience. We have database analyst, a
 25 gentleman by the name of Troy Wood, and then I had two other
 26 individuals assisting me in reviewing the report for clarity

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1 Matthew - Direct - Rollin
 2 and content.
 3 Q Thank you.
 4 In your binder, would you please turn to Exhibit 239.
 5 THE COURT: Do you have it?
 6 THE WITNESS: Yes, sorry.
 7 THE COURT: Do you have it?
 8 MR. ROLLIN: Your Honor, I have another copy if
 9 you would like mine.
 10 THE COURT: Which binder is it in?
 11 MR. ROLLIN: Your Honor, it's in the trustee's
 12 binders. It's a trustee exhibit. It's number 239.
 13 THE COURT: We have it. Thank you.
 14 MR. ROLLIN: Thank you.
 15 Q Mr. Lewis, do you have Exhibit 239?
 16 A I do.
 17 Q Can you tell the Court what 239 is?
 18 A Sure. It's something I was asked to complete at my
 19 deposition by I believe it was counsel for the investors.
 20 I was presented with a series of trustee reports at
 21 each one year anniversary of the closing date of this
 22 transaction and I was asked to fill in columns, first column E
 23 and then based upon the results of column E compute the
 24 percentages in column D.
 25 Q And what does Exhibit 239 -- what did you rely on in
 26 completing the information -- in completing 239?

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1 Matthew - Direct - Rollin
 2 A These seven trustee reports given to me on each of
 3 these one year anniversary dates.
 4 Q Understood. Thank you.
 5 What does Exhibit 239 reflect with respect to the
 6 timing and amount of losses in the Chase 2007 S6 transaction?
 7 A So, it reflects the timing of losses as it was -- it
 8 was done on the same format, the same basis as one of the
 9 exhibits of my report which was to look at these various
 10 vintages, to look at the timing of those losses, the losses at
 11 the end of a given year as a percentage of the total losses
 12 incurred over the first seven years of the transaction.
 13 So, it reflects the percentages obviously summing to a
 14 hundred by the end of year seven reflects the percentages in D
 15 which they asked me to compare to Columns B and C which are
 16 taken from my report.
 17 Q And what with respect to the amount of losses in each
 18 year?
 19 A So, these reflects the dollar amounts of realized
 20 losses. This security -- the B1 through B6 were fully written
 21 down I believe it was month 44, payment month 44 of that
 22 transaction. They represented either two and a half or
 23 2.55 percent.
 24 So, that would indicate that somewhere in the middle
 25 of year three roughly two and a half percent of the original
 26 balance or the cutoff date balance, the closing date balance of

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1 Matthew - Direct - Rollin
 2 the loans that were deposited into that trust, roughly two and
 3 a half percent losses had been incurred.
 4 Q So, does this reflect that in year one there had been
 5 no realized losses recognized by the trust?
 6 A It does.
 7 Q And does that tie back to the testimony you gave a
 8 moment ago concerning the gap between the cessation of payment
 9 by the borrower and the amount of time that it takes to
 10 actually have a realized loss?
 11 MS. PATRICK: Objection, leading.
 12 THE WITNESS: I'll allow it.
 13 A Yeah, I think it fairly permits that you potentially
 14 could see. So, for a loan to realize a loss in the first year
 15 of the transaction, I believe each of these securitizations at
 16 the time as of the cutoff date there were no delinquencies.
 17 So, all the loans were then current on their payments. So, the
 18 first --
 19 THE COURT: You mean the cutoff date for the
 20 closing?
 21 THE WITNESS: So, a given securitization has the
 22 closing date, the date in which you know funds are --
 23 THE COURT: The cutoff date prior to the
 24 closing?
 25 THE WITNESS: Yes, cutoff date prior to the
 26 closing. Typically the closing would be the 30th of the

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1 Matthew - Direct - Rollin
 2 month and the cutoff date would be the first of that
 3 month.
 4 THE COURT: Do you know what the closing date
 5 was for this securitization?
 6 THE WITNESS: I believe it was late 2007 as
 7 well. I know it was November for the A3. I'm not sure
 8 exactly the date for the S6.
 9 THE COURT: Doesn't this chart just concern the
 10 S6?
 11 THE WITNESS: It does.
 12 THE COURT: What is the -- what is meant by 2000
 13 to 2002 vintage average?
 14 THE WITNESS: So, I had the database analyst
 15 pull from a data source called MBS Data. It's a loan
 16 level source of data that is -- source of which is the
 17 monthly trustee -- the loan files that are sent by the
 18 servicer of a given transaction to the trustee also sends
 19 it to MBS Data. They send it to Bloomberg. They send it
 20 to Intex.
 21 MBS Data being one of the reporting agencies or
 22 repositories of this data, they provide subscribers such
 23 as NewOak the ability to access and query loan level
 24 historical performance of each of the loans underlying the
 25 securitization to which they have been provided data. So,
 26 2000 2002 vintage what I did was have the database

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1 Matthew - Direct - Rollin
 2 analysts query the database. I actually had them go all
 3 the way back to --
 4 THE COURT: What does that mean vintage?
 5 THE WITNESS: He goes in and he says, he
 6 actually writes in computer code, says -- go into this
 7 database maintained by MBS Data and retrieve the loan
 8 level -- sorry -- retrieve loss history to date for each
 9 prime securitization and prime being those designated as
 10 prime by Intex as differentiated from sub, sub prime for
 11 example for each of the securitizations deemed prime by
 12 Intex.
 13 So, he has the -- by going into Intex, he can
 14 figure out all of the 2000 issue of prime securitizations.
 15 He then uses those deal names to query the MBS Database
 16 and retrieve the historical loss performance, the dollar
 17 amount of losses for each, on a cumulative basis for each
 18 month from their initial issuance of each 2000 vintage
 19 prime securitization, each 2001, each 2002, and then what
 20 I did was average -- I accumulated each of the 2000
 21 through 2002 and I divided through the losses as of each
 22 year following the issuance of the vintage.
 23 So, as of the end of December 2000, in this case
 24 end of year one, December of 2001 end of year two, I
 25 aggregated the total dollar amount of losses reported in
 26 MBS Data for each of those three vintages. I also summed

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1 Matthew - Direct - Rollin
 2 up those total losses reported through the end of the
 3 seventh year. So, through the end of 2006 and I divided
 4 the aggregate as of the end of each of the -- of December
 5 of each year by the total amount as of the end of December
 6 of 2006 to come up with percentages of each of those first
 7 seven years.
 8 THE COURT: Excuse me.
 9 Do we have a stipulation of counsel as to the
 10 closing dates for the two trusts?
 11 MS. PATRICK: Your Honor, I can tell you what
 12 they are. Under tab 14 S6 in one of the binders they have
 13 the closing date for the S6 securitization was also
 14 November of 2007 and in A3 it was November of 2007.
 15 THE COURT: And do we have a stipulation of
 16 counsel as to when these were written down, when the
 17 certificates were written down?
 18 MS. PATRICK: Your Honor, we do not. We know
 19 that the whole deal, the whole credit support was written
 20 off by 2012 as Ms. Lundberg testified but these tranches
 21 erode from the bottom and there are five subordinate
 22 tranches.
 23 So, W & L has offered no evidence as to when it
 24 purchased relative to when the tranches it owned were
 25 written off. Because there is B5, B4, B3 and it comes up
 26 from the bottom. So, there are five subordinate tranches.

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1 Matthew - Direct - Rollin
 2 THE COURT: You said the whole credit support
 3 was written off by December?
 4 MS. PATRICK: By 2012 is what Ms. Lundberg's
 5 testimony was.
 6 THE COURT: Do you have anything to say in
 7 response to that, Mr. Rollin?
 8 MR. ROLLIN: Your Honor, several things. I
 9 believe that 2012 date includes the M class which is not
 10 one of the certificates owned by W & L.
 11 MS. PATRICK: Correct.
 12 MR. ROLLIN: I do agree with Ms. Patrick that
 13 each class erodes at a different time. So, first the B5,
 14 then the B4. Those dates are I believe available in the
 15 trustee remittance reports that are in Exhibits 243 and
 16 244 but I will double check that and we'll get a
 17 stipulation to your Honor with respect to those matters.
 18 THE COURT: Thank you.
 19 We will break for lunch at this time.
 20 Sir, you may step down.
 21 (Witness excused)
 22 THE COURT: We will resume at 2:15.
 23 MS. PATRICK: Your Honor, may we have an
 24 instruction to the witness concerning conversations with
 25 counsel. I am sorry. We've been doing witness by
 26 affidavit and cross. I had a brain freeze for a moment.

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1 Matthew - Direct - Rollin
 2 Pardon me.
 3 THE COURT: Thank you.
 4 (Lunch recess taken)
 5 (Continued on next page)
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1 Lewis - Direct/Mr. Rollin
 2 A It was -- the main opinion related to the timing of
 3 losses relating for those -- relating to loans for which there
 4 was a material breach of a rep and warranties that lead to that
 5 default.
 6 I used larger sets to compare that to the relative
 7 timing versus vintage that were not expected or were never
 8 alleged to have massive issues of rep and warrant breaches, such
 9 as the 2000, 2002 vintage.
 10 Q With respect to this particular trust, 2007 S 6, was
 11 that one of the trusts that was part of the 2007 cohort for
 12 purposes of your analysis?
 13 A I believe it was. I didn't look at any of the
 14 individual loans, but given that our data set has close to like
 15 95 percent coverage, my expectation -- and Chase was a large
 16 issuer -- my strong expectation is that both of the two Chase
 17 trusts would have been included within that 2007 vintage in
 18 aggregate.
 19 Q What do you mean by 95 percent coverage?
 20 A Sorry. So every once in awhile there is a transaction
 21 for which the servicer, for whatever reason, is not reporting to
 22 one or more of the data repositories, such as MBS Data, or
 23 CoreLogic Loan Performance, or to Bloomberg, or one of the
 24 various sources.
 25 But, again, it is pretty rare. Especially in the prime
 26 space of -- these two trusts were prime credit quality

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1 Lewis - Direct/Mr. Rollin
 2 A F T E R N O O N S E S S I O N
 3 THE COURT: Good afternoon.
 4 Mr. Lewis, will you resume your place in the
 5 witness box.
 6 So, you are still under oath.
 7 You may proceed.
 8 MR. ROLLIN: Thank you.
 9 Q Mr. Lewis, I would like to take you back to exhibit
 10 239, please.
 11 A Okay.
 12 Q The Court asked you some questions about these vintage
 13 2000, 2002, 2007, and I wonder if you might just explain more
 14 generally what the purpose of the exercise was in connection
 15 with your analysis of those two cohorts?
 16 A Sure. The purpose of the analysis was just to
 17 demonstrate the difference in loss in timing. The earlier
 18 losses that I expected to see in a later vintage like 2007, that
 19 had a number of allegations of issues in underwriting and a
 20 number of settlements with respect to -- later to reps and
 21 warranties breaches.
 22 So it was simply to illustrate the different timing of
 23 losses for those securitizations issued in those various years.
 24 Q Was it true that your -- well, was your expert analysis
 25 about the general occurrence of losses or is it focused on
 26 causes solely by breaches of reps and warranties?

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1 Lewis - Direct/Mr. Rollin
 2 mortgages, so I would be very surprised if they were not in
 3 there.
 4 Q Now, with respect to each of the two cohorts, the
 5 earlier vintage and the later vintage, do you expect then there
 6 are potentially hundreds of trusts in the data set that you used
 7 for purposes of your -- the analysis that you gave in your
 8 report?
 9 A Yes. Again, I don't have a count of the individual
 10 ones. But given the size of the data sets, the 2002 had
 11 something like 73 billion original loan amounts and the 2007 had
 12 something like 1.8 trillion original aggregate loan amounts, so
 13 it's very likely that, given the size of an average mortgage,
 14 they are well over 100.
 15 Q And with respect to this particular trust, Chase 2007 S
 16 6 reflected in Exhibit 239, in terms of the timing of the
 17 losses, did it perform more like the earlier vintage trusts?
 18 A It did. As you can see from a comparison of columns B
 19 and D, by the end of the year '4, they were pretty much on top
 20 of each other. However, there is a very big difference in
 21 aggregate amount of loss.
 22 By the end of year '4, you would have 350.3 million
 23 versus an original face. I want to say it was something like
 24 1.2 billion, I believe was the transaction size. So well higher
 25 than what you saw in the 2000, 2002 vintage in terms of the
 26 total amount of losses.

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1 Lewis - Direct/Mr. Rollin
 2 The total loss is three year. In the 2000 to 2002 was
 3 less than .1 percent, it was .06 percent of the original
 4 balances.
 5 Q Does the nominalistic nature with respect to the timing
 6 of losses for the 2007 cohort for this particular trust affect
 7 your bottom line opinion in this case?
 8 A No, because I still -- even if the percentage was
 9 lower, those that occur earlier, I still have a strong opinion
 10 that those are more likely caused by breaches, those that
 11 occurred very early in the life of a transaction, given both the
 12 lag from the time of succession of payments until the loss is
 13 finally incurred.
 14 As well as the fact that in cases of prime mortgages,
 15 even if you had an event, if the borrower losses his job the day
 16 after he gets the loan, most likely they will be able to pay for
 17 a period of time because a typical prime mortgage, the mortgage
 18 underwriter requires them to have at least two months of liquid
 19 reserve. So there's a source of some payments there. And they
 20 typically have some assets that they can turn into cash.
 21 And, these are borrowers who have clean credit
 22 histories and are highly motivated to maintain those. So to the
 23 extent they experience diverse events, it takes longer for them
 24 to default than, say, a sub-prime borrower would.
 25 Q Do you have an opinion about the number of years into a
 26 transaction within which all or substantially all of the breach

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1 Lewis - Direct/Mr. Rollin
 2 related losses are realized?
 3 MS. PATRICK: Objection, there is nothing about
 4 that in his report.
 5 THE COURT: Can you respond to that?
 6 MR. ROLLIN: I can respond to that. I believe it
 7 is part of his opinion.
 8 THE COURT: Well, let's see where it is.
 9 MR. ROLLIN: I am looking for it now.
 10 MS. PATRICK: In the binder that you have, your
 11 Honor, it is Tab 1 in the little black binder.
 12 MR. ROLLIN: Your Honor, I have a reference and I
 13 can provide your Honor the exhibit number that was used for
 14 identification.
 15 THE COURT: Can I have the question pack, please?
 16 (Whereupon, the reporter read back the requested
 17 portion.)
 18 MR. ROLLIN: Your Honor, the reference in his --
 19 there are two paragraphs that are relevant here. First of
 20 all, the exhibit number is RX 328. The paragraph is 18.
 21 And there are references --
 22 THE COURT: RX 328?
 23 MR. ROLLIN: Yes, your Honor.
 24 THE COURT: I'm sorry, and paragraph?
 25 MR. ROLLIN: There are three paragraphs that are
 26 relevant to this question. The first being 18 and the

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1 Lewis - Direct/Mr. Rollin
 2 latter two being 20 and 21.
 3 THE COURT: Off the record.
 4 (Discussion held off the record.)
 5 THE COURT: I have reviewed the expert report, the
 6 objection is overruled.
 7 MS. PATRICK: Your Honor, could I be heard for just
 8 one moment?
 9 THE COURT: You can state your exception.
 10 MS. PATRICK: My exception, your Honor, is that
 11 paragraph 18 in the report states that breaches -- losses on
 12 settlement loans were far more likely to occur in the first
 13 two years of the respective trusts.
 14 This expert offered no opinion in his report or in
 15 his testimony as to what Mr. Rollin asked, which is the
 16 period by which all or substantially all of the rep and
 17 warrant breach related losses are realized. In fact, his
 18 cohort study was limited to a two year period, and
 19 Mr. Rollin is now attempting to have this witness show that
 20 some seven years or something else is the period of time.
 21 Paragraph 18 refers solely to a two year inference
 22 that the witness draws about early payment defaults.
 23 THE COURT: You can cross-examine, I'm adhering to
 24 my ruling.
 25 You can inquire.
 26 MR. ROLLIN: I will do the best I can to repeat

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1 Lewis - Direct/Mr. Rollin
 2 that question. Thank you, your Honor.
 3 BY MR. ROLLIN:
 4 Q Mr. Lewis, what is your opinion about the period of
 5 time within which all or substantially all the breaches of reps
 6 and warranties would occur?
 7 A I would expect the majority of the actual succession of
 8 payments, the default by the borrower on the mortgage to occur
 9 within the first one to two years. And ultimate loss following
 10 the, you know, the timeframe.
 11 So it is going to depend somewhat on the particular
 12 state in which the borrower lives and judicial versus non, and
 13 during -- especially during this period, the slowdown and
 14 foreclosure due to the issues that the trusts and servicer's
 15 had.
 16 That being said, I would expect the majority of them to
 17 be realized, substantially all by the end of the year five, the
 18 ultimate losses, and with the vast majority of those losses
 19 occurring in the first two to four years, ultimate liquidation.
 20 Q And with respect to these two particular trusts, 2007 A
 21 3 and 2007 S 6, do you have an opinion about whether all or
 22 substantially all of the breaches of the losses were suffered at
 23 a period of time prior to them having been written down?
 24 MS. PATRICK: Objection, foundation. The witness
 25 testified that he examined none of the loans in these
 26 trusts.

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1 Lewis - Direct/Mr. Rollin
 2 THE COURT: Can you lay a foundation, please?
 3 Q Did you --
 4 MR. ROLLIN: I will, your Honor, yes. Thank you.
 5 Q Did you particularly study the Chase 2007 S 6 and Chase
 6 2007 A 3 transactions to make an assessment of the likelihood
 7 that losses caused by reps and warranties occurred during a
 8 period of time before they were all written down, the W & L
 9 certificates were written down?
 10 A I looked at the realized loss history and was able to
 11 see that the aggregate of the certificates owned by W & L, the B
 12 1 through B 5, which in each case aggregated to roughly
 13 two-and-a-half percent of the original balance, that in each
 14 case one was slightly more than three years out; 39 months and
 15 the other about three-and-a-half years; 44 months, time it took
 16 to fully realize, to have losses which fully wiped out those
 17 classes through their write-downs due to realized losses.
 18 Given that timeframe, I would expect that a majority --
 19 given the timeframe of the early occurrence of that and the lags
 20 that it takes to liquidate a loan, I would expect that the
 21 majority of those write-downs they incurred were related to
 22 breaches of reps and warranties.
 23 THE COURT: You mentioned having looked at loss
 24 allocations through time, I believe, this morning.
 25 THE WITNESS: Yes.
 26 THE COURT: Can you state in more detail what the

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1 Lewis - Direct/Mr. Rollin
 2 information was that you looked at and where it came from?
 3 THE WITNESS: Sure. So I looked at -- Intes has a
 4 function, has a screen with an Intes, it is called tranche
 5 history, where you can pull the historical payments, balance
 6 declines and realize losses incurred by given tranche, in
 7 any securitization which they have modelled, and so I simply
 8 pulled that and retrieved that tranche history for each of
 9 the certificates in question.
 10 THE COURT: And did you also say that you reviewed
 11 information -- excuse me, that you reviewed other
 12 information such as information from Faten Sabry?
 13 THE WITNESS: The only thing I looked at there was
 14 to look at the total amount of the settlement that had been
 15 allocated to each of the two trusts. It was a way -- it
 16 was, from my view, a proxy for -- somewhat of a proxy for
 17 the amount per the settlement that the selling party likely
 18 conceded was related to breaches of reps and warranties,
 19 breaches of those two trusts.
 20 THE COURT: And what else did you look at with
 21 respect to these two trusts in particular, if anything?
 22 THE WITNESS: That was it, just the information
 23 from Intes mas well as the Sabry report.
 24 MS. PATRICK: I move to strike the last answer. He
 25 has, therefore, established that he has not looked at any of
 26 the individual loans in this trust to identify which of them

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1 Lewis - Direct/Mr. Rollin
 2 breached a representation of warranty or when certificate
 3 holders would have borne losses on a breaching loan, that
 4 was the nature of my objection.
 5 And the witness just established that he did not
 6 look at any, any individual loan to identify a breach, nor
 7 can he testify when breaches on ineligible loans were
 8 incurred.
 9 MR. ROLLIN: Your Honor, if I may respond to that.
 10 THE COURT: I'll let you respond in a louder
 11 volume, please.
 12 MR. ROLLIN: I would be happy to, your Honor. This
 13 gentleman is offering an expert opinion based upon his
 14 experience reviewing loan files for over a decade and
 15 monitoring performance of loan files and transactions for
 16 over a decade.
 17 He has direct personal experience with the
 18 re-underwriting process to put that process -- he is the
 19 only expert that appeared in this case that has that kind of
 20 experience, and based on that experience he is rendering the
 21 opinion that losses arising from breaches of representations
 22 and warranties occur early in the life of the trust.
 23 And that is entirely consistent with the evidence
 24 provided and the opinion offered by Professor Fischel; in
 25 particular, with respect to his discussion of early payment
 26 default.

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1 Lewis - Direct/Mr. Rollin
 2 Now, he largely confined it only to the first year.
 3 There could be some breaches in later years, and it would be
 4 logical that losses would decrease over time because they
 5 are weighted toward the earlier years.
 6 That is the same opinion Mr. Lewis is offering; and
 7 it's an uncontested fact and opinion in this case.
 8 THE COURT: Do you wish to respond to that, Miss
 9 Patrick?
 10 MS. PATRICK: Yes, your Honor. It is one thing for
 11 the witness to say it is his general understanding that
 12 losses are associated with representations and warranties,
 13 typically occur within the first two years of the trust,
 14 that is stated in his report at paragraph 18.
 15 But the witness testified, and his report has made
 16 clear, he looked at not a single one of the loans in this
 17 trust. And, therefore, it is improper and surprise to ask
 18 this witness to opine now that the losses that were suffered
 19 on these trusts resulted from reps and warranty violations
 20 as opposed to something else.
 21 And so we move to strike, that opinion is not in
 22 the report and the witness should not be so testifying.
 23 MR. ROLLIN: I believe that opinion is --
 24 THE COURT: Excuse me. The motion is denied, the
 25 testimony will stand. On cross-examination you will have
 26 the opportunity to explore the significance of not having

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1 Lewis - Direct/Mr. Rollin
 2 reviewed individual loans.
 3 MR. ROLLIN: Thank you, your Honor.
 4 Q I would like to make sure we are clear about the source
 5 of information that feeds into Intes. Will you please tell us
 6 where that information comes from?
 7 A Sure. Any of the historical loss and payment
 8 experience that I looked at comes to them directly from the
 9 servicers in each underlying transaction, they submit a monthly
 10 tape. It may actually come from the trustee, but ultimately the
 11 source of that is the servicer. And that same tape is submitted
 12 to Intes. It is typically submitted to Bloomberg and it is
 13 typically also submitted to some third-party data repository
 14 such as MBS Data or their larger competition, CoreLogic Loan
 15 Performance.
 16 THE COURT: Were there larger --
 17 THE WITNESS: Competitions? CoreLogic is the
 18 dominant provider in the industry, but MBS Data is a
 19 competitor to them.
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1 Lewis - Direct - Rollin
 2 T8.
 3 Q Mr. Lewis, do you know whether loan files were
 4 available for review with respect to the W & L trusts with
 5 respect to anybody other than the trustee for JP Morgan?
 6 A I have no idea.
 7 Q Is it your experience that certificateholders
 8 typically have access to the loan files in order to perform Re
 9 underwriting?
 10 A No, a typical -- my experience from Swiss Re pursuing
 11 the put backs is most -- I looked at several before we decided
 12 on the loan. We looked at -- we looked at several pooling
 13 service agreements and found universally that the trustee was
 14 not bound to release files unless at least 25 percent in
 15 aggregate in certificateholder interest asked for those files.
 16 Q In a case where you didn't have access to loan files,
 17 are there other ways to try to go about doing an analysis of
 18 when losses from breach of rep and warranties are realized?
 19 A On a specific loan, no, you didn't have that ability
 20 to do it. It's much more by inference than the fact that it's
 21 very rare for a loan that's represented to go down very
 22 quickly.
 23 Q And that's based on your experience?
 24 A Yes.
 25 THE COURT: What does that mean?
 26 THE WITNESS: Meaning -- as represented, meaning

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1 Lewis - Direct - Rollin
 2 the characteristics of that loan that are per the
 3 underwriting. And I set forth from the schedules to the
 4 and prospectus and the pooling and servicing agreements
 5 characteristics indicated credit worthiness such as the
 6 debt to income ratios, loan to value ratios, credit scores
 7 and the like. If those are underwritten and disclosed and
 8 accurately disclosed, unless you are talking about
 9 programs that don't really exist anymore, there used to be
 10 125 percent loan to value program. There you might expect
 11 someone to not pay right away, could happen, but on loans
 12 that are a hundred percent or less, you would not expect
 13 that to happen or if there was an event that caused loss,
 14 it wouldn't manifest itself very very early in the length.
 15 Q Let me see if I can summarize that in fewer words.
 16 A Sure.
 17 Q Is it your testimony or opinion that loans that are
 18 properly underwritten and properly disclosed with respect to
 19 their quality and characteristics were unlikely to default
 20 early?
 21 A Yes. They may stop paying after some period of time
 22 but the combination of that plus the lags, even in a
 23 non-judicial state, it would be rare to see those loans go into
 24 loss within the first couple years of the trust.
 25 THE COURT: So, when you used the word just now
 26 loans as represented, you were referring to the

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1 Lewis - Cross - Patrick
 2 representations made with respect to the quality and
 3 characteristics of the loans.
 4 THE WITNESS: Yeah. So that underwritten in
 5 accordance with guidelines and that the general rep that
 6 the information in the Schedule A to the pooling and
 7 servicing agreement is true and accurate.
 8 MR. ROLLIN: Thank you, your Honor.
 9 I have no further questions for this witness.
 10 THE COURT: I am sorry.
 11 No further witness?
 12 MR. ROLLIN: No further questions, yes, your
 13 Honor.
 14 MS. PATRICK: May I proceed, your Honor?
 15 THE COURT: Who will be cross-examining
 16 Mr. Lewis, just Ms. Patrick or also Mr. Ingber?
 17 MR. INGBER: I think it will be just Ms.
 18 Patrick. We reserve our right to follow up if necessary
 19 but we're not expecting that that's going to be necessary.
 20 THE COURT: Certainly.
 21 MR. INGBER: Thank you.
 22 CROSS-EXAMINATION
 23 BY MS. PATRICK:
 24 Q Good afternoon, Mr. Lewis.
 25 A Good afternoon.
 26 Q My name is Kathy Patrick. I represent TruPro, Black

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1 Lewis - Cross - Patrick
 2 Rock and other institutional investors who are the proponents
 3 of the settlement.
 4 A Yes.
 5 Q My colleague Mr. Sheeren took your deposition in this
 6 case; is that right?
 7 A Yes, it is.
 8 Q So that we can all follow along together, up there
 9 somewhere should be a small black binder. In that binder are
 10 the exhibits we expect to use together with a copy of your
 11 deposition. All right.
 12 A Okay.
 13 Q So, let's start with your report.
 14 Can you identify under tab one Exhibit 238 which is
 15 the report that you rendered in this case?
 16 A Without reading every word, yes, it appears to be.
 17 Q And if I could direct your attention to page five of
 18 the report.
 19 Now, you were retained as I understand to do a
 20 relatively high level analysis. Is that fair?
 21 MR. ROLLIN: Objection. Vague.
 22 THE COURT: Well, maybe Mr. Lewis knows what is
 23 a high level analysis and if he does, he can answer and
 24 then someone can explain it to me.
 25 A I was retained to deliver an opinion generally with
 26 respect to timing of losses on loans with material -- with

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1 Lewis - Cross - Patrick
 2 losses relating to material rep and warranties.
 3 Q And to that end, you had prepared the report
 4 indicating that at paragraph 17 it was your view the loss on
 5 RMBS trust issued in 2007 occurred earlier than those issued in
 6 2000; is that right?
 7 A It's both my opinion, and as set forth in the table on
 8 the following page, you can see the relative differences in
 9 percentage of loss of timing of those losses for the 2007
 10 relative to the 2000 to 2002.
 11 THE COURT: Excuse me. I am sorry, Ms. Patrick.
 12 Why do you call them vintage trusts?
 13 Is it just a way of referring to a year or is it
 14 something else?
 15 THE WITNESS: Yes, vintage, it could be any
 16 period of time but in this case I've used annual vintages,
 17 yes. It's a standard kind of industry term to separate
 18 the origination timing of one's trust relative to another.
 19 THE COURT: Thank you.
 20 Q Vintage refers to the year in which the securitization
 21 was issued; is that right?
 22 A Correct.
 23 Q And your table on page 66 is a comparison of a
 24 population of prime trust that were issued in 2000 to 2002; is
 25 that right?
 26 A Yes.

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1 Lewis - Cross - Patrick
 2 Q And a comparison separately of populations that
 3 were -- of a population that was issued in 2007?
 4 A Yes.
 5 Q All of which were prime trusts as you understood it?
 6 A Yes.
 7 Q But you choose the 2000 to 2007 vintage because it was
 8 your judgment that that was a period of time that predated
 9 significant rep and warranty violations based on your
 10 experience?
 11 A Based on my experience and the absence of litigation
 12 relating to that timeframe, yes.
 13 Q So, you were using the 2000 to 2002 vintage to
 14 illustrate what a trust that didn't have very many rep and
 15 warranty violations would have done in terms of realizing
 16 losses in the first one or two years?
 17 A Well, the timing of losses over the first seven years.
 18 So, one or two is also you know one of the data points there
 19 but, yes, it would be expected -- any one securitization even
 20 if not alleged is likely to bent some level of breaches of reps
 21 and warrants but I would expect them to be very sparse in the
 22 2000 2002 vintages.
 23 Q So, what you looked at in 2000 and 2002 to demonstrate
 24 was in a population that had very sparse rep and warranty
 25 violations how did that compare to a broad population of 2007
 26 vintage trusts, correct?

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1 Lewis - Cross - Patrick
 2 A Yes.
 3 Q And it was your opinion as stated at paragraph 18 that
 4 loans, defaults on loans with material breaches which led to
 5 such default generally occur early in the life of the loans.
 6 Far more likely in the first two years of the trust. Is that
 7 your opinion?
 8 A Yes, well the default. I should have been clearer on
 9 the second sentence. The default is likely to occur that led
 10 to the loss. The loss timing ultimately could be extended a
 11 little bit beyond there because of these lags but the defaults
 12 would occur within the first two years.
 13 Q Okay. So, to press the point, defaults from rep and
 14 warranty violations in your experience are likely to occur in
 15 the first two years of a securitization?
 16 A The cessation of payments, yes, the default by the
 17 borrower.
 18 Q But the realization of losses on those trusts on those
 19 loans could happen later?
 20 A They could happen. You know, given a loan could go
 21 out as a -- out as many as four years but on average given the
 22 preponderance of default within the first two, I would expect
 23 those losses to occur, the vast majority of those from years
 24 two to four of the securitization.
 25 Q But there is no reference in your report to years two
 26 to four of the securitization other than this chart; is that

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1 Lewis - Cross - Patrick
 2 right?
 3 A I have to look again exactly at the time. I don't
 4 think I used exactly those terms but I used early years.
 5 Q In fact, in paragraph 18 you said losses were far more
 6 likely to occur in the first two years of the respective
 7 trusts, right?
 8 That's what you said?
 9 A I did.
 10 Q And this cohort population that you developed --
 11 THE COURT: Excuse me.
 12 Are you refining your statement now in paragraph
 13 18 to say that defaults as opposed to losses were far more
 14 likely to occur in the first two years?
 15 THE WITNESS: Yes, I should have been clear
 16 about that.
 17 Q And in fact, Mr. Lewis, if we look at the chart that
 18 you did on paragraph six, you make no study at all of when
 19 cessation of payment occurred for 2007 trust versus 2000 to
 20 2002; isn't that right?
 21 A No, because you don't -- you don't know exactly when
 22 you look in the aggregate you have a loss. So, you don't
 23 necessarily have the default associated with each loss but
 24 given average lags, you can make strong inferences to when the
 25 defaults would have occurred.
 26 MS. PATRICK: Objection. Non-responsive.

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1 Lewis - Cross - Patrick
 2 Q Mr. Lewis, I'll ask my question again.
 3 THE COURT: Do you want me to strike that
 4 testimony?
 5 MS. PATRICK: Move to strike it.
 6 THE COURT: And have it re-elicited on redirect
 7 examination?
 8 MS. PATRICK: No, your Honor, I take the point.
 9 Q Mr. Lewis, I think my question was relatively clear.
 10 Let me try again.
 11 The chart below paragraph 24 refers to the cumulative
 12 percentage of the total loss realized over each cohort,
 13 correct?
 14 A Yes.
 15 Q It does not compile any data concerning when the
 16 default in payment occurred, true?
 17 A True.
 18 Q And you understand, do you not, that you could have
 19 done this comparison chart for the 2007 vintage by actually
 20 looking at the loss realization percentage for the two W & L
 21 trusts. You could have done that analysis?
 22 A Could I have? Sure.
 23 Q And in fact, you did that analysis in your deposition;
 24 isn't that right?
 25 A Yes.
 26 Q And that analysis, if you turn to tab three, is

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1 Lewis - Cross - Patrick
 2 Trustee's Exhibit 239 for the S6 trust, right?
 3 A Yes.
 4 Q And that analysis for the S6 trust demonstrates that
 5 in year one the loss realization in the S6 trust was lower than
 6 your 2000 to 2002 vintage, correct?
 7 A Immaterially so. Zero versus one. There was hardly
 8 either --
 9 Q Not out of line with that expectation at all?
 10 A Right. I wouldn't expect very few losses to have
 11 surfaced in the first year given lags.
 12 Q Your analysis in paragraph 18 concerned two years of
 13 experience what you called early payment defaults, right?
 14 A I don't use that term but that's when it -- over the
 15 time of which I would expect a breach loan to have defaulted to
 16 stop paying.
 17 Q Okay. Defaults within the first two years is what you
 18 expect, right?
 19 A Yes, for the majority, the vast majority of them.
 20 Q Okay. So, at least in year one the experience of the
 21 S6 trust was marginally better than the experience of the 2000
 22 to 2002 vintage trust. One you said would have infrequent rep
 23 and warranties violations?
 24 A Again, it's a 1 percent difference and in each case de
 25 minimus. That 1 percent I don't know exactly -- actually, I do
 26 know. By year seven that hundred percent represents

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1 Lewis - Cross - Patrick
 2 .06 percent of the balance, the cutoff date balance of those
 3 loans. So, one over -- so .0006 percent. So, it's literally
 4 something like 40 odd thousand dollars if I recall.
 5 Q The answer to my question, that the experience of
 6 realized losses in the first year of the S6 trust was
 7 commensurate with the experience of losses in 2000 to 2002
 8 vintage trusts?
 9 A Of losses, yes.
 10 Q Okay. And as to year two, is it also the case that
 11 you determined that the realization of losses for the S6 trust
 12 was lower again than the 2000 to 2002 vintage?
 13 A The relative timing was less. The amount was many,
 14 many multiples of that 4.6 million.
 15 Q Correct. But your paragraph 24 chart in your report
 16 was the percentage of -- was based on the percentage of losses
 17 realized at particular dates, right?
 18 A Yes.
 19 Q And for the S6 trusts, the percentage of loss realized
 20 was lower than the similar percentage of loss realized in 2000
 21 to 2006 vintage trust, true?
 22 A Yes.
 23 Q And also lower than a comparable cohort of 2007
 24 vintage trusts, true?
 25 A Yes.
 26 Q And you did not do a similar analysis for the A3

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1 Lewis - Cross - Patrick
 2 trust, did you?
 3 A No.
 4 Q So, as you sit here today, you cannot tell the Court
 5 whether the A3 trust realized losses at a rate similar to 2000
 6 to 2002, more rapid than or not?
 7 A What I can say is the magnitude is much greater. That
 8 while the pace in terms of the relative portion of the first
 9 year, seven of losses is less given the massive many, many
 10 multiples times 79 million by year seven, I can say that while
 11 the relative portion of those was less, it's against such a big
 12 denominator, 79 million that we still have -- that's one of the
 13 reasons that the percentages are less.
 14 It's the vintage -- the particular transaction
 15 performed so much worse than the others that even with a large
 16 dollar amount of losses over those earlier periods it's going
 17 to be a lesser percentage.
 18 Q Mr. Lewis, would you turn to tab four please. This is
 19 Exhibit 376 in evidence which is a remittance report for the A3
 20 trust, the trust we were just asking about. You see that?
 21 A Yes.
 22 Q And would you turn to the first page please?
 23 THE COURT: Can I just stop you for a moment.
 24 What about the other documents that we've been looking at,
 25 the report itself, has that been marked into evidence on
 26 consent?

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1 Lewis - Cross - Patrick
 2 MS. PATRICK: It has not.
 3 THE COURT: It has not. And the chart Exhibit
 4 239, has that been marked into evidence?
 5 MS. PATRICK: It has not but I will offer
 6 Exhibit 239.
 7 THE COURT: So, now we're doing -- are you
 8 offering it now?
 9 MS. PATRICK: Yes.
 10 THE COURT: Is there any objection?
 11 MR. ROLLIN: No objection, your Honor. I
 12 believe it should be read -- it needs to be read in
 13 conjunction with 240 and I suggest that go as well, the
 14 expert report -- I am sorry, 238.
 15 MS. PATRICK: The expert report he's talking
 16 about is 238.
 17 THE COURT: I thought I just heard 240.
 18 MR. ROLLIN: I'll clarify.
 19 THE COURT: Let's do this later then. We'll get
 20 that straightened out.
 21 MR. ROLLIN: Thank you.
 22 Q Mr. Lewis, looking at the remittance report for the
 23 2007 A3 trust on page 1, do you see there that the cumulative
 24 realized loss on that trust is \$46.7 million as of
 25 November 2014?
 26 THE COURT: Where are we looking?

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1 Lewis - Cross - Patrick
 2 MS. PATRICK: I am looking in the blue box next
 3 to total in the right-hand column that says cumulative
 4 realized loss.
 5 Q Do you see that?
 6 A Yes.
 7 Q Do you see there the number is \$46,796,000?
 8 A It's little hard to read but that's what it looks
 9 like.
 10 Q Is that larger or smaller than the losses in the S6
 11 trust?
 12 A It is a lesser amount. It's also a smaller number
 13 of -- smaller balance of loans. I think this was 790 million,
 14 roughly versus about 1.2 billion in the other trust.
 15 Q Mr. Lewis, would you now turn to Exhibit 377 which
 16 counsel have agreed that is under tab five?
 17 THE COURT: Before we do that, what is the last
 18 document 376, what is your understanding of what that
 19 document is, Mr. Lewis?
 20 MS. PATRICK: Your Honor, I can clarify if you
 21 like.
 22 THE WITNESS: This is a monthly remittance
 23 report or trustee report.
 24 Q What is a remittance report, Mr. Lewis?
 25 A It sets forth the underlying activity, payments,
 26 losses, balances of the loans underlying the trust as well as

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1 Lewis - Cross - Patrick
 2 the application of those payments on the certificates in the
 3 trust.
 4 Q And it accumulates on a monthly basis the experience
 5 of the trust. So, it's a snapshot each month of the
 6 performance of the trust, right?
 7 A Yes. There would be both a typical report. I didn't
 8 give you this entire report but a typical report of it would
 9 have a portion of it representing the current months and a
 10 portion of it representing an accumulation.
 11 Q If we go back for one more moment to 376 page 1, you
 12 see there that this reports cumulative losses on that trust for
 13 that period, right?
 14 A Yes.
 15 Q And this is the kind of report that you used in your
 16 deposition to prepare the chart marked as a Trustee Exhibit
 17 239, correct?
 18 A That's that table, yes.
 19 Q Yes. All right. So, would you -- do you have a pen,
 20 sir?
 21 A I don't.
 22 Q You do or you do not?
 23 A I do not. Thanks.
 24 MS. PATRICK: May I hand the witness a piece of
 25 paper, your Honor?
 26 THE COURT: Let's have this piece of paper

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1 Lewis - Cross - Patrick
 2 marked with the next trustee number for identification or
 3 letter. I'm not sure which you decided to use.
 4 MS. PATRICK: Yes, that piece of paper will be
 5 Trustee Petitioner Exhibit 381 -- 388.
 6 Petitioner's 388.
 7 (Trustee Petitioner Exhibit 388
 8 marked for identification)
 9 Q All right. So, Mr. Lewis, would you note on the paper
 10 the cumulative loss number from Exhibit 376 of 46,796,000.
 11 Would you now turn to Exhibit 377 which is tab five in
 12 your notebook and turn please to page 10.
 13 Do you see there at the top of the page the cumulative
 14 realized loss for that trust as of one year after issuance is
 15 \$55,619?
 16 A I see that.
 17 Q Would you write down year one 55,619.
 18 Can we agree that the rough math of that is .1 -- the
 19 .001 percent, that is 1/10th of 1 percent. 55,000 over
 20 46 million is about a tenth of a percent, right?
 21 MR. ROLLIN: Your Honor, I object. If he's
 22 going to be asked to do math, then he should have an
 23 opportunity to take his time and use a calculator if
 24 necessary.
 25 THE COURT: That's fine.
 26 MS. PATRICK: I will be happy to hand him a

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1 Lewis - Cross - Patrick
 2 calculator.
 3 THE COURT: Excuse me. Do you have a calculator
 4 with you, Mr. Lewis?
 5 THE WITNESS: No, I do not.
 6 THE COURT: Do you have a calculator that you
 7 would like to hand up?
 8 MR. ROLLIN: It's on my phone if that's okay,
 9 your Honor.
 10 THE COURT: Would you prefer or would you accept
 11 Ms. Patrick's calculator?
 12 MR. ROLLIN: That would be fine.
 13 MS. PATRICK: My calculator would be a phone as
 14 well. Let me grab it. Excuse me.
 15 THE COURT: We have one but it would tell you
 16 too much about the court technology.
 17 MS. PATRICK: If you would give me just a
 18 moment, your Honor, I have to put in my super secret
 19 password to open my phone.
 20 There is a calculator.
 21 Q Mr. Lewis, could you please calculate what percentage
 22 of the total losses as of November 2014 were realized in the
 23 first year of the life of the A3 trust?
 24 A It's approximately .12 percent.
 25 Q All right. And would you write down .12 percent
 26 please year one.

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1 Lewis - Cross - Patrick
 2 Now, would you look at exhibit under tab six. The
 3 exhibit is 378?
 4 THE COURT: Excuse me.
 5 Mr. Lewis, as you understand it, are these also
 6 remittance reports or are they something else?
 7 THE WITNESS: No, they are also.
 8 MS. PATRICK: I am sorry, your Honor.
 9 Q And using the remittance report for 2009, Mr. Lewis,
 10 could you write down the cumulative realized losses as of 2009?
 11 A (Witness indicating)
 12 Q Would you calculate that as a percentage of the total
 13 realized losses as of 2009 -- of the lifetime losses?
 14 A I am sorry. I get 15.9 percent.
 15 Q Would you write down please 15.9 percent as of year
 16 two.
 17 Now please turn back to your report and looking at
 18 paragraph 24 which is Exhibit 238 under tab one, you recorded
 19 the percentage loss realization at the end of year one for the
 20 2000 to 2002 vintage as 1 percent?
 21 A Yes.
 22 (Continued on next page)
 23
 24
 25
 26

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1 Lewis - Cross/Ms. Patrick
 2 Q And do you agree that as matter of the math, the
 3 percentage realization rate in the S 6 trust was lower?
 4 A As a percentage of the first seven years, yes.
 5 Q And it was lower, as well, than it was in year two,
 6 even compared to the 2007 vintage; do you see that?
 7 A Yes.
 8 Q It was roughly a comparable rate of realization; do you
 9 agree?
 10 A It was slightly higher, about two percent higher than
 11 the 2007 vintage.
 12 Q And your opinion in this case was based on the
 13 differential between the percentage loss realization rate
 14 between 2000 to 2002 vintage trust and 2007 vintage trust,
 15 correct?
 16 MR. ROLLIN: Objection, it characterizes the scope
 17 of his opinion and basis.
 18 THE COURT: Overruled, you may answer.
 19 A It was one of the things I considered. My opinion is
 20 based on my understanding of -- from reviewing remittance
 21 reports, from putting back loans when I was at Swiss Re, and
 22 from understanding the delays in the process from default to
 23 liquidation. So this was just an illustration to support that.
 24 Q Let me refine the question. The percentage realization
 25 calculation you presented at paragraph 24 --
 26 A Yes.

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Lewis - Cross/Ms. Patrick

1 Q -- was an analysis of the percentage of losses realized
 2 in trusts at each year for each of the two cohorts; correct?
 3 A Yes.
 4 Q You did not perform that analysis for the A 3 trust?
 5 A No.
 6 Q You did not perform that analysis for the S 6 trust?
 7 A I did not.
 8 Q But you now acknowledge that in the first year, the
 9 experience of the A 3 and S 6 trusts were similar to the 2000
 10 cohort, true?
 11 A As was the 2007, they're in all cases negligible.
 12 Q In all cases the differences are negligible; right?
 13 A The 2007, as well, were relative to 2000.
 14 Q Thank you.
 15 Back on your experience. You do have experience with
 16 repurchase claims as you've noted, true?
 17 A Yes.
 18 Q And you are generally aware that one aspect of such
 19 claims is reviewing the files to identify defects to give the
 20 seller notice of the defects; do you understand that?
 21 A Yes.
 22 Q Are you aware of any notice of a defect given on any
 23 loans in the A 3 trust?
 24 A No, it is beyond the scope of my report.
 25 Q And no knowledge of any notice given on the S 6 trust,
 26

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Lewis - Cross/Ms. Patrick

1 either?
 2 A No, again, beyond the scope.
 3 Q You are not here opining that any particular loss in
 4 these trusts were caused by a rep and warranty defect?
 5 A I'm not making any representations -- any opinion with
 6 respect to individual loans. My strong inference, based upon a
 7 settlement amount, is they wouldn't have settled unless they
 8 agreed that the certain amount was related to rep and warrant
 9 violations.
 10 MS. PATRICK: Objection, move to strike.
 11 Q Your opinion here does not identify a single loan in
 12 these trusts that was ineligible or violated a rep and warranty;
 13 does it?
 14 A No, because my opinion was not intended to address
 15 that. It addressed the timing of losses generally with respect
 16 to loans breaching.
 17 Q And you are not here to identify for the Court which,
 18 if any, certificate holder in these trusts suffered a loss on an
 19 ineligible loan, true?
 20 A On any individual loan, no.
 21 Q Okay. And you could have determined from your
 22 expertise whether W & L bore losses in these trusts, right?
 23 A I know the losses on the certificates and the timing of
 24 those losses, yes.
 25 Q But you do not know whether W & L owned them at the
 26

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Lewis - Cross/Ms. Patrick

1 time?
 2 A I do not, it was beyond the scope.
 3 Q Nor do you know whether W & L suffered any losses,
 4 right?
 5 A Again, my scope is limited to opining on the timing of
 6 losses with respect to breached loans.
 7 Q And with regard to your issue of reviewing loan files,
 8 did anyone from W & L make you aware that over 200,000 loan
 9 files had been made available to the experts in this case?
 10 A No, I was not aware of that. Again, outside the scope.
 11 Q There are -- you would agree, five subordinate tranches
 12 in each of these trusts; is that right?
 13 A They own five, is my understanding. There was a sixth
 14 in each case, an M or M 1, Double A class above them.
 15 Q Okay. Just so we understand, so we're communicating,
 16 the A holders sit at the top of the waterfall; is that your
 17 understanding?
 18 A Yes.
 19 Q Then the M holders, called the mezzanine class, sit
 20 below them, right?
 21 A Yes.
 22 Q And then in order there are B 1, B 2, B 3, B 4 and B 5?
 23 A In order of seniority, yes.
 24 Q In order of seniority. And what that means,
 25 importantly, is because they are an order of seniority, you
 26

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Lewis - Cross/Ms. Patrick

1 understand from your experience that they bear losses from the
 2 bottom up; true?
 3 MR. ROLLIN: Objection, it calls for a legal
 4 conclusion. This is a reading of the PSA's.
 5 MS. PATRICK: No, it is an --
 6 THE COURT: Overruled, you may answer.
 7 A In general, losses that are allocated as a realized
 8 loss are -- would go from the bottom up.
 9 Q Okay. And because they would go from the bottom --
 10 strike that.
 11 Look at your opinion at paragraph 20. You see there
 12 that the certificates purchased by W & L were fully written down
 13 in months 39 and 44 of Chase 2007 A 3 and S 6 respectively? Do
 14 you see that?
 15 A Yes.
 16 Q And what that means for the A 3 trust is that the last
 17 loss bearing tranche, meaning the B 1 at the top, was
 18 extinguished by losses in the 39th month of that trust?
 19 A Correct.
 20 Q Which means in that 39th month -- I think you testified
 21 to Mr. Rollin would be sometime around November -- I'm sorry,
 22 February of 2010?
 23 A '11, I was off a year. My math is bad.
 24 THE COURT: For which trust is that?
 25 THE WITNESS: 2007 A 3.
 26

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1 Lewis - Cross/Ms. Patrick
 2 Q 2007 A 3 would be February of 2011?
 3 A Yes.
 4 Q When the top tranche was written off?
 5 A Correct.
 6 Q Which means that all the other tranches had been
 7 written off earlier, right?
 8 A Yes.
 9 Q They eroded up to the B 1, right?
 10 A Yes.
 11 Q And the same would be true that as to the S 6; the
 12 other more junior tranches, B 2 to B 6, had been written off
 13 entirely before the B 1 was finally written off in month 44?
 14 A Yeah, with just a clarification. I believe it only
 15 went down to B 5. But, yes, all the classes below B 1 would
 16 have been written down first.
 17 Q And you did not determine whether W & L owned those
 18 particular certificates 1 through 5 when they were written off?
 19 A I don't know dates of purchase, no. It was outside the
 20 scope.
 21 Q But you did indicate in your opinion at paragraph 21,
 22 that all -- or a significant portion of the losses on the
 23 settlement loans in the A 3 and S 6 trusts were borne by the
 24 certificates purchased by W & L; do you see that?
 25 A Yes.
 26 Q But you're not testifying that W & L bore them; are

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1 Lewis - Cross/Ms. Patrick
 2 you?
 3 A No, I'm testifying that the certificates, the B 1
 4 through 5, were the ones that bore the brunt of the losses
 5 relating to repurchases.
 6 Q I believe you told Mr. Rollin that you have not read
 7 the Settlement Agreement?
 8 A Yes.
 9 Q But you do understand that the settlement covers all of
 10 the loans in those trusts, right?
 11 A From the testimony here. Again, I haven't read it, but
 12 typically settlement releases every loan.
 13 Q Every loan. Although you didn't put it in your report,
 14 do you now know what percentage of the losses in the A 3 trust
 15 were borne by the senior holders?
 16 A I remember something at deposition, but I couldn't -- I
 17 couldn't tell you the percentage. But given that they are
 18 outstanding much longer and they are much, much larger in size,
 19 the class A certificates in each transaction was 96 percent, so
 20 roughly 45 times as large as the aggregate of the B 1 through 5.
 21 So I would expect them, if losses continue, they are going to
 22 bear a lot more in aggregate, but it is going to be a lot less
 23 percentage of what they owned.
 24 Q Will you look at your deposition at page 142, it is in
 25 the inside folder. See if that refreshes your recollection as
 26 to the amount of losses.

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1 Lewis - Cross/Ms. Patrick
 2 A I'm sorry, 14 --
 3 Q Page 142.
 4 A It must be a different page number.
 5 Q There are four pages per page.
 6 A It starts numbering again, that's why. Okay, I see it.
 7 Q Okay. And you remember that -- directing your
 8 attention first to page 140. Do you see that Mr. Sheeren
 9 directed your attention to the remittance reports for the A 3
 10 trust at line 16?
 11 A Sorry, I'm trying to find it.
 12 THE COURT: Counselor, you can step up and --
 13 MS. PATRICK: Fair enough.
 14 A I see it now. Mr. Lewis, I want to show you --
 15 Q Does that refresh your recollection that Mr. Sheeren
 16 directed your attention in the deposition to the A 3 remittance
 17 reports for that trust?
 18 A Yes, I recall doing it, I just didn't recall the
 19 percentages.
 20 Q Let's see if we can refresh your recollection. Turn to
 21 page 142, line 3. Read to yourself paragraphs -- lines 3 to 7.
 22 (Witness complies.)
 23 A I've read it.
 24 Q Does that refresh your recollection that the percentage
 25 of losses in the A 3 trust that were borne by the senior holders
 26 was 62 percent?

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1 Lewis - Cross/Ms. Patrick
 2 A It is 62 percent of the total losses, which would be a
 3 much lower percentage of their particular balances. But of the
 4 losses, yes.
 5 Q So of the total losses in the trust, in the A 3 trust,
 6 62 percent have been borne by the class A senior holders?
 7 A Yes, based upon that remittance report.
 8 Q All right. And if you will, do you remember what the
 9 data was for the S 6 trust?
 10 A Not offhand, no.
 11 Q Would you turn, please, to page 97.
 12 (Witness complies.)
 13 A I'm there.
 14 Q Line 19. Do you see there that Mr. Sheeren directed
 15 your attention to the remittance reports for the S 6 trust?
 16 A Yes.
 17 Q If you'll turn over to page 99, at line 3.
 18 (Witness complies.)
 19 A Yes. I'm sorry, okay.
 20 Q Does that refresh your recollection that the percentage
 21 of losses in the -- the percentage of total losses in the S 6 is
 22 borne by the class A holders at 64 percent?
 23 A Of the total losses, yes.
 24 Q So the class A holders have borne 64 percent of the
 25 total losses, right?
 26 A As expressed as a percentage of the loss itself, yes.

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1 Lewis - Cross/Ms. Patrick
 2 Q Okay. So it is not the case, is it, Mr. Lewis, that
 3 all of the losses in these two trusts have been borne by the
 4 class B subordinated holders; true?
 5 A Correct.
 6 Q In fact, it is the case that as a percentage,
 7 substantially all of the losses have been borne by the A
 8 holders, true?
 9 A As a percentage of the losses, even these two percent,
 10 I wouldn't -- as a percentage of the losses, I wouldn't say 60
 11 something percent was substantially all, I would call that
 12 majority. But again, as a percentage of the losses, not as a
 13 relative impact to that class.
 14 Q And to follow-up on one last area of Mr. Rollin's
 15 inquiry of you, you have not read either of the pooling and
 16 servicing agreements for these trusts, right?
 17 A I have not.
 18 Q And, therefore, you have no opinion to offer the Court
 19 concerning how the settlement proceeds should or would flow
 20 under those trust waterfalls, true?
 21 A No, that is beyond my scope.
 22 MS. PATRICK: Thank you, Mr. Lewis. That is all I
 23 have.
 24 MR. INGBER: No questions, your Honor.
 25 MR. ROLLIN: May I redirect, your Honor?
 26 THE COURT: Redirect examination.

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1 Lewis - Redirect/Mr. Rollin
 2 MR. ROLLIN: Thank you.
 3 REDIRECT EXAMINATION
 4 By MR. ROLLIN:
 5 Q Will you please turn to Exhibit 239, it is in the tab
 6 folder Miss Patrick --
 7 THE COURT: Excuse me one minute.
 8 (Short pause taken.)
 9 A I'm there.
 10 THE COURT: I'm sorry, where?
 11 THE WITNESS: Tab 3.
 12 MR. ROLLIN: I am at Exhibit 239, in the binder
 13 that Miss Patrick used.
 14 Q Mr. Lewis, you were asked whether you had prepared an
 15 equivalent to Exhibit 239 for the A 3 trust; do you remember
 16 Miss Patrick's questions to that effect?
 17 A Yes.
 18 Q Exhibit 239 was created during deposition at the
 19 request of opposing counsel?
 20 A Yes.
 21 Q And you did it, right?
 22 A Yes.
 23 Q And an equivalent for S 6 -- I'm sorry, for A 3 was not
 24 requested of you in deposition, right?
 25 A I don't believe it was.
 26 Q Now, turning to what appears to be the start of an

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1 Lewis - Redirect/Mr. Rollin
 2 equivalent for A 3 in Exhibit 388, which is the blank piece of
 3 paper that you wrote on. Do you have that handy?
 4 A Yes.
 5 Q You were asked to write down the percentage of losses
 6 realized in years one and two, correct?
 7 A Yes.
 8 Q Can you please tell me, with respect to the percentage
 9 of loss in year one and year two, what the dollar value of that
 10 loss was in the A 3?
 11 A In the A 3 it was 55,619 at the end of year one. And
 12 you know, I didn't total these, if you give me one second --
 13 well, it will come back -- 7,437,000, roughly.
 14 Q Is it your understanding that for the A 3 trust, based
 15 on that number you just gave, that the losses realized in years
 16 one and two alone were greater than the estimated allocable
 17 share for that trust under the Settlement Agreement?
 18 A I don't remember the exact amount, but I believe it was
 19 four million and change. So, yes.
 20 Q And with respect to the S 6 trust on Exhibit 239, there
 21 you have the dollar values for losses in years one through
 22 three, correct?
 23 A Yes.
 24 Q And do you believe that at least by the middle of year
 25 three, there had been enough losses absorbed to take up the
 26 entire allocable share of the Settlement Agreement for that

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1 Lewis - Redirect/Mr. Rollin
 2 trust?
 3 A I recall it being in the lower sixes. So, yes,
 4 sometime between year two and year three.
 5 Q If I represent to you that the estimate, based upon the
 6 testimony in this case, is 7.1 million dollars, would you agree
 7 by the middle of year three that entire allocable share is
 8 absorbed by losses?
 9 A I can't tell you exactly the point in year three, but
 10 given the interpolating between those two, probably between year
 11 two and year three.
 12 Q You were also asked by Miss Patrick in the last series
 13 of questions -- or second to last series of questions, about
 14 total losses of trusts; correct?
 15 A Yes.
 16 Q And you were asked about the percentages of loss
 17 absorbed by the A class.
 18 A Yes.
 19 Q That was a series of questions about total losses
 20 absorbed by the trust, correct?
 21 A Yes.
 22 Q Your opinion is not about total losses; isn't that
 23 right? Your opinion is about losses caused by breaches and
 24 representations and warranties?
 25 MS. PATRICK: Objection to form. His opinion has
 26 no content with respect to reps and warranties in these

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1 Lewis - Redirect/Mr. Rollin
 2 trusts.
 3 THE COURT: You may answer.
 4 A My opinion was about the timing of losses; generally,
 5 with respect to loans with material breach of reps and
 6 warranties leading to loss.
 7 Q Is it your opinion that those losses are concentrated
 8 in the earliest few years of the trust?
 9 A Yes.
 10 MR. ROLLIN: Thank you, no further questions.
 11 THE COURT: Any request for anything further?
 12 MS. PATRICK: Yes, your Honor. I neglected to
 13 offer Exhibit 388 and Exhibit 2 -- Petitioner's 388 and
 14 Petitioner's 239. If the Court would like the expert report
 15 to be on the record, counsel can offer it, if he wishes.
 16 MR. ROLLIN: I do offer it, your Honor. I have no
 17 objection to those. I do believe it is necessary for
 18 completeness to have Exhibit 328 -- Respondent's Exhibit 328
 19 made a part of the record.
 20 THE COURT: That is the report; is it not? That is
 21 the report, correct?
 22 MR. ROLLIN: It is.
 23 THE COURT: We just have 238 and 239.
 24 MS. PATRICK: Your Honor, so we have three. The
 25 other is the piece of paper that I had the witness do.
 26 THE COURT: Is this an objection to any of these?

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1 Lewis - Redirect/Mr. Rollin
 2 MS. PATRICK: Yes, we have one objection as to the
 3 report being offered for the truth. It is hearsay, and so
 4 we do not believe it should be admitted for the truth. We
 5 can offer -- he can offer it for the fact that he did what
 6 he did.
 7 THE COURT: It is offered as an opinion; is it not?
 8 And he has just testified as to his opinion. Is there an
 9 objection to that?
 10 MS. PATRICK: No, your Honor. To that extent, no.
 11 MR. INGBER: No objection, your Honor, on that
 12 basis.
 13 MR. ROLLIN: Thank you, your Honor.
 14 THE COURT: Is that satisfactory?
 15 MR. ROLLIN: That is satisfactory.
 16 THE COURT: Is there any further questioning being
 17 requested of Mr. Lewis?
 18 MS. PATRICK: No, your Honor.
 19 MR. INGBER: No, your Honor.
 20 MR. ROLLIN: No.
 21 THE COURT: Thank you, sir. You may step down.
 22 (Witness excused.)
 23 THE COURT: These documents 388, 239 and 328 are
 24 marked into evidence subject to the limitations stated on
 25 the record.
 26 (Whereupon, at this time, Petitioner's

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1 Proceedings
 2 Exhibit's 238, 239 and 388 were deemed received in
 3 evidence, as of this date.)
 4 THE COURT: Do we have any further witnesses to be
 5 called by W & L or any further evidence?
 6 MR. ROLLIN: Your Honor, we have no further
 7 witnesses and the only potential further evidence may be in
 8 connection with the stipulation reached with the
 9 petitioners. We just need a little bit of time to focus on
 10 that.
 11 THE COURT: How long do you need?
 12 MR. ROLLIN: If we could have an afternoon break,
 13 your Honor, I believe we can reach a conclusion today.
 14 THE COURT: And I would like you, before I go back
 15 on the record, to meet with my law clerk to just make sure
 16 you understand the marking of the exhibits. The procedure
 17 that has been followed in this case is a little unusual, so
 18 I'm sure it is fine, you just all need to make sure that
 19 everything has been marked that should be marked and that we
 20 have a record of it.
 21 So we'll take a recess of 20 minutes until four
 22 o'clock. If we do that, will that give you enough time for
 23 the closing statements that you requested when we discussed
 24 scheduling off the record first thing this morning?
 25 MR. ROLLIN: That should be enough time for W & L,
 26 your Honor.

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1 Proceedings
 2 MS. PATRICK: Yes.
 3 MR. INGBER: I think that is fine, your Honor.
 4 THE COURT: That means we are going until about a
 5 quarter to five. So you will have forty-five minutes, will
 6 that be enough?
 7 MS. PATRICK: Yes.
 8 MR. INGBER: That will be fine, we will be brief.
 9 MR. ROLLIN: Yes.
 10 THE COURT: We will take a break.
 11 (Recess taken.)
 12 THE COURT: We will now have closing statements and
 13 I will hear first from W & L.
 14 MR. INGBER: Your Honor, before we start closings,
 15 I would like to hand up the stipulation and the exhibits.
 16 This is a list of exhibits as to which the parties
 17 have agreed should be introduced into evidence.
 18 THE COURT: I was under the misapprehension that
 19 you needed more time to work on it. But it is, in fact,
 20 done?
 21 MS. PATRICK: It is done.
 22 MR. INGBER: It is.
 23 MR. ROLLIN: I have two additional issues to raise,
 24 your Honor. I believe Miss Patrick has, as well. But as to
 25 the stipulation, we have agreed --
 26 MS. PATRICK: There are -- just to put on the

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1 Proceedings
2 record, in addition to that stipulation, there is also a
3 stipulation to the admission of Petitioner's 376, which is
4 the remittance report for the A 3 trust for November 25,
5 2014; Petitioner's 377, which is the remittance report for
6 the A 3 trust for November of 2008; 378, the A 3 trust
7 remittance report November of 2009; 379, the A 3 trust
8 remittance report for February 2012 and then 380, the
9 remittance report for the S 6 trust, May of 2012.
10 THE COURT: Is it so stipulated, Mr. Rollin?
11 MR. ROLLIN: It is, your Honor.
12 THE COURT: Did you have a second matter?
13 MS. PATRICK: No, that was it.
14 THE COURT: Mr. Ingber, do you have anything?
15 MR. INGBER: I have nothing, your Honor.
16 MR. ROLLIN: I do have a matter with respect to
17 exhibits, your Honor.
18 THE COURT: All right. Well --
19 MR. ROLLIN: We would like to ask the Court to take
20 into evidence two exhibits. One is trustee's Exhibit 357,
21 that is an interrogatory response by W & L with respect to
22 its holdings at different times. There have been some
23 comments and inferences related to that, we would like to
24 move that document into evidence.
25 We would also ask the Court to take into evidence
26 RX 331. RX 331 is the deposition transcript of Loretta

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1 Proceedings
2 Lundberg.
3 As your Honor knows, Loretta Lundberg --
4 THE COURT: I'm sorry, you want to put in the
5 deposition?
6 MR. ROLLIN: I do. I do, your Honor. She is the
7 corporate representative of the Bank of New York Mellon. I
8 believe for potential posttrial briefing and for
9 completeness, this is an admission of the Bank of New York
10 Mellon. We do that ask that it be introduced into evidence.
11 MR. INGBER: I'll address the Lundberg transcript.
12 We object on a number of grounds.
13 Number one, they would like to introduce the
14 transcript wholesale. There are many, many questions and
15 topics that were covered in that deposition that are
16 completely irrelevant, in our view. There are numerous
17 objections to the form of the question.
18 There was a process for designating depositions
19 transcripts prehearing -- pretrial. None of Miss Lundberg's
20 deposition transcript excerpts were designated by W & L. We
21 have had no opportunity to, obviously, review what they
22 think is relevant, and on that basis we would object.
23 With respect to posttrial briefing, I don't know
24 that your Honor wants any posttrial briefing, but to us that
25 is beside the point.
26 Completeness? Miss Lundberg was on the stand

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1 Proceedings
2 today. They examined Miss Lundberg for 20 minutes. They
3 could have conducted a direct for two hours if they wanted
4 to, she was here testifying. So if there is a deficiency in
5 the evidence, it has nothing to do with Miss Lundberg, but
6 it has everything to do with the topics and the line of
7 questioning that they chose to pursue.
8 So we object on all of those grounds.
9 MR. ROLLIN: Your Honor, first with respect to 357,
10 I apologize, I misspoke that is admitted on the stipulation.
11 The request in that regard is withdrawn.
12 With respect to Miss Lundberg's deposition, I did
13 not hear from Mr. Ingber anything about -- he hasn't
14 demonstrated --
15 MR. INGBER: Relevance.
16 MR. ROLLIN: There are many relevant issues there.
17 I'm not suggesting that we're going to do posttrial briefing
18 for this Court, but we do need a thorough record in case
19 this case moves on. This is an admission not subject to
20 evidentiary ruling.
21 MR. INGBER: Your Honor, thank you.
22 THE COURT: The wholesale admission of depositions
23 is not permitted under New York state law. They can be used
24 in cross-examining a witness and under limited
25 circumstances, they may be admitted for other purposes in
26 part.

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1 Proceedings
2 However, I would -- I would request that you confer
3 and if there is an agreement to certain admissions, I will
4 look at them and rule. At this point I must, however,
5 sustain the objection.
6 MR. ROLLIN: Thank you, your Honor.
7 (Transcript continues on the next page.)
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1 Closing Arguments - Rollin
 2 T10
 3 THE COURT: I think that this is probably one of
 4 the only times in all these years anyone has ever told me
 5 they did not hear me. I developed a booming voice so that
 6 no one would ever say that this woman could not be heard
 7 in a courtroom as have we all I think.
 8 These exhibits will be deemed marked into
 9 evidence and I will mark them at a later time and will be
 10 handed back to you before you leave the courtroom today.
 11 We will now hear closing statements 15 minutes
 12 per side and if it turns out that you want supplemental
 13 closing submissions, you can let me know before we
 14 conclude today.
 15 MR. ROLLIN: Thank you, your Honor. Michael
 16 Rollin for W & L.
 17 Your Honor, I'll start this closing with where
 18 every case starts and that is with burden. And we adopted
 19 this statement by the trustees of their burden. We agree
 20 that if discretion is conferred upon the trustee in the
 21 exercise of a power, the Court will not interfere unless
 22 the trustee in exercising or failing to exercise the power
 23 acts dishonestly or with an improper -- sorry --
 24 dishonestly or with an improper even though not a
 25 dishonest motive or fails to use his judgment or acts
 26 beyond the bounds of reasonable judgment.

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1 Closing Arguments - Rollin
 2 Your Honor, what's clear, we assume no bad
 3 faith.
 4 What is clear is that with respect to the
 5 decision to apply the distribution methodology in this
 6 manner, whether under the governing agreements or with
 7 respect to the meeting, the purpose of the settlement
 8 agreement, the trustee has not exercised judgment.
 9 A trustee does not have the luxury to fail to
 10 exercise judgment when it comes to the affairs of her or
 11 his beneficiaries even if completely innocent.
 12 I refer the Court to the Stillman matter,
 13 Stillman case which is cited in our trial brief 433 NY 2nd
 14 701 which is also where I read the burden quote from a
 15 moment ago.
 16 Even if that misjudgment, failure to his
 17 judgment is completely honest, is completely innocent, and
 18 it is the role of the Court to correct errors of judgment
 19 or actions taken without the exercise of judgment and that
 20 is the case here with respect to the distribution
 21 methodology and it's consequence.
 22 There is no factual dispute as we learned from
 23 Ms. Lundberg that there was no analysis of how subsequent
 24 recoveries compared to repurchase proceeds. There was no
 25 analysis of how the PSAs in this case were different from
 26 the PSA in the Countywide case. There is no analysis of

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1 Closing Arguments - Rollin
 2 whether this distribution method would compensate the
 3 certificates or certificateholders that suffered loss from
 4 breaches of rep and warranties. That's just not something
 5 the trustee analyzed.
 6 It appears instead that the trustee simply
 7 accepted the distribution methodology as written in the
 8 settlement by others and others with an interest in the
 9 outcome because it was the same one that was used in
 10 Countrywide acknowledged to be a different contract.
 11 There was no challenge in that case. They have
 12 vetted this issue.
 13 There was nothing in Justice Kapnick's order
 14 that addressed this issue and this, your Honor, is a lapse
 15 in judgment the Court should correct.
 16 We know, however, in addition to not thinking
 17 about it, Mr. Stern for W & L Investments sent a number of
 18 letters to the trustee and he said I would like to be part
 19 of any settlement negotiations. We saw that today. He
 20 said I suffered losses in these -- in these trusts. I
 21 disagree with the distribution methodology and there is no
 22 evidence of any analysis or consideration, notwithstanding
 23 the fact that those letters were sent pursuant to a
 24 notice, several notices issued by the trustees including
 25 the Bank of New York Mellon asking for investor input.
 26 Investor input they received and they did nothing with it.

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1 Closing Arguments - Rollin
 2 Instead -- this is more than a lack of judgment. This is
 3 a decision to ignore. What we heard in response to
 4 Mr. Stern and W & L sending letters and expressing concern
 5 was the casting of aspersions about whether and when he
 6 owned the certificates at issue.
 7 I will tell the Court the fact is that's
 8 irrelevant under the law. General Obligations Law 13.107
 9 says that the rights move with the certificates. That's
 10 also noted by the Court of Appeals in the Bloomberg
 11 Partners case.
 12 THE COURT: In?
 13 MR. ROLLIN: Bloomberg Partners Case, 97 New
 14 York 2nd 456 at page 461, a 2002 case.
 15 But regardless, we don't have to rely on that
 16 because W & L owned the certificates. In fact, we
 17 responded to an interrogatory. Any time that W & L was
 18 asked what it owned and when it owned, it responded to
 19 that question.
 20 The interrogatory response is the document that
 21 I just referred to Exhibit 357. If we had received other
 22 discovery requests wanting to know what ownership rights
 23 we had at other times, long before the settlement was
 24 announced they would have received that offer as well. It
 25 is entirely improper to cast aspersions in the absence of
 26 any foundation whatsoever.

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1 Closing Arguments - Rollin
 2 THE COURT: So, I am not to know when W & L
 3 owned the certificates? There is nothing in the record
 4 about that.
 5 MR. ROLLIN: I am happy to tell your Honor but
 6 we did not produce evidence unless requested in the
 7 interrogatory responses which we did when asked. There is
 8 no evidence about that. It's not relevant because of GBL
 9 13,107. However, I'm happy --
 10 THE COURT: Well, before you do, I just don't
 11 want to be receiving any factual information now that is
 12 not stipulated to. So, if you confer about it and you
 13 both agree that it's proper for me to consider, then I
 14 will take the stipulation.
 15 But it is your position that it is relevant
 16 whether they owned the certificates at the time of the
 17 losses.
 18 MR. ROLLIN: It is our legal position it is
 19 clear under GBL 13.107 and Bloomberg Partners that it is
 20 irrelevant. However, it is relevant -- well, however, I
 21 am more than happy to tell the Court and I'm happy to
 22 confer to the other side with respect to a stipulation.
 23 There is nothing to hide there. Certainly owned the
 24 losses. Owned the certificates when they were suffering
 25 losses.
 26 The fact is that W & L is a certificateholder.

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1 Closing Arguments - Rollin
 2 It did suffer losses. It has a right to be here both
 3 factually and legally and it lodges an objection because
 4 it will receive none of the settlement payment which the
 5 evidence from experts on both sides was realized by the
 6 certificates he owns.
 7 This lack of process is manifest, your Honor, in
 8 incorrect result.
 9 What the petitioners would have your Honor do is
 10 read one provision of the pooling and servicing agreements
 11 to the exclusion of the others that are relevant. It will
 12 have you read section 6.01 concerning the distribution
 13 methods to say that the trustees' hands are tied. Even if
 14 we wanted to, we cannot distribute any of the settlement
 15 proceeds to W & L with investments because 6.01 prohibits
 16 it.
 17 But you don't read an agreement, a provision of
 18 an agreement in isolation. In New York law we read the
 19 provisions of an agreement together to reach the result
 20 that was intended by the parties.
 21 In Sutton versus East River Savings Bank, 55 New
 22 York 2d 550 1982 case, the Court of Appeals explained that
 23 a court ought not read words and provisions in isolation
 24 but seek to provide practical interpretation to the end
 25 that there be a realization of the parties' expectation,
 26 of the petitioners' expectation.

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1 Closing Arguments - Rollin
 2 Relying only on 6.01 ignores this principal and
 3 elevates form over substance, something the Sutton court
 4 specifically warned against.
 5 Section 6.01 does not stand in isolation. 6.01
 6 stands together with other provisions of the agreement
 7 that bear precisely on this issue including section 3.01
 8 in the definition of repurchase proceeds require not only
 9 a loan-by-loan sole remedy analysis but there is a
 10 temporal component that cannot be read out of the
 11 agreements and that those payments are to be made timely
 12 and that they would have the effect of a prepayment and to
 13 have an effect of prepayment it must be paid at or at the
 14 time the loss is incurred.
 15 Why is that so? That is so that the certificate
 16 that suffers the loss from breaches of representations and
 17 warranty and not from something else received the cash
 18 replacement in the form of a purchase price as the Court
 19 is certainly familiar with from --
 20 THE COURT: In the form of?
 21 MR. ROLLIN: The purchase price, the contractual
 22 term used for the calculation that replaces that defective
 23 loan. So that that cash sits in that certificate allowing
 24 it to remain with balance longer and therefore continue to
 25 receive interest payments longer and also to shore up the
 26 more senior tranches which is the notion of the

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1 Closing Arguments - Rollin
 2 subordination that is built into these agreements.
 3 To read 6.01 alone is to ignore these other very
 4 relevant provisions. In fact, it stands for the reverse
 5 proposition that a petitioner reading that if you were
 6 denied your remedy long enough, if we wait long enough
 7 before we comply with both the temporal, the loan-by-loan
 8 requirement of the sole remedy and the temporal component
 9 of when it is to be paid, if you were denied that remedy
 10 long enough, you never get it. That would not be a fair
 11 or reasonable reading of the governing agreements.
 12 New York law recognizes the opposite is
 13 principal. As a matter of fact, that a party aggrieved in
 14 a breach of contract action should be made whole
 15 regardless of the passage of time. That is the concept of
 16 principal behind prejudgment interest.
 17 This is a breach of contract case and New York
 18 law requires that the aggrieved party be made whole.
 19 Under their interpretation, your Honor, the PSA,
 20 the passage of time actually divest the aggrieved parties
 21 of any remedy at all. This is a picking and choosing of
 22 those provisions. They want to enforce those provisions.
 23 They want to ignore.
 24 In order to -- what we read in the brief late
 25 last night early this morning from the petitioner is that,
 26 well, we don't have to comply with the sole remedy

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1 Closing Arguments - Rollin
 2 provision because this is a settlement agreement.
 3 What we heard today on the stand from Ms.
 4 Lundberg was that the pooling and servicing agreements
 5 don't contemplate a settlement agreement at all. And yet
 6 they rely on a provision of pooling and servicing
 7 agreement to direct the settlement compensation away from
 8 the certificates and certificateholders that suffered loss
 9 to the suffered loss caused by breaches of rep and
 10 warranties to other certificates. And although they may
 11 have suffered loss, a discourse we had between Ms. Patrick
 12 and Mr. Lewis just a few moments ago, they didn't suffer
 13 loss from breaches of rep and warranties.
 14 That's absolutely immaterial in the context of
 15 the Court's decision on whether the settlement agreement
 16 and the settlement proceeds ought to be used to pay
 17 compensation to people with certificates other than those
 18 who suffered losses as a result of the conduct being
 19 settled. That is the bottom line.
 20 This is a settlement agreement as Ms. Lundberg
 21 testified. It is not contemplated by the pooling and
 22 servicing agreements. The parties harmed by the conduct
 23 being settled will receive none of the payment. We heard
 24 that today, specifically obviously referring to W & L.
 25 And a single isolated provision of the pooling and
 26 servicing agreement that didn't contemplate the settlement

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1 Closing Arguments - Rollin
 2 agreement in the first place ought not be used to divest
 3 W & L the benefit of its bargain and divest it of
 4 receiving compensation for the losses that it suffered
 5 from the conduct being settled.
 6 Final point here is there is an assumption that
 7 in order to pay the settlement, payment somehow must go
 8 through the trustee and it must go through 6.017 and I've
 9 addressed up to now why 6.01 is not appropriate to read
 10 this that way. But I note also this is conduct alleged
 11 against JP Morgan Chase. And JP Morgan Chase even if you
 12 adopted the trustee's reading, the 6.01, JP Morgan Chase
 13 is in no way constrained by 6.01. It has -- it is
 14 responsible for breaches of rep and warranties alleged.
 15 It has chosen to settle that and it has every ability
 16 irregardless of what may be found in 6.01 to pay that
 17 compensation to the certificates and the
 18 certificateholders that were harmed by the conduct being
 19 settled.
 20 JP Morgan Chase, along with the other
 21 petitioners, have placed itself in the jurisdiction of
 22 this Court and asked this Court for an instruction and our
 23 view is that the Court can and should instruct that the
 24 settlement payment, whether it's by the trustee or by JP
 25 Morgan Chase be directed to the certificates that suffered
 26 loss from a conduct that is being settled.

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1 Closing Arguments - Ingber
 2 THE COURT: Is there any evidence in the record
 3 to which you can point me as to the extent to which the
 4 institutional investors that are the petitioners here also
 5 did not receive any distributions from the settlement
 6 payment?
 7 MR. ROLLIN: I do not believe that the
 8 institutional investors have any holdings in the
 9 subordinated tranches. I believe they are all in the
 10 senior tranches with respect to the W & L trusts but I do
 11 not have the evidence one way or the other to direct your
 12 Honor on that question.
 13 THE COURT: Thank you.
 14 MR. ROLLIN: Nothing further, your Honor.
 15 THE COURT: Will I be hearing from both Mr.
 16 Ingber and Ms. Patrick?
 17 MR. INGBER: Yes, your Honor. Briefly from both
 18 of us. So, we'll take guidance from the Court on where we
 19 should start.
 20 THE COURT: As you wish.
 21 MR. INGBER: You want to go first?
 22 MS. PATRICK: Sure.
 23 Go ahead.
 24 MR. INGBER: Thank you.
 25 Your Honor, thank you for your time and thank
 26 you for your patience. Matthew Ingber from the Bank of

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1 Closing Arguments - Ingber
 2 New York Mellon on behalf of the trustees.
 3 I think when I finished off my opening last week
 4 I said that there is ample precedent in the Countrywide
 5 case and the Citi matter for your Honor to grant the
 6 relief that the trustees are seeking but I also said that
 7 we take absolutely nothing for granted and in this hearing
 8 we would submit evidence for your Honor to consider that
 9 will we think, we thought at that time and we believe now,
 10 conclusively demonstrate that the trustees acted in good
 11 faith and acted in reasonable -- acted reasonably in
 12 connection with their evaluation and entry into the
 13 settlement.
 14 Now, there is one remaining objection and I will
 15 address that objection, but we are seeking an order from
 16 your Honor that the trustees acted in good faith and
 17 reasonably with respect to the entire evaluation process
 18 in the entry into the settlement with respect to all 319
 19 trusts.
 20 So, while I will address the two W & L trusts,
 21 in just a minute, I do want to take the Court just through
 22 the evidence at a very high level that applies across the
 23 board.
 24 As a I said during the opening, your Honor, it
 25 really starts with the process.
 26 Your Honor has now seen or will have the ability

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1 Closing Arguments - Ingber
 2 to read all of the witness affidavits that have been
 3 submitted. Your Honor has heard the testimony of
 4 Professor Fischel over the course of two days and of
 5 course the testimony of Ms. Lundberg today.
 6 What your Honor now knows is that the trustees
 7 followed a very careful process, a very robust process and
 8 a very open and transparent process from December of --
 9 November, December 2013 when they first learned of the
 10 proposed settlement agreement through their decision to
 11 enter into the settlement in August and then October of
 12 2013, getting the right people involved, a working group
 13 with each trustee and experienced outside counsel,
 14 understanding the process in which the trustees understood
 15 where they have subject matter expertise and where they do
 16 not and there were certainly areas where the trustees have
 17 deep subject matter expertise.
 18 Distribution is one of those topics, one of
 19 those areas.
 20 Other areas the trustees don't have the subject
 21 matter expertise to fully understand the issues that are
 22 relevant to the settlement is valuation is one of them,
 23 complex economic analysis that was performed by Professor
 24 Fischel, details of the servicing of loans which was an
 25 opinion provided by Jerry Reifsynder of PBA.
 26 A critical element of this process was a trustee

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1 Closing Arguments - Ingber
 2 following a very diligent process to go out to find
 3 candidates, identify candidates who could provide expert
 4 opinions, interview those candidates, understand what
 5 their qualifications were and their approach to the
 6 assignment would be, hiring those experts and getting them
 7 to work and getting them all the information that they
 8 need. There was no derth of information for these experts
 9 to consider.
 10 The trustees worked cooperatively with these
 11 expert. JP Morgan worked cooperatively with these experts
 12 to get them all the information they needed and as
 13 Professor Fischel testified, the trustees never once tried
 14 to influence any of the opinions in this case, went out of
 15 their way to make sure that the trustee -- I am sorry --
 16 that the experts acted independently, that they had
 17 whatever information they needed to form whatever opinions
 18 they thought were appropriate under the circumstances.
 19 Your Honor has heard about the notices that were
 20 provided, 12 notices throughout this process.
 21 Investors had the opportunity to weigh in. They
 22 did weigh in. The trustees were careful to make sure that
 23 everything they received from investors was passed along
 24 to the experts to consider including the W & L letter with
 25 respect to the distribution methodology. There were
 26 regular meetings throughout the process, regular calls,

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1 Closing Arguments - Ingber
 2 meetings at the end of the process with the experts so
 3 that like your Honor had the opportunity to do during this
 4 hearing, the trustees could sit down with the experts.
 5 They could read the reports and they could listen to the
 6 experts walk through the analysis and they would have
 7 opportunities to ask questions of the experts like your
 8 Honor did during Professor Fischel's testimony. They
 9 could see the expert in person. They could gauge whether
 10 the expert is credible, whether the analysis was thorough,
 11 whether it was sound, whether there is flaws in the
 12 analysis or not.
 13 At the end of that process, as your Honor now
 14 knows, the trustees in good faith believed that the
 15 analysis by Professor Fischel which had his own
 16 independent analysis but took into account the analysis of
 17 other experts was thorough. It was sound. There was
 18 nothing left on the table. And using the standard that
 19 was articulated in the Countrywide matter and, your Honor,
 20 in the City matter, it was plausible. It was more than
 21 plausible.
 22 (Continued on next page)
 23
 24
 25
 26

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1 Summations/Mr. Ingber
 2 MR. INGBER: So, your Honor, that high level is the
 3 process that the trustees followed, it was consistent with
 4 processes followed in other global RMBS settlements. And
 5 the trustees were focused from the beginning through the
 6 summer of 2013 on making sure that that process was robust
 7 and investigators had an opportunity to weigh in.
 8 Let me address briefly the W & L objection. There
 9 is a process piece of this; this is a substantive piece of
 10 this. Miss Patrick and I will tag team, most likely on the
 11 substantive piece.
 12 W & L thinks that there was no analysis, that there
 13 was no judgment exercised at all. Quite the contrary. The
 14 trustee, Bank of New York Mellon -- all of the trustees
 15 received the proposed Settlement Agreement. They analyzed
 16 the proposed Settlement Agreement. They studied it. They
 17 talked about the proposed Settlement Agreement with their
 18 counsel.
 19 They identified what issues they needed expert
 20 advice on, okay? Outside expert advice. That is not advice
 21 that can come from within each of the trustee or from their
 22 counsel.
 23 This, the distribution issue, the treatment of
 24 settlement proceeds as subsequent recovery instead of
 25 something else, like repurchased proceeds.
 26 The Bank of New York's perspective, this was

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1 Summations/Mr. Ingber
2 something about which they had subject matter expertise.
3 They had been through this before. Not just once with the
4 Countrywide settlement in which they actually participated
5 in the discussions, according to Miss Lundberg, about the
6 treatment of settlement proceeds and had the very debate
7 that is at issue in this case, and not only were they able
8 to see what Justice Kapnick and then the Appellate Division
9 did with respect to the settlement, including the
10 distribution methodology, but they entered into a second
11 settlement. Miss Lundberg referred to the Res Cap
12 settlement; that was before the JP Morgan settlement. And
13 the Res Cap settlement treated these settlement proceeds as
14 such good recoveries.
15 And there was a third settlement that Miss Lundberg
16 referred to, the FGIC settlement, which were entered into,
17 she said the spring of 2014, before the decision was made to
18 enter into this settlement.
19 So the trustee had been through this before. It is
20 not the case that every time the trustee receives a new
21 Settlement Agreement -- and there are issues that overlap
22 with issues in the previously negotiated Settlement
23 Agreements -- the trustee is supposed to reinvent the wheel
24 on every single issue. This was, as I would say, an issue
25 about which the trustees had subject matter expertise.
26 And there is a distinction between the treatment of

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1 Summations/Mr. Ingber
2 settlement proceeds in the Settlement Agreement and the
3 distribution issues in the PSA's, okay?
4 So they are separate issues. With respect to the
5 question of whether these should be treated as subsequent
6 recoveries or repurchase proceeds, Bank of New York Mellon
7 had been through that. They had had discussions and debates
8 and negotiations about that issue and they had seen what
9 other courts had done.
10 With respect to distribution, that is not a
11 Settlement Agreement issue. That is purely a Pooling and
12 Servicing Agreement issue. Trustees are in the business of
13 distributing proceeds, proceeds that make their way into the
14 collection account. If the trustees know anything -- and
15 they know a lot -- they certainly know distribution.
16 What did Miss Lundberg say? She said, what we do
17 with respect to distribution is we receive funds into the
18 collection account and then we distribute in accordance with
19 waterfall provisions of the Settlement Agreement -- of the
20 Pooling and Servicing Agreements, thank you, Kathy.
21 Your Honor, 14 trustee -- Trustees's Exhibit 143,
22 Section 508, that is the PSA. Mr. Rollin didn't quote any
23 language from the Pooling and Servicing Agreement, I would
24 like to very briefly.
25 508: The servicer shall deposit or cause to be
26 deposited into a collection account on a daily basis and

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1 Summations/Mr. Ingber
2 retain therein -- and then there is a list of proceeds that
3 the trustee receives into the collection account. And there
4 are certain payments that were received, including all
5 principal prepayments, subsequent recoveries, re --
6 THE COURT: Excuse me.
7 (Pause taken.)
8 THE COURT: Go ahead.
9 MR. INGBER: So romanette iii, romanette vi, all
10 repurchase proceeds. So whether you call these subsequent
11 recoveries or you call these repurchase proceeds, what Miss
12 Lundberg testified to today was that they make their way
13 into the collection account, the trustee looks at what is in
14 the collection account, and the trustee then turns to
15 Section 601 of the PSA's, that say on each distribution date
16 the bank agent shall apply the amount equal to the available
17 distribution amount in the following order of priority, and
18 they follow the order of priority.
19 The available distribution amount is defined as the
20 amounts sitting in the collection account. There is nothing
21 in these Pooling and Servicing Agreements that say that the
22 trustees are supposed to take a look at these amounts and
23 figure out, okay, was this -- what do these relate to? Was
24 this a breach of reps and warranties in a particular loan?
25 When were the losses realized on each of these loans? Who
26 were the certificate holders at the time these losses were

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1 Summations/Mr. Ingber
2 incurred?
3 That is not an analysis that the trustees are
4 required to do under the Pooling and Servicing Agreements.
5 Miss Lundberg testified to that today. It's also not an
6 analysis that can really be done. It is nearly impossible
7 to do what Mr. Rollin is describing, because the trustee
8 would have to look at every single loan in every single
9 trust and there are 319 trust settlements to make those
10 determinations, okay?
11 So there is the legal issue, it is not required
12 under the Pooling and Servicing Agreements, and there is the
13 practical issue, that it is just impossible for the trustee
14 to actually do what Mr. Rollin is suggesting be done.
15 What I believe W & L is asking is not so much that
16 the Court rewrite the Settlement Agreement, but that the
17 Court look at the PSA's, interpret the PSA's, and if the
18 PSA's don't allow for the type of analysis that Mr. Rollin
19 thinks is appropriate because he believes his clients have
20 suffered losses that aren't being exerted in this Settlement
21 Agreement, that the Court either ignore the PSA or reform
22 the PSA to allow Mr. Rollin's client, W & L, to get the
23 benefit of this settlement.
24 When he talks about the benefit of the bargain,
25 each party's benefit of the bargain, two points. The party
26 here is the trustee. And there is a recovery on behalf of

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1 Summations/Mr. Ingber
 2 the trust. There is not a recovery on behalf of certificate
 3 holder X, or certificate holder X, or certificate holder Z.
 4 The trustee isn't looking at which certificate holder will
 5 do better than the other one. They are trying to maximize
 6 security for the trust and then it flows through the
 7 waterfall.
 8 Second point. The benefit of the bargain, this is
 9 what W & L bargained for when they bought their
 10 certificates. It is what they bargained for when they
 11 decided we're not going to buy senior certificates, we're
 12 going to buy subordinate certificates.
 13 So both on the process point and the substantive
 14 point, we think we are right and we think we have amply
 15 satisfied our burden.
 16 One final point, less than a minute, and it is one
 17 of my favorite subjects.
 18 THE COURT: I didn't really think this was going to
 19 be enough time for any of the counsel, but my understanding
 20 was you wanted to finish today.
 21 So, basically, you have taken 15 minutes and
 22 Mr. Rollin has taken 15 minutes. How do you want to
 23 proceed?
 24 MR. INGBER: I'm going to wrap up in less than a
 25 minute.
 26 THE COURT: Do you want to do supplemental

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1 Summations/Mr. Ingber
 2 submissions? I don't want anyone to feel like he or she has
 3 not had an adequate opportunity to be heard.
 4 MR. INGBER: So, your Honor, I'll defer to the
 5 Court on that. Our view is that, your Honor, we have had an
 6 opportunity to be heard. I think everyone has had an
 7 opportunity to be heard. But if it would be helpful to the
 8 Court in considering the issues, we're more than happy to
 9 provide supplemental briefing.
 10 With respect to my closing --
 11 THE COURT: Just confer for a moment.
 12 MR. INGBER: Sure.
 13 (Short pause taken.)
 14 MS. PATRICK: Your Honor, on behalf of the
 15 petitioners, the issue of W & L's objection and the PSA's
 16 has been addressed in the supplemental briefing the Court
 17 ordered. There is no requirement for additional
 18 supplemental briefing or post hearing briefing. W & L put
 19 its argument in; we responded to it in the brief filed this
 20 morning. We don't favor supplemental submissions.
 21 THE COURT: Are you comfortable not being heard
 22 further on the record this afternoon?
 23 MS. PATRICK: Yes, your Honor. Yes.
 24 MR. INGBER: Your Honor, I will finish up in less
 25 than a minute.
 26 THE COURT: Just a moment.

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1 Summations/Mr. Ingber
 2 MR. INGBER: Okay.
 3 THE COURT: Then just take the additional time and
 4 make your final point.
 5 MR. INGBER: I didn't hear you.
 6 THE COURT: You said you had a final point.
 7 MR. INGBER: I do have a final point.
 8 THE COURT: So Miss Patrick is deferring to you, so
 9 take your additional time and make the final point.
 10 MR. INGBER: I'm going to speak for a minute and
 11 then if there is a few minutes, Miss Patrick can speak or
 12 not.
 13 The only point I want to make, your Honor, is with
 14 respect to the borrower, to reinforce the point that we made
 15 during the opening, about the importance of that borrower to
 16 the trustees who have been through this process, who have
 17 filed this proceeding and given certificate holders an
 18 opportunity to be heard.
 19 We would expect that a decision from your Honor,
 20 regardless of what it is, would have res judicata effect.
 21 If your Honor finds that we acted in good faith and
 22 reasonably, we would like to memorialize the res judicata
 23 piece of that to move that forward, but --
 24 THE COURT: I don't think W & L is challenging the
 25 form of the order, except to the extent that it would like
 26 this Court to direct a different distribution methodology.

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1 Summations/Ms. Patrick
 2 And that order is identical to the order that I approved in
 3 Citigroup.
 4 MR. INGBER: That is exactly right.
 5 THE COURT: I don't think I need to have further
 6 argument on the order at this time.
 7 MR. INGBER: Thank you.
 8 THE COURT: If I misapprehended W & L's position on
 9 this, then perhaps we will have further argument at a
 10 different time on the form of the order.
 11 MR. ROLLIN: You have not misapprehended our
 12 position.
 13 MR. INGBER: Thank you, your Honor. That's why I
 14 said I would keep it to a minute.
 15 On that note, I thank the Court for its time and
 16 I'll concede to Miss Patrick, if there is any time left.
 17 Thank you.
 18 MS. PATRICK: Your Honor, I don't know if the Court
 19 has time left and I will defer to the Court's schedule on
 20 that.
 21 THE COURT: Were you going to speak to W & L?
 22 MS. PATRICK: I was, but I certainly don't want to
 23 ask the Court to come back tomorrow.
 24 THE COURT: Let's just see what the high points are
 25 and then I will decide if I want anything further on it.
 26 MS. PATRICK: Your Honor, very succinctly, counsel

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1 Summations/Ms. Patrick
2 for W & L suggested there was an error in judgment with
3 regard to the distribution provision.
4 The undisputed evidence is that the remedy that W &
5 L seeks evading the contractual waterfalls and PSA's would
6 violate the PSA's, that was Miss Lundberg's testimony.
7 W & L had the opportunity to come forward with
8 citations to the PSA authorizing some other flow of cash
9 under the waterfall; it did not. It suggested to you in its
10 opening brief there was a distinction between subsequent
11 recoveries and repurchase proceeds; there is not, that has
12 been conclusively established.
13 It also does not dispute, nor could it, that
14 because the certificate depletion date has been met, when
15 cash flows into these trusts from the settlement, whenever
16 that happens, W & L is entitled to no portion of it. That
17 is what the contracts say.
18 And so W & L does not refute that. What it wants
19 is to have the Court direct the trustee to violate the
20 PSA's.
21 Now, the final thing I will point out is that W & L
22 contends that the settlement payment should be paid wholly
23 to W & L, ostensibly because W & L -- according to its
24 expert, or according to its objection, or brief at page
25 18 -- bore all of the losses or substantially all of the
26 losses in the trusts. W & L offers no evidence that it bore

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1 Summations/Ms. Patrick
2 losses from a single ineligible loan in these trusts. Not
3 one, not at all. And, separately, the evidence established
4 that the senior holders bore over 60 percent of the losses.
5 Now, we do not have to ask W & L the facts that
6 meet its burden of proof, it is W & L's obligation to
7 support its objection. And its objection was that because
8 it claimed to have borne all of the losses, it should get
9 all of the money. And it cites neither a PSA provision, nor
10 its own holdings to support that.
11 W & L's witness was here in the courtroom, could
12 have testified; did not. And it is not now open for them to
13 say, well, your Honor, we could prove it if we wanted. The
14 time to prove it was when their case was available.
15 And so in sum, it's not taking an isolated
16 provision out of the Pooling and Servicing Agreement and
17 arguing that that alone governs. In fact, the Pooling and
18 Servicing Agreement's central provision is the waterfall and
19 how the cash flows. And that waterfall is clear that when
20 cash comes in, it flows from the collection account down the
21 top of the waterfall, full stop -- end of story.
22 There is no provision in the PSA that would
23 authorize this Court to direct the trustee to go back, find
24 the certificate holders that bore those losses and pay it to
25 them, because this is a trust claim and the trust is being
26 compensated. And every certificate holder agreed that when

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1 Proceedings
2 cash flows, that's how it flows, and that's the end of it.
3 It was not unreasonable or in bad faith for BNY Mellon to
4 agree to a Settlement Agreement that conforms to the Pooling
5 and Servicing Agreement.
6 So as to W & L and all of the other trusts, the
7 order should be granted.
8 Thank you, your Honor.
9 THE COURT: Thank you. Do I understand correctly
10 that the petitioners are not requesting an opportunity to
11 submit a request for findings of fact and conclusions of
12 law?
13 MS. PATRICK: Correct, your Honor.
14 THE COURT: And do I understand that W & L also is
15 not seeking that opportunity?
16 MR. ROLLIN: We are not.
17 THE COURT: All right. I will request that the
18 parties e-file a transcript of today's proceedings with an
19 errata sheet and that they also file two hardcopies of the
20 transcript and errata sheet with the clerk of this part. I
21 will not mark the proceedings submitted until I receive that
22 transcript with the hardcopies.
23 In addition, please let us know by the end of the
24 week if there is to be an agreement designating any
25 additional sections of Miss Lundberg's deposition testimony.
26 And if I require any further briefing, I will let

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1 Proceedings
2 you know at later time.
3 MR. INGBER: Thank you, your Honor.
4 MR. ROLLIN: Thank you.
5 MS. PATRICK: Thank you.
6 THE COURT: I believe we are concluded. Thank you
7 it has been a pleasure having you here.
8 MR. INGBER: Thank you.
9 MS. PATRICK: Thank you.
10 MR. ROLLIN: Thank you.
11 MS. BRASWELL: Thank you, your Honor.
12
13 * * * * *
14
15 Certified to be a true and accurate transcription of the minutes
16 taken in the above-captioned matter.
17
18
19 _____
20 Gloria Brandon, SCR
21
22 _____
23 Kathy Jones, SCR
24
25 _____
26 Denise M. Paternoster, RPR
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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-Wurtemberg (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-

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.

Index No. 652382/2014

Part 60

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

Joint Errata Sheet for the Transcript of the Proceedings Held on January 26, 2016

The parties wish to make the following changes, for the following reasons:

Page	Line	Change From	Change To	Reason(s)
347	20	his	is	TR
346	20	taking	taken	SP
350	12 (and throughout)	Broswell	Braswell	SP
353	12	be talking referring	be referring	TR
353	20	a settlement	the settlement	TR
354	18	five billion	4.5 billion	TR
354	23	approximate	approximately	TR
355	8	trust	trusts	TR
355	10	As a consideration	As consideration	TR
355	19	constitutes	confers	TR
358	18	had	have	TR
359	11	570	530	TR
359	12	similar	similarly	TR
361	19	to	two	TR
364	5	3X311	RX311	TR
367	17	affect	effect	TR
367	21	a settlement	the settlement	TR
368	12	of question	of that question	TR
369	17	had	has	TR
370	3	trust	trusts	TR
370	8	Countrywide were	Countrywide PSAs were	TR

370	8	difficult	different	TR
372	11, 25	settlement	supplement	TR
373	17	modify	model	TR
375	9	capitalized	characterized	TR
375	22	GEW-MC	GEWMC	SP
376	2	settlement	subsequent	TR
377	25	illegal	legal	TR
383	12-14	with respect to certificates in those classes, they will like receive any payments in the future on those spots	with respect to certificates in those classes, they will not receive any payments on those positions	TR/CL
391	3	client	clients	TR
392	11	is done doing	is doing	TR
392	26	the side of defense	the defense	TR
394	5	describes as	describes it as	TR
394	26	contrast	contrasted	TR
411	9 (and throughout)	Intes	Intex	SP
421	12	THE WITNESS	THE COURT	TR
430	15	losses	loses	SP
441	26	TruPro	PIMCO	TR
443	18	one's	one	TR
478	18	adopted	adopt	TR
479	7	to the meeting, the	to meeting the	TR
479	13-14	Stillman case which is cited in our trial brief 433 NY 2nd 701 which	the Stillman case which is cited in our trial brief, 433 NY 2nd 701, which	TR
479	16	to his	to use his	TR

479	26	PSA in Countrywide case. There is no analysis	PSAs in Countrywide case. There was no analysis	TR
480	10	Countrywide acknowledged	Countrywide, acknowledged	TR
480	11	They have	No one	CL
481	10 (and throughout)	Bloomberg	Bluebird	SP
482	7	responses which	responses, which	TR
482	8 (and throughout)	GBL	GOB	TR
482	9	13,107	13.107	TR
482	15	relevant	irrelevant	TR
482	18	legal position it is	legal position. It is	TR
482	19	Bloomberg Partners that	Bluebird that	TR
482	22	confer to	confer with	TR
482	23	Certainly owned	W&L certainly owned	TR
483	5	sides was	sides testified was	TR
483	7	in	an	SP
483	13	method	methods	TR
483	15	W&L with investments	W&L Investments	TR
483	18	In New York	Under New York	TR
484	17	warranty and not from something else received	warranties and not from something else receives	TR
485	4-5	reserve proposition that a petitioner reading that if you were	perverse proposition under petitioners' reading that if you are	TR/CL
485	9	were	are	TR
485	12-16	the opposite is principal. As a matter of fact, that	the opposite principle, as a matter of fact, that a party	TR/CL

		a party aggrieved in a breach of contract action should be made whole regardless of the passage of time. That is the concept of principal	aggrieved in a breach of contract action should be made whole regardless of the passage of time. That is the concept and principle	
485	19-23	your Honor, the PSA, the passage of time actually divest the aggrieved parties of any remedy at all. This is a picking and choosing of those provisions. They want to enforce those provisions. They want to ignore	your Honor, of the PSA, the passage of time actually divests the aggrieved parties of any remedy at all. This is a picking and choosing of those provisions they want to enforce, and those provisions they want to ignore	TR
486	6	of pooling	of the pooling	TR
486	9	to the suffered loss caused by breaches of rep	caused by breaches of rep	TR
486	14	immaterial	material	TR
486	17	compensation to people with certificates	compensation to certificates	TR
487	8	6.107	6.01	TR
487	10	this that way	this way	TR
487	12	reading, the 6.01	reading of 6.01	TR
487	13-14	It has -- it is... responsible for breaches	It is responsible for the breaches	TR
487	16	Irregardless	regardless	TR
487	21	have	has	TR
487	22	instruction and	instruction, and	TR
487	26	a conduct	the conduct	TR
489	24	As a I	As I	TR
490	25	PBA	BPA	TR
492	20	City	Citi	SP

492	7	investigators	investors	TR
494	14	such good recoveries	subsequent recoveries	TR
497	9	trust settlements	settlement trusts	TR
498	6	security	recovery	TR
502	7	W 7 L	W&L	TR

Reasons: TR = Transcription Error; SP = Spelling Error; CL = Clarification

Dated: New York, New York
February 25, 2016

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