

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

In the matter of the application of

WELLS FARGO BANK, NATIONAL ASSOCIATION,
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, HSBC BANK USA,
N.A., and DEUTSCHE BANK NATIONAL TRUST
COMPANY (as Trustees, Indenture Trustees, Securities
Administrators, Paying Agents, and/or Calculation Agents of
Certain Residential Mortgage-Backed Securitization Trusts),

Index No. 657387/2017

IAS Part 60

Honorable Marcy S. Friedman

Petitioners,

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

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF TILDEN PARK TO
LIMIT STANDING WITH RESPECT TO THE [REDACTED] TRUST**

Tilden Park Investment Master Fund LP, Tilden Park Management I LLC and Tilden
Park Capital Management LP, on behalf of themselves and their advisory clients (collectively,
“Tilden Park”), respectfully submits this memorandum of law in support of its motion to limit
standing to participate in this proceeding with respect to the [REDACTED] Trust.

PRELIMINARY STATEMENT

Under black letter principles, standing in this Article 77 proceeding is limited to holders
of certificates that (i) were issued by the Settlement Trusts and (ii) will be affected by this
Court’s decision. The joint motion filed today by Tilden Park and a number of other respondents
(the “Joint Motion”) addresses the first of these requirements. That motion asks the Court to
limit standing to parties that hold Settlement Trust certificates, as distinct from merely holding

interests in CDOs, Re-REMICs and NIMS trusts that themselves hold Settlement Trust certificates.

By the present motion, Tilden Park seeks to enforce the second of these two standing requirements: Even a party that holds a certificate in a Settlement Trust does not have standing with respect to that trust if its interest will not be affected by any possible ruling in this proceeding. Such a party fails to satisfy the most basic requirement of standing under New York law – an “injury in fact.” While Tilden Park believes a number of the Settlement Trust interests held by Respondents fail to satisfy this requirement, we request a ruling as to only one particularly clear instance: the interest held by [REDACTED] in the [REDACTED] Trust. We show that, however the Court rules on the various issues raised by the Petition, there is no possible scenario under which [REDACTED] would be entitled to receive any portion of the Settlement Payment or to have its certificate balances written up with respect to this trust. For this reason alone – [REDACTED] – [REDACTED] lacks standing to participate in this proceeding with respect to this trust.

STATEMENT OF FACTS

The Trustees commenced this proceeding under CPLR Article 77 to obtain judicial instructions regarding the distribution of each Trust’s Allocable Share or Shares of a \$4.5 billion Settlement Payment to be transferred by JPMorgan Chase & Co. to the Trustees. The Petition raises several issues relating to the distribution, including the order of operations – the Write-Up First Method, the Pay First Method, or a different method – that should be used to distribute the settlement proceeds to Certificateholders. Fifteen respondents, including Tilden Park, have filed answers to the Petition. On February 21, 2018, pursuant to the Court’s Scheduling Order dated

February 13, 2018, the parties exchanged information, on an “attorneys’ eyes only” basis, concerning the nature of their interests in the Settlement Trusts.

[REDACTED]¹

Consequently, under any ruling this Court might make as to the issues raised by the Petition, the distributions and write-ups on account of this trust’s Allocable Shares will be exhausted before reaching this class.

ARGUMENT

[REDACTED] Lacks Standing to Participate in This Proceeding With Respect to the [REDACTED] Trust, Because It Has No Economic Interest in This Court’s Rulings Concerning That Trust

Parties that do not have an economic interest in the outcome of a proceeding cannot satisfy the basic “injury in fact” requirement of standing under New York law. *Soc’y of Plastics Indus., Inc. v. Cty. of Suffolk*, 77 N.Y.2d 761, 772–73, 573 N.E.2d 1034, 1040 (1991); *see also Lederle Labs. Division of American Cyanamid Co. v. Public Service Commission*, 444 N.Y.S.2d 779, 780 (App. Div. 3rd Dep’t 1981) (customer lacked standing to challenge change in rates because it “sustained no economic injury or imminent threat of economic injury sufficient to confer standing.”); *Matter of Turner’s Will*, 382 N.Y.S.2d 235, 238 (Sur. 1976) (party lacked

¹ “Exh. ___” refers to exhibits to the accompanying affirmation of Philip Bentley, submitted in support of Tilden Park’s motion.

standing to challenge admission of will to probate “where the objectant’s financial interest is the same under the will as it would be in the event of intestacy.”).

Here, [REDACTED] has no economic interest in the outcome of this proceeding with regard to the [REDACTED] Trust and, consequently, does not have standing with respect to that trust. The reason for this is simple: Regardless of how the Court resolves the issues raised by the Petition, [REDACTED] will receive **no** portion of the Settlement Payment, **no** write-up, and **no** other economic benefit for this trust. The class in which [REDACTED] holds an interest is so junior, and the certificate balances and unpaid realized losses of the more senior classes are so great, that in any scenario the distributions and write-ups on account of this trust’s Allocable Shares will be exhausted before reaching this class.

While Respondents disagree on a number of issues, they agree on the finite set of ways in which write-ups and distributions can be made:

- With respect to write-ups, the parties agree that a trust’s classes – or alternatively, its subordinate classes² – are written up according to a set order of priority that (as relevant here) generally follows class seniority, such that the certificate balance of the most senior class is written up first, up to the amount of that class’s realized losses, followed by the next most senior class, and so on. Once the aggregate amount that the classes are written-up equals the amount of the Allocable Share, no remaining junior classes are written up.

- Similarly, all Respondents agree that distributions of the Settlement Payment to the various classes are made in an order of seniority. For most trusts, distributions are made pursuant to the principal waterfall, with each class receiving up to the amount of its certificate balance. In some scenarios (*e.g.*, for OC Trusts using the Pay First With OC Release Method),

² [REDACTED].

part of the distribution may be made pursuant to the excess cashflow waterfall, with each class receiving up to the amount of its realized losses and interest shortfalls according to the distribution rules for excess cashflow. Regardless of the method of distribution, once the aggregate amount of the distributions made among the classes equals the Allocable Share, no remaining junior classes receive a distribution of the Allocable Share.

Applying these rules, it is clear that [REDACTED] Trust in which [REDACTED] has an interest will obtain no write-up and no distribution from that Trust's Allocable Shares, regardless of the Write-Up Method or the method of distribution that the Court adopts:

A. The Write-Up

[REDACTED]

B. The Distribution

1. *Distribution as Principal (i.e., under Write-Up First, or Pay-First Without OC Release).*

[REDACTED]^{3 4}

³ [REDACTED].

⁴ [REDACTED].

2. *Distribution as Excess Cash Flow (i.e., under Pay-First With OC Release).*

[REDACTED]

Consequently, [REDACTED] will obtain no write-up or distribution from the Allocable Shares under any methodology. Holders of certificates in this class are unaffected by the questions in the Petition, which only affect the apportionment of those benefits to classes senior to them.

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CONCLUSION

WHEREFORE Tilden Park respectfully requests that the Court order that [REDACTED] does not have standing to appear in this proceeding with regard to the [REDACTED] Trust.

New York, New York
March 12, 2018

RESPECTFULLY SUBMITTED,

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