

# **EXHIBIT D**

**In The Matter Of:**

*US BANK v.*

---

*January 26, 2016*

---

*Original File 012616 USBANK.txt*

*Min-U-Script® with Word Index*

## US BANK v.

January 26, 2016

Page 366

Page 368

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.

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)

Page 367

Page 369

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.

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.