

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),

Petitioners,

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

Index No. 657387/2017

IAS Part 60

Honorable Marcy S. Friedman

**SUPPLEMENTAL AFFIRMATION IN SUPPORT OF RESPONDENTS’ CONCLUDING  
MEMORANDUM OF LAW ON THE APPLICATION OF THE RETIRED CLASS  
PROVISION**

DONALD W. HAWTHORNE, as an attorney admitted to practice before the courts of  
the State of New York, affirms the following to be true under penalty of perjury:

1. I am a partner at the law firm Axinn, Veltrop and Harkrider LLP, and counsel to  
respondents Prophet Mortgage Opportunities LP (“Prophet”) and Poetic Holdings VI LLC,  
Poetic Holdings VII LLC and affiliates (“Poetic”) in the above-captioned proceedings.

2. I submit this supplemental affirmation in support of the concluding memorandum  
of law on the application of the retired class provision filed by respondents Poetic and Prophet,  
and U.S. Bank National Association, in its capacity as NIM Indenture Trustee at the direction of  
Poetic, Prophet, and HBK Master Fund LP.

3. Attached as Exhibit 1 hereto is a summary of relevant provisions relating to the treatment of overcollateralization in the PP/HBK Trusts (and BSABS 2005-HE5 and BSABS 2005-HE7, which were trusts in which Poetic and Prophet asserted an interest prior to their resolution pursuant to consent orders). Each of the PP/HBK Trusts (and BSABS 2005-HE5 and BSABS 2005-HE7) contains substantially identical provisions relating to the treatment of overcollateralization.

4. Attached as Exhibit 2 hereto is a true and correct copy of the PSA for BSABS 2005-HE3.

5. Attached as Exhibit 3 hereto is a true and correct copy of the PSA for SACO 2005-WM1.

6. Attached as Exhibit 4 hereto is a true and correct copy of the PSA for BSABS 2006-HE1.

7. Attached as Exhibit 5 hereto is a true and correct copy of a September 10 email from Keith Kollmeyer, and the attachments thereto.

8. Attached as Exhibit 6 hereto is a summary of the payment history of BSMF 2007-SL2's Class 2A following its reduction to zero principal balance in June 2013 (see Column B, "Curr Balance") following accumulated writedowns of \$13,727,168 (Column E, "Accum Writedown,") showing that in 18 months following June 2013 there were subsequent recoveries to the applicable loan group for that Class (Column F, "SR to Group"), and that in every one of those cases, consistent with enforcement of the Retired Class Provision, there were no corresponding write-ups or distributions to the Class 2A. In at least seven of those months, there were no realized losses for the loan group (Column G, "Losses to Group,") which could potentially have offset any part of the subsequent recovery for the month, and thus, in the

absence of the Retired Class Provision, those subsequent recoveries would ordinarily have flowed in their entirety to the Class 2A.”

9. Attached as Exhibit 7 is a summary of the recent payment history of BSABS 2007-AQ2’s Class A1, showing that in June 2017, the Class A1 was reduced to zero principal balance (Column C) with \$4,805,321 in accumulated write-downs for realized losses (Column H), and that in October 2017, the Class A1 received a distribution of \$1,958,983 in connection with the settlement payment to that trust (Column D), and it received a further distribution of \$7 in December 2017 (*id.*). However, as shown in Exhibit 7, in four subsequent months (March, April, August and September 2018) the trust received subsequent recoveries (Column I), and yet no distribution was made to the Class A1 (Column D). During that time, distributions continued to be made to other classes in that trust that had never reached zero principal balance.

10. Attached as Exhibit 8 is are a true and correct copy of the “Distributions” and “Final Distributions on the Certificates” sections of BSABS 2006-1.

Affirmed this 10th day of October, 2018.

/s/ Donald W. Hawthorne

Donald W. Hawthorne