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# New York Supreme Court

## Appellate Division—First Department

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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, NA, 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),

**Appellate  
Case No.:  
2020-02716**

*Petitioners,*

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

*(For Continuation of Caption See Inside Cover)*

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### RESPONSIVE BRIEF FOR PROPHET AND POETIC PARTIES

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Poetic Holdings VI LLC and Poetic  
Holdings VII LLC*

*Attorneys for Appellant-Respondent  
U.S. Bank N.A., solely in its  
capacity as NIM Trustee for the  
Poetic and Prophet Trusts*

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*Appellants-Respondents*

AEGON USA INVESTMENT MANAGEMENT, LLC, BLACKROCK FINANCIAL MANAGEMENT, INC., CASCADE INVESTMENT, LLC, FEDERAL HOME LOAN BANK OF ATLANTA, FEDERAL HOME LOAN MORTGAGE CORP., FEDERAL NATIONAL MORTGAGE ASSOCIATION, GOLDMAN SACHS ASSET MGMT L.P., VOYA INVESTMENT MGMT LLC, INVESCO ADVISERS, INC., KORE ADVISORS, L.P., METROPOLITAN LIFE INS. CO., PACIFIC INVESTMENT MGMT COMPANY LLC, TEACHERS INS. AND ANNUITY ASSOC. OF AMERICA, TCW GROUP, INC., THRIVENT FINANCIAL FOR LUTHERANS and WESTERN ASSET MGMT. CO.  
(the “Institutional Investors”)

– and –

*Appellants-Respondents*

AMERICAN GENERAL LIFE INSURANCE COMPANY, AMERICAN HOME ASSURANCE COMPANY, LEXINGTON INSURANCE COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., THE UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF NEW YORK and THE VARIABLE ANNUITY LIFE INSURANCE COMPANY  
(the “AIG Parties”)

– and –

*Appellants-Respondents*

ELLINGTON MANAGEMENT GROUP, L.L.C. and DW PARTNERS LP  
(the “Ellington and DW Parties”)

– and –

*Appellants-Respondents*

TILDEN PARK INVESTMENT MASTER FUND LP on behalf of itself and its advisory clients, TILDEN PARK MANAGEMENT I LLC on behalf of itself and its advisory clients and TILDEN PARK CAPITAL MANAGEMENT LP on behalf of itself and its advisory clients  
(the “Tilden Park Parties”)

– and –

*Appellants-Respondents*

PROPHET MORTGAGE OPPORTUNITIES LP, POETIC HOLDINGS VI LLC, POETIC HOLDINGS VII LLC and U.S. BANK NATIONAL ASSOCIATION, solely in its capacity as Indenture Trustee for the Prophet and Poetic Trusts  
(the “Prophet and Poetic Parties”)

– and –

*Appellant-Respondent*

AMBAC ASSURANCE CORPORATION  
(“Ambac”)

– and –

*Appellants-Respondents*

U.S. BANK NATIONAL ASSOCIATION, as NIM Trustee, U.S. Bank, solely in  
its capacity as Indenture Trustee for the HBK Trusts  
(the “HBK Parties”)

– against –

*Respondent*

NOVER VENTURES, LLC  
 (“Nover”)

– and –

*Respondent*

D.E. SHAW REFRACTION PORTFOLIOS, L.L.C.  
 (“D.E. Shaw”)

– and –

*Respondent*

STRATEGOS CAPITAL MANAGEMENT, LLC  
 (“Strategos”)

– and –

*Respondents*

OLIFANT FUND, LTD., FFI FUND LTD. and FYI LTD.  
 (the “Olifant Parties”)

– and –

*Respondents*

GMO OPPORTUNISTIC INCOME FUND  
 and GMO GLOBAL REAL RETURN  
 (the “GMO Parties”)

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**TABLE OF CONTENTS**

ARGUMENT.....1

## **TABLE OF AUTHORITIES**

No authorities cited.

Non-Party Appellant-Respondent U.S. Bank National Association (“U.S. Bank” or the “NIM Trustee”), solely in its capacity as Indenture Trustee for certain NIM Trusts (the “NIM Trusts”) holding interests in certain RMBS Trusts, and solely at the direction of Appellant-Respondents Poetic Holdings VI LLC, Poetic Holdings VII LLC (“Poetic”) and Prophet Mortgage Opportunities LP (“Prophet”), by its undersigned counsel, together with Poetic and Prophet as certificateholders in certain RMBS Trusts (collectively, “the Poetic and Prophet Parties”) respectfully submit this brief to oppose the appeal by Tilden Park Investment Master Fund LP, Tilden Park Management I LLC, and Tilden Park Capital Management LP (together, “Tilden Park”) from the Decision and Order of Supreme Court, entered February 13, 2020.<sup>1</sup>

## **ARGUMENT**

The Poetic and Prophet Parties join in the arguments made in the responsive brief of U.S. Bank in its capacity as Indenture Trustee to certain NIM Trusts, solely at the direction of HBK Master Fund L.P., filed today (the “HBK Responsive


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<sup>1</sup> All capitalized terms not defined herein shall have the meaning set forth set in the Poetic and Prophet Parties’ Opening Brief. As explained in footnote 1 of the Poetic and Prophet Parties’ Opening Brief, incorporated here by reference, this brief reflects the positions of Poetic and Prophet. U.S. Bank submits this memorandum solely in its capacity as Indenture Trustee of the Poetic and Prophet NIM Trusts, and solely at the direction of Poetic and Prophet. Further, U.S. Bank’s capacity in its role as NIM Trustee hereunder is a separate and distinct capacity from that of U.S. Bank in its role as Petitioner and Trustee of the RMBS trusts at issue in the underlying settlement.

Brief”). For the reasons given in the HBK Responsive Brief, Supreme Court’s ruling that the Settlement Agreement Write-Up Provision (as defined therein) does not supersede conflicting provisions of the governing agreements, and that in the event of a conflict between the write-up provisions of the governing agreements and the Settlement Agreement Write-Up Provision, the governing agreements must control, was correct and should be affirmed.

Dated: New York, New York  
December 2, 2020

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**PRINTING SPECIFICATION STATEMENT**

I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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Dated: New York, New York  
November 2, 2020

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