

EXHIBIT 16

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

**AMENDED EXPERT REPORT OF MARK
ADELSON**

April 27, 2021

MLRN LLC

- against -

U.S. Bank National Association

No. 652712/2018

- it would “assess the materiality of the remaining missing defective documents.”

260. If, contrary to the expectations of market participants, the practical effect of the language of the governing agreements for the Covered Trusts was to relieve the Trustee of responsibility for determining the materiality of document exceptions and for enforcing repurchases of loans with missing or defective documents, that fact would have been material to investors and should have been disclosed in the prospectuses for the offerings of the related MBS. To my knowledge, none of the prospectuses contain such material.

C. Market Participants Would Have Expected an MBS Trustee to Enforce a Seller’s Repurchase Obligation When the Seller Cannot Cure Breaches of Representations and Warranties and Would Have Expected the Trustee to Be Responsible for Determining the Materiality of Breaches of Representations and Warranties

261. In my opinion, market participants would expect an MBS trustee to provide notices of R&W breaches and to enforce a seller’s obligation to cure or repurchase loans with such breaches. The governing agreements for MBS transactions generally reflect that expectation. (See ¶¶ 126-133, 217-219 above). In that connection, market participants would expect an MBS trustee to pursue successively stronger measures, as necessary—potentially including litigation—in order to achieve the cure or repurchase of mortgage loans with R&W breaches.

262. I understand that the Trustee takes the position that it does not have to take any action other than forwarding any repurchase requests, unless it receives direction (and indemnification) from the security holders.¹⁸⁶ That position is untenable (*see supra* ¶ 241). Further, to the extent that the Trustee did not inform the security holders that it had received notice of potentially breaching loans or the scope of such notices, it could not reasonably have expected to receive direction from security holders (other than the security holder, if any, that provided the original information about the potentially

¹⁸⁶ See, e.g., Defendant U.S. Bank National Association’s Second Supplemental Responses and Objections to Plaintiff’s Interrogatories 1, 2, 4, and 7, Supplemental Responses and Objections to Plaintiff’s Interrogatories 3, 5, and 6, and Responses and Objections to Plaintiff’s Third Set of Interrogatories, at 30-31 (30 Oct 2020) (describing U.S. Bank’s actions after receiving notices of representation and warranty breaches).

breaching loans). Indeed, the Trustee routinely failed to analyze the alleged defects or enforce the repurchase of breaching loans.¹⁸⁷

263. Here too, the Trustee seeks to engineer a framework after-the-fact where no transaction parties were required to address, much less enforce, the cure, substitution, or repurchase of loans with R&W breaches. In my opinion, market participants would have expected the contrary. Market participants would not have expected that none of the parties to a transaction were responsible for addressing loans with R&W breaches by cure, substitution, or repurchase. The governing agreements for MBS transactions cannot reasonably be read to support that construction.
264. In my opinion, market participants would expect MBS transaction parties not to deal with breach notices by simply trying to pass the buck and avoid taking action.
265. Rather, as noted in Part VI.C.6 above, market participants expect a trustee to take action when presented with “red flags” alerting it to potential problems in a transaction. In the context of MBS, in my opinion, market participants would expect a trustee to take action if it has information indicating likely breaches of R&Ws. The appropriate actions include reviewing the evidence of R&W breaches and engaging the responsible party or parties to cure the breaches or repurchase the affected loans. Market participants would view this as subsumed within the duty to enforce repurchases.
266. Consistent with this expectation, certificateholders in MBS trusts sent the Trustee requests to determine if trusts contained breaching loans and/or to enforce repurchase of loans with R&W breaches.¹⁸⁸
267. As emphasized above, if, contrary to the expectations of market participants, the practical effect of the language of the governing agreements for the Covered Trusts was to relieve the Trustee of responsibility for enforcing a seller’s repurchase obligation

¹⁸⁷ I also understand that certain Covered Trusts were part of global settlements that trustees entered with JPMorgan Chase & Co and Citigroup. To the extent an expert for the Trustee provides opinions regarding those settlements in their expert reports, I reserve the right to respond.

¹⁸⁸ See, e.g., USBMLRN01083623, Letter from Michael T. Moran of Allstate to U.S. Bank, re Mortgage Loan Files for Securitizations Set Forth in Attachment A (19 Nov 2010) (“Allstate believes that its interests as Certificateholder in these Trusts may have been materially and adversely impacted by underwriting errors or breaches of the representations and warranties (or both) contained in the contracts and offering materials related to the Trusts. As Trustee, U.S. Bank is empowered to safeguard the interests of the Certificateholders whose assets U.S. Bank administers.”); USBMLRN00044921, Letter from Timothy A. Greensfelder of AIG to U.S. Bank, re AIG Request for Mortgage Loan Information (13 Aug 2010).

compliance with standards relating to the custody and safekeeping of loan documents would inform investors in all the MBS transactions in which the Trustee serves as such.

279. The whole point of assessing compliance at the platform level is that isolated and infrequent instances of non-compliance are not the issue. The issue is when instances of non-compliance are so severe or so frequent that they are material at the level of the whole operation – the whole platform.
280. Disclosure of the true extent of non-compliance would have been material to market participants.



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April 27, 2021

Date

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