

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Baltimore Division)

In re

TMST, INC., f/k/a THORNBURG  
MORTGAGE, INC., *et al.*

Debtors

Bankruptcy Case: 09-17787-DWK

Chapter 11

**THE UNITED STATES TRUSTEE'S OBJECTION TO  
CHAPTER 11 TRUSTEE'S MOTION FOR  
APPROVAL OF SETTLEMENT AND COMPROMISE  
OF CONTROVERSY BETWEEN, AMONG OTHERS,  
THE TRUSTEE AND COUNTRYWIDE  
HOME LOANS, INC. AND BANK OF AMERICA CORPORATION**

The United States Trustee for Region Four, which includes the District of Maryland, files this objection to the Chapter 11 Trustee's Motion For Approval Of Settlement And Compromise Of Controversy Between, Among Others, The Trustee And Countrywide Home Loans, Inc. And Bank Of America Corporation (the "Motion to Approve Settlement").

**INTRODUCTION**

By this Objection, the United States Trustee echoes the concerns raised by the Unsecured Creditors Committee. While the United States Trustee does not presently have any reason to believe that the proposed settlement agreement is in any way inappropriate or otherwise objectionable in substance, the United States Trustee is

concerned that the lack of disclosure of certain information makes complete analysis of the agreement impossible. In light of the fact that the Chapter 11 Trustee has not provided any reason that the secrecy of this information that would override the interests of creditors and other parties in interest, the United States Trustee agrees with the Unsecured Creditors Committee that full disclosure would be appropriate prior to the Court's consideration of the proposed settlement agreement.

### **FACTS AND BACKGROUND**

1. As described more fully in both the Motion to Approve Settlement and the Unsecured Creditors Committee's response, the Chapter 11 Trustee, along with Zuni Investors, LLC and Och-Ziff Capital Management Group, LLC (collectively, the "Zuni Parties") initiated litigation against Countrywide Financial Corporation, Countrywide Home Loans, Inc., Bank of America, N.A. and Bank of America Corporation (collectively, the "Defendants").

2. Pursuant to a joint prosecution agreement entered into between the Chapter 11 Trustee and the Zuni Parties, the Chapter 11 Trustee and the Zuni Parties agreed to divide any recovery (either by judgment or settlement) between themselves pursuant to an agreed-upon proportion.<sup>1</sup>

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<sup>1</sup> The division between the Chapter 11 Trustee and the Zuni Parties recognizes, among other things, each party's respective financial stake in the matters being litigated as well as each party's financial contribution to the litigation. The precise division of the recovery between the Chapter 11 Trustee and the Zuni Parties is not disclosed in the Motion to Approve Settlement and is redacted from the copy of the joint prosecution agreement on file with the Court for public viewing. (*See* doc. 1268-1) However, pursuant to this Court's Order entered March 25, 2011, that information is available upon request to most creditors and interested parties. (*See* doc. 1267.)

3. The Chapter 11 Trustee, the Zuni Parties and the Defendants reached an agreement to resolve the litigation. They reduced that agreement to writing and, on February 26, 2013, by motion filed by the Chapter 11 Trustee, requested the Court approve that agreement. A copy of the written settlement agreement was attached to the Motion to Approve Settlement.

### **BASIS FOR OBJECTION**

4. According to the Motion to Approve Settlement, the Chapter 11 Trustee expects the estate's share of the recovery to be approximately \$3,108.624.

5. However, the total amount Defendants are paying under the settlement agreement is not disclosed.

6. The agreement provides that Defendants are to pay to the Trustee and the Zuni Parties a "Repurchase Payment" and a "Make-Whole Payment." However, the amount of each payment is simply described in the agreement as "the total amount of [•••] (\$•)."

7. Additionally, the joint prosecution agreement provides that, out of any recovery, the Zuni Parties are entitled to reimbursement of certain costs and expenses incurred in connection with the litigation. The amount of those costs and expenses are not disclosed, so parties in interest cannot analyze the reasonableness of those reimbursements.

**CONCLUSION**

For the reasons stated above, the Court should deny approval of the proposed settlement agreement until the undisclosed information described above is disclosed and the creditors and parties in interest have an opportunity to fully analyze and, if appropriate, comment on or object to, the substance of the settlement.

Respectfully Submitted,

Dated: March 18, 2013

Judy A. Robbins  
United States Trustee, Region Four

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18 day of February 2013, a copy of the foregoing opposition was filed electronically in the United States Bankruptcy Court for the District of Maryland and, according to the Court's CM/ECF system, the following persons received electronic service thereof:

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