No. 09-2266

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In re DERRICK MILLARD, SR. AND TRACIE MILLARD,
Debtors.

SUNTRUST BANK,
Creditor-Appellant
— v. —
DERRICK MILLARD, SR. and TRACIE MILLARD,
Debtors-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BRIEF *AMICI CURIAE* NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS IN SUPPORT OF DEBTORS POSITION SEEKING AFFIRMANCE

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March 15, 2010

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

No. 09-2266. Caption: *SunTrust Bank v. Millard,*

Pursuant to FRAP 26.1 and Local Rule 26.1, the National Association of Consumer Bankruptcy Attorneys , who is filing this brief as *Amicus Curiae*, makes the following disclosure:

1) Is party/amicus a publicly held corporation or other publicly held entity? **NO**

2) Does party/amicus have any parent corporations? **NO**

3) Is 10% or more of the stock of party/amicus owned by a publicly held corporation or other publicly held entity? **NO**

4) Is there any other publicly held corporation or other publicly held enityt that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? **NO**

5) Is the party a trade association? **NOT APPLICABLE**

6) Does this case arise out of a bankruptcy proceeding? **YES**
If yes, identify any trustee and the members of any creditors' committee.

CHAPTER 13 TRUSTEE, TIMOTHY P. BRANIGAN
THERE IS NO CREDITORS' COMMITTEE

s/Tara Twomey Dated: March 15, 2010
Tara Twomey, Esq.
Attorney for the National Association of Consumer Bankruptcy Attorneys

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INTEREST OF *AMICI CURIAE*

Incorporated in 1992, the National Association of Consumer Bankruptcy Attorneys ("NACBA") is a non-profit organization of more than 4700 consumer bankruptcy attorneys nationwide.

NACBA's corporate purposes include education of the bankruptcy bar and the community at large on the uses and misuses of the consumer bankruptcy process. Additionally, NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors. NACBA has filed *amicus curiae* briefs in various courts seeking to protect the rights of consumer bankruptcy debtors. *See, e.g., Kawaauhau v. Geiger*, 118 S.Ct. 974 (1998)*; Schwab v. Reilly*, U.S.S.C. No. 08-538 (2009); *In re Price,* 562 F.3d 618 (4th Cir. 2009).

The NACBA membership has a vital interest in the outcome of this appeal. NACBA members primarily represent individual debtors, a significant number of whom file chapter 13 bankruptcy. Many of these debtors have homes that are encumbered by junior liens obtained as part of debt consolidation refinances, home repair loan transactions, or “piggyback” purchase loan transactions. These types of loans became common during the expansion of the high loan-to-value (LTV) mortgage market from the mid-1990s to the mid-2000s. For these high LTV loans, creditors were well aware that there was either no equity supporting the lien at the time the loan was made or that depreciation in the real estate market would potentially leave no equity in the property. To compensate for the increased credit risk of high LTV loans, creditors typically extracted a much higher interest rate on their loans.

The Court's ruling in this case is critical to individual debtors who wish to retain their homes and successfully complete their chapter 13 plans. By permitting the strip off of wholly unsecured mortgages in chapter 13 proceedings, debtors can preserve their homes by directing payments to the first lien mortgage and can more effectively satisfy the terms of their chapter 13 plans. If debtors are barred from modifying claims, such as SunTrust's, they will be forced to fully pay junior lien holders under the threat of stay relief and foreclosure of their homes even when the creditor's lien is completely without value.

SUMMARY OF ARGUMENT

Affirmance of the District Court's decision is mandated by the Supreme Court's decision in *Nobelman v. American Sav. Bank*, 508 U.S. 324, 113 S.Ct. 2106 (1993), and the plain language of the Bankruptcy Code. Furthermore, the District Court's decision comports with the overwhelming weight of authority. Six Circuit Courts of Appeal (Second, Third, Fifth, Sixth, Ninth and Eleventh) have directly addressed this question, and all six have ruled that a completely unsecured second mortgage may be modified in a chapter 13 plan. *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002); *In re Lane*, 280 F.3d 663 (6th Cir. 2002); *In re Pond*, 252 F.3d 122 (2d Cir. 2001); *In re Tanner*, 217 F.3d 1357 (11th Cir. 2000); *In re Bartee*, 212 F.3d 277 (5th Cir. 2000); *In re McDonald*, 205 F.3d 606 (3d Cir. 2000). In addition, the Bankruptcy Appellate Panels in the First and Tenth Circuits have adopted this majority view. *In re Griffey*, 335 B.R. 166 (B.A.P. 10th Cir. 2005); *In re Mann*, 249 B.R. 831 (B.A.P. 1st Cir. 2000).

The Supreme Court found that the Code provisions relevant to this matter, sections 506(a) and § 1322(b)(2), are not in conflict. In determining whether a home secured claim is entitled to protection from modification under section 1322(b)(2) a court must first look to section 506(a) for a determination of the claim's secured and unsecured components. If the lien is supported by at least some value, the lien holder is the "holder of a secured claim" under the Bankruptcy Code, and its claim may be entitled to protection under section 1322(b)(2). On the other hand, if the lien has no true economic value based on the underlying collateral, and is therefore totally unsecured, then the exception does not come into play and the claim may be modified. This reading of the statute gives effect to both subsections.

Affirmance of the decision below is also compelled by the policies enunciated by Congress in enacting the Bankruptcy Code. These policies include preserving the debtor's fresh start in the face of valueless security and equity among creditors.

Lastly, Creditor's argument that the debtors acted in bad faith is unavailing because the record is devoid of any evidence of abuse or bad faith.

ARGUMENT

I. The holding of the district court that a wholly unsecured lien may be stripped off is supported by the plain language of the Bankruptcy Code, the Supreme Court's decision in the *Nobelman* case, and the overwhelming majority of relevant case law.

Six Circuit Courts of Appeals (Second, Third, Fifth, Sixth, Ninth and Eleventh) have directly addressed the question presented in this case, and all six have ruled that a completely unsecured second mortgage, such as SunTrust's, may be modified in a chapter 13 plan. *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002); *In re Lane*, 280 F.3d 663 (6th

Cir. 2002); *In re Pond*, 252 F.3d 122 (2d Cir. 2001); *In re Tanner*, 217 F.3d 1357 (11th Cir. 2000); *In re Bartee*, 212 F.3d 277 (5th Cir. 2000); *In re McDonald*, 205 F.3d 606 (3d Cir. 2000). In addition, the Bankruptcy Appellate Panels in the First and Tenth Circuits have adopted this majority view. *In re Griffey*, 335 B.R. 166 (B.A.P. 10th Cir. 2005); *In re Mann*, 249 B.R. 831 (B.A.P. 1st Cir. 2000). In determining whether the anti-modification provision of section 1322(b)(2) applies, each of these appellate courts and the district court below properly began their analyses with the application of section 506(a). The Supreme Court in *Nobelman* makes clear that section 506(a) is essential to the preliminary determination of whether the anti-modification protections should be invoked at all.

The general rule set forth in section 1322(b)(2) is that a debtor's chapter 13 plan may "modify the rights of a holder of a secured claim." This general rule permitting modification of the rights of a holder of a secured claim is followed by a limited exception for secured claim holders whose claims are "secured only by a security interest in real property that is the debtor's principal residence." 11 U.S.C. § 1322(b)(2). Based on the plain language of the statute, the narrowly drawn language that follows the general rule and contains the anti-modification provision can apply only to a holder of a "secured claim." Thus, before reaching the question of whether the claim is "secured only by a security interest in real property that is the debtor's principal residence," the creditor must hold a secured claim. *In re Zimmer*, 313 F.3d at 1226-27. It is this initial determination that requires the application of section 506(a).

The Supreme Court in *Nobelman* clearly recognized the need to turn to section 506(a) first to determine whether the creditor has a secured claim:

> Petitioners were correct in looking to § 506(a) for a judicial valuation of the collateral to determine the status of the bank's secured claim. It was permissible for petitioners to seek a valuation in proposing their Chapter 13 plan since § 506(a) states that '[s]uch value shall be determined…in conjunction with any hearing…on a plan affecting such creditor's interest. But even if we accept petitioners' valuation, the bank is still the 'holder' of a 'secured claim,' because petitioners' home retains $23,500 of value as collateral.

Nobelman, 508 U.S. at 328-29.

Nobelman correctly states that after conducting a section 506(a) valuation, a partially secured claim will be divided into its secured and unsecured claim components. *Nobelman*, 508 U.S. at 329 ("The portion of the bank's claim that exceeds $23,500 is an 'unsecured claim componen[t]' under § 506(a), *United States v. Ron Pair Enterprises, Inc.* 489 U.S. 235, 239 n.3, 109 S.Ct. 1026, 1030 n.3, 103 L.Ed.2d 290 (1989)"). The district court correctly understood that a claim having no secured component cannot be a secured claim entitled to the protection of the anti-modification provision. *See In re Zimmer*, 313 F.3d at 1227 (improper to jump forward to the last step in analysis—determining what is entitled to protection from modification—without considering whether the creditor even qualifies for such protection in the first place); 8-1322 Collier on Bankruptcy ¶ 1322.06[1][a][i]. As a matter of common sense, a lien that attaches to nothing provides no security to the lien holder.

Creditor's position completely dismisses the role of section 506(a). Creditor argues that the "rights" of a home mortgage creditor contained in the mortgage instruments must be unequivocally enforced; that the mere existence of a lien controls rather than the creditors status as a "holder of a secured claim" under the Bankruptcy Code. This position, however, cannot be reconciled with the *Nobelman* directive that courts are "correct in looking to § 506(a) for judicial valuation" of the collateral. *Nobelman*, 508 U.S. at 328-29. If the "rights" of a home mortgage holder are protected in all circumstances, as the Creditor would have it, then what purpose would such a valuation serve? "[T]he § 506(a) analysis approved of by the court would superfluous if any claim secured by a lien on the debtor's principal residence were protected by the anti-modification provision. In other words, there would be no need for a § 506(a) analysis if fully secured, partially secured, and totally unsecured home mortgage lienholders all received the protection of the anti-modification provision." *Matter of Sanders*, 202 B.R. 986 (Bankr. D. Neb. 1996), *citing In re Williams*, 161 B.R. 27, 29-30 (Bankr. E.D. Ky. 1993). For the statement in *Nobelman* to have any meaning at all, it must follow that a section 506(a) valuation to determine whether a claim is at least partially secured is a necessary prerequisite before turning to section 1322(b)(2). *See In re McDonald*, 205 F.3d at 611.

To the extent "rights" are to be protected under section 1322(b)(2), they must attach to a lien having at least some minimum economic value. *See In re Lane*, 280 F.3d at 664. A home mortgage holder cannot be a "holder of a secured claim" for purposes of section 1322(b)(2) of the Bankruptcy Code simply because its mortgage documents say it is.

II. Permitting modification of a claim that is secured in name only, and that is not supported by any true economic value is consistent with the public policy goals of the Bankruptcy Code.

A. The Bankruptcy Code's Policy is to Treat Similarly Situated Creditor Equally.

For claims that are not entitled to protection under section 1322(b)(2), bifurcation into their secured and unsecured components is an integral part of the Code's balance between the rights of secured and unsecured creditors. *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 108 S.Ct. 626 (1988). Bifurcation ensures that unsecured creditors receive the same treatment for their claims as partially secured creditors receive for the unsecured portion of their claims. In *Timbers*, relying both on the language and structure of the Code as well as pre-Code practice, the Court declined to adopt a result that would permit undersecured creditors (i.e., creditors with both allowed secured claims and allowed unsecured claims after the application of section 506(a)) to receive interest on their allowed secured claims before other unsecured creditors received any payment. "To allow a secured creditor interest where his security was worth less than the value of his debt was thought to be inequitable to unsecured creditors." *Timbers*, 484 U.S. at 373, *citing Vanston Bondholders Protective Comm. v. Green*, 329 U.S. 156, 164, 67 S.Ct. 237, 240 (1946).

In this case, SunTrust seeks to enforce its prepetition mortgage documents without modification so as to obtain principal and interest on a claim that is in reality totally unsecured, and to be paid prior to any payment to other unsecured creditors. If SunTrust is successful in these efforts, this would violate the principle of equity among similarly situated creditors. Every additional dollar paid to an unsecured lienholder delays or prevents a payment to the general unsecured creditors.[1]

Reversal of the decision below would encourage certain lenders to obtain liens that are worthless in an economic sense simply to subvert the chapter 13 scheme in the event that the borrower files bankruptcy. These lenders would be guaranteed a stream of payments in chapter 13 that they

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[1] Distribution of the debtor's assets in bankruptcy is almost always a zero-sum game because the claims against the debtor typically far exceed the value of the estate. To the extent one creditor or class of creditors gets paid more other creditors will be paid less.

would not otherwise be entitled to but for the documents creating the illusory lien.

> In essence, an overly expansive reading of §1322(b)(2) allows opportunistic lenders to convert what would normally be dischargeable unsecured debt into nondischargeable secured debt. Lenders are able to obtain high interest rates on their loans while avoiding the concomitant risk usually associated with such lending. . . The less expansive view of §1322(b)(2) that we embrace is in accord with the purpose–acknowledged by both sides of this debate–of promoting home purchase lending, while at the same time withholding incentives to opportunistic secondary lenders to acquire unsecured liens in order to defeat potential Chapter 13 plans.

In re Bartee, 212 F.3d at 293. Such a gaming of the bankruptcy system should not be condoned.

The strip off of wholly unsecured claims through application of section 506(a) recognizes the real world economic rights of creditors in relation to the debtor's property at the time of a bankruptcy case. Mortgage creditors are given special treatment by the Code only to the extent they have security that has some economic value. Beyond that, the bankruptcy policy of equity among creditors dictates that they be treated identically with other wholly unsecured creditors.

B. Section 1322(b)(2) was not intended to protect the high loan-to-value home mortgage lending industry.

SunTrust argues that the anti-modification provision in section 1322(b)(2) is intended to protect all home mortgage lenders, so as to promote "the flow of capital into the home lending market," citing to the concurring opinion of Justice Stevens in *Nobelman*. 508 U.S. at 327. The majority of courts that have considered this brief reference to policy considerations in *Nobelman* have questioned whether Congress intended to protect the entire home mortgage lending industry as it exists today.

Courts have repeatedly noted a distinction between the first and second mortgage markets. Starting in the mid-1990's the second mortgage market expanded rapidly as lenders pushed high loan-to-value (LTV) mortgages.[2] In issuing a warning to lender about the risks involved with such loans in comparison to traditional mortgage loans, the Office of Thrift Supervision described the practice as follows:

> An increasing number of lenders are aggressively marketing home equity and debt consolidation loans, where the loans, combined with any senior mortgages, are near or exceed the value of the security property…Until recently, the high LTV home mortgage market was dominated by mortgage brokers and other less regulated lenders. Consumer groups and some members of Congress have expressed concern over the growth of these loans, and the mass marketing tactics used by some lenders.

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[2] In 1995, home equity lenders had made $1 billion of high LTV loans. By 1997, the amount of these loans had increased to $8 billion. High Loan-To-Value Lending, General Accounting Office, GAO/GGD 98-169, August 13, 1998; Paine's High LTC Specialist is Out," National Mortgage News, October 27, 1997, 1997 WL 12863567.

Thrift Bulletin TB 72, Office of Thrift Supervision, Department of the Treasury, August 27, 1998, at 1. Lenders who make such high LTV loans, or no equity loans, take their illusory security in the debtor's home not for its economic value or the ability to foreclose, but for the threat of foreclosure.

Similarly, in the early 2000's, lenders aggressively pitched "piggyback" loans to borrowers unable to come up with a larger down payment, or any down payment at all. Piggyback loans feature two mortgages—an 80 percent first mortgage and a second mortgage for 10, 15 or 20 percent of the purchase price. The structure typically combined a traditional fixed-rate or adjustable-rate first mortgage with either a closed-end second lien or a home equity line of credit. The risks of piggyback loans were well known to the second mortgage industry by mid-2005.

> "The potential for risk is that already over-extended home buyers will be left with an upside down mortgage should the bubble burst and price drop."

See Broderick Perkins, Piggyback Loan Growth Poses Mortgage System, Realty Times (July 13, 2005), available at http://realtytimes.com/rtpages/20050713_piggyback.htm. The additional risks borne by piggyback and other high LTV lenders allowed them to charge higher interest rates on these second mortgages.

In this case, SunTrust did not provide a loan that helped the Millards purchase their home. Instead, SunTrust refinanced an already high risk, high LTV piggyback loan (principal balance of $138,250) with a loan having a principal balance of more than twice that original amount ($280,000). *In re Millard*, 414 B.R. 73, 75 (D. Md. 2009).

At the time of the SunTrust/Millard transaction in 2006, the Washington Metropolitan Area[3] in which the Millard property was located was experiencing record house price appreciation. *See* Maryland Department of Planning, Housing Price Index, Table 2 – Cumulative Inflation-Adjusted* House Price Appreciation in Maryland's MSA and MSADs, 1995-2009, p.2 (Addendum A). Now that the housing bubble has burst and home values have dropped, SunTrust can hardly argue that it was not aware of the potential risk that the Millards would be left with an upside down mortgage.

Additionally, prior to 2006, the overwhelming weight of legal authority on this very issue allowed debtors to avoid wholly unsecured second mortgages in bankruptcy. Notably, Congress chose not to alter that settled precedent when it enacted significant changes to the Bankruptcy Code in 2005. *See Lorillard v. Pons*, 434 U.S. 575, 580, 98 S.

[3] Formerly know as the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA.

Ct. 866 (1978)("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without [relevant] change.").

Bankruptcy policy should not be used to protect piggyback and high LTV lenders who would not otherwise be protected outside of bankruptcy and who knowingly make riskier loans. Any other result will create a perverse incentive for lenders to make high LTV loans knowing that they will gain an unfair advantage in bankruptcy.

III. SunTrust's argument that the Millards acted in bad faith by purposefully defaulting on their first mortgage is unavailing.

SunTrust suggests, however briefly, that the Millards acted in bad faith by failing to pay their first mortgage for 11 months prior to filing for bankruptcy. SunTrust Br. at 18. SunTrust presented no such argument in its written brief to the bankruptcy court and the record on appeal is devoid of any evidence of fraud or bad faith. Because the issue was not raised in the bankruptcy court and because there is no evidence in the record to support such a finding, the district court correctly dismissed SunTrust's argument.

In re Eashai, 87 F.3d 1082 (9th Cir. 1996), which is cited by SunTrust, is inapposite. In that case, creditor alleged that the debtor engaged in fraudulent conduct—credit card kiting[4]—prior to filing for bankruptcy. The creditor in *Eashai* filed a complaint seeking a determination that the fraudulently incurred debt was non-dischargeable. By contrast, SunTrust opted not to file any such action against the Millards. Had SunTrust sought to protect its rights by seeking a determination of the dischargeability of its debt, it would have been required to prove all the elements of fraud.

In *Eashai*, the Ninth Circuit held that to prove fraud the creditor must establish by preponderance of the evidence that the debtor made representations, that at the time the debtor knew they were false, that the debtor made them with the intention and purpose of deceiving the creditor, that the creditor relied on the representations, and the creditor sustained alleged loss and damage as a proximate result of the representations having been made. *Id.* at 1086. The crux of the case revolved around factors to be considered in determining the debtor's intent to deceive the creditor in the credit card kiting context. *Id.* at 1088-89. In contrast to the creditor in *Eashai*, who proved each element of fraud by a preponderance of the evidence, SunTrust in this case has

[4] Credit card kiting involves using cash advances from one credit card to pay the monthly minimums on other cards.

filed no action to challenge debtors' conduct and presented no evidence to support its conclusion of abuse and bad faith.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully Submitted,

_s/Tara Twomey___________________

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CERTIFICATE OF COMPLIANCE

Compliance with Type-Volume Limitations, Typeface Requirements, and Type Style Requirements

1. The brief complies with the type-volume limitations of FED. R. APP. P. 32(a)(7)(B) because:

    this brief contains 3461 words, excluding the part of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6)

    this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Garamond, 14pt.

s/Tara Twomey
Tara Twomey
National Association of Consumer
Bankruptcy Attorneys

ADDENDUM A

Maryland Department of Planning, Housing Price Index, Table 2 – Cumulative Inflation-Adjusted* House Price Appreciation in Maryland's MSA and MSADs, 1995-2009

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Table 2: Cumulative Inflation-Adjusted* House Price Appreciation in Maryland's MSAs and MSADs, 1995 to 2009

Year and Quarter	Baltimore-Towson, MD	Bethesda-Frederick-Rockville, MD (MSAD)	Cumberland, MD-WV	Hagerstown-Martinsburg, MD-WV	Salisbury, MD	Washington-Arlington-Alexandria, DC-VA-MD-WV (MSAD)	Wilmington, DE-MD-NJ (MSAD)	Maryland
95-q1	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
95-q2	0.3%	-0.1%	-8.4%	1.7%	1.4%	0.2%	-0.6%	0.3%
95-q3	1.1%	0.8%	-3.6%	3.1%	0.0%	1.2%	1.2%	1.3%
95-q4	1.7%	0.5%	-8.4%	3.8%	0.3%	1.5%	0.6%	1.6%
96-q1	2.2%	0.5%	-7.0%	4.0%	-0.2%	1.8%	0.6%	2.0%
96-q2	0.1%	-1.9%	-6.1%	3.1%	-3.5%	-0.6%	-1.3%	-0.3%
96-q3	-1.1%	-3.4%	-9.5%	0.4%	0.2%	-2.1%	-1.7%	-1.6%
96-q4	-0.9%	-3.0%	-9.8%	1.7%	0.1%	-2.4%	-1.8%	-1.3%
97-q1	-0.7%	-3.1%	-6.9%	2.5%	-0.1%	-2.5%	-2.1%	-1.4%
97-q2	-1.8%	-3.7%	-7.4%	1.6%	-1.7%	-3.2%	-2.3%	-2.2%
97-q3	-0.5%	-3.8%	-7.6%	3.1%	-1.1%	-2.3%	-1.4%	-1.4%
97-q4	0.2%	-3.1%	-1.8%	3.0%	0.6%	-2.0%	-1.3%	-0.7%
98-q1	1.9%	-1.7%	-3.7%	4.4%	1.6%	-0.4%	1.0%	0.8%
98-q2	1.2%	-2.2%	-5.0%	3.5%	2.7%	-0.7%	1.3%	0.2%
98-q3	1.8%	-1.6%	-3.8%	3.8%	2.8%	-0.3%	1.7%	0.7%
98-q4	2.6%	-0.9%	1.2%	5.8%	3.9%	0.5%	1.5%	1.4%
99-q1	3.4%	0.0%	-1.9%	6.1%	5.2%	1.5%	2.8%	2.3%
99-q2	2.7%	-0.2%	-0.9%	7.2%	2.8%	1.1%	2.1%	1.5%
99-q3	2.8%	1.5%	-4.9%	4.4%	2.7%	2.4%	3.2%	1.8%
99-q4	3.1%	1.7%	-6.0%	5.6%	-0.2%	3.1%	2.3%	2.1%
00-q1	4.0%	3.7%	-5.7%	2.3%	2.2%	4.6%	3.4%	3.3%
00-q2	4.0%	4.6%	-9.8%	4.5%	1.0%	7.1%	3.3%	3.3%
00-q3	5.3%	6.5%	-6.8%	5.6%	3.7%	9.1%	4.9%	4.5%
00-q4	6.3%	7.8%	-5.2%	6.2%	3.0%	11.3%	5.6%	5.7%
01-q1	8.0%	10.5%	-2.8%	7.4%	6.6%	14.5%	6.8%	7.6%
01-q2	9.2%	12.5%	-5.4%	7.9%	4.5%	17.1%	7.6%	8.8%
01-q3	12.2%	17.7%	-4.3%	10.1%	7.6%	21.6%	10.6%	12.4%
01-q4	15.0%	21.1%	-2.2%	12.1%	9.6%	25.5%	13.1%	15.3%

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Table 2: Cumulative Inflation-Adjusted* House Price Appreciation in Maryland's MSAs and MSADs, 1995 to 2009

Washington-
Bethesda-
Arlington-

Year and Quarter	Baltimore-Towson, MD	Frederick-Rockville, MD (MSAD)	Cumberland, MD-WV	Hagerstown-Martinsburg, MD-WV	Salisbury, MD	Alexandria, DC-VA-MD-WV (MSAD)	Wilmington, DE-MD-NJ (MSAD)	Maryland
02-q1	18.3%	25.8%	-0.5%	15.5%	10.3%	29.2%	15.0%	18.6%
02-q2	21.0%	30.3%	-0.8%	16.6%	12.6%	33.0%	16.8%	21.5%
02-q3	24.6%	35.2%	-1.2%	18.3%	14.6%	37.7%	19.6%	25.6%
02-q4	26.9%	37.9%	2.6%	21.9%	17.0%	40.2%	21.5%	28.0%
03-q1	28.7%	39.7%	-0.9%	22.2%	16.0%	41.9%	22.4%	29.6%
03-q2	31.4%	42.4%	3.3%	24.1%	17.5%	44.6%	25.1%	32.4%
03-q3	35.3%	47.0%	2.2%	27.2%	22.0%	49.2%	28.1%	36.4%
03-q4	44.1%	56.9%	4.3%	35.5%	25.4%	58.1%	33.6%	44.8%
04-q1	47.5%	59.0%	8.3%	38.6%	27.4%	62.5%	36.6%	48.2%
04-q2	52.9%	66.3%	6.5%	43.1%	30.2%	69.9%	39.7%	54.1%
04-q3	65.0%	82.3%	7.5%	55.9%	42.4%	86.3%	47.9%	66.7%
04-q4	70.3%	86.1%	7.9%	61.7%	44.3%	92.9%	52.3%	71.9%
05-q1	78.5%	94.4%	13.2%	67.4%	54.0%	102.2%	56.2%	80.3%
05-q2	87.5%	106.8%	17.4%	79.3%	62.2%	116.1%	62.0%	90.3%
05-q3	96.5%	115.5%	21.8%	87.3%	70.2%	126.9%	68.3%	99.1%
05-q4	104.2%	123.1%	25.3%	98.0%	77.3%	137.4%	73.3%	107.9%
06-q1	110.7%	127.6%	26.8%	105.5%	82.1%	142.4%	77.6%	114.3%
06-q2	113.4%	129.0%	35.0%	105.1%	85.4%	145.0%	77.7%	117.4%
06-q3	116.6%	128.9%	36.5%	108.9%	93.7%	146.2%	79.8%	120.6%
06-q4	122.2%	132.9%	41.2%	110.5%	96.1%	150.4%	85.2%	125.9%
07-q1	122.7%	130.1%	41.3%	112.9%	96.8%	147.7%	83.9%	126.0%
07-q2	121.2%	124.2%	49.5%	106.9%	98.2%	142.9%	83.9%	123.8%
07-q3	119.4%	120.5%	47.1%	99.7%	95.2%	138.4%	82.1%	120.9%
07-q4	118.5%	117.0%	47.7%	98.3%	98.6%	131.9%	82.4%	119.0%
08-q1	115.3%	112.3%	44.2%	94.8%	92.2%	124.8%	79.1%	114.8%
08-q2	106.3%	99.1%	45.8%	86.8%	79.1%	106.9%	72.3%	103.5%
08-q3	96.4%	89.0%	42.2%	72.0%	83.9%	94.8%	66.7%	92.9%
08-q4	100.9%	93.2%	53.1%	73.9%	84.1%	98.7%	70.1%	96.6%

Table 2: Cumulative Inflation-Adjusted* House Price Appreciation in Maryland's MSAs and MSADs, 1995 to 2009

Year and Quarter	Baltimore-Towson, MD	Bethesda-Frederick-Rockville, MD (MSAD)	Cumberland, MD-WV	Hagerstown-Martinsburg, MD-WV	Salisbury, MD	Washington-Arlington-Alexandria, DC-VA-MD-WV (MSAD)	Wilmington, DE-MD-NJ (MSAD)	Maryland
09-q1	100.5%	94.1%	49.6%	72.5%	84.9%	100.4%	72.2%	96.5%
09-q2	89.8%	84.5%	45.5%	61.9%	75.3%	90.1%	64.1%	85.6%
Peak Quarter	**2007-q1**	**2006-q4**	**2007-q2 ****	**2007-q1**	**2007-q4**	**2006-q4**	**2006-q4**	**2007-q1**
Peak **Appreciation**	122.7%	132.9%	53.1%	112.9%	98.6%	150.4%	85.2%	126.0%
Decline from Peak	-26.8%	-36.4%	-14.2%	-45.2%	-23.6%	-40.1%	-24.8%	-32.1%

Source: Quarterly House **Price** Index, Second Quarter 2009, Federal Housing Finance Agency, 2009

* Adjusted for inflation using series ID# CUUR0000SA0L2 as described in question 17 of the HPI FAQ, http://www.ofheo.gov/hpi.aspx?Nav=60.

** The Cumberland, MD-WV peaked in Q3 of 2007 and peaked again in Q4 of 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2010 pursuant to 6th Cir. R. 25, I caused the foregoing brief to be served electronically on the following through the ECF System:

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