

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

BASIS PAC-RIM OPPORTUNITY FUND
(MASTER) & BASIS YIELD ALPHA FUND
(MASTER),

Plaintiffs,

-against-

TCW ASSET MANAGEMENT COMPANY,

Defendant.

Index No. _____

Date Index No. Purchased:

SUMMONS

To the above named Defendant:

TCW Asset Management Company
1251 Avenue of the Americas
Suite 4700
New York, NY 10020

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial. The basis of venue is CPLR 503(c) and (d). A principal office of TCW Asset Management Company is located in the County of New York.

Dated: November 21, 2012

/s/

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BASIS PAC-RIM OPPORTUNITY FUND
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FUND (MASTER)

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COMPLAINT

Basis Pac-Rim Opportunity Fund (Master) (“Pac-Rim”) and Basis Yield Alpha Fund (Master) (“BYAFM”), through their attorneys, Lewis Baach PLLC, as and for their complaint, allege:

Nature of Action

1. This is a suit against TCW Asset Management Company (“TCW”) for fraud, breach of contract, and unjust enrichment.
2. TCW acted as the collateral manager for a special purpose investment vehicle called Dutch Hill Funding II, Ltd. (“Dutch Hill II”).
3. Under TCW’s direction, Dutch Hill II invested in a portfolio of mortgage-backed bonds, and also in other securities, known as Collateralized Debt Obligations (“CDOs”), which themselves had invested in mortgage-backed bonds.
4. TCW entered into an Investment Advisory Agreement (the “Agreement”) with Dutch Hill II. Pursuant to the Agreement, TCW selected the specific mortgage-backed bonds and CDOs to be purchased by Dutch Hill II.

5. Dutch Hill II had no executive officers or managers, and so its success depended upon the quality and integrity of TCW's investment process.

6. Once Dutch Hill II had acquired, under TCW's direction, a portfolio of mortgage-backed bonds and CDO securities, it then issued notes. The holders of the notes were then entitled to a share of the interest and principal payments and pre-payments that Dutch Hill II received from its portfolio of mortgage-backed bonds and CDO securities.

7. The Dutch Hill II notes were marketed by means of a written Investor Presentation. This Investor Presentation emphasized TCW's independent role as the collateral manager for Dutch Hill II, TCW's depth of experience with the mortgage-backed bond market, and TCW's experience managing similar types of portfolios of mortgage-backed bonds and CDO securities.

8. The investment rationale for the Dutch Hill II notes, as expressed in the Investor Presentation, was that note holders would get the benefit of TCW's ability "to invest in stable performing Ba1/Ba2 RMBS applying TCW's established credit selection criteria." (RMBS is an acronym for residential mortgage-backed securities.)

9. TCW acknowledged in the Investor Presentation that what TCW referred to as a "perception of risk" had increased. However, TCW assured potential investors that "TCW's view is that on a selective basis the subprime RMBS market remains a fundamentally sound asset class."

10. In fact, TCW's actual and honest view, at the exact time Plaintiffs invested in the Dutch Hill II notes, was that the subprime market was -- in the words of its Chief Investment Officer -- a "total unmitigated disaster."

11. TCW lied about its view of Dutch Hill II's portfolio in order to earn fees, protect its investment in personnel and technology, and continue in its profitable role as a collateral manager working in close association with leading investment banks to churn out investment vehicles like Dutch Hill II.

12. TCW began to acquire and assemble the portfolio of Dutch Hill II in 2006.

13. As of December 2006, TCW had \$28 billion in CDOs under management. Given its experience as a collateral manager on numerous deals, TCW had an excellent vantage point from which to monitor and evaluate trends in mortgage-backed bonds and to evaluate the specific securities that it was recommending for purchase.

14. That meant that TCW was privy to real-time information about the performance of \$28 billion worth of mortgage-backed bonds, information which was not available to investors such as Plaintiffs.

15. Much of this information was not public, but instead was available only to entities, like TCW, that held or managed investments in particular mortgage-backed bonds, or investments in CDOs, or managed CDOs. In its capacity as a collateral manager for at least 42 CDOs, TCW received detailed trustee reports, cash-flow reports, and other up-to-date non-public information about the current performance of these CDOs and the mortgage-backed bonds contained in the portfolios of these CDOs.

16. TCW, in the Investor Presentation for Dutch Hill II, represented that it maintained a state-of-the-art technology system to assist in its investment decisions. On information and belief, this technology system permitted TCW to track in real-time the performance of thousands of distinct mortgage-backed bonds including bonds that were the assets of CDOs, like Dutch Hill II, that TCW managed.

17. From its perch as a “top player” in this market, TCW was uniquely privy to information directly from its own managers and consultants, and from non-public data that it received from trustees and others, about the current performance of RMBS that it managed or that were in CDOs that it managed and about the serious problems and endemic lack of quality of mortgages issued in the U.S. during 2005 and 2006, and of the mortgage-backed bonds that securitized those mortgages.

18. Towards the end of 2006, and continuing into 2007, TCW, in the persons of its top managers, including Jeffrey Gundlach, who at that time was the Chief Investment Officer for the TCW Group, began to form the view that the class of mortgage-backed bonds that TCW selected to include in the Dutch Hill II portfolio were not performing and would likely continue not to perform. This meant that there would be significant defaults in the near term.

19. Once TCW formed the view that a certain class of mortgage-backed bonds was not performing and would likely continue not to perform as expected, the only responsible course of action would have been for TCW to cease the process of creating and marketing new securities like Dutch Hill II, that were being constructed to hold a portfolio of this class of mortgage-backed bonds which TCW had identified as being likely to fail.

20. TCW did not take this course. Instead, TCW continued to market Dutch Hill II to investors, and lied about its knowledge of current performance and expectations for future performance of the type of mortgage-backed bonds TCW selected for the portfolio of Dutch Hill II.

21. As noted, TCW had made significant operational investments in the technology necessary to serve as a collateral manager for CDOs, as well as significant investments in

personnel and infrastructure. TCW also relied on strong relationships with underwriting banks that were essential to its collateral management business as well as its other business lines.

22. TCW could earn a return on these investments and relationships only if it continued to churn out CDOs.

23. TCW was not willing to risk its investments in technology and personnel, or to forgo management fees or alienate the investment banks that provided such a significant portion of its business. Accordingly, TCW chose in 2007 to continue to assemble and market CDO securities that were comprised of mortgage-backed bonds, even though it knew such securities were already not performing and were highly likely to fail.

24. TCW concealed its true knowledge of the current performance and its expectation about the future performance of mortgage-backed bonds through (i) a variety of misleading and false statements in an “Investor Presentation” that TCW drafted and that TCW intended to be, and that was, distributed to and relied upon by investors, including Plaintiffs, in Dutch Hill II; and (ii) by stating that three of its officers would invest their own personal funds in Dutch Hill II, and then lying about the circumstances surrounding the decision of those three not to invest in Dutch Hill II.

25. In addition, TCW lied about the criteria that it used to select the portfolio of Dutch Hill II, or knowingly failed to disclose material information that was necessary so that the statements that TCW did make were not misleading.

26. TCW stated that its core investment strategy was to invest in stable performing mortgage-backed bonds. Instead, TCW invested in some of what its top investment personnel knew were the worst bonds in the market, and in addition, on information and belief, allowed

Deutsche Bank Securities Inc. (“Deutsche Bank”), the structuring bank and underwriter on Dutch Hill II, to influence TCW’s selection to the detriment of the investors in Dutch Hill II.

27. Rather than being a “defensively managed” portfolio that consisted of “stable performing Ba1/Ba2 RMBS,” Dutch Hill II contained toxic securities and performed significantly worse than a benchmark portfolio comprised of similar mortgage-backed bonds.

Parties

28. Plaintiffs Pac-Rim and BYAFM are exempted companies incorporated with limited liability under the laws of the Cayman Islands. At all material times, Pac-Rim was a Master Fund into which the Basis Pac-Rim Opportunity Fund, a regulated Cayman Island mutual fund, invested. At all material times, BYAFM was the Master Fund into which the Basis Yield Alpha Fund, a regulated Cayman Islands mutual fund, invested. At all material times, Pac-Rim and BYAFM were managed by Basis Capital Funds Management Limited (“BCFM”) as its investment advisor. BCFM is headquartered in Sydney, Australia.

29. Defendant TCW is a California corporation headquartered in California with offices in New York, New York. TCW is a wholly-owned subsidiary of The TCW Group, Inc., indirectly owned by the French company Société Générale, S.A. TCW provides trust, investment management, and investment advisory services. TCW held itself out as highly skilled and experienced in devising investment strategies and selecting assets in the mortgage-backed bond and CDO market. It was the collateral manager to Dutch Hill II and was solely responsible for the selection of mortgage-backed bonds and CDO assets for the Dutch Hill II portfolio.

Pertinent Non-Party

30. Deutsche Bank, a subsidiary of the German company Deutsche Bank AG, was the investment banker, structurer, underwriter and placement agent for Dutch Hill II.

31. Dutch Hill II is, or was, a special purpose vehicle and an exempted company with limited liability, registered in the Cayman Islands. One hundred percent of Dutch Hill II's Ordinary Shares were held by Deutsche Bank (Cayman) Limited as share trustee. Dutch Hill II had no operating history, prior business, or employees. The sole purpose and function of Dutch Hill II was to acquire collateral, issue notes and conduct other activities incidental to these functions. TCW decided for Dutch Hill II what collateral would be purchased.

Jurisdiction and Venue

32. This Court has jurisdiction over TCW pursuant to CPLR 301 and 302 and BCL 1313(b).

33. Venue is proper under CPLR 503(c) and (d) because TCW operates a principal office in the County of New York and many of the wrongful acts alleged herein occurred in the County of New York.

34. The basic documents pertaining to Dutch Hill II, including the Indenture, the Collateral Administration Agreement and the Investment Advisory Agreement, are governed by and construed in accordance with the laws of New York.

35. The Issuer, Dutch Hill II, submitted irrevocably to the jurisdiction of the courts of New York.

36. During the period at issue, a Managing Director of TCW communicated with individuals at BCFM from her office at 200 Park Avenue, New York, N.Y.

37. Deutsche Bank, the structurer, arranger, underwriter and placement agent for Dutch Hill II, carried out these functions in its offices in New York City.

38. On information and belief, TCW managers met with managers of Deutsche Bank in New York City on matters pertaining to Dutch Hill II, and/or communicated with Deutsche Bank from TCW's office at 200 Park Avenue, New York, N.Y., and/or with managers at Deutsche Bank who were working out of Deutsche Bank's New York offices.

Chronology

39. In the 2004 through 2006 time frame, TCW developed and marketed several distinct branded CDO products. TCW referred to these products as its "CDO Issuance Platforms."

40. TCW worked in conjunction with several different investment banks to develop and market these CDO products. TCW decided to use different underwriters on the different CDOs so that it could reach different investors.

41. In 2005, TCW worked with Deutsche Bank on at least two CDOs – Stack 2005-1 and Dutch Hill 2005-1.

42. In 2006, TCW approached Deutsche Bank on another CDO, to be called Dutch Hill II.

43. On January 16, 2007, Deutsche Bank's Paul Brownsey first solicited BCFM principals Stuart Fowler and John Murphy concerning Dutch Hill II, shortly thereafter forwarding to them an email from Deutsche Bank's offices in New York describing Dutch Hill II.

44. On January 26, 2007, Fowler attended a Deutsche Bank conference held in Portugal. Representatives of TCW also attended this conference. At the conference, TCW

predicted that there would be losses from mortgage-backed bonds issued in 2006, but claimed to have developed systems for assessing such bonds that allowed TCW to take on 2006 risks while safely navigating away from those mortgage-backed bonds that were likely to fail.

45. Fowler was told at the conference that senior managers at TCW would personally invest in the equity of Dutch Hill II. This was important to Fowler as it showed TCW's commitment to and belief in Dutch Hill II.

46. Also in late January, John Murphy of BCFM met with TCW managers, Sonia Mangelsdorf, Louis Lucido and Roland Ho at an industry conference in Las Vegas and discussed, among other subjects, a potential investment by Pac-Rim and/or BYAFM in Dutch Hill II.

47. On February 12, 2007, Brownsey forwarded to Stuart and Murphy a "preliminary investor presentation," on the Dutch Hill II offering ("Investor Presentation"), setting forth in greater detail a description of the Dutch Hill II security. The Investor Presentation highlights throughout TCW's selection and management of the Dutch Hill II portfolio and TCW's purported current view of the market and prospects for investments in mortgage-backed bonds. TCW's corporate logo appears prominently on the front page of this Investor Presentation.

48. TCW represented that Dutch Hill II was "designed to capitalize on opportunities in the below investment grade RMBS market" and "to be defensively managed by TCW." As noted previously, RMBS is an acronym for "residential mortgage-backed securities," in other words, mortgage-backed bonds.

49. TCW represented that it had the ability to select mortgage-backed bonds calculated to be profitable by "exploiting market inefficiencies" as "the most reliable way to enhance returns." TCW described these "inefficiencies" as caused by (i) the market being

“relatively young” and “still developing,” (ii) “the perceived complexity of security valuation,” and (iii) “lack of skill or experience” leading investors to avoid these offerings. TCW assured prospective investors that “managers with relevant expertise and analytical capabilities can exploit these features in managing CMBS/ABS portfolios.”

50. In further support of its represented ability to separate the wheat from the chaff among mortgage originators and mortgage-backed bonds and its confidence in the Dutch Hill II security, TCW announced that three of its senior staff would personally invest in the equity of Dutch Hill II.

51. The term “equity tranche” is used to describe the lowest tranche of the CDO, which is sometimes described as being in a “first loss” position. Hence, the willingness of TCW’s managers to invest in the equity tranche of Dutch Hill II was intended to convey, and did convey, that TCW honestly continued to hold the view that mortgage-backed bonds remained “a fundamentally sound asset class.”

52. On March 14, 2007, TCW forwarded a U.S. Housing Market Update under cover of a letter from TCW’s Group Managing Director Louis C. Lucido, one of the TCW executives who TCW said intended to purchase Dutch Hill II equity. The cover letter stated in part:

I am enclosing our view on the events that have led to the current market dilemma, as this will hopefully clarify for investors that ***we are confident that our investment process has mitigated the impact on their portfolios.***

(Emphasis supplied.)

53. The Market Update reiterated comments made at the January 26 conference that some subprime mortgage originators had eased their underwriting standards in order to maintain market share and that the level of home price appreciation had been declining and even turning

negative in some regions. Once again, however, TCW professed to have “minimized and often avoided” these poor quality loans in TCW’s transactions.

54. The Update also stated TCW’s belief that TCW’s levels of delinquency would not increase sufficiently to cause downgrades to more recent vintage ABS CDOs backed by RMBS collateral:

For example, Deutsche Bank recently estimated that if cumulative defaults rose to 23.7%, and loss severities increased to 40%, cumulative losses would reach 9.5%. ***We believe the estimated level of cumulative defaults is highly unlikely and the cumulative losses based on these assumptions should be viewed only as a worst-case scenario.*** Most 2006 triple-B rated subordinated tranches would begin to lose principal when cumulative losses exceed 9%.

(Emphasis supplied.)

55. On April 30, 2007, Brownsey forwarded to Fowler and Murphy an email from Lazarus N. Sun, TCW’s Senior Vice President and Associate General Counsel. In this e-mail, Sun informed prospective investors in Dutch Hill II that the three TCW senior staff members were not investing in Dutch Hill II equity as previously announced. Sun explained that the three had been relying on a TCW loan to finance their purchases but that TCW’s Compensation Committee had recently determined that TCW should no longer extend loans to company employees. Sun reported that the three staff members “wish to assure you that their decision” not to invest was based solely on the unavailability of TCW financing “and in no way reflects on their confidence in Dutch Hill II, which remains very high. They wish to assure all parties to this transaction that they remain fully committed to Dutch Hill II.” In fact, this representation of “remain[ing] fully committed to Dutch Hill II” was false.

56. On May 2, 2007, based on these ongoing assurances from TCW that it had “minimized and often avoided” the pitfalls currently affecting portions of the mortgage-backed bond market by implementing its proven strategy for identifying mortgage originators and

securitizers who had abandoned proper credit standards and were producing poor quality mortgage-backed bonds, and based on Sun's confirmation that TCW continued to have very high confidence in Dutch Hill II, Pac-Rim purchased \$11,800,000 of the BBB minus rated notes in Dutch Hill II and BYAFM purchased the Dutch Hill II subordinated notes, including the portion that had been earmarked for the TCW senior staff, for \$16,378,417.

57. On May 3, 2007, three days after TCW reassured Pac-Rim and BYAFM on April 30 that its senior staff continued to have a "high level of confidence" in Dutch Hill II and *the day after* Pac-Rim and BYAFM made their purchases, Jeffrey E. Gundlach, TCW's Chief Investment Officer and the lead TCW executive on the Dutch Hill II offering, published a letter revealing TCW's actual views of the state of the mortgage-backed bond market. Gundlach stated bluntly that "the subprime sector likely faces a significant period of deterioration ahead." He predicted a "multi-quarter period of deterioration" and projected that "cumulative losses" on "many subprime pools backing bonds issued in 2006," which he characterized as the "weakest vintage," would "exceed 8%" and acknowledged that at this rate "the lowest-rated investment grade bonds would experience losses." This was precisely the type of bonds that TCW had selected for Dutch Hill II. Yet three days earlier TCW had expressed a "high level of confidence" in these same bonds.

58. On June 27, 2007, Gundlach expanded on the views he expressed on May 3. In a speech given at the Morningstar Investment Conference in Chicago, he acknowledged that the "subprime market is a total unmitigated disaster and it's going to get worse." Gundlach described "a perfect storm of conflicting factors" that coalesced in February 2007. This "perfect storm" thus occurred at the same time that TCW was assuring Pac-Rim and BYAFM that

mortgage-backed bonds were a “fundamentally sound asset class” generally and three months prior to TCW’s expression of its “high level of confidence” in Dutch Hill II in particular.

59. On August 9, 2007, Gundlach published another letter to investors. In this August letter, Gundlach provided a further explanation of his earlier views. The August 9 letter makes clear that Gundlach’s extremely negative assessment of the mortgage-backed bond market was not a recent epiphany. Indeed, Gundlach had held this opinion from at least the time that Dutch Hill II closed. Gundlach expressly referenced his May 3 letter, stating:

In fact, mortgage lending had undergone a serious deterioration in underwriting standards – to the point that, in an open letter on May 3, I forecast a cascade of downgrades and losses on subprime-backed bonds rated “investment grade” and on collateralized debt obligations (CDOs) backed by these bonds.

60. Gundlach further described his earlier warning as “**my May 3 public sell recommendation on subprime bonds and CDOs.**” This May 3 opinion on the present quality of mortgage-backed bonds was the exact opposite of what TCW had represented to Pac-Rim and BYAFM on April 30 when, in its zeal to persuade them to invest in Dutch Hill II, it assured them that it continued to have a “high level of confidence” in Dutch Hill II.

61. Barely two months after Plaintiffs invested in Dutch Hill II, on July 10, 2007, the Rating Agencies announced their intention to review for possible downgrade subprime mortgage-backed bonds. The very next day Deutsche Bank, with TCW’s approval, drastically lowered its mark on Dutch Hill II and issued a margin call to BYAFM with respect to its investment in the subordinated notes representing a 77.5% loss in value of BYAFM’s interest. Within days, BYAFM’s subordinated notes had fallen in value to virtually zero, and Pac-Rim’s interest in the BBB minus notes fell close behind. Both securities ultimately became worthless.

The Investor Presentation

62. TCW either drafted the Investor Presentation on its own, or it played a substantial role, with Deutsche Bank, in drafting the Investor Presentation.

63. TCW marketed Dutch Hill II to investors effectively as bonds, which could give investors steady returns based on Dutch Hill II's receipt of payments from mortgage-backed bonds, with the mortgage-backed bond payments being in turn dependent upon the receipt of mortgage payments from individual homeowners.

64. To emphasize the bond-like aspect of the CDOs, TCW, along with Deutsche Bank, arranged for Standard & Poors and Moody's and Fitch ("Rating Agencies") to rate Dutch Hill II using the same ratings that the Rating Agencies used to rate corporate bonds and government bonds.

65. The Investor Presentation falsely and misleadingly stated that Dutch Hill II was "designed to capitalize on opportunities in the below investment grade RMBS market." When Dutch Hill II was sold to Plaintiffs, TCW did not honestly believe or expect that there were "opportunities in the below investment grade RMBS market." TCW viewed these assets as being caught in a "perfect storm." Indeed, one day after Plaintiffs invested in Dutch Hill II, Gundlach issued his "public sell recommendation" on mortgage-backed securities.

66. The Investor Presentation falsely states that "[a]lthough the perception of risk in the market has recently heightened, **TCW's view is that on a selective basis the subprime RMBS market remains a fundamentally sound asset class.**" To the contrary, as noted above, one day after Plaintiffs invested in Dutch Hill II, Gundlach issued a "public sell recommendation" for mortgage-back bonds.

67. The Investor Presentation states that the “[c]ore investment strategy is to invest in stable performing Ba1/Ba2 RMBS applying TCW’s established credit selections criteria.” This statement falsely and misleading implies that TCW expected the mortgage-backed securities to be “stable” and “performing.” TCW expected exactly the opposite. Gundlach expected “a cascade of downgrades and losses on subprime-backed banks rated ‘investment grade’ and on collateralized debt obligations (CDOs) backed by these bonds.”

68. The Investor Presentation states that certain hedging features in Dutch Hill II would “protect the transaction against idiosyncratic and macro risks and promote outperformance in adverse ‘long-tail’ scenarios.”

69. The phrase “long-tail scenarios” is jargon for so-called Black Swan events, i.e., market events that are low-probability, infrequent, surprising, and unpredictable.

70. TCW’s reference to “adverse ‘long-tail’ scenarios” was misleading in the extreme. It implied that TCW did not expect or anticipate any imminent “long-tail” scenarios. To the contrary, in a June 27, 2007 speech, Jeffrey Gundlach stated that “the subprime market is a total unmitigated disaster and it’s going to get worse.” He attributed the disaster to factors that had coalesced in February 2007. Nor did the June 27 speech represent a view newly arrived at. It merely extended comments made by Gundlach in his May 3 letter, which was released one day after Plaintiffs invested in Dutch Hill II.

71. By referring to “adverse ‘long-tail’ scenarios” TCW was concealing its view that the market for mortgage-backed securities was in fact and in truth in the very midst of an adverse “long-tail” event. In other words, the “long-tail” event was an actuality, and not some hypothetical “scenario.” On information and belief, TCW was aware of the “long-tail” event

based on its review of non-public information concerning the actual performance of in excess of \$28 billion of mortgage-backed bonds.

72. TCW understood that investors relied heavily on credit ratings provided by Standard and Poor's and Moody's.

73. The Investor Presentation references the ratings for mortgage-backed bonds on nearly every page.

74. The ratings, as utilized in the Investor Presentation, were crucial on two levels. First, the Investor Presentation described the mortgage-backed bonds that were to be included in the Dutch Hill II portfolio by reference to their ratings. Second, the notes Dutch Hill II would issue were described by their ratings, ranging from AAA to BBB-.

75. TCW understood that investors, including Plaintiffs, would rely on these ratings -- both the ratings for bonds in Dutch Hill II's portfolio and the ratings for notes issued by Dutch Hill II -- in evaluating whether Dutch Hill II was a suitable investment. However, TCW, including Gundlach, TCW's Chief Investment Officer, believed that the ratings were extraordinarily unstable and did not accurately reflect credit risk.

76. Gundlach, in his August 9, 2007 letter, summarized his true views on the ratings as follows:

People bought bonds backed by subprime mortgages based on credit ratings bestowed by the rating agencies. These credit ratings were based upon a naïve extrapolation of historical default rates. In fact, mortgage lending had undergone a serious deterioration in underwriting standards – to the point that, in an open letter on May 3, I forecast a cascade of downgrades and losses on subprime-backed bonds rated “investment grade” and on collateralized debt obligations (CDOs) backed by these bonds.

77. TCW's use of ratings to market Dutch Hill II, when it privately understood, based on its knowledge and access to information, that the ratings were unstable and unreliable, was

deceptive and misleading. At the very least, by concealing these facts, TCW knowingly failed to disclose material information that should have been disclosed to make the statements that TCW did make in the Investor Presentation not misleading.

78. The Investor Presentation represents that the Subordinated Notes (the tranche in which Plaintiffs invested) would be advantaged by a feature of Dutch Hill II that allowed principal payments to be paid, on a pro-rata basis, to the Subordinated Notes. However, this feature would operate only where all so-called Coverage Tests were in compliance. Coverage Tests, however, would not be in compliance in a scenario where there was a “cascade of downgrades and losses on subprime-backed bonds....” Yet Gundlach stated, the day after Pac-Rim and BYAFM purchased the Subordinated Notes, that “subprime credit **has entered** a multi-quarter period of deterioration” (emphasis supplied).

79. So Gundlach understood that the conditions necessary to permit payments to the Subordinated Notes **no longer obtained** as of the date Plaintiffs invested in Dutch Hill II.

80. TCW’s reference to payments of principal to the Subordinated Notes was false and misleading, when TCW knew that this so-called feature of Dutch Hill II was illusory, in light of Gundlach’s (and TCW’s) knowledge of actual current conditions.

81. It is false and misleading to say “payments will be made, so long as condition x is maintained,” when the speaker knows that condition x is no longer being maintained or that it is highly likely that it will not be maintained.

82. The Investment Presentation states that “Ba1/Ba2 RMBS [the type of bonds in the Dutch II collateral] are typically structured to withstand losses significantly in excess of expected case losses (3.5-5.5% cumulative net losses) and can often withstand losses in excess of historical ‘worst vintage’ loss performance.” The Investment Presentation goes on to say that the

breakevens for the majority of the types of bonds in the Dutch Hill II portfolio are “generally in excess of generic average expected case losses.”

83. These statements falsely convey that TCW expected the bonds in the Dutch Hill II portfolio to withstand expected losses. In fact, Gundlach, on May 3, forecast “a cascade of downgrades and losses on subprime-backed bonds.” Gundlach went on to say that he expected “cumulative losses to exceed 8% of many subprime pools backing bonds issued in 2006....” And TCW, based on its access to extensive non-public information regarding the current actual performance of mortgage-backed bonds, knew the bonds contained in the Dutch Hill II portfolio were **not** structured to withstand the losses that TCW expected, and that the “breakeven” points for Dutch Hill II did not exceed expected case losses.

84. TCW closes out Section 2 of the Investment Presentation, which is labeled “Investment Opportunity,” with the plain and direct statement that “TCW’s view is that on a selective basis the subprime RMBS market remains a fundamentally sound asset class.” That is a plainly false statement of TCW’s actual view, as evidenced by Gundlach’s May 3 letter.

Lazarus Sun April 30 E-mail

85. As noted above, TCW represented to Plaintiffs that a group of senior managers at TCW would personally invest in the equity tranche of Dutch Hill II.

86. This was an important and material representation to Plaintiffs, because the equity tranche of Dutch Hill II was in a “first-loss” position. Accordingly, the representation that senior managers would invest their own personal funds was intended to and did communicate to Plaintiffs a high level of confidence that TCW in fact believed that Dutch Hill II was a good investment.

87. On April 30, Lazarus Sun, the Senior Vice President and Associate General Counsel of TCW, sent an e-mail to Richard Kim of Deutsche Bank. Sun intended Richard Kim to forward this e-mail to potential investors in Dutch Hill II, and intended these investors to rely on the e-mail in making their decision to invest in Dutch Hill II. Sun, and/or others at TCW, knew that Plaintiffs planned to make a significant investment in notes issued by Dutch Hill II.

88. On April 30, Kim forwarded the email to Paul Brownsey of Deutsche Bank, who sent it to BCFM principals Stuart Fowler and John Murphy the same day.

89. The subject line of Sun's April 30th E-mail is "Explanation of Decision by Lou Lucido, Roland Ho and Sajjad Naqvi Not To Invest in Dutch Hill II Equity."

90. Sun attributed the decision not to invest in Dutch Hill II solely to a very recent change in TCW's policy concerning the extension of loans to employees.

91. Sun states categorically that the decision not to invest "is based **solely** on the unavailability of financing ..." (emphasis supplied).

92. Sun goes on to state that the managers' confidence in Dutch Hill II "remains very high" and that the managers "remain fully committed to Dutch Hill II."

93. After receiving Sun's e-mail, and in reliance on Sun's explanation, Plaintiffs invested in Dutch Hill II.

94. On May 3, Chief Investment Officer Gundlach issued a lengthy letter setting out TCW's view on the market for mortgage bonds and in particular on the very category of mortgage bonds that comprise the portfolio of Dutch Hill II.

95. The views expressed in the May 3 letter directly contradict the statements in Sun's April 30 e-mail.

96. TCW had regular credit-mortgage investment meetings attended by senior managers, including Gundlach, Lucido, Ho, and Naqvi. The purpose of these meeting included the review of the economic outlook and its impact upon credit mortgage sectors, and analysis of market conditions. As a result of these meetings, Lucido, Ho, and Naqvi, by April 30, the date of Sun's e-mail, were fully cognizant of the views and expectations shortly thereafter expressed by Gundlach in his May 3 letter.

97. On information and belief, Lucido, Ho and Naqvi, by April 30th, agreed in whole, or in large part, with Gundlach's views, as expressed in his May 3 letter.

98. Published reports state that Gundlach was highly respected by those who worked with him, and that he exerted an out-sized influence on his staff. Lucido reported to Gundlach who was the Chief Investment Officer of TCW. Indeed, when Gundlach left TCW in 2009 to start Doubleline Capital LP, many of his staff, including Lucido, left with him.

99. Gundlach's May 3 letter identifies a number of factors which, in Gundlach's view, would result in losses to the BBB rated tranches of mortgage-backed bonds.

100. Dutch Hill II invested in BB-rated tranches of mortgage-backed bonds. Such tranches are even more exposed to losses than BBB-rated tranches. Thus, if Gundlach believed BBB tranches would experience losses, that meant that he believed the BB tranches would have no value whatsoever. This must be so because before the BBB tranche can experience a loss, the BB tranche must be a complete loss.

101. In short, the import of Gundlach's May 3 Letter was that a security like Dutch Hill II, which is composed of BB-rated tranches of mortgage-backed securities, had no value.

102. The sequence can be summarized in a nut-shell. On April 30, TCW's Associate General Counsel represents to Plaintiffs and others that three TCW managers working under

Gundlach have “very high” confidence in, and remain “fully committed to” Dutch Hill II, which invested in BB-rated mortgage-backed bonds. On May 2, Plaintiffs buy notes issued by Dutch Hill II. On May 3, Gundlach, TCW’s Chief Investment Officer and supervisor of the three managers, gives a detailed explanation of the current situation pertaining to mortgage-backed bonds, the unmistakable conclusion of which is that BB-rated mortgage-backed bonds will default.

103. Sun’s April 30 e-mail was false and misleading. It gives a false and misleading statement of, specifically, TCW’s actual views and expectations concerning BB-rated mortgage-backed bonds, and, generally, of TCW’s actual view and expectations for investments in mortgage-backed bonds.

104. At the time Sun sent the April 30 e-mail, TCW management, including the three TCW managers specifically identified in the letter, did not genuinely or reasonably hold the opinion ascribed to them in Sun’s e-mail.

105. Alternatively, Sun’s April 30 e-mail is false and misleading because it knowingly failed to disclose material information that was necessary to make the statements that were contained in the e-mail not misleading. The material information that was not disclosed is that Gundlach, as TCW’s Chief Investment Officer, had the negative views which have been detailed in this Complaint, including in ¶¶ 57-60.

106. A comparison of the Gundlach May 3 letter with Sun’s April 30 e-mail establishes that TCW had knowledge of facts and access to information at the time of the April 30 e-mail that contradicted the statements in that e-mail. As such, the April 30 e-mail establishes that TCW’s deception was knowing and intentional.

TCW Did Not Apply The Stated Selective Criteria Data

107. In addition to the representations that TCW made as to its management and selection of the Dutch Hill II portfolio. TCW also falsely represented that it had undertaken a “Transaction Structural Analysis” in order to

- Make sure the lowest rated tranche performs in breakeven analysis
- Perform scenario analysis across many credit and interest rate environments
- Look for stability of cash flows
- Seek deals with sufficient credit enhancement (e.g. full. funded OC)
- Make relative value decisions on rating, price, asset type

108. In addition, in direct communications with BCFM, Paul Brownsey of Deutsche Bank, on behalf of TCW, represented on February 11, 2007 that “TCW will pick very conservative names but the current wide spaced market will allow them to execute those conservatives names at attractive levels.” On information and belief, TCW, as a result of its close coordination with Deutsche Bank in the marketing of Dutch Hill II, was aware that Deutsche Bank had made this, or a substantially identical, representation.

109. These representations did not pertain to acts which TCW promised to perform in the future. These statements pertained to acts which TCW claimed to have already taken place, since the Dutch Hill II portfolio was largely selected before Plaintiffs invested in notes issued by Dutch Hill II.

110. Five years have elapsed since TCW selected the mortgage-backed bonds for the Dutch Hill II portfolio. In that time period, as a result of government investigations and private lawsuits, certain information has been disclosed about mortgage-backed bonds that was not

public in 2007, and was not known nor available to potential investors, including Plaintiffs. TCW, however, was fully aware of this information.

111. This information establishes that TCW did not, in fact, select investments that it expected to be stable and to perform. In fact, TCW selected investments that, as is now apparent, were the worst of the worst.

112. The key to TCW's marketing strategy was its repeated assurance that, in selecting the Dutch Hill II portfolio, it had the skill and expertise to identify and avoid poor-performing mortgage-backed bonds. This was a knowing misrepresentation. In fact, TCW selected mortgage-backed bonds for Dutch Hill II from numerous mortgage originators that TCW knew were among those who had dramatically lowered their underwriting standards and were producing the very type of toxic securities that TCW had promised to avoid.

113. During the ramp-up period for Dutch Hill II, TCW and Deutsche Bank worked together and communicated about TCW's selection of securities to purchase for the Dutch Hill II portfolio. In this process, on information and belief, TCW and Deutsche Bank communicated with each other about specific mortgage-backed securities that were under consideration to be purchased for the Dutch Hill II security.

114. The Permanent Subcommittee on Investigations of the United States Senate investigated Deutsche Bank and released a comprehensive report (the "PSI Report") which sets out in great detail the actual views and expectations of Deutsche Bank with respect to the general class of mortgage-backed bonds that TCW selected to be included in Dutch Hill II. The PSI report also details the actual views and expectations of Deutsche Bank concerning specific mortgage-backed bonds that TCW selected for Dutch Hill II.

115. The PSI report did not focus on collateral managers, so it does not contain any internal TCW emails, and Plaintiffs will not have access to such emails until discovery commences. However, based on the common practice among investment banks and collateral managers during this period to communicate about specific securities being considered for inclusion in a planned CDO, on information and belief, TCW was made fully aware of Deutsche Bank's views on such securities.

116. The PSI report contains many Deutsche Bank e-mails authored by Greg Lippmann, who was Deutsche Bank's top global CDO trader. During the period that TCW was selecting mortgage-backed bonds to be included in Dutch Hill II, Lippmann regularly identified for his colleagues at Deutsche Bank and elsewhere specific mortgage-backed bonds that he advised should be avoided. In a series of emails during late 2006 and early 2007, Lippmann specifically identified a number of these originators and securitizers and warned against including their product in offerings on which Deutsche Bank intended to invest "long."

117. For instance, Lippmann characterized mortgage-backed bonds securitized by ACE Securities Corp., which was affiliated with his own employer Deutsche Bank, as "not good," "generally horrible," a "pig," and "stinks." Loan originators on these ACE mortgage-backed bonds included Countrywide Home Loans, Inc., Argent Mortgage Co., and Option One Mortgage Corp., originators that Lippmann internally identified as among the worst in the industry. He also identified Asset Backed Securities Corp., First Franklin Mortgage, Ameriquest Mortgage Securities, Inc., IXIS Real Estate, Securitized Asset Backed Receivables LLC, Structured Assets Securities Corp., Saxson Asset Securities, and Terwin Mortgage, variously describing them as putting out a "very, very bad deal," a "piece of crap," "one of the worse deals ever," an "absolute pig," and similar negative assessments.

118. As noted, Deutsche Bank worked closely with TCW during the 2005-2007 time period on a number of CDO transactions, including Dutch Hill II. On information and belief, Deutsche Bank shared the substance of Lippmann's assessments with TCW, and TCW was well-apprieved of Lippmann's views. Notwithstanding this information, and diametrically contrary to its representations to Pac-Rim and BYAFM that it had employed an asset-selection methodology calculated to identify and avoid just such assets, fully 40% of the mortgage-backed bonds that TCW included within the Dutch Hill II portfolio came from the very originators and securitizers that Lippmann specifically had identified as among the worst in the industry.

119. In all events, whether or not TCW was told of Lippmann's assessments, if TCW did, in fact, have a proven strategy for identifying poor quality mortgage-backed bonds, and if it did, in fact, employ it in evaluating assets for Dutch Hill II, as TCW represented, TCW would have known that these and other securitizers whose mortgage-backed bonds it selected were exactly the sort that TCW assured Pac-Rim and BYAFM it had avoided.

120. Based on information which has only been available after 2007, it is now apparent that TCW allowed particular securities to be included in Dutch Hill II that were completely unsuitable, contrary to statements in the Investor Presentation.

121. TCW, for example, caused Dutch Hill II to invest in the BBB-rated tranche of a Deutsche Bank CDO called Gemstone 7.

122. Gemstone 7 is the subject of an extensive analysis by the PSI. This analysis discloses information that was not known by Plaintiffs in 2007, nor could it have been known by Plaintiffs.

123. Gemstone 7 was a CDO that Deutsche Bank assembled and underwrote as the mortgage market deteriorated in 2007.

124. Deutsche Bank took extraordinary steps to sell Gemstone 7, in the face of rejection by U.S. investors.

125. Deutsche Bank rushed to sell Gemstone 7 in the face of concerns that the market for this type of investment was collapsing.

126. Deutsche Bank had serious difficulty in persuading U.S. investors to invest in Gemstone 7, particularly the As and BBB rated tranches of Gemstone 7.

127. Deutsche Bank offered special sales incentives to its sales force for selling Gemstone 7.

128. The portfolio of Gemstone 7 was comprised of tranches of mortgage-backed bonds that Deutsche Bank had identified as being “pigs,” “crap” and as otherwise being clearly unsuitable investments.

129. Deutsche Bank had serious and material difficulty in selling Gemstone 7. This indicates that knowledgeable investors in the market did not expect Gemstone 7 to perform. Yet TCW caused Dutch Hill II to purchase Gemstone 7, after having advised investors that its “core investment strategy” is to invest in stable, performing mortgage-backed bonds.

130. TCW decided to include a BBB-rated tranche of Gemstone 7 in Dutch Hill II -- which was otherwise virtually unsaleable -- because, on information and belief, TCW succumbed to pressure from Deutsche Bank, as the investment bank in Dutch Hill II, to include a hard-to-place and totally unsuitable bond in Dutch Hill II.

131. On information and belief, discovery will show additional instances where TCW abdicated its role as an investment manager for Dutch Hill II and acquiesced to pressure from Deutsche Bank to include defective bonds from Deutsche Bank’s balance sheet.

Reliance

132. The market for securities based on subprime residential mortgages as it existed during the timeframe relevant to this dispute was highly complex, opaque, and concentrated. Only a few investment banks were significant issuers or traders in this market, which was characterized by illiquidity and a paucity of publicly available information. TCW was a central participant in this market and was intimately involved in it. As a consequence, TCW was one of a very small group of market participants to have and acquire substantial and comprehensive information about the current value and outlook for mortgage-backed bonds and CDO securities.

133. The flow of information, including pricing information, about mortgage-backed bonds and CDO securities was highly restricted. As a result, the investors in the mortgage-backed bonds and CDO securities relied heavily on and reasonably expected the investment banks and collateral managers such as TCW to provide truthful and complete information about the mortgage-backed bonds and CDO securities and the pricing and market for these securities.

134. As TCW's "pitch book" for Dutch Hill II explained, the process of conducting effective due diligence to evaluate the quality of the mortgage-backed bonds in any CDO offering and the hundreds of loans underlying those mortgage-backed bonds requires (i) access to extensive information concerning the mortgage lenders, the mortgage-backed bonds securitizers, and the credit quality of the loans themselves, and (ii) skillful and time-consuming in-depth assessment of this information. As a matter of market practice, investors in such CDOs, including Plaintiffs, could not and were not expected to obtain such extensive information and to repeat the same loan-level due diligence process as the collateral managers who are paid to select assets for the CDOs. Investors, including Plaintiffs, justifiably rely heavily on the reputation and experience of the collateral managers who select the CDOs' portfolios and reasonably expect the

collateral managers, like TCW, to provide truthful and complete information about the quality of the underlying collateral.

135. As explained by Ian Giddy, Professor of Finance at the Stern School of Business at New York University:

[T]he manager's expertise with the assets and ability to manage within established constraints is *paramount* to the success of the CDOs. *Market consensus is that the manager is the most important factor in the performance of a CDO.*

"The CDO Product," by Ian Giddy, Professor of Finance at the Stern School of Business at New York University.

136. Fundamental to its role is that the collateral manager will act independently and serve the interests of all of the CDO's investors. As explained by the former Co-Head of Global CDOs at Citigroup in testimony to the U.S. Financial Crisis Inquiry Commission ("FCIC") in April 2010: "The collateral manager's role was to ... manage and trade the collateral pool for the benefit of the debt and equity issued by the CDO."

137. As the collateral manager for Dutch Hill II, TCW had special knowledge, far superior to that of Pac-Rim and BYAFM, and far superior to what was reasonably available to Pac-Rim and BYAFM, about the quality, value, pricing, current performance and likely future performance over time of the underlying mortgage-backed bonds which comprised Dutch Hill II's portfolio. Moreover, TCW had exclusive knowledge of whether it had faithfully carried out the due diligence process that it represented had allowed it to identify and avoid defective mortgage-backed bonds.

138. As the collateral manager for Dutch Hill II, TCW had superior knowledge concerning the actual risk of default for the assets in the Dutch Hill II portfolio. TCW possessed

knowledge that the Plaintiffs did not have reasonable access to, and Plaintiffs, therefore, could not verify the representations made by TCW.

139. During the period at issue here, from January 2007 through April 2007, managers of BCFM contacted TCW directly on at least three occasions seeking information from TCW concerning the current status and performance of other TCW-managed CDOs, the identification of specific mortgage-backed securities TCW maintained on a watch-list, updated portfolios for specific CDOs, and TCW market views. As a result of these communications, among other reasons, TCW understood that its knowledge and expertise concerning mortgage-backed bonds and CDOs far exceeded that of Pac-Rim, BYAFM, and their advisors.

140. TCW understood that Pac-Rim and BYAFM were relying upon TCW for information about mortgage-backed bonds, and TCW welcomed this reliance.

141. TCW knew, both because it worked closely with Deutsche Bank in the marketing of Dutch Hill II, and as a result of direct communication with Stuart Fowler and John Murphy, that Pac-Rim and BYAFM were planning to make substantial investments in notes issued by Dutch Hill II.

142. TCW was aware that Pac-Rim and BYAFM would of necessity rely on the representations TCW made to them concerning the mortgage-backed bonds underlying Dutch Hill II, and TCW expected and intended that Pac-Rim and BYAFM would rely on such information. Pac-Rim and BYAFM reasonably relied on TCW's representations, to their detriment.

Causation and Damage

143. As an intended consequence of TCW's fraudulent representations, Pac-Rim and BYAFM were induced to purchase their respective interests in Dutch Hill II, purchases they

would not have made if TCW had honestly represented its actual knowledge about the current performance of mortgage-backed bonds, its actual views on the state of the market for such securities generally and the likely failure of Dutch Hill II in particular, and if TCW had truthfully disclosed that it had failed to identify and avoid poor quality mortgage-backed bonds for inclusion in the Dutch Hill II portfolio as it had represented, but instead had knowingly placed poor quality mortgage-backed bonds and CDOs in the portfolio.

144. TCW's many fraudulent misrepresentations and failures to disclose concealed the circumstances and factors that led to Pac-Rim's and BYAFM's loss.

145. Pac-Rim, as the investor in the BBB minus rated notes of Dutch Hill II, was directly injured by TCW's fraud and contractual breaches. Pac-Rim's injury was separate, distinct and independent from any injury sustained by Dutch Hill II. Dutch Hill II was structured so that the BBB-notes took losses as a result of defaults or as a result of any failure of the mortgage-backed bonds in the Dutch Hill II portfolio to perform, prior to any of the other higher tranches of Dutch Hill II taking losses or otherwise being affected.

146. BYAFM, as the investor in the subordinated notes of Dutch Hill II, was directly injured by TCW's fraud and contractual breaches. BYAFM's injury was separate, distinct and independent from any injury sustained by Dutch Hill II. Dutch Hill II was structured so that the subordinated notes were in the first position to take losses as a result of defaults, or as a result of any failure of the mortgage-backed bonds in the Dutch Hill II portfolio to perform.

147. Pac-Rim and BYAFM suffered damages as a result in sums to be proven at trial.

COUNT I
(Fraudulent Inducement)

148. Plaintiffs repeat and reallege each of the allegations of the foregoing ¶¶ 1-147.

149. TCW made materially false statements and wrongfully omitted material facts in communications, both written and oral, with Pac-Rim, BYAFM, and their collateral manager BCFM in order to induce Pac-Rim and BYAFM to purchase interests in Dutch Hill II.

150. TCW knew that these statements were false when made and knew that it had wrongfully omitted material facts at the time it made the omissions.

151. Pac-Rim and BYAFM reasonably and justifiably relied on TCW's false representations and culpable omissions in deciding to make their purchases.

152. As a result, Pac-Rim and BYAFM suffered damages in an amount to be proved at trial, but not less than \$28,178,417 plus prejudgment interest.

153. TCW's actions towards Pac-Rim and BYAFM regarding Dutch Hill II, including the false misrepresentations and culpable omissions as alleged above, were egregious in nature. These actions were directed at Pac-Rim and BYAFM, and in addition, were part of a larger scheme to defraud other investors and induce them to buy impaired securities that would generate substantial collateral manager fees for TCW. By knowingly putting these securities into the stream of commerce, TCW caused damage far beyond the damage suffered by Pac-Rim and BYAFM. Accordingly, TCW should also be required to pay substantial punitive damages.

COUNT II
(Fraudulent Concealment)

154. Plaintiffs repeat and reallege each of the allegations of the foregoing ¶¶ 1-147.

155. TCW suppressed and concealed material information concerning Dutch Hill II, its actual knowledge and expectations concerning the class of mortgage-backed securities that were included in Dutch Hill II, and other material information as detailed above.

156. TCW had a duty of disclosure to Pac-Rim and BYAFM due to its unique position and knowledge of material facts concerning Dutch Hill II and its knowledge that Pac-Rim and BYAFM did not know these facts.

157. This information about Dutch Hill II could not have been discovered by Pac-Rim and BYAFM and/or was not reasonably available to Pac-Rim and BYAFM.

158. TCW knew that Pac-Rim and BYAFM were making their decisions with regard to Dutch Hill II on the basis of mistaken information about these securities, and/or without knowing the material facts about Dutch Hill II that were known to TCW, including that TCW had a very negative view of the current and future performance of the class of securities that TCW selected for the Dutch Hill II portfolio.

159. Pac-Rim and BYAFM reasonably and justifiably relied on TCW's false representations and culpable omissions in deciding to enter into the transactions.

160. As a result, Pac-Rim and BYAFM suffered damages in an amount to be proved at trial, but not less than \$28,178,417 plus prejudgment interest.

161. TCW's actions towards Pac-Rim and BYAFM, including the false misrepresentations and culpable omissions as alleged above, were egregious in nature. TCW's actions were directed at Pac-Rim and BYAFM, and in addition, were part of a larger scheme to defraud other investors and induce them to buy bogus securities and generate profits for TCW and allow TCW to accommodate a critical investment banking client at the expense of investors. By knowingly putting these securities into the stream of commerce, TCW caused damage far beyond the damage suffered by BYAFM. Accordingly, TCW should also be required to pay substantial punitive damages.

COUNT III
(Negligent Misrepresentation)

162. Plaintiffs repeat and reallege each of the allegations of the foregoing ¶¶ 1-147.

163. As alleged herein, TCW had access to substantial and material information concerning the particular mortgage-backed bonds that were included in Dutch Hill II at issue here, which information was not generally known and was not known or reasonably available to Plaintiffs. Accordingly, Plaintiffs were reasonably and heavily reliant on TCW's special and unique knowledge concerning these securities.

164. As the collateral manager for Dutch Hill II, TCW had a duty to exercise due care in its statements and representations so as not to mislead or deceive investors like Plaintiffs.

165. Notwithstanding that duty, TCW did not exercise due care to make sure that its statements and representations to Plaintiffs were accurate and complete. To the contrary, TCW negligently made false statements which were intended to and did induce Plaintiffs to purchase notes issued by Dutch Hill II.

166. Plaintiffs reasonably relied on the false statements and omissions by TCW in their decisions to invest in the notes issued by Dutch Hill II.

167. TCW expected and intended that Plaintiffs would rely on TCW in deciding whether to invest in notes issued by Dutch Hill II, and TCW understood that Plaintiffs would so rely.

168. As a direct, proximate and foreseeable result of TCW's conduct, Plaintiffs been damaged in an amount to be determined at trial, but not less than \$28,178,417 plus prejudgment interest.

COUNT IV
(Breach of Contract -- Third-Party Beneficiary)

169. Plaintiffs repeat and reallege each of the allegations of the foregoing ¶¶ 1-147.

170. As collateral manager to the Dutch Hill II offering, TCW entered into an Investment Advisory Agreement with Dutch Hill II. Pursuant to the Investment Advisory Agreement, TCW agreed to select the Dutch Hill II portfolio, promising to exercise its skill and experience to select mortgage-backed bonds likely not to default and to avoid poor quality mortgage-backed bonds likely to default.

171. Pac-Rim and BYAFM, as investors in Dutch Hill II, were intended third-party beneficiaries of TCW's contractual promise.

172. TCW breached its contract by failing to select mortgage-backed bonds as promised.

173. TCW's acts and omissions in failing to carry out its contractual promise constituted bad faith, willful misconduct or gross negligence.

174. As a result, Pac-Rim and BYAFM suffered damages in an amount to be proved at trial, but not less than \$28,178,417 plus prejudgment interest.

COUNT V
(Unjust Enrichment)

175. Plaintiffs repeat and reallege each of the allegations of the foregoing ¶¶ 1-147.

176. TCW has been unjustly enriched at the expense of BYAFM though its conduct as alleged herein, by which it received substantial fees as collateral manager on the Dutch Hill II transaction.

177. TCW's fees were funded, in whole or in part, by means of BYAFM's investment in the subordinated notes of Dutch Hill II.

178. TCW failed to select mortgage-backed bonds as promised. In addition, TCW participated in advising Dutch Hill II to select a class of mortgage-backed bonds that TCW knew were not performing, and that TCW expected to continue to fail to perform. TCW is like a manufacturer which learns that the device it is building will not work, but elects to put profits ahead of integrity and to continue to build and sell the device. TCW has no entitlement, in equity or good conscious, to retain the fees it charged in support of such a fiasco.

179. TCW should be required to disgorge the fees, with interest, it received.

WHEREFORE, Plaintiffs Pac-Rim and BYAFM request judgment against defendant TCW as follows:

- a. On Counts I, II, III and IV, damages according to proof, but not less than \$28,178,417 plus prejudgment interest;
 - b. On Counts I and II, punitive damages in the amount of \$100 million or as deemed appropriate;
 - c. On Count V, disgorgement of TCW's fees according to proof;
 - d. On all counts, the costs of action, interest, and reasonable attorneys' fees;
- and
- e. Such other and further relief as may be proper.

DEMAND FOR JURY TRIAL

Plaintiffs Pac-Rim and BYAFM hereby demand a trial by jury of all claims and issues so triable.

November 21, 2012

_____/s/_____
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