

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BAYERISCHE LANDESBANK, NEW YORK  
BRANCH,

Plaintiff,

-against-

BEAR STEARNS & CO. INC., THE BEAR  
STEARNS COMPANIES, INC., BEAR STEARNS  
ASSET BACKED SECURITIES I LLC, EMC  
MORTGAGE LLC (f/k/a EMC MORTGAGE  
CORPORATION), STRUCTURED ASSET  
MORTGAGE INVESTMENTS II INC., J.P.  
MORGAN ACCEPTANCE CORPORATION I,  
J.P. MORGAN MORTGAGE ACQUISITION  
CORPORATION., J.P. MORGAN SECURITIES  
LLC (f/k/a JPMORGAN SECURITIES INC.),  
CHASE HOME FINANCE, CHASE MORTGAGE  
FINANCE, WAMU ASSET ACCEPTANCE  
CORP., WAMU CAPITAL CORP., WAMU  
MORTGAGE SECURITIES, JPMORGAN CHASE  
& CO., and JPMORGAN CHASE BANK, N.A.,

Defendants.

ECF Case

Civil Action No. [\_\_\_\_\_]

Removed from:

Supreme Court of the State of New York,  
County of New York, Index No. 653239/2011

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that the undersigned Defendants<sup>1</sup> hereby remove the  
above-captioned action from the Supreme Court of the State of New York, County of New York,  
to the United States District Court for the Southern District of New York.<sup>2</sup> This action is

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<sup>1</sup> Neither “Bear Stearns & Co., Inc.”, “The Bear Stearns Companies, Inc.”, nor “Chase Home Finance”, all named as defendants, is an existing legal entity. “Bear Stearns & Co., Inc.” is now known as JPMorgan Securities LLC; “The Bear Stearns Companies, Inc.” is now known as The Bear Stearns Companies LLC; and, on May 1, 2011, JPMorgan Chase Bank N.A. succeeded by merger to Chase Home Finance LLC.

<sup>2</sup> In removing this action, Defendants preserve any and all defenses. *See, e.g., Cantor Fitzgerald, L.P. v. Peaslee*, 88 F.3d 152, 157 n.4 (2d Cir. 1996) (“Removal does not waive any

removable on two grounds: first, this action is removable pursuant to 28 U.S.C. §§ 1452(a), 1334(b) because it is “related to” pending bankruptcy proceedings arising under Title 11 of the United States Code; and second, this action is removable pursuant to 28 U.S.C. §§ 1441(a), 1331 and the Edge Act, 12 U.S.C. § 632, because it involves a party organized under the laws of the United States and arises out of “international or foreign financial operations”.

## **I. PROCEDURAL HISTORY AND BACKGROUND**

1. On or about November 21, 2011, Plaintiff Bayerische Landesbank, New York Branch (“Plaintiff”) filed a complaint in the Supreme Court of the State of New York, County of New York (the “State Court Action”). The State Court Action has been assigned Index No. 653239/2011.

2. On March 20, 2012, Plaintiff filed an amended complaint (“Amended Complaint”).

3. In the Amended Complaint, Plaintiff alleges that it purchased residential mortgage-backed securities (“RMBS”) certificates (the “Certificates”) in a number of offerings. Plaintiff alleges that Defendants acted as either sponsor, underwriter and/or depositor in the relevant offerings, or are currently successor to, or in control of, an entity that served in one of those roles.<sup>3</sup>

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Rule 12(b) defenses,” including “defense of lack of personal jurisdiction.”); *Gay v. Carlson*, No. 89 Civ. 4757 (KMW), 1991 WL 190584, at \*5 (S.D.N.Y. Sept. 17, 1991) (“[M]erely by removing a case from state to federal court a party does not waive any of its defenses under Rule 12(b), including a motion to dismiss for improper service.”).

<sup>3</sup> Plaintiff alleges that EMC Mortgage LLC (f/k/a EMC Mortgage Corporation), Washington Mutual Mortgage Securities Corp., J.P. Morgan Mortgage Acquisition Corp., Chase Home Finance LLC and Chase Mortgage Finance Corp. served as sponsors for certain of the offerings at issue. (Amended Compl. ¶¶ 16, 23, 28, 30-31) Plaintiff alleges that Structured Asset Mortgage Investments II Inc., Bear Stearns Asset Backed Securities I LLC, WaMu Asset

4. Plaintiff alleges that Defendants made misrepresentations about the risk profile and characteristics of the Certificates and the underlying mortgage loans in various registration statements, prospectuses, prospectus supplements and other written materials.

5. Plaintiff purports to bring claims of fraud, fraudulent inducement, aiding and abetting fraud and fraudulent inducement, and negligent misrepresentation against Defendants under common law. (Amended Compl. ¶¶ 308-95.)

6. On or about March 20, 2012, Defendants were served with the Summons and Amended Complaint.

7. Defendants' time to respond to the Amended Complaint has not expired, and they have not pled, answered, or otherwise appeared in the State Court Action.

8. No motions or other proceedings are pending in the State Court Action.

## **II. OTHER PROCEDURAL REQUIREMENTS FOR REMOVAL**

9. Copies of the Supplemental Summons and Amended Complaint served upon Defendants are attached hereto as Exhibit 1.<sup>4</sup> Defendants have received no other process, pleadings, motions or orders in the State Court Action.

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Acceptance Corp. and J.P. Morgan Acceptance Corp. I served as depositors for certain of the offerings at issue. (Amended Compl. ¶¶ 17, 18, 22, 29.) Plaintiff alleges that Bear Stearns & Co. Inc., WaMu Capital Corp. and J.P. Morgan Securities LLC (f/k/a J.P. Morgan Securities Inc.) served as underwriters for certain of the offerings at issue. (Amended Compl. ¶¶ 15, 21, 27.) Plaintiff alleges that J.P. Morgan Securities LLC, The Bear Stearns Companies, Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. are in control of, or successor-in-interest to, certain entities that served as sponsor, underwriter or depositor for certain of the offerings at issue. (Amended Compl. ¶¶ 15-19, 21-23, 25-31.)

<sup>4</sup> A copy of the original summons and complaint filed on November 21, 2011, which were never served on Defendants, is also attached to this Notice of Removal as Exhibit 2.

10. This Notice of Removal is filed within 30 days after the Removing Defendants were served. Removal is thus timely under 28 U.S.C. § 1446(b)(1).

11. The Supreme Court of the State of New York, County of New York, is within the geographical boundaries of the United States District Court for the Southern District of New York. *See* 28 U.S.C. § 112(b).

12. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly file a Notice of Filing of Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of New York, and serve all parties with a copy of this Notice of Removal.

13. This Notice of Removal is signed pursuant to Federal Rule of Civil Procedure 11.

14. This is not a “core” proceeding within the meaning of 28 U.S.C. § 157(b) or Federal Rule of Bankruptcy Procedure 9027 upon removal. Defendants do not consent to entry of final order or judgment by any bankruptcy judge.

### **III. GROUNDS FOR REMOVAL**

#### **A. Removal Is Proper Based on “Related to” Bankruptcy Jurisdiction.**

15. This action may be removed pursuant to 28 U.S.C. § 1452(a), because this Court has original jurisdiction over this action as one “related to” bankruptcy proceedings under 28 U.S.C. § 1334(b).

16. The Certificates at issue are backed by mortgage loans originated by entities that have filed bankruptcy petitions, or whose parent corporations have filed bankruptcy petitions, including but not limited to Accredited Home Lenders, Inc., American Home Mortgage Investment Corp., Bear Stearns Residential Mortgage Corp., Fieldstone Mortgage Company, First NLC Financial Services, LLC, Fremont Investment & Loan, New Century Mortgage Corp.,

Ownit Mortgage Solutions, Inc., People's Choice Home Loan, Inc. and SouthStar Funding, LLC (collectively, the "Bankrupt Originators").<sup>5</sup>

17. The following chart lists for each Bankrupt Originator (or its parent corporation) the court in which a bankruptcy proceeding has been filed.

<b>Bankrupt Originator</b>	<b>U.S. Bankruptcy Court</b>
Accredited Home Lenders, Inc.	District of Delaware, No. 09-11516
American Home Mortgage Investment Corp.	District of Delaware, No. 07-11047 & No. 07-11048
Bear Stearns Residential Mortgage Corp. (subsidiary of Accredited Home Lenders, Inc.)	District of Delaware, No. 09-11516
Fieldstone Mortgage Company	District of Maryland, No. 07-21814
First NLC Financial Services, LLC	Southern District of Florida, No. 08-10632, No. 08-10634 & No. 08-10635
Fremont Investment & Loan	Central District of California, No. 08-13421
New Century Mortgage Corp.	District of Delaware, No. 07-10419
Ownit Mortgage Solutions, Inc.	Central District of California, No. 06-12579
People's Choice Home Loan, Inc.	Central District of California, No. 12-15811 (previously No. 07-10765)
SouthStar Funding, LLC	Northern District of Georgia, No. 07-65842

<sup>5</sup> See BSABS 2006-HE5 Prospectus Supplement, at S-4; BSABS 2006-HE7 Prospectus Supplement, at S-4; BSABS 2006-HE9 Prospectus Supplement, at S-4; BSABS 2006-HE10 Prospectus Supplement, at S-4; BSABS 2007-HE1 Prospectus Supplement, at S-4; BSABS 2007-HE2 Prospectus Supplement, at S-4; BSABS 2007-HE3 Prospectus Supplement, at S-4; BSSLT 2007-1 Prospectus Supplement, at S-4; JPMAC 2006-HE2 Prospectus Supplement, at i; MSST 2007-1 Prospectus Supplement, at S-4; NCMT 2007-1 Prospectus Supplement, at 1; SACO 2006-2 Prospectus Supplement, at S-4; SAMI 2006-AR1 Prospectus Supplement, at S-6; WMALT 2006-1 Prospectus Supplement, at S-30.

18. The following chart lists the Bankrupt Originator(s) that originated mortgage loans underlying the relevant Certificates and the offerings in which those Certificates were purchased.

<b>Securitization</b>	<b>Bankrupt Originator(s)</b>
BSABS 2006-HE5	Fieldstone Mortgage Company
BSABS 2006-HE7	First NLC Financial Services, LLC; People's Choice Home Loan, Inc.
BSABS 2006-HE9	Fieldstone Mortgage Company
BSABS 2006-HE10	Bear Stearns Residential Mortgage Corp.
BSABS 2007-HE1	Bear Stearns Residential Mortgage Corp.
BSABS 2007-HE2	Bear Stearns Residential Mortgage Corp.
BSABS 2007-HE3	Fieldstone Mortgage Company
BSSLT 2007-1	SouthStar Funding, LLC
JPMAC 2006-HE2	Ownit Mortgage Solutions, Inc.
MSST 2007-1	Accredited Home Lenders, Inc.; First NLC Financial Services, LLC
NCMT 2007-1	Fremont Investment & Loan
SACO 2006-2	American Home Mortgage Investment Corp., SouthStar Funding, LLC
SAMI 2006-AR1	SouthStar Funding, LLC
WMALT 2006-1	New Century Mortgage Corp.

19. Pursuant to agreements between Defendants and the Bankrupt Originators as well as statutory and common law, the Bankrupt Originators owe certain Defendants indemnification and/or contribution for claims arising out of misrepresentations regarding the mortgage loans underlying the Certificates.<sup>6</sup>

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<sup>6</sup> For example, one of the Bankrupt Originators, People's Choice Home Loan, Inc. ("People's Choice") promised to indemnify Bear Stearns Mortgage Capital Corporation and its affiliates "against all liabilities, losses, damages, judgments, costs and expenses of any kind . . . (including counsel's fees and disbursements)" arising out of the Master Repurchase Agreement. Bear Stearns Mortgage Capital Corporation's Proof of Claim, Part 2 at 11-12 (Annex A, Master Repurchase Agreement § 14), *In re People's Choice Home Loan, Inc.*, Case No. 8:07-bk-10765 (Bankr. C.D. Cal. Aug. 31, 2007), Claim 449-1. Similarly, People's Choice promised to indemnify named defendant Washington Mutual Mortgage Securities Corp. and its affiliates against "any losses, damages, penalties, fines, forfeitures, legal fees and expenses and related

20. This action “relates to” the Bankrupt Originators’ bankruptcy proceedings because the indemnification and/or contribution owed by the Bankrupt Originators to certain Defendants for costs and expenses incurred by those Defendants in defending against this action, and for any judgment entered against those Defendants in this action, affects the distribution of the Bankrupt Originators’ assets subject to the bankruptcy proceedings. *See Allstate Ins. Co. v. Ace Sec. Corp.*, No. 11 Civ. 1914 (LBS), 2011 WL 3628852, at \*5 (S.D.N.Y. Aug. 17, 2011) (finding “related to” bankruptcy jurisdiction under 28 U.S.C. § 1334(b) where defendants had rights of indemnification against bankrupted mortgage loan originators); *Stichting Pensioenfonds ABP v. Countrywide Fin. Corp.*, 447 B.R. 302, 309-10 (C.D. Cal. 2010) (same). Accordingly, this action may be removed as “related to” bankruptcy proceedings pursuant to 28 U.S.C. §28 U.S.C. §§ 1334(b), 1452(a).

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costs, judgments, and any other costs, fees and expenses that any of them may sustain arising out of or based upon . . . any breach by [People’s Choice] of a representation or warranty.” Washington Mutual Mortgage Securities Corp.’s Proof of Claim at Exhibit A & Exhibit 1 (Mortgage Loan Purchase Agreement § 7.7), *In re People’s Choice Home Loan, Inc.*, Case No. 8:07-bk-10765 (Bankr. C.D. Cal. Aug. 31, 2007), Claim 384. On March 20, 2007, People’s Choice filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Central District of California. *See In re People’s Choice Home Loan, Inc.*, Case No. 8:07-bk-10765 (Bankr. C.D. Cal.). Bear Stearns Mortgage Capital Corporation and Washington Mutual Mortgage Securities Corp. have timely filed proofs of claim to assert their rights to indemnification in the People’s Choice’s bankruptcy proceedings. *See* Proofs of Claims 449-1, 384, *In re People’s Choice Home Loan, Inc.*, Case No. 8:07-bk-10765 (Bankr. C.D. Cal.).

B. Removal Is Proper Based on the Edge Act.

21. This action is also removable pursuant to the Edge Act because it involves a party organized under the laws of the United States and arises out of “international or foreign financial operations”. 12 U.S.C. § 632.

22. Under the Edge Act, federal district courts have original jurisdiction in a civil action that (1) involves a party that is “any corporation organized under the laws of the United States”, and (2) “aris[es] out of transactions involving international or foreign banking . . . or out of other international or foreign financial operations”. 12 U.S.C. § 632; *Am. Int’l Grp. v. Bank of Am.*, No. 11-cv-6212, 2011 WL 5022716, at \*4 (S.D.N.Y. Oct. 20, 2011). Both requirements are satisfied here. Named Defendant JPMorgan Chase Bank, N.A. is a national bank chartered under federal laws. (Amended Compl. ¶ 26.) This action arises out of securities purchase transactions between a foreign party<sup>7</sup>, and corporations in the United States, which constitute “international or foreign financial operations” within the meaning of the Edge Act. *See Bank of America Corp. v. Lemgruber*, 385 F. Supp. 2d 200, 215 n.13 (S.D.N.Y. 2005) (finding that stock purchase transaction between U.S. and foreign parties “satisfies the second requirement for Edge Act jurisdiction as an ‘international financial operation’”).

23. Therefore, this action is properly removable pursuant to 12 U.S.C. § 632 and 28 U.S.C. §§ 1441(a), 1331.

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<sup>7</sup> The Amended Compl. is purportedly filed by the domestic “New York Branch” of Bayerische Landesbank. (Am. Compl. ¶ 13). That entity is an uninsured federal branch of a foreign banking organization, which is not recognized by law as a separate entity but an instrumentality of the parent foreign bank. *See* [http://www.ffiec.gov/nicpubweb/nicweb/institutionprofile.aspx?parID\\_Rssd=599401&parDT\\_E ND=99991231](http://www.ffiec.gov/nicpubweb/nicweb/institutionprofile.aspx?parID_Rssd=599401&parDT_E ND=99991231); *Greenbaum v. Handlesbanken*, 26 F. Supp. 2d 649, 652 (S.D.N.Y. 1998) (“[T]he law seems fairly well-settled that the domestic branch of a foreign bank is not a separate legal entity under either New York or federal law.”).



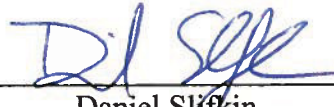
**IV. CONCLUSION**

24. For the reasons set forth above, this action is properly removed from the Supreme Court of the State of New York, County of New York, to this Court.

April 9, 2012

CRAVATH, SWAINE & MOORE LLP,

by

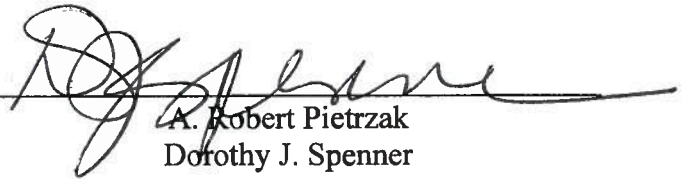


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