

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re ) Chapter 11  
)  
LTV STEEL COMPANY, INC., ) Jointly Administered  
a New Jersey Corporation, *et al.*, ) Case No. 00-43866  
)  
Debtors. ) Judge William T. Bodoh

**MOTION OF THE NEW YORK CLEARING HOUSE ASSOCIATION L.L.C. FOR  
LEAVE TO APPEAR AS AMICUS CURIAE IN OPPOSITION TO DEBTORS'  
EMERGENCY MOTION FOR AN ORDER GRANTING AUTHORITY  
TO USE CASH COLLATERAL, AND BRIEF OF AMICUS CURIAE**

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Of Counsel

February 20, 2001

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AUTHORITY TO USE CASH COLLATERAL**

The New York Clearing House Association L.L.C. (the "Clearing House") respectfully moves by its undersigned counsel for leave to appear as amicus curiae in opposition to Debtor's Emergency Motion for an Order Granting Authority To Use Cash Collateral dated December 29, 2000.

The Clearing House's proposed amicus curiae brief is attached and conditionally filed with this motion.

LTV's consent to the filing of the Clearing House's amicus curiae brief has been requested but has not been obtained.

## Interest of Amicus Curiae

The Clearing House is an association of twelve leading commercial banks.<sup>1/</sup> The Clearing House regularly engages in advocacy concerning legal and regulatory issues of importance to its members, including frequent appearances as amicus curiae.

Clearing House members and their affiliates regularly participate as originators, agents, lenders, investors, underwriters, and dealers in connection with asset-based securitizations.<sup>2/</sup> As such, Clearing House members have a vital interest in sound application of settled law to the transactions upon which asset-based securitizations are based.<sup>3/</sup> More generally, as leading U.S. banks, the members have a direct interest in the outcome of court procedures that threaten economic confusion and disruption.

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<sup>1/</sup> Bank of America, National Association; The Bank of New York; Bank One, National Association; Bankers Trust Company; The Chase Manhattan Bank; Citibank, N.A.; European American Bank; First Union National Bank; Fleet National Bank; HSBC Bank USA; Morgan Guaranty Trust Company of New York; and Wells Fargo Bank, National Association.

<sup>2/</sup> Clearing House member Chase Manhattan Bank is an Accounts Lender, an Inventory Lender, and Agent for the Inventory Lenders (as those terms are defined in Debtor's Motion). Clearing House member Bankers Trust Company and affiliates of Clearing House members Bank of America and Citibank are also Inventory Lenders.

<sup>3/</sup> For example, a substantial portion of the trillions of dollars of securitizations during the past 15 years are securitizations of consumer debt, mostly by banks. The potential consequences of a challenge to the core principles upon which LTV relied in its securitizations have become even more serious today, especially as they relate to the pricing and availability of consumer credit customarily sold by banks in securitizations, because of revisions to applicable accounting principles and related auditing procedures. *See* FASB Statement of Financial Accounting Standards No. 140. If the soundness of the well-established state law principles that underlie these transactions is questioned, the ability of banks to securitize consumer receivables and other assets will be in jeopardy. The impact on the cost and availability of consumer credit could be severe.

### **Reasons Why an Amicus Curiae Brief Is Desirable**

Securitization plays a vital role in the nation's economy. In 2000, for example, U.S. companies raised \$299 billion through new issues of asset-backed securities.<sup>4/</sup> Securitization serves diverse objectives of originators of securitization programs, such as LTV Steel, including obtaining funds at lower cost, obtaining financing when other avenues are unavailable, obtaining access to broader sources of financing, removal of assets and associated financing from the originator's balance sheet, and matching assets and liabilities.<sup>5/</sup>

Securitization, or structured finance, is based on one core principle—legal and structural isolation of a defined group of assets, so that the assets serve as the basis of a financing that is legally independent from the insolvency and other risks associated with the former owner of the assets.<sup>6/</sup> Such financing can be conducted only if courts that are asked to rule on challenges to a securitization honor that core principle by permitting the expressed intentions of the originator and its counterparties to be effectuated to the extent consistent with settled law. Any other approach will cause great uncertainty in the capital markets, resulting in potential sharp declines in the value of existing asset-based securities held, either directly or indirectly through pension plans and mutual funds, by millions of

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<sup>4/</sup> INVESTMENT DEALERS DIG., January 15, 2001, at 17.

<sup>5/</sup> Joseph C. Shenker & Anthony J. Colletta, *Asset Securitization: Evolution, Current Issues and New Frontiers*, 59 TEXAS L. REV. 1369, 1371-75 (1991).

<sup>6/</sup> Comm. on Bankr. & Corporate Reorg., Ass'n of the Bar of the City of New York, *Structured Financing Techniques*, 50 BUS. LAW. 527, 529 (1995).

investors, significantly raising borrowing costs for a wide spectrum of American borrowers, and in some cases, depriving borrowers of funding altogether.

LTV's motion is being closely watched by all the participants in the securitization process, originators, borrowers, lenders, underwriters, investors, and rating agencies. Legal challenges to securitizations have been rare, and although there is judicial precedent that applies the legal principles distinguishing a sale from a financing, there is little or no such precedent for the originator of a securitization to attack the very structure that it utilized and upon which contemporary securitization is based. The outcome of this dispute likely will affect the decisions of rating agencies and other participants in the securitization process for years to come. Given these circumstances, the Clearing House respectfully submits that the Court should consider the views of securitization participants beyond the immediate participants to the transaction at issue.

WHEREFORE, the Court should permit The New York Clearing House Association L.L.C. to appear as amicus curiae in opposition to Debtor's Emergency Motion for an Order Granting Authority To Use Cash Collateral.

Respectfully Submitted,

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securitizations.<sup>8/</sup> As such, Clearing House members have a vital interest in sound application of settled law to the transactions upon which asset-based securitizations are based.<sup>9/</sup> More generally, as leading U.S. banks, the members have a direct interest in the outcome of court proceedings that threaten economic confusion and disruption.

### **Preliminary Statement**

LTV emerged from its previous bankruptcy in 1993. Unlike many other alumni of the bankruptcy process, LTV almost immediately obtained access not only to financing, but to financing on favorable terms. In 1994, advised by sophisticated counsel and using a financing technique that had become widespread among companies of all types, LTV sold its receivables on an ongoing basis to LTV Sales Finance Company, a wholly-owned LTV subsidiary that was able to borrow on favorable terms. The subsidiary's notes were rated AAA, and purchased by banks that relied on that rating. LTV, far from being the victim of

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<sup>8/</sup> Clearing House member Chase Manhattan Bank is an Accounts Lender, an Inventory Lender, and Agent for the Inventory Lenders (as those terms are defined in LTV's Motion). Clearing House member Bankers Trust Company and affiliates of Clearing House members Bank of America and Citibank are also Inventory Lenders.

<sup>9/</sup> For example, a substantial portion of the trillions of dollars of securitizations during the past 15 years are securitizations of consumer debt, mostly by banks. The potential consequences of a challenge to the core principles upon which LTV relied in its securitizations have become even more serious today, especially as they relate to the pricing and availability of consumer credit customarily sold by banks in securitizations, especially because of revisions to applicable accounting principles and related auditing procedures. *See* FASB Statement of Financial Accounting Standards No. 140. If the soundness of the well-established state law principles that underlie these transactions is questioned, the ability of banks to securitize consumer receivables and other assets will be in jeopardy. The impact on the cost and availability of consumer credit could be severe.

a financial conspiracy, as the rhetoric of its motion implies, sought out and received the benefits of that transaction. LTV executed transaction documents that stated LTV's intention to sell its receivables outright to its subsidiary and filed audited financial statements and other required reports with the SEC that reflected that intention. LTV enjoyed the benefits of its inventory securitization for years before filing its Motion.

In 1998, LTV again was able to arrange the creation of a special-purpose subsidiary that would purchase its current assets, this time inventory, and obtain favorable financing. The transaction documents for the inventory securitization characterized the transfers of inventory to LTV's subsidiary as sales, and audited financial statements and other reports that LTV filed with the SEC reflected that treatment. As part of the transaction, LTV's officers certified that the transactions between LTV and its subsidiary were sales of the inventory and that LTV was receiving fair consideration. The subsidiary issued notes that were purchased by banks that relied on the description of the transaction to which LTV and its officers subscribed, and for over two years LTV enjoyed the benefits of this additional funding.

The securitization structures LTV employed to obtain funding on better terms than otherwise would be available are neither novel nor devious. Similar transactions have been used by thousands of companies, invested in (directly and indirectly) by millions of investors, and form an important segment of the economic landscape.

LTV's effort before this Court to demonize the asset securitization structures that it has so willingly embraced for a number of years is both short-sighted and narrow-minded. It is short-sighted because, in an apparent effort to gain short-term negotiating

leverage, LTV is prepared to sacrifice the very form of financing that was successful in aiding its rehabilitation in the past and, unless LTV prevails, could be used to aid its current efforts at rehabilitation. It is narrow-minded because LTV is willing to disregard the adverse impact of its Motion on thousands of companies with millions of employees, as well as the millions of investors with interests in securitizations through pension funds, mutual funds, and other investment vehicles. LTV nonetheless asks this Court not merely to engage in the inequity of imposing a new bargain on the banks that funded LTV's operations for most of the period since it emerged from its previous Chapter 11 proceeding, but to engage in a frontal attack on the basic concepts of securitization.

As explained below, the isolation of assets in separate corporate structures that LTV now disparages is essential to the securitization process. There is no alternative means of obtaining the broader and more cost-effective access to funding that securitization makes possible. There is nothing secret, deceptive, or coercive about the process, which has been used in thousands of transactions and manifestly benefits all concerned.

Today we may be entering a more difficult economic environment than we have experienced in recent years. There are countless other companies that are enjoying and in the future could enjoy the benefits of the securitization process. For some, the result sought by LTV would mean more expensive financing; for others the result could indeed be no financing at all. Whatever conclusion the Court ultimately may reach concerning the specific facts and claims before it, the Clearing House urges the Court to recognize

the benefits of the securitization process, and the representations of the parties and the structure of the transactions that previously they all supported, lest these benefits become totally unavailable.

## ARGUMENT

### I.

#### **Asset Securitization Is of Critical Importance to the Nation's Economy.**

Asset securitization, or structured finance, is a process by which a defined group of assets can be legally transferred and structurally isolated, and thus serve as the basis of a financing that is legally independent from the financial fortunes, including bankruptcy risks, of the former owner of the assets. Isolation of the assets in this manner facilitates access to financial markets precisely because bankruptcy and other risks have been eliminated, or at least reduced.<sup>10/</sup>

Asset securitization is one of the most significant financial innovations of recent decades.<sup>11/</sup> The significance of asset securitization flows from the diverse and substantial benefits it makes available to a wide variety and large number of companies, investors, and consumers. First and foremost, asset securitization makes credit available to borrowers that otherwise could not obtain credit or that could obtain it only at higher

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<sup>10/</sup> Comm. on Bankr. & Corporate. Reorg., Ass'n of the Bar of the City of New York, *Structured Financing Techniques*, 50 BUS. LAW. 527, 529 (1995) [hereinafter "*Structured Financing Techniques*"].

<sup>11/</sup> Joseph C. Shenker & Anthony J. Colletta, *Asset Securitization: Evolution, Current Issues and New Frontiers*, 59 TEXAS L. REV. 1369, 1371 (1991).

cost. For this reason, asset securitization has played a significant role in debt restructuring, debtor-in-possession financing, and confirmation financing, as well as reducing funding costs for major, financially-sound companies.<sup>12/</sup> Second, asset securitization increases the availability of credit and lowers borrowing costs for millions of consumers whose mortgages, auto loans, and credit card debts are made the subject of asset securitization transactions by the institutions from which consumers borrow. Third, asset securitization helps investors such as pension funds obtain diversification and attractive returns.

In addition to serving the needs of and conferring benefits upon borrowers, consumers and investors in general, asset securitization serves important objectives of depository institutions, including the Clearing House members. Asset securitization enhances lending capacity, makes possible more effective management of risks associated with bank lending activities, and helps depository institutions strengthen their capital positions. These benefits of asset securitization enable depository institutions better to serve their customers' needs.

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<sup>12/</sup> *Structured Financing Techniques*, *supra* note 4, at 530.

## II.

### **The Legal Principles Upon Which Asset Securitization Is Dependent Are Fundamental and Well-Established.**

The core principle upon which all asset securitization is based is the structural and legal isolation of a defined group of assets in a company separate from the original owner.<sup>13/</sup> Isolation of assets from the bankruptcy and other risks associated with the original owner of the assets is critical to achieving the benefits of asset securitization because it provides lower risk to investors—the ultimate source of the funds the asset securitization makes available to the borrower. This lower risk for investors translates into a lower cost of funds for borrowers.

The legal principles that support the ability of originators and investors to isolate a group of assets from the bankruptcy risks associated with the original owner of the assets derive from basic corporate and commercial law. A corporation is a legal entity distinct from its shareholders. Title to the corporate property is vested in the corporation and not in the owner of the corporate stock.<sup>14/</sup> Provided the parent corporation has not taken unfair advantage of the subsidiary, “their identity as separate corporations will not be disregarded but their respective rights when dealing with each other in respect of their

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<sup>13/</sup> *Structured Financing Techniques*, *supra* note 4, at 529.

<sup>14/</sup> *Moline Properties, Inc. v. Commissioner*, 319 U.S. 436 (1943); *United States v. Wallach*, 935 F.2d 444, 462 (2d Cir. 1991); *Monterey Life Systems v. United States*, 635 F. 2d 821 (Ct. Cl. 1980).

separate property will be recognized and maintained.”<sup>15/</sup> The isolation may be accomplished either by a sale or a contribution of the property to the subsidiary.<sup>16/</sup> These basic principles defining the rights of a transferee of property are subject to any applicable avoidance powers recognized under the Bankruptcy Code, but otherwise the transferee’s interest in property transferred prepetition is defined by nonbankruptcy law.<sup>17/</sup>

Most asset securitizations attain isolation of the securitized assets through an interplay of the basic corporate and commercial law principles just stated—they work through the creation of a special-purpose subsidiary and transfers of property from the parent to that subsidiary either through a capital contribution or sale to the subsidiary, depending upon the terms of the transaction. Isolation from the parent's bankruptcy risk is achieved because the parent retains no interest in property subject to such transfers. The parent’s interest is limited to the stock of the subsidiary and does not extend to the subsidiary’s assets.

There is nothing novel about these legal foundations of asset securitization. These principles have been recognized for decades. The purposeful use of these principles to isolate assets from the bankruptcy risks associated with the original owner

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<sup>15/</sup> *Kentucky Electric Power Co. v. Norton Coal Mining Co.*, 93 F.2d 923, 926 (6th Cir. 1938).

<sup>16/</sup> *Comstock v. Group of Institutional Investors*, 335 U.S. 211, 229 (1948).

<sup>17/</sup> *Buttner v. United States*, 440 U.S. 48, 55 (1979).

may be a relatively recent development, but the principles themselves have not changed. Maintenance of those principles, however, has become of greater economic importance, as they have formed the basis for thousands of securitization transactions involving trillions of dollars originated over the past fifteen years.

### **III.**

#### **The Court Should Not Undermine the Legal Principles Underlying Asset Securitization for the Sake of Short- Term Benefits in this Bankruptcy Case.**

LTV purposefully and deliberately availed itself of asset securitization. It entered into the receivables securitization in 1994, shortly after its emergence from Chapter 11, obtaining thereby the benefits of securitization in the form of a lower cost, and possibly greater availability, of funds. The transaction was formally documented as a sale of receivables to a special-purpose subsidiary; LTV was advised by experienced counsel; and LTV's audited financial statements and other reports filed with the SEC reflected the sale of receivables to the special-purpose subsidiary. No one complained about this transaction in 1994, and for a very good reason: all concerned benefitted thereby.

In 1998, LTV again originated an asset securitization, this time of its inventory. Once again, LTV entered into a formally documented transaction, advised by experienced counsel; LTV's audited financial statements reflected the sale of inventory to the special-purpose subsidiary; LTV obtained funding that otherwise would have been available, if at all, only at higher cost. Once again, no one was deceived by this

transaction, and no one complained about it, because the inventory financing conveyed benefits to all concerned.

Then in 2000, having enjoyed the benefits of the receivables securitization for six years and the inventory securitization for two, LTV once again found itself in Chapter 11. LTV initiated a full-bore attack on those transactions, in which it willingly and deliberately participated, depicting them as a mere fairytale designed solely to deprive this Court of jurisdiction over the securitized assets.

Although recognizing that thousands of people have an interest in LTV's continuing to operate, the Clearing House respectfully urges the Court to approach the issues presented by LTV's motion cautiously, with due regard for the interests of millions of people that could be negatively affected if the legal foundations of asset securitization were placed in question by this Court's decision. Other firms that have securitized their assets have filed Chapter 11 petitions but, so far as the Clearing House is aware, in those instances securitizations were respected in bankruptcy and were continued or paid down. There would seem to be overwhelming benefits to this approach in this case as well.

We also urge the Court to recognize the *in terrorem* aspects of LTV's position. It is by no means certain that LTV will "shut off the lights" if its motion is denied. Rather, the more normal course would be for LTV to negotiate with the banks, albeit without the leverage that would be provided by an order granting LTV's motion. LTV and the banks seemingly have a common interest in an arrangement that will keep LTV

in operation. For one thing, the value of inventory that is not processed is likely to decline if LTV were to cease operations.

In particular, in view of LTV's conduct, its motion presents no occasion for deviation from the rule that formal corporate structures will be observed in bankruptcy in the absence of those highly unusual circumstances that justify substantive consolidation. The Clearing House urges that corporate formalities be respected in connection with the Court's consideration of LTV's motion. This is a time when respecting corporate formalities matters. It is of no use for corporations to create separate subsidiaries and transaction structures if those legal entities and that documentation will be ignored when the originator's circumstances change.

#### IV.

#### **LTV Has Not Identified an Adequate Legal Basis for a Fact-Intensive Review of its Asset-Securitization Transactions.**

Because the transactions at issue here are based on the fundamental principles of law discussed above, and are basically similar to thousands of executed transactions, we urge the Court to reject the intensive, fact-based analysis of the type urged by LTV and to consider a departure from the settled principles upon which the LTV securitizations are based only if LTV can demonstrate fraud, fundamental unfairness, or such a sharp deviation from the norm as to justify a reexamination of the application of those principles. We believe that otherwise an analysis of the type urged by LTV could have a chilling effect on asset securitizations, whatever the ultimate outcome of its motion. If

every insolvency proceeding for an originator of securitization transactions is going to involve a fact-based analysis of the type suggested by LTV, then the benefits of asset securitization—most importantly, predictability and certainty of timely repayment— will have been lost.

LTV’s citation to various authorities describing the legal risks involved in securitizations does not contradict the approach the Clearing House recommends.<sup>18/</sup> Because originators, lenders, investors, and others are fully familiar with those risks, and are convinced that the risks are very limited in standard securitization transactions, there have been thousands of these transactions. The commentators LTV cites all appear to agree that securitizations are “bankruptcy remote” even though no transaction can be “bankruptcy proof” because of the possibility of sharp deviation from the relevant commercial or legal standards.

An overview of certain of the factors listed by LTV—as well as those it chooses to ignore—helps demonstrate why the analysis it suggests should not be followed. At the outset, LTV ignores the documents that it willingly signed, the legal opinions it procured, and its audited financial statements and other SEC filings, which reflect the sales of receivables and inventory to the securitization subsidiaries. We recognize that courts have reached different conclusions as to how much effect to give to the parties’

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<sup>18/</sup> Debtors’ Memorandum of Points and Authorities in Response to Emergency Motion by Abbey National Treasury Services PLC for Modification of Interim Order Granting Authority To Use Cash Collateral, filed January 17, 2001, at 10-11.

expressed intentions in determining whether a transfer was a sale or a financing. Some courts give presumptive effect to the parties' contemporaneously expressed intentions and require clear and convincing evidence that the substantive terms of the transaction negate that intention.<sup>19/</sup> Although the Cleaning House believes that this is the right approach, particularly when dealing with transactions between sophisticated parties represented by experienced counsel, it recognizes that other courts speak of the parties' expressed intentions as one among a number of factors the court must consider.<sup>20/</sup> Under even the latter approach, however, the parties' contemporaneously expressed intentions are a critical factor in determining whether to treat as a sale what has been documented as a sale.

A second factor ignored by LTV is that creditors did not deal with the entities "as a single economic unit".<sup>21/</sup> A third factor ignored by LTV is that the independent

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<sup>19/</sup> *In re Kassuba*, 562 F.2d 511 (7th Cir. 1977); *In re OMNE Partners II*, 67 B.R. 793 (Bankr. D.N.H. 1986); *Cohen v. Army Moral Support Fund (In re Beville, Bressler & Schulman Asset Management Corp.)*, 67 B.R. 557 (D.N.J. 1986) (under New York law, which is controlling here, intention of the parties as clearly and unambiguously set forth in their agreement controls characterization of transactions as sales or financing).

<sup>20/</sup> *Major's Furniture Mart, Inc. v. Castle Credit Corp.*, 602 F.2d 538 (3d Cir. 1979).

<sup>21/</sup> *In re Augie/Restivo Baking Co.*, 860 F.2d 515, 518 (2d Cir. 1988). Although *Augie/Restivo* is a "substantive consolidation" rather than a "true sale" case, LTV appears to be relying on both approaches in its Motion. An examination of most other factors cited by the courts in analyzing substantive consolidation claims demonstrates that they are not present here. *In re Vecco Const. Indus. Inc.*, 4 B.R. 407, 410 (Bankr. E.D. Va. 1980) (degree of difficulty in segregating assets and liabilities, parent guarantees, transfer of assets without corporate formalities);

(continued...)

accountants for the inventory subsidiary, after scrutiny of the transaction, concluded that transfers of the assets indeed had occurred.

Many of the other factors cited by LTV are part of virtually every asset securitization, lack any legal foundation, or are incorrectly presented:

1. LTV treats indemnification agreements associated with its securitizations as establishing that its special-purpose subsidiaries had recourse against LTV, when all that those indemnification agreements provide for is assurance that LTV has represented accurately the nature of its assets sold, and that LTV performs its obligations as servicer; no indemnification for credit or market risks -- true recourse -- is provided. Indeed, the absence of recourse is a significant factor in determining that a true sale has occurred.

2. LTV contends that its sales of inventory and receivables to its subsidiaries were not true sales because they were not on “standard payment terms.” It fails to identify any authority conditioning a true sale on such terms, and we are aware of none. Indeed, such an approach would be totally inconsistent with the isolation of assets that can be effected by a capital contribution.

3. Many of the practices LTV cites as undercutting the validity of the transaction—servicing by the parent, daily sweeps, book-entry settlement, and sharing of office space and employees—are ordinary, cost-saving and efficiency-generating aspects

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<sup>21</sup>(...continued)

*Eastgroup Properties v. Southern Motel Ass’n*, 935 F.2d 245, 250 (11th Cir. 1991) (gross undercapitalization, both entities disregard separate legal existence of the subsidiary).

of management of affiliated corporations; to accept such practices as casting doubt upon the separate legal identity of such affiliates would have an adverse impact that would go well beyond asset securitizations to affect the business practices of corporate groups generally.

4. LTV argues that the filing of UCC-1's demonstrates that the banks regard the transactions as financings. To the contrary, these filings are made to protect against the remote possibility that someday, somewhere, an originator will seek to do what LTV has done here—repudiate its original statements and agreements -- and with the knowledge that UCC § 9-408 prohibits the very argument that LTV seeks to make. In addition, the filings are necessary for technical reasons to protect the interests of the asset-securitization participants even if their transaction structures are upheld.

5. LTV repeatedly conflates LTV's interests as a seller in its transactions with its special-purpose subsidiaries with LTV's interests as owner of those subsidiaries. LTV's acceptance of subordinated debt as payment from the Inventory SPV was necessary because otherwise the senior notes of the inventory SPV would have been unsaleable. LTV's conversion of the subordinated debt issued by the Inventory SPV to equity reflected LTV's decision to fund the SPV's losses, not a form of recourse by the SPV (which had no contractual right to compel the additional investment). Similarly, the increase in the value of LTV's investment in the subsidiary that would have occurred had the subsidiary thrived was likewise a function of LTV's interest in the subsidiary itself, not a retained interest in the property owned by the subsidiary.

## V.

### **Adequate Protection Is Not an Adequate Alternative to Recognition of LTV's Asset Securitization Transactions.**

LTV attempts to gloss over the impact of its position on the bank lenders, and implicitly on the securitization market as a whole, by arguing that the interests of the lenders can be adequately protected. In the first place, this argument, even if it were accurate as a financial matter, should not be permitted to infect the basic legal issue—whether the assets have been isolated as a matter of law. If isolation has been accomplished, then adequacy of protection is a legal irrelevancy.

Moreover, if adequate protection were to be accepted as a substitute for full recognition of asset securitization transactions, then the benefits of asset securitization would be lost. The principal reasons why originators and lenders choose securitizations rather than secured loans are to provide timeliness and certainty of repayment. Recharacterizing these transactions as LTV requests impairs both features. In addition to delay, “adequate” protection of a security interest does not, in fact, provide sufficient protection, particularly to support the higher rating and lower interest rate that the securitizations have provided. With all due respect, courts make errors in determining adequate protection because they cannot, and cannot be expected to, foresee the future. Collateral with a value of  $X$  at the time of the determination may turn out to have a value substantially below  $X$  when it is ultimately liquidated. In addition, adequate protection

does not provide liquidity. Lenders and investors want to be repaid at the time and in the amount they bargained for, not when a process largely beyond their control permits.

### **Conclusion**

Asset securitizations, which are based on fundamental legal principles of valid transfers and corporate separateness, have been used by thousands of originators for their own benefit and have also benefitted millions of investors. We urge the Court to reject LTV's sweeping attack on asset securitizations. Instead, we ask that the Court proceed with due regard for the interest of securitization participants in the application of settled principles to asset securitization transactions.

Respectfully submitted,

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