

**CWCapital Cobalt VR Ltd. v CWCapital Invs. LLC**

2024 NY Slip Op 33996(U)

November 10, 2024

Supreme Court, New York County

Docket Number: Index No. 653277/2018

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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CWCAPITAL COBALT VR LTD.,

Plaintiff,

- v -

CWCAPITAL INVESTMENTS LLC and CWCAPITAL  
ASSET MANAGEMENT LLC,

Defendants.

INDEX NO. 653277/2018

MOTION DATE --

MOTION SEQ. NO. 033 034

**DECISION + ORDER ON  
MOTION**

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 033) 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1500, 1501, 1502, 1503, 1516, 1518

were read on this motion to/for SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 034) 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1504, 1505, 1506, 1507, 1517, 1519

were read on this motion to/for SEAL

In motion sequence 033, defendant CWCapital Investments LLC (CW) moves pursuant to the Uniform Rules of the New York State Trial Courts (22 NYCRR) § 216.1 to redact/seal the following documents:

1. CW's Memorandum of Law in Support of Motion to Exclude Certain Opinions of Andrew Berman (NYSCEF Doc. No. [NYSCEF] 559 and refiled at 1379)<sup>1</sup>

<sup>1</sup> A publicly redacted copy is filed at NYSCEF 1438.  
653277/2018 CWCAPITAL COBALT VR LTD. vs. CWCAPITAL INVESTMENTS LLC  
Motion No. 033 034

2. Freed's expert report (NYSCEF 568 and refiled at 1352)<sup>2</sup>
3. Freed's corrected expert report (NYSCEF 569 and refiled at 1353)<sup>3</sup>
4. Freed's first corrected report redline (NYSCEF 574 and refiled at 1355)<sup>4</sup>
5. Freed's second corrected report redline (NYSCEF 575 and refiled at 1356)<sup>5</sup>
6. CW's fee share agreement (NYSCEF 579)
7. CW's Memorandum of Law in Support of Motion to Exclude Certain Opinions of Laurence Freed (NYSCEF 591 and refiled at 1380)<sup>6</sup>
8. Strategic Inv. Portfolio L.P. affirmation (NYSCEF 606)
9. Cobalt's Memorandum of Law in Support of Motion to Compel Document Production of (NYSCEF 632)
10. Strategic A2 note sale presentation (NYSCEF 680)
11. Email thread re: Fortress A2 Note valuation (NYSCEF 681)
12. Email thread re: BAML A2 Note purchase (NYSCEF 682)
13. Galaxy Securities presentation (NYSCEF 695)
14. Nealon's rebuttal expert report (NYSCEF 708 and refiled at 1351)<sup>7</sup>
15. Lanigan's expert report (NYSCEF 716 and refiled at 1330)<sup>8</sup>
16. Buono's deposition transcript (NYSCEF 727 and refiled at 1349)<sup>9</sup>
17. Gannaway's deposition transcript (NYSCEF 732 and refiled at 1350)<sup>10</sup>

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<sup>2</sup> A publicly redacted copy is filed at NYSCEF 1411.

<sup>3</sup> A publicly redacted copy is filed at NYSCEF 1412.

<sup>4</sup> A publicly redacted copy is filed at NYSCEF 1414.

<sup>5</sup> A publicly redacted copy is filed at NYSCEF 1415.

<sup>6</sup> A publicly redacted copy is filed at NYSCEF 1439.

<sup>7</sup> A publicly redacted copy is filed at NYSCEF 1410.

<sup>8</sup> A publicly redacted copy is filed at NYSCEF 1389.

<sup>9</sup> A publicly redacted copy is filed at NYSCEF 1408.

<sup>10</sup> A publicly redacted copy is filed at NYSCEF 1409.

18. Hanson's deposition transcript (NYSCEF 733 and refiled at 1331)<sup>11</sup>
19. Lanigan's deposition transcript (NYSCEF 738 and refiled at 1332)<sup>12</sup>
20. Shevlin's deposition transcript (NYSCEF 745 and refiled at 1333)<sup>13</sup>
21. Yale's deposition transcript (NYSCEF 749 and refiled at 1334)<sup>14</sup>
22. Investment Management Agreement amended May 26, 2011 (NYSCEF 821)
23. Galaxy Securities presentation for Hermes (NYSCEF 822)
24. Fortress memo approving use of Rockwood Real Estate (NYSCEF 823)
25. Email threat re: advisory board call (NYSCEF 824)
26. Fortress memo approving REO joint venture (NYSCEF 825)
27. Email threat re: voting rights (NYSCEF 826)
28. Serling's deposition transcript of (NYSCEF 846 and refiled at 1335)<sup>15</sup>
29. Cunningham's' deposition transcript (NYSCEF 847 and refiled at 1336)<sup>16</sup>
30. Lubin's deposition transcript (NYSCEF 873 and refiled at 1337)<sup>17</sup>
31. Lake Sweetwater investment memo (NYSCEF 904)
32. Startown Crossing investment memo (NYSCEF 905)
33. Mills Pointe investment memo (NYSCEF 906)
34. Shoppes at Letson investment memo (NYSCEF 907)
35. Village at Orange investment memo (NYSCEF 908)
36. Red Mountain investment memo (NYSCEF 909)

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<sup>11</sup> A publicly redacted copy is filed at NYSCEF 1390.

<sup>12</sup> A publicly redacted copy is filed at NYSCEF 1391.

<sup>13</sup> A publicly redacted copy is filed at NYSCEF 1392.

<sup>14</sup> A publicly redacted copy is filed at NYSCEF 1393.

<sup>15</sup> A publicly redacted copy is filed at NYSCEF 1394.

<sup>16</sup> A publicly redacted copy is filed at NYSCEF 1395.

<sup>17</sup> A publicly redacted copy is filed at NYSCEF 1396.

37. Birtcher Charlesbank investment memo (NYSCEF 910)
38. Dolan's rebuttal expert report (NYSCEF 916 and refiled at 1338)<sup>18</sup>
39. CW's Memorandum of Law in Support of their Motion for Summary Judgment (NYSCEF 936 and refiled at 1373)<sup>19</sup>
40. Cobalt's Memorandum of Law in Support of their Motion for Partial Summary Judgment (NYSCEF 939 and refiled at 1462)<sup>20</sup>
41. Cobalt's Statement of Material Facts (NYSCEF 940 and refiled at 1463)<sup>21</sup>
42. Letter agreement re: retention of CWCapital Asset (NYSCEF 958)
43. Letter to CWCapital Asset re: retention (NYSCEF 959)
44. March letter to CWCapital Asset re: servicing compensation (NYSCEF 960)
45. May letter to CWCapital Asset re: servicing compensation (NYSCEF 961)
46. August letter to CWCapital Asset re: servicing compensation (NYSCEF 962)
47. April letter to CWCapital Asset re: servicing compensation (NYSCEF 963)
48. January letter to CWCapital Asset re: servicing compensation (NYSCEF 964)
49. December letter to CWCapital Asset re: servicing compensation (NYSCEF 965)
50. October letter to CWCapital Asset re: servicing compensation (NYSCEF 966)
51. CWCA agreement letter dated March 25, 2015 (NYSCEF 969)
52. Letter to CWCapital Asset re: fee agreement (NYSCEF 975)
53. Hundertmark's deposition transcript (NYSCEF 1067 and refiled at 1339)<sup>22</sup>

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<sup>18</sup> A publicly redacted copy is filed at NYSCEF 1396.

<sup>19</sup> A publicly redacted copy is filed at NYSCEF 1432.

<sup>20</sup> A publicly redacted copy is filed at NYSCEF 1488.

<sup>21</sup> A publicly redacted copy is filed at NYSCEF 1489.

<sup>22</sup> A publicly redacted copy is filed at NYSCEF 1398.

54. Cunningham's Affirmation in Opposition to Cobalt's Motion for Summary Judgment (NYSCEF 1069 and refiled at 1340)<sup>23</sup>
55. Cobalt's Memorandum of Law in Opposition to Defendants' Motion to Exclude Expert Opinion (NYSCEF 1085 and refiled at 1464)<sup>24</sup>
56. Cobalt's Memorandum of Law in Opposition to Defendants' Motion to Exclude Expert Opinion (NYSCEF 1102 and refiled at 1465)<sup>25</sup>
57. Memorandum of Law in Opposition to Cobalt's Motion for Partial Summary Judgment (NYSCEF 1118 and refiled at 1377)<sup>26</sup>
58. Responses and Counterstatements of CWCapital Asset (NYSCEF 1119 and refiled at 1378)<sup>27</sup>
59. CWCapital Asset - policy and procedures guide (NYSCEF 1126)
60. Email threat re: business plan budget (NYSCEF 1127 and refiled at 1341)<sup>28</sup>
61. Email threat re: materials for budget presentation (NYSCEF 1128)
62. Version 6 special servicing policies and procedures (NYSCEF 1147)
63. Letter re: MLCFC 2006-1 fee agreement (NYSCEF 1161)
64. Fishkind's deposition transcript (NYSCEF 1173 and refiled at 1342)<sup>29</sup>
65. CF Mills Point loan agreement between (NYSCEF 1188)
66. First American Title Insurance Company settlement (NYSCEF 1201)

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<sup>23</sup> A publicly redacted copy is filed at NYSCEF 1399.

<sup>24</sup> A publicly redacted copy is filed at NYSCEF 1490.

<sup>25</sup> A publicly redacted copy is filed at NYSCEF 1491.

<sup>26</sup> A publicly redacted copy is filed at NYSCEF 1436.

<sup>27</sup> A publicly redacted copy is filed at NYSCEF 1437.

<sup>28</sup> A publicly redacted copy is filed at NYSCEF 1400.

<sup>29</sup> A publicly redacted copy is filed at NYSCEF 1401.

67. Email threat dated December 19, 2012 (NYSCEF 1202 and refiled at 1343)<sup>30</sup>
68. Version 7 special servicing policies and procedures (NYSCEF 1203)
69. Version 8a special servicing policies and procedures (NYSCEF 1204)
70. Version 9 special servicing policies and procedures (NYSCEF 1205)
71. Cobalt's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment (NYSCEF 1219 and refiled at 1466)<sup>31</sup>
72. Responses to CW's Statement of Material Facts (NYSCEF 1220 and refiled at 1467)<sup>32</sup>
73. Olin's deposition transcript (NYSCEF 1248 and refiled at 1344)<sup>33</sup>
74. CW-DG 2013 business plan (NYSCEF 1249)
75. CW's Reply in Support of Motion to Exclude Certain Opinions of Andrew Berman (NYSCEF 1254 and refiled at 1382)<sup>34</sup>
76. CW's Reply Memorandum of Law in Further Support of their Motion for Summary Judgment (NYSCEF 1260 and refiled at 1375)<sup>35</sup>
77. CW's Responses to Cobalt's Statement of Material Facts and Counter-Statements (NYSCEF 1261 and refiled at 1376)<sup>36</sup>
78. CW's Reply in Support of Motion to Exclude the Opinions of Laurence Freed (NYSCEF 1262 and refiled at 1381)<sup>37</sup>

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<sup>30</sup> A publicly redacted copy is filed at NYSCEF 1402.

<sup>31</sup> A publicly redacted copy is filed at NYSCEF 1492.

<sup>32</sup> A publicly redacted copy is filed at NYSCEF 1493

<sup>33</sup> A publicly redacted copy is filed at NYSCEF 1403.

<sup>34</sup> A publicly redacted copy is filed at NYSCEF 1441.

<sup>35</sup> A publicly redacted copy is filed at NYSCEF 1434.

<sup>36</sup> A publicly redacted copy is filed at NYSCEF 1435.

<sup>37</sup> A publicly redacted copy is filed at NYSCEF 1440.

79. Cobalt's Reply to Partial Summary Judgment Motion (NYSCEF 1263 and refiled at 1468)<sup>38</sup>
80. Cross's affirmation in Opposition to Cobalt's Motion (NYSCEF 1303 and refiled at 1387)<sup>39</sup>
81. Anthracite 2002 Form 10-K (NYSCEF 1304)
82. Anthracite 2003 Form 10-K (NYSCEF 1305)
83. Anthracite 2004 Form 10-K (NYSCEF 1306)
84. Anthracite 2005 Form 10-K (NYSCEF 1307)
85. Anthracite 2006 Form 10-K (NYSCEF 1308)
86. Anthracite 2007 Form 10-K (NYSCEF 1309)
87. BlackRock brochure to form ADV (NYSCEF 1310)
88. Midland fee-share agreement amendment (NYSCEF 1311)
89. May 12, 2023, oral argument transcript (NYSCEF 1312)
90. *In re Anthracite Capital, Inc.* Complaint (NYSCEF 1313)
91. Law360 article (NYSCEF 1314)
92. Anthracite 2005-HY2 CDO offering memorandum (NYSCEF 1315)
93. Berman's expert testimony (NYSCEF 555, 583, 709, 953, 1359)<sup>40</sup>
94. Berman's rebuttal expert report (NYSCEF 556, 578, 1013, 1459)<sup>41</sup>
95. Berman's deposition transcript (NYSCEF 557, 584, 725, 1106 and 1361)<sup>42</sup>

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<sup>38</sup> A publicly redacted copy is filed at NYSCEF 1496.

<sup>39</sup> A publicly redacted copy is filed at NYSCEF 1446.

<sup>40</sup> A publicly redacted copy is filed at NYSCEF 1418.

<sup>41</sup> A publicly redacted copy is filed at NYSCEF 1485.

<sup>42</sup> A publicly redacted copy is filed at NYSCEF 1420.



96. Greenspan's rebuttal expert report (NYSCEF 558, 577, 707, 1362)<sup>43</sup>
97. Freed's second corrected expert report (NYSCEF 571, 714, 979, 1354)<sup>44</sup>
98. Nealon's expert report (NYSCEF 586, 720, 954, 1104, 1363)<sup>45</sup>
99. Nolan's deposition transcript (NYSCEF 588, 742, 951, 1364)<sup>46</sup>
100. Frank's deposition transcript (NYSCEF 589, 730, 976, 1365)<sup>47</sup>
101. Smith's rebuttal expert report (NYSCEF 598, 928, 1015, 1366)<sup>48</sup>
102. Smith's deposition transcript (NYSCEF 599, 746, 1080, 1358)<sup>49</sup>
103. Greenspan's deposition transcript (NYSCEF 601, 888, 1091, 1367)<sup>50</sup>
104. 2015 CWCI policy and procedure guide (NYSCEF 675 and refiled at 950)
105. Buono's expert report of (NYSCEF 710, 1076, 1368)<sup>51</sup>
106. Dolan's expert report (NYSCEF 711, 1075, 1369)<sup>52</sup>
107. Greenspan's expert report (NYSCEF 715, 1105, 1090, 1370)<sup>53</sup>
108. Freed's deposition transcript (NYSCEF 581, 731, 1357)<sup>54</sup>
109. Iannarone's (Vol. 1) deposition transcript (NYSCEF 734, 952, 1347)<sup>55</sup>
110. Nealon's deposition transcript (NYSCEF 741, 982, 1371)<sup>56</sup>

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<sup>43</sup> A publicly redacted copy is filed at NYSCEF 1421.

<sup>44</sup> A publicly redacted copy is filed at NYSCEF 1413.

<sup>45</sup> A publicly redacted copy is filed at NYSCEF 1422.

<sup>46</sup> A publicly redacted copy is filed at NYSCEF 1423.

<sup>47</sup> A publicly redacted copy is filed at NYSCEF 1424.

<sup>48</sup> A publicly redacted copy is filed at NYSCEF 1425.

<sup>49</sup> A publicly redacted copy is filed at NYSCEF 1417.

<sup>50</sup> A publicly redacted copy is filed at NYSCEF 1426.

<sup>51</sup> A publicly redacted copy is filed at NYSCEF 1427.

<sup>52</sup> A publicly redacted copy is filed at NYSCEF 1428.

<sup>53</sup> A publicly redacted copy is filed at NYSCEF 1429.

<sup>54</sup> A publicly redacted copy is filed at NYSCEF 1416.

<sup>55</sup> A publicly redacted copy is filed at NYSCEF 1406.

<sup>56</sup> A publicly redacted copy is filed at NYSCEF 1430.

111. Warcholak's deposition transcript (NYSCEF 587, 748, 949, 1372)<sup>57</sup>
112. Weiss's deposition Transcript (NYSCEF 833 977, 1345)<sup>58</sup>
113. Finkel's expert rebuttal report (NYSCEF 848, 1014, 1346)<sup>59</sup>
114. CW's response to Cobalt's 3<sup>rd</sup> Interrogatories set (NYSCEF 983, 1107, 1348)<sup>60</sup>
115. CW's Responses to Cobalt's Statement of Undisputed Facts in related action (NYSCEF 1360)<sup>61</sup>
116. CW's Opening Brief for Summary Judgment Motion (NYSCEF 1383)<sup>62</sup>
117. Memorandum of Law in Opposition to Cobalt's Motion for Summary Judgment (NYSCEF 1384)<sup>63</sup>
118. Plaintiffs' Reply Memorandum of Law in Further Support of its Motion for Summary Judgment (NYSCEF 1385)<sup>64</sup>
119. Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion to Supplement the Record on Summary (NYSCEF 1316 and refiled at 1386)<sup>65</sup>
120. Rule 19-A Statement of Material Facts (NYSCEF 937, 1374)<sup>66</sup>

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<sup>57</sup> A publicly redacted copy is filed at NYSCEF 1431.

<sup>58</sup> A publicly redacted copy is filed at NYSCEF 1404.

<sup>59</sup> A publicly redacted copy is filed at NYSCEF 1405.

<sup>60</sup> A publicly redacted copy is filed at NYSCEF 1407.

<sup>61</sup> A publicly redacted copy is filed at NYSCEF 1419.

<sup>62</sup> A publicly redacted copy is filed at NYSCEF 1442.

<sup>63</sup> A publicly redacted copy is filed at NYSCEF 1443.

<sup>64</sup> A publicly redacted copy is filed at NYSCEF 1444.

<sup>65</sup> A publicly redacted copy is filed at NYSCEF 1445.

<sup>66</sup> A publicly redacted copy is filed at NYSCEF 1433.

The motion is unopposed. There is no indication that the press or public have an interest in this matter.

In motion sequence 034, plaintiff CWCapital Cobalt VR LTD (CW Cobalt) moves pursuant to the Uniform Rules of the New York State Trial Courts (22 NYCRR) § 216.1 to redact/seal the following documents:

1. Berman's rebuttal expert report (NYSCEF 556, 578, 1013, 1459)<sup>67</sup>
2. Greenspan's rebuttal expert report (NYSCEF 558, 577, 707, 1362)<sup>68</sup>
3. August 2016 PIMCO letter agreement (NYSCEF 580, 674,1071)
4. Nealon's expert report (NYSCEF 586, 720, 954, 1104,1363)<sup>69</sup>
5. Warcholak's deposition transcript (NYSCEF 587, 748, 949, 1372)<sup>70</sup>
6. May 2016 PIMCO letter agreement (NYSCEF 678)
7. PIMCO Email Thread dated July 21, 2016 (NYSCEF 696 and refiled at 1449)<sup>71</sup>
8. PIMCO Email Thread dated May 13, 2014 (NYSCEF 697 and refiled at 1450)<sup>72</sup>
9. PIMCO Email Thread dated October 25, 2012 (NYSCEF 699)
10. PIMCO Email Thread dated October 12, 2012 (NYSCEF 700)
11. PIMCO note purchase and sale agreement (NYSCEF 701and refiled at 1451)<sup>73</sup>

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<sup>67</sup> A publicly redacted copy is filed at NYSCEF 1485. CW also seeks to seal this document in mot. seq. no. 033.

<sup>68</sup> A publicly redacted copy is filed at NYSCEF 1421. CW also seeks to seal this document in mot. seq. no. 033.

<sup>69</sup> A publicly redacted copy is filed at NYSCEF 1422. CW also seeks to seal this document in mot. seq. no. 033. .

<sup>70</sup> A publicly redacted copy is filed at NYSCEF 1431. CW also seeks to seal this document in mot. seq. no. 033.

<sup>71</sup> A publicly redacted copy is filed at NYSCEF 1475.

<sup>72</sup> A publicly redacted copy is filed at NYSCEF 1476.

<sup>73</sup> A publicly redacted copy is filed at NYSCEF 1477.

12. PIMCO note purchase and sale agreement (NYSCEF 702 and refiled at 1452)<sup>74</sup>
13. PIMCO note purchase and sale agreement (NYSCEF 703 and refiled at 1453)<sup>75</sup>
14. PIMCO A2 note purchase and sale agreement (NYSCEF 704 and refiled at 1454)<sup>76</sup>
15. Buono's expert report (NYSCEF 710, 1076, 1368)<sup>77</sup>
16. Greenspan's expert report (NYSCEF 715, 1105, 1090, 1370)<sup>78</sup>
17. Marin's expert report (NYSCEF 718 and refiled at 1458)<sup>79</sup>
18. Gannaway's deposition transcript (NYSCEF 732 and refiled at 1460)<sup>80</sup>
19. Tsu's deposition transcript (NYSCEF 747 and 1461)<sup>81</sup>
20. PIMCO email thread re: PIMCO Investment (NYSCEF 875 and refiled at 1455)<sup>82</sup>
21. Wallace's Affirmation (NYSCEF 914 and refiled at 1111)
22. CW's Memorandum of Law in Support of their Motion for Summary Judgment (NYSCEF 936 and refiled at 1373)<sup>83</sup>
23. Rule 19-A Statement of Material Facts (NYSCEF 937 and refiled at 1374)<sup>84</sup>

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<sup>74</sup> A publicly redacted copy is filed at NYSCEF 1478.

<sup>75</sup> A publicly redacted copy is filed at NYSCEF 1479.

<sup>76</sup> A publicly redacted copy is filed at NYSCEF 1480

<sup>77</sup> A publicly redacted copy is filed at NYSCEF 1427. CW also seeks to seal this document in mot. seq. no. 033.

<sup>78</sup> A publicly redacted copy is filed at NYSCEF 1429. CW also seeks to seal this document in mot. seq. no. 033.

<sup>79</sup> A publicly redacted copy is filed at NYSCEF 1484.

<sup>80</sup> A publicly redacted copy is filed at NYSCEF 1486.

<sup>81</sup> A publicly redacted copy is filed at NYSCEF 1487.

<sup>82</sup> A publicly redacted copy is filed at NYSCEF 1481.

<sup>83</sup> A publicly redacted copy is filed at NYSCEF 1432. CW also seeks to seal this document in mot. seq. no. 033.

<sup>84</sup> A publicly redacted copy is filed at NYSCEF 1433. CW also seeks to seal this document in mot. seq. no. 033.

24. Cobalt's Opening Brief in Support of Partial Summary Judgment Motion (NYSCEF 939 and refiled at 1462)<sup>85</sup>
25. Cobalt's Statement of Material Facts (NYSCEF 940 and refiled at 1463)<sup>86</sup>
26. Tuten's affirmation (NYSCEF 942 and refiled at 1110)
27. Cobalt's Memorandum of Law in Opposition to Defendants' Motion to Exclude Expert Opinion (NYSCEF 1085 and refiled at 1464)<sup>87</sup>
28. Cobalt's Memorandum of Law in Opposition to Defendants' Motion to Exclude Expert Opinion (NYSCEF 1102 and refiled at 1465)<sup>88</sup>
29. Memorandum of Law in Opposition to Cobalt's Motion for Partial Summary Judgment (NYSCEF 1118,1377)<sup>89</sup>
30. Responses and Counterstatements of CWCapital Asset (NYSCEF 1119 and refiled at 1378)<sup>90</sup>
31. Cobalt's Opposition to CW's Motion for Summary Judgment (NYSCEF 1219 and refiled at 1466)<sup>91</sup>

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<sup>85</sup> A publicly redacted copy is filed at NYSCEF 1488. CW also seeks to seal this document in mot. seq. no. 033.

<sup>86</sup> A publicly redacted copy is filed at NYSCEF 1489. CW also seeks to seal this document in mot. seq. no. 033.

<sup>87</sup> A publicly redacted copy is filed at NYSCEF 1490. CW also seeks to seal this document in mot. seq. no. 033.

<sup>88</sup> A publicly redacted copy is filed at NYSCEF 1491. CW also seeks to seal this document in mot. seq. no. 033.

<sup>89</sup> A publicly redacted copy is filed at NYSCEF 1436. CW also seeks to seal this document in mot. seq. no. 033.

<sup>90</sup> A publicly redacted copy is filed at NYSCEF 1437. CW also seeks to seal this document in mot. seq. no. 033.

<sup>91</sup> A publicly redacted copy is filed at NYSCEF 1492. CW also seeks to seal this document in mot. seq. no. 033.

32. Responses to CW's Statement of Material (NYSCEF 1220 and refiled at 1467)<sup>92</sup>
33. Cobalt's Opposition to Motion to Exclude Testimony of Tuten and Wallace  
(NYSCEF 1222)
34. CW's Responses to Cobalt's Statement of Material Facts and Counter-  
Statements (NYSCEF 1261 and refiled at 1376)<sup>93</sup>
35. Cobalt's Reply to Partial Summary Judgment Motion (NYSCEF 1263 and refiled  
at 1468)<sup>94</sup>
36. Redacted Letter Agreement, dated July 9, 2014 (NYSCEF 1271)
37. Cobalt's Memorandum of Law in Support of Motion To Supplement The SJ  
Record (NYSCEF 1284 and refiled at 1471)<sup>95</sup>
38. Pickhardt's affirmation (NYSCEF 1285 and refiled 1472)<sup>96</sup>
39. February 11, 2011, letter agreement (NYSCEF 1287)
40. April 1, 2014, letter agreement (NYSCEF 1288)
41. July 9, 2014 letter agreement (NYSCEF 1289)
42. Dec. 10, 2002 indenture (NYSCEF 1290)
43. Jul. 26, 2005 indenture (NYSCEF 1291)
44. May 23, 2006 indenture (NYSCEF 1292)
45. May 14, 2002 offering memorandum (NYSCEF 1293)

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<sup>92</sup> A publicly redacted copy is filed at NYSCEF 1493. CW also seeks to seal this document in mot. seq. no. 033.

<sup>93</sup> A publicly redacted copy is filed at NYSCEF 1435. CW also seeks to seal this document in mot. seq. no. 033.

<sup>94</sup> A publicly redacted copy is filed at NYSCEF 1494. CW also seeks to seal this document in mot. seq. no. 033.

<sup>95</sup> A publicly redacted copy is filed at NYSCEF 1496.

<sup>96</sup> A publicly redacted copy is filed at NYSCEF 1478.

46. November 26, 2002 offering memorandum (NYSCEF 1294)
47. March 16, 2004 offering memorandum (NYSCEF 1295)
48. November 3, 2004 offering memorandum (NYSCEF 1296)
49. May 16, 2006 offering memorandum (NSCEF 1297)
50. Cobalt's Memorandum of Law (NYSCEF 1300 and refiled at 1471)<sup>97</sup>
51. Email from QE to Special Servicers, June 20, 2024 (NYSCEF 1326)
52. Cobalt's Reply in Further Support of its Motion To Supplement The SJ Record (NYSCEF 1327 and refiled at 1473)<sup>98</sup>
53. CW's Responses to Cobalt's Statement of Undisputed Facts in related action (NYSCEF 1360)<sup>99</sup>
54. CW Opening Brief for Summary Judgment Motion (NYSCEF 1383)<sup>100</sup>
55. PIMCO email thread re: Stuy Town (NYSCEF 1456)<sup>101</sup>
56. PIMCO email thread re: Stuy Town (NYSCEF 1457)<sup>102</sup>
57. Gannaway's deposition transcript (NYSCEF 1460)<sup>103</sup>
58. Cobalt's Opposition to Summary Judgment in related action (NYSCEF 1469)<sup>104</sup>

The motion is unopposed. There is no indication that the press or public have an interest in this matter.

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<sup>97</sup> A publicly redacted copy is filed at NYSCEF 1497.

<sup>98</sup> A publicly redacted copy is filed at NYSCEF 1499.

<sup>99</sup> A publicly redacted copy is filed at NYSCEF 1419. CW also seeks to seal this document in mot. seq. no. 033.

<sup>100</sup> A publicly redacted copy is filed at NYSCEF 1442. CW also seeks to seal this document in mot. seq. no. 033.

<sup>101</sup> A publicly redacted copy is filed at NYSCEF 1482.

<sup>102</sup> A publicly redacted copy is filed at NYSCEF 1483.

<sup>103</sup> A publicly redacted copy is filed at NYSCEF 1486.

<sup>104</sup> A publicly redacted copy is filed at NYSCEF 1495.

“Under New York law, there is a broad presumption that the public is entitled to access to judicial proceedings and court records.” (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010] [citations omitted].) The public’s right to access is, however, not absolute, and under certain circumstances, “public inspection of court records has been limited by numerous statutes.” (*Id.* at 349.) One of those statutes is section 216.1 (a) of the Uniform Rules for Trial Courts, which empowers courts to seal documents upon a written finding of good cause. It provides:

“Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.” (22 NYCRR § 216.1.)

The “party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Mosallem*, 76 AD3d at 349 [citations omitted].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Lab Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000] [internal quotation marks omitted].)

### **Mot. seq. no. 033**

#### Third-Party Investment Strategy

CW demonstrated good cause to redact information related to third-party investment strategies in NYSCEF 1316; 1315; 1303 and 1387; 1349 and 727; 873 and 1337; 936 and 1373; 1383; 1384; 1360; and 1385. CW also demonstrated good cause to seal information related to third-party investment strategies in NYSCEF 606; 904; 905; 906; 907; 908; 909; 910; 822; 823; 824; 825; 826; 680; 681; 682; 695; 821; 632;



1188 and 1201. Courts have recognized a compelling interest in sealing a third-party's financial or private information as disclosure could impinge upon the privacy rights of these nonparties. (See *Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007]; *Natixis Real Estate Capital Tr. 2007-HE2 v Natixis Real Estate Capital, Inc.*, 77 Misc 3d 1224 [A] [Sup Ct, NY County 2023].) Here, disclosure of nonparties' proprietary and confidential business information would impair their privacy rights. Accordingly, these documents shall be sealed.

### Sensitive Business Information

CW demonstrated good cause to redact sensitive business information in NYSCEF 555, 583, 709, 953, and 1359; 937 and 1374; 711 and 1075; 715, 1105 and 1090; 708; 710 and 1076; 983 and 1107; 1352 and 568; 1353 and 569; 1355 and 574; 1356 and 575; 1380 and 591; 1379 and 559; 1350 and 732; 1334 and 749; 1338 and 916; 1340 and 1069; 1464 and 1085; 1465 and 1102; 1377 and 1118; 1344 and 1248; 1382 and 1254; 1381 and 1262; 1359, 555, 583, 709, and 953; 1459, 556, 578, and 1013; 1361, 557, 584, 725 and 1106; 1362, 558, 577, and 707; 731, 581, and 1357; 1354, 571, 714, and 979; 745 and 1333; 1127 and 1341; 1331 and 733; 1335 and 846; 1336 and 847; 1378 and 1119; 1342 and 1173; 1345, 833 and 977; 1462 and 939; 1463 and 940; 1466 and 1219; 1467 and 1220; 1347, 734, and 952; 1371, 741 and 982; 1261 and 1376; 586, 720, 954, 1104 and 1363; 1967 and 1339; 601, 888, 1091 and 1367. CW also demonstrated good cause to seal sensitive business information in NYSCEF 579; 958; 959; 960; 961; 962; 963; 964; 965; 966; 969; 975; 1161; 1304; 1305; 1306; 1307; 1308; 1309; 1310; 1311; 1312; 1313; 1315; and 1128. Courts have sealed records where the disclosure of documents "could threaten a business's competitive advantage."

(*Mosallem*, 76 AD3d at 350-351 [citations omitted].) Here, disclosure of CW's fee income would threaten its competitive advantage. Accordingly, these documents shall be sealed.

CW has not demonstrated good cause to seal sensitive business information in NYSCEF 1314 because NYSCEF 1314 is a public article published by Law 360. (*Visentin v Haldane Cent. Sch. Dist.*, 4 Misc 3d 1018[A], 2004 NY Slip Op 50937[U], \*5 [Sup Ct, Putnam County 2004] [unsealing a newspaper article because the article has been publicly disseminated and is demonstrably of public interest].) Accordingly, NYSCEF 1314 shall be unsealed.

#### Internal Policies and Procedures

CW demonstrated good cause to redact information pertaining to internal policies and procedures in NYSCEF 716 and 1330; 738 and 1332; 1202 and 1343; 1260 and 1375; 1263 and 1468; 599, 746, 1080 and 1358; 588, 742, 951 and 1364; 589, 730, 976 and 1365; 598, 928, 1015 and 1366; 748, 949, 587 and 1372. CW also demonstrated good cause to seal information pertaining to internal policies and procedures in NYSCEF 1249; 848 and 1014; 1126; 1147; 675 and 950; 1203; 1204; and 1205. Courts have sealed records of internal corporate procedures and policies when “the disclosure of which may provide valuable insights into a company’s current business practices that a competitor would seek to exploit.” (*Louis Vuitton Malletier S.A. v Sunny Mdse. Corp.*, 97 F Supp 3d 485, 511 [SDNY 2015] [internal citations omitted].) Here, disclosure of CW's internal policies and procedures on loan modifications and workouts with buyers would threaten its competitive advantage. Accordingly, these documents shall be sealed.

**Mot. seq. no. 034****Third-Party Investment Analysis**

CW Cobalt demonstrated good cause to redact information related to nonparties investment analysis in NYSCEF 696, 1449, and 1475; 697, 1450, and 1476; 701, 1451, and 1477; 702, 1452, and 1478; 703, 1453, and 1479; 704, 1454, and 1480; 1456 and 1482; 1457 and 1483; 718, 1458, and 1484; 732, 1460, and 1486; 747, 1461, and 1487. CW Cobalt also demonstrated good cause to seal information related to nonparties investment analysis in NYSCEF 699 and 700. Courts have recognized a compelling interest in sealing a third-party's financial or private information as disclosure could imping upon the privacy rights of these nonparties. (See *Mancheski*, 39 AD3d at 502; *Natixis Real Estate Capital Tr. 2007-HE2*, 77 Misc 3d at 1224.) Here, disclosure of nonparties' proprietary and confidential business information would impair their privacy rights. Accordingly, these documents shall be sealed.

**Fee Sharing Information**

CW Cobalt demonstrated good cause to seal information related to fee sharing agreements of nonparties in NYSCEF 678; 580, 674, and 1071. Courts have sealed records where the disclosure of documents "could threaten a business's competitive advantage." (*Mosalle*, 76 AD3d at 350-351 [citations omitted].) A party "ought not to be required to make their private financial information public ... where no substantial public interest would be furthered by public access to that information." (*D'Amour v Ohrenstein & Brown*, 17 Misc 3d 1130 [A], 2007 NY Slip Op 52207[U], \*20 [Sup Ct, NY County 2007] [citations omitted].) Here, the agreements include proprietary contractual

terms relevant to the deal struck between the parties to the agreement that, if publicly disclosed, could competitively disadvantage the parties involved. Accordingly, these documents shall be sealed.

Documents Sealed in Mot. Seq. No. 033

CW Cobalt also moves to seal/redact NYSCEF 1085 and 1464; 1102 and 1465; 1219 and 1466; 1220 and 1467; 940 and 1463; 939 and 1462; 1383; 558, 577, 707 and 1362; 586, 1104, 720, 954 and 1363; 710, 1076 and 1368; 715, 1105, 1090 and 1370; 748, 949, 587 and 1372; 936 and 1373; 937 and 1374; 1118 and 1377; 1119, 1378 and 1437; 1263 and 1468; 556, 578, 1013 and 1459, 1360 which CW showed good cause to redact/seal in mot. seq. no. 033. Accordingly, these documents shall be sealed.

Documents Pursuant to Confidentiality Agreement

CW Cobalt has not demonstrated good cause to seal/redact information produced by nonparty Special Servicer in NYSCEF 1271; 1284 and 1470; 1300 and 1471; 1285 and 1472; 1287; 1288; 1289; 1290; 1291; 1292; 1293; 1294; 1295; 1296; 1297; 1326; 1327 and 1473. CW Cobalt has also not demonstrated good cause to seal/redact information produced by nonparty Sculptor Capital Management Inc. (Sculptor) in NYSCEF 914 and 1111; 942 and 1110; and 1222. The court notes that the fact that the parties had stipulated to the sealing documents exchanged during discovery does not obviate the need to now demonstrate why good cause exist to continue the sealing pursuant to Rule 216.1. (See *Benkert v Smithers (In re Will of Benkert)*, 288 AD2d 147 [1st Dept 2001].) Parties may designate information as confidential during discovery, but it is another matter whether the information can be shielded from the public. In sum, a confidentiality agreement does not excuse the

movant from making a showing of good cause why certain information should be redacted. (See *Eccles v Shamrock Capital Advisors, LLC*, 2023 NY Slip Op 32730[U], \*5 [Sup Ct, NY County 2023] [internal quotation marks omitted].)

As to nonparty Special Servicer's documents, CW Cobalt seeks to provisionally redact/seal the documents above because they were produced by nonparties pursuant to an Order for Production and Exchange of Confidential Information but does not explain why the information needs to be sealed/ redacted. (See NYSCEF 480, Order for Production and Exchange of Confidential Information.) Instead, CW Cobalt asks that the court maintain the documents' provisional sealing status until Special Servicer make a motion to seal. To date, Special Servicer has not made a motion to redact/ seal these documents. Accordingly, these documents shall be unsealed.

As to nonparty Sculptor documents, CW Cobalt seeks to provisionally redact/seal the documents above so that Sculptor can have the opportunity to show good cause why the documents should remain. However, Sculptor did not move to seal or redact these documents in their Order to Show Cause. (See NYSCEF 1532, Order to Show Cause [Mot. Seq. No. 035].) Accordingly, these documents shall be unsealed.

#### Unsealing Publicly Redacted Documents

CW Cobalt moves to seal NYSCEF 1419, 1421, 1422, 1427, 1429, 1431, 1432, 1433, 1435, 1436, 1437, and 1442. However, these are the publicly redacted versions of some of the documents that CW moved to seal in mot. seq. no. 033. These documents should be unsealed.

Accordingly, it is

ORDERED that motion sequence 033 is granted, in part, and the County Clerk, upon service of this order, shall seal NYSCEF 559, 568, 569, 574, 575, 579, 591, 606, 632, 680, 681, 682, 695, 708, 716, 727, 732, 733, 738, 745, 749, 821, 822, 823, 824, 825, 826, 846, 847, 873, 904, 905, 906, 907, 908, 909, 910, 916, 936, 937, 939, 940, 958, 959, 960, 961, 962, 963, 964, 965, 966, 969, 975, 1067, 1069, 1085, 1102, 1118, 1119, 1126, 1127, 1128, 1147, 1161, 1173, 1188, 1201, 1202, 1203, 1204, 1205, 1219, 1220, 1248, 1249, 1254, 1260, 1261, 1262, 1263, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1315, 1316, 555, 583, 709, 953, 556, 578, 1013, 557, 584, 725, 1106, 558, 577, 707, 571, 714, 979, 586, 720, 954, 1104, 588, 742, 951, 589, 730, 976, 598, 928, 1015, 599, 746, 1080, 601, 888, 1091, 675, 950, 710, 1076, 711, 1075, 715, 1105, 1090, 731, 581, 734, 952, 741, 982, 748, 949, 587, 833, 977, 848, 1014, 983, 1107, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1459, 1462, 1463, 1464, 1465, 1466, 1467, 1468; and it is further

ORDERED the County Clerk is direct to unseal NYSCEF 1314; and it is further

ORDERED that motion sequence 034 is granted, in part, and the County Clerk, upon service of this order, shall seal NYSCEF 556, 558, 577, 578, 580, 2 586, 587, 674, 678, 696, 697, 699, 700, 701, 702, 703, 704, 707, 710, 715, 718, 720, 732, 747, 748, 875, 914, 936, 937, 939, 940, 949, 954, 1013, 1071, 1076, 1085, 1090, 1102, 1104, 1105, 1118, 1119, 1219, 1220, 1261, 1263, 1288, 1360, 1362, 1363, 1368, 1370, 1372,

1373, 1374, 1376, 1377, 1378, 1383, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469; and it is further

ORDERED that any party is permitted to move, by Order to Show Cause, demonstrating why good cause exists to seal NYSCEF 1271, 1284, 1470, 1300, 1471, 1285, 1472, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1326, 1327, 1473, 914, 1111, 942, 1110, 1222 within 10 days of this order, if so advised. If no party moves to seal within the stipulated period, the County Clerk will be directed to unseal those documents; and it is further

ORDERED that the County Clerk is directed to unseal NYSCEF 1419, 1421, 1422, 1427, 1429, 1431, 1432, 1433, 1435, 1436, 1437, and 1442; and it is further

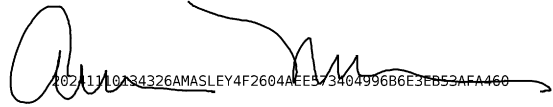
ORDERED the County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in this action, and any representative of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

ORDERED that movant serve a copy of this order upon the Clerk of the Court and the Clerk of the General Clerk's Office in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that if any party seeks to redact identical information in future filings that the court is permitting to be redacted here, that party shall submit a proposed

sealing order to the court (via SFC-Part48@nycourts.gov and NYSCEF) instead of filing another seal motion; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial.



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11/10/2024

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: