

**IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN  
AND FOR MIAMI-DADE COUNTY,  
FLORIDA**

**CASE NO. 07-43672 (CA 09)**

STATE OF FLORIDA, OFFICE OF FINANCIAL  
REGULATION,

Plaintiff,

v.

BERMAN MORTGAGE CORPORATION,  
a Florida corporation, M.A.M.C. INCORPORATED,  
a Florida corporation, DANA J. BERMAN,  
as Owner and Managing Member,

Defendant.

and

DB ATLANTA, LLC, a Florida limited liability  
company, et al.,

Relief Defendants.

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**RECEIVER'S MOTION TO AUTHORIZE DISTRIBUTION  
OF PROCEEDS FROM INSURANCE SETTLEMENT**

Michael I. Goldberg, the receiver (the "Receiver") for Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC"), and Relief Defendants DB Atlanta, LLC, *et al.*, hereby files this *Motion to Authorize Distribution of Proceeds from Insurance Settlement* (the "Motion"). In support of this Motion, the Receiver states as follows:

1. On December 11, 2007, the Florida Office of Financial Regulation filed a complaint (the "Complaint") seeking an injunction against BMC, MAMC, Dana J. Berman ("Berman") and other related entities (the "Relief Defendants") and requesting appointment of a receiver in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County,

Florida, Case No. 07-43672 CA 09, styled *State of Florida, Office of Financial Regulation v. Berman Mortgage Corporation, et al.* (the "Receivership Action").

2. The Complaint alleged that BMC and MAMC sold unregistered securities in the form of fractionalized interests in mortgages, operated as an unregistered securities dealer, made misrepresentations to investors, and misapplied investors' monies in connection with the funding of approximately forty commercial mortgage loans.

3. The Complaint also alleged that BMC and MAMC obtained at least \$192 million from more than 700 individual investors (the "Lenders"). The Lenders' monies were used to fund the acquisition and construction of commercial real estate projects, many of which are incomplete or in default.

4. On December 11, 2007, this Court entered a *Temporary Injunction and Agreed Order Appointing Receiver* ("Receivership Order") appointing Michael Goldberg as the receiver for BMC and MAMC (the "Defendants") and the Relief Defendants (collectively, the "Receivership Defendants") to prevent the waste and dissipation of the Receivership Defendants' assets to the detriment of the Lenders.

5. BMC had obtained a Specialty Errors and Omissions Liability Insurance Policy and a Miscellaneous Professional Liability Insurance Policy. Multiple claims were made against the insurance policies. Following two mediations and protracted settlement discussions, the various parties reached a settlement of the claims (the "Insurance Settlement").

6. After motion, notice and hearing, on January 26, 2015, the Receivership Court entered an Order Granting Receiver's Motion for Approval of Settlement Agreement and Entry of Bar Order Enjoining Lenders and Receivership Creditors From Prosecuting Claims Against Dana Berman, Mitchell Morgan and Berman Mortgage Corporation's Insurance Company.

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7. In summary, the Insurance Settlement was for \$9 million. After payment of Court approved attorney's fees and costs, the Receiver has \$5,600,000 (the "Net Proceeds") to distribute to Lenders. Many people suggested various distribution schemes to the Receiver. In turn, the Receiver had several meetings with the Executive Committee, and as a result of those meetings, it was determined that the most equitable way to distribute the funds was on a pro-rata basis among the various projects that sustained losses, and thereafter, on a pro-rata basis among the Lenders in each project.

8. More specifically, there are a total of 38 projects in the Receivership. These 38 projects are set forth on the chart attached to this Motion as Exhibit "A". Of the 38 projects, twelve (12) of the projects had a zero recovery (the "Lost Projects") due to the fact that the Lenders had second mortgages which were foreclosed upon by senior lenders. Thus, for the Lost Projects, the Lenders never received a return of any funds from the receivership. Of the 38 projects, fifteen (15) were sold (the "Sold Projects") and the Lenders on such projects received a portion, but not all, of their funds back from each project's respective sale. Finally, there are eleven (11) remaining projects (the "Remaining Projects") that the Receiver is still administering and there is expected to be some return to investors in the future, but as of this point in time, the amount of any such distribution is unknown. For purposes of the distribution of the Net Proceeds, the Receiver and his professionals did the best they could under the circumstances to estimate the final sale price for each Remaining Project.

9. The Receiver added up the amount the Lenders lost on each Lost Project, the amount the Lenders were not repaid on each Sold Project and the amount he expects that each Lender will ultimately lose on each Remaining Project and that totals \$134,769,333.97 (the "Total Expected Loss"). Thereafter, the Receiver divided each project's expected loss by the

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Total Expected Loss to obtain each project's percentage of the Total Expected Loss. For example, the first project listed on Exhibit "A" is DB Tampa which has a loss of \$4,560,000. This is 3.38% of the Total Expected Loss. Accordingly, the Receiver proposes to distribute 3.38% of the Net Proceeds to this project. This calculation was performed for each project and the pro-rata share of each project is listed in the "Prorated Share of losses" column in the Chart on Exhibit "A".

10. Once each project receives its pro-rata distribution, the Receiver proposes to further distribute the projects share of the Net Proceeds to the Lenders in each project on a pro-rata basis. It is anticipated that numerous Lenders will receive distributions on account of each project in which they are a lender, although the Lender will receive a single check along with a breakdown listing the amount they are receiving from each project.

**WHEREFORE**, Michael I. Goldberg, in his capacity as Receiver of MAMC and related entities, respectfully requests this Court to enter an Order authorizing distribution of Net Proceeds as described in this Motion and to grant such further relief as is just and proper.

Respectfully submitted,

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By: /s/ Joan Levit  
Joan M. Levit, Esquire  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this June 24, 2015, a true and correct copy of the forgoing was furnished to the parties on the attached Service List by U.S. mail, to the Lenders by e-mail and a copy of this motion will be posted on the receivership web-page.

/s/ Joan Levit

**SERVICE LIST**

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**EXHIBIT A**

**E&O Settlement Distribution**

Settlement Amount		\$ 9,000,000.00
FUERST ITTLEMAN PL	\$(3,150,000.00)	
Dana Berman Estate	\$(200,000.00)	
Holdback for MISC. Account Payables	\$(50,000.00)	
<b>Net Amount to be Distributed</b>		<b>\$ 5,600,000.00</b>

**LOST PROPERTIES (zero recovery)**

DB Tampa	\$ 189,479.31	
DB Key Largo	\$ 305,410.73	
DB Atlanta	\$ 144,394.87	
Brickell Yacht Club	\$ 270,714.40	
DBDS Vero Beach	\$ 146,389.39	
MAMC Windward	\$ 41,552.48	
Redlands Ranch Holdings, LLC Promissory Note	\$ 18,698.62	
Bay Estates at Pinetree	\$ 70,639.22	
515 Seabreeze 2nd	\$ 19,363.46	
Desert Inn	\$ 124,657.44	
DBDS Melbourne	\$ 103,881.20	
DB Biloxi III (Oakwoods)	\$ 970,250.40	
		\$ (2,405,431.49)

**SOLD PROPERTIES**

DB Biloxi II Le Chateau	\$ -	
Florida's Sport Dance	\$ 2,091.99	
DB Durham	\$ 32,008.44	
Southchase	\$ 25,504.26	
DBDS North Miami	\$ 61,767.44	
Guillermo Felipe Moran	\$ 11,896.44	
V-Strategic Group	\$ 113,270.19	
DB Simpsonville	\$ 72,074.52	
Airport Executive	\$ 107,166.98	
Miami Health District	\$ 41,760.42	
903 Duvall Street	\$ 57,601.78	
DBDS Biscayne Park, LLC	\$ 73,002.90	
DB Islamorada	\$ 864,762.48	
Normandy Holdings II, LLC Member	\$ 76,145.12	
Cape Haze Windward Partners	\$ 273,419.40	
		\$ (1,812,472.36)

**REMAINING PROPERTIES**

Gulf Island	\$ 40,139.83	
AHIFO Top Two	\$ 236,190.69	
Atlantic Beach Oceanfront	\$ 298,898.94	
Emerald Cay	\$ 51,172.26	
Project Managers Group	\$ 38,535.62	
IBEX Cheoah	\$ 72,422.13	
Bella Vista	\$ 252,765.22	
DB Biloxi (Edgewater)	\$ 391,971.46	
		\$ (1,382,096.15)

<b>Total Distribution</b>	<b>\$ (5,600,000.00)</b>
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<b>Net Amount to be Distributed</b>	<b>\$ 5,600,000.00</b>
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<b>Total Distribution</b>	<b>\$ (5,600,000.00)</b>
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\$ -
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**E & O Distribution Calculations**

Name	Principal Invested	Princ. Distribution	Remaining Principal Balance	Listed Price	Est. Gross Sale Price	Priority Loans w/ interest thru 7/31/15	LEGAL Due thru 11/26/14	Closing costs at 8%	EST NET Return	LOSS	Prorated Share of losses	Pro Rata Dist. (\$5.6M NET)	% Distrib.	TOTAL PROJECT RECOVERY	
<b>LOST PROPERTIES (zero recovery)</b>															
DB Tampa	\$ 4,560,000.00	\$ -	\$ 4,560,000.00	n/a	n/a	n/a	n/a	n/a	n/a	\$ 4,560,000.00	3.38%	\$ 189,479.307	4.16%	4.16%	
DB Key Largo	\$ 7,350,000.00	\$ -	\$ 7,350,000.00	n/a	n/a	n/a	n/a	n/a	n/a	\$ 7,350,000.00	5.45%	\$ 305,410.725	4.16%	4.16%	
DB Atlanta	\$ 3,475,000.00	\$ -	\$ 3,475,000.00	n/a	n/a	n/a	n/a	n/a	n/a	\$ 3,475,000.00	2.58%	\$ 144,394.867	4.16%	4.16%	
Brickell Yacht Club	\$ 6,515,000.00	\$ -	\$ 6,515,000.00	n/a	n/a	n/a	n/a	n/a	n/a	\$ 6,515,000.00	4.83%	\$ 270,714.405	4.16%	4.16%	
DBDS Vero Beach	\$ 3,523,000.00	\$ -	\$ 3,523,000.00	n/a	n/a	n/a	n/a	n/a	n/a	\$ 3,523,000.00	2.61%	\$ 146,389.386	4.16%	4.16%	
MAMC Windward	\$ 1,000,000.00	\$ -	\$ 1,000,000.00	n/a	n/a	n/a	n/a	n/a	n/a	\$ 1,000,000.00	0.74%	\$ 41,552.480	4.16%	4.16%	
Redlands Ranch Holdings, LLC	\$ 450,000.00	\$ -	\$ 450,000.00	n/a	n/a	n/a	n/a	n/a	n/a	\$ 450,000.00	0.33%	\$ 18,698.616	4.16%	4.16%	
Bay Estates at Pinetree	\$ 1,700,000.00	\$ -	\$ 1,700,000.00	n/a	n/a	n/a	n/a	n/a	n/a	\$ 1,700,000.00	1.26%	\$ 70,639.215	4.16%	4.16%	
515 Seabreeze 2nd	\$ 466,000.00	\$ -	\$ 466,000.00	n/a	n/a	n/a	n/a	n/a	n/a	\$ 466,000.00	0.35%	\$ 19,363.455	4.16%	4.16%	
Desert Inn	\$ 3,000,000.00	\$ -	\$ 3,000,000.00	n/a	n/a	n/a	n/a	n/a	n/a	\$ 3,000,000.00	2.23%	\$ 124,657.439	4.16%	4.16%	
DBDS Melbourne	\$ 2,500,000.00	\$ -	\$ 2,500,000.00	n/a	n/a	n/a	n/a	n/a	n/a	\$ 2,500,000.00	1.86%	\$ 103,881.199	4.16%	4.16%	
DB Biloxi III (Oakwoods)	\$ 23,350,000.00	\$ -	\$ 23,350,000.00	n/a	n/a	n/a	n/a	n/a	n/a	\$ 23,350,000.00	17.33%	\$ 970,250.399	4.16%	4.16%	
	\$ 57,889,000.00	\$ -	\$ 57,889,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 57,889,000.00	42.95%	\$ 2,405,431.491			
<b>SOLD PROPERTIES</b>															
DB Biloxi II Le Chateau	\$ 8,900,000.00	\$ 8,900,000.00	\$ -	n/a	n/a	n/a	n/a	n/a	n/a	\$ -	0.00%	\$ -		100.00%	
Florida's Sport Dance	\$ 867,750.00	\$ 817,404.22	\$ 50,345.78	n/a	n/a	n/a	n/a	n/a	n/a	\$ 50,345.78	0.04%	\$ 2,091.992	4.16%	94.44%	
DB Durham	\$ 5,100,000.00	\$ 4,329,686.50	\$ 770,313.50	n/a	n/a	n/a	n/a	n/a	n/a	\$ 770,313.50	0.57%	\$ 32,008.436	4.16%	85.52%	
Southchase	\$ 2,370,000.00	\$ 1,756,215.70	\$ 613,784.30	n/a	n/a	n/a	n/a	n/a	n/a	\$ 613,784.30	0.46%	\$ 25,504.260	4.16%	75.18%	
DBDS North Miami	\$ 5,300,000.00	\$ 3,813,507.73	\$ 1,486,492.27	n/a	n/a	n/a	n/a	n/a	n/a	\$ 1,486,492.27	1.10%	\$ 61,767.440	4.16%	73.12%	
Guillermo Felipe Moran	\$ 900,000.00	\$ 613,700.93	\$ 286,299.07	n/a	n/a	n/a	n/a	n/a	n/a	\$ 286,299.07	0.21%	\$ 11,896.436	4.16%	69.51%	
V-Strategic Group	\$ 8,000,000.00	\$ 5,274,044.90	\$ 2,725,955.10	n/a	n/a	n/a	n/a	n/a	n/a	\$ 2,725,955.10	2.02%	\$ 113,270.194	4.16%	67.34%	
DB Simpsonville	\$ 4,585,000.00	\$ 2,850,457.91	\$ 1,734,542.09	n/a	n/a	n/a	n/a	n/a	n/a	\$ 1,734,542.09	1.29%	\$ 72,074.525	4.16%	63.74%	
Airport Executive	\$ 6,600,000.00	\$ 4,020,924.44	\$ 2,579,075.56	n/a	n/a	n/a	n/a	n/a	n/a	\$ 2,579,075.56	1.91%	\$ 107,166.985	4.16%	62.55%	
Miami Health District	\$ 2,550,000.00	\$ 1,544,995.81	\$ 1,005,004.19	n/a	n/a	n/a	n/a	n/a	n/a	\$ 1,005,004.19	0.75%	\$ 41,760.416	4.16%	62.23%	
903 Duvall Street	\$ 2,500,000.00	\$ 1,113,758.33	\$ 1,386,241.67	n/a	n/a	n/a	n/a	n/a	n/a	\$ 1,386,241.67	1.03%	\$ 57,601.779	4.16%	46.85%	
DBDS Biscayne Park, LLC	\$ 2,450,000.00	\$ 693,115.70	\$ 1,756,884.30	n/a	n/a	n/a	n/a	n/a	n/a	\$ 1,756,884.30	1.30%	\$ 73,002.899	4.16%	31.27%	
DB Islamorada	\$ 24,818,000.00	\$ 4,006,667.27	\$ 20,811,332.73	n/a	n/a	n/a	n/a	n/a	n/a	\$ 20,811,332.73	15.44%	\$ 864,762.479	4.16%	19.63%	
Normandy Holdings II, LLC M	\$ 6,250,000.00	\$ 4,417,495.09	\$ 1,832,504.91	n/a	n/a	n/a	n/a	n/a	n/a	\$ 1,832,504.91	1.36%	\$ 76,145.123	4.16%	71.90%	
Cape Haze Windward Partner	\$ 7,000,000.00	\$ 419,901.80	\$ 6,580,098.20	n/a	n/a	n/a	n/a	n/a	n/a	\$ 6,580,098.20	4.88%	\$ 273,419.396	4.16%	9.90%	
	\$ 88,190,750.00	\$ 44,571,876.33	\$ 43,618,873.67	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 43,618,873.67	32.37%	\$ 1,812,472.358			
<b>REMAINING PROPERTIES</b>															
DBKN GULF	\$ 990,000.00		\$ 990,000.00			\$ -				\$ 665,252.25	\$ 324,747.75	0.24%	\$ 13,494.07	4.16%	68.56%
Oceanside 1st MTG	\$ 1,050,000.00	\$ 327,600.00	\$ 722,400.00			\$ -				\$ 485,432.55	\$ 236,967.45	0.18%	\$ 9,846.59	4.16%	78.37%
Oceanside	\$ 650,000.00		\$ 650,000.00	\$ 2,921,000.00	\$ 2,329,000.00	\$ -	\$ (163,803.29)	\$ (186,320.00)		\$ 436,781.78	\$ 213,218.22	0.16%	\$ 8,859.75	4.16%	68.56%
Gulf Island	\$ 877,500.00	\$ 295,020.15	\$ 582,479.85			\$ -				\$ 391,410.13	\$ 191,069.72	0.14%	\$ 7,939.42	4.16%	79.13%
AHIFO Top Two	\$ 5,900,000.00		\$ 5,900,000.00			\$ (658,005.02)	\$ (46,148.81)	\$ (80,000.00)		\$ 215,846.17	\$ 5,684,153.83	4.22%	\$ 236,190.69	4.16%	7.66%
Atlantic Beach Oceanfront	\$ 9,560,000.00		\$ 9,560,000.00			\$ 2,575,499.99	\$ (2,747.75)	\$ (206,040.00)		\$ 2,366,712.24	\$ 7,193,287.76	5.34%	\$ 298,898.94	4.16%	27.88%
Emerald Cay	\$ 2,500,000.00		\$ 2,500,000.00			\$ 1,800,000.00	\$ (373,064.12)	\$ (144,000.00)		\$ 1,268,490.83	\$ 1,231,509.17	0.91%	\$ 51,172.26	4.16%	52.79%
Project Managers Group	\$ 2,250,000.00		\$ 2,250,000.00			\$ 1,500,000.00	\$ (53,937.20)	\$ (120,000.00)		\$ 1,322,603.52	\$ 927,396.48	0.69%	\$ 38,535.62	4.16%	60.50%
IBEX Cheoah	\$ 2,000,000.00	\$ 151,578.00	\$ 1,848,422.00			\$ 295,000.00	\$ (20,116.81)	\$ (12,000.00)		\$ 105,514.53	\$ 1,742,907.47	1.29%	\$ 72,422.13	4.16%	16.48%
Bella Vista	\$ 6,650,000.00		\$ 6,650,000.00			\$ 1,700,000.00	\$ (533,412.94)	\$ (96,000.00)		\$ 566,964.11	\$ 6,083,035.89	4.51%	\$ 252,765.22	4.16%	12.33%
DB Biloxi (Edgewater)	\$ 10,465,000.00	\$ 805,379.22	\$ 9,659,620.78			\$ 279,900.00	\$ (250,000.00)	\$ (20,000.00)		\$ 226,454.22	\$ 9,433,166.56	7.00%	\$ 391,971.46	4.16%	13.61%
	\$ 42,892,500.00	\$ 1,579,577.37	\$ 41,312,922.63	\$ 15,095,900.00	\$ 10,804,499.99	\$ (1,638,536.09)	\$ (250,141.57)	\$ (864,360.00)		\$ 8,051,462.33	\$ 33,261,460.30	24.68%	\$ 1,382,096.15		
<b>TOTAL</b>	<b>\$ 188,972,250.00</b>	<b>\$ 46,151,453.70</b>	<b>\$ 142,820,796.30</b>	<b>\$ 15,095,900.00</b>	<b>\$ 10,804,499.99</b>	<b>\$ (1,638,536.09)</b>	<b>\$ (250,141.57)</b>	<b>\$ (864,360.00)</b>	<b>\$ 8,051,462.33</b>	<b>\$ 134,769,333.97</b>	<b>100.00%</b>	<b>\$ 5,600,000.00</b>			