

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	Chapter 11
)	
)	Case No. 10-26881 (PSH)
CORUS BANKSHARES, INC., ¹)	
)	Honorable Pamela S. Hollis
)	
Debtor.)	Objection Deadline: November 25,
)	2011 at 4:00 p.m., C.T.
)	
)	Hearing Date: December 1, 2011, at
)	10:30 a.m., C.T.

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **Thursday, December 1, 2011, at 10:30 a.m.**, or as soon thereafter as counsel can be heard, the undersigned shall appear before the Honorable Pamela S. Hollis, Bankruptcy Judge, in Room 644 of the United States Bankruptcy Court in the Everett McKinley Dirksen Federal, 219 S. Dearborn Street, Chicago, Illinois, or before any other Judge who may be sitting in her place and stead and shall present **APPLICATION OF WELLS FARGO BANK, N.A. IN ITS CAPACITY AS TOPrS INDENTURE TRUSTEE, FOR PAYMENT OF TOPrS INDENTURE TRUSTEE FEES**, a copy of which has been served upon you or filed with the Bankruptcy Court, and shall pray for the entry of an Order in compliance therewith.

PLEASE TAKE FURTHER NOTICE that any objection must be filed with the Court by November 25, 2011 at 4:00 p.m., C.T. and served by such time on: the Debtor: Corus Bankshares, Inc., 10 S. Riverside Plaza, Suite 1800, Chicago, IL 60606, Attn: Chief Financial Officer; (b) counsel to the Debtor: Kirkland & Ellis LLP, 300 N. LaSalle, Chicago, IL 60654, Attn: Jeffrey W. Gettleman; (c) the Office of the United States Trustee for the Northern District of Illinois, 219 South Dearborn Street, Suite 873, Chicago, Illinois 60604, Attn: Richard C. Friedman; and (d) counsel to Wells Fargo Bank, N.A., in its capacity as TOPrS Indenture Trustee: Loeb & Loeb LLP, 345 Park Avenue, New York, New York 10154, Attn: Walter H. Curchack and Vadim Rubinstein.

PLEASE TAKE FURTHER NOTICE that pursuant to the *Order Establishing Certain Notice, Case Management, and Administrative Procedures* [Dkt. 20] and the accompanying *Notice, Case Management, and Administrative Procedures*, if no objections are filed and served in accordance with the above procedure, the relief requested may be granted by the Court without a hearing.

¹ The Debtor in this chapter 11 case, along with the last four digits of the Debtor's federal tax identification number, is: Corus Bankshares, Inc. (3592). The location of the Debtor's corporate headquarters and the service address for the Debtor is: 10 S. Riverside Plaza, Suite 1800, Chicago, IL 60606.

Dated: November 4, 2011

Respectfully submitted,

WELLS FARGO BANK, N.A., in its capacity as
TOPrS INDENTURE TRUSTEE

By: /s/ Blair R. Zanzig
(One of Its Attorneys)

Blair R. Zanzig (ARDC No.: 6273293)
LOEB & LOEB LLP
321 North Clark Street, Suite 2300
Chicago, Illinois 60654
Telephone: (312) 464-3100
Facsimile: (312) 464-3111
Email: bzanzig@loeb.com

Walter H. Curchack
Vadim J. Rubinstein
LOEB & LOEB LLP
345 Park Avenue
New York, New York 10154
(212) 407-4000

*Counsel to Wells Fargo Bank, N.A., in its capacity
as TOPrS Indenture Trust*

CERTIFICATE OF SERVICE

I, Blair R. Zanzig, an attorney certify that on November 4, 2011, I caused the attached **Notice of Motion and Application of Wells Fargo Bank, N.A. in its Capacity as TOPrS Indenture Trustee, for Payment of TOPrS Indenture Trustee Fees** to be served on the attached service list via ECF notification, First Class U.S. Mail or facsimile, as indicated.

/s/ Blair R. Zanzig

Parties served Via ECF Notification

Ronald Barliant -- ronald.barliant@goldbergkohn.com, kristina.bunker@goldbergkohn.com
Mark A Berkoff -- mberkoff@ngelaw.com, cdennis@ngelaw.com
Deborah J Bisco -- bisco.deborah@pbgc.gov, efile@pbgc.gov
Sonia U Chae -- chaes@sec.gov
Jeffrey W Gettleman -- jgettleman@kirkland.com,
dseligman@kirkland.com;csroka@kirkland.com;agorman@kirkland.com
Deborah M Gutfeld -- dgutfeld@ngelaw.com, cdennis@ngelaw.com
Wojciech F Jung -- wjung@lowenstein.com, squigley@lowenstein.com;ilevee@lowenstein.com
Patrick S Layng -- USTPRegion11.ES.ECF@usdoj.gov
Michael D Messersmith -- mmessersmith@kayescholer.com, keanderson@kayescholer.com;
jben@kayescholer.com
Todd C Meyers -- tmeyers@kilpatricktownsend.com,
rrahman@kilpatricktownsend.com;lcanty@kilpatricktownsend.com
Nicholas M Miller -- nmiller@ngelaw.com
Matthew A Olins -- maolins@duanemorris.com
Elizabeth Gayle Peterson -- epeterson@fhslc.com,
docket@fhslc.com;clukey@fhslc.com;acotter@fhslc.com
Robbin S Rahman -- rrahman@kilpatricktownsend.com
Kevin G Schneider -- kschneider@ngelaw.com
David R Seligman -- dseligman@kirkland.com,
adam.gorman@kirkland.com;leslie.garthwaite@kirkland.com
Alan P. Solow -- alan.solow@dlapiper.com,
docketingchicago@dlapiper.com;william.guthrie@dlapiper.com
John R Weiss -- jrweiss@duanemorris.com
Guthrie B William -- william.guthrie@dlapiper.com, docketingchicago@dlapiper.com

Parties served via first-class mail:

Corus Bankshares, Inc.
10 S. Riverside Plaza, Suite 1800
Chicago, IL 60606
Attn: Chief Financial Officer

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654
Attn: Jeffrey W. Gettleman

The Office of the United States Trustee
Northern District of Illinois
219 South Dearborn Street, Suite 873
Chicago, Illinois 60604
Attn: Richard C. Friedman

Merri Jo Gillette Regional Director
Securities and Exchange Commission
Chicago Regional Office
175 W Jackson Boulevard
Suite 900
Chicago, IL 60604

Richard Gill
Federal Deposit Insurance Corp FDIC
Virginia Square, L. Wm Seidman Ctr
3501 Fairfax Drive
Arlington, VA 22226

Internal Revenue Service
Centralized Insolvency Operations
Po Box 7346
Philadelphia Pa 19101-7346

Parties served via Facsimile Transmission:

Department of Justice
Attorney General of the United States
950 Pennsylvania Ave, NW
Washington, DC 20530-0001

Marie Ferguson
Debt Collector
Bloomberg
Vengroff Williams & Associated Inc.
PO Box 4155
Sarasota, FL 34230-4155

Renita Cannon
IRS BK Specialist
Department of the Treasury - IRS
PO Box 21126
Philadelphia, PA 19114

Michael Berman
SEC Headquarters
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Attn: Civil Process Clerk
Office of the United States Attorney
Northern District of Illinois, Eastern Division
219 S Dearborn Street
Chicago, IL 60604

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 11
)	
)	Case No. 10-26881 (PSH)
CORUS BANKSHARES, INC.,¹)	
)	Honorable Pamela S. Hollis
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Debtor.)	

**APPLICATION OF WELLS FARGO BANK, N.A., IN
ITS CAPACITY AS TOPrS INDENTURE TRUSTEE,
FOR PAYMENT OF TOPrS INDENTURE TRUSTEE FEES**

Wells Fargo Bank, N.A., in its capacity as TOPrS Indenture Trustee (“Wells Fargo”), hereby files its Application (the “Application”), pursuant to section 1129(a)(4) of title 11 of the United States Code (the “Bankruptcy Code”) and Article IV.D.3 of *The Debtor’s Third Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (With Technical Modifications)* [ECF No. 689-1] (the “Plan”), for allowance and payment of its TOPrS Indenture Trustee Fees (as defined below) incurred in connection with the chapter 11 case of the above-caption debtor (the “Debtor”).

In this Application, Wells Fargo respectfully requests that this Court enter an order, substantially in the form attached hereto as “Exhibit A”, determining as reasonable and awarding the allowance and payment of its TOPrS Indenture Trustee Fees (as hereinafter defined) in the sum of \$330,407.75. The additional exhibits attached to this Application are:

“Exhibit B” – Summary of TOPrS Indenture Trustee Fees

“Exhibit C” – Invoices of Wells Fargo.

¹ The Debtor in this chapter 11 case, along with the last four digits of the Debtor’s federal tax identification number, is: Corus Bankshares, Inc. (3592). The location of the Debtor’s corporate headquarters and the service address for the Debtor is: 10 S. Riverside Plaza, Suite 1800, Chicago, IL 60606.

“Exhibit D” – Invoices of Loeb & Loeb LLP, counsel to Wells Fargo.

In support of its Application, Wells Fargo respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. In addition, this Court retained jurisdiction to consider this Application pursuant to Article X.1 of the Plan and paragraph 18 of the Order Confirming the Debtor’s Third Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [ECF No. 689] (the “Confirmation Order”).

2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B) and (O). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicate for the relief requested herein is section 1129(a)(4) of the Bankruptcy Code.

BACKGROUND

4. On June 15, 2010 (the “Petition Date”), the Debtor filed a voluntary petition with this Court under chapter 11 of the Bankruptcy Code.

5. Following extensive discussions between the Debtor and the official committee of unsecured creditors (the “Committee”) regarding the terms of a plan of liquidation, the Debtor filed the *Debtor’s Amended Plan Under Chapter 11 of the Bankruptcy Code* [ECF No. 285] on December 15, 2010, which proposed the orderly wind down and liquidation of the Debtor. On December 16, 2010, the Bankruptcy Court approved the disclosure statement for this proposed liquidation plan [ECF No. 303], and on December 23, 2010, the Debtor commenced solicitation for the liquidation plan [ECF No. 322]. Subsequently, six creditors holding claims in the principal amount of approximately \$166 million (including Tricadia CDO Management, LLC

and Mariner – Tricadia Credit Strategies Master Fund, Ltd. (collectively, “Tricadia”)) voted to reject the Debtor’s proposed liquidation plan.

6. In the wake of this rejection of the proposed liquidation plan by the Debtor’s creditors, extensive discussions ensued amongst the Debtor, the Committee and Tricadia about the confirmability of a plan of liquidation, and proposed plan modifications. Ultimately, after numerous discussions and extensive analysis of costs and benefits of a plan of liquidation and a plan of reorganization, Tricadia and a majority of the other creditors who had voted to reject the liquidation plan, plus one additional creditor (collectively, the “Plan Support Parties”), determined that a plan of reorganization would best maximize value for the Debtor’s estate. On May 3 and May 4, 2011, the Plan Support Parties delivered to the Debtor letters informing the Debtor that they supported a reorganization and attached a term sheet setting forth the proposed material terms of that reorganization.

7. The Debtor, Tricadia and the Committee thereafter negotiated the terms of a reorganization plan and, on July 26, 2011, the Debtor filed a new disclosure statement (as amended, the “Disclosure Statement”) and attached, as an exhibit, a draft of the negotiated plan of reorganization (i.e., the Plan) [ECF. No. 553]. Thereafter, on July 28, 2011, the Bankruptcy Court entered the *Order Approving: (A) the Adequacy of the Debtor’s Disclosure Statement; (B) Solicitation and Notice Procedures With Respect to Confirmation of the Debtor’s Proposed Plan of Reorganization; (C) the Forms of Various Ballots and Notices in Connection therewith; and (D) the Scheduling of Certain Dates With Respect Thereto* [ECF No. 575] (the “Disclosure Statement Order”). In accordance with Disclosure Statement Order and the solicitation procedures approved thereunder, the Debtor provided ballots to certain of its stakeholders to

solicit votes to accept or reject the Plan. A majority of the stakeholders who submitted ballots voted in favor of the Plan. See [ECF No. 663].

8. Following a hearing held on September 27, 2011, the Court entered the Confirmation Order confirming the Plan. The effective date of the Plan was October 27, 2011 (the “Effective Date”).

The TOPrS Indenture

9. Between June 2003 and June 2007, the Debtor created thirteen unconsolidated subsidiary trusts (collectively, the “TOPrS Trusts”), each of which issued trust originated preferred securities (the “TOPrS”) to investors and then used the proceeds of the issuances to purchase debentures (the “TOPrS Debentures”) from the Debtor with terms essentially identical to the TOPrS. Each of the TOPrS Trusts was governed by a declaration of trust (a “TOPrS Trust Indenture”) and an indenture trustee (the “TOPrS Trust Indenture Trustee”) was appointed for each TOPrS Trust. Similarly, each issuance of TOPrS Debentures was governed by an indenture (the “TOPrS Debenture Indentures”) and an indenture trustee (the “TOPrS Debenture Indenture Trustee”) was appointed for each series of TOPrS Debentures.

10. Wells Fargo is the TOPrS Trust Indenture Trustee under that certain Amended and Restated Declaration of Trust of Corus Statutory Trust XII, dated as of March 29, 2006 (the “TOPrS Trust XII”), and also is the TOPrS Debenture Indenture Trustee under TOPrS Debenture Indenture dated as of March 29, 2006 (the “Indenture”). In its capacity as both TOPrS Debenture Indenture Trustee and TOPrS Trust Indenture Trustee, Wells Fargo is sometimes collectively referred to herein as the “TOPrS Indenture Trustee.”

11. Section 6.06 of the Indenture² provides that Wells Fargo is entitled to payment of reasonable, documented fees and expenses (including professional fees and expenses) that it has incurred:

[T]he Company will pay or reimburse the Trustee upon its written request for all documented reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance that arises from its negligence, willful misconduct or bad faith. The Company also covenants to indemnify each of the Trustee (including in its individual capacity) and any predecessor Trustee (and its officers, agents, directors and employees) for, and to hold it harmless against, any and all loss, damage, claim, liability or expense including taxes (other than taxes based on the income of the Trustee), except to the extent such loss, damage, claim, liability or expense results from the negligence, willful misconduct or bad faith of such indemnitee, arising out of or in connection with the acceptance or administration of this Trust, including the costs and expenses of defending itself against any claim or liability in the premises. The obligations of the Company under this Section 6.06 to compensate and indemnify the Trustee and to pay or reimburse the Trustee for documented expenses, disbursements and advances shall constitute additional indebtedness hereunder.

12. Section 6.06 of the Indenture further provides the TOPrS Indenture Trustee with a lien with respect to such fees and expenses:

Such additional indebtedness shall be secured by (and the Company hereby grants and pledges to the Trustee) a lien prior to that of the Debt Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Debt Securities.

² Section 9.6 of the Amended and Restated Declaration of Trust for TOPrS Trust XII contains a similar provision regarding payment of the TOPrS Indenture Trustee's reasonable, documented fees and expenses. Because the TOPrS Trust XII and the Indenture are voluminous, they have not been attached hereto. However, copies are available upon request to the undersigned counsel.

The Plan and the TOPrS Indenture Trustee Fees

13. On the Effective Date of the Plan, substantially all instruments and agreements executed in connection with the TOPrS were deemed automatically canceled and of no further force or effect, except for certain limited purposes. See Plan at Article IV.D.1. The relevant TOPrS instrument or agreement remained in effect for the purpose of, among other things, “permitting such TOPrS Indenture Trustee to maintain any rights or Liens it may have under the applicable TOPrS Documents to receive TOPrS Indenture Trustee Fees” Id. The Plan defines “TOPrS Indenture Trustee Fees” as follows:

reasonable, documented fees, disbursements, advances and expenses (including, without limitation, professional fees and expenses, and payments made or to be made in connection with indemnity Claims) of each TOPrS Indenture Trustee (including, without limitation, in connection with service on the Committee, and in connection with Distributions under the Plan.)

Plan at Article I.A.101.

14. In addition, the Plan establishes a specific process to allow the TOPrS Indenture Trustee to apply for and receive payment of its TOPrS Indenture Trustee Fees. In particular, pursuant to the Plan, “as soon as practicable after the Effective Date, the Reorganized Debtor shall pay the TOPrS Indenture Trustee Fees.” Id. at Article IV.D.3. However, to receive payment of the TOPrS Indenture Trustee Fees, the Plan requires the TOPrS Indenture Trustee to comply with the following process:

As a precondition to payment of any TOPrS Indenture Trustee Fees incurred prior to the Effective Date, each TOPrS Indenture Trustee shall, after the Effective Date, submit to the Bankruptcy Court its invoices and an application for payment of such TOPrS Indenture Trustee Fees in accordance with Article XI.A. of the Plan. The Bankruptcy Court shall review each application for payment of TOPrS Indenture Trustee Fees for

reasonableness, as required by section 1129(a)(4) of the Bankruptcy Code.

Id. The Plan provides that the deadline for submission of applications by TOPrS Indenture Trustees for the payment of TOPrS Indenture Trustee Fees incurred on or before the Effective Date is 60 days after the Effective Date. Id. at Article XI.A.

Wells Fargo's Proof of Claim

15. On August 6, 2010, the TOPrS Indenture Trustee timely filed a Proof of Claim (the "Claim") against the Debtor, assigned claim number 124. The Claim included a liquidated claim for, among other things, all claims arising under the Indenture, totaling not less than \$26,961,544.19. Pursuant to the Plan, the liquidated portion of the Claim, representing solely its principal and interest components, was deemed to be an Allowed Claim (as such term is defined in the Plan) in the amount of \$26,958,979. See Plan at Article IV.Q.

16. In addition, the Claim included an unliquidated claim for all fees and expenses incurred by Wells Fargo as TOPrS Indenture Trustee, including the fees and expenses of any professionals retained by Wells Fargo in connection with this chapter 11 case. See Claim at ¶ 3. The Claim further invoked section 6.06 of the Indenture, which preserves Wells Fargo's charging lien with respect to any unpaid fees and expenses.

17. As set forth above, the Plan provides that the unliquidated portion of the Claim, constituting the TOPrS Indenture Trustee Fees, is subject to further consideration by this Court for reasonableness, pursuant to section 1129(a)(4) of the Bankruptcy Code. See Plan at Article IV.D.3. Upon approval of the TOPrS Indenture Trustee Fees, the Plan provides that the Debtor shall "as soon as practicable thereafter, reimburse the TOPrS Indenture Trustee in Cash for such TOPrS Indenture Trustee Fees." Id.

Wells Fargo's Role in This Bankruptcy Case

18. On June 28, 2010, pursuant to section 1102 of the Bankruptcy Code, the United States Trustee appointed five creditors to serve on the Committee in connection with this chapter 11 case. Wells Fargo, in its capacity as TOPrS Indenture Trustee, was one of the five TOPrS Indenture Trustees appointed as a member of the Committee.³ Pursuant to the Plan, the Committee dissolved on the Effective Date. See Plan at Article IV.M.

19. On or about the Petition Date, Wells Fargo retained the law firm of Loeb & Loeb LLP ("Loeb") to represent it in connection with its service on the Committee and this chapter 11 case, generally. The majority of Loeb's services were performed by Walter H. Curchack and Vadim J. Rubinstein, partners at the firm. Both attorneys have substantial experience representing indenture trustees in large, complex cases, including, among others, the bankruptcy cases of Washington Mutual, Inc., Netbank, Inc., Luminent Mortgage Capital, Refco, Inc., Fruit of the Loom, Muzak, Local Insight Media Holdings, Allied Holdings, XO Communications, Horizon Natural Resources, Horizon PCS, Applied Extrusion Technologies, and EnviroSolutions. In light of the complexities of this case, the unique structure of the TOPrS and the numerous issues that arose during Loeb's representation of Wells Fargo, other attorneys assisted as was required for the representation.

20. James R. Lewis, Vice President in the Corporate, Municipal & Escrow Solutions group of Wells Fargo Bank, N.A., performed the majority of work on behalf of the TOPrS Indenture Trustee, in consultation with its counsel. These activities performed by Wells Fargo and Loeb during the chapter 11 case included, but were not limited to:

³ On March 21, 2011, one of the members of the Committee, Bank of America, in its capacity as a TOPrS Indenture Trustee, resigned as a member of the Committee [ECF No. 385].

- (a) Seeking membership on the Committee, attending the organizational meeting of the Committee, and interviewing and selecting Committee professionals.
- (b) participating in regular Committee calls as well as numerous telephonic or in-person meetings with the Debtor, and other significant parties throughout the case, including Tricadia, the Plan Support Parties and the Federal Deposit Insurance Corporation (the “FDIC”);
- (c) reviewing, analyzing and providing input on significant pleadings filed on behalf of the Committee;
- (d) participating in the negotiation and formulation of a plan of liquidation and related disclosure statement and solicitation documents and related pleadings, which ultimately was rejected by voters;
- (e) participating in the negotiation and formulation of the Plan and related Disclosure Statement and solicitation documents and all related pleadings;
- (f) negotiating the inclusion of several features into the Plan to provide creditors with additional alternatives and protections, including, but not limited to: (i) the “liquidation option,” which provides eligible creditors with the option to receive a distribution of cash rather than a distribution of stock in the reorganized debtor;⁴ (ii) the Plan Committee, made up of independent members of the reorganized debtor’s board of directors with fiduciary duties to parties entitled to distributions under the Plan, to oversee and have decision-making authority with respect to the reorganized debtor’s ongoing litigation and causes of action; (iii) the Plan Committee Consultant, a former federal judge, tasked with overseeing and consulting with the Plan Committee regarding any material decision in connection with ongoing litigation and related settlements; (iv) the Litigation Trust, a trust created to hold causes of action against certain of the Debtor’s former officers; (v) the Creditors Designee, an individual appointed by the Committee and tasked with consulting with the Plan Committee and the Plan Committee Consultant regarding ongoing litigation and related settlements, to take positions in connection with the litigation between the Debtor and the FDIC regarding subordination issues and to monitor the Debtor with respect to distributions under the Plan; (vi) periodic reporting requirements, requiring the Debtor to publicly file periodic reports detailing the costs of administration of the estate and the amounts available for distribution, including the requirement to provide to the Creditors Designee any information that is withheld from the filed report out of concerns for the sensitivity or confidentiality of the information; (vii) prohibition against pledging assets, which prohibits the

⁴ In fact, a significant number of creditors, including certain of the Plan Support Parties, elected to receive a distribution of cash pursuant to the liquidation option rather than a distribution of equity under the Plan.

reorganized debtor from pledging any interest in various assets specifically reserved, in part or in whole, for parties that elected the Liquidation Option; (viii) the Cash Election Entitlement Segregated Account, a segregated account established to hold the amounts distributable to parties electing the Liquidation Option, governed by extremely conservative investment guidelines; (ix) refinements to the definition of "Free Cash," the term used to establish the actual and potential assets that will be available to parties entitled to distributions, designed to enlarge and clarify the scope of the definition; and (x) refinements to the definition of "Net Free Cash," the term used to describe the deductions from Free Cash that will be made to arrive at the amount of a distribution, designed to make clear that only those costs that otherwise would have been incurred in connection with a liquidation will be applied to reduce the Net Free Cash available to those parties that elected a cash distribution pursuant to the Liquidation Option;

- (g) regularly consulting with Committee counsel and commenting on numerous drafts of the liquidation plan, the Plan, the related disclosure statements and solicitation materials regarding, among other things, description, structure and treatment of the Debtor's pre-petition capital structure, including the TOPrS and the TOPrS Debentures;
- (h) analyzing the documents governing the TOPrS and the TOPrS Debentures, as well as complex legal, intercreditor and subordination issues, and reviewing various corporate documents relevant to the Debtor's bankruptcy case;
- (i) calculating, preparing and filing the Claim;
- (j) preparing various notices to holders and engaging in other communications with holders regarding this case;
- (k) participating in teleconferences and correspondence with the Debtor and Committee professionals regarding distribution mechanics, solicitation mechanics, post-confirmation securities issues and related Plan implementation issues; and
- (l) preparing this Application.

21. With respect to general case issues, whenever possible and appropriate, the TOPrS Indenture Trustee and Loeb relied on counsel and advisors to the Committee to perform the necessary due diligence and legal research in order to avoid duplication of services. In this regard, the TOPrS Indenture Trustee, through Mr. Lewis and Loeb, reviewed significant

pleadings, reports and legal memoranda prepared by counsel and advisors to the Committee on a weekly basis, relating to the wide-ranging issues in these bankruptcy proceedings. Additionally, Mr. Lewis and/or Loeb analyzed various pleadings and plan-related documents prepared or filed in the case, reported the analysis to the TOPrS Indenture Trustee and provided input to Committee counsel where appropriate.

The TOPrS Indenture Trustee Fees

22. Wells Fargo's TOPrS Indenture Trustee Fees are in the aggregate amount of \$330,407.75. A total of \$4,072.50⁵ of the TOPrS Indenture Trustee Fees were incurred during the few months leading up to the Petition Date, beginning on April 9, 2010 (the "Prepetition Period"), and the remaining \$326,335.25 of the TOPrS Indenture Trustee Fees were incurred between the Petition Date and the Effective Date (the "Postpetition Period"). In particular, the TOPrS Trustee Fees are comprised of the following:

- (a) with respect to Wells Fargo: (1) \$4,072.50 in fees were incurred during the Prepetition Period; and (2) \$102,397.50 in fees and \$876.07 in expenses were incurred during the Postpetition Period; and
- (b) with respect to Loeb, all of its fees in the amount of \$222,563 and expenses in the amount of \$498.68 were incurred during the Postpetition Period.

23. Attached hereto as Exhibit B is a chart summarizing the TOPrS Indenture Trustee Fees. In addition, attached hereto as Exhibits C and D and incorporated by reference herein are copies of the invoices of Wells Fargo and Loeb, redacted to preserve privilege and attorney work product where appropriate. The amounts set forth in the invoices remain unpaid and outstanding.

⁵ In its Claim, Wells Fargo asserted a claim for \$5,107.50 on account of TOPrS Indenture Trustee Fees incurred during the Prepetition Period. As reflected in the invoices of Wells Fargo attached as Exhibit B, \$1,035 of that sum was incurred on the Petition Date, and thus relates to the Postpetition Period. Consequently, the prepetition figure has been reduced to \$4,072.50.

24. In accordance with industry practice and as reflected in the invoices appended to this Motion as Exhibit B, Wells Fargo bills for the time spent by Mr. Lewis and its other professional administrators providing default administration services at an hourly rate. Similarly, and as reflected in the invoices appended to this Motion as Exhibit C, Loeb's fees are billed at an hourly rate and represent the customary fees and expenses that Loeb charges to its clients. Both Wells Fargo and Loeb have prepared and maintained their records and invoices in a manner that is consistent with their ordinary business practices and those of others in the same industry. As is further discussed below, it is respectfully submitted that the TOPrS Indenture Trustee Fees reflected in those invoices are reasonable and should be approved in full.

REQUESTED RELIEF

25. Wells Fargo, in its capacity as TOPrS Indenture Trustee, hereby seeks a determination that its TOPrS Indenture Trustee Fees are reasonable, pursuant to section 1129(a)(4) of the Bankruptcy Code and Article IV.D.3 of the Plan, and requests that the Debtor be authorized and directed to pay, in cash, the sum of \$330,407.75 for its TOPrS Indenture Trustee Fees incurred in connection with the TOPrS and this chapter 11 case, from April 9, 2010 through and including the Effective Date.

***Section 1129(a)(4) of the Bankruptcy Code and the Plan
Authorize Payment of "Reasonable" TOPrS Indenture Trustee Fees***

26. As set forth above, the Plan imposes an obligation on the Debtor to pay, in cash, the TOPrS Indenture Trustee Fees, subject only to this Court's consideration of whether such fees are "reasonable," pursuant to section 1129(a)(4) of the Bankruptcy Code. See Plan at Article IV.D.C. Section 1129(a)(4) of the Bankruptcy Code provides that in order for a court to confirm a plan, "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and

expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to approval of, the court as reasonable.” 11 U.S.C. § 1129(a)(4).

27. Though the payment of fees, such as the TOPrS Indenture Trustee Fees, by a debtor through a chapter 11 plan is not uncommon, very little case law exists to confirm and explain this practice. However, several bankruptcy courts have confirmed that, where the provision of payment of fees is an element of a chapter 11 plan, section 1129(a)(4) may serve as the basis for payment of such fees, independent of any other provision of the Bankruptcy Code. See In re Adelphia Communications Corp., 441 B.R. 6, 9 (Bankr. S.D.N.Y. 2010) (holding that reasonable fees may be paid, pursuant to section 1129(a)(4) of the Bankruptcy Code, where the provision for payment of such fees is an element of a chapter 11 plan, over objection of United States Trustee who argued that such payment could only be made upon demonstration of “substantial contribution,” pursuant to section 503(b)(3)(D) of the Bankruptcy Code); see also In re Washington Mutual, Inc., 442 B.R. 314, 365 (Bankr. D. Del. 2011) (in assessing whether to confirm chapter 11 plan that provided for, among other things, payment of the fees of various settling parties (including indenture trustees), bankruptcy court held that such fees can be paid only after they are subject to court review under the “reasonableness” standard, pursuant to section 1129(a)(4)).

28. Moreover, in interpreting what is “reasonable” under section 1129(a)(4) of the Bankruptcy Code, one bankruptcy court has observed that: (a) fees incurred protecting the applicant’s personal recovery (even without a benefit to the estate) may be reasonable, whereas (b) fees incurred undertaking abusive or “scorched earth” tactics are not reasonable. Adelphia, 441 B.R. at 9 (concluding that “‘reasonable’ in the context of fees awarded under section

1129(a)(4) permits payment for fees (otherwise reasonable) that have been incurred solely to increase the applicant's personal recovery on a long position in claims against the estate (even without benefit to the estate), but does not permit payment for fees to advance interests unrelated to recovering on claims (such as short positions or competitive advantage), or for activities that go beyond normal advocacy or negotiation, that represent scorched earth tactics, or that are abusive, irresponsible, or destructive to the estate.”). Of course here, Wells Fargo is the TOPrS Indenture Trustee for holders of TOPrS issued in connection with TOPrS Trust XII and the Indenture (the “TOPrS XII Claims”), and has at all times sought to maximize recoveries not for itself but rather for the investors in such securities and all other unsecured creditors.

The TOPrS Indenture Trustee Fees are Reasonable

29. As described above, Wells Fargo and its counsel have undertaken significant efforts in this case to assure that Wells Fargo complies with its duties both as a TOPrS Indenture Trustee and as a member of the Committee. In discharge of its duties, Wells Fargo, through Mr. Lewis and Loeb, gave significant attention to complex legal analysis, including analyzing, commenting on and negotiating: (a) drafts of a plan of liquidation, disclosure statement and related solicitation documents which was proposed but ultimately rejected by voters; (b) drafts of the Plan, Disclosure Statement and related solicitation documents; (c) the various additional options and protections included in the Plan, including, but not limited to, the Liquidation Option, the Plan Committee, the Litigation Trust, the Creditors Designee, the periodic reporting requirements, the restrictions on the pledging of assets, the Cash Election Entitlement Segregated Account and the refinements and clarifications to the definitions of “Free Cash” and “Net Free Cash,” each as described in more detail above; (d) complex intercreditor and subordination issues, particularly in connection with the FDIC’s arguments as asserted in connection with its objections to the Plan and Disclosure Statement; and (e) complex distribution issues, particularly

in light of the unusual structure of the Plan and the TOPrS, most of which are held by and through collateralized debt obligation trusts. The services rendered by Wells Fargo and Loeb were necessary and appropriate to carry out Wells Fargo's contractual and fiduciary duties and to protect the interests of Wells Fargo's holders and creditors generally.

30. Moreover, absent Wells Fargo's participation in this case as a TOPrS Indenture Trustee, each holder would have had to assert its own claims, requiring the Debtor to respond to dozens or hundreds of TOPrS holders' inquiries, claims and perhaps objections. Wells Fargo's role as TOPrS Indenture Trustee thus protected both the TOPrS holders and the Debtor, and facilitated the administration of this bankruptcy case by providing the Debtor with one creditor representative for TOPrS XII Claims instead of many.

31. While the TOPrS Indenture Trustee Fees of Wells Fargo were incurred, in part, as an effort to advance and protect the interests of its holders, none of Wells Fargo's efforts were related to attempts to obtain a competitive advantage or for activities that go beyond normal advocacy or negotiation, that represent scorched earth tactics, or that are abusive, irresponsible, or destructive to the estate. See, e.g., Adelphia, 441 B.R. at 9. To the contrary, Wells Fargo conducted itself at all times with the legitimate purpose of assuring that all holders of TOPrS XII Claims and unsecured creditors, whether large or small, would maximize their recoveries in this case. Under these circumstances, the TOPrS Indenture Trustee Fees of Wells Fargo and Loeb are reasonable, as such term is used in section 1129(a)(4) of the Bankruptcy Code.

32. Moreover, payment of Wells Fargo's TOPrS Indenture Trustee Fees through this Application is preferable to other alternatives available in the Indenture and the Plan. In particular, the Plan explicitly contemplates the exercise by Wells Fargo of the charging lien

granted to it pursuant to Section 6.06 of Indenture. See Plan at Article IV.D.4.⁶ While this process would allow Wells Fargo to recover all of its TOPrS Indenture Trustee Fees, it is (a) a complex and cumbersome process; (b) would create undue delay in making distributions to holders; and (c) would dilute recoveries to holders. Exercise of the charging lien is made even more difficult in this case as a result of the complex structure in which the TOPrS are held and the fact that a portion of the holders elected to receive a cash distribution while other holders elected to receive an equity distribution under the Plan. Exercise of the charging lien in this case would result in significant delay in distributions as a result of the need to determine the appropriate manner to exercise the lien uniformly among holders, and the need, in some cases, to hold and liquidate securities.

33. For all of the reasons set forth herein, the TOPrS Indenture Trustee Fees are “reasonable” as such term is used in section 1129(a)(4) of the Bankruptcy Code and should be allowed in full and paid, in cash, by the Debtor as soon as practicable.⁷

NO PRIOR REQUEST

34. Wells Fargo has not made a previous application for the relief requested herein to this or any other Court.

NOTICE

35. In accordance with the Plan, Wells Fargo has served this Application upon: (a) the Debtor: Corus Bankshares, Inc., 10 S. Riverside Plaza, Suite 1800, Chicago, IL 60606, Attn:

⁶ Article IV.D.4 provides as follows: “If the TOPrS Indenture Trustee Fees are not allowed pursuant to the above paragraph, and to the extent that, under the TOPrS Documents, the TOPrS Indenture Trustees are entitled to charging liens on account of unpaid TOPrS Indenture Trustee Fees, recoveries under the Plan will be adjusted so that sufficient Cash distributions are available to allow the TOPrS Indenture Trustees to exercise their charging liens against Cash distributed under the Plan.”

⁷ Wells Fargo reserves its right to submit requests for the payment of TOPrS Trustee Fees incurred after the Effective Date directly to the Reorganized Debtor (as defined in the Plan) as is necessary and appropriate. See Plan at Article IV.D.3.

Chief Financial Officer; (b) counsel to the Debtor, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Jeffrey W. Gettleman; and (c) the Office of the United States Trustee for the Northern District of Illinois, 219 South Dearborn Street, Suite 873, Chicago, Illinois 60604, Attn: Richard C. Friedman. (collectively, the “Notice Parties”). Wells Fargo submits that such notice is appropriate and proper.

WHEREFORE, Wells Fargo respectfully requests that the Court: (a) approve and allow its request for allowance and payment, in cash, of its TOPrS Indenture Trustee Fees in the sum of \$330,407.75, comprised of: (1) with respect to Wells Fargo: (A) \$4,072.5 in fees incurred during the Prepetition Period; and (B) \$102,397.50 in fees and \$ 876.07 in expenses incurred during the Postpetition Period; and (2) with respect to Loeb: \$222,563.00 in fees and \$498.68 in expenses incurred during the Postpetition Period; (b) approve and direct payment, in cash, by the Reorganized Debtor to (or at the direction of) Wells Fargo the amounts so awarded as soon as practicable; and (c) grant such other and further relief as is just and proper under the circumstances.

Dated: November 4, 2011

Respectfully submitted,

WELLS FARGO BANK, N.A., in its capacity as
TOPRS INDENTURE TRUSTEE

By: /s/ Blair R. Zanzig
(One of Its Attorneys)

Blair R. Zanzig (ARDC No.: 6273293)
LOEB & LOEB LLP
321 North Clark Street, Suite 2300
Chicago, Illinois 60654
Telephone: (312) 464-3100
Facsimile: (312) 464-3111
Email: bzanzig@loeb.com

Walter H. Curchack
Vadim J. Rubinstein
LOEB & LOEB LLP
345 Park Avenue
New York, New York 10154
(212) 407-4000