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Occupy the SEC works to ensure that financial regulators protect the interests of the public, not Wall Street.

FOR IMMEDIATE RELEASE:

Occupy the SEC Submits Amicus Brief to the Supreme Court in *Bank of America N.A. v. Caulkett*, Advocating for Strip-off of Underwater Mortgages During Chapter 7 Bankruptcy

New York, New York- March 23, 2015

Occupy the SEC (“OSEC”) has submitted an amicus brief in *Bank of America N.A. v. Caulkett*, and *Bank of America N.A. v. Toledo-Cardona*, two consolidated cases presently pending before the U.S. Supreme Court.

These cases focus on Sections 506(a) and 506(d) of the Bankruptcy Code, which, if read together, provide that a completely underwater lien must be voided under a Chapter 7 process. The Petitioner, Bank of America, claims that a Chapter 7 filing should not cause the strip off of an underwater second mortgage. Rather, an unsecured creditor should be allowed to uphold the lien, even if the mortgage is underwater and worthless. Bank of America takes the stance that sections 506(a) and 506(d) should be interpreted separately when it comes to determining the meaning of the term “allowed secured,” in keeping with the flawed reasoning of a prior Supreme Court case *Dewsnupp v. Timm* (1992).

In its amicus brief, OSEC argues that Bank of America’s position would produce a great injustice to those individuals who have filed for Chapter 7 bankruptcy. OSEC reminds the Court that a central purpose of bankruptcy law is to afford unfortunate debtors a “fresh start.” The banking industry’s misconduct has fueled, and continues to fuel the mortgage crisis. The bipartisan Financial Crisis Inquiry Commission found banks to be culpable in bringing about the Great Recession of 2008. The crisis distressed the economic status of millions of homeowners — currently there are 2.1 million underwater borrowers who are at risk of impending default and possible foreclosure.

The legislative history behind the implementation of §506 shows that subsections (a) and (d) were intended to be read jointly. Numerous House and Senate reports supplementing the passage of the Bankruptcy Code of 1978 confirm this. In fact, any ambiguities in understanding §506(d) can be remedied by reading that statute in conjunction with §506(a). OSEC also points to several policy considerations that favor the strip-off of wholly underwater liens during Chapter 7 liquidation.

Oral argument for these cases is set for **Tuesday, March 24, 2015**.

Occupy the SEC is a group of concerned citizens, activists, and financial professionals that works to ensure that financial regulators protect the interests of the public, not Wall Street. For further information, visit <http://occupythesec.org> or email info@occupythesec.org.

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