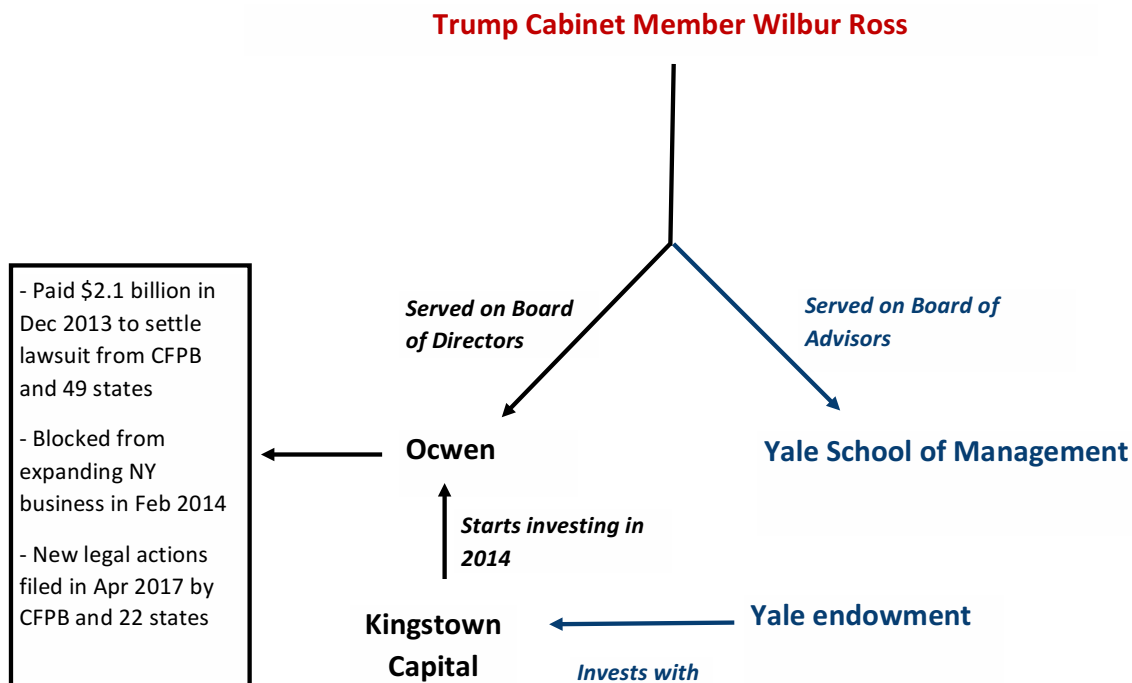


## Yale, Debt, and Wilbur Ross



Wilbur Ross, now Trump’s Commerce Secretary, formerly served on the Board of one of Yale’s endowment assets and on the Yale School of Management Board of Advisors.

In 2012, Ross’ private equity firm sold AHMSI, a mortgage debt collector, to Ocwen. After the sale, Ross served on Ocwen’s Board of Directors through November 2014.<sup>1</sup>

Meanwhile, during the first quarter of 2014, Yale’s investment manager Kingstown Capital began purchasing shares of Ocwen.<sup>2</sup> By April 2015, Kingstown controlled 9.5% of Ocwen.<sup>3</sup> Yale’s own shares were worth an estimated \$15.4 million in August 2015.<sup>4</sup>

Two years earlier, Ross had donated \$10 million to the School of Management, which named a library after him. In 2014, Ross served on both the Ocwen Board of Directors and the Yale School of Management Board of Advisors.

Kingstown invests Yale endowment money through a fund called “Ktown.” Initially, Kingstown was not required to disclose whether it used Yale funds in Ktown for its purchases. Starting in February 2015, however, Ocwen filed five copies of the SEC Form 13D that include more detailed information about Kingstown’s ownership of Ocwen. Every one of those five filings includes the Yale-owned fund as a part of Kingstown’s Ocwen investment.<sup>5</sup>

Just prior to the Yale/Kingstown investment, Ocwen had paid \$2.1 billion to settle a lawsuit on debt servicing abuses brought by 49 states and the U.S. Consumer Financial Protection Bureau.<sup>6</sup> In April 2017, Ocwen’s stock lost half its value in the immediate wake of what the New York Times called “a fusillade of lawsuits and enforcement orders” containing state and federal regulators’ allegations that it “mishandled accounts and in some cases illegally foreclosed on homeowners.”<sup>7</sup>

## **Wilbur Ross: Trump's "former savior"**

In November 2016, the newly-victorious President Elect Donald Trump announced his appointment of Wilbur Ross as Secretary of Commerce. Ross, worth an estimate \$2.9 billion and often referred to as the "king of bankruptcy," is by far the richest member of Trump's cabinet. Upon the announcement, fellow billionaire David Butters, a gas shipping CEO, described the sentiment at a celebration with "Manhattan elite" by saying: "It was like—we have a chance, now. We have a chance to make some differences."<sup>8</sup>

Ross made his fortune in large part by "us[ing] bankruptcy to his advantage—acquiring only assets while others shouldered the burden." Those "others" included the government in the case of Ross's deals to buy steelmakers LTV and Bethlehem Steel, as the government agency Pension Benefit Guarantee Corporation assumed responsibility for benefits, and workers, who saw pensions "slashed in half," were forced into retirement, or were laid off. Over the course of his career, Ross's position on issues as fundamental as the merits of free trade or the US's basic orientation to China as a trade partner have reversed repeatedly, sometimes when his investments changed.<sup>9</sup>

Now, he's "positioned to become the most powerful Commerce boss in years," overseeing "the census, patents, economic analysis, the development of minority-owned businesses, and even, under the aegis of the National Oceanic and Atmospheric Administration, the monitoring of the effects of climate change." Trump's transition team spokesperson has said that Ross will be the administration's leader on setting trade priorities, though that falls outside the normal duties of his office. Past business dealings during the bankruptcy of the Atlantic City Trump Taj Mahal, in which Ross struck a deal with Trump that prevented Trump from being cut out of his investment by the bondholders, led Bloomberg Businessweek to call Ross the President's "former savior."<sup>10</sup>

## **Yale Donor and Advisor**

To Yale, Ross is not only a prominent alumnus, but also a donor, building namesake, and sometime advisor. In 2010, Ross gave \$10 million toward the construction of a new campus for the School of Management.<sup>11</sup> The campus is now home to the Wilbur L. Ross Library.<sup>12</sup> Ross has also served on the University Council, an advisory body to the President; the board of the Yale University Art Gallery; and the Board of Advisors for the School of Management, where he served from 2004 until at least 2014 and sat alongside current Yale Corporation Fellows Joshua Bekenstein of Bain Capital and Lei Zhang of Hillhouse Capital.<sup>13</sup>

Since his appointment, Ross's business dealings have been scrutinized for his business ties to Russia, particularly during his tenure as vice chairman of the Bank of Cyprus.<sup>14</sup> He was also the owner of West Virginia's Sago Mine when an explosion and collapse killed twelve miners in 2006. The mine had a long record of unaddressed safety violations; in fact, Ross purchased it in March 2005, the year safety violations at the mine increased from 68 to 208. He eventually paid \$2 million to the families of the miners who were killed.<sup>15</sup>

## **Mortgages, Foreclosures, and Robo-Signing**

Ross also has a history of business dealings in the mortgage industry. One high-profile example of this business activity was his firm's ownership of American Home Mortgage Servicing, Inc. (AHMSI).

W.L. Ross & Co., LLC, the private equity firm of which Ross was chairman until 2016, bought part of American Home Mortgage out of bankruptcy in 2007: it purchased the mortgage servicing

assets—that is, the contracts to collect on the loans—but not ownership of the mortgages themselves. W.L. Ross & Co thus acquired the servicing rights on \$132 billion in loans, and used those assets to form AHMSI.<sup>16</sup>

AHMSI outsourced its mortgage document operations to a third-party document company called DocX.<sup>17</sup> In 2010, DocX was shut down after a 60 Minutes investigation exposed widespread abuses, including “robo-signing” of key documents used in foreclosures. The banks and loan servicers, like AHMSI, who contracted with DocX used these falsified documents to foreclose on homeowners.<sup>18</sup> In one of the few criminal cases to come out of the housing crisis, DocX’s CEO was sentenced to five years in prison for instructing her employees to falsify documents beginning in 2005. She is reportedly the only person to be jailed for foreclosure fraud.<sup>19</sup>

AHMSI settled a lawsuit brought by the Ohio Attorney General in 2011, including a condition that AHMSI would agree to new servicing standards.<sup>20</sup> Ross’s private equity firm sold AHMSI (rechristened Homeward Residential Holdings, Inc.) in 2012 to Ocwen Financial Corporation.<sup>21</sup>

Like AHMSI, Ocwen is a so-called “non-bank mortgage servicer,” a rapidly growing industry that focuses on collections from homeowners, primarily those with subprime and delinquent loans. Ocwen does not lend, but acquires from lenders the right to “service” mortgages: collect payments, negotiate modifications, and pursue foreclosures. From 2009 to 2013, the number of loans serviced by Ocwen grew by a factor of eight.

### **Avoidable foreclosures**

Critics of non-bank mortgage servicers allege that they grew too fast following the 2008 financial crisis and never developed the capacity to meet borrowers’ needs, commonly losing paperwork and making other clerical errors. As New York state regulator Benjamin Lawsky put it, “We are seeing far too many struggling homeowners getting caught in a vortex of lost paperwork, unexplained fees and avoidable foreclosures.”<sup>22</sup>

Some analysts are concerned that the servicers actually have a structural financial incentive to foreclose on borrowers rather than modify their loans. Mortgage servicers are paid fees according to the total amount of principal in the loans being serviced. This can create an incentive not to agree to reduce the principal in distressed mortgages. In fact, servicers can charge extra fees to borrowers in default, which decrease the long-term viability of the loan but increase the short-term profitability of these contracts for the servicer.<sup>23</sup>

This short-term incentive is especially acute for non-bank mortgage servicers. Unlike banks, they have no base of deposits to draw on, which exposes them to potential liquidity problems from the distressed properties for which they perform collections. Where Ocwen services a “securitized” mortgage—meaning a mortgage that has been bundled with other mortgages and sold to investors as a security—the bondholders have a right to steady payment from the servicing company, which is drawn from the debtors’ payments. This can create an incentive for the servicer to foreclose quickly: when an institution has little cash on hand, its business model relies on short-term income, rather than longer-term solutions like modifying the mortgage to allow the homeowner to keep her house with lower monthly payments.<sup>24</sup>

### **Largest CFPB settlement to date**

Ocwen was sued jointly by 49 states, the District of Columbia, and the Consumer Finance Protection Bureau. Ocwen settled the case in December 2013 by agreeing to pay \$2.1 billion, the largest

single settlement won by the Bureau to that point. Said CFPB Director Richard Cordray, "Ocwen took advantage of borrowers at every stage of the process."<sup>25</sup> As a result, Ocwen agreed to a consent order in which it would provide \$2 billion in principal reductions to borrowers, refund \$125 million to almost 185,000 people who had already been foreclosed on, and "adhere to significant new homeowner protections."<sup>26</sup>

In February 2014, New York state regulators denied Ocwen the right to buy servicing rights to \$39 billion of mortgages from Wells Fargo.<sup>27</sup>

### **A high-complaint industry**

As of a September 1, 2015 report, consumers had sent more complaints to the CFPB about mortgage servicing than any other segment of the consumer financial services industry—27% of the total 702,892 received by the Bureau.<sup>28</sup>

The Bureau's interest in mortgage servicing was not new. A CFPB report issued in January 2014 detailed "unfair and deceptive practices ... in industries supervised by the Bureau, such as the mortgage servicing industry."<sup>29</sup> The CFPB found that unnamed major mortgage servicing actors had committed violations including:

- Failing to honor loan modification agreements. One servicer "called borrowers repeatedly to represent that they should have paid amounts exceeding those required by their modification agreements."
- "Requiring all borrowers, regardless of individual circumstance, to enter into across-the-board waivers of existing claims in order to obtain a forbearance or loan modification agreement," unfairly presenting these waivers as a "take it or leave it" condition of their ordinary loan modifications.
- "Deceptive marketing" of a biweekly payment plan that "misrepresented" how the servicers would apply borrowers' payments to generate savings on interest.<sup>30</sup>

Issues from the September 2015 report included delays, unexpected increases in payment, ambiguity about who should be paid, lack of information about loan transfer, unexplained fees, foreclosures proceeding without waiting for the modification application to be reviewed, and "complaints where consumers assert that they sent documents but companies report never having received them," the last of which the report notes "are common."<sup>31</sup>

### **"We cannot allow this to continue"**

In its announcement about the consent decree that ended the 2013 lawsuits, the CFPB detailed some of the complaints commonly brought against Ocwen. They include robo-signing unverified foreclosure documents and providing false information to consumers about the status of foreclosure proceedings.<sup>32</sup> The regulators' summary of their complaint against Ocwen breaks their claims into three bullet points—that Ocwen:

- "Took advantage of homeowners with servicing shortcuts and unauthorized fees."
- "Deceived consumers about foreclosure alternatives and improperly denied loan modifications."
- "Engaged in illegal foreclosure practices."<sup>33</sup>

Since the national settlement, Ocwen has struggled with little success to free itself of regulatory

scrutiny. In 2015, Ocwen settled a dispute with the California Department of Business Oversight. The CDBO alleged that Ocwen had failed to produce loan documentation for the agency to review, and threatened to revoke Ocwen's mortgage license in California. The settlement prohibited Ocwen from acquiring the rights to service any additional mortgages in California until an independent monitor was satisfied that Ocwen was meeting the settlement terms.<sup>34</sup> From 2014 to July 1, 2016, Ocwen spent \$147 million on independent monitoring of various settlements, the majority for the CDBO case.<sup>35</sup> In February 2017, Ocwen reached a new settlement with the CDBO for \$225 million that allows the company to begin purchasing the right to service California mortgages again.<sup>36</sup>

However, less than two months after the latest California settlement, Ocwen has become the target of another round of lawsuits and regulatory actions. Since April 2015, Ocwen has received over 300,000 error notices from borrowers; for perspective, it currently services about 1.4 million mortgages. On April 20, 2017, the CFPB filed a new lawsuit and some 22 states took regulatory action to restrict or slow Ocwen's acquisition of new business. The regulators cite allegations of illegal foreclosures and mishandled collections.<sup>37</sup>

"Ocwen has consistently failed to correct deficient business practices that cause harm to borrowers," said a North Carolina regulator, regarding the most recent lawsuit. "We cannot allow this to continue."<sup>38</sup>

## Yale and Ocwen

Yale is the 97.37% owner of an entity, Ktown, LP, worth \$216,369,379 according to the university's most recent tax filing.

Ktown is managed externally by a hedge fund, Kingstown Capital Management. Kingstown-managed funds controlled 9.5% of Ocwen shares in 2015, with Ktown specifically controlling 1.6 percent, as of August 2015.<sup>39</sup> At the time, Ktown's shares were worth \$15.8 million.<sup>40</sup>

As of the most recent Ocwen SEC filing about Kingstown's shares, Kingstown controls 4.84 percent of Ocwen, of which nearly one-fifth is accounted for by Yale's Ktown portion.<sup>41</sup> Those shares would be worth \$2.7 million as of April 25, 2017.<sup>42</sup>

Yale's fund manager first bought into Ocwen in 2014, immediately after Ocwen agreed to pay \$2.1 billion to settle a lawsuit brought against it by 49 states and the Consumer Finance Protection Bureau. At the time of that initial investment, Wilbur Ross was a member of the Board of Directors of Ocwen and the Yale School of Management Board of Advisors.

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