EXHIBIT C

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Who Has Your Back? Hard to Tell

By GRETCHEN MORGENSON

What is the duty of a trustee to protect investors?

The answer to that question is at stake in an $8.5 billion settlement that is awaiting approval by a justice in New York State Supreme Court. Early this week, the court will hear closing arguments in a case about the settlement struck by Bank of America and 22 mortgage securities investors two years ago. The settlement would resolve Bank of America's legal liability for more than one million loans made by Countrywide Financial — now owned by Bank of America — during the mortgage mania. The court will decide whether the settlement is fair and reasonable and can go forward.

While this case may appear to be about Countrywide's lending practices, what's really on trial here is the role played in the settlement by Bank of New York Mellon, the trustee charged with protecting all investors in these securities. Trustees for asset-backed securities have a duty to ensure that the companies administering them, known as servicers, do right by the investors who own them.

But testimony in the case, known as an Article 77 proceeding, indicates that during months of settlement talks, Bank of New York Mellon did not do all it could to ensure that all investors holding the Countrywide securities got the best deal possible from Bank of America. If the settlement is blessed by the justice, Barbara R. Kapnick, the standard for acceptable behavior by a trustee on behalf of investors will be low indeed. Her ruling will undoubtedly be cited as a precedent for other similar mortgage matters waiting to be heard.

All investors in every one of the 530 Countrywide securities covered by the settlement must abide by its terms, and its approval would let Bank of America extinguish legal liability for loans that could lose investors up to $100 billion, according to one estimate. This is the case even though some investors were kept out of the negotiation process and many others didn't know it was going on.

The only reason we know anything about what Bank of New York Mellon did or didn't do during closed-door meetings with Bank of America and lawyers for the 22 investors is that some Countrywide securities holders who were not invited to the talks have objected to the deal. These objectors are led by the American International Group, the insurance giant.

A.I.G.'s lawyers maintain that Bank of New York Mellon failed to perform its duties as trustee as the settlement was negotiated.

A statement from Kevin Heine, a Bank of New York Mellon spokesman, said: "Isolated bits of testimony are an insufficient basis for evaluating the weight of extensive testimony provided to the court over nine weeks. We believe a full and objective review of the testimony in the Article 77 proceeding presents a clear and compelling case that we acted reasonably and in good faith and that the proposed settlement is in the best interest of the trusts and certificate holders."

The case began as a dispute over faulty loans between Bank of America and a group of institutional investors who held the Countrywide securities, including BlackRock, Pimco and the Federal Reserve Bank of New York. Early in settlement talks, Bank of America suggested bringing all investors in the 530 Countrywide trusts into the deal. Bank of New York Mellon agreed. This meant that even though the absent investors were not represented by lawyers at the bargaining table, they would be forced to abide by the terms of the settlement. Unlike the process that occurs in a class action, there was no opting out of this deal.

Bank of New York Mellon also kept the absent investors in the dark as the negotiations went on, testimony shows. Asked why the bank didn't disclose crucial developments to other investors, Jason H. P. Kravitt, a lawyer at Mayer Brown who is outside counsel to the bank, testified that it would have been unwise to give notice at the time "because that also could serve to upset the stable negotiating platform that we were working from."

Never mind that other investors might have pushed for more than $8.5 billion.

Other courtroom testimony indicates that Bank of New York Mellon seemed so eager to secure the settlement that it would not pursue opportunities to improve the deal's terms. For example, the bank agreed to a settlement clause that effectively bound it to the deal even if new facts emerged about the Countrywide loans. Such facts might have included indications that the settlement's loan loss estimates were too conservative, making the investor payout too low. Agreeing to the clause, Bank of New York Mellon's counsel conceded, "ties the bank's hands."

Neither was Bank of New York Mellon aggressive when it came to hiring experts in the case. When advising the experts, Mr. Kravitt said, he did not push them to question Bank of America's arguments and positions. Asked whether Bank of New York Mellon could have hired experts "to strengthen your leverage in the negotiations" with Bank of America, Mr. Kravitt said: "We could have," but didn't.

Finally, there's the choice that Bank of New York Mellon made to hire Mayer Brown as its legal representative in the first place. The firm has done extensive work for Bank of America and, according to an email written by Mr. Kravitt that surfaced in the case, Mayer Brown considered Bank of America its "good client."

Jon Diat, a spokesman for A.I.G., said in a statement: "The evidentiary record in this case shows that the trustee was hobbled by collusion and conflict throughout the process, and that the pennies-on-the-dollar settlement is inadequate."

I asked Bank of New York Mellon about why it hired Mayer Brown, why it agreed to sign the restrictive settlement clause and why it didn't disclose the negotiations to all investors or push its experts to be more aggressive. The bank declined to comment on all of these points.

Writing about this case in June, I noted earlier testimony in which Bank of New York Mellon confirmed that it had not asked for loan files so that the deal's relatively modest loss estimates could be verified. Testimony from subsequent months in Justice Kapnick's courtroom has only raised further doubts about the bank's actions.

This complex and circuitous case has drawn back the curtain on trustee practices. Investors relying on these entities to serve their best interests should be dismayed by the view.