

# EXHIBIT 9

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the matter of the application of

THE BANK OF NEW YORK MELLON, (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), BlackRock Financial Management Inc. (intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor), Maiden Lane II, LLC (intervenor), Maiden Lane III, LLC (intervenor), Metropolitan Life Insurance Company (intervenor), Trust Company of the West and affiliated companies controlled by The TCW Group, Inc. (intervenor), Neuberger Berman Europe Limited (intervenor), Pacific Investment Management Company LLC (intervenor), Goldman Sachs Asset Management, L.P. (intervenor), Teachers Insurance and Annuity Association of America (intervenor), Invesco Advisers, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank Baden-Wuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital LLC (intervenor), ING Investment Management LLC (intervenor), New York Life Investment Management LLC (intervenor), Nationwide Mutual Insurance Company and its affiliated companies (intervenor), AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio (intervenor), Federal Home Loan Bank of Atlanta (intervenor), Bayerische Landesbank (intervenor), Prudential Investment Management, Inc. (intervenor), and Western Asset Management Company (intervenor)

Petitioners,

for an order pursuant to CPLR § 7701 seeking judicial instructions and approval of a proposed settlement.

Index No.  
651786/2011

Assigned to:  
Kapnick, J.

**AMENDED  
VERIFIED  
PETITION IN  
INTERVENTION**

For its amended petition pursuant to CPLR 401, 1012, and 1013 to intervene as respondent in this proceeding, proposed intervenor the State of Delaware by JOSEPH R. BIDEN, III, Attorney General of the State of Delaware (the “Delaware Department of Justice”), states and alleges upon information and belief as follows:

**INTRODUCTION**

1. In this proceeding pursuant to CPLR Article 77, the Bank of New York Mellon (“BNYM”), as trustee for 530 trusts (“Covered Trusts”) comprised of billions of dollars in residential mortgage backed securities (“RMBS”), seeks the Court’s approval of a proposed

settlement of claims against Countrywide Home Loans, Inc. and Countrywide Financial Corporation (collectively “Countrywide”), who acted as loan originators and servicers to the Covered Trusts, and Bank of America (“BoA”) and its affiliated entities who acted as servicers to the Covered Trusts.<sup>1</sup>

2. The claims that would be resolved by the proposed settlement are related to Countrywide and BoA’s pervasive failure to comply with the standards of conduct governing the creation and administration of the covered trusts. These failures contributed to the massive collapse of the market for RMBS, causing substantial harm to mortgage loan borrowers, investors and the integrity of the securities markets.

3. If approved, the terms of the proposed settlement would fully and finally release the claims of the Covered Trusts and would be binding on all of the trust beneficiaries, whether or not they are represented in this special proceeding.

4. The Delaware Department of Justice seeks permission to intervene in this proceeding: (i) pursuant to its authority as *parens patriae* to protect the public interest, including the interests of absent investors and homeowners as well as the integrity of the marketplace; (ii) to protect potential state law claims that may be adversely affected if the proposed settlement is approved, including claims for securities fraud, consumer fraud and deceptive trade practices, against BNYM, BoA or Countrywide, arising out of the conduct covered by the potential settlement.

5. The DDOJ objects to the proposed settlement because it does not have sufficient information to evaluate the proposal.

---

<sup>1</sup> BoA acquired Countrywide in a transaction that was finalized on July 1, 2008, and later announced that Countrywide would transfer all of its assets to unnamed subsidiaries of BoA.

**I. BACKGROUND**

6. On June 29, 2011, BoA announced that it had entered into an agreement with BNYM to settle all potential claims belonging to the [covered] trusts for which BNYM serves as trustee.

7. On the same day, BNYM commenced the instant special proceeding by filing a verified petition pursuant to CPLR § 7701 seeking judicial instructions and approval of the proposed settlement.

8. BNYM also appeared *ex parte* on July 29, 2011, without notice to any of the trust beneficiaries or other potentially adverse parties, and obtained an Order to Show Cause setting forth a procedure for the approval of the proposed settlement.

9. The Delaware Department of Justice filed a Petition to Intervene in this Court on August 10, 2011.

10. BNYM filed a response to that Petition on August 19, 2011.

11. Before the Delaware Department of Justice had an opportunity to file a Reply in Support of its Petition to Intervene, the matter was removed to the Southern District of New York.

12. After filing a Reply in Support of its Petition to Intervene in the Southern District of New York, and the filing of a sur-Reply by the BNYM, on November 18, 2011 Judge Pauley issued an Order granting the intervention of the Delaware Department of Justice.

13. The matter was subsequently remanded to the New York Supreme Court.

14. The terms of the proposed settlement include a cash payment to the trust beneficiaries of 8.5 billion dollars, provisions requiring the master servicers to implement certain

servicing improvements, and provisions addressing the cure of document exceptions. *See* Settlement at ¶¶ 3, 5, and 6.

15. The proposed settlement, on behalf of the Trustee, Investors, the Covered Trusts, or any Person acting on behalf of the Trustee or Investors of the Covered Trusts, contemplates the full and final release of a number of claims including those related to: 1) the breach of the representations and warranties governing the sellers of mortgage loans to the Covered Trusts and the master servicers of the Covered Trusts, 2) the breach of the recordkeeping requirements contained in the Pooling and Servicing Agreements and Sales and Servicing Agreements (collectively “PSAs”) governing the trusts including the requirement that deficiencies in mortgage files be identified and corrected, and 3) claims that BoA and Countrywide charged excessive fees and costs for their inadequate services. *See* Settlement at ¶ 9.

16. The proposed settlement with BoA was negotiated by a group of 22 institutional investors and BNYM. No other trust beneficiaries took part in the settlement negotiations. The proposed settlement is undoubtedly complex and billions of dollars are at stake. There is limited access to the information exchanged between the parties to the proposed settlement during settlement negotiations. In light of this, the Delaware Department of Justice does not have sufficient information to evaluate the adequacy of the settlement or its full impact on the interests of the State of Delaware.

## **II. INTERESTS OF THE DELAWARE DEPARTMENT OF JUSTICE**

17. The Delaware Department of Justice has both common law and statutory authority to protect the interest of the State of Delaware generally, and the interests of Delaware citizens and investors more specifically, and should be permitted to intervene to ensure those

interests are properly represented and that a fair and reasonable settlement of this matter is achieved.

18. The Delaware Department of Justice, based upon a review of the extremely limited universe of available facts concerning the proposed settlement, has significant concerns that the proposed settlement does is inadequate. Many of the investors in the Covered Trusts have not intervened in this litigation and, indeed, may not even be aware of it. The PSAs that govern the creation and administration of the Trusts impose limitations on the right of investors to bring suit under the PSAs. Generally, the PSAs governing the creation and administration of the trusts prevent a certificateholder from instituting suit under the PSA unless a certificateholder, or group of certificateholders, evidencing not less than twenty five percent of the voting rights of the trust, typically representing hundreds of millions of dollars, has sent a notice of default to the trustee as well as a written request for the trustee to institute an action, and the trustee has refused to do so sixty days after its receipt of the notice of default. *See generally*, Trust PSA, section 10.08 [Ex B to NY Petition]. These provisions are an additional impediment to certificateholders seeking to assert their rights under the PSAs. With its intervention, the Delaware Department of Justice will ensure that the interests of absent Delaware investors are adequately represented.

19. The Delaware Department of Justice's intervention is particularly important given the evidence suggesting that BNYM negotiated the settlement on behalf of the trust beneficiaries under a conflict of interest. The proposed settlement confers substantial direct benefits to BNYM, primarily by a provision, contained in a side letter to the proposed settlement agreement, in which BoA agrees to expressly guarantee the indemnification obligations of Countrywide to BNYM under the terms contained in the PSAs. *See* Settlement at ¶ 16 & Exhibit C ("sideletter")

agreement between Countrywide and BNYM). This expanded indemnification provision also covers BNYM's negotiation and implementation of the terms of the settlement. The potential conflicts of BNYM go directly to the heart of the issue in this special proceeding.

20. Given that interested parties were excluded from the negotiation of this settlement and BNYM's potential conflict of interest in negotiating the settlement on behalf of absent parties, the Delaware Department of Justice has concerns that the proposed settlement is inadequate.

21. The proposed settlement agreement requires BoA to pay \$8.5 billion into the trusts. *See* BNYM Petition at ¶ 11. The settlement amount represents a fraction of the principal balance of the loans in the covered trusts, and more information is necessary to evaluate the proposed settlement.

22. The proposed settlement agreement also requires implementation of changes to the way in which the loans in the Covered Trusts are serviced. *See* BNYM Petition at ¶ 11. Changing the minimum servicing standards represents a unique opportunity to deliver value to the investors in trust certificates by more effectively working with struggling homeowners to ensure that their loans continue to perform. Unfortunately, the proposed settlement agreement does not address how high risk loans will be serviced, except to say that qualifying loans will be transferred to approved sub-servicers, leaving implementation solely to the discretion of the sub-servicer. *See* Settlement at ¶ 5(a) and (b). The loss mitigation requirements and considerations provisions in the proposed settlement do not require the "Master Servicer to offer any modification or loss mitigation strategy to any borrower," leaving loss mitigation decisions solely to the discretion of the Master Servicer. *See* Settlement at ¶ 5(d) and (e). The lack of established servicing standards for high risk loans and the lack of standards for loss mitigation

and loan modification raise concerns that the proposed servicing changes may not add value to the trusts and deserves a more detailed review.

23. The Delaware Department of Justice also has a significant interest in preserving its potential claims against the parties to the proposed settlement that arise out of the conduct covered by the proposed settlement. The Delaware Department of Justice seeks to intervene pursuant to its statutory and common law authority to protect Delaware investors. The Delaware Department of Justice has statutory authority to “remedy any harm caused by securities law violations.” 6 *Del. C.* § 7301(b). The Delaware Department of Justice also has statutory authority to pursue remedies for deceptive trade practices that are harmful to Delaware residents or consumers. 6 *Del. C.* § 2533(d). The Delaware Department of Justice is charged with protecting the interests of all Delaware investors, including those Delaware investors who are beneficiaries (directly or indirectly) of the covered trusts.

24. The acts and practices of BNYM alleged herein may have violated 6 *Del. C.* § 7303(2), in that BNYM may have made untrue statements of material fact and/or omitted to state material facts in order to make the statements made, in light of the circumstances under which they were made, not misleading. BNYM’s conduct as described above may have violated the Delaware Securities Act insofar as the Trust PSA requires the Trust annually to certify the following “servicing criteria”:

- “Collateral or security on mortgage loans is maintained as required by the transaction agreements or related mortgage loan documents.”
- “Mortgage loan and related documents are safeguarded as required by the transaction agreements;” and
- “Any addition, removals or substitutions to the asset pool are made, reviewed and approved in accordance with any conditions or requirements in the transaction agreements.” [*See generally*, Trust PSA, [Ex W to NY Petition]].



25. The Delaware investors in the Trusts may have been misled by BNYM into believing that BNYM would review the loan files for the mortgages securing their investment, and that any deficiencies would be cured.

26. The acts and practices of BNYM alleged herein also may have violated Delaware's Deceptive Trade Practices Act, 6 *Del. C.* § 2432(12), in that BNYM's conduct created "a likelihood of confusion or misunderstanding" in the investors in the Trusts, for the reasons cited above.

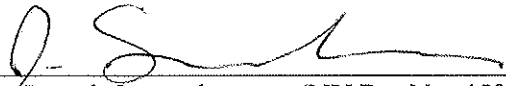
**RELIEF REQUESTED**

WHEREFORE, The Delaware Department of Justice respectfully seeks relief as follows:

1. Granting the petition to intervene, and
2. Granting such other and further relief as may be just and proper.

Dated: April 11, 2012

THE DELAWARE DEPARTMENT OF JUSTICE

By:   
Joseph Sensenbrenner (NY Bar No. 4508107)  
Assistant Deputy Attorney General  
Delaware Department of Justice  
820 N. French St.  
Wilmington, DE 19801  
(302) 577-8600  
*Counsel for Proposed Intervenor the State of  
Delaware*

*Of Counsel:*

Gregory C. Strong (DE Bar No. 4664) (Pro Hac Pending)  
Deputy Attorney General  
Delaware Department of Justice  
820 N. French St.  
Wilmington, DE 19801  
(302) 577-8504  
(302) 577-8426 (fax)


**VERIFICATION**

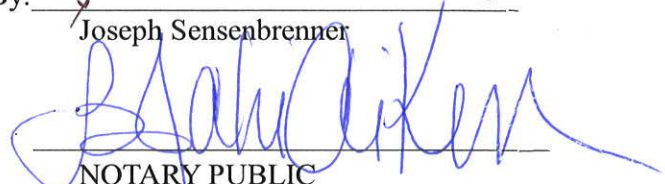
I, Joseph Sensenbrenner, hereby affirm under penalty of perjury that the following is true and correct:

I am a member of the New York Bar in good standing and an Assistant Deputy Attorney General for the Delaware Department of Justice. I have read the foregoing Verified Petition and know the contents thereof. All statements of fact therein are true and correct to the best of my knowledge and belief.

Executed this 11<sup>th</sup> day of April 2012, in Wilmington, Delaware

By:

  
\_\_\_\_\_  
Joseph Sensenbrenner

  
\_\_\_\_\_  
NOTARY PUBLIC

**BRUCE JAH I AIKEN**  
**NOTARY PUBLIC, STATE OF DELAWARE**  
My Commission Expires Upon Office