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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), 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 Advisors, 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), 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 C.P.L.R. § 7701, seeking judicial instructions and approval of a proposed settlement.

Index No. 651786-2011

Kapnick, J.

THE INSTITUTIONAL INVESTORS' RESPONSE TO THE DELAWARE ATTORNEY GENERAL'S MOTION TO INTERVENE

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The intervention by the Delaware Attorney General (DEAG) makes overt what is merely implied in the NYAG's intervention: both are being pursued to effectuate borrower-relief policies, not to vindicate the contract rights of investors in RMBS securities. No state's *parens patriae* doctrine—and certainly not this doctrine as it is applied in Delaware—could or would authorize an attorney general to usurp private contract rights for this purpose. The DEAG therefore lacks standing to intervene and this Court should reject his invitation to use this private settlement proceeding as a vehicle to re-make Delaware law and public policy.[1]

A. The Delaware AG Lacks Standing.

No Delaware court would permit the DEAG to intervene in a private dispute to try to remake a private contract in an attempt to further the DEAG's public policy goals. For more than a century, Delaware courts have emphasized that "a stranger to the consideration cannot sue on the contract . . . ." *Merchants' Union Trust Co. v. New Philadelphia Graphite Co.*, 10 Del. Ch. 18, 83 A.2d 520, 524 (Del. Ch. 1912); *see also Stone v. Green Tree Financial Corp.*, No. 1998-02-142, 1998 WL 1557439, *2-*3 (Del. Com. Pl. 1998) *rev'd. on other grounds* 2000 WL 1610637 (Del. Super. Sept. 29, 2000). Given that the DEAG is not a party to the PSAs, he lacks standing to enforce them. His Petition to Intervene should be denied on that basis alone.

1. Delaware's Policy Weighs Against Permitting Public Officials to Interfere in Private Contracts.

Delaware's strong public policy of enforcing private agreements also weighs strongly against permitting the DEAG to intervene to try to remake the parties' private contracts to suit his public policy preferences:

[1] The DEAG also asserts that he intervenes "to protect potential state law claims that may be adversely affected if the proposed settlement is approved . . . ." DE Pet. at 3 (Doc. No. 249-11). We address this argument in Part IV of our response to the NYAG's motion to intervene.

> [T]here is a strong American tradition of freedom of contract, and that tradition is especially strong in our State, which prides itself on having commercial laws that are efficient.

Abry Ptnrs. V L.P. v. F & W Acquisition LLC, 891 A.2d 1032, 1059-60 (Del. Ch. 2006). "Freedom of contract enables parties to enter into all sorts of agreements, advantageous and disadvantageous. Where, as here, the parties have voluntarily ordered their relationship through a binding contract, 'Delaware is strongly inclined to respect their agreement.'" *West Willow-Bay Court, LLC v. Robino-Bay Court Plaza, LLC*, No. 2742-VCN, 2007 WL 3317551, *9 (Del. Ch. 2007) *quoting Libuea v. Fox*, 880 A.2d 1049, 1056 (Del. Ch. 2005) *aff'd in pertinent part* 892 A.2d 1068 (Del. 2006). Delaware courts thus recognize "the fundamental principle that parties should have the freedom to contract and that their contracts should not easily be invalidated." *Benihana of Tokyo, Inc. v. Benihana, Inc.*, 891 A.2d 150, 172 (Del. Ch. 2005).

Delaware courts are particularly skeptical of allegations (like those made by the DEAG) that "public policy" can be invoked to set aside or interfere with the sanctity of private contracts. Delaware courts will interfere in a private contract on public policy grounds only "upon a strong showing that dishonoring the contract is required to vindicate a public policy interest even stronger than the freedom of contract. Such public policy interests are not to be lightly found, as the wealth-creating and peace-inducing effects of civil contracts are undercut if citizens cannot rely on the law to enforce their voluntarily-undertaken mutual obligations." *Libeua*, 880 A.2d at 1056-57. The DEAG cites no case or Delaware statute to support his claim that *any* public policy in Delaware authorizes him to interfere in the settlement of private contract disputes, much less that there is a *strong* policy authorizing him to do so. He cites none, because that is not the law of Delaware: "It is imperative that contracting parties know that a court will enforce a contract's clear terms and will not judicially alter their bargain, so

courts do not trump the freedom of contract lightly." *Superior Vision Servs., Inc. v. ReliaStar Life Ins. Co.*, No. Civ.A.-1668-N, 2006 WL 2521426, *6 (Del. Ch. August 25, 2006).[2] That is particularly true here, where investors have invested billions in securities issued by the Covered Trusts on the express contractual expectation that the contracts would be performed solely and only for their benefit.[3]

2. Delaware Cases Applying the *Parens Patriae* Doctrine Confirm it Does Not Afford the DEAG Standing to Intervene in this Private Contract Dispute.

The office of the Delaware Attorney General exists for "the protection of public rights and the enforcement of public duties … [and] to represent the State and its several departments in all litigation where the public interests are concerned." *Darling Apartment Co. v. Springer*, 25 Del. Ch. 420, 22 A.2d 397, 403 (Del. 1941) (emphasis added). Given that the DEAG's role has long been limited in Delaware to the resolution of public rights and public duties, it is no surprise that the DEAG cannot cite a single case in which a Delaware court authorized him to intervene in the settlement of a private contract dispute on public policy grounds. There are, in fact, twenty-two reported cases in Delaware that mention the term "*parens patriae.*" They involve largely[4] the interests of minor children,[5] the protection of insane or infirm persons,[6] or

[2] *Compare Obaitan v. State Farm*, 1997 WL 208959 at *3 (Del. Ch. 1997) (statutes may protect citizens from unconscionable acts by insurance carriers, but "…we are yet to be so paternalistic that we act as *parens patriae* to prevent them from suffering the consequences of their inept bargaining skills").

[3] Indeed, to permit the DEAG to intervene to usurp these private contract rights for his public policy purposes would be tantamount to a prohibited regulatory taking. Injecting an issue of such fundamental constitutional import into this otherwise streamlined trust administration proceeding is yet another reason the DEAG's intervention should be denied.

[4] Cases that did not involve minor children, the protection of insane or infirm persons, or the construction of charitable trusts were: *State of Sao Paulo v. American Tobacco Co.*, 919 A.2d 1116 (Del. Supr. 2007); and *Republic of Panama v. American Tobacco Co.*, 2006 WL 1933740 (Del. Supr. June 23, 2006) (both rejecting an effort by foreign states to sue in American courts to recover tobacco-related medical costs); *Obaitan v. State Farm*, 1997 WL 208959 (Del. Ch. 1997) (rejecting the notion that *parens patriae* authorized a court to intervene to protect an insured against "inept bargaining skills"); and, *Maddock v. Greenville Retirement Community, L.P.*, 1997 WL 89094 (Del.

the construction of charitable trusts.[7] In only five of these cases did the Delaware courts consider the *parens patriae* standing of the Delaware Attorney General to appear as a party: two involved the health and well-being of minor children;[8] the remaining three involved construction of the powers of charitable trusts.[9] Not once have the Delaware courts reported any case in which they even considered—much less granted—a request by the Delaware Attorney General to intervene in the settlement of a private contract dispute. This Court should not permit the DEAG to intervene here on public policy grounds when no Delaware court would do so. The DEAG's Petition in Intervention should be denied.

Ch. February 26, 1997) (rejecting an effort by a private citizen to enforce an antitrust statute authorizing state AG to initiate *parens patriae* suits to redress antitrust violations).

[5] *Bancroft v. Jameson*, 19 A.3d 730 (Del. Fam. Ct. July 15, 2010); *In re Truselo*, 846 A.2d 256 (Del. Fam. Ct. September 19, 2000); *Elijah C.FR. v. Stephanie A.R.*, 1999 WL 692069 (Del. Fam. Ct. May 3, 1999); *Newmark v. Williams*, 588 A.2d 1108 (Del. Supr. 1991); *State in Interest of N.H.*, 1998 WL 56868 (Del. Fam. Ct. April 13, 1988); *Cohen v. Markel*, 35 Del. Ch. 115, 111 A.2d 702 (Del. Ch. 1955) (support of minor daughter); *Matter of Susan S.*, 1996 WL 75343 (Del. Ch. 1996) (potential sterilization of autistic minor child); *Ward v. Ward*, 537 A.2d 1063 (Del. Fam. Ct. March 2, 1987) (grandparent visitation rights); and, *DuPont v. Family Court for New Castle County*, 2 Storey 72, 153 A.2d 189 (Del. 1959) (constitutionality of child support statute in divorce matter).

[6] *In re Markel*, 254 A.2d 236 (Del. 1969) (elderly infirm person's jewelry); *Poole v. Newark Trust Co.*, 1 Terry 163, 8 A.2d 10 (Del. Super. 1939) (enforceability of a check written by an insane person); and, *In re Harris*, 7 Del. Ch. 42, 28 A.3d 329 (Del. Ch. 1893) (state has jurisdiction of "alleged lunatics" and their property).

[7] *Trustees of New Castle Common v. Gordy*, 33 Del. Ch. 196, 91 A.2d 135 (Del. 1952) (sale of real property); *Delaware Trust Co. v. Graham*, 30 Del. Ch. 330, 61 A.2d 110 (Del. Ch. 1948) (determination of whether charitable trust failed for lack of a beneficiary); *Delaware Land & Dev. Co. v. First and Central Presbyterian Church*, 16 Del. Ch. 410, 147 A. 165 (Del. 1929) (concerning whether the Presbyterian Church acquired good and marketable title to property); *Monaghan v. Joyce*, 12 Del. Ch. 28, 103 A.582 (Del. Ch. 198) (enforcement of a charitable trust); and, *Griffith v. State*, 2 Del. Ch. 421 (Del. 1848) (construction of power of appointment in a trust "for the poor of Kent County").

[8] *See Matter of Susan S.* 1996 WL 75343 (Del. Ch. February 8, 1996) (potential sterilization of an autistic minor) and *State in Interest of N.H.*, 1988 WL 56868 (Del. Fam. Ct. 1988) (eleven year-old child hit in the head with a brick).

[9] *See Trustees of New Castle Common*, 33 Del. Ch. 196, 91 A.2d 135 (Del. 1952); *Delaware Trust v. Graham*, 30 Del. Ch. 330, 61 A.2d 110 (Del.Ch. 1948); and, *Griffith v. State*, 2 Del. Ch. 421 (Del. 1848).

B. Delaware Public Policy Does Not Conform to the Claimed Purpose of the DEAG's Intervention.

The DEAG objects to the Settlement, and its resulting $8.5 billion cash payment to the Covered Trusts and the transfer of mortgage loans to more highly competent, special subservicers, because it "may have a negative effect on Delaware borrowers who [,the DEAG speculates,] otherwise would be in a much stronger position to stay in their homes if their mortgage loans were repurchased and serviced by BofA." DE Pet. at pg. 8. In other words, the DEAG does not simply object to this Settlement. The DEAG objects to ***any*** settlement by the Trustee of mortgage repurchase claims, because a settlement forecloses costly and uncertain litigation that might force BofA to repurchase mortgage loans. The DEAG's claim of standing to assert this "public policy" objection is not merely astonishing in its scope, it rests on several false assumptions with respect to borrowers.

First, the DEAG's argument wrongly assumes borrowers would have standing to appear and object in this Article 77 proceeding. They would not. Borrowers are not parties to the PSAs. They have no standing to sue or be sued under them. They have no right to direct the Trustee or to otherwise enforce any provision of the PSAs, including the repurchase provisions. Instead, borrowers have rights under their own notes and mortgage contracts to which they are a party. Importantly, nothing in the Settlement alters any borrower's rights.

A second false assumption is that, in the absence of this Settlement, BofA will simply *agree* to repurchase thousands of presumably Delaware loans[10] based solely on the DEAG's non-party assertion that those loans breached representations and warranties. As has been explained in detail elsewhere, litigation of the mortgage repurchase claims resolved by the

[10] The DEAG fails to allege any facts to support his implication that there are large numbers of delinquent or defaulted, Delaware borrowers whose loans would either: a) be eligible for repurchase, or b) be transferred to subservicing under Paragraph 5 of the Settlement Agreement.

Settlement would be fraught with uncertainty. Before agreeing to the Settlement, BofA promised to vigorously contest any such claims through "hand to hand combat." Nothing in the PSAs, or in any applicable law, requires the Trustee to choose costly and uncertain litigation over settlement, particularly where the motivation to choose litigation (as now urged by the DEAG) would be to attempt to obtain a speculative benefit for non-parties to the PSAs. These erroneous assumptions are but a few of the many reasons the Court should not take at face value the DEAG's assertion that destruction of the Settlement will serve any Delaware public interest.

Another reason for skepticism is that the DEAG significantly misstates (or omits to explain) central aspects of Delaware public policy. Delaware courts uphold as paramount the sanctity of private contracts like the PSAs. Strangers (including the DEAG) have no standing to invoke rights or remedies under them. If Delaware's policy of upholding private contracts means anything, it must mean that when parties to a contract agree to resolve a massive dispute between them, that decision should be vindicated by the court.[11] Settlement, in fact, is *favored* by the public policy of both Delaware and New York. *See Marie Raymond Revocable Trust v. MAT Five LLC*, 980 A.2d 388, 402 (Del. Ch. 2008) ("It is well established that Delaware law favors the voluntary settlement of contested issues. Settlements are encouraged because they promote judicial economy and because the litigants are generally in the best position to evaluate the strengths and weaknesses of their case.") (citation omitted); *Denburg v. Parker Chapin Flattau & Klimpl*, 82 N.Y.2d 375, 379 (1993) ("Strong policy considerations favor the enforcement of settlement agreements . . . Moreover, there is a societal benefit in recognizing the autonomy of parties to shape their own solution to a controversy rather than having one

[11] It is difficult even to imagine a context in which a non-party to a contract would be permitted to compel the parties to proceed to litigation of a contract dispute they had decided to settle.

judicially imposed. Additionally, a settlement produces finality and repose upon which people can order their affairs.”).

Delaware public policy also favors the enforcement of loan agreements and creditors' rights. Delaware law affords creditors multiple remedies to recover what they are owed when borrowers do not repay their loans. *See, e.g.*, *Jeffery v. Seven Seventeen Corp.*, 461 A.2d 1009, 1010 (Del. 1983) (“A lender may accelerate a mortgage for a default in payments on principal, interest or taxes if provided for in the mortgage contract. The purpose of an acceleration clause is solely to protect the lender.”); 10 Del. C. § 5061, *et. seq* (providing for foreclosure in the case of nonpayment of mortgage money).[12] These policies exist because Delaware, like every state, has an interest in ensuring that credit remains available to its citizens. The desire of the DEAG to prevent the settlement of any and all repurchase claims, in pursuit of a speculative effort to all prevent foreclosures, cannot be squared with Delaware public policy.

Though he invokes the public policy of Delaware, the DEAG has not cited anything in the Settlement Agreement that actually offends a recognized public policy of Delaware.[13] The Settlement does not alter the terms of any borrower's note or mortgage. The lawful rights and remedies each borrower had when they signed their notes remain in effect; the DEAG does not suggest otherwise. Nothing in the Settlement deprives any borrower of the protections afforded

[12] “[U]pon breach of the condition of a mortgage of real estate by nonpayment of the mortgage money or nonperformance of the condition stipulated in such mortgage . . . the mortgagee . . . may, at any time after the last day whereon the mortgage money ought to have been paid or other conditions performed, sue out of the Superior Court of the county wherein the mortgage premises are situated a writ of scire facias upon such mortgage directed to the sheriff of the county commanding the sheriff to make known to the mortgagor . . . that the mortgagor . . . appear before the Court to show cause, if there is any, why the mortgaged premises ought not to be seized and taken in execution for payment of the mortgage money with interest or to satisfy the damages which the plaintiff in such scire facias shall, upon the record, suggest for the nonperformance of the conditions.”).

[13] Given that all of the Trusts involved are New York Trusts, the public policy of Delaware is of no relevance to this dispute. *See* Section C, *infra*.

them under applicable consumer protection or other laws governing their mortgages. The DEAG again does not suggest otherwise.

Rather, what the DEAG suggests is that the Settlement might deprive unnamed borrowers of a potential advantage they *might* have in preventing foreclosure, based on the DEAG's *speculation* that such borrowers would be better served by requiring the Trustee to pursue (presumably at Certificateholder expense) costly, time consuming, and uncertain loan-by-loan re-underwriting and repurchase litigation against Countrywide and BofA. Having assumed the success of lengthy, disputed, loan-by-loan litigation, the DEAG then extends his speculation further to posit that as a result of this highly uncertain series of events, borrowers would be advantaged. Why? Because, he assumes, borrowers would "otherwise be in a much stronger position to stay in their homes" if "the owner of the loan was also responsible for servicing the loan." DE Pet. at pg. 8. The DEAG's desire to speculate on uncertain litigation where he will neither be a party nor bear any risk is no basis on which to grant him intervention. More fundamentally, however the DEAG's argument is simply wrong. The owner of the loans is not responsible for servicing any borrower's loan in any of the Covered Trusts *now*; instead, those loans are serviced by Bank of America. Given the length of time needed to pursue the loan-by-loan litigation the DEAG advocates, it will likely be years (if ever) before *any* borrower's loan in a Covered Trusts would be serviced by Bank of America as an "owner" as a result of a successful repurchase claim. In the meantime, borrowers' loans will continue to be serviced by Bank of America—a servicer repeatedly sanctioned by the federal government for improper servicing practices. The DEAG fails utterly to explain how troubled borrowers would *benefit* from remaining at the mercy of Bank of America, when the Settlement makes available an alternative that is much better for them: the transfer of their loans to highly competent,

independent subservicers who are *incentivized* to provide borrowers with appropriate and lasting loan modifications.

The DEAG's argument boils down to the astounding proposition that a Settlement that is highly beneficial to Certificateholders should be *destroyed* so borrowers can obtain a non-existent "stronger position." Even if this were true—and it emphatically is not true—the DEAG's argument tortures the PSAs beyond recognition: it contemplates that the Trustee make its decisions about litigation or settlement of Trust claims for the benefit of borrowers, when the contracts mandate only and solely that the Trustee act for the benefit of Certificateholders. PSA §2.01(b) (Trust assets conveyed to Trustee "for the benefit of Certificateholders"). Taken to its (not far distant) logical conclusion, the DEAG's desire to provide borrowers with a "stronger position" to resist foreclosure would permit him to intervene in every individual foreclosure proceeding. Nothing in Delaware law (and nothing in New York law) contemplates such an extraordinary taking—and remaking—of private contract rights. For all of these reasons, the DEAG's Petition in Intervention should be denied.

C. None of the Covered Trusts is a Delaware Trust.

The DEAG's Verified Petition (filed on August 9, 2011) originally claimed that "two of the 530 trusts covered by the proposed settlement are Delaware Statutory Trusts and governed by Delaware law." Del. Pet. at ¶21. This assertion is incorrect. To the extent that the DEAG continues to rely on it,[14] the Institutional Investors respond as follows.

None of the Covered Trusts are Delwarate Statutory Trusts. It is true that, with respect to the two trusts referenced in the DEAG's petition, a Delaware entity originally held the Mortgage Loans and repurchase rights at issue. In each instance, however, that Delaware entity

[14] This argument was omitted from the DEAG's most recent memorandum in support of its application to intervene. We address it here in an abundance of caution.

granted all of the Mortgage Loans and repurchase rights to a second, separate trust. That second, separate trust is the Covered Trust involved in the Settlement. The Covered Trusts that were the grantees of these assets and contract rights are each New York trusts, governed by New York law, with a New York Trustee, BNY Mellon. *See* Excerpts from Indentures of CWHEQ 2006-A and CWHEQ 2007-G (attached as Exhibits A and B, respectively, to the Warner Affirmation, filed herewith). Thus, all of the trusts involved in the settlement are New York trusts. None are Delaware trusts.

The DEAG cites two securitizations in support of his argument: CWHEQ 2006-A and CWHEQ 2007-G. The Indentures confirm that neither is a Delaware Trust. We begin with the granting clause in the Indenture for each of these securitizations:

> The Issuer [CWHEQ Revolving Home Equity Loan Trust Series 2006-A][15] Grants to the Indenture Trustee,[16] as Indenture Trustee for the benefit of the relevant Secured Parties, all of the Issuer's interest existing now or in the future in:
>
> - the Mortgage Loans . . . and the related Mortgage Files and all property that secures the Mortgage Loans and all property that is required for foreclosure or deed in lieu of foreclosure . . . .
>
> - the interest of the Issuer in the Sale and Servicing Agreement and the Purchase Agreement (including the Issuer's right to cause the Mortgage Loans to be repurchased)

Under this granting clause, the Issuer—a Delaware trust—deposited mortgage loans and mortgage repurchase rights into a separate trust for which JPMorgan Chase (and later BNYM) served as Indenture Trustee. This second trust, which is one of the Covered Trusts at issue here,

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[15] CWHEQ Revolving Home Equity Loan Trust Series 2006-A is identified on the front cover of the Indenture as the "Issuer." *See* Ex. A to Warner Affirmation.

[16] Though the original Indenture Trustee was JPMorgan Chase Bank, N.A. *see id.*, the current Indenture Trustee is BNY Mellon, which purchased the corporate trust business of JPMorgan. *See* BNY Mellon Press Release, April 6, 2006, *The Bank of New York to Acquire JPMorgan Chase's Corporate Trust Business In Exchange for Retail Banking Business*, available at http://www.bnymellon.com/investorrelations/events/archive/bankofnewyork/news_announce.pdf.

is governed by New York law. *See, e.g.*, CWHEQ 2006-A Indenture at ¶11.13 (attached as Ex. A to Warner Affirmation) (This trust "shall be governed by and construed in accordance with the laws of the State of New York."). This second trust also had (and continues to have) a New York Trustee. The Delaware statutory trusts, in contrast, are not Covered Trusts. Their trustees are not BNYM, but rather Wilmington Trust Company (the entity who signed the conveyance of mortgage loans and repurchase rights *into* the separate New York Covered Trust). *See, id*. I at p. 69 (signed "CWHEQ Revolving Home Equity Loan Trust, Series 2006-A by Wilmington Trust Company, not in its individual capacity, but solely as Owner Trustee."). In each instance, the entities that currently hold (and have the right to enforce) both the Sale and Subservicing Agreement and the mortgage repurchase obligations they contain are the New York trusts. The Delaware trusts, having assigned all of those rights to the New York trusts, cannot enforce any of them. That is why they are not parties either to this proceeding or to the Settlement Agreement.

Even if these two Covered Trusts *were* Delaware trusts (and they are not), that fact would not deprive this Court of jurisdiction to consider whether the Trustee exceeded the scope of its reasonable discretion in settling their claims. Delaware courts "give effect to the terms of private agreements to resolve disputes in a designated judicial forum out of respect for the parties' contractual designation." *Prestancia Mgmt. Group, Inc. v. Virginia Heritage Foundation, II LLC*, 2005 WL 1364616 at *7 (Del. Ch. May 27, 2005) *citing In re IBP, Inc. Shareholders Litig.*, 2001 WL 406292 at *1 (Del. Ch. April 18, 2001) (enforcing forum selection clause for resolution of dispute); *see also Ashall Homes, Ltd. v. ROK Entertainment Group, Inc.*, 992 A.2d 1239, 1245 (Del. Ch. 2010). The parties to the PSAs each agreed, in their settlement, that issues pertinent to the authorization and enforcement of their settlement should be heard in New York. A Delaware court would enforce this agreement, even against Delaware trusts. Thus, the DEAG again has no

standing to seek to interfere with the parties' agreement to resolve issues of the Trustee's authority in this court. His Petition in Intervention should be denied.

Dated: New York, New York
April 20, 2012

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