

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) *et al.*,

Petitioner,

-against-

WALNUT PLACE, *et al.*,

Intervenor-Respondents.

Index No. 651786/2011

Assigned to: Kapnick, J.

**NOTICE OF THE STATE ATTORNEYS GENERAL
INTERVENORS PURSUANT TO THE FEBRUARY 26, 2013
AMENDED SCHEDULING ORDER**

Intervenor-Respondents, the State Attorneys General of New York and Delaware (“Attorneys General”), submit this Notice pursuant to the Amended Scheduling Order issued in this matter on February 26, 2013.

At the time the instant Proceeding was filed, the trustee of 530 RMBS trusts presented to its investors a settlement of unprecedented size and complexity that would extinguish, without opt-out, trust claims affecting all certificateholders in the affected trusts. The settlement even covered trusts for which no certificateholder was ever present at the settlement negotiations.

The settlement was presented to most certificateholders after it was already concluded, even though only a minority of investors negotiated the settlement.

In addition, the trustee revealed the settlement as part of an Article 77 proceeding, which until then had been an untested mechanism for approval. The trustee obtained, *ex parte*, a schedule that required all “potentially interested persons” to object to the settlement, if ever, within two months of the filing of the Proceeding. (*See* Order to Show Cause (June 29, 2011).) The trustee also proposed a highly deferential standard of review for its conduct, and minimal disclosure to the certificateholders it sought to bind. (*See, e.g.*, Letter from Matthew Ingber to the Court (Mar. 12, 2012).) Notwithstanding the limited information it was prepared to disclose, the trustee sought a broad range of factual findings by the Court in the Proposed Final Order and Judgment submitted with its Petition. (Pet. Ex. F.)

These facts caused the Attorneys General concern and they intervened to ensure, among other things, that the above concerns were allayed. Court approval of the settlement should depend on the disclosure of full and complete facts concerning the settlement terms and the circumstances leading to its execution. To protect New York and Delaware investors and the securities markets and to safeguard New York and Delaware trust law from abuse, the Attorneys General have supported additional further disclosure and a robust debate on the legal issues presented in this matter.

Since the Petition’s filing, in addition to the Attorneys General, numerous certificateholders have intervened. Petitioner, the other settlement proponents, and the certificateholders have all been served by capable and sophisticated counsel. As such, scheduling, disclosure and important and unsettled questions of trust and contract law relevant to this proceeding have all had the benefit of aggressive litigation by the parties. Where they deem it appropriate, the Attorneys General are supporting efforts to obtain

disclosure of documents and testimony, and are advocating for a standard of review appropriate in light of the applicable law and relevant facts. Although certain important issues remain to be resolved, these developments are enabling a fulsome adversarial examination, including expert examination, of the facts and circumstances surrounding, and the complex legal issues implicated by, the settlement.

Moreover, because the deadline for objection was moved to a date after fact and expert disclosure, certificateholders have had the opportunity to consider whether to object to the settlement with the benefit of the adversarial proceedings thus far. Lastly, a final hearing will occur at which legal briefing, fact and expert witness testimony and documentary evidence is expected to be offered. Such a hearing should provide the Court an adversarial presentation of all the available facts and legal arguments considered by the parties to be relevant and significant to the Proceeding.

While the need for this adversarial proceeding might have been avoided had the trustee provided notice to all certificateholders at an earlier point in the settlement negotiation process, as indicated above, the nearly two years of litigation and discovery has placed the Court in a position to fairly evaluate the adequacy of the settlement and the trustees' conduct in entering the settlement. Accordingly, the Attorneys General are not submitting an objection to the settlement, nor are the Attorneys General endorsing the settlement. The Attorneys General do not express a view as to the unsettled substantive issues of the settlement's adequacy or the reasonableness or propriety of the trustee's or any other party's conduct in regard to the settlement.

Dated: May 3, 2013
New York, New York

DELAWARE DEPARTMENT OF
JUSTICE

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