

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),

Petitioner,

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

Index No.: 651786/2011

**NOTICE OF INTENTION TO
APPEAR AND OBJECT TO
SETTLEMENT**

Sterling Federal Bank, F.S.B., Bankers Insurance Company, Bankers Life Insurance Company, First Community Insurance Company, and Bankers Specialty Insurance Company (the "Objectors"), as Potentially Interested Persons, and pursuant to the Court's Order to Show Cause dated June 29, 2011 and the August 5, 2011 Order modifying the Order to Show Cause, respectfully submit their Notice of Intention to Appear and Object to Settlement ("Notice of Objection"), and in support thereof state:

1. The Objectors are holders of certificates evidencing various categories of ownership interests in one or more of the five hundred and thirty (530) residential mortgage-securitization trusts (the "Covered Trusts") listed on Exhibit A to the Verified Petition filed by The Bank of New York Mellon ("BoNY") on June 28, 2011. Accordingly, the Objectors are Potentially Interested Persons, as defined by Paragraph 4 of the Affirmation of Matthew D. Ingber, dated June 28, 2011.

2. Sterling Federal Bank, F.S.B. (“Sterling”) is a federal savings bank chartered under the laws of the United States, with its principal place of business at 110 East Fourth Street, Sterling, Illinois 61081.

3. Bankers Insurance Company (“BIC”) is a corporation organized and existing under and by virtue of the laws of the State of Florida, with its principal place of business at 11101 Roosevelt Boulevard North, St. Petersburg, FL 33716.

4. Bankers Life Insurance Company (“BLIC”) is a corporation organized and existing under and by virtue of the laws of the State of Florida, with its principal place of business at 11101 Roosevelt Boulevard North, St. Petersburg, FL 33716.

5. First Community Insurance Company (“FCIC”) is a corporation organized and existing under and by virtue of the laws of the State of Florida, with its principal place of business at 11101 Roosevelt Boulevard North, St. Petersburg, FL 33716.

6. Bankers Specialty Insurance Company (“BSIC”) is a corporation organized and existing under and by virtue of the laws of the State of Louisiana, with its principal place of business at 3636 South I10 Service Road, Suite 204, Metairie, LA 70001.

7. The Objectors hold ownership interests in the following Covered Trusts by virtue of their purchase of the below classes of certificates:¹

¹ BLIC also holds an ownership interest in CWHEQ 2006-S8 (“2006-S8”), a trust created by Countrywide entities for which BoNY serves as trustee, but is not a Covered Trust pursuant to the terms of the proposed settlement. BLIC objects to the proposed settlement given that it fails to include 2006-S8 despite it suffering losses as a result of

| <u>ENTITY</u> | <u>CERTIFICATE</u> | <u>CLASS</u> |
|----------------------|---------------------------|---------------------|
| Sterling | CWALT 2004-15 | 2A2 |
| Sterling | CWMBS 2004-22 | M |
| Sterling | CWMBS 2005-HYB6 | 5A2 |
| Sterling | CWALT 2006-26CB | A19 |
| BIC | CWABS 2005-12 | 2A4 |
| BLIC | CWALT 2005-73CB | 1A2 |
| BLIC | CWALT 2005-73CB | 1A3 |
| BLIC | CWALT 2005-J13 | 1A4 |
| BLIC | CWALT 2006-6CB | 1A2 |
| BLIC | CWALT 2006-8T1 | 1A4 |
| BLIC | CWALT 2007-21CB | 1A5 |
| BLIC | CWMBS 2006-10 | 1A3 |
| BLIC | CWABS 2005-11 | AF3 |
| BLIC | CWABS 2005-12 | 2A4 |
| BLIC | CWABS 2005-13 | 3AV4 |
| BLIC | CWABS 2005-16 | 2AF3 |
| BLIC | CWABS 2006-13 | 1AF5 |
| BLIC | CWABS 2006-11 | 1AF2 |
| BLIC | CWMBS 2005-21 | A39 |
| BLIC | CWABS 2006-15 | A6 |
| BSIC | CWALT 2005-J13 | 1A4 |
| FCIC | CWABS 2005-12 | 2A4 |

8. As grounds for objecting to the proposed settlement, the Objectors submit that because they do not have sufficient information to evaluate the reasonableness of the proposed settlement they object to the settlement amount and the manner in which BoNY seeks to exclude itself from any personal liability for its inaction in policing the Covered Trusts in its capacity as trustee. Apparently, BoNY does not believe it bears responsibility for the mounting losses experienced by the Covered Trusts, which is a fallacy. BoNY, like other corporate trustees appointed as

the same misrepresentations concerning the underwriting standards and practices employed by Countrywide that is at issue with the Covered Trusts.

part of the RMBS securitization process, has not taken its job seriously to the detriment of the investors in the Covered Trusts and did not act to make timely repurchase demands. The proposed settlement with Bank of America (“BoA”) was negotiated by a group of twenty-two (22) institutional investors (the “Inside Institutional Investors”) and BoNY. No other trust beneficiaries, including the Objectors, took part in the settlement negotiations. In addition, there is limited access to the information exchanged between the parties to the proposed settlement during the settlement negotiations. Accordingly, the Objectors cannot evaluate the adequacy of the proposed settlement or its full impact on their interests.

9. The Objectors incorporate by reference the arguments made by the proposed intervenors as set forth in the memoranda in support of the motions to intervene that have been filed in this action. *See* Walnut Place LLC, *et al.* (Doc. No. 28); Policeman’s Annuity & Benefit Fund of Chicago, *et al.* (Doc. No. 33); TM1 Investors, LLC (Doc. No. 52); Federal Home Loan Bank of Boston, *et al.* (Doc. No. 57); V RE-REMIC, LLC (Doc. No. 74); The Western and Southern Life Insurance Company, *et al.* (Doc. No. 86); Cranberry Park LLC, *et al.* (Doc. No. 92); American International Group, Inc., *et al.* (Doc. No. 109); Attorney General of the State of New York (Doc. No. 101-4); and Attorney General of the State of Delaware (Doc. No. 129-2).

10. For the Court’s convenience, the Objectors set forth a non-exhaustive list of factors, cited by other Potential Interested Persons, that call into question the reasonableness of the proposed settlement:

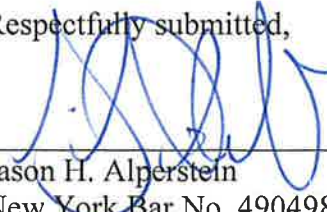
- a. The proposed settlement is the product of a highly conflicted process.
- BoNY admits that “it finds itself squarely in the middle of conflict among Certificateholders” who have directed the trustee to take different actions and who do not support the proposed settlement and are “looking to remedy alleged breaches in different ways.”
 - Despite this admitted conflict of interest, BoNY has chosen to support the proposed settlement which is supported only by the Inside Institutional Investors.
 - As part of the proposed settlement BoNY has obtained a release from certain claims the trust beneficiaries may bring as well as expanded indemnification from BoA.
 - Counsel for the Inside Institutional Investors will be paid \$85 million in legal fees from BoA upon approval of the settlement.
- b. The proposed settlement is a fraction of the \$108 billion in losses assumed by the Institutional Investors.
- Based upon certain assumptions, the Inside Institutional Investors assumed that the various trusts have and would suffer losses in an amount of \$108 billion.
 - Accepting for present purposes the Inside Institutional Investors’ loss assumption, the \$8.5 billion proposed settlement is a dramatic reduction from the \$108 billion in losses that the Inside Institutional Investors believe the trusts have or will incur.
 - BoNY appears to have accepted, without challenge, BoA’s assumptions – including breach rates, success rates, and predications on successor liability – to drive down the settlement value to a mere \$8.5 billion.
 - BoNY also adopted loss assumptions much smaller and much more favorable to BoA than the Inside Institutional Investors’ assumption of \$108 billion.
 - The negotiation process by which BoNY got to \$8.5 billion is entirely opaque.

- There has been no allocation of the \$8.5 billion across the 530 trusts, so neither the trusts nor the trust beneficiaries have any understanding of what they would receive.
- c. The proposal approval process deprives individual trusts and trust beneficiaries of their due process rights and is fundamentally unfair.
 - The proposed settlement suffers from a serious structural defect in that it provides no opt-out mechanism for either individual trusts or individual trust beneficiaries.
 - There is no precedent for using Article 77 to approve a settlement in the residential mortgage-backed securities trust context and BoNY/BoA's attempted to use of Article 77 may be improper.

11. Based on the foregoing, the Objectors respectfully request that the Court permit the Objectors to participate in discovery and preserve their right to supplement this Objection as need be. To the extent necessary, the Objectors respectfully request that the Court enter an Order confirming that the Objectors will be permitted to participate in the proceeding to determine the scope of discovery and the resulting discovery process approved by the Court to evaluate the reasonableness of the proposed settlement.

Dated: August 29, 2011

Respectfully submitted,



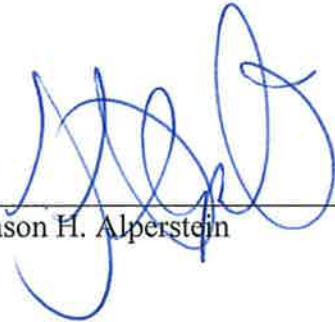
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Counsel for the Objectors

CERTIFICATE OF SERVICE

This is to certify that on this the 29th day of August, 2011, a true and correct copy of the above and foregoing instrument was properly forwarded to the following counsel of record as indicated below:

The Bank of New York Mellon
Attn: Matthew D. Ingber
Mayer Brown LLP
1675 Broadway
New York, New York 10019
Counsel for Petitioner

Via Fedex Overnight Mail



Jason H. Alperstein