

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

----- X

THE BANK OF NEW YORK MELLON (as Trustee	:	Index No. 651786/2011
under various Pooling and Servicing Agreements and	:	
Indenture Trustee under various Indentures), et al.,	:	Part 39
	:	
Petitioners,	:	(Hon. Barbara R. Kapnick)
	:	
-against-	:	
	:	NOTICE OF PETITION TO
	:	INTERVENE
THE WESTERN AND SOUTHERN LIFE	:	
INSURANCE COMPANY, WESTERN-SOUTHERN	:	
LIFE ASSURANCE COMPANY, COLUMBUS LIFE	:	
INSURANCE COMPANY, INTEGRITY LIFE	:	
INSURANCE COMPANY, NATIONAL INTEGRITY	:	
LIFE INSURANCE COMPANY, and FORT	:	
WASHINGTON INVESTMENT ADVISORS, INC. on:	:	
behalf of FORT WASHINGTON ACTIVE FIXED	:	
INCOME LLC,	:	
	:	
Proposed Intervenors-Respondents,	:	
	:	
for an order, pursuant to CPLR § 7701, seeking judicial	:	
instructions and approval of a proposed settlement.	:	
----- X		

PLEASE TAKE NOTICE that upon the affirmation of Vincent T. Chang, dated July 29, 2011, the petition filed herewith and the accompanying memorandum of law, and all pleadings and proceedings filed heretofore and herein, the proposed intervenors listed below, will move this Court by their undersigned attorneys at the Motion Submission Part thereof, Room 130, located at 60 Centre Street, New York, New York, on August 8, 2011, at 9:30 a.m., or as soon thereafter as counsel may be heard, pursuant to CPLR 401, 1012 and 1013, for an Order permitting The Western and Southern Life Insurance Company, Western-Southern Life Assurance Company, Columbus Life Insurance Company, Integrity Life Insurance Company, National Integrity Life Insurance Company, and Fort Washington Investment Advisors, Inc.,

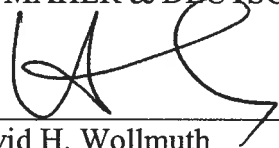
collectively, "Western & Southern," to intervene in the above-captioned proceeding, directing that Western & Southern be added as respondents, directing that the Trustee's petition and notice of petition be amended by adding Western & Southern as intervenors-respondents, permitting discovery to proceed as specified in the accompanying papers and granting such other and further relief as may be just, proper, and equitable.

PLEASE TAKE FURTHER NOTICE that answering papers, if any, must be served upon the undersigned no later than two (2) days prior to the return date of this motion.

Dated: New York, New York
July 29, 2011

WOLLMUTH MAHER & DEUTSCH LLP

By: _____


David H. Wollmuth
Vincent T. Chang
Steven S. Fitzgerald

500 Fifth Avenue
New York, New York 10110
Tel: (212) 382-3300

*Attorneys for The Western and Southern
Life Insurance Company, Western-Southern
Life Assurance Company, Columbus Life
Insurance Company, Integrity Life
Insurance Company, National Integrity Life
Insurance Company, and Fort Washington
Investment Advisors, Inc. on behalf of Fort
Washington Active Fixed Income LLC*

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

----- X
:
THE BANK OF NEW YORK MELLON (as Trustee : Index No. 651786/2011
under various Pooling and Servicing Agreements and :
Indenture Trustee under various Indentures), et al., : Part 39
:
Petitioners, : (Hon. Barbara R. Kapnick)
:
-against- :
:
THE WESTERN AND SOUTHERN LIFE : **VERIFIED PETITION**
INSURANCE COMPANY, WESTERN-SOUTHERN : **TO INTERVENE**
LIFE ASSURANCE COMPANY, COLUMBUS LIFE :
INSURANCE COMPANY, INTEGRITY LIFE :
INSURANCE COMPANY, NATIONAL INTEGRITY :
LIFE INSURANCE COMPANY, and FORT :
WASHINGTON INVESTMENT ADVISORS, INC. on :
behalf of FORT WASHINGTON ACTIVE FIXED :
INCOME LLC, :
:
Proposed Intervenors-Respondents, :
:
for an order, pursuant to CPLR § 7701, seeking judicial :
instructions and approval of a proposed settlement. :
----- X

Proposed intervenors The Western and Southern Life Insurance Company, Western-Southern Life Assurance Company, Columbus Life Insurance Company, Integrity Life Insurance Company, National Integrity Life Insurance Company and Fort Washington Investment Advisors, Inc. (collectively, “Western & Southern”), for their petition pursuant to CPLR 401, 1012, and 1013 to intervene as respondents in this proceeding, state and allege:

1. Countrywide Financial Corporation and its affiliates (“Countrywide”) routinely granted new mortgage loans that should never have been approved issuing billions of dollars of mortgages based upon fake appraisals, inflated income figures, false owner occupancy attestations and rigged loan to value ratios. Countrywide packaged these loans into so-called

“securitization trusts.” Certificates or mortgage-backed securities (“MBS”) issued by these trusts were sold to investors such as Western & Southern based on assurances that the loans underlying the securitizations were underwritten in accordance with prudent underwriting guidelines and that any loans that did not comply with such guidelines would be repurchased by the originator, often Countrywide itself.

2. The Bank of New York Mellon (“BNY Mellon”) is the trustee for certain mortgage-securitization trusts that Countrywide created.

3. On June 29, 2011, BNY Mellon petitioned this Court pursuant to CPLR 7701 for judicial instructions and approval of the proposed settlement, which relates to the 530 securitization trusts created by Countrywide (the “Covered Trusts”). The Covered Trusts are identified as Exhibit A to BNY Mellon’s verified petition.

4. Western & Southern purchased certificates issued by 25 of the Covered Trusts including CWALT 2004-12CB, CWALT 2004-J13, CWALT 2004-J2, CWALT 2005-10CB, CWALT 2005-20CB, CWALT 2005-26CB, CWALT 2005-28CB, CWALT 2005-30CB, CWALT 2005-46CB, CWALT 2005-47CB, CWALT 2005-49CB, CWALT 2005-54CB, CWALT 2006-14CB, CWALT 2006-39CB, CWALT 2007-16CB, CWALT 2007-17CB, CWALT 2007-21CB, CWALT 2007-5CB, CWHL 2005-25, CWHL 2005-J2, CWHL 2006-21, CWHL 2007-5, CWHL 2007-14, CWHL 2007-15, and CWL 2007-4.

5. Among other things, the proposed settlement purports to release certain claims related to MBS issued through the Covered Trusts in exchange for a payment of \$8.5 billion. Moreover, BNY Mellon seeks to settle claims that Countrywide made misrepresentations in the representations and warranties in the governing agreements for the Covered Trusts concerning the underwriting standards and practices employed by Countrywide in generating the loans that

were eventually sold to the Covered Trusts and packaged into MBS. These “representation and warranty” claims relate to hundreds of billions of dollars worth of Countrywide MBS that suffered massive losses because, contrary to its representations, Countrywide was not adhering to its underwriting standards.

6. By its petition, BNY Mellon appeared *ex parte*, seeking to obtain from this Court an Order to Show Cause setting forth a procedure of the proposed settlement. BNY Mellon did not name any adverse parties when it filed this proceeding, but instead expressly stated that adverse parties could be added. *See* BNY Mellon Petition ¶ 18.

7. Western & Southern is directly affected by this proceeding and seeks to intervene to protect its own interests. Western & Southern has identified several significant issues related to the fairness of the proposed settlement, including the following:

- (a) The proposed settlement does not appear to give investors the opportunity to opt out of the proposed settlement.
- (b) Many of the twenty-two corporate investors that negotiated the proposed settlement appear to have significant ongoing business dealings with Bank of America Corporation (“BOA”), raising conflict-of-interest concerns. For example, BlackRock Financial Management, Inc. is one of the 22 investors. During the time in which the Settlement Agreement was being negotiated, BOA owned up to 34 percent of BlackRock. Many other of the 22 investors also have substantial business dealings with BOA or its subsidiaries other than their ownership of certificates in Countrywide-sponsored trusts.
- (c) The proposed settlement provides the trustee with an enhanced indemnification backed by BOA. Previously, the Trustee had only an indemnification backed by Countrywide, a much less creditworthy entity. This difference is significant because the Trustee may face many potential claims based upon its failure to provide accurate exception reports and its failure to monitor the performance of the MBS and take corrective action. In any event, the existence of potential claims and the generous nature of the release conferred upon the Trustee in the proposed settlement provide a strong incentive for the Trustee to back the proposed settlement to the detriment of absent bondholders.
- (d) The Trustee has another serious and disabling conflict of interest: more than 60 percent of BNY Mellon’s trustee business comes from BOA. This dependence

provides a powerful incentive for the Trustee to defer to BOA to the disadvantage of investors.

- (e) The proposed settlement purports to preserve certain claims held by the investors in a carveout appearing on page 34 of the proposed settlement. This provision however, forecloses Western & Southern from enforcing any contractual rights against Countrywide or BOA. It is also unclear as to whether the release is intended to eliminate all claims that are not based on misrepresentations or nondisclosures. Thus, for example, it is not clear whether negligence or gross negligence claims based upon conduct (as opposed to representations) would be released. Such claims might include negligence or gross negligence claims that BOA/Countrywide failed to implement proper underwriting, servicing, and/or foreclosure standards.
- (f) Under the terms of the proposed settlement, the settlement fund is allocated among investors in accordance with the “payment waterfall” set forth in the Pooling and Servicing Agreements, which may provide some investors with a windfall and may not appropriately compensate others for their actual loss.
- (g) The proposed settlement carves out “Individual Securities Claims” from the release, but fails to address the securities claims asserted in the class action securities lawsuits that are currently pending in the United States District Court for the Central District of California.
- (h) The proposed settlement appears to give BNY Mellon broad indemnification rights for the role that it played as Trustee for the Countrywide MBS, but does not appear to specifically carve out claims against BNY Mellon from the release.


8. In light of the foregoing, Western & Southern seeks to intervene in the above-captioned matter to take discovery regarding the fairness of the proposed settlement.

RELIEF REQUESTED

Western & Southern respectfully requests that this Court issue an order permitting Western & Southern to intervene in the above-captioned proceeding.

Dated: New York, New York
July 29, 2011

WOLLMUTH MAHER & DEUTSCH LLP

By: 

David H. Wollmuth
Vincent T. Chang
Steven S. Fitzgerald

500 Fifth Avenue
New York, New York 10110
Tel: (212) 382-3300

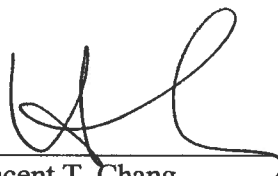
Attorneys for The Western and Southern Life Insurance Company, Western-Southern Life Assurance Company, Columbus Life Insurance Company, Integrity Life Insurance Company, National Integrity Life Insurance Company, and Fort Washington Investment Advisors, Inc. on behalf of Fort Washington Active Fixed Income LLC

VERIFICATION

I, Vincent T. Chang, hereby affirm under the penalty of perjury that the following is true and correct:

I am a member of the bar of this Court and of Wollmuth Maher & Deutsch LLP, attorneys for the proposed intervenors. 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. I am making this affirmation in lieu of a verification by the proposed intervenors because the proposed intervenors are not within New York County, where Wollmuth Maher & Deutsch LLP maintains its offices.

Executed this 29th day of July 2011, in New York, New York.



Vincent T. Chang