

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT 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,

-against-

WALNUT PLACE LLC, WALNUT PLACE II LLC, WALNUT PLACE III LLC, WALNUT PLACE IV LLC, WALNUT PLACE V LLC, WALNUT PLACE VI LLC, WALNUT PLACE VII LLC, WALNUT PLACE VIII LLC, WALNUT PLACE IX LLC, WALNUT PLACE X LLC, WALNUT PLACE XI LLC,

Case No.: 11 Civ. 5988

POLICEMEN'S ANNUITY & BENEFIT FUND OF CHICAGO, THE WESTMORELAND COUNTY EMPLOYEE RETIREMENT SYSTEM, CITY OF GRAND RAPIDS GENERAL RETIREMENT SYSTEM, CITY OF GRAND RAPIDS POLICE AND FIRE RETIREMENT SYSTEM, TM1 INVESTORS, LLC, FEDERAL HOME LOAN BANK OF BOSTON, FEDERAL HOME LOAN BANK OF CHICAGO, FEDERAL HOME LOAN BANK OF INDIANAPOLIS, FEDERAL HOME LOAN BANK OF PITTSBURGH, FEDERAL HOME LOAN BANK OF SAN FRANCISCO, FEDERAL HOME LOAN BANK OF SEATTLE, V RE-REMIC, LLC, THE WESTERN AND SOUTHERN LIFE INSURANCE COMPANY, WESTERN- SOUTHERN LIFE ASSURANCE COMPANY, COLUMBUS LIFE INSURANCE COMPANY, INTEGRITY LIFE INSURANCE COMPANY, NATIONAL LIFE INSURANCE COMPANY, FORT WASHINGTON INVESTMENT ADVISORS, INC. on behalf of FORT WASHINGTON ACTIVE FIXED INCOME LLC, CRANBERRY PARK LLC, and CRANBERRY PARK II LLC, (intervenor) and COMMONWEALTH ADVISORS, INC., (proposed intervenor),

Respondents.

DECLARATION OF JUSTIN M. SHER IN SUPPORT OF PROPOSED INTERVENOR-RESPONDENT COMMONWEALTH ADVISORS, INC.'S MOTION TO INTERVENE

I, Justin M. Sher, declare under penalty of perjury that the foregoing is true and correct:

1. I am the managing partner of Sher LLP and represent Commonwealth Advisors, Inc. ("Commonwealth") in the above-captioned matter. I submit this declaration in support of Commonwealth's Motion to Intervene in this matter.

2. On June 29, 2011, the Bank of New York Mellon ("BNY" or the "Trustee"), as trustee for 530 residential mortgage-backed securities trusts (the "Covered Trusts"), either sold or serviced by Countrywide Home Loans, Inc., or its affiliates ("Countrywide"), filed a Petition in New York State Supreme Court, New York County, seeking approval of a proposed settlement (the "Proposed Settlement") with Countrywide and its parent, Bank of America Corporation ("BoA"), as well as judicial instructions, pursuant to New York State CPLR Article

77. A copy of the Petition is attached as Exhibit 1 to the Notice of Removal of Intervenor-Respondent Walnut Place LLC, et al.

3. Intervenor-Respondent Walnut Place LLC and its affiliates removed this action from the New York Supreme Court, New York County, to this Court, by Notice of Removal, filed August 26, 2011.

4. Prior to Removal, New York State Supreme Court Justice Barbara R. Kapnick issued an order in the Article 77 proceeding, providing that any “Potentially Interested Person who wishes to object to the Settlement may file with the [New York State Supreme] Court, on or before August 30, 2011, a written notice of intention to appear and object” and “stating the grounds for their objection, one of which may be that such Potentially Interested Person does not have enough information to evaluate the Settlement.” (*See* Order, issued August 5, 2011, attached hereto as **Exhibit A.**)

5. In the event that the August 5, 2011 Order issued in the New York County Supreme Court remains in effect upon removal to this Court (*see, e.g., Sun Forest Corp. v. Shvili*, 152 F. Supp. 2d 367 (SDNY 2001) (a district court takes a removed action in the posture in which it existed when it was removed from the state court’s jurisdiction and must give effect to all actions and procedures accomplished in state court prior to removal)), Commonwealth seeks to preserve all of its rights to seek discovery and to supplement its objection to the Proposed Settlement by filing a Notice of Intention to Appear and Object and Notice of Motion to Intervene in this Court.

6. The terms of the Proposed Settlement include, *inter alia*, the payment of \$8.5 billion by BoA into the trusts in exchange for a release of all claims against BoA and

Countrywide related to the Covered Trusts, purportedly binding on all investors and other persons. (See Walnut Notice of Removal, Ex. 1, ¶ 1.)

7. The Proposed Settlement includes a release that purports to bar all claims against Countrywide and BoA related to the Covered Trusts, as well as claims against BNY for, *inter alia*, any breach of its fiduciary duty to the beneficiaries of the Covered Trusts. (See Proposed Settlement Agreement, Ex. B, ¶¶ (k), (p) (attached as Walnut Notice of Removal, Ex. 6).)

8. Commonwealth is a money management firm based in Baton Rouge, Louisiana.

9. Commonwealth purchased notes in the Covered Trusts on behalf of itself and on behalf of its clients for which it manages discretionary accounts, including but not limited to the following Covered Trusts: CWALT 2004-35T2, CWALT 2004-J2, CWALT 2005-17, CWALT 2005-J10, CWALT 2006-HY13, CWALT 2006-HY13, CWALT 2006-J5, CWALT 2006-J5, CWALT 2007-1T1, CWALT 2007-9T1, CWALT 2007-OA2, CWHL 2004-25, CWHL 2004-25, CWHL 2005-11, CWHL 2005-21, CWHL 2005-HYB6, CWHL 2005-J3, CWHL 2006-J2, CWHL 2007-12, CWHL 2007-HYB2, CWL 2004-1, CWL 2004-1, CWL 2004-10, CWL 2004-12, CWL 2004-13, CWL 2004-2, CWL 2004-3, CWL 2004-3, CWL 2004-6, CWL 2004-6, CWL 2004-8, CWL 2004-9, CWL 2004-AB2, CWL 2004-BC4, CWL 2004-BC5, CWL 2004-ECC2, CWL 2005-10, CWL 2005-13, CWL 2005-7, CWL 2005-AB1, CWL 2006-11, CWL 2006-3, CWL 2006-BC5, CWL 2007-2 and CWL 2007-4.

10. Commonwealth is therefore a Certificateholder or Trust Beneficiary as defined in BNY's Petition. (Walnut Notice of Removal, Ex. 1, ¶ 2.)

11. Commonwealth invested in excess of \$150 million in the Covered Trusts.

12. As a Certificateholder in the Covered Trusts, Commonwealth has suffered significant losses. As a consequence of the releases in the Proposed Settlement, which purport to

bar future claims against Countrywide, BoA and BNY, Commonwealth has an interest relating to the property that is the subject matter of the above-captioned case.

13. The Proposed Settlement was allegedly the product of a year-long negotiation between the Trustee, Countrywide and BoA, and twenty-two institutional investors (the “Institutional Investors”). The existence of these settlement negotiations (“Settlement Negotiations”) was not disclosed to Commonwealth until the Trustee filed its Petition on June 29, 2011.

14. Commonwealth does not have sufficient information to evaluate the Proposed Settlement.

15. The negotiating parties are alleged to have exchanged documents and information “related to potential liabilities and defenses, and alleged damages” that have never been disclosed to investors in the Covered Trusts. (*See* Walnut Notice of Removal, Ex. 6 at 2.) Commonwealth seeks to review all the documents and communications exchanged between the Trustee and the Institutional Investors and to otherwise pursue discovery from BoA, BNY and Countrywide related to Commonwealth’s potential claims against Countrywide, BoA and BNY before these claims are barred.

16. The Proposed Settlement was purportedly reached after review of expert reports. (*See* Walnut Notice of Removal, Ex. 1, ¶ 61.) Commonwealth seeks, *inter alia*, to review all of the underlying documents and communications that were used to create the expert reports that were relied upon by the Trustee in connection with the Proposed Settlement.

17. The Proposed Settlement does not provide an opt-out mechanism. All investors in the Covered Trusts, including those like Commonwealth who were not included in the Settlement Negotiations with the Trustee, are purportedly bound by the Proposed Settlement’s

provisions, (*see* Walnut Notice of Removal, Ex. 6, ¶ (e)), although they were provided no opportunity to review relevant documents or engage in discovery.

18. Because the Proposed Settlement purports to bar Certificateholders from pursuing remedies against Countrywide, BoA and BNY, Commonwealth's interest will be significantly impaired if it is not permitted to intervene in this matter.

19. Furthermore, Commonwealth's interest will not be adequately represented by the existing parties, as set forth below.

20. First, Countrywide and BoA are adverse to all potential claimants with respect to the Proposed Settlement and cannot, therefore, represent Commonwealth's interest.

21. Second, the Trustee has expressly recognized "that some Certificateholders may disagree with the Trustee's judgment that the Settlement is reasonable" and that "different groups of Certificateholders may wish to pursue remedies for all alleged breaches in different ways, creating the potential for conflicts among Certificateholders." (*See* Walnut Notice of Removal, Ex. 1, ¶¶ 13-14.)

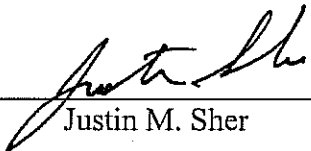
22. Third, the composition of the Institutional Investors' investments in the Covered Trusts varies from those of Commonwealth. Therefore the interests of the Institutional Investors in supporting the Proposed Settlement are likely at odds with the interests of Commonwealth.

23. Fourth, the attorneys for the Institutional Investors seek to receive \$85 million under the Proposed Settlement, in addition to any ongoing monthly fees and expenses, which are also paid for by BoA. (*See* Walnut Notice of Removal, Ex. 6, at Ex. F.) Therefore counsel to the Institutional Investors has a strong economic incentive to recommend this early settlement, even if the Proposed Settlement fails to provide an adequate recovery for Commonwealth.

24. Finally, under the terms of the Proposed Settlement, BNY is insulated from any claims arising out of any breach of fiduciary duty to the beneficiaries of the Covered Trusts. (See Walnut Notice of Removal, Ex. 6, at Ex. B, ¶¶ (k), (p).) Therefore, BNY cannot be expected to adequately represent the interest of all beneficiaries, including Commonwealth.

25. In order to protect its interests as described above, Commonwealth seeks to intervene so that it may participate in discovery to evaluate the Proposed Settlement and to otherwise exercise its rights as a party in this proceeding.

Executed this 30th day of August, 2011


Justin M. Sher