

**REPORT AND RECOMMENDATION OF THE LOSS MITIGATION AND MORTGAGE
MODIFICATION COMMITTEE (“COMMITTEE”) TO THE JUDGES OF THE
BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MICHIGAN**

The Committee was convened by Judge Shapero at the direction of the Court. Committee members are those persons set forth in Exhibit A attached hereto. As is evident it consists of attorneys representing consumers, attorneys representing mortgage lenders and servicers, and the Chapter 13 trustees.

The impetus for the Committee came primarily from various perceived problems and failures arising from attempts to timely modify home mortgages within the context of ongoing bankruptcy cases and the various ways those problems and failures have been addressed by state legislation, federal programs, processes put into effect by mortgage lenders and servicers, and several bankruptcy courts around the country implementing local rules and practices, some involving mandatory mediation.

The Federal Judicial Center in 2011 put on a program and produced a workbook designed to educate Courts which might be interested in weighing in on the issues. Over the period of time the Committee has been deliberating, this dynamic subject has been affected and influenced by ongoing changes and extensions of the Michigan law setting forth certain procedures incident to, and as a condition of, foreclosures by advertisement, as well as in 2013, the Multistate/Federal Settlement of Foreclosure Misconduct Claims, involving Bank of America, Wells Fargo, JPMorgan Chase, Citibank and Ally, as well as the U.S. DOJ (including the U.S. Trustee Program), HUD, U.S. Treasury and various state attorneys general. The Executive Summary of that Settlement is attached as Exhibit B. Effective as to foreclosures by advertisement the first notice of which was published after January 9, 2014, Michigan changed its existing statutes providing for deferral of foreclosure pending the giving of certain notices and opportunities to discuss modifications to apply only to those mortgages the servicing agent for which is one of the five lenders and defendants in the National Mortgage Settlement, i.e., Chase, Wells Fargo, Bank of America, Citi, and GMAC/Ally. The changes lessened and/or generalized requirements and could reduce the number of mortgage servicers covered by the statute. Those changes were considered and taken into account in the Committee’s recommendation. There have also been perceived positive changes and improvements on the part of mortgage lenders and servicers in dealing with the concerns addressed by legislation, the referred to settlement, Court rules and lawsuits designed to deal with them.

The definitive meeting of the Committee occurred on August 13, 2013, the minutes of which are set forth as Exhibit C. At that meeting, a consensus was developed as to what the recommendation to the Court should be, taking into account that (a) modifications cannot be forced on a lender; (b) there have been improvements in the modification process over time, but not enough to preclude Court involvement; (c) there are lenders and servicers who were not parties to the National Settlement, or, if they were, they are not adequately implementing it yet; (d) in situations where they are necessary, Court orders will be useful and important in moving the modification process forward in a timely fashion; and (e) Court involvement should not add unnecessary, unaffordable, or avoidable extra costs to debtors if at all possible.

The specific recommendation of the Committee is that by General Order the Court establish utilization of the following forms:

- (a) Debtor's Motion Requesting Mortgage Modification Review;
- (b) Order Granting Debtor's Motion Requesting Mortgage Modification Review,

and, that such be the exclusive way in which the subject should be addressed, if Court involvement is sought, and, that procedurally the Motion be filed and governed by E.D. Mich. L.B.R. 9014-1 (copies of each are attached as Exhibits D and E respectively).

Respectfully submitted by the Committee on February 4, 2014

EXHIBITS

- A. Committee membership
- B. Executive Summary of Multistate Federal Settlement of Foreclosure
Misconduct Claims
- C. Committee meeting minutes of August 13, 2013
- D. Proposed form of Motion Requesting Mortgage Modification Review
- E. Proposed form of Order Granting Debtor's Motion Requesting Mortgage
Modification Review

LOSS MITIGATION AND MORTGAGE MODIFICATION COMMITTEE

Brett A. Border
Mark E. Bredow
Dennis A. Brodsky
C. Jason Cardasis
Krispen S. Carroll
Noel Aaron Cimmino
Heather M. Dickow
Richard Fessler
Marcy J. Ford
Edward Gudeman
Biana Hamady
Christopher W. Jones
Yuliy Osipov
David Ruskin
Kimberly Siebert
Marla A. Skeltis
Brian Joel Small
Tammy I. Terry
Adam I. Wiener

EXHIBIT A

NATIONAL MORTGAGE SETTLEMENT

Philip A. Bellman
Assistant Attorney General
Consumer Protection Division
North Carolina Department of Justice

EXECUTIVE SUMMARY OF MULTISTATE/ FEDERAL SETTLEMENT OF FORECLOSURE MISCONDUCT CLAIMS

The settlement between the state attorneys general and the five leading bank mortgage servicers will result in approximately \$25 billion dollars in monetary sanctions and relief. The settlement represents the largest financial recovery obtained by the attorneys general except for the 1998 Master Tobacco Settlement. The accord will enable hundreds of thousands of distressed homeowners to stay in their homes through enhanced loan modifications. It will also fund payments to victims of unfair foreclosure practices and provide support for housing counseling and state-level foreclosure prevention programs.

In addition to the monetary allocations, the settlement will require comprehensive reforms of mortgage loan servicing. The mandated standards will cover all aspects of mortgage servicing, from consumer response to foreclosure documentation. To ensure that the banks meet the new standards, the settlement will be recorded and enforceable as a court judgment. Compliance will be overseen by an independent monitor who will report to the attorneys general and the court.

The settlement follows ten months of intensive negotiations between the five banks and a coalition of state attorneys general and federal agencies, including the Departments of Justice, Treasury, and Housing and Urban Development. The investigation began in October 2010 following revelations of widespread use of "robo-signed" affidavits in foreclosure proceedings across the country. State attorneys general formed a working group to investigate the problem and to confront the banks about the allegations. The major mortgage servicing banks soon acknowledged that individuals had been signing thousands of foreclosure affidavits without reviewing the validity or accuracy of the sworn statements. Several national banks then agreed to stop their foreclosure filings and sales until corrective action could be taken.

While the robo-signing issue received the most attention, other servicer-related problems were identified, including deceptive practices in the offering of loan modifications (for example, telling consumers that a loan modification was imminent while simultaneously foreclosing). The performance failures resulted in more than just poor customer service. Unnecessary foreclosures occurred due to failure to process homeowners' requests for modified payment plans. And where foreclosures should have been concluded, shoddy documentation led to protracted delays. This misconduct threatened the integrity of the legal system and had a negative impact on communities and the overall housing market.

All 50 state attorneys general determined that the compliance and performance failures prevalent in mortgage servicing were a high priority law enforcement and consumer protection matter. A bipartisan Negotiating Committee, made up of eight attorneys general led the settlement negotiations. The Committee had extensive discussions with a wide variety of stakeholders, including investor groups, state banking examiners, bankruptcy attorneys, consumer groups and

legal aid attorneys. The assistance and cooperation of state banking regulators and the Conference of State Banking Supervisors was particularly helpful in developing expertise. The attorneys general also partnered with federal authorities in order to benefit from their expertise and investigations. A working relationship with federal agencies was particularly important because national banks assert that state officials have no authority to investigate their banking practices.

The negotiations focused on robo-signing and mortgage servicing misconduct. The resulting settlement addresses the primary goals of the attorneys general: to provide immediate relief to enable struggling homeowners to avoid foreclosure; to bring badly needed reform to the mortgage servicing industry; to ensure that foreclosures are lawfully conducted; and to penalize the banks for robo-signing misconduct. The settlement imposes monetary sanctions on the banks while providing immediate and continuing relief to homeowners. Full litigation of the states' claims would likely have taken years, at a time when the foreclosure crisis requires immediate relief for homeowners. And adjudication of state-based robo-signing claims may have led to civil penalties but could not have yielded the amount and scope of the relief obtained in this settlement.

The settlement was not intended to address issues related to mortgage loan securitization or the concerns of investors. The settlement does not release securitization claims, so private parties and government officials are free to pursue those claims. Nor does the settlement provide any immunity or release for criminal conduct.

SUMMARY OF KEY SETTLEMENT TERMS

I. Relief for Struggling Homeowners

The settlement requires the five banks to allocate a total of \$17 billion in assistance to borrowers who have the intent and ability to stay in their homes while making reasonable payments on their mortgage loans. At least 60 percent of the \$17 billion must be allocated to reduce the principal balance of home loans for borrowers who are in default or at risk of default on their loan payments. Many homeowners, particularly in states like Florida, Arizona, Nevada and California, have negative equity in their homes and have no realistic ability of refinancing or selling their homes, or to build equity. Principal reductions will also yield lower payments and will give homeowners a fair opportunity to preserve their homes.

In addition to principal reductions, the banks must allocate funds, approximately \$5.2 billion, for other forms of homeowner assistance. These options include the facilitation of short sales which allow houses to be bought and sold when the mortgage balance exceeds the value of the property. Another program is unemployed payment forbearance, which will defer payments for homeowners who are between jobs. Other options for funding include relocation assistance for homeowners facing foreclosure, waiving of deficiency balances, and funding for remediation of blighted properties.

II. Refinancing of Underwater Homes

To assist homeowners who are not delinquent on their payments but cannot refinance to lower rates because of negative equity, the banks must offer refinance programs totaling at least \$3 billion. The banks will be required to notify eligible homeowners of the availability of these programs. To be eligible, a borrower must be current on mortgage payments, have a loan to value ratio in excess of 100%, and must have a current interest rate in excess of 5.25%. The refinanced rate must reduce monthly payments by at least \$100 or the interest rate by at least 0.25%.

III. Mortgage Servicing Reforms

A major component of the settlement is the comprehensive reform of mortgage servicing practices. The new standards will prevent mortgage servicers from engaging in robo-signing and other improper foreclosure practices. The standards will require banks to offer loss mitigation alternatives to borrowers before pursuing foreclosure. They also increase the transparency of the loss mitigation process, impose time lines to respond to borrowers, and restrict the unfair practice of "dual tracking," where foreclosure is initiated despite the borrower's engagement in a loss mitigation process.

Specific new servicing standards include:

- Information in foreclosure affidavits must be personally reviewed and based on competent evidence.
- Holders of loans and their legal standing to foreclose must be documented and disclosed to borrowers.
- Borrowers must be sent a pre-foreclosure notice that will include a summary of loss mitigation options offered, an account summary, description of facts supporting lender's right to foreclose, and a notice that the borrower may request a copy of the loan note and the identity of the investor holding the loan.
- Borrowers must be thoroughly evaluated for all available loss mitigation options before foreclosure referral, and banks must act on loss mitigation applications before referring loans to foreclosure; i.e. "dual tracking" will be restricted.
- Denials of loss mitigation relief must be automatically reviewed, with a right to appeal for borrowers.
- Banks must implement procedures to ensure accuracy of accounts and default fees, including regular audits, detailed monthly billing statements and enhanced billing dispute rights for borrowers.
- Banks are required to adopt procedures to oversee foreclosure firms, trustees and other agents.
- Banks will have specific loss mitigation obligations, including customer outreach and communications, time lines to respond to loss mitigation applications, and e-portals for borrowers to keep informed of loan modification status.
- Banks are required to designate an employee as a continuing single point of contact to assist borrowers seeking loss mitigation assistance.
- Military personnel who are covered by the Service members Civil Relief Act (SCRA) will have enhanced protections.
- Banks must maintain adequate trained staff to handle the demand for loss mitigation relief.
- Application and qualification information for proprietary loan modifications must be publicly available.
- Servicers are required to expedite and facilitate short sales of distressed properties.
- Restrictions are imposed on default fees, late fees, third-party fees, and force-placed insurance.

IV. Monitoring and Enforcement

The settlement with each bank will be incorporated into a Consent Judgment that will be submitted to a federal judge for approval. Compliance with the servicing standards and financial obligations of the banks can be ultimately enforced through court process. Civil penalties may be assessed for violations of the Consent Judgment.

The banks' performance of their obligations under the settlement will be overseen by an independent Monitor. The Monitor will employ a staff of professionals to review the banks' compliance. The Monitor will issue periodic reports to the attorneys general, including notices of any potential violations.

The banks will report on their compliance in the form of agreed-upon metrics and outcome measures. Included among the compliance metrics are testing for proper documentation of foreclosures, loss mitigation offers and proper evaluation of loan modification applications. There will also be testing to ensure that borrowers' account information is accurate and that any fees are properly assessed and are not excessive. If banks fail to remedy violations, they are subject to civil penalties of up to \$5 million from the court.

V. Payments to Foreclosure Victims

Approximately \$1.5 billion of the settlement funds will be allocated to compensation to borrowers who were foreclosed on after January 1, 2008. These borrowers will be notified of their right to file a claim. Borrowers who were not properly offered loss mitigation or who were otherwise improperly foreclosed on will be eligible for a uniform payment, which will be approximately \$2000 per borrower depending on level of response. Borrowers who receive payments will not have to release any claims and will be free to seek additional relief in the courts. Borrowers may also be eligible for a separate restitution process administered by the federal banking regulators.

VI. Payments to the States

The remaining settlement funds, approximately \$2.5 billion, will be paid to the participating states. The funds may be distributed by the attorneys general to foreclosure relief and housing programs, including housing counseling, legal assistance, foreclosure prevention hotlines, foreclosure mediation, and community blight remediation. A portion of the funds may also be designated as civil penalties for the banks robo-signing misconduct.

VII. Release of Claims

The proposed Release contains a broad release of the banks' conduct related to mortgage loan servicing, foreclosure preparation, and mortgage loan origination services. Claims based on these areas of past conduct by the banks cannot be brought by state attorneys general or banking regulators.

The Release applies only to the named bank parties. It does not extend to third parties who may have provided default or foreclosure services for the banks. Notably, claims against MERSCORP, Inc. or Mortgage Electronic Registration Systems, Inc. (MERS) are not released.

Securitization claims, including claims of state and local pension funds, and including investor claims related to the formation, marketing or offering of securities, are fully preserved. Other claims that are not released include violations of state fair lending laws, criminal law enforcement, claims of state agencies having independent regulatory jurisdiction, claims of county recorders for fees, and actions to quiet title to foreclosed properties. Of course, the Release does not affect the rights of any individuals or entities to pursue their own claims for relief.

Loan Mitigation and Mortgage Modification Committee

Summary of Results of the meeting of August 16, 2013

Attendance: See attached attendance sheet.

There seemed to be general consensus that some sort of mandatory mediation program like those adopted by other Courts would not be appropriate and would produce elements of time and additional costs that were not consonant with or productive of the goals, or justified by the perceived needs..

It was recognized that in the last year or so there had been some improvements in the process, coming out of the National Mortgage Settlement Process and servicing standards contemplated thereby, and other initiatives, and enhanced knowledge of attorneys involved in the process, but not enough to have the Court refrain from doing anything at this time..

Instead there seemed to be general consensus that it would be helpful and productive to both the creditors and their clients, and the debtors and their attorneys to propose and for the Court to adopt a rule or general order standardizing the process for ch 13 debtors who wish to do so (it would be optional and not mandatory) to be able to invoke a modification oversight process, to be effectuated by an order of the type used by Judge Opperman in the Cole case, 10-35342, docket # 66, with appropriate enhancements and changes. Such essentially sets deadlines and at least one status conference and accountability of both the creditors in processing modifications and debtors in complying with the modification document production requirements., which seem to present the most issues and problems which need addressing..

At this point any recommendation would not encompass also mandating forms to be used for any court approvals of temporary or permanent modifications sought or resulting from the activities contemplated by the orders, , nor would it be appropriate to procedurally tie in those court approvals to the separate ,different, but related process of any actual plan modifications. which might be required or sought-the same to be handled on a case by case basis..

The result of the meeting was that Judge Shapero would appoint a small committee to draft proposed forms of (a) a motion seeking an order relating to the mortgage modification process; (b) the order granting same; and (c) a specific formal recommendation by the Committee to the Court for adoption of such by general order or other appropriate action..

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - *

In the Matter of:

*

Debtors.
_____ /

Chapter 13

Case Number: *

Judge: *

DEBTOR'S MOTION REQUESTING
MORTGAGE MODIFICATION REVIEW

Debtor, *, by and through counsel, *, requests entry of an order setting deadlines and other parameters for Creditor, *, to respond to Debtor's request for mortgage modification, and in support states as follows:

1. The Debtor filed this Chapter 13 case in an attempt to retain his/her primary residence.
2. The Debtor would like to modify the terms of the mortgage encumbering his/her primary residence. The Debtor's household income will now allow him/her to contribute to a modified mortgage debt.
3. An order setting forth certain deadlines and other parameters will assist the parties in negotiation of a modification of the relevant mortgage.

Wherefore, Debtor requests the entry of an order setting deadlines and other parameters for a mortgage modification, and such other relief as this Court deems just and proper.

Dated:

(P)
Attorney for Debtor

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - *

In the Matter of:

*

Debtors.
_____ /

Chapter 13

Case Number: *

Judge: *

**PROPOSED ORDER GRANTING DEBTOR'S MOTION REQUESTING
MORTGAGE MODIFICATION REVIEW**

This matter having come before the Court on Debtors' Motion Requesting Mortgage Modification Review and to encourage the parties to engage in the modification process in good faith;

NOW THEREFORE IT IS HEREBY ORDERED THAT:

1. Notice of Applicable Programs. Within 21 days of the service of this Order upon Creditor, Creditor shall supply and notify Debtor and Debtor's counsel of the Creditor's required loan modification package.
2. Debtor's Financial Documents. Within 35 days after service of this Order, Debtors shall submit to Creditor a fully complete Loan Modification Package with all timely supporting documentation. Such exchange of information shall be through the mechanism as specified by Creditor or as otherwise agreed upon.
3. Creditor Request for Additional or Updated Documents. Creditor and/or its counsel shall review the Loan Modification Package submitted by Debtors and notify the Debtors and their Counsel of any additional or updated financial records that must be supplied to Creditor. Debtors shall provide Creditor all required additional financial records within 10 days.
4. Point of Contact. Creditor shall designate a point of contact for loss mitigation purposes including phone number and/or email address. The point of contact may be Creditor's counsel.
5. Status of Review. Any document(s) or exchanges of information, not otherwise protected by any privilege, exchanged between the Debtor, Creditor, and/or Creditor's representative counsel (as applicable) may be presented to the court for purposes of providing a status of the loan modification review by either party. Where the parties agree, dates and times may be established for filing a mutually prepared status report or the Court may, if on ex parte request of any party or sua sponte, set status conferences at reasonable intervals to allow the parties to provide the Court with updates as to the process.

6. Lack of Prosecution. In the event that this case is converted under any other chapter of the Bankruptcy Code, the Debtor(s) fail to pursue the modification with appropriate submission of the package within the above stated time frames, or if the Debtor declines an offered trial payment plan or permanent modification this order shall become null and void unless otherwise extended by the court.
7. Court Approval of Mortgage Modification. The parties shall seek any necessary court approval to formalize any fully executed and completed modification.
8. Creditor Fee. If applicable, any fees and costs incurred by Creditor for all work involved in connection with the mortgage modification shall be recoverable from the borrower as permitted by law.
9. Debtors' counsel's fee. Counsel for the debtors is entitled to receive reasonable compensation for all work involved in connection with the mortgage modification and shall file an application for allowance of attorney fees and costs for allowance by the Court to be paid as an administrative expense.
10. Privileged Communications. All statements made by the parties, attorneys, and other participants associated with the mortgage modification request are privileged and may not be construed for any purposes as an admission.
11. Stay Modified to Allow Loan Modification. The automatic stay is modified, to the extent necessary, to facilitate the terms pursuant to this Order.
12. Service. Debtor shall serve a copy of this Order on the Creditor and file a Proof of Service.

IT IS SO ORDERED.