

FORECLOSURE JUSTICE ADVOCATES ARE THANKFUL IN 2011

Lynn E. Szymoniak, Esq., Fraud Digest, Thanksgiving 2011

....for **Nevada Attorney General Catherine Cortez Masto** and **Chief Deputy Attorney General John Kelleher** for filing criminal charges against two employees at Lender Processing Services, alleging that these employees filed thousands of falsified documents relating to foreclosures in Nevada. Attorney General Masto never said "I wish someone would do something about all of this mortgage fraud by servicers and document companies."

...for **Congressman Elijah E. Cummings**, representing Maryland's 7th District, for his recognition of the importance of keeping families in their homes, for his battle against fraudulent banking practices and for being a constant, strong voice against fraudulent foreclosures in America.

...for **Delaware Attorney General Beau Biden** for filing a lawsuit against MERS for unfair and deceptive trade practices that plainly sets out the fraudulent activities done in the name of MERS, including obscuring important mortgage ownership information, acting as an agent of the true owners of mortgage loans without authority, and failing to properly oversee the MERS registry or enforce its own rules in foreclosure proceedings. (State of Delaware v. MERSCORP, Wilmington Division, Delaware Chancery Court). Attorney General Biden also intervened in the \$8.5 billion settlement proposed by Bank of America to resolve claims by investors in mortgage-backed securities put together by Countrywide Financial Corporation.

...for **New York Attorney General Eric Schneiderman** for his determination to investigate whether securities laws were broken when mortgage loans were bundled into securities, for intervening in the Bank of America settlement, and for refusing any deal that would give immunity for criminal acts to banks or securities companies.

...for **New York Judge Arthur Schack**, for his intolerance of lies by banks, for exposing the massive problem of fraudulent documents used in foreclosures, and for writing the following in response to a sworn affidavit from a bank lawyer, Margaret Carucci, that an officer from Downey Savings & Loan could vouch for the accuracy of the documents: "Ms. Carucci affirmed under the penalties of perjury that she communicated on Christmas Eve with the officer of a defunct

financial institution. This is a deceptive trick and fraud upon the court. It cannot be tolerated. This Christmas Eve conduct, in the words of Ebenezer Scrooge, ins`Bah, humbug!'" (Downey Savings and Loan Association, F.A. v. Trujillo, 2011 NY Slip Op 51517 (U)). Judge Schack has led the way to honesty in courtrooms.

...for *New York Times* OpEd columnist **Joe Nocera** for bringing the photographs of the Steven Baum Halloween party, where firm employees mocked homeowners in foreclosure, to the attention of the world.

...for **Massachusetts Attorney General Martha Coakley** for focusing attention on Mortgage Electronic Registration Systems, Inc. and whether MERS impaired the integrity of the state's recording system. Attorney General Coakley also made it clear that she would do an in-depth investigation of MERS, stating, "We want to be clear we are not prepared to give a release of liability on any broad scope of MERS issues."

...for **Oscar-winning director Curtis Hanson** and his HBO Film, *Too Big To Fail*. Can anyone ever look at Treasury Secretary Henry Paulson again without remembering **William Hurt's** portrayal? When we hear the name Ben Bernake, doesn't **Paul Giamatti** come immediately to mind? But **James Woods**, as Richard Fuld, Chariman and CEO of Lehman Brothers, will always epitomize the clueless corporate executive.

...for Florida attorneys **Theresa Edwards** and **June Clarkson** who were fired from the Economic Crimes Division of the Attorney General's Office after targets of their foreclosure fraud investigations complained that these Assistant Attorneys General were too aggressive. Edwards and Clarkson had gone after some of the most notorious foreclosure mills in the state, including the law offices of David Stern and Marshall Watson. They were also conducting an extensive investigation of Docx and Lender Processing Services at the time they were forced to resign. **Florida Representative Darren Soto** of Orlando called for an investigation of the firings by the U.S. Department of Justice and by the Inspector General in the Attorney General's office.

...for **Locke Barkley, the standing Chapter 13 Trustee for the Northern District of Mississippi**, and her attorneys, **Nick Wooten** and **D.W. Grimsley**, for filing a class action complaint in federal court against Lender Processing Services alleging a kick-back scheme and

unlawful fee splitting between LPS and the attorneys in its network.

...for **New York Bankruptcy Court Judge Robert E. Grossman** for issuing the first federal court ruling that MERS cannot transfer and assign mortgage through its electronic registry system. Judge Grossman rejected the argument that the banks had the authority to arbitrarily change state property laws, stating, "This Court does not accept the argument that because MERS may be involved with 50% of all residential mortgages in the country, that is reason enough for this Court to turn a blind eye to the fact that this process does not comply with the law." (In re Agard, 10-77338, U.S. Bankruptcy Court, Eastern District of New York (Central Islip)).

...for **Louisiana Bankruptcy Judge Elizabeth W. Magner** for imposing sanctions against Lender Processing Services, stating: "The fraud perpetrated on the Court, Debtors and trustee would be shocking if this Court had less experience concerning the conduct of mortgage servicers. One too many times, this Court has been witness to the shoddy practices and sloppy accounting of the mortgage service industry. (In re Wilson, U.S. Bankruptcy Court, Eastern District of Louisiana.)

...for **Guilford County Recorder Jeff Thigpen** for showing in painstaking and incontrovertible detail how foreclosure fraud has permeated county recording offices, for standing up for the rights of homeowners, and for explaining how foreclosure fraud affects ALL homeowners, not just those in foreclosure.

...for **Massachusetts Register of Deeds John O'Brien** and **Marie McDonnell** who studied the records of the Southern Essex County Registry of Deeds and found massive fraud. O'Brien released findings that 75% of the mortgage assignments in the registry are fraudulent. "My registry is a crime scene..." said O'Brien, who also has assisted other county recorders throughout the United States in understanding mortgage fraud issues and identifying robo-signers.

...for **Illinois Attorney General Lisa Madigan** and **Michigan Attorney General Bill Schuette** for issuing subpoenas to mortgage servicers Lender Processing Services and Nationwide Title Clearing as part of criminal investigations into the practices of mortgage servicing companies. Just when the mortgage servicing companies thought they had worked out a wonderful settlement with the OCC where they were free to investigate themselves and report back, along came these serious criminal law enforcement efforts.

...for **Ingham County, Michigan Register of Deeds Curtis Hertel, Jr.** for investigating foreclosure fraud and robo-signing and reporting his findings. Hertel found that banks were continuing to produce foreclosure paperwork without proper reviews and signatures, despite promises of reform.

...for **Dallas County, Texas, District Attorney Craig Watkins** and **Duval County, Florida, Clerk of the Court Jim Fuller** for bringing class action lawsuits against MERS. The lawsuits allege that MERS acts as a "shadow recording system" for buying and selling mortgages in the United States. The lawsuits attack the system that lists MERS as the mortgagee on millions of loans throughout the country when MERS did not originate the loans, lend any money or own or hold any promissory notes.

...for **Massachusetts Supreme Court Justice Ralph Gants** who upheld a lower court ruling that two foreclosures were invalid because the banks did not prove they owned the mortgages which had been transferred into residential mortgage-backed trusts. The case was expected to affect all foreclosures done without proper documents. Judge Gants wrote, "the mortgages securing these notes are still legal title to someone's home or farm and must be treated as such." The case was seen as a significant warning to all purchasers of foreclosed properties to be certain that an unbroken chain-of-title could be established prior to making any purchase of residential real estate.

...for **Scott Pelley, Robert G. Anderson and Daniel Ruetenik** of *60 Minutes* for their segments "The Hard Time Generation" and "The Next Housing Shock." Americans needed to see school buses stopping at cheap motels in Orlando for children who have lost their homes and to hear that the poverty rate for children in America would soon hit 25%. For tens of thousands of people with mortgage documents signed by Linda Green, the image of Chris Pendley forging Green's name to mortgage documents was the best possible confirmation that something is rotten in the state of Denmark. This segment provided the impetus for country recorders with conscience to take action against mortgage fraud.

...for **California Attorney General Kamala Harris** for her determination to investigate and expose the root causes of California's mortgage crisis by issuing subpoenas to Fannie Mae and Freddie Mac.

...for **U.S. District Judge William Pauley** in Manhattan for

recognizing the significance of the Bank of America settlement when he wrote, "This action concerns far more than the financial interests of a few sophisticated investors," and when he decided, "The intervention of the state AGs in this action will protect the interests of absent investors." (Bank of New York Mellon v. Walnut Place, LLC, 11-cv-05988, USDC, Southern District of New York (Manhattan)).

...for **Academy Award Winning Director Charles H. Ferguson** for the movie Inside Job which documents the 2008 financial meltdown and why it was avoidable. Ferguson himself has said that the film is about the systemic corruption of the United States by the financial services industry. There is a reason this film won the Academy Award for Best Documentary as well as many other film critic awards. It is chilling to watch.

...for filmmaker and author **Michael Moore** and his advocacy on behalf of a nationwide moratorium on home foreclosures and his work to expose "liar liens."

...for **Florida Appellate Court Judge Juan Ramirez, Jr.**, who wrote in his dissent, "I dissent because I cannot condone the unprofessional and unethical means used by the bank's counsel, with the trial court's complicity, to obtain an amended final judgment in this case...This case is the quintessential denial of due process. Due process requires notice and an opportunity to be heard. Here appellant was granted neither. A final judgment was amended from \$216,485.73 to \$529,630.64, and the appellant was only informed after the fact when he received the conformed copy in the mail...In my view, to affirm what happened here requires that we turn a blind eye to the Florida Rules of Civil Procedure, the Florida Bar Rules of Professional Conduct, and the Code of Judicial Conduct, to say nothing of the Constitutions of the United States and the State of Florida." (Phillips v. Centennial Bank, No. 3D10-2910, (Fla. 3rd DCA 2011)).

...for **Dylan Ratigan** for making the word "fraudclosure" part of the American vocabulary and for telling the story of tens of thousands of American families impacted by fraudulent foreclosures when much of the rest of the country would only focus on investors' losses.

...for **Max, April and Nye** – because when everyone in a movement knows you by your first name, you have fought the longest and been an inspiration to the most.

...for **Jack Wright** who gives us MSFraud.org.

...for **Massachusetts Land Court Judge Keith C. Long** for his careful, thoughtful common-sense ruling in the case of Antonio Ibanez, a case eventually upheld by the Massachusetts Supreme Court.

...for the Bankruptcy Trustees and Judges including **Hon. Tracey Hope Davis** (Northern District of New York), **Hon. Martin Glenn** (Southern District of New York), **Hon. Harry C. Dees, Jr.** (Northern District of Indiana), **Hon. Diane Sigmund Weiss** (Eastern District of Pennsylvania), **Hon. Joel B. Rosenthal** (Massachusetts), **Hon. Joan M. Feeney** (Massachusetts), and, of course, Hon. **Christopher Boyko** (Ohio) for carefully scrutinizing the evidence presented by the banks regarding ownership claims of notes and mortgages.

...for **Hon. William G. Young** of Massachusetts who put the blame squarely on the legal profession, stating:

After 43 years at the bar, the saddest thing about this case is the conduct of the lawyers — all the lawyers. A careful reading of the briefs in this case reveals only a single recognition that counsel did anything amiss in their misrepresentations to the Bankruptcy Court. There's blame aplenty, of course, each one blaming everyone else — including the hapless bankrupt homeowner. ... How is it that our profession, the legal profession —which could have and should have strongly counseled against the self interested excesses that set up the collapse — instead has eagerly aided and abetted those very excesses? How could we (all of us who profess to be lawyers) have fallen so low?" (In re Nosek, 386 B.R. 374 (Bankr. D. Mass. 2008)

...for **Neil Garfield** and his Livinglies weblog for his endless efforts to educate consumers and their lawyers on "the largest economic fraud in human history." Neil is the source of so much valuable information — he is a one-man Consumer Protection Bureau and THE SOURCE for foreclosure defense.

...for **Michael Olenick** of LegalPrise for building Findthefraud.com, allowing citizen researchers the power to view documents quickly and thoroughly, eliminating the impediments in the systems set up by many county recorders.

...for the **ACLU** for fighting for the rights of homeowners and for exposing courtroom injustices.

...for Floridians **Lisa Epstein, Damian Figueroa, Michael Redman, and Matt Weidner** for speaking the truth on their blogs, at great personal cost, assisting tens of thousands of citizens across the country who educate themselves regarding foreclosure fraud and injustice, and reporting what actually goes on in county courtrooms every day.

...and finally, for JPM Chase's CEO Jamie Dimon for his definition of foreclosure as debt relief, for BOA's CEO Brian "We have a right to make a profit" Moynihan, for the parties at the Steven Baum Halloween party, to Cheryl ("David Stern buys me a new BMW every year") Samons, for Stern crony Miriam ("Let ME find the fraud") Mendieta and for screaming Representative Joe Walsh, for illustrating this quotation from historian David C. McCullough:

History is not the story of heroes entirely. It is often the story of cruelty and injustice and shortsightedness. There are monsters, there is evil, there is betrayal. That's why people should read Shakespeare and Dickens as well as history – they will find the best, the worst, the height of noble attainment and the depths of depravity.

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