

N.Y.S.D. Case #
09-cv-4583(LAK)

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of August, two thousand seventeen.

Present: BARRINGTON, D. PARKER,
REENA RAGGI,
PETER W. HALL,
Circuit Judges.

**USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: August 16, 2017**

BERMAN DEVALERIO, WOLF HALDENSTEIN
ADLER FREEMAN & HERZ LLP, SCHNADER
HARRISON SEGAL & LEWIS LLP, COHEN,
PLACITELLA & ROTH PC, KOHN, SWIFT & GRAF
PC,

Appellants,

POLICE AND FIRE RETIREMENT SYSTEM OF THE
CITY OF DETROIT, INDIVIDUALLY AND ON
BEHALF OF ALL OTHER SIMILARLY SITUATED,
WYOMING STATE TREASURER, WYOMING
RETIREMENT SYSTEM, CITY OF PHILADELPHIA
BOARD OF PENSIONS AND RETIREMENT,
GENERAL RETIREMENT SYSTEM OF THE CITY
OF DETROIT, IOWA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM, LOS ANGELES COUNTY
EMPLOYEES' RETIREMENT SYSTEM, PUBLIC
EMPLOYEES' RETIREMENT SYSTEM OF
MISSISSIPPI,

Plaintiffs,

v.

AMENDED ORDER
15-1310-cv

JOHN OLINSKI, BLAIR S. ABERNATHY, SAMIR
GROVER, SIMON HEYRICK, VICTOR H.
WOODWORTH, BANC OF AMERICA SECURITIES,

LLC, J.P. MORGAN SECURITIES, INC., AS SUCCESSOR-IN-INTEREST TO BEAR STEARNS & CO., INC., CITIGROUP GLOBAL MARKETS INC., COUNTRYWIDE SECURITIES CORPORATION, CREDIT SUISSE SECURITIES (USA) LLC, DEUTSCHE BANK SECURITIES INCORPORATED, DEUTSCHE BANK NATIONAL TRUST COMPANY, GOLDMAN, SACHS & Co., GREENWICH CAPITAL MARKETS, INC., INDYMAC SECURITIES CORPORATION, LEHMAN BROTHERS INC., MORGAN STANLEY & Co. INCORPORATED, UBS SECURITIES LLC, JPMORGAN CHASE & Co., RBS SECURITIES INC., MICHAEL W. PERRY, BANK OF AMERICA CORPORATION, AS SUCCESSOR-IN-INTEREST TO MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., COUNTRYWIDE SECURITIES CORPORATION,

*Defendants-
Appellees,*

INDYMAC MBS, INCORPORATED, RESIDENTIAL ASSET SECURITIZATION TRUST 2006-A5CB, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR9, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR11, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR6, RESIDENTIAL ASSET SECURITIZATION TRUST 2006-A6, RESIDENTIAL ASSET SECURITIZATION TRUST 2006-A7CB, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR13, INDYMAC INDB MORTGAGE LOAN TRUST 2006-1, INDYMAC HOME EQUITY MORTGAGE LOAN ASSET-BACKED TRUST, SERIES 2006-H2, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR21, RESIDENTIAL ASSET SECURITIZATION TRUST 2006-A8, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR19, INDYMAC INDA MORTGAGE LOAN TRUST 2006-AR1, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR23, RESIDENTIAL ASSET SECURITIZATION TRUST 2006-A10, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR12, INDYMAC INDX MORTGAGE LOAN TRUST

2006-AR25, INDYMAC INDX MORTGAGE LOAN TRUST 2006-R1, RESIDENTIAL ASSET SECURITIZATION TRUST 2006-A11, INDYMAC INDA MORTGAGE LOAN TRUST 2006-AR2, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR27, INDYMAC HOME EQUITY MORTGAGE LOAN ASSET-BACKED TRUST, SERIES 2006-H3, RESIDENTIAL ASSET SECURITIZATION TRUST 2006-A12, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR29, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR31, INDYMAC INDX MORTGAGE LOAN TRUST 2006-FLX1, RESIDENTIAL ASSET SECURITIZATION TRUST 2006-A13, RESIDENTIAL ASSET SECURITIZATION TRUST 2006-R2, INDYMAC INDA MORTGAGE LOAN TRUST 2006-AR3, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR14 (AND 5 ADDITIONAL GRANTOR TRUSTS FOR THE CLASS 1-A1A, CLASS 1-A2A, CLASS 1-A3A, CLASS 1-A3B AND CLASS 1-A4A CERTIFICATES, TO BE ESTABLISHED BY THE DEPOSITOR, RESIDENTIAL ASSET SECURITIZATION TRUST 2006-A14CB, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR33, RESIDENTIAL ASSET SECURITIZATION TRUST 2006-A15, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR35, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR37, RESIDENTIAL ASSET SECURITIZATION TRUST 2006-A16, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR41, INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR39, RESIDENTIAL ASSET SECURITIZATION TRUST, INDYMAC INDX MORTGAGE LOAN TRUST, INDYMAC INDA MORTGAGE LOAN TRUST 2007-AR1, RESIDENTIAL ASSET SECURITIZATION TRUST 2007-A1, INDYMAC INDX MORTGAGE LOAN TRUST 2007-FLX1, RESIDENTIAL ASSET SECURITIZATION TRUST 2007-A2, INDYMAC INDX MORTGAGE LOAN TRUST 2007-AR1, INDYMAC INDX MORTGAGE LOAN TRUST 2007-FLX2, RESIDENTIAL ASSET SECURITIZATION TRUST 2007-A3, INDYMAC

INDA MORTGAGE LOAN TRUST, INDYMAC
INDX MORTGAGE LOAN TRUST 2007-AR5,
RESIDENTIAL ASSET SECURITIZATION TRUST
2007-A5, INDYMAC INDX MORTGAGE LOAN
TRUST 2007-AR7, INDYMAC INDX MORTGAGE
LOAN TRUST 2007-AR9, INDYMAC INDA
MORTGAGE LOAN TRUST 2007-AR2, INDYMAC
INDX MORTGAGE LOAN TRUST 2007-FLX3,
INDYMAC INDX MORTGAGE LOAN TRUST
2007-AR11, RESIDENTIAL ASSET
SECURITIZATION TRUST 2007-A6, INDYMAC
IMSC MORTGAGE LOAN TRUST 2007-F1,
RESIDENTIAL ASSET SECURITIZATION TRUST
2007-A7, INDYMAC INDX MORTGAGE LOAN
TRUST 2007-AR13, INDYMAC INDA
MORTGAGE LOAN TRUST 2007-AR3, INDYMAC
INDX MORTGAGE LOAN TRUST 2007-FLX4,
INDYMAC IMJA MORTGAGE LOAN TRUST
2007-A1, INDYMAC IMJA MORTGAGE LOAN
TRUST 2007-A2, RAPHAEL BOSTIC, MOODY'S
INVESTOR SERVICES, INCORPORATED, THE
MCGRAW-HILL COMPANIES, FITCH RATINGS,
FITCH INCORPORATION,

Defendants,

LYNETTE ANTOSH, INDYMAC INDX MORTGAGE
LOAN TRUST SERIES 2006-AR14, INDYMAC
INDX MORTGAGE LOAN TRUST SERIES 2006-
AR2, INDYMAC INDX MORTGAGE LOAN TRUST
SERIES 2006-AR15, INDYMAC INDX
MORTGAGE LOAN TRUST SERIES 2006-AR4,
INDYMAC INDX MORTGAGE LOAN TRUST
SERIES 2006-AR7, INDYMAC RESIDENTIAL
MORTGAGE BACKED TRUST SERIES 2006-L2,
INDYMAC RESIDENTIAL ASSET BACKED TRUST
SERIES 2006-D, FITCH RATING LIMITED,

*Consolidated
Defendants,*

WILLIAM B. RUBENSTEIN,

Amicus Curiae.

Appointed counsel Professor William B. Rubenstein was successful in defending the district court's fee award decision, and he now moves for an award of attorneys' fees of his own in the amount of \$200,000 and reimbursement of \$1,424.10 for his travel expenses. His motion is denied in part and granted in part.

When our Court appoints counsel as *amicus curiae* to fulfill the role of opposing counsel and to assist the Court in our review and disposition of a fee dispute, such appointments are traditionally accepted *pro bono*. Professor Rubenstein's appointment was not explicitly designated as *pro bono*, but was accepted without promise of remuneration. We permitted Professor Rubenstein to move for an award of fees. Upon due consideration of that motion, however, it will be denied for the reasons underlying this Court's traditional practice. Furthermore, while we are grateful for Professor Rubenstein's aid in the disposition of this case, we conclude that awarding fees from the common fund based on our own appointment of counsel is inappropriate.

Accordingly, it is hereby ORDERED that Professor Rubenstein's motion seeking attorney's fees is DENIED. Professor Rubenstein's motion for reimbursement of expenses is GRANTED. He is directed to submit receipts for expenses incurred so that we may review them.

For The Court:
Catherine O'Hagan Wolfe, Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

 Catherine O'Hagan Wolfe



 Catherine O'Hagan Wolfe