

ORIGINAL

In the Supreme Court of Ohio

STATE OF OHIO, ex rel. MICHAEL
DEWINE, ATTORNEY GENERAL, et al.

Petitioners,

v.

GMAC MORTGAGE, LLC, et al.

Respondents.

: Case No. 2011-0890
:
: On Review of Certified Questions from
: the United States District Court for the
: Northern District of Ohio
:
: U.S. District Court Case
: Nos. 3:10-cv-02537, 1:10-cv-02709
:
:

NOTICE OF ANTICIPATED SETTLEMENT BY PETITIONER OHIO ATTORNEY GENERAL MICHAEL DEWINE

JEFFREY LIPPS* (0005541)
**Counsel of Record*
DAVID A. WALLACE (0031356)
Carpenter, Lipps & Leland
280 North High Street, Suite 1300
Columbus, OH 43215
614-365-4100
614-365-9145 fax
lipps@carpenterlipps.com

Counsel for Respondent GMAC Mortgage,
LLC

RICHARD M. KERGER* (0015864)
**Counsel of Record*
KHARY HANIBLE (0077095)
Kerger & Hartmann, LLC
33 South Michigan, Suite 100
Toledo, OH 43604
419-255-5990
419-225-5997 fax
rkerger@kergerlaw.com

Counsel for Respondent Jeffrey Stephan

MICHAEL DEWINE (0009181)
Attorney General of Ohio

ALEXANDRA T. SCHIMMER* (0075732)
Solicitor General
**Counsel of Record*

DAVID M. LIEBERMAN (0086005)
Deputy Solicitor
SUSAN A. CHOE (0067032)
JEFFREY R. LOESER (0082144)
Assistant Attorneys General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
alexandra.schimmer@ohioattorneygeneral.gov

Counsel for Petitioner
Ohio Attorney General Michael DeWine

FILED
FEB 06 2012
CLERK OF COURT
SUPREME COURT OF OHIO

RICHARD E. HACKERD* (0055306)

**Counsel of Record*

1370 Ontario St., Suite 2000

Cleveland, Ohio 44113

(216) 241-8282

866-201-0249 fax

Richard@Hackerd.com

PHILLIP F. CAMERON* (0033967)

**Counsel of Record*

441 Vine St., Suite 4300

Cincinnati, Ohio 45202

513-421-4343

513-381-4757 fax

pfclaw@gmail.com

Counsel for Petitioner Louis Blank, et al.

**NOTICE OF ANTICIPATED SETTLEMENT BY PETITIONER
OHIO ATTORNEY GENERAL MICHAEL DEWINE**

The Attorney General informs the Court that he expects to settle the pending claims against GMAC in the near future.

As the Court is aware, the Attorney General filed suit against GMAC, alleging violations of Ohio's Consumer Sales Practices Act ("CSPA") and common law fraud. GMAC removed the case to federal court, which certified three questions of state law to this Court regarding the scope of the CSPA. *See State v. GMAC*, No. 3:10-cv-2537 (N.D. Ohio). Last week, several large mortgage servicing companies—including GMAC—proposed a final settlement offer to the attorneys general of all 50 States. Under the proposal's terms, the state attorneys general would agree to dismiss certain pending civil claims against these mortgage servicers, including the claims raised in this matter.

Late this afternoon, the Attorney General indicated his preliminary intent to accept the settlement offer, the terms of which will be disclosed to the public in the coming week. All participants will then finalize the settlement and submit it for approval to a federal district court. If approved, the Attorney General would seek dismissal of his pending CSPA and fraud claims against GMAC.

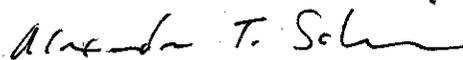
These events, should they occur, will not affect this Court's ability to answer the district court's certified questions. A group of private homeowners have sued GMAC under similar statutory and common law theories, and the federal district court consolidated their litigation with the Attorney General's. *See Blank v. GMAC Mortgage*, No. 1:10-cv-2709 (N.D. Ohio). That case will proceed, even if the settlement agreement between Attorney General and GMAC is finalized and approved by the court. For this reason, the district court's certified questions still present a live dispute, and the Court should resolve them.

Furthermore, this Court should still convene for oral argument on February 8. The certified questions remain of utmost importance to the Attorney General, who has special enforcement powers under the CSPA and potential claims against mortgage servicers who are not parties to the settlement. The questions also remain critical to the homeowners (who wish to proceed with their civil claims) and the mortgage servicing industry (which needs to understand the scope of its responsibilities under the CSPA). The parties have briefed the certified questions and are prepared to proceed. Any delay would also impair other tribunals. A number of lower state and federal courts have stayed their proceedings, waiting for an answer from this Court on the CSPA's applicability to the mortgage servicing industry.

But given the likelihood of settlement with GMAC in the near future, the Attorney General intends to appear at oral argument in the posture of an *amicus curiae*, reflecting the fact that the Attorney General's interest in the certified questions remains concrete and substantial even as the claims against this specific servicer are likely to be settled soon. And when a final agreement is reached by the parties and approved by a court, the Attorney General will file a motion with this Court, seeking a formal change in his status from "petitioner" to "*amicus curiae*."

Respectfully submitted,

MICHAEL DEWINE (0009181)
Attorney General of Ohio



ALEXANDRA T. SCHIMMER* (0075732)
Solicitor General

**Counsel of Record*

DAVID M. LIEBERMAN (0086005)
Deputy Solicitor

SUSAN A. CHOE (0067032)

JEFFREY R. LOESER (0082144)

Assistant Attorneys General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

alexandra.schimmer@ohioattorneygeneral.gov

Counsel for Petitioner

Ohio Attorney General Michael DeWine

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Anticipated Settlement by Petitioner Ohio Attorney General Michael DeWine was served by U.S. mail this 6th day of February, 2012 upon the following:

Jeffery Lipps
David A. Wallace
Carpenter, Lipps & Leland
280 North High St., Suite 1300
Columbus, OH 43215

Counsel for Respondent GMAC
Mortgage, LLC

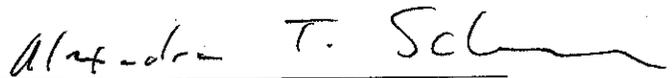
Richard M. Kerger
Khary Hanible
Kerger & Hartmann, LLC
33 South Michigan, Suite 100
Toledo, OH 43604

Counsel for Respondent Jeffrey Stephan

Richard E. Hackerd
1370 Ontario Street
Suite 2000
Cleveland, Ohio 44113

Phillip F. Cameron
441 Vine Street
Suite 4300
Cincinnati, Ohio 45202

Counsel for Petitioner Louis Blank, et al.



Alexandra T. Schimmer
Solicitor General