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## Barroway Topaz Scores Major Appellate Reversal in Homeowner Reinsurance Class Action against Countrywide

*Third Circuit Court of Appeals clarifies RESPA anti-kickback provision; allows homeowners' lawsuit to continue against Countrywide and its captive reinsurer; plaintiffs seek treble damages for alleged sham reinsurance coverage; not a single claim paid out on nearly \$900 million in homeowner premiums*

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PHILADELPHIA (October 29, 2009) – The U.S. Court of Appeals for the Third Circuit has green lighted a proposed class action brought by homebuyers against mortgage lender **Countrywide Financial Corp.** and its affiliated reinsurer, Balboa Reinsurance Co. The ruling by a three-judge panel in Philadelphia reverses an Eastern District of Pennsylvania order that had granted Countrywide's motion to dismiss.

**Barroway Topaz Kessler Meltzer & Check, LLP** filed suit in December 2006 on behalf of a group of national homebuyers who took out mortgages from Countrywide. In their proposed class action, plaintiffs allege that Countrywide orchestrated a massive reinsurance kickback scheme potentially affecting hundreds of thousands of borrowers in clear violation of the Real Estate Settlement Procedures Act (RESPA).

The Third Circuit noted that Countrywide required homebuyers who took out mortgages with less than a 20% down payment to obtain private mortgage insurance, which could only be obtained from one of seven insurers approved by the lender. According to the complaint, the insurers were selected for each borrower by Countrywide without regard to price, terms or quality of the policy. Instead, the insurer was assigned to each borrower on a simple rotating referral fee basis.

Countrywide then required the assigned carrier to reinsure its policy with Balboa, a Countrywide subsidiary also known as a "captive reinsurer." In its decision, the Third Circuit panel noted that the reinsurance premiums were alleged to be "kickbacks to Countrywide by the primary insurer, in return for Countrywide's referral..." According to plaintiffs' calculations, from 2000 through 2006 Balboa collected \$892 million in reinsurance premiums and paid nothing in claims.

As a result of this alleged scheme, borrowers were overcharged for mortgage insurance and subjected to home loan settlement services tainted by unlawful kickbacks and non-competitive referrals. Under the RESPA statute, plaintiffs and the putative class of affected Countrywide borrowers could be entitled to treble damages equal to three times the amount paid for their private mortgage insurance.

The lower district court had dismissed plaintiffs' claims in 2008, holding that the homeowners did not satisfy the injury-in-fact standing requirement of Article III of the U.S. Constitution. On appeal, the Third Circuit reversed and allowed the case to go forward. The court found that RESPA authorizes suits by individuals who receive a loan accompanied by an alleged kickback, and such suits would meet the Article III standing requirement.

The Third Circuit also rejected defendants' argument that plaintiffs' claims should be barred by the "filed rate" doctrine, which provides that a rate filed with a governing regulatory agency is unassailable in judicial proceedings. "It goes without saying that if we were to find that the filed rate doctrine bars the plaintiffs claims, we would effectively be excluding PMI from the reach of RESPA, a result plainly unintended by Congress," Circuit Judge Maryanne Trump Barry wrote.

**Edward W. Ciolko**, a partner with Barroway Topaz, argued the plaintiffs' case before the appeals court. "We are pleased with the Court's ruling to allow the case to be heard," he said. "The decision upholds borrowers' statutory right under RESPA to receive a loan or referral services untainted by kickbacks."

He added: "The decision is a vindication of the basic purpose of the RESPA statute, to protect borrowers from abusive business practices. Consumers faced with inherently opaque real estate settlements have the right under RESPA to be compensated if they are subjected to practices such as kickbacks or unearned closing fees. These abusive practices eliminate competition and increase prices over time, and they are what RESPA is specifically intended to address."

"We're pleased to be able to move forward with this case and others that challenge these practices."

Several other cases brought by Barroway Topaz alleging PMI kickbacks had been stayed pending the decision of the Third Circuit in the Countrywide matter. These include litigation against **Washington Mutual**, **GMAC** and **Wells Fargo** for their own roles in violating RESPA through their own captive PMI reinsurance schemes.

In addition to Mr. Ciolko, the Barroway Topaz team included **Joseph H. Meltzer**, **Donna S. Moffa** and **Terence S. Ziegler**. The case caption is *Alston v. Countrywide Financial Corporation*, No. 08-4334.

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*Note:* **Barroway Topaz Kessler Meltzer & Check, LLP** represents institutional investors and shareholders internationally in securities class actions, corporate governance actions, as well as ERISA, consumer, antitrust and derivative litigation. The firm has recovered billions of dollars for shareholders in the last five years and has been named among the top firms for shareholder recovery by RiskMetrics Group every year since 2003. For more information, please visit: [www.btkmc.com](http://www.btkmc.com).

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