

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

**FILED**

OCT 25 2016

CLERK OF CIRCUIT COURT #9  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

WILLIAM TENNISON, individually, et al., )  
and on behalf of all others similarly situated, )

Plaintiffs, )

v. )

MARION BASS SECURITIES )  
CORPORATION, et al. )

Defendants. )

Case No. 01-L-000457

**ORDER GRANTING PROVISIONAL CLASS CERTIFICATION AND  
PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT**

On October 17, 2016, Plaintiffs and Defendant Wells Fargo Bank, N.A. filed a Joint Motion for Preliminary Approval of Class Action Settlement. The Court, having reviewed the Joint Motion and its exhibits, the Class Action Settlement Agreement (the "Settlement Agreement") and its exhibits, the pleadings and other papers on file in this action, and statements of counsel, hereby GRANTS the Motion in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Court adopts and incorporates by reference herein the definitions and capitalized defined terms appearing in the Settlement Agreement. Reference to the Settlement Agreement includes all exhibits appended thereto.

2. Solely to assist implementation of the Parties' Settlement Agreement, the Court grants Plaintiffs' motion, filed concurrently herewith, for leave to file the Fourth Amended Complaint. If the Settlement Agreement is terminated for any reason, or if Final Approval of the settlement is not obtained for any reason, then the Fourth Amended Complaint will be stricken

without the necessity of further action or order by the Court, and the Third Amended Complaint will be reinstated automatically in its place.

3. The Court preliminarily approves the proposed settlement and will schedule a Final Hearing on its final approval.

4. Pursuant to 735 ILCS 5/2-802, the Court provisionally certifies the following class for settlement purposes only:

All of those persons or entities who ever purchased, owned, or otherwise acquired any of the revenue bonds issued between February 1, 1996 and December 11, 1998 by state or municipal economic development agencies for the cities of: Lawrence, Indiana; Princeton, Wisconsin; Manitowoc, Wisconsin; Gillett, Wisconsin; Wautoma, Wisconsin; Riverview, Michigan; Bangor, Michigan; and Redford, Michigan, with the Malachi Corp., Inc., as Obligor. Excluded from the Settlement Class are (a) Wells Fargo and all of its employees, directors, officers, and legal representatives; (b) all Court employees; and (c) Class Counsel and all of their respective employees, directors, officers, and legal representatives.

5. The Court further provisionally finds that, for settlement purposes only, the prerequisites to a class action under 735 ILCS 5/2-801 are satisfied in that:

- a. there are hundreds, if not thousands, of geographically dispersed Settlement Class members, making joinder of all members impracticable;
- b. there are questions of law and fact common to the Settlement Class;
- c. the claims or defenses of the proposed Settlement Class representative are typical of the claims or defenses of the Settlement Class;
- d. the proposed Settlement Class representative will fairly and adequately protect the interests of the Settlement Class, and has retained counsel experienced in class action litigation who have, and will continue to, adequately represent the Settlement Class;

- e. questions of law or fact common to Settlement Class members predominate over any questions affecting only individual members; and
- f. a class action is superior to individual actions or other available methods for fairly and efficiently adjudicating the controversy.

6. The Court finds that the Settlement Agreement has been reached as a result of intensive, comprehensive, serious, and non-collusive arms-length negotiations, and that the Parties are able to reasonably evaluate their respective positions after many years of litigation. The Court further finds that settlement at this time will avoid substantial additional costs to the Parties, as well as the uncertainty and risks inherent in continued litigation of the claims and defenses in this case. The Court has reviewed the benefits provided pursuant to the Settlement Agreement, and recognizes the significant value of such benefits to Class Members.

7. The Court, therefore, preliminarily finds that the Parties' proposed settlement is fair and reasonable to the Settlement Class and thus preliminarily approves all terms of the Settlement Agreement. The Court further finds that there is a sufficient basis to notify Class Members of the proposed settlement and to schedule the Final Hearing.

8. The Court provisionally appoints William Tennison as representative of the Settlement Class.

9. The Court provisionally appoints the law firms of Motley Rice, LLC (Fred S. Thompson, III, and William S. Norton) and Lucco, Brown, Threlkeld & Dawson, LLP (J. William Lucco and Christopher J. Threlkeld) as Class Counsel to the Settlement Class.

10. Any Class Member may enter an appearance in this action, at his, her, or its expense, individually or through counsel of his, her, or its choice. Any Class Member who does not enter his, her, or its appearance separately will be represented by Class Counsel.

11. The Court appoints RG/2 Claims Administration LLC to serve as the Settlement Administrator. The Court also directs Wells Fargo to disburse, within 20 days after entry of this Preliminary Approval Order, the sum of \$30,000.00 to the Settlement Administrator, as the Initial Costs Advance to be deducted from the WF Contribution. The Court further directs the Settlement Administrator to utilize the Initial Costs Advance to pay for the costs of the Class Notice, the Publication Notice, and all other Settlement Costs incurred through the date the Class Notice is mailed and the Publication Notice is published. As provided in the Settlement Agreement, the Initial Costs Advance is part of, and a credit against, the WF Contribution.

12. The Court approves the Class Notice, attached as Exhibit 2 to the Settlement Agreement, and directs the Settlement Administrator to mail the Class Notice to Class Members who are holders of Bonds of record as of the date this Order is entered. Such mailing should occur within 28 days after entry of this Preliminary Approval Order. The Settlement Administrator is further directed to include a link to the Class Notice on the Settlement Website.

13. The Court approves the Publication Notice, attached as Exhibit 3 to the Settlement Agreement, and directs the Settlement Administrator to publish the Publication Notice in *The Wall Street Journal* and *P.R. Newswire*, also within 28 days after entry of this Preliminary Approval Order. One week later, the Settlement Administrator is directed to publish the Publication Notice in *Investor's Business Daily*.

14. Pursuant to 735 ILCS 5/2-803 and 5/2-806, the Court finds that the mailing of the Class Notice and publication of the Publication Notice, as provided in Paragraphs 12-13 above: (a) is the best practicable notice to Class Members under the circumstances; (b) is reasonably calculated to apprise Class Members of the proposed settlement and of their right to object or to exclude themselves as provided in the Settlement Agreement; (c) is reasonable and constitutes

due, adequate, and sufficient notice to all persons entitled to receive notice; and (d) meets all applicable requirements of due process and any other applicable requirements. No later than January 17, 2017, Class Counsel will file with the Court one or more affidavits or declarations confirming compliance with the foregoing mailing and publication requirements.

15. The Court finds that the proposed Proof of Claim Form attached as Exhibit 6 to the Settlement Agreement is clear, succinct, and fair, and imposes no undue burdens on eligible Class Members who may seek to participate in the monetary Distribution contemplated by the proposed settlement. The Proof of Claim Form is therefore approved, and the Settlement Administrator is directed to (a) include the Proof of Claim Form in the mailing of the Class Notice as specified in paragraph 12 above, and (b) include a link to the Proof of Claim Form on the Settlement Website.

16. Each Class Member will have the right to be excluded from the Settlement Class by mailing an Opt Out Request to Class Counsel and counsel for Wells Fargo. To be valid and considered by the Court, an Opt Out Request must (a) set forth the full name, mailing address, email address, and telephone number of the Class Member; (b) be signed by the individual Class Member, or an authorized representative of the Class Member; (c) state clearly that the Class Member wishes to be excluded from the Settlement Class; (d) identify the types and amount of the Bonds purchased by the Class Member, the date(s) of all such purchases and the date(s), if any, that the Class Member sold any Bonds; and (e) be postmarked no later than January 31, 2017. Any Class Member who does not timely submit a valid Opt Out Request satisfying these requirements will be treated as not having requested exclusion from the Settlement Class and will therefore remain a Class Member and a Settling Plaintiff for all purposes. Class Members cannot submit a valid Opt Out Request by telephone, facsimile, or email. No later than 5 days

prior to the Fairness Hearing, Class Counsel will file a report with the Court of all persons or entities who have timely and validly requested exclusion from the Settlement Class.

17. Any Class Member who does not properly and timely submit an Opt Out Request as provided in Paragraph 16 above will, if the proposed settlement receives final approval, be bound by the terms and provisions of the proposed settlement, including but not limited to the releases, waivers, and covenants described in the Settlement Agreement, whether or not such person or entity objected to the Settlement Agreement and whether or not such person or entity makes a claim upon any settlement funds.

18. Each Class Member who has not submitted a valid and timely Opt Out Request will have the right to object to the proposed settlement by mailing a written Objection to the Court, Class Counsel, and counsel for Wells Fargo. To be valid and considered by the Court, an Objection must (a) set forth the full name, mailing address, email address, and telephone number of the Class Member; (b) be signed by the Class Member or an authorized representative of the Class Member; (c) identify the specific settlement provisions or terms being challenged, together with an explanation of the basis or reason for the objection, including any legal support and/or evidence (including witnesses) that such Class Member wishes to bring to the Court's attention; (d) identify the types and amount of Bonds purchased by the Class Member, the date(s) of all such purchases, and the date(s), if any, the Class Member sold any Bonds; and (e) be postmarked no later than January 31, 2017. Class Members cannot validly object to the proposed Settlement by telephone, facsimile, or email. The Court will not consider objections by Class Members which are not timely and properly mailed and served, or which do not include the information specified in this Paragraph 18.

19. Any Class Member, including but not limited to any who timely mail and serve a valid Objection in accordance with Paragraph 18 above, may appear at the Final Hearing, either in person or through counsel retained at such Class Member's expense. Any Class Member who desires to appear and be heard must file a Notice of Intent to Appear with the Court no later than February 10, 2017, and serve copies of the Notice of Intent to Appear on Class Counsel and counsel for Wells Fargo. The Notice of Intent to Appear must include the Class Member's name, address, telephone number, signature, and the number and dollar value of Bonds the Class Member purchased, owned, or otherwise acquired. A Class Member who fails to timely file and serve a Notice of Intent to Appear with the required information will not be permitted to present evidence and/or argument at the Final Hearing.

20. All persons or entities who certify that they are members of the Settlement Class, choose not to exclude themselves from the Settlement Class, and seek to participate in the proposed monetary Distribution to Settlement Class Members ("Claimants") must (a) provide full and accurate responses to all of the information requested in the Proof of Claim Form, (b) sign the Proof of Claim Form, and (c) mail the fully completed and signed Proof of Claim Form to the Settlement Administrator, postmarked no later than April 21, 2017. Claimants cannot validly submit a Proof of Claim Form (or provide the information required by the Proof of Claim Form) by telephone, facsimile, or email. Proof of Claim Forms bearing a postmark after the foregoing postmark deadline, or improperly submitted by telephone, facsimile, or email, will be rejected and will not be considered for participation in the Distribution of settlement funds to Claimants if the Court ultimately grants final approval to the settlement.

21. Within 10 days after entry of this Preliminary Approval Order, Class Counsel will provide written notice to Wells Fargo of the financial institution and the specific money market

account in which the settlement funds to be contributed by Wells Fargo will be held in the event that the Court ultimately grants final approval to the settlement.

22. If the Settlement Agreement is terminated for any reason, or if the Settlement Agreement does not obtain Final Approval for any reason, then:

- a. the Settlement Agreement will become null and void and be of no force or effect whatever, and the Parties will be absolved from all obligations under the Settlement Agreement;
- b. the Settlement Agreement, along with all drafts thereof and all exhibits thereto, and all discussions, negotiations, documentation, and all other parts or aspects of the Parties' settlement discussions, whether before or after execution of the Settlement Agreement, will have no effect, will not be deemed an admission of any kind or nature by any Party, will not be admissible evidence, and will not be referred to by any Party for any purpose in this case or otherwise;
- c. all awards, orders or judgments entered pursuant to the Settlement Agreement will be null and void and of no force or effect and will be vacated automatically, without further action or order by this Court, immediately upon any Party providing notice to the Court that the Settlement Agreement has been terminated or that Final Approval has not been obtained; and
- d. this case will revert to its pre-settlement status; and
- e. the Parties will have all rights, claims, and defenses that they had or were asserting prior to entering into the Settlement Agreement, and will stand in



the same position as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

23. If the Settlement Agreement is terminated for any reason, or if the Settlement Agreement does not obtain Final Approval for any reason, then no class will be deemed certified as a result of, or pursuant to, the Settlement Agreement. In that event, this Order provisionally certifying the Settlement Class will be vacated automatically, without further action or order by this Court, immediately upon any Party providing notice to the Court that the Settlement Agreement has been terminated or that Final Approval has not been obtained. In such circumstance, Wells Fargo will not be deemed to have consented to certification of any class, for purposes of settlement or otherwise, and this case will proceed as though the Settlement Class had never been proposed or provisionally certified, without prejudice to any Party thereafter to request or oppose class certification. Further, Wells Fargo will retain all rights to object to or oppose any motion for class certification of any class or subclass on any ground, including but not limited to certification of a class identical to that defined in the current proposed Settlement Class. Wells Fargo will also retain all rights to seek decertification of the class previously certified by the Court on November 29, 2010, for any reason and on any ground.

24. The Court will conduct the Final Hearing on February 21, 2017 at 1:30 p.m. The Final Hearing will be conducted to determine the following:

- a. Whether the proposed Settlement is fair, reasonable, and adequate and should receive the Court's final approval;
- b. Whether a Final Approval Order should be entered (1) dismissing the Litigation and all Claims with prejudice; (2) approving all covenants and releases to be provided by the Settlement Class, all Class Members, Wells

Fargo, and all potential joint tortfeasors, and (3) directing that the Settlement Class and all Class Members be forever barred from commencing, instituting, prosecuting, maintaining, or supporting any and all Released Claims against Wells Fargo;

- c. Whether the Distribution Plan proposed by Class Counsel and attached as Exhibit 5 to the Settlement Agreement is fair, reasonable, and adequate and should be approved by the Court;
- d. Whether a Fee and Expense Award for attorney's fees and litigation costs should be awarded and, if so, to whom and in what amount;
- e. Whether the Incentive Awards to the present and former class representatives should be approved and, if so, in what amount;
- f. Whether a class should be finally certified for settlement purposes only; and
- g. Such other matters as the Court may deem appropriate.

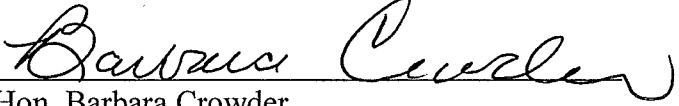
25. All briefs, memoranda, and other documents in support of final approval of the proposed settlement are to be filed no later than January 17, 2017, including (a) the application for the Fee and Expense Award, (b) the application for the Incentive Awards, (c) the application for payment of any Settlement Costs incurred and not paid following entry of the Preliminary Approval Order, and (d) the proposed Final Approval Order.

26. Any opposition to the proposed settlement or any of its components (including, but not limited to, the Settlement Costs, the Fee and Expense Award, the proposed Distribution Plan, and the proposed Final Approval Order) is to be filed no later than January 31, 2017.

27. All responses to Objections, and all reply memoranda in support of the Parties' proposed settlement, are to be filed no later than February 14, 2017.

28. The Court has and retains exclusive jurisdiction over this action to consider all further matters arising out of or connected to the proposed settlement.

IT IS SO ORDERED.

  
Hon. Barbara Crowder  
Circuit Judge  
Circuit Court for the Third Judicial Circuit

Date: October 25, 2016

Copies to: Fred Thompson III, Esq.  
William S. Norton, Esq.  
Christopher Threlkeld, Esq.  
David Wells, Esq.  
Michael J. Morris, Esq.  
Catherine A. Schroeder, Esq.