

THIS IS AN IMPORTANT LEGAL NOTICE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

LEONARD BECKER, on behalf of himself and all those similarly situated,	:	
	:	CIVIL ACTION
	:	NO. 11-cv-6460
Plaintiff,	:	(consolidated with No. 12-6412)
	:	
v.	:	
	:	
THE BANK OF NEW YORK MELLON TRUST	:	
COMPANY, N.A. and J.P. MORGAN TRUST	:	
COMPANY, NATIONAL ASSOCIATION,	:	
	:	
Defendants.	:	

NOTICE OF PENDENCY OF CLASS ACTION

TO: ALL PERSONS OR ENTITIES WHO PURCHASED OR OTHERWISE ACQUIRED THE BONDS IDENTIFIED AS THE BOROUGH OF LANGHORNE MANOR HIGHER EDUCATION AND HEALTH AUTHORITY HOSPITAL REVENUE BONDS, SERIES OF 1992 (THE LOWER BUCKS HOSPITAL), AND WHO ARE HOLDERS OF AN ALLOWED CLASS A3 CLAIM PURSUANT TO SECTION 5.1.3.(A)(ii) OF THE PLAN FOR REORGANIZATION OF LOWER BUCKS HOSPITAL, WHICH PLAN WAS CONFIRMED UNDER CHAPTER 11 OF THE BANKRUPTCY CODE.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.
YOUR RIGHTS MAY BE AFFECTED BY THIS LITIGATION.

PURPOSE OF THIS NOTICE

This Notice is being sent to advise Class members of the pendency of the above-captioned class action lawsuit (the “Action”) pursuant to Rule 23 of the Federal Rules of Civil Procedure and of their rights with respect thereto. If you are a Class member, your rights may be affected by the Action referred to as *Becker v. The Bank of New York Mellon Trust Company, N.A., et al.*, No. 11-6460 (consolidated with No. 12-6412), which is now pending before the United States District Court for the Eastern District of Pennsylvania (the “Court”). This Action is being prosecuted by the class representative, Leonard Becker (“Becker”), on behalf of himself and others similarly situated, and is pending against The Bank of New York Mellon Trust Company, N.A. (“BNYM”) and J.P. Morgan Trust Company National Association (“J.P. Morgan”) (together, the “Defendants”).

THERE HAS BEEN NO JUDGMENT ENTERED OR SETTLEMENT REACHED IN THE ACTION AND YOU ARE NOT CURRENTLY ENTITLED TO RECEIVE A PAYMENT FROM THIS ACTION. THIS NOTICE IS NOT TO BE UNDERSTOOD AS AN EXPRESSION OF ANY

OPINION FROM THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY THE PLAINTIFF OR THE DEFENDANTS. THIS NOTICE MERELY INFORMS YOU THAT THE ACTION IS PENDING AND THAT YOU MAY BE A MEMBER OF THE CLASS, AND THAT YOU HAVE CERTAIN RIGHTS WITH RESPECT TO THE ACTION, AS MORE FULLY DESCRIBED IN THIS NOTICE.

By Order dated October 5, 2016, the Court determined that this lawsuit may proceed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. You received this Notice because you have been identified as a potential member of the Class. This Notice only advises you of the existence of the Action and of your rights if you are a member of the Class. If you received this Notice in error and you are not a member of the Class, you do not need to take any action and your rights will not be affected.

THE CLASS

On October 5, 2016, the Court certified the litigation to proceed as a class action and Leonard Becker as the class representative. The Class is defined as:

All persons or entities who purchased or otherwise acquired the bonds identified as the Borough of Langhorne Manor Higher Education and Health Authority Hospital Revenue Bonds, Series of 1992 (The Lower Bucks Hospital), and who are holders of an allowed Class A3 claim pursuant to Section 5.1.3(A)(ii) of the Plan for Reorganization of Lower Bucks Hospital, which plan was confirmed under Chapter 11 of the Bankruptcy Code.

In accordance with ¶¶ 1.30, 1.45 and 10.11 of the Plan of Reorganization of Lower Bucks Hospital, and the Confirmation Order (10-cv-10239, ECF 1538), the record date for holders of an allowed Class A3 is December 7, 2011.

Excluded from the class are Defendants and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant and any officers and directors thereof.

The ruling by the Court certifying the Class does not in any way address the merits of the Action. Rather, the certification of the Class means only that the ultimate outcome of the Action – whether favorable or unfavorable to the Plaintiff or the Defendants – will apply in like manner to each Class member who does not timely elect to be excluded from the Class.

DESCRIPTION OF THE CLASS ACTION

Status of the Litigation

Plaintiff Becker, individually and on behalf of other holders of revenue bonds issued for the benefit of Lower Bucks Hospital (“LBH”), sued Defendants BNYM and J.P. Morgan as successive Indenture Trustees under multi-party agreements that created the bond financing transaction at issue. LBH filed for protection under Chapter 11 of the Bankruptcy Code on January 13, 2010, and then challenged the bondholders’ security interest in the assets of LBH that were to secure the bond debt, contending that the security interest in the collateral had become unperfected. BNYM filed a proof of claim in which it claimed the amount due under the bonds was \$25,906,294.98 (plus amounts that continued to accrue post-petition, including interest, compensation, fees, costs, and expenses under the indenture, the loan agreement, and all related documents), which it asserted as a secured claim in the amount of the value of the collateral. The proof of claim listed that value as “no less than” \$15.3 million. BNYM contends that the amount listed was based on the statements of LBH regarding its available cash and the value of its accounts receivable.

In an adversary proceeding in LBH's bankruptcy, LBH and BNYM resolved their dispute by entering into a settlement agreement.

The settlement agreement allowed BNYM's claim as a secured claim in the amount of \$8,150,000, plus the amounts remaining in the reserve and debt service funds that BNYM maintained on behalf of the bondholders, which totaled \$2,202,047 as of January 13, 2010, the date LBH filed for bankruptcy. The settlement agreement also included a provision that would have released BNYM from liability to the bondholders arising out of the perfection of security interest issue. Becker filed an objection to confirmation of LBH's Plan of Reorganization (the "Plan") based only on the inclusion of that release language. The Bankruptcy Court agreed and struck the language from the Plan. Among other things, the Bankruptcy Court ruled that the notice to bondholders about the settlement of the dispute with LBH did not adequately disclose the inclusion of the release, and the Court could therefore not approve the release. BNYM appealed the Bankruptcy Court's decision to the United States District Court for the Eastern District of Pennsylvania, which affirmed the Bankruptcy Court's decision. BNYM again appealed, to the Court of Appeals for the Third Circuit, which affirmed the District Court's decision.

On January 19, 2012, the Plan became effective. On January 24, 2012, BNYM received a cash distribution of the funds allowed under the Plan (and subject to the provisions of the Plan) in the amount of \$8,150,000. BNYM also had been holding the reserve and debt service funds. BNYM has made no distributions to bondholders since that date.

Plaintiff Becker's first suit ("*Becker I*") alleges that Defendants breached their fiduciary and contractual duties to the bondholders by failing to maintain a perfected security interest in the collateral securing the bonds. The complaint alleges that the bondholders were awarded less in LBH's bankruptcy than the value of the assets securing the bondholders' debt, which they would have been entitled to receive if the security interest had been perfected. Becker's second suit ("*Becker II*") seeks a declaratory judgment that the bondholders are entitled to prompt disbursement of the funds allowed under the Plan, and that Defendant BNYM is not entitled to deduct from those funds any amounts that it incurred as a defendant in the bankruptcy proceedings or in this litigation. *Becker II* seeks equitable remedies: an injunction compelling BNYM to distribute funds to the bondholders, an accounting of those funds, damages for conversion and for money had and received, and for punitive damages. (*Becker I* and *Becker II* have been consolidated.)

Defendants argue that they had no duty to ensure the lien's perfection because the indenture imposes that obligation on the hospital and the municipal authority that issued the bonds for the hospital, not on the Defendants as indenture trustees. Defendants also argue that the bondholders' recovery under the Plan was not reduced as a result of the lien issue, because the bondholders received all of the funds available in the bankruptcy for the secured creditors of the hospital. Defendants also argue (a) that they are entitled to indemnification by the hospital and municipal authority under the bond documents, including for defense costs; (b) that the bond documents and the Plan allow Defendants to deduct this indemnification from the bankruptcy recovery; and (c) that the Plan preserved these indemnity rights.

Discovery in the consolidated actions was completed on October 10, 2014. The parties thereafter filed cross-motions for summary judgment. By order dated March 23, 2016, the Court granted in part and denied in part the motions. As to the claims in *Becker I*, the Court ruled that the "Defendants owed actionable fiduciary duties to the bondholders." The Court also ruled that the contract language relevant to the issue of the scope of the Defendants' contractual duties is ambiguous and must be decided at trial.

As to the claims in *Becker II*, the Court ruled that, contrary to Defendants' claim, the "Defendants had no rights under [LBH's] Plan of [Reorganization]" or under the "Bond Documents to be indemnified and

exercise a first-priority charging lien for expenditures incurred by BNYM's defense of this consolidated litigation." The District Court also ruled that "Defendants had no rights ... to be indemnified and exercise a first-priority lien for expenditures incurred after January 19, 2012, by BNYM's on-going efforts to make the third party release part of the Plan in the bankruptcy case, and its appeals of the bankruptcy court's denial of confirmation of the third party release." As to those expenses incurred before January 19, 2012, the District Court left it to the jury to decide to what extent, if any, Defendants had rights to be indemnified and exercise a first-priority lien. Defendants believe the District Court's rulings in regard to the deduction of BNYM's fees and expenses and the extent to which it is entitled to indemnification are based on error and have indicated they will appeal those rulings.

The Court also granted Plaintiff's motion for summary judgment on Defendants' counterclaim against the Plaintiff in which Defendants sought indemnification of its fees and expenses from the bondholders' funds or, alternatively, from Plaintiff Becker, for expenditures incurred in the defense of this litigation. The Court denied summary judgment on all other issues, leaving those issues for trial. By order dated September 30, 2016, the Court denied Defendants' motion for reconsideration of the Court's summary judgment ruling.

On October 5, 2016, the Court granted Plaintiff's motion for class certification, certifying the class defined above. Defendants thereafter sought permission to appeal the class certification order under Rule 23(f) of the Federal Rules of Civil Procedure. The Court of Appeals for the Third Circuit has denied Defendants' petition asking for permission to appeal the class certification decision, though challenges to certification may be raised, along with challenges to other aspects of the Court's rulings to date, in a later appeal.

A trial date for the Action has not been scheduled. The anticipated trial in this matter will resolve, on behalf of the entire Class, issues, claims, and defenses over whether Defendants breached any fiduciary or contractual duty owed to bondholders as a result of the alleged imperfection of the bonds' security interest in a manner that caused the bondholders to incur loss or damage. If it is proven that a breach of duty did cause loss or damage, then the extent and measure of the loss or damage will be resolved. Moreover, the trial will resolve on behalf of the entire Class whether Defendants are permitted to withhold amounts from the settlement funds that would otherwise have been paid to the bondholders and, if so, the amount to be withheld.

Identification of Class Counsel

The Court has appointed the following law firm to serve as Class Counsel on behalf of the Class in this litigation:

CLASS COUNSEL
BARRACK, RODOS & BACINE
Daniel E. Bacine
Lisa M. Port
3300 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103

HOW TO PARTICIPATE IN THIS CLASS ACTION

If you fall within the definition of the Class set forth above, you are a member of the Class. **IF YOU WISH TO REMAIN A MEMBER OF THE CLASS, YOU DO NOT NEED TO DO ANYTHING AT THIS TIME.** As a Class member, you will be bound by any judgment in or settlement of this Action, whether

favorable or unfavorable to the Class. In the event of a settlement or favorable monetary judgment, you will receive notice of such a settlement or judgment and will have the opportunity to submit a Proof of Claim to participate in the recovery. On the other hand, you will also be legally bound by any unfavorable order or judgment, and will not be permitted to sue, or be party of, any other lawsuit against Defendants for the claims asserted in the Action. **No settlement has occurred and no final judgment has been entered at this time.**

Class Counsel and the class representative appointed by the Court will represent the Class on behalf of all Class members. Class Counsel has agreed to pursue this Action on a contingent fee basis. All attorneys' fees and expenses will be payable only out of a recovery by the Class, if any. Unless you hire your own lawyer, you will not have to separately pay lawyers any additional amounts, and will not be obligated to pay any judgment, court costs, or lawyers' fees for participating in this Class Action.

Class members who do not request exclusion from the Class may also enter an appearance through their own counsel hired at their own expense.

HOW TO BE EXCLUDED FROM THE CLASS

If you wish to be excluded from the Class, you must submit a request for exclusion in accordance with the instructions in the next paragraph. If you choose to be excluded: (1) you will NOT be entitled to share in a recovery from any settlement or judgment, if any, that may be paid to members of the Class as a result of a trial in this Action; (2) you will NOT be bound by the terms of any settlement or judgment entered in this lawsuit; and (3) at your own expense, you MAY pursue any claims that you have by filing your own lawsuit or taking other action.

To be excluded, a person shall mail, by first class mail, a written request for exclusion from the Class, postmarked no later than, November 14, 2017 addressed to "Becker v. Bank of New York Mellon Litigation, c/o Heffler Claims Group LLC, 1515 Market St. Suite 1700, Philadelphia, PA 19102". After that date, you may not be able to request exclusion from the Class. In order to be valid, any request for exclusion must set forth the name and address of the person or entity requesting exclusion, and must contain the following statement that such person or entity "requests exclusion from the Class in the *Becker v. Bank of New York Mellon*, No. 11-6460" and must be signed by such person or entity.

You cannot exclude yourself on the phone or by e-mail. If you do not submit a timely and valid request for exclusion, you will remain a member of the Class and you will be bound by all of the Court's orders and judgments, whether favorable to the Class or not. **Only request exclusion if you do NOT wish to participate in the class action, do NOT wish to share in any potential recovery that the Class may obtain, and do NOT wish to be bound by any orders or judgments entered in this Action.**

EXAMINATION OF PAPERS AND INQUIRIES

This Notice contains only a summary of the litigation and your rights as a potential Class member. For more detailed information regarding the matters involved in this litigation, please refer to the papers on file in this Action, which may be inspected at the Office of the Clerk of Court, United States District Court, Eastern District of Pennsylvania, James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106, during business hours of each business day. You may also obtain copies of all the documents filed of record in the Action through the Federal Court's Public Access to Court Electronic Records ("PACER") system with registration and payment of the required fee.

In addition, inquiries regarding this litigation may be addressed to Class Counsel as identified above.

NOTICE TO BROKERS AND CUSTODIANS

If you hold or held securities covered by this Action on behalf of a beneficial owner or in “street name,” you are directed by the Court to provide this notice to the beneficial owner. You may obtain additional copies of this Notice by contacting the Notice Administrator, Heffler Claims Group LLC, 1515 Market St. Suite 1700, Philadelphia, PA 19102, (855) 711-8800. As an alternative, you may provide the Notice Administrator with mailing lists of beneficial owners. Please contact the Notice Administrator immediately upon receipt of this Notice.

If this Notice was mailed to you at an old address, or if you move, please advise the Notice Administrator, c/o Heffler Claims Group LLC, 1515 Market St. Suite 1700, Philadelphia, PA 19102, (855) 711-8800, of your current address so that you can receive any future notice and/or Proof of Claim forms.

You may contact Class Counsel for more information about the Action. **PLEASE DO NOT CALL THE COURT OR THE COURT CLERK’S OFFICE REGARDING THIS NOTICE.**

Dated: September 14, 2017

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA