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Borrowers Seek Final OK For \$54M Deal In Nationstar Row

By **Kurt Orzeck**

Law360, Los Angeles (June 01, 2015, 9:18 PM ET) -- Borrowers accusing Nationstar Mortgage LLC of colluding with force-placed insurance providers to make lucrative profits asked a Florida federal judge on Monday to finalize a \$54 million settlement of their class action, calling it an "extraordinary" result for the plaintiffs.

Plaintiffs' motion for final approval of the deal said it would resolve claims by roughly 380,000 borrowers who allegedly had mortgage loans with Nationstar and were overcharged for hazard, flood or wind coverage issued by Assurant Inc. or its subsidiaries between Jan. 1, 2008, and Jan. 30 of this year.

Plaintiffs claimed the issuers and their subsidiaries entered into exclusive relationships with major mortgage lenders and services to provide force-placed insurance policies implemented when borrowers lapsed on their coverage. The issuers allegedly charged inflated premiums and paid tens of millions of dollars in kickbacks to Nationstar and its affiliates.

The settlement would block Nationstar from engaging in practices that allegedly inflated the insurance premium charges imposed on mortgagors for five years, according to Monday's motion in the U.S. District Court for the Southern District of Florida.

"This result is ... extraordinary because it involved the resolution of complex issues against a rising tide of adverse decisions from federal district and appellate courts — decisions class counsel would certainly distinguish, but their opponents would just as vigorously assert," the filing said.

The Seventh Circuit in February 2013 **affirmed** the dismissal of a proposed class action alleging Wachovia Mortgage FSB placed fraudulent insurance on a homeowner's property and paid kickbacks to an insurance agency affiliate, finding the complaint didn't state a viable claim for relief. The Eleventh Circuit **ruled** in February 2014 that a mortgage borrower could not prevail in a suit alleging Wells Fargo Bank NA required her to have more flood insurance on her home than the amount mandated by regulations governing Federal Housing Administration-guaranteed loans, saying the amount is a minimum, not an upper limit.

The issue arose from the practice of mortgage banks requiring borrowers to secure hazard insurance to protect their properties. Plaintiffs didn't challenge the requirement to have insurance but argued that the arrangement that Nationstar had with Assurant and others artificially inflated the cost of premiums beyond what was reasonable or necessary to protect the property, according to court documents.

JPMorgan Chase NA, HSBC USA NA, Citibank NA and Wells Fargo NA — as well as their affiliates and several insurers — agreed to settle claims similar to the ones in the instant suit. In March 2014, Wells Fargo and Assurant Inc. **settled** for an undisclosed amount in a

similar case. And Bank of America NA in April 2014 agreed to pay \$228 million to settle a putative class action — in the same court as the instant suit — accusing the bank of overcharging homeowners for force-placed insurance.

Monday's motion said some of the practices at issue were blocked by a settlement with New York state regulators, but the prohibitions only applied to borrowers in that state and only bound Assurant.

Plaintiffs in the instant suit reached a settlement-in-principle roughly a year ago following mediation, they said in the motion seeking final approval of the deal. The Florida federal court preliminarily approved the settlement and certified the proposed settlement on Jan. 30 of this year, court filings said.

Plaintiffs' attorneys are seeking \$5 million in fees, which amounts to 9.26 percent of the money obtained in the settlement, according to court papers. They said they had received only two objections and 26 opt-outs, which supports the fee request.

Adam M. Moskowitz of Kozyak Tropin & Throckmorton LLP, which is representing the plaintiffs, told Law360 on Monday that they "are glad to present our ninth nationwide lender placed class action settlement to the court for final approval and are appreciative that over 99.9 percent of the class supported the settlement."

Attorneys and representatives for Nationstar, Assurant and others didn't immediately respond to requests for comment late Monday.

The class is represented by Adam M. Moskowitz, Tucker Ronzetti, Rachel Sullivan and Robert J. Neary of Kozyak Tropin & Throckmorton LLP, Lance A. Harke, Sarah Engel and Howard M. Bushman of Harke Clasby & Bushman LLP, and Aaron S. Podhurst, Peter Prieto, John Gravante III and Matthew Weinshall of Podhurst Orseck PA.

Nationstar is represented by Alan G. Greer and Nathaniel M. Edenfield of Richman Greer PA, and John B. Sullivan, Mark D. Lonergan, Erik Kemp and Megan C. Kelly of Severson & Werson PC. Assurant and other defendants are represented by Frank G. Burt of Carlton Fields Jordan Burt PA.

The case is Howard Braynen et al. v. Nationstar Mortgage LLC et al., case number 1:14-cv-20726, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Kelly Knaub and Zachary Zagger. Editing by Kelly Duncan.

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