Big News for Florida Finance with Gretchen Morgenson's NYT Expose: Obama Admin Wants to Block Individual State Investigations Into ForeclosureGate

August 23, 2011 by Rosa Schechter

On Tuesday, Pultizer-Prize winning journalist Gretchen Morgenson's article "***Attorney General of N.Y. Is Said to Face Pressure on Bank Foreclosure Deal***," was published in the *New York Times* and the next day, the New York Times published its editorial,"*It's a Flawed Settlement*," opining that the New York AG should persevere in his fight against this deal getting done.

The firestorm this has sparked is still spreading across the country.

Why? It may end up being the death knell to the national attorneys general ForeclosureGate settlement with the nation's biggest mortgage lenders - which would have a significant impact on Florida.

In her expose, Ms. Morgenson reveals that Obama Administration has been pulling its Executive Branch strings to get the Attorney General for the State of New York, **Eric Schneiderman**, to stop resisting the finalization of the AG - Big Bank Deal.

According to Ms. Morgenson's investigations, the NY Attorney General as well as some of the other Attorneys General involved in the negotiations with the lenders, are not too keen on the current deal sitting on the table because it would bar their states from going after the banks under their state laws, including specifically alleged illegalities that occurred during the sales of mortgage-backed securities. Joining these AGs in their opposition to the proposed deal are various consumer advocate groups and the like.

Their position: the deal lets the banks walk with merely a hand slap and it bars the states from instituting their own actions against the lenders.

The *New York Times* story reveals that behind the scenes, White House representatives have been contacting the NY Attorney General as well as these consumer advocates and others who share Mr. Schneiderman's concern - trying to convince them to get Eric Schneiderman to go along with the proposed deal. And according to Ms. Morgenson, the White House calls began after officials from the Big Banks asked Shaun Donovan, Secretary of Housing and Urban Development, to help get the contrary NY Attorney General in line.

Mr. Donovan did admit to the NYT that he had discussed the deal with Mr. Schneiderman - but his position was that he was motivated by a need to help troubled homeowners, not banks.

What Is On The Table?

The top prosecutors from all fifty states and representatives of the federal government have negotiated with the major lenders involved in the ForeclosureGate crisis to find a settlement agreement that would rectify improprieties that have resulted from widespread activities that include robosigning and false filings (including forged real estate documents and the like).

In March 2011, basic terms of the proposed deal were released by the group, where big national lenders (e.g., Bank of America, Citi, JPMorgan Chase, Wells Fargo) would pay approximately $20 billion into a fund that would be used to help homeowners who had been harmed by the foreclosure crisis. In exchange for the money, the lenders would receive releases -- and that's the problem: how big should those releases be?

The deal on the table has each state's attorney general agreeing to release the lenders from any other claims based upon the bad acts addressed in the negotiations (robosigning, etc.). The lenders would be freed from future lawsuits in exchange for putting the billions of dollars into the fund.

Here's Where It Hits Florida - Banking Business Is Needed Here

It's true that Florida may have substantial claims against these lenders -- claims that former Florida Attorney General Bill McCollum began investigating last fall (see our discussion "Real Estate Transactions: Florida Attorney General Spearheading Foreclosuregate Investigation - All Other State Attorneys General May Follow Bill McCollum's Lead.") It's also true that counties have lost significant filing fee revenue, etc., from the ForeclosureGate practices that they'd like to get back (see last week's post, "Suing MERS: Calif Case Reaches Supreme Court and States, Counties Pursue Claims for Lost Fees - But Whose Pockets Would Pay Their Damage Claims?")

However, these prosecutions would seek to bring more money from the lender's pockets into the government's pockets for distribution as the state or county entity saw fit. Meanwhile, as the Federal Reserve's Kathryn Wilde points out, these lenders are the very same banks that Florida citizens (and elsewhere in the country) depend upon not only as depositors but as home buyers and businesspeople who need solid banking business upon which they can depend.

What the NYT reveals may be accurate, but in the bigger picture, does this help Florida? How much money is in the lender's pockets and by taking that cash in claims filed by the government(s), how free will those lenders be to participate in the crucial role of getting Florida's economy out of its dire straits? Banks aren't bottomless pits of cash - and if they are forced to pay federal settlements, state claims, county claims, both as direct defendants and as indirect defendants (i.e., MERS ownership), then how long does that keep South Florida down?