

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: BARBARA R. KAPNICK
Justice

PART 39

Index Number : 651786/2011
BANK OF NEW YORK MELLON
vs.
FOR AN ORDER PURSUANT TO
SEQUENCE NUMBER : 040
OTHER RELIEFS

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

The following papers, numbered 1 to , were read on this motion to/for
Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).
Answering Affidavits — Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is

MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 11/4/13

Signature of BARBARA R. KAPNICK, J.S.C.

- 1. CHECK ONE: CASE DISPOSED, NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED, DENIED, GRANTED IN PART, OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER, SUBMIT ORDER, DO NOT POST, FIDUCIARY APPOINTMENT, REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IA PART 39

-----x  
In the matter of the application of

THE BANK OF NEW YORK MELLON (as Trustee  
under various Pooling and Servicing  
Agreements and Indenture Trustee under  
various Indentures) *et al.*

Petitioners,

**DECISION/ORDER**

Index No. 651786/11  
Motion Seq. No. 040

for an order, pursuant to CPLR § 7701,  
seeking judicial instructions and  
approval of a proposed settlement

-----x  
**BARBARA R. KAPNICK, J.:**

This motion was brought by three members of the Steering Committee - the AIG Entities, the Triaxx Entities and the Federal Home Loan Banks of Boston, Chicago and Indianapolis<sup>1</sup> (the "movants") - by Order to Show Cause for an order pursuant to CPLR 4402:

- (1) Following the trial dates that are already set in September, continuing the trial to allow Respondents an opportunity to obtain discovery regarding BNYM's investigation and evaluation of claims;
- (2) Compelling BNYM to produce documents concerning BNYM's investigation and evaluation of claims, including documents that were previously subject to claims of

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<sup>1</sup> Since the submission of this motion, the Federal Home Loan Banks of Boston, Chicago and Indianapolis have withdrawn from this action pursuant to Order dated November 1, 2013. (NYSCEF Doc. No. 1013.)

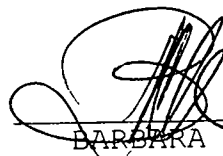
privilege;

- (3) permitting necessary depositions based on that production; and
- (4) granting leave to recall any witnesses to provide additional testimony based on the newly disclosed evidence.

After hearing oral argument on the record on September 25, 2013 and reviewing each instance of alleged waiver, which are cataloged by the movants in the "Appendix" to their "Memorandum of Law in Support of the Order to Show Cause Why the Court Should Not Continue the Trial Following the September Trial Dates to Allow Discovery Concerning Newly Disclosed Evidence," and petitioner's "Reasons Testimony Was Not a Waiver," which are contained in the "Testimony Chart" (see Memo Opp. n.2), this Court finds that there has been no waiver of the attorney client privilege or work product protection and thus the motion is denied in its entirety.

This constitutes the order of this Court.

Dated: November 4, 2013

  
BARBARA R. KAPNICK  
J.S.C.

**BARBARA R. KAPNICK**  
**J.S.C.**