



February 14, 2014

VIA E-FILE

Hon. Saliann Scarpulla
Supreme Court, New York County
60 Centre Street, IAS Part 39
New York, NY 10007

Re: *In the Matter of the Application of The Bank of New York Mellon*
Index No. 651786/2011

Dear Justice Scarpulla:

We are counsel for Objectors, Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago, City of Grand Rapids General Retirement System, and City of Grand Rapids Police and Fire Retirement System (collectively, "Chicago Police"), and write in support of AIG's application to stay entry of final judgment dated February 4, 2014, on the grounds set forth by AIG in its Memorandum of Law and in the Affirmation of Michael A. Rollin ("Rollin Aff.").

In addition, entry of judgment should be stayed, as permitted under C.P.L.R. §2201, until this Court ascertains whether, under §2(a) and (b) of the Settlement Agreement (the "Settlement"), attached as Ex. B to the Rollin Aff., the Settlement has become "null and void" as a result of Judge Kapnick's refusal to enter the form of the proposed Final Order and Judgment ("PFOJ") (Rollin Aff., Ex. C). As Judge Kapnick also refused to approve the scope of the release included in §9 of the Settlement, the severability clause contained in ¶26 of the Settlement does not apply to save the Settlement from becoming a nullity. Despite these discrepancies, parties to the Settlement have proceeded as though Judge Kapnick's January 31, 2014 decision approved rather than nullified the Settlement. *See, e.g.*, the February 4, 2014 letter by Warner Partners, P.C. to this Court (AIG's motion and stay requests "have no merit and will be greatly prejudicial to the thousands of certificateholders who are waiting for the settlement proceeds to be distributed.").

Because §2(a) of the Settlement appears to permit the settling parties to enter into a written agreement to "deem" the Article 77 Court's decision and order the "Final Order and Judgment" that satisfies the condition that the Court approve the settlement, Chicago Police, by

ATTORNEYS AT LAW

NEW YORK
CONNECTICUT
OHIO
CALIFORNIA

SCOTT + SCOTT LLP
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE, 40TH FLOOR
NEW YORK, NY 10174

212 223-6444 VOICE
212 223-6334 FAX
SCOTTLAW@SCOTT-SCOTT.COM
WWW.SCOTT-SCOTT.COM

its counsel, sent a letter to counsel for Bank of New York Mellon (Ex. 1) asking whether Bank of America has agreed to accept a narrower release, which Judge Kapnick indicated she would approve, and whether the parties to the Settlement have entered into a written agreement “deeming” the terms of her January 31, 2014 decision (if included in this Court’s final judgment) to be adequate to effectuate the Settlement. To date, Chicago Police has received no response to this inquiry.

This Court should not enter a final judgment which would leave Chicago Police and other certificateholders dangling, not knowing whether Judge Kapnick’s January 31, 2014 decision had the effect of approving or nullifying the Settlement. Ordinarily, a Court cannot modify the terms of a settlement it reviews for approval, because doing so permits the parties to withdraw from the settlement. *See, e.g., State of New York v. Philip Morris, Inc.*, 686 N.Y.S.2d 564, 566 (N.Y. Sup. Ct. 1998) (where the court is presented with a consent settlement and decree, the Court is confronted with “a take-it-or-leave-it proposition”); *Michels v. Phoenix Home Life Mut. Ins.*, No. 95/5318, 1997 WL 1161145, at *20 (N.Y. Sup. Ct. Jan. 7, 1997) (A Court in assessing the fairness and reasonableness of a settlement cannot delete, modify or substitute its terms).

Thus, before this Court enters any judgment, it should require the parties to the Settlement, and the Institutional Investors, and their respective counsel, to (a) disclose whether they have entered into a written agreement under §2(a) of the Settlement, and (b) produce any such written agreement, as well as any other documents which refer or relate to any actual or proposed changes to the terms of the Settlement that have been made or proposed since January 31, 2014.

Respectfully,
SCOTT+SCOTT, ATTORNEYS AT LAW, LLP



Beth Kaswan

BK/as
Enclosure

Cc: All Counsel (via e-filing)