

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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,

for an order, pursuant to C.P.L.R. § 7701, seeking judicial instructions and approval of a proposed settlement.

Index No. 651786/2011

Assigned to:
Hon. Saliann Scarpulla

**AFFIRMATION OF
MARK C. ZAUDERER
IN SUPPORT OF
MOTION TO
REARGUE PURSUANT
TO CPLR § 2221(d)**

Mark C. Zauderer, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms under the penalty of perjury as follows:

1. I am a member of the Bar of the State of New York and a member of Flemming Zulack Williamson Zauderer LLP, co-counsel along with Reilly Pozner LLP and Jones & Keller, P.C. for the AIG entities¹, several Respondents in this matter.

2. I submit this Affirmation to put before the Court certain documents relevant to AIG's Motion for Leave to Reargue Pursuant to CPLR § 2221(d).

3. Attached as Exhibit A is a true and accurate copy of the Court's January 31, 2014 Decision and Order in the above-captioned matter.

¹ The Respondent American International Group, Inc. entities include American International Group, Inc., American General Assurance Company, American General Life and Accident Insurance Company, American General Life Insurance Company, American General Life Insurance Company of Delaware, American Home Assurance Company, American International Life Assurance Company of New York, Chartis Property Casualty Company, Chartis Select Insurance Company, Commerce and Industry Insurance Company, First SunAmerica Life Insurance Company, Lexington Insurance Company, National Union Fire Insurance Company of Pittsburgh, PA, New Hampshire Insurance Company, SunAmerica Annuity and Life Assurance Company, SunAmerica Life Insurance Company, The Insurance Company of The State of Pennsylvania, The United States Life Insurance Company in The City of New York, The Variable Annuity Life Insurance Company, and Western National Life Insurance Company.

4. Attached as Exhibit B is a true and accurate copy of excerpts from the transcript of the hearing (Hearing Transcript) on the Verified Petition in this matter.

5. Attached as Exhibit C is a true and accurate copy of the news article by Gretchen Morgenson, *Who Has Your Back? Hard to Tell*, N.Y. TIMES, Nov. 16, 2013.

6. Attached as Exhibit PTX 1 is a true and accurate copy of Hearing Exhibit PTX 1 (Settlement Agreement, including Side Letter), which was admitted into evidence on June 6, 2013.

7. Attached as Exhibit PTX 604 is a true and accurate copy of Hearing Exhibit PTX 604 (All Consortium Deals: Assumes 50% Performing Loan Default Rate), which was admitted into evidence on June 6, 2013.

8. Attached as Exhibit R-13 is a true and accurate copy of excerpts from Hearing Exhibit R-13 (Pooling and Servicing Agreement for CWALT 2005-35CB), which was admitted into evidence on June 6, 2013.

9. Attached as Exhibit R-17 is a true and accurate copy of Hearing Exhibit R-17 (October 18, 2010 Notice of Non-Performance), which was admitted into evidence on June 7, 2013.

10. Attached as Exhibit R-46 is a true and accurate copy of Hearing Exhibit R-46 (Forbearance Agreement), which was admitted into evidence on July 11, 2013.

11. Attached as Exhibit R-53 is a true and accurate copy of Hearing Exhibit R-53 (Email from Kravitt to Koplow, Mirvis, Golin, CC: Ingber, Subject: Our discussion today, dated Dec. 1, 2010), which was admitted into evidence on July 11, 2013.

12. Attached as Exhibit R-330 is a true and accurate copy of the transcript of Hearing Exhibit R-341 (CNBC Video of Laughlin discussing Legacy Asset Servicing with Jim Cramer, dated Feb. 4, 2011), which was admitted into evidence on June 10, 2013.

13. Attached as Exhibit R-724 is a true and accurate copy of Hearing Exhibit R-724 (Redacted letter from Mayer Brown to BNYM re: Investor Claims, dated Nov. 9, 2010), which was admitted into evidence on July 9, 2013.

14. Attached as Exhibit R-725 is a true and accurate copy of Hearing Exhibit R-725 (Redacted letter from Mayer Brown to [redacted] re: Conflict Waiver, dated Jan. 7, 2011), which was admitted into evidence on July 9, 2013.

15. Attached as Exhibit R-1072 is a true and accurate copy of Hearing Exhibit R-1072 (Letter from Bank of America Corporation to Jason H.P. Kravitt regarding representation by Mayer Brown LLP, dated Nov. 4, 2010), which was admitted into evidence on July 9, 2013.

16. Attached as Exhibit R-1444 is a true and accurate copy of Hearing Exhibit R-1444 (Email from Kravitt to Sherburne et al, Subject: Re: Conversation with Chris Garvey of BofA in-house legal department, dated Nov. 11, 2010), which was admitted into evidence on July 8, 2013.

17. Attached as Exhibit R-1445 is a true and accurate copy of Hearing Exhibit R-1445 (Email from McCarthy to Kravitt, CC: Hakim, Espana, Ingber, Subject: *Confidential: Re: FW: A minor lawyer's point/Confidential/attorney work product, dated Dec. 2, 2010), which was admitted into evidence on July 11, 2013.

18. Attached as Exhibit R-1458 is a true and accurate copy of Hearing Exhibit R-1458 (Email from Ingber to McCarthy, CC: Kravitt, Espana, Hakim, Subject: Revised Scenario Analysis, dated Nov. 17, 2010), which was admitted into evidence on July 8, 2013.

19. Attached as Exhibit R-4142 is a true and accurate copy of excerpts from Hearing Exhibit R-4142 (Video designation excerpts of Bostrom, Robert Deposition Transcript), which was admitted into evidence Sept. 20, 2013.

20. Subject to the Court's permission, AIG intends to provide the Court with a CD containing an electronic copy of the full hearing transcript, electronic versions of all entered hearing exhibits, and a complete set of the originally submitted motion papers in unredacted form in order to provide the Court with the complete record in support of this Motion.

21. Respondents have made no previous application to this Court for the same or similar relief.

Dated this 18th day of February, 2014.

/s/Mark C. Zauderer
Mark C. Zauderer