

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

**PRE-ARGUMENT STATEMENT**

**PLEASE TAKE NOTICE** that pursuant to CPLR § 5701(a), Respondents-Appellees-Cross-Appellants the Retirement Board of the Policemen’s Annuity & Benefit Fund of the City of Chicago, the City of Grand Rapids General Retirement System, and the City of Grand Rapids Police and Fire Retirement System (the “Public Pension Funds”), by its counsel, Scott+Scott, Attorneys at Law, LLP, hereby submit this Pre-Argument Statement pursuant to 22 N.Y.C.R.R. § 600.17(b).

1. The full title of this action is set forth below:

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), BlackRock Financial Management Inc. (intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor), Metropolitan Life Insurance Company (intervenor), Trust Company of the West and affiliated companies controlled by The TCW Group, Inc. (intervenor), Neuberger Berman Europe Limited (intervenor), Pacific Investment Management Company LLC (intervenor), Goldman Sachs Asset Management, L.P. (intervenor), Teachers Insurance and Annuity Association of America (intervenor), Invesco Advisors, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank Baden-Wuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital LLC (intervenor), ING Investment Management LLC (intervenor), Nationwide Mutual Insurance Company and its affiliated companies (intervenor), AEGON USA Investment Management LLC, authorized signatory for

Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, Western Reserve Life Assurance Co. of Ohio (intervenor), Federal Home Loan Bank of Atlanta (intervenor), Bayerische Landesbank (intervenor), Prudential Investment Management, Inc. (intervenor), and Western Asset Management Company (intervenor),

Petitioners,

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

2. The full names of the original parties are set forth below:

**Original Petitioners:**

THE BANK OF NEW YORK MELLON, (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), BlackRock Financial Management Inc. (intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor), Metropolitan Life Insurance Company (intervenor), Trust Company of the West and affiliated companies controlled by The TCW Group, Inc. (intervenor), Neuberger Berman Europe Limited (intervenor), Pacific Investment Management Company LLC (intervenor), Goldman Sachs Asset Management, L.P. (intervenor), Teachers Insurance and Annuity Association of America (intervenor), Invesco Advisors, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank Baden-Wuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital LLC (intervenor), ING Investment Management LLC (intervenor), Nationwide Mutual Insurance Company and its affiliated companies (intervenor), AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, Western Reserve Life Assurance Co. of Ohio (intervenor), Federal Home Loan Bank of Atlanta (intervenor), Bayerische Landesbank (intervenor), Prudential Investment Management, Inc. (intervenor), and Western Asset Management Company (intervenor).

**Original Respondents:**

Cranberry Park II LLC; Cranberry Park LLC; Federal Home Loan Bank of San Francisco; Federal Home Loan Bank of Seattle; TM I Investors, LLC; Walnut Place II LLC; Walnut Place III LLC; Walnut Place IV LLC; Walnut Place IX LLC; Walnut Place LLC; Walnut Place V LLC; Walnut Place VI LLC; Walnut Place VII LLC; Walnut Place VIII LLC; Walnut Place X LLC; Walnut Place XI LLC; Federal Deposit Insurance

Corporation; RMBS Acquisition Co, LLC; Federal Home Loan Bank of Boston; Federal Home Loan Bank of Chicago; Federal Home Loan Bank of Indianapolis; Federal Home Loan Bank of Pittsburgh; City of Grand Rapids General Retirement System; City of Grand Rapids Police and Fire Retirement System; Retirement Board of the Policeman's Annuity and Benefit fund of the City of Chicago; The Westmoreland County Employee Retirement System; The Western and Southern Life Insurance Integrity Life Insurance Company; National Integrity Life Insurance Company; Fort Washington Investment Advisors, Inc. (on behalf of Fort Washington Active Fixed Income LLC); Mortgage Bond Portfolio LLC; Triaxx Prime CDO 2006-1, Ltd.; Triaxx Prime CDO 2006-2, Ltd.; Triaxx Prime CDO 2007-1, Ltd.; 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; Western National Life Insurance Company; First Reliance Standard Life Insurance Company; Liberty View; Platinum Underwriters Bermuda, Ltd.; Platinum Underwriters Reinsurance, Inc.; Reliance Standard Life Insurance Company; Safety National Casualty Corporation; Sun Life Insurance Company of Canada; CA Core Fixed Income Fund, LLC; CA Core Fixed Income Fund, Ltd.; CA High Yield Fund, LLC; CA High Yield Fund, Ltd.; Strategic Equity Fund, LLC; Strategic Equity Fund, Ltd.; Sand Spring Capital III Master Fund, LLC; Knights of Columbus; American Equity Investment Life Insurance Company; American Equity Investment Life Insurance Company of New York; Amici Associates, LP; Amici Fund International Ltd., Amici Qualified Associates; Blue Mountain Credit Alternatives Master Fund, LP; Cedar Hill Capital Partners LLC; Cedar Hill Mortgage Fund GP LLC; Cedar Hill Mortgage Opportunity Master Fund LLP; Declaration Management & Research LLC; Doubleline Capital LP; First Bank; First Financial of Maryland Federal Credit Union; First National Bank & Trust Co. of Rochelle, Illinois; First National Banking Company; First Penn-Pacific Life Insurance Company; Kerndt Brothers Savings Bank; Lea County State Bank; LibreMax Capital LLC; Lincoln Investment Solutions, Inc.; Lincoln Life & Annuity Company of New York; Lincoln National Reinsurance Company (Barbados) Limited; LL Funds LLC; Manichean Capital, LLC; NCMIC Group, Inc.; NCMIC Insurance Company; NexBank, SSB; Peoples Independent Bank; Radian Asset Assurance Inc.; Stone Creek LLC; Taconic Capital Advisors LP; The Collectors' Fund LP; The Lincoln National Life Insurance Company; Thomaston Savings Bank; Valley National Bank; CIFG Assurance North America, Inc.; American Fidelity Assurance Company; United States Debt Recovery VIII, LP; United States Debt Recovery X, LP; Bankers Trust Company; Bankers Life Insurance Company; Bankers Specialty Insurance Company; First Community Insurance Company; Sterling Federal Bank, FSB; Oriental Bank and Trust; Maine State Retirement System; Pension Trust Fund for Operating Engineers; Vermont Pension Investment

Committee; Washington State Plumbing and Pipefitting Pension Trust; Goldman Sachs & Co. Securities Division; Pine River Fixed Income Master Fund Ltd.; Pine River Master Fund Ltd; Silver Sands Fund LLC; Two Harbors Asset I LLC; Good Hill Partners LP; Syncora Guarantee Inc.; Federal Housing Finance Agency as Conservator for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; National Credit Union Administration Board as Liquidating Agent of US Central Federal Credit Union, Western Corp. Fed. Credit Union, Members United Corp. Fed. Credit Union, Southwest Corp. Fed. Credit Union, Constitution Corp. Fed. Credit Union; Ballantyne Re Place; the State Attorneys General for the State of New York and Delaware.

Since the Commencement of this proceeding, the following Respondents have withdrawn their objection to the settlement at issue:

Federal Home Loan Bank of San Francisco; Federal Home Loan Bank of Seattle; TM1 Investors, LLC; Walnut Place II LLC; Walnut Place III LLC; Walnut Place IV LLC; Walnut Place IX LLC; Walnut Place LLC; Walnut Place V LLC; Walnut Place VI LLC; Walnut Place VII LLC; Walnut Place VIII LLC; Walnut Place X LLC; Walnut Place XI LLC; Oriental Bank and Trust; Maine State Retirement System; Pension Trust Fund for Operating Engineers; Vermont Pension Investment Committee; Washington State Plumbing and Pipefitting Pension Trust; LibreMax Capital LLC; Clayhill Investors LLC; Syncora Guarantee Inc.; Federal Deposit Insurance Corporation; RMBS Acquisition Co, LLC; Federal Housing Finance Agency as Conservator for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; National Credit Union Administration Board as Liquidating Agent of US Central Federal Credit Union; Western Corp. Fed. Credit Union, Members United Corp. Fed. Credit Union, Southwest Corp. Fed. Credit Union, Constitution Corp. Fed. Credit Union; National Credit Union Administration; Cranberry Park II LLC; Cranberry Park LLC; V Re-Remic, LLC; Federal Home Loan Bank of Boston; Federal Home Loan Bank of Chicago; Federal Home Loan Bank of Indianapolis; Columbus Life Insurance Company; Fort Washington Investment Advisors, Inc. (on behalf of Fort Washington Active Fixed Income LLC); Integrity Life Insurance Company; National Integrity Life Insurance Company; The Western and Southern Life Insurance Company; Western-Southern Life Assurance Company; Ambac Assurance Corporation; The Segregated Account of Ambac Assurance Corporation; Monarch Debt Recovery Master Fund Ltd.; Monarch Opportunities Master Fund Ltd.; Monarch Capital Master Partners LP; Monarch Structured Credit Master Fund Ltd.; Monarch Capital Master Partners II LPP.; Monarch Recovery Ltd.; Monarch Alternative Solutions Master Fund Ltd.; Oakford MF Limited.; Monarch Cayman Fund Limited.; Monarch Capital Master Partners II-A LP; American Equity Investment Life Insurance Company; American Equity Investment Life Insurance Company of New York; Blue Mountain Credit Alternatives Master Fund, LP; Lincoln Investment Solutions, Inc; NCMIC Group, Inc.; NCMIC Insurance Company; Stone Creek LLC; Taconic Capital Advisors LP; Goldman Sachs & Co. Securities Division; Vertical Capital, LLC.

3. The names, address and telephone number of counsel for Respondents-Appellees-Cross-Appellants the Public Pension Funds are:

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4. The names, address and telephone number of counsel for Petitioner-Appellant The Bank of New York Mellon (“BNYM”) are:

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5. The names, address and telephone number of counsel for other Petitioners:

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6. The names, address and telephone number of counsel for other Respondents are:

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7. This appeal is taken from the Decision/Order/Judgment of The Supreme Court of the State of New York, County of New York (Justice Barbara R. Kapnick), entered in the office of the Clerk of Supreme Court of the County of New York on February 21, 2014 (the "Decision"). Attached hereto as Exhibit 1 is a true and correct copy of the Decision.

8. On June 29, 2011, Petitioner BNYM, as trustee for 530 residential mortgage backed securities (RMBS) trusts, filed a Verified Petition, pursuant to CPLR §7701, seeking approval of its decision to enter into a settlement of certain trust claims. Under the proposed

settlement, current certificate holders in the trusts would have received \$8.5 billion, plus certain alleged servicing improvements for the mortgages still held in the trusts, upon entry of a final, non-appealable judgment finding that BNYM acted reasonably and within the scope of its discretion and authority in entering into the settlement.

9. After a hearing, on January 31, 2014, the Supreme Court issued its Decision, which (1) found that BNYM had “acted unreasonably or beyond the bounds of reasonable judgment” when it settled and released loan modification claims against Bank of America Corporation and its related entities (including Countrywide Financial Corporation and Countrywide Home Loans, Inc.) without investigating their worth (Decision at 53); (2) refused to enter various factual findings requested by Petitioner BNYM or to enter the requested injunctive relief against certificate holders contained in the proposed final order and judgment attached to and incorporated into the Settlement Agreement (Decision at 13, n.5); (3) but otherwise purported to approve the proposed settlement “except to the extent that it releases the loan modification claims.” (Decision at 53).

10. Respondents-Appellees-Cross-Appellants the Public Pension Funds appeal the Judgment with respect to the Supreme Court’s ruling:

- (a) to the extent it purports to have done anything other than REJECT the proposed settlement, inasmuch as the Supreme Court lacked the authority to modify or revise any of the proposed settlement’s terms; and
- (b) to the extent that it erroneously held that none of the Respondents had raised a “triable issue of fact” on any of their Objections to the proposed settlement (other than with respect to BNYM’s unreasonable release of the loan modification claims), and erroneously failed to allow the parties to proceed to resolution of such triable disputed factual issues (or mixed questions of law and fact) at trial under a preponderance of the evidence standard (whether by the Court itself or by a jury). *See* Decision at 25.



10. There is not a related action or proceeding pending in any court of this or any other jurisdiction.

11. There are currently two appeals pending in this action:

(1) On February 21, 2014, Petitioner-Appellant BNYM filed its Notice of Appeal relating to that aspect of the Supreme Court's Decision which refused to approve the proposed settlement to the extent that it released any loan modification claims. Dkt. No. 1090. Attached hereto as Exhibits 2 and 3 are copies of the Notice of Appeal and pre-argument statement, respectively, from that appeal.

(2) On May 28, 2013, certain Respondents filed an appeal in this action relating to the Supreme Court's grant of Petitioners' Order to Show Cause to strike Respondents' jury demand. Dkt. No. 841. Copies of the Notice of Appeal and accompanying pre-argument statement from that appeal are included within Exhibit 3 as Exhibits B and C thereto.

Dated: March 21, 2014  
New York, New York

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