

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

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

NY County Clerk's
Index No. 651786/2011
**PRE-ARGUMENT
STATEMENT**

PLEASE TAKE NOTICE that, Respondent/Cross-Appellant American Fidelity Assurance Company (the "Respondent"), by its counsel, Federman & Sherwood, hereby submits this Pre-Argument Statement in connection with its Cross-Appeal pursuant to 22 NYCRR § 600.17(b).

1. **Title of Action**

The full title of this action is as set forth in Item 1 of the Pre-Argument Statement of Petitioner The Bank of New York Mellon ("BNYM"), filed February 21, 2014 (the "BNYM Pre-Argument Statement").

2. **Full Name of Original Parties and Any Changes in the Parties**

The full names of the original parties to this action and any changes to those parties are as set forth in Item 2 of the BNYM Pre-Argument Statement.

3. **Name, Address and Telephone Number of Counsel for Appellant or Petitioner**

The names, addresses and telephone numbers of counsel for Petitioner BNYM (which has filed a separate Notice of Appeal and Pre-Argument Statement) are:

DECHERT LLP
Hector Gonzalez
James M. McGuire
Mauricio A. Espafia

1095 Avenue of the Americas
New York, New York 10036
(212) 698-3500

MAYER BROWN LLP
Matthew D. Ingber
Christopher Houpt
1675 Broadway
New York, New York 10019
(212) 506-2500

The names, addresses and telephone numbers of counsel for Petitioners other than BNYM

are:

GIBBS & BRUNS LLP
Kathy Patrick (pro hac vice) and
Robert J. Madden (pro hac vice)
1100 Louisiana, Suite 5300
Houston, Texas 77002
(713) 650-8805

WARNER PARTNERS, P.C.
Kenneth E. Warner
950 Third Avenue, 32nd Floor
New York, New York 10022
(212) 593-8000

4. **Name, Address and Telephone Number of Counsel for Respondent/Appellant**

The name, address and telephone number of counsel for Respondent/Appellant American

Fidelity Assurance Company is:

William B. Federman
FEDERMAN & SHERWOOD
10205 North Pennsylvania Ave.
Oklahoma City, Oklahoma 73120
(405) 235-1560

The names, addresses and telephone numbers of counsel for the Respondents other than American Fidelity Assurance Company are as set forth in Item 5 of the BNYM Pre-Argument Statement.

5. **Court and County From Which Appeal is Taken**

This appeal is taken from the Decision/Order/Judgment of Supreme Court of the State of New York, County of New York (Hon. Barbara R. Kapnick), dated January 31, 2014, and entered in the office of the Clerk, County of New York, on February 21, 2014 (the "Judgment"). Attached hereto as Exhibit A is a true and correct copy of the Judgment.

6. **Nature and Object of the Cause of Action**

This is a proceeding under CPLR Article 77 to obtain judicial approval claimed to have been reached among some of the parties in interest with respect to approximately 530 trusts that issued mortgage-backed securities holding defective mortgages. American Fidelity Assurance Company was not consulted in connection with the settlement negotiations, and objects to the terms of the settlement on numerous grounds, including that BNYM reached the proposed settlement without investigating the strength of the trusts' claims regarding defective mortgage loans that were not repurchased by Countrywide as required by the governing documents.

7. **Result Reached in the Court Below**

After a hearing, the court below generally approved the Settlement Agreement except as to the loan modification claims, finding that the Trustee acted in good faith and within its discretion in settling the action and determining that the settlement was in the best interests of the trust. However, as to the loan modification claims, which involved the repurchase of approximately \$31 billion of mortgage loans, the court found that the Trustee acted unreasonably in settling those claims without investigating their potential worth or strength. American Fidelity Assurance Company is appealing the court's determination to approve the Settlement Agreement other than with respect to the loan modification claims, and is not appealing that portion of the court's Order.

8. **Grounds for Seeking Reversal**

The court below erred in approving only a portion of the Settlement Agreement. The court correctly determined that the loan modification claims could not be approved, and this determination should have precluded approval of the Settlement Agreement in its entirety. In addition, the court applied an incorrect legal standard in reaching its determination of whether the Settlement Agreement should be approved.

9. **Related Actions and Proceedings**

There is not a related action or proceeding pending in any court of this or any jurisdiction, except for a pending appeal by BNYM from the above Decision/Order/Judgment as to the loan modification claims (copies of BNYM's Notice of Appeal and Pre-Argument Statement, without Exhibits, are attached as Exhibit B). On March 6, 2014, a group of Petitioners referred to as the Institutional Investors filed an appeal on the same grounds (copies of that Notice of Appeal and Pre-Argument Statement, without Exhibits, are attached as Exhibit C).

Dated: March 24, 2014
Oklahoma City, OK

FEDERMAN & SHERWOOD

/s/ William B. Federman
William B. Federman
10205 N. Pennsylvania Avenue
Oklahoma City, OK 73120
(405) 235-1560
wbf@federmanlaw.com

*Attorneys for Respondent/Cross-Appellant
American Fidelity Assurance Company*