

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

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In the matter of the application of

**PRE-ARGUMENT  
STATEMENT**

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

Index No. 651786/2011

Petitioners,

for an order, pursuant to C.P.L.R. § 7701, seeking judicial  
instructions and approval of a proposed settlement.  
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Respondents United States Debt Recovery VIII, LP and United States Debt Recovery X,  
LP (collectively, the "U.S. Debt Recovery Entities") submit this Pre-Argument Statement  
pursuant to Section 600.17(g) of the Rules of the Appellate Division, First Department.

1. Title of Action

The full name of this action is as set forth in Item 1 in the Pre-Argument Statement of  
Respondent American International Group, Inc. ("AIG") and the related AIG entities  
(collectively the "AIG Entities") filed March 21, 2014 (the "AIG 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 the changes to the parties, are as  
set forth in Item 2 of the AIG Pre-Argument Statement.

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

The names, address and telephone numbers of counsel for petitioner The Bank of New  
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4. Name, Address and Telephone Number of  
Counsel for Respondents-Objectors-Appellants

The name, address and telephone number of counsel for the U.S. Debt Recovery Entities Respondents-Objectors-Appellants is as follows:

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5. Court and County From Which the Appeal is Taken

Supreme Court of the State of New York, County of New York (Barbara R. Kapnick, J.S.C.).

6. The Nature and Object of the Cause of Action

In June 2011, Petitioner, BNYM, as Trustee acting as a fiduciary on behalf of 530 separate residential-mortgage backed securities trusts, commenced this proceeding under CPLR Article 77 seeking judicial instructions and approval of a proposed settlement of claims that BNYM may have brought against Bank of America and Countrywide, for alleged servicing, mortgage documentation, and mortgage origination failures. In conjunction with its petition, BNYM sought through a Proposed Final Order and Judgment at least eighteen (18) separate findings related to BNYM's past conduct in negotiating and entering the proposed settlement agreement, as well as a release of all claims that certificateholders, including the U.S. Debt Recovery Entities, have or would have in the future related to BNYM's actions or inactions with respect to its negotiation and entry into the proposed settlement on behalf of all certificateholders. The U.S. Debt Recovery Entities were not parties to or consulted in connection with the settlement negotiations, and objected to the settlement terms on a number of grounds.

7. Result Reached in the Court Below

In a Decision/Order/Judgment dated January 31, 2014 (the "Decision"), and entered as a judgment in the Office of the County Clerk, New York County, on February 21, 2014, the Supreme Court declined to enter BNYM's Proposed Final Order and Judgment, but nevertheless adopted many of the requested findings and granted summary judgment pursuant to CPLR § 409(b), approving the proposed settlement agreement "except to the extent it releases the loan

modification claims.” The Court below found that the Trustee “abused its discretion in settling the loan modification claims” and that the Trustee “acted ‘unreasonably or beyond the bounds of reasonable judgment’ . . . in exercising its power to settle the loan modification claims without investigating their potential worth or strength.” A true and correct copy of the Decision is attached hereto as Exhibit A.

8. Grounds for Seeking Reversal

The Court below erred in fact and law and in the exercise of its discretion by, among other things, (1) approving any portion of the Settlement Agreement, and (2) applying the incorrect legal standard in reaching its determination of whether the Settlement Agreement should be approved.

9. Related Actions and Proceedings

There are no related actions or proceedings pending in this or any other court of which the U.S. Debt Recovery Entities are aware. Notices of appeal and pre-argument statements have been filed by the following parties concerning the Decision:

- a. Petitioner The Bank of New York Mellon on February 21, 2014;
- b. The Institutional Investors on March 6, 2014;
- c. Respondents Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd, and Triax Prime CDO 2007-1 on March 21, 2014;
- d. Respondents The AIG Entities on March 21, 2014;
- e. Respondents 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 on March 21, 2014; and
- f. Respondent American Fidelity Assurance Company on March 21, 2014.

Dated: New York, New York  
March 24, 2014

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