

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: Kapnick, J.

**AFFIRMATION OF
DEREK W. LOESER IN
SUPPORT OF OTSC
REGARDING
COMMON INTEREST
PRIVILEGE**

I, Derek W. Loeser, hereby affirm under the penalty of perjury that the following is true and correct:

1. I am counsel for the Federal Home Loan Banks of Boston, Chicago and Indianapolis (the "FHLBs") in this matter. I have personal knowledge of the facts set forth below.
2. This relief is requested by order to show cause because during the December 7, 2012 conference call with the Court, the parties were directed to file orders to show cause to address outstanding discovery matters.
3. The FHLBs are among the several Intervenor-Respondents and Objectors ("Intervenors") in this matter, and my firm is a member of the Steering Committee. I submit this Affirmation in support of the Intervenors' motion for an order pursuant to CPLR § 3124:
 - (a) Compelling the Bank of New York Mellon ("BNYM") and the Inside Institutional Investors to produce documents identified in the Inside Institutional Investors' May 21, 2012 privilege log currently being withheld

under the common interest exception to the waiver of the attorney client privilege;

(b) Resuming the deposition of Jason Kravitt; and

(c) Awarding such other and further relief as the Court may deem just and proper.

4. Through its Verified Petition and Proposed Final Order and Judgment, BNYM asks this Court to approve a settlement that it seeks to consummate on behalf of 530 trusts (the “Covered Trusts”), in its capacity as Trustee for those trusts, and to make at least eighteen separate factual findings related to the Trustee’s conduct, including a finding that the Trustee conducted an adequate factual investigation.

5. To date, BNYM and the Inside Institutional Investors have refused to provide meaningful discovery regarding binary communications between BNYM and the Inside Institutional Investors between November 18, 2010 and June 28, 2011 pursuant to the common interest privilege.

6. Attached as Exhibit 1 is a true and accurate copy of a relevant portion of the transcript from the Court’s August 2, 2012 hearing.

7. Attached as Exhibit 2 is a true and accurate copy of a relevant portion of the transcript from the Court’s October 12, 2012 hearing.

8. Attached as Exhibit 3 is a true and accurate copy of relevant portions of the deposition of Jason Kravitt.

9. Attached as Exhibit 4 is a true and accurate copy of relevant portions of the deposition of Robert Bailey.

10. Attached as Exhibit 5 is a true and accurate copy of relevant portions of the deposition of Richard Stanley.

11. Attached as Exhibit 6 is a true and accurate copy of relevant portions of the deposition of Meyer Koplow.

12. Attached as Exhibit 7 is a true and accurate copy of relevant portions of the deposition of Kathy Patrick.

13. Attached as Exhibit 8 is a true and accurate copy of relevant portions of the deposition of Robert Bostrom.

14. Attached as Exhibit 9 is a true and accurate copy of BOA_Art77_00017682-83, a December 2, 2010 e-mail chain between Kathy Patrick and Jason Kravitt.

15. Attached as Exhibit 10 is a true and accurate copy of BOA_Art77_00013156-57, a June 7, 2011 letter from Kathy Patrick to attorneys for Bank of America and Bank of New York Mellon.

16. The parties have met and conferred with respect to the issues set forth in the accompanying memorandum. On January 4, 2013, counsel for the Intervenors, including myself, Mike Rollin and Maritza Braswell (counsel for the AIG entities), conferred with BNYM's counsel, Matt Ingber and Chris Houpt, and the Inside Institutional Investors' counsel, Kathy Patrick and Robert Madden. Ms. Patrick indicated that the Inside Institutional Investors were unwilling to produce any of the documents currently withheld in their May 21, 2012 privilege log.

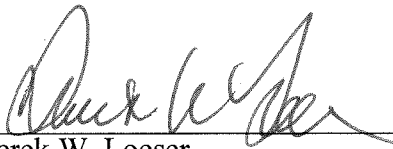
17. The Intervenors therefore seek an order from this Court pursuant to CPLR § 3124 compelling the production of these documents, as well as the right to redepose Mr. Kravitt, for reasons set forth in the accompanying memorandum of law.

18. The Court previously directed the parties to address outstanding discovery matters by way of orders to show cause and set the following schedule:

- January 14, 2013: Orders to Show Cause Filed
- January 28, 2013: Response Briefs Due
- February 1, 2013: Reply Briefs Due.

19. The Intervenors have made no previous application for the same or similar relief.

Dated this 14th day of January, 2013.



Derek W. Loeser