

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), 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, and 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.

Index No. 651786-2011

Kapnick, J.

**AFFIDAVIT OF
ROBERT J. MADDEN**

Before me, the undersigned authority, on this day personally appeared Robert J, Madden, who, being by me duly sworn, deposed as follows:

1. I am a member of the Bar of the State of Texas and a partner in the law firm of Gibbs & Bruns, L.L.P., counsel for the Institutional Investors in the above captioned matter. I have personal knowledge of the facts stated in this affidavit, and they are all true and correct. I make this affidavit in support of the Institutional Investors' Response to the Objectors' Motion to Compel Settlement and Common Interest Communications.

2. On November 18, 2010, I attended a meeting, as counsel for the Institutional Investors, that included representatives and counsel for The Bank of New York Mellon (“BNYM”), Countrywide (“CW”) and Bank of America (“BofA”). At this meeting, CW and BofA indicated a willingness to engage in negotiations, between themselves on the one hand and BNYM and the Institutional Investors on the other, to attempt to reach a settlement of repurchase and servicing claims belonging to certain CW residential mortgage backed securities trusts for which BNYM acted as indenture trustee, and in which the Institutional Investors had significant holdings (the “CW RMBS Trusts”). The November 18, 2010 meeting was held at the New York offices of Mayer Brown, counsel for BNYM.

3. Prior to the November 18, 2010 meeting, the Institutional Investors had taken the following actions, among others to attempt to bring about the initiation and prosecution of repurchase and servicing claims owned by the CW RMBS Trusts against CW and BofA: (i) meeting with BNYM to discuss the potential claims; (ii) instructing BNYM to open an investigation into the facts underlying the claims; and (iii) issuing a notice of non-performance under the relevant agreements governing the CW RMBS Trusts.

4. At the November 18, 2010 meeting, BNYM and the Institutional Investors agreed to CW and BofA’s request that the parties enter into settlement negotiations regarding the CW RMBS Trusts’ servicing and repurchase claims. From and after that date, BNYM through their counsel at Mayer Brown, LLP, and the Institutional Investors through their counsel at Gibbs & Bruns, agreed to, and entered into, a common and identical legal strategy embodying a cooperative and common enterprise, to obtain a common result: the negotiation of a favorable settlement of the CW RMBS Trusts repurchase and servicing claims with CW and BofA, on

terms that were acceptable to BNYM and which BNYM could enter into consistent with its duties and obligations as indenture trustee for the trusts.

5. Towards this common purpose, and in furtherance of this common strategy and objective, Mayer Brown and Gibbs & Bruns cooperatively: (i) shared research, analysis, and other work product concerning relevant legal issues, (ii) shared work product analysis of relevant facts bearing on, among other things, the merits of the claims that were the subject of the negotiations; and (iii) engaged in numerous meetings and telephone calls, and exchanged numerous e-mails, in which joint legal strategies were discussed and agreed on. These are the communications listed on the privilege log submitted by the Institutional Investors for which a common interest privilege is claimed with BNYM and its counsel. These communications were made for purposes of: (i) furthering the Institutional Investors' and BNYM's common legal strategy and common interest in obtaining a favorable settlement for the CW RMBS Trusts, and (ii) facilitating the rendition of legal advice by Gibbs & Bruns and Mayer Brown to their respective clients. It was the understanding, agreement, and expectation of Gibbs & Bruns, the Institutional Investors, Mayer Brown, and BNYM that these communications would be kept confidential and not disclosed to third parties.

6. On June 27, 2011, BNYM, CW, and BofA entered into the Settlement Agreement. On June 28, 2011, BNYM filed this proceeding. Both before and after the signing of the Settlement Agreement, Gibbs & Bruns' and Mayer Brown's common cooperative effort and strategy, described above, has included sharing legal research and work product, and participating in developing and acting on a joint strategy, for the purpose of obtaining judicial confirmation, in this proceeding, that BNYM has acted within the scope of its contractually conferred discretion in entering into the Settlement Agreement.

7. In July 2011, certain of the Mayer Brown attorneys who had represented BNYM in connection with this matter moved their practices to the law firm of Dechert, LLP. From and after this date, Dechert participated in the common interest communications described herein regarding judicial confirmation as co-counsel for BNYM.

8. Like the communications revolving around the negotiation of the Settlement Agreement, the communications between and among Gibbs & Bruns, Mayer Brown, and Dechert, on the topic of judicial confirmation of BNYM's exercise of discretion, were made for purposes of: (i) furthering the Institutional Investors' and BNYM's common legal strategy and common interest in obtaining a favorable settlement for the CW RMBS Trusts, and (ii) facilitating the rendition of legal advice by Gibbs & Bruns, Mayer Brown, and Dechert to their respective clients. In this way, Gibbs & Bruns, Mayer Brown, Dechert, and their respective clients agreed to, and entered into, a common and identical legal strategy embodying a cooperative and common enterprise, to obtain a common result regarding judicial confirmation. It was the understanding, agreement, and expectation of Gibbs & Bruns, the Institutional Investors, Mayer Brown, Dechert, and BNYM that these communications would be kept confidential and not disclosed to third parties.

9. Attached as Exhibit 1 is a true and correct copy of excerpts from the deposition of Meyer Koplow.

10. Attached as Exhibit 2 is a true and correct copy of excerpts from the deposition of Jason Kravitt.

11. Attached as Exhibit 3 is a true and correct copy of an October 11, 2011 letter from Thomas C. Baxter, Jr., General Counsel and Executive Vice President of the Federal Reserve Bank of New York to Thomas A. Russo, Executive Vice President and General Counsel for

American International Group, Inc., filed in Case No. 2:11-cv-10549, *American International Group, Inc., et al. v. Countrywide Financial Corp., et al.*, in the United States District Court for the Central District of California.

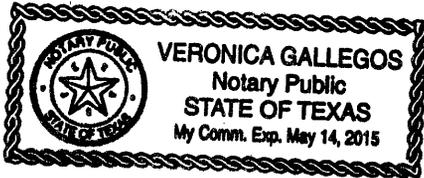
12. Attached as Exhibit 4 is a true and correct copy of an November 10, 2011 letter from Thomas A. Russo, Executive Vice President and General Counsel for American International Group, Inc. to Thomas C. Baxter, Jr., General Counsel and Executive Vice President of the Federal Reserve Bank of New York, filed in Case No. 2:11-cv-10549, *American International Group, Inc., et al. v. Countrywide Financial Corp., et al.*, in the United States District Court for the Central District of California.

FURTHER AFFIANT SAYETH NOT.



ROBERT J. MADDEN

SWORN TO AND SUBSCRIBED before me on the 28th day of January, 2013.





Notary Public in and for The State of Texas