

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.

**STIPULATION OF THE
PARTIES AND
~~PROPOSED~~ ORDER**

IT IS HEREBY STIPULATED AND AGREED, by and between the Steering Committee of the Intervenor-Respondents and Objectors (the "Steering Committee")¹, The Bank of New York Mellon (the "Trustee"), and the Institutional Investors ("Petitioners"), through their undersigned counsel of record, as follows:

¹ The Steering Committee consists of the law firms Reilly Pozner LLP, Keller Rohrback LLP, and Miller & Wrubel P.C. The Steering Committee signs this Stipulation and Proposed Order on behalf of the Intervenor-Respondents and Objectors (the "Respondents"), except the following entities: the Delaware Department of Justice; the New York State Office of the Attorney General; the Federal Housing Finance Agency; the National Credit Union Administration Board; the Maine State Retirement System; Pension Trust Fund for Operating Engineers; Vermont Pension Investment Committee; the Washington State Plumbing and Pipefitting Pension Trust.

1. This Stipulation and Order shall govern discovery procedures in connection with any person or entity that any party will or may designate as an expert witness in this action under CPLR 3101(d) to present evidence (an "Expert Witness").

2. This Stipulation and Order does not apply to the following: John Langbein, Robert Daines, Barry Adler, Brian Lin, Allen Gutterman, RRMS Advisors, Capstone Valuation Services, Faten Sabry, NERA Consulting, David Anthony, EmphaSys Technologies, Inc., Jose Fraga, The Garden City Group, and any other individual or entity the Bank of New York Mellon consulted between November 18, 2010 and June 28, 2011 regarding any aspect of the proposed settlement ("Settlement Advisors"). If any of the Settlement Advisors are designated as Expert Witnesses under CPLR 3101(d), the provisions of Paragraph 5 and Paragraph 6, *infra*, shall not apply to that Expert Witness unless that Expert Witness produces an expert report pursuant to the terms of this Stipulation and Order, in which case this Stipulation and Order shall apply in all respects to such Expert Witness solely with respect to such separate expert report. All parties expressly reserve, and do not waive, their positions with regard to the scope of discovery concerning the Settlement Advisors.

3. Each side (settlement proponents and respondents) shall be permitted to designate up to six (6) Expert Witnesses total, including Expert Witnesses designated for rebuttal.

4. The expert reports described in Paragraph 1 shall include, at a minimum, the following:

- (a) A summary of the subject matter on which the Expert Witness will testify;
- (b) A summary of the substance of the facts and opinions to which the Expert Witness will testify;
- (c) A summary of the grounds for the Expert Witness's opinions;
- (d) A list of the documents upon which the Expert Witness relied in his/her opinions;

- (e) A summary of the Expert Witness's qualifications; and
 - (f) A list of all of the Expert Witness's publications authored in the last 10 years.
5. Notwithstanding any provision of law to the contrary, including CPLR 3101 (or

any other potentially applicable provision, case law, or rule), no party will seek discovery of, and no party shall be required to disclose or produce in discovery or at any hearing or trial any:

- (a) drafts of reports, declarations, affidavits, or other supporting materials, including materials, studies, charts, illustrative documents, or exhibits, in whatever form, prepared on or after June 29, 2011, by the Expert Witness, persons working under the Expert Witness's supervision, parties, their in-house or outside counsel, employees, or consultants; this provision shall apply regardless of whether such drafts have been disclosed or otherwise transmitted to any party or parties who have retained the Expert Witness, or their in-house or outside counsel, employees, or consultants (or any co-parties (which, for the purpose of this subparagraph, shall include Bank of America, Countrywide, their affiliates, and all parties participating in this case as either Intervenors or non-party Objectors) or the co-parties' counsel);
- (b) notes or other documents prepared on or after June 29, 2011, by the Expert Witness or by persons working under the Expert Witness's supervision, unless relied upon as a basis for the Expert Witness's opinions;
- (c) documents or information constituting or reflecting oral or written communications occurring on or after June 29, 2011, between the Expert Witness and persons working under the Expert Witness's supervision, unless relied upon as a basis for the Expert Witness's opinions; or
- (d) documents or information constituting or reflecting oral or written communications occurring on or after June 29, 2011, between the Expert Witness or persons working under the Expert Witness's supervision on the one hand, and, on the other hand any party or parties who have retained the Expert Witness, or their in-house or outside counsel, employees, or consultants (or any co-parties (which, for the purpose of this subparagraph, shall include Bank of America, Countrywide, their affiliates, and all parties participating in this case as either Intervenors or non-party Objectors) or the co-parties' counsel), unless relied upon as a basis for the Expert Witness's opinions.

6. Each Expert Witness, persons working under the Expert Witness's supervision, the parties and their counsel, employees, and consultants are free to discard, and need not preserve, copies of any of the documents listed in paragraphs 5(a) through 5(d) above.

7. Each Expert Witness shall be required to:

- (a) Identify by Bates number all documents, other than Loan Materials (as that term is defined in the Stipulation and Order, entered August 9, 2012), produced in discovery by any party or nonparty to this action on which the Expert Witness has relied as a basis for his or her opinions;
- (b) Identify by Countrywide-loan number all loans for which the Expert Witness has relied on Loan Materials as a basis for his or her opinions;
- (c) Identify by deponent name and date of deposition all deposition testimony on which the Expert Witness has relied as a basis for his or her opinions;
- (d) Identify by deponent name, date of deposition, and exhibit number, each deposition exhibit on which the Expert Witness has relied as a basis for his or her opinions;
- (e) Identify and produce all documents, deposition testimony, data or other information which informed the Expert Witness's opinions in this matter (provided that the Expert Witness need not produce copies of case law, statutes, and regulations). An Expert Witness shall not be required to produce documents or other information included in paragraphs 5(a) through 5(d) above with respect to any expert report produced pursuant to the terms of this Stipulation and Order.;
- (f) Identify any other litigation, arbitrations, or proceedings in which the Expert Witness has submitted a report, declaration, or affidavit or has testified at trial, arbitration hearing, other hearing, by deposition, by affidavit, by declaration or by submission of a report, within the preceding five years. Parties shall not be required to identify the litigation, arbitration, or proceedings referenced herein to the extent prohibited by applicable confidentiality obligations; and
- (g) Identify any publications authored by the Expert Witness in the last 10 years.

8. Any Expert Witness may be examined at deposition or in any proceeding, other than with respect to the documents and/or information listed in paragraphs 5(a) through 5(d) above. Notwithstanding anything to the contrary herein, it is understood and agreed that all parties reserve their right to object to any question, as necessary.

9. The parties agree that each Expert Witness shall be deposed on a day in which no other depositions are occurring.

10. Any fees charged by an Expert Witness for responding to discovery, including time spent at depositions, shall be paid by the party who retained the Expert Witness unless otherwise ordered by the Court.

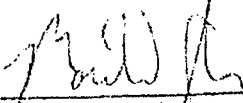
11. Nothing herein shall limit or waive any party's right to object for any reason to the admission of any other party's Expert Witness's report or opinions (in whole or in part) into evidence or to the qualification of any person to serve as an expert witness.

12. No party objects to Countrywide's and/or Bank of America's participation in this proceeding for all matters relating to any Expert Witness who will present evidence related to Loan Materials (as that term is defined in the Stipulation and Order, entered August 9, 2012). The parties agree that the Stipulation and Order, dated August 9, 2012, remains in effect.

13. Entry of this Stipulation and Order by the Court shall be binding on all parties to these proceedings, including, but not limited to, the Intervenor-Respondents and Objectors that are not represented by the Steering Committee.

Dated: February 25, 2013

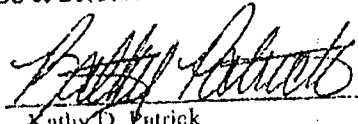
MAYER BROWN LLP

By: 

Matthew D. Ingber
Christopher J. Houpt
1675 Broadway
New York, New York 10019
(212) 755-0100

*Attorneys for The Bank of New York
Mellon*

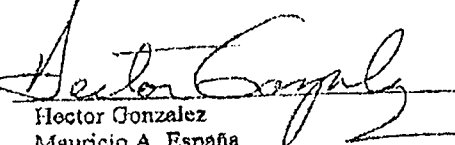
GIBBS & BRUNS LLP

By: 

Kathy D. Patrick
Robert J. Madden
Scott A. Humphries
Kate Kaufman Shih
1100 Louisiana, Suite 5300
Houston, Texas 77002
(713) 650-8805

*Attorneys for the Institutional
Investors*

DECHERT J.L.P

By: 

Hector Gonzalez
Mauricio A. España
1095 Avenue of the Americas
New York, New York 10036
(212) 698-3500

REILLY POZNER LLP

By: 

Daniel Reilly
Michael Rollin
1900 Sixteenth St., Ste. 1700
Denver, Colorado 80202
(303) 893-6100

Attorneys for AIG Entities


MILLER & WRUBEL P.C.

By: _____

John G. Moon
Clare L. Huene
570 Lexington Avenue
New York, New York 10022
(212) 336-3500

Attorneys for the Triaxx Entities

KELLER ROHRBACK LLP

By: 

Derek W. Loeser
David J. Ko
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
(206) 623-1900

*Attorneys for Federal Home Loan
Banks of Boston, Chicago, and
Indianapolis*

So Ordered:

Hon. Barbara R. Kapnick

[February] __, 2013

REILLY POZNER LLP

By: Michael H. Rolfe

Daniel Reilly
Michael Rollin
1900 Sixteenth St., Ste. 1700
Denver, Colorado 80202
(303) 893-6100

Attorneys for AIG Entities

MILLER & WRUBEL P.C.

By: John G. Moon

John G. Moon
Clare L. Huene
570 Lexington Avenue
New York, New York 10022
(212) 336-3500

Attorneys for the Triaxx Entities

KELLER ROHRBACK LLP

By: Derek W. Loeser

Derek W. Loeser
David J. Ko
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
(206) 623-1900

*Attorneys for Federal Home Loan
Banks of Boston, Chicago, and
Indianapolis*

So Ordered:

Barbara R. Kapnick

Hon. Barbara R. Kapnick

February 26, 2013

BARBARA R. KAPNICK
J.S.C.