

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.

AFFIRMATION OF KENNETH E. WARNER

Kenneth E. Warner, an attorney duly licensed to practice law in the State of New York, hereby affirms under penalty of perjury that the following is true and correct:

1. I am a member of Warner Partners, P.C., attorneys of record for the Institutional Investors in the above-captioned action. I am familiar with the proceedings in this case and submit this affirmation in support of the Petitioners' Memorandum of Law in Opposition to Objectors' Order to Show Cause Why the Court Should Not Exclude Certain Evidence and Testimony from Trial.

2. Attached hereto as **Exhibit 1** is a true and correct copy of a June 22, 2012 e-mail from Owen Cyrulnik to Matthew Ingber.

3. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the deposition of Kent Smith.

4. Attached hereto as **Exhibit 3** is a true and correct copy of an August 25, 2011 letter from Vertical Capital, LLC to the Honorable Barbara R. Kapnick.

5. Attached hereto as **Exhibit 4** is a true and correct copy of a May 17, 2013 letter from Daniel Reilly to the Honorable Barbara R. Kapnick, enclosing a May 16, 2013 letter from Vertical Capital, LLC to the Honorable Barbara R. Kapnick.

Dated: New York, New York
June 2, 2013

s/ Kenneth E. Warner
Kenneth E. Warner