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September 3, 2013

**BY E-FILING**

The Honorable Barbara R. Kapnick  
Supreme Court of the State of New York  
60 Centre Street  
New York, New York 10007

Re: *In re The Bank of New York Mellon*  
(Index No. 651786/2011)

Dear Justice Kapnick:

We write on behalf of PIMCO, BlackRock, MetLife, ING, and eighteen other Institutional Investors to oppose the Objectors' latest effort to continue these proceedings. The court made clear to all parties that it would be out this week for the holidays. Given that the objectors' continuance concerns a case now in trial before Your Honor, it should be taken up—if at all—on an orderly schedule that does not interfere with this week's important religious observances or the parties' trial preparation.

The Trustee has set out ably why the Objectors' arguments are a rehash of issues the court resolved in earlier motions. We write to make a different point: further delay in these proceedings would be deeply prejudicial to the court, to the administration of justice, and to the 93% of certificateholders who have not objected to this settlement. For these reasons, the court should decline to sign the objectors' proposed order to show cause.

CPLR §4402 is clear: a continuance should be granted only when "it is in the interests of justice." There is nothing just about the Objectors' effort to delay this proceeding to permit them to re-argue issues they have lost multiple times. Though the objectors assert their motion "is not made *merely* for delay" (*Id.* 8 (emphasis added)), delay is their overt aim. By the time these proceedings reach their scheduled conclusion in September, the parties will have been afforded seven and one-half weeks of trial. That is an extraordinary investment of resources for this court and the judicial system as a whole. The Objectors are not entitled to monopolize the court's time, simply because they want a "do over"—after two years of discovery and many weeks of trial—on points the court has already rejected.

Separate from the unjust strain further delay would impose on the court, a continuance would also deeply injure the interests of certificateholders. Though the Objectors avoid this point entirely in their motion, their efforts at delay continue to impose dramatic costs on all

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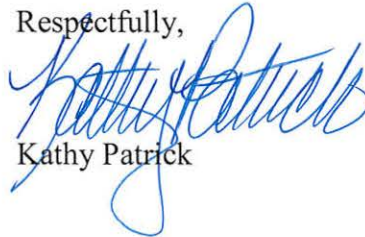
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certificateholders. The objectors' demand for "a production of all documents reflecting, discussing, or otherwise evidencing BNYM's factual and legal investigation and evaluation of the claims sought to be released by the settlement" (Br. 10), carries with it the intended consequence of months of further delay, including a mid-trial document review and production, followed by depositions and the recalling of trial witnesses. All of this stands to inflict tens, if not hundreds, of millions of dollars of costs on the 93% of certificateholders who do not object to the settlement and who want nothing other than the prompt receipt of the \$8.5 billion settlement the Trustee has obtained for all of them.

The Objectors have been afforded more than enough time and discovery to present their case fully and fairly. They are not entitled to more. The Objectors' conduct to date—which includes wrongful removal to federal court, several motions to adjourn the trial (including on the first day of trial), a baseless jury trial demand, followed by an even more baseless appeal and motion to stay the trial, and cross examinations that in most cases are at least quadruple the length of the petitioners' direct examinations—makes plain that their sole remaining strategy is delay for delay's sake.

A mid-trial continuance, on these facts, is not in the interests of justice. CPLR §4402. Accordingly, we urge the court not to sign the objectors' proposed order to show cause.

Respectfully,



Kathy Patrick

cc: All counsel