

Ingber Affirmation

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.

Motion Sequence No. 29

AFFIRMATION OF MATTHEW D. INGBER

The undersigned, Matthew D. Ingber, states the following under penalty of perjury:

1. I am a partner of the law firm of Mayer Brown LLP, attorneys for Petitioner The Bank of New York Mellon (“Trustee”). I am familiar with the matters referenced herein and submit this affirmation in support of the Trustee’s opposition to the Steering Committee’s motion to compel discovery from EmphaSys Technologies, Inc. (“ETI”) (motion sequence 29).
2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the transcript of the November 15, 2012 deposition of David Anthony, as a representative of ETI.

3. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the transcript of the November 27, 2012 deposition of Jason Buechele.

Dated: January 28, 2013
New York, New York

/s/ Matthew D. Ingber
Matthew D. Ingber