

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),

Petitioner,

-against-

WALNUT PLACE, ET AL.,

Intervenor-Respondents,

Index No. 651786/2011

Assigned to: Kapnick, J.

**AFFIRMATION OF
MICHAEL A. ROLLIN**

I, Michael A. Rollin, hereby affirm under the penalty of perjury that the following is true and correct:

1. I am a member of the Bar of the State of New York and of Reilly Pozner LLP, counsel for the AIG entities in this matter. I have personal knowledge of the facts set forth below.
2. This relief is requested by order to show cause because during the March 19, 2012, conference call with the Court, the parties were directed to file orders to show cause to address threshold matters.
3. AIG is one of several Intervenor-Respondents and Objectors (“Intervenors”) in this matter and my firm is a member of the Steering Committee. I submit this Affirmation in support of the Intervenors’ motion for an order pursuant to CPLR § 3124:
 - a) compelling The Bank of New York Mellon (“BNYM”) and the Institutional Investors to produce all communications and documents exchanged between and among BNYM, the Institutional Investors, and the Bank of

America/Countrywide entities (“BAC/CW”) during the negotiation, consummation, and Court submission of the proposed settlement (“Settlement Communications”); and

- b) compelling BNYM to produce a sampling of loan files and compelling BNYM and the Institutional Investors to produce all other information relevant to the meaning, effect, and reasonableness of the settlement terms; and
- c) ruling that the fiduciary exception to the attorney-client privilege applies to communications between BNYM and its counsel, and the Institutional Investors and their counsel, when they were seeking legal advice about the proposed settlement (from approximately November 2010 to June 29, 2011); and
- d) Awarding such other and further relief as the Court may deem just and proper.

4. BNYM initiated the instant proceeding by filing a Verified Petition (*See Docket No. 1.*)

5. BNYM attached a Proposed Final Order and Judgment (“PFOJ”) to its Verified Petition. (*See PFOJ, Docket No. 7.*)

6. Through its Verified Petition and PFOJ, BNYM asks this Court to approve a settlement that it seeks to consummate on behalf of 530 trusts (the “Covered Trusts”), in its capacity as Trustee for those trusts. (*See PFOJ ¶ n [requesting approval of the proposed settlement].*)

7. As described more fully in the accompanying Memorandum of Law, the settlement will extinguish claims of every certificateholder in each of the Covered Trusts.

8. BNYM seeks at least eighteen separate findings from this Court:
- (1) **The “Jurisdiction” Finding:** “The Court has jurisdiction over the subject matter of this Article 77 proceeding.” (*PFOJ ¶ b.*)
 - (2) **The “Adequate Notice” Finding:** “The form and the method of dissemination of the notice (the “Notice”) . . . provided the best notice practicable under the circumstances The Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the Settlement and the Court’s consideration of the actions of the Trustee in entering into the Settlement Agreement” (*Id. ¶¶ c-d.*)
 - (3) **The “Trustee’s Authority” Finding:** “The Trustee has the authority . . . to enter into the Settlement Agreement” (*Id. ¶ f.*)
 - (4) **The “Within the Trustee’s Discretion” Finding:** “. . . the decision whether to enter into the Settlement Agreement . . . is a matter within the Trustee’s discretion.” (*Id. ¶ g.*)
 - (5) **The “Full and Fair Opportunity” Finding:** “A full and fair opportunity has been offered to all Potentially Interested Persons, including the Trust Beneficiaries, to make their views known to the Court, to object to the Settlement and to the approval of the actions of the Trustee in entering into the Settlement Agreement, and to participate in the hearing thereon.” (*Id. ¶ e.*)
 - (6) **The “Factual Investigation” Finding:** “The Settlement Agreement is the result of factual . . . investigation by the Trustee” (*Id. ¶ h.*)
 - (7) **The “Legal Investigation” Finding:** “The Settlement Agreement is the result of . . . legal investigation by the Trustee” (*Id.*)
 - (8) **The “Focus on Available Alternatives” Finding:** “. . . the Trustee’s deliberations appropriately focused on . . . the alternatives available or potentially available to pursue remedies for the benefit of the Trust Beneficiaries” (*Id. ¶ j.*)
 - (9) **The “Appropriate Evaluation of the Underlying Claims” Finding:** “The Trustee appropriately evaluated . . . the strengths and weaknesses of the claims being settled.” (*Id. ¶ i.*)
“. . . the Trustee’s deliberations appropriately focused on the strengths and weaknesses of the Trust Released Claims” (*Id. ¶ j.*)

- (10) **The “Appropriate Evaluation of the Settlement” Finding:** “The Trustee appropriately evaluated the terms, benefits, and consequences of the Settlement . . .” (*Id.* ¶ i.)
- “. . . the Trustee’s deliberations appropriately focused on . . . the terms of the Settlement.” (*Id.* ¶ j.)
- (11) **The “Arms-Length Negotiations” Finding:** “The arms-length negotiations that led to the Settlement Agreement . . . appropriately focused on the strengths and weaknesses of the Trust Released Claims . . .” (*Id.*)
- (12) **The “Acted in Good Faith” Finding:** “The Trustee acted in good faith . . . in determining that the Settlement Agreement was in the best interests of the Covered Trusts.” (*Id.* ¶ k.)
- (13) **The “Acted Within its Discretion” Finding:** “The Trustee acted . . . within its discretion . . . in determining that the Settlement Agreement was in the best interests of the Covered Trusts.” (*Id.*)
- (14) **The “Acted Within the Bounds of Reasonableness” Finding:** “The Trustee acted . . . within the bounds of reasonableness in determining that the Settlement Agreement was in the best interests of the Covered Trusts.” (*Id.*)
- (15) **The “Binding on all Parties” Finding:** “[T]he Parties [to the Settlement Agreement] are directed to consummate the Settlement” (*Id.* ¶ m.)
- (16) **The “Extinguished Rights” Finding:** BNYM seeks to forever bar and enjoin all certificateholders—which includes the Intervenors—from ever seeking relief: (1) from BAC/CW for their conduct in originating, selling, delivering, servicing, and failing to maintain proper documentation for the mortgage loans held by the Covered Trusts, (*id.* ¶ n.); and (2) from BNYM for “any claims arising from or in connection with the Trustee’s entry into the Settlement . . .” (*Id.* ¶ p.)
- (17) **Approval of the Trustee’s Decision:** “[T]he Court hereby approves the actions of the Trustee in entering into the Settlement Agreement in all respects.” (*Id.* ¶ l.)
- (18) **Approval of the Settlement:** “The Settlement Agreement is hereby approved in all respects, and is fully enforceable in all respects.” (*Id.* ¶ n.)

9. The Institutional Investors took part in the negotiation of the proposed settlement and have intervened in this matter in support of the settlement.

10. While this matter was pending in federal court, the Intervenors served discovery requests upon BNYM and the Institutional Investors.

11. To date, BNYM and the Institutional Investors have refused to provide meaningful discovery into the settlement and the process by which it was reached.

12. Attached as Exhibit 1, is a true and accurate copy of BNYM's Responses and Objections to Intervenor-Respondents' First Set of Document Requests.

13. Attached as Exhibit 2, is a true and accurate copy of The Institutional Investors' Objections and Responses to Intervenor-Respondents' First Set of Interrogatories and First Requests for Production.

14. BNYM and the Institutional Investors withhold relevant documents under categorical claims of privilege, but fail to provide adequate privilege logs that allow the Intervenors to assess their privilege claims.

15. Attached as Exhibit 3, is a true and accurate copy of BNYM's Privilege Log.

16. Attached as Exhibit 4, is a true and accurate copy of The Institutional Investors' Privilege Log.

17. BNYM and the Institutional Investors also withhold communications and documents exchanged between and among BNYM, the Institutional Investors, and the Bank of America/Countrywide entities ("BAC/CW") during the negotiation, consummation, and Court submission of the proposed settlement ("Settlement Communications").

18. BNYM also refuses to provide a sampling of loan files and both BNYM and the Institutional Investors withhold information relevant to the meaning, effect, and reasonableness of the settlement terms.

19. The parties have met and conferred with respect to discovery on multiple occasions.

20. On January 19, 2012 and January 23, 2012, counsel for the Intervenors, including myself and my partner, Daniel M. Reilly, conferred with counsel for BNYM and counsel for the Institutional Investors to address the status of discovery and the taking of depositions. At that time, counsel for BNYM and the Institutional Investors made clear that any and all inquiries into "Settlement Communications" would be off-limits until the parties obtained a ruling from the court on that issue.

21. On February 6, 2012, counsel for the Intervenors, including myself and my partner, Dan Reilly, conferred with the Institutional Investors' counsel, Kathy Patrick, regarding the Institutional Investors' responses and objections to the Intervenors' requests for production. Ms. Patrick indicated that any documents concerning the settlement terms and/or the underlying claims were considered categorically irrelevant and therefore not subject to discovery. Ms. Patrick also indicated that the Institutional Investors would continue to withhold "Settlement Communications."

22. On February 7, 2012, counsel for the Intervenors, including myself and my partner, Dan Reilly, conferred with BNYM's counsel, Matt Ingber, regarding BNYM's responses and objections to the Intervenors' requests for production. Mr. Ingber indicated that any documents concerning the settlement terms and/or the underlying claims were considered

categorically irrelevant and therefore not subject to discovery. Mr. Ingber also indicated that BNYM would continue to withhold “Settlement Communications.”

23. On March 12, 2012, BNYM reiterated its position with respect to discovery that any documents concerning matters beyond the single issue of whether the Trustee’s “decision to settle was within the bounds of a reasonable exercise of discretion,” are not relevant and therefore not discoverable. (*See* March 12, 2012 Letter from Matthew D. Ingber of Mayer Brown LLP to The Honorable Barbara R. Kapnick at 6, Docket No. 205.)

24. Pursuant to BNYM’s and the Institutional Investors’ written objections to the Intervenors’ discovery requests, their subsequent representations to Dan Reilly and myself, and their submissions to this Court, it is evident that BNYM and the Institutional Investors will not produce Settlement Communications or documents relevant to the meaning, effect and reasonableness of the settlement terms and underlying claims, including loan files, absent court order.

25. The Intervenors cannot fully and adequately evaluate BNYM’s requested findings without that information.

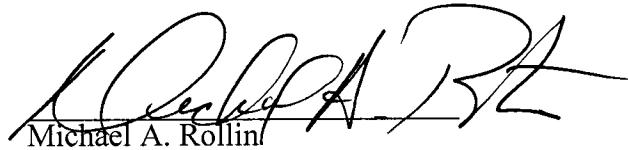
26. The Intervenors therefore seek an order from this Court pursuant to CPLR § 3124 compelling BNYM and the Institutional Investors to produce meaningful and adequate discovery as described more fully in paragraph 3 of this Affirmation.

27. The Court previously directed the parties to address threshold matters by way of orders to show cause. The parties also were ordered to submit a proposed briefing schedule to the Court. The parties subsequently agreed upon and submitted the following schedule:

- April 3: Orders to Show Cause Filed
- April 13: Response Briefs Due
- April 19: Reply Briefs Due

28. Other than by way of pre-motion submissions and other communications to The Honorable William H. Pauley while this matter was pending in federal court, the Intervenors have made no previous application for the same or similar relief.

Dated this 3rd day of April 2012



A handwritten signature in black ink, appearing to read "Michael A. Rollin".