



October 25, 2012

Hon. Barbara R. Kapnick  
Justice  
Supreme Court, New York County  
60 Centre Street  
New York, NY 10007

VIA TELECOPIER: 212-401-9154

Re: Application of The Bank of New York Mellon (Index No. 651786/11)

Dear Justice Kapnick:

At the last hearing, you asked counsel to The Steering Committee to send to you a list of the pending securities actions against Bank of America being pursued by its members. They have not done so. Accordingly, the list of all such cases known to us is enclosed with this letter.

This information is highly relevant. Courts are always on the lookout for situations where settlement objectors oppose broad-based settlements and create delay – as is happening here -- *not* because they really believe the settlement is unfair, but instead to gain leverage for a large settlement in their own separate lawsuits (the *quid pro quo* being that in exchange the objectors will stop holding up the other settlement).

For example, in *In re Prodigy Comm'n Corp. Shareholders Litig.*, the court rejected the complaints of a settlement objector whose objections were made “as part of a campaign to force [the settling defendant] to pay him sums on account of” an unrelated employment claim.<sup>1</sup> Likewise, in *In re Talley Indus., Inc. Shareholders Litig.*, the court rejected the complaints of a settlement objector where “the record before me strongly suggests that the decision to lodge objections to the Settlement was related to [the objector’s] efforts to force the payment or settlement of [a separate] claim.”<sup>2</sup> As the *Talley* court explained, “this suggested connection necessarily colors the Courts consideration of the objections.”<sup>3</sup>

Here the same risk is evident. All of the members of the Steering Committee (save one -- Triaxx), have securities fraud cases pending against Bank of America relating to mortgage backed securities. The most active member of the Steering Committee, AIG, has made clear that

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<sup>1</sup> *In re Prodigy Comm'n Corp. Shareholders Litig.*, 2002 WL 1767543, at \*5 (Del. Ch. 2002).

<sup>2</sup> *In re Talley Indus., Inc. Shareholders Litig.*, 1998 WL 191939, at \*6 (Del. Ch. 1998).

<sup>3</sup> *Id.* (emphasis added).

it used the threat of an objection to the Settlement as leverage in settlement negotiations with Bank of America concerning AIG's separate securities claims.<sup>4</sup>

Thus, in examining the positions taken by the Steering Committee with respect to scheduling, discovery, and final approval of the Settlement, the Court should consider the mixed motives of AIG and the other committee members who are currently pursuing securities claims against Bank of America. These objectors' securities claims give them an individual incentive to hinder and delay approval of this highly beneficial Settlement to gain leverage to serve their own litigation ends, a goal that is contrary to the best interests of the thousands of certificateholders who will benefit from this \$8.5 billion Settlement if it is approved.

Respectfully,

*Kathy Patrick / r.j.m.*

Kathy Patrick

Enc.

cc: All counsel of record (via ECF)

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<sup>4</sup> As the Court will recall, the Institutional Investors requested that AIG produce all communications with Bank of America regarding AIG's objection, or any threatened objection, to the Settlement. *See* Doc. 316. In response, AIG: (i) acknowledged the existence of such communications, and (ii) admitted that they were contained in a mediation statement made in connection with AIG's attempt to extract a securities settlement from Bank of America. Clearly communications from AIG to Bank of America regarding AIG's threat to object to the Settlement here should have been completely irrelevant to AIG's separate claim against Bank of America, *unless* they were being conveyed for leverage by threatening an objection from AIG to the Settlement if Bank of America did not settle AIG's separate claim to AIG's satisfaction. AIG has asserted the mediation privilege to prevent these communications from being discovered. *See* AIG Letter (Doc. 326) (asserting that the request for production of AIG communications with Bank of America concerning any threatened objection to the Settlement "would encompass AIG's mediation materials and, thus, violate the privileges that govern those materials."); Transcript of June 14, 2012 Hearing at 30:26-31:2.

Steering Committee Member	Case Name	Plaintiffs' Counsel	Date Filed	Current Court and Judge
AIG Entities	<i>American International Group, Inc. et al v. Bank of America Corporation et al.</i> , No. 11 Civ. 6212 (BSJ) (S.D.N.Y).	Quinn Emanuel Urquhart & Sullivan LLP	Aug. 8, 2011	S.D.N.Y., Judge Barbara S. Jones
AIG Entities	<i>American International Group, Inc. et al v. Bank of America Corporation et al.</i> , No. 11 Civ. 10549 (MRP) (C.D. Cal.)	Quinn Emanuel Urquhart & Sullivan LLP	Aug. 8, 2011	C.D. Cal., Judge Mariana A. Pfaelzer
Federal Home Loan Bank of Boston	<i>Federal Home Loan Bank of Boston v. Ally Financial, Inc. et al.</i> , No. 11 Civ. 10952 (GAO) (D. Mass.)	Keller Rohrback L.L.P.	Apr. 20, 2011	D. Mass., Judge George A. O'Toole, Jr.
Federal Home Loan Bank of Chicago	<i>Federal Home Loan Bank of Chicago v. Banc of America Securities L.L.C. et al.</i> , No. LC091499 (Cal. Super. Ct., L.A. Cnty.)	Keller Rohrback L.L.P.	Oct. 15, 2010	Los Angeles County Superior Court, CA (Complex Division), Judge Anthony J. Mohr
Federal Home Loan Bank of Chicago	<i>Federal Home Loan Bank of Chicago v. Banc of America Funding Corporation, et al.</i> , No. 10-CH-45033 (KMP) (Ill. Cir. Ct., Cook Cnty)	Keller Rohrback L.L.P.	Oct. 15, 2010	Cook County Circuit Court (Chancery Division), IL, Judge Kathleen M. Pantle
Federal Home Loan Bank of Indianapolis	<i>Federal Home Loan Bank of Indianapolis v. Banc of America Mortgage Securities, Inc. et al.</i> , No. 49D05-10-10-PL-045071 (Ind. Super. Ct., Marion Cnty.)	Keller Rohrback L.L.P.	Oct. 15, 2010	Superior Court for Marion County, Indiana, Judge Robyn L. Moberly