

Exhibit 62
to
Affidavit of Daniel M. Reilly
in Support of Joint Memorandum of
Law in Opposition to Proposed Settlement

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 39
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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,

For an Order, pursuant to CPLR Section 7701,
seeking judicial instructions and approval of
a proposed settlement.

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INDEX NO: 651786/11 60 Centre Street
 New York, New York
 August 2, 2012

BEFORE: HONORABLE BARBARA R. KAPNICK, Justice

APPEARANCES:

MAYER BROWN
Attorneys for Bank of NY Mellon (Trustee)
1675 Broadway
New York, New York
BY: MATTHEW D. INGBER, ESQ.

GIBBS & BRUNS, LLP
Attorneys for Institutional Investors
1100 Louisiana
Suite 5300
Houston, Texas
BY: KATHY PATRICK, ESQ.
 ROBERT J. MADDEN, ESQ.

WARNER PARTNERS, P.C.
Attorneys for Institutional Investors
950 Third Avenue
New York, New York
BY: KENNETH E. WARNER, ESQ.

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2 of the fiduciary duties that the law sets up. You can't
3 avoid there are documents in BoNY's possession that are not
4 attorney client privilege documents, that go to what their
5 role was, what the understanding of their fiduciary duties
6 were.

7 Those documents are highly relevant because of the
8 issues they put in play. They are not privileged and they
9 should be produced. There is a separate interrogatory, two
10 interrogatories that go to those particularly, and it's just
11 a no-brainer on those. Those materials, have no reason not
12 to produce those in Court.

13 Thank you, your Honor.

14 THE COURT: Mr. Ingber.

15 MR. INGBER: Good afternoon, your Honor. Matthew
16 Ingber for the Trustee.

17 It's difficult to know where to begin after hearing
18 Mr. Loeser's argument and Mr. Reilly's argument from earlier
19 this morning.

20 I am tempted to take every one of the documents
21 that Mr. Reilly showed the Court and to walk you through
22 those documents, and explain how misleading Mr. Reilly's
23 presentation was.

24 I am also tempted to question why Mr. Reilly is so
25 eager to present this evidence, these so-called greatest
26 hits from our 277,000 pages of documents that have been

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2 produced, why he is so eager to present them to this Court
3 in this setting, in this fashion, but he is so reluctant or
4 has been so reluctant to take a deposition and ask questions
5 about those documents and has about been so reluctant to
6 agree to enter into a schedule that gets us to a hearing
7 where we can show you all the evidence, where you could hear
8 testimony from Mr. Kravitt and other parties, individuals,
9 working on behalf of Bank of New York, where we can show
10 that what happened between November and June was good faith
11 negotiations, combative, adversarial communications about
12 the settlement, where Bank of America, the Institutional
13 Investors and Bank of New York were working hard and in good
14 faith to enter into a settlement for which there is no play
15 book.

16 We have heard that the Trustee did nothing after it
17 got the notice of non-performance. We also just heard we
18 took extraordinary measures to enter into this settlement on
19 behalf of 530 Trusts.

20 The fact is, that Bank of New York is the only
21 Trustee that has taken meaningful steps to solve a very
22 significant problem, and that culminated in a settlement
23 that we are asking your Honor to approve.

24 But really, where I would like to start is with a
25 focus on this issue and this motion. Since the outset of
26 this case, the Trustee has been an open book with respect to

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this settlement.

We filed this proceeding, in part, to allow objectors to come forward and learn about the settlement and decide whether they want to object. We filed the petition, where we explain the rationale for entering into the settlement, and we attach the settlement agreement and all the exhibits, including the side letter that has been subject to so much debate.

A few days after the settlement was announced and the filing was made, we were approached and asked whether we would disclose all of the expert reports that the Trustee relied on, five of the expert reports. We said yes. We posted them to the website we created for this proceeding.

Fast forward two or three months later.

Mr. Reilly and other objectors said to the Trustee, you know, we haven't issued a document request. We are interested in the Trustee making it voluntary, into entering the settlement and everything it gave. Voluntary disclosure? We said okay, sure. We produced those documents.

Fast forward to January of this year. Objectors were offered settlement communications, they were offered a proposal in which we will produce settlement communications and it included a provision in which they would agree not to disqualify counsel. They never offered a counter proposal.

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2 So, fast forward four months later, after we had a
3 brief, to brief this issue, and we argued the issue before
4 this Court and they finally came around to agreeing not to
5 disqualify counsel and what did we do? We said, here you
6 go. Here are the settlement communications. They now
7 have 271,000 pages of documents that the Trustee has
8 produced.

9 But, this is where we draw the line, your Honor --
10 when we are talking about confidential, privileged
11 communications between Bank of New York and its counsel,
12 communications that Bank of New York had the right to expect
13 and did expect would remain privileged and remain
14 confidential.

15 When Bank of New York hasn't put that advice of
16 counsel at issue, when there is a shrinking number of
17 objectors who are seeking this information, a third of which
18 haven't even signed on to this motion seeking privileged
19 communications, when the Trustee is not a fiduciary, that is
20 where we draw the line.

21 We are asking that the Court draw the line as well,
22 and avoid issuing a ruling that will have consequences far
23 beyond this matter, consequences that will effect Trustees
24 across the country who, based on years of jurisdiction
25 prudence, based on the plan language of their contracts,
26 have thought all along that their privileged communications