

Exhibit 1
to
Affidavit of Michael A. Rollin
in Support of Jury Demand

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK : PART 39

3 -----X

4 In the Matter of the Application of

5 THE BANK OF NEW YORK MELLON,
6 (As Trustee Under Various Pooling and Servicing
7 Agreements and Indenture Trustee Under Various
8 Indentures) et al,

9
10 Petitioners,

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12 For an Order Pursuant to CPLR Section 7701,
13 Seeking Judicial Instructions and Approval of
14 a Proposed Settlement.

15 -----X

16 Index No. 651786/11

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18 October 12, 2012
19 60 Centre Street
20 New York, New York

21 B E F O R E: HONORABLE BARBARA R. KAPNICK, JSC

22 A P P E A R A N C E S:

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1 anything more about it, but I can't stand here any longer
2 and listen to that.

3 THE COURT: Let's not make this overly personal
4 since you all are coming here to New York to litigate this
5 case from wherever it is that you are.

6 Ms. Patrick, I want you to explain to me, because
7 it does look to me at first blush to be -- at first blush,
8 tenth blush it looks like a release, and your guys keep
9 saying it is not a release.

10 MS. PATRICK: Okay. Here's the issue.

11 THE COURT: "Permanently barred and enjoined from
12 instituting."

13 MS. PATRICK: I get it, your Honor. Let me get
14 there.

15 Mr. Loeser started this process by saying
16 compromising our rights and our claims. As you know, not
17 their rights, not their claims. These claims belong to the
18 trusts. What is the finding here doing? There is no
19 release. There is no release in the settlement agreement
20 for Bank of New York Mellon. Zero. Paragraph 9,
21 Paragraph 10 of the agreement specify the releases. You
22 will read it in vain for any release of BNY Mellon.
23 Absolutely no release. So what is the order doing?

24 The only thing the order does in Paragraph P is
25 if the Court finds, as the Trustee has requested, that it

1 acted within its reasonable discretion in entering into
2 this settlement, then the Trustee cannot be sued for having
3 entered into the settlement because the Court will
4 effectively have entered a declaratory judgment that it
5 performed its obligations under the PSA on the narrow
6 question of entering into the settlement. There is no
7 finding here about conduct outside the settlement, and
8 there is no release in the settlement agreement for the
9 Trustee of any kind.

10 THE COURT: Well, what other things could happen?
11 What other cases could somebody bring if it was not to say
12 that you did not act appropriately, Bank of New York, in
13 negotiating these agreements?

14 MR. INGBER: Any other case that a certificate
15 holder wants to bring against Bank of New York they can
16 still bring. There are cases outstanding now. Knights of
17 Columbus has a case pending before your Honor. And if you
18 recall --

19 THE COURT: I am well aware of it.

20 MR. INGBER: I know. And if you recall at the
21 oral argument on the motion to dismiss I said to the Court,
22 I'm not here arguing that this case is released by the
23 settlement agreement because that would be false. It is
24 not released.

25 There is a case before Pauley right now, Judge
Rachel C. Simone, CSR, RMR, CRR

Reporter Certification

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2 The foregoing is hereby certified to be a true and
3 accurate transcript of the proceedings.

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Rachel C. Simone

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Senior Court Reporter

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