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BY ELECTRONIC FILING

The Honorable Barbara R. Kapnick
Supreme Court of the State of New York
60 Centre Street
New York, New York 10007

Re: *In re The Bank of New York Mellon*
(Index No. 651876/2011)

Dear Justice Kapnick:

In another violation of Rule 18, the Steering Committee has filed its fourth brief on motion sequence 31. The latest filing further dooms the Steering Committee's motion, for it only reinforces that privileged attorney-client communications are far from the "the only evidence" available on topics of interest to the objectors. The production of yet additional discovery beyond the tri-party settlement communications – namely, the common interest communications – provides another compelling reason to deny the objectors' motion once and for all.

The letter reflects the extent to which, after taking 27 depositions and receiving hundreds of thousands of pages of documents, the objectors are left to draw inferences from isolated words. They find support for a claim of "self-dealing" by the Trustee in Jason Kravitt's remark that Bank of America was a "good" client (rather than a "bad" client).¹ They cite their expert witness's speculation about the Trustee's motive to remain a "preferred trustee," a theory that has been refuted by every fact witness asked about it, that courts have held is categorically irrelevant, and that their expert agrees applies to every trustee, simply by virtue of being a trustee. They further suggest that because the terms of the indemnity confirmation were "negotiated," the confirmation must have been exchanged for a lower recovery for the trusts. Nearly two years into the case, this is the best they have, and it is woefully inadequate to invade the privilege.

The recent production of common interest materials is relevant for another reason. Less than a week ago, Mr. Reilly told the Court that the Trustee was "staring down the barrel of a shotgun," a reference to a supposed threat of a lawsuit from the Institutional Investors. After reviewing the 550 communications between those investors and the Trustee, they have gone silent on this theory.

¹ That Bank of America was a client of Mayer Brown was disclosed last October. After the Steering Committee fought for Mayer Brown's conflict waivers, we produced them, and the Steering Committee evidently has found nothing in those letters to support any of their conjectures.

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Finally, the Steering Committee asks for further delay so that the Trustee can rewrite its privilege log. The Trustee produced logs between February 28 and July 25 of last year, yet the Steering Committee has never objected to their form, including in their first three briefs and two oral arguments on this motion. The motion should be denied not because the Steering Committee cannot identify particular documents from the log, but for two other, independent reasons: the Steering Committee cannot justify its extraordinary demand, or even define the categories that it wants with any specificity.

Respectfully submitted,


Matthew D. Ingber

cc: All counsel