

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT 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), *et al.*,

Petitioner,

-against-

WALNUT PLACE LLC, *et al.*,

Intervenor- Respondents,

No. 11-CIV-5988

Assigned to: Hon. William H. Pauley III

MEMORANDUM OF  
LAW IN SUPPORT OF  
PROPOSED  
INTERVENOR-  
RESPONDENT AIG'S  
MOTION TO  
INTERVENE

American International Group, Inc., American General Assurance Company, American General Life and Accident Insurance Company, American General Life Insurance Company, American General Life Insurance Company of Delaware, American Home Assurance Company, American International Life Assurance Company of New York, Chartis Property Casualty Company, Chartis Select Insurance Company, Commerce and Industry Insurance Company, First SunAmerica Life Insurance Company, Lexington Insurance Company, National Union Fire Insurance Company of Pittsburgh, PA, New Hampshire Insurance Company, SunAmerica Annuity and Life Assurance Company, SunAmerica Life Insurance Company, The Insurance Company of the State of Pennsylvania, The United States Life Insurance Company in the City of New York, The Variable Annuity Life Insurance Company, and Western National Life Insurance Company (hereinafter collectively referred to as "AIG") submit this memorandum of law in support of their motion to intervene, and state as follows:

**INTRODUCTION**

In this action, the Bank of New York Mellon ("BoNY"), as trustee for 530 residential mortgage-backed securities trusts, seeks judicial approval of a proposed settlement reached with

Countrywide Home Loans, Inc. and its affiliates (“Countrywide”) and its parent, Bank of America Corporation (“BAC”). AIG is a certificateholder in 97 of the at-issue trusts. Prior to the removal of this action to federal court, AIG had filed a motion to intervene in the state court action, which BoNY did not oppose. That motion was pending when this action was removed. AIG now seeks to intervene in this action to protect its interests in those trusts.

## **ARGUMENT**

### **I. AIG Is Permitted to Intervene as of Right.**

Under Federal Rule of Civil Procedure 24(a)(2), “the court must permit anyone to intervene” on a “timely” motion if that party “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.”

Intervention as of right under Rule 24(a)(2) is granted when all four of the following conditions are met: (1) the motion is timely; (2) the applicant asserts an interest relating to the property or transaction that is the subject of the action; (3) the applicant is so situated that without intervention, disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; and (4) the applicant's interest is not adequately represented by the other parties.

*MasterCard Int'l Inc. v. Visa Int'l Serv. Ass'n, Inc.*, 471 F.3d 377, 389 (2d Cir. 2006). AIG satisfies these criteria.

#### **A. AIG’s Motion Is Timely.**

AIG has timely filed its motion to intervene. This matter was removed to this Court on August 26, 2011, and AIG has filed its motion to intervene within one week of the removal. Further, at the time of removal, AIG had pending before the state court a motion to intervene in the state court action, which BoNY did not oppose. *See* Rollin Decl. ¶¶ 5-6. Finally, AIG submitted a notice of intention to appear and object in this court and in state court on August 30,

2011, a date that the trustee stated would be sufficient to permit a party to be heard in regards to the settlement. *See id.* ¶ 7. This motion to intervene is timely.

**B. AIG Asserts an Interest in the Transaction That Is the Subject of the Action.**

AIG is a certificateholder in 97 of the 530 trusts at issue in the settlement proposed by BoNY. Rollin Decl. ¶ 3. The proposed settlement seeks to resolve claims that those trusts have against BAC and Countrywide. Accordingly, AIG “asserts an interest relating to the property or transaction that is the subject of the action.” *MasterCard Int’l Inc.*, 471 F.3d at 389.

**C. Disposition of the Action May Impair or Impede AIG’s Ability to Protect Its Interest.**

This is an action seeking judicial approval of a proposed settlement of claims. If approved, the settlement may completely foreclose AIG’s ability to protect its interest in pursuing claims against Countrywide and BAC. This is sufficient to satisfy the third criterion for intervention as of right.

**D. AIG’s Interest Is Not Adequately Represented by Other Parties.**

Finally, intervention as of right is appropriate because its interests are not adequately represented by other parties to this action. “[T]he burden to demonstrate inadequacy of representation is generally speaking minimal.” *Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 179 (2d Cir. 2001) (internal quotations omitted). AIG easily satisfies this minimal standard. AIG owns interests in more trusts than the Walnut Place entities, so AIG’s interests are not the same as those entities. Nor does BoNY adequately represent AIG’s interests. In fact, as the action is currently styled, BoNY is adverse to its investors, demonstrating that, at least at this stage of the litigation, the trustee cannot be presumed to adequately represent the interests of AIG.

Because it satisfies the criteria for intervention as of right, AIG asks this Court to permit it to intervene as a Respondent.

**II. In the Alternative, AIG Should Be Permitted to Intervene.**

Even if a party is not entitled to intervene as of right, the court may still permit it to intervene if that party has a “claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). This standard is easily satisfied, as AIG’s claims relate to the fairness and propriety of the settlement, questions that are at the heart of this case. Further, AIG has substantial experience in residential mortgage backed securities litigation, and its participation in this action is likely to assist the court in its evaluation of the proposed settlement.

Therefore, in the alternative, AIG asks that it be permitted to intervene under Federal Rule of Civil Procedure 24(b)(1)(B).

**CONCLUSION**

For the foregoing reasons, AIG asks that it be allowed to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a)(2) or, in the alternative, should be permitted to intervene pursuant to Federal Rule of Civil Procedure 24(b)(2)(B).

Dated: September 2, 2011

Respectfully Submitted,

/s/ Michael A. Rollin  
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**CERTIFICATE OF SERVICE**

This is to certify that on this 2nd day of September, 2011, a true and correct copy of the MEMORANDUM OF LAW IN SUPPORT OF PROPOSED INTERVENOR-RESPONDENT AIG'S MOTION TO INTERVENE was served on the following counsel via ECF/PACER.

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