

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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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), BlackRock Financial Management Inc. (intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor), Maiden Lane II, LLC (intervenor), Maiden Lane III, LLC (intervenor), Metropolitan Life Insurance Company (intervenor), Trust Company of the West and affiliated companies controlled by The TCW Group, Inc. (intervenor), Neuberger Berman Europe Limited (intervenor), Pacific Investment Management Company LLC (intervenor), Goldman Sachs Asset Management, L.P. (intervenor), Teachers Insurance and Annuity Association of America (intervenor), Invesco Advisers, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank BadenWuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital LLC (intervenor), ING Investment Management LLC (intervenor), New York Life Investment Management LLC (intervenor), Nationwide Mutual Insurance Company and its affiliated companies (intervenor), AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio (intervenor), Federal Home Loan Bank of Atlanta (intervenor), Bayerische Landesbank (intervenor), Prudential Investment Management, Inc. (intervenor), and Western Asset Management Company (intervenor),

Petitioners,

-against-

[VARIOUS PROPOSED INTERVENORS],

Respondents,

for an order pursuant to CPLR § 7701 seeking judicial instructions and approval of a proposed settlement.

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Index No. 651786/2011

Assigned to: Kapnick, J.

**NOTICE OF PETITION
TO INTERVENE**

PLEASE TAKE NOTICE that upon affirmation of Peter N. Tsapatsaris dated August 20, 2011, the petition filed herewith, and all previous papers filed heretofore and herein, the Knights of Columbus will move this Court on August 29, 2011, at 9:30 a.m., or as soon thereafter as counsel may be heard, for an Order pursuant to CPLR 401, 1012 and 1013 permitting the Knights of Columbus to intervene as a respondent in the above-captioned proceeding and granting such other and further relief as may be just, proper, and equitable.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 403(b), answering papers, if any, must be served upon the undersigned no later than two (2) days prior to the return date of this Petition.

Dated: August 20, 2011

Respectfully Submitted,

/s Peter N. Tsapatsaris
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Petitioners,

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Index No. 651786/2011

Assigned to: Kapnick, J.

**VERIFIED PETITION
TO INTERVENE**

Respondent intervenors, Knights of Columbus (the “Knights”), by and through their attorneys, Peter N. Tsapatsaris, LLC and Talcott Franklin P.C.,¹ submit this Petition to Intervene, pursuant to CPLR 401, 1012 and 1013 to protect the Knights’ greater than \$500 million investment in trusts included in the proposed settlement and to obtain basic information needed to evaluate the Proposed Settlement Agreement² before the Court’s August 30, 2011 deadline for filing objections. The Knights respectfully allege as follows:

SUMMARY

1. The Knights are the world’s largest Catholic family fraternal service organization. The Bank of New York Mellon (“BNYM” or the “Trustee”) serves as Trustee for a number of trusts in which the Knights have invested (a list of relevant trusts is attached as Exhibit 1). On May 24, 2011, the Knights filed a non-adversarial lawsuit against the Trustee demanding an accounting with respect to two of the trusts (the “Accounting Action”). The Accounting Action contained detailed allegations regarding the servicing practices of Bank of America and its affiliates, sought to assess the resulting damages, and sought to protect borrowers and investors against future servicing abuses. Despite the fact that the Knights made the Trustee keenly aware of the Knights’ interest

¹ *Pro hac vice* motion to be filed.

² On June 28, 2011, The Bank of New York Mellon (f/k/a The Bank of New York), in its capacity as trustee or indenture trustee of certain mortgage-securitization trusts identified herein (“BNYM” or the “Trustee”), and Bank of America Corporation (“BAC”), and BAC Home Loans Servicing, LP (“BAC HLS”) (collectively, “Bank of America”) and Countrywide Financial Corporation (“CFC”) and Countrywide Home Loans, Inc. (“CHL”) (collectively, “Countrywide”) entered into a settlement agreement (the “Settlement Agreement”).

in preventing servicing abuses by filing the Accounting Action and that the Trustee purports to settle the claims underlying the Knights' Accounting Action, the Trustee failed to make the Knights aware of the on-going settlement negotiations and claims evaluation and/or allow the Knights to participate in such negotiations and evaluation. After excluding the Knights from the settlement process, the Trustee now demands that the Knights participate in the result.

2. Further, based on additional information that has come to light since the filing of the Accounting Action, the Knights believe sufficient grounds exist to hold the Trustee liable for its actions in administering the Trust. New public reports, claims by the Attorney General of the State of New York, and provisions in the Proposed Settlement Agreement indicate that the Trustee failed to fulfill critical duties. Further, the Trustee has refused to answer the Knights' discovery served in the Accounting Action, which was narrowly tailored to help determine whether or not the Trustee engaged in wrongdoing. As a consequence, the Knights amended the Complaint in the Accounting Action to hold the Trustee liable for its wrongful acts, and through this petition request the opportunity to object to any provision of the Settlement Agreement that would or could be construed to relieve the Trustee of liability for those claims, either directly or indirectly.

BACKGROUND – THE KNIGHTS OF COLUMBUS

3. The Knights of Columbus, the world's largest Catholic family fraternal service organization, were chartered as a fraternal benefit society by the Connecticut state legislature in 1882 to render financial aid to the sick, disabled, and needy members. Founded on the principles of charity, unity, patriotism, and fraternity, the Knights

promote social and intellectual fellowship among members and their families through educational, charitable, religious, social welfare, war relief, and public relief works. Membership in the Knights is open to men 18 years of age or older who are practicing Catholics and are committed to supporting the Catholic Church and making their community a better place. The Order has been called “the strong right arm of the Church” and has been praised by popes, presidents, and other world leaders for support of the Church, civic involvement, and aid to those in need. In 2008, the Holy See gave the founder of the Knights, parish priest Father Michael J. McGivney, the title “Venerable Servant of God”, which marks an important step on the journey to his beatification and canonization.

4. In 2009, the Knights raised and donated more than \$151 million to charitable needs and projects, and members volunteered more than 69 million hours of their time to charitable initiatives including 227,900 hours to Habitat for Humanity. In the last decade, the Knights have donated more than \$1.367 billion to charity and provided nearly 640 million service hours. The charitable work performed by the Knights is vast and varied and includes disaster relief in Japan, Haiti, and the Philippines; donations of over \$1 million to local food banks; and the distribution of new coats to children and wheelchairs to those in need. More recently the Knights have begun an extensive program in Haiti to assist the children who lost limbs in the earthquake by fitting them with prosthetics, providing rehabilitation services, and operating “The Return to Sports” program so that amputees can run and play soccer once again.

5. Since its inception the Knights have sought to protect members through the tool of insurance. Initially the founding parish priest, Father McGivney, instituted a

not-for-profit life insurance program to provide for the widows and orphans of deceased members. This not-for-profit program has expanded substantially to more effectively serve the organization's 1.8 million members worldwide and now includes annuity, disability, and long term care products. Today the Knights maintain a \$17 billion investment portfolio and operate a fraternal insurance organization doing business in the 50 states of the United States, the District of Columbia, the 10 provinces of Canada, Puerto Rico, the Virgin Islands, Northern Mariana Islands, Guam, Mexico, the Philippines, and Poland. In April of 2011, life insurance in force exceeded \$80 billion. The Knights are one of only five insurers in North America to receive the highest possible rating for financial stability from both A.M. Best and Standard & Poor's, and one of only three U.S. insurers to have earned both those accolades plus the Insurance Marketplace Standards Association certification for ethical business and marketing practices.

6. As a fraternal benefit society, the Knights have no stockholders; the Knights' "owners" are its members, and just as those members are committed to performing an impressive array of charitable, religious, and patriotic works, the Knights are committed to protecting the financial futures of members and their families. One way the Knights do this is by paying claims and dividends to insured members. In 2009, the Knights paid well over \$431 million in death claims and other benefits and more than \$309 million in dividends to policyholders. From 2000 to 2009, the Knights paid \$3.191 billion in dividends to insured members.

BACKGROUND – THE ACCOUNTING ACTION

7. The Knights own securities in the trusts listed in Exhibit 1, which are included among the 530 trusts for which The Bank of New York Mellon filed this Article 77 proceeding to seek judicial approval of the Settlement Agreement.³ The Knights paid more than \$500 million for these securities.

8. Last year the Knights, through widespread media reports, learned of the poor servicing of the mortgage loans that make up the corpus of the trusts in which the Knights hold certificates. Among other things, the Knights learned that one or more trust administrators have: (1) been examined by the Office of Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Federal Reserve Board, which “found critical deficiencies and shortcomings in foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third party law firms and vendors”; (2) been found by the Office of the Comptroller of Currency to have “engaged in unsafe or unsound banking practices” “[i]n connection with certain foreclosures of loans in its residential mortgage servicing portfolio”, which is subjecting each trust to unknown costs and expenses; (3) been accused by the City of Buffalo, among others, of failing to care properly for and dispose of unoccupied properties, contributing to the deterioration of neighborhoods and increasing losses to the trusts’ beneficiaries; (4) been accused by the Federal Trade Commission of engaging in a deliberate strategy to “mark up” the actual cost of services that are ultimately paid by each trust; (5) been exposed by AMERICAN BANKER for using

³ Two Countrywide trusts in which the Knights are Certificateholders were not included in this settlement.

affiliates to place on homes insurance costing up to ten times the price of regular policies, which premiums are ultimately charged to the trust beneficiaries; and (6) had a court find that a practice that an employee of a trust administrator testified under oath was “customary” precluded a similar trust from enforcing its rights under a mortgage.

9. Given these alarming revelations, on May 26, 2011, the Knights filed a Complaint in the Supreme Court of the State of New York, County of New York, against BNYM as Trustee for two trusts known as CWALT 2005-6CB and CWALT 2006-6CB. The Accounting Action⁴ requests the Court to order an immediate accounting of these two trusts under New York law. The Accounting Action Complaint provides detailed allegations of servicing and other abuses by trust administrators.

10. The Accounting Action was not adversarial against BNYM as BNYM itself recognized. According to Reuters, “Kevin Heine, a spokesman for BNY Mellon, said, ‘The complaint does not assert any claims against BNY Mellon or seek damages. The complaint merely seeks an accounting.’”

THE TRUSTEE EXCLUDED THE KNIGHTS FROM THE SETTLEMENT PROCESS

11. As part of the Accounting Action, the Knights served a Notice for Discovery and Inspection on BNYM with the original state court Complaint, pursuant to CPLR 3120. The discovery was narrowly tailored to help confirm that BNYM did not bear responsibility for the myriad issues described by the Knights in the Complaint.

⁴ The case is currently pending before Justice Shirley Kornreich of the Commercial Division and is styled *Knights of Columbus v. The Bank of New York Mellon*, Index No. 651442/2011. BNYM moved to transfer the case to Justice Kaplan, and the Knights consented to the transfer because, among other reasons, BNYM’s transfer request appeared unlikely to be denied.

Under New York procedural rules, BNYM was to answer the suit on June 16, 2011, and produce the requested discovery on June 30, 2011.

12. According to paragraph 13(b) of the Settlement Agreement, BNYM received a CD-ROM “provided to the Trustee’s counsel and experts on June 3, 2011, contain[ing] business records of BAC HLS as kept on its computer systems in the ordinary course of business.” This CD-ROM appears relevant to the Knights’ Accounting Action.

13. On or about June 7, 2011, RRMS Advisors provided to BNYM a “Settlement Amount Opinion” at the request of BNYM’s counsel. *See* Letter to BNYM from RRMS Advisors, June 7, 2011. This “Settlement Amount Opinion” purports to be “an independent professional opinion relating to the settlement amount of 530 Trusts”. *See* RRMS Settlement Opinion, June 7, 2011, at 1.

14. On or about June 9, 2011, counsel for BNYM contacted counsel for the Knights, requesting an extension of time to respond to the Complaint. Counsel for the Knights agreed to the extension subject to the Knights’ approval. Counsel for the Knights then asked whether BNYM intended to oppose the Complaint. Counsel for BNYM responded, “We don’t know yet. We’ve never thought of this [an accounting] before.”

15. On or about June 24, 2011, counsel for BNYM contacted counsel for the Knights requesting an extension to respond to discovery served on BNYM. Counsel for the Knights asked whether BNYM’s plan was to file a motion to dismiss the Complaint and then claim that BNYM did not need to answer the discovery because of a pending

motion to dismiss. In response, counsel for BNYM stated: “I can tell you that is not the plan because we still do not know what we are going to do in this case.”

16. *Two business days later*, BNYM executed the Settlement Agreement. And on the following day, June 29, counsel for BNYM signed a petition, filed in this Court, with respect to the Settlement Agreement. The petition specifically described the Knights’ suit as follows: “In early June 2011, a different Certificateholder commenced an action against BNY Mellon, as Trustee, for an accounting relating to two separate trusts that are part of the Settlement. *See Knights of Columbus v. The Bank of New York Mellon*, Index No. 651442/2011 (N.Y. Sup. Ct. N.Y. County).” According to BNYM, “the Settlement will release the claims [...] underlying plaintiff’s accounting claim here.” *See Memorandum in Support of the Bank of New York Mellon’s Motion to Transfer or Stay*, July 20, 2011, at 2. BNYM characterized the Knights’ non-adversarial Accounting Action as one of the “conflicting demands” that was “creating the potential for conflicts among Certificateholders and placing the Trustee squarely in the middle of those conflicts.”

17. Further, the RRMS “Servicing Opinion” is dated June 28, 2011. Thus, the Trustee was uncontrovertibly reviewing the servicing claims during the pendency of the Knights’ lawsuit.

18. In an affidavit filed in this Court on July 11, 2011, counsel for BNYM claimed that BNYM informed other investors, called eleven Walnut Place LLC entities (collectively “Walnut Place”), that “the Trustee, Bank of America, and Countrywide were actively negotiating a settlement”, offered Walnut Place “the opportunity to be appraised

on a current and ongoing basis about the settlement discussions”, and invited Walnut Place “to provide input on settlement discussions”.⁵

19. In stark contrast, and despite the non-adversarial nature of the Accounting Action, BNYM failed to include the Knights in the settlement process. Never once during any conversation between the Knights and BNYM did any representative of BNYM mention that BNYM was engaged in settlement discussions with Bank of America and 22 other institutional investors. Nor did BNYM attempt to involve the Knights in the process or seek its input in any way despite the existence of the Accounting Action, which seeks information directly relevant to the Proposed Settlement Agreement. Instead of involving the Knights in the settlement process, BNYM repeatedly and prominently used the Knights’ non-adversarial Accounting Action to support its claim that “the Trustee has been presented with conflicting demands”. BNYM’s Memorandum of Law in Support of its Verified Petition Seeking Judicial Instructions and Approval of Proposed Settlement, June 29, 2011, at 13-14; *see also id.* at 1-2; BNYM’s Verified Petition ¶ 14. Rather than answer the properly propounded discovery requests, BNYM notified the Knights on July 15, 2011, that BNYM would file a motion to transfer the Accounting Action to the settlement Court and/or stay the Knights’ Accounting Action, which motions BNYM filed on July 20, 2011.⁶ Thus, after excluding the Knights from the settlement process, BNYM decided to thrust the Knights into the result.

⁵ Walnut Place disputes these characterizations. *See* Affirmation of Owen Cyrulnik in Further Support of Petition to Intervene ¶¶ 3-11.

⁶ BNYM reserved all other objections to the discovery.

20. BNYM – a Trustee – has determined to deal with certain Certificateholders while excluding other Certificateholders from the process entirely. BNYM must explain how it represents the interests of the Knights as Certificateholders when BNYM excluded the Knights from the settlement process despite knowledge of a claim by the Knights.

THE NEED FOR INFORMATION TO PROPERLY EVALUATE SETTLEMENT

21. The Knights seek additional information to evaluate the Proposed Settlement Agreement, which includes a review of the information upon which the Trustee based its decision to enter into the Proposed Settlement Agreement. Further, the Knights seek to determine whether the Trustee acted in good faith as to the Certificateholders. Consistent with the Court’s discovery-related Order dated August 5, 2011, modifying its Order to Show Cause dated June 29, 2011, the Knights will confer with other parties and potentially interested persons during the week of September 5, 2011 regarding the scope of and schedule for discovery and appear before the Court on September 16, 2011 at 2:15 PM to address these issues.

OBJECTIONS TO THE PROPOSED SETTLEMENT AGREEMENT

22. A Trustee cannot engage in misconduct and then release itself from claims brought by Trust beneficiaries. The Knights object to any provision of the Proposed Settlement Agreement or related orders of this Court that releases or could be construed to release BNYM from any liability asserted against BNYM in the Knights’ Amended Complaint filed in this Court. This objection should not be controversial. The Institutional Investors recently stated that nothing in the Proposed Settlement Agreement bears upon or purports to release claims against the Trustee based on alleged actions or

inactions with respect to the quality of mortgages and loan files. *See* The Institutional Investors Memorandum in Opposition to the New York Attorney General’s Motion to Intervene, Aug. 16, 2011, at 7. This point may require clarification, however, because a Member of Congress in a letter to the Federal Housing Finance Agency reported that “[t]he release apparently would include claims against Bank of New York Mellon for failing to provide accurate exception reports, and for failing to monitor the performance of the RMBS and take corrective action.” Letter from Congressman Brad Miller to Federal Housing Finance Agency Acting Director DeMarco, July 8, 2011. Further, the Trustee could attempt to argue that a failure to object to the Proposed Settlement Agreement constitutes an endorsement of the Trustee’s actions, evidences consent that the amount paid in settlement constitutes adequate compensation for a Certificateholder’s claims, or is in some other way prejudicial to an action brought against the Trustee. The Knights object to any such finding or inference, and will seek clarity on this issue with respect to the claims made by the Knights.⁷

23. This Petition to Intervene also constitutes a written notice of intention to appear and object as provided in the Initial Order. The Knights do not have enough information to evaluate the Proposed Settlement Agreement, and may seek discovery and supplement this Petition to intervene with additional objections as provided in this Court’s August 5, 2011 Order.

⁷ Prior to submitting a proposed order to the Court on this issue, the Knights will seek to obtain agreement among the parties to this proceeding on the language and scope of the proposed order.

RELIEF REQUESTED

WHEREFORE, the Knights respectfully request that the Court grant its petition to intervene, enter an Order clarifying that the Proposed Settlement Agreement does not prejudice any claim or release any liability asserted against BNYM in the Knights' Amended Complaint, and grant the Knights such additional and further relief to which they may be entitled.

Dated: August 20, 2011

Respectfully Submitted,

/s Peter N. Tsapatsaris
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VERIFICATION

I, Peter N. Tsapatsaris, hereby affirm under the penalty of perjury that the following is true and correct:

I am a member of the bar of this Court and of Peter N. Tsapatsaris, LLC, attorneys for the proposed intervenors, Knights of Columbus. I have read the foregoing Verified Petition and know the contents thereof. All statements of fact therein are true and correct to the best of my knowledge and belief. I am making this affirmation in lieu of a verification by the proposed intervenors because the proposed intervenors are not within New York County, where Peter N. Tsapatsaris, LLC maintains its offices.

Executed August 20, 2011, in New York, New York.



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