

To be Argued by:
BETH ANN KASWAN

New York County Clerk's Index No. 651786/11

New York Supreme Court

Appellate Division—First Department

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.*,

Petitioners,

(For Continuation of Caption See Inside Cover)

**THE PUBLIC PENSION FUNDS' CROSS-MOTION AND
RESPONSE TO THE AMERICAN BANKERS
ASSOCIATION'S AND THE NEW YORK BANKERS
ASSOCIATION'S MOTION FOR LEAVE TO FILE AN
AMICUS BRIEF**

BETH A. KASWAN
WILLIAM C. FREDERICKS
MAX R. SCHWARTZ
SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
*Attorneys for Respondents-Respondents-Cross-
Appellants The Retirement Board of the
Policemen's Annuity & Benefit Fund of the
City of Chicago and other members of the
Public Pension Fund Committee, City of
Grand Rapids General Retirement System,
City of Grand Rapids Police and Fire
Retirement System and The Westmoreland
County Employee Retirement System*
The Chrysler Building
405 Lexington Avenue, 40th Floor
New York, New York 10174
(212) 223-6444
bkaswan@scott-scott.com

For an order, pursuant to C.P.L.R. § 7701, seeking judicial instructions and approval of a proposed settlement.

THE BANK OF NEW YORK MELLON, (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures),

Petitioner-Appellant-Cross-Respondent,

– and –

BLACKROCK FINANCIAL MANAGEMENT INC., KORE ADVISORS, L.P., MAIDEN LANE, LLC, METROPOLITAN LIFE INSURANCE COMPANY, TRUST COMPANY OF THE WEST and affiliated companies controlled by The TCW Group, Inc., NEUBERGER BERMAN EUROPE LIMITED, PACIFIC INVESTMENT MANAGEMENT COMPANY LLC, GOLDMAN SACHS ASSET MANAGEMENT, L.P., TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, INVESCO ADVISORS, INC., THRIVENT FINANCIAL FOR LUTHERANS, LANDESBANK BADEN-WUERTTEMBERG, LBBW ASSET MANAGEMENT (IRELAND) PLC, DUBLIN, ING BANK FSB, ING CAPITAL LLC, ING INVESTMENT MANAGEMENT LLC, NATIONWIDE MUTUAL INSURANCE COMPANY and its affiliated companies, 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, WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO, FEDERAL HOME LOAN BANK OF ATLANTA, BAYERISCHE LANDESBANK, PRUDENTIAL INVESTMENT MANAGEMENT, INC., and WESTERN ASSET MANAGEMENT COMPANY,

Intervenors-Petitioners-Appellants-Cross-Respondents,

– against –

THE RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO, CITY OF GRAND RAPIDS GENERAL RETIREMENT SYSTEM, CITY OF GRAND RAPIDS POLICE AND FIRE RETIREMENT SYSTEM, THE WESTMORELAND COUNTY EMPLOYEE RETIREMENT SYSTEM, TRIAXX PRIME CDO 2006-1, LTD., TRIAXX PRIME CDO 2006-2, LTD., TRIAXX PRIME CDO 2007-1, 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,
WESTERN NATIONAL LIFE INSURANCE, UNITED STATES DEBT
RECOVERY VIII, LP, UNITED STATES DEBT RECOVERY X, LP
and AMERICAN FIDELITY ASSURANCE COMPANY,

Respondents-Respondents-Cross-Appellants,

– and –

STERLING FEDERAL BANK, F.S.B., BANKERS INSURANCE COMPANY,
BANKERS LIFE INSURANCE COMPANY, FIRST COMMUNITY
INSURANCE COMPANY, BANKERS SPECIALTY INSURANCE
COMPANY, FEDERAL HOME LOAN OF PITTSBURGH, AMICI
ASSOCIATES, LP, AMICI FUND INTERNATIONAL LTD., AMICI
QUALIFIED ASSOCIATES, CEDAR HILL CAPITAL PARTNERS LLC,
CEDAR HILL MORTGAGE FUND GP LLC, CEDAR HILL MORTGAGE
OPPORTUNITY MASTER FUND LLP, DECLARATION MANAGEMENT
& RESEARCH LLC, DOUBLELINE CAPITAL LP, FIRST BANK, FIRST
FINANCIAL OF MARYLAND FEDERAL CREDIT UNION, FIRST
NATIONAL BANK & TRUST CO. OF ROCHELLE, ILLINOIS, FIRST
NATIONAL BANKING COMPANY, FIRST PENN-PACIFIC LIFE
INSURANCE COMPANY, KERNDT BROTHERS SAVINGS BANK, LEA
COUNTY STATE BANK, LINCOLN LIFE & ANNUITY COMPANY OF NEW
YORK, LINCOLN NATIONAL REINSURANCE COMPANY (BARBADOS)
LIMITED, LL FUNDS LLC, MANICHAEAN CAPITAL, LLC, NEXBANK,
SSB, PEOPLES INDEPENDENT BANK, RADIAN ASSET ASSURANCE
INC., THE COLLECTORS' FUND LP, THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY, THOMASTON SAVINGS BANK, VALLEY
NATIONAL BANK, MORTGAGE BOND PORTFOLIO LLC, FIRST
RELIANCE STANDARD LIFE INSURANCE COMPANY, LIBERTY VIEW,
PLATINUM UNDERWRITERS BERMUDA, LTD., PLATINUM
UNDERWRITERS REINSURANCE, INC., RELIANCE STANDARD LIFE
INSURANCE COMPANY, SAFETY NATIONAL CASUALTY
CORPORATION, SUN LIFE INSURANCE COMPANY OF CANADA, CA
CORE FIXED INCOME FUND, LLC, CA CORE FIXED INCOME FUND,
LTD., CA HIGH YIELD FUND, LLC, CA HIGH YIELD FUND, LTD.,
STRATEGIC EQUITY FUND, LLC, STRATEGIC EQUITY FUND, LTD.,
SAND SPRING CAPITAL III MASTER FUND, LLC, CIFG ASSURANCE
NORTH AMERICA, INC., BANKERS TRUST COMPANY, PINE RIVER
FIXED INCOME MASTER FUND LTD., PINE RIVER MASTER FUND LTD,
SILVER SANDS FUND LLC, TWO HARBORS ASSET I LLC, GOOD HILL
PARTNERS LP, and BALLANTYNE RE PLACE,

Respondents-Respondents,

– and –

THE KNIGHTS OF COLUMBUS,

Intervenor-Respondent-Respondent.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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.*,

Petitioners,

for an order, pursuant to C.P.L.R. §7701,
seeking judicial instructions and approval of a
proposed settlement.

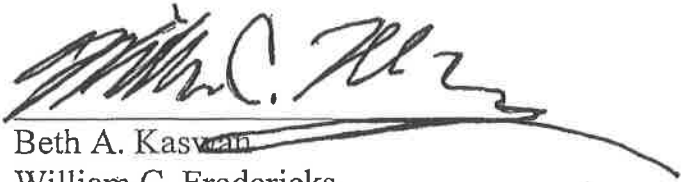
Index No. 651786/2011

**CROSS-MOTION AND
RESPONSE TO ABA'S/NYBA'S
MOTION FOR LEAVE TO
FILE AMICUS BRIEF**

PLEASE TAKE NOTICE that upon the annexed affirmation of William C. Fredericks, dated September 24, 2014, the Public Pension Fund Committee, by their attorneys Scott+Scott, Attorneys at Law, LLP, will move this Court, at the Supreme Court, Appellate Division, First Department, 27 Madison Avenue, New York, New York 10010, on October 1, 2014 at 10:00 a.m. or as soon thereafter as counsel may be heard, for an order permitting the Public Pension Funds to file a brief on October 8, 2014, not to exceed 3,500 words, responding to ABA's/NYBA's *amicus* brief, if the Court permits ABA/NYBA to file their proposed *amicus* brief.

DATED: September 24, 2014
New York, New York

SCOTT+SCOTT, ATTORNEYS AT
LAW, LLP

A handwritten signature in black ink, appearing to read "W.C. Fredericks", written over a horizontal line.

Beth A. Kaswan
William C. Fredericks
Max R. Schwartz
The Chrysler Building
405 Lexington Avenue, 40th Floor
New York, NY 10174

*Counsel for Respondents-
Respondents-Cross-Appellants, The
Public Pension Funds*

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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.*,

Petitioners,

for an order, pursuant to C.P.L.R. §7701,
seeking judicial instructions and approval of a
proposed settlement.

Index No. 651786/2011

**AFFIRMATION OF WILLIAM
C. FREDERICKS IN SUPPORT
OF CROSS-MOTION AND
RESPONSE TO ABA'S/NYBA'S
MOTION FOR LEAVE TO
FILE AMICUS BRIEF**

William C. Fredericks, an attorney duly admitted to practice before the courts of the State of New York, affirms the following to be true under penalty of perjury:

1. I am a member in good standing of the Bar of the State of New York and a partner with the law firm of Scott+Scott, Attorneys at Law, LLP, attorneys for the respondent-cross-appellant the Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago, the City of Grand Rapids General Retirement System and the City of Grand Rapids Police and Fire Retirement System (collectively, the "Public Pension Funds"). I make this affirmation in support of the Public Pension Funds' cross-motion and response to the Motion for Leave to File Amicus Brief (the "Motion") submitted by the American Bankers Association and the New York Bankers Association

(collectively, the “ABA/NYBA”) in support of appellant/cross-respondent The Bank of New York Mellon.

2. The Public Pension Funds take no position with respect to the ABA/NYBA Motion. However, the Public Pension Funds note that the ABA/NYBA (despite having had ample time to do so) never sought the Public Pension Funds’ prior consent to its Motion, and did not serve its Motion (and accompanying proposed amicus brief) until September 18, 2014 – two business days before the Public Pension Funds’ deadline for printing and filing their Reply Brief on cross-appeal issues (which was the Public Pension Funds’ last permitted brief in this matter). Moreover, the ABA/NYBA Motion and proposed brief was received literally just hours before the Public Pension Funds’ lead attorney on this matter (Beth Ann Kaswan) left – after finalizing the substance of the Public Pension Funds’ Reply Brief – for a long-planned, two-week overseas trip.

3. The eleventh-hour timing of the ABA/NYBA Motion and proposed amicus brief – which is nearly 7,000 words long – has therefore prejudiced the Public Pension Funds’ ability to respond to the purported “industry perspectives” referenced in the proposed amicus brief (assuming the Court permits that brief to be filed). Accordingly, if the Court grants the ABA/NYBA Motion, the Public Pension Funds respectfully request that it grant their Cross-Motion for leave to file a short brief, not to exceed 3,500 words, in response to the ABA/NYBA amicus

brief. Moreover, because the Public Pension Funds' lead attorney on this matter will not be returning to the U.S. until September 29, 2014 (and because it appears that the Public Pension Funds may not know whether the ABA/NYBA's Motion has even been granted until its scheduled October 1, 2014 return date), the Public Pension Funds further request that they be granted until October 8 to file any such responsive brief.

WHEREFORE, on behalf of the Public Pension Funds, I respectfully request that the Court grant their cross-motion to file a response brief, as described above, if it grants the ABA's/NYBA's Motion.

DATED: September 24, 2014
New York, New York

SCOTT+SCOTT, ATTORNEYS AT
LAW, LLP



William C. Fredericks
The Chrysler Building
405 Lexington Avenue, 40th Floor
New York, NY 10174

*Counsel for Respondents-
Respondents-Cross-Appellants, The
Public Pension Funds*