

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY 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), BlackRock Financial Management Inc. (intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, 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 Advisors, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank Baden-Wuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital LLC (intervenor), ING 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,

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

**Index No. 651786-2011**

**Kapnick, J.**

**THE BANK OF NEW YORK MELLON'S RESPONSE  
TO THE VERIFIED PETITION TO INTERVENE BY  
AMERICAN INTERNATIONAL GROUP, INC. ET AL.**

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The Bank of New York Mellon (“Trustee”) takes no position on the petition to intervene filed by American International Group, Inc. and various affiliates (collectively “AIG”). Investors’ participation in this proceeding is not, as AIG suggests, a “special privilege[]” (AIG Petition ¶ 4); it is one of the essential purposes of the proceeding and the whole point of the notice program approved by the Court. The Trustee *brought* this proceeding precisely so that investors could be heard.

AIG’s petition is not a vehicle for resolving objections to the Settlement, and the Trustee will respond to AIG’s objections at the appropriate time. But the Trustee is compelled to respond to one widespread misconception that AIG’s petition parrots.

AIG accuses the Trustee of securing a “far-reaching release from all of its beneficiaries, including those who have not been allowed to participate in the settlement negotiations or decision-making.” That is false: the Trustee has received no release whatsoever. AIG is referring to the Proposed Final Order and Judgment, which the Court must first adopt after a hearing and presentation of evidence, and which *proposes*, among other things, that “Trust Beneficiaries . . . are hereby (i) permanently barred and enjoined from instituting . . . any suit . . . arising from or in connection with the Trustee’s entry into the Settlement . . . .”<sup>1</sup> That follows another *proposed* finding—that the Trustee “acted in good faith, within its discretion, and within the bounds of reasonableness in determining that the Settlement Agreement was in the best interests of the Covered Trusts.” The Court either will approve the Settlement because the Trustee acted in good faith and within the bounds of reasonableness, or it will not. If it approves

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<sup>1</sup> AIG accuses the Trustee of including the “release” only in the Proposed Final Order and Judgment, and not in the Settlement Agreement, because “no one would look there.” AIG Pet. ¶ 23. That is absurd. It was not in the Settlement Agreement because the parties have not released any claims against the Trustee. If the Trustee wanted to shield any settlement information from public scrutiny, it would not have commenced this proceeding and implemented a massive program of notice to investors. It would not have attached the Settlement Agreement and the Proposed Final Order and Judgment to its Petition. And it would not have created and maintained a website that contains every one of these documents, and others.

the Settlement, the Court's judgment will have *res judicata* effect, there will be no conceivable claim that could arise out of the Trustee's decision to enter into the Settlement Agreement, and the bar order will make perfect sense. If the Court does not approve the Settlement, there will be no Final Order and Judgment, there will be no bar order, and all interested parties will resume their pre-Settlement positions. The Trustee is hardly "using the settlement process to secure benefits for itself" (AIG Pet. ¶ 24).

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