

To be Argued by:
DONNA H. LIEBERMAN

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

New York Supreme Court
Appellate Division – First Department

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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), *et al.*,
Petitioners,

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,
(For Continuation of Caption See Reverse Side of Cover)

**BRIEF FOR RESPONDENTS-RESPONDENTS-CROSS-
APPELLANTS UNITED STATES DEBT RECOVERY VIII, LP
and UNITED STATES DEBT RECOVERY X, LP**

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– 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,

(For Continuation of Caption See Last Page of Cover)

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.

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INTRODUCTION

This brief is respectfully submitted on behalf of respondents-respondents-cross-appellants United States Debt Recovery VIII, LP and United States Debt Recovery X, LP (collectively, “US Debt”) in support of their appeal of the Decision/Order/Judgment of the Supreme Court, County of New York (Kapnick, J.) dated January 31, 2014 (the “Decision”) to the extent that it approved the Settlement Agreement (as defined in the Decision), and in opposition to the appeals filed by petitioner-appellants-cross-respondents The Bank of New York Mellon (“BNYM”) and the Institutional Investors.

QUESTIONS PRESENTED

US Debt hereby joins in and incorporates by reference the questions presented and counterstatement of the questions presented in the brief of respondents-cross-appellants the Retirement Board of the Policemen’s Annuity & 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 (the “Public Funds”) filed with this Court on July 17, 2014 (the “Public Funds’ Brief”).

STATEMENT OF THE CASE

US Debt is an investment fund that regularly invests in a variety of industries and instruments. As of the date of the commencement of the Article 77 proceeding in the Court below and continuously through the date hereof, it held

interests in certain of the 530 trusts implicated in the Settlement Agreement. The holdings were and continue to be in different tranches.¹

US Debt had no notice of the settlement negotiations and was not represented at those negotiations. It did not learn of the existence of the Settlement Agreement until the proposed settlement was publicly announced and BNYM sought judicial approval in June 2011. US Debt duly filed its notice of intent to appear and object to the settlement on August 30, 2011 and since that date, has steadfastly maintained its position that the proposed settlement is inadequate, the process undertaken to arrive at it was flawed and fraught with unresolvable conflicts of interest, that US Debt and its interests were not represented during the settlement negotiations, and the releases accorded to BNYM are unwarranted and improper. US Debt was not part of respondents' trial court steering committee, but joined in many of the submissions to the lower court, including the post-trial brief in opposition to the Settlement Agreement.

US Debt hereby joins in and incorporates by reference the Statement of the Case set forth in the Public Funds' Brief.

ARGUMENT

US Debt hereby joins in and incorporates by reference the Argument set forth in the Public Funds' Brief.

¹ During the proceedings below, US Debt provided detailed information about its holdings to other parties, subject to a confidentiality order entered on June 14, 2012.

CONCLUSION

For the reasons set forth above and in the Public Funds' brief, the Decision should be: (a) affirmed with respect to its determination that BNYM failed to investigate and evaluate the loan modification claims before settling them; and, in all other respects, (b) reversed, (i) so as to reject the proposed settlement in its entirety as a matter of law, or (ii) and remanded for review of its substantive fairness under the correct legal standard.

Dated: New York, New York
 July 17, 2014

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PRINTING SPECIFICATION STATEMENT

I hereby certify pursuant to 22 NYCRR §600.10 that the foregoing brief was prepared on a computer using Microsoft Word 2010.

Type: A proportionally spaced typeface was used as follows:

Name of Typeface: Times New Roman
Point size: 14
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Word Count: The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service and this Statement is 546.

Dated: New York, New York
July 17, 2014

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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), *et al.*,

Petitioners,

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

**PRE-ARGUMENT
STATEMENT**

Index No. 651786/2011

Respondents United States Debt Recovery VIII, LP and United States Debt Recovery X,
LP (collectively, the “U.S. Debt Recovery Entities”) submit this Pre-Argument Statement
pursuant to Section 600.17(g) of the Rules of the Appellate Division, First Department.

1. Title of Action

The full name of this action is as set forth in Item 1 in the Pre-Argument Statement of
Respondent American International Group, Inc. (“AIG”) and the related AIG entities
(collectively the “AIG Entities”) filed March 21, 2014 (the “AIG Pre-Argument Statement”).

2. Full Name of Original Parties and Any Changes in the Parties

The full names of the original parties to this action, and the changes to the parties, are as
set forth in Item 2 of the AIG Pre-Argument Statement.

3. Name, Address and Telephone Number of Counsel for Appellant or Petitioner

The names, address and telephone numbers of counsel for petitioner The Bank of New
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4. Name, Address and Telephone Number of
Counsel for Respondents-Objectors-Appellants

The name, address and telephone number of counsel for the U.S. Debt Recovery Entities Respondents-Objectors-Appellants is as follows:

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5. Court and County From Which the Appeal is Taken

Supreme Court of the State of New York, County of New York (Barbara R. Kapnick, J.S.C.).

6. The Nature and Object of the Cause of Action

In June 2011, Petitioner, BNYM, as Trustee acting as a fiduciary on behalf of 530 separate residential-mortgage backed securities trusts, commenced this proceeding under CPLR Article 77 seeking judicial instructions and approval of a proposed settlement of claims that BNYM may have brought against Bank of America and Countrywide, for alleged servicing, mortgage documentation, and mortgage origination failures. In conjunction with its petition, BNYM sought through a Proposed Final Order and Judgment at least eighteen (18) separate findings related to BNYM's past conduct in negotiating and entering the proposed settlement agreement, as well as a release of all claims that certificateholders, including the U.S. Debt Recovery Entities, have or would have in the future related to BNYM's actions or inactions with respect to its negotiation and entry into the proposed settlement on behalf of all certificateholders. The U.S. Debt Recovery Entities were not parties to or consulted in connection with the settlement negotiations, and objected to the settlement terms on a number of grounds.

7. Result Reached in the Court Below

In a Decision/Order/Judgment dated January 31, 2014 (the "Decision"), and entered as a judgment in the Office of the County Clerk, New York County, on February 21, 2014, the Supreme Court declined to enter BNYM's Proposed Final Order and Judgment, but nevertheless adopted many of the requested findings and granted summary judgment pursuant to CPLR § 409(b), approving the proposed settlement agreement "except to the extent it releases the loan

modification claims.” The Court below found that the Trustee “abused its discretion in settling the loan modification claims” and that the Trustee “acted ‘unreasonably or beyond the bounds of reasonable judgment’ . . . in exercising its power to settle the loan modification claims without investigating their potential worth or strength.” A true and correct copy of the Decision is attached hereto as Exhibit A.

8. Grounds for Seeking Reversal

The Court below erred in fact and law and in the exercise of its discretion by, among other things, (1) approving any portion of the Settlement Agreement, and (2) applying the incorrect legal standard in reaching its determination of whether the Settlement Agreement should be approved.

9. Related Actions and Proceedings

There are no related actions or proceedings pending in this or any other court of which the U.S. Debt Recovery Entities are aware. Notices of appeal and pre-argument statements have been filed by the following parties concerning the Decision:

- a. Petitioner The Bank of New York Mellon on February 21, 2014;
- b. The Institutional Investors on March 6, 2014;
- c. Respondents Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd, and Triax Prime CDO 2007-1 on March 21, 2014;
- d. Respondents The AIG Entities on March 21, 2014;
- e. Respondents the Retirement Board of the Policemen’s Annuity & 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 on March 21, 2014; and
- f. Respondent American Fidelity Assurance Company on March 21, 2014.

Dated: New York, New York
March 24, 2014

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