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BY E-FILING

The Honorable Barbara R. Kapnick
Supreme Court of the State of New York
60 Centre Street
New York, New York 10007

Re: *In re The Bank of New York Mellon* (651786/2011)

Dear Justice Kapnick:

We represent The Bank of New York Mellon and write in advance of the scheduled teleconference with the Court, in which we anticipate that the Objectors will urge the Court to schedule additional hearing time beyond the additional five total weeks the Court has scheduled.

On June 21, the Court issued a clear order: the hearing would re-commence on July 8, and the parties should immediately confer regarding scheduling so that "all testimony and closing arguments can conclude by July 26, 2013." In response, Petitioners:

- reduced their list of remaining witnesses to be called from 7 to 6,
- offered a stipulation to Objectors in order to eliminate another witness,
- offered to spend no more than 12 hours total on all of the Petitioners' remaining direct examinations, and
- offered several alternatives to the Objectors for completing the hearing in the time remaining, including a 50/50 split of the remaining hours (notwithstanding the fact that the Objectors used 2/3 of the time in the first two weeks of hearings).

In contrast, the Objectors:

- first, stated their intention to call only 5 additional witnesses,
- then, four days later, added 17 witnesses, increasing their "will call" list from 5 to 22, and
- refused to agree to or propose any alternatives for completing the hearing in the time remaining, other than demanding that Petitioners rest on July 9 (the day after the hearing resumes).

The Court has provided five weeks to conclude this settlement hearing, including the two already used. The additional time ordered by the Court affords the parties approximately 63.5 hours of remaining court time (excluding the afternoon of July 11). Petitioners have committed to complete their direct examinations in no more than 12 hours. That leaves 46 hours for the Objectors to cross-examine the Respondent's remaining witnesses and present their witnesses for direct and cross-examination, with the last day being reserved for summations. That is more than enough time if the parties are reasonably efficient and do not present cumulative or irrelevant evidence.

Objectors' demand for additional time is also unfounded because a number of the witnesses on their expanded "will call" list are not necessary and could be eliminated with a minimal amount of cooperation between the parties. Five witnesses (one from petitioners' list and four from objectors' list) could easily be removed by stipulations. For example, the notice vendor (Jose Fraga of Garden City Group) is being called to testify only that the Trustee carried out its court-ordered notice program, which no one has ever contested. We could remove Mr. Fraga from our list if the objectors stipulate to the admissibility of his affidavit, filed on August 24, 2011. They have refused to so stipulate, without explanation. Similarly, the Objectors included four witnesses (including me) on their will call list, apparently for the sole purpose of testifying to conversations between the Trustee and certain holders. The Objectors have said that those conversations could be stipulated to, and just yesterday offered a stipulation covering two of the witnesses.

As the Court has emphasized repeatedly, this is not a trial on the merits of the settled claims. It is a settlement approval hearing. Most settlement approval hearings—even those involving complex matters—are concluded in a matter of hours.[1] The Court's resources are not infinite and the Court has already been extraordinarily generous with its time. The total of five weeks the Court has allotted are more than enough to conclude this Article 77 special proceeding by July 26, 2013, as the Court has directed, if the parties use the Court's valuable time efficiently.

Petitioners respectfully submit that the fairest and most reliable method to ensure the appropriate efficiency is for the Court to direct that the 63.5 hours remaining should be split evenly between Petitioners and Objectors to be used as they see fit for examinations, cross-

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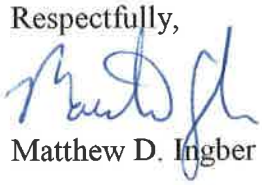
[1] Though this is a large settlement, that does not warrant more time than the five weeks the court has already allotted. Hearings on comparably large settlements, with numerous objections, have been concluded on far more abbreviated schedules. *See e.g. In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico on April 20, 2010*, 2010 WL 6652608 (E.D. La. Dec. 21, 2012) (one day settlement fairness hearing in the Deepwater Horizon spill, involving thousands of plaintiffs and claims and hundreds of objections); *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, 2008 WL 4178151 (S.D. Tex. Sept. 8, 2008) (single day settlement hearing involving $7 billion settlement of securities claims in Enron, resolving numerous objections); and, *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319 (S.D.N.Y. 2005) ($3.5 billion settlement, resolving numerous objections, resolved in single day fairness hearing).

examinations, argument, and summation. Although such a split would favor the Objectors (who used 2/3 of the time allowed in the first two weeks of evidence), the Petitioners nonetheless are willing to propose it order to ensure that the hearing is concluded without unnecessary delay.

Respectfully,



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cc: All counsel