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-Appellants-Cross-Respondents,* for an order, pursuant to C.P.L.R. § 7701, seeking judicial instructions and approval of a proposed settlement.	NY County Index No. 651786-2011 **AFFIRMATION**

KENNETH E. WARNER, an attorney duly licensed to practice law in the State of New York, affirms under penalties of perjury and says:

1. I am counsel, together with the firm of Gibbs & Bruns LLP, for the Institutional Investors, who are co-petitioners and co-appellants in the above matter, and I submit this affirmation in further support of the portion of the pending motion by The Bank of New York Mellon that seeks the Court's immediate adoption of a stipulated briefing schedule without further motion practice. [1]

2. In connection with movants' request for the Court's immediate adoption of the briefing schedule contained in the Stipulation between appellants and cross-appellants (all of whom consented to the relief requested), yesterday (June 17, 2014) I contacted the attorneys of record for five of the nine respondents-respondents by telephone.[2] I divided the task of contacting counsel with Mauricio Espana, Esq., a partner at Dechert LLP (co-counsel with

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[1] The Institutional Investors are identified in the affidavit of Robert J. Madden, Esq., that has been submitted in support of the pending motion.

[2] The Stipulation is an exhibit to the moving papers on this motion.

Mayer Brown LLP for The Bank of New York Mellon), who called the other four counsel of record.

3. We made these calls from the Appellate Division courthouse. In that regard, on June 9, 2014 Mr. Espana sent all counsel of record for respondents-respondents a copy of the Stipulation, telling them in a cover letter *inter alia* that the Court's adoption of the stipulated briefing schedule (which included a July 17, 2014 date for filing opposition briefs) would be requested by appellants. We received no objection or other comment from anyone. Also, since the immediate adoption of the stipulated briefing schedule was part of the relief being sought on the pending motion, that relief was specifically set forth in the 24-hour notice letter of this application, which was sent by Mr. Espana to all counsel of record on this appeal (including all counsel for respondents-respondents). Again we received no objection or other comment from anyone.

4. Against this background, the purpose of our calls was to advise the Court whether counsel for respondents-respondents, on behalf of their clients, *explicitly* had no objection to the Court's immediate adoption of the stipulated briefing schedule without further motion practice. Every one of the attorneys I spoke with confirmed, on behalf of their clients, that they had no objection to that relief being granted. However, I was unable to advise the Court of this information yesterday because two of the attorneys were unavailable at the time of my call (*i.e.*, Messrs. Ohman and Fitzgerald, *see infra*), and I did not speak with them until later that day (by which time the Court was closed).

5. I set forth below the names, firm affiliations, contact information and clients for each of the attorneys I spoke with yesterday:

a. Bradley J. Nash, Esq.
Schlam Stone & Dolan LLP

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(212) 344-5400

Attorneys for Respondents-Respondents First Reliance Standard Life Insurance Company, Liberty View LLC, Platinum Underwriters Bermuda, Ltd., Platinum Underwriters Reinsurance, Inc., Reliance Standard Life Insurance Company, Safety National Casualty Corporation, Sun Life Insurance Company of Canada

b. John C. Ohman, Esq.
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Attorneys for Respondents-Respondents Pine River Fixed Income Master Fund Ltd., Pine River Master Fund Ltd., Silver Sands Fund LLC, Two Harbors Asset I LLC

c. Russell M. Yankwitt, Esq.
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Attorneys for Respondent-Respondent Good Hill Partners LP

d. Jason H. Alperstein, Esq.
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Attorneys for Respondents-Respondents Sterling Federal Bank, F.S.B., Bankers Insurance Company, Bankers Life Insurance Company, First Community Insurance Company and Bankers Specialty Insurance Company, CIFG Assurance North America, Inc., Bankers Trust Company

e. Steven S. Fitzgerald, Esq.
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Attorneys for Respondent-Respondent Mortgage Bond Portfolio LLC

6. Mr. Espana's affirmation confirming that the other four respondents-respondents have no objection to the adoption of the stipulated briefing schedule accompanies my affirmation.

WHEREFORE, your affirmant respectfully requests that this Court issue an Order without further delay or further motion practice adopting the stipulated briefing schedule on consent of all appellants and cross-appellants and explicitly without objection from any of the respondents-respondents.

KENNETH E. WARNER

Affirmed this 18th
day of June, 2014.