

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

AMERICAN INTERNATIONAL GROUP,
INC., AMERICAN GENERAL LIFE
INSURANCE COMPANY, AIG
SECURITIES LENDING CORP., THE
UNITED STATES LIFE INSURANCE
COMPANY IN THE CITY OF NEW YORK,
and THE VARIABLE ANNUITY LIFE
INSURANCE COMPANY,

Plaintiffs,

-against-

MAIDEN LANE II LLC,

Defendant.

Index No. _____

COMPLAINT

Plaintiffs American International Group, Inc., American General Life Insurance Company, AIG Securities Lending Corp., The United States Life Insurance Company in the City of New York, and The Variable Annuity Life Insurance Company, by their attorneys, Quinn Emanuel Urquhart & Sullivan, LLP, for their Complaint against Maiden Lane II LLC allege as follows:

NATURE OF ACTION

1. This is an action by Plaintiff American International Group, Inc. and its named affiliates (collectively, “AIG” or Plaintiffs) seeking a declaration from the Court as to the proper interpretation of a contract between AIG and Defendant Maiden Lane II (“Maiden Lane II” or “ML II”). Plaintiffs do not seek monetary damages.

2. AIG brings this action to eliminate damaging uncertainty recently and unjustifiably created by or on behalf of Maiden Lane II concerning Plaintiffs’ ownership of billions of dollars of fraud and other tort claims that exist against numerous financial institutions that made material misrepresentations and omissions in securitizing and marketing to AIG residential mortgage-backed securities (“RMBS”) between 2005 and 2007.

3. The financial institutions that created and/or sold the RMBS provided offering materials that assured AIG that each mortgage loan underlying the RMBS met certain quality standards. In reality, the financial institutions, driven by a single-minded desire to increase their share of the lucrative RMBS market and the considerable fees generated by it, abandoned the stated underwriting guidelines, ignored the represented credit quality metrics, and packed the RMBS with thousands of defective mortgages. In 2008, when the defective loans experienced unprecedented rates of delinquency, default, and foreclosure, the performance and value of the RMBS plummeted, causing AIG and its subsidiaries great harm.

4. In December 2008, to ease the liquidity problem in AIG's securities lending program, a special purpose vehicle named Maiden Lane II, created and controlled by the Federal Reserve Bank of New York (the "FRBNY") as its sole member, purchased over 850 different RMBS tranches from AIG. The sale was effected through an Asset Purchase Agreement (the "APA") (attached hereto as Exhibit A) between Plaintiffs and Maiden Lane II, dated December 12, 2008. The purchase price was \$20.8 billion, the parties' best estimate of the RMBS' market value at the time based on their projected cash flows, and a massive discount off their face value of \$39.3 billion. AIG incurred a loss of approximately \$18 billion on the RMBS it sold and lost tens of billions of dollars more as a direct result of the financial institutions' fraud.

5. As information regarding widespread misconduct in the mortgage securitization business became public, AIG investigated the extent to which it had viable claims against other parties to recover the massive losses it had sustained. In August 2011, AIG filed a \$10 billion lawsuit against one of the most blatant offenders, Bank of America and certain of its affiliates ("BoA"), for fraudulent inducement, aiding and abetting fraudulent inducement, negligent misrepresentation, and violation of the Securities Act of 1933 (the "BoA Action"). Of the nearly \$10 billion in damages AIG is seeking in the BoA Action, more than \$7 billion relate to RMBS involving BoA that AIG later sold to Maiden Lane II.

6. During the ensuing 18 months and through today, AIG has vigorously pursued its claims against BoA. Throughout that period, while the lawsuit proceeded and was covered by *The New York Times*, *The Wall Street Journal*, and other prominent publications, neither Maiden Lane II nor the FRBNY raised any objection to AIG asserting its fraud and other tort claims against BoA. To the contrary, the FRBNY's only response to the BoA Action was to request confirmation that AIG was not seeking to rescind its purchase of the BoA RMBS that AIG

transferred to Maiden Lane II as AIG was no longer the owner of those securities, and that Maiden Lane II retained the contractual rights that accompany ownership of the securities.

7. In response to the FRBNY's inquiry, AIG confirmed that it was not seeking rescission against BoA and would not assert any contractual rights that belonged to Maiden Lane II as the owner of the RMBS. In an exercise of caution, AIG also expressly noted that it retained all "tort or securities law claims arising from misrepresentations or omissions made in connection with AIG's purchase of any RMBS Certificates." The FRBNY did not take issue with this statement. Indeed, in the parties' correspondence it had acknowledged that "AIG may seek damages under Section 12(a)(2) of the Securities Act of 1933 for those RMBS that it sold to Maiden Lane II."

8. Last month, however, the FRBNY publicly reversed itself and provided BoA with declarations from two FRBNY executives stating, among other things, that AIG transferred to Maiden Lane II through the APA all "litigation claims" relating to the RMBS that Maiden Lane II acquired. One of the declarations further stated, in substance, that the FRBNY had terminated its correspondence with AIG following its receipt of AIG's written statement that it retained any tort or Securities Act claims because the APA was clear regarding ownership of the RMBS-related claims and the FRBNY did not wish to renegotiate its terms. Not only is that explanation at odds with how sophisticated counsel typically proceed in the face of a written assertion that is allegedly contrary to their position on a matter involving billions of dollars, it is undermined by the fact that the FRBNY has now provided BoA with declarations from its officers for the very purpose of litigating the meaning of the APA.

9. The FRBNY also apparently authorized BoA to disclose an unfiled draft complaint prepared on behalf of Maiden Lane II with claims against BoA for breach of contract,

rescission, and violations of the California Corporations Code, in connection with two RMBS notes that Maiden Lane II had purchased from AIG. BoA asserts that it received the draft complaint in August 2011 during settlement negotiations with the FRBNY and argues that the draft complaint reflects the FRBNY's understanding that it owned AIG's tort claims. Far from reflecting this alleged understanding, the draft complaint did not analyze the APA, and it focused on potential claims emanating from Maiden Lane II's *contractual* rights regarding an improper "waterfall" payment provision in two of the RMBS contracts. The draft complaint expressly excluded any fraud claims similar to those that AIG asserts in the BoA Action regarding BoA's rampant fraudulent misstatements in the RMBS offering materials. The FRBNY's failure to object to AIG's fraud claims on the same RMBS, filed within days of the transmittal of the draft complaint, only shows that the FRBNY *did not* own the fraud claims.

10. Neither the FRBNY declarations nor its unfiled draft complaint undermine AIG's ownership of its tort claims. Indeed, any argument that AIG assigned its tort claims to Maiden Lane II is contrary to the plain language of the APA, which does not contain any assignment of the tort claims to Maiden Lane II. It is also contrary to controlling New York law requiring that any assignment of fraud and other tort claims be both explicit and unambiguous. It also cannot be squared with the fact that the purchase price Maiden Lane II paid under the APA does not account for the tort claims, the 2011 correspondence in which the FRBNY claimed ownership only of contract claims related to the RMBS and acknowledged AIG's ownership of tort claims, Maiden Lane II's inaction with respect to the claims it now purports to hold, or the fact that in February 2012, the FRBNY completed an auction of the RMBS it purchased pursuant to the APA for a profit of approximately \$2.8 billion, without mentioning any potential fraud or other tort claims.

11. Also telling, Maiden Lane II never indicated to AIG that it had any intent to preserve or pursue these claims against the parties that caused AIG's many billions of dollars in losses. In order to pursue such claims, Maiden Lane II would have required substantial assistance from AIG, including but not limited to requesting information concerning: (i) the details of each AIG RMBS acquisition including the timing and purchase price; (ii) the pre-trade communications between AIG and the financial institutions that marketed and sold the RMBS; and (iii) the due diligence performed by AIG concerning the RMBS at issue that supported its reliance on the representations made by BoA and other financial institutions.

12. Neither Maiden Lane II nor the FRBNY ever sought such information from AIG because, on information and belief, neither of them ever sought to assert AIG's fraudulent inducement and related statutory securities claims. Moreover, at this late date, they likely could not do so for a significant portion of the RMBS given applicable statutes of limitation. Accordingly, if the declarations and draft complaint the FRBNY recently provided to BoA somehow established that AIG transferred its claims to Maiden Lane II (which they do not), the result would be that AIG would have no means to recover for the massive losses it suffered at the hands of BoA and other potential defendants, and those parties would escape being called to account for their misconduct. Similarly, Maiden Lane II itself would have let its own claims expire unaddressed, without seeking to recoup payment for American taxpayers, who would have benefited directly due to the FRBNY's contractual right to 5/6 of Maiden Lane II's profits. Indeed, in announcing their plan to auction the RMBS owned by Maiden Lane II, the FRBNY and the Board of Governors of the Federal Reserve System publicly acknowledged their obligation to the public to maximize returns from any sale. *See* Press Release, "New York Fed

to Sell Maiden Lane II Assets in Competitive Process over Time,” FRBNY (Mar. 30, 2011) (attached hereto as Exhibit B).

13. Looking at both AIG’s and Maiden Lane II’s conduct in the four years since the signing of the APA, it is perfectly clear that Maiden Lane II did not bargain for, intend to acquire, or believe that it had the right to litigate the tort claims that AIG is asserting against BoA. This is the only reasonable conclusion.

14. Nonetheless, because the FRBNY is the sole and controlling member of Maiden Lane II and has asserted that AIG transferred all “litigation claims” through the APA, there now exists a dispute between AIG and Maiden Lane II as to the ownership of AIG’s RMBS-related tort claims that imperils AIG’s ability to prosecute and recover on those claims. AIG, therefore, seeks a declaratory judgment clarifying that it is the owner of those claims. Alternatively, because the parties to the APA had no intention to create a transfer of tort claims through the APA, AIG requests that the contract be reformed to the extent necessary to effectuate the parties’ intent by clarifying that no such transfer occurred.

PARTIES¹

15. Plaintiff American International Group, Inc. (“AIG Parent”) is a Delaware corporation with its principal place of business at 180 Maiden Lane, New York, New York, 10038. AIG Parent heads a group of affiliates and subsidiaries that engage in various lines of business in the insurance and financial sectors.

¹ Thirteen AIG entities signed the APA. Seven of those entities no longer exist. Five former AIG insurance subsidiaries merged into American General Insurance Company, *see* ¶ 17, and two other AIG insurance subsidiaries merged into The United States Life Insurance Company in the City of New York, *see* ¶ 18. An eighth entity, American Life Insurance Co., was sold to Metlife Inc. in 2010, with AIG Parent retaining American Life Insurance Co.’s rights under the APA. Thus, all remaining AIG signatories to the APA are represented by the five Plaintiffs in this action.

16. Plaintiff AIG Securities Lending Corp. (f/k/a AIG Global Securities Lending Corp.) is a Delaware corporation with its principal place of business in New York, New York. It is an indirect, wholly-owned subsidiary of AIG Parent.

17. Plaintiff American General Life Insurance Company is a Texas corporation engaged in the business of selling life insurance with its principal offices in Houston, Texas. It is an indirect, wholly-owned subsidiary of AIG Parent and successor-in-interest to former AIG insurance subsidiaries American General Life and Accident Insurance Company, American General Life Insurance Company of Delaware (f/k/a AIG Life Insurance Company), SunAmerica Annuity and Life Assurance Company (f/k/a AIG SunAmerica Life Assurance Company), SunAmerica Life Insurance Company, and Western National Life Insurance Company (f/k/a AIG Annuity Insurance Company).

18. Plaintiff The United States Life Insurance Company in the City of New York is a New York life insurance corporation, with its principal offices in Houston, Texas. It is an indirect, wholly-owned subsidiary of AIG Parent and successor-in-interest to former AIG insurance subsidiaries American International Life Assurance Company of New York and First SunAmerica Life Insurance Company.

19. Plaintiff The Variable Annuity Life Insurance Company is a Texas corporation that serves as a financial services company with its principal offices in Houston, Texas. It is an indirect, wholly-owned subsidiary of AIG Parent.

20. Defendant Maiden Lane II LLC is a Delaware LLC with its principal place of business in New York, New York. Maiden Lane II's sole member is the FRBNY.

JURISDICTION AND VENUE

21. The Supreme Court of New York has jurisdiction over this action pursuant to N.Y. C.P.L.R. §§ 301 and 302. Almost all activity pertaining to the drafting, negotiation, and execution of the APA occurred in New York.

22. Venue is proper in New York County pursuant to N.Y. C.P.L.R. §§ 501 and 503. AIG Parent and Maiden Lane II are residents of New York County, New York.

23. In Section 6.11 of the APA, AIG and Maiden Lane II agreed to submit “irrevocably and unconditionally . . . to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York City . . . in any action or proceeding arising out of or relating to [the APA]” Each party also “irrevocably and unconditionally waive[d] . . . any objection that it may . . . have to the laying of venue of any suit, action or proceeding arising out of or relating to [the APA] . . . in any New York State or federal court.”

FACTUAL BACKGROUND

The 2008 Financial Crisis Precipitates a Strain on AIG’s Liquidity

24. As chronicled in numerous reports on the financial crisis of 2008, disruptions in the U.S. residential mortgage market triggered a chain of events that resulted in a liquidity problem in AIG’s securities lending program operated by AIG Global Securities Lending Corp. (now AIG Securities Lending Corp.) (“AIG GSL”). Under the securities lending program, AIG GSL loaned securities owned by various AIG insurance subsidiaries to financial institutions in exchange for cash collateral posted by the borrower. AIG GSL then invested the cash collateral received from the borrower in interest-bearing securities, such as RMBS, in order to generate a profit.

25. Pursuant to guidelines established to govern investments in the securities lending collateral pool, AIG GSL invested the cash collateral almost exclusively in the highest-rated and most liquid securities. A significant portion of its investments were in highly-rated tranches of RMBS, many of which had obtained artificially high credit ratings because the financial institutions that created the securities provided the ratings agencies with false and misleading information about the quality of the underlying mortgages. These securities dropped in both value and liquidity as residential mortgage defaults skyrocketed. At the same time, news of AIG's losses on credit default swaps raised concerns among securities lending counterparties about the safety of the cash collateral they had posted with AIG GSL. Many financial institutions began to curtail their exposure to AIG, returning the securities they had borrowed and seeking return of their cash collateral. The effect of the financial institutions' actions on AIG's securities lending program, and the precipitous drop in value of the RMBS in which AIG GSL had invested borrowers' cash collateral, caused the liquidity problem the securities lending program was facing.

Maiden Lane II is Created to Purchase RMBS from AIG

26. In mid-September 2008, the Board of Governors of the Federal Reserve authorized the FRBNY to lend up to \$85 billion to AIG. Then, on November 10, 2008, AIG and the FRBNY announced a comprehensive plan to create a durable capital structure for AIG and provide AIG with additional time and greater flexibility to repay loans extended by the FRBNY.

27. Among other things, the November 10, 2008 restructuring created a special purpose vehicle—Maiden Lane II—that would purchase from AIG the RMBS in which AIG GSL had invested borrowers' collateral in order to provide AIG with cash it required to return that collateral and to wind down AIG's securities lending program. As stated by Donald Kohn,

then Vice-Chairman of the Board of Governors of the Federal Reserve, to the U.S. Senate Banking Committee, Maiden Lane II was created “to provide a permanent solution to the AIG securities lending program’s losses and liquidity drains.”

The APA

28. On December 12, 2008, pursuant to the APA, Maiden Lane II acquired RMBS with a face value of \$39.3 billion from AIG for a purchase price of \$20.8 billion. AIG realized a loss of approximately \$18 billion on the sale.

29. Section 1.01 of the APA provided that Maiden Lane II was to acquire all of AIG’s “right, title and interest in and to its Share of each RMBS Issue” that was included in the transaction. The term “RMBS Issue” was defined to mean the “securities of a single issue of residential mortgage-backed securities listed on Schedule A . . . together with all right, title and interest in and to all Related Instruments.” *Id.* § 7.01. “Related Instruments” was defined to mean “any participation, pooling, servicing or other agreement, document or instrument pursuant to which an RMBS Issue has been created, pooled, securitized, issued, sold, serviced, enhanced, insured, or guaranteed.” *Id.* Taken together, this language effectuated the parties’ intent that Maiden Lane II acquire AIG’s entire ownership interest in the RMBS, including any contractual rights granted in the documents appurtenant to the securities (*i.e.*, the Related Instruments), such as the right to distributions and voting rights. It does not mention, and clearly does not transfer, AIG’s fraud or tort claims to recover losses AIG suffered as a victim of fraudulent representations made by the financial institutions that securitized and marketed the RMBS assets that were transferred.

30. The fact that the APA was not intended to effect a transfer of tort claims is confirmed by the price that AIG and Maiden Lane II agreed upon for the transfer of RMBS

assets to Maiden Lane II. Specifically, the \$20.8 billion price listed in the APA for the RMBS was calculated by the parties to approximate the market value of the securities at the time of the transaction based on an analysis of their projected cash flows. Section 1.07 of the APA thus explains that “mid-market pricing estimates of the RMBS Issues” were prepared “based on projected cash flows relating to such RMBS Issues,” and that “the parties used such estimates as the basis for their negotiation of the Purchase Price of the RMBS Issues.” The value of tort claims arising from third parties’ fraudulent sale of the RMBS to AIG was not factored into the purchase price. Indeed, the parties made no attempt to value any such claims, nor were such claims ever discussed by the parties during the negotiation of the APA, nor are such claims referenced or mentioned anywhere in the APA.

AIG Sues BoA for Fraud in Connection with Creating and Selling RMBS to AIG, and Maiden Lane II Acknowledges AIG’s Ability to Do So

31. AIG conducted a thorough investigation of the misconduct by the financial institutions that sponsored, underwrote, and originated loans in the RMBS that AIG purchased and caused its massive losses. Among other things, AIG analyzed publicly available data, government reports, and testimony, interviewed confidential witnesses who formerly worked for the financial institutions, and conducted a detailed forensic analysis. AIG’s investigation revealed that AIG had been the victim of a massive fraud perpetrated by the entities that had created and sold the RMBS that AIG purchased. The investigation showed that those parties had drastically overstated the value of the RMBS.

32. On August 8, 2011, AIG initiated the BoA Action, suing BoA for fraudulent inducement, aiding and abetting fraudulent inducement, violations of the 1933 Securities Act, and negligent misrepresentation. The BoA Action seeks nearly \$10 billion in damages, more

than \$7 billion of which arise from AIG's purchase of RMBS that were later sold to Maiden Lane II.

33. On September 26, 2011, almost two months after AIG filed the BoA Action, the General Counsel and Executive Vice President of the FRBNY, acting as Maiden Lane II's sole member, sent a letter to counsel for AIG (attached hereto as Exhibit C). This began an extended letter writing exchange between the FRBNY and AIG regarding the scope of the assignment provision in the APA that confirms that the FRBNY understood that AIG had not assigned its tort claims arising from its purchase of the RMBS to Maiden Lane II.

34. In that first letter, the FRBNY incorrectly stated that "AIG seeks rescission as a remedy for *its fraudulent inducement* claim,"² and demanded that "AIG amend its complaint to remove any *request for relief* that requires AIG to tender any securities owned by ML II." The FRBNY notably did not challenge AIG's ability to assert a fraudulent inducement claim, but simply (and correctly) asserted that Maiden Lane II owns "any and all *contract-based claims* relating to the RMBS and the various offering documents and related agreements." The FRBNY, therefore, demanded that AIG confirm in writing that AIG "does not claim the right to assert any claim for *breach of contract* under which the RMBS were created"

35. AIG replied to this first letter with a letter dated October 3, 2011 (attached hereto as Exhibit D), in which it explained that it seeks rescissory damages, not rescission, as a remedy against BoA. AIG also confirmed that it had not and would not assert any contractual repurchase claims with respect to the RMBS it had sold to Maiden Lane II.³

² Emphasis added unless otherwise indicated.

³ Broadly speaking, a common feature of RMBS permits the holder of the security to require the party that created the security to repurchase any of the mortgage loans underlying the security that do not comply with certain representations and warranties concerning the credit

36. On October 11, 2011, the FRBNY responded to AIG in a letter (attached hereto as Exhibit E) that asked AIG to broaden its promise by agreeing that “[f]or those RMBS that AIG sold to Maiden Lane II LLC, AIG will not assert *any claim for breach of a contract* under which the RMBS were created, pooled, securitized, issued, sold, serviced, enhanced, insured or guaranteed.” In the same letter, the FRBNY also acknowledged the FRBNY’s agreement that “AIG has the right to seek damages under Section 12(a)(2) of the Securities Act of 1933 for those RMBS that it sold to ML II,” again evidencing the parties’ mutual understanding that AIG retained its tort claims and had transferred only contract-based claims to Maiden Lane II in the APA.

37. AIG replied to that letter with a letter dated November 10, 2011 (attached hereto as Exhibit F), in which it confirmed that AIG would not assert any cause of action for *breach of a provision* of a Related Instrument (as defined in the APA), and reiterated that it sought only rescissory damages, not actual rescission, on its fraudulent inducement and 1933 Securities Act claims on the RMBS it sold to Maiden Lane II.

38. In a response dated November 23, 2011 (attached hereto as Exhibit G), the FRBNY again wrote AIG to confirm “the intent of the parties, and to eliminate any ambiguity or perceived ambiguity to the assignment of rights set forth in the Asset Purchase Agreement.” It asked AIG to represent and agree that: “[f]or those RMBS that AIG sold to Maiden Lane II LLC, AIG will not assert any cause of action for *breach of a provision* of a Related Instrument . . .”

39. In a letter dated December 1, 2011 (attached hereto as Exhibit H), AIG agreed to the language that the FRBNY had proposed, but also expressly noted that “*nothing in this agreement or the Asset Purchase Agreement precludes AIG from asserting tort or securities*

quality of the individual loans. Claims to enforce this right are generally known as contractual “repurchase” claims.

law claims arising from misrepresentations or omissions made in connection with AIG's purchase of any RMBS Certificates."

40. The FRBNY never responded to AIG's December 1, 2011 letter, nor did it ever seek to intervene in the BoA Action, protest AIG's prosecution of that action, or otherwise claim ownership of the claims AIG had asserted therein. Upon information and belief, the FRBNY never preserved such claims through tolling agreements or caused Maiden Lane II to prosecute tort claims in its own name against BoA or any other party involved in creating and/or marketing the RMBS it had purchased from AIG.

BoA Argues that Maiden Lane II Owns the Tort Claims AIG is Asserting, and the FRBNY Agrees

41. On August 8, 2012, after the BoA Action had been removed to federal court and divided between the United States District Court for the Southern District of New York and a multi-district litigation in California, BoA filed a motion to dismiss AIG's claims in the multi-district litigation based, in part, on an argument that AIG lacks standing to assert tort claims relating to the RMBS owned by Maiden Lane II because AIG had purportedly assigned such claims to Maiden Lane II in the APA. BoA contended that the language of the APA and, in particular, AIG's assignment of its interest in the "Related Instruments," a term that BoA asserts covered documents that include the alleged fraudulent misrepresentations and omissions, compelled that conclusion.

42. AIG amended its complaint in the BoA Action on August 29, 2012, and BoA again moved to dismiss on October 7, 2012. AIG filed its opposition to BoA's motion to dismiss on November 27, 2012. In that opposition, AIG explained, *inter alia*, that (i) controlling New York law requires that any assignment of tort claims be explicit and manifest a tort claimant's affirmative intent to transfer a personal right to recover its losses, (ii) that a contract that merely

provides for the transfer of “right, title, and interest” to property is insufficient to assign tort claims relating to the property, (iii) that the APA does not contain any other language constituting an explicit assignment of AIG’s tort claims, and (iv) in contrast to contractual rights, a claim that a misleading document led a victim to purchase an asset is not an “interest” in a document, but rather, such a claim is instead a common law or statutory right to seek redress for injury suffered by a victim as a result of his or her reliance on false representations and omissions about the asset’s characteristics at the time of the initial purchase.

43. AIG also provided the Court presiding over the multi-district litigation with the above-described correspondence between AIG and the FRBNY to demonstrate that, even if the Court found the assignment clause in the APA to be ambiguous (which it is not), the parties’ course of conduct confirms that both of them understood that AIG had not assigned its tort claims in the APA.

44. On December 21, 2012, BoA submitted its reply papers in support of its motion to dismiss AIG’s claims in the multi-district litigation. The reply papers included declarations by two officers of the FRBNY, Vice President James Mahoney (attached hereto as Exhibit I) and Senior Vice President and Deputy Counsel Stephanie Heller (attached hereto as Exhibit J), and an unfiled draft complaint, dated September 2010, prepared on behalf of Maiden Lane II (attached hereto as Exhibit K) that included claims against BoA relating to four tranches of securities in two series of IMPAC RMBS that Maiden Lane II had purchased from AIG pursuant to the APA.

45. Mr. Mahoney’s declaration, which is dated December 19, 2012, states in pertinent part that he led the negotiations of the APA for Maiden Lane II and that, in entering the APA, “the FRBNY and ML II intended for ML II to receive all transferable and assignable benefits

associated with the securities and Related Instruments, including litigation claims associated with those securities or their acquisitions by AIG.”

46. Ms. Heller’s declaration, which is dated December 20, 2012, states in pertinent part that she participated in drafting the above-described correspondence the FRBNY sent to AIG, that the FRBNY did not intend in that correspondence to take a position concerning the proper interpretation of the APA, and that in stating that the FRBNY “agree[d] that AIG has the right to seek damages under Section 12(a)(2) of the Securities Act of 1933,” it “meant only that a claim for such damages would not be inconsistent with ML II’s ownership of the securities.” Ms. Heller also states in her declaration that the FRBNY did not reply to AIG’s December 1, 2011 letter, in which AIG expressly stated that it had retained common law fraud and other tort claims relating to the RMBS, because “the FRBNY was not interested in negotiating a new allocation of claims or other after-the-fact agreement.”

47. To the extent they deny AIG’s ownership of its RMBS-related tort claims, the declarations of Mr. Mahoney and Ms. Heller cannot be squared with (1) the plain language of the APA—which does not contain the express language required by New York law to effect an assignment of tort claims; (2) the valuations of the RMBS assets that were transferred pursuant to the APA; or (3) the parties’ subsequent conduct, which clearly demonstrates that both AIG and Maiden Lane II understood that AIG had retained the tort claims it is asserting in the BoA Action.

48. Mr. Mahoney’s vague assertion that Maiden Lane II intended “to receive all transferrable and assignable benefits associated with the securities and Related Instruments, including litigation claims associated with those securities or their acquisition by AIG,” stops short of actually saying that Maiden Lane II intended to obtain the fraud and tort claims at issue

here. *See* Exhibit I. At best it reflects Maiden Lane II’s undisclosed, subjective intent, which is irrelevant to determining the scope of the APA. Moreover, Mr. Mahoney does not state that either the FRBNY or Maiden Lane II ever raised or discussed this issue with AIG—let alone reached an express agreement with AIG to assign AIG’s fraud and tort claims.

49. Ms. Heller’s declaration also fails to establish that AIG transferred any potential tort claims to Maiden Lane II. Ms. Heller’s statement that AIG’s retention of the Section 12 damages claim is “not inconsistent with ML II’s ownership of the securities” only shows that AIG retained that claim, as it did its other tort claims. *See* Exhibit J. Her explanations of the FRBNY’s decision not to respond to AIG’s written assertion that AIG retained its tort and securities law claims is difficult to reconcile with how sophisticated counsel typically behave in matters involving billions of dollars. The FRBNY, in its last correspondence to AIG, sought “[t]o confirm the intent of the parties, and to *eliminate any ambiguity or perceived ambiguity* with respect to the assignment of rights set forth in the Asset Purchase Agreement.” *See* Exhibit G. When AIG responded with its own understanding of the APA, the FRBNY did not respond. If the FRBNY did not agree with AIG’s understanding of the scope of the APA, its counsel would not have remained silent while AIG asserted its unambiguous position and the BoA Action advanced.

50. Finally, the unfiled draft complaint that Maiden Lane II negotiated with BoA does not reflect that Maiden Lane II believed that it owned AIG’s tort claims. The draft complaint, which is dated September 22, 2010, is stamped “CONFIDENTIAL DRAFT—RULE 408 SETTLEMENT DISCUSSION NOT TO BE CITED OR REFERENCED IN ANY COURT OR OTHER PROCEEDING.” It was never filed in any court. The draft complaint asserted that Maiden Lane II “is assignee-in-interest to the AIG Subsidiaries’ rights to breach of contract,

rescission, and any other causes of action *arising out of the IMPAC Notes*,” pursuant to the APA. See Exhibit K ¶ 21. The gravamen of the draft complaint was breach of contract based on an improper waterfall provision in the IMPAC RMBS pooling and servicing agreements (“PSAs”). The draft complaint alleged that, according to the relevant RMBS prospectus supplements, the RMBS trusts were required to allocate payments of principal among Class A tranche holders on a “pro rata” basis, meaning each tranche would receive its respective share of principal. Instead, BoA sold RMBS with PSAs that entitled tranche holders only to “sequential” payments of principal based on seniority. Thus, Maiden Lane II’s subordinated Class A tranches were not recovering any principal payments until the more senior Class A tranches were paid in full.

51. The draft complaint asserted three causes of action focused on the mismatch between the waterfall provisions in the prospectus supplements and the PSAs. First, Maiden Lane II asserted a breach of contract claim against BoA for rescission of the original purchase, or alternatively damages. Second, Maiden Lane II asserted a rescission/rescissory damages claim for mutual mistake, which was also a breach of contract claim. Third, the draft complaint asserted a violation of California Corporations Code Sections 25401, 25501 and 25504, arising from allegedly false statements in the prospectus supplements for the IMPAC RMBS concerning the securities’ waterfall.

52. The draft complaint does not suggest, much less demonstrate, that AIG assigned its tort claims to Maiden Lane II through the APA or that it was the FRBNY’s intention to receive such claims. The draft complaint—never filed, but only submitted to BoA as part of settlement negotiations—did not purport to analyze the APA, and it focused on potential claims emanating from Maiden Lane II’s contractual rights under the APA. Maiden Lane II did not assert any common law fraud claims or federal securities law claims, which form the crux of

AIG's allegations against BoA. Whereas AIG asserts fraud claims against BoA based on misrepresentations in the prospectus supplements concerning the credit quality of the mortgages underlying the RMBS, Maiden Lane II's draft complaint expressly excluded any such fraud claims, stating that "Plaintiff is at this time unaware of any evidence—and does not allege—that the prospectus supplements were intentionally misleading." Exhibit K ¶ 26 (emphasis in original). And whatever similarity the California Corporations Code claim may bear to federal securities claims under the 1933 Act, the FRBNY expressly conceded in its October 11, 2011 letter to AIG, *see* Exhibit E, that AIG may pursue Section 12 claims arising from the RMBS sold pursuant to the APA. Maiden Lane II's draft California Corporations Code claim, moreover, is premised on the same mismatch between the waterfall provisions in the prospectus supplements and the PSAs and not misstatements regarding the quality of the RMBS.

53. According to BoA, Maiden Lane II presented the draft complaint to BoA just five days before AIG filed the BoA Action, which included fraud claims for the same IMPAC RMBS at issue in the draft complaint. Maiden Lane II never objected to AIG asserting its fraud claims against BoA, demonstrating that it believed AIG owned the fraud claims.

54. Indeed, throughout the period from August 2011, when AIG filed the BoA Action, until December 2012, Maiden Lane II did not seek to intervene in the BoA Action or challenge AIG's ownership of the claims. When Maiden Lane II auctioned all of its RMBS positions at market prices in February 2012, realizing a profit of approximately \$2.8 billion, it also made no mention of any supposed ownership of billions of dollars of fraud claims associated with the RMBS. Maiden Lane II, moreover, has (i) never filed suit against any financial institution to recover on the billions of dollars of fraud and other claims it supposedly acquired from AIG; (ii) upon information and belief, never preserved such claims through tolling

agreements; (iii) never sought information from AIG critical to the prosecution of such claims; (iv) never disclosed in any public report, press release, congressional testimony, or any other forum that it retained or acquired such claims; and (v) never discussed any potential fraud or other tort claims on its extensive website detailing the history of the Maiden Lane II transaction.

55. Maiden Lane II's inaction with respect to the tort claims it now claims to have acquired from AIG stands in stark contrast to its intervention in a New York state court proceeding seeking approval of a proposed settlement of *contractual* mortgage repurchase claims in 530 Countrywide RMBS arising from misrepresentations of loan quality in those securities. *See* Pet. to Intervene, *In re Bank of New York Mellon*, No. 651786/2011 (N.Y. Sup. Ct. N.Y. Cty. Jun. 29, 2011) (doc. no. 14). As was the case with Maiden Lane II's unfiled draft complaint, Maiden Lane II expressly avoided raising any fraud claims in this New York case, noting in its motions to intervene that "[t]he claims covered by this Settlement are exclusively those arising under the Governing Agreements and do not include individual investor claims arising under the securities or anti-fraud laws of the United States or of any state." *Id.* at 3 n.2; *see also* Settlement Agreement, *In re Bank of New York Mellon*, No. 651786/2011 (N.Y. Sup. Ct. N.Y. Cty. Jun. 29, 2011) (doc. no. 3, Exhibit B).

56. Had Maiden Lane II been assigned these tort claims, the FRBNY, on behalf of Maiden Lane II, would have prosecuted them, as other federal agencies and government bodies have done elsewhere. *See, e.g., FHFA v. Countrywide Fin. Corp.*, No. 12-cv-01059 (C.D. Cal. Sept. 30, 2011) (doc. no. 1 at 2) (securities and common law tort claims on \$26.6 billion in RMBS purchases); *Fed. Deposit Ins. Corp. v. Countrywide Sec. Corp.*, D-1-GN-12-002516 (Tex. Dist. Ct.) (seeking \$560 million in damages for RMBS sold to failed bank); *U.S. v. Countrywide*

Home Loans, No. 12-cv-01422 (S.D.N.Y. Oct. 24, 2012) (doc. no. 6) (seeking over \$1 billion in damages related to fraudulent loans sold to Fannie Mae and Freddie Mac).

57. As Mr. Mahoney and Ms. Heller speak for the FRBNY, and since the FRBNY controls Maiden Lane II, it is evident that there now exists a dispute between AIG and Maiden Lane II as to which of them owns the fraud and other tort claims that AIG is asserting in the BoA Action. The dispute imperils AIG's ability to prosecute and recover on these claims and similar claims against other parties, which are together worth billions of dollars.

FIRST CAUSE OF ACTION
(Declaratory Judgment as Against Maiden Lane II)

58. AIG incorporates the allegations in paragraphs 1–57 as if fully set forth within this Cause of Action.

59. Pursuant to N.Y. C.P.L.R. § 3001, this Court may grant a declaratory judgment “having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed.” A justiciable controversy involves a present, rather than hypothetical, contingent, or remote prejudice to the plaintiff.

60. As described above, there exists a real and justiciable controversy between AIG and Maiden Lane II as to AIG's ownership of tort claims arising from certain third parties' misconduct in the sale of RMBS to AIG.

61. AIG requests a declaration that it is the sole owner of all such claims.

62. Moreover, AIG requests an order giving effect to such declaration.

SECOND CAUSE OF ACTION
(Reformation of the APA)

63. AIG incorporates the allegations in paragraphs 1–57 as if fully set forth within this Cause of Action.

64. If the Court determines that a declaratory judgment is not warranted because it determines that the language of the APA does not reflect the parties’ intent and inadvertently provides for an assignment to Maiden Lane II of claims arising from third parties’ wrongful sale of RMBS to AIG, then it should, in the alternative, hold that the APA must be reformed to accurately reflect and effectuate the parties’ intent that such claims not be transferred to Maiden Lane II.

65. Mutual mistake may furnish the basis for reforming a written agreement.

66. The premise underlying the doctrine of mutual mistake is that the agreement as expressed, in some material respect, does not represent the meeting of the minds of the parties.

67. In executing the APA, neither party intended that AIG would assign to Maiden Lane II tort claims arising from third parties’ wrongful sale of RMBS to AIG. This mutual intention is manifested in both parties’ course of conduct, described in detail above, in the four years since the signing of the APA.

PRAYER FOR RELIEF

WHEREFORE, AIG respectfully requests the following relief:

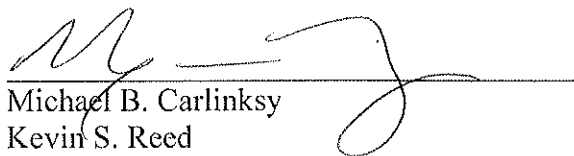
A. A declaratory judgment that the APA did not assign to Maiden Lane II any potential claims or causes of action sounding in tort, including federal Securities Act claims, arising from third parties’ misconduct in the sale to AIG of RMBS that AIG subsequently sold to Maiden Lane II (the “Claims”), and that AIG is the owner of all such Claims.

B. In the alternative, should this Court determine that the APA inadvertently assigned any Claims to Maiden Lane II, and that AIG is not the owner of all such Claims, reformation of the APA such that it does not assign any of the Claims to Maiden Lane II.

C. Such other and further relief as the Court may deem just and proper.

DATED: New York, New York
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