

Respondents American General Life Insurance Company, American Home Assurance Company, American International Reinsurance Company, Ltd., Lexington Insurance Company, National Union Fire Insurance Company of Pittsburgh, Pa., The United States Life Insurance Company in the City of New York, and The Variable Annuity Life Insurance Company (collectively, "the AIG Respondents") respectively submit this memorandum of law, together with the accompanying affidavit of Kevin S. Reed, in support of the AIG Respondents' motion to amend their Initial Statement (the "Answer") concerning the Petition (the "Petition") in this Article 77 proceeding to assert direct holdings in three additional settlement trusts.

FACTUAL BACKGROUND

The AIG Respondents filed their Answer on May 30, 2018. (Dkt. No. 54). As required by the Court's Order of April 20, 2018 (Dkt. No. 37), the AIG Respondents identified the Settlement Trusts subject to the Petition in which they assert an interest and specified 54 such trusts in which they have direct holdings. Recently, the AIG Respondents identified three additional Settlement Trusts subject to the Petition in which they have direct holdings: SASCO 2004-10, SASCO 2004-17XS, SASCO 2003-S2 (the "Additional Subject Trusts"). The AIG Respondents did not identify the Additional Subject Trusts in their Answer because those trusts are referenced in the AIG Respondents' internal records under slightly different names. No other respondent in this proceeding has asserted an interest in the Additional Subject Trusts. (Dkt. No. 106).

A copy of the AIG Respondents' proposed amended Answer is Exhibit A to the accompanying affirmation of Kevin S. Reed (the "Reed Affirmation").

ARGUMENT

Well-settled New York law holds that "[l]eave to amend the pleadings 'shall be freely given' absent prejudice or surprise resulting directly from the delay." *Fahey v. Ontario Cty.*, 44 N.Y.2d 934, 935, 380 N.E.2d 146, 147 (1978) (quoting CPLR 3025(b)); see also *Tushaj v. Elm Mgmt. Ass'n, Inc.*, 198 A.D.2d 127, 128, 604 N.Y.S.2d 52, 53 - 54 (1st Dep't 1993) ("Requests

("for leave to amend should be granted freely in the absence of prejudice or unfair surprise."); *Sze Kong Realty Corp. v. Tsang*, 59 Misc. 3d 1212(A) (Sup. Ct. N.Y. Cty. 2018) ("Courts should freely grant leave to amend a pleading if there is no surprise or prejudice to the other party."). "[M]ere lateness is not a barrier to an amendment. Lateness must be coupled with significant prejudice." *Masterwear Corp. v. Bernard*, 3 A.D.3d 305, 306, 771 N.Y.S.2d 72, 74-75 (1st Dep't 2004).

The amendment proposed by the AIG Respondents via this motion will not work prejudice on any other Respondent to the Petition. As noted above, no other Respondent has asserted an interest in any of the Additional Subject Trusts, so the proposed amendment will not directly affect any other Respondent. Additionally, the proposed amendment will not cause any delay in these proceedings; it does not signal any change in the positions the AIG Respondents' have expressed on the merits of the issues raised by the Petition, and since AIG owns its interests in the Additional Subject Trusts directly, there is no viable standing challenge to be made.

CONCLUSION

For the foregoing reasons, the AIG Respondents request that the Court grant them leave to amend their Answer in the form reflected in Exhibit A to the Reed Affirmation.

Dated: August 23, 2018
New York, New York

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: /s/ Kevin S. Reed
Kevin S. Reed
51 Madison Avenue, 22nd Floor
New York, New York 10010
(212) 849-7000

Attorneys for Respondents American General Life Insurance Company, American Home Assurance Company, American International Reinsurance Company, Ltd., Lexington Insurance Company, National Union Fire Insurance Company of Pittsburgh, Pa., The United States Life Insurance Company in the City of New York, and The Variable Annuity Life Insurance Company