

EXHIBIT R-1445

From: Kevin.McCarthy@BNYMellon.com
Sent: Thursday, December 2, 2010 2:03 PM
To: Kravitt, Jason H. P. <JKravitt@mayerbrown.com>
Cc: Hakim, David <DHakim@mayerbrown.com>; Espana, Mauricio <MEspana@mayerbrown.com>; Ingber, Matthew D. <MIngber@mayerbrown.com>
Subject: *Confidential: Re: FW: A minor lawyer's point/Confidential/attorney work product

Jason - I think you need to speak with Kathy directly to clear this up before it goes sideways. If she is under the belief that there is an EOD outstanding (rather than a potential EOD that may be declared on or after 12/17) then we have a real problem because that is not the assumption that we have been operating under - we have working hard to AVOID a formal declaration of an EOD. I suggest that you nail down with Kathy that as of now, and until her band of holders actually declares it, there is no EOD and that the whole point of the forbearance agreement is to toll the running of time so that her holders are not in a position to have to decide whether or not to declare an EOD on 12/17, but rather can create some breathing room to work with BoA toward a plan that avoids an EOD and allows for review of the files.

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From: "Kravitt, Jason H. P." <JKravitt@mayerbrown.com>
To: "Ingber, Matthew D." <MIngber@mayerbrown.com>, "Hakim, David" <DHakim@mayerbrown.com>, "Espana, Mauricio" <MEspana@mayerbrown.com>, <Kevin.McCarthy@BNYMellon.com>
Date: 12/02/2010 01:45 PM
Subject: FW: A minor lawyer's point/Confidential/attorney work product

This may be disturbing. This means that there IS, in KP's opinion, an EOD, and this specific group of CHs is forbearing from exercising their rights with regard to it. What if another group chooses to do so? It would not be precluded from doing so. Further, if there is an EOD, then the Trustee's standard of care changes to a prudent man standard. The actual draft now is titled "Forbearance", but the text says "extend" the notice period. We ought to discuss this.

I don't think it is in Kathy's interest to actually have an EOD outstanding. For one reason, it allows other "wildmen" to jump into the fray, and, it starts BONYM on a track to figure out on its own if it should replace the MS.

David, as master of the "text", what do you think? Please note that I have included Kevin on this email and I welcome his thoughts as well.

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BNYM_CW-00285997

In re BNYM
Index No. 651786/11
Trial Exhibit
R-1445

In Re BNY Mellon
Index No. 651786/11
McCarthy 6/5/10
DEPO Ex. 1445

R1445-001

From: Kathy D. Patrick [mailto:kpatrick@gibbsbruns.com]
Sent: Thursday, December 02, 2010 1:01 PM
To: Kravitt, Jason H. P.; tmirvis@wlrk.com; mgkaplow@wlrk.com; epgolin@wlrk.com
Cc: Litsey, Jana J -Legal; Ingber, Matthew D.; Kathy D. Patrick; Scott A. Humphries; Robert J. Madden
Subject: RE: A minor lawyer's point/Confidential/attorney work product

I think forbearance is the right word.

After the Section 7.01 Notice of Non-Performance has been sent, and sixty days have passed, Section 10.08 affords the noticing holders the right but not the *requirement*--to send a second notice demanding that the Trustee take action to remedy the Event of Default. Our clients are agreeing to forbear, for 21 days, from sending the 10.08 notice they are otherwise entitled to send on December 18 (60 days after the Section 7.01 Notice).

Stated differently, we re not *lengthening* the 60 day cure period under Section 7.01. Instead, our clients are simply agreeing to send the 10.08 notice *when they want to send it*, rather than sending it on December 18, the earliest date on which they could otherwise send it.

From: Kravitt, Jason H. P. [mailto:JKravitt@mayerbrown.com]
Sent: Thursday, December 02, 2010 9:27 AM
To: Kathy D. Patrick; tmirvis@wlrk.com; mgkaplow@wlrk.com; epgolin@wlrk.com
Cc: Litsey, Jana J -Legal; Ingber, Matthew D.
Subject: A minor lawyer's point/Confidential/attorney work product

While I am not one to obsess about small, technical points, I have a concern with the present wording of one verb in the Forbearance Agreement. Putting aside whether the notice that has been given is effective to start a 60 day period running under the Sections 7.01(ii) of the various PSAs, the wording of such Sections (ii) is that failure continues unremedied for a period of 60 days after the date on which written notice of such failure shall have been given to [various parties such as the MS or Trustee] . While I do not come out negatively on this myself, someone might raise the question whether even the party giving the notice can extend it unilaterally.

Would it be wiser to say that the giver of the notice is suspending it? Or tolling it? Or some other formulation that strengthens the argument that it is an action that the giver of the notice has the unilateral power to do? I welcome your thoughts.

Jason H.P. Kravitt

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