

At Commercial Division Part 39
Supreme Court of the State of New
York, held in and for the County of
New York, at the Courthouse located at
60 Centre Street, New York, New
York, on the ___ day of January, 2013

P R E S E N T:

HONORABLE BARBARA R. KAPNICK, J.S.C.

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),

Petitioner,

for an order, pursuant to C.P.L.R. § 7701, seeking judicial
instructions and approval of a proposed settlement.

Index No. 651786/2011

Assigned to: Kapnick, J.
(Part 39)

**ORDER TO SHOW
CAUSE WHY THE
COURT SHOULD NOT
COMPEL DISCOVERY
FROM EMPHASYS
TECHNOLOGIES, INC.**

UPON the annexed Affirmation of Michael A. Rollin, dated January 13, 2013, with
exhibits attached thereto, the accompanying Memorandum of Law in Support of the Order to
Show Cause Why the Court Should Not Compel Discovery from EmphaSys Technologies, Inc.,
dated January 14, 2013, and all pleadings and proceedings previously had herein,

SUFFICIENT CAUSE THEREFOR BEING ALLEGED, IT IS HEREBY

ORDERED that petitioner The Bank of New York Mellon (“BNYM”) show cause
before this Court at Commercial Division Part 39, to be held at 60 Centre Street, New York, New
York, on the 7th day of February, 2013 at 10:00 a.m., or as soon as counsel may be heard, why
an order should not be entered as follows:

- 1) Pursuant to CPLR § 3124, compelling EmphaSys Technologies, Inc. (“ETI”), through its representative David Anthony, to answer questions posed during its deposition regarding work product ETI prepared for BNYM, and concerning the 530 Covered Trusts at issue in this matter; and
- 2) Pursuant to CPLR § 3124, compelling ETI to produce its documents and reports prepared for BNYM regarding such work product; and
- 3) Resumption of ETI’s deposition; and
- 4) Awarding such other and further relief as the Court may deem just and proper.

SUFFICIENT REASON APPEARING THEREFOR, let service of a copy of this Order, together with the papers upon which it was granted, upon counsel for BNYM, by electronic filing service, and a courtesy copy of the signed order by electronic mail on or before the 14th day of January, 2013, be deemed good and sufficient service. In accordance with the briefing schedule previously ordered by this Court, any answering papers shall be filed and served upon all counsel of record on or before January 28, 2013, and reply papers shall be filed and served upon all counsel of record on or before February 1, 2013.

Oral argument is requested on this motion.

Counsel submitting this Order to Show Cause has affirmed that a good faith effort has been made to resolve the issues raised in this Order to Show Cause with counsel for BNYM.

ENTER,

J.S.C.