

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

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,

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.

**AFFIRMATION OF
MICHAEL A. ROLLIN
IN SUPPORT OF
ORDER TO SHOW
CAUSE REGARDING
EMPHASYS
TECHNOLOGIES, INC.**

I, Michael A. Rollin, hereby affirm under the penalty of perjury that the following is true and correct:

1. I am a member of the Bar of the State of New York and of Reilly Pozner LLP, counsel for the AIG entities in this matter. I have personal knowledge of the facts set forth below.

2. This relief is requested by order to show cause because during the December 7, 2012 conference call with the Court, the parties were directed to file orders to show cause to address outstanding discovery matters.

3. AIG is one of several Intervenor-Respondents (collectively with Objectors “Intervenors”) in this matter and my firm is a member of the Steering Committee. I submit this Affirmation in support of the Intervenors’ motion for an order pursuant to CPLR § 3124:

(a) Compelling EmphaSys Technologies, Inc. (“ETI”), through its representative David Anthony, to answer questions posed during its deposition concerning work product that ETI prepared for the Bank of New York Mellon

(“BNYM”), as Trustee acting on behalf of all Certificateholders in the 530 Covered Trusts at issue in this matter; and

(b) Compelling ETI to produce its documents and reports prepared for BNYM regarding such work product; and

(c) Resuming ETI’s deposition; and

(d) Awarding such other and further relief as the Court may deem just and proper.

4. Through its Verified Petition and Proposed Final Order and Judgment, BNYM asks this Court to approve a settlement that it seeks to consummate on behalf of 530 trusts (the “Covered Trusts”), in its capacity as Trustee for those trusts, and to make at least eighteen separate factual findings related to the Trustee’s conduct, including a finding that the Trustee conducted an adequate factual investigation.

5. To date, BNYM and ETI have refused to provide meaningful discovery into the work product ETI prepared as a third party for BNYM, and improperly blocked relevant testimony from ETI through meritless privilege assertions made during the deposition of David Anthony, who appeared on behalf of ETI.

6. Attached as Exhibit 1, is a true and accurate copy of Intervenors’ Subpoena Duces Tecum to EmphaSys Technologies, Inc. (Oct. 29, 2012).

7. Attached as Exhibit 2, is a true and accurate copy of Intervenors’ Subpoena Duces Tecum to EmphaSys Technologies, Inc. (Nov. 8, 2012).

8. Attached as Exhibit 3, is a true and accurate copy of BNYM’s Objections to Intervenors’ October 29, 2012 Subpoena Duces Tecum to EmphaSys Technologies, Inc. (Nov. 13, 2012).

9. Attached as Exhibit 4, is a true and accurate copy of counsel for BNYM's Document Production Letter to Intervenors (Nov. 14, 2012).

10. Attached as Exhibit 5, is a true and accurate copy of the Deposition Transcript of David Anthony, as a representative of EmphaSys Technologies, Inc. (Nov. 15, 2012).

11. Attached as Exhibit 6, is a true and accurate copy of excerpts from the Deposition Transcript of Jason Buechele (Nov. 27, 2012).

12. Attached as Exhibit 7, is a true and accurate copy of the confidentiality agreement between BNYM and ETI.

13. Attached as Exhibit 8, is a true and accurate copy of ETI's proposal.

14. Attached as Exhibit 9, is a true and accurate copy of excerpts from the Deposition Transcript of Loretta Lundberg (Oct. 2 & 3, 2012).

15. Attached as Exhibit 10, is a true and accurate copy of excerpts from the Deposition of Faten Sabry (Dec. 4, 2012).

16. Pursuant to the Protective Order, exhibits containing information designated confidential are filed only with the Court or are filed with redactions.

17. The parties have met and conferred with respect to ETI's testimony and reports.

18. The Court previously directed the parties to address outstanding discovery matters by way of orders to show cause and set the following schedule:

- January 14, 2013: Orders to Show Cause Filed
- January 28, 2013: Response Briefs Due
- February 1, 2013: Reply Briefs Due.

19. The Steering Committee has made no previous application for the same or similar relief.

Dated this 13th day of January, 2013.

A handwritten signature in cursive script, reading "Michael A. Rollin". The signature is written in dark ink and is positioned above a horizontal line.

Michael A. Rollin