

**WORKING COPIES FOR JUDICIAL REVIEW**

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 15<sup>th</sup> 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.**

**MOTION SEQUENCE # 029**

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~~ <sup>Emphasys Technologies Inc</sup> ("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:

*Bank of New York and  
Emphasys  
Tech.  
Inc*

- 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~~ <sup>Dem alleged</sup> ~~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 <sup>16</sup>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<sup>n</sup> and

served upon all counsel of record on or before January 28, 2013<sup>n</sup>, and reply papers shall be filed

and served upon all counsel of record on or before February 1, 2013<sup>n</sup>

*with the Clerk in 1A Part 39*  
*by 4:00pm*  
*with the Clerk in 1A Part 39*  
*by 4:00pm*

~~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. **BARBARA R. KAPNICK**  
J.S.C.

**ORDERED**, that opposition papers, if any, shall be served on the \_\_\_\_\_ on or before \_\_\_\_\_

**ORAL ARGUMENT DIRECTED**

**BARBARA R. KAPNICK J.S.C.**  
J.S.C.