

**Exhibit 116**  
to  
**Affidavit of Daniel M. Reilly**  
**in Support of Consolidated Response to**  
**Statements in Support of the Proposed Settlement**

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

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In the Matter of the Application of

Index No. 651786/

The Bank of New York Mellon  
(As trustee under various Pooling Assigned to Kapnick, J.  
and Servicing Agreements and  
Indenture Trustee under various  
Indentures), et al.,

Petitioners,

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

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\* C O N F I D E N T I A L \*

VIDEOTAPED DEPOSITION  
OF  
Faten Sabry Ph. D.  
New York, New York  
Tuesday, December 04, 2012

Reported by:  
ANNETTE ARLEQUIN, CCR, RPR, CCR, CLR  
JOB NO. 55545

1 F. Sabry - Confidential

2 says, is that we have experience in conducting  
3 statistical analysis to examine why particular  
4 loans default for example.

5 Q. Including residential loans?

6 A. Including residential loans.

7 Q. Under the bullet point entitled  
8 "Portfolio Performance Analysis" --

9 A. Yes?

10 Q. It says, "Analyzing causes of  
11 collateral failure."

12 Can you tell me what that means?

13 A. It means we, we, not just myself but  
14 several economists at NERA, have experience in  
15 analyzing underlying collateral, be it student  
16 loans or auto loans or other types of  
17 collateral.

18 Q. And so you could -- that includes  
19 residential mortgages?

20 A. That includes residential mortgages,  
21 yes.

22 Q. And so explain that to me. Does that  
23 mean that you could perform an analysis to  
24 determine why a residential mortgage, for  
25 example, goes into default?

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2 MR. HOUPPT: Objection. Calls for  
3 speculation.

4 A. Well, it means that we can use  
5 statistical tools to try to understand what  
6 determines the probability of default within a  
7 particular pool of loans for example.

8 Again, this is more general than  
9 residential mortgages.

10 Q. And I'm asking the more specific with  
11 respect to residential mortgages.

12 You could take a pool of residential  
13 mortgage loans and using your statistical tools  
14 and expertise, perform an analysis to determine  
15 why those borrowers went into default?

16 MR. HOUPPT: Objection. Calls for  
17 speculation.

18 A. Not, not -- I mean...

19 I'm not sure your description is  
20 accurate.

21 Q. Will you give an accurate description  
22 then?

23 A. The -- Let me see. What this, and  
24 again, I'm not quite sure -- what this would  
25 mean or how I would explain it is by saying we

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2 know -- we have expertise in developing  
3 statistical analysis to estimate or examine  
4 various factors that contributed to the  
5 performance of particular loans, yes.

6 Q. Below that it says, "Using  
7 statistical analysis to evaluate the quality of  
8 loan servicing."

9 Can you describe that?

10 A. Again, I would describe this as using  
11 statistical analysis to, for example, examine  
12 whether certain loans performed according to  
13 certain benchmarks that were set in  
14 predetermined benchmarks for example.

15 Q. And to determine whether or not some  
16 aspect of loan servicing played a role in  
17 performance?

18 A. Assuming there is enough, there are  
19 enough -- there is the type of data variables  
20 that would enable us to do that, yes.

21 Q. What kind of data variables would you  
22 need to enable you to do that?

23 MR. HOUP: Objection. Calls for  
24 speculation.

25 A. Oh, variables related to the metrics

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2 of performance of certain loans or metrics, I'm  
3 sorry, metrics that would enable us to measure  
4 the servicing performance, such as, for example,  
5 the number of times a servicer calls a borrower  
6 or relative to how often the servicer was  
7 supposed to contact the borrower.

8 Q. But you could develop a plan --  
9 strike that.

10 Let's say somebody came to you and  
11 said, I want you to evaluate the extent to which  
12 poor servicing contributed to losses in a  
13 particular loan pool. You could put together a  
14 methodology for determining that, right?

15 MR. HOUPPT: Calls for speculation.

16 A. It depends.

17 Q. On what?

18 A. Again, one, it depends on whether  
19 this information is available or not and what is  
20 exactly required.

21 If what's required is to review the  
22 loan files, the actual loan files, this is  
23 something that we do not do.

24 Q. Well, you could look at  
25 servicing-related records to determine whether

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2 or not there were -- there was poor servicing as  
3 benchmarked against the servicing standards that  
4 apply in a particular deal.

5 MR. HOUPT: Same objection.

6 A. It depends on -- if that's the  
7 question that the client needs answered, then  
8 that's -- you know, a question that requires a  
9 statistical analysis, that we can do. But a  
10 question that requires, you know, industry  
11 expertise in the sense that somebody needs to  
12 sit down and review the actual loan files and  
13 say well, this is what the industry standards  
14 are or are not, this is not something we do.  
15 This is not what is stated here.

16 Q. So you could work in conjunction  
17 with, say, an industry expert on servicing and  
18 that person could do the sort of the industry  
19 expertise part and then you could use  
20 statistical methods and expertise to create a  
21 model that would identify losses related to  
22 improper servicing.

23 MR. HOUPT: Objection to form and  
24 calls for speculation.

25 A. Hypothetically that could happen,

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2 yes.

3 Q. Did you receive any servicing data  
4 for any of the covered trusts?

5 A. Not that I recall.

6 Q. I'm showing you what we marked for  
7 Identification as Exhibit 363.

8 I ask you to take a moment and look  
9 at 363 and confirm for me whether or not,  
10 including looking at the cover email, that these  
11 are the materials that you sent to Jason Kravitt  
12 on May 2nd, 2011.

13 (Document review.)

14 A. Yes. It appears to be what I sent to  
15 Jason, yes.

16 Q. And this is information that you sent  
17 in order for counsel for the trustee to have  
18 information about NERA and its professionals?

19 A. That's correct.

20 Q. Were you in a beauty contest at the  
21 time?

22 A. Yes.

23 MR. HOUPPT: Objection to form.

24 BY MR. HOUPPT:

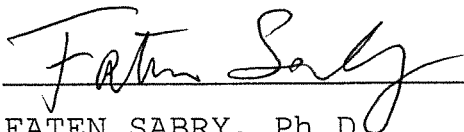
25 Q. Do you know who else was in the



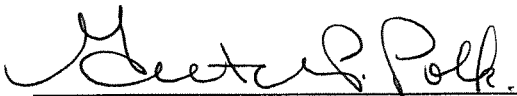
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THE VIDEOGRAPHER: This concludes  
today's deposition. The time is 4:33 p.m.  
We're off the record.

(Time noted: 4:33 p.m.)

  
FATEN SABRY, Ph.D.

Subscribed and sworn to before me  
this 4<sup>th</sup> day of February 2012<sup>3</sup>.



GRETCHEN P. POLK  
Notary Public, State of New York  
No. 5003066  
Qualified in Westchester County  
Commission Expires October 13, 2014

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ERRATA SHEET FOR THE TRANSCRIPT OF:

CASE NAME:

DATE:

DEPONENT:

Pg.	Ln.	Now Reads	Should Read	Reason
3	5	for Bank	for The Bank	party name
158	9	efficiencies	deficiencies	typo
162	18	the on	to	typo
171	6	Fannie Freddie	Fannie Mae	typo
218	18	Langbein	Langbein	typo
218	20	Langbein	Langbein	typo
13	4	hospital	hostile	incorrect transcription
14	2	target	acquirer	misstatement
—	—	—	—	—

Father Saly

SUBSCRIBED AND SWORN BEFORE ME

THIS 4<sup>th</sup> DAY OF February 2012<sup>3</sup>.

Gretchen P. Polk

(Notary Public)

GRETCHEN P. POLK  
Notary Public, State of New York  
No. 5003088  
Qualified in Westchester County  
Commission Expires October 13, 2014

MY COMMISSION EXPIRES: 10/13/2014

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mingber@mayerbrown.com

December 18, 2012

**VIA ELECTRONIC MAIL**

**TO: STEERING COMMITTEE**

**Re: *In re the Application of The Bank of New York Mellon*** (Index No. 651786-2011)

Dear Counsel:

Pursuant to Paragraph 2(c) of the protective order signed by the parties and so ordered by Justice Kapnick on June 14, 2012 (the "Protective Order"), The Bank of New York Mellon designates the following portions of the deposition of Faten Sabry as "Confidential," as it is defined in the Protective Order:

<b>December 4, 2012 Transcript Page/Line Designation</b>
16:20-29:15
36:3-54:19
55:2-97:17
98:5-133:21
135:10-167:6
172:6-198:2
198:11-241:12
241:22-255:18

December 18, 2012

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Please feel free to call or email me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Matthew Ingber (DC)", written in a cursive style.

Matthew D. Ingber

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April 26, 2013

**VIA ELECTRONIC MAIL**

Michael A. Rollin  
Reilly Pozner LLP  
1900 Sixteenth Street  
Suite 1700  
Denver, CO 80202

**Matthew D. Ingber**  
Direct Tel +1 212 506 2373  
Direct Fax +1 212 849 5973  
mingber@mayerbrown.com

Re: *In re the Application of The Bank of New York  
Mellon* (Index No. 651786/2011)

Dear Mike:

I am writing in response to your March 11, 2013 and April 17, 2013 letters regarding confidentiality designations of discovery materials. In addition to the materials we agreed to de-designate per our April 3, 2013 and April 22, 2013 letters, we will also remove confidentiality designations from the deposition transcript excerpts listed in Exhibit A (attached). The remaining excerpts should retain their "confidential" designations in accordance with section 1(d) of the Protective Order.

Please call my colleague, Chris Houpt, or me if you have any questions.

Very truly yours,

  
Matthew D. Ingber

cc: All counsel

Michael A. Rollin  
April 26, 2013  
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# EXHIBIT A

Michael A. Rollin

April 26, 2013

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226:19-229:5
241:23-243:9
245:2-246:16
262:15-266:10
269:3-273:4
279:24-287:13

<b><u>Baker</u></b>
8:3-8:17
8:23-8:25
9:1-10:8
11:16-11:22
12:20-15:8
15:9-16:9
16:10-17:13
18:14-19:16
35:1-36:22
37:3-38:21
43:5-43:20
69:10-73:3
74:3-10
74:16-75:18
76:2-76:15
83:7-84:16
97:1-98:20

<b><u>Sabry</u></b>
Entire Transcript

<b><u>Bingham</u></b>
Entire Transcript