

*Other*

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 10<sup>th</sup> day of September, 2013

**PRESENT:**

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

**MOTION SEQUENCE # 040**

Index No. 651786/2011

Assigned to: Kapnick, J. (Part 39)

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.

**ORDER TO SHOW CAUSE WHY THE COURT SHOULD NOT CONTINUE THE TRIAL FOLLOWING THE SEPTEMBER TRIAL DATES TO ALLOW DISCOVERY CONCERNING NEWLY DISCLOSED EVIDENCE**

Motion Seq. 40

UPON the accompanying Memorandum of Law in Support of the Order to Show Cause Why the Court Should Not Continue the Trial Following the September Trial Dates to Allow Discovery Concerning Newly Disclosed Evidence and Affirmation of Michael A. Rollin, dated August 30, 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 27<sup>th</sup> day of September, 2013 at 2:15 ~~am~~ p.m., or as soon as counsel may be heard, why an order should not be entered pursuant to CPLR § 4402 as follows:

- 1) Following the trial dates that are already set in September, continuing the trial to allow Respondents an opportunity to obtain discovery regarding BNYM's investigation and evaluation of claims;
- 2) Compelling BNYM to produce documents concerning BNYM's investigation and evaluation of claims, including documents that were previously subject to claims of privilege;
- 3) Permitting necessary depositions based on that production;
- 4) Granting leave to recall any witnesses to provide additional testimony based on the newly disclosed evidence; and
- 5) Awarding such other and further relief as the Court may deem just and proper.

*Deem alleged*  
**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 on or before the 11 day of September 2013, be deemed good and sufficient service. Any answering papers shall be filed and served upon all counsel of record on or before September 20, 2013. Properly bound and tabbed copies shall be delivered to the clerk in Part 39 *or before Sept. 20 2013 at 1 pm* ~~or to Chambers.~~

ENTER,

**NO PREVIOUS APPLICATION HAS BEEN MADE FOR THE RELIEF REQUESTED HEREIN.**

*SM*  
 (INITIAL)

J.S.C.

*[Handwritten Signature]*

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

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

**ORAL ARGUMENT DIRECTED**

J.S.C.