

**Exhibit 36**  
**to**  
**Affidavit of Daniel M. Reilly**  
**in Support of Joint Memorandum of**  
**Law in Opposition to Proposed Settlement**

# MAYER • BROWN

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October 4, 2012

**VIA ELECTRONIC MAIL**

TO: STEERING COMMITTEE

Re: *In re the Application of The Bank of New York Mellon* (Index No. 6517876-2011)

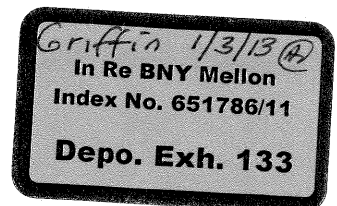
Dear Counsel:

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 Jason Kravitt as "Confidential," as defined in the Protective Order:

September 19, 2012 Transcript Page/Line Designation
22:18-26:5
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27:23-28:8
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344:2-375:3
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October 4, 2012

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595:6-604:6
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614:6-621:20
626:5-632:4
632:25-640:4
641:3-645:11

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

Very truly yours,

*Matthew Ingber (DC)*

Matthew D. Ingber

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

-----X  
In the Matter of the Application of

Index No. 651786/

THE BANK OF NEW YORK MELLON  
(As trustee under various Pooling  
and Servicing Agreements and  
Indenture Trustee under various  
Indentures), et al.,

Assigned to Kapnick, J.

Petitioners,

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

-----X

REVISED

VOLUME I

VIDEOTAPED DEPOSITION

OF

JASON H.P. KRAVITT, ESQUIRE

New York, New York

Wednesday, September 19, 2012

Reported by:  
ANNETTE ARLEQUIN, CCR, RPR, CCR, CLR  
JOB NO. 53618











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Jason H.P. Kravitt

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1 Jason H.P. Kravitt

2 instructed the witness not to answer, so  
3 it's the same instruction.

4 BY MR. REILLY:

5 Q. You're not going to answer the  
6 question whether you as a person knowledgeable  
7 in the industry about what happens in events of  
8 default, that you know the consequences of that;  
9 is that correct?

10 A. I generally know the consequences of  
11 the occurrence of an event of default in RMBS  
12 documentation and generally it is that the  
13 trustee would have an obligation to give notice  
14 to certificate holders, correct.

15 MR. GONZALEZ: Objection to form.

16 Calls for a legal conclusion.

17 You can answer it if it doesn't  
18 violate any privilege.

19 A. It's always dangerous to generalize  
20 with regard to RMBS documentation because while  
21 it generally follows particular forms, there's  
22 lots of variations among the documents. I would  
23 say that if events of default are outstanding,  
24 often the trustee will give notice to the  
25 bondholders.

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Jason H.P. Kravitt

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1 Jason H.P. Kravitt

2 Q. And were you also representing the  
3 interests of the certificate holders in those  
4 trusts that Ms. Patrick didn't represent?

5 MR. GONZALEZ: Objection to form.

6 Calls for a legal conclusion.

7 And I'll instruct the witness not to  
8 answer to the extent his answer requires  
9 testimony regarding his mental impressions  
10 or communications with his client.

11 A. I told Kathy I was representing the  
12 Bank of New York Mellon as trustee.

13 Q. Did you tell her you were not  
14 representing the certificate holders who were  
15 not her clients in those trusts?

16 A. We didn't discuss certificate holders  
17 -- I'm going to tie up myself because it's so  
18 complicated to say.

19 We did not discuss who I was not  
20 representing.

21 Q. Did Ms. Patrick make it clear to you  
22 at any point that she was not representing  
23 anyone other than the certificate holders that  
24 she had described to you or to the Bank of New  
25 York Mellon in her previous letters before

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Jason H.P. Kravitt

[Redacted text block containing approximately 25 lines of obscured content]

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Jason H.P. Kravitt

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1 Jason H.P. Kravitt

2 do you have to show causation. Some of the  
3 legal theories were discussed. But if there  
4 were settlement, what trusts would it apply to,  
5 that sort of thing.

6 Then everybody agreed that they made  
7 a lot of progress and everyone would go back and  
8 think about it, and then construct next steps.

9 Q. Was there a discussion about where a  
10 lawsuit might be filed?

11 A. I don't think we discussed a lawsuit  
12 at that meeting.

13 Q. And was there a discussion about  
14 whether a draft complaint had been prepared?

15 A. I don't recall.

16 Q. Did you ever see a draft complaint  
17 regarding the underlying claims?

18 A. Do you mean a draft complaint  
19 prepared by Gibbs & Bruns?

20 Q. Prepared by anybody, but that's who I  
21 would expect.

22 A. Let me think.

23 I don't know if one had been prepared  
24 and I don't know if I saw one, but I have no  
25 memory of seeing one.

1 Jason H.P. Kravitt

2 event of default. It's not restricted to one  
3 position or another.

4 Q. Yeah, and I wasn't trying. I was  
5 trying to list the possibilities and it sounds  
6 like we're in agreement that there were a number  
7 of them available to the trustee on December 18,  
8 2010 if the forbearance agreement had not been  
9 entered into.

10 A. That's correct, including continuing  
11 to negotiate an attempted settlement.

12 Q. And that's right.

13 You could have kept going without  
14 stopping the clock.

15 MR. GONZALEZ: Objection to form.

16 Calls for speculation.

17 MR. REILLY: Well, I'm just agreeing  
18 with the witness.

19 THE WITNESS: Very good, Dan.

20 (Laughter.)

21 A. As I stated, it's very unstable to  
22 try to negotiate a large, complicated,  
23 time-consuming matter when other parties can  
24 interfere because an event happened.

25 Q. Other parties meaning who?

1 Jason H.P. Kravitt

2 A. Any group of certificate holders who  
3 want the trustees to do something different or  
4 who want to attack the bank based on the event  
5 of default.

6 We weren't trying to forestall  
7 anyone's action if we couldn't negotiate a  
8 favorable settlement. We were just trying to  
9 give ourselves a chance to negotiate a good  
10 settlement.

11 Q. Of course if a certificate holder not  
12 represented by Gibbs & Bruns or one of those  
13 trusts, had December 18th come and an event of  
14 default arguably triggered, they would have some  
15 rights to pursue their claims on their own,  
16 correct?

17 MR. GONZALEZ: Objection to form.

18 Calls for speculation.

19 Also instruct the witness not to  
20 answer to the extent it requires him to  
21 reveal mental impressions regarding his  
22 representation.

23 A. As a general matter, it's very hard  
24 for certification holders to do things on their  
25 own unless they have the requisite holdings

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Jason H.P. Kravitt

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Jason H.P. Kravitt

THE VIDEOGRAPHER: The time is 4:49

p.m. We are off the record.

(Time noted: 4:49 p.m.)

  
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JASON H.P. KRAVITT, ESQ.

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



  
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ERRATA SHEET FOR THE TRANSCRIPT OF:

CASE NAME: BNYM v. WALNUT PLACE  
 DATE: SEPTEMBER 19, 2012  
 DEPONENT: JASON H.P. KRAVITT, ESQ.

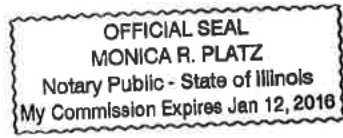
Pg.	Ln.	Now Reads	Should Read	Reason
<u>1</u>	<u>2-13</u>	<u>Federal Court Caption</u>	<u>State Court Caption</u>	<u>Incorrect Caption</u> (see Kravitt transcript from Day 2.)
<u>3</u>	<u>5</u>	<u>for Bank</u>	<u>for The Bank</u>	<u>party name</u>
<u>3</u>	<u>13</u>	<u>for Bank</u>	<u>for The Bank</u>	<u>party name</u>
<u>10</u>	<u>5</u>	<u>of Bank</u>	<u>of The Bank</u>	<u>Incorrect transcription</u>
<u>10</u>	<u>5-8</u>	<u>Federal Court Caption</u>	<u>State Court Caption</u>	<u>Incorrect Caption</u>
<u>11</u>	<u>14</u>	<u>Kapnik</u>	<u>Kapnick</u>	<u>Misspelling</u>
<u>191</u>	<u>17</u>	<u>The of</u>	<u>The Bank of</u>	<u>Incorrect transcription</u>
<u>193</u>	<u>5</u>	<u>Yeah --</u>	<u>That's --</u>	<u>Incorrect transcription</u>
<u>202</u>	<u>13</u>	<u>has to two</u>	<u>has two</u>	<u>Incorrect transcription</u>
<u>227</u>	<u>17</u>	<u>fas</u>	<u>fast</u>	<u>Misspelling</u>

Jason H. Kravitt  
 JASON H.P. KRAVITT, ESQ.

SUBSCRIBED AND SWORN BEFORE ME

THIS 14<sup>th</sup> DAY OF November 2012.

Monica R. Platz  
 (Notary Public)



MY COMMISSION EXPIRES: Jan. 12, 2016

## ERRATA SHEET FOR THE TRANSCRIPT OF:

CASE NAME: BNYM v. WALNUT PLACE

DATE: SEPTEMBER 19, 2012

DEPONENT: JASON H.P. KRAVITT, ESQ.

Pg.	Ln.	Now Reads	Should Read	Reason
242	23	or slightly there	or it's likely there	Incorrect transcription
243	24	who event went	who it went	Incorrect transcription
243	24-25	at heading it on it	at the heading on it it	Incorrect transcription
244	24	suspended	extended	Incorrect transcription
245	2	preliminary	preliminarily	Incorrect transcription
253	11	805	8.05	Provision, as written
254	16	805	8.05	Provision, as written
257	5	805	8.05	Provision, as written
269	24	Elain	Elaine	Misspelling
272	19	Calabrass	Calabasas	Misspelling

  
 JASON H.P. KRAVITT, ESQ.

SUBSCRIBED AND SWORN BEFORE ME

THIS 14<sup>th</sup> DAY OF November 2012.

  
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(Notary Public)

MY COMMISSION EXPIRES: Jan. 12, 2016

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ERRATA SHEET FOR THE TRANSCRIPT OF:

CASE NAME: BNYM v. WALNUT PLACE

DATE: SEPTEMBER 19, 2012

DEPONENT: JASON H.P. KRAVITT, ESQ.

Pg.	Ln.	Now Reads	Should Read	Reason
273	3	interexchange	interchange	Incorrect transcription
273	14	morning	New York	Incorrect transcription
275	6	Calabgrass	Calabasas	Misspelling
290	7	too	to	Misspelling
251	5	flew	grew	Incorrect transcription

Jason H.P. Kravitt  
JASON H.P. KRAVITT, ESQ.

SUBSCRIBED AND SWORN BEFORE ME

THIS 14<sup>th</sup> DAY OF November 2012.

Monica R. Platz  
(Notary Public)



MY COMMISSION EXPIRES: 1-12-2016

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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.

-----X

\* C O N F I D E N T I A L \*  
VOLUME II  
VIDEOTAPED DEPOSITION  
OF  
JASON H.P. KRAVITT, ESQUIRE  
New York, New York  
Thursday, September 20, 2012

Reported by:  
ANNETTE ARLEQUIN, CCR, RPR, CCR, CLR  
JOB NO. 53619

1 Jason H. P. Kravitt - Confidential  
2 event of default with Ms. Patrick at that time  
3 frame?

4 A. We discussed the forbearance  
5 agreement.

6 Q. And within that was the concept of  
7 the event of default considered?

8 A. As I stated yesterday, my strategy,  
9 and as far as I could tell Bank of America's  
10 strategy as well, was to try to negotiate what  
11 we could agree on and not waste time on things  
12 that parties would have to fight on unless it  
13 became necessary to fight on them.

14 So to the best of my recollection,  
15 Ms. Patrick and I never had a debate on whether  
16 an event of default was outstanding, but what to  
17 do about the allegation of noncompliance.

18 Q. Well, my question is intended to be  
19 as broad as possible on that issue so I'm  
20 asking, did you have any conversation in that  
21 time frame with Ms. Patrick about the concept of  
22 an event of default?

23 MR. GONZALEZ: Objection to form.

24 Asked and answered.

25 A. We didn't discuss what an event of

1 Jason H. P. Kravitt - Confidential

2 to what extent certificate holders should get  
3 notice and we always took what we thought was  
4 our legal -- a legal analysis into  
5 consideration, and we reached conclusions on  
6 when it would be appropriate to notify  
7 certificate holders or not.

8 Q. "We" meaning you and Bank of America,  
9 and the institutional investors?

10 A. The Bank of New York would make its  
11 own mind up on what its obligations were under  
12 the Pooling and Servicing Agreement.

13 Q. There was no notice given to  
14 certificate holders in these trusts about the  
15 existence of settlement negotiations before the  
16 settlement was reached, correct?

17 MR. MADDEN: Objection. Vague.

18 MR. GONZALEZ: Objection to form.

19 Vague.

20 A. We did not send out a formal notice  
21 to certificate holders until the proposed  
22 settlement was agreed to.

23 Q. Did you consider sending out a formal  
24 notice to certificate holders at the time that  
25 Gibbs & Bruns was asking to be retained by the

1 Jason H. P. Kravitt - Confidential

2 all certificate holders until the settlement had  
3 been agreed to.

4 Q. How many times did the issue of  
5 whether a notice ought to go to the certificate  
6 holders come up amongst the three settlement  
7 proponents before ultimately it was given?

8 A. I don't remember how many times. It  
9 was probably something on -- to the best of my  
10 recollection, it would have been on the order of  
11 half a dozen times.

12 Q. When did it first come up?

13 A. I don't recall when it first came up,  
14 but I do recall that it would have been in  
15 connection with execution of the forbearance  
16 agreement or a renewal of the forbearance  
17 agreement.

18 Q. There was actual discussion among the  
19 settlement proponents at the time of the  
20 execution of the forbearance agreement about  
21 whether or not the Bank of New York Mellon would  
22 give notice to all the non-participating  
23 certificate holders about the forbearance  
24 agreement, correct?

25 MR. MADDEN: I'm going to instruct



1 Jason H. P. Kravitt - Confidential

2 you to exclude any bilateral communications  
3 with Gibbs & Bruns, if any.

4 A. To the best of my recollection, we  
5 discussed that issue, but I don't -- I'm just  
6 trying to be accurate here. I don't recall if  
7 it was at the first signature of the execution  
8 of the agreement of forbearance or an extension  
9 of it. I'm just trying to be precise. I don't  
10 recall.

11 Q. But the answer is yes, there was a  
12 discussion around that time about whether the  
13 Bank of New York Mellon as trustee would give  
14 notice to the non-participating certificate  
15 holders.

16 A. To the best of my recollection, yes.

17 Q. And when was the next time that the  
18 issue came up about whether the Bank of New York  
19 Mellon as trustee would give notice to  
20 certificate holders about something regarding  
21 the settlement negotiations?

22 MR. MADDEN: Objection to form.

23 MR. GONZALEZ: And obviously I'll  
24 join that objection.

25 But just to the extent there are

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2 MR. GONZALEZ: Objection to form.

3 Mischaracterizes the witness' prior  
4 testimony.

5 A. Well, if I was ambiguous, I  
6 apologize.

7 The confidence that you will have a  
8 settlement increases or decreases based on how  
9 the negotiations are going and how the terms are  
10 coming into being.

11 And by May, particularly late May and  
12 June, our parties were certainly feeling more  
13 confident that we would have an acceptable  
14 settlement.

15 I don't know what the other parties  
16 were feeling.

17 Q. Our parties being?

18 A. The Bank of New York as advised by  
19 its lawyers.

20 Q. And I just didn't want to  
21 misunderstand you there.

22 You had one counsel -- one client in  
23 this setting, correct?

24 A. We had one client, the Bank of New  
25 York Mellon as trustee.

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2 And that issue is distinct from  
3 successor liability issues that you were also  
4 looking at, correct?

5 MR. GONZALEZ: Objection to the  
6 extent it calls for a legal conclusion.

7 And I instruct the witness to answer  
8 only to the extent that he can answer  
9 without privilege violations.

10 A. Well, that issue, that concept was  
11 certainly discussed and debated.

12 Q. Do you know if any value is placed on  
13 the Bank of America's servicer's liability in  
14 the settlement?

15 A. What we focused on in the settlement  
16 was the quality of the servicing remedies as  
17 opposed to trying to put a dollar figure on any  
18 past transgressions other than the indemnity for  
19 -- I guess that's looking forward also, so what  
20 we focused on were the remedies going forward.

21 Q. So is that another way of saying no,  
22 Mr. Reilly, we did not put any value on the  
23 potential liability of Bank of America's  
24 servicing arm?

25 A. To my knowledge --

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2 MR. GONZALEZ: Objection to form.

3 Sorry.

4 A. To my knowledge we did not try to  
5 size any liability for past ser -- alleged past  
6 servicing transgressions.

7 Q. Including Bank of America's  
8 independent --

9 A. Correct.

10 Q. -- liabilities, correct?

11 A. Correct.

12 Q. Was that a conscious decision  
13 discussed amongst the three to not do that?

14 A. I don't remember if we discussed, I  
15 don't remember if we discussed making a  
16 conscious -- I don't remember if we discussed  
17 making a conscious decision on that issue, but  
18 from a very early time we focused on servicing  
19 remedies as opposed to damages.

20 I will tell you that we certainly  
21 discussed how difficult it would be to value any  
22 alleged servicing wrongdoing.

23 Q. What was discussed in that regard?

24 A. Well, first of all, you have to  
25 decide what was wrongdoing. You have to decide

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2 A. We did not attempt to place any  
3 liability on any losses that may have arisen  
4 from document exceptions.

5 Q. Or any losses that may have arisen  
6 from unsecured liens?

7 A. Well, I think the latter is subsumed  
8 in the former.

9 Q. So the answer is yes, you didn't put  
10 a value on that either?

11 A. We did not attempt to value it.

12 Q. And did you consider --

13 A. You know, I'm sorry, Dan, for  
14 interrupting, but what I should have added in my  
15 answers, and I apologize that I didn't  
16 previously, I keep meaning to have several long  
17 parts to my answers, but my memory isn't as good  
18 and I forget the ending parts I had planned.

19 We did have, as you know, our  
20 servicing expert, who we hired, give us his  
21 opinion on the servicing remedies. And as you  
22 know, as you may remember, in that opinion they  
23 opined that the servicing remedies went beyond  
24 the standard in the Pooling and Servicing  
25 Agreements.

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2 recollection, I said that was largely based on  
3 their own key assumptions.

4 Q. Do you know when the meeting that  
5 you're talking about between RRMS and someone  
6 from Gibbs & Bruns, you said expert to expert  
7 just to trigger you, when it was in relation to  
8 that presentation?

9 A. That would have been after the  
10 presentation.

11 Q. And if I understood you, are you  
12 saying that Gibbs & Bruns never made a  
13 settlement demand in the case?

14 A. They negotiated a number and they  
15 once sent a letter saying they were going to  
16 settle for the \$8.5 billion after the parties  
17 had tentatively agreed on that number, but I'm  
18 not aware of their ever making a demand of the  
19 type this is our demand, take it or leave it.

20 Q. Well, I didn't mean it take it or  
21 leave it. I meant a settlement offer.

22 Did Gibbs & Bruns ever make a  
23 settlement offer that had a settlement amount in  
24 it?

25 A. I don't -- well, I don't know if B of

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2 A offered 8.5 and they took it tentatively or  
3 Gibbs & Bruns made the offer of 8.5 and B of A  
4 accepted it tentatively. I don't know how the  
5 last, the final number -- I don't know who  
6 proposed it and who accepted the final number.

7 Q. When you say the final number, it  
8 suggests to me that there were some preliminary  
9 numbers.

10 Were there numbers being exchanged  
11 back and forth between Bank of America and Gibbs  
12 & Bruns as the settlement amount?

13 A. Well, as I told you, the first  
14 presentation that B of A made to the three  
15 parties had numbers in the one. You know, 1.X  
16 billion.

17 Q. Billion?

18 A. Billion.

19 Q. I don't remember hearing that from  
20 you actually.

21 A. Actually, I believe we went over it  
22 yesterday, one of the documents that they  
23 presented, and I said it had an analysis in it  
24 of an analogy of the Gibbs & Bruns portfolio and  
25 those numbers were all one point something,

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2 you thought would be adequate?

3 MR. GONZALEZ: Objection to form to  
4 the extent it divulges your mental  
5 impressions about the case or  
6 attorney-client communications.

7 A. I never stated to the three parties  
8 what the Bank of New York's number was that it  
9 would be willing to accept.

10 Q. Did you have a number at the Bank of  
11 New York Mellon that you would have been willing  
12 to accept?

13 A. The issue never got to that point,  
14 because the 8.5 number ended up being proposed  
15 to us and we asked our experts -- we did not  
16 tell our experts the 8.5 number.

17 We told them to give us a range.  
18 They gave us a range and then the Bank of New  
19 York Mellon decided, based on the expert's range  
20 and the haircuts that they thought were  
21 appropriate for legal reasons, whether the 8.5  
22 number was acceptable.

23 Q. And what I'm really trying to  
24 understand is how the number was eventually  
25 reached. It's not clear to me. I understand



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2 ask if we would be interested in taking on that  
3 representation.

4 Q. And that's 2010, correct?

5 A. That's 2010.

6 Q. And then since the first payment, is  
7 it accurate to say that Mayer Brown has been  
8 billing, sending that on this matter, billing to  
9 Bank of New York Mellon, Bank of New York Mellon  
10 is again culling privileged information from  
11 that and sending a redacted bill to Bank of  
12 America on a monthly basis?

13 A. That is -- I don't know if they're  
14 doing it on a monthly basis, but I know that  
15 they're doing on a regular basis.

16 Q. Okay. And somewhat less regularly,  
17 Bank of America is paying that bill or those  
18 bills.

19 A. That's an excellent way of stating  
20 it.

21 Q. And do you know how many of those  
22 bills have gone out since July, since the first  
23 one was received?

24 A. Yeah. I would have sent one a month.

25 Q. And can you give me an estimate as to

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2 how much has been billed following that first  
3 period?

4 A. Well, before I said it would be under  
5 five.

6 I would say now it's under ten.

7 Q. In total.

8 A. Yeah.

9 Q. So under five in the first payment  
10 and then under five again in the second period?

11 A. Yes.

12 Q. And are they paying you, you meaning  
13 your firm, is Bank of America paying your firm  
14 up till today also?

15 A. Yes.

16 Q. And is it your understanding that  
17 Bank of America will pay Mayer Brown's fees into  
18 the future through the completion of or  
19 resolution of this Article 77 proceeding?

20 A. They will pay our fees in accordance  
21 with the indemnity in 8.05.

22 Q. Which would include all efforts to  
23 defend or pursue this approval process, correct?

24 A. Provided that Bank of New York does  
25 not act in bad faith or negligently.

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2 Q. Same question with regard to experts  
3 retained by Bank of New York Mellon.

4 Has Bank of America paid for the  
5 expenses of retaining experts in connection with  
6 the attempt to obtain approval of the  
7 settlement?

8 A. To the best of my knowledge, they  
9 paid the experts' fees.

10 Q. And that will continue into the  
11 future as you understand it?

12 A. Subject to the terms of the agreement  
13 to pay, you know, such as acting in bad faith or  
14 negligently, yes.

15 Q. And what is -- what's your estimation  
16 of the total amount of fees paid by Bank of  
17 America for experts retained by Bank of New York  
18 Mellon in this matter?

19 A. Actually, I apologize, but I haven't  
20 been paying a lot of attention to those dollar  
21 amounts so I cannot give you a rational  
22 estimate.

23 Q. Who would know at Mayer Brown, if you  
24 know?

25 A. I think we -- I could go back and add

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2 it all up, but I just haven't been keeping a  
3 running total in my mind.

4 Q. As to the experts, is Bank of America  
5 paying the experts directly or is Bank of New  
6 York billing them and then sending them on to  
7 Bank of America?

8 A. Like our fees, Bank of New York is  
9 being billed and then they're being sent on to  
10 Bank of America.

11 Q. Do you know if there's any redaction  
12 process through the bills sent by the experts to  
13 Bank of New York before they're sent to Bank of  
14 America?

15 A. I just don't recall.

16 Q. Are there any experts that were  
17 retained by Bank of New York Mellon that Bank of  
18 America has refused to pay?

19 A. Not to the best of my recollection.

20 Q. Does Mayer Brown have to clear any  
21 work that it's going to do on this matter before  
22 it does it with Bank of America?

23 A. No, sir.

24 Q. Do the experts have to clear any work  
25 they might do on this matter before they do it



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2 would give notice, you meaning the Bank of New  
3 York Mellon, would give notice to the  
4 certificate holders?

5 A. No. I remember discussing it with  
6 them as to what its terms would say.

7 Q. Is this the first time that you  
8 linked the obligation of Bank of New York Mellon  
9 to give notice to certificate holders to the  
10 request by Bank of New York Mellon to get an  
11 indemnity from Bank of America?

12 MR. GONZALEZ: Objection to form.  
13 Lacks foundation. Assumes facts not in  
14 evidence.

15 (Beth Kaswan enters the deposition  
16 room.)

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

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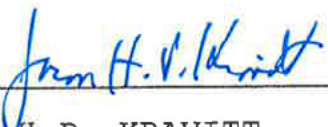


1 Jason H. P. Kravitt - Confidential  
2 the instruction.

3 A. Well, Ms. Kaswan I don't know how to  
4 answer that. I don't believe that's the case  
5 and I don't -- if it were the case, I don't know  
6 how B of A's payment would affect Bank of New  
7 York's hypothetical liability.

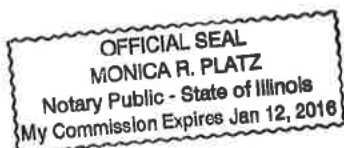
8 THE VIDEOGRAPHER: The time is 5:26.  
9 We are off the record.

10 (Recess is taken.)

11  
12   
13 \_\_\_\_\_  
14 JASON H. P. KRAVITT

15  
16 Subscribed and sworn to before me  
17 this 14<sup>th</sup> day of November 2012.

18  
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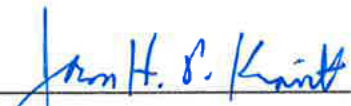
## ERRATA SHEET FOR THE TRANSCRIPT OF:

CASE NAME: In the Matter of the Application  
of The Bank of New York Mellon

DATE: SEPTEMBER 20, 2012 - VOLUME II

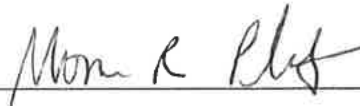
DEPONENT: JASON H.P. KRAVITT, ESQ.

Pg.	Ln.	Now Reads	Should Read	Reason
310	5-7	Federal ct. caption	State ct. caption	Incorrect caption
319	6	Espa a	España	misspelling
355	12	Bank of New York	Bank of America	Incorrect party
395	6	asking	answering	Words reversed
395	7	answered	asked	Words reversed
402	24	701	7.01	Provision, as written
414	5	rate	raise	Incorrect transcription
418	3	not	meant	Incorrect transcription
456	6	by	but	Incorrect transcription
465	2	would not be	would be	Misstatement

  
\_\_\_\_\_  
JASON H.P. KRAVITT, ESQ.

SUBSCRIBED AND SWORN BEFORE ME

THIS 14<sup>th</sup> DAY OF November 2012.

  
\_\_\_\_\_  
(Notary Public)



MY COMMISSION EXPIRES: Jan. 12, 2016

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ERRATA SHEET FOR THE TRANSCRIPT OF:

CASE NAME: In the Matter of the Application  
of The Bank of New York Mellon

DATE: SEPTEMBER 20, 2012 - VOLUME II

DEPONENT: JASON H.P. KRAVITT, ESQ.

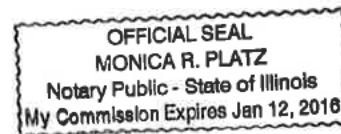
Pg.	Ln.	Now Reads	Should Read	Reason
494	9	<u>any</u>	<u>an</u>	<u>Incorrect transcription</u>
521	15	<u>redirect</u>	<u>redraft</u>	<u>Incorrect transcription</u>
607	9	<u>basis</u>	<u>based</u>	<u>Incorrect transcription</u>
611	14	<u>and on certain</u>	<u>in uncertain</u>	<u>Incorrect transcription</u>
621	18-19	<u>private settlement</u>	<u>private label settlement</u>	<u>Incorrect transcription</u>
621	19	<u>said</u>	<u>set</u>	<u>Incorrect transcription</u>
312	16	<u>variation</u>	<u>verification</u>	<u>Incorrect transcription</u>
522	13	<u>forum...forum</u>	<u>form...form</u>	<u>Incorrect transcription</u>
—	—	—	—	—
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Jason H.P. Kravitt  
JASON H.P. KRAVITT, ESQ.

SUBSCRIBED AND SWORN BEFORE ME

THIS 14<sup>th</sup> DAY OF November 2012.

Monica R. Platz  
(Notary Public)



MY COMMISSION EXPIRES: Jan. 12, 2016

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mingber@mayerbrown.com

October 4, 2012

**VIA ELECTRONIC MAIL**

**TO: STEERING COMMITTEE**

Re: *In re the Application of The Bank of New York Mellon* (Index No. 6517876-2011)

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 Jason Kravitt as "Confidential," as defined in the Protective Order:

<b>September 19, 2012 Transcript Page/Line Designation</b>
22:18-26:5
26:18-27:2
27:23-28:8
29:5-49:6
49:21-53:9
54:15-56:8
56:19-61:7
61:14-63:12
69:23-72:3
72:20-76:7

<b>September 20, 2012 Transcript Page/Line Designation</b>
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396:25-398:21
399:12-402:22
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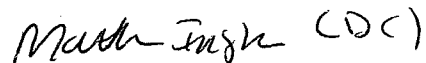
October 4, 2012  
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<b>September 19, 2012 Transcript Page/Line Designation</b>
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<b>September 20, 2012 Transcript Page/Line Designation</b>
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632:25-640:4
641:3-645:11

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

Very truly yours,



Matthew D. Ingber

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mingber@mayerbrown.com

April 26, 2013

**VIA ELECTRONIC MAIL**

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

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

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April 26, 2013  
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