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June 6, 2012

OF COUNSEL
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ERIC HECKER

Hon. Barbara R. Kapnick
Justice
Supreme Court of the State of New York
60 Centre Street, Part 39
New York, New York 10007

Re: In re: The Bank of New York Mellon, Index No. 651786/11

Dear Justice Kapnick:

My firm is attorney of record in the above matter, and co-counsel with the firm of Gibbs & Bruns, on behalf of the 22 Institutional Investors, intervenor-petitioners in support of the settlement being proposed by the Trustee.

I write to ask the Court to add to the agenda of the June 14 conference a discovery dispute between the parties over our Document Request No. 5,¹ which seeks from various Objectors "[a]ll documents constituting communications with BNY Mellon, Bank of America, or any Countrywide entity concerning or relating to your Objection, or any contemplated or threatened Objection, to the Settlement."² "Objection" is defined in the First Requests as "the Petition in Intervention, [the] Notice of Intent to Appear and Object, or other pleading filed by you in which you advised the court that you were opposed to, or sought more information about, the Trustee's settlement."

For the past six months, all but two (*i.e.*, Triaxx and Commonwealth) of the Objectors have refused to produce these communications in the absence of a court order directing them to do so, notwithstanding multiple meet and confers between counsel.

Some Objectors claim that the documents being sought by Request No. 5 are "irrelevant to these actions." Others claim that the Request is "overly broad and unduly burdensome." And

¹ This Request comes from the Institutional Investors' First Requests for Production of Documents and Interrogatories (the "First Requests"), served on November 17, 2011. An excerpted copy of the First Requests is attached as Exhibit A.

² The Objectors served were: the Walnut Place entities, the AIG entities, TM1, the Federal Home Loan Banks of San Francisco, Seattle, Pittsburgh, Boston, Chicago, and Indianapolis, Cranberry Park, the Public Pension Fund entities, Western and Southern, Triaxx, Commonwealth Advisors, Liberty View, First Reliance Standard Life Insurance, Platinum Underwriters Reinsurance, Reliance Standard Life Insurance, Safety National Casualty Corporation, and Sun Life Assurance Company of Canada.

AIG claims also that its communications with Bank of America concerning its Objection were subject, among other things, to the attorney-client privilege. For the Court's convenient reference, a table excerpting the Objectors' Responses to Request No. 5 is attached as Exhibit B.

None of these Responses has merit and therefore the Institutional Investors now ask that the Court compel production by the Objectors in response to Request No. 5.³

All of the Objectors have filed pleadings stating grounds on which they object to the settlement or seeking more information about it. Request No. 5 simply asks them to produce communications they have had with BNY Mellon and Bank of America concerning these *filed pleadings*. This information is not and cannot be "irrelevant," because it directly concerns pleadings that are on file in this case and goes to the heart of what this proceeding is all about. Nor is it "unduly burdensome" for the Objectors to produce the documents concerning their communications with BNY Mellon and Bank of America *about* their filed pleadings. That is apparent from the complete failure of the Objectors, over these many months, to substantiate or explain the supposed undue burden they allege. Finally, we submit that AIG's communications with third parties – such as BNY Mellon or Bank of America – cannot possibly be protected by the attorney-client privilege, and we note the absence of any privilege log from AIG to support its claim.

The documents sought by Request No. 5 are highly relevant and important. For example, if an Objector had reached out to BNY Mellon or to Bank of America and sought to obtain a disproportionate individual benefit in exchange for not objecting to the settlement, that fact would certainly be relevant to the Court's assessment of the objection. If the Objectors' communications with BNY Mellon or Bank of America contain admissions that they do not object to the *substance* of the settlement, or acknowledge that particular *attributes* of the settlement are beneficial to the Covered Trusts, that too would be relevant to the Court's evaluation of the filed objections.

The Objectors should not be permitted to lower a veil of secrecy over the objections they have filed in this case and the requested documents should be produced promptly. Accordingly, we ask that the Court consider this issue at the June 14 conference and order the Objectors to comply forthwith.

I have made this request by letter rather than by formal order to show cause because a narrow discovery dispute is at issue which I believe is capable of resolution by Your Honor upon oral argument at the June 14 conference. However, if the Court would prefer that I proceed by order to show cause I will do so immediately, so that resolution of this dispute will not be delayed any further.

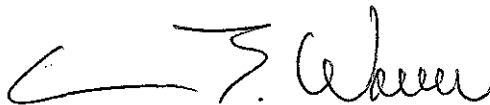
³ On Wednesday, May 30, 2012, my co-counsel Ms. Patrick sent an e-mail to the Objectors, notifying them of our intention to ask the Court to address this issue at the June 14 conference if the Objectors continued to refuse to produce responsive documents (Exhibit C).

WARNER PARTNERS, P.C.

Hon. Barbara R. Kapnick
June 6, 2012
Page 3

Thank you for your continuing attention to this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "K. E. Warner". The signature is fluid and cursive, with a large initial "K" and "E" followed by the name "Warner".

Kenneth E. Warner

KEW:ak

Enc.

cc: All counsel of record (via ECF)

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X

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.*, :

11 Civ. 5988 (WHP)

Petitioners, :

-against- :

WALNUT PLACE LLC, *et al.*, :

Intervenor-Respondents :

-----X

**INSTITUTIONAL INVESTORS' FIRST REQUESTS FOR PRODUCTION
OF DOCUMENTS AND INTERROGATORIES**

Pursuant to FED. R. CIV.P. 33 and 34, the Institutional Investors serve these Requests for Production of Documents and Interrogatories on the parties listed on the attached Exhibit "A," by and through their counsel of record. Each recipient is directed to respond individually to these requests. Recipients should refer to Exhibit "B" for definitions of capitalized terms and additional details concerning the manner in which you should respond to these requests. As required by Rule 33, parties are reminded that answers to interrogatories shall be sworn and under oath. While notice of the issuance of these requests has been provided to all parties and proposed intervenors, the requests are directed solely to the entities listed on Ex. A.

Interrogatory No. 1

For all securities at issue in your Objection, provide the following information:

- A. CUSIP Number
- B. Name of issuing Trust
- C. Unpaid principal balance of the security as of June 27, 2011
- D. Unpaid principal balance of the security as of the date of your Objection
- E. Whether you owned the security as of June 27, 2011
- F. Whether you acquired the security between June 27, 2011 and the date you filed your Objection.

Document Request No. 4

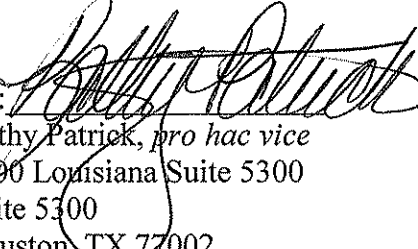
For each case identified in response to Interrogatory No. 2, produce all complaints or statements of claim filed by you or your affiliate.

Document Request No. 5

All documents constituting communications with BNY Mellon, Bank of America, or any Countrywide entity concerning or relating to your Objection, or any contemplated or threatened Objection, to the Settlement.

Respectfully submitted,

GIBBS & BRUNS LLP

By: 
Kathy Patrick, *pro hac vice*
1100 Louisiana Suite 5300
Suite 5300
Houston, TX 77002
(713) 650-8805
(713) 750-0903 (fax)
kpatrick@gibbsbruns.com

CERTIFICATE OF SERVICE

I certify that a true and correct copy of these requests was served on counsel of record for all parties and proposed intervenors, at their address of their counsel of record, via electronic mail and regular mail, on this the 17th day of November, 2011.


Kathy Patrick

4. "Objection" means the Petition in Intervention, Notice of Intent to Appear and Object, or other pleading filed by you in which you advised the court that you were opposed to, or sought more information about, the Trustee's Settlement.

5. "You" and "your" means the recipient of these requests, as well as all persons on whose authority you filed any Objection.

6. "PSA" refers to any of the Pooling and Servicing Agreements governing certain of the Trusts.

7. "Indenture" refers to any Indenture of Trust governing any Trust.

8. "Voting Rights" has the meaning ascribed to it in the PSA or Indenture applicable to each Trust.

9. "Securities" means residential mortgage backed securities issued by the Trusts or residual interests in any Trust.

10. "Own" means the person or entity has the right to exercise Voting Rights for the securities and possesses the right to sell the securities without the consent of any other person or entity.

11. "Document" is defined in the manner described in FED. R. CIV. P. 34(a).

12. Unless otherwise defined, capitalized terms shall have the meaning ascribed to that term in the relevant PSA or Indenture.

Exhibit B**Responses to Document Request No. 5 in the Institutional Investors' First Requests for Production (November 17, 2011)**

Document Request No. 5: “All documents constituting communications with BNY Mellon, Bank of America, or any Countrywide entity concerning or relating to your Objection, or any contemplated or threatened Objection, to the Settlement.”

Objector	Response to Institutional Investors' Document Request No. 5	Page Number
AIG	“AIG objects to this Request as overbroad and unduly burdensome. AIG has engaged in communications with BNY Mellon about a number of topics since the announcement of the proposed settlement that may “relate to” AIG’s objection, such as coordinating the joint case management report or scheduling meet and confers regarding discovery disputes. Locating all such communications imposes an undue burden on AIG and the documents themselves are not relevant to any party’s claim or defense and are not reasonably calculated to lead to the discovery of admissible evidence.”	P. 6
Commonwealth Advisors	“Commonwealth objects to Request No. 5 to the extent it seeks information that is equally available to, or is in the possession, custody or control of the Institutional Investors, is publicly available, or is otherwise obtainable from another source for which such production is more convenient, less burdensome, or less expensive. Commonwealth further objects to Document Request No. 5 to the extent it seeks documents that are protected by the attorney-client privilege and/or the work-product doctrine. Subject to and without waiving these objections and the General Objections, Commonwealth will produce non-privileged documents responsive to Request No. 5.”	P. 5
Cranberry Park	“Cranberry Park objects to this Request because it seeks documents that are irrelevant to these actions. Cranberry Park also objects to this Request on the grounds that it is overly broad and unduly burdensome and that it seeks documents that are not reasonably calculated to lead to the discovery of admissible evidence.”	P. 7
First Reliance Standard Life Insurance	“Reliance/Safety National objects to Document Request No. 5 on the grounds that it is overly broad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent it seeks documents that are subject to the attorney-client privilege, the work-product doctrine, or any other applicable privilege.”	P. 7

Objector	Response to Institutional Investors' Document Request No. 5	Page Number
FHLB Boston	“In addition to the General Objections, FHLB Boston objects that the Request seeks information that has no bearing on FHLB Boston’s standing to intervene and obtain more information with regard to the Settlement, has no bearing or nexus on the fairness or adequacy of the Settlement, is not relevant to the subject matter of the Settlement proceedings, nor reasonably calculated to lead to the discovery of admissible evidence, and is confidential and protected from disclosure. FHLB Boston further objects to the terminology in the Request because it has not objected to the Settlement. <i>See also</i> Response to Interrogatory No. 1.”	P. 9
FHLB Chicago	“In addition to the General Objections, FHLB Chicago objects that the Request seeks information that has no bearing on FHLB Chicago’s standing to intervene and obtain more information with regard to the Settlement, has no bearing or nexus on the fairness or adequacy of the Settlement, is not relevant to the subject matter of the Settlement proceedings, nor reasonably calculated to lead to the discovery of admissible evidence, and is confidential and protected from disclosure. FHLB Chicago further objects to the terminology in the Request because it has not objected to the Settlement. <i>See also</i> Response to Interrogatory No. 1.”	P. 9
FHLB Indianapolis	“In addition to the General Objections, FHLB Indianapolis objects that the Request seeks information that has no bearing on FHLB Indianapolis’s standing to intervene and obtain more information with regard to the Settlement, has no bearing or nexus on the fairness or adequacy of the Settlement, is not relevant to the subject matter of the Settlement proceedings, nor reasonably calculated to lead to the discovery of admissible evidence, and is confidential and protected from disclosure. FHLB Indianapolis further objects to the terminology in the Request because it has not objected to the Settlement. <i>See also</i> Response to Interrogatory No. 1.”	P. 9
FHLB Pittsburgh	“Pittsburgh FHLB objects to this request as it is not relevant to the issues in this case and is not reasonably calculated to lead to the discovery of admissible evidence.”	P. 4
FHLB San Francisco	“FHLB SF objects to this Request because it seeks documents that are irrelevant to these actions. FHLB SF also objects to this Request on the grounds that it is overly broad and unduly burdensome and that it seeks documents that are not reasonably calculated to lead to the discovery of admissible evidence.”	P. 8
FHLB Seattle	“Seattle Bank objects to this Request because it seeks documents that are irrelevant to these actions. Seattle Bank also objects to this Request on the grounds that it is overly broad and unduly burdensome and that it seeks documents that are not reasonably calculated to lead to the discovery of admissible evidence.”	P. 8

Objector	Response to Institutional Investors' Document Request No. 5	Page Number
Liberty View	"Liberty View objects to Document Request No. 5 on the grounds that it is overly broad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent it seeks documents that are subject to the attorney-client privilege, the work-product doctrine, or any other applicable privilege."	P. 6
Platinum Underwriters Reinsurance	"Platinum objects to Document Request No. 5 on the grounds that it is overly broad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent it seeks documents that are subject to the attorney-client privilege, the work-product doctrine, or any other applicable privilege."	P. 6
Public Pension Funds	"The Public Pension Funds object to this Request on the ground that it seeks irrelevant information, and also repeat the General Objections above."	P. 5
Reliance Standard Life Insurance	"Reliance/Safety National objects to Document Request No. 5 on the grounds that it is overly broad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent it seeks documents that are subject to the attorney-client privilege, the work-product doctrine, or any other applicable privilege."	P. 7
Safety National Casualty Corporation	"Reliance/Safety National objects to Document Request No. 5 on the grounds that it is overly broad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent it seeks documents that are subject to the attorney-client privilege, the work-product doctrine, or any other applicable privilege."	P. 7
Sun Life Assurance Company of Canada	"Sun Life objects to Document Request No. 5 on the grounds that it is overly broad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent it seeks documents that are subject to the attorney-client privilege, the work-product doctrine, or any other applicable privilege."	P. 6
TM1	"TM1 objects to this Request because it seeks documents that are irrelevant to these actions. TM1 also objects to this Request on the grounds that it is overly broad and unduly burdensome and that it seeks documents that are not reasonably calculated to lead to the discovery of admissible evidence."	P. 7
Triaxx	"Triaxx objects to Document Request No. 5 on the grounds that it is [sic] seeks documents and information that are neither relevant to a claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence. Triaxx further objects to Document Request No. 5 on the grounds that "any Countrywide entity" is vague and ambiguous. Subject to and without waiving the foregoing General and Specific Objections, Triaxx states that there are no documents responsive to Document Request No. 5."	P. 6

Objector	Response to Institutional Investors' Document Request No. 5	Page Number
Walnut Place	<p>“Walnut Place objects to this Request because it seeks documents that are irrelevant to these actions. Walnut Place also objects to this Request on the grounds that it is overly broad and unduly burdensome and that it seeks documents that are not reasonably calculated to lead to the discovery of admissible evidence.”</p>	P. 7
Western & Southern	<p>“Western & Southern objects to this Request on the grounds that it is vague and ambiguous insofar as it is unclear what is meant by the undefined terms “BNY Mellon,” “Bank of America” and “Countrywide.” For the purposes of these Objections and Responses, Western & Southern assumes that such terms refer to Bank of New York Mellon, Bank of America Corporation and Countrywide Financial Corporation, respectively, and do not include outside counsel to such entities or to Western & Southern. Western & Southern further objects to this Request on the grounds that it is overbroad and unduly burdensome with respect to both time and scope. Western & Southern moreover objects to this Request to the extent it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Western & Southern also objects to this Request to the extent that it seeks information in the possession, custody or control of the Institutional Investors or third parties.”</p>	P. 7

Exhibit C

From: Kathy D. Patrick

Sent: Wednesday, May 30, 2012 6:03 PM

To: Houpt, Christopher J.; aromanelli@rplaw.com; hyfong@rkmc.com; efile@scott-scott.com; jbulmer@rplaw.com; luis.lopez@dechert.com; Susan Bishop Fisher; Tammy J. Myers; graffh@dicksteinshapiro.com; alperstein@kolawyers.com; jmoon@mw-law.com; hector.gonzalez@dechert.com; mauricio.espana@dechert.com; Scott A. Humphries; robailey@bankofny.com; thomas.carroll@ag.ny.gov; sziluck@halperinlaw.net; sfitzgerald@wmd-law.com; dreilly@rplaw.com; chuene@mw-law.com; russell@yankwitt.com; dweintraub@scott-scott.com; joseph.sensenbrenner@state.de.us; dle@murphyking.com; kwarner@warnerpartnerslaw.com; lgrant@grantfirm.com; cpurdy@rplaw.com; aatlas@graisellsworth.com; minerva@sfclasslaw.com; jbuchdahl@susmangodfrey.com; sviafore@graisellsworth.com; e_file_ny@rgrdlaw.com; Kate Shih; dpreminger@kellerrohrback.com; rcq@mcvpr.com; Marsala, John A.; emcclary@vanfelieu.com; olc@pobox.com; crhodes@labaton.com; jeremy.eicher@state.de.us; s.lieber@cifg.com; rgupta@ambac.com; jsheer@shertremonte.com; npopp@graisellsworth.com; rajiashvili@susmangodfrey.com; mrollin@rplaw.com; nycmanagingclerks@dechert.com; dgrais@graisellsworth.com; james.mcguire@dechert.com; law@federmanlaw.com; drscott@scott-scott.com; tome@rgrdlaw.com; lee@sfclasslaw.com; aslaughter@scott-scott.com; ymiller@sfa-law.com; schere@dicksteinshapiro.com; gregory.strong@state.de.us; megan.fazio@state.de.us; mtlatenchi@scott-scott.com; wbf@federmanlaw.com; mschwartz@scott-scott.com; cmitchell@halperinlaw.net; ngb@federmanlaw.com; calert@wlrk.com; peter@pntlaw.com; rrothman@rgrdlaw.com; cskiba@susmangodfrey.com; lwilson@graisellsworth.com; tnmirvis@wlrk.com; dwilcher@kellerrohrback.com; amir.weinberg@ag.ny.gov; lfischbein@wsmblaw.com; jguglielmo@scott-scott.com; Robert J. Madden; nylitigationdocketing@dicksteinshapiro.com; bkaswan@scott-scott.com; ocyrulnik@graisellsworth.com

Cc: Ingber, Matthew D.; Cervoni, Domenic C.; Kathy D. Patrick; Scott A. Humphries; Robert J. Madden; David Sheeren; Ken Warner

Subject: RE: In re The Bank of New York Mellon - NOTICE OF INTENTION TO RAISE DISCOVERY DISPUTE AT JUNE 14 CONFERENCE

Counsel:

On November 17, 2011, our clients served document requests on a number of intervenors and objectors to the settlement. Request 5 asked each recipient to produce "All documents constituting communications with BNY Mellon, Bank of America or any Countrywide entity concerning or relating to your Objection, or any contemplated or threatened Objection, to the Settlement." The request defined "Objection" as "the Petition in Intervention, Notice of Intent to Appear and Object, or other pleading filed by you in which you advised the court that you were opposed to, or sought more information about, the Trustee's settlement." The request was directed to the following parties: the Walnut Place entities; TM1 Investors LLC; the Federal Home Loan Banks of San Francisco, Pittsburgh, Boston, Chicago and Indianapolis; the Policemen's Annuity & Benefit Fund and its co-intervenors; Western & Southern Life Insurance and affiliates; AIG and affiliates; Triaxx Prime CDO; Cranberry Park LLC and affiliates; Commonwealth Advisors, Inc. and affiliates; Liberty View LLC; First Reliance Standard and affiliates; Platinum Underwriters; Reliance Standard; Safety National Casualty; and, Sun Life Assurance of Canada.

Triaxx responded that it had no responsive documents. Commonwealth responded that it would produce the documents in its custody. The remaining recipients objected to Request 5, contending the documents it sought were "irrelevant to these

actions.” See Walnut Response to Request No. 5, TM1 Response to Request No. 5, FHLB San Francisco Response to Request No. 5, FHLB Seattle Response to Request No. 5, Cranberry Park Response to Request No. 5, Policeman’s Pension Fund Response to Request No. 5, FHLB Pittsburgh Response to Request No. 5, FHLB Boston Response to Request No. 5, FHLB Chicago’s Response to Request No. 5, FHLB Indianapolis Response to Request No. 5, Western & Southern Response to Request No. 5. Others among the recipients also responded that this request was “overly broad and unduly burdensome.” See *e.g.* AIG Response to Request No. 5, TM1 Response to Request No. 5. AIG claimed its communications with Bank of America concerning its Objection were subject, among other things, to the attorney-client privilege. See AIG Response to Request No. 5.

Communications about the Objections your clients have filed and seek to litigate in this case cannot possibly be irrelevant. Equally groundless is the unsubstantiated assertion that it is “too burdensome” to produce documents that relate directly to your clients’ filed pleadings. Finally, we have noted AIG’s claim that such documents are allegedly “subject to a mediation privilege, the attorney-client privilege, and/or the work product doctrine.” *Id.* No privilege log scheduling these documents has been provided for our review; even if one had been provided, there is no possible basis on which the “attorney-client privilege” could conceivably apply to AIG’s communications with Bank of America, its adversary in AIG’s pending securities case.

We have held several “meet and confers” with the Steering Committee to discuss the lack of response to this request. The Steering Committee has advised that all of the recipients intend to stand on their objections and thus will refuse to produce any responsive documents unless ordered to do so. Given that we have made no progress in resolving this dispute, please take notice that we intend to raise this issue with Justice Kapnick at the Status Conference scheduled for June 14. Should any of you wish to reconsider your position, please contact Scott Humphries or David Sheeren in our office to discuss the matter.

Regards,

Kathy

Kathy Patrick

Gibbs & Bruns LLP | 1100 Louisiana Suite 5300 | Houston TX 77002

713.751.5253 o. | 713.750.0903 f. | www.gibbsbruns.com

kpatrick@gibbsbruns.com