

# REQUEST FOR JUDICIAL INTERVENTION

UCS-840 (3/2011)

Supreme COURT, COUNTY OF New York

Index No: 651786/2011 Date Index Issued: June 29, 2011

For Court Clerk Use Only	
IAS Entry Date	
Judge Assigned	
RJI Date	

**CAPTION:** Enter the complete case caption. Do not use et al or et ano. If more space is required, attach a caption rider sheet.

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 CPLR § 7701, seeking  
 judicial instructions and approval of a proposed settlement.

Plaintiff(s)/Petitioner(s)

-against-

**Defendant(s)/Respondent(s)**

**NATURE OF ACTION OR PROCEEDING:** Check ONE box only and specify where indicated.

**MATRIMONIAL**

- Contested
  - Uncontested
- NOTE:** For all Matrimonial actions where the parties have children under the age of 18, complete and attach the **MATRIMONIAL RJI Addendum**.

**TORTS**

- Asbestos
- Breast Implant
- Environmental: \_\_\_\_\_ (specify)
- Medical, Dental, or Podiatric Malpractice
- Motor Vehicle
- Products Liability: \_\_\_\_\_ (specify)
- Other Negligence: \_\_\_\_\_ (specify)
- Other Professional Malpractice: \_\_\_\_\_ (specify)
- Other Tort: \_\_\_\_\_ (specify)

**OTHER MATTERS**

- Certificate of Incorporation/Dissolution [see **NOTE** under Commercial]
- Emergency Medical Treatment
- Habeas Corpus
- Local Court Appeal
- Mechanic's Lien
- Name Change
- Pistol Permit Revocation Hearing
- Sale or Finance of Religious/Not-for-Profit Property
- Other: \_\_\_\_\_ (specify)

**COMMERCIAL**

- Business Entity (including corporations, partnerships, LLCs, etc.)
  - Contract
  - Insurance (where insurer is a party, except arbitration)
  - UCC (including sales, negotiable instruments)
  - Other Commercial: \_\_\_\_\_ (specify)
- NOTE:** For Commercial Division assignment requests [22 NYCRR § 202.70(d)], complete and attach the **COMMERCIAL DIV RJI Addendum**.

**REAL PROPERTY:** How many properties does the application include?

- Condemnation
  - Foreclosure
- Property Address: \_\_\_\_\_ Alabama  
Street Address City State Zip
- NOTE:** For Foreclosure actions involving a one- to four-family, owner-occupied, residential property, or an owner-occupied condominium, complete and attach the **FORECLOSURE RJI Addendum**.
- Tax Certiorari - Section: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_
  - Other Real Property: \_\_\_\_\_ (specify)

**SPECIAL PROCEEDINGS**

- CPLR Article 75 (Arbitration) [see **NOTE** under Commercial]
- CPLR Article 78 (Body or Officer)
- Election Law
- MHL Article 9.60 (Kendra's Law)
- MHL Article 10 (Sex Offender Confinement-Initial)
- MHL Article 10 (Sex Offender Confinement-Review)
- MHL Article 81 (Guardianship)
- Other Mental Hygiene: \_\_\_\_\_ (specify)
- Other Special Proceeding: Article 77 (judicial instructions and court approval of a settlement)

**STATUS OF ACTION OR PROCEEDING:** Answer YES or NO for EVERY question AND enter additional information where indicated.

**YES NO**

- Has a summons and complaint or summons w/notice been filed?  YES  NO If yes, date filed: \_\_\_\_\_
- Is this action/proceeding being filed post-judgment?  YES  NO If yes, judgment date: \_\_\_\_\_



## RIDER TO REQUEST FOR JUDICIAL INTERVENTION

### Related Cases

Title: *Walnut Place LLC et al., derivatively on behalf of Alternative Loan Trust 2006-OA10 and Alternative Loan Trust 2006-OA3, v. Countrywide Home Loans, Inc.; Park Granada LLC; Park Monaco Inc.; Park Sienna LLC; and Bank of America Corporation; The Bank of New York Mellon, in its capacity as Trustee of Alternative Loan Trust 2006-OA10 and Alternative Loan Trust 2006-OA3, Index No. 650497/2011*

Title: *Greenwich Financial Services Distressed Mortgage Fund 3, LLC and QED LLC v. Countrywide Financial Corporation, Countrywide Home Loans, Inc., and Countrywide Home Loans Servicing LP, Index No. 650474/2008*

Court: Supreme Court, New York County, IAS Part 39, The Honorable Barbara R. Kapnick

### Nature of Relationship

Petitioner designates this case as related to *Walnut Place LLC et al. v. Countrywide Home Loans, Inc. et al.*, Index No. 650497/2011, which is currently before the Honorable Barbara R. Kapnick, and *Greenwich Financial Services Distressed Mortgage Fund 3, LLC v. Countrywide Financial Corporation, et al.*, Index No. 650474/2008, which was dismissed by Justice Kapnick on October 13, 2010.

The claims in all three proceedings involve, among other things, residential mortgage-backed securitization trusts that hold mortgage loans originated by Countrywide Home Loans, Inc. and its affiliates (“Countrywide”).

In this Article 77 proceeding (the “Article 77 Proceeding”), the Petitioner, The Bank of New York Mellon (“BNY Mellon” or “Trustee”), as trustee or indenture trustee of 530 mortgage-securitization trusts (“Trusts”), seeks judicial instructions and court approval of a settlement between BNY Mellon, as Trustee, and Countrywide and other related entities (the “Settlement”). The Settlement, if approved, will resolve the Trustee’s potential claims arising out of alleged breaches of the agreements governing the Trusts. The *Walnut Place LLC* complaint, filed by individual investors, purports to be a derivative action filed on behalf of two of the same Trusts at issue in the Article 77 Proceeding, and contains allegations similar to those here. If approved, the Settlement will resolve the claims raised by the plaintiffs in *Walnut Place LLC*.

The *Greenwich* complaint raised the same claims and allegations as the *Walnut Place LLC* complaint. Justice Kapnick dismissed the *Greenwich* complaint on the basis that the plaintiff did not comply with certain provisions of the agreement governing one of the Trusts at issue in the Article 77 Proceeding. Notably, on May 19, 2011, this Court determined that the *Walnut Place LLC* matter was related to the *Greenwich* matter and on that basis accepted assignment of that matter.

Given Justice Kapnick’s familiarity with the agreements governing the Trusts and the similarity of the claims and allegations in *Greenwich*, *Walnut Place LLC*, and the Article 77 proceeding, assigning *In the matter of the application of The Bank of New York Mellon* to Justice Kapnick will conserve significant judicial and party resources. We respectfully request that the Court assign this matter to Justice Kapnick.

SUPREME COURT OF THE STATE OF NEW YORK

UCS-840C  
3/2011

COUNTY OF New York x

Index No. 651786/2011

In the matter of the Application of  
THE BANK OF NEW YORK MELLON  
-against- Plaintiff(s)/Petitioner(s)  
for an order, pursuant to CPLR § 7701, seeking judicial  
instructions and approval of a proposed settlement. Defendant(s)/Respondent(s) x

RJI No. (if any) \_\_\_\_\_

**COMMERCIAL DIVISION**  
**Request for Judicial Intervention Addendum**

COMPLETE WHERE APPLICABLE [add additional pages if needed]:

Plaintiff/Petitioner's cause(s) of action [check all that apply]:

- Breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g. unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (e.g. sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices)
- Transactions governed by the Uniform Commercial Code (exclusive of those concerning individual cooperative or condominium units)
- Transactions involving commercial real property, including Yellowstone injunctions and excluding actions for the payment of rent only
- Shareholder derivative actions — without consideration of the monetary threshold
- Commercial class actions — without consideration of the monetary threshold
- Business transactions involving or arising out of dealings with commercial banks and other financial institutions
- Internal affairs of business organizations
- Malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters
- Environmental insurance coverage
- Commercial insurance coverage (e.g. directors and officers, errors and omissions, and business interruption coverage)
- Dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures — without consideration of the monetary threshold
- Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR Article 75 involving any of the foregoing enumerated commercial issues — without consideration of the monetary threshold

Plaintiff/Petitioner's claim for compensatory damages [exclusive of punitive damages, interest, costs and counsel fees claimed]:

\$ \_\_\_\_\_

Plaintiff/Petitioner's claim for equitable or declaratory relief [brief description]:

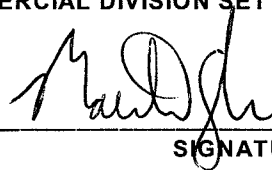
Petitioner, The Bank of New York Mellon, as trustee and indenture trustee under 530 mortgage - securitization trusts, seeks judicial instructions and court approval of a proposed settlement.

Defendant/Respondent's counterclaim(s) [brief description, including claim for monetary relief]:

\_\_\_\_\_

I REQUEST THAT THIS CASE BE ASSIGNED TO THE COMMERCIAL DIVISION. I CERTIFY THAT THE CASE MEETS THE JURISDICTIONAL REQUIREMENTS OF THE COMMERCIAL DIVISION SET FORTH IN 22 NYCRR § 202.70(a), (b) AND (c).

Dated: 06/28/2011



SIGNATURE

Matthew D. Ingber  
PRINT OR TYPE NAME