

Exhibit 11

December 6, 2012

Via E-mail and U.S. Mail

Matthew D. Ingber, Esq.
Mayer Brown LLP
1675 Broadway
New York, New York 10019

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

Dear Matt:

We are in receipt of your letter dated November 21, 2012. The position the trustee has taken with respect to each of our discovery requests reflects its repeated efforts to artificially and improperly narrow the scope of discovery. BNYM's definition of relevance is contrary to the broad discovery courts permit under Article 31 of the CPLR, and we note that its continued resistance to fulsome discovery is causing unnecessary delay.

Additionally, to be clear, the Steering Committee has never agreed with BNYM's articulation of the standard of review. In submitting the Settlement Agreement and Proposed Final Order and Judgment to the Court for approval, BNYM has placed more than its discretion at issue. BNYM is asking the Court to approve, among other things, the proposed settlement in all respects, the process by which the settlement was reached, and the Trustee's decision to enter into the settlement. BNYM's broad request for relief warrants equally broad discovery. This has always been the Steering Committee's position.

Nevertheless, and in an effort to reach compromise, we are willing to narrow the discovery requests set forth in our November 8, 2012 letter. Without waiving any of our arguments concerning the discoverability of documents and materials requested in that letter, we ask that you produce the following items:

1. From the deposition of Jason Kravitt:

a. [REDACTED]

(See Kravitt Dep. 105:7-19.)



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- b. [REDACTED]
[REDACTED]
[REDACTED] (See Kravitt Dep. 108:12-109:8.)
- c. [REDACTED]
[REDACTED] (See Kravitt Dep. 114:7-12.)

BNYM has asked the Court to approve its conduct with regard to the proposed settlement in all respects. One of the actions that BNYM took was [REDACTED]. The certificateholders (and the Court) therefore have a right to know specifically what [REDACTED] may have impacted Mayer Brown's representation in this case. Mr. Kravitt did not testify as to the [REDACTED], and we again request that BNYM produce this information.

2. From the deposition Loretta Lundberg:

- a. [REDACTED]
[REDACTED]
- b. [REDACTED]
[REDACTED]. (*Id.* at 204:7-13.)
- c. [REDACTED]
[REDACTED] (*Id.* at 303:21-304:12.)

In your November 21, 2012 letter you "generally agree that 'whether BNYM labored under a conflict of interest is relevant.'" The above documents bear on that question directly.

[REDACTED]
[REDACTED] Additionally, Ms. Lundberg [REDACTED]
[REDACTED]
[REDACTED] t. (*Id.* at 313:9-15.) [REDACTED]
[REDACTED]
[REDACTED] will shed light on the question of whether BNYM was laboring under a conflict of interest. We therefore reiterate our request that BNYM produce the documents requested above and also that you provide us dates for the deposition of Mr. Rogan.

3. From the subpoena of RRMS and the deposition of Brian Lin

- a. A copy of *all* facts, data and other documents Mr. Lin relied upon in forming the opinions in his reports, including but not limited to certain [REDACTED] reports and all information Mr. Lin or his staff [REDACTED]



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[REDACTED] (responsive to Document Request No. 2 of the Steering Committee's subpoena to RRMS).

- d. All drafts to both reports prepared by Mr. Lin and RRMS, as well as all notes and calculations made by Mr. Lin (responsive to Document Request No. 3 of the Steering Committee's subpoena to RRMS).
- e. All time records, invoices and bills evidencing payment for all work performed by Mr. Lin and RRMS in connection with BNYM's retention of Mr. Lin and RRMS (responsive to Document Request No. 5 of the Steering Committee's subpoena to RRMS).
- f. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. (See Lin Dep. 86:9-16.)

New York does not adopt the protections afforded to draft expert reports under federal law. To the contrary, New York state courts are "more amenable" to expert disclosure "because of the 'clear legislative policy in favor of liberality.'" See *Rosario v. General Motors Corps.*, 148 A.D.2d 108, 112 (1st Dept. 1989). Liberal expert disclosure may be trumped by the very narrow protections afforded to attorney work product, but the burden is on BNYM to establish that the work product doctrine applies. "[M]ere assertion that the [materials] are/would be attorney work product does not suffice as meeting the burden placed on the resisting party." *Bellar v. William Penn Life Ins. Co. of New York*, 15 Misc.3d 350, 353 (Sup. Ct. N.Y. 2007). Thus, BNYM cannot—under a bare assertion of privilege—withhold the reports prepared by Mr. Lin and RRMS.

BNYM's relevance arguments concerning the RRMS materials are equally unsupported. Courts have consistently held that "drafts of expert reports are relevant and discoverable." *Aid Women v. Foulston*, 2005 WL 1657046 (D.Kan. Jul. 14, 2005) (citing *Krisa v. Equitable Life Assur. Soc.*, '96 F.R.D. 254, 256 (M.D.Pa. 2000); *Ladd Furniture, Inc. v. Ernst & Young*, 1998 WL 1093901, at *11 (M.D.N.C. Aug. 27, 1998); *B.C.F. Oil Refining, Inc. v. Consolidated Edison Co. of New York, Inc.*, 171 F.R.D. 57, 62 (S.D.N.Y. 1997); *Quadrini v. Sikorsky Aircraft Division, United Aircraft Corp.*, 74 F.R.D. 594, 595 (D.Conn. 1977)). Here, any draft reports would bear directly on Mr. Lin's analysis which was performed on behalf of the Trustee. These issues bear directly on the good faith, reasonableness, and adequacy of the Trustee's evaluation of the Settlement and the strengths and weaknesses of the claims being settled.

Additionally, facts, data and other documents Mr. Lin relied upon in forming the opinions in his reports, as well as all time records, invoices and bills evidencing payment for all work performed by Mr. Lin and RRMS are discoverable. Even under the recent amendments to the Federal Rules of Civil Procedure—which provide limited protections against expert disclosure—



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facts and data provided to the expert, communications concerning the expert's compensation, and assumptions that the attorney provided to the expert are still discoverable. *See* FRCP 26(b)(4)(C)(i-iii).

Please note that we have withdrawn our request for the [REDACTED]. [REDACTED] You have represented that the report is not in BNYM's possession. Although we find it troubling that the Trustee would not insist upon receiving a copy of [REDACTED] [REDACTED] we will withdraw our request for the information at this time.

With respect to the depositions of Gavin Sang, Courtney Bartholomew and Brian Rogan, we believe each of these individuals has knowledge relevant to the issues in this case. Loretta Lundberg testified that Gavin Sang may be able to identify how many of the Covered Trusts could potentially become excluded under the Settlement Agreement (Lundberg Dep. at 432:19-433:25) and that [REDACTED]. (Id. at 33:10-37:9.) [REDACTED] Ms. Lundberg also testified that [REDACTED]. (Id. at 37:10-38:17.) We continue to believe that the depositions of Mr. Sang and Ms. Bartholomew are proper. However, in the interest of moving forward expeditiously, we will agree to forgo those depositions at this time. We reserve the right to notice them at a later date should the need arise.

We still wish to schedule the deposition of Brian Rogan. We understand him to be BNYM's Risk Officer and someone with significant responsibility in managing BNYM's risk. Ms. Lundberg testified that [REDACTED] (id. at 313:9-15) and that [REDACTED] (Id. at 201:1-10). We again request that you provide us with Mr. Rogan's availability so that we can schedule his deposition as soon as possible.

Finally, a new issue has arisen from the NERA deposition. We ask that you identify: 1) the projected Allocable Share to be paid to each Covered Trust, including the projected Allocable Share of each potentially Excluded Covered Trust, and 2) the projected distribution of each Allocable Share within each Covered Trust, specific enough to identify the projected distribution to each tranche. We previously requested this information through interrogatories, and now deposition testimony has revealed that [REDACTED].



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We are prepared to meet and confer on these issues at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Rollin", with a long, sweeping horizontal line extending to the right.

Michael A. Rollin

cc: All counsel of record (via email)