

# ANTHONY J. PASQUARIELLO & ASSOCIATES, P.C.

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## VIA UPS OVERNIGHT MAIL

Honorable Louis F. Locascio, J.S.C.  
Superior Court of New Jersey  
Monmouth County Courthouse  
71 Monument Park  
Freehold, New Jersey 07728-1266

**RE: Patricia Conte v. Merrill Lynch Bank USA**  
**Docket No. MON-L-2530-03**  
**Letter Brief in Opposition to Motion of Counterclaim**  
**Plaintiff Patricia Ann Conte Seeking To Amend Caption**  
**of Counterclaim and To Include Award of Counsel Fees**  
**Per R. 4:58**  
**(Return Date: September 8, 2006, at 10:30 a.m.)**

Dear Judge Locascio:

This firm represents the interests of Plaintiff Merrill Lynch, Pierce, Fenner & Smith Inc. ("MLPFS") and Counterclaim Defendant Merrill Lynch Bank, USA ("MLB"). Please accept this Letter Brief in lieu of a more formal brief in Opposition to the Motion filed by Counterclaim Plaintiff Patricia Ann Conte ("Ms. Conte") seeking to amend the caption of her Counterclaim to reflect the Defendant on the Counterclaim as MLPFS (as opposed to MLB) and to include an award of counsel fees per R. 4:58 (seeking permission, for a second time, to belatedly file an Offer of Judgment).

George W.C. McCarter, Esq. correctly points out that should Counterclaim Plaintiff MLB be named as the Judgment-Debtor, MLB will appeal from that Judgment on various bases. On the other hand, if for some reason, MLPFS should be named as Judgment-Debtor, despite the fact that MLPFS was never named as a Counterclaim Defendant, MLPFS will likewise appeal. Certainly, this is an odd situation which is brought upon by Mr. McCarter himself as counsel to Ms. Conte. MLB, on the one hand, does not oppose the "form" of Judgment as to it, although MLB, as set forth above, will substantively oppose on appeal the factual and legal bases of the Judgment itself. MLB certainly opposes any authorization for a late-filed Offer of Judgment which would enable Ms. Conte to obtain counsel fees for her attorney's failure to both file and serve (Mr. McCarter merely served) the Offer of Judgment. MLPFS, on the other hand, certainly and vehemently opposes the entry of any Judgment as against it at this late date, post-Trial, when it was never properly served with the Counterclaim (which never should have been filed as a Counterclaim in any event - should have been filed as a separate action). On the same basis as MLB, MLPFS opposes any authorization to late-file the Offer of Judgment in the event it should have any legal effect as to MLPFS.