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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM : PART 39

-----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),

Petitioner,

Index No.
651786/11

for an order, pursuant to CPLR § 7701,
seeking judicial instructions and approval
of a proposed settlement.

-----X
New York Supreme Court
60 Centre Street
New York, New York 10007
June 6, 2013

B E F O R E:

HON. BARBARA R. KAPNICK, JSC

A P P E A R A N C E S:

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(Continued on next page)

* * * * *

ELLEN RUBIN, CSR, RPR
WILLIAM KUTSCH
Senior Court Reporters
60 Centre Street - Room 420
New York, New York 10007

1 Smith - by Petitioner - Direct/Patrick
2 letter that was sent on October 18, as described?

3 A Yes.

4 MS. PATRICK: We offer Plaintiff's Exhibit 108.

10:25 5 MR. REILLY: No objection, your Honor.

6 (Petitioner's Exhibit 108 received in evidence.)

7 Q Mr. Smith, calling your attention to the re line of
8 that letter.

9 MS. PATRICK: Could we pull that out, please, Ed?

10:26 10 Thank you.

11 Q Whose failures are the subject of this letter,
12 Mr. Smith?

13 A Master servicer.

14 Q Did you or your group ever take the position that BNY
10:26 15 Mellon, the trustee, was in default of its obligations under
16 the PSAs?

17 A No.

18 Q Have you ever claimed that BNY Mellon breached its
19 fiduciary obligation to certificate holders in these trusts?

10:26 20 A No.

21 Q As you sit here today, Mr. Smith, what would you like
22 Justice Kapnick to know about your observations of BNY Mellon's
23 efforts throughout this process?

24 A They have been engaged, cooperative and active

10:26 25 throughout.

26 Q Now, Mr. Smith, I want to direct your attention --

1 Smith - by Petitioners - Direct/Patrick
2 headed Servicing, when you were referring to a separate
3 agreement, were you referring to a separate contract or separate
4 component?

14:23:27 5 A Separate component of this agreement.

6 Q How actively was Mr. Kravitt and BNY Mellon involved in
7 translating these servicing proposals into reality?

8 A Very. I mean, from the -- from the design to the
9 implementation, all the way throughout, BNY has been very
10 involved, they have been instrumental in its implementation to
11 actual practice.

12 Q Give Justice Kapnick please examples in the way in
13 which BNY Mellon was instrumental in implementing these
14 provisions into the agreement.

14:24:18 15 A It began, at least with my impression or my experience,
16 is that it began with the due diligence of the subservicers that
17 we had selected as a steering committee to direct the most high
18 risk loan, what I called the high risk loan queue to receive,
19 and they underwent an extensive due diligence, very detailed,
14:24:48 20 very -- there was an extraordinary amount of process and
21 documentation surrounding the due diligence of each one of the
22 candidates that we had selected for subservicers. And as a
23 result of that due diligence, they prescribed the number of
24 loans that any one of these firms could receive at any one time
14:25:18 25 to ensure that the servicers that were selected were not
26 overwhelmed with their ability to staff, such that their ability

1 Smith - by Petitioners - Direct/Patrick

2 to manage that default would still stay, quote-unquote, special.

3 And they continued to manage that process fairly actively today.

4 Q When you say quote-unquote, special, what do you mean
14:25:41 5 by that?

6 A Again, it's the way in which they are staffed and
7 organized and even get paid in order to resolve delinquency
8 faster than just a regular primary or let call it a standard
9 primary servicer, something like Wells Fargo or Bank of America
14:26:02 10 or Chase, that are primarily in the business of servicing
11 performing loans.

12 And special servicers are specifically organized to
13 service delinquent or subperforming loans.

14 Q Mr. Smith, as you understood the Pooling and Servicing
14:26:28 15 Agreements, what ability did you or the Trustee have to force
16 Bank of America to retain subservicers to deal with default
17 servicing?

18 A Outside of the gross negligence, none.

19 Q And what ability did you have under the Pooling and
14:26:49 20 Servicing Agreements to impose automatic monetary penalties for
21 poor servicing?

22 A None.

23 Q Mr. Smith, in your experience how do these servicing
24 reforms compare to the servicing that would otherwise have been
14:27:07 25 available under these Trusts had this settlement not been
26 achieved?

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PART 39

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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,

Index No.
651786/11

-against-

For an Order pursuant to CPLR §7701, seeking
judicial instructions and approval of a
proposed settlement.

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June 7, 2013
60 Centre Street
New York, NY 10007

B e f o r e:

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(Appearances continue on next page.)

1 Smith - by Petitioner - Cross/Rollin

2 significant amount of those redefault dollars by including a
3 90 percent assumed or estimated default rate for that category
4 of loans; is that right?

14:42:06 5 A Default rate is what it is. I'm not exactly sure what
6 you're asking me.

7 Q I'll withdraw it.

8 Now, another thing that your group did in connection
9 with this exercise was to estimate the breach and success rates
14:42:26 10 for the loans in the Trusts; right?

11 A Correct.

12 Q And that's reflected in the lower-right-hand corner of
13 this document; right?

14 A Yes.

14:42:35 15 Q You have five different scenarios; right?

16 A Yes.

17 Q For breaches of seller representations and warranties
18 under Section 2.03(c) of the Pooling and Servicing Agreements;
19 right?

14:42:49 20 A Breaches of seller representation and warranties, yes.

21 Q Are you specifically confining it to 2.03(c) or do you
22 have something else in mind?

23 A No. I'm just saying that those are -- my understanding
24 of what we were doing was trying to recover against violations
14:43:04 25 of seller representations and warranties under Section 2.03
26 generally.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM : PART 39

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IN THE MATTER OF THE APPLICATION OF
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under various Pooling and Servicing
Agreements and Indenture Trustee under
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New York Supreme Court
60 Centre Street
New York, New York 10007
June 10, 2013

B E F O R E:

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(Continued on next page)

* * * * *

ELLEN RUBIN, CSR, RPR
WILLIAM KUTSCH
Senior Court Reporters
60 Centre Street - Room 420
New York, New York 10007

1 Laughlin - by Petitioner - Cross/Pozner

2 paper. You have talked to the Institutional Investors about
3 expanding the number of Trusts that will be settled to include
4 all of them. You have introduced the concept that perhaps Bank
02:18 5 of America might take Countrywide bankrupt if the number is too
6 big. And then you talked on national TV at the same time;
7 didn't you?

8 A Are you referring to the CNBC interview?

9 Q I am.

02:18 10 A Yes, I was on CNBC.

11 Q You went on national TV to talk about the size of this
12 representation and warranty buyback problem; yes?

13 A I don't recall specifically what I said, but I did talk
14 on CNBC.

02:18 15 Q And the time you were on national TV talking about the
16 size of the problem and how Bank of America intends to respond,
17 is the identical time that you are talking to the Institutional
18 Investors about how absurd their number is and how you might
19 possibly bankrupt Countrywide.

02:19 20 A I will go back to what I said previously. Bankruptcy
21 was always an option, and it would be silly for us to take off
22 the table.

23 Q That wasn't my question, sir. My question was, at the
24 same period of time, when you are talking to the Institutional
02:19 25 Investors: "Hey, we may bankrupt Countrywide if the number is
26 too big," you chose to go on national TV and speak about Bank of

1 Laughlin - by Petitioner - Cross/Pozner

2 America and how it was handling the reps and warranty problem
3 and how big or small it was.

4 A I was on CNBC at that time. I don't connect the dots
02:19 5 that you are trying to connect.

6 Q But you are on CNBC with the permission of your
7 company?

8 A I was on CNBC.

9 Q With the permission of Bank of America?

02:19 10 A That is obvious.

11 Q You do not take lightly going on national TV to talk
12 about what Bank of America --

13 THE COURT: Wait. You have to let him finish the
14 question.

02:20 15 Q You do not take lightly going on national TV on an
16 investor show, a show about finances, to talk about Bank of
17 America's thoughts on the size of the representation and
18 warranty problem.

19 A I don't take that lightly ever.

02:20 20 Q And you had the authority of Bank of America to speak?

21 A I have the authority of Bank of America to speak.

22 Q And let us look at a clip of what you said on national
23 TV about the size of this problem and how Bank of America was
24 going to handle it.

02:20 25 MR. POZNER: Your Honor, this is, your Honor,

26 R-341, a video. I want to only play the first two minutes

1 Laughlin - by Petitioner - Cross/Pozner

2 "I know that Mr. Moynahan (CEO) on the conference
3 call made very clear that this is not the death knell of
4 Bank of America. You have been able to analyze the
02:26 5 situation. It's not nearly as big as some of the bears
6 think is it."

7 Your answer: "You are absolutely right, Jim. You
8 know, listen, if we have an obligation to repurchase some of
9 these loans, Bank of America will stand up to that
02:26 10 obligation. But having said that, this is not as big as
11 many investors and a lot of the blogs might suggest."

12 A I said that.

13 Q And when you said that, you were in discussions with
14 some people on the private side, you are talking about the
02:26 15 Institutional Investors you were talking to at the very same
16 time.

17 A One could infer that.

18 Q And you did not say on national TV or to any of the
19 investors: "We're keeping the option open, if the exposure gets
02:26 20 too great, to bankrupt Countrywide." That never came out of
21 your mouth; did it?

22 A That is correct.

23 Q Not in that call or any other call.

24 A Not that I'm aware.

02:27 25 Q Now, let us then look at what Bank of America has been
26 doing and have been doing. You have paid billions of dollars in

1 Laughlin - by Petitioner - Cross/Pozner

2 A We have used resources from Countrywide to make
3 settlements.

02:28

4 Q And you have used resources, meaning money, from Bank
5 of America?

6 A That's correct.

7 Q You have used billions of dollars of Bank of America
8 funds to pay?

02:29

9 A I'm sorry. I misunderstood the question. The claims
10 were made out of -- the claims were paid out of Countrywide.

11 Q But where did the money come from? Are you saying it
12 came out the Countrywide treasury, or are you saying that Bank
13 of America has infused billions of dollars into Countrywide to
14 take care of these obligations?

02:29

15 A In some instances we have made infusions, but in some
16 instances they have come out of Countrywide. Countrywide is an
17 ongoing legal entity, operating, and in some instances we have
18 provided additional capital.

19 Q It's billions; isn't it?

02:29

20 A Again, I would have to go back and look, but that's
21 probably not incorrect.

22 Q And it's billions in the period 2011, 2012, and
23 actually even coming forward into 2013?

24 A I don't know 2013, but yes.

02:29

25 Q But what we're talking about here is Bank of America
26 infusing money into Countrywide to satisfy putbacks for

1 Laughlin - by Petitioner - Cross/Pozner

2 violations of reps and warranties?

3 A I wouldn't phrase it that way. I would phrase it: To
4 maintain the capitalization of the company.

02:30 5 Q So maintain the --

6 A Capitalization of the company.

7 Q And when you say that the Bank of America put money
8 into Countrywide, 2010, 2011, 2012, to maintain the
9 capitalization of Countrywide, what you mean is, without these
02:30 10 infusions from Bank of America, Countrywide would have been
11 bankrupt before now.

12 A I'll go back to my original answer. My answer is that
13 we periodically from time to time have made capital infusions
14 into the company.

02:30 15 Q And my discussion with you is about the purpose, the
16 capital infusions were necessary on the part of Bank of America
17 to keep Countrywide from going bankrupt.

18 A Again, I will repeat my previous answer. It was,
19 infusions were made to maintain the capitalization of the
02:30 20 company.

21 Q Is that financial talk for: It wouldn't have been able
22 to continue in business if we hadn't made capital contributions?

23 A I will go back to my original answer.

24 MR. POZNER: Your Honor, I ask the court to direct
02:31 25 the answer.

26 THE COURT: Can you answer that question more

1 Laughlin - by Petitioner - Redirect/Madden

2 best of my recollection.

3 Q What do you recall that they said about whether or not
4 these breach and success rates that ended up getting to a
02:46 5 defect rate, whether these numbers down here at the bottom
6 reflected any discounts for litigation risks such as causation
7 or bankruptcy?

8 MR. POZNER: Objection. Leading.

9 THE COURT: Yes, I do think you have to rephrase
02:47 10 your question.

11 Q Did you understand whether or not these numbers down
12 here reflected any type of litigation risk discount?

13 MR. POZNER: Objection. Leading.

14 THE COURT: I'll let him answer.

02:47 15 A During the course of those conversations, it became
16 apparent that the estimates did not include a discount for
17 separateness, i.e., potential bankruptcy or causation.

18 Q Throughout the course of these negotiations, generally
19 speaking, what did you observe, how would you characterize the
02:47 20 involvement of the trustee in this process, the net settlement
21 negotiation process?

22 A The trustee participated in every meeting that I was
23 in attendance of -- I was attendance in. And I would say in
24 general, as a generalization, the trustee was very adamant that
02:48 25 the parties needed to sit down in good faith and try to reach a
26 settlement or try to negotiate to some type of settlement.

In The Matter Of:
Article 77 Hearing
Bank of New York

June 14, 2013

New York Supreme Court

Original File 06-14-13BNY.txt

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PART 39

-----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),

Petitioner,

Index No.
651786/11

-against-

For an Order pursuant to CPLR §7701, seeking
judicial instructions and approval of a
proposed settlement.

-----x
June 14, 2013
60 Centre Street
New York, NY 10007

B e f o r e:

HON. BARBARA R. KAPNICK, Justice.

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(Appearances continue on next page.)

1 Scrivener - by Petitioner - Cross/Rollin

2 Q Is it your testimony that it's not the policy of Bank
3 of America to honor valid repurchase requests?

4 A Bank of America will honor valid repurchase requests if
11:06:09 5 Bank of America has the exposure.

6 Q You are aware of the fact, are you not, that Bank of
7 America infuses capital into Countrywide Home Loans?

8 A I have seen capital contributions from Bank of America
9 Corporation, the parent company, into Countrywide Home Loans.

11:06:38 10 Q And those capital contributions are used to pay
11 repurchase claims; are they not?

12 A I have not seen those capital contributions come to pay
13 loan level claims. I have seen them happen at the time of a
14 settlement.

11:06:58 15 Q Including for PLS?

16 A Yes. There have been some settlements that include PLS
17 trusts, not these Covered Trusts -- actually some of these
18 Covered Trusts potentially.

19 MR. ROLLIN: I have no further questions.

11:07:27 20 I pass the witness.

21 THE COURT: Thank you.

22 MR. LOESER: Your Honor, just to clarify, I have
23 some questions and Miss Kaswan has some questions.

24 THE COURT: Who is going to go next?

11:08:01 25 CROSS-EXAMINATION

26 BY MR. LOESER:

In The Matter Of:

BNY Mellon v.

July 8, 2013

Laura L. Ludovico, Senior Court Reporter

Original File 070813BNY.txt

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM : PART 39

-----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
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Index No.
651786/2011

Petitioner,

for an order, pursuant to CPLR § 7701,
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Hearing

New York Supreme Court
60 Centre Street
New York, New York 10007
July 8, 2013

B E F O R E:

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(continued on next page.)

* * * * *

LAURA L. LUDOVICO
Senior Court Reporters
60 Centre Street - Room 420

New York, New York 10007

1 Kravitt - Defendant - Direct

2 them informed as to the status of negotiations with Bank of
3 America Countrywide.

4 MR. GONZALEZ: Your Honor, at this time we
10:42:08 5 offer Respondent's 1444, the exhibit, I don't have any
6 objection to that.

7 MR. REILLY: It's our exhibit, no objection.

8 Q Now, Mr. Kravitt, if you'll look at your first in
9 time e-mail in .1 you state: Kathy is better off fighting
10:42:24 10 over loans, it says that, I assume you meant than ED. Do
11 you see that?

12 A I do.

13 Q First, what did you mean by ED?

14 A First of all, let me confirm that although I wrote
10:42:35 15 that I intended than, T-H-A-N. ED was an abbreviation for
16 events of default.

17 Q What did you mean by your comment to the client
18 that Kathy was better off fighting over loans than events of
19 default?

10:42:50 20 A I meant -- what I meant was that in my opinion the
21 Institutional Investors were better off pursuing a strategy
22 of trying to get relief for breach of warrantee than they
23 were over whether the event of default was outstanding or
24 not.

10:43:12 25 Q And why did you believe that?

26 A Well, I believed that for the following reasons.

1 Kravitt - Defendant - Direct

2 grounds, what grounds are you referring to? Where there
3 grounds?

4 A In the October 18th letter they alleged that the
10:45:12 5 Master Servicer had violated various of its obligations, and
6 they referred to events in the public forum that had
7 happened. Settlements with regulators, things like that.

8 So I felt that the remedy wasn't necessarily
9 a very good remedy. The parties would immediately start a
10:45:39 10 very difficult fight with each other. And there were other
11 remedies where we had much -- where we likely would acquire
12 much stronger evidence that would be cut and dry, so I
13 thought that was the best strategy for the investors at the
14 time.

10:45:55 15 Q And you communicated that to the Trustee?

16 A I did communicate that to the Trustee.

17 Q Continuing in your e-mail the second point that's
18 numbered there it reads: It's in BNYM's self interest not
19 to have an alleged ED outstanding.

10:46:14 20 Do you see that?

21 A I do.

22 Q Now, what did you mean by that comment to the
23 Trustee?

24 A Well, if there were an event of default
10:46:22 25 outstanding, the Trustee would then have to make a decision
26 whether or not to replace the Master Servicer even if the

1 Kravitt - Defendant - Direct

2 Certificate Holders did not give it an instruction to do so.

3 I thought that decision would be very difficult to make,

4 extremely difficult to know what the right thing to do was.

10:46:47 5 I felt that had we pursued this strategy, not

6 only the Certificate Holders, but the Trustee would have

7 gotten bogged down in very hostile litigation.

8 And finally, if there was an event of default

9 outstanding, then the scope of the Trustee's duties changed

10:47:10 10 so that it would have to start acting as though it were a

11 prudent investor and that would have entailed an enormous

12 amount of work and decision-making. So I felt not only was

13 the fighting over the event of default not in the investor's

14 self interest, but I also felt it was not in the bank's self

10:47:32 15 interest.

16 Q Mr. Kravitt, was Mayer Brown ever asked by the
17 Trustee to analyze scenarios that could arise as a result of
18 the October 18th letter?

19 A It was.

10:47:42 20 Q Let me ask you to look at Respondent's 1458 for
21 identification, please.

22 A Okay, I'm there.

23 Q Do you recognize the document attached to the
24 e-mail on the first page of 1458?

10:48:10 25 A I do.

26 Q What is Respondent's 1458 for identification?

1 Kravitt - Defendant - Direct

2 forbearance agreement falls away, as I indicated.

3 Q Now, prior to the forbearance agreement being
4 executed, did you have any discussions with anyone from
12:02:50 5 Wachtel about the issue of indemnity to the Trustee?

6 A I did.

7 Q And just tell us, what did you discuss and with
8 whom about the issue of indemnity?

9 A I negotiated with Ted Mirvis to obtain the letter
12:03:07 10 that I mistakenly started to talk about with you --

11 Q Petitioner's 37?

12 A -- which is 37. Which is also dated
13 December 10th, 2010. And we went back and forth on that for
14 a few drafts.

12:03:27 15 Q And did you tell Wachtel anything about the reason
16 why the Trustee wanted the indemnity?

17 A We told them that trustees are very careful about
18 covering their costs and liability. And although we thought
19 it pretty clear that Section 8.5 applied to this situation,
12:03:51 20 that is the indemnity we already had from the Master
21 Servicer under the various 8.5s, we wanted a confirmation
22 from them that it applied to these circumstances, and that's
23 what the December 10th letter does.

24 Q Now, when you say the various Sections 8.5, are
12:04:12 25 you referring to the PSAs?

26 A I'm sorry, I'm referring to the pooling and

1 J. Kravitt - by Petitioner - Direct/Mr. Gonzalez
2 warranty in an agreement like a Pooling and Servicing
3 Agreement, would the trustee have to prove that if a warranty
4 were breached that it caused the loss on the underlying loan.
03:09:24 5 In other words, what if the warranty were breached, but that
6 didn't cause the loss.

7 For example, let's say that the loan-to-value warranty
8 was breached, but the gentleman who was liable on the mortgage
9 stopped paying because he lost his job, so the breach wouldn't
03:09:42 10 cause the damages. Investors, for the most part, claim that
11 you don't need to prove causation as long as the breach itself
12 is material. So that was relevant also.

13 BofA thought that the damages should be discounted,
14 taking into consideration the uncertainty with regard to
03:10:11 15 causation issue, and so we wanted to get as definitive an
16 answer as possible from our expert how likely was that
17 causation to be required or not.

18 Q Now, when did the trustee begin the process of
19 engaging these experts?

03:10:30 20 A We engaged RRMS earlier in the process than anyone
21 else because we started negotiating the servicing remedies, if
22 I remember correctly, as early as February or early March, so
23 we needed them right away to help us on the servicing remedies.

24 The other experts we waited to hire until we were
03:11:01 25 feeling mildly confident that we were going to have a
26 settlement so they could get started in preparing their advice.

1 Kravitt - Defendant - Direct

2 Q In the settlement agreement.

3 A I don't recall any discussions concerning the
4 precise monetary value of the remedies that were agreed to,
03:50:11 5 though I do remember discussions saying that we thought they
6 were very valuable.

7 Q What do you recall about those discussions?

8 A Well, if -- there's several ways to go about
9 looking at servicing remedies. One thing you could try to
03:50:34 10 do is get compensation for what you believe was breached in
11 the past. Okay? A different way to focus on them would be
12 to focus on what will occur in the future.

13 Now, the way Pooling and Servicing Agreements
14 were written, the ones in this case and the way they are
03:50:56 15 generally written, but the way they were written in this
16 case is that the servicing standard was a very vague,
17 general standard which was for the most part that the Master
18 Servicer will service the portfolio in accordance with
19 prudent servicing standards, in effect where the property
03:51:17 20 was located.

21 So that is a very amorphous standard. It's
22 very difficult to prove when or how much that's violated.
23 For example, if you could compare servicing between two
24 servicers, it's very difficult to because everybody has a
03:51:42 25 different portfolio. But if you could, if one servicer were
26 10 percent less effective than another is that a breach of

1 Kravitt - Defendant - Direct

2 employing prudent servicing standards?

3 You could argue about what their protocols
4 were, what their processes were, how fast they did things et
03:52:02 5 cetera, but that would only try to get you a measurement, it
6 wouldn't tell you if that reached the standard of a breach.
7 Certainly it couldn't be that if you were below average that
8 was a breach because that would mean half the servicers in
9 America were in breach of prudent servicing standards. I
03:52:21 10 don't think if you got damages you could pull yourself up to
11 average.

12 Secondly, the way I construed the Pooling and
13 Servicing Agreement, and as I stated several times to the
14 Institutional Investors and their counsel, you can only go
03:52:42 15 after the Master Servicer if they acted in bad faith or were
16 grossly negligent, and that's even a tougher standard to try
17 to figure out than the amorphous consistent with prudent
18 servicing standards.

19 So what we thought, with Institutional
03:53:07 20 Investors and the Trustee fund was to be far more valuable,
21 to create value going forward that would be produce a higher
22 standard of servicing than even the agreement required.

23 Q What agreement are you referring to?

24 A Than the Pooling and Servicing Agreements
03:53:32 25 required. So for requiring the high risk loans to be
26 transferred to sub servicers, we fully expected would mean

1 J. Kravitt - by Petitioner - Direct/Mr. Gonzalez

2 Q Yes.

3 A Okay. Well, we had some very constructive days and we
4 had some very hostile days. I think, for the most part, the
12:29:32 5 parties worked together very effectively identifying issues,
6 attempting to solve them in a fashion that satisfied the
7 various parties. Sometimes there would be intense and
8 vociferous disagreement between the parties and the tone would
9 get very hostile.

12:29:55 10 Q And how often did the parties engage in settlement
11 discussions that you were aware of?

12 A Well, I think we would have an actual meeting on the
13 order of every other week when we started. As we got closer to
14 the end, we had just a continuation of meetings among various
12:30:22 15 of the attorneys and officers. Almost on a daily basis some
16 group would meet with another.

17 We certainly, the various parties, would talk to each
18 other or e-mail each other every day, probably from January on
19 through the end of June, so it was a gradually escalating
12:30:48 20 amount of communications, to the point where it was constant
21 and ongoing in June.

22 Q And how often were you in contact with the Gibbs &
23 Bruns firm from the mid-November 2010 to the end of June
24 period?

12:31:04 25 A Well, I don't think we were in contact with them every
26 day in November and December of 2010, or at the very beginning

1 J. Kravitt - by Petitioner - Direct/Mr. Gonzalez
2 of January. But I -- I would think that from the middle of
3 January until the end of June, it was an unusual day when
4 someone from our team didn't talk or otherwise communicate with
5 someone from the Gibbs & Bruns team.

12:31:25

6 Q And who was your primary contact at Gibbs & Bruns?

7 A My current primary contact was Kathy Patrick.

8 Q And what sort of issues, during that time period,
9 generally, did you discuss with Ms. Patrick?

12:31:40

10 A Well, we discussed, I believe, all the important
11 issues, you know, whether the cash damages should be a lump-sum
12 payment, how much -- it should -- the cash damages should be a
13 lump-sum payment, how -- how large it should be; what the best
14 strategy for obtaining it was; what the appropriate service --
15 servicing remedies were; we constantly discussed the extent to
16 which Bank of America was either acting in good faith or trying
17 to delay us; what we thought about the various drafts that we
18 were given.

12:31:57

19 Really, it was two parties who had a substantial
20 alignment of interest, a very large alignment of interest,
21 discussing substance and strategy on a regular basis.

12:32:21

22 Q And during that same seven-month period, how often
23 were you in contact with Wachtell?

24 A I think we were in contact regularly with them, though
25 probably not as often as -- you know, we weren't strategizing
26 with Wachtell in the same way we were with Gibbs & Bruns. So I

12:32:40

1 J. Kravitt - by Petitioner - Direct/Mr. Gonzalez

2 can't be sure, but I would say, you know, we had two contacts
3 with -- something on the order of two contacts with BofA for
4 every three contacts with Gibbs & Bruns, or something like
12:33:01 5 that.

6 Q And who were your primary contacts at Wachtell?

7 A In the beginning, it was Meyer Koplow and Ted Mervis.
8 As time went on, it became more Ted, and Elaine Golin.

9 Q And what sort of issues, generally, did you discuss
12:33:21 10 with them?

11 A Well, we discussed the same sorts of issues, in terms
12 of substance, but we didn't discuss, you know, strategy very
13 often and what to go for. It was more either negotiations or
14 obtaining information and trying to understand each party's,
12:33:43 15 you know, what -- what each party was actually trying to get.

16 When you do these negotiations, in my experience, it's
17 very hard to understand completely what -- what another side
18 wants, and it's a lot easier to reach an agreement if you have
19 a very deep understanding of what is motivating them.

12:34:03 20 Q Now, do you know if other members of your Mayer Brown
21 team communicated with Wachtell?

22 A Yes.

23 Q What is your understanding of the frequency of those
24 communications?

12:34:13 25 A I understand them to have been similar to mine.

26 Q Now, during the course of the negotiations, who from

1 J. Kravitt - by Petitioner - Direct/Mr. Gonzalez
2 Petitioner's 613 as a summary exhibit and the underlying
3 drafts that are referenced in Petitioner's 613.

4 MR. REILLY: I don't have any objection,
5 Your Honor.

6 THE COURT: What?

7 MR. REILLY: No objection.

8 THE COURT: Okay. Thank you.

9 Q Now, with respect to those two binders that are now in
10 evidence, please describe generally the sorts of issues that
11 parties negotiated over during the period covered by
12 Petitioner's 613 and the accompanying exhibit.

13 A Well, we negotiated, of course, the adequacy of the
14 cash payment; we negotiated whether it should be paid in one
15 sum or in a series of installments; we negotiated, if it were
16 paid in a series of installments, would any interest accrue
17 and, if so, what sort of rate would be calculated; we
18 negotiated how the cash payment would be divided among the
19 different trusts; we negotiated the formula for allocating the
20 payments, the cash payments, among the trusts; we negotiated
21 the manner in which the payments would be applied within the
22 trust, within the cash waterfall.

23 All right. We negotiated what would constituted final
24 approval of the settlement, including, of course, this Court's
25 approval; the expiry of any appeals; the obtaining of an
26 opinion from the Internal Revenue Service, as to the remedy not

1 J. Kravitt - by Petitioner - Direct/Mr. Gonzalez
2 violating REMIC and some other opinions with regards to the tax
3 aspects of the transaction. We negotiated the terms of those.

4 We negotiated the extent to which, if the Court had
12:48:26 5 allowed any trusts out of the settlement, which I don't
6 understand to have occurred, whether Bank of America would
7 continue to be bound by the settlement; we negotiated the
8 various servicing remedies, including how to pick
9 sub-servicers, the schedule of transferring loans to
12:48:55 10 sub-servicers, what kinds of loans would be transferred; we
11 negotiated how loans could or should be modified when there was
12 credit problems with them; we negotiated the reduction in the
13 servicers, the Masters -- the -- their total cash that they
14 received. I'm sorry. I did slur that.

12:49:22 15 We negotiated adjustments in the cash the
16 Master Servicer would receive if it didn't, going forward, meet
17 industry standards with regard to certain types of loans; we
18 negotiated what those industry standards were; we negotiated
19 certain documentary remedies; we negotiated what would happen
12:49:49 20 to the Forbearance Agreement and the tolling of the statute of
21 limitations; we negotiated what was released and what wasn't
22 released; we negotiated the warranties given by the various
23 parties; we negotiated a similar set of trustee's rights in the
24 agreement, as our -- as in the Pooling and Servicing Agreement,
12:50:12 25 with regard to its obligations.

26 I think that is a good enough summary. It has

1 Kravitt - Defendant - Direct

2 Q At any of these meetings that you recall --

3 A Oh, I'm sorry, I left out Mayer Brown attended all
4 these meetings, to the best of my recollection. And
02:43:10 5 sometimes we would have Bob Bailey, the in-house attorney at
6 Bank of New York with us, and at least one of these meetings
7 we had our expert that we had hired to opine to us on the
8 efficacy of the cash payment, RRMS. He had attended one of
9 these meetings.

02:43:38 10 Q Let me show you next Petitioner's 25 in evidence
11 and ask you if you recognize this document?

12 A I do.

13 (Continued on next page.)

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In The Matter Of:

v.

July 9, 2013

Laura L. Ludovico, Senior Court Reporter

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 39

-----X

11:29:34

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,

Index No.
651786/11

11:29:34

for an order, pursuant to CPLR Section
7701, seeking judicial instructions and
approval of a proposed settlement.

-----X

July 9, 2013
60 Centre Street
New York, New York

11:29:34

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11:29:34

1 Kravitt - Petitioner - Cross/Mr. Reilly
2 Mr. Bailey made that decision to not give certificate
3 holders notice in December of 2010, correct?

4 A With our advice.

10:38:17 5 Q And by the time that this draft came from Bank of
6 America, the Trustee knew that Bank of America had already
7 agreed that entering into the forbearance agreement was
8 going to be covered by Bank of America, correct?

9 A Correct.

10:38:30 10 Q And that the stopping of the event in default was
11 going to be covered by Bank of America, correct?

12 A Correct.

13 Q And the willingness to let Ms. Patrick negotiate
14 the settlement in trust in which her clients didn't have
10:38:43 15 25 percent, that was going to be covered by Bank of America?

16 A Correct. Well, the decision of the Trustee to
17 accept that would be covered by Bank of America.

18 Q And the Trustee did accept that, correct?

19 A Correct.

10:38:58 20 Q The Trustee allowed Ms. Patrick to represent --

21 Let me start again.

22 A I'll let you start again.

23 Q The Trustee allowed Ms. Patrick to negotiate on
24 the trusts in which her clients had 25 percent, correct?

10:39:17 25 A Correct.

26 Q And allowed Ms. Patrick to represent --

1 J. Kravitt - by Petitioner - Cross/Mr. Riley

2 A Sometimes with regard to talking about an event of
3 default, yes, sir.

4 Q Because you knew that if, in fact, an event of default
10:49:07 5 was outstanding, a prudent person standard was triggered under
6 the Pooling and Servicing Agreements for the trustee?

7 A That's correct.

8 Q And we will get to the specifics of that, but
9 throughout the fall of 2010, and up to December 10th of 2010,
10:49:28 10 Bank of America (sic) Mellon, as a trustee, was working hard to
11 avoid having an outstanding event of default?

12 A Well, I don't think it's fair to say. I'm sorry, did
13 you say Bank of America or Bank of New York?

14 MR. REILLY: What did I say?

10:49:56 15 THE COURT: Bank of America Mellon, so --

16 MR. REILLY: Bank of America Mellon. That would
17 explain the --

18 Q There -- there was a difference between the two banks,
19 right?

10:50:05 20 A Yes.

21 Q But in this --

22 A But that was really a low blow.

23 Q -- but in this process there were some similarities
24 also, correct?

10:50:13 25 A There was some alignment in interests.

26 Q Including wanting to avoid an event of default?

1 J. Kravitt - by Petitioner - Cross/Mr. Riley

2 A Correct. At this point in the process, at some point,
3 Bank of New York may have wanted to have an event of default.

4 Q "At this point in the process," meaning while the
10:50:32 5 clock was ticking, correct?

6 A No, meaning that so long as we were negotiating a
7 settlement that we considered to be advantageous and the
8 parties were in agreement, we didn't want an event of default
9 outstanding. If the negotiations fell apart and we were
10:50:46 10 looking for leverage we may have wanted an event of default to
11 be outstanding.

12 Q During the 60-day ticking clock Bank of New York
13 Mellon wanted to stop that clock?

14 A That's correct.

10:50:59 15 Q Bank of America wanted to stop that clock?

16 A I assume they did.

17 Q The Institutional Investors, through Kathy Patrick,
18 agreed to stop that clock?

19 A Correct.

10:51:10 20 Q Back to R119, subsection N, that was added regarding
21 Article 77 by Bank of America, correct?

22 A I don't remember. If you say so I will believe you,
23 but I just don't remember.

24 Q Subsection P, which has five double-spaced lines and
10:51:45 25 then a very thick release language on Exhibit R11907, correct,
26 and that was added by Bank of America?

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 Q Did you change the duties of the Trustee in the
3 settlement agreement?

4 A The settlement agreement --

11:32:03 5 Q That's a yes or no question.

6 Did you change the duties of the Trustee in
7 the settlement agreement, and by you I mean Bank of New York
8 Mellon?

9 A There is one provision in the settlement agreement
11:32:34 10 that might be described as changing duties, although I don't
11 think in effect it changes duties.

12 Q You're talking about the best efforts clause,
13 aren't you?

14 A I don't know what the best efforts clause is, but
11:32:50 15 there's a clause in the agreement that says the parties will
16 attempt to get the settlement agreement adopted.

17 Q Further Assurances, do you remember that being the
18 title of that clause?

19 A I don't remember the title.

11:33:02 20 Q Do you remember talking to anyone from Bank of
21 America and saying you know what, we're going to change the
22 fiduciary duties -- excuse me, we're going to change the
23 duties of the Trustee in this case as it relates to the
24 settlement by contract; do you remember that conversation
11:33:17 25 coming up?

26 A No.

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 (Pause.)

3 A Where do you want me to start on 205?

4 Q Line 6.

11:35:14 5 "Q There would be nothing wrong and everything
6 right with trying to advocate for the largest possible
7 recovery for your beneficiaries. Do you see that?

8 "A I do."

9 Q Unless Mr. Gonzalez wants me to read the objection
11:35:29 10 I'll skip it.

11 "A That's a different question but yes, of
12 course, you are attempting in various ways to get the
13 largest possible recovery that you can.

14 "Q And in fact, that was the duty of Bank of New
11:35:48 15 York Mellon in this case, was it not?

16 "A Act in the best interest of your
17 beneficiaries with due care" -- I think it is rather
18 than duly care.

19 Do you agree with me on that?

11:36:00 20 A I would.

21 "Q -- "with due care, skill and caution, yes.

22 "When we say act in the best interest of the
23 beneficiaries what's going on in this case is financial,
24 that's what the case is about, we agree?

11:36:13 25 "A Yes.

26 "Q So what was in the best interest of the

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 beneficiaries is to maximize the settlement amount?

3 "A Yes."

4 Do you agree with that?

11:36:24 5 A I agree that in a case such as this the Trustee
6 should be trying to maximize the recovery. But you can't
7 enter into a settlement agreement if it's an option. Nobody
8 is going to sign a settlement agreement if the parties they
9 sign with have the option of attempting to get a better
11:36:48 10 agreement the day after it's signed.

11 So the price of entering into the settlement
12 agreement was agreeing to support the settlement agreement
13 after it was signed. And that's what we thought would get
14 the best recovery for the certificate holders.

11:37:02 15 Q So did you lower the settlement amount in exchange
16 for an agreement that you'd support the settlement?

17 A No.

18 Q You didn't do that, did you?

19 A No.

11:37:11 20 Q And are you testifying that, in fact, the efforts
21 that Bank of New York Mellon took were consistent with the
22 effort to maximize the financial recovery in the settlement?

23 A I'm very comfortable that that's what we did.

24 MR. REILLY: Two more, your Honor.

11:37:33 25 Page 232, line 13.

26 THE WITNESS: We're lucky I didn't drink a

1 J. Kravitt - by Respondent - Cross/Mr. Reilly

2 A This language was bargained for and I'm not going to
3 pretend that we were happy that it was part of the agreement,
4 but it was part of the whole package and we felt that the other
12:11:23 5 terms of the agreement were sufficiently advantageous that it
6 was worth agreeing to having that provision in it.

7 Q And that provision ties the hands of the trustee,
8 correct?

9 A It ties our hands in many circumstances, correct.

12:11:40 10 Q Including if a fact develops that dramatically changes
11 the assumptions that were relied upon by the trustee in
12 supporting a settlement?

13 A As long as Bank of America is not involved in any
14 intentional breach of those obligations.

12:12:02 15 Q Sure. But if they are not involved in any intentional
16 breach, for example, that their voluntarily infusing money into
17 Countrywide to pay for Countrywide's exposure, is something
18 that you didn't know at the time of this settlement, that would
19 dramatically change whether or not Bank of America actually
12:12:20 20 supports Countrywide's liability?

21 A I -- I don't think -- I agree with the principle that
22 you have stated, which is that it could restrict some of the
23 things that we would otherwise do, but I don't agree with the
24 example you gave. It's a different thing for Bank of America
12:12:39 25 to be putting infusions of capital, if they are. I don't know
26 if they are.

1 J. Kravitt - by Respondent - Cross/Mr. Reilly

2 THE COURT: What is your question again?

3 MR. REILLY: That, in fact, when Bank of America
4 put this clause in, you, as counsel for the trustees and
12:19:20 5 your client, were not happy about it?

6 THE COURT: I will allow it.

7 A Correct.

8 Q Because you knew it created a conflict for the trustee
9 in its role with obligations to the certificate holders, on the
12:19:32 10 one hand, which you agree continued all the way up until this
11 signing of this document, right?

12 A I don't agree that it created a conflict.

13 Q Okay.

14 A Our obligation was to do the best job -- and when I
12:19:46 15 say "our," I mean as in Bank of America -- was to do the best
16 job that it could in its own best judgment to get as good a
17 remedy as possible for the alleged wrongdoing. It could
18 exercise its judgment to decide, and in order to get that
19 remedy, it had to tie its hands with regard to subsequent
12:20:07 20 developments and in subsequent periods of time.

21 And, as I said earlier, it's very difficult for anyone
22 to sign a Settlement Agreement where they have tremendous
23 obligations, knowing that the parties to it can get out of it
24 or try to adjust it later based on later facts. That is not a
12:20:27 25 settlement that anybody is going to enter into, or I should say
26 it's not a settlement that many people will enter into.

1 J. Kravitt - by Respondent - Cross/Mr. Reilly

2 A Correct.

3 Q You knew him before that?

4 A Correct.

12:29:19 5 Q Had you represented Bank of New York Mellon before
6 that?

7 A I had.

8 Q At the time you spoke to Mr. Finkenberg in that first
9 call, did he know that Mayer Brown also represented Bank of
10 America?

12:29:28

11 A I don't know.

12 Q Did you tell him -- did you know that Mayer Brown also
13 represented Bank of America?

14 A I did.

12:29:34

15 Q Did you tell him in that call that Mayer Brown, my law
16 firm, represents Bank of America?

17 A If I didn't tell him, I told him very shortly
18 thereafter.

12:29:49

19 Q Did you take steps from the time that Mr. Finkenberg
20 spoke to you and up to the time that you spoke to him again to
21 determine the nature and extent of the representation that
22 Mayer Brown had of Bank of America? That is a "yes" or "no"
23 answer for starters.

24 A Yes.

12:30:07

25 Q And in that process, tell me how long it was before
26 you knew the nature and extent of Mayer Brown's representation

1 J. Kravitt - by Respondent - Cross/Mr. Reilly

2 of Bank of America?

3 A A very short period of time.

4 Q Days? Weeks?

12:30:22 5 A Days.

6 Q And you spoke to who to do that?

7 A I spoke to the relationship manager within our firm --

8 one of the relationship managers in our firm, one of my

9 partners, who was the relationship manager for our relationship

12:30:38 10 with Bank of America.

11 Q And who was that?

12 A His name Hayden Brown.

13 Q And was Mr. Brown in New York?

14 A Mr. Brown was out in our Charlotte office.

12:30:50 15 Q Is that near Bank of America's headquarters?

16 A It is.

17 Q When did you first tell Mr. Finkenberg or anybody at

18 Bank of New York Mellon that Mayer Brown represented Bank of

19 America?

12:31:05 20 A Within the very first day or two of being hired my --

21 I don't remember the discussion, per se, but I would have told

22 him right away. I would have told Mr. Finkenberg right away.

23 Q Meaning, right away in --

24 A Either on that call or the next time I talked to him.

12:31:26 25 (Continued on the next page.)

26

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 Q And you would agree that there is nothing in the
3 Pooling and Servicing Agreements, any of these 530, that
4 sets forth a procedure by which the Trustee can agree to
12:41:28 5 stop a 60 day clock, correct?

6 A That's correct. I believe that the investors had
7 the ability to stop their own notice.

8 Q There was nothing in the Pooling and Servicing
9 Agreements that said the Trustee could stop that clock,
12:41:42 10 that's my question, correct?

11 A That's correct.

12 Q And when the Trustee agreed to enter into that
13 forbearance agreement it was acting outside the four corners
14 of those Pooling and Servicing Agreements, correct?

12:41:55 15 A No.

16 Q It was acting in a discretionary manner?

17 A He had the discretion to accept somebody else's
18 waiver of their rights.

19 Q We'll get to that.

12:42:07 20 Let's go back to 724.

21 MR. REILLY: I'd also like to move to admit
22 Exhibit R1446.

23 MR. GONZALEZ: No objection.

24 THE COURT: Admitted. Now we're back to
12:42:54 25 724?

26 MR. REILLY: Correct.

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 Q Was anyone else on the call when you spoke to
3 counsel for Bank of America?

4 A The first time I called her I think Hayden Brown
12:46:09 5 was on the phone with me.

6 Q And this Jana Litvi is the same Jana Litvi who was
7 actually sitting in some of the meetings that you had when
8 you met with Bank of America, correct?

9 A Correct.

12:46:21 10 Q When you were now representing Bank of New York
11 Mellon in negotiations with Bank of America?

12 A Correct.

13 Q Do you know if Bank of America and Bank of New
14 York Mellon had discussed the representation of Mayer Brown
12:46:35 15 in this process before you got the call?

16 A Before I got the call from Bank of New York?

17 Q Right.

18 A I do not know.

19 Q Ms. Litsey's letter confirms her understanding,
12:46:53 20 which she suggests is yours and hers, with respect to
21 representation of Mayer Brown, "In connection with advice
22 relating to the rights and obligations of the company in its
23 role as indenture Trustee in the transactions that are
24 sponsored and serviced by subsidiaries or affiliates of Bank
12:47:15 25 of America Corporation that are identified on Exhibit A,
26 together with any additional transactions that are sponsored

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 and served by subsidiaries or affiliates of the banks in
3 which the company also acts as an indentured Trustee."

4 Do you see that?

12:47:32 5 A I do.

6 Q Ms. Litvi doesn't describe litigation against Bank
7 of America either, does she?

8 A No.

9 Q She doesn't suggest that Bank of New York Mellon
12:47:42 10 is authorized to file a lawsuit against Bank of America in
11 any express way, correct?

12 MR. GONZALEZ: Objection, your Honor, this
13 document is as between Mayer Brown and Bank of America.
14 The Bank of New York is not a party to this document so
12:47:56 15 to characterize it as not authorizing Bank of New York
16 is an unfair characterization of this document.

17 MR. REILLY: I misspoke, your Honor.

18 THE COURT: Okay.

19 Q There isn't any express allowance by Ms. Litvi on
12:48:09 20 behalf of Bank of America to Mayer Brown to file a lawsuit
21 against Bank of America, correct?

22 A Correct.

23 Q In fact, the description is that there would be
24 advice being given by your firm regarding the rights and
12:48:23 25 obligations of Bank of New York Mellon, correct?

26 A Correct.

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 Q It's true, isn't it, that Mayer Brown also
3 represented some of the Institutional Investors represented
4 by Ms. Patrick, correct?

12:48:50 5 A Correct.

6 Q About half of them?

7 A Maybe a little less than half.

8 Q Who did Mayer Brown represent in that group?

9 A I don't recall. I know that -- I think we had
12:49:06 10 represented MetLife, I think we represented BlackRock, I
11 think we represented PIMCO. I don't remember who else we
12 got waivers from.

13 Q You understood that BlackRock, PIMCO and MetLife
14 were on the steering committee that Ms. Patrick's clients
12:49:28 15 had appointed to handle the negotiations?

16 A Eventually I did, yes.

17 Q In addition to those three you estimated that
18 there were 10 or 12 total of the 20 or 22 investors that
19 Mayer Brown represented also, correct?

12:49:55 20 A In my deposition?

21 Q Yes.

22 A Okay.

23 As I say, I don't remember the precise number
24 but around ten is correct.

12:50:03 25 Q Let's look at Exhibit 725.

26 This is a January 7th, 2011 letter from Keith

1 J. Kravitt - by Petitioner - Cross/Mr. Reilly
2 understanding that the testimony is he didn't know this number,
3 he didn't evaluate the way the number got to -- was reached or
4 the number, itself, that process didn't start until after it
02:18:19 5 was tentatively agreed to, is my question?

6 A Well, no, I don't believe so. My memory is that RRMS
7 advisors were furnished the materials as the parties developed
8 them with regard to calculating the cash payment number, so he
9 would have started his analysis before the parties tentatively
02:18:47 10 agreed to the 8.5 billion.

11 Q Do you know when that was?

12 A Alas, I don't know when it would have been, but
13 sometime in the spring before the 8.5 number was tentatively
14 agreed to.

02:19:02 15 Q Before April 18, 2011?

16 A If that's the day it was agreed to, yes, before that.

17 Q Mr. Lin should know that date, correct?

18 A I would expect he would.

19 Q I want to go back to Exhibit 1072, which is the letter
02:19:24 20 between Ms. Janna Litsey of Bank of America and yourself
21 concerning the scope of representation.

22 Do you recall that we went over that and you indicated
23 that there was no specific reference with regard to whether
24 Mayer Brown could represent Bank of New York Mellon in a
02:19:46 25 lawsuit against Bank of America?

26 Do you recall that?

1 J. Kravitt - by Petitioner - Cross/Mr. Reilly

2 A Correct. Correct.

3 Q Did you have any conversation with Ms. Litsey, prior
4 to the signing of that agreement in which the prospect of

02:19:59 5 Mayer Brown suing Bank of America on behalf of Bank of New York
6 Mellon came up?

7 A We did.

8 Q And did you have that discussion on a phone call?

9 A I believe we did.

02:20:07 10 Q And did you discuss with her that in order to, in
11 fact, pursue litigation on behalf of Bank of New York Mellon
12 against Bank of America, that you would discuss with her again
13 another waiver?

14 A We discussed the fact that this waiver did not extend
02:20:24 15 to litigation, and we didn't reach agreement on whether
16 there are -- there would be a subsequent letter or not. We
17 just agreed that this letter would not extend to the
18 litigation.

19 Q It would be fair to state, then, that as of
02:20:46 20 November 4, 2010, Mayer Brown did not have a waiver from Bank
21 of America to represent Bank of New York Mellon in a lawsuit
22 against them?

23 A That's correct. That's correct.

24 Q And it never did get a waiver to that effect, correct?

02:21:01 25 A That's correct.

26 Q Did the Institutional Investors know that, meaning

1 J. Kravitt - by Petitioner - Cross/Mr. Riley
2 liability." Correct? And I only read part of it, but you can
3 look at this whole thing.

4 A Yes.

03:34:18 5 Q And you made it clear to Bank of America that the Bank
6 of New York Mellon would need to have expenses and liabilities
7 covered within an appropriate indemnity from the parties to do
8 anything?

9 A Correct.

03:34:30 10 Q To take any action?

11 A Correct.

12 Q And when you made that statement, you knew that the
13 Pooling and Servicing Agreements already had Section 8.05 in
14 them, correct?

03:34:42 15 A I knew that they already had 8.05, correct.

16 Q But you wanted to make sure that the activities, that
17 whatever they were going to be, were clearly covered by 8.05?

18 A Right.

19 Q And you didn't have that assurance until you got it
03:34:59 20 from Bank of America later?

21 A That's correct.

22 Q The ninth paragraph, "And this doesn't even include a
23 further discussion of how statistical sampling would work, how
24 the matrix would be agreed upon and how dollar damages would be
03:35:26 25 calculated, though, I also like the idea of an agreement on a
26 dollar amount or how to calculate it with the bank's" --

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 Wachtel lawyers --

3 A It's a greeting. I wouldn't read anything more
4 into it than it was a friendly greeting.

03:49:02 5 Q You certainly, on behalf of Bank of New York
6 Mellon, were trying to keep your relationship with Bank of
7 America lawyers friendly, correct?

8 A And if they had been the Bank of Mars I would have
9 been trying to do the same thing.

03:49:17 10 Q Let's look to Exhibit 1455.

11 MR. REILLY: Can I move for the admission of
12 1474, your Honor.

13 THE COURT: Which number is it?

14 MR. REILLY: R1474.

03:49:36 15 Q R1455.

16 A I'm sorry. Mr. Reilly, I didn't hear you.

17 Q 1455.

18 A Okay. I take it the R is Respondent's not Reilly,
19 right?

03:49:48 20 Q Yes, right.

21 THE COURT: Just out of curiosity, this looks
22 like it goes from 1468 to 2000?

23 MR. REILLY: We'll check.

24 THE WITNESS: Mine stops at 1474.

03:50:15 25 MR. REILLY: 1474, is that where yours stops,
26 too?

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 rights and obligations.

3 Q You included in your responsibilities to Mayer
4 Brown to protect them from being sued, correct?

04:00:07 5 A Correct.

6 Q And to protect them from being liable for any
7 actions they might take?

8 A Correct.

9 Q And to protect them in the event that they could
04:00:16 10 obtain indemnity so that if they were sued somebody else
11 would pay?

12 A Correct.

13 Q And to the try and obtain indemnity so if they
14 took any action they would be covered for that action?

04:00:31 15 A Correct.

16 Q You as counsel to the Trustee wanted to take those
17 steps that you could take to prevent the Trustee from
18 litigation exposure, correct?

19 A So long as it didn't violate the obligations the
04:00:48 20 Trustee had to the certificate holders and then provided --
21 proviso -- with the proviso the Trustee had the right to
22 take some actions that may or may not have been in the best
23 interest of the certificate holders to wit to ask for an
24 indemnity.

04:01:09 25 Q One of your jobs as lawyer for the Trustee was to
26 try and make sure that the Trustee's duties didn't get

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 heightened, correct?

3 A No. Our job was to point out to our client the
4 pros and cons of having their duties heightened and to give
04:01:29 5 them advice as to the best way to serve the certificate
6 holders without having their duties heightened, unless there
7 was a -- such a conflict that it overruled their desire not
8 to be exposed to any liability, and they didn't have any
9 right to counter that.

04:01:50 10 So for example, if they felt it was in the
11 best interest of the Certificate Holder to have an event of
12 default outstanding, the Trustee already had all the
13 indemnities that it needed, but it would have had less
14 liability if it didn't advocate that an event of default was
04:02:17 15 outstanding, it's obligation would have been to advocate
16 that an event of default was outstanding.

17 Q Mayer Brown wasn't representing the certificate
18 holders, correct?

19 A Correct.

04:02:29 20 Q Ms. Patrick wasn't representing any certificate
21 holders other than her clients?

22 A Correct.

23 Q The certificate holders in the trust in which
24 Ms. Patrick had clients with 25 percent holdings were not
04:02:41 25 represented by counsel in these negotiations, correct?

26 A Correct.

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 Q And the certificate holders in the trusts in which
3 Ms. Patrick didn't have 25 percent were not represented by
4 counsel in these negotiations?

04:02:54 5 A Correct.

6 Q Let's go to 1458 017.

7 A Okay.

8 Q Second -- begins with the word second. Go to the
9 second sentence there. An event of default places BNYM in a
04:03:36 10 position of determining whether to terminate the rights and
11 obligations of the Master Servicers, and we think the
12 rights --

13 An event of default places BNYM in a position
14 of determining whether to terminate the rights and
04:04:01 15 obligations of the Master Servicer, and we think the holders
16 are less interested in replacing the Master Servicer than in
17 forcing it to satisfactory any repurchase obligations that
18 it might have, and to perform its servicing obligations in
19 the appropriate manner.

04:04:19 20 Did I read that correct?

21 A You did.

22 Q You understood in fact that it's not the Master
23 Servicer that has the repurchase obligation, correct?

24 A Yes, it's the seller who has the obligation.

04:04:41 25 Q So this statement needs to be corrected so that
26 the it after forcing should read rather than forcing the

In The Matter Of:

v.

July 11, 2013

Laura L. Ludovico, Senior Court Reporter

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM : PART 39

-----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),

Index No.
651786/2011

Petitioner,

for an order, pursuant to CPLR § 7701,
seeking judicial instructions and approval
of a proposed settlement.

-----X
Hearing

New York Supreme Court
60 Centre Street
New York, New York 10007
July 11, 2013

B E F O R E:

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(continued on next page.)

* * * * *

LAURA L. LUDOVICO ,SCR
DONNA EVANS, SCR
60 Centre Street - Room 420

New York, New York 10007

1 J. Kravitt - by Petitioner - Cross/Mr. Reilly
2 have a relationship with the trusts, an attorney/client
3 relationship with the trusts.

4 THE COURT: What is your next question?

09:55:43 5 Q You owed your duties as a lawyer to your client, the
6 trustee, correct?

7 A Correct.

8 Q If the interest of the trustee differed with the
9 interest of the trusts, you would have a conflict, wouldn't
09:56:03 10 you?

11 A Who would have a conflict?

12 Q You as an attorney.

13 A No, I wouldn't.

14 Q The trust can have an interest different than the
09:56:11 15 trustee, correct?

16 A What is good for the trustee may not necessarily be
17 the same thing as what is good for the trust.

18 Q Thank you.

19 Did you ever consider recommending that the trust
09:56:31 20 retain separate counsel?

21 A No.

22 Q Did you ever consider that the trusts retain counsel
23 that didn't have a responsibility to protect the Bank of New
24 York Mellon from being sued?

09:56:45 25 A No.

26 Q You testified already that one of your jobs in this

1 J. Kravitt - by Petitioner - Cross/Mr. Reilly

2 case was to protect the Bank of New York Mellon from being
3 sued, correct?

4 A Correct.

09:57:01 5 Q And, in fact, your firm did work that you provided to
6 the Bank of New York Mellon discussing the possible ways that
7 the Bank of New York Mellon could be sued, correct?

8 A We advised them on a regular basis as to the risks of
9 any action that they contemplated taking.

09:57:26 10 Q Including that could result in the holders represented
11 by Ms. Patrick suing the Bank of New York Mellon?

12 A Sometimes when discussing what the risks were, we
13 would discuss the possibility of being sued by the
14 Institutional Investors.

09:57:49 15 Q And you also discussed the possibility of being sued
16 by certificate holders, meaning the trustee, being sued by
17 certificate holders, other than the certificate holders
18 represented by Ms. Patrick?

19 MR. GONZALEZ: Your Honor, I object to the extent
09:58:09 20 that calls for attorney/client communications.

21 MR. REILLY: It's just a "yes" or "no" question.

22 THE COURT: I will let you answer just "yes" or
23 "no."

24 THE WITNESS: Could you repeat the question,
09:58:19 25 please?

26 Q Did you discuss the possibility that the Bank of New

1 J. Kravitt - by Petitioner - Cross/Mr. Reilly

2 York Mellon as trustee could be sued by the other certificate
3 holders that Ms. Patrick didn't represent?

4 A Yes.

09:58:33 5 Q You didn't have any doubt that Bank of New York Mellon
6 understood that that was a risk in this process, correct?

7 MR. GONZALEZ: Your Honor, that goes further than
8 a "yes" or "no." That asks for the mental impression of
9 the trustee based on legal advice that they may or may not
09:58:47 10 have received from Mr. Kravitt.

11 MS. KASWAN: Your Honor, can I address that point
12 with Mr. Gonzalez? I just want to harken back to my
13 earlier objection, and that was when Mr. Gonzalez asked his
14 witness whether or not he discussed with BoNY Mellon of
09:59:07 15 releasing BoNY Mellon from the potential claims by the
16 trusts, and when he asked this witness whether he discussed
17 with BoNY Mellon the topic of BoNY Mellon's obligations
18 under the trust some of the -- Mr. Gonzalez opened the door
19 with respect to this witness's discussions with his client
09:59:35 20 about his exposure in connection with these matters.

21 MR. GONZALEZ: Your Honor, I will repeat what I
22 said during the direct. The only topics ever explored of
23 an attorney/client nature from the three that Your Honor
24 ruled on with respect to the -- the privilege motion that
09:59:52 25 Your Honor decided against the trustee.

26 MS. KASWAN: And, Your Honor, I would simply say

1 J. Kravitt - by Petitioner - Cross/Mr. Reilly

2 THE COURT: Okay.

3 Q You need the question read back Mr. Kravitt?

4 A I do.

10:06:30 5 (The record is read by the reporter.)

6 A Yes.

7 MR. GONZALEZ: That was -- that was the question
8 I objected to, Your Honor, it went beyond the "yes" or
9 "no."

10:07:02 10 THE COURT: What was that question, because she
11 is standing here? I missed what you said.

12 MR. GONZALEZ: I thought that was the question
13 you were --

14 (The record is read by the reporter.)

10:07:49 15 THE COURT: I'll sustain the objection. Go on to
16 another question.

17 MR. REILLY: All right.

18 Q Regardless of what your client understood, you

19 understood that your job was to protect the Bank of New York

10:08:14 20 Mellon from being sued by certificate holders that included the

21 certificate holders other than those who were not represented

22 by Ms. Patrick?

23 A I understood that to be one of the things that I took

24 into consideration in giving advice.

10:08:41 25 Q You knew that or did you know what possibility there
26 would be for a certificate holder to actually sue the trusts?

1 J. Kravitt - by Petitioner - Cross/Mr. Reilly

2 most, if not all, of those as well.

3 Q And you, as counsel to the trustee, knew that after
4 the occurrence of an event of default, the trustee had to give
10:13:02 5 formal notice under the Pooling and Servicing Agreements?

6 A Yes, sir.

7 Q And that was a contractual but not a fiduciary
8 obligation, but that was a contractual obligation that all the
9 parties agreed to?

10:13:13 10 A Correct.

11 Q And, in fact, you know that there is a method by which
12 notice is given by trustees when that formal legal notice is
13 required?

14 A I don't know what you mean by "method"?

10:13:24 15 Q Well, did you have an idea in your mind how the notice
16 would be disputed if it was done in December of 2010 to all the
17 certificate holders?

18 A I don't remember focusing very much at the time on the
19 practical aspect of giving notice, but what I remember focusing
10:13:46 20 in on was the decision whether or not to give the notice.

21 Q And it's fair to say, isn't it, that, in fact, the
22 Bank of New York Mellon, as a trustee, in December of 2010, was
23 making a decision whether or not to give notice to certificate
24 holders in these 530 trusts, correct?

10:14:03 25 A Correct.

26 Q And it's fair to say --

1 Kravitt - Petitioner - Cross- Mr. Reilly

2 Q So your view was -- your client's view must have
3 been you knew in advance of any settlement negotiations
4 between December and when the settlement was submitted that
12:37:29 5 Bank of America was going to cover your client's conduct?

6 A Right. We were very careful lawyers.

7 Q And you as careful lawyers knew you didn't have
8 that assurance without the additional indemnity being signed
9 on December 9th, 2010?

12:37:47 10 A We were very confident that 805 applied, but as
11 you say, we didn't have the assurance from the indemnitor
12 itself and we got that.

13 Q We meaning Bank of New York Mellon?

14 A We meaning Bank of New York Mellon and Mayer

12:38:03 15 Brown.

16 Q And that was a comfort?

17 A That was a comfort, yes.

18 Q And a benefit?

19 A And a benefit, as Judge Lenihan says.

12:38:15 20 Q I didn't know he was there, but --

21 A He said in a decision that an indemnity helps the
22 Certificate Holders in the case of a Trustee because it
23 frees the Trustee to not worry about its actions.

24 Q But it might not be in the interest of Certificate
12:38:34 25 Holders, as you said the other day, right?

26 A What I said was sometimes the rights that the

In The Matter Of:

v.

July 12, 2013

Laura L. Ludovico, Senior Court Reporter

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 39

-----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),

Petitioner,

Index No.
651786/11

for an order, pursuant to CPLR Section
7701, seeking judicial instructions and
approval of a proposed settlement.

-----X

July 12, 2013
60 Centre Street
New York, New York

B E F O R E: HONORABLE BARBARA R. KAPNICK, JSC

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1 J. Kravitt - by Petitioner - Cross/Mr. Pozner.

2 number was in the neighborhood of 12 billion?

3 A I just don't recall.

4 Q Do you remember the number?

10:51:35 5 A No.

6 Q You have no memory of the Institutional Investors
7 first settlement offer?

8 A Strangely, I remember their analysis more than I do
9 the first number that they threw out.

10:51:55 10 Q After the April 11th meeting, the next session will be
11 April 18th?

12 A No, I don't remember the dates.

13 Q Okay. But it would have been about a week later?

14 A It would have been roughly at that period of time.

10:52:13 15 Q Let me assist. Let's look at R90.

16 A Yes, that says, "April 18."

17 Q Now, R90 is an e-mail from you on Monday, April 18th,
18 2011, to Ms. Patrick, copied to lawyers in your firm,
19 Mr. Ingber, talking about "the process today."

10:53:19 20 You agree that this is one of your e-mails?

21 A Yes.

22 MR. POZNER: I move for the admission of R90,
23 Your Honor.

24 MR. GONZALEZ: No objection, Your Honor.

10:53:30 25 THE COURT: Okay. Thank you.

26 Q Does that help that "the process today", help refresh

1 J. Kravitt - by Petitioner - Cross/Mr. Pozner.

2 your recollection that the negotiation session was going to be
3 on April 18th?

4 A It does.

10:53:45 5 Q And on April 18th, 2011, you write -- knowing a
6 negotiation session is going to happen, you write to
7 Meyer Koplow. He represents Bank of America?

8 A That is correct.

9 Q You write to Kathy Patrick. She represents the
10:54:15 10 Institutional Investors only?

11 A Correct.

12 Q And you note, "We are fine with the, quote, lawyers
13 talking with lawyers, close quote, process."

14 You are saying there that you were knowledgeable that
10:54:36 15 this negotiation session would be lawyers talking to lawyers?

16 A I'm saying that if they want the negotiations to
17 primarily be lawyers negotiating with lawyers, we were fine
18 with that.

19 Q But you put a caveat on it, you put a requirement?

10:54:57 20 A I did.

21 Q "Provided Matt and/or I can sit in, as well"?

22 A Correct.

23 Q You did not sit in?

24 A Are you saying this is the last negotiating session on
10:55:12 25 the numbers?

26 Q Are you saying it is not?

1 J. Kravitt - by Petitioner - Cross/Mr. Pozner.

2 A I'm saying I didn't remember the date which was the
3 last one. We had lots of sessions.

4 Q Yes, it is our belief that this is that session, sir,
10:55:24 5 but you should not take me as testifying, I'm just -- okay?

6 A Yes. Let me tell you, it's not pleasant to testify.
7 if it was the last session, then, I did not sit in.

8 Q Did Mr. Ingber sit in?

9 A If it was the last session, to my knowledge, no one
10:55:42 10 from Mayer Brown sat in.

11 Q So, when you had said you're "okay with lawyers
12 talking to lawyers, provided Matt and/or I can sit in as well,"
13 that didn't happen?

14 MR. GONZALEZ: Objection, Your Honor. He just
10:55:55 15 said he didn't recall and now he is mischaracterizing that
16 testimony by saying this was that meeting.

17 THE COURT: Could you rephrase the question,
18 please, based on his answer?

19 Q Assuming that this is that last negotiation session --

10:56:09 20 A Yes.

21 Q -- neither you nor Mr. Ingber were in attendance?

22 A Correct.

23 Q And no one from the trustee was in attendance?

24 A Correct.

10:56:19 25 Q And then you say why you have to put in the proviso
26 that you or Mr. Ingber be allowed to attend the negotiation,

1 J. Kravitt - by Petitioner - Cross/Mr. Pozner.

2 "Again" -- and you say "again," and this is an expression
3 meaning you have made this point before, right? --

4 A That's what I believe.

10:56:48 5 Q -- "again, we would like to be able to say" -- and
6 when you say "we would like to be able to say," you mean you
7 would like to be able to say to a judge some day? --

8 A We would like to be able to say it to anyone.

9 Q Including a judge?

10:57:04 10 A Including a judge or a justice.

11 Q -- "that we quote" -- and that is your quote -- "that
12 we quote, watched, closed quote, the whole thing"?

13 A Correct.

14 Q And you wanted to be able to say that not only did you
10:57:23 15 watch it, but it was clearly hard fought, arm's-length,
16 correct?

17 A Correct.

18 Q Hard fought, arm's-length, right?

19 A Right.

10:57:41 20 Q As to this session, no person representing the trustee
21 was in attendance?

22 MR. GONZALEZ: Objection, Your Honor. Which
23 session since we have not established that there was a
24 session?

10:57:51 25 THE COURT: Okay.

26 Q Assuming this is the April 18th meeting, no person

1 Kravitt - Petitioner - Cross/Mr. Pozner

2 been used as weapons with Bank of America to show the game
3 plan to maximize this settlement, and if not a settlement
4 the option of litigation that could achieve up to
5 \$52 billion in recoveries?

11:14:10

6 A I don't know why you say up to \$52 billion in
7 recoveries, there would never be a settlement on 52 billion
8 and there would never be a litigation that would have gotten
9 52 billion.

11:14:30

10 Putting aside the number, we didn't choose to
11 do that strategy because Mayer Brown was advising the
12 Trustee and we have lawyers who can make the same analysis.

13 When BofA made their presentations to us we
14 walked them through the issue and what we thought were the
15 weaknesses of what they did. They were fully aware that we
16 could have fought that.

11:14:49

17 Q They were fully aware that they signed a limited
18 conflict's waiver?

19 A When I used the word we just as you used the word
20 you I mean our client the Bank of New York Mellon.

11:15:11

21 Q Fine. Let's look at R11, Professor Adler's
22 opinion.

23 A Okay.

24 Q And he's writing an opinion on legal

11:15:38

25 interpretation of the material and adverse clause --

26 A Correct.

In The Matter Of:

BNY Mellon v.

July 15, 2013

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 39

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,

- against -

For an Order pursuant to CPLR Section 7701,
seeking judicial instructions and approval
of a proposed settlement.

INDEX NO: 651786/11 60 Centre Street
New York, New York
July 15, 2013

BEFORE: HONORABLE BARBARA R. KAPNICK, Justice

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(Appearances continue on next page.)

1 J. Kravitt - by Petitioners - Cross/Wollmuth
2 and Servicing Agreement does not preclude cure is a
3 misstatement of the documents under 2.03(c).

4 THE COURT: Look, is there a way you can perhaps
12:05:01 5 rephrase your question. You use such esoteric little
6 things.

7 MR. WOLLMUTH: Sure. No problem.

8 Q I was just trying to center for you, Mr. Kravitt, the
9 changes that we discussed before, but I'll do it in a more
12:05:12 10 summary way.

11 Did any of the changes from the PSAs to the Settlement
12 Agreement that we discussed adversely affect in any material
13 respect the interests of the holders of any class of
14 certificates?

12:05:27 15 A Well, just as we accepted \$8.5 billion for breach of
16 warranty, which eliminated in the future any cause for breach
17 of warranty, we accepted a set of remedies for document defects
18 that are different than what the agreement provides as the
19 exercise of our enforcement discretion.

12:05:55 20 Q Right. So it's kind of a trade. You took away some
21 rights, but you got other remedies. Is that fair to say?

22 A No. We accepted the remedies that we got as being
23 superior to the remedies provided in the agreement in effect
24 and a remedy for enforcement is not amending the terms of the
12:06:19 25 agreement.

26 Q Yes. It's changing them I think you testified

In The Matter Of:

BNY Mellon v.

July 16, 2013

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM : PART 39

-----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),

Petitioner,

Index No.
651786/11

for an order, pursuant to CPLR § 7701,
seeking judicial instructions and
approval of a proposed settlement.

-----X

New York Supreme Court
60 Centre Street
New York, New York 10007
July 16, 2013

B E F O R E:

HON. BARBARA R. KAPNICK, JSC

A P P E A R A N C E S:

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REBECCA KAHAN, ESQ.

1 BAILEY-PETITIONERS-DIRECT (GONZALEZ)

2 T4 BY MR. BAILEY:

3 Q Do you recall that the settlement agreement also deals
4 with certain servicing provisions?

00:00:31 5 A Absolutely, yes.

6 Q What steps, if any, did the Trustee take to evaluate
7 the servicing provisions in the settlement agreement?

8 A Again, we had RRMS look at the servicing provisions,
9 and provide us with their opinion to the enhancements that were
00:00:55 10 gained as a result of those servicing improvements.

11 I believe RRMS' opinion was that those improvements
12 sort of put Countrywide best in class, in terms of servicing.

13 Q Now, let me show you what's been admitted in evidence
14 as Petitioner's 444. It's an e-mail in a series of attachments
00:01:18 15 of the various reports you have just been talking about.

16 A Yes.

17 Q Do you recognize this exhibit?

18 A Yes.

19 Q And, did you review the expert opinions that Mr. Ingber
00:01:31 20 provided to you in this exhibit?

21 A Absolutely.

22 Q And, were these reports distributed to others at the
23 Trustee?

24 A Yes, as you can see from the e-mail it went to Ms.
00:01:42 25 Lundberg, as well as myself, and then ultimately, these reports
26 were made part of a package that went to members of the Trust

1 BAILEY-PETITIONERS-DIRECT (GONZALEZ)

2 Committee, which ultimately voted to enter into the settlement.

3 Q If you look at the last paragraph of Mr. Ingber's
4 e-mail beginning "RRMS' opinion on servicing issues will be
00:02:05 5 completed once the parties agree upon the final servicing terms
6 of the settlement."

7 Do you see that?

8 A I do.

9 Q What was your understanding of what Mr. Ingber was
00:02:15 10 saying to you there?

11 A My recollection is that the servicing piece of the
12 settlement agreement was the last piece that was finally agreed
13 to.

14 So, we didn't come to final terms until fairly close to
00:02:32 15 you know, the final agreement, and that RRMS had been reviewing
16 all of the drafts of the servicing provisions. They had formed
17 an opinion based on sort of all the material terms that the then
18 current draft had. I believe there were some nonmaterial
19 changes that took place after they had sort of reached their
00:02:58 20 initial conclusion and then they finalized their opinion.

21 We had seen a draft opinion and then they finalized,
22 once the servicing terms had been agreed to.

23 Q What's your understanding of whether the Trustee was
24 aware of RRMS' opinion regarding the servicing provision prior
00:03:15 25 to the issuance of its report on the servicing agreement?

26 A Ms. Lundberg would clearly have been aware of RRMS'

In The Matter Of:

BNY Mellon v.

July 18, 2013

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2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK: TRIAL TERM PART 39

4 - - - - - X
5 In the Matter of the Application of:
6 THE BANK OF NEW YORK MELLON, (as Trustee
7 under various Pooling and Servicing
8 Agreements and Indenture Trustee under
9 various Indentures),

PETITIONER,

10 - against -

11 For an Order pursuant to CPLR Section 7701,
12 seeking judicial instructions and approval
13 of a proposed settlement.

14 - - - - - X
15 INDEX NO: 651786/11 60 Centre Street
16 New York, New York
17 July 18, 2013

18 BEFORE: HONORABLE BARBARA R. KAPNICK, Justice

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 REBECCA S. KAHAN, ESQ.

(Appearances continue on next page.)

1 BAILEY-PETITIONER-CROSS (LOESER)

2 different way.

3 Q Mr. Bailey, did you believe that it likely that Mayer

4 Brown would take positions with Bank of America that would

00:18:11 5 expand corporate liability for the matters at issue in this

6 dispute? Did you have --

7 A Whose corporate liability?

8 Q Bank of America's.

9 A I have no idea how to answer that question.

00:18:29 10 Was I concerned that Mayer Brown was not zealously

11 representing the interests of the Trustee? No.

12 Q Put R4078 up.

13 As in-house counsel of Bank of New York Mellon, you

14 were in-house counsel of Bank of New York Mellon during the

00:19:09 15 settlement negotiations?

16 A Yes.

17 Q Take a look at the first page of R4078. This is a

18 power point presentation prepared by Mayer Brown on common

19 conflict issues, and if you look at the bottom corner of that

00:19:28 20 first page says it's a webinar series for in-house counsel.

21 Were you familiar with webinar series prepared by

22 Mayer Brown for in-house counsel?

23 A I am familiar that they do do that, yes.

24 Q You can take time to review this or I will represent to

00:20:00 25 you this is a presentation --

26 A I don't have a copy, so I can't review it.

1 R. Bailey - by Petitioners - Cross/Loeser

2 A Again, I have a recollection of discussing the further
3 assurances clause. I don't have a specific recollection as to
4 the question you asked.

11:11:06 5 Q Did you discuss the fact that the further assurance
6 clause in the settlement is different than most best efforts
7 clauses, specifically because it does not allow the Trustee to
8 consider new information that is inconsistent with information
9 provided by Bank of America?

11:11:20 10 MS. PATRICK: Objection. Foundation, "most other
11 best interests clauses." There's no foundation for the
12 comparison.

13 THE COURT: Fine.

14 Why don't you rephrase the question.

11:11:30 15 Q Mr. Bailey, were you aware that this further assurance
16 clause was more extreme than your typical further assurance
17 clause?

18 MS. PATRICK: Same objection. Foundation.

19 THE COURT: You just have to ask him if he's
11:11:41 20 familiar with other further assurance clauses, has he seen
21 them and if he knows the difference rather than --

22 Q Are you familiar with further assurance clauses?

23 A Yes.

24 Q Have you been involved in negotiating deals that

11:11:54 25 contain further assurance clauses?

26 A Yes.

1 R. Bailey - by Petitioners - Cross/Loeser

2 Q Are you aware that this further assurance clause in
3 this case is more extreme than your typical further assurance
4 clause?

11:12:03 5 A It's different, yes.

6 Q And more extreme, would you say? Does it limit the
7 Trustee --

8 A Yes, it is more limiting.

9 Q More limited than the typical further assurance clause
11:12:17 10 that you've seen as counsel; is that correct?

11 A Yes.

12 MR. LOESER: If we can show R-4072, your Honor.
13 This is the plan of support from the ResCap case. We'll be
14 referring to a few pages of it.

11:12:50 15 THE WITNESS: Oh, is it not in the binder?

16 Okay.

17 MR. LOESER: Your Honor, this is another document
18 that we would ask the Court take judicial notice of from
19 the ResCap proceedings.

11:13:00 20 Q And you'll note, Mr. Bailey, that R-4072 is the Plan
21 Support Agreement from the ResCap proceedings. And you are
22 aware that Bank of New York Mellon is a Trustee for the trust
23 in the -- the ResCap trust?

24 A Actually I'm not sure I was aware of that.

11:13:28 25 Q If we could look at page 38.

26 MS. PATRICK: Objection, your Honor. Unless the

1 R. Bailey - by Petitioners - Cross/Kaswan

2 THE COURT: Okay. You may finish up. You may
3 continue.

4 MS. KASWAN: I'll do my best.

02:19:48 5 THE COURT: Eventually.

6 R O B E R T B A I L E Y, called as a witness, having been
7 previously sworn, testified further as follows:

8 CROSS-EXAMINATION (Cont'd)

9 BY MS. KASWAN:

02:19:51 10 Q Mr. Bailey, would it be fair to say that it was your
11 understanding that Mayer Brown was hired to represent the
12 Trustee full stop rather than to represent the interests of
13 certificate holders?

14 A The answer is yes. I think that's a quote from my
02:20:11 15 deposition, if I recall.

16 Q And do you know if Bank of New York Mellon ever
17 expressed to Bank of America that if the settlement did not get
18 agreed to, that in fact it would sue Bank of America?

19 A I know I didn't convey that directly to Bank of
02:20:43 20 America. I don't know.

21 Q And did you authorize anybody to have those
22 discussions?

23 A Did I authorize someone to specifically say that if we
24 were unable to reach a settlement, the Trustee was going to sue
02:21:06 25 Bank of America? Not that I recall.

26 Q And you don't think that's what you would have said,

In The Matter Of:

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July 19, 2013

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM : PART 39

-----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),

Petitioner,

Index No.
651786/11

for an order, pursuant to CPLR § 7701,
seeking judicial instructions and
approval of a proposed settlement.

-----X

New York Supreme Court
60 Centre Street
New York, New York 10007
July 19, 2013

B E F O R E:

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1 LANDAU-PETITIONER-DIRECT (INGBER)

2 covered so it's not going to end up in the hole financially,
3 man, it's going to go 90 miles an hour.

4 So, and that's to the advantage of the investors of the
02:00:59 5 Certificate Holders. So now, you have a Trustee that's not
6 worried about getting, recovering its expenses. It's a great
7 plus for investors.

8 Q In your opinion, was that the case here?

9 A Oh, absolutely. I mean, there is, obviously, the
02:01:14 10 Trustee here is being asked or is spending an enormous amount of
11 money, and they are indemnified, as far as I know.

12 So, there is no problem on their part. They will
13 proceed 90 miles an hour down that track, sir, because they know
14 their expenses are covered and they could do everything they
02:01:32 15 think is appropriate and necessary in the interests of all of
16 the Holders of the debt.

17 Q Your opinion is, that this was for the benefit of
18 Certificate Holders?

19 A Oh, absolutely. Makes sense.

02:01:44 20 Q What would happen, Mr. Landau, in your view, if
21 Trustees didn't receive indemnities or confirmations of
22 indemnities?

23 A They would be much more reluctant, number one, to go
24 out on a limb with a particular action or, number two, they
02:02:05 25 would constantly be asking themselves if we do this, how much is
26 this going to cost us, what's the potential benefit.

1 R. Landau - by Petitioners - Cross/Reilly
2 about in this case.

3 MR. REILLY: Well, let's go to what it is then.

4 Q Have you seen in your experience that different
12:18:10 5 beneficiaries have different lawyers who represent their
6 interests?

7 A Counselor, I don't recall -- I don't recall a
8 situation where that happened. I do not recall discussions of
9 that in seminars that we've had, but I can understand where
12:18:42 10 that might occur. If you want to hire your own attorney on
11 your nickel, fine, you can do it.

12 Q The Trustee shouldn't be favoring beneficiaries or
13 attorneys for beneficiaries, correct?

14 A Should what?

12:18:58 15 Q Should not be favoring beneficiaries or attorneys for
16 beneficiaries.

17 A I don't know how you favor an attorney for a
18 beneficiary; they're just a hired gun. So -- well, I'm sorry.

19 THE COURT: We have a lot of them in here.

12:19:18 20 THE WITNESS: I apologize, your Honor.

21 MR. REILLY: No offense taken by any of us.

22 THE WITNESS: Okay.

23 THE COURT: Present company excluded.

24 MR. REILLY: I'm sorry, your Honor.

12:19:29 25 A But the Trustee does have an obligation toward, to use
26 your word, beneficiaries to the extent that -- and I don't know

1 LANDAU-PETITIONER-CROSS (LOESER)

2 My question is, did you assume that the outside counsel
3 they appointed did not have a conflict?

4 A I didn't even think about that when I put that in
00:17:21 5 there. That's not something that comes to the fore
6 immediately, because you assume if you are going to retain
7 outside counsel, they are going to be up front with you as to
8 whether they can represent you or not. Period.

9 Q In the summary of your opinion that you discussed on
00:17:45 10 your direct testimony, which was PTX 618, you noted that the
11 Trustee submitted the proposed settlement agreement to the Trust
12 Committee for final check; is that right?

13 A Sounds right, yeah. I think I said that yes, sir.

14 Q It's the second to last --

00:18:00 15 A Yes, it is.

16 Q -- bullet on the PTX?

17 A Yes.

18 Q And you found, as you testified, that this was one of
19 the actions that showed the Trustee's process was reasonable,
00:18:13 20 prudent and consistent with industry custom and practice; is
21 that correct?

22 A Absolutely correct.

23 Q And, in your report you elaborate on this, and you
24 explain that the Trust Committee meetings are a check to insure
00:18:25 25 that the employees with day-to-day management of the matter did
26 what they were supposed to do; is that correct, and sir, that's

1 LANDAU-PETITIONER-CROSS (LOESER)

2 at paragraph 28, page ten of your report.

3 A It concluded, its process -- is that what you are
4 reading? By seeking approval from the relevant Corporate Trust
00:19:06 5 committee -- is that what you are citing?

6 Q What I am referring to, you say in your statement, in
7 your report, that quote, "the Trust Committee meetings are a
8 check to insure that the employees with day-to-day management of
9 the matter did what they were supposed to do?"

00:19:21 10 A Yes.

11 Q That statement in your report, correct?

12 A Absolutely correct.

13 Q You would agree with that?

14 A Absolutely.

00:19:26 15 Q You also agreed that the final check that the Trust
16 Committee does is an important part of the approval process for
17 the settlement, correct?

18 A Yes.

19 Q And it's important because, in fact, it's important for
00:19:38 20 the Trustee to insure that employees with day-to-day management
21 of the matter, in fact, did what they were supposed to do,
22 correct?

23 A Yes, that's what I wrote.

24 Q Here, the matter that we are talking about is the
00:19:50 25 investigation and settlement of a multi billion dollar dispute;
26 is that correct?

1 LANDAU-PETITIONER-CROSS (LOESER)

2 A Repeat your question please?

3 Q When you refer to day-to-day management of the matter,
4 the matter is a dispute with Bank of America involving billions
00:20:10 5 of dollars of Trust assets, correct?

6 A Sounds right.

7 Q Now, in order to, for the Trustee to insure that these
8 employees with day-to-day management of the matter did what they
9 were supposed to do, the Trust Committee must be informed of
00:20:28 10 what these employees, in fact, did, correct?

11 A Yes, at varying levels, yes.

12 Q And the Trust Committee meeting is not supposed to be a
13 rubber stamp; is it?

14 A Well, I understand rubber stamp -- that's sort of
00:20:47 15 pejorative. The answer is absolutely not.

16 Q It's not supposed to be an exercise of form over
17 function; is that correct? I mean that in a pejorative manner.

18 MR. INGBER: Object.

19 THE COURT: I will allow it.

00:21:01 20 MR. INGBER: Argumentative.

21 A Of course not.

22 Q Of course not you say?

23 A Of course not. It's not supposed to be, as you mean,
24 pejoratively form over function.

00:21:12 25 Q Trustee is supposed to, the Trust Committee is supposed
26 to evaluate the material facts and circumstances that, in the

1 LANDAU-PETITIONER-CROSS (LOESER)

2 Trustee's view, justify entry into the settlement, correct?

3 A The role of the Trust Committee here was, as I
4 indicated, final check to insure -- I am quoting your quote --
00:21:35 5 that the employees with day-to-day management of the matter
6 that we are talking about, do what they are supposed to do.

7 In other words, they can conform to custom and practice
8 in the industry. They exercise, obviously, the due care that
9 they are supposed to, and it is a management check. It is not a
00:21:59 10 check on detail.

11 I think you have got to understand that, sir. This is
12 a high level committee and in every bank they are more
13 interested in process than they are in substantive result.

14 In other words, without belaboring the point, in my
00:22:17 15 opinion, the Trust, in my opinion, the Trust Committee would not
16 care what's 8.5 billion or 8 billion or seven point something or
17 other billion. That's not the issue for a Trust Committee.

18 Trust Committee is, what did we do to reach the point
19 where we are at today, and did we do it in good faith, did we
00:22:37 20 act professionally, did we act with due care and all the other
21 words you are certainly familiar with.

22 That's what the function of the Trust Committee is --
23 not to evaluate whether 8.5 billion is a good number or bad
24 number.

00:22:49 25 Q Sir, I didn't ask you any question about the number.

26 I think we will move along a little faster -- I will

In The Matter Of:

BNY Mellon v.

July 22, 2013

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 39
- - - - - 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),

PETITIONER,

- against -

For an Order pursuant to CPLR Section 7701,
seeking judicial instructions and approval
of a proposed settlement.

- - - - - X
INDEX NO: 651786/11 60 Centre Street
 New York, New York
 July 22, 2013

BEFORE: HONORABLE BARBARA R. KAPNICK, Justice

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 MAURICIO A. ESPANA, ESQ.
 REBECCA S. KAHAN, ESQ.

1 Burnaman - by Petitioners - Cross/Rollin
2 portfolio."

3 Correct?

4 A I said that, yes.

00:21:16 5 Q And you believe that's true as well, right?

6 A Yes.

7 MR. ROLLIN: You can take it down. Thank you.

8 Q Two sets of data, Bank of America on the one hand,
9 Institutional Investors on the other hand. Both you say are
00:21:31 10 reasonable, but you only have one disagreement with the
11 Institutional Investors, right?

12 A I said that one of their assumptions was unreasonable.

13 Q Right. And as to Bank of America, you say taking the
14 totality of the assumptions you believe that Bank of America
00:21:48 15 underestimated the future losses to the portfolio, correct?

16 A I think their assumptions were generally reasonable,
17 but that their estimate of losses was lower than I would expect.

18 Q You agree with me that between Mr. Lin who's on the low
19 end, he's lower bound, 67 billion, and the Institutional
00:22:06 20 Investors who are at 108 billion, that the range between those
21 two is \$40 billion, correct?

22 A 67 to 107 is \$40 billion range.

23 Q There is a \$40 billion variance in the threshold
24 calculation, what are the cumulative lifetime losses to the
00:22:25 25 Trust, correct?

26 A Correct.

1 Burnaman - by Petitioners - Cross/Rollin

2 Q And we agree that that's a very important number
3 because the breach in success rates, or what you call the
4 repurchase rate, come off of that number, right?

00:22:37 5 A It does.

6 Q So the \$40 billion swing matters very much to the
7 bottom line, what would be the reasonable repurchase amount,
8 right?

9 A Yes.

00:22:49 10 Q And with that kind of wide variability you can have no
11 confidence that the bottom line number will be accurate, right?

12 A Well, I ran my own estimate of cumulative losses in
13 order to ascertain what I thought was most reasonable.

14 Q I'm talking about what the Trustee had when it signed
00:23:10 15 the Settlement Agreement. It had a \$40 billion variance in the
16 threshold number which is estimated losses, right?

17 A I don't know that that's necessarily correct. The
18 Trustee's expert, I believe, calculated a range of losses that
19 went up to 77 billion.

00:23:24 20 Q And the Trustee's expert, two sets of data in front of
21 him, Bank of America's, Institutional Investors', agreed?

22 A Yes.

23 Q And he came up with a number that at the lowest, the
24 lowest loss estimate, \$67 billion, right?

00:23:37 25 A No. Brian Lin's low end -- the highest end of his
26 range, I believe, was \$77 billion.

In The Matter Of:

BNY Mellon v.

July 25, 2013

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Min-U-Script® with Word Index

1 STANLEY-PETITIONER-DIRECT (INGBER)

2 to the Settlement Agreement that made you a logical choice to
3 Chair the committee?

4 A Given it came out of the Structured Finance business,
5 these issues of a MBIA type Trust, it would be logical for the
6 Structure Finance Committee to be able to be the one for the gut
7 check, if you will, of the agreement, and I would be the natural
8 person to turn to because I am the senior business head. I did
9 have delegates to the Chair position, but I was available, so I
10 did.

11 Q You said you didn't get details about the draft of the
12 Settlement Agreement or expert reports in advance of the Trust
13 Committee meeting.

14 Given that, can you elaborate some more on why you were
15 in a position to Chair this committee meeting?

16 A One of the elements of the Trust Committee in general,
17 you know, first of all, it tends to take place at the end of the
18 processes.

19 Again, I will refer back to that new business process.
20 All the heavy lifting has already been done. It's been
21 approved. When it comes to the Trust Committee it's more, has
22 all the standard processes taken place, so it's a gut check, if
23 you will, an overview process.

24 In this particular case, it would be, given the unusual
25 nature and importance of this particular issue, and ad hoc
26 committee would be just another governing check point to make

1 STANLEY-PETITIONER-DIRECT (INGBER)

2 sure we have done all the due processes that should be
3 considered.

4 I think from a business perspective, having the
5 third-party without a lot of detailed knowledge of the
6 situation, including the other members of the committee who had
7 even less than I did, makes good sense, just because it's a gut
8 check of, is it reasonable, is it right, have we missed anything
9 that's obvious.

10 Q You talked about other members of the committee.

11 Were there participants in the Trust Committee meeting
12 who had knowledge or even extensive knowledge, about the process
13 that led to the Settlement Agreement?

14 A Short answer is yes -- and that would be Bob Bailey and
15 Loretta Lundberg. They would be walking the committee through
16 what is being asked of the Committee, and then the rationale and
17 presentation.

18 Q Were there other participants in the meeting who would
19 have worked with Mr. Bailey or Ms. Lundberg throughout the
20 process?

21 A Correct. Again, I would refer to the subject matter
22 aspects that work with the detail.

23 Q Now, who led the Trust Committee meeting, Mr. Stanley?

24 A In terms of the presentation itself and of the facts,
25 it will be Bob Bailey and Loretta Lundberg.

26 Q Do you recall reviewing the Settlement Agreement prior

1 STANLEY-PETITIONER-CROSS (REILLY)

2 A Again, there might be some legal implications. I will
3 answer from a business perspective.

4 In looking at the people at the table, the parties at
5 the table, could we try to address a broader scope of issues
6 that were hitting the marketplace with these Trust and
7 agreements? So, if you go back in that timeframe, a lot of
8 people were saying Trustees were not doing enough.

9 Now, we were having these conversations going on, I was
10 wasn't privy to the detail, but I knew we, as a Trustee, were
11 doing an awful lot trying to come to what we thought would be a
12 reasonable and a good result for many investors.

13 So, in my mind, from a business perspective, we were
14 taking appropriate action as a Trustee where, from what I could
15 read in the papers, a lot of Trustees were not doing that.

16 Q My question really was focused on that choice.

17 Was a voluntary choice made by the Trustee to do so,
18 correct?

19 A And that's how I, that's how I used discretionary.

20 Q That discretion that the Trustee exercised at that
21 point, meant that it was not required to do that under the
22 Pooling and Servicing Agreements, correct, if you know?

23 A Yes, I would, I would ask counsel. That's what I would
24 formally do, I would ask counsel. If I am sitting in Loretta
25 Lundberg's role, I would ask counsel how would we work this.

26 Q I want to go back for clarification.

In The Matter Of:

BNY Mellon v.

July 26, 2013

Original File 072613 BNY Mellon.txt

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1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK - CIVIL TERM - PART: 39

4 -----X
5 In the Matter of the Application of

6 THE BANK OF NEW YORK MELLON, (as Trustee under
7 various Pooling and Servicing Agreements and
8 Indenture Trustee under various Indentures),

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Petitioner,

for an order, pursuant to CPLR § 7701, seeking
judicial instructions and approval of a proposed
settlement.

-----X
Index No. 60 Centre Street
651786/11 New York, New York
July 26, 2013

B E F O R E:

HONORABLE BARBARA R. KAPNICK,
Justice of the Supreme Court

A P P E A R A N C E S:

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1 Daines - by Petitioner - Cross/Pozner

2 25th through May 26th of 2011?

3 A Yes.

4 Q And on June 7th of 2011, you submitted to the Trustee

10:49:42 5 your signed version of your legal memo?

6 A Yes.

7 Q You turned around this assignment in six weeks?

8 A Yes. As you can see, I put in a lot of time. I put
9 in -- in six weeks I put in 165 hours. So that's a lot of time.

10:50:01 10 At least for me. Not for the lawyers maybe, but for a professor
11 that's pretty good work.

12 Q You put in 165 hours at a thousand dollars an hour?

13 A Yes. I don't -- yeah.

14 Q "I don't"? Was there an up-charge or is that standard?

10:50:20 15 A I was going to say, I don't actually -- I got into this
16 job to do research and teaching, which is what I really like.
17 So this was a tight deadline and so that's what I charged.

18 Q Are you saying you charged extra because it was a rush?

19 A I charged a little bit more. Maybe a \$100 an hour.

10:50:41 20 Q And you say in your report, and I believe you have said
21 in your direct examination, that asset stripping is a fact-
22 intensive inquiry?

23 A Yes.

24 Q And you have said de facto merger is a fact-intensive
10:50:59 25 inquiry?

26 A Yes.

1 Daines - by Petitioner - Cross/Pozner

2 MR. POZNER: Let's go also to 157, if we can start
3 at 156, line 25.

4 Q For context, Professor, I asked you about investigating
11:00:17 5 veil piercing or successor liability analysis. And then at 156,
6 line 25:

7 "Question: Did they ever ask you, okay, good, so
8 investigate that?"

9 Your answer: "Like as a factual matter?"

11:00:37 10 My response to you: Yes."

11 Your answer at page 157, line 4:

12 "No, that wasn't my role. I was offering advice
13 about the law. I didn't like -- it wasn't my task, or I'm
14 not sure I would have agreed to assess the value of the
11:00:56 15 transactions, the value of the assets sold. That is not
16 something I -- I would feel comfortable in doing."

17 Q Then I followed up with you.

18 "Did they ever tell you, we will have somebody
19 else investigate, and use that factual information in your
11:01:16 20 analysis, your legal analysis?"

21 Your answer: No."

22 Those are the answers you gave me, sir?

23 A Yes.

24 Q And in fact, we continue with that.

11:01:30 25 At page 157, line 14:

26 "Question: Did you ever recommend that somebody

1 Daines - by Petitioner - Cross/Pozner

2 PSA as the first document I got, but nobody said go look there.

3 Q Well, did you look to see where does Bank of America
4 have independent liability?

12:25:12 5 A I understood that there was going to be a dispute about
6 whether B of A had independent liability and I didn't have an
7 opinion on that, so I didn't much consider the matter.

8 Q You were not told that there were parts of the PSA that
9 would impose liability on Bank of America without need of
12:25:30 10 successor liability theories?

11 A I wasn't told that at the time. I understand now that
12 that's an allegation, but I don't actually know if that's right.
13 So, I -- but I certainly wasn't told that at the time and I
14 don't know whether I'd agree with it now.

12:25:54 15 Q In your 2011 opinion, you did not independently verify
16 any of the facts discussed or assumed for purposes of your
17 opinion?

18 A No. I took the documents, many of which were publicly
19 filed, and I analyzed them. But I didn't separately call people
12:26:14 20 up and confirm whether they were actually true.

21 Q So, for example, some of the assumptions that you did
22 not independently verify is whether the initial transactions
23 were arm's length?

24 A You mean Countrywide's acquisition by B of A?

12:26:38 25 Q You were told that the initial acquisition transactions
26 were arm's length?

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SUPREME COURT OF THE STATE OF NEW YORK.
COUNTY OF NEW YORK: TRIAL TERM PART 39

- - - - - 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),

Petitioner,

INDEX NO.
651786/11

for an order, pursuant to CPLR §7701, seeking
judicial instructions and approval of a
proposed settlement.

- - - - - X

60 Centre Street
New York, New York 10007
September 9, 2013

BEFORE:

HONORABLE BARBARA R. KAPNICK, Justice

APPEARANCES:

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REBECCA KAHAN, ESQ.
JAMES M. McGUIRE, ESQ.

1 Professor D. Fischel - by Petitioner - Direct/Ingber
2 anybody.

3 Q Okay. I want to ask you about a few other
4 allegations that have come up in trial, and in particular
12:54:58 5 whether they affect your opinion, in any way, that the
6 objectors' claims of conflict are fundamentally flawed?

7 First, there's been a claim in this trial about
8 a provision in the settlement agreement, the parties in
9 the case have referred to further assurances clause that
12:55:18 10 binds the parties to support the settlement even if they
11 learn of facts inconsistent with those they knew at the
12 time of the proposed settlement. In your opinion, did
13 that provision create a conflict for the trustee? And
14 does it affect your opinion in any way that the trustee
12:55:33 15 was not conflicted?

16 A I don't believe it creates a conflict and it doesn't
17 affect my opinion in any way because it's a reciprocal
18 opinion. And what it means is that if the parties themselves
19 determine that it's in their economic interest to enter into
12:55:49 20 the proposed settlement, then they want that proposed
21 settlement to be durable, they don't want it to be so fragile
22 that any party can back out at any time if they claim that
23 they have new information if they want to second-guess their
24 earlier action.

12:56:08 25 But, again, there is a basic reality test here,
26 which is that that provision doesn't bind everybody else.

1 Professor D. Fischel - by Petitioner - Direct/Ingber

2 And if there was any sense that with the benefit of
3 hindsight, with the benefit of information that's come
4 out, that the settlement is not a good deal for the
12:56:27 5 certificate holders, that there was something wrong with
6 the trustee's decision or the settlement process, again,
7 there would've been an outpouring of objections from all
8 the different parties that are not bound by that
9 particular agreement. That hasn't happened. So I would
12:56:46 10 say the agreement itself is very understandable as
11 increasing the probability that the proposed settlement
12 that the parties with a economic stake themselves
13 determined what was in their best interest would last, be
14 durable. In the absence of any significant objector
12:57:07 15 reaction I think makes clear that there's nothing that
16 has occurred that would cause the bulk of the certificate
17 holders to second-guess the judgment to enter into the
18 proposed settlement with or without the assurance clause.

19 Q On that note, Professor, I think we're going to
12:57:27 20 break for lunch.

21 MR. INGBER: And, your Honor, for planning
22 purposes, I have about I think 30 or 45 minutes remaining
23 in the examination.

24 THE COURT: Okay. So it's about one o'clock
12:57:36 25 now. Why don't you come back at ten after and we'll get
26 going in the afternoon.

In The Matter Of:

BNYMellon v.

September 12, 2013

Bonnie Piccirillo

Original File BNYMellon.txt

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 39

- - - - - 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),

Petitioner,

INDEX NO.
651786/11

for an order, pursuant to CPLR §7701, seeking
judicial instructions and approval of a
proposed settlement.

- - - - - X

60 Centre Street
New York, New York 10007
September 12, 2013

BEFORE:
HONORABLE BARBARA R. KAPNICK, Justice

APPEARANCES:

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REBECCA KAHAN, ESQ.
JAMES M. McGUIRE, ESQ.

1 B. Lin - By Respondent - Direct/Pozner

2 MR. POZNER: I'm asking the question.

3 THE COURT: All right. I will let you answer
4 the question, but --

10:12:19 5 A It is in comparison what was in the settlement
6 agreement versus the industry standards, just what's in the
7 settlement agreement.

8 Q No part of your assignment by the Trustee was to
9 actually go back and analyze what is Bank of America doing in
10:12:36 10 these various areas of servicing?

11 A What do you mean by various areas of servicing?

12 Q Well, your report doesn't just take servicing as a
13 monolithic entity, it divides it into various aspects of
14 servicing of this particular portfolio.

10:12:57 15 A My report is to give the opinion of what was in the
16 settlement agreement and how I felt about it.

17 Q I understand, but I want to make sure that I've
18 given you an opportunity.

19 Was any part of your assignment to go back and
10:13:12 20 determine what is Bank of America doing in each of these
21 parts of servicing that you then discuss in your report?

22 A I'm just trying to understand what you're saying.
23 You asked me what they were doing as the entity for servicing
24 prior to a report? Is that your --

10:13:30 25 Q Yes.

26 A No.

1 B. Lin - By Respondent - Direct/Pozner

2 provide oral reports to the Trustee or was the report, R-8,
3 the sum total of the report that you gave the Trustee on
4 servicing?

10:23:35 5 A Actually, can I clarify something? When you say
6 "Trustee", I assume you're referring to Bank of New York
7 Mellon; correct?

8 Q I'm sorry?

9 A I'm sorry. Repeat that question for me please?

10:23:47 10 Q Sure.

11 The Trustee asked you to give a series of oral
12 reports before you gave them R-8?

13 A I don't think I gave any oral reports formally.
14 I might have, you know, expressed one or two things about
10:24:05 15 things but they're just part of the normal course of
16 discussion.

17 Q So, really, R-8 is the only report you gave the
18 Trustee formally or informally?

19 A If you define it that way, that is the only report,
10:24:20 20 yes.

21 Q And you didn't provide the Trustee with any other
22 opinions on servicing other than those you've expressed in
23 the R-8 report?

24 MR. HOUP: Objection. Asked and answered
10:24:33 25 about five times now.

26 THE COURT: That's sustained.

1 B. Lin - By Respondent - Direct/Pozner

2 28th?

3 A I don't know what the Trustee has or not had.

4 Q Well, we know that you didn't give them any drafts;
10:28:59 5 right?

6 A That's correct.

7 Q Are you aware of a man named Robert Bailey, former
8 in-house counsel for the Trustee Bank of New York Mellon?

9 A Yes.

10:29:16 10 Q How are you aware of Mr. Bailey?

11 A I believe I met him one time.

12 Q Well, did you ever give Mr. Bailey a draft report?

13 A No.

14 Q Did you ever give anybody on behalf of the Trustee a
10:29:36 15 draft report?

16 MS. PATRICK: Objection. Asked and answered.

17 THE COURT: Sustained.

18 Q Are you aware that Mr. Bailey testified that the
19 Trust Committee had a draft of your report before it had the
10:29:49 20 final report?

21 A I'm not aware of that.

22 MR. POZNER: Your Honor, this is the trial
23 transcript of July 16, 2013 at Page 2211 Lines 3 through
24 22.

10:30:06 25 Q Then that would be incorrect testimony; would it
26 not, sir?

1 B. Lin - By Respondent - Direct/Pozner

2 (Exhibit displayed.)

3 Q There was no possibility of Mr. Bailey had a draft
4 report from you to give to the Trust Committee isn't that
10:30:16 5 right?

6 A I can't comment on what he testified.

7 Q No, but you can comment on the accuracy. There was
8 no draft report; was there?

9 A I did not give a draft.

10:30:33 10 Q Now, going back to R-8.

11 (Exhibit displayed.)

12 Q The five bullet points, that's the scope of your
13 opinion that you delivered to the Trustee?

14 A Those were the highlights, yes.

10:30:58 15 Q The Trustee never asked you any questions about the
16 bullet points; is that correct?

17 A We might have had subsequent conversations regarding
18 the report.

19 Q Well, do you remember any -- do you remember being
10:31:16 20 questioned and asked by the Trustee to elaborate on any of
21 the opinions in your report?

22 A I may have. I may have, sir.

23 Q I understand you may have. I'm asking do you have
24 any recollection of that actually happening?

10:31:30 25 A I mean, after the report was issued, I had
26 conversations with Mayer Brown and we might have talked about

1 Mr. Lin-by Respondent-Direct/Mr. Pozner

2 Q Let's turn to page 6 of are R-8. On page 6 you give an
3 opinion "certain approaches to servicing as outlined in the
4 settlement agreement are quite reasonable and in accordance with
10:39:07 5 or exceeding customary and usual standards of practice for
6 prudent mortgage loan servicing and administration."

7 Do we agree?

8 A Yes.

9 Q But no part of your opinion is a quantification of
10:39:27 10 whether those approaches actually add monetary value to the
11 settlement?

12 A I did not give an opinion on the monetary aspect.

13 Q Not only do you not give an opinion on the monetary
14 aspect as to how much the improvement is, you don't try to
10:39:47 15 quantify any one of these and say this will result in X dollars
16 as a result of exceeding industry standards?

17 A Yeah, like I said, I did not give a value on the
18 improvements.

19 Q And I want to do it one more way. We talk about
10:40:04 20 exceeding industry standards. Let's phrase it differently.

21 Let's talk about prudent mortgage loan servicing
22 and administration. No part of your report seeks to quantify in
23 any way these changes in how Bank of America services will
24 result in a certain number of dollars because they are beyond
10:40:26 25 prudent mortgaging loan servicing standards?

26 A My opinion was the settlement agreement had

1 Mr. Lin-by Respondent-Direct/Mr. Pozner
2 improvements, but I did not give a monetary value to those
3 improvements.

4 Q Well, I understand that it's about improvements, but my
10:40:42 5 point is were you asked to find those areas where Bank of
6 America is currently servicing below prudent standards so that
7 these improvements within the settlement agreement bring Bank of
8 America up to a prudent standard?

9 MR. HOUPPT: Objection, asked and answered.

10:41:12 10 THE COURT: Go ahead. You can just answer.

11 A I mean, like I mentioned earlier, I did not look
12 the current practices of Bank of America.

13 Q And so the task you were given did not include whether
14 any of these approaches mentioned in the settlement agreement
10:41:38 15 add monetary value to the settlement?

16 MR. HOUPPT: Objection, the same question was asked
17 about four times in a row.

18 THE COURT: Sustained. You've answered it enough.

19 THE WITNESS: Thank you.

10:41:56 20 Q I'd like to discuss the servicing opinions. Your
21 opinion discusses the servicing opinions in the proposed
22 settlement agreement, and in your report R-8 you characterize
23 the servicing terms as improvements.

24 Right?

10:42:12 25 A Yes, some of the aspects.

26 Q But, no part of your opinion is to express to the Court

1 Mr. Lin-by Respondent-Direct/Mr. Pozner

2 how many of the things being done would simply bring Bank of
3 America -- pardon, let me rephrase -- how many of the proposals
4 in the settlement agreement would result in bringing Bank of
10:42:32 5 America's settlement -- Bank of America's servicing up to a
6 prudent standard?

7 A I think I mentioned I did not look at what the
8 current practice is at the time of the Bank of America
9 servicing practices.

10:42:53 10 Q So if we were trying to establish a baseline of here is
11 Bank of America and here are the resulting improvements, we
12 really -- you were never asked to determine the baseline; right?

13 MR. HOUPT: Objection. I'm sorry to keep
14 objecting, but this is really the same question; what does
10:43:13 15 the report say and what does the report not say.

16 It's been asked about twenty different ways.

17 THE COURT: I mean, again, I think that he's
18 testified to certain things were not within the scope of
19 what he did and so if they weren't, then they weren't and
10:43:28 20 they're not there.

21 So I got the point.

22 MR. POZNER: I'll move on, your Honor.

23 THE COURT: Perhaps you can move on a little bit.

24 Q Well, it is true that you are aware that Bank of
10:43:43 25 America was contractually obligated to provide servicing at or
26 above industry standards?

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 39

----- 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),

Petitioner,

INDEX NO.
651786/11

for an order, purusant to CPLR §7701, seeking
judicial instructions and approval of a
proposed settlement.

----- X

60 Centre Street
New York, New York 10007
SEPTEMBER 17, 2013

BEFORE:
HONORABLE BARBARA R. KAPNICK,
Justice

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REBECCA KAHAN, ESQ.
JAMES M. McGUIRE, ESQ.

1 Adler-by Respondents-Direct/Mr. Rollin

2 answer the question, don't answer. Thank you.

3 Q Is that a way of saying you don't know the answer to my
4 question?

03:21:51 5 THE COURT: Right, he'd have to speculate.

6 THE WITNESS: I had to guess as to whether this
7 language was relevant to one trust or many.

8 I didn't ask the number of trusts it was relevant
9 to. I didn't understand knowing the answer to that
03:22:06 10 question being in the scope of my assignment.

11 As I say, I'm very precise and meticulous about my
12 assignment.

13 Q Were you told that the governing agreements with
14 respect to each of the trusts that was at issue was identical in
03:22:23 15 relevant part?

16 A I don't believe I was told that, no.

17 Q Do you recall whether were you asked that question?

18 A I don't recall, but I don't imagine that I did
19 because I wouldn't have. In my practice, if a question was
03:22:41 20 presented to me, I answered it. That's the way I approached
21 these assignments.

22 Q Did you know that in some of the Pooling and Servicing
23 Agreements there is language that states that certain breaches
24 are deemed to be material and adverse?

03:22:58 25 MR. MADDEN: Again, your Honor, there's nothing
26 about this in his report. The question about when a

1 Adler-by Respondents-Direct/Mr. Rollin

2 standard is applied, whether in some circumstances it
3 doesn't apply to a particular breach has nothing to do with
4 this opinion. It's not discussed in his opinion. Again,
03:23:13 5 this is more argument by counsel. They can make this in
6 closing. It is a waist of the Court's time.

7 MR. ROLLIN: It is relevant to --

8 THE COURT: You can answer the question.

9 A Do I know at the time that I wrote the report?

03:23:26 10 Q Yes.

11 A No.

12 Q Nobody from the Trustee or its counsel told you that
13 such a provision existed in more than a hundred of Pooling and
14 Servicing Agreements?

03:23:33 15 A What I should have said, not as I recall; and now I
16 will say again, not as I recall.

17 Q And that is not a fact that you gleaned from your
18 review of the Pooling and Servicing Agreements that was provided
19 to you?

03:23:51 20 THE COURT: Sustained. You got your answer. You
21 asked it twice. Three times is too much.

22 MR. ROLLIN: Yes, your Honor.

23 Q You agree with me that when a contract says something
24 is deemed, then you don't have to prove it separately?

03:24:12 25 MR. MADDEN: Objection, outside the scope of his
26 report. He didn't give an opinion about what deemed means.

In The Matter Of:

BNY Mellon

September 19, 2013

Bonnie Piccirillo
Senior Court Reporter
New York Supreme Court
60 Centre Street - Rm. 420
New York, New York 10007

Original File 19SEPT2013 BNYMellon.txt

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SUPREME COURT OF THE STATE OF NEW YORK.
COUNTY OF NEW YORK: TRIAL TERM PART 39

- - - - - 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),

Petitioner,

INDEX NO.
651786/11

for an order, pursuant to CPLR §7701, seeking
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proposed settlement.

- - - - - X
60 Centre Street
New York, New York 10007
SEPTEMBER 19, 2013

BEFORE:
HONORABLE BARBARA R. KAPNICK, Justice

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REBECCA KAHAN, ESQ.
JAMES M. McGUIRE, ESQ.

1 B. Bingham - By Respondent - Direct/Pozner

2 Q And if we look at Exhibit R-12.

3 (Exhibit displayed.)

4 Q Page 005. I'd like you to read to yourself the "Key
10:36:14 5 Assumptions And Premise Of Recovery" section before I ask you
6 further questions.

7 A Okay.

8 Q Do you recall that there were three different
9 assumptions you were asked to make?

10:36:44 10 A I think there might have -- or at least three, yes.

11 Q And there is no basis upon which a Court could
12 pierce the corporate veil of CFC leading to liability of BAC?

13 A Correct.

14 Q You were to assume that CFC and its subsidiary were
10:37:12 15 solvent?

16 A Correct.

17 Q And you were to assume that reasonably equivalent
18 value was paid for the transfer of any assets in those
19 transactions that you described on the previous page of your
10:37:27 20 report?

21 A Correct. And also that the solvency was at the time
22 of the three dates of the transactions.

23 Q That the solvency was at the time of the
24 transactions?

10:37:40 25 A Yes.

26 Q Now, I want to talk about the transactions and the

In The Matter Of:
Bank of NY Mellon v.

September 23, 2013

Bonnie Piccirillo
Senior Court Reporter
New York Supreme Court
60 Centre Street - Rm. 420
New York, New York 10007

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 39

- - - - - 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),

Petitioner,

INDEX NO.
651786/11

for an order, pursuant to CPLR §7701, seeking
judicial instructions and approval of a
proposed settlement.

- - - - - X

60 Centre Street
New York, New York 10007
SEPTEMBER 23, 2013

BEFORE:
HONORABLE BARBARA R. KAPNICK, Justice

APPEARANCES:

MAYER BROWN, LLP
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MAURICIO A. ESPAÑA, ESQ.
REBECCA KAHAN, ESQ.
JAMES M. McGUIRE, ESQ.

1 Prof. J. Coates - By Respondent - Direct/Pozner

2 * * * A F T E R N O O N S E S S I O N * * *

3 COURT OFFICER: All rise. Part 39 is now back
4 in session. The Honorable Barbara R. Kapnick now
02:20:28 5 presiding.

6 Please be seated. Come to order.

7 THE COURT: Mr. Pozner.

8 MR. POZNER: Thank you, your Honor.

9 THE COURT: As opposed to Mr. Posner. You may
02:20:41 10 continue.

11 CONTINUED DIRECT EXAMINATION

12 BY MR. POZNER:

13 Q If we could bring up Slide 9 please.

14 (Exhibit displayed.)

02:20:48 15 Q Professor, I'd like to discuss with you the
16 significance of verifying information before making critical
17 decisions in this case. Does Slide 9 assist you in that
18 regard?

19 A Yes. Part of what I was asked to evaluate was not
02:21:05 20 only the kinds of claims that the Trustee evaluated in
21 proposing the settlement, but also the facts on which the
22 proposed settlement was based. And in reviewing the verified
23 petition and the advisor reports that were submitted by the
24 Trustee, it's my opinion that the Trustee, on key facts that
02:21:35 25 are relevant to the theories of liabilities that I reviewed,
26 basically took Bank of America's word on them. Didn't get

1 Prof. J. Coates - By Respondent - Direct/Pozner
2 meaningful proof of key facts that would be directly relevant
3 to a successor liability analysis, fraudulent conveyance
4 analysis, et cetera.

02:21:55 5 And while Bank of America did make a
6 representation to the Trustee about the facts that it did
7 tell the Trustee, that representation was, in my view,
8 and based on my experience in negotiating representation
9 and warranties in virtually every transaction I ever
02:22:17 10 worked on, what I would characterize as weak general
11 representation. It essentially required intent; it did
12 not cover omissions; it did not cover the possibility
13 that even though Bank of America may have been literally
14 speaking truthful in what it was telling the Trustee,
02:22:37 15 that there were important categories of information that
16 it had left out that if the Trustee had known about them
17 or found out about them later, would change the Trustee's
18 view of the relevant facts.

19 Q Now, Professor, would it have been necessary, in
02:22:51 20 your experience, for the Trustee to have commenced formal
21 litigation in order to obtain verified information in support
22 of its negotiating position or Bank of America's positions?

23 MR. GONZALEZ: Objection. Calls for
24 speculation.

02:23:08 25 He doesn't know what B of A would've done if
26 requested to give that sort of information.

1 Prof. J. Coates - By Respondent - Direct/Pozner

2 As I mentioned earlier today, that approach
3 seems to me not a reasonable basis for relying on these
4 advisors. What they're going to do is tell you not what
02:45:54 5 your best position is, or the position that could support
6 the proposed settlement, but, rather, to go to a place
7 where they're having to reject as unreasonable something
8 that B of A's proposing. And that is not, in my
9 experience, the way a neutral investigator on whom the
02:46:17 10 Trustee wants to rely for key factual inputs would have
11 their questions framed.

12 Q Well, has it been your experience and observation
13 that the custom and practice in such transactions is to give
14 such limiting assumptions to outside advisors? Or is this
02:46:37 15 negative? Is this opposed to what you've observed the custom
16 and practice to be?

17 A This would tend to reduce the reliability of the
18 advisor's report relative to custom and practice.

19 If you want information about Countrywide's
02:46:53 20 ability to pay, you don't tell somebody just to assume
21 solvency. You get the full picture. If you want key
22 information about whether a potential legal claim is
23 valid or not, you don't say, Does the other side have a
24 reasonable argument about whether it's valid, Tell me
02:47:08 25 what you think, you know, Go on, maybe, to evaluate the
26 other side's position, but tell me what you actually

1 Prof. J. Coates - By Respondent - Direct/Pozner

2 think. So collectively, this, in my view, undermines the
3 reliability of these reports.

4 MR. POZNER: May I have a moment, your Honor?

02:47:20 5 THE COURT: Sure.

6 (Pause in proceedings.)

7 Q Now, in those instances when you have been asked to
8 consult with major institutions on their financial affairs
9 and such transactions, have you ever accepted such
02:47:54 10 limitations on the opinions you would give or the analysis
11 you would give?

12 A I honestly don't recall being asked to make those
13 kinds of assumptions. When I've been asked to evaluate
14 litigation, I've been asked, Should we bring it or not, not,
02:48:11 15 Would it be reasonable for us to not bring it, for example.
16 So I can't really answer it because I wouldn't -- let me put
17 differently.

18 Again, I don't necessarily fault anyone who is a
19 service provider for carrying out instructions if it's
02:48:29 20 within the scope of their professional responsibility and
21 doesn't otherwise create a problem under their --
22 whatever duties they have. I do think it's unreasonable
23 to rely on someone for outputs when you strongly limit
24 what they can do and what information they can take into
02:48:46 25 account.

26 Q Now, this morning, you talked about the fact that,

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 39

----- 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
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Petitioner,

INDEX NO.
651786/11

for an order, purusant to CPLR §7701, seeking
judicial instructions and approval of a
proposed settlement.

----- X

60 Centre Street
New York, New York 10007
SEPTEMBER 24, 2013

BEFORE:
HONORABLE BARBARA R. KAPNICK,
Justice

APPEARANCES:

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1 McCarthy-by Respondents-Direct/Mr. Reilly

2 MR. REILLY: Your Honor, I'm trying to get to
3 those issues. I do believe this is relevant to what this
4 witness knows and did.

11:23:48 5 THE COURT: I mean, you want to show him the
6 section and deal with it, but I don't think he should just
7 be -- ask your next question.

8 Q Do you recall stating that you and the Bank of New York
9 Mellon had been working hard to avoid an event of default from
11:24:39 10 being declared?

11 A I don't recall specifically saying that, but I know
12 we did. So, it would be consistent.

13 Q You know that in fact the Bank of New York Mellon did
14 work hard to avoid an event of default from being declared?

11:24:57 15 A Yes.

16 Q And when you did that, you in fact believed that Ms.
17 Patrick could declare an event of default, correct?

18 A I don't recall basing on a judgment what we thought
19 Ms. Patrick could do. I think we were focused on what we
11:25:19 20 needed to do in order to address the situation that had been
21 created by Ms. Patrick's letter.

22 Q Well, you were very concerned in November and December
23 of 2010 what Ms. Patrick would do if the 60-day cure period ran;
24 correct?

11:25:39 25 A Not only what Ms. Patrick would do, but what we
26 would have to do or others might do. So, yeah, there were a

1 McCarthy-by Respondents-Direct/Mr. Reilly

2 number of ramifications that we were focused on and
3 concerned about.

4 Q Three things you mentioned. What Ms. Patrick might do
11:25:55 5 if the 60-day clock ran; correct?

6 A Correct.

7 Q And what additional responsibilities the Trustee would
8 have if the 60-day clock ran?

9 A Correct.

11:26:06 10 Q And what other certificate holders not represented by
11 Ms. Patrick might do if the 60-day clock ran?

12 A Correct.

13 Q Because certificate holders not represented by Ms.
14 Patrick if the 60-day clock ran could, in fact, provide a notice
11:26:23 15 to a Trustee asking that the Trustee sue Bank of America;
16 correct?

17 A To the extent that certificate holders could
18 organize themselves under the terms of whatever Pooling and
19 Servicing Agreements were out there, certainly if they had
11:26:40 20 that ability they could do that at any time.

21 Q Well, actually, they were likely to do it if the
22 Trustee provided notice to all certificate holders that in fact
23 the Master Servicer was in default?

24 MR. INGBER: Objection, calls for speculation.

11:26:54 25 MS. PATRICK: Same objection.

26 MR. REILLY: I think he can answer that.

1 McCarthy-by Respondents-Direct/Mr. Reilly

2 Q So at least two things, two additional responsibilities
3 would fall upon the Trustee at that time. One, notice to all
4 certificate holders, and, two, consideration of whether or not
11:30:01 5 it would replace Bank of America as the Master Servicer,
6 correct?

7 A At least those two.

8 Q Well, were there other additional responsibilities that
9 you were concerned about in December of 2010 as the 60-day clock
11:30:15 10 was ticking?

11 A If it's helpful, I was then and am now the head of
12 litigation. I was involved in that capacity so my concern
13 was principally the litigation concerns. Whether we would
14 be commencing litigation at the direction of certificate
11:30:33 15 holders, either Ms. Patrick or others, whether we were being
16 sued. That's my role. It was a litigation role.

17 So I was focused on managing and focusing on
18 the litigation issues at the time.

19 Q Including claims that could be brought against Bank of
11:30:51 20 New York Mellon or claims that be brought by Bank of New York
21 Mellon?

22 A Principally claims that we would be asserting in
23 response to a valid certificate holders direction, but
24 certainly analyzing all our exposure and being prepared to
11:31:09 25 deal with that during that timeframe.

26 Q And you on behalf of Bank of New York Mellon were

1 McCarthy-by Respondents-Direct/Mr. Reilly

2 operating like the 60-day clock was ticking between October 18th
3 of 2010 and December 17th of 2010; correct?

4 A We were. We took a conservative view and operated
11:31:29 5 as if there were a 60-day clock ticking so that to the
6 extent that the 60-day clock expired and we found ourselves
7 in a position to have to take some of these actions, that we
8 would in fact be prepared to take them.

9 Q That 60-day period was a cure period for the Master
11:31:46 10 Servicer; right?

11 A I recall it as a cure period of notice deficiencies
12 or issues. Whether they were just the Master Servicer, I
13 don't recall specifically; but I think that's right. I
14 don't have that specific recollection.

11:32:03 15 Q I didn't mean to suggest it was limited to that, but
16 one of the things that that period was intended to provide was
17 an opportunity for the Master Servicer to cure any event of
18 defaults that were occurring?

19 A As I recall the letter, there were a series of
11:32:23 20 issues that were identified problems, if you want to call
21 them that, that the letter sought to fix and rectify.
22 Whether they were all Master Servicer or not I don't recall,
23 but there were a series of complaints and issues identified
24 and a demand that they be addressed.

11:32:42 25 Q And they, pursuant to Pooling and Servicing Agreements,
26 needed to be addressed in those 60 days or that clock was going

In The Matter Of:

BNYMellon

September 25, 2013

*Bonnie Piccirillo
Senior Court Reporter
New York Supreme Court
60 Centre Street - Rm. 420
New York, New York 10007*

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 39

- - - - - 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),

Petitioner,

INDEX NO.
651786/11

for an order, pursuant to CPLR §7701, seeking
judicial instructions and approval of a
proposed settlement.

- - - - - X
60 Centre Street
New York, New York 10007
SEPTEMBER 25, 2013

BEFORE:
HONORABLE BARBARA R. KAPNICK, Justice

APPEARANCES:

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Proceedings

MS. PATRICK: Would you anticipate, your Honor, for argument, petitioners -- which order would be most helpful to you?

12:52:59 THE COURT: I think you would have to go first.

MR. INGBER: I think we have the burden of proof; at least our understanding is we speak last.

MR. REILLY: I thought they would go first. Same context of briefing --

12:53:14 THE COURT: It's not really. You're thinking of it as a summation at trial. I don't need everybody to tell me. Everybody can sit.

MS. PATRICK: What if we did it this way, your Honor --

12:53:28 MR. INGBER: I think if this were a summation at the end of a trial, with the burden of proof, we would go last. They would go first. We would go second and be done.

THE COURT: Well, you can talk about it, but I think you probably get the last word. Whether you do one, two, three or just do it through him, I think you're probably right. I'm sort of seeing this as a motion.

I mean, this really isn't a trial. It's really a hearing, an evidentiary hearing on the -- on whether or not I should approve the settlement, so I think it's not really a summation as though it were a trial. It's an evidentiary

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Proceedings

hearing, that you can all try to tie up the ends and pull out the important things that you think are the most important for me to decide.

12:54:21 So I don't really see that it is a summation at trial where the defendant sums up and the plaintiff gets to say the last thing. That's not really what happened here.

So I think maybe we'll sort of it do it like why I should prove it and you can explain why I shouldn't; and then you can have a very short finishing up. That's why I'm saying you may need to go into a third day. I think that makes sense.

MS. PATRICK: With that schedule, your Honor, if we're starting the evidence on the 14th, if we got you a complete set -- if the last reply was filed on the 4th, and then we back up from there, does that work for you or do you need less time than that?

THE COURT: I don't need less time.

MS. PATRICK: I just thought I'd throw that in there.

MR. REILLY: We have not coordinated these dates.

THE COURT: She's trying to ask me what would be the latest date that I would want the last document so that you can work backward. I don't care when the first one comes as much as I care when the last one comes.

And, you know, it seems it would probably be

In The Matter Of:

BONY v.

November 14, 2013

Deborah Rothrock, RPR

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1
2 SUPREME COURT OF THE STATE OF NEW YORK.
3 COUNTY OF NEW YORK - CIVIL TERM - PART 39

-----X

4 IN THE MATTER OF THE APPLICATION OF
5 THE BANK OF NEW YORK MELLON, (as Trustee
6 Under various Pooling and Servicing
7 Agreements and Indenture Trustee under
8 Various Indentures),

Petitioner

9 for an order, pursuant to CPLR 7701, seeking
10 judicial instructions and approval of a
11 proposed settlement.

-----X

11 Index # 651786/11 Proceedings
12 60 Centre Street
13 New York, New York 10007
14 November 14, 2013

B E F O R E:

14 HONORABLE HONORABLE BARBARA R. KAPNICK,
15 Supreme Court Justice

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1 Levitin-Respondents-Direct-Reilly

2 wouldn't like it.

3 THE WITNESS: The counties do not. Some of
4 them have brought class action suits against MERS.
5 Some of those suits have survived motions to dismiss in
6 Federal Court.

7 Q Does the settlement exclude MERS loans
8 from the document cure section altogether?

9 A It does, and it excludes any loan register
10 with MERS, even if the documentation problem has
11 nothing to do with MERS.

12 Q Let's look to R-1, page 28. That's the
13 settlement agreement. It's section 6A(i).

14 A I'm sorry. R-1, which page?

15 Q Page 28. Go to the next page. My notes
16 may be wrong here, your Honor. We're on R-129.

17 A Yes.

18 Q What's the section i, 6A(i); okay. So
19 where in this section does it indicate that the MERS
20 loans are excluded from the document cure provision of
21 the settlement?

22 A It's in the penultimate phrase that's set
23 off in commas. So if you go counting the last partial
24 line, that line, and then you go up three lines, about
25 halfway through, there's a comma, and that it carves
26 out the MERS loans.

1 Levitin-Respondents-Direct-Reilly

2 It says: "Provided that it" -- the
3 document fixes, the document cures -- "required by the
4 settlement shall exclude any such mortgage loan
5 registered on the Mortgage Electronic Registration
6 System ('MERS Americas')."

7 It also includes mortgage loans paid in
8 full or liquidated as of the signing date.

9 Q Why is that -- why do you believe that's a
10 significant exclusion?

11 A The MERS one or the other exclusion?

12 Q The MERS.

13 A The MERS is an enormous exclusion. It's
14 the exclusion that pretty much swallows the rule here.

15 Q What do you base that on?

16 A MERS, it's well attested to in academic
17 literature and MERS' own congressional testimony.

18 I have sat on a congressional panel, a
19 panel of witnesses before a senate banking committee,
20 sat next to a Mr. R.K. Arnold, who at the time was the
21 head of MERS.

22 MERS is understood to have registered in
23 its system roughly 60 percent of all mortgage loans in
24 the United States.

25 Now, that 60 percent number roughly
26 tracks the percentage of residential mortgage loans

1 Levitin-Respondents-Direct-Reilly

2 that are securitized. Pretty much MERS gets used by the
3 securitization industry, so if a community bank or a
4 credit union is just holding a loan on its own books,
5 it doesn't use the MERS system because it doesn't
6 benefit from avoiding the recording fees because the
7 benefit only comes when the loan is being transferred
8 multiple times.

9 That 60 percent number, however, is
10 actually, I think, really kind of a low-bar number.
11 Here's why: Roughly 60 percent of mortgage loans in
12 this country are securitized.

13 However, some mortgage loans are 30-year
14 loans. Most loans don't get refinanced or paid off
15 before 30 years, but once you start taking account
16 that you have some loans that are older, it means that
17 mortgage loans that were originated between, say, 2004
18 and 2007, the years in which the loans in the covered
19 trust were created, those loans were securitized at a
20 much higher rate.

21 Securitization rates from 2004 to 2007
22 were in the 80 percent or 90 percent range. This is
23 according to Inside Mortgage Finance, which collects
24 statistics on this. This is kind of the go-to Bible
25 for securitization statistics.

26 So probably, you know, in general if

1 Levitin-Respondents-Direct-Reilly

2 one were looking at securitized loans, I think a fair
3 assumption would be that at least three-quarters --
4 securitized loans between 2004 and 2007, I think a fair
5 assumption would be that at least three-quarters, if
6 not maybe 90 or 95 percent of those loans would be in
7 the MERS system.

8 Beyond that I have another data point
9 that sort of confirms this belief. In the course of
10 another expert engagement fee, the one I spoke of
11 earlier regarding the punitive class action in New
12 Jersey against Bank of America and Countrywide for
13 violation of the New Jersey Fair Foreclosure Act, one
14 of the activities I undertook as an expert in that case
15 was to work on designing a study of loan documentation
16 in New Jersey foreclosures for Bank of America or
17 Countrywide loans.

18 We had our sampling methodology, we
19 worked with a Princeton sociology professor who is a
20 sampling expert on this methodology.

21 MR. MADDEN: Your Honor, I'm going to object.

22 None of this is anywhere in his report. This is the
23 first time we're hearing all this.

24 I move to strike. This is an undisclosed
25 expert opinion. Nothing in his report about the work
26 he did on a study to understand MERS, none of that's in

1 -Direct/A. Levitin/by Mr. Reilly-

2 servicer, a specialty servicer. So it's a very different kind
3 of business than Bank of America servicing operations are really
4 set up to deal with.

5 Q In your view, does the settlement provision Section 5-A
6 and B provide any value?

7 A No. I don't think one can fairly say it provides
8 value.

9 Q Why not?

10 A Because there are a number of things that require the
11 use of specialty servicers if Bank of America is not adequately
12 servicing the loans by itself.

13 Q Are you familiar with those provisions, that you are
14 saying were already inexistence before the settlement?

15 A Yes.

16 Q And how do you know about that?

17 A Well, starting --

18 MR. MADDEN: I am going to object to this. This
19 entire line of questioning is based on Professor Levitin
20 interpreting the PSAs and various other, the National
21 Mortgage Settlement, et cetera, to make the argument that
22 they were already required by those. That is a legal
23 conclusion what those require.

24 What is even more important, your Honor, is that
25 his argument is based on this very idiosyncratic notion,
26 that none of those provisions say a thing about special

1 -Direct/A. Levitin/by Mr. Reilly-

2 The fact that Bank of America has been resistant in
3 doing this, historically, I think is an example that Bank of
4 America is not engaged in prudent loan servicing. It is not
5 evidence that prudent servicing does not include use of sub
6 servicer when you don't have capacity. This is elementary to
7 prudent servicing.

8 Q Why do you believe the servicing terms in the
9 settlement document do not add value to the settlement?

10 A Because I believe that they are already required
11 preexisting duty. Every one of these servicing terms in the
12 settlement is part of a persisting duty on the Master Servicer
13 on Bank of America either under the prudent servicing standard
14 or under Federal law or under various consent orders and
15 settlements that Bank of America has entered into and legally
16 binding.

17 MS. KASWAN: Move to stricken the entire answer,
18 legal conclusion.

19 THE COURT: I am leaving it in. You will deal with
20 it on cross-examination.

21 Q You have written blogs or you regularly write blogs in
22 your observations of the industry?

23 A Yes, I contribute to a blog called creditslipsdot.org.
24 It is a group blog by legal academics who teach and write and
25 study about bankruptcy and credit and finance.

26 Q When you blog, are you subject to peer review?

In The Matter Of:

BONY v.

November 15, 2013

Deborah Rothrock, RPR

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 39
- - - - -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),

Petitioner,

- against -

for an order, pursuant to CPLR 7701,
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- - - - -X

Index No. 651786/11
Trial 60 Centre Street
New York, New York
November 15, 2013

BEFORE:

HONORABLE BARBARA R. KAPNICK,
Justice.

APPEARANCES:

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VIRGINIA PALITZ, ESQ.
CHRISTOPHER HOUP, ESQ.

1 Levitin-Respondent-Direct-Reilly

2 foreclosures.

3 This is something that I have testified
4 before Congress about and which I worked for the
5 congressional oversight panel, which put out an
6 extensive report about the concerns with documentation
7 issues.

8 Q Let's bring it back to these trusts. What
9 difference does it make to the trusts if, in fact,
10 loans are in default, meaning the borrower is not
11 paying, and the loan can't be foreclosed?

12 A It means that there's likely going to be a
13 significant loss to the trust.

14 Q Why?

15 A Because there's no revenue coming in from
16 that loan. The borrower is not paying voluntarily, and
17 the trust cannot liquidate the house, cannot sell the
18 house to get revenue.

19 Q Were those types of losses the type of
20 losses that are being addressed in this settlement?

21 A Yes.

22 Q How do you know that?

23 A Well, in, I think it's section 6 of the
24 settlement, the documentation issues, first, all of the
25 documentation cures that are required in the PSAs are
26 being waived as to MERS loans.

1 Levitin-Respondent-Direct-Reilly

2 Secondly, for nonMERS loans there are new
3 requirements being added that if you want to have -- if
4 you want to get a documentation remedy from the master
5 servicer, now under the settlement there's got to be a
6 finding of materiality and causation.

7 By that what I mean is the new
8 provisions in the settlement, the new stuff is added in
9 the settlement says if it's not a MERS loans -- because
10 MERS loans are not addressed in any way; all this is
11 waived.

12 But if it's not a MERS loan, there has to
13 be both what settlement terms a mortgage exception and
14 a title exception before there is any liability for the
15 master servicer, and there has to be a failure -- this
16 has to connect with a failure to foreclose.

17 So you have to go through three things:

18 1, there has to be a for closure that
19 doesn't happen.

20 2, that foreclosure has to not happen
21 because of a mortgage exception.

22 3, the trust has to not be made whole
23 because of what's called a title exception, basically a
24 problem with title insurance documentation.

25 If all those three things happen -- and
26 whether they happen is something that's really in the

1 Levitin-Respondent-Direct-Reilly

2 discretion of, I think, the trustee -- then, and only
3 then, does the settlement say that the trust is
4 supposed to be compensated by the master servicer.

5 Q In your view, is that a reasonable term
6 for the trustee to have entered into?

7 A No.

8 MR. GONZALEZ: Objection, your Honor. That's
9 purely a legal conclusion.

10 THE COURT: Just rephrase it.

11 Q What's your view of the fact that the
12 trustee agreed to enter into that term in the
13 settlement?

14 A I think the trustee gave up significant
15 value for the trusts and that it did so without any
16 investigation of that value it's giving up.

17 What's particularly remarkable to me on
18 this is that the trustee had the ability to value this.

19 Q What do you mean?

20 A Well, in the settlement in section 6 the
21 settlement directs -- it talks about the trustee
22 preparing yet an additional set of document exceptions.

23 These were exceptions that were -- reports
24 that were prepared in April of, I guess, 2011.

25 So before the settlement -- before the
26 settlement agreement had been signed, the trustee goes

In The Matter Of:
BANK OF NEW YORK MELLON v.

November 19, 2013

Eric Allen
Official Court Reporter
60 Centre Street - Room 420
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 39

- - - - -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),

Petitioner,

- against -

for an order, pursuant to CPLR 7701,
seeking judicial instructions and
approval of a proposed settlement.

- - - - -X

Index No. 651786/11
Trial
60 Centre Street
New York, New York
November 19, 2013

BEFORE:

HONORABLE BARBARA R. KAPNICK,
Justice.

APPEARANCES:

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CHRISTOPHER HOUPPT, ESQ.

(Continued)

Summation-AIG-Rollin

1
2 Throughout the course of the case, your Honor,
3 there's been a lot of talk about, well, what are the
4 losses, what's the breach rate, what's the success
5 rate, and what's the ultimate reasonable settlement
6 amount?

7 What we have seen is an incredible range of
8 possibilities. We and your Honor have no idea where
9 the actual losses are.

10 Mr. Lin says at the low end, 61.3 billion.
11 The institutional investors are at about 108 billion.
12 That is a 40 billion dollar swing.

13 By the way, Mr. Burnaman, 84.7. Their trustee
14 expert, Mr. Burnaman.

15 I think in one of the briefs they wrote that
16 the losses are 53 billion. They're 53 billion now.
17 They have to project losses into the future. By the
18 way, 53 billion is twice as much as it was between the
19 institutional investors put PTX 604 together.

20 So where are we in this 40 billion dollar
21 swing? This is a threshold determination to get to
22 that number. Can you possibly conclude that with a 40
23 billion dollar swing at the top end, you're going to
24 come out with anything reliable at the bottom?

25 And it goes on. It happens at the breach rate
26 too, your Honor. There is evidence of breach rates

Summation-AIG-Rollin

1
2 ranging from 36 percent -- that's what Lin uses, lowest
3 of the low of the low -- all the way up to the MBIA
4 case, 91 percent. Ms. Patrick put in her letter on
5 June 17, for example.

6 Well, what's the breach rate there? Let's
7 see. We have it could be as high as 65 percent. That
8 is column 5 in PTX 604.

9 It could be as high as 60 percent, and that's
10 column 4 on PTX 604.

11 It could be, your Honor, at 50 percent. This
12 is column 2. This is the adjustment, just the
13 adjustment that the institutional investors made of the
14 GSE data, based on the fact that the GSE data wrongly
15 stopped the representations and warranties at two
16 years. That was the first stop sign I used earlier
17 today.

18 Where is it? We don't know. How about the
19 success rate, your Honor? Which imbeds the meritless
20 causation argument that we've heard about in the ResCap
21 case?

22 It's at 50 percent? That's a couple of the
23 columns. Is it 60 percent? That's a couple of the
24 columns they used in PTX 604. We have no idea, your
25 Honor. The ranges are too broad.

26 Where would your Honor like to place this one?

Summation-AIG-Rollin

1
2 Where shall I place this one? Where would the trustee
3 place this one? The big question mark? What is a
4 reasonable settlement amount? Mr. Burnaman's low end
5 is 8.2. When you run these calculations, 73.7 billion
6 dollars.

7 Can we possibly make a decision here about
8 whether 8.5 is a reasonable number in light of this
9 incredible range of all equally bad, frankly, evidence?

10 Where does it go, and how can your Honor rule
11 that this settlement is reasonable, that investigation
12 was conducted, that they valued the claims and
13 defenses, that's they did their job as a trustee, when
14 we could be anywhere from here to here?

15 And where do they want you to put it? All the
16 way down here, Judge, all the way down here at the
17 very, very end, the very, very lowest.

18 And that's just the repurchase liability.
19 There is nothing in here for servicing liability.
20 There is nothing in here for documentation liability.
21 There is nothing in here for the loan modification
22 liability.

23 One more point, your Honor: 138. There is
24 some information that your Honor would need before
25 approving the settlement that your Honor does not have.
26 8 and a half billion is a cap. 8 and a half billion is

In The Matter Of:
BANK OF NY MELLON v.

November 21, 2013

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 39

-----X
IN THE MATTER OF THE APPLICATION OF
THE BANK OF NEW YORK MELLON (as Trustee
Under various Pooling and Servicing
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Various Indentures),

Petitioner,

for an order, pursuant to CPLR 7701,
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APPEARANCES:

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CHRISTOPHER HOUPPT, ESQ.

1 Rebuttal-Patrick-Inst. Investors

2 did not apply.

3 The objectors are simply wrong when they
4 argued, as Mr. Rollin did, that the trustee did not get
5 compensation for that harm.

6 It got 12.5 to 3 billion dollars of
7 improvements and value, at a cost paid by Bank of
8 America, not by the trust. It cost Bank of America
9 hundreds of millions of dollars, and the objectors have
10 no response to that.

11 The next false claim in this case is that the
12 trustee failed to get a remedy for document defects in
13 MERS loans. But the repurchase remedy, the \$8.5
14 billion cash remedy, covers all defects in mortgage
15 loans, including document defects.

16 It covers all mortgage loans, including all
17 MERS loans, and it pays the trust \$8.5 billion for
18 already purchased claims. And guess what? Document
19 defects are listed reps and warranties. They are part
20 of the \$8.5 billion cash settlement.

21 But more important, your Honor: The trustee
22 considered these issues. There was discussion of the
23 fact that document defects are a common ground on which
24 repurchase claims are pursued. That's Plaintiff's
25 Exhibit 25.

26 And, importantly, the remedy the trustee got,

BARBARA STROH, CSR, CRR, CMR