

September 30, 2016

Hon. Saliann Scarpulla
Supreme Court of the State of New York
New York County
Commercial Division
60 Centre Street
New York, NY 10007

VIA NYSECF

Re: *In re Bank of N.Y. Mellon*, No. 150973/2016: Article 77 Transcript Citations

Dear Justice Scarpulla:

Pursuant to the Court’s request at oral argument for “trial testimony during the first Article 77 proceeding that . . . shed[s] light on what the parties intended the settlement agreement to mean and how it should function,” Respondents Tilden Park Capital Management LP and Prosirris Capital Management LP respectfully submit the following transcript excerpts from the prior Article 77 proceeding concerning these trusts, *In re Bank of N.Y. Mellon*, No. 651786/2011 (N.Y. Sup. Ct.).¹

In that proceeding, the Trustee argued for judicial approval of a settlement that reached a fair result for investors – not just a small group of investors. The negotiations that led to the settlement involved give and take with no class of investors getting all that they wanted. The clear primary intent, however, was to pay funds to the “tranches who are most senior ***who suffered losses***” – not simply to the senior-most tranches. Tr. 1877:16-1878:16 (Jason Kravitt) (Ex. 10). And they intended that the Settlement proceeds be distributed through the various waterfalls in the PSAs of the 530 trusts. Tr. 1642:6-1643:2 (Jason Kravitt) & Petitioner’s Ex. 44 (Ex. 1).

¹ Emphases are added throughout and indicated in bold italic text.

1. The parties intended to pay the Settlement through each individual PSA's "waterfall" provisions:²

Tr. 1642:6-1643:2 (Jason Kravitt, Mayer Brown partner and lead negotiator for BONY) & Petitioner's Ex. 44 (Ex. 1):

Q: The next paragraph, Ted, I assume that's Mr. Mirvis [attorney for Bank of America], correct?

A: Correct.

Q: Ted asked us how we felt about various alternative means of payment to certificate holders on some paren but not nearly enough yet reflection, *we think that the, "default" remedy is for funds to go through the waterfall if at all possible.* Then skip the paren. We are completely open minded at this point. So, talking about the funds going through the waterfall, you were already discussing, after the very first meeting, how the funds were going to be distributed to the trusts, correct?

A: Correct.

Q: And one possibility was through the waterfall?

A: Correct.

Q: And at that – you understand or believe that the process for putting funds through the trust was ultimately not agreed to be a waterfall?

A: *No, what was agreed was that the cash payments to each trust would go through the waterfall.*

2. The parties intended to pay through the PSAs' waterfalls to avoid potential conflicts among competing certificate holders:

Tr. 4589:19-4590:5 (Loretta Lundberg, managing director of BONY's Corporate Trust Division) (Ex. 2):

Q: Bank of New York Mellon knew that *different groups of certificate holders could be competing for the same dollars within the trusts* that Ms. Patrick had put the bank on notice of in the summer of 2010?

A: *That's true.*

² Dkt. #3 (Settlement Agreement) § 3(d)(i) (Settlement funds should be distributed "in accordance with *the distribution provisions of*" each PSA) (emphasis added); Tr. 1879:5-1879:12 (Kravitt) (the "waterfall" is "the distribution [of payments] set out within the trust documents").

Q: And Bank of New York Mellon knew that there was – *that it had the potential to create conflicts among certificate holders*; correct?

A: *Well, the PSAs set forth how money is to flow to different classes of certificate holders and certificate holders should understand that when they bought the securities.*

3. The parties understood that there were different PSAs, with different waterfall provisions, in the 530 trusts at issue, and intended to respect those differences:

Tr. 1479:12-1481:7 (Jason Kravitt) (Ex. 3):

Q: You found through that process that there were different provisions in the 530 Pooling and Servicing Agreements, correct?

A: Yes.

Q: And that process was undertaken in part because Bank of New York Mellon was a Trustee 530 different times, correct?

A: Correct.

Q: In 530 different trusts?

A: Correct.

Q: And the obligations of the Trustee in each one of those trusts was driven in part by whatever the language was of the respective Pooling and Servicing agreement?

A: Correct.

Q: *And the rights of certificate holders in each one of those 530 trusts would have been driven in part by the language of that particular Pooling and Servicing Agreement?*

A: *Correct.*

Q: And you found that there were differences in provisions within the 530 trusts that mattered as it related to the settlement negotiations?

...

A: There were – I'm trying to answer this precisely. There were differences in provisions. There's lots of wording differences in the provisions. If you're asking were there material differences – in other words, if there are differences that can make a difference in how things come out, how we went to it with an important legal issue, how

it would come out, I don't think that there were many instances of that. However, I can't say that there was no material difference between all 530 agreements.

Q: You can't say because you don't know?

A: Because I don't remember.

Q: Do you remember if you did know before June 29th, 2011?

A: To the best of my knowledge, we had reviewed all 530 trust agreements as to the provisions that affected the various things that we were doing in the settlement.

Q: *So is it your testimony that you, on behalf of Bank of New York Mellon and, therefore, Bank of New York Mellon knew what differences were in the 530 trusts during the settlement negotiations?*

A: *We believe that we did.*

4. The parties intended that the Settlement would follow the PSAs "to a tee" – without any opportunity to pick and choose which of the PSAs would be followed and which would not, or which provisions of a given PSA would apply:

Tr. 2308:14-22 (Robert Bailey, in-house counsel for BONY) (Ex. 4):

Q: Was there a discussion that they were going to play by the book and follow the PSAs in the settlement discussions?

A: I don't know if it was expressed, but *I think it was understood that the process moving forward would have to conform and comport with the PSAs.*

Q: And is it your view based upon what you know about the process to move forward, that *the Trustee followed the PSAs to the tee* from that meeting on November 3, 2010 until June, 2011?

A: *I'm not aware of any material deviation from the PSAs.*

Tr. 1918:8-1919:8 (Jason Kravitt) (Ex. 5):

Q: Mr. Kravitt, each of the 530 Trusts has a corresponding Governing Agreement; is that correct?

A: Correct.

Q: And for most of the trusts, the governing – of the governing document is what we're calling the Pooling and Servicing Agreement; is that correct?

A: Correct.

...

Q: And the PSA set forth the duties and obligations of the parties to the PSAs; is that correct?

A: Correct.

Q: And that includes the trustees; is that correct?

A: Correct.

...

Q: *And none of those parties get to just pick and choose which of the obligations in the PSAs it is going to follow; is that correct?*

A: *Correct.*

Q: The parties are not allowed to say, You know what, I'll follow the other provisions, but I'm not going to follow all of these provisions, right?

A: Right.

Tr. 2157:25-2158:10 (Jason Kravitt) (Ex. 5):

Q: Mr. Kravitt, you testified that the power to bring claims gives the Trustee here the power to accept a remedy that is in the best interest of security holders; isn't that correct?

A: I did.

Q: And, that does not however, give the Trustee the power to rewrite the PSAs, does it?

A: It does not.

Q: *And, in fact, it does not give the Trustee the right to override express provisions of the PSAs governing when they may be changed, correct?*

A: *Correct.*

5. AIG specifically insisted that the individual PSAs should govern how each trust would operate with respect to the Settlement:

Tr. 268:16-269:15 (opening statement of Michael Rollin, attorney for AIG) (Ex. 5):

Now, as everybody has discussed and as Mr. Reilly noted, there are 530 trusts in this case. They are these. There is a lot of them. Each of these trusts has its own governing document, normally it's called a pooling and servicing agreement. For the indentured trusts it's called something different. ***And these PSAs – and nobody will dispute this, you won't hear anyone saying otherwise in evidence – the PSAs dictate how the trusts are supposed to operate.*** They tell the trustee what it's supposed to do. They tell the master servicer what it's supposed to do. They are not allowed to make it up. They are not allowed to change it. They've got what it tells them they are supposed to do. And as Ms. Patrick indicated, ***“what happens here has to be grounded in the contract.”*** That's a quote. ***And nobody is going to disagree with that, your Honor.*** No witness is going to say otherwise. ***But significantly, the PSAs are not all the same.*** And this is nowhere more apparent than with the repurchase of modified loan provision. Some of the PSAs require the master servicer to repurchase modified loans, others do not.

Your Honor, it is not challenging to figure this out. You just have to read the PSAs. And I know there is a lot of them and it might take a while to go through all 530, but the trustee was supposed to read the PSAs. ***We read the PSAs, your Honor.***

6. The Trustee, the sole signatory for the Trusts, acted for the benefit of all certificate holders in all 530 Trusts, not only the senior-most certificate holders:

Tr. 1777:12-18 (Jason Kravitt) (Ex. 6):

Q: You also knew that Bank of New York Mellon has a continuing fiduciary duty to the Certificate Holders, correct?

A: A continuing fiduciary duty to be loyal to them.

Q: And that's ***all Certificate Holders in the 530 trusts?***

A: ***Or any other trusts where we're Trustee.***

7. The “institutional investors” (including Blackrock and AEGON) were involved in negotiating the settlement and supported a “universe” deal covering all 530 trusts, not just the 17 at issue now:

Tr. 1354:22-1356:13 (Jason Kravitt) (Ex. 7):

Q: Now, in the next paragraph you use the term “universe transaction.” What is that a reference to?

A: Well, from the very first meeting, that is, the November 18th meeting, the parties discussed what the settlement could apply to. When Kathy Patrick had come into the negotiations and when we started out we were both thinking in terms – thinking in terms

of the settlement applying just to those trusts where Ms. [Kathy] Patrick's investors³ could give the trustee a binding Safe Harbor instruction. BofA announced their interest at the very start of their first meeting of having a settlement that extended to a wider group trusts because that would make it more advantageous to it if it was going to pay a large sum of money and reformulate the way it serviced assets, the more trusts involved the better so that it could put all its legacy and RMBS problems behind it. From the trustee's points of view, we thought that if it could be done to negotiate a settlement that applied to a much wider platform, that would be good for all investors, because that would include investors who otherwise would have no remedy if they warranted the trust that Kathy Patrick's group could give a binding Safe Harbor instruction to. So all the parties are interested in the idea of extending the settlement beyond the Safe Harbor trust, and that is what we mean by universe – about the universe of transactions, what could it apply to.

Q: Now, at the time that settlement discussions began, what is your recollection of how many trusts were being initially discussed?

A: I believe when I first met with Kathy in Houston we were talking about something on the order of 65 trusts.

Q: And before that number got to the 530 that are addressed in this litigation, did that number grow to some other figure?

A: Yes. Even while the trust being considered for settlement remained just the trust that Kathy could give binding instructions with regard to, other investors started to join her group. And as investors joined her group and their holdings were combined with the holdings of investors already in the group, the number of trusts as to which she could give binding instructions grew and it grew to over 100 and then I think it grew eventually to over 200.

8. Blackrock and AEGON, in addition to many other institutional investors who participated in negotiations, held various classes of certificates, not merely the senior-most certificates. Accordingly, it is not a fair conclusion that the Settlement was intended only to benefit the senior-most certificates:

Tr. 3501:11-3502:22 (Professor Daniel Fischel, expert for BONY) (Ex. 8):

Q: Professor Fischel, right before the break, you were taking us through Professor Levitin's analysis of the role of the institutional investors

³ Ms. Patrick represented numerous institutional investors in negotiating the Settlement Agreement and litigating the prior Article 77 proceeding, including Blackrock, AEGON, and affiliated entities. See Affidavit of Kathy D. Patrick, *In re Bank of N.Y. Mellon*, No. 651786/2011, Dkt. #15 (N.Y. Sup. Ct. N.Y. Cnty. June 29, 2011), ¶ 1.

A: Yes. . . . But this is supposedly the second basis in Professor Levitin’s opinion as to why the institutional investors are not representative.

So if you begin just with the first sentence, “the institutional investors may not be”, again, the same speculation, “invested in similarly supposed tranches of the covered trusts.” And then he goes through an example of what would happen if the institutional investors had, for example, senior tranches and other certificate holders in the 530 trusts did not, rather than read the whole thing. But if you just go to the last sentence and just highlight that, “if that were the case, their interests would not be representative of many other certificate holders.” So, again, he doesn’t say that is the case, he just speculates as to what might happen if it were the case. But, again, it turns out that this is something that can be checked and it’s not the case. You can look at the CUSIP numbers for the certificate holders of the various trusts that were provided by the institutional investors interrogatories, look at a standard database, ABS Net, and compare the tranches held by the institutional investors with all the other certificate holders in all the different trusts.

And so it’s not just speculation, again, it’s incorrect speculation. Speculation that can be refuted by checking, and certainly *provides no support for the basic claim that the institutional investors are not representative of the other certificate holders. If anything, if you did the checking, you would conclude the opposite.*

9. **The Settlement was a compromise between “some of the most sophisticated investors in the world,” and the court proceeding was a way to allow all investors to have a voice, so that all issues – including those being raised now by AIG, Blackrock and AEGON – could be considered:**

Tr. 3124:7-3128:25 (Richard Stanley, head of BONY’s “Structured Finance Group”) (Ex. 9):

Q: Mr. Stanley, what was your rationale for voting in favor of the Trustee entering into the Settlement Agreement?

A: . . . *[T]his was a compromise.* It was a compromise between parties that are having a real challenging time up front getting together, where I am heading there. *You are dealing with 22 of some the most sophisticated investors in the world and they approved it.* So, you know, in my mind, that’s, it’s market tested. Here is the investor telling me, I want the deal. So, I have a market test with some of the most sophisticated investors in the world. I have got more money on the table than some of obligors that I understood could even pay. I had a certainty of payment, and then you get to the point where, about the other investors that are not at the table because there are lot more investors in these Trusts than 22, whatever the number was.

That’s where the Court approval was discussed and again, this is my rationale, this was a forum for other investors to have a voice. So, it opened it up to the public, if you will, all the investors, to have a voice at the table. So, I am sitting here saying okay, it’s market tested by investors that have skin in the game, real skin, I know there was a challenge in

getting to that compromise, just given the length of time it's taken to get, the months it took

10. The parties intended for the Settlement to be paid to the “tranches who are most senior *who suffered losses*” – not simply to the senior-most tranches:

Tr. 1877:16-1878:16 (Jason Kravitt) (Ex. 10):

Q: Now, let's tell the Court what the effect is. For a large Institutional Investor who has bought into any of these tranches, any of the trusts that we are dealing with, at a deep discount, the amount of money they are going to get back on the proposed waterfall will be substantially greater a return than somebody who bought into the tranche and has suffered the downturn and not sold out? They are at par?

. . .

A: Well, I disagree. Here is why I disagree. The way we wrote the Settlement Agreement is that *it's the tranches who are most senior who suffered losses who get the cash first*, therefore, the people who are holding subordinated and most subordinated tranches, likely, will not get any cash out of the settlement if the losses in the settlement went to any of the senior level tranches. So, if you made a bet on a subordinated tranche, this wouldn't necessarily get you any cash distributed out of the settlement. The way the cash is distributed would restore the face amount of some of this – or the face amount or the partial portion of the face amount of any lower seniority tranche, it might get some interest in a future period it might not otherwise get. But the recovery goes first in line to the senior holders and then the next level and so on down to the bottom.

* * *

Respectfully submitted,

/s/ Steven F. Molo
Steven F. Molo

CC: All counsel of record via NYSECF

Exhibit 1

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(03:37:03-03:38:19)

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

2 Q Did they make clear to you during the settlement

3 process they wouldn't turn the loan files over?

4 A They made it very clear that they would prefer not to

5 turn loan files over.

6 Q Who said that?

7 A Who? Who from Bank of America?

8 Q Correct.

9 A I'm sure it was said on more than one occasion and I'm

10 sure it was said by a Wachtell attorney, but I don't remember

11 the circumstances or who.

12 Q When?

13 A I'm sure the statement on fighting was Ted Mervis'.

14 Q Was there a point between October of 2010 and

15 June 29th of 2011, that it became clear to you that Bank of

16 America and Bank of New York Mellon and Ms. Patrick and its

17 Institutional Investors were going down the route of

18 negotiating without the loan files?

19 A Let me try and make this clear, and I apologize if

20 it's a long answer. Okay?

21 Whether or not we asked for loan files, again, was a

22 function of how well the negotiations were going with regard to

23 the cash payment and whether we thought we needed to go look at

24 loan files. We thought -- by "we," I mean the Institutional

25 Investors and the trustee -- thought that those negotiations

26 were going well enough, and the information that we had at the

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(03:38:40-03:39:33)

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

2 time was sufficient that we didn't need to hold out for

3 reviewing loan files. So there was never a decision made on

4 any particular day, we just never reached a point where we felt

5 that we needed to go back and ask for loan files.

6 Q When was the last time that the Bank of New York

7 Mellon asked for loan files from Bank of America?

8 A I don't think technically that we ever did ask for

9 loan files. We discussed if we did a sampling what the

10 sampling would be like, but we didn't -- we never made a

11 specific request for loan files.

12 Q There was never a point -- and I think we had this

13 conversation, but I'm trying to make sure I understand it.

14 There was a point where loan files were no longer

15 discussed between Bank of New York Mellon and Bank of America,

16 correct?

17 A Right. But that doesn't mean that we wouldn't -- by

18 "we," I mean the Bank of New York Mellon, wouldn't have gone

19 back to discussing a request for them if we felt it was

20 necessary to do so.

21 (Continued on the next page.)

22

23

24

25

26

Page 1641

(03:39:52-03:41:08)

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 Q When was the last time the two banks discussed the

3 Bank of America providing loan files?

4 A Mr. Reilly, I don't remember precisely, but it

5 probably would have been not later than February or March.

6 Q You said you discussed sampling with the Bank of

7 America?

8 A Yes.

9 Q What did you discuss about sampling? Did you have

10 specific conversations about the numbers that would be

11 sampled?

12 A No. Most of the dialogue I had with Bank of

13 America on sampling were issues that I sent to them to

14 consider when it came to -- if and when it came time to

15 construct a sampling formula, just to construct the sampling

16 formula. And we never debated how many loans need to be

17 sampled or the types of criteria I suggested we think about.

18 Q Did the Trustee ever reach a final view on what an

19 appropriate sample would be in the 530 trusts?

20 A No.

21 Q Did the Trustee ever obtain any counsel regarding

22 what an appropriate number of loan samples would be?

23 A No.

24 Q Did the Trustee ever ask anyone to start the

25 process of determining how many loans would be statistically

26 significant for sampling the 530 trusts?

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(03:41:27-03:42:48)

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 A No.

3 Q Did the Trustee ever determine how much it would

4 cost to engage in a loan sampling of 530 trusts?

5 A No.

6 Q The next paragraph, Ted, I assume that's

7 Mr. Mirvis, correct?

8 A Correct.

9 Q Ted asked us how we felt about various alternative

10 means of payment to certificate holders on some paren but

11 not nearly enough yet reflection, we think that the,

12 "default" remedy is for funds to go through the waterfall if

13 at all possible.

14 Then skip the paren. We are completely open

15 minded at this point.

16 So, talking about the funds going through the

17 waterfall, you were already discussing, after the very first

18 meeting, how the funds were going to be distributed to the

19 trusts, correct?

20 A Correct.

21 Q And one possibility was through the waterfall?

22 A Correct.

23 Q And at that -- you understand or believe that the

24 process for putting funds through the trust was ultimately

25 not agreed to be a waterfall?

26 A No, what was agreed was that the cash payments to

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(03:43:02-03:44:17)

1 Kravitt - Petitioner - Cross/Mr. Reilly
 2 each trust would go through the waterfall.
 3 Q Do you know, as you sit here today, how much money
 4 would go to any particular trust?
 5 A No.
 6 Q Is that calculable?
 7 A It's not calculable in the following sense: In
 8 order to calculate it you would have to know not only all
 9 the present losses that each trust has but all the future
 10 losses they would have. As the formula that was agreed on
 11 in the settlement agreement for dividing the funds up among
 12 the trusts, there was a fraction, the numerator of which was
 13 the historic and predicted future losses for each trust
 14 divided by a denominator, which was the sum of all those
 15 numerators. So until there's the last dollar loss on the
 16 last trust, or until the settlement is actually agreed on
 17 and NERA starts its calculation of future losses you can't
 18 do the calculation.
 19 Now, you can do an estimate but you can't do
 20 the actual calculation.
 21 Q And it hasn't been done?
 22 A I'm sorry, sir?
 23 Q It has not been done?
 24 A It has not been done.
 25 Q I asked you earlier before lunch whether you
 26 considered this a transaction.

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(03:44:29-03:45:29)

1 Kravitt - Petitioner - Cross/Mr. Reilly
 2 Remember when you said no?
 3 A I said no.
 4 Q Let's look at the 12th paragraph. You indicated
 5 to Bank of New York Mellon lawyers we look forward to our
 6 discussion and working with you on this transaction.
 7 Those are your words, correct?
 8 A I do. Or they are.
 9 Q PS, next page. I think we all agree that speed
 10 and PR and disclosure coordination is essential, and we are
 11 prepared to work as fast and in as coordinated a fashion as
 12 we can, correct?
 13 A Correct.
 14 Q So Bank of New York Mellon and Bank of America
 15 were in agreement that they needed to work quickly, correct?
 16 A Correct.
 17 Q They needed to coordinate on public relations,
 18 correct?
 19 A Correct.
 20 Q Disclosure coordination, did that mean notice to
 21 certificate holders or disclosure to the public or what?
 22 A Any type of disclosure.
 23 Q Including notice to certificate holders?
 24 A I didn't have any particular notice in mind when I
 25 wrote that.
 26 Q You didn't need to coordinate with Bank of America

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(03:45:45-03:47:41)

1 Kravitt - Petitioner - Cross/Mr. Reilly
 2 as to what to tell certificate holders as to the Trustee,
 3 did you?
 4 A No. I didn't want Bank of America to be surprised
 5 by anything we put in a notice to certificate holders.
 6 Q Because you were already working with them in a
 7 coordinated fashion, correct?
 8 A No. Because it has been my experience that
 9 negotiations often fall apart if the parties don't
 10 coordinate their disclosure.
 11 Q At this point, though, did any process get set up
 12 for public disclosure of the negotiations?
 13 A No. We agreed at some point that we would discuss
 14 disclosure, but we did that ad hoc when we felt it was time
 15 to discuss disclosure.
 16 Q Nothing in this lawsuit discusses the possibility
 17 of litigation, correct?
 18 A Nothing -- I'm confused by what you're saying.
 19 What lawsuit?
 20 Q Nothing -- I'm sorry. Nothing in this e-mail
 21 suggests the possibility of litigation, correct?
 22 A Correct.
 23 Q If we could look at Exhibit R1474. This is an
 24 e-mail you sent on November 30th, 2010, correct?
 25 A Correct.
 26 Q And you sent it to Mr. Mirvis, Mr. Koplou and Ms.

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(03:47:54-03:48:48)

1 Kravitt - Petitioner - Cross/Mr. Reilly
 2 Golin from Wachtel, correct?
 3 A Correct.
 4 Q And you copied Mr. Ingber, correct?
 5 A Correct.
 6 Q And referred to that group as team, right, hello
 7 team?
 8 A Correct.
 9 Q That's a pretty friendly reference to a group of
 10 lawyers in which you're going to be evaluating claims
 11 against their clients, right?
 12 A It is, I'm a very friendly person.
 13 Q Did you consider the Wachtel lawyers to be part of
 14 the team at this point?
 15 A I considered the Wachtel lawyers to be people with
 16 whom we were negotiating in an attempt to reach an
 17 agreement.
 18 Q They were --
 19 A So I treat them politely.
 20 Q Well, you can treat them politely by saying hello,
 21 right?
 22 A Mr. Reilly, I'm sure you have very effective ways
 23 of negotiating, you're a very impressive lawyer. I have my
 24 ways of negotiating, they are different than yours.
 25 Q All I'm trying to establish is you had a
 26 negotiating team by then, in your words, that included the

From: Kravitt, Jason H. P.
Sent: Saturday, November 20, 2010 11:19 AM
To: 'christopher.garvey@bankofamerica.com'; 'mgkoplow@wlrk.com'; 'jana.j.litsey@bankofamerica.com'; 'tnmirvis@wlrk.com'
Cc: 'kevin.mccarthy@bnymellon.com'; Ingber, Matthew D. <MIngber@mayerbrown.com>
Subject: Discussions on PSAs etc.

Good morning. I am sure that you will agree that our meeting on Thursday afternoon was a good start on reaching constructive solutions.

I managed to reach Kathy on Friday and had a good follow up conversation with her. We also, as Meyer had suggested, tried calling Ted to have a similar discussion, but weren't able to connect.

Matt and I wished to discuss the following. I suggest that we try to have a similar discussion on Monday or thereabouts so that we can stay coordinated and move as fast as we can as December 17 is really right around the corner.

First, Kathy asked if we would draft the "tolling" agreement. We had some ideas for that ourselves, so we gladly agreed and are drafting such an agreement for the parties' review. We hope that you are okay with that and we also hope to have it for the parties' review early next week.

Second, we discussed with Kathy the probate "solution". We are concerned that the DB case involved reforming a trust where there had clearly been a mistake to conform to the parties' intent. Here, while the argument might be that we are refining the parties' intent on something like what "materially adverse" means, the analogy may not be completely perfect and we all need to think more about the vulnerabilities of a judgment obtained in that fashion.

We also discussed the prepackaged class action where I believe that the argument would revolve around the proper exercise of the Master Servicer's duties with regard to putbacks and the Trustee's effectuation of related remedies. If we could construct a very large, responsible, and varied investor group and gave effective notice to all CHs with opportunity to object, we might very well construct a more "bullet proof" remedy. This idea will take a lot of thought and research of course, but to us at this point in time it seems more appealing.

Another topic for discussion is to what universe of transactions you'd like the settlement to apply? When I asked Kathy what she thought, she wasn't certain either. All CW platforms? All platforms where BofA is MS? All BofA as issuer/seller platforms? First liens or also Helocs? We'd be very interested in your thoughts on that topic as obviously that will inform the architecture of our plans.

Moving on, the Trustee will need to be covered of course to insure that it is not exposed to any potential liability (of course we understand that there is always a risk of lawsuit in these things; but we will need to have expenses and liability covered with an appropriate indemnity from the parties).

(And this doesn't even include a further discussion of how statistical sampling would work, how the "matrix" would be agreed upon, and how dollar damages would be calculated, though, I also like the idea of an agreement on a dollar amount or how to calculate it, with the bank's just paying it and being done.)

Ted had asked us how we felt about various alternative means of payment to CHs. On some (but not nearly enough yet) reflection, we think that the "default" remedy is for funds to go through the waterfall if at all possible (perhaps after deduction for expenses where appropriate), but we are completely open minded at this point.

Judging from our discussion, you have obviously thought long and hard about these kinds of issues. We welcome a discussion as quickly as possible so that we can focus our own follow up efficiently.

We look forward to our discussion and working with you on this transaction.

In Re BNY Mellon
Index No. 651786/11
Depo. Exh. 044

PS. I think that we all agree that speed (and PR and disclosure coordination) is essential, and we are prepared to work as fast and in as coordinated a fashion as we can.

Jason

Jason H.P. Kravitt
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Exhibit 2

1 L. Lundberg - By Respondent - Direct/Reilly
 2 what I just said.
 3 Q In the summer of 2010, Bank of New York Mellon knew
 4 that it could be sued by individual certificate holders for
 02:56:15 5 any actions it took in resolving or settling -- resolving or
 6 negotiating the claims raised by Ms. Patrick; correct?
 7 A Certificate holders -- I'm sorry. I don't quite
 8 follow your question.
 9 Q Do you agree that Bank of New York Mellon could be
 02:56:45 10 sued -- could've been sued for actions it took in resolving
 11 the claims raised by Ms. Patrick's letter in the summer of
 12 2010?
 13 A Could we have been sued?
 14 Q Correct.
 02:56:57 15 A Probably.
 16 Q Okay. And, in fact, that was a concern of Bank of
 17 New York Mellon throughout the process?
 18 A I don't recall that.
 19 Q Bank of New York Mellon knew that different groups
 02:57:13 20 of certificate holders could be competing for the same
 21 dollars within the trusts that Ms. Patrick had put the bank
 22 on notice of in the summer of 2010?
 23 A That's true.
 24 Q And Bank of New York Mellon knew that there
 02:57:30 25 was -- that it had the potential to create conflicts among
 26 certificate holders; correct?

1 L. Lundberg - By Respondent - Direct/Reilly
 2 THE COURT: Well, if you know --
 3 MR. INGBER: I don't think we put in our
 4 verified petition that some certificate holders might
 02:58:39 5 want to pursue claims and not enter into forbearance
 6 agreement that would stop an event of default clock. I'm
 7 fairly certain of that.
 8 MR. REILLY: May I continue? I understand
 9 that. I want to keep going here.
 02:58:51 10 THE COURT: Well, no --
 11 MR. REILLY: I don't know if the Court's ruling
 12 on that question or not.
 13 THE COURT: That's what his objection is, to
 14 that question.
 02:58:58 15 MR. REILLY: Okay. I didn't know if you ruled
 16 yet.
 17 THE COURT: Well, I was letting everyone
 18 address it.
 19 He indicated that that was not in the petition,
 02:59:07 20 you said it was.
 21 MR. REILLY: Okay.
 22 THE COURT: So I don't have the petition in
 23 front of me, but unless you can show me that that's in
 24 the petition, I think that's somewhat speculating. And
 02:59:16 25 unless you can rephrase it --
 26 MR. REILLY: I will rephrase it, but I will

1 L. Lundberg - By Respondent - Direct/Reilly
 2 A Well, the PSAs set forth how money is to flow to
 3 different classes of certificate holders and certificate
 4 holders should understand that when they bought the
 02:57:48 5 securities.
 6 Q But Bank of New York Mellon knew that different
 7 groups of certificate holders may wish to pursue the put-back
 8 claims in different ways?
 9 A Yes.
 02:57:59 10 Q Some might want to be more aggressive than others?
 11 A That's correct.
 12 Q Some might want to pursue claims only if they got
 13 loan files?
 14 A That's correct.
 02:58:07 15 Q Some might want to pursue claims and not enter a
 16 forbearance agreement that would stop an event of default
 17 clock from ticking; correct?
 18 MR. INGBER: This calls for speculation about
 19 what other certificate holders might, in theory, want to
 02:58:23 20 do.
 21 MR. REILLY: It's not speculation.
 22 THE COURT: What?
 23 MR. REILLY: Not speculation.
 24 THE COURT: Why is it not speculation?
 02:58:28 25 MR. REILLY: Because that's what they put in
 26 their verified petition.

1 L. Lundberg - By Respondent - Direct/Reilly
 2 show you the petition after I ask a couple more
 3 questions.
 4 Q Bank of New York Mellon knew that it would be placed
 02:59:30 5 squarely in the middle of conflicts among certificate holders
 6 if they varied how they wanted to pursue put-back claims;
 7 correct?
 8 A In general, we were aware that in any trust, holders
 9 could have different ideas of how they want to resolve
 02:59:52 10 things.
 11 Q And you knew that the triggering of Ms. Patrick's
 12 letter could put Bank of New York Mellon in the middle of a
 13 conflict among certificate holders; correct?
 14 A I don't recall having that thought at the time.
 03:00:07 15 Q Then you knew that that could be a very real
 16 conflict for the Trustee; correct?
 17 A Again, I don't recall thinking about Ms. Patrick's
 18 letter in that way.
 19 Q Well, separate from Ms. Patrick's letter then, was
 03:00:24 20 there ever a point in the summer of 2010 that you and the
 21 default services group were concerned that certificate
 22 holders might have different views about how to pursue
 23 put-back claims so that Bank of New York Mellon was concerned
 24 about its ability to manage a conflict among certificate
 03:01:11 25 holders?
 26 MR. INGBER: I'm going to object to that.

Exhibit 3

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(10:13:12-10:14:27)

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 Pooling and Servicing Agreements or trust indentures for

3 various aspects of them.

4 Q And when was that done?

5 A It was done not all at once. It started -- I

6 don't remember when it started, it continued throughout the

7 seven month period.

8 Q Was it completed by New Year's Eve 2010?

9 A No, because different issues kept arising and we

10 would go back and check the agreements on the portions of

11 them that applied to the different issues that kept arising.

12 Q You found through that process that there were

13 different provisions in the 530 Pooling and Servicing

14 Agreements, correct?

15 A Yes.

16 Q And that process was undertaken in part because

17 Bank of New York Mellon was a Trustee 530 different times,

18 correct?

19 A Correct.

20 Q In 530 different trusts?

21 A Correct.

22 Q And the obligations of the Trustee in each one of

23 those trusts was driven in part by whatever the language was

24 of the respective Pooling and Servicing agreement?

25 A Correct.

26 Q And the rights of certificate holders in each one

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(10:14:42-10:16:08)

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 of those 530 trusts would have been driven in part by the

3 language of that particular Pooling and Servicing Agreement?

4 A Correct.

5 Q And you found that there were differences in

6 provisions within the 530 trusts that mattered as it related

7 to the settlement negotiations?

8 MR. GONZALEZ: Objection to form, your Honor.

9 And I object to the extent mattered is actually asking

10 him for some sort of legal opinion.

11 THE COURT: Well -- I'll allow you to answer.

12 A There were -- I'm trying to answer this precisely.

13 There were differences in provisions. There's lots of

14 wording differences in the provisions. If you're asking

15 were there material differences -- in other words, if there

16 are differences that can make a difference in how things

17 come out, how we went to it with an important legal issue,

18 how it would come out, I don't think that there were many

19 instances of that. However, I can't say that there was no

20 material difference between all 530 agreements.

21 Q You can't say because you don't know?

22 A Because I don't remember.

23 Q Do you remember if you did know before

24 June 29th, 2011?

25 A To the best of my knowledge, we had reviewed all

26 530 trust agreements as to the provisions that affected the

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(10:16:27-10:17:47)

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 various things that we were doing in the settlement.

3 Q So is it your testimony that you, on behalf of

4 Bank of New York Mellon and, therefore, Bank of New York

5 Mellon knew what differences were in the 530 trusts during

6 the settlement negotiations?

7 A We believe that we did.

8 Q And we for that purpose, let me expand that to

9 make sure you're clear, I'm talking about now the Trustee.

10 Based upon what you knew did the Trustee know what the

11 differences were in the 530 trusts during the settlement

12 negotiations?

13 A To the best of my knowledge, we conveyed to the

14 Trustee any of the imports of the provisions that affected

15 the issues, which the settlement agreement required us to

16 look at. And we made sure, to the best of our ability, that

17 our knowledge was passed on to our client, the Trustee.

18 Q Did you ever discuss with any representative of

19 Bank of America the difference -- any differences in

20 provisions in the 530 separate trusts?

21 A I don't recall.

22 Q Did you ever discuss with Ms. Patrick or any other

23 representative of her group of clients the differences in

24 the 530 trusts that you were aware of before June 29th,

25 2010 -- 2011?

26 A I almost certainly did, but I can't remember a

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(10:18:10-10:19:08)

1 Kravitt - Petitioner - Cross/Mr. Reilly

2 specific conversation at this point.

3 Q When you say you almost certainly did, do you mean

4 you almost certainly did have that conversation with Kathy

5 Patrick?

6 A Well, we discussed the various issues that arose

7 from the settlements all the time. And if any of the

8 provisions of the trusts varied in a material way with

9 regard to any of those issues, it's very likely that I would

10 have discussed that with Ms. Patrick.

11 Q It's very likely because even though you don't

12 remember you think it would have been important to do that,

13 correct?

14 A Well, I don't appreciate the way you said even

15 though you don't remember, but I'm going to agree with your

16 statement.

17 Q You don't remember?

18 A I don't remember.

19 Q I didn't mean to use a tone that you didn't like,

20 but the fact is you don't remember, right?

21 A That's correct.

22 Q And so, when you say that it's very likely you did

23 have that conversation, it's because you are speculating

24 that that's what you would have done had you known that

25 there were material differences in the 530 trusts?

26 A I don't know if I would agree with the word

Exhibit 4

Page 2307

1 R. Bailey - by Petitioners - Cross/Reilly
 2 Q Well, I'm talking about the beginning of the process
 3 and I assumed you were, too. So I'm focusing on this meeting
 4 that you had following Mr. Kravitt's first visit with
 5 Ms. Patrick?
 6 A I don't think there was a meeting. There may have
 7 been a meeting. I don't recall the construct for how I learned
 8 this information.
 9 Q Okay. Tell me what else you recall you learned after
 10 Mr. Kravitt -- right after Mr. Kravitt met with Ms. Patrick.
 11 Have you told me now everything you recall?
 12 A The meeting went well, appeared to be a basis for
 13 moving forward with potential settlement discussions. And
 14 Mr. Kravitt may have said that we had to, you know, reach out
 15 or discuss with Countrywide about the ability of possibly
 16 moving forward.
 17 Q Did he talk about having a plan of investigation so
 18 that the settlement discussions could begin?
 19 A I'm sorry. I don't understand the question.
 20 Q Did he talk about whether there was going to be an
 21 investigation?
 22 A Of loan files?
 23 Q Yes.
 24 A I don't recall.
 25 Q Did he tell you anything about whether or not the plan
 26 was to proceed following the PSAs?

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1 R. Bailey - by Petitioners - Cross/Reilly
 2 A Again, not sure I understand the question, but the
 3 Trustee would follow the PSAs.
 4 Q And Ms. Patrick had agreed to do that, too?
 5 A Again, I don't know what your question is.
 6 THE COURT: Then if you don't, let him rephrase
 7 it.
 8 Q Did Mr. Kravitt tell you that he and Ms. Patrick had
 9 agreed to play by the book, meaning play by the PSAs?
 10 A Did Mr. Kravitt use those words?
 11 Q Anything to the effect of those words. I don't want
 12 to be hung up on those words. I want to make sure you
 13 understand.
 14 Was there a discussion that they were going to play by
 15 the book and follow the PSAs in the settlement discussions?
 16 A I don't know if it was expressed, but I think it was
 17 understood that the process moving forward would have to
 18 conform and comport with the PSAs.
 19 Q And is it your view based upon what you know about the
 20 process to move forward, that the Trustee followed the PSAs to
 21 the tee from that meeting on November 3, 2010 until June, 2011?
 22 A I'm not aware of any material deviation from the PSAs.
 23 Q And you're not aware of any conversation that would
 24 have suggested that you were doing anything that was a
 25 deviation from the PSAs, correct?
 26 A I don't recall such a conversation.

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1 R. Bailey - by Petitioners - Cross/Reilly
 2 Q Do you recall a conversation where anyone with regard
 3 to the event of default ever raised a question -- and this
 4 includes Mr. Kravitt -- "You know, we can't do that because
 5 it's not allowed under the Pooling and Servicing Agreements"?
 6 A What is the "that"?
 7 Q Anything. Did anybody ever put up a hand and say,
 8 "You know what? If we're going to do that, we're going to have
 9 to figure out how to do it because it's not set forth in the
 10 Pooling and Servicing Agreements"?
 11 A Again, I'm not sure I completely understand your
 12 question.
 13 Q Well, then don't answer it. I want to ask you so you
 14 understand the question.
 15 Was there ever a discussion that any action the
 16 Trustee was taking during the settlement process was not
 17 specifically authorized by the Pooling and Servicing
 18 Agreements?
 19 A There were discussions about the Trustee's authority
 20 to do various things. I don't recall if part of that
 21 discussion may have been "but the trustee can't do X." There
 22 was a discussion of the Trustee's authority, yes.
 23 Q That's just a general statement. You don't have the
 24 specific memory of anybody ever saying, "Don't do that. That
 25 was not allowed by the Pooling and Servicing Agreements"?
 26 A Sitting here today, I do not have that recollection.

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1 R. Bailey - by Petitioners - Cross/Reilly
 2 Q Did Mr. Kravitt tell you that Ms. Patrick was willing
 3 to stop the clock from ticking following that first call, that
 4 first meeting with her?
 5 A I don't recall when the issue of the Forbearance
 6 Agreement first came up. I don't know if it was immediately
 7 following this meeting or at some point further on.
 8 Q And the ticking clock, you equated Forbearance
 9 Agreement just now, correct?
 10 A Right. Ms. Patrick had sent a Letter of
 11 Non-performance that in, sort of trustee speak, started a clock
 12 ticking, at least in her view.
 13 Q And the Forbearance Agreement was intended to stop the
 14 clock?
 15 A I don't know if it stops the clock. It pauses the
 16 clock while the parties agree to discuss settlement.
 17 Q So the cure period wouldn't run on December 18, 2010.
 18 That was the agreement, right?
 19 A It would -- I believe it tolled the cure period for
 20 whatever -- I think they were done on fairly discrete periods
 21 of time, months, a month, a week. I don't recall.
 22 Q Did Mr. Kravitt talk to you after his first meeting
 23 with Ms. Patrick about a plan by which the investors would
 24 start putting loans back to the Master Servicer?
 25 A I do not recall that.
 26 Q Do you remember at any time before the end of the year

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(02:16:42-02:17:34)

1 J. Kravitt - by Petitioner - Cross/Mr. Loeser
 2 A F T E R N O O N S E S S I O N
 3 T H E C O U R T : O k a y . M r . L o e s e r .
 4 M R . L O E S E R : H o w i s y o u r c a r , Y o u r H o n o r ?
 5 T H E C O U R T : I t c o u l d b e b e t t e r , i t c o u l d b e
 6 w o r s e . T h a n k s .
 7 B Y M R . L O E S E R :
 8 Q M r . K r a v i t t , e a c h o f t h e 5 3 0 T r u s t s h a s a
 9 c o r r e s p o n d i n g G o v e r n i n g A g r e e m e n t ; i s t h a t c o r r e c t ?
 10 A C o r r e c t .
 11 Q A n d f o r m o s t o f t h e t r u s t s , t h e g o v e r n i n g -- o f t h e
 12 g o v e r n i n g d o c u m e n t i s w h a t w e ' r e c a l l i n g t h e P o o l i n g a n d
 13 S e r v i c i n g A g r e e m e n t ; i s t h a t c o r r e c t ?
 14 A C o r r e c t .
 15 Q M r . K r a v i t t , c o u l d y o u m o v e t h e m i c a l i t t l e c l o s e r ?
 16 A S o r r y .
 17 Q A n d t h e P S A s e t f o r t h t h e d u t i e s a n d o b l i g a t i o n s o f
 18 t h e p a r t i e s t o t h e P S A s ; i s t h a t c o r r e c t ?
 19 A C o r r e c t .
 20 Q A n d t h a t i n c l u d e s t h e t r u s t e e s ; i s t h a t c o r r e c t ?
 21 A C o r r e c t .
 22 Q A n d t h e M a s t e r S e r v i c e r ?
 23 A C o r r e c t .
 24 Q A n d t h e s e l l e r o f t h e l o a n s ?
 25 A C o r r e c t .
 26 Q A n d n o n e o f t h o s e p a r t i e s g e t t o j u s t p i c k a n d c h o o s e

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(02:17:43-02:18:44)

1 J. Kravitt - by Petitioner - Cross/Mr. Loeser
 2 w h i c h o f t h e o b l i g a t i o n s i n t h e P S A s i t i s g o i n g t o f o l l o w ; i s
 3 t h a t c o r r e c t ?
 4 A C o r r e c t .
 5 Q T h e p a r t i e s a r e n o t a l l o w e d t o s a y , Y o u k n o w w h a t ,
 6 I ' l l f o l l o w t h e o t h e r p r o v i s i o n s , b u t I ' m n o t g o i n g t o f o l l o w
 7 a l l o f t h e s e p r o v i s i o n s , r i g h t ?
 8 A R i g h t .
 9 Q A n d t h a t i s t r u e f o r t h e l o a n m o d i f i c a t i o n p r o v i s i o n s
 10 i n t h e P S A s , a s w e l l , a m I r i g h t ?
 11 A T h a t i s c o r r e c t , a l t h o u g h , y o u h a v e t o r e a d e v e r y
 12 p r o v i s i o n i n t h e a g r e e m e n t t a k i n g a l l t h e c i r c u m s t a n c e s i n t o
 13 c o n s i d e r a t i o n .
 14 Q A n d b y a l l t h e c i r c u m s t a n c e s , y o u m e a n y o u h a v e t o
 15 r e a d t h e P S A a n d l o o k a t t h e w o r d s i n t h e P S A a n d d e t e r m i n e
 16 w h a t t h e w o r d s i n t h e P S A m e a n , i s t h a t w h a t y o u ' r e s a y i n g ?
 17 A N o . T h a t i s p a r t o f w h a t I ' m s a y i n g . W h a t I ' m s a y i n g
 18 i s i n a d d i t i o n , y o u h a v e t o l o o k a t t h e c i r c u m s t a n c e s a s
 19 u n d e r s t o o d b y t h e p a r t i e s w h e n t h e y e n t e r e d i n t o t h e P S A s a n d
 20 y o u h a v e t o l o o k a t t h e l a w s t h a t h a v e b e e n p a s s e d , w h i c h
 21 e f f e c t u a t e s t h e w a y s t o i n t e r p r e t t h e P S A s .
 22 Q O k a y . B u t a p a r t y i s n o t a l l o w e d t o s a y w i t h a P S A
 23 w h i c h i s a c o n t r a c t , t h e s e w o r d s , I ' m n o t g o i n g t o f o l l o w t h e m
 24 b e c a u s e I h a v e r e a d s o m e t h i n g s o m e w h e r e e l s e t h a t I w o u l d
 25 r a t h e r f o l l o w i n s t e a d ; i s t h a t f a i r ?
 26 A T h a t ' s f a i r .

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(02:18:57-02:20:17)

1 J. Kravitt - by Petitioner - Cross/Mr. Loeser
 2 Q A n d t h e P S A s c a n n o t b e a m e n d e d w i t h o u t f o l l o w i n g t h e
 3 p r o c e d u r e s i n t h e P S A s f o r a m e n d m e n t s ; i s t h a t f a i r ?
 4 A T h a t ' s f a i r .
 5 Q A n d y o u w o u l d a g r e e t h a t t h e s e t t l e m e n t c a n n o t a m e n d
 6 t h e P S A s ; i s t h a t f a i r ?
 7 A T h e s e t t l e m e n t c o u l d h a v e a m e n d e d t h e P S A s b e c a u s e
 8 S e c t i o n 1 0 . 0 1 h a s , I b e l i e v e , f i v e c i r c u m s t a n c e s i n w h i c h y o u
 9 d o n ' t n e e d c e r t i f i c a t e h o l d e r c o n s e n t o r a r a t i n g a g e n c y
 10 c o n s e n t t o m o d i f y t h e P S A s .
 11 Q O k a y . S o , w h a t y o u ' r e t e l l i n g t h e C o u r t i s t h a t t h e r e
 12 a r e c i r c u m s t a n c e s w h e r e y o u c a n c h a n g e t h e m e a n i n g s o f t h e
 13 p r o v i s i o n s o f t h e P S A s ?
 14 A W h a t I ' m s a y i n g i s --
 15 Q C o u l d y o u a n s w e r t h a t q u e s t i o n , s i r ?
 16 A W h i c h q u e s t i o n ?
 17 M R . G O N Z A L E Z : I t h i n k h e w a s , Y o u r H o n o r .
 18 A W h i c h q u e s t i o n a m I s u p p o s e d t o a n s w e r ?
 19 M R . L O E S E R : I f w e c o u l d r e a d t h e q u e s t i o n b a c k ,
 20 Y o u r H o n o r .
 21 (T h e r e c o r d i s r e a d b y t h e r e p o r t e r .)
 22 A T h e S e c t i o n 1 0 . 0 1 i n m o s t P S A s p r o v i d e s s o m e
 23 c i r c u m s t a n c e s i n w h i c h t h e p a r t i e s t h a t y o u m e n t i o n e d c a n a m e n d
 24 t h e P S A w i t h o u t c e r t i f i c a t e h o l d e r o r r a t i n g a g e n c y c o n s e n t .
 25 I f y o u i n t e r p r e t t h a t t o m e a n t h e m e a n i n g o f t h e p r o v i s i o n s ,
 26 t h e n , t h e a n s w e r i s y e s .

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(02:20:29-02:21:51)

1 J. Kravitt - by Petitioner - Cross/Mr. Loeser
 2 Q I s i t y o u r t e s t i m o n y t h a t t h i s s e t t l e m e n t d i d , i n
 3 f a c t , c h a n g e p r o v i s i o n s i n t h e P S A s ?
 4 A N o .
 5 Q B e c a u s e t h e c i r c u m s t a n c e s t h a t e x i s t h e r e , y o u w o u l d
 6 a g r e e , d o n o t a l l o w f o r c h a n g i n g t h e m e a n i n g ; i s t h a t c o r r e c t ?
 7 N o n e o f t h e p r o v i s i o n s t h a t y o u n o t e d w o u l d a l l o w f o r
 8 e v e n c h a n g i n g t h e m e a n i n g a r e a p p l i c a b l e h e r e ?
 9 A W e l l , n o . A s a m a t t e r o f f a c t , s o m e o f t h e m a r e
 10 a p p l i c a b l e h e r e .
 11 Q I s i t y o u r t e s t i m o n y t h a t y o u ' r e p e r m i t t e d t o c h a n g e
 12 t h e m e a n i n g o f t h e l o a n m o d i f i c a t i o n p r o v i s i o n s i n t h e P S A s ?
 13 A Y e s .
 14 Q I s t h a t w h a t y o u h a v e d o n e ?
 15 A I d o n o t b e l i e v e t h a t I ' v e c h a n g e d t h e m e a n i n g , b u t
 16 t h e w a y t o i n t e r p r e t t h e m c a n b e o v e r r u l e d b y t h e d e s c r i p t i o n
 17 o f t h e m i n t h e p r o c e s s .
 18 Q W e l l , m y q u e s t i o n w a s : W h e t h e r y o u c h a n g e d t h e
 19 m e a n i n g o f t h e l o a n m o d i f i c a t i o n p r o v i s i o n s i n t h e P S A s . C o u l d
 20 y o u a n s w e r t h a t q u e s t i o n ?
 21 A A l l w o r d s a r e s u s c e p t i b l e t o -- m o s t o f t h e t i m e , n o
 22 m a t t e r w h a t y o u w r i t e , i t ' s s u s c e p t i b l e t o s e v e r a l
 23 i n t e r p r e t a t i o n s .
 24 O n e o f t h e S e c t i o n s o f 1 0 . 0 1 s a y s t h a t i f t h e
 25 d e s c r i p t i o n o f w h a t e v e r s u b j e c t m a t t e r i s c o v e r e d b o t h i n t h e
 26 P S A s a n d i n t h e P r o S u p p t h a t t h e d e s c r i p t i o n i n t h e P r o S u p p c a n

1 J. Kravitt - by Petitioners - Redirect/Gonzalez
 2 perspective, there is absolutely zero difference between a
 3 report and testimony. It's out of court by a declarant
 4 who's not sitting here right now, so there is no difference
 04:10:31 5 as to those two things.
 6 The reason they didn't ask anything from the
 7 report obviously is because they only cherry pick those
 8 sections of the deposition that they believe somehow were
 9 favorable to their position.
 04:10:43 10 MR. REILLY: Professor Langbein testified under
 11 oath to this. If they don't like what he testified to,
 12 that's one thing, but the report is clearly hearsay. It
 13 doesn't overcome their problem. It's an out-of-court
 14 statement made by someone that they retained, who they can
 04:11:00 15 call and bring.
 16 THE COURT: You were at the depositions, so you
 17 were there and able to -- somebody was there at the
 18 deposition, so you were there and able to ask questions and
 19 make objections and things. It is different, I think, from
 04:11:14 20 a report.
 21 MR. GONZALEZ: Your Honor, I won't belabor the
 22 point. The issue is that both of them are out of court.
 23 I'll move to just -- if they want me to ask about
 24 deposition testimony, I'll move beyond Professor Langbein's
 04:11:31 25 opinion.
 26 Q Let's go to Professor Langbein's deposition at page

1 J. Kravitt - by Petitioners - Redirect/Gonzalez
 2 125, beginning at line 10. At that site he was asked -- the
 3 following occurred:
 4 "Question: Well, wouldn't it be fair to say that
 04:11:51 5 Bank of New York Mellon, as Trustee, had to negotiate
 6 with its goal of benefiting the beneficiaries, not
 7 forming any benefit for itself."
 8 And there was an objection and then answer.
 9 "Answer: That is basically wrong. Every trustee
 04:12:07 10 is always acting for itself when it obeys the law
 11 because if it disobeys the law and attracts liability,
 12 it's harming the beneficiaries and harming itself. So
 13 that there is always self-interest whenever a trustee
 14 administers a trust. It's in the nature of the
 04:12:30 15 relationship. There is, if you will, a structural
 16 overlap of interest."
 17 Do you agree or disagree with Professor Langbein's
 18 opinion in that testimony?
 19 A I agree.
 04:12:47 20 (Continued on following page.)
 21
 22
 23
 24
 25
 26

1 KRAVITT-PETITIONER-REDIRECT (GONZALES)
 2 T13 BY MR. GONZALEZ:
 3 Q If we can now go to page 108, beginning at line 12.
 4 Beginning line 12.
 00:01:01 5 "Question: I am trying to figure out then the
 6 basis of your opinion. What was the legal investigation
 7 that Bank of New York Mellon undertook before entering into
 8 negotiations that resulted in the proposed settlement?
 9 "Answer: Well, gosh -- " a word I am not familiar
 00:01:19 10 with, Your Honor -- "you have read Jason Kravitt's
 11 deposition, so you must have taken it. There were the
 12 range of issues about which he was concerned. There are
 13 aspects of this to which my attention has been directed, and
 14 quite appropriately.
 00:01:33 15 "The bank did just the right thing in going to
 16 Immensely prominent fiduciary counsel. Mayer Brown is one of
 17 the great fiduciary law firms in the country -- great depth
 18 in this area.
 19 "Jason himself, is an immensely distinguished
 00:01:52 20 figure in the securitization branch of fiduciary matters --"
 21 I believe it continues.
 22 MR. LOESER: Is there a question, your Honor.
 23 THE COURT: We didn't get there yet.
 24 MR. LOESER: The point is Mr. Kravitt is going to
 00:02:10 25 agree with some of this, some of the things the expert says.
 26 MS. PATRICK: This is a disruption.

1 KRAVITT-PETITIONER-RECROSS (WOLLMUTH)
 2 MR. LOESER: I am here for a question.
 3 THE COURT: He can read a little bit more before he
 4 gets to a question. There is no rule on that, that I am
 00:02:23 5 aware of.
 6 Q And they said basically, continuing line 5, where I was
 7 interrupted, they said basically to these Mayer Brown people
 8 "guide us, see what are our duties, how should we act in this
 9 circumstance, and that comes through loud and clear in Jason's
 00:02:39 10 testimony, and to a lesser extent in the testimony of the line
 11 officers that you depose -- Lundberg, and I forget the others."
 12 Do you agree or disagree with Professor Langbein's
 13 testimony that is among the steps that the Trustee took?
 14 A Except with regard to his description of me, as to
 00:02:59 15 which I have no opinion, I agree.
 16 MR. GONZALEZ: Nothing further of the witness, your
 17 Honor.
 18 THE COURT: Okay. Could you all come up here?
 19 (Whereupon, there was a discussion had off the
 00:03:14 20 record, among the Court and counsel, at this time).
 21 THE COURT: Okay, we only have a few minutes.
 22 Who wants to ask just a few minutes of recross?
 23 RECROSS EXAMINATION
 24 BY MR. WOLLMUTH:
 00:05:23 25 Q Mr. Kravitt, you testified that the power to bring
 26 claims gives the Trustee here the power to accept a remedy that

1 KRAVITT-PETITIONER-RECROSS (KASWAN)
 2 is in the best interest of security holders; isn't that correct?
 3 A I did.
 4 Q And, that does not however, give the Trustee the power
 00:05:43 5 to rewrite the PSAs, does it?
 6 A It does not.
 7 Q And, in fact, it does not give the Trustee the right to
 8 override express provisions of the PSAs governing when they may
 9 be changed, correct?
 00:05:55 10 A Correct.
 11 MR. WOLLMUTH: No further questions, your Honor.
 12 THE COURT: Ms. Kaswan.
 13 RECROSS EXAMINATION
 14 BY MS. KASWAN:
 00:06:02 15 Q Mr. Kravitt, when you said one of the reasons that you
 16 wanted to avoid an event of default was that the Trustee might
 17 need to replace the Master Servicer, in fact, there were a lot
 18 of other remedies that the Trustee could have pursued in the
 19 case of event of default other than replacing the Master
 00:06:36 20 Servicer, right?
 21 For example, the Trustee could have sued the Master
 22 Servicer to enforce repurchase rights?
 23 A I think it's --
 24 MS. PATRICK: Objection. Misstates -- the Master
 00:06:50 25 Servicer doesn't have repurchase obligations.
 26 MS. KASWAN: That the Trust could have sued the

1 KRAVITT-PETITIONER-RECROSS (KASWAN)
 2 the agreement.
 3 Q Sir, is it true, that you have learned since June of
 4 2011, that there were a series of Inspector General
 00:08:40 5 investigations into the methodology that Freddie Mac had used to
 6 evaluate and put back Countrywide loans?
 7 A Yes.
 8 Q And, you also know, sitting here today, that the
 9 Inspector General found that, in fact, Freddie Mac had not
 00:09:03 10 looked at a large number of loans that had defaulted in
 11 connection with its repurchase activity, right?
 12 A I think that's, and I apologize Beth, Ms. Kaswan, I am
 13 not trying to be obstreperous, but I think that's a misleading
 14 question.
 00:09:25 15 But, I am going to answer and say I am aware of that.
 16 Q Well, sir, you have read those Inspector General
 17 reports; is that right?
 18 A I have.
 19 Q They say -- do you have any other information about the
 00:09:38 20 Inspector General reports?
 21 A Well, if you look at the Freddie Mac one, it talks
 22 about not reviewing the loans for put-back obligations after the
 23 first 24 months. But, in fact, they did review the loans that
 24 were, that went, defaulted longer than 24 months after reviewed.
 00:10:06 25 If there were certain red flags, that might have been
 26 a warranty breach, and if you look at the chart, for example,

1 KRAVITT-PETITIONER-RECROSS (KASWAN)
 2 Master Purchaser who is causing losses to the Trust.
 3 THE COURT: Don't you, don't you mean the Master --
 4 A You mean the seller.
 00:07:09 5 Q Let me withdraw.
 6 A Think how tired I am, if you can't ask a question.
 7 Q Sir, you understood one of the options of the Trustee
 8 was to sue the Master Servicer, because the Master Servicer had
 9 failed to enforce the repurchase rights; isn't that fair?
 00:07:30 10 A That is something that we could have done, if we
 11 thought that was, that there was a rational argument that the
 12 Master Servicer should have done more.
 13 Q And, sir, when you said that the Forebearance Agreement
 14 did not effect the rights of other Certificate Holders to give
 00:07:52 15 notices of events of default, did the Forebearance Agreement
 16 effect the right of the Trustee to give a notice under 7.01 of
 17 an event of default?
 18 A Not with regard to the Trust. That wasn't a subject of
 19 the Forebearance Agreement.
 00:08:13 20 Q But, with respect to those that were?
 21 A I have to go back and look at the Forebearance
 22 Agreement.
 23 Which exhibit is it?
 24 Q So, is it that you don't recall without looking at the
 00:08:25 25 agreement?
 26 A I just feel uncomfortable answering without looking at

1 KRAVITT-PETITIONER-RECROSS (KASWAN)
 2 that they had in connection with that report, you will see, I
 3 believe, that the number of loans they checked in the 36-month
 4 period that had those red flags, actually exceeded the number of
 00:10:31 5 loans that they checked with regard to it that falls in the
 6 24-month period.
 7 MS. KASWAN: Your Honor, I move to strike. The
 8 answer is not responsive.
 9 The question to this witness was, do you have any
 00:10:44 10 information other than what is in the two Inspector General
 11 reports about what the Inspector Generally knew.
 12 MR. GONZALEZ: Your Honor, the fact that the
 13 witness gives an answer that Ms. Kaswan doesn't like, is not
 14 a basis to strike it.
 00:11:01 15 THE COURT: I didn't strike it. I am just letting
 16 her pose it again.
 17 Q Sir, you know, don't you, that with respect to the
 18 loans that the GSE reviewed and proposed to put-back to
 19 Countrywide, for those loans where there had been 36 payments,
 00:11:27 20 the chart that you are referring to stated that only 1 to
 21 2 percent of the loans were defective.
 22 Do you recall that?
 23 A I don't recall the specific percentages, Ms. Kaswan.
 24 Q Now, let's assume that they were 1 to 2 percent, you
 00:11:45 25 would agree with me, wouldn't you, sir, that it is far-fetched
 26 that, for that group of loans, 98 to 99 percent were prudently

Exhibit 5

[1] Opening Statement - Mr. Rollin
 [2] So we are not talking about something normal
 [3] here. It does nothing to talk about a big settlement if we
 [4] don't look at what it is that we settled. So if we look at
 [5] the release, the release is really like a bin. It's Bank
 [6] of America's bin. And claims get swept into this bin. And
 [7] if the settlement is approved, the bin gets emptied, gets
 [8] dumped out. They are off the hook. And they walk away.
 [9] The problem, your Honor, is that claims ended up
 [10] in this bin that weren't valued. Claims were given away
 [11] for free, valuable claims, claims potentially worth
 [12] billions of dollars. It's a simple principle, your Honor.
 [13] A fiduciary is supposed to protect trust assets; it's not
 [14] supposed to give them away for free.
 [15] Your Honor noted yesterday that this has been
 [16] going on for a couple of years and you know a lot about
 [17] this case and you have heard a lot about this case and
 [18] that's absolutely true. But there is some claims that you
 [19] haven't heard much about, your Honor, and those are the
 [20] claims asserted by my clients in the supplemental objection
 [21] that was filed on May 3rd. And they have to do with the
 [22] release of claims for the repurchase of modified loans.
 [23] Now, in the PFOJ, and I am not going to try and
 [24] say whatever it is, PFOJ there is an extremely important
 [25] component of that and it's up on the board as number ten in
 [26] the list that Mr. Reilly put together. And the PFOJ, I

[1] Opening Statement - Mr. Rollin
 [2] believe it's I, states: The trustee appropriately
 [3] evaluated the strengths and weaknesses of the claims being
 [4] settled. And J says, "The trustee's deliberations
 [5] appropriately focused on the strengths and weaknesses of
 [6] the trust's released claims."
 [7] So when I said that we need to focus on the
 [8] release, that's exactly what they are doing in the PFOJ.
 [9] They want you to look at the release and say they did the
 [10] investigation, they did the evaluation, and they released
 [11] claims appropriately.
 [12] The evidence will show that the trustee is not
 [13] entitled to these two findings. The trustee did not
 [14] evaluate the modified loan repurchase liability and it gave
 [15] them away for free.
 [16] Now, as everybody has discussed and as Mr. Reilly
 [17] noted, there are 530 trusts in this case. They are these.
 [18] There is a lot of them. Each of these trusts has its own
 [19] governing document, normally it's called a pooling and
 [20] servicing agreement. For the indentured trusts it's called
 [21] something different. And these PSAs -- and nobody will
 [22] dispute this, you won't hear anyone saying otherwise in
 [23] evidence -- the PSAs dictate how the trusts are supposed to
 [24] operate. They tell the trustee what it's supposed to do.
 [25] They tell the master servicer what it's supposed to do.
 [26] They are not allowed to make it up. They are not allowed

[1] Opening Statement - Mr. Rollin
 [2] to change it. They've got what it tells them they are
 [3] supposed to do. And as Ms. Patrick indicated, "what
 [4] happens here has to be grounded in the contract." That's a
 [5] quote. And nobody is going to disagree with that, your
 [6] Honor. No witness is going to say otherwise. But
 [7] significantly, the PSAs are not all the same. And this is
 [8] nowhere more apparent than with the repurchase of modified
 [9] loan provision. Some of the PSAs require the master
 [10] servicer to repurchase modified loans, others do not.
 [11] Your Honor, it is not challenging to figure this
 [12] out. You just have to read the PSAs. And I know there is
 [13] a lot of them and it might take a while to go through all
 [14] 530, but the trustee was supposed to read the PSAs. We
 [15] read the PSAs, your Honor. And let me tell you what we
 [16] found about the loan modification provisions.
 [17] There are three different ways that these 530
 [18] PSAs treat repurchased and modified loans. There are three
 [19] categories, your Honor, not one. The first category has
 [20] 49, I could draw circles around them, there is 49 PSAs that
 [21] fall into the first category. And the first category says
 [22] this about repurchasing modified loans. "The master
 [23] servicer may agree to a modification of any mortgage loan
 [24] if CHL," which is Countrywide Home Loans, "purchases the
 [25] modified mortgage loan from the trust fund immediately
 [26] following the modification as described below."

[1] Opening Statement - Mr. Rollin
 [2] That is what 49 of these contracts for which
 [3] everything that happens here must be grounded in say about
 [4] loan modifications. It's simple. It's clean. It's
 [5] uncontroverted. It's what it says. Now, Ms. Patrick in
 [6] her presentation didn't show you this version of the PSA.
 [7] Your Honor, this is the kind of language on which a motion
 [8] for summary judgment can and should be based. It's
 [9] absolutely clear. Now, there is 401 PSAs that fall into
 [10] the next category.
 [11] Now, this language, your Honor, adds a couple of
 [12] other conditions. But what's significant is how it starts.
 [13] It says, "The master servicer may agree to modification of
 [14] any mortgage loan." Any mortgage loan, it's not talking
 [15] about some mortgage loans, other mortgage loans. Any
 [16] mortgage loan can be modified and it has three conditions.
 [17] One is it's supposed to be in lieu of refinancing. And
 [18] another is, the master servicer purchases the modified
 [19] mortgage loan from the trust fund as described below.
 [20] Now, what you will hear, I guess the
 [21] institutional investors saying because we haven't heard
 [22] anything from the trustee, who is actually the party who's
 [23] suppose to be reading and interpreting these documents, but
 [24] apparently the institutional investors will say that this
 [25] provision makes it clear there is no obligation to purchase
 [26] any more modified loan other than in lieu of refinanced

Exhibit 6

Page 1776

(12:37:29-12:38:34)

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

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?

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

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.

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

25 Holders, as you said the other day, right?

26 A What I said was sometimes the rights that the

Page 1777

(12:38:52-12:39:46)

1 Kravitt - Petitioner - Cross- Mr. Reilly

2 Trustee has may not necessarily be consistent with what's

3 best for the Certificate Holders, but it has those rights.

4 Q And the same is true with regard to after the

5 settlement agreement. You said that Bank of America gave to

6 Bank of New York Mellon an indemnity for its conduct in

7 trying to promote the approval of the settlement, correct?

8 A Correct.

9 Q And you knew that you had that from the time the

10 filing was submitted?

11 A We knew we had that confirmation.

12 Q You also knew that Bank of New York Mellon has a

13 continuing fiduciary duty to the Certificate Holders,

14 correct?

15 A A continuing fiduciary duty to be loyal to them.

16 Q And that's all Certificate Holders in the 530

17 trusts?

18 A Or any other trusts where we're Trustee.

19 Q And even though you have -- you, again Bank of New

20 York Mellon has that fiduciary obligation of loyalty to its

21 Certificate Holders, up until the present as it relates to

22 the settlement still, right?

23 A Right.

24 Q Bank of New York Mellon nonetheless signed a best

25 efforts clause in which it contractually agreed that it

26 would do whatever was reasonably necessary to support the

Page 1778

(12:40:03-12:41:02)

1 Kravitt - Petitioner - Cross- Mr. Reilly

2 settlement even if it learned of facts that were contrary to

3 a fair settlement being found?

4 MR. GONZALEZ: Objection. Asked and

5 answered, your Honor.

6 THE COURT: Go ahead, just answer it, but I

7 think just wrap it up.

8 MR. REILLY: No. I understand.

9 A Just as BofA promised to support the agreement and

10 not back out of it the facts contrary to its liability

11 arose, we agreed not to change the settlement. The facts

12 contrary to our position arose. It was a two sided, evenly

13 balanced further assurances paragraph.

14 Q Bank of America doesn't have any fiduciary duties

15 to Certificate Holders, do they?

16 A Bank of America --

17 Q It's a yes or no question, Mr. Kravitt.

18 Does Bank of America have fiduciary duties to

19 the Certificate Holders that Bank of New York Mellon did

20 have fiduciary duties to?

21 A I don't know if they do or they don't arising from

22 other circumstances, but not in the circumstances of the

23 trust. They had lots of duties under the trust.

24 Q Fiduciary duties to the Certificate Holders?

25 A I have not researched that. That's a legal

26 question, I don't know the answer. But I'm perfectly

Page 1779

(12:41:13-12:43:07)

1 Kravitt - Petitioner - Cross/Mr. Pozner

2 willing to tell you that the Trustee has the duty of

3 loyalty.

4 Q And it did when it signed the best efforts clause?

5 A And it did and it does now.

6 Q Thank you.

7 MR. REILLY: Your Honor, I'll turn it over to

8 Mr. Pozner.

9 (Pause.)

10 CROSS EXAMINATION

11 BY MR. POZNER:

12 Q Mr. Kravitt, at one point this was going to be a

13 settlement between those people who came to the Gibbs &

14 Bruns law firm and Bank of America?

15 A I'm not sure what you mean. When I was hired it

16 was to represent the Trustee in connection with its

17 relations with the Institutional Investors. So I don't know

18 what you mean by a settlement between them and Bank of

19 America.

20 Q All I'm pointing out is the origins of this

21 settlement were not we have a problem and we are going to

22 try to settle 530 trusts, the origins were that the Gibbs &

23 Bruns law firm had a group of clients and they were seeking

24 actions in behalf of those trusts with Bank of America.

25 They were looking for damages from Bank of America for their

26 trusts.

Exhibit 7

Page 1354

(11:17:23-11:18:49)

1 J. Kravitt - by Petitioner - Direct/Mr. Gonzalez
 2 servicing obligations, etc., that provides a lot of risk in the
 3 following way:
 4 First of all, Bank of America is taking a big risk if
 5 it enters into that remedy, but at the same time, other
 6 certificate holders are not bound by that remedy and could sue
 7 it for additional consideration. The trustee, in entering into
 8 such a settlement, also exposes -- exposed itself to liability,
 9 because no matter what action a trustee takes, there is usually
 10 some group of certificate holders who don't agree with it and
 11 often sue the trustee or attempt to get the -- whatever the
 12 trustee did reversed.
 13 And from the investors point of view, they wanted to
 14 make sure that whatever they obtained in the settlement could
 15 not be taken away from them. So all three parties wanted to
 16 make sure that the settlement's terms would be binding and
 17 final, and in the case of Bank of America, insulated from any
 18 further remedies, and in the case of Bank of New York, make
 19 sure that it would not be liable or for him to go out-of-pocket
 20 solely because it entered into, negotiated and performed a
 21 settlement agreement.
 22 Q Now, in the next paragraph you use the term "universe
 23 transaction."
 24 What is that a reference to?
 25 A Well, from the very first meeting, that is, the
 26 November 18th meeting, the parties discussed what the

Page 1355

(11:19:23-11:20:55)

1 J. Kravitt - by Petitioner - Direct/Mr. Gonzalez
 2 settlement could apply to. When Kathy Patrick had come into
 3 the negotiations and when we started out we were both thinking
 4 in terms -- thinking in terms of the settlement applying just
 5 to those trusts where Ms. Patrick's investors could give the
 6 trustee a binding Safe Harbor instruction. BofA announced
 7 their interest at the very start of their first meeting of
 8 having a settlement that extended to a wider group trusts
 9 because that would make it more advantageous to it if it was
 10 going to pay a large sum of money and reformulate the way it
 11 serviced assets, the more trusts involved the better so that it
 12 could put all its legacy and RMBS problems behind it.
 13 From the trustees' points of view, we thought that if
 14 it could be done to negotiate a settlement that applied to a
 15 much wider platform, that would be good for all investors,
 16 because that would include investors who otherwise would have
 17 no remedy if they warranted the trust that Kathy Patrick's
 18 group could give a binding Safe Harbor instruction to. So all
 19 the parties are interested in the idea of extending the
 20 settlement beyond the Safe Harbor trust, and that is what we
 21 mean by universe -- about the universe of transactions, what
 22 could it apply to.
 23 Q Now, at the time that settlement discussions began,
 24 what is your recollection of how many trusts were being
 25 initially discussed?
 26 A I believe when I first met with Kathy in Houston we

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(11:21:10-11:22:30)

1 J. Kravitt - by Petitioner - Direct/Mr. Gonzalez
 2 were talking about something on the order of 65 trusts.
 3 Q And before that number got to the 530 that are
 4 addressed in this litigation, did that number grow to some
 5 other figure?
 6 A Yes. Even while the trust being considered for
 7 settlement remained just the trust that Kathy could give
 8 binding instructions with regard to, other investors started to
 9 join her group. And as investors joined her group and their
 10 holdings were combined with the holdings of investors already
 11 in the group, the number of trusts as to which she could give
 12 binding instructions grew and it grew to over 100 and then I
 13 think it grew eventually to over 200.
 14 Q And what was your understanding of how it is that that
 15 investor group expanded?
 16 A Well, my understanding is that in many cases they
 17 heard about what Ms. Patrick was doing and approached her to
 18 ask to become part of the group.
 19 Q Now, turning back to your e-mail, Mr. Kravitt, in the
 20 next paragraph where it's beginning "Moving on," you write --
 21 A Yes, let's everybody move on.
 22 Q We are well beyond that, at this point.
 23 "Moving on, the trustee will need to be covered, of
 24 course," and then you go on.
 25 What are you referring to there that "the trustee will
 26 need to be covered"?

Page 1357

(11:22:54-11:24:19)

1 J. Kravitt - by Petitioner - Direct/Mr. Gonzalez
 2 A I'm referring there to the fact that the -- the
 3 trustee, in this case, and as I understand it, trustees
 4 normally, wouldn't take any significant action unless they are
 5 indemnified against the cost of that action and any liability
 6 that may arise from it.
 7 Q And then just wrapping up with this e-mail in the next
 8 paragraph, the one beginning "and this," and in that sentence
 9 you make a reference to how "statistical sampling would work."
 10 Do you see that?
 11 A I do.
 12 Q And what were you referring to there?
 13 A Well, if we did do an investigation it would most
 14 likely involve a sampling of the various mortgage loans and the
 15 various trusts, and the validity of that sampling would depend
 16 on the quality of the formula used to create the sampling, so
 17 that is what I was referring to there.
 18 Q And you end that paragraph by saying, "I also like the
 19 idea of an agreement on a dollar amount or how to calculate it
 20 with the bank's just paying it and being done."
 21 What were you referring to there?
 22 A Well, of course, if you're negotiating damages for
 23 breach of warranty or remedies for a breach of servicing, not
 24 all breaches will have come to fruition at that point in time.
 25 You may discover that other loans that default in the future,
 26 for example, breached the warranties that were given to them.

Exhibit 8

1 Fischel-Petitioners-Direct/Mr. Ingber
2 supports the reasonableness and adequacy of the settlement
3 as well as the Trustee's decision to enter into the
4 settlement.

5 Obviously, in this particular case, the
6 Trustee went further and engaged in the process of hiring
7 additional experts; but in my opinion, even if the Trustee
8 had not done that, even if the Trustee had relied solely on
9 the support of the Institutional Investors in light of the
10 facts and circumstances of this case that I described, that
11 would be sufficient.

12 In fact, the Trustee being criticized for
13 going beyond for what I believe what was necessary to
14 support the reasonableness and adequacy of the settlement is
15 really more an example of no good deed goes unpunished, and
16 a justifiable basis for criticizing the behavior of the
17 Trustee.

18 My second basis for my opinion that the -- is
19 that as stated in the -- on the screen, the proposed
20 settlement is reasonable and adequate in light of the
21 uncertainty about the value of the claim and the ability to
22 recover in litigation, as well as the delay that litigation
23 would cause.

24 And, basically, what that opinion is, I think
25 both the magnitude of the claim as well as the ability to
26 collect on whatever ultimately the claim was demonstrated to

1 Fischel-Petitioners-Direct/Mr. Ingber
2 be, was very uncertain and is very uncertain.

3 And I think it's useful to just imagine what
4 would have happened had the Trustee rejected the
5 \$8.5 billion settlement with the servicing remedy, with the
6 document remedy and as a result, the parties got bogged down
7 and what might have happened if that occurred, such as for
8 example, Countrywide going bankrupt and of the 530 trusts
9 instead of getting the \$8.5 billion and the related remedies
10 got virtually nothing or were creditors in bankruptcy
11 proceeding.

12 And I think if you start to think of the
13 alternatives of what could have happened in light of the
14 uncertainty about collection as well as the magnitude of the
15 claim, I think the Trustee's decision looks, at least to me,
16 very good.

17 The third basis for my opinion is that all of
18 the claims in this case, about the conflicts of the Trustee,
19 are fundamentally flawed. I've looked at all of them. I
20 don't believe the Trustee had any conflicts. I believe from
21 what I can tell, the Trustee acted ethically and honorably
22 and in the best interest of the trust and the certificate
23 holders at all points in time.

24 And, finally, I looked at the consensus
25 market's reaction to the announcement of the settlement;
26 because one way to test whether Bank of America got

1 Fischel-Petitioners-Direct/Mr. Ingber
2 basically a windfall in this settlement, settlement for much
3 less than what the settlement should be, is to look at how
4 market participants, contemporaneous market participants who
5 observed the settlement, observed the events leading up to
6 the settlement, what their consensus judgment was.

7 Again, it doesn't prove that the settlement
8 was reasonable and adequate, but it gives some indication of
9 what people in the marketplace, including the most
10 sophisticated investors in the world thought about the
11 reasonableness of the settlement.

12 And based on my analysis, I've concluded that
13 the market judgment of the settlement is completely
14 consistent with my basic opinion that the proposed
15 settlement was reasonable and adequate.

16 Q Thank you, Professor.

17 Now, before we get into the details of your
18 opinions, would it be helpful for you to have a copy of your
19 reports?

20 A Sure.

21 Q That we would talk about and you could refer to them?

22 A Sure.

23 MR. INGBER: Your Honor, may I hand these reports
24 to Professor Fischel?

25 THE COURT: Sure.

26 (Handed)

1 Fischel-Petitioners-Direct/Mr. Ingber

2 A Thank you.

3 Q Okay, Professor, let's focus on the first basis for
4 your opinion that the proposed settlement was reasonable and
5 adequate and that is the behavior of the Institutional
6 Investors.

7 Can you explain this opinion to the Court?

8 A Yes. Basically, what I said before that I believe
9 under the facts and circumstances of this case, the behavior
10 of the Institutional Investors in light of their large
11 economic stake, the absence of any conflict that they had
12 with other certificate holders, the role of the Trustee, it
13 being able to facilitate negotiations and observe that the
14 negotiations were at arm's length, as well as in combination
15 with other opinions that I mentioned, as I said by itself if
16 there were nothing else would be sufficient for me to
17 justify the reasonableness and adequacy of the settlement,
18 as well as the Trustee deciding to enter into the
19 settlement.

20 Remember, that even though the Trustee has
21 obligations to the trust and the certificate holders, the
22 parties who are either paying the money or receiving the
23 money are not -- do not include the Trustee. They are the
24 certificate holders on the one hand represented by and the
25 Institutional Investors represented by counsel and the Bank
26 of America.

1 Professor D. Fischel - By Petitioner - Direct/Ingber
 2 paragraph, even within the covered trust, "the inside
 3 investors" -- and I just want to emphasize, "are not
 4 representative of other certificate holders in the following
 11:32:58 5 ways." So before going through the reasons, this is a claim
 6 that the institutional investors, in contrast with what I
 7 said, are not representative of the other certificate
 8 holders, and he lists a series of reasons. And what I want
 9 to do is go through those reasons and see what the support is
 11:33:23 10 in the reasons for the bold claim that is made at the outset
 11 that the institutional investors are not representative.
 12 So let's look at first, "the particular 189
 13 covered trusts in which the inside investors have 25
 14 percent of the voting rights may have." First of all
 11:33:48 15 underline "may have", "a different collateral makeup than
 16 the other 341 covered trusts. To wit, the trusts in
 17 which the inside investors have 25 percent of the voting
 18 rights, may have" -- and again underline "may have"
 19 again, "more subprime or Alt-A collateral or vice versa,"
 11:34:11 20 under line "vice versa." So this is supposedly a basis
 21 for why the inside institutional investors are not
 22 representative --
 23 Q Okay. Professor, let me interrupt for a second.
 24 I'd like you to respond to this first bullet
 11:34:25 25 point, and before you move onto the second, I think we
 26 are going to have a short morning break.

1 Professor D. Fischel - By Petitioner - Direct/Ingber
 2 A Okay. First of all, as I think it's clear just from
 3 the language, there's a complete disconnect between the
 4 statement of what's going to be shown and the supposed
 11:34:40 5 evidence. The evidence in this first bullet point doesn't
 6 demonstrate anything. It's just pure speculation about the
 7 relationship between the collateral makeup of the 189 trusts
 8 versus the other trusts, it doesn't establish anything about
 9 whether or not representative.
 11:35:00 10 But if you go further than that, and the reason
 11 you go further than that is that this is something that's
 12 easy to verify. You can look at the interrogatory
 13 responses, the CUSIP numbers in connection with
 14 particular trusts, go to well-recognized widely-used
 11:35:22 15 databases, ABS Net, and actually look at the relationship
 16 between the collateral makeup of the 189 trusts versus
 17 the other trusts. And if you did that, which anybody can
 18 do based on the information that was provided to them,
 19 you would see that there's not much difference at all.
 11:35:46 20 So it's not just speculation that proves nothing, it's
 21 speculation that's wrong and speculation that can be
 22 easily demonstrated to be wrong by looking at obvious
 23 sources that anybody who is familiar with the data in
 24 this field would be able to analyze.
 11:36:07 25 MR. INGBER: Okay. Thank you.
 26 On that note, I think, your Honor, we'll --

1 Professor D. Fischel - By Petitioner - Direct/Ingber
 2 THE COURT: Yeah. We're going to take a
 3 ten-minute break.
 4 And you can step down and then we'll continue.
 11:36:14 5 THE WITNESS: Thank you, your Honor.
 6 THE COURT: Thank you.
 7 (Recess taken.)
 8 THE COURT: Okay. Mr. Ingber, you may
 9 continue.
 11:54:47 10 MR. INGBER: Thank you, your Honor.
 11 Q Professor Fischel, right before the break, you were
 12 taking us through Professor Levitin's analysis of the role of
 13 the institutional investors and you had given your reaction
 14 your response to Bullet #1. Can you proceed to bullet point
 11:55:06 15 #2 please?
 16 A Yes. And maybe I'll be a little briefer with bullet
 17 point #2 because it's basically the same point as bullet
 18 point #1. But this is supposedly the second basis in
 19 Professor Levitin's opinion as to why the institutional
 11:55:24 20 investors are not representative.
 21 So if you begin just with the first sentence,
 22 "the institutional investors may not be", again, the same
 23 speculation, "invested in similarly supposed tranches of
 24 the covered trusts." And then he goes through an example
 11:55:46 25 of what would happen if the institutional investors had,
 26 for example, senior tranches and other certificate

1 Professor D. Fischel - By Petitioner - Direct/Ingber
 2 holders in the 530 trusts did not, rather than read the
 3 whole thing. But if you just go to the last sentence and
 4 just highlight that, "if that were the case, their
 11:56:12 5 interests would not be representative of many other
 6 certificate holders." So, again, he doesn't say that is
 7 the case, he just speculates as to what might happen if
 8 it were the case. But, again, it turns out that this is
 9 something that can be checked and it's not the case. You
 11:56:29 10 can look at the CUSIP numbers for the certificate holders
 11 of the various trusts that were provided by the
 12 institutional investors interrogatories, look at a
 13 standard database, ABS Net, and compare the tranches held
 14 by the institutional investors with all the other
 11:56:57 15 certificate holders in all the different trusts.
 16 And so it's not just speculation, again, it's
 17 incorrect speculation. Speculation that can be refuted
 18 by checking, and certainly provides no support for the
 19 basic claim that the institutional investors are not
 11:57:16 20 representative of the other certificate holders. If
 21 anything, if you did the checking, you would conclude the
 22 opposite. But, again, there's a basic reality check
 23 which is that there's been ample time to object after the
 24 settlement. If it were the case that there was -- if
 11:57:37 25 there were huge numbers of other certificate holders who
 26 did not feel their interests were represented because

1 Professor D. Fischel - By Petitioner - Direct/Ingber
 2 they were invested in certificates, were different
 3 collateral, different tranches, whatever reason, they
 4 would object. And, again, the absence of any comparable
 11:57:58 5 opposition group in terms of economic stake, I think, is
 6 also inconsistent with these particular claims.
 7 And just moving to the third point, again, the
 8 first sentence, the third, "if the institutional
 9 investors accumulated all or part of their positions in
 11:58:19 10 the covered trusts at distressed prices, they would have
 11 different incentives regarding the proposed settlement
 12 from an investor that purchased at par." And here, I
 13 would say again that, not only speculation, but there's
 14 basically a fundamentally economic error that's embedded
 11:58:39 15 in this particular sentence because it's presuming that
 16 the prices that the certificate holders pay will dictate
 17 how much they're willing to accept. In other words,
 18 implicit in this statement is that if a certificate
 19 holder purchased at a lower price, they're willing to
 11:59:06 20 leave huge amounts of money on the table because they
 21 purchased at a low price as opposed to for themselves,
 22 for their clients that they have a fiduciary obligation
 23 to as opposed to trying to get as much as they can.
 24 So, again, it's not just speculation, but it's
 11:59:23 25 speculation that's incorrect. In fact, there's a term in
 26 economics that describes this kind of error, it's

1 Professor D. Fischel - By Petitioner - Direct/Ingber
 2 referred to as a sunk cost fallacy --
 3 THE COURT: Would you like to spell that or
 4 would you mind spelling that?
 11:59:37 5 THE WITNESS: Yeah. It actually may be
 6 simpler --
 7 THE COURT: I say it for her, but for me too.
 8 THE WITNESS: It's S-U-N-K, sunk, second word
 9 cost, C-O-S-T, fallacy. And what the term implies is
 11:59:53 10 exactly the way it sounds. Is that what you did in the
 11 past is sunk, it's over, it's gone, and it's not going to
 12 influence trying to do as well as you can going forward.
 13 But, again, but it's not just an abstract
 14 principle of economics, there is a similar reality check
 12:00:15 15 here. If there were other certificate holders -- if this
 16 claim were correct, if this pure speculation were
 17 correct, if there are other certificate holders who
 18 purchased at high prices and had greater losses, assuming
 19 the speculation is correct, and felt that the
 12:00:36 20 institutional investors were selling them out because
 21 they purchased at lower prices, there's an obvious
 22 solution; they could've registered their objections to
 23 the Court and stated that they don't believe that the
 24 institutional investors were adequately representing
 12:00:54 25 their interests because of the difference in the purchase
 26 prices as opposed to what the reasonable amount that

1 Professor D. Fischel - By Petitioner - Direct/Ingber
 2 could be gotten in a settlement. And then you wouldn't
 3 have had this disparity between 25 percent versus eight
 4 percent that currently exists, you'd have 25 percent
 12:01:17 5 versus 50 percent, or something that would really call
 6 into question how representative the institutional
 7 investors were in negotiating what led up to the proposed
 8 settlement.
 9 Q And what's your understanding of how costly it
 12:01:33 10 would've been for a certificate holder to object in this
 11 case?
 12 A Well, particularly, having heard the testimony this
 13 morning and basically what I'm familiar with from my own
 14 background, my understanding is anybody could object. There
 12:01:50 15 is no ownership -- no minimum ownership requirement, no
 16 filing fee, no hundred-page form to fill out or anything else
 17 that would -- and plus there's enough money at stake that if
 18 there was any serious issue about whether the institutional
 19 investors, their role was adequate in being, in effect, a
 12:02:16 20 proxy for all the certificate holders, that you would expect
 21 that there were a serious issue, there would be a lot more
 22 objections.
 23 MR. INGBER: PTX 621.
 24 (Exhibit displayed.)
 12:02:29 25 Q Professor, I'd like to go back to the bases -- the
 26 four bases for your opinion that the settlement was

1 Professor D. Fischel - By Petitioner - Direct/Ingber
 2 reasonable and adequate, and let's focus on #2 here, that
 3 "the proposed settlement is reasonable and adequate in light
 4 of the uncertainty about the value of the claim and the
 12:02:43 5 ability to recover in litigation and also the delay that
 6 would accompany litigation." And I'd like to start by asking
 7 a few questions about what you referred to in your expert
 8 report as the economics of this settlement decision. Could
 9 you explain that term to Justice Kapnick?
 12:03:03 10 A Yes. Certainly. It's the basic decision process
 11 that a party, in this case the trustee, has to go through,
 12 either explicitly or implicitly, when confronted with the
 13 possibility of settling a claim. There's always the
 14 possibility that the perception is that the settlement offer
 12:03:31 15 is too low and you could do better by going further in the
 16 litigation process and that happens all the time. Settlement
 17 offers are rejected and the parties go forward in the hope
 18 that they can do better. But on the other hand, going
 19 forward is not costless. There's not just the time and the
 12:03:58 20 expense of further litigation, but, more importantly, there's
 21 no guarantee that going further in the litigation guarantees
 22 a better outcome. Sometimes, the bird in the hand is the
 23 best deal you can get. And if you go further, you not only
 24 waste time, waste money, but the outcome is worse as a
 12:04:23 25 result.
 26 So the tradeoff for a party faced with a

Exhibit 9

1 Stanley - by Petitioner - Direct/Ingber
 2 THE COURT: I can handle that.
 3 (Handing to the Court.)
 4 THE COURT: All right. You may continue.
 10:27:26 5 MR. INGBER: Okay.
 6 BY MR. INGBER:
 7 Q Mr. Stanley, what was your rationale for voting in
 8 favor of the Trustee entering into the Settlement Agreement?
 9 A The way I thought, and it's based on my lending
 10:27:41 10 background and the IR background, to be honest with you, it was
 11 the certainty of the payment and the probability that it would
 12 get paid and aspects around that as the core issue in my mind.
 13 So, as it was being presented to me by Bob, as
 14 well as by Loretta, the type of thoughts that were going through
 10:28:07 15 my mind is, if I'm sitting in the investor role, how am I going
 16 to get to this cash and the speed at which I'm going to get to
 17 it. So, first thing I was thinking was looking at the size of
 18 the actual payment itself and who could be obligated to make
 19 that payment. That got into that conversation about, well,
 10:28:29 20 Countrywide is one of the key places for the cash, could they
 21 make the payment the size that was eventually reached. And, you
 22 know, there was reflection there regarding the -- one of the
 23 experts - I forgot the name - created a valuation of Countrywide
 24 and the payment was well above what they would be able to pay.
 10:28:47 25 So, right there a certainty of payment was, Bank of America was
 26 stepping up to make sure that size payment well beyond that

1 Stanley - by Petitioner - Direct/Ingber
 2 particular issue, the obligor there being Countrywide, was
 3 capable of paying. So right there, certainty of payment is one
 4 of the key aspects. The probability that being made as well,
 10:29:10 5 well, Bank of America was agreeing to it in terms of the
 6 Settlement Agreement.
 7 As they discussed it, I'm sitting there saying,
 8 okay, what's the best next alternative to that particular
 9 payment. And the next best alternative, as I understood it, was
 10:29:23 10 going down a very challenging road. And the way I thought about
 11 it was a loan-by-loan type of a road in terms of arguing each
 12 loan and whether there was a breach to that loan and whether or
 13 not we can have Bank of America on the hook to make those type
 14 of payments. So, in my mind, that was very, very ugly in terms
 10:29:44 15 of certainty of the payment and the probability of when it was
 16 going to be made.
 17 I take it to the next step, you know, referring to
 18 various experts, I looked at the issue of, if I were to go down
 19 that particular more detailed road, were there hurdles --
 10:30:06 20 THE COURT: Could you just wait a minute?
 21 MR. INGBER: Sure.
 22 (Pause in proceedings.)
 23 THE COURT: Sorry. You may continue. Sorry.
 24 A -- were there hurdles if I were going down the other
 10:30:44 25 route, loan-by-loan, that people would - Bank of America
 26 specifically - would they be able to put up hurdles allowing us

1 Stanley - by Petitioner - Direct/Ingber
 2 to get to those maybe larger payments. And there was a
 3 conversation, pointed to some of the legal documentation or the
 4 expert documentation that was in the folder that basically said
 10:31:03 5 there was a series of hurdles. Again, that goes to the
 6 certainty of payment or the lack thereof in terms of getting to
 7 those larger potential payments.
 8 THE COURT: Just keep your voice up a little.
 9 THE WITNESS: Sure.
 10:31:13 10 THE COURT: Okay.
 11 A So that, to me, was one of the key components to my
 12 decision.
 13 The other component.
 14 I'm looking at what other cash flow was available
 10:31:24 15 to benefit the investors, and that's where we got into the
 16 servicing improvements. We did not have a dollar amount that I
 17 recall in the Trust Committee in terms of the value of that, but
 18 I was aware of the challenges the industry was having in terms
 19 of properly servicing many of the loans that were undergoing
 10:31:44 20 changes. I think of them as sort of like those high risk type
 21 loans that were becoming much more common in the industry. So
 22 that conversation at a high level was around the topic of,
 23 there's real value there that all investors would get benefit
 24 of. And from, again, a lending background, there's a pool of
 10:32:00 25 cash that we haven't had an opportunity to get to that were
 26 these servicing improvements, we now would be able to get to.

1 Stanley - by Petitioner - Direct/Ingber
 2 And there's some real meat behind the commitment that I think it
 3 was Bank of America was the master servicer would make in terms
 4 of an audit report, monthly reports, benchmarking, stuff like
 10:32:19 5 that.
 6 So to me, there was a second pool of cash here
 7 that, again, wasn't quantified but was very significant in my
 8 mind in terms of it was the gravy to the deal, and I didn't have
 9 a number to it.
 10:32:35 10 (Continued on next page.)
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1 STANLEY-PETITIONER-DIRECT (INGBER)
 2 T3 BY MR. INGBER:
 3 A (Continuing) Third big point, this was a compromise.
 4 It was a compromise between parties that are having a real
 10:32:57 5 challenging time up front getting together, where I am heading
 6 there.
 7 You are dealing with 22 of some the most sophisticated
 8 investors in the world and they approved it. So, you know, in
 9 my mind, that's, it's market tested. Here is the investor
 10:33:11 10 telling me, I want the deal.
 11 So, I have a market test with some of the most
 12 sophisticated investors in the world. I have got more money on
 13 the table that some of obligors that I understood could even
 14 pay. I had a certainty of payment, and then you get to the
 10:33:29 15 point where, about the other investors that are not at the table
 16 because there are lot more investors in these Trusts than 22,
 17 whatever the number was.
 18 That's where the Court approval was discussed and
 19 again, this is my rationale, this was a forum for other
 10:33:45 20 investors to have a voice. So, it opened it up to the public,
 21 if you will, all the investors, to have a voice at the table.
 22 So, I am sitting here saying okay, it's market tested
 23 by investors that have skin in the game, real skin, I know there
 24 was a challenge in getting to that compromise, just given the
 10:34:04 25 length of time it's taken to get, the months it took, I have got
 26 an obligor, Bank of America, going beyond where I understood

1 STANLEY-PETITIONER-DIRECT (INGBER)
 2 that they had to go, and they had legal defenses at a high level
 3 to avoid if we went down a different route and the probability
 4 of payment was extremely high, subject to Court approval, and
 10:34:23 5 allowed other Investors' voices at the table throughout the
 6 process.
 7 When you add all of that together, the reasonableness
 8 of the decision, I thought, was very high.
 9 Q Mr. Stanley, did your rationale for voting to approve
 10:34:45 10 the settlement have anything to do with an interest in having
 11 the Trustee avoid any liability?
 12 A No. As a matter of fact, we were preparing back up
 13 service in-lines in case whatever happened, you know, if other
 14 scenarios might occur, to make sure we were prepared for other
 10:35:07 15 scenarios.
 16 Q Was your decision to vote in favor of approving the
 17 settlement motivated at all by a desire to avoid an event of
 18 default?
 19 MS. KASWAN: Your Honor, leading.
 10:35:29 20 THE COURT: Can you rephrase your question please?
 21 MR. INGBER: What was the objection?
 22 MS. KASWAN: Leading.
 23 THE COURT: Leading.
 24 MR. LOESER: Is his answer based on the advice of
 10:35:50 25 counsel or his answer --
 26 THE COURT: I am letting you rephrase the question.

1 STANLEY-PETITIONER-DIRECT (INGBER)
 2 Q Was the topic of an event of default, a topic of
 3 discussion at the Trust Committee meeting?
 4 A Not that I recall specifically.
 10:36:11 5 Q Did Bank of New York Mellon's relationship with Bank of
 6 America have any bearing on your decision to support the
 7 settlement?
 8 A It did not. I think, you know, a key thought here is
 9 that any major --
 10:36:34 10 MR. REILLY: Your Honor, I think the question was
 11 did it, and I would like to have another question so --
 12 THE COURT: I will allow it. It's direct. He can
 13 answer.
 14 A One of the key elements here is, given our business
 10:36:49 15 model at the firm, almost every major financial institution at
 16 any point in time is a direct client, is a vendor to us, is an
 17 investor, is a counterparty.
 18 So, you know, I assume that any major financial
 19 institution has a multiple number of relationships with us.
 10:37:08 20 Therefore, you got to do what you need to do on your transaction
 21 to maintain the properness of your actions.
 22 Q How does the Trustee's relationship with its clients
 23 impact the work that it does as a Corporate Trustee?
 24 A From a new business side, because at that point, I was
 10:37:29 25 the business owner. I would have, obviously want new business
 26 from large clients. That would be part of my job.

1 STANLEY-PETITIONER-DIRECT (INGBER)
 2 In my actions that I take with Trustees, you do what
 3 you need to do within the four corners of the document, and in
 4 many cases, that's in consultation with a Default Administration
 10:37:47 5 Group, in many cases that's in consultation with our in-house
 6 counsel, as well as outside counsel.
 7 Usually, through the DAG Group, what's important is we
 8 have to maintain the reputation going forward. Any one deal, we
 9 wouldn't be making a biased decision because of a relationship.
 10:38:05 10 Q Was your decision to support the settlement motivated
 11 at all by a desire to benefit the Trustee financially?
 12 MS. KASWAN: Objection. Leading.
 13 THE COURT: Can you rephrase?
 14 Q To what extent, if any, did you believe that the
 10:38:23 15 Trustee was benefitting financially from its entry into the
 16 Settlement Agreement?
 17 A The short answer is no. However, I did realize that if
 18 the Court approved the settlement, we would be protected in
 19 terms of anything that might be claimed against the Bank of New
 10:38:41 20 York Mellon for the process of the settlement itself. So, I
 21 understood that.
 22 But, what I also understood is, all this does is, if
 23 let's assume for a second the settlement is not approved. It
 24 would just bring me back to our normal state, with all of the
 10:38:56 25 liabilities that we appropriately would have, in terms of our
 26 obligations to properly administer a Trust.

Exhibit 10

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(11:57:57)

1 Kravitt - Petitioner - Cross/Mr. Pozner
 2 try to correct you, but I apologize. It's not the lower
 3 down you are in the tranche, it's the lower down the tranche
 4 is in the hierarchy.
 5 (Continued on next page.)
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(11:59:29-12:00:58)

1 J. Kravitt - by Petitioner - Cross/Mr. Pozner
 2 A That is my understanding.
 3 Q And so, what happens now is we get to the proposed
 4 waterfall in this case, and what you are proposing is that you
 5 will look at the trusts, you will compute the losses in the
 6 trusts, you will compare that loss in the trust to the overall
 7 settlement number and divide the number up that way including
 8 projections of future losses?
 9 A Correct, you stated it precisely. The formula is each
 10 trust gets a fraction of the 8.5 billion, the numerator, which
 11 is -- for it is the sum of experienced losses plus projected
 12 losses and the denominator of which is the sum of all trusts
 13 enumerated.
 14 Q Now, let's talk about the sophisticated investors who
 15 purchased into the tranches at deep discounts, and you are
 16 aware that that happened, are you not?
 17 A I assume that that has happened with regard to
 18 Countrywide, but I don't know who bought their tranches when.
 19 Q You don't know who bought the tranches when, but
 20 everything in the securitization world is trackable and you
 21 can't hide that you purchased it?
 22 A Well, you can. I'm not trying to create a controversy
 23 with you, but it's very easy to hide who owns things because
 24 who owns things goes through so many names. In fact, if you
 25 look at the number of holders in the trust, it looks like there
 26 is only 12 holders because it's held in the dealers' names, and

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(11:58:13-11:59:15)

1 J. Kravitt - by Petitioner - Cross/Mr. Pozner
 2 Q Right. So, the person buys into a tranche and where
 3 that tranche falls in the hierarchy, the lower that tranche is,
 4 the more it suffers first pain of defaults and other problems?
 5 A Usually it gets a higher interest rate because it
 6 takes a greater risk with regard to loss.
 7 Q Now, what happens is these securitizations are
 8 marketable items?
 9 A That is their purpose.
 10 Q That is exactly why they were secured, so that they
 11 could be bought and sold in the marketplace?
 12 A Correct.
 13 Q And what happens is as the economy suffers, what we
 14 called "the meltdown," we have the mortgage crisis?
 15 A Correct.
 16 Q The value of these tranches -- well, the value is
 17 going down on its securitizations.
 18 A Correct.
 19 Q And what happens is some people can say I have taken
 20 enough of a beating, and they sell out of their position?
 21 A Correct, if someone will buy it.
 22 Q And somebody will buy them at a deep discount?
 23 A Yes, if that's their strategy.
 24 Q But there are companies that have that strategy?
 25 A That's -- that is my understanding.
 26 Q So sophisticated investors have that strategy?

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(12:01:18-12:02:45)

1 J. Kravitt - by Petitioner - Cross/Mr. Pozner
 2 then the dealers have people who hold the beneficial -- the
 3 beneficial interest in those securities, even though the
 4 dealers, the Pro Forma owners of those securities, and then
 5 there will be people who own interests in the second level and
 6 there will be people who own interests in the third level and
 7 then some people whose are actually investment managers and
 8 don't hold anything for their own benefit at all, but for the
 9 benefit of their customers.
 10 So, in fact, when you try and find out who holds your
 11 securities, it is actually almost impossible.
 12 Q You can find the large institutions who have them in
 13 their mutual funds, right?
 14 A I don't know a lot about the disclosure that mutual
 15 funds make on a monthly basis.
 16 Q Now, let's tell the Court what the effect is. For a
 17 large Institutional Investor who has bought into any of these
 18 tranches, any of the trusts that we are dealing with, at a deep
 19 discount, the amount of money they are going to get back on the
 20 proposed waterfall will be substantially greater a return than
 21 somebody who bought into the tranche and has suffered the
 22 downturn and not sold out? They are at par?
 23 MS. PATRICK: Objection. Calls for speculation,
 24 lacks foundation.
 25 THE COURT: If you can answer that I will let
 26 you.

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(12:03:06-12:04:26)

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

2 A Well, I disagree. Here is why I disagree. The way we

3 wrote the Settlement Agreement is that it's the tranches who

4 are most senior who suffered losses who get the cash first,

5 therefore, the people who are holding subordinated and most

6 subordinated tranches, likely, will not get any cash out of the

7 settlement if the losses in the settlement went to any of the

8 senior level tranches. So, if you made a bet on a subordinated

9 tranche, this wouldn't necessarily get you any cash distributed

10 out of the settlement. The way the cash is distributed would

11 restore the face amount of some of this -- or the face amount

12 or the partial portion of the face amount of any lower

13 seniority tranche, it might get some interest in a future

14 period it might not otherwise get.

15 But the recovery goes first in line to the senior

16 holders and then the next level and so on down to the bottom.

17 Q Exactly. You wrote the waterfall yourself, your firm?

18 A No.

19 MS. PATRICK: Objection.

20 Q Who wrote it for you?

21 A There is no --

22 Q Let me -- maybe I'm asking it wrong. Let me ask it

23 again.

24 MS. PATRICK: Excuse me. Can the witness finish

25 his answer?

26 THE COURT: I'm sorry?

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(12:04:30-12:05:44)

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

2 MS. PATRICK: Can the witness finish his answer?

3 THE COURT: Well, he withdrew the question, so

4 let's start again.

5 Q You are aware of the waterfall that is being proposed?

6 A The waterfall is the distribution that is set out

7 within the trust documents themselves. All we did is

8 characterize how the payments would be -- is characterize the

9 payments within the various defined terms in the agreement and

10 then the agreement tells you how to use those, and we also set

11 in some rules to make sure that subordinate tranches didn't get

12 money before senior tranches.

13 Q That is my next point.

14 You are aware that in all likelihood many tranches of

15 investors, certificate holders in the lower tranches, will get

16 nothing?

17 A Correct. Well, I wouldn't say "likelihood." I'm

18 aware of the reasonable possibility that that will happen.

19 Q And not only will the lower tranches -- well, what did

20 you say are likely?

21 A A reasonable -- that I was aware of the reasonable

22 possibility that they may not get any money.

23 Q Not only are the lower tranches suffering the

24 reasonable possibility that they will get zero out of this --

25 this settlement, but those senior tranches that were traded at

26 discounts, and you know that happened?

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(12:06:03-12:07:21)

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

2 A I don't know it happened. I believe that it probably

3 happened.

4 Q That wasn't part of the investigation either, was it?

5 A There is no way to go into the market and figure out

6 who wrote the securities. The entire United States government

7 could try to do that and they wouldn't be able to.

8 Q Well, did you ask Ms. Patrick, Did any of the

9 companies that are on your Steering Committee who came to be

10 your clients, buy into these securitizations at a deep discount

11 from par?

12 A I don't know.

13 Q Because if she has clients like BlackRock, like PIMCO,

14 like WAMCO, who are astute investors and bought into these

15 securitizations in the upper levels at deep discounts to par,

16 when we figure out how much they are going to get in this

17 settlement, it be will be a completely different rate of return

18 than the same investor in the same tranche who bought in

19 initially and paid par. That is mathematical, isn't it?

20 MS. PATRICK: Objection to form. Speculation,

21 lacks foundation and irrelevant.

22 THE COURT: Yes.

23 MS. PATRICK: Where people bought, when, is

24 utterly irrelevant to this issue.

25 THE COURT: I don't get that that matters.

26 MR. REILLY: Pardon me?

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(12:07:29-12:08:35)

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

2 THE COURT: What does it matter?

3 MR. REILLY: It matters because, Your Honor, the

4 trustee has conflated the interest of certificate holders

5 in a way that it ignores the protective obligation that it

6 has. If, in fact, somebody paid 50 cents and I will use an

7 example of 50 cents, and as a result of this 8.5 settlement

8 is going to get 85 cents back, they love the settlement.

9 If someone paid a dollar for their interest and

10 they are only getting 4 cents back on it, they don't like

11 the settlement, and the trustee did not take that into

12 consideration and ignored that. The duty was to treat the

13 certificate holders in a fair fashion and to know whether

14 or not it was in a conflicted position.

15 And if -- if Mr. Kravitt and Ms. Patrick and

16 Mr. Gonzalez want to admit we never looked at that, we

17 never considered that, then, we will make the argument

18 about it later.

19 THE COURT: So did you ask him? Ask him, did you

20 ever consider that, and move along and make the argument.

21 MR. POZNER: Yes, I understand, Your Honor.

22 Q Did you ever look at those holdings and try to figure

23 out, did Ms. Patrick's clients buy into these tranches at deep

24 discounts?

25 A We had no duty to do that and, therefore, we did not.

26 Q Let us then -- so, there was no effort to figure out