

# **Exhibit 12**

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: TRIAL TERM PART 39  
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In the Matter of the Application of  
  
THE BANK OF NEW YORK MELLON,  
(As Trustee under various Pooling and Servicing  
Agreements and Indenture Trustee under various  
Indentures),

PETITIONER,

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

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INDEX NO: 651786/11           60 Centre Street  
                                  New York, New York  
                                  August 2, 2012

BEFORE:       HONORABLE BARBARA R. KAPNICK, Justice

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## PROCEEDINGS

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NINA J. KOSS, C.S.R., C.M.  
Official Court Reporter

## PROCEEDINGS

1  
2 It's a little bit of splitting the words here.

3 It's clear that the type of Trustee we have in this  
4 case is not a full fledged fiduciary. Everybody agrees  
5 with that. But, I think that these cases make it clear  
6 that there is a fiduciary obligation outside, that extends  
7 beyond the terms of the PSA contract or whatever it is, that  
8 allows me to find that there are some fiduciary obligations,  
9 and like Judge Baer found, that would rise to the level of  
10 finding there could be a fiduciary exception to this very  
11 important attorney client privilege.

12 I know Judge Sullivan, a Federal Judge colleague  
13 friend of mine, you probably read that I actually sat on the  
14 bench with him and did a whole day's hearing together with  
15 him, but he was dealing, he was making reference to AG  
16 Capital, and I think he was talking about a more ministerial  
17 situation, and didn't really reach, didn't really mention  
18 Ambec and this development of the law that Judge Baer went  
19 through, and that was sort of adopted by the Appellate  
20 Division, First Department -- the Courts that I am loyal to,  
21 not that I am not loyal to my friend Judge Sullivan, but  
22 it's a different situation. I think these are more  
23 controlling on me.

24 So, I am going to find, in the first instance, that  
25 there is, that we can at least reach the fiduciary  
26 exception. The problem, this is the same thing that Judge

## PROCEEDINGS

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2 Baer did, I am having a very difficult time of  
3 understanding, of incorporating into my brain your colorable  
4 claim of good cause. I know you have reiterated it several  
5 times.

6 But, I just don't understand how the indemnity  
7 provision suggests that there is any kind of a conflict of  
8 interest, because the PSA provided for some indemnity and  
9 the side letter just sort of, as Miss Patrick answered my  
10 question, sort of made it a, made sure it applied to Bank of  
11 America and sort of stitched in all the people after  
12 Countrywide.

13 I also don't exactly understand what you are  
14 talking about with, about that there was some colorable  
15 claim of conflict because they somehow sought to undo the  
16 Event of Default.

17 What you have kind of all said to me here today, we  
18 are going to have to eventually deal with, exactly deal  
19 further with the Event of Default, but I am not sure anybody  
20 thought I was going to make an absolute finding or even  
21 really ask me to, on the Event of Default today.

22 So, I guess what I am saying, I have found that we  
23 could reach the fiduciary exception in this case, but I am  
24 still, at this time, denying your request, because I can't  
25 see the highly relevant nature of the documents you are  
26 seeking or understand what the colorable claim of conflict

## PROCEEDINGS

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2 is that would allow me to let you use this fiduciary  
3 exception.

4 So maybe, as we get a little further and we talk  
5 further about the Event of Default, then I might, not that I  
6 won't change my mind, but maybe I will get the good cause  
7 part of it, but I already decided the fiduciary part of it.

8 I wish I had the luxury of sitting in and writing a  
9 lovely decision, like some of these other people, but I  
10 don't have that right now, and I am going to go on vacation  
11 next week, and I want to get you going on something here  
12 other than just visiting, having long conversations and  
13 maybe not getting anything done -- although several people  
14 did withdraw, so that is something that happened in the past  
15 few months.

16 So, that's what I am going to decide for today.  
17 As far as I can figure out, I will consider that your motion  
18 to compel has sort of been ruled upon by numerous, on the  
19 record over the past several conferences. I am not writing  
20 anything else on that.

21 You will all have the transcript. I know you cite  
22 them, and Nina has been here before on the case, so you will  
23 have a good transcript from this date.

24 The last two very quick things I want to deal with  
25 before we finish up today are, I know you have talked to me  
26 about a schedule.

## PROCEEDINGS

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2 late, in case there is something else we are doing that  
3 evening. Make sure we have them a week in advance, and have  
4 time to read them, and think them through before you come  
5 and visit us, which is what we had a chance to do today, so  
6 we could sort of get through as much as we did.

7 Have a great rest of the summer everybody.

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17 THE FOREGOING IS CERTIFIED TO BE A  
18 TRUE AND ACCURATE TRANSCRIPTION OF  
19 THE ORIGINAL STENOGRAPHIC NOTES.

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23 NINA J. KOSS, C.S.R., C.M.

24 OFFICIAL COURT REPORTER  
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