

EXHIBIT 2

1 not want to come back. The witness is here. Mr. Ingber
2 has offered to permit the testimony simply provided that
3 counsel acknowledge what he is saying here today, which is
4 facts aren't privileged, he refused to do so. I begged
5 them to take that deal. We had a break. I tried to -- I
6 said, I will mediate the dispute. I tried to reach an
7 agreement.

8 The suggestion that we are now going to go back,
9 re-question the witness that they had every opportunity to
10 do, so I think is unfair, your Honor.

11 THE COURT: I think that since there has been a
12 representation that there is over 20 depositions coming
13 along, I am not sure that you need to go back to her right
14 now.

15 MR. INGBER: Agreed.

16 THE COURT: I think you should move ahead. So
17 maybe it is good that you had some of these problems,
18 because you seem to object to almost every other question
19 based on what I am looking at in the transcript and what I
20 am seeing on the video. But move ahead in a better way,
21 and if there needs to be one or two questions, then an
22 interrogatory might be appropriate so she can answer a
23 couple of things that fit into that situation.

24 I am not saying that you didn't do it, that it
25 was a good idea. I don't know what happened. I can only

1 move it forward from today. I think that's a better way of
2 doing that.

3 MR. REILLY: We will do that.

4 THE COURT: Now you are talking about a whole
5 other issue, about redoing the privilege log.

6 MR. INGBER: One point on that?

7 MR. REILLY: I am not asking you to do that.

8 THE COURT: Good.

9 MR. INGBER: Mr. Reilly is not understanding the
10 distinction that we drew.

11 Facts, understandings of facts are not
12 privileged. Communications, even if they include facts,
13 communications with counsel in connection with the delivery
14 of legal advice, that is privileged. The cases are clear
15 on that point. So there is a distinction between
16 Ms. Lundberg's understanding of facts and the disclosure of
17 documents that are communications of legal advice that
18 happen to contain facts. Those are off limits. But her
19 understanding of fact is not off limits. That is the
20 distinction we drew. Maybe it wasn't understood, but
21 that's the distinction we drew.

22 There is no going back to the log, we don't have
23 to because these communications unquestionably are
24 privileged. He could have asked her about the facts. That
25 ship has sailed. There will be other depositions, and he

1 when our notice of nonperformance was made public their
2 stock price dropped by 5 percent.

3 THE COURT: When was that?

4 MS. PATRICK: October 18, 2010. It was a public
5 event. It was the subject of an above-the-fold, full-page
6 article in the Wall Street Journal. Everybody knew about
7 it. It was covered in the Bank of America analyst
8 conference where Mr. Moynihan made some comments he might
9 wish he hadn't made.

10 Thereafter as we went through and did these
11 forbearance agreements, there were press releases about
12 them. And you hit it right on the head. Where were these
13 other certificate holders whose interests were allegedly
14 prejudiced? Where were they? Did anybody else step
15 forward and say, Hey, if they are not going to pursue that
16 event of default because there is a public disclosure they
17 have entered into a forbearance, I want to? No. Nobody
18 did. But the point is the trusts' interests were protected
19 and the trusts' claims were preserved. And the more
20 important point is in this discovery hearing they have all
21 those documents. They put them up here on the screen. So
22 why did they take your morning? They have the evidence.
23 They have it. They have it, but they don't always choose
24 to use it. And, you know, people make chooses about what
25 they do with discovery. That's totally fine. But you

1 can't make a choice to use evidence in a particular way and
2 then come in and say, Gee, I didn't get the discovery.

3 This document, this blow-up is an excerpt from an
4 exhibit that Mr. Reilly prepared, Exhibit 128, put it in
5 not of Mr. Kravitt in his deposition. And he said,
6 Mr. Kravitt, this is a list, we have gone through the
7 documents. We have identified this list of 21 meetings
8 that occurred where various people were present: Tri-party
9 meeting, BOA Trustee, institutional investors Trustee. And
10 what is really striking is this right-hand column about
11 deposition references. Because having put this list of 21
12 meetings, which, by the way, is less than complete. There
13 are more, but let's take these 21 for what they are. They
14 knew about them at the time of Mr. Kravitt's deposition.
15 This is their exhibit. And did they ask him about these
16 meetings? They did not. They asked him about five. Then
17 they come in and complain that they haven't had an
18 opportunity to take discovery. They know about these
19 meetings from documents. They didn't ask the question. It
20 is not okay for them to come in and complain they can't get
21 discovery when they don't follow your instruction to use
22 the documents they have and ask the questions they should
23 ask. That's the point. There is no basis on which you
24 should reconsider any of your earlier rulings here. There
25 is no basis on which you should consider the common

1 interest privilege either.

2 The common interest privilege, you ruled on it,
3 you know what that law is. Their suggestion that Bank of
4 New York Mellon didn't view itself as having a common
5 interest with our clients in the negotiations is belied by
6 the deposition testimony they did not give you. Page 346,
7 Line 8:

8 THE COURT: Mr. Kravitt?

9 MS. PATRICK: Yes, Mr. Kravitt.

10 "QUESTION: Why don't you tell me what you mean
11 by settlement negotiations, and then we'll go from there."

12 Line 11:

13 "ANSWER: Well, when I or members of my team
14 would have discussions with Kathy or members of her team,
15 our discussions would be strategic: What do you think we
16 should do about this issue? What do you think about this
17 issue? And what are your impressions what B of A wants?
18 Will they give on this issue? Discussions of I think we
19 should go for this or not go for this, or we should modify
20 this, etcetera.

21 "So sometimes most of the time we would agree and
22 we'd just be figured out the best way to do something.

23 "Sometimes we would disagree and try to work out
24 our differences to figure out what the smartest thing to do
25 was."

1 Honestly, to suggest that the Trustee did not
2 view itself as having a common interest with the
3 certificate holders is ludicrous in the face of this
4 testimony. It is ludicrous. And I don't understand why
5 they have come here and argued that they haven't gotten
6 discovery.

7 The key point is you told them last time to take
8 the depositions, use the documents. They have noticed 26
9 depositions. Let's take them. It is not appropriate for
10 them to come in in a discovery conference and try to have a
11 mini-trial of half of the case with misleading deposition
12 excerpts to try to suggest something other than what is
13 true from the state of the record.

14 There were two things they said they wanted when
15 they came in. Our binary communications, they haven't met
16 their burden to ask you to reconsider that ruling. The
17 trustee's fiduciary exception, I don't think they met their
18 burden on that because they have to establish good cause.
19 And as you have seen from the testimony you have heard
20 today largely from them, they did not use the evidence they
21 had in the depositions.

22 Let's go on. There is an overt effort here to
23 pursue things that are not at the heart of the case for
24 what purpose I don't know, but there is a real and
25 legitimate interest on the part of the vast majority of

1 certificate holders in getting this case done. And it is
2 not a good use of your time or the discovery time here for
3 people that hold less than 3 percent of the holdings to
4 refuse to ask relevant questions and then come in and try
5 to get you to reconsider rulings that you have already
6 made. Your rulings are made for a purpose. They were to
7 give the parties guidance. They need to follow that. We
8 are prepared to do that. We will move forward.

9 Thank you, your Honor.

10 THE COURT: Thank you.

11 Mr. Ingber?

12 MR. INGBER: Thank you, your Honor.

13 THE COURT: I may have to interrupt you in the
14 midst of your presentation because we have to take a lunch
15 break.

16 MR. INGBER: Well, your Honor, how long do we
17 have, because I think I could finish.

18 THE COURT: Twelve minutes.

19 MR. INGBER: Twelve minutes? I am going to keep
20 this to twelve minutes because I agree with everything that
21 Ms. Patrick just said. We have done this already.

22 I have dusted off my notes from the last hearing
23 and the hearing before that to make the exact same argument
24 that I made then because nothing has changed. I have this
25 distinct sense of deja vu from the August 2 conference.

1 Why do you know that? Because he didn't ask about the
 2 relevant meetings with Mr. Kravitt. Because he didn't ask
 3 about the settlement agreement. Because he didn't ask
 4 about settlement documents. Because he didn't ask about
 5 settlement presentations.

6 So the only constructive thing that in my
 7 judgment has been said this afternoon from Mr. Reilly is,
 8 We will go take the depositions. Good, let's go. You have
 9 outlined how to deal with the claims of fact that are
 10 embedded in a privilege. So let's take them. Let's find
 11 out if they can't find out what they want, that is if they
 12 actually try --

13 MR. REILLY: I promise to try.

14 MS. PATRICK: -- instead of avoiding the core of
 15 the issues at stake.

16 MR. REILLY: Your Honor, I don't expect you to
 17 read all the depositions, nobody expects you to. But let
 18 the record reflect I don't agree with anything that was
 19 just said.

20 THE COURT: I can see why the people that weren't
 21 at the negotiating table have some questions, some
 22 uncomfortableness, for lack of a stronger term, about the
 23 negotiations that, Ms. Patrick, you were at on behalf of
 24 the large group of clients that you represent. And there
 25 was representation of Bank of America and representation of

1 Bank of New York, but the people that Mr. Reilly represents
2 were not there, and the people that Mr. Loeser represents
3 were not there, and, I guess, there were some other people
4 not there too.

5 So lawyers, being the suspicious group as we are,
6 may say, Well, we weren't there, how did they get to this?
7 We really want to know how they got to this.

8 As Mr. Loeser said, after the 26 depositions and
9 the experts and whatever, they say, You know what? I think
10 this turned out pretty well, we think it is a good
11 settlement, Judge, sign off. That would be a nice way for
12 it to end. I might be a little optimistic, but okay.

13 I understand, and Bank of America is paying
14 everybody's fees, and your fees, and Mayer Brown fees, and
15 expert fees and they weren't there. So I get why there is
16 concern. I bet you I would feel that way too. And, I dare
17 say, maybe if you ever were on that side you might feel
18 that way too. You are usually on that side, so maybe you
19 don't know. So I can see what is fueling the problem.

20 I also see that you want me to sign a very, very
21 comprehensive order approving, rubber stamping after the
22 fact your negotiations your investigations, everything you
23 did as being okay, good, excellent, you get an A plus.

24 I have to see things. So to the extent that you
25 objected to every single question through this deposition,

1 many, many, many of the questions. I mean, everything you
2 guys read to me had objections that were longer than the
3 answers. It is going to be a long process. It is going to
4 be problematic.

5 I think you might have to rethink just a little
6 bit what you might think might be more reasonable to let
7 him answer, and you have to think about how you may want to
8 conduct it so that you get the most out of the depositions.

9 I understand, I think, where you are coming from.
10 And, I mean, I am boiling it down to, sort of, almost like
11 layman's language; but that's kind of what I think this is
12 all about.

13 Ms. Patrick said at one point, I don't want
14 people to know my negotiation strategies. That's why I get
15 what I get, or what do what I do. But some of it is going
16 to have to come out because that's what they want to know
17 because they weren't there, right?

18 MS. PATRICK: Well, your Honor, with regard to
19 who was and wasn't there, let me just make a couple of
20 points.

21 THE COURT: Sure.

22 MS. PATRICK: You will remember that we were here
23 some time ago when Mr. Karlinsky up for AIG. AIG was not
24 uninformed about what was going on here. AIG was trying to
25 hijack this process for its own securities claim.

1 of them is applicable. We argued this in April.

2 MR. REILLY: Here is what the problem is going to
3 be. We are going to take the deposition of the Bank of
4 America witness. I don't know if it will be the lawyer or
5 if it will be whoever actually negotiated. We are going to
6 say, Did you negotiate the settlement amount with Katy
7 Patrick? Tell us about those negotiations. And the
8 problem is going to be they are going to say no; or we are
9 going to take Ms. Patrick's deposition or BlackRock or
10 Pimco and say, Tell us about the negotiation. How did you
11 get to 8.5? What did you give? What did your lawyers
12 give? How did we get the attorney's fees at \$85 million to
13 get the \$8.5 billion? And they will say no. That's a
14 problem. She says it's not going to be a problem? Then
15 have her tell us they are not going to stop us from asking
16 those questions because that's the question that they put
17 into issue by asking you to find that their arm's length
18 negotiations are something you need to review and approve.
19 It is going to be a problem if you don't let us get those
20 questions.

21 MS. PATRICK: Your Honor, these findings from the
22 class action cases are arm's length negotiation findings
23 that are made without discovery of the settlement
24 negotiations. That's what these cases hold. That's the
25 context in which they arise.

1 THE COURT: Look, I made decisions. You are
 2 arguing a lot I think of what you already argued before. I
 3 made a decision. If you don't like it, of course you have
 4 your remedies. If you absolutely think that things have
 5 changed so much so, then I guess you better bring on a very
 6 small order to show cause to reargue because I made a
 7 decision. I can't have you come back and say, Judge, I
 8 don't like it. I mean, I am sure 50 percent of the people
 9 don't like what I do because they lose. Then I will look
 10 at it again, I guess. I think I looked at it every time
 11 you have been here.

12 MR. REILLY: Okay.

13 THE COURT: I am not prone to grant it today. If
 14 you start to have a couple of these and see this running
 15 into a problem -- and I kind of made my remarks here, so
 16 everybody knows they might have to give and get a little --
 17 bring on an order to show cause and show me what did it,
 18 what changed. And focus in on just the cases that you want
 19 me to look at. I know you said them, but it is hard for me
 20 to take notes while I am listening to everybody.

21 MR. REILLY: Great idea.

22 THE COURT: But I don't want it to stop the Bank
 23 of New York depositions and others.

24 MR. REILLY: No. We will move forward on that.
 25 But here is what I don't want Ms. Patrick and Mr. Madden to
 Rachel C. Simone, CSR, RMR, CRR

1 do; because when I go and do that, I am entitled to know
2 what happened without getting into the specifics of it. I
3 am entitled to know was there a meeting? Who was there?
4 What --

5 THE COURT: What is wrong with answering that?

6 MS. PATRICK: We produced all the documents.

7 THE COURT: Some person said during the
8 deposition -- I think it was your objection Mr. Ingber --
9 by saying whether or not there was even a meeting is giving
10 away legal advice.

11 MR. INGBER: The testimony was that she didn't
12 know because her lawyers were at the negotiations. He
13 wasn't asking the lawyers --

14 THE COURT: The question was: Was there a
15 meeting? If somebody on the stand and they say
16 "privilege," I say answer yes or no but not what was said.
17 Tell us if you were aware of it, tell us if you know who
18 was there. That they can answer. Don't block every single
19 question.

20 MS. PATRICK: Your Honor, just to be clear,
21 exactly what you said is what we tried to make happen in
22 Mr. Kravitt's deposition. We said let him testify to the
23 fact and don't contend it is a waiver. Mr. Reilly said,
24 No, no, I am not agreeing to that. It is simply not
25 accurate to suggest there is an effort to block that.

1 THE COURT: You are all characterizing things
 2 differently. It seems to me if the person was sitting in
 3 the courtroom being asked those questions and there was a
 4 hearsay objection, you would say, Say if there was a
 5 meeting, say if you know who was there, but don't tell us
 6 what was discussed.

7 If she says there were 500,000 meetings and I
 8 don't know a darn thing because they never let me come in
 9 the door, then I would be concerned. I haven't yet heard
 10 that. Maybe I will, but I haven't. So that's where I
 11 would be concerned. It seems like Bank of New York was at
 12 an awful lot of these meetings, and that's what you should
 13 discover. But I am right now taking it that you are trying
 14 to represent your clients and the truth at the same time.

15 So when do you want to come back, approximately?

16 MS. PATRICK: Your Honor, the fact discovery
 17 cutoff is December 14. I would suggest we come in after
 18 that. That way you will be able to -- you know, you set
 19 the hearing for May. If we come in after the fact discovery
 20 deadline of December 14, people can report to you on any
 21 difficulties they have had, we can see whether there is
 22 anything else that needs to be done; but it seems to me
 23 that that in the next 60 days we ought to be able to knock
 24 out these 26 depositions they have noticed and deal with
 25 any issues. There are four firms on the Steering Committee