

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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), et al.**

Index No. 651786-2011

Kapnick, J.

EXPERT REPORT

OF

TAMAR FRANKEL

QUALIFICATIONS

I am a Professor of Law at Boston University, and have been teaching at Boston University School of Law since 1968. I was awarded a Law Degree from the Jerusalem Law Classes (Israel) in 1948 and the LL.M. and S.J.D. degrees from Harvard Law School in 1964 and 1972, respectively. I have taught courses on corporations, trusts and estates, securities regulation, insurance, securitization (asset-backed securities), investment management regulation, and seminars on fiduciary law, pension fund regulation (ERISA), and Internet Issues. Throughout the years, I was a Visiting Professor at Harvard Law School (1979, 2005), Harvard Business School (1980, 2006), and at the University of California, at Berkeley (1981); a Visiting Scholar at the Brookings Institution in Washington D.C. (1987) and an Attorney Fellow at the Securities and Exchange Commission (“SEC” or “Commission”), Division of Investment Management (June - December 1995; and July 1996 - July 1997). As an associate at the firm of Arnold & Porter, Washington, D.C. (1965-1966), I worked in the areas of general corporate, securities, and commercial law. As a consultant to Bankers Trust Company, New York (1982-1986), I worked mainly on matters of securities regulation, the Investment Company Act of 1940 and Investment Advisers Act of 1940, as they related to banks and bank trust departments.

Among my publications are a four-volume treatise, *The Regulation of Money Managers (Mutual Funds and Advisers)* (2d ed. 2001) (with Ann Taylor Schwing) (Aspen Law & Business), a two-volume treatise on *Securitization (Structured Financing, Financial Assets Pools, and Asset-Backed Securities)* (2d ed. 2006), *Trust and Honesty, America’s Business Culture at a Crossroad* (Oxford University Press 2006), and *Fiduciary Law* (Oxford University Press, 2010). My other publications are listed in Appendix A, attached to this Report.

Throughout the years, I have testified as an expert witness before congressional committees, before the SEC, in court, and in arbitration

proceedings. Among the cases in which I was deposed during the past years are: SEC v. O'Malley (2009); In the Matter of Michael K. Brugman, Administrative proceeding File No. 3-13063 (2008); Sims v. Janus Capital Management LLC, No. 04-1647-WDM (MEH) (2006); Jones v. Harris Associates L.P., No. 04-CV-8305 (N.D. Ill. 2005); DOE v. American Funds Distributors, Inc., Disciplinary Proceedings No. CE3050003 (2006); Baker v. American Century Investment Management, Inc., No. 04-4039-CV-C-ODS, 2006 U.S. Dist. LEXIS 100794 (W.D. Mo. June 27, 2006); Neuberger Berman Real Estate Income Fund Inc. v. Lola Brown Trust, No. 1B, No. AMD-04-3056 (D. Md. 2005). I derive my information and knowledge about fiduciaries, including trustees, from my research, written and teaching materials, and experience as a consultant for Bankers Trust in the early 1980s. My information and knowledge are also based on over 35 years of observation of the business practices and standards in these areas. My full resume, including a list of my other publications, is attached as Appendix A.

THE SUBJECT OF THIS OPINION

The Firm of Reilly Pozner LLP is counsel for AIG. AIG is one of the parties that intervened in the matter concerning the application of Bank of New York Mellon (BNYM), noted above. I am compensated for my work at an hourly rate \$700 plus out-of-pocket expenses. My compensation is in no way contingent upon my opinions and the testimony that I intend to offer in this case.

The Firm of Reilly Pozner LLP has sought my opinion on matters relevant to this judicial proceeding, which was initiated by BNYM as trustee of 530 trusts (Trustee). I have opined on the following issues:

1. The nature and scope of the Trustee's fiduciary duties;
2. Whether the Trustee assumed fiduciary duties and obligations concerning the 530 trusts at issue in this case;
3. Whether the Trustee acted improperly in certain respects in connection with the proposed settlement; and
4. Whether the Court should defer to the Trustee's discretion and judgment.

The Trustee seeks the Court's approval of the June 28, 2011 settlement agreement (Settlement) with Bank of America and Countrywide, as they are defined in the Settlement (BoA). The Settlement purports to settle potential claims belonging to 530 of the trusts for which BNYM serves as trustee. The Trustee's beneficiaries include investors who participated in the negotiation of the Settlement (Insiders) as well as other investors who did not participate in the negotiations (Outsiders).¹ All investors, however, were the beneficiaries of Trusts that held mortgage backed securities governed by "Pooling and Servicing Agreements" (PSA), "Sale and Servicing Agreements" (SSA), and Trust Indentures (collectively "Governing Agreements").²

The Trustee and Insiders seek the Court's approval of the Settlement by passing on the terms of the Settlement in a limited and perfunctory manner. They ask the Court to rely on their expertise and the opinions of their experts.³ The Trustee bases its authority to settle on the Governing Agreements.⁴ In addition, the Trustee seeks the Court's approval of its own activities as Trustee, and full protection from its own liabilities to any party, including the Outsiders, for any activity concerning the Settlement.⁵ On this issue as well, the Trustee asks the Court to approve the request by deferring to the Trustee rather than after a thorough examination of these activities.⁶ The Trustee requests the Court's approval to be almost automatic and put a full closure on both issues by relying on the Trustee.

SUMMARY OF OPINION

I conclude that, contrary to the Trustee's and Insiders' requests, the Court's examination of the Settlement, and the evaluation of the Trustee's exoneration from all responsibility and liability concerning the Settlement, should be detailed and meticulously thorough.

¹ [REDACTED]

² For purposes of this opinion I have reviewed a sample PSA, Dep. Ex. 13, CWALT 2005-35CB (BNYM_CW-00217617-857). I have focused my review on the sections that concern the subject matter of my opinion.

³ Verified Petition ¶¶ 61, 64-67, 75.

⁴ Verified Petition ¶¶ 48-57; PFOJ ¶ f.

⁵ PFOJ ¶¶ h-k, n, p.

⁶ Tr. 43:6-17, 45:2-6 (Apr. 24, 2012) (Ingber).

The Trustee acted beyond the authority vested in it in the Governing Agreements when it agreed to extend the 60-day cure period associated with an Event of Default under the PSAs and when it entered into negotiations and the Settlement. Additionally, because the Trustee lacks the relevant expertise and because there is evidence of conflict of interest, deference to the Trustee is not warranted under these circumstances. Therefore, the substantive fairness of the Settlement, the circumstances in which it was reached, the benefits gleaned by each of the negotiating parties, to the exclusion of the Outsiders, and the effect of the Settlement on the Outsiders, ought to be examined before the Settlement is approved by the Court.

I also conclude that the process in which the Settlement was negotiated and reached is seriously flawed, as the Trustee acted in conflict of interest and failed to exercise due care. The evidence of conflict and lack of care should preclude any judicial release of liability for the Trustee's settlement conduct without in-depth judicial review and full approval of the Trustee's conduct.

My opinion is based on understandings about the Governing Agreements as set forth below:

1. The Governing Agreements do not grant the Trustee the power to negotiate or reach a settlement such as the Settlement.⁷
2. The Governing Agreements do not grant the Trustee the power to extend the 60-day cure period and avoid an Event of Default.
3. The Governing Agreements do not grant the Trustee the power to enter into a "forbearance agreement."⁸
4. The Governing Agreements provide that an Event of Default triggers additional investors' rights and Trustee's duties.⁹

⁷ [REDACTED]

⁸ [REDACTED]

⁹ See, e.g., PSA Section 7.03.

My opinion is as follows:

A. The Trustee’s functions, powers, and duties

Fiduciaries provide a service to others—the beneficiaries. To perform the service effectively, fiduciaries are entrusted with assets and power. *The only purpose of entrustment is to enable the fiduciary to perform the service to the beneficiaries most effectively.* Therefore, with respect to entrusted assets and powers, Trustees may not act in conflict of interest and must serve with care. These duties arise because the beneficiaries cannot control their fiduciaries without undermining the very purpose of the service. The strictness of the duties reflects the possible controls of the fiduciaries’ use of entrusted assets and powers.

A trustee’s functions and powers are enumerated in a document, which constitutes the basis of the legitimacy of the trustee’s actions. Fiduciaries and their duties vary, depending on the extent of expertise the fiduciaries offer, the degree of discretion they need in order to perform their services, and the degree to which the beneficiaries can control the fiduciaries in performing their services. These factors determine the strictness of fiduciary duties.

The services and duties of the Trustee differ in two time zones of the relationship, before and after an Event of Default.¹⁰ This is because before an Event of Default, the Trustee’s services are more perfunctory and less discretionary and its duties are *similar* to those of contract parties. After an Event of Default, the Trustee’s services and related powers are far more numerous and discretionary. Therefore, after an Event of Default, the Trustee’s duties and the strictness of these duties rise as well.¹¹

¹⁰ *Ellington Credit Fund, Ltd. v. Select Portfolio Servicing, Inc.*, 837 F. Supp. 2d 162 (S.D.N.Y. 2011). This case distinguishes between pre- and post-default fiduciary duties. Pre-default, the duties of the trustee constitute a lower level of duties. The court’s use of the term “obligations” is indistinguishable from “duties.” Both mean “must” not “may.” The nature of the Trustee’s obligations in the two periods lies in the different powers which the Trustee is required to exercise upon the rise of an Event of Default. See also *Lorenz v. CSX Corp.*, 1 F.3d 1406, 1415 (3d Cir. 1993) (describing New York decisions).

¹¹

[REDACTED]

This distinction reflects the design of fiduciary law applicable to trustees: the more power and control a trustee exercises, the higher the trustee's duties must be. Before the Event of Default the functions and powers of a trustee are more predictable and can be more clearly specified and limited in the trust instrument. Hence, its duties are *similar* to those of a contract party.¹² After the Event of Default, the detailed powers and functions of a trustee depend on an agreed upon purpose but its achievement requires more discretion, depending on the different circumstances. These services cannot be as easily specified in the trust instrument. As a trustee exercises greater discretion, the trustee's duties and the strictness of the duties rise.

Yet at all times, before and after the Event of Default, regardless of what the relationship is called, a trustee must avoid conflicts of interest and perform its functions with appropriate care.¹³ That is because even before an Event of Default a trustee has fiduciary duties. In fact, if the trustee presumes that it is strictly a contract party a serious question arises as to whether it even attempted to adhere to its fiduciary duties and whether this posture does not violate its duties. The distinction of contract-fiduciary status is crucial. Contract parties are presumed to be able to ensure their interest in the contract and a contract breach is measured by the damages incurred. Trust beneficiaries, on the other hand, are presumed to be *unable* to ensure their interests. That is why fiduciaries must act in the beneficiaries' "*sole interest*."¹⁴ Neither the entrusted assets nor entrusted power belong to the trustee.

¹² I emphasize the word "similar" because contract parties are presumed to be able to protect themselves from the other party's violation of its promises while such protection by beneficiaries of their fiduciaries are presumed to undermine the very utility of the relationship. The investors would not enter into the relationship if they had to control the Trustee's functions and trustworthiness.

¹³ *Ellington Credit Fund*, 837 F. Supp. 2d at 191-92. This case names the relationship as contract before the Event of Default. However, the word contract is used to denote an agreement rather than contract **law**. That is why the same decision notes the conditions of the contract obligations. These obligations are subject to avoiding conflict of interest and negligence. See also *In re Bruches*, 415 N.Y.S.2d 664, 668 (2d Dep't 1979) ("If discretion is conferred upon the trustee in the exercise of a power, the court will not interfere unless the trustee in exercising or failing to exercise the power acts dishonestly, or with an improper even though not a dishonest motive, or fails to use his judgment, or acts beyond the bounds of a reasonable judgment." (quoting Restatement (Second) of Trusts § 187 cmt. e)); *In re Stillman*, 107 Misc. 2d 102, 110 (Sur. Ct. 1980) (same).

¹⁴ There are those who argue that fiduciaries need not act in the "sole" interest of the beneficiaries but only in the beneficiaries' "best interests." The difference smacks of contract, in which the fiduciary can serve itself and somehow, even in conflict of interest, is permitted to serve the beneficiaries. In fact, this approach is derived from the Civil Law. Judges in the Civil Law regime judge the fairness of the contract terms, unlike judges in the Common Law regime who ensure that the parties are capable of fending for themselves and then enforce the terms of the contract. See Tamar Frankel, *Fiduciary Law*, at 20 (2010) ("In Europe, contract does the work of trust."); *Id.* at 150-52.

In this case, the Trustee was a fiduciary of the Outsiders, particularly with respect to its activities concerning the Settlement. The Trustee’s decision to enter into settlement negotiations is precisely the type of discretionary conduct that subjects trustees to the highest duties. There can be no question that the Trustee owed to the Outsiders fiduciary duties.

B. The Trustee exceeded the power vested in it, as provided in the Governing Agreements, and the process by which the Settlement was reached was tainted by the Trustee’s conflicts of interest, and lack of care

No fiduciary authority is unlimited.¹⁵ The Trustee anchors its duties in the Governing Agreements.¹⁶ Yet, duties and powers are linked. As one Court noted: “It is axiomatic that the powers of an indenture trustee are limited to those specifically articulated in the indentures themselves.”¹⁷ While some powers may be implied from express powers, these powers depend on the circumstances and are subject to the courts’ interpretation.

In this case, the Governing Agreements do not grant the Trustee a specific power or function to negotiate or reach a settlement such as the Settlement.¹⁸

¹⁵ *Denver Nat’l Bank v. Von Brecht*, 322 P.2d 667 (Colo. 1958). A trust that vests on a trustee unlimited power is not a trust. It is probably a gift or at most custody. See *Morice v. Bishop of Durham*, 32 Eng. Rep. 947, 947 (1805) (where testator left remainder in trust “for such objects of benevolence and liberality as the trustee in his own discretion shall most approve,” trust classification failed because the court could not exercise supervisory power, and remainder passed intestate). Once he consents to act, a fiduciary is bound by fiduciary duties even though he was promised nothing in return. A fiduciary is not entitled to any consideration, except perhaps quantum meruit. See, e.g., Austin W. Scott & William F. Fratcher, *The Law of Trusts* 125 (4th ed. 1987) (“The trustee is held to the standard of a man of ordinary prudence, whether he receives compensation or whether he acts gratuitously. . . . The courts have ordinarily fixed a higher standard for bailees and agents who are compensated than they have fixed for those who act gratuitously. There is no similar distinction, however, as to trustees.”).

¹⁶ Hrg. Tr. 11:3-14:5 (Sept. 21, 2011) (Ingber); Hrg. Tr. 150:24-25 (Feb. 7, 2013) (Ingber).

¹⁷ *Cont’l Bank, N.A. v. Caton*, No. 88-1611-C, 1990 U.S. Dist. LEXIS 11624, at *4 (D. Kan. Aug. 6, 1990) (“The rights and powers of the [Indenture] Trustee are a function of the Trust Indenture and cannot be generally expanded in contradiction of the Indenture by reference to broad common law principles.”).

¹⁸ [REDACTED]

Even if the Trustee has the power to bring suit against BoA after an Event of Default, it does not have the power to *forego the claims against BoA* without the consent of the investors whose rights are being extinguished. An analogy to the Trustee’s powers is a lawyer’s power to settle. *Fennell v. TLB Kent Co.*, 865 F.2d 498, 501-02 (2d Cir. 1989). The lawyer may have power to conduct the litigation. But that power does not by implication vest in the lawyer the unfettered power to settle the case. *Id.* (stating that generally “the decision to settle is the client’s to make”; however, settlement may be upheld if there is apparent authority). One of the reasons for this distinction is that conducting the litigation requires the lawyer’s expertise and the client’s control is likely to undermine the conduct of the litigation. Settlement of a case,

The Governing Agreements also do not grant the Trustee the power to: (a) extend the 60-day cure period and avoid an Event of Default, nor (b) enter into a “forbearance agreement.”¹⁹ If the Trustee purports not to be bound by any *duties* that are not specified in the PSA,²⁰ it may not simultaneously assume *powers* that are unrelated to nonexistent duties. The Settlement is the result of the Trustee’s assumption of powers that were not granted under the PSAs.

The Settlement should not be approved absent in-depth judicial scrutiny into the Trustee’s conduct and the Settlement’s substantive fairness to all investors. Even if the Trustee had acted within its enumerated powers, the assertion and exercise of this power must be accompanied by the duties of loyalty and care.

It is my opinion that the Trustee violated its duty of loyalty. It acted in conflict of interest by [REDACTED]

[REDACTED]²¹ In fact, [REDACTED]

[REDACTED]

[REDACTED]²² The evidence shows that [REDACTED]

[REDACTED]²³ In fact, the Trustee continued and continues to seek a release from

on the other hand, is not as time sensitive, and the lawyer’s expertise is not necessarily decisive in determining the best settlement terms. In fact, the client may be the better or at least far more important decision-maker. A similar rationale would apply to the Trustee’s authority to settle claims on behalf of the beneficiaries.

¹⁹ [REDACTED]

²⁰Tr. 11:3-14:5 (Sept. 21, 2012) (S.D.N.Y.); *see also* [REDACTED]

²¹ Dep. Ex. 235 [REDACTED] Dep. Ex. 118 [REDACTED]

²² Dep. Ex. 210, BNYM_CW-00254990-254998 at -00254991 [REDACTED]

²³ Dep. Ex. 235 [REDACTED] Dep.

its activities in attempting to settle the claims against BoA through the Proposed Final Order and Judgment and a side letter agreement with BoA that secured indemnification for the Trustee.²⁴

The Trustee's activities seeking [REDACTED] constitutes an additional conflict of interest.²⁵ An Event of Default triggers the Trustee's higher fiduciary duties²⁶ and additional investor rights.²⁷ The Trustee [REDACTED]

[REDACTED]²⁸ Additionally, in negotiating the Settlement, the Trustee did not exercise the necessary level of due care.²⁹ Rather, the Trustee failed to [REDACTED]

[REDACTED]³⁰ This attitude is reflected in the Trustee's purported reliance on its experts. Even though the Trustee sought the opinions of experts, it did so, not in the course of the

Ex. 118 [REDACTED] *see also* Bailey Dep. 148:16-149:14

²⁴ PFOJ ¶¶ b-n,s, t; Exhibit C to Settlement Agreement ("side letter").

²⁵ Dep. Ex. 46, [REDACTED] BNYM_CW-00271275-81; Griffin Dep. 143:13-144:4 [REDACTED] 162:190-162:25 [REDACTED]

²⁶ [REDACTED]

²⁷ *See, e.g.*, Dep. Ex. 13, PSA Section 7.03.

²⁸ Dep. Ex. 52, [REDACTED] BNYM_CW-00270587-89.

²⁹ [REDACTED]

³⁰ *See* The Institutional Investors' Response to Order to Show Cause Why the Court Should Not Compel Discovery (DKT 250), April 13, 2012.

negotiations, but mostly just before the Settlement was submitted to the Court. Some of the experts relied solely on BoA's representations rather than make independent examinations.³¹ The timing and substance of the expert reports suggests that rather than employ experts to develop the Trusts' case against BoA during the negotiations of the key terms, the Trustee sought the opinions of experts to put a stamp of justification post-hoc on the settlement terms that were agreed upon.

Further, the Trustee failed to [REDACTED]
[REDACTED]³² even though the negotiations involved a settlement that purported to extinguish the rights of the Outsiders against BoA and the Trustee. [REDACTED]

[REDACTED]³³ Robert Griffin, a Trustee employee [REDACTED]

[REDACTED]³⁴ In this case the Trustee [REDACTED]

[REDACTED]³⁵ It seems that [REDACTED]
[REDACTED]³⁶

The evidence of conflict and lack of care should preclude any judicial release of liability for the Trustee's settlement conduct absent in-depth judicial review of that conduct. To the extent that the Trustee acted in conflicts of interest or negligently towards the unrepresented Outsiders, the

³¹ Robert Daines report at p. 8 fn. 3; Capstone Valuation Services report; Letter of Brian Lin, Managing Director, RRMS Advisors, New York, N.Y. (June 28, 2011); Letter of Brian Lin, RRMS (June 7, 2011)

³² Dep. Ex. 53 [REDACTED]
[REDACTED] Bailey Dep. 151:18-152:21
[REDACTED]
[REDACTED] Kravitt Dep. 366:20-22
[REDACTED] 187:21-188:5
[REDACTED]

³³ Griffin Dep. 214:21-215:18 [REDACTED]
[REDACTED]

³⁴ Griffin Dep. 218:6-14.

³⁵ Kravitt Dep. 366:20-22 [REDACTED]
[REDACTED] 187:21-188:5
[REDACTED]
[REDACTED]

³⁶ Dep. Ex. 62, BNYM_CW-00270712-15 at -00270712 [REDACTED]
[REDACTED]

Settlement agreement cannot bind the Outsiders without the Court's finding that the Settlement is fair to the unrepresented Outsiders.³⁷

C. The Need for Judicial Scrutiny of the Settlement and the Trustee's Requested Release

1. **Deference to Trustees.** Under certain conditions, not present here, the courts have deferred to the decisions of fiduciaries. For example, in the bankruptcy context, “[t]he standard for review of a trustee's decision regarding case administration is the business judgment rule. So long as the decision was not made arbitrarily, or in bad faith, it is appropriate for a bankruptcy court to accept the trustee's decision.”³⁸ The bankruptcy trustee is far more qualified to deal with judicial claims than the Trustee in this case. Therefore, the bankruptcy trustee may negotiate settlements and compromise disputes, and the courts may approve these compromises or settlements. And yet, the “court may approve a proposed compromise only if it is ‘fair and equitable’ and supported by an adequate factual foundation. Several factors may be considered, including: (i) the probability of success in the litigation; (ii) the difficulty, if any, to be encountered in enforcement of the judgment(s); (iii) the complexity of the litigation, and the expense, inconvenience, or delay involved; and (iv) the paramount interest of creditors and a proper deference to their views. The burden of meeting the standards rests squarely on the trustee.”³⁹

The main reasons for judicial deference are the fiduciaries' *expertise* relating to the subject matter of fiduciaries' decisions, and the ability of the

³⁷ See, e.g., *In re Lower Bucks Hosp.*, 471 B.R. 419, 453 (Bankr. E.D. Pa. 2012) (footnotes omitted) (“BNYM makes an unjustified leap in logic when it suggests that because it was the Bondholders' sole authorized representative, it had the legal right to put the interests of BNYM-Indemnitee ahead of the interests of the Bondholders. There is nothing about BNYM's status as the Bondholders' sole authorized representative that justifies acting in any manner other than in the Bondholders' interests. Nor does BNYM's lack of a threshold duty to act on behalf of the Bondholders following a default justify self-serving conduct once it undertook to represent the Bondholders' interests. Quite the opposite. Regardless of the label put on its role (contractual agent or fiduciary), once BNYM chose to act as the Bondholders' representative and participate in the settlement negotiations on their behalf, it was obliged to represent the interests of the Bondholders faithfully. A review of the relevant case law suggests that BNYM's argument to the contrary is utterly without merit.”).

³⁸ *In Re: Interiors of Yesterday, LLC Debtor*, Case No. 02-30563 (LMW), Chapter 7, Doc. I.D. Nos. 233, 275, 276, 363 U. S. Bankruptcy Court For the District of Connecticut, 2007 *Bankr. LEXIS* 449 (2007).

³⁹ *In Re Rake, Debtor*. Case No. 05-22188-TLM U.S. Bankruptcy Court For The District of Idaho 363 *B.R.* 146; 2007 *Bankr. LEXIS* 549.

beneficiaries and the markets to supervise and affect the way the fiduciaries continue to exercise their judgment (e.g., by making higher or lower risk decisions).⁴⁰

Not surprisingly, judicial deference wanes and vanishes when fiduciaries make decisions while acting under conflict of interest or absent care or where the trustee lacks the requisite expertise. Even if a fiduciary has the required expertise, if its decision is tainted by conflicts of interest or lack of care the court should not defer to the trustee's decision. Drawing on the business judgment rule as an analogy: "The business-judgment rule merely creates a rebuttable presumption that corporate directors acted in good faith and in the best interest their company when making business decisions. It does not preclude judicial review of those decisions."⁴¹ If a trustee, in contrast to directors, has less applicable expertise, the court's supervision of the trustee's decision should be broader.

2. In this case none of the conditions for deference to the Trustee's actions exist. First, as noted above, the Trustee's conduct during settlement negotiations involved both conflicts of interest and lack of care. The evidence shows that the Trustee was [REDACTED] [REDACTED] Additionally, the Trustee failed to [REDACTED] [REDACTED] together with its post hoc justification of the key settlement terms indicate a lack of due care. The Trustee [REDACTED] [REDACTED] It rubber-stamped the Settlement agreement. Even the advisers that were hired in connection with the Settlement issued reports after the Settlement agreement had been reached in principle.

Second, and most importantly, the courts defer to the expertise of the fiduciaries (barring conflict of interest and lack of care). But the subject matter in this case goes beyond the expertise of the Trustee and is

⁴⁰ *Auerbach v. Bennett*, 393 N.E.2d 994, 1000 (N.Y. 1979) (stating that business judgment doctrine "at least in part" is based on "recognition that courts are ill equipped and infrequently called on to evaluate what are and must be essentially business judgments"; stating also that "responsibility for business judgments must rest with the corporate directors; their individual capabilities and experience peculiarly qualify them for the discharge of that responsibility").

⁴¹ *Townsend, et al. v. Antioch University C.A.*, Case No. 2008 CA 103 Court of Appeals of Ohio 2009 Ohio 2552; 2009 Ohio App. LEXIS 2139, May 29, 2009.

specifically and uniquely appropriate for court resolution.⁴² The judges and juries are best equipped to address and resolve the factual and legal issues presented by the Trustee’s petition. The Trustee seeks Court approval of—among other things—the negotiations, the factual and legal investigation, and the Trustee’s evaluation of *legal claims*.⁴³ The settlement of *legal claims and a decision regarding the legal chances of success of a claim* are not within the Trustee’s expertise. Indeed, the very reason the Trustee [REDACTED] Judicial deference to the expertise of trustees does not apply in this case. No deference is due nor warranted.

CONCLUSION

This case is replete with sufficient “red flags” to raise the Court’s full and detailed inquiry before approving this Settlement. The case involves Outsiders that were not a party to negotiations but who will be bound by the Settlement and the Court’s approval of the Settlement. The Trustee and the Insiders [REDACTED] and further ask the Court, by articulating an unduly narrow standard of review, to avoid evaluating let alone determining the substantive fairness of the Settlement itself.

In light of the circumstances as expressed in my opinion, no deference is due to the Trustee’s actions. The Court should not grant the Trustee’s application without engaging in an in-depth evaluation of the Trustee’s conduct and the Settlement’s substantive fairness to all investors.

⁴² *Id.* at 1002 (holding that “[a]s to the methodologies and procedures best suited to the conduct of an investigation of facts and the determination of legal liability, the courts are well equipped by long and continuing experience and practice to make determinations” and “[i]n fact they are better qualified in this regard than are corporate directors in general”).

⁴³ PFOJ ¶ h, i, & j.

RESUME

Tamar Frankel

Office: Boston University School of Law, 765 Commonwealth Avenue, Boston MA, 02215, Tel.: (617) 353-3773 Fax: (617) 353-3077
e-mail: tfrankel@bu.edu

Home Address: 51 Goodnow Lane, Framingham, MA, 01702
Tel.: (508) 820-1889 Fax: (508) 820-4733

Website: www.tamarfrankel.com

Education:

1972 S.J.D., Harvard Law School
1964 LL.M., Harvard Law School
1948 Jerusalem Law Classes, Israel, Diploma

Awards

2010 Named one of 50 Top Women Wealth Management,
<http://wealthmanagerweb.com/News/2010/5/Pages/50-Top-Women-in-Wealth-Named-by-WealthManagerWebcom.aspx>.

2007 Chosen as one of the Women Trailblazers in the Law. ABA Commission project on Women in the Profession. The Commission is spearheading an oral history project called [Women Trailblazers in the Law](#). The interviews are taped and transcripts of the interviews are preserved at the Library of Congress in Washington as a resource for future generations of lawyers and scholars <http://new.abanet.org/divisions/srlawyers/womentrailblazers/all.aspx>
Completed in 2009.

Noted in [The Lawdragon](#) as one of 500 Leading Lawyers in America
www.lawdragon.com/images/uploads/pdf/lawdragon500.pdf

2012 Noted on “breaking Barriers, The Unfinished Story of Women Lawyers and Judges Massachusetts pp. 73-87.

Publications

Books

The Ponzi Puzzle (Oxford University Press 2012)

Fiduciary Law (Oxford University Press) (2010).

Law and the Financial System - Securitization and Asset Backed Securities (Vandeplas Publishing Company (2009) (with Mark Fagan)

Securitization (2d ed.) (Translated into Chinese) (Law Press China 2009)

Trust and Honesty in Real Life (2d ed.) (Fathom Publishing Company 2009) (With Mark Fagan)

Fiduciary Law, Analysis Definitions, Relationships, Duties, Remedies over History and Cultures (Fathom Publishing Company 2008)

Trust and Honesty, America's Business Culture at a Crossroad (Oxford University Press 2006)

Securitization: Structured Financing, Financial Assets Pools, and Asset-Backed Securities (formerly Little, Brown & Company (1st ed.1991) (2d ed. 2006) (a two-volume treatise) (Fathom Publishing Company, formerly Aspen Law & Business)

Investment Management Regulation (4th ed. 2012) (Fathom Publishing Company)

The Regulation of Money Managers (Mutual Funds and Advisers) (1st ed. 1978-80) (2d ed. 2001) (With Ann Taylor Schwing) (Wolters Kluwer Law and Business , formerly Little, Brown & Company) (a four-volume treatise) (updated annually)

Book Chapters

Chapter 19, Research Handbook on Economics and Corporation (2012)

Chapter 9. The Panic of 2008: Causes, Consequences and Implications for Reform (2009)

ABA Guide to International Business Negotiations: A Comparison of Cross-Cultural Issues and Successful Approaches) James R Skilkenat, Jefferey M. Aresty, Jacqueline Klosek eds. (3d ed.) Chapter 1: Trust and the Internet (2009).

Securitization of Loans: Asset-Backed Securities and Structured Financing, The Financial Services Revolution, Understanding the Changing Roles of Banks, Mutual Funds and Insurance Companies at 215 (Clifford E. Kirsch, ed., 1997; 2008)

Chapter 12. Conflicts of Interest In Corporate Governance and Financial Markets (Luc Thevenoz and Rashid Bsahar eds. Kluwer Law International 2006). (Published in 2007)

Cross-Border Securitization, Financial Innovations and the Welfare of Nations (Laurent L. Jaque and Paul M. Valler, eds, Kluert Academic Publishers, 2001)

Securitization (Asset-Backed Securities and Structured Financing), Financial Product Fundamentals Law Business Compliance Chapter 4 (Clifford E. Kirsch, ed., 1999)

Money Managers Conflicts of Interests -- An American Viewpoint, Legal Aspects of Investment Management at 177 (Under the Direction of Professor Luc Thevenoz) (International Conference, October 17, 1997, Geneva, Switzerland)

Knowledge Transfer: Consulting and Teaching in China, Legislative Drafting For Market Reform Some Lessons From China at 182 (Ann Seidman & Robert B. Seidman, eds., 1997)

Should Funds and Investment Advisers Establish a Self-Regulatory Organization? The Financial Services Revolution, Understanding the Changing Roles of Banks, Mutual Funds and Insurance Companies at 447 (Clifford E. Kirsch, ed., 1997)

Securitization: Its Effect On Bank Structure, Structural Change In Banking at 309 (Michael Klausner & Lawrence J. White, eds., N.Y.U. Salomon Center, Leonard N. Stern School of Business, 1993)

Fiduciary Law in the United States, Equity, Fiduciaries And Trusts 1993 at 173 (Donovan W.M. Waters, ed., 1993)

Fiduciary Law: The Judicial Process and The Duty of Care, The 1993 Isaac Pitblado Lectures, Fiduciary Duties/Conflicts of Interest at 143 (Manitoba, Canada, November 1993)

Decision Making for Social Investing, Social Investing at 131 (Dan McGill, ed., for Pension Research Council, Wharton School, Univ. of Pennsylvania, Richard D. Irwin, Inc., 1984)

Bank Loan Participations under the Securities Acts; The Implications of SIA v. Board of Governors (Becker), 16th Annual Institute of Securities Regulation, v.2 at 311 (PLI 1984) (Bank loans and the securities markets regulation)

Articles

The Regulation of Brokers, Dealers, Advisers and Financial Planners, 30 Rev. of Banking and Financial Law, 123 (2010-2011).

Essay, Fiduciary Law in the Twenty-First Century, 91 B.U. L. Rev. 1289 (2010-11).

Let the Securities and Exchange Commission Outsource Enforcement by Litigation. A Proposal, 11 J. Bus. & sec. Law 111 (2010-11).

The New Financial Assets: Separating Ownership from Control, 33 Seattle Univ. L. R. 931 (2010).

The Story of Sub-Prime Mortgage Disaster, Studi e Note di Economia, Anno XIV n.2-2009 pages 325-353 (Italy).

Mutual Fund Advisers Fees and Executive Compensation, Palgrave Macmillian-International Journal of Disclosure and Governance. Volume 7, Issue 1 (February 2010) and International Journal of Disclosure and Governance 7, 7-19 (26 November 2009) doi:10.1057/jdg.2009.26 (republished with permission)

Trust Honesty and Ethics in Business, Finance & The Common Good/Bien Commun -No.31-32-II-III/2008 (Italy).

Corporate Boards of Directors: Advisors or Supervisors, 77 U. Cin. L. Rev. 501 (2008).

Private Investment Funds: Hedge Funds' Regulation by Size, 39 Rutgers L. J. 657 (2008).

The Problems of Securitizing Sub-Prime Loans The Asian Business Lawyer, Vol 1, Korea University Legal Research Institute (Spring 2008).

Court of Law and Court of Public Opinion: Symbiotic Regulation of the Corporate Management Duty of Care 3 NYU Journal of Law & Business 353 (2007). Also published by Amicus Law Books, ICFAI University, India.

Using the Sarbanes-Oxley Act to Reward Honest Corporations, 62 Bus. Law. 151 (2007).

The Mysterious Ways of Mutual Funds: Market Timing, with Lawrence A. Cunningham, *Annual 25 Review of Banking & Financial Law* 235 (2006). (Published in 2007)

Fall of the Barriers Preventing Abuse of Trust and Deception: The Hidden Changes in Legal Doctrine and Legal Interpretation, 5 Law & Business IDC Herzelia, Radzyner School of Law 113 (2006). (Partial Hebrew translation of Trust and Loyalty, Americas Business Culture and at Crossroad (2006))

How Did We Get Into This Mess? 1 J. Bus. & Technology Law 133 (2006)

What Default Rules Teach Us About Corporations, And What Understanding Corporations teaches us about Default Rules, 33 Fla. State U. L. Rev. 698 (2006) also reproduced in Fiduciary Obligations, Legal Perspectives 149 (Radhika G ed.) (2008).

Are Advisers Contributing to Fund Rule Avalanche? Ignite Magazine (*April 2006*).

The Scope and Jurisprudence of the Investment Management Regulation, 83 Washington U. L.Q. 939 (2005).

Book Review, Why We Lie, Human Nature Review, Vol. 5, 2005, 45 (2006).

Why the Board is Broken, with Joseph Anton, Wall Street Lawyer 23 (2005).

Governing by Negotiation: The Internet Naming System, 12 Cardozo J. Intl. And Comp. Law 449 (2004).

Future Developments, Selling the Advisory Business, Wall Street Lawyer (2004).

The Seventh Circuit in WSOL v. Fiduciary Management Associates and the Amendment to Rule 12b-1, Investment Lawyer No 8, 11 (2004).

Advisory Fees: Evolving Theories, 10 Investment Lawyer 21 (2003).

Regulation and Investors' Trust in the Securities Markets, 68 Brooklyn L. Rev. 439 (2002).

Report to the Markle Foundation on Corporate Governance, September, 15 (2002).

The Managing Lawmaker in Cyberspace: A Power Model, 27 Brooklyn L. Rev. 859 (2002).

The Law of Cross-Border Securitization: Lex Juris, 12 Duke J. Comp. & Int'l L. 475 (2002).

Of Theory and Practice, 77 Chi-Kent L. Rev. 5 (2001).

The Delaware Business Trust Act Failure as The New Corporate Law, 23 Cardozo L. Rev. 325 (2001).

Trusting and Non-Trusting on the Internet, 81 B.U.L. Rev. 457 (2001).

Introduction, Symposium, Trust Relationships (with Wendy Gordon), 81 B.U.L. Rev. 457 (2001).

Accountants' Independence; The Recent Dilemma, 2 Colum. Bus. L. Rev. 261 (2000).

The Different Design of Corporate Governance under State Law and Federal Law and the Aftermath of the Strougo Case, 7 Investment Lawyer 3 (2000).

Securitizing Insurance Risks (with Joseph W. LaPlume), Annual Review of banking Law 203 (2000).

The Internet, Securities Regulation, and Theory of Law, Symposium on The Internet and Legal Theory, 73 Chi-Kent L. Rev. 1319 (1999).

Securitization: The Conflict Between Personal and Market Law (Contract and Property), 18

Annual Review of Banking Law 197 (1999).

Trends in the Regulation of Investment Companies and Investment Advisers, 1 Villanova J. L. & Investment Management 3 (1999).

Cross-Border Securitization: Without Law, But Not Lawlessness, 8 Duke J. Comp. & Int'l L. 255 (1998).

Fiduciary Duties, *The New Palgrave Dictionary of Economics and The Law*, 127 (Peter Newman ed. 1998).

Trust and Contract in the U.S. and Japan (with Norio Higuchi), Hogaku Kyokai Zassi, 115 Journal of the Jurisprudence Association, The University of Tokyo, no.2 (Feb. 1998).

Symposium, Comment, Lessons From The Past: Revenge Yesterday and Today, 76 B.U. L. Rev. 89 (1996).

Symposium: A Recipe for Effecting Institutional Changes to Achieve Privatization: Foreword, 13 B.U. Intl L. J. 295 (1995).

Fiduciary Duties as Default Rules, 74 Ore. L. Rev. 1209 (1995).

Knowledge Transfer: Suggestions for Developing Countries on The Receiving End, 13 B.U. Intl L. Rev. 141 (1995).

Enforcing Coasian Bribes for Non-Price Benefits: A New Role For Restitution (with Wendy Gordon), 67 S. Cal. L. Rev. 1519 (1994).

The Pros and Cons of a Self-Regulatory Organization for Advisers and Mutual Funds, 1 The Investment Lawyer 3 (September 1994).

Bank Powers to Sell Annuities, 49 Bus. Law. 1691 (1994).

Presumptions and Burdens of Proof As Tools For Legal Stability And Change, 17 Harv. J. L. & Pub. Policy 759 (1994).

Essay, The Legal Infrastructure of Markets: The Role of Contract and Property Law, 73 B.U.L. Rev. 389 (1993.)

What Can be Done About Stock Market Volatility? 69 B.U.L. Rev. 891 (1989).

The Inapplicability of Market Theory to Adoptions, 67 B.U.L. Rev. 99 (1987) (with Professor Frances Miller).

The South Dakota Experiment, 53 Brooklyn L. Rev. 53 (1987).

Corporate Directors Duty of Care -- the American Law Institute Project on Corporate Governance, 52 Geo. Wash. L. Rev. 81 (1985).

The Power Struggle Between Shareholders and Directors: The Demand Requirement in Derivative Suits, 12 Hofstra L. Rev. 39 (1983) (with Wayne Barsky).

Fiduciary Law, 71 Cal. L. Rev. 795 (1983).

First Amendment Protection of Mutual Fund Advertising, 14 Rev. Sec. Reg. 957 (1981).

Implied Rights of Action, 67 Va. L. Rev. 553 (1981).

Distribution of Mutual Fund Shares, 10 Rev. Sec. Reg. 860 (1977).

Regulation of Variable Life Insurance, 48 Notre Dame Lawyer 1017 (1973).

Variable Annuities, Variable Insurance and Separate Accounts, 51 B.U.L. Rev. 173 (1971).

The Governor's Private Eyes, 49 B.U.L. Rev. 627 (1969).

The Maloney Act Experiment, 6 B.C. Ind. & Comm. L. Rev. 187 (1967) (under the name of Hed-Hoffman).

Newspaper Articles

Rethinking the American Dream, femme-o-nomics, April, 2012.

Legal Briefs, The Breakdown of Legal Categories: Brokers, Dealers, Financial Planners and Advisers, Community Banker 48 (2009).

The Wall Street Lawyer, How Should the Financial Markets be Regulated," October 2008, Vol. 12 Issue 10.

Rethinking the American Dream, LAWDAGON, <http://www.lawdragon.com> August, 2008

Boston Globe (op-ed), January 2, 2007.

American Banker, World Bank Should Consolidate Third World Debt, June 18, 1987 (with Robert E. Litan).

Legal Times, Carrots' Should be Utilized by Bank Regulation, January 13, 1986 (with Robert E. Litan).

American Banker, The Problem of Off-Balance-Sheet Liabilities, December 12, 1985.

Deposit Insurance and Risk: A Shaky Connection, American Banker, August 1, 1985.

Legal Background

Jan. -- June, 2006 **Visiting Professor Harvard Business School**

Sept. – June 2005 **Visiting Professor, Harvard Law School**

1971-Present **Professor of Law, Boston University School of Law**

Oct. – Dec. 2000 **Visiting Fellow, St. Catherine’s College; Visiting Fellow at the Center for Socio-Legal Studies, Wolfson College, Oxford, England**

Apr. 29-June 1, 1997 **Visiting Professor, Graduate School of Law and Politics, The University of Tokyo, Japan**

July-Dec. 1995;
July 1996-July 1997 **Attorney Fellow, Securities and Exchange Commission, Wash. DC**

Summer 1992 **Consultant, Peoples' Bank of China Drafting of Banking Law, United Nations Development Program**

Jan. 1986-Aug 1987 **Guest Scholar, The Brookings Institution, Washington, DC**

1983-1985 **Consultant, Bankers Trust Company, New York**

1982-1983 **Visiting Professor of Law, University of California Law School, Berkeley, California**

Fall 1980 **Visiting Professor of Business Management, Harvard Business School.**

1979-1980 **Visiting Professor of Law, Harvard Law School**

1968-1970 **Assistant Professor of Law, Boston University School of Law**

Fall 1967 **Lecturer, Boston University School of Law**

1966-1967 **Special Assistant to the Commissioner of Corporations, State of California**

1965-1966 **Associate, Arnold & Porter, Washington, DC**

1964-1965 **Associate (part-time), Ropes & Gray, Boston, Massachusetts**

1962-1963 **Legal Advisor, State of Israel Bonds Organization, France**

- 1950-1962 **Private Law Practice, Tel Aviv, Israel** (housing, banking, corporate work)
- 1949-1950 **Assistant Attorney General, State of Israel, Ministry of Justice, Legislation Department**
- 1948-1949 **Assistant Legal Advisor, Israeli Air Force**

Testimony before congressional committees

- January 5, 2009 **Testimony before the Subcommittee on Financial Regulation, concerning Bernard Madoff Ponzi scheme**
- Oct. 7, 1998 **Testimony (concerning ICANN) before a joint hearing of the Subcommittee on Basic Research and the Subcommittee on Technology of the Science Committee of the U.S. House of Representatives**
- Feb. 16, 1993 **Testimony before the Subcommittee on Economic Growth and Credit Formation of the Committee on Banking, Finance and Urban Affairs U.S. House of Representatives**
- Feb. 12, 1992 **Participant, Informal Round Table Discussion of Commercial Credit Securitization, Senate Committee on Banking, Housing and Urban Affairs**
- Mar. 19, 1986 **Testimony before the Subcommittee on Telecommunication, 1986 Consumer Protection and Finance of the Committee on Energy and Commerce, U.S. House of Representatives. Pension Funds in the Capital Markets: Impact on Corporate Governance, Trading Activity and Beneficiaries**

Professional activities

- October 10, 2012, **The Ponzi Scheme Puzzle, University lecture**
- September 28, 2012 **Osler Lecture, Fiduciary Law in Civil Law and Common Law, Kingston University, Canada**
- September 18, 2012 **Lecture to Securities and Exchange Personnel, Washington D.C. Ponzi Scheme Puzzle.**
- July 12, 2012 **Participation as Panelist, Warsaw (by internet) Fiduciary Law**
- June 30, 2012 ASE **Presentation. Restructuring of Bank Holding Companies**

June 29 2012. **ASE Panel discussion, Fiduciary Law under Civil Law and Common Law**

June 9, 2012 **Webinar Reuters (with Peter Rosenblum, esq.)**

April 11, 2012 **Ponzi Scheme Puzzle participant in a Webinar by SEC Historical Society**

March 22, 2012 **Presentation, Conference on Fiduciary Law: University of Borgano, Italy “Towards Universal Fiduciary Principles” (by teleconference)**

March 24, 2012 **Panelist on Discussion about S.J.D. Harvard law School (100 years to the S.J.D.)**

March 24, 2012 **Panelist, Discussion on Securitization, Harvard Law School.**

March 30, 2012 **Conference, Paper presentation: The Failure of Disclosure, Cincinnati Law School**

November 11, 2011 **Presentation , Fiduciary Law, University of Bazel Switzerland**

November 2011 **Presentation, Fiduciary Law, University of Geneva, Switzerland Observatoire de la Finance, 24, rue de l'Athénée, CH-1206 Geneve, Switzerland**

March 12, 2010 **Presentation. Round Table Fordham Law School**

March 25, 2010. **Panel presentation. FAIR. Toronto, Canada**

April 4, 2010 ABA **Panel presentation on Ponzi schemes.**

April 9, 2010 **Commentator. Penn Law School.**

December 10, 2010 **Organized with Professor William Birdthistle, Chicago Kent law School Round Table discussion on Fiduciary law**

December 4, 2009. **Organized together with Professor William Birdthistle, Chicago Kent law School Round Table discussion on Fiduciary law**

November, 6-7, 2009 **Discussant, Conference. The Origins of Shareholders Advocacy**

October 29, 2009 **Speaker before the faculty of Oregon Law School on Fiduciary Law.**

November 11, 2008 **Speaker, Conference, Fiduciary Law, Manitoba, Canada**

June 4, 2008, **Speaker, Ethical Leadership in Investment Firms, Boston, Ma.**

February 19, 2007- **Member, Advisory Committee on curriculum for a Master Degree in**
June 2008 **Compliance and Ethics at New England College of Finance (Scott Harshbarger, chair)**

November 8, 2007, **Speaker. Directors Roundtable & National Leadership Institute.**

November 30-Dec. 1, 2006 **Co-Chair ALI-ABA Investment Management Advanced Course**

November 7, 2006 **Presentation at New York University combined course of law and business**

November 1, 2006 **Speaker. Center for Corporate Excellence Conference, Denver, CO**

October 13, 2006 **Panelist, The Center for Banking and Financial Law of Boston University School of Law and Federated Investors, Inc. A Symposium on How to Manage Conflicts of Interest in Wealth Management Transactions. Washington D.C.**

October 12, 2006 **Speaker, Securities and Exchange Commission Staff at Office of Compliance**

October 6. 2006, **Presentation on Fiduciary Law, Boston. Nat. Assoc. Independent Pub. Fin. Advisors**

September 26, 2006 **Panelist, 10th Annual Investment Management Compliance Summit**

July 6, and 7, 2006 **Presentation: Author speaks to Reader and panel member, Annual Meeting Law and Society Association, Baltimore**

June 24, 2006 **Panel member, Directors College, Stanford University, Palo Alto**

May 10, 2006 **Presentation. Trust and Honesty, Seminar, Said Business School, Oxford UK**

April 20, 2006 **Speaker, Role of Institutional Investors and Regulation in Effective Corporate Governance, Center for Research in Regulated Industries, Rutgers Business School, New York**

March 9, 2006 **Speaker. Millennium Hedge Fund Management**

February 2, 2006 **Lecture Seminar, Directions and Regulation, Kennedy School, Harvard University**

January 26, 2006: **Presentation. Leadership Council, Kennedy School Harvard University**

June 2, 2005 **Chair and Discussant, Annual Meeting of Law and Society, Las Vegas.**

June 4, 2005 **Presentation of book- Trust and Honesty, America's Business Culture at a Crossroad- Canadian-American Research Centre for Law and Policy, University of Windsor, Canada**

May 19, 2005 **Speaker - Callan College, for Mutual Funds Directors, the Meaning of Fiduciaries and Their Duties**

March 29, 2005 **Speaker - Mutual Fund Directors Forum, Boston**

January 31, 2005 **Participant, Roundtable Discussion, Center For Corporate Securities and Financial Law, Fordham University School of Law, Mutual Funds and Hedge Funds: The Expenses and Fees of Professional Investment Advice**

June, 2004 **Participant, Rueschlikon Conference, Openness, Trust and Sovereignty Zurich, Switzerland (organized by John F. Kennedy School of Government, Harvard University) (hosted by Swiss Re-Center for Global Dialogue, Rueschlikon)**

April, 2004 **Panelist, Practicing Law Institute, Investment Management Compliance New York**

February, 2004 **Presentation, Sloan Conference, George Washington University, D.C.**

December 2003 **Moderator, New England Legal Foundation**

October, 2003 **Introduction to the lecture by Professor Eli Weisel, Boston University**

Oct. 16,17, 2003 **Co-Chair, ALI-ABA Advanced Course in Investment Management, Washington D.C.**

Feb. 8, 2003 **Panelist, American Bar Foundation, Seattle**

Nov. 4, 2002 **Lecturer, School of Sociology, All Souls College, Oxford on Con Artists and Ponzi Schemes**

Oct. 17,18, 2002 **Co-Chair, ALI-ABA Advanced Course in Investment Management, Washington D.C.**

Jan. 4, 2002 **Panelist, “Donative Transfer, Fiduciaries and Estate Planning,” American Association of Law Schools, New Orleans**

Dec. 26, 2001 **Speaker, Conference, Confederation of Indian Industry, Hyderabad, India**

Oct.9, 2001 **Speaker, The Common Law and Cyberspace, Center for Socio-Legal Studies, Oxford, UK**

Jan. 31, 2001 **Panelist, Annual Adviser Compliance, Glasser Legal Works**

Feb 19, 2001 **Speaker, Conference on Trust, Tokyo, Japan**

Feb. 20, 2001 **Speaker, Panel discussion on Trust, Tokyo University**

Jan 31, 2001 **Speaker, PLI Course on Municipal Bond Markets, New York**

Jan. 12, 2001 **Speaker, Directors’ Educational Project, Washington D.C.**

Nov. 14 -23, 2000 **Seminar Talk, Oxford, UK**

Sept. 22-23, 2000 **Co-Chair, Conference, Trust Relationship, Boston University Law School**

Oct. 31, 1999. **Panelist by Teleconference. Open Meetings. ICANN and The public Interest. Organized by the Berkman Center for Internet and Society. Harvard Law School. Los Angeles**

Oct. 26-27, 2000 **Co-Chair (with Clifford E. Kirsch), ALI-ABA Course of Study, Investment Management Regulation Conference, Washington, D.C.**

Oct. 21-22, 1999 **Co-Chair (with Clifford E. Kirsch), ALI-ABA Course of Study, Investment Management Regulation Conference, Washington, D.C.**

Oct. 14, 1999 **Speaker. Municipal Sec. Round Table. SEC**

Oct. 15, 1999 **Speaker, 1999 National Society of Compliance Professionals Membership Meeting, Washington, D.C.**

Sept. 24, 1999 **Speaker, Governing the Commons: The Future of Global Internet Administration, Computer Professionals for Social Responsibility, Alexandria, Virginia**

Sept. 16, 1999 **Speaker, Financial Innovations and the Welfare of Nations: How Cross- Border Transfers of Financial Innovations Nurture Emerging**

Capital Markets, Tufts University

- 1999-2000 **Member, Advisory Committee Restatement of Trusts (Third), American Law Institute**
- Apr. 26, 1999 **Presentation on Corporate Governance before the Advisory Group of the Investment Company Institute, Washington, D.C.**
- Aug. 21, 1998 **Speaker by Teleconference, International Forum on White Paper (IFWP) (Internet), Buenos Aires, Argentina, from Cambridge, Massachusetts**
- Aug. 11-13, 1998 **Chair, International Forum on White Paper (IFWP), Singapore**
- July 24-25, 1998 **Co-Chair, International Forum on White Paper (IFWP), Geneva, Switzerland**
- July 1-2, 1998 **Chair, International Forum on White Paper, Reston (IFWP), Virginia**
- Apr. 14, 1998 **Speaker, Second Annual Investment Advisers Compliance Conference, New York**
- Feb. 5-6, 1998 **Speaker, ALI-ABA Course of Study, Investment Adviser Regulation, Washington, D.C.**
- Dec. 4, 1997 **Speaker, International Conference on Asset Securitization, Kuala Lumpur, Malaysia**
- Oct. 17, 1997 **Panelist, Fiduciary Duties of Investment Managers, International Conference on Legal Aspects of Investment Management, organized by Ceje Droit Bancaire & Financier, University of Geneva**
- May 23, 1997 **Speaker, Association of Trust Banks, Japan, Tokyo, Issues concerning fiduciary duties and Securitization**
- Feb. 18-19, 1997 **Speaker, Issues Concerning Emerging Markets, presented at the Conference: "Comparative Study of Internationalization of Emerging markets and its Application to China," Beijing, China**
- Jan. 30, 1997 **Speaker, The 1996 Amendments of the Advisers Act, Proposed Implementing Rules, ALI-ABA Course on Investment Advisers, Washington D.C.**
- Oct. 16-17, 1997 **Co-Chair (with Clifford Kirsch), ALI-ABA Advance Course Study, Regulation of Investment Management, Washington, D.C.**

- Oct. 17-18, 1996 **Co-chair (with Clifford Kirsch), ALI-ABA Advanced Course Study, Investment Management Regulation, Washington, D.C.**
- Oct. 12-13, 1995 **Co-chair (with Clifford Kirsch), ALI-ABA Advanced Course Study, Investment Management Regulation, Washington, D.C.**
- Apr. 21, 1994 **Speaker, Seminar on Mutual Fund and Investment Advisor Compliance For New Complex Products & Transactions. Institute for International Research. New York**
- Sept. 13, 1994 **Panel Member, Spotlight On Derivatives, Facing New Realities New York What Capabilities and Controls Do Funds Need for the Derivatives Business Today? Some Suggested Guides for Fund Directors, Organized by Fund Directions**
- June 12, 1992 **Panel Member, Annual New England Securities Conference**
- 1984 **Speaker: Symposium: Current Issues in Corporate Governance, 45 Ohio State L. J. 629-63**

Bar, Professional Associations and Editorial Boards Memberships

Massachusetts Bar Association

American Bar Association, Section of Corporate, Banking and Business Law

Life Member, American Bar Foundation

Life Member, American Law Institute

Board of Editors Investment Lawyer (Aspen Law & Business)

Board of Editors, Regulation and Governance (Blackwell, Inc.)

ALI Advisory Committee, Securities Regulation

**APPENDIX B
DOCUMENTS RELIED ON**

DEP EX. NO.	DEPOSITION EXHIBITS
13	PSA CWALT 2005-35CB (BNYM_CW-00217617-857)
44	E-mail from Mr. Kravitt, Subject: [REDACTED]
46	Forbearance Agreement (BNYM_CW-00271275-81)
52	Forbearance Agreement (BNYM_CW-00270587-89)
53	Email from Kravitt [REDACTED] Subject: [REDACTED] (BNYM_CW-00270970)
62	Email from Kravitt [REDACTED], Subject: [REDACTED] (BNYM_CW-00270712-15)
118	Email from Ingber, [REDACTED] Subject: [REDACTED] (BNYM_CW-00255381-84)
210	Email from Madden [REDACTED] Subject: [REDACTED] [REDACTED] (BNYM_CW-00254990-98)
235	Email from Matthew Ingber [REDACTED] Subject: [REDACTED] [REDACTED]
DATE	COURT DOCUMENTS
6/29/2011	Bank of New York Mellon's Verified Petition and Exhibits A through F (DKT0001 - DKT0007)
4/13/2012	The Institutional Investors' Response to Order to Show Cause Why the Court Should Not Compel Discovery (DKT 250), April 13, 2012
DATE	DEPOSITION TRANSCRIPTS
9/19-20/2012	Kravitt Deposition Transcripts, September 19-20, 2012.
10/2-3/2012	Lundberg Deposition Transcripts, October 2-3, 2012
12/3/2012	Bailey Deposition Transcript, December 3, 2012
1/3/2013	Griffin Deposition Transcript, Jan. 3, 2013
DATE	HEARING TRANSCRIPTS
9/21/2011	Transcript of Hearing before Judge Pauley, September 21, 2011 (S.D.N.Y)
4/24/2012	Transcript of Hearing before Justice Kapnick, April 24, 2012
2/7/2013	Transcript of hearing before Justice Kapnick, February 7, 2013
DATE	ADVISORS' OPINIONS
6/6/2011	Capstone Valuation Services, LLC's Countrywide valuation analysis (BNYM_CW-00249770-784)
6/7/2011	Robert Daines's 6/07/2011 Opinion
6/7/2011	Brian Lin's 6/7/2011 Opinion
6/28/2011	Brian Lin's 6/28/2011 Opinion