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),

Petitioner,

for an order, pursuant to C.P.L.R. § 7701, seeking judicial instructions and approval of a proposed settlement.

Index No. 651786/2011

Assigned to: Kapnick, J.

MEMORANDUM OF LAW IN SUPPORT OF THE ORDER TO SHOW CAUSE WHY THE COURT SHOULD NOT CONTINUE THE TRIAL FOLLOWING THE SEPTEMBER TRIAL DATES TO ALLOW DISCOVERY CONCERNING NEWLY DISCLOSED EVIDENCE

The undersigned respectfully move under CPLR § 4402 for a continuance following the September trial dates the Court has already set to allow discovery concerning newly disclosed evidence.

INTRODUCTION

It is well-established that a court can continue a trial if, during the trial, one party waives a privilege it relied upon in discovery to allow the other party the opportunity to obtain discovery into the matter. Bank of New York Mellon (BNYM) drew a bright line during discovery that its witnesses would not be permitted to disclose any investigation or evaluation of claims conducted by their in-house or outside counsel. The Steering Committee made repeated efforts to obtain this discovery in order to test the findings sought by BNYM in the proposed final order and judgment (PFOJ). These efforts included inquiry into the bases for the proposed findings that the "Settlement Agreement is the result of factual and legal investigation by the Trustee" and that the "Trustee appropriately evaluated the terms, benefits and consequences of the Settlement and the strengths and weaknesses of the claims being settled." Doc. No. 7 ¶¶ h, i. BNYM repeatedly refused to produce documents or allow testimony concerning this information. The Court accepted BNYM's position because, as the Court recognized, BNYM bore the risk that without the requested evidence the record might lack sufficient facts to support the requested findings.

BNYM now seeks to have it both ways. BNYM has selectively leaked information concerning its factual and legal investigation and evaluation of claims during trial that it has previously refused to provide in discovery. Such selective disclosure constitutes a waiver of the attorney-client privilege. By waiving its privilege during trial, BNYM has subjected the

Respondents to trial by ambush: Respondents are hearing testimony for the first time live on the witness stand, despite having tried to obtain this information during discovery.

In light of BNYM's clear waiver, the trial should be continued for a brief period to enable the Respondents to conduct targeted discovery into the full extent of BNYM's factual and legal investigations and evaluation of claims sought to be resolved by the settlement. While BNYM will undoubtedly (again) accuse the undersigned of seeking to delay these proceedings, the undersigned do not seek a continuance until after the dates the Court has currently set for trial in September. The requested discovery could even begin during the September trial dates and need not slow down the proceedings in any significant way. Further, this motion is necessitated entirely by BNYM's own conduct. Had BNYM disclosed during discovery the information it has now volunteered live on the witness stand at trial, no such request would be needed. Alternatively, had BNYM drawn the same line with respect to its privilege during trial as it did during discovery, there would be no basis for this motion. Instead, BNYM seeks strategic advantage by disclosing information for the first time at trial, thereby precluding Respondents from having the opportunity to prepare to address the new evidence. In light of this prejudicial conduct, the undersigned Respondents respectfully request a brief continuance of the trial following the September trial dates to conduct additional discovery related to BNYM's investigation.

FACTUAL BACKGROUND

A brief chronology of the Steering Committee's repeated attempts to obtain evidence relating to BNYM's investigation and evaluation of claims information that has now been partially disclosed at trial illustrates that BNYM is subjecting the Respondents to trial by ambush.

- Mr. Kravitt's deposition was taken on September 19 and 20, 2012. Ms. Lundberg's deposition was taken on October 2 and 3, 2012. Throughout both depositions, Mr. Kravitt and Ms. Lundberg were repeatedly instructed not to disclose the investigation performed by Mayer Brown or BNYM's in-house counsel. *See* Appendix to this motion; Exs. 2, 4.

- On October 9, 2012, the Steering Committee sent the Court a letter informing it of the Trustee's position and stating that BNYM was using the privilege as a sword and a shield by putting "its investigation, deliberation, and conduct at issue" while "withholding the discovery necessary to evaluate the findings sought in the PFOJ." Doc. No. 368 at 9.

- At a hearing on October 12, 2012, the Court commented on this problem, directing its comments to counsel for the Trustee:

> I also see that you want me to sign a very, very comprehensive order approving, rubber stamping after the fact your negotiations[,] your investigations, everything you did as being okay, good, excellent, you get an A plus.
>
> I have to see things. So to the extent that you objected to every single question through this deposition, many, many, many of the questions. I mean, everything you guys read to me had objections that were longer than the answers. It is going to be a long process. It is going to be problematic.
>
> I think you might have to rethink just a little bit what you might think might be more reasonable to let him answer, and you have to think about how you may want to conduct it so that you get the most out of the depositions.

Ex. 5 (10/12/12 Hearing Tr.) at 123:20-124:8.

- Despite the Court's statements, BNYM took the same positions with respect to privilege at Mr. Bailey's deposition on December 3, 2012. *See* Appendix; Ex. 3.

- On January 14, 2013, the Steering Committee filed a narrowly-tailored order to show cause seeking documents because, in part, the "Trustee's request for approval of its 'legal investigation' and its 'deliberations' has placed much of its communications with counsel and documents generated by counsel at issue." Doc. No. 430 at 10.

- At the April 12, 2013 hearing, after hearing argument on this order to show cause, the Court stated "If they [BNYM] don't prove it to me they are not getting that finding. *That's the risk they are going to bear*. I don't know if it's going to fall apart if half of those findings aren't able to be made or not." Ex. 6 (4/12/13 Hearing Tr.) at 114:2-5 (emphasis added). In response, Trustee's counsel stated "The risk is [ours], there is a proposed final order of judgment, your Honor is going to hear the evidence, *it's going to involve nonprivileged information*. You are going to go through the proposed final order of judgment and decide which of those findings your Honor is going to accept." *Id.* at 114:6-11 (emphasis added).

- Apparently to avoid the risk that its discovery tactics could limit its ability to obtain the findings contained in the PFOJ, BNYM has presented new evidence of its investigation and evaluation of claims at trial that it previously blocked during discovery. The Respondents are thus subject to trial by ambush, having heard answers for the first time at trial regarding subjects on which they sought full discovery.

ARGUMENT

"The CPLR directs that there shall be 'full disclosure of all evidence material and necessary in the prosecution or defense of an action.' . . . This statute embodies the policy determination that liberal discovery encourages fair and effective resolution of disputes on the merits, minimizing the possibility for ambush and unfair surprise." *Spectrum Systems Int'l Corp. v. Chemical Bank*, 78 N.Y.2d 371, 376 (1991) (quoting CPLR § 3101(a)).

"At any time during the trial, the court, on motion of any party, may order a continuance or a new trial in the interest of justice on such terms as may be just." CPLR § 4402. "Liberality should be exercised in granting postponements or continuances of trials to obtain material

evidence and to prevent miscarriages of justice." *DiMauro v. Met. Suburban Bus Auth.*, 105 A.D.2d 236, 241 (2d Dep't 1984) (quotations omitted). "It is an abuse of discretion to deny a continuance where the application complies with every requirement of the law and is not made merely for delay, where the evidence is material and where the need for a continuance does not result from the failure to exercise due diligence." *Id.* (quotations omitted).

I. BNYM has waived any privilege covering its legal and factual investigation by selectively disclosing parts of that investigation at trial

A party waives its privilege when it selectively discloses counsel's advice. *See Orco Bank v. Proteinas Del Pacifico*, 179 A.D.2d 390, 390 (1st Dep't 1992) (trial court "properly found plaintiff had waived the attorney-client privilege by placing the subject matter of counsel's advice in issue and by making selective disclosure of such advice"); *Jakobleff v. Cerrato, Sweeney & Cohn*, 97 A.D.2d 834, 835 (2d Dep't 1983) ("A client who voluntarily testifies to a privileged matter, who publicly discloses such matter, or who permits his attorney to testify regarding the matter is deemed to have impliedly waived the attorney-client privilege.") (internal quotations omitted). "[S]elective disclosure is not permitted as a party may not rely on the protection of the privilege regarding damaging communications while disclosing other self-serving communications." *Village Bd. of Pleasantville v. Rattner*, 130 A.D.2d 654, 655 (2d Dep't 1987). This rule "reflects the principle that the privilege is a shield and must not be used as a sword." *American Re-Insurance Co. v. U.S. Fidelity & Guaranty Co.*, 40 A.D.3d 486,493 (1st Dep't 2007).

Here, BNYM has selectively disclosed information about its attorneys' investigation and evaluation of the claims after blocking discovery into these matters. A full list of the questions and answers that were blocked during discovery and improperly volunteered at trial is attached as

an appendix to this motion. To provide a few examples here, BNYM answered questions at trial on the following topics, despite refusing to answer questions on those topics during discovery:

- **Whether Mayer Brown did its own analysis of the matters for which it hired advisors.** During his deposition, Mr. Kravitt refused to answer the question, [redacted], Ex. 2 (Kravitt Dep.) at 177:7-14, but at trial, Mr. Kravitt testified that "the Trustee, through its counsel, performed its own legal analysis" before hiring the experts. Ex. 1 (7/12/13 Trial Tr.) at 1860:16-1861:5.

- **Why the Trustee did not value Bank of America's liability for servicing.** Ms. Lundberg was not permitted to answer why BNYM did not "evaluate the exposure of Bank of America for its own independent servicing conduct." Ex. 4 (Lundberg Dep.) at 332:21-333:10. However, on both his direct and redicrect examinations, Mr. Kravitt provided lengthy explanations as to why the Trustee chose not to "seek[] monetary damages for alleged past servicing breaches." Ex. 1 (7/15/13 Trial Tr.) at 2132:24:2134:24; Ex. 1 (7/8/13 Trial Tr.) at 1450:7-1451:22.

- **Why the Trustee did not review loan files.** Ms. Lundberg was not permitted to answer [redacted] Ex. 4 (Lundberg Dep.) at 151:15-152:7, although the Trustee's counsel elicited this testimony from Mr. Kravitt during his direct examination. Ex. 1 (7/8/13 Trial Tr.) at 1346:20-1347:6.

- **The Trustee's understanding of the Notice of Non-Performance.** Mr. Bailey was not allowed to answer the question [redacted] Ex. 3 (Bailey Dep.) at 46:25-48:2. Once again, at trial, the

Trustee's own counsel elicited this exact testimony from both Mr. Kravitt and Mr. Bailey. Ex. 1 (7/8/13 Trial Tr.) at 1321:8-18 ("And in this letter there is reference to a 'Notice of Event of Default,' and in the context of this letter, what did you understand that to mean?"); Ex. 1 (7/18/13 Trial Tr.) at 2487:14-2488:8 ("What's your understanding of whether the Trustee agreed with any of the allegations from the letters that Mr. Reilly highlighted for you during his examination?").

- **Other subjects of Mayer Brown's legal investigation.** Ms. Lundberg refused to answer the question "What legal investigation did Mayer Brown engage in?" Ex. 4 (Lundberg Dep.) at 243:4-244:2. At trial, Messrs. Kravitt and Bailey repeatedly discussed Mayer Brown's legal investigation. For example, Mr. Kravitt volunteered that "we did our own study" that compared the representations and warranties Countrywide made when it sold loans to the GSEs with the representations and warranties Countrywide made when it sold loans to the Covered Trusts. Ex. 1 (7/15/13 Trial Tr.) at 2014:14-26. This information was not disclosed during discovery.

- **Mayer Brown and the Trustee's interpretation of the PSAs.** BNYM repeatedly prevented Mr. Kravitt from testifying during his deposition as to what he understood the PSAs to mean. Ex. 2 (Kravitt Dep.) at 53:15-25 (BNYM counsel stated "Dan, I assume you're not asking this witness to give his opinion on his interpretation of the PSA, correct?" and then issued an instruction to the witness not to give his interpretation of the PSAs). At trial, however, he often gave his—and by extension, the Trustee's—interpretation of various provisions of the PSAs. *E.g.* Ex. 1 (7/8/13 Trial Tr.) at 1327:2-1328:5 ("in this case the Pooling and Servicing Agreements and the applicable indentures provide that . . . ."). The Trustee's evaluation of the claims at issue in this settlement is of course intertwined with its interpretation of the governing agreements, so all

of Mr. Kravitt's interpretation of the PSAs during trial was newly disclosed evidence that was blocked during discovery.

BNYM has thus selectively disclosed information during trial that it blocked during discovery, giving Respondents and the Court no meaningful opportunity to determine the full nature and extent of BNYM's factual and legal investigation and analysis of the claims sought to be released by the settlement. *See Village Bd. of Pleasantville*, 130 A.D.2d at 655. This selective disclosure waives any privilege with respect to the entire topics. *See Orco Bank*, 179 A.D.2d at 390.

II. The Court should continue the trial following the September trial dates to permit discovery of BNYM's factual and legal investigation

In light of BNYM's improper use of the privilege, the Court should continue the trial after the dates the Court has already set in September and permit further discovery. A brief continuance to permit the undersigned to conduct discovery is "in the interest of justice." CPLR § 4402. The Court should grant a continuance "where the application complies with every requirement of the law and is not made merely for delay, where the evidence is material and where the need for a continuance does not result from the failure to exercise due diligence." *DiMauro*, 105 A.D.2d at 241. The Steering Committee's repeated attempts to obtain the very information that BNYM has now chosen to leak out during trial demonstrates both that this motion is not made merely for delay and that the undersigned have exercised due diligence in their request for this information. In addition, because the undersigned are not seeking the continuance until after the dates currently set for trial, the discovery could begin during trial to reduce any delay. The request for discovery is also narrowly focused on the precise relief that

BNYM itself has requested in the PFOJ, and so is plainly material. Therefore, the Court should order a brief continuance to permit the requested discovery.

The fact that the trial has already begun does not change this analysis. It is well established that a court can continue the trial if during trial a party waives a privilege it relied on during discovery. *See La Plante v. Garrett*, 282 A.D. 1096, 1097 (3d Dep't 1953) ("The court upon the trial will be free to decide whether the proof offered by plaintiff constitutes a waiver [of privilege] and will allow appropriate time and opportunity to defendant in the event a waiver results to subpoena, examine and test the correctness of such . . . records as may then become material to the issue tendered."); *Rubin v. Equitable Life Assur. Soc'y of U.S.*, 269 A.D. 677, 677 (2d Dep't 1945) ("If disclosure is made at the trial by plaintiff . . . defendant may apply, in the light of such waiver, for suspension for a reasonable length of time . . . ."); *Lorde v. Guardian Life Ins. Co. of Am.*, 252 A.D. 646, 648-49 (1st Dep't 1937) ("If plaintiff upon the trial should waive the privilege she had theretofore consistently asserted . . . [the waiver and defendant's inability to obtain other evidence] might, in certain circumstances, furnish sufficient grounds to warrant a reasonable adjournment or perhaps a mistrial on the ground of surprise."); *Jaffe v. City of N.Y.*, 196 Misc. 710, 711-12 (Kings Cnty. 1949) ("If the privilege be waived at the trial . . . defendant may apply in the light of such waiver for a suspension for a reasonable length of time"); *see also Granite Partners, LP v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 2002 WL 737482, at *3 (S.D.N.Y. 2002) (permitting discovery, in the two weeks before trial, to explore defendants' advice of counsel defense after defendants had previously "made strenuous objections to any such questioning").

Although courts may strike improperly disclosed trial testimony, granting a continuance to conduct further discovery is more fair to all parties because it allows the matter to be decided on a full record with all parties having an opportunity to develop the record. "[T]he interests of justice will probably best be served by allowing the proponent to introduce the privileged information but only after granting the opponent an opportunity to conduct the necessary investigation to gather rebuttal evidence." *See* Edward Imwinkelried, *The New Wigmore: A Treatise on Evidence* § 6.12.18 (2013); *see also Developments in the Law—Discovery*, 74 Harv. L. Rev. 940, 1009 (Mar. 1961) ("But if the holder of the privilege asserts it during discovery and then waives it at trial, making his earlier claim of privilege binding seems an inappropriate sanction if the waiver was not anticipated. Instead, his opponent should be granted a continuance and given the opportunity to discover the material previously protected by privilege.").

Accordingly, the undersigned respectfully request that the Court continue the Article 77 proceeding following the trial dates the Court has already cleared in September to permit discovery into the previously shielded topics. Such discovery should begin with a production of all documents reflecting, discussing, or otherwise evidencing BNYM's factual and legal investigation and evaluation of the claims sought to be released by the settlement. The undersigned should then be permitted to notice and take the necessary depositions based on that production. The undersigned also request leave to recall any witnesses to provide additional testimony based on the newly disclosed evidence.

III. BNYM's arguments merely distract from its own conduct

BNYM has filed a brief arguing that the Respondents have waived any objection to the trial testimony when they did not immediately object after BNYM disclosed matters it previously deemed privileged. Doc. No. 908. BNYM misses the point.

The cases cited by BNYM are inapposite for several reasons. First, they all concern a motion to strike, rather than a motion for a continuance. Further, with one exception, the cases cited by BNYM concern run-of-the-mill evidentiary objections, not privilege objections. BNYM does not cite a single case in which the party questioning the witness was required to make privilege objections on behalf of the witness. On the contrary, the holder of the privilege and his attorney are obligated to protect his privilege. His opponent is under no such obligation. *See Scott v. Beth Israel Med. Ctr. Inc.*, 17 Misc. 3d 934, 938 (N.Y. Cnty. 2007) ("As with any other confidential communication, the holder of the privilege and his or her attorney must protect the privileged communication; otherwise, it will be waived."); CPLR § 3101(b) ("Upon objection *by a person entitled to assert the privilege*, privileged matter shall not be obtainable.") (emphasis added). BNYM points to no authority requiring Respondents to be armed and ready to anticipate and identify any improper testimony based on BNYM's privilege abuse. BNYM's baseless position would penalize the Respondents for BNYM's strategic about-face. This is especially unfair when the Respondents have argued throughout discovery that they should be entitled to the discovery which has been presented for the first time on the witness stand.

The only case cited by BNYM that actually concerns a privilege claim has no bearing on BNYM's conduct here. In *Parkhurst v. Berdell*, the defendant permitted plaintiff to examine defendant's wife, cross-examined her, and then moved to strike the testimony as covered by the

spousal privilege. 110 N.Y. 386, 393 (1888). The court held that the defendant, as the holder of the privilege, "could not lie by, tacitly consent to the examination, and take his chances as to the evidence, and, when it proved unsatisfactory to him, complain of its admissibility." *Id.* Here, BNYM, not the Respondents, held the privilege. This case cited by BNYM fails to address this situation, where the holder of the privilege has prevented access to this information throughout discovery despite diligent efforts by the non-holder to obtain such evidence, and then permits the testimony for the first time during trial.

BNYM also argued that the undersigned cannot complain about Mr. Kravitt's and Mr. Bailey's testimony because it was provided in response to questions asked by Respondents' counsel. However, as the Appendix shows, both Mr. Kravitt and Mr. Bailey gave numerous answers in response to questions on direct and redirect examination that also waived the privilege that attached to BNYM's communications with counsel. *E.g.* Ex. 1 (7/18/13 Trial Tr.) at 2487:14-2488:8 ("Q: What is your understanding of whether the Trustee agreed with any of the allegations from the letters that Mr. Reilly highlighted for you during his examination?"). Further, Mr. Kravitt and Mr. Bailey frequently volunteered information about Mayer Brown's investigation that was not directly requested by the cross-examiner. *E.g.* Ex. 1 (7/15/13 Trial Tr. at 2014:14-19) ("Q: And, sir, is this the chart that you had mentioned earlier that compared the representations and warranties in the GSE contracts versus the governing agreements for the private label securitization trusts? A: This is the chart that BofA presented, *but we did our own study.*" (emphasis added)).

In short, BNYM's arguments merely distract from a simple fact: BNYM has waived its privilege by allowing its witnesses to testify at trial to matters about which it prevented

Respondents from obtaining discovery. This is unfair to Respondents and prevents the Court from obtaining a full record on which to base its ultimate decision in this matter. Accordingly, a continuance should remedy the prejudice suffered by Respondents and increase the chances the Court has *all* relevant information in front of it when it makes its decision, rather than having just the information that BNYM selectively chooses to disclose. The undersigned therefore request a brief continuance following the September trial dates to complete discovery into the topics that were first disclosed during trial.

CONCLUSION

For the reasons above, the undersigned respectfully request a continuance following the September trial dates to obtain documents and take depositions regarding BNYM's factual and legal investigation and evaluation of the claims sought to be settled.

DATED: August 30, 2013

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Appendix

BNYM's evaluation of potential claims against Bank of America

Deposition Blocks (Exs. 2-4)	Trial Testimony (Ex. 1)
Lundberg Dep. (Ex. 4) at 332:21-333:10 21 "QUESTION: In the process that the 22 trustee engaged in, did the trustee 23 evaluate the exposure of Bank of America 24 for its own independent servicing 25 conduct?" 2 A. No. 3 Q. And why not? 4 MR. INGBER: You can answer -- well, 5 I'll instruct Ms. Lundberg not to disclose 6 any communications with counsel on the 7 grounds that it's covered by the 8 attorney-client and/or work product 9 privileges. 10 A. I can't answer.	7/15/13 Trial Tr. (Kravitt redirect examination) at 2132:24-2134:24 24 Q Could you tell us why did the Trustee choose, as you 25 described it, a forward-looking remedy, rather than a remedy 26 seeking monetary damages for alleged past servicing breaches? 2 A Notwithstanding the cross-examination that we have had 3 today -- 4 MR. REILLY: Can we -- I think it's an 5 inappropriate comment. Move to strike. 6 THE COURT: Let it go. Let it go. 7 A I believe and still believe, that any damages -- we 8 believe that actually look at the servicing standard, look at 9 the level of liability that the Master Servicer had, look at the 10 damages that could be proved, that we were much better off 11 focusing on the future remedies that we were going to get 12 because they would be worth a lot more than any damages we could 13 get for the alleged past violations of servicing. 14 We didn't feel that -- first of all, we did the 15 investigation of what documents were missing and we analyzed how 16 serious it was, how serious were the missing documents or not. 17 We decided that documents that made the most difference were the 18 mortgaging, excuse me, were the mortgage, something wrong with 19 the mortgage file and/or the title insurance policy. 20 When we looked at the lost documents or missing 21 documents, excuse me, we didn't feel that missing notes would 22 have made that big a difference. There weren't that many to 23 begin with, and they could be cured through lost note

	24 affidavits. 25 So we, first of all, with regard to the document cures, 26 we focused on what would actually make a difference. 2 Secondly, with regard to the servicing standard, as I 3 have stated before, we actually got, to my mind, the best 4 servicing relief we could possibly get. 5 If you didn't even have to negotiate with, but just was 6 able to pick your most effective servicing relief, the problem 7 we had with trying to decide whether or not to replace the 8 Master Servicer was balancing the job demands the Master 9 Servicer was probably doing, versus the tremendous dislocation 10 that would occur if you tried the replace a Master Servicer 11 pursuant to a fight. 12 What we were able to do was replace the Master 13 Servicer, about whom everybody was concerned not being 14 sufficiently effective, with what we consider to be some of the 15 best specialist servicers in the United States, who could deal 16 with high risk loans and produce cash flow that would be 17 superior to the average in the United States. 18 We negotiated the time period so that these could be 19 phased in without dislocation, and for the loans that didn't go 20 to the specialty servicers, we forced the, we negotiated to pay 21 a cash, the equivalent of a cash penalty by having a credit 22 against servicing compensation, otherwise owed them, to the 23 extent that they didn't meet what we took as a proxy to the 24 industry standards.
	7/8/13 Trial Tr. (Kravitt direct examination) at 1450:7-1451:22 7 Q What do you recall about those discussions? 8 A Well, if -- there's several ways to go about 9 looking at servicing remedies. One thing you could try to 10 do is get compensation for what you believe was breached in

	11 the past. Okay? A different way to focus on them would be 12 to focus on what will occur in the future. 13 Now, the way Pooling and Servicing Agreements 14 were written, the ones in this case and the way they are 15 generally written, but the way they were written in this 16 case is that the servicing standard was a very vague, 17 general standard which was for the most part that the Master 18 Servicer will service the portfolio in accordance with 19 prudent servicing standards, in effect where the property 20 was located. 21 So that is a very amorphous standard. It's 22 very difficult to prove when or how much that's violated. 23 For example, if you could compare servicing between two 24 servicers, it's very difficult to because everybody has a 25 different portfolio. But if you could, if one servicer were 26 10 percent less effective than another is that a breach of 2 employing prudent servicing standards? 3 You could argue about what their protocols 4 were, what their processes were, how fast they did things et 5 cetera, but that would only try to get you a measurement, it 6 wouldn't tell you if that reached the standard of a breach. 7 Certainly it couldn't be that if you were below average that 8 was a breach because that would mean half the servicers in 9 America were in breach of prudent servicing standards. I 10 don't think if you got damages you could pull yourself up to 11 average. 12 Secondly, the way I construed the Pooling and 13 Servicing Agreement, and as I stated several times to the 14 Institutional Investors and their counsel, you can only go 15 after the Master Servicer if they acted in bad faith or were 16 grossly negligent, and that's even a tougher standard to try 17 to figure out than the amorphous consistent with prudent

	18 servicing standards. 19 So what we thought, with Institutional 20 Investors and the Trustee fund [sic] was to be far more valuable, 21 to create value going forward that would be produce a higher 22 standard of servicing than even the agreement required.
	7/15/13 Trial Tr. (Kravitt) at 2101:11-2102:8 11 Q You testified earlier that you did not evaluate 12 servicer claims because one, the servicing, the servicing 13 standard, the servicing standard was vague, and two, the 14 standard of proof is very high; isn't that correct? 15 A There was a three. 16 Q The three is the servicer enhancement? 17 A The first was because the standard itself is extremely 18 amorphous. The second was that the, in order to find the 19 servicer liable, you had to find bad faith, intentional 20 wrongdoing, reckless disregard or gross negligence. 21 The fourth, the next reason was that we felt that the 22 remedies we did obtain were so much more valuable than the ones 23 we didn't pursue, that that added to the, our reasoning that we 24 should pursue the remedies we did, as opposed to the ones we 25 didn't pursue. 26 Q For sure, I am not asking you about the future servicer 2 enhancement. 3 As to evaluation of the past claims, I think we are in 4 agreement as to what your two principle reasons were in finding 5 those claims difficult to evaluate the proof, correct? 6 A I apologize for fighting you on this, but part of our 7 decision making process about what claims to make, included our 8 judgment as to what remedies we could otherwise obtain.

Additional examples from deposition testimony: *-Kravitt (Ex. 2)* *-476:11-22* *-Bailey (Ex. 3)* *-37:20-38:15* *-129:17-131:25* *-132:3-21* *-Lundberg (Ex. 4)* *-251:20-252:9* *-252:25-253:15*	*Additional examples from trial testimony:* *-7/16/13 (Bailey)* *-2343:26-2344:12*

BNYM's investigation of loan files

Deposition Blocks (Exs. 2-4)	Trial Testimony (Ex. 1)
Kravitt Dep. (Ex. 2) at 43:6-13 [redacted]	7/8/13 Trial Tr. (Kravitt direct examination) at 1346:20-1347:6 20 Q Was a loan file review ever done during the course 21 of the negotiations? 22 A No. 23 Q And why not? 24 A Between the November meeting and our first -- our 25 next meeting, which was in early January, Bank of America 26 entered into some settlements with regard to breach of 2 warrantee claims with one or more of the GSEs. And after 3 that happened, the three groups of parties started to 4 discuss whether an investigation were necessary or could we 5 find some other basis to estimate damages for breach of 6 warrantee and settle on that other basis.
Lundberg Dep. (Ex. 4) at 151:15-152:7 [redacted]	

Lundberg Dep. (Ex. 4) at 411:25-412:15 25 Q. How did Bank of New York Mellon 2 determine that it was not going to engage in a 3 review of the loan files in the settlement 4 process? 5 MR. INGBER: Objection. 6 And I'll instruct Ms. Lundberg not to 7 answer the question on the ground that any 8 response will necessarily reveal privileged 9 attorney-client communications and/or work 10 product to the extent such conversations 11 happened. 12 BYMR. REILLY: 13 Q. Are you going to follow the advice of 14 counsel? 15 A. Yes, I will.	
Additional examples from deposition testimony: *-Kravitt (Ex. 2)* *-45:17-24* *-Lundberg (Ex. 4)* *-152:24-154:20*	*Additional examples from trial testimony:* *-7/9/13 (Kravitt)* *-1639:14-1640:5* *-7/12/13 (Kravitt)* *-1913:24-1914:4*

BNYM's evaluation of the Notice of Non-Performance

Deposition Blocks (Exs. 2-4)	Trial Testimony (Ex. 1)
Bailey Dep. (Ex. 3) at 46:25-48:2 	7/18/13 Trial Tr. (Bailey redirect examination) at 2487:14-2488:8 14 Q What's your understanding of whether the Trustee agreed 15 with any of the allegations from the letters that Mr. Reilly 16 highlighted for you during his examination? 17 MS. KASWAN: Objection, your Honor, and my 18 objection is when Mr. Gonzalez asks Mr. Bailey what is your 19 understanding of what the Trustee thought, he is actually 20 asking for what Mr. Gonzalez has claimed to be attorney 21 client communication. 22 So, we are either going to have to ask the witness 23 what's the basis of the understanding and then be blocked, 24 or Mr. Gonzalez has to ask the witness about who he, whose 25 position he is talking about. 26 MR. REILLY: I join in that, your Honor. The 2 question is compound. 3 THE COURT: I will let you answer. 4 A I apologize. So, the question is, did the Trustee 5 agree to the positions staked out by Ms. Patrick in her letters 6 that I was shown by Mr. Reilly? 7 Q Yes. 8 A The answer to that question is no.
	7/8/13 Trial Tr. (Kravitt direct examination) at 1321:8-18 8 Q And in this letter there is reference to a "Notice of 9 Event of Default," and in the context of this letter, what did 10 you understand that to mean? 11 A The way I understood this letter was that Ms. Patrick, 12 on behalf of her clients, was giving a notice to the servicer

	13 and the trustee that in their opinion the servicer had breached 14 its servicing obligations, some of them, under the applicable 15 Pooling and Servicing Agreements, and if this were true, that 16 would start a 60-day clock ticking, at the end of which there 17 would be an outstanding event of default under the various 18 Pooling and Servicing Agreements.

Other aspects of BNYM's legal investigation

Deposition Blocks	Trial Testimony
Kravitt Dep. (Ex. 2) at 177:7-14 [redacted]	7/12/13 Trial Tr. (Kravitt) at 1860:16-1861:5 16 Q And when we say you had then a chance to make a 17 presentation time after time to Bank of America that says, 18 our litigation team has put together facts or here are the 19 discovery requests we're going to hit you with, or here is 20 how we're going to put together the case against you, those 21 kinds of analyses were never given to Bank of America, were 22 they? 23 A That's correct. 24 Q Because they were never performed by the Trustee? 25 A No, the Trustee, through its counsel, performed 26 its own legal analysis. Subsequently to that analysis we 2 hired experts for the purpose of finding out what national 3 experts felt on the subject. The Trustee was advised as to 4 the strength or weakness of their case by their own counsel 5 which was Mayer Brown.
Lundberg Dep. (Ex. 4) at 243:13-244:2 13 Q. What legal investigation did Mayer 14 Brown engage in -- 15 MR. INGBER: Privileged and I'll -- 16 MR. REILLY: Wait. I'm sorry. 17 Q. -- prior to the trustee determining 18 that it would try to get court approval of the 19 settlement? 20 MR. INGBER: Privileged and I 21 instruct the witness not to answer the 22 question.	7/11/13 Trial Tr. (Kravitt) at 1958:12-23 12 Q And so, sir, you would agree with me then that you 13 couldn't look at the GSE repurchase experience in order to 14 obtain an indication of the number of loans in the private 15 label securitizations that violated the prudent underwriting 16 and origination practices if, in fact, the GSEs didn't have 17 that representation, right? 18 A Well, actually we reviewed the representations of 19 the GSEs and we reviewed the private label representations. 20 It all took a long time because of the number of trusts. 21 And we compared them and we found that the GSE

23 BY MR. REILLY: 24 Q. Are you going to follow that 25 instruction? 2 A. Absolutely.	22 underwriting -- excuse me, the GSE reps and warranties to be 23 meaningfully stronger.
	7/12/13 Trial Tr. (Kravitt) at 1802:24-1803:12 24 Q Well, then, did you hire an investigator or group of 25 investigators to say I want to put together the brief for 26 purposes of settlement or litigation proving that Countrywide's 2 methodologies of originating loans were among the worst in the 3 city and did not rise up to the standards of the industry. Was 4 that person hired? 5 A That person was not hired because we started doing our 6 own research in 2010/2011. 7 Q On Countrywide? 8 A On Countrywide. 9 Q And you determined that it was at the bottom of 10 originators, in terms of its practices? 11 A They were not a high-quality originator, but I didn't 12 rank them.
	7/15/13 Trial Tr. (Kravitt) at 2014:14-26 14 Q And, sir, is this the chart that you had mentioned 15 earlier that compared the representations and warranties in the 16 GSE contracts versus the governing agreements for the private 17 label securitization trusts? 18 A This is the chart that BofA presented, but we did our 19 own study. 20 Q And when you say you did your own study, was that a 21 document that you developed? 22 A I don't recall now if it was a document that I saw, 23 you know, other of my colleagues might have, but I received an 24 extensive oral report on differences in warranties between the

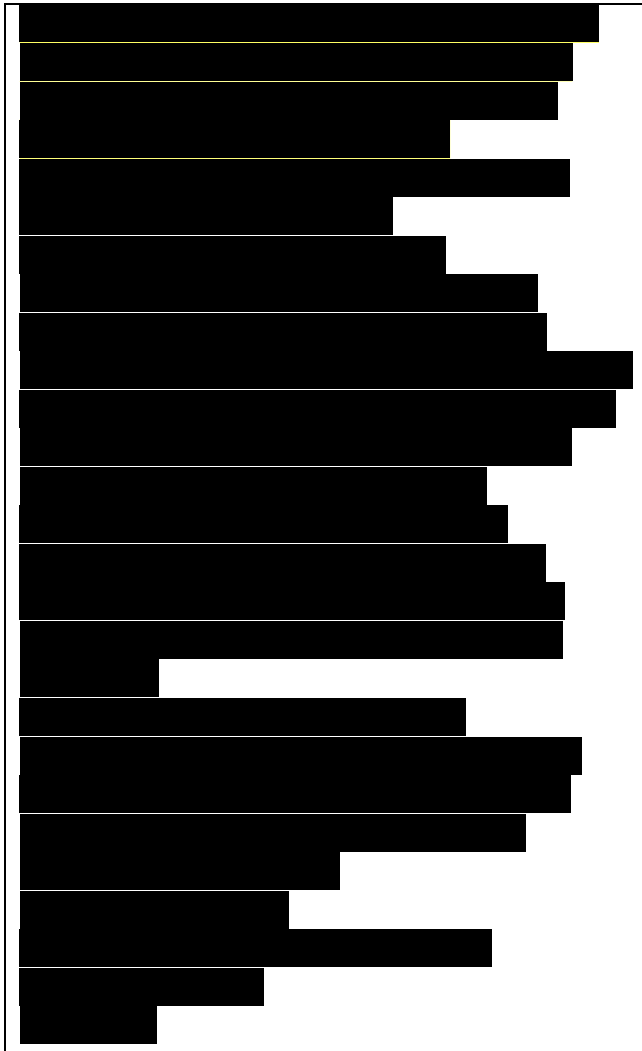
	25 parties. I don't remember if a document exists summarizing 26 that or not.
Additional examples from deposition testimony: *-Kravitt (Ex. 2)* *-427:11-428:10* *-Bailey (Ex. 3)* *-139:9-24* *-140:19-141:9*	*Additional examples from trial testimony:* *-7/9/13 (Kravitt)* *-1478:16-1479:11* *-7/12/13 (Kravitt)* *-1922:12-17* *-7/15/13(Kravitt)* *-2007:2-17* *-7/15/13 (Kravitt redirect examination)* *-2150:3-2152:15* *-7/16/13 (Bailey)* *-2254:24-2255:8*

BNYM's belief as to its duties

Deposition Blocks (Exs. 2-4)	Trial Testimony (Ex. 1)
Kravitt Dep. (Ex. 2) at 595:22-596:14 22 Sir, I'm asking you not whether or 23 not Bank of New York Mellon was taking into 24 consideration certificate holders' interests, 25 I'm asking you whether you saw that you were 2 responsible to maximize the recovery for 3 certificate holders. Did you consider that to 4 be your job? 5 MR. GONZALEZ: I'll instruct the 6 witness as I did before. If he can answer 7 the question without revealing his mental 8 impressions regarding his assignment and 9 communications with his client, he may do 10 so. 11 A. I was trying to be helpful to you 12 giving you the answer I did. Otherwise, I have 13 to follow my attorney's instructions and I can't 14 answer.	7/9/13 Trial Tr. (Kravitt) at 1537:5-1538:14 5 "Q There would be nothing wrong and everything 6 right with trying to advocate for the largest possible 7 recovery for your beneficiaries. Do you see that? 8 "A I do." 9 Q Unless Mr. Gonzalez wants me to read the objection 10 I'll skip it. 11 "A That's a different question but yes, of 12 course, you are attempting in various ways to get the 13 largest possible recovery that you can. 14 "Q And in fact, that was the duty of Bank of New 15 York Mellon in this case, was it not? 16 "A Act in the best interest of your 17 beneficiaries with due care" -- I think it is rather 18 than duly care. 19 Do you agree with me on that? 20 A I would. 21 "Q -- "with due care, skill and caution, yes. 22 "When we say act in the best interest of the 23 beneficiaries what's going on in this case is financial, 24 that's what the case is about, we agree? 25 "A Yes. 26 "Q So what was in the best interest of the 2 beneficiaries is to maximize the settlement amount? 3 "A Yes." 4 Do you agree with that? 5 A I agree that in a case such as this the Trustee 6 should be trying to maximize the recovery. But you can't

	7 enter into a settlement agreement if it's an option. Nobody 8 is going to sign a settlement agreement if the parties they 9 sign with have the option of attempting to get a better 10 agreement the day after it's signed. 11 So the price of entering into the settlement 12 agreement was agreeing to support the settlement agreement 13 after it was signed. And that's what we thought would get 14 the best recovery for the certificate holders.
	7/18/13 Trial Tr. (Bailey) at 2380:25-2382:12 25 Q With regard to the question of whether or not the 26 Trustee had an obligation to maximize the certificate holders' 2 recoveries, in the time frame that this issue was being 3 negotiated, was it your belief that Bank of New York Mellon had 4 an obligation to maximize recovery in these trusts as to the 5 claims that could be brought against Bank of America or 6 Countrywide? 7 A The Trustee had an obligation to achieve a result that 8 was reasonable and fair to all certificate holders. 9 Q And what would you say to my question. Did the 10 Trustee have a responsibility to maximize the recovery in these 11 trusts? 12 A I'm struggling over the use of "maximize." I'm not 13 sure I know the answer to that question. 14 Q Okay. During the time that you were participating in 15 this process, did you believe that Bank of New York Mellon had 16 a fiduciary obligation to evaluate strength and weaknesses of 17 the claims that the Trustee could bring against Bank of America 18 or Countrywide? 19 A The Trustee did evaluate those claims, the nature of 20 those claims. 21 Q That's not my question.

	22 A I understand. 23 Was it a fiduciary duty? Again, my understanding of 24 the PSA is that prior to a servicer event of default, the 25 Trustee is largely in a ministerial capacity. Following a 26 servicer event of default, it becomes subject to the prudent 2 person standard, which I sort of equate to the fiduciary duty 3 standard. 4 Q If I understand your testimony, you would say that 5 before a servicer event of default, it was your belief that 6 during this settlement process, that Bank of New York Mellon 7 did not have a fiduciary duty to evaluate the strengths and 8 weaknesses of the claims that the Trustee could bring against 9 Bank of America or Countrywide, correct? 10 A It had an obligation to evaluate those claims. Is 11 that obligation properly characterized as a fiduciary duty? I 12 don't know.
Kravitt Dep. (Ex. 2) at 206:25-208:17 	7/16/13 Trial Tr. (Kravitt) at 2180:5-11 5 Q And the Trustee had fiduciary duties or has fiduciary 6 duties to all certificate holders in all of the 530 trusts, 7 correct? 8 A Well, the two fiduciary duties are not to be negligent 9 and to not have a conflict of interest. And I don't think that 10 that issue, as you're raising it, would apply a conflict of 11 interest.



Additional examples from deposition testimony: *-Kravitt (Ex. 2)* *-203:7-205:4* *-205:6-23* *-Bailey (Ex. 3)* *-133:11-23*	*Additional examples from trial testimony:* *-7/9/13 (Kravitt)* *-1539:16-1540:23*

BNYM's view of whether an instruction had been given

Deposition Blocks (Exs. 2-4)	Trial Testimony (Ex. 1)
Kravitt Dep. (Ex. 2) at 130:12-131:6 12 Q. And when you flew down to Houston, 13 was it your position that the trustee had not 14 been instructed to do anything yet? 15 MR. GONZALEZ: I'm going to instruct 16 the witness not to answer to the extent it 17 requires him to reveal a mental impression 18 or attorney-client communication. 19 A. Based on that, I am again going to 20 not answer your specific question but try and be 21 helpful to you. 22 Quite often bondholders send 23 instructions to trustees. They sign and they 24 claim to have given them a valid instruction. 25 In response, trustees say no, no, 2 this doesn't satisfy us. Instead you've got to 3 do the following. 4 So just because a bondholder group 5 thinks they've given a binding instruction 6 doesn't mean the trustee agrees with that.	7/16/13 Trial Tr. (Bailey) at 2270:2-2271:8 2 Q That the Trustee only acted at the direction of 3 Certificate Holders through the settlement process? 4 A No, there was not, under the PSA, there was not a 5 direction in indemnity to engage in settlement negotiations. 6 Q And the Trustee did so anyway, right? 7 A The Trustee engaged in settlement negotiations. 8 Q Without any Investor demanding that it do so from the 9 perspective of the Trustee in a way that complied with the 10 Pooling and Servicing Agreements, correct? 11 A Was there a binding instruction to engage in settlement 12 negotiations? 13 Q No, I didn't actually ask you that question, but if you 14 want to answer that one, answer it as to Bank of New York 15 Mellon's position on that. 16 Was that binding instruction, did Bank of New York 17 Mellon take the position, there was a binding instruction from 18 Certificate Holders in these 530 Trusts to engage in settlement 19 negotiations? 20 MR. GONZALEZ: Your Honor, objection, to the extent 21 this is calling for the witness to answer in terms of a 22 litigation position, that the Trustee might take, or the 23 reading of the PSA from the legal position that the 24 corporate entity is taking. 25 This witness is not being put forward as a 26 corporate representative for that purpose. So, if he has 2 an understanding, that's fine. 3 THE COURT: I think he can answer that based on

	4 his -- I think that's what he would be answering from, based 5 on his understanding. 6 A Based on my understanding, there was not a binding 7 instruction from the Certificate Holders to engage in the 8 settlement negotiations.
	7/8/13 (Kravitt direct examination) at 1331:14-22 14 Q Now, Mr. Kravitt, the attached draft letter of 15 direction was that letter ever finalized? 16 A No. 17 Q And why not? 18 A We didn't reach agreement on all of the issues 19 raised in the letter of direction prior to going the 20 alternative route, which was attempting to negotiate the 21 settlement. And in that process of negotiation the Trustee 22 ended up being indemnified by Bank of America.

BNYM's understanding of the settlement agreement

Deposition Blocks (Exs. 2-4)	Trial Testimony (Ex. 1)
Kravitt Dep. (Ex. 2) at 210:13-211:24 13 There are material terms in the 14 agreement. 15 Would you agree with that? 16 A. There are some terms that are more 17 important than others. 18 Q. Okay. Can you tell me what you 19 consider to be the material terms of the 20 agreement? 21 MR. GONZALEZ: Instruct the witness 22 not to answer that on the ground that it by 23 definition requires him to analyze the 24 agreement and give his mental impression 25 regarding the agreement. 2 MR. REILLY: You're instructing him 3 on that whole answer, on the whole 4 question? 5 MR. GONZALEZ: Yes and also a 6 question of what this witness thinks is 7 material versus what the party thinks is 8 material, I don't see the relevancy of 9 that, but I obviously can't object on that 10 point. 11 But to the extent the question 12 requires him to necessarily analyze 13 different provisions of an agreement that's 14 not even presented to him and then to give 15 his mental impressions of those provisions	7/8/13 Trial Tr. (Kravitt direct examination) at 1404:16-1407:26 16 Q And what is your understanding of the structure of 17 the settlement agreement? 18 A Well, the settlement agreement is organized as 19 follows: First there is the normal set of recitals 20 explaining the facts. Then there is the section on 21 definitions that are used. Then there is a discussion of 22 what constitutes final approval of the settlement agreement, 23 including what has to happen in judicial proceedings. The 24 tax rulings needed to be obtained and notice given to 25 Certificate Holders with an opportunity to object. 26 Then after dealing with what final approval 2 is the agreement goes into the cash payment, the amount that 3 it will be, how it will be allocated among the 530 trusts, 4 and how it will be allocated in the trust once the cash 5 portion is obtained and distributed. 6 There also is a section on what happens if -- 7 which hasn't happened so far -- if the Court provides that 8 some trust may leave the settlement. If that eventuated, 9 then the Bank of America had the option of dropping out of 10 the settlement if a certain threshold is met. 11 Then the settlement agreement goes into the 12 servicing remedies. The first servicing remedy is the 13 transfer of high risk loans to specialist high touch sub 14 servicers. Those sections deal with how to define what a 15 high risk loan is. The qualifications for a special sub 16 servicer, the process that's gone about in choosing them, 17 and then the schedule for transferring loans quarter by

and determine whether it's material or not, I believe breaches the attorney work product and requires him to by definition give his mental impression of the agreement. BY MR. REILLY: Q. Are you going to follow that instruction? A. I am going to follow it.	quarter to the designated sub servicers. Then the settlement agreement has a provision on costs for Bank of America in the following sense. First of all, there is an exhibit which lists how the sub servicers are to be compensated and they are to be compensated by B of A. And there is also a section on reduction of the cash that B of A, as Master Servicer, can take out of the deals as they liquidate if it doesn't perform to certain agreed upon benchmarks for loans that are in default or in foreclose. Then the -- moving on to Section 5, the settlement remedies next dealt with are guidelines for the bank in how it treats borrowers who are having difficulty paying, principally focusing on loan modifications to deal with borrowers who can't pay. And there are provisions in that on how to go about calculating the net present value calculation that has to be made in order for a loan to qualify for modification. There's also a provision in the settlement remedies that provides for any requirements of law affecting execution of the settlement remedies being required to be paid for by Bank of America Countrywide. After the servicing remedies the agreement has a section on documentary exceptions, and it deals principally with the two most serious types of documentary exceptions where there's something wrong or there's something missing about a mortgage or an assignment of mortgage and the title insurance policy. The section defines what those exceptions are, and there's a provision that requires Bank of America to make the trusts whole with regard to any loan that is missing both a proper mortgage or assignment of mortgage and

	an enforceable title policy. In that case, after the appropriate time period, Bank of America will make the appropriate trust whole where the difference in the amount of the loan then outstanding and any accrued interest and audit obtained from liquidating the underlying property or not being able to liquidate the underlying property. Then there is the section which deals with the forbearance agreement and the tolling of the statutes of limitations, we've been through that section, basically leaves the parties in the condition they were before the settlement agreement was entered into on the date of the first forbearance agreement, if the settlement agreement is not approved, finally approved, and otherwise if the settlement agreement is approved then the notice of default is deemed withdrawn that was originally given -- I should say the notice of non-compliance which, if true, could ripen into an event of default that notice is withdrawn if the settlement is finally approved. By the way, as I'm reciting this I realize that when I talked about section 2 as to what constituted final approval, I left out that a final order and judgment has to be approved as well or adopted by the Court. After the section dealing with the forbearance agreement and any statutes of limitation there's a section on what is released, what the Trustee releases B of A from. Then there's a section clarifying what B of A is not released from -- B of A and Countrywide, I should say.

BNYM's interpretation of the PSAs

Deposition Blocks (Exs. 2-4)	Trial Testimony (Ex. 1)
Kravitt Dep. (Ex. 2) at 53:15-25 15 Dan, I assume you're not asking this 16 witness to give his opinion on his 17 interpretation of the PSA, correct? 18 MR. REILLY: I'm asking him if he 19 agreed that the PSA required that the 20 trustee give a list of document exceptions. 21 MR. GONZALEZ: I'll instruct the 22 witness not to answer questions that call 23 for his legal opinion concerning the 24 subject matter of his engagement in this 25 case.	7/8/13 Trial Tr. (Kravitt direct examination) at 1326:15-1328:5 15 Q And in the context of your discussion of your 16 testimony, what do you mean by the term either "instruction" or 17 "direction"? 18 A Well, the way most Pooling and Servicing Agreements 19 are written, a trustee has a Safe Harbor to liability if it 20 follows an instruction from the holders of not less than some 21 given percentage of the dollar amount of the certificates in 22 the Pooling and Servicing Agreement. 23 In addition, the trustee is free to ask for any 24 reasonable indemnity to indemnify it against expense or loss as 25 part of that instruction or direction. So normally, before a 26 trustee will take action, at the request -- Page 1327 1 J. Kravitt - by Petitioner - Direct/Mr. Gonzalez 2 MR. REILLY: Excuse me, Mr. Kravitt. 3 Your Honor, can we get clarity whether he is 4 talking about these Pooling and Servicing Agreements or 5 whether he is talking about Pooling and Servicing 6 Agreements generally that have nothing to do with this 7 case? 8 MR. GONZALEZ: I believe he started in his answer 9 by saying "generally, in his experience." 10 THE COURT: Yes, I think he is just talking about 11 it generally. 12 MR. REILLY: And not these Pooling and Servicing 13 Agreements? 14 THE COURT: That is how I understood it. 15 MR. REILLY: Okay. 16 THE COURT: Am I correct?

	17 MR. REILLY: Then I would argue it's irrelevant, 18 but... 19 THE COURT: I am allowing it. I think it is. 20 A Fortunately, what is true generally is true 21 specifically, and in this case the Pooling and Servicing 22 Agreements and the applicable indentures provide that a trustee 23 has a Safe Harbor if it takes directions from the holders of a 24 required percentage of the dollar amount of outstanding 25 certificates and the trustee, in taking that direction, has the 26 right to ask for and receive a reasonable indemnity as to any 2 loss or expense before taking such instruction. 3 So, in this case, the trustee started the normal way 4 of operating with an investor group, which would be to try and 5 negotiate a letter of instruction and an acceptable indemnity.
Additional examples from Mr. Kravitt's deposition (Ex. 2): *-56:9-23* *-68:4-69:22* *-74:19-75:6* *-75:22-77:3* *-78:22-79:15* *-128:20-129:12* *-189:18-190:16* *-365:4-14* *-396:6-24* *-406:11-407:4*	*Additional examples from trial testimony:* *-7/12/13 (Kravitt)* *-1921:18-1922:11* *-1990:10-18* *-7/15/13 (Kravitt)* *-2009:22-2010:16* *-2026:24-2027:2* *-2125:14-2129:15 (examination by Ms. Patrick)*