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1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK  
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3 RETIREMENT BOARD OF THE  
3 POLICEMEN'S ANNUITY AND  
4 BENEFIT FUND OF THE CITY OF  
4 CHICAGO,

5  
5 Plaintiff,

6  
6 v.

11 CV 5988 (WHP)

7  
7 THE BANK OF NEW YORK MELLON,  
8 et al.,

8  
9 Petitioner.

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10 -----x

New York, N.Y.  
January 18, 2012  
11:15 a.m.

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12 Before:

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13 HON. WILLIAM H. PAULEY III,

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14 District Judge

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1 (In the robing room)

2 THE COURT: Good morning, everyone. This is District  
3 Judge Pauley. You're on a speakerphone in my robing room and a  
4 court reporter is now present, recording what's being said. I  
5 understand from my law clerk that there are a large number of  
6 participants in this call; and, Mr. Reilly, since you initiated  
7 this call, I'm going to ask you, after the call is over, to fax  
8 to my chambers a list of the participants so that the court  
9 reporter can include them as appearances on the face of the  
10 transcript.

11 Do you understand?

12 MR. REILLY: I do, your Honor, of course.

13 THE COURT: All right, Mr. Reilly, it's your dime. Do  
14 you want to be heard?

15 MR. REILLY: All right. Thank you, your Honor.

16 I hope you have seen Mr. Ingber's letter that was  
17 filed this morning also. I think it sets the dispute squarely  
18 in front of you. We obviously have a dispute about whether my  
19 letter is an appropriate method to address the Court. I'm glad  
20 to address that and recognize that it's an unusual situation  
21 and thank the Court for allowing us to speak.

22 The reason that we took this approach is that in light  
23 of the letter from Mr. Ingber that I received Friday afternoon  
24 and my extensive conversation with him over the weekend, it  
25 became apparent to me that this deposition that we have

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1 scheduled for Thursday was not going to occur unless the Court  
2 was asked to get involved. I don't need to go through all the  
3 details of that phone call but it was a very long phone call.  
4 Mr. Ingber and I spoke quite frankly about the disputes and his  
5 concerns.

6 And the reason, frankly, that we are submitting this  
7 to the Court at this point, in response to Mr. Ingber's comment  
8 that my letter is late -- I'm sorry, that my letter is --  
9 because I think his letter was late. But setting that aside --  
10 and if the Court wants me to address the procedures, I'll be  
11 glad to in more detail -- setting that aside, what we became  
12 convinced of is that the settlement proponents do not want to,  
13 and do not I believe intend to, proceed with deposition  
14 discovery until the Second Circuit rules.

15 Mr. Ingber can obviously comment on that, but the  
16 practical fact of every part of the conversation that I had  
17 with him Sunday night was that there would be no deposition on  
18 Thursday, that my impression was he was not going to file a  
19 motion for protective order, which I think were his two  
20 options, either show up or file motions, and then if in fact we  
21 agreed to everything that he suggested, we would not have a  
22 formal agreement that a deposition would ever occur. And as a  
23 result of that, it seemed to me that they were granting  
24 themselves a de facto cancelation of the deposition and an  
25 extension of the deadline for us to complete discovery.

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1 That is what I was convinced of, and I am still  
2 convinced of that. And faced with this Court's scheduling  
3 order and this Court's clear directive that you do have  
4 jurisdiction and that discovery is to continue, we felt the  
5 only way to proceed was to ask the Court to give us guidance on  
6 this.

7 I'm sure the Court recalls that on November 4th you  
8 issued your scheduling order. On that date you indicated you  
9 would supervise discovery in this action pending the Court of  
10 Appeals' decision in the Second Circuit, and that discovery was  
11 to proceed according to the schedule that you indicated. We  
12 have been complying with that. All of the written discovery  
13 that we issued was issued on the date that you allowed that.  
14 And the third item was that depositions could occur after  
15 January 17th, so we intended to proceed with the 30(b)(6)  
16 notice depositions on the 19th, with the view that that was an  
17 efficient and effective way for us to get an idea fundamentally  
18 of what activity the trustee engaged in.

19 And we have not yet received any written or formal  
20 document responses to our written discovery. I now can tell  
21 the Court that we have a protective order that is agreed to by  
22 my client and many of the intervenors. Not all of them have  
23 yet signed off on it and some of them have some concerns about  
24 some nuances individual to them, but we are still awaiting the  
25 document production and our belief was that, let's get the

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1 skeleton chronology clear in our minds so that we know on what  
2 date -- and who is participating in the process of this  
3 particular settlement process.

4 The context of this, again, is that Bank of New York  
5 Mellon and the institutional investors have gone to the Court  
6 and seek relief that includes a finding that they acted in good  
7 faith, a finding that the terms of the settlement agreement are  
8 reasonable and seek a court order to that effect. And we on  
9 the institutional investor side, collectively I believe, want  
10 to know more about that. And in order to make sure we get that  
11 done in what I think all would agree is a condensed discovery  
12 process, we thought we had to move forward now.

13 The proposal that Mr. Ingber made to me over the  
14 weekend, in essence, was let's get documents exchanged, let's  
15 identify any discovery disputes, but let's not do any  
16 depositions until the Second Circuit rules, which, as we all  
17 know, could be February 24th, but there's no guarantee of that.  
18 I've spoken to counsel in the Greenwich case, and in that case  
19 the Court held a hearing and then granted itself or requested  
20 an extension for the parties; and it was, as I understand it,  
21 many weeks or months before the Court issued its order on a  
22 jurisdictional question.

23 We have a discovery cutoff of April 17th. All fact  
24 discovery should be completed by then, and if I agree to  
25 Mr. Ingber's approach, which was in essence formally putting

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1 back the depositions, talking about what our disputes are, it  
2 wasn't even clear from that that we were going to present those  
3 issues to the Court for resolution; we would be, at best, if  
4 the Second Circuit ruled on February 24th, a month and a half  
5 or so out, assuming the Court confirms your ruling on  
6 jurisdiction, we'd have roughly 50 days to complete what is a  
7 substantial amount of fact discovery. And we could not be in  
8 that position, we didn't want to be in that position, and as a  
9 consequence we reached out to the Court.

10 Now that I have seen Mr. Ingber's letter, I think the  
11 fundamental issue is whether or not we can move forward with  
12 depositions before the Second Circuit rules. All of the other  
13 sort of logistic and procedural complaints about where we are,  
14 I think, are minor and, frankly, as I told Mr. Ingber on the  
15 call Sunday, all logistic issues can be dealt with. We have  
16 experienced counsel here, we have an experienced Court; it's  
17 really not a question of how is a deposition going to proceed.  
18 My belief is that any deposition in this case will have one  
19 speaker do 80 to 90 percent of the questioning and the other  
20 parties will have an opportunity to supplement questions on  
21 topics that were covered and ask new questions that were  
22 covered. And for the most part, that ought to be able to be  
23 done within the durational rules that apply. So that's the big  
24 picture.

25 The key thing again, the letter that I got from  
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1 Mr. Ingber on the 13th was the first time that they had  
2 indicated they were not going to appear for the deposition.  
3 And the second to last sentence in it, I think, states clearly  
4 what their view is, and it states, "The difference is in  
5 procedural rules that would govern any deposition in state  
6 court reinforce the conclusion that the intervenor's deposition  
7 of BNY's corporate representative should not proceed until the  
8 Second Circuit rules on the Court's jurisdiction."

9 We do not believe that anything this Court has said  
10 would support that, and believe that it's time to move forward  
11 and find out what we can find out in order to comply with  
12 discovery.

13 It is plainly true that even if the Second Circuit  
14 found that the Court didn't have jurisdiction, that we would  
15 still be entitled in discovery in the state court, we would  
16 still be entitled to the trustee's deposition, we would still  
17 be entitled to know the chronology of the settlement  
18 negotiations and who participated in them and what alternatives  
19 were considered by the trustee and what concessions were made  
20 by the trustee. So, to me, I don't quite get why we can't move  
21 forward at this point when in fact -- and I think Mr. Ingber  
22 will concede that we're entitled to discovery and that even if  
23 we got sent back, that would happen.

24 So big picture, your Honor: We'd ask that we move  
25 forward with the deposition on Thursday with the topics that I

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1 had identified. And I saw the Court had asked for the  
2 deposition notice, so hopefully you have that before you and I  
3 just wanted to give you some background as to our thinking on  
4 this deposition notice.

5 We did circulate these topics amongst the intervenors.  
6 And I don't want to state that every single one had input or  
7 participated in the choices, but we certainly had a good  
8 representative group help us identify these topics, and I think  
9 I'm comfortable saying that they cover the majority, if not  
10 every topic that would ultimately be covered in deposition in  
11 this case. So, first of all, we tried to make sure that it  
12 covered the issues.

13 Secondly, I believe that a 30(b)(6) approach is an  
14 effective and efficient way, particularly in a setting where  
15 you've got condensed discovery, to get the information, to find  
16 out what the trustee's position is about why they entered into  
17 settlement and understand some of the opaque terms in the  
18 agreement, like how much are people going to get paid and how  
19 are the distributions going to be made, and at what point did  
20 Bank of America pull out of this settlement. So that was our  
21 fundamental thoughts.

22 The second thought was that we would try and put  
23 together topics that made sense on a particular day so that we  
24 could be sure Bank of New York Mellon could identify a witness  
25 who would be comfortable talking about topics that were

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1 related. So the first day, which was to be Thursday, was  
2 really about the activities of the trustee -- what did you do  
3 in this process, who did you talk to, what did you look at,  
4 what did you consider, what did you reject? And that's  
5 fundamentally topic number 4, the respective actions taken by  
6 the Bank of New York Mellon.

7 Mr. Ingber was concerned that we would be delving into  
8 settlement communication issues, which is topic number 1, and  
9 was noted for that day. I assured him that I understood that  
10 that issue was before this Court. The Court now should have  
11 our letter, joint letter, that sets forth the parties'  
12 respective positions on the discoverability of the settlement  
13 communications. I assured him I would not suggest questions or  
14 inquire into that area and that if he felt that I was getting  
15 close to that particular area, that he should let me know and  
16 that I would honor his objections in that way.

17 So I think we have tried as best we could to move  
18 forward with our fundamental approach and not have the bank  
19 trustee's concerns ignored.

20 The other question that I see from Mr. Ingber's letter  
21 is meeting and conferring. When I talked to Mr. Ingber Sunday  
22 night -- and candidly it was a difficult, first part of the  
23 conversation was difficult but it was extensive -- I offered to  
24 go through his letter in detail and he candidly, and I  
25 accepted, said that he was at his inlaws' home and didn't have

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1 it in front of him and so we did not go over the subjects, the  
2 topical objections, but we did go through every single logistic  
3 objection.

4 And those included the questions of multiple  
5 questioners at the deposition. I told him I didn't think that  
6 was an issue.

7 A significant concern of his is that this notice  
8 wasn't signed off by all intervenors. That's true, but as I  
9 said, I think most of the intervenors had input. And I've  
10 talked to intervenor counsel, they can chime in, but I do  
11 believe that the majority of the intervenor counsel would agree  
12 that they're not going to issue another notice that's identical  
13 to this on the same topics. I think some people were hoping to  
14 reserve the right to perhaps issue another notice on a new  
15 topic and the Court could easily address that question because  
16 I think that's one that at this stage I'm not speaking for all  
17 the group anyway but I think that's a valid concern on  
18 trustee's counsel's point.

19 The protective order issue, as I said, we've got that  
20 in front of the Court now. Or we'll have that in front of the  
21 Court now and Mr. Ingber has agreed that we will expeditiously  
22 ask that that be entered amongst those parties who have agreed  
23 to sign off on it. It's most of the intervenors at this point,  
24 and that could be in place by Thursday.

25 The one issue that we did not -- and I'm not

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1 knowledge of the process as well as institutional investors  
2 that also actively participated in the negotiations.

3 So, big picture --

4 THE COURT: Quite frankly, you've given the refrain  
5 "big picture" several times. I have the big picture.

6 MR. REILLY: All right.

7 THE COURT: And I want to first hear -- before I hear  
8 from Mr. Ingber, I'd like to hear from Mr. Cyrulnik because I  
9 don't see Walnut Place taking any position in this matter.

10 MR. CYRULNIK: Your Honor, Owen Cyrulnik for Walnut  
11 Place.

12 I don't have any objection to the 30(b)(6) notice that  
13 AIG served. We agree with the topic and, as Mr. Reilly  
14 represented, we're willing to agree to address Mr. Ingber's  
15 concerns not to serve any deposition notice that duplicates the  
16 topics on that 30(b)(6).

17 We're in the process of working with Mr. Reilly to  
18 resolve some coordination issues that I don't think we'll have  
19 to burden the Court with. But for now, we're comfortable with  
20 the deposition notice and we agree that it's an appropriate  
21 deposition that should be taken, and we also certainly agree  
22 that the Court has jurisdiction, and that in order for the  
23 schedule to be maintained as the Court set it, discovery must  
24 proceed before the Second Circuit rules.

25 THE COURT: All right, thank you, Mr. Cyrulnik.

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1 Mr. Ingber?

2 MR. INGBER: Thank you, your Honor, and good morning.

3 I hear an echo, so I would just ask all counsel to  
4 mute their lines to try to avoid that. I'll do my best to work  
5 through the echo.

6 Your Honor, Mr. Reilly said that there were two  
7 options for the trustee, either to show up on Thursday or to  
8 file a motion for a protective order. We disagree with  
9 Mr. Reilly. We think ultimately if the parties can't reach  
10 resolution of the issues that we have raised in our letter to  
11 the Court, we would need to file a motion for protective order.  
12 But we think there's a third option here, and that option was  
13 to meet and confer. As contemplated by the rules, that's how  
14 litigants in a typical case would operate, and that was the  
15 purpose of the very detailed letter that we sent to Mr. Reilly  
16 last week. We told him that we invited him to meet and confer  
17 about those issues, they were substantive, they were  
18 logistical, they were procedural, they were real concerns that  
19 the trustee had.

20 We did speak on Sunday night. And the reason we  
21 didn't get into substantive topics and we just discussed  
22 logistics is because he was on the phone and I was on the  
23 phone. He asked to have a call on Sunday night, I agreed to  
24 it, we spoke for two hours. Ms. Patrick, representing the  
25 institutional investors, wasn't on the call, and none of the

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1 intervenor respondents or objectors were on that call.

2 What I told Mr. Reilly was that this is a productive  
3 conversation we're having, this is why we sent the letter, we  
4 think we should meet and confer again this week. I offered to  
5 do it on Tuesday. And then we heard from Mr. Reilly the next  
6 day, that he would be either calling the Court or sending a  
7 letter to the Court raising this issue. And we asked him to  
8 meet and confer again this Thursday and to send us a letter  
9 explaining the issues that he had with our January 13th letter.

10 So for us, this is an issue of process. We do not  
11 object to any depositions taking place before the Second  
12 Circuit rules. We have not refused to move forward with  
13 depositions. We think that as a practical matter, that might  
14 be the best approach because there are a number of issues that  
15 the parties need to work through.

16 And I reinforced this point to Mr. Reilly on Sunday.  
17 He asked me pointblank, are you telling me that you're not  
18 going to proceed with the depositions until the Second Circuit  
19 rules? And I said no. I said, let's meet and confer, let's  
20 try to work through these issues, I don't know whether we can  
21 work through every one of these logistical and substantive  
22 issues but let's take a stab at it; and if we can, we will  
23 think about making someone available at the end of January and  
24 early February but we've first got to work through these  
25 issues.

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1 That's what I told Mr. Reilly on Sunday, and that's  
2 our position, your Honor. But the reason we think that as a  
3 practical matter it makes sense to wait on this 30(b)(6)  
4 deposition and other depositions until the Second Circuit rules  
5 is because there's a number of discovery disputes that I  
6 anticipate the parties will have and that will come up in these  
7 depositions.

8 Now, there's one issue that the parties have teed up  
9 for the Court, and that's the question of discoverability of  
10 settlement communications. But we served our responses to the  
11 objectors' document requests, and there are a number of  
12 objectionable requests. We have made our objections known.  
13 There haven't been a meet-and-confer about any of those issues.  
14 We're happy to meet and confer. The onus is not on the trustee  
15 to call up the objectors and say we have objected to your  
16 document requests, if you don't agree with our objections,  
17 let's have a meet-and-confer and talk through them. If the  
18 objectors' were interested in having a discussion with them, we  
19 would have assumed that they would have called and started that  
20 discussion.

21 What we don't want to happen is for depositions to  
22 take place piecemeal and then for the objectors to come forward  
23 and say, hey, you guys didn't produce these documents, and for  
24 us to say, well, we objected to those documents, to producing  
25 those documents, you didn't raise those issues, and then they

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1 go ahead and raise the issue with the Court, the deposition is  
2 behind us, and then they ask for a second bite at the apple.  
3 Those are the types of issues that we're trying to avoid.

4 With respect to this 30(b)(6) notice in particular, we  
5 have laid out all of the issues that we have with respect to  
6 this notice. I want to point out just a few, your Honor.

7 Number one, it's signed by a handful of the 42 groups  
8 of objectors. That's an issue, from our perspective. We have  
9 talked about trying to avoid piecemeal discovery, and it's very  
10 important to us that we do this in a coordinated fashion.

11 It strikes us as fairly obvious that the objectors  
12 themselves aren't coordinated, by virtue of the fact that only  
13 a few of them signed this notice in particular; by virtue of  
14 the fact that they haven't coordinated on how to proceed with  
15 depositions generally, the logistics of that, they haven't  
16 communicated that to us. Mr. Reilly, on the call on Sunday and  
17 in the call this morning, your Honor, said that it's his  
18 position that he'll speak for 80 percent of the time and others  
19 will speak for 20 percent of the time, and it may be the case  
20 that other intervenor respondents or objectors will file a  
21 subsequent 30(b)(6) notice, and that's an issue that he  
22 recognizes that the trustee has and one that needs to be worked  
23 through.

24 He's making representations to me -- he made  
25 representations to me in the call on Sunday night about how he

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1 would like things to proceed, that he would agree not to  
2 redepose a 30(b)(6) witness based on newly produced documents.  
3 But we don't know what the other objectors and intervenors,  
4 what their view is on these issues, and it's very important  
5 that we all get in a room and we talk through these issues.

6 We need a comprehensive plan, your Honor, about how  
7 depositions are going to be taken. Is Mr. Reilly going to take  
8 the lead? If so, that's fine. Are the objectors in agreement  
9 about who's going to be deposed? Are the objectors going to  
10 seek another 30(b)(6) deposition? If they don't like the  
11 questions that Mr. Reilly asks, will they seek to subsequently  
12 depose that witness again?

13 These are issues that are of significant importance to  
14 the trustee and should be important to anyone participating in  
15 this process, because we want to make sure that the process is  
16 efficient, is productive, and achieves the goal that everybody  
17 wants here, which is to give the objectors the information to  
18 which they're entitled.

19 So, on the narrow question of whether we should go  
20 forward tomorrow, we have raised the concerns that we have in  
21 our letters, the small minority of objectors who seem to want  
22 to go forward with this, they asked for the deposition  
23 protocol. A protective order, when we sent our letter on  
24 Friday, hadn't been agreed to, and as Mr. Reilly pointed out,  
25 some of the objectors still have concerns about that protective

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1 order.

2 We have issues -- and this could take probably many  
3 hours to do, but we could go through each of the topics and  
4 explain the issues that we have with many of these topics and  
5 why we don't think they're relevant to the question that's  
6 before the Court.

7 We have mentioned, your Honor, in the letter that the  
8 deposition is scheduled for four days. We understand there's a  
9 lot that the objectors may want to delve into, and we have an  
10 open mind about the duration of the deposition. But under the  
11 rules, the objectors are entitled to seven hours with one  
12 witness, and we may well put forward one corporate  
13 representative to testify on these issues. That's not to say  
14 that we wouldn't agree to more time, but it's an issue that  
15 needs to be worked out and it's an issue that Mr. Reilly and  
16 other objectors assumed would be a nonissue. They scheduled  
17 the deposition for four days without reaching out and having a  
18 discussion about whether that made sense and a discussion about  
19 the topics.

20 We mentioned document review and production. It's not  
21 just an issue with respect to newly produced documents and the  
22 question of whether objectors are going to seek to redepose  
23 Bank of New York witnesses. We also need these documents for a  
24 30(b)(6) deposition. It's not as if this is a deposition of a  
25 single bank witness about that witness' personal knowledge of

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1 issues, where we can produce the documents pertaining to that  
2 witness and have a fulsome deposition. This is a deposition  
3 notice that was 26 topics and the corporate representative  
4 rightly will not have personal knowledge about each of those 26  
5 topics, assuming all 26 topics are part of this deposition.  
6 It's important for us to make sure that we have been through  
7 all the documents and that those documents are produced so that  
8 we can adequately prepare our witnesses to give the information  
9 that Mr. Reilly is looking for.

10 So those are the key issues that we have with this  
11 notice. This was the purpose of the letter that we sent to  
12 Mr. Reilly on January 13th. What I have proposed to  
13 Mr. Reilly, and what I have proposed to all the objectors on  
14 this call now, and a proposal that I would make if there were a  
15 meet-and-confer taking place, is that we try to work through  
16 these issues, we try to deal with whatever document issues  
17 we're going to have now, we discuss deposition logistics, we  
18 understand who's taking the lead, what the position of each of  
19 the objectors is going forward with respect to depositions, we  
20 raise issues with the Court if we need to raise those issues  
21 with the Court, and, if necessary, we brief those issues, and  
22 then by then we believe we'll have a decision from the Second  
23 Circuit. The Second Circuit has indicated as much; the merits  
24 brief was filed yesterday on behalf of the Bank of New York and  
25 the institutional investors, two separate briefs. Briefing

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1 will be finished by February 9th and as I understand it, your  
2 Honor, it is on the Court's calendar for the 13th; and by  
3 statute, and I think by the Court's order, a decision will be  
4 rendered by February 24th.

5 So over the next few weeks, we think that the parties  
6 can work together in a very constructive fashion so that  
7 whatever issues we have are vetted, are addressed to the Court,  
8 and then can be resolved by the Court shortly after the Second  
9 Circuit rules.

10 So for us this is more about process right now than  
11 substance, although substance will be a key issue going  
12 forward, as reflected, for example, in the settlement  
13 communications letter that was jointly submitted by the  
14 parties.

15 That's all I have for your, your Honor, but I'm  
16 obviously happy to answer any questions that you have.

17 THE COURT: All right. Look, let me try to give all  
18 of you some guidance at this point in time.

19 First, it seems to me that there is a little fault to  
20 go all around. I don't understand why the trustee waited until  
21 January 13 to lodge objections to the Rule 30(b)(6) notice that  
22 was served in December. But at the same time, it's clear to me  
23 from listening to counsel that there is a lack of coordination  
24 here about how discovery is going to proceed. The very first  
25 thing I want all of you to do is to meet and confer regarding

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1 the document discovery that's still outstanding because it  
2 strikes me that when it comes to a Rule 30(b)(6) deposition,  
3 the trustee has a legitimate concern that he doesn't want to  
4 have his client subjected to repeated multiple 30(b)(6)  
5 depositions, seeing if the witness can come up with a different  
6 answer to the same question.

7 Therefore, I think that the parties -- and now I'm  
8 speaking to the objectors and the intervenors -- better get on  
9 the same piece of music, because at the end of the day there  
10 really should not be multiple 30(b)(6) depositions of the same  
11 witnesses. There may need to be multiple 30(b)(6) witnesses to  
12 cover a variety of topics but that's a different matter.

13 I also think that these substantive disputes, like the  
14 issue that's been raised with me regarding the discoverability  
15 of settlement discussions, should be, and can be, carefully  
16 teed up. I tell you that the Court of Appeals has said that it  
17 is going to make a determination in this matter in late  
18 February. That is not that far off.

19 And in the end, when it comes to a substantive issue,  
20 like any privilege attaching to settlement negotiations, the  
21 outcome of such an application may be different in my court  
22 than it would be in Judge Kapnick's court. So I think that it  
23 may be appropriate for me to wait until the Second Circuit has  
24 decided the issue before it. But that doesn't mean that  
25 procedural matters can't be resolved and that depositions can't

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1 go forward where the content is undisputed, because at the end  
2 of the day nobody's being served by a delay in these  
3 proceedings.  
4 So I want you to meet and confer. I want a protective  
5 order to be agreed to and submitted to me. It would be  
6 foolhardy for the trustee to go forward with a deposition in  
7 the absence of a protective order. These are things that need  
8 to be discussed face to face and resolved. And to the extent  
9 there's a dispute, you can present it to me and I'll act on it.  
10 I haven't begun to dip into the settlement privilege question  
11 that's been raised, but that is obviously a significant legal  
12 question, and I may want some more briefing on that.  
13 Now, the bottom line is, there will be no deposition  
14 tomorrow, but I'm not staying depositions in this case because  
15 I don't think that the prerequisites for going forward with the  
16 deposition have been satisfied, namely a meet-and-confer. And  
17 there certainly could be subjects on which the parties agree  
18 and therefore a deposition could begin, but the ground rules  
19 need to be worked out.  
20 Are there any questions that the parties want to raise  
21 with the Court while we're all together here on the record?  
22 And just identify yourself.  
23 MR. REILLY: It is Dan Reilly. And I understand  
24 clearly what you're saying. We are scheduled to be in New York  
25 tomorrow and would agree to do that tomorrow so we can keep it

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1 all moving.

2 THE COURT: That's fine, Mr. Reilly. And I might  
3 suggest that I guess I could understand why you'd rather talk  
4 to Mr. Ingber on Sunday night than watch the Denver Broncos.

5 MR. REILLY: Oh, Judge, that hurt, that hurt.  
6 Congratulations to the Giants.

7 THE COURT: Anything further from counsel?

8 MS. PATRICK: Your Honor, it's Cathy Patrick for the  
9 institutional investors.

10 THE COURT: Thank you. Go ahead.

11 MS. PATRICK: The conference tomorrow that Mr. Reilly  
12 is going to have, do you anticipate that all objectors -- I'm  
13 terribly sorry for the echo -- that all objectors and  
14 intervenors should be present for that for purposes of  
15 coordination, or is that to continue to be binary?

16 THE COURT: Well, in the absence of having some  
17 written agreement among the parties, that's a joint agreement;  
18 it's hard for it to be binding on everyone if it's only a  
19 binary discussion, but I don't think that that means that  
20 everybody has to be present in the same room but they have to  
21 be available to provide their input so that the trustee knows  
22 that when he's sitting across the table talking to Mr. Reilly  
23 or Mr. Cyrulnik or anyone else, that he's not going to have to  
24 have the same conversation with 40 other parties.

25 MS. PATRICK: All right, thank you, your Honor. I

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1 just wanted to understand our attendance.

2 THE COURT: That's fine.

3 Any other questions?

4 MR. INGBER: No, thank you, your Honor.

5 THE COURT: Mr. Reilly, apart from submitting the list  
6 of participants for the court reporters benefit, I'm going to  
7 direct you to make arrangements to purchase this transcript.

8 MR. INGBER: All right, we'll do that.

9 THE COURT: Thank you.

10 MR. INGBER: Your Honor, if I could ask everyone who's  
11 on the call to shoot me an email so I'm sure I have the right  
12 list, I'd appreciate it.

13 THE COURT: That's fine.

14 All right, everyone.

15 COUNSEL: Thank you, your Honor.

16 THE COURT: Thank you.

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