EXHIBIT 8

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : Part 60

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In the matter of the application of

U.S. BANK NATIONAL ASSOCIATION, THE BANK OF NEW YORK MELLON, THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., WILMINGTON TRUST, NATIONAL ASSOCIATION, LAW DEBENTURE TRUST COMPANY OF NEW YORK, WELLS FARGO BANK, NATIONAL ASSOCIATION, HSBC BANK USA, N.A., and DEUTSCHE BANK NATIONAL TRUST COMPANY (as Trustees under various Pooling and Servicing Agreements and Indenture Trustees under various Indentures), AEGON USA Investment Management, LLC (intervenor), Bayerische Landesbank (intervenor), BlackRock Financial Management, Inc. (Intervenor), Cascade Investment, LLC (intervenor), the Federal Home Loan Bank of Atlanta (intervenor), the Federal Home Loan Mortgage Corporation (Freddie Mac)(intervenor) the Federal National Mortgage Association (Fannie Mae)(intervenor), Goldman Sachs Asset Management L.P. (intervenor), Voya Investment Management LLC (f/k/a ING Investment LLC) (intervenor), Invesco Advisers, Inc.(intervenor), Kore Advisors, L.P. (intervenor), Landesbank Baden-Wurttemberg (intervenor), Metropolitan Life Insurance Company (intervenor), Pacific Investment Management Company LLC (intervenor), Sealink Funding Limited (intervenor), Teachers Insurance and Annuity Association of America (intervenor), The Prudential Insurance Company of America (intervenor), the TCW Group, Inc. (Intervenor), Thrivent Financial for Lutherans (intervenor), and Western Asset Management Company (intervenor),

Petitioners,

Index: 652382/2014

for an order, pursuant to CPLR § 7701, seeking judicial instruction, and approval of a proposed settlement.

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60 Centre Street
New York, New York 10007
December 16, 2014

B E F O R E: HONORABLE MARCY S. FRIEDMAN, Supreme Court Justice

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Michael Ranita
Senior Court Reporter

Proceedings

THE COURT: Good morning. May I have the appearances of counsel who are seated at the table or are in the well.

MS. PATRICK: Yes, your Honor. Kathy Patrick with Gibbs & Bruns on behalf of the institutional investors, also in the well is our local counsel, Mr. Ken Warner, and my partner, Robert Madden.

MR. MICHELETTO: Good morning, your Honor. Robert Micheletto of Jones Day, on behalf of US Bank. Also with me in the well this morning is Matt Martel. Also from Jones day.

MR. INGBER: Good morning, your Honor. Matthew Ingber from Mayer Brown on behalf of the Bank New York Mellon and the Bank of New York Mellon Trust Company.

MR. LOESER: Good morning, your Honor. Derek Loeser, Keller Rohrback for Federal Home Loan Bank of Boston.

MR. ROLLIN: Good morning, your Honor. I'm Michael Rollin for Jones and Keller. I represent W&L Investments, LLC.

MR. WOLLMUTH: Good morning, your Honor. David Wollmuth from Wollmuth, Maher & Deutsch. I represent QVT Financial. And with me today is John Libra from the Korein Tillery firm. He represents the National Credit Union Administration branch of the US government.

Proceedings

MR. LEDLEY: Michael Ledley, Wollmuth, Maher & Deutsch, for Ambac Insurance Corporation.

MR. JACOB: Charles Jacob of Miller and Wrubel for the Triaxx objectors. And with me today is my partner John Moon.

MR. MUNNO: William Munno of Seward & Kissel for Law Debenture Trust Company of New York.

MR. ATAMIAN: Good morning, your Honor. Jean Atamian from Mayer Brown on behalf of HSBC Bank.

MR. RADEMACHER: Good morning, your Honor. Kurt Rademacher from Morgan Lewis for Deutsche Bank National Trust Company.

MR. JOHNSON: Good morning, your Honor Michael Johnson from Alston & Bird for Wilmington Trust NA.

MR. SCHNELL: Good morning, your Honor. Robert Schnell from Faegre Baker Daniels for Wells Fargo Bank.

THE COURT: This is the first court appearance in this Article 77 proceeding. What I would like to do today is to hear, first, the trustees' and supporting intervenors' position in support of the settlement, and then I would like to hear the objectors' positions.

This is a preliminary hearing today and I am asking that you try to confine your statements to 15 minutes per side. There will be further opportunities to argue in support of the petition and in opposition at length. Today

we are just setting the stage, and I am asking Counsel just to highlight their most important points.

So, how will the trustees and supporting intervenors divide their time?

MR. INGBER: Thank you, your Honor. Matthew Ingber. I will be speaking on behalf of all of the trustees. I will do my best to speak on behalf of all those trustees for ten minutes, and then Ms. Patrick, on behalf the institutional investors, will speak for five.

THE COURT: This is a guideline. If you can't stay within the limits, then we'll extend a bit. When we finish hearing the initial statements, we'll take a brief break and then I'm going to have the same procedure with respect to discovery issues, so you needn't address the discovery in your initial statements.

Mr. Ingber.

MR. INGBER: Thank you, your Honor. And Mr. Micheletto is going to speak on the discovery issues, and I'll speak on the petition.

Your Honor, in August of this year, the trustees filed this Article 77 petition and presented to your Honor one issue, and that is whether the trustees, after an exhaustive evaluation process, acted within the bounds of reasonableness and in good faith in entering into a four-and-a-half billion dollar settlement with JP Morgan.

Now, this filing in August was the culmination of a very lengthy process, and that process started with the negotiation of the economic terms of the settlement that was presented to the Court, and that negotiation was led by a group of institutional investors, 21 of the largest and most sophisticated institutional investors in the world, investors with fiduciary duties to their own clients; that negotiation lead to a settlement that was presented to the trustees in November of 2013, and that was the start of the process for the trustees, a process that spanned more than nine months, um, that process, involved six notices to all certificateholders in these trusts to update them on the progress of the trustees' evaluation process and to invite them to reach out to the trustees with relevant information. That process involved the trustees seeking four extensions of their deadline to either accept or not accept the settlement, and that was at the behest of experts who wanted to make sure that their consideration of the issues was careful and thoughtful and not rushed, and JP Morgan granted those extension requests. That process involved vetting of experts to opine on the key drivers of the settlement decision for the trustees.

Now, the trustees relied on experts for a number of reasons. Number one, trustees are not subject matter experts in the topics that were the subject of these expert

reports. The trustees certainly have their duties and responsibilities under the PSA's, but they are not subject matter experts when it comes to servicing and it comes to a calculating potential repurchase -- losses associated with breaches of representations and warranties. So they looked to experts.

Now, they also look to experts because the PSA's that govern these trusts expressly contemplate that the trustees can, and should, rely on experts. And the restatement itself acknowledges that this is what a prudent trustee does, um, section 93 of restatement third. If a trustee has selected an advisor prudently and in good faith, has provided the advisor with relevant information and has relied on plausible advice on a matter within the advisor's confidence, this conduct provides significant evidence of the prudence of the trustees' action or inaction in the matter at issue. That is why the trustees retained and rely upon experts.

Now, as part of that process, the trustees supplied massive amounts of information to the experts, at their request, documents that Mr. Micheletto will explain shortly, will be produced to the objectors at their request. These five experts, experts on servicing, on law and economics, on -- a former judge to opine on contract interpretation, a Yale law professor to opine on another, um, contract

interpretation issues. Experts who have extensive experience valuing repurchase damages.

These experts, these five experts issued nine expert reports, hundreds and hundreds of pages with hundreds and hundreds of pages of exhibits, and provided those reports to the trustees. The trustees made those expert reports available for all certificateholders in these trusts to see. They were posted on settlement website that was created right at the outset of this process to keep certificateholders up-to-date on what -- on the trustees' evaluation process. And these experts, in particular, Professor Fischel, who is the former dean of the University of Chicago Law School and an expert -- one of the foremost experts on law and economics, recommended to the trustees that they accept the settlement with respect to 319 of the 330 trusts that were the subject of this agreement between the institutional investors and JP Morgan.

And it was based principally on the recommendation of these leading experts that the trustees entered into the settlement and decided that in lieu of litigation that could take many years and produce no certain outcome, they would enter into the settlement, get four-and-a-half billion dollars for investors today rather than go through the process of litigating these claims for many years through the appeal process and maybe, one day, getting

four-and-a-half billion dollars or less, possibly more, but they decided not to roll the dice. They decided to take what was on the table based on the advice of their experts.

Now, after all of this process, the trustees filed this petition and implemented one of the largest notice programs ever. This is, as we understand it, one of the largest notice programs implemented by a vendor, by the name of Garden City Group, that gave notice to certificateholders through a number of publications, through the settlement website, through DTC and other forms of publication. And we are here today with eight objectors, eight groups of certificateholders coming forward and objecting to the settlement.

And so we are in a position now where we would like to proceed with this Article 77 proceeding, but we want to balance the interests of the objectors who certainly are entitled to information in this proceeding and are entitled to have their day in court, that's one of the reasons for the Article 77 proceeding, with the interest of the thousands of certificateholders who have decided not to object to the settlement, whose silence, we believe, can be interpreted as implicit support for the settlement, and also the interest of the institutional investors who account for 32 percent of the holdings in these trusts.

Now, it's also relevant that there are more than

100 trusts, by our account, as to which there is absolutely no objection. And so we are here, we are going to be talking about discovery in a bit, but we are here to talk about a process for this proceeding. And as I said, what we are trying to do is to give the objectors their day in court, but to balance that against the interests of all the certificateholders who want that four-and-a-half billion dollars today.

At bottom, the trustees are entitled to the relief that they requested because their evaluation process was robust. Their selection of the experts was the result of the significant vetting process. The experts were qualified to give the reports that they did. There is no objection whatsoever that the experts were not qualified to opine on the topics that were the subject of their expert reports.

It was reasonable for the trustee to rely on those experts, to take them into account and to follow the recommendations of Professor Fischel, who recommended acceptance with respect to 319 trusts, and to not consider -- well, they considered, but to reject the alternative, which is to reject the recommendations of these qualified experts and to embark on a process that, as I said before, could take many years with no certain outcome.

So, that's the fundamental reason why the trustees are entitled to this relief. They followed an exhaustive

process. They relied on experts. Those experts recommended settlement with respect to 319 trusts. The trustees followed the recommendations of those experts.

There are objections, clearly, and I'll leave it to the objectors that actually are articulating those objections, and, um, in great detail, but I want to mention just one or two and respond very quickly, and then I'll turn the podium over to Ms. Patrick.

There is an objection that the trustees were conflicted, somehow conflicted because if they didn't exercise their rights and enter into this settlement, they might have been sued. That is not, in our view, a serious objection. The trustees carried out their rights that they had under the contract in entering into this settlement agreement. Their interests were aligned with the interests of the certificateholders. There is a conflict -- in order to -- in order to survive a motion to dismiss on a conflict theory, there has to be some allegation that the trustee benefitted financially from a decision at the expense of beneficiaries. There is no allegation here that the trustees benefitted financially at the expense of any of the certificateholders in these trusts. The trustees' interest and the certificateholders' interests were very much aligned.

The second conflict theory is that the trustees

were indemnified by JP Morgan Chase. That is, JP Morgan paid the expenses of the trustees' experts and is paying for the legal fees associated with this process. That is -- again, that is not a conflict as a matter of law. Judge Rakoff in the CFIP case in the Southern District ruled that trustees are not expected to go out-of-pocket, an indemnity is not, as a matter of law, a conflict. JP Morgan was required to provide indemnity under the contract -- under certain of the contracts here, and with respect to others where it had secondary responsibility for providing an indemnity, um, the -- um, the benefit was to the trust and not to the trustee, because the alternative would have been for the trustees to tap trust funds to pay that indemnity. So the conflict allegations we think are not serious. We think they wouldn't survive a motion to dismiss. We think they are not entitled to discovery on these issues.

The other issues really boil down to a challenges to the expert reports and the conclusions of the expert reports, and they draw distinctions between Professor Fischel and some of the other experts. But at bottom, this is just a challenge to the correctness of the expert reports. And it's not for this court to second guess the correctness of the expert reports. It's not --

THE COURT: I agree, but to what extent does the Court need to look at the merits in order to determine

whether the trustee has appropriately exercised its discretion in accepting this settlement?

MR. INGBER: We think not at all. We believe that based on the standard of review, which was endorsed by the First Department in Haynes and by Justice Kapnick in the Countrywide Article 77 proceeding, the standard of review is whether the trustees acted reasonably and in good faith. That focus is on the process that the trustees followed to evaluate the settlement and ultimately accept the settlement.

Reasonable minds, I'm sure, can disagree about whether four-and-a-half-billion dollars is fair or not. We think, based on our expert recommendations, that this was eminently reasonable, um, but it's the process. It's the selection of the experts. It's the information that the experts requested and provided. It's the scope of the experts' assignment. It's the information that the trustees relied upon in deciding whether or not to enter into this settlement. It's a process-focused inquiry by the Court and not a litigation of the merits of the underlying dispute, because in order to assess the fairness of this settlement, in many respects it would require the very discovery that the trustees sought to avoid through years and years of litigation by entering into this settlement. It's not -- in our view, it's not the role of the court, or any settlement

court, really, to relitigate those underlying issues. And that is essentially what the objectors, we believe, will be asking the Court to do, to relitigate those underlying issues to assess the substantive fairness of the settlement.

THE COURT: Thank you.

MS. PATRICK: May it please the Court. Kathy Patrick on behalf of the institutional investors.

First, your Honor, may I thank the Court for the courtesy of allowing me to appear pro hac vice. I appreciate it, as do my clients.

Let me begin with the question that you asked, just to amplify something that Mr. Ingber said, and then I'll walk through a little bit of the position of why we support the settlement.

Article 77 is, as the Court knows, a summary proceeding in which the Court's scope of review is limited to evaluating whether the trustees' conduct exceeded the scope of its reasonable discretion.

In that regard, we have afforded the Court the abundant law that says that the Court may not substitute its judgment for that of the trustees. Thus, the question in this proceeding is never whether the trustees were right or wrong or correct, instead it is whether their actions were within the range of reasonableness; that is the law in New York. And the two cases we have provided to you in re

Clark's Will, which is 257 N.Y. at 136, and in re Cowles' Will, 22 AD2d 365.

In addition, we would commend to the Court the United States Supreme Court's elucidation of common-law trust principles in the case of Metropolitan Life against Glenn. Although that case is an ERISA case, it is found at 554 U.S. 105. It reviews, at length, the common-law trust principles concerning a trustee's exercise of discretion, how a court reviews a trustee's exercise of discretion, and importantly, the significance vel non of claims of conflict and reliance upon experts. It is a very nice treatise and summary and we commend it to the Court.

Let me turn now to the question of how our clients and why they support the settlement. Our clients, as Mr. Ingber noted, are 21 large institutional investors, their names are disclosed. They have been part of the effort to try to remedy the profound problem of ineligible mortgages and improper mortgages services. They have been working to address these issues quite literally for years. They include PIMCO, BlackRock, Met Life, Fannie Mae, Freddie Mac, household names, who act for their shareholders, or on behalf of investment clients, to try to recover and remedy these problems. We are not late on the scene. Our clients and we have been working in this area for many years and have now obtained a number of very, very large settlements

that will offer significant relief to certificateholders and to borrowers in the form of improved mortgage servicing, which reduces investor losses, and also makes modifications available more readily and on clearer criteria. It is a good thing.

New York favors settlements for a reason, because litigation is costly and uncertain, but in this context, settlement is particularly beneficial to the judicial system, to our clients and to the trust as a whole because of the uncertainties that surround these claims and because of the lengthy and uncertain prospect they face in litigation.

Now, our clients are very, very substantial holders of these trusts. They hold in over, um, nearly a third of the trusts. And they have holdings in the vast majority of the trust as to which no objection at all has been lodged.

So in the first instance, as it pertains to the objections, we believe the Court should, as it has done with regard to the mortgage brokers who sought to intervene, require evidence of standing. That is, the Court should not entertain objections on behalf -- sort of as private attorneys general, so to speak, on behalf of trusts where these certificateholders do not have holding. If they don't have holdings, they can't object to the settlement on that basis.

THE COURT: Have any parties that do not have holdings sought to intervene in this proceeding?

MS. PATRICK: Your Honor, we think in two ways they have. You've dealt with the mortgage brokers that were in prison who sought to intervene and did not have holdings.

But my point in rising the issue was that the objectors would have the Court understand that they may explore their objections as to all trusts and are not limited to exploring their objections only as to the trusts where they have holdings. And our view is that their objections are constrained only to those trusts where they have standing. So that's one point.

Our clients favor the settlement, in addition, because the process the trustees used to evaluate it was robust and independent. This settlement is unlike -- let me repeat that, unlike the Countrywide settlement. This is not a settlement that the trustee negotiated and accepted before notifying certificateholders.

This is a settlement that our clients negotiated in the form of a binding offer that JP Morgan presented to the trustees for them to accept or reject based on their sound exercise of their judgment and discretion. The trustees were not involved in the negotiations, were not privy to them, have no information about them. And instead, what they did is once the settlement was presented to them, they

gave notice to certificateholders that the settlement offer was out there, invited certificateholders' views, and then retained independent experts. That's important in this context because the scope of relief that is sought here is narrower than the scope of relief that was at issue in the Countrywide proceeding.

For example, there is no request in this petition for relief for any form of finding regarding the settlement negotiations, because the trustees did not participate in those negotiations. Instead, there is a single claim for a finding. Did the trustees' conduct in evaluating and accepting the settlement comport with the governing agreement and applicable law. It is a trustee-focused inquiry. It begins at the point when the trustees received the settlement offer, and it ends there.

Why does it begin there? Because no part of the relief requested concerns, for example, the trustees' pre-settlement conduct. Their alleged action or inaction in failing to prosecute these claims is not at issue in this petition because the trustee seek no finding on that, that conduct is not released by the settlement, and there is no judgment requested on that.

The sole and narrow issue is, was the trustees' conduct in evaluating, accepting and then implementing the settlement reasonable and within their discretion. So, in

light of that, does the Court need to litigate the merits of the claims or permit the objectors to do so? The answer is definitively no. The judgment you will be asked to -- you've been asked to reach by the trustees does not concern the correctness of their judgment or their merits of the underlying claim. It concerns reasonableness.

THE COURT: If the settlement were to be approved or the trustees acceptance were to be found an appropriate exercise of their discretion, there would be no remaining viable claims against the trustees for failure to seek repurchase of the loans; isn't that the case?

MS. PATRICK: No, I don't believe it is, your Honor.

THE COURT: How would such an action be maintainable?

MS. PATRICK: The action would be maintainable, we believe, I mean, there is no -- if you look at the settlement agreement at the release sections, the trustees are not released from any claim for failure to prosecute these claims sooner, for allowing them to become time-barred, for anything. They are not released. They are simply not released.

THE COURT: But they would have settled the claims and would have acted on them and the Court would be making a finding that the settlement was reasonable. If I don't have

the exact terminology refined at this very preliminary stage, bear with me on that --

MS. PATRICK: Sure.

THE COURT: -- but there would be some finding about the reasonableness --

MS. PATRICK: Yes.

THE COURT: -- of the settlement. So I don't see how claims against the trustees could be brought in the face of that.

MS. PATRICK: Your Honor, there are two things. First --

THE COURT: I'm not suggesting that such claims should be brought either.

MR. INGBER: Thank you for that, by the way.

THE COURT: I'm just trying to understand what your position is on the limits of the issues before me.

MS. PATRICK: Our clients' position is that those claims are not released and that a finding that the trustees acted within their reasonable discretion in settling them might give rise to a settlement credit against some other liability that the trustees have for failing to prosecute these claims, but the claims against the trustees are not extinguished in the settlement. They are not released. In fact, they are preserved. Individual certificateholders' securities claims are preserved, and claims against the

trustees for anything other than settlement related conduct are not released.

And importantly, it is not for this court, in this proceeding, to decide the effect of the judgment it enters here on some other lawsuit that might have been filed in Federal Court elsewhere by other people. For example, there's a case involving -- filed by an entity called Park Royal, which concerns some of these trusts, I believe. The effect vel non of this judgment on that case would be for that judge to decide, not this court. The settlement that is presented does not release the trustees' claims. It categorically does not, and the trustees do not contend that it does.

So --

THE COURT: I'm afraid we are running past the time guidelines, but if you need mother few minutes --

MS. PATRICK: Yes.

THE COURT: -- to conclude your remarks, then I'll balance the time out for the objectors.

MS. PATRICK: There is one other point that I simply wanted to make, your Honor, with regard to the objection concerning the allocation formula. There is an objection lodged by W&L that the allocation formula in the settlement is not fair. That misapprehends the settlement agreement. Each trust, and indeed, in most instances, loan

group by loan group, decisions were made as to whether the settlement was reasonable as to that trust. The trustees got a recommendation, not just trust by trust, by loan group by loan group. The reasonableness of the settlement for trust A, in no way turns upon what trust B gets.

Each of these trusts has been presented individually as an acceptance decision. Each trust is getting the allocation it gets. And the burden is not -- the trustee doesn't have to justify the entire allocation formula because it looked at what flowed into each trust individually and made a judgment on that trust. And so the objection regarding the formula is not well taken because the trustees' decision is trust by trust.

THE COURT: Would you address the 90 percent discount.

MS. PATRICK: Yes. I would be glad to do that. Those structures are in JP Morgan multi-originator shells. Those are structures in which the originator -- and I know the court does a lot of mortgage back things, so you are familiar with what I'm talking. Those are aggregation shells where JP Morgan bought mortgages from other parties, from Harbor View or others, New Century, securitized them and sold them. In those trusts, the people that originated the mortgages make full reps and warranties.

JP Morgan's structural representation and warranty

it that they will repurchase the mortgage if it is required and the primary obligor does not. It is in the nature of a guarantee. And importantly, as to this 90 percent discount, that discount was applied only as to obligors that were solvent. That is, that were able to front the reps themselves, and so, as a practical matter, step out of this context and into a repurchase claim. And let's just suppose on trust A, where Wells Fargo is the originator of the mortgage and makes the rep, and JP Morgan has this backstop representation, in that universe, if JP Morgan was sued on that representation, it would turn around and implead Wells Fargo as the primary obligor, which it has the right to do under that contract. And so, as a practical matter, in that circumstance, Wells Fargo would either pay the liability, because it is solvent, and JP Morgan would not. Or, the repurchase wouldn't be owed, because the primary obligor, they have -- they have to make demand on the primary obligor in those structures. So it's not as to all of the originators, there are 2,000 originators in that shell. It's as to a set of very large originators, Wells Fargo is one of them, where those people are solvent. There was a discount, because as a practical matter, if the trustees were directed to/did pursue those claims, the obligors would ultimately owe them, and so effectively what JP Morgan was settling into that context is the value, the reasonable

value of the expected backstop liability that it had.

It is unique to those multi-originator structures whose PSA's are different, and the trustees' experts considered all of that.

Thank you, your Honor.

THE COURT: Thank you. How will the objectors divide their time? There will be a half hour, given that I extended the time for the trustee and the institutional investors. How many counsel will speak?

MR. WOLLMUTH: I'll just need three or four minutes.

MR. ROLLIN: Two or three minutes for me, your Honor.

THE COURT: There is no such thing.

ROLLIN: Less than five.

MR. LEDLEY: About five.

MR. JACOB: Ten minutes for Triaxx, your Honor.

THE COURT: There is no such thing.

MR. LOESER: So, your Honor, the overall answer is, limited, um, two or maybe up to five -- we'll see what really is the case -- for several of the objectors. And I'll have more general comments generally about the objections, and in an effort to respond to some of your Honor's questions and some of the things that have been said.

As I said, I'm Derek Loeser from Keller, Rohrback, and represent the Federal Home Loan Bank of Boston, which is a federally chartered institution with public admissions to support community lending and development.

The Federal Home Loan Bank of Boston purchased close to two billion dollars of triple A rated JP Morgan mortgage backed securities. The purpose of purchasing those securities was to help fund the public mission of the bank and, of course, those bonds have been a disaster. And frankly, there have been books written about how bad JP Morgan's conduct has been, the abusive practices that resulted in the creation of these trusts that are the subject of the settlement, and that were purchased by my client.

It goes without saying that obviously this is not a normal Article 77. This is not a dispute over a will. It's not two brothers arguing over their uncle's money. Instead, it's a proceeding that involves 319 trusts. As your Honor well knows, these are not small trusts. They have a billion or two billion dollars of assets in each of them. The trusts are not all the same. There is a variety of differences among the pooling and servicing agreements. There is an original face value of $300 billion. By the trustees' experts own lights, the losses here exceed 60, or in some cases they say $65 billion, um, and all of these

losses have been reduced to a single seven cents on the dollar, pennies on the dollar settlement, at one time.

The settlement was not negotiated by the trustees, as Ms. Patrick has said. Unlike the Countrywide proceedings where the trustees', as it described, vigorous involvement in the negotiations helped insure the best interest of the certificateholders. Instead, the trustee was nowhere to be found. The trustee has obvious obligations as a fiduciary requirement, but they had no role in negotiating this settlement. Instead it was negotiated by the group of institutions, many with closer ties to JP Morgan.

Your Honor, BlackRock, for example, is the single largest shareholder of JP Morgan stock, so billions and billions of liability, close ties. These are not institutions that if this were a class action -- and there's several instances where they cite class action authority in their briefs -- these are not institutions that could be class plaintiffs. They could not be qualified as adequate plaintiffs because of the business relationships that exist here.

JP Morgan is paying for this entire show. They are paying for the institutional investors' legal fees. They're paying for the trustees' legal fees and they're each paying for the trustees' experts. So all roads lead to JP Morgan.

Now, the trustees, again, unlike the Countrywide

proceedings with Justice Kapnick, currently face massive lawsuits for the damage they've caused to over 2,000 mortgage backed securities trusts, just like these trusts, as a result of years of failure to appropriately protect the trust and pursue repurchase claims. And to make things stranger still, in several of Ms. Patrick's clients, BlackRock and PIMCO among them, who are bringing those lawsuits.

Those lawsuits allege, among other things, events of default, which are, you know, there's some discussion in the papers about how events of default are kind of a nonevent. They are a game changer in the trusts world. Events of default are huge. Events of default trigger obligations of the trustee which significantly enhance their duties and create a situation where they can't just sit on their hands anymore. They have to issue notice and they have to actually pursue the repurchase claims. So it's a big deal if there are events of default, or not.

Now, a baffling feature of this settlement, and again distinguishes it from the Countrywide settlement, is that the trustees' own chief expert, Mr. Fischel, who really is the decision maker here, um, he made these recommendations and assembled all of the information, um, Mr. Fischel, you could take his report and simply change the conclusion to say, and therefore the settlement should not

be approved, and it would make a lot of sense.

He essentially concluded that this is a bad deal for 174 of the trusts because the compensation they'll receive under the settlement is worse then they would receive in a repurchase settlement. But he recommends that the settlement be approved anyway, because apparently, his understanding of the law is if the trustees either accept the settlement or do nothing, they could simply sit on their hands. But that really isn't a conclusion about the best interests of certificateholders; that's a conclusion about the trustees' duties. And, in fact, because of the events of default which BlackRock and PIMCO and others allege, the trustee can't sit on it's hands anymore. It has to be assertive.

Now, we see this settlement as a race to the bottom, an effort by the trustees to get out of their own liabilities, numbered by institutions with ties to JP Morgan, to just flush these massive losses down the drain. We don't have, and as we indicated in our preliminary objections, we don't have discovery, we don't have information about really what the trustee has done.

What we have are the expert reports. And we've read the reports and we've made objections based on what we know. And our concerns are primarily that the trustees engaged in an inadequate investigation regarding the value

of the claims released and the adequacy of the settlement. We have expert reports that are inconsistent, um, Dr. Sabry seems to think this is the best settlement ever by a 100 to 260 percent of the liability, which is remarkable, but Mr. Fischel seems to conclude that it's actually the worse settlement he could find.

We have trustee conflicts because of their own liability for the underlying losses, and we have trustee failure to take actions necessary or required as a result of events of default. Those are the general objections for which all of our discovery is geared at obtaining additional information.

Now, your Honor, in the pleadings, and again, here today, the petitioners have characterized our objections and tried to tell the Court what we are saying. And I think it's important for us to tell the Court what we really are saying and what we are really not saying.

We are not objecting based on hindsight. We are not saying that the Court -- that the trustees failed to consider information that only came to light later. Circumstances that not -- did not exist at the time the trustee made their decisions to accept the settlement. That is not at all what we are saying. We are saying that we need to figure out what the trustees new, because they were not strangers to these trusts. They had a tremendous amount

of information about the repurchase and rep and warranty violations, and the servicing abuses. We need to know what the trustees knew, what the trustees relied on and what they chose not to rely on, and what they ought to have know, because the standard is not simply limited to looking and seeing, oh, the trustees hired experts, the experts did their thing. They have the information that they had. Instead, the standard involves exploring what the trustees knew and not what the trustees should have knew.

We are not saying there needs be a trial on the merits of JP Morgan's repurchase of service and reliability. We agree that an Article 77 is a special proceeding, but that does not mean it's a rubber stamp. It is far from a rubber stamp. As Justice Kapnick's proceeding in the Countrywide case demonstrated, the purpose of an Article 77 is not just to make sure the trustee checked off the right boxes. There needs to be an evaluation of the facts and circumstances that a prudent trustee would consider when deciding to accept a settlement that resolves billions of dollars of liability on behalf of thousands of certificateholders. And we are not saying that the amount of the settlement by itself demonstrates the settlement should not be approved, but the idea that the amount is wholly irrelevant, as the petitioners have said in their papers and as they're saying now, is absurd. It cannot

wholly irrelevant given the relief that they are asking this Court to find. It is a relevant circumstance to determining whether the trustees' decision to enter the settlement was reasonable.

Now, your Honor asked an important question, which is, does the Court need to consider the merits? And the answer really is provided by the relief that the trustees are seeking. And Ms. Patrick suggested that it's a single determination that really sounds abstract, just did the trustee act within its discretion. But actually, the trustees have come forward and asked for specific findings, and here's what they are:

Did the trustee accept the settlement based on a thorough and reasonable investigation of the claims proposed to be released and the settlement consideration?

Did the trustee make its decision in good faith? They are asking the Court to find that the decision was made in the best interest of beneficiaries of each trust, and they are asking the Court to find that the trustees complied with all applicable duties under the governing agreements and any other applicable law.

And this last finding is a broad one. It means finding the trustee did not negligently, complied with the duty of prudence, and acted loyally and without conflicts. So it's not a single issue. We're not looking -- they're

not looking for an abstract determination. They're asking for specific findings. And to make those findings, the Court does need to consider what the settlement provides. The Court does need to consider what investigation was done.

Your Honor has heard a bit about the standard for this proceeding from Mr. Ingber, and it is not a box checking standard, and it's not a rubber stamp, and it's not just looking to see did the trustee higher the experts, and did the experts go to good schools. Did the expert generally have an understanding of what they are talking about. There is no case law, if you look at any case that any of them have cited, there's no case law that describes a review of the trustees in that manner. Instead what you see are things like in the restatement where the statements says:

"The Court will interpose if the trustee arbitrarily, or without knowledge of or inquiry into relevant circumstances, fails to exercise the discretion."

So there is an inquiry into relevant circumstances. That inquiry into, among other things, the value of the settlement, the merits of the settlement, things that the Court needs to consider when deciding if this in fact is in the best interest of the certificateholders.

In re Korn says:

"In determining whether a breach of fiduciary duty

has occurred, the court must evaluate the fiduciary's actions along with relevant factors that affected or ought to have affected the fiduciary's decisions."

So again, it's not just a question of does the trustee come and say here's our process, refer to it, we are done. It's an examination of the process. These trustees are not strangers to these trusts. They are not strangers to the rep and warranty violations. They have knowledge of their own that needs to be evaluated. They also, as a result of events of default and as a result of their fiduciary duties, have an obligation to obtain the information one would need to figure out what really happened here, to figure out what does JP Morgan know about the degree to which these loans violate the rep and warranty, um, it's about the quality of loans, um, to figure out what does the trustee need to understand the relevant circumstances before deciding to accept the settlement.

Another statement, your Honor, that comes from an ERISA case, which is based on the Law of Trusts:

"A pure heart and empty head are not enough. A trustee must make reasonable investigations into the representations of interested parties, and where that investigation would have revealed evidence that the investment was unsound, the trustee can be held liable."

So again, it's not just box checking. There is a

real examination that needs to occur here.

THE COURT: In how many instances has Article 77 or similar statutes been used for judicial approval of an RMBS or other settlement that might be analogous?

MR. LOESER: Your Honor, the only analogous proceeding that I'm aware of is the one that was initiated by Mr. Ingber on behalf of Bank of New York Mellon or Bank of New York Mellon on behalf of Mr. Ingber.

THE COURT: Justice Kapnick's case.

MR. LOESER: Yes.

THE COURT: Wasn't there one also in Federal Court.

MR. LOESER: There was a Res Cap proceeding in Bankruptcy Court, your Honor, um, which has a tremendous amount of information about what's involved in examining the underlying merits, the degree to which merits are irrelevant, um, the degree to which loan --

THE COURT: I really --

MR. LOESER: -- is irrelevant, but it was not an Article 77 --

THE COURT: I really think we need to take a look at a different universe of cases than I've been given in this briefing. Many of these are traditional proceedings for approval of trust accountings. This action, or this proceeding, rather, really differs in material respects.

I'm not going to hear from Mr. Ingber right now. I

have always strictly adhered to a procedure from which I will only hear from one side at a time in oral arguments, and it's worked very well.

MR. INGBER: Sure.

THE COURT: But I will, of course, give you an opportunity to weigh in. I don't want anyone to leave this courtroom today worried about not having an adequate opportunity to put their positions on any of the many issues which we will have to deal with on the record.

All right. So we only know of Justice Kapnick's case and the Bankruptcy Court case.

MR. LOESER: Right. And Bankruptcy Law, um, trustees play a significant role in Bankruptcy Court, and there's an extensive amount of law that, again, describes what it is the trustee is required to do, um, what type of investigation the Court needs to have of the trustees' conduct, and, um, makes the sensible determination that -- the question really is, um, did the trustee engage in the appropriate process, was the decision reasonable, um, but also questions of if a fairness exists as to whether the resolution is, in fact, in anybody's best interest as suggested by the trustee, such that the decision to accept the settlement is reasonable.

Now, another question your Honor had was about the extent to which this settlement will mark claims against the

trustees. The trustees have made the statement that the release here will not bar someone from filing a claim. And that is certainly true. The question I think that your Honor rightly asked is, well, what's the effect? What does it mean? How could a claim proceed if the Court has found -- if the Court has provided all this relief, for example, if the Court concludes that the entry into the settlement was reasonable and represented what was in the best interest of certificateholders. And I do think that creates a real question as to what would happen in subsequent litigation.

But the larger point is the one of conflicts, because obviously if the trustee is conflicted, it cannot obtain a finding that satisfied its fiduciary duties, um, because we all know the trustee is not allowed to put its own interests ahead of certificateholders, and it's not allowed to operate under conflicts. And the trustees don't seem to think much of the conflict concerns that we have. But in their papers, um, and really here today, they haven't really addressed the primary concern, which is the presence of these massive cases against the trustees for conduct, that was identical to their conduct here. And what that means for the trustees' evaluation of what to do here.

Now, what we know about that conduct as alleged by BlackRock and PIMCO and others is that for years the trustees did not adequately protect the trusts, for so many

years, in fact, that statutes of limitations may have run. And the trustees own experts, in fact, point out that one of the reasons why it's okay to accept the smaller settlement here than they could find in looking at any other RMBS settlement is that the value of the claims has been diminished by the failure to pursue claims on a timely basis.

Now, the trustees are here today presenting a settlement which they say is fair and adequate and in the best interests of the certificateholders, and yet their own expert is indicating that one of the reasons why a smaller settlement is justified is because of a time bar. So, the trustees are asking the Court to enter a settlement where it's their own conduct, according to some of the institutional investors themselves, that had resulted in a smaller settlement. That is a problem. That is a concern and it's important to figure out, did the trustees evaluate that, was part of their investigation to consider this really untenable position that they are in.

Problem number two here is that Mr. Ingber said that really all we are looking for is whether there is a benefit obtained by the trustees. But we do have real concerns about the benefits to the trustees. The trustees have been sued for over 2,000 trusts, and they are being -- there's an effort to hold them liable for billions of

dollars of losses of those 2,000 trusts. The only trust they are not being sued for are these ones. But their conduct is exactly the same. So, in accepting the settlement, they get a pass from the institutional investors who brought these claims on these massive claims. That's a concern. That is a concern that requires some investigation. We need to see what it is the trustees did to evaluate that, because, your Honor, it is not in the least bit unusual in the trustee world where there is a concern that the trustee is focused on its own liability or efforts to avoid its own liability, where a trustee finds itself in a position where it's difficult to figure out what the right thing to do is, for an independent fiduciary to get involved. Someone who is not facing liability. Someone who could investigate the merits of the settlement, whether it's in the people's best interest without any conflict.

But here's the third problem, your Honor --

THE COURT: Well, you are passing the time limit, so if you need to take another couple of minutes, please do that.

MR. LOESER: Okay, I will be -- quickly, just to finish out this point, your Honor, and then I'll pass along to others.

Now, the trustees' position is that the settlement doesn't stop people from suing the trustees for their

pre-settlement conduct, and as we discussed, there's issues as to how that will work. But if someone does sue for pre-settlement conduct, and if they do get over these findings that they are asking the Court to find about the reasonableness, the amount the trustees presumably would be liable for is the difference between the value of the settlement with and without the impact of the trustees' own bad conduct. So the value of the settlement -- if not for the trustees' failure to act on a timely basis, this settlement could be worth X, because of their failure to act on a timely basis, the settlement is worth less than X; that would be the value of what's leftover to the trustees' claims.

The trustees have an incentive not to fairly evaluate the liability here because they are the ones who ultimately will be left holding the bag for the difference. And, your Honor, if you look at Dr. Sabry's report, that's exactly our concern. They've hired what's really the go-to defense firm, your Honor, to prepare a report, and Dr. Sabry concludes that miraculously JP Morgan has paid 100 to 260 percent of the liability here, which is bizarre given that Mr. Fischel says that you can't find any settlement worse than this. Well, conveniently there is nothing left for the trustees, so the relief they are seeking would be to endorse a view of calculating liability that would leave nothing

left in the event of a subsequent suit.

So with that, your Honor, I will pass to Mr. Ledley.

MR. LEDLEY: Good morning, your Honor. Michael Ledley for Ambac.

Ambac is not an investor in these trusts. It's differently situated, as your Honor may be aware. Ambac is a financial guarantee insurer and has provided guarantee insurance for numerous RMBS trusts, including seven of the trusts for which the trustees seek approval of the settlement in this proceeding. With respect to those trusts, Ambac has paid out over $500 million in insurance losses to certificateholders. And for those trusts, the losses, in total, exceed $2.7 billion.

Ms. Patrick mentioned that her clients are not newcomers here. Ambac also is not a newcomer. Ambac has been litigating with JP Morgan since 2008 with respect to JP Morgan's securitization misconduct, and with respect to the trusts that are at issue here since 2012. In the course of that litigation, Ambac has uncovered a wealth of evidence demonstrating JP Morgan's misconduct here; misrepresentations related to underwriting; misrepresentations relating to due diligence, um, a practice through which JP Morgan would enter into settlements with originators for defective loans that it securitized, but

never bought the loans back from the trusts so that investors bore the losses while JP Morgan got the proceeds, um, through -- in large part, a significant part through the discovery that Ambac developed, um, others, including the federal government, began investigations with JP Morgan, which resulted, um, in among other things, a $13 billion settlement with the Department of Justice, pursuant to which JP Morgan admitted making misrepresentations about the quality of the loans in its securitizations, among other admissions.

So, here, unlike a lot of cases, the question of did they do it, isn't really at issue. We know they did it. Everyone in the world knows they did it. The question is, what are the damages and what is required to compensate the trusts for the misconduct?

In particular here, Ambac, through its effort, its long-standing efforts, has obtained samples of loan files from the seven trusts that it insured, and has done re-underwriting on those loan files, um, just like you would in a put-back case or repurchase case, and has determined that the breach rates for those loans extend from a low of 61 percent up to a high of 90 percent. And what Ambac is looking for here is an opportunity to bring to bear all of the work that its already done to present to the Court to demonstrate that the process that the trustee followed here,

in terms of the information that it looked at, and most importantly, chose not to look at, and its overall judgment as to the acceptability of the settlement, is an abuse of discretion. Your Honor mentioned the standard, and I guess the $4.5 billion question is to what extent is your Honor required to look at the merits of the settlement and the settlement amount.

Your Honor, the cases are very clear that it's an analysis that looks at both process and the reasonableness of the judgment overall. Ms. Patrick mentioned two cases. They are cases that I think are great because I think they demonstrate our point. The first is the in re Clark, Clark's Will, which is a Court of Appeals case in 1931. Ms. Patrick says that that supports the proposition that the Court isn't to look at any -- um, to look at the merits of the decision, simply the process.

To the contrary, on page 138 to 140 of the New York Reporter, the Court of Appeals made its own detailed evaluation of the merits of the conduct of the trustee in that case. There it was whether the trustee appropriately retained interests in certain sugar investments. And the Court evaluated the state of the sugar market, the various factors that impacted prices in the sugar market, the history of those price changes, did a very detailed analysis and ended up concluding, on the merits, that the decision of

the trustee in that case was reasonable because it appeared, at the at the time of the decision, that the sugar investments were in the trough of the market and you could expect it to rebound. So the idea that in re Clark supports a process only approach to evaluating trustee conduct is not supported by the case itself.

Ms. Patrick mentioned another case called in re Cowles' Will, that's a First Department case from 1965. There, the decision -- the question was whether the trustee appropriately sold an investment it had in a closed corporation in return for another investment. And once again, there are -- there is language in there about the fact that the trustee appropriately got advice from experts, et cetera, but then -- so it followed and it looked at process, but then it looked at the overall reasonableness of the decision on the merits as well, and on page 376 of the Appellate Division Reporter, it looked at the substantive reasonableness of the decision to enter into the new investment, including the assets and liabilities of the company, its history of profitability, its history of dividends payments, and evaluated the price that the trustee paid for that investment and determined that it was less than book value so that it was a good deal. These are not process only cases.

THE COURT: I must say to all of the Counsel, if

you want to have the opportunity to talk about discovery today, you will need to limit your preliminary presentations on the objections.

MR. LEDLEY: Your Honor, I'll come to a close quickly with that direction.

Even if you are to focus on process only and not the overall reasonableness of the decision, we will present a wealth of information that the trustees either disregarded intentionally, or were negligent in not considering, that demonstrates that the value of the settlement here is grossly, grossly deficient compared to the liabilities that they are releasing.

The final point I would make --

THE COURT: I think I must stop you.

MR. LEDLEY: Okay. Thank you, your Honor.

MR. WOLLMUTH: I'll try not to wear on the Court's patience.

THE COURT: It has nothing to do with patience. There are some very complicated discovery issues here and we need to reserve the time so that we can hear them.

MR. WOLLMUTH: Understood. I'll eliminate 90 percent of the five minutes I have and focus on what I think impacts discovery today.

The extent that the institutional investors and trustees argue that all that's at stake here is an abusive

discretion standard, that's wrong as a matter of law.

THE COURT: I am completely aware that the objectors are unified in rejecting that position of the trustees and the institutional investors. You could take it for granted that I understand that that is your position.

MR. WOLLMUTH: And the reason is, your Honor -- which that was really just a preliminary comment -- the Trust Indenture Act imposes its own standard here, as does the New York corollary, the Street Act, as do the terms of the PSA's. Each one of those bodies of law require an affirmative investigation by the trustee, and the exercise of remedies by the trustee, as a prudent person would act in a similar situation. Those duties are triggered by an event of default, the question of which is a fact question here, and impacts discovery.

The only other comment I'll make is that our principal client -- my principal client here is QVT Financial. They are one of the trusts suffering from the 90 percent discount your Honor noted. We tried, prior to this proceeding, to get information as to why the 90 percent discount was imposed on the trust that we own. US Bank would not provide it. We directed them to reject this settlement. We offered an indemnity. We own more than 25 percent of the trusts, more than Ms. Patrick's group. They ignored our direction, and we hear for the first day it's

because the underlying originator, in our case, WMC, is solvent. WMC is not even solvent. It's a shell company owned by GE. The other thing is -- your Honor, so we'll need discovery on things like solvency for the 90 percent discount. It's not a simple matter.

The other thing, your Honor, is the whole premise of the discount is that they could go pursue put-back claims against those originators. As your Honor knows, those claims are not timely anymore under Ace II. We have no rights against WMC as trust at this point. It's too late. The trustee waited too long, which is why these trustees are being sued for billions and billions of dollars and why this proceeding can't possibly let them off the hook.

So in closing, your Honor, you're quite right that this is ill-suited to any kind of Article 77 proceeding, though this is --

THE COURT: I did not --

MR. WOLLMUTH: -- hit on by B of A.

THE COURT: I did not say that this settlement was ill-suited to an Article 77 proceeding. I think there are issues about what the appropriate standards are given that this is not the traditional subject matter of an Article 77.

MR. WOLLMUTH: Fair enough. By no means did I mean to put words in the Court's mouth. We would love to brief those issues at the appropriate time.

THE COURT: Thank you.

MR. ROLLIN: Thank you, your Honor. I do think I could keep it to two or three minutes, because W&L Investments has a very narrow issue. And it's not -- Ms. Patrick misunderstands what our objection is. We do not -- we have not interposed objections to the manner in which the settlement amount, the overall amount is allocated among the trusts, but rather the manner in which it is distributed among certificates within the trust. That is a provision that was negotiated by the institutional investors and was accepted by the trustees. The Court will not find an expert report in any of the exhaustive analysis that Mr. Ingber referred to that addresses that issue; that addresses whether the distribution methodology comports with the governing agreements and whether it effectuates the purpose of the settlement, which is to compensate those certificates which suffered losses from breaches of representations and warranties and poor underwriting and mis-servicing. So there is no expert report on that, it's not part of their analysis, and there's no expert report about whether the institutional investors, in negotiating that particular provision, sought or obtained a unique benefit based on their own self-interests, whether for themselves or for people for whom they are fiduciaries.

So as to us, W&L owns five classes of certificates

in each of two of the accepting trusts, and those certificates are worth nothing because they were wiped out from the very misconduct that this settlement purports to compensate for, but it will receive none of the settlement payment. As I said, there is zero analysis on this in any of the work done by the trustees or their experts, and that is W&L's objection to the settlement. The $11 million paid to those two particular trusts will not be paid to the certificates that suffered loss from the harm that was caused and that was supposed to be remediated through the settlement, but instead, to the top of the waterfall where far fewer or even no loses were suffered at all.

Thank you, your Honor.

MR. JACOB: Triaxx, your Honor. We join in the other concerns, and somewhat similar to Mr. Rollin's client, Triaxx, which purchased $1.5 billion of these RMBS of the least risky ones before financial crisis started, and still holds those positions, objects to the allocation as unreasonable because different trusts that are subject to the settlement and different loan groups hold very different kinds of loans. Some were less risky and some were more risky, and similarly, some trusts or loan groups held loans subject to one kind of reps and warranties, others different and less robust reps and warranties, yet, in our view, the settlement does not take this into account. And so there is

a problem that the settlement is unreasonable because it simply looks at gross losses and does not take into account that less risky tranches, if you will, that were supported by more robust reps and warranties should be entitled to greater relief than the tranches or trusts that held more risky mortgages subject to less robust reps an warranties. And that is our specific objection, which is some what similar to and a little bit different than W&L's.

We also have a question about loan modification claims and how those were taken into account, and we think that should be the subject of discovery as well.

Thank you, your Honor.

THE COURT: Thank you.

Anyone else? Let's take a ten minute recess and then we'll turn to discovery. We haven't had you hand up the draft discovery order. If you could do that at this time, that would be helpful. Thank you.

(Whereupon, a short recess was agreed upon and taken by all parties.)

THE COURT: Back on the record. I have reviewed the parties' proposed order and I see that the discovery that is being agreed to at this point is the discovery that was outlined in the trustees' memorandum of law regarding the appropriate scope of discovery.

As the objectors are requesting discovery that

significantly exceeds that to which the trustees are willing to agree at this point, I will hear, first, from the objectors. You can assume familiarity with the papers that you submitted on this issue.

MR. LOESER: Thank you, your Honor.

So the first question, and really the question your Honor asked at the last hearing, is what is the proper scope of discovery? And the answer is fairly straight forward. Unlike other special proceedings in an Article 77, beneficiaries are entitled to full and complete discovery with regard to the action taken by the trustee. And putting all the papers together and trying to figure out, you know, where there is agreement, the petitioners have articulated a standard which is that you are entitled to discovery based on what is material and necessary, um, and we agree. That is the standard. It's just that their interpretation of what is material and necessary is obviously very different than ours.

Material and necessary is not an abstract concept. The case law is clear that it's defined by what is sought in the pleadings. The test of materiality should be the relevancy of the materials to the issues completed. So under the case law and the CPLR, Article 31 does apply here. The answer to what discovery is appropriate is what information is material and necessary for the relief sought

by the trustees.

We talked earlier about what is that relief, and I won't go over that again, but your Honor knows it's a variety of the findings about the investigation and about the thoroughness of it, and about the best interest and about fiduciary duty. So that's the -- the petition itself is the relief that the trustees say that they want from this Court, um, defines what is material and relevant.

And the trustees didn't need to come here. They did not need to come to this court to settle this matter. They are here to get a release. If your Honor weren't involved, they would be out and they would be exposed to whatever they're exposed to, but they are here for a release and the release is based on these findings and that's what is material and necessary.

Now, one of the points that's made by the petitioners is that the standard of review determines the scope of discovery. And that's wrong. That conflates standard of review of scope of discovery. The standard of review cannot be determined until after discovery, because if discovery shows, for example, that there are conflicts, then the standard of review is completely different. If there are conflicts, the trustees get no discretion.

THE COURT: Can you address what discovery is critical to your thinking.

MR. LOESER: Yes. The critical discovery is the information necessary to evaluate whether the investigation by the trustees was thorough and reasonable. It is an evaluation of the trustees' consideration of its own liability, and evaluation of whether the trustees had conflicts which they consider, um, or did not consider, but information relating to whether they have conflicts.

It's information sufficient to evaluate whether it was reasonable for the trustees to accept the expert recommendations that they received. It is discovery relating to whether there were events of default, and that matters because it completely changes the standard and the scope of duties of the trustees. Event of defaults, a settlement has real problems, so we need to understand, and their expert's conclusions of the results.

THE COURT: Can you explain what you mean by that, "event of default." What in particular are you referring to?

MR. LOESER: I'm referring to when there have been violations of representations and warranties, knowledge by the trustees and the failure to cure them.

THE COURT: You want to know when the trustees had knowledge of events of default.

MR. LOESER: Yes, and whether they've evaluated the occurrence of event of defaults, because these trustees are

not strangers here. As your Honor knows, they are kind of at the center of it. They know when there are rep and warranty violations. Reports are prepared by them, evaluations are done. They have access to evaluations from the servicers. There is litigation. There's letters they received. There's information -- there's an abundance of information that they received about whether there are uncured breach of rep and warranty violations and breach of servicing obligations. So that's what I mean.

And we are not asking to litigate the underlying liability. We are just asking, what did the trustees look at? What did they consider, based on all of the information they have at ground zero in these trustees and all of the information that they received and have access to?

THE COURT: What is it in particular that you want? Give me some example, not every last document or piece of evidence, but can you specify what it is that you want that is not included in the materials that the trustees have already agreed to provide.

MR. LOESER: With regard to events of default, or just generally?

THE COURT: With regard to everything. You have outlined four or five categories just now. Let me have a flavor of what kinds of documents you are looking for.

MR. LOESER: Well, sure. On the event of defaults,

the information that would provide the trustees of knowledge of uncured breaches, for example. This would be, um, notices they received from certificateholders. This would be the results of any investigation that they've done, um, results of investigations that have, um, been prepared by the servicers. Um, the ground level information that a reasonably prudent fiduciary when deciding are there events of default on the underlying liability for rep and warranty violations, as discussed, there is this multitude of claims and litigation against JP Morgan in which loan file reviews have already been done, reports are completed. The trustees can get this information. They could ask JP Morgan for it. They have information of their own. So we want information -- so if you're going to decide --

THE COURT: How many cases are there -- how many put-back cases have been brought against JP Morgan?

MR. LOESER: Ten or 15, I would think. Others could speak more to that, but my understanding from what I read in the materials is something around ten or 15 different put-back cases. There is also the monoline (phonetic) cases that Mr. Ledley, um, with Ambac. There is a multitude of cases in which loan file re-underwriting has been done. There are securities cases for which loan file re-underwriting has been done. And they all -- it's been the same underlying fundamental issue. This is a mortgage

repurchase put-back settlement writ large. There is nothing more than important to the trustees' evaluation than how bad are these loans. And we're not asking to go out and do a loan file re-underwriting. That has been done in other cases.

In the Res Cap matter that we talked about briefly, there was a loan file re-underwriting that was ordered by the court, and in the Article 77 with Justice Kapnick there was a lot of arguing about going out and doing the re-underwriting. We are not asking for that. We just want the results. These are reports. They're written. They're prepared. The trustees should have looked at them. You cannot release $65 billion of liability for repurchase claims without looking at the reports that exist. They ought to have known information, if not known information by the trustees. That's what we are asking for. We are not asking for litigation of the underlying claims. We are not asking to go through loan file by loan file. We just want the easy stuff, the stuff that already exists.

THE COURT: Are there any other major categories of documents that you are looking for?

MR. WOLLMUTH: Your Honor, if I may.

THE COURT: We are only going to have one Counsel at a time.

MR. LOESER: Your Honor, let me just -- there are

few other discrete categories, and then I'll move on, and perhaps Mr. Wollmuth can come back to this point.

Tolling agreements, for example, it's tremendously important for the trustees' evaluation that they believe that the claims are time-barred for a lot of these claims. And there are a variety of tolling agreements that are negotiated between the sponsors and originators that toll claims.

We don't know anything about what the trustee took into account when considering the presence of other tolling agreements. Tolling agreements other than the ones that Ms. Patrick and her clients entered into with the trustees and with JP Morgan. Other tolling agreements, they have a huge impact on the evaluation. That's a very discrete easy to identify category of information.

Information about conflicts. Now --

THE COURT: Information about?

MR. LOESER: About conflicts. I've been involved in a lot of trustee litigation, and when a trustee finds itself in a circumstance where it has conflicting loyalties to itself and to others, they often obtain counsel, for the benefit of the trusts, as to what they should do and whether they are conflicted. That is extremely important information. It's information beneficiaries are entitled to. It's information supposedly obtained on their behalf.

THE COURT: You want to know if the trustees consulted counsel about potential conflicts?

MR. LOESER: Yeah, this is something that was the subject of a tremendous amount of briefing in Justice Kapnick's courtroom. There is a concept known as the "fiduciary duty exception." Ultimately Justice Kapnick granted access to some of the information. And it's very specific. It's when lawyers advise trustees regarding the scope of their duties, that is information that beneficiaries are entitled to because it was obtained for their benefit. And we can submit briefs on this at the right time and go over this, but that's a very discrete category that relates specifically to the occurrence of conflicts and the trustees' consideration of what it's supposed to do in the face of that information.

Your Honor, if I could address just a couple other points, um, generally, as to what it is we're being told we are entitled to by the petitioners and why we are entitled to something more than that.

THE COURT: I'm not going to hear any further general argument today on discovery.

MR. LOESER: Okay.

THE COURT: There will be adequate opportunities on it in the future or on a future occasion, or occasions. Today I will just like to conclude by getting a flavor of

what the objectors are really looking for.

MR. LOESER: Okay. Let me -- with the Court's permission --

THE COURT: And I would like to hear the response to this.

MR. LOESER: Let me address a few specific categories of information then.

The bases of experts' conclusions. This is a settlement that is -- everything that we know about it is simply what's put in these expert reports and the trustees apparently deferred to these experts in deciding what is and what is not appropriate.

We've been told that any examination of whether the experts are right or wrong, their conclusions are justified or not, is completely off limits. All we get is the reports. And they're graciously now allowing us to see unredacted versions of reports.

The use of experts in trustee litigation, this is not some new area of the law. There is not -- it's not you just get experts and it doesn't matter what they say. There is a very specific standard that applies to the question of how experts are used and what their role is in trustee litigation. And what the case law says is that obtaining an expert record is not a complete defense to a charge of imprudence. What needs to be shown is that the fiduciary

investigated the expert's qualifications, provided the expert with complete and accurate information --

THE COURT: You know, this is exactly what was in your brief, in one or more of your briefs. I am familiar with your argument. I want to know what in particular you want to enable you to evaluate the expert's report.

MR. LOESER: What we need --

THE COURT: There's been talk about methodologies. Can you particularize that?

MR. LOESER: Well, your example -- yeah, I can. Let's start with Fischel. Fischel, for example, as we talked about earlier, assumes there was not an event of default. There was no event of default that justifies his conclusion. We need information about whether there were events of default to evaluate whether it was reasonable for the trustees to rely on Mr. Fischel's conclusions. It's not possible to evaluate his report without that information.

Dr. Sabry describes and goes to great lengths to go through all the various methods she has of determining what the liability is to arrive at this kind of miraculous 100 to 260 percent number, um, and it's hard to say exactly what you want because her entire report is redacted, but obviously we need to know what -- how did she crunch those numbers? What is the basis for those conclusions? Where does it come from?

The there's an expert report about the presence of time bars. And again, we can't evaluate -- we can't decide and determine if it was reasonable for the trustees to rely on the law professor's report on time bars without having the information about the presence of tolling agreements. It can't be done. It's abstract legal brief on time bar.

There's another report that discusses whether loan modifications were proper, but it doesn't identify where or what PSA's the expert was relying on, so -- I mean, we could go through -- it's all identified in the various objections where we go through and try to give sort of a flavor of, look, we have his reports. That's great. But just having the reports does not satisfy the trustees' obligations. And the Court has to decide if it's reasonable for the trustee to rely on the reports. And nobody can do that without getting underneath the hood and getting the information, which we are more than happy to write down in great detail as to exactly what it is we want. And we've tried to do that in our discovery which goes through and identifies information we need for Dr. Sabry, information we need for Mr. Fischel, and down the list.

THE COURT: Now, I really will stop you and ask you to leave a little more time than we did earlier this morning for your fellow counsel.

MR. LOESER: Of course. Thank you, your Honor.

MR. WOLLMUTH: Your Honor, I just like to touch on three buckets of information.

I think critical to determination of this case is the standard of care that the trustee had to use which turns on whether or not there is an event of default. Once there is, the trustee becomes a common-law trustee, not an indentured trustee. The exception reports, which the trustee does for every trust, show within 180 days after closing the extent to which the original mortgage notes and assignments of mortgage were not delivered to the trust. This resulted in the robo-signing scandal and contributed greatly to the losses suffered by investors. And we'll show, we'll show, your Honor, that for every one of these trusts, an event of default occurred within 180 days after closing.

Second, insolvency, we learned today for the first time, is the justification -- or solvency, I'm sorry -- for the 90 percent discount my client, QVT, took with respect to its sharing under the settlement. It is absolutely critical that QVT be able to test and understand the determination that, in our case, WMC mortgage is solvent. And I submit to the Court that it's not solvent. It has no assets. We need to understand how they concluded it was solvent.

And last, another factor that purportedly justified this 90 percent discount which we've been discussing is the

right to put back the bad loans to the originators with JP Morgan standing only as a guarantor. Well, under Ace II, that's -- under Ace II, there is no right to put back loans at this point. It's time-barred under that decision. So to say that a client should have a 90 percent discount because of its ability to, today, put back loans to an insolvent, for WMC mortgage, um, is implausible and an abuse of discretion. And that's it, your Honor.

THE COURT: Thank you.

MR. ROLLIN: Thank you, your Honor. As I described earlier, the nature of our objection is very narrow, so as it applies to W&L, we seek only discovery that bears on the distribution methodology and whether the institutional investors negotiated that particular provision in their self-interests and in the interests of the other certificateholders who are going to be left out of the settlement by virtue of that methodology. So we ask for the communications just on those topics, on the analyses, the evaluations, any modeling, um, on those issues that is just for W&L.

Now, in the course of the respondents trying to get organized, I was tasked with the question about what discovery should be provided by the institutional investors, and so I'll comment on that very briefly.

The specific items that we are asking for are what

are the positions that were taken and exchanged in the course of the negotiations where this settlement was created? And how do those positions support it by both sides, because that bears directly on the reasonableness of the trustee in deciding to rely on the institutional investors' support as a substantial component of its decision to accept the settlement, and a substantial component on the decision of its expert, and a substantial component of what they ask your Honor to do, and that is to accept the support of the institutional investors as evidence of the reasonableness of the trustees' conduct.

What happened in those negotiations goes directly to the reasonableness of the trustees' reliance and whether the Court should give these institutional investors' support any weight at all.

And I'll end with a quote from Professor Fischel at paragraph 56 of his report, and I think it's very illuminating. He says, "We lack adequate information about the process by which the proposed settlement was negotiated. This is in contrast to the Countrywide settlement where the trustee witnessed the negotiations and an extensive record in the form of documents and depositions was available to me that showed the negotiations were arms-length and the substantive issues were explored in depth. That is completely absent in this case."

We believe the Court should be guided by the discovery permitted by Justice Kapnick where she allowed us to get into those negotiations, and the way the positions were stated and supported, what was given, what was taken away, what was left off the table. For example, loan modifications. The question of loan modifications came up in negotiations which we only learned because of that discovery. And Justice Kapnick found that by dropping that issue and by not evaluating that issue, the trustee, in that case of the Bank of New York Mellon, abused its discretion. But for that discovery, she never could have performed that analysis and reached that conclusion. I think that is precisely why the settlement proponents would rather that your Honor didn't look into those.

MR. LEDLEY: Your Honor, Michael Ledley for Ambac again. I'm going to address the discovery that we served on JP Morgan.

The big picture, your Honor, the discovery from JP Morgan, who is going straight to the horses mouth, as it were, is relevant to the question of did the trustee do an adequate investigation and seek out the known information that was available they could've asked for in evaluating the trust. Um, Ambac is in possession of a significant amount of information from its prior discovery. That can be produced in this case simply by JP Morgan saying we deem it

produced in this case, subject to appropriate confidentiality which the parties are working out.

Other information that we requested on behalf of all objectors includes any re-underwriting information, re-underwriting results that JP Morgan has for the trusts at issue here, um, whether that it did itself or that trustees or investors provided to JP Morgan. Again, specific to these trusts here, and that goes directly to the question of how bad are the loans at issue in these trusts.

Other information we've asked for that is specific to or that is on behalf of all objectors is any notices that the trustee received of events of default, for reasons that my colleagues had mentioned it's a very significant issue, or notices of breaches of JP Morgan servicer affiliates obligations under the pooling and servicing agreements and the indentures here. And that's relevant, your Honor, because notices of those breaches, after a certain period of time, turned into an event of default. So again, the same issues that we talked about, that's very important. Now, that's just to try -- trying to prioritize and give you a flavor that you asked for of the specific information that we are asking for.

On behalf of Ambac in particular with respect to the Ambac insured trusts that are at issue here, we also have asked for certain information, targeted information

that we know exists based on our prior discovery against JP Morgan; that goes directly to the issue of the quality of the particular loans at issue here. So, due diligence reports on the loans in the Ambac insured trusts. Um, quality control reports on the loans that are securitized in the Ambac insured trusts. And those reports, your Honor, are after JP Morgan securitized the loans. It had people go through them and look at samples and identify which loans should not have been included in the securitizations or which ones should be put back to the originators; that obviously goes directly to the issues here. The due diligence reports are prior to the securitization at the time of acquisition by JP Morgan. They do a similar review. Again, this is easily identifiable information and it's very targeted.

And the remaining information that we asked for is with respect to the Ambac insured trusts, documents from the database that we know exists that identifies the loans for which JP Morgan made repurchase requests to originators, um, and the amount that they received for those loans, and the amounts, if any, that they paid to the Ambac insured trusts in connection with those tractions. It's very targeted, your Honor, and each of those items goes directly to the question of what loans in these trusts breach representations and warranties, and which didn't.

And there's a few other things that we've asked for, but, your Honor, I don't think I need to detail each one of them, but that gives you a flavor of the kind of information we are seeking.

THE COURT: Thank you.

MR. JACOB: Your Honor, Triaxx.

Very briefly, we join in what the other objectors have requested, particularly what Mr. Rollin indicated as to how the allocation formula was arrived at here, um, is of particular interest because of the position we previously stated that the settlement operates very much in a one-size-fits-all manner where that is not reasonable.

And also with respect to the loan modifications, discovery, not just as to particular PSA's, but as to whether the trustees considered that JP Morgan had conflicts of interest in the loan modifications because they held different interests in the loans. They had second liens in some instances, and they have passed loan modification losses onto the trusts improperly. We would just like discovery as to whether the trustees considered that issue. We don't have to reinvent the wheel as to what happened with each modification.

MR. MICHELETTO: Good afternoon, now, your Honor. I'm Bob Micheletto of Jones Day on behalf of US Bank.

I guess the place I would like to start is with the

proposed order that was submitted to your Honor at the last break. Just to clarify one point that your Honor has undoubtedly noted, um, that the draft originally provided that each trustee would produce one witness for deposition, and that that was struck out in the order that was handed up to your Honor. That's not because we have gone back on that. We stand by that. We will -- each trustee has agreed to produce one witness for deposition.

In addition, we've agreed to identify the witnesses with the most knowledge and information about the trustees' decision to accept the settlement. So from that list, presumably the objectors will be able to pick the person they think is most appropriate from each trustee, um, for deposition. Obviously, a lot of the information the objectors claim they need from the trustees can be asked of the trustees' witnesses during the course of the depositions.

Mr. Loeser indicated that the scope of discovery should be defined by what is sought in the pleadings, um, and that only information material and necessary to what is sought in the pleadings is appropriate. I guess we agree with that, your Honor, but we dispute, strongly, the objectors' characterization of what is actually sought in the trustees' pleadings. I think it's very clear and it is concisely stated, at paragraph 77 of the amended petition,

precisely the relief the trustees are seeking in this proceeding. In that paragraph 77, the trustees say, "Accordingly, the trustees request the declaration that their acceptance of the settlement on behalf of each of the accepting trusts comports with all applicable duties under the governing agreements and any other applicable law, and that the certificateholders are barred from asserting claims against any trustee with respect to such trustees' evaluations and acceptance of the settlement, and the implementation of the settlement in accordance with its terms has been memorialized in the settlement agreement."

So in other words, your Honor, the issue is, as Mr. Ingber indicated this morning, um, before this Court, a very narrow one, and that issue is whether or not the trustees reasonably, and in good faith, evaluated and accepted the settlement agreement. And we believe that the discovery we have agreed to produce, which is set forth in the proposed order, is all of the information that is necessary and material to that issue, and that no other discovery is necessary. We are not looking, contrary to the objectors' assertions, for a finding that we did an adequate investigation into repurchase claims or for breaches of misrepresentations of warranties, or any of that stuff. In fact, the purpose of the settlement was to avoid such lengthy and time-consuming and expensive investigation of

litigation into those very claims. And although they say they don't want to litigate the merits of the claims in this case, in fact, that is precisely what they want to do through the discovery they have sought.

They have propounded 60, 60 requests for production of documents seeking a wide, broad range of documents that would require us to produce mountains and mountains of documents over months and months. It would be exactly contrary to the purpose of this special proceeding, which is expeditious.

The notion that they need discovery into whether or not there has been an event of default, your Honor, is a red herring. Whether there is an event of default or not is irrelevant; that the standard is the same. Whether the trustee acted reasonably -- the trustees acted reasonably and in good faith in evaluating the settlement. Whether or not there was an event of default does not change that analysis one bit. They should not be permitted a fishing expedition into whether or not there was an event of default.

Same for the alleged conflicts. They haven't demonstrated or made a prima facie showing that there is any conflict of interest that warrants discovery. We talked this morning, and I won't go over it again, about whether or not the conflict is created by the settlement agreement,

because the trustees, according to the objectors, stand to be sued if a settlement agreement is approved. And Mr. Ingber disputed that, and I, too, dispute that characterization, but that is not a conflict. And that is certainly not a conflict that warrants a wide-open fishing expedition into all areas of the trustees' investigation and the like. And for the same reason, the information they seek with regards to an event of default is irrelevant. So too is the information they seek with regards to the conflicts.

Another part worth mentioning is when they were asked to specifically identify the documents they were looking for, I think at least some of what the objectors say they want is actually going to be produced to them pursuant to the proposed order we presented to your Honor. For instance, the -- there was repurchase data that they claimed to need and want. And that data was provided to the experts, and we've agreed to make available to the objectors all information that was provided to the experts, um, that they relied upon in coming up with their expert reports.

So in conclusion, your Honor, I think the standard of review does most definitely define the scope of discovery in this case. And without a determination the appropriate standard of review, it's difficult to characterize the appropriate scope of discovery. And again, our view is that

the issue in this case is limited to whether or not the trustee reasonably, and in good faith, evaluated and accepted the settlement, and all the discovery we agreed to provide is all the information that is relevant to that issue, which is the sole issue before this Court.

THE COURT: Thank you.

MS. PATRICK: May it please the Court. I'm going to speak specifically about some of the arguments that are made about the waterfall, the allocation, and the settlement negotiations.

Let me begin by saying that, as Mr. Micheletto said, the scope of discovery here is defined by the Law of Trusts. There is not a different set of law for big trusts and little trusts. It is the Law of Trusts. There are four major securitization cases that have dealt with this issue: Res Cap, IBJ Schroder, the Countrywide decision, obviously, and the Second Circuit in the CAFA appeal, but the Law of Trusts defines the scope of discovery and what is relevant.

And let me begin with the expert evaluations. You asked them specifically, what do they want to evaluate the expert reports? And the answer was to do with the correctness of the expert reports, but Cruden said that was beyond the scope of discovery, and we've given you that law.

As it pertains to the waterfall, they want to understand how the waterfall works. The answer to that is,

read the pooling and servicing agreements. The particular section of the settlement agreement that specifies the allocation is section 3.06. It says, "Each trusts' allocable share shall be deposited into the related trusts collection or distribution account pursuant to the terms of the governing agreements."

These agreements have a waterfall in them. And the waterfall says what it says and it does what it does. And the settlement agreement says that, um, if the Court determines that, um, that the waterfall says -- that the waterfall says something different, it's not the case, and let me be clear about this, the suggestion is that somehow our clients, who are a broad and diverse group of investors, somehow thought to advantage themselves with the distribution scheme that it embodied in the settlement offer that was presented to the trustees.

In fact, our clients take exactly and only the same thing every other similarly situated holder takes. The fact that a particular investor chose to buy junior tranches that were wiped out by losses, and that under the pooling and servicing agreement do not benefit from subsequent recoveries, is not a matter of discovery. It is a matter of the contracts. And to the Court's earlier point, these contracts do matter. There is an abundance of law about that. And so that issue of the waterfall is answered by

looking at the pooling and servicing agreements.

Now, with regard to the negotiations, let us be perfectly clear. No information, at all, was provided to the trustees about these negotiations. None. They got no presentations. They got no information, nothing. And that's why Professor Fischel's report says he lacks adequate information about the negotiations, because none was provided.

What is the implication of that here? The trustees received this settlement. Like manna in the desert, it came. They did not know anything other than that it came and that our clients supported it. And from there, they decided what to do. And if you read the petition, which is the definition of the scope of what is relevant and material, there is no request for relief regarding the negotiations, whether or not they were at arms length, or their character; simply not placed an issue in this case, and therefore, it is not relevant.

Now, our response to that discovery is not yet due, when we respond, we will raise certain legal issues, including a California mediation statute that precludes the discovery of this information, and related New York law, but the Court need not reach those issues because they are not relevant because they are not placed in issue by the trustees' petition. This settlement came to the trustees as

it was. It is reasonable or it is not reasonable. It is within the range of reason or it is not within the range of reason. How it got there is irrelevant to the relief the trustees seek.

Finally, I want to address a form of discovery that we have served and that we believe is highly relevant in this case. We have asked that the objectors be ordered to produce their holdings as of particular dates. And the two dates that are of particular interest to us is the day before the settlement offer was made public, and the day the settlement -- the settlement acceptance was announced.

Why do we believe that is relevant? Well, we have been through this process before in Res Cap and in Countrywide. And we have observed that certain people view these settlements as opportunities to try to extract idiosyncratic benefit for themselves by lodging objections. That is relevant in this context because the pooling and servicing agreements prohibit investors from invoking rights, including, we contend, the right to object by seeking individual benefits. And our view is that before the Court credits objections, it should know whether those holders bought with knowledge of the settlement or bought after it was accepted, which would create significant issues of estoppel waiver ratification, and otherwise, that might preclude those objections. So we have simply asked, tell us

the holdings as of those dates so that we can know whether you actually -- whether these objections conformed to the pooling and services agreements.

And with that, your Honor, unless the Court has particular questions, that's our view on discovery. We believe we need holdings as of those dates, negotiations are not relevant, and the waterfall issue is what it is.

THE COURT: Thank you. I would like to hear from just one of the counsel on the discovery that Ms. Patrick has just said is being requested.

MR. MICHELETTO: Your Honor, I apologize, I neglected to mention that Counsel for JP Morgan would appreciate an opportunity to address the Court in respect to the discovery sought with JP Morgan.

THE COURT: I can't do it given the timing. I'm sorry. There will be other opportunities.

MR. WOLLMUTH: Yes. QVT Financial objects to the request as to when they bought. It's irrelevant. The question is, did they own the certificates in time to issue a valid instruction to the trustee? It's undisputed they did. We are happy to provide that information. The trustee disobeyed the direction; that is legal consequences.

I won't speak to the other points, unless your Honor want me to.

MR. LEDLEY: I only have one other thing, your

Honor. That same argument was rejected by Justice Kapnick's decision.

MR. LOESER: With the Court's permission, I'll respond briefly. Points that were made -- I heard Mr. --

THE COURT: I'm just going to hear about the discovery that Ms. Patrick has indicated the institutional investors are requesting of the objectors. Do you have anything to say about that issue?

MR. LOESER: The only thing I have to say about that issue is that if we are talking about idiosyncratic concerns, there are objectors/respondents that have different holdings that bought at different times. My client purchased these bonds when they were issued, um, but we did have significant concerns about Ms. Patrick's clients' idiosyncratic interests, including that BlackRock and PIMCO were known to have purchased billions of dollars of distressed -- at distressed prices, but as to that discovery question itself, we are happy to talk to Ms. Patrick about what information our client should provide or should not provide.

THE COURT: Thank you. I think that less progress has been made here in reaching an agreement as to appropriate discovery than I would have hoped. I think the parties need to go back to the drawing board and to meet and confer in a very serious effort to reach as much agreement

as possible on appropriate discovery.

I agree with Mr. Micheletto that the standard of review determines the scope of discovery. I'm not going to make a ruling on that issue based on briefing that I've had thus far. I'm going to want further briefing on that issue. And that said, I am inclined to grant more discovery than what the trustees are offering to produce. And it seems to me that there should be a way to work out many of the discovery issues, perhaps not all, but many.

This discovery cannot be as extensive as the discovery that would be appropriate if the repurchase claims were to be litigated, and the ultimate hearing of this matter is not going to be a minitrial on the merits of the repurchase claims. I think everyone would agree, if not on the record at least in private, that that is not the proper result for this Article 77 proceeding, but certainly there should be some areas on which Counsel can reach agreement.

So before I start to become more deeply involved in discovery issues, I am going to request that Counsel meet and confer. I would recommend that you meet an confer in person in an effort to reach as much agreement as you possibly can. And we'll, in a moment, schedule a conference call, which I will do in January, to hear what the results are.

I would also like to ask Counsel set up process for

conferring on a confidentiality order that we can use in this litigation. I believe one of the Counsel mentioned you were already discussing this, so that is a good thing.

I do want you to consider retaining a special master for this litigation. As you know, State Court does not have the resources that Federal Court has for dealing with complex discovery issues. You may have read that we will have a pilot special master program using retired attorneys, but that program will not even be up and running until September, and this case is obviously going to be driven, at least in the near future, by discovery disputes.

If you are willing to retain a special master, we could talk further about what rulings I'm going to need to make about the scope of discovery, generally, or about the standard of review, in order for the special master to function effectively, unless, of course, you want to leave that issue to a special master, at least for purposes of making recommendations to me. I already see heads shaking in a way that signals "no" on that point.

Perhaps we need to have a liaison counsel. The last time we did a conference call, it worked very well, and I think counsel had decided amongst themselves who would take the lead in presenting the positions of other counsel, but perhaps you want to think about that for the future, because we have people coming in from out of town and there

may be efficiencies that will benefit all if we can do some of this work on conference calls.

That is really all I have to say today, other than that I will sign the proposed order that you have presented today on the discovery to which you have already agreed, and that discovery should proceed in advance of the January conference call. And I think it would also be very useful if Counsel conferred about an e-discovery protocol for use in this litigation.

My law clerk will come out and give you the date for the conference call after conferring with you about your schedules.

My law clerk is also going to talk with you about furnishing us a binder with certain discovery order in some of the cases that you have mentioned. I want to refine my thinking about the supplemental briefing on the standard before I request it, so I'm not going to request that today.

Well, thank you for a very interesting morning, and I wish you all very happy holidays.

MR. INGBER: Thank you, your Honor.

MR. MICHELETTO: Thank you, your Honor.

MS. PATRICK: Thank you, your Honor. Same to you.

MR. LOESER: Thank you, your Honor. Same to you.

MR. ROLLIN: Thank you, your Honor.

MR. WOLLMUTH: Thank you, your Honor.

Proceedings

MR. LEDLEY: Thank you, your Honor.

MR. JACOB: Thank you, your Honor. Same to you.

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Certified to be a true and accurate transcript of the stenographic minutes taken within.

Michael Ranita
Senior Court Reporter

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