In The Matter Of:

US BANK v.

January 20, 2016

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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,

US BANK NATIONAL ASSOCIATION, THE BANK OF NEW YORK MELLON, THE BANK OF NEW YORK MELLON TRUST COMPANY, NA, WILMINGTON TRUST, NATIONAL ASSOCIATION, LAW DEBENTURE TRUST COMPANY OF NEW YORK, WELLS FARGO BANK, NATIONAL ASSOCIATION, HSBC BANK USA, NA, and DEUTSCHE BANK NATIONAL TRUST (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 Mortgage Corporation (Freddie Mac)(Intervenor), the Federal National Mortgage Association (Fannie Mae)(Intervenor), GOLDMAN SACHS ASSET MANAGEMENT, LP, (Intervenor), VOYA INVESTMENT MANAGEMENT, LLC, (F/k/a ING Investment)(Intervenor), INVESCO ADVISORS, INC., (Intervenor), Kore Advisors, LP, (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,

- against -

TRIAXX PRIME CDO 2006-1, LTD., TRIAXX PRIME CDO 2006-2, LTD., TRIAXX PRIME CDO 2007-1, LTD., (Intervenors), QVT FUND V LP, QVT FUND IV LP, QUINTESSENCE FUND, LP, QVT FINANCIAL LP, (Intervenors), AMBAC ASSURANCE CORPORATION,

CONTINUED ON NEXT PAGE...

And the SEGREGATED ACCOUNT OF AMBAC ASSURANCE CORPORATION (Intervenors), and W&L INVESTMENTS, LLC (Intervenor),

Respondents,

For an order, pursuant to CPLR 7701, seeking judicial instruction.
----------X
INDEX NUMBER 652382/14

60 Centre Street
New York, New York
January 20, 2016

B E F O R E:

HONORABLE MARCY S. FRIEDMAN,
Supreme Court Justice.

A P P E A R A N C E S:

FOR THE PETITIONERS:
US BANK ASSOCIATION, THE BANK of NEW YORK MELLON, THE BANK OF NEW YORK MELLON TRUST COMPANY, NA, WILMINGTON TRUST, NATIONAL ASSOCIATION, LAW DEBENTURE TRUST COMPANY OF NEW YORK, WELLS FARGO BANK, NATIONAL ASSOCIATION, HSBS BANK USA, NS, DEUTSCHE BANK NATIONAL TRUST COMPANY BY: KATHY PATRICK, ROBERT SCHNELL, WILLIAM MUNNO, ROBERT SACKS, KIRSTEN ROSE VOGEL, JOSEPH BRUSETT SCONYERS, ROBERT C. MICHELETTO, NIDHI YADAVA, CHRISTOPHER J. HOUPT, HARMAN DOUGLAS RUSSELL, MATTHEW D. INGBER, MICHAEL E. JOHNSON, CHRISTINA SPILLER, JAMES MATTHEW TOURANGEAU, WILLIAM M. MUNNO, DALE C. CHRISTENSEN, THOMAS R. HOOPER, MICHAEL KRAUSS, JEAN MARIE L. ATAMAIN, JAMES ANCONE, HOAH LIBEN, MATTHEW V. WARGIN, LAUREN AMBER JACOBSON, IAN JOSEPH ZACK, MICHAEL S. KRAUT, KURT W. RADEMACHER.

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 MORTGAGE CORPORATION (Intervenor), THE FEDERAL HOME LOAN MORTGAGE CORPORATION, FREDDIE MAC (Intervenor), THE FEDERAL NATIONAL MORTGAGE ASSOCIATION, FANNIE MAE (Intervenor), GOLDMAN SACHS ASSET MANAGEMENT LP (Intervenor), VOYA INVESTMENT MANAGEMENT LLC (f/k/a) ING INVESTMENT LLC,

(Intervenor), INVESCO ADVISERS, INC., (Intervenor), KORE ADVISORS, LP, (Intervenor), LANDESBANK BADEN-WURTTEMBERG (Intervenor), METROPOLITAN LIFE INSURANCE COMPANY (Intervenor), PACIFIC INVESTMENT MANAGEMENT COMPANY, LLC (Intervenor), SEALINK FUNDING LIMITED (Intervenor), TEACHES INSURANCE and ANNUITY ASSOCIATION OF AMERICA (Intervenor), THE PRUDENTIAL INSURANCE COMPANY OF AMERICA (Intervenor), THE TCW GROUP, INC., (Intervenor), THRIVENT FINANCIAL FOR LUTHERANS (Intervenor), WESTERN ASSET MANAGEMENT COMPANY (Intervenor)

FOR THE RESPONDENTS:
FEDERAL HOME LOAN BANK of BOSTON, (Intervenor Respondent), TRIAXX PRIME CDO 2006-1, LTD., TRIAXX PRIME CDO 2006-2, LTD., TRIAXX PRIME CDO 2007-1, LTD. BY DAVID KO, DEREK W. LESTER, JOHN G. MOON, AMANDA F. PARSELS, CHARLES R. JACOB.

QVT FUND V LP, QVT FUND IV LP, QUINTESSENTIAL FUND, LP, QVT FINANCIAL LP & AMBAC BY DAVID WOLLMUTH, DANIELLE D'AQUILA, NIRAJ PAREKH.

W&L INVESTMENTS BY MICHAEL A. ROLLIN, MARITZA BRASWELL, DAVID S. PREMINGER, DONALD W. HAWTHORNE, MAGDALENA HALE SPENCER.

JP MORGAN CHASE & CO. BY DARRELL SCOTT CAFASSO, ROBERT A. SACHS.

AEGON USA INVESTMENT MANAGEMENT, LLC, BAYERISCHE LANDESBANK, BLACKROCK FINANCIAL MANAGEMENT,INC., CASCADE INVESTMENT, LLC, THE FEDERAL HOME LOAN BANK OF ATLANTA, et al, BY WARNER E. KENNETH.

Gloria Ann Brandon,
Kathy Jones,
Senior Court Reporters.

THE COURT: Good morning.

May I have counsels' appearances, please.

MR. INGBER: Good morning, your Honor.

Matthew Ingber from Mayer Brown for the Defendant, the Bank New York Mellon.

MR. SCHNELL: Good morning.

Your Honor, Robert Schnell from Faegre, Baker, Daniels for Wells Fargo Bank.

MISS PATRICK: Kathy Patrick for the Petitioners, Gibbs & Bruns.

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

MR. SACKS: Good morning, your Honor.

Robert Sacks, for Sullivan & Cromwell, for JP Morgan.

MR. WOLLMUTH: Good morning, your Honor.

David Wollmuth for Ambac Insurance from Wollmuth, Maher & Deutsch.

MISS D'AQUILA: Good morning, your Honor.

Daniel D'Aquila also from Wollmuth, Maher & Deutsch also for Ambac.

MR. PAREKH: Niraj Parekh from Wollmuth, Maher & Deutsch also for Ambac.

MR. ROLLIN: Good morning, your Honor.

W&L Investments.

MISS BRASWELL: Good morning, your Honor.

Maritza Braswell from Rollin, Braswell & Fisher, also for W&L investments.

THE COURT: Thank you.

We will hear opening statements first from the objectors.

Mr. Wollmuth --

MR. WOLLMUTH: Good morning, your Honor.

May it please the Court, David Wollmuth for Ambac.

Your Honor, at the time of the Country-Wide proceeding, Article 77 had been used to seek approval of a settlement of the size and scope of that one never before.

Formally, Article 77 was Article 79, and it was typically used for small matters related to the routine administration of trusts, such as trust accountings. Much has changed with the upholding of Country-Wide's approval by the First Department, and use of the Article 77 procedure has become much more routine in a short time, and as use of Article 77 expands, it is likely and important that the rules relating to such proceedings become even more developed.

The First Department has established some clear rules in its affirmance of Country-Wide.

First, the First Department held that an Article 77 cannot second guess the reasoned and reasonable judgments of the trustee, and reasoned and reasonable will be my focus today, and I'm sure that the Petitioners' focus will be deference, which is to be awarded to those decisions in the absence of the ability to second guess them, and we do not contest any of that, but deference not afforded to trustees if they are acting in bad faith, or in an abuse of discretion. These standards turn the focus principally on the process followed by the trustees, which leads to their decision-making, and the focus on the integrity of the process makes particular sense in highly complex settlements by an indentured trustee, rather than a common law trustee involving billions of dollars, and of course, this is such a case.

Here the process begins with Professor Fischel who states that he cannot, he simply cannot value the claims being released here because the facts are so complex, and the outcome so uncertain. In fact, he says it may be impossible to value the claims. One of the things we'll show at trial is

that's not true at all, but that's aside from the point. It's difficult, of course, from a financial point of view for any Court to take on; is four and-a-half billion enough? Should it be four billion or six? And that's exactly what we understand the Court is not trying to second guess here, and is not allowed to second guess here, but if claims can't be valued according to Mr. Fischel, how can the Court be confident that investors are being treated fairly by making sure the decision-making of the trustees is not infected with bad faith, or exercise of discretion outside of their powers. The standard does not mean the trustee gets a free pass in its decision-making. The words bad faith and abuse of discretion stand for an established body of rules.

As set forth in our brief, a classic example of bad faith is where a trustee exercises its decision-making power when it has an interest in the transaction.

The classic example for a common-law trust is where the trustee bought the property that was being sold. In an indentured trust like this with complex instruments, many parties and billions of dollars, the conflict is more nuanced, but it's far greater than a trustee who wins the best price at an auction

and buys trust property, despite its interest. That is a very transparent, potential conflict and some Courts recognize even with that potential conflict, the trustee may proceed, and the reason is there's complete clarity on the process, if the property is auctioned off and nobody bids more. This is not remotely that kind of case.

As Professor Fischel recognizes, it's intricate, it's complicated in fact and law, and I won't belabor that because I know your Honor's knows it, but if your Honor concludes here that the trustees do have an interest in this transaction, or if they otherwise have a conflict of interest, then under First Department authority this Court is without choice; it is mandated that the Court strip the trustees of all deference, and purify the process because it is the process, rather than the recalculation of the numbers, or a second guessing of the trustees' calculations that protects investors. That, unlike financial spread sheets and vast amounts of data, protecting the process is something the Courts are very good at, and that is the only assurance investors have.

Another thing has changed since Country-Wide that has brought the trustees' vast conflicts here

into very sharp focus. As this Court knows, the Court of Appeals decision in ACE2 has been a major event. The decision meant millions of potential put back claims that many market participants assumed were alive, were, in fact, time barred. Investors began to look more frequently at whether trustees might be liable for allowing a statute of limitations to run out on their claims.

The great fiction; we didn't know a thing.

And a wave of easily more than 150 billion in damage claims were filed and continue to be filed against these exact trustees. There's only about six or seven major trustees for RMBS. They're in every deal, in every case. It's not like the sponsors where there's tens of them. There's six trustees. Many of those cases have been filed by the Institutional Investors in this case, including Pimco, Blackrock, and a number of other leading respected Institutional Investors. In fact, the institutional investors have sued these very trustees on over 1,000 RMBS mortgage trusts alleging facts and conduct identical to the facts and conduct that the evidence will show the trustees here are infected with, and while the Institutional Investors have sued on over a thousand trusts, there's some trusts they

have not sued on, and the absence of sued on those trusts is telling.

They have not sued any trustee who has supported a settlement sponsored by the institutional investors, so the choice for a trustee is abundantly clear, abundantly clear;

If institutional investors led by the group here are supporting a settlement, a trustee has a very difficult choice;

They can either approve the settlement, which appears to be the path of least resistance, or alternatively, they can accept the certainty that they will be sued by some of these institutional investors, and some of my clients for their nonfeasance for years while the mortgage prices raged on, and they easily could have sued long ago.

You know, Professor Fischel waxes on about how, you know, the trustee has no power to act, and litigation is very uncertain, so his opinion can be fairly boiled down to, you know, a bird in a hand is better than a bird in the bush, especially if the bird in the bush is expensive.

Well, in fact, other investors have sued some of these trustees on the very trust in this proceeding, on these trusts, and those cases are

proceeding in Federal Court in New York.

Here as we will show at trial, the institutional investors made these trustees feel the full risk of suit against them. The trustees here were far from impartial. They either approved the settlement, or they would be sued, and in addition to the threat of litigation, the trustees' impartiality is also compromised by the enormous amount of litigation they already face in the proceedings brought by Miss Patrick's clients, by my clients, and by many other lawyers' clients.

As I said, it has been a wave of litigation. A principal defense in those cases is that the trustees never had to do anything in those cases because there was not an event of default, and the bedrock of that false assumption is that the trustees never had actual knowledge of any breach with respect to the quality of any loan. They didn't know that the trusts did not possess, which the trustees themselves are supposed to possess, not the servicer, not the master servicer, not the custodian; the trustees in every trust, or their agents are to possess the mortgage documents, which stand as the collateral package for the mortgage loans that investors bought, and that's just as important as the

quality of the mortgage loans.

But, the trustees even though they through them and counted what documents they had and filed a report, we have it. It's over an inch thick for a single trust. Of all the documents they were missing, they didn't know they were missing any documents, so there is no event of default, and the trustees repeat that over and over, but it is the great lie, and it is not credible, and it depends on conscious eye shutting, which the case law says is the classic example of bad faith.

THE COURT: I didn't hear that word, conscious --

MR. WOLLMUTH: I'm sorry, avoiding knowledge.

There's a phrase conscious eye shutting. If I say --

THE COURT: Eye shutting?

MR. WOLLMUTH: If I say can you take a look at this please --

THE COURT: I just didn't hear the word.

MR. WOLLMUTH: Fine. I won't digress. I apologize, sometimes I can be a little low in tone.

The fact is, they've made movies about how rife these trusts were with defective loans. Courts have stated over, and over, and over that there are

plausible allegations of systemic problems with the loans relating to substantially all trusts. Of course, the trustees here had no idea there was any problem with the trusts that are before your Honor. I can speak for Ambac with respect to eight of them I should have noted, and therefore, they never had to do anything, and that fallacy is a key factor underlying the trustees' lack of process in this case. Here trustees assert that they had no duty to act or it would be prudent to reject -- I'm sorry, except the proposed settlement absent a direction and indemnity from a group holding 25 percent or more of the loans.

We will prove beyond doubt, your Honor, that that is false. It is contrary to the expressed language of the PSA's in at least two regards.

First, as I've been alluding to, the PSA states explicitly that the trustees must exercise all powers under the agreements if they have knowledge of an EOD.

THE COURT: Of an --

MR. WOLLMUTH: I'm sorry, event of default it's often referred to.

THE COURT: So, you can make that capital EOD.

MR. WOLLMUTH: Thank you.

State explicitly that the trustees must exercise all powers under the agreement if they know of an event of default.

Given the pending litigation against them, they can't afford to have their knowledge regarding events of default examined and explored here by an objective independent expert. If the documents or the testimony that an objective independent expert brought forth demonstrated that trustees knew of an event of default as early as their failure to take possession of the mortgage file, it would face I believe over a hundred billion dollars of liability in the pending cases filed by just Miss Patrick's group and my clients.

Second, the event of default provision need not even be reached here.

And, by the way, your Honor, the Petitioners have not even tried to make a factual record that there's no event of default. They put in, and I invite your Honor to examine them, and we'll explore them at trial, superficial affidavits of trustee witnesses saying we looked at our file. To the best of our knowledge, there's no event of default.

Do they really have any other choice? Are

they going to confess to liability in a hundred billion plus worth of litigation because if they put an affidavit that says there is an event of default, there is no excuse for years of inaction by faithless trustees.

THE COURT: Are you referring to servicer, or master servicer events of default under all of the governing agreements for the trusts in which Ambac has an interest?

MR. WOLLMUTH: I am, your Honor.

THE COURT: Thank you.

MR. WOLLMUTH: The way it works, if there's any lack of clarity, I think they're most easily thought of together because the master servicer is expressly charged with the duty to enforce the obligations and compliance of the servicers beneath it, be it monitoring is the word used in the PSA's, so the master servicer has to monitor the servicers and enforce their obligation to act prudently. Then they certify to the trustees that that has all been done, and those certifications are blatantly false, which is a point I will come to.

But, beyond the event of default question, and as I was saying, there's really no evidence this Court could take as reliable that there has not been

one, they're knowledge qualified statements by interested parties.

There is an express obligation under the PSA's for the trustees to act, with respect to the Ambac trust at least, and this is critical. These PSA's are a little different than many I've seen, your Honor. Usually, the trustee has substantially nothing, other than ministerial obligations prior to an event of default.

That is not the case here, your Honor.

The provision that applies to what the trustees must do. We will present to your Honor at trial, it says exactly what they say, the trustee need not do anything, other than ministerial acts prior to an event of default.

Conveniently, however, they ignore the introduction to that limitation on their duty to act, which is a few words that say, except as otherwise set forth in this agreement, and here that exception swallows the hole, and one of the few I would refer your Honor to in my opening -- I only have two provisions. I would point your Honor to directly 2.20B is an example, and if we could blow that up a little bit, if you don't mind.

(Whereupon, Sr. Court Reporter Kathy Jones

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MR. WOLLMUTH: Yes, the last two, yes, exactly. Thank you.
This relates to the document delivery failures I was referring to, your Honor, earlier. And I believe every PSA is substantially like this but this is BSMF --
THE COURT: Which exhibit is this for the record?
MR. WOLLMUTH: I was about to tell your Honor. It is RX 14.6 and we spoke to your court clerk about this. It's just a PSA, your Honor.
THE COURT: Yes, I understand that. This is exactly why I don't like power point because I like to see this language in the context of the provision, not pulled out. So, I will look at it in the PSA itself.
MR. WOLLMUTH: You can take it down.
THE COURT: Thank you.
MR. WOLLMUTH: Thank you, your Honor. Because the power point I usually think of as something different.
THE COURT: Whatever this is, you are right, this technically is not a power point. It's a blowup. I don't like blowups either.
MR. WOLLMUTH: It's good to know. So, your Honor --
THE COURT: Well, I've been very clear about

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that.
MR. WOLLMUTH: For sure. And I thought the power point meant something different.
THE COURT: I understand. It's the same problem though. It's important language taken out of context.
MR. WOLLMUTH: Your Honor, going forward, I will provide to your court clerk a copy of the PSAs if we're going to refer to it.
THE COURT: We'll use our binders. If you just give us the volume number and the exhibit number, that's what we'll use. If you want to put these things on the screen for the benefit of the other counsel or the observers, that's fine with me.
MR. WOLLMUTH: That's great, your Honor. We'll refer to it as volume number and exhibit going forward.
THE COURT: Thank you.
MR. WOLLMUTH: If we put it up, it's for the benefit of others and we understand that we won't ask the Court to rely on such power points.
THE COURT: Thank you.
MR. WOLLMUTH: Excellent.
Getting back to the point and if your Honor would like us to provide a copy for this limited purpose.
THE COURT: Let's just continue please.
MR. WOLLMUTH: Sounds good to me.

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2.02 (b) of the exhibit we referred your Honor to provides expressly that the trustee shall enforce the obligation of repurchase with respect to mortgage files missing the mortgage documentation. There is no requirement that there be an event of default first. The trustee is charged as the primary actor. And these two points, the fact of allegations that they never knew anything and therefore there is no event of default and ignoring the provisions of the PSA require them to be the ones that enforce put-back obligations lead to one of their core arguments which is the bird in the hand here must be accepted because there can't be a better alternative unless a 25 percent investor group shows up and directs the trustee.
That entire presumption that's how these things work from an economic point of view defies reality and it defies the charge to the trustees under these agreements.
First, as to the charge under the agreements, I've already shown your Honor how that is true and Professor Fischel states that the trustee's first obligation under any examination of prudence is to make sure that the trustee has complied with its obligations under the agreement. That seems fairly basic.
Second, that's not the bargain bondholders make when they buy a bond and indenture with a trustee.

If you or I buy a bond and pick a company with vast fraud, Petrobras, and Petrobras has defrauded its bondholders and they are issuer, am I expected to go find 25 percent of the holders and file a case? No. I have a trustee that protects me and that is the economic structure of these deals.

The trustee is first charged to protect investors if there is a problem which is to find event of default. Respectfully, the will of the majority, the trustee duly ceases to become primary and becomes secondary if a large group comes in and directs them to take specific action.

THE COURT: Mr. Wollmuth, is this an argument that you are making in the litigation that your client has brought against the trustees?

MR. WOLLMUTH: I have not made that specific argument in that litigation, no.

THE COURT: What is that litigation and where is it?

Can you tell me a little bit about the claims that are being made there?

MR. WOLLMUTH: I can.

We represent the U.S. government for one, the FDIC, some other institutional investors, and I can get your Honor a complete list if you would like in

allegations that are substantially parallel to the cases I alluded to that Ms. Patrick's clients are bringing.

What they allege in substance, I mean, the complaints are over a hundred pages long. So, please don't hold me to this with precision is that the trustee's inaction was unjustified under the PSAs, and they are all a little different that are at issue in that case. That certain specific information gave them actual knowledge of events of default that triggered their duty to act and that they may have had a duty to act in other circumstances without event of default. That a failure to act manifests itself in claims that may be asserted and I'm not sure I'll get all the counts of the complaint correct, your Honor, but the investors are express-intended third-party beneficiaries of these trusts and that gives them a breach of contract rights if their trustee does not act in accordance with their contractual obligations.

So, that's the bedrock of the claim. It's a Rule 8 contract claim at bedrock but there are other claims of equal validity that arise out of the PSAs including negligence, breach of duty, negligent misrepresentation and those are the counts fundamentally of those cases.

Is there more I can answer for your Honor?

THE COURT: No. At this time that is sufficient.

MR. WOLLMUTH: Thank you.

I think that those cases, and I was trying to explain to your Honor, those cases that my clients are bringing and Ms. Patrick's and others create a significant problem for these trustees because unanimously the substance of those allegations have survived motions to dismiss, at least ten, and that means thereare certainly plausible which I would submit your Honor can take judicial notice of as well as the problems, plausible allegations of misconduct create for the trustees -- create for the trustees in this action and that is really where I go next in my outline with your Honor's permission.

First, under Section 3.16 (a) on page 81 before your Honor is the requirement that the servicer and the trustee shall deliver to the depositor which is JP Morgan and for this trust the servicer is EMC Mortgage which is a JP Morgan affiliate. And this is all on the cover.

Just to help your Honor with the defined terms. EMC Mortgage is the servicer. Wells Fargo Bank is the trustee and Structured Asset Mortgage Investments II known as SAMI II, SAMI is the depositor and that's a JP Morgan entity.

So, with that scorecard, it says here the servicer EMC and the trustee Wells Fargo shall deliver to the depositor JP Morgan not later than March 15 of each calendar year beginning in 2007 an officer certificate which is known as an Annual Statement of Compliance stating as to each signatory, meaning the servicer and the trustee, that, one, a review of the activities of such party during the preceding calendar year in its performance under this agreement has been made under such officer's supervision; and two, to the best of such officer's knowledge based on such review, each such party has fulfilled all of its obligations under this agreement in all material respects throughout the year.

Those certifications could not have been made here in good faith, and in fact, they were false because mortgage collateral documents were not ever properly delivered at least as indicated by the final certification produced by the trustee in this case which indicates that vast numbers of mortgage documents were missing.

This statement of compliance is required by law. It's not just a contractual requirement. It's called Regulation AB and what it requires is set forth at 17 CFR 1122. This is all explored in our brief, your Honor, which may make it easier if your Honor wants to refer to it.

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The certification not only is false. It can't be made in good faith given as Judge Forest observed in the case against U.S. Bank. Once it becomes widely known that there are systemic problems with these mortgages, the trustee is not entitled to live under a rock regardless of what the PSAs say because implied in every PSA is the duty to act in good faith, and when you close your eyes to a problem that every other banker in the world knows about, you are not acting in good faith. And that particularly applies to trustees like Wells Fargo as they've recognized by seeking a separate trustee in the mortgage context because they are the biggest producer of mortgage loans I believe in the country and one of the biggest if not the biggest securitizer of those loans. Very difficult for them to say they had no idea that there were systemic problems with the mortgages when they are acting as trustee. That is just one example, your Honor.

I'm about out of time but there are things to do when there is an appearance of conflict or an actual conflict to protect against the infection of decision making and the lost of deference. The things that you are to do are developed under New York Trust law which under the restatement commands impartial and informed trustee decision making, impartial and informed, and this again is set forth in greater detail in our brief and will be

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developed at trial. This is only meant as a preview.

Impartial informed decision making. Both trust law and corporate law further flesh that out, and as we've said in our brief, New York law of trust looks to New York corporate law in part for matters of governance.

The things they should do are first have an impartial decision maker in the context of the trust, what you do if you think you could have a conflict or the appearance of one. You should bring in a separate trustee as to that discreet issue under consideration such as evaluation of the settlement. That's why Law Debenture is in this case. Wells did it in certain context and not others. They said we would like an independent consideration of consideration by Law Debenture not by us because we may have a conflict.

In the corporate context, things go to a vote of the majority of the disinterested board. Getting separate guidance from an impartial special trustee is like the disinterested board. Second, the protection from infection of decision making can be afforded by obtaining impartial counsel to advise the separate decision maker.

Counsel here for every trustee -- your Honor, you had asked me about the cases that I had brought and Ms. Patrick had brought -- I am sorry. That is incorrect. They were brought by another counsel. I meant to say her

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clients are being defended by the exact same counsel in this case and they have a duty to vigorously defend the trustees in those litigations to make sure that they advance with force the arguments about why there is no event of default. That places them not in a conflict of interest in a disqualification sense necessarily. I'm not alleging they are doing anything improper but they are not independent counsel for the trustees within the meaning of the law. So, protection one is get an independent decision maker. They didn't do it.

Protection two is get objective counsel who are not taking litigation positions that the settlement implicates. They failed to do it.

Protection three is to have an independent financial advisor evaluate the prudence of the transaction and they didn't do that either. They used Mr. Fischel who is a serial witness for financial institutions and his opinion more importantly was guided by the advice of these conflicted trustee counsel.

I will note for your Honor, we'll show it at trial but I won't explore it at length right now, that the matters that they did seek independent legal advice on, there is two submissions to your Honor, from the petitioners from Judge Carpinello and Professor Schwartz. They speak only to a couple of very discreet issues and

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the discreet issues that they support -- that they speak to exclusively support acceptance of this settlement. They do not explore anything beyond these discreet issues which only help demonstrate the advisability of this settlement choice but they make no attempt to explore any of the issues that Mr. Fischel would have needed if he was the purportedly independent financial advisor. He would have needed independent financial advice about how the PSAs work to do his job right. We'll show, he struggles with that in his deposition. We'll show it at trial. He says I was head of U of Chicago Law School but I'm not giving any legal opinions here but I do kind of have a view on how these things work, but he won't say even though we try and get him to how he got that view. Very clearly he says I have a general understanding because I've looked at some and I talked to some people. That's not remotely sufficient. These are serious matters.

So, in conclusion and I have more but I don't have more time, it is the process that assures integrity for the investors here, not a second guessing of the number. That is not allowed.

One final point that really drives home how infected this process was is you had asked me about this, your Honor, before at a pretrial conference. Your Honor called the trustees out a little bit in a City proceeding

how can I judge how if there is compliance with all the governing agreements or not. Your Honor was on to something there but it's bigger than that. They asked for an absolute bar of claims. It goes beyond the release that JP Morgan is getting. JP Morgan is released which is set forth in the settlement confines itself to claims arising under the Governing Agreement. That is all the trustee possesses. They don't possess claims arising outside of the Governing Agreement.

The Court of Appeals decision in a case we will bring to your Honor's attention during the trial and is discussed in our brief named Quadrant which has been decided since Countrywide makes that abundantly clear they do not have claims in the tort or statutory claims that don't arise under the PSA. They arise at common law or statutory law. They are not contract claims which is what all that PSAs deals with. Nevertheless, the trustees would have for themselves a release, a bar, not a release, I will be corrected, a bar of all claims not only relating to whether they abused their discretion under this proposed settlement but claims arising under different laws applying different standards that the trustees don't have and are not settling.

That is a severe overreach, your Honor, and we will show exactly how at trial. That overreach infects the entire

process as well because the trustees are bargaining for themselves here, not objectively handing to the Court a settlement and saying there was a property auction, nobody bid. We bid a hundred dollars, a thousand dollars higher. It's all right before you. Please let us go forward. It's not that, your Honor.

Thank you for the time and we look forward to proceeding with the trial.

THE COURT: Thank you. Mr. Rollin.

MR. ROLLIN: Thank you, your Honor.

Rather than me shuffling the well, I am perfectly comfortable addressing the Court from here. If the Court would like me to address you over there, I would move over.

THE COURT: Whatever you prefer is fine.

MR. ROLLIN: Thank you, your Honor. I'll speak from here.

Your Honor, my remarks will focus on the purpose of the settlement agreement.

The purpose of the settlement agreement is to compensate certificateholders for losses from breaches of representations and warranties, not from losses suffered by the trust or something else for all of the other reasons this why trust might suffer such losses but specifically to compensate for losses from breaches of

representations and warranties.

(Continued on next page)

MR. ROLLIN: And the governing agreements tell the trustees exactly how to do that because the two governing agreements that W&L has holdings in have sole remedies provisions, and your Honor is aware of the sole remedies provision. That is very often the topic of repurchase litigation in this Court.

To explain the way the sole remedies provision works, and why it matters very much to insuring compliance both with the governing agreements and the purpose of the settlement agreements, it's important to understand that there are two, generally, two kinds of losses, or two bases for losses.

One, and in this demonstrative, loans go into default for all kinds of reasons.

THE COURT: I obviously did not make my views about demonstrative exhibits sufficiently clear.

MR. ROLLIN: Thank you, your Honor.

It is a complex issue of understanding the way the agreements work, and I will try to use it as little as possible.

THE COURT: Well, I think we're a profession that better works with words, especially when dealing with complex issues, not pulling squares out of a

chart.

MR. ROLLIN: Very well. I'll be happy to proceed that way, your Honor.

THE COURT: Thank you.

MR. ROLLIN: There are two different reasons why trusts lose money. It all arises from loans that go into default, borrowers stop paying.

But, there are two different circumstances.

There are times when borrowers stop paying that has absolutely nothing to with the representations and warranties given by JP Morgan/Chase.

THE COURT: Go ahead, Mr. Rollin, pull the squares out. Prove me wrong.

MR. ROLLIN: That's okay, that's okay.

THE COURT: Really, I'm curious.

MR. ROLLIN: You're curious. Very well, I'll be happy to satisfy your Honor's curiosity.

When a loan goes into default, it leaves a loss in the trust, there are times when a loan goes into default and leaves a loss that has nothing to do with anything that JP Morgan promised, said, or did.

That is a risk that the investors bear.

There are also times, however, that a loan suffers a loss because of a breach of a

representation and warranty, and in those instances JP Morgan/Chase has a responsibility to replace that loss with cash flow, replaces the cash flow that was supposed to come from the loan with a cash payment that is called the purchase price, and that is the sole remedy under the governing agreements, and in order to give effect to the sole remedy under the governing agreement, that is the process that has to follow, and that is the process that is the trustees have to assure occurs.

Under the governing agreements, there's a defined term called repurchase proceeds, and any money that is received by the trust as a result of breaches of representations and warranties is repurchase proceeds.

There's another definition called subsequent recoveries. That's something else. That is what's used in the settlement agreement, not the repurchase proceeds, and the difference matters because it affects the timing of the repurchase payments.

The repurchase proceeds, unlike subsequent recoveries, have to be paid as pre-payments. The loan comes out, the repurchase price goes in. It fulfills two purposes; one, in replacing the cash flow for the certificate that suffered the loss.

That's the first goal. It replaces the cash flow for the certificate that suffered the loss, and it provides credit support for all of the senior certificates above it in the capital structure because that's the way these trusts worked, and that's what's necessary to meet the reasonable expectations of investors who invested on the basis of what was in the governing agreements, what the remedy was, the sole remedy was for breaches of the representations and warranties.

The problem with the settlement agreements is that the losses from breaches of representations and warranties are suffered at the bottom of the capital structure by the junior certificates, but the payment is being made at the top of the capital structure to the senior certificates.

Now, let me speak about that first part.

First, how do we know that losses are suffered at the bottom of the capital structure?

Well, we don't know it from the trustees because the trustees did not do anything in the course of evaluating, or approving the settlement to determine which losses were caused by breaches of representations and warranties as contrasted with the losses caused by something else that are not the

subject of this settlement.

THE COURT: Excuse me, can I have a read back on the last sentence, please?

(Whereupon, record was read.)

THE COURT: Okay, thank you. That's breaches of representations and warranties, okay.

MR. ROLLIN: Thank you.

There is one witness who has considered this issue, and that is Matthew Lewis from Newoak, one word, N E W O A K, the expert, who based on his industry expertise and experience provides the opinion, will provide in this Court the opinion that the losses from breaches of representations and warranties are overwhelmingly suffered in the first couple of years of the transaction, and therefore, by the junior certificates, and this makes perfect sense.

The purpose of the representation and warranty is to establish the borrowers' ability and willingness to repay the loan and provide a remedy if they don't. If a borrower says that they make twice as much money than they do in order to get a loan, then they're not going to be able to pay it for very long, or if a borrower says I only have one mortgage when, in fact, they have four mortgages, then that's

a breach of a representation and warranty. Then they're not going to be able to pay for very long.

So, the only person who analyzed this issue is Mr. Louis, and that's his opinion;

Losses arising from the settled conduct for breaches and representations and warranties are suffered in the bottom tranches, in the junior tranches, but the settlement agreement is clear that the payment for that arm is paid into the top of the waterfall, and never makes it down to the certificates that are --

THE COURT: Is that because they use, the settlement uses the subsequent recovery measures as opposed to the repurchase proceeds?

MR. ROLLIN: Yes, your Honor, because the repurchase proceeds are required to be paid as pre-payments. The intent of the governing agreements and the reasonable expectations of the investors is that those payments would be made at or about the time the loss occurs, or the subsequent recovery simply comes into the trust whenever that money happens to come into the servicer, and then is distributed to the trust afterwards. That's after foreclosure and liquidation, extra money comes in as contrasted with the specific repurchase remedy that

is supposed to come in at or about the time of the loss.

In order to give effect to the sole repurchase remedy in the agreement, when the trustees evaluated and approved the settlement agreement, what they needed to do was to give effect to that provision, and to make the junior certificate holders to provide them the payment, so that they would receive compensation for the harm that they suffered.

The settlement agreement, therefore, does not follow the governing agreements, and is entirely inequitable.

Your Honor, what I ask is, what we would like your Honor to do is to direct the trustees to distribute the allocable shares to the two W&L trusts to both meet the purpose of the settlement agreement and pay only compensation for losses caused by breaches of representations and warranties, and not something else, and to give effect to the repurchase remedy under the governing agreement.

Thank you.

THE COURT: Thank you. We will take a true five-minute break before I hear from the Petitioners.

(Brief recess taken.)

THE COURT: Back on the record.

MR. WOLLMUTH: Your Honor, if I could just briefly, Mr. Chang is going to take the lead chair here during the Petitioner's opening, if it's okay.

THE COURT: Mr. Ingber --

MR. INGBER: Thank you, your Honor.

May it please the Court, Matthew Ingber for the Bank of New York Mellon. I'm going to be speaking today on behalf of all the trustees.

Your Honor, a year-and-a-half ago the trustees entered into a settlement that will pay billions of dollars to investors now. That offers certainty, instead of risk; finality, instead of years of litigation.

They entered into that settlement after an eight-month process that was at all times robust, transparent, and most importantly for purposes of this proceeding, reasonable, and carried out in good faith, and as your Honor knows well, that's the question in this proceeding; whether the trustees acted in good faith, or bad faith, whether they acted reasonably, or abused their discretion.

That standard has been applied for decades. It was tested, challenged, and confirmed as the standard by the First Department in the Country-Wide case, and just weeks ago adopted by your Honor, by

this Court, as the standard in the Citibank matter. It's not controversial, and I think at this point it's not even disputed.

So, at the end of this hearing, we'll ask your Honor to make a specific finding; that the trustees acted in good faith and reasonably in evaluating and entering into the settlement with respect to each of the 309 trusts for which there's no objection whatsoever, and for each of the ten trusts for which there is.

We believe that after this hearing they'll be no shortage of evidence for the Court to rely on. It starts and really ends with the process that the trustees followed. When your Honor considers the process, some of steps may seem basic, some less so, but they were all important to the goal of arriving at a decision that the trustees in good faith believed was in the best interest of the investors as a whole, so I'd like to take the Court through the process at a high level, then address briefly the objections that we've heard in the pre-trial brief and today, and then make a few closing points about the proposed order and judgment that we have submitted for your Honor's consideration.

So, starting with the process;

In the category of basic, but important, the process starts with getting the right people involved. It varied from trustee to trustee, but generally speaking, the trustees had an in-house working group of experienced corporate trust business personnel, and in-house or outside counsel experienced in analyzing complex settlements, and in some cases, analyzing settlements of this very type, global RMBS settlements. It, of course, continued with a review of the proposed settlement agreement, and recognition by the trustees that having experienced running a corporate trust group doesn't necessarily mean that they have subject matter expertise to evaluate the reasonableness of a settlement of this type. Administering trusts doesn't equate to expertise applying complex valuation methodology, or performing complex economic analyses, or knowing the in's and out's of mortgage loan servicing, or researching and analyzing legal issues that fall outside of the scope of their duties, and so, of course, your Honor, the process continues with discussions among the trustee group and their counsel about where they needed assistance, multiple meetings and calls to discuss which expert candidates to interview, what specific expertise was

required, and whether the sixteen or so candidates who were identified as potential experts had any disqualifying conflicts. That was followed by meetings, meetings with candidates. There were two meetings in particular to learn about the experts' experience, their qualifications, and their approach to analyzing the issues that were relevant to the settlement;

One meeting before the settlement agreement was even publicly disclosed, and then another after it was disclosed and the experts had an opportunity to read the agreement, and study it, and discuss in depth their approach to the task.

Now then there was a process of selecting the experts, and hiring them, and getting them to work.

So, who did the trustees hire?

They hired a valuation expert from NERA, Faten Sabry, who had a Ph.D, has a Ph.D in business, and whose qualifications as a valuation expert in the Country-Wide case went unchallenged.

Miss Sabry calculated the allocable share of the settlement for each trust, and she estimated losses attributable to alleged record warranties claims.

It was the servicing expert, Jerry Reifsnyder

from Boston Portfolio Advisors, which was a firm that for decades was steep in the mortgage loan servicing industry. Mr. Reifsnyder opined on various aspects of the servicing components of the settlement, including the potential losses associated with JP Morgan servicing, and an estimate of the potential benefit of the subservicing protocol.

And then, later in the process, and we have laid this out in our brief, the trustees hired two legal experts, Judge Carpinello, a retired Appellate Division Judge, and a Yale Law Professor, a Professor Alan Schwartz, and they looked at legal issues, in particular, legal issues that fell outside the scope of the trustees duties and responsibilities, the applicable statute of limitations, the specific meaning of tolling agreements, and the analyzing the breathe of those tolling agreements, and whether they applied to certain trusts, analyzing the ability of the trustee to bring claims against JP Morgan in third-party originator trusts, the extent of any JP Morgan repurchase obligation arising out of modifications of mortgage loans, so it was those types of issues that the legal experts opined on.

And then, finally, your Honor, the trustees hired an expert, Professor Daniel Fischel, from

Compass Lexecon, to consider all of the other expert reports, to conduct his own economic analysis, and to give his recommendations trust by trust, loan group by loan group whether the settlement was reasonable.

Professor Fischel is a leading expert in economics. He's taught classes, including as the Dean of the University of Chicago Law School on issues that are relevant to this settlement. He's consulted the Government on a variety of economic issues. He's been retained to provide expert testimony in consulting in connection with RMBS cases, and he's been retained and qualified as an expert to opine on the reasonableness of settlements, including as an expert in the Country-Wide matter, to opine on the reasonableness of the eight and-a-half billion dollar settlement, so this was a considered, thoughtful decision by the trustees, but I don't think it was a difficult one.

Now just continuing with the process, the Court will hear -- perhaps, the Court has already read through the written affidavits, testimony that the trustees worked with the experts, through their counsel worked with the expert almost every day answering their questions, to a large extent, relying on the experts to determine what information would be

most useful to them, taking information requests, collecting information that was in the trustees' possession, and collecting, obtaining, and sending to the experts massive volumes of data and documents from JP Morgan.

Your Honor, I mentioned at the outset the notion of transparency.

The trustees reviewed, commented on, and sent out twelve notices to investors disclosing in December of 2013 the settlement agreement, updating them on the evaluation process, telling them that there was a settlement web site created for the purpose of keeping them up to date on the evaluation process, inviting them to contact the trustees with inquiries, or if they were planning to direct the trustees to accept or reject the settlement with respect to any particular trust, disclose the expert reports, and, of course, disclose the ultimate decision by the trustees at the end of the process, so investors had every opportunity to share their concerns, to tell the trustees how would they analyze the settlement, which was in the public domain since December of 2013. They had every opportunity if they didn't know how to analyze the settlement agreement themselves to go out and hire their own

experts to help them analyze the settlement agreement, and share any of that with the trustees.

The trustees wanted Professor Fischel to have this information, and to consider it, and that's why the trustees didn't hesitate to have meetings with investors groups, and their counsel to hear what they thought about the settlement, and the trustees didn't hesitate to turn over to Professor Fischel the investor correspondence that they received that touched on settlement issues.

While all this was going on, the trustees as a group participated in regular calls about the settlement, the progress of the experts' work, questions or issues raised by the experts, communications with JP Morgan, and your Honor, updates by the trustees to more seniors trust personnel within each institution took place in the ordinary course.

Trustees also made sure that the experts had enough time to do their work. There were deadlines baked into the settlement agreement, and the fact is the trustees had operate with those deadlines in mind, but they took advantage of the automatic extension from January to March, 2014, and extensions from -- they negotiated extensions from March to

June, June to August, and then for a small subset of the trust to October. All told the experts had 7 to 8 months to analyze these issues, and complete their work.

Towards the end of the process, the trustees received preliminary reports from the financial and valuation experts, and they read them, of course, but they also wanted separate meetings with each of Faten Sabry from NERA, Professor Fischel from Compass Lexecon, and Jerry Reifsnyder from EPA. They wanted to read the reports and understand them, but they wanted to hear from each of the experts. They wanted the experts to walk them through the opinions. They wanted the ability to ask questions and push back, if necessary.

That's exactly what happened as part of this process.

I'm nearing the end of the process here.

Once the trustees had all of the final reports and the final settlement agreement, they passed it all along to personnel within each institution that was making the ultimate decision, and each trustees followed its own process and practice for making the ultimate decision whether to accept or reject the settlement.

For some trustees, it was formal trust committee meetings. For others, it was smaller working groups, but in all cases it was consistent with that trustees' practice.

As your Honor now knows, after these deliberations, what's really the culmination of the process that I have just described, the trustee accepted the settlement for the vast majority of the trusts and loan groups, and rejected it for others, so that's the basics of the process, and it's all reflected in the sworn affidavits that your Honor has already received.

We think it was intensive, thorough, disclosed, and again, above all, it was performed reasonably and in good faith, so that in our view begs the question:

What are we fighting about?

Well, I'd like to start with what we're not fighting about.

There's 319 accepting trusts, and 794 loan groups. For 309 trusts, and 761 loan groups, there's no objection at all, no questions asked about the trustees' good faith, the reasonableness of the process. The experts retained the analyses. They applied the information they obtained, or the

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assumptions they made. No objections to the amount of the settlement, the servicing component of the settlement, or the allocation, or distribution methodologies.

There's also no objection to the decisions of U.S. Bank, Deutsch Bank, and HSBC to accept the settlement on behalf of the trusts for which they're a trustee.

So, that leaves ten trusts, 33 loan groups.

After the eight month process that I've described, the 12 information notices that were sent to investors, the notice program ordered by this Court, the opportunity to intervene, and the massive discovery that the trustees produced, we're left with ten trusts subject to an objection, and two objectors for two trusts.

W&L objects to the distribution methodologies. They are the only ones. No other investor, not even the holders of the same class of certificates has raised this distribution issue.

And the same with Ambac, and it's a trust, and arguments about conflicts, and expert qualifications in trustee duties; they stand alone on these objections.

And I'll address the specifics of the

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objections, but first I'd like to make just 1 or 2 high level points, big picture points for your Honor to consider throughout this hearing.

First, the objectors seem to disagree with each other. W&L doesn't join Ambac's argument that Professor Fischel is unqualified to give the opinions that he gave, and Ambac wouldn't join.

THE COURT: You said does not join.

MR. INGBER: Does not join as far as we can tell.

Ambac does not join W&L's distribution objection. W&L won't touch it seems the conflict allegations raised by Ambac, or suggest that the duties are consistent with what Ambac has said, and so if these objectors can't agree with each other, and we have thousands of investors who won't join in any of these objections, and we have Institutional Investors with 24 billion dollars in holdings saying these objectors and these objections are wrong, then at the very least, at the very least, what the trustees did fell within a range of reasonableness.

The second point, it's a related point; we can accept that if these objectors were evaluating the settlement, they may have done things different. Put a different group of trustees in a room and they

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may have done things differently, and I suspect we're going to hear lines of questioning that a different approach might have been better, or a shift of emphasis more appropriate, or a category of documents more relevant for the experts to consider, or even that there was an another way of looking at distribution issues.

If we give the objectors every benefit of the doubt, if we ignore the pooling and servicing agreements, we ignore the case law, we give them every benefit of the doubt, at most, at most these issues are debatable, and if they're debatable, they're not black and white, and almost by definition what the trustees did was reasonable. The point is that someone has to make a judgment. Someone is assigned the task of making a judgment under these circumstances, and that task is assigned to the trustees, and that judgment by the trustees is entitled to deference.

So, the specific objections; your Honor, let me just, if I may, make a few points about the specific objections.

With respect to W&L's distribution objection, when they make an objection about distribution, they're not saying this is a bad settlement in the

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sense that it's not enough money; they just want a bigger piece of it.

Now, I believe Miss Patrick is going to discuss the substance of what Mr. Rollin said in some detail, but from a process standpoint and from the trustees' perspective, this is very, we think very simple and straight forward;

The distribution methodology is materially identical to the one in the Country-Wide case.

It cannot be unreasonable we believe. It cannot be an exercise of bad faith to use the same distribution methodology used in other global RMBS settlements, and approved first by Justice Kapnick, and then by the First Department, and since then, actually by this Court in the Citibank matter.

THE COURT: Was the distribution methodology at issue in Country-Wide?

MR. INGBER: I don't believe the distribution methodology was at issue, but it was a distribution methodology that was submitted to the Court for consideration.

The final order asked for approval of the settlement in all respects, and the settlement was approved, ultimately, approved in all respects, and the trustees' conduct in connection with that

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settlement was viewed as reasonable in all respects.

(Whereupon, Senior Court Reporter Kathy Jones resumed.)

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MR. INGBER: So, then there is the AMBAC objections. Before I get into the objections, I would like to first point out that claims in at least five of the eight AMBAC Trusts are time barred. Statute of limitation has expired. So, if there is no settlement for these trusts, there is no prepurchase contract. We will be taking money out of the hands of investors.

As for the objections, there is really multiple places to start but I suppose I'll start with the attack on Professor Fischel which we seen in the motion in limine that AMBAC wanted to file and a pretrial break and we heard it today in the opening. They said he's not qualified, that he relied on improper assumptions about trustees lead obligations. He didn't look at all the right materials.

I can spend quite a bit of time talking about Professor Fischel and his qualifications and the analysis that he conducted but very shortly you will have a chance to hear from Professor Fischel directly. He'll testify about his qualifications, his retention, his course of dealing with the trustees, the information that he relied on and most importantly he'll testify --

THE COURT: Excuse me. Are you expecting to call him today?

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MR. INGBER: Yes, absolutely.

With your Honor's permission, I think if we finish openings and there is nothing else for us to discuss, then we will be ready to call Professor Fischel. Thank you.

What he'll testify about most importantly, your Honor, is his analysis, his financial and economic analysis of the settlement and his ultimate methods for evaluating the reasonableness of the settlement on a trust basis and a loan group level.

It's not simply that Professor Fischel was qualified to give the opinions that he gave. It's that his analysis which you will have an opportunity to hear were sound, it was thorough and it was -- it was more than plausible.

So, like the trustees did, when they were thinking about Professor Fischel and whether they can rely on his report, your Honor will be able to see Professor Fischel and hear directly from him about his analysis and read his report and judge as the trustees did whether Professor Fischel was qualified to give the opinions that he gave and whether it would have been an exercise in bad faith for the trustees to rely on that opinion.

AMBAC's second objection and I'm not necessarily going in any particular order here but the second

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objection as we see it and it's shared by no one else seems to be that the trustees were mistaken when they -- when they told Professor Fischel that they had no knowledge of an Event of Default or it was improper for Professor Fischel to assume that the trustee had no independent duty to pursue to repurchase the claims absent the direction and an indemnity. So, I have a few points to make on this objection.

First, this is what the trustees believed. This is what the trustees practiced. This is an area where they did in fact have subject matter expertise. This specifically fell within the scope of the trustees' duties. That's point one.

Two, there are contracts that govern here. I'll just address a few points from these contracts.

Mr. Wollmuth referred to 202 of one of the PSAs. There is also language in those PSAs that require a trustee to receive an adequate indemnity before it does anything, before it is obligated to do anything. There is no exception for Section 202. The trustees are entitled to an indemnity before they act and that makes perfect sense because, when you read these agreements as a whole, it is clear, crystal clear that the trustee has ministerial functions. Certainly before an event of default, the trustee has ministerial functions and only

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ministerial functions. The trustees get paid a couple thousand a year in these transactions. It wasn't contemplated and it's clear from the agreement that there is no obligation to go out of pocket to enforce obligations without an adequate indemnity.

THE COURT: What do you mean the trustees earn a couple of thousand dollars a year? What does that mean?

MR. INGBER: The trustees is a -- it is usually calculated as basis points times the unpaid principle amount. That adds up to, it varies, but we're talking 5,0000, 10,000, give or take on each deal a year. So, when you have trustees --

THE COURT: What do you mean by each deal?

MR. INGBER: Each trust. Each trust.

THE COURT: Each trust.

MR. INGBER: Yes, each trust.

So, what Mr. Wollmuth is contemplating here is that the trustees, even though they are getting paid much like I said, it varies, but a few thousands a year to be trustee and carry out their ministerial function, and when I say ministerial, I don't mean to downplay the importance of the trustee's role. There is a lot for trustees to do and these are important functions that the trustee has but the language -- the language of the contract is clear but also the intent of the parties is clear based on the fact

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that the intent of the parties is clear that the trustee didn't have these expansive fiduciary type duties based on the fact that they were being paid so little in terms of trustee fees on this deal.

Mr. Wollmuth refers to event of defaults in connection with mortgage loan files.

The obligation to deliver a mortgage loan file is an obligation not of the servicer. It's an obligation of usually the seller or the depositor. So, that doesn't give rise to any sort of event of default which I'm going to get to in a second which really stems from either a master servicer breach or a servicer breach. So, it's apples and oranges.

Let's talk about the event of default issue because it is really -- there is several things that need to occur before there is an event of default. An event of default doesn't just happen. There is no -- it's not a case that there is an event of default somewhere in the air and the trustee just don't know about it. Certain things need to happen before there is an event of default.

Three of the eight AMBAC trusts, there has to be a material breach by the master servicer. It has to materially affect the rights of certificateholders and it has to materially affect their rights in that specific trust. The breach by the master servicer has to be in

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that specific trust. The master servicer isn't even JP Morgan. It's not a JP Morgan entity. It's not affiliated with any JP Morgan entity and Mr. Wollmuth can say, well, it's sort of the same thing, the master servicer is supposed to supervise the servicer, and if there is a servicer breach, then there must be a master servicer breach too, but you are piling the layer on top of layer on top of layer.

The fact is that until Mr. Wollmuth spoke those words in his opening, no one on the objector side has alluded to the possibility of a master servicer breach. The master servicer is not JP Morgan. It's some other entity. So, that's dispositive we think with respect to the three trusts.

Now, in all the AMBAC Trust and by the way I should say in the other five, that's a servicer breach and that is a JP Morgan entity but that leads to the next point which is that in all of the AMBAC Trust servicer or Master Service Trust, there has to be a notice of a material breach and there has to be a 60 day cure period and expiration of that cure period without a cure for there to be any sort of event of default. There is no notices here. There is no cure period. There is no expiration of any cure periods. The objectors are not going to submit evidence that any of this happened and we

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think that is separately dispositive for all of the AMBAC Trust.

Then in all the AMBAC Trust, this is something that I believe the objectors will concede, the trustees have to have actual knowledge of an event of default. And it's not just knowledge of a servicer or master servicer breach. It's actual knowledge of an event of default and all of the conditions that lead up to that event of default.

Your Honor, I do want to quote from one of the trusts here. I have a copy that I can hand up to your Honor. I can also bring it up on the screen or I could just read it. You know what, I think I'm just going to read it. It's from --

THE COURT: Where is it?

MR. INGBER: It's Exhibit 14. It's the SAMI 2005-AR7 Trust.

THE COURT: And what volume is that please?

MR. INGBER: It's in volume -- you know what, your Honor, it was submitted separately as part of the CD of all of the PSAs.

THE COURT: Then we'll take a copy if you show it to opposing counsel and there is no objection.

MR. INGBER: I'll turn to the page that I'm reading so it will be easier for your Honor. Thank you.

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So, it's section 9.01 iv. I've given you the page which has Romanette iv but if you want to go to the preceding page you can see where it starts.

THE COURT: 9.01 iv?

MR. INGBER: Romanette iv (d). (d) iv. Okay. Thank you.

"The trustee shall not be required to take notice or be deemed to have notice or knowledge of any default or Event of Default unless a Responsible Officer of the Trustee's Corporate Trust Office shall have actual knowledge thereof." And what comes next is as important or perhaps even more important. "In the absence of such notice, the Trustee may conclusively assume there is no such default or Event of Default."

So, that leads to my third point, your Honor, which is that the Court already has sworn testimony from the trustees that they had no knowledge whatsoever of any defaults in any of the AMBAC Trust or any of the Settlement Trusts.

THE COURT: Are you saying that all of the AMBAC Trusts have the same or similar provision?

MR. INGBER: My understanding is that they all have that provision.

Now, what the Court won't hear is evidence that AMBAC ever sent its own notice of an Event of Default and

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on that score they join thousands of other investors who have never alleged an actual event of default in these trusts.

On this event of default, your Honor, I would like to make just one final point. Reading through the pretrial brief, the objector seemed to complain that they didn't get enough discovery on this issue and that the Court should limit the bar order so that there could be a plenary litigation on this issue.

Where have they been?

Last summer your Honor practically invited the objectors to issue new document requests. They have received massive documents from the trustee. But they never sent a new document requests in response to your Honor's invitation. They never did that. They could have deposed any of the lawyers in this case about the process. They never did that.

That's exactly what they did in the Countrywide case. If they wanted more information about these issues, more information about the communications with the experts, they had every opportunity to ask fact witnesses about these or request additional fact witness depositions.

We hired a special master in anticipation of having discovery disputes about these issues. They never

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present any issue to the master servicer.

The time to raise these issues is in this proceeding. It is not for some other what they describe as a plenary litigation. If they have an issue with respect to the settlement, now is the time to raise that issue.

Now, in the end, your Honor, we don't think it's -- we don't think it's going to matter because Professor Fischel will testify that event of default or no event of default, his opinions would remain exactly the same.

THE COURT: Can you just address Mr. Wollmuth's point under 3.16 (a) of the PSA, the officer's certificate.

MR. INGBER: So, first of all, yes. Again, the exception report is not a servicer -- I am sorry. The delivery of the mortgage files is not a servicer function. But the trustee is entitled to receive attestations, attestations of compliance, and this agreement is crystal clear on this point. The trustees are entitled to rely conclusively on those statements attesting to compliance with obligations under the agreement. They don't need to look under the hood and study whether it's right or it's wrong. They need to look at the document. They need to figure out whether the document is genuine and that's

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where it ends from the trustee's perspective.

Again, it goes back to how all of the parties understood the trustees' duties and the function and role of the trustee. It was not a fiduciary. It was not conducting investigation. There is language, again clear language in the PSAs that the trustee is under no obligation to conduct any investigation whatsoever absent direction from 25 percent or an indemnity.

So, your Honor, if I've answered the question, that leaves the new conflict theory. I'll say new because we heard about these conflict theories for the first time on Tuesday morning when we read the pretrial brief. It wasn't part of their objections in the beginning of the case. Not part of the supplemental objection. It wasn't part of the hand-back letters that were sent presettlement. But really most importantly these theories, the way we see it, these theories are supported by no evidence at all.

They say the trustees' counsel was conflicted. Now, not that the trustee was conflicted but trustee's counsel was conflicted because they previously represented the trustees. And on this issue, there is just a fundamental disconnect. They say that it was not appropriate for trustees' counsel who has knowledge of RMBS issues, knowledge with how these contracts operate,

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knowledge of other global RMBS settlements, it was not appropriate for trustees to hire this counsel. It was just a disconnect.

We think that hiring experienced counsel -- the trustee believed that hiring experienced counsel is evidence of good faith and not bad. They say the trustees -- this is from the brief. Mr. Wollmuth didn't mention it today. They said trustees' incentive to settle because they are liable for the acts of the servicer and they go even further and they say the trustees are actually aiders and abettors of servicer fraud. That's a pretty serious charge but it's also one that as far as we can tell has never been asserted against a trustee ever. And that makes perfect sense to us at least because the PSAs are unambiguous in the same contract, your Honor. It's 9.01 (d) vii. It says "None of the Securities Administrator, EMC or the Trustee shall be responsible for the acts or omissions of the other, the Master Servicer or the Servicer, it being understood that this Agreement shall not be construed to render them partners, joint venturers or agents of one another."

So, we'll litigate this issue, this legal issue if need be, but on the process point we think it will be impossible for AMBAC to prove that the trustees factored this theory into their decision making. There is just no

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evidence. They have no evidence because there is no evidence of it.

Finally, on the conflict point, then I'm going to finish up with the final order, AMBAC thinks that the trustees had entered into a bad settlement because they were scared of being sued by the institution investors.

On this you need to, frankly, just take a step back. I think security agent trustees are smart enough to know that whatever decision they make somebody is going to be unhappy about it. So, they have every incentive to make the right decision. They have every incentive to make the good decision because perhaps more to the point on this issue or for purposes of this proceeding it's one thing to assert a theory. It's another thing to prove that there is again no evidence of this and where does it end?

Did Professor Fischel also have a conflict when he issued his independent opinion? Was he looking to protect the trustees? Was Jeremy Schneider from BBA or Faten Sabry or Justice Carpinello, were they just crafting opinions that had the goal of protecting trustees? It just makes no sense to us.

You will hear, your Honor will hear a different version of these events. No doubt what we say is good faith they'll say is bad. What we say is reasonable,

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they'll say is unreasonable. What we say is benign, they'll just assume is nefarious.

There is a case that we've cited the Dabney versus Chase, 1952. It's Judge Hand. We cited that I don't think in our pretrial brief but certainly throughout this litigation.

What Judge Hand said is, I think it's relevant here, a possible conflict of interest can be conjured up out of all sorts of situations in which persons of normal scruple would feel no hesitation to go ahead. The law ought not to make trusteeship so hazardous that responsible individuals and corporations will shy away. Mere vague or remote advantages to a trustee are not sufficient to prove such an adverse interest as to bring misconduct into question.

The objectors are trying to make it impossible for the trustees to do of anything.

Finally, the final argument, Judge, I certainly have more to say on the conflicts but I see I'm running out of time. So, I'll move on. But thinking about the pretrial briefs, thinking about these allegations, again the trustees, discussions about the trustee duties, this is really a perfect segue to a discussion about the final order. Your Honor knows that the final order that we submitted for the Court's consideration is materially

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identical to the City order. I think the only two disputed provisions under good faith are good faith and reasonableness findings and the bar order.

On the first, I think I've laid out in this opening, we've laid out through the written directs the evidence of good faith and reasonableness and we think that's extensive. If your Honor makes that finding, if after all the evidence the Court agrees that we the trustees acted in good faith and reasonably, we ask that it issue an order barring claims against the trustees in connection with the evaluation and entry into the settlement and implementation of the settlement in accordance with its terms. Here is why.

This is I think a very important point and one that I'll close with. We hope your Honor will agree that after all of this, if it issues a decision, that decision will have res judicata affect. If the Court finds that we acted reasonably, then an investor for example shouldn't be able to claim in some other court at some other time that the trustees acted unreasonably or negligently or in bad faith in connection with the settlement. We think that's correct. Your Honor may think that's correct. We think the case law makes it clear that it's correct but the investors might not see it that way, AMBAC may not see it that way and this isn't hypothetical at all.

You asked Mr. Wollmuth about cases that he's handling for other clients. One of those cases was filed in state court in Ohio. It was filed on behalf of an objector to the Countrywide Article -- to the Countrywide eight and a half billion dollar settlement. That objector intervened, that certificateholder intervened in a Countywide case. That investor then hired Mr. Wollmuth and filed a separate lawsuit in Ohio focusing in part on the trustee's presettlement conduct which wasn't released in that case and isn't released in this case but also challenged the reasonableness of the eight and a half billion dollar settlement and they just filed a brief within the last two weeks. On page 1 of the brief this is what they said. "The New York Court did not intend its approval of the settlement to bar claims relating to the Bank of New York's conduct concerning a settlement. Bank of New York proposed a form of approval order that would have expressly barred such claims but the New York Court struck the proposed bar order from its final order and thus deliberately left Western & Southern free to assert settlement-related claims in this action.

This was filed after the trustee's conduct was found to be reasonable in all respects after the First Department ruled that it would have been unreasonable for the trustees not to enter into that settlement.

I want to be clear about this.

All they want is another day in another court that isn't this court to litigate issues, to raise issues that are required to be raised in this proceeding in connection with the settlement.

So, if and only if your Honor finds that we acted in good faith and reasonably, we ask that the court issue the bar order to make clear that this was the forum to litigate the trustee's conduct in connection with the settlement, not in federal court, not in some other state court, not in a year but today in this court.

So, your Honor, now that I am truly closing, we think the precedent for granting the relief that we're seeking is clear from the Countrywide case and from the City matter but we take nothing for granted.

We look forward to proving to this Court that the trustees acted in good faith and reasonably and that we are entitled to the full order and judgment that we've submitted to the Court for your Honor's consideration.

Thank you for your time and thank you for allowing me to go over of what I had anticipated.

THE COURT: Ms. Patrick.

MS. PATRICK: May it please the Court, Kathy Patrick for the Institutional Investors.

You heard a lot of talk today about the

contract. One thing bears emphasis. Under the terms of the agreement that govern every one of these trusts, every certificate holder made an agreement with every other certificate holder that they would be bound by the reasonable and good faith decisions of the trustee. And all of them agreed with the trustee that when the trustee exercised its discretion reasonably and in good faith, the trustee could not be sued for doing so.

Those provisions appear in the no-action clause in the Pooling and Services Agreement and in the sections governing the trust fees duties.

Our clients hold 32 percent of the outstanding securities and they are here because they want to enforce that bargain. They and all of the other certificateholders, thousands of them, that do not object to this settlement are entitled to the benefit of the trustee's reasonable and good faith decision in the form of an order sustaining the trustees exercise of its judgment that this over 4 billion-dollar in cash and servicing improvements is indeed in the best interest of certificateholders.

The law it must be said favors settlement and this extraordinary result is an example of why.

No one is here contending that JP Morgan did everything perfectly in the origination of mortgage loans

in these trusts or in their servicing. It is axiomatic that one does not pay four and a half billion dollars in cash and agree to pay someone else to service loans because one has done everything perfectly. But that is not the issue in this case. Nor is it the issue in this case that in some other court somewhere else on other trusts some investors including some but not all of my clients have sued the trustees.

It bears emphasis that none of our clients has sued the trustees on these trusts and we are not aware of any lawsuit filed against the trustees on these trusts because the trustees have acted and achieved an extraordinary result.

W & L is here and AMBAC is here but AMBAC is the only investor contesting the reasonableness and the good faith of the trustees' settlement judgment. W & L's objection is not that there is something wrong with the substantive terms of the settlement but rather that they would like the Court to rewrite the settlement agreement to direct all of the funds to W & L. That's in their brief at page 18. But W & L has cited no provision of the Pooling and Servicing Agreement, not one.

(Continued on next page)

MISS PATRICK: That would authorize, or require the distribution of these settlement proceeds to W&L.

In fact, under the terms of these pooling and servicing agreements, at Section 6.01 repurchase proceeds would flow in exactly the same way as a subsequent recovery would flow. The only way in which W&L can prevail on its objection is if it persuades the Court to roll back the clock to some undetermined date in the past, to treat the settlement recovery as though it was received then, rather than under the pooling and servicing agreements, how it is treated when it is received now.

Section 6.01 of the pooling and servicing agreement, even if these were called repurchase proceeds, would cause them to flow in exactly the same way today when the settlement proceeds are received.

Separate from the wholly flawed suggestion that the Court can ignore and the rewrite the PSA's, or rewrite the settlement agreements is that the facts concerning W&L's objections are wildly divergent from what is alleged in its objection.

Their argument relies on speculative

testimony of a purported expert witness, Matthew Lewis, who arrived at his opinion based on a methodology, we will demonstrate was not only flawed, and untenable, but wholly speculative.

Mr. Lewis has not read the pooling and servicing agreements. He has not read the settlement agreement. He has not read W&L's objections, but the one thing he did admit was that contrary to what you heard today, based on the remittance reports on these trusts, the records of how cash flowed, and how losses were accrued, in these trusts, two-thirds of losses were suffered not by W&L, but by the senior tranches where the money will flow in this settlement, and W&L whose certificates have unquestionably been written off, can cite no provisions of PSA, and nothing in the law to demonstrate that the trustees acted unreasonable in accepting a settlement where the proceeds would flowed exactly as they flow under the pooling and servicing agreement.

So, where does that leave Ambac, the other objector you heard from?

THE COURT: Miss Patrick, what is the evidence going to be that two-thirds of the losses were suffered by the senior tranches?

MISS PATRICK: W&L's expert witness, Matthew Lewis, testified at pages 99 and 142 of his deposition, based on the remittance reports in the trusts, that that was so. Those are the facts. I don't think they're disputed. Their expert admitted it.

So, on to Ambac; as the First Department ruled in Country-Wide2, "A party challenging the decision of a trustee who followed the advice of a highly regarded specialist in the relevant area of law can prevail only upon a showing that, based on the particular circumstances, the reliance on such counsel's assessment was unreasonable and in bad faith."

That rationale, of course, extends to reliance on highly qualified independent experts, as well.

The trustees have come forward with evidence that meets their burden that they did, in fact, rely on the advice of highly qualified experts, and so it is now Ambac's burden, Ambac's burden to demonstrate the trustees' decision was unreasonable and was made in bad faith.

The argument you heard today, and the argument you read in Ambac's pre-trial brief filed

48 hours ago, is a tacid admission that the arguments made in Ambac's original objection fail that test. They fail that test. Ambac originally asserted the settlement was, "too low." That is a difference of opinion. It is not a demonstration that the settlement was unreasonable, and certainly, does not meet Ambac's burden to demonstrate bad faith when the evidence is that the trustees relied on the advice of Professor Fischel in their settlement decision.

Ambac represented to you that it would prove that the approached trustees breached their duties, but it is important to note that Ambac has identified no witness on its witness list from Ambac, and has offered no expert testimony of its own to come here under oath and say that the terms of this settlement were unreasonable, or were reached in bad faith. None. No one.

Ambac's views about the results of its unsuccessful litigation against JP Morgan in others matters were presented to Professor Fischel in the nine month evaluation process the trustees undertook.

Professor Fischel considered them, and he, ultimately, concluded that the settlement should be accepted. Part of his conclusion is based on the fact that the repurchase claims as Mr. Ingber told

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you are in five trusts time barred. You will not hear evidence from Ambac disputing that Justice Carpinello was unqualified to assess whether litigation claims were time barred, and nor will you hear any evidence that it was unreasonable for the trustees to rely on advice from a prestigious Judge to that effect.

And in Country-Wide2, the Court noted that it would be, "unreasonable to decline to enter into the settlement with the expectation of obtaining a much greater judgment after years of litigation," when there was no prospect of doing so.

The evidence here establishes that it would have been unreasonable for the trustees to reject the claims, the settlement for those five trusts, and the only thing Ambac really has to point to are its encoit assertions about servicing claims, claims it never mentioned in its pre-settlement correspondence with the trustees, and as to every single trust as to which Ambac has lodged an objection, no other certificate holder has objected.

Volume II of the exhibits, Exhibit 20 at Schedule P is Professor Fischel's compilation of the holdings of the objectors who support the settlement, and those that oppose. When you review that

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information, you will see that the settlement was actively supported not only by our clients, but by other investors not in our group, and that in every instance, save one, the investors supporting the settlement have a larger interest than Ambac, and as to all of them, Professor Fischel recommended that the trustees accept the settlement, and though Ambac originally criticized the trustees for failing to act in the face of what it called an event of default, the argument has gotten much murkier today.

The Court asked the right question; are you contending that there was an event of default by the servicer, or the master servicer? And the conversation veered off into a discussion of the trustees' duties with regard to repurchase claims.

But, here's the key point;

Ambac, which has the means and ability to do so, has never itself sent a notice of an event of default on these trusts, never, and Ambac, though it has the means and ability to do so, chose not to direct and indemnify the trustees to reject the settlement for these eight trusts, even though it did direct on others.

So, what has Ambac done now?

Well, they've shifted ground. In the brief

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they filed 48 hours ago, they thrown up a bunch of new theories about alleged conflicts of interests on the part of the trustees' counsel. None of that was in their original stated objection, so the Court would be justified in ignoring it.

But, if the Court were to consider these new arguments, the facts and evidence the Court will hear again will not support it.

First, the assertion that our clients somehow created a conflict by pressing the trustees to accept the settlement; that's nonsense.

Of course, the clients, our clients having worked to achieve over four billion dollars in cash and servicing improvements to be implemented at JP Morgan's expense, and this independent servicing monitor pressed the trustees to accept it. They believed it is a good settlement. Are our clients working hard now to ensure it is finalized? Of course, they are.

Does that make the trustees conflicted as to the settlement? Of course not, no more than the trustees are rendered conflicted by the fact that Ambac opposes it and threatens to sue them if they accept.

The trustees have to do what is reasonable

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and in good faith, and in the best interest of the certificate holders, and in the evidence there is, "no indication that any trustee was acting in its self-interest, or the interest of JP Morgan, or rather than the interest of certificate holders." That's the language from Country-Wide2, and here, as in Country-Wide2 and Citigroup, the trustees' pre-settlement conduct, including Ambac's newly found exception report theory, are not released in the settlement agreement. They're simply not released, and the order for relief is limited strictly to lawsuits against the trustees. After the Court has -- based on the settlement, based on the settlement alone, and nothing more, if the Court finds that the trustee acted reasonably in good faith. Trustees are not receiving a penny of this settlement, and the indemnity provided by JP Morgan is not a conflict.

It's the indemnity of the trustees were otherwise entitled to under the pooling and servicing agreement.

So, what is left are the same scurrilous pattern of attacks on trustees' counsel that we saw in Country-Wide; the assertion that the trustees' counsel were somehow conflicted, and so disregarded their professional obligation to provide the trustees

with sound and independent advice.

But, here's the thing, your Honor; none of the trustees is here asserting that they settled this claim based on the advice of their counsel. The affidavits to a person attest to the fact that the trustees here seek review of a decision that they made in reliance upon and based upon the advice of their independent experts, including Professor Fischel, and Justice Carpinello.

That is the trustees' business judgment that is at issue here. They do not ask the Court to review the advice of their counsel.

Separately, Ambac's argument about the trustees claimed duty to seek legal advice misstates the law.

While the law gives the trustees a right to seek advice from independent experts, or lawyers in a matter that is outside their expertise, no Court has held they have an obligation to seek legal advice concerning a matter that is within their own knowledge and expertise.

And, finally, a trustees' decision to retain its long-time counsel was held in Country-Wide2 to be evidence of prudence, not evidence of a conflict.

There's simply no evidence of a conflict, so

throughout this proceeding, the standard the Court should apply is the standard established by the First Department;

The Court should grant the relief if it finds the trustees acted reasonably and in good faith.

One word about the bar order; leaving the trustees exposed to collateral litigation about the settlement after the Court has found that the trustees acted reasonably and in good faith is injurious to the certificate holders and the trusts. Each of the PSA's requires the trusts to provide and indemnity to the trustee if they are alleged to have acted, if they are sued for actions they undertook reasonably and in good faith, so if the Court does not grant the bar order, all of the settlement benefits, the cash, could be dissipated -- not all of it, of course, but significant quantities could be dissipated to defend the trustees for the good faith and reasonable actions the Court has found they undertook.

It is not only in the interest of trustees to have a bar order, and something they are entitled to in this Article 77 proceeding. After all, as the Court held in segregated account, the purpose of this proceeding to provide the trustees judicial

instruction before they take contested action, so that they cannot be sued afterward for having done so.

So, the trustees are entitled to it, but on behalf of the investors I represent, we want that bar order to be entered, so that trust assets are not dissipated defending claims arising from the trustees good faith exercise of their settlement decision, and it is a narrow and carefully limited order.

Based on the evidence that you have heard, and the evidence that you will hear in this proceeding, the trustees have met their burden of proof at the conclusion of this case, therefore, we will join them in asking the Court to enter the order for relief, so that the thousands of certificate holders, including Ambac, and W&L can receive the benefits of this settlement to which they are entitled, and if, as is true of W&L, they own certificates that are written off, there is no such entitlement, and there is no injury, and no valid objection.

Thank you, your Honor.

THE COURT: Thank you.

We will take a very brief recess of approximately five minutes.

MISS PATRICK: Your Honor, after the recess, should we be prepared to begin with Professor Fischel?

THE COURT: That's what I want to confer with my law clerk about.

MISS PATRICK: Thank you, your Honor.

(Brief recess taken.)

THE COURT: Thank you.

Back on the record.

My law clerk is going to meet with you in the next few minutes to discuss the order in which witnesses will be presented and some other issues.

I see from the last transcript from January 6th that the parties agreed to Direct testimony via affidavit. One of the things he'll discuss with you, for example, is whether there are going to be any objections to any of those affidavits. He will not discuss that with you at length, just enough so that I know what to expect when I hear from you on the record this afternoon, and issues of that sort, so I'm going to go off the record for the morning session, and we'll resume here at 2:15 sharp.

Thank you.

(Whereupon, luncheon recess was taken by all

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parties.)

THE COURT: On the record.

Good afternoon.

Is my understanding correct that the Petitioners intend to call Mr. Fischel as their first witness?

MISS PATRICK: That is correct, your Honor.

THE COURT: Is my further understanding correct that there is a threshold issue that the objector, or objectors wish to raise with respect to Mr. Fischel's testimony?

MR. CHANGE: That is correct, your Honor.

We wish to reiterate the motion in limine we made on January 6th.

THE COURT: Excuse me, before you do, Mr. Change, would you please note your appearance and state what your involvement is in this case?

MR. CHANG: Yes.

Vincent Chang, Wollmuth, Maher.

THE COURT: And you are -- well, Mr. Wollmuth's firm is counsel of record.

MR. CHANG: Yes.

THE COURT: What is the role of your law firm?

MR. CHANG: I'm with Mr. Wollmuth' firm.

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THE COURT: I didn't realize that.

I am going to make a disclosure to the parties, and that is that Mr. Chang and I have sat as members of the New York County Lawyers Association Justice Center Board for many years, and perhaps, we still do, although there hasn't been a meeting in some time. I think actually there maybe a conference call tomorrow. I don't believe that the rules of judicial ethics require me to make this disclosure. I always prefer to err on the side of caution in areas of judicial ethics.

Does anyone wish to be heard on this issue?

Let me just say, I didn't realize until I saw Mr. Chang today that he was, or his firm was involved in this case, but that is all I have to say about it.

Does anyone wish to be heard?

I'm not hearing anything, so we will proceed.

I will hear Ambac's issue.

MR. CHANG: Your Honor, I guess one threshold question is whether we should do our motion orally, or wait until after they have laid a foundation, or attempted to lay a foundation in their presentation.

I'm happy to do it now if that's your wish.

THE COURT: Well, I am not going to give any

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advisory opinions. I have had not had -- I believe I indicated in the last transcript that I was not going to have written motions in limine.

If you have a motion in limine, now is the time to put it on the record.

I have your letter, dated -- the parties' joint letter, dated January 4th. I can mark a clean copy of that into the record as Court's Exhibit I, and if there's anything further you wish to say in connection with this matter, you should put that on the record.

MR. CHANG: Yeah, I do have a fairly extensive presentation prepared, which I'm ready to make now if you so desire.

THE COURT: Well, I will hear ten minutes per side.

MR. CHANG: Okay.

THE COURT: Okay, off the record for a moment.

(Brief pause.)

THE COURT: Back on the record.

MR. CHANG: Your Honor, to reiterate some of points that Mr. Wollmuth raised in his opening, we've got an unusual situation here.

We've got an expert who is opining on the

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fairness and the good faith of a settlement, yet he admits that he's unable to opine, or unwilling to opine in a way on whether the considerations being provided for the settlement, i.e. the value of the claims that are being released, he's unable to opine what that valuation is. He says it's uncertain, and I would admit that on the record that he has in front of me, it is uncertain. That's because he didn't conduct the kind of inquiry that would be necessary to establish the requisite certainty. He doesn't call CoreLogic and get an analysis of all the loans. He didn't go through the files one by one as could have been done. He didn't call the investors to find out what their preferences were on the settlement. None of these thing were done, so yes, there is uncertainly. That uncertainly is of their choosing is what our argument is.

A situation is like this; say that you had an appraiser who was claiming there was uncertainty and couldn't value, he couldn't value what the value of a house was, but what he did was, he looked at what other houses had sold for, but he couldn't value those either he said. Would you hire that appraiser to say whether or not the price that was being paid for the house was fair, or unfair?

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I would think not.

But, what else is going on here is that they did hire him, and he came up with numbers, but he didn't say if those were the value of the comparable settlements, didn't say those were the valuations of the claims that were being released, and the simple fact that he could not come to a conclusion on either of those subjects, so which argue that he should be excluded on that ground.

A few other points to raise;

Mr. Fischel is, as Mr. Wollmuth mentioned, a hired gun who has been a notorious defender of notorious -- a defender of notorious defendants; such as, Charles Keating; Skilling, the President of Enron; Michael Milken, and the Courts said in other proceedings, have given no weight to Mr. Fischel's testimony.

For example, in en re Pfizer, which is a case that was in the Southern District May 21st, 2014, Judge Swing ruled that Fischel cited no research reference, or peer review information to support his analysis.

THE COURT: Excuse me, on an issue like that, if when the testimony is sought to be elicited you can show me that similar testimony was at issue

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in our cases, I will consider those cases. I am just not going to consider the cases in a vacuum.

MR. CHANG: Fair enough, your Honor.

What I'll do is, I'll show he doesn't meet the legal standard that was articulated in those cases.

THE COURT: Well, it depends. I don't know what you mean by the legal standards in those cases, and what the relevance of that is. We have our own legal standard in this case for the reliance on expert testimony, which I would venture to say was probably very different than the legal standards with respect to which testimony was being considered these other cases.

If you can show me correspondence when I hear what testimony is going to be sought to be elicited, I will consider the opinions of other Judges' findings in the testimony.

MR. CHANG: We're going to move on then, your Honor. I do have the testimony of other Judges.

THE COURT: Excuse me, finding the testimony unworthy of belief.

MR. CHANG: Sorry, your Honor.

I do have several other opinions of that fact, but let me just move on to other points here,

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and you know, the first point we would like to make is that he on opines that he subject matters on which he's not an expert.

He doesn't have a degree in economics, and he admits the settlement decision in this case, in any event, turns not on economics, but on business judgment. That's in his report at paragraph seventeen.

He conceded in his deposition that, among other things, his expertise not include the exercise of business judgment by RMBS trustees, does not include the valuation of litigation. Instead he tried to argue that his expertise that was being supplied here was on economic of principle agents relationships, but note that in his report itself as opposed to his deposition, there's no reference to principal agent issues, no citations on principle agent issues, and in any event, principle agent issues are irrelevant without contract analysis because contracts often control what the principle agent relationship is governed by as Mr. Fischel himself admits in some of the publications that he submitted in his attachment to his expert report.

Time after time, Mr. Fischel admits that he cannot come to any conclusions on critical legal

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issues relating to the contract, to damages issues, to the valuation of the litigation.

Where did he get the information for these propositions from? He got them all from counsel for the trustees, and as Mr. Wollmuth pointed out in his opening, counsel for the trustees are conflicted in several senses.

But, in any event, regardless of whether it's conflicted --

THE COURT: I'm sorry, Mr. Chang, I really must ask you to slow down.

MR. CHANG: I'm sorry, I was just so conscious of the limited time.

THE COURT: I know, but if you want me to be able to follow what you're saying, you have to speak at a normal speed.

MR. CHANG: Yeah. Sorry, I will. I will do so.

There is no independent legal opinion here on things like damages, no independent legal opinion here on construction of the contract, and no legal opinion on the value of the claims, so these are huge issues on which there's a big vacuum.

On that ground alone, we don't think that his opinion is probative of anything.

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If you look at his deposition transcript at 133, he admits many of the things that are lacking.

He says my calculation of loans no matter what it is by itself does not tell you what recoverable tangible damages are. It doesn't tell you whether or not liability can be established. It does not distinguish between servicer conduct, and other possible cause of a loss, does not tell you even if something servicers did was responsible for a loss, whether that conduct was legally actionable, as I said, under the relevant contractual and legal standards, so we submit that any opinion on the principle agent relationship is devoid of content because it only has content within the context of the contract and damages analysis, and that cannot be done by Mr. Fischel, and at least wasn't done by him.

Some of the other methodological problems; as Mr. Wollmuth mentioned, Mr. Fischel's opinion did assume there had been no event of default, and we showed in the opening that an event of default had occurred, and had occurred many times, and yet Mr. Fischel's opinion did not consider that possibility.

His opinion also suffers from a flawed legal assumption that a trustee has no duty to act in the absence of a direction to act, and that is simply

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refuted by, for example, Section 2.02 of some of the PSA's, and the Ambac decision in the First Department, which is 121 AD 3rd at 519.

A few other issues;

The payment; if you look at the comparable settlement, the comparable settlements, of course, are unreliably indicated as anything, unless there's a very close analysis of the claims that were being released in those comparable settlements. That just wasn't done here. No valuation was made.

Reliance on certificate prices; that's in his report at paragraph 66 to 67, but he made no attempt to demonstrate that the certificate market was an efficient market during the relevant periods, and he doesn't make that determination. There is absolutely no value to that calculation.

He failed to do any sort of survey of note holders to gauge whether or not they were in favor of the settlement.

He failed to sample loan files to determine the valuation of those loan files and the damage claims associated with them, so over all, we think there are a lot of holes. We can establish them more in our cross-examination, and we would like the opportunity if your Honor would indulge us to,

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perhaps, put in another letter, or a brief after all the testimony is in to summarize our further objections to him.

THE COURT: Mr. Chang, do I understand when you met with my law clerk during the time before we broke this morning that you characterized this motion in limine as a Frye motion?

(Whereupon, Senior Court Reporter Kathy Jones resumed.)

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MR. CHANG: Yes, that is how we characterized it.

THE COURT: Is there anything further?

MR. CHANG: Nothing at this time.

THE COURT: Thank you.

Mr. Rollin, is it Rollin or Rollins?

MR. ROLLIN: It's Rollin with no S, your Honor.

THE COURT: Mr. Rollin, do you wish to be heard on this motion?

MR. ROLLIN: I do not.

THE COURT: Mr. Ingber?

MR. INGBER: Thank you, your Honor.

I will be brief and then if Ms. Patrick wants to weigh in, she can certainly do so.

All of the argument that Mr. Chang just made he can make at the end of the trial and he can argue that and we think they are without merit.

He can argue that Professor Fischel was not qualified to give opinions that he gave and he can argue that it was unreasonable for the trustees to rely on Professor Fischel. He just laid out the cross-examination outline. He can take Professor Fischel through that during the cross-examination.

Professor Fischel is testifying here because he

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gave opinions to the trustees. He's testifying factually about the work that he did, the course of dealing with the trustee and the opinions that he gave and the basis for those opinions. He is not offering those opinions to the Court in the sense that a litigation expert oftentimes takes the stand and offers opinions to the Court. He's testifying factually about the opinions that he gave to the trustee.

Your Honor will have a chance to hear Professor Fischel, to hear him walk through, as I said in my opening, to hear him walk through everything from the beginning of his engagement to the end including the opinions that he offered to the trustees. He explains how those opinions are supported.

It would be certainly premature at this point to rule on what is one of the key issues in the case which is whether the trustees were reasonable or acted in good faith in relying upon the report of Professor Fischel.

It's similar to what happened in the Countywide matter. In the Countrywide matter, there was an expert who was proffered to give opinions to the Court about the reasonableness of the settlement. That was Professor Fischel in the Countrywide matter.

We took the Court through his qualifications. There were no challenges to his qualifications. There was

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no challenge to Professor Fischel's ability to evaluate the reasonableness of that eight and a half billion dollar settlement.

We also called the experts who provided advice to the trustees in connection with the trustees' decision to enter into the settlement and those experts were -- they didn't have to go through this Frye or Daubert process where they were qualified for the Court as an expert. They testified about the work that they did. The objectors in that case argued at the end that those experts weren't qualified to give the opinions that they gave on which the trustees relied and the Court ultimately disagreed and it said, no, that it was perfectly appropriate for the Court to rely on those opinions and that's for your Honor to determine.

THE COURT: What is the purpose for which you are offering Professor Fischel's testimony at this hearing?

MR. INGBER: In this hearing, we are calling Fischel, Professor Fischel because he was one of the experts who provided an opinion to the trustees concerning the reasonableness of the settlement on a trust by trust basis and loan group by loan group basis. So, we are calling Professor Fischel to describe the process from beginning to end from his engagement through the issuance

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of his opinions and to describe the opinions that he gave to the trustees.

THE COURT: And you are making a distinction then as to the offer of his testimony at Countrywide and the offer here?

MR. INGBER: I'm making a distinction. I mean, the opinions that he gave are similar opinions. He had to apply his --

THE COURT: But you are offering them for different purposes?

MR. INGBER: Yeah, absolutely.

THE COURT: There you offered the opinions to the Court as to the reasonableness of the settlement. You are not offering his testimony for that purpose in this case. You are offering it only for the purpose for which I imagine you also offered it in Countywide, to show what opinions he gave to the trustee as to the reasonableness of the settlements.

Do I have that right?

MR. INGBER: So, yes, we are offering his opinions in this case to show the -- what opinions he gave to the trustee.

In the Countywide case, he was offering opinions to the Court about the reasonableness of the settlement.

THE COURT: Well, you certainly refined your

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thinking since that trial, haven't you?

MR. INGBER: No. I don't --

THE COURT: I think there is a lot of creative thinking on both sides in the wake of the Countywide hearing. I'm hearing it over and over again.

MR. INGBER: Well, your Honor, I'll just address that.

Professor Fischel just played a different role because there were other experts hired to advise the trustee in connection with the settlement decision in that case.

THE COURT: But this time you've decided you don't need to offer an expert to give the expert's opinions to the Court for the Court's benefit as to the reasonableness of the settlement. Let's characterize it for what it is.

MR. INGBER: Absolutely. Here is why.

THE COURT: I know why. It's because the standard that was articulated in Countywide. I just wish you would say what is actually happening here.

MR. INGBER: Thank you, your Honor. That's exactly what I'm going to say.

In the Countywide case, there was a dispute about what the standard was and whether we had to establish in that case whether this settlement was fair,

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was reasonable by some objective standard. We argued in that case that the process is what's important. Did the trustees act in good faith and reasonably in entering into that eight and a half billion dollar settlement. The objectors in that case disagreed.

I think we have color, much more color on what the standard is. So, I don't even think the objectors are going to present evidence in this case and that there was a different number that would have been more reasonable. They have no evidence that they can present to your Honor to show that the four and a half or so billion dollars was unreasonable.

So, the purpose of this Article 77 proceeding is in part for the trustees to come in and demonstrate that they acted in good faith and reasonably -- in good faith and reasonably in entering into this settlement.

THE COURT: Yes, but they still have to have acted within the bounds of reasonable judgment.

MR. INGBER: Of course.

THE COURT: And I will not go with you to the extent that you are going down the road that the merits are completely irrelevant.

MR. INGBER: No.

THE COURT: I'm not going to characterize it beyond that because it's a very sensitive issue.

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MR. INGBER: Sure. I think the merits are bathed into Professor Fischel's opinion that he offered to the trustees and that is relevant to the trustees' consideration.

The trustees -- the assignment to Professor Fischel was to evaluate the reasonableness of the settlement. He wasn't opining on the reasonableness of the process. That's something for your Honor to consider. He was analyzing, evaluating the reasonableness of the settlement and of course there are merits, determinations that go into that. So, the trustee was of course considering the reasonableness of the settlement in relying upon Professor Fischel's opinion.

THE COURT: Let's make a little time for Ms. Patrick to weigh in on the issue.

MR. INGBER: Sure.

MS. PATRICK: Your Honor, to answer the question the Court asked is this a Frye issue, it is not.

As the Court noted, the standard here is different than the standard for scientific evidence in the cases Mr. Chang cited. No Court has ruled that a trustee can only seek expert advice where the expert can for example cite a peer review study. Instead, as this Court recognized in Citigroup based on the ruling in Countywide, the issue is did the trustees -- was there trustee

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reliance on plausible reports and advice of outside experts. That is significantly probative of prudence. If a trustee has selected counsel prudently and in good faith and has relied on plausible advice, that is probative of prudence and that is a different issue and standard than the standard Frye.

Here in order to assess whether the trustees selected Professor Fischel prudently, formed a reasonable decision that he could assist them in the work they were asked to do and receive plausible reports, the Court needs to hear what Professor Fischel did and why he is qualified.

So, the suggestion that a trustee can only consider the advice of an expert to support its reasonable decision making if it assures itself first that if its discretion were challenged it can demonstrate the expert would qualify as a judicial expert in a Frye test is simply wrong. That is not the law.

The issue is was he reasonably qualified, did the trustees form a reasonable view and were his opinions plausible. On that standard, the Frye motion is misplaced and Professor Fischel should be permitted to testify.

THE COURT: I am prepared to rule at this time.

I have adhered to my ruling at the pretrial conference on January 6 that the issue of whether

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Professor Fischel is qualified to give opinions on certain subject matter areas is an issue that must be decided at the hearing on the foundation laid at the hearing for the various opinions. I understand that he is not being offered at this hearing to give his opinion to the Court as to the reasonableness of the settlement but rather to testify as to the opinions he gave to the trustees as to the reasonableness of the settlement. Foundation must nevertheless be laid at this hearing for him having given those opinions to the trustees.

Now, I will expect that to be done at this hearing. We will not wait until the end of the trial.

If there is a claim of lack of foundation, I will hear it when the petitioners seek to qualify him, seek to have a determination that he was qualified to offer these opinions to the trustees.

As to the Frye matter, I am entirely unpersuaded that the testimony of Professor Fischel presents a Frye issue. New York courts apply this Frye standard in determining the reliability of novel scientific evidence. The standard requires a determination of whether the "accepted techniques when properly performed generate results accepted as reliable within the scientific community generally." People v Wesley, 83 New York 2d 417, 422, 1994, and Parker v Mobile Oil Corp., 67, New

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York 3d 434, 446, 2006. The argument denied 8 New York 3d 828 2007.

The testimony is not being offered for a purpose for which a Frye determination would be required.

We are ready to proceed.

Mr. Ingber, you may call the petitioner's first witness.

MR. INGBER: Thank you, your Honor.

The petitioner calls Professor Daniel Fischel.

Your Honor, I have a binder of a combination of exhibits to Professor Fischel's reports that Professor Fischel may refer to and there are demonstratives that we prepared for purposes of this examination and I've given notice -- I've sent the demonstratives to the objectors. I haven't heard any objection to the demonstratives.

With your permission, I would like to hand to your Honor a binder of the documents that we intend to use with Professor Fischel. I'll give you a binder.

THE COURT: Is there any objection?

MR. CHANG: No objection, your Honor.

MR. ROLLIN: None for us.

THE COURT: You have also received the binder?

MR. ROLLIN: I believe we have.

MR. INGBER: I've sent the demonstratives. The binder includes not just demonstratives but exhibits to

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Professor Fischel.

D A N I E L R. F I S C H E L

called as a witness on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

COURT CLERK: State your full name and business address for the record.

THE WITNESS: My name is Daniel Robert Fischel, F-I-S-C-H-E-L and my business address is 332 South Michigan Avenue, Chicago, Illinois, 60604.

THE COURT: Thank you.

Good afternoon.

THE WITNESS: Good afternoon, your Honor.

THE COURT: You may inquire.

MR. INGBER: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. INGBER:

Q Good afternoon, Professor Fischel.

A Good afternoon.

Q Professor, can you please tell the Court where you're employed?

A I'm employed in two places, an economics consulting firm by the name of Compass Lexecon and I'm also employed at the University of Chicago.

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Q What is Compass Lexecon?

A As I said, Compass Lexecon is an economics consulting firm that specializes primarily in the application of economics to various legal and regulatory disputes. We have I think now 17 offices all over the world. We have personnel that are primarily economists and people with related training, computer programmers, some accountants. We also have affiliates with leading academics around the world -- affiliations with leading academics around the world including several Nobel Peace Prize winners and other imminent authorities in their respective fields.

Q Can you give us a sense of Compass Lexecon's clients?

A Yes. We have a variety of different clients. We have very close relationships with the States Department of Justice and a number of other agencies of the federal government, state and local governments as well. Also companies, law firms, investors, non-profit groups, pretty much the gamut.

Q What specifically do you do at Compass Lexecon?

A I do two things. I am the chairman, the president of the firm. So, in some sense I'm responsible for the entire firm.

I also personally have a very active consulting practice in my area of expertise which primarily relates to various aspects of the economics of financial markets.

Q Professor Fischel, you also mentioned the University

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of Chicago. What's your current position at the University of Chicago?

A Currently, I'm the Lee and Brena professor of law and business emeritus at the University of Chicago Law School.

Q Have you previously held any other academic positions there?

A Yes. Well, obviously before I was emeritus, I held the same chair at the University of Chicago Law School.

I've also served as a Dean of the University of Chicago Law School. I also had an appointment for a number of years at the graduate school of business at the University of Chicago. I also for many years was director of the law and economics program at the university which is a university wide program as the name suggests devoted to the intersection between law and economics.

Q Can you describe your educational background please?

A Yes. I grew up in New York. I went to Bronx High School of Science. Then I went to --

THE COURT: And so did I.

MR. INGBER: Well, then, he must be qualified.

A Then I went to Cornell University where I got a Bachelor's degree in history and with a minor in economics. Then I spent a couple of years going to graduate school in history. I went to Brown University.

After that I went to university of Chicago at the law

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school.

Q What did you do after law school?

A After law school I served two years as a law clerk first for the Honorable Thomas Fairchild who was then the Chief Judge of the Seventh Circuit Court of Appeals in Chicago. And then I had the privilege of serving as a law clerk to the Associate Justice Potter Stewart of the United States Supreme Court. Then I practiced law for less than a year.

Then I started my academic career originally at Northwestern University where I was there for a couple of years. Then I went back to the University of Chicago and I've also gone back a couple of times to Northwestern since but always much returned to the University of Chicago.

Q And what types of courses have you taught as a professor either at the University of Chicago or Northwestern?

A I've taught a number of different courses but I would say primarily courses in business organizations, corporate finance and a variety of advance courses in law and economics particularly ones focusing on financial markets.

I've also took courses in the business school at Chicago when I had my appointment there and some joint courses even when I wasn't a professor -- didn't have an appointment as a professor at the business school.

Q Did those business school classes cover the same sorts of topics that you just described?

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A Yes.

Q Professor, have you taught any courses that deal with the issues arising in this case?

A Yes. A number of the subjects covered in my courses deal directly with the matters that I investigated in this case, the economics of voting particularly when votes are connected to economic interests and a contrast to let's say democratic voting, one person one vote, voting rule.

I've taught about the economics of indemnification. A number of my courses deal with valuation.

Also, as was alluded to in the argument that I just heard, I taught extensively about various aspects of different types of principal agent relationships, the relationship -- the difference between the economics of principal-agent relationships in different contexts and how those relationships can be modified by contrast.

Q Professor, are you a member of any professional organizations?

A Yes. I'm a member of the of American Economics Association and the American Finance Association.

Q Do you have any other professional affiliations?

A I am a governing member of the Brena Freeman Institute at the University of Chicago and former member of various organizations as well.

Q Let's discuss publications. Have you authored any

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publications?

A Yes. I published several books and I think approximately 50 articles in leading legal and economics journals.

Q I'm not going to ask you to run through each of those 50 publications but can you give the Court a sense of what those publications covered?

THE COURT: Excuse me. Where is the CV in the record or is it not?

MR. INGBER: I believe it's attached to the report, Professor Fischel's report. It's at the end of his report and I'm happy to hand the report up to your Honor right now. I plan to offer it into evidence at some point.

THE COURT: Is it not included in one of your binders?

MR. INGBER: I am sorry. It's Trustees' Exhibit 20 is the first report and then the supplemental report is Trustees' Exhibit 22 and Professor Fischel's CV is at the end of his written report and before the exhibits start.

THE COURT: Thank you.

MR. INGBER: If you would like copies of the report, your Honor, I have them right here.

THE COURT: We can always use an extra copy of the report.

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Let's make sure counsel are in the habit of showing each other what's being handed up.

MR. CHANG: We have.

THE COURT: I assume that if you plan to hand something up, either side, that you would have confirmed in advance and I will hear if there is any objection without having to ask.

MR. INGBER: Thank you, your Honor.

May I proceed?

THE COURT: Please.

MR. INGBER: Thank you.

Q So, I was saying I'm not going to force you to go through each and every one of your 50 articles and describe what they were about but if you can just give the Court -- if you can just give the Court a sense of the topics that were covered in the articles?

A Very similar subjects. I've written about the economics of voting, the role of indemnification and assurance. I've written extensively on valuation including statistical methodology for analyzing the affects of events and information on prices. I've written again extensively on different types of principal-agent relationships. I've written about trust relationships and how those trust relationships relate to the general economics of principal-agent relationships. I've also written about the meaning of the duty to be informed, the legal

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duty to be informed in a situation where gathering more information is costly both because of the direct cost of getting additional information as well as the opportunity cost of what you might lose by getting additional information.

So that generally subject of economics of information in connectin with the legal duty to be informed has been something I've both taught about and written about.

Q Have any of your books and articles been cited by courts?

A Yes, hundreds of times including numerous times by the United States Supreme Court and I think courts of every level at the federal and state level.

Q And you may have covered this in a previous answer but just to make sure the record is clear, do any of your books or articles specifically cover the types of issues arising in this case?

(Continued on next page)

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A Yes.

I think all the subjects that I described a minute ago arise in one way other another in connection with the work that I've done in this case, and they're all part of the academic work, the scholarship that I've done.

Q Has any of your research covered issues such as those relating to event studies?

A Yes.

I wrote an early article called The Use of Modern Finance Theory in Securities Fraud Litigation, which was a discussion of the use of regression analysis in event studies in litigation.

That actually is part of my analysis in this case that I'm going to talk about.

It's also one of the articles that was cited favorably by the United States Supreme Court, and I've written about it in other articles, as well.

Q Is there any other research that you have performed that you think is particularly relevant to the issues arising in this case relating to the settlements?

A Well, I think really all the different subjects that I mention, you know, maybe if I had to prioritize them, I'd say they're all relevant, but because this is a settlement decision, it directly implicates the economics

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of information and what it means to be sufficiently informed to make a reasonable business decision as opposed to the alternative of either giving up, in effect, a bird in the hand, the settlement that's presented to today, and taking the risk of gathering more information, which is costly, expensive, and may result in losing the bird in the hand as the settlement offer, so present, in many cases it might be worth to do it, but in order to analyze whether it's worth it or not, you have to analyze the full costs and benefits.

That's what I've written about in my writing.

Q Have you been invited to lecture to any types of audiences?

A Yes.

I've lectured extensively to various groups in conferences of Federal and State Judges, to business groups, legal groups.

I've talked earlier this year, gave a talk at the Bar Association of the City of New York.

I've spoken at many of the major universities in the country, and various more informal gatherings.

Q Professor, have you ever served as consultant on economic issues to the Government, or to any regulatory agents?

A Yes, many, many times. I've served as a

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consultants and/or expert witness to, certainly, the United States Department of Justice that I mentioned, the Securities and Exchange Commission, National Association of Securities Dealers, the Federal Trade Commission, all the banking regulatory agencies; New York Stock Exchange, the National Association of Securities Dealers, some of the Futures and Options Exchanges, as well.

There may be others, but that's what comes to mind.

Q You previously testified as an expert witness?

A Yes, many times.

Q Approximately, how many?

A Oh, if I limit myself to trials and/or I guess arbitrations like trials, maybe 70 times over a 30-year period.

Q Are there any instances in which you have not been qualified as an expert to give testimony?

A No, never.

Q Have you ever served as an expert in a judicial proceeding in which a settlement was being proposed and reviewed by a Court?

A Let me just modify my answer because I don't want to overstate for the Court;

There's one case that is actually currently on appeal in the Second Circuit. Again, I think it

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was mentioned in the argument, the Pfizer case, where a Court ruled that my testimony was inadmissible under doubt, but not for qualification reasons, but because in the Court's opinion, I did not adequately explain the calculation that I did modifying my original opinion after the Court's summary judgment opinion. That was argued in the Second Circuit eight months ago, will come down any day, but other than that, with that qualification, I would say.

And, again, that was not a ruling on qualifications.

So, in terms of qualifications, being an expert, I was qualified in every single proceeding I've ever appeared in.

Q Thank you.

So, back to the -- thank you for that clarification.

Back to the question that I had asked; that is, whether you served as an expert in a judicial proceeding in which a settlement was being proposed and reviewed by a Court.

A Yes.

Well, again, Country-Wide proceeding has gotten a lot of attention. I was an expert in that proceeding, and was qualified there.

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There was also a case several years ago involving a class action settlement between a class and AIG. After the settlement was entered into, the settlement was challenged if I remember correctly by the New York Attorney General on the ground that one of the experts in the proceeding on which his analysis on which the settlement was based had some serious errors, and that was a basis for invalidating the settlement. I think the errors were pretty much conceded.

And then, I was retained by the parties at the suggestion of the Court to advise the Court as to whether or not the methodological errors by the expert were sufficient to invalidate the settlement, and I analyzed the errors, again, the admitted errors, and the affect of those errors on the value of the settlement, submitted a report, concluded that the errors were not sufficient to invalidated the settlement.

Ultimately, the Court agreed in part based on the report that I submitted.

I've also had a lot of other experience with settlements in various forms.

I was retained by the United States Department of Justice after the World Trade Center

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disaster here in New York to work with the Department of Justice to come up with valuation formulas to propose to victims of the World Trade Center in settlement of their potential claims as an alternative to litigation, so I did that.

We're currently involved advising trustees in other proceedings as to whether or not particular settlements are reasonable, or what a reasonable settlement range would be.

And then, I would just say more generally, I've been retained by insurance companies to analyze whether settlements that they've been asked to reimburse particular parties, or litigants, whether the settlements were reasonable. I've submitted reports in that area.

And then, just more informally, I'm asked all the time in connection with the work that we do whether particular settlement offers that are either made, or proposed to be made, depending on which clients retained us, were numbers based on the context of the matter whether were ones that I would feel comfortable -- whether or not I would feel comfortable with, advise in favor of, or advise against.

Q Thank you. Have you done work relating to

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mortgage bank securities for residential mortgage loans in other cases?

A Yes, extensively. Again, there's the Country-Wide case. Obviously, I was also --

Q And, Professor, let me just interrupt. I know we talked a lot about the Country-Wide case, and I've described for the Court the work that you performed in Country-Wide, but why don't you describe the work that you did in Country-Wide?

A Yeah, and actually, it's a fair question because there are a lot of different Country-Wide cases, and I'm using Country-Wide as a shorthand to the previous Article 77 proceeding that I was involved in.

I was, as I think I heard in the argument, I was retained there, we were retained, and I was retained as an expert there after the settlement was entered into, so I had a different role than the role that I was asked to perform here, and there, there were various allegations; such as, the allegation that I know has recently been made in this case about various alleged conflicts of interest that the trustee and the law firms representing the trustee had.

There were claims about comparable settlements, and generally, claims about the

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inadequacy of the settlement in light of the alleged potential recovery.

I analyzed all those issues, testified as an expert witness there, and the Court heard my testimony and reached the conclusion that it did, but apart from that, I've had many other cases involving mortgage backed securities.

I've been an expert a number of years ago for the, again, the United States Department of Justice, in a whole series of cases following the United States Supreme Court's decision in United States versus Winstar where all those cases involved analyzing the investment characteristics of mortgage backed securities as an investment alternative, so I testified extensively about that.

Currently, a witness in another major case involving claims about modifications of mortgage backed securities, and the disclosures that were made in connection with those modifications.

I've been involved in the litigation brought by the FHFA against a whole series of different financial institutions. That has been a major engagement for our firm, which all those cases involve the performance of mortgage backed securities, the relationship between defective,

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alleged defective underwriting in the housing crisis, and collapse of the value of mortgage loans, and again, also involved in a number of different matters, currently, involving retention by trustees to analyze issues relating to potential settlements of mortgage backed securities claims.

Q Now, can you describe your experience in matters involving the entities in this case, including JP Morgan?

A I've had a lot of experience in matters involving JP Morgan. I've been a witness in major litigation against JP Morgan.

I've also been a witness in major litigation where we and I were retained on behalf of JP Morgan. That's generally true with many of the entities involved.

I mentioned the FHFA, which is one of our major current clients.

We've also had many matters adverse to the FHFA where I have been involved. It's true for I believe your client, the Bank of New York, worked adversely to the Bank of New York, as well as retained by the Bank of New York Mellon.

It's also true for many of the other Institutional Investors, besides Fannie and Freddie. Many of them are involved in major litigation and we

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tend to be involved either on the same side or on the opposite side.

Q Okay, thank you, Professor.

I think I'd like to move on now to your retention in this case and your specific assignment. When were you first contacted in this matter?

A I think sometime in late 2013. I think maybe in the November, '13 if I remember correctly.

Q Okay. And what happened after you were first contacted?

A I think we were invited to come to New York to attend a meeting with the trustees, and then shortly thereafter, invited again to come to New York and make a presentation to the trustees as to what we thought the -- excuse me, what we thought the issues were that we could analyze in connection with providing guidance, or advice to the trustees on the reasonableness of the potential settlement.

Q And at those two meetings, did the trustees and their counsel have an opportunity to ask you questions?

A Yes.

Q About anything ranging from your qualifications to your approach to the assignments?

A Yes. They were very well attended meetings. There were a lot of representatives of different trustees

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that were there, and in both meetings there was extensive give and take about our ideas, questions about backing qualifications. I think it's fair to say we understood those meetings to be something of a competitive situation where the trustees were deciding who to hire. I don't think we were the only firm that was interviewed, if I remember correctly, and so I think there were probing questions about background qualifications, approach really, anything that was deemed to be relevant by the representatives of the trustees who were there.

Q And at those meetings, did the trustees ever express a view on the merits of the proposed settlement?

A No. Quite the opposite.

The one thing that was emphasized over and over again by the representatives of the trustees who were there was that the trustees had no bias one way or the other in terms of approving the settlement, or not approving the settlement in whole, or in part, and that they wanted a completely objective analysis without any predetermined outcome in terms of what the trustee -- the outcome the trustees would like to see happen.

Q What about after those meetings, did the trustees ever, or their counsel ever express to you any view on the merits of the proposed settlement?

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A No.

Through out, the refrain that was emphasized over, and over, and over again was that the trustees just wanted our objective opinion, and did not have a view one way or the other in terms of what outcome they, themselves, would prefer, or would like to see happen.

Q So, about when you were engaged, formally engaged?

A I think shortly after the second meeting we made, as I recall, a presentation. We had a set of materials that -- particularly, at the second meeting that we provided and discussed, and I think within a week or two after that second meeting, I think we were formally engaged.

THE COURT: I hope it included a PowerPoint.

MR. INGBER: We didn't hold it against them.

THE WITNESS: I actually don't remember.

Q And, Professor Fischel, what did you understand to be your assignment in the case?

A Oh --

Q Or in the matter?

A To analyze the evidence, economic evidence and related evidence that was within our areas of expertise, to provide objective guidance to the trustees for their

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consideration in terms of their ultimate decision about whether or not to accept the settlement in whole or in part.

Q Was that on an trust basis?

A It was originally on a trust basis, and then we were subsequently asked to supplement our analysis by performing the analysis not just on the trust basis, but on an analysis going -- supporting loan group by supporting loan group.

Q What is a supporting loan group for the benefit of the Court?

A Trusts, generally, have different loan groups, and sort of different levels of priority of certificate holders. Their rights are typically supported by one or more of the loan groups in a particular trust.

Q All right. So, after you were retained, Professor, what type of interaction did you and your team have with the trustees?

A You know, I'd say we had fairly continuous interaction. There was a lot of information that we were able to get on our own because of our own experience and familiarity with the issues that were involved, but we also needed a lot of information both from the trustees and from JP Morgan, as well, and so I would say, we had continual interaction about information.

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And then, I would say as the process proceeded, we had information about deadlines, interaction with deadlines, possible extensions of deadlines, and also some, I would say, informal progress reports about where we were, and what we thought was possible within certain time tables, particularly before there were extensions.

Q Did you get cooperation from the trustees in obtaining the information that you were looking for?

A Yes.

The trustees pledged at the outset that they would make themselves available to provide information that we needed, and also to ensure that we would have access to JP Morgan, to be able to get information from JP Morgan, as well.

Q Did you or your team have direct dealings, direct interactions with JP Morgan?

A Yes.

We had, and again, when I say we, I'm not suggesting that I, myself, was on every single call with either the trustees, or JP Morgan because we had a team of people working on it, but there was information that we just needed that we couldn't get any other place, but from JP Morgan, and so we requested that information, and for the most part, we

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got it.

Q And can you describe, perhaps, at a high level the type of information that you needed and obtained from JP Morgan?

A Well, for example, we wanted to know which loans were the subject of repurchase claims.

We were also interested in the litigation that JP Morgan had with the GSE's, and we wanted to know the loan characteristics of the loans that were repurchased by the GSE's, and that information isn't available any other place, but from JP Morgan, so we requested it.

We requested it, and we got it.

Q What other types of information did you rely on in forming your opinions?

A Well, there's a voluminous amount of information. I couldn't begin to describe it all, but generally speaking, from the trustees we needed governing documents. We needed information about tolling agreements. We needed guidance on the statute of limitations. We needed information on the holdings of supporters of the settlement, and the opposition to the settlement.

We also on our own were able to collect information about other settlements, to do an

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analysis of market evidence about how investors in JPM, and also certificate holders, whether the news about the settlement either was viewed favorably or unfavorably as sort of a market test of the reasonableness of the settlement.

And we also, I would say, just generally, needed just a lot of detail about the trusts, the different supporting loan groups, the different certificate holders, their identities, etc., and we were able to collect all of that information.

Q I know this is difficult, but can you try to give the Court a sense of the volume of all of the material that you received and considered?

A Yeah.

As I said, between the different sources what we got from the trustees from we got from JPM, what we collected on our own, I think we tried to compile a list. I think all the entries, if I remember correctly, was I think over 30 pages single-spaced, so a lot of information.

Q Okay. Now, Professor, who made the decision about what information should be collected?

A You know, I'd say it was a -- it was a combination. Certainly, a lot of the background information was just provided to us by the trustees, but

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in terms of what information we needed to do our analysis, I think without exception we were the ones that asked for particular information, and as I said, typically got it.

Q Do you believe that you and your team had enough information to be able to make a recommendation about the settlement on a trust and loan group level?

A Yes.

Again, obviously, because it's a settlement, and this is a big part of my report dealt with the subject, you're dealing with very incomplete information, and that's true in all settlements, but in terms of forming an opinion about the reasonableness of the settlement on a trust by trust basis, and on an SLG by SLG basis, I felt we did have enough information as a result of the analysis that we performed to make a recommendation to the trustees.

Q And did you think you had enough time to complete your analysis?

A Initially, I was nervous about it, but as a result of several extensions that were negotiated, I did feel we had enough time.

Q Professor, did you meet again with the trustees after your initial set of meetings?

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A Yes. I think the next face-to-face meeting that we had with the trustees was after we sent a preliminary draft of our initial report to the trustees. We had another face-to-face meeting in New York.

Q What was the purpose of that meeting?

A I think to present our analysis report and preliminary conclusions to the trustees for the trustees to understand what our approach was, what our conclusions were, at least on a preliminary basis, and allow the trustees to not just to hear it, but to probe it, to ask questions, and that's exactly what happened.

Q I think you mentioned the supplemental report at some point in your testimony.

Why did you submit a supplemental report to the trustees?

A Oh, because we were told that the payments under the settlement agreement were based on the SLG level as opposed to the trust level, and therefore, in addition to our analysis on the trust level, it was desirable for the trustees, so they would be as informed as they felt they needed to be to get a recommendation from us on the SLG level, as well.

THE COURT: What is SLG level?

THE WITNESS: I'm sorry, your Honor; supporting loan group.

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THE COURT: Thank you.

THE WITNESS: It's in every trust.

Not every, but trusts generally have more than one supporting loan group as part of the trust.

Q Professor, did you do any work after you submitted your final report and supplemental report to the trustees?

A Some. We were asked a couple I think loose-end questions about what our opinions were about the reasonableness of the settlement with a couple of trusts, or supporting loan groups that were left over where there was some dispute about, so we did that.

And then, obviously, preparing for deposition and trial.

(Whereupon, Senior Court Reporter Kathy Jones resumed.)

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Q Before we get into the substance of your opinions, Professor, would it be helpful for you to have a copy of the report and the supplemental report?

A Yes, if it's not too much trouble, I think it would.

MR. INGBER: May I approach, your Honor?

THE COURT: Let's just either have these marked and identified with specificity for the record exactly what is being handed up.

MR. INGBER: Sure.

We are handing up Trustee's Exhibit 20 which is the expert report of Daniel R. Fischel and Trustee's Exhibit 22 which is the supplemental expert report of Daniel R. Fischel.

THE COURT: Professor, I would just -- withdrawn. I don't think we're going to need to further identify these.

You can continue with your questioning.

MR. INGBER: We're going to get into the substance of the opinion, shortly.

So, your Honor, the Trustees petitioner would offer into evidence Trustee Exhibit 20 and Trustee Exhibit 22.

MR. CHANG: Your Honor, we would object to the introduction in evidence of the reports. First of all,

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they are hearsay. Secondly, we think that they would contravene the ruling you just made that the opinions have to be established -- foundation for them has to be established on an issue-by-issue basis and the report itself can only be used for the fact that it was introduced as something the trustee considered, not for the truth of the matters within the document.

THE COURT: Mr. Rollin, do you have a position on these reports?

MR. ROLLIN: Your Honor, we certainly have the position that they should be admitted for what was provided to the trustee in terms of their notice. We don't have a position at this time with respect to the truth of the matters asserted.

MR. INGBER: Your Honor, I agree with Mr. Rollin. They should be offered not as hearsay but to show what the trustees received from Professor Fischel.

THE COURT: They will be admitted into evidence for that limited purpose.

MR. CHANG: Thank you, your Honor.

(Trustee's Exhibits 20 and 22 deemed marked in evidence)

THE COURT: Now, we just have an issue with respect to getting exhibits marked. You may have to confine this procedure as time goes by but we don't need

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to take the time right now.

I will ask counsel to keep running lists of documents which have been marked into evidence to compare the list periodically throughout this hearing to make sure there are no disputes and to present them to me periodically.

Right now 20 and 22 will be deemed marked into evidence for the limited purpose stated on the record.

MR. INGBER: Thank you, your Honor.

Q Okay. Professor, we'll get into the substance of your opinion in just a moment?

A Can we start by having you summarize your ultimate recommendations. I would ask that we bring up tab one please.

A Yes. This is the ultimate conclusion that we reached after the analysis, the extensive analysis that we performed.

THE COURT: Excuse me. I would like you, if you put documents up, to tell me where they are in the exhibits.

MR. INGBER: We are not offering these into evidence, your Honor. So, they are not marked as exhibits. This in particular is a demonstrative.

THE COURT: Is this not part of the reports?

MR. INGBER: This document, as I mentioned, the binder that I gave your Honor and that Professor Fischel has is a combination of two things. One is a

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demonstrative. I believe there are seven demonstratives that we intend to use for purposes of this examination. And then we have other documents that are part of the report, separate exhibits that are attached to the report. So, for ease of reference during the examination, we compiled this binder. Each time I bring up something that has been introduced into evidence or something that we're seeking to introduce into evidence, I will note for the record what exhibit number it is.

THE COURT: Well and good but the demonstratives that are being put up on the screen have not been marked for any purpose and there are no hard copies anywhere.

MR. INGBER: We have hard copies with us and we can mark them. If your Honor would like them to be marked, we can certainly mark them as Professor Fischel's Demonstrative 1 for example.

THE COURT: Have you conferred with objector's counsel about these demonstratives.

MR. INGBER: We have sent the demonstratives to objectors' counsel. We asked if they had any objection to demonstratives.

MR. CHANG: We have no objection provided the entry only for evidence of what the trustees received, not for the truth of the matter asserted on the slides.

MR. ROLLIN: That's our position as well, your

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Honor.

THE COURT: We don't need to do this now but I certainly think that the hard copies should be marked for ID only. That's the way I usually mark demonstratives. In the future, if either side is going to use demonstratives that are going to be put up on the screen, they should be marked and you should be sure there are no objections before they are put up.

MR. INGBER: Okay.

THE COURT: Thank you.

MR. INGBER: Thank you, your Honor.

THE COURT: Let me just say we'll go for about another ten minutes. Then we'll take a ten-minute recess and then we will resume and go until about 4:45.

MR. INGBER: Your Honor, if this has any bearing on the timing, Professor Fischel is just going to go through in about a minute the summary of his recommendations and then we are moving on to a different topic.

THE COURT: So, you would prefer to have the break after.

MR. INGBER: It may just be cleaner at that point.

THE COURT: That's fine.

MR. INGBER: Okay.

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Q So, where were we, Professor?

A I think I was about to say if you add up all of our recommendations in my two reports, you get these numbers in terms of my recommendations for whether the settlement should be accepted or rejected on a trust basis and on a supporting loan group basis.

So, for the trusts, I recommended that the trustees accept the settlement for 314 trusts and reject the settlement for 16 trusts and for the supporting loan groups, and again that number is larger because trusts generally have more than one supporting loan group as part of them. There were 792 supporting loan groups. I am sorry. There are 816 supporting loan groups. I recommended that the trustees accept the settlement for 792 of them and reject the settlement for 24 of them.

MR. INGBER: Your Honor, I think this is probably --

THE COURT: This is only one of seven right now?

MR. INGBER: One of seven?

Oh, one of seven demonstratives, yes. There will be several other demonstratives and exhibits as well.

THE COURT: Okay. I think we can take a ten-minute break. It will be a real ten-minute break.

THE WITNESS: Thank you, your Honor.

THE COURT: Professor Fischel, you may step

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down.

THE WITNESS: Thank you, your Honor.

(Witness excuse)

(Recess taken)

(Witness resumed the stand)

THE COURT: Please resume.

MR. INGBER: Thank you, your Honor.

Q Professor, in your report, you discussed what you referred to as the economics of the settlement decision.

Could you explain what that term means to Justice Friedman please.

A Yes, it's basically an application of the economics of information under uncertainty that I referred to in my earlier testimony that a settlement offers the parties obviously resolution and end to the controversy but it also entails giving up a future outcome. A lot of times that future outcome is perceived to be likely better than the settlement offer in which case the settlement offer is rejected. That happens all the time.

But the opposite also happens all the time because rejecting a settlement is costly. It's costly because if you go forward, obviously, there is going to be a lot of time and resources. That's costly in terms of going forward to litigate further. Those I would say are direct costs.

There is also the possibility of a big opportunity

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cost, namely, that the settlement offer that was available today might not be available a year from now or six months from now or whatever the relevant time period is. So, the issue in terms of evaluating whether to accept a settlement is whether the potential benefits from going forward outweigh the cost of going forward both in terms of the direct costs, the time and expense of litigating further and also taking the risks that going further won't improve the result, might result in a worse outcome and in the extreme case losing altogether, the settlement not being available any further, losing the case on motion by the Court, losing the case in front of a jury, whatever the situation happens to be in which case you get the worst of all worlds that you give up the settlement, you incur a lot of costs in terms of time and resources and you wind up with a worse outcome than you could have had if you had accepted the settlement.

So, there is these tradeoffs between certainty and uncertainty which typically occur all the time and they are very hard to balance and they can -- you can reach different decisions. Even faced with the same information, sometimes different people will reach -- different entities will reach different decisions because it's inherently a process that has a lot of uncertainty associated with it.

That's a summary of the various tradeoffs involved.

Q What's the applicability of those principles that you

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just described the facts and circumstances here in this case?
A I think those principles have direct applicability to the facts and circumstances of this case because the uncertainty of going forward in a case like this is I would say particularly great. Not just in terms of the cost of litigating and who knows how many years it would be to litigate this case to a conclusion but the potential outcomes are very very uncertain.
For one thing, a big part of my analysis is, as I'll get into, is how much support there was for the settlement versus how much support there was for rejecting the settlement. If there is not enough support for rejecting the settlement and therefore likely not enough support for litigating the claims, what could happen would be the settlement would be rejected, the $4.5 billion, and the settlement improvements would be lost and the claims would never be litigated because the trustee would never go forward because there wasn't sufficient support on the part of the certificateholders to litigate and incur the cost of litigation. That would be a particularly bad outcome to trade $4.5 billion for zero.
Even assuming that that hurdle could be overcome that there would be sufficient support on the part of the certificateholders to direct and indemnify the trustee to litigate, the outcome was extremely uncertain. There is a legal opinion by Justice Carpinello that many of the claims

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would be barred under the statute of limitations. So, no matter how meritorious, no matter how aggressively litigated, assuming that a court were to agree with Justice Carpinello, those trusts would wind up with nothing because their claims would be barred.
There are similar uncertain issues about the relationship between economic factors and underwriting factors, what the causation standard would be, whether loan file reviews would be required or not required. If they were required, how long it would take, how much money would be required.
So, the decision in this particular context to reject the settlement would be one that could be the right thing to do, but you would have to be very very careful and very confident that it was the right thing to do because I would say in this case more than most the uncertainties about future outcomes and particularly the possibility of future negative outcomes, if a large percentage of the claims for example were barred by the statute of limitations or never brought at all because there wasn't sufficient certificateholder interest in litigating and again the result of that would be giving up the bird in the hand, the $4.5 billion and the servicing improvements.
So, I think the general principles of the economics of the settlement decision have even greater applicability under the facts and of circumstances of this case than most because

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of the uncertain possible future outcomes and particularly maybe greater probability of negative outcomes in the future as compared with the $4.5 billion and the servicing improvements today.
Q Thank you, Professor.
You also explained in your report an economic rule for evaluating a settlement. Can you explain to the Court what that rule is?
A Yeah, it's easy to state in principle but hard to apply.
THE COURT: Excuse me. Can you please refer us to the part of the report which discusses this.
MR. INGBER: Yes. It starts on page 7.
THE COURT: Thank you.
MR. INGBER: And continues.
THE COURT: Before we look at that, Professor Fischel, is it your position that there is a body of academic literature on the economics of settlements or the economics of settlement decisions?
THE WITNESS: Yes, your Honor, there is an extensive body of economic literature on that subject.
THE COURT: Is it referenced in either of the reports?
THE WITNESS: I don't think its specifically cited, no.

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THE COURT: Can you give me an idea of where this literature is published.
I'm not suggesting I'm going out to look at it and if I did I would tell you. It would be my ethical obligation to do so. I would like to have some sense of where this literature was developed and also whether it's been developed principally in the context of this RMBS litigation?
THE WITNESS: You know, in candor, your Honor, it has not been developed in the context of the RMBS litigation. It's a more general literature. It started with a very famous article by a Preaston Klein and it's been extended in a series of articles by among others Professors Shavell and Polinsky and it basically talks about the conditions under which parties because of their assessment of the possible future outcomes will come to an agreement on a settlement as opposed to the situations where their assessments of the possible outcomes are so different that there is not an effective bid that they can agree on.
My discussion in my report really talks about this economic literature, at a very high general level but it's actually a very technical sophisticated literature, sort of almost a branch of economic literature all on its own because there's been so much written about it but to

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the best of my knowledge, as I said, it really is literature that applies to all settlement decisions as opposed to this particular context but it would apply to this particular context.

THE COURT: Can you tell me -- can you identify any of the types of settlements to which the literature has been directed?

THE WITNESS: I think it's as I said, your Honor, general literature to any situation where there is a dispute between a plaintiff and a defendant. And they both at every point in time are assessing the tradeoff between settlement and litigation and particularly when their assessments of settlement versus litigation will converge, when they will both see the outcomes the same way so that they will reach agreement.

The literature as I said, it's not addressed to a tort case or a contract case or this case. It's just any case.

If the Court would like, I'm happy to provide citations to this literature that I just referred to.

THE COURT: It would be best to let the lawyers weigh in on that rather than agree between ourselves.

MR. INGBER: I'll follow-up on that and of course would ask if your Honor would like a list of the economic literature to which Professor Fischel can

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provide.

THE COURT: We can discuss that at a later time. Please continue.

MR. INGBER: Your Honor, to be more specific than I was before, the economic rule that I believe Professor Fischel is about to describe is paragraph 15 of Trustee's Exhibit 20, page 8.

Q Okay. So, go ahead, Professor, your economic rule.

A Again, as I said, it's simple to state, hard to apply but a settlement is the ability to get economic consideration today. So, the decision about whether or not to accept that settlement today is a comparison of that consideration today versus the expected benefits from litigating, taking all costs and benefits into account and choosing the right discount rate to reduce those costs and benefits to present value so you get a number to compare to the settlement number which is a concrete number.

It's actually a little bit more complicated than that because different participants as I state in my report have different attitudes towards risk. Some litigants are more willing to tolerate risk and uncertainty about the future than others. That can also affect the discount rate that litigants apply to come up with with a present value.

In theory what you want to do is try and quantify the expected benefits from litigation and get a number today and

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compare that with the number of the settlement consideration that's offered today.

Q So, you said it's more difficult in the practice. Was it possible in this case to quantify precisely the expected net present value of accepting and rejecting a proposed settlement for each trust and supporting loan group?

A I think in any meaningful way, it's impossible because there is so many uncertainties, so many unknowns and particularly when you are trying to analyze it on a trust by trust basis or on a supporting loan group by supporting loan group basis, when there are so many uncertainties about what the facts will show, what the legal rules will be as applied to the facts in the future.

So, what I did was, when I get to this part of my report, try and use proxies for possible expected recovery in litigation and I had a chosen number for the cost of litigating. So, I tried to perform basically the same exercise without what I would call false precision of trying to say the value of litigating is this many dollars and this many cents which I don't think is defensible given all the future uncertainties particularly on a trust by trust or loan group by loan group basis.

Q So, what was the structure of the analysis that you did conduct?

A You know, I would say in terms of an overview there

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was a two-part analysis that I conducted. The first part was an analysis of the reasonableness of the settlement based on factors that apply to every trust and then the second part was an analysis of the reasonableness of the settlement as applied to individual trusts and individual loan groups.

Q So, you mentioned that you analyzed factors that apply to all of the trusts?

A Correct.

Q What were those factors?

A There are three.

Q If you can just say what those factors were and then we'll break them down.

A Fine. There were three of them. The first was how the settlement compared with other settlements, comparable settlements.

The second was the significance of the support of the settlement by the Gibbs & Bruns investors relative to at that time the objectors represented by Quinn Emanuel.

Q Let me just interrupt for a second. When you say the Gibbs & Bruns investors, you mean the institutional investors represented by Ms. Patrick and her firm?

A Yes, that's exactly what I mean.

Q Then you said opposition is expressed by investors represented by I think you said the QE firm?

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A Yes.
Q What is the QE firm?
A It's a well-known law firm headquartered in New York although they have offices other places. They sent a letter that was provided to us by the trustees with a presentation opposing the settlement giving reasons and also describing their holdings.
Q So, by QE you mean Quinn Emanuel?
A Correct.
THE COURT: Excuse me. Do you remember approximately how many parties they were representing?
THE WITNESS: I don't remember the number of parties. I remember and I think this is in my report. They had -- they represented certificateholders holding approximately I think a 4.5 percent interest in the trusts versus the Gibbs & Bruns certificateholders who represented I think a 32 percent interest in all the trust in terms measured by unpaid principle balance, monies that were owed and that's very important because the voting rule for support or opposition to the settlement was for the most part based on unpaid principle balance.
Again, I cover this in my report, your Honor, but something that I had placed a fair amount of weight on was the disparity in terms of the certificateholders and the economic interest of the certificateholders supporting

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the settlement versus the much lower economic interest of certificateholders represented by Quinn Emanuel who were opposing the settlement.
Q So, Professor, we're talking about the factors that apply to all of the trusts. You said there were -- you mentioned comparable settlements as the first?
A Correct.
Q You mentioned the support of the Gibbs & Bruns investors and the opposition of the QE investors as the second?
A Correct.
Q I think you were about to describe the third.
A The third was the market evidence, whether information about news of the settlement was perceived as beneficial or not beneficial by investors in JP Morgan and also certificateholders because there's a simple economic test that I wanted to apply, namely, there were claims particularly by the Quinn Emanuel certificateholder group that the settlement was grossly inadequate, that it was way too low.
Well, in economic terms, that creates a testable proposition. If the settlement was perceived as being way too low, then that would have been a windfall for JPM. So, its value should have gone up as a result of the settlement or news about the settlement relative to expectations about what a reasonable settlement would be and the affect should have been the opposite on certificateholders. They should be very

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disappointed because if the claims of the Quinn Emanuel group were correct, the value of those certificates should decrease in price because they would be disappointed because they would be getting lower than what they expected.
I also looked at an analyst commentary. JPM is one of the most actively followed financial firms. I looked again, I'm sort of anticipating, maybe summarizing what I would normally get to later. We looked at 43 different analysts reports about JPM to see if there was any evidence in those analyst reports that the most sophisticated market participants who were aware of all the prior settlements, all the other considerations involved with the claims would view the proposed settlement as inadequate and I didn't provide -- I didn't find any support for it. So, that was a relevant factor to me as well.
Q Okay. Thank you. That was a helpful summary of the three factors.
Now I would like to actually dig into each of them. Let's start with the first factor that applied to all of the trusts and that is comparable settlements.
Why, Professor, did you look at comparable settlements?
A Well, first of all, it's something that's very commonly looked at. When I mentioned the 43 analyst reports about JP Morgan or for that matter analyst reports from firms

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involved in other settlements, one of the criteria that's frequently mentioned described analyzed as whether the settlement looks favorable or unfavorable relative to other settlements. It's also a situation where other litigants are facing similar tradeoffs in terms of getting the money today in terms of the settlement versus the future uncertainties that go along with litigating further.
So, to get some sense of how other sophisticated economic actors interpreted the same type of evidence in reaching a decision about whether to settle or at what level to settle at again is just widely considered to be a factor, a factor that has to be taken with a big grain of salt because not every situation is the same. There are different claims. There is different evidence. There is different parties. There is different times. So that it's not possible I think by saying that one settlement is higher or lower than another to say definitively that one settlement is good and another settlement is bad. But nevertheless I think it's relevant evidence which is why I looked at it.
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Q And how did you go about identifying comparable settlements?

A Oh, because, well, first of all, because we as a firm are so active in this area, we follow settlements closely based on publicly available information, news reports, and again, this is another area where I think we got valuable information as a result of the cooperation from the trustees and JP Morgan.

There was information about some JP Morgan settlements that we wanted to get, that we asked for and we got it. There are a few things that were subject to confidentiality restrictions, but not material ones for our purposes, and as a result of what we could get on our own, and the information that we got from trustees, and JP Morgan, I think were able to compile a fairly full set of what we call comparable settlements, although in the report, discuss on how some of those settlements are more comparable than others.

Q Let's actually talk about the report. I'd ask Malcolm to please bring up Tab 2 in the binder, which is Trustee Exhibit 20, Professor Fischel's initial report, Exhibit D to his report.

A You know, I think it's better if we highlight the whole page as opposed to just the top two lines.

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Q Sure.

A Hopefully, people have hard copies, so if the print is too small, they can see.

Q Here we go.

A Good job.

Q Can you see that? You have a hard copy, as well?

A Yeah, I have a hard copy in front of me.

THE COURT: Can you see the hard copy?

THE WITNESS: Yes, I can.

Q Okay. So, Professor --

THE WITNESS: Less and less, your Honor, but I can still see it.

Q This is Exhibit D to your initial report?

THE COURT: Exhibit D, right.

MR. INGBER: Exhibit D as in Daniel.

Q So, is this your analysis of comparable settlements, Professor?

A Oh, this is part of our analysis of comparable settlements. I would say, these are the most comparable because they are also RMBS settlements involving trust claims, and there's six of them, and of these, I would say, the first two -- well, the top line is this settlement, the one that's at issue in Court today.

The next two, I would say, are the most relevant because they predated the settlement at

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issue right now.

The others are relevant because they're other RMBS settlements, but because they postdated the trustees' decision, obviously, they were not taken into account by the trustee at the time. The trustees at the time, they made the decision that they did, so that said, would you like me to explain?

Q Yes. If you can, just continue, walk through Exhibit D for the benefit of the Court, please?

A Okay, well, let's start with the top line, which is our analysis of this settlement, and so it starts, obviously, with proposed settlement, the date that the settlement was announced. Going across, the settlement covers breach and warranties claims, and servicing claims, the amount of cash involved in the settlement, a little bit less than 4.5 billion dollars;

Subsequent exhibits that explain where this number comes from, expected lifetime losses of --

Q Before you get there, I think you skipped over --

A I'm sorry.

Q That's okay.

A I did.

In addition to the cash, there is part of the settlement, which deals with servicing, and so-called subservicing protocol, which involves the

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transfer of loans from JPM as servicer to other servicers presumably to improve the quality of the servicing.

Then there is -- the next column is expected lifetime losses of a little bit less than $64 billion dollars, and again, I'll explain a little bit later where that number comes from.

The next column is the value in the settlement of servicing improvements, the subservicing protocol, and here we only attributed $31 million dollars worth of value of the settlement to the servicing improvements as part of the settlement. Again, I think I'll come back to that later as to where that number comes from.

But, I think it's worth noting that our calculation of $31 million dollars was out of a possible number of 2.4 billion dollars, so we applied a very severe haircut to that number in ways that I'll explain later.

Q So, you're talking about the benefit, or consideration associated with servicing a total number of 2.4 billion, you did discounted for purposes of your analysis to 31 million?

A Right, correct.

Q Okay.

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A So, in other words, the settlement has cash, as well as servicing. The cash part that's I think undisputed, what that is.

The servicing part, we had to decide how much of the 2.4 billion dollars that could have been attributed as value of the settlement to servicing, and for reasons that I think I'll explain later, we haircutted that number drastically, and only credited $31 million dollars of that 2.4 billion dollars to the servicing improvements.

Q Okay, thank you. If you can just continue with the column, and we can talk about the other settlements.

A I'm sorry?

Q I said, if you can just continue, if there's anything else you want to add about the columns, and we can talk about the settlements, or whatever you prefer.

A Well, the last two columns are, I would say, the common denominator services that can be compared against each other. First is the cash, the percentage of cash consideration in the settlement relative to expected lifetime losses. That's a simple matter of division as the little heading suggests, so that this particular settlement provided cash of the 4.5 billion dollars, almost $4.5 billion dollars presented certificate holders with a cash recovery in the settlement of seven percent

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of expected lifetime losses, and if you add the value of the servicing improvements as we calculated with the severe haircut, that seven percent number goes to 7.1 percent.

Q All right.

A So, the Country-Wide settlement, which is the next item down, which there's been a lot of discussion about it already from what I've heard in Court today, this is a quantification of the terms of the Country-Wide settlement, which is in some sense the most comparable because it also involves reps and warranties claims, and servicing claims, and cash, as well as servicing improvements, and rather than going through all of the columns, unless anybody has any questions, if you just look at the last two columns, you see that the Country-Wide settlement provided certificate holders with cash consideration of somewhere between 7.9 percent and 12.5 percent of expected lifetime losses, depending on how you calculated expected lifetime losses. That's a higher number than the seven percent of this settlement.

And then, if you include the servicing part, the Country-Wide settlement goes up to 10.2 percent, to a range of 10.2 percent to 17.1 percent, which is, again, significantly higher than the 7.1 percent.

And then, in the Q&E materials and other

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materials, there's a lot of discussion about one reason that demonstrates that the proposed settlement was inferior should be rejected was it was lower than the Country-Wide settlement, and so what we also tried to do was take various other factors into consideration that can effect the outcome of settlements and --

Q What types of factors?

A And we did that both in terms of the context of those two different settlements, as well as what I think I come to later, the investors, the certificate holders that were involved in negotiating them, but for starters, there's several significant differences between the settlement at issue in this Court and the Country-Wide settlement somewhat cut in opposite directions.

For one, there is a significant risk in this case for this settlement that many of the claims are going to be barred by the statute of limitations. That's going to significantly depress a settlement amount that a firm like JPM is going to be willing to pay if they think that they're ultimate exposure is going to be significantly reduced because many of the claims are going to be barred by statute of limitations.

There's also a significant time difference in

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when the Country-Wide settlement was negotiated and announced, and when this settlement was negotiated and announced more than two years later, so with that two-year period, you get a lot more information about what expected losses are going to be, and with a lot better information about what expected losses are going to be, because more of the losses have already occurred, you don't have to make as many predictions about what's going to happen in the future, you have it a better basis of negotiating an outcome, a settlement that takes into account the better information that you now have about what lifetime losses are going to be relative to the earlier settlement, so that's another factor that can explain why the proposed settlement is lower than the Country-Wide settlement.

But, in fairness, there's also, I would say, a third factor, which cuts in the opposite direction, which is in the Country-Wide settlement, there was significant uncertainty as to the ability of Country-Wide to pay, and there was a big dispute about whether it was possible if Country-Wide was unable to pay the 8.5 billion dollars, whether it was possible to reach the assets of Bank of America, which was appearing either in some kind of veil

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piercing theory, or because of the direct liability, alleged direct liability of Bank of America under a variety of different theories, so to the extent there's collectability issues, that would cause the Country-Wide settlement, all else equal, to be depressed relative to this settlement since I'm not aware there's any judgment-proof, or collectability issues with this settlement with JPM, but you can see, really see the importance of that factor if you look at the next settlement, the ResCap settlement, and again, look at the last two columns;

ResCap settlement involved much higher lifetime losses than either the current proposed settlement, or the Country-Wide settlement, but there were severe collectability issues because ResCap was in bankruptcy, so if you look at the comparable numbers in the last two columns, you get numbers of 0.6 percent of recovery of expected lifetime losses, which is much lower than the settlement amounts in the proposed settlement, obviously. Obviously, much lower than Country-Wide, and again, that's a factor, that's a function of the fact that every settlement occurs even if there are similarities because it involves trusts, and trust-holding residential mortgage backed securities.

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There's a different factual background in context, different possible legal rules that apply, and so in ResCap when it was clear that there was going to be big collectability issues, the ultimate settlement was a small fraction of what the Country-Wide settlement was, and obviously, also a small fraction of the proposed settlement, and if you look at the remaining --

Q Before you get into the remaining ones, those are the two comparable settlements that were entered into before the JP Morgan settlement was negotiated and signed.

And then, the next three in your exhibit are ones that were entered into after that proposed settlement agreement was signed, but before the trustees' decision was made in this case.

A That's right.

Q Okay.

A But, if you look at the two settlements involving trusts holding residential mortgage backed securities, two most similar settlements prior to the trustees' decision in this case, you see a huge range from 0.6 percent to, looking at the last column to 10.2 percent to 17.1 percent, and the actual settlement in the settlement amount in the proposed settlement is,

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you know, somewhere in the middle of those two, and again, not surprising, because every settlement reflects the different circumstances, the bargaining position, the expected factual development, the relevant legal rules, the relative attitude of the parties towards risk, how much people want to get money faster, you know, all kinds of different considerations.

But, I would say, that this settlement was clearly lower than Country-Wide, much higher than ResCap, somewhere in the middle of those two.

If you look at all the settlements, the ones before the trustees entered into this settlement, and the ones after, you know, I think you can fairly conclude that this particular settlement, if you just compare numbers, percentage of recovery relative to expected lifetime losses, was a little bit on the low end, but in the middle of the two settlements that were entered into prior to the time the trustees made the decision here.

Q Okay, thank you.

THE COURT: Excuse me, these were not the only two settlements that were entered into before this current settlement, were they?

THE WITNESS: No, your Honor.

In fact, in my report I have a whole bunch of

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other settlements, but these were the ones that involved trusts, trust claims involving residential mortgage backed securities.

THE COURT: Were they the only two involving representations and warranties claims in connection with residential mortgage backed securities?

THE WITNESS: In the context of trust claims as opposed to securities claims, there's all kinds of other types of claims, and I go through that in my report, as well, your Honor.

I have other discussion of those other types of settlements, but many of those other settlements involved --

You're right. What your Honor is saying is quite right; there are other settlements at earlier points in time, but they were --

You know, for example, securities claims, securities fraud claims, not claims like the type of claims, the type of repurchase claims involving trusts that are at issue in this case, but I discussed them all in my report.

THE COURT: So, there were only two involving trust claims based on alleged breaches of representations and warranties?

THE WITNESS: Yes. That's my understanding.

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That's where we could get data.

THE COURT: And where did you get the information for these other two settlements about the expected lifetime losses and the other elements that you considered?

THE WITNESS: I think they're generally part of the documentation of the settlements themselves that we collected as part of our analysis.

THE COURT: Thank you.

Q Okay. And, again, I just want to make sure the record is clear on this; settlements two and three on Exhibit D predated the December, 2013 entry into the proposed settlement agreement, and then 4, 5, and 6 postdated that proposed settlement agreement, but predated the trustees' decision of August, 2014 to enter into the settlement with respect to the 319 trusts?

A Correct, that's right.

MR. INGBER: Okay.

Should I continue, your Honor? I see --

THE COURT: Yes.

Q Okay, great.

Professor Fischel, before we move to the next exhibit, is there anything else that you would like to offer on Exhibit D?

A No.

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Other than, you know, what I said, I think while the different contexts and circumstances of the different settlements have to be taken into account, I think a fair interpretation, a fair conclusion looking at this settlement as compared with other settlements, is that it tends to be on the lower side, and there's possible reasons for that, that I explained, but if you just look at the results, it is a little bit on the low side.

Q Okay. Now, we can take this exhibit down, and I'd ask that you bring up Tab 3 in the binder, which is Trustee Exhibit 20 the initial report, and it's Exhibit H-2 to Professor Fischel's initial report, Trustee Exhibit 20.

Professor Fischel, is this another exhibit that you prepared as part of your report?

A Correct.

Q Okay. How is this exhibit relevant to your opinion?

A I think it's very relevant in terms of how to interpret the data on comparable settlements, so what this exhibit does is, it compares the Institutional Investors who expressed support for this settlement with the composition of the Institutional Investors who were involved in negotiating the Country-Wide settlement, and

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the ResCap settlement, the two that I considered to be most comparable on the previous page, as well as the Citigroup settlement, another one of the settlements on the previous page, and if you look at the very bottom, bottom number, you see there's 21 Institutional Investors who were involved in negotiating and supporting the proposed settlement.

Of those 21, 13 were involved in negotiating and supporting the Country-Wide settlement.

14 were involved in negotiating and supporting the ResCap settlement, and 18 were involved in negotiating and supporting the Citigroup settlement.

Now the reason why that's relevant, really important is because, as I said, it's not possible just to look at numbers of settlements and say one is good, and one is bad because there's all kinds of different factors that enter into the calculation of whether or not a settlement should be entered into, and if it is entered into, on what terms, and so, the fact that --

Just to take the Country-Wide settlement, that a majority of the Institutional Investors who were involved in negotiating and supporting the proposed settlement were also involved in negotiating

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and supporting the Country-Wide settlement.

To me, that's highly relevant information because if somebody were to make the claim as has been made, that the proposed settlement is too low because the Country-Wide settlement is higher, well, one of the things to take into account is that the same people were involved in negotiating both, and it's not just the same people. These are some of most sophisticated institutions in the world, and so if the same people were involved in negotiating both, then I think it's a reasonable inference that these same people thought there were sufficient differences between the two situations to decide that one level of the settlement was appropriate in one case, and the same people decided that a different level of the settlement was appropriate in the next case, and exactly the same thing is true with ResCap, and so this to me, as I said, creates an inference, really strong inference that you can't just look at the level of settlements in terms of percentage recovery relative to expected lifetime losses without taking into account the context, the facts and circumstances surrounding those settlements.

Who is in a better position to take those circumstances into account than the sophisticated

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people who are negotiating the settlement?

And if it's the same people negotiating different settlements, and they reach different outcomes in terms of what level of settlement they're willing to agree to, that tells me really, I think a fair inference tells anybody, that those sophisticated Institutional Investors thought they were significant enough differences to justify a lower settlement payment in the proposed settlement relative to Country-Wide, and a much higher settlement payment relative to ResCap, again, based on their a assessment of the relevant facts and circumstances.

You know, obviously, there's another party. It's not -- the institutional investors can't themselves just dictate what the settlement terms are going to be. It has to be an agreement.

But, nevertheless, in order for the settlement to occur, the sophisticated Institutional Investors themselves have to agree, and the fact that the same people are willing to agree to the settlement at different numbers suggests that there's facts and circumstances that are different between the different situations that can explain the different settlement amounts that are, ultimately,

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entered into.

Q Okay, thank you. Let's move on to some other settlements, Professor.

Were you ever able to find settlement involving mortgage loans that were sold by JP Morgan?

A Yes, and you know, when I said that I thought the original trust settlements were the most comparable, comparability is sort of a tricky term because things can be comparable in different ways, so my exhibit that we just looked at, that was comparable in the sense that they were settlements involving trust claims for breach and warranties, and breaches of warranties claims, and also servicing claims, but those settlements, other than the proposed settlements, did not involve JPM, so I thought it was significant to also look at the settlements involving JPM. That's what this particular exhibit did. I --

Q I think we're going to bring that up.

THE COURT: Excuse me, Mr. Ingber, I think we will stop at this point.

Professor Fischel, you may step down.

THE WITNESS: Thank you.

THE COURT: I'd like to discuss scheduling briefly off the record, and I will close the record for today's proceedings.

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(Whereupon, hearing adjourned to January 21, 2016.)

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

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,

-against-

AMBAC ASSURANCE CORPORATION, THE SEGREGATED ACCOUNT OF AMBAC ASSURANCE CORPORATION (intervenors), and W&L INVESTMENTS, LLC (intervenor)

Respondents,

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

Index No. 652382/2014

Part 60

The Hon. Marcy J. Friedman, J.S.C.

Joint Errata Sheet for the Transcript of the Proceedings Held on January 20, 2016

The parties wish to make the following changes, for the following reasons:

Page	Line(s)	Change From	Change To	Reason(s)
30	12	shuffling the	Shuffling around the	TR
30	24	trust or something else for	trust for something else, for	TR
30	25	reasons this why	reasons why this	TR
30	25	losses but	losses, but	TR
32	10	insuring	ensuring	TR
34	4	flow replaces	flow. It replaces	TR
34	10	that is the trustees	that the trustees	TR
35	12	agreements	agreement	TR
36	19	the representative	each representative	TR
37	7	and representations	of representations	TR
37	10	arm	harm	SP
37	21	occurs or the	occurs, but the	TR
38	18	only compensation	compensation only	TR
38	20	something else and to give effect to the repurchase remedy under the governing agreement.	something else. That would give effect to the repurchase remedy under the governing agreements.	TR
63	2	master servicer	special master	TR
64	16	hand back	Ambac	TR
66	20	Schneider from BBA	Reifsnyder from BPA	TR

Page	Line(s)	Change From	Change To	Reason(s)
68	2	City	Citi	TR
70	16	City	Citi	TR
102	3	bathed	baked	TR

Reasons: TR = Transcription Error; SP = Spelling Error; CL = Clarification

Dated: February 25, 2016
New York, New York

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