

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NEW YORK - CIVIL TERM - PART 60

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4 In the Matter of the Application of

5 THE BANK OF NEW YORK MELLON, in its  
6 Capacity As Trustee For 278 Residential Mortgage-  
7 Backed Secruization Trusts,

Index No.:  
150738/2019

8 Petition,

9 For the Judicial Instructions Under CPLR Article 77  
10 Concerning the Proper Pass-Through Rate  
11 Calculation For CWALT Interest Only Senior  
12 Certificates.

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14 60 Centre Street  
15 New York, New York  
16 January 31, 2019

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

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

19 MAYER BROWN LLP  
20 Attorneys For the Petitioner  
21 1221 Avenue of the Americas  
22 New York, New York 10020  
23 BY: MATTHEW D. INGBER, ESQ.

24 -and-  
25 BY: ANJANIQUE WATT (not yet admitted)

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28 51 Madison Avenue, 22nd Floor  
29 New York, New York 10010  
30 BY: JONATHAN E. PICKHARDT, ESQ.

31 -and-  
32 BY: BLAIR ADAMS, ESQ.

33 Maria E. Rivera  
34 Senior Court Reporter  
35

## Proceedings

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1 THE COURT: Good morning.

2 May I have counsels' appearances, please.

3 MR. INGBER: Good morning, Your Honor.

4 Matthew Ingber from Mayer Brown for the petitioner,  
5 The Bank of New York Mellon.

6 THE COURT: And present with you?

7 MR. INGBER: Present with me is Anjanique Watt also  
8 from Mayer Brown.

9 MR. PICKHARDT: Good morning, Your Honor.

10 Jonathan Pickhardt from Quinn Emanuel Urquhart &  
11 Sullivan, here on behalf of Silian Ventures LLC, which will  
12 be a respondent in this proceeding.

13 I'm here with my colleague, Blair Adams.

14 THE COURT: Thank you.

15 So I understand, Mr. Ingber, that you did give  
16 Silian's counsel notice of this proceeding. And I would  
17 like to discuss a few issues, procedural issues today.

18 But first, Mr. Pickhardt.

19 MR. PICKHARDT: Pickhardt, yes, Your Honor.

20 THE COURT: You have indicated that you were going  
21 to appear in this proceeding.

22 MR. PICKHARDT: That's correct, Your Honor.

23 THE COURT: Have you already filed a notice of  
24 appearance?

25 MR. PICKHARDT: We have not filed a notice of

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1 appearance, Your Honor, understanding that it would probably  
2 require Your Honor entering the order for us actually moving  
3 to intervene, so that's why we haven't filed the appearance  
4 as of yet, but we are prepared to do so whatever procedures  
5 Your Honor has.

6 THE COURT: Do you have any position on Silian's  
7 appearance?

8 MR. INGBER: We have no objection to Silian's  
9 appearance today.

10 THE COURT: So you will not need to move to  
11 intervene? I'm not making a finding that you would have had  
12 to, but it's a moot issue.

13 MR. PICKHARDT: Thank you, Your Honor.

14 THE COURT: Now, I would like to know, Mr. Ingber,  
15 what you contemplate will be the purpose of the hearing  
16 date.

17 MR. INGBER: The purpose of the hearing date?

18 THE COURT: That it is going to be set in the order  
19 to show cause. As you know, I have had a number of Article  
20 77 proceedings brought on by order to show cause, and we  
21 have had different appearances for different purposes.

22 MR. INGBER: So what we contemplate for the hearing  
23 date is that it will be a date by which all interested  
24 parties will have had an opportunity to appear, will have  
25 submitted papers in support or in opposition to the position

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1 laid out by the trustee in the petition. And then we would,  
2 if Your Honor would like us, we would have an argument on  
3 both sides of the issue.

4 Now, we have been through some Article 77  
5 proceedings in the past. We understand that the procedure  
6 can be fluid. There may be -- it may be the case that  
7 certificate holders intervene and ask for some other type of  
8 process. It is certainly within the realm of possibility.  
9 Although, we don't know that it would be necessary here that  
10 certificate holders could ask for some form of limited  
11 discovery. We can't anticipate that right now.

12 What we are expecting and what we're hoping is that  
13 this can be resolved expeditiously. And that at the hearing  
14 date Your Honor will get the benefit of the submissions by  
15 all the interested parties.

16 THE COURT: Counselor, do you want to weigh in on  
17 this?

18 MR. PICKHARDT: Yes, Your Honor, I would.

19 Your Honor, if I can provide a very brief context  
20 of this dispute which is part of what informs our position  
21 here. This is a distribution dispute. I know Your Honor is  
22 very is familiar with distribution disputes, probably more  
23 familiar than Your Honor would like to be.

24 This is an issue that my client raised with the  
25 trustee about a year ago. And we raised an issue because,

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1 effectively what the trustee was doing was calculating  
2 payments to senior interest only certificates that had the  
3 effect of treating them like subordinate certificates. They  
4 were doing it in a manner that was different than other  
5 trustees handle payments to interest only certificates with  
6 respect to modifying the mortgage trust.

7 We raised the issue with the trustee and asked them  
8 for their position and identified what we thought was an  
9 error. And we didn't actually hear anything back from the  
10 trustee, notwithstanding sort of repeated questions for  
11 about seven months until last fall. They came back to us,  
12 and they said we don't agree with you.

13 THE COURT: I do think this is too much detail at  
14 this point. I'm sorry to stop you. But I think when you  
15 see who is going to appear here, that would be the time to  
16 hear about the merits of the dispute.

17 MR. PICKHARDT: Understood, Your Honor.

18 THE COURT: I do understand from having looked at  
19 the petition that there is a dispute about the calculation  
20 interest, and that there is a pending action in Federal  
21 Court by certain certificate holders regarding calculation  
22 issues, that there may be a dispute about the jurisdiction  
23 of this Court.

24 MR. PICKHARDT: That is correct, Your Honor. My  
25 only point was that this has been percolating for quite a

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1 while. We are anxious to get a prompt resolution to this.  
2 So we frankly agree with Mr. Ingber. That would be good if  
3 this Court could, as I know it has done in some other cases,  
4 schedule a prompt merits hearing within the next 90 days in  
5 order that we could be in front of Your Honor to be able to  
6 present merits arguments, largely probably on the papers,  
7 maybe there will be some support --

8 THE COURT: You are not going to seek to have this  
9 moved to Federal Court? You are not asking to argue that  
10 this is not the proper Court to exercise jurisdiction over  
11 the matter?

12 MR. PICKHARDT: Your Honor, we still have to talk  
13 to our client based upon Your Honor's ruling today as to the  
14 options. I know Mr. Ingber has indicated with respect to  
15 the federal action that he is intending to move against the  
16 action there, contending that there is not jurisdiction in  
17 the federal courts. So it may be, Your Honor, talking to my  
18 client that we will frankly agree, we will be happy to  
19 proceed in front of Your Honor, especially if we could  
20 proceed in an expeditious manner.

21 That is, frankly, what my client is most interested  
22 in. They have been very respectful of your experience with  
23 respect to these matters. They would like to be in front of  
24 a Court that can move expeditiously and that has expertise,  
25 and Your Honor has both of those, we believe. So I believe

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1 we will be very interested in proceeding here.

2 We really only have, you know, the expedition in  
3 really two other kinds of issues that we have with respect  
4 to the order to show cause that's being presented in front  
5 of Your Honor. I'm happy to address those other two issues  
6 now if you would like.

7 But on this specific issue, you asked with respect  
8 to the hearing. We are in agreement with Mr. Ingber, that  
9 it is something that can be scheduled expeditiously, we are  
10 all in favor.

11 THE COURT: Mr. Ingber, do you want to respond to  
12 anything that counsel just said?

13 MR. INGBER: No, other than to say that what is  
14 most important to us for purposes of today is that we get  
15 direction to implement the notice program that we laid out,  
16 so that other certificate holders can be here as well, if  
17 they choose to be here, to weigh in on all of the issues  
18 that counsel for Silian has started to discuss.

19 THE COURT: Fair enough.

20 And counsel should consult with their clients and  
21 confer with each other about this issue of whether the case  
22 will proceed here or whether there will be litigation over  
23 the proper form.

24 In the meantime, I'll sign this order to show  
25 cause, and I'm going to strike the provisions about

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1 exclusive jurisdiction. It doesn't mean that the Court  
2 won't take jurisdiction. I just think those findings are  
3 premature.

4 I would like to know whether it's feasible or  
5 whether you can suggest -- withdrawn.

6 I would like to see publication of notice here, and  
7 I would like to know if you can propose a feasible  
8 publication regimen.

9 MR. INGBER: So the notice program that we proposed  
10 here, as Your Honor may know, is consistent with notice  
11 programs that Your Honor has approved in the past, including  
12 in connection with the in re Wells Fargo Article 77  
13 proceeding related to the JP Morgan settlement.

14 THE COURT: We might not have had publication in  
15 the distribution proceeding because we had such extensive  
16 notice, including publication in the initial proceeding to  
17 approve the settlement amount. But in most of these others  
18 I have been requiring some publication.

19 MR. INGBER: And I'll get to that in just a moment.  
20 I did want to add that there was a matter before Justice  
21 Ramos in the Article 77 proceeding initiated by The Bank of  
22 New York Mellon as Trustee, and he approved the notice  
23 program as well without publication. The notice that is  
24 required in the cleaning services agreement is simply notice  
25 by registered mail to the certificate holders identified by



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1 the certificate registry. And so what we proposed goes well  
2 beyond that.

3 With respect to publication, we are proposing that  
4 we give notice of this proceeding on the investor reporting  
5 website, which is what every certificate holder has access  
6 to, included in the website to see monthly remittance  
7 reports. That is where certificate holders live in the  
8 world of these RMBS transactions.

9 So that is in our view the most efficient and most  
10 direct way to give notice to certificate holders, coupled  
11 with the notice through The Depository Trust Company which  
12 we proposed, and the mail.

13 Publication is we -- our view is that it is not  
14 necessary to have publication notice to comport with due  
15 process. It's a very expensive proposition. It's not  
16 something that's been required in the past. But, of course,  
17 we are open to a proposal with respect to publication, but  
18 we would ask, just given the expense, given what the  
19 contract says, and given the precedent in this Court by  
20 multiple Judges that publication not be -- not be required  
21 in this case.

22 THE COURT: I have generally been requiring  
23 publications, so can you weigh in on what you think is  
24 feasible?

25 MR. INGBER: I want to discuss this specific issue

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1 with our client. We have --

2 THE COURT: I think in the last case, for  
3 example -- I don't mean to interrupt you -- I think in the  
4 last case we required publication on two separate weeks in  
5 The Wall Street Journal, and it wasn't terribly expensive.

6 Counsel represented that it cost around \$50,000.  
7 I'm not saying \$50,000 isn't a lot of money. I'm a public  
8 servant, after all. But it's not -- it doesn't seem to have  
9 been regarded in other cases by counsel has exhibited.

10 MR. INGBER: And we are certainly open to that, and  
11 we will comply with whatever Your Honor directs us to do.  
12 With respect to notice, our goal here is to provide notice.  
13 We are not seeking to keep the fact of this proceeding from  
14 anyone. We want to make sure that all certificate holders  
15 do have an opportunity to be heard, if they would like to be  
16 heard.

17 And so we can -- I think most importantly for us  
18 coming out of this, this hearing today is that we start  
19 implementing the notice program that we proposed. If Your  
20 Honor would like us to add another element to that, we will  
21 do that.

22 I don't have handy the cost associated with The  
23 Wall Street Journal publication. There may be -- it may be  
24 that it's more feasible or more appropriate to do a  
25 publication through an online Wall Street Journal

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1 publication, rather than the physical newspaper.

2 But those are the types of things that we want to  
3 consult with our client about. We just don't want to push  
4 off implementing other aspects of the notice program to  
5 resolve that question.

6 THE COURT: Mr. Ingber, I think you should  
7 telephone us on a conference call on Monday afternoon. Will  
8 that be enough time for you?

9 MR. INGBER: It will certainly be enough time for  
10 us, and we could probably do this tomorrow as well. Like I  
11 said, I want to have a chance to speak to The Bank of New  
12 York Mellon about this.

13 In the meantime, is Your Honor contemplating that  
14 the Court would direct us to start implementing the aspects  
15 of the notice program that we proposed?

16 THE COURT: I think that looked okay. One moment,  
17 please.

18 Ms. Lane is pointing out that the notice has to  
19 include the instructions about how to appear and so on.

20 So let's just have a conference call on Monday.  
21 When I say a conference call, I mean with counsel who have  
22 appeared today. And we will get that uploaded on Monday.

23 If you want to call us maybe -- we will check, but  
24 we will set a time for Monday morning for the conference  
25 call, if that works for counsel.

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1           And what I think we should do is have the initial  
2           date set for a status conference, and we will set that on an  
3           expedited basis.

4           Now, you indicated, Counselor, that you have other  
5           procedural issues that you want to address?

6           MR. PICKHARDT: Yes, Your Honor. The relief that  
7           the trustee is seeking in the petition is that, at the time  
8           of judgment if they are found to have not been distributing  
9           interest correctly, that they only have prospective  
10          application, there may be some disagreement about that.

11          But we have a concern, because during the pendency  
12          of the proceeding, as has been happening for the months  
13          leading up to here, each month they are distributing amounts  
14          that are subject to this dispute. We think as it's been  
15          done in other Article 77 proceedings that it would be  
16          appropriate for the trustee to escrow the disputed amounts  
17          during the pendency of the proceeding, or essentially our  
18          rights are being prejudiced by the type of relief that's  
19          being sought. We have --

20          THE COURT: What is the extent of the amounts at  
21          issue?

22          MR. PICKHARDT: So Silian Ventures, we are  
23          investors in over half, about 150, 155 of the 270 trusts  
24          that are at issue. Across the trust we are investors in  
25          estimated about a million and a half dollars a month.

1 Across -- not each trust. We are across the 150 a trust,  
2 about a million and a half. And that's why I was raising  
3 sort of a time delay from when we raised this last year. We  
4 think there's been about 18 million dollars that's been  
5 already distributed and was subject to dispute since we  
6 raised this with a trustee over a year ago.

7 I honestly have a client that is very frustrated  
8 and concerned with respect to the passage of time and the  
9 prejudice that it may cost him.

10 THE COURT: What other procedural issues do you  
11 wish to address? Then we will have Mr. Ingber respond.

12 MR. PICKHARDT: The other procedural question, the  
13 trustee, you know, states in its petition as this is not a  
14 big surprise, that the trustee has no economic stake or  
15 interest in these distribution issues.

16 And we know, we agree that there should be a robust  
17 notice program for other interested parties and the stake  
18 holders to appear if they want to appear. That has been  
19 done in other Article 77 proceedings, the J.P. Morgan  
20 proceeding. We think it should be the economically  
21 interested parties that are the ones who want to join on  
22 these issues, as opposed to the trustee taking, you know,  
23 taking a position.

24 And so we would also request -- we don't do think  
25 this needs to be embodied in the order to show cause, but

1 with respect to prospective hearings and reaching the terms  
2 on the merits, we think it should be, you know, limited to  
3 the economic interested parties who are litigating the  
4 dispute.

5 THE COURT: Well, we've had quite a bit of  
6 litigation over what certificate holders qualify as  
7 interested parties. And if that becomes an issue down the  
8 road, we will certainly hear about it.

9 But on the escrow, Mr. Ingber.

10 MR. INGBER: So on the --

11 THE COURT: Excuse me one moment.

12 What is your position that the trustee should not  
13 be permitted to address the merits of the distribution?

14 MR. PICKHARDT: Your Honor, the trustee -- and we  
15 had initially asked the trustee to start an Article 77  
16 proceeding. And they had told us as of December that they  
17 didn't think it was in the best interest of the trust to do  
18 so.

19 With respect to Article 77 proceedings as they have  
20 been handled elsewhere, you need to have a dispute between  
21 economically interested parties. It makes sense for the  
22 Court to get involved and resolve that dispute. If you  
23 don't have any economically interested parties who are  
24 actually interested in the disputes, then we are not sure it  
25 makes sense for the trustee to be interposing itself as a

1 party that it concedes it has no economic stake.

2 THE COURT: You are not going to be agreeing with  
3 that, are you?

4 MR. INGBER: I am not going to be agreeing with  
5 that. I can layout the reasons for Your Honor, if you would  
6 like. But we are not going to be agreeing to that.

7 THE COURT: If you want to balance that out and put  
8 something on the record, you may. But this will be it, if  
9 this is really what the parties' respected positions are  
10 going to be, then it will have to be ruled on at an  
11 appropriate time on proper papers.

12 MR. INGBER: Very briefly. The discussion over  
13 whether the trustee would file an Article 77, the discussion  
14 that the trustee had with Mr. Pickhardt's client, revolved  
15 around the question whether the trustee would file a  
16 petition and remain neutral on an issue, as the trustee is  
17 not neutral.

18 We are the petitioner here. We believe that we  
19 have a right to be heard on those issues. This is a  
20 calculation of distribution methodology that has been  
21 employed by the trustee consistent with the contracts for  
22 the last decade. And this is the first time any certificate  
23 holder has raised any issue, as I understand it, has raised  
24 an issue with respect to this specific IO distribution.

25 And so we are the petitioner. We anticipate that

1 we will -- we will continue to have a view on this issue.  
2 We will see whether other investors intervene and join  
3 either -- are aligned with either Silian Ventures position  
4 or are aligned with the trustees' position. And we will see  
5 as the case proceeds who actually says what in open court.  
6 But, of course, we think we have the right to be heard on  
7 this issue.

8 THE COURT: Well, again, I'm not ruling on this  
9 today. I just wanted you to have an opportunity to balance  
10 the record for today's proceedings.

11 And on the escrow?

12 MR. INGBER: So with respect to the escrow, I will  
13 put it to the side the fact that this is administratively  
14 infeasible, that is to separate out these disputed amounts  
15 over the course of the next distributions next month and in  
16 every successive month.

17 I'll also, I suppose, put to the side that this was  
18 the relief that Silian Ventures could have sought in Federal  
19 Court before Judge Gardephe, and they didn't do that. So I  
20 don't think that coming to Your Honor today and asking to  
21 modify the order to show cause to allow for escrow is  
22 appropriate. But most importantly, I don't think any  
23 escrowing would be appropriate or even any consideration of  
24 whether escrowing would be appropriate.

25 I don't think any of that should happen without



1 notice to certificate holders, and giving those certificate  
2 holders a chance to weigh in on this issue. This impacts  
3 their rights. Silian just could say it impacts their  
4 rights.

5 But escrowing funds means that other certificate  
6 holders are not going to be getting what they believe  
7 they're entitled to.

8 So we think escrow is not appropriate. We  
9 certainly don't think consideration of escrow is appropriate  
10 without giving notice to certificate holders. And we would  
11 ask that we start implementing these notice of programs.  
12 Allow certificate holders to intervene. Let's see if they  
13 do or they do not.

14 And if Silian Ventures wants to raise the question  
15 of escrow at some point down the road when everyone has had  
16 a chance to intervene, then they can raise it and we can  
17 address the issue on the merits then.

18 THE COURT: Do you wish to reply?

19 MR. PICKHARDT: Yes, Your Honor. We disagree with  
20 respect to the feasibility issue. We will be happy to meet  
21 and confer with the trustee in respect of an appropriate and  
22 workable methodology for establishing the escrow.

23 We also think, as Mr. Ingber is essentially  
24 acknowledging, that by proceeding with distributing these  
25 amounts every month, they are certainly prejudicing one set

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1 of note holders against another set of note holders with  
2 respect to this dispute. They obviously consider this  
3 dispute serious enough that they have initiated an action.  
4 And the relief that they are seeking is a relief that they  
5 are requesting the only prospective. We don't think they  
6 should be able to have it both ways to be seeking  
7 prospective relief with respect to that they have subjected  
8 to the jurisdiction of this Court, and at the same time be  
9 prejudicing note holders during the pendency of the action.

10 To the extent Your Honor would like if we do have a  
11 proposed modification to the order to show cause that  
12 addresses this issue, I would be happy to hand it up if Your  
13 Honor would like to see the specific question.

14 THE COURT: That will not be necessary. When you  
15 file your notice of appearance, you can set forth your  
16 position about the escrow, and I will consider it when other  
17 certificate holders have had the opportunity to intervene,  
18 and that will be one issue at least that we may deal with at  
19 the status conference that I will set for the initial date.

20 I think that's everything from my point of view.

21 Does anyone have anything else?

22 MR. INGBER: I do have a question, Your Honor.  
23 You've asked us to consider publication option, we will do  
24 that expeditiously. We will have a conference call on  
25 Monday.

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1 Does Your Honor want to hear from us before that  
2 Monday conference call on what we propose with respect to  
3 publication?

4 THE COURT: I don't think that's necessary.

5 MR. INGBER: Okay.

6 THE COURT: So we will give you a date for the  
7 conference call.

8 I am requesting that the trustee obtain a copy of  
9 the transcript of today's proceedings, eFile it, and file  
10 two hard copies with the Clerk of Part 60.

11 As is my usual practice, I reserve the right to  
12 correct errors in the transcript. Therefore, if it is  
13 needed for any further purpose, you should have a copy so  
14 ordered by me and not merely signed by the court reporter.

15 Thank you.

16 This lady is going to give you a date.

17 (Whereupon, a luncheon recess is held.)

18 (Whereupon, the following proceedings take place in  
19 Judge Marcy S. Friedman's chambers with the attorneys  
20 appearing via teleconference.)

21 THE COURT: Good afternoon. This is Judge  
22 Friedman. I am here with the same court reporter who was  
23 present this morning.

24 Without full appearances, please state the names of  
25 the counsel who are on the call.

1 MR. INGBER: This is Matthew Ingber and Anjanique  
2 Watt from Mayer Brown.

3 MR. PICKHARDT: Good afternoon, Your Honor. This  
4 is Jon Pickhardt from Quinn Emanuel. I'm joined by my  
5 colleague, Evan Hess.

6 THE COURT: Thank you.

7 Please say your names before you speak because the  
8 voices are very difficult to distinguish over the phone.

9 Mr. Ingber, have you conferred with your client  
10 about publication?

11 MR. INGBER: I have, Your Honor.

12 THE COURT: And the outcome?

13 MR. INGBER: The outcome, yes. We will publish the  
14 notice as Your Honor suggested earlier today. We had been  
15 in touch with a vendor for pricing proposals for The Wall  
16 Street Journal or other publications. We have pricing for  
17 our placement in a hard copy newspaper, and we are waiting  
18 for pricing on placement on the online version of The Wall  
19 Street Journal. And we would propose both because of cost,  
20 but most importantly because we think it's more likely to  
21 get more eyeballs, we would propose publication on the  
22 online version of The Wall Street Journal.

23 THE COURT: Is that everything, Mr. Ingber?

24 MR. INGBER: Yes, Your Honor.

25 THE COURT: Are you asking me to wait to sign the

1 order until you determine what the pricing is for the online  
2 journal, or are you requesting that I authorize today  
3 placement in the online journal?

4 MR. INGBER: We are comfortable with the Court  
5 ordering placement in the online version of The Wall Street  
6 Journal.

7 THE COURT: Mr. Pickhardt, do you have a position  
8 on this?

9 MR. PICKHARDT: I do not, Your Honor.

10 THE COURT: I will authorize the placement in the  
11 online Journal. I think that's everything for this  
12 afternoon.

13 Anything else, Mr. Ingber?

14 MR. INGBER: Nothing here, Your Honor.

15 THE COURT: Mr. Pickhardt?

16 MR. PICKHARDT: Yes, Your Honor, just two quick  
17 questions.

18 One, Your Honor indicated this morning that you  
19 would accept some form of a submission from us concerning a  
20 potential escrow fund in advance of the initial conference.  
21 Is that something you would like for us to do by motion or  
22 would a letter submission be sufficient?

23 THE COURT: No. At this point we will just have  
24 the notices of appearance, and we'll take up the issue at  
25 the status conference. If I think I need anything before

1 then I will let the parties know.

2 MR. INGBER: Okay.

3 MR. PICKHARDT: Okay. Thank you, Your Honor.

4 The second question is whether -- when the parties  
5 make appearances, there should be some identification by the  
6 parties as to what trust they have investments in, given  
7 that there are 278 different trusts at issue.

8 THE COURT: Let me just check and see what we've  
9 done on the -- what we've done in the past on that. I can't  
10 do it during the call, but I'll bear that in mind.

11 There have been a lot of concerns expressed by  
12 parties in these cases about revealing of details regarding  
13 their positions and potential competitive disadvantages or  
14 other financial disadvantages and disclosing that  
15 information. So I'll keep in mind your request, and I'll  
16 see what we've done in the past.

17 MR. PICKHARDT: Thank you, Your Honor.

18 And I know the Court had mentioned this morning as  
19 taken up in other cases issues around whether indirect  
20 holders have the ability to appear as well as, you know, the  
21 timing on holding. Is it correct that the Court would  
22 address those issues at a later time, as opposed to in this  
23 initial notice?

24 THE COURT: Yes.

25 MR. PICKHARDT: Okay.

1 MR. INGBER: Your Honor, if I can respond just very  
2 briefly?

3 THE COURT: This is Mr. Ingber speaking, correct?

4 MR. INGBER: Your Honor, just on this question of  
5 what the notice -- I'm sorry -- what the order should  
6 include or not include. The trustee's position is that we  
7 think the order should, should be issued, you know, as it is  
8 subject to Your Honor's -- Your Honor's edit. But with  
9 respect to what Mr. Pickhardt said, we are uncomfortable as  
10 trustee giving one group of certificate holders the ability  
11 to weigh in on what the order should say, specifically when  
12 other certificate holders have not had the same opportunity  
13 to weigh in on that issue.

14 I just wanted to put that on the record.  
15 Obviously, it is up to the Court to decide what should be in  
16 the order and whether there should be identification of the  
17 trust in which the interested parties have an interest. But  
18 our view more generally is that this is the order that we  
19 had proposed, and that one group of certificate holders  
20 shouldn't have any advantage over any other group of  
21 certificate holders.

22 THE COURT: Well, I certainly agree with you. And  
23 I think pretty much all of these issues have been deferred  
24 for a later time after all of the interested persons have  
25 had an opportunity to appear.

Proceedings

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If I put in a provision in prior orders to show cause requiring identification of trust before anyone had had the opportunity to be heard, then I will do the same again.

But if there is a potentially disputed issue about this, then it will not be addressed until all interested persons have had the opportunity to be heard.

MR. INGBER: Thank you, Your Honor.

THE COURT: Thank you.

And let me request again that you obtain the transcript of today's proceedings, subject to my reservation of the right to correct errors, as is my usual practice. I'm going to leave the call, so if you need the reporter's information again you can get it.

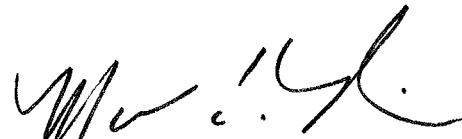
Thank you.

MR. INGBER: Thank you, Your Honor.

MR. PICKHARDT: Thank you, Your Honor.

\* \* \* \* \*

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

  
Maria E. Rivera  
Senior Court Reporter