

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

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3 In the Matter of the Application of

4 THE BANK OF NEW YORK MELLON, in its
5 Capacity as Trustee for 278 Residential
6 Mortgage-Backed Securitization Trusts,

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Petitioner(s)

INDEX:
150738/2019

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

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11 60 Centre Street
12 New York, New York 10007
13 April 18, 2019

14 B E F O R E:

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16 J U S T I C E

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1 THE COURT: On the record. Good afternoon. May
2 have the appearances of counsel at the table.

3 MR. INGBER: Good afternoon, your Honor. Matthew
4 Ingber for Mayer, Brown, for Bank of New York Mellon.

5 MR. HOUPT: Good afternoon, your Honor.
6 Christopher Houpt, for Mayer, Brown, for Bank of New York
7 Mellon.

8 THE COURT: I'm afraid I'm having trouble hearing
9 everyone who has spoken, not your fault.

10 MR. SHAPIRO: I'm Saul Shapiro, from Patterson,
11 Belknap, Webb and Tyler, on behalf of AIG.

12 MR. WARNER: Good afternoon, your Honor. Kenneth
13 Warner, 950 Third Avenue, New York, New York. I represent
14 the following institutional investors:

15 Blackrock Financial Management, Inc., Federal Home
16 Loan Bank of Atlanta, Goldman Sachs Asset Management, LP,
17 Kove Advisors, LP, Pacific Investment Management Company,
18 LLC.

19 MR. PICKHARDT: Good afternoon, your Honor.
20 Jonathan Pickhardt, Quinn, Emanuel, Urquhart and Sullivan,
21 on behalf of Silian Ventures, LLC. I'm joined by my
22 colleague Blair Adams.

23 MS. ADAMS: Blair Adams, Quinn, Emanuel, Urquhart
24 and Sullivan, on behalf of Silian Ventures, LLC.

25 THE COURT: This is the first appearance in this

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1 case since notice has been given to interested parties and I
2 am expecting to hear from the parties about what issues may
3 need to be addressed before merits briefing and proposed
4 scheduling. So why don't we start with the trustee.

5 MR. INGBER: Your Honor, thank you. Matthew Ingber
6 for the trustee.

7 There has been some discussion among the parties,
8 the investors, various investor groups and the trustee about
9 what the schedule should be leading up to a final merits
10 hearing. There is agreement that there should be briefing
11 on the issues followed by a hearing.

12 There is, right now, a dispute between one group of
13 investors and another about whether that briefing should
14 encompass just one brief in response to the papers that have
15 already been filed. Silian can speak for itself, but my
16 understand is that their position is that there should be
17 one round of briefing and those papers should be filed on
18 May 9th.

19 Other groups of investors have proposed opening
20 briefs, opposition briefs and reply briefs starting at the
21 end of May, two weeks later opposition briefs and two weeks
22 after that reply briefs. It's our position that additional
23 briefing could be beneficial to the Court. The trustee
24 doesn't feel strongly about this issue.

25 We understand that these issues can be complicated

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1 and ultimately our view is that we will do what's best for
2 the Court. If there's more than one round of briefing, we
3 think there should be some limits on the pages so that
4 you're not getting duplicative briefing and it can ease the
5 Court's burden, but ultimately I think we lean in favor -- I
6 know that we lean in favor of additional briefings for the
7 Court's benefit. Ultimately we defer to your Honor. So
8 that I would say is the first issue that the parties have
9 been back forth on.

10 THE COURT: Have the parties also discussed whether
11 there will be any request for discovery before the merits
12 briefing?

13 MR. INGBER: So Pickhardt and I have had a
14 conversation about discovery. Silian will, again, I don't
15 want to -- they can speak for themselves, it is my
16 understanding that they would like to pursue discovery while
17 the parties are briefing these issues, mindful that the
18 Court may be in a position to just rule on the papers.

19 It's our position that we should brief the issues.
20 The Court should decide whether or not it can rule on the
21 papers, issue a ruling --

22 THE COURT: Excuse me. Is this the issue about
23 whether the governing agreements are ambiguous or would
24 there be discovery on something else?

25 MR. INGBER: I'm not quite sure what they want

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1 discovery on. We don't think discovery is necessary at all.
2 We think your Honor can read the contracts, your Honor can
3 consider the undisputed fact that the trustee has been using
4 what we have described as the dynamic method since the
5 inception of these deals and we think that undisputed fact,
6 coupled with the contract which we believe supports the --
7 our interpretation of the dynamic method is sufficient for
8 your Honor to rule that the trustee acted properly in
9 applying the dynamic method for the last ten or so years and
10 should continue to do so going forward. I think Sillion
11 Ventures would like to have discovery into course of
12 dealing. Our view is that course of dealing is undisputed.
13 This is what we did. What we did was made available to
14 investors, in our investor reporting website every month in
15 the form of remittance reports. So it's going to be a lot
16 of work that we think ultimately is going to be unnecessary
17 if your Honor decides, after the parties brief these issues,
18 that there are fact issues and discovery would heed the
19 Court, then we can get into discovery at that point, but we
20 think at this point it would be not the best use of the
21 Court's time and the parties's time.

22 THE COURT: Are there any other issues that need to
23 be addressed?

24 MR. INGBER: Not for -- well, let me raise one
25 other issue.

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1 Mr. Pickhardt and I discussed an issue with respect
2 to expedited discovery as to one specific question. I don't
3 want to get into the details of it. We have a dispute about
4 whether it's even at issue in this case or should be at
5 issue in this case, but Mr. Pickhardt asked whether we would
6 agree to expedite a discovery on that specific issue or
7 whether we can agree on a set of facts that would allow the
8 parties to argue based upon that agreed upon set of facts.
9 We told Mr. Pickhardt that the latter option sounds better
10 to us. We think we can reach agreement. We hope that we
11 will be able to reach agreement on that agreed set of facts.
12 Again, we think that what we have been doing should be
13 undisputed, but how we frame it and what language we use is
14 can be the subject of some discussion. I think that,
15 assuming that we reach agreement in the next few weeks on
16 that, that would put to the side the question of whether we
17 need discovery on that issue. So that's the only other
18 related discovery issue that we were discussing.

19 THE COURT: On this secret issue, will the other
20 investors be privied to the negotiations?

21 MR. INGBER: Sure. Everyone will be privied to all
22 of the negotiations. The issue -- I'm happy to get into it,
23 your Honor. The issue is with respect to what we think is
24 -- it's the method by which -- it's related to the
25 methodology that the trustee uses to calculate the payments

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1 to the IO certificate holders. It's not an issue that --
2 it's not an issue that Silion Ventures had raised at all
3 with the trustee in the lead up to their filing in Federal
4 Court. It's not an issue that they teed up in their Federal
5 Court filing. It's therefore not an issue that we squarely
6 teed up in our petition. Their views that it's related to
7 the ultimate merits issue of whether the dynamic method or
8 static method should be used, and so there's -- there are
9 disputes about a whole host of issues, in particular, the
10 relevance of this question, but we might be able to just put
11 this to bed by agreeing on a set of facts that the parties
12 can argue from.

13 THE COURT: Thank you. Will I hear next from
14 Silion?

15 MR. PICKHARDT: Yes, your Honor. John Pickhardt on
16 behalf of Silian. I think Mr. Ingber generally fairly
17 characterized the discussions we had and what our position
18 is.

19 In respect of the discovery, you know, we do think
20 discovery should move forward, but there's only one issue
21 that we think for which discovery is relevant for the
22 initial merits hearing; and that derives from the fact that
23 the way the trustee has structured its petition here, is it
24 has claimed to have engaged in a particular methodology
25 historically for calculating payments to the IO

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1 certificates, which my client holds, and is actually asking
2 from this Court for an order that it should continue
3 performing the calculations in the same way it's been doing
4 it. There actually is a dispute, your Honor, as to whether
5 how they are describing the petition they have done the
6 calculation is in fact how they have done it, and we think
7 quite strongly, we believe, that in fact the attorneys'
8 actual practice in performing that calculation deviates in a
9 very material way from how they've described themselves as
10 having done it. So we think if we're going to go into a
11 hearing where the Court is going to be considering (A) the
12 arguments about, you know, historical, you know,
13 calculations that have been performed and is being asked to
14 take that into account in making a determination as to how
15 they should be performed in the future; and secondly,
16 literally being asked to imbed in an order a direction that
17 the trustee continue with it's same calculations, that it's
18 imperative that we be able to understand exactly how it's
19 been performing those calculations.

20 I had a discussion with Mr. Ingber, in which he
21 suggested that perhaps we could avoid needing to take, you
22 know, actual discovery of that if they simply give us a very
23 clear statement that is acceptable to us, in detail, with
24 respect to how in fact they have been performing the
25 calculations and we handle that by stipulation.

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1 We are perfectly happy to proceed that way or at
2 least to attempt to proceed that way in the first instance
3 and that may resolve the issues for the initial hearing.

4 THE COURT: If you can't resolve it by stipulation
5 that would be the only issue on which you would need
6 discovery before the merits briefing?

7 MR. PICKHARDT: That is correct, your Honor.

8 THE COURT: All right. Now, I'm not sure I
9 understood from Mr. Ingber's explanation what position
10 you're taking with respect to how the briefing should be
11 done.

12 MR. PICKHARDT: Yes, your Honor, our position is
13 that the briefing should progress in the same manner that
14 was set forth in the Court's February 1st order. In the
15 Court's February 1st order, paragraph 6, it said that for
16 parties to appear, that they should file a statement of
17 their position, up to 20 pages, with support for that
18 position and even evidence for that position if they wanted
19 to present it. And then in paragraph 11 when it described
20 what would be done at this initial conference, it indicated
21 that there would be a discussion of responses by petitioner
22 interested persons to submissions filed pursuant to
23 paragraph 6 above. So, your Honor, consistent with your
24 order we, on March 8th, filed a 20 page substantive
25 submission setting forth our position and our support for

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1 that. The group of investors that are represented by
2 Mr. Warner did something, you know, similar to that, and the
3 trustees, obviously set forth its position in the petition.
4 So we would like to just stay with the process that was set
5 forth in the Court's order to affix a date for responses to
6 what has been filed so far.

7 I will also just note, your Honor, you will note in
8 our positions consistently in this proceeding that I do have
9 a client who is very anxious for this to move along
10 expeditiously. As I mentioned at the conference on February
11 1st, there's about a million and a half dollars each month
12 that is getting paid out, that is going to other certificate
13 holders, when we believe it should be going to the IO
14 certificate holders. So for my client time is of the
15 essence here as well. So we would like to have all of the
16 issues ventilated to the fullest extent that would be
17 helpful for the Court. We do also have a client that is
18 concerned with prejudice as time goes on with respect to the
19 ongoing distributions that are happening.

20 THE COURT: What is the status, Mr. Pickhardt with
21 respect to the Federal Court action?

22 MR. PICKHARDT: We have agreed to a stay of that
23 proceeding at this point, which is indefinite. We have
24 advised the Federal Court that we will periodically give
25 reports as to, you know, the status of this proceeding, but

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1 there has been no further filings other than stay
2 applications since the last time we were in front of this
3 Court.

4 THE COURT: Is there, on another matter, is there
5 still an issue as to escrow?

6 MR. PICKHARDT: Your Honor, we're not making a
7 formal application for an escrow at this point in time. We
8 think that, in fact, you know, there are -- this issue has
9 actually become more complicated than when we were here in
10 front of you before because the group of investors that are
11 represented by Mr. Warner has actually taken a position in
12 their papers that the IO certificates were over paid, not
13 that they've been under paid. So we have in front of your
14 Honor parties that are arguing kind of both sides and the
15 dollars could be very significant if you were going to talk
16 about an escrow, 100 million dollars or more. So, your
17 Honor, we are concerned that an escrow would be one way to
18 kind of preserve, you know, against prejudice, but so many
19 dollars would need to be set aside that the escrow in and of
20 itself might cause its own prejudice. So we would sort of
21 alternatively encourage, as much as possible, a rapid
22 resolution. We are not making a formal application for
23 escrow.

24 THE COURT: Would any of the other investors like
25 to be heard?

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1 MR. WARNER: Thank you, your Honor. Ken Warner for
2 the investors I mentioned before. Your Honor, we agree that
3 the briefing should be to the fullest extent that would be
4 helpful to the Court, but one brief is not going to do that
5 and we certainly didn't understand paragraphs 6 and 11 to be
6 a briefing schedule in the Order to Show Cause.

7 We understood it to be a call for each party to
8 give an overview of what's your position, not get into the
9 weeds about all the nuances, and that is what we did, that's
10 what the other investors did. Actually, I think one of the
11 investors really didn't say much about its position and
12 people spoke in different lengths, but everybody had the
13 position, we look forward to full merits briefing and we put
14 that repeatedly in our overview presentation.

15 We believe, your Honor, that one brief would be
16 more of a problem than a benefit because undoubtedly new
17 positions are going -- new aspects of everybody's position
18 are going to be set forth and then there will be no response
19 for your Honor. So we think that what will give your Honor
20 the clearest presentation of everybody's position and the
21 responses to those positions would be a briefing schedule in
22 which there's an opening brief, an answering brief and a
23 reply brief. We had suggested a schedule of May 31st, June
24 14th, and June 28th. That was just our suggestion. I don't
25 want to speak on behalf of the other investors, but I

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1 believe they join in having a full briefing of that kind,
2 which we think gives your Honor the benefit of not only of
3 hearing, you know, articularly worded positions, but the
4 reputation.

5 THE COURT: Who would author the opening brief?

6 MR. WARNER: Well, we thought that there could be
7 simultaneous in view of the fact that a lot has been said
8 by, you know, a number of people have set forth enough for
9 everyone to respond simultaneously because if we have three
10 rounds we think that would work but, of course, if your
11 Honor -- I think if we -- I think if one side then the
12 other, it does leave sort of a more open-ended last word
13 whereas if people are joint, probably gives everybody a
14 chance to be heard fully.

15 THE COURT: Would anyone else like to be heard?

16 MR. SHAPIRO: Just briefly, your Honor. We agree
17 with Mr. Warner and Mr. Ingber having additional briefing
18 would be helpful and we certainly did not understand the
19 Court's order. We put in, I think, a three page submission
20 just to set forth what our position was. We didn't
21 understand that to be, you know, the time to put in a 20
22 page brief.

23 Your Honor, with respect to the schedule that
24 Mr. Warner suggested, we think that makes sense. I mean, if
25 there are particular days that don't work out, whatever the

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1 Court's convenience, but we think several rounds of briefing
2 would be helpful.

3 We agree also with what the trustee said with
4 respect to discovery. In our view the PSA is quite clear on
5 this issue of dynamic versus the original rate. We don't
6 think that any discovery at all is necessary on that. We
7 think that it's easier for the Court and it makes more sense
8 for the Court to hear what we have to say, decide whether
9 the Court agrees with us that it's unambiguous and can rule
10 without any discovery, but I would say, if you are going to
11 order the discovery that Sillion asked for that that
12 discovery should happen before and then we should have the
13 briefing schedule after that so that we can address whatever
14 there is that's revealed in that discovery in our briefing.

15 Thank you, your Honor.

16 MR. HOCHMAN: Your Honor, John Hochman, for Tilden
17 Park. What Mr. Shapiro just said goes for us as well. This
18 was our initial submission in totality. We obviously would
19 like the opportunity to say more about it than that and I
20 think at least two rounds or three rounds of briefing would
21 be appropriate.

22 THE COURT: We are going to take a very brief
23 recess, around five minutes and then I will let you know
24 where I think we should go from there. Thank you.

25 (Recess taken.)

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1 THE COURT: Back on the record. There may have
2 been an Article 77 proceeding early on in this part, in
3 which we used the initial appearances as the merits
4 briefing, but as we've gotten more experienced we haven't
5 been doing that. We've been having separate merits briefing
6 and I think that that makes sense here.

7 What I would like to do, though, is avoid
8 unyielding excessive briefing. Anyone who was here on the
9 JP Morgan Article 77 knows what massive papers we had, and
10 in some cases, what duplication we had. So I'm going to ask
11 my law clerk who has been working with me on these Article
12 77's from the outset to sit with you for a few minutes and
13 see if we can come up with something that looks feasible,
14 that can avoid excessive paper and will be user friendly for
15 all of us in understanding what the arguments are and the
16 differences in position. Part of the problem is that it
17 doesn't -- you're not -- all of the investors are not
18 aligned 100 percent with the trustee and we have some
19 separate arguments. So my hope is that if you talk with
20 Miss Lang you'll be able to work out something that makes
21 sense.

22 I will expect that Sillion and the trustee will meet
23 in order to determine whether a stipulation can be reached
24 on the methodology issue. If you cannot reach a
25 stipulation, you can let me know whether there's going to be

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1 a request for discovery and whether there's an agreement as
2 to the timeline for that. We can do that on a conference
3 call with all appearing parties and we will set the dates on
4 an expedited basis given that pretty much everyone seems to
5 be agreeing to the schedule Mr. Warner proposed seems to be
6 quite expedited to me. It's not as quick as the one Silion
7 wanted, but it's still very reasonable I think, and if we
8 have to move it out a little if there's going to be
9 discovery on the methodology issue, then we can do that, but
10 we should set those dates today.

11 I'm just going to leave it to you to discuss at
12 least for a few minutes whether you can work out something
13 on the briefing and if you can't, I will do my job.

14 I will request if we have to go back on the record
15 today, we will, but let me say now that I'm requesting the
16 trustee obtain a copy of the transcript, E-file it and file
17 two hard copies with the clerk of the part. The transcript
18 will not be so ordered until the hard copy is filed with the
19 clerk.

20 I remind you that I reserve the right to correct
21 errors in the transcript, therefore, if it is needed for any
22 further purpose you should have a copy as so ordered by me
23 and not merely as signed by the Court Reporter.

24 MR. PICKHARDT: Your Honor, there has also been
25 discussion among the parties about a protocol for

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1 disclosures among the parties as to what their holdings are
2 for purposes of any questions around standing. We had some
3 initial discussions. There are some on-going disputes as to
4 the full extent of those disclosures. We're going to
5 continue trying to work among the parties to resolve that so
6 not to have to burden the Court with what the issues are in
7 dispute. If we do come across a dispute that we can't
8 resolve, we may be presenting that to the Court to seek its
9 assistance.

10 THE COURT: If there is a problem of that sort or
11 any other sort, initially you should initiate a conference
12 call with all appearing parties and if we think we need a
13 joint letter and that's the best way to proceed we will ask
14 for that on the conference call. I think you should be able
15 to work out the holdings issue though. We did very well
16 with that on the JP Morgan case.

17 MR. PICKHARDT: We are very, very close to what has
18 been done historically in the Lima case, which we're using
19 as a model, but we think we are very, very close to doing
20 that.

21 The only other issue, it may have been implicit in
22 what you have already indicated, but are we okay to proceed
23 understanding it's not going to be on an expedited basis
24 with serving any discovery requests with the matter in
25 general at this point. There hasn't been a formal

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1 application for a stay. I know the standard rules are that
2 even on a pending and dispositive motion the parties may
3 proceed with discovery generally. Is that something we may
4 do or would you like for us to hold off on discovery?

5 MR. INGBER: Your Honor, for the trustee, we
6 suggest holding off. We are confident that your Honor is
7 going to be able to rule on this issue on the papers that
8 the parties submit. Discovery, as you know, can be very
9 time consuming, can be very costly. We think it's
10 unnecessary in this case. If it becomes necessary after the
11 papers have been submitted and your Honor hears argument on
12 the issues, then of course we can proceed with discovery,
13 but we would ask for a stay of discovery at this point.

14 (Whereupon, there is a brief pause in the
15 proceedings.)

16 THE COURT: I think we need to know more about what
17 discovery would be sought. I was under the impression from
18 the initial go-round today that the only discovery that
19 might be needed before the merits briefing was the
20 methodology issue.

21 MR. PICKHARDT: I think that is, your Honor, the
22 only discovery that would be needed before the merits
23 briefing, however, your Honor, we are not as sure that your
24 Honor will be able to resolve this case at that stage and we
25 don't think that the discovery in this case is going to be

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1 particularly extensive.

2 THE COURT: What would the discovery be?

3 MR. PICKHARDT: The discovery would go to really
4 two issues. One is, again, the trustee's historical conduct
5 around the calculations. Not just how they performed it,
6 but whether this issue is something that they have
7 considered using a modified rate versus using, you know, the
8 original rate; and then secondly, would be, you know,
9 discovery that goes to parole evidence related to the
10 formation of the provisions that are at issue. Even though
11 there's 278 trusts at issue, it won't surprise you that
12 there's near uniformity on the relevant provisions. So
13 we're talking about when those provisions were originally
14 embodied in the agreements in the first place and parole
15 evidence around the formation there. We think that that
16 discovery could be available from the trustee. There may be
17 a small number of third parties.

18 What we don't think is relevant here is, frankly,
19 any discovery among the investor parties. So we think that
20 also limits the burden. As your Honor is going to be asked
21 to resolve, you know, the meaning of a contract and none of
22 us were involved in forming. We do think that there is a
23 small group of parties that were involved in the formation,
24 in the preparation of the relevant provisions and we would
25 like to be able to at least commence that discovery process,

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1 you know, understanding that if we don't do that and we go
2 however many months it will take in order to get to a ruling
3 from your Honor, and we're just commencing discovery then,
4 then again you're going to hear from me a bit of a broken
5 record, but that the passage of time without even having
6 gotten started on that process will have been to my client's
7 prejudice.

8 MR. INGBER: So, your Honor, I think there's a
9 little bit of tension in what Mr. Pickhardt said. If
10 discovery is not as straightforward as he suggests, then we
11 can wait and we can do it on a relatively short timetable if
12 your Honor thinks that it's necessary after hearing argument
13 on the issues and ruling on the papers.

14 I suspect that discovery about what the trustee was
15 saying about these issues, since the inception of these
16 deals in 2006 or so, is going to take a bit more time and is
17 going to cost a bit more money than Mr. Pickhardt is
18 suggesting.

19 What we know is what the trustee has done over the
20 past 13 years with respect to this calculation. The trustee
21 has used the dynamic method. That is undisputed. That is
22 not -- doesn't have to be the subject of any discovery, and
23 what the trustee was discussing internally at the time about
24 this issue we think is irrelevant and would be a waste of
25 party resources.

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1 I don't agree, I certainly do not agree that if
2 there's discovery in this case it's completely one-sided
3 discovery. I think what -- if we're going to be getting
4 into discovery we, as trustee, if we're going to be digging
5 through our documents disclosing internal communications
6 about what we were thinking about this issue to the extent
7 those documents exist, well then we're going to be posing or
8 presenting discovery requests to investors such as Silion
9 and we're going to be probing questions about the timing of
10 their purchases, and what they were thinking about these
11 contracts, and how they interpreted the contract with
12 respect to the dynamic versus the static issue, and how they
13 modeled these deals. So we think that, yeah, if we go down
14 this path of discovery, it would be very unyielding for the
15 parties and ultimately unnecessary. So we would ask your
16 Honor that a stay be in place for now and then we could
17 always revisit this as the parties brief the issues.

18 THE COURT: Does anyone else want to be heard on
19 that?

20 MR. WARNER: We join in that, your Honor.

21 MR. SHAPIRO: I completely join. I thought we were
22 through with the discovery issue. What they're proposing
23 is, you know, trustee and third party discovery. I mean, I
24 don't see the point of just propounding that discovery, and
25 if that's all they're going to do, then why not wait until

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1 after the briefing; and if we're going do more than that,
2 well that doesn't make any sense because as we said before
3 it makes more sense for your Honor to decide whether or not
4 you read these contracts as cleanly as we do and then there
5 may be no need for discovery. I certainly don't agree with
6 what the trustee said.

7 MR. WARNER: Especially given the extensiveness of
8 it. It sounds like a huge historical investigation back
9 years and years when your Honor is going to be presented
10 with briefs directly related to the text, and I'm glad that
11 at one point in Mr. Pickhardt's presentation the word parole
12 evidence did emerge because that's what it's all about
13 parole evidence, and parole evidence is not relevant unless
14 your Honor finds ambiguity. So especially since we have a
15 briefing schedule that's going pretty quickly. Why
16 everything should wait until that takes place we don't
17 understand.

18 THE COURT: Thank you.

19 (Whereupon, there is a brief pause in the
20 proceedings.)

21 THE COURT: I am going to consider the issue for a
22 few minutes while you're getting started on the briefing.
23 Off the record.

24 (Discussion held off the record and a recess is
25 taken.)

Proceedings

1 THE COURT: Back on the record. I have conferred
2 with my law clerk and I'm prepared to approve the following
3 briefing:

4 Opening brief by the trustee, by Silion and a
5 single opening brief by the various investors, each brief of
6 20 pages to be served and so received by May 31. The same
7 three opposition briefs of 20 pages to be served, so
8 received by June 14, and the same three reply briefs of five
9 pages to be served so received by June 28. My understanding
10 is that the page limits have been discussed with counsel and
11 these are workable.

12 In addition, I am going to stay the discovery that
13 has been mentioned on parole evidence. I do call to the
14 parties' attention a decision that I wrote in Lehman
15 Brothers International Europe against AG Financial Products
16 60 Misc. 3d 1214A Affirmed, 168 AD3d 527.

17 I discuss custom and practice in that decision and
18 the use of custom and practice in interpreting complex
19 specialized financial instruments, but the discovery I was
20 hearing about was not discovery of that nature. So the
21 discovery I heard about on the record earlier I will stay
22 pending the merits briefing.

23 All right. If there's nothing further.

24 MR. WARNER: One more thing, if I may, your Honor,
25 does the Court have a preference for the timing and manner

Proceedings

1 of pro hac vice applications? I believe we can probably
2 submit one by stipulation.

3 THE COURT: If you can stipulate and attach a copy
4 of the certificate of good standing that would be
5 preferable. If you have to bring motions or if it's easier
6 for you to bring motions, I will not set in-court return
7 dates for them.

8 MR. WARNER: Thank you.

9 THE COURT: All right. I think that's everything
10 then. The record is closed. Thank you.

11 * * * *

12 CERTIFIED THAT THE FOREGOING IS A TRUE
13 AND ACCURATE TRANSCRIPT OF THE ORIGINAL
14 STENOGRAPHIC MINUTES IN THIS CASE.

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Lynnette Y. Cruz, CRR, RPR
Senior Court Reporter

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