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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: CIVIL TERM: PART 39  
- - - - -X  
In the matter of the application of  
THE BANK OF NEW YORK MELLON, (as Trustee under various  
Pooling and Servicing Agreements and Indenture Trustee  
under various Indentures), BlackRock Financial  
Management Inc (intervenor), Kore Advisors LP  
(intervenor), Maiden Lane LLC (intervenor),  
Metropolitan Life Insurance Company (intervenor),  
Trust Company of the West and affiliated companies  
controlled by The TCW Group Inc (intervenor) Neuberger  
Berman Europe Limited (intervenor), Pacific Investment  
Management Company LLC (intervenor), Goldman Sachs  
Asset Management LP (intervenor), Teachers Insurance  
and Annuity Association of America (intervenor),  
Invesco Advisors Inc, (intervenor), Thrivent Financial  
for Lutherans (intervenor), Landesbank  
Baden-Wuerttemberg (intervenor), LBBW Asset Management  
(Ireland)plc, Dublin (intervenor), ING Bank fsb  
(intervenor), ING Capital LLC (intervenor), ING  
Investment Management LLC (intervenor), Nationwide  
Mutual Insurance Company and its affiliated companies  
(intervenor), AEGON USA Investment Management LLC,  
authorized signatory for Transamerica Life Insurance  
company, AEGON Financial Assurance Ireland Limited,  
Transamerica Life International (Bermuda) Ltd,  
Monumental Life Insurance Company, Transamerica  
Advisors Life Insurance Company, AEGON Global  
Institutional Markets plc, LIICA Re II Inc, Pine Falls  
Re Inc, Transamerica Financial Life Insurance Company,  
Stonebridge Life Insurance Company, and Western  
Reserve Life Assurance Co of Ohio (intervenor),  
Federal Home Loan Bank of Atlanta (intervenor),  
Bayerische Landesbank (intervenor), Prudential  
Investment Management Inc (intervenor) and Western  
Asset Management Company (intervenor),

Petitioners,

Index Number:  
651786-2011

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

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Supreme Court  
60 Centre Street  
New York, New York 10007

April 24, 2012

BEFORE:

HONORABLE BARBARA KAPNICK,  
Justice of the Supreme Court

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## Proceedings

1  
2 this should fall under, which is the exception  
3 for the benefit of creditors. I decline to  
4 follow your reasoning of this, and follow rather  
5 the reasoning of the petitioners and I do not  
6 think it falls within that exception, and I do  
7 think that this is an appropriate case to  
8 determine under Article 77.

9 And so, I will keep it as an Article 77  
10 and I spent Friday saying I have never seen an  
11 Article 78 like this, and now I have never seen  
12 an Article 77 like this, and I don't know what  
13 will happen tomorrow, but I have a specialty in  
14 PSA and special proceedings this month.

15 In terms of the other two motions which  
16 we never got to, the motion to compel disclosure  
17 and the one that asks me to determine exactly  
18 what the scope of the review was, as I said, it  
19 is a funny kind of a thought, but I think  
20 probably the scope of the discovery and the case  
21 going on is going to be, was were the trustee's  
22 actions taken within their reasonable discretion.

23 I think that is a very broad and much  
24 broader, I am sorry to say to the petitioners, a  
25 much broader scope than you think that it is.

26 Now, I did read the motion to compel and we

## Proceedings

1  
2 didn't talk about it, and I understand there were  
3 requests for perhaps doing a sampling of some of  
4 the underlying loans, a sampling to know -- there  
5 is tens of thousands of those loans, for  
6 documents and communication and what happened  
7 during the settlement negotiations. I thought  
8 that some of that was exchanged. Obviously, a  
9 lot of that has not been exchanged.

10           What I am going to ask you to do, I am  
11 not going to take a look at the proposal that you  
12 -- without everybody else. That is ex parte. I  
13 am giving you -- that is never how I look at it  
14 -- a discovery schedule that has to be done with  
15 all of the parties working it out together. I  
16 do not expect to spend two years on discovery  
17 here. Somebody brought to my attention that  
18 Judge Pauley thought he could do it in eight  
19 months. I don't really know exactly what happens  
20 there on a day to day basis. Obviously, he  
21 didn't get that much of it done, and I think that  
22 is something that a time range would be more than  
23 enough. So I think what you will have to do is  
24 in the next few weeks is sit down and start  
25 working out some proposals for discovery with the  
26 understanding to the petitioners that it is not

## Proceedings

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2 going to be as narrow as you want, and it is not  
3 maybe going to be quite as broad as you suggest,  
4 but I think that a lot of the objectors or a lot  
5 of the intervenors have not objected, but said I  
6 need more information, I need to know what  
7 happened here.

8 The petitioners want me to make 18  
9 findings at the end of the day. They are quite  
10 expansive findings and I myself will not make a  
11 finding that everything you did is right, because  
12 Mr. Ingber eloquently got up and told me  
13 everything that he did is right. I think I will  
14 need to see more, so hence, they are going to see  
15 more and they are going to look at it more in  
16 depth than I will, and tell me what are the  
17 problems and maybe there won't be any problems,  
18 maybe they will say you guys did a great job for  
19 us, terrific work and we are on board -- I am not  
20 overly optimistic, but that is exactly how it  
21 goes, but you know, hope springs eternal.

22 So, see what you can do. See if you can  
23 get this going a little bit, and I don't know if  
24 you want to have a deposition at this stage or  
25 some more documents before you have a deposition,  
26 but we know for sure there is no question that

## Proceedings

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2 difficulties, and I promise I will listen but I  
3 can't continue on today.

4           The scope of discovery or the scope of  
5 review and motions will get adjourned so we can  
6 talk about them, work with them. I am not making  
7 determinations on those right now. We will work  
8 through those and that would be helpful.

9           Thank you all for coming in.

10          MR. INGBER: Thank you, your Honor.

11                           \*           \*           \*

12           Certified that the foregoing is a true  
13 and accurate transcript of the original  
14 stenographic minutes of this case.

14                           -----  
15                           Claudette Gumbs  
16                           Senior Court Reporter  
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