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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM : PART 36

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In the Matter of the Rehabilitation of  
FINANCIAL GUARANTY INSURANCE COMPANY,

Index No.  
401265/2012

-----X  
Index No.  
401265/2012

New York Supreme Court  
60 Centre Street  
New York, New York 10007  
December 18, 2012

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A P P E A R A N C E S: (continued)

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## Proceedings

1  
2 THE COURT: On the record.

3 Let the record reflect that this matter had been  
4 set by order to show cause way back in November, I believe,  
5 November of 2012, November 5th, setting today as the  
6 hearing date in the matter of Rehabilitation of Financial  
7 Guarantee Insurance Company or also known as FGIC by those  
8 who love this case, including myself.

9 And on behalf of the rehabilitator, let's note  
10 your appearance.

11 MR. HOLTZER: Good afternoon, your Honor.

12 Gary Holtzer, Weil, Gotshal & Manges on behalf of  
13 the Superintendent of Financial Services as the  
14 rehabilitator of Financial Guarantee Insurance Company  
15 which, as your Honor indicated, we refer to as FGIC.

16 Here at the table with me is my partner, Richard  
17 Slack, and Kelly DeBlasi from our firm.

18 THE COURT: Very good. Thank you very much.

19 In addition, we have another set of cards and I  
20 understand that these are the people who have filed  
21 objections and are still objectors.

22 Would that be fair to say, this set of cards?

23 MR. HOLTZER: Yes, your Honor. Although some of  
24 the objections that are on file we have narrowed and we  
25 will explain to the Court the status of them during today's  
26 session.

## Proceedings

1  
2 THE COURT: Okay. Let's take the appearances,  
3 starting from the right.

4 MR. GADSDEN: Thank you, your Honor.

5 James Gadsden, Carter Ledyard & Milburn, LLP for  
6 the Bank of New York Mellon and the Bank of New York Mellon  
7 Trust Company NA as indentured trustee.

8 THE COURT: Good afternoon. Thank you.

9 MR. JOHNSON: Good afternoon, your Honor.  
10 Michael Johnson from Alston & Bird for Wells Fargo Bank NA,  
11 which is also an indentured trustee and trustee on certain  
12 RMBS trusts.

13 MR. GOTTFRIED: Andrew Gottfried, Morgan Lewis &  
14 Bockius LLP, counsel for Deutsche Bank National Trust  
15 Company and Deutsche Bank Trust Company America.

16 THE COURT: We should be able to get you a seat,  
17 sir. I think there is an extra seat, if one of my  
18 volunteers could. The court lacks a lot of resources, but  
19 chairs we should be able to get enough of.

20 MR. WAGNER: Jonathan Wagner from Kramer Levin,  
21 representing the Jefferson County Warrant Holders.

22 THE COURT: Thank you.

23 MR. FISCO: Michael Fisco from Faegre Baker  
24 Daniels representing U.S. Bank National Association in the  
25 capacity as trustee.

26 THE COURT: Very good. Thank you.

## Proceedings

1  
2 MR. HESSLER: Paul Hessler of Linklaters LLP on  
3 behalf of Children's Health Partnership Holdings Limited.

4 THE COURT: Very good. Thank you.

5 MR. McGUIRE: There are additional objectors,  
6 your Honor. James McGuire and Allan Brilliant of Dechert  
7 LLP for Aurelius Capital Management, LP.

8 THE COURT: If you would like to step into the  
9 well that makes sense. All right.

10 MR. TILLINGHAST: Edward Tillinghast from  
11 Sheppard Mullin on of behalf of U.S. Bank National  
12 Association.

13 MR. MULLANEY: Thomas M. Mullaney from the Law  
14 Office of Thomas M. Mullaney for CQS ABS Master Fund  
15 Limited, CQS Select ABS Master Fund Limited and CQS ABS  
16 Alpha Master Fund Limited.

17 MR. CASTELLANO: Carmine Castellano from the law  
18 firm of Hodgson Russ for M & T Bank.

19 THE COURT: Thank you very much.

20 In terms of the objectors, do we have all of your  
21 cards? I would ask that you hand up the cards to the court  
22 officer and we will staple it onto this notice of  
23 appearance sheet.

24 Okay, moving on. I understand that a number of  
25 the objections have been resolved. I commend all sides for  
26 working hard on doing that in terms of building a

## Proceedings

1  
2 consensus. I understand that there is an Exhibit 1 that  
3 reflects in bold the continuing objections; is that  
4 correct?

5 MR. HOLTZER: Yes, your Honor. We have taken the  
6 chart that was attached to our reply and for the Court's  
7 benefit, shaded the objections in bold that will continue  
8 after confirming with each of the objectors what those are.

9 THE COURT: All right. So basically we are  
10 referring to what is before the Court as Exhibit 1, the  
11 omnibus response chart; is that correct?

12 MR. HOLTZER: That's correct, your Honor.

13 THE COURT: Okay. I would like to remark this so  
14 it doesn't get confused with the other Exhibit 1. Right?  
15 There is another Exhibit 1 in the reply, I believe. Is  
16 that correct or is it --

17 MR. HOLTZER: Yes.

18 THE COURT: Which looks very similar to this, but  
19 clearly is different.

20 MR. HOLTZER: Yes.

21 THE COURT: Okay. So I'm going to mark this  
22 Exhibit 1A, 1A for amended. Okay?

23 MR. HOLTZER: Okay.

24 THE COURT: And this will be now a Court exhibit  
25 so we know exactly what we are talking about and we are  
26 going off the record so it will be marked as a Court

## Proceedings

1  
2 Exhibit.

3 (Whereupon, omnibus response chart was marked  
4 Court's Exhibit 1A.)

5 THE COURT: Let the record reflect that one of  
6 the objectors requested a copy of what now has been marked  
7 as Court Exhibit 1A and copies are being handed around.

8 If there are not enough copies, I would assume  
9 the rehabilitator will make copies available later on.  
10 Okay. So the first order of business is to make sure that  
11 what has been marked as 1A really is the document that  
12 embodies what has been agreed to as the outstanding  
13 objections.

14 Is that correct?

15 MR. HOLTZER: Yes, your Honor.

16 THE COURT: Okay. So I would ask that each  
17 objector look over the document 1A and see if it accurately  
18 reflects their position at this point in time.

19 MR. HOLTZER: Your Honor.

20 THE COURT: And perhaps if it does not, then we  
21 will take you in order.

22 Go ahead.

23 MR. HOLTZER: Your Honor, perhaps while they are  
24 reviewing it to confirm that it's marked in accordance with  
25 our discussion and confirmations with them, we could simply  
26 inform the Court that there were two other objections, one

## Proceedings

1  
2 filed by Assured Guarantee and the other one filed --

3 THE COURT: By, I'm sorry, who? That's part of  
4 court record; is that correct?

5 MR. HOLTZER: Yes, it is.

6 THE COURT: So I have my own summary.

7 MR. HOLTZER: One is filed by Assured Guarantee  
8 Corp. and two of its affiliates. That objection, we  
9 entered into a stipulation with Assured and they filed a  
10 notice withdrawing their objection.

11 THE COURT: Okay.

12 MR. HOLTZER: Second one was an objection filed  
13 by Jefferson County Alabama, a Chapter 9 debtor. We  
14 entered into stipulations with that Chapter 9 debtor and  
15 they have withdrawn their objection.

16 THE COURT: All right. Very good.

17 MR. HOLTZER: In addition, your Honor, there is  
18 one party here, perhaps, that we can stip to now, which is  
19 Item No. 8 on the exhibit, which is M & T or Manufacturers  
20 and Traders --

21 THE COURT: Just give me one second. When you  
22 say Item No. 8, you are not referring to page -- okay, I  
23 see it. It's Objection 8?

24 MR. HOLTZER: Yes, page 31.

25 THE COURT: Page 31.

26 MR. HOLTZER: That's right.

## Proceedings

1  
2 THE COURT: All right.

3 MR. HOLTZER: And we understand that  
4 Manufacturers in connection with their joinder is simply  
5 monitoring today and intends to withdraw their objection.

6 Their counsel is here today and can confirm that  
7 on the record as well.

8 THE COURT: All right. Do we have that attorney  
9 present?

10 MR. CASTELLANO: We do, your Honor.

11 THE COURT: All right, so the objection of  
12 Manufacturers and Traders Trust Company has been withdrawn  
13 on the record.

14 Any other items related to Exhibit 1A?

15 MR. HOLTZER: Not related to Exhibit 1A, your  
16 Honor, but in addition to the objections, the rehabilitator  
17 has had discussions with certain other counter parties to  
18 FGIC contracts and transactions and has entered into six  
19 commutation agreements or settlement agreements. These  
20 settlement agreements are similar in form and substance to  
21 the ones that this Court has approved, as we have submitted  
22 them in advance of this hearing.

23 So there remains now six that were included in  
24 our plan supplement. They are not conditioned on the  
25 approval of the plan, your Honor. And if those would be  
26 approved by the Court, since we haven't had objections to

## Proceedings

1  
2 those six, those parties that we're commuting with, like  
3 the other parties we have commuted with, would be able to  
4 be removed from our proceeding and we can go effective on  
5 those commutations.

6 We handed to your clerk a separate order with  
7 respect to those six commutations.

8 THE COURT: I believe I have this order in front  
9 of me. And does anybody want to be heard on that issue?

10 Okay, let the record reflect there was silence.

11 Moving on. The Court will sign that order. Let  
12 the record reflect that my court attorney will do a quick  
13 review and I expect that it will be signed before you leave  
14 the building.

15 MR. HOLTZER: Thank you, your Honor.

16 THE COURT: Okay. Next?

17 MR. HOLTZER: Next we are up to the exhibit, your  
18 Honor. And we can turn some pages to confirm with each  
19 objecting party --

20 THE COURT: That's fine.

21 MR. HOLTZER: -- that we have properly marked the  
22 document to reflect the status.

23 THE COURT: Okay, very good. Moving to objection  
24 of The Bank of New York. It makes sense to go in the  
25 order, right?

26 MR. HOLTZER: It does, your Honor.

## Proceedings

1  
2 I would propose though, if it's helpful to your  
3 Honor, there are five key features to the plan and some of  
4 these aspects of the plan are the subject of certain of the  
5 objections. And so if it's helpful to your Honor, we can  
6 outline that as opposed to an alternative way would be,  
7 depending on how much time we have, we would simply turn  
8 pages and identify, as the exhibit is organized, Item A,  
9 Item B, Item C. And you would simply know which ones are  
10 still there without understanding the background. It just  
11 depends how much time you have now, your Honor.

12 THE COURT: I wish I could read minds because I  
13 have to read the jurors' minds. So I don't know exactly  
14 how much time I have.

15 I would suggest that to make sure that we cover  
16 the things we need to cover today, that we do it in the  
17 logical way, which is by objection of BNY and ask the  
18 counsel who represents the Bank of New York whether they  
19 agree with what is set forth here as to items that have  
20 been resolved and have not been resolved.

21 MR. HOLTZER: That's fine, your Honor.

22 THE COURT: And then on another day if those  
23 other issues are not resolved, you can set forth that for  
24 me.

25 MR. HOLTZER: Okay.

26 THE COURT: All right. So Bank of New York,

## Proceedings

1  
2 could you please just indicate that you represent the Bank  
3 of New York.

4 MR. GADSDEN: Yes, your Honor.

5 James Gadsden, Carter Ledyard & Milburn,  
6 attorneys for the Bank of New York Mellon and the Bank of  
7 New York Mellon Trust Company, NA.

8 And I do confirm that the exhibit accurately  
9 reflects the objections which I have agreed with  
10 Mr. Holtzer have been resolved and those that remain  
11 outstanding. We will, of course, want to see the final  
12 plan and any modifications that are made to it from here  
13 forward in order to finally and formally withdraw all the  
14 objections, but this is an accurate status report of where  
15 we are today.

16 THE COURT: Okay, very good.

17 So moving on now to page 2, sorry, Objection 2,  
18 page 10.

19 Deutsche Bank.

20 MR. GOTTFRIED: Good afternoon, your Honor.

21 Andrew Gottfried, Morgan, Lewis & Bockius LLP for the  
22 Deutsche Bank entities.

23 I can also confirm that this accurately reflects  
24 the status of our discussions at this time. And similarly  
25 to the Bank of New York, of course, things are dependent  
26 upon any further revisions to the plan that might be

## Proceedings

1  
2 problematic. We are not anticipating that, but of course,  
3 we would reserve all our rights with respect to further  
4 changes.

5 THE COURT: All right, understood. And of  
6 course, you are reserving your rights, but I'm hopeful that  
7 you would work it out.

8 All right, moving on. U.S. Bank, page 12.

9 MR. FISCO: Mike Fisco, your Honor, Faegre Baker  
10 Daniels.

11 This exhibit does accurately reflect the  
12 remaining objections, same qualifications as the other  
13 trustees. We will also note that we are making progress on  
14 two of the four that remain outstanding to us, but would  
15 also note for the Court and the record that these are just  
16 summaries of the objections that have been filed.

17 THE COURT: Very good.

18 Moving on, Item 4, Wells Fargo, page 15.

19 MR. JOHNSON: Michael Johnson from Alston & Bird  
20 on behalf of Wells Fargo Bank.

21 And your Honor, I can also confirm that the  
22 bolding that has been used here does indicate those  
23 objections as to which appears we have reached resolution,  
24 subject to the reservation of rights that you have heard  
25 from other counsel. And the non-bolded ones -- excuse me.  
26 The bolded ones are the objections that we have not reached

## Proceedings

1  
2 resolution yet. It's the non-bolded ones where we do seem  
3 to have reached resolution with the rehabilitator.

4 THE COURT: Thank you.

5 Item 5, objection of JeffCo Holders, page 18.

6 MR. WAGNER: Jonathan Wagner from Kramer Levin.

7 Subject to are Mr. Gottfried's caveats, this  
8 chart is accurate. Essentially, our first two objections  
9 remain and the third one has been resolved.

10 THE COURT: Item 6, objection of CQS, page 24.

11 MR. HOLTZER: On that one there hasn't been any  
12 resolution so the objection remains outstanding.

13 THE COURT: Okay.

14 MR. MULLANEY: Tom Mullaney from the Law Offices  
15 of Thomas M. Mullaney.

16 The chart does accurately reflect the objections  
17 that we have put.

18 THE COURT: For CQS?

19 MR. MULLANEY: Yes, your Honor.

20 THE COURT: Very good.

21 Item No. 7 is CHP. That's the Children's Health  
22 something, right?

23 MR. HESSLER: Yes, your Honor. Paul Hessler of  
24 Linklaters LLP on behalf of Children's Health Partnership  
25 Holdings PTY Limited or CPH LP.

26 Your Honor, I do confirm that Section 7 of the

## Proceedings

1  
2 chart accurately reflects the status of the objections we  
3 have made and/or resolved on behalf of CHP.

4 THE COURT: Thank you. All right Item No. 8,  
5 Manufacturers and Traders Trust Company I believe was --  
6 okay, that is 31, was withdrawn on the record.

7 MR. HOLTZER: That's correct.

8 THE COURT: That was withdrawn on the record.  
9 And then we have Aurelius, that is Item No. 9, page 31.

10 MR. McGUIRE: James McGuire, Dechert LLP for  
11 Aurelius.

12 Your Honor, Aurelius join in the objection to the  
13 Bank of New York and U.S. Bank and I confirm that the  
14 statements made by counsel for U.S. Bank and for Bank of  
15 New York are accurate. And we agree as well with the  
16 accuracy of the statement of objections. Subject to the  
17 same caveat identified by counsel for U.S. Bank and Bank of  
18 New York.

19 THE COURT: This is a point of information. Now,  
20 as to 9, that's not bolded.

21 MR. HOLTZER: I'm sorry?

22 THE COURT: As to Item No. 9, 31, that was not  
23 bolded. There are still outstanding objections? That's  
24 still not been resolved in other words?

25 MR. HOLTZER: Yes, your Honor. It's a joineder,  
26 has not been resolved.

## Proceedings

1  
2 THE COURT: So this actually should be bold,  
3 right?

4 MR. HOLTZER: Yes.

5 THE COURT: Okay. I just wanted to make sure  
6 that I was not reading it incorrectly.

7 Anything else for the record as to Exhibit 1A?

8 MR. MULLANEY: Yes, your Honor.

9 THE COURT: Please state again.

10 MR. MULLANEY: Thomas M. Mullaney for CQS.

11 We would also join in -- I think it's subsumed in  
12 the arguments that are reflected in the chart -- the notion  
13 that CQS ought to have the opportunity to opt out.

14 THE COURT: I know that was requested by some of  
15 the objectors and I believe the rehabilitator opposes the  
16 opt out. And having read your brief, that's for another  
17 day, okay. So you are just preserving that. We won't take  
18 argument as to that.

19 MR. HOLTZER: Yes, your Honor. Except that  
20 particular objection was not in their submitted objections.  
21 So we would object to them joining other parties'  
22 objections at this point. The purpose of the hearing in  
23 process is to understand what is still outstanding.

24 THE COURT: So we need a clarification. It says  
25 Aurelius, that is Item No. 9, Aurelias Capital Management  
26 LP joins joint in the objections filed by U.S. Bank and

## Proceedings

1  
2 Bank of New York. So if they didn't have an opt-out  
3 objection, you don't. That's what he is saying.

4 MR. HOLTZER: Yes, your Honor. Except that's CQS  
5 not Aurelius. They didn't file a joinder, they filed an  
6 objection.

7 MR. MULLANEY: Yes, your Honor, CQS filed its own  
8 objections. We did not join in the arguments at that time  
9 of any of the objectors. I think it is -- it would be very  
10 hard to say that what one objector has the opportunity to  
11 opt out, but that factually our objections wouldn't fall in  
12 that category. But I was hopeful of preserving that for  
13 the record to argue it another day.

14 THE COURT: We are talking about Item 6, right?  
15 Item 6?

16 MR. HOLTZER: Yes.

17 THE COURT: Not Aurelius. All right, I  
18 understand.

19 And the rehabilitator's position is that that was  
20 not an objection that was properly made.

21 MR. HOLTZER: Correct, your Honor. It does not  
22 appear in their objections.

23 THE COURT: Seems you have a problem.

24 MR. MULLANEY: That may be, your Honor. If the  
25 rehabilitator objects, I guess that's -- objects to that  
26 objection, we won't have it preserved. But might I say, I

## Proceedings

1  
2 don't understand how some objectors would have the  
3 opportunity to opt out if it were not given to all the  
4 objectors.

5 THE COURT: It seems to me that we have not  
6 decided whether anybody can opt out. Having reviewed the  
7 briefs, without deciding it right now, it seems that there  
8 is case law that says you can't opt out. But nonetheless,  
9 I understand what you are saying. I hear you. We need not  
10 decide this right this minute, because we are not going  
11 forward with a number of other things this minute anyway.  
12 But I think that you folks need to clarify whether that is  
13 a legitimate objection at this juncture, given that it was  
14 not filed.

15 Yes, go ahead.

16 MR. MULLANEY: I would just add one thing for the  
17 record. Because it's, I think, a purely legal issue and  
18 because it's not going to be decided today and because the  
19 rehabilitator did reply to the arguments of others about an  
20 opt-out right, I don't think there -- not I don't think --  
21 there would not be any prejudice to permitting CQS to join  
22 in that legal argument to the extent it is not a necessary  
23 part of the objections it has made.

24 THE COURT: Would you like to respond?

25 MR. HOLTZER: Sure, your Honor.

26 I agree with you, I don't think this issue is an

## Proceedings

1  
2 issue that we necessarily should decide today. But we do  
3 object on the grounds that we have settled quite a number  
4 of matters in this situation. And the point of the  
5 exercise is to narrow down what the litigable issues still  
6 are. And if we get resolved with one party, we now have  
7 somebody who is making further objections that weren't in  
8 the universe of issues that we are trying to resolve with  
9 other parties. And that's the reason why we don't think  
10 it's a good idea to start letting people file objections  
11 that have been made timely previously.

12 THE COURT: All right. The Court notes that this  
13 matter was brought by order to show cause, and my  
14 recollection is the order to show cause did provide time  
15 periods for opposition papers, filing of objections. And  
16 it is inappropriate to allow a party orally to request  
17 essentially that they be allowed to interpose an objection  
18 at the hearing today.

19 So the Court denies that application, to the  
20 extent it was an application, and we will move on. I  
21 understand that there is, besides the six commutation  
22 agreements, signing of that order, there is an issue of  
23 discovery; is that right?

24 MR. HOLTZER: That's right.

25 THE COURT: Is that the only remaining issue?

26 MR. HOLTZER: Yes, your Honor.

## Proceedings

1  
2 THE COURT: All right, moving on.

3 MR. HOLTZER: Our request, your Honor, is that we  
4 obtain from you a hearing date at the end of January, if  
5 possible, depending on whether we are able to further the  
6 issues, but on the current set of issues that have been  
7 outlined in Exhibit 1A today, we would expect that we would  
8 need at least one day of hearings, and it would probably  
9 best serve us to have two days to make sure we can be  
10 completed.

11 In that regard, your Honor, we have received a  
12 couple of requests regarding discovery. And my partner,  
13 Richard Slack, can address any issues concerning how we  
14 would handle discovery, but our approach, your Honor, would  
15 be that we would like to get a control date from your Honor  
16 early in January. And we will begin the process of meeting  
17 and conferring with anybody that has a discovery request,  
18 whether it's for document discovery or some other  
19 discovery. And your Honor, this is a special proceeding so  
20 we have a view about how the discovery should go and that  
21 it should be narrowly tailored. But we will meet and  
22 confer with parties, in advance, with a control date and  
23 only bring your Honor any disputes that we have well in  
24 advance of the trial date.

25 THE COURT: As a special proceeding there is no  
26 automatic right to discovery. I will say that at the

## Proceedings

1  
2 outset. I believe that's governed by Article 4 of the  
3 CPLR.

4 MR. HOLTZER: Yes, your Honor.

5 THE COURT: And to the extent that the parties  
6 are mindful of that and they can work out some discovery on  
7 consent, that if it's on consent, it's on consent and the  
8 Court is happy to allow that to go forward.

9 To the extent that it means that one side is  
10 demanding interrogatories of 20 pages with subsections, as  
11 we all have gotten in the past and dreaded, that probably  
12 will not be allowed. So I say that I hope you folks can  
13 work it out. We are happy to give you a control date. We  
14 will work that out according to our calendar and juggle a  
15 number of things.

16 So you need a control date. You need two dates  
17 for hearings, two full dates. And the Court will endeavor  
18 to work that out. I did hold this date open. I did not  
19 put anything else on, but unfortunately, the jury trial  
20 went over and this is what we are left with. So I will try  
21 to keep those two dates open and we will proceed from  
22 there.

23 Anything else before we actually work out the  
24 control dates and the two hearing dates? Is there anything  
25 else for the record at this point in time?

26 MR. MULLANEY: For CQS, I would just, for the

## Proceedings

1  
2 record, like to note my exception to your Honor's ruling.

3 THE COURT: Okay. Heard and understood.

4 MR. HOLTZER: Your Honor, one other item for the  
5 record.

6 We have had when I mentioned discovery requests,  
7 requests for some depositions. We are skeptical that  
8 depositions will be needed in order to get the or obtain  
9 the information that will be needed for the trial. And in  
10 the conferences that we will hold with parties that are  
11 requesting depositions, we will elicit from them exactly  
12 what information sets they need and we will attempt to  
13 provide it to them in the most efficient way. But I did  
14 not want the record to go unmentioned regarding requests  
15 specifically for deposition and our view for the need for  
16 those in this proceeding.

17 THE COURT: As indicated, it's a special  
18 proceeding. The idea of a special proceeding is to move  
19 quickly and that would probably be the antithesis of moving  
20 quickly. And again, if the parties consent, that's one  
21 thing. But I'm letting my views -- I will keep an open  
22 mind -- but I'm letting my views be expressed on the record  
23 because it is a special proceeding and the rehabilitator  
24 does have a duty which the Court is mindful of. And I'm  
25 sure all sides do understand. But I'm hopeful that you  
26 will work it out.

## Proceedings

1  
2 So anything else for the record at this point in  
3 time?

4 MR. WAGNER: Yes. On behalf of Jefferson County  
5 Warrant Holders, I had a question about the hearing. I  
6 don't know if it's premature to ask, but will we have the  
7 opportunity to cross-examine witnesses? There have been  
8 two affiants and I think it will help us in terms of our  
9 discussion about discovery to understand whether we will  
10 have that opportunity.

11 THE COURT: Would you like to speak to that?

12 MR. HOLTZER: We can meet and confer with counsel  
13 regarding that request and attempt to elicit from counsel  
14 what is not in the affidavit or what's in there that they  
15 have questions about in order to determine whether that  
16 would be appropriate. And we can certainly report back to  
17 you in the control date as to the result of those  
18 discussions.

19 THE COURT: And the Court would entertain  
20 position papers essentially on that precise issue, whether  
21 there is a right to cross-examine, et cetera. So I throw  
22 that back to you, folks. Hopefully, you will work it out.  
23 And then if not, you can state your positions in writing.  
24 I just want to remind that there is a page limit in the New  
25 York County Supreme Court. And this is one of about a  
26 thousand cases I do a year. So please cut to the chase.

## Proceedings

1  
2 MR. HOLTZER: Thank you.

3 THE COURT: And having said that, I'm very, very  
4 thankful for the Exhibit 1, which does summarize things.  
5 We actually did our own summary before we saw Exhibit 1,  
6 but we do appreciate Exhibit 1 very much and now  
7 Exhibit 1A. This case certainly has killed a few trees.  
8 And so anything to expedite and to help the Court is much  
9 appreciated.

10 Anything else for the record?

11 MR. HESSLER: Paul Hessler of Linklaters, again  
12 on behalf of Children's Health Partnership Holdings PTY  
13 Limited. We will certainly take it up with the  
14 rehabilitator as to what discovery they would consent to.

15 One other thing that I would add to the Court's  
16 consideration about the process between now and the  
17 evidentiary hearing in this matter, at the risk of  
18 consigning more trees to death, in the interests of  
19 potentially helping the Court frame some issues, we would  
20 also propose that in addition to whatever discovery we can  
21 agree, that it would make sense for the objectors to have  
22 the ability to submit a surreply in advance of the hearing  
23 for two reasons; both to address the contractual  
24 submissions that were submitted on reply by the  
25 rehabilitator, but also to the extent that the parties were  
26 able to agree on certain discovery, to marshal whatever

## Proceedings

1  
2 emerges from that discovery, and to reflect that for the  
3 Court along with whatever affect that may have on the  
4 parties' arguments.

5 THE COURT: Would you like to speak to that?

6 MR. HOLTZER: Sure, your Honor.

7 And we are happy to take this up at the control  
8 date. With all due respect to counsel, the fact that we  
9 submitted affidavits to try to be transparent and indicate  
10 to all parties what our affiants were saying in connection  
11 with our reply --

12 THE COURT: Which the Court will note that one of  
13 the objections was that there wasn't enough transparency,  
14 so you were trying to address that.

15 Okay, go ahead.

16 MR. HOLTZER: We not only address it in the  
17 affidavits that we submitted, but also in a very extensive  
18 disclosure statement that we filed along with the plan,  
19 which contained a substantial amount of details about the  
20 plan, and isn't required by statute with but we did it  
21 anyway in order to enhance transparency. I don't think all  
22 of those efforts triggers entitlement to file a surreply  
23 which was not contemplated at the outset.

24 THE COURT: As I indicated, this matter was  
25 brought by order to show cause. The order to show cause  
26 did not contemplate a surreply. It did allow a reply. I

## Proceedings

1  
2 think that if we are at the point where I need additional  
3 papers, I can certainly ask at the hearing for essentially  
4 post-hearing memorandums of law and on a very short time  
5 frame.

6 MR. HOLTZER: Thank you.

7 THE COURT: So at this point the answer is no,  
8 but I will be open to that if necessary, all right?

9 MR. HESSLER: Thank you, your Honor.

10 THE COURT: Okay. So anything else for the  
11 record before we pick -- you again?

12 MR. MULLANEY: Yes. I will be the tree killer  
13 and ask your Honor if this will be put into a written  
14 order.

15 THE COURT: Oh, yes. Which part?

16 MR. MULLANEY: Well, my part.

17 THE COURT: Excuse me?

18 MR. MULLANEY: My part.

19 THE COURT: Your part. Your part, well, to the  
20 extent that it was an oral application and I denied it,  
21 it's on the record and that's the part.

22 MR. MULLANEY: Does your Honor so-order  
23 transcripts?

24 THE COURT: If you order it from the reporter and  
25 you provide it to me, I will so-order it.

26 MR. MULLANEY: At least I'll make the court

## Proceedings

1  
2 reporter happy.

3 THE COURT: Very good. And she is a very good  
4 court reporter. We should make her happy.

5 All right, anything else for the record?

6 MR. HOLTZER: Nothing for us, your Honor.

7 THE COURT: Okay. So we need to pick essentially  
8 three dates. And we can go off the record for that.

9 I will be checking on my jury in the meantime and  
10 we need to figure out some dates.

11 (Discussion is held off the record.)

12 THE COURT: Back on the record.

13 Let the record reflect that the Court has  
14 provided a number of proposed dates which seem agreeable to  
15 everyone.

16 As a control date for discovery, we are providing  
17 January 15th at 2:30. And as hearing dates, we are  
18 providing January 28th at -- we don't get a court officer  
19 until 10, so we are saying 10 o'clock. You are welcome to  
20 come earlier. As well as January 29th, we are saying  
21 10 o'clock as well.

22 We have actually a number of cases on already.  
23 Our January is already booked, so we are doing the best we  
24 can. We may have to move things around. And I just asked  
25 my court attorney to ask if there was a feasible way to  
26 notify everybody, so you didn't have to come in today, for

## Proceedings

1  
2 example. We got a lot of things accomplished, but if there  
3 was a feasible way to notify everyone, I don't want to  
4 engage in ex-parte discussion or anything else, but on  
5 scheduling, perhaps just dealing directly with the  
6 rehabilitator and then having that message -- or unless you  
7 folks have a website that you are posting things. I don't  
8 know how you are working it. Somehow you are able to  
9 communicate with everyone, which is very commendable.

10 MR. HOLTZER: If you inform counsel to the  
11 rehabilitator, which is us, we will let this intimate  
12 gathering know of any adjournment.

13 THE COURT: Unfortunately, we can't serve  
14 cocktails, but nonetheless, we are happy to have you all  
15 here and those are the dates provided at this juncture. We  
16 will endeavor to keep them free.

17 There was one question, actually a couple of  
18 questions. I had made notes. There seems to be some  
19 issues that there were no objections on, which were raised  
20 by your reply, which is the charter bylaws, the proof of  
21 policy form, and they were basically plan documents which  
22 needed approval. I don't know if that's still an issue  
23 that needs to be addressed today or some other time.

24 MR. HOLTZER: Your Honor, for the record, those  
25 documents are implementing documents that are contained in  
26 the plan supplement. They would be approved at the time

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Proceedings

that the plan is approved and they don't need to be addressed by Court now.

THE COURT: All right, not a problem.

Thank you very much. See you next time. Have a wonderful holiday season everyone. It was a delight to have you all here.

\* \* \* \* \*

Certified to be a true and accurate record of the within proceedings.

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Ellen Rubin, CSR, RPR  
Senior Court Reporter