

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JPMORGAN CHASE BANK	:	
NATIONAL ASSOCIATION,	:	Docket No. CA 12-450
	:	
Plaintiff,	:	Washington, D.C.
	:	Tuesday, January 28, 2014
vs.	:	10:20 a.m.
	:	
FEDERAL DEPOSIT INSURANCE	:	
CORPORATION ET AL,	:	
	:	
Defendants.	:	
-----	:	x

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE ROSEMARY M. COLLYER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 Appearances continued:

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8 Court Reporter: CRYSTAL M. PILGRIM, RPR
9 Official Court Reporter
10 United States District Court
11 District of Columbia
12 333 Constitution Avenue, NW
13 Washington, DC 20001

14 Proceedings recorded by machine shorthand, transcript produced
15 by computer-aided transcription.
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1 P-R-O-C-E-E-D-I-N-G-S

2 THE DEPUTY CLERK: Civil action 12-450 JPMorgan
3 Chase Bank National Association versus FDIC, et al. For the
4 plaintiffs, Brent McIntosh, Ian McDonald and Mia Spiker. For
5 the defense, Scott Christensen, Kathleen Fones, and Wendy
6 Kloner.

7 THE COURT: Hello everybody.

8 MR. MCINTOSH: Good morning, Your Honor.

9 MR. CHRISTENSEN: Good morning, Your Honor.

10 MR. KURTENBACH: Daniel Kurtenbach for FDIC in it's
11 corporate capacity, Your Honor.

12 THE COURT: Thank you. Forgive me for sort of
13 looking around trying to identify who everybody is. Nice to
14 see you all.

15 All right, the question of the day; are you ready for
16 the next step; have you completed all of the discovery that you
17 think you needed? Remember it was going to be really brief
18 discovery and you were going to use some of the discovery from
19 Deutsche Bank so we didn't have to repeat it so that then you'd
20 be ready to file briefs or something or go to trial maybe.
21 What do you think? Please.

22 MR. MCINTOSH: Your Honor, Brent McIntosh, Sullivan &
23 Cromwell on behalf of plaintiff JPMorgan Chase.

24 We are as Your Honor acknowledges in a bit of an odd
25 posture here because we're dependent on another case. We have

1 largely finished document discovery as was suggested and the
2 order Your Honor set forth earlier.

3 The document discovery there as Your Honor knows focuses
4 on the question of as to specific states and municipalities
5 what was reflected in Washington Mutual Bank's books and
6 records as the parties respectively understand that term.

7 THE COURT: Do you agree on that term?

8 MR. MCINTOSH: No, I think the meaning of that term
9 --

10 THE COURT: I didn't think you did, so it's okay.

11 MR. MCINTOSH: Your Honor, that leads to a bit of a
12 quirk I think in the scheduling proposal we have here, but we
13 are largely complete with document discovery. There are of
14 course as there always is some stragglers, but we are, I think
15 there's nothing on that topic that we need to discuss today.

16 The question in Your Honor's order on scheduling for us
17 was you asked that we meet and confer, come back and tell you
18 do we need additional forms of discovery depositions or written
19 discovery and we have, I think given snow days and illnesses
20 has been a remarkable show of diligence have met twice and had
21 another phone call.

22 THE COURT: Met?

23 MR. MCINTOSH: Met even.

24 THE COURT: Face to face?

25 MR. MCINTOSH: True, true meet and confers in the

1 literal sense, Your Honor.

2 THE COURT: Well I congratulate you all.

3 MR. MCINTOSH: Although given illnesses we've made
4 sure to sit on far, on the opposite sides of tables and things
5 like that.

6 THE COURT: Well that's all right. Lawyers acting as
7 lawyers instead of as clients is always -- excuse me, I hope
8 there isn't a client here I'm insulting. Lawyers acting as
9 lawyers instead of clients is always very nice. Clients are in
10 dispute. Go ahead, sir.

11 MR. MCINTOSH: Exactly, Your Honor.

12 The answer to the question I think is that the parties
13 agree that some small amount of additional, non document
14 discovery would be useful perhaps a few litigations on each
15 side.

16 THE COURT: You mean a few depositions?

17 MR. MCINTOSH: I'm sorry, did I -- a few depositions
18 on each side from the FDIC's perspective to I think to
19 understand Washington Mutual Bank's books and records and what
20 was shown there. From our perspective to understand the FDIC's
21 interactions with some of the states and municipalities at
22 issue. I don't think it's a lot of depositions and I think
23 some of it will be susceptible to being done as 30(B)(6)
24 depositions.

25 So We have put together a proposed schedule for Your Honor

1 that the parties agree on that would have fact discovery
2 completed by the end of May and then should there be a need for
3 expert discovery we have dates for and if it would help I
4 believe Mr. Christensen has clean copies of the proposed order
5 that we would suggest to Your Honor.

6 THE COURT: Okay.

7 MR. MCINTOSH: Expert reports, if any, due near the
8 end of June and rebuttal is due near the end of July and expert
9 depositions, if any, by the end of August. And then we would
10 meet and confer about next steps once again because as Your
11 Honor recognizes this is, there is a dependency here between
12 this case and the Deutsche Bank case where we are litigating
13 the meaning of the section, the relevant section of the
14 Purchase & Assumption Agreement Section 2.1.

15 THE COURT: Some day we will be. Right now you're
16 doing things that you must, you must explain to me at another
17 time and place.

18 MR. MCINTOSH: We are in the midst of expert
19 discovery on that and have expert rebuttal reports due this
20 Friday, Your Honor.

21 THE COURT: And experts are interpreting the
22 agreement?

23 MR. MCINTOSH: We have experts; for example, the
24 parties have experts on the accounting understanding of the
25 term books and records; the parties have experts on what the

1 actual books and records as the parties respectively understand
2 it showed for the repurchase obligations that are at issue in
3 that litigation, but because of the dependency of this case on
4 that case --

5 THE COURT: Right.

6 MR. MCINTOSH: -- we haven't proposed at this time a
7 schedule for dispositive motions or for trial in this case.
8 Summary judgment in the Deutsche Bank action is due to be,
9 briefing is due to be completed in midsummer and the result of
10 that, those motions I think we all believe will have some
11 effect on how this case proceeds.

12 THE COURT: Okay, and that was one of my questions
13 whether -- you're exactly the people to ask. Whether Deutsche
14 Bank would reach the point of summary judgment first or whether
15 this case would reach the point of summary judgment first.

16 MR. MCINTOSH: I think it appears that Deutsche Bank
17 would reach the point of summary judgment. In part because we
18 have been, we're ahead in Deutsche Bank.

19 THE COURT: Right.

20 MR. MCINTOSH: And so in our expert discovery
21 already.

22 THE COURT: Right.

23 MR. MCINTOSH: I think that at some point because the
24 Deutsche Bank action, the ruling in the Deutsche Bank action on
25 the ultimate meaning of the provision at issue will effect this

1 case. There will be some interplay between the cases and this
2 case is moving somewhat more rapidly than Deutsche Bank, so
3 there may be some amount of convergence. I think it's probably
4 too early to predict how that works out today.

5 THE COURT: I was under the impression that this case
6 was moving more quickly than Deutsche Bank which is why I
7 wasn't sure which would come first and which presented the most
8 clear question of interpretation. I mean as you know better
9 than I, this is a complicated set of facts and expectations and
10 negotiations and statements and all of that.

11 MR. MCINTOSH: I would say that I don't think either
12 necessarily presents the clearest, an obviously clearer way of
13 interpreting the P&A than the other, but they do present
14 different issues.

15 THE COURT: Yes.

16 MR. MCINTOSH: It is conceivable that the Deutsche
17 Bank ruling could go in one party's favor and the ruling here
18 could go in the other party's favor or vice versa.

19 THE COURT: Yes.

20 MR. MCINTOSH: It's kind of a four box option there.
21 And frankly, this case has the possibility for lots of
22 different outcomes given that we have different states and
23 municipalities and they have different postures vis-a-vis
24 Washington Mutual Bank.

25 I would note last, Your Honor, that we have been, the FDIC

1 in particular has been attempting to narrow the dispute by
2 writing to states and municipalities and saying have you given
3 up yet, which we greatly appreciate. And just yesterday the
4 City of New York at least some set of the taxes due appears to
5 have decided it's no longer interested in pursuing this fight.

6 So we are attempting to narrow the dispute for Your Honor.
7 States and municipalities are not always cooperative in that we
8 do occasionally get new tax assessments which expand the set of
9 states and municipalities at issue. But we are attempting to
10 work cooperatively to present only those states that are
11 actually at issue.

12 THE COURT: Good, thank you.

13 MR. MCINTOSH: Thank you.

14 THE COURT: Did you want to add anything
15 Mr. Christensen?

16 MR. CHRISTENSEN: Simply wanted to pick up where
17 Mr. McIntosh left off and underscore I think most everything
18 that he said about the benefit of the party's cooperation on
19 trying to eliminate or at least narrow the actual liabilities
20 that are in dispute.

21 As you recall, the underlying liabilities here are those
22 asserted by third parties.

23 THE COURT: Right.

24 MR. CHRISTENSEN: Against that neither of us control
25 against one or the other or both of us.

1 THE COURT: One or the other or both. And then
2 there's the -- yes.

3 MR. CHRISTENSEN: Yes. If we can, to the extent we
4 can make the underlying liability go away there's much less of
5 --

6 THE COURT: Yes.

7 MR. CHRISTENSEN: And I know there will at least be
8 one such case remaining, but in the -- based on the discovery
9 we received in December, the FDIC did send letters to every
10 jurisdiction that the FDIC and to Chase both believe have a
11 liability that is barred as a matter of law for failure to
12 exhaust the FDIC's claims process. We sent ten letters at the
13 beginning of this month. Just yesterday we received
14 confirmation from the City of New York, as Mr. McIntosh
15 mentioned, that it will, it has abandoned its proposed
16 liability which takes 8.2 million dollars off the liability at
17 issue in this case.

18 THE COURT: Oh well now we ought to be able to just
19 settle this in a heart beat then.

20 MR. CHRISTENSEN: In the past couple of months, Your
21 Honor, through discovery and through other processes we have
22 been able to eliminate the liability asserted by the State of
23 Washington which was at least 10.5 million dollars.

24 We've removed as a dispute between the parties the
25 liability asserted by the State of Oregon which was 29.8

1 million dollars.

2 We've been able to clarify that the only dispute
3 remaining between the two parties here with respect to
4 California amounts to about 1.89 million dollars rather than
5 the 267 million dollars that was previously at stake. So just
6 within the last couple of months we've been able to clarify and
7 confirm that almost a third of a billion dollars are now off
8 the table.

9 THE COURT: That makes substantial progress.

10 MR. CHRISTENSEN: So we expect that we will continue
11 and we hope certainly we will continue to receive confirmation
12 from the many jurisdictions we are trying to confirm.

13 THE COURT: And if they all one way or the other drop
14 out, what are we down to, what gargantuan sum?

15 MR. CHRISTENSEN: We'll always have Connecticut which
16 I think which is 2. was settlement JPMorgan Chase reached with
17 a state for 2.65 million dollars. The state had asserted a 26
18 million dollar liability and Chase was able to settle that for
19 a tenth of the alleged liability. So since that has been
20 settled that remains on the, the only dispute between the
21 parties.

22 THE COURT: Right.

23 MR. CHRISTENSEN: But there is at least no longer a
24 third party chasing us, no pun intended for that liability.

25 THE COURT: Okay, if you get down to there given the

1 number of suits in the room, it may be useful to consider
2 settlement.

3 MR. CHRISTENSEN: Understood, Your Honor.

4 THE COURT: Right, yes. Okay, well I have no reason
5 not to adopt your proposed scheduling order and the other
6 aspects of the scheduling orders that I've issued that are
7 pertinent would remain outstanding. The ones that say you
8 should conduct yourselves in a civil and professional manner
9 and call me on the telephone before you file any angry motions
10 against each other and that sort of thing. All of which is
11 going along between such professionals as you very well.

12 So, and when do we have anything happening in Deutsche
13 Bank next? Is it just waiting for you to finish and file
14 papers; is that where I am? I don't see you again for that
15 case?

16 MR. CHRISTENSEN: Yes, not for awhile.

17 THE COURT: Not for awhile.

18 MR. CHRISTENSEN: On the and forgive me if I can't
19 quote it verbatim, as Mr. McIntosh mentioned we're completing
20 the expert reports this Friday.

21 THE COURT: Right.

22 MR. CHRISTENSEN: We are scheduled to complete for
23 the moment expert depositions by the middle of March. I have
24 motions for summary judgments submitted April 4th and with a
25 schedule that proceeds with summary judgment briefing into

1 June.

2 THE COURT: Well, you should expect oral argument on
3 that case, all right?

4 MR. CHRISTENSEN: I understand.

5 THE COURT: Thank you.

6 MR. CHRISTENSEN: Thank you, Your Honor.

7 THE COURT: Anything else we need to address?

8 MR. MCINTOSH: Not from us, Your Honor.

9 THE COURT: All right. May I just say again how much
10 I appreciate having good lawyers on a case of this magnitude.
11 Thank you.

12 MR. MCINTOSH: Thank you, Your Honor.

13 (Proceedings concluded @ 10:45 a.m.)

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CERTIFICATE

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the stenographic notes provided to me by the United States District Court, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

/S/Crystal M. Pilgrim, RPR

Date: January 31, 2014

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