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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

Federal Home Loan Bank of Pittsburgh,  
Plaintiff,

V.

J.P. Morgan Securities LLC, J.P. Morgan  
Mortgage Acquisition Corp., J.P. Morgan  
Mortgage Acceptance Corporation I,  
Chase Home Finance L.L.C., Chase  
Mortgage Finance Corporation, JPMorgan  
Chase & Co., Moody's Corporation,  
Moody's Investors Service, Inc., The  
McGraw-Hill Companies, Inc., and Fitch,  
Inc.,

Defendants.

Federal Home Loan Bank of Pittsburgh,  
Plaintiff,

V.

J.P. Morgan Securities LLC, JPMorgan  
Chase & Co., Moody's Corporation,  
Moody's Investors Service, Inc., and The  
McGraw-Hill Companies, Inc.,

CIVIL DIVISION - Commerce and  
Complex Litigation Center

Judge R. Stanton Wettick, Jr.

No. GD-09-016892

Plaintiff's Motion to Compel Compliance  
with the Court's October 17, 2013 Order

REDACTED VERSION

CIVIL DIVISION - Commerce and  
Complex Litigation Center

Judge R. Stanton Wettick, Jr.

No. GD-09-016893

Served on behalf of Plaintiff.  
Counsel of record for this Party:

Defendants.

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Justin T. Romano (PA ID No. 307879)  
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Judge R. Stanton Wettick, Jr.

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Mortgage Acquisition Corp., J.P. Morgan  
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Federal Home Loan Bank of Pittsburgh,

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v:

CIVIL DIVISION - Commerce and  
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Judge R. Stanton Wettick, Jr.

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J.P. Morgan Securities LLC, JPMorgan  
Chase & Co., Moody's Corporation,  
Moody's Investors Service, Inc., and The  
McGraw-Hill Companies, Inc.,

Defendants.

#### NOTICE OF PRESENTATION

TO: All Defendants.

PLEASE TAKE NOTICE that the within Plaintiff's Motion to Compel Compliance with the Court's October 17, 2013 Order [and response to JPMorgan's motion to vacate or amend the October 17, 2013 Order and for a Protective Order] against JPMorgan Securities L.L.C., and JPMorgan Chase & Co. will be presented to

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Judge R. Stanton Wettick, Jr. on December 6, 2013 during the 2:00 p.m. add-on list in Courtroom 818 of the City-County Building, Pittsburgh, Pennsylvania 15219, or as soon thereafter as meets the convenience of the Court.

Respectfully submitted,

Dated: ii/OPI44r 2 2CV3

ROBINS, KAPLAN, MILLER & CREST L.L.P.

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Federal Home Loan Bank of Pittsburgh,

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J.P. Morgan Securities LLC, JPMorgan  
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Defendants.

CIVIL DIVISION - Commerce and  
Complex Litigation Center

Judge R. Stanton Wettick, Jr.

No. GD-09-016893

Plaintiff's REDACTED Motion to Compel Compliance with the Court's

October 17, 2013 Order

[and response to JPMorgan's motion to vacate or amend the  
October 17, 2013 Order and for a Protective Order]

Plaintiff, Federal Home Loan Bank of Pittsburgh ("Pittsburgh FHLB"), by and  
through its undersigned counsel, will present the within Motion to Compel Compliance  
with the Court's October 17, 2013 Order:

## Introduction

1. JPMorgan has refused to comply with this Court's October 17, 2013 Order, which required JPMorgan to produce the draft complaint it received from the Department of Justice. JPMorgan wants to revisit the arguments that it previously made as to whether the draft complaint is reasonably calculated to lead to the discovery of admissible evidence — arguments that this Court has already rejected. JPMorgan also now attempts to stand in the shoes of the U.S. government and argues that the policy favoring settlements should hide the draft complaint from view. But the Department of Justice, which authored the draft complaint and provided it to JPMorgan, has explicitly stated to Pittsburgh FHLB's General Counsel, Dana Yealy, that it will not intervene in this motion to argue that the draft complaint should not be disclosed. (Mr. Yealy has submitted an affidavit to that effect with this motion). Public policy — the interests of full disclosure and transparency — demands just the opposite of what JPMorgan seeks. The circumstances of this motion therefore lead to one obvious question— what is JPMorgan trying to hide?

### **Pittsburgh FHLB granted an extension of time for the production of the draft complaint to accommodate the DOJ's interest in resolving its claims with JPMorgan.**

2. At the status conference on October 17, 2013, arguments were held on the motion of Pittsburgh FHLB to compel the production of the documents that JPMorgan produced to the DOJ. Counsel for JPMorgan argued that the negotiations with the DOJ involved unrelated trusts. To determine whether the documents produced to the DOJ might be relevant, the Court ordered, as an interim step, that JPMorgan produce the draft complaint that had been mentioned in the press. Counsel for JPMorgan stated that they were not aware of the existence of any such draft complaint, but the Court ordered JPMorgan to produce it by November 6, or advise that it did not exist.

3. On November 1, Pittsburgh FHLB's general counsel, Dana Yealy, received a call from a DOJ attorney involved in the DOJ's investigation and potential action against JPMorgan. (Yealy Affidavit 411 2.) The DOJ attorney cautioned Mr. Yealy not to reveal the content of the call to anyone. (Yealy Affidavit **if** 3.)

4. Following that call, that same day, Mr. Yealy received a phone call from JPMorgan's in-house counsel, Alyssa Kelman, indicating that she understood that Pittsburgh FHLB would agree to an extension of time for the production of the draft complaint until November 15, 2013. (Yealy Affidavit 11 4.)

5. Then, on November 14, Mr. Yealy received another call — this time from a DOJ attorney in Washington D.C. in charge of the negotiations with JPMorgan, and the person who ultimately signed the settlement agreement with JPMorgan on behalf of the United States. That attorney explained that the DOJ and JPMorgan were very close to finalizing their settlement negotiations, and it would mean everything to him if Pittsburgh FHLB granted another week extension for the production of the draft complaint. The DOJ attorney stated explicitly that if Pittsburgh FHLB would grant this additional extension, the DOJ would not intervene to urge this Court to vacate its order. Pittsburgh FHLB agreed to grant the DOJ this accommodation, by extending the time for production of the draft complaint to November 22, 2013. (Yealy Affidavit **If** 5.)

6. On Tuesday, November 19, the settlement with JPMorgan was publicly announced. (Yealy Affidavit 411 6.)

7. Nevertheless, JPMorgan did not produce the draft complaint and on Friday, November 22, requested another extension of time for its production.



Pittsburgh FHLB declined to grant an additional extension, and later that day, at about 9:00 p.m., JPMorgan served a motion to vacate or amend the October 17, 2013 order and set a hearing date for January 10, 2014. (Yealy Affidavit **If** 7.)

8. Pittsburgh FHLB has brought its own motion to compel compliance with the Court's order because it cannot wait until January 10, 2014 (the date set by

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JPMorgan for its motion to vacate) to have this issue resolved. The Court has established the end of February 2014 as the deadline for the completion of depositions and Pittsburgh FHLB has been working to meet that deadline. If the draft complaint reveals that there are relevant documents produced by JPMorgan to the DOJ or witnesses whose testimony may be relevant in this case, then those documents need to be produced and the witnesses identified sooner, rather than later, so that the parties can meet the end-of-February deadline. Resolution of this issue in January 2014 is too late to allow meaningful production and review of any additional documents.

**Production of the draft complaint is reasonably calculated to lead to the discovery of admissible evidence.**

9. JPMorgan makes two contradictory arguments about what the draft complaint might show. On the one hand, it argues that the DOJ's claims are not relevant to these proceedings and then on the other hand it argues that the Statement of Facts accompanying the DOJ's Settlement Agreement—facts to which JPMorgan has admitted—make the production of the draft complaint unnecessary. The first argument merely repeats what JPMorgan argued on October 17, 2013, and neither the first nor the second argument is persuasive. In fact, the DOJ's Settlement Agreement and Statement of Facts give even more reason to believe that the draft complaint will lead to the

discovery of admissible evidence.

10. The Settlement Agreement makes plain that the claims of the United States (and the other settling parties) against JPMorgan do relate to the trusts at issue before this Court. The Settlement Agreement provides for releases of claims by the settling parties arising out of "Covered Conduct." "Covered Conduct" is defined as the creation, pooling, structuring, packaging, marketing, underwriting, sale or issuance by JPMorgan . . . of the RMBS . . . identified in Annex 3." (Yealy Affidavit Ex. A.) In Annex 3, each of the JPMorgan deals at issue in the litigation before this Court is identified:

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JPMMT 2006-A4, JPMMT 2006-S2, JPMMT 2007-A5, JPMMT 2007-A6, CMFT 2007-A3, and INDX 2006-AR29. (Yealy Affidavit Ex. C.) In other words, the conduct and the deals that are at issue in the cases before this Court are covered by the DOJ's settlement with JPMorgan.

11. In her affidavit, Alyssa Kelman, JPMorgan's Assistant General Counsel, does not provide the Court with the entire Settlement Agreement which reflects this fact nor does she mention this fact, much less attach Annex 3. Similarly, nowhere in the 19-page motion filed by JPMorgan does it mention this fact. Instead, JPMorgan and Ms. Kelman suggest that the settlement involved only 10 unrelated trusts. That is simply not true. JPMorgan's conduct with respect to the trusts at issue here is expressly identified as "Covered Conduct." (Although the settling parties to the DOJ's settlement apparently will or have received compensation from JPMorgan for the "Covered Conduct," Pittsburgh FHLB has not.)

12. The DOJ's Statement of Facts also makes it plain that the draft complaint is reasonably calculated to lead to the discovery of admissible evidence. The Statement of Facts is remarkably consistent with the facts that Pittsburgh FHLB has discovered in this litigation. The Statement of Facts recites that between 2005 and 2007, JPMorgan securitized mortgage loans and sold the resulting RMBS to investors, and failed to disclose to investors that the loans were not issued in accordance with the originator's underwriting standards. (Yealy Affidavit Ex. B.) This is exactly what Pittsburgh FHLB alleges in its complaints against JPMorgan.

13. In addition, the Statement of Facts describes JPMorgan's "due diligence" process for deals backed by subprime and Alt-A loans, which is the same process that JPMorgan used on the deals that are at issue in this case. JPMorgan admits to the following:

Through that due diligence process, JPMorgan employees were informed by due diligence vendors that a number of the loans included in at least

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some of the loan pools that it purchased and subsequently securitized did not comply with the originators' underwriting guidelines, and, in the vendors' judgment, did not have sufficient compensating factors, and that a number of the properties securing the loans had appraised values that were higher than the values derived in due diligence testing from automated valuation models, broker price opinions or other valuation due diligence methods.

(Yealy Affidavit Ex. B.) While it is certainly helpful that JPMorgan has admitted to this conduct, the Statement of Facts is quite general and does not refer to any particular employees, documents, or events that support this factual statement. The draft complaint likely does so.

14. The Statement of Facts also includes this description of a deal involving many "stated-income" loans:

In one instance, JPMorgan's due diligence revealed that several pools from a single third-party originator contained numerous stated income loans (i.e., loans originated without written proof of the borrower's income) where the vendor had concluded that borrowers had overstated their incomes. Initially, due diligence employees and at least two JPMorgan managers decided that these pools should be reviewed in their entirety, and all unreasonable stated income loans eliminated before the pools were purchased. After the originator of the loan pools objected, JPMorgan Managing Directors in due diligence, trading, and sales met with representatives of the originator to discuss the loans, then agreed to purchase two loan pools without reviewing those loan pools in their entirety as JPMorgan due diligence employees and managers had previously decided; waived a number of the stated income loans into the pools; purchased the pools; and subsequently securitized hundreds of millions of dollars of loans from those pools into one security. In addition, JPMorgan obtained an agreement from the originator to extend contractual repurchase rights for early payment defaults for an additional three months.

(Yealy Affidavit Ex. B.)

15. All of the JPMorgan trusts at issue here also contained many "stated-income" loans, and Pittsburgh FHLB has discovered facts which show significant concern on the part of JPMorgan employees about material misrepresentations

regarding borrowers' reported income levels, and about the performance of certain stated income loan programs. The Statement of Facts does not provide any details about the originator, the vendor, the loan program, or the employees involved. The draft complaint may do so. And even if those facts relate to a different trust or a different

program, the knowledge of the employees would certainly be relevant to Pittsburgh FHLB's claim of fraud, and would support Pittsburgh FHLB's position that JPMorgan's conduct with respect to the trusts at issue in this case was not unique, but rather was part of a pattern of fraudulent conduct, involving its entire mortgage platform and related companies, which should be deterred by an award of punitive damages.

16. The lack of specificity in the Statement of Facts has led others to question what it was the DOJ actually found in its investigation that caused JPMorgan to pay \$13 billion. Gretchen Morgenson, writing in the New York Times on November 23, 2013 found the Statement of Facts unsatisfying:

Eager to see what the Justice investigation had found, I consulted the statement of facts that accompanied the settlement and that JPMorgan had to acknowledge. There, I reckoned, would be some juicy, new evidence of the bank's mortgage misdeeds "uncovered" by assiduous investigators armed with subpoena power and other government might.

Perusing the 11-page document, I quickly saw that I'd reckoned wrong. Much of it was the same-old-same-old, a not-very-lively description of a corrupted Wall Street mortgage factory, based largely on some facts that have been in the public domain for years.

In other words, although it took the Justice Department more than five years to pursue a major bank for its role in the mortgage mania, the investigation seems to have unearthed material that, by and large, could have been dug up with a spoon.

(Ex. A, attached.)

17. Given the DOJ's desire not to have the draft complaint become public until after the settlement was reached, and given JPMorgan's apparent deep desire to prevent it from ever seeing the light of day, it would not be at all surprising if the draft

complaint is a much more detailed account of JPMorgan's fraudulent conduct, and as such, far more enlightening than the Statement of Facts.

**JPMorgan cannot make the policy arguments that belong to the U.S. government, and in any event, the public policy of promoting settlements will not be harmed by the production of the draft complaint.**

18. Pittsburgh FHLB has plainly shown that the draft complaint is reasonably likely to lead to the discovery of admissible evidence, and that the DOJ's Statement of Facts does not serve as a substitute for the draft complaint. But JPMorgan still argues that the production of the draft complaint would offend the policy of promoting settlements, and resorts to the laws of other states in support of this argument. The laws of other states are not controlling regarding this specific discovery dispute in Pennsylvania state court nor, in this context, is federal law. For this issue, the only law that is relevant is Pennsylvania law, and particularly the rule of civil procedure that allows discovery of materials that are reasonably calculated to lead to the discovery of admissible evidence. Pa.R.C.P. 4003.1(b) ("It is not ground for objection that the information sought [in discovery] will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."). In addition, a substantial body of persuasive authority holds that "neither public policy concerns over the confidentiality of settlement agreements nor limits on the admissibility of settlement materials at trial necessarily prohibits the disclosure of settlement documents during the discovery process." 6-26 Moore's Federal Practice - Civil § 26.42. But even if the laws of other states were controlling on this Court, the production of the draft complaint would not make settlements in this case, or in other cases, less likely.

19. Several important facts make this situation different than the fact patterns in virtually every case cited by JPMorgan:

a. First, the settlement between the DOJ and JPMorgan has been completed. Pittsburgh FHLB granted the extensions on the production of the draft complaint to accommodate the DOJ's concerns that disclosure of the draft complaint may interfere with its negotiations. But now that the settlement is completed, those concerns are gone. This is not like a situation where one party is attempting to use information it learned in settlement negotiations to its advantage at trial. The DOJ and JPMorgan have settled; there will be no trial of the United States' claims.

b. Second, the draft complaint is not a statement of compromise or confession by JPMorgan made during settlement negotiations that is now going to be used against it. The draft complaint is the work of the DOJ, and presumably is based on its review of the thousands of documents that JPMorgan produced to it, the witnesses it interviewed, and experts it consulted. Pittsburgh FHLB fully expects JPMorgan to deny the allegations of the draft complaint.

c. Third, the draft complaint may have been work product at one time, but that work product privilege was waived when the document was produced to JPMorgan. *See Commonwealth v. Kennedy*, 583 Pa. 208, 219 (Pa. 2005) ("[T]he work product doctrine is not absolute but, rather, is a qualified privilege that may be waived.").

d. Fourth, the confidentiality agreement under which JPMorgan received the document was an agreement made for the benefit of the DOJ. The DOJ wanted JPMorgan to use the draft complaint solely to evaluate settlement. The settlement has been completed and the DOJ has now advised Pittsburgh FHLB that it will not intervene and will not urge the Court to prohibit disclosure of the

document.

e. Fifth, a confidentiality agreement between parties does not prevent a court from ordering production of a document that is reasonably likely to lead to the production of admissible evidence. *See, e.g., Thermal Design, Inc. v. Guardian Bid. Prods., Inc.*, 270 F.R.D. 437, 438-39 (E.D. Wis. 2010) ("the Court agrees with the cases which find that there is no federal privilege preventing the discovery of settlement agreements and related documents"). The court is not bound by the parties' private agreements.

f. Sixth, although the draft complaint was part of the negotiations between the DOJ and JPMorgan, Rule 408 deals only with the admissibility of evidence at trial, and does not prohibit the discovery of settlement communications that may lead to the discovery of admissible evidence. *See, e.g., Small v. Nobel Biocare USA, LLC*, 808 F. Supp. 2d 584, 586-87 (S.D.N.Y. 2011) (holding that a settlement agreement was discoverable, rejecting a heightened showing of relevance, and ordering its production). Pittsburgh FHLB has no intention of attempting to offer the draft complaint into evidence at trial. It wants the draft complaint to determine whether there are witnesses or documents that are relevant to the proof of its claims.

**Public policy demands that the draft complaint be produced without any confidentiality restrictions.**

20. The most important public policy at issue here is transparency — what did



the DOJ actually learn about JPMorgan's conduct which caused JPMorgan to pay \$13 billion? The Statement of Facts does not answer this question. As the New York Times article states, these facts have been known for some time. The draft complaint most likely provides a rich source of detailed facts about JPMorgan's conduct that have not yet been made public. And those facts should be made public, not only to aid private litigants such as Pittsburgh FHLB in the pursuit of their claims, but also to inform the

public of the basis for the DOJ's settlement. The government has made it clear that it supports transparency. A DOJ attorney explicitly stated to Mr. Yealy that the DOJ would not intervene here to prevent the production of the draft complaint. Moreover, just recently President Obama and Attorney General Holder directed federal agencies to apply a presumption of openness and not to withhold information requested under the Freedom Of Information Act. *See*

<http://webcache.googleusercontent.com/search?q=cache:iB09kILb9UJ:www.foia.gov/faq.html+&cd=6&hl=en&ct=clnk&gl=us>. In addition, it is common for a federal

agency to disclose its draft complaint in connection with a settlement or consent decree,

to allow the public to understand the basis for the settlement. *See e.g. Nielsen Holdings N. V., a Corporation and Aribtron Inc., a Corporation; Analysis of Agreement Containing Consent Order To Aid Public Comment*, a proceeding before the Federal Trade Commission. 78 FR 59690 (September 13, 2013).

21. For public policy reasons, the draft complaint should be produced without any confidentiality restrictions. It should be a public document.

**JPMor an has also not corn 'lied with the Court's order**

22. Finally, pursuant to this Court's October 17 order, JPMorgan informed Pittsburgh FHLB on October 24, 2013:

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23. On the same date and in response to JPMorgan's communication, Pittsburgh FHLB responded:

As of this writing, JPMorgan has not responded. JPMorgan is substantially in non-compliance with this portion of the Court's October 17 Order with respect to

#### Conclusion

The draft complaint is reasonably calculated to lead to the discovery of admissible evidence and public policy demands that the draft complaint be produced, without any confidentiality restriction. Accordingly, Pittsburgh FHLB respectfully requests that this Court issue an order that compels JPMorgan to act in compliance with

its October 17 Order regarding the DOJ's draft complaint and

Respectfully submitted,

Dated: **trGUO-kbat 26? 201S**

ROBINS, KAPLAN, MILT ER 8.r CIRESI L.L.P.  
(

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Federal Home Loan Bank of Pittsburgh,

CIVIL DIVISION – Commerce and  
Complex Litigation Center

Plaintiff,

Judge R. Stanton Wettick, Jr.

v.

No. GD-09-016892

J.P. Morgan Securities LLC, J.P. Morgan Mortgage Acquisition Corp., J.P. Morgan Mortgage Acceptance Corporation I, Chase Home Finance L.L.C., Chase Mortgage Finance Corporation, JPMorgan Chase & Co., Moody's Corporation, Moody's Investors Service, Inc., The McGraw-Hill Companies, Inc., and Fitch, Inc.,

Defendants.

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Federal Home Loan Bank of Pittsburgh,

CIVIL DIVISION – Commerce and Complex Litigation Center

Plaintiff,

Judge R. Stanton Wettick, Jr.

v.

No. GD-09-016893

J.P. Morgan Securities LLC, JPMorgan Chase & Co., Moody's Corporation, Moody's Investors Service, Inc., and The McGraw-Hill Companies, Inc.,

Defendants.

### **ORDER**

AND NOW, this 6th day of December, upon consideration of Plaintiff Federal Home Loan Bank of Pittsburgh's Motion to Compel Compliance with the Court's October 17, 2013 Order, it is hereby ORDERED, ADJUDGED and DECREED that

84379782.1

Defendants JPMorgan Chase & Co. and JPMorgan Securities, Inc. shall comply with this Court's ruling of October 17, 2013 by producing the draft complaint by the Department of Justice and the name of the confidential informant referenced by the Department of Justice no later than Monday, December 9, 2013.

BY THE COURT:

\_\_\_\_\_, J

CERTIFICATE OF SERVICE

I hereby certify that on **WO V. 24'** 2013, the undersigned caused to be served a true and correct copy of the foregoing Plaintiff's REDACTED Motion to Compel Compliance with the Court's October 17, 2013 Order via electronic mail on:

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in GD-09-16892*

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By:

84386031.1



# EXHIBIT A

November 23, 2013

## \$13 Billion, Yes, but What Took So Long?

By **GRETCHEN MORGENSON**

After weeks of pre-deal chatter about its \$13 billion settlement with [JPMorgan Chase](#), the Justice Department finally nailed it down last week. And for the first time, the department provided a glimpse of the investigatory findings upon which the settlement was based.

“Without a doubt,” [Eric H. Holder Jr.](#), the attorney general, said in a statement, “the conduct uncovered in this investigation helped sow the seeds of the [mortgage](#) meltdown.”

Eager to see what the Justice investigation had found, I consulted the statement of facts that accompanied the settlement and that [JPMorgan](#) had to acknowledge. There, I reckoned, would be some juicy, new evidence of the bank’s mortgage misdeeds “uncovered” by assiduous investigators armed with subpoena power and other government might.

Perusing the [11-page document](#), I quickly saw that I'd reckoned wrong. Much of it was the same-old-same-old, a not-very-lively description of a corrupted Wall Street mortgage factory, based largely on some facts that have been in the public domain for years.

In other words, although it took the Justice Department more than five years to pursue a major bank for its role in the mortgage mania, the investigation seems to have unearthed material that, by and large, could have been dug up with a spoon.

"The facts here are all stuff we knew years ago," said [Kurt Eggert](#), a professor at the Chapman University law school who testified about mortgage woes before the [Financial Crisis Inquiry Commission](#) in 2010. "So you have to ask, 'Why has it taken so long to hold a bank accountable?'" "

A good question. A spokeswoman for the Justice Department did not return a phone call seeking comment.

Of course, the government is to be commended for taking action. "Expectations had gotten so low for the Justice Department that I can't help but be a little pleased that they've done something," said [Jeff Connaughton](#), author of "The Payoff: Why Wall Street Always Wins," who was chief of staff to Ted Kaufman, a former Democratic senator from Delaware. "Yes, it's thin and weak, but it's also the first time in five years they haven't completely rolled over."

Still, the meager set of facts cited by the government is surprising. And when you compare the Justice Department's statement with some of the [meaty lawsuits](#) that have been filed against banks by investors and some state securities regulators, it's thin gruel indeed.

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<http://www.nytimes.com/2013/11/24/business/13-billion-from-jpmorgan-chase-yes-but-w...>  
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The earlier suits, for example, are brimming with facts, figures and telling accounts from former bank insiders turned confidential witnesses. A [case](#) brought against Morgan Stanley more than three years ago by Martha Coakley, the Massachusetts attorney general, was especially revelatory and damning in its details. For example, when a mortgage originator threatened to take its business elsewhere after Morgan Stanley questioned the quality of its loans, the bank quickly capitulated and accepted the loans. Morgan Stanley paid \$102 million to settle that one state complaint in June 2010.

Among the many private lawsuits is one filed in January 2012 by Dexia, a European bank that lost money on mortgage securities. That case, like the Justice Department matter, was aimed at JPMorgan as well as its Bear Stearns and Washington Mutual units.

Reading the Dexia suit alongside the Justice Department's fact statement is an interesting exercise. For example, lawyers for Dexia cited 23 confidential witnesses in their complaint. By contrast, the Justice Department cited one unnamed former employee in its account.

Then there's the surprisingly narrow breadth of the securities scrutinized by the Justice Department. While the Dexia case reviewed 53 different securitizations underwritten and sold by JPMorgan, Bear Stearns and WaMu, the government examined only 10. By the way, six of the 10 troubled mortgage pools cited by Justice also figured in the Dexia case.

The 10 securities examined by the Justice Department totaled \$10.28 billion. That [might sound like a lot](#), but it's a drop in the \$325 billion flood of mortgage securities packaged and sold by Bear Stearns, WaMu and JPMorgan Chase from 2005 to 2007.

Among the few figures cited by the Justice Department were those from due-diligence reports provided to JPMorgan by outside firms examining mortgages that were destined for securitization. These reports were supposed to be a quality-control mechanism so underwriters could be assured that they were selling investors the kinds of loans they expected. But in actuality, banks often ignored the analyses.

In its statement of facts, the Justice Department highlighted one such report covering all of 2006 and the first half of 2007. It said the report showed that more than 6,000 of the loans purchased by JPMorgan in that period had not met the underwriting standards promised to investors. Yet, the department said, the bank accepted 3,238 of those loans for use in its pools.

These are disturbing figures, but they aren't new. Although the Justice Department doesn't identify where it got them, they appear to have come from a report provided to the crisis inquiry commission more than three years ago. The report has been available on the Internet since then.

<http://www.nytimes.com/2013/11/24/business/13-billion-from-jpmorgan-chase-yes-but-w...>  
\$13 Billion, Yes, but What Took So Long? - NYTimes.com

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The facts emerged at a commission hearing in Sacramento on Sept. 23, 2010, in testimony by two officials from Clayton Holdings, a major due-diligence firm. D. Keith Johnson, a former president of the firm, was one of them, and [his presentation](#) was explosive.

Providing private data from a [Clayton report](#), he showed how over a dozen institutions disregarded the problems identified by the due-diligence firm. The institutions accepted

thousands of loans that should have been rejected for use in the securities sold to investors.

It's hard to analyze whether the \$13 billion is a good deal for the government or for JPMorgan. There's nothing wrong, of course, with the government recycling well-known facts to drag a bank that behaved badly to the negotiating table. Had the Justice Department aggressively investigated the banks' practices using its full array of powers, who knows how much more it could have generated?

Byron S. Georgiou, a lawyer and former member of the crisis commission who runs [Georgiou Enterprises](#), said he was glad the commission's findings helped the Justice Department pursue JPMorgan.

"It is much better late than never that the Justice Department has extracted from JPMorgan Chase the largest financial penalty ever paid by any private-sector entity to any government anywhere in the world," Mr. Georgiou said. "I look forward to the conclusion of more such prosecutions of the many other financial institutions that remain at large, and are just as deserving to be held accountable to the American people for their knowing, deliberate deceptions."

*EXHIBIT B*

*Filed under Seal:*

*Portions of this transcript are redacted  
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From: [Srinaw, Dombiv L](#)  
 To: [Frois, Ian F](#)  
 Cc: [Frois, Ian F](#); [Srinaw, Dombiv L](#); [Srinaw, Dombiv L](#)  
 Subject: FMLB Pittsburgh v. IF Morgan et al, Ca\* No. GD-09-16S92 and FHLB Pittsburgh v. J? Morgan et al, CaseNo. GD-M-16S93  
 Date: Thursday, October 24, 2013 12:46:12 PM

Jan:

Best regards,  
Dorothy

Doiolyh J. Spenner  
 Sidley Austin LLP  
 787 Seventh Avenue  
 New York, NY 10019  
 Phone: (212) 839-7375  
 Fax: (212) 839-5599  
 (bpenner@sidley.com)

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# EXHIBIT C

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**IN THE COURT OF COMMON PLEAS OF  
ALLEGHENY COUNTY, PENNSYLVANIA**

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**FEDERAL HOME LOAN BANK  
OF PITTSBURGH,**

**Plaintiff,**

**CIVIL DIVISION**

**PROCEEDING:  
MOTIONS &  
STATUS CONFERENCE**

7           **Vs.**  
8           **JPMORGAN SECURITIES**  
9           **INC., JPMORGAN MORTGAGE**  
10          **ACQUISITION CORP.,**  
11          **JPMORGAN MORTGAGE**  
12          **ACCEPTANCE CORPORATION**  
13          **I, CHASE HOME FINANCE**  
14          **LLC, JPMORGAN CHASE &**  
            **CO., MOODY'S**  
            **CORPORATION, MOODY'S**  
            **INVESTORS SERVICE, INC.,**  
            **THE MCGRAW-HILL**  
            **COMPANIES, INC., and**  
            **FITCH, INC.,**

**DATE:**  
**OCTOBER 17, 2013**

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**GD NO. 2009-016892**

**Defendants.**

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17          **FEDERAL HOME LOAN BANK**  
18          **OF PITTSBURGH,**

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**GD NO. 2009-016893**

**Plaintiff,**

19          **Vs.**

20          **JPMORGAN SECURITIES**  
21          **INC., JPMORGAN CHASE &**  
22          **CO., MOODY'S**  
23          **CORPORATION, MOODY'S**  
            **INVESTORS SERVICE, INC.,**  
            **AND THE MCGRAW-HILL**  
            **COMPANIES, INC.,**

**Defendants.**

25          -----

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Janeen E. Ellsworth, RPR      [\(412\) 350-5414](tel:4123505414)

1           **FEDERAL HOME LOAN BANK**  
2           **OF PITTSBURGH,**

**GD NO. 2009-017818**

**Plaintiff,**

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**Vs.**

**THE MCGRAW-HILL  
COMPANIES, INC., FITCH,  
INC., MOODY'S  
CORPORATION, and MOODY'S  
INVESTORS SERVICE, INC.,**

**Defendants.**

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**FEDERAL HOME LOAN BANK  
OF PITTSBURGH,**

**Plaintiff,**

**Vs.**

**COUNTRYWIDE SECURITIES  
CORPORATION, COUNTRYWIDE  
HOME LOANS, INC., CWALT,  
INC., CWMBS, INC.,  
COUNTRYWIDE FINANCIAL  
CORPORATION, MOODY'S  
CORPORATION, MOODY'S  
INVESTORS SERVICE, INC.,  
THE MCGRAW-HILL  
COMPANIES, INC., and  
FITCH, INC.,**

**Defendants.**

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**GD NO. 2009-018482**

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**BEFORE: HONORABLE R. STANTON WETTICK, JR.**

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Janeen E. Ellsworth, RPR (412) 350-5414

1 APPEARANCES:

2 For Plaintiff, FHLB:

Janet C. Evans, Esq.  
Randall Tietjen, Esq.  
Justin T. Romano, Esq.  
William H. Manning, Esq.  
Damien A. Riehl, Esq.

5 For Defendant, JPMorgan:

Dorothy J. Spenner, Esq.  
Tom Paskowitz, Esq.  
Jeremy Stamelman, Esq.  
Deborah A. Little, Esq.  
Samuel W. Braver, Esq.

8 For Defendant, Fitch:

Christopher L. Filburn, Esq.  
Julia Mason Wood, Esq.  
Elizabeth F. Collura, Esq.

10 For Defendant, McGraw-Hill: Tammy L. Roy, Esq.

Jacqueline A. Koscelnik, Esq.

11

For Defendant, Moody's:

James Regan, Esq.  
James J. Coster, Esq.

12

13 For Defendant, Countrywide: John J. Falvey, Jr., Esq.

Sharon L. Rusnak, Esq.  
Aleksandra Sasha Williams, Esq.

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PROCEEDING

(12:24 p.m., Counsel present before the Court.)

- - -

THE COURT: I do believe I brought another file, so I will be back, because we're not dealing with whether silicon can cause cancer.

(Discussion held off the record.)

(Brief pause in proceedings.)

(12:28 p.m.)

THE COURT: Okay. We'll try again. Be seated.

Now, we're starting with the rating agency's motion, and there's some 10,000 documents; is that right?

MS. WOOD: Yes, Your Honor.

THE COURT: Okay. And they're all protected -- they're all SARs reports?

MS. WOOD: They're all -- they are on a log that Plaintiff has prepared of all documents that are subject to the bank examiner privilege.

THE COURT: Okay. That's what I meant.

22 Yes, I'm sorry.

23 MS. WOOD: Yes.

24 THE COURT: So the Plaintiffs want to take

25 the position that there's no cause shown for any

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1 There are some letters rogatory, I think, both from  
2 Countrywide and the rating agencies.

3 MS. ROY: Standard & Poor's, yes.

4 MS. EVANS: So if we could proceed, I'd  
5 like to talk through the couple of motions to compel  
6 that were on today.

7 THE COURT: Okay.

8 MS. EVANS: Are you all right with that?  
9 Okay.

10 This is the original that I am filing on  
11 the motion to compel for receipt of documents  
12 produced to the Department of Justice.

13 (Counsel and the Court exchange documents.)

14 This is against JPMorgan.

15 In August, Your Honor, of this year,  
16 JPMorgan announced that, in an SEC filing, that the  
17 Department of Justice was conducting civil and



18 criminal investigations relating to its MBS matters  
19 activities. Appended to that motion at Tab B is Page  
20 204 of that disclosure, which discloses -- JPMorgan  
21 discloses that there are parallel investigations.

22 This is up on the right-hand top.

23 THE COURT: Okay. And what's the  
24 discovery issue?

25 MS. EVANS: What we would like is all of

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1 the documents that were produced in connection with  
2 the DOJ investigation. In September of this year,  
3 the Department of Justice indicated that it was  
4 ready to serve a complaint.

5 My understanding, from public  
6 information -- whether it's accurate or not -- is  
7 the complaint did go to JPMorgan. It's not public.  
8 We don't have it.

9 JPMorgan entered into settlement  
10 negotiations right away -- it's been in the  
11 newspaper -- for about \$11 billion, is the number  
12 that was discussed. The last I know, only from  
13 public statements or publicly available information,

14 is that Jamie Dimon was involved in the talks and  
15 they are stalled on some points.

16 THE COURT: Okay. So, what are you asking  
17 for?

18 MS. EVANS: The documents that were  
19 provided to the Department of Justice in connection  
20 with the civil and criminal investigation into the  
21 mortgage backed securities.

22 THE COURT: Okay.

23 MS. EVANS: It's the same time frame, too,  
24 Your Honor, and the allegations reported in the  
25 press are the same.

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1 MR. PASKOWITZ: So, the motion here is  
2 asking for documents produced to the Department of  
3 Justice.

4 THE COURT: Right.

5 MR. PASKOWITZ: And there's no --  
6 critically, what Ms. Evans has failed to do is  
7 create any sort of connection between any of the  
8 investigations that may or may not be going on and  
9 this case.

10 But I think, to put the motion in context  
11 that Your Honor's aware, we have been in front of  
12 Your Honor, you know, several times in the last year  
13 since Special Master Patricia Dodge made her  
14 findings that recommended to Your Honor that no  
15 further electronic searches should be performed by  
16 the JPMorgan Defendants.

17 THE COURT: No more what?

18 MR. PASKOWITZ: Electronic searches,  
19 discovery searches should be performed by the  
20 JPMorgan Defendants. Your Honor ordered that  
21 recommendation.

22 THE COURT: Okay. But about these changed  
23 circumstances?

24 MR. PASKOWITZ: I don't believe there are  
25 any changed circumstances. I think that what's

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1 happening here is, faced with that order and unable  
2 to give any further discovery, given the position  
3 that we are in discovery, discovery's been going on  
4 since January of 2011. We're approaching the cutoff  
5 for depositions in February of 2014. They have

6 taken our -- have noticed all but maybe one or two  
7 of the depositions they're allowed to take of us.  
8 We're sort of at the very end of discovery here.

9 What they're trying to do with these  
10 motions -- and you can see from the agenda in front  
11 of you -- they're going to be asking for documents  
12 that were produced to the government, completely  
13 unrelated investigations. They're going to be  
14 asking for documents from non-custodians produced in  
15 litigations that have nothing to do with this, and  
16 they may be asking for other things; I'm not sure.

17 But, just to finish my thought here, what  
18 they're doing is essentially trying to, you know, do  
19 an end-run. And, yes, Your Honor's order, which was  
20 back from December that, you know, electronic  
21 discovery of JPMorgan should be done, now we should  
22 be moving towards depositions. We should be moving  
23 towards the ends of this case.

24 MS. EVANS: Your Honor --

25 MR. PASKOWITZ: But I'm not even nearly

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1 finished. If you want to let me continue -- sorry,

2 just want to make sure we don't talk over each other  
3 for the court reporter's benefit.

4 So now they're requesting what may or may  
5 not -- I don't think she has put it in any sort of  
6 context on what actually she's asking for here.  
7 She's attached to her motion an article from the  
8 Wall Street Journal that references some kind of  
9 investigations. She's attached a disclosure from  
10 JPMorgan in an SEC filing that says that there's a  
11 notice from the civil division, from the civil  
12 division of the DOJ, that there is some kind of  
13 conclusion related to nonprime loans. And I think  
14 you've probably come to understand the difference  
15 between sort of the prime mortgage business and the  
16 nonprime mortgage business, that there's a bit of a  
17 difference.

18 The disclosure that she's attached to the  
19 motion makes it very clear that the only finding  
20 that's referenced anywhere relates to the nonprime  
21 business that JPMorgan -- not the prime business  
22 that's at issue in this case. There are five  
23 offerings, all prime, so I think it's very  
24 important.

25 Your Honor addressed this issue earlier in

1 the year, in the March order that related to S&P,  
2 and there, you ordered S&P to produce documents that  
3 had been produced to the DOJ because FHLB referenced  
4 Your Honor to a complaint filed by the government  
5 against S&P, an actual complaint that contained  
6 hundreds of specific allegations that, to quote from  
7 Your Honor, that were, quote, "very similar to the  
8 allegations in the complaint filed in this  
9 litigation."

10 And so Your Honor's finding was based on  
11 the fact that those allegations appeared to be  
12 based, you know, on the very same documents that  
13 FHLB sought, so there was a very specific nexus.

14 THE COURT: They're saying there's a  
15 linkage that doesn't exist here.

16 MR. PASKOWITZ: It's completely lacking.

17 MS. EVANS: Not completely lacking, Your  
18 Honor. Looking first to the Tab A in the Wall  
19 Street Journal article, in particular, dated  
20 September 30th, 2013, on the second page of that  
21 article, half the way down, "The Justice Department  
22 lawyers are emboldened by documents uncovered in the  
23 course of their investigation that point to JPMorgan  
24 knowingly pedalling mortgage backed securities whose

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1 to the investors, according to people familiar..."

2 That is precisely --

3 THE COURT: But isn't that --

4 MS. EVANS: That's precisely our

5 allegation.

6 MR. PASKOWITZ: Absolutely. And --

7 THE COURT: There's been no complaint; is

8 that right?

9 MR. PASKOWITZ: Yes.

10 MS. EVANS: There is a complaint.

11 THE COURT: It hasn't been filed?

12 MS. EVANS: That's correct, because of the

13 settlement talks. We don't have the complaint.

14 MR. PASKOWITZ: Whether it has been or has

15 not been filed, I think, is completely up to

16 speculation up to this point. You could infer that

17 it's not been filed because there's no basis for it

18 to be filed.

19 MS. EVANS: I don't think that's what

20 they're talking about.

21 MR. PASKOWITZ: I don't think any of us  
22 knows, which is the problem.  
23 MS. EVANS: It goes on to say in the Wall  
24 Street Journal article that, "...among the documents  
25 is an e-mail from a bank employee warning her

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1 superiors that they were vastly overstating the  
2 quality of the mortgages being bundled into the  
3 securities."

4 MR. PASKOWITZ: Again, hearsay.

5 MS. EVANS: Pardon me. I was kind enough  
6 not to interrupt you. I appreciate the courtesy.

7 What we have developed in our case is  
8 exactly -- this is exactly it. This is -- they are  
9 looking into the RMBS business, which means all  
10 loans; prime, subprime.

11 THE COURT: So, what are you asking with  
12 respect to the two people?

13 MS. EVANS: What we would like is the  
14 documents that they produced pursuant to the  
15 subpoenas from the Department of Justice. Now --

16 THE COURT: Well, what's that have to do



17 with two people?

18 MS. EVANS: That should -- if it does not  
19 include the e-mail, then we do want the identity of  
20 the individual who warned her supervisor that they  
21 were vastly overstating the quality of the mortgages  
22 they bundled into securities.

23 THE COURT: That you believe JPMorgan can  
24 identify that employee?

25 MS. EVANS: Yeah, I do. This has been a

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1 two-year investigation. It started out from the  
2 Obama administration. We have known that there have  
3 been these subpoenas, and now the Justice Department  
4 has decided that it is doing both civil and criminal  
5 investigation into its entire MBS activities.

6 That's JPMorgan's own disclosure. It's not just to  
7 subprime or Alt A or different kinds of securities.

8 Importantly, I don't know what Ms. Dailey  
9 has to do -- Ms. Dailey. Our Special Master; not  
10 Ms. Dailey.

11 MS. SPENNER: Ms. Dodge.

12 MS. EVANS: Dodge. She was deciding

13 whether they were using any more search terms. They  
14 don't have to do anything. All they have had to do  
15 is download the documents, whatever they were, that  
16 they gave to the Department of Justice and deliver  
17 them to us.

18 That's very similar to what S&P did. We  
19 would simply agree, as we did in the S&P DOJ  
20 documents, that we will treat them highly  
21 confidential so you don't have to go through and  
22 delay. We are getting towards the end. I am very  
23 excited about that.

24 THE COURT: Now, there is a -- you believe  
25 there's a draft of a complaint that JPMorgan has?

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1 MS. EVANS: I do. All I can tell you is I  
2 read it in publications.

3 MR. PASKOWITZ: That's our main problem  
4 with this whole motion, is that what FHLB is  
5 currently asking us is to vastly expand the record  
6 in this case when we're a couple months away from  
7 the close of discovery, based on a newspaper  
8 article.

9 THE COURT: Well, I think they could ask  
10 you, if there is a draft of a complaint, to turn  
11 that over.

12 MR. PASKOWITZ: Whether there is or is  
13 not, I do not know.

14 THE COURT: If there is.

15 MR. PASKOWITZ: My concern, I would put on  
16 the record, my concern there in the S&P context,  
17 whether there was a filed complaint that the  
18 government was willing to stand behind, I think you  
19 have a very different situation than a draft  
20 complaint that they may have turned over to JPMorgan  
21 as part of a negotiation.

22 I think there's a very different factual  
23 record there that exists and different implications  
24 that can arise.

25 THE COURT: Okay. I'm going to, for the

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1 time being, let you get any drafts of a complaint  
2 and the name of that employee, if they have it.

3 MR. PASKOWITZ: I -- okay. I think we  
4 have to sort of explore whether there's any issues

5 turning that over from the government. I don't know  
6 if there are or are not. If a complaint has been  
7 shared, whether there are any concerns from the  
8 government's standpoint as to turning that over, I  
9 just don't know sitting here today.

10 THE COURT: Well, you have the draft?

11 MR. PASKOWITZ: I do not know that we do.

12 MS. SPENNER: Says the Wall Street  
13 Journal. I have no idea.

14 THE COURT: The claim is, you have the  
15 draft.

16 MR. PASKOWITZ: The --

17 MS. SPENNER: Their claim.

18 THE COURT: Okay. So that, to the extent  
19 that you have it, you turn it over.

20 MS. SPENNER: I can --

21 MS. EVANS: And the name of the employee?

22 MS. SPENNER: I can tell you right now  
23 that, because we have looked into this, that",

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THE COURT: Well, you'll just answer it.

MS. SPENNER: Say that -- say exactly what I just said?

THE COURT: In your answer.

MR. PASKOWITZ: In our answer.

THE COURT: 'Tell us who the employee is referred to in the Wall Street Journal.' **Sm.**

MS. EVANS: May I request the information in ten days, Your Honor?

MR. PASKOWITZ: The complaint, again, because we'll have to explore this issue --

THE COURT: I'll give you twenty days.

MR. PASKOWITZ: Thank you.

MS. EVANS: Thank you, Your Honor.

The next motion, that is kind of a double motion, this is for William King's documents produced in another piece of litigation, and that is in the FHFA case against JPMorgan.

He is a named Defendant. His name is William King. I do want to share with you and tell you something of who he is.

(Indicating)

Here's -- here is an organizational chart

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C E R T I F I C A T E

I, Janeen E. Ellsworth, RPR, do hereby certify that  
the proceedings are contained fully and accurately in  
the notes taken by me on the hearing of the herein  
cause, and that this is a true and correct transcript  
of the same.

\_\_\_\_\_  
Janeen E. Ellsworth, RPR  
Official Court Reporter

\_\_\_\_\_  
Date

The foregoing record of the proceedings upon  
the hearing of the herein cause is hereby approved and  
directed to be filed.

\_\_\_\_\_

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25

Janeen E. Ellsworth, RPR (412) 350-5414

*EXHIBIT D*

*Filed under Seal:*

*Portions of this transcript are redacted  
pursuant to Protective Order*



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To: [Kahle, Mitchell](#) <[MKahle@ibsondunn.com](mailto:MKahle@ibsondunn.com)>  
Cc: [Pascowitz, Tom A.](#); [ibsondunn, Brian](#); [Minnis, William H.](#); [Ratner, Warren](#)  
Subject: RE: FHLB Pittsburgh v. JP Morgan et al. Case No. GD-09-16892 and FHLB Pittsburgh v. JP Morgan et al. Case No. GD-09-16893  
Date: Thursday, October 24, 2013 1:36:20 PM

Dorothy

Thank you.

Regards, Jan

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*Sent:* Thursday, October 24, 2013 12:46 PM  
*To:* Evans, Janet C.  
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*Subject:* FHLB Pittsburgh v. JP Morgan et al. Case No. GD-09-16892 and FHLB Pittsburgh v. JP Morgan et al, Case No.GD-09-16893

Jan:

*^unm^wa*

Best regards,

Dorothy

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