Exhibit 1

Amherst Mortgage Insight

Amherst® Securities Group LP

May 17, 2013

MBS Strategy Group

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Subsequent Recoveries—What Is The Market Telling Us?

Summary

With settlements on representation and warranty violations in non-agency RMBS beginning to pick up momentum, many investors are becoming more and more comfortable with pricing the potential recovery cash flows from either a settlement or loan repurchase.

In this article, we will first look to recent security pricing performance to see how the market has treated securities tied up in rep&warrant litigation, and then look to our analytics in order to estimate how much breakeven recovery cash flow is being priced into these securities, drawing some investment conclusions from the analysis.

Looking Back To Recent History, How Has the Market Reacted to Reps/Warrants?

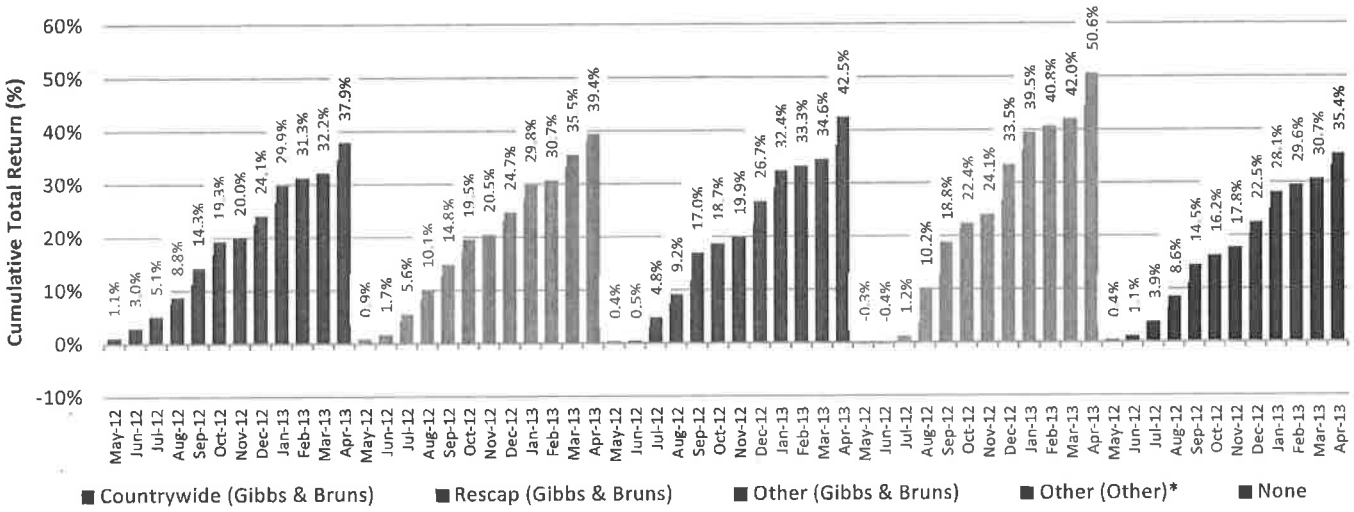
Exhibit 1 (next page) highlights historical market total return performance on a cumulative basis for the last twelve months broken out by different categories of securities tied to rep&warrant litigation: those bonds involved with the Countrywide settlement ["Countrywide(Gibbs&Bruns)"], those bonds associated with the Residential Capital bankruptcy ["ResCap(Gibbs&Bruns)"], other securities associated with claims of violations that are represented by the law firm Gibbs&Bruns, LLP ["Other(Gibbs&Bruns)"], other securities we have identified which are associated with litigation not tied to Gibbs&Bruns ["Other(Other)"], and securities not tied to any rep&warrant litigation ("None"). In reviewing the twelve month cumulative total returns, you can see that all of the various rep&warrant categories outperformed the securities not tied to any litigation of this type.[1] It appears these securities received different treatment, as investors likely included recovery cash flows, and priced the bonds accordingly.

A specific example will make this clearer. The bankruptcy filing of Residential Capital (ResCap) in May 2012, where MBS investors (represented by Gibbs&Bruns and Ropes&Gray) were allowed an $8.7 billion unsecured claim, provides a market event that investors were able to react to. Exhibit 2 (next page) takes a sample of Alt-A securities originally serviced by GMAC/RFC, and tracks their weighted average (by balance) month-end price over time. These securities are broken out by those associated with the settlement, and those that are not. You can see that the settlement bonds were priced $1.80 below the non-settlement securities

[1] Past performance is not indicative of future performance.

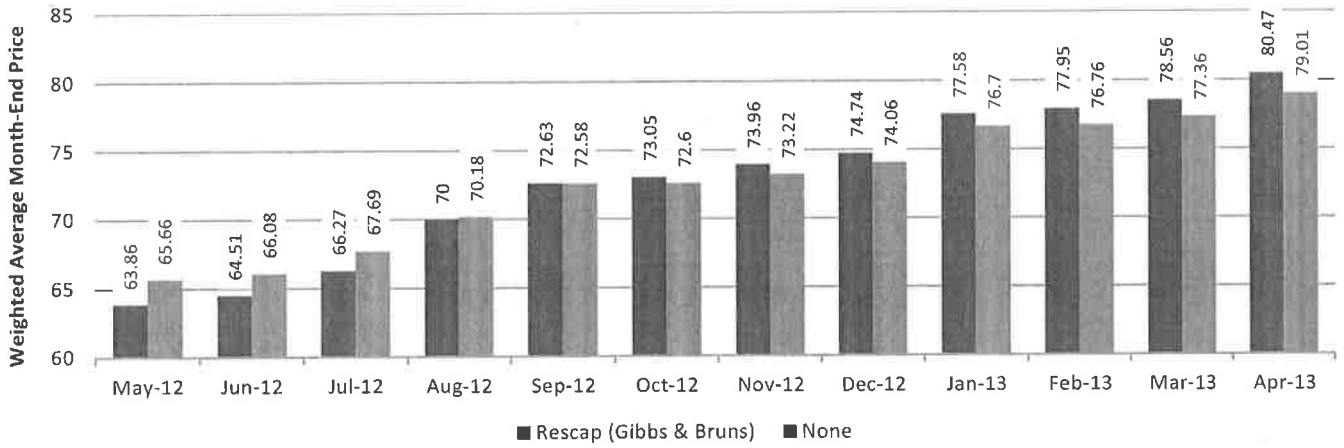
This material has been prepared by individual sales and/or trading personnel and does not constitute investment research.

Exhibit 1: Cumulative Total Return of Sectors of Securities Tied To Rep&Warrant Violation Claims



Source: CoreLogic, 1010data, ABSNet, IDC, Court Filings, Amherst Securities as of April 2013
*Other (Other) are securities with rep/warrant claims and not associated with Gibbs & Bruns LLP.

Exhibit 2: Price Movement of Alt-A, GMAC/RFC Originally Serviced Bonds



Source: CoreLogic, 1010data, ABSNet, IDC, Court Filings, Amherst Securities as of April 2013

($65.66 – $63.86) back in May 2012, but are now priced $1.46 above the non-settlement securities ($80.47 – $79.01). The exhibit shows the market digested the bankruptcy and reacted over time as information became more available. The price move from a $1.80 discount to a $1.46 premium, a full $3.26 move, is another indicator that the market might be favoring these securities because of potential recovery cash flows.

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What Pay-Up Is The Market Requiring For These Securities?

Now that we have looked to our detailed historical market intelligence and established that the market has favored these rep&warrant bonds relative to the market as a whole, we will now turn to looking forward and use our analytics to estimate how much recovery cash flow is being priced into these securities. Exhibit 3 (below) highlights some weighted average default-model generated, loss-adjusted yields of subprime senior 2006/2007 vintage non-agency RMBS. The reason we are focusing on just subprime estimated yields because it is arguably the "target rich" environment for violation claims. This sector is further broken out by three rep&warrant categories: those with no identified rep&warrant claims ("None"), those tied to the Countrywide settlement ["Countrywide(Gibbs&Bruns)"], and all other rep&warrant securities ("Rep&Warrant"). You can see that the rep&warrant yields are lower than their non-rep&warrant counterparts. And the Countrywide settlement bonds have the lowest estimated average yield. Rep&warrant subprime securities have an average 5.05% yield (45 bps discount to the non-rep&warrant) and the Countrywide settlement bonds have an average 3.77% yield (173 bps discount to the non-rep&warrant bonds). Spoken another way, this 45bps and 173bps yield difference highlights the market pay-up for these securities. *[Note: Our default model doesn't factor in any potential subsequent recoveries.]*

Exhibit 3: 2006/2007 Vintage Senior Securities—Default Model Yields

Product	Category	RepWarrant Group	Median Model Yield
Subprime	Subprime Senior 06/07	None	5.50
		RepWarrant*	5.05
		Countrywide (Gibbs & Bruns)	3.77
Grand Total			5.18

Source: CoreLogic, 1010data, ABSNet, IDC, Court Filings, Amherst Securities as of April 2013—based on a ~2,312 security sample of senior 2006/2007 vintage non-agency RMBS
* - Securities not associated with the Countrywide settlement but have other rep&warrant violation claims.

There are several reasons why we broke out the Countrywide settlement here. One reason that it is one of the few settlements where an approximate pay-out formula is known (based on the methodology put forth in settlement documents and our loss estimates going forward, we estimate securities will be around 10.2% of past and future projected losses). So we separated these because most other claim payouts are more uncertain as to likelihood and claim payout at this point, and the Countrywide bonds would skew the results. Another reason is we can use these bonds as a control group to see if our estimate of subsequent recovery being priced in by the market is reasonable. We'll do this later in the article, but will first cover an example of how we establish a breakeven subsequent recovery being priced on a security.

A Subsequent Recovery Pricing Example—ACE 2006-NC2 A1

Now that we have loss-adjusted yield estimates on the various rep&warrant sectors, we can now layer in subsequent recovery cash flows and back out a breakeven subsequent recovery being priced into these securities. We chose ACE 2006-NC2 A1 as our example bond. It is a 2006 vintage subprime pass through and has a base

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case yield of 4.8% at a price of $61.8 in Exhibit 4 (below). The other scenarios take our base model scenario (which assumes borrower behavior based on a 20% home price increase over 5 years) and adds in recovery cash flows at month 24 that equate to 10%, 20%, and 50% of the combined historical and future projected losses. So, for example, the yield table shows us that the security yield estimate jumps to 8.7% if we assume there is a 10% recovery of past and future projected losses in 24 months.

So if we want to figure out what subsequent recoveries are being priced into this bond, we can simply add back the average subprime yield pay-up of 45bps we found in the last section to the base yield of 4.8%, giving us the effective yield the bond would have if it was not associated with any rep/warrant claims. All we have to do then is interpolate this new yield between the subsequent recovery scenarios to back out what 24-month subsequent recovery is needed to get the bond yield back to this new level. So in this case, our non-rep/warrant yield on the bond is 5.25% (4.8 + 0.45). This falls between 0% and 10% subsequent recovery scenarios, and the interpolated subsequent recovery is 1.2%. So the bond would need to receive 1.2% of past and future losses to effectively break even. To the extent an investor holds the view that recoveries for this bond are larger than this amount, they might view this bond as cheap.

Exhibit 4: ACE 2006-NC2 A1, Subsequent Recovery Yield Table

	Scenarios			
	Base Case (HPA +20% over 5 years)	Base Case 10% Subsequent Recovery (SR) 24mo	Base Case 20% SR 24mo	Base Case 50% SR 24mo
Price → Yield	58.8 → 5.4 59.8 → 5.2 60.8 → 5.0 61.8 → 4.8 62.8 → 4.6 63.8 → 4.4 64.8 → 4.2	58.8 → 9.7 59.8 → 9.4 60.8 → 9.1 61.8 → 8.7 62.8 → 8.4 63.8 → 8.1 64.8 → 7.9	58.8 → 14.8 59.8 → 14.2 60.8 → 13.7 61.8 → 13.2 62.8 → 12.8 63.8 → 12.3 64.8 → 11.9	58.8 → 31.4 59.8 → 30.4 60.8 → 29.3 61.8 → 28.3 62.8 → 27.3 63.8 → 26.3 64.8 → 25.4
Weighted Average Life	9.7	8.1	5.6	1.9
Duration	7.6	5.2	3.4	1.6
Group Collateral Liquidation	67%	67%	67%	67%
Group Collateral Loss	56%	56%	56%	56%
Group Avg Severity	83	83	83	83
Aggregate Collateral Liquidation	71%	71%	71%	71%
Aggregate Collateral Loss	58%	58%	58%	58%
Aggregate Avg Severity	83	83	83	83
Tranche Writedown	27%	8%	0%	0%
Period of First Writedown	397	397	NA	NA
Minimum Support %	0.00 In Period 24	0.00 In Period 33	0.00 In Period 41	0.91 In Period 23
Loss at Min Support	0	0	0	0
Cum Loss at 1st Writedown	0	0	NA	NA
DM/Spread	243.2/248.8	663.6/681.4	1144.3/1229	2624.4/2809.3

Source: CoreLogic, 1010data, ABSNet, IDC, Court Filings, Amherst Securities as of April 2013

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What Does the Market Say About the Countrywide / Gibbs&Bruns Settlement?

To test our methodology, we took 185 of the senior subprime securities tied to the Countrywide settlement that generated the average yield in Exhibit 3 and applied the same methodology as our ACE bond above. A histogram of the results is displayed in Exhibit 5 (next page). As listed in the chart, the weighted average subsequent recovery comes in around 6.9%. This roughly verifies our methodology because, based on published methodology and our expectation of future losses, we estimate the settlement pay-outs will be approximately 10% of bond losses. Since the timing of and amount of payment is still unknown and there is a minute chance it does not happen, it makes sense to use that the implied breakeven recovery amount is slightly less than the 10% we are estimating.

The Implied Breakeven Subsequent Recovery Being Priced In

We then took the breakeven analysis to a 200-bond sample of rep/warrant securities not associated with the Countrywide settlement, and Exhibit 6 (next page) shows the distribution of implied subsequent recoveries. The weighted average breakeven recovery comes in much lower at 1.8%. This also makes sense to us as many of these cases are in various stages and the outcomes are more uncertain at this point.

Investment Conclusions

We have shown that the market has identified securities involved in rep/warrant violation claims and has reacted by pricing these securities higher, reflecting the potential cash flow from subsequent recoveries. Using our sample of subprime securities along with our default model and some recovery estimates, we have found that Countrywide settlement securities are priced with an average ~7% recovery cash flows and non-Countrywide settlement securities are priced with ~2%. Again, these are breakeven figures, the recovery cash flows needed to get yields back to the sector average that do not have any outstanding claims. To the extent investors have the conviction that recoveries are higher, they may view these securities as an attractive investment. And always keep in mind all securities are unique, and have varying degrees of sensitivity to recovery cash flows. We stand ready to help you, our valued customer base, identify these securities in your search for outperformance.

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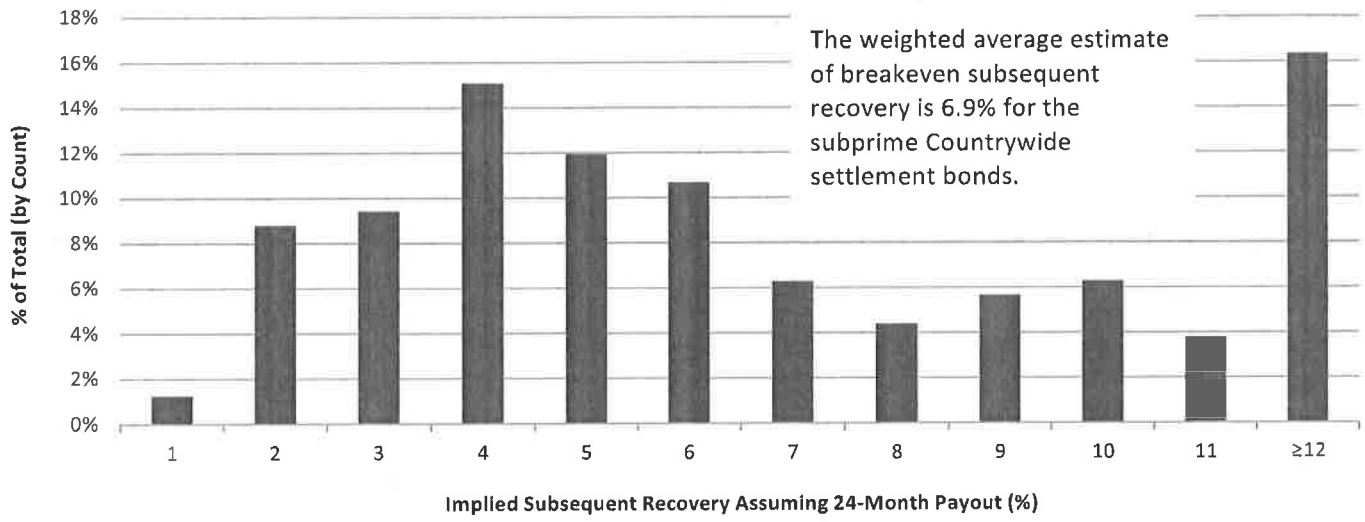
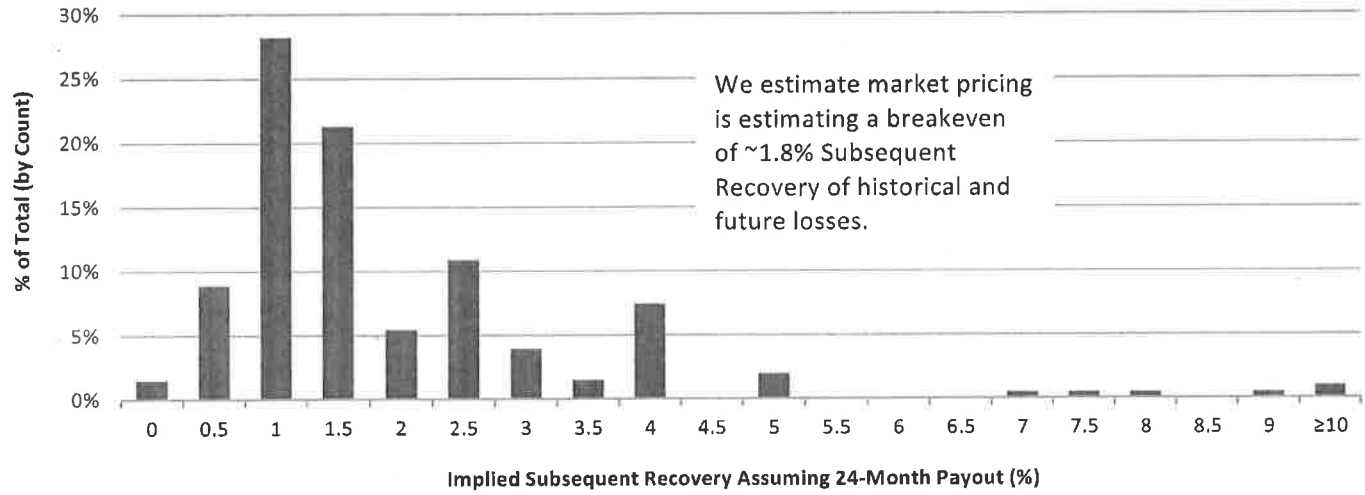
Exhibit 5: Subprime Countrywide Settlement Securities—Breakeven Recovery Results



Source: CoreLogic, 1010data, ABSNet, IDC, Court Filings, Amherst Securities as of April 2013

Exhibit 6: Non-Countrywide Settlement—Breakeven Recovery Results



Source: CoreLogic, 1010data, ABSNet, IDC, Court Filings, Amherst Securities as of April 2013

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Exhibit 2

EXECUTION COPY

CWALT, INC.,
Depositor
COUNTRYWIDE HOME LOANS, INC.,
Seller
PARK GRANADA LLC,
Seller
PARK MONACO INC.,
Seller
PARK SIENNA LLC,
Seller
COUNTRYWIDE HOME LOANS SERVICING LP,
Master Servicer
and
THE BANK OF NEW YORK,
Trustee

POOLING AND SERVICING AGREEMENT

Dated as of August 1, 2006

ALTERNATIVE LOAN TRUST 2006-OC7

MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-OC7

ARTICLE III
ADMINISTRATION AND SERVICING OF MORTGAGE LOANS

SECTION 3.01. Master Servicer to Service Mortgage Loans.

For and on behalf of the Certificateholders, the Master Servicer shall service and administer the Mortgage Loans in accordance with the terms of this Agreement and customary and usual standards of practice of prudent mortgage loan servicers. In connection with such servicing and administration, the Master Servicer shall have full power and authority, acting alone and/or through Subservicers as provided in Section 3.02, subject to the terms of this Agreement (i) to execute and deliver, on behalf of the Certificateholders and the Trustee, customary consents or waivers and other instruments and documents, (ii) to consent to transfers of any Mortgaged Property and assumptions of the Mortgage Notes and related Mortgages (but only in the manner provided in this Agreement), (iii) to collect any Insurance Proceeds and other Liquidation Proceeds (which for the purpose of this Section 3.01 includes any Subsequent Recoveries), and (iv) to effectuate foreclosure or other conversion of the ownership of the Mortgaged Property securing any Mortgage Loan; provided that the Master Servicer shall not take any action that is inconsistent with or prejudices the interests of the Trust Fund or the Certificateholders in any Mortgage Loan or the rights and interests of the Depositor, the Trustee and the Certificateholders under this Agreement. The Master Servicer shall represent and protect the interests of the Trust Fund in the same manner as it protects its own interests in mortgage loans in its own portfolio in any claim, proceeding or litigation regarding a Mortgage Loan, and shall not make or permit any modification, waiver or amendment of any Mortgage Loan which would cause any REMIC created under this Agreement to fail to qualify as a REMIC or result in the imposition of any tax under section 860F(a) or section 860G(d) of the Code. Without limiting the generality of the foregoing, the Master Servicer, in its own name or in the name of the Depositor and the Trustee, is hereby authorized and empowered by the Depositor and the Trustee, when the Master Servicer believes it appropriate in its reasonable judgment, to execute and deliver, on behalf of the Trustee, the Depositor, the Certificateholders or any of them, any and all instruments of satisfaction or cancellation, or of partial or full release or discharge and all other comparable instruments, with respect to the Mortgage Loans, and with respect to the Mortgaged Properties held for the benefit of the Certificateholders. The Master Servicer shall prepare and deliver to the Depositor and/or the Trustee such documents requiring execution and delivery by either or both of them as are necessary or appropriate to enable the Master Servicer to service and administer the Mortgage Loans to the extent that the Master Servicer is not permitted to execute and deliver such documents pursuant to the preceding sentence. Upon receipt of such documents, the Depositor and/or the Trustee shall execute such documents and deliver them to the Master Servicer. The Master Servicer further is authorized and empowered by the Trustee, on behalf of the Certificateholders and the Trustee, in its own name or in the name of the Subservicer, when the Master Servicer or the Subservicer, as the case may be, believes it appropriate in its best judgment to register any Mortgage Loan on the MERS® System, or cause the removal from the registration of any Mortgage Loan on the MERS® System, to execute and deliver, on behalf of the Trustee and the Certificateholders or any of them, any and all instruments of assignment and other comparable instruments with respect to such assignment or re-recording of a Mortgage in the name of MERS, solely as nominee for the Trustee and its successors and assigns.

In accordance with the standards of the preceding paragraph, the Master Servicer shall advance or cause to be advanced funds as necessary for the purpose of effecting the payment of taxes and assessments on the Mortgaged Properties, which advances shall be reimbursable in the first instance from related collections from the Mortgagors pursuant to Section 3.06, and further as provided in Section 3.08. The costs incurred by the Master Servicer, if any, in effecting the timely payments of taxes and assessments on the Mortgaged Properties and related insurance premiums shall not, for the purpose of calculating monthly distributions to the Certificateholders, be added to the Stated Principal Balances of the related Mortgage Loans, notwithstanding that the terms of such Mortgage Loans so permit.

SECTION 3.02. Subservicing; Enforcement of the Obligations of Subservicers.

(a) The Master Servicer may arrange for the subservicing of any Mortgage Loan by a Subservicer pursuant to a subservicing agreement; provided, however, that such subservicing arrangement and the terms of the related subservicing agreement must provide for the servicing of such Mortgage Loans in a manner consistent with the servicing arrangements contemplated under this Agreement; provided, however, that the NIM Insurer shall have consented to such subservicing agreements (which consent shall not be unreasonably withheld). Unless the context otherwise requires, references in this Agreement to actions taken or to be taken by the Master Servicer in servicing the Mortgage Loans include actions taken or to be taken by a Subservicer on behalf of the Master Servicer. Notwithstanding the provisions of any subservicing agreement, any of the provisions of this Agreement relating to agreements or arrangements between the Master Servicer and a Subservicer or reference to actions taken through a Subservicer or otherwise, the Master Servicer shall remain obligated and liable to the Depositor, the Trustee and the Certificateholders for the servicing and administration of the Mortgage Loans in accordance with the provisions of this Agreement without diminution of such obligation or liability by virtue of such subservicing agreements or arrangements or by virtue of indemnification from the Subservicer and to the same extent and under the same terms and conditions as if the Master Servicer alone were servicing and administering the Mortgage Loans. All actions of each Subservicer performed pursuant to the related subservicing agreement shall be performed as an agent of the Master Servicer with the same force and effect as if performed directly by the Master Servicer.

(b) For purposes of this Agreement, the Master Servicer shall be deemed to have received any collections, recoveries or payments with respect to the Mortgage Loans that are received by a Subservicer regardless of whether such payments are remitted by the Subservicer to the Master Servicer.

SECTION 3.03. Rights of the Depositor, the NIM Insurer and the Trustee in Respect of the Master Servicer.

The Depositor may, but is not obligated to, enforce the obligations of the Master Servicer under this Agreement and may, but is not obligated to, perform, or cause a designee to perform, any defaulted obligation of the Master Servicer under this Agreement and in connection with any such defaulted obligation to exercise the related rights of the Master Servicer under this Agreement; provided that the Master Servicer shall not be relieved of any of its obligations under this Agreement by virtue of such performance by the Depositor or its designee. None of the Trustee, the NIM Insurer or the Depositor shall have any responsibility or liability for any action

ARTICLE VI
THE DEPOSITOR AND THE MASTER SERVICER

SECTION 6.01. Respective Liabilities of the Depositor and the Master Servicer.

The Depositor and the Master Servicer shall each be liable in accordance with this Agreement only to the extent of the obligations specifically and respectively imposed upon and undertaken by them in this Agreement.

SECTION 6.02. Merger or Consolidation of the Depositor or the Master Servicer.

The Depositor will keep in full effect its existence, rights and franchises as a corporation under the laws of the United States or under the laws of one of the states thereof and will obtain and preserve its qualification to do business as a foreign corporation in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement, or any of the Mortgage Loans and to perform its duties under this Agreement. The Master Servicer will keep in effect its existence, rights and franchises as a limited partnership under the laws of the United States or under the laws of one of the states thereof and will obtain and preserve its qualification or registration to do business as a foreign partnership in each jurisdiction in which such qualification or registration is or shall be necessary to protect the validity and enforceability of this Agreement or any of the Mortgage Loans and to perform its duties under this Agreement.

Any Person into which the Depositor or the Master Servicer may be merged or consolidated, or any Person resulting from any merger or consolidation to which the Depositor or the Master Servicer shall be a party, or any person succeeding to the business of the Depositor or the Master Servicer, shall be the successor of the Depositor or the Master Servicer, as the case may be, hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything in this Agreement to the contrary notwithstanding; provided, however, that the successor or surviving Person to the Master Servicer shall be qualified to service mortgage loans on behalf of, FNMA or FHLMC.

As a condition to the effectiveness of any merger or consolidation, at least 15 calendar days prior to the effective date of any merger or consolidation of the Master Servicer, the Master Servicer shall provide (x) written notice to the Depositor of any successor pursuant to this Section and (y) in writing and in form and substance reasonably satisfactory to the Depositor, all information reasonably requested by the Depositor in order to comply with its reporting obligation under Item 6.02 of Form 8-K with respect to a replacement Master Servicer.

SECTION 6.03. Limitation on Liability of the Depositor, the Sellers, the Master Servicer, the NIM Insurer and Others.

None of the Depositor, the Master Servicer, the NIM Insurer or any Seller or any of the directors, officers, employees or agents of the Depositor, the Master Servicer, the NIM Insurer or any Seller shall be under any liability to the Certificateholders for any action taken or for refraining from the taking of any action in good faith pursuant to this Agreement, or for errors in judgment; provided, however, that this provision shall not protect the Depositor, the Master Servicer, any Seller or any such Person against any breach of representations or warranties made

by it in this Agreement or protect the Depositor, the Master Servicer, any Seller or any such Person from any liability which would otherwise be imposed by reasons of willful misfeasance, bad faith or gross negligence in the performance of duties or by reason of reckless disregard of obligations and duties hereunder. The Depositor, the Master Servicer, the NIM Insurer, each Seller and any director, officer, employee or agent of the Depositor, the Master Servicer, the NIM Insurer or each Seller may rely in good faith on any document of any kind prima facie properly executed and submitted by any Person respecting any matters arising under this Agreement. The Depositor, the Master Servicer, the NIM Insurer, each Seller and any director, officer, employee or agent of the Depositor, the Master Servicer, the NIM Insurer or any Seller shall be indemnified by the Trust Fund and held harmless against any loss, liability or expense incurred in connection with any audit, controversy or judicial proceeding relating to a governmental taxing authority or any legal action relating to this Agreement or the Certificates, other than any loss, liability or expense related to any specific Mortgage Loan or Mortgage Loans (except as any such loss, liability or expense shall be otherwise reimbursable pursuant to this Agreement) and any loss, liability or expense incurred by reason of willful misfeasance, bad faith or gross negligence in the performance of duties hereunder or by reason of reckless disregard of obligations and duties hereunder. None of the Depositor, the Master Servicer, the NIM Insurer or any Seller shall be under any obligation to appear in, prosecute or defend any legal action that is not incidental to its respective duties hereunder and which in its opinion may involve it in any expense or liability; provided, however, that any of the Depositor, the Master Servicer, the NIM Insurer or any Seller may in its discretion undertake any such action that it may deem necessary or desirable in respect of this Agreement and the rights and duties of the parties hereto and interests of the Trustee and the Certificateholders hereunder. In such event, the legal expenses and costs of such action and any liability resulting therefrom shall be expenses, costs and liabilities of the Trust Fund, and the Depositor, the Master Servicer, the NIM Insurer and each Seller shall be entitled to be reimbursed therefor out of the Certificate Account.

SECTION 6.04. Limitation on Resignation of Master Servicer.

The Master Servicer shall not resign from the obligations and duties hereby imposed on it except (a) upon appointment of a successor servicer that is reasonably acceptable to the Trustee and the NIM Insurer and the written confirmation from each Rating Agency (which confirmation shall be furnished to the Depositor, the Trustee and the NIM Insurer) that such resignation will not cause such Rating Agency to reduce the then-current rating of the Certificates or (b) upon determination that its duties hereunder are no longer permissible under applicable law. Any such determination under clause (b) permitting the resignation of the Master Servicer shall be evidenced by an Opinion of Counsel to such effect delivered to the Trustee. No resignation of the Master Servicer shall become effective until the Trustee or a successor master servicer shall have assumed the Master Servicer's responsibilities, duties, liabilities (other than those liabilities arising prior to the appointment of such successor) and obligations under this Agreement and the Depositor shall have received the information described in the following sentence. As a condition to the effectiveness of any such resignation, at least 15 calendar days prior to the effective date of such resignation, the Master Servicer shall provide (x) written notice to the Depositor of any successor pursuant to this Section and (y) in writing and in form and substance reasonably satisfactory to the Depositor, all information reasonably requested by the Depositor in order to comply with its reporting obligation under Item 6.02 of Form 8-K with respect to the resignation of the Master Servicer.

Exhibit 3

The BoA MBS Settlement

posted by Adam Levitin

The $8.5B dollar figure of the Bank of America settlement with a cohort of MBS investors has gotten all the attention, but I think there's a bunch of more interesting things going on than the price tag. Still, it's hard not to talk about the price tag, so let's get that out of the way. Then we can get into servicing, documentation, and the question of whether anyone can/will object to the settlement.

1. Is $8.5B too high or too low or just right?

I have no way of knowing. On the one hand, putback claims are really hard to pursue. They are slow slogs, and there are questions of loss causation under other litigation theories (not that any suit has actually been brought). On the other hand, BoA looks like a dog in any court, and recent rulings in putback or rep/warranty cases have been holding that they can be done by sampling, rather than by "onesies and twosies" as Judge Crotty of the SDNY memorably put it. And if BoA is willing to pay out $8.5B when the investors haven't even gotten to the loan files, they must be hiding something pretty bad.

Frankly, it's just hard to know how to price this. If I were an MBS investor, however, I'd hesitate to take the offer. The investors would be probably able to get to the loan files one way or another, even if it takes some time, and that would give them far better information for pricing a settlement.

OK, enough on the price tag. Now for the more interesting tidbits.

2. The Settlement is really a PSA addendum.

The settlement agreement really gets interesting to me with parts 5 and 6. Part 5 deals with servicing, and part 6 with documentation and putbacks. I think the best way to understand it is that it is a correction/clarification via settlement of all sorts of terms that should be in pooling and servicing agreements (PSAs), but aren't. For example, PSAs require trustees to compile an exceptions report for documentation problems. And they do. But there is nothing in PSAs that requires trustees to ensure that all of the exceptions actually get fixed.

There's widespread consensus that PSAs are going to have to be drafted differently (and servicing will have to work differently) going forward, and this settlement might be part of that blueprint. I don't think investors are going to go for "trust and have no ability to verify and lousy remedies."

3. The Servicing Provisions of the Settlement Are a Vote of No Confidence in BAC

On the servicing side, I think this settlement is a real embarrassment for both BAC and the OCC and Fed. BAC has basically consented to outsource the servicing on all of its delinquent loans in these pools. That's a pretty clear sign that no one has confidence in BoA's servicing operation. It'll be interesting to see who gets brought in; while some servicing shops are better than others, none of them is exactly a dreamboat.

4. The Servicing Provisions Show Just How Weak the OCC/Fed Consent Orders Are

For the OCC and Fed, this should also be an embarrassment. The OCC and Fed had significantly greater leverage over the servicers than the investor coalition does, yet they were only able to extract generic operational reform promises. This settlement has some very precise operational reforms mandated and a much more serious verification mechanism, including a requirement that audits of the servicers be done by firms that do not have significant other dealings with them. This settlement shows what a slap on the wrist the OCC/FRB consent orders were.

5. Documentation Is a Suprisingly Detailed Focus but Doesn't Cover Endorsements

I've been ranting since last fall about documentation problems, and on several occasions I've been told that I must be wrong since big law firms did all the work and they never screw up. (I take careful note of these individuals as likely investors in my future Florida swampland real estate venture.) Well, a bunch of investors

(who happen to hire those very law firms for their securitization deals) seem to be awfully concerned about documentation. They want exceptions reports to know what's wrong and they want them on a regular basis.

Curiously, though, they don't want to know about endorsements in the exceptions reports. The particular exceptions they want to know about in paragraph 6(a)(i) aren't the ones that I'd be particularly concerned about. Sure, "document missing" or "photocopy" could be real pains, but title insurance issues? That's not where the action is. So why nothing about missing or incomplete endorsements? Well, for starters, those problems aren't correctable. The only remedy would be a putback. The issue seems to have been pushed off to paragraph 6(c), which says that if the trust can't foreclose because of any documentation issue, then the servicer (BAC) has to make the trust whole. Which is actually a pretty good smart settlement for BAC and the investors. To the extent that documentation issues don't get in the way of foreclosure, the investors will eat the loses, but if there are documentation problems, then it's on BAC. What would concern me, as an investor, however, is how the trustee will determine whether the trust's inability to foreclose was because of a documentation issue or not. It's not as if the trustee is looking at the court filings to figure this out. I would want a better verification system, such as an audit of all cases where foreclosure actions failed.

6. The scope of the release.

The release is very broad. I was struck, however, by how careful it is to include the "delivery" of notes to the trust and to cover

> the documentation of the Mortgage Loans held by theCovered Trusts (including the documents and instruments covered in Sections 2.01("Conveyance of Mortgage Loans") and 2.02 ("Acceptance by the Trustee of the MortgageLoans") of the Governing Agreements and the Mortgage Files) including with respect to alleged defective, incomplete, or non-existent documentation, as well as issues arising out of or relatingto recordation, title, assignment, or any other matter relating to legal enforceability of a Mortgage or Mortgage Note

Clearly BAC thinks there's something here for which it is worthwhile getting a release. What does that tell you?

7. Will There Be a Squeakly Wheel (and Some Tips for How One Might Contest the Settlement)

I'm very curious to see if there'll be a squeaky wheel with this settlement. If I were a hedge fund manager, I'd try to buy some MBS in these pools just to extract some holdup value. BONY, the trustee, has petitioned the NY State Supreme Court to sign off on the settlement. I'm not sure that they technically need to do so, but trustees are cautious types who like comfort orders. And that opens the door for someone to come in an object to get a holdup payment.

On what basis would one object? Well, there are any number of substantive terms within the settlement, but I don't think an objector will get particularly far with those. Maybe an objector could try to pare back the scope of the release, such that if there was not actual delivery to the trusts, the deal would be off.

But I think there's a better argument to be made, namely that BONY has not established its authority to settle claims on behalf of the trust. BONY is only the trustee if there is an express trust. An express trust requires, among other things, a trust res and delivery of the res to the trust. If there isn't proper delivery, there might be a constructive trust, but then BONY's authority is quite different. Put differently, don't we have to peak behind the curtain and see if the notes (the trust res) were actually delivered to the trust in order to know whether the trustee is in fact a trustee and can settle the trust's claims? That's not a particularly burdensome inquiry--produce a random sample of notes for examination. And doing so will help resolve the initial question about the pricing. There are a few months before this settlement will get heard, I think, so that's plenty of time for holdouts to flex their muscles.

8. Sundries

I've linked BONY's petition to the NY Supreme Court and their memorandum of law in support of the petition. I

love the reference in the memo of law to the unnamed financial advisors and unnamed leading contract law professor. Who is this international wo/man of mystery? And why isn't BONY naming who these parties are? I would think that would be a key part of establishing the credibility of their position.

9. Bottom line

The biggest thing about this settlement might be what it doesn't do. It doesn't settle things for every CW deal out there; there are plenty that aren't covered. If anything, the settlement's an invitation to other investors to come and get their share of the action. We haven't seen the end of putback litigation, and Subprime Shakeout has some astute commentary (here and here) explaining why we'll see more.

The settlement doesn't settle things in any of the homeowner class actions that are facing BAC. And it doesn't solve their problems vis-a-vis the attorneys general.

Speaking of which, I'd be curious to see if the NY AG weighs in on this settlement. The NY AG is the supervisor of NY trusts, which would make it appropriate. Afterall, it's not every day that NY trusts enter into an $8.5B settlement. This might present an opportunity for the NY AG to squeeze BAC for any and everything else it wants on servicing reform.

June 30, 2011 at 12:23 AM in Financial Institutions, Mortgage Debt & Home Equity

Like 8 Send

Comments

FTC could use some embarassment too with CWide's starring role in their mortgage servicing fraud trilogy that also included Fairbanks Capital aka Select Portfolio Servicing and EMC Mortgage Corp.

FTC SETTLEMENT: 06/07/2010
Countrywide Will Pay $108 Million for Overcharging Struggling Homeowners;
Loan Servicer Inflated Fees, Mishandled Loans of Borrowers in Bankruptcy
"Two Countrywide mortgage servicing companies will pay $108 million to settle Federal Trade Commission charges that they collected excessive fees from cash-strapped borrowers who were struggling to keep their homes. The $108 million represents one of the largest judgments imposed in an FTC case, and the largest mortgage servicing case. It will be used to reimburse overcharged homeowners whose loans were serviced by Countrywide before it was acquired by Bank of America in July 2008." http://www.ftc.gov/opa/2010/06/countrywide.shtm

$8.5 Billion for investors and chump change for victimized homeowners!

Posted by: Blossom | June 30, 2011 at 01:46 AM
So did any one bother to define "outsourced servicing"? for BAC or are they just going to flip the servicing to Wilshire? They're too late to purchase Litton Loan, Ocwen already sucked that up - there's a total nightmare in the making in and of itself...

The more things change the more things stay the same. At least the BAC investors will be slightly less grumbly... Maybe they won't have to keep GIVING all of that foreclosed inventory away.

Disgusted, meet Amused.

Someone may want to ask Benito Santiago Sr. how HE feels about the $8.5B BAC settlement after BAC "mistakenly" foreclosed on his home...
http://www.homepreservationnetwork.com/201106295140/retired-floridian-returns-home-to-find-his-home-foreclosed-upon-by-mistake

At least the case law is slowly piling up - for those who can afford to hire and can find competent legal counsel.

Posted by: Mike Dillon | June 30, 2011 at 09:44 AM
I have posted this also on Naked Capitalism. I don't understand how this settlement can be forced upon all investors. It

doesn't seem to me that the Trustee should or does have the power to "settle" anything for a bond investor who feels that the PSA was violated. Wouldn't this require all pending suits to be merged first??

But I get the goal of BAC. They are fighting on two fronts - homeowners (forclosures) and investors. BAC is monkey-in-the-middle. Everytime a homeowner gets to discovery and depositions (Linda DiMartini in Kemp BK case for example), they risk someone saying something stupid. Linda maybe helped homeowners a little, but she insipired the Dexia/TIAA suit that specifically cited her testimony in the chain of title claim (which I wonder - did they sign off on this settlement!?!?).

But, what Linda did do was cost BAC a lot of settlement money. The investor suits, using that testimony, will be costly.

And so now, if BAC can settle all past/future claims of any and all nature, they can relax a little when a homeowner does get to D&D. While stupid or bad things can come out, it's a one off problem for the most part. Stupid testimony won't matter with respect to the investor side. They settled all past and future claims. They're done, no matter what comes out later?

Take out the investors, and BAC is now fighting a war on one front. Next up, AG settlement for all past foreclosure flubs (i.e. did not follow the letter of the law). And then next, the legislative fix for any and all laws that do not make it possible for a MERS foreclosure. Example - Oregon requires all assignments to be recorded, and is looking like a MERS to ReconTrust won't work in a securitized Note. So, go get that legislatively fixed - and viola! All of BAC's problems are solved, and 3-5 million more foreclosures will crank through the system.

Maybe we should be buying BAC stock. They won.

Posted by: John S | June 30, 2011 at 10:30 AM
Like John S, I'm curious as to the legal authority of the Trustee to settle this issue -- even if the trust qualifies as an express trust. Doesn't New York law state that the Trustee only has the authorities expressly granted in the Trust document? Is this incorrect? Is settlement authority a standard part of trust documents?

I'd be curious to get a lawyer's view on these issues.

Posted by: csissoko | June 30, 2011 at 11:40 AM
i saw this i the settlement:

"No Person not a Party to this Settlement Agreement shall have any third-party beneficiary or other rights under this Settlement Agreement. Under no circumstances shall any Person not a Party hereto have any right to sue under or otherwise directly enforce this Settlement Agreement. For the avoidance of doubt, nothing in this Settlement Agreement confers any right or ability to sue to any present or former Mortgage Loan borrower, nor does this Settlement Agreement create any obligation on the part of any Person to any such borrower."

can you just say it and it can be so? seems to me that they are trying to close a huge avenue for legitimate 3rd party beneficiary suits. i'm not a lawyer... but i kind of think that it is for the courts to decide third party beneficiary issues isn't it?. you cant just put it in a settlement and say it wont have an direct impact on a third party and be done with it can you? anyone?

Posted by: furiouscalves | June 30, 2011 at 12:30 PM
Countrywide -- worst acquisition ever?

Posted by: mt | June 30, 2011 at 02:30 PM
Trying again to post a link. Adam - if linking is not allowed, can you email me so I know the rules?

The below article speaks to the settlement. If correct, and approved, there is no "opt-out"

http://newsandinsight.thomsonreuters.com/New_York/News/2011/06_-_June/BofA_s_novel_settlement_vehicle_will_make_deal_hard_to_challenge/

Posted by: John S | June 30, 2011 at 04:26 PM
how does article 77 relate to by-passing third party beneficiaries? am i way off?am i just a stupid?

"You could think of this as 530 trusts all being heard," said Madden of Gibbs & Bruns. "It's very pragmatic."

i ask Robert Madden, WHO DO YOU WORK FOR?

no... it amounts to the sum all of the individual mortgages within the 530 trusts being heard. that is a very large number of parties that are not being considered. i think that will meet the "hurdle" mentioned in the article. though i may be dumb.

it seems to me to be an extreme "abuse of discretions" and a "breach of its fiduciary duty to the trusts' beneficiaries" i think that if the court did the math, it would find that the trust is leaving mountains of money on the table. and judge Barbara Kapnick will be prudent and see the exponential damages to third party beneficiaries. and how that directly relates to the "noteholders" lost $ stream.

this is the part of the game where the investors and the homeowners interests are aligned and tip the scale. at his point it either gets fixed or it all falls apart.

"Anyone with an interest in the trust has a right to challenge the trustee's decision."

obviously, the third party beneficiary do.
the lawyers are on the same team.

Posted by: furiouscalves | June 30, 2011 at 06:17 PM
I am curious who the other investors are and how much they hold. I think I read that the 22 institutional claimants (including the NY Fed?) hold $56 billion of either the total 424 or the remaining $121 billion, but it isn't clear.

Pension funds? Widows and orphans? Some Fed vehicle?

Posted by: ab | July 01, 2011 at 07:35 AM
OT, but I'd like Prof. Levitin's take:

http://www.bloomberg.com/news/2011-06-30/fannie-mae-silence-on-taylor-bean-mortgages-opened-way-to-3-billion-fraud.html

Only for so long can academia ignore the role their buddies in the GSEs and Congress played.

Posted by: oyez | July 01, 2011 at 09:48 AM

The comments to this entry are closed.

Exhibit 4

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X
In the Matter of the Application of

Index No. 651786/

THE BANK OF NEW YORK MELLON
(As trustee under various Pooling and Servicing Agreements
and Indenture Trustee under various Indentures), et al.,

Assigned to Kapnick, J.

Petitioners,

for an order, pursuant to C.P.L.R. Rule 7701, seeking judicial instructions and approval of a proposed settlement.
----------X

* C O N F I D E N T I A L *

VOLUME II

VIDEOTAPED DEPOSITION

OF

JASON H.P. KRAVITT, ESQUIRE

New York, New York

Thursday, September 20, 2012

Reported by:
ANNETTE ARLEQUIN, CCR, RPR, CCR, CLR
JOB NO. 53619

And that issue is distinct from successor liability issues that you were also looking at, correct?

MR. GONZALEZ: Objection to the extent it calls for a legal conclusion.

And I instruct the witness to answer only to the extent that he can answer without privilege violations.

A. Well, that issue, that concept was certainly discussed and debated.

Q. Do you know if any value is placed on the Bank of America's servicer's liability in the settlement?

A. What we focused on in the settlement was the quality of the servicing remedies as opposed to trying to put a dollar figure on any past transgressions other than the indemnity for -- I guess that's looking forward also, so what we focused on were the remedies going forward.

Q. So is that another way of saying no, Mr. Reilly, we did not put any value on the potential liability of Bank of America's servicing arm?

A. To my knowledge --

MR. GONZALEZ: Objection to form.

Sorry.

A. To my knowledge we did not try to size any liability for past ser -- alleged past servicing transgressions.

Q. Including Bank of America's independent --

A. Correct.

Q. -- liabilities, correct?

A. Correct.

Q. Was that a conscious decision discussed amongst the three to not do that?

A. I don't remember if we discussed, I don't remember if we discussed making a conscious -- I don't remember if we discussed making a conscious decision on that issue, but from a very early time we focused on servicing remedies as opposed to damages.

I will tell you that we certainly discussed how difficult it would be to value any alleged servicing wrongdoing.

Q. What was discussed in that regard?

A. Well, first of all, you have to decide what was wrongdoing. You have to decide

Exhibit 5

Exhibit 5 contains materials that have been designated Confidential pursuant to the Court's Protective Order dated June 14, 2012. A copy of Exhibit 5 has been delivered to the Court and served on all parties of record.

Exhibit 6

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

In the Matter of the application of

THE BANK OF NEW YORK MELLON
(As Trustee under various Pooling
and Servicing Agreements and
Indenture Trustee under
Various Indentures

Petitioner, Index No. 651786/2011

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

VIDEOTAPED DEPOSITION OF JOHN C. COATES IV

Boston, Massachusetts

May 2, 2013

Reported by:
Dana Welch, CSR, RPR, CRR, CLR
Job #60717

Q. How about on the question just of de facto merger in general?

A. If hypothetically, some shareholder were suing to try to block a transaction on the ground that the transaction had failed to comply with the statute, and the question was whether a Delaware court would hear that kind of a claim versus a New York court, that potentially to could be a difference, but that is not anything that I've seen relevant to this case.

Q. Have you done the work sufficient to form an opinion on the question of the likelihood of success on a claim of de facto merger with respect to imposing Countrywide's liabilities on Bank of America?

A. I don't know how to answer that question. I certainly have done the work to form an opinion about elements of a conclusion that a New York court would apply de facto merger doctrine to the Bank of America Countrywide transactions. It's of course, always possible that other facts might come out that would be relevant and so which -- some of which I can't anticipate. I do believe I could render a view -- I have an opinion about the likelihood, as we've already discussed. And beyond

that, I'm not sure what else you're asking.

Q. Well, I guess what I'm asking you is whether or not you have performed sufficient work as it relates to all the various factors that would have to be taken into account in an analysis of de facto merger as between Countrywide and Bank of America, whether you've done all the work that you would deem necessary in order to believe that you're in a position to give an informed opinion on that, that would meet your standards that you've enunciated in this case?

A. So I don't know. I have to think about it. And the reason I have to think about it is because while I'm fairly confident on the law and I have a fair degree of familiarity with facts that are in the record regarding the Bank of America Countrywide transaction and other matters, and in public -- and in public information, I have not tried to take a final step which I would probably do if I were asked to give an opinion like the one a judge would render, or a combination of judge and jury, and review facts that have been developed subsequent to my report that I attached in this case, to think about creditability issues more generally that might bear on the opinion. So there

are things that I would do that I have not done if I were being asked to give a bottom line opinion on that ultimate issue. Having said that, I do feel quite confident that I could give an opinion about probabilities based on what I know now.

Q. You said, "So there are things that I would do that I have not done if I were being asked to give a bottom line opinion on that ultimate issue," right?

A. Correct. It's not something I'm habitually asked to do and I have not been asked to do so far.

Q. Right. You haven't been asked to do it. And you said there are things I would do that I have not -- "So there are things I would do that I have not done if I were being asked to give a bottom line opinion on the ultimate issue." Is that accurate?

A. Yes.

Q. Okay. And so given that you haven't done those things, you're not prepared as you sit here today, to give a bottom line opinion on the ultimate issue of success or failure on successor liability, correct?

A. Correct. I could give a probability

assessment based on what I have done, which is review the law, review the facts as they were developed up to the point that I filed my report, and then reach a conclusion about that. But there would be other things that I would want to do if I were also being asked to go further and reach a final bottom line, taking into account everything that's available in the record.

Q. What's the difference between a probability estimate and a final bottom line? That is going to be stated as a probability also, right?

A. No. Maybe I'm misunderstanding. I thought when you were asking me a couple of questions ago, essentially have you done the work to give an opinion about this, that you were asking me what I actually thought the actual truth was.

Q. So a binary yes or no?

A. Correct.

Q. Okay. So what you're saying is there's some work that you'd want to do before -- if I was asking you to give me a thumbs up or thumbs down on successor liability, there's some other work that you'd want to do before stating it that binary thumbs up or thumbs down, fair?

A. To put this into context, which I think

MR. ROLLIN: I'm not doing anything different than what you did when I was trying to take depositions. I'm just letting you know my position on it.

MR. MADDEN: Are you done?

MR. ROLLIN: I am done.

MR. MADDEN: Thank you.

Q. Do you have an opinion about -- okay. Have you performed the work necessary to perform a probability weighting of the likelihood of success of imposing Countrywide's liabilities on Bank of America?

A. Yes. I have an opinion about that.

Q. I didn't ask you whether you have an opinion. I'm asking if you've done the work necessary to form such an opinion, consistent with the standards that you are attempting to hold Professor Daines to.

A. Okay. So those are two very different questions. If I were in the role of a fiduciary, such as the role being performed by the trustee, I would engage in more work, as I've already indicated, than I have done to date, before researching a bottom line conclusion about the probability of success on the successor liability

Q. I'm talking about the context of this case and the work that you have done and the decision the trustee had to make.

A. When I refer to context, I would need to have some better understanding than I do have -- this is part of what the factual record would be -- of what the incentives are for Bank of America, which I would learn by conversations with counsel for the trustee, which I have not done. I would need to have some understanding of what the dynamics of the settlement were.

Q. Have you analyzed all of the issues that you think Professor Daines should have analyzed in reaching his opinion?

A. Sitting here today, I can't think of an issue that I would have, had I been in his shoes tried to analyze, that I haven't tried to analyze. That's the best can I do with that.

Q. Can you say as you sit here today, that you have performed the work necessary to give an opinion that meets the standard that you set out for Professor Daines in your opinion?

A. So maybe I'm misunderstanding the question. In my report, certainly my initial report, I don't recall suggesting that Professor

like that. It, however, does not do many things. And I have not tried to think through the factual analysis that the trustee should have done in its entirety, as I've already alluded a couple of times, on the successor liability issues. I have relied upon my factual knowledge of the transactions between Bank of America and Countrywide to illustrate the ways in which facts that were knowable at the time the settlement was entered into, the settlement agreement was entered into, and that could have been verified, at least in part relatively inexpensively by the trustee, if as Bank of America was claiming, this was a good settlement for everyone involved. So I'm just trying to capture what I thought I was doing and why I can't directly answer the question you asked me.

Q. All right. Let's do it this way: Tell me what's your opinion on the probability weighting of Countrywide's liabilities being imposed on Bank of America under a successor liability theory?

A. As currently informed, I believe it's above 50 percent.

Q. Okay. Can you say how much above 50 percent?

A. No, not with any great precision.

Q. Could reasonable minds differ and perhaps somebody suggest it's under 50 percent?

A. Yes.

Q. So would it be unreasonable to assume that the most likely outcome here would be that the trustee would have failed on its successor liability claim, would that be unreasonable?

A. It would be -- I think it would be reasonable to believe that someone could reach a reasonable judgment that there was less than a 50 percent chance of prevailing. So if that's your question, the answer is yes. However, just to be clear and complete, I don't believe it would be anywhere close to a zero.

Q. If you have less than 50 percent chance of prevailing on something, that means the most likely outcome is that you won't prevail, right?

A. Correct by definition. It's not, however, my opinion. My opinion is that it is, in fact, more likely than not.

Q. I hear that. But you've also said that it would be reasonable for others who have looked at this closely to conclude that it was something less than 50 percent probability, right?

on from there.

Q. And when you said that normally when you give probability weightings, you give a band, and you said a reasonable person could be less than 50 percent. So what's the plus or minus on your 50 percent?

A. Again, as currently advised based on the facts as I understand them and applying the laws I understand it to be, I would put something on the order of a 10 percent band, so 40 to 60.

Q. Forty to 60, somewhere --

A. Actually, so I wouldn't center it right at 50. I would probably center it higher than that but the band would extend below 50 and it would be ten up and ten down.

Q. So tell me, where would you center?

A. Forty-five to 65 -- oh 45, 55.

Q. If I'm understanding your testimony, based on the work that you've done, your best analysis of the likelihood of success of imposing successor liability on Bank of America for Countrywide's liabilities would be between 45 percent and 55 percent likelihood of success?

A. No. Between 45 and 65 centered at 55.

Q. You said a 10 percent band. That's a

20 percent band?

A. Ten percent up and 10 percent down is what I said, I thought.

Q. Okay. So when you said before, so 45 to 65, you said you thought it was around 50 percent, right, when before I asked you for a band?

A. No. I said it was above 50.

Q. Well, the halfway point between 45 and 65 is 55, right?

A. Correct. Which is above 50.

Q. So now you're saying it's 55?

A. If you force me to assume a flat distribution between 45 and 65, then the middle of it is 55, yes.

Q. All right. And a reasonable person looking at this could conclude that it was more likely than not that successor liability would fail.

A. I think I said that, yes.

Q. Okay. And if successor liability failed here, you understand that the trustee would get significantly less than eight and a half billion dollars on its claim, right, assuming -- let's put aside fiduciary duty, fraudulent transfer. Let's talk about that in a minute. If the only avenue to

verified information possibly through litigation or possibly through the threat of litigation would have been, it seems to me, pretty clearly beneficial to the trustee's evaluation of the successor liability claims.

Q. And based on the information that you've seen that's been obtained in discovery in MBIA, has that made it more or less likely in your mind that a successor liability claim could succeed?

A. More.

Q. Okay. And your -- the opinion you gave earlier about the probability of success of a successor liability claim, that's taking into account everything that you've learned in your work up to today, right?

A. Correct.

Q. All right. And so you're certainly not suggesting that the trustee should have engaged in years of discovery, right, before it made a decision on whether to enter into the settlement?

A. I'm not asserting that the trustees should have engaged in years of discovery. It should have at least undertaken a more careful analysis of what that might have produced by way of benefit and thought about the tradeoffs, more than what has