

quinn emanuel trial lawyers
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Recent Structured Finance and Derivatives Representations

- We represent the Federal Housing and Finance Agency, in its capacity as Conservator of Fannie Mae and Freddie Mac, in connection with its investigation and litigation of private label residential mortgage-backed securities (RMBS) purchased by Fannie Mae and Freddie Mac. On September 2, 2011, we filed fourteen complaints in federal and state court against most major underwriter banks. The complaints asserted federal and state statutory claims, as well as state common law claims, arising out of material misrepresentations by the defendants concerning the collateral underlying the RMBS. As widely reported, this is one of the most significant court actions taken by any federal regulator since the advent of the mortgage crisis.
- (“AIG”) has retained Quinn Emanuel to investigate and pursue claims in connection with AIG’s purchases of residential mortgage-backed securities (“RMBS”). AIG has asserted claims for \$10 billion in losses against Bank of America, Merrill Lynch and Countrywide, who misrepresented to AIG the key credit characteristics of the underlying mortgage loans, their failure to comply with stated underwriting guidelines, and engineered inflated credit ratings to market the securities. AIG’s complaint asserts claims for common law fraud, negligent misrepresentation, violations of Sections 11, 12 and 15 of the 1933 Securities Act, and successor liability.
- We represent MBIA Insurance Corporation, one of the nation’s oldest and largest monoline insurers, in several litigations in New York state and federal court that encompass a wide range of complex structured products with a value of over \$20 billion, including actions:
 - Against GMAC Mortgage, LLC, an indirect sub of GMAC Inc., in New York State Supreme Court and in California State Court. MBIA had insured three GMAC Mortgage-sponsored RMBS securitizations – vintage 2004, 2006 and 2007 – backed by over \$4 billion worth of prime second-lien mortgages (measured by original aggregate principal balance). The suit alleges that GMAC Mortgage fraudulently induced MBIA to provide financial guaranty insurance by misrepresenting the quality of the loans (all of which had been either originated or acquired by GMAC Mortgage), the loan pools, and the underwriting. The complaint also alleges that MBIA breached express contractual representations and warranties, including a rep and warranty that all loans contributed to the pools had been originated in compliance with GMAC Mortgage’s underwriting guidelines. Before filing suit, MBIA had reviewed loan files relating to over 4,100 delinquent and charged-off loans and found that at least 89% were in breach of GMAC Mortgage’s express representations and warranties.

- Against Countrywide Home Loans and related entities, including Bank of America as Countrywide's successor, arising out of fraudulent acts and breaches of contract of Countrywide in connection with over \$14 billion of RMBS. Countrywide induced MBIA to provide billions of dollars of financial guaranty insurance, which covered the risk of nonpayment on the underlying collateral loans, by misrepresenting the characteristics of the mortgage pools it wanted MBIA to insure. Due to the poor performance of Countrywide's loans, MBIA was forced to pay out over \$1.4 billion on these guarantees and is exposed to billions more. Through this lawsuit, MBIA seeks to recover the sums paid out due to Countrywide's fraud. On July 8, 2009, Justice Bransten denied Countrywide's motion to dismiss and accepted MBIA's position that it was free to pursue tort remedies in litigation for fraudulent inducement of the guaranties. This decision helps pave the way for structured finance plaintiffs to proceed with tort claims against securities arrangers who fraudulently induced the execution of structured products transactions through misrepresentation of the risk characteristics of the underlying collateral. On April 27, 2010, Justice Bransten denied Bank of America and Countrywide's motion to dismiss MBIA's claims of fraud on the part of Countrywide, and its claims of successor and vicarious liability for Countrywide on the part of Bank of America, in its Amended Complaint. The Court held that MBIA sufficiently alleged "a de facto merger in which Bank of America intended to absorb and continue the operation of Countrywide." This is the first decision allowing claims to proceed against Bank of America for Countrywide's misconduct under a theory of successor liability.
- Against Countrywide Financial Corporation and related entities, including Bank of America as Countrywide's successor, certain individuals affiliated with Countrywide, and Greenwich Capital Markets, Inc., HSBC Securities (USA), Inc., and UBS Securities LLC, underwriters for Countrywide's RBMS offerings, in California Superior Court as subrogee seeking to recover in excess of \$1.5 billion in insurance payments made by MBIA on account of misrepresentations relating to RMBS. MBIA asserts claims in this lawsuit under the California Corporations Code and under the common law.
- Against JPMorgan Securities, UBS Securities LLC, and Credit Suisse (USA) LLC, underwriters for IndyMac Bank's offerings of RMBS in three securitizations, and against various individuals who were IndyMac officers, as subrogee in California Superior Court. The Complaint, which seeks to recover payments by MBIA that now total in excess of \$450 million as insurer for the RMBS, has survived defendants' pleading motions.
- Against Merrill Lynch alleging fraud and breach of contract in connection with the issuance of \$5.7 billion in credit default swaps written on synthetic reference pools of collateralized debt obligations. This action was resolved in July of 2011.
- Against RBC, one of North America's largest banks, for fraud and breach of contract surrounding several RBC arranged CDOs. This action was also resolved in January of 2011.

- We represent Hildene Capital Management in its challenge to the attempt by three funds managed by Anchorage Capital Group to liquidate the ZIGL CDO for the sole benefit of its senior investors through filing an involuntary Chapter 11 bankruptcy petition against ZIGL. Hildene, which holds junior debt securities issued by ZIGL, has sought to challenge Anchorage's bankruptcy petition on the grounds that it was filed in bad faith for the improper purpose of benefiting Anchorage at the expense of junior investors. Hildene has also challenged the petition as seeking to improperly circumvent the established procedures under the ZIGL indenture for liquidating its assets, which can only occur upon the consent of each class of ZIGL investors. As a "bankruptcy remote" entity, the liquidation procedures under ZIGL's indenture were the only procedures through which ZIGL's assets were intended to be liquidated. Finally, Hildene has also challenged whether the Anchorage funds, as secured investors, were proper petitioning creditors. Hildene also intends to challenge the plan of reorganization proposed by the Anchorage funds, which would provide for all of ZIGL's assets to be liquidated for the sole benefit of ZIGL's senior investors, regardless of what proceeds that liquidation generates.
- We represent Assured Guaranty Municipal Corp. in connection with its litigation of claims arising from its issuance of financial guaranty insurance for residential mortgage-backed securities (RBMS) originated and marketed by IndyMac Bank. From at least 2001 until 2007, IndyMac Bank originated or acquired pools of mortgage loans that were then sold to Trusts created by IndyMac in connection with the securitization process. As part of the securitizations, Assured provided financial guaranty insurance in the form of guarantees of the trust obligations to make certain principal and interest payments on certain RMBS issued in connection with two securitizations. Assured alleged that the Underwriters for the securitizations, UBS Securities LLC and Deutsche Bank Securities, and IndyMac falsely represented to Assured, the rating agencies, and the investors who purchased the Notes that IndyMac had originated the mortgage loans in compliance with its purported underwriting standards and guidelines. In reality, however, IndyMac was issuing mortgage loans that did not conform to its stated underwriting guidelines, which created material risks that were not disclosed to the investing public or Assured. The result was a substantial number of delinquencies and defaults on IndyMac's mortgage loans, and substantial resulting payments by Assured on its policies. Assured brings both a direct claim and claims as subrogee and assignee of the holders of the Notes to the extent of its payments under its insurance policies, which now exceed \$237 million dollars.
- We recently filed suit in New York Supreme Court against Goldman Sachs on behalf of Korean insurance companies Heungkuk Life and Heungkuk Fire & Marine. The action arises out of Heungkuk's purchase of notes issued by a CDO known as Timberwolf, which Goldman underwrote and sold in 2007. Heungkuk is alleging that Goldman fraudulently misrepresented many aspects of the CDO's investment and risk character, such as the quality of the assets that were packaged into Timberwolf's collateral portfolio, as well as Goldman's plan to profit from taking a proprietary short position in relation to those assets, and knowingly marketed and sold Timberwolf notes at prices that were inflated well beyond Goldman's internal valuations. Heungkuk's allegations are consistent with the findings of the United States Senate Permanent Subcommittee on

Investigations, which examined Goldman's activities leading up to the financial crisis and concluded that the investment bank had misled clients into purchasing CDO securities that Goldman had designed to fail and was secretly shorting for its own profit.

- We represent German bank HSH Nordbank in an action against UBS AG in New York state court based upon fraud and breach of contract in connection with HSH's \$500 million investment in the senior tranches of a synthetic CDO, arranged by UBS, that was backed by a credit default swap on a \$3 billion reference pool of assets. UBS was the CDS counterparty, and had authority over the substitution of obligations in the reference pool. UBS had agreed contractually to create an oversight committee to manage this pool. Not only did UBS fail to create this committee, but it also used the reference pool as a dumping group for its most troubled securities in order to wrongfully extract gains at HSH's direct expense. This wrongdoing violated UBS's contractual obligations as well as its prior representations that the pool would contain high credit quality assets. As a result of UBS's wrongdoing, HSH lost its entire \$500 million investment, which HSH now seeks to recover through this lawsuit. This matter is progressing towards trial which is expected to take place in the spring of 2012.
- We represent Morgan Stanley in two litigations in the Southern District of New York relating to CDO disputes:
 - An interpleader action brought by the trustee for a hybrid CDO called Tourmaline that was named the ABS CDO "Deal of the Year" for 2005 by Sourcemia's Asset Securitization Report for its precedent setting structure and complexity. Morgan Stanley is the swap counterparty to the credit default swaps that constitute Tourmaline's synthetic assets and Barclays is the senior investor in Tourmaline. After Morgan Stanley's credit ratings were downgraded, Barclays attempted to subordinate Morgan Stanley's interests in Tourmaline in order to secure for itself payments in excess of \$275 million that would otherwise be directed to Morgan Stanley by claiming that Morgan Stanley had failed to fulfill certain collateral posting requirements. Morgan Stanley threatened suit which resulted in the trustee's decision to bring the interpleader action. The case is currently in discovery.
 - An action involving a CDO structured by Citibank named Capmark VI Ltd. Morgan Stanley was the counterparty to Citibank in credit default swaps that protected Citibank if certain losses matured within three years of deal's closing in August 2006. In July 2009, when it was clear no losses would mature, Citibank unilaterally directed the CDO's trustee to liquidate the CDO, thereby triggering \$250 million in losses that it called upon Morgan Stanley to cover. Morgan Stanley refused to pay because Citibank had breached the swap agreement by issuing the direction to liquidate without obtaining Morgan Stanley's written consent as required by the terms of the swap. In September 2009, Citibank sued Morgan Stanley for \$250 million in damages.
- We represent Rabobank in several cases brought in New York pertaining to CDOs and credit default swaps, including actions:

- To protect Rabobank’s security interest in the assets of Brookville CDO I, a failing CDO, against efforts by Brookville’s controlling noteholder to liquidate Brookville’s assets in a manner that Rabobank claimed was improper and which threatened Rabobank’s senior interest in those assets. Rabobank sought declaratory and injunctive relief against Brookville and Wells Fargo, the trustee responsible for overseeing Brookville’s assets, to prevent the dissipation of those assets for the benefit of Brookville’s controlling noteholder. The matter settled following the Court’s denial of Wells Fargo’s motion to dismiss.
- Against JPMorgan Chase & Co., Bear Stearns Asset Management and two CDOs structured by JPMorgan, Tahoma CDO II Ltd. and Tahoma CDO III Ltd. The litigation involved claims for breach of contract and breach of fiduciary duty arising out of cash flow swap agreements that Rabobank had entered into with the CDOs at the request of JPMorgan. Rabobank alleged that JPMorgan had improperly inflated by \$30 million the amounts that Rabobank was required to pay under the swap agreements through, among other things, coercing Bear Stearns, as the CDOs’ manager, to knowingly cause an event of default for one of the CDOs, a clear breach of Bear Stearns’ contractual and fiduciary duties. Following its filing of the litigation, Rabobank agreed to settle the dispute for payment of an undisclosed amount.
- Against Merrill Lynch & Co., related to Norma CDO I, a \$1.5 billion CDO structured by Merrill Lynch. As reported by the Wall Street Journal in January and April 2008, Norma was one of the CDO vehicles used by Merrill Lynch to “de-risk” its exposure to subprime assets. Rabobank made an upfront loan to the CDO as part of its formation based upon representations made to it by Merrill Lynch. After the CDO defaulted and was liquidated, Rabobank was ultimately repaid less than \$13 million of its original \$57.7 million loan. Rabobank’s suit alleges claims including common law fraud, negligent misrepresentation and fraudulent conveyance. The litigation is currently in discovery.
- We recently filed a \$100 million action on behalf of a regional bank alleging fraud and breach of contract against UBS arising from the TABS synthetic hybrid CDO. The case seeks to hold UBS accountable for a series of allegedly inadequate disclosures in connection with a \$2.3 billion subprime RMBS CDO that defaulted within nine months after issuance.
- We represent Ambac Credit Products in a lawsuit against Citigroup and Credit Suisse related to \$2 billion of credit protection that Citigroup obtained from Ambac on the super-senior tranches of a CDO named Ridgeway Court Funding II Ltd. that was structured by Citigroup during the first half of 2007. Credit Suisse was hired by Citigroup to manage the CDO and was responsible for selecting the collateral in which it invested. In order to induce Ambac to provide credit protection on the deal, Citigroup and Credit Suisse made specific false representations with respect to the value, nature and credit quality of the collateral that was included in Ridgeway II’s portfolio, which, in fact, included substantially deteriorated subprime mortgage backed securities that Citigroup sold to Ridgeway II in order to get off its own books. In August 2009, Ambac

filed its action in New York state court, asserting claims for fraud, negligent misrepresentation, breach of fiduciary duty, and fraudulent conveyance. Ambac seeks to rescind the credit default swaps or, in the alternative, obtain damages.

- We represent private mortgage insurer United Guaranty against Countrywide Home Loans, Countrywide Financial Corp., and related entities in multiple actions in federal court and arbitration arising out of the fraudulent acts and breaches of contract of Countrywide in connection with 20 first-lien and second-lien RMBS transactions. In order to procure this insurance from United Guaranty, Countrywide represented that the loans were originated in compliance with prudent underwriting standards and Countrywide's own underwriting criteria. In reality, Countrywide had disregarded prudent underwriting standards in order to drive loan origination, and intentionally extended loans to borrowers unable to repay. Additionally, in order to induce United Guaranty to issue to policies, Countrywide misrepresented the risk profile of the insured loans by making false representations as to the characteristics of individual loans themselves (e.g., misrepresentations regarding the borrower's income characteristics). As a result of Countrywide's poor lending practices, the mortgage loans underlying the RMBS have defaulted at an incredible rate and United Guaranty has paid hundreds of millions in claims under the policies. Through these lawsuits, United Guaranty seeks to rescind the policies procured through Countrywide's fraud and recover the money it has been forced to pay in claims.
- We recently represented AIG Financial Products Corp. ("AIGFP") in litigation in the Southern District of New York against seven CDOs in connection with the CDOs' attempt to terminate a series of interest rate swaps entered into with AIGFP. Quinn Emanuel was successful in defeating the CDO plaintiffs' order to show cause why all payments due to AIGFP from the CDOs should not be placed in escrow pending resolution of the litigation. Following this victory, the parties agreed to settle the dispute to AIGFP's satisfaction.
- We represent the Litigation Trust in investigating and pursuing litigation claims against a variety of financial institutions and investment banks arising from the bankruptcy of SemGroup, once the fifth largest privately held company in the U.S. A foundational part of the representation is our analysis of a complex commodities derivatives trading portfolio involving billions of dollars in oil and gas investments including butterfly options, strangles, straddles, and other derivatives.
- We acted for shareholders in a joint venture CDO investment vehicle in a dispute with their joint venture partner and investment manager. The case involved proceedings in Cayman and an LCIA arbitration in London. Central to the dispute were the obligations owed by the parties pursuant to a shareholders' agreement and pursuant to common law principles relating to joint venturers in vehicles such as this. Ultimately the case was a fight for control of the investment vehicle which held substantial CDO assets. A negotiated settlement was reached in October 2009.
- We are acting for a large Spanish company in a claim against Deutsche Bank relating to a structured product sold to our client in 2006. At the heart of the case is the question

whether our client is required to deliver replacement collateral to the value of €35 million to replace collateral which has defaulted, in circumstances where the payments remaining to be made to our client from the structure are less than €5 million.

- We are advising a significant Saudi family in connection with a \$300 million dispute with Citigroup arising out of failed investments in structured private equity and hedge fund investments. The case raises inter-locking issues of English, Cayman, Swiss and New York law and involves a number of jurisdictional questions. The underlying claim concerns negligent investment advice given to the client.

We also represent court-appointed litigation trustees, creditor's committees and debtors in complex financial litigation. Representative engagements include:

- We serve as special counsel to Washington Mutual, Inc. in its multi-billion dollar lawsuit against JPMorgan Chase concerning the forced sale of WaMu, which involves allegations of preferences and fraudulent transfers, and includes litigation over billions of dollars in structured trust preferred securities.
- We represent the creditor's committee in the Lehman bankruptcy. We are analyzing and evaluating the claims that could be asserted against financial institutions and third party advisors and advising our clients as to the courses of action available to them.
- We represent the Trustees appointed to recover assets in two high profile financial frauds: Parmalat and Refco. In each matter, we serve as lead counsel in actions seeking billions of dollars in damages against these defunct companies' bankers (including Citigroup, Bank of America, Deutsche Bank, CSFB), professional advisers and auditors.

NOTABLE SUCCESSES

Our structured products litigation practice has had notable successes. With Quinn Emanuel's representation, our clients have recovered billions of dollars in settlements and awards. Below are examples of recent recoveries.

- We recently represented a group of hedge funds as plaintiff-holders of Yosemite and Enron Credit-Linked (ECLN) Notes in an action that included their individual claims, and claims that they directed The Bank of New York to bring as Indenture Trustee, against Citigroup. The action focused on Citigroup's failure to disclose information about Enron's financial condition and various off balance sheet finance vehicles that Enron structured in connection with the market and sale of Enron credit-linked notes. We were able to achieve a settlement for our clients that had value in excess of \$2 billion.
- We successfully tried a FINRA arbitration for a large merger arbitrage fund against a one of the leading global broker-dealers over the liquidation of a swap transaction. After four weeks of hearings spread over three months, we recovered over \$10 million for our client in a confidential settlement. The dispute concerned the market quote method of valuing an equity swap under the 1992 ISDA Master Agreement where the broker-dealer sought and received quotes from three reference market makers. We effectively challenged the

validity of the settlement value by attacking the quotes as shams which were the product of coaching friendly market makers and manipulating the market price through heavy volume sales.

- We were retained by Solutia on the eve of its exit from its four-year bankruptcy when the banks that had agreed to provide the necessary \$2 billion of exit financing (Citigroup, Goldman Sachs and Deutsche Bank) refused to fund the loans. The banks claimed that the credit market downturn constituted a “material adverse change” that enabled them to terminate the agreement. The banks refused to engage in settlement negotiations until, after three days of trial, they capitulated on the eve of closing arguments. Under the terms of the settlement, the banks were required to provide the \$2 billion in exit financing needed to fund the plan.
- We represented ING Bank in a \$500 million fraud action against JPMorgan Chase, Bank One and others arising out of ING’s purchase of asset backed debt instruments issued by National Century Financial Enterprises. The claims – breach of contract, negligent misrepresentation, breach of fiduciary duty and fraud – focused on misrepresentations made in connection with the indenture agreement and the issuance of the debt instruments. Thus far we have recovered in excess of \$210 million for ING Bank.
- We have successfully represented a number of multi-national corporations, including institutions based in Central and South America and Japan, in confidential settlement negotiations against several large U.S. investment bank arising from structured foreign currency or interest rate swaps, or swaps written against CDOs, in cases that involve in the aggregate billions of dollars in exposure. The cases typically involve collateral posting requirements or the recording of negative MTM valuations posing material threats to the corporation’s liquidity and balance sheet.

Each of these matters involved situations where a sophisticated party entered into a financial agreement and/or made an investment based on information and representations that turned out to be incomplete or inaccurate. Litigating these cases requires a detailed analysis and understanding of the financial agreements, negotiation history and course of dealing between the parties. We have the expertise and experience to develop and analyze this complex factual record. We know of no other firm that has the same level of ability to litigate matters involving complex structured financial products.