



## Recent Structured Finance and Derivatives Representations

- 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 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, once the largest mortgage originator in the country, generated an unprecedented number of extremely high risk mortgage loans and sought to sell these loans on the secondary market by repackaging them as mortgage backed securities. To better market these securities, 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.
  - 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. By late 2006, Merrill Lynch had accumulated tens of billions of dollars in subprime loan related assets on its books, and, in a campaign to reduce its exposure, repackaged these assets into CDOs for sale on the secondary market. Through manipulation of the credit rating agencies, Merrill Lynch was able to secure AAA ratings for the senior tranches of these securities and, with these ratings, marketed these notes to investors and insurers, without revealing their true risk. Based on Merrill Lynch's representations as to the high credit quality of these notes and the credit ratings, MBIA guaranteed payments of five CDOs through credit default swaps in exchange for minimal premiums. Merrill Lynch's CDOs subsequently failed in spectacular fashion, and as the subprime collateral underlying these CDOs fell in value, many formerly AAA rated securities have been downgraded to junk bond status. Through this lawsuit, MBIA seeks damages from Merrill Lynch and rescission of the transactions.

- Against RBC, one of North America's largest banks, for fraud and breach of contract surrounding several RBC arranged CDOs. Between 2005 and 2007, RBC induced MBIA to issue credit default swaps that would cover the payment obligations of three CDOs in the event of default. RBC represented the CDOs as an extremely conservative investment that carried minimal risk, but internally had performed its own valuations that indicated that even the senior tranches of the CDOs carried embedded losses making them akin to junk bonds. Based on RBC's knowing misrepresentations as to the risk profile of the CDOs, and RBC's intentional obfuscation of known risk, MBIA seeks rescission of the credit default swaps and damages.
- 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 contractually agreed 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. Quinn Emanuel won a major victory in this case on September 28, 2009, when Judge Lowe refused to dismiss HSH's claims for fraud and permitted HSH to proceed on the majority of its tort and contract claims against UBS.
- In a related London action initiated by UBS against HSH Nordbank, Quinn Emanuel obtained a unanimous decision of the English Court of Appeal in favor of its client HSH in what was heralded by UK's *Legal Week* as "the first true bank-on-bank dispute to hit the UK as a result of the credit crunch." The main issue on appeal was whether the English courts had jurisdiction to hear the claim based on an exclusive English jurisdiction clause relating to the notes paid by HSH to purchase its interest in the \$500 million floating rate notes from NS-4 synthetic CDO.
- 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 I that was named the ABS CDO "Deal of the Year" for 2005 by Sourcemedias'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 re-paid 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 represent defendant Swiss Re Financial Products Corporation (“SRFPC”) in an action brought by three units that were formerly part of Fortis. The action relates to a synthetic CDO originated by SRFPC, which is also the counterparty on the underlying CDS. Plaintiffs hold notes in the CDO and allege breach of contract and misrepresentations in connection with post-closing indicative quotes provided by SRFPC as a courtesy. We have filed a motion to dismiss all claims.
- 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. Filed in California, the case is the first of its kind seeking to invalidate the standard jury waiver clause found in virtually every CDO indenture.
- We acted in the Sigma litigation in the English Courts, leading to success in the first substantive judgment ever delivered by the UK Supreme Court. The case involved Sigma Finance Corporation, a Structured Investment Vehicle. Sigma’s administrative receivers applied to the court for directions concerning the construction of a Security Trust Deed, and how funds should be paid to various categories of secured creditors, represented on an anonymous basis by Parties A, B, C and D. Quinn Emanuel acted for Party D. The Supreme Court ruled in favor of Party D’s contentions. Sue Prevezer QC led the legal team for Party D and also argued the case both at first instance in the High Court, in the Court of Appeal and later in the House of Lords. The Supreme Court only agrees to hear about 70 cases a year and, as a matter of English law, will only hear cases which it considers to be of general public importance. To have been given permission to be heard by the House of Lords was a significant victory in and of itself. The victory on the merits will likely become one of the leading cases cited in disputes involving construction of commercial agreements, and is one of the earliest “credit crunch” cases to reach the UK’s highest court.
- 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 facilitate the

securitization of Countrywide-originated mortgage loans for sale on the secondary market, Countrywide induced United Guaranty to issue insurance policies covering the risk of default of each mortgage loan. Thus, if a borrower defaulted on a loan that served as RMBS collateral, United Guaranty's insurance would help insulate an investor in the RMBS from suffering a loss. 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 financial institutions and structured products litigation practice has had tremendous success. With Quinn Emanuel's representation, our clients have recovered billions of dollars in settlements and awards. Below are some examples of recent recoveries for our financial institution clients.

- We recently represented a group of hedge funds as plaintiff-holders of Yosemite and Enron Credit-Linked (ECLN) Notes in an action brought against Citigroup. The action focused on the contractual agreements governing the Notes, Citigroup's failure to disclose information about Enron's financial condition in connection with these agreements and various off balance sheet finance vehicles structured for Enron by Citigroup. We were able to achieve a settlement for our clients in this case valued in excess of \$2 billion.
- Another recent relevant matter is Solutia. 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 recently 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 recently represented a leading mutual fund client successfully in a \$40 million action against Citigroup brought under the Pennsylvania Securities Act relating to Citigroup's structuring and issuance of Enron credit-linked notes. While the matter was resolved to the mutual satisfaction of the parties, the terms of the settlement are confidential.
- 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 (or in the case of Solutia, sought to escape its obligations due to changed market circumstances). 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 complex financial cases or matters involving complex structured financial products.