

Exhibit 120
to
Affidavit of Daniel M. Reilly
in Support of Consolidated Response to
Statements in Support of the Proposed Settlement

Expert Report of Charles D. Cowan, Ph.D.**I. Summary of Conclusions**

I have been retained by AIG to review and opine on Brian Lin's Opinion Concerning Contemplated Settlement Amount ("Lin Report"), and to consider issues raised by the Lin Report and other matters bearing on the quantification of damages to the Covered Trusts. Based on my expertise and my review of the case materials described herein, I conclude as follows:

A. Mr. Lin Materially and Unjustifiably Undervalued the Damages Suffered By the Covered Trusts

The proposed Settlement Agreement seeks to resolve certain claims, including claims arising from breaches of representations and warranties in the 530 Covered Trusts. I have experience and expertise in the identification of breaches of representations and warranties in residential mortgage loans and pools of residential mortgage loans and the quantification of repurchase liability. In my experience and expert opinion, the most reliable method for establishing actual breaches of representations and warranties in the Covered Trusts is to review the actual loan files and other loan-level information, such as servicing records and data tapes. Alternatively, one may reunderwrite a statistically valid sample of the actual loan files and related loan-level information. This is the standard practice in repurchase disputes, and I am not aware of any repurchase case – other than this one – where this was not done.

To the extent a loan file review were impossible for whatever reason, (e.g., the files were lost or destroyed) an alternative methodology would be to reunderwrite loans similar to those in the subject pools, such as the approach used by the investor group represented by Gibbs & Bruns ("GBIG"), set forth in Exhibit 13 to Docket No. 301 (the "Alternative Approach"). That approach demonstrated that the repurchase liability ranged from approximately \$64 billion to \$95 billion on nearly \$108 billion in realized and expected losses.¹ Because there was no

¹ Ex. 13 to Doc. No. 301 (BNYM_CW-00000206 – 207) ("Affirmation of Elaine P. Golin In Support of Memorandum of Non-Parties Bank of America and Countrywide in Opposition to Objectors' Motion to Compel Production of Loan Files") (Dep. Ex. 21). The Alternative Approach was based on 543 trusts, including the 530 Covered Trusts.

HUD, the FHA, and the Department of Justice. Additionally, I have worked with nearly all of the monoline insurers, including MBIA, Ambac, Syncora, Assured, and FGIC. I have worked with numerous investors and investor groups, as well as states (Nevada and Arizona) pursuing consumer issues, and class actions on behalf of borrowers. We have been responsible for the sampling of loans in preparation for re-underwriting, damages calculations and modeling, recreation of waterfalls for payment streams, the re-underwriting of loans, review of due diligence, analysis of mortgage insurance claims, the re-analysis of quality control programs, and the evaluation of models forecasting default and prepay rates. I have been qualified as an expert witness in state and federal courts in New York, among other places, on the topics of economics and statistics.

My resume and a listing of my publications are presented in Exhibit A. A list of the materials on which I relied in formulating my opinions is attached as Exhibit B. My firm, Analytic Focus, is being compensated at an hourly rate ranging from \$55-\$95. The compensation Analytic Focus receives in no way affects my opinion.

III. Summary of My Opinions and Their Factual Basis

A. Lin's and the Trustee's Failure to Review Loan Files

In my experience and opinion, the most effective method by which to identify breaches of representations and warranties in residential mortgage loans is to review the actual loan files and other relevant materials such as servicing files and data tapes. It is my understanding that this method was not used in this case. Nor was any sampling of loan files conducted.

I am aware of the fact that the GBIG has argued that loan file review would be expensive and time consuming, but it is important to keep those costs in perspective. An analysis across the 530 trusts, but not for the trusts individually, could have been performed using a valid statistical sampling of 4,630-6,470 loan files.² An analysis at the trust level (for each of the 530 trusts) could have been performed using a valid statistical sampling of approximately 50,000 loan files, at an approximate cost of \$200 to \$300 per loan file.

² Affidavit of Charles D. Cowan, Ph.D. (June 1, 2012), Doc. No. 314.

The review of actual loan files in the Covered Trusts would have yielded, among other things, a more accurate breach rate than what was used in the Lin Report. Indeed, one of the most significant deficiencies in the Lin Report is the failure to establish a breach rate for the actual loans in the Covered Trusts or, at least, use of a reasonable approximation of those loans. Instead, Mr. Lin and the Trustee relied on the different, indeed, completely irrelevant loans sold to the GSEs. Mr. Lin himself testified that [REDACTED]

[REDACTED].³
Loan file review and sampling is a generally accepted and judicially approved method for calculating breach rates in RMBS.

B. Lin’s Unreasonable Rejection of the Breach Rate Identified by the GBIG

As an alternative to actual loan file review, another methodology that Mr. Lin and the Trustee could have employed was to obtain breach rates from similar loans or pools of loans. In fact, this is the exercise that the GBIG performed and presented to both [REDACTED] and Mr. Lin.⁴ The Alternate Approach relied on reunderwriting of 250,000 loan files that, according to Mr. Lin, were similar to the loans in the Covered Trusts. The GBIG identified breach rates at or exceeding 60% and repurchase liability of approximately \$64 billion to \$95 billion. The GBIG further concluded that a reasonable settlement amount would be \$32.3 billion.⁵ Without any justification, other than characterizing the GBIG breach rate as “aggressive,”⁶ Mr. Lin rejected the actual reunderwriting experience reflected in the Alternative Approach.

C. Summary of the Lin Approach

1. Overview of Mr. Lin’s Approach

Brian Lin says he was hired to “render an independent professional opinion relating to the settlement amount of 530 Trusts,” which he calls the “Settlement Portfolio.”⁷ The details of

³ Lin Dep. 90:5–94:9, 218:7-18 (Oct. 16 & 17, 2012).

⁴ Ex. 13 to Doc. No. 301 (BNYM_CW-00000206 – 207) (Dep. Ex. 21).

⁵ *Id.*

⁶ Dep. Ex. 9 (BNYM_CW-00252597–605) at 1 (“Lin Report”) (also available at <http://www.cwrmbssettlement.com/docs/Opinion%20Concerning%20Contemplated%20Settlement%20Amount%20For%20530%20Trusts.pdf>).

⁷ Lin Report at 1.

In actual fact, the re-default rate is 51.4% at 12 months after modification. I would expect the cumulative re-default rate will be much higher than this rate at the maturity of the trust, a factor Mr. Lin apparently did not consider at all. Even for the group “Portfolio Loans” with the lowest re-default rate, the predicted rate will be 53.6%¹⁴ at twenty-four months after modification.

For the non-modified current loans, Mr. Lin assigned a default rate of either 11% or 16%. According to data provided to Mr. Lin by the GBIG,¹⁵ the rate is 50%. The 50% rate was derived from Bank of America’s own published information.¹⁶ Moreover, Mr. Lin provided no factual support for his use of 11% or 16%. He provided no calculations supporting his downward adjustment of the publicly available data provided to him.

Further, Mr. Lin repeated an error that he made with the 60+ days delinquent loans. He improperly lumped current loans with loans that were 30-59 days delinquent without distinguishing between the different default characteristics of current and delinquent loans. I am using Mr. Lin’s number, with the understanding that it is a conservative value, likely lower than the true weighted average.

Cumulatively, the result of Mr. Lin’s facially unsupported default rates results in a drastic understatement of likely defaults when compared with reliable, publicly available data - including data that Mr. Lin and the Trustee had in their possession at or before the issuance of the Lin Report. Since default rates served as the first assumption that reduced the aggregated balances for purposes of deriving estimated losses, understatement of default rates (and severity rates, as discussed below) results in artificially underestimated losses. Underestimated losses result in underestimated repurchase liability. Further, throughout this process, Mr. Lin did not estimate or acknowledge standard measures of reliability used to evaluate such calculations.

¹⁴ Appendices.

¹⁵ Ex. 13 to Doc. 301 (BNYM_CW-00000206–207) (Dep. Ex. 21) (Reliance 2).

¹⁶ Ex. 19 to Doc. 301 (BNYM_CW-00000278–369) at BNYM_CW-00000279 (Dep. Ex. 22).

2. Severity Rate

Turning to the issue of severity, Mr. Lin utilized assumptions of 45% and 60% at the low and high ranges, respectively. However, the Alternative Approach shows a “Grand Total” severity rate of 66%.

Under Mr. Lin’s assumptions (low range), the loss rate (the expected losses over the current balance) is 19.7%, which is 32.2% lower than the loss rate 28.8% according to Mr. Lin’s reliance material (see Table 2 below). Even with Mr. Lin’s high range, his loss rate of 28.1% is still lower than 28.8%. In short, Mr. Lin’s severity rates are grossly short of the numbers found in his reliance materials.

Table 2: How Mr. Lin Calculates His Loss Rate

Low Range

<u>Description</u>	<u>Balance</u>	<u>Default Rate</u>	<u>Severity Rate</u>	<u>Loss Rate</u>
Liquidated Loans				
60+ Delinquent Loans	\$72.5	90%	45%	41%
Mod. Current Loans	\$12.8	35%	45%	16%
Non-Mod. Current Loans / D30	\$98.6	11%	45%	5%
<u>Total</u>	\$183.9			19.7%

High Range

<u>Description</u>	<u>Balance</u>	<u>Default Rate</u>	<u>Severity Rate</u>	<u>Loss Rate</u>
Liquidated Loans				
60+ Delinquent Loans	\$72.5	90%	60%	54%
Mod. Current Loans	\$12.8	40%	60%	24%
Non-Mod. Current Loans / D30	\$98.6	16%	60%	10%
<u>Total</u>	\$183.9			28.1%

3. Losses

The cumulative effect of these errors and omissions results in low and high estimates from Mr. Lin's approach that significantly underestimates losses.

4. Breach Rate

After calculating losses, Mr. Lin assumed a breach rate of 36.0%. The breach rate represents Bank of America's *unverified* experience in negotiating repurchase claims with the Government Sponsored Enterprises ("GSEs"), Fannie Mae and Freddie Mac. As set forth below, adopting a breach rate from the GSE repurchase experience is completely improper and unjustified. In an earlier section, I also noted that Mr. Lin [REDACTED] [REDACTED] but the application of this rate is to dollar amounts and so would more properly be computed as the proportion of dollars in loans with breaches relative to the total dollars in loans. My past experience in similar investigations is that the "dollar breach rate" is typically higher [REDACTED] because loans with higher dollar values are more likely to have breaches, [REDACTED]. For multiple reasons, Mr. Lin's breach rate is fundamentally wrong and undermines the validity of his approach.

5. Success Rate

Finally, Mr. Lin assumed a 40% success rate. This too represents unverified GSE repurchase experience data provided by BofA. Furthermore, this assumption has no place in the Lin Report. As a preliminary matter, the "success rate" appears to be a reflection of [REDACTED] claims between BofA and the GSEs. As set forth below, there are numerous problems with comparing the GSE loans to the loans in the Covered Trusts. More fundamentally, however, embedded in the very notion of a success rate are various factors parties consider when resolving legal disputes. In my experience, experts offering opinions about the calculation of damages are never involved in the acceptance or non-acceptance of the results. It is highly unusual for any financial expert to offer any opinion on the various factors lawyers and clients consider with respect to litigation. This appears to be why the Trustee hired additional experts to opine on legal arguments that would affect the probability of success on the underlying claims.