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

THE BANK OF NEW YORK MELLON (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), et al.,	Index No. 651786/2011
	Part 39
Petitioners,	(Hon. Barbara R. Kapnick)
-against-	
CRANBERRY PARK LLC and CRANBERRY PARK II LLC,	
Respondents,	
for an order, pursuant to CPLR § 7701, seeking judicial instructions and approval of a Proposed Settlement.	

OBJECTION OF CRANBERRY PARK TO PROPOSED SETTLEMENT

On June 28, 2011, The Bank of New York Mellon (the "Trustee") filed this Article 77 proceeding seeking judicial approval of a Proposed Settlement of the claims of 530 trusts (the "Trusts") for which the Trustee serves as trustee, against Bank of America Corporation ("BAC") and its subsidiaries Countrywide Financial Corporation ("CFC") and Countrywide Home Loans, Inc. ("CHL") ("CFC" and "CHL" together, "Countrywide"). Cranberry Park LLC and Cranberry Park II LLC (together, "Cranberry Park") intervened in the proceeding on August 2, 2011. Cranberry Park hereby respectfully submits its objection to the Proposed Settlement.

PRELIMINARY STATEMENT

Setting aside issues concerning the Trustee's conflicts of interest, and the mismatch between the interests of an institutional investor group represented by the Gibbs & Bruns firm (the "Investor Group") and those of other holders of Countrywide residential mortgage-backed securities ("RMBS"), the essential issue in this proceeding is whether the Trustee by entering into the Proposed Settlement has acted within "the bounds of a reasonable judgment." *In re Stillman*, 107 Misc.2d 102, 110 (Sur. Ct. N.Y. Cnty. 1980). The Proposed Settlement plainly fails this test. The proposal is premised on sweeping assumptions that were unexamined and unsupported at the time of the Proposed Settlement. These assumptions fall into three categories: (1) "expert" forecasts as to future rates of loss severity, breach of representations, and repurchase demand success; (2) presumed cost and uncertainty of litigation over loan repurchase obligations; and (3) supposed limits on BAC's obligation or willingness to contribute to a settlement that Countrywide would be otherwise unable to pay. In all three areas, the Trustee's speculative assumptions were plainly unreasonable.

- **Forecasts**: The Trustee relied upon an eight-page "Settlement Amount Opinion" for a quantitative assessment of the $8.5 billion amount of the Proposed Settlement. This report is based on forecasted rates of loan loss severity, breach of representations and warranties, and repurchase demand success that do not bear even modest scrutiny. Utilizing readily available RMBS data, Cranberry Park has adjusted these forecasts to reality. The resulting Cranberry Park range of settlement amounts is $43.8 billion low range, $48.7 billion base range, and $52.7 billion high range. The Proposed Settlement of $8.5 billion is but 17.5% of the Cranberry Park $48.7 billion base amount.

- **Legal Uncertainty**: The only possible justification for the Trustee's willingness to settle for well under 20% of Cranberry Park's base case damages is that the Trustee accepted a drastic discount for the presumed difficulties of compelling BAC and CHL to meet their repurchase obligations. Yet recent legal rulings have consistently confirmed that the stumbling blocks assumed by the Trustee are without substance. For example, these rulings have endorsed standard statistical sampling techniques as a means of demonstrating breach rates without resort to loan-by-loan analysis. They also have rejected the meritless argument that the breach of the applicable representations or warranties must "cause" a loan to default in order to be actionable. Rather, courts have confirmed that the materiality requirement means only what the plain language suggests – that the breach made the loan riskier to the trust.

- **Ability to Pay**: The Trustee attempts to excuse the Proposed Settlement on grounds of Countrywide's inability to pay and BAC's supposed unwillingness to pay. This justification ignores the Countrywide RMBS settlements financed by BAC since 2010. These have totaled billions of dollars in excess of the Trustee's $4.8 billion estimate of Countrywide's ability to pay. The incentives for BAC to continue to support Countrywide are clear. BAC has made tremendous progress in convincing financial markets that uncertainty regarding loan repurchase exposure is under control. Cranberry Park believes this has been a major factor in the near doubling of BAC's share price in 2012 and that the markets would severely punish the share price were BAC to threaten a Countrywide bankruptcy. On top of that, absent a settlement, BAC faces direct liabilities arising out of the servicing activities of BAC HLS, the former Countrywide servicing operation that is now merged into Bank of America, N.A. As the Verified Petition itself outlines, BAC HLS's non-performance of its servicing obligations generated much the same harm as caused by CHL's failure to meet loan repurchase obligations (*see* Verified Petition ¶¶ 28-34). The fact that BAC is directly liable for that harm was not even considered by the Trustee.

In sum, the Trustee should not be permitted to use its right to exercise discretion to hide an unreasonable judgment that was based on a shoddy analysis contradicted by both contemporaneous circumstances and subsequent facts.

FACTUAL BACKGROUND

Countrywide and its affiliates sold billions of dollars of loans to trusts in securitization transactions sponsored by Countrywide. The trusts then issued certificates representing interests in the cash flow from payments on loans held by the trusts. These RMBS were sold to investors all over the world.

Mortgage Securitization

The first step in a mortgage securitization transaction is the acquisition of mortgage loans by a "sponsor" (or "seller"), such as CHL, and the sale of a large pool of such loans by the sponsor to a "depositor," typically a special-purpose affiliate of the sponsor. The depositor then conveys the pool of loans to a trustee, such as the Trustee, pursuant to a pooling and servicing agreement ("PSA") that establishes the Trustee as the party responsible for protecting investors and enforcing their rights under the PSA.

The PSA also appoints a "master servicer" whose duties include foreclosing on defaulted loans, monitoring compliance with loan origination representations and warranties, tracking mortgage documentation, and managing and selling foreclosed properties. The master servicer for the Trusts was originally Countrywide Home Loans Servicing LP. Following BAC's acquisition of Countrywide and its affiliates in July 2008, the name of Countrywide Home Loans Servicing LP was changed to BAC Home Loans Servicing LP (BAC HLS). In July 2011, BAC HLS was merged into Bank of America, N.A., and BAC's principal operating subsidiary. *See FTC v. Countrywide Home Loans*, Case No. 10-4193-JFW-SSX (C.D. Cal.) (Supplemental Consent Judgment) at http://www.ftc.gov/os/caselist/0823205/120209countrywideorder.pdf ("Effective July 1, 2011, and after proper notice was provided to the FTC, BAC Home Loans merged with and into Bank of America, N.A.").

Under a PSA, the seller makes various representations and warranties as to the origination and characteristics of the underlying loans, and enters into covenants regarding the proper delivery of the documents evidencing the loans and their collateral. The principal means of enforcing these representations, warranties, and covenants are the rights of the master servicer and the trustee under the PSA to require the seller to repurchase or replace loans in material breach of the representations, warranties, and covenants. All parties to a PSA – including a seller such as CHL and a master servicer such as BAC HLS – are obligated to report to the trustee any loans that are in breach of the PSA representations, warranties, and covenants.

ARGUMENT

I. LEGAL STANDARD

Under New York law, a court can and should override a trustee's decision where "the trustee in exercising or failing to exercise the power acts dishonestly, or with an improper even though not a dishonest motive, or fails to use his judgment, or acts beyond the bounds of a reasonable judgment." *In re Stillman*, 107 Misc.2d 102, 110 (Sur. Ct. N.Y. Cnty. 1980). New York courts do not defer to a trustee who operates under a conflict of interest or in circumstances otherwise affecting its impartiality. At a minimum, a court must review a conflicted trustee's conduct and actions "with strict scrutiny and with special care." *Milea v. Hugunin*, No. 5 08-2941, 2009 WL 1916400, at *8 (Sup. Ct. Onondaga Cnty. June 1, 2009) (Article 77 proceeding); *see also Birnbaum v. Birnbaum*, 117 A.D.2d 409, 416 (4th Dep't 1986) ("One of the most stringent precepts in the law is that a fiduciary shall not engage in self-dealing and when he is so charged, his actions will be scrutinized most carefully.").

The objections of many respondents focus on the myriad circumstances demonstrating that the Trustee is incapable of exercising independent judgment in these proceedings, given, among other things, its close business and financial relations with the Investor Group, and its incentive to secure indemnification against its exposure for failure to exercise its duties under the PSAs. Cranberry Park holds portfolios managed by a team of investment professionals with a long and successful track record of analyzing and investing in the RMBS market. Given this perspective, Cranberry Park – while in agreement with the objections addressing the Trustee's lack of impartiality – will focus its objection on the many ways in which the Proposed Settlement is premised on sweeping assumptions that were unexamined and unsupported at the time of the Proposed Settlement, and that are now known to have been, not at all unexpectedly, entirely wrong. Thus, even assuming that the Trustee were disinterested, Cranberry Park believes that the Trustee's illogical and unsupported "analysis" was not the exercise of reasonable judgment.

II. THE INADEQUACY OF THE PROPOSED SETTLEMENT

The question whether the Trustee acted within its reasonable discretion must turn on the quality of its analysis. In agreeing to the Proposed Settlement, the Trustee cited three key factors: (1) "expert" forecasts as to future default, loss severity, and breach-of-representation rates among loans in the Trusts; (2) the cost and uncertainty of litigation over loan repurchase obligations; and (3) supposed limits on BAC's willingness to contribute to a settlement that Countrywide would be otherwise unable to pay. In all these areas, the Trustee's speculative and poorly formulated calculations were not reasonable.

With respect to future loan performance, the Trustee failed to develop forecasts that were logical and supportable, resulting in grossly understated rates of loan default, loss severity, and breaches of representations or covenants. With respect to litigation uncertainty, the Trustee paid scant attention to the quality of BAC's arguments or the prospect of rapid development of legal principles for resolving PSA loan repurchases demands, including in particular loan sampling techniques, materiality standards for breaches of representations, and elimination of any loan-loss condition to repurchase. Finally, in considering BAC's willingness to pay, the Trustee relied on speculation rather than financial market conditions faced by BAC, and ignored BAC's direct exposure to its own servicing failures and the liabilities of BAC for Countrywide servicing operations merged into Bank of America, N.A. In short, the Trustee's duty to protect investor interests does not permit it to engage in an unreasonable, superficial process, based on assumptions that were unreasonable at the time and contradicted by subsequent facts.

1. <u>The Settlement Payment Is Not Reasonable in Light of Actual Loan Performance and Breach Rates</u>

The Trustee relies upon an eight-page "Settlement Amount Opinion" by Brian Lin of RRMS Advisors dated June 7, 2011 (the "Lin Report") for a quantitative assessment of the $8.5 billion amount of the Proposed Settlement. This report is grounded in numerous unsupportable assumptions, under the guise of "uncertainty," about key variables driving the settlement amount. Not only have these assumptions turned out wrong since the time of the settlement, they were entirely unsupportable even on the evidence available at that time. Correcting these assumptions, as shown below, results in a settlement range of $44 billion to $53 billion, well over five times what the Trustee has proposed.

Figure 1 below is a set of two charts from that report summarizing its calculation of low range and high range settlement amounts (Lin Report at 8). The charts divide the loans underlying the Trusts as of February 2011 remittance reports into four "delinquency buckets": (i) liquidated; (ii) 60+ days delinquent; (iii) modified current loans; and (iv) non-modified current loans. The low-high settlement ranges for each bucket of loans are the products of assumptions for the category's default rate, loss severity rate ("Loss Severity Rate"), breach of representations-and-warranties rate ("Breach Rate"), and repurchase demand success rate ("Success Rate"), respectively. These assumptions do not withstand scrutiny.

Figure 1

The Lin Report Calculation of the Proposed Settlement Amount

Low Range

Description	Balance[1]	Default Rate	Severity Rate	Losses	Breach Rate	Success Rate	Settlement
Liquidated Loans				$25.0	36.0%	40.0%	$3.6
60+ Delinquent Loans	$72.5	90.0%	45.0%	$29.4	36.0%	40.0%	$4.2
Mod. Current Loans	$12.8	35.0%	45.0%	$2.0	36.0%	40.0%	$0.3
Non-Mod Current Loans / D30	$98.6	11.0%	45.0%	$4.9	36.0%	40.0%	$0.7
							$8.8

High Range

Description	Balance[1]	Default Rate	Severity Rate	Losses	Breach Rate	Success Rate	Settlement
Liquidated Loans				$25.0	36.0%	40.0%	$3.6
60+ Delinquent Loans	$72.5	90.0%	60.0%	$39.2	36.0%	40.0%	$5.6
Mod. Current Loans	$12.8	40.0%	60.0%	$3.1	36.0%	40.0%	$0.4
Non-Mod Current Loans / D30	$98.6	16.0%	60.0%	$9.5	36.0%	40.0%	$1.4
							$11.0

Loss Severity Rate

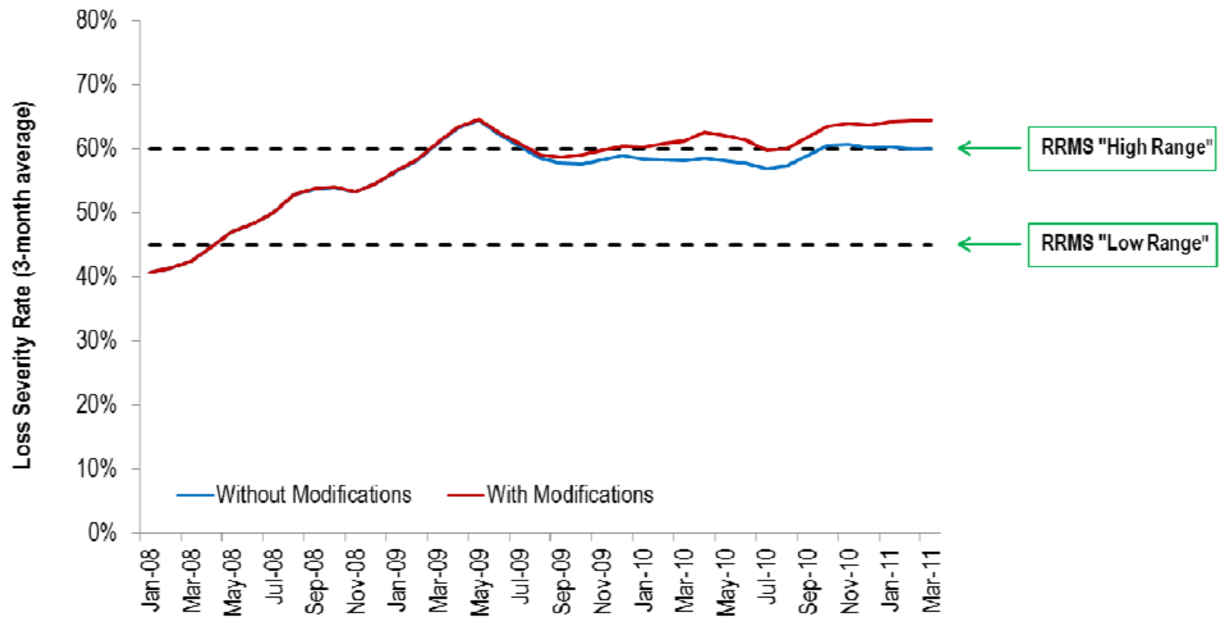
The Lin Report attempts to explain its 45%-60% low-high Loss Severity Rate assumptions as follows:

> "[W]hen weighted according to the actual collateral composition of the portfolio, loss severity is approximately 60%. In addition, based on the information provided by BofA, the historical loss severity for the loans within the Settlement Portfolio is approximately 45%. Thus, these were the ranges utilized in my assumptions."

(Lin Report at 7). This appears to mean that back in early 2011, the *recent* loan loss Severity Rate was 60%. This percentage fits with Cranberry Park's analysis of loan-level data on losses due to actual liquidations at that time (*see* Figure 2 (blue line)). These data, however, take no account of losses due to principal modifications and other pre-liquidation events, and, therefore, understate the Trusts' actual economic losses. When principal modifications and other pre-liquidation losses are correctly included in the analysis, the Lin Report Loss Severity Rate assumption increases to 64% (*see* Figure 2 (red line)). As for the report's 45% "historical" Loss Severity Rate, the report provides no support, other than to say that the figure was provided by BAC. Cranberry Park has calculated a life-to-date Loss Severity Rate of 55% excluding loan modifications, and 57% including loan modifications, through March 31, 2011.[1]

<u>Figure 2</u>

Loss Severity Rates (3-Month Average) With and Without Modification Through March 2011: The Lin Report "High Range" Ignores Modification Losses



Apart from the flaws in its calculation of recent and historical Loss Severity Rates, the Lin Report without explanation endorses recent experience as of March 2011 as the "high range" assumption for Loss Severity Rates *prospectively*. This is a baffling and entirely illogical leap.

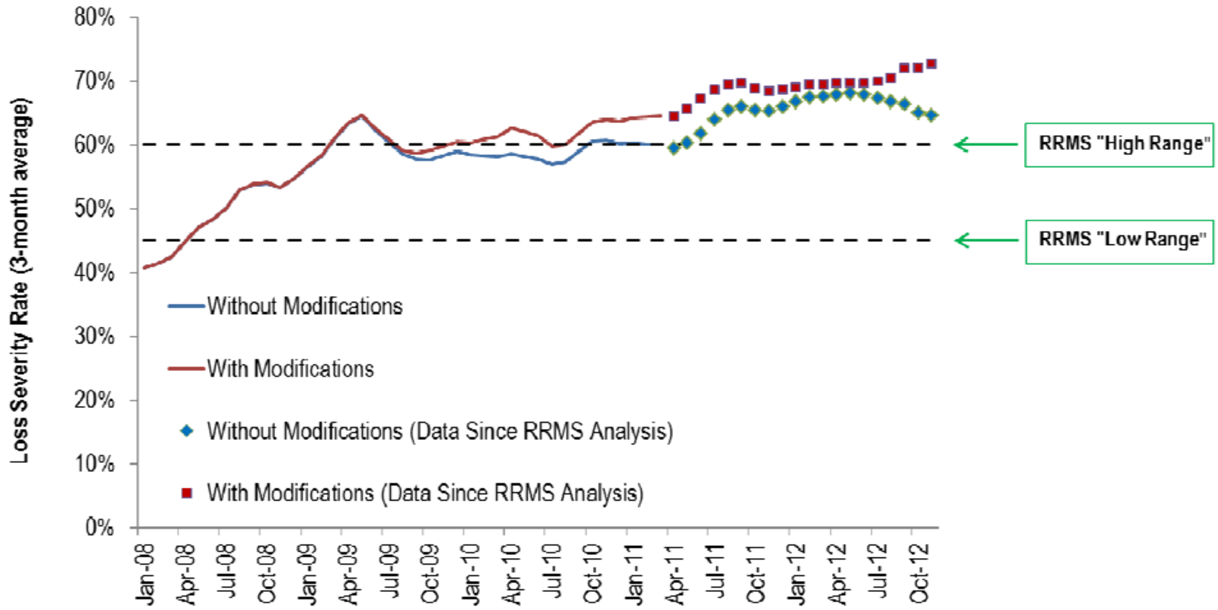
[1] Life-to-date Loss Severity Rates would be expected to be, and are, lower than current Loss Severity Rates, since loss severities have increased over the lives of the loans underlying the Trusts. Loan performance databases available to the Trustee and other market participants provide loan level information for substantially all of the Trusts, and the calculation of life-to-date Loss Severity Rates is a relatively straightforward process for any expert with access to the widely available loan level data. The Lin Report is silent as to why it chose instead to accept BAC's Loss Severity Rate without verification.

RMBS market participants in March 2011 fully expected that Loss Severity Rates would continue to increase, as they had since the onset of the mortgage loan crisis. This expectation was grounded not only in the high likelihood of near term home price declines, but also in the inevitable effects of negative selection on those loans headed toward foreclosure and liquidation. For example, loans in non-judicial foreclosure states are, on average, liquidated much more quickly than loans in judicial foreclosure states. As a result, as time passes, liquidated loans are sure to be increasingly in judicial foreclosure states, which, all else equal, will tend to increase Loss Severity Rates. Similarly, over time, property deterioration and expenses mount, leaving increasingly larger losses among the remaining mix of loans headed toward liquidation. The Trustee was also fully aware that the Loss Severity Rates would be significantly increased by the systemic documentation failures that dramatically lengthened foreclosure periods and led to the related "robo-signing" scandal that broke in the fall of 2010.

As Figure 3 shows, the market was entirely correct in expecting higher Loss Severity Rates. Even without adjusting for pre-liquidation losses due to loan modifications, loan level data provided in loan performance databases available to market participants, including the Trustee, show that Loss Severity Rates have exceeded the Lin Report's 60% "high range" in almost every month since March 2011 (*see* Figure 3 (blue diamonds)). And with loan modification losses correctly factored into the calculation, Loss Severity Rates have risen to nearly 73% (*see* Figure 3 (red squares)). Doing no more than adjusting the Lin Report calculation for these fully anticipated and now actually observed higher Loss Severity Rates would increase the settlement amount by $1.7 billion – or 20%.

Figure 3

Actual Loss Severity Rates Have Exceeded the Lin Report's "High Range"



Breach Rate

The Lin Report's explanation of its assumption of a 36% breach of representations-and-warranties rate is entirely inadequate and contradictory. The report first rejects the 60% Breach Rate suggested by the Investor Group as follows:

> "[A] third party . . . completed a forensic underwriting project of a non-agency whole loan portfolio. This review consisted of approximately 250,000 loans of similar product types, and of the same original period as the Settlement Portfolio. It was observed that there was an instance of a breach in approximately 60% of the loans examined and the actual repurchase rate of these loans by the originator ranged between 50% and 75%. *I was not able to verify these figures since I was not given access to any documents or specifics pertaining to this underwriting review. However, based on the limited amount of publicly available information and my industry knowledge, it is my opinion that these percentages are too high.*"

Lin Report at 3 (emphasis added). Mr. Lin then instead turns to the "actual repurchase experience" of 2004-2008 vintage GSE loans – not private label loans – originated by BAC or Countrywide in order to settle on his far lower 36% Breach Rate:

> "Given the lack of meaningful public information regarding [breach and success rates], I feel that it would be reasonable to use BofA's percentages for both rates since they are based on the performance of a mortgage pool representing actual repurchase experience. Specifically, a 'Breach' rate of 36% and a 'Success' rate of 40% were utilized."

Lin Report at 8. As for justifying an extrapolation of the Breach Rate and Success Rate from GSE loans to private label loans, the Lin Report has still less to offer:

> "I believe it would have been easier to compare two analogous portfolios rather than to utilize a comparison between conforming and non-conforming portfolios. However, *due to the lack of available information*, I am of the view that utilization of a GSE portfolio based on actual repurchase experience is a proper alternative with appropriate adjustments."

Lin Report at 4 (emphasis added). The report provides no explanation as to why the 60% Breach Rate found by the Investor Group's forensic underwriting does not qualify as "available information." Moreover, the Trustee had access to the actual loan files for each Trust and easily could have reviewed a meaningful sample of loans for an accurate estimate of the Breach Rate. It is especially puzzling why the Trustee did not do so in light of the insignificant expenses of sampling loans (which would ultimately be paid for by the Trusts themselves) as compared to the potential rewards to the Trusts. Even a <u>1%</u> increase in the proposed settlement would increase the return to Certificateholders by <u>$85 million</u>, which under any analysis would dwarf the cost of reviewing a meaningful sample of loans.

Within just a few months of the Lin Report, a rash of data on non-conforming loan Breach Rates emerged in other proceedings arising out of CHL's wholesale abandonment of underwriting standards. Review after review of CHL non-conforming loan pools has found Breach Rates at levels about equal to or, more often, substantially higher than the Investor Group's 60% rate. To cite some of the more prominent examples:

> • <u>August 2011</u>: *Walnut Place et al. v. Countrywide Home Loans, Inc. et al.*, Index No. 652146/11: Plaintiff selected 2,460 of 2,623 defaulted or delinquent CHL

loans and found that **64%** breached seller representations and warranties. Plaintiff alleged that the Trustee was notified of these breaches on May 26, 2011, *before* the proposed settlement. Substantially similar breach data (66%) was included in an earlier complaint involving different Trusts, captioned *Walnut Place et al. v. Countrywide Home Lones et al.*, Index No. 650497/11, which was filed in February 2011. The plaintiff in that action alleged that the Trustee was notified of the breaches in August 2010 – *nearly a year* before the Trustee agreed to the proposed settlement.

• August 2011: *U.S. Bank National Association, as Trustee for Harborview Mortgage Loan Trust, Series 2005-10 v. Countrywide Home Loans, Inc. et al.*: Plaintiff analyzed an initial sample of 786 loan files for delinquent or defaulted CHL loans, and found that **66%** of the loans breached one or more representations.

• December 2012: *MBIA Insurance Corp. v. Countrywide Home Loans, Inc. et al.*: Based on re-underwriting a random sample of 3,000 loans in securitized pools of current and defaulted loans totaling over 380,000, Plaintiff's expert found "indisputable" material breaches of **56%** of *all loans* and a total rate of material breaches of **96.8%** of *all loans*.[2]

Many other proceedings have revealed Breach Rates at well over 60% among numerous pools of non-conforming loans originated by sellers with shabby underwriting practices comparable to those of CHL. For example:

• December 2012: *Merrill Lynch Mortgage Investors Trust, Series 2006-RM4 and RM5 v. Merrill Lynch Mortgage Lending, Inc. et al.* Plaintiff's analysis of two RMBS securitizations found Breach Rates of **73%** (1,211 loans) and **75%** (1,411 loans).

• February 2013: *Assured Guaranty Municipal Corp. v. Flagstar Bank FSB:* Based on re-underwriting a random sample of 800 loans in securitized pools of current and defaulted loans totaling over 15,000, Plaintiff's expert found a rate of material breach of **76%** of all loans. Following a lengthy bench trial, Judge Rakoff accepted the expert's findings and awarded $90 million in damages for insurance claims paid to date. *Significantly, the complaint in the case was filed in April 2011, well before the Lin Report claimed a "lack of available information" on non-conforming loan breach rates.*

None of the above cases supports a Breach Rate close to the 36% assumed in the Lin Report, and each supports a Breach Rate at least as high as the 60% originally found by the

[2] *MBIA Insurance Corp. v. Countrywide Home Loans, Inc., et al.* (602825/08), Motion Sequence No. 58, Document 3983 ("MBIA's Motion for Summary Judgment On Breach of the Insurance Agreements").

Investor Group. Though (with the exception of Judge Rakoff's findings in *Assured*) disclosed only in complaints, this Breach Rate information is detailed and specific. The data entirely undermine Mr. Lin's 36% Breach Rate as well as his assertion of a "lack of available information" on Breach Rates among non-conforming loans. Indeed, Cranberry Park is not aware of any actual Breach Rate disclosed in any non-conforming loan repurchase suit that lends support to the Lin Report's 36% estimate.

Repurchase Success Rate

The Lin Report defines the "Success Rate" as follows:

> "There is a possibility that BofA may offer resistance relating to some of [the loans submitted for repurchase], resulting in a buyback rejection; thus the 'Success Rate' represents the percentage of loans submitted to BofA which would actually be repurchased."

Lin Report at 2. The only part of this statement that makes sense is the unremarkable observation that BAC and CHL may resist meeting their obligations to repurchase loans that breach PSA representations and warranties. The remainder of the definition is puzzling and illogical. It seems to limit "Success Rate" to the percentage of loans that BAC or CHL might *voluntarily* repurchase in response to a putback claim. This is, of course, quite different from the percentage of loans that BAC or CHL may be found to be *contractually obligated* to repurchase. Though a reasonable RMBS trustee – like any claimant – might ultimately agree to settle at a discount, an analysis of the reasonableness of the Proposed Settlement must surely begin with an estimate of the full amount owed, not with a guess about what BAC and CHL might find agreeable. Indeed, the Verified Petition itself asserts that "a settlement payment in the range of $8.8B to $11B would be reasonable, *without discounting for the legal defenses* to the Trustee's claims." (Verified Petition ¶ 67 (emphasis original)). The Lin Report's notion of "Success Rate" necessarily incorporates discounts for legal defenses, as well as any other issues that may have influenced the GSE repurchase negotiations. It is irrelevant to the merits and quantum of the Trusts' repurchase claims and plainly inconsistent with the Trustee's stated calculation of a damages range "without discounting for legal defenses."

Re-calculation of a Settlement Amount Range

As set forth in Figure 4, Cranberry Park has formulated low, base, and high range settlement estimates that incorporate reasonable Loss Severity Rates and Breach Rates, and do not impose Mr. Lin's arbitrary "Success Rate" on repurchase estimates. Consistent with the Breach Rate disclosures described above, Cranberry Park applies a 66% Breach Rate for liquidated, severely delinquent, and modified current loans, and a half as large 33% rate on current unmodified loans.[3] Cranberry Park's estimates also apply more reasonable Loss Severity Rate estimates of 55% in the low case, 65% in the base case, and 70% in the high case. As noted above in Figure 3, current Loss Severity Rates are now at roughly 73% including modifications, and Cranberry Park's estimates thus incorporate in both their low and base ranges considerable improvements in the housing market. No changes are made to the various flawed default-rate assumptions in the Lin Report.[4] The resulting Cranberry Park range of settlement amounts is $43.8 billion low range, $48.7 billion base range, and $52.7 billion high range. The Proposed Settlement of $8.5 billion is but 17.5% of the Cranberry Park $48.7 billion base amount.

[3] Modified current loans are included in the 66% group insofar as loans are typically modified only after having become severely delinquent. The 33% rate for current unmodified loans is highly conservative in view of the data from *MBIA vs. Countrywide* and *Assured vs. Flagstar* indicating Breach Rates of 97% and 76% among pools that include current as well as modified and delinquent loans.

[4] These flaws include, for example, the report's "Low Range" estimate that only 11% of unmodified current or 30-day delinquent loans will default over the remaining life of the Trusts loan pools. In fact, the loan performance data available in the market shows that 11% of these loans had already either defaulted or gone 60+ delinquent within 17 months of the Lin Report and over 13% had gone 60+ delinquent after two years.

Figure 4

Cranberry Park's Re-Calculated Settlement Ranges

Low Range

Description	Balance	Default Rate	Severity	Losses	Breach Rate	Settlement
Liquidated Loans				25.0	66%	16.5
60+ DQ Loans	72.5	90%	55%	35.9	66%	23.7
Mod. Current Loans	12.8	35%	55%	2.5	66%	1.6
Non-Mod Current/D30	98.6	11%	55%	6.0	33%	2.0
Total	183.9			69.3		**43.8**

Base Range

Description	Balance	Default Rate	Severity	Losses	Breach Rate	Settlement
Liquidated Loans				25.0	66%	16.5
60+ DQ Loans	72.5	90%	65%	42.4	66%	28.0
Mod. Current Loans	12.8	35%	65%	2.9	66%	1.9
Non-Mod Current/D30	98.6	11%	65%	7.0	33%	2.3
Total	183.9			77.4		**48.7**

High Range

Description	Balance	Default Rate	Severity	Losses	Breach Rate	Settlement
Liquidated Loans				25.0	66%	16.5
60+ DQ Loans	72.5	90%	70%	45.7	66%	30.1
Mod. Current Loans	12.8	40%	70%	3.6	66%	2.4
Non-Mod Current/D30	98.6	16%	70%	11.0	33%	3.6
Total	183.9			85.3		**52.7**

2. Judicial Rulings Demonstrate That the Trustee's Concern That "Countrywide and BAC HLS May Have Viable Defenses to Any Potential Claims" Was Not Well-Founded

The only explanation for the Trustee's willingness to settle for well under 20% of Cranberry Park's base case of the Trusts' damages under the PSAs is that the Trustee – contrary to the Verified Petition – severely discounted BAC and Countrywide's exposure for presumed difficulties in compelling BAC and CHL to meet their repurchase obligations. Yet recent legal rulings have consistently confirmed the strength of the Trustee's legal position and demonstrate that the Trustee's assumptions were unreasonably pessimistic as of the time of the Settlement. In all events, these rulings have reduced whatever legal uncertainties may have existed at the time of the Proposed Settlement.

In summarizing its pessimistic assumptions regarding Countrywide and BAC's legal defenses, the Verified Petition began by speculating that the Trustee might bear an "extraordinary burden" of loan-by-loan analysis of material breaches:

> "Countrywide has taken the position that if the Trustee brought an action to enforce Countrywide's repurchase obligations under Section 2.03 of the Governing Agreements, the Trustee would need to prove, on a loan-by-loan basis: (i) that Countrywide breached specific representations and warranties in the Governing Agreements, (ii) that the breach was material, and (iii) that the breach adversely affected the interests of the Certificateholders in the loan. With respect to the final requirement, Countrywide has taken the position that the Trustee would have to prove, on a loan-by-loan basis, that the breach caused Certificateholders to suffer a significant loss on the affected loan."

Verified Petition ¶ 70. The petition went on to credit Countrywide's position that the Trust would need to prove that the breaches alone, not other discrete factors, caused realized loan losses:

> "For all of these reasons, in the Trustee's judgment, Countrywide's position that Section 2.03 imposes an element of causation could be accepted by a court, and if this occurred it would present significant challenges to the Trustee in proving, for each Mortgage Loan or even a sample of Mortgage Loans, that the harm was caused specifically by a breach of representation and warranty rather than by the individual circumstances of the borrower or the various macroeconomic events affecting the U.S. and global economy (§77)."

Verified Petition ¶ 77. The Trustee's expert in this area was even more definite as to the likelihood of a burdensome loss-causation requirement:

> "It is not possible to conclude with any confidence how a court would interpret such a provision such as §2.03(c) of the Pooling and Servicing Agreement…based solely on general contract principles, and taking the language of provision at face value, it appears to be a reasonable position that a determination of whether a breach materially and adversely affects the interest of Certificateholders should turn on the harm caused by the breach."

Opinion of Prof. Barry E. Adler dated May 27, 2011 at 13.

Judge Rakoff's comprehensive post-trial findings in *Assured v. Flagstar* conclusively demonstrate the flimsy and overblown nature of the legal concerns expressed by the Trustee in support of the Proposed Settlement. *See Assured Guaranty Municipal Corp. v Flagstar Bank, FSB*, No. 11-2375 (S.D.N.Y. Feb. 5, 2013) ("*Flagstar*").[5] To begin, Judge Rakoff carefully rejects the view that breaches of representations and warranties among loans in an RMBS trust cannot be proven by statistical sampling:

> "*Sampling is a widely accepted method of proof in cases brought under New York law, including in cases relating to RMBS and involving repurchase claims*. *See Syncora Guarantee Inc. v. EMC Mortg. Corp.*, No. 09 Civ. 3106, 2011 WL 1135007, at *4 (S.D.N.Y. Mar. 25, 2011); *MBIA v. Countrywide Home Loans, Inc.*, 30 Misc. 3d 1201(A), at *4 (N.Y. Sup. Ct. 2010). . . . The very purpose of creating a representative sample of sufficient size is so that, despite the unique characteristics of the individual members populating the underlying pool, the sample is nonetheless reflective of the proportion of the individual members in the entire pool exhibiting any given characteristic. Because the Court accepts sampling as an appropriate method of proof in this case and because it largely adopts [Assured's expert's] findings of material defects, the Court finds that the loans underlying the Trusts here at issue pervasively breached Flagstar's contractual representations and warranties."

Flagstar at 90-91 (emphasis added). Notably, the court relied on precedents in RMBS actions involving repurchase claims that were issued well before the date of the Settlement.

The court then entirely rejects proof of actual loan loss as a condition to a seller's obligation to repurchase loans in material breach of representations and warranties. Citing his September 2012 denial of summary judgment, Judge Rakoff ruled:

> "In its opinion denying Flagstar's summary judgment motion, the Court determined that *the further requirement that breaches of these representations and warranties must be 'material and adverse' means that 'plaintiff must only show that [Flagstar's] breaches of the representations materially increased its risk of loss*.'"

Flagstar at 83 (emphasis added). As Judge Rakoff further explained:

> "Moreover, given the Court's prior ruling that 'the causation that must here be shown is that the alleged breaches caused plaintiff to incur an increased risk of

[5] Although Judge Rakoff's post-trial findings of fact and conclusions of law were only issued in March of this year, his legal conclusions were disclosed as early as February 2012, when he issued a summary judgment order upholding the core of Assured Guaranty's claims and denying Flagstar's motion, followed by a detailed opinion issued in September 2012.

> loss' . . . it is irrelevant to the Court's determination of material breach what Flagstar believes ultimately caused the loans to default, whether it is a life event or if the underwriting defects could be deemed 'immaterial' based on twelve months of payment. *Risk of loss can be realized or not; it is the fact that Assured faced a greater risk than was warranted that is at issue for the question of breach*."

Flagstar at 88 (emphasis added).[6]

Finally, *Flagstar v. Assured* recognizes standards of materiality that, along with the opinion's rulings on sampling and causation, pave the way for streamlined litigation by the Trustee and other RMBS trustees to enforce PSA repurchase obligations. In particular, Judge Rakoff endorses the adequacy of expert testimony to show materiality:

> "[T]he absence of mechanical standards for defining all the circumstances that might create a material breach of Flagstar's representations and warranties with respect to any given loan reflects not a failure of methodology, but a candid recognition of the multi-variable nature of the inquiry . . . Inevitably, this means that the opinion of any expert testifying on this issue involves a degree of subjectivity. But this is not a basis for rejecting such an opinion on the ground that the methodology is 'unreliable.'"

Flagstar at 72-73. The court goes on to detail with approval the standards of materiality articulated by Assured's expert:

> "The Court finds that this testimony well supports a finding that evidence of fraud is inherently material." *Flagstar* at 84.
>
> "Where exposure of a misrepresentation or a miscalculation of a relevant data point – e.g. income, assets, debts – would lead to a modified CLTV or DTI calculation that fell outside Flagstar's guidelines permissible range, the misrepresentation or miscalculation would be deemed a material breach if the deviation from Flagstar's standards was sufficiently large that no compensating factors could have made up for the deviation." *Id.* at 85.

[6] Last June, Judge Crotty reached this same obvious conclusion. In denying a defense motion for summary judgment, Judge Crotty held that the material and adverse language "does not require Syncora to prove that EMC's alleged warranty breaches caused HELOC loans to default . . . . EMC's proposed construction of the MLPA repurchase provision [to require that the loan be in default] has no support in the parties' agreements." *Syncora Guarantee, Inc. v. EMC Mortgage Corp.*, No. 09 Civ. 3106 (S.D.N.Y June 19, 2012).

> "Where significant documentation was missing from the loan file such that it was impossible to verify that the required checks were completed, [Assured' expert] deemed this a material failure to follow Flagstar's guidelines if no adequate compensating documentation existed in the file" *Id*.
>
> "Applying these principles [the above principles], [Assured's expert] found 606 of the 800 loans reviewed to be materially defective…The court finds that, with minor exceptions, [Assured's expert's] conclusions in these respects were fully credible and corroborated in numerous ways." *Id.* at 86-87.

The *Flagstar* court's rulings were neither revolutionary nor surprising. The *Flagstar* decision and other legal developments since the proposed settlement was announced confirm what was apparent at the time – the Trustee's extremely pessimistic assumptions regarding the efficacy of Countrywide's legal defenses to repurchase claims were simply not reasonable.

3. <u>Countrywide's Ability to Pay and BAC's Willingness to Pay</u>

The last of the Trustee's attempted justifications of the Proposed Settlement are Countrywide's inability to pay and BAC's supposed unwillingness to pay. The Trustee stresses that the $8.5 billion Proposed Settlement is significantly larger than Countrywide's standalone financial resources:

> "The Trustee has considered the ability, or inability, of Countrywide to pay a judgment that would exceed the Settlement Payment . . . the valuation expert [retained by the Trustee to value Countrywide] opined that the Trustee's maximum recovery is significantly less than the Settlement Payment . . . . Based on this analysis, the Trustee has concluded that Countrywide will be unable to pay any future judgment that exceeds, equals, or even approaches the Settlement Payment."

Verified Petition ¶¶ 78-81.

This sole focus on Countrywide's standalone resources ignores the commercial realities of the negotiation of a proper settlement. Countrywide's ability to pay has not, in itself, been a limiting factor in the size of the RMBS settlements reached by Countrywide to date. Countrywide has already made or agreed to settlement payments significantly in excess of its standalone resources by receiving direct or indirect BAC capital contributions. These settlements (including the $8.5 billion Proposed Settlement) have totaled over $20 billion since 2010 – far in excess of the Trustee's $4.8 billion estimate of Countrywide's intrinsic ability to pay.[7] BAC has, of course, made these payments because it is in its interest to do so. Contentions that BAC can avoid the liabilities at issue are dubious to begin with, and the financial markets and BAC's regulators have viewed positively the tradeoff between defined losses today and uncertainty regarding future claims.[8]

The incentives for BAC to support Countrywide are even greater now than at the time of the Proposed Settlement. When the prospect of massive loan repurchase obligations first

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[7] Specifically, the following settlements totaling $20.54 billion have been reported: (1) $2.8 billion in cash payments made to Freddie Mac ($1.2 billion) and Fannie Mae ($1.52 billion) in their 2010 settlement in respect of certain Countrywide liabilities (*see* "Bank of America Announces Fourth-Quarter Actions With Respect to Its Home Loans and Insurance Business," Jan. 3, 2010 at http://investor.bankofamerica.com/phoenix.zhtml?c=71595&p=irol-newsArticle&ID=1511819&highlight=#fbid=0xYCMzOVX5s); (2) a settlement with Syncora Guarantee for $375 million (*see* "Syncora Guarantee Settles its Countrywide Litigation," July 17, 2012 at http://phx.corporate-ir.net/phoenix.zhtml?c=198015&p=irol-newsArticle&ID=1715608&highlight); (3) a settlement with Assured Guaranty for $1.57 billion (*see* "Bank of America Announces Agreement on Mortgage Repurchase Claims With Monoline Insurer Assured Guaranty" at http://investor.bankofamerica.com/phoenix.zhtml?c=71595&p=irol-newsArticle&ID=1550866&highlight=#fbid=0xYCMzOVX5s); (4) the $8.5 billion proposed settlement at issue; (5) at least $500 million in cash payments to settle claims by the Federal Housing Administration (*see* "Bank of America Announces Agreements in Principle With Federal and State Authorities on Mortgage Matters," Feb. 9, 2012 at http://investor.bankofamerica.com/phoenix.zhtml?c=71595&p=irol-newsArticle&ID=1659163&highlight=#fbid=0xYCMzOVX5s); (6) a 2013 settlement with Fannie Mae, pursuant to which Bank of America paid $3.6 billion in cash and agreed to repurchase $6.75 billion of loans at par, which would be a $2.7 billion loss at 40% severity (*see* "Bank of America Announces Settlement with Fannie Mae to Resolve Agency Mortgage Repurchase Claims on Loans Originated and Sold Directly to Fannie Mae Through December 31, 2008" at http://investor.bankofamerica.com/phoenix.zhtml?c=71595&p=irol-newsArticle&ID=1771565&highlight=#fbid=0xYCMzOVX5s); and (7) the recently announced $500 million settlement of class action lawsuits pending in the Central District of California. The $20.54 billion figure is based on publicly available information and therefore likely understates significantly the total amount of payments Bank of America has agreed to make on behalf of Countrywide.

[8] It is likely that BAC's concern about its potential liability as successor to Countrywide has also contributed to its willingness to bear the cost of Countrywide settlements. The Trustee appears to have assigned zero value to potential recoveries against BAC for repurchase claims. Objector experts have amply demonstrated the unreasonableness of the Trustee's evaluation, including, among other things, the Trustee's failure to consider certain potential theories of recovery against BAC such as fraudulent conveyance and breach of fiduciary duty. *See, e.g.*, Report of John C. Coates IV ("Coates Report"). Moreover, the Trustee's assignment of zero value to potential claims against BAC cannot be reconciled with the conduct of other sophisticated parties that have vigorously pursued successor liability and similar theories against BAC in connection with RMBS repurchase claims even though there were significantly smaller total losses at stake. *See, e.g.*, *MBIA Insurance Corp. v. Countrywide Home Loans, Inc., et al.*, Index No. 08/602825 (N.Y. Sup. Ct., New York County).

surfaced, financial analyst and market estimates of the ultimate liability varied widely, and the market put significant weight on scenarios in which BAC faced a regulatory capital shortfall. Two excerpts from analyst reports illustrate the market's initial doubts about the Proposed Settlement and the fear of BAC's loan repurchase exposure:

> "While progress in addressing legacy issues is appreciated and its [sic] settlement reduces the level of uncertainty around its rep & warranties exposure, it does not eliminate it, as it only covered half its private label exposure. While the company aimed to box its remaining exposure, this feat has proved elusive in the past."

Barclays Capital, "CFC Agreement Reduces, Doesn't Eliminate Uncertainties (Now Including Capital)" (June 30, 2011).

> "If the settlement is indeed $8.5bn, it would equal the midpoint of the $7-$10bn range that BAC had previously claimed as the 'high end' of its entire estimated losses on private label mortgage repurchases . . . BAC would still have over $300bn of remaining outstanding principal balances on private label (non-GSE) mortgage securitizations that could be subjected to additional claims and settlements . . . [W]e maintain our Hold opinion on Bank of America because [among other reasons, of] its ongoing risk related to mortgage repurchases [and] mortgage servicing litigation."

ISI Group, Client Email from Head of Bank Research (June 28, 2011).

Over the past year, however, BAC has made tremendous progress in convincing the equity and debt markets that remaining uncertainty regarding loan repurchase exposure is both bounded and manageable. Analysts are now generally assured of fairly precise and bounded outcomes for Bank of America's remaining loan repurchase exposure, based in part on the Proposed Settlement itself. Goldman Sachs, for example, in its analysis of fourth quarter 2012 earnings for the bank, noted:

> "We estimate that remaining rep & warranty reserves represent 1.3% of private label original principal balances that have not yet been settled (compared to 2.0% implied by the Countrywide settlement). That said, if we add the $4.0bn liability BAC estimates as possible over existing accruals, that equates to 2.1%, which implies a reasonable range of future losses."

Goldman Sachs, "Putting More Legacy Issues Behind" (January 7, 2013). This reduction in uncertainty was a major factor in the near doubling of BAC's share price in 2012.[9] Much of these gains for BAC would likely vanish in the face of the market reaction were BAC credibly to threaten a Countrywide bankruptcy.

Even more important, a Countrywide bankruptcy would do little or nothing to shield BAC from its undeniable liability for the servicer misconduct alleged by the Investor Group in its October 2010 letter. Such servicer liability attached to BAC regardless of the outcome of any rulings on de facto merger or consolidation. The Trustee appears entirely to have ignored that apart from exposure to the origination activities of its indirect subsidiary CHL, BAC is directly exposed to liabilities arising out of the servicing activities of BAC HLS, the former Countrywide servicing operation that is now a fully merged unit of Bank of America, N.A.[10] The Verified Petition itself outlines how BAC HLS's abject non-performance of its Master Servicer obligations under the PSAs generated much the same harm as caused by CHL's shoddy underwriting and failure to meet loan repurchase obligations, particularly as a result of the failure of BAC HLS to notify the Trustee and depositors of CHL breaches of loan representations and warranties and enforce CHL's repurchase obligations (*see* Verified Petition ¶¶ 28-34). For example, if the Master Servicers had given notice of Countrywide's breaches of (as required under the PSAs) or enforced CHL's repurchase obligations, investors would have been in substantially the same position as if the Countrywide loans had been properly underwritten. Indeed, vast losses suffered by RMBS investors could have been avoided if the Master Servicers

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[9] BAC's stock price closed at $5.80 on January 3, 2012 and $11.61 on December 31, 2012. *See generally* http://www.bloomberg.com/quote/BAC:US/chart.

[10] *See generally* Rebuttal Report of Adam J. Levitin ("Levitin Report") at ¶¶ 169-78; Coates Report at 10-11.

(including both CH HLS and BAC HLS) had not, for years, breached their obligations under the PSAs.[11]

The Master Servicers also breached their obligations to require CHL to replace or repurchase all loans for which complete documentation was not transferred to the Trustee. Section 2.01 of the PSA states that "substitution or repurchase" of such loans "shall be accomplished in the manner and subject to the conditions set forth in Section 2.03." The Master Servicer is obligated to enforce these repurchase and substitution provisions and is reimbursed the costs incurred in doing so pursuant to Section 2.03(c) of the PSA. The Verified Petition acknowledges that there is a substantial number of loans for which full documentation was not transferred to the Trustee. *See* Verified Petition ¶ 46. Had the Master Servicers enforced CHL repurchase obligations with respect to loans with document deficiencies, the losses incurred by the Trusts would have been significantly reduced. The Trustee's failure even to attempt to quantify BAC's servicer liabilities is patently unreasonable and inconsistent with the Trustee's obligation to safeguard the interests of investors in the Trusts.

The Investor Group specifically informed the Trustee of substantial breaches by the Master Servicers (including both CH HLS and BAC HLS) in their "Notice of Non-Performance" letter dated October 18, 2010. As that notice explained:

> "Although it regularly modifies loans, and in the process of doing so has discovered that specific loans violated the required representations and warranties at the time the Seller sold them to the Trusts, the Master Servicer has not notified the other parties of this breach; . . . Although aware of loans that specifically violate the required Seller representations and warranties, the Master Servicer has

[11] As Section 2.03(c) of the PSAs expressly requires: "Upon discovery by any of the parties hereto of a breach of a representation or warranty with respect to a Mortgage Loan made pursuant to Section 2.03(a) … that materially and adversely affects the interests of the Certificateholders in that Mortgage Loan, the party discovering such breach shall give prompt notice thereof to the other parties." The Master Servicer is also required to take action to enforce the Trusts' repurchase rights, for which it is entitled to reimbursement pursuant to Section 2.03(c).

> failed to enforce the Sellers' repurchase obligations, as is required by Section 2.03."

As the Investor Group also pointed out, the Master Servicers violated their prudent servicing obligations under Section 3.01 of the PSAs by, among other things, failing "to maintain accurate and adequate loan and collateral files in a manner consistent with prudent mortgage servicing standards," failing "to demand that sellers cure deficiencies in mortgage records when deficient loan files and lien records are discovered," and incurring "wholly avoidable and unnecessary servicing fees and servicing advances to maintain mortgaged property, all as a direct result of the Master Servicer's deficient record-keeping."

The proposed settlement, however, does not identify any compensation being paid by the Master Servicers for their misconduct and appears to release both CH HLS and BAC HLS for no consideration. Instead, the Proposed Settlement provides for *future* servicing "enhancements" that would at best do no more than compel the Master Servicer to meet – rather than in any way improve upon – their preexisting obligations under the PSAs.[12] There is no evidence that the Trustee or any of its experts even considered BAC's substantial direct liability for the admitted *past* misconduct by the Master Servicers. For this reason alone, the Trustee has failed to exercise reasonable judgment.

Failures of the Master Servicer and the Trustee to enforce the obligation of CHL to substitute or repurchase mortgage loans lacking proper documentation has resulted in dramatic increases in the period needed to foreclose on defaulted loans held by the Trusts. *See, e.g.*, "Foreclosure free ride: 3 years, no payments," *CNNMoney*, Jan. 1, 2012 at http://money.cnn.com/2011/12/28/real_estate/foreclosure/index.htm (reporting that time to

[12] *See* Levitin Report ¶¶ 218-253 ("The Proposed Settlement's Servicing Provisions Have Zero Value Because They Replicate the Bank of America's Pre-Existing Legal Duties").

process foreclosures nationwide had more than doubled over the preceding four years due in part to documentation deficiencies, resulting in delays of more than three years in some jurisdictions). Such extended foreclosure periods have caused the Trusts enormous losses, as expenses incurred during the foreclosure period for items such as real estate taxes, homeowner's insurance and property maintenance are advanced by the Master Servicer and reimbursed by the Trusts. The proposed settlement fails to provide any financial remuneration for losses caused by past documentation failures, and instead offers only supposed future servicing "enhancements" that in many respects narrow investor rights under the PSAs. For example, while the PSAs require substitution or repurchase of all loans missing documentation, under Section 6 of the proposed settlement a loan need only be repurchased if it *both* is missing documentation *and* lacks title insurance. Further, the proposed settlement would grant CHL a new period to cure existing documentation failures despite the fact that the cure period expressly provided for (and limited by) the PSAs expired years ago. In these respects, the proposed settlement actually amends the PSAs in a manner adverse to Certificateholders without the requisite two-thirds approval. *See* Levitin Report ¶¶ 179-86. Thus, the proposed settlement is unreasonable in that it makes no attempt to quantify the cost of CHL's widespread documentation failures, provides no compensation for such failures and narrows the obligation of CHL to repurchase loans even where such failures persist to this day.[13]

CONCLUSION

The Trustee has repeatedly argued that it is entitled to deference in its decisions and that in this Article 77 proceeding, the Court cannot substitute its judgment for that of the Trustee,

[13] The servicing "enhancement" provisions also appear to shift *to the Trusts* the costs that BAC is already required to incur in complying with its obligations under settlements with various governmental bodies, including the Office of the Comptroller of the Currency and state Attorneys General, and are therefore of *negative* value to the Trusts. *See* Levitin Report ¶¶ 254-60 (discussing Section 5(i) of the Proposed Settlement).

unless the Trustee failed to act prudently or otherwise failed to exercise reasonable judgment. But the Trustee has offered the Court no more than the illusion of a prudent analysis, complete with a parade of experts waving glossy resumes. The Court is the arbiter of the substance of whether the Proposed Settlement reflects prudence or premature guesswork and lack of considered judgment. That the Court should not "substitute its judgment" surely does not imply that the Court should not carefully evaluate the logical and empirical bases of the Trustee's claims in support of a $8.5 billion settlement of claims that should be valued, at least, in the tens of billions.

The Trustee's analysis has ignored key facts readily apparent at the time of the Proposed Settlement and since reinforced by developments in the RMBS market and in the courts. The Trustee's analysis was unreasonable with respect to key factors relating to the adequacy of the Proposed Settlement: incorrect on the Breach Rate, incorrect on the Loss Severity Rate, incorrect on the availability of loan sampling, incorrect on loss causation requirements, and incorrect on BAC's willingness to pay and its inability to avoid to Countrywide's loan repurchase liabilities. This litany of poor judgments is not just some kind of bad luck or everyday forecasting error. It is, rather, concrete evidence that the Trustee's "analysis" did not drive the Trustee to support the Proposed Settlement, but rather the analysis was itself driven by the Trustee's preconceived desire to rid itself of the difficult task of meeting its obligations to investors in the RMBS issued by the Trusts.

RELIEF REQUESTED

Cranberry Park respectfully requests that this Court issue an Order denying approval of the Proposed Settlement in the amount of $8.5 billion.

Dated: New York, New York
May 3, 2013

WOLLMUTH MAHER & DEUTSCH LLP

By: ____/s/ Thomas P. Ogden____________
Thomas P. Ogden
David H. Wollmuth
Steven S. Fitzgerald
Michael C. Ledley

500 Fifth Avenue
New York, New York 10110
Tel: (212) 382-3300

Attorneys for Cranberry Park LLC and Cranberry Park II LLC