"Robosigners and Other Servicing Failures: Protecting the Rights of RMBS Investors" Presentation Transcript (Oct. 27, 2010)

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David Grais: Good morning ladies and gentlemen. Thank you all very much for coming. My name is David Grais and on behalf of all of my colleagues at Grais & Ellsworth it's a pleasure to welcome you to our conference this morning and to thank you for attending.

To observers of the mortgage-backed securities scene, the recent revelations that the large bank-affiliated servicers are using Robosigners and, therefore, often submitting perjured affidavits in court, come as no particular surprise. For the last several years, these large bank servicers have engaged in a variety of misconduct of which the Robosigners is only the latest and, by no means, the most serious. The opportunity for the banks to engage in this misconduct, in my view, is a product of at least four different circumstances. First, conflicts of interest are deeply embedded in the structure of many securitizations. I'll talk about that further in a moment. The second factor that has created this opportunity is trustees in securitization transactions who, with the honorable exception of Deutsche Bank, have been aggressively passive in interpreting the scope of their duties and have been more concerned with minimizing their workload than with actually protecting the rights of the parties under the agreements that they are entrusted to administer. The third factor that has given this opportunity is the very weak, or rather weak, remedy structures under PSAs and the procedural difficulties in the way of investors who would like to enforce their rights. And, fourth, and perhaps most fundamentally, is the fact that servicing is concentrated in four large banks, whereas RMBS investors number thousands all over the world. And since the advantage is always to the concentration of force, the servicers and their parent banks have been able both by the structure of the transactions and by their political power, to vanquish investors thus far, although as I'll mention shortly, I think that's changing.

As with all issues, I think it's helpful to view the Robosigner controversy in its context. The most important context, and one that I know nothing about, is the political context. Since I do know nothing about politics, I'll comment only that's it clear even to me as an untutored observer of politics, that the political climate has changed radically since the spring of 2009 when Congress passed servicers safe harbor legislation. Those of you who were involved in that effort then will recall the tremendous lobbying effort made by the Big Four Banks, which persuaded Congress to enact legislation to protect them. RMBS investors, being very numerous, and spread all over the world, were unable to respond in kind because their force was dispersed rather than concentrated, and Congress passed legislation under the impression that they could safely entrust the future of American homes and borrowers to the servicers. I think the events of the ensuing 18 months have made clear to all of us that that was not the case, and the Robosigners controversy is probably just the latest episode in the shift of the political winds away from the servicers.

What I would like to talk about in my introduction to our conference today is two different contexts into which to place the Robosigner controversy. The first is the contractual context and the second is the litigation context. Most of you or many of

you, at least, will be familiar with the ins and outs of pooling and servicing agreements, but for those of you who may not have had a chance to study them, I'm going to give a brief structural introduction so that we can see the contractual context in which the servicer Robosigner controversy takes place.

There is a law professor who has referred to pooling and servicing agreements as troglodyte contracts. When I read that I didn't know what "troglodyte" meant, and I thought that it must mean something like fiendishly complicated. But I actually went to the dictionary and found that it means quoting from Webster's, "a member of a primitive people dwelling in caves or pits; an animal, as an ant, that lives under the surface of the ground." So I think what the professor must have meant is that those of us who spend their time studying PSAs become troglodytes because indeed one has to spend a lot of time in a dark room with no telephone or e-mail in order to focus on the several hundred pages of interlocking provisions. But, once you've read a few hundred, you find that they have a lot of similarities.

Under a PSA, which provides the contractual context, there are four principle players. There is the seller of the mortgage loans into the securitization trust. The seller may or may not be the lender that made the loans in the first place. Sometimes aggregators purchase the loans and then put them into the trust. There is the trustee of the trust which takes ownership of the loans when they are sold by the seller. There is the master servicer who is supposed to administer the loans, collect the payments and so on. And there are the certificate holders who lend the money to the trust that it uses to purchase the loans from the seller, and they hope to get their money back when it is due. Let me talk briefly about each of these four players. The seller makes certain representations and warranties to the trustee about the condition of the loans that it is selling to the trust. And if it emerges that any of these representations was breached and in a way that materially affects the value of the loan as security for the payment to the certificates, then the seller is obligated to repurchase that loan at full price. This process is the one that we usually refer to in shorthand as "putbacks." Sellers typically make dozens and dozens of representations and warranties, but there are six of them that are important and that are common to virtually all deals. The first, which the Robosigner controversy particularly highlights, is that the title documents are in good order and that valid title and security interests in the mortgage is being passed from the seller to the trustee. The second is that the mortgage has been accurately described in what we refer to as the "loan tape," which is just the database of information about each loan that accompanies the agreement under which the trustee buys the loan. The third is that the mortgage was made in full compliance with law. The fourth is that it was made in compliance with the originator's underwriting guidelines. The fifth, that the property was appraised in accordance with standards of professional appraisal practice, and the last is the loan-to-value ratio, or in some cases the combined-loan-to-value ratio on the property does not exceed a hundred.

Countrywide also, in particular, made an additional representation in warranty that's not found in most other PSAs, and that is, and I'll quote, that "the origination underwriting, servicing, and collection practices with respect to each loan, have been in all respects, legal, proper, prudent and customary." In retrospect, given what we now know about Countrywide, something of a joke.

The second player is the trustee. The trustee has three principal duties under PSA. The first is to verify that the documents that it is receiving from the seller about each mortgage loan are indeed in good order. One upshot of the controversy about Robosigners is the revelation that some number of those documents were not in good order, and not only may the seller run into legal difficulty as a result of that, but so may the trustee, because the trustee is required to verify that the documents are in good

order when it receives them.

Incidentally, as a litigation sideline, MBIA, the monoline is the leader in Putback litigation against Countrywide, and it is fighting valiantly to admit statistical sampling of Countrywide's many loans in order to establish how many breached representations and warranties, and B of A, of course, is fighting back. An interesting sideline is that now in its own study of how many loans it messed up the foreclosures of, B of A itself is using sampling and a very small sample indeed. So I trust that this has not escaped the extremely able lawyers who represent MBIA.

The trustee's second duty is to administer the transaction, that is to collect payments, and to make sure that they are paid out to the proper parties in accordance with what we refer to as the "waterfall provisions" of the pooling and servicing agreement. And then the third duty of the trustee is to act as a fiduciary, to protect the rights of the certificate holders. But the trustee is not always a fiduciary; it is a fiduciary only in certain circumstances. The first is if there has been a default in the prompt payment of principal and interest, then the trustee has to shift from clerical mode to fiduciary mode without further demand or notice. The second condition is that there was a breech of a representation or warranty with respect to one of the loans, or that the servicer breached its obligations under the servicing agreement, which I'll come to in a moment. But those conditions do not trigger the fiduciary duty unless they are escalated to become a formal event of "DEFAULT" – capitalized, defined term **–** and they become an event of default only in two circumstances. One is if 25% of the certificate holders give notice that they've become an Event of Default, that is the premise of the letter that was recently sent by Kathy Patrick, in Houston, to the Trustee of numerous Countrywide deals. And in that circumstance the trustee is obligated to shift from clerical to fiduciary mode or—and this is less clear—that the trustee itself can give notice that escalates a breech from a mere breech to a, quote, "Event of Default." And one of the most interesting facets of the current Robosigner controversy will be whether or not the trustees of their own volition and without demand by 25% of the certificate holders shift from clerical to fiduciary mode when confronted with what is obvious and conclusive evidence of a breech of the law in the servicing of the loans by the Robosigners.

Again, by and large, the trustees have taken a very minimal view of their own duty to send notices of Events of Defaults—and again Deutsche Bank deserves honorable mention as an exception to that general rule. The third player, and the one we are concerned about in the Robosigners, is the master servicer. The master servicer has two main obligations: to service the loans, first of all, in the interest of and on behalf of the certificate holders, not in the interest of itself or its parent bank; and secondly to do so in accordance with the law, that is, by not submitting perjured affidavits, among other things, and in accordance with customary and usual and prudent practices of mortgage lenders.

And lastly, of course, there are the certificate holders, who are the people who actually invest their money and hope that if the seller, the master servicer, and the trustee do their job correctly they will get it back with interest. The main thing to know about certificate holders in this connection is that they are subject to what's called a "no-action clause," which says that certificate holders cannot sue for some, at least, violations of the PSA, unless 25% of them have previously demanded that the trustee file such suit and they have furnished suitable indemnity to the trustee to protect it in doing so.

My own opinion is that the courts are wary of no-action clauses because they hold the potential of leaving wrongs without a remedy, which the law abhors, and that no-action clauses apply certainly when certificate holders are fighting with each other, but not

always when the certificate holder urges the trust to take action that would benefit all of them, but my firm lost that issue two weeks ago in a class action that we brought against Countrywide, which certainly shows that no-action clauses have a lot of life left in them even though their exact scope has yet to be defined by the courts.

So that's the contractual context in which the controversy about Robosigners fits. Let me now turn to the litigation context. As I can see that there are three litigation avenues open to investors in residential mortgage-backed securities. None of these avenues of litigation is for either the faint of heart or those with a short attention span. Mr. Moynihan of Bank of America who is pictured in the cartoon before you, to express our view of his thoroughly reprehensible comments about investors who bought super senior AAA graded tranches of his bank's securities and whom he is now saying bought a Chevy Vega, anyway, that Mr. Moynihan, as well as his counterpart at JP Morgan Chase, Mr. Diamond, have made it quite clear that they view all this litigation as a war of attrition, that they have the resources and incentives to fight it, and they know that time is on their side because statutes of limitations in some cases are beginning to run out. And so any investor who chooses litigation as a path of recourse ought to know in advance that the opposition will be fierce and one has to have fire in the belly at the beginning or one will peter out.

In our view the first, and by far the best, avenue of litigation for investors is actions under the securities laws of the fifty states against the dealers who sold them the mortgage-backed bonds in the first place. This kind of litigation has two huge advantages. First, it's necessary to prove very little. Really only just that there were material inaccuracies in the way the mortgage collateral was described in the disclosure documents for the deal. It's not necessary to prove anything about the dealer's negligence, or fraud, or bad faith, or the investor's knowledge, or due diligence or anything like that.

The second big advantage is that the remedy is that you just get your money back. You, as one client said, "Return the item to the store for a refund." You don't have to prove damages, you don't have to worry about how much of the loss in value of the securities was caused by macroeconomic factors and so on, you just return the bond and get your money back. There are two big disadvantages to this course. One is that it's available only to purchasers at, or shortly after, the initial issuance of the bonds, and the other is that it's available only to investors in those states where the time limits are still open, and they are closing fairly quickly.

The second type of litigation—and in our view, probably the next best—is litigation to enforce putbacks against sellers that violated representations and warranties in their loans. Again, there are some big advantages. We know from reviewing data about 750,000 loans that my firm has studied—which our clients have purchased from Quorologic, which is the leading vendor of data about real estate in the United States—that something in the neighborhood of 45% of securitized loans between 2005 and 2007 are likely to have breached their reps and warranties. And even if you discount that, for, to allow some measure of argument, it's still, I think, fairly clear that somewhere between a quarter and a third of all those loans breached their reps and warranties. And the second advantage is that, again, there is no need to prove damages, you simply return the loan to the seller and the trust gets full price for it. The disadvantages are that probably, but not necessarily, you need 25% of the trust to do this kind of litigation, and that when you win this kind of case the money flows into the trust not back to the individual investors. So even if you don't have 25%, you need at least an investor with a big enough stake in the trust to make it worthwhile advancing the necessary legal fees. If this kind of litigation is successful, then normally the courts will assess the legal fees against the trust as a whole, but at least one investor needs

to have a big enough stake to be willing to advance the fees in anticipation of that.

And finally the third avenue of recourse, which I think is the most difficult, is litigation over servicing failures like Robosigning. The biggest advantage of this is that the banks have committed many, many serious servicing failures. The Robosigners are probably, are certainly the latest, and probably the clearest. I think there's really nothing left to be said in defense of a servicer that filed perjured affidavits. There's really no way for the servicer to argue that it complied with its obligation to service loans in accordance with the law. So even though Robosigners may be the clearest and easiest to prove, it's probably not the most serious. Probably the most serious of the servicing failures is the way in which servicers modify first loans, first-lien loans that are owned by securitization trusts so as to leave intact the second-lien loans that their parent banks own. Laurie Goodman is going to address this in a moment. This is probably the hottest of the hot-button issues for investors. Another egregious servicing failure is the failure of servicers to notify the trustee when they learn of loans that breached the representations and warranties. This is one of the main artifacts of the conflicts of interest embedded in these documents. When the seller and the servicer are owned by the same bank, or are the same bank, there's no reason for the seller to, for the servicer rather, to comply with its obligation to notify the trustee of loans that the trust ought to be able to put back and get full price for.

Another way in which the servicers have failed their obligations is by modifying loans to forgive interest but not principal, which means that borrowers get no equity in their homes, and again as Laurie will address in a moment, nobody except the servicers benefit from this because their servicing fee is a percentage of the principal. Both the borrowers and the investors would be far better off if borrowers were given equity in their homes and an incentive to stay there and continue to make payments.

Lastly, servicers are often engaged in all manner of self-dealing when they require borrowers to purchase insurance from insurance companies that they own at above-market rates, when they use captive firms for appraisal and marketing services and charge above-market rates, and so on. Another advantage of this type of litigation is that it holds the potential of expelling the servicer by terminating its servicing rights. This is the atom bomb for servicers. They can be counted on to fight it very vigorously, because they need to remain in place servicing the firsts in order to protect their seconds, but on the other hand the threat of it is probably the one thing that will bring them to the negotiating table.

So, I hope that that will give you an overview of the context of the Robosigner controversy. We have an illustrious panel of speakers to offer their further thoughts to you about it today. I'm going to call on each one of them. In turn, I'll introduce each as I call on him or her, and then when we're finished we'll invite questions both from those of you who are here at the Core Club this morning, and for those of you who are participating by webcast, if you e-mail your comments and questions to Comments@graceellsworth.com they will pop up on a computer here, and one of my colleagues will read them out to the group.

Our next speaker is Laurie Goodman from Amherst Securities Group. Laurie is generally acknowledged to be the smartest observer of mortgaged-backed securities. She is a longtime analyst, and a Ph.D. economist, and therefore operates at a level of intelligence and insight that eludes those of us who deal in mere words. She is uniformly respected, the first observer to highlight the conflict involved in second mortgages, and generally, I think, a person who will be able to shed a great deal of light on not only Robosigners and seconds, but other servicing failures as well. So Laurie:

Laurie Goodman: David, thank you very much for having me today. This is a very, very interesting session. I really appreciate the invite and thank you all for coming. What I'd like to do is spend a few minutes talking about three large conflicts of interest in securitizations. The first is the second lien issue, then we have the reps and warrants issue, and finally, other conflicts of interest. So, let's talk first about the second lien issue. The largest servicers own a very large share of the second liens. Let's look at some numbers. As of the second quarter, the four largest banks, B of A, Wells, JP Morgan Chase, and City Group, own 56.2% of the 1-4 family servicing. They also owned 433 billion of the roughly, and that number is blocked in red, thank you Bill, owned 433 billion of the roughly $1 trillion market in home equity lines of credit and second liens. So they own about 43% of the outstandings. You'll notice that their tangible common equity capital is roughly equal to their total revolving and second lien position. They own a relatively much smaller proportion of the first liens, and a good deal of the first liens are, of course, in private label securitizations. The second liens are in the bank portfolio. That, of course, creates a huge conflict of interest.

It's important to realize that under the Garn-St. Germain Act, the first lien has no control over the ability of the borrower to take out a second. By contrast, the second has to approve any sort of refi, any short sales, etc. This is a going-forward issue, and in my view the biggest omission of the Dodd-Frank Act was the inability to deal with these second mortgages because there's this very strong notion of a qualified mortgage, and a qualified mortgage is going to be a good loan that is going to be able to be securitized with no risk retention. The question, what is a good loan when the borrower can go out and re-lever tomorrow. Now let's look at the prevalence of second liens.

You'll notice that second liens are about, that about 51% of the first liens in private label securitizations have a second lien on them. That's about 46% in 2002, 54% in 2003, 57% in 2004, 56% in 2005, 48% in 2006, and 42% in 2007. In the 2003 through 2005 vintage years, it was mostly, it was more, it was more subsequent seconds; in later vintage years it became more simultaneous seconds. There is no question that the very presence of a second lien has a huge impact of the performance on the first lien. If you look at page 4 of your handout, what we've done is we've looked at the loan performance securitized database, matched the true LTV database, and then looked at the percent of each type of group that's nonperforming. Where there is a single lien, 10 1/2% of 2006 prime is non-performing. Second lien paid off, about the same; simultaneous second lien, 14.8% nonperforming. Single lien with subsequent higher lien, 18.2%; simultaneous second with subsequent higher lien, 17.4%. And when the data is missing, those numbers seem to indicate a disproportionate amount of that also has second liens. So you know when you look at the performance of the first liens, the very presence of a second lien just has a huge impact.

Now, what the banks seem to be doing is saying to borrowers, well listen, just keep paying on that second lien and we'll modify your first lien, and we'll maybe look to modify your second lien later. Remember the second lien modification program is a voluntary program. That's very, very clear when you look at the delinquency status of first liens versus second liens. And according to the FDIC data first liens in bank portfolios, 2.8% are 30-89 days delinquent; second liens, that number is 1.2 %. Notice that we're focusing on the 30 to 89 days delinquent for a very simple reason. First liens take forever to liquidate; by contrast, most second liens are written off relatively quickly. So looking at the 90 plus days delinquent, the first liens linger and the second liens get written off. So we focus on the 30 to 89 days delinquent.

Now let's look in the bottom section of how that compares to the relatively small amount of second liens in private label securitizations. If you return to page 2 for a second, what you'll notice is that there's about 27 billion of second liens in private label

securitization. So it's a relatively small number. Now if we go, if we look at the performance of second liens with FICOs greater than 720, what we find is that the 30 to 89 day delinquency rate on the first liens is about 3.5%. On second liens, it's about 5%. So basically the performance of first liens and securitizations where the FICO is greater than 720 for the borrower, the performance of first liens is a little bit worse, it's about 25% worse. For second liens it's about 400% worse. Clearly there's a differential standard of managing second liens and securitizations versus second liens in bank portfolios. It's very clear banks are doing all they can to get the, to keep, to get the first lien modified in order to keep the second intact, and that is just a huge conflict of interest.

The second conflict of interest, the putback issue. As you all very well know, most of the time the originator that you're putting back the mortgage to is, in fact, also the servicer. So what we've tried to do here is tried to quantify this issue. We looked at 2005 to 2007 vintages on pages 6 of your handout. We looked at original balance, current balance, the percent that have defaulted, and the severity. So where you see total default, that is the percent that we think will eventually default. The total loss is basically total default multiplied by the severity. So these are the losses that will be experienced in private label securitizations. We think the number is about 714 billion, now, out of the original 2.9 trillion. Now the way we've tried to figure out the putback is we assumed about 60% of the loans that have been paid off or are currently nonperforming you can attempt to put back. That is, there are some violations. About 40% of the current reperforming are always performing loans. We assumed a 25% success rate on those putbacks; thus the percent expected putback is 15% for the paid off, and nonperforming loans, about 10% for the reperforming and always performing loans. And you can see our numbers. So the putback is going to be that expected putback percentage times the total loss. And so you can see we expect about 97, so the potential for putbacks is essentially about 97 billion. Remember, the success will—this number's going to seem wildly high though, because first the success is going to be determined by investors being aligned in order to acquire a critical mass of voting rights, and I think that's very, very important. In addition, you have deal-specific PSAs, MLPAs and other sales and assignment documentations that in some deals can make it very, very difficult to do the putbacks.

Finally, when you go to do the putbacks, not all of the responsible parties are going to still be in business and that too is going to cap the amount that will eventually be recovered. Theoretically, we think the number is around 97 billion. The slide on page seven is kind of cute. Basically, it just makes the point that there are some very low hanging fruit. What we did is we looked through private label securitizations, and we said, where have those, "What has been the status of those borrowers that never made a single payment after the loan was securitized?" You know something that would seem like a very, very obvious putback candidate. Well obviously 0% of them have been cured or prepaid, 3% of them are actually still outstanding, having never made a payment in securitization, 37% of them have been repurchased, at par, and 59% of them have been liquidated with a 56% on average loss to the investors. So 59% of the loans that never made a single payment, the trust has actually experienced a loss. So it seems like there's a lot of obvious rep and warrant violations, more as you investigate the loan files. Obviously it's a loan-by-loan fight, as Dave had mentioned, but certainly one that can be very, very profitable.

Now what I'd like to do is look at some of the other conflicts of interest. Some of the originators are extremely conflicted. First, you know it's important to realize when you talk about one of the consequences of Robosigning is going to be enlarged liquidation lags. Those liquidation lags are already extremely long. You look at page 8, and you can see that in California and other judicial states, the liquidation lag is averaging about 19 months. In Florida and other judicial states, it's average close to 25 months.

When you look at the percent of loans greater than 24-months delinquent that have been liquidated, you sort of look at the latest liquidation measures and you say , "what percentage of these guys have actually been sitting there in their homes for at least two years without paying?" You can see the number is about 25% in California and other non-judicial states. It's about 45% in judicial states, ex-Florida, and it's over 50% in Florida. These are borrowers who have been sitting in their homes at least two years without paying, and realize the consequence of the Robosigning, is that you extend these liquidation lags still further as servicers proceed to dot every "i" and cross every "t," which they should have done to begin with.

Now there are some servicers that are unusually conflicted, and I've chosen two: Carrington and Countrywide. When you look at their liquidation lags on page 9, you can see that their liquidation lags are unusually long. That is, you know, sort of normal, is, normal subprime, all states, is about 19 months; Countrywide is about 26 months; and Carrington is about 30 months; and obviously there are differences between judicial and non-judicial states.

Now, when you look at loans that have been liquidated you get a sample of loans that have, well, been liquidated. So there is a selection bias that was written home to me as, you know you always hear, "well, gee, the average kid graduates in four or five years," as I'm sitting there writing out a year-six tuition check. And it dawned on me, that that's, my kid, in year six, is a lot like the loan that doesn't liquidate. So I decided to come up with a survival example to illustrate this point.

We are starting a new college, it's a twelve-person class. Two kids finish in year three; six kids finish after four years' and one kid apiece finishes in year five, six, seven and eight. In year two, same, same configuration. Year three, same configuration. In year four we double the size of the class, but again the same configuration. In year seven, we increase the size of the class again, but again the same configuration. You'll notice that I've rigged this such that the average kid spends about 4.67 years in the classroom. Again, I've rigged it this way. Now you asked, now in year five of this college's existence you say, okay, kids marching down the aisle in a cap and gown, how long have you been in school? The average is 3.89 years on average; the next year it's 3.92; in year seven it's 4.11; in year eight it's 4.33, because again the accelerated students finish very, finish quickly. Kids like my six-year example sit in the pipeline a much longer period of time, and so it is with loans that don't, that take forever to liquidate. So, you all read the story last week about that Florida borrower who's been in his home, hasn't paid since 2002, he doesn't count as a liquidation yet. So the way we're actually looking at liquidations is the percent of loans that are, say, 20 months delinquent that liquidate in that month. So, you can see, in 2008, the 20-month delinquent loans we were liquidating about, servicers as a whole were liquidating about 10%. By the fourth quarter of 2009, it was about 6%; now it's about 4%. That 4% on page 12 of your handout, is going to be different depending on whether it's a judicial or a non-judicial state. In a judicial state, that number is about 2% for 20 month old loans. In non-judicial states it's about 5%. So, again, that 4% is an average.

Now, let's look at the two servicers we were looking at before, Carrington and Countrywide, using this same type of analysis, on page 13 of the handout. And you can see that Carrington and Countrywide at 20 months liquidate far fewer percentages of the loans than the market as a whole. So, again, much, much slower. Why are they much slower? Carrington owns the residuals on their deals, and Countrywide, of course, owns Balboa, their captive insurance company, so when the borrower stops making his mortgage payments, Bank of America force places the insurance with Balboa at a much, much higher than market rate. So it makes sense that these servicers would be much, much slower to liquidate and in fact they are, another conflict

of interest in securitizations.

So, again, we've highlighted three conflicts of interest -- second liens, reps and warrants, and other conflicts of interest. Thank you very much.

David Grais: Thank you very much, Laurie. Our next speaker is Tal Franklin, who is the principle of Talcott Franklin P.C., a law firm in Dallas. Tal has been litigating and studying residential mortgage-backed securities since long before most of us knew that acronym and certainly long before it became fashionable. His greatest claim to fame now, though, is not his lengthy experience in this area, but the fact that he is the mastermind of a clearing house of investors that enables them to come together and pool their holdings to see where they, together, comprise 25% or more of one trust. This is, as I think Laurie commented as well, one of the best hopes of investors. Tal is going to address two topics for us. The first is his clearing house, it's progress and how it works. And the second is, since he does have a broad and deep background in the law of relating to RMBS, I've asked Tal to address one of the most technical aspects of the Robosigners controversy, and that is the possibility that mortgages that are owned by MERS, the Mortgage Electronic Recording System, may not be valid and therefore that the tax advantage status of securitization trusts has REMICs may be in jeopardy. Tal . . .

Talcott Franklin: I'm going to start with my closing argument to the jury, which is: "What Laurie said, I rest my case." That was amazing Laurie. Before we jump into the clearing house, it's not real clear, but I thought people would like to see what a Robosigned affidavit looks like. So, this is by Jeffrey Steffan, now famous guy. A limited signing officer, okay? And he was first duly sworn, according to law, and deposed and says on the basis of personal knowledge, that he's an employee of GMAC, etc. He's competent to testify to the matters in the affidavit. And GMAC Mortgage has custody of maintains records related to the promissory note, etc. is subject of the foreclosure action. Next line, please. Here's the other version of that. Again, the limited signing officer. Being first duly sworn, states as follows, "he's an LSO," I guess that is what he is writing there, with GMAC Mortgage etc.; and his job position affiant has the custody of and has personal knowledge of the accounts of said company. And specifically with the account of the defendant therein, and whited-out the name. Next.

Now, how did Robosigning really come to the fore, I mean, how did this get figured out? It was actually by a lawyer, a pro-bono lawyer, by the name of Thomas Cox. And, this is what he wrote in his brief after he deposed Jeffrey Stephan. "When Stephan says in an affidavit that he has personal knowledge of the facts stated in his affidavit, he doesn't. When he says that he has custody and control of the loan documents, he doesn't. When he says he's attaching 'a true and accurate copy of the note' or a mortgage, he has no idea if that is so, because he does not look at the exhibits. When he makes any other statement of fact, he has no idea if it is true. When the notary says that Stephan appeared before him or her, he didn't." Okay? And, next slide here.

The bank in this case made the argument that, hey, this is a technical issue. It's no big deal. The Bradbury defendant is behind on her mortgage, she should be out of the house. There's no reason why this should be an issue, Judge. And look what the Court said in response. The Court didn't really agree that this was no big deal. In fact, they called it a "serious and troubling matter." Alright? And they sanctioned the lender in this case for the full amount of the attorneys fees necessary to prove that the Robosigned affidavit existed. Go on to the next line.

This is what troubles me about that holding, however. Look who got sanctioned. This is in a footnote to that opinion. It wasn't the servicer, it was the holder of the note.

Alright. And that happened twice. Once in Florida and then once here. Mr. Cox is submitting his attorney's fee, I believe either today or in the next day or two; $27,000 is what he's asking for. Let's go to the next line.

This is what the Ohio Attorney General is saying about Robosigning, and again, I don't think he agrees that this is "no big deal." What he's really saying is that, and he's quoting some caselaw here, I'm just going to excerpt a bit for you, "an affidavit proven to be willfully, corruptly and intentionally false is worse than no affidavit at all, for it brands the whole part of the petition to which it is attached with the indicia of fraud." And that is a court case from Ohio, and he goes on to cite the U.S. Supreme Court. Next slide.

And this is something, I think, GMAC is going to be seeing a lot of, when these cases go to trial. This is one of their ads for Ally, and it's the one where they got the slick banker and he's taking – shows a girl a pony and then in the other one she gives her a toy, and then the other one gets a full pony. Next.

Some of the other issues that have been raised include the following. Here's one where the, essentially, the servicer and its council kept representing that they were the holder of the note, when in fact they weren't. And, again, here they're getting sanctioned in this court order, and the attorneys fees have yet to be submitted. And who do you think is going to wind up paying those attorneys fees? We are, at the clearing house, we are pretty disturbed, obviously, about this. And most of the clients I've spoken to are pretty disturbed about this trend. We're up to, as David said, just to give you an update, we have 2,600 deals, where we have 25% or more of the voting rights. We have 1,150 deals where we have 50% or more of the voting rights. Okay? We can do something, we can do something here. So, skipping two more slides. One of the things we are going to do is we're sending out a letter, and in that letter, we are going to, this is a quote from that letter, but it expresses a sentiment of a lot of investors, and it is the following: "We write to make it absolutely and unmistakably clear that <u>no</u> <u>Investor</u> endorsed, supported or authorized any representative of the Trust to engage in illegal activities, fabricate documents, falsely swear to affidavits, abuse the notary process, or otherwise mislead or defraud any borrowers, courts or public officials. These activities are of no benefit to investors and could only have been motivated by an effort to increase the profits associated with performing duties on behalf of the Trusts. Furthermore, we are aware of no servicing standard that would support these practices." It is amazing—if you had told me at the beginning of starting this clearinghouse that we would ever have to send a letter like this, I would, I never would have believed it. It is amazing what these banks have attempted to do here.

Now, I want to address one of the other issues that has been troubling people is the issue of whether or not there's a REMIC issue related to both the Robosigning and also the issue of MERS. And it is obviously a highly technical issue and one that I can't get into in a lot of detail. What I can tell you is I have talked to tax counsel about this. And, generally speaking, what they're saying is that the threshold can be low for a trust to be found non-REMIC compliant. In other words, it doesn't have to be every loan in the pool that is non-REMIC compliant; it can be a small percentage of the loans. That said, they do not believe that it would be likely that the IRS would find non-REMIC compliance. So, while it is an issue we should consider, and we definitely should consider it, because any change in administration could change the tenor and tone of that. It's one we've got to watch out for, and it's one we've got to think about. And I want to keep us on time, David, so I'll address any subsequent questions about that during the question/answer period. Sure.

David Grais: Our next speaker is Bill Frey. Bill is a thought leader in the RMBS arena. He has been active in the RMBS market for almost 30 years of his career. He is actually a leader not only in the U.S. market, but also in the Russian market. Bill designed the first RMBS securitization transactions in Russia, and he designed out of them, the conflicts of interest that you heard about this morning, and as a result, Bill's Russian deals are actually performing better than any of the deals in the United States, and I think provide something of a model for how securitization could be revived in the United States if it ever is. Bill is currently working on two of the most interesting projects in the RMBS arena. First, he's working on ways to, in which investors with access to whatever data they have, can document cases in which servicers are modifying firsts for the purpose of leaving their owned seconds intact. And secondly, Bill is working on creating a new entity that would enable investors to go to court to vindicate their rights, but it would do so on their behalf and thereby enable them to remain anonymous, which I think would address concerns that many investors have about possible retribution from the banks if their participation in litigation becomes known. Bill. . . .

William Frey: Well, thank you David, and I can say, it's a little intimidating following Laurie, but I've done this a couple of other times, so I'm getting use to it.

Let me take the first and second lien issue first. You just don't go to a loan tape and say, give me the loans that are modified and that the first liens are modified and the second liens are left intact. The loan tapes that are provided by the servicers, basically do not provide a road map for that. However, what we can do to ascertain this information is to map one month of a loan tape to the next month of a loan tape and come up with an algorithm to figure out which loans were indeed modified. Once you have that, what you basically have is a loan amount and a zip code and an approximate date of origination. And it is intentionally—the name of the borrower, the address and the specific information for the borrower are obscured for privacy reasons.

The next question is, if you're going to show that first and a second lien are on the same property and the first lien was modified to the benefit of the second lien, you have this, basically, a wall of information. And how does one actually pierce that? Now, first, one must realize that all this information is publicly available. All transactions relating to real estate are recorded in the county clerk's office and one can go and actually look up any transaction. I can find out how much my neighbor has as a mortgage, on a first and a second lien. And so on and so forth. So, what we end up having is a loan amount and a zip code. And we can basically go to that county clerk office and triangulate to the individual home. From that, we can then look to see who has the second and the status of that second, and when it was put on the property. When you have those data points, you have the name of the second, you have the servicer on the first, you have the fact that it's been modified or not modified, you can ascertain what their actions have been on a specific date. That is a specific evidence of a default. And, one thing the trustees, especially Bank of New York, has been very insistent upon, is that you not only come in with 25% (the 25% being a necessary but not a sufficient condition to open up the conversation of the servicer default), you must come up with specific evidence of a default.

Well, you can, when you start rolling off loan number such-and-such on 15 Maplewood Drive on such-n-such a date, that is just about as specific as you can get. The information is publicly available; it's in a very disaggregate form; and the trick is how to map from the raw loan tapes to the specific home and to the second lien holder. And we've done this for one servicer for the consortium, the clearinghouse, and we literally found defaults in every single trust. So, we expect to be doing that with the database, we're right now going through a growth spurt in the database. We're adding two or

three a day, some ridiculous number. Once that stops or slows down, we'll re-aggregate the data, we will reanalyze the database and figure out which trust we'll go forward on.

The other thing I'd like to talk about, a separate topic, is many investors are quite concerned about anonymity. There are large amounts of these loans held in sovereign wealth funds. There are large amounts of these loans held in public pension funds, where there may be political issues. There are money managers that have legal fiduciary responsibilities but have either ownership of the parent and they don't want to be public because it would piss the parent off or have interlocking contracts with the government that they would prefer to remain anonymous. So, just as within the securitization structure, there's many conflicts of interest, within the investor community, there's also conflicts of interest. And these investors have a legal responsibility to act as fiduciaries, and they're put in, basically, a quandary. There are four ways to deal with this. The first one is: they can place their assets in an LLC, and the LLC can act on their behalf. And they can get a regular interest in the LLC. So, economically, they own the entire cash flow and the credit risk. Nothing changes. It's put in a bankruptcy remote entity, and that entity can be the one that would sue on behalf of the investor. This was one of the plaintiffs in the Countrywide case was RMBS or Resolution Fund 3, or whatever it was.

The second is: in the event the parties cannot take a regular interest in an LLC, they can place the asset in an LLC and take an index-like note, which would economically defease the REMIC security and they would own a note.

The third is: the asset can be re-REMICed and the voting rights left in one class, which I could own or Tal could own, or a Trust could own, and the new re-REMICed security could go back to the investors. And the investor still has a mortgage-backed security, exactly like he had before.

And the fourth is a grant or trust which is, you could put multiple securities in there, there may be economies of scale in doing that. But the bottom line is that each one of these opportunities or vehicles to, essentially transfer voting rights to a consortium of investors can be done with a call on the underlying asset. So, if for example, it was transferred to Tal or to me, and I was voting the rights and you the investor decided I'd run off the rails, they could simply call the security, and I no longer have the voting rights. So, all these can be unwound basically instantly. And, once again, there is no transfer of economics, it's purely a transfer of voting rights, and allowing investors to remain anonymous.

One other ancillary benefit that can be done with this is that fees could be paid through the grant or trust and things like that. And economically, the fees would be attached to your bonds. So, if you were a money manager, the legal fees and such would be placed with the owners of your Trust not with the management company. And that's a big deal, because very often there's absolutely no provisions for the management company to bill the fund for the legal fees to enforce the fund's rights. There again, another conflict of interest which this vehicle has a tendency to take care of.

This structure can be done, is designed to maintain the anonymity of the investor, and if it were done through me, for example, and I knew it was a particular investor and I were ever subpoenaed I'd have to tell them. It can also be done through a lawyer, and the lawyer would place the securities with me and I would vote them and all of a sudden is it attorney-client privilege? And, I don't know who's in there. And the lawyer cannot tell because you're the client of the lawyer. So, there are ways to effectively guarantee the anonymity of the investors should they choose to want that anonymity. But keep in mind there's also the option that the investor decides to be named in which

case the anonymity is obviously not necessary. But there are vehicles that will allow investors to maintain their anonymity.

Based on that, I'll yield the floor to David.

David Grais: Our last speaker was to be Dennis Stow. Dennis is the CEO of Residential Credit Solutions, which is a non-conflicted servicer, that is, it is an independent company, not owned by, or affiliated with any originator or seller of mortgage loans. Unfortunately for us, Dennis works in Texas, and many of you will have read about the storm that grounded most flights coming out of the Midwest last night, so Dennis was unable to join us. He has however, been kind enough to ask a colleague, Rudy Orman, to join us and during the question-and-answer period, Rudy will be here and happy to answer questions about how non-conflicted servicers approach the servicing of trusts in which RMBS investors have invested. So that concludes our formal speeches for today. I'm going to entertain questions both from the floor here in the auditorium as well as from our webcast audience, which will be represented by my colleague Stewart Wells. So let's begin and perhaps take three questions from the floor. Yes sir? Actually, if you could just wait until you get the microphone so that those who are participating by webcast will be able to hear your question.

Questioner #1: In an instance where a 25% holder group has obtained the right to bring a legal action against a loan seller, assume that they've made the demand on the trustee, the trustee hasn't acted in a certain period of time, what authority do they have if they bring that legal action either to settle for less that a full par repurchase of the loans and also to release the loan seller from any future liability?

David Grais: That action would probably take the form of what's referred to as a derivative action, which is the form that we have recommended to our clients who have made demands like that. That's a case in which the investors are suing not in their own name but in the name of the trust because it's the right of the trust that they're trying to vindicate, and settlements of derivative actions are subject to approval of the court. So that if an investor who was not a member of the group that was suing felt that the settlement was unfair to the trust, that investor would have the opportunity to come into court and explain to the court why it should not approve the settlement.

Questioner #1: And the court approval then immunizes the 25% from any action?

David Grais: Correct, and if the settlement involves any repurchase of loans, then the law requires the court to shift the legal fees incurred by investors to the trust because the trust has benefited by the litigation.

Questioner #1: Yeah, it's sort of interesting though, is the court really willing to consider the economics of the settlement in deciding whether to approve it or not?

David Grais: Certainly.

Questioner #1: They will?

David Grais: Yes. The gentleman in the yellow tie, please.

Questioner #2: Thanks. What actions are possible with loans that have already been liquidated, if for example you believe that, you know, the recovery on the liquidated loan was something that could have been put back for a much higher recovery?

David Grais: Many PSAs—and I'll just ask my co-panelists to chime in on this—many PSAs provide that even a liquidated loan can be put back and the amount to be paid into the trust is the full price minus the proceeds of the liquidation. Tal would you like to comment on that as well?

Talcott Franklin: You raise a really good point, because a lot of these PSAs have what they call a sole remedy clause, and it lists a remedy for repurchase as—excuse me, the remedy for a breach—as repurchase substitution or a cure. But we had that issue before, and what we argued in that case was that the definition of mortgage loan in fact was broad enough to encompass a liquidated loan, so as long as we had the loan documents in our hands and could hand them back to them after the repurchase took place, we were able to put it back, and we won that argument in court.

David Grais: I'm going to ask my colleague Stewart Wells to represent our webcast audience and read us a couple of questions or comments from them.

Stewart Wells: The first question is, David, directed to you. Can you further describe the burden of proof that is necessary to demonstrate that a loan may be put back under PSA?

David Grais: The question is the burden of proof that applies to a case to put back a loan? There are two aspects to this, as in any claim for breach of contract, the burden of proof in the legal sense is just a preponderance of the evidence, that means 51%, just more evidence for than against. But the specific test that the court would apply is twofold. First, what was the representation or warranty breached? And second, did the breach have a material adverse effect on the interests of the certificate holders in the loan? I think what that means in plain English is, was the breach one that affected the value of the loan as collateral, or what is just a technical breach? So, to take two examples, if the loan was stated to secure a property that was the principal residence of the borrower, which is a much more secure mortgage than one that is secured by a vacation home or an investment property, that would materially and adversely affect the investors because the loan is worth much less as collateral. On the other hand, if the discrepancy were that the mortgage had been signed in blue ink instead of black ink, but courts nevertheless enforced mortgages in blue ink, that is a technical discrepancy that wouldn't meet the standard that it materially adversely affected the interests of the certificate holders.

Stewart Wells: What do you see as the prospect of litigation against trustees for initial documentation lapses?

David Grais: Tal would you like to take a crack at that one?

The prospect of litigation against trustees for initial documentation lapses.

Talcott Franklin: I think it's going to—this is a highly specific question or highly specific answer, because the PSA assigns to a party, some party, the obligation to review files that come in, and essentially what happens practically is that party, and that party could be the trustee, it could also be the servicer, or it could be an independent—another entity called a custodian, alright? And practically what is to happen is that the party receiving the documents is supposed to inventory them and prepare an exception, what they call an exception report, which is simply checking the boxes of each document that's supposed to be in the mortgage file. That thing goes back to the originator, and the originator supplies those documents where the boxes aren't checked. The question is, you know, in some instances, and here's where the legal issue come in, if the originator didn't give the documents that were supposed to be in the mortgage file, and now they can't be found, who's responsible for that, and it's going to be addressed by the PSA. If the PSA says that the custodian had the obligation to thereafter force that

issue, then obviously it would have been on them to do it.

David Grais: May I invite questions to the non-lawyers on the panel, whom I think are the more interesting participants?

Yes Sir?

Questioner #3: When you describe the three litigation options that you have, can you tell us if—obviously you can't go through those three avenues at the same time, or in which instances is there a vast majority where you intend to potentially litigate against the dealer or the seller or the trustee, what's the term?

David Grais: One could use all three avenues of litigation at once, but if one has a good case under the first, and succeeded then one would get all of the money back for the bonds, minus some technical adjustments and then it would probably not be a good use of your litigation budget to be pursuing the other two because in theory if you win the first, you don't have to worry about winning the others. So as a practical matter I think that investors who are eligible for the first strategy should use it and those who aren't should use either or both of the second. Yes Sir?

Questioner #4: I have two questions. First for Laurie. You mentioned that you thought your 97 billion dollar number was theoretical, would you be more willing to give a number that you thought was perhaps more within the bounds of likely? And then Talcott, you mentioned that you had several, I think thousand, deals where you had over 25% of the holders who had signed on, so what's the next step for that? You have their 25%, will you be—you mentioned there's letters, but are there other law suits that will follow that? Can you tell us what the next step is? Thank you.

Laurie Goodman: Yeah, I actually have that 97 billion dollars as a theoretical number, but the things that sort of scale it down are very, very hard to determine. So, for example, investors being aligned enough to acquire a critical mass of voting rights—and Tal's obviously done a great thing with the clearing house—but you don't know what percentage of the deals, they're deal-specific PSAs, some have stronger reps, some have weaker reps, you've got to go through each of those, and then finally some of the originators are either not in business, and then the question is what is the successor liability issues, and those are currently being litigated as well. So I really can't be more specific on it. There are so many questions as to what extent does successor liability apply. Actually, Tal may do a better job of answering the third part of that.

Talcott Franklin: The clearing house—I'm the lawyer, so I'm sort of the instrument of the clients, and so the clients are going to drive what direction the clearing house goes, obviously. I can always make suggestions as to what we should be doing, but at the end of the day, the clients are going to make those decisions. I will tell you that it's, you know, just assembling that hasn't been the only thing we've been doing, you know, some of the things we've been doing is just really reaching out to certain parties involved in this and trying to persuade them to do the right thing. And you know, sometimes it actually works. So, you know, part of it is just meeting the voting right requirements and sitting down with somebody and having a decent conversation about what their obligations are and why it's better to work with us than work against us.

David Grais: I would just like to add one gloss on Laurie's comments about the putback liability. I think if you could imagine an observer of RMBS with X-ray vision, who could look straight into the loan files and ask how many of them did not comply with the reps and warranties, and in how many of those cases did the noncompliance materially and adversely affect the interests of the investors, the answer would be a very high percentage, perhaps somewhere as I mentioned in the neighborhood of a quarter to a

third. You know, our securities cases, we bolster our complaints by purchasing the core logic data on every single one of the loans in all the trusts. We bought and studied data on 750,000 loans across 30 originators, and they're remarkably uniform in showing discrepancies from the prospectus supplement, but the prospectus supplement is based on the same loan tape as the reps and warranties in something in the neighborhood of 45 to 50% of all of those loans. So even if you scale back that figure as I mentioned in my comments leaving room for argument, you're still left with a very high number. The imponderable—and I think, therefore, I would suggest the top line number is considerably higher than Laurie's 97 billion. The imponderables are working back from the plaintiff with X-ray vision to the real-world plaintiffs, and in particular to the questions about whether investors will actually aggregate their holdings and act together or won't, and secondly, whether or not, as Laurie mentioned, defendants are actually going to be there who are solvent and able to respond, and third, as Laurie also mentioned, particularly in the case of J.P. Morgan, which has succeeded to EMC, one of the worst originators and Bank of America, which has succeeded to Countrywide, also a very bad originator, whether their legal strategies for ring-fencing those liabilities will succeed or not. To me, those are the questions that, rather than the number of noncompliant mortgages actually affect the prospects of the banks for putback litigation. Way in the back, please. The microphone is coming.

Questioner #5: This is a question around trustees' duties and obligations. You talked earlier about the trustees' duties potentially as document custodian. And, David, in your introductory statement, you talked about how the event of default works and how the fiduciary duty in the transition from a clerical duty to a fiduciary duty works for the trustee. Now, in terms of who determines an event of default and who signs off in the end ultimately whether it's an event of servicer default, I know it's fairly clear-cut if the servicer is defaulted on payments or defaulted on advances, but if it's a default under servicing covenants where the servicer hasn't notified the trustee itself but instead the requisite number of investees have notified the trustee. How does the trustee then determine definitively whether that's an event of default or not? Do they rely on trustee counsel or if there is another party that determines ultimately that it's not an event of default, are they then not under fiduciary duty at that point?

David Grais: I am going to ask Tal to comment as well. I think the first step is that they call their lawyers, and we know them and have a high regard for their work on behalf of the trustees. I think just anecdotally in our experience that the reaction of the lawyers tends to be proportional to the specificity of the communication from the investors. So when we have communicated with trustees and made rather general allegations about the conduct of the servicer usually we've been met with some skepticism, much as judges are somewhat skeptical of complaints in court that don't have a lot of detail. On the other hand, when we have sent letters demanding that the trustee exercise putback rights and we've accompanied each letter with a list of the loans in the trust that we think should be put back and the specific reasons for it, then we find that we've gotten a much more respectful hearing. Ultimately, of course, there is no objective judge, and if the trustee makes a judgment that a debatable conduct does not amount to a breach then the investors, being 25%, have the right to go forward without the trustee. I think the trustee has to be careful not to have demanded indemnity that is unrealistic for the investors to provide, but if there is a good-faith difference of opinion between the trustee and the investors, then the trustee should step aside and let the investors go forward and ultimately let the courts decide whether there was an event of default, which is, of course, the job of the courts in the end anyway. But let me invite Tal to comment as well.

Talcott Franklin: Yeah, you raise a great question, which is: Do they have to be right, or can they just get an opinion of counsel and wash their hands of it? There is a case that Orrick's brought involving the REMIC compliance of a certain hospital, and the issue in the

case was—it was a repurchase case but it may help answer your question cause there is not a case on point, that I am aware of, that addresses the issue you're talking about. But in that case the tax counsel basically said, "Hey, this is REMIC-compliant and, therefore, we don't breach a rep." And the court said, "No, you just actually—it's not that you can't rely on an opinion of counsel, you actually have to be right about this, and we find that your tax counsel may not have been right, so we're sending it back down." This is second circuit opinion, so we're sending it back down to make that decision. As a practical matter, I think what would happen is—and this has happened in a case, *Merrill Lynch v. Graystone*. The trustee basically, Merrill Lynch said, "We think this is a servicer event of default." The trustee said, "We don't think so but we will give you an assignment of the cause of action. Merrill Lynch, go sue Graystone." So, Merrill Lynch sues Graystone. Under the assignment, the fees and expenses would have been taken out and then any proceeds would have gone through the trust, and right before trial, Merrill Lynch dropped the case and walked away.

Questioner #5: So, what you're saying is that in this, in that circumstance that it's possible that the trust, you could just assign its role to the bond holders and let them deal with it.

Talcott Franklin: It's happened before.

Questioner #5: Gotcha.

David Grais: And sometimes trustees may be willing to appoint counsel nominated by the bond holders to represent the trust, which accomplishes the same thing. The gentleman in the front row, please.

Questioner #6: Thank you. My question is related to putbacks. Two parts; first on the timeline. How do you see the timeline from the second that you have the 25% percent or so? Considering that the monolines have been talking about maybe three years MBIA started with their first claims in late '08, and early '09, and they're saying that they're not going to even see a judge until mid-2011, and then you'll have litigation from there, so how does that really affect, you know, you think the investors really being with this with the whole process? And then could you talk more about the fees because I think I was confused before. I think, David, you were saying that upon the putbacks at the end of this process the court will say alright the trust has to reimburse for the legal fees; but, Bill, I think before you were talking about how the LLC would have the trust pay for the cost. So, Where are the costs? you know Who pays the cost?, When do investors need to pay the cost? and How much do you see them being?

David Grais: With respect to the timeline, it's slow, which is why I said at the beginning that this is not for investors with a short attention span. It starts as follows: the investors make a demand on the trustee, itemizing the loans that it wants the trustee to put back. Generally, we give the trustee a month to reply. The trustee then may or may not send a demand on to the seller. If the trustee doesn't, then we do. The seller has 90 days to cure, so we're up to four months already. And at the end, we expect that normally the seller refuses and that's the point at which it would be possible to file litigation. Not all litigation takes place in only the courts in New York; some takes place in courts where the investor may be situated. Different courts have different schedules, but I think it's true to say that these are the most—among the most—complex cases that any court sees and therefore take the longest. And we have already heard from our adversaries, as you know, that they plan to drag these cases out as long as they can, and in certainly MBIA against Countrywide, they're succeeding in doing that. So, I don't think three years is at all unrealistic. With respect to the costs, I think there are two components, the arrangement that we have made with some clients is that we are not sure whether this entire theory of relief is going to work and, therefore, we've offered them fixed or capped fees through the part of the litigation necessary to see

whether or not the courts will even accept investors as plaintiffs in these cases. After that, assuming the court lets the case go forward, then it's just grinding through loan files, which is very labor-intensive and expensive, which is why it's important for the investors who are the flywheels of this effort to have a sufficient stake in the trust that when money comes back into the trust, it will tangibly benefit their bonds otherwise, investors may find themselves doing worthwhile charitable work, but that's usually not why they undertake litigation. Tal, do you have anything else to add to that?

Ok, we are going to take a question or two from the webcast audience, please.

Stewart Wells: Laurie does your estimate of 97 billion include monoline claims? And what are the loss severities on those transactions?

Laurie Goodman: It doesn't include monoline claims, and it also doesn't include any second lien putbacks so, it was just first liens in our RMBS, and private label RMBS transactions. It also doesn't include anything from the GSE world.

David Grais: Okay, any other questions from the webcast audience?

Stewart Wells: Yes, can you explain what the effect of government investigations may have on private litigations?

David Grais: The question is what effect government investigations may have on private litigations. Private litigants always half worry about and half hope for parallel governmental investigations. In the extreme case, there is nothing quite so dramatic as a witness in a civil case having to take the fifth because he is under criminal investigations, but we have no reason to think that that's likely in any of these cases. I think the governmental investigation that's most on everybody's mind now is the fifty-state attorney general task force that has been convened to investigate the allegations of Robosigning and other failures by servicing, failures of servicing. Speaking entirely for myself here and then I'll invite my co-panelists to chime in as well. I think that investors should be reaching out to the AGs to make a couple of things clear. One is that even though the investors may appear in the form of investment funds or insurance companies or pension funds, ultimately the people who stand to lose by abusive investors are largely pensioners, because virtually every large pension fund is invested in this class of assets either directly or through money managers. And so when the attorneys general think of investors, they should not think of large, faceless, greedy institutions, but rather they should think of pensioners and particularly of the state pension funds in their own states, all of which are invested in this class of assets. Secondly, I think it's important to get across to the AGs that if they are to have any effect on reforming the practices of the servicers—which we all hope for—they must ensure that the servicers themselves must absorb any penalties that they agree to as part of the settlement with the AGs or are forced to pay as the result of any judgment if the investigation is not amicably settled. When the AGs investigated Countrywide for predatory lending in 2008, this issue was obscure and not highlighted and brought to their attention, but what Countrywide was notoriously able to do was to shift the cost of the settlement that it had promised to the AG's onto the investors in the trusts whose loans it serviced. Therefore the punitive and deterrent effect of the investigation was lost on Countrywide. We know that it was lost on Countrywide because among other things of Laurie's study of its behavior as a servicer and the reason is that Countrywide was able to escape the weight of the AG investigation by shifting the cost of the penalties that it occurred for predatory lending onto investors. This is not an issue that was brought to the attention of the AGs in 2008, but I think that investors will welcome the chance to bring it to their attention now. Unlike the situation in 2008, investors are now much better organized. They formed a group, the association of mortgage investors, which is advised by excellent Washington advisors to speak with one voice

and to counteract the lopsided effect of the concentration of power in the Big Four Banks that I think it would be fair to say really routed investors in the legislative fight over servicer safe harbor in 2009. Do any of my – Laurie, would you care to comment?

You are asked to stand here in the center, please.

Laurie Goodman: Let me just add one thing. I think the kind of feel among investors here is that the AG settlement would involve a large-scale modification effort rather than a monetary fine, which would hopefully be borne by the servicers. I think, I would hope that the AGs would have seen all the modification studies by now and learn that you basically—the chance of successful modification on a loan that is already foreclosed on is extremely low. That's been shown in study after study after study—I mean it is so low as to be trivial, and I mean the FDIC, even the FDIC—you don't even have to rely on Wall Street research for that, the FDIC's own studies have shown that as well.

David Grais: Bill reminds me of a good point. Fannie and Freddie are, of course, huge owners of RMBS. They have some tools that private sector investors don't, one of which is a regulator, FHFA, that has subpoena power. When FHFA and Fannie and Freddie became exasperated with their inability to get access to loan files the nice way, FHFA issued subpoenas to sixty or so originators and others, and one imagines—I don't know, but one imagines that they are in the process of getting documents produced in response to those subpoenas, which of course is information that is available to them but not to private sector investors. It emerged last week in a story in *The Wall Street Journal* that FHFA has hired a peerless litigation firm, Quinn Emanuel, to help it enforce those subpoenas, which clearly sends a signal that it's serious. And the fruits of those investigations will be a lot of information that's not generally available. Whether or not FHFA plans to make that information available to other investors in trusts in which Fannie and Freddie also hold stakes and, therefore, are the subject of subpoenas, I guess will remain to be seen. But that is certainly an investigation that will have a big effect on the private litigation particularly to enforce putbacks.

Okay, yes sir.

Questioner #7: Thank you. Two questions. On the second lien issue, have you tried to identify, and is this perhaps the relevant question, the number of second liens in which the servicer also holds the first because I would presume that that's where the primary conflict arises rather than with them holding the second where someone else might hold the first. With respect to MERS, an issue that's been surfaced and was not yet been addressed, is the question of whether loans at some point in the chain of title actually may be successfully into the trust in a timely basis and whether those loans if they did not make it in could theoretically if not be put back because they never got there, the trust would be able to seek full reimbursement of par for loans that never made it in. At some point, the mortgage transferor does hold the loan but now they're sitting on the loan that might only be worth 80. That could be a huge hit for someone in that chain of title.

David Grais: I am going to ask Laurie to address the first part of your question on ownership, the second Tal to address the second part of your questions on MERS.

Laurie Goodman: On ownership of seconds, if you look at page 3 of the handout and you look at the bottom line where it says "simultaneous seconds divided by total second liens." Your simultaneous seconds are almost always owned by the same lender—like close to 100% of the time. A good deal of the time, subsequent second is the same lender as the original just because you're used to banking with that institution. But again, there

are no hard numbers, so I would just as a guess, I would guess at something like 70%, but 50% that's simultaneous seconds and then 40% of the remainder.

Talcott Franklin: Thanks for the follow-up on MERS. The issue there is—that's right, there's been arguments made that perhaps the loans didn't actually make it into the trust—and, therefore, in essence, the trust is collecting on loans that it doesn't actually own; somebody else owns them, which brings up the REMIC-compliant issue, obviously. But the secondary issue is the breach of a rep and warranty because the loan actually didn't make it there. I think the problem is to answer that question, I think we have to turn to state law and the laws of 50 states— they may have different answers to it. Now, the response of the banks so far has been – and there's another issue, too, about assignment in blank. The notes were signed in blank. It says in the PSA they were signed in blank, was that okay? The response from the banks generally on that one has been that UCC Article 9 governs that and they just – and those are uniform laws so I know we are getting…

David Grais: Bill.

William Frey: One thing, when we took a couple of hundred trusts and examined the first and second liens and the behavior of the servicing of the first lien, first as the ownership of the second lien, we found servicer defaults in 100% of the trusts. So it wasn't a statistical sampling. We went and did loan-by-loan within those trusts and looked to see who owned the second. So, we could tell when we find the ownership of the second and what they did to the first whether the conflict of interest obscured their or affected their behavior because we could tell what they did with the second when they had the first in a securitization. So it was not a statistical sampling, and it worked out to be 100% of the trusts—not a 100% of the loans in the deal, a 100% of the trusts.

David Grais: One member of the webcast audience member asked how it is possible to sign up for the clearing house. I think the answer is that you should be in touch with Tal and his office. I know that the fee to join the clearing house is very modest and that the agreement that each member signs provides extensive protection for the confidentiality of its positions and name. Those of you either here or participating by webcast who are interested should call Tal. I think since we're near the end, I'm going to take two more questions, and then all of us will be happy to stick around after to answer further questions. Are there any more questions from the audience? Anything more from our. Okay. Well, ladies and gentleman thank you very much for coming today. We appreciate your interest in this issue, and all of us are here if you care to continue the conversation further.