quinn emanuel trial lawyers
quinn emanuel urquhart & sullivan, llp

Recent Structured Finance Representations

- We represented **an Eastern European bank** in defending two parallel claims brought against it by the Trustee in respect of overdue and unpaid Eurobonds of the Bank. We were successful in persuading the Tribunal that the bonds were tainted by illegality and that, as a result, the Bank should not be required to make payments in respect of the interests of noteholders shown to have been involved in such illegality.

- In the first ever RMBS-related jury trial, Quinn won a $29 million damages award in a hard fought battle over indemnity claims arising out of the sale of mortgages by HLC to ResCap Liquidating Trust's (the "Trust") predecessor, **Residential Funding Company, LLC** ("RFC"). With interest and attorney's fees, this should result in a judgement in excess of $60 million. Although the Trust had brought over 90 cases seeking indemnity against various defendants, this is the first case to actually go to trial. Previous settlements have resulted in recoveries for the trust in excess of $1.1 billion. This recovery validated Quinn's strategy and will set a new benchmark for future settlements.

- We represented **Hildene Opportunities Master Fund II Ltd.** and **EJF Capital LLC** in successfully opposing an involuntary chapter 11 petition filed against Taberna Preferred Funding IV, a CDO that had been forced into bankruptcy by three senior noteholders. Following 5 days of trial, the Court granted our motion for judgment as a matter of law and dismissed the involuntary petition on two independent grounds: (1) that the petitioning creditors were ineligible to file because they held secured nonrecourse claims and (2) that "cause" existed for dismissal because the case did not serve a legitimate bankruptcy purpose.

- We represented **UMB Bank, N.A.** as trustee on behalf of noteholders, in a case against Airplanes Limited and Airplanes U.S. Trust that involved a dispute over the improper reserving by Airplanes of $190 million that otherwise would have gone to noteholders. We obtained a favorable judgment on the pleadings with the Court finding that the $190 million reserve was improper and in violation of the indenture.

- We represented **South Tryon** in a lawsuit in the Southern District of New York seeking to force the Collateral Manager of Triaxx Prime CDO 2006-1, Ltd. ("Triaxx") to sell over $500 million in defaulted collateral in accordance with the requirements of the Indenture. South Tryon moved for summary judgment at the outset of the case arguing that the Indenture unambiguously required the Collateral Manager to sell. The District Court ruled in South Tryon's favor on that motion and ordered the Collateral Manager to liquidate the defaulted collateral. The District Court, and then the Second Circuit, denied the Collateral Manager's attempt to stay the judgment. Finally, the Second Circuit affirmed the District Court's decision in its entirety.

- We represent **Bank of New York Mellon ("BNY")**, as Securities Administrator of a Residential Mortgage-Backed Securities ("RMBS") trust of 6,510 loans with a face value of about $1.275 billion, in a contract lawsuit against the loans' originator, their seller to the trust, and their servicer, based on breaches of representations and warranties made regarding the credit quality of the loans. The action was commenced by BNY through other counsel, and the court dismissed the case in its entirety. The firm was retained for the appeal, and obtained the reversal of the lower court's dismissal of claims (1) against the loan seller for failure to backstop the loan originator's failure to repurchase loans which breached the representations and warranties by repurchasing the loans itself, and (2) against the loan servicer, for failing to notify BNY and the trustee when it discovered that the loans breached the representations and warranties. This ruling permits RMBS suits against parties with such "backstop" repurchase duties even where, as here, claims against the originator itself are deemed barred by the statute of limitations. And it further opens an additional area of RMBS litigation against servicers for failure to give notice of breaching loans, by confirming that such claims against servicers are not barred by the standard contractual limitations on remedies in RMBS contracts.

- We represent **Computershare Trust Company** in a breach of warranty action against Natixis Real Estate Capital concerning warranties Natixis made about loans backing a residential mortgage-backed securitization trust in New York state court. Computershare acts as a separate Securities Administrator on behalf of the trust, and Natixis moved to dismiss, arguing (among other things) that only the trustee could bring the suit. The lower court held that Computershare had standing to bring the suit and, in an issue of first impression, the First Department affirmed. The appellate court's ruling creates new precedent that non-trustees may have standing to bring suits on behalf of securitization trusts.

- On behalf of client **CIFG**, now known as Assured Guaranty, Quinn Emanuel convinced a New York state appellate court to modify the lower court's dismissal of a misrepresentation claim with prejudice to a dismissal without prejudice, thus allowing CIFG to replead the claim in its effort to recover from Bear Stearns for inducing CIFG to issue financial guaranty insurance regarding collateralized debt obligation vehicles that Bear Stearns had loaded with risky assets.

- After a week-long trial, we won a complete defense verdict—plaintiff was awarded nothing and lost on every count—in a bet-the-company case. We represented **Athilon Capital Corp.** and its board of directors in a lawsuit brought by Quadrant Structured Products LLC (owned by Magnetar) in Delaware Chancery Court. Quadrant sought not only hundreds of millions of dollars and findings of breach of fiduciary duty against the members of the Athilon board as individuals—but also an order requiring Athilon to liquidate its assets and shut its business down entirely. Instead, Vice Chancellor Laster denied all the relief Quadrant requested, leaving Athilon free to continue the long-term business strategy Quadrant challenged at trial. Quadrant attempted to reverse our trial win by appealing to the Delaware Supreme Court, but we won the appeal by securing an en banc decision that affirmed all of the trial court's rulings.

- We represented **U.S. Bank**, as trustee of three residential mortgage-backed securities trusts, in a breach of warranty action against UBS, which issued the trust. In the Spring of 2016, Judge Kevin Castel of the Southern District of New York held a month-long bench trial on the question of whether UBS had breached its warranties for approximately 9,300 loans. On September 6, 2016, Judge Castel issued findings of fact and conclusions of law that held UBS had materially violated its warranties as to 13 of 20 "exemplar" loans, and ordered special masters to review the remaining loans consistent with his decision.

- We represented the **Official Committee of Unsecured Creditors of Lehman Brothers Holdings Inc.** in litigation against JPMorgan Chase Bank, N.A. concerning collateral JPMorgan obtained from Lehman pre-petition and the close out of derivatives transactions between the two institutions post-petition, resulting in a settlement that included a cash payment by JPMorgan to the Lehman estate of over $1.4 billion.

- A federal judge has ruled that plaintiffs' claims can go forward in the Quinn Emanuel-led ISDAfix antitrust case. Our basic allegation is that the major Wall Street banks who set the ISDAfix benchmark rate—which is used to determine the settlement value of certain financial derivatives—conspired to rig ISDAfix in order to extract higher profits on financial instruments that are linked to ISDAfix. In a March 28, 2016 decision, Judge Jesse Furman of the S.D.N.Y. largely upheld our complaint, sustaining the antitrust, breach of contract and unjust enrichment claims. This victory is notable because we identified anomalies in the market and put together a complaint where the conspiracy was pled almost entirely on our self-developed economic evidence. The decision thus vindicates our data-driven approach to developing these large antitrust and market manipulation cases—something only Quinn Emanuel has been doing, allowing us to stake a unique claim to the right to "lead counsel" in class-action antitrust cases involving the financial markets. On May 11, 2016, the court preliminarily approved settlements with six defendant banks: Bank of America, Barclays, Credit Suisse, Deutsche Bank, JPMorgan, and RBS. Those defendants have agreed to pay a total of $324 million, and to provide discovery that will assist in the continued prosecution of the case.

- We achieved a complete victory for our clients, **GSO Credit Partners** and **Canyon Partners**, in the Financial List of the English High Court. The dispute arose out of an agreement by our clients to acquire (by way of back-to-back trades) a position held by HCC International Insurance Company Plc under a surety bonds facility. Barclays Bank was the intermediary for the purpose of the back-to-back trades. The trades were entered into under standard Loan Market Association (LMA) documentation and the dispute concerned the settlement amount payable in relation to the trades. The judge, Mr. Justice Knowles, agreed with our arguments and found that our construction of the LMA terms was correct. Significantly for us in the London legal market, this was the first judgment of the recently created Financial List.

- We represent the monoline insurer **CIFG Assurance North America** in its pursuit of damages against Goldman, Sachs for fraud in connection with a collateralized debt obligation as to which CIFG provided insurance and in which it invested. In arbitrating

CIFG's claim relating to its investment, we prevailed and successfully obtained a finding of fraud against Goldman and an order to pay substantial damages. CIFG will now return to prosecute the remainder of its claims in state court, where Goldman is collaterally estopped from challenging the fraud finding.

- We represented **Zions Bancorporation** in a case concerning a dispute over the interpretation of waterfall payment provisions in a CDO Indenture. Zions was adverse to both the CDO Trustee (Wells Fargo) and another investor. We prevailed on a motion for judgment on the pleadings. Judge Buchwald of the United Stated District Court for the Southern District of New York ruled that Zions interpretation of the waterfall payment provisions was clearly and unambiguously correct.

- We represented **ICICI Bank Limited** in proceedings concerning the construction of three letters of credit together worth $150 million. ICICI Bank Limited was the issuing bank under the credits and by our construction of them the letters of credit expired before the liability against which they were being drawn became due and payable. Both at trial and on appeal the court agreed with our construction and our client avoided this $150 million liability – this was critical given the low practical likelihood of recouping funds from the borrower.

- We represented **Financial Guaranty Insurance Company** in a case relating to a $900 million insurance policy on a credit default swap referencing a $1.5 billion collateralized debt obligation. We obtained a complete reversal from the Second Circuit of the district court's order dismissing the complaint for failure to state a claim, protecting our client's right to pursue its claims for fraud, negligent misrepresentation, and negligence.

- In a truly historic partnership between a regulator and a private firm, we represent the **Federal Housing Finance Agency**, as Conservator for Fannie Mae and Freddie Mac, in connection with its investigation and litigation of residential mortgage-backed securities. We filed fourteen complaints, asserting billions in damages, against most major investment banks. Each complaint asserts federal and state "strict liability" statutory claims arising out of misrepresentations about the securities, and certain complaints assert common law fraud claims. As widely reported, this is one of the most significant court actions taken by any federal regulator since the advent of the mortgage crisis, and the single largest set of actions ever filed by a governmental entity. In 2012, the Honorable Denise L. Cote denied a motion to dismiss the claims in what was designated the "lead case" brought by FHFA, and in 2013 entered a series of rulings to streamline the cases for trial, including orders as to statistical sampling, loan file collection and reunderwriting, the scope of the so-called "actual knowledge" defense, the lack of any loss causation defense to FHFA's Blue Sky claims, and other significant issues. In 2013 we also obtained a unanimous affirmance by the Second Circuit of Judge Cote's decision as to the timeliness of FHFA's claims and its standing to sue, as well as a unanimous rejection of defendants' joint mandamus petition seeking to overturn a number of Judge Cote's key discovery rulings. With the cases moving toward fixed trial dates in 2014 and 2015, we have now settled twelve of the actions filed by Quinn Emanuel against Bank of America, Merrill Lynch, Countrywide, Credit Suisse, Deutsche

Bank, J.P. Morgan, UBS, Citigroup, First Horizon, Barclays, Goldman Sachs, and HSBC. To date, we have recovered approximately $20 billion for FHFA.

- We represented monoline insurer **Assured Guaranty** in a suit against DLJ Mortgage Capital and its parent Credit Suisse alleging breach of contract, fraud, and material misrepresentation in the inducement of an insurance contract arising out of defendants' pervasive misrepresentations concerning the credit quality of mortgage loans underlying six residential mortgage-backed securities transactions sponsored and underwritten by defendants, for which Assured provided financial guaranty insurance. Assured sought damages of approximately $400 million. After three years of litigation, including a successful appeal which fully reinstated part of Assured's breach of contract claims that had been dismissed by the trial court, the suit was settled on mutually agreeable terms.

- We represented **AIG** (and its subsidiary AIG Matched Funding Corp.) in a suit in which eight plaintiffs alleged that AIG breached their guaranteed investment contracts ("GIC"s) in 2008 by triggering the GICs' event of default provisions. The Delaware Superior Court granted our motion to dismiss the suit, agreeing with our argument that, having received back all principal invested under the GICs, with accrued interest, the plaintiffs could not recover under any theory of damages for any alleged breach. The Court also agreed with our argument that plaintiffs were barred from reinvesting funds with AIG pursuant to the same GICs they allege were breached. The Delaware Supreme Court affirmed in a summary order following oral argument.

- We secured a multi-billion dollar settlement, involving both cash payments and the commutation of credit default swaps, for our client **MBIA Insurance Corporation**, after a series of victories in the New York state trial and appellate courts. In the summary judgment rulings immediately prior to settlement, Justice Bransten adopted virtually the entire legal framework advocated by Quinn Emanuel. The court confirmed: (a) insurers may recover on misrepresentation claims without showing reasonable reliance or loss causation beyond inducement to enter the transaction; (b) plaintiffs can enforce repurchase claims for material breaches regardless of whether or why the defective loans are in default or delinquency—rendering the housing crisis irrelevant as a purported defense; and (c) "no default" warranties make actionable by investors and insurers instances where the borrower provided false statements, even if the transaction documents do not otherwise warranty against borrower fraud. The Court also ruled that MBIA correctly applied the New York law of *de facto* merger to its claims of successor liability against Bank of America, under which the successor cannot assert as a legal defense that it paid fair value for the assets of its predecessor. In addition, the First Department of New York's Appellate Division ruled in favor of MBIA on the day-one insurance causation rule, the interpretation of the "material and adverse effect" test in RMBS putback cases, and the inapplicability of "sole remedy" clauses to insurer claims of misrepresentation.

- We also have a large practice representing other investors that purchased RMBS. For example, we represented **Allstate Insurance Company** in eight lawsuits, represented **Prudential Insurance Company** in twelve lawsuits, **Capital Ventures International** in two lawsuits; and **Massachusetts Mutual Life Insurance Company** in nine

lawsuits. All of those lawsuits have now been resolved, and sought to recover losses on residential mortgage-backed securities arising from material misrepresentations about the quality of the underlying loan collateral. These cases were against the world's leading banks (including, for example, Bank of America, Merrill Lynch, Credit Suisse, Citigroup, Goldman Sachs, UBS, JP Morgan, and Deutsche Bank), and cover litigation pending in various state and federal courts, and cover federal and state statutory, as well as state common-law, claims.

- We represented **Sceptre, LLC**, a holder of Class I-A-2 Notes in the American Home Mortgage 2005-2 Investment Trust, in its trial victory in federal district court successfully reforming a nine year old indenture to correct for a scrivener's error that mistakenly subordinated Sceptre's notes in the Trust's capital structure that had been well publicized for years and prior to Sceptre's purchase of its notes. Initiated as a trust instruction proceeding, we succeeded against a holder of other impacted notes in presenting clear and convincing evidence at trial of a scrivener's error in the allocation of losses, and the Court ordered that the Indenture be reformed to preserve the intended seniority of Sceptre's Class I-A-2 Notes. This case represents the first reported decision applying New York law to grant reformation of a bond indenture in the face of bondholder objections.

- We represented **CIFG Assurance North America, Inc.** ("CIFG") in an action in which CIFG was alleged to have breached two agreements with Royal Park Investments, SA/NV ("RPI")—a special purpose vehicle formed to hold Fortis Bank assets—arising from a mortgage backed securities issuance that RPI purchased and CIFG insured. RPI sought to recover its purported share of liquidation proceeds that CIFG obtained upon liquidation of the collateral on the grounds that in agreeing to forego RPI's right to CIFG's insurance on the bonds, RPI was entitled to its share of the liquidated proceeds. Following extensive summary judgment briefing and argument, we obtained a complete dismissal, with prejudice, of RPI's claim.

- We served as Lead Counsel for a class of major investors alleging collusion in the multi-trillion dollar Credit Default Swaps market. The defendants included twelve major wall street banks, a data provider, and an industry trade association. The Department of Justice had examined the market in 2013, but reportedly closed its investigation with no files or penalties to any of the defendants. The lack of convictions increased the risk profile of the case, but Quinn Emanuel nonetheless sought to bring reform to the market and compensate investors for the harm imposed by the conspiracy. The case ultimately settled for $1.87 billion dollars in the midst of fact depositions, placing the matter among the top antitrust settlements of all time. In support of the settlement, the mediator Judge Weinstein (Ret.), said: "I would go so far as to say that, in 30-plus years of mediating high-stakes disputes, this was one of the finest examples of efficient and effective lawyering by plaintiffs' counsel that I have ever witnessed. I have rarely, if ever, observed a Plaintiff in a case of this complexity and size, achieve a result of this magnitude with the speed that Plaintiffs achieved here." At the final approval hearing, the Honorable Judge Denise Cote explained the settlement "particularly its size, is attributable in no small measure to the skill of class counsel and the litigation strategy it employed."

- We represent various plaintiffs, including **Prudential**, **Capital Ventures**, **Salix**, and **The City of Philadelphia**, in claims arising from various banks' manipulation of the London Interbank Offered Rate (Libor). Defendants are U.S. Dollar Libor panel banks or their affiliates, and include Bank of America, Barclays, Citigroup, Credit Suisse, Deutsche Bank, J.P. Morgan, RBC, RBS, and UBS. Plaintiffs allege that, over a period of years, defendants deliberately suppressed Libor, which reduced the Libor-linked payments due to plaintiffs on their interest-rate swaps, increased the termination payments each plaintiff was required to make when a swap was terminated, decreased payments being made on Libor-linked floating-rate bonds, or otherwise decreased the value of investments tied to Libor. Plaintiffs allege that defendants' manipulation of Libor, among other things, constituted fraud, breached the terms of certain contracts, interfered with others, and violated the Sherman Act. The plaintiffs' group, including our firm, also recently succeeded in convincing the Second Circuit to overturn the district court's prior dismissal of the antitrust claims, putting the potential for treble damages back on the table.

- In 2014, we were was selected as co-lead class counsel by Judge Caproni of the S.D.N.Y. on behalf of investors harmed when a group of banks conspired to manipulate the market for gold and gold-related investments. Defendants include the panel banks that make up the "London Gold Fixing," a daily process that was supposed to involve a competitive auction among the panel members. Instead, the complaint alleges the panel banks and their co-conspirators used this secretive, daily conference call as a platform for price-fixing. An extensive analysis of prices around the Fixing window shows statistically significant, anomalous movements appearing around the Fixing window—but *only* around the Fixing window. This is alleged to be a tell-tale sign of manipulation of the market in advance and during the setting of the benchmark Fix price. The consolidated class-action complaint brings claims for violations of the Sherman Act, violations of the Commodity Exchange Act, and unjust enrichment, on behalf of those who transacted in certain gold-related investments, including gold futures contracts traded on COMEX and other exchanges during the class period (January 2004-June 2013). Defendant Deutsche Bank settled in 2015. Remaining Defendants are The Bank of Nova Scotia, Barclays Bank plc, HSBC Bank plc, Société Générale SA, UBS AG, UBS Securities LLC, and The London Gold Market Fixing Limited.

- In November 2015, we initiated a class action antitrust lawsuit to recover damages suffered by investors in interest rate swaps ("IRS") due to an unlawful conspiracy to block the emergence of exchange trading of interest rate swaps. The case was filed on behalf of named plaintiffs the **Public School Teachers' Pension and Retirement Fund of Chicago** and the **Mayor and City Council of Baltimore**, and alleges that a dozen large Wall Street banks and two co-conspirators (entities that broker and provide trading services for IRS transactions) manipulated the market for interest rate swaps at the expense of investors. The IRS market is one of the largest financial markets with billions of dollars in swaps traded each day. The lawsuit is pioneering because it is not an outgrowth of a prior government investigations, indictment, or guilty plea; the conduct at issue was instead uncovered and developed by Quinn Emanuel acting as "private attorney's general." We spent over six months investigating the facts and law

underlying what eventually became the complaint, including interviewing dozens of potential witnesses and industry experts. Since filing, we have expeditiously advanced the lawsuit, but in the interests of judicial economy and overall efficiency are currently awaiting a ruling from the Judicial Panel on Multidistrict Litigation on our motion to transfer and centralize a copy-cat lawsuit filed nearly three months later in the Northern District of Illinois. The JPML sent the cases to Judge Paul A. Engelmayer in the Southern District of New York per our request, who then selected us as co-lead counsel. Judge Engelmayer recognized that "the efforts undertaken by Quinn Emanuel and Cohen Milstein [in crafting the complaint] were more generative and exceeded the investigative work of the other applicants by an order of magnitude."

- We have filed four class action complaints on behalf of investors in U.S. Treasury Securities and related financial instruments who allege that the 22 "primary dealers" entrusted with an "inside" role at the public auctions for Treasury Securities colluded to rig the auctions. The cases allege that these 22 major financial institutions conspired to artificially drive up the yield of Treasury Securities, and correspondingly to drive down the prices of those Treasuries, to their own benefit. The Defendants then turned around and sold the Treasuries at higher prices (and correspondingly lower yields) in the secondary markets, reaping substantial profits. The Quinn Emanuel complaints employ a series of statistical "screens" to show that yields were repeatedly higher (and prices lower) than they would have been in a competitive auction. The complaints also explain how investors in Treasury Securities, Treasury Futures, Treasury-linked swaps, and other related instruments were harmed by this manipulative scheme. The Quinn Emanuel cases have been consolidated with class action complaints filed by dozens of other plaintiffs before Judge Paul Gardephe in the Southern District of New York. We have applied for appointment as c-lead class counsel; briefing for lead counsel appointment is currently ongoing.

- We represented **Access Industries** in an action for breach of an investment management agreement, and obtained a $63 million verdict based on manager's violation of sector caps limiting percentage of mortgage securities.

- We obtained a unanimous Second Circuit victory for **AIG** in a suit against Bank of America and other banks, who had removed our client's state-court RMBS fraud action under the Edge Act. The banks argued that the fact that a few mortgages were originated in Guam and other insular territories created federal jurisdiction. The Second Circuit disagreed, holding that the Edge Act applied only to suits that actually arise out of the purported foreign banking activity by the federal bank that is a party to the suit. We also represent AIG in RBMS, CDOs, and related cases, including: (1) a pending RMBS suit against Countrywide and Merrill Lynch; (2) a suit against ICP Asset Management LLC and other parties, alleging that the defendants fraudulently shifted losses of over $1 billion to AIG Financial Products via sales to certain CDOs on which AIG Financial Products held the credit risk; (3) a settlement against seven CDOs relating to interest-rate swaps, after an AIG victory defeating an order to show cause to escrow funds pending resolution of the litigation.

- We represent **Assured Guaranty Municipal Corp.** and **Assured Guaranty Corp.** in connection with their litigation of claims arising from their issuance of financial guaranty insurance for RMBS underwritten and marketed by (1) DLJ Mortgage Capital, Inc. and Credit Suisse Securities (USA) LLC ($1.8 billion), and (2) IndyMac Bank and its outside underwriters ($250 million). Assured asserts that the defendants made contractual and other representations that the mortgage loans met specified quality control and underwriting standards that were materially false or misleading. We recently secured a settlement of $358 million from UBS, plus an 85% reinsurance obligation for future payments, on a similar case against UBS Real Estate Securities Inc. We also represent Assured Guaranty in a suit alleging that JPMorgan fraudulently induced it to issue municipal bond insurance policies guaranteeing principal and interest payments for municipal warrants issued by Jefferson County and underwritten by JPMorgan, including through bribing county officials.

- We represent **U.S. Bank** as trustee for multiple RMBS trusts. Unlike the claims brought by investors, claims brought by the RMBS trustees are primarily contractual in nature, seeking to enforce the representations and warranties made by the sellers of the loans.

- We were lead trial counsel for **MHR Capital Management** in its successful defense of litigation brought by Carl Icahn as part of his hostile takeover bid for Lions Gate Entertainment Corp. In the span of two months, we won a trial in British Columbia, defeating Icahn's shareholder oppression claim (later affirmed on appeal) and won a preliminary injunction hearing in New York defeating his request to enjoin the voting of MHR's shares.

- We prevailed in a court trial for **BlackRock** in a structured-finance matter, successfully opposing reformation of the deal documents (PSAs) governing three RMBS securitizations. The court adopted our proposed statement in full—finding reformation was unwarranted and ordering the release of tens of millions of dollars from escrow to certificate holders that include our client BlackRock.

- We obtained a directed summary judgment on appeal for a Brazilian infrastructure company **CCR Rodoanel** in a swap dispute against French and Portuguese banks.

- We obtained dismissal of all claims against **Swiss Re** by a Dutch insurer in connection with a CDO backed primarily by credit default swaps that referenced collateral selected by Swiss Re.

- We represented a **group of funds** in a claim against a European investment bank arising from a failed CMBS investment. Our clients had participated in a junior tranche of a development loan extended to a German shopping mall operator, by way of subscription for notes issued by an SPV. Our clients had, in substance, acquired their interest from the investment bank. However, in order to pursue a claim, they had to 'look through' the SPV and a note trustee, both of which were controlled by the defendant bank. We forced the bank to delegate the trustee's rights to a non-conflicted trustee, then applied pressure through that trustee to get the bank into a direct negotiation. The essence of our clients' complaint was that the warranties given at the time of the investment were

false. We built a case based on local factual investigations in Germany and a review of hundreds of thousands of documents disclosed by the Bank. As a result of our work, a confidential (favorable) settlement was reached.

- We represent a **monoline insurer** in connection with the restructuring of a major UK Pubco. Our client had provided a 'wrap' in respect to a bond issue undertaken by a securitization structure within the Pubco. The effect of a proposed restructuring was to move value away from the entities within the securitization structure—the only entities against which a right of indemnity was initially believed to exist. We developed novel legal arguments to contend for the existence of rights against companies outside the securitization structure. In the face of serious skepticism from the client's transactional counsel, we deployed those arguments in the restructuring negotiations, backed up with a threat to litigate the point. The Pubco eventually conceded, entering into a new agreement confirming that our client held the right to look for indemnity against a company that would retain value even post-restructuring.

- We represented **Morgan Stanley & Co International Plc** in its defense of a multimillion dollar claim brought against it in the Commercial Court by Oasis Investments Limited, a Hong Kong-based hedge fund. The claim arose out of a put-option transaction in relation to shares in Sino-Forest Corporation entered into between the parties in May 2011 and governed by the terms of the 2002 ISDA Master Agreement. The claim concerns the parties' competing interpretations of the consequences of MSI giving notice of early termination of the transaction, the trading suspension which affected trading of the shares on the Toronto Stock Exchange, and Oasis' purported exercise of the put option prior to such termination taking effect. The case was successfully settled in 2012.

- We represent **UniCredit** in proceedings brought against it by Barclays, in relation to the disputed termination of certain regulatory capital guarantees. The dispute turned on whether a regulatory change had occurred, and whether Barclays had lawfully withheld a commercially reasonable consent to the termination of the guarantees. Barclays conceded the regulatory-change issue before trial, but prevailed in the first instance on the consent issue. UniCredit has recently sought permission to appeal from the English Court of Appeal. The case raises important issues for the market, because the 'commercially reasonable manner' language is in increasing use in the capital markets and ISDA-based agreements. Thus, the court's ultimate interpretation of this concept will have a significant impact on the operation of many agreements and structures.

- We represent **SNCB** (the Belgium national rail company) in connection with a claim against UBS AG arising out of credit defeasance and security arrangements. The case turns on whether an order requiring the segregation of certain assets could be treated by UBS as an event of default. If so, the question is whether UBS was obliged to deliver the bonds that were in the reference entity at the time of default, or whether UBS could supply alternative bonds that were "cheapest to deliver."

- We represent a **German municipal authority** in litigation arising from a CDO/CDS structure established in connection with a long lease on infrastructure assets. Our client

contended that its counterparty, UBS, mis-sold the structure, that the transaction had been entered into without proper authority, and that an intermediary had been engaged in bribery of our client's executives. The case involved parallel proceedings in London and Germany.

- We represent **Morgan Stanley** in CDO and other cases, including: (1) litigation against Citibank arising out of a credit default swap under which Morgan Stanley sold credit protection to Citibank on the super-senior tranche of a CDO, where Citi liquidated the CDO collateral without obtaining mandatory consents; and (2) a trial on a breach of swap action against Barclays arising from a hybrid CDO called Tourmaline I that was named 2005's ABS CDO "Deal of the Year" for its precedent-setting structure and complexity.

- We represented **Rabobank** in cases arising from CDOs and credit default swaps, including: (1) a case against Merrill Lynch & Co., related to the infamous Norma CDO I, a $1.5 billion CDO structured by Merrill Lynch and used to "de-risk" its exposure to subprime assets, which resulted in a favorable settlement for Rabobank; (2) a successful settlement after denial of a motion to dismiss relating to an action against Brookville and Wells Fargo to protect Rabobank's security interest in the assets of Brookville CDO I against improper efforts to liquidate collateral; (3) a case against JPMorgan Chase & Co., Bear Stearns Asset Management, and two CDOs structured by JPMorgan, based on claims for breach of contract and breach of fiduciary duty arising out of cash flow swap agreements, which led to a successful settlement.

- We represent **Hildene Capital Management** in CDO and other cases including: (1) a suit that challenged the proposed sale of BankAtlantic, a federal savings bank, to BB&T Corporation, leading to a trial victory of a permanent injunction in favor of plaintiffs; (2) a successful challenge to an attempt by Anchorage Capital to liquidate the ZIGL CDO for the sole benefit of its senior investors through filing an involuntary Chapter 11 bankruptcy petition against ZIGL; (3) a suit against the trustee of CDO Preferred Term Securities XX, Bank of New York Mellon, and Bimini Capital based on Bimini's wrongful purchase of certain collateral held by the CDO at steeply discounted prices in return for cash payments made to the CDO's equity holders; and (4) a similar suit against Arlington Asset Investment on purchases facilitated by Wells Fargo.

- We represented **Heungkuk Life Insurance Company** in a suit against Goldman Sachs alleging fraud in connection with the marketing and sale of the Timberwolf CDO. The dispute was resolved through a confidential settlement.

- We represent **Syncora Guarantee** in a suit against JPMorgan and Jefferson County, Alabama, raising claims of fraudulent inducement in connection with the solicitation of bond insurance from Syncora. Syncora also alleges that the defendants concealed a report by a Jefferson County advisor, which concluded that the County would likely not be able to repay the warrants fully without identifying new revenue sources. Syncora seeks over $400 million in compensatory and punitive damages.

- We represent **Intesa Sanpaolo, SpA** in litigation pending in New York federal court against Crédit Agricole and other defendants, alleging securities fraud and other claims. Crédit Agricole allegedly structured a CDO that Intesa invested in for the benefit of Magnetar, a notorious hedge fund, allowing Magnetar to hijack asset selection for its own benefit.

- We represent the **Abbars, a family of Saudi businessmen**, in their dispute with Citi Group in respect of the loss of some $300 million invested by the Abbars in complex financial products that were not suitable to their needs. The Abbars were advised to establish a complex offshore corporate structure, which was then leveraged with a derivatives overlay. Separately, the Abbars entered into a loan facility which was managed by Citi Group through a Caymans STAR/LPUT trust. The Abbars commenced a FINRA arbitration in New York, whereas Citi Group filed proceedings in London for declarations of non-liability. We have succeeded in "freezing" the English proceedings by having them in part dismissed on jurisdictional grounds, and in part stayed on the basis of a rarely used procedural power to stay the proceedings on case-management grounds. We continue to advise the Abbars on a number of issues related to ongoing proceedings and potential disputes in New York, the Cayman islands, and Switzerland.

- We successfully represented a **regional bank** in a securities fraud case against UBS arising from the issuance of a $2.3 billion synthetic subprime RMBS CDO.

- We represented **Ambac Credit Products** in a lawsuit against Citigroup and Credit Suisse related to $2 billion of credit protection that Citigroup obtained from Ambac on the super-senior tranches of a CDO named Ridgeway Court Funding II Ltd. that was structured by Citigroup during the first half of 2007. Credit Suisse was hired by Citigroup to manage the CDO and was responsible for selecting the collateral in which it invested. In order to induce Ambac to provide credit protection on the deal, Citigroup and Credit Suisse made specific false representations with respect to the value, nature and credit quality of the collateral that was included in Ridgeway II's portfolio, which, in fact, included substantially deteriorated subprime mortgage backed securities that Citigroup sold to Ridgeway II in order to get off its own books. Ambac filed its action in New York state court, asserting claims for fraud, negligent misrepresentation, breach of fiduciary duty, and fraudulent conveyance. The dispute was resolved through a confidential settlement.

- We represent the **SemGroup Litigation Trust** in a case against SemGroup's former auditors, seeking over $1 billion in damages. The case arises from the collapse of SemGroup, once the fifth-largest privately held company in the U.S., and turns in part on the analysis of a multibillion dollar complex commodities derivatives trading portfolio.

- We represent **shareholders in a joint venture CDO** investment vehicle in a dispute with their joint venture partner and investment manager. The case involved proceedings in the Caymans and an LCIA arbitration in London. Central to the dispute were the obligations owed by the parties pursuant to a shareholders' agreement and pursuant to

common-law principles relating to joint venturers in vehicles such as this. Ultimately the case was a fight for control of the investment vehicle, which held substantial CDO assets. We negotiated a successful settlement.

- We represented a high profile **Spanish retailer** in a dispute with Deutsche Bank arising out of a credit-linked note that had been entered into by the retailer to guarantee future income to meet employee pension obligations. The dispute concerned the ability of the bank to substitute names within the credit-linked note, and the future economic implications of substitutions for our client. We developed legal theories, including a basis for requiring the bank to repurchase our client's participation, which ultimately provided our client with the leverage necessary to achieve a favorable restructuring of the investment.

- We have successfully represented a number of multi-national corporations, including institutions **based in Central and South America and Japan**, in confidential settlement negotiations against several large U.S. investment banks arising from structured foreign currency or interest rate swaps, or swaps written against CDOs, in cases that involve in the aggregate billions of dollars in exposure. The cases typically involve, disputes over events of default, termination, and collateral posting requirements

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

- We obtained, with co-counsel, a settlement of more than $6 billion for the Estate of **Washington Mutual, Inc.** in litigation against JPMorgan Chase.

- We represent the **creditor's committee in the Lehman bankruptcy**. We are analyzing and evaluating the claims that could be asserted against financial institutions and third-party advisors and advising our clients as to the courses of action available to them.

    - *JPMorgan Adversary Proceeding:* The Committee and the Lehman estate brought an adversary proceeding against JPMorgan Chase Bank asserting over $8 billion in fraudulent transfers as well as billions of dollars in damages for common-law claims, including breach of contract and duress, among others, relating to JPMorgan's actions as Lehman's clearing bank in the weeks and days leading up to Lehman's bankruptcy filing. JPMorgan moved to dismiss the claims. The over $8 billion in fraudulent transfer claims and the common-law claims survived the motion, and the Committee and the Estate will continue to pursue these claims to bring in significant value to the estate.

    - *Claim Objection to Investment Funds' Claims:* Various investment funds advised by JPMorgan entities asserted over $730 million in purported secured claims against the Lehman estate, claiming they were covered by guaranty and security agreements because they were "affiliates" of JPMorgan Chase Bank under those agreements. The Committee and the Estate filed an omnibus objection to the claims asserted by the investment funds, arguing that the claims were not covered by the agreements and should be either eliminated or re-characterized as unsecured because the investment funds were not affiliates of JPMorgan Chase

Bank. Following briefing, the funds agreed to a settlement eliminating or re-characterizing as unsecured approximately $700 million of their asserted secured claims, and JPMorgan, which was holding cash to satisfy the claims, agreed to return approximately $700 million in cash.

- *Claim Objection to WaMu related claim asserted by JPMorgan Chase Bank*: JPMorgan filed a secured claim asserting that an unsecured claim it acquired as a result of its acquisition of Washington Mutual after Lehman's petition date became a secured claim because it was covered by guaranty and security agreements between Lehman and JPMorgan. The Committee and the Estate asserted an objection to the claim, arguing that it should be re-characterized as unsecured because its status could not change based on a post-petition-date acquisition. After the objection, JPMorgan agreed to re-characterize the entirety of the $80 million claim as unsecured.

- *Citibank, N.A. Litigation:* The Committee and the Lehman estate also brought a multi-count complaint against Citibank, N.A. and certain of its affiliates. Under governing ISDA Master Agreements, Lehman's trading counterparties were directed to determine the value of their derivatives trades following Lehman's bankruptcy. LBHI's objections sought a significant reduction to the amounts claimed by Citibank, which totaled more than $2 billion, relating to approximately thirty thousand derivatives trades on a variety of grounds including that Citibank failed to act in a commercially reasonable manner when valuing the derivatives in question. Quinn Emanuel engaged in almost five years of fact and expert discovery involving more than 1.4 million documents, thirty expert witnesses, and approximately 170 fact and expert depositions in addition to briefing summary judgment and pre-trial motions. After 42 days of trial over the course of four months, at around the expected halfway point in trial, LBHI announced that it had reached a settlement with Citibank that will return $1.75 billion to Lehman's creditors. Lehman's motion for approval of that settlement is currently pending before the Bankruptcy Court with a hearing scheduled for October 13.

- We were retained by the **Refco Litigation Trust** and the **Refco Private Actions Trust**, litigation vehicles established pursuant to Refco's Chapter 11 plan to pursue claims belonging to the estates of Refco Inc. and its subsidiaries and private causes of action held by customers of the defunct broker-dealer. We were lead litigation counsel in actions seeking damages in excess of $2 billion for fraud, breach of fiduciary duty, aiding and abetting, and professional malpractice brought by these Trusts against Refco's officers and professional advisors including, among others, Refco's accountant's Grant Thornton LLP and it's outside counsel Mayer Brown LLP. The case against Grant Thornton was settled on the opening day of a three week jury trial. The case against Mayer Brown was settled on the eve of a critical appellate argument. Both cases were pending in the Southern District of New York.

- We have acted as counsel for Dr. Enrico Bondi, Extraordinary Commissioner of **Parmalat S.P.A** in three separate lawsuits — arising out of the largest bankruptcy in European history — against various financial institutions and accounting firms, for

aiding and abetting Parmalat's insiders in the commission of massive fraud, and for auditor malfeasance. We have obtained a $100 million settlement against Bank of America, a $150 million settlement against various Deloitte entities, and continue to litigate claims against Parmalat's other former auditor, Grant Thornton.

- We represented a **group of hedge funds** as plaintiff-holders of Yosemite and Enron Credit-Linked (ECLN) Notes in an action that included their individual claims, and claims that they directed The Bank of New York to bring as Indenture Trustee, against Citigroup. The action focused on Citigroup's failure to disclose information about Enron's financial condition and various off-balance sheet finance vehicles that Enron structured in connection with the market and sale of Enron credit-linked notes. We were able to achieve a settlement for our clients that had value in excess of $2 billion.

- We successfully tried a FINRA arbitration for a large merger arbitrage fund against one of the leading global broker-dealers over the liquidation of a swap transaction. After four weeks of hearings spread over three months, we recovered over $10 million for our client in a confidential settlement. The dispute concerned the market quote method of valuing an equity swap under the 1992 ISDA Master Agreement where the broker-dealer sought and received quotes from three reference market makers. We effectively challenged the validity of the settlement value by attacking the quotes as shams which were the product of coaching friendly market makers and manipulating the market price through heavy volume sales.

- We were retained by **Solutia** on the eve of its exit from its four-year bankruptcy when the banks that had agreed to provide the necessary $2 billion of exit financing (Citigroup, Goldman Sachs and Deutsche Bank) refused to fund the loans. The banks claimed that the credit market downturn constituted a "material adverse change" that enabled them to terminate the agreement. The banks refused to engage in settlement negotiations until, after three days of trial, they capitulated just before closing arguments. Under the terms of the settlement, the banks were required to provide the $2 billion in exit financing needed to fund the plan.

- We represented **ING Bank** in a $500 million fraud action against JPMorgan Chase, Bank One, and others arising out of ING's purchase of asset backed debt instruments issued by National Century Financial Enterprises. The claims—breach of contract, negligent misrepresentation, breach of fiduciary duty and fraud—focused on misrepresentations made in connection with the indenture agreement and the issuance of the debt instruments. Thus far we have recovered in excess of $210 million for ING Bank.