**Hearing Date and Time: March 18, 2013 at 9:00 a.m. (Eastern Time)**

Irena M. Goldstein
Jeffrey Chubak
PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036
Tel: (212) 969-3000
Fax: (212) 969-2900

*Attorneys for Assured Guaranty Municipal Corp. and Certain of its Affiliates*

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|---|
| **In re:** | : | **Chapter 11** |
| | : | |
| **RESIDENTIAL CAPITAL, LLC, *et al*.,** | : | **Case No. 12-12020 (MG)** |
| | : | |
| **Debtors.** | : | **(Jointly Administered)** |

# OBJECTION OF ASSURED GUARANTY MUNICIPAL CORP. AND CERTAIN AFFILIATES TO DEBTORS' MOTION PURSUANT TO BANKRUPTCY RULE 9019 FOR ORDER APPROVING RMBS TRUST SETTLEMENT AGREEMENTS

Assured Guaranty Municipal Corp. and certain of its affiliates (together, "Assured") hereby object to the second supplemental motion, filed October 19, 2012 [Docket No. 1887] (as supplemented by the initial and first supplemental motions, the "Motion") of Residential Capital, LLC and its debtor affiliates (together, the "Debtors") pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for an order approving the RMBS Trust Settlement Agreements (as defined in the Motion) (the "Settlement Agreements"), and respectfully represent:

## Preliminary Statement

1. Assured provided financial guaranty insurance covering in excess of $1 billion of residential mortgage-backed securities ("RMBS") backed by mortgage loans originated or acquired by certain of the Debtors. Despite being the party with a real economic interest at

stake, the Debtors bypassed Assured and other monoline insurers and entered into the Settlement Agreements with holders of RMBS represented by Talcott Franklin, P.C. (the "Talcott Franklin Group") or Gibbs & Bruns LLP (the "Steering Committee Group") (together, the "Institutional Investors").

2. The settlement reached between the Debtors and Institutional Investors, which would fix the claims of up to 392 securitization trusts that issued RMBS (the "Trusts"), is not objectively fair or in the best interests of the Debtors' estates and their creditors. Accordingly, the Motion should be denied.

3. The settlement does not stand alone – it is an integral part of the Debtors' efforts to obtain a third party release for parent Ally Financial, Inc. ("AFI") and its nondebtor subsidiaries (together with AFI, "Ally").[1] Indeed, it was negotiated contemporaneously with Plan Support Agreements, dated May 13, 2012, between the Debtors and Institutional Investors, which require such investors to support the Debtors' efforts to obtain a release for Ally (the "Plan Support Agreements").

4. Because the settlement is part of the Debtors' efforts to settle its and its creditors' claims against Ally, an insider, the Debtors are incorrect in contending that deference should be afforded to their business judgment in determining whether to approve the settlement pursuant to Bankruptcy Rule 9019. *See* Motion at ¶62. *See also Dewey & LeBoeuf LLP*, 478 B.R. 627, 641 (Bankr. S.D.N.Y. 2012) (in general a debtor's business judgment may be considered in determining whether to approve a settlement under Bankruptcy Rule 9019). Instead, the Motion must be evaluated under the "entire fairness" standard under which the Debtors must establish to

[1] Assured reserves the right to object to the validity of any third party release for Ally at the appropriate time, whether in a plan or confirmation order or otherwise and whether required under the Plan Support Agreements or AFI Settlement Agreement (each as defined below) or otherwise.

the Court's satisfaction that the settlement is "objectively fair" to all parties, that is, that the settlement is "the product of both fair dealing and fair price." *In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27, 74 (Del. 2006).

5. Under the Settlement Agreements the amount of the Trusts' aggregate Allowed Claim (as defined below) is $8.7 billion and is reduced proportionately based on the original issue balance of Trusts that choose not to participate in the settlement. In support of their contention that the aggregate Allowed Claim is reasonable, the Debtors rely, in part, upon the Original and Supplemental Declarations of Jeffrey A. Lipps (the "Lipps Declarations") and the Original and Supplemental Declaration of Frank Sillman (the "Sillman Declarations") in support of the Motion. As set forth below and made clear in the Supplemental Lipps Declaration, attached as Exhibit 4 to the Motion, the monolines have stronger direct claims than those asserted by the Institutional Investors, and similarly, the Debtors may have stronger defenses to the Institutional Investors' claims. Because these differences exist, the settlement is not fair to Assured and the other monolines because it is in large part a "one size fits all" settlement.[2] The Sillman Declarations, as became clear during the deposition of Mr. Sillman, contain nothing more than an opinion based upon very few facts but many assumptions. These declarations, thus, do not support the allowance of the aggregate Allowed Claim.

6. After the aggregate Allowed Claim is determined, an Expert (as defined below) will be appointed to allocate the Allowed Claim. Under the Settlement Agreements' allocation formula, each Trust that accepts the settlement will receive an "Allocated Claim" equal to the Allowed Claim amount multiplied by the Trust's Net Loss Percentage (each as defined below), *i.e.*, the losses the Expert estimates the Trust will suffer over its lifetime divided by the losses the

[2] As set forth elsewhere in this objection, the Motion and Settlement Agreements are woefully unclear as to how the settlement affects the monolines' claims.

Expert estimates all Trusts that accept the settlement will suffer over their lifetimes. This calculation requires the Expert to estimate future losses for the Trusts. *The Expert's determination will not be subject to judicial review*.

7. Without details concerning what the Allowed Claim amount will be, the Expert's methodology for calculating the Net Loss Percentage, the allocation of the Allowed Claim across Trusts, creditors, and Debtors, and the real impact of the settlement on monoline insurers, the Court cannot possibly determine that the transaction is fair to all parties, and as a result, the Motion should be denied.[3]

8. For related reasons, even if the Court were to apply a more debtor-friendly standard and consider the so-called *Iridium* factors in considering whether the settlement is fair and equitable, and thus, whether to approve the same, the Motion should still be denied because the Debtors cannot satisfy the third and fourth *Iridium* factors, namely, the Debtors have not demonstrated the settlement is in the paramount interests of creditors or that other parties in interest support the settlement.

9. In this regard, the Debtors argue that the settlement is in the paramount interests of creditors because it provides "certainty." *See* Motion at ¶45. However, as noted above, the settlement provides little certainty with respect to the Allowed Claim amount or its allocation or the impact on monoline insurers.

10. The Debtors further point to the support of Institutional Investors to satisfy the fourth *Iridium* factor, but this must fail (of course they support the settlement – they are parties to

[3] The Settlement Agreements purport to affect monoline insurers' claims. *See* Settlement Agreements, Exhibit B at ¶5 ("To the extent any … financial guarantee insurer receives a distribution on account of the Allowed Claim, such distribution shall be credited at least dollar for dollar against the amount of any claim it files against [a] Debtor that does not arise under the Governing Agreements"). However, it is unclear what the practical effect of this provision (let alone its meaning), together with the remainder of the Settlement Agreements, will be on monoline insurers' pending claims against the Debtors.

it). What the Debtors must demonstrate, but cannot, is that the *other* parties in interest in the Debtors' cases, *i.e.*, parties in interest that are not party to, and have had no input into, but are (or may be) affected by the Settlement Agreements, such as monoline insurers, support the settlement. Moreover, any weight given to the support of the Institutional Investors must be discounted by the fact that they have received, and will receive, payments from the monoline insurers on account of the insured RMBS.

11. Regardless of which standard applies, the Debtors' effort to delegate the determination of RMBS claims to the Expert under the Settlement Agreements is reason enough to deny the Motion. First, such delegation violates Assured's due process rights to have an opportunity to be heard by a court on its claims against the Debtors.[4] Second, the Debtors cannot delegate their responsibility under section 704(a)(5) of the Bankruptcy Code, made applicable under section 1106(a)(1) of the Bankruptcy Code, to examine proofs of claim and object to the allowance of improper claims. Finally, and most importantly, this Court may not delegate its obligation to rule on the law and facts underlying creditors' claims to an Expert.

12. For these reasons, the Motion should be denied.

## Objection

### I. The Court Must Evaluate the Settlement under the Entire Fairness Standard

13. The Debtors claim that the Motion should be approved because the *Iridium* factors, which include consideration of the Debtors' business judgment, weigh in favor of approving the settlement. *See* Motion at ¶¶34-38. The Debtors are wrong.

14. Settlements with insiders are subject to heightened scrutiny and must be evaluated under an "entire fairness" standard. *See*, *e.g.*, *Dewey*, 478 B.R. at 641 (citing *In re Innkeepers*

[4] Nothing in this objection is intended to waive Assured's rights to seek withdrawal of the reference for matters as to which Assured has the right to be heard before an Article III court.

*USA Trust*, 442 B.R. 227, 231 (Bankr. S.D.N.Y. 2010)). Under this standard, consideration of the *Iridium* factors is not sufficient to determine whether a settlement should be approved under Bankruptcy Rule 9019. Rather, the proponents of the transaction must establish "to the court's satisfaction that the transaction was the product of both fair dealing and fair price." *Disney*, 906 A.2d at 74. "Not even an honest belief that the transaction was entirely fair will be sufficient to establish entire fairness. Rather, the transaction itself must be objectively fair." *Id*. *See also Weinberger v. UOP, Inc.*, 457 A.2d 701, 711 (Del. 1983) ("the test for fairness is not a bifurcated one as between fair dealing and price. All aspects of the issue must be examined as a whole").

15. The facts that (i) the Settlement Agreements themselves are not between a Debtor and an insider (to the best of Assured's knowledge and belief) and (ii) the releases granted under the Settlement Agreements do not apply to AFI or any officer or director of AFI (Settlement Agreements § 7.01) do not mean that the Settlement Agreements were not entered into, in large part, to benefit insiders.

16. Indeed, from the very start, the Debtors have made clear that the bedrock of their reorganization efforts are (i) the sale of certain assets, (ii) the Settlement Agreements, and (iii) the Plan Support Agreements under which the Institutional Investors agree to support a plan of reorganization under which Ally receives a release.[5] As set forth in the Affidavit of James Whitlinger, Chief Financial Officer of Residential Capital, LLC, in Support of Chapter 11

[5] Section 3.1 of the Plan Support Agreements requires the Institutional Investors to direct the indenture trustees of the Trusts to "support confirmation of the Plan and approval of any settlement with Ally, whether or not such settlement is provided for under a plan of reorganization, *including approval of third party releases in Ally's favor, on terms no less favorable than the AFI Settlement Agreement*." *See* Plan Support Agreements § 3.1(i) (emphasis supplied). The AFI Settlement Agreement, in turn, provides: "the holders of Claims and Interests shall be deemed to provide a full discharge and release to [Ally] … from any and all Causes of Action … arising from or related in any way to the Debtors, including those in any way related to residential mortgage backed securities issued and/or sold by Debtors." *See* Settlement and Plan Sponsor Agreement § 3.1(d)(ii), attached to the Debtors' First Day Affidavit as Exhibit 8 [Docket No. 6] (the "AFI Settlement Agreement").

Petitions and First Day Pleadings, dated May 14, 2012 [Docket No. 6] (the "First Day Affidavit"):

> *As part of the second phase of the plan process* [the first phase being the sales of certain assets] the Debtors obtained support for a restructuring plan premised upon the sales described above from AFI, and from holders of ResCap's junior secured notes holding approximately 37% of the outstanding notes. Besides for obtaining the support of a key creditor constituency, the settlement with the junior secured noteholders also has the benefit of reducing the estate's interest obligations by $350 million. *ResCap also obtained support from, and entered into a settlement agreement with, institutional investors in residential mortgage-backed securities issued by ResCap's affiliates. At present, institutional investors holding more than 25% of at least one class in each of 293 securitizations have agreed to support the reorganization …* If approved by the Bankruptcy Court, the institutional investor settlement would result in ResCap making an irrevocable offer to settle with trusts, and trusts accepting the deal would be granted a maximum Allowed Claim of $8.7 billion, which they would share with monoline representation and warranty claims.

First Day Affidavit at ¶108 (emphasis supplied).

17. The fact that the Debtors chose to negotiate a settlement with the Institutional Investors rather than the monolines, who bear the brunt of the economic risk of the settlement and who have extensive knowledge and experience concerning representation and warranty claims, reflects that the settlement is more about getting a release for Ally than achieving a fair and equitable deal.

18. In furtherance of their strategy, on June 11, 2012, the Debtors filed motions for orders authorizing the Debtors to assume the Plan Support Agreements and the Settlement Agreements with the Institutional Investors [Docket Nos. 318-20]. Originally, all such motions were to be heard on July 10, 2012. Subsequently, due to pressure from interested parties, the hearing on the Debtors' motions seeking approval of the Plan Support Agreements was adjourned to a date and time to be determined, while the initial Motion to approve the Settlement

Agreements was twice supplemented. The Debtors' agreement to bifurcate the approval process of the Settlement Agreements from the Plan Support Agreements does not alter the reality that the two sets of agreements were negotiated simultaneously, are linked, and are designed, in part, to provide a release to insider non-Debtors.

19. Accordingly, this Court must evaluate the settlement under the "entire fairness" standard.

## II. The Settlement is Not Objectively Fair

### A. There is No Support for an Allowed Claim of $8.7 Billion

20. The Debtors assert that $8.7 billion is a reasonable amount to settle the outstanding claims relating to RMBS. In support of their assertion, the Debtors rely upon the Lipps and Sillman Declarations. The Debtors' reliance is misplaced, particularly with respect the Sillman Declarations.

21. The Debtors filed the Original Sillman Declaration on June 11, 2012, which is attached to the Debtors' initial Motion seeking approval of the settlement as Exhibit 8 [Docket No. 320] in which Mr. Sillman asserted that he used the "Shelf Level Estimated Lifetime Loss" methodology in support of his argument that the Allowed Claim was reasonable. According to Mr. Sillman:

> [T]he first step in estimating the range of potential repurchase liability for the Debtors ("<u>Potential Repurchase Requirements</u>") is developing the potential cumulative lifetime loss ranges for the Trusts ("<u>Estimated Lifetime Losses</u>"). The next step necessary to understand the Potential Repurchase Requirements is to determine the percentage of Estimated Lifetime Losses that the Debtor might agree to share with the Trusts ("<u>Loss Share Rate</u>") as a result of potential breaches of representations and warranties.

Original Sillman Declaration at ¶6.

22. Mr. Sillman calculated Estimated Lifetime Losses by adding the "Actual Liquidated Losses," *i.e.*, the actual losses incurred when a loan is foreclosed and sold and the losses are allocated to a Trust, and "Forecasted Remaining Lifetime Losses," *i.e.*, the losses forecasted on the remaining unpaid principal balance ("Outstanding UPB") for the remaining life of a Trust. *Id.* at ¶25. Forecasted Remaining Lifetime Losses for the Trusts are determined by multiplying (i) the Outstanding UPB, (ii) the "Frequency Rate" assumptions, *i.e.*, "the projected likelihood that a group of loans will 'roll' from current or delinquent status to defaulted and liquidated," and (iii) "Severity Rate" assumptions, *i.e.*, the percentage of loans associated with a group of loans which default and are liquidated. *Id.* at ¶¶27, 31, 35. Mr. Sillman reviewed Frequency Rates from "at least one Series by Issue Year," *id.* at ¶32, as clarified by the Supplemental Sillman Declaration at ¶29, attached to the Motion as Exhibit 5, and compared such rates to those found in the RRMS Advisors Opinion Concerning Contemplated Settlement Amount for 530 Trusts, dated June 7, 2011 ("BofA Expert Report") and the Lehman Brothers Holdings Inc. Declaration of Zachary Trumpp filed January 12, 2012 ("Lehman Expert Declaration"). Original Sillman Declaration at ¶32. Mr. Sillman determined the Severity Rate assumptions based on actual losses and adjusted them "to current market conditions based on the latest three month actual Severity Rates." *Id.* at ¶36.

23. Loss Share Rate, according to Mr. Sillman, is the product of the "Breach Rate" and "Agree Rate." *Id.* at ¶45. The "Breach Rate" is calculated by multiplying the "Audit Rate," *i.e.*, "the percentage of loans in a given mortgage portfolio that are audited by the Trustee or other parties authorized under the Governing Agreements for the purpose of finding alleged representation and warranty breaches," *id.* at ¶47, by the "Demand Rate," *i.e.*, the rate by which the Trusts or monoline insurers make demand on the Debtors to repurchase loans in the Trust, *id.*

at ¶55. The "Agree Rate" is "the percentage of Demands issued by the Trustee that the Seller agrees to repurchase or make whole." *Id.* at ¶59. As noted above, the Potential Repurchase Requirements is the product of Loss Share Rate and the Estimated Lifetime Losses.

24. Every component of Loss Share Rate (*i.e.*, Breach Rate and its components, Audit and Demand Rate), Agree Rate, and most portions of Estimated Lifetime Losses are based upon one or all of (i) certain industry reports, (ii) the Debtors' buy-back experience with government-sponsored entities ("GSEs"), *i.e.*, Fannie Mae and Freddie Mac, (iii) the BofA Expert Report, (iv) the Lehman Expert Declaration, and (v) Mr. Sillman's personal work experience and three clients of Fortace, LLC, of which Mr. Sillman is a managing partner. Very little of Mr. Sillman's opinion is based upon the actual loans at issue and it is notable that it does not include the Debtors' put back experience with the monoline insurers. Indeed, Mr. Sillman did little work to confirm the relevance of the information he relied upon to the actual loans at issue.[6]

25. For example, Mr. Sillman admitted he had not determined what loans "actually breach reps and warranties" but instead relied on the Debtors' "GSE repurchase rate work" as well as some "private label repurchase activity" that the Debtors completed (Sillman Dep. at 119:18-120:5, 126:15-16) and that "no other review of loan files went into … the conclusions expressed" in the Original Sillman Declaration. *Id.* at 128:17. The vast majority of the repurchase analysis that Mr. Sillman relied upon related to the GSE transactions, as opposed to private label repurchase activity, and none of the GSE transactions overlapped "in any way" with the loans subject to the settlement. *Id.* at 126:25-127:4.

[6] Mr. Sillman likely had little time to do a more thorough analysis because the Debtors retained him *after* they had already entered into the Settlement Agreements. *See* Transcript of November 20, 2012 Deposition of Frank Sillman, a copy of which is attached hereto as Exhibit A ("Sillman Dep.") at 104:13-105:18.

26. When asked how he computed the ranges for audit rates found in paragraph 53 of the Original Sillman Declaration, Mr. Sillman said "these individual assumptions were not the product of an additional mathematical equation. They were based on my professional experience." Sillman Dep. at 228:1-228:16. Mr. Sillman could not produce back up for these numbers because "there's no other data to support these numbers other than my professional experience." *Id.* at 228:14-16. Mr. Sillman confirmed that similarly, there is no backup for his calculations of demand rates set forth in paragraph 56 of the Original Sillman Declaration. *Id.* at 230:4-6. Mr. Sillman could not produce any support for the Agree Rates he used in the Original Sillman Declaration. Sillman Dep. at 271:1-272:17 ("[The lower and higher agree rate numbers] were based on my professional experience with agree rates for these buckets adjusted for the repurchase experience the debtor had and the higher agree rates than the industry as a whole for their GSE purchases"). In other words, Mr. Sillman created ranges for Agree Rates based upon his professional experience and adjusted the rates to reflect the Debtors' history with GSE repurchases, even though none of the GSE repurchases overlap with the loans subject to the Settlement Agreements.

27. Mr. Sillman looked to the BofA Expert Report and Lehman Expert Declaration to confirm his calculation of Breach Rates (which are the product of Audit and Demand Rates – which he calculated based solely upon his professional experience and can produce no evidence supporting his calculations). *See* Sillman Dep. at 237:12-19 ("I believe [the BofA Expert Report and the Lehman Expert Declaration] were relevant data points that the readers should or could look at in evaluating the breach rates and agree rates in my report"). Mr. Sillman, however, did not confirm that the BofA Expert Report and the Lehman Expert Declaration were "relevant data points" because he did not complete a "trust by trust" comparison of the BofA or Lehman loans

or their representations and warranties with the loans subject to the Settlement Agreements. Sillman Dep. at 243:7-15.

28. Mr. Sillman was asked whether, in forming his conclusions, he took into consideration the fact that the Trusts at issue are alleged to have suffered $30 billion of losses, but for that same time period, the Debtors "received put back demands only with respect to loans with an original principal balance of roughly $1.37 billion." *Id.* at 183:6-18. Mr. Sillman conceded that he factored that into consideration, but added, that he also took into consideration the fact that the Debtors had agreed to a claim of $8.7 billion. *Id.* at 183:21-184:7. Thus, in a bit of circular reasoning, Mr. Sillman bases the reasonableness of the $8.7 billion settlement upon the fact that the Debtors agreed to pay $8.7 billion.

29. Another less obvious example of Mr. Sillman's circular reasoning is his assumption with respect to Demand Rates. Mr. Sillman argues he based his "Demand Rate assumptions on my repurchase demand experience," because (i) the Demand Rates for the GSEs (since his entire repurchase analysis relates to the Debtors' repurchase experience with GSEs) are not publically available, (ii) the "PLS [private label securities] litigation Demand Rates are unsubstantiated, appear to be inflated and are vigorously disputed by the Sellers," and (iii) there was no information concerning Demand Rate assumptions in the Lehman Expert Declaration or BofA Expert Report. Original Sillman Declaration at ¶56.

30. Mr. Sillman's repurchase demand experience is largely based upon his years at IndyMac and three clients. Those three clients comprise one unidentified, allegedly confidential client, and the Debtors Residential Capital Funding Company and GMAC Mortgage, LLC. Sillman Dep. at 321:10-322:22. In other words, the Demand Rates relating to private label securities are inflated and unsubstantiated, yet, it is exactly his experience in that industry that

serves as the basis for his conclusions regarding Demand Rates in the Original Sillman Declaration.

31. Mr. Sillman's analysis also contradicts the Debtors' stated "position that a repurchase claim requires a loan-by-loan evaluation of *which* loans to repurchase." Supplemental Lipps Declaration at ¶119.

32. To summarize, Mr. Sillman was given the unenviable task of opining on the reasonableness of the $8.7 billion Allowed Claim after the fact. He based much of his opinion supporting the reasonableness of the Allowed Claim on his "professional experience" but can produce no meaningful backup for his conclusion. As a result, the Debtors have not established that the $8.7 billion Allowed Claim is reasonable.

**B. The Proposed Allocation of the Allowed Claim is a Mystery**

33. The proposed settlement does not satisfy the entire fairness standard for a number of reasons, the most obvious of which is that neither the Court nor creditors can determine what the impact of the settlement will be on the claims of the Trusts and the monoline insurers. Without details concerning the foregoing, it is impossible to determine whether the settlement is fair and, as a result, the Motion should be denied.

34. Section 5.01 of the Settlement Agreements provide as follows with respect to allowance of the above-referenced claim:

> ResCap hereby makes an irrevocable offer to settle … with each of the ... Trusts (the … Trusts that timely agree to the terms of this Settlement Agreement being the "<u>Accepting Trusts</u>"). *In consideration for such agreement, ResCap will provide a general unsecured claim of $8,700,000,000 in the aggregate against the Seller Entities* [*i.e.*, Residential Funding Company LLC or GMAC Mortgage LLC] and the Depositor Entities [*i.e.*, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Asset Securities Corp., Residential Accredit Loans, Inc., and Residential Asset Mortgage Products, Inc.] (the "<u>Total Allowed Claim</u>"), *all of which shall be allocated*

> *and implemented as provided in Section 6.01*. For the avoidance of doubt, the Total Allowed Claim shall be allocated among the Accepting Trusts, subject to the provisions of this Settlement Agreement. Subject to the provisions of this Settlement Agreement, the Accepting Trusts shall be allowed an aggregate claim in an amount calculated as set forth below (the "Allowed Claim"), which aggregate claim shall be allocated to each Accepting Trust pursuant to Article VI herein.

35. Article 6 provides that "[e]ach Accepting Trust shall be allocated a share of the Allowed Claim against its Seller Entity and its Depositor Entity … calculated as set forth on Exhibit B hereto, for which such Seller Entity and Depositor Entity are jointly liable." Exhibit B, in turn, provides that a "qualified financial advisor" (the "Expert") shall allocate the Allowed Claim among the Accepting Trusts according to the following general formula:

> (i) *First*, the Expert shall calculate the amount of Net Losses for each Accepting Trust as a percentage of the sum of the Net Losses for all Accepting Trusts (such amount, the "Net Loss Percentage");
>
> (ii) *Second*, the Expert shall calculate the "Allocated Claim" for each Accepting Trust by multiplying (A) the amount of the Allowed Claim by (B) the Net Loss Percentage for such Accepting Trust …

36. The Settlement Agreements define "Net Losses" with respect to a particular Trust as "the amount of net losses for such … Trust that have been or are estimated to be borne by that trust from its inception date to its expected date of termination, as determined by the Expert … in accordance with the methodology described in Exhibit B." Thus, the Settlement Agreements provide that Net Losses are to be determined by the Expert in accordance with the methodology set forth in Exhibit B, but Exhibit B leaves the calculation of Net Loss to the unknown Expert. In other words, without knowing today how the Expert calculates Net Losses, it is virtually impossible for Assured to determine what impact (if any) the settlement, if approved, would have on Assured's claims against the Debtors.

### C. The Settlement is Not Fair to Monoline Insurers.

37. The Debtors purport to affect the monoline insurers' claims by providing that "[t]o the extent any credit enhancer or financial guarantee insurer receives a distribution on account of the Allowed Claim, such distribution shall be credited at least dollar for dollar against the amount of any claim it files against [a] Debtor that does not arise under the Governing Agreements." Settlement Agreements, Exhibit B at ¶5. This language is as clear as mud. As a result it is virtually impossible for the monoline insurers to determine the practical effect of this provision, together with the remainder of the Settlement Agreements, on monoline insurers' pending claims against the Debtors.

38. Moreover, lumping the monoline insurers' claims with those asserted by the Institutional Investors (if that is what the Settlement Agreements contemplate) is not fair because different standards of proof may be applicable to their respective claims. Monoline insurers' representation and warranty claims may be established by demonstrating that the representation and warranty breaches increased the risk the insurer would suffer losses. *See*, *e.g.*, *Assured Guar. Mun. Corp. v. Flagstar Bank, FSB*, No. 11-cv-2375, 2012 WL 4373327, at *5 (S.D.N.Y. Sept. 25, 2012) ("the Court concludes that plaintiff [monoline insurer] must only show that the breaches materially increased its risk of loss. Put another way, the causation that must here be shown is that the alleged breaches caused plaintiff to incur an increased risk of loss"); *Syncora Guarantee Inc. v. EMC Mortg. Corp.*, No. 09-cv-3106, 2012 WL 2326068, at *9 (S.D.N.Y. June 19, 2012) ("Syncora may establish a material breach of the [Insurance and Indemnity Agreement] by proving that EMC's alleged breaches increased Syncora's risk of loss on the Policy, irrespective of whether the breaches caused any of the HELOC loans to default").

39. On the other hand, the standard applicable to RMBS certificate holders for establishing representation and warranty claims, once any no-action clause requirements have

been satisfied, is not settled. In this regard, the Court in *Syncora* implied that the standard for RMBS holders may be different from that applied to claims for breaches of representation and warranty filed by monoline insurers. *Syncora*, 2012 WL 2326068, at *8 n.5 (the Court found that a case cited by the mortgage banking company in defense of the action commenced by the financial guarantee insurer was distinguishable in part because the alleged breach in that case "affected the interests of note holders rather than the note insurer"). The Debtors' expert, Mr. Lipps agrees with the foregoing. *See* Supplemental Lipps Declaration at ¶72 ("Thus, it is unclear what burden of proof a court in a case between Debtors and the trustee or Institutional Investors might place on the plaintiffs regarding materiality").

40. Mr. Lipps pointed to another potential distinction between the level of proof required by the monolines in light of the statutory and contractual claims, protections and relief afforded to insurance companies versus the Trusts/Institutional Investors:

> Courts in the monoline insurance context have addressed the causation issue – most notably Justice Bransten in the *MBIA Insurance Co. v. Countrywide Financial Corp.* case. There, Justice Bransten held that MBIA was "not required to establish a direct causal connection between proven warranty breaches by [defendant] and MBIA's claims payment made pursuant to the insurance policies at issue" in order to prove that a breach was material. 936 N.Y.S. 2d 513, 527 (2012). In the same opinion, Justice Bransten nonetheless held that MBIA must still "prove that it was damaged as a direct result of the material misrepresentations," and denied MBIA's motion to strike Countrywide's defenses based on the intervening or superseding cause of the economic crisis. *Id.* at 522, 527. However, the court's ruling – in addition to providing mixed guidance – was based in substantial part on applicable insurance statutes, which are not relevant to the Investor or Trustee-initiated claims at issue in the RMBS Trust Settlements … It is unclear whether any portion of these rulings can be imported into the Institutional Investors/Trustee litigation context, or to what extent courts will look to the monolines insurance litigation for guidance.

Supplemental Lipps Declaration at ¶81. While Mr. Lipps believes it is "unclear" if Institutional Investors or indenture trustees would have the same burden, it is clear they would face hurdles (particularly the Institutional Investors) monolines would not face under New York insurance law.

41. As Mr. Lipps noted, there are applicable insurance statutes which grant monoline insurers greater advantages in lawsuits than the Institutional Investors in connection with RMBS. *See MBIA Insurance Co. v. Countrywide Financial Corp*, 936 N.Y.S.2d 513, 521 (Sup. Ct. N.Y. Cty. 2012) ("The court finds that in this insurance context, with MBIA as an insurance company and Countrywide as an applicant for insurance … the claims are informed by New York common law and *Insurance Law Sections* 3105 and 3106").

42. Finally, Assured has made (and continues to make) (as have other monoline insurers), actual payments to investors under its financial guaranty insurance policies. In other words, there can be no dispute that Assured is entitled to a claim based upon amounts it has actually paid and will pay, versus some Expert's determination as to what the Net Losses will be.

43. Accordingly, to the extent the settlement provides that monoline insurers have to share in the Allowed Claim *pro rata* with the Institutional Investors, it is patently unfair and the Motion should be denied.

## III. The Debtors Cannot Satisfy the *Iridium Factors*

44. Even assuming, arguendo, that instead of applying the entire fairness standard the Court considers the *Iridium* factors in determining whether the settlement is fair and equitable, and thus, whether to approve the same, the Motion should still not be granted. As the Debtors have noted, the *Iridium* factors include (i) "the paramount interests of creditors, including each affected class's relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement," and (ii) "whether other parties in interest support

the settlement." *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 462 (2d Cir. 2007) (internal quotations and citations omitted). In addition, "[t]he bankruptcy court must exercise its own independent judgment in analyzing the *Iridium* factors." *Dewey*, 478 B.R. at 641.

### A. The Third *Iridium* Factor Weighs Against Approval of the Settlement

45. In support of the proposition that the settlement satisfies the third *Iridium* factor, *i.e.*, is in the paramount interests of creditors, the Debtors argue the "certainty" of the settlement "avoids the necessity of setting aside substantial reserves for the potential payment of [representation and warranty] claims, which could delay (and reduce) recoveries to other stakeholders," and the settlement would resolve contested claims disputes. Motion at ¶52-53.

46. Although the settlement would resolve the Accepting Trusts' claims and litigating such claims would certainly prove expensive, the settlement by no means provides certainty to creditors affected by it. As noted above, the Court and creditors cannot possibly estimate the real world results of the proposed settlement, which include the Allowed Claim amount, the allocation of the Allowed Claim, and the impact of the settlement on monoline insurers' claims. As a result, creditors cannot determine whether the settlement is or is not beneficial and whether to support or oppose the same.

47. This uncertainty is particularly worrisome for monoline insurers that have insured certain payment obligations with respect to RMBS and cannot predict how the Allowed Claim allocation will impact such RMBS and claims made (and to be made) on their financial guaranty insurance policies. Assured's well-founded concerns are compounded by the fact that the settlement was negotiated by Institutional Investors who carry no risk in connection with many transactions wrapped by monoline insurers, such as Assured, as opposed to the monoline insurers themselves.

### B. The Fourth *Iridium* Factor Weighs Against Approval of the Settlement

48. In support of the proposition that the settlement satisfies the fourth *Iridium* factor, *i.e.*, parties in interest generally support the settlement, the Debtors argue it is supported by a significant percentage of holders of certificates issued by the Trusts, given that the Institutional Investors hold certificates in an amount sufficient to direct 336 of the 392 Trusts to accept the settlement. Motion at ¶55.

49. The Debtors' reliance on the support of the Institutional Investors is misplaced. The fourth *Iridium* factor does not ask whether parties to the settlement support such settlement, but rather, whether "*other* parties in interest" support the settlement. Moreover, under Section 3.02 of the Settlement Agreements, the Institutional Investors have only covenanted to "maintain holdings aggregating 25% of the voting rights in one or more classes of Securities of not less than 235 of the Covered Trusts." The Institutional Investors, as a result of their minority position (among other reasons) may not have the power to direct a Trustee in a particular transaction[7] or reflect the interests of the remaining holders of RMBS in such class or the other classes of the relevant securitization transaction.

50. Accordingly, it is misleading to suggest that Institutional Investors' support reflects creditor sentiments in general; it certainly does not reflect the sentiments of the parties who have the economic risk as well as the control rights with respect to a particular transaction, *i.e.,* the monoline insurers.[8]

---

[7] The Institutional Investors and the Debtors acknowledge that monoline insurers can exercise the rights of the holders of RMBS in transactions where the insurers provided financial guaranty insurance. *See* Settlement Agreements § 3.02 (for the purposes of determining whether or not the Institutional Investors maintain the required holdings of RMBS, trusts excluded "due to the exercise of voting rights by a third party guarantor or financial guaranty provider" are not counted).

[8] In addition to transactions for which monoline insurers issued financial guaranty policies covering the entire transactions, they also have issued financial guaranty insurance policies which partially "wrap" a transaction, *e.g.,* a class of RMBS issued by the Trust, in which case holders of RMBS in such class would have transferred the control

51. As noted above, other parties in interest, including parties in interest with substantial amounts at stake such as Assured and other monoline insurers cannot support the settlement because it is unclear how their claims will be treated under the settlement. Accordingly, the settlement does not satisfy the foregoing *Iridium* factors and the Motion should be denied.

## IV. The Settlement Agreements Violate Creditors' Due Process Rights

52. "An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532, 542 (1985) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.,* 339 U.S. 306, 313 (1950)). Further, due process requires notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane*, 339 U.S. at 314.

53. To ensure that creditors in bankruptcy cases receive due process, the Bankruptcy Code and Rules proscribe specific procedures that must be followed in connection with the claim allowance process. Under Bankruptcy Rule 3001, the Debtor is required to file an objection to a claim, and under section 502(b) of the Bankruptcy Code, "the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition."

54. There will be no notice or hearing on the monoline insurers' claims if the Debtors' proposed procedure is adopted. The allocation of the Allowed Claim to the Trusts and creditors will be in the hands of an unnamed Expert. The Motion does not satisfy creditors' due

and voting rights with respect to such RMBS to the monoline insurers as well as secondary market transactions with investors in which voting rights were transferred to the monoline insurers.

process rights because, as set forth above, it is impossible to determine from the Motion what methodology the Expert will use in allocating the Allowed Claim or even what impact the Settlement Agreements have on the monoline insurers' claims. Moreover, because the Expert's decisions will not be subject to Court approval, Assured will have no recourse to the extent that the Expert's determinations impact its claims.

55. Accordingly, the Motion should be denied because the Settlement Agreements do not afford Assured adequate notice or opportunity to object to the extent Assured's claims may be affected by the same.

## V. <u>The Settlement Agreements Improperly Delegate Claims Administration Duties to a Third Party</u>

56. Section 1106(a)(1) of the Bankruptcy Code provides that a debtor "shall … perform the duties of a trustee, as specified in paragraph … (5) … of section 704. Section 704(a)(5) of the Bankruptcy Code, in turn, provides that "[t]he trustee shall … examine proofs of claim and object to the allowance of any claim that is improper."

57. A trustee cannot delegate its claims administration duties. *See In re Abraham*, 163 B.R. 772, 779 (Bankr. W.D. Tex. 1994) ("There is one trustee 'duty' that can never be delegated, and for which the trustee must *always* be held accountable … The trustee is ultimately responsible for the administration of the estate … The trustee can *not* delegate the ultimate responsibility or the decision making that is part and parcel of her office"); *In re R. Woolsey & Assocs., Inc.*, 454 B.R. 782 (Bankr. D. Idaho 2011) (same); *see also* United States Department of Justice Handbook for Chapter 7 Trustees (Oct. 1, 2012), *available at h*ttp://www.justice.gov/ust/eo/private_trustee/library/chapter07/docs/ch7hb2012/Handbook_for_Chapter_7_Trustees.pdf, at p. 4-20 ("It is critical that the trustee oversee the work performed").

58. Yet delegating its claim administration duties to the Expert is precisely what the Debtors contemplate under the settlement. Pursuant to the Settlement Agreements, the Expert may employ "the methodology described in Exhibit B" to determine Net Losses, and, in turn, allocation results. However, Exhibit B does not specify a methodology for calculating Net Losses, but rather, provides "the Expert shall calculate the amount of Net Losses." As noted above, without a detailed methodology, it is impossible to estimate how the Expert will allocate the Allowed Claim. Moreover, under the Settlement Agreements the Expert's decision will not be subject to judicial review.

59. The Debtors' entrusting the claim determination to an outside expert is particularly troubling because the Debtors themselves are in an excellent position to know the historical losses as well as to calculate the projected losses of the Trusts. The Debtors have been a key player in the residential mortgage market. *See* First Day Affidavit at ¶9 ("The Debtors are collectively the fifth largest servicer of residential mortgage loans in the United States … [o]nly Bank of America, NA, J.P. Morgan Chase Bank NA, Wells Fargo Bank, NA and CitiMortgage, Inc. service more mortgage loans than the Debtors"). In addition, the Debtors originated or purchased the residential mortgage loans that comprise the collateral for RMBS, then securitized and marketed the residential mortgage loans, all the while continuing to service such loans. Instead of fulfilling its fiduciary obligations to review RMBS-related claims based upon, a task, as set forth above they are more than qualified to do, the Debtors propose assigning the claim calculation to the Expert, who likely will not have the Debtors' experience and knowledge of the Trusts' claims, and whose methodology and assumptions remain unknown.

60. In addition, this Court cannot delegate its decision making authority with respect to disputed claims to a third party. In considering a fee committee's authority in *Adelphia*, Judge

Robert E. Gerber emphasized that the Bankruptcy Rules prohibit such committee's role from exceeding that of an expert and that final authority with respect to allowance of professional fee claims must remain with the bankruptcy court. Specifically, Judge Gerber stated:

> The determination as to whether or not fee requests should be authorized is vested with the bankruptcy court, and not anyone else, by delegated authority or otherwise … The [Bankruptcy] Rules … do not authorize, or contemplate, masters. A fee committee does not make determinations that are to be made by the Court. Rather, in large chapter 11 cases … a fee committee acts as both an advocate and a species of court-appointed expert, to make recommendations to the Court … But a fee committee's views, and opinions, do not rise to the level of judicial determinations, nor do they even carry a presumption of validity. As a case cited by the Fee Committee notes, "the touchstone for [judicial immunity's] applicability [is] performance of the function of resolving disputes between parties."

*In re Adelphia Commc'ns Corp.*, 348 B.R. 99, 106-07 (Bankr. S.D.N.Y. 2006) (citing *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 434 n.8 (1993)). *See also West v. Prudential Secs., Inc.*, 282 F.3d 935, 938 (7th Cir. 2002) (cautioning, in a class action certification dispute, against the "delegation of judicial power to the plaintiffs" on account of their retained expert); *Caudill v. State Farm Mutual Auto Ins. Co.*, 779 N.W.2d 83, 87 (Mich. 2010) (citations omitted) ("there is no constitutional authority for [a] trial court to delegate specific judicial functions to an 'expert'"). As with *Adelphia*, judicial authority to determine Assured's claims or claims that will impact the value of Assured's claims must rest with this Court.

61. Accordingly, the Motion should be denied to the extent that the Settlement Agreements provide for the improper delegation of claims administration responsibilities to the Expert.

WHEREFORE, Assured respectfully requests that the Court deny the Motion and grant such further relief as the Court deems proper.

Dated: February 1, 2013
New York, New York

Respectfully submitted,

/s/ Irena M. Goldstein
Irena M. Goldstein
Jeffrey Chubak
PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036
Tel: (212) 969-3000
Fax: (212) 969-2900

*Attorneys for Assured Guaranty Municipal Corp. and Certain of its Affiliates*

# EXHIBIT A

**(Sillman Deposition Transcript)**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

-----------------------------------x

In Re: Case No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020(MG)

Debtors.

-----------------------------------x

DEPOSITION OF FRANK SILLMAN

New York, New York

November 20, 2012

9:35 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27687

November 20, 2012
9:35 a.m.

Deposition of FRANK SILLMAN, held at the offices of Kramer, Levin, Naftalis & Frankel, 1177 Avenue of the Americas, New York, New York, pursuant to Notice, before Erica L. Ruggieri, Registered Professional Reporter and Notary Public of the State of New York.



A P P E A R A N C E S:

FOR THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS:
KRAMER, LEVIN, NAFTALIS & FRANKEL, LLP
1177 Avenue of the Americas
New York, New York 10036
BY: PHILIP BENTLEY, ESQ.
pbentley@kramerlevin.com
LAURENCE PETTIT, ESQ.
lpettit@kramerlevin.com
JEFFREY DUNLAP, ESQ.
jdunlap@kramerlevin.com

FOR THE DEBTORS:
MORRISON & FOERSTER, LLP
755 Page Mill Road
Palo Alto, CA 94304-1018
BY: DARRYL P. RAINS, ESQ.
drains@mofo.com



A P P E A R A N C E S: (Cont'd.)

FOR ALLY FINANCIAL INC.:
KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Washington D.C. 20005
BY: JONATHAN D. JANOW, ESQ.
jonathan.janow@kirkland.com

FOR WELLS FARGO:
ALSTON & BIRD, LLP
90 Park Avenue, 12th Floor
New York, New York 10016
BY: MICHAEL JOHNSON, ESQ.
michael.johnson@alston.com

FOR MBIA:
CADWALADER, WICKERSHAM & TAFT, LLP
One World Financial Center
New York, New York 10281
BY: JASON JURGENS, ESQ.
jason.jurgens@cwt.com
JOHN VASQUEZ, law clerk



A P P E A R A N C E S: (Cont'd.)

FOR THE EXAMINER:
CHADBOURNE & PARKE, LLP
30 Rockefeller Plaza
New York, New York 10112
BY: MICHAEL DISTEFANO, ESQ.
mdistefano@chadbourne.com

FOR THE LAW DEBENTURE:
SEWARD & KISEL, LLP
One Battery Park Plaza
New York, New York 10004
BY: BENAY L. JOSSELSON, ESQ.
josselson@sewkis.com

FOR THE U.S. BANK:
SEWARD & KISSEL, LLP
One Battery Park Plaza
New York, New York 10004
BY: MARK D. KOTWICK, ESQ.
kotwick@sewkis.com

A P P E A R A N C E S: (Cont'd.)

FOR THE POTENTIAL OBJECTOR FGIC:
JONES DAY
555 South Flower Street, 15th Floor
Los Angeles, California 90071
BY: ERIN N. BRADY, ESQ.
enbrady@jonesday.com
STEVEN C. BENNETT, ESQ. (New York)
scbennett@jonesday.com

FOR DEUTSCHE BANK:
MORGAN, LEWIS & BOCKIUS, LLP
1701 Market Street
Philadelphia, Pennsylvania 19103
BY: JOHN C. GOODCHILD, III, ESQ.
jgoodchild@morganlewis.com

FOR THE ASSURED GUARANTY:
PROSKAUER ROSE, LLP
Eleven Times Square
New York, NY 10036-8299
BY: Irena M. Goldstein, ESQ.
igoldstein@proskauer.com



A P P E A R A N C E S: (Cont'd):

FOR BANK OF NEW YORK MELLON:
DECHERT, LLP
1095 Avenue of the Americas
New York, New York 10036
BY: MAURICIO ESPANA, ESQ.
mauricio.espana@dechert.com

FOR THE STEERING COMMITTEE INVESTORS:
GIBBS & BRUNS, LLP
1100 Louisiana, Suite 5300
Houston, Texas 77002
BY: DAVID SHEEREN, ESQ.
dsheeren@gibbsbruns.com
KATHY D. PATRICK, ESQ. (P.m. session)
kpatrick@gibbsbruns.com

FOR THE RMBS STEERING COMMITTEE:
ROPES & GRAY, LLP
800 Boylston Street
Boston, MA 02199-3600
BY: ANDREW G. DEVORE, ESQ.
andrew.devore@ropesgray.com



A P P E A R A N C E S: (Cont'd)

ALSO PRESENT:
ALAN FRANKEL, Coherent Economics
LANDON D. PARSONS, Moelis & Company
ALLY GIBLER, Moelis & Company



S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

FRANK SILLMAN
(Expert 9019 Exhibit 4, Mr. Sillman's CV, marked for identification, as of this date.)
(Expert 9019 Exhibit 5, Mr. Sillman's expert report, marked for identification, as of this date.)
(Expert 9019 Exhibit 6, Mr. Sillman's supplemental expert report, marked for identification, as of this date.)
EXAMINATION BY
MR. BENTLEY:
**Q. Good morning, Mr. Sillman.**
A. Good morning.
**Q. For the record, I'm Philip Bentley of the Kramer Levin law firm representing the official committee of unsecured creditors in this case. You and I have spoken before?**
A. (Witness nods.) Right.
**Q. Good to see you again.**
A. Yeah.
**Q. And you've been through this process before I take it?**



**FRANK SILLMAN**
A. Yes.
**Q. You've been deposed before?**
A. Yes.
**Q. Let's start by marking as Exhibit 4 -- let's start -- let me start again.**
**Let's start by marking as expert 9019-4 the CV that the debtors filed in connection with your expert reports in this case.**
**And just a word on terminology. The exhibits are marked with this funny designation expert 9019 and then a number. I'm just going to call it Exhibit 4, Exhibit 5, et cetera because I think that's a bit simpler.**
A. Fine.
**Q. So let me hand you Exhibit 4 and ask you if that in fact is the CV that the debtors filed in connection with your reports?**
MR. RAINS: If you know.
A. Yes.
**Q. And it's reasonably accurate and**



**FRANK SILLMAN**
**up to date?**
A. Yes.
**Q. Let's start by talking about your education and then move on to employment. You have a BA from UC at San Diego?**
A. Yes.
**Q. And what year was that, if you recall?**
A. I believe it was 1986.
**Q. Do you have any advanced degrees?**
A. No.
**Q. What was your major at UC San Diego?**
A. Psychology.
**Q. Did you study statistics or any other quantitative matters?**
A. As part of that degree I did take some statistics classes.
**Q. Do you have any formal education since college?**
A. No.
**Q. Do you have any formal training**



**FRANK SILLMAN**
**of any sort since college, putting aside your professional experience, just focusing on formal training?**
A. No additional formal training.
**Q. So let's turn to -- strike that.**
**I take it you don't have any -- you haven't had any legal education?**
A. I have not.
**Q. And you don't consider yourself to have any expertise in legal matters?**
A. No, I do not.
**Q. Let's turn to your employment experience. You started out at Shearson Lehman?**
A. Correct.
**Q. And you were in the mortgage business at Shearson?**
A. Yes.
**Q. It looks to me like you've been in mortgage related businesses all of your careers, do I have that right?**
A. Yes.
**Q. Can you briefly summarize for me the principal aspects of your career that**

FRANK SILLMAN
**form the basis for the expert opinions that you'll be offering to the court?**
A. Over my 25 plus years in the mortgage banking business I have had experience in loan origination, secondary marketing, capital markets. I'm an expert in mortgage-backed securitizations and in the review and analysis of repurchase risks and liabilities.
**Q. When did you first get involved with mortgage securitizations?**
A. At Shearson Lehman.
**Q. Wow, right back at the very beginning of your career or close to it?**
A. Yes.
**Q. Can you just describe that experience for me, your Lehman experience.**
A. So I was involved at various positions therein, secondary marketing, treasury and warehouse lending. In my treasury position and secondary marketing position I was involved in the creation and sale of mortgage-backed securities.
**Q. And did you continue to be**



FRANK SILLMAN
**involved in mortgage securitizations at your next job at TCM/AHC Mortgage?**
A. No. We did not -- we did not create and sell mortgage-backed securities at TCM/AHC Mortgage.
**Q. Can you briefly summarize your responsibilities there as they -- as they relate to the expertise that you'll be offering in this case?**
A. So at TCM/AHC Mortgage I was involved in the loan production. So the origination of loans and the sale of those loans to other mortgage investors. And as part of that process we would be presented loan repurchases. So I was involved in the review and negotiation of loan repurchases.
**Q. What was your role in that regard?**
A. I was the senior manager who would review the recommendations made by our underwriters and present the findings to the principal of the mortgage company so that he could make a decision as to



FRANK SILLMAN
whether or not he would repurchase the loan.
**Q. You then moved on to IMB Bank. Can you describe the positions you held there and your responsibilities?**
A. Okay. The first position that I held there was senior vice president of retail lending. I was responsible for the sales and marketing of residential mortgages to consumers. And then I was promoted to head product development at -- at the bank. My responsibilities there were to design loan programs that could be sold through the securitization process in the secondary market. Predominantly GSE loans that were securitized and private label loans that were securitized.
**Q. Over what period did you hold that position?**
A. I don't remember the dates. It was a couple of years but I don't remember the exact dates.
**Q. Okay. What was your next position at IMB Bank?**



**FRANK SILLMAN**
A. I believe my next position was the head of sales and marketing for the wholesale division.
**Q. And can you describe what that entailed?**
A. That was we marketed it to mortgage brokers. We marketed our loan products to mortgage brokers who would deliver them to us. We would underwrite those, create loan documents and fund those loans on behalf of the mortgage brokers. And then we would put those loans into securitizations and sell them in the secondary market.
**Q. And were these both private label and GSE securitizations?**
A. Yes.
**Q. And over what period did you hold that position?**
A. That position morphed into taking on more responsibilities. Again, I'm -- you know, I would say it's -- I held various loan production positions all the way through 2008 but I don't recall

the dates that I was responsible for these individual divisions.

**Q. And when -- to the best that you can recall when did you get promoted to executive vice president of the mortgage banking group?**

A. If I had to guess, I don't remember the date, it was probably somewhere around 2003-2004. But I don't recall the exact date.

**Q. And how did your responsibilities change when you, after that promotion, as they related to loan securitizations?**

A. As I got promoted I took on more responsibilities in relation to certain divisions. The retail division, the correspondent division, the warehouse lending division and then for a period of time I was responsible for the secondary marketing group that was responsible for the securitization of our loans both to the GSEs and private label.

**Q. While you were at IMB Bank did**





**the bank sell any loans to the debtors?**

A. I don't recall. They may have. I just -- I don't recall.

**Q. And did your, did the loans that you securitized cover the gamut in terms of loan types or did they fall under certain types -- certain categories principally?**

A. Well, we did GSE loans, we did private label securitization loans and we did FHA loans. So we did all three types of loans.

**Q. Let me ask an ignorant question. By the way, a number of my questions today are going to be ignorant so I hope you'll --**

MR. RAINS: So stipulated.

MR. BENTLEY: So I'm relying on Mr. Sillman to further my education in this quite complicated area.

**Q. Tell me about FHA loans, how do they differ from GSE loans?**

A. It's a program -- FHA is part of HUD. It's a program where FHA insures





loans that are securitized principally through Ginnie Mae. So in many ways it's, it's a direct insurance product as opposed to the GSEs, where they don't directly insure the loans. And they are typically lower loan to -- higher loan to value lower down payment loans.

**Q. And a moment ago when I asked you about the types of loans, what I meant to ask was prime, subprime, Alt-A. Did the loans you were securitizing cover the gamut in that regard?**

A. We did securitize prime jumbo loans. We securitized Alt-A loans and we securitized subprime loans. We also securitized, I believe we securitized HELOC loans also.

**Q. So you covered the spectrum of the principal types of loan products?**

A. That's right.

**Q. Is IMB Bank the same thing as IndyMac?**

A. Correct.

**Q. When in 2008 did you leave the**





**bank?**

A. I resigned in September of 2008, I believe.

**Q. That was an eventful month.**

A. Yes.

**Q. When did IMB Bank stop securitizing loans? When did that business dry up?**

A. I don't remember. I know that the securitization markets got more difficult in 2007 but I don't recall when we did our last securitization.

**Q. Was it sometime in '07 or do you think it might be in '08?**

A. I don't remember.

**Q. Was anybody securitizing in any meaningful numbers in '08?**

A. I don't believe so but I don't -- I don't recall. The market had gotten more difficult in, you know, late 2007. So but I don't recall securitization activity.

**Q. Is there a particular point during '07 when RMBS securitizations**

**FRANK SILLMAN**

**pretty much dried up, summer, fall? Can you pinpoint it?**

A. I don't recall. I remember two thousand -- summer of 2007 liquidity was more difficult but I don't recall. I don't recall when they stopped.

**Q. Fair enough. You left IMB Bank and you formed Fortace LLC?**

A. Correct.

**Q. When did you start Fortace?**

A. Right after we left, so that was September. I think we formed it the latter part of September 2008.

**Q. Tell me about the forming of that business. You say we, who is we?**

A. Myself and Richard Wohl were the founding partners of that business.

**Q. And have the two of you been the two principals of Fortace ever since?**

A. We had been up until October of last year. I bought out Richard Wohl's interest and he's no longer involved in the business.

**Q. And while he was still at the**



**FRANK SILLMAN**

**business, was there any particular division of responsibilities between the two of you?**

A. I typically handled client development and audit operations. He tended to handle more of the corporate work. So he was a trained attorney. So he would handle more of kind of contract negotiations, corporate work that we would do.

**Q. Corporate work, can you just explain that to me a little bit, how it differed from the work you did?**

A. He typically would focus on kind of our business, corporate business activities. So negotiating leases and agreements and contracts with our clients. Those types of activities.

**Q. Understood. I see. In terms of providing the services you were the lead person?**

A. That's correct.

**Q. Is your wife involved in your business?**



**FRANK SILLMAN**

A. She is.

**Q. And what is her role?**

A. She is a managing partner.

**Q. I don't mean to pry, I was just curious. I had heard that over the grapevine.**

**Excuse me one second.**

**Just to return to something you said a few minutes ago. No, strike that.**

**So can you summarize for me the sorts of work you have done for clients at Fortace?**

A. We have done work analyzing loans that they may decide to issue repurchase demands for for clients. And we have -- or rescission requests. And we have done work defending clients against repurchase demands.

**Q. Is that -- would you say that's the principal part of the services you've been providing at Fortace?**

A. It's one of the major services that we were providing. We do other consulting work also.



FRANK SILLMAN

**Q. You've done some work for the debtors, is that correct, prior to your engagement in this matter?**

A. Yes.

**Q. Tell me what work you've done for the debtors.**

A. We did some consulting work with them. We also reviewed loan files for them in relation to some potential litigation and -- litigation they had at the time.

**Q. Over what period -- over what period have you done work for the debtors prior to -- strike that. Let me start again and try to be a little clearer.**

**In this matter, when were you first contacted?**

A. I believe it was May of this year.

**Q. It was after the settlement agreement had been executed?**

A. Yes.

**Q. Prior to that time, over what period had you been doing work for the**

**FRANK SILLMAN**

**debtors?**
A. I believe we started in early 2011. I don't recall exactly when we started.
**Q. And who did you work with at the debtors?**
A. We did most of the work with their outside law firm. I don't recall -- there was a contact that was on some of the calls. I don't remember their name. Most of the work was done through their outside counsel.
**Q. The Carpenter Lipps firm?**
A. Yes.
**Q. Who were the principal attorneys there who you had contact with?**
A. Jen Battle.
**Q. And also Jeff Lipps to some extent?**
A. Maybe on one call. Very rarely. I don't recall but it was predominantly Jen Battle.
**Q. Was all of the work you did in connection with lawsuits or was some of it**



**FRANK SILLMAN**

**not?**
A. I'm trying to remember. Predominantly it was lawsuits. I believe there was some work we discussed with them that wasn't related to a lawsuit. I believe we did some work before one of the plaintiffs filed their lawsuit. That's why I'm trying to remember for you. So I think we did work both not related to litigation and in litigation.
**Q. In one instance you recall some prelitigation work?**
A. Correct.
**Q. What were the lawsuits you worked on?**
A. The MBIA litigation.
**Q. MBIA versus which debtor entity?**
A. I believe it was both entities, RFC and GMAC if there was -- yeah.
**Q. They're two separate suits?**
A. Yes.
**Q. Any other lawsuits?**
A. For them?
**Q. For the debtors.**



**FRANK SILLMAN**

A. I don't recall work. There may have been discussions about other cases but I don't recall. The majority of our work was done for those cases.
**Q. Those two lawsuits?**
A. Yeah. And I think the majority of the work was the RFC case of the two cases.
**Q. And can you describe for me the work you did -- let me start again.**
**Did you stop working on those projects when you took on your current engagement?**
A. We stopped before we took on the current engagement.
**Q. When did you stop?**
A. They asked us to stop any work on it, might have been late April or early May.
**Q. In anticipation of the work that you are doing on your current profit project?**
A. I don't know why they asked us.
**Q. Who asked you?**



**FRANK SILLMAN**

A. Jen Battle.
**Q. And what was the nature of the work you'd been doing in the MBIA versus RFC suit?**
A. We would develop audit strategies and review loan files in preparation for any work that we may need to do in that case.
**Q. How many loan files did you review?**
A. There were thousands. I don't recall the number.
**Q. Are we talking tens of thousands?**
A. No. I would say thousands.
**Q. Did you work with any other firm in doing this loan review work?**
A. For other clients?
**Q. No. What I'm trying to understand is this loan review project, was it staffed entirely out of your firm?**
A. Yes.
**Q. How many people at your firm were involved?**

FRANK SILLMAN
A. Well, it varied depending on the volume but could have been anywhere from ten to, I don't recall, 25, possibly.
**Q. Over what time period did that work go on?**
A. It was a couple of months in 2011 and some work in 2012.
**Q. Did that result in any expert report being presented?**
A. No.
**Q. Were you working with any other experts in connection with the work you did?**
A. No.
**Q. Would you say -- I'm trying to understand the nature of the work you did. Would you say you did a full loan -- a full reunderwriting of the loans you reviewed?**
A. In some cases. In some cases we reviewed the files to ensure the document, the imaged file had a complete set of documents. So two types of work.
**Q. Okay. I didn't follow that.**



FRANK SILLMAN
**Can you explain.**
A. So in some cases we did a full reunderwriting of the file. In some cases we just reviewed the file to determine whether a predetermined set of loan documents were contained in the file.
**Q. Is there a reason you did the full loan review for some files but not for others?**
A. Just different objectives from the client. In one case they wanted to understand the quality of the subset of loans that they gave to us. In another case they wanted to understand how complete the imaged files were.
**Q. Were you involved in selecting the pool of loans that you reviewed?**
A. I was involved in the discussions of, you know, the selection process. I don't know -- our firm didn't pick the loan numbers.
**Q. Who did?**
A. I don't know who did. We received the loan numbers from Jen Battle



FRANK SILLMAN
but I don't know who at the firm picked the loan numbers.
**Q. Do you know what the criteria or method that was used in selecting the loans?**
A. Which, the loan reunderwriting population or the --
**Q. Yes.**
A. No, I don't recall.
**Q. Was that a random sample?**
A. I don't recall.
**Q. And again, sticking with the loans that you reunderwrote. You looked at the loan files. Did you look at any documents outside the loan files?**
A. Rephrase the question.
MR. RAINS: You are still again asking him what he did previous to this assignment.
MR. BENTLEY: Correct. Sure.
**Q. I'm asking about this loan reunderwriting project you are describing.**
A. Right.
**Q. You looked at the loan files?**



FRANK SILLMAN
A. Correct.
**Q. Did you look at any documents or information outside of the loan files?**
A. Yes. We would typically use their seller guide. We would look at that document. We would -- as part of preparing for the project, we would look at governing agreements. We may have looked at documents from third-party service providers, which is credit reports.
**Q. Credit reports is an example of the sort of documents you might have looked at from third-party service providers?**
A. Correct, that were outside the imaged loan file.
**Q. When you do a loan reunderwriting, what types of documents do you generally get from third-party service providers?**
A. It depends on an engagement by engagement basis on what the client wants us to incorporate in the reunderwriting

FRANK SILLMAN

project. So in some cases we may only utilize the documents contained within the imaged file and the seller guide or underwriting guidelines. In other cases they may ask us to go out and get third-party documents such as an updated credit report as part of that review.

**Q. Did you also look at pay histories as part of the work you did in connection with this RFC case?**

A. You know, I don't recall that particular. I just don't remember what the requirements were on that reunderwriting project.

**Q. You also mentioned you looked at certain documents to determine if the file was complete. Sorry. Let me start again.**

**With respect to the reunderwriting project you did, were some of those files incomplete?**

A. I don't recall the results of that project. It's possible that some of those were incomplete. But I don't have the information regarding the work that we



FRANK SILLMAN

did there.

**Q. Okay. And if some files were incomplete, do you believe that would create a flaw in the reunderwriting process?**

A. There's a standard process under which you reunderwrite these loans. It's normal for some documents to be missing from the imaged credit file as part of that underwrite -- reunderwriting process. And that would have to be evaluated on a loan by loan, case by case basis.

**Q. Okay. Let's turn from this subject and let me ask you more broadly about the clients you've represented while at Fortace. Some of them are loan sellers?**

A. (Witness nods.)

**Q. And some of them are, would buy side clients be a --**

A. Correct. They purchase loans.

**Q. -- a term you recognize?**

A. Yes.

**Q. So in the case of the surgical**



**FRANK SILLMAN**

**sellers you would generally advise them about how to respond to put back demands?**

A. Yes.

**Q. And in the case of the buy side clients you'd generally advise them about put back demands they were considering making?**

A. Yes. Help them determine the audit population and then evaluate those loans to help advise them on whether or not they should require a repurchase demand.

**Q. So focusing on the entire period you've been at Fortace since you created it up to now, what can you tell me about when -- the loans that you've been advising clients about, what portion of them were originated before September '08 and what portion were originated after? Is that something that matters when you are doing your work?**

MR. RAINS: Object to the form of the question. It's compound.

A. We generally worked on loans



FRANK SILLMAN

that were originated prior to 2008.

**Q. So help me understand how the business has worked. Securitizations I think you said mostly dried up in '07; is that correct?**

A. I don't recall is my answer.

**Q. May have continued to some extent into '08 but at a much lower level, is that fair?**

A. Liquidity began to dry up in, yes, late 2007, 2008.

**Q. Did there come a point when securitizations resumed or increased in number?**

A. Are we talking about private label securitizations? Can you clarify your question?

**Q. Sure. Let's start by that. I'm just trying to get a general background.**

A. The private label, my -- my understanding today and I'm, is that private label securitizations are not at the levels they were in 2005-2006.

**Q. But was there basically a major**

**FRANK SILLMAN**

**lull and then an uptick?**
A. Uptick and -- I'm sorry.
MR. RAINS: Objection, vague and ambiguous.
**Q. I know these terms are very imprecise but did the market basically die and then revive at some point?**
MR. RAINS: Same objection. Vague and ambiguous.
A. I'm not sure what time frame that you are asking me to opine upon.
**Q. During 2009 or 2010, did the number of private label securitizations at some point substantially increase, generally speaking?**
A. I didn't review that. I haven't reviewed what the securitization volume was in 2009, 2010. So I really can't answer that question.
**Q. Has a lot of the business during this post '08 period been what's called re-remics?**
A. I wouldn't -- I don't know. I didn't evaluate that as part of the work I



FRANK SILLMAN

did on this project.
**Q. Can you tell me what a re-remic is?**
A. It's basically the resecuritization of loans that were originally in remics securitizations.
**Q. And what does resecuritization entail?**
A. I'm not an expert on re-remics.
**Q. Not part of your background?**
A. It's not part of my, yeah, my background.
**Q. Fair enough. Let me hand you what's been marked as Exhibit 5. And can you tell me what this is?**
A. This is my original declaration.
**Q. By the way, before turning further into this declaration let me ask you a few unrelated questions. Have you testified before as an expert?**
A. I have not.
**Q. Have you ever prepared an expert report?**
A. Prior to this, no. Our cases



FRANK SILLMAN

have not gone to that stage.
**Q. So you've been retained as an expert who might potentially file an expert report but it hasn't come to the expert report stage?**
A. Correct.
**Q. By the debtors?**
A. Yes.
**Q. In the MBIA versus RFC case?**
A. Yes.
**Q. And at the time that Jen Battle asked you to stop work in that case did you anticipate that it was still possible you might be asked to provide expert testimony for RFC?**
A. Rephrase your question.
**Q. You mentioned that at some point in late April or early May Jen Battle asked to you stop work on the two lawsuits you were handling for the debtors?**
A. Yes.
**Q. And at that point before she asked you to stop work did you anticipate that you might be asked to provide expert**



**FRANK SILLMAN**

**testimony for the debtors?**
A. Yes.
**Q. For RFC?**
A. Yes.
**Q. And also for GMAC Mortgage?**
A. Yes.
**Q. Are there other matters where you have been hired as somebody who might potentially provide expert testimony?**
A. Yes.
**Q. By which clients?**
A. It's confidential.
MR. BENTLEY: I won't ask.
MR. RAINS: I'll let you ask if it was ResCap or somebody else.
**Q. In any other matters for any of the debtors?**
A. No.
**Q. Have you ever done any work for Ally Financial or any of its affiliates other than the debtors?**
A. No.
**Q. Have you authored any publications in your field?**

A. I have written articles that have been published, yes.

MR. BENTLEY: Darryl, I don't believe we have been provided with a list of Mr. Sillman's publications as required by Rule 26.

MR. RAINS: I don't know.

MR. BENTLEY: I would ask that you cure that deficiency.

MR. RAINS: So let's huddle on a break and find out what those are.

**Q. So let's return to that and if it's possible to supply me with a list, I'd like to return to that later.**

**Okay. Can you turn, please, to paragraph 2 of Exhibit 4. And by the way just so we are clear on terminology, Exhibit 4 is the first declaration that you filed in this case?**

A. (Witness nods.)

**Q. Correct?**

A. Correct.

**Q. And you subsequently filed a supplemental declaration in September --**





A. Correct.

**Q. -- correct?**

**So if I refer to this as your first declaration or your initial declaration, you'll know what I mean?**

A. Okay.

**Q. So please turn to paragraph 2 of your initial declaration. And as we have already discussed to some degree, this paragraph describes work you've done both for sellers and for buy side clients?**

A. Correct.

**Q. Tell me a bit about your buy side clients. You referred to insurers and lenders. Can you describe that in a bit more detail for me?**

A. They are -- they are or were predominantly banks that purchased loans or originated loans through their retail, wholesale or correspondent origination channels.

**Q. Can you identify those clients or is that confidential?**

A. That's confidential.





**Q. And tell me about the insurers you've represented?**

A. We also did work with two mortgage insurance companies that had us review loans for potential insurance rescission.

**Q. And same question as before. Can you identify those clients or is that confidential?**

A. That's confidential.

**Q. Can you help me understand a little bit, again this is my ignorance in the field, how those mortgage insurers differed from monoline insurers like MBIA or FGIC?**

A. The mortgage insurance, and I'm not an insurance expert, but in general --

**Q. I'm not either.**

A. -- from my mortgage experience, the mortgage insurance is typically issued on a loan by loan basis. So they issue a certificate for each loan. The monoline insurers tended to secure -- insure securitizations so they insured a pool of





loans. So it's kind of an individual versus a pool process.

**Q. And these insurer clients you represented, when you've been reviewing possible put back demands they might make, would this generally be when they are reviewing a number of potential put back demands against one particular company?**

A. The loans that we worked on were typically from many originators not just one particular originator.

**Q. But these mortgage insurers would have insured a number of loans provided by a particular originator and they would then ask you to look at that group of loans and consider making put back demands; is that right?**

A. The way they allocated the loans to us, it may have been for one particular originator or may have been for multiple originators.

**Q. But would they generally have provided this mortgage insurance in bulk as it were, that is to a whole bunch of**

**loans at the same time?**

A. The mortgage insurers had relationships with originators. So they may have done work with one particular originator. What's typical in the industry is that the originator has multiple mortgage insurance relationships. How they allocate those depends on lots of corporate objectives. But there's typically not a 1 to 1 relationship between a mortgage insurer and an originator. So mortgage originators wrote insurance for multiple originators. And originators got insurance from multiple mortgage insurers.

**Q. They spread the business around?**

A. Yes.

**Q. And the loans that your clients insured, were they generally loans that -- were they often loans that had been sold into securitizations?**

A. They were both private label securitization loans and GSE, Fannie, Freddie originated loans.





**Q. Your sell side clients, was that mostly the debtors or what were portion of your work for sell side clients was for the debtors?**

A. That's confidential.

**Q. Okay. Can you tell me whether it's most of the work?**

A. Sell side work. I'd have to look at the numbers. It's a large portion. I don't know that it's most. I don't have those numbers in front of me.

**Q. What can you tell me about -- I don't mean to ask you to disclose confidential information. Without doing that what can you tell me about the nature of those other sellers?**

A. Many cases similar in the origination and sales process to the debtors. So they originated loans, purchased loans, originated their own loans, gathered those loans, securitized those loans, both to the GSEs and in private label securitizations.

**Q. And just like with the debtors**





**GMAC originated most of the loans it sold, RFC purchased most of the loans it sold, did you have the same variation among your other sell side clients, some originated, others purchased?**

A. Correct.

**Q. And did that difference sometimes have a bearing on the work you did? Did it sometimes affect the process you applied or the results you found?**

A. Which difference is that?

**Q. Whether your client had originated the loans or had purchased from others.**

A. The process that we went through was similar whether or not the loan was originated by our client or purchased by our client. The results, I don't remember what -- I don't recall what the results were by different segments.

**Q. Just one moment. Let me hand you what's been marked as Exhibit 6. Do you recognize that to be your September 28, 2012, supplemental**





**declaration in this case?**

A. Yes.

**Q. And tell me what Exhibit C is.**

MR. RAINS: Do you have another copy? No? If not -- I'm okay. I'm okay.

MR. BENTLEY: We do have another if I can find it.

A. The whole document is labeled Exhibit C. It's on -- in the upper right it's all Exhibit C so which exhibit --

**Q. I'm sorry. Then this is confusing. If you flip through -- shall I come around and help you? I think the confusion is that this document may have been filed as Exhibit C to something else --**

A. Right.

**Q. -- but I'm talking about Exhibit C to your supplemental declaration.**

A. Got it.

**Q. Now you found it?**

A. Yes.

**Q. Can you tell me what it is?**

FRANK SILLMAN

A. DBRS, it's the -- DBRS is the name of the company, the rating agency.

**Q. And the report is called RMBS Insight and it then continues?**

A. Yes.

**Q. And what does this report describe?**

A. Their mortgage-backed securities loss model and rating methodology.

**Q. Who is DBRS?**

A. They are a credit rating agency.

**Q. They are not affiliated with Deutsche Bank, are they?**

A. I don't know whether or not they are or are not.

**Q. Just wondering whether the DB?**

A. Yeah.

**Q. And this document describes a model that they generate called insight; is that correct?**

A. Yes.

**Q. And you annexed this to your supplemental declaration I believe as an example of a methodology that's commonly**



FRANK SILLMAN

**used in the business to estimate loan losses, correct?**

A. Correct.

**Q. And do you believe that DBRS is reliable and that the work they do should be given some weight?**

A. One of the credit agencies that rate bonds, I'm not familiar with their track record as to the accuracy of their model.

**Q. But is it one of the models that you sometimes use in your work?**

A. I don't use their model in particular. The two models that we used were the Intex model and the West Pat model. I attached this because I thought they did a very good job of explaining the process that many rating agencies use and other models to use in evaluating mortgage bonds and estimated loss models?

**Q. If you turn to page 39, you'll see that this is called Appendix 2 Operational Risk Assessment. Do you see that?**



FRANK SILLMAN

A. Yes.

**Q. And I believe this describes the review process that DBRS does to assess whether loans have been originated in accordance with the sellers underwriting guidelines and for related matters?**

MR. RAINS: Objection. The document speaks for itself.

**Q. Is that what you understand this to, this appendix to address?**

A. It discusses their originator review process.

**Q. And if you look at page 40 at the bottom of the page under the heading Origination and Sourcing. Do you see on the second and third line it says that DBRS reviews -- I'm paraphrasing -- DBRS reviews the approval and monitoring processes for third-party originators to determine if the originate has strong procedures and controls.**

A. I see those sentences.

**Q. Okay. Now look, if you would, to the bottom of page 42 and take a moment**



FRANK SILLMAN

**and read the last paragraph on that page.**

A. The last paragraph starting with "Based on the above analysis"?

**Q. Correct. It then says "The performance, varied by originator and servicer, generally fall between the plus-minus 25 to 35 percent range for originators and servicers excluding a small number of irregular deals."**

**Do you have an understanding of what -- what that sentence means, what DBRS is saying?**

A. I don't know what numbers, what they evaluated. They did not share in here their historical review history. So no, I can't opine on what they are trying to say in that sentence.

**Q. And I don't actually mean to ask you to opine on that. I'm just trying to see if you can help me understand it. I think what they are saying is that they believe some originators have much stronger practices than others and that that has a significant effect on the**

54

**FRANK SILLMAN**

**quality of loan production. Did I get that right as you read this?**

MR. RAINS: Objection. Asked and answered.

A. Yeah, I don't know.

**Q. Do you believe that different originators, some have stronger practices and procedures as it affects loan quality than others?**

A. It's possible to have variations in the strength of their controls.

**Q. If you were reviewing put back requests with respect to loans originated by Countrywide, the fact that Countrywide originated them might affect your analysis, right?**

A. Not necessarily. I don't predispose the work that gets done based on who the originator is. You are talking about at the auditor level they are following the audit strategy that we develop with the client.

**Q. Fair enough. But would you agree that the level of breaches in loans**

55

**FRANK SILLMAN**

**may vary depending on who the originator is and what the quality of their practice is?**

MR. RAINS: Objection. Asked and answered.

A. There may be variances in the breach rates based on different originators, based on, you know, certain factors.

**Q. And do you have a view as to whether GMAC Mortgage's origination practices and controls, how they compare to those of other originators?**

A. The review of GMAC's operational controls were not part of the work that I did in my declaration. I relied on the repurchase analysis that I did related to the their GSE repurchases.

**Q. But do you have a view of this based on the prior work you had done?**

A. The prior work that we had done did not involve the review of their operational practices, origination practices.

56

FRANK SILLMAN

**Q. Okay. Just so we are clear, you don't have a view as to how GMAC Mortgage's origination practices and controls compare to those of other originators?**

A. I discussed a little in my declaration regarding the agree rates that they had on their GSE. But I don't have an opinion, I did not review their operational practices.

**Q. Do you have a -- strike that.**

**Help me with terminology if you would. RFC doesn't originate the loans itself, rather it buys from others, right?**

A. I believe in the majority of the case they purchase those loans.

**Q. Is there a label you use, a name you use for companies who operate that way as opposed to originating the loans themselves?**

A. No. It's more whether they originate the loans in their retail, their wholesale, their correspondent or their conduit group is typically how the

57

FRANK SILLMAN

industry differentiates how the loans are originated.

**Q. So which of those categories does RFC fall in?**

A. They tend to be more in the correspondent and conduit realm than in the retail and wholesale.

**Q. And when you are looking at loans that had been sold into a securitization by a company like that, that is a company that relies on correspondent and conduit sources to source its loans do you sometimes look at the quality of that company's controls?**

A. When are you asking me when I would do that.

**Q. In any assessment you might do relating to loan quality, loan performance, put back, et cetera?**

A. The engagement that we are on we are typically asked to -- I guess you are asking me on repurchase requests. It's focused on the objectives the client set up which might be, did the loan meet the

FRANK SILLMAN

underwriting guidelines. If there were any breaches, were they material and adverse. So it's a confined project scope on what they ask us to do.

**Q. Understand. Do you have a view -- strike that.**

**When RFC sourced loans, did it have certain practices and procedures for due diligencing those loans?**

A. According to their seller guide they had certain policies or procedures around approval of sellers of loans to them and processes that they went through to review the loans. I did not as part of the work that I did for them test the scope of whether or not they performed those functions.

**Q. So is it fair to say you don't have a view as to the quality of RFC's practices and procedures in that regard?**

A. I did not review their practices and procedures so I don't have a view on their practices and procedures.

**Q. You can't say whether they are**



**FRANK SILLMAN**

**stronger than average, weaker than average or in the middle?**

A. As part of the work I did here, I did not review that so that was outside the scope of the work that I did.

**Q. I'm just asking whether you have a view based on anything.**

A. I don't.

**Q. Fair enough. Let's turn back to initial declaration and now let's turn to paragraph 3. And I promise you we are not going to move at a glacial pace like this all day. We are going to move a lot faster.**

**I want to ask you in particular about the last sentence in this paragraph. You refer here to -- what's the term you use -- different loan types, loan products?**

MR. RAINS: Hold on. What are you directing -- are you asking him to read something?

MR. BENTLEY: The last sentence of paragraph 3.



FRANK SILLMAN

MR. RAINS: So what's the question?

**Q. There's a list here. I just want to get my terminology straight with you so we are not talking past each other. Is this a list of product types, loan types? What would you call it?**

A. It's a mixture of both sales outlets as it relates to Fannie Mae and Freddie Mac. And product types as it relates to FHA prime, jumbo, Alt-A subprime, home equity and closed end seconds.

**Q. So let's talk first about sales outlets and then about product types. Does your repurchase experience -- does the repurchase experience that you have encountered in your work at Fortace differ when you are dealing with GSEs as distinct from private label trusts?**

A. The process was similar.

**Q. Does the outcome tend to differ?**

A. What do you mean by the outcome?

**Q. Does the put back rate tend to**



**FRANK SILLMAN**

**be higher for example?**

A. There are -- there are different, you know, reps and warrants for Fannie Mae for Freddie Mac versus FHA versus -- depending on the type of vehicle you sold in the other products there might be different rep and warrant standards that need to be met between these.

**Q. And by and large the reps and warranties for the GSE deals tend to be stronger than for private label deals?**

MR. RAINS: Objection. No foundation. Calls for speculation.

**Q. In your experience --**

A. There are different reps and warrant requirements from Fannie and Freddie than there are from private label securitizations.

**Q. And in fact you actually address that in your report?**

A. I do discuss it in the report.

**Q. Let's turn to that so I'm not keeping you in suspense. Paragraph 61.**

A. 61, okay.

FRANK SILLMAN

**Q. And the point you make in 61 is that the reps and warranties in GSE deals tend to be stronger than in private label deals, right?**

A. I said the trusts governing agreements. So I'm -- was not trying to make a -- you were asking me private label deals in general and I'm discussing here the trust governing agreements that I have reviewed which were, I believe, eight of the governing agreements, one from each shelf as a representative sample.

**Q. Okay, fair enough. So you are limiting your response to these particular private label deals?**

A. Correct.

**Q. And you then describe here some of the principal respects in which the GSE reps and warranties are stronger than those in the governing agreements for these trusts?**

A. Correct.

**Q. Let's turn back to paragraph 3 and now let's talk about product type.**



**FRANK SILLMAN**

**Am I right when you refer to prime, jumbo, Alt-A and subprime, those labels as you understand them generally apply to first lien loans?**

A. Yes.

**Q. And then HELOC is a form of second lien loan?**

A. In most cases, not always. There are first mortgage HELOCs but predominantly I believe the HELOCs are second mortgages.

**Q. And in your experience do Alt-A and subprime mortgage loans tend to yield higher rep and warranty breaches than prime jumbo? And I'll refer you to paragraph 58 of your declaration if you want to look at that. I'm going to object to the form of the question as vague and ambiguous?**

A. Can you restate the question for me.

**Q. In your experience do Alt-A and subprime mortgages tend to yield higher rep and warranty breaches than prime jumbo**



**FRANK SILLMAN**

**mortgages?**

A. They tend to yield higher alleged rep and warrant breaches.

**Q. And how much higher, can you quantify that at all?**

A. I don't have the numbers in front of me to be able to give you any type of percentage differences.

**Q. Suppose you were asked by your client to quantify that. Could you do that and how would you go about it?**

A. I wouldn't be able to quantify it without looking at and doing more work on what the actual experience is. I do know that it is -- my experience has been it's higher, there's been a higher rate of alleged rep and warrant breaches, but I couldn't put a percentage on it.

**Q. Are there any publications that address that to your knowledge?**

A. There may be that address it. I'm not aware of them.

**Q. Do you know if anybody has attempted to address that issue on an**



**FRANK SILLMAN**

**industry wide basis?**

A. It's -- it's possible in this environment that that type of analysis has been done -- I don't recall reading anything or relying on anything that I felt had a credible and reliable data around that.

**Q. Have you attempted to search the literature and determine whether anybody has made a credible attempt to determine that?**

MR. RAINS: Have you searched the literature, that's the question.

A. I have done some searches relating to that and didn't find any work that I believed had credible results.

**Q. Do you think that work could be done or is there just not enough publicly available data for anybody to reach meaningful conclusions?**

MR. RAINS: Objection. Vague and ambiguous.

A. Can you rephrase that.

**Q. Sure. Suppose a client asks you**

**FRANK SILLMAN**

**generally speaking as a matter of industry averages how much higher are the alleged rep and warranty breaches for Alt-A and subprime mortgages compared to other kinds of loan products?**

A. I don't believe I have --

MR. RAINS: Hold on. He hasn't asked a question yet.

**Q. Do you think you could undertake to answer that question?**

A. I have not seen information available that would allow me to study that question.

**Q. Have you attempted to determine whether that question can be answered in a meaningful way?**

A. I did do some work I discussed in my, on agree rates that are publicly available so I did do research as part of the work I did on my declaration to determine if there are other publicly available information regarding breach rates and agree rates and did not find any credible information that would allow me



FRANK SILLMAN

to come to any conclusions on breach rates.

**Q. Is part of the problem that an awful lot of this data is simply not publicly available?**

A. Yes.

**Q. And let me now broaden the question. Suppose the question is if you are asked to determine how the rates of alleged rep and warranty breaches compare as between any particular types of loan products, is that a question that can be answered using publicly available data?**

A. Again you are asking for industry wide comparisons?

**Q. Correct.**

A. I'm not aware of any publicly available data that would allow for a credible comparison between originators.

**Q. I'm talking about loan types?**

A. I'm sorry.

MR. RAINS: Products.

A. Yeah, products. You are talking about rep and warrant violations.



FRANK SILLMAN

**Q. Correct. And suppose now we modify the question so we are not asking about alleged breach rates but instead we're asking about what you call loss share rates. Could that question be addressed using publicly available data?**

A. There have been some expert reports that you can discern the loss share rates from. The issues with that is the underlying data you don't have access to so I can't opine on whether or not that's comparative to the debtors proposed settlement because the data behind those reports are not publicly available.

**Q. And which expert reports are you referring to?**

A. The Bank of America expert report and the Lehman expert declaration.

**Q. Now, I'm not asking you about discerning loss share rates as to any particular seller but rather as to industry averages. Is there publicly available data from which one could reach meaningful conclusions about average**



**FRANK SILLMAN**

**industry loss share rates?**

A. On a product by product basis?

**Q. Yes.**

A. I'm not aware of any credible sources that I have been able to evaluate their underlying data that provide that information.

**Q. And now let me ask the same question but as to vintages. Is there publicly available data from which one could reach meaningful conclusions about how loss share rates varied depending on the loan's vintage?**

A. Again, I'm not aware of any data that's available that you can reach credible conclusions and that I have been able to view the underlying data behind that.

**Q. In your -- strike that.**

**So now let's turn away from industry averages and turn back to your personal experience. In your personal experience is the vintage of a loan a factor that can affect the likelihood of a**

**put back?**

A. Yes. There is some correlation between the vintage of the loan and the potential for an alleged rep-warrant breach.

**Q. What correlation have you observed?**

A. There's a segment of loans originated from 2005 to 2007 that tended to have higher alleged breach rates in the work that I have done for my clients.

**Q. I want to understand what you said. You referred to a segment of loans originated from '05 to '07. Are you saying that loans originated during that period generally tend to have higher alleged breach rates in your experience?**

MR. RAINS: Objection. Misstates the witness's testimony.

MR. BENTLEY: I'm trying to understand it.

A. Loans originated in that period may have higher alleged breach rates or reps and warrant violations than loans





originated before or after that period.

**Q. And higher loss share rates as well?**

A. The information that I have on loss share rates outside of that period is limited, I don't recall a comparison on the loss share rate.

**Q. Let me now ask you about alleged breach rates within this period of '05 to '07. Have you observed any differences in alleged breach rates within that, during different times within that period?**

A. You mean comparing 2005 to 2006 to 2007?

**Q. Exactly.**

A. No, I have not observed meaningful differences in the alleged breach rates in that period.

**Q. Do you believe that they tend to be the same, everything else being equal?**

A. I believe that there aren't meaningful differences between the alleged breach rates in my professional experience.





**Q. Depending on when the loan was origi- -- whether the loan was originated in '05, '06 or '07?**

A. Yes.

MR. BENTLEY: The reporter has just requested a break and I think this is a good time for a break.

MR. RAINS: Sure enough.

(Whereupon, there is a recess in the proceedings.)

**Q. Let me ask you a few follow-up questions about topics we were just discussing and then we are going to move on.**

**In your experience have you observed any differences in the put back rates between first lien loans and second lien loans?**

A. Can you clarify what you mean by put back rates or do you --

**Q. What you call loss share rates.**

A. Okay. Loss share rates. No, I have not observed differences.

**Q. In your experience did the loss**





**share rates for first lien loans and second lien loans tend to be roughly the same?**

A. In my experience, yes.

**Q. And when I say second lien loans, I mean to include HELOCs. Did you understand me to include HELOCs?**

A. Yes.

**Q. And let me now ask the same questions but with respect to alleged breach rates. Have you observed in your personal experience any differences between the alleged breach rates for first lien and second lien loans?**

A. I haven't experienced any meaningful differences. I don't want to say that they are the same but there's no meaningful differences between the breach rates.

**Q. And again, you are not aware -- strike that.**

**Let me return briefly to your work for RFC. You said part of the work you did was to look at imaged loan files,**

74

**FRANK SILLMAN**

**correct?**

A. Imaged loan files were part of both of the projects, whether it was a reunderwrite or a document in inventory project.

**Q. So let's focus on the reunderwriting project that you did for RFC. Some of the imaged loan files were incomplete?**

A. I don't recall the results of that review.

**Q. Let me broaden the question to apply not just to imaged loan files but all of the loan files you reviewed for RFC as part of your reunderwriting project. Were some of the loan files incomplete?**

A. We only looked at imaged loan files as part of the RFC project.

**Q. And you don't recall whether some were incomplete?**

A. I don't have the data around what the results of that -- of those audits were.

**Q. So let me then ask you more**

75

**FRANK SILLMAN**

**broadly. Now, I'm not asking you just about your RFC experience but the work, the put back work you do generally. When you review a pool of loan files, if a particular loan file is incomplete, do you draw any conclusions based on that?**

A. It typically depends on a number of factors, which documents are missing, whether there are any facts in the file to determine whether or not the doc was, the document was likely there at the time that the credit decision was made. The reps and warrants regarding loan documents and any of the governing agreements. So there are many factors that go into determination of whether or not a missing doc is meaningful to our assessment.

**Q. And do you sometimes conclude that the absence of the document is a defect that could be remedied?**

A. Yes. That's a standard process in the industry from a repurchase perspective is when missing docs are noted out of an imaged file they may be

76

FRANK SILLMAN

requested from the originator or the servicer.

**Q. And often the missing documents can be obtained from the originator or the servicer?**

A. Yes. We frequently do get missing documents from the originator and the servicer or sometimes from other third parties, involved in the origination of the loan.

**Q. And in that instance you wouldn't conclude that the fact that the document was missing was a breach?**

A. Correct.

**Q. Sorry, I want to return one more time to -- I want to return to the questions I was just asking you about your personal experience with respect to first liens and second liens. And I believe you testified you haven't observed any differences in the average loss share rates or the average alleged breach rates between those two types of loans?**

A. Not material differences

77

FRANK SILLMAN

between.

**Q. Does your answer change if you distinguish between GSE deals and private label deals, that is in private label deals have you observed differences between the average alleged breach rates or the average loss share rates between first and second lien loans?**

MR. RAINS: Objection. Vague and ambiguous. Compound.

A. I'm not sure I understand exactly what you want me to compare here.

**Q. Okay. Let me try again because Mr. Rains is correct. That was a compound question.**

**Let me ask you to focus now on the differences, if any, between first and second lien loans in the private label deals that you've worked on. Have you observed any differences between the average breach rates -- the average alleged breach rates?**

A. Between first and second liens for private label securitizations?

FRANK SILLMAN

**Q. Exactly.**

A. I don't recall any material differences between alleged breach rates for first and second mortgages and private label securitizations.

**Q. And how about any differences between the loss share rates of first and second lien loans in private label securitizations?**

A. I have not observed material differences between lost share rates for first and second liens on private label securitizations.

**Q. Let's turn back one more time to paragraph 2 of your initial declaration and I'm going to ask you about the last sentence in that paragraph which begins "As part of this work I have reviewed contractual obligations." And it then goes on.**

**Do you see that?**

A. Yes.

**Q. Why have you reviewed contractual obligations as a part of your**



**FRANK SILLMAN**

**work?**

A. That was something that the client would is me to give my thoughts on as part after the engagement.

**Q. And you would look at the governing agreements; is that right?**

A. Sections of the governing agreements, yes.

**Q. And also the underwriting guidelines?**

A. Yes.

**Q. Anything else you would look at?**

A. As it relates to the whole sentence or the review of the contractual obligations?

**Q. The latter.**

A. I could have looked at governing agreements, seller guides and other related underwriting guideline matrices, any other agreements between the sellers and my clients. So any master agreements, other contractual agreements they had, I might also look at those documents.

**Q. And in some projects you look at**



**FRANK SILLMAN**

**more of those sorts of documents and in other projects you look at less?**

A. That's right. It depends on whether the clients wants me to look at those and give my thoughts.

**Q. In conducting this review is it your goal to determine whether put back of a particular loan is contractually required?**

A. As part of my work that I have already done?

MR. RAINS: So I'm going to object, vague and ambiguous. Paragraph 2 talks about his work experience generally.

MR. BENTLEY: And that's what I'm asking about.

**Q. In your work experience generally is a reason that you look at contractual documents that you are trying to determine whether put back is contractually required?**

A. The reason that I look at those is ultimately the client sets the



FRANK SILLMAN

repurchased standard. They may request my input in the development of that repurchase standard that we will use when evaluating the loans.

**Q. So you won't make the legal judgment, the client will do that and they will instruct you?**

A. Correct.

**Q. But you may play a role in -- in the client's consideration of that issue?**

A. That's right.

**Q. And generally speaking, do you advise that a client put back a loan if you don't think he's legally obligated to do so?**

A. They developed the repurchase standard under which we make our recommendations. So if the loan meets the repurchase standard, we will make the according recommendation and then they decide after receiving our recommendation whether or not they will send out a repurchase demand or not.

**Q. And let me just focus you on**

**FRANK SILLMAN**

**sell side clients who are receiving the repurchase agreements.**

A. Okay.

**Q. In your experience have you ever advised that a client agreed to a put back demand if you didn't think it was legally required to do so?**

A. The test that we put the review under is whether it met the repurchase standard. So it might have legal components to it. It might have business components to it. So it's not strictly a legal determination.

**Q. Is it your understanding that sometimes there are business components to the decision whether or not to honor the put back demand?**

A. Yes.

**Q. Can you describe that to me?**

A. They may feel that they are getting too many frivolous demands and they may decide that they are going to put loans in to a gray area, an undetermined area as to whether or not they should



FRANK SILLMAN

repurchase it or not and something that they will have to negotiate with the demander with. So that's a scenario where they may decide to not repurchase a loan that otherwise might meet, you know, some or all of the repurchase standard.

**Q. In your experience does a client sometimes agree to repurchase a loan even if it doesn't believe that repurchase is legally required?**

A. I can't say whether that's ever happened or not. But it is not the experience that I see. If the client does not believe the repurchase is warranted, they have typically not agreed to repurchase the loan. That being said, in all loan level repurchases they go into this disagreement bucket in the middle. So it's possible that a loan that they don't believe they have a standard for could be repurchased based on settled negotiations.

**Q. To resolve a dispute over whether it's required to be repurchased or**



**FRANK SILLMAN**

**not?**

A. More in kind of a bulk resolution, yeah. So whatever their unresolved resolution process is.

**Q. Let me hand you the transcript of a deposition that was taken last week, losing track of time in this case, of John Ruckdaschel. Do you know who Mr. Ruckdaschel is?**

A. I don't.

**Q. Okay. I can represent to you that he's an executive at the debtors who has been involved -- who was involved in the debtors' prepetition put back experience. Let me ask you to turn to pages 37 and 38 of the transcript. And can you please take a minute and read it starting at line 8 on page 37 and going through to --**

A. It's pretty small. Do you have a larger -- I seem to have kind of the Cliff notes version.

**Q. You have the, what we call the Minuscript version.**



**FRANK SILLMAN**

A. Yes.

**Q. It's not Cliff notes.**

A. Okay.

**Q. It's not a paraphrase.**

A. It's just a little...

**Q. Let me loan you my copy and please pardon the underscoring. And I'm going to look over your shoulder if you don't mind.**

A. Sure, not a problem.

**Q. So we can both look at it together. So I'd like you to read from line 6 on page 37 down to almost the bottom of the page 38 and tell me when you are done.**

**Tell me when you are ready.**

A. Okay.

**Q. So you see Mr. Ruckdaschel testified on page 38 that the debtors repurchase group, "would not repurchase a loan where the -- the loss was not caused by a breach of a rep or a warranty." Do you see that?**

A. Yes.

FRANK SILLMAN

**Q. It's in the middle of page 38. Is that consistent with your experience, namely that a seller generally would not agree to repurchase a loan if it believed that the loss on that loan had not been caused by a breach?**

MR. RAINS: You are asking about his experience generally?

MR. BENTLEY: I am.

A. Okay. So just so that I clarify, the question is would they repurchase the loan if the loss was not caused by a breach?

**Q. Correct.**

A. Okay. That's a subjective determination. And it varied from client to client. Varied from loan to loan. So there -- there was this concept of if there was a documented loss of job, the borrower died, that they may consider not repurchasing the loan because of those facts. I have in my experience seen my clients deny a repurchase of a loan that may have had a breach of rep and warrant



FRANK SILLMAN

because of those types of circumstances.

**Q. So let me just try to recap. Would you agree sometimes it's clear that the loss wasn't caused by a breach? For example, if the loan had perfect pay history for several years and then the borrower lost his job, would you agree that that, in those circumstances you would tend to believe that the loss wasn't caused by the breach?**

MR. RAINS: Objection to form.

MR. JURGENS: Objection. Incomplete hypothetical. Calls for speculation.

Go ahead and answer if you can.

A. I mean that's a theoretical situation. There's a lot of factors that go into that determination. So it's not an easy theoretical question to answer. The payment history, life events that you are describing are one of the factors that are taken into consideration both in the person who received the demand and the group that issues the demand.



FRANK SILLMAN

**Q. And a loan that continues to perform for 3, 4, 5 years before defaulting, would that be a factor that would affect your judgment as to whether the loss was likely caused by a breach?**

MR. JURGENS: Objection to form.

MR. SHEEREN: Objection to form.

MR. BENNETT: Could we just have a stipulation that whatever objections are one for all and all for one?

MR. RAINS: Fine with me.

MR. BENTLEY: Fine with me.

A. Again, it depends on many factors in the loan and the governing agreements and the reps and warrants and whether or not there were any reps and warrants for perfect payment history or not so --

**Q. Let's assume there were. And let's assume the only thing you are trying to determine is whether the breach caused the loss?**

MR. RAINS: It's an incomplete hypothetical. Calls for speculation.



FRANK SILLMAN

MR. BENTLEY: I haven't finished my question.

MR. RAINS: Sorry, you paused.

**Q. Let me start again. Let me try to make it clear and as easy as I can for you. Okay. So let me ask you to make a couple of assumptions. You are an expert, you make assumptions, right?**

A. Yes.

**Q. Let me ask you to assume a loan that performs for five years and then defaults. Would the fact that it had performed for five years be a factor that in your judgment would tend to suggest that the breach may not have caused the loss?**

MR. JURGENS: Objection to form.

MR. RAINS: Objection. Incomplete hypothetical.

A. Are you asking me to opine from what a firm who is receiving the repurchase demand or for the firm who is issuing the repurchase demand?

**Q. Let's assume you are advising**

FRANK SILLMAN

**seller who is being asked to repurchase a loan.**

MR. RAINS: Same objection.

**Q. And let me ask you to assume, to cure Mr. Rains's objection let me -- let me say everything else being equal, would the fact that a loan has performed for five years before going into default be a factor suggesting to you that the loss may not have been caused by the breach?**

MR. JURGENS: Objection to form.

MR. RAINS: Objection. Incomplete hypothetical.

A. So in the hypothetical situation the client has set a repurchase standard under which we make our recommendations. So if that standard does not include an a payment history provision to it, then we would not make a -- we would make a recommendation not taking into consideration the payment history. Now, whether the client takes into consideration the payment history or not is something that's beyond our control.



FRANK SILLMAN

**Q. Let --**

A. So we follow -- you are asking what we do in that situation. We follow what the requirements are of the engagement.

**Q. Okay. So let me ask you to make a few more assumptions then. Let me ask you to assume that the client has set a repurchase standard under which a loan will not be repurchased unless the breach has caused the loss. Are you with me?**

A. Okay. That's much vaguer than the repurchase standards that we get from our clients. So...

**Q. Do they tend to drill down into specifics that might, specific factors that might bear on this loss causation?**

A. Yes.

MR. JURGENS: Objection to form.

**Q. Can you give me some examples?**

A. Well, I know not the causation, they give specific factors. I'm sorry. So they do set certain requirements.

**Q. So is payment history sometimes**



FRANK SILLMAN

**one of those elements?**

A. For example, with mortgage insurers that it's written into their contract they may include that. So they may not have to repurchase a loan if it had made 24 months or 36 months according to the contract they had with the mortgage insurer. If that was the case, they would likely include that into the repurchase standard and we would evaluate payment history as part of that process.

**Q. By the way, have you seen any pay performance reps in the governing documents for the 392 trusts we are looking at in this case?**

A. In the eight governing agreement documents that I looked at, I don't recall any payment history exclusions in those eight documents.

**Q. So for example, no early payment default reps?**

A. Now you are asking about early payment default -- you know, I can't -- I'd have to review those documents again.



FRANK SILLMAN

I don't recall.

**Q. Fair enough. Let's continue with our hypothetical. And let me ask you to assume that the -- let me ask you to assume that the governing agreement doesn't have any performance, pay performance representations.**

A. Okay.

**Q. Do clients sometimes set guidelines for you to follow, factors for you to look at that would relate to this causation issue?**

MR. JURGENS: Objection to form.

A. Which causation? Explain it. I'm not an attorney so I'm not an expert on causation.

**Q. Okay, sure. The issue of whether the loss was caused by the breach.**

MR. JURGENS: Objection to form.

A. Can you kind of restate the question. I'm not sure I --

**Q. Sure.**

MR. RAINS: Objection. Vague and ambiguous.

**Q. You testified earlier that in your experience some of your clients have denied repurchase because of circumstances such as a documented loss of a job or a death. Do you recall that?**

A. I don't recall what I said.

**Q. But is that the case, sometimes your clients will refuse to repurchase a loan because a life event had occurred?**

A. Yes. We have had clients that have refused to repurchase loans because of a life event.

**Q. And generally speaking, have you ever seen a client repurchase a loan where there was -- where the loan performed for three years and then subsequently went into default?**

A. You are asking me for a specific three-year and then went in default. I mean I don't -- I don't have those types of specifics. I can speak more generally that clients that I have worked with have repurchased loans where there has been a good pay history yet they still repurchase





the loan. Whether it was exactly three years or not, you know, I can't speak to those specifics.

Again, in many of these cases these types of loans are repurchased as part of settled negotiations on unresolved loans. So I want to make sure that that's clear.

**Q. So you are saying some repurchases might be part of a bulk settlement?**

A. That's right.

**Q. Okay.**

A. So some of those loans in those scenarios might be part of a bulk agreement to re- -- you know, to settle outstanding repurchase demands.

**Q. In your experience are repurchase demands ever made as to a loan that is performing?**

A. Have I ever seen that?

**Q. Correct?**

A. Yes.

**Q. Is that common?**





A. I don't know what you mean by common. I see it. It's not in the majority of the cases. But we do see loans where the loan payment history has had 0 lates and they still require a repurchase under the governing agreements.

**Q. Would you agree that in your experience most of the time the put back demand follows a default?**

A. Defaulted loans, liquidated loans, make up the majority of the repurchase demand requests that I have seen.

**Q. Can we quantify that any further? Would you say the substantial majority?**

A. Substantial majority.

**Q. Great majority?**

A. I mean it's the majority of them.

**Q. And would you agree that most put back demands are made within a year or two after the origination of the loan?**

MR. RAINS: Objection. Vague





and ambiguous.

**Q. In your experience?**

A. In my experience the repurchase demands that I have seen have been made greater than a year after the origination.

**Q. Is it -- in your experience are most put back demands made within a year or two after origination?**

A. A year or two. I mean that's a broad range. They are typically --

**Q. Let's say within two years.**

A. I regularly see repurchase demand requests for loans that are outside the two-year time frame that you are asking about.

**Q. So what I -- here's what I want to be clear on. Can you tell me sitting here today whether in your experience most put back demands are made within two years or less after origination?**

MR. JURGENS: Objection to form.

A. I mean, that's too broad of a question because there are -- I see repurchase demands for loans that are --

FRANK SILLMAN

were originated in 2010, 2011. I also see repurchase demands for loans that originated in 2005, 2006, 2007. So -- and I don't have the numbers in front of me to -- or to give you a precise answer. So the answer is I see repurchase demands that are issued within two years and outside of two years.

**Q. Suppose your client asks you to try to answer that question by reviewing your records. Could you do it?**

MR. RAINS: Objection. Vague and ambiguous.

A. Could I determine the percentage that I have seen?

**Q. Yes. I'm talking about your experience that you are relying on in forming your expert opinion.**

A. I would tell them that I see repurchase requests that are within two years of origination and after two years and would not be able to tell them the percentages I see in one bucket or the other.



FRANK SILLMAN

**Q. I recognize you couldn't tell them that off the cuff but what I want to try to be clear on is could you get an answer to that question by looking at your records?**

A. And I would be looking at other clients' confidential records to give -- I wouldn't access that information from other confidential client work that we have done. So the answer is I would not provide them with details. Though I may understand them, I would not provide them to a client.

**Q. And I'm not suggesting that you would ever disclose confidential details to a client. But you could look at the details of your various client work and reach an aggregate conclusion and you could provide that conclusion to your client, right?**

A. The aggregate conclusion is the one that I have been giving you which is I see pre-2, 2 years and post 2 years. But I would not be more specific because I



FRANK SILLMAN

might be giving away indirectly confidential client information about their activities, just in general all of my other clients' activities so I would provide them with the same type of answer I'm providing to you.

**Q. In your experience have you ever seen a put back demand made after the loan had been foreclosed on?**

A. Yes, I believe I have.

**Q. How many times?**

A. I wouldn't be able to tell you how many times. But it's not an uncommon occurrence.

**Q. Can you speak to whether, when that has happened in your experience, the seller has agreed to put it back or not?**

A. That I -- and those details -- I mean you are asking for extremely narrow situations. So it's not something a client has asked me. I have observed just because we see the status of the loan from a servicing perspective as part of the work that we will do, but I have not -- I



FRANK SILLMAN

would not be able to -- to put those circumstances together with what the end resolution of that loan was.

**Q. Are you familiar with any court rulings holding that once a loan has been foreclosed the seller is not legally required to put it back?**

A. I'm not aware of.

**Q. Are you aware that that's an issue that could affect whether put back is legally required or not?**

MR. SHEEREN: Objection to form.

A. So you are asking me -- I'm not aware of the case so. What's your second -- I'm sorry.

**Q. I'm just trying to see whether you are familiar with that issue at all.**

A. I am not. I have not been in discussions with that issue with any of my clients.

**Q. We are moving on.**

A. Okay. Do you want that back?

**Q. Yes. Can you turn, please, to paragraph 5 of your initial declaration.**

FRANK SILLMAN

**By the way, before we turn to paragraph 5. Let me ask you to imagine you are advising a seller about a put back demand. You review the loan file and you conclude that the only breach is the absence of flood insurance. Do you have a view on whether that would constitute a material breach of a rep and warrant put back?**

MR. RAINS: Objection. Incomplete hypothetical. Calls for speculation.

A. So in your hypothetical those types of situations would either be developed in the repurchase standard they gave us to work under or if it's a new scenario, the client would revise the repurchase standard to include. So we don't advise the client outside of what the repurchase standards are that we are reunderwriting the loan to.

**Q. So it would be up to the client to answer the question I posed?**

A. That's correct.



FRANK SILLMAN

**Q. Suppose the loan file contained a hardship letter showing that the borrower had died. In your experience does that sometimes lead a seller to refuse put back?**

MR. RAINS: Objection. Incomplete hypothetical. Calls for speculation.

MR. BENTLEY: It's not a hypothetical. I'm asking him a factual question.

MR. RAINS: Objection. Incomplete hypothetical. Calls for speculation.

Can you answer the question?

A. So, again, that would, the recommendation that we would make would be in accordance with a repurchase standard. So if the repurchase standard contained guidance around a hardship letter, we would follow the guidance that the client gave us.

**Q. Okay. Now we are going to turn to paragraph 5. The second sentence of**



FRANK SILLMAN

**this paragraph is what I'm going to focus on. It says, "I was asked to provide an independent assessment of the total allowed claim as defined in the RMBS Trust Settlement Agreements and opine as to its reasonableness."**

**Do you see that?**

A. Yes.

**Q. And the total allowed claim, that's $8.7 billion?**

A. Yes.

**Q. Who first contacted you about this matter?**

A. Jen Battle.

**Q. When did she contact you?**

A. I believe it was early May but, you know, I'm not positive as to the date. But that's around the time.

**Q. She contacted you after the debtors had entered into the RMBS Trust Settlement Agreement?**

A. Yes.

**Q. And I can tell you that that agreement was executed on May 13th.**



FRANK SILLMAN

A. Okay.

**Q. And the debtors filed bankruptcy the next day.**

**When she contacted you, had the debtors filed bankruptcy?**

A. Contacted me to discuss retaining me for this expert work?

**Q. When she contacted you to discuss this expert work the first time.**

A. You know, I don't recall. Because we were an ongoing -- we were doing ongoing work and then they suspended that work, I don't recall when. I believe it was -- we didn't have any discussions regarding this potential work until after they filed bankruptcy but I don't recall exactly.

**Q. Turning back to the sentence I quoted a moment ago. The opinion you were asked to provide was as to whether or not the total allowed claim was reasonable; is that correct?**

A. Yes.

**Q. So you were not asked to come up**

**FRANK SILLMAN**

**with an independent range of what a reasonable settlement might be but -- but rather to opine on whether a settlement that had already been reached was reasonable?**

A. No. I think it's more accurate to say -- I believe I did say that -- maybe it was in my conclusion -- it was a -- yeah. They asked me to develop an opinion to whether or not to a reasonable degree of certainty that the proposed allowed claim of 8.7 billion appears to be in the range of reasonableness.

**Q. So let's just be clear. You were asked to focus on the $8.7 -- $8.7 billion figure, right?**

A. The allowed claim, yeah.

**Q. $8.7 billion?**

A. Yes. That was the allowed claim.

**Q. And to determine whether that fell within what you deemed to be the range of reasonableness?**

A. Yes.



FRANK SILLMAN

**Q. Were you given a deadline for completing your analysis?**

A. There were, I believe, some court imposed deadlines for the filing of my original declaration.

**Q. Now, you filed that declaration on June 11th. It's dated June 11th.**

A. Yeah.

**Q. Was that the deadline that you were told about when you were initially contacted?**

A. I don't remember the original deadline. It might have been June 11. I don't recall.

**Q. Were you told that you should complete your work within a period of ten days or thereabouts?**

A. There was a time frame that was put together. I don't remember if it was ten days or not. But there was a time frame.

**Q. If you were told it was ten days, you wouldn't disagree with that?**

A. I mean, it's not outside the



FRANK SILLMAN

realm of what it was. But I just don't remember how many days it was.

**Q. Were you told by -- your work needed to be done within that time frame?**

A. There was a deadline for the -- or a court imposed filing date so I had to get the work done and be able to file within that court imposed filing date.

**Q. Was there discussion of a deadline for you to complete your work prior to the deadline for the filing?**

A. Yes.

**Q. And how much in advance of the filing?**

A. I don't remember. I think that I -- we finished it and filed it maybe that day or the day before I actually completed the declaration.

**Q. Now, regardless of whether this initial deadline was ten days or some other length of time, did you in fact complete your work within that deadline?**

A. Yes.

**Q. And did you feel that was enough**



**FRANK SILLMAN**

**time for you to complete your work?**

A. Yes.

**Q. Now you did later do further work as to certain parts of your analysis, right?**

A. Correct.

**Q. As to estimated lifetime losses?**

A. (Witness nods.)

**Q. Did you do further work after June 11 as to any other part of your analysis?**

A. Part of the supplemental work?

**Q. Correct. I'm asking the question a bit more broadly. I'm not just asking about your supplemental declaration. But you did certain work after June 11 relating to this project?**

A. Yes.

**Q. Some of that work related to the estimated lifetime losses?**

A. Yes.

**Q. Did you do any work other than that after June 11?**

MR. RAINS: Are you excluding a

110

FRANK SILLMAN
supplemental declaration or are you
including a --
**Q. Look, I'm not trying to trip you up here. Your supplemental declaration talks mostly about estimated lifetime losses?**
A. Right.
**Q. And then at the very end there's a couple of paragraphs about methodologies employed with respect to put back rates?**
A. Right.
**Q. And you annex two exhibits relating to that subject, right?**
A. Correct.
**Q. So I don't mean to exclude that work. What I mean to ask is whether after June 11 you did any further analysis of loss share rates?**
A. No, I don't believe that I did any additional loss share rate work.
**Q. At any time up to today?**
A. No, I don't believe I have done additional loss share rate work.
**Q. Okay. Because you believe --**

111

**FRANK SILLMAN**
**you are satisfied with the work you did on loss share rate that's reflected in your initial declaration?**
A. Yes.
**Q. Okay.**
A. It's open. You know, I may continue to do more work on that but I'm very confident in the work that I did on loss share rate in the original declaration.
**Q. Understood. And have there been any developments that have occurred between June 11 and today that might affect that analysis?**
A. I'm not aware of any developments.
MR. RAINS: You know, of course, that we will ask him to do more work after we see what your experts have to say.
MR. BENTLEY: I am aware of that, Darryl. I don't mean to exclude that. That's why I said additional work through today.

112

FRANK SILLMAN
MR. RAINS: Great.
**Q. Do you expect to offer any expert opinion at the hearing on this matter other than the opinion set forth in the last sentence of your initial declaration? And when I say last sentence, I don't mean the swearing under penalty of perjury.**
MR. RAINS: Object. The question calls for speculation.
A. I'm not -- I may discuss other or provide other opinions in that testimony.
**Q. I'm not trying to tie your hands --**
A. Okay.
**Q. -- or preclude you. I'm just trying to -- just asking whether you currently anticipate that you may be doing that.**
MR. RAINS: When he says he's not trying to tie your hands, he's trying to tie your hands.
MR. BENTLEY: That's not fair.

113

FRANK SILLMAN
But it's funny.
**Q. What I'm asking is whether you currently anticipate other topics that you may testify about?**
A. We're in discussion about other potential topics. But nothing that I have any final opinions on at this time.
**Q. What other topics are you currently contemplating that you might testify about?**
A. Might be around loan level reviews and those results.
**Q. Anything else?**
A. No. As of now.
**Q. And when you say loan level reviews, are there particular loans or pools of loans that you are thinking of possibly reviewing?**
A. Yes. We are evaluating and preparing to potentially review certain loans that may be in the expert report, the loan level expert report we would reply to.
**Q. So you are referring to the**

**FRANK SILLMAN**

**sample of 1500 loans that the committee's experts have looked at?**
A. Yes.
**Q. So in other words, you and your colleagues at Fortace, might review those loan files?**
A. Yes.
**Q. Anything else? Any additional work that you are contemplating possibly doing?**
A. Not at this time.
**Q. Have you or any of your colleagues looked at any of those loans yet?**
A. I have not looked at any of the results of any work that has been done on those loans.
**Q. Has somebody been looking at them?**
A. We have had some people looking at loans.
**Q. Fortace employees?**
A. Fortace personnel, yes.
**Q. Have they been developing**



**FRANK SILLMAN**

**reunderwriting standards to do that work?**
A. Yes.
**Q. And those standards have been developed? That cake is baked?**
A. I don't believe that they are finalized at this point.
**Q. In the course of developing those standards what documents are your colleagues looking at?**
A. We are looking at the governing agreements, the seller guide.
**Q. Anything else?**
A. There may be other contractual agreements, master commitments.
**Q. Anything else?**
A. I think that covers the documents that we are using.
**Q. Pro supps?**
A. I consider that to be part of the governing agreements or the securitization documents.
**Q. Fair enough. Seller guide is the same thing as program guide or client guide?**



**FRANK SILLMAN**

A. Yeah.
**Q. How many -- strike that.**
**Your colleagues are looking at governing agreements for how many of the deals?**
A. I don't know. I'd have to talk to them about it. I don't know how many we are looking at.
**Q. Is it more in the nature of -- is it more than a hundred?**
A. I believe it's less than a hundred.
**Q. Is it one or two deals per shelf?**
A. I don't know how many. I'd have to get back to you.
**Q. Probably closer to ten than to a hundred?**
A. I mean I wouldn't want to put a number on it.
**Q. And are your colleagues looking at the loan files or has that work not yet started?**
A. We have begun looking at loan



FRANK SILLMAN

files.
**Q. And anything -- anything else other than the documents you already mentioned, plus loan files? That is, are your clients -- are your colleagues going outside the loan files?**
A. You know, I'd have to look at the audit strategy document for this review to answer that question. I just don't recall whether we are or are not.
**Q. Let's turn back to paragraph 5. And I'm going to ask you about the third sentence of the paragraph which states, "However, I take no position on the ability of any party to prove a breach of representations and warranties under the governing agreements and I assume for the purposes of this declaration that such a showing can be made against the debtors."**
**Do you see that?**
A. Yes.
**Q. Can you explain what you mean by that?**
A. I don't know. I think I have

FRANK SILLMAN

said it in the paragraph.

**Q. So is it fair to say you are not opining as to whether any of the claims have legal merit?**

A. Whether they would be able to prove breaches of reps and warrants, yeah, under the governing agreements.

**Q. Or prove the requirements of put back?**

A. Correct.

**Q. And by the way, you don't claim to have any expertise in that issue, do you?**

MR. RAINS: Objection, vague and ambiguous.

A. Which area is that?

**Q. Whether put back is legally required?**

A. I didn't render any legal -- I don't have any legal training and didn't provide any legal recommendations under this work.

**Q. And you don't claim to have the expertise needed to provide legal opinions, right?**



**FRANK SILLMAN**

A. Correct.

**Q. And you are not expressing a view, I take it, as to whether any of the debtors' legal defenses have merit?**

A. Correct.

**Q. And you are also not expressing a view as to whether the facts relating to any of the loans in the pool being settled would legally warrant put back?**

A. Yeah. I'm not making a legal assessment.

**Q. Am I correct you've made no attempt to determine the, what portion of the loans in the pool actually breach reps and warranties?**

A. The work that I'm depending on or relying on is the repurchased, GSE repurchase rate work that was done between Fannie, Freddie and the debtor where they reviewed thousands of loans over a number of years and looked at the actual loan by loan file review and availed themselves to the defenses of the governing agreements



FRANK SILLMAN

or any other legal arguments as part of that process. So it's that work and the results of that work that's incorporated in my work, in my declaration.

**Q. I understand you are drawing inferences from the debtors' put back history with the GSEs, among other things?**

A. Correct.

**Q. So I just want to be clear, am I correct you haven't looked at any one loan within the pool that's being settled to try to reach a view or express an opinion as to whether that loan actually breaches any reps and warranties?**

A. We have not completed our loan level review work. And I'm relying on the thousands of loans that went through the debtors' repurchase process as the basis for my original declaration.

**Q. So I think I'm hearing the answer to my question but I just want to be clear. In your June 11 declaration you are not expressing any opinion as to whether any particular loan breaches any reps and warranties?**



**FRANK SILLMAN**

MR. RAINS: Objection. Vague and ambiguous. Asked and answered.

A. I utilized the repurchase work the debtor did with the GSEs to form the basis for my original declaration.

**Q. And in reaching the conclusions in your initial declaration you didn't look at any individual loan file in the pool that's being settled?**

A. I relied on the thousands of loans that were reviewed by the debtor as part of their process prelitigation.

**Q. With respect, Mr. Sillman, I don't think you answered my question.**

MR. BENTLEY: Let me ask the reporter to read it back.

MR. RAINS: I think you answered the question. It's been asked and answered.

MR. BENTLEY: You know, Darryl, it's a yes or no question and I got a nonanswer.

Read it back, please.

FRANK SILLMAN

(Record read.)

MR. RAINS: Same objections.

A. I relied on the GSE repurchase work that the debtor did with Fannie and Freddie.

**Q. To date have you looked at any loan file for any of the loans within the pool that's being settled?**

A. We are in the process of reviewing the loan files.

**Q. Have you yet looked at any loan files?**

MR. RAINS: You mean him personally or Fortace?

**Q. Let's break it into pieces. Have you personally looked at any loan file?**

A. I have not looked at the loan files.

**Q. Prior to your signing your June 11 declaration, did anybody at Fortace look at any of the loan files for the loans being settled?**

A. I relied on, we relied on, the



FRANK SILLMAN

work that the debtor did with the GSE repurchases in forming the assumptions and conclusions in my original declaration.

**Q. So that's a no?**

A. I relied on --

MR. BENTLEY: Read back my question.

**Q. It's a very simple factual question. I'm not asking you what you relied on. I'm asking you whether you looked at any loan files?**

MR. BENTLEY: Read it back, please.

(Record read.)

MR. RAINS: Objection, vague and ambiguous. Asked and answered.

A. I relied on the work that was done by the debtor as part of their GSE repurchase for the conclusions and assumptions made in my original declaration.

**Q. And you didn't look at any loan files?**

A. I relied on the GSE repurchase



FRANK SILLMAN

work.

**Q. Did that involve looking at any loan files?**

A. It revolved relying on the loan file reviews that the debtor performed.

**Q. Is there a reason you are resisting answering a simple question?**

MR. RAINS: Objection. Argumentative. Asked and answered.

MR. BENTLEY: It's not asked and answered for Christ's sake, Darryl. Read it back.

MR. RAINS: Of course it has. It's been asked 15 times and --

MR. BENTLEY: Is the answer no? Because I sure can't tell what the answer is.

MR. RAINS: I think his answer is very clear.

MR. BENTLEY: The answer is he did something else, it's not whether he did this or not.

MR. RAINS: That's his answer. You don't like his answer but it's his



FRANK SILLMAN

answer.

MR. BENTLEY: I'm fine with his answer, he just hasn't answered my question.

Can you read it back, please.

MR. RAINS: Let's do this, let's take a quick break.

MR. BENTLEY: You know what, I want an answer to my question before you speak --

MR. RAINS: I'm going to talk to him about his answer to your question.

MR. BENTLEY: I object. You are not supposed to talk to the witness while a question is pending.

(Whereupon, there is a recess in the proceedings.)

MR. RAINS: I think we have succeeded in clearing up some of the ambiguities and confusion caused by your question. Why don't you put the question to him again.

**Q. I know it's very confusing but I'll state it again. In connection with**

**FRANK SILLMAN**
**forming the opinions expressed in your June 11 declaration, did you or any of your colleagues look at any of the files for the loans in the pool being settled.**
A. For the, my original declaration I relied on the work that was done by ResCap and the repurchase activity. We are now looking at loan files. We are currently looking at loan files.
**Q. So let's just unpack what you just said. You relied on the work that was done by ResCap. What work are you referring to?**
A. To GSE and private label repurchase activity work ResCap did.
**Q. Understood. But was that as to any of the loans that are in this pool that's being settled?**
A. There may be in the private label securities work loans that are included in this settlement. The vast majority of the loans were related to their GSE originations.
**Q. And none of the GSE deals**



**FRANK SILLMAN**
**overlap in any way with this settlement, right?**
A. Correct.
**Q. Were you relying, when you prepared this report, on any work that RFC had done in looking at the loans that are part of this settlement?**
A. Yes. We did review some information regarding their private label securitization repurchase work. What we found, I think there's an exhibit, that the vast majority of those repurchase demands were unresolved.
**Q. So I'm going to return to that. I know what you are referring to. Putting aside any loan reviews that RFC may have done in connection with its prepetition put back experience, did you or any of your colleagues look at any loan files in connection with the work that went into your June 11 report?**
A. We relied on the company's work for the information in the original declaration and we are now looking at loan



FRANK SILLMAN
files that are contained within the 392 trusts.
**Q. And when you say the company's work, are you referring to anything other than the work the company did prepetition in connection with its prepetition put back negotiations?**
A. Yeah. It was prepetition work.
**Q. In connection with -- done by the debtor in connection with its prepetition put back experience?**
A. Yes.
**Q. And no other review of loan files went into your, the conclusions expressed in your June 11 declaration?**
A. That's right.
**Q. Okay. We are there. We got an answer. Thank you. Let's move on.**
A. I would say no additional loan work.
MR. BENTLEY: I'm about to change topics. If people want to take a break, this is fine or we can keep going.



FRANK SILLMAN
MR. RAINS: Let's take a break. Sounds good.
(Luncheon recess taken at 12:09 p.m.)

* * *

A F T E R N O O N S E S S I O N
(Time noted: 1:22 p.m.)
F R A N K S I L L M A N, resumed and testified as follows:
EXAMINATION BY (Cont'd.)
MR. BENTLEY:
**Q. Mr. Sillman, Good afternoon.**
A. Good afternoon.
**Q. Let's go back to paragraph 5 of your initial declaration. And I'm going to ask you about the carryover sentence that starts at the bottom of page 3 and carries over to page 4. So if you can take a moment and read that, and tell me when you are ready.**
A. Okay.
**Q. Does this sentence list all of the data and agreements that you reviewed**

FRANK SILLMAN

**in connection with preparing your initial declaration?**

A. There may have been additional documents that I reviewed that we provided to the data room as part of the work.

**Q. This was your attempt to comprehensibly state the data and documents that you reviewed in connection with preparing your report?**

MR. RAINS: Objection. Misstates the witness's testimony.

A. This -- I don't believe this paragraph was to try to include all of the information and documents that I reviewed. If there were additional documents, we provided those to the data room.

**Q. Is it fair to say these are the principal documents and data you reviewed in connection with preparing your June 11 declaration?**

MR. RAINS: Objection. Vague and ambiguous.

A. These documents represent some of the core documents that I utilized.



FRANK SILLMAN

But again, in addition to the documents I provided to the data room.

**Q. Was it your intent in preparing this sentence to list the principal documents you looked at?**

MR. RAINS: Objection. Vague and ambiguous.

A. The intention of the sentence was to try to identify some of the principal documents utilized in developing this declaration.

**Q. Does the report identify anywhere else what other documents you, or data, you considered?**

A. I may have throughout it. I'd have to read the rest of it. But if there was any other information that was considered as part of this process I provided it to be included in the data room.

**Q. Item 6 in this sentence says you reviewed governing agreements from one trust for each of the shelves. Is that a correct statement?**



FRANK SILLMAN

A. Yes.

**Q. Did you believe it was sufficient to review the governing agreements for just one trust for each shelf?**

A. Yes.

**Q. And why is that?**

A. I wasn't looking to read the governing agreements to render any type of legal opinion on its requirements but to get familiar with the types of reps and warrants that these shelves had.

**Q. For what purpose?**

A. Just an understanding of the types of reps and warrants that the debtor made on these trusts.

**Q. And was that relevant to your conclusions?**

A. It was useful as background information for me to understand the general types of reps and warrants that were made versus potentially Fannie Mae or Freddie Mac reps and warrants.

**Q. Did you also think it was useful**



FRANK SILLMAN

**as a basis for comparing the debtors' reps and warrants to the reps and warrants you've seen for other sellers in your personal experience?**

A. It was helpful to compare and contrast that against work we have done for other clients.

**Q. That was one of the elements that went into your expert opinion?**

A. It was a factor considered.

**Q. Let me ask you now about items 1 through 4 of this sentence. These are things that you looked at to determine the estimated lifetime losses for the trusts?**

A. Yes. They were -- there was information that I used to develop the assumptions for our estimated lifetime loss model.

**Q. Did you look at those also for the purpose of developing your loss share rate or just to determine lifetime losses?**

A. Just to determine lifetime losses.

**Q. So to determine lifetime**

**FRANK SILLMAN**

**losses -- well, we are down to just one remaining item in this sentence, number 5.**

A. Okay.

**Q. In addition to the governing agreements from the trusts, which you already testified about. You looked at the debtors repurchase experience with Freddie Mac and Fannie Mae. What documents did you look at to understand that?**

A. I looked at the -- let me get the name of the document. Exhibit A, Inside Mortgage Finances Special Report Analyzing GSE Mortgage Buyback Demands.

**Q. And Exhibit A to your report is a portion of that document?**

A. Yes. This is -- this was one section, the section that contained the information that I referred to and then we provided the entire document to the data room.

**Q. Let's turn now to the next sentence in this paragraph. You say, "In those areas where actual data for the**



**FRANK SILLMAN**

**trusts is not available, such as audit rates, demand rates, breach rates and agree rates as defined and detailed below, I utilized assumptions and developed my own models based on my own experience and industry data where available." And it then continues.**

**This sentence describes the data you looked at to come up with your loss share rate?**

A. Correct.

**Q. And the different rates that are mentioned in this sentence, these are elements that go into the calculation of the loss share rate?**

A. That's correct.

**Q. Is this a relatively complete statement of the data you considered in determining those rates?**

MR. RAINS: Objection, vague and ambiguous.

**Q. Actually, it is a bad question, so let me withdraw it and try again.**

**Let me ask you first, you say in**



**FRANK SILLMAN**

**those areas where actual data for the trusts is not available such as audit rates, et cetera. Can you explain what you meant, that actual data for the trusts was not available?**

A. So, you know, data regarding the audit rates, demand rates, breach rates and agree rates, let me talk about the first three first. The debtor was not able to provide the audit rates for the private label securitization or the GSE work, was not able to provide demand rates for either GSE or PLS and neither breach rates for the PLS and was able to get breach rates for the GSEs and agree rates for the GSEs from the IMF report. So where that data wasn't available I utilized assumptions and developed my own models.

**Q. You say the debtor was not able to provide the audit rates for its prepetition -- for its prepetition put back experience. Is that what you are referring to?**



**FRANK SILLMAN**

A. That's correct. So that would be something that the debtor would not have known that would have been known, for example, on PLS to the trustees or the insurance companies.

**Q. The debtor wouldn't have known what the audit rate used by the trustees was, correct?**

A. That's right.

**Q. But the debtor would know what the loss share rate was, wouldn't it?**

A. For which? For the PLS or for?

**Q. Yes. Let's focus on the debtors prepetition PLS put back experience. We are going to be talking about that for the next few minutes. I want to focus you on that.**

A. Okay, okay.

**Q. You've pointed out that the debtor didn't have access to the audit rate used by the trustees?**

A. Correct.

**Q. But the debtor knew what percentage of demanded put backs it agreed**

138

FRANK SILLMAN

**to, right?**

A. Well, there is a schedule that I provide that develops that. If I could get a copy of that, that would be helpful.

**Q. Let's do that. Unfortunately it's very large. You know what I'd like to do to save a few trees is let me mark as the next exhibit, namely Exhibit 7, just the first page, the summary page of the schedule that you were just referring to. And then if you'd like to see the backup, I'm happy to give that to you. I just don't want to necessarily make it part of the record unless we have to.**

A. Okay.

(Expert 9019 Exhibit 7, Fortace Analysis PLS Demand Data Summary, Bates RC-9019_00045459, marked for identification, as of this date.)

**Q. So I have marked as Exhibit 7 a single page document with Bates numbers RC-9019_00045459. And it's headed Fortace Analysis PLS Demand Data Summary.**

**Is this the spreadsheet you were**

139

FRANK SILLMAN

**referring to?**

A. Yes.

**Q. And tell me what this shows.**

A. Give me a second to --

**Q. Certainly.**

A. -- look it over.

**Q. Take all the time you need.**

A. Okay.

**Q. So let me return then to the question I asked you when you referred to your schedule. Did you have sufficient data available to you to compute the debtors prepetition loss share rate?**

A. To calculate that based on this information?

**Q. Let's start with this information. Well, strike that.**

**This spreadsheet summarizes the information you gathered to see if you could answer that question; is that right?**

A. No. This information was provided by the debtor regarding their PLS demands so that I could understand the repurchase process that the debtor went

140

FRANK SILLMAN

through on PLS demands.

**Q. So the debtor prepared this spreadsheet, both the single page we are looking up plus all the backup that came with it?**

A. No. The -- the backup was provided, the detail was provided by the debtor. And I summarized the information in Table 1 and Table 2 and --

**Q. So you prepared Table 1 and Table 2?**

A. Correct.

**Q. Namely the two tables shown on Exhibit 7?**

A. Yes.

**Q. And what was your intent in preparing this document?**

A. Similar to the work that we did with the GSE repurchase data. We wanted to review the PLS repurchase demand data to see if we could garner any information that would help us in developing our assumptions.

**Q. So this document divides the**

141

FRANK SILLMAN

**debtors prepetition PLS history into three categories; is that correct?**

A. Yes.

**Q. Nonvoluntary, voluntary and unknown?**

A. Correct.

**Q. Can you tell me what those three categories represent?**

A. Yes. So nonvoluntary, and that's nomenclature that's developed by the debtor, means that this repurchase demand was received from the trustee or the insurer and not instigated or initiated by the company or the debtor.

**Q. In other words --**

A. So these are inbound repurchase demands that or rescission requests that the company would have received from trustees or insurers.

**Q. So this category shows the debtors responses to put back demands, right?**

A. Yes.

**Q. And the category voluntary is**

FRANK SILLMAN

**what?**

A. Where they reviewed the loan file internally, possibly as part of a post funding QC process where they identified loans that they felt met the repurchase standard and notified the appropriate trustee or insurer.

**Q. What is a post funding QC process?**

A. That's where lenders review a sample of loans that close to see if there are any underwriting compliance or other errors in the origination process.

**Q. And what's the -- do you have an understanding as to what the debtors purpose was in doing that?**

A. It's standard in the industry to select a group of loans post closing. One, it's a requirement for the GSEs to do that and it's typically because the GSEs make up such a large percentage of their volume, it's typically utilized for all types of loans to review the origination process.



FRANK SILLMAN

**Q. And is there a reason the debtor does this for PLS?**

MR. JURGENS: Objection to form.

MR. RAINS: Calls for speculation. Go ahead.

A. I'm not aware of, you know, why they chose these loans and what their policies are for QC'ing loans that go into PLS securities.

**Q. Did you or your team make any effort to try to understand the nature of the debtors practices and procedures in that regard?**

MR. RAINS: Objection, vague and ambiguous.

A. We discussed when they provided this data what these various categories were. And they could not tell us under what initiative these voluntary loans were selected. So their records -- they explained to us their records didn't reflect you how the loans were created as voluntary demands.

**Q. Who participated in these**



FRANK SILLMAN

**discussions?**

A. I did, Michelle Minier and Jeff Cancelliere.

**Q. Who is Mr. Cancelliere?**

A. He works for the debtor.

**Q. Do you know what he does there or what he did at the time of these discussions?**

A. Yeah. He -- my understanding was he was involved in the risk group for the company.

**Q. So did he, to your knowledge, did he participate in the post funding QC process?**

A. That -- in my conversations with him that wasn't my understanding. I interfaced with him in this regard. He was the person that collected this information for us at the company.

**Q. So were you able to ascertain what portion of the loans that you described as voluntary, were reviewed as part of the post funding QC process?**

MR. JURGENS: Objection to form.



FRANK SILLMAN

A. I answered that already. In that they did not have the data available to ascertain under what program these voluntary demands were developed.

**Q. Did you have any understanding what other programs may have given rise to these voluntary repurchases?**

A. We had some discussions around trying to better understand the types of loans that would be included in the voluntary. And Jeff was not able to give us any data around how these were created.

**Q. And just so we are clear. I meant to ask you about other programs, not types of loans. Do you have any understanding of what programs other than post funding QC programs led to these voluntary repurchases?**

MR. SHEEREN: Objection to form.

A. In my conversations with him they didn't discuss the types of programs that led to these voluntary because the data was not available. So they weren't able to speak to how these loans came to

FRANK SILLMAN

be categorized as voluntary.

**Q. And do you know if it would be possible now to reconstruct or come up with that information?**

A. I don't know if anything has changed. They were not able to provide that information at the time that we requested this data.

**Q. Did you reach a conclusion about whether the voluntary repurchases had any bearing on the issues you were analyzing?**

A. We looked at all of the PLS demands including the voluntary in developing the conclusions that we had in my report.

**Q. What weight -- strike that.**

**Table 2 addresses nonvoluntary repurchases only. Why did you isolate out the nonvoluntary?**

A. I wanted to understand better the state of the repurchase demands that were made by trustees or insurers.

**Q. Am I right the only difference between the Table 1 box relating to**



**FRANK SILLMAN**

**nonvoluntary and Table 2 is that Table 2 adds percentages, did I get that right?**

A. Well, it has the additional categories, it has the three categories as opposed to the one.

**Q. The third category meaning percentages?**

A. No. I'm sorry. Voluntary, nonvoluntary and unknown. But just for voluntary, yes, it was percentages so that I can get an understanding of the status similar to what we see in the GSE report on the state of the repurchase demands.

**Q. And did you attribute any significance to the data shown here about voluntary repurchases?**

A. Other than the fact that the vast majority of the voluntary were agrees and repurchased. It didn't have the same type of informational value regarding the repurchase demand process.

**Q. So did these numbers about voluntary repurchases play any role in your calculation of the debtors loss share**



**FRANK SILLMAN**

**rate?**

A. All of this information, this was one of many factors, all of this information was utilized in our determination of loss share rate, including the fact that 77 percent of the PLS demands were either disagrees or pending reviews, so unresolved at the time that we received this information 87 percent.

**Q. But I just want to stick with the voluntary category for a moment and understand whether you took that into account in any specific way in reaching the conclusions in your report?**

A. It was one of the factors that went into the development of our assumptions.

**Q. How did it affect your assumptions?**

A. We looked at the PLS demands on a nonvoluntary/voluntary and didn't really factor in the unknown. But it was one of the factors to try to understand the



FRANK SILLMAN

validity of the repurchase demands experience that the debtor had with PLS.

**Q. Here's what I'm trying to understand. If there were no voluntary repurchase activity at all for the debtor prepetition would that change your conclusions or your analysis in any way?**

A. Since it was a factor it would have had -- what it told me was that the debtor did have some loans that they felt met the repurchase standard and they voluntarily acknowledged that and notified the appropriate parties. So that factored into my declaration.

**Q. Did it affect the numbers in your conclusions in any way?**

A. It's one of the factors. I can't break out what detailed effect it had. But it was factored into my analysis.

**Q. If the debtors had voluntarily put back twice as many loans would that have affected your analysis?**

A. Because the voluntary

150

FRANK SILLMAN
repurchases were a factor in the analysis, no matter what the numbers were it would have been considered in my analysis.
**Q. I understand. Would it have changed your conclusions in any way if the debtors voluntary put backs had been double what --**
MR. RAINS: Objection. Incomplete hypothetical. Calls for speculation.
A. It's speculation around what I would have done in the case of different information. I can't speak to that. I evaluated the information as it was presented to us and took it into consideration in developing my declaration.
**Q. And can you tell me what significance, if any, you attributed to these voluntary repurchase numbers?**
A. I believe I answered that. You told me that the company had acknowledged that some of the loans they originated had met the repurchase standard that would

151

FRANK SILLMAN
have required them to notify the trustee or the insurer.
**Q. Did you take those data points and use them in any quantitative analysis?**
A. These data points on this we did.
**Q. The voluntary data points.**
A. There isn't a quantitative schedule that was developed solely from the voluntary repurchase demands.
**Q. Or anything quantitative done with those numbers?**
A. With the voluntary numbers?
**Q. Correct.**
A. They were a factor in the analysis. I don't know how else to --
**Q. That's all you can say about them, that's fine.**
A. Yeah.
**Q. Let's turn to the nonvoluntary category. It states near the top of the page that this covers demands received from late 2007 to May 2012. Do you see that?**

152

**FRANK SILLMAN**
A. Yes.
**Q. And that data was not available for the period prior to late '07. Do I understand that correctly?**
A. That's correct. That's what the debtors told us.
**Q. Do you have any understanding of the number of demands that were made prior to late '07?**
A. This is all the information that we have that the letter was able to provide on the PLS demand data. We asked for it. This is -- you have what we received.
**Q. So you drew no conclusions about whether the pre late '07 demands were -- what number they might be, large or small?**
A. I couldn't make any determinations about that without having the data.
**Q. Okay. As far as you know, it could be a very small number?**
MR. RAINS: Objection. Calls for speculation.

153

FRANK SILLMAN
A. I don't have any idea.
**Q. The rate of put back demands did go up significantly following late '07, didn't they?**
A. What do you mean the timing?
**Q. Starting in late '07, the number of put back demands made against these debtors and other sellers tended to go up, didn't it?**
A. You mean industry wide?
**Q. Yeah.**
A. I don't have access to industry wide statistics on demands that were made but it's my understanding that demands were larger in 2008 then they were in 2005.
**Q. And you actually discuss this in your declaration?**
A. Right.
**Q. So let's turn to where you discussed it. Paragraphs 19 and 20. What did you base these paragraphs on, your general experience?**
A. Which paragraphs?

154

FRANK SILLMAN

**Q. 19 and 20.**

A. Yes. Based on my professional experience and based on information noted in paragraph 20.

**Q. So the unemployment rate went up substantially, starting in when?**

A. The beginning of -- what I state is the beginning of late 2007 the U.S. economy entered the worst recession since the great depression and it affected employment, credit, gross domestic product and the housing market.

**Q. And you say in the next paragraph -- sorry. And at around the same time the housing prices plummeted, right?**

A. I'd categorize it as having a devastating effect on the housing market, loan performance and housing prices.

**Q. And you say in the next sentence housing prices were plummeting. And in the next paragraph you note that the GSEs, monolines and investors to pursue rep and warranty claims at elevated rates?**

155

**FRANK SILLMAN**

A. Yes.

**Q. So the rates of put back demands went up starting when?**

A. In 2007-2008.

**Q. By the way, had it been anticipated, do you have an understanding as to whether this sharp decline in housing prices had been anticipated --**

MR. RAINS: Objection to form.

**Q. -- prior to October 2007?**

A. Participated by?

**Q. The participants in the RMBS securitization market?**

A. I'd have no way --

MR. RAINS: Objection. Calls for speculation.

A. I'd have no way to know what they knew.

**Q. And I mean, at the time you were a senior executive at IndyMac, correct?**

A. (Witness nods.)

**Q. Did you anticipate the plummeting home prices?**

A. I did not.

156

FRANK SILLMAN

**Q. Do you anticipate that the company economy might go into a recession?**

A. I do not.

**Q. And do you believe that large numbers of your colleagues did in fact anticipate these things?**

A. I can't speak to what they thought.

**Q. Do you think you were in the minority in not anticipating this?**

A. I don't know. I have no way of knowing.

**Q. Think you were part of a large crowd, weren't you?**

A. I have no way of knowing what other people were thinking.

**Q. And these factors increased delinquency rates in home mortgage loans, didn't they?**

MR. SHEEREN: Objection to form.

A. I believe that these were factors in delinquency rates.

**Q. For example, if somebody was laid off that might tend to lead to his**

157

**FRANK SILLMAN**

**defaulting on a loan?**

MR. SHEEREN: Objection to form.

MR. RAINS: Objection. Incomplete hypothetical.

A. Unemployment doesn't help payment histories. I can say that. I don't know what cause and effect there were to the changes in delinquencies. There were many factors that were involved. Being unemployed wouldn't be one that would necessarily help delinquency rates.

**Q. I understand you are not an economist or a statistician so I'm not asking you to give an opinion along those lines.**

A. Okay.

**Q. I am asking you as a participant in the market going back to '06, '07 and as part of for the past 4 years did you have an understanding that there was some connection between rising unemployment and rising homeowner defaults?**

MR. SHEEREN: Objection to form.

158

FRANK SILLMAN
A. Is this at a particular time?
**Q. Let's say over the past 2, 3, years.**
A. I believe that rising unemployment is a factor in rising delinquencies.
**Q. It can contribute to rising delinquencies?**
A. It can contribute.
**Q. And plummeting home prices can also contribute to rising delinquencies?**
A. That's in theory probably more indirect. I have not studied whether or not borrowers that have lower home appreciation or lower equity in their homes are delinquent more. There have been some that have floated that theory. I'm just not an expert. That's back to more of an economist view of the process.
**Q. Fair enough. So you don't have a view on that issue?**
A. Right.
**Q. Would you agree with me that plummeting home prices tends to increase**

159

**FRANK SILLMAN**
**the loss severity?**
MR. SHEEREN: Objection to form.
**Q. That's something I think you do claim to that an expert on?**
A. Yeah.
MR. SHEEREN: Objection to form.
A. Loss severity is driven in part by the value that the servicer is able to dispose of the home at liquidation. So there is a correlation between housing prices and severities.
**Q. And that's something you looked at as part of analyzing lifetime losses for the trusts, correct?**
A. Yes.
**Q. So you believe that's a significant causal relationship?**
MR. JURGENS: Objection to form.
MR. RAINS: Objection, vague and ambiguous.
A. There's a relationship between the value of a house and the severity. And that was utilized in our initial declaration and in our subsequent

160

FRANK SILLMAN
declaration about the estimated loss models.
**Q. So delinquency rates went up following '07. Would you agree that a fair number of -- a certain number of the delinquent loans in the pool that's being settled could have gone delinquent for reasons having nothing to do with breaches of reps and warranties?**
MS. PATRICK: Objection to form.
MR. RAINS: Objection to form. Calls for speculation.
A. I have not evaluated the millions of loans associated with all of the trusts and so I couldn't answer the question as to whether or not that was the case.
**Q. Let's turn back to Exhibit 7 and we are going to focus now on Table 2. Can you tell me how you computed the numbers in the first line, the agree line?**
A. That was taken from the data that was provided by the debtor where they noted that they agreed to repurchase the

161

FRANK SILLMAN
loan.
**Q. And so what does this line of data show?**
A. It shows that of the PLS demands they received during this time frame, they agreed to repurchase based on the original principal balance a percentage of 10.36 percent.
**Q. And the next line shows repurchase demands that were --**
A. Cancel the rescinded. So again their status category, that represented repurchase demands that were given to them that the trustee or insurer or demander rescinded or canceled after sending them the repurchase demand.
**Q. So usually this would be when the demanding party was persuaded that it wasn't a put backable loan?**
A. Yeah. So it didn't meet the repurchase standard.
**Q. And the next line?**
A. Disagree, rescission requested. So that's where the company had reviewed

FRANK SILLMAN

the loans and disagreed that the loan met the repurchase standard. And the rescission is, you are asking them to rescind the demand.

**Q. And what about the next line, pending review?**

A. Pending review is a category again from the debtor of loans that was somewhere in the review process at the company. So it may have been reviewed pending manager approval. It may be in the queue to be reviewed. It may be in the process of being reviewed by an underwriter. So it's somewhere in that review process.

**Q. Do you have any understanding of how the loans in that category, pending review, compare to the loans in the other categories? Are they just a big unknown, a big black box?**

A. What are you asking me about those loans?

**Q. Can you make any conclusions about the likelihood that had those**



**FRANK SILLMAN**

**loans -- had the put back process finished as to those loans, what the outcome would have been?**

A. I don't have any way to determine that. All I know is that they are currently unresolved.

**Q. So had they been resolved the agree rate might have been 10.36 percent or it might have been less or it might have been more, you just don't know?**

A. I don't know.

MR. RAINS: Objection. Calls for speculation.

A. So agree and the cancel rate numbers would -- or the disagree would change based on the disposition of the pending review files.

**Q. Sure. So for purposes of your calculations do you believe it's appropriate to just disregard the pending review category, take it out of the equation, so to speak, or should it be considered in some way?**

A. I believe it should be



FRANK SILLMAN

considered. I considered it in my analysis as unresolved.

**Q. I guess here's what I'm trying to understand. Based on the data shown in Table 2 can you tell me what the debtors nonvoluntary put back rate was with respect to prepetition PLS demands?**

A. What do you mean put back rate? You mean their agree rate?

**Q. I mean the loss share rate.**

A. I don't believe that you can develop a sound and confident loss share rate on PLS demands based on the status of the PLS demands with the debtor prepetition. Since 87 percent of them were unresolved I don't believe that I could come to a credible conclusion.

**Q. Where do you get 87 percent from?**

A. If I add the disagree and the pending review together. So that's 87 percent of the loans are unresolved. They are not agrees or cancels, right, which are the...



FRANK SILLMAN

**Q. So let me try again. Based on the data in Table 2 can you determine the debtors prepetition agree rate for PLS demands?**

A. I don't believe you can since 87 percent of the demands are unresolved.

**Q. But let's break that down. 65 percent in round numbers were disagreed?**

A. Correct.

**Q. Then I ask you can you tell anything about the loans that are pending review and how they would likely fall into the agree category or the disagree category. And is your answer still you can't tell?**

A. I can't tell. I wouldn't want to speculate.

**Q. So wouldn't it be appropriate to take that out of the equation and say the debtors prepetition PLS agree rate is 10 percent -- 10.36 percent?**

MS. PATRICK: Objection to form.

A. No, I don't believe you can

FRANK SILLMAN

gather that information from this since 87 percent are still unresolved. I don't believe you can come to that conclusion.

**Q. Okay. Let me turn to a related topic. The demands that are reflected here. What sort of parties made these demands? Are some of them monoline insurers?**

A. Some monoline insurers. Some more MI companies and I believe a small portion of them were also private label securities trustees. Mostly monolines and MI.

**Q. What is an MI company?**

A. Mortgage insurance.

**Q. Do you have any understanding of the breakdown between monolines and mortgage insurance companies?**

A. They may have -- in the large set of spreadsheets there, they may have provided that information. I'd have to review it to determine whether that information was provided to us or not.

**Q. The spreadsheet that backed up**



**FRANK SILLMAN**

**Exhibit 7 contained information from a sheet that would compute what portion on the of the prepetition demands were monolines versus MI companies versus trustees?**

A. I don't know. I'd have to look at it. I don't recall all the fields that were on there. So if you --

**Q. So my goal of saving trees I'm going to abandon and let's mark as Exhibit 8 --**

A. Maybe give me one page in the --

**Q. I think we have to mark it or we are going to cause confusion. I'm going to mark as Exhibit 8 the entire spreadsheet, including both the cover page that was marked as Exhibit 7 plus all of the backup.**

**(Expert 9019 Exhibit 8, entire spreadsheet marked as Exhibit 7 plus all of the backup, marked for identification, as of this date.)**

**Q. You've now had a chance to review this spreadsheet?**



**FRANK SILLMAN**

A. I'm in the process right now.

**Q. Sorry, take your time.**

A. Okay, I see --

MR. RAINS: Wait for him to ask a question.

**Q. So let me reask what I asked you a moment ago. Namely, can you tell from Exhibit 8 what portion of the prepetition PLS demands against the debtors were monolines, what portion were MI companies and what portion were trustees?**

A. There is in column C titled Notification Received From, there are names of institutions listed there. So I couldn't tell you right now where or what portion of these demands came from each of those groups. But I could figure that out. I might need to get some additional clarification from the company. There are names on here of companies that were purchasers of loans that also may have been trustees on securitizations. So I would need to understand what role they played as it relates to these demands.



FRANK SILLMAN

**Q. Fair enough. By the way, let me ask you a related question which is in your experience advising sellers about how to respond to put back demands, often the demands have been made by monoline insurers?**

A. I have had clients that had demand for monoline insurers.

**Q. Through that experience have you developed an understanding of whether the put back rules that govern monoline insurers differ from the rules that govern the put-back claims of uninsured trusts?**

A. Nonmonoline trusts?

**Q. Correct.**

A. I have not done that evaluation of the reps and warrants of monoline deals versus nonmonoline deals.

**Q. Is it fair to say you don't have any basis to say whether the put back claim would be stronger because it's made by a monoline insurer than made by an uninsured trust?**

A. For purposes of my declaration I

FRANK SILLMAN

haven't done any legal analysis work, one, because that's not my area of expertise between those two. And the clients I have done work for that have had monoline demands we set a repurchase standard and we have followed that repurchase standard in reunderwriting files.

**Q. For purposes of forming the opinions set forth in your declaration, did you make any assumptions about how monoline put back claims might compare to those of uninsured trusts?**

A. For purposes of my declaration I did not take into consideration any legal arguments regarding potential differences in reps and warrants between monoline and nonmonoline securitizations.

**Q. Or any effect that might have on the put back rate involving a monoline compared to that involving an uninsured trust?**

A. Can you ask me that question one more time?

**Q. In looking at the debtors put**



**FRANK SILLMAN**

**back history, did you make any distinctions between put back demands made by monolines and those made by uninsured trusts?**

A. The repurchase history that we relied on predominantly in the declaration was the GSE repurchase history. And those GSE loans that went through that repurchase process were not insured by monoline insurers. So the work that was done and the conclusions and assumptions that were derived from that work did not differentiate monoline versus nonmonoline securities.

**Q. Are you saying the debtors GSE experience formed the principal basis for your conclusions about the debtors loss share rate?**

A. It didn't principally. But it was a factor in the assumptions that I made in my original declaration.

**Q. And did you take the distinction between monolines and nonmonolines into account in any respect in doing your**



**FRANK SILLMAN**

**analysis?**

A. I did not perform a legal analysis and therefore did not factor that into the work we did on our initial declaration.

**Q. Loss share rate as you define it is the product of breach rate and agree rate, correct?**

A. Let me validate. Yeah, multiplying the breach rate times the agree rate.

**Q. So in looking at the debtors prepetition PLS history and trying to judge whether that should play any role in your opinion, did you consider the alleged breach rate that could be -- did you consider whether an alleged breach rate could be derived from the debtors prepetition put back experience?**

MR. RAINS: Objection, vague and ambiguous.

A. The breach rate is determined, as I state on page 20 paragraph 57, by multiplying the audit rate times the



FRANK SILLMAN

demand rate. And since the audit rate was not provided by the company there was no way to try to determine the breach rate from the information that we received from the company.

**Q. Audit rates aren't always reported, right?**

A. That's correct.

**Q. And so if you are looking at the put back experience of a particular seller and you can't find the audit rate, it's sometimes possible to compute the breach rate, isn't it?**

A. Well, if you don't have the audit rate, then my methodology you can't compute the breach rate.

**Q. But can you do it in a different way?**

A. I'm not aware of a different way to do that.

**Q. What if you simply look at the number of loans sold by the seller and how many of them were the subject of a put back demand? Wouldn't that get you to the**

174

FRANK SILLMAN
**same place?**
MS. PATRICK: Objection to form.
A. It's a different calculation.
**Q. I realize. Doesn't it get you to the same place?**
MS. PATRICK: Same objection.
MR. RAINS: Objection. Vague and ambiguous.
A. It's a different calculation. It's a calculation but it's a different calculation.
**Q. Would it yield the same result or a different result?**
A. It would yield a different result because it's a different calculation.
**Q. Is it your view that you gave -- strike that.**
**Did you give any consideration in forming your opinion to the number of put back demands made against the debtors prepetition?**
A. The number you mean, which number?

175

FRANK SILLMAN
MR. RAINS: He said put back demands.
**Q. Let me try it again because my question wasn't very clear. You've computed that the debtors -- sorry, that the trusts -- let me start again. You've computed that the loans subject to the proposed settlement have losses, liquidated losses to date of about $30 billion, correct?**
A. Correct.
**Q. And by the way, by liquidated losses what do you mean?**
A. It means when there's a loss that's passed on to the trust when the loan is liquidated.
**Q. So are all of those losses on account of either foreclosure or some other sale?**
A. Short sale, yes. There's a number of categories that would consider the loan liquidated. And any losses associated with that are reported as liquidated losses.

176

FRANK SILLMAN
**Q. So it would be a sale in satisfaction of the mortgage?**
A. I'm not sure that I'm the expert. Mortgages work differently in each of the states. When the property is liquidated, the losses associated with that are passed on to the trust.
**Q. So let me just show you your report so we don't have to go back and forth on this. Look at paragraph 25 of your initial declaration. And item A in the first sentence refers to, "The actual losses that are incurred when a loan is foreclosed and sold through a short sale, REO or other final disposition."**
**Do you see that?**
A. Yes.
**Q. And that's what you've defined as the actual liquidated loss?**
A. Yes.
**Q. Okay. And do you have any way of knowing whether after a liquidation of that sort the trust would still hold the mortgage?**

177

FRANK SILLMAN
A. That would be a --
MR. JURGENS: Objection to form.
MS. PATRICK: Objection to form.
A. -- a legal question that may be discussed in the governing agreements but outside the scope of what -- what I looked at for my declaration.
**Q. Okay. Fair enough. But you've computed that the debtors -- the liquidated losses on the loans in the trusts to date are approximately $30 billion?**
A. That's the information that I received from Intex and LP, loan performance.
**Q. And does Table 2 of Exhibit 7 show that, tell you the dollar value of put back demands made against the debtors with respect to these trusts from late 2007 until the petition -- until May 2012?**
A. I'm not sure -- you are asking the detailed schedule information?
**Q. Exhibit 7, the cover page.**
A. Oh, the cover page.

FRANK SILLMAN

**Q. The summary page.**
A. Okay.
MR. RAINS: Ask the question again, please.
MR. BENTLEY: Sure.
**Q. Look at Table 1, last line labeled Grand Total.**
A. Uh-hum.
**Q. And does this tell you that between late '07 and May 2012 a total of 15,481 put back demands were made, PLS demands were made on the debtors?**
A. Nonvoluntary?
**Q. That's what demands are, right?**
A. Right.
**Q. So did I get that right?**
A. Yes.
**Q. And does this tell you that during that same time period the original principal balance for those loans was, in round numbers, $1.37 billion?**
A. Yes. That's information that was provided to me by the company.
**Q. Did you give any consideration**



**FRANK SILLMAN**

**in forming your conclusions to the fact that loans with that aggregate original principal balance were the subject of put back demands -- sorry.**
**Did you give any consideration to the relationship between that number, the $1.37 billion, and the $30 billion of liquidated losses for these trusts?**
MS. PATRICK: Objection to form.
MR. RAINS: Objection. Vague and ambiguous.
A. These demands --
MR. RAINS: Ignore them. Just go ahead and answer.
A. These demands may or may not correlate to the liquidated loans that make up the $30 billion in actual liquidated losses.
**Q. Okay. If the debtor had agreed to put back, then the loan would no longer be in the trust. That's part of your point?**
A. If they had repurchased the loan they may have repurchased the loan from



FRANK SILLMAN

the trust or they may have, you know, settled some dollar amount related to the loss of the trust if they agreed.
**Q. But these are all of the put back -- so my question is did you give any consideration to the fact that all of the prepetition put back demands against the debtor during this period were for loans with a total principal balance of only 1.37 billion whereas the loans in the trusts being settled had suffered losses -- had suffered $30 billion of losses. Did the relationship between those two numbers have any significance to you?**
MR. RAINS: Objection. Vague and ambiguous.
A. The original principal balance of the nonvoluntary was one of the numbers that we looked at, one of the factors that we considered. But since the vast majority of them were unresolved we weren't able to draw any conclusions from the information.



FRANK SILLMAN

**Q. By the way, you say the vast majority were unresolved. That's not true, is it? 22.54 percent were unresolved.**
A. No, the 64.76 is also unresolved, right. There's a disagree so we have a pending demand that has not been rescinded or canceled and you have the company who is disagreeing with either the underlying facts or that it meets the repurchase standards. So it is unresolved.
**Q. But it's been resolved as far as the better is debtor is concerned in its put back negotiations, correct?**
MR. RAINS: Objection. Vague and ambiguous. Misstates the witness's testimony.
MS. PATRICK: Objection to form.
A. Yeah. The resolved for purposes of our analysis here is when they come to an agreement to repurchase or cancel and rescind, all others are still in the unresolved category.

FRANK SILLMAN

**Q. Well, look at paragraph 59 of your declaration. The first sentence states, "The agree rate is the percentage of demands issued by the trustee that the seller agrees to repurchase or make whole." Correct?**

A. Yes.

**Q. So the agree rate for the debtors shown on Exhibit 7 is just 10.36 percent, correct?**

A. Yes.

**Q. And the 64 percent would not be unresolved in the sense you use -- sorry, using the approach you take in your declaration the 64.76 percent would be the reject rate, the opposite of the agree rate, correct?**

A. This --

MS. PATRICK: Objection to form.

A. The information that we utilized is the loans all had a determination as we -- as they made their way through the process. And so the disagree rate would not be it. It would be the canceled and



FRANK SILLMAN

rescinded rate would be the opposite to the agree rate. So they all have to be resolved. So it's not the disagree. It's the cancel and rescinded or agree.

**Q. Okay. Let's move on. And I don't think I got an answer to my question. In forming your conclusions did you attribute any significance to the fact that the debtors had suffered -- sorry, the trusts whose loans are being settled have suffered $30 billion in losses but during the period shown on Exhibit 7 the debtors received put back demands only with respect to loans with an original principal balance of roughly 1.37 billion, did you give any significance to those facts?**

MR. RAINS: Objection, compound. Vague and ambiguous.

A. It was a factor. This takes it through demands that were received by the debtor through May 2012, at the same time they entered into a settlement agreement agreeing to -- agreeing to an allowed



FRANK SILLMAN

claim for 8.7 billion. So I took into consideration the 1.3 billion and the fact that the trustees had also negotiated an allowed claim of 8.7. So I had to take into consideration the fact that there was a claim.

**Q. So one of the things you took into consideration in forming your conclusion was that the debtors had agreed to an aggregate settlement of $8.7 billion?**

A. We are talking about the PLS demand data. I could not ignore the fact that in addition to the 1.3 billion in demands there was also a proposed settlement of 8.7 billion. So it was a factor in the development of my declaration.

**Q. Let's go back to paragraph 5 of your declaration.**

**MS. PATRICK: 5?**

MR. BENTLEY: Correct.

MR. RAINS: I'm sorry, where?

MS. PATRICK: 5.



FRANK SILLMAN

MR. BENTLEY: 5.

MR. RAINS: That's so demoralizing. We made it up to 50 --

MR. BENTLEY: Darryl, I'm going doing it just to demoralize you.

MR. RAINS: We started at 5 over an hour ago and we are still stuck in 5.

MR. BENTLEY: I think that means we are going to go for days.

MR. BENNETT: He likes 5.

MR. BENTLEY: Don't lose hope, Darryl.

**Q. I want to focus you on the last sentence and specifically the portion that says "I utilized assumptions and developed my own models based on my own experience and industry data where available."**

**So your reference to your own experience, the way you used your own experience in developing your models is described later in this declaration; is that right?**

A. Yes.

FRANK SILLMAN
**Q. It's described on pages 16 to 23 of your declaration?**
A. Yes. Those are areas where I discuss my experience with these rates. Yes.
**Q. Now, going back to the sentence I just quoted. You say you also used industry data where available. What industry data are you referring to?**
A. I looked at Freddie Mac and Fannie Mae's repurchase data.
**Q. Anything else?**
A. Let me read through.
**Q. And actually, sorry. When you say Freddie Mac and Fannie Mae repurchase data, you are referring to the data --**
A. In the IMF report.
**Q. The excerpt annexed as Exhibit A?**
A. Yes.
**Q. Okay. Anything else?**
A. Let me read through this. Your question was in regards to industry data?
**Q. Correct.**



**FRANK SILLMAN**
A. So I also looked at the FHFA OIG report.
**Q. Which you discuss in?**
A. Paragraph 49 -- 48.
**Q. Okay. Anything else?**
A. I did review the BofA expert report and the Lehman expert declaration.
**Q. And specifically the BofA report annexed as Exhibit C? And the Lehman declaration annexed as Exhibit D?**
A. Let me take a look. Yes. And the FHFA OIG report as Exhibit E.
**Q. Did you consider any other industry data?**
A. Just as it relates to these pages in question, is that what you are asking me?
**Q. I'm referring to the sentence in paragraph 5 which refers to your using assumptions in developing models based on industry data.**
A. I would need to also look at the complete list of the documents I have provided to the data room so that I make



FRANK SILLMAN
sure that I cover all of the industry data that I utilized.
**Q. Are these the only sorts of industry data that you describe in your report, the ones you've just mentioned?**
A. I'll have to go through the report.
**Q. Take your time.**
A. I also reviewed some information regarding Bank of America's settlements with Fannie Mae and Freddie Mac.
**Q. And that is referred to?**
A. Paragraph 22. I also make a reference to the Compass Pointe exhibit, which is Exhibit B.
**Q. And where do you refer to that?**
A. In paragraph 20 at the top of page 10.
**Q. And that's part of your calculation of loss rates not loss share rates, right?**
A. No. I didn't -- I don't believe I used it for that purpose. That was just under the loan repurchase trend section.



FRANK SILLMAN
**Q. I see. Yes. My mistake.**
A. And then let me finish up here. We are only talking about my original declaration, my first declaration?
**Q. Correct.**
A. Yes. Those are the documents I refer to in my declaration.
MR. BENTLEY: Your counsel will be thrilled to know I'm not going to ask you about paragraph 6.
MR. RAINS: There's no going back after this.
**Q. Paragraph 6 describes the way you ended up computing loss share rate, right?**
MR. RAINS: Objection. Misstates the paragraph.
MR. BENTLEY: How did I get it wrong?
A. It discusses two of the steps. The first step in determining estimated lifetime losses and then the second step is determining a loss share rate. And for all of these rates I developed ranges but

190

FRANK SILLMAN
a loss share rate range. So it's both, I discuss both of them.
**Q. I understand that the computation of each of these two elements involves a number of steps. But does this paragraph 6 accurately summarize from a big picture standpoint your whole analysis used to develop loss share rate -- I'm sorry -- used to estimate the debtors -- let me start again. I think I mucked it up.**
**Does this paragraph accurately summarize the method you used to estimate the debtors potential repurchase requirements?**
A. It allowed me to estimate the range of reasonableness for the allowed claim. And that was done in two steps, step one and step two.
**Q. Which are described here?**
A. Yes.
**Q. So basically to compute potential repurchase requirements you calculated an estimated lifetime of**

191

**FRANK SILLMAN**
**losses, you then calculated loss share rate and you multiplied the one by the other?**
A. That's correct. In ranges so it's not a single number. It's a lower range and a higher range.
**Q. Understood. And your computation of estimated lifetime losses is contained in the section starting on page 11 of your report, correct?**
A. Yes. That's the section.
**Q. And your computation of loss share rate is addressed in the section starting on page 16 of your report?**
A. Yes. Paragraph 44.
**Q. So this is basically -- paragraph 6 is basically a nutshell summary of computations you performed?**
MR. RAINS: Objection. Vague and ambiguous. Misstates the witness's testimony.
A. It discusses the two steps that I utilized first in developing the estimated lifetime loss ranges and then

192

FRANK SILLMAN
this next step in estimating the loss share rate ranges.
**Q. So all of your calculations on pages 16 to 23, the upshot of those calculations is the loss share rate, correct?**
A. Yes. The result of the work that's done starting on page 16, paragraph 44 and ending on page 23, paragraph 66.
**Q. There's a number of different components, retrade, agree rate and audit rate and demand rate. But the purpose of all of those is to come up with the -- the collective result of all of those is the loss share rate?**
A. Right.
**Q. Now, going back to paragraph 6 in the second sentence describing loss share rate, you describe loss share rate as, "The percentage of estimated lifetime losses that the debtors might agree to share with the trusts."**
**Do you see that?**
A. Yes.

193

FRANK SILLMAN
**Q. So was it deliberate on your part to use the word "might" rather than would?**
A. What I was developing -- what I developed for this is a range of reasonable loss share rates. And whether or not the debtor would agree to a loss share rate ultimately agree to a loss share rate or an allowed claim that you could calculate a loss share rate is something for the others to decide, not me to impose by using the word "would."
**Q. For example, your calculations are all predicated on the assumption that a breach of rep and warranties can be proved against the debtors as a legal matter, right? We talked about that earlier.**
A. Let me get to -- what paragraph are you referring --
**Q. 5. Third sentence.**
MR. RAINS: What was the question again?
**Q. You assume for purposes of your**

**FRANK SILLMAN**

**declaration that a showing can be made against the debtors that reps and warranties were breached under the governing agreements, correct?**

A. Let me reread the sentence.

What was your question?

MR. BENTLEY: Can you read it back.

(Record read.)

A. What I said was however, I take no position on the ability of any party to prove a breach of representations and warranties under the governing agreements. And I assume for the purposes of this declaration that a showing can be made against the debtors.

**Q. Now, as an expert you are familiar with the use of assumptions in forming your conclusions?**

A. Yes.

**Q. An assumption is something that somebody gives to you and you accept without vouching for it, fair?**

A. That someone gives to me as the



FRANK SILLMAN

expert?

**Q. It's an assumption that you don't vouch -- you don't vouch for the accuracy of the assumption as an expert, correct?**

A. It's not based on specific data.

**Q. You are told to assume something, correct?**

A. No. I don't believe that in this scenario that I'm being told to assume certain assumptions. I'm --

**Q. You weren't instructed by counsel to make this assumption?**

A. To make which assumption?

**Q. The assumption referred to in the sentence we just read?**

MR. RAINS: Objection. Vague and ambiguous.

A. I'm not sure what you're --

**Q. We just read the sentence that says in part "I assume for purposes of this declaration that such a showing can be made against the debtors." Weren't you instructed by counsel to make that**



**FRANK SILLMAN**

**assumption or did you come up with that on your own?**

A. I'm trying to remember how we -- how I came up with this.

**Q. Weren't you instructed by Kirkland & Ellis to make that assumption?**

A. I don't recall whether I was or wasn't.

**Q. Well putting aside --**

MR. RAINS: Did you say Kirkland & Ellis?

MR. BENTLEY: I did.

MR. RAINS: Were you instructed by Kirkland & Ellis to make that assumption?

THE WITNESS: I don't believe I was.

**Q. Were you instructed by Morrison & Foerster to make that assumption?**

A. I don't -- I don't recall as to -- I don't believe it was Kirkland & Ellis. But I don't recall whether or not that particular sentence was discussed with Morrison & Foerster or not. I just



FRANK SILLMAN

don't remember.

**Q. So was it your own decision to make that assumption?**

A. I don't recall is what I'm saying. I don't recall. You asked me whether Morrison & Foerster instructed or whether I came up with it. I don't recall that particular language.

**Q. Do you think it's appropriate to use this assumption in your report?**

A. Yes. I think it's appropriate to use that assumption.

**Q. Why is that?**

A. The whole sentence, part of the sentence.

**Q. Do you have a clear understanding of what you assumed?**

A. I believe I do.

**Q. What did you assume?**

A. I assumed in the first part that I didn't take a position on the ability of any party to prove a breach of rep and warrants under the governing agreements. And I assumed that they could make or

198

FRANK SILLMAN

could make such a showing of a breach of reps and warrants against the company or against the debtors.

**Q. Why did you choose to make that assumption?**

A. I guess because it's important in the analysis of whether or not they may or may not be responsible for some portion of the loss share.

**Q. Can you explain that to me?**

A. I'm not sure what --

**Q. I asked you why did you choose to make that assumption and your response was I guess because it's important in the analysis of whether or not they may or may not be responsible for some portion of the loss share. I don't understand that. Can you explain it to me?**

A. That's my understanding of what it means. So I'm --

**Q. Can you give me any further explanation of why you chose to make this assumption?**

MR. RAINS: Object to the form

199

FRANK SILLMAN

of the question as vague and ambiguous.

A. I have answered it. I don't know how to put it a different way.

**Q. When you make an assumption if the court then concludes that the assumed facts are not true, does that affect your conclusions generally as an expert.**

MR. RAINS: Objection, vague and ambiguous.

A. Ask me the question again.

**Q. You are familiar as an expert with the process of making assumptions?**

A. Yes.

**Q. You don't vouch for the facts that you assume. You just assume them, right?**

A. Yes.

**Q. And it's possible that the court might find that the assumed facts are not true, right?**

A. It's possible, yeah.

**Q. And generally speaking, when that happens that might affect the**

200

**FRANK SILLMAN**

**validity of your conclusions, right?**

A. That could, yeah.

**Q. Because they rest on the assumptions and if the assumptions aren't true, then the conclusions may not be true either.**

A. Okay.

**Q. You agree with that?**

A. I understand it, yes.

**Q. And would you agree that that's true here to that this assumption that you describe in paragraph 5 is not true then that could undermine the validity of your conclusions?**

MS. PATRICK: Objection to form.

A. I can't speculate on what the court might decide based on any of the assumptions that I made in the agreement.

**Q. I'm asking you to assume now, which is something you do as an expert, assume that the court finds that this assumption was unwarranted. Would that impact the validity of your conclusions?**

MR. RAINS: Objection.

201

FRANK SILLMAN

Incomplete hypothetical. Calls for speculation.

A. Yeah, I can't speculate on what the court might decide if one or more of the assumptions they deemed are not valid.

**Q. If the court were to find that the debtor is not liable for a certain portion of the rep and warranty claims, that might affect the validity of your conclusions, right?**

MS. PATRICK: Objection to form.

MR. RAINS: Well, it doesn't talk about a certain portion here. Where are you getting that?

MR. BENTLEY: The whole --

MR. RAINS: I object to the form of the question. Misstates the witness's testimony and his declaration.

**Q. Can you answer?**

A. I'm not sure what the question is. Can you repeat it?

**Q. Just give me one moment.**

**If the court were to conclude**

202

FRANK SILLMAN

**that the debtors are not liable for certain of the rep and warranty claims, would that affect the validity of your conclusion?**
MR. RAINS: Objection. Misstates the witness's testimony. Calls for speculation.
A. I have no opinion as to what the court might do and how that might affect the outcome.
**Q. Just so we are clear, I'm not asking you to speculate about what the court might do. I'm asking you to assume that the court concludes that the debtors are not liable for certain of their rep and warranty claims. Might that impact the validity of your conclusions?**
MS. PATRICK: Objection to form.
MR. RAINS: Objection. Incomplete hypothetical.
A. In this hypothetical I don't know what type of impact that might have on the conclusions.
**Q. As far as you know, it might**

203

FRANK SILLMAN

**undercut your conclusions?**
MS. PATRICK: Objection to form.
MR. RAINS: Same objection.
A. I have no basis to speculate as to in this hypothetical on what might happen.
**Q. Let's turn back.**
MR. RAINS: If you are going to a new topic, we have been going over an hour and a half. I have been waiting for a convenient space here. Is this a good point?
MR. BENTLEY: This is a fine time for a break.
(Whereupon, there is a recess in the proceedings.)
**Q. Before we turn back to the declaration I do have one topic that I'd like to briefly return to that you testified about earlier, the MBIA suit against RFC and the work you did there reunderwriting loan files.**
**Did you determine a breach rate or a range of breach rates?**

204

FRANK SILLMAN

A. We never finished the project or that engagement for the reunderwriting. So we did not come to any type of agree or breach rates.
**Q. Please turn to page 17 of your declaration. What is audit rate as you use that term?**
A. The percentage of loans in a given mortgage portfolio that are audited by the trustee or other parties authorized under the governing agreements for the purpose of finding alleged representation and warranty breaches.
**Q. And audit rate is a component of calculating breach rate?**
A. Yes.
**Q. You multiply audit rate by?**
A. The demand rate.
**Q. Demand rate to get breach rate?**
A. Correct.
**Q. Let me ask you about your calculation of audit rate. You don't know what the trustees' audit rate was, right?**
A. Correct. A sample, since a

205

FRANK SILLMAN

trustee's audit selection. So it's a hypothetical.
**Q. But you concluded that a certain report from the office of the inspector general of FHFA provided some valuable insight into your calculation of the audit rate?**
A. Well, into the methodology that Freddie Mac used in their audit rate selection or audit rate determination process.
**Q. So what I'm trying to understand is this report wasn't about Fannie or Freddie. What was the significance of this, of the FHFA report to your report?**
A. It gave some insight, publicly available insight into the thought process behind the development of audit rates by trustees or investors.
**Q. Okay. Well, it gave you insight into the thought process of certain people at FHFA, correct?**
A. No, they discussed in their document some processes that Freddie Mac

FRANK SILLMAN

used in developing their loan audit selection criteria audit rate.
**Q. So do you think this report shed valuable light on Freddie Mac's audit process?**
A. Yes.
**Q. And what light did it shed?**
A. They discussed and if you have a copy of the report.
**Q. It's --**
A. Is it in --
**Q. It is attached to your declaration as Exhibit E.**
A. Let me review the document.
Okay. So if you look -- if you want to ask your question again. I'm sorry.
**Q. Sure. In your view what light did this FHFA OIG report shed on your calculation of audit rate?**
A. If you look, for example, on page 18, paragraph B of the report.
**Q. This is --**
A. Page 84 of 110 I believe of the



FRANK SILLMAN

declaration.
**Q. Sorry. You are looking at Exhibit E to the declaration?**
A. Yes. I'm looking at the FHFA report.
**Q. Which is Exhibit E. And you are looking at page 18 of that report?**
A. Yes.
**Q. Okay. Please continue.**
A. Paragraph B starts about a third of the way down. So it talked about concerns regarding the fact it didn't revise its loan review process.
**Q. It being Freddie Mac?**
A. It being Freddie Mac. And that the second sentence, "Freddie Mac reviews intensively for repurchase claims only those loans that go into foreclosure or experience payment problems during the first two years following origination. Loans that default thereafter are reviewed at dramatically lower rates." It goes on to discuss --
**Q. So let me stop you there. Did**



**FRANK SILLMAN**

**you understand this to be an accurate description of Freddie Mac's loan review processes?**
A. Based on what the FHFA examiner found, yes.
**Q. Okay. Please continue.**
A. They go on to discuss what Freddie Mac's management believed were the, was the right policy to review these loans or audit these loans based on certain criteria he lays out here. The upshot is at the end of the report Freddie Mac's management responded that they would modify their audit rate selection criteria going forward to expand it beyond the loans that go into default or have payment problems during the first two years.
**Q. And can you show me what you are referring to? Are you referring to Exhibit A starting on page 38?**
A. No, no. I'm still in the same Exhibit E.
**Q. And sorry, I misspoke. I meant to ask are you referring to Appendix A**



**FRANK SILLMAN**

**which starts on page 38 of Exhibit E?**
A. Page 38.
MR. RAINS: I think the record should reflect he wasn't referring to Appendix A before because he just turned several pages to look at it for the first time.
MR. BENTLEY: Let's get an answer because I'd like to know what he was referring to.
A. Yes. Finding one of that letter --
**Q. Can you tell me what page you are looking at?**
A. I'm looking at page 39. It's really better summarized on page 34, paragraph 3.
**Q. Which paragraph are you referring to?**
A. The second paragraph in that paragraph 3.
**Q. Tell me specifically.**
A. Starting with the sentence "In response to that opinion Freddie Mac

FRANK SILLMAN

management agreed to perform out of sample testing of loans not currently reviewed for repurchase claims. Freddie Mac commenced such testing."

**Q. I'm sorry, I just found it. Sorry, go ahead.**

A. You want me to start again.

**Q. No. Pick up where you were.**

A. "In February 2011 at the urging of the FHFA senior examiner management agreed to review a sample of a thousand interest-only loans originated during the housing boom that went into foreclosure more than two years after origination. The draft results of that sample were disclosed to FHFA on August 31, 2011, and they revealed that at least 15 percent of such loans, a higher percentage than anticipated by Freddie Mac management in connection with the BofA settlement include representations and warranty defects and are subject to repurchase claims to loan sellers. However, the final repurchase rate may be lower. Final



FRANK SILLMAN

results are expected in about three months."

Next paragraph. "Moreover as discussed in footnote 58 and the accompanying text, on May 26, 2011, a Freddie Mac senior manager who provided management estimates to the Freddie Mac board of directors in late 2010 advised the board of directors that the enterprise could recover from 500 million to 1 billion net in additional revenue through the use of a more expansive loan review process."

**Q. Is it your conclusion based on those two -- strike that. Let me back up a moment.**

**You were previously reading from page 18 of Exhibit E, which says, to summarize, that Freddie Mac's existing process was to intensively review loans that have payment problems during the first two years after origination but to review loans that default thereafter at dramatically lower rates. Is that a fair**



**FRANK SILLMAN**

**summary of what Freddie's practice is --**

A. According to the FHFA.

**Q. That's described here?**

A. Yes.

**Q. Did Freddie change that practice?**

A. This report doesn't -- what page was that? Yeah. Page 34 notes that a Freddie Mac senior manager advised the board of directors but it does not address what ultimately was changed with Freddie Mac.

**Q. And do you have an understanding as to whether Freddie Mac did ultimately change this practice?**

A. I have not seen a follow-up report regarding Freddie Mac's response to that. The concept is not whether or not Freddie Mac actually did change. It gives insight into the audit rate selection process both existing at Freddie Mac and what might be improved to the extent that they changed it. But it's the first publicly available audit rate selection



FRANK SILLMAN

criteria that I believe that has been published from a large market participant like Freddie Mac so it was a factor in the consideration in creating my audit rate assumptions in addition to my professional experience.

**Q. So I want to understand what inferences you drew from this report. Am I right, one inference, what you are saying is that audits of loans that default more than two years after origination can in some circumstances result in repurchases?**

A. Yes.

**Q. And this report describes some of those circumstances?**

A. Yes.

**Q. Do you draw any other conclusions from this report?**

A. It supports the assumptions that I utilized in my audit rate ranges that I developed for my original declaration.

**Q. And what use did you make of this in developing your audit rates?**

214

FRANK SILLMAN

A. It validated for me the similar audit rate experience that I had working with my clients who audited loans for the purpose of sending out repurchase demands. So the ranges that I came up with, the 65 to 69 percent audit rate ranges were based on similar but a little different process that Freddie Mac undertook. It was more expansive. It was like the audit rate methodology that FHFA recommended to Freddie Mac use in their review of defaulted loans.

**Q. You say that the FHFA report validated for you the similar audit rate experience that you had working with your clients. How did it validate that?**

A. The selection criteria that the clients that I worked with used, the experience that I had at IMB bank was similar to the audit rate methodology that FHFA recommended that Freddie Mac use on a go-forward basis.

**Q. Now, you're referring to the experience you had at IMB bank and also**

215

FRANK SILLMAN

**the experience you had advising clients while at Fortace?**

A. Yes.

**Q. Tell me about your experience at IMB.**

A. I was in charge at various times of our wholesale, our correspondent and also our secondary marketing group there. And as buyers of loans we regularly would develop audit rate selection criteria to determine which loans we would review for potential repurchase demands back to those wholesale and correspondent sellers.

**Q. And did you audit the same percentage of loans that defaulted in year 5 as those that defaulted in year 1 after origination?**

MR. JURGENS: Objection to form.

A. The same percentage?

**Q. Did your audit rate vary depending on the number of years that occurred between origination and default?**

MR. JURGENS: Objection to form.

A. The time to default was one of

216

FRANK SILLMAN

the factors that went into the audit rate selection process.

**Q. So there was some reduction of the audit rate as you went out an additional number of years?**

MR. JURGENS: Objection to form.

A. That's just wouldn't factors is the time factor. Didn't necessarily mean that we didn't review loans that were originated 5 years earlier, 4 years earlier. There could be other factors and reasons why we might audit loans for a potential repurchase demand.

**Q. I understand. But you reviewed years that defaulted in year 5 -- loans that defaulted in year 5 at a lower rate than loans that defaulted in year 1?**

MR. JURGENS: Objection to form.

A. I'm not sure -- I don't have that data in front of me to be able to tell you in fact that's what we did. The time to default was one of the factors that was deployed, delinquency, product types, the seller, were all factors that

217

FRANK SILLMAN

went into the audit rate selection process.

**Q. And when you say the time to default was one of the factors, a greater time to default would lead to a lower audit rate, correct?**

MR. JURGENS: Objection to form.

A. There are many factors that are involved in that audit rate selection process. So it was one of the factors that was involved in that selection criteria.

**Q. Everything else being equal would a greater number of years to default result in a less likelihood of audit?**

MR. JURGENS: Objection to form.

MS. PATRICK: Objection to form.

A. Theoretical?

**Q. No, I'm asking you about the IMB experience you are describing.**

A. I don't have the data from what the actual audit rate selections were for each one of those years. So you are asking me to opine on actual audit rates

FRANK SILLMAN

that we did at IMB and I can't speak to those numbers at that level of granularity.

**Q. Okay. Let's go back to the FHFA report and Freddie Mac's practice of reviewing loans that default more than two years out at dramatically lower rates than loans that default earlier.**

**According to the report Freddie Mac's reason for doing that -- according to the report Freddie Mac's likely reason for doing that?**

A. What page?

**Q. I'm sorry.**

MR. RAINS: What page are you on?

**Q. Look at page 18. Near the bottom of the page referring to Freddie Mac's management, it says, "In their view loans that had demonstrated a consistent payment history over the first two years following origination and then defaulted in later years (i.e. years 3 through 5 after origination) likely did so for a**



**FRANK SILLMAN**

**reason such as loss of employment which is unrelated to a representation and warranties defect."**

**Do you see that?**

A. Yes.

**Q. And do you have any reason to believe that wasn't the reason that Freddie Mac's management followed this policy?**

MR. RAINS: Objection. Calls for speculation. No foundation.

A. No, I don't have any idea as to why they decided to follow that policy.

**Q. Did you make any attempt to speak with Freddie Mac management or otherwise to better understand their reasons for following this policy?**

A. No, I did not.

**Q. Did you make any attempt to determine whether they subsequently changed this policy?**

A. I did check to see if there was a follow-up audit review and was not able to find it.



FRANK SILLMAN

**Q. Okay. So as far as you know they may still pursue this same practice today?**

A. That might be the case.

**Q. Now, you referred in paragraph 52 to your experience with your clients. Are you talking now about your sell side clients, your buy side clients or both? Sorry, this would be the buy side clients, correct?**

A. Yes.

**Q. How many clients are you referring to when you say that this is the practice you observed?**

A. Three clients.

**Q. Three clients.**

A. Three clients and my experience at IMB.

**Q. And you refer in the middle of paragraph 52 to a, "More prevalent industry practice." Do you base your understanding of that industry practice merely on those three clients plus IMB?**

A. And discussions with other



FRANK SILLMAN

colleagues in the industry.

**Q. Who?**

A. I don't recall who at these other institutions. But over the years I had discussions with them on what their policies were.

**Q. And how many colleagues are you referring to?**

A. Probably two or three colleagues at other major banks.

**Q. And what did they tell you?**

A. They were similar to the process that we had at that time at IMB bank for determining the audit rate selection.

**Q. Did you consult any other sources to form this view?**

A. No. My own expert experience and the information that I garnered from the memorandum.

**Q. What you've just described?**

A. Yes.

**Q. Did you look at any reports issued by rating agencies?**

A. For audit rate selection?

**Q. For information bearing on the selection of your audit rate.**

A. I did not look at any credit agency reports or memorandums.

**Q. Do you think reports by Moody's or other credit rating agencies might have some significant bearing on this issue?**

A. I'd have to see the reports and see if they are credible.

**Q. Okay. But you didn't make any attempt to look for such reports when you prepared your report?**

A. I did. I didn't find any reports that I thought were credible.

**Q. Did you find any reports by Moody's?**

A. I don't recall whether I found any Moody's reports.

**Q. Let's turn to the table on page 19. How did you calculate the numbers in this table?**

A. I believe this was provided on the -- one of the spreadsheets we used in our model we provided to the data room.





MR. BENTLEY: Let's mark as Exhibit 9 a three-page spreadsheet bearing Bates numbers ending in -- I guess it's just one Bates number on all three pages. 30.1.612 RC-9019_00000001. This is the very first document put into the data room.

(Expert 9019 Exhibit 9, three-page spreadsheet, Bates 30.1.612 RC-9019_00000001, marked for identification, as of this date.)

MR. BENTLEY: It's a three-page spreadsheet and the heading on the first page says Fortace Trusts Analysis Comparisons.

A. Also if it's possible to pull it up just so I can.

**Q. Yes.**

A. Actually I believe there's a subsequent version of this also.

**Q. Is the subsequent version similar in format?**

A. I believe so, yes.

**Q. Just some of the numbers are**





**different?**

A. Yes.

**Q. So is this the street or is this or the subsequent version of it the spreadsheet you were referring to when you said you had a spreadsheet that calculated the --**

A. Let me look at it to make sure that --

**Q. -- the audit rate assumptions set forth in the table in paragraph 53 of your report.**

A. We also have -- I believe there's a subsequent one also. Let me review the spreadsheet.

**Q. Sure, take your time.**

A. Yes, so this is -- I don't know if this is the latter version but it still has the information we are discussing here which is the projected audit rate at the lower and higher ranges.

**Q. Okay. So just to be clear, Exhibit 9 or possibly a later version of Exhibit 9 contains the calculations you**





**were referring to a few minutes ago?**

A. Yes.

**Q. The calculations you used to derive the audit rate ranges shown in the table on paragraph 53 of your report?**

A. Right. The total average of 65 percent and 69 percent.

**Q. Okay. But how did you compute each of the individual ranges shown on this table? For example, the first line, trusts, liquidated loans, a range of 70 to 75 percent. How did you compute those numbers?**

A. That was based on my professional experience with audit rate percentages.

**Q. So do you compute it or did you just -- does that number -- is that number the product of any calculations?**

A. It's the product of my professional experience. There's not an additional calculation.

**Q. You just came up with that number?**

226

FRANK SILLMAN
A. I didn't just come up with it. It's based on my professional experience.
**Q. How did you come up with it?**
MR. RAINS: Objection. Asked and answered.
**Q. How did you pick 70 percent rather than 60 or 80 percent?**
MR. RAINS: Asked and answered.
A. I came up with it based on my professional experience. I developed a range to take into consideration the variability of each one of these categories.
**Q. Did you compute any of the numbers shown in paragraph 53 other than the average that's shown at the bottom of the table?**
A. The assumptions for each wouldn't delinquency buckets were based on my professional experience.
**Q. But you didn't perform any calculations to derive any of these numbers?**
MR. RAINS: Which numbers?

227

FRANK SILLMAN
MR. BENTLEY: All of the numbers in the table in paragraph 53 other than the total average numbers shown on the last line.
A. The numbers for each of those are assumptions based on my professional experience. So I developed those assumptions and input them into the model.
**Q. How did you develop them? Were there any steps that went into the development?**
A. Based on my professional experience for these categories of loans that's how I developed the assumptions.
**Q. Did you start with the total average range of 65 to 69 and then back into the component ranges?**
A. I did not.
**Q. And can you shed any more light on how you came up with the various ranges shown here, other than the total average range?**
A. Based on my professional experience.

228

FRANK SILLMAN
**Q. It wasn't a quantitative calculation?**
A. It wasn't a -- you are asking me is this a product of a mathematical equation?
**Q. Correct.**
A. It was -- these individual assumptions were not the product of an additional mathematical equation. They were based on my professional experience.
**Q. And there's no backup to these numbers?**
A. There is no -- there's no other data to support these numbers other than my professional experience.
**Q. If I ask you the same questions about the numbers shown in the table on paragraph -- in paragraph 56 of your report are your answers the same?**
MR. RAINS: Objection. Vague and ambiguous. Compound.
MR. BENTLEY: You can walk through all these questions again, Darryl.

229

FRANK SILLMAN
A. I followed the same process based on my professional experience in determining the assumptions for each of the lower and higher ranges in paragraph 56.
**Q. Did you prepare any calculations that went in to the derivation of these numbers, that is on paragraph -- in paragraph 56?**
A. There aren't any additional calculations to derive the assumptions other than the calculations for the total average.
**Q. Let me try to be clear. The total average numbers you derived from the numbers above it in -- in the table?**
A. And they are weighted against the estimated trust lifetime losses. So they are a function of a calculation in the model.
**Q. But each of the numbers other than the total average has no calculation backing it up?**
A. That's right. It's an

FRANK SILLMAN

assumption based on my professional experience.

**Q. And there's no backup documents or data supporting these numbers?**

A. That's correct.

**Q. Let's move on to breach rate. And as we discussed before, breach rate is simply the product of audit rate and demand rate, correct?**

A. Correct.

**Q. So the derivation of this was simply math?**

A. That's correct. And then again weighted against the estimated trust lifetime losses for the averages.

**Q. Now, in paragraphs 57 and 58, you refer to the breach rates used in the BofA expert report and the Lehman expert report, right?**

A. Yes. I discussed them.

**Q. So you attempted to determine what breach rate had been used in connection with the BofA settlement, right?**



**FRANK SILLMAN**

A. Yes.

**Q. And you concluded that the breach rate that was used in connection with that settlement was 36 percent?**

A. Yes.

**Q. And you based that on the BofA expert report that's annexed as Exhibit C to your report?**

A. Let me take a look. Let me review the report.

**Q. When you are finished reviewing the report, and please take as much time as you need, I'm going to ask you about the last page of the BofA expert report.**

A. Okay. Okay.

**Q. So let me just repeat the question I asked before you pulled the report. I said -- I asked you based that BofA expert -- you based that on the BofA expert report that's annexed to Exhibit C to your report?**

MR. RAINS: Objection. Vague and ambiguous.

**Q. You know what let me start**



**FRANK SILLMAN**

**again.**

**You testified a few minutes ago that you concluded that the breach rate that was used in connection with the BofA settlement was 36 percent?**

A. Well, the expert report.

**Q. And you based your conclusion on the BofA expert report that's annexed as Exhibit C, correct?**

A. What -- the conclusion for that section?

**Q. The conclusion shown in the table in paragraph 57.**

MR. RAINS: The 36 percent?

MR. BENTLEY: Correct.

A. The 36 percent was obtained from the BofA expert report.

**Q. And that's shown on page 8 of the BofA expert report?**

A. Yes.

**Q. Before continuing with breach rate let me ask you similar questions about agree rate and the agree rates stated in the BofA expert report. Look at**



**FRANK SILLMAN**

**paragraph 62 of your declaration. It compares your agree rate to the one used in the BofA and Lehman expert reports.**

**Do you see that?**

A. Yes.

**Q. And it shows a BofA agree rate of 40 percent?**

A. Correct.

**Q. And you base that on the number -- you base that on the, what the BofA expert called his success rate?**

A. Correct.

**Q. And that's the number shown in his table on page 8 --**

A. Correct.

**Q. -- of Exhibit C?**

A. Under breach rate and success rate.

**Q. And then on page 23, paragraph 65 of your declaration, you compare your loss share rate to the loss share rate shown in the BofA expert report. Do you see that?**

A. I don't believe the BofA shows

FRANK SILLMAN

an expert, a loss share rate, excuse me. We calculated that by taking the estimated losses divided by their higher and lower range in the settlement columns. I believe that was in our spreadsheet. We can take a look at that.

**Q. Maybe this will help you. Did you -- to compute the 14 percent loss share rate shown in your table in paragraph 65 did you derive that from the 36 percent breach rate and the 40 percent success rate shown on page 8 --**

A. Yes.

**Q. -- of the BofA expert report?**

A. Yeah, the same amount.

**Q. You simply multiplied 36 percent by 40 percent?**

A. Yes, I believe that's the case.

**Q. And to get your Lehman agree rates --**

A. I'm sorry.

**Q. I have got to review that. So I'm going to ask you now about how you derived the breach rate, agree rate and**



FRANK SILLMAN

**loss share rate you used for Lehman. You derived those from the Lehman expert report attached as Exhibit D to your declaration?**

A. Let me take a look at that report.

**Q. And take your time but when you are done I'm going to focus you on paragraphs 19, 20 and 21 of that document.**

A. Okay.

Okay.

**Q. Let me focus you first on the table shown in paragraph 57 of your declaration, and specifically the line relating to Lehman. Did you derive these Lehman breach rate assumptions from paragraphs 19 and 21 of the Lehman expert declaration?**

A. Yes.

**Q. And turn now to paragraph 62 of your report. And look at the Lehman numbers in the table there. Did you derive those Lehman agree rate assumptions from paragraphs 20 and 21 of the Lehman**



**FRANK SILLMAN**

**expert report?**

A. Yes.

**Q. And turn now to paragraph 65 of your report, which shows certain Lehman loss share rate assumptions. Did you derive those by simply multiplying your Lehman breach rate by your Lehman agree rate?**

A. Yes. They are not mine but, yes, from the --

**Q. Understood.**

A. From Lehman's, yes.

**Q. The numbers you put in your tables for the Lehman breach rate and agree rate?**

A. Yes.

**Q. Did you know whether the ResCap board of directors, when it approved the settlement, considered the BofA settlement and the Lehman settlement?**

A. I don't have any information about what the board considered as part of the settlement.

**Q. We will move on.**



**FRANK SILLMAN**

A. Okay.

**Q. You thought it was appropriate in your report to compare the breach rate that you had computed for the trusts being settled to the breach rates used in the BofA settlement and used by the Lehman expert report, correct?**

A. I thought it was informational for the readers of the report to understand other experts breach rates.

**Q. You thought those other experts breach rates might have some relevance to the estimation of breach rates for the debtors?**

A. I believe that they were relevant data points that the readers should or could look at in evaluating the breach rates and agree rates in my report.

**Q. And what significance, if any, did you think the readers should attribute to them?**

A. Well, I wasn't imposing any thought process that the readers should go through. It's just available data points

FRANK SILLMAN

out in the market. I don't have any detailed data behind the BofA report or the Lehman declaration to validate their numbers or evaluate their assumption valuation process. So I'm not speaking by adding these in here as these are important data points. They are just other data points for similar types of settlements that are available in the market.

**Q. Well, so let me ask you this. In evaluating the reasonableness of the $8.7 billion settlement, do you think that the BofA settlement and the Lehman settlement are meaningful data points?**

MR. RAINS: Objection. Vague and ambiguous.

A. They are data points that the reader can take into consideration. There are other factors that would create differences or variations between any one of the data points that I presented in the declaration and the data points that I use or the assumptions that I used in, for



FRANK SILLMAN

example, breach and agree rates.

So without knowing the underlying data, the construction of the loans on a trust by trust basis, you can't do an apples to apples comparison between the two. But they are nonetheless available data points that I felt was useful for the reader.

**Q. Now, a certain amount of data is available about the loans that were settled in the BofA settlement, right?**

A. You are talking about remittance data?

**Q. Data about a loan product type.**

A. I mean there's various data points that are available. I don't know if the product types are available.

**Q. Did you make an attempt to determine the predominant types of loan products that were subject to the BofA settlement?**

A. There was some information that was summarized in their expert reports generally about some of the product types.



FRANK SILLMAN

But the 500 plus trusts to the 392 trusts, we did not do a loan by loan or product by product comparison.

**Q. Didn't you conclude that the collateral, the loans that were part of the BofA settlement were predominantly Alt-A, subprime, prime and pay option ARM with a diminutive amount of HELOC and second lien residential mortgage loans?**

A. Where is that in the --

**Q. Let me find that for you. Turn back to Exhibit 9. The language I was just quoting from is near the top right corner of the first page.**

A. Let me take a look at their -- I see it on the schedule.

**Q. And I believe you'll find that you took this quotation from page 1 of Brian Lin's report, namely the BofA expert report?**

A. Yes.

**Q. Do you see the sentence I just read?**

A. Yes.



FRANK SILLMAN

**Q. You don't have any reason to believe that's not true, right?**

A. I don't. But I didn't validate it. And didn't compare the percentages to the percentages in the 392 trusts or the debtors trusts.

**Q. Did you look at the types of loan products in the debtors trusts?**

A. Can you be more specific?

**Q. Can you say what are the predominant types of loan products in the trusts whose claims are being settled?**

A. I think there was a spreadsheet that we provided to the data room that contained balances by entity and by shelf. That's one of the ones RC 9019 No. 2, bunch of zeros No. 2.

**Q. And I'm looking at the spreadsheet. What are you referring to?**

A. So there is, if you look at the product per trust list column C.

**Q. You know what, let me mark that spreadsheet as the next exhibit so that we have a clear record.**

FRANK SILLMAN

MR. BENTLEY: Exhibit 10 is a spreadsheet entitled Fortace Trusts Summary By Entity Shelf, By Product. And it bears Bates number RC 9019_00000002.

(Expert 9019 Exhibit 10, Fortace Trusts Summary By Entity Shelf, By Product, Bates RC 9019_00000002, marked for identification, as of this date.)

**Q. And does this spreadsheet show you the distribution by loan type of the loans whose claims are being settled?**

A. Now, these are broad product categories for each of these trusts so Alt-A or jumbo, subprime, jumbo A, so it does...

**Q. Can you tell me the percentages by deal balance, original deal balance of the different --**

A. I don't have that. I didn't do that calculation in this spreadsheet.

**Q. Did you do that calculation as part of your work that went into your**



FRANK SILLMAN

**report?**

A. We looked at the overall distribution of the products and looked at those characteristics whether it was Alt-A or subprime or jumbo A, HELOC.

**Q. Did you then make a systematic attempt of any sort to compare the distribution of loan products in the debtors trusts with the distribution of loan products in the trusts whose claims were being settled in the BofA settlement?**

A. We did not do a trust by trust comparison of the BofA proposed settled trust and the ResCap settled trusts.

**Q. Same question with respect to the Lehman settlement.**

A. We did not do a trust by trust analysis.

**Q. Did you look at the reps and warranties in sample governing agreements with respect to the BofA settlement?**

A. We did not.

**Q. Are you sure about that?**

A. In the BofA?



FRANK SILLMAN

**Q. Yes. Didn't you do that both for the BofA settlement and the Lehman settlement?**

A. Can you show me the paragraph where I discuss that?

**Q. It's not in your report.**

MR. RAINS: So is this a guessing game? You want to refresh his recollection, test his memory? What --

MR. BENTLEY: I'm asking him if he can recall whether he did this sort of analysis.

A. In the course of my work I may have looked at Bank of America or Lehman. But it was not in my report. I don't remember off the top of my head what the -- what work was done with those governing agreements.

**Q. Now, by the way, you did compare the reps and warranties in the governing agreements for the trusts with the reps and warranties that were typical for the trusts that you had personal experience**



FRANK SILLMAN

**with in your put back work?**

A. I had already done work related to the clients that we had -- we would receive inbound repurchase demands. So I understood representative samples again of the types of reps and warrants that my other clients had and did compare those to the types of reps and warrants again in the trusts against sample but not for all 392 trusts.

**Q. And what conclusions did you reach?**

A. That in some cases the reps and warrants were similar. In some cases they varied.

**Q. Didn't you conclude that the reps and warranties in the deals that you had experience with outside of the ResCap context, tended to be stronger than the reps and warranties in the trusts covered by this settlement?**

A. There were areas where my other clients reps and warrants were stronger than the ResCap reps and warrants.

FRANK SILLMAN

**Q. And didn't you take that into consideration in computing some of the rates that you address in your report?**

A. The main attribute that I looked at was the repurchase history the debtor had with the GSEs.

**Q. We are going to get to that. But I'm asking you whether you also took into account --**

A. I believe there's a schedule that I did that showed reconciliation of the reps and warrants. It would be good, it would be helpful to look at that.

**Q. Okay. But what I'm asking you now is did the fact that the reps and warranties in some of your clients' deals were stronger than those in the trusts being settled here factor into your conclusions?**

A. Well, I'd like to review the spreadsheet that I provided regarding that.

**Q. Okay. You can't answer my question without seeing --**



**FRANK SILLMAN**

A. I need to refresh my memory with the document.

**Q. Did you do any -- did you give any consideration to the vintages of the loans in the BofA settlement?**

A. What do you mean take into consideration the vintages?

**Q. Did --**

A. I provided information in here of data points from on the expert reports. But that was after the work that I did on my conclusions. So the data points or the data behind didn't influence the assumptions that I developed.

MR. BENTLEY: I'm moving on to another topic. I'm happy to keep going or we could take a break here.

MR. RAINS: Let's take a quick break.

(Whereupon, there is a recess in the proceedings.)

**Q. Let's turn to the subject of the agree rate.**

A. Okay.



FRANK SILLMAN

**Q. You discussed this, paragraphs 59 to 63, in your report, correct?**

A. Yes.

**Q. Before we go into details can you give me an overview of what methodology, if any, did you apply in computing the agree rate?**

A. I believe there was a spreadsheet that I did that did some analysis.

**Q. Are you referring to Exhibit 9?**

A. I don't believe. Let me take a look at Exhibit 9.

**Q. And if you look at page 2 of Exhibit 9 it shows a lower range and a higher range for breach rate among other -- I'm sorry -- for -- yes, for agree rate, among other things.**

A. That's one of the spreadsheets. There's another spreadsheet that we provided to the data room that reconciled I believe the GSE agree rates to the agree rate assumption ranges.

**Q. Give us a moment, we are going**



**FRANK SILLMAN**

**to try to -- can you help us find it?**

A. You know, I mean -- I don't remember the name of it or the Bates number.

**Q. My crack assistant team has found it.**

A. Okay, good.

**Q. I may have spoken too soon.**

A. There's a lot of documents.

MR. BENTLEY: Let's go off the record for a moment.

MR. RAINS: You want him to just walk over to the screen and look at it?

Hold on. Let's first get the question on the record and then he'll look at it and then he'll come back and he'll give you the answer on the record.

So what's the question you want him to answer?

MR. BENTLEY: The question is already on the record.

MR. RAINS: What is the question

FRANK SILLMAN

you want him to answer?

MR. BENTLEY: He said there's a spreadsheet that contains some calculations to get you from GSE rates to his agree rate and we are trying to find the spreadsheet.

**Q. Is that it?**

A. Let me take a look at it.

**Q. Sure. Take your time.**

A. This is the -- looks like, yeah, this looks like the PLS demand data, not the reconciliation. No.

**Q. That's not it?**

A. This is not it.

(Brief recess.)

MR. BENTLEY: For the record, we have been attempting to locate the spreadsheet that Mr. Sillman was referring to.

**Q. Would it be possible at a break for you to locate the spreadsheet that you have in mind?**

A. I don't have any idea -- I didn't bring any information with me.



FRANK SILLMAN

**Q. Can I ask you then, if you would, after the deposition, identify for us the spreadsheet in question?**

A. I can do that.

MR. BENTLEY: Let's go off the record.

(Brief recess.)

MR. BENTLEY: We have agreed that while we are locating and printing copies of the spreadsheet that Mr. Sillman referred to, Erin Brady is going to ask her questions and then I will resume and conclude with my questions when she's done and then I believe there's at least one other questioner who will follow.

EXAMINATION BY

MS. BRADY:

**Q. Hi, Mr. Sillman, I'm Erin Brady. I represent FGIC. I just have a few documents I want to basically walk through with you, ask you some questions. I should be relatively quick. I apologize, I'm a little out of order because I wasn't**



**FRANK SILLMAN**

**quite expecting to jump in quite yet.**

**I'm going to hand you a copy of an exhibit that's been marked 9019-54. And I'll represent to you that this is the form 10-K that was filed by Ally Financial.**

**Have you seen this document? This is an excerpt of the document. Have you reviewed Ally's form 10-Q filed for the period ending March 31, 2012?**

A. I have not.

**Q. Okay. I want to first direct your attention to page 68, which is the first page of the excerpt here. In that, at the very last paragraph there, on page 68, the paragraph begins "The risk of repurchase or indemnification."**

A. Uh-hum.

**Q. I want to direct your attention to the second sentence there that reads, "We believe in general the longer a loan performs prior to default the less likely it is that an alleged breach of representation and warranty will be found**



**FRANK SILLMAN**

**to have a material and adverse effect on the loan's performance."**

**Do you agree with that?**

A. Can I take some time to read the document?

**Q. Absolutely. Go ahead.**

A. Okay, can you ask the question again?

**Q. Sure. I just wanted to see if you agree with the statement that Ally made in its 10-Q for the period ending March 31, 2012, that "We believe that in general the longer a loan performs prior to default the less likely it is that an allege breach of representation and warranty will be found to have a material adverse on the loan's performance."**

MS. PATRICK: Objection to form.

MR. RAINS: The question is vague and ambiguous. Calls for speculation.

A. I don't have any basis to determine whether or not the longer a loan performs the less likely it will be found

FRANK SILLMAN

to have a material and adverse impact.

**Q. That's not something you learned or you have come to understand in your professional experience?**

MS. PATRICK: Same objection.

A. I don't have any statistics around that information. So that's a very specific claim or scenario that they are painting in their 10-Q and I don't have any specific data around how to properly answer that question based on my experience.

**Q. Okay. And I'd like to direct your attention to the last page of the excerpt that I gave you, page 73. And could you read the paragraph, the section below the title Potential Losses?**

A. Okay.

**Q. The first sentence there reads, "We," meaning Ally, "currently estimate that ResCap's reasonably possible losses over time related to the litigation matters and potential repurchase obligations and related claims described**



**FRANK SILLMAN**

**above" -- and you can read the above if you need to -- "could be between 0 and 4 billion over existing accruals. Did you take this into account when you did your report?**

A. I did not utilize their information from this 10-Q because I don't have any basis and don't understand their accounting policies, their reserve policies. And they also qualify this as saying the estimated range is based on significant judgment and numerous assumptions that are subject to change of which could be material.

**Q. Just so I understand, this disclosure that was made approximately 45 days before the, your analysis began, you didn't believe that it was relevant to your report -- or to your analysis?**

A. No, I didn't say that. What I'm saying is that the information that they put in here they caveat tremendously. Therefore, without understanding the underlying accounting practices and data



FRANK SILLMAN

that they relied on to make this, in their own words, it consisted of significant judgment and numerous assumptions subject to change and which could be material.

**Q. Did you ask any questions of the debtors or Ally with regard to how they came up with this number so you could further understand that and take it into consideration in your report?**

A. I had some discussions with the debtor regarding their reserves and accruals. And I did not receive any information from them regarding the underlying data and models associated with developing their accruals at Ally Bank. So I discussed that with the company, with ResCap, and asked for that information and was not provided that information.

**Q. Who did you discuss it with?**

A. Jeff Cancelliere.

**Q. And you asked for it and he didn't provide it or you didn't ask for it and he didn't provide it?**

A. No. We discussed getting that



FRANK SILLMAN

information. He was going to check to see if he could get us that information. And I never received that information.

**Q. Okay. If you had that information, would you have factored it into your analysis?**

MR. RAINS: Objection. Calls for speculation.

A. I have no idea what data would be provided, what kind of backup, how much information I would get. So I can't speculate about what I might do with that data.

**Q. As somebody who is coming up with an opinion would it be helpful to you to at least know what that data was. Would you want to have it in evaluating, regardless of whether you took it into consideration, is it something that you would want to know in evaluating the value of your analysis?**

MR. RAINS: Objection. Compound. Vague and ambiguous.

A. Which data are you referring to?

FRANK SILLMAN

**Q. The data that you asked for and didn't receive.**

A. So data on accounting policies, reserve amounts, models to determine those reserves amounts?

**Q. Right. How they came up with the number in there.**

A. Those are data points that could be helpful but I would have to validate those data points to determine whether or not they would be helpful in my declaration.

MS. BRADY: I want to mark as Exhibit 11 an e-mail string beginning with Bates number 00092076.

(Expert 9019 Exhibit 11, e-mail string, beginning Bates number 00092076, marked for identification, as of this date.)

A. Okay. Let me read through this. So this starts from the most recent back to --

**Q. Yes.**

A. Okay. Okay. I have not seen



FRANK SILLMAN

this document or schedule before.

**Q. If you had seen it would you would you have considered it in your analysis?**

MR. RAINS: Objection. Calls for speculation.

A. I don't know the basis behind any of these numbers. I don't understand necessarily what they are doing. I guess it's a spreadsheet. So I would have to do more work to better understand the basis behind these numbers and how they were calculated.

**Q. So according to the e-mail the spreadsheet is supporting or is presented to support Ally's disclosure of the reasonably possible range of losses in excess of what they had previously recorded for R&W litigation and other related matters. And it appears that this is going into the -- in preparation for the 3/31 2012 10-Q exhibit. Would you in doing your analysis want to further understand the analysis that was done in**



**FRANK SILLMAN**

**this chart?**

MR. RAINS: Objection. No foundation. Calls for speculation.

A. Before I could make a decision as to whether or not I think this would be a good set of data points for me to evaluate, I'd have to understand the basis behind all the numbers and the underlying calculations. So I couldn't speculate as to whether or not this would be helpful or not. The e-mail chain doesn't explain how they come up with these numbers, what these numbers mean.

**Q. Okay.**

MS. BRADY: I'm going to mark this as Exhibit 12, this is Bates numbers 00054001 through 005.

(Expert 9019 Exhibit 12, document with attachment, Bates 00054001 through 005, marked for identification, as of this date.)

**Q. I just ask you to take a look at this document and the attachment?**

A. I have not seen this memo or



FRANK SILLMAN

slides before.

**Q. Did you have any input into this -- I believe that this was created before you were retained as an expert in this case, correct?**

A. Correct.

**Q. So is it safe to say that you had -- you didn't have any involvement in coming up with the 19.72 percent defect rate?**

A. I did not.

**Q. Okay.**

MS. BRADY: Moving along. This is Exhibit 13. This is an excerpt of the form 10-K that Ally filed for the fiscal year ended December 31st, 2011.

(Expert 9019 Exhibit 13, excerpt of the Ally form 10-K filed December 31st, 2011, marked for identification, as of this date.)

**Q. And I want to direct your attention to page 98 of this in the subheading labeled Private Label Securitization. And specifically to the**

**FRANK SILLMAN**

**last paragraph. But if you want to read through that section quickly.**

A. What section in particular?

**Q. I want to direct your attention to the last paragraph on page 98.**

A. Okay.

**Q. Okay. On the last paragraph of page 98 the second sentence Ally says, "In order to successfully assert a claim it is our position that a claimant must prove a breach of the representation and warranties that materially and adversely affects the interest of the investor in the allegedly defective loan." And what I want to ask you is did you -- was this factor -- was this position factored into your analysis in any way?**

A. Our analysis focused on the historic repurchase rate analysis that we did primarily with the GSEs under which their repurchase department would review thousands of loans over years and they would assert certain claims including legal claims in order to dispute



FRANK SILLMAN

repurchase demands. And so that was built into or factored into the agree rate assumptions that I utilized in my declaration.

**Q. So just so I understand, so you are saying that the analysis that you did in your declaration factors in legal analysis --**

A. It factors in work the company did prelitigation in reviewing and defending itself against repurchase claims which does include any legal theories they pursued as part of that process.

**Q. Can you explain to me how it factors it in? Where exactly is it factored into the analysis?**

A. Well, it's factored in the agree rates, the historic agree rates that the company has, in particular with the GSEs.

**Q. Okay. So we don't have the exhibit up anymore but is that the agree rate, the 10 percent agree rate that Mr. Bentley had up on the board for a while?**



**FRANK SILLMAN**

A. No. It's the GSE agree rate of I believe it's 67 percent.

**Q. So the legal causation issues are factored into that 67 percent agree rate?**

A. There are legal defenses from my understanding of their repurchase process factored in potential legal defenses.

**Q. I guess this is kind of a slightly different question. Is there -- in your experience is there a difference between the ultimate agree rates on GSE loans and PLS loans?**

A. There are at times similarities between the two and times where I found with clients there's differences between agree rates for GSE and agree rates for PLS.

**Q. And between the two which one is higher, lower?**

A. I wouldn't be able to kind of look at my whole client base and experience to give you a comparison. But sometimes they have been very similar.



FRANK SILLMAN

Other times the GSE agree rates have been higher.

**Q. Okay.**

MS. BRADY: I have one last document. This is going to be Exhibit 14. This is an e-mail chain beginning with Bates number 00053182 and concluding with 224.

(Expert 9019 Exhibit 14, e-mail chain, Bates 00053182 through 224, marked for identification, as of this date.)

**Q. There was some testimony earlier about some language in, I think it ended up in paragraph 5 of your declaration, regarding the assumption of liability for purposes of your analysis. I think this e-mail will likely refresh your recollection as to where that came from. Have you seen a copy of this e-mail? Was it forwarded to you ever?**

MR. RAINS: Objection. Vague and ambiguous. Compound.

A. The e-mail is just this first

FRANK SILLMAN

page?

**Q. Right. Attached to it is a redline of your declaration sent by the sender of the e-mail presumably, which is Patrick Brian.**

A. I have not seen this e-mail.

**Q. Did you receive instructions to -- does this refresh your recollection, I guess --**

A. Can I read it?

**Q. Yeah, go ahead.**

A. Okay. I need to look at the redlines here also. How do I identify those?

MR. RAINS: You want him to look at the attachment or no?

MS. BRADY: He doesn't need to.

**Q. Were those comments -- were you given comments by Morrison & Foerster regarding adding into your declaration the assumption or saying that your declaration was assuming liability for purposes of the analysis?**

A. I was asked this earlier. I



FRANK SILLMAN

don't recall -- I didn't receive this e-mail. I don't recall whether or not I received any red line comments regarding assuming liability for purposes of his analysis. So I don't recall whether or not I did or didn't. But I did not receive this e-mail.

**Q. Were you aware during the course of receiving comments on your declaration that comments were coming in from Kirkland & Ellis, who represents Ally, and from Kathy Patrick, who represents a group of trustees?**

MS. PATRICK: Objection, form.

A. I was aware that Jen Battle was reviewing my declaration. I was not aware of any comments from Kathy Patrick.

MR. RAINS: Or Kirkland & Ellis.

A. Or Kirkland & Ellis, I'm sorry.

**Q. One last question. When was it conveyed to you that the settlement was for $8.7 billion? At what point following your retention was that information conveyed to you?**



**FRANK SILLMAN**

A. I don't recall the date. We met in New York. I don't recall the date. But I can get you that date. I just don't have it off the top of my head where we discussed retaining Fortace to be the expert on this engagement. I don't recall when the $8.7 billion figure of the allowed claim was provided to me. It's possible that I received at that meeting a copy of the settlement agreement or it may have been e-mailed to me after that meeting. Somewhere around that time that we met in New York. But I don't remember when.

**Q. So at the outset or very early on before the analysis?**

A. Early in my engagement, yes. Before my -- yes, before I began my analysis I received a copy of the settlement agreement.

**Q. Okay.**

MS. BRADY: That's all I have for you, Mr. Sillman. Thank you.

BY MR. BENTLEY:



FRANK SILLMAN

**Q. Hello again, Mr. Sillman. I'm back. Before we switched questioners I asked you what general methodology you employed in calculating your agree rate and you told me that your calculations were set forth in a spreadsheet.**

MR. BENTLEY: Let me mark as Exhibit 15, a one-page spreadsheet entitled Fortace LLC Supplemental Declaration, Debtor GSE to PLS Agree Rate Range Reconciliation. And at the bottom of the page it has document number ending in 66117.

(Expert 9019 Exhibit 15, Fortace LLC Supplemental Declaration, Debtor GSE to PLS Agree Rate Range Reconciliation, Bates ending 66117, marked for identification, as of this date.)

**Q. Is this the spreadsheet you were referring to?**

A. Yes. There's actually two spreadsheets. There is the one model spreadsheet that we used and this

FRANK SILLMAN

spreadsheet. So I want to make sure it's clear that both spreadsheets were utilized in calculating and validating the agree rate assumptions.

**Q. Is Exhibit 9 the other spreadsheet you are referring to?**

A. Yes.

**Q. Let's look at that first before we turn to Exhibit 15. This spreadsheet addresses agree rate on page 2?**

A. Correct.

**Q. Is that what you are referring to?**

A. Yes.

**Q. And so on page 2 there's a column for projected agree rate and it shows a lower range and a higher range for projected agree rate. Do you see that?**

A. Yes.

**Q. Is there any other discussion of agree rate in this document?**

A. I think I have the agree rates on the first page, page 1, if you look to the line agree rates.



FRANK SILLMAN

**Q. And that's simply the same agree rate percentages that show up in your report?**

A. That's correct.

**Q. Is agree rate addressed anywhere else in this exhibit?**

A. I can't read the third page.

MR. BENTLEY: Can you bring it up on the screen?

A. Let me look it up here. Yes, in this model it's just page 1 and 2.

**Q. Are there any -- is there anything in this document that shows you how you derived your agree rates?**

A. The average agree rates again were the weighted average calculation of the agree rates by the delinquency buckets for both the lower and higher so.

**Q. So let me just see if I understand. Page 2 of Exhibit 9 shows low and high ranges of agree rates both as a total number and broken out by buckets?**

A. Yes.

**Q. And other than that is there any**



**FRANK SILLMAN**

**anything relating in any way to agree rates on page 2 of this document?**

A. No. That column referred here as formula column H is where I calculate the overall trust agree rate assumptions for the lower and higher ranges.

**Q. But nothing in this document shows how you got to the lower and higher agree rate numbers shown for the various buckets?**

A. That's correct. Those were based on my professional experience with agree rates for these buckets adjusted for the repurchase experience the debtor had and the higher agree rates than the industry as a whole for their GSE repurchases.

**Q. Let's take it step by step. I'm going to ask you more about Exhibit 15 in a moment. But just to jump to the bottom line, does Exhibit 15 show how you computed the 41 to 47 percent agree rate range?**

A. This was a validation step that



FRANK SILLMAN

I went through to validate the assumptions that I utilized in Exhibit 9, in the model in Exhibit 9, to calculate the agree rates.

**Q. When did you prepare Exhibit 15?**

A. This actual sheet in this condition was produced after the filing of my original declaration but based on calculations that I did prior to my original declaration.

**Q. Is there any reason that this document refers in the heading to supplemental declaration?**

A. I don't know whether or not timing wise when this was added to the data room. That might be during the time, you know, when the supplemental declaration was filed.

**Q. Did you compute the 41 to 47 percent range in the method shown on Exhibit 15 and then back into the component parts shown on page 2 of Exhibit 9 or did you do it the other way around?**

274

**FRANK SILLMAN**

A. I did it the other way around. So I first went through and input assumptions regarding the projected agree rates for the lower and higher ranges by these delinquency buckets.

**Q. So how did you calc- -- and you are referring now, I believe, to Exhibit 9, page 2, column H.**

A. Correct. It's column P in the spreadsheet but the calculation call it column H, yeah.

**Q. So I'm going to focus on column H on page 2 of Exhibit 9. And let's focus first on the lower range. So this shows, the first number in this column is 42 percent. And the number at the bottom is 41 percent. How do those numbers relate to each other?**

A. The bottom number is a weighted average. And since -- in this scenario on the estimated trusts lifetime losses the vast majority of the losses had already occurred in what I call trust liquidated losses. That number weights the weighted

275

FRANK SILLMAN

average more than the other categories, the other line items.

**Q. Is the 42 percent also a total and it's different from 41 just because of rounding issues?**

A. No. Independently -- the 41 is just a product of the projected agree rates for each one of the buckets times the corresponding estimated trust's lifetime losses. So the 41 is just a result of those calculations.

**Q. And what is the 42 percent?**

A. Which 42 percent?

**Q. At the top of column H.**

A. So the row 21 in column P. Yeah. The one associated on the line trusts, liquidated loans 42 percent?

**Q. Correct.**

A. So that is my assumption for the agree rate for trusts liquidated loans. And the next is my assumption for current nonmodified loans.

**Q. I see.**

A. And so on down the line. So I

276

FRANK SILLMAN

developed these assumptions by buckets first.

**Q. How did you develop these percentages?**

A. So I took my experience with agree rates by these bucket categories and I adjusted them for the higher experience, agree rate experience the debtor had with the GSEs versus the industry as a whole. And then I further adjusted it for the debtors rep and warrants overall comparative to other industry PLS reps and warrants.

**Q. Now, the three steps you just described are shown on Exhibit 15, correct?**

A. In aggregate, correct.

**Q. And you are saying that you applied those same three steps to derive the percentage for each of the buckets in column H?**

A. That's correct.

**Q. Let's turn to Exhibit 15 then and go step-by-step.**

277

**FRANK SILLMAN**

A. Okay.

**Q. Step one was you referred to your personal experience at Fortace advising both sell side and buy side clients?**

A. Yes. Also including my experience at IndyMac Bank.

**Q. And how many Fortace clients did you consider in doing this calculation?**

A. Three.

**Q. Can you identify them?**

A. No, I cannot.

**Q. Because they are confidential?**

A. Yes.

**Q. Okay. Can you tell me about characteristics of the loans that you advised them on and how they compare to the characteristics of the loans in the pools being settled?**

A. In general they were Alt-A, jumbo A, subprime, and HELOC originators.

**Q. Did you do any attempt to quantify what portion of their loans fell into each of those categories?**

FRANK SILLMAN

A. I did not as part of this analysis.

**Q. Did you attempt to quantify the vintages of their loans as part of this analysis?**

A. The vintages were similar vintages to the vintages, the same time period majority from 2005 to 2007.

**Q. Did you attempt to quantify how the vintages broke out as between the different years within that time frame?**

A. I did not do the further analysis. I didn't feel that was necessary as part of my assumption development.

**Q. Did you make any attempt to compare how the reps and warranties governing those loans compared to the reps and warranties in the governing agreements for the debtors?**

A. In general I did do that. That's one of the discounts applied in my Exhibit 15 document.

**Q. Okay. So we will turn back to**



FRANK SILLMAN

**that in a moment. And over what years were the put back demands and put back responses that -- of the three clients you are referring to?**

A. And the IndyMac experience. They related to originations primarily from 2005 to 2007.

**Q. I'm actually asking a different question which is when were the put back demands? How long after origination?**

A. They were 2008 -- let me step back. IndyMac they were 2006 through 2008. At my Fortace clients they were 2009 through part of 2012.

**Q. And did you attempt to -- did you give any consideration to the length of time between the origination and the put back demands in the client experience that you were basing your opinion on?**

A. I did not, with my experience with, at IndyMac Bank and with my Fortace clients, did not see any differences in when the demand was presented and the agree rates.



FRANK SILLMAN

**Q. Did you make any attempts to quantify the length of time between originations and demands?**

MR. JURGENS: Objection to form.

A. I didn't see that as a factors that influenced the agree rates in the work that I had been involved with.

**Q. So you didn't do any such calculation?**

A. It was not included in my agree rate calculation.

**Q. Now, what were the agree rates of these three clients that you are referring to?**

A. And IndyMac. They ranged in general from a low of around 37 to a high of 42 percent.

**Q. One of the three clients was 37 and another was --**

A. No. At different times the agree rates, depending on who the demander was, when the demands were made might change how they negotiated and came to agree rates. So in general I would see



FRANK SILLMAN

the agree rates fluctuate which is why I came up with this concept of ranges so that I could take into consideration the variability in all of these assumptions.

**Q. Now, a low of 37, high of 42, those are very specific numbers. Where did you get those numbers from?**

A. They are based on my professional experience in working with repurchases.

**Q. But each of those numbers had to be calculated, right? It's not a number you walked around carrying in your head, is it?**

A. It's a number -- it's an important number for your clients. It's one of the factors that they evaluate various audit firms for as ultimately what types of agree rates do they get based on certain audit firms, all other things being held equal. So it is one that I am familiar with from a global perspective.

**Q. So in computing this 37 to 42 percent range that you used in your, in**

**FRANK SILLMAN**

**forming your conclusions, did you consult any documents?**
A. I did not consult any documents.
**Q. You just knew those numbers by memory?**
A. I do know those numbers by memory.
**Q. This was the experience of three clients. Were they sell side or buy side?**
A. And IndyMac.
**Q. Sure. Were the three Fortace clients sell side?**
A. Yes.
**Q. How many sell side clients did you have altogether who you advised on -- with respect to put back demands?**
A. For what period? I mean, we had clients come and go so.
**Q. From '09 through this year.**
A. Five clients.
**Q. About five sell side clients?**
A. Yes.
**Q. Why did you pick these three and not the other two?**



**FRANK SILLMAN**

A. Just because of the volume of work that we did for them or have done for them is not significant. The three --
**Q. The two --**
A. Yeah. Two of the five we have not done significant work for.
**Q. Did you consider including your buy side clients in doing this analysis?**
A. Give me a second. Let me just recall. The work we did for the buy side was, in many cases, we did not receive back the ultimate agree rate data for those clients. The three clients I picked were ones where I received back agree rate feedback.
**Q. Did you receive the ultimate agree rate data for any of your buy side clients?**
A. I may have received agree rate data for those clients but I'm not sure.
**Q. Did you give any consideration to including them in your analysis?**
A. I did consider them in determining my analysis but felt that the



FRANK SILLMAN

data from the three that I selected and my IndyMac experience was more on point and more robust than the information that was provided to me.
**Q. What was the basis for that conclusion?**
A. The amount of loans that we did for them and the data that was provided to us regarding the agree rates.
**Q. That explains how you concluded it was more robust. But how about more on point?**
A. They were sell side clients, very similar in structure to ResCap.
**Q. In what sense?**
A. In that they sold securitizations with Alt-A, subprime, jumbo A loans.
**Q. And that wasn't true of your buy side clients?**
A. Some of the buy side clients sold whole loan to companies like ResCap. Some didn't have as robust of a correspondent or conduit business as



FRANK SILLMAN

ResCap.
**Q. So let's go back for a second to Exhibit 9 and the second page in particular. Pardon me if you said this already but the three step analysis you did, you did it first -- you did it separately for liquidated loans, for current nonmodified and for each of the other categories that are listed here?**
A. Yes. I made a net adjustment similar to what I did on Exhibit 15 for each of the categories and then it was calculated on a weighted average basis.
**Q. But how did you determine for example to use 42 percent for liquidated loans but only 13 per- -- I'm sorry -- well, the different percentages for different categories?**
A. My experience was that some of the categories had varying agree rates such as trust liquidated loans versus current nonmodified or current modified loans. And some of the categories such as 30 to 59, 60 to 89, 90 plus and REO had

286

FRANK SILLMAN
and foreclosure categories typically had similar agree rates.
**Q. I see. In this column you used 42 percent for many of the buckets. You used a lower number just for the current nonmodified and the current modified bucket?**
A. Right. That's what I was just complaining.
**Q. So tell me again why did you use a much smaller number for the current nonmodified buckets?**
A. My experience has been that the agree rates for that bucket are less than the liquidated loans bucket.
**Q. Is that because the default hasn't yet occurred, whereas for the other buckets the default occurred as much as several years before?**
MS. PATRICK: Objection. Modify? Objection, form. There's a default in the current bucket.
A. Yeah. Can you rephrase it, please.

287

FRANK SILLMAN
**Q. Sure. Why did you give so much lower percentage for current nonmodified than you did for most of the other buckets?**
A. My experience with at the bank and with my clients were that they agreed to repurchase far less loans that were current nonmodified.
**Q. Did you give any consideration to -- did your 13 percent figure take into account put back demands that might be made in the future after the loan had defaulted or was the 13 percent not addressing that?**
A. The 13 percent for this model addresses the buckets that they are in at the time that we do this analysis.
**Q. Okay. Let's turn back to Exhibit 15. You've explained to me the first line, the 37 to 42 percent range. Can you explain to me the second line?**
A. Plus debtor higher GSE agree rates versus industry GSE agree rates?
**Q. Correct.**

288

**FRANK SILLMAN**
A. That adjustment I made based on the IMF report.
**Q. Exhibit A to your declaration?**
A. Correct.
**Q. Okay. Based on anything else or just that?**
A. Based on that.
**Q. And how did you derive the 7 to 9 percent range?**
A. I looked at the difference between the debtors GSE agree rates and the industry's agree rates and tried to quantify or did quantify what I believed to be the difference of how that would affect the PSL agree -- PLS agree rates.
**Q. So let's turn to paragraph 63 of your report.**
MR. RAINS: This is still the initial one?
MR. BENTLEY: The initial report.
**Q. And I meant to say 63. Paragraph 63 of your initial declaration. You refer there to the debtors having**

289

**FRANK SILLMAN**
**agree rates for the GSEs of 67.56 percent compared to the industry as a whole agree rate of 49.54 percent, right?**
A. Correct.
**Q. Was it on the basis of those numbers that you derived your 7 to 9 percent range?**
A. Yes. With some additional analysis. If we look at my Exhibit A there were -- for the industry as a whole what they deemed the grand total on page 31 of the declaration there was still 12.8 percent pending versus -- for the industry as a whole versus 2.8 percent for GMAC. So I made this adjustment knowing that there were still loans that might -- that the industry as a whole might agree to. So I came up with my assumption for 7 to 9 percent taking into consideration the differences between those two and the differences in the pending percentage.
**Q. And was there a calculation you performed to get from the numbers you just mentioned in Exhibit A to the 7 to**

**9 percent range?**
A. There isn't further calculations. That was a calculation -- and assumption I developed to put into my calculation.
**Q. But what I'm asking is to get from the numbers in Exhibit A to a 7 to 9 percent range I can't figure out, at least if I were doing it, how I would get to 7 to 9 percent. I'm trying to understand if there were a series of steps with numbers attached to each?**
MR. RAINS: Object to the form of the question.
A. The process I utilized was I developed an assumption based on the information in that report and applying it to the PLS rates that I had had experience with. And the result of that work was the 7 to 9 percent.
**Q. Sir, am I right no calculation went into the 7 to 9 percent?**
MR. RAINS: Objection. Misstates the witness's testimony.





A. I did the calculations to come up with the 7 to 9 percent.
**Q. Can you show me the calculation?**
A. I don't have them written anywhere. I did the calculations to determine what I thought the assumptions should be.
**Q. Did you do in your head?**
A. Yes.
**Q. Wow. Can you repeat it for me, please. Because you are way better than me at math I think.**
A. I looked at the agree rate differences between the two.
**Q. I understand the concepts you explained. But what I'm trying to ask you is was there then a calculation, a series of numbers, addition, subtraction, division, anything like that?**
A. There was assumption I developed from that information that I discussed to come up with the 7 to 9 percent.
**Q. So did you just take the percentages in Exhibit A that we were**





**discussing and then apply your professional judgment based on your experience to get to 7 to 9 percent?**
A. Yes.
**Q. With no calculations that you could point to?**
A. No written calculations.
**Q. Or any mental calculations that you could describe beyond the general process you just -- you've testified about?**
A. I described the process that I went through to come up with the 7 to 9 percent.
**Q. And there were no specific steps to get from the several numbers in Exhibit A to the 7 to 9 percent?**
MR. RAINS: Objection. Misstates the witness's testimony.
A. I utilized that information to derive an assumption of 7 to 9 percent.
**Q. And you can't tell me any further the steps in that process?**
A. I did many steps to come up with





my agree rates. I did further validation of the agree rates in Exhibit 15. I went through a thoughtful process to come up with the assumptions in that process. So there was a lot of calculations involved in the development of the agree rates.
**Q. But there are no calculations you created other than the ones on the spreadsheets we have looked at so far and in your report?**
MR. RAINS: Objection. Asked and answered.
A. The calculations that were done are shown in Exhibit 9, Exhibit 15. And the development of those assumptions were done based on my professional experience.
**Q. Let's turn to the third line in the top box on Exhibit 15. The one that says, "Minus lesser debtor PLS versus industry PLS reps and warrants."**
**Do you see that?**
A. Yes.
**Q. And can you describe to me what that addresses?**

**FRANK SILLMAN**

A. Based on the customers that I based the PLS agree rates on the top line, those these customers and my IndyMac experience, I compared the debtors PLS reps and warrants again utilizing the eight sample trust governing agreements that I looked at versus similar documents for similar customers and felt that in some cases the debtors reps and warrants were less, in some cases they were similar, to other industry PLS reps and warrants. So I felt it was warranted to discount for the debtors lesser reps and warrants in the agreements that I reviewed.

**Q. You concluded that overall the debtors reps and warrants were less strong than that of the other sellers that you were looking at?**

A. Correct. PLS, yes.

**Q. And the lesser strength of the reps and warrants warranted an adjustment of the agree rate?**

MS. PATRICK: Objection, form.



FRANK SILLMAN

A. I believe they -- in order to come up with a valid range of agree rates warranted a reduction in the agree rate assumptions.

**Q. Now, you've testified you looked at eight sample governing agreements for the trusts that are, whose claims are being settled?**

A. Yeah. One from each of the shelves.

**Q. And then did you look at governing agreements for each of the three Fortace clients that you mentioned?**

A. I was familiar with the general reps and warrants from my other Fortace clients.

**Q. Now, your other Fortace clients you represented them in connection with multiple deals each, correct?**

A. Yes.

**Q. And their reps and warrants varied from deal to deal?**

A. Generally reps and warrants on a shelf basis were similar. From shelf to



FRANK SILLMAN

shelf they may have changed.

**Q. Did you perform any system -- did you attempt to review the reps and warrants of those clients in any systematic way?**

A. I based it on my professional experience and actual repurchase agree rate experience with them in regards to their reps and warrants.

**Q. And are there -- is there any work product that you or your team generated reflecting your review of the reps and warrants of these other clients?**

A. There isn't any information that I relied on that we did not provide to the data room or in the exhibits. It's confidential information. So we didn't document any of the work. This was based on my professional experience with the Fortace clients.

**Q. Let's just try to make sure we have a clear record. Did you go back and look at the reps and warrants of these other clients for purposes of performing**



**FRANK SILLMAN**

**your analysis or did you instead simply rely on your general experience in representing those clients?**

MR. RAINS: Or something else. Tell him what you did.

A. I relied on my familiarity with the reps and warrants from my other clients in comparing them to the reps and warrants in the governing agreements that I reviewed.

**Q. So you didn't conduct any rep and warrant review of those other clients for purposes of this analysis?**

A. I didn't do any additional rep and warrant review other than the rep and warrant review that I explained to you that I did.

**Q. That you had done previously in connection with your work for those other clients?**

A. Correct.

**Q. And same question with respect to IndyMac. Did you go back and look at the reps and warrants for any IndyMac**

298

FRANK SILLMAN

**deals for purposes of this analysis?**

A. I was familiar with the reps and warrants that we made at IndyMac as part of the work that I did there. So, again, I relied on the information that I ascertained during my time at IndyMac.

**Q. And did you do any quantitative analysis to get from your knowledge of the various reps and warrants to the 3 to 4 percent range reflected on Exhibit 15?**

A. That was an assumption derived from my professional experience on how the differences in the reps and warrants might affect the agree rates.

**Q. It wasn't based on any statistical analysis of correlations between different sorts of reps and warrants and resulting agree rates?**

A. It's based on my professional experience. It's not on a statistical analysis.

**Q. So I mean could the proper number be 5 or 6 instead of 3 or 4 percent?**

299

FRANK SILLMAN

A. I created higher and lower ranges to take into consideration the potential variability in agree rates. And this was a step that was done to further validate the work that I had done on the bucket by bucket basis for the lower and higher ranges.

**Q. But when you did that bucket by bucket analysis, you didn't do any quantitative analysis of the impacts of reps and warranties, did you?**

A. As part of the development of these assumptions I did take into consideration these two factors in the development of these assumptions.

**Q. I understand. I'm asking a different question, which is you didn't do any quantitative analysis of the impact that rep and warranty differences have on agree rates?**

A. I'm not sure I understand what you mean by quantitative analysis. I performed analysis in developing my assumptions.

300

FRANK SILLMAN

MR. JURGENS: Can we take a break? Is this a good time.

MR. RAINS: We only have like five minutes so. Whether it's 5 or 7 or whatever let's not take a break now. Let's push through the end.

MR. BENTLEY: Let's push through and --

MR. JURGENS: Then I'm just going to say for the record that MBIA is very unhappy that we got no time at all despite the fact that we were promised approximately an hour at the beginning of the deposition. I'm also reserving MBIA's right to compel Mr. Sillman to identify the three clients that he's referred to several times today in light of the fact that he relied on his experience doing work for those clients in rendering the expert opinions that were the subject of his declarations.

MR. BENTLEY: Let's go off the record.

301

FRANK SILLMAN

MR. RAINS: Who promised you one hour today?

MR. JURGENS: Mr. Bentley.

MR. BENTLEY: Let's go off the record. Can we go off the record for a minute, Darryl?

MR. RAINS: The witness has been here since 9:00, right? It's now 6:30 and I'd like to get him out. We only have a few number of minutes left.

MR. BENTLEY: What do we have on your clock?

MR. RAINS: I wrote down we should stop at 6:30. I'm not counting --

MR. BENTLEY: Can we go off the record?

MR. RAINS: Sure.

(Whereupon, there is a recess in the proceedings.)

BY MR. BENTLEY:

**Q. Exhibit A to your report addresses GSE buyback experience?**

MR. RAINS: Actually can I

302

FRANK SILLMAN

interrupt you? I want to put on the record just quickly that there has been a dispute up until now about how long this deposition is going to go and all parties have agreed that the deposition will go another 20 minutes until 7:00 and then it will end and no party will seek to have it reopened. So that's the agreement. Sorry to interrupt.

**Q. That's fine. So let me start my question again. Exhibit A to your initial declaration addresses GSE buyback experience for the years 2006 to 2008, correct?**

A. Yes.

**Q. Did you consider -- did you give any consideration to whether GSE buyback experience for later years might also be pertinent?**

A. I considered the 2006 to 2008 period because it was most similar to the period of time associated with the 392 trusts.

303

FRANK SILLMAN

**Q. How was it most similar?**

A. It's the origination activity from 2006 to 2008.

**Q. Isn't Exhibit 1 about the buyback activity during 2006 to 2008?**

A. Yes. Yes. Buybacks issued which would have related to originations, you know, prior to and including this similar period to the PLS trusts.

**Q. Let's just be clear. Exhibit A addresses buyback demands and requests -- buyback demands and responses that occurred during the years '06 to '08, correct?**

A. On mortgages securitized from 2006 to 2008, yes. So it focuses on when the mortgages were securitized.

**Q. Your view is that this report addresses buyback demands made during later years with respect to securiti- --**

A. I'm just reading the note --

**Q. -- with respect to securitizations that occurred between 2006 and 2008?**

304

**FRANK SILLMAN**

A. I'm reading the note on the bottom of page 31. Data coverage repurchase demands on mortgages -- 31 of the declaration.

**Q. 31 of? 31 of your declaration?**

A. Yeah, right there.

**Q. I don't see a page 31.**

A. It's page 31 of the declaration. I'm sorry.

**Q. Oh, okay. It's page 22 --**

A. -- of the report and 31 of the 110 in the declaration.

**Q. And what are you reading?**

A. I'm looking at the bottom of where it says note. Data cover repurchase demands on mortgage securitized by Fannie Mae and Freddie Mac from 2006 through 2008.

**Q. I see. Okay. Did you give any consideration to the demand rate shown on this document as to GMAC compared to the demand -- the grand total demand rate shown on this document?**

A. Which column are you referring

305

FRANK SILLMAN

to?

**Q. The second column. Or the second column under the heading Repurchase Demands?**

A. The percentage of assets?

**Q. Correct?**

A. Is that the column?

**Q. Yeah.**

A. The 1.49 percent?

**Q. Correct. Compared to 2.40 percent. And what I'm asking you is while you were preparing your report did you give any consideration to that factor?**

A. I did evaluate the 1.49 versus the 2.40 overall. But determined that the repurchased column number, the 67.56 percent was the meaningful number from the information provided on, in this report.

**Q. Did you take the percentage assets column into account in reaching your conclusions?**

A. I evaluated in reaching my conclusions. It was a factor. But the

FRANK SILLMAN

overriding factor was the actual agree rate experience the debtor had with Fannie and Freddie.

MR. BENTLEY: Thank you, Mr. Sillman. I have nothing further at this time.

THE WITNESS: Thank you.

MR. BENTLEY: For the record, I'd like to say I actually finished in exactly five minutes.

MR. JURGENS: Well, thank you, Mr. Bentley. And thank you, Mr. Sillman, for accommodating us.

EXAMINATION BY
MR. JURGENS:

**Q. My name is Jason Jurgens, I'm from Cadwalader, Wickersham & Taft. We represent MBIA. I just wanted to ask you a couple of questions about your report and what you did and what you didn't do in the time that I have.**

**First question I have, demand rate. How do you define that in the report?**



**FRANK SILLMAN**

A. Let me go to that section.

**Q. It's paragraph 55, I believe. I couldn't find an actual definition in that section.**

A. Okay. The demand rate is the rate at which the trustee or similar party would issue demands to repurchase loans.

**Q. And that's -- is that a percentage of the loans that are audited or is it a percentage of the total pool of loans in the trust?**

A. It's a percentage of the loans that are in the audit rate or are audited.

**Q. Okay. Thanks for clarifying that. You mentioned earlier in your testimony that you recall either getting a hard copy of the settlement agreement or an e-mail version of it, electronic version via e-mail. Did I recall that correctly?**

A. That's correct.

**Q. Did you review the settlement agreement from beginning to end?**

A. I did review the settlement



FRANK SILLMAN

agreement.

**Q. And do you remember seeing any provision in the settlement agreement that determined how the total allowed claim would be allocated between and among the different trusts that opted into the settlement agreement?**

A. I do remember seeing some language regarding allocation.

**Q. Is there anything in your report -- sorry, withdraw that.**

**When you were asked to opine on the reasonableness of the $8.7 billion total allowed claim, did you consider at all the allocation mechanism in the settlement agreement?**

A. I did not. That was not part of my declaration.

**Q. Now, you mentioned earlier the West Pat model; is that correct?**

A. Yes.

**Q. And in your supplemental declaration I believe you disclosed that you looked at the West Pat model and**



**FRANK SILLMAN**

**considered that in connection with coming up with some of your loss estimates, correct?**

A. Correct.

**Q. Do you know whether the West Pat model is a dynamic model or a static?**

A. What do you mean by dynamic versus static?

**Q. Dynamic in the sense that the -- well, let me back up one step. I'm sorry, I'm going really fast. So the way I understand how models work is oftentimes vendors will update the model with new information as it comes in. So if every month, let's say, they get new bond performance information or maybe loan performance information, they may update their model on a monthly basis. Some do it quarterly, some do it more frequently than that. When I use the phrase "dynamic model," that's what I'm talking about. Do you understand that?**

A. Yes, the West Pat model does accommodate the ability to refresh the

FRANK SILLMAN

data. For purposes of what we did in our supplemental declaration we looked at developing the estimated lifetime loss one time. So we didn't continue month over month and refresh that.

**Q. Okay. If somebody went back to West Pat today, could they replicate what you did back in June?**

A. If -- I'm not an expert with the West Pat had model so I would have to ask them to see if they had the same inputs, could they replicate. That's something I can follow-up. I'm just -- I'm not familiar. I don't license that model.

**Q. Well, we can leave a spot in the transcript then for you to follow up with an answer to that question whether or not we can replicate what you did related to calculating an estimate of lifetime losses using West Pat.**

**(Insert.)______________________________.**

**Q. You mentioned a few times today that when you did work with your clients they often had their own repurchase**



**FRANK SILLMAN**

**standard that they would give to you in connection with the work that you do for them, the reps and warranties analysis. Did I recall that correctly?**

A. Pretty much. We worked together so it may be the case they already had a repurchase standard they wanted us to audit to or we may have had discussions back and forth about what the appropriate repurchase standard might be. But in the end they decided what the ultimate repurchase standard was.

**Q. And did each client have a different repurchase standard?**

A. They varied, some more or less than others.

**Q. And would the ultimate agree rate for your individual clients depend upon the repurchase standard that you were asked to apply?**

A. That could affect the agree rate.

**Q. Could we just look at paragraph 18 of your declaration quickly?**



**FRANK SILLMAN**

A. Yes.

**Q. Page 8 reads "Generally the standard for analyzing a breach of representations and warranties requires an assessment of, A, whether the alleged loan defect or alleged breach is an actual and material breach of representations and warranties, and, B, whether such breach was material and adverse to the interests of the certificate holders in the mortgage loans." Then you define that cumulatively as the R&W repurchase standard. Do you see that?**

A. Yes.

**Q. That's a different repurchase standard than the one you testified about earlier working on with each of these different clients where it varied different -- it varied from client to client; is that correct?**

A. The variances between client to client might not vary in these two categories just the underlying factors for each of those categories. So what would



FRANK SILLMAN

be considered the alleged defect or alleged breach and then what their standards were for material and adverse. So it's not necessarily mutually exclusive.

**Q. Did the debtors give you any R&W standard or repurchase standard when you did your work for them?**

A. The work we did prior?

**Q. Yeah, prior.**

A. To the bankruptcy?

**Q. Yes.**

A. We were in the process of finalizing the repurchase standard as part of the work that we did for them as we were reviewing the loans. The repurchase standard tends to be dynamic in that you try to develop all of the possible scenarios that might go into a repurchase standard but things come up based on the work that you do that causes you to modify the repurchase standard. So it's not a static standard.

**Q. Am I correct that the repurchase**

FRANK SILLMAN

**standard might change depending on whether or not you are doing a litigation analysis for the client as opposed to say an analysis in the context of whole loan transaction that you might be vetting for the client?**

A. Can you explain again what were you are asking in a little bit more detail?

**Q. Sure. I assume this is the case, I don't know. But when you come in to do work for a client in the context of evaluating or doing a reps and warranties type analysis I take it that the client has some goal in mind that they are seeking to achieve by having you do work for them, correct?**

A. Yeah. They want to resolve the repurchase demands.

**Q. In some context I assume that the client's goal is a business goal, they just want to reach some business objective. It may be perhaps evaluating whether to go forward with purchasing a**



FRANK SILLMAN

**pool of loans, it may be some other business objective. Is that a fair assumption on my part?**

A. Yes. My clients tend to have business objectives to the engagements they engage us.

**Q. And in some context, like the context of your work for RFC in connection with the MBIA litigation, I take it that there was a litigation overlay, let's say, or an advocacy overlay to the work that you were doing for them, correct?**

A. What do you mean by --

**Q. Were the lawyers who are representing RFC in the civil litigation involved in crafting the repurchase standard that you said was a work in progress?**

A. Yes.

**Q. Now, one more question I had -- one more area really. Are you aware that some of the trusts that, of the 392, never made a single put back demand to any of the debtors?**



FRANK SILLMAN

A. I believe that's the -- I believe I understand that to be the case though I cannot tell you which of the 392 did. I do believe reading or hearing that that was the case.

**Q. Do you know whether over 300 trusts never made a put back demand?**

A. Is this prior to -- are you talking about prior to the allowed claim?

**Q. So do you consider the allowed claim to be a put back demand, a big bulk put back demand?**

MR. RAINS: Which question -- he was in the middle of answering your earlier question. So --

MR. JURGENS: Sure. Let's go back.

**Q. On the chart that we were looking at earlier, the PLS demand data chart that was prepared --**

A. Right.

**Q. -- was that prepared prior to the settlement agreement?**

A. I don't know the answer to that.



FRANK SILLMAN

I received it from the debtor after the settlement agreement was done. I don't know when the time -- I don't know if the detailed spreadsheets have any dates on there.

**Q. There are 392 trusts that are part of the proposed settlement, correct?**

A. Right.

**Q. Do you know how many of the 392 trusts never made a single put back demand prior to the total allowed claim being approved?**

A. I do not.

**Q. Would it surprise you that over 300 of the trusts never made a single put back demand prior to the total allowed claim being agreed to?**

A. That wouldn't surprise me.

**Q. Did you take into account the fact that a large number of the trusts never made a put back demand when you came up with your opinion that the $8.7 billion total allowed claim fell within the range of reasonableness?**

FRANK SILLMAN

A. My understanding is there's certain hurdles that trusts need to get over in order to make a put back claim. So it's possible and not surprising that 300 of them had not met that standard prior to the settlement agreement.

**Q. Did you factor that into your analysis, the fact that a large number of the trust members made a single put back demand?**

A. There are many reasons why these trusts may not have qualified to make a demand. So that was not part of the analysis. Whether they had met the legal standards as defined in the governing agreements, I did not, was not asked to evaluate that as part of the declaration.

**Q. How could potential repurchase liability for the debtors arise without the trusts making a put back demand?**

MR. RAINS: Objection. Calls for a legal conclusion.

A. Yeah, I'm just not an attorney. I can't speak as to why they did or didn't



FRANK SILLMAN

or could or couldn't make a repurchase demand.

**Q. Earlier you testified in sum or substance that there were certain defenses, litigation defenses that you believed were built in to the agree rate assumptions that you were making. Did I recall that testimony correctly?**

A. That's correct. The company, as part of their repurchase process, would evaluate certain legal defenses.

**Q. Do you know what legal defenses the companies considered in connection with agreeing or disagreeing to repurchase a loan?**

A. I was told that that was part of their process. We did not get into each of the different legal defenses they used in each one of the individual loans.

**Q. So other than the assumptions you made with respect to the agree rates, you didn't factor in any other litigation risk discounts in connection with attempting to analyze whether the**



FRANK SILLMAN

**$8.7 billion total allowed claim fell within the range of reasonableness; is that correct?**

MR. RAINS: Objection. Misstates his testimony.

Go ahead.

A. That was -- the legal strategies and the valuation of their legal options was part of their agree -- I mean their repurchase process. So it was factored in.

**Q. Put that aside. Other than the agreed rate, the assumptions you made about the agreed rate, did you consider any other litigation risk discounts that might be applicable in determining whether or not the $8.7 billion total allowed claim fell within the range of reasonableness?**

A. I considered the legal considerations the company took in its repurchase process in my declaration.

**Q. But the statute of limitations, arguments, things like that you didn't**



FRANK SILLMAN

**take into consideration independent of whatever the companies may have done, or not the companies really, the GSEs, right, took into consideration?**

MR. RAINS: Objection. Vague and ambiguous.

MR. JURGENS: Fair enough. I withdraw the question.

**Q. My last question and my last minute. Focusing on your three clients at Fortace whose -- focusing on the three clients at Fortace whose repurchase experience and agree rate experience you considered in connection with preparing your report, did any of the repurchase work that you did for them involve first liens?**

A. Yes.

**Q. Could you put a percentage on the first liens versus second liens that you considered for your three clients?**

A. I considered both, IndyMac and the Fortace clients. But I can't put a --

**Q. Put aside IndyMac for a second.**

FRANK SILLMAN

**Just focusing on the three clients. Is one of the three clients the debtors RFC or --**

A. I cant disclose.

**Q. Well, no, but just when you say there are three clients, does that include the debtors or is that exclusive of the debtors?**

A. That includes the debtors and --

**Q. And are you treating GMAC and RFC as two of the three?**

A. We treated those clients separately and they were considered separately and --

**Q. So when you were telling Mr. Bentley earlier that in making your assumptions about different things that you looked to your experience with three clients, it's really the debtors plus one other client; is that right?**

A. That's correct.

**Q. And for that one other client, did you evaluate repurchase demands made with respect to first liens?**



FRANK SILLMAN

A. They were predominantly first liens.

**Q. Okay.**

MR. JURGENS: Okay. That's all the questions that I have.

MR. RAINS: Thanks everyone.

(Time noted: 7:01 p.m.)



STATE OF ______________ )
) :ss
COUNTY OF ______________)

I, FRANK SILLMAN, the witness herein, having read the foregoing testimony of the pages of this deposition, do hereby certify it to be a true and correct transcript, subject to the corrections, if any, shown on the attached page.

______________________
FRANK SILLMAN

Sworn and subscribed to before me, this day of , 2012.

______________________
Notary Public



C E R T I F I C A T I O N

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

I, ERICA L. RUGGIERI, RPR and a Notary Public within and for the State of New York, do hereby certify:

That I reported the proceedings in the within-entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of November, 2012.

ERICA L. RUGGIERI, RPR