

Class Action Issues Regarding RMBS Trustees

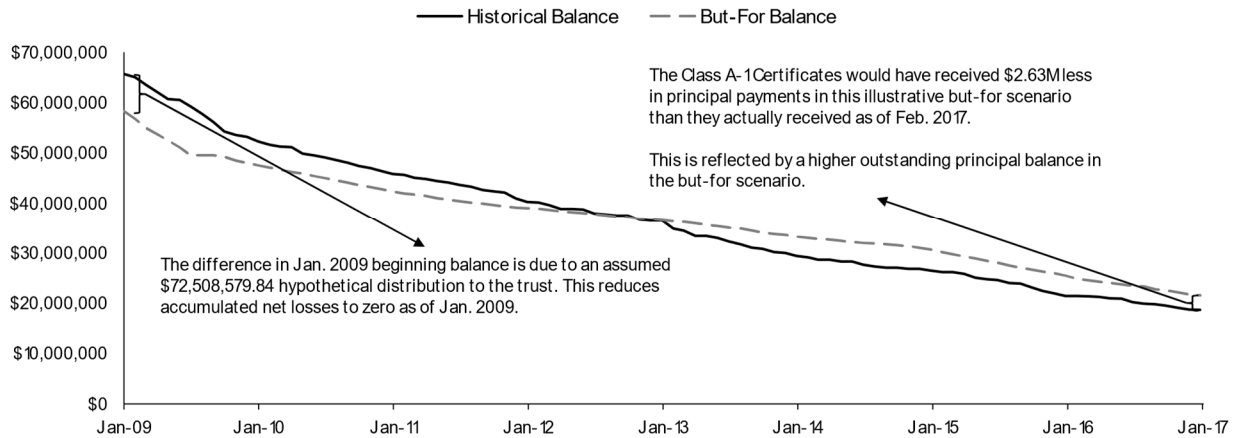
Vega was retained by Jones Day on behalf of Wells Fargo in *Royal Park Investments SA/NV v. Wells Fargo Bank, N.A.* (S.D.N.Y. No. 1:14-cv-09764) and *BlackRock Allocation Target Shares: Series S Portfolio, et al. v. Wells Fargo Bank, N.A.* (S.D.N.Y. No. 1:14-cv-09764). Named plaintiffs alleged that Wells Fargo, as the trustee of certain residential mortgage-backed securities (RMBS), breached its duties as specified in the governing agreements and failed to protect the interests of a proposed class of investors.

The Vega team supported Wells Fargo's damages expert Dr. Ethan Cohen-Cole in providing quantitative analysis and opinions regarding:

- whether the named plaintiffs were representative of the class they sought to represent;
- whether the proposed class had experienced losses;
- whether the proposed damages methodologies could calculate damages on a class-wide basis;
- whether the proposed damages methodologies could isolate losses allegedly attributable to Wells Fargo's conduct;
- whether the proposed damages methodologies were consistent with the allegations and based on defined and reasonable assumptions; and
- whether the proposed damages methodologies appropriately and adequately addressed causation.

In the *Royal Park Investments* matter, Dr. Cohen-Cole demonstrated that investors were not similarly situated and exposed conflicts of interest between class members. He further demonstrated that the proposed damages methodology did not calculate damages on a class-wide basis. For example, he illustrated that in certain circumstances certificateholders could receive, over time, reduced principal payments in a "but-for" scenario than what they actually received, making them worse off than they otherwise would have been. See **Example Analysis: But-For Scenario with Lower Principal Distributions** below. Furthermore, Dr. Cohen-Cole revealed numerous assumptions in the proposed damages methodology that potentially benefited certain classes of investors over others.

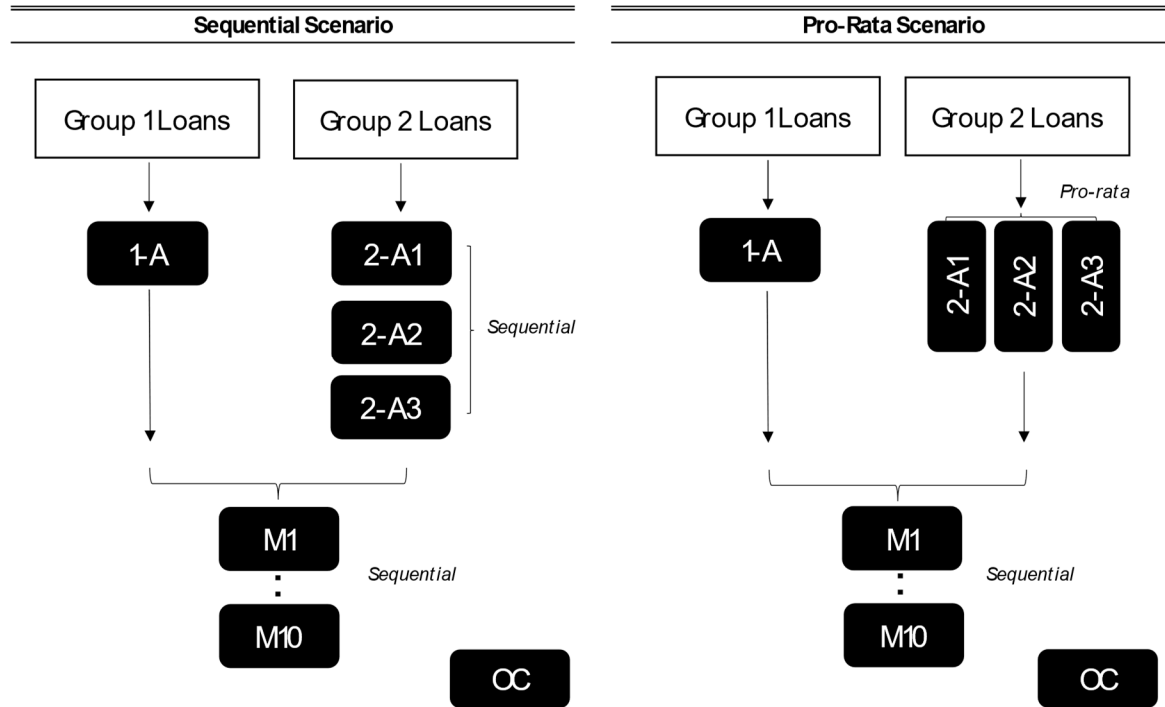
Example Analysis: But-For Scenario with Lower Principal Distributions



Similarly, in the *BlackRock* matter, Dr. Cohen-Cole established conflicts within the proposed class. He demonstrated the proposed damages methodologies resulted in conflicts of interest among class members due to the numerous assumptions required to determine the allocation of cashflows.

The opposing expert assumed strict and objective rules for distributing damages. However, ambiguities in the governing agreements’ language and the treatment of damages awards called into question his assumptions. For example, the governing agreements in this case shift the priority of payments based on the relationship between the trust collateral and the certificate balance. See **Example Analysis: Example Principal Waterfall Distribution Scenarios**. Therefore, the plaintiff’s expert needed to make an assumption that would determine whether the damages would be distributed to class members on a pro-rata basis or sequentially.

Example Analysis: Example Principal Waterfall Distribution Scenarios



In both cases, Vega’s expert demonstrated that plaintiff’s expert did not provide a reliable methodology to calculate damages on a class-wide basis in a manner consistent with the case allegations.

Class certification was denied in the *Royal Park Investments* matter with the court citing many of the same issues and critiques raised by Dr. Cohen-Cole. The court found that individual issues predominated over common questions noting the “variety of factors that would be idiosyncratic to each putative class member,” and that “the individualized inquiries necessary to distribute damages among investors, along with the individualized questions discussed above, would dwarf the only common question identified in this case.” *The BlackRock* matter settled shortly thereafter.

About Vega Economics

Vega Economics provides economic consulting and expert testimony in all phases of complex litigation and regulatory proceedings. We work with an extensive network of academic and industry professionals that provide support in a variety of practice areas. We always pair the best suited consultant or expert witness for each case. For additional inquiries, please contact info@vegaeconomics.com.