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A.I.G. to Sue Bank of America Over Mortgage Bonds

By LOUISE STORY and GRETCHEN MORGENSON

The [American International Group](#) is planning to sue [Bank of America](#) over hundreds of mortgage-backed securities, adding to the surge of investors seeking compensation for the troubled mortgages that led to the financial crisis.

The suit seeks to recover more than \$10 billion in losses on \$28 billion of investments, in possibly the largest mortgage-security-related action filed by a single investor.

It claims that Bank of America and its Merrill Lynch and Countrywide Financial units misrepresented the quality of the mortgages placed in securities and sold to investors, according to three people with knowledge of the complaint.

A.I.G., still largely taxpayer-owned as a result of its 2008 government bailout, is among a growing group of investors pursuing private lawsuits because they believe banks misled them into buying risky securities during the housing boom. At least 90 suits related to mortgage bonds have been filed, demanding at least \$197 billion, according to [McCarthy Lawyer Links](#), a legal consulting firm. A.I.G. is preparing similar suits against other large financial institutions including Goldman Sachs, JPMorgan Chase and Deutsche Bank, said the people with knowledge of the complaint, as part of a litigation

strategy aimed at recovering some of the billions in losses the insurer sustained during the financial crisis.

The private actions stand in stark contrast to the few credit crisis cases brought by the Justice Department, which is wrapping up many of its inquiries into big banks without filing any charges. The lack of prosecutions — the Justice Department has brought three cases against employees at large financial companies and none against executives at large banks — has left private litigants, mainly investors and consumers, standing more or less alone in trying to hold financial parties accountable.

“When federal authorities don’t fulfill their obligation to enforce the law, they essentially give an imprimatur to the financial entities to do whatever they want and disregard the law,” said Kathleen C. Engel, a professor at Suffolk University Law School in Boston. “To the extent there are places where shareholders and borrowers can pursue claims, they are really serving the function of the government. They are our private attorneys general.”

Though many in the public have called for more accountability for parties involved in the financial crisis, criminal charges on complex financial matters can be difficult to prosecute.

A spokeswoman for the Justice Department said the government was vigorously pursuing cases where appropriate, and she pointed to a recent jail sentence for the chairman of the mortgage company Taylor, Bean & Whitaker. The spokeswoman, Alisa Finelli, declined to say how many people the government had assigned to that task.

“Prosecutors and agents determine on a case by case basis the importance of relevant evidence developed in private litigation and how such evidence should be pursued,” Ms. Finelli said. “Civil litigation involves a lower standard of proof than is required for a criminal prosecution, where prosecutors must have sufficient evidence to prove beyond a reasonable doubt that a crime has been committed.”

On Friday, the department announced it had concluded its investigation into Washington Mutual, the

Seattle-based bank that nearly collapsed because of its risky mortgages, without finding evidence of criminal wrongdoing. The Justice Department has also concluded its investigation into Countrywide's conduct leading into the financial crisis, according to a person with knowledge of that case.

Even more investigations may soon be shut down because the Justice Department is heavily involved in negotiations between big banks and state attorneys general that may give the banks broad immunity against future claims. The state attorneys general are weighing these requests in the mortgage servicing and foreclosure cases, even though the government has not pursued the most basic investigation of these practices.

As it has in similar cases, Bank of America is likely to dispute A.I.G.'s claims, in the suit, which is expected to be filed on Monday in New York State Supreme Court. When asked generally about the quality of mortgage bonds issued by companies that are now part of the bank, Lawrence Di Rita, a spokesman for Bank of America, said the disclosures were robust enough for sophisticated investors. He said many of the loans lost value because housing fell.

"Now you have a lot of investors and lawyers who are seeking to recoup the losses from an economic downturn," Mr. Di Rita said. The bank has not yet seen A.I.G.'s suit.

On Monday morning, in response specifically to A.I.G.'s planned suit, Mr. Di Rita said in an e-mail: "A.I.G. recklessly chased high yields and profits throughout the mortgage and structured finance markets. A.I.G. is the very definition of an informed, seasoned investor, with losses solely attributable to its own excesses and errors. We reject A.I.G.'s assertions and allegations."

Mark Herr, a spokesman for A.I.G., confirmed the company's plans to file a lawsuit on Monday and responded to Mr. Di Rita's comments by saying: "It is disappointing but unsurprising that Bank of America continues to attempt to blame others for its own misconduct. Investors, no matter how sophisticated, were entitled to rely on its numerous written representations about the securities it sold. Now that it is clear that those representations were false, Bank of America must be held to account."

Asserting that Bank of America caused A.I.G. billions of dollars in losses, Mr. Herr said, “We are bringing this suit today to protect AIG and the taxpayers' stake in it.”

The company’s chief executive, Robert H. Benmosche, first told shareholders in 2010 that he was considering litigation to recover losses.

A.I.G. also plans to file a request to intervene in [the \\$8.5 billion settlement proposed in June by Bank of America and Bank of New York Mellon](#), which represents mortgage security investors including BlackRock and Pimco. Mr. Di Rita said on Sunday that large sophisticated investors have signed on to that deal.

A.I.G. plans to object to the deal because it believes [the amount is too low and that Bank of New York’s role was rife with conflicts](#), according to the people with knowledge of A.I.G.’s plans.

Cases like A.I.G.’s may turn up information in interviews and document discovery that could be helpful to the government, though it is unclear if the Justice Department would seek to reopen closed cases.

Already, the private suits are revealing dubious activities. One [case against Bear Stearns](#) indicates that its employees put troubled mortgages into securitization trusts that it sold to customers, while simultaneously receiving reimbursement — known as apology payments — from the companies that originated the loans.

And a recent case against Morgan Stanley cited a witness saying that the bank would receive mortgages with documentation of a buyer’s income and then shred that documentation so that it could call it a “no doc” loan and pay less for it. Those banks dispute the accusations.

Lawsuits have long been a crucial method for shareholders to recover losses. A February letter to the Securities and Exchange Commission from the general counsel of the California Public Employees’ Retirement System noted that private litigants in the 100 largest securities class action settlements had recovered \$46.7 billion for defrauded shareholders.

But the costs of these recoveries are often borne by the companies' insurers or stockholders. It is exceedingly rare that such deals require money to come from the pockets of corporate executives or directors. As a result, the lack of criminal inquiries by the government means that restitution is often paid by innocent parties — shareholders — who have already been hurt by the questionable conduct.

Lawyers involved in the lawsuits, who stand to share in any financial recoveries, say that there are plenty of unknown facts related to the crisis that should be exposed.

“We continue to discover new information,” said Gerald H. Silk, a lawyer with Bernstein Litowitz Berger & Grossmann. “The private litigations that have been brought on behalf of investors paint a very strong picture that many of the financial calamities were caused by fraud.”

Mr. Silk's firm has filed dozens of cases related to the financial crisis, and the government has contacted the firm with requests for information in a few of them, Mr. Silk said.

The government could look to private litigation and the law firms bringing the actions for potential witnesses and new information. A recent [case against Wachovia](#), for instance, included 51 confidential witnesses. Lawyers say, however, that many witnesses in private litigation cases have not been contacted by the government.

A.I.G. faced some limits on the lawsuits it could bring, because during the bailout [the company signed a waiver that it would not sue big banks](#) over mortgage bonds it had insured. But it did not sign such a deal on a series of Goldman Sachs securities called Abacus, nor for mortgage bonds it bought outright, like the \$28 billion worth of securities included in its suit against Bank of America. The company is working with the law firm Quinn Emanuel Urquhart & Sullivan, which is bringing many financial crisis cases.

According to the people with knowledge of the litigation, the roughly 200-page complaint relies on more than 1,900 pages of exhibits. Quinn Emanuel interviewed former Bank of America employees and conducted forensic analysis on more than 262,000 loans inside 349 deals. They found that 4 out of

10 mortgages, on average, differed significantly from the descriptions of the loans in the marketing materials.

For instance, the number of loans said to cover owner-occupied properties was lower than investors were told, and the amount of the loans compared with the value of properties was often higher.

The complaint describes the loan files of one mortgage security, where 82 percent of the loans did not comply with the underwriting guidelines as marketed to investors.

For instance, a borrower in that deal who said she was a builder with 25 years of experience was born in 1971. Another borrower inflated his income by about \$90,000 on his application, though his tax return in the loan file showed the true figure.

The suit against Bank of America involves mortgage bonds that A.I.G.'s securities lending unit bought using savings from its insurance subsidiaries, which relied to some degree on the high ratings on the mortgage bonds.

A.I.G. will contend that Countrywide, Merrill Lynch and Bank of America provided false information to the ratings agencies, resulting in false ratings. And the insurer will describe the steps it took to understand the mortgages that were placed in the deals, like requesting spreadsheets with data about all the loans in the deals from the banks that created them.



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