

+-----+
-----+
Fed's 'Pit Bull' Takes on Bank of America in Buyback Battle
2010-10-26 04:01:00.6 GMT

By Thom Weidlich, Laurel Brubaker Calkins and Jody Shenn

Oct. 26 (Bloomberg) -- Kathy D. Patrick is a Houston lawyer who spends her Sundays teaching children about God. The rest of the week, according to one attorney who knows her, she can be "as frightening as a pit bull on steroids."

That's bad news for issuers of mortgage-backed securities like Bank of America Corp. Patrick represents bond investors including the Federal Reserve Bank of New York and BlackRock Inc. who are seeking to force the bank to buy back bad home loans, claiming the debt failed to match contractual promises about its quality.

Her law firm, Gibbs & Bruns LLP, is a 30-lawyer outfit that says it specializes in "bet the company" litigation. This month, it reached a settlement with JPMorgan Chase & Co. and Bank of Montreal stemming from an alleged fraud at a Canadian gold company. Earlier this year, Goldman Sachs Group Inc. and UBS AG settled with the firm over the sale of \$550 million in mortgage-backed securities. Patrick reached that settlement on behalf of her clients just two months after filing suit.

Patrick, 50, is "fearless and tenacious," said Dan Cogdell, a Houston criminal-defense lawyer who said she is capable of pit bull-like aggressiveness "if the need be." If she succeeds in getting Bank of America to settle, it may trigger more calls for buybacks in the \$1.4 trillion market for so-called non-agency mortgage securities, which lack government backing.

Bank costs from repurchasing mortgages in such securities may total as much as \$179.2 billion, including expenses related to suits against bond underwriters, Chris Gamaitoni, a Compass Point Research and Trading LLC analyst, estimated in August.

\$1.73 Billion

In June 2009, Patrick got Credit Suisse Group AG and Deutsche Bank AG to agree to pay \$1.73 billion to end litigation over their decision to back out of the leveraged buyout of Huntsman Corp. Her firm is suing Zurich-based Credit Suisse as bond underwriter for a now-defunct Ohio company that sold securities based on health-care providers' unpaid bills.

"She has a deep understanding of the banking process and the constraints, motivations and incentives of the banking industry," said Harry M. Reasoner, a partner at Vinson & Elkins LLP in Houston, who also represented Huntsman.

In the fight against Charlotte, North Carolina-based Bank of America, Patrick represents the biggest bond investors in the U.S., including Pacific Investment Management Co., which runs the world's biggest bond fund.

\$47 Billion

On Oct. 18, she wrote Bank of America and Bank of New York Mellon Corp., the trustee for \$47 billion of bonds created by Bank of America's Countrywide Financial unit. In the letter, she accused Countrywide of failing to service the home loans properly. Her clients want Bank of America, which bought Countrywide in 2008, to take back some of the underlying loans, and are questioning its servicing as a way to broaden their legal options, Patrick said the next day.

"We continue to review and assess the letter, and have a number of questions about its content, including whether these investors have standing to bring these claims," Bank of America Chief Financial Officer Charles H. Noski said Oct. 19 on a conference call with analysts. "We continue to believe the servicer is in compliance with the servicing obligations."

Jeffrey V. Smith, a spokesman for the New York Fed, didn't return a call seeking comment.

"The contracts say we win," Patrick said in an interview earlier this month. "It may take a short time or a long time." She declined to comment further on the case or to be interviewed for this story at the request of her clients.

"It's great to see somebody stepping up to the plate and taking action, even if it may not be the most well-conceived effort," Isaac Gradman, an attorney and San Francisco-based consultant, said in an e-mail.

Patrick's Clients

Patrick's clients may find themselves unable to force a buyback because they failed to point out problems with Countrywide's servicing of specific loans, said Gradman, formerly a lawyer at Howard Rice Nemerovski Canady Falk & Rabkin PC. He represented mortgage insurer PMI Group Inc. in a settled lawsuit over similar issues against General Electric Co. and its defunct mortgage unit.

Gibbs & Bruns was founded in 1983 and specializes in complex commercial cases. Last year, *American Lawyer*, a law firm trade publication, named it one of the top four U.S. litigation "boutiques."

Patrick, a partner, focuses on securities, creditor-recovery and institutional-investor cases, according to the firm. She is a graduate of Harvard Law School and the University of Texas at El Paso.

'Very Smart'

"Kathy is very good at simplifying things for jurors, and she's very smart," Irv Terrell, the partner at Houston-based Baker Botts LLP who represented the banks in the Huntsman case, said in a telephone interview.

Last month, New York-based BNY Mellon said it would ignore Patrick's demand that the trustee investigate whether Bank of America should repurchase loans that didn't follow requirements in the trust documents.

At the time, Kevin Heine, a spokesman for BNY Mellon, said Patrick's letter did "not comply with multiple requirements" and declined to comment further.

Patrick represents investors who own at least 25 percent of voting rights in the deals and stand to recover "many billions of dollars," she has said.

In signing onto the Oct. 18 letter, the New York Fed joined a group including Munich-based Allianz SE's Pimco, Freddie Mac and

MetLife Inc., the biggest U.S. life insurer. The institution acquired mortgage debt through its 2008 rescues of Bear Stearns Cos. and American International Group Inc.

Contractual Obligations

Countrywide hasn't met its contractual obligations as a servicer because it hasn't asked for loan repurchases, is failing to keep adequate records and is taking too long with foreclosures, Patrick has said.

If the faults aren't fixed within 60 days, BNY Mellon should declare Countrywide in default on its servicing contracts, Patrick said previously. Her clients then could have the right to pursue legal action against Bank of America, Bank of New York or both, according to the lawyer.

"We play no role in managing individual loans held in the trust," Ron Gruendl, a spokesman for BNY Mellon, said in an e-mail. "That responsibility falls to the servicer."

Patrick, who clerked at Vinson & Elkins, teaches Sunday school and is married to a divinity-school student, said Reasoner, a former Vinson & Elkins managing partner.

'Tough-Minded'

"She's very tough-minded, and extremely well-prepared," Reasoner said. "She would not take a case on unless she thought she had a real shot at prevailing." Barrett H. Reasoner, Reasoner's son, is a partner at Patrick's law firm.

Patrick's interest in the world of securitization began with the 2002 implosion of National Century Financial Enterprises Inc., the Dublin, Ohio-based company that bought unpaid bills from health-care providers and sold securities it promised would be backed by the anticipated revenue.

She represents institutional bondholders, including Pimco and the state of Arizona, which held more than half of the \$3 billion in NCFE notes outstanding when a fraud was discovered there. The company eventually went bankrupt.

Gibbs & Bruns has recovered \$600 million in settlements so far in that case, including \$425 million from New York-based JPMorgan, trustee on the notes, according to her law firm. She is still pursuing the case against underwriter Credit Suisse.

"NCFE is probably the largest corporate fraud that most people have never heard of because it involves investment grade notes sold to government entities, banks and mutual funds," Patrick said in 2006.

Mutual, Hedge Funds

She also represented 11 mutual funds and three hedge funds, including Short Hills, New Jersey-based Appaloosa Investment LP, seeking to recover about \$42 million in damages from JPMorgan and Bank of Montreal stemming from the alleged fraud at Bre-X Minerals Ltd. The Calgary-based company's claim to have a gold reserve in Indonesia proved to be a hoax. Terms of the settlement this month weren't disclosed.

Patrick represented Pimco in a suit filed last year against Goldman Sachs, Zurich-based UBS and Ally Financial Inc.'s Residential

Accredit Loans Inc., a Minneapolis-based bundler of home loans, over what Pimco said were misstatements in connection with its purchase of more than \$550 million in mortgage-backed notes.

The case was filed Nov. 13 in federal court in Los Angeles and voluntarily dismissed Jan. 19, after it settled. Terms weren't disclosed. New York-based Goldman Sachs underwrote the notes and UBS sold them.

Balked at Funding

In the Huntsman case, which Patrick also tried with name partner Robin Gibbs, Credit Suisse and Frankfurt-based Deutsche Bank balked at funding the private-equity deal after they determined the global recession hurt demand for the combined companies' products and made syndicating the deal's debt impossible.

The banks' lawyers argued their clients were doing their job in refusing to lend billions of dollars to companies that couldn't repay. Documents introduced at the Conroe, Texas, state court trial supported the banks' claim that the combination of Huntsman, a Salt Lake City-based chemical company, and Apollo Management LLP's specialty chemicals unit could have been insolvent from the start.

Patrick, seeking to capitalize on news of bank bailouts that was dominating headlines during the trial, portrayed Credit Suisse and Deutsche Bank as villains that made promises they never intended to keep.

'What They Promise'

"This case is about whether people should be held to what they promise," she said before the trial began.

Some Huntsman owners complained that the banks got off easy with their \$1.73 billion settlement in cash and loans, reached two weeks into the trial. At the time the banks pulled out of the deal, in October 2008, they had calculated their losses at about \$8 billion, according to court papers.

Switzerland-based investor George Bessenyei, a market analyst at Oxford Capital AG, said at the time that "the settlement does not reflect the damages that the banks and Apollo's action caused to the company."

For Related News and Information:

Top legal stories today: TLAW <GO>

For Bloomberg legal resources: BLAW <GO>.

Legal news about Pimco: 21429Z US <Equity> TCNI LAW <GO> Mortgage-bond stories: NI MBS <GO> Delinquency reports: DQRP <GO>

--With assistance from Jody Shenn in New York. Editors: David E. Rovella, Andrew Dunn.

To contact the reporters on this story:

Thom Weidlich in New York at +1-718-330-1093 or tweidlich@bloomberg.net; Laurel Brubaker Calkins in Houston at +1-713-851-6648 or laurel@calkins.us.com; Jody Shenn in New York at +1-212-617-2380 or jshenn@bloomberg.net.

To contact the editor responsible for this story:

David E. Rovella at +1-212-617-1092

or drovella@bloomberg.net.