



## Jury verdict against BofA-Countrywide reignites litigation concerns

Decision could stall private-label RMBS, market progress

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A jury verdict against a former **Countrywide** executive and **Bank of America (BAC)** over legacy Countrywide mortgages is another spoke in the wheel for a mortgage industry already struggling to reach a new norm, industry insiders say.

The bank is now on the hook for troubled loans Countrywide sold off to Fannie Mae and Freddie Mac.

The verdict is bad news for banks already knee-deep in investors suits, regulatory changes, attorney general probes and existing residential mortgage-backed securities litigation.

A federal jury unanimously found Countrywide, Bank of America and senior executive Rebecca Mairone liable for making bad loans and removing quality checks from the due diligence process, U.S. Attorney Preet Bhara said Thursday. USA Today [has more on Mairone](#), who was in charge of the Countrywide loan origination program at the center of the case.

But the verdict raises many questions, industry insiders tell HousingWire. Why now? And why did one executive get the shaft? Not to mention the fact that BofA bailed out Countrywide, presumably helping the financial system -- only to end up facing litigation over Countrywide's leftover mess.

A banking industry insider said, "It illustrates the amazing short comings of the Obama administration that they haven't prosecuted senior management. They probably could have gone after the whole C-suite."

Yet, only one executive to date is on the hook: Rebecca Mairone.

But with a verdict calling the handling of these Countrywide loans an act of fraud, the insider believes the case suggests prudential regulators dropped the ball since they took no real actions against executives when they still could.

"The main regulators could bring a fraud action under Section 12 of the banking statutes," he noted.

The other lingering concern is what this all means for larger banking institutions when they takeover less stable banks as part of a rescue measure in the future.

It's well known Bank of America rescued Countrywide in the heat of the financial crisis not only from itself, but from tanking the financial system. Will banks be willing to pull off such a feat if they fear the absorption of litigation-risk later on?

BofA alluded to this in the lender's public statement.

"The jury's decision concerned a single Countrywide program that lasted several months and ended before Bank of America's acquisition of the company. We will evaluate our options for appeal," said Countrywide spokesperson Lawrence Grayson.

This decision also creates a new hurdle for the creation of a robust private-label residential mortgage-backed securities market.

"It's going to be really hard to restart anything like a private-label RMBS market," the industry insider said. "These deals in the future are going to have to be squeaky clean."

And a litigation firestorm is not impossible – albeit it's already in effect.

"Will it help the government or plaintiffs trying to extract settlements? Absolutely. It's a datapoint we haven't had because the street fought very hard," he said. "They've taken one of the more problematic issuers – but certainly not the worse – and decided the issuance was fraudulent."

Mark Calabria with the Cato Institute offered his experience working on housing policy and legislation on Capitol Hill. He's more suspicious of the verdict's suggestion that the GSEs are the alleged victims in this case.

"While I don't doubt Countrywide sold shoddy loans to the GSEs, it is somewhat surprising that a jury did not see the GSEs as expert enough to judge the quality of what they were buying," Calabria said. "If anyone should have been an informed investor in the mortgage space, it should have been Fannie and Freddie. I think the GSEs were well aware of the quality of what they were buying and simply chose to look the other way."

An industry insider added that it proves the GSEs were merely sampling mortgages that came in the door, and the banks came to expect this easy barrier. A sampling of mortgages doesn't necessarily reveal all of the data, the source suggested. This point later became clear to the entire market.