

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY  
PRESENT: HON. EILEEN BRANSTEN, JUSTICE PART 3

-----X  
MBIA INSURANCE CORPORATION,

Plaintiff,

-against-

Index No.: 602825/08  
Motion Date: 10/5/11  
Motion Seq. Nos.: 034, 038

COUNTRYWIDE HOME LOANS, INC.,  
COUNTRYWIDE SECURITIES CORP.,  
COUNTRYWIDE FINANCIAL CORP.,  
COUNTRYWIDE HOME LOANS  
SERVICING, LP AND BANK OF AMERICA  
CORP.,

Defendants.  
-----X

The following papers, numbered 1 to 6, were read on these motions to stay, sever and consolidate.

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause - Affidavits - Exhibits	1, 4
Answering Affidavits - Exhibits	2, 5
Replying Affidavits	3, 6
Cross-Motion: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Upon review of the foregoing papers, this motion is decided in accordance with the accompanying memorandum decision.

Dated: October 31, 2011

  
Hon. Eileen Bransten

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE  SETTLE/SUBMIT ORDER/JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE \_\_\_\_\_ FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 3

-----X  
MBIA INSURANCE CORPORATION,

Plaintiff,

-against-

COUNTRYWIDE HOME LOANS, INC.,  
COUNTRYWIDE SECURITIES CORP.,  
COUNTRYWIDE FINANCIAL CORP.,  
COUNTRYWIDE HOME LOANS  
SERVICING, LP AND BANK OF AMERICA  
CORP.,

Index No.: 602825/08  
Motion Date: 6/27/11  
10/5/11  
Motion Seq. Nos.: 034, 038

Defendants.

-----X  
PRESENT: HON. EILEEN BRANSTEN

In motion sequence number 034, defendant Bank of America Corporation (“BAC”) moves to sever plaintiff MBIA Insurance Corporation’s (“MBIA”) successor liability claim against it and to stay related discovery and expert and fact depositions pending resolution of the parties’ upcoming summary judgment motions.

In motion sequence number 038, BAC moves to sever and consolidate allegedly identical successor liability claims asserted against it by MBIA and by the plaintiffs in three other cases pending in this court: *Syncora Guarantee Inc. v. Countrywide Home Loans, et al.*, Index No. 650042/2009 (“*Syncora*”); *Financial Guaranty Insurance Co. v. Countrywide Home Loans, et al.*, Index No. 650736/2009 (“*FGIC*”); and *Ambac Insurance Corp., et ano v. Countrywide Home Loans, Inc. et al.*, Index No. 651612/2010 (“*Ambac*,” together with the instant matter (“*MBIA*”), the “Monoline Actions”).

The motions are consolidated for disposition.

## **BACKGROUND**

The facts of this matter have been discussed extensively in previous decisions of this court. Thus, only details necessary to this motion are referenced herein.

This action stems out of fifteen residential mortgage-backed securitizations (the “securitizations”). The securitizations were collateralized by residential mortgages that were originated and purchased by defendant Countrywide Home Loans, Inc. (“CHL”; collectively with Countrywide Securities Corporation (“CSC”), Countrywide Financial Corporation (“CFC”) and Countrywide Home Loans Servicing, LP (“CHLS”) “Countrywide”; and Countrywide, together with BAC, “Defendants.” MBIA insured the securitizations, guaranteeing payments to the securitizations’ investors.

MBIA brought the instant action on September 30, 2008 against the Countrywide defendants. MBIA alleged, and alleges, that Countrywide fraudulently induced MBIA to insure the Securitizations and that Countrywide breached the representations and warranties in the transaction documents.

On August 24, 2009, MBIA filed an amended complaint (the “Amended Complaint”). The Amended Complaint added, in addition to five securitizations, a cause of action alleging successor and vicarious liability against BAC. Amended Complaint, ¶¶ 200-07. MBIA alleges that BAC’s purchase of Countrywide on July 1, 2008, constituted a merger. *Id.*, see also ¶¶ 119-31.

MBIA alleges that BAC acquired CFC and the other Countrywide defendants in July of 2008. Amended Complaint, ¶ 202; see also BAC’s Memorandum of Law in Support of

its Motion to Sever the Successor Liability Claim and for a Limited Stay to Sequence Successor Liability Depositions and Expert Discovery (“BAC Memo (034)”). BAC’s purchase of CFC was controlled by an “Agreement and Plan of Merger” by and between BAC, CFC and Red Oak Corporation, through which, in BAC’s words, “CFC agreed to merge with and into Red Oak, a BAC subsidiary.” BAC Memo (034), p. 9. BAC states that CFC is a BAC subsidiary, that CHS and CSC are subsidiaries of CFC and that CHLS is an indirect subsidiary of BAC. *Id.*

MBIA bases its seventh cause of action upon BAC’s acquisition of CFC and the Countrywide defendants. Amended Complaint, ¶¶ 119-31; 200-07.

#### Facts Relevant to the Instant Motions<sup>1</sup>

Plaintiffs in each of the Monoline Actions assert a claim against BAC for successor liability.<sup>2</sup> BAC contends, and plaintiffs generally do not contest, that each Monoline Action plaintiff asserts very similar bases for their successor liability claim.<sup>3</sup>

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<sup>1</sup> The same facts are relevant to both motion sequence numbers 034 and 038. For convenience only, and while citations and arguments in both motions were carefully considered, citations stem primarily from briefing for motion sequence number 038.

<sup>2</sup> Rosenberg Support Affirm. (038), Exs. 1 (*MBIA* Amended Complaint, ¶¶ 200-07), 2 (*Ambac* Complaint, ¶¶ 204-100), 3 (*Syncora* Amended Complaint, ¶¶ 136-46), 4 (*FGIC* Amended Complaint, ¶¶ 466-72).

<sup>3</sup> See Plaintiff’s Opposition to Defendant Bank of America Corporation’s Motion to Consolidate Identical Successor Liability Claims Pending in Four Actions Before This Court (“*MBIA* Opp. Memo. (038)”); Memorandum of Law In Opposition to Defendant Bank of America Corporation’s Motion to Sever and Consolidate the Successor Liability Claims Against Bank of America (“*Syncora* Opp. Memo.”); Plaintiff *FGIC*’s Opposition to Defendant Bank of America’s Motion to Sever and Consolidate the Successor Liability Claim (“*FGIC* Opp. Memo.”); and Plaintiff’s Memorandum in Opposition to Motion to Sever and Consolidate (“*Ambac* Opp. Memo.”).

Each Monoline Action plaintiff asserts that, upon BAC's July 1, 2008 acquisition of Countrywide, BAC became Countrywide's successor-in-interest. Plaintiffs contend that BAC must therefore bear joint and several liability for Countrywide's alleged wrongdoing. Plaintiffs' assertions are first based on an alleged *de facto* merger between BAC and Countrywide and the allegation that BAC assumed all of Countrywide's liabilities. See MBIA Amended Complaint, ¶¶ 119-31; BAC Memo (038), pp. 4-5.<sup>4</sup>

Plaintiffs also base their successor liability claim on Countrywide's merger into a wholly owned BAC subsidiary that was created for the sole purpose of facilitating BAC's Countrywide acquisition. MBIA Amended Complaint, ¶ 119; BAC Memo (038), Ex. A (chart of the Monoline Actions' complaints' allegations in support of their claims against BAC for successor liability). Further, each plaintiff argues their respective successor liability claim on Countrywide's asset transfer from CFC's subsidiaries to BAC subsidiaries (MBIA Amended Complaint, ¶ 126); public statements of BAC representatives (MBIA Amended Complaint, ¶¶ 120-27, 130, 205); allegations that BAC discharged or assumed pre-merger Countrywide liabilities (MBIA Amended Complaint, ¶ 126); and BAC's rebranding of "legacy" Countrywide businesses with BAC trade names. See MBIA Amended Complaint, ¶¶ 119-31; BAC Memo (038), pp. 5-6 (citing to specific paragraphs of each Monoline Action), Ex. A.

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<sup>4</sup> Defendant Bank of America Corporation's Memorandum of Law In Support of its Motion to Sever the Successor Liability Claims in *Ambac*, *FGIC*, and *Syncora* and Consolidate Identical Successor Liability Claims Pending in Four Actions Before This Court ("BAC Memo (038)").

BAC also asserts, without contest, that the Monoline Action plaintiffs' primary liability claims against the Countrywide defendants are divorced from plaintiffs' claim against BAC for successor liability. Whereas plaintiffs assert claims against the Countrywide defendants for breach of contract, breach of the implied covenant of good faith and fair dealing and fraud (BAC Memo (038), p. 9, n.30), plaintiffs assert against BAC only a claim for successor liability.

BAC argues that the evidence differs between the primary and successor liability claims, with little if any overlap. Evidence pertaining to the primary liability issue will focus upon Countrywide and the Securitizations, including representations about the loans, and the loans themselves, which underlie the Securitizations. Evidence relevant to the successor liability claim will involve only whether and to what extent BAC assumed Countrywide's liabilities.

BAC contends that, because the Monoline Actions' successor liability claims are so similar, "discovery on all four claims will be identical." BAC Memo (038), p. 6. BAC states that Plaintiffs have requested many, if not all, of the same documents pertaining to Countrywide's merger into BAC and the continuing operation of Countrywide. *See* BAC Memo (038), p. 6-8, n.16 (detailing MBIA's, FGIC's and Ambac's document requests to BAC). BAC has produced or may produce the same document universe to all four plaintiffs.<sup>5</sup>

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<sup>5</sup> Syncora and BAC have entered into a stipulation staying discovery on Syncora's successor liability claim. Rosenberg Affirm., Ex. 9. The court addresses that stipulation solely in the *Syncora* decision on BAC's motion to sever and consolidate.

*See* Transcript of October 5, 2011, p. 11 (“MBIA, Ambac and FGIC all have exactly the same set of successor liability documents from Bank of America at this point.”). BAC has further answered eighteen MBIA interrogatories and fifteen MBIA requests for admission, and has agreed to answer interrogatories from the other Monoline Action plaintiffs. *Id.*, p. 51.

MBIA and the Monoline Action plaintiffs note that while the evidence proving or disproving the primary and successor liability claims may differ, it does not necessarily follow that discovery on the two types of claims is completely divergent and will only stem from different sources. It is without question that current BAC employees were formerly involved with Countrywide. MBIA has alleged that BAC witnesses, for whom BAC seeks by this motion to postpone deposition, have information relevant to both the primary- and successor liability claims. *See* Transcript of October 5, 2011, pp. 27-28. BAC aptly argues against MBIA’s contention, claiming that MBIA merely seeks to manufacture issues conflating the two. *Id.*, p. 52. Ultimately, the possible overlap will be determined upon deposition questioning.

MBIA contends that, particular to the instant action, discovery relevant to BAC’s unclean hands affirmative defense must be undertaken. BAC has asserted at oral argument that should its motion to sever and consolidate the successor liability claims be granted, it will forego that affirmative defense. *Id.*, p. 7.

MBIA is the first-filed of the Monoline Actions, and it is the front-runner in completing discovery. *Syncora*, *FGIC* and *Ambac* follow, respectively.

**Bank of America Corp's Motion to Sever the Successor Liability Claim  
and for a Limited Stay to Sequence Successor Liability Depositions and Expert  
Discovery**

(Motion Sequence Number 034)

**Bank of America Corp.'s Motion to Sever and Consolidate Allegedly Identical  
Successor Liability Claims Pending in Four Actions Before This Court**

(Motion Sequence Number 038)

**ANALYSIS**

**I. Standards of Law**

Pursuant to CPLR § 602(a):

[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Consolidation is generally favored by the courts where common issues of law and/or fact exist, unless the party opposing consolidation demonstrates that consolidation will prejudice a substantial right. *Amcan Holdings, Inc. v. Torys LLP*, 32 A.D.3d 337, 339 (1st Dep't 2006) citing *Amtorg Trading Corp. v. Broadway & 56th St. Assocs.*, 191 A.D.2d 212, 213 (1st Dep't 1993). "The mere fact that a case may be somewhat delayed by such consolidation" does not alone bar the consolidation. *Amtorg Trading Corp.*, 191 A.D.2d at 213. The decision to consolidate, however, rests soundly in the discretion of the trial court. *Amcan Holdings, Inc.*, 32 A.D.3d at 339.

CPLR § 603 states that:

In furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any

separate issue. The court may order the trial of any claim or issue prior to the trial of the others.

As with consolidation, severance rests in the sound discretion of the trial court. *See Seay v. Stateside Const. Corp.*, 282 A.D.2d 268, 268 (1st Dep't 2001).

## II. Arguments

BAC argues that consolidation of the Monoline Actions' successor liability claims will promote judicial economy and the interests of justice. BAC asserts that all four claims in the separate actions turn on common legal theories and issues of fact, and, thus, that one trial thereon will prevent undue burden on the court and will guard against the possibility of inconsistent verdicts. BAC further contends that consolidation of the successor liability claims will neither prejudice plaintiffs nor unduly delay trial on the successor-liability issue.

MBIA asserts three primary arguments in opposition to BAC's motions to sever and consolidate: (1) that MBIA will suffer significant prejudice by the consolidation; (2) that BAC will not suffer prejudice absent consolidation; and (3) that, due to BAC's unclean hands defense in this matter, BAC has not met the commonality requirement of CPLR § 602(a).

### 1. Common Issues of Fact and Law Exist

It is apparent that common issues of law and fact predominate in the Monoline Action plaintiffs' claims for successor liability. BAC has shown that each of the Monoline Actions' successor liability claims rests upon the same allegations of fact and upon the same legal theory. Plaintiffs, and, here, MBIA, do not dispute BAC's contentions. The burden therefore rests upon MBIA to show prejudice that would result from the consolidation. *Amcan Holdings, Inc.*, 32 A.D.3d at 339.

2. BAC Has Shown Commonality under CPLR § 602 (a)

MBIA argues that, because BAC argues an affirmative defense of unclean hands against it alone, BAC has not shown commonality of facts with the other Monoline Action plaintiffs. The court disagrees. It is clear that the successor liability claims of the Monoline Action plaintiffs are based upon the same issues of fact and common theories of law. The court is confident that if a single factfinder is to hear the primary-liability claim, that finder of fact would be fully able to differentiate as to one separate affirmative defense against one plaintiff.

3. MBIA Has Shown That it Will Suffer  
Prejudice to a Substantial Right Upon Consolidation

MBIA asserts that consolidation of the Monoline Actions' successor liability claims will cause MBIA significant prejudice by delaying its claim, potentially for years. MBIA is the first-filed of the Monoline Actions before this court and has pressed hard to complete its litigation. MBIA has completed greater discovery than *Syncora*, *FGIC* and *Ambac*, and stands to wait the greatest duration of time should the court sever and consolidate the successor liability claims. The court finds that MBIA has posited a sufficient showing of prejudice to deny in part BAC's motion to sever and consolidate.

MBIA has obtained from BAC significant discovery relevant to the successor liability issue, including documents and answers to interrogatories and requests to admit. *See* MBIA Opp. Memo. (038), pp. 3-5; BAC Memo. (038), p. 7. MBIA recently received additional

production relating to search terms it posed to BAC in July 2011.<sup>6</sup> Transcript of October 5, 2011, at p. 10. MBIA has stated that it is prepared to depose BAC witnesses, and it had proposed or scheduled depositions of BAC witnesses, though those depositions were stayed pending decision on this motion and motion sequence 034. While MBIA's discovery is scheduled to be completed by November 18, 2011, that date is expected to be postponed due to the delay resulting from the instant motions.

*Syncora, FGIC and Ambac*, in contrast, lag behind MBIA in the discovery process. This is not necessarily through the fault of any litigant, but primarily results from each respective actions' filing date.

In New York where common issues of fact exist, denial of consolidation is most often found where actions are at markedly different procedural stages. For example, in *Abrams v. Port Authority Trans-Hudson Corp.*, 1 A.D.3d 118 (1st Dep't 2003), the Appellate Division affirmed the trial court's denial of consolidation. The court based its decision on the fact that the Civil Court action at issue had been placed on the trial calendar, while the Supreme Court action had "barely advanced to the discovery phase." *Id.*, at 119. Consolidation was denied on the basis of preventing undue delay. *Id.*; see also *Ahmed v. C.D. Kobsons, Inc.*, 73 A.D.3d 440, 440-41 (1st Dep't 2010) (affirming denial of consolidation motion when one case was scheduled for trial and the other in its initial stages).

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<sup>6</sup> Plaintiffs in *FGIC* and *Ambac* have received the same documents. Transcript of October 5, 2011, at p. 10.

The court finds the prevention of undue delay to be decisive in this matter. While the Monoline Actions are all at the discovery phase, and are thus not at markedly differently procedural stages, the actions do markedly differ within their respective discovery processes. Whereas *MBIA* nears discovery completion, discovery in the three other Monoline Actions lags from close to very far behind. For instance, discovery in *Ambac*, filed two years after *MBIA*, has only just begun.

*MBIA* has worked diligently for over three years to move its case forward, and it will suffer significant prejudice in waiting, possibly for two years or more, for the other three Monoline Actions to arrive at the same point in discovery. Further, it is prejudicial to the front-running plaintiffs to necessarily place completed document discovery aside, to be re-visited and re-evaluated when the moment for depositions upon the successor liability materials arrives.

Thus, in the discretion of this court, a sound basis exists mandating the denial of consolidation of the successor liability claims in the Monoline Actions at this time. See *Barnes v. Cathers and Dembrosky*, 5 A.D.3d 122, 122 (1st Dep't 2004), affirming *Barnes v. Cathers*, 2003 WL 25627188, Index No. 600241/2002 (Sup. Ct., New York County, 2003) (affirming on the basis that the matters were at distinct stages of discovery; trial court also denied consolidation based upon differing facts). This does not, however, conclude the analysis. The court next examines how the successor liability claims are to move forward.

4. Substantial Justice Will not be Served by Consolidating Discovery

BAC argues that without consolidation or its proposed sequencing of discovery in the Monoline Actions, it will suffer prejudice by having its employees, many of whom are in key management positions, deposed multiple times. BAC states that it will also suffer prejudice should those same key employees be forced to testify multiple times in separate trials of the Monoline Actions. *See* Transcript of October 5, 2011, p. 16.

MBIA contends that BAC's motion as a whole is premature, and that discovery must move forward to establish a record of witness deposition testimony. MBIA argues that it is in the best interest of it and the case to take depositions while the witnesses' memories of key events and facts remain fresh. MBIA Opp. Memo. (038), p. 12-13. Further, MBIA contends that multiple witnesses have information pertinent to both issues of primary and successor liability, and to stop discovery on the successor liability issue will, instead of streamlining discovery, lead to multiple depositions of the same witnesses. *See* Transcript of October 5, 2011, pp. 27-28.

The court finds that consolidation of the successor liability claims at this point in the Monoline Actions' timeline will not prevent undue delay, promote judicial economy or prevent substantial prejudice and/or risk to BAC. It does, however, stand to prejudice the Monoline Action plaintiffs. *Amcan Holdings, Inc.*, 32 A.D.3d at 339.

The court holds that discovery in the Monoline Actions, including expert reports and discovery, is to move forward at this time.<sup>7</sup> MBIA has significant interest in continuing and completing discovery in full, including its claim for successor liability, and will be prejudiced if discovery were stayed. The three other Monoline Actions have the same interest.<sup>8</sup> As has been shown in document discovery on the successor liability claims, allowing discovery to move forward will, contrary to BAC's argument, increase efficiency. Rather than four plaintiffs with similar, but varying, interests attempting to work together to obtain discovery, efficiency may be increased by allowing one party to take the lead, and others to fill in their own discovery requests as needed and necessary.

The court is cognizant that multiple depositions of BAC employees interrupts the normal course of business. However, business often, and unfortunately, also includes litigation, and BAC is no stranger to litigations involving Countrywide. As the parties were instructed to approach the multiple depositions of Countrywide employees, the Monoline Action plaintiffs are to also take all due care to build upon, and not repeat, prior deposition testimony of BAC witnesses and witnesses pertinent to the successor liability claims.

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<sup>7</sup> Syncora has elected to opt out of successor liability discovery at this time, an issue the court addresses in the *Syncora* decision on BAC's motion to sever and consolidate, motion sequence number 013.

<sup>8</sup> See footnote 7, *supra*.

Thus, to the extent that successor liability discovery, including expert reports and discovery, is neither stayed nor sequenced until a later date, BAC's motions to sever and stay (motion sequence number 034) and to consolidate and sever (motion sequence number 038) are denied.

5. The Possibility of Prejudice of Separate Trials of the Monoline Actions' Successor Liability Claims May Later be Shown

BAC argues that should the Monoline Actions move forward separately, BAC will face the risk that different jury factfinders may draw different conclusions from the facts presented to them. BAC Memo (038), p. 13-14. BAC further contends that if it were to prevail in *MBIA*, should *MBIA* be the first Monoline Action to trial, then the following Monoline Action plaintiffs would be able to refine their case to have multiple attempts to reach a verdict for successor liability. BAC also argues that should *MBIA* prevail on its successor liability claim, the other Monoline Actions would claim collateral estoppel and attempt to prevent BAC from defending against the claim in following actions. *Id.*

Finally, BAC contends that it will suffer prejudice should the primary and successor liability claims be tried together, as any wrongdoing of Countrywide may be imputed by the finder of fact to BAC.

*MBIA*, in opposition, asserts that BAC's motion is premature. *MBIA* asserts that no trial dates have been set in the Monoline actions and that BAC's argument is unavailing due to the number of cases pending against BAC in different jurisdictions.

The court finds it is premature to decide the issue of consolidation of the Monoline Actions' successor liability claims at this time, and holds decision upon BAC's motion to sever and consolidate those claims for trial in abeyance.

Whereas MBIA has shown prejudice upon delaying discovery, and it is the court's finding that allowing discovery to move forward will best serve the interests of justice, the issue of trial on the claims stands separate from discovery. Further facts may be developed at trial, and the course of the cases may change. While it appears that facts suggest enough cohesiveness to warrant one trial, ultimately the issues is best decided at the time for trial. *See* CPLR 4011.

The court recognizes that different Monoline Action plaintiffs will approach the successor liability actions in different manners. The court thus declines to force all Monoline Action plaintiffs move as one for summary judgment, as has been suggested. The court will therefore entertain requests to address the issue of one or separate trials for the successor liability claims in the future. The court will hear argument to decide the issue at argument for summary judgment on the successor liability claim by the first Monoline Action case to so move, or, should the most advanced Monoline Action decide against a summary judgment motion on the issue, after the note of issue in the most advanced Monoline Action is filed, pertinent appeals are resolved and the trial date is set.<sup>10</sup>

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<sup>10</sup> The court notes that it does give short shrift to MBIA's argument that, due to the numerous cases pending against BAC in other jurisdictions, consolidation in the Monoline Actions does not prevent the risk to BAC of inconsistent verdicts. This court has no control over matters outside of its purview, but retains all control over those before it. To the extent that its

It is the court's discretion and decision, pursuant to the reasoning stated above, that allowing discovery to move forward, while holding the issue of trial for later decision, will minimize prejudice and best serve the economy of the parties. *Amcan Holdings, Inc.*, 32 A.D.3d at 339.

**ORDER**

Accordingly, it is hereby

ORDERED that Bank of America Corporation's motion to sever the successor liability claim and for a limited stay to sequence successor liability depositions and expert discovery (motion sequence number 034) is denied; and it is further

ORDERED that Bank of America Corporation's motion to sever and consolidate the successor liability claims in this matter and in *Syncora Guarantee Inc. v. Countrywide Home Loans, et al.*, Index No. 650042/2009 ("*Syncora*"), *Financial Guaranty Insurance Co. v. Countrywide Home Loans, et al.*, Index No. 650736/2009 ("*FGIC*") and *Ambac Insurance Corp., et ano v. Countrywide Home Loans, Inc. et al.*, Index No. 651612/2010 ("*Ambac*") (motion sequence number 038) is denied as to plaintiff's discovery on the successor liability claims and it is further

ORDERED that Bank of America Corporation's motion to sever and consolidate the successor liability claims in this matter and in *Syncora Guarantee Inc. v. Countrywide Home*

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decision may prevent prejudice in the Monoline Actions at trial, the court will consider that a factor in its ultimate decision upon whether the successor liability claims will be consolidated for trial.

*Loans, et al.*, Index No. 650042/2009 (“*Syncora*”), *Financial Guaranty Insurance Co. v. Countrywide Home Loans, et al.*, Index No. 650736/2009 (“*FGIC*”) and *Ambac Insurance Corp., et ano v. Countrywide Home Loans, Inc. et al.*, Index No. 651612/2010 (“*Ambac*”) (motion sequence number 038) pertaining to trial of the separate actions’ successor liability claims is held in abeyance until argument of the first summary judgment motion on the successor liability claim in this action or in *Syncora*, *FGIC* or *Ambac* or upon setting of a trial date in either the instant matter or in *Syncora*, *FGIC* or *Ambac*.

This constitutes the decision and order of the court.

Dated: New York, New York  
October 31, 2011

ENTER  
  
Hon. Eileen Bransten, J.S.C.