

**Ambac Assur. Corp. v Countrywide Home Loans,
Inc.**

2013 NY Slip Op 32802(U)

October 31, 2013

Sup Ct, New York County

Docket Number: 651612/2010

Judge: John A.K. Bradley

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: JOHN A.K. BRADLEY
Referee Justice

PART

Ambac Assurance Corp et al

INDEX NO. 651612/2010

MOTION DATE

MOTION SEQ. NO.

Countrywide + Bank of America

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).

Answering Affidavits — Exhibits No(s).

Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the decision and order attached.

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

Dated: 10/31/13

Signature of John A.K. Bradley, Referee Justice

- 1. CHECK ONE: CASE DISPOSED, NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED, DENIED, GRANTED IN PART, OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER, SUBMIT ORDER, DO NOT POST, FIDUCIARY APPOINTMENT, REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X
**AMBAC ASSURANCE CORPORATION and
THE SEGREGATED ACCOUNT OF AMBAC
CORPORATION,**

Index No. 651612/2010

Plaintiffs,

-against-

DECISION and ORDER

**COUNTRYWIDE HOME LOANS, INC.,
COUNTRYWIDE SECURITIES CORP.,
COUNTRYWIDE FINANCIAL CORP., and
BANK OF AMERICA CORP.,**

Defendants.

-----X
JOHN A. K. BRADLEY, REFEREE:

By a letter, dated September 27, 2013, Defendant Bank of America Corporation (“BAC”) requests partial reconsideration of my August 21, 2013, order granting in part Ambac’s June 28, 2013, application and requiring BAC to produce certain purchase-related documents, and clarification of the August 21 order regarding 12 documents. By a letter, dated October 7, 2013, Ambac opposes the application asserting that the application is based on new but previously available facts and arguments that is improper on an application for reconsideration. In reply, BAC argues that Ambac erroneously argues that BAC has improperly supplemented the record and misstates the scope of the bank-examiner and attorney-client privileges under New York law.

Having considered the request for the motion for reconsideration, the motion is granted to the extent that I am reconsidering and I will review the documents as to which my prior rulings have been contested. In the letters, the documents have been discussed in five categories. I will discuss them in the same categories.

Category 1

Document number

- 64a Privileged. The more detailed “Basis for Withholding” makes clear what the “description” provided in support of the prior submission of documents for *in camera* review did not. Specifically, this document contains matter that is “deliberative,” *In re Providian Financial Securities Litigation*, 222F.R.D. 22, and reveals the “opinions and recommendations of bank examiners and BAC’s [proposed] responses thereto. *MBIA v. Countrywide et al.*, N.Y. Supreme Court, Bransten, J., June 4, 2012.
- 64b Columns C, D and H are privileged. The rest of the spreadsheet is not privileged. C, D and H contain OCC’s opinions and recommendations and BAC’s responses thereto.
- 64c Columns titled “Issue summary (CIT data),” “Milestones summary (CIT data)” and LOB Weekly Detail Update” which correspond to columns C, D and H in document 64b are privileged. The rest of the spread sheet is not privileged.
- 64d The first, second and eighth items in the redacted section are privileged. The rest is not.
- 504a Privileged.
- 516a Privileged for the reasons stated in Exhibit A, page 2, of BAC’ letter dated September 27, 2013.

Category 2

- 50a The redactions indicated in pink highlighting are privileged for the following lines: 1, 9, 10, 13, 15, 16, 17, 18, 19, 20, 25, 30, 34, 39, 43, 53, 62, 64, 67, 68, 78, 79, 80, 81, 87. The other lines are not privileged.
- 70 All lines except line 23 are privileged. Line 23 is not privileged.
- 72 The highlighted sentence is privileged.
- 83 The highlighted sentence is privileged.
- 91a Privileged.
- 113a Privileged.
- 115 The highlighted sentence is privileged.
- 132 The highlighted sentences are privileged.
- 163 The highlighted sentences are privileged.
- 171b The highlighted sentence is privileged.
- 173a The highlighted sentences are privileged.
- 174a The highlighted sentences are privileged.
- 176 Privileged.
- 176a Privileged.
- 177 Not privileged. This e-mail appears to be discussing business matters not giving legal advice.
- 178 Not privileged. This e-mail appears to be discussing business matters not giving legal advice.
- 179 The highlighted sentences are privileged.
- 191a The highlighted sentences are privileged.

- 198a The highlighted sentences are privileged.
- 203a The highlighted sentences are privileged.
- 216 The highlighted sentence is privileged.
- 222 The highlighted sentences are privileged.
- 231 Not privileged. The highlighted sentences do not contain legal advice.
- 235 The highlighted sentences are privileged.
- 248 Not privileged except e-mails at 5:23 and 15:45:47 which are privileged. The other e-mails do not contain legal advice nor requests for legal advice.
- 254 Not privileged. These e-mails do not contain legal advice nor requests for legal advice.
- 283 Privileged.
- 283a Privileged.
- 288a The highlighted sentences are privileged.
- 307a The highlighted sentences are privileged.
- 310a Not privileged. These e-mails do not contain legal advice nor requests for legal advice.
- 319a The highlighted sentence is privileged.
- 342 The highlighted sentences are privileged.
- 389 Privileged.
- 397a Privileged.
- 401 Privileged.
- 406 Privileged.
- 409 Privileged.
- 465a The highlighted sentence is privileged (second bullet only).
- 473 The highlighted sentences are privileged.
- 476 Privileged.
- 499 Privileged.
- 500a The highlighted sentences are privileged.
- 518 Privileged.
- 520 Privileged.
- 526 Not privileged. The letter referred to in these e-mails may be privileged but the e-mails are not privileged.
- 527 The highlighted sentence is privileged.
- 529 This document is covered by the September 24, 2013, agreement.
- 540 Privileged.
- 549 The highlighted sentences are privileged.
- 564 The highlighted sentences are privileged.
- 566 The highlighted sentences are privileged.
- 570 The highlighted sentences are privileged.
- 571 Privileged.
- 596 This document is covered by the September 24, 2013, agreement.
- 598a This document is covered by the September 24, 2013, agreement.
- 598b This document is covered by the September 24, 2013, agreement.
- 598c This document is covered by the September 24, 2013, agreement.
- 598d This document is covered by the September 24, 2013, agreement.
- 635 The highlighted sentences are privileged.
- 654a This document is covered by the September 24, 2013, agreement.
- 654b This document is covered by the September 24, 2013, agreement.

- 657 The bottom e-mail is privileged.
- 659 This document is covered by the September 24, 2013, agreement.
- 660a This document is covered by the September 24, 2013, agreement.
- 660b This document is covered by the September 24, 2013, agreement.
- 663a This document is covered by the September 24, 2013, agreement.
- 663b This document is covered by the September 24, 2013, agreement.

Category 3

- 97 Privileged.
- 97a Privileged.
- 98a Privileged.
- 144 The top e-mail is privileged.
- 152 Privileged.
- 158 Privileged.
- 162 The highlighted sentences are privileged.
- 204 Privileged.
- 208 This document is covered by the September 24, 2013, agreement.
- 280 The highlighted sentences are privileged.
- 336 This document is covered by the September 24, 2013, agreement.
- 337 This document is covered by the September 24, 2013, agreement.
- 402 This document is covered by the September 24, 2013, agreement.
- 403 This document is covered by the September 24, 2013, agreement.
- 422 This document is covered by the September 24, 2013, agreement.
- 427 This document is covered by the September 24, 2013, agreement.
- 440 This document is covered by the September 24, 2013, agreement.
- 517 This document is covered by the September 24, 2013, agreement.
- 542 This document is covered by the September 24, 2013, agreement.
- 545 This document is covered by the September 24, 2013, agreement.
- 573a Privileged.
- 580 Privileged.
- 588 This document is covered by the September 24, 2013, agreement.
- 610 The highlighted sentences are privileged.
- 662 The highlighted sentences are privileged.
- 681 Privileged.
- 683 This document is covered by the September 24, 2013, agreement.

Category 4

- 53 Privileged.
- 53a Privileged.
- 54 Privileged.
- 54a Privileged.
- 55 Privileged.
- 55a Privileged.
- 57 Privileged.

57a Privileged.
 57b Privileged.
 58 Privileged.
 58a Privileged.
 59 Privileged.
 59a Privileged.
 59b Privileged.
 59c Privileged.
 59d Privileged.
 59e Privileged.
 59f Privileged.
 59g Privileged.
 60 Not privileged.
 60a Privileged.
 60b Privileged.
 60c Privileged.
 61a Privileged.
 61b Privileged.
 65 Privileged.
 65a Privileged.
 66 This document is covered by the September 24, 2013, agreement.
 66a This document is covered by the September 24, 2013, agreement.
 69 Privileged.
 69a Privileged.
 188 The highlighted sentences are privileged.
 195 The highlighted sentences are privileged.
 282 Privileged.
 445 This document is covered by the September 24, 2013, agreement.
 457 The highlighted sentence is privileged.
 459 This document is covered by the September 24, 2013, agreement.
 469 This document is covered by the September 24, 2013, agreement.
 575 This document is covered by the September 24, 2013, agreement.
 592 This document is covered by the September 24, 2013, agreement.
 601 This document is covered by the September 24, 2013, agreement.
 612 This document is covered by the September 24, 2013, agreement.
 620 This document is covered by the September 24, 2013, agreement.
 637 The highlighted sentences are privileged.
 641 Not privileged.
 676 Not privileged.

Category 5

89a Privileged.
 130a Privileged.
 190a The highlighted sentences are privileged.
 281 The highlighted sentences are privileged. "7:35" in prior decision should read "8:35."

- 343a This document is not covered by the September 24, 2013, agreement. Not privileged.
- 350 The e-mails at 9:56 and 8:25 are covered by the September 24, 2013, agreement. The rest of the e-mail string is not covered by the agreement and is not privileged.
- 387a Privileged. Document listed as "387" in the prior decision should have read "387a."
- 392a This document is not covered by the September 24, 2013, agreement but it is privileged.
- 461a Not privileged.

CONCLUSION

The documents that are not privileged should be produced to the other side within one week of the date of this decision and order.

DATED: 10/31/13

SO ORDERED

ENTER



 JOHN A. K. BRADLEY
 REFEREE