

BofA-MBIA securitisation litigation trudges on

March 18, 2013:

Monoline insurer MBIA's securitisation-related litigation with Bank of America (BofA) is turning into a corporate warfare. MBIA is the monoline insurer that had guaranteed several sub-prime mortgage backed securities, of which several, including BofA, were beneficiaries. In the aftermath of the subprime crisis, most of the monoline insurers suffered loss of AAA ratings, and therefore, had to recapitalise or restructure themselves.

The litigation has now dragged for over 4 years on multiple fronts.

Quick summary of the litigation

As there is a web of complicated, multi-track litigation going between MBIA and several of the securitisation originators, we try to make sense to it by briefly explaining what is happening:

- First and most important is MBIA's claim for damages from BofA. This case, *MBIA Insurance Corp. v. Countrywide Home Loans, Inc* is the one where MBIA has claimed damages to the tune of \$ 4.5 billions from Countrywide, now, BofA, alleging that Countrywide made serious misrepresentations in respect of mortgage loans underlying the securitisation transactions that MBIA had insured. There are 15 RMBS transactions involved in the suit. There are as many as 7 categories of misrepresentations that MBIA alleges - including loans carrying LTV of more than 100%, loans internally characterised as "severely unsatisfactory", etc. In view of the misrepresentations, MBIA alleges that the insurance agreements that MBIA signed with Countrywide were founded on a mistake, and hence, were void ab initio. MBIA states that MBIA has already paid nearly \$ 1.4 billion (till mid 2009) under the insurance policies.

This matter is currently under appeal court of New York.

- The other important litigation is one where the banks (several of them, including ABN AMRO, Barclays, BNP Paribas, Calyon, CIBC, and of course, BofA, allege that the restructuring whereby MBIA spun off a substantial part of its money by way of stock dividends to its parent, and sought reinsurance from a municipal bonds insurance entity, was fraudulent. On this litigation, there was a ruling 4th March 2013 [<http://www.mbia.com/investor/publications/Article-78-Decision-03-04-13.pdf>] in favour of MBIA. This litigation has commonly been referred to as Article 78 litigation, somewhat similar to a writ jurisdiction against actions of public authorities.

Corporate warfare:

In the meantime, BofA has engaged in corporate warfare as well. BofA through its subsidiaries bought substantial amount of bonds of MBIA

For MBIA, settlement of the litigation is important for its survival. An earnings call by MBIA [<http://investor.mbia.com/releasedetail.cfm?ReleaseID=743810>] showed net income for 2012, compared to a loss for 2011.

More readings:

- See also: A story in Forbes 4th March 2013 edition:
<http://www.forbes.com/sites/danielfisher/2013/02/13/billion-dollar-game-of-chicken/>
- See this complete blog dedicated to securitization litigation:
<http://www.structuredfinancelitigation.com>
- Another blog on MBIA - BofA litigation: <http://mbibaclitigton.blogspot.in/>

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