

# THE NATIONAL LAW REVIEW

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## Bank of America's Inconsistent Positions re: Faulty Residential Mortgage-backed Securities

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Bank of America recently moved to dismiss a lawsuit filed by Ambac Assurance Corp. in New York state court, alleging \$600 million in damages for fraudulent inducement in connection with payments it made under policies insuring faulty residential mortgage-backed securities issued by Countrywide. In its [complaint filed at the end of 2014](#), Ambac claims that it insured securities in eight RMBS trusts worth \$1.68 billion at the height of the housing boom from 2005 to 2007, in reliance on Countrywide securities offerings that contained false and misleading information. Ambac contends it would have never insured the transactions had it known Countrywide failed to follow strong underwriting guidelines as it claimed. The bond insurer filed a similar lawsuit against Bank of America in 2010 which is still ongoing.

### BofA Launches Stones From its Glass House



In its [motion seeking dismissal](#), Bank of America denigrates Ambac's lawsuit as a "sophisticated monoline insurer's hindsight effort to shift blame for its own recklessness." Bank of America goes on to state that Ambac, having sued every major participant in the RMBS market it did business with in the years leading up to the collapse of the housing market, is now "unwilling to accept the consequences of its own losing bets." In its heated argument for dismissal, Bank of America is also critical of Ambac for having "access to offering documents rife with relevant disclosures" and that it was "incumbent on an insurer of its size and sophistication" to conduct its own due diligence.

Like a chameleon that changes its colors to conform to the surrounding environment, Bank of America appears to be changing positions to meet the needs of each case. The use of the defenses cited above are astounding considering that Bank of America itself (which can easily be regarded as a "sophisticated" financial institution engaged in a "hindsight effort to shift blame," because it is "unwilling to accept the consequences of its own losing bets") has alleged in various lawsuits and pre-litigation payment demands that correspondent lenders misrepresented the quality of the loan products it structured, such as stated income loans, no doc loans, and "fast and easy" loans. Countrywide originated such loans on a retail basis, and also was a voracious purchaser from correspondent lenders and other parties during the housing boom. In these lawsuits, Bank of America engages in revisionist history by attempting to shift the blame onto correspondent lenders for its own recklessness. For each transaction, Countrywide, a bank of considerable size and sophistication, had access for years as purchaser and usually servicer, to documents that contained the same alleged "misrepresentations" and "defects" that form the very questionable basis for its lawsuits filed years later.

Correspondent lenders defending buyback lawsuits brought by Bank of America should consider the bank's use of these key defenses as a validation of the merit of those defenses. In any such lawsuit, correspondent lenders now have an even greater ability than they already did to hold Bank of America's strikingly inconsistent positions against it.

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