

Litigators of the Week: 5 Weeks Into Countrywide Trial, Quinn and Patterson Belknap Bring Home \$1.84B Settlement for Ambac

A trial team led by Michael Carlinsky and Manisha Sheth at Quinn Emanuel and Peter Tomlinson at Patterson Belknap landed the market-moving payout for monoline insurer Ambac in the case dating back to the mortgage meltdown.

By Ross Todd
October 14, 2022

Let's call it the trial of a decade-and-a-half ago. Last week our Litigators of the Week—Michael Carlinsky and Manisha Sheth at Quinn Emanuel Urquhart & Sullivan and Peter Tomlinson at Patterson Belknap Webb & Tyler—were five weeks into a trial before Justice Robert Reed in Manhattan Supreme Court that was expected to run into December. Their client, monoline insurer Ambac, had insured securities issued by Countrywide Financial between 2004 and 2006 backed by mortgage loans. Ambac alleged that more than 80% of those loans didn't meet the standards required under the applicable insurance contracts. It was seeking to have Bank of America Corp., which acquired Countrywide, to repurchase them. On Friday, Ambac netted a \$1.84 billion settlement from BofA, sending its stock-price soaring 24% before the market opened.

Lit Daily: Who is your client and what was at stake?

Peter Tomlinson: This was literally a bet-the-company case for Ambac as the recoveries it was seeking were essential for the future of the company. Ambac is a monoline insurer that suffered devastating losses in the wake of the 2007 financial crisis, including huge losses on insurance



(L-R) Michael Carlinsky, Manisha Sheth of Quinn Emanuel and Peter Tomlinson of Patterson Belknap.

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policies it issued for residential mortgage-backed securities (RMBS). Ambac's remediation efforts to recover its losses on RMBS policies have been an essential part of the legacy insurance company's business objectives for the past decade, and the Bank of America settlement is an important milestone in those efforts.

Who was on your team and how did you split up the work?

Michael Carlinsky: The Quinn trial team joined this case two years ago, to pair up with the

Patterson Belknap team led by Peter Tomlinson, who has been involved since 2010. The two teams worked very collaboratively and never let egos get in the way. As we approached the start of trial, both teams were focused on the presentation of evidence and witnesses, with lawyers from both firms having active roles at trial. The core Quinn trial team also included **Meredith Shaw, Sascha Rand, Toby Futter, Andrew Kutscher, Alex Ng, Hayden Miller, Luke Phillips, Tenisha Williams, Casey Quinn, Christina Crowley, Lin Zhu and Liam Murphy.** The core Patterson trial team included: **Muhammad Faridi, Josh Kipnees, Harry Sandick, Alex Shapiro, Jason Vitullo, Jacqueline Bonneau, David Kleban, Leigh Barnwell, Nadav Ben Zur, Hannah Brudney, Jacob Chefitz, Warren Chu, Michael Fisher, Jon Hermann, Greg Margolis, Scott Kim, Yoni Schenker and Jonah Wacholder.**

We're talking about securities Ambac insured back between about 2004 and 2006 backed by Countrywide loans. What took this matter so long to get to trial?

Tomlinson: There were a lot of different drivers for the 12 years it took this case to get to trial, including a global pandemic. We filed the case in 2010 at a time when the New York Commercial Division was flooded with litigation related to the financial crisis. The case also raised a number of cutting-edge legal issues that were vigorously litigated, including an extraordinary number of appeals. In what has to be a record or near record for a single case, it went to the New York Court of Appeals two separate times and to the First Department seven times. Two of the trial court judges who presided over the case retired. When the case was assigned to Justice Reed, he jokingly vowed that he would not let this case send him to his retirement. He kept his word.

The Countrywide saga already had been the subject of plenty of regulatory probes and litigation. How did you and your client benefit from all that here?

Manisha Sheth: The testimony and documentary evidence from other litigations and proceedings involving Countrywide was voluminous. Although it was challenging to master such an extensive record, both firms had teams of stellar associates who had every key piece of testimony and every critical document at their fingertips. The challenge was selecting the specific witnesses and deposition designations that told the most compelling story for trial. At trial, we had the opportunity to play a number of video clips of these depositions for the court as part of Ambac's case-in-chief.

Michael and Manisha, you opted to split up the opening statement. Who handled what? And how did you land on that approach?

Carlinsky: Given Manisha's extensive trial and RMBS experience, I desperately wanted her on the team and to serve as co-lead with me. When it came to the opening, we decided I would present the first part, allowing me to set the stage and summarize some of the most important evidence. Manisha then took over, calmly walking the court through the critical technical aspects of our case and tying it all together. Our styles, while very different, were very complementary.

Sheth: As in any trial, the opening not only previews the evidence for the fact finder, but more importantly, it tells a compelling story with a cohesive trial theme. Mike and I brainstormed to formulate the trial theme and from there, we crafted the narrative of the story. The challenge here was simplifying a complex series of contracts that governed each securitization, not bogging the fact finder down with superfluous details and distinctions, and distilling the core facts to create a riveting presentation that captured the fact finder's attention. Despite the fact that we went well over the allotted time, I was thrilled to see that Justice Reed appeared to be deeply engrossed in every minute of our opening presentation.

Of the 17 securitizations at play here at trial, four of them dealt with subprime loans and the rest were made up of second liens—inherently risky stuff. How were you putting together your case that there were breaches of the underlying contracts here?

Sheth: The trial was a breach of contract case in which the key issue was whether the loans Countrywide included in the securitizations materially complied with the representations and warranties Countrywide made to Ambac in the contracts. Our strategy was two-fold. First, we retained an expert in the field of underwriting and re-underwriting mortgage loans who reviewed a statistically valid random sample of loans in each of the 17 securitizations to determine whether the loans complied with the representations and warranties. Second, we did not want this trial to be a battle between the experts for each side, and so we also amassed key documentary evidence and deposition testimony relevant to our experts' opinions.

Who were your key experts and how did you find them?

Tomlinson: Each side had over a dozen experts, but these cases are ultimately all about the loans. We had two key experts on the loans: Jim Johnson and Corey Harrison. What is remarkable is that our trial was the first time either witness had ever testified at trial. Conventional wisdom tells you that, in cases like these, you should only hire experts with substantial testifying experience. We thought Jim and Corey were so uniquely qualified that we took the risk. We believe it was the right call. It was refreshing to have experts who are real people with real experience who do not come across as hired guns. My partner Muhammad Faridi conducted Jim's and Corey's direct

examinations at trial. The two witnesses were on the stand for nearly 10 days.

Ambac's damages expert calculated the damages on these 17 deals to be more than \$2.72 billion. Nobody's going to scoff at any 10-digit settlement under such circumstances. But was there part of you that wanted to try this case to a decision from the judge?

Carlinsky: I have often analogized a trial to the Super Bowl or Game 7 of the Stanley Cup. So naturally, you want to finish the contest you and your team trained and worked so hard to win. But we are always guided by what is in our client's best interest. And when, as here, we are presented with a great opportunity to resolve this 12-year old dispute without further delay and the inherent risks of litigation, the answer became obvious.

What will you remember most about this matter?

Carlinsky: Muhammad Faridi's direct examination of our key expert witness. The thoroughness of his preparation was incredible to witness.

Sheth: Harry Sandick's direct examination of our first witness, Nobel Laureate Joseph Stiglitz. Professor Stiglitz is a very engaging and dynamic witness who has a knack for explaining very complicated issues in an easy-to-understand and colloquial manner. Harry conducted a textbook direct examination that allowed the witness to shine.

Tomlinson: Meredith Shaw's mastery of the factual record and her arguments on numerous evidentiary issues throughout the trial. Her exhaustive preparation and persuasive presentation were the reasons that many key documents were admitted into evidence at trial.