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# Bailout Terms Kill AIG's \$11B MBS Suit, BofA Says

By [Ciaran McEvoy](#)

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Law360, Los Angeles (January 29, 2013, 5:49 PM EST) -- [Bank of America Corp.](#) asked a California federal judge Tuesday to throw out [American International Group Inc.](#)'s \$10.5 billion lawsuit accusing the bank of lying about the quality of mortgage-backed securities it sold the insurer, saying the terms of AIG's 2008 federal government bailout barred its securities law claims.




At a Tuesday hearing, Richard C. St. John, a lawyer representing Bank of America, argued that AIG should not be allowed to go beyond the terms of its bailout to recoup money it lost by purchasing the securities from Countrywide Financial Corp., which Bank of America purchased in 2008, St. John said.

In its motion to dismiss the case, filed in October 2012, Bank of America argued that when AIG transferred the securities to Maiden Lane II, a special purpose vehicle the [New York Federal Reserve Bank](#) created in order to buy more than 850 of AIG's MBS tranches, it also assigned away its rights to sue over those securities.

Allowing AIG to sue for its MBS losses after it got a federal bailout would permit "double-dipping," St. John said.






But Michael B. Carlinsky, a lawyer for AIG, said the assignment clause was vague and thus did not bar the insurance giant from suing other entities for alleged fraud.

"Unless there is an explicit assignment, the claims are reserved to the victim-assignor," he said.

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## Case Information

### Case Title

[American International Group, Inc. et al v. Bank of America Corporation et al](#) 

### Case Number

2:11-cv-10549

### Court

California Central

### Nature of Suit

Fraud or Truth-In-Lending




### Judge

[Mariana R. Pfaelzer](#)




### Date Filed

December 21, 2011

### Law Firms

- [Munger Tolles](#) 
- [Quinn Emanuel](#) 
- [Reed Smith](#) 

### Companies

- [American International Group Inc.](#) 
- [Bank of America Corporation](#) 
- [Insurance Australia](#) 

Between 2005 and 2007, AIG bought residential RMBS certificates for \$28 billion, according to its original complaint against BofA, Countrywide and Merrill Lynch & Co. Inc. The complaint, filed in August 2011 in New York state court, accused the defendants of ignoring underwriting standards and selling AIG hundreds of securities largely backed by residential mortgages issued to bad borrowers.

The case was partly removed to federal court and transferred to Judge Pfaelzer after U.S. District Judge Barbara S. Jones ruled that the jurisdiction provisions in the Edge Act, which grant federal jurisdiction to civil cases involving national banks that arise from transactions involving international banking or banking in U.S. territories, applied to the case.

Carlinsky, the AIG lawyer, told U.S. District Judge Mariana R. Pfaelzer on Tuesday that the "appropriate approach" would be to stay the California federal litigation in order to let AIG and Maiden Lane II slug it out in a separate lawsuit the insurer filed in New York state court on Jan. 11. That suit also seeks to recoup the losses AIG took on the MBS when it sold them to the federal government.

Judge Pfaelzer took the matter under submission.

AIG is represented by James R. Asperger, Michael B. Carlinsky and Maria Ginzburg of [Quinn Emanuel Urquhart & Sullivan LLP](#).

BofA is represented by Marc T.G. Dworsky, Stephen M. Kristovich, Richard C. St. John and David H. Fry of [Munger Tolles & Olson LLP](#).

Countrywide is represented by James L. Sanders, David M. Halbreich and Amy J. Greer of [Reed Smith LLP](#).

The case is American International Group Inc. v. Bank of America Corp., case number [2:11-cv-10549](#), in the U.S. District Court for the Central District of California.

--Additional reporting by David McAfee and Sindhu Sundar. Editing by Kat Laskowski.

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