

Simpson Thacher Obtains Landmark RMBS Appellate Victory

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The New York Court of Appeals issued a standards-defining ruling on June 27 in a closely watched case in favor of Simpson Thacher client Countrywide Home Loans, Inc. and related entities on fundamental issues that RMBS market participants have litigated for a decade. In *Ambac Assurance Corp. v. Countrywide Home Loans, Inc.*, plaintiff, a financial guaranty insurer, brought fraud and breach of contract claims in 2010 arising out of Ambac's agreement to provide financial guaranty insurance in connection with 17 Countrywide residential mortgage-backed securitizations issued by Countrywide. Rejecting Ambac's argument that New York recognizes an insurer-only version of common law, the Court of Appeals held that insurers asserting a common law fraud claim must allege and prove both justifiable reliance and loss causation. The court also agreed with Countrywide that having issued an irrevocable financial guaranty of securities, Ambac cannot recover compensatory damages in the form of all claims payments it made or will make under its policies, regardless of whether they arise from a warranty breach or misrepresentation. Addressing breach of contract claims, the Court of Appeals held that the contractual "repurchase protocol" of cure, repurchase or substitution of defective loans is Ambac's "sole remedy" for alleged breaches of R&Ws. The court also held that Ambac is not entitled to contractual reimbursement of attorneys' fees in litigation between the parties.

Litigation Partner Joe McLaughlin was profiled as the "Litigator of the Week" by *The Am Law Litigation Daily* in recognition of this victory. To read the article, please [click here](#) (subscription required). The decision also received media coverage in *Law360*. To read the article, please [click here](#) (subscription required).

The Simpson Thacher team includes Joe McLaughlin (who argued the appeal), Shannon McGovern, Rachel Sparks Bradley, Sarah Sheridan and Becky Sussman.

Team and Contacts

Joseph McLaughlin

Partner

jmclaughlin@stblaw.com

+1-212-455-3242

Rachel Sparks Bradley

Partner

rachel.sparksbradley@stblaw.com

+1-212-455-2421

