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AIG Sues NY Fed Over Right To Billions In RMBS Claims

By [David McAfee](#)

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Law360, Los Angeles (January 11, 2013, 10:49 PM EST) -- [American International Group Inc.](#) and a group of affiliated insurance companies on Friday petitioned a New York court to clarify an asset purchase agreement with a Federal Reserve vehicle over the ownership of billions of dollars in claims related to residential mortgage-backed securities.

In Friday's complaint, AIG seeks to eliminate uncertainty regarding the insurance company's ownership of tort claims against numerous financial institutions that allegedly made material misrepresentations and omissions in securitizing and marketing RMBS to AIG between 2005 and 2007.

AIG said the tort claims were never intended to be allocated to Maiden Lane II, a vehicle created by the [Federal Reserve Bank of New York](#) to purchase nearly \$21 billion in AIG's mortgage-backed securities to ease liquidity concerns as part of a 2008 government bailout, according to the complaint.

"In executing the [asset purchase agreement], neither party intended that AIG would assign to Maiden Lane II tort claims arising from third parties' wrongful sale of RMBS to AIG," the complaint says. "This mutual intention is manifested in both parties' course of conduct in the four years since the signing."

The tort claims in question, AIG says, resulted from financial institutions abandoning underwriting guidelines, ignoring credit quality metrics and packing the RMBS with thousands of defective mortgages.

In 2008, when the defective loans experienced delinquency, default and

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foreclosure, the performance of the RMBS plummeted, causing AIG and its subsidiaries financial harm, according to Friday's complaint.

In December 2008, to help resolve monetary problems in AIG's securities lending program, the New York Fed created Maiden Lane II as a special purpose vehicle to purchase more than 850 different RMBS tranches from AIG for their \$20.8 billion market value, AIG said. The amount was \$18 billion less than their purchase price, according to AIG.

Finding that its losses were a direct result of various financial institutions' fraud, AIG investigated the extent of its viable claims against the parties. In August 2011, AIG filed a \$10 billion lawsuit against [Bank of America Corp.](#), calling the bank one of the most "blatant offenders," according to Friday's filing.

Until December, the New York Fed had no issues with AIG's right to seek damages from the originators of the devalued RMBS, the complaint says.

"Last month, however, the [New York Fed] publicly reversed itself and provided [Bank of America] with declarations from two [Fed] executives stating, among other things, that AIG transferred to Maiden Lane II through the [asset purchase agreement] all 'litigation claims' relating to the RMBS that Maiden Lane II acquired," the complaint says.

AIG goes on to say that the New York Fed's explanation is at odds with how "sophisticated counsel" typically proceed when faced with an assertion contrary to their position on a matter involving billions of dollars.

AIG says the New York Fed's declarations don't undermine AIG's ownership of the claims. According to AIG, any argument that it had assigned its tort claims to Maiden Lane is contrary to the plain language of Maiden Lane's asset purchase agreement with AIG, which does not contain any re-assignment of the tort claims.

AIG seeks a declaratory judgment that the 2008 purchase agreement didn't assign to Maiden Lane any potential claims or causes of action sounding in tort and that AIG is the owner of all such claims.

In the alternative, the complaint says, if the court determines that the purchase agreement inadvertently assigned any tort claims to Maiden

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Lane, AIG seeks reformation of the agreement such that it does not assign any of the claims to Maiden Lane.

AIG is not seeking monetary damages.

Representatives for the parties didn't immediately return calls for comment Friday.

AIG is represented by Michael B. Carlinsky, Kevin S. Reed, Maria Ginzburg, Isaac Nesser and Ian Marcus Amelkin of [Quinn Emanuel Urquhart & Sullivan LLP](#).

Counsel information for Maiden Lane II was not immediately available.

The case is American International Group Inc. et al. v. Maiden Lane II LLC, case number 650115, in the Supreme Court of the State of New York, County of New York.

--Editing by Kat Laskowski.

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