

**MBIA Ins. Corp. v Countrywide Home Loans, Inc.**

2012 NY Slip Op 33147(U)

December 6, 2012

Supreme Court, New York County

Docket Number: 602825/08

Judge: Eileen Bransten

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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY  
PRESENT: HON. EILEEN BRANSTEN, JUSTICE PART 3

-----X  
MBIA INSURANCE CORPORATION,

Plaintiff,

-against-

Index No.: 602825/08  
Motion Date: 11/28/12  
Motion Seq. No.: 063

COUNTRYWIDE HOME LOANS, INC.,  
COUNTRYWIDE SECURITIES CORP.,  
COUNTRYWIDE FINANCIAL CORP.,  
COUNTRYWIDE HOME LOANS  
SERVICING, LP AND BANK OF AMERICA  
CORP.,

Defendants.


-----X  
The following papers, numbered 1 to 7, were read on this motion to seal.

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause - Affidavits - Exhibits	1
Answering Affidavits - Exhibits	2
Replying Affidavits	3
Supplemental Motion – Affidavits – Exhibits	4, 5
Second Supplemental Motion – Affidavits – Exhibits	6, 7

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in  
accordance with the accompanying memorandum decision.

Dated: December 6, 2012

  
Hon. Eileen Bransten

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE  SETTLE/SUBMITORDER/JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE \_\_\_\_\_ FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY  
PRESENT: HON. EILEEN BRANSTEN, JUSTICE PART 3

-----X  
MBIA INSURANCE CORPORATION,

Plaintiff,

-against-

Index No.: 602825/08  
Motion Date: 11/28/12  
Motion Seq. No.: 064

COUNTRYWIDE HOME LOANS, INC.,  
COUNTRYWIDE SECURITIES CORP.,  
COUNTRYWIDE FINANCIAL CORP.,  
COUNTRYWIDE HOME LOANS  
SERVICING, LP AND BANK OF AMERICA  
CORP.,


Defendants.  
-----X

The following papers, numbered 1 to 5, were read on this motion to compel discovery.

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause - Affidavits - Exhibits	1
Answering Affidavits - Exhibits	2
Replying Affidavits	3
Supplemental Motion – Affidavits – Exhibits	4, 5
Cross-Motion: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

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MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE \_\_\_\_\_ FOR THE FOLLOWING REASON(S): \_\_\_\_\_

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 3

-----X  
MBIA INSURANCE CORPORATION,

Plaintiff,

-against-

Index No.: 602825/08  
Motion Date: 11/28/12  
Motion Seq. No.: 063, 064

COUNTRYWIDE HOME LOANS, INC.,  
COUNTRYWIDE SECURITIES CORP.,  
COUNTRYWIDE FINANCIAL CORP.,  
COUNTRYWIDE HOME LOANS  
SERVICING, LP and BANK OF AMERICA  
CORP.,

Defendants.

-----X  
PRESENT: HON. EILEEN BRANSTEN

Motion sequence numbers sixty-three and sixty-four are consolidated for  
disposition.

This matter comes before the Court on the motions to seal filed by defendants  
Countrywide Home Loans, Inc. ("CHL"), Countrywide Securities Corporation ("CSC"),  
Countrywide Financial Corporation ("CFC") and Countrywide Home Loans Servicing,  
LP ("CHLS", and, with CHL, CSC and CFC, "Countrywide") (motion seq. no. 063) and  
plaintiff MBIA Insurance Corporation's ("MBIA") (motion seq. no. 064). Each party  
seeks to seal certain documents and portions of documents included as exhibits to the  
summary judgment motions recently filed by MBIA and Countrywide in this litigation  
(motion seq. no. 057, 058). Both motions are opposed by the parties, as well as by  
Intervenor Bloomberg LP ("Bloomberg").

### **BACKGROUND**

The facts of this matter have been discussed extensively in previous decisions of this court. Thus, only details necessary to this motion are referenced herein.

MBIA brought the instant action on September 30, 2008 against the Countrywide defendants. MBIA alleged, and alleges, that Countrywide fraudulently induced MBIA to insure fifteen securitizations and that Countrywide breached the representations and warranties in the securitizations' transaction documents. On August 24, 2009, MBIA filed an amended complaint. The parties then entered into a protective order, governing the production, exchange, and discovery of documents, which was entered by the Court on March 3, 2010. Following several years of discovery, the Note of Issue was filed on September 17, 2012. Shortly thereafter, both MBIA and Countrywide filed motions for summary judgment pursuant to CPLR 3212. These summary judgment motions introduce as court records documents produced by the parties pursuant to the protective order.

In connection with these summary judgment motions, MBIA and Countrywide each have sought to have certain of these previously confidential documents, or excerpts of such documents, filed under seal, as these documents otherwise would become part of the public court record.<sup>1</sup> Countrywide and MBIA's motions differ to a large degree but

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<sup>1</sup> In addition to its motion to seal filed on November 6, 2012, Countrywide filed a supplemental motion to seal in response to certain documents filed for the first time with MBIA's reply brief in further support of its motion for summary judgment. (Doc. No. 2215-

there are certain categories of information for which they agree that sealing is appropriate:

- personal identifying and private financial information of third-party borrowers, including name, address, social security number, and date of birth;<sup>2</sup> and,
- personal identifying information of witnesses and experts, including home address, date of birth, and social security number.

Beyond these two categories, Countrywide alone requests that the following categories of information be sealed:

- borrower employment-related information, including occupation and employer;
- borrowers' loan numbers;
- transcripts subject to a protective order in another litigation;
- documents and transcripts revealing Countrywide's and Bank of America's current, non-public financial information;
- documents and transcripts containing specific information about Countrywide's current repurchase analyses, policies, procedures, objectives, strategies, or processes concerning other counterparties' repurchase requests; and,

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2218.) MBIA likewise has filed a motion to seal certain documents filed with its reply. (Doc. No. 2219-2221.)

<sup>2</sup> MBIA also seeks to redact bank account numbers contained in claim letters exchanged between the trustee of the securitizations at issue and MBIA. At oral argument, Countrywide informed the Court that it does not oppose these redactions. (Transcript of 11/15/12 Oral Argument ("Tr.") 72: 22-73: 3.)

- documents and transcripts containing information about Countrywide's loss reserves and the processes used to set such reserves.

In support of their motions, MBIA and Countrywide jointly submitted a chart outlining their respective positions as to each of the 1069 documents at issue. (Affidavit of Sarah Heaton Concannon in Support of Countrywide's Motion to Seal, Ex. 1.) At oral argument, the Court requested that the parties provide more detailed justifications for certain categories of documents, particularly documents related to repurchase analyses, repurchase and loss reserves, as well as current non-public financial information.

Following the hearing, Countrywide submitted its Second Supplemental Motion to Seal, winnowing the list of specific documents to be reviewed *in camera* to eleven. The court will address the proposed redactions in these eleven documents after considering the broader categories of documents submitted by the parties.

## ANALYSIS

### **I. Standard of Law**

There is a broad presumption under New York law favoring public access to judicial proceedings and court records. *Mosallem v. Berenson*, 76 A.D.3d 345, 348 (1st Dep't 2010). This presumption stems from the State's long recognition that "civil actions and proceedings should be open to the public in order to ensure that they are conducted

efficiently, honestly and fairly.” *Id.* The media’s right of access and the public’s right are considered to be “on the same footing.” *Danco Labs. v. Chemical Works of Gedeon Richter*, 274 A.D.2d 1, 6 (1st Dep’t 2000).

While the public’s right of access is broad, it is not absolute. *Mosallem*, 76 A.D.3d at 349. Under Section 216.1(a) of the Uniform Rules for Trial Courts, a court may seal court records: “upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties.” 22 N.Y.C.R.R. 216.1(a).

Although “good cause” is not defined in Section 216.1(a), “[a] finding of ‘good cause’ presupposes that public access to the documents at issue will likely result in harm to a compelling interest of the movant.” *Mancheski v. Gabelli Group Capital Partners*, 39 A.D.3d 499, 502 (2d Dep’t 2007). “Confidentiality is clearly the exception, not the rule, and the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access.” *Monallem*, 76 A.D.3d at 349. To satisfy this burden, the proponent of the sealing motion must demonstrate a “sound basis or legitimate need to take judicial action.” *Danco Labs.*, 247 A.D.2d at 8 (internal quotation omitted).

“[N]either the potential for embarrassment or damage to reputation, nor the general desire for privacy, constitutes good cause to seal court records.” *Monsallem*, 76 A.D.3d at



351. However, sealing has been deemed appropriate to shield trade secrets or where the release of documents could “threaten a business’s competitive advantage.” *Id.* at 350.

In determining whether information qualifies as a trade secret, the court may consider:

- (1) the extent to which the information is known outside of [the] business;
- (2) the extent to which it is known by employees and others involved in [the] business;
- (3) the extent of measures taken by [the business] to guard the secrecy of the information;
- (4) the value of the information to [the business] and to [its] competitors;
- (5) the amount of effort or money expended by [the business] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

*Wiener v. Lazard Freres & Co.*, 241 A.D.2d 114, 124 (1st Dep’t 1998). As the Court of Appeals explained, “[a] trade secret may consist of any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” *New York Tel. Co. v. Pub. Serv. Comm’n of the State of New York*, 56 N.Y.2d 213, 219 n.3 (1982).

Determination of whether the release of documents threatens a harm to a business’s competitive business advantage hinges on a finding that such information: is proprietary; involves current or future business strategies; is closely guarded; and, if

disclosed, would give a competitor an unearned advantage. *Mancheski*, 39 A.D.3d at 503. Such information has been described as “akin to a trade secret.” *Id.*

Where sealing is authorized, a document need not be withheld from the public in its entirety, as “[r]edaction is a viable option, predicated upon the required level of need.” *Danco Labs*, 274 A.D.2d at 8.

## II. Document Categories That MBIA and Countrywide Both Seek to Seal

As noted above, MBIA and Countrywide’s sealing motions overlap with respect to two categories of documents: (1) documents containing personal identifying information related to third-party borrowers and (2) documents containing the same information with regard to witnesses and experts. While the parties agree that such information should be sealed, their agreement is not sufficient to demonstrate “good cause” under Section 216.1. *See Mancheski*, 39 A.D.3d at 501 (explaining that Section 216.1 was promulgated to ensure judicial review of documents even where parties agree to sealing). The Court must make its own findings as to each category of information.

A. *Personal Identifying and Private Financial Information of Third-Party Borrowers*

The documents at issue in this category contain certain identifying information pertaining to the borrowers of those loans eventually securitized into the fifteen transactions at issue in this litigation. The parties agree that this personal and financial information, including the borrowers' names, home addresses, social security numbers, and dates of birth, should be sealed.

The Court agrees with MBIA and Countrywide and finds that good cause has been shown for redaction. There is no compelling public interest in disclosure of borrowers' personal and financial information. In fact, there is a compelling interest in sealing third-party personal and financial information since "disclosure could impinge on the privacy rights of third parties who clearly are not litigants herein." *Mancheski*, 39 A.D.3d at 502. Further demonstrating this compelling interest, the Court notes that this type of information is subject to certain statutory privacy protections, including but not limited to the Gramm-Leach-Bliley Act, *see* 15 U.S.C. §§ 6801(a).

MBIA additionally requests sealing of certain bank account numbers referenced in claim letters exchanged between the securitizations' trustee and MBIA. Revelation of these account numbers could expose the trustee to risk of fraud, and there is no

compelling public interest in exposure of this information. MBIA's request is granted and the trustee bank account numbers referenced in MBIA's papers shall be redacted.

Countrywide has requested that certain "voluminous spreadsheets" containing this information be sealed in their entirety due to "the substantial burdens of production, expense, and risk of inadvertent disclosure . . ." (Countrywide Memorandum of Law in Support of Motion to Seal ("Countrywide Moving Br."), p. 9.) The burdens articulated by Countrywide do not fall within the ambit of "good cause," as considered by the First Department. Countrywide has not shown that the borrowers' personal information or the other information in these spreadsheets are trade secrets, *see Wiener*, 241 A.D.2d at 124, or threaten its business advantage, *see Mancheski*, 39 A.D.3d at 503. Thus, Countrywide's motion to seal these "voluminous spreadsheets" in their entirety is denied. Instead, Countrywide shall redact these spreadsheets to remove the personal identifying information listed above.

B. *Personal Identifying and Private Financial Information of Witnesses and Experts*

MBIA and Countrywide seek to redact witness- and expert-specific documents that reference witnesses' names, addresses, social security numbers, and dates of birth. These documents are primarily deposition testimony.

For the reasons noted above, witnesses' home addresses, social security numbers, and dates of birth are sealed.<sup>3</sup> There is a compelling public interest in shielding parties subpoenaed for depositions from having personal identifying information revealed that could expose them to a risk of fraud. The same holds true for expert deposition testimony; however, the business address of the particular expert shall not be sealed.

The analysis is different, however, for witness names. Where a party decides to use deposition testimony or an affidavit on a motion for summary judgment, the name of witness becomes part of the court record. Thus, to seal the witness' name, the burden is on the movant to demonstrate good cause. No such cause has been shown here. A witness' preference for submitting testimony anonymously, whether out of concern for his or her business reputation or not, is insufficient in and of itself to demonstrate good cause under Section 216.1. *See Mosallem*, 76 A.D.3d 345, 351 (1st Dep't 2010) (rejecting concern regarding embarrassment or damage to business reputation as a basis for sealing).

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<sup>3</sup> MBIA also requested that the names and other personal identifying information of former employees and contractors of third-party due diligence firms be sealed. While MBIA withdrew this portion of their motion on the record, Tr. 72: 15-21, the Court notes that these individuals would be treated like the other non-expert witnesses discussed in this section.

### III. Countrywide's Motion to Seal

#### A. *Borrowers' Occupations and Employers*

Countrywide requests that information related to borrowers' occupations and employers be sealed. This request is denied, except to the extent that the description of borrowers' employment information is so specific as to reveal the identity of individual borrowers. For example, Countrywide notes in its papers that a particular borrower is identified in a deposition transcript as working for a specific government entity in a small county in a southern state as a "receptionist ... across the hall [from Human Resources], in the [specifically named office] for 21 years." (Countrywide Memorandum of Law in Opposition to MBIA Motion to Seal at p. 4; Affidavit of Sarah Heaton Concannon in Opposition to MBIA's Motion to Seal, Ex. 1.) The specificity of the unredacted description could lead to the identification of this third-party. Where there is such specific information in the exhibits as to borrower employment, the Court directs the parties to redact this information to provide instead a general job title, a general description of the borrower's employer, as well as reasonably specific, but not exact, geographic information. By including this general information, the public nonetheless will be able to comprehend the nature of the loan-specific analyses discussed by MBIA in

its brief, *see* MBIA Opp. Br. at 13, while personally identifiable borrower information is not exposed.

B. *Borrowers' Loan Numbers*

The Court finds that the borrowers' loan numbers should be redacted. The loan numbers are a species of financial account number that could be used to identify the particular third-party borrowers whose loans were part of the securitizations in this case. While the Court notes MBIA's opposition to sealing or redacting loan numbers, MBIA has shown no compelling public interest in disclosure of the loan numbers themselves. Instead, MBIA highlights the logistical difficulties of removing "every reference to a loan number in the parties' submissions." (MBIA's Memorandum of Law in Opposition to Countrywide's Motion to Seal ("MBIA Opp. Br.") at p. 13.) Such inconvenience does not establish good cause under Section 216.1.

However, the Court does not find that complete redaction of the loan numbers is warranted in this instance. Instead, as discussed during oral argument, the parties can truncate the loan numbers so to render them untraceable back to any particular borrower. (Tr. 14: 17-15: 19.) Such a remedy will enable public access to, and understanding of, the particular loan-specific evidence submitted by the parties, without exposing the identity of third-party borrowers. *See Mancheski*, 39 A.D.3d at 502 (noting that "good cause"

determination “involves weighing the interests of the public against the interests of the parties.”).

C. *Transcripts Subject to a Protective Order in Another Litigation*

Countrywide next seeks to seal thirty-seven transcripts in their entirety on the basis that the transcripts are subject to confidentiality and protective orders entered in unrelated actions and before other courts. While these transcripts may be subject to orders entered in other courts, once they were produced in this Court, they became subject to the protective order in this case. The protective order here does not mandate that these documents be sealed. Instead, under Section 216.1, Countrywide must demonstrate “good cause,” and the parties’ designation of these materials as “confidential” is not controlling. *Eusini v. Pioneer Elecs. (USA), Inc.*, 29 A.D.3d 623, 626 (2d Dep’t 2006) (“We note that the defendant’s designation of the materials as confidential or highly confidential is not controlling on the court’s determination whether there is good cause to seal the record pursuant to 22 N.Y.C.R.R. 216.1.”).

Moreover, whatever scope of sealing may have been appropriate under the protective order during the pretrial disclosure phase of this case, once materials are introduced or filed in open court, either at trial or in connection with court rulings on substantive motions, they become “court records,” and are presumptively public under



Section 216.1. *See In re World Trade Ctr. Bombing Litig.*, 298 A.D.2d 72, 79-80 (1st Dep't 2002) (distinguishing between "court records" subject to Section 216.1 and discovery documents not yet filed with the court that remain subject to protective orders under CPLR 3103(a)). Since Countrywide has not presented any showing of "good cause" for sealing these transcripts, the presumption of public disclosure holds, and Countrywide's motion to seal these transcripts on this basis is denied. However, to the extent that these transcripts contain borrower names, social security numbers, or other information that the Court has directed be sealed, such information shall be redacted from the transcripts at issue in this category.

D. *Testimony Revealing Countrywide's Current Non-Public Financial Information*

In its moving papers, Countrywide sought sealing of documents containing "current non-public financial information." (Countrywide Moving Br. at 12.) Countrywide explained that good cause existed for sealing because disclosure of this information would be harmful to its ongoing business operations and may provide counterparties with an unearned advantage in negotiations. (Affidavit of Michael W. Schloessmann ("Schloessmann Aff.") ¶ 21.) This argument was offered as a broad basis upon which to seal all documents labeled current and non-public by Countrywide.

However, Countrywide offered no specific discussion as to why each sealing or redaction request posed the harm asserted in its moving brief. *Mosallem*, 76 A.D.2d at 351 (rejecting motion to seal and noting movant's failure to allege "facts from which specific harm can be established").

Accordingly, at oral argument, the Court requested that Countrywide provide a more detailed explanation of good cause, demonstrating how each document presented a threat of harm to Countrywide's competitive advantage. (Tr. 33: 16-26.) Countrywide then filed its second supplemental submission to the Court; however, it asserts no further argument in favor of sealing documents on this basis. Therefore, Countrywide's request to seal "current non-public financial information" is denied, based on its failure to make a particularized showing of good cause.

E. *Documents Related to Countrywide's Repurchase Process*

In its motion, Countrywide also requests that documents and portions of documents and transcripts related to Countrywide's repurchase process be sealed. Countrywide's moving papers did not provide much explanation as to the types of documents and transcripts it seeks to seal. However, in considering this request, it appears that Countrywide is discussing three distinct categories of repurchase-related documents, each of which presents a different analysis: (1) documents related to MBIA's

repurchase requests to Countrywide for the securitizations at issue in this case; (2) repurchase requests and related replies exchanged between other entities and Countrywide for other securitizations; and, (3) documents discussing general procedures, processes, and principles related to repurchase requests sent to Countrywide.

The Court addressed these categories on the record during oral argument. For the first category – repurchase requests issued by MBIA – the Court noted that these documents involve disputes central to this case, including whether Countrywide complied with the contractual repurchase remedy in the operative documents. Countrywide claims that disclosure of these documents will cause Countrywide competitive harm. However, Countrywide has not explained how these MBIA- and transaction-specific documents might harm it, nor has Countrywide weighed any potential harm against the public interest. Thus, these documents will not be sealed.

As for the second category, the repurchase requests and responses exchanged by counterparties other than MBIA and Countrywide will be sealed for the purpose of this motion for summary judgment. While there may be a public interest in the disclosure of these documents, this interest is more in the nature of curiosity, since these documents do not concern securitizations at issue in this case. *See Matter of Crain Comm. v. Hughes*, 135 A.D.2d 351, 352 (1st Dep’t 1987) (denying motion to seal where no showing made of any legitimate public interest “as opposed to mere curiosity”). Therefore, these

documents will not be made public at this time; however, the Court is open to revisiting this issue on a document by document basis if necessary before trial.

Finally, the Court noted on the record that the third category of documents – discussing general procedures, processes, and principles related to repurchase requests sent to Countrywide – will not be sealed if those documents do not reveal trade secrets or threaten harm to Countrywide’s competitive business advantage. At the time of the hearing, Countrywide had not explained how these documents would reveal trade secrets or result in competitive harm to Countrywide. The Court therefore allowed Countrywide to submit supplemental briefing to demonstrate good cause.

In its second supplemental submission, Countrywide narrowed its sealing request, focusing on nine different documents and transcripts. Countrywide maintains that these proposed redactions shield specifics regarding Countrywide’s processes, procedures, and analysis for counterparty repurchases. Further, Countrywide argues that these redactions are necessary because revelation of these specifics would cause significant harm to Countrywide in its repurchase negotiations with counterparties, aside from MBIA.

The Court agrees that details as to Countrywide’s analysis of the validity of repurchase requests made by specifically defined counterparties, other than MBIA, should be sealed for the purpose of this motion. On this basis, the following redactions listed in

Exhibit 1 to the Second Supplemental Affirmation of Sarah Heaton Concannon (“Concannon Second Supp. Affirm.”) are granted: ¶¶ 5, 6, 12, 23, 24, and 35.

However, where references are made to particular counterparties that do not reveal the analysis of their particular claims – including discussions of statistics as to the number of repurchase requests or appeals made by a particular counterparty, or the amounts of claims issued and/or paid – only the numbers referenced are to be redacted. *See* Concannon Second Supp. Affirm., Ex. 1 ¶¶ 1, 2, 3, 7, 8, 9, 10, 11, 13, 14,<sup>4</sup> 15, 16, 17, 18, 19, 20,<sup>5</sup> 21, 22, 25, 27, 28, and 29. Countrywide has not shown that its keeping of repurchase-related statistics, including statistics as to claim volume, would hinder any particular negotiation. Thus, Countrywide’s motion to seal these particular documents is granted to the extent that only the numbers referenced in the documents be redacted.

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<sup>4</sup> For redactions number 14, 15, 16, and 17, as listed in Exhibit 1 to the Concannon Second Supplemental Affirmation, the Court notes that the first bullet point in each section to be redacted involves statistics regarding particular monoline insurers. The numbers presented in these sections are to be redacted in accordance with the Court’s direction. The latter portion of redactions 14, 15, 16, and 17 also include a narrative describing Countrywide’s consideration of these non-MBIA monoline insurers’ repurchase claims. This analysis portion of each section may be redacted.

<sup>5</sup> There are five columns of information that Countrywide seeks to seal in redaction number 20, listed in Exhibit 1 to the Concannon Second Supplemental Affirmation. The numbers contained in the four columns on the right are redacted for the reasons noted in this paragraph. The left-most column is to be redacted on the separate basis that it contains analysis of the viability of non-MBIA repurchase claims.

Further, where references are made to Countrywide's repurchase process in general, without reference to any specific counterparty's claims, Countrywide has failed to demonstrate "good cause" requiring these documents to be sealed. Countrywide has not demonstrated how this generalized information poses any particular threat to its negotiations with repurchase counterparties. *See Concannon Second Supp. Affirm., Ex. 1 ¶¶ 30, 31, 32,<sup>6</sup> 33, 34, 36, 37, 38, 39, 40, 41, and 54.* The fact that Countrywide has certain entities that are involved with the repurchase process is not a trade secret. Countrywide has not shown that this information is of the kind considered a trade secret by the Court of Appeals, *see New York Tel. Co.*, 56 N.Y.2d at 219 n.2, or under *Wiener*, 214 A.D.2d at 124. Likewise, there has been no demonstration that discussion of these entities reveals proprietary information closely guarded by Countrywide akin to a trade secret. *Mancheski*, 39 A.D.3d at 503. Thus, Countrywide has not established that this information poses a threat to its competitive business, akin to a trade secret.

Moreover, Countrywide has not shown that the same general discussions of repurchase processes and procedures threaten its competitive business. While the court will abstain from revealing the precise content of these documents, Countrywide has not

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<sup>6</sup> The specific numbers referenced in redaction numbers 32, 33, 37, 38, and 41 (from Exhibit 1 to the Concannon Second Supplemental Affirmation) may be sealed, on the basis that the numbers provide specific information as to the analysis of particular counterparties' repurchase requests. In addition, for redaction number 38, the counterparty-specific information in footnote 1 of the document may be redacted.

made a sufficient factual showing that general discussions as to which employee may approve claims and which general principles apply to claims – where those principles are not specific to a particular counterparty – are trade secrets. *See New York Tel. Co.*, 56 N.Y.2d at 219 n.2; *Weiner*, 214 A.D.2d at 124. Nor has Countrywide made a sufficient factual showing that these documents should be viewed as a threat to its competitive business advantage, such that they are “akin to trade secrets.” *Mancheski*, 39 A.D.3d at 503. Again, to the extent that these documents reference specific numbers, such numbers may be redacted.

F. *Documents Related to Countrywide’s Reserves*

Countrywide seeks to seal documents concerning its repurchase reserves and the process used to set those reserves. As with the repurchase process issue, the Court requested that Countrywide provide a more detailed explanation as to why repurchase reserve documents should be withheld from the public. Specifically, the Court requested that Countrywide move beyond labeling such information as “proprietary,” in order to provide a more robust record from which the Court could assess whether good cause for sealing exists.

In its second supplemental submission, Countrywide tailored its sealing request to focus on thirteen portions of three different documents, which it contends reveal the

process for setting – and the amount of – Countrywide’s representation and warranty reserves, as well as Countrywide’s loss reserves generally.

Consistent with the repurchase process analysis above, general narratives or descriptions presenting statistics related to repurchase and/or loss reserves shall not be sealed, except that specific reserve numbers cited in these descriptions may be redacted. *See Concannon Second Supp. Affirm.*, Ex. 1 ¶¶ 42, 43, 44, 48, 49, 50, 51, 52, 53, and 54.

Specific discussions as to the process by which reserves are set, however, shall be sealed. Revelation of formulas or other bases used to set reserves could cause competitive harm to Countrywide, as it would reveal Countrywide’s financial ability to negotiate certain claims, giving adversaries a window into the amount available to resolve their disputes. *See Mancheski*, 39 A.D.3d at 502-03 (“Proprietary information, in the nature of current or former business strategies which are closely guarded by a private corporation, is akin to a trade secret, which, if disclosed, would give a competitor an unearned advantage.”). Having shown good cause, Countrywide’s motion is granted as to redactions numbered 45, 46, and 47, listed in Exhibit 1 to the Concannon Second Supplemental Affirmation.



**ORDER**

Accordingly, it is hereby

ORDERED that defendants Countrywide Home Loans, Inc., Countrywide Securities Corporation, Countrywide Financial Corporation, and Countrywide Home Loans Servicing, LP's motion to seal (motion seq. no. 063) is granted in part and denied in part; and it is further

ORDERED that plaintiff MBIA Insurance Corporation's motion to seal (motion seq. no. 064) is granted in part and denied in part; and it is further

ORDERED that plaintiff and defendants shall redact those exhibits filed with their summary judgment motions in accordance with the Court's direction; and it is further

ORDERED that plaintiff and defendants shall file the redacted documents by Tuesday, December 11, 2012 at 5 p.m.

This constitutes the decision and order of the court.

Dated: New York, New York  
December 6, 2012

ENTER



Hon. Eileen Bransten, J.S.C.