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BANK & LENDER LIABILITY

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NEGLIGENCE

FDIC blames execs for bank's $71 million in losses

In a lawsuit the Federal Deposit Insurance Corp. says the former officers and directors of a failed bank caused the institution to lose more than $71 million through risky lending practices.

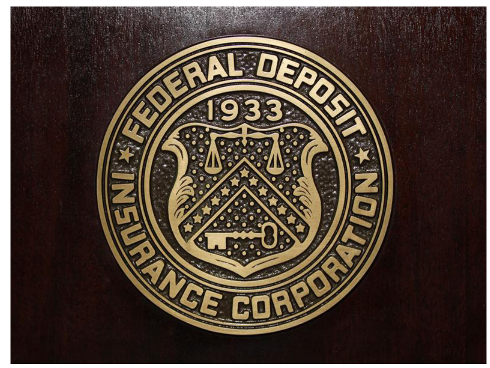
Federal Deposit Insurance Corp. v. Bryan et al., No. 11-CV-2790, complaint filed (N.D. Ga. Aug. 22, 2011).

The regulatory agency says the defendants negligently allowed Georgia-based Silverton Bank to make high-risk real estate and construction loans despite the declining economy.

The failure of the defendant officers and directors to exercise sound business judgment when making loans led regulators to close the bank May 1, 2009, according to the suit.

The government is asking the U.S. District Court for the Northern District of Georgia to hold the defendant officers and directors liable for the institution's losses.

In the complaint the FDIC says Silverton was chartered by the state of Georgia in 1986 and served the needs of community financial institutions.



REUTERS/Jason Reed

The bank applied to the Office of the Comptroller of the Currency in 2007 to become a national commercial bank so it could expand its lending into markets across the country, the suit says.

The defendants were interested in making CRE and ADS loans — for commercial real estate and acquisition, development and construction — in

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COMMENTARY

New consumer protection agency's efforts may be hindered for the foreseeable future

Gustav Schmidt of the Florida law firm Gunster discusses the controversy surrounding the new Consumer Financial Protection Bureau and the regulatory responsibilities the agency is assuming.

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New consumer protection agency's efforts may be hindered for the foreseeable future

By Gustav Schmidt, Esq.
Gunster

July 21, 2011, marked the birthday of the Consumer Financial Protection Bureau, a new consumer watchdog agency created under the Dodd-Frank Wall Street Reform and Consumer Protection Act that was passed by Congress and signed into law by President Obama in July 2010.

The purpose of the CFPB is to centralize regulatory responsibility and authority over consumer financial products and services, which historically had been spread among a number of governmental agencies, including the Federal Trade Commission, Office of the Comptroller of the Currency and Federal Reserve Board.

The CFPB will be headed by a single director appointed by the president and confirmed by the Senate. The CFPB also will have authority to create and enforce rules and regulations designed to further its stated purpose.

Even though the CFPB is now officially open for business, there is still uncertainty concerning the agency, and many have questioned whether it is even needed. Although regulatory oversight of consumer financial products like home mortgages has always existed, it was never the sole focus of any particular agency.

With the creation of the CFPB, there is now a governmental agency dedicated to educating consumers about financial products and services as well as regulating those products and services and the companies that offer them.

Advocates of the CFPB say the agency will help consumers make better and more informed decisions regarding financial products and also hold consumer financial product and service companies accountable for deceptive or unfair practices.

Others say the CFPB is unnecessary because government agencies that regulate consumer financial products and services already exist, thus rendering the CFPB a redundant agency and an unnecessary expense for taxpayers.

In support of this argument, opponents of the CFPB have pointed to the FTC, which has recently released a new rule prohibiting deceptive and unfair advertising with respect to mortgages. This would certainly also be an area under the cognizance of the CFPB and shows the overlap of the CFPB with other federal agencies.

At these early stages, it remains to be seen whether the CFPB will ultimately prove to be a useful creation since there are still many unknowns such as how it will interact with the other federal agencies.

One certainty is that in order for the CFPB to fully begin to function, a director must be confirmed. The president recently appointed former Ohio Attorney General Richard Cordray as the CFPB's director, but he has not yet been confirmed by the Senate. However, his confirmation may not come to fruition in the foreseeable future.

In May, 44 senators openly stated they would not confirm any person as the CFPB director because they believe the agency is more appropriately headed by a five-person commission. The Senate would need 60 votes at a minimum to block a filibuster of Cordray's confirmation.

Furthermore, until the CFPB has a confirmed director, it may exercise its regulatory authority over banks only.

The CFPB has indicated that it would be sending out examiners immediately to begin conducting examinations on banks.

Although Dodd-Frank requires the CFPB to coordinate with other regulatory agencies to minimize regulatory burdens, we are likely to see the CFPB heavily scrutinizing banks and their practices related to consumer financial products in an effort to let the banks know that the CFPB is here and watching.

This might also be a tactical move in an attempt by the CFPB to get the banks on its side and help persuade some of the Republican senators to vote in favor of Cordray's confirmation. It will be interesting to see whether the banks do in fact push the Senate to confirm someone as director in order to escape the CFPB's microscope that is currently focused only on banks.

Given that next year is an election year, any lobby by the banks would likely fall on deaf ears as Republicans will be reluctant to give in to an agency that is a creation of the formerly Democrat-controlled Congress and that they see as an unnecessary expansion of government.

Moreover, despite being the sole focus of the agency, the banks may actually see themselves as better off without the appointment of a CFPB director. Even though the CFPB may regulate only banks with more than $10 billion in assets until such time as a director is appointed, the CFPB examiners are likely viewed by large banks as no different from the examiners of the Office of the Comptroller of the Currency or other cognizant regulator who are a part of life in the banking industry.

But if a director were to be appointed and confirmed, the CFPB would have the power to declare certain bank practices illegal as being either deceptive or unfair from a consumer standpoint. The numerous fees charged by banks in an effort to sustain profits in an environment where interest-rate spreads are extremely narrow could be at risk.

For example, a $39 fee that might be charged for overdrafting an account — when the actual cost incurred by the bank is less than 10 percent of that — could conceivably come under attack. Banks could lose out significantly if forced to eliminate or reduce fees charged to their customers.

> Advocates of the Consumer Financial Protection Bureau say the agency will help consumers make better decisions regarding financial products.

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It is quite possible, and even likely, we will not see a director confirmed in the near future or that the CFPB director will be replaced by a five-person commission similar to the Securities and Exchange Commission and FTC.

Depending on the results of the 2012 election, we could see a rollback of the CFPB's powers if Republicans gain control of both houses of Congress. Even if that does not happen, banks will likely prefer a director-less CFPB to help avoid being burdened with additional rules and regulations that could be promulgated if a director were to be confirmed. As a result, it is likely that the status quo will be maintained unless Democrats agree to have a commission head the agency. WJ

Gustav Schmidt is an associate at the law firm **Gunster** in Fort Lauderdale, Fla., where he practices in the areas of banking and financial services, corporate law, and securities law. He is a Navy veteran who served as a nuclear submarine officer.

FDIC

CONTINUED FROM PAGE 1

areas outside Georgia, according to the complaint.

The OCC approved the application in July 2007 but said Silverton had to develop strong credit risk management practices and needed to be aware of the adverse real estate market, according to the suit.

The FDIC says the defendants then had the bank expand into CRE and ADC lending in Arizona, California, Florida, Nevada and Texas even though Silverton did not have any experience in these markets.

While the bank was doing business in these new areas, it had weak loan underwriting practices and poor credit administration, the agency says.

Silverton made ADC loans without obtaining proper paperwork from borrowers and guarantors and made loans to borrowers who had poor credit history, the FDIC says.

The agency also says that in some situations the bank did not ensure that it would have a valid security interest in the underlying real estate.

In addition the FDIC says the defendants did not heed warning signs that the real estate market was weakening and instead continued to make the risky loans.

The defendants were bankers with specialized knowledge of the banking industry, and they should have been aware of changes in the real-estate-based lending market, the suit says.

The FDIC also says the defendants ignored the OCC's warnings, issued in June 2008 and February 2009, about the bank's poor risk management and lax lending practices.

In addition to allowing Silverton to make risky loans the defendants permitted the bank to buy two airplanes, a hangar and a new office building, the suit says.

The FDIC says these expenditures were unnecessary and a waste of the bank's money and directly contravened the OCC's directives about spending during an economic downturn.

The FDIC says the District Court should hold the defendants responsible for Silverton's failure and the loan losses.

As of press time the defendants had not filed a response to the suit. WJ

Related Court Document:
Complaint: 2011 WL 4054822

Scan this code with your QR reader to see the complaint on Westlaw.

The defendants

The FDIC says the actions of the following officers and directors caused Silverton Bank to fail:

Directors
Tom A. Bryan
Paul T. Bennett
Michael Carlton
W. Roger Crook
J. Michael Ellenburg
Brian R. Foster
Robert I. Gulledge
Charles F. Harper
R. Rick Hart
Christopher B. Maddox
J. Edward Norris
Stephen L. Price
Bobby Shepard
Hunter Simmons
Tony W. Wolfe

Officers
Brian D. Bueche
Brock Fredette

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The SEC's new rules for the Dodd-Frank whistle-blower program

By R. Scott Oswald, Esq., and Nicholas Woodfield, Esq.
Employment Law Group

On July 21, 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. Law No. 111-203 (codified in scattered sections of 7, 12 and 15 U.S.C.), in response to the financial crises triggered by the improper and illegal activities of large financial institutions.

The Dodd-Frank Act established the new Consumer Financial Protection Bureau, the mission of which is to make markets for consumer financial products and services work for every American and to detect and prevent financial fraud.[1]

In addition to establishing a new watchdog agency, the law also enlists the help of whistle-blowers. Dodd-Frank requires the Securities and Exchange Commission to reward whistle-blowers who disclose original information regarding violations of securities law that result in monetary sanctions exceeding $1 million. The reward can range from between 10 percent and 30 percent of the amount recouped by the SEC. Further, employers are prohibited from retaliating against those whistle-blowers who do come forward.

The SEC had a largely unsuccessful whistle-blower reward program prior to the enactment of the Dodd-Frank Act. The reward ranged from 0 percent to 10 percent, and the program primarily targeted insider trading. However, the new SEC program is modeled after the successful Internal Revenue Service whistle-blower program established in 2006, which has already resulted in the recovery of millions of tax dollars because of tips provided by whistle-blowers.

Another source of inspiration for the new SEC program is the *qui tam* provision of the federal False Claims Act. Originally enacted during Abraham Lincoln's presidency as an answer to the unscrupulous government contractors who were selling to the U.S. Army, *inter alia*, faulty rifles and decrepit horses, the FCA authorizes whistle-blowers to sue contractors on behalf of the federal government to recover ill-gotten funds. Under the FCA, billions of taxpayer dollars have been recovered in the last two decades alone.

SEC PROPOSES NEW WHISTLE-BLOWER RULES

In November 2010, the SEC proposed a set of rules and regulations for implementing the Dodd-Frank whistle-blower program. During this rule-making process, the SEC received hundreds of comments from companies, individuals and law firms.

> The False Claims Act was originally enacted to stop the sale of faulty rifles and decrepit horses to the U.S. army in the mid-19th century.

In particular, corporations argued that employees should be required to report all securities violations to internal compliance programs, noting the requirement for corporations to maintain these costly programs.[2] Whistle-blower advocates countered that broader protections and greater incentives for whistle-blowers are necessary to prevent another financial crisis.

On May 25, 2011, the SEC adopted, by a 3-2 vote, Rule 21F implementing the Section 922 whistle-blower provisions of the Dodd-Frank Act. These rules were effective Aug. 12, 2011. In the end, the SEC declined to require whistle-blowers to first report securities law violations internally.

However, to encourage internal reporting, the SEC included internal reporting as a factor that may increase the size of whistle-blower rewards for those whistle-blowers who first report violations internally.[3] Whistle-blowers who report violations internally and then to the SEC within 120 days are still entitled to a reward, even if the employer later reports the same violations to the SEC.[4]

The finalized rules also delineate the types of disclosures that qualify for a reward and the types of individuals — the bad actors — who are generally prohibited from receiving a reward. Only those whistle-blowers who provide original information to the SEC leading to $1 million or more in sanctions are eligible for a reward. Moreover, attorneys working for the employer are often ineligible except where one of the enumerated special exceptions is applicable.

According to the SEC, the new law is already producing its intended results.

"For an agency with limited resources like the SEC, it is critical to be able to leverage the resources of people who may have first-hand information about violations of the securities laws," SEC chief Mary L. Schapiro said. "While the SEC has a history of receiving a high volume of tips and complaints, the quality of the tips we have received has been better since Dodd-Frank became law. We expect this trend to continue, and these final rules map out simplified and transparent procedures for whistle-blowers to provide us critical information."[5]

ELIGIBILITY OF A DISCLOSURE

For the whistle-blower to be eligible for a reward under the Dodd-Frank program, the disclosure must relate to a violation of one or more securities laws, rules or regulations. Importantly, the Dodd-Frank Act explicitly includes within the purview of the SEC any violations of the Sarbanes-Oxley Act or the Foreign Corrupt Practices Act. SOX requires corporations to abide by certain accounting rules. The FCPA prohibits U.S. corporations from bribing foreign officials.

A whistle-blower must *voluntarily* provide the SEC with *original information* regarding a *securities law violation* that *results in sanctions exceeding $1 million* in order to be eligible for a reward. Disclosures are *voluntary* so long as the whistle-blower discloses the

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information to the SEC *before* the information is requested by:

- The SEC or in connection with an investigation by:
  - The Public Company Accounting Oversight Board or any self-regulatory organization.
  - Congress.
  - Any other authority of the federal government.
  - A state attorney general or securities regulatory authority.[6]

The $1 million threshold can be achieved by aggregating the monetary sanctions resulting from two or more SEC, administrative or judicial proceedings arising from the same nucleus of operative facts.[7]

"The same-nucleus-of-operative-facts test is a well-established legal standard that is satisfied where two proceedings, although brought separately, share such a close factual basis that the proceedings might logically have been brought together in one proceeding."[8] Monetary sanctions may include any money, penalties, disgorgement or interest resulting from SEC enforcement.[9]

SEC chief Mary Schapiro reports that the quality of tips and complaints the commission has received has improved since Dodd-Frank became law.

The SEC defines *original information* as information that is based upon the whistle-blower's independent knowledge or independent analysis and not already known to the SEC.[10] Independent knowledge pertains to any factual information in the whistle-blower's possession that is not derived exclusively from public sources, such as the news media, judicial proceedings or government reports.[11]

However, a whistle-blower's independent analysis may also be based upon public sources so long as that analysis reveals information that is generally unknown to the public.[12] The new rules provide that a whistle-blower's disclosure through an employer's internal compliance program maintains its original information status so long as the whistle-blower also discloses that information to the SEC within 120 days.[13]

Requests for information made by the SEC to the employer are not automatically directed at every employee. For example, an SEC request made to the accounting department of a company probably would *not* preclude an employee outside the accounting department from receiving a reward in return for providing information to the SEC. In addition, requests for information made by the employer during its own internal investigations would not preclude an employee from later making a voluntary disclosure to the SEC.

Finally, a disclosure must be sufficiently specific, credible and timely such that it causes the SEC to open an investigation, or otherwise contributes significantly to a new or existing investigation.[14]

ELIGIBILITY OF A WHISTLE-BLOWER

The SEC included rules that make certain individuals ineligible for a reward in order to avoid rewarding improper behavior. For instance, a preexisting legal or contractual duty to report information to the SEC precludes a whistle-blower from a reward.[15] However, the duty must be one that is owed to the government. Therefore, an employer could not preclude its employees from eligibility by requiring them to report securities law violations to the SEC.

Moreover, the SEC generally will not grant rewards to:

- Attorneys (including in-house attorneys) and non-attorneys in cases in which the information is subject to attorney–client privilege.
- Public accountants working on SEC engagements in cases in which the information relates to the engagement client.
- Personnel with compliance-related responsibilities.
- Officers, directors, trustees or partners who learn the information in connection with the corporation's internal reporting, compliance or auditing procedures.
- Individuals who obtained the information through the commission of a crime.
- Officials of foreign governments.

In an important victory for whistle-blower advocates, the SEC included exceptions permitting eligibility to officers, public accountants and other personnel with compliance-related responsibilities when:

- The whistle-blower reasonably believes that disclosing the information to the SEC is necessary to prevent the company from substantially harming the financial interests or property of the company or its investors.
- The whistle-blower reasonably believes the company is impeding the investigation of the misconduct.
- At least 120 days have elapsed since the whistle-blower provided the information to internal compliance personnel or his or her supervisor.
- At least 120 days have elapsed since the whistle-blower received the information, if he or she received the information under circumstances indicating that internal compliance personnel were already aware of the information.[16]

The foregoing exceptions permit employees who are the most likely to uncover wrongdoing to blow the whistle to the SEC when their company refuses or otherwise fails to address the misconduct.

THE ANTI-RETALIATION PROVISION

Whistle-blowers who report that what they *reasonably believe* to be a *possible* securities law violation has occurred, is occurring, or is about to occur will qualify for protection under the anti-retaliation provisions of the Dodd-Frank Act. The disclosure must have a facially *plausible* relationship to a securities law violation, but it does not necessarily have to be material. Conversely, a frivolous disclosure would *not* qualify an employee for whistle-blower protection under the new rules.

The rules prohibit employers from interfering with the efforts of whistle-blowers to disclose information to the SEC. The SEC is permitted to enforce the anti-retaliation provisions by investigating and sanctioning employers who practice illegal retaliation.[17] Should the SEC or the courts find an employer liable for retaliation, the prevailing whistle-blower can:

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- Be reinstated to his or her former position.
- Recover double the wages owed to him or her in the form of back pay with interest.
- Recover attorney fees and other litigation costs.

> The SEC rules bar those with a pre-existing duty to report information to the commission from receiving a reward.

CONCLUSION

The SEC's rules are consistent with the intent of Congress to create a robust whistle-blower reward and protection law. Under the new SEC rules, protections for whistle-blowers are broadened and the reward program is strengthened. Employees who report violations internally to their employer can receive protection and can receive a reward. As such, the rules reflect the spirit of the act, and the next question will be whether the court will continue to interpret the Dodd-Frank Act and its enabling regulations in a consistent manner. WJ

NOTES

1 Consumer Financial Protection Bureau, http://www.consumerfinance.gov/the-bureau.

2 In the wake of several high-profile corporate and accounting scandals, including those of Enron and WorldCom, Congress passed the Sarbanes-Oxley Act of 2002 to prevent future scandals by requiring corporations to implement proper internal compliance programs meant to address accounting irregularities.

3 Rule 21F-6(a) at 34,330, 34,358.

4 Rule 21F-4(c)(3) at 34,325.

5 Press Release, SEC, SEC Adopts Rules to Establish Whistleblower Program (May 25, 2011), *available at* http://www.sec.gov/news/press/2011/2011-116.htm.

6 Securities Whistleblower Incentives and Protections; Final Rule; Rule 21F-4(a), 76 Fed. Reg. 34,299, 34,306 (June 13, 2011) (to be codified at 17 C.F.R. pt. 240 and 249).

7 Rule 21F-4(d) at 34,327.

8 *Id.* at 34,328; *see, e.g., Harper v. AutoAlliance Int'l*, 392 F.3d 195, 209 (6th Cir. 2004).

9 Rule 21F-4(e) at 34,329.

10 Rule 21F-4(b) at 34,310.

11 Rule 21F-4(b)(2) at 34,311.

12 Rule 21F-4(b)(3) at 34,312.

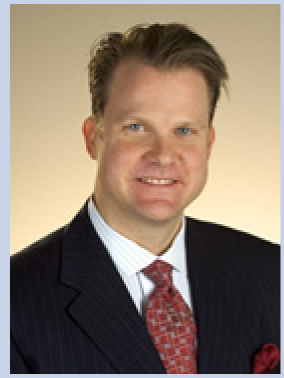
13 Rule 21F-4(c). at 34,323.

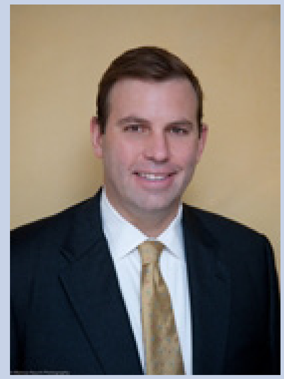
14 Rule 21F-4(c)(1) at 34,324.

15 Rule 21F-4(a) at 34,306.

16 Rule 21F-4(b)(4)(v) at 34,317.

17 Rule 21F-2(b)(2) at 34,304.





R. Scott Oswald, (top) managing principal of the **Employment Law Group** in Washington, concentrates his practice on representing individual plaintiffs in whistle-blower, *qui tam* and employment rights litigation. He has extensive jury trial experience litigating claims under the Family and Medical Leave Act, the Americans with Disabilities Act, Title VII, and other statutory discrimination claims. **Nicholas Woodfield**, (bottom) a principal in the firm, focuses his practice on non-payment of wages and misclassification claims, Sarbanes-Oxley whistle-blower complaints, False Claims Act (*qui tam*) claims, and discrimination and retaliation cases.

BREACH OF CONTRACT

Company sues FDIC for $5.1 million over loan reduction deal

A company says in a lawsuit that the Federal Deposit Insurance Corp. should pay more than $5.1 million because the agency did not lower the amount due on a mortgage owed to a failed bank.

Richards Industrial Park LP et al. v. Federal Deposit Insurance Corp. et al., No. 11-CV-2059, complaint filed (S.D. Cal. Sept. 7, 2011).

Richards Industrial Park LP and its general partner, Marc Barmazel, are suing the agency for breach of contract in the U.S. District Court for the Southern District of California.

The plaintiffs say the FDIC, as receiver for the failed La Jolla Bank, had agreed to lower the mortgage's amount so they would not pursue a fraud claim against the institution.

The complaint says that before La Jolla Bank failed in February 2010, the plaintiffs entered into a real estate transaction with the institution and nonparty developer ALB Properties.

ALB had previously defaulted on two loans from La Jolla, according to the suit.

The complaint says the real estate transaction was actually a complex fraud scheme designed by the bank and ALB to replace ALB's non-performing loans with a mortgage loan taken out by Richards and guaranteed by Barmazel.

The plaintiffs say the loan they took out was for $6.4 million and was secured by a parcel of real estate called the Roxbury property.

The plaintiffs say they lost $4.1 million through the allegedly fraudulent transaction with the bank and ALB. After the bank failed, they notified the FDIC about their claim for damages arising from the alleged fraud, the suit says.

The complaint says Richards and Barmazel negotiated with the FDIC's representative, nonparty Martin O'Riordan, about resolving the claim without litigation.

O'Riordan said the FDIC would reduce by 10 percent the amounts due on the Roxbury loan and on a $693,000 mortgage, called the Loma Vista loan, that the plaintiffs also had with La Jolla Bank.

In exchange for these reductions the plaintiffs agreed that they would not sue the bank over the allegedly fraudulent ALB transaction, the complaint says.

The plaintiffs say they have a Sept. 15, 2010, letter from O'Riordan confirming the agreement.

The suit says that in February the plaintiffs notified the FDIC that they were going to sell the property that secured the Roxbury mortgage loan.

The plaintiffs say they asked the agency for a payoff figure so they could satisfy the mortgage with the property sale proceeds.

The suit says the plaintiffs believed the payoff amount would be a sum that was 10 percent less than the actual balance in accordance with the September 2010 loan reduction agreement.

The suit says the FDIC did not respond before the sale took place and the plaintiffs had to pay off the full amount of the Roxbury loan.

Richards and Barmazel say that without the 10 percent loan balance reduction, they did not earn as much profit as they had hoped from the Roxbury property sale.

The FDIC later contacted the plaintiffs in May and supplied paperwork that confirmed a 10 percent reduction in the amount of the Loma Vista loan, according to the suit.

The suit says the FDIC acknowledged the validity of the entire loan amount reduction agreement when it sent this paperwork to the plaintiffs.

The agency's failure to reduce the Roxbury mortgage is a breach of the agreement, the suit says.

The plaintiffs say that because of the breach they have sustained damages of more than $5.1 million. This sum consists of their lost $4.1 million fraud claim and a loss of at least $1 million on the Roxbury property sale. WJ

Attorney:
Plaintiffs: J. Russell Tyler Jr., San Clemente, Calif.

Related Court Document:
Complaint: 2011 WL 3922351

See Document Section A (P. 19) for the complaint.

The plaintiffs say the FDIC agreed to lower the mortgage's amount so they would not pursue a fraud claim against the failed La Jolla Bank.

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Seller of counterfeit credit cards gets 14 years in prison

A man who sold counterfeit credit cards and caused lenders to lose a total of $3 million must serve 14 years in prison on wire fraud charges.

***United States v. Perez*, No. 11-CR-122, defendant sentenced (E.D. Va. Sept. 9, 2011).**

Tony Perez III, 21, must also turn over $2.8 million to the government and pay a $250,000 fine, according to the Justice Department.

In addition, U.S. District Judge Liam O'Grady of the Eastern District of Virginia ordered Perez to serve a three-year term of supervised release upon completion of the prison sentence.

Secret Service agents found 21,000 stolen credit card numbers stored on Tony Perez's computers, the Justice Department said.

Perez pleaded guilty to wire fraud charges in the District Court April 4, the Justice Department said.

In a criminal information filed in tandem with the plea agreement, prosecutors said Perez used the Internet to sell counterfeit credit cards that he encoded with stolen account information.

The Justice Department said he obtained the account information by participating in a number of online discussion groups dedicated to buying and selling stolen financial data.

Perez both bought and sold account information using these forums and used the data to create counterfeit credit cards, according to the charges.

REUTERS/Jonathan Bainbridge

Prosecutors said agents from the U.S. Secret Service searched Perez's apartment in June 2010 and found the equipment he used to manufacture and encode the cards.

The agents also found 21,000 stolen credit card numbers and related information stored on Perez's computers, the Justice Department said.

The fraud scheme caused unidentified credit card lenders to lose at least $3 million, according to prosecutors. WJ

Related Court Document:
Plea agreement:

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MORTGAGE-BACKED SECURITIES

U.S. regulator sues major banks over subprime bonds

WASHINGTON/NEW YORK, Sept. 2 (Reuters) – A U.S. regulator sued 17 large banks and financial institutions over losses on about $200 billion of subprime bonds, which may hamper a broader government settlement of the mortgage mess left over from the housing crisis.

The lawsuits by the Federal Housing Finance Agency, which oversees Fannie Mae and Freddie Mac, surprised investors, dragging down bank shares and could add billions of dollars of legal costs at perhaps the worst possible time for the industry.

The lawsuits reflect how different parties, including investors, banks and different government groups, are fighting over who should bear losses from a housing crisis that in 2008 drove the economy into its worst recession in decades.

The FHFA accused Bank of America Corp. and its Countrywide and Merrill Lynch units, Barclays Plc, Citigroup Inc., Goldman Sachs Group Inc., JPMorgan Chase & Co., Royal Bank of Scotland Group Plc and others of misrepresenting the checks they had done on mortgages before bundling them into securities.

According to the lawsuits, the securities should have never been sold because the underlying mortgages did not meet investors' criteria. As more borrowers fell behind or went into foreclosure, the securities' value fell, causing losses.

Nearly all the banks that were sued declined to comment or were not immediately available for comment. Others called the charges unfounded.

"Fannie Mae and Freddie Mac are the epitome of a sophisticated investor, having issued trillions of dollars of mortgage-backed securities and purchased hundreds of billions of dollars more," Mayura Hooper, a spokeswoman for defendant Deutsche Bank AG, said in a statement.

A Bank of America spokesman said Fannie Mae and Freddie Mac are trying to shift responsibility to banks after earlier blaming losses on other factors. A spokesman for Ally Financial Inc., once known as GMAC, called the FHFA claims "meritless."

Bank of America faces three FHFA lawsuits, covering losses on more than $57 billion of securities. JPMorgan faces claims related to $33 billion of securities and Royal Bank of Scotland was sued over $30.4 billion of securities.

Several large banks are also negotiating with all 50 U.S. state attorneys general on a comprehensive settlement to address mortgage abuses and limit future mortgage litigation.

"This new litigation could disrupt the AG settlement," said Anthony Sanders, finance professor at George Mason University and a former mortgage bond strategist.

Reuters Brian Snyder

REUTERS Mike Segar

The lawsuit accuses Countrywide Financial, Citigroup and others of misrepresenting the checks they had done on mortgages before bundling them into securities.

FACTBOX:

Who the FHFA has sued over subprime bonds

(Reuters) – The U.S. Federal Housing Finance Agency sued 17 financial institutions for allegedly misrepresenting material information when selling mortgage-backed securities.

Below is a summary of banks that were sued and the dollar value of securities that the FHFA is suing over:

Defendant	Value of Securities
Ally Financial	$6 billion
Bank of America Corp. Bank of America	$6 billion
Countrywide (unit of Bank of America)	$26.6 billion
Merrill Lynch (unit of Bank of America)	$24.853 billion
Barclays Plc	$4.9 billion
Citigroup Inc.	$3.5 billion
Credit Suisse*	$14.1 billion
Deutsche Bank AG	$14.2 billion
First Horizon National Corp.	$883 million
General Electric Co.	$549 million
Goldman Sachs Group Inc.	$11.1 billion
HSBC*	$6.2 billion
JPMorgan Chase & Co.	$33 billion
Morgan Stanley	$10.58 billion
Nomura Holdings Inc.*	$2 billion
Royal Bank of Scotland	$30.4 billion
Société Générale	$1.3 billion
TOTAL:	**$196.165 billion**

* Some lawsuits targeted subsidiaries and not the parent company.

Source: Court documents

(Compiled by Ben Berkowitz, Clare Baldwin, Dan Wilchins and Jonathan Stempel)

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Banks might resist settling if they knew litigation from other regulators could deplete capital, he said.

Before the FHFA lawsuits had even hit a court docket, financial experts offered blunt expectations for the outcome.

"The lawsuits will be settled," said Sean Egan, managing director of Egan-Jones Ratings Co., an independent credit ratings firm. "The end result will be a further outflow of cash from the banks, and more importantly an additional black eye."

A TWIST

FHFA director Edward DeMarco is looking to minimize future losses for Fannie Mae and Freddie Mac, which have been owned by the government after being seized Sept 7, 2008.

The FHFA filed the suits before a three-year statutory limitations period expired. Fannie Mae and Freddie Mac are pillars of U.S. mortgage finance.

Wells Fargo & Co., the largest U.S. bank not sued by the FHFA, entered a "tolling" agreement waiving its right to claim the FHFA waited too long to sue, a person with knowledge of the matter said. The bank said Wells Fargo might have done this to give it time negotiate its own settlement, the person added.

FHFA spokeswoman Corinne Russell and Wells Fargo spokeswoman Mary Eshet declined to comment.

Bank shares came under pressure from signs the Federal Reserve could start selling short-term debt on its books and buy long-dated bonds to push longer-term yields lower.

Such a move, known as "operation twist," would hurt banks whose profit margin is tied to the short-term rates at which they fund and the longer-term rates at which they invest.

Major banks already face potential payouts of tens of billions of dollars to settle regulatory charges of abusive mortgage lending and foreclosure practices and other investor lawsuits over mortgage debt losses.

Such payouts would reduce earnings and weaken capital levels, perhaps harming the ability of banks to lend money and provide much-needed life to a stalled housing market and weakened economy.

Whether to take action for mortgage bond problems had been under discussion since Fannie Mae and Freddie Mac were placed in conservatorship, a person familiar with the matter said.

While the ultimate amount FHFA will seek is still unclear, that person said it could top the $20 billion settlement being discussed by the banks and the state attorneys general.

Arthur Wilmarth, a George Washington University law professor, said the banks might argue Fannie Mae and Freddie Mac knew how risky the securities they bought were.

If the companies had reason to know mortgages were "essentially being given to anyone with a pulse, then banks could argue they were at least partially at fault," he said.

The FHFA filed the lawsuits in state and federal courts in New York

Federal Housing Finance Agency v. Ally Financial Inc. f/k/a GMAC LLC et al., No. 652441-2011, *complaint filed* (N.Y. Sup. Ct., N.Y. County Sept. 2, 2011).

Federal Housing Finance Agency v. Bank of America Corp. et al., No. 1:2011-cv-6195, 2011 WL 3873302, *complaint filed* (S.D.N.Y. Sept. 2, 2011).

Federal Housing Finance Agency v. Barclays Bank PLC et al., No. 1:2011-cv-6190, 2011 WL 3873300, *complaint filed* (S.D.N.Y. Sept. 2, 2011).

Federal Housing Finance Agency v. Citigroup Inc. et al., No. 1:2011-cv-6196, 2011 WL 3873301, *complaint filed* (S.D.N.Y. Sept. 2, 2011).

Federal Housing Finance Agency v. Countrywide Financial Corp. et al., No. 652436-2011, *complaint filed* (N.Y. Sup. Ct., N.Y. County Sept. 2, 2011).

Federal Housing Finance Agency v. Credit Suisse Holdings (USA) Inc. et al., No. 1:2011-cv-6200, 2011 WL 3873303, *complaint filed* (S.D.N.Y. Sept. 2, 2011).

Federal Housing Finance Agency v. Deutsche Bank AG et al., No. 1:2011-cv-6192, 2011 WL 3871798, *complaint filed* (S.D.N.Y. Sept. 2, 2011).

Federal Housing Finance Agency v. First Horizon National Corp. et al., No. 1:2011-cv-6193, 2011 WL 3867538, *complaint filed* (S.D.N.Y. Sept. 2, 2011).

Federal Housing Finance Agency v. General Electric Co. et al., No. 652439-2011, *complaint filed* (N.Y. Sup. Ct., N.Y. County Sept. 2, 2011).

Federal Housing Finance Agency v. Goldman Sachs & Co. et al., No. 1:2011-cv-6198, 2011 WL 3873305, *complaint filed* (S.D.N.Y. Sept. 2, 2011).

Federal Housing Finance Agency v. HSBC North America Holdings Inc. et al., No. 1:2011-cv-6189, 2011 WL 3869350, *complaint filed* (S.D.N.Y. Sept. 2, 2011).

Federal Housing Finance Agency v. JPMorgan Chase & Co. et al., No. 1:2011-cv-06188, *complaint filed* (S.D.N.Y. Sept. 2, 2011).

Federal Housing Finance Agency v. Merrill Lynch & Co Inc. et al., No. 1:2011-cv-6202, 2011 WL 3865125, *complaint filed* (S.D.N.Y. Sept. 2, 2011).

Federal Housing Finance Agency v. Morgan Stanley et al., No. 652440-2011, *complaint filed* (N.Y. Sup. Ct., N.Y. County Sept. 2, 2011).

Federal Housing Finance Agency v. Nomura Holding America Inc. et al., No. 1:2011-cv-6201, 2011 WL 3864110, *complaint filed* (S.D.N.Y. Sept. 2, 2011).

Federal Housing Finance Agency v. Royal Bank of Scotland Group PLC et al., No. 3:2011-cv-01383, *complaint filed* (D. Conn. Sept. 2, 2011).

Federal Housing Finance Agency v. SG Americas Inc. et al., No. 1:2011-cv-06203, *complaint filed* (S.D.N.Y. Sept. 2, 2011).

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A BLIZZARD

The blizzard of litigation against banks is hurting share prices because investors are unable to estimate the ultimate scope of a given bank's legal liabilities.

Bank of America, for example, had intended its proposed $8.5 billion settlement in June with investors in Countrywide mortgage securities to resolve most litigation tied to its disastrous 2008 takeover of that home loan provider.

But many parties are objecting, and that settlement did not stop insurer American International Group Inc. from suing the bank for $10 billion over its own alleged losses.

Nor did it stop Nevada's attorney general from threatening to withdraw from an $8.4 billion nationwide settlement with the bank. The AG now wants to sue the bank, accusing it of reneging on promises to modify mortgages.

Meanwhile, the U.S. Justice Department in May sued Deutsche Bank, accusing it of misleading a U.S. housing agency into believing loans it made qualified for federal insurance.

The FHFA's lawsuits follow an initial lawsuit in July against UBS AG seeking to recover $900 million of losses incurred on $4.5 billion of debt.

One legislator praised the expected FHFA lawsuits.

Brad Miller, a Democratic congressman from North Carolina, said "not pursuing those claims would be an indirect subsidy for an industry that has gotten too many subsidies already."

Since Fannie Mae and Freddie Mac were seized, taxpayers have spent more than $140 billion to keep them afloat. WJ

(Reporting by Margaret Chadbourn in Washington and Jonathan Stempel in New York; additional reporting by Clare Baldwin and Lauren Tara LaCapra in New York; additional writing by Ben Berkowitz and Dan Wilchins; editing by Matthew Lewis, John Wallace and Andre Grenon)

MORTGAGE-BACKED SECURITIES

Securitization trustee demands BofA buy back deficient loans

Securitization trustee U.S. Bancorp has demanded that Bank of America repurchase about $100 million worth of deficient loans underwritten by the bank's Countrywide unit, according to a complaint filed in New York state court.

U.S. Bank National Association v. Countrywide Home Loans Inc. et al., No. 652388/2011, complaint filed (N.Y. Sup. Ct., N.Y. County Aug. 29, 2011).

U.S. Bancorp subsidiary U.S. Bank National Association says Bank of America Corp. and its subsidiary Countrywide Home Loans Inc. breached their obligation to repurchase the mortgage loans underlying securities issued by the HarborView Mortgage Loan Trust.

The complaint was filed in the New York County Supreme Court. It states a claim for breach of contract and seeks a declaration that BofA must honor its obligation to repurchase the loans after breaching several representations and warranties.

The dispute concerns over 4,000 residential mortgage loans that Countrywide originated, represented as conforming to underwriting standards, and then sold to Royal Bank of Scotland subsidiaries Greenwich Capital Acceptance Inc. and Greenwich Capital Financial Products Inc.

Greenwich securitized the loans, with U.S. Bancorp as their trustee, and sold them to the HarborView trust. According to the complaint, the underlying loans soon defaulted at a "startling rate" as the nation's mortgage crisis intensified.

U.S. Bancorp's lawsuit is significant because securitization trustees have rarely acted to hold lenders responsible for underwriting allegedly deficient residential mortgages.

According to the complaint, U.S. Bancorp entered into a pooling and servicing agreement with Greenwich, governing the sale of the loans to the HarborView trust. U.S. Bancorp agreed to serve as the trustee of the HarborView trust and Greenwich assigned U.S. Bancorp its right to enforce Countrywide's representations and warranties concerning its underwriting practices.

REUTERS/Fred Prouser

The lawsuit seeks a declaration that Bank of America must honor its obligation to repurchase the loans after breaching several representations and warranties.

The complaint says the HarborView trust pooled the cash flow from the loans into about $1.75 billion worth of notes for sale to investors.

According to the complaint, U.S. Bancorp's consultants reviewed 786 of the underlying loans and found 66 percent did not comply with certain underwriting guidelines, in violation of Countrywide's representations to Greenwich.

U.S. Bancorp alleges Countrywide violated its underwriting guidelines because it issued loans to borrowers who:

- Misrepresented their income.
- Misrepresented their existing debt obligations.
- Misrepresented their employment.

The complaint says several of the underlying loans omitted key documents such as appraisals, fully executed second mortgages and settlement statements.

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U.S. Bancorp notified Bank of America that its Countrywide unit had breached various representations and warranties and demanded that it repurchase 520 loans worth over $150 million within 90 days.

Bank of America has refused to repurchase any of the loans without providing any explanation, the complaint says.

In addition to a declaration that BofA is obliged to cure or repurchase over 4,000 loans from the mortgage pool, Bancorp seeks attorney fees, expert fees and costs. WJ

Attorneys:
Plaintiff: Philippe Z. Selendy, Adam Abensohn and Robert W. Scheef, Quinn Emanuel Urquhart & Sullivan, New York

Related Court Document:
Complaint: 2011 WL 3805447

Scan this code with your QR reader to see the complaint on Westlaw:

NEWS IN BRIEF

GEORGIA BANK TAKES FAILED FLORIDA INSTITUTION'S ASSETS

Georgia-based CharterBank has assumed the assets and deposits of the failed First National Bank of Florida, the Federal Deposit Insurance Corp. said Sept. 9. The transfer of assets occurred immediately after the Office of the Comptroller of the Currency acted on liquidity concerns, closed Milton, Fla.-based First National and appointed the FDIC as the bank's receiver. As of June 30 First National had $296.8 million in assets and $280.1 million in deposits, the FDIC says. The bank is the 71st institution to fail this year and the 11th in Florida.

OCC RELEASES BANK EXAMINATION SCHEDULE

The Office of the Comptroller of the Currency announced Sept. 1 that it has released a schedule of upcoming Community Reinvestment Act bank examinations for the fourth quarter of the year. The CRA mandates that financial institutions serve the credit needs of low- and moderate-income customers in their neighborhoods. Under the law federal regulators periodically assess how each bank is complying with the statutory obligations. According to the schedule the OCC will evaluate the CRA compliance of 83 banks beginning in October and running through mid-December. The schedule is available at http://www.occ.gov/static/cra/exam-schedule/craq411.pdf.

TREASURY BARS FINANCIAL DEALS WITH SYRIAN OFFICIALS

The Department of the Treasury has blocked U.S. citizens and banks from conducting financial transactions with three high-ranking officials of the Syrian government, according to an Aug. 30 announcement. In addition, any U.S.-based assets the officials may have are now frozen. The Treasury issued the directive pursuant to President Obama's May 18 Executive Order 13573, which sanctions the Syrian government for violence against its people. The officials are Syria's foreign and expatriates minister, Walid Al-Moallem; the nation's presidential political and media advisor, Bouthaina Shaaban; and its ambassador to Lebanon, Ali Abdul Karim Ali.

WESTLAW JOURNAL **SECURITIES LITIGATION & REGULATION**

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Class certified against Merrill Lynch over mortgage-backed securities

A federal judge in Manhattan has certified a class of investors suing Bank of America's Merrill Lynch units over allegedly untrue statements and material omissions in their offering documents for mortgage-backed securities.

Public Employees' Retirement System of Mississippi et al. v. Merrill Lynch & Co. Inc. et al., No. 08 Civ. 10841, 2011 WL 3652477 (S.D.N.Y. Aug. 22, 2011).

U.S. District Judge Jed S. Rakoff of the Southern District of New York said the plaintiff retirement and pension funds satisfied all the requirements for class certification.

The newly issued opinion explaining his June 16 order to certify a class of about 1,600 investors will likely affect the various pending class-action lawsuits over mortgage-backed securities.

"The alleged flaws common to the process, which resulted in the misstatements, will be the subject of common proof," U.S. District Judge Jed S. Judge Rakoff said.

The Mississippi Public Employees' Retirement System, the Los Angeles County Employees Retirement Association, the Wyoming State Treasurer, the Connecticut Carpenters Pension Fund and the Connecticut Carpenters Annuity Fund are the plaintiffs in a consolidated action composed of four separate lawsuits filed against the Merrill Lynch units.

The defendants are Merrill Lynch & Co., Merrill Lynch Mortgage Investors and Merrill Lynch, Pierce, Fenner & Smith Inc.

The funds say they purchased securities from the Merrill Lynch units. They insist that the offering documents for securities contained material untrue statements and omissions.

The securities were sold through 18 separate offerings in 2006 and 2007.

According to the opinion, the securities entitled the holder to income payments from pools of loans and asset-backed or mortgage-backed securities.

After the cases were consolidated, the plaintiffs sought certification of a class comprised of all people or entities that suffered damages from the purchase or acquisition of the securities.

Judge Rakoff held that the group met the four threshold requirements of Federal Rule of Civil Procedure Rule 23(a) pertaining to qualifications for class certification: numerosity, commonality, typicality and adequate representation.

The judge explained that after the Rule 23(a) requirements are met, a court may then consider whether common questions of law predominate over any questions affecting only individuals and whether a class action is a superior method for efficiently adjudicating the controversy.

He said the common issues "overwhelmed" the individualized differences among the 18 offerings of securities under Rule 23(b)(3).

The defendants failed to persuade the judge that the variations in the nature of the misrepresentations made to each member of the proposed class necessitated individual inquiries into the falsity of the alleged misrepresentations.

REUTERS/Brendan McDermid

Judge Rakoff acknowledged that the defendants used separate prospectus supplements and backed the securities with loans issued by different originators that had varied underwriting guidelines and exceptions.

He reasoned, however, that the same defendants created and issued securities using the same process for every security purchased by the plaintiff class.

"The alleged flaws common to the process, which resulted in the misstatements, will be the subject of common proof," Judge Rakoff said.

He also said there was insufficient evidence that any class member actually knew the offering documents contained materially false statements before purchasing the securities.

As a result, treating the plaintiffs as a class is a superior method to resolving the dispute, he concluded. WJ

Attorneys:
Plaintiffs: David R. Stickney and Timothy Alan Delange, Bernstein Litowitz Berger & Grossmann, San Diego

Defendants: Carla R. Walworth, Mor Wetzler and William A. Novomisle, Paul Hastings LLP, New York

Related Court Document:
Opinion: 2011 WL 3652477

See Document Section B (P. 25) for the opinion.

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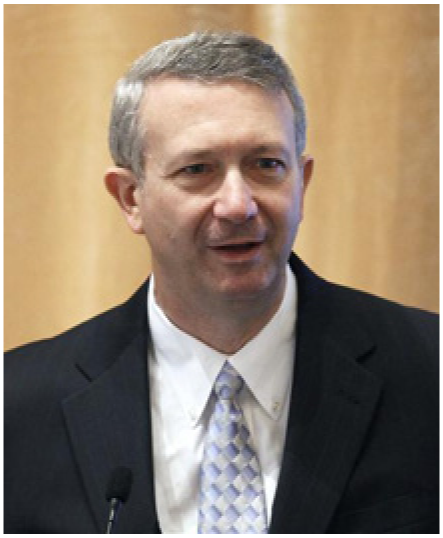

REUTERS/Lucas Jackson

Penson Worldwide CEO Philip Pendergraft is a defendant in the case.

SECURITIES FRAUD

Bad collateral meant bad news for stock price, suit says

When the stock market found out that nearly half of the $97 million in collateral for margin loans that Penson Worldwide made to investors was virtually worthless, the finance industry firm's share price plummeted, a federal securities fraud suit in Dallas has charged.

Friedman v. Penson Worldwide Inc. et al., No. 11-2098, complaint filed (N.D. Tex. Aug. 23, 2011).

The suit says Penson officers artificially inflated the stock price of the Dallas-based financial services support firm by hiding news that it was unlikely to collect interest on margin loans to customers using subprime real estate and related securities as collateral.

One of Penson's chief sources of income was the interest it received on margin loans it made to enable investors to bet large amounts on stocks.

The firm's stock price dropped by nearly 30 percent between May 9 and May 11 after the announcement, blindsiding investors who had been deceived the rosy fiscal forecasts by company officers, Friedman says.

The suit claims that CEO Philip Pendergraft and CFO Kevin McAleer violated federal securities laws by knowingly authoring false and misleading statements about the security of Penson's margin loans and the revenue that could be expected from them.

Penson's stock price dropped by nearly 30 percent between May 9 and May 11 after the disclosure, blindsiding investors who had been deceived by rosy fiscal forecasts, the suit says.

If the value of those investments does not go up, there is often no money to pay the margin loans, and a lender like Penson is entitled to collect from the assets designated as collateral.

But if the collateral is worthless, as half the assets in this case allegedly are, the margin lender is often out of luck.

In this case, the collateral was illiquid securities issued by a horseracing track and a real estate project in Texas, plaintiff Reid Friedman alleges in the U.S. District Court for the Northern District of Texas.

The officers and directors knew by the end of 2010 that Penson's income could be compromised by the shaky collateral but said nothing until they were forced to divulge it in a financial report and write down Penson's net worth.

They had direct and supervisory involvement in the day-to-day operations of the company and knew or should have known the statements were false and that they would injure investors, the suit alleges.

The suit charges violations of Securities and Exchange Commission Rule 10b-5, which covers alleged fraud in the sale of securities.

Friedman asks the court to hold the officers individually liable for any economic damage the shareholders suffered. WJ

Attorneys:

Plaintiff: Ryan R. C. Hicks and Peter Schneider, Schneider Wallace Cottrell Brayton Konecky LLP, Houston; Laurence D. King, Kaplan Fox & Kilsheimer, San Francisco; Frederic S. Fox and Jeffrey P. Campisi, Kaplan Fox & Kilsheimer, New York

Related Court Document:

Complaint: 2011 WL 3681729

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Wells Fargo sued over securities lending program

A group of institutional investors has sued Wells Fargo in Minneapolis federal court, alleging the bank invested cash from a $23 billion securities lending program in risky structured investment vehicles without their consent.

Blue Cross and Blue Shield of Minnesota et al. v. Wells Fargo Bank N.A., No. 0:11-cv-02529, complaint filed (D. Minn. Sept. 1, 2011).

The complaint, filed by a group of pension and retirement funds in the U.S. District Court for the District of Minnesota, says Wells Fargo Bank N.A. misrepresented its securities lending program as safe and conservative.

The plaintiffs, led by the Blue Cross and Blue Shield of Minnesota Pension Equity Plan, alleges breach of fiduciary duty, breach of contract, intentional and reckless fraud and fraudulent nondisclosure/concealment, negligent misrepresentation, and violations of Minnesota's unlawful- and deceptive-trade-practices statutes, Minn. Stat. §§ 325D.13, 325D.44 and 8.31.

The dispute concerns Wells Fargo's securities lending program. The bank allegedly marketed and represented to its institutional customers as a safe way to earn incrementally higher returns on securities they already owned to offset the bank's custodial fees.

In a common securities lending program, brokers temporarily borrow securities from a bank's custodial accounts to support their trading activities. The bank then invests the broker's collateral in safe and liquid investments so the bank can sell them and repay the brokers in cash when the securities are ultimately returned.

The customers keep the nominally extra return, minus their bank's normal custodial fees.

Instead of safe and liquid investments, the complaint says, Wells Fargo invested in "some of the most confusing, opaque and illiquid debt investments ever devised" — structured investment vehicles.

The SIVs were entities that borrowed money by issuing short-term securities, usually commercial paper at low interest rates, the suit says. The SIVs then lend money by buying long-term assets at higher interest rates.

The purpose of the structured investment vehicle is to profit from the spread between the two interest rates.

According to the complaint, Wells Fargo repeatedly represented it would invest its customers' funds in "'high-grade money market instruments,' where the 'prime considerations' would be 'safety of principal and liquidity.'"

The plaintiffs say they relied on these statements when they agreed to participate in the securities lending program with the securities they held in Wells Fargo custodial accounts.

The bank temporarily loaned the plaintiffs' securities to brokers who posted collateral mostly in the form of cash, the complaint says.

> Instead of safe and liquid investments, the suit says, Wells Fargo invested in "some of the most confusing, opaque and illiquid debt investments ever devised" — structured investment vehicles.

The plaintiffs estimate Wells Fargo loaned about $23 billion worth of securities by 2006.

The plaintiffs allege Wells Fargo then invested the collateral in risky structured investment vehicles.

In early 2007 the pools of collateral fell below their face value, but Wells Fargo concealed this fact from its customers until November 2007, the suit says.

The plaintiffs assert Wells Fargo has refused to return their securities and deliberately concealed the securities lending program's overexposure to risky investments.

The plaintiffs are seeking a court order forcing Wells Fargo to immediately return their securities.

In addition, they seek to disgorge Wells Fargo's profits from the securities lending program and an award that includes compensatory damages, attorney fees and costs. WJ

Attorneys:
Plaintiffs: Michael V. Ciresi, Vincent J. Moccio, Munir Meghjee and Stephen F. Simon, Robins, Kaplan, Miller & Ciresi, Minneapolis

Related Court Document:
Complaint: 2011 WL 3922329

REUTERS/Jessica Rinaldi

The complaint says Wells Fargo Bank N.A. misrepresented its securities lending program as safe and conservative.

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Goldman Sachs Bank to forgive $53 million in mortgage debt in New York

Under a deal with New York regulators, Goldman Sachs Bank has agreed to forgive $53 million in unpaid principal on certain mortgages owed by homeowners in the state.

Benjamin M. Lawsky, New York's superintendent of financial services, announced the Banking Department's agreement with the bank Sept. 1.

Goldman Sachs Bank agreed to write down the mortgages in exchange for the department's approval of the sale of the bank's subsidiary loan servicing company, Litton Loan Servicing, to Ocwen Financial Corp.

To reach the $53 million figure GSB will forgive 25 percent of the unpaid principal balance on 143 mortgages serviced by Litton that were at least 60 days delinquent as of Aug. 1, Lawsky said.

He said the Banking Department also imposed a number of other conditions on all three companies as part of the sale approval process.

By acquiring Litton, Ocwen will become the 12th largest mortgage loan servicer in the nation and will be handling a large number of mortgages that are in or at risk of foreclosure, Lawsky said.

To protect consumers from abuses that have been occurring in connection with foreclosures, the companies must implement specific changes in their nationwide business practices, the Banking Department said.

Under the terms of the deal GSB, Litton and Ocwen will stop the practice of "robo-signing" in foreclosure proceedings, the superintendent says.

Robo-signing involves having employees execute affidavits in support of foreclosure without personally reviewing the borrowers' loan documents.

The three companies will also withdraw any pending foreclosure actions where employees robo-signed documents, Lawsky said.

GSB, Litton and Ocwen have also agreed to assign a single employee representative to borrowers who are seeking a loan modification or who are in foreclosure. This will prevent borrowers from being given the runaround, according to the Banking Department.

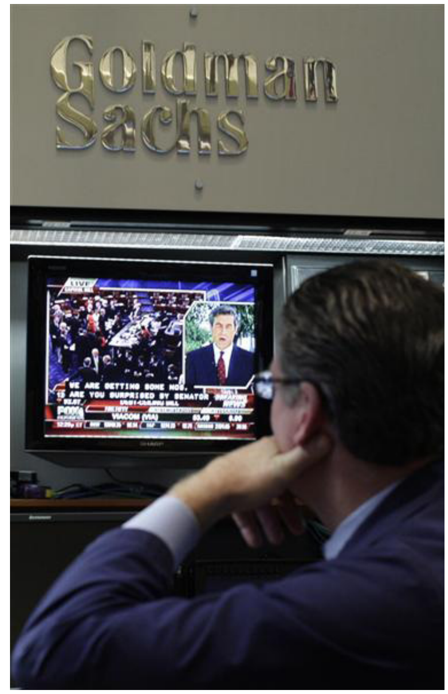
The companies will also refrain from placing borrowers in foreclosure when they are trying to obtain a loan modification, Lawsky said.

The deal further provides that in foreclosure cases the companies will ensure they have a documented, enforceable interest in the note and the mortgage and have the legal right to foreclose.

"Goldman Sachs, Ocwen and Litton have now all agreed to put the rights of homeowners ahead of their profit margins by implementing these changes," Lawsky said in a statement.

The agreement is available at http://www.banking.state.ny.us/clocwen.pdf. WJ

Scan this code with your QR reader to see the agreement.



REUTERS/Brendan McDermid

Goldman Sachs Bank agreed to write down the mortgages in exchange for approval of the sale of subsidiary Litton Loan Servicing to Ocwen Financial Corp.

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CASE AND DOCUMENT INDEX

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