

# *In re Morgan Stanley Mortgage Pass-Through Certificates Litigation*

**COURT:** United States District Court for the Southern District of New York  
**CASE NUMBER:** 1:09-cv-02137-LTS  
**CASE LEADERS:** Jeroen van Kwawegen, Jonathan D. Uslaner  
**CASE TEAM:** Richard D. Gluck

This is a class action against Morgan Stanley and certain related defendants arising from the issuance of certain residential mortgage-backed securities ("RMBS") during 2006 and 2007. The Complaint alleges that the Offering Documents for the RMBS misrepresented the quality of the underlying mortgage loans and that the originators of the mortgage loans had abandoned their loan underwriting standards. The defendants include Morgan Stanley & Co. Inc., Morgan Stanley Mortgage Capital, Inc. ("MSMC") and MSMC's officers.

## **The Court Grants Preliminary Approval of a \$95 Million Settlement**

On September 8, 2014, the parties entered into a Stipulation and Agreement of Settlement for \$95 million. On September 10, 2014, the Court granted preliminary approval of the settlement and set a final approval hearing for January 16, 2015.

## **Background**

On August 17, 2010, U.S. District Judge Laura Taylor Swain of the Southern District of New York issued an order indicating that the original Lead Plaintiff's claims were time-barred and that the Public Employees' Retirement System of Mississippi ("MissPERS") (which filed the initial complaint in the action) should file a second amended complaint. On September 10, 2010, MissPERS filed the second amended complaint, which included its claims, and added claims of additional investors.

On September 15, 2011, the Court issued its motion to dismiss order. The order denied Defendants' motion to dismiss as to Plaintiffs' Section 11, 12 and 15 claims related to false statements and omissions regarding underwriting standards and appraisals. The Court did, however, grant defendants leave to amend "as to the sufficiency of their allegations with respect to compliance with the Section 13 timing requirements ..." Plaintiffs complied with the Court's direction as to Section 13 and filed the third amended complaint.

On September 29, 2011, Defendants filed a motion for reargument related to the September 15 Order's conclusion that *American Pipe* tolling applied to certain of Plaintiffs' claims. On April 24, 2012, the Court denied the motion and reiterated its conclusion that all Plaintiffs' claims were timely.

On October 17, 2011, Defendants moved to dismiss the third amended complaint, and Plaintiffs opposed. On July 16, 2012, the Court denied Defendants' motion in its entirety, stating, *inter alia*, that the Defendants' exhibits in support of their motion were "qualitatively no different from the evidence Defendants adduced in support of their failed motion to dismiss the Second Amended Complaint on untimeliness grounds."

The Court subsequently denied Defendants' motion to stay the case in light of two appeals pending before the Second Circuit, finding that the outcome of the appeals would not affect the scope of the claims because "MissPERS had standing under [*NECA-IBEW Health & Welfare Fund v. Goldman, Sachs & Co.*, 693 F.3d 145 (2d Cir. 2012)] as of

the time of the Initial Complaint to sue on behalf of purchasers of each of the [13] offerings.” On January 31, 2013, Plaintiffs filed the fourth amended complaint asserting claims arising from the 13 offerings included in the initial complaint. On March 8, 2013, Defendants filed their Answer.

On August 30, 2013, Plaintiffs filed their Motion for Class Certification and Appointment of Class Representatives and Co-Class Counsel. Defendants opposed on November 14, 2013, to which Plaintiffs replied on December 16, 2013. The parties subsequently filed supplemental submissions.

On May 27, 2014, the Court entered an order granting Defendants’ motion for reconsideration of the Court’s prior September 15, 2011 Order which had denied in part Defendants’ motion to dismiss. The Court’s May 27, 2014 Order on reconsideration dismissed certain New Plaintiffs’ claims insofar as they were asserted directly by New Plaintiffs as named parties without prejudice to the litigation of those claims by one or more class representatives if MissPERS’s motion for class certification were granted.

On May 29, 2014, the Action was reassigned to U.S. District Judge Katherine Forrest. Shortly thereafter, the Court issued a superseding pretrial schedule setting, among other dates, a fact discovery cut-off of September 29, 2014, a summary judgment motion deadline of January 15, 2015, and a trial date of May 18, 2015.

On September 10, 2014, the Court granted preliminary approval of a settlement agreement reached by the parties. Following briefing and a hearing, the Court granted final approval of the Settlement on December 19, 2014.

## Case Documents

- December 19, 2014 - Order and Final Judgment
- November 13, 2014 - Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation of Settlement Proceeds
- November 13, 2014 - Memorandum of Law in Support of Lead Counsel's Application for an Award of Attorneys' fees and Expenses
- Notice of Pendency of Class Action and Proposed Settlement and Final Approval Hearing
- September 9, 2010 - Second Amended Complaint for Violation