

In re Wilmington Trust Securities Litigation

COURT: United States District Court for the District of Delaware
CASE NUMBER: 10-cv-990-ECR
CLASS PERIOD: 01/18/2008 - 11/01/2010
CASE LEADERS: Katherine M. Sinderson, Hannah Ross, Jesse L. Jensen
CASE TEAM: Catherine E. van Kampen

This is a securities class action on behalf of a class of persons and entities who purchased or acquired the shares of Wilmington Trust Corporation ("Wilmington Trust") between January 18, 2008 and November 1, 2010.

On March 7, 2011, Hon. Leonard P. Stark, U.S. District Judge for the District of Delaware, entered an Order appointing the Institutional Investor Group (consisting of the Merced County Employees' Retirement Association, the Coral Springs Police Pension Fund, the St. Petersburg Firefighters' Retirement System, the Pompano Beach General Employees Retirement System, and the Automotive Industries Pension Trust Fund) as Lead Plaintiff and appointing BLB&G as Co-Lead Counsel for the Class. The Action was subsequently reassigned to U.S. District Court Judge Sue Robinson.

This action brings claims for violations of the federal securities laws by Wilmington Trust, CEO and Chairman Donald E. Foley, former CEO and Chairman Ted T. Cecala, CFO David R. Gibson, COO Robert V.A. Harra, Jr., former Chief Credit Officer William North, Controller Kevyn N. Rakowski, Wilmington's Board of Directors and Audit Committee, outside auditor KPMG LLP, and underwriters J.P. Morgan Securities and Keefe, Bruyette & Woods, Inc.

Plaintiffs allege that Defendants violated the Securities Exchange Act of 1934 by concealing the drastic deterioration of Wilmington Trust's loan portfolio and improperly accounting for the value of its loans under Generally Accepted Accounting Principles. In particular, Defendants understated Wilmington Trust's provision for loan losses as its loan portfolio declined in quality, improperly delayed recognition of losses on the portfolio, and inflated its financial results by misstating the fair value of its loan portfolio. Defendants' misconduct served to artificially inflate the price of Wilmington Trust securities during the Class Period.

Plaintiffs also allege that Defendants violated the Securities Act of 1933 by issuing untrue statements in connection with the Company's February 23, 2010 public equity offering, including by understating Wilmington Trust's provision for loan losses.

Upon revelation of the truth about Wilmington Trust's loan portfolio and loan loss provisions through a series of disclosures in 2010, the price of Wilmington Trust securities dropped sharply, causing the Class to incur substantial losses.

On May 16, 2011, Lead Plaintiffs filed a Consolidated Securities Class Action Complaint. Following briefing on Defendants' motions to dismiss, on March 29, 2012, the Court entered an order dismissing the Complaint with leave to replead. Lead Plaintiffs filed a second amended complaint on April 30, 2012. Following public disclosure of facts in a related federal investigation of one of Wilmington Trust's borrowers, Lead Plaintiffs filed a third amended complaint on January 9, 2013 containing additional facts supporting Lead Plaintiffs' allegations. Following a former senior bank executive's guilty plea to conspiracy to commit bank fraud, Lead Plaintiffs filed a Fourth Amended Complaint on May 30, 2013, containing further facts supporting Lead Plaintiffs' allegations.

On March 20, 2014, the Court issued an Order sustaining the Fourth Amended Complaint in all material respects.

On September 12, 2014, Lead Plaintiffs filed their Motion for Class Certification, through which they sought to certify a Class of all investors who were damaged as a result of the challenged activity. On September 3, 2015, the Court issued a Memorandum and Order granting Lead Plaintiffs' motion and certified the Class.

On May 6, 2015, two individual defendants were indicted by the U.S. Attorney for the District of Delaware for their roles in compiling and providing false information to regulators during 2009 concerning the same subject matter as the Complaint in this action. The next day, the SEC charged those two defendants plus two additional defendants with violations of the Exchange Act for the same misdeeds. On July 2, 2015, the Court issued a sua sponte order staying the case until further order of the Court in light of the U.S. Attorney and SEC actions against numerous individual defendants and others, and on November 3, 2015, the Court stayed discovery in the action, pending the government's criminal investigations. On January 6, 2016, the U.S. Attorney filed a "Second Superseding Indictment" that added Wilmington Trust as a criminal defendant in the case already pending against the four individual defendants, charging Wilmington Trust with, among other crimes, conspiring to commit securities fraud. On April 13, 2016, the Court ordered a continuation of the stay of fact discovery, pending the completion of the criminal trial against Wilmington Trust and the four individual defendants. However, on August 16, 2016, the Court issued a report and recommendation to grant Lead Plaintiffs' previously filed motion to compel discovery of documents purportedly protected by the bank examination privilege. The report and recommendation was adopted by the Court on September 12, 2016. Then, on September 19, 2016, Lead Plaintiffs filed a motion seeking to lift the stay of fact discovery. On October 6, 2016, the US Attorney for the District of Delaware, in response to Lead Plaintiffs' motion, indicated that it did not oppose the lifting of the discovery stay. Briefing on Lead Plaintiff's motion to lift the stay was completed on October 21, 2016, and, on December 28, Judge Robinson granted Lead Plaintiff's lift-stay motion and, given the age of the litigation, the pace of the criminal proceedings, and the interests of justice, ordered that fact discovery should be lifted in its entirety.

On June 13, 2017, after Judge Robinson retired, the case was reassigned to Judge Eduardo C. Robreno.

On May 25, 2018, the Court-appointed representatives for the Class, on behalf of themselves and the other members of the Class, filed for preliminary approval of proposed settlements with Defendants for a total of \$210,000,000 in cash that, if approved, would resolve all claims in the Action. On July 9, 2018, the Court preliminarily approved the proposed settlements, authorized the dissemination of the Notice and Proof of Claim Form to potential Class Members, and set a final approval hearing for November 5, 2018.

On November 19, 2018, the Court granted final approval of the settlements.

The claims administration was completed in August 2019. On September 11, 2019 a Motion for Approval of Distribution Plan was filed. On October 10, 2019 the Court entered the Order Approving the Distribution Plan. The initial distribution occurred in November 2019. The second distribution occurred in October 2020. A third distribution occurred in September 2021. A fourth distribution occurred in October 2022. A fifth distribution occurred in January 2025. Subsequent distributions will occur on a rolling basis provided that net settlement funds are available.

More information about the settlements can be found at: www.wilmingtontrustsecuritieslitigation.com.

Case Documents

- Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- October 10, 2019 - Order Approving Distribution Plan
- November 19, 2018 - Memorandum Regarding Final Approval
- November 19, 2018 - Judgment Approving Class Action Settlement with Wilmington Trust Defendants and Underwriter Defendants
- November 19, 2018 - Judgment Approving Class Action Settlement with KPMG
- November 19, 2018 - Order Approving Plan of Allocation of Net Settlement Funds
- November 19, 2018 - Order Awarding Attorneys' Fees and Reimbursement of Litigation Expenses
- September 17, 2018 - Lead Plaintiffs' Motion for Final Approval of Class Action Settlements and Plan of Allocation
- September 17, 2018 - Brief in Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlements and Plan of Allocation
- September 17, 2018 - Lead Counsels' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- September 17, 2018 - Brief in Support of Lead Counsels' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- September 17, 2018 - Declaration of Hannah Ross and Joseph E White, III in Support of (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlements and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- July 17, 2018 - Proof of Service of Notice of Settlement Under Class Action Fairness Act
- July 10, 2018 - Order Preliminarily Approving Settlement and Providing for Notice
- May 25, 2018 - Stipulation and Agreement of Settlement with Wilmington Trust Defendants and Underwriter Defendants
- May 25, 2018 - Stipulation and Agreement of Settlement with KPMG
- May 25, 2018 - Lead Plaintiffs' Unopposed Motion for (I) Preliminary Approval of Settlements and (II) Approval of Notice to the Class
- May 25, 2018 - Brief in Support of Lead Plaintiffs' Unopposed Motion for (I) Preliminary Approval of Settlements and (II) Approval of Notice to the Class
- March 20, 2014 - Memorandum Opinion
- June 7, 2013 - Fourth Amended Consolidated Securities Class Action Complaint
- January 9, 2013 - Third Amended Consolidated Securities Class Action Complaint

- September 12, 2011 - Lead Plaintiffs' Omnibus Opposition to Defendants' Motions to Dismiss the Consolidated Securities Class Action Complaint
- May 16, 2011 - Consolidated Securities Class Action Complaint