

In re Bancorp Inc. Securities Litigation

COURT: United States District Court for the District of Delaware

CASE NUMBER: 14 Civ. 0952

CLASS PERIOD: 01/26/2011 - 06/26/2015

Settlement:

On July 27, 2016, the parties entered into the Stipulation and Agreement of Settlement setting forth the terms and conditions of the settlement of this Action (the "Settlement"). The Settlement provides for a \$17,500,000 cash payment and the implementation of certain corporate governance reforms by Bancorp (as described in the Stipulation). On December 15, 2016, the Court granted final approval of the Settlement, approved the Plan of Allocation for the distribution of the Settlement proceeds, and awarded attorneys' fees and reimbursement of litigation expenses to Plaintiffs' Counsel.

Description of the Case:

This action asserts claims pursuant to Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 against defendants seeking to recover for their fraudulent course of conduct that artificially inflated the price of The Bancorp, Inc. ("Bancorp" or the "Bank") common stock during the time period of January 26, 2011 through June 26, 2015, inclusive (the "Class Period").

The Bancorp is a commercial bank that primarily generates revenue by issuing "prepaid debit cards," for which it earns fees, and by making commercial loans to businesses in the Philadelphia metropolitan area, on which the Bank earns interest. Throughout the Class Period, Bancorp and its senior officers made a series of materially misleading statements and omissions about both of the Bank's revenue-generating businesses. Through these misstatements and omissions, Defendants concealed the fact that the Bank's prepaid business was in violation of federal law designed to prevent money laundering by its customers, and that its commercial loan portfolio was rife with toxic credit and massive undisclosed losses.

Specifically, Defendants stated that Bancorp had supposedly established a "rock-solid" compliance program in accordance with all the key requirements of the Bank Secrecy Act, which was essential to Bancorp's ability to operate and grow in accordance with federal law. Contrary to these representations, Bancorp was in violation of each of these requirements, as was revealed when Bancorp entered into a consent order with the FDIC in June 2014, which froze its ability to grow its core prepaid card business. Furthermore, throughout the Class Period, Defendants repeatedly represented that they preemptively identified problem loans, disclosed them and charged them off. At the same time, unbeknownst to investors, far from "proactively" disclosing and "aggressively" charging off problem loans, Defendants made delinquent loans appear current by either modifying the loan terms to extend or reduce the payment schedule, or by extending the delinquent borrower new credit to make payments on the existing loans, also known as "extend-and-pretend" tactics.

Beginning on April 23, 2014, Bancorp made a series of stunning disclosures that began to reveal the truth about its severe BSA violations and toxic commercial loan portfolio. On that day, the Bank reported that it had recorded a \$17.3 million provision for bad loans, which had wiped out its income for the quarter and was 200% greater than the prior period. In response to this news, the Bank's common stock dropped 15% from \$18.60 per share to \$15.84 per share on extremely high volume. Then, on June 10, 2014, Defendants shocked the market again when they

disclosed that the Bank had entered into a consent order with the FDIC, which revealed that the Bank was violating a number of basic BSA requirements. The consent order also froze the growth of Bancorp's prepaid business, which was the Bank's primary source of growth. The Bank's stock dropped again in response to this news, falling 28% on its highest volume of the year, declining from \$16.20 per share to \$11.54 per share on June 11. Finally, on July 23, 2014, Bancorp announced that it had been forced to take another \$15.5 million provision for losses in its loan portfolio, which was twice as high as expected. On this news, Bancorp's stock tumbled another 14%, falling from \$10.87 per share to \$9.31 per share.

On October 24, 2014, Judge Gregory Sleet of the District of Delaware appointed Arkansas Public Employees Retirement System and the Arkansas Teacher Retirement System as Lead Plaintiff, and Bernstein Litowitz Berger & Grossmann LLP and Spector Roseman Kodroff & Willis, P.C. as Lead Counsel for the Class. On January 23, 2014, Lead Plaintiff filed a Consolidated Class Action Complaint.

On April 1, 2015, Bancorp announced in a Form 8-K filed with the Securities and Exchange Commission that its Audit Committee had concluded that the Company's previously issued financial statements from 2012, 2013 and 2014 "should no longer be relied upon" given that "certain provisions for loan losses" were "taken in incorrect periods." The Company did not announce when the Restatement would be issued, but it is expected that it will be issued on or before May 11, 2015, the date that the Company informed the SEC that it plans to issue its Annual Report on Form 10-K for the fiscal year ended December 31, 2014. Given that the Restatement is expected to relate directly to Lead Plaintiffs' claims, on April 10, 2015 Lead Plaintiffs and Defendants submitted a proposed modified schedule to Judge Sleet regarding the filing of an Amended Consolidated Complaint and Defendants' renewed motion to dismiss.

On May 27, 2015, this case was reassigned to Judge Sue L. Robinson.

The Restatement was issued on September 28, 2015 and Lead Plaintiffs filed an Amended Consolidated Class Action Complaint ("CCAC") on October 26, 2015. Defendants' motion to dismiss the CCAC was pending at the time that the Parties reached their agreement to settle.

The claims administration process has concluded and the net settlement fund has been fully disbursed. This matter is considered closed.

Case Documents

- March 4, 2019 - Order Approving Distribution Plan
- December 16, 2016 - Judgment Approving Class Action Settlement
- December 16, 2016 - Order Approving Plan of Allocation of Net Settlement Fund
- December 16, 2016 - Order Awarding Attorneys' Fees and Reimbursement of Litigation Expenses
- November 10, 2016 - Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan Allocation
- November 10, 2016 - Memorandum of Law in Support of Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation

- November 10, 2016 - Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- November 10, 2016 - Memorandum of Law in Support of Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- November 10, 2016 - Joint Declaration of John Rizio-Hamilton and Robert M. Roseman in Support of: (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- September 5, 2016 - Notice of (I) Pendency of Class Action, Certification and Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- August 17, 2016 - Order Preliminarily Approving Settlement and Providing for Notice
- July 27, 2016 - Stipulation and Agreement of Settlement
- October 26, 2015 - Amended Consolidated Class Action Complaint