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Judge Approves \$110 Million Settlement in HEMT MBS Case

A federal judge has approved a \$110 million settlement between Credit Suisse and investors who accused the underwriter of misleading them in offering documents for certain Home Equity Mortgage Trusts (HEMT) mortgage-backed securities issued in 2006 and 2007.

Cohen Milstein acted as lead counsel in the class-action lawsuit, representing the lead plaintiff, the New Jersey Carpenters Health Fund. Over the last three years, Cohen Milstein has negotiated nearly \$2 billion in settlements in eight mortgage-backed securities (MBS) cases.

“We are extraordinarily proud of the work we did on this case, which enabled investors to achieve a particularly strong result,” said Cohen Milstein Partner Joel Laitman, one of the attorneys overseeing the litigation. “We believe the certified class has the best per-bond recovery of any MBS class action up to this point.”

Federal Judge Paul A. Crotty of the Southern District of New York issued final approval of the settlement on May 10. The settlement covered investors who bought four series of MBS pass-through certificates in offerings underwritten by Credit Suisse and related entities. Despite high credit ratings, the certificates were constructed of shaky mortgages. The securities plummeted in value in 2008 after borrowers began defaulting on the underlying loans.

The New Jersey Carpenters fund sued, saying that the underwriters failed to properly disclose that the financial instruments depended on portfolios of subprime and other high-risk mortgages as collateral. In addition, the plaintiff alleged that the mortgages systematically violated the offerings’ written guidelines about loan quality and that underwriters hadn’t done properly investigated whether the loans met those guidelines.

In denying the defendants’ motion to dismiss the case in 2010, Judge Crotty found that plaintiffs had properly stated most of their claims and should be allowed to argue the merits of the case at trial.

“Taken as a whole, the Offering Documents lend the clear impression that controls and oversight mechanisms were in place and that, in fact, the mortgage Originators were evaluating the creditworthiness of borrowers and appraising the value of the subject properties,” Judge Crotty wrote. “Investors reasonably assumed that in offering mortgage-backed securities, the Defendants conducted adequate due diligence to ensure the accuracy of their reputations.”

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The judge eventually certified a class of investors that included 330 entities who purchased pass-through certificates issued by four HEMT trusts: Series 2006-4, Series 2006-5, Series 2006-6 and Series 2007-2.

The case is *New Jersey Carpenters Health Fund v. DLJ Mortgage Capital, Inc., et al.*, Civ. No. 08-5653 (S.D.N.Y).