

Securities Litigation

April 30, 2018

Lowenstein Sandler Securities Litigation Group Generates Significant Returns for Fund Clients in 2017

In 2017, Lowenstein's securities litigators achieved several outstanding results for their investment fund and structured finance clients, including:

Fund Recovers Almost as Much on Individual Claim as Entire Class

Investors in Ocwen Financial Corporation—one of the nation's largest non-bank mortgage servicers—suffered significant losses in 2014 when former Chairman Bill Erbey's conflicts of interest and Ocwen's failure to comply with regulatory requirements were revealed to the market following an investigation by the New York Division of Financial Services. A class action on behalf of investors who purchased Ocwen common stock in 2013 and 2014 was filed in federal court in Florida. That class action settled for \$49 million in cash and \$7 million in Ocwen common stock.

A multibillion-dollar hedge fund that was a member of that class retained Lowenstein to opt it out of the class action and file a separate lawsuit against Ocwen. Lowenstein litigated the fund's individual claim against Ocwen to the brink of trial, at which point Ocwen agreed to pay \$36 million to settle the fund's claim, or about 65 percent of the entire class settlement. By opting out, the fund was paid last year, while investors who remained in the class will wait years before getting paid and will receive much lower recoveries per share.

First-Lien Noteholders Receive \$20 Million Extra in Restructuring

As a direct result of Lowenstein's litigation efforts, a group of senior noteholders secured \$20 million in additional value from the restructuring of an international semiconductor company, Global A&T Electronics Ltd. (GATE). After GATE consummated a surprise debt exchange, Lowenstein was retained by holders of hundreds of millions of dollars in first-lien senior secured notes to protect their rights and enforce their lien priorities. On the group's behalf, Lowenstein filed suit against GATE, its equity sponsors, and second-lien noteholders to challenge the debt exchange in court.

After a New York appeals court reinstated the group's claims, GATE announced that it would restructure all of its outstanding debt. Armed with powerful contract and tort arguments (which spawned a number of copycat lawsuits), Lowenstein's group of first-lien noteholders was able to extract significant additional concessions from GATE and its equity sponsors in the restructuring, including \$15 million of new secured notes as well as \$5 million in cash, in addition to the noteholders' pro rata share of \$540 million in face amount of new first-lien senior notes issued in the restructuring.

RMBS Sponsors on the Hook for Attorneys' Fees and Costs of Suit

Lowenstein represents several structured finance investors who have directed the trustees of RMBS trusts to file suit against the sellers of mortgage loans for breach of representations and warranties. Many firms before Lowenstein had tried—but failed—to convince the New York courts that mortgage loan sellers were contractually obligated to indemnify the trustees for the attorneys' fees and costs incurred in enforcing the sellers' repurchase obligation. In the case of *Wilmington Trust Co. v. Morgan Stanley*

Mortgage Capital Holdings, LLC, however, Lowenstein successfully persuaded a New York appeals court that the defendant was required to indemnify the trustee for its fees and expenses. As a result, many trustees have started to ask courts to revisit the denial of their indemnification claims against other mortgage sellers and sponsors of RMBS trusts. If trustees are successful in their indemnification claims, it will increase the recoveries paid to the trusts to resolve mortgage repurchase claims, which in turn inures to the benefit of structured finance investors.

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