

# Bear Stearns Mortgage Pass-Through Litigation

**COURT:** United States District Court for the Southern District of New York

**CASE NUMBER:** 1:08-cv-08093

**CASE LEADERS:** Jeroen van Kwawegen, Jonathan D. Uslaner

This class action alleges violations of the Securities Act arising from Bear Stearns & Company, Inc.'s ("BSC") sale of mortgage pass-through certificates using false and misleading offering documents. The offering documents contained false and misleading statements related to, among other things, (1) the underwriting guidelines used to originate the mortgage loans underlying the certificates; and (2) the accuracy of the appraisals for the properties underlying the certificates. The Defendants include BSC, Bear Stearns Asset Backed Securities I ("BSABS") and Structured Asset Mortgage Investments II, Inc. ("SAMI") (the BSC subsidiaries that issued the Certificates) and various BSABS and SAMI officers.

## May 27, 2015 - Court Grants Final Approval of \$500 Million Settlement

After six years of hard-fought litigation and extensive arm's-length negotiations, the parties reached an agreement to resolve this securities class action for \$500 million, plus up to an additional \$5 million for payment of litigation expense and claims administration expenses. The Court preliminarily approved the settlement on February 19, 2015, and granted final approval on May 27, 2015.

### Background

On December 23, 2009, the Honorable Laura Taylor Swain issued an order consolidating all previously-filed Bear Stearns pass-through cases under the caption *In re Bear Stearns Mortgage Pass-Through Certificates Litigation*, Master file No. 08-Civ. 8093 (LTS) (KNF). Concurrently, Judge Swain appointed BLB&G client the Public Employees' Retirement System of Mississippi and the New Jersey Carpenters Health Fund as co-lead plaintiffs and appointed BLB&G and Cohen Milstein Sellers & Toll PLLC to serve as co-lead counsel.

On March 30, 2012, Judge Swain issued an order sustaining Plaintiffs' claims for violation of Sections 11, 12 and 15 of the Securities Act related to untrue statements and omissions regarding underwriting standards and appraisals. The Court concluded that Plaintiffs' claims were timely because Plaintiffs could not have pled facts sufficient to survive a motion to dismiss prior to one year before the complaints were filed. Further, the Court held that the filing of the complaints tolled the statute of repose for all members of the class, even where the original plaintiffs lacked standing to bring some claims. The Court also concluded that Plaintiffs had adequately pled cognizable injury, and that loan repurchase was not the sole remedy available to Plaintiffs. Finally, the Court concluded that Plaintiffs, who purchased select tranches of each offering at issue, had standing to represent all investors in those offerings.

On May 16, 2012, the Court stayed the Action pending the outcome of the appeal before the Second Circuit in *Police and Fire Retirement System of the City of Detroit v. IndyMac MBS, Inc.*, No. 11-2998-cv (2d Cir.) ("*IndyMac*"). The Court subsequently restored the Action to the Court's active calendar after the Second Circuit issued its *IndyMac* decision.

Following the Second Circuit's September 6, 2012 decision in *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145 (2d Cir. 2012) ("*NECA-IBEW*"), Plaintiffs moved for leave to file an amended complaint to

include claims arising from 26 offerings in accordance with *NECA-IBEW* and to lift the stay of proceedings. Thereafter, the parties submitted additional briefing regarding Plaintiffs' motion for leave to amend, and Defendants' motion for reconsideration in light of *IndyMac*.

On December 2, 2013, in response to the Court's request, the parties filed a Joint Response identifying the 22 offerings remaining at issue in the case, including the 8 offerings for which there is no dispute as to timeliness and that would proceed regardless of the outcome of pending motions, and the 14 disputed offerings for which Defendants contend that the statute of repose expired. These are the 22 offerings that are the subject of the proposed Settlement.

On August 4, 2014, the parties informed the Court that they had agreed to exchange documents and information in connection with an upcoming mediation, and on November 17, 2014, the parties reached an agreement to settle the Action, subject to satisfaction of certain conditions, including the completion of Plaintiffs' ongoing diligence and Court approval pursuant to Fed. R. Civ. P. 23.

## Case Documents

- April 22, 2015 - Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation of Settlement Proceeds
- April 22, 2015 - Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- Notice of Pendency of Class Action and Proposed Settlement, Final Approval Hearing, and Motion for Attorneys' Fees and Reimbursement of Litigation Costs
- February 19, 2010 - Consolidated Class Action Complaint