

# Merrill Lynch Mortgage Pass-Through Litigation

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

**CASE NUMBER:** 1:08-cv-10841-JSR

**CASE LEADERS:** Jeroen van Kwawegen

This case alleges violation of the Securities Act arising from Merrill Lynch's sale of mortgage pass-through certificates using false and misleading offering documents. Specifically, the offering documents failed to disclose, *inter alia*, that loan originators had systematically ignored their stated underwriting and appraisal standards.

On December 16, 2008, a complaint captioned *Iron Workers Local 25 Pension Fund v. Credit-Based Asset Servicing and Securitization LLC, et al., 08-cv-10841* (the "Federal Merrill Lynch Action") was filed against Merrill Lynch. *The Federal Merrill Lynch Action* did not include claims on behalf of investors in the securities that the Mississippi Public Employees' Retirement System ("MissPERS") purchased. Therefore, on February 16, 2009, MissPERS filed a class action in the United States District Court for the Southern District of New York against Merrill Lynch and several of its related entities, asserting additional claims on behalf of purchasers of the mortgage pass-through certificates MissPERS purchased.

On April 2, 2009, the Court consolidated the two actions. On April 23, 2009, the Honorable Jed S. Rakoff appointed MissPERS Lead Plaintiff. On May 20, 2009, MissPERS filed its Consolidated Complaint and on June 17, 2009, Defendants filed motions to dismiss. On June 1, 2010, Judge Rakoff issued an order which sustained plaintiffs' Section 11 claims against the Merrill Lynch Depositor, the Merrill Lynch Underwriter, and the Individual Defendants in 18 of the 19 offerings in which plaintiffs purchased certificates. Further, the Court granted plaintiffs leave to amend with respect to: (1) plaintiffs' Section 12(a)(2) claims against the Merrill Underwriter and the Junior Underwriters; and (2) plaintiffs' Section 15 control person allegations against Merrill Lynch & Co. and the Individual Defendants.

On July 6, 2010, Plaintiffs filed the Second Amended Complaint and on August 6, 2010, Defendants moved to dismiss. On November 29, 2010, Judge Rakoff issued an order granting the Junior Underwriters' motion and denying the Merrill Lynch Defendants' motion. Specifically, the Court held that Plaintiffs had adequately pled section 11 claims related to the untrue underwriting, appraisal and ratings statements for 18 offerings. Further, the Court sustained Plaintiffs' claims under sections 12(a)(2) and 15.

On March 22, 2011, Plaintiffs filed a motion seeking an order: (1) certifying a class of investors that purchased in the 18 offerings; and (2) appointing Plaintiffs as class representatives and BLB&G as class counsel. On June 15, 2011, Judge Rakoff issued an order granting Plaintiffs' motions. According to the order, "after careful consideration, and for reasons that will be stated in a forthcoming written opinion, the Court hereby grants both motions." The order represents the first Class to be certified related to mortgage-backed securities issued between 2005 and 2007.

## **Plaintiffs Obtain \$315 Million Settlement in Merrill Lynch MBS Litigation**

After extensive litigation, document and deposition discovery, and negotiations—including mediation sessions facilitated by an experienced and highly respected mediator - the parties recently reached an agreement to settle the case. Under the settlement, which is subject to court approval, Merrill Lynch will pay \$315 million to resolve claims against all defendants. Notably, it is the largest settlement of a class action asserting Securities Act claims related to the issuance of mortgage-backed securities. On December 5, 2011, Plaintiffs filed with the Court a

motion for preliminary approval of the settlement. On March 21, 2012, the court gave final approval to the settlement. The Court entered the orders implementing the final settlement on May 7, 2012.

### **Case Documents**

- Notice of Pendency of Class Action and Proposed Settlement, Settlement Fairness Hearing and Motion for Attorneys' Fees and Reimbursement of Litigation Expenses
- June 16, 2011 - Order on Class Certification
- May 20, 2009 - Consolidated Class Action Complaint