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Calif. Investors' Lehman Collapse Suit Moves Forward

By **Richard Vanderford**

Law360, New York (October 15, 2012, 9:33 PM ET) -- A federal judge on Monday greenlighted a securities fraud suit California investors brought over alleged lies Lehman Brothers Holdings Inc. told in the run-up to its financial-crisis collapse, ruling that some of the allegations against the firm's officers and directors can go forward.

U.S. District Judge Lewis A. Kaplan ruled in a 66-page opinion that core fraud claims in a group of eight lawsuits can go to trial, but found certain theories of investor harm were not strong enough.

In the suits, seven California public entities and an insurance company that invested in Lehman securities offerings brought fraud claims against the failed investment bank's directors, officers, stock issuance underwriters and accountants. The defendants misled the investing public about Lehman's risk-management policies, leverage and real estate holdings, the California investors, a group that includes the city of Burbank and several water districts, claim.

Judge Kaplan ruled that federal securities fraud claims against the officers, directors and Lehman's auditor, Ernst & Young LLP, are overall strong enough to proceed.

"This is a tremendous victory. Our public entity clients are extremely pleased with the result," said Mark C. Molumphy of Cotchett Pitre & McCarthy, an attorney for the plaintiffs.

The judge, though, also threw out several legal theories offered by the investors, rejecting, for example, complaints about Lehman's risk limits and stress testing. Lehman's directors called the decision a victory for their side.

"We are pleased that [the] court has concurred in our analysis in largely dismissing the claims against our clients," said Adam J. Wasserman of Dechert LLP, a lawyer for the group. "We look forward to obtaining dismissal of the remaining claims."

A group of 24 underwriters that participated in Lehman's securities offerings will also escape the suit.

Judge Kaplan ruled that the single state law claim against the underwriters — a group that includes Citigroup Global Markets Inc., Wells Fargo Securities LLC and others — fails because the law at issue, which makes it illegal to aid a securities fraud, requires the investors to show that they bought the securities from Lehman.

The investors did not make any claims about where they bought the securities, Judge Kaplan said, and he also dismissed a related claim against Ernst & Young LLP, Lehman's auditor.

Judge Kaplan, though, found that the investors could bring certain claims against E&Y related to an accounting technique called Repo 105, where a company makes itself seem less indebted by selling assets with the intent of immediately buying them back.

Attorneys for the other parties did not immediately respond to requests for comment.

The California investors' suit is part of a larger multidistrict litigation over what Lehman told investors prior to its September 2008 bankruptcy, the largest in U.S. history.

In December, Lehman's underwriters agreed to pay \$417 million to settle a class action related to notes Lehman sold in the year prior to the bankruptcy.

The plaintiffs are represented by Cotchett Pitre & McCarthy.

The underwriters are represented by Cleary Gottlieb Steen & Hamilton LLP and Kasowitz Benson Torres & Friedman LLP. E&Y is represented by Latham & Watkins LLP. The individual defendants are represented by Simpson Thacher & Bartlett LLP, Dechert LLP and others.

The MDL is In re: Lehman Brothers Securities and ERISA Litigation, case number 1:09-md-02017, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Lana Birbrair. Editing by Jeremy Barker.

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