

Cahill Wins Major Victory Affirming Dismissal of Structured Investment Vehicle Litigation

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A Cahill litigation team prevailed on behalf of The McGraw-Hill Companies and its Standard & Poor's ("S&P") Financial Services unit in defeating a plaintiff's appeal that challenged earlier dismissals by the Supreme Court (Commercial Division, New York County), and the Appellate Division, First Department in *Oddo Asset Management v. Barclays Bank*. The appeal was argued on behalf of McGraw-Hill and S&P by Dean Ringel on May 30, 2012, in the New York Court of Appeals.

The suit had been brought by Oddo Asset Management following the collapse of two structured investment vehicles, or SIV-lites, notes of which it had purchased. The suit was brought against the collateral managers of the SIV-lites, Barclay's--alleged to have arranged the creation of the SIV-lites-- and S&P. In the case, Oddo Asset Management asserted that S&P and Barclays "aided and abetted" a breach of fiduciary duty by the collateral managers of the SIV-lites.

In its June 27, 2012 ruling, the New York Court of Appeals unanimously upheld the lower court dismissals, holding that no fiduciary duty existed between the collateral managers and Oddo because a debtor-creditor relationship does not create a fiduciary duty and because there was no contact between Oddo and the collateral managers. In the absence of any duty there could be no claim of aiding and abetting a breach of the non-existent duty.