
Cahill Wins Major Victory Affirming Dismissals of Mortgage-Backed Securities Litigations

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A Cahill litigation team prevailed on behalf of The McGraw-Hill Companies in a federal appeal that challenged the earlier dismissals by the U.S. District Court in *In Re Lehman Brothers Mortgage-Backed Securities Litigation*, *Wyoming State Treasurer v. Moody's Investors Service, Inc., et al*, and *Vaszurele Ltd. v. Moody's Investors Service, Inc.*, et al, three purported securities class actions brought by purchasers of certain mortgage pass-through certificates against McGraw-Hill in connection with ratings issued by its Standard & Poor's (S&P) unit. The appeals were argued by Cahill partner Floyd Abrams on January 11, 2011 in the U.S. Court of Appeals for the Second Circuit.

In each of the cases, plaintiffs asserted that the offering documents pursuant to which the certificates were sold contained material misstatements and omissions. The complaints alleged that S&P was an "underwriter," "seller," and/or "controlling person" of those that underwrote or sold the securities at issue and as such, could be held liable for the allegedly misleading offering documents under the Securities Act of 1933.

In its May 11, 2011 ruling, the U.S. Court of Appeals for the Second Circuit in New York unanimously upheld the dismissals by Judge Lewis Kaplan of the U.S. District Court, Southern District of New York, finding that S&P was not an "underwriter" or a "controlling person" of those that underwrote or sold the securities. (Plaintiffs did not appeal the lower court's dismissal of claims that S&P was a "seller" of the securities.) "Nothing in the statute's text supports expanding the definition of underwriter to reach persons not themselves participating in such purchases, offers, or sales, but whose actions may facilitate the participation of others in such undertakings," wrote Judge Reena Raggi.

Attorneys

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