

Lawsuit by Tops Market Trustee Against Morgan Stanley May Proceed

Editors

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A New York bankruptcy judge ruled Oct. 12 that a lawsuit filed by the litigation trustee for Tops Market LLC against New York-based Morgan Stanley and other defendants may proceed.

The case alleges that Morgan Stanley, a onetime private-equity owner of Tops, caused the supermarket chain to file for Chapter 11 bankruptcy by having it pay out more than \$375 million in “lavish and illegal dividends” to Morgan Stanley and Tops’ other private-equity owners, while running up \$426 million in debt and saddling the grocery company with \$515 million in liabilities from underfunded pension plans.

Kyle Lonergan, of [McKool Smith](#), lead counsel for the plaintiff in Alan D. Halperin v. Morgan Stanley Investment Management Inc., et al, and noted: “We are happy with the decision and look forward to prosecuting the case for the benefit of the creditors of Tops.” The law firm has offices in Austin, Texas; Dallas; Houston; Los Angeles; Marshall, Texas; New York; Washington, D.C.

As reported in [Law360](#), Morgan Stanley-led group of private-equity investors purchased Tops in 2007 for \$300 million, \$227 million of that amount funded by debt issued by Tops, and sold it in 2013 to a group of Tops executives for \$21 million. After Tops [filed for Chapter 11 in 2018](#) and a [\\$455 million reorganization plan was approved](#), a litigation trust was established. In 2020, trustee Halperin filed suit against Morgan Stanley and the other private-equity owners.

Williamsville, N.Y.-based [Tops Markets LLC](#) operates 150 supermarkets, including five franchise stores, and employs more than 14,000 associates in New York, Pennsylvania and Vermont. The banner’s parent company, Northeast Grocery Inc., is No. 44 on The PG 100, Progressive Grocer’s 2022 list of the [top food and consumables retailers in North America](#).