

Big Banks Lose Bid To Toss NJ Bond Marketing Claims

By **Katryna Perera**

Law360 (October 26, 2023, 9:24 PM EDT) -- A New Jersey state judge has denied JPMorgan Chase & Co. and other banks' bid to toss a suit accusing them of a scheme to inflate the interest rates of certain bonds, ruling that a recent change to state law bars the court from dismissing the action.

New Jersey Judge Douglas H. Hurd delivered an oral ruling Tuesday and said a recent amendment made to a provision of the New Jersey False Claims Act applies retroactively, and therefore, the state has every right to use its veto power to prevent the case from being dismissed.

The case concerns the work that bank defendants, which also include Citigroup, Wells Fargo and Bank of America, performed while serving as so-called remarketing agents for more than 200 New Jersey variable-rate debt obligations that were roughly valued at \$7.7 billion at issuance, court records show.

Plaintiff Edelweiss Fund LLC launched the current action in 2015 on behalf of the state of New Jersey.

The firm, a registered municipal adviser that brought the suit as a qui tam whistleblower claim, alleges the banks "mechanically set the rates en masse without any consideration of the individual characteristics of the bonds or the associated market conditions."

The banks did not make any effort "to broadly market the bonds to those investors who would have been willing to hold the bonds at the lowest interest rates possible," the complaint also said.

This coordinated action allowed the banks to unlawfully collect millions of dollars in fees each year from the state, despite doing "the exact opposite of what New Jersey hires them to accomplish," Edelweiss alleged.

The banks sought to dismiss the case, but a recent amendment to New Jersey's False Claims Act blocks the dismissal bid, Judge Hurd noted Tuesday in his oral ruling.

According to the **transcript** of the judge's ruling, the New Jersey Legislature recently amended the state False Claims Act to give the state's attorney general the authority to contest the dismissal of a qui tam whistleblower action on what are known as public disclosure grounds.

The question before the court was whether the amendments to the state False Claims Act applied retroactively. The banks argued they did not. The state's Attorney General's Office and Edelweiss argued that they did.

Judge Hurd agreed with the state and Edelweiss on Tuesday. He said the crux of their argument is that, no matter what, the state is the real party-in-interest in the suit, and the amendment to the NJFCA is procedural rather than substantive.

"As the real party-in-interest, the state maintains continuing rights in the action, including the right to preclude dismissal based on public disclosure grounds," the judge said. "While the State formally had to intervene to prevent dismissal, it can now simply notify the court to achieve the same result. This procedural shift is said not to diminish its substantive authority in the case."

With the amendment, the state, in the current action, does not gain any new rights, Judge Hurd said,

nor does it "destroy" any of the defendants' rights and therefore, it can be applied retroactively.

Judge Hurd added that if he were to accept the defendants' arguments that the amendment is substantive rather than procedural change, it would "impair the entire statutory framework and render it impracticable."

"The defendants' motion for dismissal in essence seeks to preclude the fact that the attorney general maintains as the party-in-interest for the life of the action ... by attempting to curtail the state's ongoing opportunity to intervene when circumstances warrant as defendants attempt here, they imperil the delicate balance established by the False Claims Act which aims to encourage both private individuals and the government to combat fraud for the greater public good," the judge said.

The judge also provided his thoughts on the defendants' motion for summary judgment based on the public disclosure bar. Given the state's veto, it is relevant, but Judge Hurd said he would like to provide analysis in case a higher court decides to review his ruling.

The judge said that overall, it's clear that the action "isn't even close to one-sided," since there are genuine disputes of material fact.

"Whether the alleged fraud in question was within the public domain and whether it was only revealed through extensive efforts and financial investment by the relator is clearly a question of material fact and must be decided by a fact finder," the judge said.

Representatives for the parties did not immediately respond to requests for comment Thursday.

Edelweiss is represented by Robert A. Magnanini and Julio Gomez of Stone & Magnanini LLP, Erica Blachman Hitchings of Whistleblower Law Collaborative LLC and by Daniel W. Levy of McKool Smith PC.

The bank defendants are represented by Greenberg Traurig LLP, Harrison Law LLC, Aguilar Bentley LLC, Sidley Austin LLP, Gibbons PC, WilmerHale, Jones Day, Pashman Stein Walder Hayden PC and Paul Weiss Rifkind Wharton & Garrison LLP.

The case is New Jersey ex. Rel. Edelweiss Fund LLC v. JPMorgan Chase & Co. et al., case number MER-L000885-15, in the superior Court of New Jersey, Mercer County.

--Additional reporting by Jeannie O'Sullivan. Editing by Andrew Cohen.