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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE LEHMAN BROTHERS SECURITIES AND ERISA LITIGATION,

09 MD 2017 (LAK)
08 CV 6762 (LAK)

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New York, N.Y.
January 26, 2010
2:15 p.m.

Before:

HON. LEWIS A. KAPLAN,

District Judge

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THE COURT: Mortgage bank. The defense.
MS. McGARRY: Good afternoon, your Honor. Lynn McGarry on behalf of the individual defendants in the mortgage backed securities case.
I'd first like to address materiality and then statute of limitations. I don't think we need to go back to standing unless your Honor would like to return to that. We tried to cover it this morning. And then the rating agencies will be arguing separately.
THE COURT: I don't think I need to hear about the statute of limitations in this case.
MS. McGARRY: In this case the plaintiffs bought securities backed by pools of mortgages. Whether they got the payments they were hoping to get depended on two things: One, the quality of those mortgages; and, two, the credit enhancement. It was an assumption that you were going to have some defaults on mortgages, so it was a matter of how much overcollaterallization you need, how many additional mortgages to address that risk. In addition -- there was other collateral credit enhancement, rather. There was insurance and there were swaps to protect against the interest risk.
And the plaintiffs have -- two of their allegations are really focused on this. One is that with respect to the quality of the mortgages, there was systematic disregard of underwriting standards. But that is not supported. I don't

have to go over the pleading standards of Twombly and Iqbal for your Honor, but their allegations simply don't rise to the level. They say it's reasonable for your Honor to infer that there was systematic disregard because there were a lot of delinquencies and because the underwriters used poor underwriting practices. That does not mean that they deviated from their underwriting guidelines. Those are two different things.

For example, in paragraph 133 of the complaint --

THE COURT: So their guidelines were that they were going to, to use your words, I think, inadequate underwriting standards. That was the rule.

MS. McGARRY: Loosened underwriting standards certainly departure from traditional underwriting standards. The paragraph 133 of the complaint is a good example. It says: First Franklin departed from its underwriting guidelines and made exceptions because First Franklin utilized its proprietary software in deciding what mortgages it issued. In other words, they used their own software. That is not an exception to your guidelines. Maybe it says something about your software, but it doesn't say you're departing.

And if one happens to look at the disclosure, at the guidelines, it is pretty complete when it tells people the risks that they might be undertaking here. It tells you, for instance, in one of the documents here, 70 percent of the

mortgages are issued to people in California. Someone might make -- decide that poses a certain risk having such concentration. It also says here, we have 11 percent of the loans are full documentation loans. That's traditional underwriting type guidelines. 49 percent are limit documentation loans. Then we have 31 percent stated documentation, and 9 percent no documentation where we don't even care about the person's income. All we care about is their assets, and we take their word for it.

THE COURT: And the document from which you're quoting is what?

MS. McGARRY: This is from an Exhibit 3 to the McGarry affidavit, which is a pricing supplement for one of the offerings. In this particular offering it also describes the particular underwriting guidelines. There are two underwriters here. One was IndyMac. IndyMac has two principal underwriting methods designed to be responsive to the needs of its mortgage loan customers: Traditional underwriting and E-MITS, electronic mortgage information and transaction system. E-MITS is an automated Internet-based underwriting and risk-based pricing system. I'm sure your Honor saw advertisements on television during the height of the mortgage market where it said, go on line, we will tell you based on a computer program whether you can be granted a mortgage. You'll get your answer in minutes. No documentation necessary.

So here IndyMac has said, one of our criteria is just based on, go to the Internet and fill out a form and that's how we decide who gets mortgages. It describes under our no income/no asset documentation program and the no-document documentation program emphasis is placed on the credit score of the prospective borrower and on the value of the adequacy of the mortgage property is collateral rather than on the income and assets of the prospective borrower. Mortgage loans initiated through mortgage professional channels will be submitted to E-MITS for assessment and subject to a full credit review, and analysis mortgage loans that do not meet IndyMac's guidelines may be manually reunderwritten and approved under an exception to those underwriting guidelines, and similar disclosure for Country Wide, which was the other mortgage originator in that particular offering.

So I think investors were well aware that the underwriting guidelines that would be used here were not the type of traditional underwriting guidelines and they don't have anything to establish that with systematic exceptions, let alone more exceptions than people were told would be there. We have cited extensively in our complaint where the offering materials said our underwriting may make exceptions to the guidelines. We are encouraging people to make exceptions to the guidelines, maybe exceptions in substantial number of cases.

So the other aspect of are you going to get paid is the credit enhancement, and that is how much additional collateral is there to protect you against a certain level of defaults. This is what went into the rating agencies. The ratings were to determine not so much were any individual loan good, but what's the mortgage pool that's backing your security, is there enough collateral there.

The plaintiff's allegation there is that the models were inadequate. There was no representation of fact that you will get paid. It was, this is a credit rating, this is an opinion of the rating agencies on what they expect, and we prefer higher levels.

There were two mortgage pools in most cases. The higher level is more protection and had a higher credit rating than the lower level and the disclosure says, this may enhance your chance of getting paid back, not that you are going to get paid back, but I'll let cocounsel address the agency rating further.

And there is also an important security regulation relevant here. There was a similar decision that came down not on this particular reg AP, but on a different reg. The Second Circuit handed it down yesterday in the In Re Morgan Stanley information case and the issue there, if you have a prospectus and you have SEC guidelines on what information to include in it, if you include the information and you don't make material

misstatements, is there an omission.

And Section 11 and Section 12, it's clear, you're liable if you make an affirmative misstatement or if you omit some information that by law or regulation you are required to disclose. And here there is a reg -- it wasn't SK. It was reg AR. It says that there you must disclose the departures from underwriting criteria or the extent to which they are overwritten, quote, to the extent known. And that's clear from the Morgan Stanley decision when it says -- when the regs say, this is what you have to disclose, that's what applies. And it isn't just, should you have known about exceptions if they existed. It's did you in fact know. That was the decision in Lansman. Again, we don't have any case under particular reg AR, but there have been other cases where there are similar SEC regs that say include this, or include this if known, trends if known. If the party doesn't know them, it's no breach for omitting them.

There are two other alleged nondisclosures. One is conflicts and that's actually the alleged nondisclosure was in Morgan Stanley, a conflict between the investment bank and the broker dealer that they didn't say were affiliated, and we cover some of these companies and a potential conflict of interest.

Well, the SEC reg didn't require you to disclose that. And as said In the -- In Re MS Tech repeated Judge Pollack's

decision in In Re Merrill Lynch. It's not surprising that there is no requirement to disclose the conflict because everybody knows about it. Well, I think it's a similar case here. There is no regulation that says if you're offering securities that have been rated by a rating agency and you paid that rating agency to do that work, that creates a potential conflict of interest, you need to disclose. Not only is there no reg, but this has been well known for a long, long time, as demonstrated by many of the documents plaintiffs quoted in their complaint.

Then the final misrepresentation is that the rating agencies had a role allegedly in determining the structure of the mortgage pools, and then structure of the securities. A primary position here, your Honor, is that it's simply not material. There is no requirement to disclose it, so it would only be if there is a misstatement, and I don't think that the statement that they allege in their complaint is a misstatement, it actually misleads anyone. It doesn't say the rather agencies have no role. I know this has gotten a lot of play. I have heard people talking about it on the morning show. But I'm actually mystified why this is so important.

When I moved to New York after the bar, I found an apartment and they said, oh, Simpson Thacher, sorry, your credit is not good enough. They could have sent me home and say come back tomorrow, see what you come up with, and I could

have come up with something the next day they rejected, and I would come back and again and say, what if my parents cosigned the lease. Bingo. But we didn't go through this exercise. They just told me, your credit is not good enough, get your parents to sign the lease.

And it's the same thing here. A bunch of mortgage files are given to the rating agencies. They say, this group of mortgages are not going to give you a triple A rating. You need to add to it. If you put this in it, this additional collateral, that's what it's going to take. So rather than go through ten trips of around and around, is this good enough, is that good enough, they just tell you, according to our model, this is what you need.

So I just don't see why it's material, but, once again, and this is in the statute of limitations argument, I know your Honor doesn't need to hear about that, but this was in many places in the public domain, even quoted in the complaint that rating agencies do in fact have a role in structuring the securities.

If your Honor doesn't have any questions, I will turn it over to cocounsel.

THE COURT: Okay. Thank you.

Mr. Abrams.

MR. ABRAMS: Good afternoon, your Honor. I represent the McGraw-Hill Companies and Standard & Poor's, which was a

business unit of it.

I want to start with just a reference to one passage in the opinion just mentioned by counsel in the Morgan Stanley case, just to set the framework. The Court took a broad look at what Section 11(a) was about and Section 12(b)(2) were about in the statute. They said that they were sibling sections with roughly similar elements. The Court said that in looking at them the notable elements, the Court said, was the limitations on the scope of these sections of the '33 Act and the in terrorem impact that they have on prospective defendants.

I want to focus my argument on the scope of the '33 Act and in particular whether rating agencies such as Standard & Poor's on the basis of the pleading in this case or otherwise can be held liable under either Section 11(a) or 12(b)(2).

Section 11(a), we start with the proposition that they cannot be held liable for their ratings. I don't think counsel disagrees with that. I think they agree with that. And that's because Rule 436(g), SEC rule, makes that very plain on the face of it, that ratings are not deemed part of registration statements in the first place.

So what section can there be liability and try to be imposed? There is Section 11(a)(4), which does have an element there which deals with experts and specifically identifies attorneys and accountants who are named in the registration statement and who have consented to be named. There is no

argument here again by plaintiffs that the rating agencies were named as having vouched for, certified anything in the document, and there is no suggestion and it's just not true that the rating agencies consented to their name being there.

Plaintiffs argue that Section 11(a)(4) is one they are not relying on. They are relying instead on 11(a)(5) which uses the words underwriters. The first thing that we say about that is that Section 11(a)(4), as the McFarland case held, 11(a)(4), is not just a provision which allows liability to be imposed on experts who consent to their names, et cetera, being in the registration statement. It is a protection for experts as well. In the words of the McFarland case, it limits liability. And so if you want to sue an expert or potential expert, it's really Section 11(a)(4) or it's nothing.

And that is what Judge Lynch suggested in the opinion cited to you this morning by plaintiff's counsel, the Refco case, where he said in so many words that 11(a)(4) would be the place one would expect in that case a lawyer to be sued, and then went on to say, but creative plaintiff's counsel there had argued as well that the lawyer was an underwriter, that it would be stranger still, he said, to say that an entity such as this, which can't be sued under 11(a)(4), can be sued under 11(a)(5).

So we start with the proposition --

THE COURT: You are not suggesting that but for

11(a)(4) your clients would be sueable under 11(a)(5).
MR. ABRAMS: Certainly not. I am coming to that next. I am saying that because of 11(a)(4), they cannot be sued under 11(a)(5) for doing the very sorts of activities which could --
THE COURT: But I thought your argument was that they can't be sued under 11(a)(5) even if 11(a) --
MR. ABRAMS: That is correct. That's what I come to now. They can't be sued under 11(a)(5) because they are not an underwriter. However, that term has been defined in the law. In case after case the underwriter has been characterized, described, explained as the entity involved in the ultimate distribution process, not at the beginning of the line, not at the start, not giving advice. That's the basic reason why, put aside 11(a)(4) now. If there were no 11(a)(4), that's what a lawyer who gives advice without which the deal couldn't go on, an accountant who gives a financial statement without which the deal can't go on is not an underwriter. And that is what the Courts have said again and again and again.
Refco is just one of the cases, but on the face of it the effort here to expand the notion of what an underwriter is to include a rating agency, even taking again as a given arguendo that what the plaintiffs say we did we did, even all of that, it is not the distribution process unless you apply a but for analysis which is so sweepingly broad that it would rope in as a matter of course all the entities that take action

which have something to do with and without which these transactions could not proceed at all. No Court has ever done that.

Plaintiffs rely on a Seventh Circuit case, the Harden case, involving a qualified independent underwriter, a situation where there is that special designation of an entity which represents that it will perform all the obligations of an underwriter and be responsible in every way legally that an underwriter would be. That case, 15 years old, has never been cited here and indeed never been cited for the proposition that the test to be used is simply whether the transaction was one in which an entity played a role which had to be played.

So our position then is that there is no claim against our client under Section 11 and that there is no claim against our client under Section 12(a)(2). Section 12(a)(2) in which they characterize our client as a "seller" runs into the repeatedly articulation of law that a seller is an entity that is part of or often central to the solicitation process. That's what the U.S. Supreme Court said in the Pinter case. That's what the Second Circuit said in the Wilson case. That's what happened in the Second Circuit in the Capri case and there is language after language which these courts are saying, it is insufficient to make one a seller because one played an important role at the beginning of an entity's foundation. The sort of language that is used routinely is to just that effect.

And the Capri case, the Second Circuit case, has an interesting comparison there. Two entities there were held liable for being sellers because they were absolutely central to and indeed the only parties that prepared and distributed promotional materials. One was not. And why was the one not? Because it was insufficient, I'm quoting from the Court now, to say and to conclude that it played a major role in setting up the venture.

So even if the rule of the rating agencies here, Standard & Poor's and others was major, even if it wouldn't have gone ahead without them, neither section applies based on the relevant case law.

And the only other thing I would add to that is that the attempt here to expand liability of rating agencies is one which finds absolutely no support in either the legislative history or the case law. We know what underwriters are. We know what sellers are, used in common parlance or in legal parlance, and we urge you, therefore, to rule that there is no claim which can be asserted and/or sustained against our client under either Section 11 or Section 12, and that what follows from that is that there is therefore no Section 15 claim either. Thank you, your Honor.

THE COURT: One question. Because this is a '33 Act case, if I were to dismiss this case I don't have to deal with the sanctions issue that arises in '34 Act cases that are

dismissed on a motion, right?
MR. ABRAMS: That is correct, your Honor. I should have mentioned that the comparison between '33 Act and '34 Act cases are telling here. Anyone can be sued who does the wrong things that the '34 Act deals with. Rating agencies, other entities can be sued under the '34 Act. The whole thrust of the '33 Act precisely because of what the Wilson case called its draconian nature, the whole thrust of it is that only identified entities in the '33 Act list five entities can be sued and that it's simply not present here. Thank you, your Honor.
THE COURT: Plaintiffs. We have another defendant who wants to argue.
MR. RUBINS: I'm Joshua Rubins for Moody's Investors Service.
I would say at the outset, your Honor, that Mr. Abrams speaks for both his client and mine. I'm here only if your Honor wanted to hear further discussion on Section 15, which Mr. Abrams did not go into any detail on. If you don't need that, I won't beg your ear.
And, similarly, I know your Honor spoke to the statute of limitations with respect to the individual defendants. There is a different statute of limitations inquiry date if you wanted to hear. You don't.
THE COURT: No need.

MR. RUBINS: Thank you, your Honor.
THE COURT: Plaintiffs.
MR. LAITMAN: Joel Laitman from the law firm of Cohen Milstein Sellers & Toll.
THE COURT: Mr. Laitman.
MR. LAITMAN: I just want to go back to the standing issue that was raised earlier this morning because I did not have an opportunity to respond to that.
THE COURT: I don't think you have to go there. You've got even more basic problems.
MR. LAITMAN: I wanted to just mention, in terms of our case --
THE COURT: I shouldn't cut you off at the pass like that on that issue because I may actually have to address standing in this case, regardless of what I do on the rest of it.
MR. LAITMAN: I think it was mentioned that in our case the complaint does not center on registration statement, alleged misstatements and omissions, that it's the underwriting guidelines and that those are found in the prospectus supplements, so there is no common causation.
Under the standing decision in Hoff, which we believe is applicable and defendants also referenced, you need an injury in fact causation. And causation is that there is a fairly traceable connection between the asserted injury in fact

and the alleged actions of the defendant.

Here, we allege that there are two core misstatements and omissions in the registration statement. One is the assertion of the roles of Lehman versus the rating agencies; that is, Lehman structured the securitizations and the rating agencies rated them, and we believe that that's a misstatement because, in fact, and we try to lay out clearly that the rating agencies were involved in structuring even before the loans were in the process of acquiring the underlying loans, they were very much involved in the bidding in auction to buy the loans and then ultimately joined with Lehman together to securitize the loans, and we allege that they were acting as coach and referee. And the statement in the registration statement says that they are completely separate, that the Lehman's act is structure and rather agencies act to rate after the fact.

And, by the way, that's not just the plaintiff saying it. In July of 2007, the SEC commenced a year-long investigation into the role of the rating agencies in connection with the residential mortgage-backed securities. They interviewed 50 former employees of Moody's and S&P and reviewed millions of documents. And in July of 2008, they issued a report which we cited in the complaint.

One of the things they found was this structuring role which we allege in the complaint. More importantly, they

allege that the structuring function, they suggest that the new policy should be that rating agencies that rate securities should not be permitted to structure them. I think defense counsel said that this is an immaterial fact. If it was so immaterial, a year-long investigation by the SEC into this precise conduct wouldn't have concluded that it's a practice that shouldn't go on.

THE COURT: What is material to the SEC in regulating the securities business in general is not necessarily the same thing that's material to somebody who is buying a security.

MR. LAITMAN: Right. We allege, however, that an investor would want to know that they are acting jointly. And, similarly, we allege that there were rating shopping practices that were not disclosed, and that is -- and this was the subject of an investigation by the attorney general of the State of New York that was settled in June of 2008, again, during this same time frame, and sought to put an end to the process by which rating agencies would give a rating of the collateral and the securitization before they were actually engaged to rate the securitization. And, again, our argument is that a reasonable investor would have wanted to know that the rating agency is actually proffering a rating before it's engaged.

THE COURT: Why?

MR. LAITMAN: Because it shows a lack of independence.

I mean, it's as if a lawyer would give an opinion before they were hired to research and analyze it. And the context of rating shopping is that --

THE COURT: I'll bet your office does it every day, just like every other lawyer in town. Guy walks in, says I'm considering hiring lawyers, here are the facts. Tell me what you think and how you handle the case.

MR. LAITMAN: As the rating shopping was defined by the attorney general and the defendants here signed onto that settlement --

THE COURT: If this was like any settlement I ever saw, they signed onto without admitting or denying that they were rating agencies, let alone --

MR. LAITMAN: However, in the context of the rating shopping, as we allege, the firms that were competing for the engagement would be aware of each other's bids, and so essentially the rating of the securitization was used as a bargaining chip by Lehman to get the best rating on the collateral.

THE COURT: Do you think the world would have been in any way different if that was all done secretly and the guy who lost out on getting the rating business for bond issue A understood that the other guy rated him higher and maybe that's why he lost out, so on the next time he does a little better? You think the world would have been any different?

MR. LAITMAN: First of all, to an investor, I believe, a reasonable investor would care whether or not the rating was being given before the engagement.
THE COURT: Why?
MR. LAITMAN: Because the rating is supposedly to be the subject of complex expertise.
THE COURT: Let's talk about the real world. The real world is, everybody knows the issuer is paying for the rating. So right away, independence is a joke, always has been a joke. And so if you are an investor who says notwithstanding the fact that the rating agency is getting paid by the guy who is selling me the thing, I put credence in it. The fact that there was some indication to the issuer of what the rating would be in advance wouldn't change the world at all. And if you're somebody who says, look, I trust Moody's and Standard & Poor's and whoever else to give an honest view, even though they are hired by the issuer, then you are going to trust them anyway. What's the difference?
MR. LAITMAN: Your Honor, I think what we allege and what the SEC found specifically was that this competitive rating shopping incentivized the rating agencies not to update the models that they used, and that's another nondisclosure. And I believe that's extremely --
THE COURT: You've got a massive problem on standing. But if you didn't have a massive problem on standing, it seems

to me you have no underwriter and no seller. And here we are worried about the foliage on the trees.

MR. LAITMAN: We are suing the individual signatories on the registration statement. And these are two misstatements that are in the registration statement that every -- there is a direct line between our plaintiff that bought pursuant to that registration statement and those alleged misstatements and omissions and every other plaintiff that bought pursuant to misstatements and omissions.

And, frankly, your statement that everybody knows that the independence is a joke is very much, I believe, the product of these massive governmental investigations that occurred only after the collapse of these bonds. That was really not the perception on Wall Street, certainly by pension funds that bought these bonds.

And in terms of our allegations that the underwriting guidelines --

THE COURT: Could we go back to something you said a minute ago?

MR. LAITMAN: Yes.

THE COURT: If you have no seller and you have no underwriter, how are you helped, or am I missing something if you're suing somebody that signed the registration statement?

MR. LAITMAN: Because under Section 11, the signatories to the registration statement are under Section

11(a)(1), they are directly and strictly liable for the misstatements and omissions. And the liability here, your Honor, even if you don't go the way of finding the rating agencies as underwriters, they were, following the allegations in this complaint, they were control persons of the trust. The trust, as we have alleged it, are nothing more than a shell that contains the securitization, and we allege that the rating agencies, acting jointly with Lehman, created the securitizations, created all the rights and duties and obligations that flow from those securitizations, and control under Section 15 is an intensive issue of fact, and I believe we have more than alleged sufficient control of the rating agency, of a primarily liable issuer; that is, the trust.

Just turning to the underwriting guidelines, and basically what we have tried to lay out is the factual nonconclusory basis for inferring that the guidelines were systematically disregarded.

The first factor is the fact that 80 percent of these bonds issued during this time frame were triple A rated, that is maximum security; shortly after issuance these bonds collapsed in the rating to 60 percent being junk bonds, which is certainly an unprecedented class-wide collapse.

However, what's more important for us is that the reasoning the rating agencies gave for that collapse, they did not say, we are downgrading these from triple A junk because of

an economic crisis, a credit crisis and the economy has imploded. What they said was, we are conducting this downgrade because the underwriting of the underlying loans was abusive and aggressive.

Now, clearly, those were not disclosed. It's not those terms, but they go into detail that they were misrepresented data. And, clearly, the rating agencies, you saw all the disclosures the defendants try to rely on now. Certainly had those disclosures been made, they wouldn't have to change their methodology and drop the rating of the bonds from triple A to C, but that's precisely what happened. And certainly that factor alone, and this affected every category of these bonds, no matter who the originator was, across the board, these bonds, 60 percent, going from 80 percent triple A, 60 percent became junk bonds for the reason of the actual, undisclosed underwriting practices.

We then looked at the exponential increase of delinquency and foreclosures after the issuance, shortly after. It was exponentially increased. We also looked at the original originator and what investigations took place with respect to each originator as to whether there was -- a systematic disregard of underwriting guidelines. And it is true that there were exceptions. But consistently from the registration, through every prospectus supplement, there was a standard. Basically, there was a review of borrower credit worthiness,

there were standard appraisals and there were no doc loans or loans with less documentation. But those type of loans, what the prospectus supplement said was, those were only given to those with good credit histories, and there were restrictive loan terms and that was repeated often in each specific prospectus, as well as in the registration statement.

We tried to go into this in our brief, but the defendants try to rely on these risk disclosures. But when you compare them, the risk disclosure to what was actually said in the prospectus, there is no match. The Olke case and the Flag case require that the cautionary language be specific, prominent, and relate directly to the risk.

There was no such disclosure. The regulation that the defendants are relying upon where you have to have actual knowledge is when there is an allegation that there were specific loans that didn't comply. But here we have the factual allegation that across the board, no matter when the offering occurred, you have 60 percent of these triple A bonds collapsing to junk bonds as a result of underwriting, undisclosed underwriting problems. That alone raises the fact that whatever warnings there were, they couldn't possibly have been sufficient if the rating agencies who were closer to the deal than anyone, have to totally revamp their methodology to account for the reality of how these loans were originated.

The other point that I would make just on that, I

guess it's SEC Rule 1111, is that that relates to a duty to speak when the case is based on pure omissions. But that's not what our alleged misstatements and omissions are based on. Here we have misstatements. By the way, the case that was decided yesterday by the Second Circuit was a case of pure omissions. There wasn't any misstatement anywhere that was being challenged.

I don't think it makes sense to go into the underwriter support because your Honor seems to have been -- seems to have a view on that. It's in our brief. But I would say our argument is that even if you don't reach that, there is control, personal liability under Section 15, because the issuer is the trust and the trust was formed as alleged and, as the SEC found, in concert between the rating agency and Lehman.

THE COURT: The SEC really found that?

MR. LAITMAN: Yes. Not in those words.

THE COURT: Tell me what the words were.

MR. LAITMAN: That there was an iterative process between the two parties where Lehman would come forward with a group of loans. The rating agency would give a rating. Either they would fix the loans, make changes to get that rating, or there would be some communication back and forth as to why the rating, the triple A rating should stick. 80 percent of those --

THE COURT: And then Lehman put the loans into a trust

which Lehman organized, right?
MR. LAITMAN: Right. But the control is the management and policies of a primary violator. Those management and policies are defined by the securitization. How many classes there are, is there overcollaterallization, is there an excess spread. All of those facts are the credit enhancement that the rating agency determined.
THE COURT: Anything else?
MR. LAITMAN: No.
THE COURT: Thank you.
I am going to grant the motions of the rating agency defendants in their entirety. An opinion will follow in due course.
My present intention is to grant the motion of the individual defendants to the extent of dismissing the Section 11 claims, first of all, with respect to the certificates that were not purchased by main plaintiffs and also to the extent that the claims are based on the rating agencies' relationships with the issuer and denied in all other respects. There will be a memorandum on that soon, too.
Thank you all very much. We are adjourned.
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