Hughes Hubbard & Reed

Hughes Hubbard Wins Dismissal of $550M Suit Against FDIC

News & Events

Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

Hughes Hubbard achieved a significant victory for its client the Federal Deposit Insurance Corporation ("FDIC") when a federal district court dismissed a $550 million suit by monoline insurer MBIA Insurance Corporation ("MBIA").

MBIA had asserted eight claims for relief against FDIC in its capacity as receiver for IndyMac Federal Bank, F.S.B., an interim depository institution created after the failure of IndyMac Bank in July 2008. MBIA sued for alleged losses suffered as a result of MBIA's agreement to insure cash flows due to investors in mortgage-backed securitizations sponsored by IndyMac Bank. MBIA sought to recoup $550 million paid out on its insurance policies, allegedly as a result of IndyMac Bank's breaches of representations and warranties regarding the quality of loans in these transactions and the underwriting standards used in making the loans. MBIA also sought to recover losses purportedly caused by breaches by IndyMac Federal of mortgage servicing obligations under the securitization documents. Both IndyMac Bank and IndyMac Federal are now in FDIC receiverships.

In November 2009, the FDIC determined that all general creditor claims against the IndyMac receiverships have no value, because the FDIC can never recover enough assets to offset the banks' staggering liabilities. MBIA therefore sought to characterize its claims as administrative expenses of the IndyMac Federal receivership, which would be entitled to the highest statutory distribution priority, ahead of depositors and general creditors. The Hughes Hubbard team moved to dismiss MBIA's amended complaint in May 2010, arguing that MBIA's claims are general creditor claims as a matter of law and, therefore, the case is moot because the FDIC's "no value" determination makes it impossible for the court to grant meaningful relief.

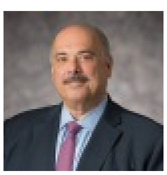
Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia heard several hours of oral argument on FDIC's motion on September 28, 2011. Less than two weeks later, on October 6, 2011, she issued a 37-page memorandum opinion and order dismissing all of MBIA's claims.

The district court's decision on the characterization of MBIA's claim turned on its interpretation of the statute that gives the highest "administrative expense" payment priority to breaches of agreements "executed or approved" by the FDIC after its appointment as receiver or conservator. The district court rejected MBIA's argument that the FDIC "approved" the relevant contracts when, upon its appointment as conservator for IndyMac Federal in July 2008, it assumed and did not immediately repudiate the securitization agreements. Echoing the arguments Hughes Hubbard had made in its motion, the district court held that "administrative expenses" under the statutory scheme were intended to be a discrete and narrowly defined category, and that MBIA's interpretation "would transform all general creditor claims based on unrepudiated obligations of the failed bank into administrative expenses of the receiver," thereby "broaden[ing] administrative priority well beyond anything Congress appears to have intended." The district court concluded that "while MBIA may be a legitimate IndyMac creditor, its claims do not fall within the scope of administrative expenses that take priority over those of other general creditors." Accordingly, the district court dismissed MBIA's general creditor claims for damages as moot in light of the "no value" determination.

The outcome of this case has far-reaching implications for other cases involving huge claims against the FDIC as receiver for failed banks that sponsored mortgage-backed securitizations. These cases typically are brought by monoline insurers or by financial institutions serving as trustees acting on behalf of investors. The plaintiffs in these cases generally allege breaches of representations and warranties by the sponsoring bank (as MBIA did in the IndyMac case). In one such case, which is currently pending in the D.C. federal court, Hughes Hubbard is defending the FDIC as receiver for Washington Mutual Bank ("WaMu") against a $10 billion claim by the trustee for 127 securitizations sponsored by WaMu prior to its closure. Like MBIA, the trustee alleges that its claims are entitled to administrative priority. The firm's victory in the MBIA case is likely to be an important precedent in the WaMu and similar cases.

Bill Stein argued the motion to dismiss on behalf of Hughes Hubbard. Many of the points in the district court's opinion mirrored Stein's responses at oral argument. The HHR team also included Scott Christensen.

Related People



William R. Stein

Related Areas of Focus

Banking & Financial Services
Complex Business Disputes
Litigation