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Morgan Keegan faces mass of bond fund claims

Damages could surpass $200 million

By **Dan Jamieson**
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Plaintiff's attorney Bill Gladden thought he had handled his last investor arbitration case when he retired in February. But a flood of claims arising from the $2 billion blowup of the Regions Morgan Keegan Select bond funds pulled him back into the legal fray.

"I couldn't resist," said Mr. Gladden, 62, a sole practitioner in Savannah, Ga., who put aside his plans to travel and go back to school to represent about 20 investors who say they lost money in the funds.

Paul Nurnberg

Bill Gladden: *He came out of retirement to represent investors who say they lost money in the $2 billion blowup of the Regions Morgan Keenan Select bond funds.*

Memphis, Tenn.-based Morgan Keegan & Co. Inc., a subsidiary of Regions Financial Corp., is facing hundreds of arbitration claims from investors who bought the

Corp., is facing hundreds of arbitration claims from investors who bought the company's funds and then watched them lose up to 95% of their value since mid-2007, thanks to losing bets on high-risk collateralized debt obligations.

Plaintiff's lawyers say 1,000 to 1,500 arbitration cases ultimately could be filed against Morgan Keegan, with potential damages surpassing $200 million.

Separately, several class actions have been filed against Morgan Keegan. Investors will have to opt out of those class claims to bring arbitrations.

FIRST WAVE

The first wave of arbitration hearings is scheduled to begin later this year, with more to follow early next year, observers said.

This month, Morgan Keegan lost its first arbitration case related to the funds' losses. A panel administered by the Financial Industry Regulatory Authority Inc. of New York and Washington awarded two investor plaintiffs a total of $90,000.

The investors' attorney, Andrew Stoltman, founder of the Stoltman Law Offices PC in Chicago, called the decision a "major victory" for his clients.

He had asked for $110,000, plus the same amount in punitive damages. Still, the award was welcome given that his clients' losses totaled $48,000.

The panel also assessed all forum fees against Morgan Keegan. Typically, panels split such fees.

"This is a clear indication of what is to come in arbitration awards against Morgan Keegan," Mr. Stoltman said.

Morgan Keegan spokeswoman Kathy Ridley declined to say how many claims have been filed. But two other cases have gone through arbitration and the claims were denied, she said.

"The results support our position that the risks were adequately disclosed and there was no wrongdoing on the part of the funds' management," said Ms. Ridley.

Morgan Keegan will continue to defend itself against the bond-fund claims, she added.

Mr. Stoltman handled one of the cases in which the claims were denied, but said his client was unable to testify in that case, due to a serious illness.

Plaintiff's lawyers contend that the funds were marketed to older, income-seeking investors with promises of a high yields and relative safety.

But attorneys say the products were actually loaded with the riskiest tranches of CDOs.

"These cases represent some of the most egregious situations of misrepresentation and omissions that I've ever seen," said Dale Ledbetter, an attorney at Ledbetter & Associates PA of Fort Lauderdale, Fla.

He said he has filed about 60 cases against Morgan Keegan already and has another 45 in the works.

"We probably get one [of the fund investors calling] every day," Mr. Ledbetter added.

"I really like these cases," said Peter Mougey, an attorney for Levin Papantonio Thomas Mitchell Echsner & Proctor PA in Pensacola, Fla. "These investors were victims."

He said he has filed about 50 cases against Morgan Keegan so far, with his first arbitration set to begin in December. Mr. Mougey anticipates having 250 to 300 arbitration set to begin in December. Mr. Mougey anticipates having 250 to 300 cases in total.

Many plaintiff's lawyers plan to group investors with similar claims, which can then be heard in the same arbitration.

So far, Morgan Keegan has shown little interest in settling, attorneys said.

The cases won't be cakewalks.

Explaining the funds to arbitrators could be a challenge.

The former manager of the funds, James Kelsoe, bought many lower-rated tranches of complicated mortgage-backed securities.

"None of the funds' filings disclosed" that they were buying subordinated tranches until 2008, said Craig McCann, president of Securities Litigation and Consulting Group Inc. of Fairfax, Va., who works as an expert witness for plaintiff's attorneys.

In a report last month, he said he was able to classify 147 of the 161 asset- and mortgage-backed securities in one of the closed-end funds. Of those, only nine were senior; the rest were subordinated.

"None of this was told to investors in 2006 and 2007," Mr. McCann said.

Some of the risky structured products were also mischaracterized as preferred stock or corporate bonds, Mr. McCann said.

More details of the portfolios will have to come out in discovery, he added.

Attorneys also plan to use Morgan Keegan's own marketing materials to make their case that the funds were improperly sold.

SPECULATIVE DERIVATIVES

A December 2002 brochure for the Regions Morgan Keegan Select Intermediate Bond Fund said that the fund "does not invest in speculative derivatives" and that "credit fundamentals ... drive the investment decisions."

Plaintiff's attorneys are also alleging that Morgan Keegan valued the funds' holdings at artificially high levels.

Managers at Hyperion Brookfield Asset Management Inc. of New York, which took over management of the funds last July, told financial advisers in September that its valuations "resulted in sharply lower" prices for the funds' assets.

Brokers were also misled, plaintiff's attorneys say.

And they were told to tell clients to hang on to the funds, especially the open-end products.

The two open-end funds were getting "hammered with redemptions," Mr. Mougey said, and were forced to sell their better-quality securities first.

Hyperion acknowledged in September that redemptions and deleveraging "resulted in high concentration of complex" structured securities.

The fund manager said it was attempting to restructure and stabilize the funds.

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