

CAUSE NO. DC-13-07858

CLAYMORE HOLDINGS LLC; DAVID
LENDER; RACHEL S FLEISHMAN,
PLAINTIFF(S),

VS.

CREDIT SUISSE AG; CREDIT SUISSE
SECURITIES (USA) LLC,
DEFENDANT(S).

IN THE DISTRICT COURT
134TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

FINAL JUDGMENT
AFTER THE TEXAS SUPREME COURT OPINION OF APRIL 24, 2020

On November 25, 2014, on a motion by Credit Suisse AG, Cayman Islands Branch and Credit Suisse Securities (USA) LLC (collectively, “**Defendants**”) to enforce a jury waiver clause, the Court bifurcated this case into two trials: (1) a jury trial on the fraudulent inducement claim brought by Plaintiff Claymore Holdings, LLC (“**Plaintiff**”) against Defendants; and (2) a bench trial on Plaintiff’s claim for rescissory damages arising from its fraudulent inducement claim, as well as Plaintiff’s claim for breach of contract against Credit Suisse AG, and Plaintiff’s claims for breach of the implied duty of good faith and fair dealing, aiding and abetting fraud, civil conspiracy, and unjust enrichment against both Defendants.

On December 1, 2014, this case was called for the jury trial. Plaintiff appeared through counsel and announced ready for trial. Defendants appeared through counsel and announced ready for trial. After a jury was impaneled and sworn, it heard evidence and arguments on Plaintiff’s claim for fraudulent inducement on its initial investment of \$250 million (the “**Primary Market Claim**”) in the June 22, 2007 refinancing (the “**Refinancing**”). In response to the jury charge, the jury made findings that the Court received, filed, and entered of record. The jury found Defendants liable for fraudulent inducement by affirmative misrepresentation and awarded legal damages of \$40,000,000 on Plaintiff’s Primary Market Claim.

On May 27, 2015, this case was called for the bench trial. Plaintiff appeared through counsel and announced ready for trial. Defendants appeared through counsel and announced ready for trial. All remaining matters in controversy, legal and factual, were

submitted to the Court for its determination, including Plaintiff's request for rescissory damages arising from its fraudulent inducement claim, as well as Plaintiff's claims for breach of contract, breach of the implied duty of good faith and fair dealing, aiding and abetting fraud, civil conspiracy, and unjust enrichment.

On September 4, 2015, the Court issued a judgment awarding rescissory damages to Plaintiff on both its Primary Market Claim as well as its secondary market purchases of the Refinancing (the "**Secondary Market Claim**"). After offsetting allocable settlement credits, the Court's judgment awarded rescissory damages in the amount of \$211,863,998.56, plus prejudgment interest at nine percent under New York law in the amount of \$75,644,154.22.

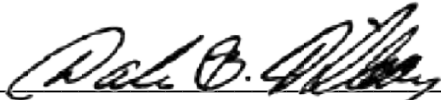
On February 20, 2018, the Dallas Court of Appeals affirmed this Court's judgment. On April 24, 2020, the Supreme Court of Texas affirmed the jury's finding of fraudulent inducement but reversed and rendered judgment on Plaintiff's other claims. As to fraudulent inducement, the Supreme Court reversed the Court's award of rescissory damages and affirmed the jury's award of \$40,000,000 in legal damages on Plaintiff's Primary Market Claim. The Supreme Court declined to render judgment on Plaintiff's claim for fraudulent inducement but instead remanded the claim for entry of a new judgment and determination of three issues: (1) the availability and amount of prejudgment interest, (2) the treatment of settlement credits, and (3) damages for the Secondary Market Claim.

Upon review of the parties' briefing on remand, as well as accompanying exhibits, the Court hereby GRANTS Plaintiff's Motion for Entry of Judgment and RENDERS judgment for Plaintiff. Accordingly, the Court hereby ORDERS:

1. On the jury's verdict, Plaintiff is entitled to an award of legal damages of \$40,000,000 on its Primary Market Claim, plus prejudgment interest at the rate of nine percent from June 22, 2007, until the date of this judgment on June 25, 2021, less allocable settlement credits. This results in a judgment of \$68,467,476.54 against Defendants, jointly and severally, calculated as follows:
 - a. \$40,000,000;
 - b. Plus prejudgment interest under N.Y. C.P.L.R. §5001 in the amount of \$26,975,342.47;

- c. Plus post-verdict interest under N.Y. C.P.L.R. §5002 in the amount of \$39,337,462.79;
 - d. Reduced by \$29,503,702.69 due to the CBRE settlement, comprising \$16,932,422.65 allocable to Plaintiff's primary market damages and hypothetical interest running from the March 28, 2013 settlement until the date of this judgment on June 25, 2021.
 - e. Further reduced by \$8,341,626.02 due to the Cushman & Wakefield settlement, comprising \$4,954,910.65 allocable to Plaintiff's primary market damages and hypothetical interest running from the November 22, 2013 settlement until the date of this judgment on June 25, 2021;
 - f. Plus court costs;
 - g. Plus post-judgment interest on all of the above at the rate of nine percent, compounded annually, from the date this judgment is entered until all amounts are paid in full.
2. Further, Plaintiff is entitled to \$23,235,910.61 in out-of-pocket damages on its Secondary Market Claim, along with prejudgment interest at the rate of nine percent from June 22, 2007, until the date of this judgment on June 25, 2021, less allocable settlement credits. This results in a judgment of \$52,665,507.93 against Defendants, jointly and severally, calculated as follows:
 - a. \$23,235,910.61;
 - b. Plus prejudgment interest under N.Y. C.P.L.R. § 5001 in the amount of \$15,669,916.16;
 - c. Plus post-verdict interest under N.Y. C.P.L.R. § 5002 in the amount of \$22,851,044.22;
 - d. Reduced by \$7,087,502.79 due to the CBRE settlement, comprising \$4,067,577.35 allocable to Plaintiff's secondary market damages and hypothetical interest running from the March 28, 2013 settlement until the date of this judgment on June 25, 2021.
 - e. Further reduced by \$2,003,860.27 due to the Cushman & Wakefield settlement, comprising \$1,190,289.35 allocable to Plaintiff's secondary market damages and hypothetical interest running from the November 22, 2013 settlement until the date of this judgment on June 25, 2021;
 - f. Plus court costs;
 - g. Plus post-judgment interest on all of the above at the rate of nine percent, compounded annually, from the date this judgment is entered until all amounts are paid in full.
3. This judgment finally disposes of all claims and all parties and is appealable.
4. The Court orders execution to issue for this judgment.

SIGNED on June 25, 2021 at 6:19 p.m.



The Honorable Dale B. Tillery
Judge, 134th Judicial District Court

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Associated Case Party: CLAYMORE HOLDINGS LLC

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Associated Case Party: CREDIT SUISSE AG

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