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## Texas Court Affirms \$288M Judgment Against Credit Suisse

By **Emma Cueto**

Law360 (February 21, 2018, 9:48 PM EST) -- A Texas state appellate court upheld on Tuesday a \$287.5 million breach of contract award against Credit Suisse Securities USA in favor of a Highland Capital Management LP subsidiary over a bungled land appraisal ahead of a 2007 Las Vegas real estate deal.

The panel ruled that the trial court **properly found** that the Swiss bank's contract with subsidiary Claymore Holdings LLC did require it to conduct a qualified land appraisal on Claymore's behalf before the company went through with a \$250 million investment, and that the trial court had correctly calculated the damages at \$211 million, with an additional \$75 million in prejudgment interest on top of the award.

In the suit, the hedge fund claimed Credit Suisse brokers pushed a CBRE Inc. appraiser to wildly inflate the value of a Lake Las Vegas property to induce Highland to invest in the refinancing, knowing the appraisal used questionable modeling and "extraordinary assumptions" about what would happen with the property.

Credit Suisse denies wrongdoing in the case and has said it never pressured the appraiser to change a report that valued the Lake Las Vegas project at between \$540 million and \$891 million. Highland said it lost nearly its entire investment when the property sold in 2012 for just \$17 million.

Highland also scored a jury victory on its fraud claims in 2014, with the jury handing out **\$40 million in damages**.

In the instant suit over breach of contract, the case was decided by Judge Dale B. Tillery, who also came down on Highland's side.

The appellate court decision Tuesday upheld the ruling, saying that disclaimers in the contract did not let Credit Suisse off the hook for providing an assessment of the land that lived up to the standards in the contract.

The decision also upheld the damages amount, noting that the calculation for a breach of contract claim was not the same as the calculation the jury rightly used when deciding the fraud claim. The jury was asked to calculate the difference between what Highland paid and the amount it received; in handling the breach of contract claim, Judge Tillery calculated rescissory damages that were more expansive, the decision said.

Judge Tillery was therefore not limited by the jury's amount, the panel ruled.

The appellate court also rejected Highland's bid for \$7 million for unjust enrichment, which Judge Tillery had not granted, and for a different calculation of the prejudgment interest. The panel wrote that it deferred to the trial court's discretion on both points.

Lisa Tsai, an attorney for Highland, told Law360 that she was pleased by the decision and that she thought the judges showed a thorough understanding of the issues. "We were very impressed by the solid and comprehensive nature of the decision," she said.

Nicole Sharpe, an attorney for Credit Suisse, said in a statement, "Credit Suisse respectfully disagrees with this decision, does not believe it is supported by applicable law, and accordingly intends to seek further review."

Claymore is represented by Bill Reid, Lisa Tsai, Rachel Fleishman, Nathan Palmer, Josh Bruckerhoff and Scott Saldana of Reid Collins & Tsai LLP, H. Christopher Bartolomucci and Edmund G. LaCour, Jr. of Kirkland & Ellis LLP and Jim Stanton of Stanton Law Firm PC.

Credit Suisse is represented by David Lender, Kevin Meade, T. Ray Guy and John O'Connor of Weil Gotshal & Manges LLP, E. Joshua Rosenkranz, Robert Loeb, Christopher J. Cariello, Kevin Arlyck, Anjali S. Dalal and Claudia Wilson Frost of Orrick Herrington & Sutcliffe LLP and Jeff Tillotson of Lynn Tillotson Pinker & Cox LLP.

The case is Claymore Holdings LLC v. Credit Suisse AG et al., case number 05-15-01463-CV in the Court of Appeals of the Fifth District of Texas.

--Additional reporting by Jess Krochtengel and Daniel Langhorne. Editing by Nicole Bleier.

*Update: This story has been updated to include comment from Credit Suisse's counsel.*

*Clarification: This article has been updated to more clearly reflect the inclusion of prejudgment interest in the total award for Claymore Holdings.*

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