Highland Gets $288M From Credit Suisse For Land Deal Fraud

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Law360, Los Angeles (September 4, 2015, 9:33 PM ET) -- A Texas state judge on Friday awarded a Highland Capital Management LP subsidiary about $288 million in its breach-of-contract and fraud inducement lawsuit against Credit Suisse AG, marking a win for the hedge-fund firm in its battle with the Swiss bank over luxury developments.

A Highland Capital Management LP subsidiary in June asked a Texas state judge to order Credit Suisse AG to pay about $376 million in damages for allegedly breaching a credit agreement tied to a 2007 real estate deal.

Judge Dale B. Tillery's award to Highland's Claymore Holdings LLC included more than $211 million in damages and restitution after deducting portions from settlements with CBRE Inc. and Cushman & Wakefield. He also ordered Credit Suisse to pay more than $75 million in pre-judgment and post-judgment interest until Highland is paid in full and for court costs.

Claymore asked for the rescission of most of its $250 million investment in a 2007 syndicated loan Credit Suisse arranged for resort property around Lake Las Vegas, along with about $7.5 million in fees it says Credit Suisse should fork over under an unjust enrichment claim and eight years of pre-judgment interest, adding up to $376 million.

"We are pleased the Texas state court ruled in our favor on all claims and agreed with us that Credit Suisse not only committed fraud and other torts, but also breached the terms of a contract with certain Highland Funds when it committed a massive and systematic fraud, costing investors of the Lake Las Vegas development hundreds of millions of dollars," Highland spokesman Tom Becker told Law360 on Friday.

Friday's decision is the second major victory for Highland investors against Credit Suisse in the past nine months. A jury in December found Credit Suisse guilty of fraud by clear and convincing evidence and rendered a verdict for $40 million.

But the $40 million was only 65 percent attributable to Credit Suisse entities, and the verdict was offset by about $27 million Highland recouped in settlements with CBRE and Cushman & Wakefield, meaning no recovery for Highland.

The hedge fund claims Credit Suisse brokers pushed a CBRE Inc. appraiser to wildly inflate the value of the 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.

The bench trial was far more wide-ranging than the jury trial on fraudulent inducement in 2014. Among Highland's claims against Credit Suisse were breach of contract, aiding and abetting fraud, civil conspiracy and unjust enrichment, among others.

The Dallas trial is part of an extended fight between Credit Suisse and Highland that hit courts in Texas and New York in July 2013 over the hedge fund's real estate investments.

Just before the bench trial kicked off, two other Highland affiliates sued Credit Suisse in Texas state court over related claims of inflated appraisals in loan transactions tied to Yellowstone Mountain Club in Montana, Turtle Bay Resort in Hawaii, Ginn Clubs & Resorts, Park Highlands and Las Vegas-based Rhodes Homes.

Highland had sued Credit Suisse in New York, but a judge dropped the suit as time-barred, finding a tolling agreement between the parties unenforceable under New York law. Highland says that in the Texas suit, Credit Suisse "brazenly" breached the tolling agreement by pleading its statute of limitations defense.

In July, a New York state judge awarded Credit Suisse subsidiaries more than $50 million from several Highland affiliates after finding the Highland entities failed to fulfill their obligations to purchase and pay for interests in commercial real estate loans. The judge found the Highland companies failed to settle certain trades obligating them to purchase syndicated loans in the secondary market. With interest, the award is estimated at about $77 million.

Becker told Law360 on Friday that Highland said the hedge fund takes its responsibility to its investors seriously.

"We have an obligation to protect the rights of our investors, which includes litigation like this," he said. "While our lawyers work on resolving this matter for our investors, Highland's investments team remains completely focused on finding ways to improve the already-strong performance of our funds."

"We respectfully disagree with the court's decision and intend to pursue all available options to vindicate ourselves in this matter," a spokeswoman for Credit Suisse told Law360 on Friday.

Claymore is represented by Bill Reid, Lisa Tsai, Rachel Fleishman, Nathan Palmer, Josh Bruckerhoff and Scott Saldana of Reid Collins & Tsai 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 and Jeff Tillotson of Lynn Tillotson Pinker & Cox LLP.

The case is Claymore Holdings LLC v. Credit Suisse AG et al., case number DC-13-07858, in the 134th District Court of Dallas County, Texas.

--Additional reporting by Brandon Lowrey and Jess Davis. Editing by Philip Shea.