

Edelweiss scores early win in VRDO lawsuit

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WASHINGTON — A lawsuit accusing banks and broker-dealers of fraud in the variable-rate demand obligation market can go forward, an Illinois court ruled Friday, setting the stage for what may be the first of several VRDO trials.

A Cook County, Illinois, Circuit Court judge handed a win to Edelweiss Fund, LLC, the Delaware-registered limited liability company formed specifically to pursue the Illinois case and at least two others filed so far.



"This is a terrific win for Illinois taxpayers," said attorney Michael Behn, who represents Edelweiss.

Attorneys representing JPMorgan Chase & Co., Citigroup Inc., Bank of America Corp., Barclays PLC, Morgan Stanley, William Blair & Co., BMO Financial Group, and Fifth Third Bancorp had

asked that the suit be dismissed for several reasons, but saw their motion defeated across the board Friday.

"This is a terrific win for Illinois taxpayers, who sorely need one," said attorney Michael Behn of the Chicago law firm of Behn and Wyetzner, who represents Edelweiss. "We look forward to successfully bringing this matter through trial."

The whistleblower [suit charges](#) that the firms set VRDO rates artificially high in order to be paid for remarketing services without having to remarket them, in violation of remarketing agreements that generally commit remarketing agents to try their best to set the rates at the level necessary to market the bonds at par. It claims the firms used a "Robo Resetting" device to reset many CUSIPs without respect to their individual characteristics.

Lawyers for the banks argued in their motion to dismiss that the suit failed to allege any specific false statements as required under the Illinois False Claims Act, and that the suit should be considered subject to a "public disclosure bar." That concept exists to prevent whistleblower suits from being filed based on publicly available information, and the Edelweiss suit was based entirely on public VRDO reset information, the banks' lawyers told the court.

Judge Diane Shelley sided with Edelweiss, deciding that the suit adequately stated false claims by the defendants and that while the VRDO reset information was public, no public information existed which would have demonstrated that anything fraudulent was occurring.

"These data did not publicly disclose that an alleged algorithmic mechanical system to reset interest rates for the VRDOs may have been utilized," Shelley wrote in her decision.

Somewhat unusually, the decision allows for an immediate appeal. If it is appealed and Shelley's decision is upheld, the banks will file their answers to each allegation in the complaint, followed by another response from Edelweiss to counter any defenses raised in those answers. The trial will then move to the discovery phase, where each side requests information from the other and conducts research to build their cases.

The firms named in the suit either declined to comment or could not immediately be reached for comment.

Two other very similar cases brought by Edelweiss are also pending in Massachusetts and California, but have not progressed as far as the Illinois case. The Illinois decision is not binding on suits filed elsewhere.

An expert consulting witness for Edelweiss is Michael Lissack, the former Smith Barney banker who helped the government win hundreds of millions of dollars — and reaped tens of millions of dollars himself in the process — from filing whistleblower lawsuits against Wall Street and other firms in 1995 over charges they engaged in yield-burning. Edelweiss, an individual [whose true identity has not yet been disclosed](#), would also stand to reap a financial reward should any of the lawsuits ultimately succeed.

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