



## Funder: the rating game is over

Edward Machin - 05 December, 2013

**RBS and Standard & Poor's are facing a long-promised landmark lawsuit, backed by an Australian litigation funder, over allegedly negligent ratings of complex financial products in the lead up to the global economic crisis.**

Filed on 4 December in the District Court of Amsterdam by **Stiching Ratings Redress**, a foundation of Australian litigation funder **Bentham IMF**, the suit involves 16 claimants from Germany, Austria and Switzerland with a combined claim of around USD 250 million against an aggregate investment of USD 365 million.

They are being represented by Dutch law firm **BarentsKrans**. Bentham IMF has also retained London-based distressed asset boutique **Fideres** to identify and coordinate additional institutional investors affected by S&P's alleged negligence, which involved assigning the highest AAA rating to products known as CPDOs while "heavily relying on misinformation supplied by RBS", the claimants said in a statement.

Fideres' lead partner on the case, **Steffen Hennig**, said it is "the first time that a group action on structured products is brought in a European court by institutional investors", adding that "it is also the first time that a European court has been asked to take a stand on the responsibility of a rating agency for losses incurred on toxic financial products which received the highest credit ratings".

The filing comes a year after the Australian Federal Court ruled that S&P was liable for its "misleading and deceptive" ratings of CPDOs sold to 12 local councils in New South Wales by Local Government Financial Services, which had in turn bought the product from now-nationalised Dutch bank ABN AMRO.

In failing to exercise reasonable care, S&P's rating opinion was "misleading and deceptive and involved the publication of information and statements false in material particulars and otherwise involved negligent misrepresentations", **Justice Jagot** said in her 1,500 page judgment.

She also slammed the bank – which invented CPDOs before being bought by RBS in 2007 – for "simply bulldoz[ing] the rating through". The meaning and reliability of the AAA rating "were not true, and ABN AMRO knew them not to be true at the time they were made", Jagot J said, adding that CPDOs, otherwise known as Rembrandts, were "grotesquely complicated".

ABN AMRO sold around USD 2 billion of CPDOs to European and Asian investors between August 2006 and July 2006.

That case – the first to hold a ratings agency to account for its assessment of the type of financial products that at the root of the global economic crash – was also funded by IMF, which at the time said it was considering launching similar actions in



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Europe. (S&P's appeal in the Australian case has been accepted; a day-10 hearing is scheduled to begin in March.)

S&P is also fighting a USD 5 billion US government law suit, launched in February 2013, which claims that it gave inflated ratings to collateralised debt obligations despite knowing that they were being propped up by failing mortgage-backed securities.

The New York-headquartered company, a unit of **McGraw Hill Financial**, is vigorously contesting the case, which it says was filed in retaliation to its decision in 2011 to downgrade the US credit rating from AAA to AA. "Only S&P Ratings downgraded the United States and only S&P Ratings has been sued by the United States," the company said in its court filing.

"Rating agencies, by conferring AAA ratings on products they knew were incapable of accurate assessment, were a material cause of the mispricing of risk and misallocation of capital in global debt markets that became dysfunctional in 2007," Bentham IMF director **John Walker** said in a statement.

He added: "Ratings were used then by investment banks to depict sows' ears as silk purses. This action seeks to hold banks and rating agencies to account for their conduct prior to the global financial crisis."