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CREDIT DEFAULT SWAPS - NEW MEXICO

In re Credit Default Swaps Auctions Litigation

United States District Court, D. New Mexico - June 5, 2023 - Slip Copy - 2023 WL 3821337

Plaintiffs – quasi-state funds that manage state and state-employee asset funds and retirement accounts – alleged that Defendants – *inter alia*, Investment Banks – impermissibly colluded and conspired to manipulate — or “fix” or “rig” — Credit Default Swap auctions in an anticompetitive manner, and that this conduct constituted: 1) a conspiracy to restrain trade in violation of the Sherman Act and the Clayton Act, 2) violations of the Commodity Exchange Act, and 3) unjust enrichment by civil conspiracy in violation of New Mexico law.

Defendants moved to dismiss.

The U.S. District Court held that:

- Plaintiffs adequately pled sufficient factual matter to invoke the fraudulent concealment doctrine, and concluded that the fraudulent concealment doctrine operates to equitably toll the applicable statutes of limitations, rendering Plaintiffs’ claims timely;
- Plaintiffs plausibly alleged that a conspiracy existed and that several domestic Defendants’ overt acts in furtherance of the conspiracy were committed in the United States and are sufficient to subject co-conspirators to jurisdiction in the United States;
- These are not “umbrella” claims in that Plaintiffs do not allege they were injured by non-conspirators who independently decided to charge artificial prices to keep pace with Defendants;
- Plaintiffs clearly alleged a common motive, conduct against self-interest, inter-firm communications, and suspicious auction rules as context for the conspiracy sufficient to adequately allege an antitrust conspiracy;
- Plaintiffs alleged sufficient facts to state a claim under the Commodity Exchange Act (CEA) against Defendants; and
- Plaintiffs adequately stated a claim for unjust enrichment and may proceed with that claim as an alternative theory to the federal antitrust and CEA claims.