

# Get set for 'ginormous' flood of litigation

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READING the complaint filed against Goldman Sachs makes me wish I was an American litigation lawyer.

Nobody's ever filed a pleading in this country that includes the word "ginormous". While Australian statements of claim make less interesting reading than Hansard, this complaint reads like airport literature, capped off by the glorious smoking gun Goldman email describing the Timberwolf transaction as "one shitty deal".

It's also exciting to read the words "securities fraud". We don't have that here. Here, you'd be suing for misleading or deceptive conduct, which doesn't carry quite the same cachet.

This is one of many GFC claims that will be filed in coming months and years. The case is along the lines of the civil fraud claim launched against Goldman by the SEC, but the SEC didn't lose \$56 million and go insolvent, so you can understand why BYAFM is a little more emotional about the whole thing.

The basic facts are that Goldman sold BYAFM a bunch of AAA and AA rated CDOs in Timberwolf. They were worthless, like other CDOs that turned out to be fancy names for home loans made to Americans with no hope of repaying them. Meanwhile, Goldman, which had seen the end of the world coming but had not let on, decided to bet against the market by taking short positions.

Although the selection of securities to go into CDOs such as Timberwolf was supposedly being done independently of Goldman, in fact Goldman had the power of veto over which ones went in.

Simply put, it's a lot like when Lillee and Marsh bet against Australia in the third Test in '81. They

had a hopeless conflict of interest, but was there a legal consequence?

Same question here. Presumably Goldman will have to admit that they were betting against the market at the same time as they were aggressively promoting new securities issues. That's pretty sharp, but it isn't fraud per se. BYAFM will have to do more than point at a whole bunch of embarrassing emails raising questions about Goldman's grasp of basic ethics. It will need to prove Goldman lied, deliberately, about the value of what they were selling and/or about the independence of the securities selection process. Then it will need to prove it relied on those lies in deciding to invest, and that it would have stayed out if it had known the truth — that being that Goldman was influencing the choice of securities and that Goldman didn't itself have any belief in their underlying value.

Goldman will say it never lied about nuffin' and it truly believed what it said but was just another poor victim of the unforeseen crash; and that BYAFM would

have invested in this rubbish no matter what it was told because it was as greedy as everyone else. If that fails, well, BYAFM is a sophisticated investor and knew that you don't get the kinds of returns that CDOs promised without considerable risk, and this is just a case of an investor losing out on a risky bet and then blaming others.

Like if you want to buy knock-off tennis shoes from China on the internet, don't complain when ballet slippers arrive in the post.

It's actually not as simple as it first appears, and that's because we're not talking about a Grisham novel here but the law. While nobody has sympathy for Goldman, the reality is courts will spend much of the next decade sorting through cases like this and trying to decide the difference between bad luck and straight-out fraud.

My guess is Goldman will go down like a BP oil rig on this one. But an each-way bet might be safer.

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