



PARAMOUNT INVESTORS TO PROCEED WITH FRAUD SUIT

By **Keith Goldberg**

Law360, New York (January 11, 2012, 9:52 PM ET) -- A New York federal judge refused Wednesday to dismiss a securities fraud lawsuit against [Viacom Inc.](#) unit Paramount Pictures Corp. by investors who had committed \$40 million to help fund a slate of Paramount movies based on an allegedly misleading private placement memorandum.

Paramount had moved to dismiss the suit lodged by Allianz Risk Transfer Inc., Marathon Structured Finance Fund LP, [NewStar Financial Inc.](#) and Munich Re Capital Markets New York Inc. based on the Supreme Court's recent decision in [Janus Capital Group Inc.](#) v. First Derivative Traders, which prevents claims over misleading prospectuses against people and firms that may have prepared the statements but did not have ultimate authority over them.

Paramount claims the memorandum was wholly attributable to Melrose Investors LLC, which issued the securities used to finance the films, that the memorandum said it was not prepared by Paramount, and that none of the statements in it could be attributed to Paramount .

The plaintiffs claim Paramount set up Melrose to shield itself from liability and that Paramount was the original and knowing source of the alleged misrepresentations about risk-mitigation techniques that would be used in connection with the Melrose slate of movies.

After a hearing on Wednesday, U.S. District Judge Thomas P. Griesa denied Paramount's motion, ruling that the Janus decision was not intended to shield companies that engage in the activity allegedly carried out by Paramount, according to **James Janowitz of Pryor Cashman LLP**, an attorney for the plaintiffs.

"I think the judge made the right decision," **Janowitz told Law360 Wednesday.** "I don't think the Supreme Court wants to open the floodgates to make it easier for companies to commit securities fraud and avoid the consequences of it."

The plaintiffs originally launched the suit against Paramount in 2008, claiming they expected to lose their entire \$40.1 million investment, a situation that could have been avoided if Paramount had used risk-mitigation techniques to co-finance the movies that were in keeping with the private placement memorandum.

The securities were issued by Melrose to finance the production of films that were to be produced, released and distributed between April 2004 and March 2006.

The plaintiffs read and relied on statements in a July 2004 memorandum that Paramount knew were incomplete and otherwise false and misleading, they claim. The Melrose transaction was a Paramount-sponsored structured finance transaction that enabled Paramount to raise about \$231 million for movie production and distribution.

Judge Griesa previously dismissed the suit in April 2010, ruling the plaintiffs hadn't alleged sufficient facts to sustain a claim against Paramount. However, the judge allowed them to submit an amended complaint that specifically identified the actions taken by Paramount.

Paramount spokeswoman Virginia Lam declined to comment Wednesday.

The investors are represented by James A. Janowitz and Jacob B. Radcliff of Pryor Cashman LLP.

Paramount is represented by Andrew J. Ehrlich, Leslie G. Fagen and Allan J. Arffa of [Paul Weiss Rifkind Wharton & Garrison LLP](#) and Richard B. Kendall and Robert N. Klieger of Kendall Brill & Klieger LLP.

The case is Allianz Risk Transfer Inc. et al. v. Paramount Pictures Corp., case number 1:08-cv-10420, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Ben James and Erin Fuchs. Editing by Cara Salvatore.