

DAILY REPORT

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An **ALM** Publication

Whistleblowers net \$45M deal

JPMORGAN CHASE is the first of 10 big banks sued in Atlanta to settle over alleged fraud of veterans program

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JPMORGAN CHASE will pay \$45 million to settle whistleblower claims by two metro Atlanta mortgage executives that the bank defrauded the federal government through a program that helped veterans refinance their homes, lawyers for the whistleblowers said Monday.

JPMorgan is the first of 10 of the nation's largest banks sued in federal court in Atlanta to settle. The banks have been accused of illegally billing legal fees and other barred costs to an estimated 1.2 million veterans who refinanced their homes through the U.S. Veterans Administration.

JPMorgan Chase settled the case without acknowledging any liability, said Atlanta attorney Marlan Wilbanks, who has partnered with Columbus firm Butler Wooten & Fryhofer in representing the whistleblowers. The bank decided to settle while its motion to dismiss the suit was pending before U.S. District Judge



REBECCA BREYER

From left, Marlan Wilbanks, Leigh May and Jim Butler represent executives from a mortgage broker who said banks charged veterans costs barred by a federal program.

Amy M. Totenberg in Atlanta, he said. "We think that speaks very strongly to the merits of the case."

Leigh May of Butler Wooten & Fryhofer said 74 percent of the settlement will go to the federal government to

reimburse it for fraudulent VA loans it guaranteed that fell into default. She said 26 percent of the settlement award will go to the whistleblowers Victor E. Bibby and Brian J. Donnelly, executives of Veterans' Mortgage Co., a Georgia

mortgage broker that arranged thousands of veterans' loans in the Southeast.

Wilbanks said the attorneys' contingency fees will come out of the whistleblowers' settlement share, adding that they will also seek hourly fees that are established by federal statute for their work on the whistleblower case.

A spokeswoman for JPMorgan Chase declined to comment on the settlement. Bryan Cave partner William V. Custer IV, who has been representing JPMorgan Chase in the litigation in Atlanta's federal court, could not be reached for comment Monday afternoon.

The suit by Donnelly, vice president of operations at the Veterans' Mortgage Co., and Bibby, the company president and CEO, was filed in 2006. But it was not unsealed until last fall, five years later.

Donnelly told the *Daily Report* when the suit was unsealed that he and Bibby uncovered billing improprieties by the big banks that financed the loans, which were guaranteed by the VA.

Butler Fryhofer attorney Brandon Peak, one of several firm attorneys who is litigating the case with name partner James E. Butler Jr., said Monday that the settlement "is a validation" of Bibby's and Donnelly's claims as well as "an affirmation of the commitment" the two had demonstrated in pursuing the litigation.

"JPMorgan made a good decision to resolve this case, given its exposure," Peak said.

The VA program, known as the Interest Rate Reduction and Refinancing Loans Program (IRRRL), was intended to encourage retired and active-duty veterans to take advantage of low interest rates by exempting them from legal fees and other costs typically associated with refinancing their VA home loans. Because the loans are federally guaranteed, according to the suit, lenders originating IRRRL loans may collect only a flat rate

of 1 percent of the loan amount as an origination fee, plus a limited number of allowable fees for recording a loan, obtaining a title search and insurance and acquiring a borrower's credit report.

Because the VA was barred by law from guaranteeing any refinanced loans for which veterans were charged the banks' legal fees, the banks hid them, Butler told the *Daily Report* last fall.

In addition to overcharging veterans who refinanced their homes, the suit also accuses the defendant banks of securing federal loan guarantees by falsely certifying to the VA that they weren't charging veterans the disallowed fees. The federal loan guarantees made the refinanced loans attractive to the banks, despite the cap on fees, Butler explained, because the risk to the lender was diminished.

Last fall, at the insistence of the whistleblowers' lawyers who were eager to pursue the litigation, the U.S. Justice Department—which had been considering for five years whether to intervene in the case—notified U.S. District Senior Judge Marvin H. Shoob that federal prosecutors had elected not to intervene "at this time." But in a written statement, Atlanta U.S. Attorney Sally Quillian Yates said at the time that her office would "continue to evaluate the merits of the case, and we will consider intervening" at some future date "if it becomes appropriate to do so."

Wilbanks has told the *Daily Report* that as much as 18 percent to 20 percent of the refinanced VA mortgages have been driven into default by the faltering economy. In connection with the resulting foreclosures, the federal government has reimbursed the banks for 25 percent of each guaranteed loan up to \$417,000—even though, according to Wilbanks and Butler, loans that contained hidden legal fees didn't qualify for the federal loan guarantees.

According to data submitted to Congress by the VA, since 2001 the agency has paid more than \$2.5 billion to banks that have made guarantee claims in connection with IRRRL loans to veterans.

May said that because the banks "did not play by the rules" associated with the VA loan guarantees, "the guaranties are void."

Wilbanks said the fraudulent practices that Bibby and Donnelly uncovered "was industry-wide fraud" on the part of the defendant banks that had occurred over the past decade. "This was fraud that was common and, but for Mr. Bibby and Mr. Donnelly coming forward, there wouldn't be a payday for taxpayers today," he said.

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