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Ponzi Investors Ink \$54M Deal In Suit Against Comerica

By **Craig Clough**

Law360 (August 9, 2021, 5:32 PM EDT) -- A proposed class of investors told a California federal judge Friday they've reached a \$54.2 million deal with Comerica Bank in a suit over an alleged Ponzi scheme by Woodbridge Group after accusing the bank of turning a blind eye to the plot.

The potential class asked U.S. District Judge Dolly Gee to grant preliminary approval of the deal, which they said would resolve claims for nearly 8,000 Woodbridge investors. About 61% of the proposed class are members of the Woodbridge Liquidation Trust, and the rest are individual investors, according to the motion.

The deal would include payouts to investors based on a formula that includes the investor's outstanding unpaid principal minus all pre-bankruptcy distributions, and would cover a period that runs from July 1, 2012, to Dec. 4, 2017, which was just before Woodbridge filed for bankruptcy.

"While the settlement is necessarily a compromise, the path to a greater recovery is daunting," the investors said. "Plaintiffs would need to prevail on their motion for class certification seeking a 50-state class under California law, and avoid Rule 23(f) review."

The investors added, "Plaintiffs would then face the additional risks and delays presented by summary judgment before reaching trial. For these reasons, the named plaintiffs and all plaintiffs' counsel (who have decades of experience in similar litigation) support the settlement."

The proposed deal also includes 25% of the settlement for attorney fees, and a separate \$300,000 to settle an adversary proceeding brought by the trust that is pending in U.S. Bankruptcy Court for the District of Delaware alleging Comerica is liable for fraudulent transfers under California law.

The investors moved for **class certification** in April and accused Comerica of aiding and abetting the Woodbridge scheme by ignoring Woodbridge principal Robert Shapiro's history of fraud, notice of investigations by regulators and alerts by its own fraud detection system in order to hang on to the nearly \$1.7 billion in business the alleged scheme brought to the bank.

Woodbridge investors said they were led to believe their funds were secured by real estate assets, but in reality it paid the purported interest payments to investors from new investors' money. The fund ran out of money and the scheme unraveled in December 2017. Woodbridge entered Chapter 11, and Shapiro was sentenced to 25 years in prison in October 2019.

The investors, who filed their original complaint against the bank in 2018, claim that Woodbridge moved about \$1.66 billion through its Comerica accounts in nearly 11,000 transactions.

The investors claimed Woodbridge's account activity was "incompatible with any legitimate business model" — including high-volume, monthly transfers of commingled funds and large, unexplained transfers to attorney trust accounts — and tripped Comerica's automated fraud detection system "hundreds" of times

They said the bank also ignored a 2011 report they received saying investors had won judgments against Shapiro for diverting money from a real estate investment vehicle in the 1990s, subpoenas from the federal government and three different states concerning Woodbridge and a September 2017 email from the U.S. Securities and Exchange Commission saying Woodbridge was failing to comply with subpoenas.

Counsel for Comerica did not immediately respond to requests for comment late Monday. Counsel for the investors declined to comment.

The investors are represented by Daniel C. Girard, Jordan Elias, Trevor T. Tan and Makenna Cox of Girard Sharp LLP, Michael C. Dell'Angelo and Barbara A. Podell of Berger Montague PC, Steven J. Toll of Cohen Milstein Sellers & Toll PLLC, Harley S. Tropin of Kozyak Tropin & Throckmorton, Jeffrey C. Schneider, Lawrence A. Kellogg and Jason Kellogg of Levine Kellogg Lehman Schneider & Grossman LLP, Jeffrey R. Sonn of Sonn Law Group and Betsy C. Manifold of Wolf Haldenstein Adler Freeman & Herz LLP.

Comerica is represented by Gayle I. Jenkins, Thomas M. Melsheimer, Steven H. Stodghill, Thomas B. Walsh IV and Rex A. Mann of Winston & Strawn LLP.

The case is In re: Woodbridge Investments Litigation, case number 2:18-cv-00103, in the U.S. District Court for the Central District of California.

--Additional reporting by Rick Archer. Editing by Ellen Johnson.

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