

## [Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—U.S.: IndyMac parties to high court: accord would not bar decision, \(Sept. 25, 2014\)](#)

Securities Regulation Daily Wrap Up

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By Mark S. Nelson, J.D.

Both sides in a securities law case soon to be heard by the Supreme Court told the court that ongoing settlement talks to resolve some of the claims in the case would not bar the court from ruling on the question it agreed to decide. The court is set to hear oral arguments about the use of *American Pipe* tolling under the Securities Act on October 6, the opening day of the court's 2014 term. On Tuesday, the court [asked](#) the parties to describe how a possible settlement may impact the part of the case now before the court ([Public Employees' Retirement System of Mississippi v. IndyMac MBS, Inc., et al.](#), November 22, 2013).

**Proposed settlement.** Public Employees' Retirement System of Mississippi (PERS Mississippi), who had asked the Supreme Court to take the case, [agreed](#) with the respondents that the settlement would have no bearing on the court's decision. PERS Mississippi said the proposed settlement leaves some claims unresolved, including ones against Goldman Sachs & Co. (Goldman Sachs). PERS Mississippi also said the settlement has yet to be approved by the district court, and there is no set timetable for when that will happen, including the resolution of any related appeals. PERS Mississippi said Los Angeles County Employees Retirement Association joined its reply.

IndyMac MBS, Inc. (IndyMac) [approvingly](#) cited the reply filed by its co-respondents as a correct summary of the proposed settlement. IndyMac said it is not a party to the settlement. The company's lawyers also said that the settlement would have no impact on claims against IndyMac regarding mortgage-backed securities underwritten by Goldman Sachs.

Lawyers for three other companies targeted by the PERS Mississippi suit [said](#) the proposed settlement would not upend a decision by the court, even though these clients are involved in both the settlement and the case before the court. Specifically, these companies noted that claims against Goldman Sachs are not part of the settlement talks. A footnote to the letter explained that the Second Circuit's *IndyMac* opinion dealt only with claims dismissed regarding two offerings of IndyMac securities Goldman Sachs underwrote.

**Tolling under *Lampf*.** If the Supreme Court in fact decides this case, a key part of its analysis will likely deal with its 1991 *Lampf* opinion, which suggested tolling may be inapt under the Securities Act provision at issue in the *IndyMac* case. The Second Circuit's *IndyMac* [opinion](#), citing *Lampf*, held that *American Pipe* tolling did not apply to the Securities Act's three-year repose period. The Second Circuit went on to say that *Lampf* would bar equitable tolling, and the Rules Enabling Act would bar legal tolling.

The case is [No. 13-640](#).

Attorneys: David C. Frederick (Kellogg Huber Hansen Todd Evans & Figel PLLC) for Public Employees' Retirement System of Mississippi. Scott H. Christensen (Hughes Hubbard & Reed LLP) for IndyMac MBS, Inc. Theodore B. Olson (Gibson Dunn & Crutcher LLP) for Credit Suisse Securities [USA] LLC, Deutsche Bank Securities Inc., Goldman Sachs & Co., and Morgan Stanley & Co. LLC

Companies: Public Employees' Retirement System of Mississippi; Los Angeles County Employees Retirement Association; IndyMac MBS, Inc.; Goldman Sachs & Co.; Credit Suisse Securities [USA] LLC; Deutsche Bank Securities Inc.; Morgan Stanley & Co. LLC

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