



Banking Newsletter Switzerland

Federal Supreme Court rejects the plaintiffs appeal against the decision of the lower court which rejected plaintiffs claim against Mario Corti, Andreas F. Leuenberger, Bénédict Hentsch and Credit Suisse First Boston (AG) relating to the purchase of SairGroup bonds in the wake of the SairGroup insolvency

In an action brought by plaintiff against the above named defendants (members of the board of directors of the SairGroup), the plaintiff sought to recover the damages suffered by three individuals who have acquired SairGroup bonds in the wake of the SairGroup insolvency. The three individuals have acquired SairGroup bonds in the amount of CHF 2.2 Mio and EUR 680'000 between April 5, 2001 and August 31, 2001 on the bond market and have assigned their claims against the defendants to the plaintiff. Plaintiff's claim was dismissed by the lower court arguing that the plaintiff failed to demonstrate that the statement made by the defendants at the occasion of the general shareholders' meeting on April 25, 2001, pursuant to which SairGroup had allegedly received a new billion CHF credit line was the decisive factor in the assignors' decision to acquire the SairGroup bonds.

The plaintiff argued that the decision of the assignors to acquire the bonds were made in detrimental reliance upon the announcement made at the occasion of the general shareholders' meeting of the SairGroup on April 25, 2001, and according to which the SairGroup had allegedly received a new credit line in the amount of CHF 1 Billion. This announcement was not withdrawn until September 2001.

The plaintiff argued that the assignors viewed the granting of this credit line as a confirmation of the financial stability and liquidity of the SairGroup and,

relying upon this confirmation, had acquired SairGroup bonds in the market. The plaintiff further claimed that the granting of the credit line was only a sham and that without this deceiving announcement confirmation the assignors would not have acquired the SairGroup bonds.

The Federal Supreme Court rejected the plaintiff's claim upon appeal.

In its decision, the Federal Supreme Court did not review the findings of the lower court as to whether or not the information regarding the granting of the credit line was a "*conditio sine qua non*" to the assignors' decision to acquire SairGroup bonds. The Federal Supreme Court is in general bound by the facts established by the lower court. But the Federal Supreme Court confirmed that the lower court did not inappropriately interpret the term of "natural causation", which would have been a question of Federal law, subject to its scrutiny.

However, according to the practice of the Federal Supreme Court, the question whether or not there was adequate causation i.e. whether or not a fact or circumstance may, in accordance with the usual course and general experience, cause a certain result, is a question of Federal law and thus may be reviewed upon appeal by the Federal Supreme Court. However, since the Federal Supreme Court was bound by the finding of the lower court that the



plaintiff was not able to show a "natural causation" (i.e. that the announcement regarding the credit line was a "*conditio sine qua non*") in the assignors' decision to purchase the SairGroup bonds, the question of adequate causation did not have to be reviewed. According to the reasoning by the Federal Supreme Court, the lower court found without any violation of Federal law that the granting of the billion CHF credit line was only one of many elements and that the plaintiff was not able to demonstrate that this was the decisive factor.

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