

## CALIFORNIA

### FRESNO COUNTY

#### CONTRACTS

**Breach of Contract — Negligence — Negligent Misrepresentation — Intentional Torts — Conspiracy — Civil Practice — Class Action — Intentional Torts — Fraudulent Concealment — Fraud**

#### Class alleged defendants operated Ponzi scheme

**Mixed Verdict** \$47,220,000

**Case** Vicken Massoyan and Maggie Antaramian; both individually and on behalf of all others similarly situated v. HL Leasing, Inc., a California Corporation; Manufacturers Acceptance Corp. dba Heritage Pacific Leasing, a California Corporation; Kathleen Otto, Individually, as successor of interest to John Otto, and as trustee of the Otto Family Trust; Dan Ramirez; Andy Fernandez; Air Fred, LLC, a Limited Liability Company; and Does 1 to 10 inclusive, No. 09-CECG-01839

**Court** Superior Court of Fresno County, Fresno

**Judge** Donald Black

**Date** 8/4/2011

#### Plaintiff

##### Attorney(s)

Ara Jabaghourian (lead), Cotchett Pitre & McCarthy, Burlingame, CA (Maggie Antaramian, Class, Vicken Massoyan)

Donald R. Fischbach, Dowling, Aaron & Keeler, Inc., Fresno, CA (Maggie Antaramian, Class, Vicken Massoyan)

Aron K. Liang, Cotchett, Pitre & McCarthy, LLP, Burlingame, CA (Maggie Antaramian, Class, Vicken Massoyan)

#### Defense

##### Attorney(s)

C. Russell Georgeson, Georgeson and Belardinelli, Fresno, CA (Dan Ramirez)

Marc P. Miles, Callahan & Blaine, Santa Ana, CA (Kathleen Otto)

None reported (Air Fred LLC, HL Leasing Inc., Manufacturers Acceptance Corp.)

David J. St. Louis, Law Offices of David J. St. Louis, Inc., Fresno, CA (Andy Fernandez)

#### Facts & Allegations

The members of this class action consist of 800 California individuals who invested money with HL Leasing Inc. The individuals had invested \$93.7 million as of April 2009. HL Leasing claimed to invest the money into American Express equipment leases at a discounted rate and promised returns to its investors of 9 percent.

John Otto was the CEO of HL Leasing and he operated the business since the early 1990s. In 1993, Otto hired Dan Ramirez as the chief sales person. Ramirez eventually became president. Andy Fernandez was hired as the chief financial officer of HL Leasing and its sister companies, Manufacturers Acceptance Corporation and Air Fred LLC. On April 25, 2009, HL Leasing failed to make its monthly interest payments to investors. In a letter dated April 28, Otto claimed that the payments were late because the company's monies were in escrow pending a sale to an unknown buyer. On May 8, HL Leasing sent out a letter from its counsel indicating that the company was trying to get the monthly payments back on track. On May 11, Otto committed suicide.

The class sued HL Leasing, Manufacturers Acceptance Corp. (which was doing business as Heritage Pacific Leasing), Ramirez, Fernandez, Air Fred and Kathleen Otto, as successor in interest of John Otto and as trustee of the Otto Family Trust, alleging breach of contract, concealment, negligent misrepresentation, conspiracy and aiding and abetting.

The plaintiffs argued that Kathleen Otto and Fernandez were indirectly liable based on their participation in the fraud with John Otto.

Plaintiffs' counsel argued that HL Leasing ran a Ponzi scheme, which collapsed in April 2009. Counsel argued that the April and May 2009 letters gave false information.

The individual defendants claimed that they too were deceived into believing that HL Leasing was a legitimate company. Ramirez and Fernandez claimed they relied on the company's lawyers, accountants and a Dun & Bradstreet report that all demonstrated they were reasonable in their belief that HL Leasing was in fact investing the proceeds received from the investors into American Express leases. Ramirez and his family invested \$1.5 million in HL Leasing, which was money they later lost.

The individual defendants also claimed that they played limited roles for the company as John Otto ran the entire company with an "iron fist." Ramirez and Fernandez claimed that they were officers and directors of HL Leasing in name only and did not have the duties prescribed to them by the company's bylaws.

Kathleen Otto claimed that she was retired and had no knowledge of the activities of her husband, despite the fact that part of the company operated out of their home in Palm Desert.

Vicken Massoyan and Maggie Antaramian were class representatives.

### **Injuries/Damages**

The total loss claimed was \$93.68 million, which was the outstanding amount in principal payments as of April 25, 2009.

### **Result**

During trial, the court entered a directed verdict against HL Leasing, Manufacturers Acceptance Corporation and Air Fred, who failed to appear and were not represented by counsel at the trial. The court awarded \$114.5 million.

The jury returned a verdict against Ramirez and Fernandez for aiding and abetting John Otto in the fraud. It also found the plaintiffs and the class 50 percent liable for failing to perform due diligence. It returned a defense verdict for Kathleen Otto.

The jury awarded \$46.5 million, which factors in the comparative negligence. It also found an additional \$720,000 against Ramirez for concealment. The award total was \$47,220,000.

The award will be divided among the class on a pro rata share based on how much each party invested with HL Leasing.

### **Plaintiff(s)**

**Maggie Antaramian**

**Class**

**Vicken Massoyan**

**Demand** None reported

**Offer** None reported

### **Insurer(s)**

None reported

### **Trial Details**

**Trial Length:** 14 Days

**Jury Deliberations:** 2 Days

**Jury Poll:** None reported

**Jury Composition:** 6 male, 6 female

### **Plaintiff**

### **Expert(s)**

Stuart H. Harden, C.P.A., C.F.E., accounting, Fresno, CA (Ara Jabaghourian, Donald R. Fischbach, Aron K. Liang)

**Defense  
Expert(s)**

James M. Skorheim, J.D., C.P.A., C.F.E., C.V.A., accounting (forensic), Irvine, CA (Marc P. Miles) (did not testify)

**Post-Trial**

Defense counsel for Ramirez has indicated plans to file post-trial motions. A separate court hearing is also set for Sept. 26, 2011, during which the court will hear the plaintiffs' claims that Kathleen Otto was the alter ego of HL Leasing.

Plaintiffs' counsel claimed that it plans to challenge the verdict as the law does not permit comparative fault on fraud.

**Editor's Note**

This report is based on information that was provided by plaintiffs' counsel and defense counsel for Kathleen Otto. Defense counsel for Fernandez and Ramirez did not respond to the reporter's phone calls.

**Plaintiff(s)  
Demographics****Maggie Antaramian**

**Age:** None reported

**Occupation:** None reported

**Gender:** None reported

**Married:** None reported

**Children:** None reported

**Children Description:** None reported

**Class**

**Age:** None reported

**Occupation:** None reported

**Gender:** None reported

**Married:** None reported

**Children:** None reported

**Children Description:** None reported

**Vicken Massoyan**

**Age:** None reported

**Occupation:** None reported

**Gender:** None reported

**Married:** None reported

**Children:** None reported

**Children Description:** None reported

**Written By –**Jaclyn Stewart