

A Review of The Banking Turmoil Securities Cases of 2023: Relative Duds, or Blockbusters in the Making?

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Case 1 In re SVB
Financial Group
Sec. Litig., No.
5:23-cv-01907-
NW (N.D. Cal.)
(Silicon Valley
Bank)

Case 2 Alecta
Tjänstepension
Ömsesidigt, et
al. v. Herbert, et
al., No. 3:23-cv-
02940-AMO
(N.D. Cal.) (First
Republic Bank)

Case 3 Sjunde AP-
Fonden v.
DePaolo, et al.,
No. 1:23-cv-01921-
FB-JRC (E.D.N.Y.)
(Signature Bank)

Case 4 Tan v. PacWest
Bancorp N/K/A
Banc of California,
Inc, et al., No. 8:23-
cv-01685-JWH-
ADS (C.D. Cal.)
(PacWest
Bancorp)

Case 5 In re New York
Community
Bancorp, Inc. Sec.
Litig., No. 1:24-cv-
00903-NRM-JRC
(E.D.N.Y.) (New
York Community
Bancorp)

Case 6 In re Silvergate
Capital Corp.
Sec. Litig., No.
3:22-cv-01936-
JES-MSB (S.D.
Cal.) (Silvergate
Bank)

Introduction

Financial and banking stocks were rocked in the spring of 2023 and into 2024, following a rapid rise in interest rates. Indeed, the Federal Funds Effective Rate rose from 0.08% in January 2022 to 4.33% in January 2023, reaching 5.33% by August 2023.[1] Several prominent banks, such as Silicon Valley Bank, Signature Bank, and First Republic Bank, failed, while several other banks were pressured with large stock price movements within single trading days. In the wake of these stunning events, investors filed a raft of putative securities fraud class actions against such banks.

More than two years have passed since the banking turmoil, so SCAS decided to review what happened in a number of these cases and where things stand. In summary, the cases currently fall into three categories:

1. Cases that have gone favorably for investors (including a \$37.5 million settlement in one case)
2. Courts have handed down decisions that could terminate these cases early
3. Cases still await decisions on motions to dismiss.

[1] See data provided by the Federal Reserve, available at <https://fred.stlouisfed.org/series/FEDFUNDS>.

CASE 1: Silicon Valley Bank

Norges Bank and Sjunde AP-Fonden are serving as lead plaintiffs, and Bernstein Litowitz Berger & Grossmann LLP and Kessler Topaz Meltzer & Check, LLP are serving as lead counsel. Lead plaintiffs alleged (ECF No. 88) that the bank's customers ultimately fled and withdrew their deposits as the bank announced that it desperately needed capital, as it was revealed that the bank had not properly managed its interest rate, liquidity, and other risks as it had previously represented.

Lead plaintiffs alleged a class period of between January 21, 2021, and March 10, 2023, inclusive, and made Securities Act claims related to eleven offerings during that class period.

Current Status: In Discovery

On June 13, 2025, Judge Noël Wise entirely denied defendants' three motions to dismiss (ECF No. 123), meaning that claims against certain former bank officers and directors, certain underwriters, and an auditor may proceed. Among many other things, the court rejected arguments that various statements were forward-looking, statements of opinion, or puffery and found that "Defendants had contemporaneous knowledge of information that contradicted the representations Defendants made to their investors." Critically, although Silicon Valley Bank collapsed and available insurance to fund any recovery is finite and presumably limited, the underwriter, defendants, and the former auditor are large institutions with more means to fund a recovery for Securities Act claimants. Importantly, the court denied the former auditor's motion for reconsideration (ECF No. 212). Thus, there is potential for a more meaningful settlement but also for prolonged, hard-fought litigation. The case, meanwhile, has entered discovery, with a schedule extending well into 2026.

CASE 2:



Alecta Tjänstepension Ömsesidigt is serving as lead plaintiff, and Kessler Topaz and Bernstein Litowitz are serving as lead counsel. Lead plaintiff alleged (ECF No. 123) that the bank misrepresented that its deposit base was stable and well-diversified, when in fact its deposits were heavily concentrated and inflated by several undisclosed rate incentive programs, which—combined with the low-interest loan assets of the bank—created a perfect storm of undisclosed risks that became increasingly acute as interest rates rose.

The alleged class period is between October 13, 2021, and April 28, 2023, both dates are inclusive.

Current Status: Motion to Dismiss Granted

Significantly, the Federal Deposit Insurance Corporation (“FDIC”) moved to dismiss this case. Judge Araceli Martínez-Olguín granted this motion to dismiss on June 9, 2025 (ECF No. 233). The FDIC had been appointed as receiver of the bank on May 1, 2023, before the June 14, 2023, filing of the first complaint in the action. The court held that the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”) requires that once the FDIC has assumed receivership of a bank, claimants must exhaust administrative remedies before filing claims in court. Since the lead plaintiff had not exhausted administrative remedies, the court found it lacked subject matter jurisdiction to hear the claims. And importantly, the court found that FIRREA does not permit class claims and instead requires each claimant to proceed individually. Lead plaintiff has appealed this decision.

CASE 3:



Sjunde AP-Fonden is serving as lead plaintiff, and Bernstein Litowitz and Kessler Topaz are serving as lead counsel. Lead plaintiff alleged (ECF No. 66) that various regulators had repeatedly informed the bank of critical problems and deficiencies in its risk profile and liquidity risk management controls, but rather than heed these warnings, the bank ignored them and massively expanded its liquidity risks by taking on billions of dollars in uninsured and volatile deposits from the cryptocurrency industry, while misleading investors about the soundness and safety of the bank's risk profile.

The alleged class period is between January 21, 2021, and March 12, 2023, inclusive.

Current Status: Motion to Dismiss Granted

The FDIC intervened and moved to dismiss the case, which motion Judge Frederic Block granted on March 21, 2025 (ECF No. 149). The court agreed with the FDIC that lead plaintiff lacked standing, finding the FDIC owned such claims pursuant to FIRREA. The court rejected lead plaintiff's argument that FIRREA only extinguished derivative claims brought on behalf of a corporation, but not direct claims brought by shareholders against the corporation. Indeed, the court found that the law intended that amounts realized from liquidating a failed bank shall be distributed first to cover the FDIC's administrative expenses, then to deposit liabilities, then to various debt holders and other obligations, and finally to shareholders. Lead plaintiff has appealed this decision, and briefing of the appeal is complete.

CASE 4:



Two individuals are serving as lead plaintiffs, and Pomerantz LLP and the Rosen Law Firm, P.A. are serving as lead counsel. Lead plaintiffs alleged (ECF No. 30) that the bank repeatedly misled investors about its financial condition and the effect consistent, sharp interest rate hikes would have on its liquidity. Lead plaintiffs further alleged that after the truth was revealed PacWest's stock price plummeted and that subsequently PacWest merged with and into Banc of California Inc., effective November 30, 2023.

The alleged class period is between February 28, 2022, and May 10, 2023, inclusive.

Current Status: Motion to Dismiss Pending

As of the publication of this article, the court had conducted a hearing on the motion to dismiss, but the court has yet to issue a decision on this motion.

CASE 5:

Boston Retirement System is serving as lead plaintiff and Labaton Keller Sucharow LLP is serving as lead counsel. Lead plaintiff alleged (ECF No. 69) that the bank, known as a commercial real estate (“CRE”) lender, recklessly acquired Flagstar Bancorp, Inc. and significant assets from collapsed Signature Bank, while falsely assuring the market that it maintained a stellar CRE portfolio largely immune from market pressures; when in fact it was under incredible stress from changes in New York City’s rent regulation laws, post-pandemic office vacancies, and the interest rate increases. Lead plaintiff asserted that after the truth was revealed through a series of stock price drops, the bank was bailed out by a \$1 billion capital infusion from an investor group led by former Treasury Secretary Steven Mnuchin on March 6, 2024, while trading was halted on the stock due to fears of its collapse.

The alleged class period is from July 27, 2022, through February 29, 2024, inclusive. Lead plaintiffs also made Securities Act claims on behalf of certain Flagstar shareholders who exchanged their shares.

Current Status: Motion to Dismiss Pending

Another institutional investor had moved the court to reconsider the appointment of Boston Retirement System as lead plaintiff (ECF Nos. 46-47). After the amended complaint was filed on September 25, 2024 (ECF No. 69), that institutional investor moved to stay the case (ECF Nos. 70-71). Then an individual investor filed another case against New York Community Bancorp and moved to reopen the lead plaintiff appointment process (ECF No. 84). Two other individual investors who had filed related actions in state court filed a letter in support of reopening the lead plaintiff process (ECF No. 93). The court then denied the institutional investor’s reconsideration motion, and consolidated the individual action, with the individual investors being added as additional plaintiffs (ECF No. 105). A motion to dismiss was filed on August 8, 2025, but it will not be filed on the public docket until the motion is fully briefed, per court order. Briefing of this motion is currently ongoing and should be completed in November.

CASE 6: Silvergate

Indiana Public Retirement System; Boston Retirement System; Public School Teachers' Pension & Retirement Fund of Chicago; International Union of Operating Engineers, Local no. 793; Members Pension Benefit Trust Corporation of Ontario; and UMC Benefit Board, Inc. and Wespath Institutional Investments LLC, both as administrative trustees of the Wespath Funds Trust are serving as lead plaintiffs. Bernstein Litowitz and Cohen Milstein Sellers & Toll PLLC are serving as lead counsel. Lead plaintiffs alleged (ECF No. 43) that in just a few years the bank went from a local community lending bank to the go-to bank of the cryptocurrency industry. Lead plaintiffs further alleged that the bank achieved these results through deception and falsely assuring the public that it conducted extensive vetting, due diligence, and monitoring of customers.

Current Status: Settled

While defendants' motions to dismiss were pending, Silvergate Capital filed for bankruptcy on September 18, 2024. The parties subsequently agreed to resolve the action for \$37.5 million. On May 21, 2025, lead plaintiffs moved for preliminary approval of the settlement, which the court granted the next day. The class period for Exchange Act claims on common stock in the settlement is from November 7, 2019, through March 21, 2023, inclusive. The settlement also covers purchasers of Silvergate Capital securities in and/or traceable to a number of the company's securities offerings during 2021. A settlement hearing is scheduled for September 3, 2025. The deadline for investors to file claims in this action is October 21, 2025.

Summary

In summary, the steep increases in interest rates over the course of 2023 had the effect of increasing the cost of capital for banks, which could prove challenging for banks holding longer-duration securities at lower interest rates. For example, many people secured fixed mortgages on their homes during the pandemic with rates less than 3%. But after 2023, savings accounts and CDs were paying over 4%. Some banks could not survive this shift (along with other key market events), and investors filed suits against a number of banks that failed or were stressed by these events. Indeed, the banking turmoil was a hot topic among investors generally.

As almost two and a half years have passed since the banking turmoil began, it is important to see where some of these cases are right now. One has settled, one has proceeded to discovery after a win for investors at the motions to dismiss, in two cases the courts dismissed investor claims (but these cases are on appeal), and two cases remain at the pleadings stage. At present, there is no indication that any mega settlements will ensue, but there is certainly a chance in some of these cases. No doubt investors will want to continue to monitor this group of cases.