

## U.S. Supreme Court Declined Review in Securities Class Action Lawsuit arising from the Financial Crisis

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Several big banks are [fighting](#) crisis-era financial lawsuits worth tens of billions of dollars. These banks recently asked the Supreme Court to review a decision from the Court of Appeals for the Second Circuit, arguing that the regulators took too long to file their claims. The case relates to the [failure of Colonial Bank](#). In August 2009, Colonial collapsed as a result of Residential Mortgage-Backed Securities (“RMBS”) purchases. As a result, the Federal Deposit Insurance Co. (“FDIC”) was appointed as a receiver. In August 2012, the FDIC sued the banks that issued and underwrote these RMBS in 2007, arguing that they issued a series of false and misleading statements in the offering documents relating to the RMBS’s liquidity and investment quality, which constituted a violation of Sections 11 and 15 of the Securities Act of 1933.

According to the banks, the claims should have been barred under the strict three-year window of the Securities Act, the so-called statute of repose. The government countered that the lawsuits were timely under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (“FIRREA”), which provides the FDIC additional time to bring claims when acting as a receiver. The District Court sided with the banks, but the Court of Appeals for the Second Circuit reversed this decision with a 2 to 1 vote. In October 2016, the banks asked the U.S. Supreme Court to determine whether the extender provision of FIRREA displaces the Securities Act’s statute of repose. Certain critics urged the Court to focus on the broader policy considerations stemming from the financial crisis, stressing the importance of the financial industry’s accountability.

The Supreme Court already declined to review this question in two other cases arising from the Fifth and the Tenth Circuit. However, the banks argued that none of these cases presented the same vehicle as this case. They referred to the Supreme Courts’ ruling in *CTS Corp. v. Waldburger*, which was an [environmental case](#) involving contaminated drinking water. In *CTS*, the Supreme Court decided – with a 7 to 2 vote – that an extender provision did not displace a statute of repose. The banks argued that there was no relevant distinction in the text and structure of the extender provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) and the FIRREA. According to the banks, review is necessary because “Justice Kennedy’s opinion in *CTS* was explicit that invoking the remedial purposes of the extender statutes is not ‘a substitute’ for interpreting their ‘text and structure’”. However, despite these arguments the U.S. Supreme Court [refused](#) again to grant certiorari.