
WilmerHale Hands SEC First 2016 Fraud Trial Defeat

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In a significant victory, a team of WilmerHale litigators persuaded an Albuquerque, New Mexico, jury to clear two former mortgage-lending officials on half of the 10 charges brought against them by the US Securities and Exchange Commission (SEC), while deadlocking on the remaining charges. This three-week jury trial represents the SEC's fifth trial of 2016, and its first loss of the year.

The defense team, led by Los Angeles Partner-in-Charge Randall Lee and Partner Heather Nyong'o, persuaded a jury to hand the SEC a defeat on five counts. The jury was unable to reach a unanimous verdict on the other five charges leveled against our clients Larry A. Goldstone and Clarence G. Simmons III, the former CEO and CFO, respectively, of Santa Fe-based Thornburg Mortgage.

In this lawsuit filed in federal district court in Albuquerque in 2012, the SEC accused Goldstone, Simmons and a third former company official of attempting to obscure Thornburg's worsening financial condition during the collapse of the housing bubble that fueled the 2008 financial crisis.

As reported by *Law360*, Thornburg—formerly the second-largest independent mortgage company in the United States—had been hit with more than \$300 million in margin calls in the weeks before it filed its 2007 annual report in February 2008. The SEC alleged that, with the company facing a liquidity crisis, its executives overstated income by \$428 million in the annual report, conspiring to hide its financial difficulties from investors. Within days after the annual report was filed, Thornburg received a new wave of margin calls.

Thornburg restated its 2007 financial results in March 2008 and announced that it couldn't meet its new margin calls. Goldstone and Simmons, who disputed the SEC's charges from the outset, maintained that they were singled out “for not having the clairvoyance to anticipate an unprecedented financial system crisis.” WilmerHale has represented Goldstone and Simmons since the inception of the SEC's investigation.

“We're gratified that the jury apparently saw through the SEC's case,” Lee said after the verdict, characterizing the SEC's position as “Monday morning quarterbacking” in the aftermath of the financial crisis. “That the SEC failed to prevail on a single one of its claims illustrates what we have maintained all along—that our clients acted in good faith and that this case should never have been

brought in the first place,” Lee said, also noting that he hoped “reason and rationality would prevail” and the SEC would now dismiss the remaining counts.

In addition to Lee and Nyong'o, the WilmerHale trial team included Counsel [Chris Johnstone](#) and Senior Associates Aaron Thompson and Daniel Crump.