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Subject: Emailing: Law.com Ponzi Investor Suit Targets Greenberg Traurig, Quarles & Brady

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Ponzi Investor Suit Targets Greenberg Traurig, Quarles & Brady Susan Beck

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When the U.S. Supreme Court last year rejected the concept of aider and abettor liability in its Stoneridge decision, it was a huge win for law firms that might otherwise be sued by angry investors. But that doesn't mean that firms are completely insulated from lawsuits like these. On Tuesday, for example, Greenberg Traurig and Quarles & Brady were named as defendants in an investor class action filed in federal district court in Arizona for allegedly aiding and abetting a Ponzi scheme run by a real estate loan company called Mortgages Ltd. and a financing company called Radical Bunny. In an attempt to bypass Stoneridge, the defendants are accused of violating Arizona state securities laws. A copy of the complaint is here.

The case was brought on behalf of 2,000 investors who claim to have lost more than \$900 million. The plaintiffs are represented by Richard Himelrick of Phoenix's Tiffany & Bosco and Andrew Friedman of Phoenix's Bonnett, Fairbourn, Friedman & Balint.

Mortgages Ltd. was an Arizona company that made loans to real estate developers and then sold most of the loans to investors. Radical Bunny helped raise money for Mortgages Ltd. by illegally operating as an unlicensed securities dealer, the complaint alleges. According to the complaint, Mortgages Ltd. adopted a Ponzi approach in which new investor money was used to cover operating expenses, investor interest, investor redemptions and the lavish lifestyle of company CEO Scott Coles. The company filed for bankruptcy in 2008, and investigations followed by the Securities and Exchange Commission and Arizona regulators. Earlier this year the Arizona Corporation Commission issued a cease-and-desist order against Radical Bunny, and the SEC found that a Mortgages Ltd. affiliate had willfully violated securities law.

The law firms, according to the complaint, "played an integral role in facilitating the fraudulent scheme." The firms are accused of violating Arizona securities laws, negligent misrepresentation and nondisclosure, and aiding and abetting breach of fiduciary duty. The plaintiffs have also sued auditors CBIZ Inc. and Mayer Hoffman McCann, and several former executives at Mortgages Ltd. and Radical Bunny.

Mortgages Ltd. hired Greenberg in April 2006, the complaint states, and over the next two years the firm, led by partner Robert Kant, prepared 11 private-offering memorandums for investors. The complaint alleges that from at least December 2006, "Kant was fully aware that Mortgages Ltd. was being funded with proceeds collected from Radical Bunny's illegal securities sales. The illegality of this fundraising was so apparent to Kant that he told Coles and [Radical Bunny executive Tom] Hirsch (during a meeting with lawyers from the Quarles & Brady firm) that 'people go to jail' for such misconduct. ... Kant's concerns about the illegal securities sales were so great that he admonished the Radical Bunny managers in late 2006 to obtain securities counsel, so that their pictures would not wind up 'on the front page of the Arizona Republic.'"

The complaint further alleges that a Quarles partner "even questioned in a file note whether Mortgages Ltd.'s relationship with Radical Bunny had 'a Ponzi scheme feel' to it." The Quarles lawyers later stated in SEC testimony that they told Radical Bunny's managers to

stop selling the securities and to contact the SEC and Arizona securities regulators to admit they had violated securities laws, according to the complaint. But the client said he didn't want to talk to regulators and disclose past securities violations, the complaint alleges. The firm did not disassociate itself with the client, the complaint alleges, and continued to assist in new securities sales.

Quarles & Brady gave us this statement from Jon Pettibone, the managing partner of its Phoenix office: "During a portion of 2007, Quarles & Brady represented Radical Bunny, but we have not represented it since. At no time have we represented Mortgages Ltd. Both federal and state enforcement authorities have thoroughly investigated the dealings between Mortgages Ltd. and Radical Bunny and brought enforcement actions against Radical Bunny and its principals. Quarles cooperated fully with both investigations. No enforcement action has been brought against our firm or any of its lawyers and we do not expect any such action will be filed. Our conduct was at all times lawful and ethical. ... We will defend ourselves against any claim that we acted improperly in any way." The firm is represented by Robert Gooding Jr. from Howrey.

Greenberg Traurig likewise maintained it acted properly. "These claims are without merit," the firm said in an e-mail. "We believe our representation was appropriate in all respects. The firm is prepared to vigorously defend against these unfounded claims." The firm said that it expects it will be represented by Williams & Connolly.

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