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Petters, Capmark, AMR, Lehman, Valence, Norse: Bankruptcy

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By Bill Rochelle

General Electric Capital Corp. temporarily defeated eight of nine fraud claims in a $1 billion lawsuit brought by creditors of hedge funds swindled by the Thomas Petters, the architect of the third-largest Ponzi scheme in U.S. history.

U.S. Bankruptcy Judge Paul G. Hyman, in a 60-page opinion on Aug. 23, concluded that the creditors made an adequate claim only for civil conspiracy to commit fraud. On the eight others, for negligence and various forms of fraud, Hyman said the allegations in the complaint were insufficient.

The surviving claim "gives us the biggest damage model," Michael Budwick, an attorney for the creditors, said yesterday in a phone interview. Budwick, of Meland Budwick, P. A., in Miami, said he was pleased with the ruling. "GECC's conduct clearly shows that it joined in the multimillion-dollar Petters Ponzi scheme," he said.

The creditors were seeking $1 billion in damages for each of the nine claims. They contend in the suit, begun in September 2012, that the finance unit of Fairfield, Connecticut-based General Electric Co. kept quiet after discovering the fraud to give Petters time to repay a $45 million loan.

Palm Beach Finance Partners LP and Palm Beach Finance II LP were forced to liquidate after unwittingly investing in the Petters scheme. The funds confirmed liquidating Chapter 11 plans in October 2010, creating a trust that filed the lawsuit last year.

Hyman is giving creditors an opportunity to revise the complaint to determine if all nine claims pass muster, and in a procedure seldom seen in bankruptcy cases, GECC

and the creditors agreed that Hyman could hold a trial with a jury in bankruptcy court.

Hyman said the fundamental flaw in the complaint was the failure to show how GECC had a duty to warn the creditors. Likewise, Hyman said the fraud claims weren't supported by "a single false statement of material fact."

Near the end of his opinion, Hyman said GECC's knowledge came "through diligent inquiring that any other lender," including the creditors, could have made. Hyman said the creditors failed "to establish any general duty on the part of GECC 'to precipitate its own loss in order to protect lenders that were less diligent.'"

According to the complaint, GECC found out in October 2000 that Petters was conducting a fraud. Rather than notify law enforcement or Petters's own lawyers, GECC at least had a tacit agreement "to keep quiet" and in the meantime forced Petters to repay the $45 million loan, the creditors claimed.

GECC "had no relationship with these bankrupt hedge funds," Ned Reynolds, a company spokesman, said in a e-mailed statement. He said the funds "provided Petters financing years after GE Capital had severed its ties with him." He called the allegations "unfounded."

The two funds filed for Chapter 11 protection in November 2009, following public disclosure of the Petters fraud in September 2008. They received some $143 million in claims by limited partner investors and another $790 million in claims by unsecured creditors.

Petters is serving a 50-year prison sentence.

The lawsuit is Mukamal v. General Electric Capital Corp. (In re Palm Beach Finance LP), 12-bk-01979, U.S. Bankruptcy Court, Southern District Florida (West Palm Beach). The hedge funds' Chapter 11 case is In re Palm Beach Finance Partners LP, 09-bk-36379, in the same court.