Thornburg Mortgage, the Santa Fe-based firm that has since gone bankrupt.

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A federal judge in Albuquerque has approved a settlement that would return $11.5 million to pension funds that lost millions on mortgage-backed securities sold by Thornburg Mortgage, the Santa Fe-based firm that has since gone bankrupt.

U.S. District Judge James O. Browning approved the settlement on Dec.10, but it is subject to a final hearing on Feb. 25. The case was first brought in March 2009 by the Genesee County Employees' Retirement System and has since been expanded to include other groups that lost millions when they purchased the mortgage certificates between June, 1, 2006 and Dec. 10, 2010.

The lead plaintiffs now are the Maryland National Capital Park & Planning Commission Employees' Retirement System and the Midwest Operating Engineers Pension Fund. An attorney for the lead law firm representing those groups, Danielle Myers of Robbins Geller Rudman & Dowd in San Diego, declined to comment on the case.

The money will be paid by the financial companies or their insurance companies and underwriters who marketed the Thornburg bonds. The settlement defendants are Credit Suisse Securities, RBS Securities, Greenwich Capital Acceptance, Structured Asset Mortgage Investments as well as a some of the corporate employees involved in the sale and packaging of the deals. Judge Browning also approved attorney fees in the case covering 21 percent of the amount — $2.36 million — as well as administrative fees.

The Genesee case is separate from a class-action brought by those who purchased shares of Thornburg common stock on the New York Stock Exchange. That case, Slater v. Thornburg, was recently settled with owners of company shares being offered less than a penny on the dollar. The Genesee case is resulting in

rated or investment-grade assets that earn lower interest but are deemed secure. The Genesee suit alleged conflicts of interest in setting credit ratings and analyzing the securities. “The credit ratings prominently displayed in the offering documents were false and misleading,” the plaintiffs stated in their lawsuit.

“Did people know what they were buying?” asked Koluncich.

The interest paid on the bonds was supposedly backed by the revenue the company received from its mortgage portfolio, but the funds claimed the securities Thornburg sold were “riddled with poor-quality loans, which contained fraudulent borrower information or were made to borrowers who lacked the ability to repay the loans,” according to court filings.

Initially, defendants in the Genesee case also included rating agencies as Moody’s Corp., McGraw Hill, Fitch Ratings and Standard & Poor’s, and the number of defense attorneys swelled to more than 30 from a dozen separate law firms.

One of the legacies of the litigation — now being cited as precedent — was a 270-page ruling by Browning on Nov. 12, 2011 that determined rating agencies cannot claim First Amendment protection for their opinions on how to classify a bond or credit offering because their views are shared with just a small group investors, not widely circulated.

That part of the case was argued in Albuquerque by noted constitutional lawyer Floyd Abrams on behalf of the agencies which rated the Thornburg bonds as high quality and investment worthy. Myers argued for the plaintiffs, according to Alison Frankel, who writes the On The Case blog for Thomson Reuters.

“The Court rejects the rating agency defendants’ arguments that the First Amendment provides any protection to them under the facts of this case,” Browning wrote. The judge, however, dismissed most of the claims against the credit agencies

Despite the settlement, "defendants, individually and collectively have denied and continue to deny each and all of the claims and contentions alleged by the plaintiffs and continue to deny all charges of wrongdoing or liability against them," according to a stipulation of settlement filed Dec. 7, 2012 in Albuquerque.

While there is not a specific indication of how much the retirement funds lost from the purchase of the securities, one complaint refers to a "substantial economic loss," to the Maryland retirement fund.

And an annual report filed by the Maryland National Capital Park & Planning Commission Employees' Retirement System for the period ending June 30, 2009 shows a net investment loss of $119 million for its portfolio. A commentary in the annual report by Wilshire Associates states, "The investment-grade fixed income portfolio has significantly underperformed as a result of the distress in mortgage-related fixed income securities. The distress in the real estate and credit markets proved to be very difficult environments … ."

The annual report also states the Maryland pension fund had reassessed its investment strategy and adopted new guidelines in asset allocations. The administrator for the fund through its attorney David Goldsmith, of Labaton Sucharow in New York, declined comment on the settlement.

Thornburg Mortgage executives are also facing separate civil charges brought by the U.S. Securities and Exchange Commission. Larry A. Goldstone, chief executive officer, Clarence G. Simmons, chief financial officer, and Jane E. Starrett, chief accounting officer, were charged in March 2012 with fraudulent accounting violations for "hiding the company's deteriorating financial condition at the onset of the financial crisis," according to an SEC news release issued earlier this year. The executives "schemed to fraudulently overstate the company's income by more than $400 million and falsely record a profit rather than an actual loss for the fourth quarter

to-day operations of the publicly traded company. Thornburg Mortgage shares hit $28 in early 2007 before the company filed for bankruptcy two years later.

Thornburg Investment Management is a privately held company that manages stock and bond funds for individual and institutional investors. The two companies shared office space in Santa Fe, but always remained separate entities.

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