

## Banking MVP: Mayer Brown's Matthew Ingber

By Kurt Orzeck

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Mayer Brown LLP partner Matthew Ingber helped establish a template for courts to approve settlements in private residential mortgage-backed securities litigation by working on the largest settlement of that kind, and a New York state appeals court greenlighted an \$8.5 billion deal earlier this year, earning Ingber a spot on Law360's list of Banking MVPs for 2015.

Ingber was part of a team of attorneys who represented Bank of New York Mellon Corp. as the trustee for 530 of Bank of America Corp.'s Countrywide Financial Corp. affiliates' private-label mortgage-backed securities trusts, which are made up of 1.6 million loans with an original principal balance of \$424 billion.

Holder of Countrywide Financial Corp. securities backed by subprime mortgages that went bust during the financial crisis had pushed Bank of America to buy back the securities. But Ingber and other attorneys representing BNY Mellon used a state law procedure known as an Article 77 proceeding to convince a New York state judge last year to approve the \$8.5 billion deal.

Under that advisory statute, trustees can seek a state court's guidance on various matters including settlement approval, as BNY Mellon used in the instant case. The New York Supreme Court Appellate Division in March approved the settlement in its entirety after finding that the trustee acted reasonably in connection with its evaluation of loan modification claims.

"[Article 77] was an elegant answer to the question of how you get judicial approval of the trustee's conduct in this context," said Ingber, who co-leads Mayer Brown's banking and finance litigation group and who also made last year's list of Banking MVPs. "We felt like this proceeding was the one that fit."

Ingber and other attorneys have since used Article 77 proceedings to seek judicial approval of other RMBS-related settlements, including a proposed settlement with JPMorgan Chase in which Ingber again

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**BANKING**



Matthew Ingber  
Mayer Brown

represents BNY Mellon — one of a number of trustees involved in the deal.

Under that agreement, JPMorgan would pay \$4.5 billion in cash to settle all representation and warranty and servicing claims asserted by 330 RMBS trusts, implement certain servicing changes to mortgage loans in the trusts, and continue a tolling and forbearance agreement while the trustees evaluate the settlement, the bank has said.

The settlement was reached in November 2013, but Ingber and his colleagues are still seeking its approval.

Ingber — who also helped place Mayer Brown's banking practice on Law360's Practice Groups of the Year — said he attributes his success in part to the team he's worked with both at Mayer Brown and from other firms on various cases.

"It goes back to when we started working with our securitization team, transactional lawyers and litigators who worked together on matters that involved RMBS," Ingber said. "Put those attorneys together with banking litigators and you have a good combination of skill sets."

In addition to his work on major RMBS settlements, Ingber has also defended BNY Mellon from litigation by pension funds that invested in the securities and alleged that the RMBS trustee had a duty to aggressively pursue claims against the mortgage issuers for breaches of representations and warranties. According to the investors, the trustees had public knowledge of the issuers' breaches of representations and warranties because the information was in the public domain.

The Second Circuit in December of last year ruled that the Trustee Indenture Act didn't apply to any trusts governed by pooling and servicing agreements, which were the bulk of the deals in the case.

A union pension fund in September asked the U.S. Supreme Court to overturn that decision, claiming that reversing the Second Circuit's TIA ruling would boost investor confidence in the RMBS market by improving trustees' oversight of the securities.

But BNY Mellon in mid-November argued that the high court risks causing "wrenching" changes to the RMBS market if it overturns the lower court finding.

Ingber says the union pension fund case is another instance in which he is able to assert a defense that he staunchly supports.

"The last year has been great, because I've been fortunate to work on cases that are important to the banking industry," he said. "I feel like we're on the right side of the law."

--Additional reporting by Erica Teichert, Jessica Corso, Stewart Bishop and Evan Weinberger. Editing by Jeremy Barker.