

## Banking Group Of The Year: Mayer Brown

By Jon Hill

*Law360 (February 2, 2023, 2:02 PM EST)* -- Mayer Brown LLP's banking litigators helped Citibank recover \$500 million in mistakenly wired funds and pulled off double victories for Société Générale against first-of-their-kind claims over decades-old Cuban asset confiscations, earning the firm a spot among Law360's 2022 Banking Groups of the Year.

This marks the fourth consecutive year that Law360 has recognized Mayer Brown for its banking practice, a streak that underscores the firm's prominence in both the capital markets and the courtroom.

Stationed across four continents with concentrations in hubs like New York, London and Hong Kong, the banking practice serves some of the world's biggest banks and has capabilities spanning every area of finance, including asset-based lending, restructuring and workouts.

About 70 of the firm's more than 300 banking and finance attorneys focus on litigating for financial services clients. Together, they form the core of the firm's banking and finance litigation group, which is co-chaired by partners Christopher Houpt and Mark Hanchet.

"The practice group is in growth mode and has been for five years," Hanchet told Law360. "We've had a few lateral additions, but the real growth has come from within through young partners who have been promoted. That's a reflection of the fact our clients are increasingly turning to us for [complex] matters and demanding skilled representation at the partner level, so it's been very healthy and steady growth."

Citibank, for example, turned to the Mayer Brown team as lead trial counsel and appellate co-counsel in a highly public court fight to recover roughly \$500 million that the bank, acting as a syndicated loan agent, accidentally wired to lenders of Revlon Inc. in August 2020.

The bank sued after the lenders refused to give back the money, which was part of a larger, nearly \$1 billion transfer that was sent out by mistake. The case then went before a New York federal judge, who stunned the banking industry by ruling in 2021 that the hold-out lenders could keep the funds, citing an obscure state law doctrine known as "discharge-for-value."

But Citi and its legal team, which included Houpt, as well as Neal Katyal of Hogan Lovells, persuaded a Second Circuit panel to overturn that ruling last September. The panel concluded that the lenders had to



repay the money, in part because there had been multiple "red warning flags" suggesting that Citi hadn't actually meant to wire it to them.

The victory paved the way for Mayer Brown to hash out a settlement with the lenders late last year that provided for the money's return to Citi, ending the bank's more than two-year-long effort to recoup its mistaken transfer. Houpt said he and his colleagues are proud of all the work they put in along the way.

"We were brought in pretty much immediately after that [transfer] happened," Houpt said. "We developed the litigation strategy, and we helped with the communications to lenders. ... We also got a temporary restraining order to freeze the money, which was a critical step to make sure it could be recovered."

"And while we were working with our new co-counsel at Hogan Lovells in prosecuting the appeal, Mayer Brown was handling all the other things that were going on and advising on other issues related to the administration of the Revlon loan," Houpt added. "So we're pleased with [the outcome]."

The firm's banking litigators also scored notable wins for Citibank this past year as lead counsel on a False Claims Act case that accused the bank of breaching two prior consent orders with its regulators.

The suit, initially filed in 2019, was brought by a Citi employee who alleged the bank had manipulated vendor oversight audits to feign consent order compliance. The employee further claimed she had alerted regulators to this alleged misconduct and, in the process, provided critical information that led to a 2020 consent order fining the bank \$400 million, which she sought to share in as a whistleblower.

But in a June decision, a New York federal judge concluded that the 2020 order didn't actually relate to the misconduct alleged by the would-be whistleblower. The judge denied the award request — which the government had itself opposed — and granted Citi's bid to dismiss the suit, a result that the judge then affirmed in August by declining to reconsider it. The employee has since appealed.

Citi is just one of many financial institutions that have benefited lately from Mayer Brown's defense work.

At the end of 2021, a team of the firm's litigators helped French banking giant Société Générale secure significant dismissals of two cases brought against it under the Helms-Burton Act, a 1996 law authorizing private lawsuits against companies that allegedly "traffic" in assets seized by the Cuban government.

Filed by heirs to the owners of two Cuban banks confiscated six decades ago, the cases were among the first to be filed against any bank after the Trump administration allowed the law's long-delayed right to sue to go into effect. They carried steep stakes for SocGen, too — the law lets plaintiffs recover the value of the confiscated assets plus interest, as well as potentially treble damages.

But New York federal judges agreed with SocGen that both sets of plaintiffs' claims couldn't proceed. In one case, Mayer Brown's litigators successfully argued that the claims against SocGen were brought too late. In the other, they won dismissal on grounds related to a claim ownership deadline and intent pleading requirement in the law.

More recently, at the D.C. Circuit, another Mayer Brown team obtained a precedent-setting win for the British multinational bank HSBC over an anti-terrorism financing suit with billions of dollars in potential damages on the line.

The suit sought to hold four HSBC affiliates liable to family members of victims from the so-called Camp Chapman attack — a 2009 al-Qaeda suicide bombing on a U.S. base in Afghanistan — on account of alleged banking ties to Iranian and Saudi financial institutions with purported terrorism links.

But a D.C. Circuit panel upheld dismissal of the case in September, siding with arguments from HSBC's Mayer Brown attorneys that the business dealings of the bank's overseas affiliates weren't enough to support jurisdiction over them and that no knowing, substantial terrorist assistance by the bank had been plausibly alleged.

The ruling is already proving influential. In early January, the Second Circuit relied in part on it to affirm dismissal of another, unrelated anti-terrorism financing case against HSBC and several other major European banks.

"We're very proud of the work that we've done in the Anti-Terrorism Act space," Hanchet said, referring to the law under which HSBC was sued. "We've represented a whole suite of international banking clients on cases like this, and we've become something of an industry leader in this space."

Mayer Brown has also been a leader in its representation of residential mortgage-backed securitization trustee banks, pioneering the use of so-called Article 77 special proceedings in New York state court as a way to resolve RMBS trust-related disputes efficiently in a single forum.

The firm bolstered its reputation on that front last year with a key appellate win as counsel to the Bank of New York Mellon in an Article 77 case tied to the bank's role as trustee for nearly 280 RMBS trusts.

The case stemmed from a dispute over how BNY Mellon calculated the interest payable to certain holders of interest-only notes in the trusts. For years, the bank's calculations had used the actual, current mortgage rates on loans underlying the RMBS, but a hedge fund that acquired many of these notes in 2017 claimed the bank should have been using the original, often higher, rates.

In February 2022, a New York state appeals court upheld a trial judge's ruling that blessed BNY Mellon's methodology.

Although the trusts' governing agreements were "ambiguous" about which rate should be used, no other investor objected to the bank's choice of rates until the hedge fund came along, according to the court. As a result, the court said it saw no problem with affirming the method that by then had become a "years-long course of conduct."

"We were able to convince the court that the way the trustee had been doing it all along was correct, and we were able to do that without any discovery," Houpt said.

"The court thought that our reading of the contract was reasonable, but it also emphasized that it didn't want to disrupt a long-standing practice — that the trustee had been calculating payments in this particular way for a long time," Houpt added. "The court was resistant to the idea that someone could come along later and buy up securities and enforce a retroactive change in a practice that people had relied on, so we think that's a helpful precedent for the industry more broadly."

--Editing by Daniel King. All Content © 2003-2023, Portfolio Media, Inc.