

Banking Group Of The Year: Mayer Brown

By **Emilie Ruscoe**

Law360 (January 26, 2024, 2:02 PM EST) -- Banking practitioners at Mayer Brown LLP recently persuaded the Second Circuit to affirm dismissal of claims under the Anti-Terrorism Act against HSBC and Credit Suisse while also securing an opinion from New York's highest court clarifying the responsibilities of trustees for residential mortgage-backed securities, earning them a spot among Law360's 2023 Banking Groups of the Year.

Mayer Brown, which serves more than half of the world's biggest banks and has a litigation group with over 100 attorneys focusing on banking and financial services, has now been recognized by Law360 for its banking practice for five consecutive years.

Its greatest achievements in the past year include the Second Circuit's January 2023 finding that a district court had been right to toss a suit accusing banks of financing terrorism — and that veterans who brought the action failed to plausibly allege the banks actually conspired with terrorist groups in violation of the federal Anti-Terrorism Act.

Mark Hanchet, a co-chair of Mayer Brown's banking and finance litigation group, described the Second Circuit decision as an important one for the industry.

"This is a decision that really has helped constrain [Anti-Terrorism Act] cases and keep them in a space that's beneficial to the banking industry, such that regular actors in difficult parts of the world that are involved in banking activities don't get swept up in these cases," Hanchet said.

"The Second Circuit did a nice job in limiting the conspiracy liability, particularly in connection with ATA cases," he added.

The group has since seen the case cited in a number of others, both in the Second Circuit and elsewhere, in which "the principles that are set forth in [the Second Circuit opinion] have been cited with approval by district court judges," Hanchet said.

The group saw similarly precedent-setting success before New York's highest court in June in an opinion that securitization trustees don't have to enforce repurchase obligations against mortgage loan originators based on certain general contract language.



Christopher Houpt, also a co-chair of the firm's banking and finance litigation group, described the matter as a significant declaration from New York's highest court, pointing in particular to its holding that trustees do not have pre-event of default duties to enforce repurchase obligations against mortgage loan originators under certain general contract language.

Dating back to the Trust Indenture Act, Houpt said, banks have viewed events of default as "important development[s] in the life of an indenture or trust" before which trustees have administrative, ministerial duties.

Prior to the ruling, Houpt said, investors had tried to "kind of push the post-event of default standard earlier in time, either by fuzzing up the definition of what an event of default is or by pointing to ambiguous language and saying 'this creates this kind of duty.'"

"I think that was the most important [residential mortgage-backed securities] case that we got last year," he said.

The group's accomplishments result in part from its strategic footprint, which includes attorneys in all the world's financial centers, Hanchet said.

He recalled a recent instance in which a Swiss bank client, which retained the firm last year to provide services in the U.S., called to say the relevant matter now had a dimension in the U.K.

Someone in Mayer Brown's London office had the right expertise to take up the matter, and has since been briefed and is handling it, Hanchet said.

"This is exactly the model that we created many years ago to make sure that wherever our clients are, wherever their problems are, we have the litigation expertise and the financial services sector available to them, and this is just a perfect validation of that strategy," Hanchet said.

Houpt said the firm's clients also benefit from working with teams like its banking and finance litigation group, which has both finance product expertise and disputes expertise for handling litigation.

The team is composed of Mayer Brown attorneys who have dealt with those issues from the contract analysis stage to someone raising an inquiry to negotiations or litigation.

"It's the whole food chain, and it's a very well integrated team of people," Houpt said. "It's one thing to have those areas of expertise all within the same firm, but it's another thing to be able to effectively bring them to bear for a particular client every time."

--Additional reporting by Jon Hill, Sarah Jarvis and Alyssa Aquino. Editing by John C. Davenport.