HSBC, Deutsche Get $340M In Libor Settlements Approved

By *Matthew Perlman*

Law360 (April 6, 2018, 8:02 PM EDT) -- A New York federal judge granted preliminary approval on Thursday for separate settlements by HSBC Bank and Deutsche Bank AG totaling $340 million in the multidistrict litigation accusing several large financial institutions of manipulating the London Interbank Offered Rate.

U.S. District Judge Naomi Reice Buchwald issued short orders granting approval of the settlements, which were inked with a group of so-called over-the-counter investors who purchased Libor-tied products directly from the banks. HSBC agreed last month to pay the investors **$100 million** to release their claims, while Deutsche Bank cut a **$240 million** deal back in February.

Both banks also agreed to cooperate in the ongoing litigation. The settlements are similar to agreements previously reached by the same investors with Citigroup Inc. and Barclays PLC totaling $250 million.

The allegations in the long-running suit stem from a multiyear investigation into banks' alleged rigging of Libor, which tracks how much banks charge one another to borrow funds. Probes by government enforcers around the globe sparked a series of lawsuits that were eventually gathered into multidistrict litigation in New York's Southern District in August 2011, court records show.

The MDL is on remand from the Second Circuit, which reversed Judge Buchwald's 2013 ruling that the plaintiffs had not experienced an antitrust injury since the Libor-setting process was not supposed to be about competition in the first place.

The OTC investors in the instant suit, which include Yale University and Baltimore city officials, were granted **class certification** by Judge Buchwald in March for a period between 2007 and 2010 after she found disagreements among experts about alleged Libor suppression and other factors showed that their claims were based on common issues.

The same 366-page order denied class certification for a group of exchange-based investors, including investment manager Metzler Investment GmbH, which purchased instruments on the Chicago Mercantile Exchange between 2005 and 2010. The judge found those investors had failed to meet the typicality and adequacy requirements of a class action.

Berkshire Bancorp Inc. also sought to lead a class of U.S.-based lenders that performed any loan transactions with interest rates tied to Libor between Aug. 1, 2007, and May 31, 2010. But the judge denied that request in the March order as well after finding the lender would not be an adequate representative based on a previously undisclosed fee arrangement between a son of Berkshire Bank's CEO Moses Krausz and plaintiffs' firm Pomerantz LLP.

Barclays was the first bank to settle with the OTC plaintiffs, striking a **$120 million** icebreaker deal in November 2015 that was granted preliminary approval in December of the following year. Judge Buchwald said when approving the agreement that it was the product of two years of negotiations and that it offered the investors "a significant recovery," especially considering Barclays' vow to cooperate.

Citi struck a **$130 million** deal with the OTC investors in August 2017, which was approved later the same month, according to court records.

The HSBC and Deutsche settlements bring the total up to $590 million for the group of investors. The banks remaining in the case include Bank of America Corp., JPMorgan Chase & Co. and UBS AG.

Attorneys for the OTC investors and the settling banks did respond to requests for comment Friday.

The class is represented by Michael D. Hausfeld, Hilary Scherrer, Nathaniel C. Giddings, Scott A. Martin and Gary I. Smith of Hausfeld LLP and William Christopher Carmody, Arun Subramanian, Seth Ard, Geng Chen, Marc M. Seltzer, Glenn C. Bridgman, Matthew Berry, Drew D. Hansen, Barry C. Barnett, Karen Oshman and Michael Kelso of Susman Godfrey LLP.

HSBC is represented by Gregory T. Casamento, Roger B. Cowie, J. Matthew Goodin of Locke Lord LLP.

Deutsche Bank is represented by Aidan John Synnott, Moses Silverman and Elizabeth M. Sacksteder of Paul Weiss Rifkind Wharton & Garrison LLP

The case is In Re: Libor-Based Financial Instruments Antitrust Litigation, case number 1:11-md-02262, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Tom Zanki, Kat Greene, Pete Brush, Dave Simpson and Bonnie Eslinger. Editing by Alanna Weissman.

BUSINESS

With Libor suit, Baltimore reinforces role as banking watchdog

By Steve Kilar and The Baltimore Sun
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Two huge civil cases led by Baltimore — one that ended last week as the other gained momentum — spotlight City Hall's emerging role as an aggressive watchdog against the misdeeds of multinational banks.

On Thursday, Wells Fargo settled a nationwide suit launched by the city four years ago that alleged the bank discriminated against black and Latino mortgage borrowers.

Baltimore is also the lead plaintiff in a class action suit against a group of financial firms worldwide it accused of conspiring to keep a key interest rate benchmark low — and thereby siphon off money from the city treasury. The case, pending in a New York federal court, drew fresh attention when the British megabank Barclays recently agreed to a related $450 million settlement with regulators.

A succession of Baltimore leaders have brought several class action suits against banks, alleging a range of financial improprieties that ultimately cost taxpayers and residents, making it one of the more activist municipalities in the country.

"They've taken an active approach to policing the public markets," said Bill Carmody, a lead outside attorney on the interest rate case. A lot of municipal plaintiffs want the money but don't want the responsibility of taking control of a case, he said. "They've stepped up to the plate."

Fear of retribution from banks has not scared off Baltimore's leaders, said City Solicitor George A. Nilson.

"It's to the credit of our two mayors that they didn't back off on Wells Fargo and these other suits," said Nilson, applauding Mayor Stephanie Rawlings-Blake and her immediate predecessor Sheila Dixon.

Wells Fargo settled the Baltimore suit and a related one filed by the U.S. Justice Department for $175 million, most of which goes to borrowers allegedly discriminated against. The city was allocated $7.5 million, money that Rawlings-Blake says will be used to assist Baltimore homebuyers.

"It all started here in Baltimore City," said Thomas E. Perez, the U.S. assistant attorney general who heads the Justice Department's civil rights division. He appeared at City Hall with Rawlings-Blake on Thursday to announce the settlement and credited Baltimore for sparking recognition of the role race played in the subprime mortgage scandal.

Though the Wells Fargo settlement was big, the nation — and world — may have a much larger financial stake in Baltimore's interest rate suit, experts say.

"It could be billions. Or tens of billions. Or maybe even more," said Phillip Swagel, professor in international economic policy at the University of Maryland School of Public Policy and a former assistant secretary for economic policy at the U.S. Treasury Department.

Baltimore's share could range from hundreds of thousands of dollars into the millions, Nilson said.

The suit alleges that banks purposefully suppressed the London interbank offered rate — Libor, for short — during the late 2000s.

Libor is a daily average of the interest rates that banks around the world say they use when they're lending to one another. The rate is meant to reflect market conditions, Swagel said.

Set by the British Bankers Association, a trade group the banks report rates to, Libor is tied to the interest rates on trillions of dollars worth of debt, such as home loans and municipal bonds.

In its settlement with British and U.S. regulators, Barclays admitted that it underreported its rate because it made the bank appear more stable.

Baltimore and more than a dozen other plaintiffs, including public and private entities, believe other large banks did the same thing.

The city sued in August because of Libor's relationship to some of Baltimore's bonds, naming banks on the Libor-setting panel, including Bank of America, Barclays and Citibank.

In the early 2000s, during Martin O'Malley's tenure as mayor, Baltimore issued bonds tied to Libor to raise money for parking infrastructure, water utilities and other projects. To entice investors, the bonds paid a floating interest rate — Libor plus an additional percentage. Such floating rates insulate investors from interest rate swings and inflation.

But they can present problems for municipalities with tight budgets. If interest rates shoot up, a municipality would need to find money by either raising revenue or cutting costs to pay more to the bond investors.

"A typical city just cannot afford that uncertainty. That would be deadly. They just cannot take that risk because they live on a thin margin," said Yuval Bar-Or, an adjunct professor at the Johns Hopkins University's Carey Business School.

In order to protect itself, Baltimore executed a contract with a bank that transferred that uncertainty. The city agreed to pay the bank a fixed interest rate and, in return, the bank agreed to pay the amount the city owed investors on the floating-rate bond.

It's called an interest rate swap. In such an arrangement, if the benchmark rate goes up, the city is protected because the bank foots the bill.

Both the city and the bank should anticipate that the floating rate will remain below the fixed rate that the city pays the bank, so the bank can make money.

But if the benchmark rate is lowered artificially, the city loses more money than it should in the swap transaction.

"At the time when the city did the swaps is when they were very sexy, popular. A lot of municipalities participated in those kinds of transactions. ... It's not necessarily unique to Baltimore," said Harry Black, who is in his sixth month as Baltimore's finance director.

Black doesn't have any intention of resurrecting floating-to-fixed swaps during his tenure: "My approach is traditional. Traditional plain vanilla."

In its complaint, Baltimore said it had "hundreds of millions of dollars" of interest rate swaps tied to Libor between August 2007 and May 2010, the period during which Baltimore and the other plaintiffs allege that banks suppressed Libor.

In 2008, a key year in the lawsuit, Baltimore had more than a half-billion dollars tied up in Libor-related swaps, according to the city Finance Department's annual report.

That amount is not unusual for a city of Baltimore's size, experts said.

"Large municipalities very likely have these types of exposures," Bar-Or said, and it would only be natural for a city to neutralize its risk by swapping a floating rate with a bank for a fixed interest rate.

Though Baltimore was not the first municipality to file a Libor-related case against banks, the attorneys

"Common sense would suggest that being at the table is better than being in the corner of the room or waiting in the anteroom for an outcome," he said.

Baltimore's attorneys were given lead counsel status because the city has a much larger financial interest in the case than the other named municipalities, said U.S. District Judge Naomi Reice Buchwald in her November decision appointing Baltimore's outside counsel, Hausfeld LLP and Susman Godfrey LLP, as interim class counsel for the antitrust litigation.

By representing its class, Baltimore has more control over the course of the litigation, said Carmody, an attorney with Susman Godfrey. If the case settles, which he predicted it will, Baltimore will be able to steer the settlement in its own best interests, he said.

Baltimore has had long-standing relationships with both Hausfeld and Susman, Nilson said. In 2008, the firms filed two federal class action cases on Baltimore's behalf in New York, both similar to the Libor case.

One alleged that banks hid the risk of auction-rate debt — a risky municipal bond that has its interest rate periodically reset at auction — that Baltimore issued in the early and mid-2000s. Baltimore, like many other municipalities, had issued over $100 million of auction-rate debt.

A judge dismissed that case in 2010. But the other case, in which Baltimore and other municipalities allege that banks rigged bids for municipal derivatives, continues. Several banks, including J.P. Morgan Chase & Co., have already settled this litigation.

Defendants have filed motions to dismiss in both the Libor and municipal derivatives cases.

During discussions about the municipal derivatives case, Nilson recalled, the firms brought up the developing Libor rate situation.

After talking over the issue, Nilson said, Baltimore officials decided that the city may have been substantially damaged by an artificially low Libor. The city signed on as a plaintiff.

The upfront cost to Baltimore for cases like the Libor suit is minimal, Nilson said. The outside attorneys work on a contingency fee basis — they get paid only if they win, he said.

Still, despite the low cost and potential returns of class action suits, the city is deliberate about the cases it joins, Nilson said.

For example, Baltimore recently turned down an opportunity to join a product liability case because the city had not purchased enough of the product, he said. The damage to the city just wasn't there, Nilson said.

Nilson and his outside counsel have no doubt Baltimore lost money — money that could have been spent to keep open recreation centers and fire companies — because of Libor rigging.

Carmody expects monetary recovery to be through the roof. "This is going to get real ugly for banks," he said.

Black, the city finance director, is more reserved. He thinks anything the city gets from the case will be negligible compared to the overall budget, which amounted to $2.3 billion in fiscal 2012.

"The money's obviously very important, but what's equally important is the fact that this activity was caught and these institutions are going to be held accountable," Black said.

Swagel, the former Treasury economist, believes it's still an open question as to whether Libor rigging, if it happened, is quantitatively important to a city like Baltimore.

Regardless, if other banks release information during discovery that is as damning as the records released by Barclays, Swagel said he suspects many bank executives could be forced to resign. Barclays' top executives have already stepped down over the scandal.

Late last week, a dozen Democratic U.S. senators called for a criminal investigation of banks involved in the matter, and the Federal Reserve Bank of New York released documents indicating that as early as 2007 regulators there suspected Libor manipulation.

Those documents were released in response to another congressional inquiry, by Rep. Randy Neugebauer, a Texas Republican who chairs the investigations subcommittee of the House Committee on Financial Services.

"The manipulation of Libor is outrageous," Swagel said. "It really goes to the heart of our financial system."

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