

Banking Group Of The Year: Orrick

By **Hannah Albarazi**

Law360 (February 1, 2023, 2:02 PM EST) -- Orrick Herrington & Sutcliffe LLP attorneys helped steer some of 2022's biggest moments in banking, including winning major decisions slashing Credit Suisse and Goldman Sachs' potential liabilities in mortgage-backed securities cases stemming from the 2008 financial crisis, earning the firm a spot among Law360's 2022 Banking Groups of the Year.

In 2022, more than a decade after the 2008 economic meltdown left homeowners underwater, distressed borrowers and devastated communities, investment banks nabbed major advances in their fight not to repurchase allegedly shoddy residential mortgage loans securitized before the financial crisis.

And Orrick attorneys helped them win those favorable decisions.

Orrick attorneys convinced New York state's highest court that U.S. Bank NA — the trustee for a residential mortgage-backed securities trust — had failed to give individual presuit notice for each allegedly defective loan, thereby limiting the repurchase action against the trust's sponsor, Credit Suisse subsidiary DLJ Mortgage Capital Inc.

"That issue had been litigated dozens and dozens and dozens of times at the trial and appellate level in New York state, and every single one of those decisions, for over a decade, went against the banks," said Orrick partner Rich Jacobsen, who led the Credit Suisse litigation and heads up the firm's financial services litigation practice group.

The tide changed in March 2022, when the New York Court of Appeals agreed with Jacobsen and a team of Orrick attorneys. The ruling resulted in a major reversal of what had been the precedent and controlling New York law for the last decade.

Jacobsen said this decision not only saves Credit Suisse potentially hundreds of millions of dollars, but because it "will apply to every single [residential mortgage-backed securities repurchase] case still remaining," it will slash the financial industry's potential exposure by "billions and billions of dollars."

Orrick partner Danny Rubens, who worked on the Credit Suisse litigation, said it was a "really hard fought win."



Gaining traction took time and the setbacks were numerous, but Rubens said that in the end, "it really paid off."

In another consequential mortgage-backed securities case, also against U.S. Bank, Orrick's banking group nabbed a major win for their client Goldman Sachs in 2022.

Since residential mortgage-backed securities litigation tends to involve claims that hundreds or thousands of individual loans have defects, plaintiffs often use a sampling method and extrapolate from their findings.

While the team representing Goldman Sachs had previously argued that the plaintiffs needed to prove their claim, one by one, for each loan, the New York state court had firmly rejected that argument, saying it just wasn't practical.

But the Orrick team had better luck in federal court, where they argued that the sampling method — even though New York state courts had endorsed it — was inconsistent with New York's contract laws.

In March 2022, a New York federal judge agreed with their argument and rejected plaintiff U.S. Bank's bid to use the sampling method.

While not a precedential appellate decision, Rubens said the judge's decision "really bucked the trend."

As a result of the ruling, plaintiff U.S. Bank will have to prove its claims for thousands of loans, instead of just a sampling of a few hundred claims, Rubens said.

Jacobsen said he thinks that this win, coupled with the precedent established in the Credit Suisse win, could dramatically reduce Goldman Sachs' financial exposure in mortgage-backed securities litigation.

Orrick's banking practice group achieved yet another major victory in July 2022, in the case *Weiner v. Ocwen* — a \$200 million consumer class action alleging Ocwen Financial Services violated mortgage contracts by improperly marking up property valuations and charging those costs to borrowers.

In 2021, as the Orrick attorneys representing Ocwen prepared to go to trial, they got a lucky break. The U.S. Supreme Court dropped its landmark decision in *TransUnion v. Ramirez*. In it, the majority held that every class member must be concretely harmed by an alleged statutory violation in order to press forward with claims.

With the *Transunion* decision in hand, the Orrick team moved to decertify the class.

Orrick associate Jennifer Keighley, who was the principal architect of Ocwen's winning brief, said that in light of the *Transunion* decision, they argued that the class could not proceed without classwide evidence that the borrowers had actually paid the fees.

A California federal judge agreed with Ocwen and ruled to decertify the class.

"I think this is one of the most significant decisions post-*Transunion* showing the impact of that decision on class actions," Keighley told Law360.

The plaintiffs' bid for reconsideration of the trial court's decision in the case remains pending.

Orrick's banking team also played an instrumental role in an environmentally focused debt restructuring deal involving the nation of Belize.

Thomas Laryea, an Orrick of counsel who advised the bondholder creditor committee on the restructuring, told Law360 the environmental, social and governance aspects to the restructuring made it "particularly interesting."

The restructuring deal, which was finalized in late 2021, involves the Belize government's buyback of its \$553 million bonds due in 2034 with funding by the U.S. environmental nonprofit, The Nature Conservancy, with support from the U.S. International Development Finance Corporation; it's considered to be one of the largest debt restructuring deals targeted at protecting the environment.

Laryea said Orrick was well-positioned to advise the creditor committee on Belize's debt restructuring, given the firm's strengths in both sovereign debt and ESG.

--Editing by Dave Trumbore.