

Real Estate Lawyer William Blanchard publishes first article in a series, on real-estate related jurisdiction clauses

Attorney William B. Blanchard reviews the case of UBS AG v. HSH Nordbank AG, involving jurisdiction clauses in complex contract litigation

ST. CHARLES, ILLINOIS, UNITED STATES, September 20, 2018 /EINPresswire.com/ -- In the first article of his instructional series of articles, [Real Estate Lawyer William B. Blanchard](#) reviews the case of UBS AG v. HSH Nordbank AG, E.W.C.A. Civ. 585; WL 1657158: "Interpreting jurisdiction clauses in complex contract litigation over collateralized debt, where one party has sued in New York courts and opposing party has invoked jurisdiction of English courts, Court of Appeal upholds lower court's ruling that rejected resort to English courts."

[Mr. Blanchard](#) first provides an overview of the case. This appeal turns on the construction of jurisdiction clauses. The principal issue is whether the English jurisdiction clause in one of the documents recording the complex transaction between the parties applies to the claims in the action in England for the negative declaration. The English court of first instance concluded that it did not. This dispute concerns derivatives in relation to the property market, or Collateralized Debt Obligations (CDOs). The contractual documentation in this matter consists of more than 500 pages; its size and complexity, which is no doubt duplicated in many other transactions, make it easier to understand, if not to excuse, why many senior banking figures throughout the world had little understanding of this market and of the very high risks their institutions were undertaking.

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*William B. Blanchard, Attorney
in Illinois*



William B. Blanchard, Real Estate Attorney

HSH Nordbank AG (HSH) is a commercial bank incorporated in Germany with dual headquarters in Hamburg and Kiel. The first claimant, UBS AG, is incorporated in Switzerland, where it has its head office, and has substantial offices worldwide, including in New York and London.

The second claimant, UBS Securities LLC (UBS LLC), is an affiliate of UBS. It is incorporated in the United States and has its principal place of business here. The appellate court generally refers to either or both of them as “UBS.”

The relevant transactions took place in 2002/2003 between UBS and LB Kiel. HSH has assumed all material assets, rights and obligations of LB Kiel, and it is in that capacity that HSH has sued UBS in New York state court and is being sued by UBS in England. HSH is domiciled in Germany for the purposes of Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels I Regulation).

UBS filed its English action for negative declaratory relief against HSH on February 25, 2008, in anticipation of proceedings which HSH was going to lodge against UBS in New York later the same day. In its complaint, HSH alleged mis selling and mismanagement of the securities which were the subject of the complex arrangements between the parties. The original complaint relied on the following causes of action: breach of contract; fraud; negligent misrepresentation; breach of fiduciary duty; breach of an implied covenant of good faith and fair dealing; unjust enrichment; and constructive trust.

"Plainly the parties did not actually contemplate at the time of the conclusion of the contracts that there would be litigation in two countries involving allegations of misrepresentation in the inception and performance of the agreements. But, in my judgment, sensible business people would not have intended that a dispute of this kind would have been within the scope of two inconsistent jurisdiction agreements. The agreements were all connected and part of one package, and it seems to me plain that the result for which UBS contends would be a wholly uncommercial result and one that sensible business people cannot have intended."

"The New York complaint alleges, inter alia, that (a) UBS induced HSH to purchase the NS4 Notes by misrepresentations concerning the credit quality of the Reference Pool to which payments under the NS4 Notes were linked; (b) UBS

A screenshot of a web browser showing the profile of William Byron Blanchard on the Lawyer.com website. The browser's address bar shows the URL https://www.lawyer.com/william-byron-blanchard.html. The page header includes the Lawyer.com logo, navigation links like 'LAWYER SEARCH', 'LEGAL PLAN', and 'NEED A LAWYER? 800-815-6600', and user account options. The profile section for William Byron Blanchard, Attorney, includes a placeholder for a profile picture, his name, and a 'Wrong Blanchard?' link. To the right, there are statistics: 'Profile LAWPOINTS™ 17/100', 'No Misconduct Found', 'Reviews Pro Bono Cases', and 'Upgrade to a premium listing'. A map on the right shows his location at 1700 Lincoln Highway, Suite K, Saint Charles, IL 60174.

William Blanchard, Attorney Listing on www.Lawyer.com

A screenshot of the Gaia Title, Inc. website. The header features the company logo, the name 'Gaia Title, Inc.', and the tagline '* The Realtors® Title Insurance Agency*'. Navigation tabs include 'HOME', 'ABOUT US', 'REALTORS', 'ATTORNEYS', 'RATE CARD', and 'CONTACT US'. The main content area has a blue background with the text 'Welcome to Gaia Title, Inc.' and a large image of a 'GAIA TITLE' sign.

Website of Gaia Title, William B. Blanchard, General Counsel

A screenshot of the William B. Blanchard blog on Blogspot. The browser's address bar shows the URL williamblanchardblog.blogspot.com. The page layout is identical to the Gaia Title website, featuring the same header, navigation tabs, and 'Welcome to Gaia Title, Inc.' message with the 'GAIA TITLE' sign image. Below the main content area, there is a bio for William B. Blanchard, stating he is a solo practice attorney with offices in St. Charles and Oakbrook Terrace, Illinois, specializing in real estate transactions and tax assessment appeals.

Blog of William B Blanchard at williamblanchardblog.blogspot.com

A professional profile for William B. Blanchard, Esq. It features a headshot of a middle-aged man with grey hair, wearing a suit and tie. To the right of the photo, the text reads 'William B. Blanchard, Esq.' followed by 'Real Estate Law'. Below this, three paragraphs describe his practice: he is a solo practice attorney in St. Charles and Oakbrook Terrace, IL, specializing in real estate transactions and tax appeals; he is General Counsel for Gaia Title, Inc., a title insurance agency; and he has gained distinction as a real estate assessment attorney by representing 23 Will County senior citizen home owners before the Illinois Property Tax Appeal Board. The profile concludes by stating he is often interviewed for legal news and maintains a blog on title insurance industry decisions.

Attorney Profile of William B Blanchard

failed to operate a Commitments Committee, as required by the RPSA, so as to select Reference Pool assets with stable or improving credit profiles, carefully monitor the credit status and quality of each asset, and avoid downgrades. As Justice Lowe stated in his decision of October 21, 2008: 'HSH's overarching claim is that UBS failed to maintain the promised high quality of the notes in the Reference Pool, by failing to ensure that the Commitments Committee keep an eye on the condition of the investments.'" [¶ 89].

"Whether a jurisdiction clause applies to a dispute is a question of construction. Where there are numerous jurisdiction agreements which may overlap, the parties must be presumed to be acting commercially, and not to intend that similar claims should be the subject of inconsistent jurisdiction clauses. The jurisdiction clause in the Dealer's Confirmation is a 'boilerplate' bond issue jurisdiction clause, and is primarily intended to deal with technical banking disputes. Where the parties have entered into a complex transaction, it is the jurisdiction clauses in the agreements which are at the commercial centre of the transaction which the parties must have intended to apply to such claims as are made in the New York complaint and reflected in the draft particulars of claim in England." [¶ 95].

"The action in England is intended to mirror the New York proceedings. I have already emphasised that the essence of the claims for misrepresentation in New York is that HSH was induced to purchase the NS4 Notes in reliance on the fraudulent and negligent misrepresentations, and would not have purchased them in the absence of those representations. No sensible commercial interpretation of the jurisdiction clause in the Dealer's Confirmation could have the result that identical misrepresentation claims would fall both within that clause and within the non exclusive New York jurisdiction clauses, simply because the consideration for the transaction was the issue of the Kiel MTN Notes.

The Court concludes that the standard form bond issue jurisdiction clause in the Dealer's Confirmation does not apply to claims that the transaction as a whole, and in particular the purchase of the NS4 Notes, was induced by misrepresentation.

The case citation is UBS AG v. HSH Nordbank AG, E.W.C.A. Civ. 585; WL 1657158. The complete commentary will be published on the Blog of Mr. Blanchard at Blog: <https://williamblanchardblog.blogspot.com/>

About William B. Blanchard

Mr. William Blanchard ("Bill Blanchard") is a solo practice attorney with offices in St. Charles and Oakbrook Terrace, Illinois. Bill specializes in representing real estate clients for purchases and sales as well as home owner real estate tax assessment appeals.

Mr. Blanchard is General Counsel for Gaia Title, Inc. a title insurance agency and settlement services provider. The Company is owned by real estate attorneys who demand exemplary title insurance services and accurate and efficient settlement services. As General Counsel he is responsible for title examination, commitment and policy review, escrow settlement supervision and regulatory review.

Mr. Blanchard gained distinction as a real estate assessment attorney by representing 23 Will County senior citizen home owners before the Illinois Property Tax Appeal Board and winning every case; this in addition to several successful appeals before various County Boards of Appeal.

Bill is often interviewed for comments on significant legal and real estate news and is developing a blog for discussion of relevant judicial decisions affecting the title insurance industry.

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References

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