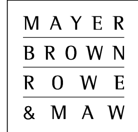
MAYER, BROWN, ROWE & MAW'S
SUPREME COURT DOCKET REPORT
OCTOBER TERM, 2002 – NUMBER 8

Today the Supreme Court granted certiorari in one case of potential interest to the business community. Amicus briefs in support of the petitioners are due on Monday, March 10, 2003, and amicus briefs in support of the respondents are due on Wednesday, April 9, 2003. Any questions about this case should be directed to Miriam Nemetz (202-263-3253) or Robert Bronston (202-263-3244) in our Washington office.

National Bank Act — Removal — State-Law Usurious Interest Claims. Under the well-pleaded complaint rule, the court assessing the propriety of removal must look to the face of the complaint to determine whether federal question jurisdiction exists and removal accordingly is proper; a defendant generally may not remove a case on the ground that it has federal defenses. Under the "complete preemption" doctrine, however, a case may be removed to federal court if Congress has so "completely pre-empt[ed] a particular area that any civil complaint * * * is necessarily federal in character." *Metropolitan Life Ins. Co.* v. *Taylor*, 481 U.S. 58, 64 (1987). The Supreme Court granted certiorari in *Beneficial National Bank* v. *Anderson*, No. 02-306, to determine whether the National Bank Act ("NBA"), 12 U.S.C. §§ 85 and 86, "completely preempts" state-law usury claims, so that such claims filed against a national bank in state court may be removed to federal court.

Petitioner Beneficial National Bank ("Beneficial") is a national bank chartered under the NBA. The respondents are borrowers who took out tax refund application loans from Beneficial. The borrowers sued Beneficial and others in Alabama state court, contending that the interest rate they paid was higher than the rate disclosed to them and exceeded the maximum permissible interest rate under Alabama law. The defendants removed the case to federal court. The district court denied the plaintiffs' motion to remand, holding that the NBA completely preempts state-law usurious interest claims and that removal accordingly was proper. *Anderson* v. *H & R Block, Inc.*, 132 F. Supp. 2d 948 (M.D. Ala. 2000).

The Eleventh Circuit reversed. *Anderson* v. *H & R Block, Inc.*, 287 F.3d 1038 (2002). The court stated that "congressional intent is the pivotal issue in the complete preemption inquiry." *Id.* at 1044. Finding "no clear congressional intent to permit removal," the court accordingly held "that while [the NBA provisions] may provide a defense to state-law usury claims, they do not accomplish complete preemption so as to permit removal." *Id.* at 1048. As evidence of congressional intent, the court noted that Congress had expressly provided for removal in certain other statutes enacted before the creation of general removal jurisdiction, but had included no such provision in the NBA. *Id.* at 1045. The court also noted that Congress had specifically excluded national banks from a statute, enacted four years after the NBA, which gave corporations the right to remove cases in which they raised a federal defense. *Id.* at 1046.



The Eleventh Circuit's decision squarely conflicts with two decisions of the Eighth Circuit, *Krispin* v. *May Dep't Stores Co.*, 218 F.3d 919 (2000), and *M. Nahas & Co.* v. *First Nat'l Bank of Hot Springs*, 930 F.2d 608 (1991).

This case is directly relevant to national banks subject to the NBA. Because the Supreme Court will discuss the scope of the complete preemption doctrine, the decision is also of interest to other businesses that are subject to extensive federal regulation.

MAYER, BROWN, ROWE & MAW WORLDWIDE

BRUSSELS
Square de Meeus 35
B1000 Brussels, Belgium
+322.502.5517

CHARLOTTE
Bank of America Corporate Center
100 North Tryon Street, Suite 2400
Charlotte, North Carolina 28202
704.444.3500

CHICAGO
190 South LaSalle Street
Chicago, Illinois 60603-3441
312.782.0600

COLOGNE
Kaiser-Wilhelm-Ring 27-29
50672 Cologne, Germany
+49.221.577.1100

FRANKFURT
Bockenheimer Landstrasse 98-100
D-60323 Frankfurt/Main, Germany
+49.69.79.41.00

HOUSTON
700 Louisiana Street
Suite 3600
Houston, Texas 77002-2730
713.221.1651

LONDON – PRINCIPAL OFFICE
11 Pilgrim Street
London EC4V 6RW
+44.0.20.7248.4282

LONDON – LLOYD'S OFFICE
Suite 892/874
Lloyd's
One Lime Street
London EC3M 7DQ
+44.0.20.7327.4144

LOS ANGELES
350 South Grand Avenue
25th Floor
Los Angeles, California 90071-1503
213.229.9500

MANCHESTER
Canada House
Chepstow Street
Manchester M1 5FW
+44.161.236.1612

NEW YORK
1675 Broadway
New York, New York 10019-5820
212.506.2500

PALO ALTO
555 College Street
Palo Alto, California 94306
650.331.2000

PARIS
13 Avenue Hoche
75008 Paris, France
+33.1.53.53.43.43

WASHINGTON
1909 K Street, N.W.
Washington, D.C. 20006-1101
202.263.3000

INDEPENDENT MEXICO CITY CORRESPONDENT
Jáuregui, Navarrete,Nader y Rojas, S.C.
Torre Arcos
Paseo de los Tamarindos No. 400-B
Floors 7, 8 and 9
Col. Bosques de las Lomas
05120 Mexico, D.F.
+525.267.45.00

Copyright © 2003 Mayer, Brown, Rowe & Maw. This Mayer, Brown, Rowe & Maw Supreme Court Docket Report provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek specific legal advice before taking any action with respect to the matters discussed herein.