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Historic Victory in New York's Highest Court

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Hughes Hubbard clinched another win for Portigon AG when New York's highest court affirmed dismissal of a fraud and mismanagement suit against the German bank claiming over \$300 million in losses arising from a collapsed collateralized debt obligations (CDO).

The New York Court of Appeals found that plaintiff's acquisition of the claims violated New York's champerty statute, which bars bringing a lawsuit in exchange for a fee. It was the first time in more than 100 years that the Court of Appeals found a transaction champertous.

On Oct. 27, in a 5-2 vote, the Court of Appeals upheld an Appellate Division ruling that found a lower court correctly tossed the suit brought by Justinian Capital against Portigon, formerly WestLB, and one of its subsidiaries.

In February 2014, Manhattan Supreme Court Justice Shirley Kornreich ruled that Justinian, a Cayman Islands litigation funder controlled by an English barrister, violated New York's champerty statute by bringing a lawsuit as proxy for a German bank that held notes in two failed CDOs managed by Portigon. The Appellate Division unanimously affirmed the decision in May 2015.

The state high court noted that Justinian did not have to pay the \$1 million purchase price listed in the agreement unless the lawsuit was successful, in litigation or in settlement.

"In sum, we hold that because the notes were acquired for the sole purpose of bringing litigation, the acquisition was champertous," Chief Judge Janet DiFiore wrote in the majority opinion. "Further, because Justinian did not pay the purchase price or have a binding and bona fide obligation to pay the purchase price of the notes independent of the successful outcome of the lawsuit, Justinian is not entitled to the protection of the safe harbor."

The victory made the front page of the New York Law Journal and garnered coverage in Reuters, Forbes.com and The D&O Diary. It was also the featured case in the New York State Bar Association's newsletter.

Chris Paparella led the HHR team and argued the appeal on Sept. 14, 2016. Click [here](#) to view the hearing. The team also included Marc Weinstein, George Davidson, Andrea Engels and Apoorva Patel.

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