

Banking litigation before the Geneva courts

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Alongside arbitration, the Geneva courts handle a substantial volume of banking and financial litigation, the nature of which has changed with the financial centre itself. The classic disputes pit clients against their bank or their asset manager over the performance of a mandate, liability for losses, fees and retrocessions, or the validity of contested orders. These disputes fall within the jurisdiction of the Tribunal de première instance (Court of First Instance), the Cour de justice (Court of Justice) and, in the last resort, the Federal Supreme Court, whose case law on asset management mandates and the duty to inform is extensive.¹ Since the 2010s these have been joined by disputes arising from the end of bank client secrecy, with clients reproaching their bank for handing over data or closing accounts, by disputes connected with sanctions and the freezing of assets, and by liability actions brought by liquidators or by investors harmed by fraud.

This litigation has characteristics of its own. It is technical, which has led the Geneva courts to develop an expertise that practitioners acknowledge; it is often international, raising questions of jurisdiction and applicable law; and it is conducted in French, which, as Part J has shown, favours French-speaking clients and obliges the others to translate. The ombudsman body provided for by the Financial Services Act, with which Geneva providers are affiliated, deals with a proportion of disputes with clients before any court proceedings.²

1 Notes

1. ATF 132 III 460 (judgment of 22 March 2006, 4C.432/2005): “Art. 400 para. 1 CO; asset management contract; payment of rebates and commissions (finder’s fees). Conditions under which the principal validly waives the payment of rebates and other receipts collected by the manager”; the waiver presupposes full information on the retrocessions expected and their scale, and may be inferred neither

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from silence nor from knowledge of customary practice. ATF 138 III 755 (judgment of 30 October 2012, 4A_127/2012 and 4A_141/2012): “Art. 400 para. 1 CO; asset management carried on by a bank; restitution of the rebates it received in return for the distribution of securities”; obligation to return the trailer fees paid to the bank, including by companies of the same group (bger.ch). ↩

2. Art. 74 FinSA (droit-bilingue.ch): “Disputes between the financial service provider and its client should, where possible, be settled by an ombudsman body in mediation proceedings.” Alongside arbitration and mediation, the Swiss Arbitration Centre offers financial ombudsman services (“Ombuds-FIN”, swissarbitration.org). ↩

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