



Fifth Circuit Affirms a \$69 Million Refund to JP Morgan Pursuant to a Most-Favored-Licensee Clause

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In 2005, DataTreasury granted JP Morgan a license for unlimited use of the patented technology both as to time and volume of use for a lump sum payment of \$70 million. The license agreement included a most favored licensee clause requiring DataTreasury to notify JP Morgan of any other licenses granted and to give JP Morgan “the benefit of any and all more favorable terms with respect to [the] Licensed Patents.”

Seven years later, DataTreasury granted a license to the same patents to Cathay General Bancorp in exchange for a significantly lower license fee. Under the terms of that agreement, JP Morgan’s lump sum license fee would have been \$1 million. DataTreasury failed to notify JP Morgan of the Cathay General license agreement or give JP Morgan the benefit of the more favorable license fee in that agreement.

Shortly thereafter, JP Morgan sued DataTreasury for breach of contract. The Eastern District of Texas held, and the 5th Circuit affirmed, that DataTreasury owed JP Morgan a \$69 million refund reflecting the difference between the license fee that JP Morgan had paid and the license fee it would have paid under the more favorable Cathay General license.

JP Morgan Chase Bank, N.A. v. DataTreasury Corp., No. 15-4095 (5th Cir. May 19, 2016).

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