

Cashing in on Check 21 rules

DataTreasury fights big banks, one suit a time

By JEREMY HARRELL

A small, privately held Melville company is taking on the nation's largest banks in court, and so far it's winning.

In July, DataTreasury Corp. scored a crucial legal victory when JP Morgan Chase, one of the country's three largest financial institutions, agreed to settle a patent-infringement case in Texas federal court. The settlement terms weren't disclosed, but JP Morgan acknowledged the validity and enforceability of DataTreasury's patents and agreed to buy licenses to use DataTreasury's technology.

So what does DataTreasury do? Founded in 1998 by Claudio Ballard, the company owns two patents on check-imaging and check-processing technology. Made important by the Internet, the technology became nearly indispensable last October with the passage of the Check Clearing for the 21st Century Act, or Check 21, as it's known.

The federal legislation elevates an electronic image of a check to the legal status of its paper counterpart, meaning that banks no longer have to retain paper copies of processed checks. The digital processing of checks is expected to grow by leaps and bounds in the next decade.

A spokesman for DataTreasury declined to say how much JP Morgan paid to settle the suits, but he said the amount was "significant."

Andrew Edson, another spokesman for the company, said the settlement was large enough to allow DataTreasury "to pay down a lot of debt and have operating capital going forward."

DataTreasury had already struck a settlement agreement with Zions Bancorp., based in Utah, and subsidiary NetPoint Inc., which writes software specifically for Check 21 transactions.

On the same day the federal judge in Texas signed off on the JP Morgan settlement, DataTreasury filed a similar suit against Bank of America, Citigroup, Wachovia and Wells Fargo, rounding out the list of the five largest banks in America. Bank of America annually processes approximately 9.4 billion checks, Citigroup approximately 2.4 billion, Wachovia approximately 4.5 billion and Wells Fargo approximately 3.7 billion, according to DataTreasury.

Citigroup said it would defend itself against the suit, while Wachovia, Wells Fargo and Bank of America declined to comment.

One industry analyst estimated that JP Morgan agreed to pay DataTreasury 5 cents per transaction.

Given its success with JP Morgan,

DataTreasury remains confident about its prospects with the other banks, said Eric Wetzel, a spokesman.

"I think it's fair to say that DataTreasury has shown the world, especially the financial services world, that it has good patents," he said.

Frank DiGiglio, a partner with Sully Scott Murphy & Presser in Garden City, said DataTreasury has good reason to feel upbeat. In its fight with JP Morgan, the company secured what's known as Markman order, in which a judge determines what the terms of a patent mean. The Markman order is a "pivotal point in litigation," DiGiglio said.

With that in hand, DataTreasury can essentially take its show on the road, and DiGiglio said the company's tactic of suing other companies on the same basis is common in patent law.

"If you've buried JP Morgan and you're carrying around a Markman order, that can be a very difficult circumstance to go against," he said. "Fundamentally, there's a lot that's already happened."

One company, however, isn't taking DataTreasury's challenge lying down. In November, a Texas federal court will hear a trial between the Melville company and Ingenico, a French manufacturer of point-of-sale check machines.

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