

Mark Matthews Quoted in Tax Analysts, U.S. Appeals Court Dismisses Suit by 'Tax Cheats' Against UBS

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Tax Analysts
Excerpt taken from the article.

A panel of the U.S. Court of Appeals for the Seventh Circuit has issued a harshly worded opinion rejecting an appeal by three former UBS clients seeking damages related to the disclosure of their accounts to the IRS.

In *Thomas v. UBS AG*, the former UBS clients sought class action status for account holders who had been forced to pay penalties and interest after the bank reached a settlement with U.S. authorities. The plaintiffs sought to recover the 20 percent penalty and other costs associated with their disclosures under the 2009 offshore voluntary disclosure program.

"The plaintiffs are tax cheats, and it is very odd, to say the least, for tax cheats to seek to recover their penalties from the source, in this case UBS, of the income concealed from the IRS," (parenthetical omitted), wrote Judge Richard Posner in a unanimous opinion dated February 7.

Mark Matthews of Caplin & Drysdale said that the case arose from widespread anger among the former UBS clients over the decision to turn over account information. He noted that many UBS clients believed that through its fee structure, UBS had, in practice, split the proceeds of tax evasion with them while leaving the clients to shoulder the majority of the risk. Also, many clients may have believed that UBS bore a responsibility for its role in getting clients into a pattern of noncompliance, with some clients essentially inheriting the pattern, with the accounts, from their parents.

"There are no heroes and no white knights in this scenario," said Matthews.

Matthews said that he sees among former UBS account holders a genuine anger that may or may not be well-placed. It has led to discussions over whether a suit such as this could be maintained.

"Not only does it appear that it cannot be maintained, but a very distinguished jurist is dismissing it in pretty derogatory language," Matthews said.

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Attorneys

Mark E. Matthews

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