

Banking & Financial Services Litigation

The firm's Banking & Financial Services Litigation Practice Group represents banks and other financial services clients in defensive litigation, and in the enforcement of creditors' rights.

Our defensive litigation practice includes the defense of claims involving all forms of financial fraud, including common law and Uniform Commercial Code claims arising out of check embezzlement schemes, identity theft, mortgage fraud and wire fraud. We have substantial experience in UCC Article 3, 4 and 4A matters, as well as under New Jersey's banking statutes, and have been involved in numerous reported decisions in this area.

We have also represented banks and consumer finance clients in the defense of consumer class actions under New Jersey state and federal consumer protection laws, including the New Jersey Consumer Fraud Act (CFA), Fair Credit Reporting Act (FCRA), and Truth-in-Consumer Contract, Warranty and Notice Act (TCCWNA), as well as the federal Truth in Lending Act (TILA), Bank Secrecy Act (BSA) and Fair Debt Collection Practices Act (FDCPA).

The firm has deep experience in all aspects of representing clients in connection with the enforcement of creditors' rights and remedies. Our creditors' rights attorneys bring an experienced perspective and strong transactional knowledge to the enforcement of our clients' remedies, working pragmatically to assist in the negotiation of loan workouts and other out-of-court resolutions. When necessary, however, we are aggressive and creative in our pursuit of remedies of foreclosure, repossession and litigation in federal, state and bankruptcy courts.

We are well-experienced with "lender liability" defenses asserted by borrowers, as well as the rare affirmative claim, and have successfully tried such cases to juries.

REPRESENTATIVE MATTERS

Results may vary depending on your particular facts and legal circumstances.

- Representing Wells Fargo Bank, N.A., the firm obtained a published opinion in *Lopresti v. Wells Fargo Bank, N.A.* that clarified a long-

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standing issue under the New Jersey Prepayment Law and holds that prepayment fees are not prohibited on commercial loans where the collateral includes personal guarantees secured by mortgages on residential property. A guarantor of a commercial business loan, whose guarantee was secured by a mortgage on his residence, claimed that the prepayment fees charged by the lender violated the New Jersey Prepayment Law. In a unanimous decision, the Appellate Division concluded that the New Jersey Prepayment Law does not apply to a commercial loan to a corporate borrower. The decision clarified the distinction between mortgage loans to homeowners, to which the New Jersey Prepayment Law was intended to apply, and commercial loans to corporate borrowers, to which the Prepayment Law does not apply.

- Successfully defended Wells Fargo Bank N.A. in *Lucca v. Wells Fargo Bank, N.A.*, a case that resulted in the only published opinion under New Jersey's elder financial abuse reporting statute. Following trial, the court dismissed the claims of an elderly depositor who had lost over \$300,000 as a result of a scam. In its opinion, the court ruled that the New Jersey elder financial abuse reporting statute did not impose an affirmative duty to report cases of suspected abuse to law enforcement, but rather protects financial institutions from liability in the event they do make such reports.
- Representing National State Bank, obtained a New Jersey Appellate Division ruling in *County Concrete Corp. v. Smith* that bank's liability for conversion of a negotiable instrument is not absolute or in the face amount of the instrument, and that bank is entitled to set-off against its liability in the amount of funds received by payee from maker by way of reimbursement.
- Representing First Union National Bank, obtained a New Jersey Supreme Court ruling in *Triffin v. TD Banknorth, N.A.* limiting bank liability for late return of checks beyond the "midnight deadline," and holding that late return claims are not assignable.
- Obtained the dismissal of a putative class action which challenged the order in which a bank paid checks presented for payment against customers' accounts. The plaintiffs alleged the bank paid checks in an order designed to generate excessive overdraft and NSF fees. On our motion for summary judgment, the court ruled that under the bank's deposit agreements and pursuant to the Uniform Commercial Code (UCC), the bank may charge checks against an account in any order within its "midnight deadline."
- Obtained a favorable jury verdict in a "lender liability" case, rejecting counterclaims and defenses alleging wrongful conduct on the part of a commercial lender in the administration of a business start-up and construction loan, and awarding the lender the full amount owed by the borrower and all guarantors.
- Representation of commercial banks in numerous cases involving financial fraud. Examples include the successful defense of a claim arising out of a check embezzlement and fraudulent funds transfer scheme engineered by the controller of a multiple company conglomerate involving several million dollars; the dismissal, on motion for summary judgment, of a \$1 million claim against our client bank by a large car dealership alleging a fraudulent check scheme perpetrated by its controller; the dismissal, on motion, of a \$6 million claim arising out of a padded payroll and fraudulent check and

Practices (Cont.)

funds transfer scheme involving a health care and rehabilitation facility.

- Successfully represented a client bank in claims arising out of the distribution of IRA proceeds. After a favorable jury verdict and trial court rulings rejecting all but one of the claims, the firm successfully appealed and obtained a reversal of the remaining claim.