

## COMMUNITY BANKING LITIGATION

### OVERVIEW

During these challenging economic times, many of our banking clients are facing increasing involvement in litigation. BCLP has extensive experience representing our banking clients with their litigation needs. We have experience pursuing litigation on behalf of financial institutions to protect their interests and recover losses as well as defending them when they face claims or lawsuits.

Some of the areas in which we advise our banking clients include:

- Workout
- Lender liability
- Mortgage fraud and other issues related to mortgages
- Litigation and investigations involving regulatory issues
- Fiduciary litigation
- Failing investments and disputes
- Litigation involving directors and officers
- Fidelity bond litigation
- Shareholder dispute issues

Our litigation team – just like our banking team – has been working with our bank clients for nearly a century. Our clients regularly tell us we excel in our responsiveness and our overall client service.

We generally staff a client relationship with a team to provide continuity and depth for the ongoing relationship, but all of the team members do not work on every aspect of a matter. One of the key aspects about our approach to community bank work is not only our many years of experience working with community banks, but also the inherent value and efficiency realized by our ability to provide community banks with access to lawyers within our Firm who have handled wide-ranging issues for community banks – we understand the community bank perspective.

Some specific examples of our experience representing financial institutions in litigation and other disputes include:

## **WORKOUT**

- Foreclosure confirmations and suits on promissory notes and guaranties.
- Bankruptcies of commercial and residential contractors, builders and subcontractors.
- Commercial borrowers' bankruptcies.
- Representing creditors' committees in bankruptcies.

## **LENDER LIABILITY**

- Defending lender liability claims, including defense of lawsuits by borrower alleging fraudulent and predatory lending practices.
- Defending Truth in Lending Act claims.

## **MORTGAGE FRAUD AND OTHER MORTGAGE RELATED ISSUES**

- Defending wrongful foreclosure lawsuits.
- Conducting internal investigations related to claims of fraud.
- Assisting in criminal investigations and civil claims related to alleged mortgage fraud.
- Defending RESPA and RICO claims in multidistrict litigation involving electronic mortgage registration fees.

## **LITIGATION AND INVESTIGATIONS INVOLVING REGULATORY ISSUES**

- Criminal, civil and regulatory investigations and litigation, including the coordinated defense of parallel proceedings by multiple agencies or authorities.
- Defending regulatory enforcement proceedings for industry bar orders or for reinstatement, as well as civil money damages or other penalties.
- Regulatory enforcement measures and issues affecting troubled or near troubled financial institutions, including supervisory agreements, cease and desist orders, and memoranda of understanding.

## **FIDUCIARY LITIGATION**

- Representing banks serving as trustees or personal representatives of estates in defending claims by beneficiaries or in defending actions to uphold the trust.

- Claims related to breach of fiduciary duty based on asset management and investments.
- Breach of fiduciary duty claims brought by shareholders.

## **FAILING INVESTMENTS AND DISPUTES**

- Disputes with vendors.
- Representing banks in connection with failing investments in which the bank is the plaintiff. In one case, we filed suit on behalf of a bank against sureties that had issued bonds guaranteeing payment on the bank's investment in income streams of equipment lease pools, ultimately obtaining a settlement of \$19.25 million from one of the sureties.

## **DIRECTORS AND OFFICERS**

- Director indemnity demands.
- Reviewing D&O policies.
- Providing advice regarding fiduciary duties owed by directors and officers.

## **FIDELITY BOND LITIGATION**

- Litigating fidelity bond coverage claims. FI Banking Litigation
- Advising banks regarding potential claims involving fidelity bonds.

## **SHAREHOLDER DISPUTE ISSUES**

- Dissenters' rights/appraisal proceedings relating the valuation of shares.
- Shareholder derivative actions, including suits brought under RICO statutes.
- Investigation and disposition of shareholder derivative demands.
- Shareholder proxy contests for election of directors.

## **OTHER LITIGATION ISSUES**

- Interpleader actions filed on behalf of the bank to obtain judicial determination as to the allocation of disputed funds.
- Garnishment actions.
- Third-party civil and criminal subpoenas.

- Preparing amicus briefs in appeals on legal issues relevant to interested banks and the banking industry.

## MEET THE TEAM



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