

## LITIGATION

### OVERVIEW

BCLP's Consumer Financial Services Litigation team represents financial institutions in high stakes cases and class actions nationwide. Our trial lawyers regularly appear in putative consumer class actions and individual claims in state and federal courts, including multi-district and bankruptcy actions, as well as in arbitrations and other alternative dispute proceedings. These cases often involve claims brought under TILA, HOEPA, RESPA, FCRA, FDCPA, ECOA, the Fair Housing Act, state unfair and deceptive practices statutes (UDAP), privacy laws, and the common law. We have handled literally thousands of consumer financial services litigation matters. Multiple clients have entrusted us to handle significant litigation matter volumes across substantial geographical regions, because we understand our clients operations and personnel, we appreciate risk and reputation concerns, and we execute strategy to mitigate litigation and trial risk effectively.

Our team members across the U.S. — in Atlanta, Charlotte, Chicago, Dallas, Denver, Irvine, Kansas City, New York, Phoenix, Santa Monica, San Francisco, St. Louis and Washington D.C. — work together to provide a seamless and effective response. With 35 dedicated financial service litigators, we work to achieve matter resolutions that meet both our clients' short term needs and broader strategic goals.

We represent clients in purported nationwide and statewide consumer class actions involving a variety of claims. These cases often challenge our clients' basic business practices, including the ability to charge certain fees, do business with affiliates, and foreclose on loan collateral, and involve issues with widespread industry impact. Our representations have covered a gamut of products and services, for example:

- Class and individual claims arising under FCRA, including serving as lead national counsel for FCRA claims and advising CFS clients regarding CARES Act FCRA changes.
- Class and individual claims arising under the TCPA asserted against CFS clients in connection with lending or servicing related outreach contacts.
- Claims under RESPA alleging sham fees, illegal kickbacks and/or marked up third party fees in connection with mortgage origination;
- Claims against mortgage servicers under the FDCPA for alleged failure to provide debt validation and other practices;

- Claims alleging state law breach of contract or improper servicing activity in connection with servicing and REO sales;
- Suits under state unfair competition laws relating to mortgage origination and servicing practices including force-placed insurance and servicing fees;
- Suits alleging claims for failure to provide loan modifications;
- Suits seeking rescission and other TILA remedies
- Suits alleging unfair competition in the financial services industry.

Our practice involves much more than litigation. We also assist clients in pre-suit activities, such as internal investigations, development of internal company procedures and advice about avoidance of litigation risk. We also partner with clients to assess litigation risk pragmatically, offering both quantitative and qualitative risk assessments. And when CFS clients, need our trial attorneys, we match our trial team to the client's needs and the case demands.

## **RELATED PRACTICE AREAS**

- Class Actions
- Business & Commercial Disputes
- Real Estate
- White Collar

## **EXPERIENCE**

- [Truth in Lending Act Claims](#)
- [Electronic Funds Transfer Act & Value Card Claims](#)
- [Fair Credit Reporting Act & FACTA Claims](#)
- [Real Estate Settlement Procedures Act & Unearned Fee Claims](#)
- [Property Valuation Issues](#)
- [Fair Debt Collection Practices Act Claims](#)
- [Lender-Placed Insurance & Debt Cancellation Product Claims](#)

- [Mortgage Servicing Claims](#)
- [Unfair & Deceptive Acts & Practices Claims](#)
- [CARES Act SBA Paycheck Protection Program Claims](#)
- [Telephone Consumer Protection Act Claims](#)

## **Truth in Lending Act Claims**

- *Modrzejewski v. MortgageIT, Inc.*(N.D. Ill.) Represented lender in putative class action alleging "confusing" disclosures provided at loan closing, and violations of TILA, the Illinois Consumer Fraud Act and RESPA. Case settled on individual basis after motion to dismiss filed.
- Obtained summary judgment on individual basis for leading national bank in putative statewide class action alleging violations of TILA, RESPA, FCRA, FDCPA and other common law claims in connection with mortgage origination. (N.D. Ohio)

## **Electronic Funds Transfer Act & Value Card Claims**

- Represent financial institution with respect to claims arising under the EFTA alleging failure to properly disclose ATM fees. (S.D.N.Y.)
- *SPGGC, LLC; MetaBank; U.S. Bank, N.A., v. Kelly A. Ayotte*(1st Cir.) Represented financial institution as issuer of open loop cards with respect to alleged inaccurate and incomplete disclosures.
- Represent financial institution as issuer of open loop cards with respect to alleged inaccurate and incomplete disclosures. (Cal. Super. San Diego Cnty.)

## **Fair Credit Reporting Act & FACTA Claims**

- *Wilson v. H&R Block, Inc.*(8th Cir.) Obtained summary judgment affirmed on appeal for financial services company in putative class actions alleging violations of FACTA seeking \$4 billion in statutory damages.
- Represented financial services company in class action alleging violation of the FCRA and New York laws relative to defendant's tenant screening reports. Negotiated settlement. (S.D.N.Y.)
- *Gray v. Ocwen* (N.D. Cal) After multiple amended complaints, obtained dismissal with prejudice of a novel FRCA and California consumer fraud class action alleging it was inaccurate for the servicer to report the plaintiff's loan delinquencies due their spouse's bankruptcy discharge coupled with the impact of California's deficiency judgment statute.

## Real Estate Settlement Procedures Act & Unearned Fee Claims

- Obtained dismissal for national financial services company in putative class action involving alleged violations of RESPA concerning pricing/disclosure of flood services products. (Cal. Super. L.A. Cnty.)
- *Rice v. Lender Servs. Direct, Inc. and Alliance Title Co.* (D. Ariz.) Obtained partial dismissal for real estate services firm in putative class action alleging RESPA and other fraud-related claims. Matter then settled.
- Represent title company in putative class action alleging Connecticut residents were charged “unearned fees” in connection with real estate financing transactions and that the charges violated RESPA. (D. Conn.)
- Represented title insurance company in putative class action alleging RESPA violations. (E.D. Mich.)
- Represented national lender in putative class action alleging RESPA violations. (E.D. Mo.)
- Obtained partial dismissal for national financial services companies in class action alleging violations of RESPA and RICO in connection with mortgage origination and appraisal services. (D. Ariz.)
- Defeated class certification for mortgage lending company in putative class action alleging violations of California Residential Mortgage Lending Act and RESPA relative to plaintiff's residential loan. Plaintiffs brought three separate motions for class certification before three separate judges, each of which was defeated. (C.D. Cal.)
- Represent financial services companies in putative class action alleging RESPA sham entity theories. (N.D. Cal.)
- Obtained dismissal for mortgage lending company in putative class action asserting claims, including false advertising and violation of RESPA, arising out of real estate auctions. (C.D. Cal.)

## Property Valuation Issues

- Represented financial services companies in putative statewide class action alleging violations of RESPA and RICO in connection with mortgage origination and appraisal services. (M.D. Fla.)
- Represented mortgage lending company in putative class action alleging conspiracy between multiple parties to inflate the value of plaintiffs’ new homes through allegedly fraudulent appraisals. (Cal. Super. L.A. Cnty.)

- Represent financial services companies in class action alleging violations of RESPA and RICO in connection with mortgage origination and appraisal services. (C.D. Cal.)

### **Fair Debt Collection Practices Act Claims**

- *Cook v. Certegy Payment Recovery Servs., Inc.*(E.D. Va.) Represented financial services company in case involving claims of FDCPA violation and common law conversion.
- Obtained dismissal for national mortgage servicer in putative statewide class action alleging violations of FDCPA. (N.D. Ga.)
- Obtained dismissal for national mortgage servicer in putative statewide class action alleging violations of FDCPA in connection with consumers in bankruptcy. (N.D. Ind.)

### **Lender-Placed Insurance & Debt Cancellation Product Claims**

- Obtained dismissal for national mortgage servicer in putative class action alleging wrongful servicing and improper imposition of lender-placed insurance. Obtained dismissal. (D. Guam)
- Defeated class certification for mortgage backed securities trust trustee and national mortgage servicer in a putative nationwide class action alleging claims for breach of contract and unfair practices in connection with lender-placed insurance placement and loan payment application. (Ohio Com. Pleas)
- Represent regional national bank and national bank cards services company in putative statewide class action alleging deceptive practices in connection with debt cancellation products. (Ga. Super. Clark Cnty.)

### **Mortgage Servicing Claims**

- *Schwend-McCummiskey v. US Bank, N.A., et al.* (E.D. Mo.)Represented US Bank in a class action involving the alleged failure to modify mortgage loans and the securitization of asset backed securities. Obtained summary judgment victory in February 2013.
- *Mandik v. Washington Mut. Bank*(Ill. Cir. Ct. and Ill. App. Ct.) Obtained dismissal upheld on appeal for lender in putative class action involving claims of violation of the Illinois Mortgage Act based on defendants' alleged failure to timely send borrowers a release of mortgage.
- Represent mortgage lender in class action alleging defendant failed to comply with certain mortgage servicing guidelines published by the Federal National Mortgage Association relative to plaintiff's private mortgage insurance. (S.D.N.Y.)
- *Plaintiff v. Financial Services Compnay, as Trustee*(N.D. Ohio) Obtained dismissal of class claims and stay action pending individual arbitration for lender in putative class action

alleging failure to timely record a satisfaction of mortgage.

- Represented national bank mortgage trustee in putative statewide class action alleging breach of contract in connection with REO sales. (N.D. Ill.)
- Represent mortgage servicer in putative nationwide class action alleging claims for unfair competition and other common law claims for relating ACH payments. (C.D. Cal.)
- Represent lender in putative class action alleging that assessment of certain charges and late fees breached terms of plaintiff's note and mortgage. (C.D. Cal.)
- Represent leading national bank in putative multi-state class actions alleging failure to adequately apply mortgage payments and improperly imposing late charges. (C.D. Ill.)
- Represent leading national bank and mortgage securitization trust trustee in putative statewide class action alleging failure to modify mortgage loans and improper property preservation practices. (N.D. Ill.)

### **Unfair & Deceptive Acts & Practices Claims**

- Plaintiff v. National Home Mortgage Lender (8th Cir.) Represented lender in successful 8th Circuit appeal dismissing borrower's fraud and promissory estoppel claims relating to servicing of mortgage.
- Represented multiple lenders in class actions involving Missouri's Second Mortgage Loan Act. (W.D. Mo.)
- Defeated class certification and obtained individual summary judgment for national lender in putative class action involving alleged fraud in connection with mortgage origination practices. (Cal. Super. L.A. Cnty.)
- Represent title insurance company in putative class action alleging plaintiff should have received a discount on a purchase of a title insurance loan policy issued by defendant. (D. Md.)
- Obtained dismissal for lender in putative class action involving dispute over insurance proceeds payable after flood damage. (N.D. Ind.)
- Represent financial services company in putative class action asserting claims on behalf of Maryland residents for violation of the consumer protection act, fraudulent concealment, negligent misrepresentation, breach of fiduciary duty, and breach of good faith and fair dealing. (Md. Cir. Ct.)

- Represent financial services company in putative class action alleging violations of consumer protection laws related to defendant's collateralized loan program. (N.D. Ill.)
- *Johnson v. Equifax, Inc.*(S.D. Ill.) Defeated class certification and obtained individual dismissal for financial services company in action alleging consumer fraud and violation of federal Fair Credit Reporting Act.
- Represent title insurance company in putative class action filed by Texas consumers alleging overcharges for title insurance when mortgages were refinanced. (N.D. Tex.)
- Represented national mortgage lending company in putative class action alleging fraud and violations of state law unfair business practices. (Cal. Super. L.A. Cnty.)

### **CARES Act SBA Paycheck Protection Program Claims**

- Defended a National Association banking institution in putative class action claims asserting violations of the Small Business Administration regulations in connection with CARES Act Paycheck Protection Program loans and loan applications. (N.D.Ga.)
- Advised top 200 Community Bank in connection class action litigation claims of discrimination against SBA under PPP and interpretation of loan application requirements and impact of BSA and CDD policies. (E.D.Mich.)

### **Telephone Consumer Protection Act Claims**

- Represented numerous CFS institution clients in TCPA claims in various federal jurisdictions including putative class and individual claims.
- **Represented U.S. national bank entity in claims asserted** under the TCPA and California Rosenthal FDCPA (Cal. Civ. Code § 1788) arising from allegedly unauthorized calls to a Plaintiff's mobile phone in connection with three credit card accounts where Plaintiff alleges consent had been withdrawn. (C.D. Cal) .
- **Defended U.S. national bank entity in claims asserted** under the TCPA in arising from 100+ allegedly unauthorized consumer calls regarding debt collection. (C.D. Cal.)
- **Defended U.S. national bank entity in claims asserting** TCPA violations and seeking emotional distress damages arising from 160+ allegedly unauthorized consumer calls regarding consumer accounts. (E.D. Cal.)

## **RELATED INSIGHTS**

News

Feb 23, 2024

## **Law360 highlights BCLP's representation of NCAA on dispute over betting suspension**

Insights

Sep 14, 2023

## **Raising the stakes in activist shareholder claims**

The High Court has ordered that ClientEarth pay Shell's costs in connection with all aspects of ClientEarth's unsuccessful application for permission to continue a derivative claim against Shell and its directors. This is a departure from the default position in derivative proceedings. Usually, the company will not be awarded any costs incurred in making submissions in opposition to, or attending any hearing of, a shareholder's application at the permission stage. This judgment therefore raises the stakes for activist shareholders who are considering bringing a derivative claim.

Insights

2 March 2023

## **Judicial review against the FCA in Ithaca Energy case**

ClientEarth has launched a judicial review against the FCA for approving a prospectus which ClientEarth claims contained inadequate climate-related disclosures. This is part of an increased use by environmental pressure groups of judicial channels to challenge companies - and now regulators - and to promote the transition to Net Zero. The courts of England and Wales have shown that they are willing to hear cases of this type and this trend is likely to continue.

News

Mar 02, 2023

## **Lawyers featured in 'Thomson Reuters' on first ever trucks cartel litigation trial in UK**

Insights

Mar 02, 2023

## **Trucks cartel decision: overcharge gets green light**

In the first "trucks cartel" litigation to go to trial in the UK, the Competition Appeal Tribunal has ruled that a cartel of truck manufacturers led to a material overcharge on a UK market-wide basis. The decision is expected to have a significant influence on the numerous other claims in relation to the cartel across Europe.

Insights

19 December 2022

## **Web 3 - The End Of The Beginning**

Insights

Jan 31, 2022

## **Beware the hybrid arbitration clause**

The recent Privy Council decision in Flashbird Ltd v Compagnie de Sécurité Privée et Industrielle SARL has highlighted some of the problems that can arise from the use of hybrid arbitration clauses. This blog considers the issues that arose in that case and how parties can avoid them.

Awards

November 4, 2021

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Awards

October 22, 2021

**Chambers UK 2022**