

## CONSUMER FINANCE DISPUTES

### OVERVIEW

BCLP has long advised banks, non-bank lenders and servicers, student loan companies, credit card issuers, auto finance companies, debt collectors, alternative finance providers and investors, on major regulatory, enforcement and litigation matters. In the U.S., our Consumer Financial Services (CFS) team includes many leaders in the private CFS bar, former in-house counsel at financial institutions and former government officials. We can bring our experience and pragmatic know-how to bear to mitigate risk in the "business as usual" environment or once a crisis begins to unfold.

### OUR SKILLS AND EXPERIENCE

#### **Regulatory**

- Compliance strategy & support
- Compliance reviews
- Supervisory examinations management
- Product and service Development
- Consumer complaint response
- Risk assessments
- Management of pre-enforcement matters
- Litigation-based process improvement & mitigation

#### **Enforcement**

- Engaging with state and federal (CFPB) regulators early to narrow enforcement
- Addressing PARRs & MRAs
- Strategizing investigations
- Defending enforcement actions

- Strategic regulator communications

## **Litigation**

- Consumer Financial Services Class Actions
- Securities Class Actions
- Quantitative risk analysis
- Federal lending law claims (FCRA, TCPA, RESPA)
- State law deceptive /unfair practice claims
- Mitigating risk
- Assessing potential policy & procedures enhancements

## **COLLABORATIVE TEAMS**

CFS clients benefit from BCLP's cross-discipline approach. For example, our Finance, Corporate, Securities & White Collar practices bring substantial knowledge of the complex regulatory and business environment in which clients operate. Likewise, our Public Policy and Government Affairs practice includes preeminent lawyers and advisors who provide government relations and strategic counsel on issues that impact the operations and business models of CFS companies. We thrive in diverse teams and bring the best combination of resources to solve complex issues and mitigate risk.

## **TECHNOLOGY SOLUTIONS**

Our Client Technology Group is also widely known for the innovative business and legal solutions it has created for a number of clients in the financial sector. For example, we developed a new technology solution that had a significant impact on legal spend for a national mortgage lender beset with hundreds of mortgage-related suits. We created a web-based risk assessment system that let lawyers develop risk and cost profiles very early in each matter and then track those variables throughout the life of each case. The availability at any point in a case of detailed risk and cost assessments highlighted cases that could and should be settled early, and that in turn reduced unnecessary discovery and trial expense.

## **RAPID RESPONSE**

We can dive in to quickly assess developing issues and help craft strategy. Today, CFS clients face unprecedented challenges arising from the global COVID-19 pandemic. A wave of borrower forbearance and deferral requests at a time when CFS clients are themselves in a telework environment creates significant regulatory, enforcement and litigation risks. To help our CFS clients eliminate or mitigate such risks, BCLP has assembled a dedicated, rapid response team of CFS lawyers. Our team has decades of experience collectively, forged both before, during and after the 2008 financial crisis.

We can help CFS clients assess real-time operations risk, strategize responses to regulatory, DOJ or State AG inquiries, assist in enhancing process and response times by assessing workflows and job aids, defend clients against enforcement charges and/or class action litigation. We regularly partner with CFS clients facing issues on multiple fronts. Currently, we are advising and defending CFS clients in connection with CARES Act SBA Paycheck Protection Program class action litigation and regulations interpretation challenges. We also are advising CFS clients on CARES Act FCRA requirements changes and related CARES Act consumer credit collections and servicing interim measures.

## MEET THE TEAM



### **Polly James**

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## RELATED PRACTICE AREAS

- Class Actions
- Business & Commercial Disputes
- Real Estate
- Financial Services Corporate & Regulatory Team

## AREAS OF FOCUS

- Enforcement
- Litigation
- Regulation

## EXPERIENCE

### 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.)

- Obtained dismissal of putative FCRA class action for communications client in which we obtained a dismissal of the claims on *Spokeo* grounds for lack of Article III standing. Plaintiff alleged that client violated Section 1681b of the FCRA by impermissibly accessing her credit report without a permissible purpose. (District of Arizona)
- Defended and obtained favorable individual settlement of putative FCRA class action for communications client asserting claims of violation of FCRA Section 1681b.(N.D. Illinois)
- Defended national loan servicing company in putative FCRA class action asserting violation of Section 1681s-2(b), as well as two other federal statutes, by inaccurately reporting their loan during and after the plaintiff filed for bankruptcy. Obtain favorable individual settlement following motion to dismiss. (District of Colorado)
- Serve as nationwide FCRA coordinating counsel for several clients, including financial services companies and student loan servicers and guarantors.

## 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.)

## RELATED INSIGHTS

Insights

Sep 23, 2022

### **What will the disputes landscape look like for firms subject to the Consumer Duty?**

On 27 July 2022, the FCA published its policy statement, PS22/9, setting out its final rules for its new Consumer Duty ("Duty"), together with accompanying non-Handbook guidance. The Duty aims to set higher standards of consumer protection across the financial services sector and consists of: A new Consumer Principle requiring firms to act to deliver good outcomes for retail customers (new Principle 12 of the FCA's Principles for businesses, which will replace Principles 6 and 7 for retail business); Cross-cutting rules providing further detail on the FCA's expectations under the Duty (these require firms to: act in good faith towards retail customers; avoid foreseeable harm to retail customers; and to enable and support retail customers to pursue their financial objectives); and



Rules relating to the four outcomes that the FCA wants to see under the Duty (these outcomes relate to: products and services; price and v...

Insights

Jul 27, 2022

## **Mid-Year Check-In: CFPB Taking Aim at The Fair Credit Reporting Act**

Insights

Apr 26, 2021

## **NYDFS Imposes Heavy Fine and Adopts Expansive View of Multi-Factor Authentication Requirements Under Cybersecurity Regulations: The Latest Lessons**

The New York Department of Financial Services (NYDFS) recently announced the resolution, through Consent Order, of its third enforcement action against entities subject to the agency's Cybersecurity Regulations ("Cyber Regulations"). The settlement is notable because it reflects the first public interpretation of the multi-factor authentication (MFA) rule by the NYDFS – an interpretation not evident from the plain text of the rule itself – and the assessment by NYDFS of its largest fine under the Cyber Regulations to date.

Insights

Mar 31, 2021

## **Lessons Learned from New York's Second Cybersecurity Action**

The New York Department of Financial Services (NYDFS) has announced its second regulatory enforcement action against a regulated entity (a New York licensed mortgage banker and loan servicer) for violating NYDFS's Cybersecurity Regulations. The action involved the mortgage banker's failure to report a data breach – a breach caused by an employee overriding the company's multi-factor authentication (MFA) protocol – enabling intruder access. The company agreed to pay a \$1.5 million fine and take several actions to bolster its cyber risk and assessment practices.

News

Mar 29, 2021

## **Petersen Quoted by 'Law360' on Supreme Court Consideration of TransUnion v. Ramirez**

Insights

Mar 04, 2021

## **Changing "Buy Now Pay Later" Regulations & Considerations for Retailers**

On 2 February 2021, the FCA published its Review of the Unsecured Credit Market in the UK. The full title of the review is "The Woolard Review - A review of change and innovation in the unsecured credit market" ("the Review"). Critically, the Review recommended that all Buy Now Pay Later ("BNPL") credit arrangements should be brought within the scope of the UK's regulatory regime for consumer credit "as a matter of urgency". Key amongst the various motivating factors for this recommendation is the idea that proper affordability assessments should be carried out on those being offered these credit products so as to prevent, or at least mitigate, potential consumer detriment.

Insights

Jun 24, 2020

## **U.S. COVID-19: The CARES Act - CFPB Provides Additional Guidance For Credit Reporting During the COVID-19 Pandemic**

Insights

Apr 22, 2020

## **Administering the Paycheck Protection Program and Managing Litigation & Regulatory Risk in the U.S.**