

Financial Services Litigation

As Congress continues to restrict the ability to bring securities actions and courts continue to narrow the scope of the antitrust statutes, more plaintiffs' firms are turning as an alternative to consumer class actions that threaten huge exposure - "bet your company" cases where the potential damages are well out of proportion to the supposed wrongdoing. Schnader has a long and successful history defending these cases, obtaining dismissals, defeating class certification, or obtaining summary judgment.

Complex consumer and financial services litigation poses unique risks and challenges for businesses. Such matters require an efficient and cost-effective analysis of the risks presented in each particular action, as well as an in-depth understanding of procedural requirements and substantive elements specific to such claims. Schnader works with clients to evaluate and manage these risks, and to formulate a detailed and practical litigation plan that evaluates both trial and settlement strategies. Schnader is accustomed to not only collaborating with its clients through each phase of the litigation, but also reasonably anticipating and containing legal fees, expert fees, and other costs such as e-discovery.

We achieve optimal results for our clients by being proactive and defending each case aggressively, as well as by providing cost-effective legal representation through the use of experienced, well-trained lawyers and cutting-edge technology. But we do more than just litigate. In anticipation of potential litigation, we assist clients with internal investigations, responding to pre-suit demands and developing internal company procedures.

We have handled the gamut of statutory claims, including ones under the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), Truth in Lending Act (TILA), the Fair Credit Reporting Act (FCRA), the Fair and Accurate Credit Transactions Act (FACTA), the Real Estate Settlement Procedures Act (RESPA), the Equal Credit Opportunity Act (ECOA), the Fair Debt Collection Practices Act (FDCPA), and state Unfair and Deceptive Trade Practices Acts (UDTPA), as well as claims under the myriad of privacy laws and the common law.

For example, we have assisted clients with the defense of class actions under RESPA concerning mortgage insurance and affiliate relationships; class actions under the FCRA concerning adverse action notices; class actions brought as a result of mortgage payoff-related charges being imposed; suits questioning practices and charges by mortgage and credit card creditors in consumer bankruptcies; class actions questioning credit card issuer charges; and claims under fair-lending laws. Many suits we defend present groundbreaking issues with wide industry impact.

We have also represented clients in professional liability and insurance claims brought under FIRREA which arose out of the failures of a number of banks and savings and loans.

Representative matters include:

- Counsel for a major underwriter of private mortgage insurance in class action litigation pending in federal court in North Carolina, Texas and elsewhere, involving claims that the structure of the industry violates the federal Real Estate Settlement Procedures Act.
- Counsel for an affiliate of a major mortgage lender in a class action in Bankruptcy Court for the Eastern District of Pennsylvania, asserting the lender and affiliates committed consumer and bankruptcy fraud by assessing post-bankruptcy fees against consumers.
- Counsel for a major underwriter of private mortgage insurance in class action litigation pending in federal court in the Eastern District of Pennsylvania, involving claims that insurers' supposed use of consumer credit reports violates the Fair Credit Reporting Act.
- Counsel for one of the underwriter defendants in *In re: Initial Public Offering Securities Litigation*, a multidistrict securities class action in federal court in the Southern District of New York, in which plaintiffs claim that hundreds of initial public offerings and aftermarkets have been manipulated by alleged industry-wide practices.
- Counsel to lender-banks and bankruptcy estate of borrowers to investigate and prosecute claims against accounting firms who provided unqualified audit opinions on fraudulent financial statements of borrowers who defaulted on loans, including claims arising out of the Phar-Mor, Nelco and Kent International Associates Ltd. bankruptcies.
- Counsel for Resolution Trust Corporation and FDIC in professional liability and insurance claims brought under FIRREA which arose out of the failures of Hill Financial Savings Association, Otero Federal Savings and Loan, AmeriFirst Savings Bank and Old Stone Savings Bank, including *Resolution Trust Corporation v. Peat Marwick*, settled globally for \$185 million, and *Resolution Trust Corporation v. Deloitte & Touche* in the federal court for the District of Colorado.
- Counsel for defendant FDIC Receiver in *Hindes v. FDIC*, a derivative action brought under FIRREA in federal court in the Eastern District of Pennsylvania relating to the failure of Meritor Savings Bank. Obtained dismissal of all claims against FDIC Receiver.

We also handle direct, derivative, and class action cases involving claims of lender liability, breach of fiduciary duty, breach of contract, fraud, misrepresentation, consumer protection, racketeering, and rights of privacy.

Representative matters include:

- Counsel for a major national bank in consumer class actions asserting RICO violations and seeking in excess of \$150 million in damages.
- Counsel for a financial institution defending a breach of contract claim regarding distribution of lockbox remittances.
- Counsel for a financial institution in an action asserting fiduciary mismanagement.
- Counsel for a financial institution in a declaratory judgment action asserting that the financial institution could not increase its trustee compensation.
- Counsel for a financial institution in a class action asserting breach of fiduciary duty, conversion and fraud in connection with interest on funds held in trust or escrow by court.

We have amassed considerable experience on the application of the Uniform Commercial Code's comprehensive scheme to the resolution of many of the issues that arise in the course of business. We rely on this knowledge in counseling clients on potential and actual claims brought under Articles 3, 4 and 5. We have been highly successful in working with our clients to assess allocation of loss under the UCC and to resolve such claims on pre-complaint demands. In those cases in which a complaint is filed, we have been successful both in dismissing UCC and common claims and in litigating actionable claims to a favorable resolution. We also routinely counsel clients on the implementation and monitoring of internal procedures designed to avoid litigation. As with other litigations we handle, we are sensitive to our clients' cost/benefit analysis and work collaboratively with our clients in developing fee arrangements that meet our clients' needs on a case-by-case basis.

Representative matters include:

- Counsel for Pennsylvania depository bank on UCC conversion and common law claims for wrongful payment of checks brought by investor defrauded in Ponzi scheme.
- Counsel for collecting bank on negligence claim brought by defrauded investor.
- Counsel for depository bank on UCC conversion, Uniform Fiduciaries Act and common law claims brought by an employer defrauded by its employee's check fraud scheme.
- Counsel for issuing bank on claim brought by customer alleging wrongful payment of letter of credit.
- Counsel for depository bank on UCC and common law claims brought by employer defrauded by its employee's check fraud scheme.

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