

OUR PRACTICE

Financial Services Litigation

Banks and financial institutions across the country know they can count on Baker Donelson to be more than just their law firm. We are committed to the banking and financial services industry, and partner with our clients to defend against a broad range of actions. We provide our clients with a multi-disciplinary team of attorneys who have class action and individual action trial experience in state, federal and bankruptcy courts across the country, including complex litigation involving allegations of mortgage fraud, predatory lending, breach of fiduciary duties and regulatory violations relative to loan origination and servicing.

Our trial lawyers regularly handle the full range of complex disputes covering all areas of business and operations, such as lender liability, alleged violations of corporate trust, loan recovery, consumer finance and regulatory litigation, and are recognized for their work by publications like *Chambers U.S.A.* and *Best Lawyers in America*. In 2023, *U.S. News – Best Lawyers* ranked Baker Donelson among the top firms nationally in banking and finance litigation, as well as in bankruptcy litigation and in bankruptcy and creditor debtor rights. Specific experience includes:

- Lender liability, including allegations of negligent and/or fraudulent lender practices
- Breach of fiduciary duties
- Breach of contract and enforcement of loan documents
- Preference litigation
- Fraudulent transfers
- Lien avoidance
- Secured and unsecured creditors' rights
- Forfeiture and setoff
- Dischargeability matters
- Issues relating to letters of credit
- Interest rate swap agreement litigation, including the appropriateness of contractual interest rates and other charges
- Personal and real property foreclosures and receiverships
- Equitable subordination
- Real estate loans and title litigation
- Lawsuit and counterclaims brought against financial institutions and servicers

We also offer deep experience and commitment in representing the mortgage lending and servicing industry, including the representation of mortgage lenders, servicers and investors in bankruptcy, default and other contested litigation and REO of single-family and multi-family residential properties as well as commercial properties.

In addition, we have represented a number of banks, bank officers and directors in a wide variety of bank closings, failures, reorganizations and FDIC litigation. We routinely represent the interests of financial institution clients before various local, state and federal administrative and regulatory agencies, and maintain a public policy practice that monitors and interacts with the legislative branches of local, state and federal government in a wide variety of circumstances.



Representative Matters

- Represented regional national bank in various individual and class action suits seeking in excess of \$100 million damages for imposition of checking account fees, which resulted in judgment in favor of the bank.
- Saved a national bank over \$25 million when a real estate developer sought to rescind a financing arrangement by securing summary judgment and maintaining it on appeal.
- Won case in favor of large Tennessee bank on claims for the conversion of negotiable instruments. This decision overturned a 1995 Tennessee Court of Appeals decision to the contrary. Under the former rule of law, the bank was obliged to defend itself against a \$700,000 claim. Plaintiffs won only \$200,000 at the earlier trial and the result of this case eradicated that ruling.
- Defended financial institution in federal jury trial against allegations of fraud, resulting in judgment in favor of client.
- Obtained defense verdict in a breach of contract action tried to a jury in federal court in which the plaintiff had sought \$2 million in earnout payments allegedly due under an asset purchase agreement.
- Successfully represented a leading financial institution against individual and class-wide claims brought on behalf of mortgagors in the aftermath of hurricanes Katrina and Rita in both Louisiana state and federal courts, obtaining involuntary dismissals in eight separate cases.
- Retained by national banking and financial services company to assist with internal investigation of a borrower real estate development company; uncovered widespread instances of mortgage fraud and insurance fraud for report to authorities.
- Won directed verdict for community bank for \$15 million against borrower and guarantors for breach of promissory notes and guarantees.
- Obtained summary judgment for a national bank in a data breach case in the Northern District of Alabama. Plaintiff's identity was stolen and alleged it was because the bank caused a breach by not encrypting a loan application sent via a PDF Attachment to an email. We defended the case on issue of proximate cause; the court agreed and granted summary judgment.
- Successfully obtained summary judgment in favor of a bank despite the bank being in default and having admitted all allegations contained in the Complaint. Also successfully prevailed on the issues of causation and damages.
- Obtained the dismissal of a malicious prosecution action brought against a regional bank based on statutory immunity afforded to banks for voluntary disclosures of potential violations of law to governmental authorities.
- Successfully resolved claims pursued over the better part of a decade by RTC/FDIC against various officers and directors for alleged breach of fiduciary duty and related misconduct surrounding the purported post-FIRREA insolvency of a recapitalized thrift that presented novel and complex issues regarding the ability of regulated institutions and their principals and investors to protect contributed real estate assets and operations through bankruptcy and other non-regulatory activities and proceedings.
- Obtained the dismissal of a Kentucky merger bank and its holding company from suit in Louisiana state court alleging negligence by the bank in accepting numerous fraudulent items over an extended period, which facilitated a massive embezzlement scheme.
- Secured dismissal of fraud claims filed against capital markets division of national banking institution arising out of plaintiffs' purchases of interest rate swaps to hedge interest rate risk on bonds issued to finance commercial real estate projects.
- Obtained summary judgment for a national financial institution in a lawsuit alleging multiple violations of the Right to Financial Privacy Act.
- Successfully represented a financial institution in a suit brought by the Department of Justice relating to federal student loan program.

- Successfully represented national bank in shareholder derivative action against bank and investors and officers alleging mismanagement, fraud and breach of duties.
- Lead counsel for national lending institution in multi-million dollar contract dispute against a major municipality.
- Served as chief trial counsel in \$2 million litigation arising from defaults of a bankrupt corporation.
- Represented national collection agency in state Consumer Protection Act, Fair Debt Collection Practices Act (FDCPA) consumer fraud claim; favorable settlement reached and concluded after class notification.
- Obtained dismissal of claim against bank seeking damages in excess of \$10 million based upon alleged conspiracy in assisting executor of estate in misappropriating estate assets.
- Represented state and national banks in obtaining dismissal of class action claims asserting damages in excess of \$130 million for violation of federal and state law arising out of banks' charging insurance premiums in connection with automobile loans.
- Represented financial services company in putative class action alleging breach of fiduciary duty and violation of state Consumer Protection Act, resulting in successful enforcement of an arbitration clause in the consumer agreement.
- Won early dismissal of federal action under Fair Debt Collection Practices Act. Plaintiffs alleged that firm's client harassed them with unlawful debt collection efforts. Client avoided expense of discovery when Court granted motion to dismiss because plaintiffs failed to effect timely service of process.
- Obtained dismissal in several class action suits brought against mortgage lenders seeking damages based on claimed excessive real estate closing costs, usurious interest charges, and fees in violation of state and federal laws.
- Successfully defended and obtained judgments in state and federal courts in favor of lenders sued by commercial customers seeking damages based upon activities of the lenders in collecting loans which were characterized as violating the lenders' obligation of good faith and fair dealing, various loan agreement provisions, and state and federal statutes.
- Represented foreclosure firm in a class action under the FDCPA brought after the U.S. Court of Appeals for the Eleventh Circuit expanded the circumstances under which such claims could be brought against law firms conducting non-judicial foreclosures. In response to a motion to dismiss, the magistrate issued a report and recommendation recommending that the lawsuit be dismissed. Although the district court declined to adopt the report and recommendation, a favorable settlement was reached before discovery or class certification.
- Defeated a class action claiming FCRA violations arising out of alleged improper access of credit reports; the federal court granted a motion to dismiss for lack of standing, finding that the alleged injuries (invasion of privacy, related emotional distress, and increased risk of data breach) were insufficiently concrete.
- Prevailed on behalf of a lender before the trial court and on appeal in an action alleging breach of an agreement to provide financing.
- Successfully represented a financial institution in a post-merger federal lawsuit challenging merger disclosures; the plaintiff voluntarily dismissed the case after the bank supplemented its disclosures, and the court denied the plaintiff's motion for attorney's fees.