

Commercial Lending Enforcement, Insolvency and Litigation

Miller Canfield's lender-focused practice is one of the premier practices of its type in the nation. Our attorneys understand what a secured lender needs to obtain the best recovery both in a bankruptcy setting and in a litigation setting. We utilize our cross-discipline approach early in the process of handling a distressed credit, particularly in the restructure and forbearance stages. Our experience and knowledge cover both the enforcement and defense of a broad range of distressed financial relationships, including secured and unsecured facilities, syndications and agented credits, credit enhancement, derivatives and cash management over virtually every industry, in bankruptcy courts, federal courts, state courts and arbitrations.

Our team's deep knowledge and vast litigation experience make us extraordinarily capable of developing the most effective and efficient strategies to enforce our clients' rights in alignment with their business objectives. We use our knowledge and skillset in the restructuring of distressed credits and provide valuable insight to our transactional colleagues. We are committed to unparalleled client service, finding the most efficient and cost-effective way to meet our clients' needs while maximizing recovery.

We regularly represent financial services clients in connection with restructures, forbearances, enforcement actions, foreclosures, debt sales, preference claim defense, and finance-related litigation, including the defense of class actions, lender liability, and RICO claims. Many banks retain us when there is an attempt to pry open the cash vaults, and we take pride in slamming the door shut.

We have resolved through agreement, arbitration or litigation a wide range of troubled lending facilities, including multi-state portfolios. We never lose sight of what typically matters most: maximizing our clients' recovery.

Representative Matters

Restructures and Workouts

- Represented agent bank in the restructure and subsequent sale of metal processing company with several locations in Texas and Oklahoma. Obtained payment in full, while navigating a divided group of participants and a litigious borrower
- Represented lead bank in the restructure and subsequent bankruptcy of a transfer station and related businesses. Obtained payment in full after positioning borrower for a sale of assets
- Represented a bank in unitranche workout, successfully maneuvering the credit to improve the overall recovery
- Represented a bank in the restructure of a manufacturing company prior to company filing a Chapter 11 proceeding. The manufacturing company subsequently filed under the Sub Part V of Chapter 11. This was the first liquidating 11 filed under the Small Business Restructuring Act. Not only was our client paid in full, but there also were distributions to the unsecured creditors.
- Represented a bank in the restructure of an American subsidiary of an Italian equipment manufacturer that had filed for insolvency proceedings in Italy. When we learned that the Italian parent was violating dominion of funds, we immediately sought and obtained judicial oversight of the workout in state court. Within nine months of filing suit, we obtained fully payment for our client; and, significantly, the borrower continued in business after we had been paid in full.

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Foreclosures and Loan Enforcements

Our experience includes all types of collateral, including aircraft, ships, tractors and trailers, heavy machinery, stocks, bonds, tax credits, patents, trademarks, and other intangibles, in addition to real and personal property. Our experience truly is coast to coast, cross border, and across oceans.

- Represented bank in the recovery and foreclosure of five aircraft, three of which were located in Africa
- Represented lender in the foreclosure sale of manufacturing assets located in Mexico
- Represented a bank in the foreclosure of a 50-gas station loan portfolio located in Michigan and Ohio
- Represented bank to collect on \$155,000,000 in loans to sophisticated real estate developers in action involving deed-in-lieu of foreclosures and complex tax consequences. Obtained Judgment and collection in full.
- Successfully prosecuted a \$12.5 million guaranty lawsuit as well as a lawsuit against the property management company for collecting subordinate management fees

Post-Judgment, Collection Matters and Pursuit of Fraudulent Transfers

- Successfully recovered millions of dollars of assets that were transferred to irrevocable trusts, under the uniform voidable transfer act
- Forced a Chapter 7 liquidation filing by a machinery manufacturer. The bankruptcy liquidation allowed bank to recover substantially more on the assets, and also provided an avenue to recover millions of dollars in insider preference claims that were paid to the equity fund owners.
- Represented a bank in connection with all aspects of the collection of a \$9.5 million judgment, including the pursuit of fraudulent transfer claims, at all stages, including in the state circuit court, Michigan Court of Appeals and Michigan Supreme Court.

Financial Institution Litigation

- Defended a bank and several of its officers in a \$50,000,000 federal lawsuit alleging RICO, money laundering and other allegedly illegal acts. The District Court dismissed the Complaint and the Amended Complaint. Currently on appeal to the U.S. Eleventh Circuit Court of Appeals.
- Successfully defended a bank in various claims involving allegations of fraud, UCC violations, breach of contract and conspiracy theories.
- Successfully defended Special Servicer in \$300 million certificateholders' action alleging breaches of Master Pooling and Servicing Agreement concerning notable New York hotel
- Represented a secured lender to a bio-fuel producer to enforce the terms of a subordination agreement, allowing our client to recover millions of dollars of loans. Affirmed by the Michigan Court of Appeals
- Assisted with the successful defense of a bank in a proposed class action filed in federal court in Detroit, Michigan, alleging numerous breaches of the Federal Truth in Lending Act, and The Real Estate Settlement Procedures Act. The U.S. Sixth Circuit Court of Appeals largely affirmed summary judgment in favor of our client.

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- Trial counsel for bank to defend bank's interest in real property in case that involved complex and novel issues of priority under mechanics' lien statute. Prevailed after trial
- Cordella Green, et al v. Ford Motor Credit Company, Circuit Court for Baltimore City, Maryland. Class action involving alleged defective post-repossession notices. Complaint was dismissed by the trial court and the dismissal was upheld by the Maryland Court of Special Appeals.
- David J. Pertuso and Karen A. Pertuso v. Ford Motor Credit Company, United States District Court for the Eastern District of Michigan, Southern Division. Hon. Denise Page Hood. Dismissed on motion. Dismissal affirmed by the Sixth Circuit. This case involved procedures related to bankruptcy reaffirmation agreements. Represented Ford Motor Credit
- In re Imperial Bank/Comerica Securities Litigation and In re Comerica Securities Litigation, United States District Court for the Eastern District of Michigan. Hon. Marianne O. Battani. These cases involve alleged violations of the 1933 Securities Act and the 1934 Securities and Exchange Act related to Comerica's restatement of its 2nd Quarter 2002 earnings. Represent Comerica, Inc. and the individual officer defendants. Pending
- Wayne E. Mitchell, et al v. Norwest Financial Indiana, Inc. Circuit Court for Berrien County, Michigan. Plaintiffs challenged prepayment penalty under usury statute and Consumer Protection Act. Settled. Represented Norwest Financial.
- Nelson v. Associates Financial Services Corp., United States District Court for the Western District of Michigan (removed from Berrien County Circuit Court). Consumer Protection Act, Usury. Pending. Represented Associates Financial
- Lenore Jenkins et al v. Ford Motor Credit Company et al, Wayne County Circuit Court (Michigan) before Hon. John A. Murphy. This case involved allegations with respect to disclosures in lease forms. Dismissed on motion. Represented Ford Motor Credit
- Wendy J. Simpkins, et al v. Ford Motor Credit Company and Primus Automotive Financial Services, Inc., et al. Circuit Court for Prince George's County, Maryland. Class action involving allegation of illegal lease late fees. Dismissed by trial court. Dismissal was affirmed by Maryland Court of Special Appeals. Remanded to trial court by Maryland Court of Appeals on a procedural issue. Representing Ford Motor Credit
- Ronald Wlosinski v. Ford Motor Credit Company et al, Wayne County Circuit Court (Michigan). Hon. Sally Harwood. This case involved claims of consumer fraud related to lease sales. Plaintiff voluntarily dismissed after motion briefing. Represented Ford Motor Credit
- Nicole Ferrell, et al. v. JK III and Ford Motor Credit Co., Howard County Circuit Court (Maryland). Hon. Raymond J. Kane, Jr. Proposed class action involving allegations of illegal and deceptive fees charged by auto dealer for title, tags and registration. Representing Ford Motor Credit. Case is pending.