Bankruptcy Litigation

Our bankruptcy trial and appellate experience covers virtually every aspect of bankruptcy law matters and includes litigation matters that can arise from bankruptcy proceedings, including prosecuting and defending preference actions, fraudulent transfer cases, tort claims and claims based on deepening insolvency.

We have significant experience before numerous bankruptcy courts, bankruptcy appellate panels, district courts and circuit courts of appeal relating to many of these issues.

Our attorneys regularly represent debtors and secured and unsecured creditors in judicial and non-judicial debt recovery enforcement. We possess significant knowledge and experience in all types of loan enforcement matters, including prosecuting judicial and non-judicial foreclosures, filing replevin actions, obtaining appointment of federal and state court receivers, conducting asset sales and defending our lender clients in connection with lender liability litigation.

Representative Experience

- A team of litigators represented a small community bank in federal district court, in front of the 8th Circuit Court of Appeals and in front of the United States Supreme Court regarding alleged violations of the Equal Credit Opportunity Act and Regulation B. The plaintiffs in the case sought to have their personal guaranties of a business loan invalidated for violating alleged prohibitions on spousal guarantees. The Supreme Court affirmed the 8th Circuit decision that Regulation B impermissibly expanded the Equal Credit Opportunity Act beyond the plain language of the statue to include parties that are not "applicants" for credit under the plain language of the statute. *Hawkins v. Community Bank of Raymore*, 136 S. Ct. 1072 (2016).

- Represented Chapter 11 bankruptcy estate in litigation against insiders to recover more than $100 million in transfers from the debtor during the four years prior to bankruptcy.

- Represented a large bank in a matter where debtor filed Chapter 11 bankruptcy and our client had a lien on the debtor's property. Plaintiff alleged the property was part of his business operations. We filed relief of stay to foreclose on the property. At trial, we proved plaintiff was not using the property for business operations and obtained permission to foreclose the property.

- Pursued claims against plaintiff for money owed by a large, publicly held grocery store chain on behalf of a large farmer-owned milk marketing cooperative. The case was settled to the satisfaction of the client.

- Defended insurance broker in Companies Creditors' Arrangement Act (CCA) proceedings in the Supreme Court of British Columbia and handled bankruptcy preference defense actions.

- Obtained appointment of a receiver after our client's borrower, who operated a hotel, defaulted on a lending arrangement. The borrower then filed for Chapter 11; we obtained a lift stay from the bankruptcy and foreclosed on the hotel and its contents for client. The hotel ultimately was sold, resulting in significant recovery for the client.

- In a case where the bankruptcy trustee asserted that the non-borrower's estate owned real property, we successfully litigated a reformation of deed claim on behalf of our lender client by presenting complicated factual and legal arguments through testimony of mutual mistake and extensive documentation, and the court ordered reformation of the deed resulting in our lender client retaining its first priority lien position.

- Represented defendants in an adversary action which challenged claims by a state securities department, that our clients were engaged in a *Ponzi Scheme.* Successfully argued before the U. S Court of Appeals for the 10th Circuit under 11 U.S.C. Section 523 (a)(19) the limits of the scope of the section relieving our clients of additional liability.

- From 2005-2010, a Lathrop GPM attorney was on the Editorial Board of the ABA Bankruptcy Litigation report and was a frequent contributor to articles in it on issues ranging from the above described 523(a)(19) issue, to issues related to Net Present Valuation calculations.