Highlights to the 2026 Edition

Lender liability litigation has continued to evolve over time as the economic environment in the United States shifts. One of the more interesting developments over the last decade is the growth of the "shadow banking" world. This can encompass everything from family offices, private lending funds and the whole world of fintech. The common thread is that none of the activity is conducted by traditional regulated financial institutions. When reviewing case law it thus becomes necessary to throw a broad net to see where new theories are being experimented with. Borrowers continue to test the traditional causes of action trying to see if they can work their way around old prohibitions and create new duties. While new financial products such as cryptocurrency are continually in the news there continue to be questions about whether it will ever have much use in day-to-day transactions. We may someday see a determination that one can pay their state or federal taxes using cryptocurrency, but we are not there yet. Meanwhile, financial institutions of all sizes are contemplating the use of Artificial Intelligence in their operations. All of these developments will provide fertile ground for litigation.

The basics of contract law undergird the entire relationship between a customer and their financial institution, whether the relationship is based on obtaining credit, access to checking or savings accounts or the purchase of esoteric financial products. The law of contracts establishes a legal relationship to address not only the creation of the relationship but also its dissolution. Precise language in documents is always the first safeguard against disgruntled borrowers or loan applicants. For example, a "loan application" is exactly what it says it is, it is not a guaranty that an applicant will receive an extension of credit. Scales v. Webster Bank, N.A., 2025 WL 1207397, at *6 (D. Conn. Apr. 25, 2025). [Section 2:2] Likewise, when a loan commitment says that a condition to the extension of credit is a requirement that the applicant pay the loan commitment fee, the bank is not merely making a suggestion, it is setting forth a contractual condition that must be met. Roy v. Banco Popular de Puerto Rico, 2025 VI 19, ¶ 26 (Sept. 4, 2025) [Section 2:2]

The Statute of Frauds continues to provide a bulwark against many breach of contract claims in a wide variety of situations. For example, a guaranty was considered to be a "credit agreement" under the Illinois Credit Agreements Act. Metro. Cap. Bank & Tr. v. Barket, 2025 WL 1883575, at *4 (N.D. Ill. July 8, 2025) [Section 2.3] Likewise, an alleged oral forbearance agreement

would be unenforceable under the Florida Statute of Frauds. Am. First Fed., Inc. v. Trugon Props., Inc., 2025 WL 1819020, at *2 (Fla. Dist. Ct. App. July 2, 2025).[Section 2.3] The Iowa Statute of Frauds barred a claim for negligence and fraudulent misrepresentation when the alleged contract when such claims arose out of an alleged oral agreement. County. Bank v. Shalla, 20 N.W.3d 812, 821 (Iowa 2025 [Section 2:3]

Something that oftentimes goes unnoticed is that contract claims with financial institutions can go along way away from traditional lending relationship issues. A review of typical bank agreements include contracts covering various types of bank accounts, cardholder agreements, safety deposit boxes, wire transfer agreements and sales agreements. The claim may be based upon a discrete action taken by the bank or may arise out of a lack of action on the part of the bank, particularly when the claim arises out of fraudulent actions by third parties. There is an astonishing amount of fraud occurring on a daily basis, whether it is generated from overseas through the highly documented "pig butchering" where the perpetrators build up a relationship of trust with a victim and convince them to send money overseas or traditional bank fraud where legitimate wire transactions are hijacked. Although in many cases the UCC provides insulation to financial institutions plaintiff's lawyers continue to look for that crack in the door that will allow them to pursue either a breach of contract or negligence claim. Henderson v. Wells Fargo Bank, 779 F. Supp. 3d 910, 917 (S.D. Tex. 2025) [Section 2:7]

Claims involving breach of the obligation of good faith and fair dealing are generally struck down when they are merely duplicative of a breach of contract claim. Finkelstein v. Bank of New York Mellon, 86 Misc.3d 1241(A), 236 N.Y.S.3d 591 (N.Y. Sup. Ct. 2025) [2:25] Courts continue to be resistant to use the good faith obligation to insert obligations into loan documents on the part of the lender to make a loan modification or refrain from taking collection action. U.S. Bank, N. A. v. Hurr, 2024-Ohio-5382, ¶ 17, 258 N.E.3d 565, 571 [Section 2:18]

An interesting intersection between claims of duress and cryptocurrency was illustrated in a case out of Iowa, Matter of Bitcoin Depot Operating, LLC, 21 N.W.3d 157, 164 (Iowa 2025) where an individual was caught up in a scam and wire Bitcoin to a fraudster. The court held that a warning notice on the Bitcoin ATM telling customers that one should never move Bitcoin into the wallet of another person was not evidence that the operator was aware of the particular customer's duress. [Section 3:4]

Fiduciary duty claims generally fall on the ramparts of the fact that banks generally do not owe a fiduciary duty to the normal rank and file customer. Case v. Bank of Am., N.A., 2025 WL 2263695, at *4 (S.D. Fla. Aug. 6, 2025). Duties may arise,

however, when the financial institution has voluntarily agreed to act to manage certain assets of the bank customer. [Section 5:3] Beckmark Farm, LLC v. Platte Valley Co., 2025 WL 2549192, at *19 (D. Neb. July 25, 2025), motion for relief from judgment denied, 2025 WL 2549177 (D. Neb. Aug. 11, 2025) [Section 5:2] Allegations that a bank aided and abetted a customer's fraud are also hard to prevail on unless one can show the bank had actual knowledge. Letidas Logistics, LLC v. Citibank, N.A., 2025 WL 2212056, at *5 (S.D. Fla. Mar. 6, 2025 [Section 5:10] The mere existence of "red flags" by itself is generally not going to be sufficient to show actual knowledge. Millstein v. Wells Fargo Bank, N.A., 2025 WL 373466, at *19 (S.D. Fla. Jan. 15, 2025), report and recommendation adopted, 2025 WL 894771 (S.D. Fla. Mar. 24, 2025) [Section 5:10]

Claims of negligence are generally difficult to pursue owing to the fact that it is difficult to establish the existence of a duty on the part of the financial institution to a customer and particularly to a non-customer. A bank generally has no obligation to investigate or actively monitor suspicious banking activity. Case v. Bank of Am., N.A., 2025 WL 2263695, at *3 (S.D. Fla. Aug. 6, 2025) [Section 7:8] In addition, Article 4 of the UCC provides safeguards that hold a bank harmless for processing authorized wire transfers from a customer's account. Markatos v. Citibank, N.A., 760 F.Supp.3d 70, 82 (S.D. N.Y. 2024) [Section 7:9] Notwithstanding those UCC protections, some courts will find that a bank owes a duty of ordinary care to its customers sufficient to allow a claim for negligence if the claim can be separated in some fashion from the UCC coverage. Rugby Holdings, LLC v. First Horizon Bank, 2024 WL 4989340, at *3 (M.D. Fla. Dec. 5, 2024) [Section 7:9]

Cours continue to analyze the implications of the Supreme Court's decision involving the issue of third party releases in Harrington v. Purdue Pharma L. P., 144 S.Ct. 2071, 219 L.Ed.2d 721 (2024) [Section 12:42] For example, does the restrictions in Harrington flow over to the past practice of recharacterizing debt as equity. Insight Terminal Sols., LLC v. Cecelia Fin. Mgmt., 148 F.4th 869, 884 (6th Cir. 2025) (concurring opinion) [Section 9:14] The charitable contribution exception to fraudulent transfers is only available to individuals debtors, not to corporations or transfers by a non-debtor. In re Health Diagnostic Laboratory, Inc., 2024 WL 2930904, at *6 (Bankr. E.D. Va. June 10, 2024) [Section 10:7] A court examined the definition of "farmer" for purposes of whether an involuntary petition could be filed and concluded that a company who was engaged in the primary and secondary processing of raw chicken was not engaged in farming. In re Pure Prairie Poultry, Inc., 2025 WL 419414, at *4 (Bankr. N.D. Iowa Feb. 5, 2025) [Section 13:2]

An interesting number of antitrust claims continue to be made against financial institutions involving rigging prices or libor rates. Sullivan v. UBS AG, 149 F.4th 206, 222–23 (2d Cir. 2025). For example, the court in In re Mexican Gov't Bonds Antitrust Litig., 2025 WL 104099, at *7 (S.D.N.Y. Jan. 15, 2025) noted that "Even with the market slang used by Defendants' traders in the chatroom transcripts quoted by Plaintiffs, direct agreements to price fix are clear." [Section 15:6]

Damages recoverable under RICO must be for injury to business or property. A number of circuits have held that personal injuries, even those that lead to economic loss, were not recoverable. The Supreme Court ruled in Med. Marijuana, Inc. v. Horn, 604 U.S. 593, 145 S.Ct. 931, 221 L.Ed.2d 475 (2025), that the "business or property" requirement operates "with respect to the kinds of harm for which the plaintiff can recover, not the cause of the harm for which he seeks relief." [Section 18:27]