

Financial Services Litigation

Polsinelli has one of the largest creditors' rights practices in the nation. Our lawyers are situated from coast to coast and have practiced for more than 30 years in state courts, federal courts, and bankruptcy courts in more than 45 states.

Our lawyers practice law with an eye – always – toward the business objectives of our clients. We realize that lenders enforcing their rights with respect to special assets are looking to remain constantly informed, want to know their alternatives, and want to maximize return in the shortest period of time and in the most cost-efficient manner possible. Accordingly, we can tell you about differences in enforcement procedures from state to state, the amount of control a lender can expect to assert in connection with those procedures, and the expected timing and cost of such procedures. Different jurisdictions bring widely varying experiences to enforcing lenders. We can tell you what to expect in those different jurisdictions.

Maximization of recovery is not simply about foreclosures and suits on promissory notes and guaranties, although those remedies are very important to lenders. It is also about speed, for the time of resolution is the single most important contributor to loss severity. It is also about the preservation of assets during the period of time that it takes to enforce those ultimate remedies. We know this, and we have assisted lenders with moving quickly to protect their collateral – obtaining orders appointing receivers, restraining orders, orders of replevin, and other orders granting extraordinary relief that is designed to preserve collateral, and sometimes even add value to it, pending disposition.

Our lawyers have also litigated in a number of cases where borrowers have gone on the offensive – asserting lender liability claims against their lenders and blaming their lenders for their financial misfortunes. Breach of fiduciary duty, “control” claims, fraudulent transfer, wrongful loan administration, 365/360 class action interest claims – we have seen, and defeated, them all.

We are also well aware that lenders are often required to deal with parties other than wayward borrowers and their principals. We specialize in assisting lenders involved in participating, co-lending, syndicated and securitized loan transactions. We have assisted lead lenders and loan servicers' in defending claims brought by participants or certificate holders questioning lead lenders' and servicers' loan administration. Conversely, we have prosecuted claims on behalf of participants damaged by faulty loan administration by lead lenders. And we assist loan servicers on a day-to-day basis, who are subject to constant, conflicting demands from various lenders in a debt stack who may insist that their rights are superior to those of others.

Our creditors' rights lawyers are also experienced in bankruptcy proceedings, particularly in Chapter 11. From “first-day orders,” which include a debtor's temporary use of the lender's cash collateral, to stay relief and plan confirmation proceedings, the group's lawyers have vast experience in the bankruptcy courts. We have litigated proceedings affecting lenders' claims in bankruptcy (including claims for yield maintenance and prepayment consideration), have defended avoidance (preference and fraudulent transfer) actions against creditors, have prosecuted stay relief motions, have litigated to maintain state-court-appointed receivers in possession of

collateral after borrowers file bankruptcy, have defeated debtors' plans of reorganization, and have filed and had confirmed our own liquidating plans as alternatives to debtors' plans that have not afforded fair value to secured lenders' claims.

For lenders, we are everywhere and anywhere you need us to be.

Matters

- Counseled Loan Servicer sued concerning servicing a \$160 million loan secured by hotel, spa and casino in Las Vegas, Nevada. Case dismissed.
- Defended Secured Lender and Loan Servicer in lender liability litigation brought in New York, New York, where Borrower asserted that loan reserves were improperly administered and that Lender was not properly disbursing reserve monies for payment of replacements and remediation at hotel property securing debt of \$90 million. Obtained dismissal of case with zero liability to Lender and Servicer.
- Defended and obtained dismissal of secured Lender sued for wrongful death following a carbon monoxide leak at a multifamily complex that secured debt owed to Lender.
- Counsel to Secured Lender, who obtained appointment of Receiver to administer two assisted living facilities in St. Louis, Missouri, securing debt of \$30 million. Maintained Receiver in possession of facilities through two separate Chapter 11 filings by Borrower, obtained dismissal of both Chapter 11 proceedings, and effected sale of facilities through receivership, rather than foreclosure, resulting in full payment to Secured Lender and zero loss.
- Represented Lender in successful workout and full payoff of \$20 million loan secured by industrial property in Houston, Texas, involving multiple and complex collateralizations.
- Counsel to Secured Lender, who obtained appointment of Receiver to administer two office buildings in Dallas, Texas, securing debt of \$18.5 million. Effected sale of buildings through receivership, rather than foreclosure, over objections of Mezzanine Lender and Borrower, resulting in full payment to Secured Lender and zero loss.
- Represented Lender in successful workout and restructuring of \$10 million loan secured by condominium development, including converting project to apartment development to fully capitalize on state and federal historic tax credits to "right-size" loan.
- Defended Secured Lender and Loan Servicer in lender liability action brought in Dallas, Texas, in which Borrower asserted claim for damages for Lender's and Servicer's alleged wrongful refusal to reasonably approve proposed change in franchise of hotel securing debt of \$7.9 million. Obtained dismissal of case with zero liability to Lender and Servicer.
- Represented Lender in registration and enforcement of \$7 million loan and substantial recovery of funds using forensic analysis of Borrower's financial transactions and carefully timed garnishment and execution proceedings
- Defended Lender who received payment in full of \$6 million loan via Borrower's sale of business to Purchaser, who subsequently filed Chapter 11 in Topeka, Kansas. Purchaser sued to avoid sale transaction as fraudulent transfer and to recover \$6 million purchase price. Obtained directed verdict in favor of Lender.
- Represented Secured Lender in Chapter 11 proceeding in Los Angeles, California, where Lender was owed \$4.5 million, secured by hotel in Manhattan Beach. Filed competing creditor plan and opposed confirmation of Borrower's proposed "cram down" plan. Obtained confirmation of creditor's plan and obtained order denying confirmation of plan of Borrower / Debtor.
- Represented Secured Lender in six-count lender liability action brought in Akron, Ohio. Obtained summary judgment on all six counts and obtained summary judgment on Lender's claims on note, guaranty, and for foreclosure, resulting in foreclosure of office complex securing indebtedness of \$3.85 million.
- Defended Lender in suit, brought in Los Angeles, California, against Lender by Borrower for recovery of \$2 million in prepayment consideration/yield maintenance that was paid to Lender, under protest, when Borrower prepaid loan. Obtained summary judgment in favor of Lender.

- Successfully defended Lenders in suit brought in St. Louis County, Missouri and U.S. District Court seeking damages for document preparation fees charged by Lenders. Obtained summary judgment in favor of Lenders and successfully defended judgment before Eighth Circuit Court of Appeals and United States Supreme Court.
- Successfully defended Lenders in various class action and lender liability lawsuits asserting claims for “365/360” interest calculations in various courts in Illinois.