

Recent Lender Liability and Other Banking and Financial Institution Litigation Representations

- Represented **KKR** in a dispute in which the plaintiff attempted to undo a \$77 million sale of real estate to KKR. Quinn Emanuel obtained a complete dismissal of all claims against KKR on appeal. In the process, the New York Appellate Division issued a landmark decision establishing that the Uniform Commercial Code does not allow aggrieved debtors to unwind sales after they have closed.
- We achieved a complete appellate victory for our Spanish construction firm clients **Cointer Concessionones** and **Grupo Azvi** in their claims for gross negligence against Scotiabank Capital Markets and The Bank of Nova Scotia relating to a botched financial model that cost our clients tens of millions of dollars. Given the high standard for proving gross negligence, the court dismissed the claim on the pleadings in 2013; we appealed and had the claim reinstated in 2015. Following the completion of fact and expert discovery, the defendants moved for, and the court granted, summary judgment in 2018. We appealed again, and the appellate division again agreed with our arguments and reinstated the claim. The case will now proceed to trial.
- We navigated Benefit Street through the chapter 11 case for **Berry Petroleum** pursuant to which it became Berry's largest shareholder and appointed the chairman of the board. Thereafter, we were lead counsel for Berry Petroleum in successfully opposing its reserve-based lenders' claims for default interest accruing during the pendency of its chapter 11 case.
- We represented **Assured Guaranty** and **Assured Guaranty Municipal Corp.** (together, **Assured**) in the Supreme Court of New South Wales in proceedings commenced by the Reliance Rail group (Reliance Rail) against Dexia Credit Local Sa and FMS Wertmanagement Aor (together, Dexia/FMS). Assured are the majority senior bondholders in Reliance Rail, and supported Reliance Rail's general position that it could effect a \$1.9 billion refinancing without bondholders' consent under the relevant finance documents. Dexia/FMS, as co bondholders, opposed this position. After an expedited two day hearing, Justice McDougall delivered a judgment on 23 August 2017, in which he relevantly found that the refinancing could proceed without bondholders' consent.
- We represented **UMB Bank, N.A.** as trustee on behalf of noteholders, in a case against Airplanes Limited and Airplanes U.S. Trust that involved a dispute over the improper reserving by Airplanes of \$190 million that otherwise would have gone to noteholders.

We obtained a favorable judgment on the pleadings with the Court finding that the \$190 million reserve was improper and in violation of the indenture.

- We obtained a unanimous victory in the Second Circuit, where we defended a dismissal that we previously obtained for **AIG** in a major False Claims Act case that alleged AIG defrauded the Federal Reserve Bank of New York by hundreds of millions of dollars during the financial crisis. The case, brought by a former AIG human resources executive-turned-whistleblower, alleged that two insurance subsidiaries that AIG sold to the Federal Reserve in exchange for \$25 billion in debt reduction had, for decades, engaged in unlicensed insurance business in New York. The plaintiff alleged that AIG was complicit in the illegal insurance activity, concealed it from regulators, and deliberately misled the Fed during the negotiations in order to consummate the transaction. This case posed a potential \$2.5 billion liability for AIG under the False Claims Act's treble damages provision.
- On behalf of client **CIFG**, now known as Assured Guaranty, Quinn Emanuel convinced a New York state appellate court to modify the lower court's dismissal of a misrepresentation claim with prejudice to a dismissal without prejudice, thus allowing CIFG to replead the claim in its effort to recover from Bear Stearns for inducing CIFG to issue financial guaranty insurance regarding collateralized debt obligation vehicles that Bear Stearns had loaded with risky assets.
- After a week-long trial, we won a complete defense verdict—plaintiff was awarded nothing and lost on every count—in a bet-the-company case. We represented **Athilon Capital Corp.** and its board of directors in a lawsuit brought by Quadrant Structured Products LLC (owned by Magnetar) in Delaware Chancery Court. Quadrant sought not only hundreds of millions of dollars and findings of breach of fiduciary duty against the members of the Athilon board as individuals—but also an order requiring Athilon to liquidate its assets and shut its business down entirely. Instead, Vice Chancellor Laster denied all the relief Quadrant requested, leaving Athilon free to continue the long-term business strategy Quadrant challenged at trial. Quadrant attempted to reverse our trial win by appealing to the Delaware Supreme Court, but we won the appeal by securing an en banc decision that affirmed all of the trial court's rulings.
- We achieved a complete victory for our clients, **GSO Credit Partners** and **Canyon Partners**, in the Financial List of the English High Court. The dispute arose out of an agreement by our clients to acquire (by way of back-to-back trades) a position held by HCC International Insurance Company Plc under a surety bonds facility. Barclays Bank was the intermediary for the purpose of the back-to-back trades. The trades were entered into under standard Loan Market Association (LMA) documentation and the dispute concerned the settlement amount payable in relation to the trades. The judge, Mr. Justice Knowles, agreed with our arguments and found that our construction of the LMA terms was correct. Significantly for us in the London legal market, this was the first judgment of the recently created Financial List.
- For more than two years, distressed debt vulture fund Weston International Capital Ltd has made our client **Bank Mutiara** its primary target by commencing actions all over

the world to collect on undocumented and other disputed obligations. After Weston successfully obtained multiple judgments against Bank Mutiara in Mauritius and in the Southern District of New York, as well as turnover orders permitting Weston to drain Bank Mutiara's New York-based bank accounts, Bank Mutiara retained us to mount a defense. Within three weeks of being retained, we convinced Judge Crotty of the Southern District to vacate his judgment and turnover orders and to order Weston to return more than \$3.6 million it had obtained from Bank Mutiara's accounts. When the fund refused to do so, we obtained a stay of every Weston action filed against Bank Mutiara in New York, convinced the Court to hold the particular Weston entity that had obtained Bank Mutiara's money in contempt, and now we have convinced the Court to expand the contempt order to hold *every* Weston entity we and even its principal personally in contempt. What is more, the court ordered each Weston entity and its principal personally to pay our attorney fees and to pay escalating fines starting at \$1,000/day and doubling each month until Bank Mutiara's money is returned.

- We obtained a directed summary judgment on appeal for a Brazilian infrastructure company **CCR Rodoanel** in a swap dispute against French and Portuguese banks.
- We successfully represented **Saudi interests** in obtaining dismissal of proceedings in the English High Court in which Citigroup sought declarations of non-liability against our clients under the 2002 ISDA Master Agreement and Equity Derivates Definitions. The proceedings were, in substance, an attempt to pre-empt U.S. arbitration proceedings worth around US\$350m brought in New York under the rules of the U.S. Financial Industry Regulatory Authority.
- We represented **two groups of investors** in a bankrupt beverage manufacturer that was operated as a massive Ponzi scheme. In California state court, we represented approximately 73 par holders of the company's bonds in an action against the bank that underwrote the bonds and the company's outside auditors. In New York state court, we represented a large group of holders of the company's bank debt, in an action against the company's principal bank, outside auditors, and other third parties. We obtained favorable settlements in both matters.
- We obtained a nine-figure settlement for a **regional bank** in a novel lawsuit involving allegations that its insurer and broker had breached their contract and fiduciary duties in failing to automatically reallocate the bank's \$612 million investment in bank-owned life insurance policies to a more conservative fund when certain performance triggers were hit.
- We represented **Union Bank of California** in numerous class actions and individual lawsuits in state, federal and bankruptcy courts arising out of the perpetration of a \$600 million Ponzi scheme by one of its clients and depositors.
- We achieved a favorable settlement on behalf of **mezzanine lenders** to the \$5.4 billion acquisition of Stuyvesant Town-Peter Cooper Village—the largest single real estate transaction in U.S. history. Mezzanine lenders brought suit against the mortgage lender and the special servicer to the mortgage loan, among others, in connection with their

attempt to transfer the property pursuant to a deed in lieu of foreclosure. In our complaint, we alleged that the defendants breached the applicable intercreditor agreement for, among other things, failing to provide prior notice of the deed in lieu to the mezzanine lenders and failing to obtain prior consent to the transfer of the property from the mezzanine lenders. While the case did not result in a reported decision on our claims, the settlement reflects the robust interpretations we offered with respect to the mezzanine lender's rights under the intercreditor agreement, paving the way for other mezzanine lenders in future disputes.

- We represent **Morgan Stanley** in litigation against Citibank arising out of a credit default swap under which Morgan Stanley sold credit protection to Citibank on the super-senior tranche of a CDO. Citibank liquidated the CDO's collateral, which triggered approximately \$250 million in losses on the super-senior tranche. Morgan Stanley refused to reimburse Citibank for its losses, because Citibank failed to obtain Morgan Stanley's consent before liquidating the collateral, as required under the credit default swap. Citibank sued for breach of contract, and Morgan Stanley counterclaimed.
- We represented **Hildene Capital Management, LLC** and eight other plaintiffs in a lawsuit that challenged the proposed sale of BankAtlantic, a federal savings bank, to BB&T Corporation. Following a three-day trial, we obtained a permanent injunction on behalf of plaintiffs based on potential adverse effects of the sale.
- We represent **Intesa Sanpaolo, SpA** in litigation pending in New York federal court against Crédit Agricole and other defendants, alleging securities fraud and other claims. Crédit Agricole allegedly structured a CDO that Intesa invested in for the benefit of Magnetar, a notorious hedge fund, allowing Magnetar to hijack asset selection for its own benefit.
- We represent **AIG Financial Products** in a suit against ICP Asset Management LLC and other parties, alleging that the defendants fraudulently shifted losses on over \$1 billion in RMBS securities to AIG-FP via sales to certain CDOs that AIG-FP held the credit risk on.
- We represented **ING Bank** and obtained a \$35 million settlement from a Big Four audit firm, which was seventy-five percent more than the settlements obtained by any of the other plaintiffs.
- We represented public company home builder **TOUSA** in connection with a \$675 million claim brought by Deutsche Bank based on the default of an off-balance-sheet structured financing used to fund the largest acquisition of home sites in Florida history. We obtained a successful resolution of this matter.
- We represented **People's Choice Mortgage** and obtained summary judgment of class claims in the millions of dollars based upon allegations of lender misconduct against a lender from which People's Choice purchased a significant number of mortgages which it then packaged into mortgage-backed securities.

- We represent Morgan Stanley's captive fund, **Morgan Stanley Senior Funding**, which has investments in, and investors from, the UK and Europe in a variety of matters including a litigation involving distressed debt arising from activities that took place in Australia.
- We represented **GMAC Mortgage** in several class actions alleging violations of usury statutes.
- We represented **Capmark** in a servicing dispute on \$300 million bond portfolio.
- We represented **Freddie Mac** in a suit over termination of \$100 million servicing contract.
- We represented a secured lender in foreclosing on a \$300 million office project.
- We represented **Bayerische Hypo- und Vereinsbank AG** (“HVB”) in a lawsuit against an investment vehicle that was wrongfully refusing to redeem shares held by HVB, bringing claims for breach of contract that sought approximately \$422 million in damages. Together with the filing of the complaint, we obtained an immediate ex parte attachment of all assets owned by the defendants located in the State of New York and we obtained an order sealing the file. The following day more than \$380 million of the Defendants’ assets in New York were attached. Having gained considerable leverage, we were able to reach a favorable settlement – receiving \$403 million – shortly thereafter.
- We have successfully represented officers and directors of banks, mortgage lenders (including those specializing in subprime loans), and other financial institutions in connection with regulatory matters and complaints brought against them arising from allegations of failure to observe their fiduciary duties, alleged fraud, alleged predatory lending practices, and other matters arising from their respective roles in guiding and leading the efforts in the marketplace of their institutions.