CREDITORS’ RIGHTS AND BANKRUPTCY

The Creditors’ Rights and Bankruptcy practice group at Taylor English has extensive experience in all aspects of creditors’ rights and bankruptcy. We routinely represent creditors and financial institutions, including national, local and community banks, in bankruptcy, commercial and business litigation, lender liability claims, participation disputes and litigation, receiverships, assignments for the benefit of creditors, financial workouts, secured transactions, and commercial lending. In addition, we represent the FDIC and financial institutions as assignees and successors in interest to the FDIC in connection with the administration of loans, financial workouts, bankruptcy, troubled asset management, and the related commercial litigation.

We provide our clients with the full spectrum of services to protect their rights and maximize their recovery. This representation includes suits on notes and guaranties, writs of immediate possession, receiverships, personal property foreclosures including public and private sales, confirmation of real property foreclosure sales, deficiency suits, involuntary bankruptcy proceedings, avoidance and recovery of preferential and fraudulent transfers under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, and suits to deny the discharge of indebtedness in bankruptcy cases.

In bankruptcy and restructuring matters, we have a wide range of experience representing financial institutions, the FDIC, creditors, creditor and management committees, trustees, examiners, purchasers, and other parties in interest. Furthermore, we advise our clients regarding the bankruptcy and creditors’ rights aspects of various types of transactions, including mergers and acquisitions, asset purchases, financings, and contracts.

PRACTICE HIGHLIGHTS

Loan resolutions from failed banks including workouts and foreclosures. Represented numerous banks in successful resolution of hundreds of loans acquired from multiple failed banks including workouts, litigation and judgment collection, foreclosures of real and personal property, statutory confirmation of foreclosures, litigation regarding loan participation disputes, and resolution of real property title issues. Advises banks regarding compliance with garnishment, levy, subpoena and bank secrecy matters.

Collections suit for the FDIC as Receiver for Silverton Bank. Represented the Federal Deposit Insurance Corporation, as Receiver for Silverton Bank (FDIC-R), in three separate federal court actions against borrowers and guarantors who defaulted on loans made by Silverton Bank, which failed in 2009. In each of the three cases, summary judgment was granted to the FDIC-R on its claims for breach of contract, interest, and attorneys’ fees in the aggregate amount of more than $10 million. The rulings in these lawsuits confirm that loan documents cannot be avoided by alleged oral modifications, especially by purported agents of the FDIC-R.

Breach of promissory note and relevance of terms of Loss Share Agreement. Our representation of financial institutions include representing financial institutions who purchased assets from the FDIC. Taylor English routinely files suit on behalf of the purchasing bank and against borrowers on loans made by the defunct financial institution. In a particular litigation, the borrower argued summary judgment was improper because the terms of the Loss Share Agreement, not discovered, was relevant to establishing the purchasing bank’s damages. Although summary judgment was initially denied by a judge sitting by designation, just before the start of trial, the presiding judge suppressed all evidence or testimony regarding the details surrounding the purchase of the assets of the failed institution and the terms of the Loss Share Agreement.
Credits’ Rights and Bankruptcy

The borrower consented to judgment and set an important precedent for financial institutions that certain terms of the Loss Share Agreement are not relevant to establishing a borrower’s damages.

**Fraudulent inducement and promissory notes.** Our client, a financial institution, sought to recover from a borrower for an unpaid loan. The borrower denied liability and brought a claim for fraudulent inducement, fraudulent misrepresentation, and intentional infliction of emotional distress. The trial court granted judgment in favor of the financial institution and denied the borrower’s claims. Although it may appear this was a typical breach of contract case, it was unique because the bank was sued first for the tort claims. In the end, the plain language of the agreement governed and the tort claims were without merit.

**Expert witness/expert adviser related to law firm bankruptcy proceedings.** Served as an expert witness/expert adviser with respect to law firm economics and operations in connection with the bankruptcy proceedings of two major law firms.