

Banking Group Of The Year: Williams & Connolly

By **Katryna Perera**

Law360 (January 30, 2024, 4:40 PM EST) -- An Ohio federal jury found last April that Fifth Third Bank owed no damages for a \$444 million breach of contract claim brought by a certified class of customers in a major trial victory for the bank and its defense team, led by Williams & Connolly LLP, earning the firm a spot as one of Law360's 2023 Banking Groups of the Year.

The win was significant, given that class actions rarely go to trial, and because Williams & Connolly was able to secure the win amid other banking crises occurring at the time, Enu Mainigi, a Williams & Connolly partner, told Law360 in an interview.

Following an eight-day trial, jurors began deliberating over whether Fifth Third broke from its loan contracts when it allegedly charged annual percentage rates, or APRs, as high as 3,650% on loans taken through the bank's Early Access Cash Advance loan program, despite advertising 120% APRs on all Early Access loans. The consolidated class actions over the program had been in litigation since 2013.

"We were obviously so pleased and relieved that the jury sided with us in that matter, in part, because certified class actions are pretty difficult to win. They tend to be very plaintiff-friendly, but also because the backdrop of that case was that there had been some recent bank failures that had occurred," Mainigi said. "So it's always hard to know how a financial crisis or something like that affects jurors' perceptions."

Mainigi and her colleagues were always ready for a potential trial because of the firm's emphasis on litigation.

"We do just one thing, and that is to litigate," she said. "We are known to take matters to trial if needed. So generally, clients don't come to us if they want to settle a case but if they think a case may end up going all the way."

The emphasis on litigation is one thing that sets Williams & Connolly apart, along with its national presence despite being solely located in Washington, D.C., and its indifference to keeping regulators on the firm's good side, said Ryan Scarborough, another Williams & Connolly partner.

"We don't have innate relationships within the regulatory agencies that we're worried about nurturing or maintaining," he said. "We have excellent relationships with the enforcement staff from the



standpoint of respecting them and them respecting us professionally, but we aren't worried about maintaining some sort of a supervisory relationship that could get burned if we were to litigate because that's all we do, is we litigate."

The firm's fearless attitude also led Williams & Connolly to see early success in its plaintiff-side representation of Custodia Bank against the Federal Reserve.

Custodia sued in 2022, accusing the Fed and its Kansas City branch of dragging their heels on the bank's application for a master account, which enables access to the Fed's payment networks. Without a master account, Custodia would have to rely on partnerships to gain access to the system.

In June, a Wyoming federal judge denied the Fed's dismissal motion entirely, marking the first time that a bank suing under these circumstances has survived the motion-to-dismiss stage, according to Scarborough.

"Nobody else has ever gotten to this point, and it really goes to the heart of: Does the Federal Reserve have discretion to determine who can get access and who can't?" he said. "This is a major fight, and it stands for broader principles ... and we feel very strong and confident in the position that we're taking."

The firm's banking practice group was also the first to take on litigation against Bank of America and its issuance of Paycheck Protection Program loans during the COVID-19 pandemic. In August, it successfully compelled arbitration of a suit accusing the bank of misguiding small businesses on how to use the program. The case is currently on appeal before the Fourth Circuit.

The firm also secured a significant high court win for Harry C. Calcutt III, who has been battling a \$125,000 fine and banking industry ban ordered by the Federal Deposit Insurance Corp. in a long-running administrative enforcement action tied to his time as CEO of Northwestern Bank, a small Michigan-based lender.

The U.S. Supreme Court ruled in May that the Sixth Circuit shouldn't have upheld an FDIC disciplinary order against Calcutt after finding the agency's legal analysis in the case had been flawed.

Scarborough said Williams & Connolly was initially brought in to handle the case at the appellate level but that their role has grown into handling the underlying proceedings as well.

The case still has a ways to go, he said, but the Supreme Court's ruling was a significant win for Calcutt, whose livelihood is hinging on the outcome of the action. The final result will also significantly impact future officers and directors within the financial services space, Scarborough said.

--Editing by John C. Davenport.
