Tucker Ellis LLP

Financial Services Litigation

Overview

Our national Financial Services Litigation practice leverages our seasoned trial, business banking, and regulatory lawyers to represent our clients throughout the United States in any litigation context. We defend claims as diverse and complex as the financial products and services our institutional clients offer. We prosecute, in certain select circumstances, claims against bad actors whose misfeasance or malfeasance has economically harmed lenders, institutional or corporate investors, and individual shareholders.

CLIENT SEGMENTS AND SERVICE AREAS

Class Action Defense

The Class Action Litigation Group at Tucker Ellis has extensive experience defending class claims in jurisdictions throughout the United States. We defend class actions that corporate clients face with their customers, employees, investors, shareholders, and regulators. Our class action practice reaches across the major substantive areas of the law, including antitrust, securities, business tort, consumer finance, consumer fraud, contract, insurance, employment, ERISA, and other fields.

Commercial Lending Litigation and Workouts

Tucker Ellis trial lawyers partner with our experienced business banking lawyers to assist bank clients when litigation arises from commercial lending, servicing, default, workouts, and collection efforts. We align our litigation strategy with our clients' objectives of preserving collateral, ensuring adequate security, and maximizing recovery if a workout cannot be achieved. We also defend and prosecute claims and/or counterclaims by commercial borrowers, which often involve fraud and misrepresentation allegations arising from the original loan transaction and loan servicing. At all stages of these matters, we work with our clients to assess, balance, and manage litigation costs against the likelihood of recovery.

Securities and Accounting Fraud Litigation

Securities and accounting fraud allegations must be treated with the utmost sensitivity, realistically assessed, and defended consistently within clients' business and legal objectives. Tucker Ellis defends these high-stakes claims with cross-functional teams of trial and securities regulatory lawyers. When necessary, lawyers from the firm's White Collar Criminal Defense & Corporate Investigations Group become involved.

We represent public companies, closely held businesses, private equity investors, and entrepreneurial ventures in the securities litigation context. We also represent investment management firms, including broker-dealers, investment advisers, and investment funds in dealing with regulatory and investor litigation. Our clients benefit from our work across multiple practice groups, navigating the federal and state securities regulatory frameworks and closely monitoring the SEC's ever-changing reporting rules and regulations, including those mandated by the JOBS Act and the Dodd-Frank Act. This comprehensive approach facilitates a coordinated defense of regulatory inquiries, threatened and pending litigation, parallel government investigations, and criminal charges.

In certain cases, we prosecute securities, accounting fraud, and related claims on behalf of corporate or institutional investors and individual or activist shareholders. Our trial lawyers have substantial experience, both in the private and public sectors, successfully investigating and prosecuting such claims.

Corporate Fiduciary and Shareholder Disputes

Leadership, ownership, and financial disputes arise even among the closest family members, friends, and business partners. Tucker Ellis trial lawyers are prepared to move quickly to protect shareholder rights. We prosecute and defend claims against companies, officers, directors, managers, and majority or minority shareholders in closely held corporate litigation. This litigation often includes claims that officers, directors, or shareholders breached an operating agreement; breached their fiduciary duty; withheld books and records; failed to disclose information material to shareholder approval of a merger or acquisition; undervalued the company or its shares; engaged in self-dealing; overcompensated themselves; misappropriated trade secrets; or failed to act in the company's best interests.

Our trial lawyers act quickly to seek or oppose temporary and preliminary injunctive relief designed to protect company and shareholder interests and assets. We are prepared, at a moment's notice, to pursue or defend motions for emergency injunctive relief, immediate disclosure of company books and records, and expedited discovery. When necessary, we press for a consolidated trial on the merits to quickly bring a case to conclusion. Our demonstrated ability to try a shareholder case on short notice, in any forum, involving any issue, no matter the complexity, can foreshorten litigation and lead to an expedited resolution through a negotiated settlement or a judicial decision.

Trust Litigation

Tucker Ellis trial lawyers in the Financial Services Litigation Group partner with the firm's highly skilled estates and trusts lawyers to represent trustees and fiduciaries in litigation

involving high net-worth individuals, beneficiaries, banks, and trust companies. In our capacity as trial counsel for beneficiaries and trustees, we prosecute and defend claims including breach of fiduciary duty, breach of the duty of loyalty, improper or unsuitable investment of trust assets, theft of trust assets, contested accountings, fraudulent transfers, beneficiary disputes concerning distributions, and disputed creditor claims. These financial claims commonly arise simultaneously with non-financial claims for judicial construction and modification of wills and trusts, a declaration of incapacity or undue influence, elder abuse, denial of adequate medical care, or conservatorships and guardianships.

Claims arising from trust management and fiduciary decision-making, among other issues, often present interrelated tax, real estate, corporate, securities, and insurance questions that must be resolved concurrently with litigation. We have deep practice experience in each of these additional areas to provide comprehensive legal services to trustees and beneficiaries before, during, and after litigation concludes.

Experience

Class Action Defense

- Served as lead counsel in defending company and board members in a transaction-related shareholder class action lawsuit brought by a national shareholder plaintiff firm; defeated claims for injunctive relief and obtained complete dismissal of lawsuit, preserving closing date without delay or extension; court decision ruled favorably for the client in case of first impression relating to so-called “don’t ask, don’t waive” provisions in purchase agreement
- Served as co-lead counsel in defending company against fiduciary duty class action claims brought against directors in connection with unsolicited proposal by a third party; obtained complete dismissal

Commercial Lending Litigation and Workouts

- Represented a large insurance indemnity company in a case involving the rights of indemnitors of construction contracts
- Represented a bank in a case of first impression in the U.S. Bankruptcy Court, resulting in a ruling in favor of the bank and a published opinion upholding payment rights of equipment lessors
- Represented a corporate creditor in complex environmental claims litigation, resulting in a ruling in favor of the creditor in the United States Sixth Circuit Court of Appeals, as well as a subsequent ruling in favor of the creditor on similar issues in the U.S. Sixth Circuit Bankruptcy Appellate Panel

- Represented petitioning creditors in a large involuntary bankruptcy case involving construction fraud at a golf course development project, resulting in a successful resolution through the sale of the project
- Represented debtors, buyers, and secured lenders in numerous asset sale transactions under Section 363 of the Bankruptcy Code
- Represented buyers, debtors, franchisors, and creditors in the franchise restaurant industry
- Represented guarantors, creditors, and debtors in commercial law cases in state courts, including the appellate level
- Served as counsel for an official creditor's committee of unsecured creditors
- Represented a variety of creditors in avoidance actions, pursuing claims, advocating during plan confirmation hearings, and related bankruptcy work
- Represented various financial institutions and debtors in credit restructure and workout arrangements involving structured alternatives to bankruptcy
- Represented a financial institution in defense of a fraudulent conveyance claim arising out of a failed leveraged buyout

Securities and Accounting Fraud Litigation

- Defended an investment company sued as a co-defendant in a securities fraud case arising from a Ponzi scheme perpetrated by another entity, which used a single herd of cattle as collateral (instead of the multiple herds it falsely represented it owned) for sequential multimillion-dollar loans; the investment company raised capital for the loans by selling private security interests in the herds it believed the other entity owned
- Represented a group of defrauded investors in litigation filed against a real estate investment firm that fabricated financial information as part of a private placement memorandum to solicit investment capital
- Represented a group of shareholders in litigation filed against a closely held company and its board of directors involving the alleged intentional devaluation of company shares and a punitive forced buy-out at below fair value
- Conducted a pre-suit investigation concerning the fraudulent use of a private placement memorandum to solicit and obtain investment capital for a mixed-use real estate development project that ultimately failed
- Advised investors who purchased interests in a real estate company under a private placement memorandum in pre-suit negotiations concerning potential claims against the offeror
- Defended a venture capital firm in misappropriation of trade secrets, fraud, and civil conspiracy lawsuit
- Represented bondholders and clearinghouses before the United States Second Circuit Court of Appeals and the United States Supreme Court in litigation arising from the

Republic of Argentina debt crisis
- Represents officers, directors, and other professionals in enforcement actions pursued by the U.S. Securities and Exchange Commission
- Defended a corporate CFO in a civil fraud action prosecuted by the U.S. Securities and Exchange Commission, resulting in dismissal of all charges
- Defended the CFO of a large insurance company in a tax fraud, insurance fraud, and money-laundering criminal prosecution arising from an alleged accounting fraud scheme and related civil litigation

Corporate Fiduciary and Shareholder Disputes

- Represented a joint venture party in a technology company during Delaware Chancery Court expedited proceedings arising from the alleged misappropriation of trade secrets, breach of contract, and breach of fiduciary duty
- Represented a joint venture party in a $30-million commercial dispute arising from the failure of an oil and gas well and the alleged misappropriation of trade secrets, which included seismic survey reports that identified the likely location of oil and gas deposits
- Represented the minority owner of a printing company in expedited litigation arising from a lockout effectuated by the majority owner and alleged financial mismanagement and other improprieties
- Represented the minority owner of a real estate firm in expedited litigation involving the misappropriation of company assets by the majority owners for their own benefit and to the company's detriment
- Served as lead trial counsel in corporate dissolution proceedings on behalf of a 50% shareholder in deadlock with co-owner; after bench trial, obtained all relief requested in complaint and secured sale of company, preserving significant asset valuation for the client
- Defended a selling shareholder in a complex breach of contract matter in Ohio state court and U.S. Bankruptcy Court adverse to the private equity fund that acquired the company; obtained advancement of the client's attorney fees in a case of first impression under Ohio corporate law and successfully dismissed the resulting appeal
- Defended and favorably resolved claims involving a partnership dispute among members of a financial advisory firm wherein a former partner alleged breach of contract, fraud, conversion, and unjust enrichment
- Represented and obtained a successful settlement for a minority shareholder in claims against the managing member of an LLC
- Represented the former managing member of an LLC in an executive compensation dispute; obtained an arbitration award for the entire amount in dispute – $1.3 million – affirmed by the trial court and court of appeals