

Anderson Kill regularly represents banks and other financial institutions engaged in lending, as well as companies who engage in various types of banking and financial transactions. In this issue of our Banking & Lending Update, we continue to chronicle the accomplishments achieved by our banking and lending attorneys on behalf of our clients. We also provide practical recommendations to banks and other financial institutions in different aspects of commercial lending and asset recovery.

Anderson Kill Secures Determination of Nondischargeability of Debt in Bankruptcy

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Anderson Kill successfully obtained a judgment in favor of a prominent regional bank in an adversary proceeding under Section 523 of the Bankruptcy Code. The client retained our services to pursue the recovery of millions of dollars owed by two individuals who had sought relief under Chapter 7 of the Bankruptcy Code in the Bankruptcy Court for the Eastern District of New York. As part of the asset recovery strategy, we commenced an adversary proceeding on behalf of our client, seeking a determination that the debt at issue should be deemed nondischargeable because the borrowers had submitted fraudulent financial information at the time the loans were initially funded and later when the maturity dates for the loans were extended.

To obtain the loans, the individual debtors, as well as several entities owned and controlled by them, had falsified securities statements and tax returns to show an inflated financial condition. The documents submitted to the bank showed marketable securities holdings with a value of over \$31,000,000, when in fact the debtors had only a few thousand dollars in the securities accounts; similarly, the tax returns that were submitted showed annual income in the amount of \$2,000,000, when the individuals actually had a net loss. On these facts, Anderson Kill asserted that the bank never would have approved the loans and loan extensions if it had known of the borrowers and guarantors' true financial condition, and such misrepresentations by the debtors were enough to overcome the presumption of dischargeability under the Bankruptcy Code. While the debtors vigorously contested the adversary proceeding from the beginning, after we filed a compelling motion for summary judgment, the debtors agreed to a multimillion dollar consent judgment before the court could even rule on the motion. Through aggressive and thoughtful pretrial motion practice, we were able to minimize the client's future legal fees and to bring certainty as to the debtors' post-bankruptcy obligations.





who's who

Inez M. Markovich is a shareholder in Anderson Kill's Philadelphia office. She is also chair of the firm's Banking and Lending Practice Group and her practice is focused on the representation of banks and finance companies in all aspects of commercial lending transactions, including ABL transactions, lease finance, bankruptcy and debt restructuring, and creditors' rights. imarkovich@andersonkill.com (267) 765-8216



Frank G. Murphy is a shareholder in Anderson Kill's Philadelphia office. Mr. Murphy's practice concentrates in corporate and commercial litigation, bankruptcy and restructuring, and real estate and construction matters. He is also a member of the firm's Banking and Lending Practice Group. fmurphy@andersonkill.com (267) 765-8237



Arthur R. Armstrong is an attorney in Anderson Kill's Philadelphia office. Mr. Armstrong has represented financial institutions, real estate developers, technology companies, and other business entities in litigation matters involving creditors' rights, corporate governance, employment discrimination, commercial and residential property development, consumer protection and defense of all manners of lender liability claims as well as various contract disputes. aarmstrong@andersonkill.com (267) 216-2711

Anderson Kill Successfully Defeats Forfeiture of Client's Assets

Last year, Anderson Kill was engaged by a leading wholesale merchant of high-end luxury goods in connection with an investigation by the U.S. Customs and Border Protection, Fines, Penalties and Forfeitures Office ("FP&F") of certain transactions between the client and one of the client's customers, a dealer and retailer of luxury brands. Our client's customer has its main places of business in Reynosa, Mexico, and Hidalgo, Texas. FP&F questioned multiple deposits of installment payments made by the dealer to the client's deposit accounts held by a national bank with operations in, among other states, Pennsylvania and Texas. FP&F subsequently seized and forfeited the client's funds in a six-figure amount held in bank accounts with the national bank. The client had the option of seeking mitigation of this forfeiture in federal court or in an FP&F administrative proceeding.

Having analyzed the available options, we recommended to the client to elect the administrative option. The proceeding for remission of forfeiture and penalties was handled by Inez M. Markovich, chair of our Banking and Lending practice. We submitted a petition for remission of forfeiture supported by hundreds of pages of bank records and a brief demonstrating that our client had not violated any federal statutes or regulations controlling the reporting of currency transactions and was entitled to all of the payments received from its customer. Following the filing of the petition, we relentlessly advocated our client's case to various FP&F and Home Land Security agents in Texas and California, and the U.S. Attorney's Office in Laredo, Texas.

Our strategy and persistence resulted in a pure victory for our client. This year, the federal government granted our client's petition and refunded 100% of the seized funds.

Notable 2015 Transactions to Date

2015 has been a very productive year for the firm's Banking & Lending practice. We have negotiated and documented multiple loan transactions, sales and financings of equipment lease portfolios, and various debt restructuring agreements. Our lawyers also continued to represent many banking clients in a variety of litigation and bankruptcy matters arising out of borrowers' defaults on their loan obligations, ranging from commercial mortgage foreclosures in Pennsylvania and New Jersey to adversary proceedings and adequate protection and stay relief proceedings in bankruptcy courts.

Represented a national bank participant in connection with the ongoing administration of several revolving credit facilities, term loans and letters of credit (in the total amount of \$38,000,000) to a multiconcept restaurant company comprised of more than 70 borrowers and guarantors organized in various jurisdictions operating 19 restaurants and an events catering business in various cities across the United States. This year, the borrower group requested

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the lenders' consent to enter into an agreement to sell one of its subsidiaries to an international catering company. One of the critical aspects of the due diligence performed by our lawyers involved the indemnification required by the acquiring entity with respect to a pending class action against the subsidiary. Supported by the firm's employment and insurance coverage lawyers, our Banking and Lending group provided a recommendation to the client regarding optimal protection against the lenders' potential exposure in connection with such indemnification obligations and negotiated and documented amendments to the existing loan documentation reflecting the recommended changes to the loan structure.

Represented an equipment leasing and finance company in the negotiation and documentation of a sale and leaseback of a \$10,000,000 equipment lease portfolio originated by the client and financed by a Japanese bank.

Prepared an opinion letter for an Indian bank in connection with a loan made by the bank to a U.K. company, secured by the company's shares in its U.S. subsidiary, as well as a blanket lien on all of the subsidiary's assets. Addressing the perfection of the bank's security interests in the subsidiary's assets and shares, the opinion was based on corporate due diligence on the formation and corporate existence of the subsidiary and an analysis of the existing Uniform Commercial Code filings against the subsidiary and the U.K. parent.

Anderson Kill Adds Value

Providing high quality transactional and litigation services and competitive fee structures for our clients is a foundation of Anderson Kill's Banking and Lending practice. However, our attorneys also perform a variety of additional services for our banking and financial services clients to add value to each engagement.

Several Anderson Kill attorneys hold advanced degrees in engineering and other hard sciences and are qualified to review Phase 1 and Phase 2 Environmental Reports, as may be needed for a bank's underwriting purposes. Because we understand not only the science and the law but also the transaction, we provide our clients with rapid response to facilitate all aspects of a loan deal.

Anderson Kill attorneys with extensive construction law backgrounds assist our banking and lending clients on a broad range of transactional projects. The ability to understand and interpret surveys, deed descriptions, and blueprints can help loan and credit officers with the underwriting of construction and mortgage loans and the structuring and monitoring of appropriate conditions of closing and funding, as well as reporting covenants.

Finally, Anderson Kill's unparalleled knowledge of insurance coverage law can pay real dividends for our banking and lending clients. Seeing beyond the typical deal structure and knowing where insurance proceeds may provide additional security, or knowing the parameters of a lender's risk due to the availability of insurance coverage, contributes to better results for our clients.

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Banking and Lending Seminars

On **June 4, 2015**, Anderson Kill attorneys Inez M. Markovich and Frank G. Murphy, and Howard Brod Brownstein, CTP, of Brownstein Corp. presented a seminar, "Creating Value Through Bankruptcy," addressing various aspects of selling and financing a distressed business in bankruptcy. Dennis J. Nolan, chair of our Bankruptcy & Restructuring practice, also contributed to the planning of this seminar.

On **November 12, 2015**, Anderson Kill will present a seminar on "Lending To Non-Profits." Frank G. Murphy will moderate the seminar. The speakers will include Inez M. Markovich, Stefanie Cutillo, principal consultant with Infosys, and Jeffrey Cooper, Chief Operating and Chief Financial Officer of ORT America Inc.

Our Banking and Lending lawyers regularly provide "in-house" seminars addressing various topics in banking and lending, ranging from amendments to loan documentation, issues in insurance coverage, negotiations of debt restructuring agreements, and others, to our clients. If you are interested in having a Breakfast or Lunch & Learn presentation at your offices, contact Inez M. Markovich at (267) 765-8216 or imarkovich@andersonkill.com. ▲

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The information appearing in this newsletter does not constitute legal advice or opinion. Such advice and opinion are provided by the firm only upon engagement with respect to specific factual situations.

We invite you to contact Inez M. Markovich, Editor, and chair of the Banking and Lending Practice Group, at imarkovich@andersonkill.com and (267) 765-8216 with your questions and/or concerns.

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